

BETWEEN PHILOSOPHY AND THE LAW

BETWEEN PHILOSOPHY AND THE LAW:
IBN RUSHD, LEO STRAUSS, AND THE DEMANDS OF THE
CITY

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ABSTRACT:

This thesis uses Leo Strauss' analysis of Ibn Rushd's *Decisive Treatise* as an analytic framework to approach the *Decisive Treatise* anew and consider the political and philosophical importance of Ibn Rushd's argument about the relationship between reason and revelation. Using primary source documents in English, Arabic, French, and German, this thesis proposes that, by returning to Ibn Rushd's text, the reader can develop a richer understanding of (1) the role of the philosopher in politics, according to Ibn Rushd, and (2) some of the complicated differences between the Islamic thought of Ibn Rushd and the Jewish thought of Maimonides as presented by Leo Strauss. This thesis offers an analysis of Strauss' reading of Ibn Rushd, a reading long overlooked by readers of Strauss and readers of Ibn Rushd alike. It provides the foundation for further research that will demonstrate the importance of Ibn Rushd's thought, both for Islamic philosophy in general and for Leo Strauss specifically.

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And last, but certainly not least, to Lisa and Emmy, who make me smile and who are my inspiration:

May you always remember that you have the power to interpret.

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Abbreviations

WORKS BY IBN RUSHD

- DT* *Decisive Treatise & Epistle Dedicatory*, trans. with introduction and notes by Charles E. Butterworth (Provo: Brigham Young University Press, 2008). All references will provide the page and line number of this edition, followed by the page number of the Arabic critical edition of the same work, *Fasl al-Maqal Fima Bayn al-Hekmat wal-Shari'a men al-Ittsal*, ed. with introduction and notes Mohammad 'Emara (Cairo: Dar al-Maaref, 1999).
- MCT* *Short Commentary on Aristotle's Topics*, in *Averroës' Three Short Commentaries on Aristotle's "Topics," "Rhetoric," and "Poetics,"* ed. and trans. Charles E. Butterworth (Albany: SUNY Press, 1977).

WORKS BY LEO STRAUSS

- PL* *Philosophy and Law: Contributions to the Understanding of Maimonides and His Predecessors*, trans. Eve Adler (Albany: SUNY Press, 1995). All references will provide the page number of this edition, followed by the German of the same work, *Philosophie und Gesetz: Beiträge zum Verständnis Maimunis und seiner Vorläufer* (1935), in *Gesammelte Schriften*, vol. 2 (Stuttgart: Metzler, 1997).
- PAW* *Persecution and the Art of Writing* (1952), (Chicago: University of Chicago Press, 1988).
- SMP* "How to Study Medieval Philosophy" [1944], *Interpretation*, vol. 23, no. 3 (Spring 1996), 319–38.

WORKS BY OTHER AUTHORS

- Gauthier* Léon Gauthier, *La Théorie d'Ibn Rochd (Averroës) sur les rapports de la religion et de la philosophie* (Paris, 1909). All translations are my own.
- DLHW* Muhsin Mahdi, "Averroes on Divine Law and Human Wisdom," in *Ancients and Moderns: Essays on the Tradition of Political Philosophy in Honor of Leo Strauss*, ed. Joseph Cropsey (New York: Basic Books, 1964), 114–31.
- Remarks* Muhsin Mahdi, "Remarks on Averroes' 'Decisive Treatise,'" in *Islamic Theology and Philosophy: Studies in Honor of George F. Hourani*, ed. Michael E. Marmura (Albany: SUNY Press, 1984), 188–202, 305–8.

Introduction

It is evident to you that sound interpretations—not to mention corrupt ones—must not be established in books for the multitude.

فقد تبين لك من هذا أنه ليس يجب أن تثبت التأويلات الصحيحة
الكتب في الفاسدة عن فضلا الجمهورية .

Decisive Treatise, 29.16-18/62

Leo Strauss (1899-1973) is arguably one of the most controversial and influential intellectual figures in late 20th century thought. Strauss is famous for his interpretations of Maimonides, Al-Farabi, Ibn Sina, Spinoza, and Plato, among others, and numerous studies have been published about Strauss' relationship to Judaism, Jewish thought, democracy, education, politics, and the U.S. presidential administration of George W. Bush. According to his critics, Strauss' theory of esotericism justifies deception and hypocrisy on the part of elected officials and is responsible for the ideological orientation of those who believe that government requires deception.¹ For too long, Strauss' work has been studied by those who first decided what Strauss' political ideology was and then read Strauss' texts to prove their assumptions. Yet there is soon to be a new era for the study of Strauss, in which the cult of personality that has surrounded Strauss for decades will finally give way to more serious analysis of Strauss' scholarship and the substantial

¹ For a prominent example of what appears to be just such an ideologically based criticism, see Drury, *The Political Ideas of Leo Strauss* (London: Macmillan, 1988); Drury, *Leo Strauss and the American Right* (London: Palgrave Macmillan, 1999).

suggestions it contains for questions of political philosophy, interpretation, revelation, and law.

As both adulation and invective toward Strauss wane in popularity, it is possible to begin looking at Strauss' work more deeply. Before launching into our discussion of Strauss' analysis of Ibn Rushd, we should not neglect to say a few words about this "esotericism" of Strauss—if only to problematize some of the assumptions about Strauss' "esotericism" that too often lead readers to dismiss his work prematurely.

Strauss' Esotericism and Ibn Rushd

In *Persecution and the Art of Writing* (1952), Strauss writes that esotericism is a means of communicating "in which the truth about all crucial things is presented exclusively between the lines. ... The fact which makes this literature possible can be expressed in the axiom that thoughtless men are careless readers, and only thoughtful men are careful readers" (*PAW*, 25). The author is to present important parts of his work "between the lines", but since most authors do actually have an opinion or point that they wish to present they must have a way to point to what they believe is the "most crucial thing"—though in such a way that it is not exposed to those who are incapable of understanding it. In the example that Strauss gives, the author must present the accepted view, permitting his or her distaste for that view to manifest only in the dull and uninteresting manner in which he or she presents it. The majority of the author's work will be taken up by this accepted view, and the opposing view will receive only a few

mentions, although these will be of a far more intriguing character than those the author offers of the accepted account (*PAW*, 24-25).

Critics of Strauss have interpreted his theory of esotericism to mean that teachers and writers ought to lie to the majority of people while preserving a secret truth for the few and elite. Esoteric writing is, according to these critics, *deceptive*. I would suggest that there are two ways that any work can be deceptive: it can deceive the reader as to the truth of the matter being discussed, and it can deceive the reader as to the opinion of the author. In *Persecution and the Art of Writing*, Strauss never indicates that the author ought to deceive or lie to his audience about the truth. Strauss does not advocate that authors misrepresent their opinion of the opposing view, only that they discuss that view “in the quiet, unspectacular and somewhat boring manner which would seem to be but natural” (*PAW*, 24). The content of the statement that the author makes does not change—only the style in which the author presents the information changes; and it is by adopting a stultifyingly unremarkable tone that the author’s opinion or evaluation of this content is revealed. In *Persecution and the Art of Writing*, Strauss discusses the means by which an author disguises her or her own opinion within the text so that only certain types of readers will notice its existence. In all honesty, I am not sure that an author veiling their own opinions presents the sort of moral and democratic problem that critics of esotericism imply—it seems more probable that such critics are concerned that when the author disguises his or her opinions, he or she is in fact misrepresenting the truth. Ideally, the author of a work (at least one that is meant to be studied) presents both fact and opinion—the student has a right to expect from such an author that he or she not

misrepresent the facts. By “misrepresent the facts,” I mean that the author must not pretend that something occurred when it did not, or did not occur when it did; he must not willfully change dates, numbers, or geography; he must not claim that people said things they did not say or did not say things that they did. These are “facts” that have a life independent of the author, and while it is up to the author to interpret the effect and meaning of such events, it is not up to the author to alter their existence.

However, as previously stated, an author does have his or her own opinion. An author who claims that there was no genocide in the 20th century is deceptive; an author who claims that genocide is justified, regardless of whether one agrees or not, is expressing an opinion. If that author presents, accurately if dully, the fact that millions have been killed in organized campaigns of murder in the 20th century, then he has not deceived us about what occurred. If both sides present the same information, one can choose to agree that these acts are justified on the basis of the author’s presentation of opinions—the author has not taught us incorrect or faulty information about 20th century genocides, only presented us with information and his own interpretation of it. Thus, if our genocide-inclined author hides his own opinion while presenting the history of 20th century genocides with all due academic probity, he has not led us farther away from the truth, but only provided us with more information that might eventually prove relevant to deciding what we believe the moral character of genocide to be.

When an author veils his own opinion, then so long as he does not manipulate fact to influence our examination of that opinion, it is our responsibility, and our

responsibility alone, as readers, to determine what his opinion might be and to make a decision about whether or not we concur with that opinion.

Critics of Strauss assume that if a writer hides his own opinion, he is preventing his audience from understanding the truth. Such criticisms, for one thing, assume that the author has fully grasped the truth and that therefore diverting attention from his own opinions is equivalent to diverting attention from the truth. The wisdom of assuming that any author has fully grasped the truth is doubtful in itself. The same school of critics assumes that it is the author's responsibility to escort the reader, bringing the reader clearly, quickly, and directly to whatever conclusion the author desires. I would suggest that for Strauss it is not the responsibility of the author to speak to the lowest common denominator in his or her audience—it is, in fact, the author's responsibility to speak to the most capable students. These capable students are the ones who are willing and able to take responsibility for a text; they are, Strauss indicates in *Persecution and the Art of Writing*, the ones who look to the inconsistencies and contradictions in a text and seek to contribute to our understanding of the text, its topic, and its author (*PAW*, 25). Esoteric writing in *Persecution and the Art of Writing* is a form of writing in which the author's interpretation of the subject (and not necessarily the subject itself) is hidden from view to avoid stimulating mistaken rebellion or violence on the part of those who would persecute the author for his opinions.

Strauss published *Philosophy and Law*, the text I will be discussing in this thesis, in 1935, long before his presentation of the theory of esotericism in *Persecution and the*

Art of Writing (1952)². In his early works, Strauss examines medieval Islamic and Jewish thinkers explicitly, and it is from his study of these thinkers that his fully formed theory of esotericism was to develop.³ Parallels exist between statements that Strauss makes about Maimonides and Ibn Rushd and the definition of esotericism drawn from *Persecution and the Art of Writing*. In *Philosophy and Law*. For example, Strauss states that both Maimonides and Ibn Rushd agree that in the case of certain subjects “one may impart only the elements [of the interpretation], and then only to suitable persons” (*PL*, 90/76). For Ibn Rushd, who will be the focus of our analysis, the actual verses that make up the revealed law are accessible to all people and anyone is entitled to read that law—in fact, the alteration of the text of the Qur’an such that two people actually read different words is an offense of the highest order. What is to be hidden from view is not the law itself but the interpretation or opinion of the philosopher about the law.

If it is indeed the case that *Philosophy and Law* contains the seeds of Strauss’ theory of esotericism, it is because the works analyzed by Strauss in *Philosophy and Law* evidence what Strauss will later identify as characteristics of esoteric texts. Both Maimonides’ *Guide for the Perplexed* and Ibn Rushd’s *Decisive Treatise* present

² While the majority of essays contained in *Persecution and the Art of Writing* were published earlier, they are first presented by Strauss a coherent whole with the publication as a single text in 1952.

³ For more information on the influence of medieval thought on Strauss’ theory of esotericism, see Hillel Fradkin, “Philosophy and Law: Leo Strauss as a Student of Medieval Jewish Thought,” *The Review of Politics* 53.1 (Winter 1991), 40-52. For how Strauss’ work is influenced by the medieval Islamic thinkers, see Remi Brague, “Athens, Jerusalem, Mecca: Leo Strauss’ ‘Muslim’ Understanding of Greek Philosophy,” *Poetics Today* 19 (Summer 1998), 235-59, specifically 239-42; Leora Batnitzky, “Strauss’ Disenchantment with Secular Society,” *New German Critique* 94 (Winter 2005), 106-26, specifically 123-24.

themselves as oral.⁴ Ibn Rushd (like Maimonides) claims that there are certain things that are harmful for certain people to know,⁵ and both Maimonides and Ibn Rushd argue that the author of a text bears responsibility for that text, and by extension the responsibility of ensuring (to the best of his or her ability) that opinions are not made transparent to those

⁴ Strauss suggests that Maimonides intentionally avoids calling the *Guide* a book, using instead the Arabic *maqala*, and he is correct when he points out that the “original connotation” of *maqala* is “speech”. Maimonides’ use of the word *maqala*, says Strauss, “hints at the essentially oral character of [the *Guide*’s] teaching” (*PAW*, 47; for an interesting discussion of esotericism and oral teaching, see Brague, “Athens, Jerusalem, Mecca,” in which Brague makes a strong case that “esoteric writing” should be understood as writing which retains some of the immediacy and control possible in oral communication; “written esoteric communication,” Brague writes, “makes possible a silent oral teaching” (Brague, 143-44). Because the *Guide* is a written text (exoteric), which is intended to retain characteristics of the oral (esoteric), it can be termed esoteric writing. Ibn Rushd’s *Decisive Treatise*, in the same manner as Maimonides’ *Guide*, hints at its own oral character. The original Arabic title of Ibn Rushd’s *Decisive Treatise*, *Fasl el-maqal*, uses precisely the same Arabic word (*maqala*) that Maimonides uses for the title of his *Guide*. Although *maqal* can be translated as “treatise,” the “original connotation” of the word denotes speech (Brague, 244). This is not merely a matter of usage, but a matter of linguistic origins. The word *maqal* shares the root of the word for “speech” (*qawl*) and the verb “to speak” (*qala*). Following Ibn Rushd’s use of this term in his title, he introduces his text as a speech or statement (*qal*): “The goal of this statement (*qawl*) is for us to test...” (*DT*, 1.4-5/22).

⁵ Ibn Rushd uses the example of a doctor who gives his patients basic information about their illness and the necessary treatment. The doctor does not explain the surgical and chemical details of their illness and the treatment, because unless the patient is also a doctor such knowledge will in no way improve the patient’s health! If this patient is exposed to one who contradicts the doctor’s view, or who claims that there are other options (interpretations), they will likely be convinced that the doctor was wrong and reject his diagnosis. In the end, the patient will have rejected the wisdom of the doctor, replaced it with nothing, and his health will deteriorate dramatically. For Ibn Rushd, the relationship between the doctor and the patient is the same as the link between knowledge and truth; the correct amount of knowledge improves one’s understanding of the truth, while excessive information can only impair it (*DT*, 27.27-29.15/59-60; *PAW*, 46).

who might become more confused or agitated as a result.⁶ Maimonides and Ibn Rushd, in the texts that Strauss analyzes in *Philosophy and Law*, are basically in agreement regarding the philosopher's responsibility to avoid exposing interpretations to those who cannot understand them.

The texts that Strauss reads in *Philosophy and Law* are a vital part of the canon of texts from which, over the next seventeen years, Strauss will extract the theory of esoteric writing as he discusses it in *Persecution and the Art of Writing*. One of the foundations of the analysis that follows is that, since it is within the texts of these medieval Islamic and Jewish thinkers that Strauss identifies the existence of esoteric writing, a return to the analysis of these texts may help deepen the way that we understand Strauss' notion of esotericism.

Why Examine Strauss' Analysis of Ibn Rushd?

A desire to understand Strauss' theory of esotericism has motivated a number of scholars to analyze Maimonides, Ibn Sina, Judah Halevi, and Al-Farabi.⁷ Almost no

⁶ For this reason, Ibn Rushd identifies the one who makes interpretations available indiscriminately as a blasphemer and a heretic who "bars him [who misunderstands the interpretation] from the truth" (*DT*, 21.22-23/93-94; *PL*, 85/91; 87/73). Similarly, Strauss identifies Maimonides' reliance on tropes of oral communication as the result of Maimonides' desire to avoid transgressing prohibitions against the public dissemination of secrets (*PAW*, 47).

⁷ Some truly wonderful scholarship is available on these figures and their relationship to Leo Strauss' thought. For more on Maimonides see Warren Zev Harvey, "The Return of Maimonideanism," *Jewish Social Studies* 42 (Summer–Autumn, 1980), 249-68; for Halevi, Kenneth Hart Green, "How Leo Strauss Interpreted Yehudah Halevi's *Kuzari*," *Journal of the American Academy of Religion* 61 (Summer, 1993), 225-273; for Ibn Sina and al-Farabi, Remi Brague, "Athens, Jerusalem, Mecca," 235-59 (cited above).

figure that Strauss analyzes has received less attention, as an object of Strauss' study, than Ibn Rushd. For the most part, analyses of Ibn Rushd, even when undertaken by those with intellectual and historical ties to Strauss, seem to refrain from mentioning Strauss whenever possible.⁸ Those who do mention Strauss' analysis of Ibn Rushd extensively tend to be extremely critical of Strauss' analysis, although I do not consider much of that criticism to be well thought-out.⁹ Even in the recent and valuable work by Georges Tamer, which is the first attempt to deal comprehensively with Strauss' understanding of and commentary on Islamic thought, relatively little is said of Ibn Rushd.¹⁰ This is despite the fact that the first chapter of Tamer's work is entitled: "On the Origins of Leo Strauss' Thought: Spinoza and Ibn Rushd." Tamer's intention in that section is to establish that, as soon as Strauss began to study Spinoza, he recognized "Averroïst" influences on Spinoza. Tamer claims that Strauss began his reading of Islamic thought as a means to understand Spinoza (Tamer, 41). However, in order for such a statement to be useful in terms of understanding Ibn Rushd's impact on Strauss, or even Strauss' reaction to Ibn Rushd's work, one would first need to clarify Strauss' understanding of "Averroïsm," which

⁸ Both Charles Butterworth and Muhsin Mahdi, whose works on Ibn Rushd are used in this thesis, have an extensive intellectual relationship to Strauss. Butterworth in fact manages to mention Strauss at the very opening of his translation of the *Decisive Treatise* without ever bringing up Strauss' name, and Strauss is wholly absent from Mahdi's articles on the *Decisive Treatise*. For details of these absences, see pages 18-19.

⁹ Two critics who discuss Strauss' analysis of Ibn Rushd are Dimitri Gutas and Oliver Leaman. For more on the type of critique they propose, see note 56 on page 51-52.

¹⁰ George Tamer, *Islamische Philosophie und die Krise der Moderne: Das Verhältnis von Leo Strauss zu Alfarabi, Avicenna und Averroes* (Leiden: Brill, 2001).

Tamer does not do.¹¹ Having claimed such a pride of place for Ibn Rushd in the development of Strauss' thought, Tamer does not significantly develop this claim, moving quickly to the consideration of Ibn Sina and Al-Farabi.¹²

Although Strauss' status as one of the more controversial political philosophers of the 20th century might be enough to motivate the study of a figure that Strauss took time to analyze, the work that follows is only partially motivated by a desire to remedy a lack of attention to Strauss' analysis of Ibn Rushd.

The analysis that I will undertake here is also provoked by the fact that Leo Strauss is a specter haunting modern English language scholarship on Islam. The influence of Strauss is obliquely present in the work of Muhsin Mahdi, Majid Fakhry, Hossein Nasr, Ralph McInerny, and Charles Butterworth, among others. Those scholars who have no particular or acknowledged relationship to Strauss make use of the analyses

¹¹ Strauss differentiates strongly between the thought of Ibn Rushd and "Christian Averroïsm." Christian Averroïsm refers to the interpretation of Ibn Rushd by medieval Christian thinkers, and the interpretation of Ibn Rushd presented by these thinkers is based on a fundamentally Christian approach to the law, not an Islamic one. See Leo Strauss, "On a Forgotten Kind of Writing," in *What is Political Philosophy?* [1959], (Chicago: University of Chicago, 1988), 221-32, specifically 229; Clark A. Merrill, "Leo Strauss' Indictment of Christian Philosophy," *The Review of Politics* 62 (Winter 2000), 77-105.

