

Review Essay

STUDIES IN MAIMONIDES & HIS INTERPRETERS

By Marc B. Shapiro

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Introduction

In his most recent book, *Studies in Maimonides and His Interpreters*,¹ Dr. Marc Shapiro discusses what he believes to be the proper method for interpreting Maimonides' *Mishneh Torah*. The book argues that the *Mishneh Torah* was never "brought to final order by its author" (60)² and that this incompleteness renders futile most attempts to harmonize its rulings with either opposing Talmudic sources or with its own inconsistencies. Rather than applying the traditional approach of struggling to seek a resolution that does not exist, his book proposes a radical alternative that rejects many fundamental principles of classical halakhic analysis.

One of Shapiro's criticisms of the 'traditional approach' is that over the

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1. *Studies in Maimonides and His Interpreters* is a series of monographs. Each discusses separate topics within the Maimonidean corpus. This review will discuss only the first essay, titled: "Principles of Interpretation in Maimonidean Halakha: Traditional and Academic perspectives." This essay comprises the bulk of the book. There are two other essays in this book that we will not review: "Maimonidean Halakha and Superstition" a discussion of Maimonides' view of magic and demons, and "A Note on Maimonides View of Muhammad", a two page analysis of Maimonides' references to Muhammad in his works.
 2. All page numbers are from *Studies in Maimonides* unless otherwise noted.

past eight centuries, a hagiographic (and incorrect) view of Maimonides has dominated the traditional commentators' mindset and has unduly influenced their understanding of the *Mishneh Torah*. "[T]he possibility that Maimonides made a simple error or that he overlooked a rabbinic passage — which entails bringing Maimonides down to the level of a mere mortal — is not an operating principle" (3–4). Shapiro argues that the 'traditional' approach is fundamentally mistaken and that instead, an acceptance of Maimonides' human ability to err ought to serve as the 'operating principle' when studying this text.³ He contends that when one encounters an inconsistency between the *Mishneh Torah* and the relevant Talmudic source "...one is safe in assuming that there were times when Maimonides cited Talmudic texts from memory, which undoubtedly brought about some additional errors" (56). With regard to any inconsistencies within the *Mishneh Torah* itself, Shapiro asserts that "any blatant contradictions in the *Mishneh Torah* were the result of careless or incomplete editing" (68).

This review will begin with a response to Shapiro's characterization of the *Mishneh Torah* and will reaffirm the traditional approach to understanding the work.⁴

Part I — The *Mishneh Torah* as Understood by Maimonides and His Son

Shapiro's first and central claim is that traditional scholars mistakenly regard the *Mishneh Torah* as a highly polished, finished product rather than the work in progress it truly is. Instead, Shapiro argues that "examination of *Mishneh*

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3. Rabbi Asher Benzion Buchman in his review "A Hagiographer's Review of *Studies in Maimonides and His Interpreters*" (*Hakirah* 7, 107) strongly disagrees with Dr. Shapiro's view, yet does not seem to provide sufficient evidence that it is in fact incorrect. Rather, Buchman takes as axiomatic that since the traditional interpreters of the past are correct, Shapiro must be incorrect. He does not provide sufficient evidence from Maimonides' and his son's *own* works to prove his point. This review will take a different approach, arguing the insufficiency of Shapiro's view on his own terms — exclusively from Maimonides' and his son's writings.
 4. We would like to thank Jessica Greenberg for the many hours she devoted to editing and proofreading this essay. We would like to thank Rabbi Michael Broyde for his help in editing as well.

Torah manuscripts reveals that, as with the commentary on the Mishnah... the *Mishneh Torah* was a work in progress, waiting to be brought to final order by its author. As far as we know this was never done” (59).

Shapiro claims that neither Maimonides nor his son R. Abraham viewed the *Mishneh Torah* we have today as a complete and accurate summation of Jewish Law. This is suggested, he believes, by the many (apparent) errors found in the *Mishneh Torah* as well as by certain responsa wherein Maimonides and his son ostensibly acknowledge that the *Mishneh Torah* was an unfinished product.

Abraham ben ha-Rambam

The primary example of this “acknowledgment” on the part of Maimonides’ son, according to Shapiro, is from his responsa (*Birkat Abraham* 13):

<p>שאלה: ועוד תמיהה לי מה שאמר ז”ל (הלכות שגגות פרק שביעי) עשה תולדה של אב זה ותולדה של אב זה בהעלם אחד יראה לי שהוא חייב שתי חטאות והלא תלמוד ערוך הוא בריש גמרא דנזיקין ...</p>	<p>Question: I am also perplexed by what [Maimonides], of blessed memory, says (<i>Hilkhot Shegagot</i> ch. 7) “...if one committed a <i>toladah</i> of one <i>av</i> [<i>melakha</i>] and a <i>toladah</i> of a different <i>av</i> [<i>melakha</i>]⁵ in one memory lapse, it appears to me that he is culpable for two sin offerings...” Is this not an explicit Talmudic text in the beginning of <i>Neziqin</i>? ...</p>
<p>תשובה: לא אמר בתלמוד שתי תולדות של שני אבות ולפיכך אמר יראה לי שאיפשר לומר דהאי דאמרינן בגמרא שתי תולדות של אב אחד ולאן אליבא דהלכתא ואפשר שנתעלם זה המקום ממנו ז”ל בעת שכתב יראה לי ומכל מקום הדין דין אמת ואליבא דהלכתא.</p>	<p>Answer: The Talmud does not say two <i>toladot</i> of two [different] <i>avot</i>, therefore [Maimonides] said “it appears to me” as one could say that the statement in the Gemara is [referring to] two <i>toladot</i> of one <i>av</i> and is not accepted as halakha. It [also] is possible that this source escaped him, of blessed memory, at the time that he wrote ‘it appears to me’. And in any case, his ruling is a correct ruling and in accordance with the halakha”</p>

5. An *av melakha* is one of the 39 types of work that are forbidden on Shabbat. A *toladah* is a type of work that is forbidden because it is a subcategory of one of the 39 *avot melakha*.

