

## ***Further Reflections on Classification of Mishneh Torah: Real Answers to Real Problems***

**By: LAWRENCE KAPLAN**

This essay, a response to Haym Soloveitchik's essay "Classification of *Mishneh Torah*: Problems Real and Imaginary," recently published in *Collected Essays: Volume II* (Oxford: Littman Library, 2014), pp. 369–377, is based on a lecture I gave at the Annual Conference of the Association for Jewish Studies, Boston, Massachusetts, December 2003, in response to the original Hebrew version of the essay, "Hirhurim 'al Miyyuno shel ha-Rambam be-Mishneh Torah: Be'ayot Amitiyot u-Medummot," *Maimonidean Studies* 4 (2000), 107–115. Professor Soloveitchik was present in the audience. I altered and considerably expanded my original lecture in light of further study on my part, recent scholarship, and some differences between the Hebrew and English versions of Soloveitchik's essay. Soloveitchik's revisions are referred to and discussed below in notes 21, 37, and 46. See, as well, his "Preface" to *Collected Essays II*, p. viii, for his policy regarding revisions to his previously printed essays. All page numbers in the body of my text refer to Soloveitchik's English essay.

### **Issues of Classification**

Haym Soloveitchik begins his incisive and stimulating essay "Classification of *Mishneh Torah*: Problems Real and Imaginary" by drawing two contrasts between the approach to the study of the *Mishneh Torah* by Talmudic scholars and historians. First, "Talmudic scholars...are concerned with specific rulings, and if the meaning of a ruling is not affected in any way by its position in the text, they generally ignore the context. Historians,

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on the other hand, attempt to understand the system as a whole, the principles of its arrangement and organization” (367). Second, while Talmudic scholars “from the days of the scholars of Lunel in the closing decade of the twelfth century down to our own days” (367) have advanced our understanding of the *Mishneh Torah* by subjecting it to questioning, scrutiny, and query, “Maimonidean scholarship” has tended to substitute “sing[ing] the praises of the *Mishneh Torah*” (367) for such scrutiny and query. One must then combine modern Maimonidean scholarship’s concern with the *Mishneh Torah*’s “principles of ... arrangement and organization” (367) with the traditional rabbinic approach to its study, which, “without fear or favoritism, questions whatever in the work appears to be problematic.” As Soloveitchik notes, “It is through such questioning and only through such that we will be able to arrive at a deeper understanding of Maimonides’ teachings.<sup>1</sup>

To be sure, as Soloveitchik’s rather vague reference to “Maimonidean scholarship” indicates, many distinguished twentieth-century scholars, among them Boaz Cohen, Isaac Herzog, Chaim Tchernowitz, Lawrence Berman, and Isadore Twersky, preceded Soloveitchik in addressing many of the issues raised by the original system of classification Maimonides constructed for his encyclopedic work, and seeking to understand that system’s logic,<sup>2</sup> but, so Soloveitchik suggests, they tended to gloss over

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<sup>1</sup> The last two quotes are from Soloveitchik’s Hebrew essay, p. 106.

<sup>2</sup> Boaz Cohen, “Classification of the Law: *Mishneh Torah*,” *JQR*, 1935, pp. 519–540; Isaac Herzog, “The Order of the Books in *Mishneh Torah*” (Hebrew), in *Rabbeinu Moshe ben Maimon*, ed. Yehudah Leib Fishman (Jerusalem, 1935), pp. 257–264; Chaim Tchernowitz (Rav Tzair), *Toledoth ha-Poskim: History of the Jewish Codes* (Hebrew) New York: The Jubilee Committee, I, 1946; Lawrence V. Berman, “The Structure of the Commandments of the Torah in the Thought of Maimonides,” *Studies in Jewish Religious and Intellectual History in Honor of Alexander Altmann*, eds. S. Stein and R. Loewe (Tuscaloosa Ala., 1979), pp. 51–66; and Isadore Twersky, *Introduction to the Code of Maimonides (Mishneh Torah)* (New Haven and London: Yale University Press, 1980), pp. 238–323. Since the appearance of Soloveitchik’s Hebrew essay in *Maimonidean Studies*, further studies of Maimonides’ classification in the *Mishneh Torah* have appeared: Joseph Tabory, “The Structure of *Mishneh Torah*,” in *Traditions of Maimonideanism*, ed. Carlos Fraenkel (Leiden and Boston: Brill, 2009), pp. 51–71; Shamma Friedman, “*Mishneh Torah*: ha-Ḥibbur ha-Gadol” (Hebrew), in *Birkat Moshe: Jubilee Volume in Honor of Rabbi Nahum Eliezer Rabinowitz* (Ma’aleh Adumim: Ma’aliyyot, 2012), pp. 361–368; Asher Benzion Buchman, “The Order of the Books of the *Mishneh Torah*” (Hebrew), *Hakirah* 18 (2014), pp. 5–26 (Hebrew numbering); and David Gillis, *Reading Maimonides’ Mishneh Torah* (Oxford: Littman Library, 2014), pp. 72–76, 86, 239–260, 319–324, and *passim*. One key question dividing these scholars is the

certain problematic aspects of Maimonides' classification.<sup>3</sup> Soloveitchik points to three types of problems raised by that classification: "problems in the placements of units (i.e., "Laws of X") within a book, problems within the units themselves, and at times, even problems in the internal organization of sub-units" (369). After detailing several problems from all three categories, Soloveitchik concludes, "it is only through solving these and like problems that we will be able to understand the methodology of Maimonides' halakhic classification."<sup>4</sup>

Soloveitchik himself in a subsequent essay, "*Mishneh Torah: Polemic and Art*,"<sup>5</sup> addressed one example of problems in the organization of units, namely the internal organization of *Hilkehot Shabbat*, but otherwise left all the questions he raised unanswered. This paper will take up, if only in part, Soloveitchik's tacit invitation. I will limit myself to the first category, that is, "problems in the placements of units within a book."<sup>6</sup>

How does one determine whether or not a placement of a set of laws in the *Mishneh Torah* is prima facie problematic? First there is the issue, as Soloveitchik notes, of the fit of a unit (i.e., "Laws of X") with the theme of the book of which it forms a part. Maimonides himself calls attention to this issue when offering justifications as to why the "Laws of Circumcision" are placed in the *Book of Love* and the "Laws of Mourning" in the *Book of Judges*.

Second, there is the problem of the tension between, to use Twersky's terms, "overall macroscopic classification and internal microscopic unity,"<sup>7</sup> that is, "between an inner-directed unity of a given section and external integration of this section with the thematic structure and rationale of the whole book in which it is found."<sup>8</sup> Often a unit will contain

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extent to which Maimonides' scheme of classification in the *Mishneh Torah* breaks with that of the *Mishnah*.

<sup>3</sup> Soloveitchik is not being entirely fair here to earlier scholarship. Thus, while Twersky in his magisterial work *Introduction to the Code of Maimonides* certainly "sings the praises of the *Mishneh Torah*," in his chapter on "Classification" (pp. 238–323) he takes ample note, as we shall see, of "stresses and strains in the system" (p. 281), "unexplained difficulties or cruxes in classification" (p. 282), "unexplained trouble spots" (p. 283), and the like.

<sup>4</sup> Again, this quote is from Soloveitchik's Hebrew essay, p. 115.

<sup>5</sup> "*Mishneh Torah: Polemic and Art*," in Jay M. Harris, ed., *Maimonides 800 Years After: Essays on Maimonides and His Influence* (Cambridge, Mass., 2007), 327–343 [reprinted in Soloveitchik, *Collected Essays: Volume II*, 387–395].

<sup>6</sup> To be precise, Soloveitchik's examples refer not to units ("Laws of X"), but, as we shall immediately see, to sub-units.

<sup>7</sup> Twersky, *Introduction*, pp. 291–292.

<sup>8</sup> Twersky, *Introduction*, pp. 292–293.

several related topics, say topics *a*, *b*, and *c*, of which, to cite Twersky, only “the first [topic] establishes a thematic link to the book in which it is found.”<sup>9</sup> That is, while topics *b* and *c* are related to topic *a*, neither *b* nor *c*, unlike *a*, is related to the book’s theme. Thus, again to cite Twersky, while the unit itself forms “an independent and self-contained entity, full integration on both levels is not forthcoming.”<sup>10</sup> One might say that topics *b* and *c*, despite their lack of connection with the theme of the book in which they are found, are included in the book by virtue of their being “piggybacked” onto topic *a*, to which they are internally connected.

Among the examples offered by Twersky of this are the “Laws of First Fruits (*bikkurim*) and Other Gifts Offered to the Priests Outside the Sanctuary,” in the *Book of Seeds*. As Twersky notes, “the laws of *bikkurim* constitute only one third of the unit, while the bulk is devoted to other non-agricultural gifts, such as setting apart a cake of dough for the priest, giving him parts of an animal, and redeeming a first born son.”<sup>11</sup> *Bikkurim* is the opening topic of this unit “in order to warrant the unit’s integration into the agricultural *Book of Seeds*,”<sup>12</sup> while the other topics, despite their non-agricultural nature, are included in the unit, alongside *bikkurim*, by virtue of their common character of being gifts offered to the priests outside the sanctuary. In this situation a set of laws could be viewed as problematic only if, in addition to lacking any thematic link to the book in which it is found, it also is not linked in any integral way to the main theme of the unit itself.

Even if the placement of a set of laws in the *Mishneh Torah* is *prima facie* problematic, the problem can be viewed as a real one, Soloveitchik correctly argues, only if “one can suggest a more appropriate locus” for that set of laws (368). For example, Soloveitchik maintains, while the placement of the “Laws of Mourning” in the *Book of Judges* not only is problematic, but Maimonides himself is aware of and refers to its problematic nature, one cannot criticize his choice of placement, for there isn’t any better place in the *Mishneh Torah* into which it can be fit (p. 368).<sup>13</sup>

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<sup>9</sup> Twersky, *Introduction*, p. 291.

<sup>10</sup> Twersky, *Introduction*, p. 291.

<sup>11</sup> Twersky, *Introduction*, p. 291.

<sup>12</sup> Twersky, *Introduction*, p. 291.

<sup>13</sup> In truth, as Moshe Halbertal has shown, “further consideration of the placement anomaly [of the “Laws of Mourning” in the *Book of Judges*] provides an indication of how Maimonides understood mourning. It also can account for the organization of the material on mourning and several halakhic decisions related to it.” After explaining and elaborating upon his contention, Halbertal concludes that precisely the apparently problematic placement of the “Laws of Mourning” may

In this light, Soloveitchik takes note of two problems regarding the placement of a set of laws in the *Mishneh Torah*. In both cases Soloveitchik argues that the set of laws in the unit in question is, indeed, not linked in any integral way to the main theme of the unit itself, the theme that gives the unit its name, and, even more so, lacks any thematic link to the book in which it is found. Moreover, Soloveitchik contends, in both cases “a more appropriate locus” for that set of laws can be suggested.

I, to the contrary, will argue that in each case: 1) the internal links between the set of laws in question and the main theme of the unit in which it is found are much stronger than Soloveitchik would have us believe; 2) that even if one wishes to argue that the links to which I will point are not sufficiently strong by themselves to justify including that set of laws in the unit in question, the set of laws, in truth, *is* thematically linked to the book in which it is found;<sup>14</sup> and 3) no “more appropriate locus” in the *Mishneh Torah* for that set of laws can be suggested.

### First Problem

The first problem Soloveitchik raises is the placement of the laws of lost property (*'Avedah*) together with the laws of robbery (*Gezelah*) in the *Book of Torts* (*Nezikin*).

Soloveitchik writes:

The *Book of Torts* (*Nezikin*) treats all the laws dealing with a breach of law or the duty of care, such as theft, robbery, murder, and personal and property damages. Obviously, you will say; why, however, are the laws of lost property (*avedah*) in the *Book of Torts*? Why has Maimonides created a unit “Laws of Robbery and Lost Property” (“*Gezelah ve-'Avedah*”)? If the

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serve as an example of “the linkage in *Mishneh Torah* between an original organizational structure and a new conceptual understanding of important halakhic principles.” See Halbertal, *Maimonides: Life and Thought* (Princeton and Oxford: Princeton University Press, 2014), pp. 236–243. More recently, Gillis, *Reading Maimonides' Mishneh Torah*, pp. 319–324, advances the (to my knowledge) novel idea that there are links between the “Laws of Mourning” and the following and concluding unit of the *Mishneh Torah*, the “Laws of Kings and Wars.” While I do not find most of the connections Gillis draws particularly persuasive, his link (p. 321) between Maimonides’ statement in *Laws of Mourning* 13:11 that death is *minhago shel olam*, the ordinary course of the world, and his statement in *Laws of Kings and Wars* 12:1 that even with the advent of the Messiah *olam ke-minhago nobeg*, the world runs its ordinary course, strikes me as suggestive.

<sup>14</sup> In one of the two cases, as we shall see, the set of laws is thematically linked to the *original* form of the book in which it is found.

reply be made that someone who does not return lost property is viewed as a robber (*gazlan*),<sup>15</sup> there is the counter that someone who did not pay his workers is equally a robber. Maimonides, however, does not place the laws of hire in the *Book of Torts*. The same holds true of bailments. Conversion of a bailment is robbery, but the laws of bailment are not found in the *Book of Torts*. Correctly so. The fact that the breach of certain obligations by either employer or bailee constitutes robbery turns neither bailment nor hire into a sub-unit of *Torts*.