¹² Tamer, 57, 324. Tamer's book is a valuable resource for research into Strauss' analysis of Islamic and Arabic thought. However, the emphasis of his book is to demonstrate that Strauss seeks to prove the radical opposition between philosophy and religion and between philosophy and politics. Tamer understands Strauss to be "employing medieval Islamic philosophy" in order to prove his assertions about the conflict between philosophy and religion, and Tamer believes that, on the basis of the harmony established by medieval Islamic thinkers between philosophy, religion, and politics, that Strauss' interpretation of these thinkers failed to fulfill Strauss' reason for undertaking them.

done by those with a deep (if unclear) relationship to Strauss and his work.¹³ If English language-scholarship on Ibn Rushd is to develop, and if we are to retain some grasp of the trajectory such scholarship is following, we must acknowledge and at least attempt to understand the roots of that scholarship. While this thesis cannot hope to provide such an over-arching analysis of the place of Ibn Rushd in Strauss' thought, it will provide some necessary first steps in such an analysis. Examining how Strauss' analysis of Ibn Rushd affects the analysis of commentators like Butterworth and Mahdi is a matter requiring further research, and this work tries only to provide a tool for such future attempts.

Strauss' Suggestions

Near the beginning of *Persecution and the Art of Writing*, Strauss makes an interesting and provocative proposition. Strauss states:

[T]he status of philosophy in Islam was intermediate between its status in Christianity and in Judaism. (*PAW*, 19)

¹³ Daniel Heller-Roazen's article "Philosophy Before the Law: Averroes' Decisive Treatise," in *Critical Inquiry* 32 (Spring 2006), 412-442, is an exceptional example of the conspicuous absence of the analysis of Strauss' reading of Ibn Rushd. Heller-Roazen uses Strauss' sources (Gauthier and Müller), and sources with known connections to Strauss (Butterworth, Mahdi, and Hourani). Heller-Roazen in fact references the work of Leo Strauss himself (specifically *Persecution and the Art of Writing*). Yet, in the course of a substantial article on Ibn Rushd's *Decisive Treatise*, one whose clarity and precision is remarkable, Heller-Roazen does not quote from, refer to, or even gesture to *Philosophy and Law* and Strauss' interpretation of Ibn Rushd in that text (although he does refer broadly to the importance of Strauss' readings). It is difficult to understand, if one acknowledges the importance of a thinker like Strauss for an analysis of Ibn Rushd, as Heller-Roazen seems to do, why one would avoid taking up Strauss' actual analysis of Ibn Rushd.

According to Strauss, this is the result of “the position which ‘the science of *kalâm*’ acquired in Islam” (*PAW*, 19). In the context of Islamic law, *kalâm* is the science of determining meaning through the use of dialectic; according to Strauss, the purpose of *kalâm* is to “establish by argument those beliefs which the privileged soul holds without argument” (*PAW*, 99). Strauss’ argument is that the status achieved by the dialectical interpretation of the law in Islam renders the status of philosophy in Islam distinct from its status in both Christianity, on the one hand, and Judaism, on the other. What is provocative is the stark contrast between this statement and the innumerable times throughout his work where Strauss refers to Islamic and Jewish thought as overwhelmingly similar in their relationship to philosophy and law; although, at various points in his many texts, Strauss mentions specific differences between specific Jewish and Islamic thinkers, this is one of the few places where Strauss gestures to a more wide-ranging difference between the status of philosophy in Judaism and Islam. In what follows, Strauss himself says little more about what this difference might consist of.

This thesis ends with a suggestion as to what this distinction between the status of philosophy in Islam and Judaism might be. Strauss’ discussion of the similarities and differences between Ibn Rushd and Maimonides, as well as Ibn Rushd’s *Decisive Treatise* itself, are invaluable to any attempt at understanding the relationship between Jewish and Islamic law not wholly pre-occupied with trying to harmonize the two traditions. There are, Strauss would agree, philosophies and ideologies that are in very basic ways different from one another—in fact one of the primary theses of *Philosophy and Law* is that reason and revelation, since they have different purposes and goals, can never be harmonized.

This thesis will draw out the notion that what Strauss is suggesting is the necessity of accepting conflict as a productive and important part of political development. What Strauss calls us to in *Philosophy and Law* is the appreciation of reason and revelation as two distinct means of approaching the world, whose tumultuous and provocative relationship is inseparable from the development and refinement of our political society. The difference between the thought of Maimonides and that of Ibn Rushd is important and meaningful for the development of the philosophical and politico-philosophical traditions of Judaism and Islam. Hopefully, articulating the difference between the statuses of reason in these two traditions will provide a greater appreciation of the individuality of each, allowing both Judaism and Islam to appear as distinct and important attempts to understand the relationship between philosophy and law.

The Name of Ibn Rushd

Ibn Rushd's proper name, at least for the purposes of English-language scholarship, is a matter of debate. In *Philosophy and Law*, Strauss names him "Ibn Ruschd," a standard if Germanic phonetic transcription of the Arabic name. Eve Adler, in the English translation of that work, has translated the name as Averroes, which is the Latinized version of "Ibn Rushd." Because this thesis is concerned primarily with Strauss' analysis of Ibn Rushd in *Philosophy and Law* and Strauss used "Ibn Ruschd" in that text, all quotations from primary and secondary sources that use "Averroes" have

been changed to Ibn Rushd.¹⁴ There is no reason why the Latinized version of Ibn Rushd's name should continue to be used, particularly when his full name—Abu 'l-Walid Muhammad Ibn Ahmad Ibn Rushd—refers directly to the paternal line of judges from which Ibn Rushd was descended, and speaks to the fact that Ibn Rushd was, at least by birth, as much an insider in the Islamic traditions of philosophy, jurisprudence, and interpretation, as anyone could claim to be.

Ibn Rushd was born in 1126 in Cordoba, Andalusia. In his early years, he was influenced by Ibn Tufail (author of *Hayy ibn Yaqdhan*) and Ibn Bajja, whose thought Ibn Rushd discusses in his own Commentary on Aristotle's *Physics*. In the Christian world, Ibn Rushd is best known as the progenitor of Averroism, a theory which, when Latinized, came to refer to the belief that there were truths of faith and truths of reason, and neither was able to contradict the other. There is a great deal of controversy, some of which is presented by Strauss, surrounding whether or not Latin Averroism presents Ibn Rushd's thought accurately. A number of scholars have argued quite persuasively that Christian or Latin "Averroists" sought support for a specifically Christian ideology in Ibn Rushd's work, and that Ibn Rushd cannot be assumed to have held the beliefs with which "Averroism" is usually associated.

¹⁴ It would be interesting to parse why, in *Philosophy and Law* (1935) Strauss uses "Ibn Ruschd," and a year later, in "Quelques remarques sur la science politique de Maïmonide et de Fârâbi" [1936], Strauss uses "Averroès". Given that M. J. Müller, whose translation of the *Decisive Treatise* Strauss relies upon, uses "Averroës," it is unlikely to be simply a matter of German usage.

Ibn Rushd was a prolific writer whose works on law, philosophy, and science influenced Maimonides and St. Thomas Aquinas, among others.¹⁵ As a judge and philosopher, Ibn Rushd held a number of appointments in the courts of Cordoba, Seville, and Morocco. In 1160, Ibn Rushd was appointed the chief judge (*qadi*) of Cordoba, a post that his father and grandfather had both held. In 1195, as the result of political pressure on the Almohad dynasty, Ibn Rushd and his thought were formally rejected: Ibn Rushd was promptly exiled to a remote village, and his books were banned or burned. Although Ibn Rushd was pardoned shortly before his death in 1198, it was not before many of his works were destroyed. Because of these purges, some of the oldest copies of Ibn Rushd's texts, and particularly his Commentaries on Aristotle, are in Latin, although translations into Arabic and Hebrew are widely available.

In the context of Islamic thought, Ibn Rushd is considered a somewhat wild figure, whose intellectual and theological allegiances have never been fully clarified. Although a member of the Maliki school of jurisprudence, Ibn Rushd rarely advocates directly for the Maliki perspective. In books where Ibn Rushd compares different legal responses to particular questions (as he does in *Bidayat al-Mujtahid wa Nihayat al-Muqtasad*), he often devotes slightly more time to the Maliki response, without presenting his own relationship to that view. There has never been any doubt that Ibn Rushd is an important and controversial figure in Islamic thought, but he also remains an ambiguous

¹⁵ Ibn Rushd's most famous work of jurisprudence is *Bidayat al-Mujtahid wa Nihayat al-Muqtasad* (The Beginning for the Industrious and the End for the Lazy). In philosophy, he is best known for *Tahafut al-Tahafut*, his response to al-Ghazali's criticism of Aristotelian philosophy in *Tahafut al-Falasifa* (Incoherence of the Philosophers), and *Fasl el-Maqal* (Decisive Treatise).

figure whose philosophy, political commitments, and personal views remain in doubt to this day.

The Structure of This Work

The following work is divided into three chapters and a short conclusion. In the first chapter, I demonstrate the relationship between philosophy and law as laid out by Ibn Rushd in the *Decisive Treatise*, using as secondary sources several of the most distinguished 19th and 20th century commentators on Ibn Rushd. In the second chapter, I examine Strauss' analysis of the *Decisive Treatise* in chapter 2 of *Philosophy and Law*, in light of what appears to be Strauss' claim that Ibn Rushd subordinates philosophy to the law, then point to some insufficiencies of Strauss' analysis, arguing that these can best be understood when we take into account that the demands of the law on philosophy are, for Strauss, the means by which the law binds philosophy to the world and transforms philosophy into political philosophy. In my final chapter, I trace—according to Strauss—the relationship of the law to philosophy in Maimonides and investigate, given the difference between how Maimonides and Ibn Rushd evaluate human reason, the unique form this relationship might take in Ibn Rushd's thought.

Chapter One:

A Short Commentary on Ibn Rushd's *Decisive Treatise*

Leo Strauss appears to reveal, in *Philosophy and Law*, that medieval Islamic thinkers view philosophy as subordinate and bound to the law. For Strauss, this “boundedness” means that for medieval Islamic thinkers, and in particular for Ibn Rushd, philosophy is never able to reach unexpected conclusions. Near the end of his examination of Ibn Rushd, Strauss writes that:

...[O]ne must at least say that for Ibn Rushd there are *truths prescribed by the law*. Thus, philosophy as authorized by the law is not free in the sense that one simply cannot say at the outset what it will teach; it is not as if it goes its way altogether unguided, so as to establish unexpectedly in the end that the result it has led to was also given previously by the law. Its results are, rather, known from the outset precisely through the law, and error with regard to these results is declared to it from the outset to be unforgivable.

... [E]s gibt für Ibn Ruschd *vom Gesetz vorgeschriebene Wahrheiten*. Die vom Gesetz ermächtigte ist also nicht derart frei, daß sich schlechterdings nicht von vornherein sagen ließe, was sie lehren wird; es ist nicht so, als ob sie gänzlich ungeleitet ihren Weg ginge, um dann an dessen Ende überrascht festzustellen, daß das, was sich ihr ergeben hat, auch und schon durch das Gesetz gegeben ist; ihre Ergebnisse sind ihr vielmehr schon von vornherein, eben durch das Gesetz, bekannt, und der Irrtum bezüglich dieser Ergebnisse ist ihr von vornherein als unentschuldbar angekündigt. (PL, 88/74)

Philosophy in Islamic law, Strauss seems to contend, is fundamentally limited to the explication and verification of what is already written in the law. This, Strauss suggests,

is an impoverished philosophy.¹⁶ The purpose of this chapter is to sketch, if only skeletally, the outlines of Ibn Rushd's argument about the status of philosophy in the *Decisive Treatise*, while considering three sources that are important to reading Strauss' analysis. Leon Gauthier is Strauss' primary source for information on the *Decisive Treatise*, and Strauss describes Gauthier's account of Ibn Rushd's thought in the first chapter of his work on Ibn Rushd as "definitive" (*PL*, 83 n. 3/69 n.3).¹⁷ Muhsin Mahdi is one of the preeminent modern scholars of Islam—while the nature of Strauss' influence on Mahdi's thought is not always clear, it was under Strauss that Mahdi began to study political philosophy at the University of Chicago, and it is in a volume published in honor of Leo Strauss that Mahdi published one of his most direct readings of Ibn Rushd.¹⁸ The

¹⁶ Straus also criticizes the subordination of philosophy to the dogmas of revelation as the greatest sin of medieval Christian thought. While it might be tempting to assume that Strauss is drawing a parallel between Christian and Muslim thought, such a claim would require a significant amount of proof, given that Strauss, in *Philosophy and Law* and throughout his other works, consistently maintains a rigorous distinction between Christian and Islamic thought in terms of each tradition construes and constructs the relationship between philosophy and revelation. I discuss Strauss' critique of Christianity further on pages 62-69, as well as the sources cited therein.

¹⁷ Léon Gauthier, *La théorie d'Ibn Rochd (Averroès) sur les rapports de la religion et de la philosophie* (Paris, 1909). As no translation of this text has yet been made available, all translations are my own.

¹⁸ Mahdi's "Divine Law and Human Wisdom," in *Ancients and Moderns: Essays on the Tradition of Political Philosophy in Honor of Leo Strauss*, ed. Joseph Cropsey (New York: Basic Books, 1964), 114-31; "Remarks on Averroes' *Decisive Treatise*," in *Islamic Theology and Philosophy: Studies in Honor of George F. Hourani*, ed. Michael E. Marmura (Albany, N.Y.: SUNY Press, 1984), 188-202, 305-08. Muhsin Mahdi describes Gauthier as "the prominent representative" of the argument that the harmony described by Ibn Rushd between philosophy and Islam is the positive result of the fact that Islam "lacked the doctrinal basis and the institutional structure for declaring with authority that a religious dogma is contrary to philosophic dogma" (*DLHW*, 116). In other words, harmony was possible because a lack of doctrine meant that Islam could not exert

last scholar we will consider is Charles Butterworth, whose new scholarly translation of the *Decisive Treatise* is used throughout this work. Apart from his own, extensive credentials as a reader of Islamic philosophy, Butterworth declares at the introduction of his translation his indebtedness to both Leo Strauss and Muhsin Mahdi.¹⁹ Referencing these scholars of the *Decisive Treatise*, this chapter will provide the foundation from which to launch, in Chapter Two, an examination of Strauss' analysis of the *Decisive Treatise*.

The title of Ibn Rushd's work is rarely translated literally. Butterworth and Mahdi call the work "The Decisive Treatise," and Gauthier calls it "Agreement between

final judgement over the results of philosophy. The other group, which also accepted the claim that philosophy and the law are in harmony, argued that this harmony was the result of the fact that Islamic philosophy was from its very origins preconditioned by Islamic religious and theological beliefs, such that Islamic philosophy was fundamentally incapable of departing from, and contradicting, Islamic law. In addition, Mahdi uses the Arabic of the Müller edition of the *Decisive Treatise* used by Strauss, despite the presence of what Mahdi acknowledges to be the more recent and critical edition by G. Hourani.

¹⁹ *DT*, n. 1, xvii; xvii. The first sentence of the Translator's Introduction makes reference to an "illustrious predecessor" whose study of one text defined the terrain for following students. The reference is actually to Harvey C. Mansfield, Jr., author of "Strauss's Machiavelli," *Political Theory* 3, no. 4 (November 1975), 371-84. Mansfield explicitly states that in trying to study Machiavelli, one is confronted by the specter of Machiavelli's previous reader, Leo Strauss (Mansfield, 372). Although Butterworth's most transparent point is that the work of Mahdi is as important in the study of Ibn Rushd as Strauss is to the study of Machiavelli, it still indicates that Mahdi fulfills, for Butterworth, the same important role that Strauss does. Interestingly, although Butterworth draws extensively on Gauthier's work and uses the same Arabic edition used by Strauss (despite there having been a more recent critical edition available), Butterworth never directly mentions Strauss' analysis of Ibn Rushd. On the same page, Butterworth gives great praise to the two studies of Mahdi's cited above as being an essential foundation for any study of Ibn Rushd.

Religion and Philosophy,” neither of which are literal translations.²⁰ The full Arabic title of the book is *Kitab fasl el maqal wa taqrir ma bain a-shari'a wa el'hikma min el-ittisal*—a literal rendition of this title would be “Book of final speech and decision on the relationship between philosophy and law.” The Arabic term used by Ibn Rushd and commonly translated as “law” or “Gesetz” is “*shari'a*.” *Shari'a* is the term for Islamic religious law, which is composed of the Qur'an and authoritative *hadith*, or sayings of the Prophet, and the legal rulings derived from those sources.²¹ For Ibn Rushd, *shari'a* is also a fundamental ordering principle. The Arabic language uses a three-letter root system in which every alphabetic triad forms the foundation of a variety of disparate words. This is the case with *shari'a*, which is composed of the letters shin, ra, and ayn (ش ر ع). Variations on the ش ر ع root include “revelation” (شرع), “the revealer of Law”, i.e. God (الشارع), the adjective “that which orders” (شرعي), and the word for a watering hole from which the thirsty can drink (شريعة). *Shari'a* is simultaneously Divine law and the law that orders and maintains the life of men—the *Decisive Treatise* is an interpretation of the order and system for attaining the truth that is derived from Divine law itself.

The Qur'an is the sacred text of Islam, and is composed of revelations given directly to the Prophet Mohammad. The Qur'an is understood less as a text than as a

²⁰ *DT*, xix; Gauthier, 31; *Remarks*, 188.

²¹ Citations of the Qur'an are given with the name of the chapter first, followed by the verse number. The spelling of the chapter names, and the greater part of the translations, are from *An Interpretation of the Qur'an: An English Translation of the Meaning*, trans. by Majid Fakhry, (New York City: New York University Press, 2004). In some cases, when the verse is cited directly by Ibn Rushd, I have noted my use of Charles Butterworth's translation and my own modifications. In cases where I have modified either of these translations, the modification has been noted.

series of utterances recorded in textual form in order to avoid corruption in the process of transmission. In Islam, the Qur'an is considered the most perfect reflection of the Divine codex, or "Mother Book,"²² and is wholly immutable. Ibn Rushd, like the majority of Islamic thinkers, believes that the Qur'an contains a response to any question it is possible to pose. The statement of the law most often cited in support of this point is that "We [the Divine] have not omitted anything from this book."²³ Despite the impression that such a statement might give, it is not the case that the law is composed of thousands upon thousands of legal prescriptions. In fact, the explicitly legal verses of the Qur'an, which scholars have numbered at between three and five hundred, account for only a tiny fraction of the law.²⁴ However, those verses that are not explicitly legal are understood to have deep and wide-ranging legislative implications.

Although for Ibn Rushd the guidance of the law can be either explicit or implicit, the law always responds to questions in a way that leads the questioner to what is true and good (*DT*, 8.27-29). Additional evidence is given in Qur'an *Al-Nahl*: 89, which states that the law has been given to "make all things clear and as a guide," and Qur'an *Al-An'am*:

²² For Qur'anic references to the "Mother of the Book" as the heavenly codex, see Qur'an *Ar-Ra'd*: 39 and *Az-Zukhruf*: 1-4. Both verses support the widely held belief that the Qur'an is the most accurate and perfect representation of the Divine codex.

²³ Qur'an *Al-Na'im*: 38: «مَا فَرَّطْنَا الْكِتَابَ مِنْ شَيْءٍ» Ibn Rushd also references Qur'an *al-Baqarah*: 29 "He it is who created for you everything on earth" «هُوَ الَّذِي خَلَقَ لَكُمْ مَا فِي الْأَرْضِ جَمِيعًا»

²⁴ Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, (Cambridge: Islamic Texts Society, 1991), 19.

