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Crisis discourse and framework transition in Maimonides' *Mishneh Torah*

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Abstract: In his works from the past decade, Menachem Fisch offered an analysis of a crucial distinction between two modes of rationalized transformation: an intra-framework transformation and an inter-framework one, the latter entailing a revolutionary shift of the framework itself. In this article, I analyze the attempt to produce such a framework transition in the tradition of Jewish Halakha (i.e., Jewish Law) by one of the key figures in its history, Moses Maimonides (1135–1204), and to explore how this transition was rationalized and promoted by the utilization of crisis discourse. Using discourse analysis, I analyze the introduction to Maimonides' great legal code, *Mishneh Torah*, and explore the modes by which he sought to establish, install and stabilize a homogenous and centralistic legal order at the center of which will lie one – that is, his own – Halakhic book.

Keywords: Maimonides, Jewish Halakha, framework transition, *Mishneh Torah*, Medieval Judaism, crisis discourse, Menachem Fisch

1 Introduction

In his works from the past decade, Menachem Fisch offered an analysis of a crucial distinction between two modes of rationalized transformation: an *intra-framework* transformation and an *inter-framework* one, the latter entailing a revolutionary shift of the framework itself. The specific philosophical problematics of the inter-framework transformation have been explored in both Fisch's collaborative study with Itzhak Benbaji, *The View from Within* (2013) and in his independent study, *Creatively Undecided* (2017).¹ The point of departure for both works is the critical enterprise of Immanuel Kant, and in particular the Kantian realization in the First Critique with regard to judgments that are constituted by a set of *a priori* principles, i.e., framework dependent. However, the idea that this set of principles is determined once and for all by one's cognitive capacities alone is challenged in both works. Instead, Fisch argues, in a Hegelian fashion, for a relativized and dynamic conception of "principles," one that acknowledges their constant transformation in tandem with the transformation of discourses. Moreover, this changing formation of principles not only is constitutive of our scientific knowledge, but also enables the standards on the basis of which normative judgments are issued and with reference to which they are assessed. Any position whatsoever, including the kind of critical position that facilitates intra-framework change, is circumscribed, in principle, by the horizons of the criticized framework itself, and is always-already dependent on our commitment to a

¹ See Fisch and Benbaji, *The View from Within*; Fisch, *Creatively Undecided*.

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specific framework. For it is this very framework which supplies us with the justifications and rationales for taking a position, including a critical position when the framework is found *incoherent* or in some sense *lacking*.

But if any position that is not arbitrary draws its reasons from within the framework, Fisch argues, how is the framework itself to be criticized from within? How can the standards, or the conceptual framework to which we are committed, be effectively subjected to a critical appraisal if it is by means of these very standards that we conduct our appraisal in the first place? How is it possible, without becoming fully antithetical to the very basis of one's judgment, to perform a suspension of the framework that predefines the boundaries and horizons of possibilities?

The prevalent mode of modification, elaboration and revision throughout the course of the Jewish tradition in its various discourses has been the intra-framework mode, whose criteria are part and parcel of an hermeneutical infrastructure that provides participants in the discourse with an array of interpretative possibilities when encountering a problem. However, a different mode of transformation, though far rarer, also constitutes an important part of the tradition. This mode of change involves retracing the horizons of the tradition, reconfiguring its vocabulary and altering the canonical constellation. At least according to one of its manifestations in the Jewish tradition, this type of transition involved the employment of crisis discourse, in a mode that consists of – as I aim to show – both constative (or indicative) and performative utterances, that allowed for a suspension of a prevailing framework. In this article, I will analyze the attempt to produce such a framework transition in the tradition of Jewish Halakha (i.e., Jewish Law) by one of the key figures in its history, Moses Maimonides (1135–1204), and to explore how this transition was rationalized and promoted by the utilization of crisis discourse. The work that will be discussed in the article is the great legal code, *Mishneh Torah*, in which Maimonides sought to establish, install and stabilize a homogenous and centralistic legal order at the center of which will lie one – that is, his own – Halakhic book. The literary unit that I will focus on is the work's introduction, both for its programmatic character and for the fact that it represents Maimonides' most intricate and elaborate employment of crisis discourse in the work.

The discursive structure of the introduction to *Mishneh Torah*, as will be presented shortly, is characterized by a complex dialectic movement between two poles: on the one hand, relating the "Oral Law" and the Halakhic tradition back to its asserted source in Sinai, emphasizing the lasting nature of this relation which is retained across generations despite the cumulative nature of the Halakha,² and accentuating its unitary character; while on the other hand stressing the presence of an ongoing threat to the "Oral Law" (i.e., the Halakhic tradition), its arrival at states of crisis, and eventually, the decisions that prevented its destruction. The crises of the Oral Law are depicted in the Maimonidean narrative not only as threats of havoc and disintegration, but also as the conditions of the existence of works that are placed at the very core of the canon and as catalysts for the creation and formation of these works.