Shapiro considers this to be an instance of R. Abraham conceding that his father unintentionally erred by forgetting a significant section in the Talmud.⁶ He includes this error in the section “To Err is Human” (11). While this seems to be true in a narrow sense, Shapiro is being unfair when he uses this responsum to demonstrate a general paradigm of “mistakes, carelessness and forgetfulness by Maimonides.”

Nowhere in his responsum does Rav Abraham state that he believes that this was a case of “halakhic error”, nor does he make any implications regarding the *Mishneh Torah*’s finished or unfinished status. In truth, upon examination of *Birkat Abraham* as a whole, there seems to be no clear admission by R. Abraham of a material halakhic error on his father’s part.⁷ On the other hand, the *Birkat Abraham* is replete with unambiguous references to Maimonides’ encyclopedic knowledge and the significance of the *Mishneh Torah*.

For example, in responsum 46 R. Abraham writes:

6. In general, Buchman seems rather wary to take R. Abraham’s comments about his father seriously (131):

Although [Rabbi Abraham] was, of course, one of our greatest scholars, why should we consider him authoritative regarding his father’s views, except when he says he heard something from his father? And even then, do we know how old he was when he heard it? Is the testimony of a child (יֶטֶף) [sic] reliable?

Specifically, regarding the above-cited responsum, Buchman asks “what are the chances that Maimonides forgot the opening Gemara of Bava Kamma?” With all due respect to Rabbi Buchman, it seems quite reasonable that R. Abraham had personal knowledge of Maimonides practices as well as specific opinions that his father may have expressed to him personally.

7. Out of the 47 responsa in the *Birkat Abraham*, only one (responsum 13) suggests the possibility that Maimonides may have erred, and this in a way that the halakha was not materially affected. 43 defend the accuracy of the *Mishneh Torah*’s rulings and 3 simply note that Maimonides had retracted his original ruling on the matter.

<p>דמית שאבא מארי זצ"ל נעלמה ממנו אותה הבריתא שהבאת בקושייתך ושנגלה לך סוד שלא נגלה לו? ואתה לא הבנת ענין דבריו... וראוי היה לך לעיין בדבריו בהלכות תמורה ותראה אם זה הטמון שנגלה לך מפורש בדבריו או לא. ואם תמצא אותו מפורש בדבריו תתבונן אם חכם גדול כמונו יסתר דבריו זה את זה והוא לא ידע או לא.</p>	<p>Did you imagine that my father, of blessed memory, missed that <i>baraita</i> that you cited in your question and that you discovered a secret not revealed to him? You simply didn't understand his words... and it would have been befitting of you to read his words in <i>Hilkhot Temurah</i> with precision and see if this 'discovery' that you made was explicit in his words or not. And if you find it explicitly mentioned, consider whether a great scholar such as [Maimonides] would write contradictory statements without knowledge.</p>
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The simple read of this responsum is that R. Abraham considers the questioner's implication that Maimonides "missed" the relevant sources, consequently impairing his judgment, to be preposterous. Instead, R. Abraham suggests that if the questioner suspects an error in Maimonides' writings, he should assume that he has misunderstood Maimonides, not that Maimonides misunderstood or confused the sources. From this responsum it does not sound as if R. Abraham considered his father's work to be a work in progress.

Maimonides

In reviewing Maimonides' responsa⁸ we found only one example of Maimonides explicitly admitting to having made a mistake⁹ and recording it as halakha in the *Mishneh Torah* (#287), and that he subsequently corrected the text to reflect his revised thoughts. However, even this example is mitigated by the fact that Maimonides original position was sufficiently grounded in the Talmudic sources such that many earlier and later codifiers consider the

8. or more specifically, those attributed to him

9. Out of 467 responsa, 424 are straightforward halakhic rulings, with only 43 intended to address a challenge to the accuracy of the halakha as recorded in the *Mishneh Torah*. Out of these, 39 are cases where Maimonides' response defends the *Mishneh Torah*; sometimes offering further justification for its ruling and sometimes not. The remaining four responses are instances where Maimonides agrees that the ruling found in the *Mishneh Torah* is incorrect. However, in three out of these four cases, Maimonides explains that the mistaken ruling resulted from a scribal error. Only responsum 287 is an actual admission of error on his part.

retracted ruling to be correct.¹⁰ It would be difficult to characterize this type of “error” as an example of sloppiness or lack of full competence.

