

## *Mishneh Torah's Structure and its Meaning: A Counter-Response to David Gillis*

By: LAWRENCE KAPLAN

I am very pleased that my brief critical reservations regarding the fundamental thesis of David Gillis' *Reading Maimonides' Mishneh Torah*, namely, that Maimonides based the *Mishneh Torah's* 14-book structure on his cosmology, stimulated him to write his lucid and vigorous response, thereby bringing his challenging thesis to the attention of *Hakirab's* readership.

In my essay I wrote, "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." Before I begin my substantive reply to Dr. Gillis's response, let me note, first, that my criticism was both tentatively phrased and very carefully qualified ("I believe," "tend to undercut," "But the matter..."), and, second, that in my reply I wish to discuss not Gillis' thesis per se, but just how the data I brought bear on it.

I would like to discuss each of my two points by itself. With reference to my first point, Gillis responds 1) that my conclusion "that the division into books was not at first part of Maimonides' scheme of classification... is an argument from silence. As such, it certainly falls short of being a fact"; 2) that in truth my argument from silence is not convincing; and 3) that even if I am right, "in interpreting the *Mishneh Torah* in its final form, the book's structure must be given its full due." I basically agree with Gillis' responses 1 and 3, but not with his response 2.

With reference to response 1, I, indeed, should not have stated so categorically that it is a "fact" that "that the division into books was not at first part of Maimonides' scheme of classification." Rather, it is a factual

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Lawrence J. Kaplan received his BA from Yeshiva College, his MA and PhD from Harvard University, and his rabbinical ordination from Rabbi Isaac Elchanan Theological Seminary. He has taught at McGill University since 1972, and is currently Professor of Rabbinics and Jewish Philosophy in its Department of Jewish Studies. In 2013 he was a Polonsky Fellow at the Oxford Centre for Hebrew and Jewish Studies.

claim that I made on the basis of 1) an argument from silence in connection with the introduction to *The Book of the Commandments*, and 2) an analysis of the two different strata discernible, at least to me, in the introduction to the *Mishneh Torah* itself.

Still, with reference to response 2, I believe my factual claim is a reasonable conclusion from the evidence I examined. I noted that in the introduction to *The Book of the Commandments*, where Maimonides discusses his projected code, he states that he will arrange it according to topics, the *halakhot*, but does not mention books. I concluded that Maimonides' non-mention of books there as overarching organizing principles of the *Mishneh Torah* indicates that the division into books was not, at first, part of Maimonides' scheme of classification.

Gillis responds that Maimonides' silence is understandable.

Maimonides is concerned to describe how the construction of his code will be akin to that of the Mishnah and will differ from that of *The Book of the Commandments* itself. Instead of discussing the 613 commandments one by one, he will group them under topics, which he will call *halakhot* ... equivalent to the *masekhtot* (tractates) of the Mishnah. Whether or not they were conceived of at this stage, the books are not relevant to the point being made, and no conclusion can be drawn about the relative importance of books and units. The attempt to do so appears to rest on a misconception, a category mistake. The books of the *Mishneh Torah* are not simply collections of units under broader topics. They have an extra dimension, and represent a different kind of division.

I cannot agree. In the introduction to *The Book of the Commandments* (unlike, by the way, the introduction to the *Mishneh Torah*), Maimonides compares the structure of the *Mishneh Torah* to that of the Mishnah. As Gillis notes, Maimonides states that the *halakhot* of the *Mishneh Torah* are equivalent to the *masekhtot* (tractates) of the Mishnah, and, as I would add, he further states that his division of these halakhot into chapters and paragraphs also follows the model of the Mishnah. Can one really imagine that had he conceived of dividing the *Mishneh Torah* into books when he wrote his introduction to *The Book of the Commandments*, he would not have further stated that his *Sefarim* are the equivalent of the Mishnah's *Sedarim*?

Gillis tries to evade this conclusion by noting that Maimonides' *Sefarim* are not "simply collections of units under broader topics," but possess a broader philosophical conceptual dimension. Is he trying to drive a wedge between Maimonides' *Sefarim* and the Mishnah's *Sedarim* by suggesting, if only by implicit contrast, that the division of the Mishnah into

*Sedarim* is devoid of conceptual significance and that they are “simply collections of units under broader topics?” If so, I cannot agree. The bottom line—or so it seems to me—is that the structural similarity between the Mishnah’s *Sedarim* and Maimonides’ *Sefarim* is undeniable. As Davidson notes, “Each of [the Books of the *Mishneh Torah*] carries a title in the form of “Book of X” where X is always a single word, as were the names of the Mishnaic orders. Three of Maimonides’ Books have exactly the same name as Orders of the Mishnah.” From this it follows that Maimonides’ silence in his introduction to *The Book of the Commandments* regarding his dividing the *Mishneh Torah* into *Sefarim* analogous to the Mishnah’s *Sedarim* can be reasonably accounted for only by assuming that the division into books had simply not occurred to him yet.