One may contend that both in robbery and lost property there is a common religious obligation of returning the lost or stolen object (*hashavah*), and this imperative yokes the two together. Why then should one not combine the laws of the Sabbath with those of the festivals (*yom tov*), for both share a common denominator of abstention from work? One might respond that the definitions of work on the Sabbath and on *yom tov* differ from one another: on *yom tov* cooking is permitted, on the Sabbath it is forbidden, and thus the two cannot be combined. Such an argument must answer an obvious question: does this difference outweigh the differences that exist between the obligation of returning lost property and that of returning stolen objects? Truth to tell, there is little in common between these two obligations other than the word *hashavah*. In lost property there is no actual “obligation to return.” The obligation is to publicize the find, so that the rightful owner can come to recover his property. After having placed the poster in the public square or the notice in the newspaper, the finder can settle down in his easy chair, never budging until the owner of the lost property rings him up. Not so the thief or the robber. He must actively seek out the owners, and even if they be found in the “lands of the Medes and the Persians,” he must travel there and return the stolen object to them.

If the existence of a common religious imperative, in this case that of *hashavah*, suffices to justify placement in the same category in Mishneh Torah, then why not position the laws regulating the Nazirite (*nazir*) alongside those regulating the leper (*metsora*)? Both share a common injunction against shaving. Why shouldn't one combine *halanat sakhar*, *halanat ha-met*, and *halanat kodashim (notar)*, as they all have a common injunction of *lo talin*? The simple answer is that other than this shared characteristic no member of either group has anything in common with the others. The same holds true for robbery (*Gezelah*) and lost property (*avedah*).

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<sup>15</sup> This suggestion was made by Boaz Cohen, “Classification of the Law,” p. 538, n. 68. “These laws [robbery and lost property] are put together because if one fails to return a lost object he violates the prohibition of *lo tiggzol* (*Gezelah va-Avedah* 11:2).”

What alternative placement can be offered for the laws of lost property? Could it be located with equal plausibility outside the *Book of Torts*? I suggest the *Book of Acquisition (Kinyan)*, alongside the laws of *hefker* (abandoned or ownerless property) and *nikhsei ha-ger*, as, indeed, is found in the *Tur* and the *Shulhan 'Arukh*. (369-370)

I reply:

Soloveitchik's main point, to which I shall return, that the laws of lost property (*'Avedah*), inasmuch as they do not involve a tort, do not belong in the *Book of Torts*, alongside the laws of theft, robbery, murder, and personal and property damages, is well taken. However the series of objections he raises against there being any substantive links, any internal connections, between the laws of robbery and the laws of lost property strike me as forced and unconvincing.

With reference to the contention "that both in robbery and lost property there is a common religious obligation of returning the lost or stolen object (*hashavah*), and this imperative yokes the two together," Soloveitchik, as we have seen, responds:

Truth to tell, there is little in common between these two obligations other than the word *hashavah*. In lost property there is no actual "obligation to return." The obligation is to publicize the find, so that the rightful owner can come to recover his property. After having placed the poster in the public square or the notice in the newspaper, the finder can settle down in his easy chair, never budging until the owner of the lost property rings him up. Not so the thief or the robber. He must actively seek out the owners, and even if they be found in the "lands of the Medes and the Persians," he must travel there and return the stolen object to them.

But is it the case that "there is little in common between these two obligations other than the word *hashavah*"? I wonder how it is that Soloveitchik passes over the central feature that lost property and stolen objects have in common, to wit, that while they still belong to the owner (*shelo*), they are not in his possession (*einam birshuto*), but in the possession of another. The duty of *hashavah* in both the case of a stolen and that of a lost object stems from this fundamental reality, and, according to Maimonides, it places upon the finder of the lost object or the robber the duty to see that the object is restored to its lawful owner in its original condition.

In this connection, Soloveitchik exaggerates the distinctions between the duty of *hashavah* with regard to a robber returning a stolen object and that duty with regard to a finder returning a lost one. First, the duty of a robber to return a stolen object is not as demanding as Soloveitchik would

have us believe. Soloveitchik states that “the thief or the robber... must actively seek out the owners, and even if they be found in the ‘lands of the Medes and the Persians,’ he must travel there and return the stolen object to them.” In truth, however, as Maimonides, basing himself on the Talmud, definitively rules:

If one robs another, even if he denies it, seeing that he did not take an oath, he need not, upon subsequent confession of guilt, chase after the owner to return to him the money in his possession. But the money may remain in the possession of the robber until the owner comes to take what is his.

If, however, one has denied under oath a robbery ...he is obligated to pursue the owner to make restitution to him, even if the latter be on the isles of the sea. For the owner will have abandoned hope of recovery, seeing that the robber has already taken an oath, and he will not return to demand it from him. (*Gezealah va-'Avedah* 7:9)

It is clear from Maimonides’ rationale for his ruling that the obligation to “actively seek out the owners” is not an integral part of the robber’s duty of *hashavah*, but takes effect only as a result of the owner’s abandonment of hope of recovery precipitated by the robber’s having denied his robbery under oath. Indeed, many eminent authorities infer from Maimonides’ rationale that even if a robber denied his robbery under oath, if he succeeded in notifying the owner—say by e-mail—that he wished to make restitution to him, he need not actively seek him out, but “the money may remain in [his] possession ... until the owner comes to take what is his.”<sup>16</sup>

Nor, on the other hand, is the finder’s duty with respect to the lost object quite as undemanding as Soloveitchik portrays it. Soloveitchik colorfully states, “After having placed the poster in the public square or the notice in the newspaper, the finder can settle down in his easy chair, never budging until the owner of the lost property rings him up.” Really? At the very least, as Maimonides makes very clear, the finder will have to budge from that easy chair every now and then in order to take care of the object and make sure it does not deteriorate, so that it might be restored to its owner in its original condition. As Maimonides rules, “The finder must pay attention to the lost article and inspect it, so that it will not become spoiled and ruined over the course of time. As the verse states: “And you shall return it to him” (Deut. 22:2). See to it that the article will in fact be

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<sup>16</sup> See the authorities cited in the *Mafteah* of the Frankel Rambam, ad loc.



returned intact” (*Gezealah va-’Avedah* 13:11).<sup>17</sup> Just consider the lost animals specified by the Bible—the ox, the sheep, the ass—and try to imagine their finder caring for them from his easy chair.... I, for one, would not wish to set foot in his house!

Thus, contrary to Soloveitchik’s claim, the two obligations of returning a stolen object and returning a lost one have much in common. Which is precisely why Maimonides refers to the religious obligation of returning the lost or stolen object, both in his short enumeration of the commandments in the Introduction to the *Mishneh Torah* and in the listing of commandments in the heading preceding the “Laws of Robbery and Lost Property” as commandments of *hashavab* (“le-hashiv et ha-gezealah”; “le-hashiv et ha-’Avedah”). And we should not forget that Maimonides’ listing and definition of the 613 commandments serves as a primary organizing principle in the *Mishneh Torah* on the unit level.<sup>18</sup>

In addition to the fundamental commandments of *hashavab* regarding both lost property and stolen objects, there are other internal connections between these two categories, most significantly, the critical role that *yeushb*

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<sup>17</sup> If the reply be made that the duty of care is derived from Deut. 22:2 and thus is distinct from the commandment to return the lost object whose source is Deut. 22:1, one may counter that, as Rabbi Kenneth Schiowitz suggested to me in private conversation, though the duty of care derives from a different verse than the commandment to return the lost object, it may be not a separate obligation, but an expansion of the duty of *hashavab* set forth in Deut. 22:1. As Rabbi Schiowitz put it to me, “even though the *makor* (source) may be different, that does not mean that it is a separate *hinyuv* (obligation).” In any event, be these conceptual distinctions as they may, Soloveitchik’s minimalist description of the duty incumbent upon the finder of a lost object is certainly misleading. One should also note that the Talmud speaks of the finder of the lost object, if he knows who the owner is, *physically* returning the lost object to the owner’s domain and thereby freeing himself from any liability for its theft or loss. Indeed, to cite the lucid summary of the eminent twentieth-century rabbinic authority Rabbi Isaac Herzog, “the duty of *babzarab*, returning or restoring the lost object to its owner” involves “*netilah*, the duty of taking charge of the found object. If the finder knows to whom the *Avedah* belongs, if, for instance, he came across a cow, known to him, visibly straying, it is his duty to take charge of it until he has brought it to the owner’s *reshuth* or premises, a place where it would be reasonably safe. If the owner is unknown to him, it is his duty first to take the found object into his own custody and then to make the matter public (*bakrazah*).” See Isaac Herzog, *The Main Institutions of Jewish Law*, Vol. I (London and New York: Soncino Press, 1965), p. 308.

<sup>18</sup> In a comment he made after the lecture I gave at the 2003 Annual Conference of the Association for Jewish Studies (referred to in the Introduction to this essay), Professor Bernard Septimus placed great stress on this point.

(abandonment) plays in both areas. One also ought to note how in chapter six of *Gezealah va-'Avedah* Maimonides skillfully weaves together laws from both these two areas. Finally, I would point to the close connection, already noted by both the *Kesef Mishneh* and (in particular) the *Maggid Mishneh*, between *Gezealah va-'Avedah* 6:2 in the section dealing with robbery and *Gezealah va-'Avedah* 11:10 in the section dealing with lost objects.

As we saw, Soloveitchik queries:

If the existence of a common religious imperative, in this case that of *hashavah*, suffices to justify placement in the same category in Mishneh Torah, then why not position the laws regulating the Nazirite (*nazir*) alongside those regulating the leper (*metsora*)? Both share a common injunction against shaving. Why shouldn't one combine *balanat sakhar*, *balanat ba-met*, and *balanat kodashim* (*notar*), as they all have a common injunction of *lo talin*?<sup>19</sup>

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<sup>19</sup> Actually, it does not appear to be the case that, for Maimonides, there is an injunction of *lo talin* common to all three areas. In the Short Enumeration of the Commandments in the Introduction to the *Mishneh Torah*, Maimonides with reference to a supposed general prohibition on *balanat kodashim*, in negative commandments 117–120 refers to the prohibitions as “lo totir.” Only in negative commandment 116 does he refer to the prohibition of “le-haniah eimurei ha-Pesaḥ ‘ad she-yipaslu be-linah.” (Note though that in the *Book of Commandments*, negative commandment 116, Maimonides uses the Hebrew word “notar” and not “linah.”) In his list of commandments preceding the “Laws of the Paschal Offering” Maimonides, consistent with his language in the Short Enumeration, lists four prohibitions: “she-lo talin eimurav,” “she-lo yash’ir mimenu le-boker,” “she-lo yash’ir mi-Pesaḥ sheni le-boker,” and “she-lo yash’ir me-hagigat ‘arb’ah ‘asar ‘ad yom shelisihi.” Similarly consistent with his language in the Short Enumeration, Maimonides in his list of commandments preceding the “Laws of Invalid Offerings” refers to the prohibition of “she-lo yotir kodashim le-aḥar zemanam.” With reference to *sekhar sakhir*, in the Short Enumeration, negative commandment 238, Maimonides refers to “lo le-aḥer pe’ulat sakhir,” though the verse he cites states “lo talin pe’ulat sakhir.” Again, consistent with his language in the Short Enumeration, Maimonides in his list of commandments preceding the “Laws of Hiring” refers to the prohibition of “she-lo ye’aḥer sekhar sakhir le-aḥar zeman.” (Note, incidentally, that regarding the biblical source of this prohibition, Maimonides appears to have changed his mind. In the *Book of Commandments* and the Short Enumeration the source of the prohibition is Lev. 19:13, while in the *Laws of Hiring* 11:1 its source is Deut. 24:15.) Only with reference to *balanat ba-met* does Maimonides, both in the Short Enumeration, negative commandment 66 and in his list of commandments preceding the “Laws of Sanhedrin,” describe the prohibition as being one of “lo talin.” What sub-

He correctly replies: “The simple answer is that other than this shared characteristic no member of either group has anything in common with the others,” But, it follows from my analysis that, contrary to Soloveitchik’s conclusion, the same does *not* “hold true for *gezalah* and *’avedab*.”<sup>20</sup>

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stantive conclusions, if any, ought to be drawn from these terminological variations of Maimonides is, obviously, beyond the scope of this note. I have only sought to show that Soloveitchik’s remark about “a common injunction of “*lo talin*” is not warranted by the evidence.