91, which confirms that the law that is given is “a light and guidance to mankind.”²⁵ The law, by its own definition, is a guide to what is true and good. For Ibn Rushd, the law either states the truth or, if the truth is unclear, provides a resource whose examination will lead to the truth. When no legal verse declares what is true or right, the Qur’an will provide support and direction for the attempt to ascertain what is true (*DT*, 4.3-7, 23.10-11/23-24). For Ibn Rushd, the search for wisdom—when done correctly—is a journey toward the truth (*DT*, 6.20-7.3/26-7).

The search for truth is called, by Ibn Rushd, the search for wisdom or *hikma* (حكمة). Ibn Rushd discusses philosophy (*falsafa*, فلسفة) as the methodological investigation of beings; *falsafa* as understood by Ibn Rushd is more of an Aristotelian scientific methodology than a broadly construed search for wisdom. (*DT*, 1.9-11/1).²⁶ As Gauthier notes,

The term [*falsafa*] among the Arabs designates, as we know, a determined system, common to all, with only simple variations, for all the *falasifa* or Hellenistic Muslim philosophers.

Ce terme [*falsafa*] chez les Arabes, désigne, nous le savons, un système bien déterminé, commun, sauf de simples variantes, à tous les *falâcifa* ou philosophes musulmans hellénisants. (Gauthier, 46-47; my translation)

Ibn Rushd only uses the term “*falsafa*,” a phonetic transcription of the Greek *philosophia*, twice in the entire text of the *Decisive Treatise*. In all other cases, including that of the

²⁵ Qur’an *An-Nahl*: 89: "نَزَّلْنَا عَلَيْكَ الْكِتَابَ تِبْيَانًا لِّكُلِّ شَيْءٍ"

Al-An'am: 91: "نَزَلَ الْكِتَابَ الَّذِي جَاءَ بِهِ مُوسَى نُورًا وَهُدًى لِّلنَّاسِ".

See also Qur’an *An-Nisa*: 174.

²⁶ "فنقول : إن كان فِعْلٌ لافلسفةٍ ليس أكثرَ من النظر في الموجودات"

For we say that the purpose of philosophy is nothing more than the study of creation" (my translation).

title, Ibn Rushd refers to *hikma* (حكمة). *Hikma* (commonly translated as wisdom) is a general term applied to true knowledge. The word *hikma* is derived from the same three-letter root as the Arabic words for judgment (*hukm*, حكم) and perfection (*ahkham*, احكام). In the current context, “philosophy” refers to the search for *hikma*, and the philosopher one who seeks the truth.

According to Ibn Rushd, the search for the truth requires the use of the intellect (*‘aql*). Classically, scholars have distinguished the Sunni schools of jurisprudence, which include analogical reasoning (*qiyas*) as a source of law for the Sunni, and the Shi’a schools of jurisprudence, which also include the use of the intellect (*‘aql*). Ibn Rushd’s emphasis on the importance of bringing the intellect (*aql*) to bear on the creation of analogy (*qiyas*) is quite remarkable (*DT*, 6.20; 7.18-22/28; 29-30). In fact, Ibn Rushd advocates the use of interpretation—at least by some readers—of verses that other Islamic thinkers argued should not be debated.²⁷ For Ibn Rushd, it is clear that the use of the intellect is mandated by numerous verses in the Qur’an.²⁸ Among the specific verses cited by Ibn Rushd is Qur’an *Al-‘Araf*: 185: “And do they [the just] not consider the kingdom of the heavens and the earth and all that God has created?” Ibn Rushd juxtaposes demonstration (*burhan*), which is the strongest and most reliable form of argument, with dialectic (*jadal*), which Ibn Rushd seems to consider the method of theologians, and

²⁷ Kamali, 128. While many Islamic scholars have argued that words which are ambiguous (*mutashabiha*) are not open to interpretation—Ibn Rushd in fact argues that these verses, the ambiguous or *mutashabiha*, are to be interpreted by those of deep knowledge. See on page 36.

²⁸ Examples of the Qur’anic mandate to use *‘aql* include Qur’an *Al-Anfal*: 22; *Al-Anbiya*: 10; *Yunus*: 100, among others.

rhetoric (*khatab*), which he considers solely a means of persuading the masses (*DT*, 26.7-16/58).

Rhetorical argument is not reliable because there is no way to establish whether or not the premises being employed are correct. The success or failure of a rhetorical argument depends on its ability to influence peoples' imagination and desires, not on having valid premises and a logical conclusion. For this reason, Ibn Rushd classifies rhetorical reasoning as less trustworthy than both intellectual and dialectical reasoning. The dialectical method of argument is more likely to give rise to the truth than the rhetorical method of argument.²⁹ Dialectical arguments are almost always based upon valid premises, but because there is a unique argumentative and coercive aspect to dialectic the dialectician can arrive at conclusions that, while following from correct premises, are nevertheless incorrect.³⁰ Only demonstrative reasoning is capable of understanding what is presented to it intellectually rather than figuratively, with no need for metaphors or persuasion to make the truth of the thing clearer (*DT*, 14.13-19/40). For Ibn Rushd, only the dialectical and demonstrative arguments should undertake projects of interpretations, since both of these methods depend on a rational system for the derivation

²⁹ This is the picture of dialectical argument that emerges from initial readings of the *Decisive Treatise*. In Chapter Three of this work, I will argue that Ibn Rushd's *Short Commentary on Aristotle's Topics*, which is devoted to an investigation of dialectic, cannot be separated from Ibn Rushd's comments in the *Decisive Treatise* and must influence our understanding of the role of dialectic in his thought.

³⁰ For example, a dialectical argument could consist of two correct statements: (1) Wine is forbidden, and (2) grapes are a necessary ingredient of wine. Both of these premises are true. However, the conclusions that (3) grapes are forbidden is incorrect. There is a significant amount to be said about why only one of two syllogisms, both constructed of valid premises, results in a correct conclusion.

of knowledge, rather than on emotion and one's ability to be persuaded. In order to engage in interpretation, one must be committed to a system of interpretation that accumulates evidence from which premises can be derived.

Once one has gathered evidence, Ibn Rushd continues, one must proceed to analyze that evidence using of analogical reasoning. Analogy, *qiyas*, is "inferring and drawing out the unknown from what is known" (*DT*, 2.24-26/23; translation modified.).³¹ Ibn Rushd proves that analogy is a necessary part of the search for knowledge by reference to passages of the Qur'an that speak of Abraham. The Qur'an states that Abraham was shown the kingdoms of heaven and earth. Following this, Abraham began to observe the movement of celestial bodies. The Qur'an further states:

When he [Abraham] saw the moon rising, he said, 'this is my Lord', but when it set, he said, 'If my Lord does not aid me rightly, I will be one of the erring people,'"(Translation modified)

فَلَمَّا رَأَى الْقَمَرَ بَازِغًا قَالَ هَٰذَا رَبِّي فَلَمَّا أَفَلَ قَالَ لَٰعَنَ لِّم يَهْدِي رَبِّي لَأَكُونَنَّ مِنَ الْقَوْمِ الضَّالِّينَ
Qur'an *Al-An'am*: 77

For Ibn Rushd, this passage of the law communicates Abraham's ability to understand changes in the moon in such a way that they reveal to him something true about his relationship to God. Abraham's precise chain of reasoning, that allowed him to move from the motion of the moon to his relationship with God, may be unclear to the reader. However, the purpose of the verse is not to explain how such leaps of knowledge can be achieved, only to communicate the fact that they are possible and that they lead to

³¹ "اعتبر ليست شيئاً أكثر من استنباط المجهول من المعلوم و استخراج منه" "Consideration is nothing more than inferring and drawing out the unknown from the known: this is analogy, or of the method of analogy, and this is syllogistic reasoning or that which uses syllogistic reasoning." (my translation).

knowledge of something true. For Ibn Rusch, such verses, among others, provide proof for Ibn Rushd that truly understanding the law requires the use of analogy to derive hidden meanings from what is presented (*DT*, 10.13-20/34). Because there are a finite number of legal verses in the Qur'an, the truth cannot always be ascertained from a literal reading of the text—Abraham is, for Ibn Rushd, the paradigm of one who extrapolates meaning from what is given.

A more concrete example of the ways that analogical reasoning is a part of Islamic law is examined by Gauthier, who emphasizes the role that analogical reasoning plays in Islamic law in determining the '*illa*', or effective but obscured meaning, of a particular law. As Gauthier notes, nowhere in the Qur'an or *hadith* is rum mentioned, although grapes are permitted and wine is forbidden. In order to determine the applicability of a prohibition against wine to grapes and rum, the reason or effective cause ('*illa*') of the original prohibition must be established. It is only after determining the reason for the prohibition on wine that one will be able to ascertain its applicability to rum.

Interpretation of the prohibition against wine reveals, for Gauthier, that

If wine is forbidden it is as a *fermented* and *intoxicating* drink. Here is the '*illa*'. Fermented and intoxicating drinks are *haram* (*forbidden*). Rum is a fermented and intoxicating drink. Therefore rum is *haram* (*forbidden*).

Si donc le vin est interdit c'est en tant que boisson *fermentée* et *enivrante*. Voilà la '*illa*'. Les boissons fermentées et enivrantes sont *harâm* (*interdites*). Or le rhum est une boisson fermentée et enivrante. Donc le rhum est *harâm* (*interdit*). (Gauthier, 39; my translation)

The intellect ascertains the obscured purpose ('*illa*') of the original prohibition (i.e., that one should not imbibe intoxicating beverages) but it is only through the additional use of analogy that one can, in a logical fashion, determine the legal and civil status of rum in

relation to that prohibition. In a case like this, the analogy is simple: rum, like wine, causes intoxication and is therefore prohibited. However, according to Ibn Rushd, it can sometimes appear that the conclusions of reason and the conclusions of the jurist appear to be in conflict. From a juridical, deductive perspective it is perfectly logical to conclude that if an object is hateful (like wine), anything that contributes essentially to the creation of that item (like grapes) is also hateful. According to this logic, grapes should be forbidden, but rum presents no problem. At the same time, reason rebels at classifying things like grapes and wine as fundamentally similar since they share no affective characteristics. In the example of analogous reasoning provided by Gauthier, interpretation reveals that it is the effect of the wine that is prohibited, rendering any ingredients that are not themselves intoxicating permitted. According to Ibn Rushd, a proper interpretation of the law will reveal that the law is in agreement with the evidence of reason (*DT*, 8.30-9.2/32).³²

According to Charles Butterworth, Ibn Rushd actually uses this syllogistic form of reasoning to make his case that the law mandates philosophy. Butterworth describes the syllogism constructed by Ibn Rushd as having the following form:

- (1) Philosophy is investigation of divine order.
- (2) Investigation of divine order is commanded by the Law.
- Ergo, philosophy is commanded by the Law. (*DT*, xxiii)

³² “If it [the law] is different [from knowledge gained through reflection], that is where interpretation is pursued. ... Indeed, we say that whenever the apparent sense of a pronouncement about something in the law differs from what demonstration leads to, if the law is considered and all of its parts scrutinized, there will invariably be found in the utterances of the law something whose apparent sense bears witness, or comes close to bearing witness, to that interpretation.”

Butterworth argues that in the *Decisive Treatise* the first premise of this syllogism is not clearly established and the second premise “stretches the Qur’anic verses cited as evidence” (*DT*, xxiii). Butterworth emphasizes that while the syllogism appears shaky, Ibn Rushd also seems aware that it is not the most convincing argument, as evidenced by “the tentativeness of the conclusion he [Ibn Rushd] draws [from it]” (*DT*, xxv). Ibn Rushd does not actually state that philosophy is obligatory, but that it “might be obligatory.”³³ This tentativeness is indicated by a particle in the Arabic language which, when used with a past-tense verb, indicates that something is true, and when used with a present-tense verb, indicates that something is possible. This particle of tentativeness testifies, for Butterworth, to Ibn Rushd’s lack of certainty about the claim that philosophy is obligatory according to the law (*DT*, xxv).

Although Butterworth raises serious and important questions about whether Ibn Rushd really considered the obligatory nature of philosophy to have been established, it seems fairly clear that Ibn Rushd considered philosophy and the law to have the same purpose and goals, such that the evidence of one could not contradict the other. Ibn Rushd is perhaps most famous for his axiomatic statement establishing this point. He claims:

The truth does not contradict the truth, but agrees with it and bears witness to it.

“الْحَقُّ لَا يُضَادُّ الْحَقَّ، بَلْ يُوَافِقُهُ وَيَشْهَدُ لَهُ”

(*DT*, 31-2/9; my translation)

³³ Ibn Rushd could have written that these interpretation or investigations were obligatory (*wajib*) or absolutely obligatory (*qad kan wajib*)—instead, he wrote, “it may be necessary” (*qad yajib*) *DT*, 5.13/26; 6.15-16/28: for Butterworth’s analysis of these passages see *DT*, xxv.

If the truths of the law and the truths of reason are the same, then any conflict between the result of reason and the results of the law is an illusion. Ibn Rushd argues that the reason for this conflict is that the law is being taken literally, and that if interpretation is brought to bear on the law in order to discover its non-literal meaning, the conflict will be dispelled. This illusion of conflict can only be dispelled through interpretation, defined by Ibn Rushd as “extracting and separating the figurative significance of what has been said from the literal significance” (*DT*, 9.12-14/32).³⁴ For Ibn Rushd, there is a figurative significance to everything, from natural phenomena, which can reveal one’s relationship to the Divine, to the laws themselves (*DT*, 2.4-23/22-23). Interpretation is the analytical tool that must weigh, as in the case of an analogy between rum and wine, whether two things are fundamentally different because, for example, they are of different colors, or whether they are governed by the same proscription because they have the same effect or use.³⁵ It is through interpretation that certain characteristics or qualities are dismissed as

و معنى التأويل : هو إخراج دلالة اللفظ من دلالة الحقيقة إلى الدلالة المجازية من غير أن يخل ذلك " ³⁴ "بعادة لسان العرب في التجوز The difficulty in translation, which Butterworth acknowledges in his notes (see *DT*, 52, n. 15) is posed by the juxtaposition of *dalalat al-lafz*, *al-dalalat al-haqiqiyya*, and *al-dalala al-mujaziyya*. *Lafz* (لفظ) can refer, generally, to that which is shown or exhibited, that is to say, evidenced in such a way that it can be observed. However, *lafz* also refers directly to something spoken or pronounced. The word مجازية (*mujaziyya*) refers to something 'metaphorical' or figurative. This word shares the root of the word *juza*, which is a 'part', or 'aspect'—this part, or aspect, is considered to be indicative of the whole. *Mujaziyya* therefore can be understood to connote figurative evidence about a particular aspect of an utterance. Butterworth provides no translation of *dalalat al-lafz* in his translation, yet it is precisely the evidence provided by the utterance itself, which must be used as a starting point to arrive at figurative evidence (*dalala mujaziyya*). Kamali’s work provides support for my translation of *haqiqiyya* as “literal” (*K* 116-119).

³⁵ I would venture to define the ‘*illa* specifically as that which makes things similar or different from one another.

irrelevant and others are given prominence, determining the nature of the analogies that can be made. For this reason, Ibn Rushd argues, interpretation is both the riskiest and most rewarding of activities.³⁶ The enormity of the risk stems from the fact that incorrect interpretation provides erroneous premises from which false syllogisms can be constructed. If it contains a single false premise, a complicated and important argument may turn out to be completely specious. When not done properly, he claims, interpretation leads to misleading and ridiculous statements that inhibit one's ability to draw near the truth—but the proper use of interpretation allows one to attain truths previously unseen.

The existence of hidden truths in the law means that the law must be regarded as revealing multiple messages and presenting different truths simultaneously (*DT*, 8.4-26). Some of these messages or truths may appear to contradict the evidence of reason. The greatest challenge we face in searching for the truth is when two pieces of evidence appear to contradict one another: interpretation is the only appropriate and productive response to such a conflict, because in the process of interpretation the hidden truths which reconcile two apparently contradictory positions can be discovered. The following examples demonstrate two of the specific types of contradiction for whose resolution one can look to interpretation.

According to Islam, God is incorporeal and a-temporal; yet, Ibn Rushd invokes Qur'an *Al-Bawarah*: 29, which states that "God directed himself up to the heavens" (*DT*,

³⁶ *DT*, 21.17-19/51; 22.1-4/52; 27.24-26/60; 26.17-28/58 cf. *DT*, 7.18-26/29-30; 12.24-29/37.

20.1-4/48). According to Ibn Rushd, this verse is the foundation of a *hadith* according to which the prophet Muhammad declared a woman who said that God was “in heaven” to be a believer.³⁷ According to Butterworth, this Qur’anic passage comments on the relationship between God and the lower, material world (*DT*, 20 n. 18). The reason this verse appears contradictory is that it contains a corporeal description of physical movement by an incorporeal and omnipresent Divinity. How can it be true that God is incorporeal and omnipresent if the Divine law describes God as moving discreetly from one place to another? For Ibn Rushd, the *hadith* provides evidence that there is a class of people, of whom the woman in the *hadith* is representative, who upon reading this verse will simply understand it to mean that God is in heaven. This class of people “assent[s] to something only insofar as they can imagine it—it is difficult to come to assent to anything that is not linked with something imaginable” (*DT*, 20.7-9/47-8). For people such as these, the verse occasions no conflict. The preceding verse effectively communicates the majesty of the Divine, and should suffice for those who require corporeal referents in order to achieve any understanding—it is precisely people such as these whose understanding and intellect should not be over-taxed.

More industrious and capable students will observe the apparent contradiction between this passage and the passages of law that prohibit the attribution of corporeal,

³⁷ The critical Arabic edition of the *Decisive Treatise* consulted for the present work identifies the *hadith* as originating with Yasar Ibn Mu’awiyah Ibn el-Hakim (*DT*, Ar. 48).

human attributes to the Divine.³⁸ These students must attempt to interpret the conflicting passages, lest the apparent contradiction between verses leads them to believe that the law itself is flawed and contradictory. These students will understand that this verse is not a description of corporeal characteristics, but rather communicates certain Divine attributes that are themselves attested to in the law. The ascent and descent mentioned by the verse could then be understood as the literal description of the Divine attribute of Unity with all creation.

The difference between these types of people is that the “more capable” ones understand the depth of the analogy being made and are committed to understanding the relationship between different parts of the law, even when they appear contradictory. Ibn Rushd claims that the proper way to understand such a verse depends on the one who is attempting to understand, and accordingly, the proper way to speak about such a verse depends upon who one is speaking to (*DT*, 24.1-13/55-56). When interpretation is the tool of the knowledgeable, it results in a deep and profound knowledge about Divine nature. When those who are ignorant or simple interpret, it results in confusion, heresy, and rejection of the law (*DT*, 21.17-23; 22.2-6/51-52).

The second type of contradiction that interpretation is capable of resolving is what we are calling a “behavioral contradiction.” This occurs when one determines that a certain type of behavior is correct, but the opposite kind of behavior appears to be mandated by Divine law. For example, one may decide, on the basis of education and

³⁸ There are in fact two types of these students, according to Ibn Rushd. The lower class should not be encouraged to interpret on their own, according to Ibn Rushd, only supplied with an interpretation that resolves their confusion (*DT*, 20.1-4/48).

consideration, that there is something wrong with violently killing another human being. Such a determination appears to conflict with the emphasis on *jihad* (commonly understood to mean both “struggle” and “holy war”) in the Qur’an (where the term appears quite often). This seems to necessitate choosing between reasoned belief and Divine command. However, as we discussed above, for Ibn Rushd such conflicts can only result from an improper reading of the text (*DT*, 31.20-23/60).

