

## **Introduction of Rabbi Yosef Kapach**

**to his edition of**

## **Moses Maimonides' Mishneh Torah**

**(translated by Michael J. Bohnen)**

Rabbi Kapach was the foremost editor of the works of Maimonides. Born in Yemen in 1917, he used ancient manuscripts to restore the text of the Mishneh Torah. Several fascinating articles about Rabbi Kapach can be found at [www.chayas.com/rabbi.htm](http://www.chayas.com/rabbi.htm) The following is a summary and translation of his 20 page Introduction to his edition of the Mishneh Torah.

### **Translator's Summary**

**My Work.** When in my youth I studied the Mishneh Torah with my grandfather of blessed memory, most people used printed books, each with his own edition, but my grandfather and several of the others had manuscripts which were several hundred years old, each scroll of a different age. The errors and deficiencies of the printed texts were well known. The changes that Maimonides made over time in the Commentary on the Mishnah, after completing the Mishneh Torah, he then inserted in the Mishnah Torah. These are all found in our manuscripts, but some are not found in the printed texts. The Jews of Yemen are a conservative group. They would never have presumed to "correct" or "amend" a text that came into their hands, and certainly not the works of Maimonides. However, the Mishneh Torah was subjected to severe editing by the printers and various editors who made emendations of style, language, the structure of sentences and the division of halachot, to the extent that there is hardly any halacha that has not been emended. In this edition of ours, we are publishing, with God's help, the words of Maimonides in full as we received them from his blessed hand. Many times a simple correction (not of a sentence or a word, but just a single letter) will settle many questions and eliminate much pilpul.

The division of the halachot is presented according to the majority of the manuscripts. Since Torah literature around the world quotes from the previously printed texts, I could not ignore them entirely. Therefore I placed the section numbers from the manuscripts in brackets and the section numbers from the printed texts in parentheses, in an effort to oblige everyone.

I was especially motivated by the attachment of my grandfather and father to the ancient manuscripts. They spared no effort or resources to obtain complete and partial manuscripts, even single pages, purchasing them at high prices, and paying agents to search through genizas to find any page or half page from the work of Maimonides, in addition to the searches which they conducted themselves.

I have explored many commentaries which have explained the words of Maimonides over the generations. Before I reached my goal of 300 works (I was still short by about 25), I realized that I was no longer young, and I decided to stop at that point. I hope that others will complete the work, if not in my way, then in theirs. I will not hold back photographic copies of any of the manuscripts in my possession that can be used for editing the books of Maimonides.

**The Goal of Maimonides in the Mishneh Torah.** The goal of Maimonides in the Mishneh Torah, according to his clear statement in his Introduction, is that everyone will be able to determine the halacha without the hard work of sifting out the final result from the Gemara or the words of the geonim, where one says one thing and another says a different thing. In fact the goal was not to spare work and effort, but to prevent errors by those "scholars" who see themselves as divers into the sea of the Talmud. (And who doesn't see himself that way?) This book was intended not just to rule on simple laws that were expressly explained in it, but also for the reader to be able to compare events and occurrences that would take place in future generations and times to what is said in the book, and, according to the foundations which were established in it, to rule without hesitation.

**The General Practice is to Rule According to Maimonides.** Objections arose regarding the declared objectives of Maimonides that people should make rulings based on his book without looking first at the Gemara and other sources. In his Introduction to the Kesef Mishneh, Rabbi Yosef Caro quotes the Rosh: "All who issue rulings from the words of Maimonides who are not expert enough in Mishnah and Gemara to know from where Maimonides derives his statements, will err in permitting the prohibited and prohibiting the permitted, because each reader thinks he understands it, but he doesn't. ...Therefore no one should rely on his reading of the Mishneh Torah to rule on matters unless he finds a proof-text in the Gemara." Many misunderstood the intent of the Rosh's words, and imagined that his intent was that no one should rule based on the Mishneh Torah even as to matters explained in simple terms. This never occurred to the Rosh and was never his intent. Caro only quoted the second half of the responsum of the Rosh. As anyone who examines the entire responsum will understand, the Rosh only intended to prohibit rulings based on matters that are not expressly explained by Maimonides, where the person issuing the ruling merely analogizes the situation before him to a ruling of Maimonides. There are numerous authorities who support the position that the general practice is to rule according to Maimonides.

**Why Maimonides Limited Himself to Reproducing Only the Laws from the Sources.** Maimonides does not present his own hidushim or deductions from the sources. The more than one hundred places where he wrote "it seem to me" or "in my opinion" are in essence innovative comments that cannot be learned from the sources. It appears that Maimonides acted this way because he reasoned that, even after the writing of the Mishnah was permitted by Rabbi Yehuda, the restriction on written innovations from the sources was not entirely released. Maimonides wrote only innovations that could not be learned from the existing sources.

**The Goal of Rabad in his Hasagot.** The purpose of Rabad was not to oppose Maimonides, nor was it to present his own views regarding any law, but to show that there is another view in opposition to that of Maimonides.

## INTRODUCTION

*You have dealt well with Your servant, O Lord, as you promised.*

*Teach me good judgment and knowledge, for I have been faithful to your commandments,*

*Before I was afflicted I went astray, but now I have kept your word.*

*You are good and do good. Teach me your laws.*

*Willful sinners have forged a lie against me, but I will keep your precepts with my whole heart.*

*Their heart grew as thick as fat, but I delight in your law.*

*It is good for me that I have been afflicted, that I might learn your laws.*

*The law of your mouth is better to me than thousands of gold and silver.*

*Psalms 119:65-72*

Blessed is the Lord, my G-d and G-d of my ancestors, who lead me in the true path from my birth until today. From the dawn of my youth, I was raised and educated to love and appreciate the teaching of two princes of Israel, the teaching of Rabbi Saadya Gaon in scriptural exegesis and the basics of thought, and the teaching of Rabbi Moses Maimonides in the understanding of the Talmud, practical halacha and the development of the foundations of the Torah. We have endeavored with all our might not to stray at all from his teachings in practical halacha.

When we began the study of Mishnah according to the dictates of our sages "at age ten begin the study of Mishnah," we studied it in parallel with the commentary of the Rambam in the original Arabic, which was for us a second mother tongue, even though the language of the market and the kitchen differed in no small respect from the language, idiom and thought of Maimonides. Constant engagement with Maimonides' statements and words mated the language of his commentary with Hebrew and spoken Arabic, and this three-fold braid is not quickly severed. From the time we began the study of Talmud, as recommended by our sages "at age fifteen, begin the study of Talmud" (and, according to the commentary of Saadyah Gaon on Proverbs 22:6, the majority of one's study should be exclusively Talmud), when we studied Gemara, the words of Maimonides regarding halacha and his commentary on the Mishnah did not leave our hands. We sought to understand the ways of this great teacher in his comprehension of the Gemara, and how and by what paths the Talmudic discussion was developed, through his spiritual vision, into what he set forth in his commentary to the Mishnah, and to what he finally established in his great compilation, the Mishneh Torah, which is unsurpassed to this very day and which had no comparable predecessor. It is unequalled in its organization, its language, its precision, its scope and its comprehensiveness. Our serene teachers awakened in us a great interest by pointing out to us the variant readings of Maimonides from one edition to another and sometimes a third and even a fourth.

As I explained in my notes to the critical edition/translation of Maimonides' Commentary on the Mishnah, and as I have repeatedly acknowledged, blessed is He who made me the son of my father and the grandson of my grandfather, who lead me in this path, to the in depth study of the Talmud and its early commentators, the scriptural exegesis of the Geonim, and Maimonides on halacha. "Moses commanded the Torah to us as an inheritance" and it is an eternal heritage. We have engaged with it, and with God's help we and our descendants will continue to engage with it all the days of our lives. We have invested most of the time of our studies in the halachic discussions of Abaye and Rava. According to the instruction of Maimonides at the end of Chapter 4 of Yesodot Hatorah:

"I believe that no one should stroll through the garden of Jewish mysticism unless his belly is filled with bread and meat, by which I mean knowledge of what is prohibited and permitted and similar issues relating to the other commandments. Even though these matters were called 'minor' by the sages (who said that mysticism is a major matter and the halachic discussions of Abaye and Rava are relatively minor matters), it is still appropriate to master the latter first, since they provide basic mental tranquility to an individual. They are a gift of God to promote social tranquility on earth so that we may inherit the world to come."

As Maimonides instructed his student Rabbi Joseph ben Judah, reinforcing this advice, (see p. 136 of my edition of the letters of Maimonides):

"I have already warned you not to neglect your studies, until you know the entire Mishneh Torah, and you have made the book your own, and you have studied it in its entirety, so that you appreciate its utility. [page 10] The basic goal is knowledge of what you must do, and of what you must refrain from doing, and this should be clear to someone like you. Therefore, [in the Mishneh Torah] we have sought this basic goal, and to make it easier to remember .... Therefore you should learn this lesson from the sacred tongue in which we have composed our work, for it is easily understood and comprehended."