With reference to the introduction to the *Mishneh Torah* itself, I argued that the section that describes the 14 books and their contents is a late insertion. My claim was that an examination of the Introduction to the *Mishneh Torah* reveals that it consists of two distinct strata. The body of the first and earlier stratum extends from the beginning of the Introduction through the short enumeration of the 613 commandments, and concludes with brief discussion of the authority of the rabbinic commandments. This stratum also includes the very last sentence of the Introduction “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 halakhot, with the help of God.” In this early stratum, as in his Introduction to the *Book of Commandments*, only the division of the *Mishneh Torah* into halakhot, not books, is mentioned.

The second stratum consists of the section immediately following Maimonides’ discussion of the authority of the rabbinic commandments. It begins with “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.

Gillis describes the Introduction differently. He writes:

The introduction opens with a survey of the history of *torah shebe’al peh*, after which the sequence of subjects is as follows: 1) a statement ... that the *Mishneh Torah* will be arranged according to topics (the units), not commandments; 2) a list of the 613 commandments; 3) a statement that the *Mishneh Torah* will be divided into books; 4) a presentation of the books and their contents.

Contrary to my linking Maimonides’ list of the fourteen books and the subject matter of the commandments each book contains with the

work's complete table of contents, inasmuch as both belong to the second strata, Gillis argues that the function of the list of the fourteen books is conceptual and meta-halakhic, while the function of the table of contents is practical. Well, obviously the function of a table of contents is practical. This does not change the fact that in both the list of the fourteen books and the table of contents that follows the *Sefarim* serve as the principle organizing device, while mention of the *Sefarim* is entirely absent from the earlier stratum. Note that Gillis in his "sequence of subjects" ignores the very last sentence of the Introduction, "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 halakhot, with the help of God," which mentions just the halakhot and not the *Sefarim*, and on my account belongs to the earlier stratum. I cannot see how Gillis's analysis can account for it.

Let me add a bit of further evidence for my claim that the two strata comprising the introduction to the *Mishneh Torah* are not just thematically but also chronologically distinct. As scholars have noted, the short list of the 613 commandments in the Introduction is a radically abridged Hebrew translation of his formulation of those commandments in his Judeo-Arabic *Book of the Commandments*, and, indeed, appears to have been written shortly after the completion of the book. Note how many of the formulations in the short list follow the formulations in *The Book of the Commandments*, though they differ from Maimonides' later formulations as found in the Introduction's table of contents and headings to each section. Maimonides obviously included his short list in the Introduction without any changes or revisions, though he changed his mind about many of its formulations. I believe this is true regarding the early first stratum as a whole, of which it forms a part.

My factual claim that the division into books was not at first part of Maimonides' scheme of classification reasonably follows, then, from the evidence presented, though my arguments are certainly not ironclad. Still, I agree with Gillis' response 3 that even if I am right, "in interpreting the *Mishneh Torah* in its final form, the book's structure must be given its full due." Since Maimonides certainly arrived at his decision to divide the *Mishneh Torah* into *Sefarim* at a fairly early (though indeterminate) stage in his writing of the work, there is no reason to assume that this division is inessential. Thus, contrary to what I stated in my article, my first point does *not* "tend to undercut Gillis' provocative claim."

My second point was that the Geniza fragment TS 10 K8, f.1., indubitably indicates 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. On this point Gillis and I agree. The

question is: What lessons are we to draw from this? I confess I am not sure.

Let me take this opportunity to correct an assertion I made in my essay. I wrote there that the original *Book of Judgments* included only the *Book of Torts* and the *Book of Judgments*, disagreeing with Elazar Hurvitz's claim that it also included the *Book of Acquisition*. Correspondence with Dr. Gillis has convinced me that Hurvitz was right and I was wrong. I now believe that the original *Book of Judgments* in including *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, included the current *Book of Torts*, containing those mitzvot "bein adam le-ḥavero ve-yesh bahen hezek tehilah"; the current *Book of Acquisition*, containing (though Maimonides does not state this explicitly) those mitzvot "bein adam le-ḥavero sh'ein bi-tehilahtan hezek" clustered about the subject of buying and selling; and the current *Book of Judgments* containing those mitzvot "bein adam le-ḥavero bi-she'ar ha-dinin sh'ein bi-tehilahtan hezek," meaning, as Gillis pointed out to me, all the rest of the laws not involving damages, a rather miscellaneous grab bag, *in addition to* the laws not involving damages found in the *Book of Acquisition*.

