

*The Book of Commandments.* Judah the Prince's Mishna corpus recognizes a distinction between laws and rituals that carry the sanction of the "Torah" and others that carry the lesser sanction of "the rabbis."<sup>184</sup> In the Babylonian Talmud, the contrast between the two levels is ubiquitous, and as the distinction is drawn there, the higher level, the category of "Torah," includes both what is explicit in the Written Torah as well as the interpretation and supplementation provided by oral tradition.<sup>185</sup> The line is drawn between the laws and rituals of the Written Torah together with their Oral Torah enhancement, on the one hand, and laws and rituals instituted by the rabbis, on the other.

The Babylonian Talmud introduces a further notion, namely, that exactly 613 commandments were communicated to Moses. The pivotal passage in the Babylonian Talmud credits the notion to a certain R. Simlai, a Palestinian rabbi who was active about the end of the third and the beginning of the fourth century, a man whose reported expertise lay in aggada, not halaka, and consequently someone who stood outside the circle of rabbinic figures wielding authority in the ritual and legal sphere. R. Simlai, according to the key passage, "taught [*darash*]: 613 commandments were stated to Moses, 365 negative commandments, paralleling the number of days of the solar year, and 248 positive commandments, paralleling the number of discrete segments [*evarim*] in [the body of] a human being."<sup>186</sup> Negative commandments are those prohibiting something, typically taking the form "thou shalt not." Positive commandments are those dictating something, typically taking the form "thou shalt."

The statement recorded in the name of R. Simlai leaves a good deal open. The intent could be that all of the 613 commandments stated to Moses are explicit in the Written Torah but it could also be that some are known only through the Oral Torah enhancement. The statement does not even indicate whether the 613 were all preserved and handed down to posterity. The Babylonian Talmud itself asserts that hundreds or even thousands of "halakot" and dialectical inferences were lost when Moses died. When the matter is considered entirely from the rabbinic standpoint, it would therefore be quite possible that some of the commandments given to Moses were forgotten and lost forever at his death or later.<sup>187</sup>

<sup>184</sup>Mishna, *Yadayim* 3:2. Other instances: Mishna, *Shebi'it* 10:3; *Yebamot* 2:4; *Gittin* 4:2-9; *Tohorot* 4:11; *Tebul Yom* 4:6.

<sup>185</sup>See the passages cited by Bacher, *Die bibel- und traditionsexegetische Terminologie der Amoräer* (n. 38 above) 2.

<sup>186</sup>BT *Makkot* 23b. For variants, cf. Maimonides, *Sefer ha-Miṣvoth*, ed. Ch. Heller, 2nd ed. (Jerusalem 1946) 5, note 1.

<sup>187</sup>BT *Temura* 15b-16a. Maimonides quotes the passage for a different purpose in his *Book of Commandments* (n. 27 above), rule 2, p. 15. He reasons that since the dialectical inferences made by Moses numbered in the thousands, they could not be what the Babylonian Talmud has in mind when it speaks of 613 commandments given to Moses. The point he wants to make is that a regulation validated only by being deduced from Scripture through the canons of rabbinic dialectic does not qualify for inclusion in the 613.

The dictum ascribed to R. Simlai looks, indeed, as if he, or the tradition transmitted in his name, did not reach the figure empirically and a posteriori, so to speak, that he—or it—did not painstakingly seek out all the commandments communicated to Moses, count them, and discover that the number came to exactly 613. The figure looks as if it was fixed a priori, by adding the days of the solar year to the number of segments of the human body.<sup>188</sup> The object of the dictum would accordingly be hortative. Every Jew, the preacher would be exhorting his listeners, must observe God's prohibitions each day of the year. Every Jew must mobilize each part of his body in fulfilling God's positive commands.<sup>189</sup>

The pivotal passage, as already said, appears in the Babylonian Talmud. No mention of, or allusion to, 613 commandments received by Moses is found in the Mishna. The number is not mentioned or alluded to in other preserved rabbinic compositions belonging to the same stratum of rabbinic literature as the Mishna and dating from roughly the same period—the corpus of mishnaic material known as the *Tosefta* and the compilations of midrashic material of a halakic character which represent themselves as the work of rabbis who lived in the period up to the publication of Judah the Prince's Mishna.<sup>190</sup> The Palestinian Talmud knows nothing of the notion.<sup>191</sup> Three other passages within the Babylonian Talmud do refer to a total of 613 commandments, all in nonhalakic contexts, and each time, the number is treated as something commonly known and accepted.<sup>192</sup> References to 613 commandments appear as well in compilations of midrashic material which are contemporaneous with, or later than, the Babylonian Talmud.<sup>193</sup> Neither the Babylonian Talmud nor the midrashic compilations that speak of 613 commandments ever list them or suggest what, exactly, they comprise.

