

"ON MAIMONIDES' PHILOSOPHY OF HALACHAH"

By

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requirements for the title of Rabbi and  
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"On Maimonides' Philosophy of Halachah"  
by Steven S. Schwarzschild

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The thesis is divided into four parts: an introduction, two chapters and conclusion. The author sets himself the task of presenting an analysis of Maimonides' ideas concerning the nature, essence and function of Jewish law. He is well aware of the vast scope of the theme and therefore did not entitle the thesis: Maimonides' Philosophy of Halachah, but rather: On Maimonides' Philosophy of Halachah.

The sources with which the author deals are mainly the last Chapters of the "Moreh" (26-50), some sections of the "Yad", and various remarks made by Maimonides in connection with different laws presented by him in his great work. The connection of Maimonides' interpretation of the law with other problems of the Moreh, such as teleology and the relation of matter and form, has been dealt with by the author.

The author points out that Maimonides, who considered right belief rather than right action to be the ultimate goal of Judaism, would not have agreed with the generally accepted definition of Judaism as the religion of "salvation through works." Maimonides is both the great legalist and the central philosophical personality of the Middle Ages. His first works are all mainly devoted to law; in his main philosophical work, the "Moreh," written after his halachic works, Maimonides returns in the concluding chapters to the problem of law, or better: philosophy of law. Thus the development of Maimonides is traced from jurisprudence, through philosophy, to philosophy of law.

In the chapter entitled "The Rationality of the Law" the author tries to show Maimonides' rationalism, that Maimonides held all of Jewish law to be in principle rational. He argues convincingly and successfully against the conception of the anti-rationalists who maintain that Maimonides' view of law was based on revelation as opposed to reason.

The dogmatic commandments "Hukkim" which cannot be rationally explained by us should not be considered as supra-rational, as not having any basis in reason, but as being, in principle, subject to rational comprehension, only their reason may be hidden or unknown to us. When a law contains certain irrational elements, those elements are purposeful because of their being indispensable for the law as a whole; their rational basis lies in their constituting a necessary condition for the law. Just as matter is necessary as a bearer of form, so are the irrational elements of the law necessary for the structure and the function of the law as a whole. This is a fine comparison for which the author deserves high praise.

In the chapter entitled "Juridico-Historicism" he tries to show that Maimonides recognized the existence of different periods in the development of the law: Pre-Sinaitic law, Sinaitic law, post-Biblical law, Talmudic law, and finally Messianic law. The author has somewhat exaggerated Maimonides' sense of history. For it must be recognized that, although Maimonides acknowledged the existence of different strata in the law, the idea of historical development is an entirely modern concept which was strange to Maimonides and to the intellectual climate in which he lived. The author brought out well Maimonides' concept of messianism with reference to Halachah. Since the messianic age does not involve a radical change in the natural course of events, the law will not be abolished, in contradistinction to the Christian concept of messianism as well as some Jewish messianic movements.

In the end the author draws some conclusions concerning the importance of law and its function for the contemporary problematic of liberal Judaism. He points out that Maimonides' concept of law is much more important for our own days than many of the philosophical problems with which he was engaged, which are, after all, outdated through the modern development of philosophy.

The author has done a very creditable piece of work; he manifests high intelligence and philosophical abilities, and it gives me great satisfaction to recommend the acceptance of his rabbinical thesis.

*Samuel Atlas*

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Samuel Atlas, Referee

Summary of

"On Maimonides' Philosophy of Halachah",  
thesis submitted by Steven S. Schwarz-  
schild in partial fulfillment of the  
requirements for the title of Rabbi  
and the degree of Master of Hebrew Letters.

This study sets out to analyze what Maimonides' view of the nature, function and significance of Jewish law is. The analysis is divided into two main chapters, the first entitled "The Rationality of the Law" and the second "Juridico-Historicism in Maimonides' Philosophy of Law". The former, beginning with the traditional distinction between "rational law" and "irrational, revealed law", intends to prove that Maimonides held all of Jewish, Biblical and talmudic law to be in principle rational. In the process of proving this thesis, a contrary interpretation of Maimonides' view, represented particularly by Leo Strauss, has to be refuted. Also a number of technical problems regarding Maimonides' formulation of certain specific laws have to be solved.

The latter, "Juridico-Historicism etc.", has for its thesis the proposition that Maimonides recognized, periodized and drew important philosophico-juridical conclusions from the historical development to which also Jewish law is subject. The five chief periods are indicated and illustrated from Maimonides' legal writings: 1. pre-Sinaitic law, 2. Sinaitic law, 3. post-Biblical law, 4. talmudic law and 5. messianic law. Especially the

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Dr. Sigmund went so far as to say that, though it is unquestionably  
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## INTRODUCTION

Dr. Slonimsky of the Jewish Institute of Religion once told me of the following incident which took place at a round-table discussion on mediaeval scholasticism at the University of Chicago: Rabbi Joshua Liebman who was to speak on the Jewish aspects of the topic under discussion made the statement that what St. Thomas' "Summa Theologica" is to Christianity and specifically to Roman Catholicism, Maimonides' "Guide of the Perplexed" is to Judaism. Dr. Slonimsky, however, rose to the correction that not the "Guide of the Perplexed" but rather Maimonides' "Mishnah Torah" occupies in Judaism the place which in Christianity is held by the "Summa."

In this apparently trivial quarrel over a mere analogy and an aphorism a crucial point is involved: what Dr. Slonimsky meant to say was that, though it is unquestionably true that even as the philosophical and theological magnus opus of mediaeval Christianity is the "Summa," so the "Guide" is the central philosophical and theological accomplishment of the Jewish Middle Ages, yet within the framework of their different religious contexts, Judaism on the one and Christianity on the other hand, these two works maintain different positions. For Christianity, the religion of "salvation through faith," an authoritative exposition of the correct doctrines and beliefs such as the "Summa," is of unsurpassable significance. For

Judaism, on the other hand, the religion of "salvation through works," (a characterization which is often used falsely and superficially but which, nevertheless, contains a good deal of truth when it is properly understood) correct doctrines and beliefs will necessarily take second place behind the rules of right action, i.e. law or Halachah.

The philosophical and theological writer and, at the same time, the legalist with whom this study concerns itself, Rabbi Moses ben Maimon, known to the historians of philosophy as Maimonides and to Jewish tradition by the abbreviation Rambam, would probably himself have disagreed with this analysis. As will appear clearly in the further course of this essay, he himself believed that right belief rather than right action was the ultimate criterion by which true philosophy and true religion separated those who would find salvation from those who would not. It is, therefore, quite likely that he would have agreed with Rabbi Liebman in this controversy which took place in Chicago; he would probably have designated his "Guide of the Perplexed" as his most important contribution to the welfare of Judaism and the Jewish people. But Jewish history played a curious trick on him: to the large bulk of Jewry which lived in his own time and after him, he is known as the author of the "Mishnah Torah," the tremendous code of Jewish law, rather than as the writer of the "Guide." In this manner

Jewish history, by preferring one of his works over another and by assigning them seats of honor in Jewish literature in an order which differs from the one which he himself would have chosen, corrected his own estimation of the respective places of law and philosophy in Judaism. (This is not the only trick which history played with Maimonides' writings! In "A Section from the Yad Ha-Hazakah of Maimonides," London 1940, p. 3, Samuel Atlas compares Maimonides' own evaluation of the function of his Code with that which Jewish history has spoken: "Maimonides wished his abstract to be a "Mishne Torah," a "Second Law," invested with all the authority of a written code. But it was accepted only as a "Yad ha-Hazakah," a "Strong Hand," being a weapon to strengthen and fortify man's thought and to be a source of inspiration for its further development." Thus, in both cases, Jewish history attributes no less importance to his works than did the author himself, but it ascribes different kinds of importance to them!) If not Maimonides, certainly Jewish history would agree with Dr. Slonimsky rather than with Rabbi Liebman, therefore, in assigning the central place to the Code rather than to the "Guide," in this way also underlining an important difference between Christianity as such and Judaism as such.

Yet, Maimonides himself must have felt that the relationships of philosophy and of law to Judaism are not quite what he theoretically believed them to be. It is true that his Code and his "Commentary to the Mishnah" were written before the

work of his old age and ripened experience, the "Guide," and thus in the chronology of his life seem to lead up to it. But when the structure of the "Guide" itself is considered, the striking fact cannot be overlooked that from his theory of homonyms, through his negative theology, the proofs for the existence of God, the problems of creation, prophecy, providence and purpose, Maimonides proceeds and leads up to the final climactic and numerous chapters on the law. It may thus be said that the entire first two-and-one-half parts of the "Guide" are but the foundation and basis for the last half, the lengthy discussion of Halachah. Not only does law, therefore, stand on the summit of the philosophical mountain which is the "Guide of the Perplexed" but it also closes the circle, as it were, of Maimonides' life: the end of the "Guide" points back to the first literary and scholarly studies of the Rambam, his Commentary on the Mishnaic law and his codification of Jewish law at large. Yet Maimonides' consideration of the law on the level of the "Guide" is not the same as his consideration of the law on the level of the Commentary or the Code: whereas in the latter two, despite such eminent exceptions as his Introduction to the Commentary, Perek Chelek, and the entire first book of the Code, he deals with law merely as a legalist, in the former he treats it as a philosopher. From jurisprudence, through philosophy, Maimonides thus grew into a philosopher of law as which he ended his days!

For these reasons alone it is sufficiently surprising how little research has been done on Maimonides' philosophy of law in all the tremendous body of Maimonides literature. But for the number of small books which can be enumerated on the fingers of one hand and which are named in the bibliography to this study, he has been studied either as a philosopher in the broad sense of the world by the philosophers or as a legalist by the men of Jewish tradition. Rarely has he been studied in those aspects of his writings and of his personality where these two are fused into one, in his philosophy of law.

Especially surprising is this, however, for the students of Jewish philosophy in particular! For a while it is easy to be blinded by Maimonides' intellectual candor and his philosophical acumen for the essential outdatedness and lack of cogency for our time of his over-all philosophical system. But if one turns to the endless discussions of very much the same problems in very much the same formulation, of a Gersonides, for example, one looks back upon Maimonides with the realization that, though his speculations were of the utmost importance to the further history of Jewish philosophy, his scholastic, Aristotelian universe of discourse is basically so foreign to ours that it has relatively very little to offer of direct pertinence to our philosophical and theological problems of today! - We can feel sure that even in his own time, most Jews, even the most cultured of them, may have been quite interested in Maimonides'

philosophical speculations in themselves, as philosophical speculations, but they saw little direct relevancy in them to Judaism as a religion and as a religious way of life. It would seem that for them Maimonides' philosophy moved on a high plane which had almost no contact at all with the plane on which Jewish life transpired. Surely, the theoretical problems of the attributes of God, of creation, prophecy, providence, etc. have their religious, theological dimension. But where Maimonides the philosopher became important to them as Jews was at that point where he turned his attention to the law, because not only is the theory of law closer to the heart of Judaism as it is lived, that is to say in accordance with the law, but also the theory of law can and, as will appear in the further course of this study, does affect the actual law itself.

How much more so is this the case in our time! The terms, categories and problems of neo-Platonic, Aristotelian, Mohammedan and Christian scholasticism are immeasurably more meaningless to us today! Our philosophical problems are largely different, and even where they are the same or similar they are couched in terminology which is so different and they are considered from perspectives which differ so greatly that they actually have very little in common. This is not to say that contemporary modern philosophy and theology are thinkable without scholasticism; but it is to say that they have advanced, or at least adopted such new forms so as to be far beyond it. The same can-  
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 not be said of Jewish law! Religions<sup>are</sup>, of course, proverbially

more conservative than any other form of human life. In addition, however, the very nature of Jewish law commands that it remain essentially the same under new conditions or that it evolve along the very same lines along which it has always evolved in the past. As a result, the Halachah as it was at the time of Maimonides is much more closely related to the Halachah as it stands today, and the halachic problems of Maimonides' generation are much more pertinent to our halachic problems than the philosophy of the 12th century and its problems are to our philosophy and its problems. Surely, on the basis of these further considerations, a study of Maimonides' philosophy of law would seem to promise valuable conclusions! Firstly, philosophy of law is more important to Judaism in general than philosophy at large, and secondly, the history of the philosophy of Jewish law is more relevant to today's philosophy of Jewish law than is the history of Jewish philosophy as such to today's Jewish philosophy.

Apart from purely historical interest, what, then, can we legitimately hope to learn from a study of Maimonides' philosophy of law for practical purposes? - The Modern meaning of Jewish Halachah, of Jewish law, its status, its applicability to our situation and the principles by which it is to be derived have finally, after 150 years, come to the foreground of the serious and urgent attention of the leaders, thinkers and rabbis of liberal Judaism. It can fairly be said that the overwhelming majority of authoritative leaders of liberal Judaism realize to-

day that the problem of religious, Jewish law lies at the bottom of our most pressing troubles. It can further be said in fairness to the facts of our situation that they also realize that the principle of law, of Halachah, and some form of valid, practically effective law must be reintroduced, or better: re-acknowledged in liberal Judaism. The great problem that has hitherto defied solution, however, is how an ancient and traditionally bound law can be made effective in modern life without either doing unbearable violence to modern life or to that law itself. On the one hand, the law as it has been preserved by Jewish orthodoxy is inherently inapplicable and in the context of the modern spirit unacceptable; on the other hand, merely to create a new law would defeat the very purpose for which it is to be created, namely to preserve and carry on the continuity of Jewish history as a unified and consistent adventure in the search for the religious way of life. The problem resolves itself, therefore, into the following form: granted that they cannot be principles taken from sources which are foreign to the spirit and purpose of that law itself, by means of what principles can the traditional law of Judaism be made effective, intellectually acceptable and legally flexible enough for liberal Judaism?

It seems clear at first sight that these principles must, therefore, be principles which are given by the law or the actual history of the law which, themselves, are to be changed by them. This notion is by no means alien to other modern con-

ceptions of the law. The American Declaration of Independence, as is well known, provides, in a manner of speaking, for its own abrogation, in that it grants the right to revolution/itself: <sup>against</sup>

"...That whenever any Form of Government becomes destructive of these ends, it is the Right of the people to alter or abolish it...It is their right, it is their duty, to throw off such Government..." In a less radical form, the amendational procedure by which the basic law is altered effects the same purpose: a law which provides for its own change! - Another method would be to attempt to discover the implicit principles of change not in the law but in the history of the law. That is to say, it must be possible to formulate valid generalizations which would describe the past changes within a certain body of law, in order to apply these same generalizations for the purpose of further changes in the present or for the future. These too would be principles taken not from a foreign source but from the law itself, as it were. - Finally, this end may be attained by detecting the general, philosophical principles which underlie the hitherto existing laws, in order, under new conditions, to embody these principles in new form.

To study Maimonides' philosophy of law exhaustively it would have been necessary to analyze in detail not only all of his philosophical writings but also the tremendous legal corpus which he left behind and which has been the subject of unceasing

legal studies by all the generations of Jewish legalists which followed his. Problems would have to be discussed fully which are clearly beyond the purview and capacity of this essay. (An example of the kind of philosophical-legal problem which may well lie buried somewhere in the Maimonidean sources, though it does not appear on the surface, is indicated in the very interesting recent study of "Rabbi Meir of Rothenburg," by Irving A. Agus, Philadelphia 1947, where it is shown on p. 108, vol. I, that Rabbi Meir held that not only all social legislation but even the divinely revealed law derive their authority from a "social contract," in the latter case between God and Israel.)