<sup>20</sup> As we saw, in response to the argument that “in robbery and lost property there is a common religious obligation of returning the lost or stolen object (*hashavah*), and this imperative yokes the two together,” Soloveitchik queries: “Why then should one not combine the laws of the Sabbath with those of the festivals (*yom tov*), for both share a common denominator of abstention from work? One might respond that the definitions of work on the Sabbath and on *yom tov* differ from one another: on *yom tov* cooking is permitted, on the Sabbath it is forbidden, and thus the two cannot be combined. Such an argument must answer an obvious question: does this difference outweigh the differences that exist between the obligation of returning lost property and that of returning stolen objects?” One may concede Soloveitchik’s point that the difference in the definitions of work on the Sabbath and on *yom tov* does not outweigh the differences that exist between the obligation of returning lost property and that of returning stolen objects (though in light of my discussion I am not certain on that point), but offer other reasons as to why Maimonides did not combine the laws of the Sabbath with those of *yom tov*. First there is the issue of length. The “Laws of Sabbath” in its present form is, alongside “The Laws of Sale,” the largest unit in the *Mishneh Torah*, consisting of thirty chapters. Had Maimonides combined the laws of the Sabbath with those of the festivals, the result would have been a monstrously large unit of thirty-eight chapters. Maimonides may have felt that there can be too much of a good thing. *Gezalah va-’Avedab* consists of eighteen chapters. Perhaps more important, Maimonides, for practical reasons and perhaps also influenced here by order of the *Mishnah*, decided to have the “Laws of Sabbath” followed by the “Laws of ‘*Eruvin*,” laws that pertain only to the Sabbath and not to *yom tov*. (To be more precise, *’eruvei hatzerot*, the subject of Chapters 1-5 of “The Laws of ‘*Eruvin*,” pertain only to the Sabbath and *Yom Kippur*, while *’eruvei tehumim*, the subject of Chapters 6-8, pertain as well to *yom tov*. See *Eruvin* 8:4.) “The Laws of ‘*Eruvin*,” in turn, are followed by the “Laws of *Shevitat ’Asor*,” Maimonides’ unique and provocative formulation (discussed by such eminent contemporary rabbinic authorities as Rabbis Yosef Dov Soloveitchik and Yitzhak Hutner) for the laws of *Yom Kippur* regarding both the prohibition of work and of eating and drinking. The definition of work on *Yom Kippur*, of course, is the same as the definition of work on the Sabbath and differs from the definition of work on *yom tov*. In sum, if, first, we take into account the already extreme length of the “Laws of Sabbath,” and if, second, we look at the “Laws of Sabbath” not in isolation but as the first of a series of thematically

Still, granted these internal links of robbery and lost property, Soloveitchik's main query as to what the laws of lost property are doing in the *Book of Torts*, alongside all the laws dealing with a breach of law or the duty of care, such as theft, robbery, murder, and personal and property damages remains unanswered. As Maimonides states in the Introduction to the *Mishneh Torah*, the *Book of Torts (Nezikin)* includes only those commandments "bein adam la-havero, ve-yesh bahen hezek tehilah," "those commandments between man and man that involve a tort to begin with." However, while finding lost property imposes a commandment between man and man upon the finder, namely, the obligation of returning the lost property to the owner, it does not "involve a tort to begin with."

Where, then, should the laws of lost property be placed? What would be a "more appropriate locus"? As we saw, Soloveitchik suggests that they should be included in "the *Book of Acquisition (Kinyan)*, together with the laws of *hefker* (abandoned or ownerless property) and *nikhsei ha-ger* [in the laws of *Taking Possession and Gifts (Zekhiyyah u-Matannah)*], as, indeed, is found in the *Tur* and the *Shulhan 'Arukh*."<sup>21</sup> Of course, it is true that *if* the owner of the lost object abandons hope for its recovery, *then* the object becomes ownerless and can be acquired by the finder without *da'at make'neh* (resolve on the part of the one who is transferring ownership of the object). It seems to me, however, that this focus on acquisition, again relevant only if the owner abandons hope, ignores what is important for Maimonides about *'avedah*, namely, its *bein adam la-havero* aspect, that is to repeat, that the finding of a lost object under ordinary circumstances imposes upon the finder a commandment of *hashavah*, of returning the lost object, however one chooses to define it. And, again, we must emphasize that Maimonides uses the commandments connected with a particular area of law as a primary organizing principle in the *Mishneh Torah*. Note that Maimonides in the Introduction to the *Mishneh Torah* states that the *Book of Acquisition (Kinyan)* "includes the commandments of buying and

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related units, the reasons that Maimonides did not combine the laws of the Sabbath with those of *yom tov* become evident. The broader point is that since there are many considerations that went into Maimonides' decisions as to whether or not to conjoin two themes, the fact that a certain consideration does not prevail in a certain unit does not necessarily mean that it should not prevail in another unit, and vice versa.

<sup>21</sup> While in his English essay Soloveitchik introduces this suggestion with the appropriately modest "I suggest," in the essay's earlier Hebrew version Soloveitchik advances the suggestion with much greater certainty: "nireh she-ha-teshuvah mehuveret ke-simlah," "the answer would appear to be as clear as day" (109).

selling.” Note, particularly, that there are no commandments at all associated with the “Laws of Taking Possession and Gifts” (*Zekhiyyah u-Mattanah*)—one of the four out of eighty-three units for which this is so.<sup>22</sup> Rather, Maimonides states, “the subject matter of these laws is to know the law regarding the person who takes possession of an ownerless article, how he acquires it and the means whereby he acquires it, and [to know] the law governing one who gives a gift and one who receives, and which gift is retracted and which is not.” Do the laws governing lost property really belong, then, in the “Laws of Taking Possession and Gifts” (*Zekhiyyah u-Mattanah*) in the *Book of Acquisition (Kinyan)*? Well, maybe. But I would suggest that a much more appropriate place would be for these laws to be a separate unit in the *Book of Judgments (Mishpatim)*, which, as Maimonides states in the Introduction to the *Mishneh Torah*, includes commandments “bein adam la-havero bi-she’ar ha-dinin sh’ein bi-tehilahtan hezek,” “those commandments between man and man regarding the other laws that do not involve a tort to begin with.” Be that as it may, Soloveitchik’s fundamental question as to what the laws of lost property are doing in the *Book of Torts (Nezikin)* remains unanswered.

But there is, I would suggest, a tacit assumption underlying this query, namely, that Maimonides *first* divided the *Mishneh Torah* into books and *then* subdivided it into units, determining the nature of the units in terms of how they would fit into the books. But an examination of the history of the composition of the *Mishneh Torah*, as determined from a reading of the Introduction to the *Book of Commandments* and the Introduction to the *Mishneh Torah*, indicates that originally Maimonides just intended to divide the *Mishneh Torah* into *halakhot*, groups of laws; the division of the work into 14 books took place at a later stage in its composition. As Herbert Davidson has noted, “Maimonides does not appear to have regarded the division into fourteen books as essential to his plan, since he does not mention it when describing the projected structure of the code in the *Book of Commandments*—he may not even have decided on it yet—or when outlining the structure at the beginning of the code itself.”<sup>23</sup>

Thus in his discussion of the structure of the *Mishneh Torah* in his Introduction to the *Book of Commandments*, Maimonides writes:

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<sup>22</sup> The other three are “The Laws of Vessels,” “The Laws of Neighbors,” and the “Laws of Agents and Partners.” It is interesting that three of these four units are in the *Book of Acquisition*. This has already been noted by Twersky, *Introduction*, p. 260, n. 46.

<sup>23</sup> Herbert Davidson, *Moses Maimonides: The Man and his Work* (Oxford and New York: Oxford University Press, 2005), p. 213.

And it appeared to me that the best way to divide the book would be to replace the tractates of the Mishnah with groups of laws (*Halakhot*), for example *Hilkebot Sukekah*, *Hilkebot Lulav*, *Hilkebot Tefillin*, *Hilkebot Mezuzah*, and *Hilkebot Tzitzit*. And that I would divide each general category into chapters and paragraphs (*halakhot*), as the *Mishnah* had done. For example: in *Hilkebot Tefillin* there would be Chapter 1, Chapter 2, Chapter 3, and Chapter 4, and each chapter would be divided into paragraphs, so that it will be easy for anyone who so wishes to know it by heart.

Nary a mention here of any books.

Even more telling—and here I am elaborating on Davidson—an examination of the Introduction to the *Mishneh Torah* reveals that it consists of two distinct strata. The first and earlier stratum extends from the beginning of the Introduction to the short enumeration of the 613 commandments, followed by a brief discussion of the authority of the rabbinic commandments, and concluding with “Ve-‘al derekh zeh kol mitzvah u-mitzvah she-hu mi-divrei sofrim, beyn ‘aseh, beyn lo ta‘aseh,” “And this is the case regarding every rabbinic commandment, whether it is a positive or a negative commandment.” This stratum also includes the very last sentence of the Introduction “ve-‘atah aḥil le-va’er mishhpetei kol mitzvah u-mitzvah, ve-khol ha-dinin ha-niglalin ‘imah mei-‘inyeneha ‘al seder ha-halakhot be-‘ezrat Shadai.” “And now I will begin to explain the rules of each and every commandment, and all the laws are connected with it in its various aspects, following the order of the halakhot, with the help of God.” Again, in this early stratum, as in his Introduction to the *Book of Commandments*, there is no mention of books. We just saw that in the very last sentence of this stratum there is no mention of books. Similarly, in the body of the first stratum, just before the short enumeration of the 613 commandments, Maimonides writes, “Ve-ra’iti leḥalek ḥibbur zeh halakhot halakhot bekhoh ‘inyan ve- ‘inyan, ve-aḥalek et ha-halakhot li-perakim she-be-oto ‘inyan, ve-khol perek u-perek aḥalek oto li-halakhot ketanot, kedei she-yehu sedurin be- ‘al peh,” “And I saw fit to divide this work into units (*Halakhot*) for each and every subject, and to divide the units into chapters, and to divide each chapter into small paragraphs (*halakhot*), so that they may be all be memorized.” The similarity between this statement and the one cited just above from the *Book of Commandments* is evident.

The second stratum consists of the section immediately following Maimonides’ discussion of the authority of the rabbinic commandments. It begins with “Ve-ra’iti le-ḥalek ḥibbur zeh le-‘arba`a ‘asar sefarim,” “And I saw fit to divide this work into fourteen books,” continues with a

list of those fourteen books and the subject matter of the commandments each book contains, and then proceeds to give a complete table of contents, enumerating all the fourteen books together with all their halakhot and all the commandments in each halakhah, introducing the table of contents with “Ve-zeh hu hilluk halakhot shel hibbur zeh lefi ‘inyenei ha-sefarim; ve-hilluk ha-mitzvot lefi ‘inyenei ha-halakhot,” “And this is the division of the halakhot of this book in accordance with the subject matter of the books, and the division of the commandments according to the subject matter of the *Halakhot*,” and concluding it with the statement “Ve-nimtzeu kol ha-halakhot shel arba‘a ‘asar sefer shalosh u-shemonim halakhot,” “Thus the total of all the *Halakhot* of [these] fourteen books is eighty-three *Halakhot*.”

Indeed, readers who will perform the simple exercise of excising the second stratum from the introduction will not notice that anything is missing. It is, thus, clear that Maimonides spliced the later stratum dealing with the books into the earlier stratum dealing with halakhot just before the earlier stratum’s very last sentence.<sup>24</sup>

It appears that Maimonides, in order to make the *Mishneh Torah* less atomistic, changed his original plans in two ways. First, such units as *shofar*, *lulav* and *sukkah*, which, as the Introduction to the *Book of Commandments* indicates, had originally been intended to be separate units, were grouped by him into a single unit. A *genizah* fragment indicates that Maimonides had originally planned that the “Laws of Borrowing” (*She‘eilah*) be an independent unit, but then decided to combine it with the “Laws of Deposits” (*Pikkadon*).<sup>25</sup> And second, he decided to divide the work as a whole into a few overarching parts, namely, *Sefarim*, corresponding to the Mishnah’s *Sedarim*.

When exactly did the Maimonides decide to divide the *Mishneh Torah* into *Sefarim*? The evidence is not clear. Perhaps some will say that this

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<sup>24</sup> Twersky, *Introduction*, notes this, but does not seem to appreciate its full significance. “The elemental division of the *Mishneh Torah* into fourteen books, the real core of his classification, is mentioned for the first time, quite unobtrusively, in what looks like a postscript to the *Mishneh Torah* introduction” (p. 260). As we have seen, however, “the elemental division of the *Mishneh Torah* into fourteen books” was, to begin with, *not* “the real core of his classification,” and its first mention in what I have referred to as the second and later stratum of the introduction does not just “look... like a postscript,” but, indeed, is a postscript.

<sup>25</sup> See *Keta‘im mi-Sefer Yad ha-Hazakah le-Rabbenu Moshe ben Maimon*, ed. Samuel Atlas (London, 1940), p. 43; reprinted with the notes of Moshe Lutzky as an addendum to the fifth volume of the Schulsinger edition of the *Mishneh Torah* (New York, 1947), p. 14.

division took place at a relatively early stage of the *Mishneh Torah*'s composition before Maimonides had begun any intensive work on the *Halakhot*. Indeed, I tend to think that this is the case. Nevertheless, my impression is that Maimonides focused mainly on crafting individual units that would possess inner thematic coherence, and that the issue of the integration of the unit's theme into the overall theme of the book of which it forms a part was often secondary.<sup>26</sup> Perhaps we may envisage Maimonides as moving from unit to book to unit and back again.

