

## Some Non-Halakic Aspects of the *Mishneh Torah*

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### I

This paper seeks to call attention to some motifs of Maimonidean rationalism explicitly or allusively incorporated into the *Mishneh Torah*—motifs by no means concentrated exclusively in the overtly philosophic sections of the *Sefer ha-Madda*<sup>c</sup> but deftly sprinkled throughout the entire work. By noting certain emphases underscored time and again, some of them in midrashic-exegetic garb, we obtain additional insight into the conceptions which predominated in Maimonides' mind when he was writing the *Mishneh Torah*. Brief philosophic comments and rationalistic directives, effectively inserted here and there, reveal in the code a vigorous intellectualistic posture usually associated exclusively with the *Guide*.

The image of Maimonides as a philosopher insisting upon the superiority of the theoretical life, questing for a rationale of the law and intimating what are its postulates, is, in fact, fully developed in the pre-*Guide* writings. Maimonides consistently espoused a sensitized view of religion and morality, demanding a full and uncompromising but inspired and sensitive observance of the law, openly disdaining the perfunctory, vulgar view of the masses (*hammon ha'am*), searching for the ultimate religious significance of every human action, indicting literalism and equating it with ignorance (*siklut*), and urging a commitment to and quest for wisdom (*hokmah*).<sup>1</sup> The latter is

1. See, e.g., *Mishnah Commentary on Berakot*, end (Kaph translation, pp. 91-92); *Rosh ha-Shanah*, 2:6; *Abot*, 4:5; introduction to *Helek*; *Iggeret Teman*, ed. A. Halkin (New York, 1952), p. 39; *Mishneh Torah, De'ot*, V, 11; *Teshubah*, V, 1; *Edut*, II, 1-3; *Melakim*, XI, 3; *Moreh Nebukim*, II, 29; III, 11, 13; *Teshubot ha-Rambam*, ed. A. Freimann (Jerusalem, 1934), 5, 345, 370; *Iggerot ha-Rambam*, ed. D. Baneth (Jerusalem, 1946), p. 63, and many others. See also the letter published by A. Scheiber, in *Sefunot*, 8:137-144 (1964). For the phrase *רוח נלטי בני ישראל* in *Teshubah*, V, 1, see D. Rosin, *Die Ethik des Maimonides* (Breslau, 1876), p. 70, n. 2. This phrase will be fully explicated in Professor Wolfson's forthcoming *The Philosophy of Kalam*. It is noteworthy that the term "fools" (טפשים), found in many of these passages, is used also to designate Karaites—another type of literalist; see, e.g., *Mishneh Torah, Temidim u-Musafim* VII:11.

absolutely indispensable for religious perfection—is indeed the crowning achievement. This thread—the process of intellectualization—is woven uninterruptedly and unabashedly from his earliest writings through the *Moreh Nebukim* and on through all his responsa. It is especially discernible in the texture of the *Mishneh Torah*.

Furthermore, if we add historical-biographical information to textual investigation, it becomes clear that Maimonides' reputation as creative religious philosopher and enthusiastic propagator of philosophy and his identification with a lofty rationalism were widespread long before the circulation of the *Guide*. As early as in the first letter of Joseph ben Judah (Ibn Aḳnin) to Maimonides—a flowery, artistically constructed epistle—the latter is extolled as enlightener of the bewildered, purifier of religious belief, and philosophic pedagogue par excellence.<sup>2</sup> Professor Baneth<sup>3</sup> noted in passing that we may infer from this that Maimonides' fame as philosopher was firmly entrenched relatively early in his public career. I would suggest that this reputation could have been based not only on hearsay but on thoughtful reading of "our Talmudic works," as he usually designates them. Such a reading of the *Commentary on the Mishnah* and the *Mishneh Torah* would reveal these characteristics, general definitions of purpose and tendencies of thought. The significance of such an early statement as "expounding a single principle of religion is dearer to me than anything else that I might teach" is transparent and sheds its light on the entire Maimonidean corpus. We may now combine this reference of Ibn Aḳnin with the suggestive statement of another contemporary (also named Joseph ibn Aḳnin), who, at a rather early date, described Maimonides in similar vein, as battling for the Torah with the "swords of syllogistic demonstration."<sup>4</sup> On the other hand, it is equally clear that not only did Maimonides' luster as halakic authority not dim while he was preoccupied with his philosophic opus but that he continued to write commentaries and novellae, let alone responsa, even after the *Mishneh*

2. *Iggerot ha-Rambam*, ed. D. Baneth, 5-6.

3. *Ibid.*, 4. In light of the references in this epistle we may with greater certitude disregard the ascription to Ibn Aḳnin of the poem in *Diwan* of Judah ha-Levi, ed. H. Brody, p. 105, n. 72. See Brody's comments *ad loc.*; also J. Mann, *The Jews in Egypt and in Palestine under the Fatimid Caliphs* (London, 1920), I, 234, n. 3. J. Toledano has published a poem of Ibn Aḳnin in praise of Maimonides; see *Ozar Genazim* (Jerusalem, 1960), pp. 29-31.

4. See *Hitgalut ha-Sodot we-Hofa'at ha-Me'orot: Perush Shir ha-Shirim*, ed. A. Halkin (Jerusalem, 1964), p. 431: טופח הוסיף הנלחם מלחמתה של חורה בהרבות הטופח. On the identity of this Ibn Aḳnin see the review article by D. Baneth, *Ozar Yehude Sefarad*, 7:11-21 (1964). See also *Essays on Maimonides*, ed. S. Baron (New York, 1941), p. 269.

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*Torah* was in circulation and the *Guide* was in various stages of preparation.<sup>5</sup> The two preoccupations—not without some tension, even friction—coexisted and both were operative in all his writings. There is a beginning and an end and in between there are unified, if multidimensional, themes of development.

It is hoped that this study will therefore have some bearing also upon the more general, complicated question of the unity of Maimonides' writing and especially the intrinsic relationship between his two major works, the *Mishneh Torah* and the *Guide for the Perplexed*. The relationship between these two monumental works, one juridical and the other philosophical, is obvious and straightforward to some, obscure and problematic for others. Some detect harmony and find deliberate progression in his writings while others hear only cacophony and see intentional disjunction. The recognition of such a problem is a commonplace of Jewish historiography.<sup>6</sup> However, not only is there no scholarly consensus concerning its solution but the very nature of the problem is conceived in a variety of different ways. *Quot homines, tot sententiae*. Some boldly bifurcate the Maimonidean corpus: (a) by disestablishing the *Guide* and dismissing it as the pseudepigraphic composition of one "who hanged himself on a mighty oak-tree";<sup>7</sup> or (b) by identifying two antithetical, unintegrated doctrines of Maimonides: an inner, traditional, authentic one articulated in the *Mishneh Torah* vis-à-vis an extraneous, foreign, spurious one borrowed from alien neighbors and formulated in the *Guide*.<sup>8</sup> Some see these two works on entirely different levels (Talmudic versus philosophic or exoteric versus esoteric), with the implication that the *Mishneh Torah* can suggest nothing of the typically intellectualistic stance of Maimonides inasmuch as it "deals with beliefs

5. See Note 70, below.

6. See R. J. Z. Werblowsky, *Joseph Karo* (Oxford, 1962), p. 8: "The problems posed by the necessity of determining the relationship between Maimonides' code and his philosophy are still far from being solved, but Jewish historiography has at least had time to get used to them."

7. This is the view formulated very bluntly, for example, by the seventeenth-century Yavetz, R. Jacob Emden; see his *Siddur, Hāllon Shebi'i*:

ספר מורה נבוכים אינו מעשה ידי אומן המחבר הגדול הר"ם ז"ל אלא מאחד שרצה ליתנק חלה עצמו באילן גדול.

See A. Shohet, *Im Hilufe Tekufot* (Jerusalem, 1960), p. 207. This view has been revived in many different forms and for disparate reasons. A partial adumbration of this approach is to be found in the commentary of Shem Tob, *Moreh Nebukim*, III, 51.

8. Z. Yavetz, *Toledot Am Yisrael*, V. X (pp. 41, 42, 47 and *passim*). Note Azariah de Rossi, *Mazref le-Kesef*, II:9 (p. 34):

בספרו הנכבד מו"נ אשר בו אמנם דבר כאיש יהודי מחוכם אך לא כרבן תלמודי.

and opinions only insofar as they are implied in prohibitions and commands,"<sup>9</sup> or that it actually conceals the author's true convictions. Some posit an irreducible tension or congenital incompatibility between law and philosophy—or between law and any metajudicial system; that is, between the temporal and the spiritual, the contingent and the eternal—and therefore any attempted combination must be discordant or incongruous.<sup>10</sup> Many scholars, of course, assume that Maimonides' writings are structured and informed by an integrated community of interests embracing theology and law.<sup>11</sup>

I would submit that the uncovering of certain nonhalakic emphases in the *Mishneh Torah* as well as in other popular, mass-directed writings—emphases which are indeed undocumented but also uncamouflaged—will contribute to a more balanced approach to this problem of unity.