For this reason, this paper is not entitled "Maimonides' Philosophy of Law" but "On Maimonides' Philosophy of Law." Two specific considerations are entertained in it, two considerations which roughly coincide with the latter two methods of internal change of law formulated in the foregoing: the second chapter, "Juridico-Historicism in Maimonides' Philosophy of Law" attempts to state in which manner Maimonides seemed to discover principles and tendencies of change which the Jewish law up to his time had undergone. The first chapter, "The Rationality of the Law," attempts to formulate the principles which Maimonides believed to discover as the underlying meaning of Jewish law as he found it. That these two chief classifications contain within them, as a matter of course, many details which shed light on yet another related aspect need not be emphasized.

On both points Maimonides may well have been wrong. As this study proceeds and at certain specific turns, unmistakable errors and inadequacies cannot but be brought out. But we may legitimately expect to observe how at least one legalist, for that matter if not actually the greatest legalist, of them all certainly one of the greatest, treated the law under these two considerations. In itself that may serve as an example of how it can be done also today. Beyond that, however, it proves that, however, it may have to be done, it can, in principle, be done.

### THE RATIONALITY OF THE LAW

In all philosophy of law a distinction is made between "positive law" on the one hand and "normative law" on the other. Simply defined, "positive law" is the law which is actually on the law-books and which is practised at a given time in a given society. "Normative law" is the law as it should be, not as it is. Different schools of thought determine what they mean by normative law in accordance with their respective theories of the basic criteria of truth and justice: Catholic Thomism, for example, and the naturalism of the Enlightenment would claim that normative law is that law which is "natural," or, in other words, deducible from the natural world. A precipitate of this philosophy is found in the American "Declaration of Independence" which proclaims that equality, liberty, etc. are "self-evident" by "the laws of nature and nature's God," because, presumably, all men are free and equal in the natural event of birth. For them, therefore, very much in the spirit of Rousseau, society should return from its own artificial, actual law to the law of unfettered nature. Critical philosophy, on the other hand, would define normative law in terms not of what it considers morally indifferent and neutral nature, but of the highest synthesis of human reason and the historic institutions which it created. Whatever may be meant by the concept of normative law, however, no self-respecting philosophy of law can dispense with it, for otherwise it would

sanction by default the actually existing and clearly imperfect laws of its particular society and clothe them in the idolatrous garment of perfection. Nevertheless, at the same time that every philosophy of law must criticize positive law by means of its normative law, it must also consider this very positive law and endeavor to exhibit its unity and reasonableness above and beyond its multiplicity of individual stipulations and the arbitrary form which they are want to adopt in legal dicta or in the codes.

These two tasks of a philosophy of law are merged into one in philosophies of religious, revelational laws due to the peculiar pretensions of such laws. To be sure, the laws of the Bible, for example, are actually existing laws, practiced in reality or at least formulated in actual law-books. It might, therefore, be assumed that, being part of historical reality, they are subject to the imperfections of reality and thus to the criticism of a normative law. For Orthodox Jewry, however, the Bible, though real, is the intrusion of the perfect reality, which is God's, into the reality of the imperfect world. Its definition of normative law is the law of God, not the law of nature or of reason, and this law of God is contained in the Bible. The Bible is, therefore, positive and normative law at the same time, or more correctly, it is normative law in the present, unlike other conceptions of normative law which must invariably locate it

in the future. It does also not stand under any form of criticism for this reason. Finally, it can, therefore, not be the task of a philosophy of biblical-Jewish law to aim at any changes whatsoever.

What, then, is conceivably its task? The work of reason upon any phenomena is either judgement or explanation. Since biblical law cannot be judged, reason's only function can be to explain it. Reason can only explain reasonably; thus it is clear that the task of a philosophy of biblical-Jewish law must be to explain that law reasonably. While both Bible and Talmud, insofar as they are merely concerned with a strictly legislating activity, can content themselves with promulgating laws by reason of the fact that "thus saith the Lord," this being satisfactory religious warrant, a philosophical understanding of the results of these legislating activities must be able to answer the further question: Why does "the Lord say "such"things?" And the answer must be in the following form: The Lord says such things for this or that reason with this or that purpose in mind. In other words, a philosophy of biblical-Jewish law must give reasons for the divine laws.

Already in Talmudic times the question of the reason for certain biblical laws was raised, especially by R. Shimeon bar Yochai who, in this respect one of the founding fathers of

Jewish rationalistic legalism, has paradoxically entered Jewish history as a saint of mysticism.<sup>1</sup> But, for reasons which will become clear in the further study of Maimonides' conception of the rationality of Jewish law, grave misgivings about the religious legitimacy of this basic question on the part of most Jewish authorities, interrupted this incipient tradition from the Talmud. It was only Maimonides himself who raised it to the height and placed it in the center of all Jewish legal thought for ever after. We cannot here enter into an exposition of the place of reason in Maimonides' philosophic system; it is a hotly debated question since shortly after his death.<sup>2</sup> Whatever it may be, however, it must certainly be the underlying principle of Jewish law by which it can and should be explained. This is true for chiefly two reasons, one apologetic, the other systematic. The apologetic and polemic note will naturally emerge more clearly in the "Guide of the Perplexed," for, as its very title indicates, this work is devoted to the task of bringing back to the fold of Judaism the lost sheep and to enlighten the minds of those who are confused about it, - both types consisting of men, therefore, who somehow stand outside the internal logic of a religious faith and can be converted only by means of the one faculty which they have in common with all other men, i.e. common human reason. If, contrariwise, religious law were autarchic and comprehensible only in its own terms, it

could never appeal to outsiders. This particular argument for the necessary rationality of the law occurs repeatedly in form of a piece of Biblical exegesis in the "Guide":<sup>3</sup> "It is written: 'Observe therefore and do them (My statutes), for this is your wisdom and your understanding in the sight of the peoples, that, when they hear all these statutes, shall say: "Surely this great nation is a wise and understanding people!"...but if this law<sup>4</sup> had no reason, brought no benefit and did not prevent harm, why should it be said of its adherent and its practitioner that he is wise and understanding, that he is of a high rank? Or why should the nations be full of admiration in that case?!"

The systematic necessity for the rationality of the law is only intimated in the "Guide" and completely stated in the legal code *דברי משה* where it could be properly appreciated by those who have already accepted its binding power as such. Moreh III, 52 states: "Each of the two over-all purposes of the law, namely the love of God and the fear of God, is attained by its respective instrumentality: the love of God is acquired through an understanding of the Torah, which includes the correct understanding of the doctrine of the existence of God, while the fear of God is instilled by keeping the laws of the Torah."<sup>5</sup> From this statement it might be deduced that in Maimonides' opinion the actual observance of the law will cause only

the fear of God to arise in the hearts of the practitioners and that the love of God can never result from it, rather that love is produced purely by understanding as disparate from doing. In the light of traditional teaching on this point, however, if for no other reason, this could not possibly be his real belief, for he must have known the noted Talmudic adage: "From fulfilling a law for an ulterior motive a man will advance to doing it for its own sake."<sup>6</sup> Indeed, there must be a distinction between actions done without understanding, what Franz Rosenzweig called "aggadic doing",<sup>7</sup> and actions done with understanding. But there must also be a way by which a transition can be made from one to the other. Quite so, in another connection in the Code, Maimonides teaches:<sup>8</sup> "Thus when one teaches minors, women and uneducated people, one teaches them to serve God out of fear and in order to receive reward, until their knowledge has increased and they have acquired greater wisdom; - then one reveals to them the secret very slowly and habituates them gradually to the truth, so that they will grasp and understand it and so that they will end up by serving God out of love." How is this transition accomplished? Clearly this must be the course of events: first the law is kept purely automatically and uncomprehendingly; by constantly living according to it, its sense and meaning is understood through actual practice; once this sense and meaning is understood, however, the law will continue to be kept for the sake and out of an appreciation of its sense and meaning, i.e.

out of a voluntary, rational decision, i.e. out of love! (In the above passage the merely pedagogical function of the fear of God and of the concept of reward and punishment is poignantly illustrated. In accordance with his theory, that one of the two methods by which the Torah combats idolatrous beliefs is to invert them completely and then teach them in this inverted form as part of Judaism,<sup>9</sup> Maimonides indicates already in Moreh III, 30 end, that the doctrine of reward and punishment serves a purely pragmatic functions, " (וי) אדם צריך לדעת שכל המצוות שהם צוים עשה ואלו שהם צוים לא תעשה הם צוים עשה ואלו שהם צוים לא תעשה הם צוים עשה" and therefore, belongs to the category of "necessary truths." <sup>10</sup>)

At any rate, out of fear must come understanding so that out of understanding may come love. This truth is formulated in Maimonides' famous parable of the citizens and the court of the king:<sup>11</sup> All citizens of a country hope to come as close to the court of their king as they can; some remain standing afar off, their faces turned in the opposite direction; others come closer by looking toward the court; some finally stand in the very court-yard beholding the countenance of their king itself. The king is the truth of religion; the first class of men consists of those who unthinkingly merely practice their religion; the second of those who are also acquainted with its truths, but the last comprises those enlightened religionists who have arrived at a belief in the religious

truths by engaging in personal, independent speculation. - Thus it is stated that to "serve God out of love" is the highest religious attainment. Since understanding is required for this, it was systematically necessary for Maimonides to show that the Jewish law is accessible to understanding, that is to say comprehensible by reason, in order to integrate it as part of the via religionensis to God.<sup>12</sup>

The law must be reasonable. Is it? In order to answer this question, in accordance with Maimonides' oft-repeated statement that "The Torah is comparable to nature and always completes the natural things,"<sup>13</sup> it is advisable to consider initially the problem of rationality in general.<sup>14</sup> On this point, in a somewhat torturous argument, Maimonides arrives at an almost orthodox Aristotelian conclusion:

With his customary and well-known biological bias, rationality for Aristotle is synonymous with purposefulness. In order that an object or a development may have a purpose, however, it must in some sense, be created because if it exists eternally, uncreatedly or uncaused, it would be meaningless to ask for what purpose it exists. So, for example, "since God is uncreated, one cannot ask: what is the purpose of the existence of God?"<sup>15</sup> The answer would simply be: He just is. This principle was already concisely formulated in the twentieth point of Maimonides' summary of Aristotelianism:<sup>16</sup> "Every necessary existence can obviously have no cause for its existence..."<sup>4</sup>

"For Aristotle, however, not only God but the whole world and all its parts, except for minor accretions, are uncreated and necessarily existing. They all cannot, therefore, have a purpose. The most that can be said of them is that they tend toward their natural and necessary consummation. This consummation, or entelechy, may be considered analagous to the purpose of created artifacts, with the modification that the latter find their purpose in something external to them while the former find theirs within themselves."He (Aristotle) refused to conceive of something different from phenomena ( a second world) which would be their cause...An essence does not possess some other, higher reality beyond its appearances, but it is only in the sequence of its appearances by means of which it realizes its potentiality."<sup>17</sup>

Now, that this formulation of the problem of rationality in general is relevant to Maimonides' problem of the rationality of the law can already be seen in the fact that, for different purposes, in both cases rationality must be synonymous with purposefulness.<sup>18</sup> In one basic respect, Maimonides' position differs from Aristotle, however, namely in that he holds to the belief in the createdness of the world. In the pertinent passage of the "Guide" in which he establishes this belief,<sup>19</sup> undoubtedly in anticipation of his later discussion of the law with which the entire work ends and in which it finds its cul-

mination, he already indicates of what importance this belief is to the question of the law. "Accepting the doctrine of Creation, we find that miracles are possible, that Revelation is possible...." That is to say, though it is true that belief in the existence of God need not be premised on the belief in Creation,<sup>20</sup> yet the belief in Revelation must, because in a necessary world which did not need God's active will for its origin there is also no room for the freedom in its structure which alone makes divine intervention by means of prophecy, miracles and Revelation possible. And, of course, Maimonides' entire legal system is based on the belief that Biblical law is divinely revealed.<sup>21</sup> Therefore, "it is already known that the principle of the belief in prophecy precedes that of the belief in the Torah, for if there were no prophet there would be no Torah."<sup>22</sup> Since, therefore, the world is believed to be created, it might appear ab initio that it can also have a purpose beyond itself, beyond its own entelechy.

Strangely enough, however, this is not the case!<sup>23</sup> If creation has a purpose, it would surely seem to be the highest and loftiest product which it can bring about, to wit, man. Man's purpose, in turn, would have to be, in accordance with the definition of a true purpose as having to reside outside the purposeful object and because it would have to be higher than man himself, the worship of God: מִדְּבָר  
" מִדְּבָר מִדְּבָר " - "The purpose of man is the worship



Stand before Thee" is used also by Cohen in exactly this context as evidence for this belief?!<sup>24</sup> And yet, in the light of the later "Copernican revolution" which removed man from the center of the universe it is also most significant that Maimonides by long anticipated such developments.<sup>25)</sup>

In any case, despite his belief in the createdness of the world, Maimonides eventually arrives at the same conclusion which Aristotle already enunciated, that the world as such has no purpose. The significance of this fact is revealed initially in the use of the words " *רצונו יצרנו* " - "that the world came about by His will alone," which are traditionally the phrase by which opposition to a rational explanation of the law ( *אין צורך* ) is expressed. There is, of course, a difference between the problem of purposefulness as it concerns nature on one hand and the law on the other. Nature, except where prophecy, Revelation or miracles intrude upon it, is subject to the necessity of the laws of nature, while the realm of man, to which the law refers, stands under that freedom which is guaranteed by its divine use in the creation of the world. Therefore, while nature will inevitably tend toward its entelechy, man will only possibly do so, depending upon his attitude toward the law. But that this is the last and chief function of the law, i.e. its purpose, its reason, - to lead man toward his entelechy - there can be no question: "This is its ultimate purpose, the

raising to true perfection of man, to that perfection which is peculiar to him."<sup>26</sup>

That God's law must be rational can and is proved in yet another way.<sup>27</sup> All actions can be exhaustively classified as either (a) senseless or (b) frivolous or (c) unsuccessfully purposeful (פ'ו) or finally (d) successfully purposeful. I.e. they are either meaningless, or engaged in for a trivial, insignificant and worthless reason, or, though purposeful, unable to achieve their purpose, or finally purposeful and able to achieve their purpose. It is clearly improper and unthinkable to ascribe to the perfection of God any of the first three categories, and it is thus established that the Torah, which is a product of the action of God, must be purposeful. Thus also the obscurantism of those people is refuted who would have it that reason is something peculiarly human and that, were the law reasonable, it would thereby be shown to be of human origin.<sup>28</sup> Therefore, "all the laws have a reason."<sup>29</sup>

With this quotation we enter upon an often controverted and, indeed, quite complicated matter. For shortly after the words above reproduced, it continues:<sup>30</sup> "Those laws which are called פ'ו (generally defined as אר"ל א"ל, arbitrary laws, as contrasted with א"ל א"ל, cf. Saadiah Gaon), such as the prohibition to wear clothes of mixed fabric, to eat milk

and meat together, and the command to send a goat into the desert, concerning which the sages said:<sup>31</sup> "Upon things which I legislated ( 'A~~pp~~n ) for you you are not permitted to meditate; Satan uses them as butts of mockery and the nations of the world object to them" (here the idea of "scandal and stumbling block" seems to recur), - concerning them the consensus of the sages was not that they are matters without any reason and without purpose, for that would imply the attribution of vain actions to God, but rather the consensus of the sages is that they have a cause, i.e. a universally beneficent purpose - only that this reason is hidden from us, either because of the limitations of our understanding or because of our lack of wisdom."<sup>32</sup> It would seem impossible to understand this statement in any other sense than to the effect that even those laws which are traditionally considered supra-rational are in principle subject to reasonable comprehension. And yet, from the fact that Maimonides also acknowledges the "hiddenness" of this rationality, the statement has been interpreted as denying, in the last analysis, rationality to the law altogether. This is obviously a distortion of the facts, however! Since this interpretation regards not only a matter of fact but also contains wide and significant ramifications, it is worthwhile to analyze the position of one of its recent representatives:

Leo Strauss<sup>33</sup> claims that the predominant strain of mediaeval Jewish philosophy, Aristotelian rationalism, did not acknowledge an "identical content of reason and revelation" but rather that in its view Revelation taught a part of the truth to which reason by itself could not attain; In that manner a positive function would be ascribed to revelation in the economy of truth. He bases this assertion not on any direct evidence but on an interpretation of Maimonides' concept of God as a deus absconditus - who, indeed, is beyond rational cognition by definition, of course, - and on a statement of Ibn Daud's that there are irrational laws ( *ש'פך* ) in Biblical legislation. E silentio Strauss then applies this latter reference also to Maimonides, and by the further claim that Maimonides is one of "the two greatest minds of the Jewish philosophy of the Middle Ages"<sup>34</sup> he believes to have sufficiently established his case.