Be this as it may, as evidence from the *Genizah* indicates, even *after* Maimonides decided to divide the *Mishneh Torah* into *Sefarim*, he was still unclear as to the exact number of *Sefarim* and their contents. More important—and this is the critical point—the evidence indicates that at a relatively late stage of composition the *Book of Torts* did not exist as a separate book!<sup>27</sup>

The *Book of Judgments (Mishpatim)* is the thirteenth book of the *Mishneh Torah* in its final version. It includes, as noted earlier, those commandments “bein adam la-ḥavero bi-she’ar ha-dinin sh’ein bi-teḥilahtan hezek,”

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<sup>26</sup> Here the example, discussed earlier in the text, of the “Laws of First Fruits (*bikkurim*) and Other Gifts Offered to the Priests Outside the Sanctuary,” in the *Book of Seeds* is instructive. An examination of the first chapter of this unit, which presents a sweeping survey of all twenty-four priestly gifts, indicates that Maimonides views the gifts offered to the priests outside the sanctuary as a unit, consisting of six gifts, from which it follows that his singling out *bikkurim* from the other gifts in the title “Laws of First Fruits (*bikkurim*) and Other Gifts Offered to the Priests Outside the Sanctuary” is a rather awkward and makeshift attempt to establish some link between the unit and the agricultural *Book of Seeds*. Note, in this connection, that in the *Laws of Firstlings (Bekhorot)* 1:7 Maimonides refers back to the *Laws of First Fruits and Other Gifts Offered to the Priests Outside the Sanctuary* 11:9 and 12:14, but terms the unit there the “Laws of Gifts Offered to the Priests” (*Matenot Kehunah*). Further evidence that Maimonides primarily thought in terms of the inner thematic coherence of the individual unit and that the issue of the integration of the unit's theme into the overall theme of the book of which it forms a part was often secondary may be provided by Maimonides' elaborate internal cross-referencing in the body of the *Mishneh Torah*. An examination of this cross-referencing reveals that there are some two hundred or so cross-references to *Halakhot*, e.g., “as we have explained in *Hilkebot* so and so,” “as we will explain in *Hilkebot* so and so,” and the like. There are exactly *eight* references to Books (*Sefarim*). Seven are internal cross-references: “As we have explained in this book;” only one is a cross-reference to another book: “As we have explained in the fifth Book (*Sefer Hamishḥ*).” Note in the latter instance that the book lacks a title.

<sup>27</sup> When I refer to “a relatively late stage of composition,” the emphasis should be on the word “relatively.” See below, note 29.



“those commandments between man and man regarding the other laws that do not involve a tort to begin with,” and consists of five units (*Halakhot*) in the following order: “Hiring” (*Sekhirut*), “Borrowing and Deposits” (*She'eilah u-Fikkadon*), “Lenders and Borrowers” (*Malveh ve-Loveh*), “Litigation” (*To'en ve-Nit'an*) and “Inheritances” (*Nahalot*). However, this was not Maimonides' original plan.

The *Genizah* fragment, TS 10 K8, f.1 (University Library, Cambridge) (see Figures 1 and 2) is a single page in Maimonides' own hand, containing a draft of the very first page of the *Book of Judgments* (*Mishpatim*) in its original form.<sup>28</sup> Here the *Book of Judgments* is not the thirteenth book of the *Mishneh Torah*, but the eleventh book (*Sefer Abad 'Asar*). Moreover, it does not consist of five but of fourteen units (*Halakhot*), though Maimonides does not list them. Finally, and perhaps most important, the first unit (*Halakhah*) is not “Hiring” (*Sekhirut*), but “Torts” (*Nezikin*), which title Maimonides at some subsequent point crossed out, replacing it with its present title “Torts Committed by one's Property” (*Nizke Mamon*). As is clear, however, from the manuscript, the basic contents of this unit, whether titled “Torts” (*Nezikin*) or “Torts Committed by one's Property” (*Nizke Mamon*), were always the same as they are now, treating of four commandments: the law of the ox, the law of the pit, the law of the grazing animal, and the law of fire.<sup>29</sup>

What does this fragment, then, tell us about the intention of the Maimonides at this stage? I believe the answer is clear. As we saw earlier, there is a conceptual connection, in Maimonides' view, between the *Book of Torts* and the *Book of Judgments* in their present forms. The *Book of Torts* in its present form includes those commandments “bein adam la-ḥavero, ve-yesh bahen hezek tehilah,” “those commandments between man and man that involve damage to begin with,” while the *Book of Judgments* in its present form includes those commandments “bein adam la-ḥavero bi-she'ar ha-dinin sh'ein bi-tehilahtan hezek,” “those commandments between man and man regarding the other laws that do not involve a tort to begin

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<sup>28</sup> See Elazar Hurvitz “Seridim Nosafim le-Sefer Mishneh Torah le-ha-Rambam,” *Hadorom* 38 (1973), pp. 22-23, 38.

<sup>29</sup> Note, though, that the order of the commandments in the fragment differs from the order of the commandments in the final published version of *Nizke Mamon*. Moreover, Maimonides in the fragment significantly revises the text of the very first halakhah—alas, the only halakhah preserved—striking out the phrase “ehad ha-behemah, ve-ehad ha-hayyah, ve-ehad ha-'ofot,” and inserting in its stead “she-harei mamonom hizik,” the phrase found in the final version. All this would appear to indicate that what we have here is an early draft.



### העתקה – עמוד ה

ספר אחד עשר והוא ספר משפטים  
הלכותיו ארבע עשרה וזה הוא סדורן... כתב...  
נמצאו כל המצוות בו (?)

נזקי טמון

הלכות נזיקים

ה יש בכללן ארבע מצוות עשה וזה הוא פרמן  
א! דין השור ג! דין חבור ב! דין ההבער  
ד! דין הבערה וביא[ור] מצוות אלו בפרקים אלו

### פרק ראשון

כל נפש חיה שחיה ברשותו של אדם שחזיקה  
שהרי מסוגל הויק.  
י חכעלים חייבין לשלם, אחד הבהמה ואחד  
החיה ואחד העופות שנ' כי יגוף שור איש  
את שור רעהו וכו' אחד השור ואחד שאר

with.” Maimonides’ original plan, then, was that there be *not* a separate *Book of Torts*, but one massive *Book of Judgments* that would include *all* mitzvot “bein adam la-ḥavero,” *all* “the commandments between man and man,” whether “yesh bahen hezek tehilah,” or “ein bi-tehilahtan hezek,” that is, irrespective of whether or not they involve a tort to begin with.<sup>30</sup>

Soloveitchik’s question as to “why ... are the laws of lost property (*avedah*) in the *Book of Torts*?” is now resolved. When Maimonides conjoined the Laws of Lost Property with those of Robbery there was no *Book of Torts*!<sup>31</sup> Maimonides conjoined these two sets of laws because of

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<sup>30</sup> Hurvitz, “Seridim Nosafim,” p. 32, suggests that the original *Book of Judgments* included not only the *Book of Torts* and the *Book of Judgments*, but also the *Book of Acquisition*. This is highly doubtful. First, as we have seen, there is a conceptual connection between the *Book of Torts* and the *Book of Judgments* in their present form, the current *Book of Torts* containing those mitzvot “bein adam le-ḥavero ve-yesh bahen hezek tehilah,” the current *Book of Judgments* containing those mitzvot “bein adam le-ḥavero bi-she’ar ha-dinin sh’ein bi-tehilahtan hezek.” One can, then, imagine an original *Book of Judgments* that would include *all* mitzvot “bein adam le-ḥavero,” *all* “the commandments between man and man,” whether “yesh bahen hezek tehilah,” or “ein bi-tehilahtan hezek,” that is, irrespective of whether or not they involve a tort to begin with. But there is no conceptual connection between the *Book of Torts* and the *Book of Judgments*, on the one hand, and the *Book of Acquisition* on the other. How could one imagine, then, a *Book of Judgments* that in addition to including *all* mitzvot “bein adam le-ḥavero,” would also include the laws of buying and selling? Possible, but unlikely. Second, according to Maimonides’ draft, the *Book of Judgments* in its original form consisted not of five but of fourteen units (*Halakhot*). The *Book of Torts* and the *Book of Judgments* in their present form contain a total of ten units. One can explain the reduction from fourteen units to ten by Maimonides’ practice of combining what had been originally intended to be independent units, for example, as we have seen, his decision to combine the “Laws of Borrowing” with the “Laws of Deposits,” though both had originally been intended to be independent units. However, the *Book of Torts*, the *Book of Judgments*, and the *Book of Acquisition* in their present form contain a total of fifteen units. Given Maimonides’ practice of combining what had been originally intended to be independent units, one would, then, have expected an original *Book of Judgments* that included the *Book of Torts*, the *Book of Judgments*, and the *Book of Acquisition* in their present form to have consisted of much more than fourteen units.

<sup>31</sup> In light of the undeniable evidence provided by Maimonides’ draft, we must unequivocally reject Twersky’s claim (*Introduction*, p. 308) that “as best as can be determined ... there is no indication that Maimonides considered alternate arrangements of the fourteen books... The underlying fourteen-book sequence is a constant.” (I should note that Twersky’s bibliography includes Hurvitz’s, “Seridim Nosafim le-Sefer Mishneh Torah le-ha-Rambam.”) Indeed, one wonders whether Maimonides had originally intended that the *Book of Temple Service*

the internal connections between them indicated earlier, and he included this combined unit in the *Book of Judgments*, which included all *mitzvot bein adam la-baivero*, whether “yesh bahen hezek tehilah,” like *Gezelah*, or “ein bi-tehilahtan hezek,” like *'Avedah*. It was only sometime *after* completing a draft of the unit of *Gezelah va-'Avedah* that Maimonides decided to split the *Book of Judgments* into two, thereby creating a new *Sefer*, the *Book of*

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(*Abodah*) and the *Book of Sacrifices* (*Korbanot*) be one book and decided to split it into two books only at a later stage of composition, so as to avoid an inordinately large book. (The *Book of Temple Service* contains nine units, while the *Book of Sacrifices* contains six units. Had they been combined into one book, that book would have contained fifteen units, by far exceeding the number of units in what is now the largest book of the *Mishneh Torah*, the *Book of Seasons* (*Zemanim*), which contains ten units.) Note that according to Maimonides' Introduction to the *Mishneh Torah* there is a conceptual connection between the *Book of Temple Service*, which includes, among other things, “the commandments concerning... the regular communal sacrifices,” and the *Book of Sacrifices*, which includes “the commandments concerning the sacrifices brought by a private individual,” just as there is a conceptual connection between the *Book of Torts* and the *Book of Judgments*—and, as we saw, the latter were originally intended to be one book. That the *Book of Temple Service* (*Abodah*) and the *Book of Sacrifices* (*Korbanot*) were originally intended to be one book would help account for a certain overlap between them. Indeed, Twersky himself describes the *Book of Sacrifices* as “a direct continuation of the preceding [book]” (p. 267). Still there is no textual evidence supporting this suggestion, and unless further evidence is forthcoming, it must remain in the realm of conjecture. For a different approach to the issue of Maimonides' division of the laws of sacrifices into two books, see Tabory, “The Structure of *Mishneh Torah*,” pp. 62-63. I should note that Gillis in *Reading Maimonides' Mishneh Torah* argues that the division of the *Mishneh Torah* into fourteen books, the first ten books dealing with commandments between man and God and the last four dealing with commandments between man and his fellow, is of profound philosophical—indeed cosmic—significance. To cite him, “the first ten books with their exalted themes are parallel to the ten orders of angels, or to the nine spheres plus the agent intellect, and, like them, are ordered hierarchically, while the mundane last four books are parallel to the four elements of matter” (pp. 3-4). I believe that the facts I have brought to light, namely, that 1) the division of the *Mishneh Torah* into books was, to begin with, not part of Maimonides' scheme of classification, and 2) that even when Maimonides decided to divide the *Mishneh Torah* into books, the division into exactly fourteen books in their current sequence was not fixed in stone, tend to undercut Gillis' provocative claim. But this matter requires a separate discussion.