Additionally, we found no statements that implied that Maimonides considered the *Mishneh Torah* to be anything other than the polished magnum opus of his rabbinic career. In fact, Maimonides consistently and vigorously defends the solidity of the *Mishneh Torah* in his responsa. For example, in a letter responding to the criticisms of Rabbi Samuel ben Eli, Maimonides writes (Blau #310):

וההקדמה שאמר שטעינו בה עד שנתנצל עלינו באמרו שגיאיות מי יבין... ובאר לנו אותן הספקות כלן שלא ידענום או שידענום ושכחנום... והיה לזה הגאון יתמיד השם ימיו שיעתיק בחבור פרק כ"ז מהלכות שבת וידע אם זה החדוש שזכרו ידוע אצלנו או אינו ידוע.	And in the introduction in which [Ben Eli] stated that we erred [in our ruling in <i>Hilkhot Eruvin</i>] to the point that he quoted in our defense ‘errors, who understands?’ (Psalms 19:13)... and [Samuel Ben Eli] explained to us those doubtful matters that we never knew, or that we knew but subsequently forgot... ¹¹ It would have been worthwhile for this ‘Gaon’, may God continue his days, to see Chapter 27 of <i>Hilkhot Shabbat</i> [in the <i>Mishneh Torah</i>] and verify if this novellum that he mentioned ¹² was known to us or not.
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Similarly, in a letter to his pupil, Rabbi Yosef ibn Aqnin, Maimonides writes (Blau #464):

10. Rif and Ramban agree with Maimonides’ first formulation of the halakha. See Rif *Eruvin* (31a), and *Milhamot Hashem* (ad loc.). See also the Gra’s glosses on the *Shulhan Arukh* (*Orah Haim* 301:42), where he asserts the correctness of Maimonides’s original formulation. Interestingly enough, Rabbi Joseph Qafih, commenting on this halakha (*Ziḳit* 2:7), actually argues that this responsum must be a forgery. He reasons that if in fact Maimonides was really challenged to defend this halakha he would have defended himself by noting that Rif agrees with this approach. Qafih therefore concludes that this letter was written by an unlearned forger; one who was not even aware of Rif’s opinion regarding this matter!

11. Maimonides is being sarcastic.

12. i.e. that some laws of *tehumim* are biblical while others are rabbinic

<p>וכן ראיתי באותה ההערה: מודה ר' שמעון בפסיק רישיה ולא ימות טעה בעל זה החיבור בפירושו ולא באר, במה היא טעותנו ואני יודע, שמחלת הכל אחת, חולי כללי, שכל מי שמוצא, שדבר מדברי על כללים או פרטים שונה מדברי אחד הגאונים או המפרשים, חושב, שאני טועה.</p>	<p>I have also seen in that note of criticism: ‘Rabbi Shimon admits in the case of inevitable effect¹³ (<i>Shabbat</i> 75a) the writer of this work is mistaken in his explanation [in <i>Hilkhot Shabbat</i> 1:6]’ yet he did not explain in what is our error. And I know that the disease of all is one, a general disease, that anyone who finds a word among my words, in general or specific that diverges from the words of one of the <i>geonim</i> or commentators instantaneously thinks that I am mistaken.</p>
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In short, there seems to be little if any evidence in the responsa of Maimonides, or the responsa of his son, that support Shapiro’s hypothesis that the work was considered by them to be an unpolished draft. It would seem that Maimonides and his son considered the possibility that the *Mishneh Torah* contains outright errors in halakha to be negligible.

Maimonides in the Guide

From other statements he made about the responsibility of authorship, it would seem that Maimonides himself would most probably have objected to Shapiro’s characterization of the *Mishneh Torah*. In the *Guide for the Perplexed*,¹⁴ for example, he writes:

If, however, the two original propositions are evidently contradictory, but the author has simply forgotten the first part when writing down the second in another part of his compilation, this is a very great weakness, and that man should not be reckoned among those whose speeches deserve consideration.

Shapiro explicitly discounts this source, writing that he considers his characterization of the *Mishneh Torah* to be correct “even though Maimonides, in

13. There is a dispute in the Talmud whether one may do a permitted activity on Shabbat if it will indirectly lead to a forbidden action being done. Rabbi Shimon permits this activity, whereas Rabbi Yehudah forbids it. However, even Rabbi Shimon admits that if the forbidden action will definitely occur (“the case of inevitable effect”), then it is forbidden.

14. Introduction (6th reason) — Shlomo Pines translation

speaking about the reasons for contradictions, holds authors up to a very high standard” (56–57).

Although the statement of Maimonides in the *Guide* is no proof that the *Mishneh Torah* is a finished product, Shapiro’s interpretation would put Maimonides in the uncomfortable and somewhat absurd position of implying that his own magnum opus should not be considered as a work “deserving consideration.” If one reflects upon the fact that Maimonides wrote the *Guide for the Perplexed* towards the end of his life, this tension between Maimonides’ characterization of a worthy composition and Shapiro’s characterization of the *Mishneh Torah* becomes all the more palpable.

Part 2 — Resolving Contradictions between the *Mishneh Torah* and the Talmud

Quoting from Memory

One of the many difficulties that plague commentators on the *Mishneh Torah* is how best to resolve contradictions between it and the Talmud. Considering that the Talmud forms the basis for Jewish law, how does one deal with a ruling in the *Mishneh Torah* that seems to explicitly contradict it?

Traditional commentators rely on an underlying premise that the *Mishneh Torah* never contradicts rabbinic literature outright¹⁵ and that all apparent contradictions are ultimately resolvable. These commentators sometimes resort to creative and seemingly forced explanations of Maimonides’ words to resolve any tension with the Talmud. Shapiro’s approach denies this very premise, arguing that error is inevitable. Hence, accidental contradiction of rabbinic literature becomes one of the lenses through which one can interpret the *Mishneh Torah* and explain its relationship to the earlier sources.

To substantiate this approach, Shapiro goes to great lengths to justify why it is often more plausible to posit Maimonides’ carelessness as a potential

15. This does not mean that Maimonides cannot contradict a specific source. Rather, it means that Maimonides must have a source somewhere in rabbinic literature that agrees with the halakha as recorded in the *Mishneh Torah*, whether it be the Mishna, the *Bavli*, the *Yerushalmi*, the *Tosefta* or the *midrashei halakha*.

explanation for some of the many contradictions to rabbinic literature found in the *Mishneh Torah*.