In passing it may be worth noting that the one specific example Strauss cites from Ibn Daud, - Abraham's unquestioning submission to the divine command to sacrifice his son Isaac, a command which to Abraham, Ibn Daud and Leo Strauss appears arbitrary and utterly unreasonable, - is a favorite text of Christian theologians, cf. particularly St. Paul and Kierkegaard, for buttressing their doctrine of salvation

through "faith" as superior to salvation through "deeds." More important is, however, that Strauss' implied claim that Maimonides acknowledged in principle the existence of irrational laws is utterly unfounded. All laws, on the contrary, are in principle understandable to the human mind. Maimonides does, in fact, clearly define the temporary and conditional difference between *ḥukim* and *ḥinukh* as residing only in the vulgar understanding of them, not in the understanding of the enlightened philosopher or in their intrinsic rationality or irrationality: "Those laws whose purposefulness is perceptible to the mob are called *ḥukim*, and those whose purposefulness is not perceptible to the mob are called *ḥinukh*."<sup>35</sup>

When the vulgar, unenlightened minds, the members of the "mob," or even the philosophers can not perceive the meaningfulness of a law, it is due to the fact "that we are ignorant of the reasons for some of the laws and do not understand the species of wisdom that is contained in them....., be it because of the limitations of our understanding, or because of our lack of wisdom."<sup>36</sup> In the first kind of ignorance due to which men cannot recognize the meaningfulness of a law, Ephodi<sup>37</sup> wants to see an essential limitation, or, to use Strauss' terminology, "insufficiency" of the human reason. But Shem-Tob,<sup>38</sup> with at least as much exegetical justifica-

cation and, in the context of the argument, with more systematic justification, refers also this kind of ignorance only to the malice of Satan<sup>39</sup> who makes men erroneously believe in their own, rational "insufficiency."

Not only in his unauthoritative, personal philosophic work but even in the legal code Maimonides affirms the essential rationality of all laws, even those which are called *ḥukim*. He says there, for example: "Even though all *ḥukim* of the Torah are (arbitrary) decrees (*ḥukim*), as we have explained at the end of the chapter *ḥukim*, yet it is proper to study them and find as much reason in them as you can. Behold, the former sages said that King Solomon understood most of the reasons of all the *ḥukim* in the Torah."<sup>41</sup> And again the following beautiful and effective, though also slightly veiled statement: "It is proper for man to study the laws (*ḥukim*) of the holy Torah and to understand them fully as is in his power. A matter for which he can find no reason and whose cause he does not know should not be light in his estimation, for he should not dare to rise to the height of God lest he be destroyed, (i.e. man should not be surprised at having great difficulties in understanding the law), and his thoughts concerning the law should not be like his thoughts concerning other, profane things. Come and see how important the Torah regards the law concerning the unlawful use of sacred property (*ḥukim*): If wood and stones, dust and ashes, as soon as

the name of the Lord of the World is called upon them, even though they are mere things, are sanctified, so that anyone who treats them as if they were secular objects thereby makes unlawful use of them (וְאֵין) and has to make atonement even if he did it unwittingly, how much the more should a man not esteem lightly a law that God legislated ( פְּקֻדָּה ) for us merely because he does not know its reason! A man should not attribute things that are not so to God and shall not think of them as he thinks of profane things. Behold, it is said in the Torah: "And ye shall keep all My statutes ( מִצְוֹתַי ) and all my laws ye shall do!" From this our sages deduced that we owe keeping and doing to the מִצְוֹתַי as much as to the מִשְׁפָּטֵי. The meaning of "doing" is known to be that the מִצְוֹתַי are to be observed. The meaning of "keeping" is that one ought to be careful concerning them and not regard them as lesser than the מִשְׁפָּטֵי. מִשְׁפָּטֵי . מִצְוֹתַי are those laws whose reason is known and the benefit of whose observance accrues in this world, such as the prohibitions of theft, blood-shed and the command to honor father and mother (i.e. reasonable, moral laws). מִצְוֹתַי are those laws whose reason is not known. Our sages said: I have given you מִצְוֹתַי upon which you are not permitted to meditate. The instinct of man rebels against them and the nations of the world object to them,<sup>42</sup> such as the prohibitions to eat pork-meat or meat and milk together, the laws

concerning the lamb whose neck is to be broken, the red cow and the goat that is sent into the desert. How was David the King troubled by the heretics and pagans who objected to these *וּפְנֵי* ! But all the time, while they were pursuing him with false objections which arise because of the limitations of man's understanding,<sup>43</sup> he continued to cling to the Torah!... And all the laws concerning the sacrificial cult are *וּפְנֵי* . (1 - Maimonides certainly gives lengthy and detailed reasons for these laws in the "Guide,"<sup>44</sup> clear and irrefutable proof that by *וּפְנֵי* he does not mean laws which are in principle incomprehensible).<sup>45 46</sup>...

Thus it is not true, Leo Strauss notwithstanding, that the central figure of mediaeval Jewish philosophy believed, at least from the legal perspective, in a surplus of truth contained only in Revelation. In fact, even with regard to the extra-legal problem of creation, Maimonides' answer, namely that philosophy cannot prove more than the likelihood of creation while Revelation teaches it as a certainly, thus coming closest to Strauss' thesis, states that it is in principle understandable to the human mind, even though he admits his personal inability with regard to this matter. Strauss refers to this<sup>47</sup> but does not consider its implications.

The systematic significance of this entire error of Strauss' is revealed when the conclusions which are based upon it are examined: since Revelation fulfills a function which cannot be

carried out by reason, it has a legitimate place in the philosophy of Judaism, a thesis which Guttman, "Die Philosophie des Judentums," has doubted.<sup>48</sup> Therefore Revelation is not only a datum of history but also a metaphysical, cosmological necessity for mediaeval Jewish rationalism. Therefore, modern "idealism" as a philosophical approach to the philosophy of Judaism and as represented at its best by Herman Cohen cannot do justice to the fundamental tenets of historical Judaism, since, in the nature of its original epistemological, man-centered perspective, it can no more transcend the phenomenal character of its concept of Revelation, i.e. Revelation as a fact only for the one to whom it is revealed, into the "real," objective, external, cosmological realm than that of its concepts of God or creation.<sup>49</sup> If, on the other hand, the contents of revelation and reason completely coincide, then metaphysical Revelation is not necessary for the economy of truth; therefore, the cosmological, metaphysical approach is not indispensable for a correct understanding of Maimonides' basic intentions or of Judaism. Just this, however, is the chief thesis of Strauss' "Philosophie and Gesetz." (Whether philosophic thought, Aristotelian or Kantian, can deal positively with the basic belief in Revelation as taught by the monotheistic religions is a problem in itself. That it is at least dubious has been shown effectively for our generation by Franz Rosenzweig.)

In another book of his, "Die Religionskritik Spinozas,"<sup>50</sup> Strauss again maintains the thesis that Maimonides held a belief in the essential insufficiency of the human reason with regard to the law, on the basis of the fact that Maimonides declared that at least parts of the biblical legislation could not be rationally explained or justified. The common belief, Strauss states, that Maimonides is the great rationalist of Jewish philosophy is true only when he is compared to his even less rationalistic predecessors; when compared with the more absolute standards of Cartesian and Spinozistic rationalism, however, he appears much less of a rationalist. To prove this thesis, Strauss refers to Moreh III, Ch. 26 where Maimonides deals with the general question of the rationality of the law and describes his position in the following words: ".... verlangt doch dieses Gesetz die Erfüllung von 'Zeremonien, d.i. Handlungen, die in sich indifferent sind und durch blosse Satzungen gut genannt werden.' (Spinoza, Tractatus Theologico Politicus, 48) Selbst Maimuni, der sich übrigens die grösste Mühe gibt, die Rationalität des Mosaischen Gesetzes darzutun, gibt zu, dass die Einzelbestimmungen dieses Gesetzes nur Kraft Satzung Geltung haben; bezüglich einzelner Opfervorschriften etwa meint er, man werde für sie niemals einen Grund ausfindig machen können." This paraphrase is at least misleading if not actually false, for by neglecting to explain the term "Einzelbestimmungen" he leaves the way open to his subsequent, false

assumption that Maimonides actually acknowledged the existence of unrational laws. It is obviously necessary to examine Moreh III, 26 more thoroughly!

Maimonides says there:<sup>51</sup> "אני מצאנו בג' דברים ש'ם  
הבבא קמח רבנו (Munk locates it in sect. 44) ויבאנו ממנו הבהירות מחלוקת  
קצת ממצות אין עשה עשה אלא ממצות בן דבר ודא כיון  
בן גבליה אומר ודא גודעל ג' מצאנו."

I.e. only at first does the Midrashic passage to which he refers seem to declare that there are unrational, unjustifiable laws. He then sets out to give a "second thought" to this

passage and to interpret it in the correct manner: "ואם כיון  
נימאמר הנה נבא מאז לדא מצאנו דו זומה בבבא קמח,  
כדל' אני גו פינול, ארמיהו דג' ע, דא נצא מצוה  
דג' ג' כדפ (Munk's correction) ודא נבד מלוקל ממוסכס דליו,  
וטוה כיון ד' ממצות הוקר בה' גבליה ומודיעיה במצאנו!"<sup>52</sup>

This corrected interpretation of the passage is: "כד' ממצות יר'  
ד' סיג' הנכח ומנ' גודעל אלו צונו גו, אב' חסקיו - הפ' א'  
"נאמר ג' הפ' א' ד' ממצות ד'."

Munk translates this passage somewhat misleadingly:<sup>53</sup> "Les dispositions générales des commandements ont nécessairement une raison et ont été prescrites en vue d'une certaine utilité; mais les dispositions de détail, a-t-on dit, n'ont d'autre but que de prescrire quelque chose."

The latter part should read something like this: "...mais c'est les dispositions de détail desquelles on a dit qu'elles n'ont d'autre but que de prescrire quelque chose." I.e. Maimonides is

is here contradicting that interpretation of the Midrashic passage which makes it say that there are unrational laws and himself interprets it to mean that, though the laws in general are always rational, there are some details, some specifications in them which are unrational. He does not, however, give his assent to this, now correctly understood quotation. Therefore, he stresses that "this is only said (by others) of them" - *לפי שם* " *לפי שם*." It is, therefore, completely misleading when Munk refers the reader back to the original interpretation of the Midrash which Maimonides has meanwhile refuted in connection with this last statement,<sup>54</sup> as if to say that Maimonides subscribes either to the first, false interpretation or to the second, correctly interpreted text. He does neither! This is quite clear from the phrase: "This is said of them by others," as well as from the fact that he goes on to say: *"אני אומר לך שכל המצוות רצונו"* .. *אני אומר לך שכל המצוות רצונו*; *אני אומר לך שכל המצוות רצונו*! I.e. "I have told you all this only in order to do justice to the Midrash, so that what its authors intended to say may be correctly understood. But actually also what they really intended to say is untrue in turn. Therefore, I shall now proceed to tell you what the true opinion concerning the rationality of the law is." (Here Munk<sup>55</sup> again confuses the student by again referring him back to the original interpretation which, by the time Maimonides has reached this step in his marvelously logically construct-

ed argument, has been left far behind!) And what is the true opinion of this matter? The Midrash and both of its interpretations, one false and one correct notwithstanding, even the specifications of the law involved, the law of *למיטע*, are rational! They aim to alleviate the pain of being killed! An Ephodi correctly interprets the end-result of the entire train of thought: *"לשם ואפ"כ דמי צני בעידול האמרו אין הגמכות למיטע"*  
*"חלקי מצוות הגמי חכונות ובהמי הגמי טעם ותכלית"*

Though Maimonides thus rejects the thesis that there is anything irrational in the laws of *למיטע*, he does seem to proceed to state that in the laws of the sacrifices there are unreasonable specifications. Not that sacrifices themselves are such! *"שמצוות בהקדשה יקרבן יל דמיטעל גדולה"* 56

But the number and kinds of sacrifices to be offered, whether seven or eight or whether sheep or oxen, cannot make any difference to the value of the spirit of sacrificing. Therefore, these details as prescribed in the Bible seem to be irrational. To try to give reasons for them is, in fact, no less heretical than not to give any reasons at all for any of the laws!

What kind of irrationality do they exemplify however?  
*"ודם כי העצום חייהו, ואם גב"ה, אלא שרצונך מביא דפיוג לט"*  
*"חלקים לאין דעם סיבה, וכאלו יוא דבר נמצא במק שגונה ללא"*  
 "And why is it impossible that such unrational *היה*"

specifications should not exist? Because it is in the nature of the given situation that some, any number, and some, any kind of animals must be assigned. Against any given number and kind the objection could be raised: why just this number and this kind? As Shem-Tob correctly states, the only way of avoiding this dilemma would be to have no sacrifices at all: <sup>58</sup> למה?

למה? I.e. in order to avoid irrational details, the very much rational whole would have to be eliminated. There is, therefore, such a thing as an inevitable irrationality.

For an understanding of the nature of this inevitable irrationality, we turn to Maimonides' account of the rationality of the world, of nature, i.e. of the providential arrangement of Creation. In his introductory sentence to Moreh III, 26, where he deals with the problem of rationality of the Law, Maimonides himself seems to direct the reader's attention to the similarity of this problem with that of the rationality of the world,

for he says: "כמו למסקו אנלי ודיין מהם. והנה אם אמרנו יתעורר  
 נחלקים אומר חכמה או אומר וירצון לבד לא לבקלא גבליה כלם,  
 כן חלקו ומהחוקק השבחה הנה אמת ענו מן החכמה, ליל מי  
 לבד יתקל עצה סיבה כלם, ויאמר להגודות כלם נחלקו אומר  
 וירצון עצה, ליל מי לאמר לבד חכמה ואצורה חסן נחלקו אומר  
 וחכמה ויחכוון בה גבליה אומר, ולחכמה כלם ול עספ סבה, וחכמי  
 והחכמה צוה חסן, ויחיו עכפ עספ אומר לאונקו נסכס עספ  
 59 קצתם ועספ אומר "חכמה חסן!"