Acknowledging the centrality of the discourse of crisis and identifying its implications, as I attempt in these pages, is the outcome not only of a close reading of the introduction to the treatise, but also of attending to the current state of research on *Mishneh Torah*, including its major achievements but also its insufficient account of the dynamics of crisis and its role in the creation and legitimization of the Halakhic code in its entirety. This acknowledgment would not have been possible if not for Isadore Twersky's

² In opposition to the general approach of the Geonim, who were generally skeptical the idea of halakhic deliberation and considered the halakhic disputes a deterioration caused by erroneous transmission, Maimonides' approach granted a wide discursive space for innovation via derivation in accordance with the hermeneutic principles for interpreting the Torah, which are the rules that regulating the Halakhic reasoning, and which endow conclusions that were appropriately deduced with the status of Rabbinic laws, *Mitzvot* from *de-rabanan* [the Rabbis]. See Maimonides, *Sefer ha-Mitzvot*, 13, and detailed discussion in Halbertal, *Maimonides*, 116–26; see also Ravitzky, "Halakhic Arguments," 205–7. On the issue of halakhic dispute and its relation to the Geonim, see Blidstein, "Tradition and Institutional Authority," 15–20; Sagi, *Elu va-Elu*, 75–6, 181–3; Hartman, *Maimonides*, 117–91.

monumental *Introduction to the Code of Maimonides*, in which he ascribed what he called Maimonides' "Drang zur Codification [Eng.: urge towards codification]," as a motive for the composition of *Mishneh Torah*, to the "historical adversity."³ Nevertheless, in his study, Twersky framed the depiction of the crisis in the introduction to *Mishneh Torah* as one of the "motives" for the *Mishneh Torah*, and more specifically, as a "historical motive," written in "response to contemporary need." In his account of the then contemporary needs, Twersky refers to the crisis, or at least to the crisis as perceived by Maimonides, as a motive that is located "outside" the scope of the work and bears a contingent relation to it, a motive that at most can be extracted with some effort as a trigger for the writing of the work from its opening assertions. As Twersky puts it: "A review of the programmatic pronouncements also sheds light on the question of Maimonides' motives and intentions, the *germination of the idea which led to the genesis of the work*."⁴ In this study, I wish to take a different path, one that illuminates the crisis from the perspective of its linguistic operation in the field of the politics of the canon. The declaration of crisis is, as I will claim, an "argumentative move," in the words of Quentin Skinner, that is enacted in a dense context.⁵ In order to fully assess Maimonides' assertion, it will not suffice to analyze it as a representation of the motivations of the author. Instead, I shall inquire why propositions of crisis were put forward, what aims this act sought to achieve, or more precisely, what constellation did it aim to alter and what resources were employed for that purpose? To put it succinctly and preliminarily, I claim that the declaration of crisis legitimized for Maimonides a dramatic move in the field of Halakha, which otherwise would have lacked sufficient justification.

In a study of the figure and works of Maimonides, Moshe Halbertal also dedicated a discussion to the way in which Maimonides unfolds the history of Halakha in the introduction to *Mishneh Torah*. Halbertal's analysis focuses on the role of the "geopolitical" crisis in the narrative, that is, on circumstances in which "the prospect of centralized, institutional halakhic authority – which depends on political stability – was lost."⁶ In Halbertal's words:

Maimonides appears to regard the rise of Islam, and the dispersion of Jewish communities to the Maghrib and Spain in its wake, as the 'extraordinarily great dispersion' that has taken place since the completion of the Talmud. His remarks about the intensified historical crisis of his own time appear to relate to the destruction of Andalusian Jewry by the Almohads.⁷

Moreover, Halbertal aptly demonstrated the relation forged by Maimonides between the circumstances of the composition of *Mishneh Torah* and Rabbi Judah the Prince's redaction of the *Mishnah*, and presented the broader theory of authority that is fundamental to *Mishneh Torah*, according to which a halakhic treatise gains authority through its dissemination and acceptance as binding by the people of Israel. Although these two points are foundational to this article, I wish to shift perspective and interpret both differently. Instead of accepting Maimonides' claim about the crisis as a well-established fact and an external, circumstantial instrument, an assumption that has yielded further studies that focused on reconstructing the critical historical circumstances, I seek in the following pages to analyze the way in which the very pronouncement of crisis, as a declaration of a halakhic "state of exception," allows Maimonides to reshape, in a dialectical manner, the discursive space and canonical politics in which the *Mishneh Torah* is situated. Maimonides does not only, and not essentially, describe in a series of propositional sentences the crisis that befell the sphere of Halakha in his days, but also declares, in a performative manner that will be explored below, a state of crisis along with the steps that must be taken to overcome it. This declaration is formulated in the *Mishneh Torah* as a rhetorical move that is well grounded in earlier Rabbinic sources. The following analysis, therefore, will both make use of discourse analysis and at the same time remain philologically

³ While insisting on an accumulation of various different motives for the composition of *Mishneh Torah*, and despite his important question, "Why should we strive for monolithic causation which might oversimplify and attenuate a multi-faceted reality?" Twersky still insisted on treating the "historical" motive as the main reason for Maimonides' "Drang zur Codification;" see Twersky, *Introduction*, 71–2, and see a broader account in Twersky, "Maimonides' *Mishneh Torah*," 8–15.

⁴ Twersky, *Introduction*, 61.

⁵ Skinner, "A Reply," 274.