In order to address this particular conflict, one must first confirm the operational cause of the conflict between reason and revelation (in this case, a negative rational judgment about violence vs. passages of law that encourage violence). One can then circumscribe the field of inquiry to those statements in the law that actually advocate some form of violence and hence are most directly in conflict with the conclusions of reason. Having determined that one is only concerned with verses that advocate violence, one must be prepared to study the text of the law. Such study reveals that there are four different kinds of *jihad* described in the Qur’an, only one of which involves the use of physical violence.³⁹ This is known as “struggle (*jihad*) of the sword.” While over fifty percent of the verses in the Qur’an make some reference to *jihad*, fewer than two hundred of the Qur’an’s 6666 verses have been identified as “sword verses.”

Once the field of inquiry has been defined, one must understand the verses in context. In this example, there are significantly more “peace verses” (that advocate alternatives to violence) than “sword verses.” A verse which advocates *jihad* of the sword

³⁹ Liyakat Ali Takim, “Holy Peace or Holy War: Tolerance and Co-existence in the Islamic Juridical Tradition.” *Islam and Muslim Societies*, 4, no. 2 (2007), 23.

like Qur'an *Muhammad*: 4 ("When you encounter the unbelievers, strike them") appears to contradict passages that restrain violence, like Qur'an *Al-Ghashiyah*: 21-22, in which the believer is told: "Exhort, for you are an exhorter. You are not supposed to dominate them." In Islamic law, it is understood that certain verses or commands may supercede or take the place of other commands. One traditional way of dealing with conflicts like these in Islamic law is to invoke the rule of "abrogation," although a more literal translation of the Arabic term is in fact "erasure" (*naskh*).⁴⁰ Some have argued that the revelations received chronologically latest must be considered the final and binding commands, and that for this reason the sword verses (which in general are considered to have been part of the later, or Medinan, revelations) abrogate the peace verses (Kamali, 194; Takim, 23). As usual when he is discussing a legal issue, Ibn Rushd does not explicitly state his own opinion, but he takes time and care laying out the reasons "that some jurists claimed the sword verses were to be read in context with the peace verses" (Takim, 23). For Ibn Rushd, to understand the two verses as non-contradictory does not mean that one must consider one of the two canceled out by the other.⁴¹ If one is willing to do the work, it becomes evident that, in this case at least, the law and reason do not necessarily demand

⁴⁰ Evidence that some verses have been abrogated, or superceded by others, is provided by the Qur'an *Al-Baqarah*: 106, which states that "Such of our revelation that we abrogate [*nasakh*] or cause to be forgotten, we will bring one better or the like thereof." There is a great deal of debate over whether this verse indicates that verses within the Qur'an itself are abrogated by other verses of the Qur'an, or whether it is a reference to the Jewish and Christian revelations.

⁴¹ Rudolph Peters, "The Legal Doctrine of Jihad: The Chapter on Jihad from Ibn Rushd's Legal Handbooks *Al-Bidaya*," in *Jihad in Classical and Modern Islam* (Princeton: Marcus Weiner, 1995), 27-42; see 39.

different behaviors, and that the conflict between the two verses does not necessarily require one to choose one over the other. Instead, Ibn Rushd suggests that the two verses complement one another, and that taken together they reflect both the paramount importance of peace as well as the vital necessity of forceful response in certain situations.

In addition to indicating that reason is compatible with and necessitated by the law, Ibn Rushd establishes that human reason is capable of attaining the highest level of truth. In other words, Ibn Rushd demonstrates that, according to Divine law, human reason in the philosopher is capable of understanding the law that no one else can understand but God. The verse given by Ibn Rushd numerous times in the *Decisive Treatise*, Qur'an *Al-Imran: 7*, is translated into English by Majid Fakhry thus:

It is He Who has revealed to you the Book, with verses which are precise in meaning and which are the Mother of the Book, and others which are ambiguous. As to those in whose hearts there is vacillation, they follow what is ambiguous in it, seeking sedition and intending to interpret it. However, no one except Allah knows its interpretation. Those well-grounded in knowledge say: "We believe in it; all is from our Lord"; yet none remembers save those possessed of understanding!

هُوَ الَّذِي أَنْزَلَ عَلَيْكَ الْكِتَابَ مِنْهُ آيَاتٌ مُحْكَمَاتٌ مِنْهُ أَمْ الْكِتَابِ وَ آخَرٌ
مُتَشَابِهَاتٌ فَأَمَّا الَّذِينَ فِي قُلُوبِهِمْ زَيْغٌ فَيَتَّبِعُونَ مَا تَشَابَهَ مِنْهُ ابْتِغَاءَ
الْفِتْنَةِ وَ ابْتِغَاءَ تَأْوِيلِهِ وَمَا يَعْلَمُ تَأْوِيلَهُ إِلَّا اللَّهُ وَالرَّاسِخُونَ فِي الْعِلْمِ
يَقُولُونَ ءَأَمَّنَّا بِهِ كُلٌّ مِنْ عِنْدِ رَبِّنَا وَمَا يَذَّكَّرُ إِلَّا أُولُو الْأَلْبَابِ

The first time that Ibn Rushd presents this verse in the *Decisive Treatise*, it is different in one small, but absolutely essential, respect from the translation provided above: instead of understanding the verse to say "No one except God knows its interpretation. Those well

grounded in knowledge say” Ibn Rushd presents the verse as reading: “No one knows its interpretation except God and those well grounded in interpretation.”⁴² That two such different interpretations exist are possible results of the language of the verse. Sentences and independent clauses in Arabic can begin with “and”, and in this verse it is grammatically ambiguous whether we have here a single clause with the subject “God and those well grounded in knowledge” or whether “those of deep knowledge” are the subject of a different clause. The importance of this passage is manifest: in the first translation offered, human reason is not capable of interpreting the ambiguous verses of the law, while in the second both God and “men of deep knowledge”—philosophers—are capable of such knowledge.⁴³ In the first presentation, reason is capable of understanding everything that the law understands; in the second, reason must give way to the superior knowledge of the law. For the philosophers, Ibn Rushd seems to be saying, there is no question that cannot be interpreted and no conflict whose origins cannot be investigated, and even those who are incapable of actually delving into the obscured meanings that interpretation can reveal still have access to the law.

⁴² Ibn Rushd in fact presents both interpretations. Ibn Rushd’s interpretation here should be provided to philosophers, and the interpretation that reserves such knowledge to God and God alone should be given to everyone else (*DT*, 10.13-20/34; cf. 27.3-14/59; see also 20.15-16/49).

⁴³ Gauthier’s analysis of how Ibn Rushd interprets this verse provides the cornerstone of Gauthier’s analysis and the first step for Gauthier in attempting to claim “For Ibn Rushd, if there was no one on earth but philosophers there would be no need for revelation.” This claim of Gauthier’s will be further discussed in Chapter Three of this work.

According to Ibn Rushd even the most utterly incompetent class of people must have access to the law, and it is the responsibility of teachers and philosophers and those who do interpret the law to ensure that they do not delve too deeply into its mysteries (*DT*, 19/46-48). The law, by its own account, is intended to be accessible to all men, including those for whom too much knowledge is dangerous (*DT*, 24.10-11/56 cf. 27.3-26/59-60). Access to the law is unlimited—what is restricted is the right to interpret the law. This class of people has no right of access to interpretation of any subject, and indeed to teach people of this sort the methods of interpretation is considered a grave crime.⁴⁴ When those who are not capable of reasoning correctly confront seemingly contradictory statements, there is a risk that, when confronted with error, these people will either reject the bodies of evidence or search out new bodies of evidence without having any particular knowledge or criterion from which to launch that search. In either case, they will have less and know less than they did before being inappropriately exposed to interpretation.

Contradictions, which naturally arise and must be dealt with in the course of interpretation, are sufficient reason for those of the less capable class to reject particular ways of understanding. If one continually dismisses all texts and utterances in which there appear to be some complication or inconsistency, one risks the gradual loss of every object of study. To people such as these, the law offers statements to be understood literally and axiomatically, since such people are doomed to failure if they attempt to compare statements. In another part of the *Decisive Treatise*, when discussing how one

⁴⁴ *DT*, 8.4-9/30; cf. *DT*, 21.22-23/51-52.

should respond to one of the less capable groups of people, Ibn Rushd returns to the very same passage of the Qur'an that he used to support the right of "men of deep learning" to interpret the law, *Qur'an Al- 'Imran: 7*. In this new context Ibn Rushd does not present the verse as saying that "none can understand [the interpretation of ambiguous verses] but God and men of deep learning." Because he is responding to the questions of a relatively simple class of people about the ambiguous passages in the law, his response is that: "None may understand them but God."⁴⁵

Of the two ways that Ibn Rushd presents this verse, "none may understand them but God" is the more "grammatically regular" (Gauthier, 62). In the first interpretation presented by Ibn Rushd, it would be necessary to rearrange the end of the verse to say: "None know its interpretation but God and men of deep knowledge. They [God and men of deep knowledge] say: 'We believe in it; all is from our Lord.'" The inclusion of God as one of those making such a statement is awkward and raises a number of theological and linguistic issues. Lest Ibn Rushd's interpretation of the verse be considered a vanity interpretation by one who is seeking to support his own conclusions, Gauthier directs his readers' attention to the fact that Ibn Rushd's interpretation is one shared by some of the most famous and respected Islamic scholars, both before and after his time (Gauthier, 64).

For Ibn Rushd, the purpose of philosophy is identical to the purpose of the law: guidance to what is good and true. Philosophy is not limited to the examination and

⁴⁵ There is perhaps a political implication here as well, that one does well in such a situation to avoid suggesting that the questioner is not "of deep knowledge," as they may attempt to argue the point. Rather, one should simply tell them that absolutely no one understands certain things, so that they do not wrongly class themselves among those who are capable of such interpretations.

interpretation of the law, because to philosophize, in all forms, is to attempt to ascertain what is true. Political, ethical, and natural philosophy are all searches for what is true, towards which the law is also a guide. Philosophy and law, for Ibn Rushd, are engaged in the same endeavor; the difference between philosophy and law is a difference of form and audience.

In this chapter we have attempted to sketch out, firstly, Ibn Rushd's argument that the law makes philosophy obligatory, noting Butterworth's doubts about this conclusion, and secondly, the importance and strength of human reason as presented in the *Decisive Treatise*. Ibn Rushd makes a strong case for human intellect being essential, permitting Gauthier to conclude:

Far from in any way subordinating philosophy to religion, this treatise, in summary, categorically subordinates religion to philosophy.

Loin de subordonner en quoi que ce soit la philosophie à la religion, ce traite, en somme, subordonne catégoriquement la religion à la philosophie.
(Gauthier, 111)

Responding to a history of scholarship that consistently categorized Ibn Rushd as either a radical heretic or closeted pietist,⁴⁶ Gauthier asserts that neither of these positions contributes an adequate and perceptive reading of Ibn Rushd, and he attempts to search out a middle ground on the basis of a close, careful, reading of the *Decisive Treatise*.⁴⁷ Gauthier concludes his analysis of the *Decisive Treatise* by suggesting that Ibn Rushd

⁴⁶ See Gauthier, 3-16, for his discussion of scholarship on Ibn Rushd as swinging maniacally between poles of heretical rationalism and total devotion.

⁴⁷ In fact, Gauthier points to previous scholarship's lack of acquaintance with the original Arabic text of the *Decisive Treatise* as presenting a major stumbling block to attempts at analyzing Ibn Rushd.

was genuinely attempting to harmonize philosophy and the law in order to be both a believer and a rationalist (Gauthier, 30). Gauthier's response to the two diametrically opposed ways of understanding Ibn Rushd is similar to that of Ibn Rushd when faced with potential conflicts between philosophy and law: he demonstrates that the two "opposing" theories have no reason to clash. Gauthier's analysis of Ibn Rushd, aside from being well written and informative, is remarkable in its attempt to overcome the disparate traditions of scholarship on Ibn Rushd. More than fifty years later, it is Gauthier's text that Leo Strauss would take up as the best authoritative secondary source on Ibn Rushd. As previously noted, Strauss calls the portion of Gauthier's text that concludes with the statement that "[The *Decisive Treatise*] categorically subordinates religion to philosophy" the "definitive" analysis of the *Decisive Treatise*. Yet Strauss' own explicit conclusion about the *Decisive Treatise* is that

Ibn Rushd undoubtedly acknowledges the primacy of the law.

Ibn Ruschd den Primat des Gesetzes unzweideutig anerkennt. (PL, 91/75)

It is difficult to read such a statement as anything but a straightforward rejection of Gauthier's conclusions. In this chapter, I have laid out the major features of the relationship between philosophy and law for Ibn Rushd in the *Decisive Treatise*. In that text it appears to be a relationship in which philosophy, working through interpretation, has no issue of conflict with the law: indeed, Ibn Rushd seems to suggest that the law commands philosophy, protects the rights of philosophy, and helps the learned understand how to philosophize. Insofar as Ibn Rushd claims that in cases of conflict between the evidence of philosophy and the evidence of reason the law must be interpreted, the law

seems to have ceded some of its (potential) authority over the workings of reason. Yet Leo Strauss argues that Ibn Rushd's *Decisive Treatise* categorically subordinates philosophy to religion. In order to take Strauss' decisive departure from the "definitive" analysis of Ibn Rushd seriously, the next chapter will consider how Strauss' analysis leads him to arrive at such a conclusion, evaluate Strauss' claims in light of Ibn Rushd's arguments in the *Decisive Treatise*, and suggest a way to understand Strauss' conclusions as being in total agreement with the project he has undertaken in *Philosophy and Law*.

Chapter Two:

Philosophy and Law Alone

Written in 1935, *Philosophy and Law* is Leo Strauss' earliest major reflection on the works of medieval Jewish and Islamic thinkers. In this text, Strauss analyzes the conflict between reason and revelation as a conflict between philosophy and revealed law: philosophy as an unending questioning whose topics and conclusions are as unlimited as the capacity of human reason and whose goal is knowledge, and the revealed law as a set of divine commands necessary to form and regulate human society. According to Strauss, medieval Islamic and Jewish philosophers had no doubt about the existence of the revealed law. For these philosophers, the law was a "factum brutum," which did not in itself require discussion (*PL*, 64/51). Ibn Rushd is the first of the medieval thinkers Strauss analyzes directly in *Philosophy and Law* because, in his view, it is Ibn Rushd who most directly addresses the "legal foundation of philosophy" (*PL*, 60/47). What makes Ibn Rushd unique for Strauss is Ibn Rushd's argument in the *Decisive Treatise* that

... [T]he one God obliges the men suited to it, by a clear, unequivocal, simple command of His revealed law, to philosophize. This is the teaching of even and precisely the "most radical thinkers" of the Middle Ages, above all of Ibn Rushd himself.

... [D]er einzige Gott verpflichtet die dazu geeigneten Menschen durch einen offenbaren, eindeutigen, einfachen Befehl seines offenbarten Gesetzes zum Philosophieren. So lehren auch und gerade die »radikalsten Denker« des Mittelalters, allen voran Ibn Ruschd selbst. (*PL*, 59/46-47)

As we examined in the previous chapter, Ibn Rushd makes this claim about the law obligating philosophy by applying principles identified in the law, which results in the following syllogistic proof: philosophy is investigation of divine order; the investigation of divine order is commanded by the law; ergo, philosophy is commanded by the law (*DT*, xxiii). For Strauss the result of the inauguration of philosophy by the law is that philosophy is never autonomous or independent of the law. As we will see shortly, Strauss understands the legal inauguration of philosophy as fundamentally limiting philosophy. On this basis, Strauss concludes that Ibn Rushd “undoubtedly acknowledges the primacy of the law” and “the *superiority* of revelation over reason” (*PL*, 89/74-75). This chapter will pay attention to those portions of Strauss’ analysis that lead him to conclude that philosophy for Ibn Rushd is subordinate to the law, highlight some of the places where, in light of the previous chapter’s analysis of Ibn Rushd, Strauss’ interpretation appears to be insufficient, and make some suggestions as to how these insufficiencies can best be understood.

In *Philosophy and Law*, Strauss argues that philosophy “stands *under the law*” in the *Decisive Treatise* (*PL* 83/70). For the purposes of this chapter’s analysis, I will discuss two senses in which, according to Strauss, philosophy is subordinated to the law. The two categories of subordination are: (1) ‘formative subordination,’ meaning the restrictions placed on philosophy by the very existence of the law; and (2) ‘qualitative subordination,’ which described restrictions drawn from the law that limits the effects and conclusions of philosophizing.

To begin, we will focus on two types of formative subordination identified by Strauss as features of philosophy's relationship to the law in the *Decisive Treatise*.⁴⁸ The first type of formative subordination identified by Strauss is that philosophy, for Ibn Rushd, is expressly commanded by revelation. Strauss acknowledges that, in the *Decisive Treatise*, both philosophy and the law are yields truths and therefore cannot come into conflict with one another (*PL*, 84/70; *DT*, 31-2/9). But, Strauss contends, the establishment of inherent agreement between the results of philosophy and the law

Does not establish the *right* of philosophizing.

Das sie aber das *Recht* des Philosophierens nicht begründet. (*PL*, 84/70).

That the law establishes interpretation as valid means for arriving at the truth does not imply, in Strauss' analysis, that the use of that method is justified. The command that inaugurates philosophy commands philosophy into existence, but does not specifically authorize philosophizing. The law indicates the existence of things whose use is still forbidden—philosophy could be established as an acceptable method in the abstract without indicating that such a method is to be used.⁴⁹ Strauss wants to establish that for Ibn Rushd the law decrees both the existence of philosophy and the use of philosophical methods. For Ibn Rushd, Strauss argues,

⁴⁸ While there may be more examples yet to be identified in Strauss' analysis of Ibn Rushd, the follow represent the two most evident types of formative subordination identified by Strauss.

⁴⁹ For example, Islamic law describes and acknowledges the existence of pigs as a part of creation, forbidding the consumption or use of pig and pig products. Similarly, as will be discussed further below, certain restrictions on interpretation are described while leaving their applicability open to conjecture.

the right of *philosophizing* is established only by the express commandment of the law. [italics mine]

das Recht des Philosophierens gründet sich allein auf das ausdrückliche Gebot des Gesetzes. (PL, 84/70)

According to Strauss, the passage in the *Decisive Treatise* that demonstrates that for Ibn Rushd the law commands both the existence and the use of philosophy is as follows:

Now since these (viz. the religious) laws are truth and since they summon to speculation, which leads to knowledge of the truth, we Muslims know positively that speculation proceeding by means of demonstration does not lead to the contrary of what is revealed in the law; for truth does not disagree with truth, but is in harmony with it and testifies to it.