In the problem of the rationality of the Law occurs the same difficulty of certain unreasonable details which also occurs in the problem of the rationality of "the handiwork of God," i.e. Creation.

What is the inevitable irrationality in Creation?

Moreh I, 72 describes the entire universe as a macrocosm, i.e. as a purposeful whole. However,<sup>60</sup> even as in the human microcosm,

וְגַם כִּן בְּבָרִיאַת הַמַּלְאָכִים הַכּוֹנְנִים לְעֵצְמָם אֵינֶם מְבַרְכִים וְהַמַּלְאָכִים וְהַמַּלְאָכִים אֵינֶם מְבַרְכִים וְהַמַּלְאָכִים אֵינֶם מְבַרְכִים וְהַמַּלְאָכִים אֵינֶם מְבַרְכִים

וְהַמַּלְאָכִים אֵינֶם מְבַרְכִים וְהַמַּלְאָכִים אֵינֶם מְבַרְכִים וְהַמַּלְאָכִים אֵינֶם מְבַרְכִים וְהַמַּלְאָכִים אֵינֶם מְבַרְכִים there are <sup>in the</sup> macrocosm. I.e.

there are things in nature which are purposeless in themselves, when viewed as independent entities, but which make possible the existence of purposeful things, or, at least, without which the purposeful things could not exist, even as the human hair does not seem to fulfill any positive function except that the human skin, which does fulfill one, cannot be thought to exist without it, due to the nature of the skin. Thus, even as the purposive, rational law of sacrifices would have to be abolished in order to avoid some of its irrational details, so the purposeful human skin would have to be made impossible in order to eliminate the purposeless human hair. Clearly, this is an absurd demand.

In the last analysis, therefore, even this "inevitable

irrationality" can no longer justifiably be designated as irrational, for surely something whose purpose it is to make the existence of something purposeful possible as a sine qua non cannot be regarded as purposeless! Thus there remains nothing unrational in Creation or in the Law.

Only one last question can be asked: why did God create reality, the reality of the Law as well as the reality of nature, in such a manner as to make the existence of only indirectly purposeful, rational factors necessary? Historically speaking, we encounter here a vestige of neo-Platonic cosmology in Maimonides. If, according to Maimonides' theory of creatio ex nihilo, God also created matter, He might have created it without such accessories and adjuncts. His theory of Creation is not purely Biblical, however; it also contains reminiscences of the Platonic theory of a hyle and the neo-Platonic theory of the evil, i.e. purposeless nature of this primaeval matter.<sup>51</sup> Systematically speaking, Maimonides overcomes his neo-Platonism by declaring, in the quotation from Moreh III, 26 cited previously that God's אין, ואין, ואין "אין, ואין, ואין" I.e. if God "wanted" reality to be such, - not if any impersonal, other-than-God "necessity required it," - it is no longer independent but part of creation. So much for the irrationality inherent in the necessary reality of the Law. Equally in the reality of nature, God so created matter as to make it come-

into-being and perish again. For though this involves the existence of some purposeless evil, under these material conditions is cognition and striving for perfection possible.<sup>62</sup> To desire the latter without the former is to want the human trait of striving for perfection without being human, without being imperfect.<sup>63</sup>

Maimonides applies this rationalization of the law as consistently as could at all be expected. Perhaps the most common argument drawn from Jewish tradition against the rationalistic school is the famous Mishnaic ordination against explaining the matter of the "bird's nest." Maimonides skirts this obstacle very ingeniously. In the process of doing so, however, he involves himself in an apparent inner self-contradiction as between his formulation of it in the "Guide" on the one hand and in the Code on the other. Even as the problem of his apparently conflicting attitude to the law of "an eye for an eye,"<sup>64</sup> so with regard to this matter close analysis of both passages reveals this contradiction as lying merely on the surface and disappearing upon deeper investigation:

For the famous Biblical injunction<sup>65</sup> to chase the mother-bird from the nest and only then to take her children for eating purposes, Maimonides gives two specific reasons:<sup>66</sup> 1. To spare the mother the pain of seeing her children taken away, and 2. to make the entire procedure less appealing, since



explains the contradiction in the following manner:<sup>73</sup> "Maimonide, dans son Mishné Torâ....s'exprime dans le même sens que la Mischnâ, et contrairement à ce qu'il dit dans notre passage, où il manifeste son opinion personnelle," while in the halachic work he bows to normative Jewish orthodoxy, - This explanation does not, however, completely satisfy, because, apart from the need to be wary of thinking that the great liberal Maimonides really lived on such a double standard, in the Mishnah Torah itself he states repeatedly<sup>74</sup> that all laws, including the so-called *Orayh*, are in principle rational. Shem-Tob's explanation is already more adequate to the spirit of Maimonides. He hazards the guess<sup>75</sup> that in the Moreh Maimonides explains the Bible, in the Mishnah Torah he reiterates the Talmud. This would comply with the facts of Bible and Talmud as well as with the two texts of Maimonides himself. And that the Rambam does in fact realize that there is a factual difference between the position of the Bible and that of the Talmud was brought out clearly in the profound text of Chapter 41.<sup>76</sup> Shem-Tob's explanation is unsatisfactory only inasmuch as Maimonides not only interprets two texts but also interprets one and the same text, that of the Gemara, in two mutually exclusive ways!

The following consideration should help solve the problem: *אין שום מידה* to the Mishnah in question quotes Rashi as permitting the explanation of the Biblical law as long as



tion of the law from God's unmerited, irrational "mercy" or "grace," because it derives in fact from His rational, Judaistically conceived justice.)

Another limitation of Maimonides' rationalization of the law does stand up to scrupulous analysis. However, this limitation is not a limitation in principle but only a limitation by accident or historical conditions. It states in effect that with regard to all those laws which do not permit of a rational explanation, we should not say "Ignorabimus" but only: "Ignoramus," i.e. they are not as yet explained but will be at some future time and by someone more learned and perspicacious than we. That is the meaning of the words " עוֹלָם אֲנִי יוֹדֵעַ," I do not know to this day (but I may know later)," which occur wherever Maimonides' rationalization fails." But for the institution of the shew-bread I know no reason, nor can I relate it to anything, to this day."<sup>77</sup> Even more explicitly: "But concerning the sacrifice of wine, I am confused to this day that this was commanded; heathens already engaged in this practice and there seems to be no reason in it; but someone else has found a reason."<sup>78</sup> The same qualification of "to this day" is stipulated even when Maimonides mentions that eternal thorn in the side of Jewish rationalist legalists, the red cow.<sup>79</sup> There is, therefore, in a few cases a temporary, inessential, historically conditioned limitation to the rationality of the law. This limitation, narrow as it is, is

further constricted, however, by a consideration which will be brought out more clearly in the treatment of Maimonides' historicism in law, namely that such ignorance of the reasons for specific laws as may exist is presumed by the philosopher to be not a complete ignorance of the kind of reasons but merely of the special forms of a kind of reasons which is well-known; what is more, even the causes for this ignorance of the special forms of a known kind of reasons are known: The reasons are historical conditions in general, and the cause of the ignorance of the specific conditions which give meaning to certain laws is the disappearance or non-existence of books in which these conditions might have been described for the benefit of later generations.<sup>80</sup>

By means of two specific examples it shall now be shown that this rationality of the law is no mere theory for Maimonides but that it concretely and practically affects his actual halachah. The first is the applicability of the general law to the king. In all philosophies of law this concept constitutes a real and important problem. Under the early modern form of "absolute monarchy," the political theory which held that kings are not crowned by their subjects but rather that they are king "dei gratia," by the grace of God,<sup>it was</sup> consistently deduced that their rights are "the divine rights." I.e. it was maintained that the status of kingship and the rights pertaining

thereto derived directly from God and independently from the law of the country. Far from being subject to the law, kings were, therefore, the authors of the law and, consequently, the masters thereof. Whenever they so desired, they could and did exempt themselves from the law. Louis XIV's famous dictum correctly summarized the end-effect of this chain of reasoning: "La loi c'est moi" - "I am the law."

In Jewish law, too, this problem is an old one. It is well-known how Sanh. 19a restricts the right that kings may not be judged, i.e. that they are above the law, by referring it only to Israelite kings, while holding that the kings of Judah are to be judged. Of course, Israelite kings had ceased to be for all eternity in 722 B.C.E. By thus, in effect, referring and limiting this legal principle to the past, the rabbis made it effectively inoperative.<sup>81</sup> Similarly the controversy whether *קדשו אלוה* in the Book of Samuel enumerates privileges which adhere to the king or warnings to his potential subjects of his illegal transgressions<sup>82</sup> arose, of course, out of an attempt to limit the king's sway. This increasing~~ing~~ historical tradition in Jewish legalism to bring the institution of the monarchy ever further under the disciplines of the general law is continued by Maimonides. The reason for this lies close at hand: if the law is rational, and reason being the common, essential character of all men to which they are subject, then

also the king must be subject to the same law to which his subjects must bow!

א"י, פ"ד א' states: A king "may break down (fences) so as to make a road for himself and nobody may stop him. There is no limit to the size of such a king's road, - rather it can be as large as he needs it. He need not reroute his roads because of anyone's vineyard or field (which might be in the way) but rather can lead it straight (through such obstructions) when he is waging war."<sup>83</sup> I.e. only when the king is waging a legally recognized war and for its conduct may he take advantage of the right of "eminent domain." As א"י פ"ד ad locum points out, the talmudic passage upon which this formulation is based<sup>84</sup> is interpreted by Rashi in these words: "And he (the king) may break down the fences of others to carve himself a road to his own field or vineyard."<sup>85</sup> Without the qualifying words: "...when he is waging war," Rashi, therefore, seems to state that, at any time, and not only for needs of war but even "for his own field and vineyard," the king may lay claim to eminent domain. That such is indeed Rashi's opinion becomes indisputable in view of a similar but more explicit commentary to Yeb. 76b.<sup>86</sup> There are two kinds of war, now, א"י פ"ד א' - "permitted wars" and א"י פ"ד א' - "commanded wars."<sup>87</sup> "Permitted wars" may be waged by a king only after consultation with the law-courts and are in this manner subject to the law

and regulated by it, while "commanded wars," as the very term goes to show, being commanded by the Torah, are subject to the Law. Unlike Rashi, therefore, and by means of a personal interpretation, i.e. by the addition of the words: "when he is waging war," Maimonides subjects the king to the law, for, since his right to eminent domain is limited to the necessities of war, and since all wars are subject to the law, eminent domain itself falls subject to the law! - Finally, it should be noted that to circumscribe the rights and privileges of kings by means of enlarging them only in favor of his official tasks, not for his private benefit, is a device used by Maimonides also on other occasions. The king may, for example, privately own only one horse and buy more only for purposes of war.<sup>88</sup>

The second example, when traced to its last philosophic-religious implications, shows Maimonides at his most radical, perhaps at his too radical! Rationalization of the law is, of course, synonymous with ethicization of the law, except in those cases where rationalization is accomplished by historical explanations.<sup>89</sup> How, because of his ethicization of the

law, Maimonides modifies the law is well demonstrated by Adolf Büchler, "Maimonides' Sources and his Method in *Mishna*

*א'קא* I, 17."<sup>90</sup> In the legal formulation with which Büchler's article concerns itself provision is made that on fastdays the lawcourt of each Jewish community is to examine all the members

of the community for their moral integrity, to separate the good from the bad and to make the latter promise to do better in the future. *דן פדס* ad locum remarks that the talmudic exhortation to give charity on fast-days does not provide for such a procedure. Büchler concludes<sup>91</sup> that its source is Gaonic and that Maimonides preferred it to the talmudic arrangement because of "his own high conception of the duties of the Beth Din on the public fast to avail themselves of his inherent religious and ethical affect upon the Jewish mind and to remove from the community not only real sins, but also existing failures leading up to transgressions."<sup>92</sup> That this is a real personal act on the part of Maimonides is testified to not only by the fact that he had to choose between the talmudic procedure on the one hand and what Büchler assumes to be the Gaonic procedure on the other but also by the fact that within the Talmud itself there was opposition even to the ethicization of the institution of the fast which went no further than to associate charity with it.<sup>93</sup> Thus in explicit opposition to the later Maimonidean rule that transgressors are to be excluded from the community of fasters ("*מאן פדס*"), R. Simeon is quoted in Kerith. 6b: "A fast in which some willful transgressors do not participate is not a (proper) fast, for the smell of galbanum is evil and yet the Torah counts it among the spices of the incense."<sup>94</sup> Büchler adds: "It is

to be noted that Maimonides did not include that statement in his rules about the public fast."

Had Büchler not limited himself in this article to a consideration of *ד' ה' מ' צ' א' י'*, had he integrated his observation of this specific ethicization of the law into a more general consideration of "the laws concerning fast-days," he would have noted that this particular point fits into Maimonides' general interpretation of the significance of the fast-days.\* He defines and explains the efficacy of fasting in the following way: "Fasting belongs to the class of Repentance, for when men pray and blow the horn at a time of evil (i.e. when they have a fast) they will learn that these evil things have befallen them as a consequence of their own evil deeds. This recognition (of the consequences of human immorality) will cause them to put aside their evil. But if they do not pray nor blow the horn but rather say: "This evil thing has happened to us as a result of the natural course of the world (i.e. it is metaphysical, not moral evil) and it has transpired by accident (i.e. not by a law of natural, this-worldly reward and punishment)," - behold this is a vicious way and causes them to cling to their evil deeds, as a result of which their troubles continue. (I.e. since it is metaphysical evil, it cannot be avoided; therefore, men who hold this belief will not do the only thing which can avoid it and it will, therefore, continue.) This is written in the Torah:<sup>95</sup>

"If ye deal accidentally with Me, then I will deal with you in accord with the law of accidents." (Actually the verse reads: "If ye walk contrary to me, then I will walk contrary unto you in fury." The word *אִשָּׁר* is a hapax legomenon. Maimonides associates it with the scholastic term for "accident" as contrasted by "essence": *אֵשֶׁר*. He uses this same ingenuous interpretation in Moreh III, ch. 36) This is to say: when I bring evil upon you so that you will repent yourselves, if you then say that the evil happened by accident (and not by My direct decree) then I will continue to bring to bear upon you this law of "accident."<sup>96</sup>

In terminology as clear as the sun Maimonides contrasts two different views of the meaning of fast: *פֶּסַח אֲשֶׁר* versus *אֵשֶׁר*, nature versus repentance, i.e. nature versus morality. Thus he ethicizes not only the assembly on the fast but also the fast itself. Instead of being a petition for rain which God answers in the realm of nature, he introduces the moral element and subsumes the fast under repentance. Schematically the two views would look like this:

(A) No rain - therefore: petition -therefore:rain  
 ( *פֶּסַח אֲשֶׁר*, nature)

(B) Evil - therefore:no rain - therefore:repentance - therefore:rain ( *אֵשֶׁר*, morality).