## II

The *Mishneh Torah*, on many occasions, renders homage to the supremacy of the intellect and intellectual pursuits. This is, of course, the general thrust of book one, the *Sefer ha-Madda*.<sup>12</sup> One can find explicit statements to this effect in such places as *Hilkot Yesode ha-Torah* 4:13 or *Hilkot Teshubah* 9:1 and 10:6. The conclusion of the last book (*Hilkot Melakim*), with its political conception of the messianic period as an instrument of intellectual achievement and the completely incorporeal view of the future life, is another obvious case in

9. E.g., Leo Strauss, "The Literary Character of the Guide for the Perplexed," *Essays on Maimonides*, ed. S. Baron, p. 38 and *passim*. See L. Ginzberg, "Caro, Joseph," *Jewish Encyclopedia*, III, 584.

10. See, e.g., the analogy between Maimonides and R. Eleazar of Worms drawn by G. Scholem, *Major Trends in Jewish Mysticism*, p. 95. Also S. Pines, introduction to the French translation of the *Mishneh Torah*, tr. V. Nikiprowetzky and A. Zaoui (Paris, 1961), especially p. 5. Cf., however, G. Scholem, *Jewish Gnosticism* (New York, 1960), pp. 9-13. On the prevalent but often avoidable antagonism between canon law and theology, see Stephan Kuttner, *Harmony from Dissonance: An Interpretation of Medieval Canon Law* (Latrobe, Pa., 1960), especially pp. 1-4 and 50.

11. E.g., S. Baron, *Social and Religious History of the Jews*, VI, 101-102 and VIII, 63; J. Guttman, *Philosophies of Judaism* (New York, 1964), p. 154. A notable example of the integrative-wholistic approach to the entire Maimonidean corpus is I. Goldziher, *Pseudo-Bahya: Kitāb ma'āni al-naḥs* (Berlin, 1907), pp. 58ff. (One might add *Abot*, 3:9 to his references.) See also Aḥad Ha-Am, *Shilṭon ha-Sekel*.

12. See Maimonides' own statement in *Iggeret Tehiyyat ha-Metim* (Tel-Aviv, 1951), p. 345; my *Rabad of Posquidres* (Cambridge, Mass., 1962), p. 285.

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point.<sup>13</sup> There are, however, more subtle and therefore more suggestive and meaningful indications of this emphasis, many of them in overtly halakic contexts. Here are a few illustrations.

First,

The words of the Torah do not abide with one who studies listlessly, nor with those who learn amidst luxury, and high living, but only with one who mortifies himself for the sake of the Torah, constantly enduring physical discomfort, and not permitting sleep to his eyes nor slumber to his eyelids. "This is the law, when a man dieth in a tent" (Numbers 19:14). The sages explained the text metaphorically thus: "The Torah abides only with him who mortifies himself in the tents of wisdom."<sup>14</sup>

This is, in essence, a quotation of the well-known rabbinic aphorism, expressing the idea that study requires commitment unto exhaustion and death.<sup>15</sup> The underlying Talmudic statement concludes

אין התורה מתקיימת אלא במי שממית עצמו עליה

and it appears so, verbatim, in most later sources up to the *Shulhan Aruk*.<sup>16</sup> In an adjacent passage on the Talmud,<sup>17</sup> Rashi paraphrases the ending and inserts "in the tents of Torah" (באהלי התורה), while in a Geonic fragment we find the ending "in the house of study" (בבית המדרש),<sup>18</sup> but there does not seem to be any antecedent or parallel for Maimonides' interpretive paraphrase, which allows his emphasis on *hokmah* to emerge forcefully and distinctly.<sup>19</sup>

13. *Kesef Mishneh, Melakim, XI, 1*, noted the essentially nonhalakic character of these two chapters:

הפרק הזה ושאריו אמורים טובות בביאח משיחנו

See, generally, J. Finkel, "Maimonides' Treatise on Resurrection: A Comparative Study," *Essays on Maimonides*, ed. S. Baron (New York, 1941), pp. 93-123; S. Schwarzfuchs, "Les Lois royales de Maimonides," *REJ* (N.S.), 11:63-86 (1951), and the latter's reference to G. Vajda, *La Théologie ascétique de Bahya* (Paris, 1947), p. 105, n. 2; A. Freimann, *Teshubot ha-Rambam*, p. xlv.

14. *Talmud Torah*, III, 12. The ending reads באהלי החכמה or החכמים. See all the variations in the new edition of *Sefer ha-Madda* (Jerusalem, 1964), editor-in-chief S. Lieberman.

15. *Berakot*, 63a; *Shabbat*, 83b; *Zohar, Terumah*, 158b.

16. *Yoreh De'ah*, 246:21.

17. *Berakot*, 63a. Similarly, *Huḳḳe ha-Torah* in S. Assaf, *Meḳorot le-Toledot ha-Hinnuk* (Tel Aviv, 1925-26), I, 10.

18. L. Ginzberg, *Ginze Schechter* (New York, 1928-29) II, 639.

19. Menaḥem b. Zerah, *Zedah la-Derek* (Warsaw, 1880), I:4, 21 (p. 82), reads: מי באהלי התורה והחכמה . . . שממית עצמו. . . באהלי התורה והחכמה. The phrase חכמה אהלי is found in the midrash to Exodus 33:11 and is quoted by Rashi, *Pirḳe Abot*, 1:1. For *Torah* and *hokmah*, see also *Abot*, 1:17.

It is, of course, either foolhardy or presumptuous to contend unqualifiedly that a given Maimonidean statement has no source, for new sources or antecedents are constantly being discovered and a contention *ex silentio* can never be too persuasive. However, even in such cases, Maimonides' choice of a particular, not too popular formulation, would remain noteworthy.

Second, the incorrigible, professional dice thrower (משחק בקוביה) is decried and his "profession" discountenanced in the Talmud. Two explanations are offered for the strong disapproval: (a) gambling approximates robbery (גזל מדבריהם), inasmuch as the high odds are unjust and indefensible; (b) the gamblers themselves are not engaged in constructive work beneficial for humanity or in professions which further the welfare of society.<sup>20</sup> In Maimonides' formulation of this law—which happens to be studded with difficulties—we need only note again the casual insertion and implicit exaltation of *hokmah*: "Playing dice . . . entails the prohibition of wasting time on useless pursuits, for it is not fitting for a person to spend any part of his life other than on studying wisdom and furthering civilization."<sup>21</sup>

Third, Maimonides' description of the procedure of conversion vividly reflects his uniform insistence upon the indispensability of knowledge of the theoretical bases and theological premises of religion. A potential convert must be carefully informed about Judaism and instructed in its ritualistic patterns and, most emphatically, its metaphysics, its dogmatic principles. Maimonides emphasizes that the latter must be presented at great length.<sup>22</sup> Now, the need to expatiate concerning the theological foundations, in contradistinction to ritual commandments, is not mentioned in the Talmud.<sup>23</sup> Some scholars were inclined to assume that Maimonides found these details in his text of *Masseket Gerim*, inasmuch as a few other variants can be traced to this source, but this seems to be a gratuitous assumption.<sup>24</sup> Given the Maimonidean stance, this emphasis is a logical corollary or even a self-evident component of the underlying text which stipulates that the convert be informed about "some [מקצת] command-

20. *Sanhedrin*, 24b.

21. *Gezeleh wa-Abedah*, VI, 11.

אין ראוי לאדם שיעסוק כל ימיו אלא בדברי חכמה וביישובו של עולם.

See J. Anatoli, *Malmad ha-Talmidim* (Lyck, 1866), p. 173; *Edut*, X, 4, where Maimonides has only יישובו של עולם and commentaries *ad loc.* for the difficulties.

22. *Issure Bi'ah*, XIV, 2:

ומודיעין אותו עיקרי הדת שהוא ייחוד השם ואיסור עכו"ם ומאריכין בדבר הזה.

23. *Yebamot*, 47a; *Masseket Gerim*.

24. See S. Rappaport, *Ozar Nehmad*, 1:30 (1856); F. Baer, *Toledot ha-Yehudim Bi-Sefarad ha-Nozrit* (Tel Aviv, 1945), p. 482. In *Zion*, 15:5 (1950), Baer has noted a striking parallel with Philo. The *Migdal 'Oz*, *ad loc.*, offers no corroborative evidence for Rappaport, whose methodological assumption—that every phrase and nuance of the *Mishneh Torah* is explicit in some source—is misleading. It fails to acknowledge the interpretive-derivative aspects of the *Mishneh Torah*. See next note.