*Torts*.<sup>32</sup> Naturally he put *Gezeleh va-'Avedah* in the newly created *Book of Torts*.<sup>33</sup>

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<sup>32</sup> Maimonides' decision to remove the units dealing with torts from the original *Book of Judgments* and create an independent *Book of Torts* explains, in my view, why Maimonides in the *Genizah* fragment containing the draft of the very first page of the *Book of Judgments (Mishpatim)* in its original form crossed out "Torts" (*Nezikin*) and replaced it with its present title, "Torts Committed by Chattel" (*Nizke Mamon*). I would suggest that Maimonides was already considering creating an independent *Book of Torts (Nezikin)*, and he did not want to have both a unit and a book called *Nezikin*. Note that nowhere in the *Mishneh Torah* are a unit and the book it is part of called by the same name. However, both Elazar Hurvitz, "Seridim Nosafim," p. 32, and Shamma Friedman, "*Mishneh Torah: ha-Hibbur ha-Gadol*," p. 362, argue that the change of name indicates a change in content. Aside from all the other problems with their suggestions, which I will discuss immediately, their suggestions must be rejected because, as I have indicated, it is clear from the manuscript that the basic contents of this unit were always the same as they are now, treating of four commandments: the law of the ox, the law of the pit, the law of the grazing animal, and the law of fire. Hurvitz suggests that *Hilkhot Nezikin*, the "Laws of Torts," originally contained all five units of what is now *Sefer Nezikin*, the *Book of Torts*: "Torts Committed by Chattel" (*Nizke Mamon*), "Theft" (*Genevah*), "Robbery and Lost Property" (*Gezeleh va-'Avedah*), "Wounding and Torts" (*Hovel u-Mazzik*), and "Murder and Preservation of Life" (*Rotzeah u-Shemirat Nefesh*). That Maimonides ever considered such a unit, covering such a wide variety of laws and containing (based on the total number of chapters in the current five units) sixty-two (!) chapters, more than twice as much as the thirty chapters contained in the "Laws of Sabbath" and the "Laws of Sale," the largest units in the *Mishneh Torah*, is, to say the least, extremely unlikely on the face of it. This is not to mention that Maimonides' beginning with such a monstrously large unit and then breaking it down into smaller units goes completely against what we have seen to be his standard procedure of combining smaller units to form larger ones. Friedman suggests that *Hilkhot Nezikin*, the "Laws of Torts," originally contained the laws about a person who damaged another's property, and not just the laws about damages committed by chattel. Maimonides removed the laws about a person who damages another's property (*mazzik*) and combined them with the laws about a person who wounds his fellow (*hovel*) to create the unit "Wounding and Torts" (*Hovel u-Mazzik*). Friedman's explanation is more plausible than Hurvitz's, but still unacceptable. First, if one assumes, as I do, that the contents of the units *Nezikin* (as it was originally called) or *Nizke Mamon* (the new name Maimonides gave it) and *Hovel u-Mazzik* were always the same as they are now, we have a neat symmetry: the first unit contains (and always contained) the laws of damages by chattel, whether to property or to people, while the second unit contains (and always contained) the laws of damages committed by a person, whether to property or to people. However, according to Friedman, the first unit originally contained the laws of damages by chattel, whether to property or to people, as well

If there is a problem, it is a different and much weaker one. Not Soloveitchik's question as to why the Maimonides conjoined the Laws of Lost Property with those of Robbery to begin with. That question has just been answered. But one can ask how come when Maimonides in the *final* draft of the *Mishneh Torah* decided to divide the original *Book of Judgments* into two books—one being the *Book of Torts* containing only those mitzvot “bein adam la-ḥavero ve-yesh bahen hezek tehilah,” the other the current *Book of Judgments* containing only those mitzvot “bein adam la-ḥavero bi-she’ar ha-dinin sh’ein bi-tehilahtan hezek”—he did not *at that point* detach the laws of *'Avedab* from *Gezealah*, place *'Avedab* as a separate unit in

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as the laws of damages committed by a person to property, while the second unit originally contained only the laws regarding a person wounding his fellow. Second, it is difficult to see how Maimonides could originally have contemplated separating the laws regarding a person wounding another from the laws regarding a person damaging another's property, since Maimonides in his heading to the “Laws of Wounding and Torts” states that the administration of the laws concerning a person who wounds his fellow and the laws concerning a person who damages another's property constitutes a single positive commandment. (Note, however, that Positive Commandment 236, in both the *Book of Commandments* and the Short Enumeration of the Commandments, refers to the administration of the laws concerning a person who wounds his fellow. But as Maimonides explains in his discussion in the *Book of Commandments*, this commandment, by extension, takes in all the laws of monetary fines for damages (*kenasot*), including, in addition to the fundamental case of damages caused by a person to his fellow, also the cases of damages caused by a person to an animal or an animal to a person. It should follow from this that Chapters 10 and 11 of *Nizke Mamon*, dealing with an ox that kills a person, really belong in *Hovel u-Mazzik*.) But again, the main argument against Hurvitz's and Friedman's suggestions regarding the conjoining of the laws of robbery with the laws of lost property is that it is clear from the draft of the first page of the original *Book of Judgments* that the basic contents of the “Laws of Damages by Chattel,” whatever the change in the unit's name, were always the same as they are now.

<sup>33</sup> It is strange that while Soloveitchik, p. 373, refers to Maimonides' draft of the first page of the “Laws of borrowing and Deposits” (see note 25), he never refers to this draft of the first page of the original *Book of Judgments*, despite its relevance to the question he poses regarding Maimonides' conjoining the laws of lost property with the laws of robbery. Perhaps even stranger is that though Friedman (“*Mishneh Torah*: ha-Hibbur ha-Gadol,” p. 362), as we saw in the previous note, *does* refer to Maimonides' draft of the first page of the original *Book of Judgments*, he does so only in connection with Maimonides' changing the name of its original first unit from *Nexikin* to *Nizke Mamon*, and despite the fact that he struggles to answer Soloveitchik's question, he evidently fails to appreciate how that draft could have enabled him to—at least in my view—easily answer it.

*Book of Judgments*, and do the necessary restructuring and rewriting of both units? I think the simple answer in a word or, to be more precise, in two words is—human nature. After all, as we saw, when Maimonides decided to divide the *Mishneh Torah* into *Sefarim*, he spliced the section dealing with *Sefarim* into his Introduction to the *Mishneh Torah*, which originally dealt only with the units (*Halakhot*), and did not rewrite the earlier stratum at all. Consider, in particular, the last sentence of the Introduction, which, as we saw, is from the earlier stratum. “Ve-‘atah at̄hil le-va’er mishpetei kol mitzvah u-mitzvah, ve-khol ha-dinin ha-niglalin ‘imah mei-‘inyeneha ‘al seder ha-halakhot be-‘ezrat Shadai,” “And now I will begin to explain the rules of each and every commandment, and all the laws that are connected with it in its various aspects, following the order of the units, with the help of God.” How much effort would it have required for Maimonides to rewrite this sentence and insert a reference to the *Sefarim* into it? Yet he did not do it.

There is a well-known *halakhab* that even though a *kinyan*, a formal act of transfer, is required to pass value or money to another party, *mehilah*, waiver, that is, an agreement to release another party from a debt, does not require a *kinyan*, since, as Rabbi Isaac Herzog observes, “it is an agreement for something passive, and sheer mental assent conveyed by word of mouth is quite sufficient.”<sup>34</sup> As we all know, when we are working on a major project, we wish, to begin with, to make it as perfect, as ideal, as possible. However, when we have worked on something for a long time and at a very late stage of the project, when we have essentially completed the work, we decide to make one easily accomplished structural change, and we then realize that that change in turn requires of us, if we want things to be ideal, further major restructuring and rewriting—well that is another story. And this is an age of word processing! In such circumstances it does not require that much mental assent to passively let things remain as they are.

Perhaps the reader will object that that is true for ordinary human beings like ourselves, but we are speaking here about Maimonides, the great eagle, *ha-nesher ha-gadol*. All I can say is: “even so.” Of course, Maimonides kept on revising the *Mishneh Torah* throughout the rest of his life. But those were substantive halakhic revisions of individual rulings. There is evidence that, to cite Herbert Davidson, “Perhaps Maimonides was so eager to finish his immense project that he neglected, as writers often do,

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<sup>34</sup> See Isaac Herzog, *The Main Institutions of Jewish Law*, Vol. II (London and New York: Soncino Press, 1967), p. 115.



to go back a tedious final time and submit his code to one more editing.”<sup>35</sup> Moreover, Maimonides might have thought to himself that in addition to the restructuring and rewriting that would be necessitated by his detaching *'Avedab* from *Geẓelah* and presenting them both as separate units, such detaching would fly in the face of his goal of combining units instead of multiplying them.

One thing I believe. Had Maimonides clearly decided to have two separate *Sefarim*, the *Book of Torts* containing only those commandments “bein adam la-ḥavero ve-yesh bahen hezek tehilah,” and the *Book of Judgments*, as it is in its present form, containing only those commandments “bein adam la-ḥavero bi-she’ar ha-dinin sh’ein bi-tehilahtan hezek,” before he started working on *Geẓelah va-'Avedab*, *Geẓelah* would, of course, have been, as it is now, in the *Book of Torts*, perhaps combined with *Genevah*, while *'Avedab* most probably would have been a separate unit in the *Book of Judgments*, or—much less likely—in “Zekhiyyah u-Matannah” in the *Book of Acquisition*, as Soloveitchik suggests. I do not believe that under those circumstances Maimonides would have combined *'Avedab* with *Geẓelah* in the *Book of Torts*, despite the links connecting them.

## Second Problem

The second problem Soloveitchik raises is the placement of the laws of conversion (*gerut*) in “Laws of Forbidden Sexual Relations” (*Issurei Biah*) in *Sefer Kedushah*, the *Book of Holiness*.

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<sup>35</sup> Davidson, *Moses Maimonides*, p. 231; see also Eliav Schochetman, “Makkat mardut be-Mishnat ha-Rambam—Gishah Hadashah le-Sugyat ha-Hashmatot be-Mishneh Torah la-Rambam,” *Mekharim be-Halakhah u-ve-Maḥshevet Yisrael: Jubilee Volume in Honor of Rabbi Professor Emanuel Rackman*, ed. Moshe Beer (Ramat-Gan: Bar-Ilan University, 1994), pp. 91–119. Davidson’s main argument in support of his view that the *Mishneh Torah* lacked a final editing is “the occasions on which, rather than polishing and clarifying the rulings he records, [Maimonides] simply repeats statements or phrases verbatim from classic sources that even... readers fully adept in rabbinic law will fail to understand unless they happen to remember the precise context in the classic sources from which Maimonides draws” (p. 231). One minor stylistic indication of this absence of a final editing may be found in the slight variations in the names of its units found in Maimonides’ cross references. (See above, note 26.) Thus, for example, as a computer word search or perusal of Volume 4 (containing the letter נ) of David Assaf, *Concordance to the Mishneh Torah*, Haifa, 1978, will indicate, Maimonides alternates between “Mekhirah” and “Mekah u-Memkar,” “Issure Bi’ah” and “Bi’ot Asurot,” and “Ma’akhalot Asurot” and “Issure Ma’akhlot”; consistently refers to “Hilkhot Malveh ve-Loveh” as “Hilkhot Halva’ah”; and once (*Avot ha-Tume’ot* 15:4) even refers to “Tume’at Tzara’at” as “Nega’im.” (In the last case Maimonides, perhaps instinctively, seems to have reverted to the Mishnaic name.)

Soloveitchik writes:

Maimonides places the laws of conversion (*gerut*) in “Laws of Forbidden Sexual Relations” (“Issurei Biah”). True, conversion (plus marriage) permits a sexual relationship between a Jew and a former Gentile. However, is the purpose and *raison d’être* of conversion to permit sexual intercourse? Conversion would fit more properly in any one of three places in the *Book of Knowledge (Madda)*: (1) At the end of “Laws of the Fundamentals of Faith” (“Yesodei ha-Torah”), which treats recognizing and acknowledging the one sole God. If the erasure of the Divine Name (*mehikat ha-shem*) has its place in *Yesodei ha-Torah*, surely conversion, the classic recognition and acknowledgment of God, has an equal claim. (2) After “Laws of Idolatry” (“Avodah Zarah”). Conversion would serve as a perfect foil to the denial of God discussed here. Doubly so, as Maimonides opened the laws of *avodah zarah* with his famous portrait of Abraham, who began as an idolater and after a forty-year quest arrived at the recognition of the true God. Moreover, Abraham is viewed as the father of all converts. Rounding off the laws of idolatry with the opening theme would give that section a literary unity, something that Maimonides was eminently aware of. (3) Lastly, they could have been placed at the end of “Laws of Repentance,” concluding the *Book of Knowledge* with conversion, for reasons I shall soon point out.

Had the laws of conversion been placed in the *Book of Knowledge*, the problems of the location of the laws of circumcision would have been solved, for circumcision is an essential component of conversion and the two fit naturally side by side. Indeed they are so found in the *Tur* and the *Shulhan ‘Arukh*. The issue goes deeper. Maimonides was wont to end each book of the *Mishneh Torah* with a peroration, and, when possible, to link one book to the next. This makes the ending of the *Book of Knowledge* with conversion and circumcision especially appealing, as he could have melded various section of that book into a memorable ending that linked up with the coming *Book of Adoration (Ahavah)*. He could have joined conversion and circumcision with his famous remarks about Abraham’s long quest for the true God in “Laws of Idolatry” and fused them with his ending of “Laws of Repentance (“Teshuvah”) and the timeless words he wrote to Obadiah the proselyte in approximately this fashion:

על פי הדעה וההכרה תהיה האהבה, אם מעט מעט ואם הרבה הרבה. ומי ששטט בדעתו כמו אותו איתן עד שהכיר את בוראו ונכספה נפשו לאהוב את ה', ורדף אחריו והלך בדרך הקודש עד שנכנס תחת כנפי השכינה, הרי הוא מבניו של אברהם אבינו, שבבריתו נכנס, שנאמר אב המון גויים נתתיך, ועליו אמר הכתוב, זרע אברהם אוהבי.