We have also not neglected the rest of his books, for it is all one monolithic unit. Maimonides' halachot, thought and outlook are unified. The words of people of hate, jealousy and envy we have cast behind our back. See Nahal K'dumim of Hayyim Yosef David Azulai on Deuteronomy 28:11. [tr. That commentary on the verse "ki yinatsu anashim" – "when men quarrel"—points out that the words "Yosef", "kin'ah" and "yinatsu" are all equal in gematria, and that people named Yosef (perhaps like our author) are subject to the jealousy of others which leads to quarrels.]

When in my youth I studied the Mishneh Torah with my grandfather of blessed memory, most people used printed books, each with his own edition, but my grandfather and several of the others had manuscripts which were several hundred years old, each scroll of a different age. Almost every halacha had annotations with variant readings. Some were passed over quickly because of their simplicity and some aroused debate on the subject and its consequences, whether relating to a halacha that will not be applicable until the time of the Messiah, or practical matters relating to the customs of our day. These debates were unending daily activities. The errors and deficiencies of the printed texts were well known. So much so that the printed books were used to characterize a mistaken person -- when someone said something incorrect on some subject, they would respond "you are like a printed text," and point out the correction. These matters were inscribed on my heart, and I grew up with the assumption that there were two types of Maimonides texts in the world: that of the Yemenite manuscripts and that of the printed book. With study and investigation over time, I realized that there were very many differences of various kinds between the Yemenite manuscripts and the printed texts, although the differences were narrowed in the case of the older printed texts like the Roman edition.

We have a tradition from our ancestors, and my grandfather wrote about it in one of his letters, that even during the life of Maimonides, the Jews of Yemen send expert copyists to Egypt to make copies of his manuscripts. And from time to time they sent for updates and corrections to their books according to the most recent emendations and reconciliations of Maimonides, including the very latest. It has already been shown in the publications of Prof. S. D. Gotein and in my own publications, that there was active two-way traffic between Yemen and Egypt at that time, but this is not the place to repeat these matters. This is not just a matter of oral tradition, but there is a provable reliable basis for

it. As I have demonstrated in my edition of the Commentary on the Mishnah, and also with regard to the Mishneh Torah, the changes that Maimonides made over time in the Commentary on the Mishnah, after completing the Mishneh Torah, he then inserted in the Mishnah Torah. These are all found in our manuscripts, but some are not found in the printed texts. And some of the revisions in the Mishneh Torah itself were discussed in the last edition of my Introduction to the Sefer HaMitzvot with the Arabic original, published by Mossad Harav Kook. For the sake of brevity, I will not repeat myself here. They have all been noted in the appropriate places.

The Jews of Yemen, both the hahamim and the individuals, are a conservative group. They would never have presumed to "correct" or "amend" a text that came into their hands, and certainly not the works of Maimonides who was respected by them and elevated in their eyes as a source of truth. As reported by Nachmanides, they would say in the kaddish, "in our life and time, and in life of our master and teacher Maimonides." The early hahamim of Yemen referred to Maimonides as the "Light of our Darkness," the "Light of Israel," the "Moses of his Day," and the "Mordechai of his Day." Rabbi Amram ben Shlomo Alkapai, who lived in the 15<sup>th</sup> century, in his book "Beor Hitkabtsu Hahamim" associated Maimonides with the text "behold I send before you Elijah the prophet," saying that Elijah and Maimonides both proclaimed to the world that "God is the Lord". It is therefore clear that every word and sentence that Maimonides wrote was treated as sacred by them, and they never amended [page 11] any book based on reasoning, and no emendation or variant reading was suggested unless it appeared in the ancient manuscripts. This follows Maimonides himself who wrote in chapter 15, Laws of Lender and Borrower, "and I have already examined the variant texts, ... and I have in Egypt an excerpt of an old Gemara written on parchment in the manner in which they wrote over 500 years ago." Therefore there was preserved in their hands the original version as he wrote it, according to his own last changes. This is proven correct by the surviving manuscripts of Maimonides which conform to the Yemenite manuscripts. Also the most ancient manuscripts from the rest of the world conform to a certain degree with the Yemenite manuscripts.

But in the printed texts, only a few of the changes which Maimonides himself inserted in his book appear, since only a few reached the early printers. Some of the emendations which Maimonides added he wrote in the margins on the side, and the copyists did not pay attention to the correct placement and inserted them in the wrong place, causing much trouble and difficult questions in the understanding of Maimonides' words. I have noted these where they appear. They are few in number, but they have been added to the many other errors that were made. The "editors" tried to deduce changes. The Mishneh Torah was subjected to severe editing by the printers, and various editors who made emendations of style, language, the structure of sentences and the division of halachot. Maimonides himself divided his book into short halachot, as he indicated in his Introduction, so that they would be easily studied and memorized. He did not number the halachot, and the numbers were added by copyists. (Similarly in the case of the Guide to the Perplexed, Maimonides made the divisions, but the copyists inserted the numbering, as noted in my edition.) The Mishneh Torah was heavily edited, to the extent that there is hardly any halacha that has not been emended. I know of no other book that was so severely emended, and the reason is clear. There was no other book that so widely and rapidly disseminated in many countries, and in particular in the "lands of the east." This distribution and dissemination was in manuscript form, so that everyone had a hand in it. As will be explained below, every third or fourth rate scholar who thought himself capable of doing so, would presume to try his hand at making emendations and corrections according to his own understanding. Also, there were truly great scholars who expressed their opinion here and there as a result of a difficult issue raised by the words of Maimonides, and they suggested an alternative reading. They never even thought of changing the text of the book, but others after them did erase the words of Maimonides

and insert the alternative reading proposed by the earlier scholars, thereby distorting the meaning and purpose of Maimonides. But the original words of Maimonides, if they are understood according to their plain meaning, are crystal clear, and the emendations are nothing but mistakes, as I have noted in the text.

It is better when books are printed during the lifetime of the author, like the Shulchan Aruch which was printed during the life of Rabbi Yosef Caro, when hundreds of copies are circulated in a uniform text under the supervision of the author or his reliable agents, and it is much more difficult for others to assault the text. This is not the case where there were hundreds of texts printed years after the death of the author based on a random manuscript that fell into the hands of the printer which had already been contaminated by impure hands. In the past forty years there were printers who glanced at some manuscripts and announced that they were annotating the text of the manuscripts, but their words were for the most part just superficial adornments for their editions. That which they annotated was limited and done in a backhanded way (and it is well known that anything done in a backhanded way does not create an obligation), and even so they did not refrain from recklessly changing the text as they saw fit, or as they saw suggested as a preferred reading in one of the commentaries, as I have noted where they appear. Generally speaking, all of the printed editions which boast and proclaim that they are edited with precision have not made changes from the existing printed texts. All of the errors of the previous "editors," "emenders," [page 12] "correctors" or typesetters were adopted as an inheritance, to be passed on to others, and they have not moved from the position to which these invaders had pushed them. The true words of Maimonides are sometimes presented in the margins or at the end of the book under the heading "textual emendations," and sometimes they are attached to some specific text commentary, one on top and seven on the bottom, randomly without any meaning.

In this edition of ours, we return the matter to its antiquity. We have turned back the wheel eight hundred years to its point of origin, and we are publishing, with God's help, the words of Maimonides in full as we received them from his blessed hand, and they appear on the page as he wrote them and in his language. Only a very few of the printed texts are referred to in my commentary and notes where I felt it was necessary. It can be said with confidence that this is the first time in eight hundred years that Maimonides' book is published according to the Yemenite manuscripts, by Yemenite émigrés. The time has come for those who admired Maimonides, who, according to Nachmanides, included his name in their kaddish prayer, to publish this book as it was received from him.

Just as the text is presented according to the manuscripts, the division of the halachot is presented according to the majority of the manuscripts and fragments of manuscripts in my possession. Since Torah literature around the world quotes from the previously printed texts, I could not ignore them entirely, so that the reader can find what he is looking for without difficulty. Therefore I placed the section numbers from the manuscripts in brackets and the section numbers from the printed texts in parentheses, in an effort to oblige everyone.

## **My Work**

I thought about undertaking this work many years ago when I was young, when I saw the need for a work of this kind as a result of the extended and eternal occupation with the Mishnah Torah by its many students, to provide the reader with the greatest possibility to understand the words of Maimonides as originally intended. I was especially motivated by the attachment of my grandfather and father to the ancient manuscripts. They spared

no effort or resources to obtain complete and partial manuscripts, even single pages, purchasing them at high prices, and paying agents to search through genizas to find any page or half page from the work of Maimonides, in addition to the searches which they conducted themselves, as I described in my preface to the Commentary on the Mishnah.... A portion of the material which was piled in their bags is now in my possession (except for that which was stolen when my books arrived in Israel from Yemen, not an insignificant amount, as I recalled in my introduction to the Guide for the Perplexed). I present here one letter from the many that my grandfather and father wrote to the villages to search the genizas to save what could be saved of the writings of Maimonides. In the summer of 5678 or 2429 (year of contracts) [tr. = 1918 c.e.] one of my grandfather's students, Rabbi Rafael Sari, went on vacation to a village called Kirya Alkabel, or Alkirya, for short, to recuperate. Since there were genizas in the town, my grandfather wrote him to take action to find a worker to open the genizas and collect whatever he could find of the works of Maimonides, and here is the translation of the letter which was given to me by his son, Mr. Ezra Sari.