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ments."<sup>25</sup> Selective instruction concerning Judaism and its commandments would be ludicrously inadequate or warped if it omitted the first and most important commandment of all: a true conception of the unity of God. That this is a sustained emphasis is corroborated further in the same chapter where Maimonides defines a truly righteous person, the person for whom the world to come was prepared, as the wise man (בעל החכמה) who practices and understands these commandments. This is also Maimonides' expository interpolation.<sup>26</sup> As a matter of fact, the entire presentation bristles with suggestive Maimonidean novelties which should not be glossed over and obscured.<sup>27</sup>

Fourth, the Talmud states that the unintentional killer who flees to a city of refuge should be provided with all the necessities and amenities of life. This statement is based on the verse "that fleeing unto one of these cities he might live [וחי]", which is interpreted to mean "see to it that he lives properly."<sup>28</sup> The halakah subsumes under this the provision that when a student flees to a city of refuge

25. See *Maggid Mishneh*, ad loc.:

אינו מבוואר בגמ' רק שפשוט הוא מעצמו

This is not in the category of a Maimonidean novelty, usually heralded by the formula "it seems to me," but an interpretive elaboration which, in Maimonides' opinion, is implicit in the text; see my article in *Biblical and Other Studies*, ed. A. Altmann (Cambridge, 1963), p. 164. See also Radbaz, *Shemīṭah we-Yobel*, XIII, 13; *Maggid Mishneh*, *Mekirah*, XIV, 14; *Lehem Mishneh*, *Sanhedrin*, II:7. The *Mishneh Torah* clearly does not efface Maimonides' personality. It should be noted here that when Maimonides says in his responsum (Freimann, 152, p. 147)

לא נניח תלמוד ערוך ונפסוק הלכה ממשא ומתן של גמרא

this does not eliminate or minimize the role of his interpretive elaborations. See also responsum 89.

26. *Yebamot*, 47a, reads:

אומרים לו הוי יודע שהעולם הבא אינו עשוי אלא לצדיקים.

*Issure Bi'ah*, XIV, 3 reads:

ומודיעין אותו שבעשית מצות אלו יזכה לחיי העולם הבא. ושאין שום צדיק נמור אלא בעל החכמה שעושה מצות אלו ויודעין.

See also *Teshubah*, IX, 1:1

העושה כל הכתוב בה ויודעין דעה נמורה.

27. E.g., the application and interpretation of Hosea 11:4 in *Issure Bi'ah*, XIV, 2. (See the Talmudic use of this verse in *Shabbat*, 89b.) It is noteworthy that these interpretive additions and philosophic amplifications were omitted by medieval writers, even those who lean heavily on Maimonides and often quote him verbatim. See ha-Me'iri, *Bet ha-Be'irah on Yebamot* (Jerusalem, 1962), p. 189; *Sefer Mizwot Gadol, lo ta'aseh*, 115; *Ṭur* and *Shulḥan 'Aruk, Yoreh De'ah*, 268.

28. *Makkot*, 10a; *Deut.* 4:42.

his master is exiled with him. At this point Maimonides sounds his bell. Whereas the Talmud derives from this the admonition to teachers to screen their students,<sup>29</sup> Maimonides underscored that the seekers of wisdom cannot live without study, inasmuch as such an unintellectual existence is tantamount to death.<sup>30</sup>

There are many other instances where Maimonides demonstratively interpolates *hokmah* or an equivalent emphasis into his formulations. Let me cite a few, without any additional comment.

One should always cultivate the habit of silence and only converse on words of wisdom . . . So too in discussing Torah and wisdom.<sup>31</sup>

In short, he will limit his speech to topics of wisdom or lovingkindness.<sup>32</sup>

He will realize that nothing endures to all eternity except knowledge of the Ruler of the Universe.<sup>33</sup>

But the conversation of the worthy ones of Israel is none other than words of Torah and wisdom.<sup>34</sup>

To these instances of interpolation may be added the consistent juxtaposition of Torah and *hokmah* either as sources of his teaching, objects of his attention, or just as natural companions.<sup>35</sup> Already in the introductory poem which he wrote for his commentary on the Mishnah, this parallelism is present.<sup>36</sup>

29. *Hullin*, 133a.

30. *Rozeah*, VII, 1:

וחיי בעלי חכמה ומבקשיה בלא תלמוד תורה כמיתה חשובין.

By leaving the rest of the Talmudic inferences for *Rozeah*, VIII, 8, this one is made even more emphatic. Cf. *Sefer Mizvot Gadol*, *aseh*, 76:

וחיי בעלי החכם (חכמה) הוא התלמוד.

Another interesting interpolation is found in *Mekirah*, XIV, 14. See also *Sanhedrin*, II, 1; III, 7; *Genebah*, VIII, 1.

31. *Deot*, II, 4, 5.

32. *Deot*, V, 7. See also *Deot*, V, 5; my *Rabad of Posquières*, p. 272.

33. *Mezuzah*, VI, 13.

34. *Tumehat Zarahat*, XVI, 10. See M. Berlin, *Sefer ha-Rambam*, ed. J. L. Fishman (Jerusalem, n.d.), II, 247ff. These endings, however, are not merely haggadic perorations.

35. E.g., *Shemonah Peraḳim*, introduction (Gorfinkle, p. 6);

ענינים לקטחים מדברי החכמים . . . ומדברי הפילוסופים גם כן הקדומים והחדשים . . . ושמע האמת ממי שאמרו

*Ḳobez Teshubot ha-Rambam* (Leipzig, 1859), II, 37b:

ולולי התורה שהיא שעשועי ודברי החכמות שאשכח בהם יגוני

36. See the edition by A. Marx, *JQR*, 25:389 (1935):

לשום בתורתו לבר חשקו. לאכול פרי חכמה לבר חוקו.

In the introduction to the Commentary, Maimonides includes among his sources and resources: *hokmah (ilm)*. Kapah's translation (p. 47) *is an evasive circumlocution*. Note also that in the characterization of R. Ashi, Kapah (p. 34) translates *למוד* instead of *חכמה*.

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Note 35.

In addition to this deft projection of *hokmah*, the *Mishneh Torah* has visible traces of philosophic ideas and even the philosophic exegesis needed to sustain them. For example, the interpretation of the Song of Songs as an allegory of the soul's relation to or communion with God—introduced into Hebrew literature for the first time by Maimonides<sup>37</sup>—is found clearly and explicitly in the *Mishneh Torah*: "This Solomon expressed allegorically in the sentence, 'for I am sick with love' (Song of Songs 2:5). The entire Song of Songs is indeed an allegory descriptive of this love."<sup>38</sup> Or, Maimonides interprets Leviticus 26:27–28 "But walk contrary (*keri*) to me; then I will walk contrary unto you in fury" as emphasizing the providential design in all events and rejecting the theory of chance (*mikreh*). Adversity is not to be looked upon as merely accidental, and therefore the only proper response is to "cry out in prayer and sound an alarm." This idea and its exegesis are also found in the *Mishneh Torah*.<sup>39</sup> Likewise, Maimonides presents in the *Guide* one general "obvious reason" for all the commandments (prayer and benedictions) enumerated in book two of the *Mishneh Torah*: "the end of these actions . . . is the constant commemoration of God . . . the love of Him and the fear of Him." I find this explanation, in elliptical form, in the *Mishneh Torah* itself: "The sages have instituted many blessings . . . in order that we should constantly commemorate God . . . blessings . . . the purpose of which is that we should always commemorate the Creator and fear Him."<sup>40</sup> There are also suggestive statements in the *Mishneh Torah* which are fully elucidated only in the *Guide*.<sup>41</sup> His frank avowal of the relevance of non-Jewish sources of wisdom is notable.<sup>42</sup> Finally, we may note that Maimonides not only insisted upon the total rejection of astrology and other superstitious practices or beliefs but demanded that this rejection be

37. *Moreh Nebukim*, III, 51. See A. S. Halkin, "Ibn Aqnin's Commentary on the Song of Songs," *Alexander Marx Jubilee Volume* (New York, 1950), pp. 396–398; A. Altmann, "The Delphic Maxim," *Biblical and Other Studies* (Cambridge, Mass., 1963), pp. 230–231; Werblowsky, *Joseph Karo*, p. 57, n. 1. See now Ibn Aqnin's commentary, edited and translated by Halkin (Jerusalem, 1964).

38. *Teshubah*, X, 3, 10. It is not mentioned in *Yesode ha-Torah*, II, 2.

39. *Moreh Nebukim*, III, 36; *Ta'aniyot*, I, 3. See also *Iggeret Teman*, ed. A. S. Halkin (New York, 1952), 77 and introduction, p. 25.