Centuries later, in the Middle Ages, a question would be posed from the standpoint of rabbinic jurisprudence. It would be asked whether the opinion of the Palestinian rabbi who set the number of Mosaic commandments at 613 should be taken as normative. His could be a minority opinion, whereas the majority or

<sup>188</sup>Mishna, *Oholot* 1:8, distinguishes 248 segments of the human body.

<sup>189</sup>BT *Makkot* 23b-24a cites a midrashic argument in the name of another rabbi in order to corroborate the number 613.

<sup>190</sup>Printed editions of *Mekilta: Ba-Hodesh-Yitro* §5 have the number 613, but that is apparently an interpolation, since the manuscripts do not have it. See *Mekilta d'Rabbi Ismael*, ed. H. Horowitz (Jerusalem 1960) 222. Printed editions of *Sifre: Deuteronomy* §76, speak of "305 negative commandments of the Torah," but the best sources have instead: "300 positive commandments." See *Sifre on Deuteronomy*, ed. L. Finkelstein (Berlin 1939) 141, and note.

<sup>191</sup>The Palestinian Talmud, *Ta'anit* 4.8 (5), has a version of the passage that appears in BT *Yebamot* 62a and *Shabbat* 87a (see next note), but whereas the version in the two Babylonian Talmud tractates gives 613 as the number of the commandments, the version in the Palestinian Talmud gives no number. That strongly suggests that the number was not originally part of the passage and was added by the redactors of the Babylonian Talmud.

<sup>192</sup>BT *Shabbat* 87a; *Yebamot* 47b; 62a (identical with *Shabbat* 87a); *Nedarim* 25a; *Shebu'ot* 20a (virtually identical with *Nedarim* 25a).

<sup>193</sup>See *Sefer Enayim* on BT *Makkot* 23b; A. Rabinowitz, *Taryag* (Jerusalem 1967) 40.

consensus, and hence authoritative, position could be that the commandments enjoying Mosaic sanction add up to a different number. Or perhaps they are not reducible to any definitive number at all.<sup>194</sup>

If Maimonides had thought that a difference of opinion obtained within the classic rabbinic sources regarding the number of Mosaic commandments, he would have had to rule out the possibility of ascertaining what the normative position is. For when he encounters differences of opinion among the ancient rabbis regarding matters of belief, he departs from his practice of determining which among the diverse recorded positions on an issue is authoritative. In his words: "Where differences occur between the rabbis regarding opinions involving no action, the halakic norm cannot be affirmed to be in accordance with the opinion of so-and-so" over against the opinion of those who disagree.<sup>195</sup> In effect, he is saying, the rules that evolved in talmudic and posttalmudic times for deciding between opposing positions recorded in the classic rabbinic texts are designed for legal and ritual matters. Inasmuch as the exact number of the laws and rituals given to Moses is not itself a ritual or legal issue, if a difference of rabbinic opinion obtained regarding the number, Maimonides' guideline would preclude the possibility of determining which opinion is normative and which is not.

Despite the questions that might be raised, the notion of exactly 613 commandments' having been given to Moses struck root in rabbinic circles. It consequently became inevitable that efforts would be made to determine precisely what they are. What is generally considered to be the oldest attempt to identify them is made in the preface to *Sefer Halakot Gedolot*, a comprehensive and influential code of rabbinic law, which Maimonides and historians today ascribe to a little-known ninth-century rabbinist named Simeon Kayyara.<sup>196</sup> The preface enumerates concisely and without elaboration 613 commandments that, in its formulation, "Israel"—rather than Moses—"received on Mount Sinai."<sup>197</sup> Other rabbinic writers as well as authors of liturgical poetry followed with their

<sup>194</sup>Nahmanides, Critique of Maimonides, *Sefer ha-Miṣwot*, first rule; S. Duran, *Zohar ha-Raqi'a* (Vilna 1879) 117; English translation of the Duran passage: E. Urbach, *The Sages* (Jerusalem 1979) 1.343–44. As we shall see, multiple obligations can sometimes be construed as a single commandment.

<sup>195</sup>Commentary on the Mishna, *Shevu'ot* 1:4. Similarly in Commentary on *Soṭa* 3:3, and *Sanhedrin* 10:3.