For instance, Shapiro points out (6, 56) that there are a significant number of instances where the *Mishneh Torah* contains biblical verses that are not quoted as they appear in the Bible. These instances are unintentional and are a result of Maimonides' failure to look up the particular verse which he quoted from memory.¹⁶ From this, Shapiro believes, we can extrapolate that if Maimonides relied on his memory when quoting biblical verses, then he must also have relied on his memory when quoting other sources like the Talmud. This, then, would explain the origin of certain otherwise inexplicable inconsistencies between the *Mishneh Torah* and rabbinic literature. Finally, Shapiro argues that this kind of "carelessness" on Maimonides' part can best be understood as indicative of the *Mishneh Torah's* nature as a sort of "rough draft" that was never finished.

Critique

Despite Shapiro's excellent work in collecting the data, the implications he draws from it remain unconvincing. First, it is unclear that all of the examples cited can be ascribed to Maimonides' faulty memory. At times it would seem that other factors are at play.

For example, in a number of instances, the form of the biblical verse found in the *Mishneh Torah* is identical to the text of the verse recorded by the Talmud, with neither of them accurately reflecting the Massoretic text. The simplest explanation, in these cases, is that Maimonides was copying the verse straight out of the Talmud. If this suggestion is correct, it would, ironically, militate *against* Shapiro's hypothesis. If Maimonides recorded verses in accordance with their text as found in the Talmud, it is more than likely that he did so while looking directly at the segment of Talmud that misquotes the verse.

Second, when cataloguing minute discrepancies between the *Mishneh*

16. Shapiro introduces a list of approximately 100 discrepancies between the text of the verse as it is quoted in the *Mishneh Torah* and the text of the verse as it is found in the Bible. However, it is worth noting that the idea that Maimonides can occasionally misquote verses is not original to Shapiro. See, for example, *Yesodei ha-Torah* 1:8, and *Sotah* 4:2, and Rav Yosef Qafih's commentary ad loc. See also *Yesodei ha-Torah* 5:4 and *Yad Peshutah* ad loc.

Torah's quoting of a verse and its appearance in the Masoretic text, one must take into consideration the possibility that Maimonides did write the verse correctly, but that a later scribe miscopied it.¹⁷ This explanation is buttressed by the fact that some manuscripts, such as those used by Rav Qafih, record many of the verses correctly.

Finally, and more fundamentally, it is unclear that the existence of errors in recording verses demonstrates the existence of errors in the recording of halakha. In writing a work of this magnitude, time must have been a factor, and looking up every source may have been an impossibility. Hence, as the *Mishneh Torah* was intended to be an encyclopedia of halakhic rulings, practicality may have dictated that Maimonides spend the bulk of his time verifying matters that directly contributed to the accuracy of the halakhic ruling in question. Thus, since the accurate wording a particular biblical proof-text is largely irrelevant in halakha, Maimonides may have chosen to rely on memory for these, and spend the lion's share of his time in careful and precise formulation of the substance of the halakha.¹⁸

This is not to say that Maimonides would never rely on memory before recording the halakha in the *Mishneh Torah*. It could very well be that those laws that he remembered very well, he wrote down from memory. However, since the *Mishneh Torah* is a halakhic work, it is logical that if Maimonides did not clearly remember a halakha, he would look it up. On the other hand, since the *Mishneh Torah* is not a commentary on Bible, it would make more sense that Rambam might not look up a verse even if he did not remember it clearly.

This distinction between *halakhic* and *non-halakhic* errors seems to have either escaped Shapiro's notice or have been silently rejected by him. Either way, this point seems to us to be a critical one, and forms the core difference between our understanding of the *Mishneh Torah* and that of Shapiro.

17. Even the Oxford manuscript, by Shapiro's own admission (14 n. 68) has errors, despite the fact that Maimonides himself testifies to its accuracy. Perhaps even this manuscript does not always record the verse as originally written by Maimonides.

18. Maimonides himself writes in the introduction to the *Mishneh Torah* that the goal of the work is to delineate the "prohibited and permitted, the impure and pure, along with the rest of the laws of the Torah... This book will gather all of the oral law with the ordinances, customs and decrees that were enacted from Moses, our teacher, until the conclusion of the Talmud."

Example — Quoting the Wrong Verse

The above distinction is borne out when examining the clearest example in Shapiro's list of Maimonides recording a halakha (not just a verse) from memory. In *Issurei Biah* 7:1 Maimonides writes:

<p>... שנאמר בזבה: "דם יהיה זובה בבשרה," מפּי השמועה למדו זובה מחמת עצמה ולא מחמת ולד.</p>	<p>...as the verse states regarding a <i>zabāh</i>, 'when there is a flow of blood in her flesh' from tradition [the rabbis] learned that the flow must come from herself and not from the fetus</p>
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As Shapiro — correctly — points out, this verse (Lev 15:19) is not, in fact, the verse used by the sages to prove this. The verse Maimonides should have recorded is Leviticus 15:25:

ואשה כי יזוב זוב דמה And a woman whose blood flows

Shapiro correctly asserts that this proves Maimonides was relying on his memory of the *sugyah*, since had he been looking at the text (*Niddah* 36b) while recording the halakha, he would have quoted the correct verse.