Da nun diese (nämlich die religiösen) Gesetze Wahrheit sind und sie zu der Spekulation aufrufen, die zur Erkenntnis der Wahrheit führt, so wissen wir Muslime positiv, dass die mittels der Demonstration vorgehende Spekulation nicht zum Gegenteil dessen führt, was im Gesetz offenbart ist; denn die Wahrheit streitet nicht mit her Wahrheit, sondern stimmt mit ihr überein und bezeugt sie. (DT, cited in PL, 84/70)⁵⁰

و إذا كانت هذا الشريعة حقاً و داعية إلى النظر المؤدى إلى معرفة الحق، فإننا معشر المساميين نعلم على القطع أنه لا يؤدي النظر البرهاني إلى مخالفة ما ورد به الشرع، فإن الحق لا يضاد الحق بل يوافقه و يشهد له (DT, 8.27-9.2/31-32)

Ibn Rushd argues in this passage that the truth of philosophy and the truth of the law are, of necessity, compatible. For Strauss it is obvious that the preceding passage establishes a harmony between the results of philosophy and the results of the law, but for Strauss this passages also establishes “the right of philosophizing,” i.e., the right to pursue specific methods in the search for truth. Paraphrasing the above-quoted passage, Strauss

⁵⁰ An interesting point, and one that deserves greater consideration in a different context, is that Strauss does not reproduce Müller’s translation exactly, although he gives the page numbers of Müller’s edition to his own translation. Müller’s translation of these same lines reads: Da diese religiösen Gesetze Wahrheit sind und zu der Spekulation auffordern, welche zur Erkenntnis der Wahrheit führt, so wissen wir Muslimen positiv, dass die demonstrative Spekulation nicht zu einem Widerspruch zu im Gesetz Enthaltenen führt, denn die Wahrheit kann der Wahrheit nicht widersprechen.

continues: “The right of philosophizing is based solely on the express commandment of the law (‘since these laws ... summon to inquiry ... ’)” (*PL*, 84/70). Strauss’ suggestion is that it is because the law explicitly authorizes philosophy that philosophy cannot come into conflict with the law:

Reason as authorized by the law to philosophize, philosophy as commanded by the law, cannot, *precisely for this reason*, come into conflict with the law. [italics mine]

Die durch das Gesetz zum Philosophieren ermächtigte Vernunft, die durch das Gesetz gebotene Philosophie kann eben deshalb nicht in Widerstreit mit dem Gesetz geraten. (*PL*, 84/71)

Strauss concludes that the harmony between the results of philosophy and the results of the law is an outcome of the express authorization of philosophy by the law rather than some intrinsic compatibility between the two projects. The results of philosophy are incapable of coming into conflict with the law because the law that commands it into existence always already conditions it.

In addition—and this is the second formative restriction on philosophy—Strauss contends that philosophy’s ability to acquire knowledge is compromised by restrictions on interpretation which are promulgated by the law. Interpretation is attempted in order to ascertain figurative or hidden meanings on the basis of what has been given (*PL*, 85/71; *DT*, 9.12-14/32). According to Strauss, Ibn Rushd lays out five restrictions on the right to interpretation. They are: (1) “Interpretation must not go against Arabic linguistic usage”; (2) When there is a conflict between the evidence of interpretation and the evidence of law, it is the evidence of the law which must be re-examined; (3) Passages about whose literal meaning consensus has been reached must not be interpreted; (4) If the literal sense

of the law is confirmed by demonstration, it is inappropriate to interpret it; and (5) “Interpretation must not lead to the disavowal of the existence of the things belonging to the principles of the law” (*PL*, 85-87/71-73). While in the *Decisive Treatise*, the passages containing these restrictions are scattered throughout the text; Strauss collects them in one place in order to simplify the investigation of whether or not they do in fact restrict interpretations.

In examining each of these restrictions, Strauss either quotes from the Qur’an himself or references places in the *Decisive Treatise* where Ibn Rushd does so.⁵¹ Then Strauss presents evidence that, for Ibn Rushd, none of these determinations actually restrict the use of interpretation (*PL*, 85-87/70-73). In most cases, this is because the restriction depends on conditions that are impossible to determine. For example, as Strauss correctly notes, for Ibn Rushd reaching consensus is only ever theoretically possible, and thus the third restriction remains only a possible restriction rather than one that is at all likely to affect an actual interpretation (*PL*, 86/72; Strauss’ reference is to *DT*, 9.29-10.4/33). Strauss concludes that, insofar as no actual topic is forbidden to interpretation, philosophy is free to interpret the literal sense of the law in every actual case (*PL*, 87/73). However, Strauss argues that while these restrictions may not actually limit the field of philosophy, their very existence restricts the autonomy of philosophy. They need not actually take effect in order to bind and limit philosophy—they need only exist and be acknowledged to exist. Strauss writes that, “Philosophy does not provide the

⁵¹ *PL*, 85-87/70-73. For the first restriction, Strauss cites Qur’an *An-Nahl*: 125; for the second, *DT*, 9.29-10.4/33; for the third, *DT*, 11.1-12/35; 21.17-23/51; for the fourth, *DT*, 19.15-16/47; for the fifth, *DT*, 21.11-16/51.

qualification ... of error with respect to those principles as ‘disavowal’ (unbelief). This qualification stems from the law” (*PL*, 88/73). Each of the five restrictions mentioned could, if contravened or rejected, result in the perpetrator being designated corrupt or blasphemous (*PL*, 87-88/73). These restrictions function like a fence on the horizon: even if one never approaches the fence, its existence destroys any illusion of unbounded space. The restrictions on philosophy do not so much regulate the practice of philosophy as form a border that philosophy must acknowledge. Strauss argues that

because it [the law] binds philosophy, philosophy is thereby bound by an extra-philosophic, pre-philosophic authority.

... [I]ndem sie [das Gesetz] die Philosophie bindet, macht sie, daß die Philosophie durch ein außerphilosophische, vorphilosophische Instanz gebunden wird. (*PL*, 88/73)

For Ibn Rushd, Strauss claims, there exists an authority that precedes philosophy and which sketches out what philosophy may consist of. These restrictions, if they are acknowledged, mean that philosophizing cannot be an inquiry without boundaries. Accepting the existence of these restrictions forces philosophy to recognize its own lack of autonomy.

In summary, the law formatively limits philosophy because (1) philosophy only exists and can be used as the result of a command of the law and because (2) the existence of restrictions on interpretation in the law means that the law restricts the subjects and methods of philosophy.

In addition to this formative subordination of philosophy to the law, Strauss contends that for Ibn Rushd philosophy is qualitatively inferior to the law, i.e., that the law censors the effects and results of philosophy. According to Strauss, the effects of

philosophy are limited in scope by the prohibition against publicly disseminating philosophical arguments. Ibn Rushd, Strauss notes, claims that some people should not study philosophy, nor should it be taught to them (84/70; 24.14-22/56; 28.8-14/60-61). In Strauss' analysis, Ibn Rushd's work is characterized by an emphasis on secrecy; only those "suited to philosophizing" are to philosophize, and those who are suited to philosophizing are commanded "to keep the interpretation secret from other men" (*PL*, 85/71).⁵² In support of his reading of Ibn Rushd, Strauss cites that thinker's pronouncement in the *Decisive Treatise* that "interpretations ought not to be declared to the multitude, nor established in rhetorical or dialectic books" and that, "when anyone declares an interpretation to the multitude or to someone not adept for it ... he corrupts it and bars them from it; and the one who bars others from the Law is an unbeliever."⁵³

For Strauss, these statements confirm that Ibn Rushd believes that both students unsuited to philosophy and the teachers who inappropriately expose such students to philosophy are guilty of heresy, if not unbelief (*PL*, 85/73). This is why, according to Ibn Rushd, access to philosophy and the right of interpretation must be restricted to the limited group suited to such studies. In contrast to the multitude's limited access to books of demonstration and interpretation, Strauss emphasizes that for Ibn Rushd the law is specifically mandated to teach all people and to be a guide for all men (*PL*, 84/70; 88/74). Strauss states:

⁵² The passages of the *Decisive Treatise* cited by Strauss in support of this claim can be found in *DT*, 12.20-21/37; 13.30-14.12/39-40; 25.2-3/57; 26/58; 28.20-24/61.

⁵³ *PL*, 85/71. These passages are references to *DT*, 26.26-27/58-59 and 28.21-24/61. Butterworth's translation of these passages is somewhat at variance that of Strauss.

In the end, philosophy does no more than to deepen and demonstrate the knowledge accessible to *all* Muslims through the law.

Die Philosophie tut zuletzt nicht mehr, als die *allen* Muslimen durch das Gesetz zugängliche Erkenntnis zu vertiefen und zu beweisen. (*PL*, 88/74)

Philosophy demonstrates things to a small group of people that the law is by itself capable of making everyone understand. For Strauss, the fact that the majority of people should not read philosophy means that the potential influence and effect of philosophy is more limited than the influence of the law.

This same claim reveals the second point of qualitative inferiority, which is perhaps the most important of the two: the knowledge that philosophy is capable of providing is knowledge that was always already available in the law. “Philosophy does no more than to deepen and demonstrate the knowledge accessible ... through the law,” Strauss writes, concluding that “its [philosophy's] results are known from the outset precisely through the law.”⁵⁴ According to Strauss for Ibn Rushd, any knowledge attained by means of philosophy is knowledge that one could have obtained from the law as it stands. In one sense, Strauss appears to be inverting Gauthier's claim: where Gauthier claimed that the philosopher had no need for the law because he could know the truth purely through the use of reason, Strauss now seems to be suggesting that the law on its own is perfectly capable of announcing its commands without the help of reason.⁵⁵ For

⁵⁴ *PL*, 88/74: “Ihre (die Philosophie) Ergebnisse sind ihr vielmehr schon von vornherein, eben durch das Gesetz, bekannt.”

⁵⁵ This is not actually the point that I believe Strauss is making, but insofar as I would like to clarify how and why Strauss departs so dramatically from his own secondary source on Ibn Rushd, the idea of an inverted result is quite useful. Instead of contending, like Gauthier, that Ibn Rushd subordinates the law to philosophy, Strauss

Ibn Rushd, according to Strauss, the law qualitatively restricts philosophy because (1) the law restricts the audience of philosophy, and (2) philosophy is unable to arrive at conclusions that have not already been given by the law.

Strauss' conclusion about Ibn Rushd's view of the status of philosophy in Islamic law is that philosophy is both formatively and qualitatively subordinated to the law for all of the reasons mentioned above. Formatively, philosophy is conditioned from the start by the command of the law that both brings it into being and restricts its use and methods. Qualitatively, philosophy is both unable to communicate with a broad range of people and incapable of arriving at any truly new result.

If we compare Strauss' analysis of the *Decisive Treatise* to the analysis of the *Decisive Treatise* in chapter 1 of this work, there are a number of places where Strauss' discussion appears insufficient, if not altogether mistaken. Of course, Strauss' interpretation of Islamic thought has long been subject to virulent, although not necessarily rigorous, criticism. Most of Strauss' critics, and certainly some of the most virulent, accuse Strauss of unduly imputing an esoteric intention to Islamic thinkers—they suggest that Strauss' claim of hidden meanings in the work of writers like Ibn Rushd is a self-interested use of Arabic thought by Strauss, and further, that Strauss makes this assumption in order to support his own theory of esoteric writing.⁵⁶ While I will not

claims that Ibn Rushd subordinates philosophy to the law; by portraying what this radical reversal looks like, Strauss is makes it perfectly obvious that both of these statements evidence a lack of understanding of the *Decisive Treatise*.

⁵⁶ For example, see Dimitri Gutas, "The Study of Arabic Philosophy in the Twentieth Century: An Essay on the Historiography of Arabic Philosophy," *British Journal of Middle Eastern Studies* 29 (May 2002): 5-25; Oliver Leaman, "Does the

respond extensively to this criticism, a simple reading of the *Decisive Treatise* does seem to suggest that Ibn Rushd considered it extremely important, and in fact ideal, for discussions as dangerous as philosophy to be hidden from the multitude. For example, the *Decisive Treatise* is replete with statements such as:

Sound interpretations—not to mention corrupt ones—need not be established in books for the multitude. [translation modified]

فقد تبين لك من هذا أنه ليس يجب أن تثبت التأويلات الصحيحة
في الكتب الجمهورية فضلا عن الفاسدة.
DT 29.16-18/62⁵⁷

Interpretation of Islamic Thought Rest on a Mistake?” *International Journal of Middle East Studies* 12 (December 1980): 525-38. Oliver Leaman argues that Ibn Rushd was, and presented himself as, primarily a jurist—he contends that the imputation of esotericism to Ibn Rushd devalues Ibn Rushd’s work as a jurist and charges Strauss with being both a bad reader of Ibn Rushd and a disrespectful one. Dimitri Gutas suggests that Strauss’ identification of esotericism as a feature of Islamic thought is the result of Strauss interpreting Islamic thought through the lens of Maimonides. Gutas writes that, like others who have based their interpretations of Arabic thought on prior tendencies, “so did Strauss start with Maimonides’ introduction to the *Guide of the Perplexed* and applied what he understood from it as valid for all Arabic philosophy” (Gutas, 19). Gutas argues that Strauss misinterpreted Maimonides’ introduction to the *Guide* to mean that philosophers had to disguise their meanings, and then applied this conclusion to all of Arabic thought. His charge is that Strauss does not take up Arabic thought on its own terms, but only through a reading of Maimonides. Neither of these criticisms, it seems to me, pays very close attention to the actual text of the *Decisive Treatise*.

⁵⁷ Although I am making a conscious effort not to be sidetracked by issues of translation, Butterworth’s rendition of this verse is somewhat puzzling. While Butterworth translates *less yajib an tuthbata el-tawillat* as “must not be established,” Hourani translates as “need not be established.” I might suggest rendering this passage, “It has become clear to you that it is not part of what is required of you to prove correct interpretations—not to mention corrupt ones—in public books.” If we understand this statement of Ibn Rushd’s to be a qualification of the requirement that those who are suited to interpretation ought to undertake it, then it is not necessary to use “must.” Ibn Rushd’s point is that the obligation to philosophize and interpret does not also include an obligation to make what one learns public, a welcome message for those philosophers who might have been concerned that they (and their opinions) were going to be thrust into the public eye.

And:

What is primarily intended by the Law is taking care of the greater number without neglecting to alert the select [few].

الشرع كان و مقصود الخواص لتنبيه إغفال غير من بالأكثر العناية الأول ه
DT, 24.18-21/5.

Or:

The reason contradictory apparent senses are set down in it [the law] is to alert “those well grounded in science” to the interpretation that reconciles them.

السبب في ورود الظواهر
المتعارضة فيه هو تنبيه الراسخون في العلم على التأويل الجامع بينها
DT, 10.15-17/33-34

Although it would be interesting and worthwhile to address such criticisms extensively and to draw out in detail the case that Ibn Rushd makes for the necessity of hidden communication, such a task must be postponed to another time. Such methodological criticisms of Strauss are not relevant to the current work because, although one may surely find seeds of Strauss’ future theory of esotericism in his reading of Ibn Rushd in *Philosophy and Law*, Strauss’ primary analysis of Ibn Rushd in this text is not concerned with establishing the esoteric character of the *Decisive Treatise*, but only with analyzing Rushd’s transparent statements about the legal foundation of philosophy in Islam (*PL*, 59/47; 81-82/68). Our investigation of Strauss’ analysis in the following pages is not a criticism of the theoretical perspective from which Strauss reads Islamic thought, nor is its goal to make the case that Strauss’ analysis is fundamentally flawed. The following critique of Strauss will attempt to mine Strauss’ conclusions as a means of furthering a

discussion about Ibn Rushd. For such a purpose, as we will see, Strauss' analysis is invaluable.

Our first step must be to analyze some of Strauss' statements in light of our analysis of the *Decisive Treatise* in chapter 1. We will identify where Strauss' statements appear to conflict with the evidence of the *Decisive Treatise* and analyze these apparent conflicts in the context of Strauss' statements about Ibn Rushd throughout *Philosophy and Law*. The critique that follows focuses on specific passages where Strauss seemingly fails to appreciate the depth of the argument being made by Ibn Rushd.

In the first place, the formal dependence of the right to philosophize upon the law is not as clear as it would appear to be from Strauss' analysis. Strauss argues that the right to philosophize only exists as the direct result of an explicit command of the law, but the right or obligation to philosophize is never mentioned by Ibn Rushd as a direct command of the law, and hardly could be since the texts of Islamic law make no reference at all to philosophy proper (*falsafa*). For Ibn Rushd, *falsafa* is the investigation of the natural world—the search for wisdom or *hikma*, which Ibn Rushd discusses at length, occurs through the use of interpretation. Yet interpretation, as the basic mode of philosophy, is not for Ibn Rushd something expressly commanded by the law. Ibn Rushd understands interpretation as a command only after he himself has interpreted a whole series of passages in the law, and derived from those passages a syllogistic proof of the obligatory nature of philosophy.⁵⁸

⁵⁸ I discuss the verses that Ibn Rushd interprets as supporting the right to philosophize in Chapter One.

When Strauss claims, “the right of philosophizing is established only by the express commandment of the law (‘since these laws ... summon to inquiry ...’),” he is paraphrasing the above-cited passage from the *Decisive Treatise*.⁵⁹

Now since these (viz. the religious) laws are truth and since they summon to speculation, which leads to knowledge of the truth, we Muslims know positively that speculation proceeding by means of demonstration does not lead to the contrary of what is revealed in the law; for truth does not disagree with truth, but is in harmony with it and testifies to it. (*PL*, 84/70; *DT*, 8.27-9.2/31-32, cited in *PL*, 84/70).

The only positive statements actually made in this passage are to the effect that that “speculation proceeding by means of demonstration does not lead to the contrary of what is revealed in the law.” The passage, which is the basis for Strauss’ claim that philosophy and philosophizing is commanded for Ibn Rushd, does not refer to philosophy or speculation, or even to demonstration as obligatory. The Arabic word translated in *Philosophy and Law* as “summon” is translated by Butterworth as “lead,” leaving some ambiguity as to how imperial the law is in calling, leading, summoning, or obligating people to speculate about the truth.⁶⁰ It might be argued that Ibn Rushd reiterates the claim that philosophy is obligatory elsewhere in the *Decisive Treatise*, and that Strauss’ conclusion is therefore sound despite the weakness of this particular example. However,

⁵⁹ For the Strauss’ German and the Arabic of this passage, see page 41.

⁶⁰ Butterworth’s translation of the same passage reads: “Since this Law is true and calls to the reflection leading to cognizance of the truth, we, the Muslim community, know firmly that demonstrative reflection does not lead to differing with what is set down in the Law. For truth does not oppose truth; rather, it agrees with and bears witness to it.” It is interesting to note that the word used by Strauss which is translated into English as “summon” is *aufrufen*, meaning “to call.” Müller, in the translation used by Strauss, uses *aufordern*, which can mean either “to require” or “to invite.”

Charles Butterworth's analysis of the *Decisive Treatise*, discussed in the preceding chapter, raised serious doubts not only about the quality of the syllogism by which Ibn Rushd nominally establishes the obligatory nature of philosophy, but also about whether Ibn Rushd himself was entirely certain of his own conclusion (*DT*, xxiii, xxv). As we have pointed out, linguistic analysis of the passages where Ibn Rushd speaks of interpretation as an obligation bears out Butterworth's claim that Ibn Rushd was not making an absolute claim that philosophy as commanded by the law is obligatory.⁶¹ At the very least, Strauss' claim that philosophy is expressly inaugurated by law for Ibn Rushd does not account for the linguistic and logical hints in Ibn Rushd's work that indicates doubt on the part of Ibn Rushd himself about making such a large claim.

The second type of formative subordination of philosophy, that it must respect restrictions on interpretation drawn from the law, could only make philosophy subordinate to the law if these restrictions applied only to philosophy and not to the law. For Ibn Rushd, the restrictions on philosophy are restrictions on interpretation, which is the process of uncovering hidden truths (*DT*, 9.11-14/32). As the fundamental mode of philosophy, interpretation for Ibn Rushd must proceed according to certain rules that prevent interpretation from becoming groundless, shallow, or sophistic. But what is vitally important to recognize is that Ibn Rushd consistently maintains that restrictions on interpretation, even if derived from the law, apply equally to philosophy and the law—for example, the restriction against exposing the multitude to hidden truths (*DT*, 26.15-16/58). The fact that these guidelines are derived from the law does not mean that they

⁶¹ See page 25 above.

privilege the law, or that the law is somehow able to circumvent these guidelines. Thus, to claim as Strauss does that philosophizing is subordinated to the law by formal rules of practice laid out in the law does not acknowledge that the law and philosophy are equally governed by the very same rules. For Ibn Rushd, these restrictions are neither uniquely applicable to philosophy, nor do they place the law in a position of privilege in relation to philosophy.