Monday, 7 Tammuz 2429

Shalom to you and your helpers, our friend Rafael ben Yechiya Al-Sari, may God protect you from all harm and send you a complete healing. Your father-in-law told me that Salam Kalif [page 13] [who was in charge of the synagogue with the genizas] said he would open [the genizas] and remove what was desired and reseal the genizas. Therefore please make an effort to collect what you can find from the pages of the Mishnah in Arabic and the Mishnah Torah manuscripts and pay the person who reseals the geniza and write a check on our account for whatever you expend and we will pay your father-in-law Yechiya Nadaff what ever the amount. Do not fail in this matter. Pay the person to open the geniza and gather the pages in whatever condition you find them in, even if torn, and don't worry about the cost of the opening, closing or the lime for resealing the geniza. We will pay the full cost immediately to your father-in-law Yechiya Nadaff. May God heal you quickly from all disease and be your aid and provider.

Yechiya ben Shlomo Kapach

On the margins of the letter, my father wrote as follows to encourage the agent:

Even torn pages of the Mishnah should not be left behind, but take them, and even half and quarter pages, and continue to search in the geniza under the hall, in addition to the two that are sealed. Try hard and don't worry about the dirt and dust, and even pay the person who removes the pages and gather them. Don't be lazy. Since you are already in Alkirya, perform this great mitzvah. Shalom, David

[photo of letter]

[page 14] I have reproduced a photo of the letter because there are still the likes of Datan and Aviram in the world, shameless individuals who would deny the existence of this letter.

I said to myself that the Mishneh Torah is written in Hebrew in crystal clear language, in a fluid and easy style, and the manuscripts are available in various places. It would therefore be easy for anyone to do this work who is eager, while there are only a few who have the facility to work with the books of Maimonides which were originally written in Arabic. Also the Arabic works have many more apparent errors and distortions than the Mishneh Torah. So I decided, and I still think I was right, to give priority to the Arabic works. Therefore, I first worked on the six orders of the Commentary to the Mishnah,

then the Guide to the Perplexed, then the Sefer Hamitzvot, then those epistles whose authenticity was clear to me without any doubt. I even added something as an appendix, a collection of scripture in Maimonides. After the Creator mercifully helped me finish that work, I decided to carry out my original plan, while working on the books of Rabbi Saadya Gaon, which with the help of God I have already published seven volumes....

The goal of my work was to publish the Mishneh Torah according to our manuscripts. It is true that there are minor variations among the manuscripts, changes which naturally occur as unintentional sprinklings emitted from the quill pen of the copyist, which require close attention to detail. Nevertheless, I noted these, but not in a consistent manner, because I don't spend time on full versus short spellings and so forth, and I generally followed the majority.

As I studied and emended the text, I was again convinced of the rightness of the activity, and how imperative it is to return the crown to its ancient glory, to publish something that has been corrected, and not, as our sages said (Eruvin 53b), to "walk on a path which has been trodden by thieves" who reprint the same mistakes that they copy from earlier editions. Often commentators engaged in lengthy pilpul regarding Maimonides' words, but with the correct text these arguments and explanations are obviated and nullified. I cannot refrain from repeating a true statement that I heard from one of the elders of Yemen. He used to say, "the words of Maimonides need no explanation, simply comprehension." Many times a simple change (not of a sentence or a word, but just a single letter) will settle many questions and eliminate much pilpul. For example, Avoda Zara, Chapter Four, Halacha 13: "The offerings for the repair of the Temple may be redeemed, and afterwards they are burned [*sorfim otam*], as the Torah [tr. Deut. 13:17] says 'booty' and not 'the booty of heaven'." A storm raged about this halacha among all those who cast a hook into the sea of the Talmud, some challenging and some explaining, starting with the Rabad and continuing to our day. "How could they be burned if they were 'booty of heaven'? Why did he call it 'booty' rather than 'booty of heaven' if according to him, it applies even to 'booty of heaven'?" If I assembled everything written on this question it would fill a book. In fact, the correct text in the Yemenite manuscripts is *sorfim otah*, "it is burned," and "it" refers to the subverted city and not to the offerings for the repair of the Temple. Two small holes in the final mem, one at the bottom and one at the side, and the whole problem is solved, the arguments can stop and the entire people may rest peacefully.

Similar dramas are also common with respect to the understanding of the words of Maimonides. Sometimes, one of the early commentators understood the words of Maimonides in a certain way, based on an earlier opinion or an interpretation that he was familiar with from Rashi or one of the geonim. Or perhaps he arrived at an understanding that differed from Maimonides based on his grasp of the development of the sugya in the Talmud, and therefore he questioned Maimonides' words. Sometimes Rabad understood the words of Maimonides in a certain way and included it in his commentary, and other great lights would follow him, like the Maggid Mishneh, the Kesef Mishneh or others. They engaged in pilpul and were hard pressed to explain [page 15] and resolve the text, trying to pull elephants through the eye of a needle, and they didn't budge even an inch from the understanding of the earlier commentator. As Maimonides' said in his Introduction to the Sefer Hamitzvot, all of the opinions were frozen by the views of the original commentator. Had they only tried to understand it differently, there would have been no difficulty in the text. Sometimes the Maggid Mishneh himself or the Kesef Mishneh understood the words of Maimonides in a particular way, and those that came after them followed their interpretation, questioning and resolving questions unnecessarily. There were times when the Kesef Mishneh had before him several variant texts and he cavalierly rejected the correct version saying "this has no meaning," and he was forced to explain the wrong text. It happens that our Yemenite scholars provided a



correct understanding of the words of Maimonides, whereby his words are beautifully understood and conform wonderfully with the text of the Talmud.

Therefore, I have endeavored to seek and to explore many commentaries, which have enlightened and explained the words of Maimonides over the generations. Since there are so many, I set a limit on myself to examine and summarize about 300 works. And so I began my work, reading one at a time. As I maintained the pace I set, I had no staff of assistants, no company of workers, no group of researchers, no assembly of editors, no team of proofreaders, and no secretaries, but in the words of the sweet singer of Israel in Psalms 25:16, I worked "alone and desolate." In addition to the disadvantage of working alone, my work at the great court of appeals took away needed time, and my work on the books of Saadya Gaon and other scholars of Israel took away time as needed, therefore the work took longer than I originally estimated. Before I reached my goal of 300 works (I was still short by about 25), I realized that I was no longer young, and, in the words of Rabbi Avraham Ibn Ezra, Lavan has been pursuing me, I decided to stop at that point, to organize and publish what I had completed, fulfilling the advice of Rabbi Tarfon at the end of Chapter 2 of Pirke Avot, "you are not required to complete the work."

As the ancients said, when an idea is born in this world, it does not remain unfulfilled, but it travels through space until it finds an incubator in which to develop, it grows skin and muscle and becomes a reality. I hope that others will complete the work, if not in my way, then in theirs. I will not hold back photographic copies of any of the manuscripts in my possession that can be used for editing the books of Maimonides. "The Almighty may be praised through me and through them," to quote Rabbi Abahu in Sotah 40a. I hope the objective can be fulfilled, because it is great. Except for the dozens of isolated very ancient folios, pages and half pages covering all parts of the Mishneh Torah, which are close to disintegration and can't be passed from hand to hand.

I use all of them in this edition of mine, and sometimes I find in them clarifying variant readings, as I have noted. Many authors are represented in my work, in their words or mine or in the words of another author who dealt with their words, whether as support or as refutation, as a question or a resolution. Since I did not deal with them consistently, some do not appear in my list. I have not tried to present all those that dealt with a subject or matter, including mere passing references to the words of Maimonides, but just those who focused their discussion on his words, because if I did the former, there would have been no end to the matter. At the end of this preface I have added a list of books whose words are summarized, presented or included in the commentary. In addition, many dozens of additional authors and books are represented in the commentary directly or indirectly.

When I copied the words of commentators, I did not always copy verbatim. Often I summarized, presenting the essence of their approach or my humble understanding of the commentary, but I believe that I preserved the spirit of the matter. This does not preclude [page 16] my misunderstanding of a particular sage, but a judge can only rule based on the evidence before him. This is not the case for the Maggid Mishneh and the Kesef Mishneh whose words I reproduced virtually verbatim, except for minor corrections that appeared to be printing errors. I noted such changes when they occurred, sometimes accompanying their words in brackets, where my notes were short, and sometimes after their words, if longer. There were some commentators where I just referred the reader to their book, even where they dealt directly with the words of Maimonides, because I didn't see them as necessary for an understanding of the simple meaning of the text, which was my goal. Sometime their words were duplicative, and there was nothing new added. In such cases, I simply mentioned the name of the book for the interested reader. Actually, in a work of this kind it is impossible to avoid some duplication, even intentional duplication, because I felt that I had to bring before the reader all the relevant

approaches. Sometimes I repeated the words of Maimonides from other books twice or three times so the reader would not have to search elsewhere above or below.