40. *Moreh Nebukim*, III, 44; *Berakot*, I, 3.

41. E.g., *Abodah Zarah*, IV, 6 and *Moreh Nebukim*, I, 54; *Abodah Zarah*, XII, 1 and *Moreh Nebukim*, III, 37; *Teshubah*, III, 4, and *Moreh Nebukim*, III, 43. I hope to treat the discrepancies between the *Mishneh Torah* and *Guide* concerning *ta'ame mizvot* separately.

42. *Kiddush ha-Hodesh*, XVII, 24. See *Shemonah Peraqim*, introduction, cited above, Note 35.

motivated by rational conviction. One who believes these "false and deceptive" practices to have been arbitrarily forbidden by the Torah is "a fool, deficient in understanding." Routine conformity without rational conviction is inadequate.<sup>43</sup> Any form of belief in magic or superstition, even without practice, is damnable. This statement is so sharp and unequivocal that many medieval writers found it offensive and took exception to it. People like Ibn Adret<sup>44</sup> and Simon ben Zemah Duran<sup>45</sup> could and did, in other words, take the full measure of Maimonides' rationalism even without reference to the *Guide*.

Perhaps the single most significant illustration of the presence in the *Mishneh Torah* both of basic philosophic ideas and their concomitant exegesis concerns Maimonides' rationale of the commandments. It is well known that Maimonides was as articulate in the *Mishneh Torah* about the permissibility, indeed the desirability, of a sustained inquiry into the reasons for the ceremonial and moral law as he was in the *Guide*.<sup>46</sup> However, I would suggest that the *Mishneh Torah* not only issues a general mandate for such speculation but intimates the specific guidelines or coordinates along which this goal is to be pursued. It sketches a framework into which all details are to be fitted, and this framework is identical with the one erected more laboriously and solidly in the *Guide*, where Maimonides submits a threefold classification of the laws, corresponding to a similar classification of the philosophic virtues: intellectual, moral and practical.<sup>47</sup> All laws teach true beliefs, inculcate moral virtues, or else themselves constitute actions which train one in the acquisition of intellectual and moral virtues. The practical commandments also have an outer-directed, social motive: to help establish a society in which "wronging each other" has been abolished and in which the individual can, therefore, flourish and devote himself to the attainment

43. *Abodah Zarah*, XI, 9.

44. *Teshubot* (Venice, 1546), 414 (pp. 63a-65b, esp. p. 63a):

אבל הרב ז"ל כתב בהלכות ע"ז . . . וכפל עוד זה בפרק ל"ז בספר המורה . . . עוד חזר וחזק דברים אלה בספר המורה.

45. *Magen Abot* (Leghorn, 1785), part III, p. 73b:

ונראה שהרב ז"ל הפריז על מדותיו שכתב בס' המדע . . .

See also *Zedah la-Derek*, p. 34; R. Elijah Gaon, *Yoreh De'ah*, 179:13. For an appreciative reaction, see the comment of the fifteenth-century Saadya b. David, published by S. Assaf in *Kiryat Sefer*, 22:242 (1946).

46. *Me'ilah*, VIII, 8; *Temurah*, IV, 13; *Mikwa'ot*, XI, 12. See C. Neuburger, *Das Wesen des Gesetzes in der Philosophie des Maimonides* (Danzig, 1933); I. Heinemann, *Ta'ame ha-Mizvot* (Jerusalem, 1954), esp. pp. 66-78.

47. *Moreh Nebukim*, III, 27, 31, 35; see H. A. Wolfson, *Philo*, II, 208, 305, and esp. 312.

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of intellectual perfection. The moral virtues are also propaedeutic: they bring about the proper social relations necessary for mankind—"moral qualities useful for life in society."<sup>48</sup> In essence, therefore, the intention of the law is a twofold one: "the welfare [*tikkun*] of the soul" (which consists of the acquisition of true beliefs) and "the welfare of the body" (which is achieved by practical and moral virtues).<sup>49</sup> This entire provocative rationale seems to have been artfully compressed by Maimonides into the following summary statement: "The majority of the commandments of the Torah are but *counsels from of old* (Isa. 25:1), from Him who is *great in counsel* (Jer. 32:19), to improve (*le-taken*) our knowledge of religious beliefs and to make straight all our doings."<sup>50</sup> And Maimonides adds a proof-text, apparently never before quoted in this context: "Have not I written unto thee excellent things of counsels and knowledge, that I might make thee know the certainty of the words of truth that thou mightest bring back words of truth to them that sent thee."<sup>51</sup>

This view, then, concerning the instrumental or teleological role of *mizvot* is a completely exoteric doctrine. As a matter of fact, Maimonides alludes to or operates with it a number of times in the *Mishneh Torah*. (a) "For the knowledge of these things [Talmudic law] gives preliminary composure to the mind. They are the precious boon bestowed by God to promote social well-being on earth [יִשׁוּב הָעוֹלָם] . . ." <sup>52</sup> (b) "Honor is due not to the commandments themselves but to Him who ordained them . . . and therewith saved us from groping in the dark. He prepared for us a candle to make straight the perversities and a light to teach us the paths of righteousness. As it is said 'Thy word is a lamp unto my feet and a light unto my path' (Ps. 119:105)."<sup>53</sup> (c) "This is the right moral principle.

48. *Moreh Nebukim*, III, 35. Note also III, 43.

49. *Ibid.*, III, 27.

50. *Temurah*, IV, 13. (Danby's translation in the Yale Judaica Series [IV, 188] misses the point.) See also Maimonides' commentary on *Abot*, I, 18, where this view is clearly formulated.

The "exoteric potential" of *fa'ame mizvot* is perhaps indicated also by the fact that he freely refers his inquirers to it; see *Kobez*, I, 14 (n. 61).

51. Prov. 22:20. For rabbinic citation of this verse, see A. Hyman, *Torah ha-Ketubah ve-ha-Mesurah*. J. Schachter, *Sefer Mishle be-dibre Hazal* (Jerusalem, 1963), cites only *Megillah* 7a. Maimonides apparently interprets counsels (מועצות) as practical and "knowledge" (דעה) as intellectual.

52. *Yesode ha-Torah*, IV, 13. See *Abodat ha-Melek*, *ad loc.*, who submits that it was this statement rather than the designation of Talmud as a "small matter" which provoked his critics.

53. *Shehitah*, XIV, 15. E. Askari, *Sefer Haredim*, introduction, cites *Midrash Tanhuma* as the source of this—without mentioning Maimonides.

It alone makes civilized life [יִישׁוּב הָאָרֶץ] and social intercourse possible."<sup>54</sup> (d) The words of the Torah should not be used to "cure the body for they are only medicine for the soul [רפואת הנפש], as it is said, 'they shall be life unto the soul' (Prov. 3:22)." Indeed, people who use the Torah so improperly are not only in "the category of sorcerers and soothsayers but they are included among those who deny the Torah."<sup>55</sup>

### III

The legitimacy and inner consistency of these assorted references, explanations, and emphases—apparently beyond the scope of the Oral Law—can perhaps be clarified in light of one axial statement in the *Mishneh Torah*, a statement which was capable of working a silent revolution in Jewish intellectual history.

The time allotted to study should be divided into three parts. A third should be devoted to the Written Law; a third to the Oral Law; and the last third should be spent in reflection, deducing conclusions from premises, developing implications of statements, comparing dicta, studying the hermeneutical principles by which the Torah is interpreted, till one knows the essence of these principles, and how to deduce what is permitted and what is forbidden from what one has learnt traditionally. This is termed Talmud.

For example, if one is an artisan who works at his trade three hours daily and devotes nine hours to the study of the Torah, he should spend three of these nine hours in the study of the Written Law, three in the study of the Oral Law, and the remaining three in reflecting on how to deduce one rule from another. The words of the Prophets are comprised in the Written Law, while their exposition falls within the category of the Oral Law. The subjects styled *Pardes* (Esoteric Studies), are included in *Talmud*. This plan applies to the period when one begins learning. But after one has become proficient and no longer needs to learn the Written Law, or continually be occupied with the Oral Law, he should, at fixed times, read the Written Law and the traditional dicta, so as not to forget any of the rules of the Torah, and should devote all his days exclusively to the study of Talmud, according to his breadth of mind and maturity of intellect.<sup>56</sup>

54. *De'ot*, VII, 8. This is an exact parallel to *Moreh Nebukim*, III, 27 and 35(3).