Nevertheless, despite this confusion of verses, the halakha as recorded in the *Mishneh Torah* is in complete accordance with the Talmud, and, as such, goes unchallenged by any commentator. Thus, we think that as Maimonides wrote down this halakha, he was completely confident in its halakhic accuracy, and therefore did not reference its source, allowing for the mistaken biblical reference.¹⁹ It would seem that Maimonides was willing to sacrifice the accuracy of citing every verse correctly for the efficiency of citing the Bible by heart.²⁰

19. These two verses are in close proximity, discuss similar topics, and begin with the same words — the cause of Maimonides' confusion is easily understood.

20. In a similar vein, even though the Talmud may conclude that a particular verse is not a valid source for certain halakha, Maimonides will for the sake of simplicity occasionally cite that verse as a source of the halakha anyway, despite the fact that doing so is against the Talmud. See the *Kelalei ha-Rambam* printed at the beginning of the standard *Mishneh Torah*.

Grammatical Errors

As a further example of Maimonides' carelessness, Shapiro points to four examples of grammatical errors in the *Mishneh Torah*.²¹ Far from being a demonstration of the slipshod composition of the work, however, this example is actually a fine illustration of the difference between material and immaterial error.

The *Mishneh Torah* has nearly one million words; four grammatical *faux pas* can hardly be considered to be a demonstration of carelessness or that the work was only a rough draft.²² Although one can imagine Maimonides checking over his work so thoroughly as to catch every grammatical mistake, would this really have been time well spent? At worst, one can see these errors as a further example of sacrifice on Maimonides' part in favor of concentrating most intently on accuracy in halakha.

The important point is that the *Mishneh Torah* is a work of halakha, not of Bible or grammar. Errors in matters unrelated to Jewish law do little to demonstrate carelessness in the formulation of halakha. To substantiate his contention that the *Mishneh Torah* is a work in progress containing numerous errors and misstatements, what Shapiro really needs is a list of places where the *Mishneh Torah* inaccurately restates the law recorded in the rabbinic literature, not a list of misquoted verses and grammatical mistakes.

Part 3 — Contradictions within the *Mishneh Torah*

Shapiro claims that Maimonides “did not establish complete Halakhic unity throughout the *Mishneh Torah*” (66). To prove this, Shapiro supplies three primary examples where he argues “that any attempt to come up with a ‘solution’ for these problematic texts is doomed to failure.” As these examples form

21. The three occasions where Maimonides treats the words *אש* and *יניה* in the wrong gender, and the one instance where he treats *מים* as a singular instead of a plural word.

22. Would one claim that the United States Constitution is only a rough draft and carelessly written because the word “Pennsylvania” is misspelled and a possessive apostrophe is put in when it is clearly mistaken? See <http://www.newarkcampus.org/studentlife/ConstitutionDay/SpellingErrors.asp>

the crux of Shapiro's thesis, since they find fault with the halakhic accuracy of the *Mishneh Torah*, it seems worthwhile to look at each in turn.

First Case — The Second Day of Yom Tov

Shapiro's first example of an internal contradiction in the *Mishneh Torah* involves the status of the second days of *Yom Tov* (59). He notes that when looking at Maimonides' treatment of *Yom Tov Sheni* one notices a certain inconsistency.

<i>Yom Tov</i> 1:21	זה שאנו עושין בחוצה לארץ כל יום טוב מאלו שני ימים מנהג הוא.	That which we in the diaspora celebrate two days of <i>Yom Tov</i> is a <u>custom</u> .
<i>Yom Tov</i> 6:14	אבל היום שבני ארץ ישראל סומכין על החשבון ומקדשין עליו אין יום טוב שני להסתלק מן הספק אלא מנהג בלבד.	But nowadays, when the Jews in the land of Israel rely on the calendar calculations and intercalate based on it, the second day of <i>Yom Tov</i> is <u>only a custom</u> .
<i>Talmud Torah</i> 6:15	המחלל יום טוב שני של גליות אע"פ שהוא מנהג.	A person who violates the second day of <i>Yom Tov</i> [is excommunicated] even though it is a <u>custom</u> .
<i>Qiddush ha-Hodesh</i> 5:6	יום טוב שני שאנו עושין בגליות בזמן הזה מדברי סופרים שתקנו דבר זה.	The second day of <i>Yom Tov</i> that we do in the diaspora nowadays is a <u>rabbinical commandment</u> that {the rabbis} decreed.
<i>Hanukkah</i> 3:5	ולמה מברכין על יום טוב שני והם לא תקנוהו אלא מפני הספק כדי שלא יזלזלו בו.	And why do we bless on <i>Yom Tov Sheni</i> if they only <u>decreed</u> to as a result of doubt [which day <i>Yom Tov</i> really is]? In order that people do not denigrate it.

Shapiro argues that from these sources one can see two different strands in Maimonides thinking. In some instances Maimonides asserts that *Yom Tov Sheni* is a custom, in others he asserts it is a rabbinic-decree. Since "custom" and "rabbinic-decree" are not exactly the same, the *Mishneh Torah* is in contradiction with itself. Shapiro surmises that this contradiction is "due to the fact that Maimonides... never brought these various halachot in line" (59).

Although at first glance this interpretation seems convincing, a closer

look at the *halakhot* suggests an alternative explanation. The full text of *Yom Tov* 1:21 reads:

<p>זה שאנו עושין בחוצה לארץ כל יום טוב מאלו שני ימים מנהג הוא, ויום טוב שני מדברי סופרים הוא ומדברים שנתחדשו בגלות.</p>	<p>That which we in the diaspora celebrate two days of <i>Yom Tov</i> is a <u>custom</u> while <i>Yom Tov Sheni</i> is <u>rabbinically ordained</u> and is among those things that were newly introduced in the diaspora.</p>
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In this halakha, Maimonides includes both explanations for the second day of *Yom Tov*, something he could hardly have done out of carelessness. It would seem that Maimonides is himself trying to resolve a contradiction whose origin is in the Talmud.