According to the understanding and recognition will be the love. If [the former is] little, [so will the latter be] little; if [the former is] great, [so will the latter be] great. And he whose mind began to reflect about the world as did that titan [Abraham] until he came to recognize his creator and his soul longed for the love of God, and he pursued Him and went in the path of holiness until he came under the wings of the *Shekhinah*, he is indeed a son of Abraham our father, for he [the searcher-convert] has entered into his [i.e. Abraham's] covenant for it is written [Gen. 17:4] "thou shalt be the father of many nations"; and about him the verse was said [Isaiah [Isa.41:8], "[he is] of the seed of Abraham who did love me." (pp. 370–372)

I reply:

Just as Soloveitchik minimizes the connections between the laws of lost property and those of robbery, so he minimizes the connections between the laws of conversion and the broader rubric of the "Laws of Forbidden Sexual Relations." Soloveitchik writes as if the only connection between conversion and the laws governing forbidden sexual relations is that "conversion (plus marriage) permits a sexual relationship between a Jew and a former Gentile." In fact, as Soloveitchik knows at least as well as I, conversion raises a host of issues with regard to forbidden sexual relations, to which Maimonides devotes ten paragraphs, "Laws of Forbidden Sexual Relations" 14:10–19, a full quarter of the two chapters ("Laws of Forbidden Sexual Relations" Chapters 13-14) devoted to conversion. As Maimonides points out, since there is a halakhic principle that a convert is like a newborn child, on a biblical level all the incest prohibitions to which a gentile is subject lapse upon his conversion. However, Maimonides continues, "the Sages forbade this matter, so that people should not say that they [the converts] have exchanged a severe form of holiness for a light form of holiness" (*Laws of Forbidden Sexual Relations* 14:12). This, in turn, raises a whole slew of complex legal issues, for example the differences between paternal and maternal relatives, which Maimonides treats in the following halakhot. The bottom line is that there is a deep connection between the laws of conversion and the "Laws of Forbidden Sexual Relations."

Reply may be made that even granted this deep legal connection, it, in itself, cannot justify placing the laws of conversion in the "Laws of Forbidden Sexual Relations," since the issues that conversion raises with regard to forbidden sexual relations, important as they may be, do not touch on conversion's essence, namely, that the convert "enter into the covenant, take shelter under the wings of the *Shekhinah*, and accept upon himself the yoke of the Torah" (*Laws of Forbidden Sexual Relations* 13:4).

This is true. I would suggest, then, that in order to fully understand Maimonides' placing the laws of conversion in the "Laws of Forbidden Sexual Relations," it does not suffice, as I have done until now, to move from conversion to its implications with regard to forbidden sexual relations. What is necessary is to reverse the procedure and move from the laws of forbidden sexual relations in general to conversion. What is the purpose, the *telos*, of these laws?

It is the name of the book in which the "Laws of Forbidden Sexual Relations" are to be found, the *Book of Holiness*, that provides us with the answer. On one level the holiness referred to is the holiness of *perishut*, the separation from and disciplining of one's physical desires. Thus Maimonides concludes the "Laws of Forbidden Foods" with the ringing declaration, "Whoever is careful concerning these matters brings an additional measure of holiness and purity to his soul and purges his soul for the sake of the Holy One, blessed be He, as the verse states, 'And you shall make yourselves holy and you shall be holy, for I am holy' (Lev. 11:44)" (Laws of Forbidden Foods 17:32). Similarly, at the end of the "Laws of Forbidden Sexual Relations" Maimonides declares, "Therefore it is proper for a person to subjugate his natural inclination with regard to this matter [the matter of forbidden sexual relations] and train himself in extra holiness, pure thought, and correct understanding so that he will be guarded against them" (*Laws of Forbidden Sexual Relations* 22:20).

But in the Introduction to the *Mishneh Torah*, Maimonides offers a related but very different explanation regarding the nature of the holiness referred to in the *Book of Holiness*.

The fifth book: I will include in it the commandments of *forbidden* sexual relations and forbidden foods. For it is through these two matters that the Omnipresent sanctified us and separated us from the nations, through [the laws of] forbidden sexual relations and forbidden foods. And in connection with both, it [i.e., Scripture] states, "And I will separate you from the nations" (Lev. 20:26, following the laws of forbidden foods) "that I have separated you from the nations" (Lev. 20:24, following the laws of forbidden sexual relations).

It should be noted that this is the only instance where Maimonides, in explaining his division of the *Mishneh Torah* into fourteen books, cites biblical verses.

Maimonides' linkage of the holiness of *perishut* and the holiness of Israel is to be found as well in the *Guide* 3:8 in the context of Maimonides' explanation of "the serious prohibition that exists among us against obscene language."

This also is necessary. For speaking with the tongue is one of the properties of a human being and a benefit that is granted to him and by which he is distinguished....Now this benefit granted us with a view to perfection in order that we learn and teach should not be used with a view to the greatest deficiency and utter disgrace, so that one says what the ignorant and sinful Gentiles say in their songs and their stories, suitable for them but not for those to whom it has been said: "And you shall be unto Me a kingdom of priests and a holy nation" (Exod.19:6). And whoever has applied his thought or his speech to some of the stories concerning that sense which is a disgrace to us [the sense of touch], so that he thought more about drink or copulation than needful or recited songs about these matters, has made use of the benefit granted to him, applying and utilizing it to commit an act of disobedience with regard to Him who has granted this benefit and to transgress His orders.<sup>36</sup>

Given, then, this tight link between the holiness of abstinence and the holiness of Israel, it ought to come as no surprise that the laws of conversion whereby converts separate themselves from the nations, accept upon themselves the yoke of the commandments, and attain the holiness of Israel should be in the "Laws of Forbidden Sexual Relations," which laws treat of matters of personal status *and which laws, by strictly disciplining the sexual desires of all Israelites, including converts, thereby sanctify them and separate them from the nations.*<sup>37</sup>

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<sup>36</sup> On the other hand, Maimonides in the *Guide* 3:32 states that "God sent Moses our Master to make out of us a 'kingdom of priests and a holy nation' (Exod. 19:6)—through the knowledge of Him, may He be exalted." However, for Maimonides, knowledge of God and abstention from forbidden sexual relations are two sides of the same coin. Thus Maimonides states in *Laws of Forbidden Sexual Relations* 22:21 that the way to achieve sexual purity (*taberah gedolah*) is to "turn one's self and one's thought to words of Torah and to broaden one's mind in wisdom, for thoughts about forbidden sexual relations are to be found only in the heart of one empty of wisdom. And concerning wisdom it is stated, 'love's doe, a graceful gazelle...you should always obsessively dote on her' (Prov. 5:19)."

<sup>37</sup> In a footnote Soloveitchik observes that there is a possible justification for Maimonides' placement of the laws of conversion in *Hilkhot Issurei Biah* that some may wish to put forward, but dismisses that proffered justification as entirely inadequate.

Reply cannot be made that these laws are located in the *Book of Holiness, Kedushah*. For this term is not used by Maimonides in the same sense as "the sanctity of the Temple." The root meaning of *kadosh* is "separated," "set apart from," "taboo." It is used here in the sense of voluntary abstinence,

I believe I have offered a satisfactory reason as to why Maimonides placed the laws of conversion in the “Laws of Forbidden Sexual Relations,” and therefore I need not explain why he did not place them elsewhere. But even if readers are not satisfied with my explanation, they must bear in mind Soloveitchik’s principle that “one cannot object to the [ap-

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pursuant to the language of *Torat Kohanim* (Lev.19:2) “Thou shalt be holy”—you should abstain from forbidden intercourse (*arayot*) in the sense of *Perishut*, separation from one’s physical desires. Maimonides saw “holiness” as restraint in food and sex, the two basic animal drives of man. For this reason the *Book of Holiness* consists of, and only of, the laws of *kashrut* (“Ma’akhalot Assurot” and “Shehitah”) and those of forbidden sexual relations (“Issurei Bi’ah”). (371, n. 4)

This note is perplexing. What is the point of the “reply” that Soloveitchik is countering? Even if “holiness” were used by Maimonides in the same sense as “the sanctity of the Temple,” how would this observation serve to explain why Maimonides included the laws of conversion in the “Laws of Forbidden Sexual Relations”? A look at the beginning of this note in Soloveitchik’s original Hebrew essay may serve to dispel our perplexity. There he writes:

Do not seek to reply that these laws are located in the *Book of Holiness* (*Kedushah*), for this term, holiness, in the name of the book does not refer to holiness in the sense of the “holiness of Israel” or “the holiness of the Temple.” (p. 110. note 4)

The rest of the note is the same in the Hebrew version as it is in the English one.

Here let me raise a point of personal privilege. Professor Soloveitchik delivered a version of his paper as a talk at an AJS Conference a number of years *prior* to the publication of the Hebrew version of his essay. After the conference, in conversation with Professor Soloveitchik, I tentatively suggested that the solution to his query rests in the connection between the meaning of holiness in the title of the *Book of Holiness* and the holiness of Israel. (At the time, Maimonides’ statement precisely to this effect in the Introduction to the *Mishnah Torah* had slipped my mind.) I, of course, said nothing about the holiness of the Temple. What possibly could have been its relevance? Indeed, at my AJS lecture in 2003, Professor Soloveitchik confirmed that he wrote the note in the Hebrew version of his essay in response to my suggestion. However, as I point out in the body of my paper and, indeed, as I already pointed out in my lecture, an examination of Maimonides Introduction to the *Mishneh Torah* speedily reveals that it is not just I who links the holiness in the title of the *Book of Holiness* with the holiness of Israel, but also, and obviously first and foremost, Maimonides himself. It is unfortunate that Soloveitchik’s version of the note in his later English essay thoroughly obscures the point and relevance of my original suggestion contained in the note in its original Hebrew version, which, to repeat, turns out to be amply confirmed by the words of the master himself.

parently problematic] placement of a set of laws, a halakhic field, in *Mishneh Torah* unless one can suggest a more appropriate locus.” Are any of the three places in the *Book of Knowledge* (*Madda*) that Soloveitchik suggests for the laws of conversion “a more appropriate locus”? I think not.

First it must be noted that there is no thematic connection between the laws of conversion and the *Book of Knowledge* as a whole. In his Introduction to the *Mishneh Torah* Maimonides characterize the units found in the *Book of Knowledge* as containing commandments “that are the fundamental principles of the religion of Moses and that a person must know at the very outset.” But a moment’s reflection should suffice to indicate that the laws of conversion, unlike the “Laws of the Foundations of the Torah,” “the Laws of Idolatry,” “the Laws of Moral Dispositions,” “the Laws of the Study of the Torah,” and the “Laws of Repentance,” cannot be characterized as belonging to the class of commandments or as containing regulations “that are the fundamental principles of the religion of Moses and that a person must know at the very outset.” The fact that a convert, as part of his conversion, has to be informed about the fundamental principles of religion does not suffice to make the laws of conversion themselves fundamental principles of religion. All the categories of laws in the *Book of Knowledge* are binding on everyone (or at least, as in the case of Torah study, on all males) at every moment of their lives. By contrast, conversion is a one-time ritual procedure, applicable, by definition, only to the convert. As a result, if I am an ordinary Jew who is not a member of a rabbinic court, I can live my life very well without knowing the laws of conversion. Of course, for Maimonides, I ought to know the laws of conversion, just as I ought to know, say, the “Laws of Things Prohibited for the Altar” (*Issure Mizbeah*). But the bottom line remains that conversion is not one of the “fundamental principles of the religion of Moses ... that a person must know at the very outset,” and, therefore, its laws do not thematically belong in the *Book of Knowledge*.

Given, then, this lack of connection between the laws of conversion and the theme of *Book of Knowledge* as a whole, the only way they could be included in the book would be if these laws were internally connected to one of the primary topics of the units constituting that book. This is precisely what Soloveitchik suggests. But is he correct?

Underlying Soloveitchik’s suggestions, I would argue, are misconceptions regarding both Maimonides’ view of the essence of conversion and his image of Abraham, misconceptions that render Maimonides’ view of conversion too universalistic and his image of Abraham too particularistic.

With reference to conversion, it is an oversimplification to refer to conversion as “the classic recognition and acknowledgment of God.” Recognition and acknowledgment of God are much more universal in

character than conversion, which is of a more particularistic nature. After all, Maimonides says concerning the Muslims, “*elu ha-Yishme`elim ... me-yahadim la-El yihud ke-rauy, yihud she-ein bo dofi,*” “these Ishmaelites profess God’s unity in a proper and flawless manner,”<sup>38</sup> and, it need not be said, Muslims are non-Jews who never converted. Similarly the resident alien “has accepted upon himself not to worship idols together [with a commitment to observe] the other commandments that the descendants of Noah were commanded to observe” (*Laws of Forbidden Sexual Relations* 14:7), but that acceptance does not thereby make the resident alien [*ger toshav*] into a righteous convert [*ger tzedek*]. Maimonides, as we already saw, clearly states that the essence of conversion is the convert’s “enter[ing] into the covenant, tak[ing] shelter under the wings of the *Shekhinah*, and accept[ing]... the yoke of the Torah.” To be sure, as Maimonides famously emphasizes, all prospective converts must be “informed at length about the fundamental principles of the [Jewish] religion, namely, the unity of the Divine Name and the prohibition of idol worship” (*Laws of Forbidden Sexual Relations* 14:2), but this acknowledgment of those fundamental principles, that is, this recognition of God’s unity and abandonment of idolatry, forms *part* the convert’s acceptance of the yoke of the Torah. Conversion, thus, is first and foremost entry into the Jewish covenant with God and acceptance of the Mosaic Law, but, of course, for Maimonides, that covenant and that Law possess universal significance.<sup>39</sup>

Conversely, Soloveitchik’s hypothetical Maimonidean peroration, as eloquent as it may be, draws an overly particularistic portrait of Abraham that scants the universal aspects of Maimonides’ genuine portrait of Abraham. With reference to Maimonides’ “timeless” letter to Obadiah the proselyte: included there among “the disciples of Abraham” are not only “all those who will convert in the future,” but also “all those who profess the unity of God’s Name, as it is prescribed in the Torah.”<sup>40</sup> That is, not only native-born Jews and converts are the disciples of Abraham, but

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<sup>38</sup> Yitzhak Shailat, *Iggerot ha-Rambam*, Vol. 1 (Jerusalem: Ma’aliyyot Press, 1987), p. 238.