The ethical preferability of B cannot be gainsaid, and yet a suspicion arises concerning it which may lead to grave consequences: in the chain of causes and effects constituted by B the agency of

God has been almost completely eliminated! Except to the extent to which God ordained the law of reward and punishment and except for the fact that He made this law part even of nature, not only of the realm of morality, so that moral deeds have consequences in nature, He plays no part. And even these exceptions refer, after all, to the primordial, creative legislative acts of God which also the god of the Epicureans might have done, and which in no wise bring Him actively into the stream of history. Especially in view of the fact that in Moreh III, ch. 30 Maimonides characterizes the belief in natural reward and punishment as a concession to old, inherited, heathen beliefs, the impression cannot be avoided that it is put forward here only by way of a "necessary truth"<sup>97</sup> and in order to cause men to be good.

Further consideration only strengthens this impression. Prayer in its purest sense does not mean the establishment of a real, personal relationship between the worshipper and God for Maimonides but a form of expression which will induce repentance on the part of man. Since it is, therefore, purely ethical and not, in the ultimate sense of the word, religious, the existence of God becomes superfluous in this respect and the belief in God, existent or otherwise, suffices for his purposes. This thought is expressed in perhaps the most astounding sentence in all of Maimonides' writings: "The practice was wide-spread at that time, so that everyone was used to it because they had been raised

with it, to bring all sorts of live sacrifices in their sanctuaries in which they had put up images to which they bowed and offered frankincense, - and their priestly men were such as devoted themselves to the cult of these sanctuaries for the stellar deities, - as we have explained it. God's wisdom, now, and His deceit<sup>98</sup> which we observe in all His deeds determined not to command us to abolish all these ways of the cult and to eliminate them completely, for in that case He would have commanded something which the human heart could not accept because of the nature of man which always clings to that to which it is accustomed. It would be as if a prophet were to arise in our time who would call to the service of God in these words: "The Lord has commanded you not to pray to him nor to fast, nor to ask His help in time of trouble, but rather to worship Him in thought only and without any actions."<sup>99</sup> What this amazing passage purports is quite clear: even as it would be preferable not to have any sacrifices, were it not for certain historical circumstances,<sup>100</sup> so also prayer is not pure "religion" but only a concession to certain historical and human weaknesses!<sup>101</sup>

This is the end of the road which began with the ethicization of the institution of facts! How, in the light of such reasoning, interpreters like Strauss can claim that Maimonides was not a strict rationalist seems incomprehensible. If anything, he was too rationalistic! At least in this case, after having started to ethicize, he is never able to transcend this ethicization

into theology.<sup>102</sup>

The concept of a pedagogically necessary "truth," a truth which is not actually true but which, when believed by the masses, leads to desirable actions, is not a mere philosophical auxiliary for Maimonides that he uses only in this case of prayer and natural reward and punishment. Rather it has a systematic place in his thought. What the chief and highest purpose of the law is has already been pointed out:<sup>103</sup> It is the "perfection of man which is peculiar to man." This peculiarly human perfection served by the law is, of course, intellectual perfection. But, in order that this intellectual perfection may be attained, it must be preceded by the physical and social conditions under which alone it is possible. Intellectual and physical-social perfection are, therefore, the two over-all aims of the law.<sup>104</sup> These two categories overlap, however, to some extent. Intellectual perfection can be defined as the possession of right beliefs. But also the right arrangement of social life, for example, requires certain beliefs, what we would today call "political theory;" there exist, therefore, beliefs which are in themselves conducive to intellectual perfection while others merely serve the inferior social perfection upon which the former kind is grounded.<sup>105</sup> Both kinds of beliefs are instilled by the law. Social perfection is served more exclusively by the law in that it restrains the physical passions

which incapacitate men for social and intellectual perfection.<sup>106</sup>

The second kind of belief, that which underlies social perfection, deserves of further consideration. They are, - this is their characteristic, - not really true, i.e. they do not refer to an actual, external existent; they proclaim something which is not true but which is useful in the education of the masses; they are ~~not~~, as Ephodi and Shem-Tob<sup>107</sup> phrase it, objectively ( *lo sh' yidun* ) but only subjectively true.<sup>108</sup> As Strauss puts it:<sup>109</sup> "...so verkündet die Offenbarung auch solche Lehren, die nicht eigentlich wahr sind, die aber dennoch notwendig sind damit des menschliche Leben, d.h. das Zusammenleben möglich wird." The disastrous consequences of this theory will become clearer in the progress of this study.<sup>110</sup>

JURIDICO-HISTORICISM  
IN  
MAIMONIDES' PHILOSOPHY OF LAW

It appears clearly that Maimonides was aware of the fact that Jewish law was not a static entity, once promulgated at Sinai and never since altered, but that it passed through a definite development. This recognition is more than a mere suspicion or vague notion to Maimonides; he has advanced to the stage of thinking where this history of the law is actually periodized: 1. pre-Sinaitic law - מנהג אבותינו; 2. Sinaitic law מנהג אבותינו; 3. post-Biblical, pre-talmudic law - מנהג אבותינו; 4. Talmudic law - מנהג אבותינו; 5. Messianic law - מנהג אבותינו.<sup>(a)</sup>

In his systematization of the laws of marriage, this periodization is perhaps best illustrated:

1. Before the Sinaitic legislation a man could marry any woman whom he happened to meet on the street by merely taking her into his house.<sup>1</sup> ... מנהג אבותינו היה אדם קולט אשה ברחוב ונשא אותה.  
מנהג אבותינו היה אדם קולט אשה ברחוב ונשא אותה.

2. The Sinaitic legislation provided that this act of taking a woman for wife had to be done in the public eye.<sup>2</sup> מנהג אבותינו היה אדם קולט אשה ברחוב ונשא אותה.  
מנהג אבותינו היה אדם קולט אשה ברחוב ונשא אותה.

where  
In the Moreh, Maimonides is not so exclusively interested in a mere statement of the actual law but also in its rational, he even supplies the purpose of this Sinaitic change:<sup>3</sup> מנהג אבותינו היה אדם קולט אשה ברחוב ונשא אותה.

המשוכס, כי איסורו היה די לו היוצא לכתב מין דוג בני אדם  
 מהיאים קראו להגניסו צמן אוקר מוסכס בין ארבע ויאמר  
 ליהא אולט, ומכני עם צוה לעלות מעלו אוקר לייחדה אולין  
 בו ויטו האידוסין, וליבוסס נדבר ופיו הנלואין; "ויקח הודע עולה  
 אוליס" 4

So that none could escape responsibility toward his partner in marriage due to the noncommittal character of a private arrangement, marriage was transformed into a public, official ceremony. This act can either be performed by copulatio carnalis or by a written document.<sup>5</sup> In the course of the same philosophic discussion Maimonides also transcends the principle of the mechanical periodization of history, as if this had not been sufficiently revolutionary for his time and religious environment. He not only notices historical change in the law from one period to another but also transitional bonds between these periods by which they are held together in a unity of history. He states that Sinaitic marriage is not altogether different from pre-Sinaitic intercourse but merely represents its legalized, officially accredited form: "העידם קראו" קורב ממן גוכה היה בעידם "אקס אולט אוקר ממן גוכה, ל"ס  
 ליהא מעלה מוזר, לאו היה אוקר מכוויק אולט כ"ס, ונג'נת לבר  
 ממוגני ע"ו לקראו אז כנג'נת עמגה אולס ע"ס עמגה געג  
 י"ג'ולין" I.e. even the institution of the מגה to be paid to the wife when she is divorced is merely the modified, moralized form of the pay which a prostitute used to receive.<sup>7</sup>

If not the most controversial, certainly the most widely discussed aspect of this theory of transition between the pre-Sinaitic and the Sinaitic period which Maimonides proposes is the treatment which the problem of the rationality of the sacrificial cult<sup>8</sup> receives at its hands. Before Sinai the tribes of Israel, alongside of all other ancient peoples, engaged in all sorts of heathen practices. The necessary first corollary of the Biblical effort to reveal and institute monotheism is the effort to combat these old forms of idolatry and polytheism which it came to supplant.<sup>9</sup> This goal the Bible attempts to attain by two different methods:<sup>10</sup> one is to legislate their complete abolition and to promise in the name of God an effect opposite to the one aimed at, so that, for example, misfortune befalls the man who engages in them in order to receive beautiful fortune; the second and, perhaps, more pedagogic method is merely to reduce them and transform the subject to which they are addressed. Of the latter method the sacrificial cult is the outstanding example: originally men offered numerous sacrifices to numerous gods in numerous sanctuaries; by biblical ordination they are to sacrifice to the One and Only God on only specified occasions in the one and only Temple at Jerusalem.<sup>11</sup>

Maimonides<sup>12</sup> envisages the obvious objection that, if it is really true that man's nature is incapable of suddenly adjusting itself to the lack of a cult to which it has been used and

that, therefore, such slow transitions are required as is manifest in the biblical legislation concerning the sacrificial cult, God could have changed this nature of man. He answers it by saying that, though, no doubt, God could<sup>30</sup>/have done, He does not nor ever will want to do it. If man's nature were such as not to require self-conquest for the doing of good but would do it naturally, all the commandments of the Bible would be superfluous and, what is more, man would no longer be man as we know him for whom the doing of good consists not of doing certain specified, inherently good acts but rather in overcoming his evil inclination.

"אך הלא בני אדם הם ילדו בשר ודם הם צרכי מוות... ועל  
 אמת, עם מבני אדם אני מאמין לשינוי טבעם איך מבני אדם  
 קלם הם שלם יג', אך הוא אביר ונזכר גמל היכנסת, אולם לשון  
 הם זכר עם עמלוג עם ועל יזכרו עמלם... ואולם היה מרובון  
 עמלוג טבע עם איל מבני אדם עמלם לזכרו יגמלם מן הטוב  
 עמלם היה בטל לעמלוג הנביאים ונבנת היגלה כולם."

In other words, the chief aim of man is not so much being good as rather becoming good. This is expressed beautifully in the very closing and climactic words of the "Guide of the Perplexed" (ch. 54): "This is (man's) ultimate purpose: that he grow perfect to the true perfection which is peculiar to him. For its sake he is worthy of eternal existence; in it man is man."<sup>13</sup>

Munk<sup>14</sup> translates "eternal existence" as "immortality," but

Hermann Cohen would, no doubt, have understood it as God's guarantee to man that he will exist eternally on earth for the sake of the infinite ethical task.<sup>15</sup>

The interesting concept of "divine deceit" plays a rôle in this argument. In Ibn Tibbon's translation this entire pedagogical device of God's is referred <sup>to</sup> as *הַיְשָׁרָה שֶׁלֹּא הָיְתָה* which can, perhaps, best be translated as "the counsel of God's deceit."<sup>16</sup> It declares in effect that, since man's nature does not permit of straight-forward, complete and instantaneous perfection, since it would, furthermore, rebel even against the announcement of a future perfection which contradicts his traditional usages, God uses the deceit of permitting the perpetuation of these usages, in a modified form, no doubt with an eye toward eventual abolition when man, by their reduction, can envisage such an eventuality. That, of course, is exactly His procedure with regard to sacrifices. Rawidowicz<sup>17</sup> is horrified by such anthropomorphism in the great Maimonides which would ascribe deceitfulness to God: "In ascribing 'orma' to God, He becomes positively near to man...How fare (sic!) this "method" is from the purified conception of God, on which his philosophy is based!" Indeed, if by "divine deceit" Maimonides intended to make a judgment of the nature of God he would be sorely contradicting the spirit and letter of his own theology. But Rawidowicz would merely have had to study the concept of *הַיְשָׁרָה* and "legal fiction" in general philosophy as well as in the usage of talmudic

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Judaism to dissolve his fears. It is to be assumed that Maimonides did not mean that God is actually deceitful but that, in order to understand the significance of the sacrificial cult in the context of the legal system of Judaism, and without either having to revise the principles of that system or our understanding of the purposiveness of God's legislating activity, we must explain it in this fashion, otherwise we could not explain it at all. In a sense, therefore, it is more a "human deceit," a "human fiction" than a "divine deceit" or "divine fiction." The word "divine" designates the origin of the law, the word "fiction" the manner of making this law humanly comprehensible.<sup>18</sup>

In this sense, the "divine fiction" of the retention of the sacrificial cult is part of a much larger concept in Maimonides' philosophy of law. In his introduction to the *Mishna* 100 (beginning of principle 9), where, in complete accordance with Moreh III, ch. 31, he divides the law into three classes, those which aim at instilling right opinions, right social mores and right social attitudes, he subsumes sacrifices in the second class. The beliefs which underlie this second class, now, are not "true beliefs" in the sense that they refer to an existent external object but are merely "necessary beliefs" without a corresponding real object, which induce the kind of action, however, that is required by human society.<sup>19</sup> Alternately, even with regard to the nature of God there are such "necesssry beliefs."

For example, if men realized that good actions are to be done not because goodness will be rewarded and evil punished but for their own sake, they might not do them at all. Therefore, they are taught the doctrine of reward and punishment and must believe it.<sup>20</sup> ' These are not "objective truths"<sup>21</sup>

but merely subjective and necessary, in the same sense in which sacrifices are necessary, namely as a concession to the weaknesses of men. Thus these "truths" fulfill a function very similar to that of the famous Thirteen Principles of Faith. They are not satisfactory or adequate in themselves but in practice lead to the desired end, social welfare in the case of "necessary truths," abolition of idolatry in the case of sacrifices, immortality in the case of the Thirteen Principles.<sup>22</sup>

From the expression *בדילוג*, man's nature cannot "suddenly" adjust itself to the lack of sacrificial cult,<sup>23</sup> it might be deduced that slowly the cult might be abolished. That this is implied as the personal wish of the philosopher should be quite clear at this point of the exposition. In fact, however, and in his capacity as codifier of authoritative Jewish belief and law, he goes to the opposite extreme of stating, as he is required by orthodox tradition, that even in the extreme end of days, when the Messiah will come, far from abolishing sacrifices de jure, as the destruction of the Temple has abolished them de facto, he will



both levels, not one alone, the literal and the allegorical.<sup>28</sup>  
Equally Maimonides makes sure that his rationalization of the law is not to lead to ritual neglectfulness: "The mob of men with its weakness will think and say to themselves: 'This has been forbidden, or that has been commanded, for this ulterior reason. I shall be wary of that for the sake of <sup>which</sup> the command has been issued and not let my heart tempt me to violate it.' In this manner the force of the faith would be lost. Therefore God hid the reasons of the law."<sup>29 30</sup> In the same manner, too, it might be thought that, since the sacrificial cult was originally instituted as an antitoxin to idolatry, when the danger of idolatry has passed, the sacrificial cult can be dispensed with. That, however, would cause "the loss of the force of the faith." The validity of a law is, therefore, preserved beyond the circumstance which caused its promulgation. In his own words:<sup>30a</sup> "A court cannot invalidate the law or the stipulation of a previous court unless it be greater in wisdom and in kind than its predecessor, even if the reason for which that law or that stipulation was promulgated no longer exists." (One should, perhaps, compare the philosophical problem of Marxism whether the "superstructure" can continue to live beyond its economic determination!) At the same time, however, while the validity of the law of sacrifices is theoretically retained, it is by the device of messianic postponement made practically inoperative. It is important to refrain

from simplifying this admittedly somewhat complex theory by formulating the theory which Ephodi propounds,<sup>31</sup> that *וְכֵן יִהְיֶה* "as long as men will live on earth there will be idolatry on earth." This theory of innate polytheism is in itself philosophically and theologically very interesting, but it wrongly interprets Maimonides to mean that because of the still existing, eternal danger of idolatry the sacrificial cult is retained. No more than the enlightened philosopher may disbelieve the "necessary truths" of reward and punishment, though he is aware of their purely pragmatic function and though it seems practically difficult for a man to believe something which he knows not to be true, can the sacrificial cult be invalidated even in the contingency that all idolatry should vanish from the earth.