We have demonstrated that the formative subordination of philosophy that stems from philosophy's inauguration by the law and its subjection to the rules of the law, appears less absolute than Strauss' analysis might make it appear. Philosophy's obligation by the law is less than certain, and restrictions on interpretation drawn from the law restrict philosophy and the law equally.

According to Strauss, the first qualitative restriction on philosophy for Ibn Rushd is that its sphere of influence is limited to the highly capable elite. Strauss suggests that for Ibn Rushd philosophy is restricted to a small group while the law is accessible to all (*PL*, 85/71 cf. 88/74). Yet, as was the case with the restrictions on interpretation just mentioned, Ibn Rushd argues in the *Decisive Treatise* that access to interpretation of the law should be at least as rigorously restricted as access to interpretation of philosophy (*DT*, 9.3-25; 29.16-18). For Ibn Rushd, interpretation, whether of philosophy or of the law, always carries the same risk: when one who is not suited to it is exposed to such interpretations, they misunderstand and are led farther away from the truth instead of closer. For this reason, access to such interpretations must be restricted to those who are able to understand them adequately (*DT*, 21.24-30/52). The study of philosophical matters

and the study of the law are geared to uncovering the truth through the examination of evidence, including evidence that appears contradictory—for the multitude, such contradictions result in the rejection of the argument being made, not because people disagree with the argument but because they do not understand the evidence being presented. The committed study of either philosophy or the law requires that one be able to depart from what one believes to be true and refrain from automatically dismissing texts that appear contradictory or confusing at first glance (*DT*, 27.27-28.24/60-61). Interpretation, be it of philosophy or the law, should be restricted to the capable and willing few who understand what it means to use reason and take seriously things that they may not immediately understand. Against Strauss' claim that it is only the truths of the law that are made accessible to all people, the *Decisive Treatise* argues that the truths of both the law and philosophy should only be investigated by certain types of people.⁶²

Strauss' final claim, that "philosophy can do no more than deepen and demonstrate the knowledge available to all ... through the law," must be critiqued more delicately than his previous conclusions. On the one hand, such a claim is problematic when we consider that philosophy, because it is both demonstrative in method and private in influence, is uniquely qualified to demonstrate truths directly in philosophic works. Ibn Rushd notes that although the law is capable of communicating with all people, the mandate of accessibility requires the law to use metaphorical devices that render

⁶² The result of this is not an ignorant multitude—all people must be told and convinced of the truth. It is simply that, for Ibn Rushd, there are ways of communicating the truth to different people, such that while all people know the truth, each person knows it in a way that is most effective and meaningful for themselves.

impenetrable the inner truths of the law (*DT*, 24.18-20/55-56; 19.1-12/46). In the previous chapter, we discussed the case of the woman who said that “God was in heaven”—such a response was appropriate because this woman specifically was incapable of imagining God outside of a corporeal context. The law must provide concrete metaphors for people like this woman (*DT*, 20.10-19/46). According to Ibn Rushd, philosophy is unique because it employs demonstrative argument, which is the most accurate and reliable type of argument in which the truth of the object can be communicated without figurative, metaphorical, or imitative embellishment (*DT*, 13.1-5/48). Since philosophy ought to be read only by those who are capable of understanding demonstration, there is no need for philosophy to cloak demonstrative arguments in metaphor, as the law had to for the woman who could only understand images. That is, the fact that philosophy is, ideally, only being read by those who can understand it means that philosophy need not mitigate the risk of dangerous misunderstanding through the use of metaphor and simile. In fact, according to Gauthier, it is precisely because of philosophy’s ability to speak clearly and without metaphor that, for Ibn Rushd, “if there was no one on earth but philosophers, there would be no reason for revelation to exist” (Gauthier, 111). Because the law is accessible to the masses, it cannot make demonstrative arguments; demonstrative arguments are forbidden to the multitude. Gauthier’s analysis of Ibn Rushd suggests that philosophy can demonstrate truths that the law cannot because the law’s public nature would result in those demonstrations being exposed to people who are not capable of understanding demonstrative arguments, a wholly unforgivable offense (*DT*, 27.15-16/59).

This claim of Strauss' is also his most provocative. Philosophy, it has been acknowledged, can understand and demonstrate certain things. If what philosophy can understand and demonstrate is only a part of what there is to be understood, and all things are in the law, then there must be things that philosophy alone is incapable of understanding without the law. One suggestion as to what philosophy alone is incapable of understanding can be derived from reading Muhsin Mahdi's excellent article, "Averroes on Divine Law and Human Wisdom," published in a collection of essays in honor of Leo Strauss. In this essay, Mahdi argues that the *Decisive Treatise* is the central work of a trilogy by Ibn Rushd whose purpose was to argue for harmony between human wisdom and divine law (*DLHW*, 117-18). The *Decisive Treatise* is the second part of the trilogy whose first part was addressed to "a prince in high political office" (*DLHW* 118). At the end of the *Decisive Treatise*, notes Mahdi, Ibn Rushd makes it clear that "the public or political implications of all these findings are embodied in a policy adopted *already* by 'this triumphant rule'" (*DLHW*, 124-25). Mahdi's conclusion is that Ibn Rushd's work was not actually intended to resolve the question of the relationship between religion and philosophy, but to confirm and bolster a relationship between religion and philosophy that Ibn Rushd's political patron had already taken steps to structure (*DLHW*, 125). Because of Ibn Rushd's complicated position as philosopher, jurist, and friend of the sovereign, Ibn Rushd "will therefore take into account, unite, or harmonize the interests of the divine law, of philosophy, and of the prince" (*DLHW*, 125). For Mahdi, the reality of politics is an important, if implicit, feature of the *Decisive*

Treatise, which must be read as a work invested in demonstrating the existence of an agreement between philosophy, law, and politics.

With this suggestion of Mahdi's in mind—that the relationship being negotiated in the *Decisive Treatise* is a relationship between philosophy, law, and politics—it is useful to take another look at the restrictions on philosophy of which Strauss is so critical. If we take into account that, according to Mahdi, in Ibn Rushd's *Decisive Treatise* both philosophy and the law take place in a space that is already politicized, then these restrictions seem to re-cast themselves not as weapons in a theoretical war for supremacy over true knowledge, but as guidelines to structure and engage the political force of philosophy. For Ibn Rushd, it is commanded (1) that interpretation be possible to understand (i.e., that it use an actual language containing real words organized in a grammatical structure that forms units of speech recognizable to the one who hears them); (2) that interpretations not contradict consensus (should a consensus ever be reached); and (3) that when one truly knows the truth one should stop arguing about what the truth is. Let us, for the sake of clarity, rephrase these.

(1) The requirement that interpretation be understandable presupposes that communication takes place between two people who have some common ground or language that allows them to interact—this restriction therefore presupposes that interpretations can be communicated. (2) The restriction against rejecting a matter around which true consensus has been reached could easily be understood as a requirement that interpretation not disrupt or agitate the civil order, and thus emphasizes the importance of agreement upon issues within the body politic. (3) The restriction against interpreting

things that are absolutely known to be true (whatever that would mean) is nothing more or less than a prohibition against speech which has either no purpose because it cannot reveal anything new, or speech whose purpose is to corrupt people's understanding of the truth. These "restrictions" on interpretation in the law are precisely what allows interpretation to take place in the world, and which reminds the theoretical work of philosophy that it cannot avoid affecting the world and must therefore take responsibility for the way in which it does so.

This belief in the fundamental importance of the city as the site of Divine law is, for Strauss, indicative of the Platonic premises of the medieval thinkers. Strauss makes the case, at the end of *Philosophy and Law*, that the medieval rationalists were greater Platonists than Aristotelians. The most important factor in this distinction, Strauss argues, is that these medieval Jews and Muslims did not believe that contemplation and understanding the truth was the only goal of the philosopher. In contrast to Aristotle, Strauss writes:

Plato ... *does not permit* the philosophers "what is now permitted them," namely the life of philosophizing as an abiding in the contemplation of the truth. He "*compels*" them to care for others and to guard them, in order that the state may really be a state, a true state....The philosopher ... is called *back* to the state, *bound* back to the state, by the command of the founder of the state, a command which considers first the ordering of the whole and not the happiness of the part.

Platon hingegen *gestattet* den Philosophen *nicht*, »was ihnen jetzt gestattet wird«, nämlich das Leben im Philosophieren als Verharren im Anschauen der Wahrheit. Er »*zwingt*« sie, für die anderen zu sorgen und sie zu bewachen, damit der Staat in Wirklichkeit Staat, wahrhafter Staat sei. Der Philosoph ... wird durch das Gebot des Staatsgründers, das zuerst die Ordnung des Ganzen und nicht das Glück der Teile bedenkt, *zurückgeholt* in den Staat, *zurückgebunden* an den Staat. (PL, 132/ 122-23)

The law, Strauss argues in the conclusion of *Philosophy and Law*, is what makes philosophy politically responsible. The law of Judaism and Islam emphasizes the city, an earthly city made up of people. The intention of the law is thus not to make these people ready for heaven, but to organize them on earth according to what is right and just.

After analyzing Ibn Rushd in chapter 2 of *Philosophy and Law*, “The Legal Foundation of Philosophy,” Strauss does not take up a direct discussion of Ibn Rushd for the remainder of his text. Concluding the chapter, Strauss writes:

It remains to ask how the law, which at first is accepted by these philosophers [Ibn Rushd, Maimonides, Gersonides] only as actual, as given [*wirklich*], comes to be understood by them through its possibilities, and thus how they understand it philosophically.

Es bleibt zu fragen, wie diese Philosophen das von ihnen zunächst nur als wirklich, als gegeben hingenommene Gesetz aus seiner Möglichkeit verstehen und damit philosophisch rechtfertigen. (*PL*, 100/86)

The law as actuality, Strauss suggests, is the law whose existence is a fact in the world which cannot be ignored and which makes demands, particularly political demands, on Philosophy (*PL*, 82-83/69-70; 87-88/74). This law, as “factum brutum,” forces philosophy to understand itself in relation to another claim, the claim of the law.

The above-quoted passage states, quite clearly, the question that Strauss now feels himself compelled to consider: how the medieval thinkers, including Ibn Rushd, understood the law to be more than actual or given (*wirklich*) law. Strauss claims that for Ibn Rushd, along with the other thinkers Strauss analyzes, the law is more than simply a set of pronouncements whose effect on philosophy must be determined. For these thinkers, Strauss argues, the law is also

a *world*, in which man lives, to the understanding of which he should apply himself according to his powers, but which always contains *more* of wisdom and goodness than man can observe. Hence ... not somehow a limit on inquiry, for inquiry encounters no limit in discovering the wisdom and grace it [the law] contains, but—a *guideline* for inquiry.

eine *Welt*, in welcher der Mensch lebt, um deren Verständnis er sich nach Kräften bemühen soll, die aber immer *mehr* an Weisheit und Güte enthält, als der Mensch einzusehen vermag. Daher ... nicht etwa eine Schranke für die Forschung, denn die Forschung kommt bei der Aufdeckung der in ihr enthaltenen Weisheit und Gnade an keine Schranke, sondern – eine *Richte* für die Forschung. (*PL*, 100/86)

The law, which is a text of infinite richness, does not limit inquiry any more than the world itself limits inquiry—both the law and the world are the field within which inquiry exists, and as such stimulate, rather than restrain, those inquiries. Drawing from both Plato and Jewish and Islamic Law, Strauss argues, these thinkers believe that however ideal the theoretical life of philosophy might be, the philosopher who has come to know the truth must return to the cave and do work in the world. This applies to philosophical and religious knowledge—for Ibn Rushd, the law is intimately concerned with the working of the world.

In chapter 3 of *Philosophy and Law*, following his analysis of Ibn Rushd, Strauss argues that for the medieval rationalists, and specifically Maimonides, the revealed law makes politics, the actual creation of worldly laws and the coherence of a community around them, possible (*PL*, 122/111; 124/114). Given the number of times that Strauss remarks on the proximate thinking of Maimonides and Ibn Rushd, there is little cause to think that they would differ in this respect, and to a certain extent Maimonides and Ibn Rushd to appear to share the opinion that the attempt to secure the spiritual and bodily perfection of man is impossible without the law. But there is one issue, one essential

point, where Strauss identifies a conflict of opinion between these two thinkers:

Maimonides, Strauss claims, rejects the notion that human reason is sufficient to know the truth, while Ibn Rushd accepts human reason as sufficient.⁶³

The following chapter will investigate (1) Strauss' view that Maimonides' rejection of the sufficiency of human reason informs his opinion about the relationship between law, philosophy, and politics; (2) discuss why, because Ibn Rushd acknowledges the sufficiency of human reason the structural relationship between philosophy, law, and politics for Maimonides could not hold true for Ibn Rushd; and (3) point to one possibility for understanding the unique relationship between revealed law, philosophy and politics in Ibn Rushd.

⁶³ *PL* 90-91/76-77 cf. *PL*, 92/78. I will discuss this difference of opinion at length in the next chapter of this work.

Chapter Three:

Political Philosophy without Prophets

To whom is the merit of instituting your
laws ascribed, strangers? To a god, or to
some man?

Laws I,
624A

If we understand Strauss' project in *Philosophy and Law* to be an examination of medieval rationalism which identifies in these medieval works a tension between philosophy and the law that catalyzes and strengthens philosophy, then the "restrictions" imposed on philosophy, while they may chafe theoretically, are in fact the conditions under which philosophy becomes political. This chapter will focus on the relationship of the law to philosophy in Ibn Rushd. In the previous chapter, we demonstrated that Strauss' analysis of Ibn Rushd appears insufficient on a number of counts, specifically in the places that Strauss considers Ibn Rushd to be subordinating philosophy to the law. We suggested that these insufficiencies can be understood in terms of Strauss' larger project in *Philosophy and Law*, as moments when the law restrains and orders the political (which is to say public) effects of philosophy. The law's fundamentally political relationship to philosophy, we suggested, informs the demands that the law makes of reason, and it is through those demands that the effects of philosophy on the world are mediated.

In this chapter, we will explicate the nature of the political relationship between philosophy and law, as laid out by Strauss in *Philosophy and Law* in relation to Maimonides. We will highlight the single most important distinction drawn between Maimonides and Ibn Rushd in *Philosophy and Law*—a difference that defines the political nature of the relationship between philosophy and the law—and explore, given Ibn Rushd’s position on this issue of difference, whether there is anything in *Philosophy and Law* that might orient an attempt to understand that relationship between philosophy and law in Ibn Rushd.

One of the reasons that Ibn Rushd and Maimonides appear so similar to Strauss is that both are characteristic and exemplary representatives of the medieval Jewish and Islamic rationalists. According to Strauss, these Jewish and Islamic thinkers share a particular understanding of the law significantly at variance with that of their Christian contemporaries. Throughout his own work, Strauss repeatedly emphasizes the difference between the Jewish and Islamic understanding of the law on the one hand, and the Christian understanding of the law on the other.

For Strauss, Christianity is the primary villain in the attempt to synthesize reason and revelation, and Strauss is profoundly unsympathetic to this strand of Christian thought. Christian thought, Strauss argues, is based not upon a set of laws intimately related to, and therefore in some sense sanctifying, the city, but upon dogmatic principles of faith like love, or care, or goodness.⁶⁴ The Christian form of the synthesis between

⁶⁴ *PL*, 53/41; *SMP*, 333-35; *PAW*, 9. See also Clark E. Merrill, “Leo Strauss’ Indictment of Christian Philosophy,” *The Review of Politics* 62, no.1 (2000), 82, 84. This article conducts an in-depth analysis of Strauss’ critique of Christian Averroism. Note

reason and revelation involves the removal of philosophy from the city, and the binding of philosophy to a Christian theology that viewed separation from the city as the path to perfect happiness. As Clark Merrill frames Strauss' position, Christian emphasis on the city as a place of corruption to be abolished with the return of the Messiah stands in direct contradiction to the Jewish and Islamic contention that "the perfect realization of God's plan for his people would remain this actual city, with walls of stone, with a law and a king, and with smoke rising from temple sacrifices" (Merrill, 90). In fact, Strauss suggests, the Christian attempt to reconcile philosophy and revelation did nothing but shackle philosophy to the service of a theology of redemption, implicating philosophy in the search for salvation; this, Strauss suggests, was the first step in constructing what would become the modern view of science as a means of spiritual salvation, capable on its own of perfecting society (*PL*, 35-36/23-25, 73 n. 25/61 n. 25). The Christian is specifically urged to move on from the things of the world, to rise above the city—by inextricably binding reason to this ascension, reason developed a moral character of its own. An increasing emphasis on rationalism in modernity is not simply a belief in the rational capacity of human beings, it is also a belief that reason in itself has positive moral character.

Strauss writes *Philosophy and Law* as a response to the modern claim that reason is capable of discovering and providing a universal truth.⁶⁵ The claim that human reason

that Merrill thanks Charles Butterworth, whose work on Ibn Rushd we have been drawing on, for "the careful reading" of Merrill's essay.

⁶⁵ *PL*, 24/11-12, 25 n. 2/13 n. 2. According to Merrill, this "modern perspective is not a return to the classical view but a reverse image of the scholastic view" (Merrill, 86).

is autonomous and inherently harmonious with what is right is one that that Strauss resists throughout *Philosophy and Law*. In order to provide an alternative to the modern reliance on reason, Strauss sets about describing and analyzing the important role that the revealed law has for Jewish and Islamic thinkers. Characteristically for their traditions, according to Strauss, these thinkers—Ibn Rushd and Maimonides—maintain that obedience to the law does not consist of having the right inner orientation to the law (for example, love). Instead, obedience to the law consists of following the law's prescriptions as they pertain to how one lives one's life. The law has local, actual, and political force that affects marriage, contracts, death, and every other action that a person could possibly take (Merrill, 88). Perhaps the best-known statement of Strauss' to this effect appears in *Persecution and the Art of Writing*, where Strauss states that "revelation as understood by Jews and Muslims has the character of Law (*torah*, *shari'a*) rather than of Faith."⁶⁶ According to Strauss, the desire to understand the medieval rationalists cannot be fulfilled unless the student is willing and able to take up certain concepts as they are understood by those thinkers. In this case, what is at issue is the meaning of "law" itself. According to Strauss, understanding the radical rationalism of Maimonides and Ibn Rushd requires first understanding what they are talking about when they talk about "the law" (*SMP*, 322, 325).

Merrill sees the modern perspective as a reverse of the scholastic view that philosophy required faith—in the modern era faith must be based on reason.

⁶⁶ *PAW*, 9; Strauss expresses the same sentiment in *PL*, 60, 73, 128, 133; *SMP*, 333, 335.

According to Strauss, medieval Jewish and Islamic scholars understand revelation, the revealed law, as that which directs human beings toward their own perfection.⁶⁷ There are two ways for man to be perfect: physically and spiritually. These two sorts of perfection can only be attained by those who live in association with other people. It is when man is in the city that he is closest to divine law.⁶⁸ For Strauss, the law is fundamentally political in that it organizes relations, whether they are between man and man, man and city, man and God, or city and God (*PL*, 111/121). Acknowledging the influence of Greek philosophy on Islamic and Jewish thought, Strauss identifies Plato's *Laws* as the Greek work that exerted the most influence on the medieval understanding of the law. Strauss makes the historical argument while Aristotle's *Politics* was available in the Western, Christian world hundreds of years before it was available in either Hebrew or Arabic, it was Plato's *Republic* and *Laws*, in translation, that formed the Greek foundation for Islamic and Jewish thought.⁶⁹ Strauss further suggests that if we wish to study Greek philosophy with an eye to understanding medieval Islamic and Jewish

⁶⁷ *PL*, 121/111: "The prophet is therefore the proclaimer of a law directed to the specific perfection of man. But the law aims at making it possible to live together. Hence the prophet is the founder of a community directed to the specific perfection of man."