<sup>39</sup> For further discussion, see James Diamond, *Converts, Heretics, and Lepers: Maimonides and the Outsider* (Notre Dame, Indiana: University of Notre Dame Press, 2007), pp. 11–31; and Menachem Kellner, *Maimonides on Judaism and the Jewish People* (Albany: SUNY Press, 1991), pp. 49–57, 61–63. I believe, however, that Kellner scants the more particularist features of Maimonides’ conception of conversion.

<sup>40</sup> Shailat, *Iggerot ha-Rambam*, Vol. 1, p. 234.



Gentiles are as well, if they profess God's unity in a proper fashion.<sup>41</sup> Indeed, it is striking that in his codification of the laws of conversion in the *Mishneh Torah* Maimonides does not speak of Abraham.

Maimonides' portrait of Abraham in the three places he refers to him in the *Book of Knowledge*—the *Laws of Idolatry* 1:3, the *Laws of Moral Dispositions* 1:7 and the *Laws of Repentance* 10:2—is even more universalistic. A number of points ought to be noted. First on a negative note, Maimonides never in the *Book of Knowledge* refers to any covenant that God made with Abraham.<sup>42</sup> Second, the community founded by Abraham, as described in *Laws of Idolatry* 1:3 (and, not so incidentally, in the *Guide* 1:63, 2:39, and 3:29 as well), is not the Jewish people. Rather the Abrahamic community is a universal community of knowledge, “a people who knows God.” It consists of both Abraham's “pious posterity” and his spiritual disciples, and consequently lacks both ethnic and political boundaries.<sup>43</sup> Finally, Abraham is consistently presented as a *hakham*, a sage, whose teachings are based on reason and knowledge. The Abraham of the *Laws of Idolatry* 1:3 arrived at knowledge of the one true God on the basis of his own reason; he realized that idolatry was wrong through his understanding of the nature of the average man; and he spread the knowledge of the one true God via proclamation, exhortation, and above all, teaching. Abraham in this extended description is not referred to as a prophet, and Maimonides conspicuously omits to say that God spoke to him, even where a

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<sup>41</sup> See Lawrence Kaplan, “Maimonides on the Singularity of the Jewish People,” in DAAT 15 (1979), p. xix, particularly n. 26. My reading is supported by Diamond, *Converts, Heretics, and Lepers*, p. 232, n. 15.

<sup>42</sup> Indeed, in the *Book of Knowledge* Maimonides avoids referring to the covenant between God and Israel. In *Laws of Repentance* 9:1 he mentions incidentally “the words of the covenant,” and in *Laws of the Foundations of the Torah* 8:1 he cites a verse referring to the covenant. (This citation of Deut. 5:3 is strange, since it appears to be both superfluous and beside the point.) It is striking that in *Laws of Moral Dispositions* 6:4, the one paragraph in the *Book of Knowledge* where Maimonides mentions the convert, he describes him as having “entered under the wings of the Shekhinah” (*nikhnas tachat kanfei ha-Shekhinah*), silently, but no less pointedly, omitting mention of his entry into the covenant. Note especially that Maimonides in *Laws of Forbidden Sexual Relations* 13:4 uses the verbs “nikhnas,” “enter,” in relation to the covenant, and “le-histofef,” “to take shelter” in connection with being under the wings of the *Shekhinah*. It is as if in *Laws of Moral Dispositions* 6:4 Maimonides plays with our expectations, using the verb normally used to signify entry into the covenant to signify rather entry under the wings of the *Shekhinah*.

<sup>43</sup> I have drawn here from my essay “Maimonides on the Singularity of the Jewish People,” p. xvi.

mention of such a divine message would seem to be called for. Similarly, Maimonides in the *Laws of Moral Dispositions* 1:7 refers to the middle path as the path of God that Abraham followed and that he taught to his children. But this middle path in 1:4 of that unit is clearly identified as the path of the wise. Again, there is no indication in this chapter that Abraham learned about this path through divine revelation. Finally, in the *Laws of Repentance* 10:2 Abraham is the model of the person who has reached the level of service of God out of love, a level that is identified there with attaining the heights of wisdom, a level that flows from, as Maimonides states in 10:6 there, the passionate and unrelenting study and knowledge of the sciences that enable a person to understand his Maker to the extent of his ability.<sup>44</sup>

Now that I have set forth Maimonides' view regarding the essence of conversion and his view of Abraham as found in the *Book of Knowledge*, I am in a position to return to and examine Soloveitchik's claim that there are three places in that book that would each serve as "a more appropriate locus" for the laws of conversion than the "Laws of Forbidden Sexual Relations."

With reference to Soloveitchik's first two suggestions: Had Maimonides' definition of conversion included a reference to the recognition and acknowledgment of the great Name of God, that would indeed have constituted good grounds for including the laws of conversion as part of the "Laws of the Foundations of the Torah," alongside the laws regarding the sanctification of the Divine Name (*kiddush ha-Shem*) in chapter 5 and the laws regarding the erasure of the Divine Name (*mehikat ha-shem*) in chapter 6. Or, again, had Maimonides' definition of conversion included a reference to the rejection of idolatry, that would have constituted good grounds for the laws of conversion serving as the conclusion of the "Laws of Idolatry." But, as we have seen, Maimonides defines conversion as the convert's "enter[ing] into the covenant, tak[ing] shelter under the wings of the *Shekhinah*, and accept[ing]... the yoke of the Torah"—the convert's

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<sup>44</sup> For more on Maimonides' portrait of Abraham in general and in the *Book of Knowledge* in particular, see Kaplan, "Maimonides on the Singularity of the Jewish People," pp. x-xxi; Diamond, *Converts, Heretics, and Lepers*, pp. 15–20; Kellner, *Maimonides' Confrontation with Jewish Mysticism* (Oxford: Littman Library, 2006), pp. 77–83; David Hartman, "Pilosophiah ve-Halakhah ki-Shenei Derakhim le-Hitmodedut 'im 'Avodah Zarah be-Mishnat ha-Rambam," *Jerusalem Studies in Jewish Thought* 3:1 (1988), pp. 319–33; and Masha Turner, "Avraham Avinu be-Haguto shel ha-Rambam," in *Avraham Avi ha-Ma'aminim*, eds. M. Halamish, H. Kasher, and A. Ravitzky (Ramat-Gan: Bar-Ilan University Press, 2002), pp. 143–154.

recognition of God and his rejection of idolatry forming *part* of his acceptance of the yoke of the Torah. Thus while one cannot say that there are no links between the laws of conversion and either the “Laws of the Foundations of the Torah” or “Laws of Idolatry,” they are not nearly as strong as Soloveitchik suggests.

Moreover, if we shift our focus from the units of the *Book of Knowledge* to the book itself, Maimonides’ understanding of the essence of conversion constitutes good grounds for *not* including the laws of conversion in either of these two units. For since, in Maimonides’ view, an integral part of the very definition of conversion is entry into the covenant—indeed, Maimonides refers to the covenant four times at the beginning of his discussion of the laws of conversion in chapter 13 of the “Laws of Forbidden Sexual Relations”<sup>45</sup>—and since, as we have seen, Maimonides very deliberately chooses not to mention either Israel’s covenant with God or Abraham’s covenant with God in the *Book of Knowledge*, neither the “Laws of the Foundations of the Torah” nor the “Laws of Idolatry,” both of which are, after all, units in the *Book of Knowledge*, can serve as appropriate loci for the laws of conversion.

This last point can also serve to explain why Soloveitchik’s third suggestion, namely that the laws of conversion could have been placed at the end of “Laws of Repentance,” thereby concluding the *Book of Knowledge*, must also be rejected. Indeed, what for Soloveitchik is a plus, namely, that “had the laws of conversion been placed in the *Book of Knowledge*, the problem of the location of the laws of circumcision would have been solved, for circumcision is an essential component of conversion and the two fit naturally side by side,” for Maimonides would be a minus. For, if as we have argued, Maimonides had good reason not to include the laws of conversion in *any* of the units of the *Book of Knowledge*, he had even better reason not to include the laws of circumcision in *any* of its units. For, as we have seen, Maimonides very deliberately chooses not to mention Abraham’s covenant with God in the *Book of Knowledge*, while he concludes the “Laws of Circumcision” with an eloquent peroration about the *thirteen* covenants that God established with Abraham with regard to the covenant of circumcision, citing each of the relevant thirteen biblical texts containing the word “berit.” Perhaps Maimonides’ placement of the “Laws of Circumcision” in the *Book of Love* is problematic, but he certainly knew

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<sup>45</sup> But, as I pointed out in note 41, it does not appear at all in *Laws of Moral Dispositions* 6:4, the one paragraph in the *Book of Knowledge* where Maimonides mentions the convert.

what he was doing when he did *not* place those laws in the *Book of Knowledge*.<sup>46</sup>

Turning to the internal level, as we saw with reference to the placement of the laws of conversion in either the “Laws of the Foundations of the Torah” or the “Laws of Idolatry,” the links between the laws of conversion and the “Laws of Repentance” are not nearly as strong as Soloveitchik suggests. Indeed, is there any intrinsic connection between conversion and repentance? Can the conversion, say, of a *ger toshav* be viewed as a form of repentance? Of course, the conversion of a pagan to Judaism

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<sup>46</sup> It should be noted that Soloveitchik in his Hebrew essay advanced a somewhat different third suggestion regarding the locus of the laws of conversion in the *Book of Knowledge*. There he writes, “He-hatimah shel *Sefer ha-Madda* be-Hilkhot Gerut ve-Milah kime`at mitbakeshet me-eleha,” “That the *Book of Knowledge* should conclude with [a separate unit] the ‘Laws of Conversion and Circumcision’ is almost self-evident” (p. 110). That is, as opposed to his present third suggestion that the laws of conversion and circumcision should form part of the “Law of Repentance,” in his Hebrew essay Soloveitchik suggests that these laws should be a separate independent unit, following the “Laws of Repentance” and thus forming the concluding unit of the book. However, in light of my observations in this essay—I already made this point in my AJS lecture—Soloveitchik’s original suggestion, rather than being “kime`at mitbakeshet me-eleha,” “almost self-evident,” is, in truth, “kime`at nimna`at le-gamrei,” “almost impossible to accept.” For, as I have noted, Maimonides could not possibly have included these laws as a separate unit in the *Book of Knowledge*. To briefly repeat: In his Introduction to the *Mishneh Torah* Maimonides characterizes the units found in the *Book of Knowledge* as containing commandments “that are the fundamental principles of the religion of Moses and that a person must know at the very outset.” But, for reasons I explain in the text, the laws of conversion—the same obviously holds true for the laws of circumcision—cannot be characterized as “fundamental principles of the religion of Moses and that a person must know at the very outset.” It follows that neither on its own belongs in the *Book of Knowledge*, and the only way these two sets of laws could be included in the book would be if they were internally connected to one of the primary topics of the units constituting that book. Whether persuaded by my argument to this effect in my lecture or for other reasons, Soloveitchik wisely modified his suggestion, and just as he in his first two suggestions seeks to “piggyback” the laws of conversion onto the “Laws of the Foundations of the Torah” and the “Laws of Idolatry,” respectively, so in his third suggestion he seeks to “piggyback” the laws of conversion and circumcision together onto the “Laws of Repentance.” However, as I argue in the body of this essay, this suggestion raises its own set of difficulties. (In truth, if Maimonides wished to combine conversion and circumcision as an independent unit, rather than piggybacking circumcision onto conversion and placing them both in the *Book of Knowledge*, he would have had to keep circumcision in the *Book of Love* and piggyback conversion onto it. I think Maimonides’ own solution was preferable by far.)

may be viewed as a type of repentance from sin and error to righteousness and truth. But the pagan could just as easily “repent” of his sin and error by becoming a *ger toshav*. There is no need for him to become a Jew. Here, again, the particularist nature of conversion comes to the fore.

We finally arrive at Soloveitchik’s claim that Maimonides’ “ending of the *Book of Knowledge* with conversion and circumcision [is] especially appealing, as he could have melded various sections of that book into a memorable ending that linked up the coming *Book of Love* (*Abavah*). He could have joined conversion and circumcision with his famous remarks about Abraham’s long quest for the true God in ‘Laws of Idolatry’ and fused them with his ending of ‘Laws of Repentance’” (‘Teshuvah’) and the timeless words he wrote to Obadiah the proselyte in approximately this fashion:” There follows Soloveitchik’s hypothetical “memorable ending.”