55. *Abodah Zarah*, XI, 12. The Maimonidean emphasis is sharpened when compared with the underlying passage in *Shebu'ot*, 15b and commentaries *ad loc*. See also R. Jonathan ha-Kohen of Lunel on Alfasi, *Berakot*, 5a (ed. J. Blau [New York, 1957], p. 6). See also *Tefillin*, V, 4, and cf. A. Hilbitz, *Lileshonot ha-Rambam* (Jerusalem, 1950), p. 64. Note the commentary of R. Abraham Maimonides on Exod. 15:26 (כי אני . . . רופאך). ed. S. Sassoon and E. Wiesenberg (London, 1959), p. 278. Maimonides' רפואת הנפש is obviously reminiscent of תקון הנפש. Note also *Ḳobez*, II, 23 (נימטסין ומשמרות לנפש); II, 24: תקון הנפש; *Shemonah Peraḳim*, chap. 4; and *Iggeret Teman*, ed. Halkin, pp. 17-19.

56. *Talmud Torah*, I, 11, 12.

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Note

This unusually expansive, almost prolix, formulation is based on the following concise, almost epigrammatic, saying in the Talmud: "One should always divide his years into three: [devoting] a third to Mikra, a third to Mishnah, and a third to Talmud."<sup>57</sup>

The Maimonidean paraphrase is highly problematic and the following items require explication: (a) the nonchalant substitution of what appears to be the genus for a species, in other words "Oral Law" for "Mishnah"; (b) the designation of "Gemara" or "Talmud"<sup>58</sup> as an independent unit of study, distinct from the "Oral Law," and the inclusion of metaphysics and the natural sciences in this third unit of study. A precise definition of the terms *Mishnah* and *Gemara* according to Maimonides, determination of their scope, and definition of their relations will help resolve these difficulties. It would be helpful perhaps to indicate the conclusions and then provide the documentation.

(a) *Mishnah* and *Gemara* are exactly coterminous in scope—complete, unabridged summaries of Oral Law.

(b) They differ in method and form, *Mishnah* being apodictic and popular while *Gemara* is analytic and technical, but they are alike in purpose and actual achievement. *Gemara* is to *Mishnah* what rational demonstration (מופת) is to traditional belief (קבלה).

(c) Philosophy is an integral, even paramount component of this oral law and, like *halakah* proper, can be presented either in apodictic, catechetical summary or in analytic, demonstrative elaboration.

That Maimonides equates *Mishnah* with the *Oral Law* in his paraphrase of *Kiddushin* 30, interpreting it to mean the authoritative corpus of the entire Oral Law, is not really perplexing upon closer scrutiny. The basic text of the Oral Law *in toto* is the work redacted by Rabbi Judah ha-Nasi: the *Mishnah*. *Every other work*—Tannaitic or Amoraic—stands in interpretive-commentatorial, but not actually innovating, relation to the *Mishnah*. Maimonides repeats this assertion, carefully and consistently, in his introductions to the *Commentary on the Mishnah* and the *Mishneh Torah*. The purpose of the *Sifra* and *Sifre* is to explain the principles of the *Mishnah* (לבאר עיקרי המשנה) while the function of the *Tosefta* is to explain the subject matter of the *Mishnah* (לבאר עניני המשנה). The same is true for the *Baraita*, whose purpose is to elucidate the words of the *Mishnah*

57. *Kiddushin*, 30a.

58. The terms are interchangeable; see variants *ad loc.* in new edition referred to in Note 14 above.

(לבאר דברי המשנה). This interpretive relation characterizes also the Talmud, the Palestinian as well as the Babylonian; both continue the task of explanation (פירוש דברי המשניות וביאור עמקותי). One of the four goals that R. Ashi set for himself in the compilation of the Talmud was to reveal the principles, methods, and proofs utilized in the Mishnah.<sup>59</sup> In light of this we may perhaps explain the fact that Maimonides frequently uses the term *Talmud* when he is actually quoting the Tosefta,<sup>60</sup> for they are generically identical. *Mishnah*, in brief, represents the entire Oral Law.

*Mishnah* differs from *Gemara* only in that its contents are cast in an apodictic mold—and this is the second characteristic or connotation of the term. *Mishnah* includes the normative conclusion, the obligatory *mizvah*, without excessive explanation or review of the process of exegesis and inference. It is for this reason that in many different contexts the terms *mishnah*, *mizvah* and *halakah* (or *hilkata*) are interchangeable and used freely as equivalents.<sup>61</sup> The following instance is especially significant. The introduction to the *Mishneh Torah* begins as follows:

All the precepts which Moses received on Sinai were given together with their interpretation, as it is said "And I will give unto thee the tables of

59. *Commentary on the Mishnah*, introduction (ed. Kapah, pp. 34-5):

החדושים שחדשו מן המשנה חכמי כל דור וביאור הכללים והראיות שלמדו מהם.

In his letter, *Kobez*, I, 25b, Maimonides speaks of פירוש המשנה שהוא פירוש המורה. The phrase is found in Abraham ibn Ezra, *Yesod Mora* (Prague, 1833), p. 12.

60. For examples, see S. Lieberman, *Tosefta Ki-Feshutah*, *Zera'im*, 637, n. 1; 642, n. 25; 645, n. 38, and others.

61. E.g., *Kiddushin*, 49b, reads:

עד דתני הלכתא ספרא וספרי ותוספתא.

Maimonides, *Ishut*, VIII, 4 reads:

צריך להיות יודע לקרות המשנה וספרא וספרי ותוספתא.

Note also *Tefillah*, VII, 10-11. See Responsum of R. Hai Gaon, ed. Harkavy, *Teshubot ha-Geonim*, 262 (p. 135):

אבל הילכתא היא משנתנו;

Assaf, *Teshubot ha-Geonim* (Jerusalem, 1927), 58 (p. 68):

ויש צורך לכם לדעת שעיקר כל חכמתם של רבותינו בכל מאמריהם בברייתא ובגמרא הוא המשנה; *Mebo ha-Talmud*, attributed to R. Samuel ha-Nagid:

המשנה היא הנקראת תורה בעל פה;

R. Nissim, *Sefer ha-Mafteah*:

כל מה ששנה ר' חייא . . . בתוספתא רמזו רבנו הקדוש במשנה.

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stone, and the law [*torah*], and the commandment [*mizvah*].” “The law” refers to the Written Law, “and the commandment” to its interpretation. God bade us fulfil the Law in accordance with “the commandment.” This commandment refers to that which is called the Oral Law.<sup>62</sup>

Here the equation of *mishnah*, *mizvah* and *torah she-be'al peh* is sharply delineated. That this is a conscious equation, carefully reasoned and consistently maintained, is clear from the cross reference to it in a subsequent book of the *Mishneh Torah*.<sup>63</sup> The Talmudic source (*Berakot* 5a) for this was noted for the first time apparently by Rabbi Elijah Gaon of Vilna.<sup>64</sup> Happily, we now have the explicit testimony of Rabbi Abraham Maimonides to the effect that this “explanation of the *tradentes*” ([אלנאקלין] פירוש המעתיקים) indeed underlies the opening statement of the *Mishneh Torah*. What is more, our general thesis which has Maimonides equating *Mishnah* with the Oral Law as a whole (or *mishnah* and *mizvah*) is fully corroborated by Rabbi Abraham, who asserts very forcefully, almost dramatically, that *mishnah* refers not to a given text but to the “principles [sources] of tradition” ([אלנקל] אבות הקבלה).<sup>65</sup> *Mishnah* refers to the traditional corpus of the oral law and *Talmud* is its ever-expanding commentary.

As a final illustration we turn to the passage in the oft-quoted letter of Maimonides to Rabbi Phinehas the judge of Alexandria.<sup>66</sup> In defending the purpose and nature of the *Mishneh Torah*, Maimonides defined the structural and stylistic differences between *perush* and *hibbur*, monolithic code and discursive commentary, justifying his own opus by characterizing it as *hibbur*. What has not been stressed in this passage is the telling equation of *hibbur* with the “way of the Mishnah” (דרך המשנה) and *perush* with the “way of the Talmud”; in other words, two approaches to or two presentations of the same material. Maimonides then proceeds to equate his own work not only with the Mishnah but with the “way of the Mishnah,” which can now be paraphrased as follows: the *Mishneh Torah*, a complete summary of Oral Law, is equal to the Mishnah in its com-

62. ומצוה זו היא הנקראת תורה שבעל פה.

63. *Shehitah*, I, 4. This is, I think, the only cross-reference to the introduction.

64. See *Abodat ha-Melech*, *ad loc.* Cf. W. Bacher, “Die Agada in Maimunis Werken,” *Moses ben Maimon*, ed. Bacher *et al.* (Leipzig, 1908), II, 145, n. 1, who says that this is Maimonides’ own formulation.

65. *Perush R. Abraham Maimonides*, ed. Sassoon and Wiesenberg, pp. 382–384.