⁶ Halbertal, *Maimonides*, 183.

⁷ *Ibid.*

attuned to the earlier Talmudic stratum, emphasizing the specific way in which these sources conceptualize crisis.

2 Crisis discourse in the introduction to *Mishneh Torah*

In order to articulate the dynamics that characterizes the Halakha, Maimonides creates in his introduction a mosaic of sources, inlaying and embedding numerous Rabbinic motifs and *derashot*, explicitly and implicitly, with or without a manipulation of the meaning of these motifs.⁸ At times, as I will show, this is done specifically in order to harness the sources' rhetorical force and canonical capital. Thus, an appreciation of the introduction demands careful attention not only to the arguments presented in it but also to the ways in which it utilizes and intensifies Rabbinic tropes.⁹ Moreover, an assessment of the introduction along these lines – that is to say, an assessment that attends to its rhetorical force – will allow us to see not only its achievement as an assemblage of arguments that narrates the story of the formation of *Mishneh Torah*, but also its ambition as a speech-act seeking to legitimize the project itself and secure its authority among the diasporic people of Israel.

In the following pages, I present two motifs that will be reinterpreted in the specific context of the crisis discourse in the introduction to *Mishneh Torah*. In the course of this analysis I clarify both the character of the threat that according to Maimonides looms over the Oral Law in its halakhic manifestations and the character of the response that Maimonides deems necessary to protect and preserve it.

2.1 Succession and transmission

In the opening words of the introduction Maimonides addresses the notion of the continuity of the Oral Law by presenting the chain of transmission, a canonical motif drawn from the first *mishnayot* of the mishnaic tractate *Avot*. In order to discuss the chain of transmission and Maimonides' specific application of it we need to ask first what it is that the ascription of a textual body to a chain of transmission imparts to it.

The clear purpose of the chain is to impart authority to the text (or to the specific persons or institutions that rely on it as its representatives or successors). Moreover, the chain traces not only the origin, but also the links that together create the continuum. In order for this rhetorical tactic to achieve its goal, and for the source to bestow its authority upon the very last link in the chain, several conditions need to be fulfilled. First, as demonstrated by Raymond Geuss in his philosophical analysis of the pedigree,¹⁰ the source needs to be positively assessed, that is, to be regarded in itself as a source of authority. Second, each link in the chain is required, in its own turn, to preserve the value imparted by the source. A missing link in the chain is, in the words of Moshe Halbertal, “a mortal blow to a mighty body of knowledge that becomes

⁸ In embedding the words of the sages in his introduction Maimonides is not referring to them as parables that we must interpret in order to assess their value, to reveal their interior-content and to dismiss their exterior peel, but rather as allusions that indicate, in the words of Yair Lorberbaum, “quasi chapter-headings.” Unlike the parables, the allusions in Rabbinic literature are not compounded by two (or more) layers of meaning, but are characterized by another rhetoric strategy, of succinctly or indirectly alluding to an issue; see Lorberbaum, “Changes in Maimonides' Approach,” 120–1; see Klein-Braslavy, *King Solomon*, 67–71.

⁹ Referring to the linguistic aspect of the Guide, Menachem Lorberbaum has claimed that “The many subtle variations in the manner in which the speaker addresses his reader are integral to the course of the argument [of Maimonides].” Lorberbaum, *Politics and the Limits of Law*, 18. See a similar assessment in Strauss' introduction to Pines' translation of the Guide. This, I wish to claim, is no less true in the case of the Hebrew of the *Mishneh Torah*. Heeding the linguistic subtleties of Maimonides' Hebrew demands careful attention to biblical, Rabbinic and Geonic layers of the Hebrew inherited by Maimonides.

¹⁰ Geuss, “Nietzsche and Genealogy.”

irretrievable.”¹¹ Indeed, even a link that is not missing but merely valued as inferior can cast a shadow both backward – on the preceding link, for endangering the entire chain by delegating its authority to a party that did not succeed in preserving the tradition – and forward, on the succeeding links, since their bond to the source has been weakened. The general logic of the rhetorical tactic of presenting a chain of transmission and designating its links is a logic of legitimization, or at the very least of stabilization or a deepening of authority. It is generally employed as a step of valorization, performed by tracing an object back “through a series of unbroken steps of transmission to a singular origin,” that is, by presenting an unbroken chain in which every link preserves the value of the origin.

It is in light of this dynamic, I argue, that we ought to read the opening words of the mishnaic tractate *Avot*, which present us with the chain of transmission that proceeds from teachers to disciples, from the revelation in Sinai to the Rabbis of mishnaic times.¹² In the celebrated words of the *Mishnah*:

Moses received the Torah from Sinai and passed it on to Joshua, and Joshua to the elders, and the elders to the prophets, and the prophets passed it on to the Men of the Great Assembly [...] Simon the Just was of the remnants of the Great Assembly [...] Antigonus of Sokho received from Simeon the Just [...] Hillel and Shammai received from them [...] Rabban Johanan ben Zakkai received from Hillel and from Shammai [...]. Five disciples were there to Rabban Johanan ben Zakkai and these are they: Eliezer ben Hyrcanus, R. Joshua ben Hananiah, Rabbi Joseph, and R. Simeon ben Nethanel, R. Elazar ben Arakh.¹³

The opening units of Tractate *Avot* are intended, in the words of Moshe Halbertal, “to trace an unbroken and reliable chain of transmitters,” in order to ensure the succession of Halakha as it was given at Sinai “all the way until the time the work was written.”¹⁴ And indeed, among the very last links of the chain is the circle of disciples of Johanan ben Zakkai, who are quoted often throughout the *Mishnah* and partake in its discursive shaping.