Even as competent a scholar as Munk, sensing Maimonides' dislike of the sacrificial cult but overestimating his heterodoxy, let himself be completely misled in this complicated but basic matter. In Moreh III, 46, after enumerating certain forms of sacrifice, Maimonides adds the words: "*וְכֵן יִהְיֶה*" - "and all this is for those who want it." From this Munk deduces<sup>32</sup> that Maimonides considers the entire sacrificial cult voluntary and not obligatory upon anyone. "L'auteur veut dire que le législateur, par toutes ces prescriptions, ne voulait que réglementer les sacrifices pour ceux qui pratiquaient volontairement ce genre de culte; car, comme l'auteur l'a développé plus haut, le culte des sacrifices n'était qu'un accommodement aux



real hypothesis for him, not that of a given, empirical fact.

This becomes clear in such a statement as in Moreh III, 48:

"ואמנם איסור הלך וחלם עם ניותו מעין עם מאז הלא ספק ומוסר  
מסוי דה אין דחוק אצלם ליל בו כיון עבדוהו זרה, אולם כן כיון עילין  
העבדוהו מעבדוהו או הולך מחליו... ועו הטעם הולך אצלם  
הענין, ואמנם עמו נאמר זי כגור הוה לנאיהו מסכרי הלאה"ו

The historical condition which negatively caused this specific law is not certified but assumed in order to explain the law.

Similarly Moreh III, 49:

"אולם ידענו כדלי עמלים הוה וחסנו  
חלקי אמת העסות יינו מתבאר לנו הוה טעם ואופני הוה חלקי  
העליו הקבועה ועטומאוו וזוהו חתו לעמו ידעו טעמו, אמת  
אין עי ספק הוה כי הוה ינו עמלוהו העסות הוה חלקי אמיתיות חלק  
הוא"ו

This kind of hypothetical historic reasoning leads directly into the urgent criticism of the entire theory. To consider a law binding upon oneself because centuries ago it carried meaning is asking a lot of human beings. Chief-rabbi Kuk<sup>36</sup> puts it very concisely: "Obviously this kind of explanation is incapable of eliciting the enthusiastic approbation of the modern Jew. It does not increase the present value of the ceremonies of Judaism and it does not enlist on their behalf any loyalties and motives other than the sheer willingness to submit to the supposedly express Will of God." The "reasons" for the sacrifices turn out to be really causes, and causes explain but do not necessarily justify.

Furthermore, not only is Maimonides' rationale of the sacrificial cult inadequate but also self-contradictory. Due to his commitment to Jewish orthodoxy, he could not draw the practical conclusions which the men of the Wissenschaft des Judentums drew from their recognition of the historical, conditioned character of certain aspects of Jewish tradition, namely that with their conditions they too had lost all raison d'être. As in other facets of his philosophy of law<sup>37</sup> he had to restrict his heterodoxy to theory and stop where it might turn into practice. Let it be said in fairness to him, however, that it seems fair to say without overly projecting modern terms back into history, that, had he been able to be as consistent as his trend of thought would indicate, he would have openly declared his position: the direction of change which is intimated by the reduction of sacrifices aims at complete abolition. In fact, when it is remembered that not only sacrifices but also petitional prayer, even all prayer is but a concession to the weakness of men,<sup>38</sup> he might well be criticized for perhaps too great consistency, not too little, - at least in theory. If it were not for the fact that Maimonides could but explain a given, not construct a desirable Judaism, both his exaggerated historicism and his inner inconsistency would have vanished automatically.<sup>39</sup>

Against one last criticism, however, it is difficult to see how Maimonides could be defended, since it is in no way connected with his commitment to orthodoxy but refers to his very theory of truth. It is perhaps his background in aristocratic Aristotelianism which made him believe that the large mass of people is incapable of understanding the stark facts of religion. He finds himself compelled, therefore, to stipulate "necessary truths," i.e. untrue truths which lead to behavior in accordance with truth. This seems neither philosophically nor religiously tenable. It is made worse by <sup>the</sup> circumstance that, since he cannot propose one religion for the mob and another for the men of enlightenment, he must demand belief for his untrue truths not only from those who do not know that they are untrue but also from those who do, including himself. <sup>40 41</sup> Leo Strauss <sup>42</sup> shows the disastrous consequences of this theory in the history of religion. Spinoza, unlike Maimonides not committed either to orthodoxy or to an unified religious doctrine, drew the perfectly justified conclusion that, though the necessary truths may be necessary for the mob, they certainly cannot be compulsory for the philosopher. <sup>43</sup> The men of 18th century enlightenment proceeded to the next step which harmonized with their early democratic faith in the universal sway of reason, namely that also the mob could be so educated as to dispense with the untrue "necessary truths." <sup>44</sup> From here it was not far to the generaliza-

tion of a Marx that all religion is a vast complex of "necessary truths" in the service of the powerful which must be destroyed if true truth is to emerge and if the oppressed are to be delivered.

3. Next a change was introduced into the laws of marriage by the post-Biblical, pre-Talmudic rabbis in that they added to the two Biblically permitted rites of official marriage<sup>45</sup> a third which consisted in the exchange of money between husband and wife.<sup>46</sup>

.. "והאם ר' אלעזר רבינו יצחק ור' אלעזר רבינו יצחק: הנהגה זו היא כגון כסף או חמץ או גביע או גיט" .

"This is an utterly astonishing innovation because thitherto marriage by money had been considered as equally as biblical as marriage by copulatio carnalis and by a written document.<sup>47</sup> Later legal expounders even feared that if Maimonides' opinion prevailed the status of marriages which had been contracted by money might be detrimentally affected, according to the talmudic principle that a legal problem which is in doubt must be decided rigorously if it depends upon a biblical interpretation while it may be decided leniently if it depends only on a non-biblical interpretation.<sup>48</sup> A doubtful marriage, if contracted by money, would therefore have to be

treated differently than had been the custom. No wonder, therefore, that Maimonides' commentators unite in a chorus of ques-

tions: "כסף מלאכה" <sup>49</sup> says: "כסף מלאכה" ויבא כסף או חמץ או גביע או גיט" .

And in Maimonides' own time he was

approached with this objection: "מכני מהו אמרתי לקידוש בטוב ואלו"

המאור והוא וקידוש כל דבר, ואמרו: והוא יבא כסף או חמץ או גביע או גיט" .<sup>50</sup>

As he points out in his own answer<sup>51</sup> and as the commentators are quick to discover, the reason for this apparent difficulty resides, of course, in the fact that, according to Principle II of his introduction to the *מבשרי חיים*, he, unlike all other legal experts, does not consider any laws biblical that are derived by hermeneutical methods. In other words, he realizes what no orthodox Jew had realized previously and only few realized afterward, that the rabbis not only explained but also innovated when they interpreted. It is not to be feared, however, that this recognition of history and change in the law induced Maimonides to become heretical. This view which he held as a theory and belief in no wise affected his Halachah. As the commentators correctly point out, though Maimonides calls laws which are not explicitly stated in the Bible *דברי סופרים*, they retain their status as *מבשרי חיים* so far as practical legal effects are concerned.

<sup>52</sup> says: *"דברי סופרים איקרי לך דבר לאינו מכולל גמור אע"פ לאו ברוב מקומות מסיני, ויטו דבר אלו ומחויבין וכו' וכו' דין"*

And <sup>53</sup> *מאי דאמר* more specifically realizes that though there is in Maimonides a theoretical distinction between marriages by document and copulatio carnalis on the one hand and marriage by money on the other, there is no practical difference between them:

*"וזה לא שדברי חיים אע"פ אינם מכללי דברי חיים (כלל) וכו' וכו' דין"*

This is clearly the case also from Maimonides' own words when he equates, so far as legal effect is con-



saying, that the rabbinic interpretation of *עין תחת עין* as referring to monetary compensation does not accord with the original meaning of the Bible. And yet, in *שם טוב חובת ומצות, א"ג-ו*, he admits that the rabbinic interpretation is not only enforced law but also that it long antedates the rabbis of the Talmud:

משה שלחנו למנוח לעם לנאום "עין תחת עין" (עין תחת עין) עלמס מחון חמ  
... ואם לא כפי ארבעה אלו נכאין מענין גובה אגרה וכוסן אפולין  
ין משה מלש נהינו מעד סיני כוסן, העלה מלש חן גירין וכד  
כא אבאנו רנין גרמי דינו א יחולוס... ורגם בגרין וגמ  
דין לעמו מיתום מלש נהינו ועד אכלין!

From this contradiction Munk<sup>59</sup> concludes: "Nous avons donc ici une preuve évidente que Maimonide, dans le présent ouvrage, suit son opinion personnelle, sans se préoccuper des décisions rabbiniques!" However, Munk himself admits that in Maimonides' introduction to his Commentary on the Mishnah, which he wrote prior to the Guide of the Perplexed, he states that anyone who interprets "*וקצומו אה נכח*" (Deut. 25:12) literally is deserving of death. Shem-Tob<sup>60</sup> quotes from the same source additional evidence to Maimonides' emphatic opposition to a literal lex talionis:

"אם מעדק ייחלום הא ויאמר אפיון ונחגב כפי שלוטו,  
"עין תחת עין" מחל, חיה מיתו עמה אמו סמוא אה ויגמורו"

On the whole it is utterly inconceivable that the great liberal and rationalist Maimonides should have endorsed, against Jewish

orthodoxy and therefore, from the point of view of Jewish orthodoxy to which he no doubt sometimes bowed, unnecessarily, a literal and primitive lex talionis.

The statement at issue can also not be understood in the sense which R. Moseh of Narboni<sup>61</sup> gives to it, namely that Maimonides believed the talmudic law to be that only when the strict application of the lex talionis might entail greater damage, possibly even death to the culprit than he deserves, and not otherwise, it should be replaced by monetary compensation. This too, would contradict his halachic position in the Mishnah Torah<sup>62</sup> where monetary compensation is universally prescribed, not only for exceptional cases. Also Shem-Tob's own explanation, that Maimonides would demand money only in cases of unintentional crimes, not only equally contradicts the Mishnah Torah but also Shem Tob himself is so aware of this that he adds the final portentous words:

" *וְאֵלֶּיךָ יָשׁוּב וְיִשְׁפָּט* ".

The real solution of this difficulty is both much simpler and much more radical. It lies embedded in his ominous words: "*וְאֵלֶּיךָ יָשׁוּב וְיִשְׁפָּט*". This is the equivalent of Ibn Ezra's famous phrase: "*וְאֵלֶּיךָ יָשׁוּב*". Both indicate in their way that at the point where their authors utter them they hold heretical views which, in deference to the accepted norm and, perhaps, fearing excommuni-

communication, they dare not express in public. What is here Maimonides' heresy? Shen Tob has felt it: *ואם אגלה יבא* "חמאמר וכה לאמר כי כונתנו היא למה סתם הפוסקים, לא סתם חנו לנאוג המדמוז, כי הפוסקים אינם אמתיים לא בהם ולא במסקן אמא כי הקדמה לקדמו דמתנו וכחו מה לפירוש דהמתנו המדמוז!"

But Maimonides does in fact distinguish between the original intent of the Bible and the varying interpretation placed upon it by the rabbis. Certainly he accepts the verdict of the rabbis; it is in his own liberal spirit. But, as he says in so many words, he realizes with his keen sense of history that it is not altogether what the Bible meant. Munk<sup>63</sup> acknowledges that this is the real explanation, but he thinks that the difference between the Guide and the Yad is the difference between Maimonides' personal opinion and his re-echoing of accepted norm, whereas it is in fact only the difference between his theoretical historiography and his practical exposition of the valid law. As in the case of the marriage by money which Maimonides labels as post-Biblical, he distinguishes theoretical knowledge from practical law. It seems more than coincidental, therefore, that Mishnah Torah

*פ' חובת הדין* I, 6 in the Padua edition, instead of our text "*כאן נכבד דמילי דבינו הן הידינו*" reads: "*כאן נכבד*" (דמילי) (The methodology of *פ' אגא פ' ע* must be exactly reproduced in the case of the laws concerning the purity of the camp.

Again in the Moreh<sup>64</sup> Maimonides says: "וכבר הוסיף לכתוב אמנות" *וכבר הוסיף לכתוב אמנות*  
 "אמן סיבה הניחה מן הנגזר." Again Munk<sup>65</sup> draws a false distinction between Maimonides' personal, legal opinion and the objective law which he accepts. Again in the Mishneh Torah<sup>66</sup> Maimonides enumerates quite simply all the rabbinic enactments).

Finally it must be noted that Maimonides' deviation from orthodox theory is not quite as great as may first appear to be the case. From what has been said hitherto it might be taken that the following formulation correctly describes the situation: Maimonides believed that while the rabbis taught that one who causes bodily or other damage to another is to be punished by being fined a sum which correctly assesses the value of the damage done, the Bible taught that he should be punished by being inflicted with the same bodily or other damage. Other orthodox Jews, on the other hand, believe that what the rabbis taught corresponds exactly to the meaning of the Bible. Actually, however, the difference between Maimonides and the rest of orthodox Jewry is not so great. Samuel Atlas<sup>67</sup> brings that out

in the following argument: Mishneh Torah, *כי עשה ומצוק, א"ה* :  
 "עם שנאמר במצוק, כאילו יתן מוסר האדם כן ינתן בו, אינו עשה  
 מצוק כמו עשה מצוק אלא שבוטא ראוי למסרו אגב או עשה בו  
 כאילו עשה ועסיבך מלשם מצוק. וכלי הווא אומר: "על מקלו כפר  
 עניו כולו", עניו כולו הווא לאין בו כפר אגב למסרו, אגב  
 או עשה בו כפר!"

"That which is written in the Bible:" As a man has inflicted an injury upon another, so shall he himself be inflicted" does not mean that he is to be wounded as he wounded another but rather that he is deserving of losing a limb or of being wounded as he wounded another, but he may pay him whom he damaged. This is meant by the Biblical injunction: "You may not take a (monetary) substitute for the life of a murderer," i.e. only for a murderer financial retribution is not permitted, but for one who merely caused the loss of a limb or wounding, it is." In other words, Maimonides believed that in the days of the Bible criminals other than murderers were to be punished in one of two ways: either in accordance with a primitive lex talionis or by monetary compensation; the rabbis, Maimonides believed, changed this institution in that they completely eliminated the first and universalized the second alternative. This argument of Atlas is further strengthened by a conscientious reading of the relevant passage in the Moreh itself (III, 4), something that Atlas himself does not seem to have noticed: after his literal interpretation of *וְאִם לֹא יִשְׁלַם*, Maimonides adds: <sup>68</sup>"*וְאִם לֹא יִשְׁלַם יִשְׁלַם בְּכֶסֶף וְיִשְׁלַם בְּכֶסֶף*" - "but the man who was financially damaged (and who is, therefore, entitled to ask that an equal damage be imposed upon the criminal) may forgive and be generous to his injurer." Actually, of course, not only one who was financially damaged but also one who was bodily injured may act in that manner, because if that were not so, there would be no sense in Maimonides' further statement that



cal messianic antinomionism is simply that the law is ordained only for unemancipated, unredeemed, pre-messianic man and that, therefore, the appearance of the Messiah automatically abrogates this law.