66. *Ḳobez*, I, 25b.

prehensive scope and apodictic method. This is further substantiated by all Maimonidean descriptions of his code. I have collated six substantive statements.<sup>67</sup> If one were to conflate them, the following characterization would emerge: an authoritative summary and guide for the entire Oral Law, practical and nonpractical, modeled upon the genre as well as the style of the Mishnah and obviating the need for exacting analysis of Talmudic demonstration and argumentation, and on the basis of which one will be able to know in capsule form the contents of *torah she-be'al peh*. Especially significant is the elimination of Talmudic "depth study."

I would now venture to submit that we should perhaps be able to terminate the debate as to the meaning of the term *Mishneh Torah* and its alleged aim of superseding the Talmud. This is how Maimonides describes its aim: ". . . a person who first reads the Written Law and then this compilation will know from it the whole of the *Oral Law*." If we rephrase this in light of the three units or categories defined in *Hilkot Talmud Torah* it means that Maimonides has provided a new text for the study of *mishnah-torah she-be'al peh*.<sup>68</sup> He has dealt with unit two of the three units of study, but has not trespassed on the grounds of unit three, *gemara*. When, therefore, he says with considerable pathos that he has never urged the abandonment of *gemara*,<sup>69</sup> we have no reason to impugn this declaration. We may rather vindicate this contention and amplify it as follows: I composed a text for what I designated as *torah she-be'al peh*—that is, the *mishnah*, unit two—but unit three remains: *gemara*. This consists of the expansive-analytic study and conceptual analysis of what has been

67. *Sefer ha-Mizvot*, introduction; *Mishneh Torah*, introduction; letter to Jonathan of Lunel (ed. Freimann, *Teshubot ha-Rambam*, p. xlv); letter to Phinehas of Alexandria (*Kobez*, I, 25b); letter to Ibn Aqnin (ed. Baneth, *Iggerot ha-Rambam*, I, 50ff.); *Iggeret Tehiyat ha-Metim*. There are significant statements, some of them in the form of direct quotations, also in the anonymous defense of the *Mishneh Torah* edited in *Tarbiz*, 25:413-28 (1956).

68. On the phrase *Mishneh Torah* as "a presentation (or formulation) of the Torah," see the brief comment of S. Duran, *Milhemet Mizvot* (1869), end. I am planning to treat this more fully elsewhere.

69. *Kobez*, I, 25b. The fact is that the *Mishneh Torah* immediately achieved wide popularity as an admirably comprehensive textbook and independent juridical guide; see, e.g., the letter of R. Sheshet, ed. A. Marx, *JQR*, 25:427 (1935); the statement of Isaac ibn Latif referred to in Note 101, and references in S. Assaf, *Meqorot le-Toledot Ha-Hinnukh* (Tel Aviv, 1925-26), vol. II, *passim*; also Maimonides' comment in *Teshubot ha-Rambam*, ed. Freimann, 69:

... ושמענו שבהם פוסקים רובי הישיבות . . .

Opponents could therefore impute to Maimonides the design to have the *Mishneh Torah* supersede the Talmud.

summarized first in the Mishnah and then in the *Mishneh Torah*.<sup>70</sup> Its essence is independent reflection, conceptualization, and interpretive innovation.

## IV

A component of Gemara, which deserved special mention alongside of that "which is forbidden or permitted, clean or unclean," is philosophy, or *pardes*. Let us note immediately a formal resemblance between these two parts of Gemara: both are uniformly described as demanding "a broad mind, a wise soul, and prolonged study." The same qualities of mind and prerequisites of knowledge are prescribed for both branches of Gemara study.<sup>71</sup>

Now, the inclusion of philosophy in the Oral Law had already been established by Maimonides in an earlier chapter of the *Sefer ha-Madda*<sup>c</sup> where—following what he elaborated in his *Commentary on the Mishnah*<sup>72</sup>—he reiterated the identification of *ma'ase bereshit* with physics and *ma'ase merkabah* with metaphysics: "The topics connected with these five precepts, treated in the above four chapters, are what our wise men called *Pardes*."<sup>73</sup>

70. The above conclusion stems primarily from an analysis of the passages in the *Mishneh Torah*. To this should be added other pertinent historical-biographical data. It would appear that there was considerable tension, perhaps even vacillation, in Maimonides' attitude toward study of the Talmud itself—unit three: see especially the letter to Ibn Aqnin, *Iggerot ha-Rambam*, ed. Baneth, 68–69; A. Halkin, "Sanegoriyah 'al Sefer *Mishneh Torah*," *Tarbiz*, 25:413–428 (1956), esp. 414–416. Maimonides is quoted as saying:

והעשהו ספרך המובהק והורהו בכל מקום.

Some of his partisans seem to be almost contemptuous of "full-time" Talmudists; see my article in *Biblical and Other Studies*, p. 172, n. 51. On the other hand, Maimonides himself displayed an abiding devotion to "pure" Talmudic exposition divorced from any practical consequences. Note the example discussed by S. H. Kook, *Iyyunim U-Mehkarim* (Jerusalem, 1963), I, 304: a problem concerning the Temple ceremonial on the Day of Atonement was treated in his *Mishnah Commentary* (*Yomah*, 2:1), was resumed in *Hilkot Jerushalmi* (see p. 11), and was still under discussion in his responsa (Freimann, pp. 313–314). Furthermore, Maimonides continued to write commentaries and *novellae* even after the *Mishneh Torah*, which should allegedly have acquitted him of his Talmudic obligations. See the very important *Hiddushe Ha-Rambam la-Talmud*, ed. J. L. Sacks (Jerusalem, 1963). It is noteworthy that his son R. Abraham also engaged in both kinds of literary activity simultaneously; study of the code and explanation of the Talmud

דקדוק פירוש התלמוד וספר הביאור לעקרי החבור.

See *Perush R. Abraham Maimonides*, 22, n. 99.

71. *Sefer ha-Mizwot*, introduction; *Mishneh Torah*, introduction; *Yesode ha-Torah*, IV, 13; *Talmud Torah*, I, 13 and see the references in my Note 67.

72. *Hagigah*, 2:1.

73. *Yesode ha-Torah*, IV, 13.

I would call attention, however, to a new proof-text which Maimonides introduces here for the first time and whose relevance is established by his interpreting it with a crushing literalism. The Talmud reports in praise of Rabbi Joḥanan ben Zakkai that he studied everything: "He did not leave [unstudied] Scripture, Mishnah, Gemara, Halakah, Haggada, details of the Torah, details of the Scribes, inferences *a minori ad majus*, analogies, calendrical computations, gematriot, the speech of the Ministering Angels, the speech of spirits, and the speech of palm-trees, fullers' parables and fox fables, great matters or small matters." "Great matters' mean the *ma'aseh merkabah*, 'small matters' the discussions of Abbaye and Rabba."<sup>74</sup> The consensual explanation of this concluding passage, which describes the Talmudic deliberations (Abbaye and Rabba symbolizing all the Amoraim) as a "small matter," is that all the future queries of the Amoraim were crystal clear to Rabbi Joḥanan ben Zakkai and his Tannaitic colleagues. They did not have to struggle with these questions because they had all the answers and the subject matter was smooth and unproblematic. Later generations, further removed from the original teachings, were marked by a decline in knowledge and insight and therefore had many sharp questions. This explanation is found in the *Iggeret R. Sherira Gaon*,<sup>75</sup> the commentaries of Rabbi Ḥananel,<sup>76</sup> Rabbi Gershom,<sup>77</sup> and Rashi,<sup>78</sup> and *Perush Sefer Yeẓirah* of Rabbi Judah of Barcelona,<sup>79</sup> and continues to prevail in post-Maimonidean writing. It should be noted that Judah ha-Levi<sup>80</sup> also quotes this passage but—fortuitously or prudentially—cites a shorter version<sup>81</sup> omitting the crucial conclusion and thereby evades the interpretive issue. Maimonides, realizing that this passage provided him with a powerful prop for his position, takes the phrases "great matter" and "small matter" at face value, thereby buttressing his argument concerning the nobility and superiority of metaphysics. As in the famous palace metaphor of the *Guide*,<sup>82</sup> *ma'ase merkabah* emerges as the summit of *torah she-bé'al peh*.

74. *Sukkah*, 28a; *Baba Batra*, 134b.

75. Ed. B. M. Lewin (Haifa, 1921), pp. 8–9.

76. *Ozar ha-Geonim on Sukkah*, *Perushim ad loc.* (p. 95).

77. *Baba Batra*, 134b.

78. *Sukkah*, 28a.

79. Ed. S. J. Halberstam (Berlin, 1885), pp. 101–102.

80. *Kuzari*, III, 65.

81. See *Abot de R. Natan*, chap. 14; *Masseket Soferim*, chap. 16.

82. *Moreh Nebukim*, III, 51.