In his introduction to *Mishneh Torah*, Maimonides elaborates on the chain of transmission and its occurrences. Naturally, the last links in the chain are no longer the Tannaitic ones, and instead the chain now spans from the giving of the Torah to Moses at Sinai all the way up to the days of Maimonides himself – “our time,” in his words. Thus, the succession begins, according to Maimonides, with Moses transmitting the interpretation of Torah – that is, according to him, transmitting the halakhic texture that can be inferred from the verses – to Elazar and Phineas and Joshua and to a court of seventy elders. From this first stratum the transmission continues onward. These are the opening words of the introduction:

All the precepts which Moses received on Sinai were given together with their interpretation, as it is said, ‘And I will give to you the tables of stone, and the law, and the commandment’ (Ex. 24:12). ‘The law’ refers to the Written Law; ‘the commandment’ to its interpretation. God bade us fulfill the Law in accordance with ‘the commandment.’ This commandment refers to that which is called the Oral Law. [...] ‘The commandment,’ which is the interpretation of the Law, he did not write down [...]. Although the Oral Law was not committed to writing, Moses taught the whole of it, in his court, to the seventy elders as well as to Eleazar, Phineas, and Joshua – all three of whom received it from Moses. Many elders received the Oral Law from Joshua. Eli received it from the elders and from Phineas. Samuel, from Eli, and his court. David, from Samuel and his court [...].¹⁵

¹¹ Halbertal, *Maimonides*, 169.

¹² This notion of a pedigree suits Maimonides’ understanding of the opening part of tractate *Avot*, and see Maimonides’ introduction to his Commentary on the *Mishnah*: “Beginning from the forefathers, and this for two reasons, one is to inform you on the truth of tradition and transmission, which is true, and many received it from many, and therefore it is appropriate to respect the sage, and to regard him in the highest esteem, for he is the one to whom it was transmitted, for he in his generation is similar to them in their generations [...] and in this there is lesson for everyone, lest they say ‘shall we accept the decision of this certain sage? Or shall we believe in the ordinance of this certain sage?’ and it is not thus, for the judgement is not that of this certain judge but of our God who commanded us thus, as it was said: “for judgment is God’s,” and indeed it is one judgement reproduced from one to another through the generations,” Maimonides, *Commentary on the Mishnah*, vol. 1, 29 (my trans.). For a discussion of the character of the chain of transmission in tractate *Avot* and its relation to other chains of transmission in early Christianity, see Tropper, *Wisdom*, 208–39, see also 22–4, 47–50.

¹³ *Mishnah Avot* 1:1–2:8. Tropper translation, modified.

¹⁴ Halbertal, *Maimonides*, 101. See also idem., *By Way of Truth*, 23–4 n.17.

¹⁵ Maimonides, *Mishneh Torah: The Book of Knowledge*, Introduction, 1b.

Much can be said about the character of this chain of transmission as reproduced here by Maimonides, and in particular about his unconventional choice of recipients of the Oral Law which together make up the succession of transmission and reception, about the new key figures in this succession,¹⁶ and about the cumulative manner in which the laws are extracted from the Written Law.¹⁷ In the present framework, however, I wish to emphasize one unique aspect of Maimonides' use of the chain of transmission, which produces a displacement and a manipulation of the familiar continuum model. In stark contrast to the succession described in Tractate *Avot*, Maimonides presents the chain of transmission not only to testify to the reliability of the Oral Law but also to expose and underscore the *constant danger* it faces. As a rhetorical instrument, by introducing the threat as an essential element of the chain, Maimonides altogether changes its character, for instead of functioning as a stabilizing factor that allows for the concatenation of the Oral Law all the way back to its source at Sinai, the chain is now cast as essentially fragile throughout the generations. For its value to be protected, the community must succeed in faithfully transmitting it and retaining its unity, yet there is no guarantee that the community will be fit for this task.¹⁸

The first threat to the continuum, and the action taken to address it, is described by Maimonides as occurring in the days of Judah the prince.¹⁹ In contrast to the succession described as uninterrupted right up to the days of the redactor of the *Mishnah*, who, according to Maimonides, is the author of the *book of Mishnah*, the hour of Judah the Prince is presented as a time of crisis for the Oral Law:

And why did our holy master act thus [put the oral tradition to writing] and not leave the matter as it was? Because he saw that the disciples were becoming fewer, and new calamities were coming upon them, and the Roman government was expanding and growing stronger, and Israelites were wandering away to the ends of the earth.²⁰

The sequence of transmission, according to this account, does not occur uninterrupted throughout history but rather is exposed to the vicissitudes of time, and constantly vulnerable, we suddenly realize, to the danger of a severance of the chain. In addition, in order for the continuum to survive the threat, Judah the Prince was demanded to transgress the guiding principle that had endured from the times of Moses, namely, the principle of refusing to put the Oral Law to writing for any purpose other than memorandum.²¹ And indeed, the measure taken by Rabbi Judah the Prince achieves its aim and reinstalls the succession,

¹⁶ Maimonides introduces significant interpolations to the chain of transmission, most importantly, the integration of zealots, Phineas and Elijah, as well as the inclusion and exclusion of sages. See Rabad of Posquière's Criticism to Maimonides' *Mishneh Torah*, Introduction. See also a discussion on few of the sages listed in the chain in Baron, "The Historical Outlook," 96–101.