This after all, is the simple explanation of St. Paul's basic Christian antinomianism. "Christ hath redeemed us from the curse of the law, being made a curse for us...Brethren, I speak after the manner of men; Though it be but a man's covenant, yet if it be confirmed, no man disannuleth, or addeth thereto...Wherefore then serveth the law? It was added because of transgressions, till the seed should come to whom the promise was made."<sup>73</sup> In other words, by First Adam's sin the law was made necessary and, though by no man, by Second Adam's atonement it is "fulfilled." Let it not be thought, however, that this argument is peculiar to Christianity. Also in Judaism, when the Messiah was believed to have finally come, the law was thereby believed to be ended. Of the Sabbatian movement Gershom Sholem<sup>74</sup> writes: "If the structure of the world is intrinsically changed by the completion of the process of Tikkun, the Torah, the true universal law of all things, must also appear from then on under a different aspect. Its new significance is one that conforms with the primordial state of the world (prior to First Adam's sin; "Natural Law"?;author), now happily restored, while as long as the Exile lasts the aspect it presents to the believer naturally

conforms to that particular state of things which is the Galuth. The Messiah stands at the crossing of both roads. He realizes in his Messianic freedom a new law ("the new law," "the new covenant", "the new testament" (author)), which from the point of view of the old order is purely subversive." And he quotes a description of Moses Hagiz<sup>75</sup> to the following effect: "It is their custom (the radical Sabbatarrians) to argue that with the arrival of Sabbatai Zevi the sin of Adam has already been corrected and the good selected out of the evil and the "dross." Since that time, according to them, a new Torah has become law under which all manner of things formerly prohibited are now permitted..."<sup>76</sup>

Maimonides emphatically contradicts such a view of the effect of the messianic advent upon the law. The law as such remains completely unaffected and retains its validity. This legal view rests on the philosophic consideration that, to use Sholem's formulation once again, it is not true that "the structure of the world is intrinsically changed by the completion of the process of Tikkun" and that, therefore, "the Torah...must also appear from then on under a different aspect." On the contrary, "Do not believe that in the days of the Messiah anything of the (natural) course of the world will vanish or that there will be an innovation in Creation; but rather the world will continue its (natural) course."<sup>77</sup> Whatever the changes that the

advent of the Messiah will work, the translation from the pre-messianic to the messianic period will be as natural as was that from the pre-Sinaitic to the Sinaitic period. Therefore also the Messiah will not need to reveal himself by any supernatural, miraculous signs. "Do not believe that the King Messiah will need to do signs and wonders, innovate anything in the world or will resurrect the dead, etc. The matter is not thus. The principle of this matter is that this Torah, its statutes and ordinances is eternal."<sup>78 78a</sup> It appears likely, furthermore, that Maimonides was induced by the fear of other, heretical, antinomian views regarding the effect of the advent of the Messiah upon the law to write: "At any rate, the way in which these things (the messianic period) and their details are is not basic to the faith. Therefore, a man should never concern himself (excessively) with aggadic things, unduly extend his concern with Midrashim which deal with these and connected matters, nor consider them basic, for they lead neither to the fear nor the love of God."<sup>79</sup>

How justified this fear of Maimonides was is testified to by the brief but pungent and powerful dissent which the Raba, his great commentator and critic, adjoined to the sentence<sup>80</sup> that "in the days of the Messiah nothing of the natural course of the world will vanish:" "But is it not written in the Torah:<sup>81</sup> "And I will cause evil beasts to cease out of the land!" It is clear,

of course, that the Rabad was not small enough a man to match mere biblical knowledge with his opponent. The purpose of his comment is that there will indeed be so fundamental and "intrinsic" a change in the nature of the world that even evil beasts, otherwise an integral part of the world which we knew, will cease to be! In the same spirit he argues against Maimonides' view that the Messiah will not need miraculous signs to reveal himself.<sup>82</sup> Whether even broader intimations are contained in his dissent is a subject worthy of investigation. At first sight it seems perfectly possible that the Rabad's well known mystical inclinations<sup>83</sup> might also have led him to the antinomian conclusions which are current in Kabbalistic literature with respect to the days of the Messiah. The specific scriptural proof which the Rabad uses is effectively nullified by Maimonides' principle<sup>83a</sup> that all these passages are to be understood as "parables and riddles."

In order that this interpretation of the controversy between the Rambam and the Rabad concerning the effect of the advent of the Messiah be unassailable, another dispute between them must be explained which at first sight might appear irrelevant in this connection. In *h"r "r v'dv'v' v'* Maimonides writes: "All the prophetic books and hagiographa will become void in the days of the Messiah except the Book of Esther which will remain in force like the Pentateuch and the laws of the Oral



As regards the Rabad's statement, perhaps the following analysis, admittedly somewhat pedantic, may solve the difficulty: he says specifically that the reason why all these books will not be abrogated is that none of them does not contain some "teaching:" "לאין אשכנח לאין בו דמוזר". Does he mean דמוזר in the sense in which it is, for example, used in Kidd. 40b as opposed to, or at least different from practice: "נענה ל' טרבון ואמר: 'העלה נענה ל' עקיבה ואמר: דמוזר דמוזר". In that case his meaning might be that for purposes of theory, not for practice, all the books of the Bible will be retained even in the days of the Messiah, thus not contradicting his intimated view of the effect of the arrival of messianic times upon the law. The entire stress on the question of reading or not reading these books, rather than on obeying them, as well as the existence of a distinction between *העשה למעלה* and theory which was demonstrated previously, tend to confirm this interpretation.

As regards Maimonides, on the other hand, the following question must be asked: חילני גזרתי, העבירה קרבנות, ה"י ז' פ' reads: "The libation sacrifices which are detailed in the Book of Ezekiel, the number of the sacrifices mentioned there and the order of the sacrificial service which is indicated there are excessive (as compared with Pentateuchal stipulations concerning these matters) and not normally valid (אין נעמן דמוזר). The prophet rather ordained and detailed how "excessive" sacri-

fices would be brought at the time of the dedication of the altar in the days of the King Messiah when the Third Temple will be built. Just as the princes offered sacrifices unlike those which are normally offered at the dedication of the altar (of the First Temple), namely on the Sabbath, so also the (messianic) Prince will sacrifice in honor of his altar-dedication on the Sabbath, as is there explained. So also the sacrifices which were brought in the days of Ezra by those who had returned from exile were excessive and unlike the normal sacrifices. But those things which are normal are written in the Torah as we explained them and as they are handed down from Moses our Teacher; with regard to them, neither shall anything be added nor detracted."<sup>87</sup> To be noted from this passage is firstly that prophets such as Ezekiel and Ezra have a right to command temporary changes in the law. Such changes are, however, strictly circumscribed. In the Introduction to the Commentary on the Mishnah Maimonides specifies that these changes may be ordered only by men who by previous proofs have shown themselves to be genuine prophets, that they must be designated as temporary, not permanent changes and that they may not include idolatry.

יובליקיס  
 נביא מנביא דא פ אלך יסנו ויצא לו שם כמו למהל ואדעו וזלמט  
 ון לנביא יהוא יכנס לעלות בגונה בגי ללא יוכל כה הך זלמט  
 לעלותו ונמו מה לאני אומר כל צוה לבטל איצי מצוה מכה המצוה  
 ממצוה עלה, או יצוה להגיד בגי אסור ממצוה לכו געלה עמי  
 לעה, מובו עלינו לעמוד להגיד ולעלות מצוה וכל העובר עלי  
 ליה מיתג גדי למילי מוש מצוה זכר."

Such prophetic authorization for legal innovations ceased with



generation, i.e. the Sanhedrin, to erect "fences" in order to establish the laws of the Torah<sup>90</sup> and to make these "fences" permanent, as it is written: "Make ye a fence for the Torah!" Thus He also permitted them to abrogate some of the stipulations of the Torah and to permit the forbidden for a specific reason and for a special event, but these must not be made permanent, as we explained the term "stipulation for the hour" in the Introduction to the Commentary on the Mishnah. In this manner the one Torah has been made permanent and applicable to all times and events according to their needs." (I.e. by providing for changes of the law in the law itself, this law has been made flexible enough to endure.) Finally, when both prophets and Sanhedrins have passed away, the Messiah again will be entitled to make changes. But these messianic changes, too, must be as temporary as those of his predecessors. Here again the phenomenon of the Messiah is no more supernatural than were the prophets and the Sanhedrin.<sup>91</sup>

Returning now to the passage in *אין אלהים אחרים*, it must be asked: if, according to *ב' א' אלהים*, all the prophetic books will be abolished in the days of the Messiah, how is it to be explained that one of them, the Book of Ezekiel, itself contains stipulations for these days of the Messiah? It should be remembered that, when the extraordinary occasion of the dedication of the Second Temple was past and with it its extraordinary sacrifices, for the rest of the existence of the Second

Temple the normal sacrifices came back into their own. Similarly, Maimonides' careful formulation states that only *במקדש* - "At the time of the dedication" of the Messianic Temple - would the extraordinary sacrifices provided for by Ezekiel be offered. After its dedication, however, also in the Third Temple the Pentateuchal sacrifices will be offered again.<sup>92 93</sup> The final conclusion to be drawn from this entire complicated matter is, therefore, that the prophetic books and the hagiographa will be abrogated in the messianic period only insofar as they contain laws which differ from the Pentateuch and were promulgated temporarily.

Whereas hitherto it was only possible to state what effects the advent of the Messiah would not have in Maimonides' opinion, it now becomes clear what the only effect is that it will have. The Messiah will restore the complete and unchanged Pentateuchal law in contradistinction to the antinomian, mystical view of messianism which, as was previously indicated, thought that "natural", pre-Sinaitic law might be restored.<sup>94</sup> "The King Messiah will come to restore the Davidic kingdom as of old as foremost government, to build the Temple and gather the dispersed ones of Israel; all the laws will come back into force in his days as they were of yore; sacrifices will be brought, sabbatical and jubilee years will be kept again as the law of the Torah prescribes them."<sup>95</sup> It is worth noting that "sabbati-

cal and jubilee years will again be kept," for this explains the further stipulation<sup>96</sup> that the Messiah will reassign "all Israelites to their respective tribes by making known that this one belongs to this tribe and that one to that;" Atlas<sup>97</sup> proves, on the basis of Gittin IV,4, that the return of land to its original owner in the Jubilee-year was aimed at having individuals return such private property to the tribe as a social whole, and that, therefore, the institution of the Jubilee-year had to become inoperative when the tribes were exiled and inter-mingled. In this form alone it seems to make society rather than the individual the genuine possessor of the land.<sup>99</sup> Atlas, it is true, adds that there are laws which do restrict private property but fails to mention that they are intimately connected with the institution of the Jubilee-year. Diesendruck<sup>100</sup> states correctly: "When Lev 25.23 grounds the Sabbatic and the Jubilee institutions on the proposition  $\text{לְכָל הָאָרֶץ לַיהוָה}$  - "for the land is Mine" -, opposition to private property seems to be indicated..." Thus the restriction on private property is even more profound. It may be compared to the modern difference between nationalization and socialization of property: whereas return of land to the government of a society would constitute merely nationalization, it would depend on the character of that government, capitalist or socialist, whether this return can be called mere nationalization or also socialization. Similarly the return of land to the tribes in itself is not yet the end of the process of de-individualization of property: once returned to the tribe, it does not belong to that either but rather  $\text{לְכָל הָאָרֶץ לַיהוָה}$  - "for Mine is all the

land." At any rate, however, the law of the Jubilee-year and its implication of the "stewardship of man" and theo-socialization are put back into operation by virtue of the fact that the Messiah will restore order among the tribes of Israel. Another example of how Pentateuchal law is reestablished by the Messiah, another example for Hermann Cohen's beautiful epitome: "The messianic idea is the hope for the future of humanity."<sup>101</sup>

### CONCLUSION

Looking back upon the road which this investigation of Maimonides' philosophy of law has traveled, it should now be possible to assess appreciatively and yet critically what it has to offer for our philosophical and theological problem of today. On a larger and more practical scale, such a positive assessment of the value of Maimonides' system of thought for the modern liberal Jew was tried for a brief moment in the Indian summer of German Jewish, liberal thought. Men such as Fritz Bamberger in his "Das System des Moses Maimonides, vom Gottesbegriff aus Betrachtet," Berlin 1935, Leo Strauss in his "Gesetz und Lehre," ib., Nahum Glatzer in his short anthology of Maimonidean philosophical writings which was published in the series of popular Jewish studies by Schocken etc. believed that the rationalist interpretation of religion of our time suffers from a false conception of what rationalism is, and that this failure could be overcome by a return to the great rationalist scholastic of Jewish history. They represented a sort of Jewish equivalent of the currently rampant scholastic Thomism in Roman Catholic and even wider, non-Catholic circles. How far they might have succeeded in proving their case cannot now be said, for their endeavors were cut short by the catastrophe of German Jewish history. They did recognize, at any rate, some of the basic problems which are involved in such an attempt.

In the preceding chapter on Maimonides' conception of "the rationality of the law," it has been shown that one of the

cornerstones in the re-interpretation of Maimonides which this small school suggested is historically and textually untenable. There is more than a mere question of textual interpretation involved, however, in the controversy between Leo Strauss and this study as to whether Maimonides believed that the revealed law could be exhausted by the penetrating analysis of reason or not. In order to be faithful to what appear to be the facts, it was necessary to show that Strauss is wrong in his claim that Maimonides believed Revelation to contain a surplus of truth not accessible to reason. At this point the question must be raised whether Maimonides' position itself is tenable or not. The alternative answer to the question as to what the function of Revelation is if not to supply mankind with truths which it could otherwise not attain is the one offered already by Saadia Gaon and which, though he nowhere seems to say so explicitly, must also have been held by Maimonides, an answer which still echoed through the minds of the men of the European, rationalist enlightenment: to wit, that Revelation teaches truths which also reason teaches but to attain which reason requires so much more of historic experience and, therefore, so much more time that, had mankind to wait until reason actually has grasped them, it might meanwhile perish for ignorance of them. Revelation, therefore, merely does quickly what reason does more slowly. (Cf.

Friedrich Schiller in his essay on the Constitution of the Mosaic State.)

Leo Strauss now felt, correctly, it would seem, that according to such a doctrine of Revelation, Revelation only fulfills an historic function, not a systematic one, that according to such a doctrine Revelation may have lost its function even now, and if not now, that it will have lost it at some time in the future. In the long-range view, therefore, once truth will have been attained to rationally and Revelation being merely a shortcut to truth, it will have become meaningless. Religion, however, Strauss feels, would refuse to let itself be defined as the historic attempt to emancipate man from Revelation.