<sup>196</sup>Maimonides mentions Simeon Kayyara in *Book of Commandments* (n. 27 above) rule 10, 43, in a manner showing that he takes him to be the author of *Halakot Gedolot*. It has been argued that the commandments were enumerated in liturgical pieces preceding *Halakot Gedolot*; see M. Guttmann, *Behinat ha-Miṣwot* (Breslau 1928) 9–10. The argument is strongest in the case of the liturgical composition beginning with the words *Atta hinhalta Torah le-Cammeka*.

<sup>197</sup>*Sefer Halakhot Gedolot*, ed. E. and N. Hildesheimer (Jerusalem 1971–1987) 3, appendix, 112, and the alternate version, *Sefer Halakot Gedolot*, ed. A. Traub (Warsaw 1875), introduction, 6. At an earlier point, the version published by Traub, introduction, p. 4, quotes R. Simlai's statement in a different form. The matter is discussed in the Hildesheimer edition, 3, appendix, note 324.

enumerations. Scholars in medieval and modern times have found the list in *Halakot Gedolot* to be fraught with problems, and some of the problems have a bearing on our subject.

The preface to *Sefer Halakot Gedolot* does not divide the commandments into the two categories, 365 negative commands and 248 positive commands, which the seminal statement reported by the Babylonian Talmud in the name of R. Simlai would require. Instead, it muddies the picture by introducing additional categories. It starts by distinguishing six types of capital punishment, treating each as a category in its own right, and classifying under them 71 sins and crimes that, by divine Law, entail a death penalty of one type or another. It goes on to enumerate 277 negative and 200 positive divine commandments. And it arrives at the figure 613 with the help of still another category, which it calls the 65 "scriptural sections of statutes and ordinances for which the community is responsible," in other words, sections of the Pentateuch containing commandments incumbent on the community rather than on the individual.<sup>198</sup> Some of the "scriptural sections" in this last category contain subheadings. One section, for instance, comprises the regulations for establishing a high court (the Great Sanhedrin), for establishing intermediate courts, for judging cases in which the punishment is monetary in character, for judging cases in which the punishment is a whipping, and for judging cases in which the punishment is the death penalty. Those look like not one, but multiple commandments, and the enumerating of sections for which the community is responsible therefore looks like a device for squeezing extra commandments into a nominal enumeration of 613.

The problematic nature of the scheme is compounded when items crop up more than once. Sometimes what seems to be the same item occurs more than once within the very same category,<sup>199</sup> and sometimes an item appearing in one category reappears in a second. Thus a half dozen transgressions that are included under one or another of the types of capital punishment reappear in the category of negative commandments: "Desecration" of the Sabbath is listed among the sins punishable by death through stoning, while the divine prohibition against doing "any manner of work" on the Sabbath is listed separately in the category of negative commandments; murder is listed among sins punishable by beheading and again as a negative commandment; and so on.<sup>200</sup> Then, eighteen items from the earlier categories reappear in the list of scriptural sections for which the community is responsible.<sup>201</sup> Commentators on *Halakot Gedolot* have long taken up the challenge of showing why the apparent doublets are not doublets at all but represent

<sup>198</sup>*Sefer Halakhot Gedolot*, ed. E. and N. Hildesheimer, 3, appendix, 25–112.

<sup>199</sup>*Sefer Halakhot Gedolot*, ed. E. and N. Hildesheimer, 3, appendix, notes 126, 231, 267, 446, 468.

<sup>200</sup>*Sefer Halakhot Gedolot*, ed. E. and N. Hildesheimer, 3, appendix, notes 47, 52, 61, 62, 1, 225, 360.

<sup>201</sup>*Sefer Halakhot Gedolot*, ed. E. and N. Hildesheimer, 3, appendix, notes 408, 424, 434, 442, 453, 454, 456, 466, 469, 470, 473, 476, 477, 478, 481, 482, 483, 486.

distinct items. The classifying of "desecration" of the Sabbath among sins punishable through stoning side by side with the listing of a negative commandment prohibiting "any manner of work" on the Sabbath has been resolved as follows: The desecration punishable by stoning comprehends most forms of labor on the Sabbath, whereas the negative commandment prohibiting "any manner of work" is concerned with labor not punishable by death, such as driving an animal on the Sabbath.<sup>202</sup> While that particular explanation may work after a fashion, many of the attempts to interpret away doublets—such as the murder doublet—stretch ingenuity beyond the breaking point.<sup>203</sup>

There is yet a further problem. The Babylonian Talmud had characterized the commandments in question as laws "stated to Moses," and *Halakot Gedolot* described them as commandments that "Israel received on Mount Sinai." Yet the list contains items that are clearly post-Mosaic.<sup>204</sup> In the two most blatant instances, *Halakot Gedolot* includes within its enumeration of positive commandments received at Sinai the reading of the Esther scroll on the Purim holiday and the lighting of candles on the Hanukkah holiday.<sup>205</sup> The Purim holiday commemorates events that are dated a millennium after the revelation at Sinai. The Hanukkah holiday commemorates events that took place still later. How could ceremonies attached to those two holidays be commandments stated to Moses, in the language of the Babylonian Talmud, or given to Israel at Sinai, in the language of *Halakot Gedolot*?