¹⁷ See discussion in Halbertal, *Maimonides*, 104–7.

¹⁸ For a similar post-Maimonidean utilization of the chain of transmission, see Samuel Ibn Tibbon, *Commentary on Ecclesiastes*. See also the survey of the history of Halakha in texts whose authors were highly influenced by Maimonides, such as *Sefer Mitzvot Gadol* by R. Moses of Coucy, *Beit Habehirah* by R. Menahem ha-Meiri, *Zeidah la-Derekh* by R. Menahem ben Zerah and *Sefer ha-Batim* by R. David ben Samuel of Étiole.

¹⁹ However, as mentioned in note 17, Maimonides did hint at the crisis related to transmission and the need to take critical measures in the integration of Phineas and Elijah to the chain.

²⁰ *Mishneh Torah*, Introduction, 2b. This powerful paradigm has significantly modified the halakhic imagination of masters of Halakha from the time of the writing of *Mishneh Torah* onward, and is manifest in innumerable halakhic texts and responsa, and see Michaelis, *Time to Act*, 174–89.

²¹ However, between the tenth and twelfth centuries another widely circulated approach maintained that the *Mishnah's* redaction was a sign of untroubled times and relative peace, and not the result of a time of crisis, as claimed by Maimonides and theoretically bolstered by Twersky, *Introduction*, 71–3; Halbertal, *People of the Book*, 74–6. See, for instance, R. Sherira Gaon's epistle's formulation: "the days of Rabbi [Judah the Prince] were free of calamity," or Rashi in his commentary to *Bava Metzia* (33b): "they were free of trouble and he [Rabbi Judah] conveyed and gathered all the disciples of the land of Israel." See also Twersky, *Rabad*, 133–4 and especially note 9. Furthermore, Maimonides' notion that the *Mishnah* was written either in Rabbi Judah the Prince's time or even at a later time predating the Geonim was contentious, with differing opinions among the French and "Spanish" Schools. See, in this respect, the different versions of the epistle of Rav Sherira in Sherira ben Hanina Gaon, *Iggeret Rav Sherira Gaon*. This dispute was rekindled in the academic scholarship of the *Mishnah*, and see the opposing view of Lieberman, *Greek in Jewish Palestine*, 216, and of Epstein, *Prolegomena*, 270, and also Sussman, "Torah She-Beal Pe."

allowing for the chain to pick up its continuity once again as if it had never been interrupted, as the following passage depicts:

Then he and his court sat for the rest of his life and studied the *Mishnah* openly. And these are the distinguished wise men which were in the court of our holy master and received from him: his sons Simeon and Gamaliel. And Rabbi Effes [...] all these wise men are the most distinguished men of the generations.²²

Furthermore, the preservation of the Oral Law is not only an act of guarding a body of knowledge, namely, the commandments as interpreted and extracted by every generation using the “hermeneutic principles” that govern the production of a valid interpretation; it also entails preserving Oral Law as an institution embodied in the authority of the *great court* and in the application of its rulings to the whole of Israelite existence.²³ The court as depicted by Maimonides constituted the axis of authority that made it possible to overcome the wide dispersion of communities, and functioned as a solid foundation that endured in the face of the fluctuations of time and fate.²⁴ Herein lies another difference between Tractate *Avot*, in which the court is not mentioned, and Maimonides’ introduction. In fact, Maimonides embeds the institution of the court within the chain of transmission, from its very beginning in the days of Moses. The centrality of this institution to the succession of Halakha in the account given in the introduction to the *Mishneh Torah* can be inferred by the very fact of its insertion into the first link in the chain, the point at which the whole of the Oral Law is transmitted, by Moses, “in his court, to the seventy elders.” The importance of the court is further attested by the fact that it is the most frequent term in the introduction, repeated as much as fifty times and recalled in every link up until the time of Hillel, and from Hillel to Judah the Prince it is mentioned under the principle that “in each generation, the head of the then existing *court* or the prophet of that time wrote down for his private use a memorandum of the traditions which he had heard from his teachers, and which he taught orally in public,”²⁵ and even beyond this it applies up to the time of the redaction of the two *Talmuds*, about which it is said: “These two *Talmuds* contain an exposition of the text of the *Mishnah* and an elucidation of its abstruse points and of the new matters that had been added by the various courts from the days of our holy master, till the compilation of the *Talmud*.”²⁶ The time of the *Talmuds* is depicted by Maimonides as perched on the verge of another threat to the succession:

After the Court of Rav Ashi, who compiled the Gemara which was finally completed in the days of his son, an extraordinarily great dispersion of Israel throughout the world took place. The people emigrated to remote parts and distant isles. The prevalence of wars and the march of armies made travel insecure. The study of the Torah declined. The Jewish people did not flock to the colleges in their thousands and tens of thousands as heretofore; but in each city and country, individuals who felt the divine call gathered together and occupied themselves with the Torah.²⁷

Indeed, the crisis of the Talmudic age not only involves an anxiety over the ominous possibility of the termination of the chain, caused by the drop in the number of disciples, but also witness another type of threat, namely, the disintegration of Halakha as a consequence of the splintering of the institution of the court into multiple *courts*. In the words of Maimonides: “Each court that was established in any country, after the time of the *Talmud*, made decrees or introduced customs for those residing in its particular country or for residents of various other countries, its enactments did not obtain the acceptance of all Israel because of the remoteness of the settlements and the difficulties of travel.”²⁸ This deteriorated state of affairs is

²² *Mishneh Torah*, Introduction, 2b.

²³ See Blidstein’s discussion of the institutionalization of the great court and its status in the first Halakha of *Mishneh Torah*’s Laws of Rebels, “The Great Court in Jerusalem is the foundation of the oral Law, and [its members] are the pillars of instruction, and it is from them that statute and judgement go forth to all of Israel,” In Blidstein, *Authority and Rebellion*, 16–8 and 27–9. On the role of the great court in Maimonides see further Michaelis, *Time to Act*, 51–112, esp. 93–112.

²⁴ For a discussion about overcoming disintegration by the method of codification, see Halbertal, *Maimonides*, 168–71.

²⁵ *Mishneh Torah*, Introduction, 2b. My italicization.

²⁶ *Ibid.*, 3a.

²⁷ *Ibid.*, 3b.

²⁸ *Ibid.*, following *BT Avodah Zarah* 36a.

depicted by Maimonides in the powerful words: “The court of any particular country consisted of individuals and the great court of seventy-one has *ceased to exist* a few years before the compilation of the Talmud.”²⁹ With these words Maimonides hints, first, at the nature of the enterprise undertaken by Rav Ashi and its indispensability, but also at a paradigmatic change and a transformation in the structure of the authority in which the succession of the Oral Law is embodied. The great court, now inoperative, is not replaced by a consensus among the different courts of the different Jewish communities, but instead by what Maimonides calls the acceptance of the community in its entirety, “all of Israel,” and the community’s authorization of the text as binding.³⁰ This radical change, indeed a framework transition, is embedded in the Maimonidean narrative by a displacement and an alteration of the crucial factor that empowers the contents of Halakha in every generation:

[...] and the new matter evolved in each generation, which had not been received by tradition but had been instantiated by application of the thirteen hermeneutical principles *and were agreed upon by the great court* [...] and these were instantiated by the great court by the hermeneutic principles, and which were decreed by the elders, which have judged thus [...] and the great court of seventy-one has *ceased to exist* a few years before the compilation of the Talmud [...] all these matters mentioned in the Talmud were *accepted by all Israel*, and those sages who instituted or decreed or introduced costumes or issued judgments and taught that a certain ruling was correct, constituted all, or the majority, of the sages of Israel, and they were the ones who received the tradition concerning the principles of the Torah in its entirety, from each other, up to Moses.³¹

The disintegration of the great court heralds a new epoch in the history of Halakha. The challenge that the Oral Law faces with the loss of its axial institution, along with the unprecedented threat to which it has been subject, suggests an ominous future that awaits it after the compilation of the *Talmuds*. This future is indeed realized, according to Maimonides, in the days of the Geonim, when, in spite of their virtues, their profound wisdom and the assertion that they are the ones who “elucidated [the *Talmud*’s] obscurities, and expounded the various topics with which it deals,” a gap was opened between the different authorial figures, and they came to form the first generation of the scission.³² In contradistinction to the *Talmud*, which obtained the acceptance of “all Israel,” the age of the Geonim is a time of decentralization.³³ Maimonides’ short account of the Geonic times is ambiguous, moving between an acknowledgment of the supreme effort to retain the Torah in its diasporic times and an insinuation of the incapacity of the Geonim to retain Halakha’s cohesion and safeguard its totality in the face of danger. The Halakhic oeuvre of the Geonim, according to Maimonides, although responding aptly to the difficult questions of the “residents of every city,” was not ambitious and foresighted enough to counteract the process of the Halakha’s deterioration so that by the times of Maimonides he describes its predicament thus:

²⁹ Ibid., 3b–4a.

³⁰ For an analysis of the implied structure of authority in the principle of the acceptance of the community, see Halbertal, *Maimonides*, 194–6.

³¹ *Mishneh Torah*, Introduction, 1b–4b. My italicization.

³² Despite what he implies in the introduction about the non-canonical status of the Geonic ruling, Maimonides’ approach to the rulings of the Geonim is complex. See Brody, “Maimonides’ Attitude;” Havatzelet, “Maimonides’ approach;” Halbertal, *Maimonides*, 175–81; Michaelis, *Time to Act*, 130–41.