It is exactly at this point that the latest and most concrete philosophies of Judaism have taken their initial start. It is at this point that the great modern Jewish rationalist, Hermann Cohen, at least according to the interpretation placed upon his posthumous work, the "Religion der Vernunft aus den Quellen des Judentums," by Franz Rosenzweig in his introduction to the "Juedische Schriften," breaks out of philosophic rationalism and regains the traditional Jewish point of view by finding the revelation of God to man not in any revelation of general, philosophic truths but simply in the revelation of God's person to man, in the famed "correlation." It is here too that Franz Rosenzweig himself breaks with Hegelian rationalism, in that he exper-

iences Revelation to be the real establishment of the I-Thou relationship between God and man, thus transcending the world of man's ideas into a metaphysical reality. From this new belief, from this Jewish existentialism of Buber and Rosenzweig, the school of Strauss, Bamberger and Glatzer actually start out, not from any fancied loyalties to the beliefs of Maimonides. (Strauss' book on "Die Religionskritik Spinozas" is dedicated to Franz Rosenzweig.) In the imagination of Rosenzweig, therefore, they tried to re-make Maimonides, - and it is for this reason that Strauss had to prove that also Maimonides breaks out and above philosophic rationalism in his conception of the nature of Revelation.

There is much to be said for both sides of the argument. It would appear indisputable that this religious existentialism is truer to the original religious beliefs than the philosophic re-interpretations of religion which Maimonides as well as Cohen embraced. That this is so cannot surprise: existentialism begins, after all, with a phenomenological study of what historic religion actually is, upon the conclusions of this study to base its own speculations. Whereas the philosophers of religion do not begin with religion but with generally accepted philosophic beliefs, to which they must then try to adjust their religions. On the other hand, much religious obscurantism can hide itself behind the convenient mantle of "existen-

tialism." The confrontation of God and man in the revelational experience of Rosenzweig and Buber and, if Rosenzweig is right, also of Cohen, is so personal and private an experience that the canons of reason do not apply to it. But the dogmatism and fanaticism, the perversions and lies which have in the past been sprouted by men with "religious," "conversionist" experiences need not be recalled here! Because of them and in opposition to them the liberal, enlightened, rationalist theories of the 19th century and the ensuing deterioration of religion took over!

On the other hand, and lastly, beyond the argument from the faithfulness to the genuine doctrines of religion which has been adduced in favor of the position which Leo Strauss takes on this issue, there is also much in what he says about the "economy of the kingdom of truths." It really would seem "uneconomical" to have two sources of truth when one of them will eventually yield all truth anyway. Thus there is a genuine and legitimate issue involved in this controversy, an issue, furthermore, which is of basic significance to all philosophy of religion as we know it. This is in fact the entire issue of philosophy versus Revelation revived from the earliest Middle Ages for our time. It is the issue between Christian liberals and Protestant neo-orthodoxy; it is the issue between classic Jewish liberalism and the movement of Bdale Te-shuvah who repent themselves of their liberalism. To enter into it further than has already been done is impossible within the limits of this study.

In the consideration of Maimonides' historicist view of the law, the utterance of the late chief-rabbi Kuk has been quoted in which he effectively demonstrates the ultimate inadequacy of Maimonides' historical justifications of certain laws. It has been shown even further that the one great danger to the authority of the law which Maimonides himself recognized as inhering in his rational explanation of the law could be skirted by him only by an ultimately dogmatic reliance on the divine character of that law. He realized, as has been seen, that men might easily conclude from their knowledge of the reasons for the law their own exemption from the observance of these laws as long as they are mindful and obedient to the purpose of the laws. Against this danger all he could and did say was: observance of the reasons for the law does not exempt from the practice of the law itself. He could not, however, rationally explain why this should be so, no more than he could give a reason for the statement that a law which was originally legislated for a specific historic situation should be retained even when that historic situation no longer exists.

The source of this entire difficulty resides in the fact that to derive revealed law either from historic or from systematic reasons is to make that law relative to these reasons, depriving it of the authoritative, divine, absoluteness which it possesses in its unrationalized state. For an orthodox Jew this constitutes a real heresy; he can overcome it only by the very dogmatism which he tried to eliminate by rationalizing the

law in the first place. What is a vice to the orthodox Jew is, in this case, however, a virtue to the liberal Jew. Here is the principle for the alteration, even for the possible abolition of certain laws which is given by these laws themselves: their inherent meaning and purpose, their historical cause and their present validity. It will have been noticed that any changes which Maimonides and his rabbinical colleagues have wrought in Jewish law were based upon their vision of two points of time in Jewish history, one the past of that law, the other the infinite future of the law: that is to say, by, for example, showing that the sacrificial cult suffered reduction in quality and quantity at the hands of Biblical legislation in the past, Maimonides practically intimated that, had the destruction of the Temple not abolished it completely de facto, further reduction to the point of complete abolition in the present and future would have been perfectly in line with the spirit of the Pentateuch; and, in the second place, the tremendous functional, normative value of the concept of messianism threw the shadow of the future upon the present for example in the case of the duty to settle in Palestine.

It appears, therefore, that what was expected in the Introduction to this study by way of practical suggestions which might arise from it for our problems of today has in some sense been fulfilled: also in our time, in order, on the one hand, to preserve in tact the unity of Jewish history and historic, Jewish law and, on the other, not to be stultified by the dead weight of

the past, it needs the loyalty to tradition together with the liberal courage of one's convictions both of which Maimonides possessed to an eminent degree. Historic unity is assured by the glance backward into the past, - change, acquisition and progress are based upon the glance forward into "the end of days." If orthodox Jewry would not limit itself to the former, and if liberal Judaism would not limit itself to the latter, the unfortunate dichotomy of contemporary Judaism would soon vanish. There is no reason in the world why today's orthodoxy could not have the courage of Maimonides and liberalism his sense for the meaningfulness of the past.

NOTESCHAPTER I.

1. cf. Gittin 49, Sukk. 56, B.M. 115, Shev. 324 b etc. etc.
2. He is generally considered the prototype of Jewish rationalism, correctly, so we believe and will try to show in the following. For even a recent attempt to interpret him as essentially a mystic of the highest order, cf. Abraham Heschel, "המאמין והמחשבים לצדו של הרמב"ם", Louis Ginzburg Festschrift, N.Y. 1946, Hebrew part, pp. 507-517.
3. cf III, ch. 31; II, ch. 27
4. cf. Al Charisi's translation!
5. *אלהי הגבלות ויש האסרה והיכאון יתדוהן נקביוס: האסרה  
היהודים הרשות הגדולה, עכ"ל ע"ל הרמב"ם חז"אור שלי" עם אומרתו,  
והיכאון הגיד בהם חס"ל ויגדוה!"*
6. Pesach 50 b: *אלהותך לאו אלהי האל אלהי."*
7. cf. "Ein Rabbinerbuch," in "Kleinere Schriften," Berlin 1936
8. *עלמות אלוהי, "ו"*
9. cf. p. 46 f.
10. cf. pp. 42,50
11. Moreh III, 51
12. *Moreh III, ch. 43 "כי טמנה אמתה בתורה ואלוהים יתענין ויחשבה"*
13. Moreh III, ch. 43
14. For the comparableness of Law and nature, cf. later the discussion of *קיום* in connection with Leo Strauss, p. 25 f.
15. Moreh III, ch 13, beginning
16. Moreh II, Introduction
17. "Er verzichtet darauf, etwas von den Erscheinungen selbst Verschiedenes (eine zweite Welt) als ihre Ursache auszudenken.. Das Wesen hat nicht neben den Erscheinungen irgendeine zweite, höhere Wirklichkeit, sondern es ist nur in der Reihenfolge seiner Erscheinungen, vermöge deren es seine eigene Möglichkeit verwirklicht." "Lehrbuch der Geschichte der Philosophie," Windelband-Heimsoeth, Tübingen 1935, pp. 116 f.

NOTES

18. cf. above
19. Moreh II, ch. 25
20. cf. 1b.
21. cf. above, p. 2
22. "וזהו נודע לפרט אמונת הנהיגות קודמת דאמרת הנהיגות האמת  
Moreh III, ch. 45
23. For the following, cf. Moreh III, ch. 13
24. cf. "Religion der Vernunft," Berlin 1929, p. 256
25. cf. the anti-anthropocentrism of Moreh III, 14
26. "וזהו הגדלת האמונה, והיא הרבה מאד למה אמת ויטוּסוּ דבני"  
Moreh III, ch. 54, the very end of the "Guide." This is  
a precise definition of the term "entelechy" in general.
27. For the following cf. Moreh III, ch. 25
28. Compare the New Testament criterion of the true faith as  
being "a scandal and a stumbling block" to the human mind!
29. "החיות כלם ילדים סיבה": Moreh III, ch. 26
30. 1b.
31. Yoma 67 b and Eight Chapters, ch. 6 end.
32. "ואלו אנקאית חקית כשטר וזהו וסב וסב מהלכה יואג טבו  
הענין פהכחית ז"ל ואמרו: רבוי לקדמי עקבני אין לך  
דלות עכודת נפש וטלן חקלני גון ואומות העולם מליהן עיסין;  
לא יאמין מהון פהכחית אפי' ענינין אין ענין סיבה כלל  
ועא נוקל ענין גבליה, כי זכ יביא עכודת נפש כחו  
לזכרון יאמין מהון פהכחית איל ענין ענין, ל"ס גבליה  
מועילי' ע' כ' ענין, אלא לנעמוה מהון, ואפי' עקבני דעמו  
א"ע עקבני חכמתו"
33. "Philosophie und Gesetz, Beiträge zum Verständnis  
Maimunis und seiner Vorläufer," Berlin 1935, p. 57

34. ib. p. 56

35. Moreh III, ch. 26:

יחסי אלה אשר אשפוט מהאודות אצלם הפתוח  
 וקראו מלשבים, ואלו לאין גשפוט מהאודות אצלם הפתוח קראו חקיס"

36. "לאנסנו נסע עמך קצת ואלו נדע אונאי וימכרהו בהן... אוס  
 לקצור דגמנו או עסקנו שכחמנו!"

37. ad locum

38. ib.

39. cf. the quotation above in which Satan appears too!

40. cf. also Moreh III, 31: "אביסו חקיס כלם יורו אום כל  
 בגיסי לופי בזכמה והגמנו"

41. "אע"פ אכל חקי המרה סכרותי כחו אבאנו. ה' גמרה"ז"  
 הסוף חסידים, כאן עיגמנו בהן וכל מהי אלה יכוס עימך  
 טעם מן עו טעם! קרי אומרו, מכחיס הכאלונית לוימלך  
 לעמך בהין דנה השפוט אל כל חקי ויגרה."

42. cf. above, a similar statement from Moreh, p. 14

43. ib.

44. cf. pp. 46 ff.

45. "הי חסידים ח"ח"  
 יכאוי לארס עיגמנו החלטי ויגונה  
 יקראו ועידע סוף ענינים כפי כוחו ובהר אלא יחצאו עו טעם  
 ואלו נדע עו חסידים, אום יהי קם הענין ואלו ייכוס עממא אום י  
 כן וכלל בו! ואלו גמי מחלמא בו כמחלמא הלאר דבגדי נוסם!  
 הא ודאם כמה החמיכס ויגונה החסידים! ומה אוס עניס מובניס  
 ועבר ואמר כיון אלקדא לפי אורן העולם עניסם הזבדית בעבר  
 גמקראו, וכל ענינים בהן לום חסד הוי, ואביסו הוי לום כלים  
 כבדי, קם ומה עממא לוקק ענו הקרהי אלא יחצאו הארס בהן  
 חסני אלא ידע טעמן! ואלו יקרה דבדית אור עלא כן עו הלס ואלו  
 יקראו עני מחלמא כבגדי נוסם! הרי נאמר בגמרה: "לחלמא או  
 כל לקמא ואלו חלמא ואלו חלמא אומס!" אומרו חכמים עימך  
 למירה ועדיין עמקיס בחלמא. והעליה ידעה והיא לילת חקיס

45. (cont.) וטמיהם ליצור בהון ואלו ידמה ליהן בחוהין מן המלכות.  
 והמלכות נסת המלכות לטוהן גמלי וטוהן שלייתן המלכות נסת ידועה  
 כהין איסוד המלכות ולפיכך המלכות וביהור אה ואה. וחקים הן המלכות  
 לאין לטוהן ורוע. אמרו חכמים: חקקים חקקתי לך ואין לך כלום  
 ענינה הן ויצוה אה אהט נוקטו בהן ואומרו המלכות מליהן עליה  
 כהין איסוד המלכות והלך חזק ופעה סכורה ופעה ארומה ולפיכך  
 המלכות. וכמה היו רז המלך המלכות מן המלכות ומה המלכות ליהן  
 מן המלכות.....

46. cf. also ספר המלכות, עמ' 187, very end

47. cf op. cit. p. 80

48. ib. p. 51

49. ib. p. 36

50. p. 142

51. loc. cit., p. 40a, ed. Warsaw 1872

52. This is an excellent formulation of the right to "unhistorical," "untextual" reinterpretation for systematic reasons.

53. p. 207

54. p. 207, note 3

55. p. 208, note 2

56. ib.

57. ib. p. 40 b

58. ad locum

59. cf. also Beginn. of ch. 32

60. p. 113

61. cf Heinemann, "Plotinus," p. 260 ff.

62. cf. More III, 12





99. קיצונו לניחוי גיני הסבורה הפסד קצת וכלתם, כי אין (cont.)  
 היה חסד ללא יחסים גמור פקדונו עמי טבד האבס' אומא נולדו  
 גמיר סמוך גס. ופיה דומה אין האסו יבא נביא בזמנו  
 ליקרא לסבורה ולס' זי אחר: "ולס' כוס אבס' ללא גמולו  
 אסיו ולא גבוהו ולא גבולו גלסמו גסו זכה, אגם  
 גיני סבורתס וזלגה גמי וזלגו."

100. cf. pp. 46 ff.
101. cf. also Moreh III, ch. 28 end
102. cf. for the contrary, Moritz Lazarus, "Die Ethik des Judentums," Vol. i, Frankfurt a/M 1898, p 276 f.
103. cf. p. 10
104. Moreh III, ch. 27
105. 1b. ch. 28,31
106. 1b. ch. 33
107. ad. 1b. ch. 28
108. cf. pp. 7, 50
109. "Philosophie und Gesetz, Beitrage zum Verstaendnis Maimunis und seiner Vorlaeufer," Berlin 1935, p. 55
110. cf. p. 50







41. Is this the explanation of his *מאמר על חכמת התורה* which accords so little with his philosophy?
42. "Spinozas Religions-Kritik," Berlin 1930
43. p. 240
44. p. 15 f.
45. cf. p. 45
46. ib. *"ה' אילנות ה' "*
47. Rashi to *תורה*, middle of page, states: *"ולמדתי מכם יהוה"*  
*"לדולי כסף מזכה לך"*  
but proceeds to argue against it emphatically!
48. *"השלם גונה העקב אומר החזקתו ובלשם סופרים העקב אומר החזקתו"*  
*"כי משאני, כעשיי הניג, וכעש ע"י."*
49. ad. loc.
50. ed. Abraham H. Freiman, Jeru. '34, *פ. 161 גילגול והחנה"ס*
51. ib. p. 162
52. to *"פ' אילנות א" ה' "*
53. ib.
54. loc. cit.
55. "Der Mishneh Thorah," Karlsruhe 1905, p. 136
56. p. *ל"ה*
57. ib.
58. Munk III, p. 314, ad loc., read: *ע"י ע"י*
59. ad. loc., p. 313
60. ad. loc.
61. cf. *Schem Tob*, ad. loc.
62. loc. cit.







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