Among the better known examples, the Mishneh Lamelech was not written by its author as a commentary or as hidushim on Maimonides, but rather as a separate book of hidushim and deep and comprehensive pilpulim of the Gaon Rabbi Rosanes on the works of various authors, early and later authorities, and even hidushim of the author on the Talmud and ancient sources including Mechilta, Sifra, Sifri and others. But in most of his hidushim and pilpulim he does not skip over the words of Maimonides whether at the beginning, the middle, or the end. Therefore Rabbi Yaakov Culi organized and arranged it according to the order of Maimonides and his halachot. Therefore there are places where there is no connection between his hidushim and the words of Maimonides except that they relate to the same topic. Some of them are similar, and I have reproduced only that which was a commentary or explanation of the words of Maimonides in understanding the halacha. It is not my intention to gather and assemble and include all methods of the sages of Israel on the topic, only an explanation of the words of Maimonides according to various interpretations. This is so that we can have in print what we have learned from our serene rabbis, the understanding of Maimonides as received by them from earlier generations, to the extent that it appears to me that they are correct.

To my surprise, there were many many interpretations that I thought were unique to the scholars of Yemen. Now after searching and investigating, I find that some of these same words were already included in the books and commentaries stored in book binderies and which have not been dusted off even by the janitors at the book bindery. I was very happy that what I had learned conformed to the words of other great scholars, and there is nothing new under the sun, the sun of Maimonides. I have noted all of these in my footnotes. I did not limit my work to collection, but also to expression. If I have erred with respect to Maimonides, forgive me because it was unintentional. As I acted with regards to the Mishneh Lamelech, the Mirkevet Hamishneh the Or Samayach, so did I act with regards to Hagahot Maymoniot. I presented all of his words which had a direct connection to the words of Maimonides. But where he presents irrelevant information, such as so-and-so said or so-and-so wrote, I have not presented this because this was not my goal. I have added to my commentary that which I found to be correct from the interpretations of the scholars of Yemen, like Rabbi Yechiya Tabib, Rabbi David Adani, Rabbi Said Darin, my grandfather Rabbi Yechiya Kapach, Rabbi Yechiya Abitz and others.

### **The Goal of Maimonides in the Mishneh Torah**

The goal of Maimonides in the Mishneh Torah, according to his clear statement in his Introduction, is that everyone who is great enough to recognize the limits of his knowledge, as well as those who believe that they have broad knowledge, will be able [page 17] to determine the halacha without the hard work of sifting out the final result from the Gemara, or the words of the geonim which were not all on the same high level, where one says one thing and another says a different thing, as explained by Maimonides in his Introduction to the Sefer Hamitzvot. It is clear that he said this with great restraint. In fact the goal was not to spare work and effort, but to prevent errors and mistakes by those "scholars" who see themselves as divers into the sea of the Talmud. (And who doesn't see himself that way?) We see this in his letter to Rabbi Yosef ben Yehudah quoted above. As he wrote in his introduction to the Mishneh Torah, he also wrote earlier when he just began to think about writing the Mishneh Torah, as indicated in his Introduction to the Sefer Hamitzvot:

Having completed our well-known work which included a commentary to the entire Mishnah, ... I deemed it advisable to compile a compendium which would include all the laws of the Torah and its applications, with nothing omitted. In it I would try, as is my custom, to avoid mentioning differences of opinion and rejected teachings, and to include in it only the established halacha, so that this compendium would include all the laws of the Torah of Moses our Teacher – whether they are applicable in the time of exile or not.... Similarly I found it advisable ... to compose it in the language of the Mishnah, so that it should be easily understood by most of the people. And I would include in it everything that has been established and confirmed from the Torah, omitting no question which might need an answer. At least I would mention the principle by means of which that question can easily be resolved without extensive research. My goal in this work is brevity with completeness – so that the reader might encompass all that is found in the Mishnah and Talmud, Sifra, Sifre, and Tosefta, and even all the regulations of the later Geonim, of blessed memory, and what they have explained and commented upon concerning the prohibited and permissible, unclean and clean, invalid and valid, liable and free, pay and not pay, swear and free from searing. In short, outside this work there was to be no need after the Torah for another book to learn anything whatsoever that is required in the whole Torah, whether it be a law of the Torah or of the rabbis.

It is appropriate to pay attention to Maimonides' special emphasis: "At least I would mention the principle by means of which that question can easily be resolved without extensive research." That is to say that this book was intended not just to rule on simple laws that were expressly explained in it, but also for the reader to be able to compare events and occurrences that would take place in future generations and times to what is said in the book, and, according to the foundations which were established in it, to rule without hesitation. This was the understanding of Rabbenu Yerocham, as noted by Rabbi Shneur Zalman in his pure Shulchan Aruch and as discussed below. On this point alone, this comparing situations to what was said in the Mishneh Torah, the Rosh [tr. Rabbi Asher ben Yechiel] developed reservations when he actually saw a teacher who compared the case before him to the ruling in the Mishneh Torah and erred. Therefore he wrote that no one should rule based on a comparison to what was said in the Mishneh Torah unless he knew the Talmud. But according to the view of Maimonides, it is better that one person err, as in the case reported by the Rosh, rather than having almost everyone (or even everyone) err. And more serious than this, many misunderstood the intent of the Rosh's words, and imagined that his intent was that no one should rule based on the Mishneh Torah even as to matters explained in simple terms. This never occurred to the Rosh and was never his intent, as stated by Rabbi Shneur Zalman and as noted below.

The primary impetus for the composition of the Mishneh Torah was Maimonides' zealotry for God and his people. Should it be that the people of the Torah does not have a book that encompasses all the laws and judgments that it is obligated to follow, in an ordered manner, in simple language understandable to every reader? Instead all of the laws and judgments of the Torah were spread across many different books, mingled and intertwined among debates and deep analyses, without clear distinction between what is a final result which is the halacha, and what is rejected. And who is wise enough to separate the former from the latter? As he wrote to his student Rabbi Yosef ben Yehudah (Letter of Maimonides, my edition, page 125):

Know that I did not write this book to become great in Israel or to publicize my name.... Rather I wrote it... to exalt God, since I was truly zealous for God, the Lord of Israel, when I saw a people without a true book, and without correct and precise religious views. Therefore I did what I did for God alone.... And further, I knew, and it was clear to me

when I wrote it, that it would certainly fall [page 18] into the hands of persons with evil and jealous hearts, who will belittle its attributes and who will think there is no need for it, or that it is incomplete; persons of simple intellect who will not appreciate the value of what I have done, to whom it will seem to be of little use; persons who are confused novice dreamers who will have difficulty understanding several matters whose sources they do not know; persons whose intellect is too limited to be as analytical as I have been; and the hypocritically pious persons whose fossilized and twisted imagination will slander what it includes about the foundations of the knowledge of faith, etc.

This is even more so in our day when ignorance has increased together with arrogant individuals who break all the rules, who turn their ignorance into fanaticism, and their impure defilement into sanctity, and who are ready to impose their abominations on all who are impressed by their brazenness. But Maimonides has already taught us in the above referenced letter (see my edition note 4) to reject absolutely those deniers and abominators, those shadows of human beings. "In every generation they rise against us to destroy us, and the Holy One saves us from their hands," as our ancestors established for us to say on the festival of redemption, of general and particular redemption.

### **The General Practice is to Rule According to Maimonides**

As we said, apparent objections arose regarding the declared objectives of Maimonides that people should make rulings based on his book without looking first at the Gemara and other sources. This is the language of Rabbi Yosef Caro in his Introduction to his commentary Kesef Mishneh, in its entirety:

I have seen what the great light Maimonides has done. "Moses undertook to explain this Torah," "the Torah that Moses commanded us as a heritage." He wrote the great Yad [Mishneh Torah] concerning all the laws of the entire Torah, its principles and precise details. No one can compare with him as a teacher, using short clear language like the language of the Mishnah, and the generations following him were too limited to understand his words and to probe the depths of his pure and highly refined statements. Also the source of each law was hidden from them. This was noted by Rabad, and in several places one needs a carpenter and the son of a carpenter to extract the answers. The Ramach [tr. Rabbi Moshe HaCohen] also commented on the Mishneh Torah and its words seemed like a sealed book. As the Rosh wrote in a responsum [Section 31 paragraph 9]

All who issue rulings from the words of Maimonides who are not expert enough in Mishnah and Gemara to know from where Maimonides derives his statements, will err in permitting the prohibited and prohibiting the permitted, because each reader thinks he understands it, but he doesn't. If he doesn't understand Mishnah and Gemara and does not understand how to confirm and verify a statement, he will stumble in the law and its application. Therefore no one should rely on his reading of the Mishneh Torah to rule on matters unless he finds a proof-text in the Gemara. I have heard from a great man in Barcelona who was expert in three of the six orders of the Talmud who said "I am amazed at individuals who have not learned Gemara who read the books of Maimonides and issue rulings based on his books and think their rulings will be recognized." For he said, "I myself know the laws of Kodashim, but I do not know Zeraim at all, and I know that this is how it is with them with regards to all of the Mishneh Torah."