³³ In presenting the age of the Geonim Maimonides does not explicitly discuss the quality of their rulings but rather emphasizes a certain gap that occurred in their age in the most basic infrastructure of the legal system, which is the mastery of language itself. According to Maimonides, “All these Geonim [...] taught the way of Talmud, elucidated its obscurities, and expounded the various topics with which it deals. [...] Furthermore, the work is composed in Aramaic mixed with other languages – this having been the vernacular of the Babylonian Jews at the time when it was compiled. In other countries, however, as also in Babylon in the days of the Geonim, no one, unless specially taught, understood that dialect.” *Mishneh Torah*, Introduction, 4a. Losing the coherence of language is a sign of the loss of communal cohesion; see, in this respect, Stern’s discussion of language and convention in Maimonides, in Stern, “Maimonides on Language.” Furthermore, the history of reception of Maimonides proves that indeed earlier generations accepted him as bridging the age of Rav Ashi and his own days, and as such, as marginalizing the place of the Geonim in the succession of Halakha. See Twersky, “The Figure of Maimonides,” 11–2, and specifically, “The right measure for comparison [with regards Maimonides and *Mishneh Torah*] is not the age of the Geonim, but the age of the Talmud. Maimonides’ rises above every head and adjoins the party of the Talmudic sages,” Ibid., 13.

In our days, severe vicissitudes prevail, and all feel the pressure of hard times. The wisdom of our wise men has failed; and the prudence of our prudent has vanished. Hence, the commentaries of the Geonim and their compilations of laws and responses, which they took care to make clear, have in our times become hard to understand so that only a few individuals properly comprehend them.³⁴

Maimonides' own "historical" moment, then, like the preceding times of the compilation of the *Talmuds* and the days of Rabbi Judah the Prince, witness a severe threat to the continuation of the Oral Law. To underscore the specific character of this threat, let us look closely at two sugiyot from the *Babylonian Talmud* to which Maimonides alludes when writing about the three critical times mentioned above.

2.2 Lest Torah be forgotten from Israel

The first sugia is extracted from the Babylonian tractate Shabbat, and is alluded to by a paraphrase of a verse fragment from Isaiah (29:14), "And the wisdom of our wise has failed; and the prudence of its prudent shall vanish," which is interlinked in the Babylonian passage to a verse from Deuteronomy:

As for the Torah, Rab said, "The Torah is destined to be forgotten from Israel: 'the Lord will inflict baffling plagues upon you and your offspring' (Deu. 28:59). But I do not know how they will be baffling. Then it is said, 'Truly, I shall further baffle that people with bafflement upon bafflement; And the wisdom of its wise shall fail [And the prudence of its prudent shall vanish]' (Isa. 29:14), so it means that this 'baffle' involves the Torah." Our Rabbis have taught: When our Masters entered the vineyard in Yavneh they said: The Torah is destined to be forgotten from Israel, for it is said, "a time is coming, declares my Lord God, when I will send a famine upon the land: not a hunger for bread or a thirst for water, but for hearing the word of the Lord," and it is said: "They shall wander from sea to sea and from north to east to seek the word of the Lord, but they shall not find it." (Ibid., 8:12) '[...]The word of the Lord': That means, Halakha. '[...]The word of the Lord': That means, the end. '[...]The word of the Lord': That means, prophecy. [And what is the meaning of] "They shall wander from sea to sea and from north to east to seek the word of the Lord, but they shall not find it"? They said, A woman is destined to take a loaf of bread in the status of heave-offering and make the rounds of synagogues and houses of study to find out whether it is unclean or whether it is clean, and no one will understand. [...] R. Simeon b. Yohai says, "God forbid that the Torah should be forgotten from Israel, as it is said, 'for it will never be lost from the mouth of their offspring.' (Deu. 31:21). But then how should I interpret the verse, '[they shall wander] to seek the word of the Lord, but they shall not find it' (Amo. 8:12)? *There will be no distinct Mishnah or distinct Halakha in any place.*"³⁵

The foreboding danger declared by the text is the forgetting of Torah in Israel. In the cited passage above, the Babylonian sugia weaves together two earlier Tannaitic sources. One of the sources, first quoted in the Tosefta, depicts the convention of the sages in Yavneh.³⁶ The other, expounding on the verse "[they shall wander] to seek the word of the Lord, but they shall not find it", appears first in the *Sifre Deuteronomy*.³⁷ As demonstrated by Shlomo Naeh,³⁸ the earlier presentation of these sources does not refer to any sort of calamity³⁹ but is instead concerned with the "sheer abundance," and with the question of handling the plentitude. The anxiety attested to in the Tannaitic strata concerns the danger of Halakha losing its cohesiveness due to the overflow. This threat calls for a restructuring of the Halakha in such a way that will bring order into its multiple contents. In the words of Naeh: "This prosperity of the words of Torah, which, as it were, multiply as if by themselves, arouses a concern in the heart of the sages, fearing that if worst come to

³⁴ *Mishneh Torah*, Introduction, 4b.

³⁵ *BT Shabbat* 138b. My translation, with the aid of Yedidah Koren and Amit Gvanyahu.