When we turn to Maimonides, we find him accepting without a second thought that, as he puts it: "613 commandments were stated to Moses at Sinai, 365 paralleling the days of the solar year, and 248 paralleling the segments in [the body of] a human being." Again: "The totality of commandments that are contained in the Book of the Torah and that God ordered us to observe is 613." The dictum is reported by Maimonides not as the opinion of an individual rabbi but as a "text of the Talmud" and a doctrine that "they," that is, the rabbis of the Babylonian Talmud in general, espoused.<sup>206</sup> We saw earlier that legal traditions transmitted from the time of Moses and making up the Oral Torah are, so Maimonides understands, characterized by the absence of any recorded difference of opinion concerning them in the classic rabbinic texts. Perhaps the handful of references to 613 commandments in the Babylonian Talmud, with no suggestion of a dissenting opinion, convinced him that here too he was in the presence of an ancient and authoritative tradition.

<sup>202</sup>*Sefer Halakhot Gedolot*, ed. E. and N. Hildesheimer, 3, appendix, note 47.

<sup>203</sup>See the notes in Hildesheimer's edition which I have cited above.

<sup>204</sup>*Sefer Halakhot Gedolot*, ed. E. and N. Hildesheimer, 3, appendix, note 324.

<sup>205</sup>*Sefer Halakhot Gedolot*, ed. E. and N. Hildesheimer, 3, appendix, notes 378, 420.

<sup>206</sup>Maimonides, *Book of Commandments* (n. 27 above), introduction, p. 7; rule 1, p. 9. *Mishneh Torah*, introduction.

Maimonides' *Book of Commandments* is the composition that he devoted to the enumeration of the 613 commandments. In the introduction, he writes that he was drawn to the subject after completing what he calls his "well-known" Commentary on the Mishna. As his next major work, he contemplated a comprehensive code of Jewish law, and he wanted to ensure that he would overlook nothing pertinent, neither legal and ritual obligations prescribed by the Torah nor obligations instituted by the rabbis. To that end, he needed an exhaustive list of the commandments given to Moses and carrying the sanction of the Torah.

As he considered possible ways of proceeding, the "grief" from which he "had already suffered for years" was reawakened. He was familiar with the influential list of commandments in the introduction to *Sefer Halakot Gedolot* and also with the enumeration, only small portions of which survive today, done subsequently by a scholar named Ḥefeṣ ben Yaṣṣīah. He had "listened to" numerous Spanish liturgical compositions that enumerate the Mosaic commandments. All those endeavors, he laments, were not merely inadequate. They contained mistakes "the enormous odiousness of which I cannot describe." The more he reflected on the errors that had been made and the way in which "one [writer on the subject] would follow another without thinking, the greater our misfortune appeared to" him. He saw his predecessors' failure to handle the issue properly as a fulfillment of the doleful biblical prophecy: "And the vision of all this is become unto you as the words of a writing that is sealed, which men deliver to one that is learned, saying 'Read this, I pray thee,' and he saith 'I cannot, for it is sealed.'"<sup>207</sup> Maimonides plainly regarded the correct enumeration of the 613 commandments as a weighty matter.

At first, he thought that he might merely draw up a concise list of the 613 commandments as a preface to his code of Jewish law much like, he might have added, the preface to *Sefer Halakot Gedolot*. But the calamitous situation prevented him from furnishing "the correct enumeration . . . without elaboration and proof." If he did, the first person to examine it would dismiss it out of hand as erroneous, "the evidence of its erroneousness" being Maimonides' departure from "what so-and-so and so-and-so had said. For that is the mentality of most of the better class of people today. The correctness of a statement is judged not by its content, but by the extent to which it agrees with some predecessor's statement, without any effort's being made to judge the earlier statement. And [if that is how things stand with the better class] how much more so with common people."