<p>b. <i>Bet</i> 4b</p>	<p>והשתא דידיעין בקביעא דירחא מאי טעמא עבדינן תרי יומי? משום דשלחו מתם: הזהרו במנהג אבותיכם בידיכם, זמנין דגזרו שמדא ואתי לאקלקולי.</p>	<p>And now that we know when <i>Rosh Hodesh</i> is why do we do two days of <i>Yom Tov</i>? Because they sent from [Israel]: be careful to observe the <i>custom of your fathers</i> because the government may persecute [the Jews] and they will come to damage [by being unable to properly calculate the calendar].</p>
<p>b. <i>Shab</i> 23a</p>	<p>והא יום טוב שני, דספק דבריהם הוא, ובעי ברכה:</p>	<p>But <i>Yom Tov Sheni</i> is a doubtful <i>rabbinic law</i> and requires a blessing! There [it is different for the blessing was decreed] so that people to not denigrate [<i>Yom Tov Sheni</i>].²³</p>

Far from being inaccurate, Maimonides is faithfully reproducing the ambiguity expressed in the Talmud, as well as possibly hinting at how to resolve the apparent contradiction.²⁴ Maimonides intentionally kept the Talmudic uncertainty about the status of the second day of *Yom Tov* in his code.

23. This is apparently the inspiration for Maimonides formulation in the *Ḥanukkah* 3:5, which discusses avoiding denigrating *Yom Tov Sheni*.

24. See Rabbi Yosef Qafih's commentary (*Yom Tov* 1:21) for a possible answer. See also *Teshuvot Ha-Rambam* (Blau) 125 and 333 and *Birkat Abraham* 38 for discussions related to this topic.

Second Case — The Paschal Offering

Shapiro's second example is based on a contradiction between the laws of offerings and the laws of the Paschal offering.

<i>Ma'aseh</i> <i>ha-Qorbanot</i> 4:2	כל שקרבו מתיריו ביום מעלין אותו על המזבח כל הלילה... וכדי להרחיק מן הפשיעה אמרו חכמים שאין מקטירין האימורין ואיברי העולה אלא עד חצות הלילה.	Any sacrifice whose central part was brought during the day may be sacrificed on the altar all night... However, in order to distance the priests from negligence the rabbis said that we may sacrifice the insides and limbs of the <i>Olah</i> (burnt offer- ing) only until midnight.
<i>Qorban Pesah</i> 1:8	ומקטירין חלבי פסחים כל הלילה עד שיעלה עמוד השחר.	One may burn the fats of the Paschal offering all night, until sunrise.

The contradiction is evident: if there is a rabbinic decree prohibiting the sacrifice of the fat after midnight, why would one be permitted to sacrifice the *Pesah* until dawn? The problem, Shapiro notes, is that the traditional solution to this difficulty is forced.

The traditional solution Shapiro refers to was suggested by Rabbi Elazar Rokaḥ (*Arba Ṭurei Even* ad loc.). He suggests that the halakha as recorded in the laws of the Paschal offering is only in accordance with biblical law, and does not incorporate the rabbinic decree. According to this approach, Maimonides is actually relying on the reader to know the rabbinic decree recorded in the laws of offerings.

Shapiro, with good reason, describes this answer as “unsatisfying” and not “faithful to Maimonides’ description of the purpose of his Code.” He argues that we “must be open to the possibility that the halakha in *Korban Pesah* was a short-lived assumption, a careless formulation, or even a copyist error,²⁵ and had Maimonides been asked about it, he would have acknowledged it as such and instructed his interlocutor to correct his text, as he did on other occasions” (64). He ends by proposing that “when the best the traditional commentaries can come up with is that Maimonides recorded an incorrect Halakha because

25. Although copyist error is always possible, there is no manuscript evidence for it in this case, and neither Qapīḥ nor Frankel offer alternative reads.

he assumed the reader would know that this is only the biblical law, I think the academic scholar must look elsewhere.”

It would seem that Shapiro has gone a step too far with this last statement, since the answer offered by the *Rokah* is not “the best” — and certainly not the only — traditional answer. Rabbi Yeḥiel Epstein, in his *Arukh ha-Shulḥan ha’Atid* (182:21), suggests that the general rabbinic decree was never extended to the Paschal offering, and that, therefore, one may offer it until dawn.²⁶ This answer seems to explain Maimonides well, and is not at all unfaithful to the purpose of Maimonides’ code.

Third Case — Meat and Milk

The third major contradiction noted by Shapiro is between the laws of forbidden foods and the laws of rebellion.

<i>Ma’akhalot Assurot</i> 9:3	אין אסור מן התורה אלא בשר בהמה טהורה בחלב בהמה טהורה שנאמר לא תבשל גדי בחלב אמו... וכן בשר חיה ועוף בין בחלב חיה בין בחלב בהמה אינו אסור באכילה מן התורה... ואסור באכילה מדברי סופרים.	The only biblically prohibited case is meat from a kosher domesticated animal cooked together with the milk of a kosher domesticated animal, as it says “You shall not cook a kid in its mother’s milk.”... but the meat of a wild animal or poultry meat [whether it is cooked] in the milk of a wild animal or a domesticated one is not prohibited to be eaten biblically... but is forbidden to be eaten rabbinically.
<i>Mamrim</i> 2:9	הרי כתוב בתורה לא תבשל גדי בחלב אמו מפי השמועה למדו שזה הכתוב אסר לבשל ולאכול בשר בחלב, בין בשר בהמה בין בשר חיה.	It is written in the Torah “You shall not cook a kid in its mother’s milk.” From tradition we learn that this verse prohibits cooking and eating meat and milk together, whether the meat is from a domesticated or a wild animal.