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The need for arduous preparation for the ascent—a pervasive theme of Maimonides—is also stressed in passing.<sup>83</sup> That Maimonides maintained this unprecedented explanation of the Talmudic passage is seen from his repetition of it in one of his letters to Ibn Aḳnin.<sup>84</sup> His ardent protagonist Jacob Anatoli also repeats this literal explanation as if it were routine.<sup>85</sup> The mainstream of Talmudic exegesis, however, continues to carry the standard Geonic explanation.<sup>86</sup> One writer, in obvious deprecation of the Maimonidean view, even adds that the Geonic explanation is “true and correct for every believer, and not as others have explained”:<sup>87</sup>

זוה הפירוש אמת ונכון לכל המאמין ולא כמו שפירשו אחרים. הא—לקים יכפר בעד.

Rabbi Joseph Karo bemoans the fact that Maimonides wrote what he did.<sup>88</sup>

This conviction that *pardes* is an integral, indispensable part of Oral Law led Maimonides to frequent tours de force in interpreting Talmudic maxims. In his commentary on *Pirḳe Abot*—a rich hunting ground not yet explored systematically—Torah is regularly interchanged with *ḥokmah*. Maimonides introduces *ḥokmah* into the opening statement of Simeon the Just and notes curtly: “this is what he meant by Torah.”<sup>89</sup> When only “Torah” appears in the underlying passage, Maimonides interprets it to include *ḥokmah* as well. When “Torah”

83. See, of course, *Moreh Nebukim*, I, 31–34, but note also *Commentary on the Mishnah*, introduction (*Kapah*, p. 38), which seems to compress this entire teaching:

חולשת שכל והתנברות התאוות. והעצלות מללמוד והחריצות לרדיפת עניני העולם הזה . . . ;

also the peculiar explanation of *קונו על כבוד קונו* in *Mishnah*, *Ḥagigah*, 2:1. Also, *Abot*, 2:15.

84. *Iggerot ha-Rambam*, ed. Baneth, I, 57.

85. *Malmad ha-Talmidim*, 11. P. Duran, *Ma'aseh Efod*, 7, alludes to it. See the apologetic treatment of Z. H. Chajes, *Tif'eret le-Mosheh* (Zolkiew, 1840), 7b.

86. E.g., ha-Me'iri, *Bet ha-Behirah* on *Abot*, 59.

87. *Ḥiddushe ha-Riṭba* on *Sukkah*, *ad loc.* See *Ḥiddushim* of R. Aaron ha-Levi (who was the teacher of Riṭba) in *Ginze Rishonim*, ed. M. Hershler (Jerusalem, 1962), p. 95. On Riṭba and Maimonides, see *Sefer ha-Zikkaron*, ed. K. Kahana (Jerusalem, 1957), pp. 27–30.

88. *Kesef Mishneh*, *Yesode ha-Torah*, IV, 13.

89. *Abot*, 1:2. See the significant observation of S. Duran, *Magen Abot ad loc.*:

זוה אמת הוא אבל אינו כוונת המאמר.

Medieval writers were often cognizant of the fact that Maimonides introduced strained interpretations in order to reinforce his theses. See also the statement of D. Kimḥi printed in *Kerem Ḥemed*, 5:31 (on Ps. 4:5):

והרב מורה צדק פירש . . . מצוה למשכילים החשובים שיכירו האמת . . . ואין זה מענין המזמור.

R. Baḥya b. Asher, *Perush ha-Torah*, beginning of *Nizavim* (New York, 1945, V, p. 81):

והפירוש הזה בעצמו . . . יקר וספיר אבל אינו בענין הפרשה.

and "ḥokmah" both appear, their separate identity or autonomy is maintained.<sup>90</sup> The rabbinic description of Moses as "a father in Torah, a father in wisdom [*ḥokmah*] and a father in prophecy"<sup>91</sup> is a favorite theme for Maimonides because, as he says, it vigorously differentiates between Torah and *ḥokmah* while establishing their precise relation.<sup>92</sup> All this interpretive energy, skill and pressure are compressed in Maimonides' adaptation of the following Talmudic maxim: "The Holy One, blessed be He, has nothing in His world but the four cubits of Halakah alone."<sup>93</sup> "Halakah" is, of course, metamorphosed by Maimonides so that it emerges several pages later as including not only positive law but all other sciences as well.<sup>94</sup> No comprehensive description of the components of Torah will be allowed to omit *ḥokmah*.<sup>95</sup>

Furthermore, Maimonides' halakic formulation, which grafts philosophy on to the substance of the Oral Law, dovetails perfectly with his view on the history of philosophy. In common with many medieval writers, Jewish, Christian, and Muslim, Maimonides is of the opinion that Jews in antiquity once cultivated the science of physics and metaphysics, which they later neglected for a medley of reasons, historical and theological.<sup>96</sup> He does not, however, repeat the widespread view, as does Halevi, that all sciences originated in Judaism and were borrowed or plagiarized by the ancient philosophers. Halevi, echoing a Philonic view, states: "... The roots and principles of all sciences were handed down from us first to the Chaldeans, then to the Persians and Medes, then to Greece, and finally to the Romans."<sup>97</sup> That Maimonides does not subscribe to this view of the Jewish origin of all wisdom has been inferred—a kind of argument *ex silentio*—from his formulation in the *Guide*, where he merely establishes the antiquity of philosophy per se. It

90. See again S. Duran, *Magen Abot* on *Abot*, 3:13:

ורבינו משה ז"ל פירש . . . התורה בביאור מצוותיה וחכמה מעשה בראשית ומעשה מרכבה.

91. *Megillah*, 13a.

92. *Moreh Nebukim*, III, 54; *Abot*, 4:4. See also Isaac Abravanel, *Naḥalat Abot* (New York, 1953), p. 205 (on *Abot* 3:22).

93. *Berakot*, 8a.

94. *Commentary on the Mishnah*, introduction (Ḳapah, p. 39).

95. For *ḥokmah* in Talmudic sources, see L. Ginzberg, *Perushim we-Hiddushim*, IV, 19-31; S. Lieberman, in *Biblical and Other Studies*, p. 132; also the review of Ginzberg's volume by A. Goldberg, *Ḳiryat Sefer*, 38:197 (1963). It is obvious that Maimonides could have read his meaning of *ḥokmah* into a good number of the original sources.

96. *Moreh Nebukim*, I, 71. See Wolfson, *Philo*, I, 163.

97. *Kuzari*, II, 66.

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seems to me that this is clearly noted by Maimonides in the introduction to his *Commentary on the Mishnah* where, in buttressing an argument, he says that this matter is known to us not only from the prophets but from the wise men of the ancient nations "even though they did not see the prophets or hear their words."<sup>98</sup> Maimonides does not care to trace all philosophic wisdom back to an ancient Jewish matrix. His sole concern is to establish *hokmah* as an original part of the Oral Law, from which it follows that study of the latter in its encyclopedic totality—that is, *gemara*—includes philosophy. This is the position—a harmonistic position unifying the practical, theoretical and theological parts of the Law—which Maimonides codified in the *Mishneh Torah*.

On a number of subsequent occasions, Maimonides seems to be reflecting upon or justifying this inclusive concept of *gemara*. In the *Guide* he refers to the fact that the "foundations of religion" were reviewed in his Talmudic works.<sup>99</sup> Elsewhere he explains why he was compelled to begin the *Mishneh Torah* with the *Sefer ha-Madda*<sup>100</sup> and in the same vein some of his immediate successors called attention to the twofold but unified objective of the Maimonidean code: halakic and philosophic.<sup>101</sup> As a matter of fact, both goals are depicted in the letter to Ibn Aq̄nin where Maimonides uses the term *diwan* to describe the *Mishneh Torah*, asserting that the Jewish people lacked such an authoritative compilation, and then he adds that the people also lacked "true exact beliefs."<sup>102</sup> The implication is that these beliefs can be presented in the same summary fashion as the details of law. Indeed, the Talmudists (people of the *fiqh*,

98. *Kapah*, p. 42. See *Teshubah*, V, 5.

99. I, introduction; 71, and others.

100. See my Note II.

101. Isaac ibn Latif, introduction to *Sha'ar ha-Shamayim*, quoted in *He-Haluz*, 7:91 (1865):

ושם כונתו הראשונה לבאר בו עקרי היחוד ושרשי האמונה... והכונה השנית היתה לברר הדברים המתבררים מכל אלו הענינים ר"ל התלמוד.

Levi b. Abraham, *Sefer Pardes ha-Hokmah* in *Ozar ha-Sifrut*, 3:19 (1890), in the section *Orot Me-Ofel*: חבר במשפטי החורה ורויה. Inasmuch as the author later singles out the *Moreh Nebukim* for individual consideration, this reference must apply exclusively to Maimonides' Talmudic works. See also *Iggeret of R. Sheshet ha-Nasi* in *JQR*, 25:417 (1935).