Before undertaking his code of Jewish law, Maimonides accordingly decided to make a detour and compose a comprehensive work on the 613 commandments. He would begin by establishing rules (*uṣūl*) for what the list of commandments given to Moses at Sinai must and must not contain and then he would give the actual enumeration of positive and negative commandments. He would justify the

<sup>207</sup>*Book of Commandments*, introduction, pp. 1, 4-5. The scriptural verse cited by Maimonides is Isaiah 29:11.

positions that he took "through the texts of the Torah and through the statements of the rabbis in interpreting them."<sup>208</sup>

Maimonides thus tells us that after the Commentary on the Mishna, his next large literary project was to be a code of Jewish law, and he wrote his *Book of Commandments* as a prolegomenon to it. A statement he makes on a subsequent occasion repeats that the *Book of Commandments* was written before the law code.<sup>209</sup> The Commentary on the Mishna was completed in 1167–1168, and Maimonides indicates that he began work on the code either immediately, or very soon, afterwards.<sup>210</sup> Virtually no time is thus left for the composition of the *Book of Commandments*. And yet a good deal of thought and labor went into it.

A possible explanation would be that he wrote the *Book of Commandments* while already engaged in the preliminary stages of his code of law, and the two overlapped. Another possibility would be that, despite what he said, he thought out the *Book of Commandments* and prepared material for it while still working on his Commentary on the Mishna. At a certain juncture in the Commentary, he makes a remark that can be translated as either: The matter under consideration here "will be explained [yubayyan] in my book on the enumeration of the commandments"; or: the matter under consideration "is explained. . ."<sup>211</sup> Maimonides is referring to one of the general rules that he in fact spells out in the introduction to the *Book of Commandments* and on which his enumeration of the commandments rests. If the second of the two possible renderings of the sentence reflects his meaning, the sentence would most likely be an addition that he made to the Commentary on the Mishna after the work was complete.<sup>212</sup> If, however, it is the first rendering that captures his meaning—and that is the way the remark has been understood by translators of the *Book of Commandments*—he already had a conception of the book when still writing the Commentary on the Mishna. It may also be pertinent that when the Commentary on the Mishna classifies the varieties of ritual impurity, Maimonides invests considerable energy in distinguishing between impurity regulations carrying the sanction of the Torah and those instituted by the rabbis. The distinction between what is legislated by the Torah and what by the rabbis lies at the heart of the *Book of Commandments*. At that stage in the composition of the Commentary on the Mishna, he was, therefore, in effect doing spade-work for the other book.

Whatever the case may be, he was about thirty years old when he started writing the *Book of Commandments* and he apparently completed it with dispatch. There

<sup>208</sup>*Book of Commandments*, introduction, pp. 4, 6–7.

<sup>209</sup>Maimonides, *Responsa* (n. 3 above) §447.

<sup>210</sup>Below, p. 206.

<sup>211</sup>Commentary on the Mishna, *Hullin* 1:5.

<sup>212</sup>Commentary on the Mishna, *Menahot* 4:1, has the remark ". . . as I have demonstrated in my book on the enumeration of the commandments." Those words, according to the editor's apparatus to the *Menahot* 4:1 passage, are absent in the original version of the Commentary and belong to a later revision.

is evidence that he went back and made corrections after completing it,<sup>213</sup> as he is known to have done to his Commentary on the Mishna.

Maimonides' fondness for general rules finds ample expression in the introduction to his *Book of Commandments*, where he formulates fourteen rules for determining what should and should not be included in the enumeration of 613 Mosaic commandments.<sup>214</sup> We have seen him say that he based the *Book of Commandments* on "the texts of the Torah" and "the statements of the rabbis in interpreting them." In justifying his fourteen rules he does indeed draw upon the Pentateuch and the classic rabbinic works,<sup>215</sup> particularly upon the implications of the key passage which affirms, in the version he had, that 613 commandments were communicated to Moses at Sinai.<sup>216</sup> He relies equally, however, on something that he does not mention—on what we would call ordinary common sense. At one spot, for instance, he contends: It is not "possible for anyone of intelligence to say" that each of the seven occasions where Scripture prohibits consuming animal blood constitutes a separate commandment;<sup>217</sup> it does not stand to reason that Scripture would be imposing a distinct and separate commandment every time it happens to repeat the same prohibition.

Maimonides' fourteen rules serve in actuality as criteria not so much for identifying what should be included in the list of 613 commandments given to Moses as for determining what should be excluded; almost all of the rules are designed for the latter purpose. Ten have *Sefer Halakot Gedolot* as at least a partial target, each of the ten criticizing the earlier work for having included inappropriate items.<sup>218</sup>

A few more rays of light are shed on Maimonides' procedure by a letter that he wrote at least a decade after he completed the *Book of Commandments*. There he states that virtually every commandment he identified as one of those given to Moses is "explicit [*meforash*] in the Torah," and in the "three or four" exceptions, a regulation not explicit in the Pentateuch is expressly designated as a commandment.