That the *Book of Acquisition* and *Book of Judgments* in their current form should be viewed as one conceptual unit, both books concerned with those mitzvot "bein adam le-ḥavero sh'ein bi-tehilahtan hezek," is also indicated, as Gillis pointed out to me, by the fact that Maimonides links them together in *Guide* 3:35, including them in the seventh class of the commandments, which "comprises the laws of property." Indeed, to go beyond Gillis, I would note that Maimonides there provocatively refers to the two books in the singular. "These are the commandments we have enumerated in the *Book (!) of Acquisition and Judgments (Sefer Qinyan ve-Mishpatim).*"

In its original form, then, what is now the last four books were two books, *Sefer Mishpatim* concerned with all "the commandments between man and man," irrespective of whether or not they involve a tort to begin with, that is with private civil and criminal law, and *Sefer Shoftim*, concerned with "those laws which are delegated to the Sanhedrin," that is with public law. I, indeed, "demur" from the view, towards which Gillis inclines, that "the material of the last book, the *Book of Judges (Sefer Shofetim)*, was covered by the fourteen units of the draft of *Sefer Mishpatim*," and I, therefore, cannot agree his claim that Maimonides originally put what are now the last four books "under one title."

Gillis, in my view, goes astray when he repeatedly describes the content of the last four books as concerned with commandments *bein adam le-havero*. Well, in a broad and loose sense this is true. But Maimonides uses the phrase “*mitzvot bein adam le-havero*,” both in his Introduction when explaining the division of the *Mishneh Torah* into fourteen books and, indeed, throughout the *Mishneh Torah* (see, for example, *Hilkhot Teshuvah* 2:9), to refer strictly to commandments between one person and his fellow, that is to *private* civil and criminal law, as contrasted with *public* law. Indeed, if anything, the contrast between private and public law was even stronger in the original draft of the *Mishneh Torah* when there was no *Sefer Nezikim* and *Sefer Kinyan*, just one massive *Sefer Mishpatim*, concerned with all “the commandments between man and man,” followed by *Sefer Shofetim*, concerned with “those laws which are delegated to the Sanhedrin.”

Thus while Gillis is right that from a teleological point “the last four books must be considered collectively as embodying a single process,” moving from “the rehabilitation of human society, from wrongdoing and injury in book 11, through the introduction of constructive and cooperative commercial relations in books 12 and 13, to the establishment of the institutions of a stable state in book 14, culminating...in the messiah,” his conclusion that therefore “they really belong under one title” glosses over Maimonides’ legal-conceptual distinction between private and public law. Perhaps our disagreement on this point is symptomatic of a broader disagreement between us as to how we should balance the legal-conceptual aspects of the *Mishneh Torah* with its philosophical-teleological aspects.

It is true that in the *Guide* 3:35 the category of “the commandments between man and man” includes the material of all four last books, including *Sefer Shofetim*, but that is precisely because in the *Guide* the philosophical-teleological aspects of the commandments are primary. Note that Maimonides there (3:35, 41) refers to the commandments contained in *Sefer Shofetim* as “commandments concerned with punishments,” in accord with his focus on those commandments’ “utility.”

The upshot of this, to repeat, is that in the original draft of the *Mishneh Torah* in place of what are now the last four books there were two books. This does not seem to fit into Gillis’ cosmological scheme, where the subject matter of the last four books refers to the “four elements [which] have no permanent separate existence,” and which therefore should be placed either under one title or under four titles.

Of course, in the *Mishneh Torah* as we have it, the original *Sefer Mishpatim* was divided into three books. That Maimonides decided to separate the “*mitzvot bein adam le-havero ve-yesh bahen hezek tehilah*” from those “*mitzvot bein adam le-havero she-ein bi-tehilahtan hezek*” and

place them in separate books makes sense. But, as Gillis correctly argues, “Books 12 and 13 could easily have been combined,” since *both* are concerned with “mitzvot bein adam le-ḥavero she-ein bi-teḥilahtan hezek,” and Book 13 is a “direct continuation” of Book 12. My assumption is that Maimonides divided them for reasons of length and symmetry (all four last books now contain five halakhot each) and possibly also because *Sefer Kinyan* is centered on one subject, while the subject matter of *Sefer Mishpatim*, as Twersky notes, is much “more diffuse.” Gillis, while not denying any of this, takes Maimonides’ final division “as further evidence that he deliberately sought a four-book arrangement,” the better “to firmly integrate” the *Mishneh Torah* “in its final form... into the cosmic pattern.” I take no position on this.

Toward the beginning of his response Dr. Gillis thanked me “for inviting a response, and for stimulating further thought about my own thesis.” His very forceful and thorough response, in turn, stimulated further thought—indeed, some second thoughts—on my part regarding some of the assertions in my article about the complex issue as to the origins and significance of Maimonides’ decision to divide the *Mishneh Torah* into fourteen books. For that I thank him. 🐾