One holy person wrote a commentary on the Mishneh Torah called Maggid Mishneh in which he revealed the source of every law, and if the law was the subject of controversy he provided support for the position of Maimonides. And he resolved and explained the hassagot of Rabad. I heard that the author of the Maggid Mishneh is Vidal of Tolosa, a friend of Rabbenu Nissim [the Rivash [tr. Yitzchak ben Sheshet Perfet] agreed in his responsum #398 to the Ran [tr. Rabbenu Nissim]. And he responded to his son in #483. See the Or Sameach [tr. of Rabbi Meir Simcha]. But we have only benefited from his illumination of Zmanim, Nashim, Kedushah, Nzikin, Kinyan and Mishpatim [tr. six of the fourteen books of the Mishneh Torah]. And even in those books there remain a few laws and a few chapters whose commentary has not reached us. My soul yearns to understand Maimonides' words in his entire book and to know their source and meaning. I have seen others yearning for this as well. Therefore, I, the young Yosef ben R' Ephraim ben R' Yosef Caro, aroused and strengthened myself with the mercies of Heaven, and I decided [page 19] to write about the rest of the books of Maimonides, the source of each law, and to explain his words, and to respond to the hassagot of Rabad and the comments of Ramach, to the limited extent of my ability. Even in the books on which the Maggid Mishneh commented there remain places that require further specificity, and I shall turn my hand to them. If I find material in the commentators on the Gemara or the Rif [tr. Rabbi Yitzchak ben Yaakov Alfasi] or in their responsa which add to an understanding of Maimonides, I will quote their words. And if I am able to resolve issues in other ways, I will write as I am guided by Heaven.... Where I cannot find answers in the words of these commentators, I will provide my humble opinion. I depend on the kindness and unmerited grace of God to enlighten me to understand to improve and to plumb the depths of Maimonides, and reveal to me an understanding of the wonders of his teaching. I call this book Kesef Mishneh [tr. see Genesis 43:12], because it yearns [kosef nichsafim] to understand this valuable book, the Mishneh Torah. I pray that the True and Exalted Helper aid and support me for the honor of His name, and revelation shall come to the humble and I will see the wonders of His Torah.

These are the words of the Introduction of the Kesef Mishneh. I pray that his prayer will stand for me as well, and the Exalted True Helper will help me. However, where he (and the Rivash in his Responsa #44) wrote in the name of the Rosh, they both only quoted the second half of the Rosh. According to Rabbi Shneur Zalman in his pure Shulchan Aruch, it was not proper to do this, since the intent of the Rosh was not to say that only the outstanding scholar of a generation can rule based on the Mishneh Torah, as it would appear from the quoted half of his words. Rather, as anyone who examines the entire responsum will understand, the Rosh only intended to prohibit rulings based on matters that are not expressly explained by Maimonides, where the person issuing the ruling merely analogizes the situation before him to a ruling of Maimonides. The Rosh prohibited only this practice, and it never occurred to the Rosh to prohibit ruling according to the express words of Maimonides where there is no requirement of analogizing.

Rabbi Shneur Zalman wrote in Hilchot Talmud Torah, Chapter 2, in the last section:

Maimonides followed his method in the Mishneh Torah of not providing any reasons for the laws, and he designed it be enable a person to rule from it alone, as he wrote in his Introduction, and that no other book would be necessary at all, etc. And not as the Maadanei Melech [called Maadanei Yom Tov on the Rosh, by Rabbi Yom Tov Lipman Heller Halevi, author of the Tosafot Yom Tov on the Mishnah] wrote in his introduction, that it is only for those who are already expert in the Talmud. The Rosh did not write this

in his responsum, rather he only asked about the fixed order of study for a person who is a professional scholar, but not about issuing rulings.

The passage in Sotah 22a which says "persons who issue rulings based on the Mishnah [tr. without studying the Gemara] are considered ruiners of the world" is not in disagreement with Maimonides. As Rashi explained this passage, there are many individual opinions in the Mishnah which are not the law, and this passage relates particularly to the Mishnah. It is not applicable to the Mishneh Torah which was written based on the deductions of the Talmud. The Rosh who wrote his responsum (Section 31, #9) (the end of which is reproduced by the Kesef Mishneh) agrees with the first reason presented by Rashi regarding analogies and for this reason he prohibited ruling by analogy even as to matters that may appear to be explicit in the Mishneh Torah lest one err in his analogy. This is the substance of Rashi's statement at Sotah 22a (the comment beginning "But did not serve scholars") and this is what the Rosh was talking about, that is to say, when the posek analogizes the matter before him to the ruling of Maimonides. But where the specific matter is explicit in Maimonides, the Rosh agrees that it is proper to rule according to Maimonides without any other investigation, since that is what the Mishneh Torah was written for. Rabbenu Yerocham (Part 2 end of Chapter 4 of Sefer Mesharim) says "Every matter that that is not covered in the Gemara, etc." He meant a matter that comes before the posek where an identical precedent did not come before the sages of the Gemara. Rabbenu Yerocham stated there "And if it is stated simply in the Mishnah or Gemara, etc.," In his book he follows the approach of Maimonides who did not provide any reasons for laws, and he wrote it also for people to rule from it alone, "for all who wish to rely on the law as written in the book, etc." Also the author of the Nehora D'Oraita [tr. R' Yehoshua Falk Zeev ben Yosef Tzvi] hinted at the words of Rabbi Shneur Zalman in Article 2 Chapter 16. In order that the words of Rabbi Shneur Zalman be understood, I reproduce here the first half of the responsum of the Rosh, and the actual situation which is described in the responsum. [page 20]

The Rosh wrote in Section 31, #9:

A rabbi wrote about ...[a question involving a mikva] where he prohibited the use of the water. He gave as his reason ...[a passage from the Mishneh Torah, Chapter 9, Law 4, of Mikvaot]. But he was not correct, and the use of the water should have been permitted.... The rabbi did not understand what he quoted from Maimonides, since Maimonides was quoting a passage from the Tosefta [Mikvaot, Chapter 1:6] ... which did not relate to a mikva but rather to the difference between collected water and rain drippings... Therefore those who rule based on Maimonides and who are not expert enough in the Talmud to know the source of Maimonides' words will err by permitting the prohibited and prohibiting the permitted, as noted previously in the Kesef Mishneh.

You now understand that the words of Rabbi Shneur Zalman are clear, and I have elaborated on his clarification. This half of the responsum has served as ammunition for me to attack the position that one should not rule from the Mishneh Torah. Rabbenu Yerocham also disagrees with this position and believes that even a posek who is not expert in the source of the law may analogize his situation to the express ruling of Maimonides and issue rulings. Even if he errs in his analogy, it is better that one person in a hundred should err rather than ninety-nine erring by looking in the Talmud and thinking that they are experts in it. And who does not think he is an expert in Talmud? This was also the opinion of Rabbi Hayyim ben Attar of blessed memory.

The Rishon Letzion [tr. Rabbi Hayyim ben Attar] in his hidushim on Brachot 60 wrote: "If you would disagree with the words of Maimonides which mention only the halacha, I have already written in several places that Maimonides expected that people would issue

rulings based on his book without any need to review the Talmud, and you should remember this principle." And in his hidushim on Sukkah 12, he wrote: "Maimonides expected the student of his book to understand matters based exclusively on what he wrote."

This question (of ruling based on the straightforward text of the Mishneh Torah versus prior examination of the Talmud) previously arose at the royal table, at the school of Maimonides' son Rabbi Avraham Hanaggid, and was put in its place by Maimonides and by his son Rabbi Avraham. A person who was present at the school of Rabbi Avraham reported, as publicized in Tarbiz Vol. 25 page 424, translated from Arabic, as follows:

I will tell you something heard by me and someone else who was present with me at the school of the holy pious Rabbi Avraham when he responded to one of his students who knew a little Talmud and wanted to explain something in the Mishneh Torah based on the Talmud. Rabbi Avraham said "Something like this happened to my father with a man who traveled from Cairo to Fostat to the bet midrash of my father, of blessed memory. This man considered himself [page 21] knowledgeable in Talmud. When he arrived at the bet midrash, a question arose about the Mishneh Torah, and Maimonides explained it according to its simple meaning and substance. Since this question was the subject of some debate in the Talmud, the man went to Maimonides and wanted to explain the passage using the discussion in the Talmud. Maimonides responded: 'If our goal was to explain the Mishneh Torah by using the Talmud, we would not have composed the Mishneh Torah.' That negated any argument that the Mishneh Torah should not be studied except by means of the Talmud.

There is good reason to question those who argue that the Mishneh Torah can't be understood without recourse to the Talmud. How could it be that something written in simple language and easy style can't be understood without recourse to something difficult and abstruse? This is against common sense.

The view that it is desirable to have scholars (and certainly prominent individuals who consider themselves scholars) rule from a code of laws rather than from the Talmud, emerges from the statements of great sages, including Rabbi Yosef Ibn Migash in Responsum #104. There he was asked about a person issuing rulings based on the responsa of the geonim where the Talmudic source of the law is not known. He answered: "This person is more worthy to issue rulings than many other self-appointed individuals in our time who think they can issue ruling by examining the Talmud. It is they who should be stopped. The person who issues rulings based on the responsa of the geonim and relies on them, even though he does not understand the Talmudic basis, is more appropriate and praiseworthy."