<sup>213</sup>*Book of Commandments*, negative commandment #179, p. 266, note 88; Kafah's introduction to his edition of *Book of Commandments* 11–12; Maimonides, *Sefer ha-Miṣvoth*, ed. Heller (n. 186 above), editor's introduction, p. 18.

<sup>214</sup>Saadia, *Sefer ha-Miṣvoth*, ed. Y. Perla (Warsaw 1914)) 1.15–16, attempts to trace some of Maimonides' rules back to Abraham Ibn Ezra's *Yesod Mora* but he overstates the case for Ibn Ezra's influence on Maimonides. Ibn Ezra makes dozens of ill-organized remarks on the different characters of different kinds of commandments, and, at most, a few of those remarks may be echoed in Maimonides' rules.

<sup>215</sup>For example, rule 11.

<sup>216</sup>Rule 3.

<sup>217</sup>See *Book of Commandments*, rule 9, p. 34. Rules 7, 10, and 12 are also based on common-sense considerations.

<sup>218</sup>Rules 1, 2, 3, 4, 5, 7, 8, 10 (where Maimonides explicitly names Simeon Kayyara, the author of *Halakot Gedolot*, as the target of his criticism), 12, 14.

“of the Torah” by the transmitters of the oral tradition.<sup>219</sup> If the sentence is combined with what we saw previously, the implication will be that Maimonides searched out everything commanded by the Pentateuch and the rabbis, whereupon he brought his fourteen rules into play in order to determine which items in the Written Torah and rabbinic literature pass the test and qualify for inclusion among the privileged 613. The elimination of the inappropriate items produced exactly the desired number of 248 positive and 365 negative commandments. And of these, the vast majority turned out to be commandments enunciated in the Written Torah.

The first of Maimonides' fourteen rules asserts that the 613 commandments can include no laws and rituals enacted after the time of Moses. So much, he writes, should have gone without saying, and articulating a rule to the effect should have been otiose. Since the commandments are defined as having been stated to Moses at Sinai, they plainly contain nothing of post-Mosaic provenance. Only because *Sefer Halakot Gedolot* and writers following in its wake had been blind to the obvious and incorporated post-Mosaic legislation in their lists was it necessary to promulgate a rule excluding everything post-Mosaic.<sup>220</sup>

Maimonides' second rule explains how he identified the three or four instances where regulations not explicit in Scripture nevertheless qualify for enumeration in the select list. He writes: When “there is no verse” in Scripture explicitly prescribing a certain law or ritual, yet “the transmitters” of the tradition going back to Moses deduce the law or ritual from what Scripture says using their canons of dialectical reasoning, and when they moreover mark the regulation as “part of the body of the Torah” (*guf Torah*) or as “from the Torah,” then the regulation “must be enumerated” among the 613. By contrast, when the transmitters of the tradition fail to mark a regulation lacking a verse in Scripture as being *from* the Torah, it is “rabbinic” in status (*mi-de-rabbanan*) and is not to be enumerated—this, even if they should derive it from Scripture by the use of one or another of their hermeneutic tools.<sup>221</sup> What is decisive in every instance is therefore the presence or absence of an explicit statement by the ancient rabbis to the effect that a given regulation is “from” the Torah or “part” of the Torah. Regulations that are not marked lack the sanction of the Torah.

The position that Maimonides takes here stirred up a small tempest in rabbinic circles. The chief critic of the *Book of Commandments* rejected the proposition that commandments derived by the ancient rabbis from Scripture through their canons of dialectical reasoning or through some other hermeneutic tool, such as the discovery of signposts in the text of Scripture, lay no claim to reflecting Scripture's

<sup>219</sup>*Responsa* §355. When he enumerates the commandments in the *Book of Commandments*, Maimonides writes that negative commandments #76, #135, #194, and #336 have no explicit biblical verse and are known to be commandments only through Mosaic tradition, supported either by the dialectic device of *gezera shawa* or by a hint embedded in the biblical text.

<sup>220</sup>*Book of Commandments*, rule 1.