In the former halakha, Maimonides calls eating meat from a wild animal that was cooked in milk rabbinically forbidden, whereas in the latter halakha he

26. Many times the Rabbis will make a general rabbinic decree and list exceptions. See *Eruvin* 67b, 81b, and *Hullin* 83a, for example. It is worth noting that the *Sefer Takkanaṯ Ezra* (b. *Meil* 7b) accepts the veracity of Rabbi Epstein’s answer, and even attempts to apply it to other laws related to the Paschal offering.

claims that according to tradition, it would be prohibited biblically. As noted by Shapiro, this is truly contradictory.

Nevertheless, this example is somewhat misleading. This is because the text of the law in *Mamrim* does not represent the final edition of the *Mishneh Torah*. Rabbi Yehoshua ha-Naggid records²⁷ that Maimonides himself was asked about this and responded that the law as recorded in *Mamrim* should be corrected to conform with the law as recorded in *Ma'akhalot Assurot*. Unfortunately, this correction was not incorporated into all future copies.²⁸ This example can best be categorized as one of the occasional instances where Maimonides retracted and told the inquirer to correct the text.

Summary

Aside from these three examples, we do not know how many possible contradictions Shapiro has found in the *Mishneh Torah*. However, we assume that, like any good scholar presenting examples to support his or her thesis, Shapiro presented what in his estimation must have been the best examples. If the three best examples of contradictions Shapiro found can be solved reasonably with a traditional approach, how many of the contradictions in the *Mishneh Torah* are really “irresolvable”?

Finally, even if Shapiro were to demonstrate his point in a handful of examples, this still would not demonstrate the overall correctness of his thesis that Maimonides’ “language and organization is simply not as careful as we’ve come to expect from him” (59). The *Mishneh Torah* has literally thousands of *halakhot* — one cannot conclude from a few contradictions that the *Mishneh Torah* is “a work in progress” (60), or that Maimonides was “careless” (67). To really make this interpretation convincing, Shapiro would need to present a hefty list of places where contradictory rulings in the *Mishneh Torah* are irresolvable.

27. Maimonides’s great-great grandson; *Teshuvot Rabbi Yehoshua ha-Naggid* #32

28. We assume that if the traditionalist commentaries had been aware of this responsum, they too would have admitted that Maimonides retracted. In other words, it is not because of their “Hagiographic sensibilities” that they posit what they do. Indeed Rabbi Karo, the author of the *Kesef Mishneh*, did change his mind when he saw the responsum of Rabbi Yehoshua, see *Avqat Rokhel* #38.

Part 4 — The *Mishneh Torah* and Its Difficulties: An Alternative Explanation

Considering the possibility that the traditional approach is correct, and that Maimonides meant his *Mishneh Torah* to be a polished and accurate reflection of the totality of halakha, how does one explain the difficulties that Shapiro raises? Additionally, why do so many commentaries, after pointing out certain inconsistencies, end their criticisms with “and this requires further investigation”, instead of forcefully asserting that Maimonides erred?

A Viable Solution

One possible explanation that suggests itself is that our comprehension of Maimonides is somewhat compromised by the fact that we frequently do not know either his sources or the rationales for his rulings. Hence, it is quite possible that the reason most traditional commentaries suggest “that there is an answer for every perplexity” (3) and that “if our rabbi [Maimonides] was before us he would properly explain matters” (4), is because they realized that Maimonides had a larger “rabbinic library” than many of the later scholars.

For example, Maimonides had Tannaitic literature²⁹ not extant until modern times, including *Mishnat R. Eliezer* and *Mekhilta de-Rashbi*, as well as literature that has not been discovered up to this day, including major textual variants in the Bavli and (possibly) a fifth order of the Yerushalmi. In addition, he had a vast library of Geonic literature, some of which we do not have.

Saul Lieberman wrote in his *Hilkhot ha-Yerushalmi le-ha-Rambam* (13), that Maimonides’ commentary on the Mishna was based on three works, and of the three, one is lost to us entirely,³⁰ and the other two are preserved only in fragments.³¹ With regard to geonic responsa generally, Simḥa Assaf notes that only a small percent of Geonic literature is extant.³² In truth, it would

29. Works from which he in fact did derive certain laws

30. *Sefer ha-Ner* (or *Sefer ha-Or*)

31. *Sefer ha-Mafte’ah* and *Sefer ha-Mitsvot le-Rav Hefets*

32. *Tequfat ha-Geonim ve-Sifrutah* 217

seem that we hardly even know what Maimonides may have had that we are missing.

Moreover, unlike the Tosafot, who always tell us their source and mostly derive halakhic rules exclusively from the Babylonian Talmud, Maimonides never tells us his source and frequently relies on alternative rabbinic materials even when it contradicts the Babylonian Talmud.³³ In truth, even when Maimonides is relying on the Babylonian Talmud, one is still often at a loss to uncover the exact source of his ruling.³⁴ As R. Abraham writes in Responsum 14, after defending his father's ruling with a reasonable but questionable proof:

וכבר אמרתי מה שנראה לי בו ואפשר שיש לו ז"ל ראיה ברורה יותר מן הראיות.	I have already stated what appears [correct] in my eyes [about this matter]. It is also possible that [my father] had clearer proofs than those that I have cited.
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As one can see from this quote, even Maimonides' own son was unsure at times of the source or rationale for his father's rulings.