Indeed, Soloveitchik skillfully and eloquently melds together various phrases from Maimonides’ writings, but in doing so he distorts Maimonides’ portrait of Abraham, joins together motifs that Maimonides carefully keeps apart, substitutes a particularistic context for a universalistic one, and, finally, creates an “imaginary” ending that has Maimonides looking forward to the coming *Book of Love*, as opposed to Maimonides’ “real” ending, which more than looking forward to the *Book of Love*, very deliberately and emphatically looks *back* to the very beginning of the *Book Knowledge*, namely, the first four chapters of the “Laws of the Foundations of the Torah.”

It is time to take a closer look at Soloveitchik’s hypothetical “memorable ending.”

על פי הדעה וההכרה תהיה האהבה, אם מעט מעט ואם הרבה הרבה. ומי ששטט בדעתו כמו אותו איתן עד שהכיר את בוראו ונכספה נפשו לאהוב את ה', ורדף אחריו והלך בדרך הקודש עד שנכנס תחת כנפי השכינה, הרי הוא מבניו של אברהם אבינו, שבבריתו נכנס, שנאמר אב המון גויים נתתיך, ועליו אמר הכתוב, זרע אברהם אוהבי.

According to the understanding and recognition will be the love. If [the former is] little, [so will the latter be] little; if [the former is] great, [so will the latter be] great. And he whose mind began to reflect about the world as did that titan [Abraham] until he came to recognize his creator and his soul longed for the love of God, and he pursued Him and went in the path of holiness until he came under the wings of the *Shekhinah*, he is indeed a son of Abraham our father, for he [the searcher-convert] has entered into his [i.e. Abraham’s] covenant, for it is written [Gen. 17:4] “thou shalt be the father of

many nations;" and about him the verse was said [Isaiah [Isa.41:8], "[he is] of the seed of Abraham who did love Me."

As we have seen, the reference to Abraham's covenant is entirely out of place here. Moreover, as we have also seen, Abraham is the father not just of converts, but of "all those who profess the unity of God's Name," and, indeed, as we have seen, in his codification of the laws of conversion Maimonides does not even mention Abraham. But more. Abraham in the last and concluding chapter of the "Laws of Repentance" is not just the teacher of monotheism, of "the unity of God's Name," as he is in the "Laws of Idolatry" and in the Letter to Obadiah the Proselyte; rather, as I have already indicated, he serves as the exemplar of that rare individual who loves God based on the knowledge he has attained and who worships God out of that love, who "performs what is true because it is true" (10:2), that is, for the sake of God Who is the truth (*Laws of the Foundations of the Torah* 1:3-4). Abraham's love of God, based as it was on his knowledge of the sciences, was on such an exalted level that, as Maimonides states, even most Sages cannot attain it. The convert, for Maimonides, is no doubt a very admirable person, whom we are command to love (*Laws of Moral Dispositions* 6:4), but, given Abraham's lofty rank, for Soloveitchik to have Maimonides describe the convert as one who loves God in the same manner as Abraham did, and for him to further have Maimonides state in that connection that the convert "[is] of the seed of Abraham who did love Me," is to fail to appreciate Maimonides' exalted and philosophically oriented portrait of Abraham. Has the convert mastered the natural and divine sciences?! Has he reached a level beyond that of even most native-born Jewish sages?! Indeed, it should be noted that Maimonides is careful not to cite the verse "[he is] of the seed of Abraham who did love Me," but just to state that God referred to Abraham as "he who did love Me" (*ohavi*). Maimonides in this context evidently does not wish to speak of the "seed of Abraham." In sum, just as any mention of the covenant would be out of place in the conclusion of the "Laws of Repentance," so would any mention of the convert.

But let us turn from Soloveitchik's hypothetical ending to Maimonides' actual ending, and readers may determine for themselves which of the two is the more "memorable." I am following here, for reasons that will become clear in a moment, Maimonides' paragraphing as found in the Oxford Manuscript.

י דבר ידוע וברור שאין אהבת הקדוש ברוך הוא נקשרת בליבו של אדם,  
עד שישגה בה תמיד כראוי ויעזוב כל שבעולם חוץ ממנה כמו שציווה ואמר  
"בכל לבבך ובכל נפשך" (דברים ו,ה; דברים י,יב; דברים ל,ו): אלא בדעה  
שיידעהו. ועל פי הדעה--על פי האהבה--אם מעט מעט, ואם הרבה הרבה.

יא לפיכך צריך האדם לייחד עצמו להבין ולהשכיל בהכמות ותבונות המודיעין לו את קונו כפי כוח שיש באדם להבין ולהשיג, כמו שביארנו בהלכות יסודי התורה.

It is a well-known and clear matter that the love of God will not become attached within a person's heart until he becomes obsessed with it at all times as is fitting, leaving all things in the world except for this. As [Scripture] commands and states: “with all your heart and all your soul” (Deut. 6:5), [that is to say,] with the knowledge with which he knows Him. And according to knowledge will be the love. If [the former is] little, [so will the latter be] little; if [the former is] great, [so will the latter be] great.

Therefore a person must devote himself to understand and conceive the sciences and concepts that make his Maker known to him in accordance with the ability that he possesses to understand and comprehend as we explained in *Hilkebot Yesodei Ha-Torah*.

The first paragraph—the penultimate one in the *Book of Knowledge*—with its interweaving of knowledge and love both sums up the gist of that book and, at the same time, looks forward to the *Book of Love*. And the pathos and passion of this paragraph are, indeed, memorable.

But, then, lest we forget exactly what is involved in attaining the knowledge of God, Maimonides shifts keys. The tone is no longer one of passionate exhortation, but one of austere, almost dispassionate intellectualism. In the last paragraph, there is no mention of the love of God, though, of course, it is implied; all the emphasis is on the overriding need to study the sciences necessary to obtain the knowledge of God.<sup>47</sup> And the very last five words of the “Laws of Repentance,” that is to say the very last five words of the *Book of Knowledge*—כמו שביארנו בהלכות יסודי “התורה”—bring the reader back to the book’s beginning, to the first four chapters of the “Laws of the Foundations of the Torah,” which outline both the divine science and the natural science and stress that it is only through studying these sciences that one can attain the love of God. And this knowledge of God, flowing from the knowledge of these sciences, is universal in nature, just as the sciences themselves are universal in nature. In sum, both in the first four chapters of the “Laws of the Foundations of the Torah” and in the last chapter of the “Laws of Repentance,” that

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<sup>47</sup> Note, as well, the progression of *Guide* 3:51–54, the *Guide*’s famous last four chapters. Chapters 51 and 52 are devoted to the love and fear of God, both as outgrowths of the knowledge of God. Then in Chapters 53 and 54 Maimonides drops all reference to either the love or the fear of God, focusing entirely on man’s achieving his ultimate goal of intellectual perfection culminating in the knowledge of God.

is to say both in the beginning and end of the *Book of Knowledge*, the knowledge of God that constitutes the main theme of the book and gives it its name is placed in a universal context.

The *Book of Knowledge* thus forms a circle, its end pointing back to its beginning, just as the *Mishneh Torah* as a whole forms a circle, Maimonides' declaration at the end of its very last chapter, Chapter 12 of the "Laws of Kings and Wars," that in the days of the King Messiah "the occupation of the entire world will be only to know God... each person in accordance with his ability" (12:5), pointing back to his declaration at the beginning of its very first chapter, Chapter 1 of the "Laws of the Foundations of the Torah," that "the foundation of foundations and pillar of the sciences is to know that there is a first existent and He brought all existents into existence, and all the existents from heaven to earth and what is between them exist only on account of the truth of His existence" (1:1). Note especially that it is the theme of the knowledge of God that links both the beginning and end of the *Book of Knowledge* and the beginning and end of the *Mishneh Torah* as a whole. Note also that the end of the very last chapter of the "Laws of Kings and Wars" is linked to the end of the very last chapter of the "Laws of Repentance," inasmuch as both refer to a person's knowledge of God "in accordance with his ability."<sup>48</sup>

If there are any lessons to be drawn, then, from my comparison between Soloveitchik's hypothetical ending of the "Laws of Repentance" and Maimonides' actual one, it is, first, that we must give Maimonides credit for knowing *exactly* what he was doing in ending the "Laws of Repentance" as he did, and, second, that we rewrite the *Mishneh Torah* at our peril. In his recent essay, "*Mishneh Torah: Polemic and Art*," Soloveitchik writes "*Mishneh Torah* is that rarest of things—a book of law... that is at the same time, a work of art."<sup>49</sup> Maimonides' ending of the "Laws of Repentance" is a work of art; Soloveitchik's substitute ending, while very fine from a literary point of view, is a pastiche.

To sum up, then, the relative merits of the "Laws of Forbidden Sexual Relations" in the *Book of Holiness* or one of the units in the *Book of Knowledge* suggested by Soloveitchik as the "appropriate locus" of the laws of conversion: I believe I have shown that there is a deep connection between the laws of conversion and the "Laws of Forbidden Sexual Relations,"

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<sup>48</sup> Note, as well, how the conclusions of both the "Laws of Repentance" and the "Laws of Forbidden Sexual Relations" cite Prov. 5:19; and how the end of the "Laws of Repentance" and the end of the *Guide* resemble each other not only in their stressing the central importance of the knowledge of God, but in their both referring back in literally their very last words to earlier passages elaborating on this point.

<sup>49</sup> "*Mishneh Torah: Polemic and Art*," p. 387.




scanted by Soloveitchik, and similarly believe I have shown that while the links drawn by Soloveitchik between the laws of conversion and the “Laws of the Foundations of the Torah,” the “Laws of Idolatry,” and the “Laws of Repentance” cannot be ruled out entirely, they are much weaker than he suggests. Two things, however, I believe, are certain. First and positively, in light of the connection Maimonides draws in the Introduction to the *Mishneh Torah* between the holiness of abstinence and the holiness of Israel, the laws of conversion fit very well into the primary theme of the *Book of Holiness*. Second and negatively, since, in Maimonides’ view, an integral part of the essence of conversion is entry into the covenant, and since Maimonides very deliberately chooses not to mention either Israel’s covenant with God or Abraham’s covenant with God in the *Book of Knowledge*, none of the units in that Book is an appropriate locus for the laws of conversion.

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We return to the beginning. Soloveitchik began his essay by declaring that we must combine modern Maimonidean scholarship’s concern with the *Mishneh Torah*’s “principles of . . . arrangement and organization” with the traditional rabbinic approach to its study, which, “without fear or favoritism, questions whatever in the work appears to be problematic.” But I would add that if this essay has shown anything it is that we can answer Soloveitchik’s penetrating and fruitful questions regarding the *Mishneh Torah*’s “principles of . . . arrangement and organization” only by combining the traditional rabbinic emphasis on the close and careful legal analysis of Maimonides’ individual rulings and the internal legal connections between them with modern Maimonidean scholarship’s emphasis on analyzing the *Mishneh Torah*’s multifaceted nature and its historical context, on the importance of a close and careful reading of Maimonides’ introductions to his various works, particularly the Introduction to the *Mishneh Torah*, on both carefully integrating the *Mishneh Torah*’s treatment of key issues with their treatment in Maimonides’ other works, where called for, and carefully differentiating between these treatments, where called for, on, more broadly, examining the complex relationship between law and philosophy in Maimonides’ works in general and the *Mishneh Torah* in particular,<sup>50</sup> and,

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<sup>50</sup> One particularly striking example of such interaction with respect to both Maimonides’ views regarding circumcision and the universal significance of Abraham may be noted. In the *Guide* 3:49, when speaking about circumcision, Maimonides states: “Circumcision is a covenant made by Abraham with a view to the belief in the unity of God. . . . This covenant imposes the obligation to believe in the unity of God.” Note here the wide-ranging scope of this obligation. It

finally, on exploring the *Mishneh Torah's* compositional history and the light that Maimonides' surviving drafts might shed on it. Soloveitchik's ringing declaration, "Maimonides is in no need of our praise; we are in need of understanding him" (367), should serve as a prod and challenge to us all.<sup>51</sup> 

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would appear to follow that since, for Maimonides, Muslims, as we have seen, "profess God's unity in a proper and flawless manner," they too, in some manner, should be brought into the covenant of circumcision. This might help explain Maimonides' famously controversial ruling in *Laws of Kings and Wars* 10:4: "The Sages said that the children of Keturah, who are the seed of Abraham who followed upon Ishmael and Isaac, are obligated with respect to [the commandment of] circumcision. And since today the children of Ishmael have intermingled (*nit'arvu!*) with the children of Keturah, all are obligated with respect to [the commandment of] circumcision on the eighth day. But they are not killed for [failing to perform] it." Note how Maimonides in two easy steps arrives at the conclusion that the Ishmaelites, that is, the Arabs who "profess God's unity in a proper and flawless manner," are obligated with respect to the commandment of circumcision on the eighth day. First he interprets the rabbinic statement (*Sanbedrin* 59b) that "the children of Keturah are included in [the commandment of] circumcision" as referring to the descendants of Keturah for all generations, as opposed to the interpretation of Rashi *ad loc.*, supported by most commentators, that it refers only to the six sons of Keturah. Second, he argues that factually, "today the children of Ishmael have intermingled with the children of Keturah." The conclusion that "all are obligated with respect to [the commandment of] circumcision on the eighth day" automatically follows. In this way Abraham's covenant of circumcision truly is "a covenant made ...with a view to the belief in the unity of God."

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