⁶⁸ *PL*, 121/111; *SMP*, 335; this claim is extended and emphasized in Merrill, 84.

⁶⁹ *PL*, 73/61, 76/63-64, 125/115-16; *SMP*, 335; also Strauss, "Quelques Remarques sur la science politique de Maïmonide et de Fârâbi," (1936), 126-27; and Strauss, "On Abravanel's Philosophical Tendency," (1936), 196-97, in *Gesammelte Schriften*, Vol. 2 (Stuttgart: Metzler, 1997).

philosophy, our analysis “has to begin not from the *Republic* but from the *Laws*” (*PL*, 76/64).⁷⁰

If *Laws* is the foundation of medieval thinking about revealed law, then it is important to examine precisely what image of the law this text extends. After opening *Laws* with a discussion of war, Plato makes the case that the lawgiver should have “in view not just some part of virtue ... but the whole of virtue” (*Laws*, 630e). Yet this does not mean, for Plato, that the lawgiver is concerned with instructing citizens to love their neighbors or with pronouncements about what is right or good in a general or abstract way; rather, he is to instruct them in precisely how they go about respecting their neighbor’s person and property rights. The law must be concerned with the practical lives of the citizens, and the lawgiver must therefore superintend how

the citizens join in marriage; then how children, male and female, are born and reared; they pass through childhood and later life, and finally reach old age [...]. Whenever they associate with each other, he should observe their pains, pleasures and desires, and watch their passions in all their intensity [...]. The lawgiver’s duty is to isolate and explain what is good and what is bad in the way each individual reacts. Next, the lawgiver must supervise the way the citizens acquire money and spend it; he must keep a sharp eye on the various methods they all employ to make and dissolve [...] their associations with one another, noting which methods are proper and which are not [...] He must decide what honors should be accorded the dead and how the manner of burial should be varied. (*Laws*, 631d—632c)

The first laws, then, should not be laws that declare what the appropriate state of mind is for the citizens, but the way that they should behave in economic, civil, and social

⁷⁰ “Daher hat die Interpretation der Platonischen Philosophie, welche die unerläßliche Voraussetzung für eine radikale Interpretation der islamischen und jüdischen Philosophie des Mittelalters ist nicht in der *Politeia*, sondern in den *Nomoi* einzusetzen” [italics mine].

transactions. Strauss himself gestures to a passage of dialogue later in *Laws* in which the Athenian uses dialectical argument to convince Cleinias that the very first law must be law about marriage and procreation and that without such a law a city would have no chance at longevity.⁷¹ The law of the *Laws*—and according to Strauss, the law as understood by medieval Islamic and Jewish philosophers—is not a set of pronouncements about the ideal character of citizens: rather, it is a set of pronouncements about the ideal behavior of citizens. In some ways today’s civil laws resemble these medieval laws, for we rarely find a civil law that takes the form of abstract and unhelpful moral admonitions such as, “you shall be nice to other people.” Rather, we institute specific laws regarding human rights and their violations, and specific penalties for physical, mental, and economic infringement upon others. Laws are addressed to specific problems and acquire a significant amount of their authority from the belief of citizens that the laws they live under constitute a rational and just response to political problems. Yet, if one were merely to exercise reason alone in addressing the problem, for example, of a violent or arson-prone child, one could conclude that one ought, for the protection of the community as a whole, to disown, banish, or kill that child.⁷²

⁷¹ *PL*, 125 n.65. This final section of *Philosophy and Law* is where Strauss makes his final case that for the Muslim *Falasifa* and Maimonides “prophecy proper differs from vulgar mantics of all ranks in its political mission.” In note 65, Strauss reads a direct link between Avicenna’s emphasis on marriage as the first object of legislation and Plato’s similar statement in *Laws* 720E-721A.

⁷² This is, in fact, exactly the sort of action that Strauss might have suggested could result from the modern assumption that purely rational action is permissible because it is a rational response. An event reflective of this took place in the United States in April 2010: a woman in Tennessee put her 7-year-old adopted Russian son, who has behavior issues, alone on a flight back to Russia with a note pinned to his chest in which

For the medieval Islamic and Jewish rationalists, the law makes declarations about practical matters in a manner designed to actively inculcate the application of principles that reason alone is incapable of determining (*PL*, 104/90-91, 106/92). If we conceive of law as that which promotes the good by facilitating the application of intelligible principles, then the law as an object of philosophy must be understood as a political force that requires the application of principles to the world. Although he gestures to this point throughout *Philosophy and Law*, perhaps Strauss' clearest articulation of this point occurs in "How to Study Medieval Philosophy," a lecture delivered less than a decade after the publication of *Philosophy and Law*. In this article, Strauss argues that the study of medieval philosophy requires taking seriously what medieval thinkers meant when they used certain phrases. The way medieval Muslim and Jewish thinkers conceive of religion will determine the relationship between that law and reason:

Muslims and Jews conceive of religion primarily as a law. Accordingly, religion enters the horizon of the philosophers primarily as a *political* fact. Therefore, the philosophic discipline dealing with religion is, not philosophy of religion, but political philosophy or political science. (*SMP*, 335)

Strauss goes on to argue that the theory of "political science" in question is derived from readings of the *Laws*, whose description of "the political character of prophecy" is recognized and accepted by Maimonides and Avicenna as reflecting what they know to be true about Jewish and Islamic law (*SMP*, 335). The "political character" of Divine law

she wrote that, "for the sake of my family, friends, and myself, I no longer wish to parent this child." For a full report of this particular case, see NP Editor, "Mother returns 7-year old adopted boy to Russia," *National Post*, April 9, 2010.
<http://network.nationalpost.com/NP/blogs/posted/archive/2010/04/09/7-year-old-returned-to-russia-alone-by-adoptive-mother.aspx> (accessed May 9, 2010).

described by Plato consists in its being inextricably linked (according to Strauss' Maimonides) to pragmatic law (*PL*, 119/108-9, 121/110-11).

That both Maimonides and Ibn Rushd, according to Strauss, share an understanding of the law as worldly and political does not actually describe the nature of the relationship between philosophy and the law for these thinkers. According to Strauss, Maimonides and Ibn Rushd agree broadly that law is concerned with the legislation that will promote the perfection of man. The question remains open whether these thinkers believe that philosophy is capable of formulating and enacting legislation. Maimonides and Ibn Rushd agree that the law commands interpretation, they agree that in cases where there is a conflict between reason and the law, the law must be interpreted, and they agree that interpretation must be restricted to the elite. Despite all of these agreements, Strauss says, they part ways in their response to the final and determining question:

Is the revelation (the law) superior to reason in such a way that revelation conveys truths that reason cannot contradict because these truths are not accessible to reason?

Ist die Offenbarung (das Gesetz) der Vernunft überlegen derart, daß die Offenbarung Wahrheiten übermittelt, denen die Vernunft darum nicht widersprechen kann, weil sie ihr nicht zugänglich sind? (*PL*, 90/77)

If, Strauss suggests, one is to determine whether reason is bound or free in relation to the law, one must first know if there are any restrictions on reason. Even if there do not seem to be any specific restrictions, reason, which is incapable of challenging revelation because it cannot understand what revelation is capable of understanding, will always be more ignorant than the law, and therefore less well-equipped to provide answers to pressing questions.

For Maimonides, Strauss claims, this question takes its concrete expression in the need to decide whether or not human reason can determine whether the world is created or not. For Maimonides, the createdness of the world is established beyond a reasonable doubt in Scripture, and to reject or question the createdness of the world fundamentally undermines the foundations of Judaism (*PL*, 91/78). This question is one that the law can answer but philosophy cannot. Therefore when Maimonides is faced with the question of the sufficiency of reason, Strauss states, “the answer of Maimonides is beyond doubt: human intellect has a limit which it cannot cross” (*PL*, 90-91/77).

For Ibn Rushd, according to Strauss, the question of the createdness of the world is significantly less urgent. “Ibn Rushd,” Strauss writes, “... considers the question ‘creation or eternity of the world?’ irrelevant to dogma” (*PL*, 91/78). Because such questioning does not call the dogma or foundations of Islam into question, Ibn Rushd has no need to regard human intellect as limited, apart from those limitations that are a result of the individual’s intellectual capacity (*PL*, 92/78). Because there is no question that reason cannot approach, and because reason is free to approach all questions without being accused of blasphemy in the attempt, Strauss concludes that “Ibn Rushd basically acknowledges the sufficiency of human intellect” (*PL*, 92/78).

For Strauss, these decisions about the sufficiency of human reason have political impact. In making a decision about the limitations of human reason, Maimonides also makes a decision about the character of the lawgiver. If human reason cannot know whether the world is created or not, then the one who can answer that question must have knowledge that does not originate in the faculties of reason or intellect. Maimonides,

Strauss argues, views philosophy as fundamentally theoretical.⁷³ Strauss writes that according to Maimonides the philosopher

... can, indeed, *qua* philosopher, *know* the principles of a law in general and the principles of the rational law in particular, [but] he can never *divine* the concrete individual ordinances of the ideal law, whose precise stipulation is the only way the law can become applicable, or simply, can become—law.

Er kann als Philosoph zwar die Prinzipien eines Gesetzes überhaupt und insbesondere die Prinzipien des vernünftigen Gesetzes *erkennen*; er kann aber niemals die konkreten Einzelbestimmungen des idealen Gesetzes *divinieren*, durch deren genaue Festlegung das Gesetz allererst anwendbar, vielmehr überhaupt – Gesetz wird. (*PL*, 71/59)

For Maimonides, Strauss suggests, this ability to “divine the concrete individual ordinances of the ideal law” is reserved for prophets (*PL*, 106/92). The philosopher is only equipped to know, theoretically, the principles, but he is never able, as simply a philosopher, to understand how those principles ought to be applied.

Prophets are uniquely qualified to legislate, Strauss’ Maimonides argues, because it is only prophets who have a perfect “imaginative faculty.” Both the imaginative and the intellectual faculty of the prophet must be perfected (*PL*, 115/101). The intellectual

⁷³ This is in contrast to Hermann Cohen’s analysis of Maimonides, which argues that Maimonides was a Platonist (rather than an Aristotelian) because he placed more emphasis on the practical life than the theoretical life. Strauss critiques Cohen’s interpretation of Maimonides in *Philosophy and Law* for ignoring the fact that Maimonides, and indeed Plato himself, agreed that the theoretical life was the most ideal. While Strauss agrees with the basic statement that Maimonides was more Platonist than Aristotelian, he views this affinity as stemming from the fact that Plato and Maimonides acknowledge both the perfection of the theoretical life and understand that it is impossible; in contrast, Strauss suggests, Aristotle left open the possibility of actually living a theoretical life apart from the city. For a clear and articulate discussion of Strauss’ critique of Cohen, and where Strauss believed that Cohen failed to understand Maimonides, see Martin D. Yaffe, “On Leo Strauss’ Philosophy and Law: A Review Essay,” *Modern Judaism* 9 (May 1989), 213-25.

faculty, that part of reasoning that can be honed and sharpened through study and industry, is perfect in both the philosopher and the prophet, but the prophet has in addition a perfect imaginative faculty (*PL*, 105/91). The prophet's imaginative faculty distinguishes him from the philosopher in two ways: first, the imaginative faculty of the prophet is what allows him to "represent the insights of the intellect figuratively"; second, the prophet's perfect imaginative faculty renders him capable of knowing about the future (*PL*, 112/98). The first distinction of prophecy, the ability to represent intelligible or intellectual truths as sensible, is what Strauss terms the "imitative activity of the imaginative faculty" (*PL*, 112/98). It is this ability that renders the legislator capable of communicating with the multitude and making them understand what he wishes to say. The second distinction of the prophet, that he knows things about the future and which are directly derived from previously known truths, is what Strauss calls knowledge of "particulars" (*PL*, 114/100). This ability allows the prophet to enact laws, by understanding the implications and effects of those laws. These abilities, according to Strauss' Maimonides, are what permit the prophet to make a transition from the abstract theoretical principles that are also known by philosophers (for example the importance of pursuing the truth) to legislation against lying, hypocrisy, and breach of contract.

The legislator is not simply supposed to know what the correct law is—he must also be able to communicate that judgment to people and make them understand, respect, and obey the law. He or she must be able to communicate the law in such a way that even if the multitude cannot understand the theory in which the law is based, they can

understand the basic form of the law, and, by obeying it, derive some benefit from it.

According to Maimonides, Strauss writes,

... [the prophet's] imaginative faculty must be so perfect that it can receive from the active intellect not only the particulars but also the intelligibles in sensible form. The man who fulfills the stated conditions is capable of communicating what he has received [...] in a manner adapted to the multitude. This man stands at the simply highest rank of humanity.

Seine Einbildungskraft muß so vollkommen sein, daß sie vom tätigen Verstand die Teildinge, dann aber auch die Verstandesdinge in versinnlichter Form empfangen kann. Der Mensch, der die angegebenen Bedingungen erfüllt ist, das, was [...] in einer für die Menge geeigneten Weise mitzuteilen. Dieser Mensch steht auf der schlechthin höchsten Stufe der Menschheit. (*PL*, 115/101)

This man who fulfills the political role of communication with the multitude, is, according to Strauss' Maimonides, capable of fulfilling that role because he has achieved access to a level of knowledge that reason alone does not provide. Even if the prophet has an astounding knowledge of the future, that knowledge is impotent unless he can communicate his knowledge to the multitude in some way.

To summarize: for Maimonides, according to Strauss, the fact that human intellect is limited means that even the most perfect philosopher cannot establish laws that truly accord with revelation.⁷⁴ The perfect intellect of the perfect philosopher is still not capable of ascertaining the truths of revelation that are perceived in a flash of divine light by the prophet. The one who can properly legislate must have a perfect imaginative

⁷⁴ Strauss identifies a distinction in Maimonides between the philosophical, or theoretical sciences, and the legal, or practical sciences (*PL*, 119/108-9, 121/110). Against Hermann Cohen, who according to Strauss exaggerated Maimonides' love of practical science, Strauss maintains that Maimonides "undoubtedly asserts the primacy of theory" (*PL*, 131/122).

faculty, and the attainment of this perfection requires, if not a direct gift from God, at the very least God's tacit approval (*PL*, 104/90-91). Ibn Rushd, however, begins from a different point, acknowledging that reason is fundamentally sufficient to address any question or claim. If for Maimonides the insufficiency of the philosopher's knowledge renders prophetic knowledge necessary to establish law, it seems on the basis of analogy that the sufficiency of the philosopher's knowledge for Ibn Rushd would render the prophetic knowledge redundant.

Gauthier's response to such a suggestion would be an emphatic affirmative. In his analysis of the *Decisive Treatise*, Gauthier argues that for Ibn Rushd, "If there existed nothing on earth other than philosophers in possession of the fullness of philosophy, there would be no reason for divine revelation" (Gauthier, 111). Gauthier derives this conclusion from his analysis of the way Ibn Rushd discusses Qur'an *Al'Imran*: 5. Ibn Rushd at one point presented this verse as "It is He who has given you this book, with verses that are clear and verses that are veiled whose interpretation none may know... except for God and the most learned."⁷⁵ Those who are most learned, who have the greatest ability to investigate the world, are capable of attaining an understanding of the truth, second only to that of God. For Ibn Rushd, in Gauthier's analysis, the people who are capable of such understanding are the philosophers. Since the philosopher can understand the truth without any reference to imitations or use of figurative language and already follows a logical path to the full understanding of the world, the revealed law

⁷⁵ See Chapter One of this work for the English and Arabic versions of this verse in full, as well as a discussion of some of the issues in translation. See Gauthier, 60-63, for his discussion of this verse in the context of the *Decisive Treatise*.

serves no purpose for these philosophers that philosophy does not also serve.⁷⁶ In the philosopher, the perfection of sufficient reason makes possible the fulfillment of the goal of revelation, to lead man to truth, and in this way seems to render divine law redundant.

Gauthier's contention that according to Ibn Rushd the philosopher has no need for divine law is one with which I cannot agree. In order for this to be the case, there would have to be nothing remarkable about the prophet, and no beneficial characteristic of the prophet that the philosopher lacks: it would be necessary for the philosopher to be able to take the place of the prophet. Yet for Ibn Rushd, and in Islam generally, there is a firm distinction between the philosopher and the prophet. First, like Maimonides, Ibn Rushd holds that it is only the prophet who is capable of speaking figuratively, and his figurative speech allows him to be understood by everyone according to his or her understanding, which to a large degree obviates the possibility of misinterpretation.⁷⁷ Second—and on this point there is a diversity of opinion within both Judaism and Islam—while in Judaism the prophet is a superior man and a teacher, he is also a man who can err; in Islam the prophet is by definition infallible and incapable of error.⁷⁸

⁷⁶ It is worth noting the rhetorical similarities between the end of Strauss' analysis of Ibn Rushd, where he writes that "Ibn Rushd undoubtedly acknowledges the primacy of the law" (*PL*, 89) and the end of the first chapter of Gauthier's analysis, where Gauthier writes: "In summary, [the *Decisive Treatise*] categorically subordinates religion to philosophy" (Gauthier, 111). The positivity with which both claims are made suggests, given that Strauss claimed to have read Gauthier's analysis closely, that Strauss would not have been unaware of this parallelism.

⁷⁷ See Chapter One for the importance of figurative speech in communicating with a multitude composed of diverse capacities.

⁷⁸ While Ibn Rushd seems to contend that men of deep knowledge are capable of understanding the hidden meanings of the law, and that the highest intellectual capacity

The prophet in Islam, as the direct messenger of God, is incapable of error. From the fact that the prophet never errs it follows that he is the most perfect legislator, as he is never incorrect in his interpretation or execution of Divine law. The philosopher, by contrast, is capable of error. But this does not mean, for Ibn Rushd, that the philosopher should be restricted from engaging in legislation or interpretation: on the contrary, as Strauss points out, error by a philosopher in the interpretation of the law is absolutely permissible (*PL*, 87/73; *DT*, 18/45-46). The philosopher may err in the interpretation of the law (because the law is less immanently present to him than it is to the prophet), and he may err in the presentation of the law (because he is less skilled at presenting truth figuratively than the prophet). However, for the one who is truly capable of philosophy, such error is excusable—it occurs as a result of the difficulty of the questions being addressed. This error, for Ibn Rushd, is not evidence of the insufficiency of reason itself (*DT*, 18.1-13/45). In fact, the risk of error does not allow the philosopher to refrain from interpretation—interpretation, as an obligation, cannot be set aside because one fears to err (*DT*, 7.18-28/29-30). Human reason, for Ibn Rushd, may be capable of ascertaining the truth on its own and may have the obligation to make that attempt. However, I would like to suggest that for Ibn Rushd, the law is still a necessary tool for the perfection of the intellectual capacity.

My contention, that the law for Ibn Rushd is a necessary object of philosophizing, is motivated by the comparison of two discordant statements that Strauss makes about Ibn

grants one knowledge only known to God, he nowhere implies that this perfect capacity actually exists—there is no philosopher whose work Ibn Rushd is reluctant to critique, or who he approaches with the reverence of the prophet.

Rushd's response to the question of the createdness of the world. It is through the consideration of these two statements that the importance of the uniquely dialectical relationship between philosophy and revelation in Ibn Rushd begins to appear, and there begins to emerge a fractious, necessary, and unique interplay between philosophy, revelation and politics in Ibn Rushd.