Similarly, the Haggahot Maimuniyyot [tr. Rabbi Meir Hakohen of Rothenburg] wrote in chapter 5 of Hilchot Talmud Torah note 3: Our teacher [tr. Meir ben Baruch of Rothenberg?] taught that a person may rule according to any ruling that he sees explicitly in the books of the Geonim, even while his teacher is alive and even if he is an exceptional student, except that he should not rule based on his own opinion, he should not depend on his own proofs, and he should not draw analogies from one situation to another.

Even the Kesef Mishneh himself, who reproduced half of the responsum of the Rosh which left the appearance that it left, truly understood the words of Rabbi Shneur Zalman, and agreed in practice with Rabbi Yerocham, that the rulings of Maimonides should be followed in all cases, as demonstrated in his clear words which contradict what appeared to be the position of the Rosh, and this is what he said in his response to the comment of Rabad at the end of Maimonides' Introduction:

I say with regard to the purpose of Maimonides, if he merely wanted to follow the path of earlier writers, what would he have been able to add to the words of the Rif who generally agrees with him? His innovation was to write the halacha in clear short language like the Mishnah. Every wise person who came after him can rely on his clarity. And if there is some great scholar who does not wish to depend on Maimonides clarity without weighing the matter in his mind, who will prevent him from examining the books of the Gemara and the commentators? We find that this method of Maimonides is the standard for the whole world, except for the single leading scholar of a generation. Even for him it can serve as a standard and if he is in a hurry to issue a ruling, he can rely on Maimonides. Even when he is not rushed, it is no small thing to know the opinion of Maimonides.

It is clear that the method of Maimonides is a standard for the whole world to use, except for the single leading scholar of a generation. That time has passed when we had a single leading scholar of a generation. Today, when we have many single leading scholars of the generation (and the rule is that more is less), according to the decision and ruling of the Kesef Mishneh, we should rely only on Maimonides. The Kesef Mishneh himself actually acted this way. He did not rely on his own clarifications even though he was the single leading scholar of his generation. Rather according to his declared decision, he established for himself three pillars of instruction: the Rif, Maimonides and the Rosh. Wherever any two of them had the same position, that was his position. So the general practice became to rule according to Maimonides, and there is no single leading scholar of the generation in any country. Even the Rivash himself, who copied half of the responsum of the Rosh, which apparently seemed to say that only great scholars are authorized to rule based on Maimonides, wrote in his responsa, #55: "In all these countries, they followed [page 22] Maimonides in all matters." He even testified in his responsum #5 that they had no books other than the Gemara and Maimonides. "Here too I have found nothing of the commentaries, hidushim and tosafot, only the books of Maimonides and the Gemara." It is clear that the Rivash testified regarding applied halacha, and not as you might have originally thought. And his testimony related to all the towns of Algeria and the western interior.

The Radbaz [tr. Rabbi David ben Abi Zimra] also testified in several responsa that all of Egypt was Maimonides territory, and they followed his rulings. Was all of Egypt expert in the chambers of the Talmud? See Responsa of the Radbaz, numbers 192, 200, 229, 328, 335, 366, 369, 415, 433, 506, 518, 534, 547, 556, 604, 706, 825, 897, 934, 962, 966, 991, 1007, 1018, 1140, 1186, 1207, 1361 and 1383. The Radbaz also testified that the land of Israel was Maimonides territory and they followed his rulings. As he said, "He is the rabbi of all these provinces." See Part 2 # 731.

See also the testimony of Rabbi Moshe Alashkar regarding the custom of ruling according to Maimonides, Responsa sections 16, 26, 63, 79 and others. The Maharitz [tr. Rabbi Yahya Ben Yosef Tzalich] in his book Peulat Tzaddik, Part 2, Section 251 and elsewhere similarly testified regarding Yemen.

We know of the decision in Toledo that no one should teach or rule in contradiction to Maimonides. See Y. Baer, History of the Jews in Christian Spain, page 955. Similarly in the lands of Castile and Tunis. As Rabbi Avraham Zacuto wrote in Sefer Yuchasin, page 122 "When the Mishneh Torah was published and distributed in all of the Diaspora, all Israel agreed to follow it and to act according to it in all laws of the Torah."

Rabbi Jacob of Prague in responsum #59 wrote that we have received a tradition from the geonim of Egypt and the scholars of the West which say that all the communities from the farthest point west and the land of Egypt, Syria, Persia, and Yemen all undertook to act according to the Mishneh Torah. With regards to the land of Israel, Rabbi Abraham



wrote that it was Maimonides territory, as did the Rashbash [tr. Rabbi Shlomo ben Shimon Duran] in responsum #251. And all these lands were not unique in their generation nor even in all generations.

Also the Kesef Mishneh himself testified regarding the general rule. As he wrote in his response to Rabad (and not as appears in the section that he reproduced from the responsum of the Rosh) and as he wrote in his responsa Avkat Rochel #32 and #140, Maimonides is the greatest of the poskim, and all communities of the land of Israel and... and the west follow Maimonides and accept him as their rabbi. Similarly he ruled in the Bet Yosef, Yoreh Deah #275. In the Kesef Mishneh Hilchot Terumot Chapter 1 Law 11, Yosef Caro and his court excommunicated anyone in the land of Israel who did not act in accordance with Maimonides, since the early authorities undertook to follow his rulings. Is it possible that they undertook to follow Maimonides in every city and village only after having received the authorization of the single leading scholar of the generation, or rather that the general rule was to follow Maimonides as the simple man understands him, as stated by Rabbi Hayyim ben Attar. See also the responsa of Ralbah [tr. Rabbi Levi ben Habib] #32, Rabbi Bezalel Ashkenazi #1, Rashdam [tr. Rabbi Shmuel De Modena] Yoreh Deah # 193, Moshe ben Yosef Trani Chapter 3 #51, Rabbi Moshe Alshekh #96 and many many others, because this was before greatness was stretched out in the world.

We should follow the simple meaning of Maimonides' words without any hesitation, but not just as a general rule. Even more than this, according to the leading scholars of their generations, such as the Ralbach in his responsum #12, and the Rashach [tr. Rabbi Shlomo Cohen] Part 2 #197, who say that we should not reject the words of Maimonides anywhere, even though we have difficulty reconciling them with a well known position of the Gemara. Rather we should blame any apparent deficiency on our limited knowledge and comprehension.

### **Why Maimonides Limited Himself to Reproducing Only the Laws from the Sources**

It is well known and accepted that Maimonides wrote only the laws that are expressed in the sources, as he stated in his Introduction. Later authorities were divided on the issue of whether he also presents matters that were stated in the Talmud by way of specification or hints. See Bet Yosef Yoreh Deah #196, the Bach Yoreh Deah # 48 and #217 and Mishneh Lamelech Hilchot Maaseh ha-Korbanot Chapter 18. See Rabbi Hayyim Benvenisti, Knesset Hagdolah, Even HaEzer #159, stating that he presents several sources from the Talmud that were stated by way of specification or hints. In any event, it is clear to all that Maimonides does not present his own hidushim or deductions from the sources. The more than one hundred places where he wrote "it seem to me" or "in my opinion" prove that these statements are in essence innovative comments that cannot be learned from the sources. This is not like the practice of the sages of the Tosafot and the other sages of France of that and later generations. It appears that Maimonides acted this way because he reasoned that, even after the writing of the Mishnah was permitted by Rabbi Judah and the Mishnah was actually written, this is how Rabbi Chiyya acted in writing the Tosefta (which is nothing more than a collection of the statements of tannaim that were not included in the Mishneh), and how Rabbi Hosheya acted writing in Breshit Rabbah. The other collectors of the Mechiltas, Sifra and Sifre acted similarly. Despite the writing of the Mishnah, the restriction was not entirely released so that all who want to are entitled to write their own opinions and innovations. Rather the relaxation of the restriction was only for a specific time and for those traditions that were the essence and foundation of the Oral Law and not more. As is stated in Temurah 14, in apparently puzzling language:

When Rav Dimi heard in the name of Rabbi Joshua ben Levi, that drink offerings which accompany a sacrifice can only be offered in daytime, he said, if he could find a messenger going to Babylonia he would write a letter and send it to Rabbi Yosef in Babylonia. The Talmud asks, how could he do this? That is, how could he write a letter and send it when it is forbidden to write down the oral law? And they explained, "the rule is different when it involves a new interpretation."