<sup>221</sup>*Book of Commandments*, rule 2, pp. 12–13; English translation 2.373–74.

intent except when the classic rabbinic texts expressly mark them as such.<sup>222</sup> As that critic put it, the proposition should be inverted. The presumption should always be that what the rabbis infer from Scripture is genuinely present there, and rabbinic inferences from Scripture hence identify commandments with Mosaic status unless the rabbis expressly label them as *not* doing so.<sup>223</sup> Maimonides had no lack of defenders, and they countered, in good rabbinic style, with a subtle distinction. They explained that although regulations deduced by the ancient rabbis but not marked as part of the Torah are characterized by Maimonides as “rabbinic” in status, he was not—paradoxical though it might sound—denying that such regulations reflect the intent of the Written Torah. He was only saying that despite reflecting Scripture's intent, they do not qualify for enumeration among the critical 613 commandments.<sup>224</sup>

In additional rules, Maimonides asserts that when a positive and a negative commandment cover the same ground, both are to be counted, the positive one—for instance, the obligation to rest on the Sabbath—being enumerated with the positive commandments, and the negative one—the prohibition against working on the Sabbath—with the negative commandments.<sup>225</sup> He posits that unspecific scriptural exhortations to obey God, such as the biblical injunction “be not stiff-necked,” do not belong in the list.<sup>226</sup> When a command has components, such as instructions for the several steps in performing a given sacrifice, the subordinate instructions are not to be counted as distinct commandments side by side with the overall command.<sup>227</sup> Thus the regulations governing the slaughtering of a sacrificial animal, receiving its blood in a bowl, carrying the blood to the altar, putting it in designated places there, burning portions of the animal on top of the

<sup>222</sup>Nahmanides, Critique of Maimonides, *Book of Commandments*, rule 2; Saadia, *Sefer ha-Misivot*, ed. Perla (n. 214 above) 1.18–20; Rabinowitz, *Taryag* (n. 193 above) 26–28.

<sup>223</sup>Nahmanides, Critique of Maimonides, *Book of Commandments*, rule 2.

<sup>224</sup>Duran, *Zohar ha-Raqi'a* (n. 194 above) 14–15; I. de Leon, *Megillat Esther*, on Maimonides, *Book of Commandments*, rule 2; Malachi ha-Kohen, *Yad Malachi* (Przemisl 1877) 2, rules regarding Maimonides, §7. Maimonides, Commentary on the Mishna, *Kelim* 17:12, and *Mishneh Torah: H. Ishut* 1.2–3, can be read as giving credence to their interpretation.

<sup>225</sup>*Book of Commandments*, rule 6.

<sup>226</sup>*Book of Commandments*, rule 4. See *Sefer Halakot Gedolot*, ed. E. and N. Hildesheimer, 3, appendix, note 204. The verse is Deuteronomy 10:16.

<sup>227</sup>*Book of Commandments*, rule 10; see *Sefer Halakot Gedolot*, ed. E. and N. Hildesheimer, 3, appendix, note 432. Rule 11, which apparently is not directed specifically against *Halakot Gedolot*. Rule 12, with undisguised criticism of *Sefer Halakot Gedolot*, although not by name; see *Sefer Halakot Gedolot*, 3, appendix, notes 411, 454.

Rule 10 addresses the preparations that Scripture requires for the performance of a commandment, such as baking showbread to place in the Temple; Maimonides insists that the placing of the showbread is the commandment. Rule 11 is concerned with separate objects that together form a single commandment, such as the holding of a citron, a palm branch, branches of willow, and branches of myrtle on the Tabernacles holiday. Rule 12 is concerned with the details of performing a commandment, such as the steps in offering a sacrifice; Maimonides' position is that each type of sacrifice as a whole, not the steps in offering it, constitutes a commandment.

altar, and so on, are not separate commandments but components making up a single whole. When Scripture gives alternative instructions for handling a given issue—as when it prescribes different death penalties for different classes of adulteresses—the alternative instructions are, similarly, not to be enumerated as distinct and separate commandments.<sup>228</sup> Regulations with temporary applicability, such as those in force only as long as the Israelites wandered through the wilderness and had not yet entered the Promised Land, are likewise to be excluded.<sup>229</sup> Commandments extending over a number of days, as the requirement that Jewish men dwell in booths during the seven days of the Tabernacles festival, are to be counted only once.<sup>230</sup> With the help of two of his fourteen rules, Maimonides does away with the extra categories—the categories of death penalties and the category of scriptural sections incumbent on the community—that *Sefer Halakot Gedolot* added to the original talmudic dichotomy of positive and negative commandments.<sup>231</sup> In a further rule, he again makes established tradition the ultimate criterion: When Scripture repeats itself and dictates or prohibits the same act in a number of passages, the presumption must be that only a single formal commandment is involved. But there is an exception. Should the Mosaic tradition transmitted by the rabbis state or imply that the repetitions delineate more than one commandment, then more than one must be enumerated.<sup>232</sup> For whatever the rabbinic “interpreters” who “transmit” the Mosaic tradition report must be taken as “the truth,” and that is the case even if the “straightforward sense” of Scripture points in another direction.<sup>233</sup> The Mosaic tradition entrusted to the ancient rabbis is once more the decisive factor.