To demonstrate this point more clearly, we will turn to two examples where traditional commentaries were faced with apparently unjustifiable *halakhot* in the *Mishneh Torah*, and show how they can be explained by finding sources in rabbinic literature.

First Example — Noahides

In the laws of Kings (*Melakhim* 8:11) Maimonides states:

33. Of course, since Maimonides does not discuss his sources, the reader is never informed of when he is doing this.

34. If one could imagine trying to understand the *Qitzur Pisqei ha-Rosh* without having first read the Rosh's larger work, the confusion one would have is perhaps akin to many of the befuddled reactions commentators have to certain laws in the *Mishneh Torah*.

כל המקבל שבע מצות ונזהר
לעשותן הרי זה מחסידי אומות
העולם, ויש לו חלק לעולם
הבא, והוא שיקבל אותן ויעשה
אותן מפני שצוה בהן הקב"ה
בתורה והודיענו על ידי משה
רבינו שבני נח מקודם נצטוו
בהן, אבל אם עשאן מפני הכרע
הדעת אין זה גר תושב ואינו
מחסידי אומות העולם אלא
מחכמים.

Any [non-Jew] who accepts the seven Noahide commandments and is careful to observe them is a pious non-Jew and will go to heaven, if he accepts them because God commanded them and gave them with the Torah and told Moses our teacher that the descendents of Noah were previously commanded to observe them. But if a [non-Jew] only keeps the Noahide laws because they make sense, he is not considered a *Ger Toshav* and is not a pious Gentile. Rather he is considered a wise Gentile.

Rabbi Joseph Karo, in his *Kesef Mishneh* (ad loc.), cannot locate a source for this halakha, and simply writes “it appears to me that our Rabbi said this based on his own logic.”³⁵ The discovery of *Mishnat Rabbi Eliezer* in 1932 dispelled the problem, since it became clear that Maimonides was drawing his ruling from this ancient work:³⁶

הפרש בין חסידי ישראל
לחסידי אומות העולם. חסידי
ישראל אינן נקראין חסידים עד
שיעשו כל התורה, אבל חסידי
אומות העולם, כיון שהן עושין
שבע מצוות שנצטוו בני נח
עליהן, הן וכל דקדוקיהן, הן
נקראים חסידים. בד"א,
כשעושין אותן ואומרין, מכח
שצוה אתנו אבינו נח מפני
הגבורה אנו עושין.

There is a difference between righteous Jews and righteous Gentiles. Righteous Jews are not called thus until they fulfill the whole Torah. Righteous Gentiles, however, are termed thus once they fulfill the seven commandments that the sons of Noah were commanded. What are other conditions? Only when they fulfill [the seven Noahide commandments] from the impetus of the divine commandment to Noah [are they called righteous Gentiles].

Had this work not been rediscovered, it would never have come to light that instead of just using his own logic or making a mistake, Maimonides was actually following an alternative rabbinic tradition.

35. נראה לי שרבינו אומר כך מסברא דנפשיה.

36. *Mishnat Rabbi Eliezer with the Commentary Midrash Agur*, p. 121 lines 7–15

Second Example — Sowing on the Sabbath

In the laws of the Sabbath (8:2)³⁷ Maimonides writes:

<p>הזורע כל שהוא חייב... וכן השורה חיטין ושעורין וכיוצא בהן במים הרי זה תולדת זורע וחייב בכל שהוא.</p>	<p>One who sows any amount of seed [on the Sabbath] is culpable... And similarly one who soaks wheat, barley or the like, since it is a <i>toladah</i> of sowing, is culpable for [soaking] any amount.</p>
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As traditional commentaries have noted for centuries, this halakha contradicts the Bavli (*Zeb.* 94b). Nevertheless, until Rabbi Elijah Kramer,³⁸ no satisfactory solution to this problem had been suggested.³⁹ He hypothesized that there must have been an alternative reading of the passage in *Zebaḥim* that was known to Maimonides. 175 years later, Rav Yosef Qafih demonstrated this hypothesis to be correct, by pointing to a responsum in which Maimonides discusses this exact issue, and makes it clear that he in fact does have a variant Talmudic text.⁴⁰

Summary

From the above two examples, one can see how “risky” it is to claim that an apparently mistaken view of Maimonides is really an error, and not the result of alternative sources. This, perhaps, is part of why traditional commentators generally eschew Shapiro’s method.

Conclusion

Although Shapiro is undoubtedly correct that one must take into consideration

37. *Shabbat* 8:2; Buchman (122) cites this example in his review as well, albeit for a different purpose.

38. Also known as the Vilna Gaon or the Gra (1720–1797); his answer is quoted in the Frankel edition of the *Mishneh Torah* ad loc.

39. See the *Sefer ha-Mafteah* for a list of *Aharonim* who deal with this issue. See also the solution of the *Arukh ha-Shulhan* OH 336:28, which is not cited in the *Sefer ha-Mafteah*.

40. This issue is also possibly related to the proper reading of b. *Eruvin* 104b (Rashi s.v. תרו בה כינתא).

the *possibility* that Maimonides may have erred in the *Mishneh Torah*, nevertheless, it would seem that his claim that the *Mishneh Torah* actually contains a great number of errors remains unsubstantiated. This is even more the case for his view that the *Mishneh Torah* as we have it is a rough draft or work in progress.

With all due respect to Shapiro, it would seem that the traditional view of the *Mishneh Torah* is the correct one, and that Maimonides intended his work as a polished, well-researched and internally consistent compendium of halakha. Finally, as we have tried to show, if there are any errors in the *Mishneh Torah*, they are rare.