102. *Iggeret ha-Rambam*, p. 50:

אין לה ספר כולל לאמתו של דבר ואין לה דעות אמתיות ומדויקות

and subsequently, p. 51, the reference to *האמונה הכלולים בו*. See B. Cohen in *JQR*, 25:519-520 (1935). Such a reference is missing from Maimonides' definition of *mishnah*, in *Talmud Torah*, I, 12.

the third group in the palace metaphor) are not without true beliefs; rather they possess true beliefs by means of tradition.<sup>103</sup> In other words, the *fiqh*, the Oral Law, contains philosophic truths presented descriptively or apodictically as articles of tradition instead of being elaborated demonstratively as syllogistic premises and conclusions.<sup>104</sup> These articles of tradition may ultimately be rationalized, just as the judicial part of *torah she-be'al peh* is subject to amplification. Both expansive processes take place in the domain of *gemara*, which had been explicitly defined as consisting of (a) the study and application of hermeneutic principles and (b) the subject matter of *pardes*. In this respect the *Moreh Nebukim* may be described as part of the *gemara* of the *Mishneh Torah* just as the actual Talmud and its commentaries are the other part.

## V

Two pointed questions remain. We should inquire first whether Maimonides could have derived this understanding of *mishnah* and *gemara* from antecedent sources or at least found implicit support for it in earlier writings.<sup>105</sup> Then we should seek to determine whether

103. *Moreh Nebukim*, III, 51:

התלמודיים אשר הם מאמינים דעות אמתיות מצד הקבלה.

104. *Iggeret Tehiyyat ha-Metim*, 346:

ראינו שצריך לנו לבאר בחבורנו התלמודיים עקרם תוריים על צד הספור לא על צד הביא ראייה. In the introduction to *Moreh Nebukim*, he speaks of the *Mishneh Torah* containing כללים מזה הענין. Y. Bedershi, in his letter to S. ibn Adret (*Teshubot*, n. 419; p. 72a), echoes this note: והנה היום ת"ל נעקרה אותה האמונה הרעה מעקרה מכל כחותינו, לא שמענו מי שהחזיק בה כלל או שיתבלבל, וזה אם בידיעה מופתית או בידיעה (עפ"י) קבלה.

Generally, Maimonides realized that the *Mishneh Torah* was an exoteric work and therefore could not be unreasonably rigorous or excessively exacting; see *Kiddush ha-Hodesh*, XI, 5-6. This fact does not mean, however, that he altered or compromised or censored the subject matter—whether abstruse halakic material or technical scientific material. This fact is relevant rather to the expository method used by Maimonides. For some discussion of this, see J. Levinger, "Al ha-'Iyyun we-ha-Diḳduḳ be-dibre ha-Rambam," *Bar-Ilan Annual*, 1:246-269 (1963); B. Benedikt, "Le-Darko shel ha-Rambam," *Torah She-be'al Peh* (Jerusalem, 1964), pp. 97-98.

It seems that what Isaac Abravanel says about the motivation of Maimonides in his formulation of the thirteen principles of faith in the *Mishnah Commentary* is applicable to the *Sefer ha-Madda* and other philosophic fragments of the *Mishneh Torah*. See *Rosh Amanah* (Venice, 1505), chap. 23 (p. 31a):

בחר הרב . . . ללמד אותם דרך קצרה אותם הדברים שיש בהם מהחכמות . . . באופן שישחלמו כל בני אדם ואפי' עמי הארץ בקבלת אותם האמונות . . .

105. For *mishnah*, see the references in my Note 61. *Ma'aseh Efod*, 15.

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or not the revolutionary impact of this halakic formulation was felt and how it was received by successors. By thus approaching the Maimonidean formulation from upstream and following it downstream, we shall be in a better position to assess its originality and significance.

The idea that *gemara* stood in an interpretive, amplificatory relation to *mishnah* could be found in many places, even though not distinctly or precisely articulated. The closest approximation of the first part of the Maimonidean definition seems to be in the *Iggeret R. Sherira Gaon*, which describes *gemara* as the "true investigation" of the Divine Commandments and adds specifically: "to deduce conclusions from premises and to study the thirteen hermeneutical principles by which the Torah is interpreted . . ." <sup>106</sup>

For the second part—the inclusion of *pardes*—two possible sources suggest themselves. Rabbi Judah of Barcelona says parenthetically that the Talmud (*gemara*) contains the "explanations of the Torah and the *mizwah* [*torah she-be'el peh*]" and that it provides "the key of *hokmah*"—a statement which is as suggestive as it is cryptic. <sup>107</sup> We may assume that Judah of Barcelona was no stranger to Maimonides. <sup>108</sup>

A more intriguing antecedent is to be found in the statement of Rabbi Joseph Rosh ha-Seder, an older contemporary of Maimonides, who apparently undertook to produce an abridgement of the Talmud. <sup>109</sup> In the introduction to this work, he describes five goals which Rabbi Ashi set for himself in the redaction of the Talmud, and in this context refers briefly to "secular sciences" (*hokmot hizoniot*) contained in some sections of the Mishnah. <sup>110</sup> Inasmuch as this description has many affinities with Maimonides' well-known de-

106. *Iggeret*, p. 8:

המכוון בתלמוד הוא החקירה האמתית במשפטי המצות . . . מכח השכל להוציא דבר מתוך דבר ולהבין בי'ג מדות שהתורה נדרשת בהם . . .

See the reference to Profiat Duran, *Ma'ase Efod*, cited in *Iggeret* by B. M. Lewin.

107. *Perush Sefer Yezirah*, p. 5:

ובתוך התלמוד בלול ושקוע פירושי התורה, והמצוה, והוא מפתח החכמה . . .

See also p. 276.

108. See E. Urbach, "Halakah u-Nebu'ah," *Tarbiz*, 18:20-22 (1947).

109. L. Ginzberg, *Ginze Schechter*, II, 403-407; J. Mann, *The Jews in Egypt and Palestine under the Fatimids* (London, 1922), II, 312-313; S. D. Goitein, *Sidre Hinnuk* (Jerusalem, 1962), 148-149.

110. *Ginze Schechter*, II, 407: חכמות חיצוניות הנחקקין על מקצת משניות. This line is missing in the fragment published by Mann. Maimonides apparently combined the philosophic interpretation of *derashot* and the allusions to *hokmot* into one unit.

scription—and may well be the immediate source or impetus for the latter—this reference is of obvious relevance.

If we follow this formulation downstream, we notice a striking phenomenon: the post-Maimonidean writers either ignore this formulation, camouflage it or blunt its edges.<sup>111</sup> Ha-Me'iri provides a pointed illustration of conscious compromise: he seems to be in a dilemma of "woe to me if I speak and woe to me if I am silent."<sup>112</sup> Turning to the *Shulḥan 'Aruk* we see how Rabbi Joseph Karo quotes both long paragraphs of *Hilkot Talmud Torah* verbatim with the single flagrant deletion of the sentence, which obviously caused him more than a twinge of discomfiture, about *pardes*. Rabbi Moses Isserles, author of the *Torat ha-'Olah* and moderate protagonist of philosophic study, reinserts this reference less conspicuously and more restrainedly toward the end of his gloss.<sup>113</sup>

The significance of the treatment—either a conspiracy of silence or various shades of qualification—accorded Maimonides actually in this instance transcends this case and is indicative of the general reaction by medieval writers to the markedly Maimonidean emphases in the *Mishneh Torah*. They took a rather accurate measure of the Maimonidean temper (sometimes correlating it with the *Guide*, sometimes considering it in isolation) and acclaimed it, condemned it, or ignored it.<sup>114</sup> In any event, they had an ear for the characteristic phrase as well as an eye for the novel, nonhalakic features of the *Mishneh Torah*.

111. See, e.g., *Sefer Mizvot Gadol*, *'aseh*, 12; *Orḥot Ḥayyim*, I, 28b (n. 10); *Toledot Adam we-Ḥawah*, *netiv sheni*; *Tur Yoreh De'ah*, 246; *Zedah la-Derek*, I:4:7 (p. 81).

112. *Bet ha-Beḥirah* on *Kiddushin*, 30 (p. 177):

שליש בתורה ושליש במשנה ושליש בתלמוד ושאר מיני מחקר הראויים במה שהוא לומר.

Cf. *Sefer ha-Ḥinnuk*, *mizwah* 419:

שליש בעסק תורה שבכתב ושליש בעסק תורה שבעל פה ושליש להבין הענינים משורש.

113. *Yoreh De'ah*, 246:4. Note the comment of R. Elijah Gaon *ad loc.*

114. See also my Notes 27, 30, 44, 45, 87-89.

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