After expounding his rules for determining which laws and rituals should or, in most of the instances, should not be included among the 613 commandments given to Moses at Sinai, Maimonides lists first the 248 positive and then the 365 negative commandments that, in his judgment, qualify. On one occasion, he indicated that he arranged the commandments in the *Book of Commandments* in accordance with a plan.<sup>234</sup> He usually does group related items together within the lists of positive and of negative commandments. Positive commandments relating to the festivals, the justice system, the Holy Temple, sacrifices, and so on form blocks, as do negative commandments having to do with the festivals, forbidden food stuffs, forbidden sexual relations, the nazirite, and other topics. Maimonides also carefully chose the commandments with which the lists of positive and negative

<sup>228</sup>*Book of Commandments*, rule 7. See *Sefer Halakhot Gedolot*, ed. E. and N. Hildesheimer, 3, appendix, note 7.

<sup>229</sup>*Book of Commandments*, rule 3.

<sup>230</sup>*Book of Commandments*, rule 13.

<sup>231</sup>*Book of Commandments*, rules 7 and 14.

<sup>232</sup>*Book of Commandments*, rule 9.

<sup>233</sup>*Book of Commandments*, rule 9, p. 33. See above, pp. 124, 130–31.

<sup>234</sup>Maimonides, *Responsa* (n. 3 above) §447.

commandments open, as well as the commandments with which his entire enumeration closes. Otherwise, it is hard to unearth any overall plan that he may have had in view.<sup>235</sup>

The first item in the positive list is the obligation to “believe that a cause exists which produces all existent things, as embodied in God’s saying [at the beginning of the Decalogue]: ‘I am the Lord your God’”<sup>236</sup>—in other words, the obligation to believe in the existence of God. The commandments that follow are the obligations to believe in God’s unity, to love God, to fear Him, and to worship Him. The first item in Maimonides’ list of negative commandments is the prohibition against “believing that divinity pertains to any other being, as embodied in God’s saying [in the second of the Ten Commandments] . . . ‘thou shalt have no other gods before Me,’”<sup>237</sup> and it is followed by commandments prohibiting various types of idolatry. Each list thus begins with fundamentals of religious belief.

The final three commandments in the *Book of Commandments*, the 611th, 612th, and 613th, are instructions to the king not to “multiply horses to himself,” not to “multiply wives to himself,” and not to “greatly multiply to himself silver and gold.” Scripture explains that the first of the three is designed to prevent anyone who occupies the office of king from sending his people back to Egypt, where the best horses are raised, and that the second has the purpose of ensuring that the king’s heart will not turn away from the Lord. Maimonides understands that the last of the three is likewise designed to ensure that the king’s heart will not turn away from God.<sup>238</sup> The three commandments are scarcely distinctive in themselves, but Maimonides places them at the very end because they provide a transition to the thought with which he wished to conclude the book.

He takes note of a rabbinic tradition according to which King Solomon sinned by undertaking to observe the intent of the three commandments without observing the commandments themselves.<sup>239</sup> Solomon multiplied horses, being confident that he could do so without sending his subjects back to Egypt, and he multiplied wives and silver, being confident that he would remain true to the Lord. The example of Solomon, who was the wisest of men, reveals—Maimonides writes—why God has kept the specific purposes of most of His commandments hidden from mankind: When someone knows the purpose of a commandment, he may be tempted like Solomon to concern himself only with the intent and make light of the commandment itself. Whereupon Maimonides signs off with the declaration toward which he had been maneuvering for a couple of pages, namely, that although Scripture has a solid rationale for not disclosing the purposes of the divine.

<sup>235</sup>An attempt to discover Maimonides’ plan is made by A. Hillvitz, “*Seder ha-Mišvot be-Minyano shel ha-Rambam*,” *Sinai* 10 (1946) 258–67.

<sup>236</sup>Exodus 20:2 and Deuteronomy 5:6. Regarding the term “believe,” see below, pp. 134–35.

<sup>237</sup>Exodus 20:3 and Deuteronomy 5:7.

<sup>238</sup>Deuteronomy 17:16–17. See *Book of Commandments*, negative commandment #365.

<sup>239</sup>BT *Sanhedrin* 21b.