On its face the whole question is puzzling, since it was asked at the time of the amoraim, many years after the writing of the oral law was permitted, that is to say the Mishnah of Rabbi Judah and everything else that his students did. We must therefore concede that that the amoraim determined that the restriction was not entirely lifted with the writing of the Mishnah. The restriction, that is the prohibition on writing oral law, was set aside [tr. as discussed in Temurah 14] because of the verse "It is time for the Lord to work, they have made void your law" [tr. Psalms 119:126]. It was set aside but not eliminated. Just like the debates of our sages where the rules of Shabbat are set aside rather than eliminated in the case of danger to life, and the rules of impurity in the case of a public offering are set aside rather than eliminated. Therefore the amoraim too did not permit themselves to write every innovation. Just the foundations and principles that could not be learned easily from the Mishnah, since "the rule is different when it involves a new interpretation." Just as every setting aside, whether with respect to impurities in public offerings or Shabbat and danger to life, is constrained and limited just to the necessary cases, so the permission to write the oral law was limited to the necessary cases only, and it should not be expanded. Maimonides hinted at this in his introduction to his Commentary on the Mishnah, when he said that Rav Ashi did what no one else could do in commenting on the Mishnah. Maimonides wrote just the innovations that could not be learned from the existing sources, and he suggested that, in the Commentary on the Mishnah (and this is the case in the Mishneh Torah as well), he did just what Rav Ashi did, and he clarified from the Talmud what most people would have difficulty understanding. And these are his words:

I then sought to write an indispensable commentary on the entire Mishnah as I will explain below. What brought me to this was seeing that the Talmud did for the Mishnah what no person could have ever deduced from logic. It presents principles and says that a particular mishnah is constructed in a certain way, or another mishnah is missing words and should be as follows, or another mishnah is the opinion of so-and-so and his reasoning is as follows, and it adds and deletes from the text and reveals its rationale.

This is the rationale and reason which the incomparable Maimonides gave for limiting himself, in this great incomparable work, to the laws which were stated in the ancient sources alone, that is the Mishnah, Mechiltas, Sifra, Sifre, Tosafot and the two Talmuds.

People erred by not seeing that Maimonides did not write his own innovative laws deriving them [page 24] from a deep or superficial interpretation of the sources, and they erred by thinking that the objective of Maimonides was educational, like his language, rather than practical, saying that Maimonides' goal in the Mishnah Torah in collecting and assembling all the laws of the Torah was not so that people should follow them and rule based on his book. They ignored the Talmud in Temurah, and even the words of Maimonides himself in his letter to Rabbi Yosef ben Yehuda.

In addition to the halachic restriction against expansive writing discussed above, Maimonides did not look kindly on expansive writing based on sad experience, especially since the essence of writing is jealousy -- doubly so, the jealousy of writing and the jealousy of contradiction. It is usually unnecessary, and even where there is some necessity, in several cases it is done without proper confirmation. He expressed his bitterness based on what was done in this area in his day, and all the more so in our day

when matters have broken through all bounds and crossed all limits. This is what he said in the Moreh Nevuchim Part 1, Chapter 71:

You already know that even the received oral law was not written down in earlier times, according to the commandment which is well known among the people "Words which I communicated to you orally you are not authorized to communicate in writing." (Gittin 60) This is basic wisdom of the Torah, since it was intended to prevent what ultimately happened, that is the multiplicity of explanations, the variety of schools, the unclear statements that appear in authors' explanations, the forgetfulness that occurs, the renewed disputes among people, the establishment of sects, and the confusion in practice ... There was concern about writing the laws in a book that would be available to everyone because of the harm that would ultimately be caused." [See my edition note 10.]

And he wrote similarly in Part 3, Chapter 41, as follows:

Since it was known by exalted God that the laws of the Torah will need, in every time and place, additions in some cases and subtractions in some cases, according to varied places and events and the requirements of the circumstances, He therefore warned about additions and subtractions, and said "Do not add to it and do not subtract from it", for it leads to damage to the laws of the Torah, and to the belief that it is not from God. He authorized the scholars of each generation, that is the Great Court, to make a fence to protect those laws of the Torah, and to make innovations when need to repair breaches. They established those fences for the generations, as it is said "Build a fence around the Torah" (Avot 1:1) ... If this particularized speculation had been permitted to every scholar, people would have perished because of the multiplicity of disputes and the fragmentation of methodologies. Therefore the Exalted One warned that the rest of the scholars should not undertake this, only the Great Court alone.

The situation extended over the generations of the Diaspora, and decrees and customs proliferated, the rulings and the laws, and even decrees whose promulgator was not clearly known, and only "we heard that so-and-so decreed." They are observed even more than the laws of the Torah itself, and they are imposed with force even on those who did not hear what so-and-so decreed.

This is the rationale and reason that Maimonides did not write in his great work "some say this and some say that" except in a very few places that can be counted by a child. According to his opinion, this approach would have taken us back to the days of creation, and not just to the status of a "nation without a true book" but even the level and science of learning is diminished. As is stated in Nedarim 8, "If one was placed under a ban in a dream, ten persons are necessary for lifting the ban. They must have learned halacha; but if they had only studied ["matnu"], they cannot lift the ban." See the Ran there. Maimonides read and interpreted it as he wrote in Hilchot Talmud Torah, Chapter 7 halacha 12: "Ten men who studied halacha are needed to lift the ban, and if he did not find them, he must take pains to search a distance for them, and if he still doesn't find them, ten persons who only studied Mishnah may lift the ban." We see that he explains "matnu" to mean they studied Mishnah and "tanu hilcheta" to mean they studied actual halachot, decided halachot, such as the Mishneh Torah. The reason for his opinion is simple. If Rabbi X says this and Rabbi Y says that, then "vision is not widespread." [tr. Samuel 3:1] Based on all the foregoing, [page 25] he constructed his book the way he did, and included what he did, and refrained from adding hidushim which he thought up or drew from the depths of his understanding.

Not just Maimonides saw the disadvantages of the many works, but also the later authorities reached the same conclusion because of the reality which they saw and

experienced, although they did not deal with the restriction on the expansion of writing. This is what Nachalat Shiv'a wrote in responsa #50:

This is how Maharshak [tr. Rabbi Aharon Shmuel Kaidanover] responded to me, in summary: Everything that they innovated on their own, I say, should be withdrawn, because in my view they are in error, Indeed, I credit them for what they do on their own since they do not have the Bet Yosef at hand, and they focus on the Taz and the Shach. That is not how I work, since the essence of my work is with the early poskim and the Talmud.... If anyone is at my bet midrash, I will show him bundles of errors on every page of their books, therefore I don't work with them, thank God, and he would be better to sell the books, etc.

See also Rabbi A. Almaliach in his book *Beka L'Gulgolet*, page 23b and page 28a, who has even sharper words. Even though they exaggerate, they are based on a solid foundation.

### **The Goal of Rabad in his Hasagot**

Rabbi Menachem Azaryah da Fano is quoted in *Responsum 108* as follows:

God forbid that one should think that the holy Rabad intended to lessen the honor of Maimonides. Rather he laid bare his holy arm to differ with Maimonides in the body of several halachot, so that everyone would not follow him to learn and teach the philosophical principles of the *Moreh Nevuchim* and similar works. See what Rabad himself wrote in Chapter 6 of *Kilayim*, that Maimonides did great work in gathering and assembling all the halachot.

But in my opinion these words have no foundation. Rabad never saw the *Moreh Nevuchim*. The *More Nevuchim* was composed in Arabic, and Rabad did not know Arabic. Rabbi Shmuel Ibn Tibbon did not finish his Hebrew translation of the *Mishneh Torah* until 1204 and Rabad died in 1198, over 5 years earlier. See the *Shevet MiYehuyda* [tr. Shlomo ibn Virga] quoted in the introduction of Rabbi Professor Shmuel Atlas of blessed memory to Rabad's Commentary on *Baba Kamma*. (It is true that while Maimonides saw the *hassagot* of Rabad, he did not relate directly to them at all, as was his custom. He characterized his reaction to his opponents in his letter to his student Rabbi Yosef ben Yehuda, contained in my edition of the *Letters of Maimonides*.)

It seems to me that the purpose of Rabad was not to oppose Maimonides, nor was it to present his own views regarding this or that law, but to show to the student of Maimonides' works immediately and at the locus that there is another view in opposition to that of Maimonides, and that he should not think that the matters presented before him are agreed to by everyone. In his *hassagot*, Rabad specifically did not present his own opinion, approach or method. Rabad's nature was to present his words sharply, but his sharpness of expression against Maimonides is very subdued compared to his sharpness towards others like Rabbi Zerachyah Halevi and others. Rabad was very wealthy and a great Torah scholar. Hundreds of students gathered around him in appreciation. All these are important factors leading to high self esteem, and his words found expression in his responsa (my edition #20) regarding a particular law that needed to have its underlying rationale revealed, he wrote:

Here I am revealing its secrets ... to serve as a model for those who follow me. If they must accept my words without investigation since I am older and wiser than they are, therefore it is worthwhile to explain the rationale so that others will learn from it. Also to be saved from the slanderers who burst forth asking their father "what are you

begetting?" and the woman "with what are you in labor?" [tr. see Isaiah 45:10], for they are wise in their own eyes. Therefore I decided to reveal its secret and make the essence of the halacha.

This goal of Rabad (that is to show that Maimonides' opinion and method is not the only opinion, but that there are other differing opinions and rationales) was also the objective of the Haggahot Maymuniyot, except that their words [page 26] were stated delicately with refinement and in a different kind of language and spirit, not like someone objecting to a preacher. But the objective was the same.