At one point, Strauss claims that Ibn Rushd considers the question of whether the world is created or not irrelevant to dogma (*PL*, 91/78). In a later section of the same chapter, devoted to the analysis of Gersonides, Strauss notes that, "in his middle commentary on Aristotle's *Topics*, Ibn Rushd had classed among the themes whose dialectical treatment is useful the question whether the world was created or not."⁷⁹ Without providing any explanation, Strauss has indicated (1) that for Ibn Rushd the question of the createdness of the world poses no threat to the law itself, and (2) that the dialectical treatment of this question is still valuable. What would it mean for something which can neither challenge nor improve what you know to be dialectically useful?

To understand the impact of dialectically treating a question, we must first speak to what Ibn Rushd was actually referring to when he discussed dialectics. Ibn Rushd made his most extensive treatment of dialectic in his *Middle Commentary on Aristotle's Topics*, whose ostensible purpose is to clarify the work of Aristotle. The content and implication of Aristotelian dialectics are, needless to say, the subject of long-standing

⁷⁹ *PL*, 97/84. Strauss' only other reference to dialectic in Ibn Rushd is when Strauss confirms that dialectic is one of the three types of persuasion identified by Ibn Rushd in the *Decisive Treatise*: "Wisdom" [alludes] to demonstrative argument; "beautiful admonition" to rhetorical argument; and "quarrel" to dialectical argument" (*PL*, 86/72).

controversy. According to Robin Smith, the “received view” is that Aristotelian dialectic is an argument based on shared beliefs or opinions, at least those that are not completely ludicrous.⁸⁰ In Aristotle, demonstration and dialect are similar in that they are both logical: the conclusions of either type of argument must be the logical result of their premises.⁸¹ Smith suggests that Aristotle’s dialectic is distinguished by the fact that it is dialogical: dialectic is a form of argument that takes place between two or more people who do not agree.⁸² Charles Butterworth, in his discussion of Ibn Rushd’s *Middle Commentary on Aristotle’s Topics*, suggests that for Aristotle dialectic is uniquely qualified to ascertain first principles, premises that can be used in demonstrative reasoning to demonstrate particulars (*MCT*, 24).

While Ibn Rushd does take the work of Aristotle seriously, he also departs from Aristotle extensively in his *Middle Commentary*, and the claims made in this text must be regarded as belonging to Ibn Rushd (*MCT*, 24, 26, 28-29). The word translated into English as “dialectic” is *jadal*, meaning dispute or controversy. In the *Middle Commentary*, Ibn Rushd announces that dialectic is just as necessary to philosophy as “skill in riding a horse in games is important for war” (*MCT*, Ar. 3). Of course, this is an

⁸⁰ Robin Smith, “Aristotle on the Uses of Dialectic,” *Synthese* 96, no. 3 (1993), 335.

⁸¹ Ibid., 336; *MCT*, 40. Butterworth, in the Editor’s Introduction to *Averroes’ Middle Commentary on Aristotle’s Topics*, emphasizes the proximity of demonstrative and dialectical arguments in Aristotle, which, he argues, are brought even closer together by Ibn Rushd. Demonstration, in this work by Butterworth, resembles something close to Platonic knowledge of Forms, and dialectic the best means of attempting to educate people about those Forms since they cannot actually be accurately transmitting except through direct understanding.

⁸² R. Smith, 344.

analogy made by Ibn Rushd in a place and time—its implication is that while one might attempt war (or philosophy), one can only excel at war if one knows how to ride (or use dialectic). The purpose of the analogy is to express the necessity of dialectic for the development of one's understanding, and the impossibility of attaining perfection in philosophizing without mastering the use of dialectic.

More significantly, particularly for making a case that dialectic is the politically active mode of philosophy, Butterworth suggests that Ibn Rushd used Aristotle's argument, that dialectic should be used to converse with the multitude, as a jumping-off point to make the case for dialectic as the most effective form of political argumentation (*MCT*, 30). In this analysis, the most important difference between demonstration and dialectic is the context in which each type of argument takes place. Demonstration, the most properly philosophical form of argument, potentially takes place in isolation, with one person using demonstration to prove a point to himself (*MCT*, 45). In that situation, the philosopher need not contend with opposing or incorrect opinions, nor is there a risk that his demonstration may be misunderstood by, and therefore detrimental to, others. But "because dialectical syllogism is always used between a questioner and answerer, the dialectician must pay attention to the proper formulation of questions and answers" (*MCT*, 44, 45). The dialectician is constantly engaged in political conversations—conversations that seek to apprehend and modify the opinions of the multitude. Training in dialectic is one of the most important skills of the legislator, insofar as he must be capable of effecting changes in the opinions and actions of the multitude so that they

understand, accept, and follow the law. The single most important claim made by Butterworth in the introduction to Ibn Rushd's *Middle Commentary* is that

[Ibn Rushd's] dialectician is nothing if he is not a *philosophe-apprenti*—a philosophe-apprenti primarily interested in the political uses of his art. (*MCT*, 46)

According to Butterworth's interpretation of the *Middle Commentary*, the “dialectical treatment” of a topic is a political treatment, which seeks to ascertain the opinions of the multitude, evaluate them, and correct them in a way that the multitude can accept. The “dialectical treatment” of the question of the createdness of the world is useful to Ibn Rushd because it is in fact the only way that error can be logically corrected, the multitude encouraged to a more truthful consensus about the question at hand, and citizens and philosophers become capable of fulfilling their greatest possibilities. In making reference to Ibn Rushd's commentary on Aristotle's *Topics*, Strauss directs his readers to a text in which Ibn Rushd put forward dialectic as the form of argument about the law through which philosophy is perfected.

Louis Lazar, in “L'Éducation politique selon Ibn Rushd (Averroës),” suggests that in order for a person to become a political being, a citizen, that person must be trained in each type of argument that Ibn Rushd discusses, which Lazar calls the poetic, the rhetorical, and the dialectical.⁸³ Lazar argues that while both rhetorical and dialectical argument involve imitations, which is to say, something other than the pure apprehension of a thing, dialectic is significantly more useful because unlike rhetoric, dialectic is

⁸³ Louis Lazar, “L'Éducation politique selon Ibn Rushd (Averroës),” *Studia Islamica*, 52 (1980), pp. 135-166, see 141. I am not certain that Lazar's divisions are an accurate representation of Ibn Rushd's categories of argument.

fundamentally rational, and while it does not cannot communicate intelligibles, it uses imitations which are appropriate and justified (Lazar, 149). Demonstration, Lazar states, provides knowledge of intelligibles, or what Plato would have called Forms—just as the Forms cannot be directly communicated to another but must be individually perceived, there is no way to instruct people in the intelligible directly. Instead, one must attempt to make people understand the imitation that most closely resembles the intelligible. By Lazar's account, dialectic is the most perfect type of argument that can be taught; the only thing greater than dialectic is demonstration, and the knowledge of intelligibles achieved through the use of demonstration is not something that can be systematically taught. The perception of intelligibles, according to Lazar's reading of Ibn Rushd, occurs in individuals with the necessary natural capacity after all of their other capacities have been disciplined into their most perfect form. The most relevant point of Lazar's article is his contention that dialectic represents the highest and last possible level of education, the level at which the person becomes political, which is to say, a citizen (Lazar, 161). Dialectic is a skill, one that a person capable of demonstrative reasoning must perfect, like the warrior must perfect their horsemanship, if they want to fulfill the promise of their capacities.⁸⁴ Even though some natural talent is necessary for both the philosopher and the warrior, those talents can only be fully developed when they are accompanied by a rigorous training that provides a foundation for them.

⁸⁴ A case could be made that prior to a person's education, their capacity to understand and make demonstrative arguments exists only as a promise, or a possibility, in the elite few who are endowed with it. It is only with the skills obtained through education that they will manifest that capacity.

As noted above, in *Philosophy and Law*, Strauss identifies dialectical treatment of a foundational problem to be something that Ibn Rushd finds “useful.” I would argue that if one takes into account Ibn Rushd’s statement about the nature and working of dialectic, dialectic actually appears essential to philosophy.⁸⁵ Dialectic, according to Ibn Rushd, is (a) the best means for communicating with the multitude effectively and (b) a necessary skill to development of one’s intellectual and demonstrative capacities. It is therefore clear that dialectic is an essential tool by means of which the law can execute its political mandate of guiding the multitude and an essential tool by means of which philosophy can perfect itself. However, neither of these relationships (the relationship of dialectic to the law and the relationship of dialectic to philosophy) actually describes the relationship between philosophy and the law. How does the relationship between dialectic and the law, and dialectic and philosophy, construct a particular relationship between the law and philosophy?

What I wish to suggest here is that the only object upon which dialectic can be perfected is the law, that therefore the perfection of one’s intellectual capacity and ability to philosophize requires one to address, argue about, and dispute the meaning of the law. This observation can take the form of an axiom: as we have discussed, for both Ibn Rushd and Maimonides the true commandment of the law—that is, knowing the truth—is not possible except through the use of reason. For Ibn Rushd, perhaps uniquely, this axiom is

⁸⁵ Specifically, this is because dialectic is necessary for the perfection of man, and the perfection and perfect understanding of man is part of philosophical inquiry.

only complete with the addition of the inverse statement: true understanding—that is, philosophy—is not possible without the law.

The above claim is predicated on the assumption that the law is the most excellent object of dialectic, and dialectic is necessary for philosophy. *Jadal*, as we have said, is dispute and argument. Disputation and argument is a skill essential for philosophy; in fact, it is a skill that must be perfected if one is to become adept at demonstration. Yet one cannot become more skilled in disputation simply by resolving each dispute that one encounters. The ability to argue can only be honed through argument, and if one resolves each argument quickly, there is nothing upon which to practice the art of dispute. Such a skill can only be gained if the dispute does not end. If one is seeking to perfect such a skill, then the only way to do so is by exercising that skill on a problem or an issue that cannot be completely resolved. Only the irresolvable question can push dialectic to its highest level. Dialectic can only truly occur in a context where there is disagreement and where a final conclusion has yet to be agreed upon. For Ibn Rushd, the final meanings of the law cannot be agreed upon, because the infinite teachings of the law mean that it “always contains *more* of wisdom and goodness than man can observe” (*PL*, 100/86). Understanding the being of the world, the particulars, such as “how the mountain rises up and how the camel moves,” is possible through demonstrative argument⁸⁶—discovering these types of truths is indeed the ultimate goal of philosophy (*DT*, 5.8-20/26-27). But one can accomplish this goal only if philosophy is rigorous in the perfection of its knowledge,

⁸⁶ Surah *Al-Ghashiyah*: 5, referenced by Ibn Rushd in *DT*, 2.18-19/22-23.

capabilities, and understanding—perfections that require attention to the law and dialectical engagement with issues of the law.

From the preceding analysis, it begins to emerge that the possibility of political force to philosophy, that is, the legal force of philosophy, requires philosophical entanglement with the law itself. For Ibn Rushd, to “philosophically justify the law” means to justify the law from the perspective of reason and philosophy as essential to the determination of truth—a project that, insofar as it cannot remove itself from the world, must be both practical and political. For Maimonides, in Strauss’ analysis, the “philosophic justification of the law” is the acknowledgement that human reason lacks something in its nature which is necessary for a political project: philosophy requires prophetic and irrational knowledge in order to legislate wisely (*PL*, 90-91/75-77 cf. 111/97, 115/101). From the preceding analysis, it appears that for Ibn Rushd the “philosophic justification of the law” is the recognition that the law is the most perfect object of dialectic philosophy, without which no philosopher is capable of becoming adept at demonstrative philosophy.

The popular axiom that Strauss derives from Maimonides—that it is not possible to be a Jew and a philosopher⁸⁷—is based on the supposition that the Jew never loses his connection to the law, or in other words, that the Jew never ceases to desire the prophetic

⁸⁷ *PAW*, 19: “One can be a perfectly competent talmudist without having had any philosophic training. Jews of the philosophic competence of Halevi and Maimonides took it for granted that being a Jew and being a philosopher are mutually exclusive.” See also *SMP*, 334. The correctness of this interpretation of Maimonides is not a part of this analysis, which focuses exclusively on how Strauss lays out the thought of Maimonides and how that analysis can help illuminate our understanding of Ibn Rushd.

“flashes of illumination” that can only come from the law itself (*PL*, 111/97). According to Maimonides, the philosopher can do his work perfectly well (albeit a-politically), without ever desiring or receiving this divine illumination. The lawgiver or prophet, however, must have the perfect imaginative faculty that reason alone cannot engender (*PL*, 105/91, 106/92, 120/109). For Maimonides, human reason is fundamentally lacking in precisely the knowledge and understanding that would allow it to be a practical political force: the role of the law in relation to philosophy is that the law supplements this lack. In contrast, for Ibn Rushd, human reason lacks nothing but the object upon which it can perfect itself. While in the case of both Maimonides and Ibn Rushd philosophy becomes political in relation to the law, it is only for Ibn Rushd that philosophy can and *must* take up the law philosophically, *dialectically*, both to become political philosophy and in order to perfect itself. Philosophy, for Ibn Rushd, does not need the law to provide the knowledge that reason is incapable of accessing, as though knowledge is made up of ingredients and the law provides the most essential. For Ibn Rushd, all the ingredients are present in philosophy; the law is what mixes them together, stimulating and shaking and challenging philosophy, and philosophy, in response, becomes something that it could not have become on its own.

Conclusion:

Why Difference?

There are a number of possibilities for the continuation of this study. None of those are for today, and they all require a thorough grasp of Islamic political, philosophical and intellectual history, not to mention the expertise in Jewish thought that would be required to make some of the more interesting comparative suggestions. It is my hope that this thesis will encourage continued study of Ibn Rushd and his place in both Islamic thought and the work of Leo Strauss—perhaps it will be work that I will have the opportunity to do.

At the very least, this thesis has proven that reading Leo Strauss' analysis of Ibn Rushd opens new avenues for exploring the difference between Islamic and Jewish political philosophy. Leo Strauss spent considerable time and effort arguing that philosophy and the law were always in conflict. Further, Strauss presents an alternative to the view that if philosophy and the law must be compatible if they are both to be a part of the way people relate to the world. Some have suggested that what Strauss outlines in *Philosophy in Law* is an oppositional relationship between philosophy and the law: the law, in this case, is concerned with opinion and with the securing of the city and the co-necessity of affecting public opinion, and philosophy is concerned with knowledge of the truth and the pursuit of knowledge at any cost. The threat posed by philosophy is one of unrest—philosophy's discovery of the truth may disrupt or fracture commonly held

opinions, and thereby destabilize the agreement between citizens that makes political life possible.

Yet there is also the possibility that what Strauss is proposing is not simply a one-on-one duel between opinion and knowledge. Strauss does not deny that philosophical and religious practices can exist in the same person or the same place, but he argues that these practices cannot exist in the same person or place *harmoniously*. When two things are harmonious, it means that together they form a consistent, orderly whole. In music, a harmony is the combination of different simultaneous notes such that they form chords, creating sounds that individual notes could not possibly make. Harmonization is the process whereby different ideologies, traditions, or ways of thinking are combined so as to form a new ideology or way of thinking that reduces our ability to see, much less appreciate, the old. I am not suggesting that harmonization cannot in itself give rise to new theories, ones which are interesting and potentially suggestive, but I am agreeing with Strauss that such harmonizations by their nature homogenize the things they bring together. For Strauss, homogeneity means that there is nothing to struggle against, nothing to challenge what you think or who you think you are. The reason that Strauss valued the political philosophy of Maimonides was that Maimonides exhibited one of the highest virtues: probity.

Because of his desire to harmonize the revealed law and philosophy, Strauss suggests, Hermann Cohen argued that for Maimonides the end result of philosophy was not to be theoretical, but practical. This is why Cohen suggests that the philosophy of Maimonides participates in, rather than conflicts with, the law. According to Strauss, this

attempt at harmonization ignores the importance and ideality of the theoretical life for Maimonides. For Strauss, Maimonides recognized and coped with the fact that while he valued the theoretical life as the most ideal and perfect way to live, he also recognized that it was impossible. What Maimonides may represent for Strauss is a tradition of living in conflict with oneself, of struggling with that conflict and at the same time ignoring the temptation to create a comforting, safe alternative.

One risk of the attempt at harmonization is this: in our desire to reconcile two things that we value, we will in fact do violence to one or the other in order to make them compatible. What Leo Strauss demands from those who read his texts is “probity,” understood here as the ability to recognize and accept that there are sometimes fundamental and irreconcilable differences between ways of thinking or specific ideas. It is necessary to look at what we believe, at what we value, and even at what we love with a clear eye; that we recognize the implications and drawbacks of those beliefs and, in the case of philosophy and the law, the attempt of each to reject the other. Philosophy, if it is truly something valued and to whose pursuit one is willing to commit oneself, must be recognized for what it is: a theoretical science that attempts to obtain knowledge of intelligibles, and which, in its mission to know the truth has no care for how such truths will affect other people or the relations between people. To make an informed decision that one wishes to study philosophy, one must realize that this is the path one is traveling, and that it is one that is particularly devoid of sympathy. The search for knowledge is not something that can be derailed by pointing out implications or consequences.

The law, if people value it and wish to support it, must be recognized for what it is as well: a practical science that attempts to order and manage the expectations and actions of people in a society, and which, for the sake of that society, is willing to accept as valid certain opinions whose validity is wholly pragmatic. To make an informed decision that one wishes to study or obey the law, one must realize that this is a practical science whose worth is determined not by its ability to uphold an abstract ethical or intellectual principle but by its ability to organize a city. There is nothing in the law that cares to know or explore the nature of a problem; the law only wishes to determine the most effective way to dispel the problem.

Despite the fundamental differences between philosophy and the law (differences that cannot be ignored if we are to take either seriously) Strauss does not suggest that each person must choose between one or the other—in fact, what Strauss really suggests is that the inheritors of medieval Jewish and Islamic thought must recognize and live with the fact that they believe and value two things which will never cease to be in tension with one another. If scholars take Strauss seriously, if they take the intrigues of his thought seriously, then the investigation of Strauss will reveal no solutions to problems of political philosophy, but only new, more difficult, and more gut-wrenching conflicts. At the beginning of this work I claimed that a new era was about to begin in the study of Strauss—as it does, everyone who works with Strauss' texts will have to decide whether or not they are prepared to deal with the conflicts that will arise. Having spent some time with Strauss, I have decided that it would be worthwhile to do so.

This thesis itself has raised new possibilities for thinking about the difference between Islamic and Jewish political theory. There are extremely suggestive and provocative possibilities in these differences; if Maimonides and Ibn Rushd really are different, if the way that they view the legislator and the city really is different, then that difference will in all likelihood turn out to have wide-ranging implications for understanding how Islamic and Jewish traditions of philosophy, theology, and political science have developed. There are many, I believe, who feel that current conflicts can only be resolved if we recognize the similarities between people—these are people for whom any emphasis on difference looks like aggression. We who study these matters therefore have the choice to make—if we believe that these investigations could destroy communities and cities, we must choose whether we are willing to take on that responsibility. That would be a difficult choice to make, and it would be much simpler to dismiss the possibility and say that by enunciating these differences we will learn to appreciate our “individuality” or “uniqueness.”

The lesson of Strauss is that this is not our choice to make; we live in a world of conflict, and we live in a world of difference. We cannot decide to make those difficulties disappear. They are real, and they are both conceptual and pragmatic. What we can do is choose whether we will face them or ignore them and hope that they disappear. If the Leo Strauss of *Philosophy and Law* could tell us anything, it would be that our problems and conflicts are too rich in history, in meaning, and in future possibilities to let them slip away out of fear. And so, as Strauss requests at the beginning of *Philosophy and Law*, we should look to “this new fortitude, being the willingness to look man’s forsakenness in its

face, being the courage to welcome the terrible truth, being toughness against the inclination of man to deceive himself about his situation, [that] is probity. It is this probity, ‘intellectual probity,’ that bids us reject all attempts to ‘mediate’” between enlightenment and orthodoxy (PL, 37/25).

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