Since this is the case, it seems to me that Rabad did not express in his hassagot his own opinion or his applied halachic methodology at all. Some poskim debate whether every place where Rabad did not comment on Maimonides was because he was in agreement with him, as opposed to others who debate whether or not Maimonides was of two opinions, as is presented by the Sde Hemed [tr. Rabbis Hizkiya Hayyim Medini] in Clalei Haposkim Section 6. It seem to me that that we should not assume that Rabad agreed where he was silent or that he disagreed where he commented, but rather that he was disclosing to the reader the existence of another opinion. What Rabad wrote should not be considered his view or decision, except in the case of his responsa which are applied halacha, and in his hidushim on the Talmud, but not his hassagot in opposition to Maimonides or Rabbi Zerachya Halevi and others. I have already noted in my introduction to the Responsa of the Rabad (my edition) several places where the opinion, method and reasoning of Rabad in his responsa did not agree with Maimonides, but he did not comment on these matters in his commentary to the Mishneh Torah. See also the instructive preface of Rabbi S. Atlas to the commentary of Rabad to Masechet Baba Kamma page 1, note 1, and page 42 note 55 where he notes several places where the opinion of Rabad in his hassagot contradicts his opinion in his commentary. Rabbi Atlas believed that Rabad changed his mind regarding the hassagot. But it seems to me that this is not the case, because if it were, Rabad would have erased the hassagot where he changed his mind, and we would have found different versions of the hassagot. But we have found none. Therefore it seems clear to me that he did not intend to express his own opinion in the hassagot. See also Avney Shoham [tr. Rabbi Avraham ben Yaakov Peretz] on Rabad's hassaga on Hilchot Hametz Umatza, Chapter 2 halacha 10 and 12 and what he wrote in Hilchot Ishut, chapter 22 Halacha 15 where he considers the matter from one point of view and comments and considers it from another point of view and comments. And see Amar Yosef [tr. Rabbi Yosef Alkalai] on Hilchot Shofar Halacha 3, Shofar Hagzul. And in Sukkah regarding lulav hagazul where his hassagot appear contradictory. And see the Sha'ar Ha-Meleh [tr. Rabbi Yitzchak ben Moshe Nuñez Belmonte] Hilchot Yom Tov chapter 5 Halacha 15 where in his hassaga on the Meor it appears that his view is that of the Rif and Maimonides and he has a hassaga on Maimonides. And see the Helek Yaakov [tr. Rabbi Yaakov Albeli] who challenges the hassaga on in Hilchot Brachot chapter 8, halacha 12 based on what the Rosh wrote in the name of Rabad. See his hassaga on Hilchot Kilayim chapter 1, halacha 3, and to the contrary see the Tur and what the Rosh wrote in the name of Rabad. And based on all these good words quoted in the name of Rabad, it appears that we should not think that Rabad wrote about applied halacha in his hassagot at all, or that that his silence regarding Maimonides or Rabbi Zerachiah Halevi means agreement, nor his hassagot as disagreement, but rather enlightening the reader regarding the reality of a different opinion or reasoning so that the reader will notice and attempt to study the matter, in depth if he can and is "the leading scholar of the generation" in the words of the Kesef Mishneh above. And this method was not something new that Rabad discovered but a path that was paved and occupied before by great sages of Israel that is to debate a matter not for the sake of debate and not because of disagreement be to descend to the explore the depths of matters and to arrive at the essence of the law being discussed. See Maimonides Commentary on the Mishnah Mikvaot Chapter 7 Halacha 1 Rabbi Akiba said Rabbi Yishmael would rule against me

there Maimonides wrote in his Commentary "He was not disagreeing with rabbi Akiba but was engaging in an intellectual debate, but that was not his position." See my edition because the printed versions are corrupted. See also Eruvin 13b "It is openly known before the Creator that there was no one equal to Rabbi Meir in his generation; then why was not the halacha fixed in accordance with his views [as is stated in Eruvin 46b]? Because his colleagues could not fathom the depths of his mind, for he would declare the ritually unclean to be clean and supply plausible proof, and the ritually clean to be unclean and also supply plausible proof." This was the method of the sharpest minds of the great scholars of Israel from whose waters we drink, and this, in my opinion, was the method of Rabad in all his hassagot, especially with regard to Maimonides, and he did not write them to establish halacha.

We are obligated to have this in mind when we come to study the words of Maimonides, that is that all his words were stated with the objective of brevity and as the testament of our sages "A person should always teach his student in the most concise manner" (Pesahim 50, Hulin 53). If we see a sentence in his writing which seems superfluous, we must recognize that it is not superfluous, and we must understand what Maimonides intended to include. Similarly if it appears to us that there is repetition in a specific law, we should clearly know that the repetition was for a reason and not without purpose. I will not refrain from reproducing his own words on his objective in all his works and the format of his words, quoted from his Treatise on Resurrection (my edition p. 89 f.):

This [misunderstanding of our words] was caused by two things. First that all our works are "small in quantity but thoroughly sifted" [as they said of the teaching of R. Eliezer ben Yaakov in Yevamot 49b], for our objective is not to increase the quantity of books and not to waste time on matters that do not have utility. Accordingly, when we interpret something, we do so only as to matters that need interpretation to be understood, and when we write something, we do so only in summary form... You, my readers, already know that I tend to omit disputes and debates, and if I were able to condense all the laws of the Torah in one chapter, I would not do so in two., etc.

See there his instructive words which teach wisdom and understanding and knowledge to a person whom God has graced as an appropriate receptacle.

In the Vilna edition of the Mishneh Torah which has been reproduced and copied many times there appeared the "Principles of Maimonides" which were collected from various editors, and since I wish to supplement them and add notes to some of them, I decided not to attach them to this volume, but G-d willing I will add them to one of the future volumes.

As I conclude my introduction, I would like to say something about the manuscripts in my possessions. I already wrote that I used several manuscripts and segments of manuscripts in this book, and in my notes I have noted with customary symbols only four of them. I did not designate symbols for most of them and I did not note them specifically since they are not complete collections, I now briefly describe a few of them.

Manuscript 100 includes the first and second parts and a portion of the third, that is, six books from the beginning of the Introduction until the end of Sefer Hafla'ah, written in Yemen in the city of Amran in the year 5411 (= 1650 c.e.), and the copyist wrote as follows at the end of Sefer Hamada: "Sefer Hamada was completed on Wednesday, Iyyar 19, year of contracts 1962, in the city of Amran, May it [tr. Jerusalem] be rebuilt and reestablished, Amen, May it be His will. The weak and poor scribe, Joseph son of Amram, son of Oded, son of Zechariah, son of Yehuda. May G-d permit me to complete innumerable books, Amen, May it be His will, Blessed is He Who bestows good things upon the guilty, Who has bestowed every goodness upon me."

Manuscript 40 includes all of the first part, that is, the three books, Mada-Ahava-Zmanim. It was written in Yemen in the City of Altsafa in 5352 (= 1591 c.e.), and the copyist wrote as follows at the end of Sefer Hamada: "the first book, Sefer Hamada, is completed from the composition of Maimonides the Sepharadi, of blessed memory, on Monday Shvat 10, in the year of contracts 1903, the 27<sup>th</sup> year in the city of Altsafa near the well of the Alskah School, may it be a good omen for the scribe and his descendents. Amen, Bless the Lord forever. Written by the servant David, son of Shlomo of blessed memory, son of Joseph, son of Shmarya known as Alnadaf.

Manuscript 80 is an ancient manuscript whose paper is close to disintegration, missing a beginning and an end so we don't know its exact date, but based on a careful evaluation of the appearance of the paper and the handwriting, it appears to me that it was written no later than the last half of the first century of the sixth millennium (= before 1340 c.e.).

Manuscript 8 is also missing a beginning and an end and the time it was written. It appears to have been written around 5400 (=1639 c.e.). Its text is almost identical to Manuscript 100.

As I said, I also used many booklets and sections and loose pages that were remnants of various manuscripts written in Yemen. On rare occasions I needed to cite the Oxford manuscript and others when there was a [page 28] text which appeared on its face to be deviant and I cited the version of a manuscript from other parts of the world to support the Yemenite version which was in fact not deviant but which matched other manuscripts which were not from Yemen.

I recall for blessing the management of Machon Mishnat HaRambam which is affiliated with Halichot Am Yisrael which undertook to publish this edition of the Mishneh Torah of the great Maimonides whose merit will protect them, and all those who learn his teaching for its own sake, from all adversaries.

Our thanks and the thanks of those who study the teaching of Maimonides go to the Ministry of Education and Culture under the direction of our friend Zevulun Hammer who was a great help to us. The blessing of Heaven above will be upon them to lead them in the way of truth in all their endeavors.

Also worthy of blessing are the members of the Committee for the Community of the Jews of Yemen in Jerusalem lead by Rabbis Tzion Garmi and Elyahu Shaul who encouraged and assisted in the publication of this volume. May God grant his full blessing to them and may they succeed in all that they do. I also recall for blessing our friend Rabbi Abraham Natan Commissioner of State Service who also encouraged us in this great work.

Yosef Kapach

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