³⁶ Tosefta Eduyot, 5:1.

³⁷ *Sifre Deuteronomy*, 48.

³⁸ Naeh, "The Art of Memory," 582–6.

³⁹ See references to scholars who interpret the redaction of the Mishnah as a consequence of the destruction of Jerusalem or with an anxious eye to future calamity and oppression, in Naeh, "Art of Memory," 584 n192. This list can be supplemented by Alon, "The History of the Jews," 15–6; Urbach, "The Jews in Their Land," 64; Oppenheimer, *Judah ha-Nasi*, 165, 187; Boyarin, *Intertextuality*, 38.

worst one shall seek a word of Torah or word of scribes and will not find it.”⁴⁰ In contrast to the Tannaitic context of the sources, and even while the general problem – namely, the problem of organizing the Halakha – is retained, the tonality of these very sources is altogether altered in *BT Shabbat*, and an emphasis is put on the calamitous character of the prevailing state of affairs and the attendant fear of loss. Instead of prosperity, the *Bavli* casts the situation as grave and depicts the loss of wisdom from Israel. Moreover, a careful reading of the passage elucidates the type of danger declared by Maimonides in his introduction. Indeed, the loss of Halakhic cohesion is delineated by Maimonides as the literal annulment of the Oral Law and as a disintegration of the communal texture that unites Jewish life throughout the diaspora. This loss is not partial – that is, a loss that concerns only one dimension, however important, in the life of the community – but fatal to the community’s most fundamental organizing principle, and even entails the loss of the community itself as a community anchored in the *singular* moment at Sinai. Not as a direct consequence of an external enemy will the community be destroyed, but because of its inability to preserve the unity of Halakha in the face of danger. The threat that “There will be no distinct Mishnah or distinct Halakha in any place” means, for Maimonides, the loss of a foundation that bestows upon the Halakha its unitary character and counteracts the inclination toward disintegration. This, in Maimonides’ account, is not related to any state of overabundance, but to a diminution and atrophy, as stated in his words about the time of the compilation of the *Mishnah*, “Because he saw that the disciples were becoming fewer, and new calamities were coming upon them;” the time of the compilation of the *Talmud*, “The study of the Torah declined [...] [and only] individuals who heeded the divine call gathered together,” and his own time.⁴¹

Another Babylonian source, presented in *BT Temurah* (14b), reveals the radical response that the threat of the forgetting of Torah requires:

Thus said R. Abba b. R. Hiyya b. Abba in the name of R. Yohanan: Those who write down Halakhot are as if they are burning the Torah, and one who learns from them is entitled to no reward. R. Judah b. Nahmani, the interpreter of R. Simeon b. Laqish, expounded: One verse says: ‘Write down these words’ (Exo. 34:27), and another verse says: ‘for in accordance with [lit. by the mouth of] these words’ (Exo. 34:27). This means to tell you, oral matters you are not allowed to put in writing, and those that are to be in writing you are not allowed to orally cite. And a Tanna of the school of R. Ishmael taught: ‘Write down these words – [only] these are the words that you may write, but you may not write down Halakhot! [By way of reply:] perhaps a new matter should be different [regarding these regulations]. For R. Yohanan and R. Simeon b. Laqish were studying a book of aggadah on the Sabbaths, and they expounded in this way [to explain their actions]: ‘It is time to act for the Lord; violate your Torah’ (Psa. 119:126), they said, it is better that Torah be uprooted, *than that the Torah be forgotten from Israel*.’⁴²

In light of the comparison of those who write down oral teachings to those who burn the Torah, the sugia discusses the case of R. Dimi who sought to write down an issue of Halakha and send it to R. Joseph, and excuses his act, in spite of the prohibition, based on the abnormal permission of “It is time to act,” which applies at a time of imminent danger for the sake of preventing the Torah from being forgotten.⁴³ The violation of Torah is decisively bound up, in this daring exegesis, with the threat of forgetting the Oral Law.

⁴⁰ Naeh, “Art of Memory,” 584.

⁴¹ To emphasize the abysmal situation, the scarcity of disciples is conjured in another Talmudic source, in the name of R. Yohanan, who refers to the generation in which “disciples of the sages are lessened” as a generation in such dire conditions that its misery brought about its redemption, in the sense that it was the great darkness before the light. “Said R. Yohanan: The generation to which the son of David will come will be one in which disciples of sages are lessened, and, as to the others, their eyes will wear out through suffering and sighing, and troubles will be many, and laws harsh, forever renewing themselves so that the new one will hasten onward before the old one has come to an end.” *BT Sanhedrin* 97a, Neusner trans., modified.

⁴² *BT Temurah*, 14a. My italicization.

⁴³ The interpretation of the Psalmic verse (119:126) involves a daring midrashic twist on the original verse “It is time for the Lord to act, for they have violated your Torah,” here expounded as an imperative: “It is time to act for the Lord: Violate your Torah[!].” This exegetical move was first made in an earlier stratum of Rabbinic literature, namely, *Mishnah Berakhot* 9:5. On the early exegetical history of the verse see Michaelis, *Time to Act*, 31–50; on the use of the verse in Maimonides’ *Guide of the Perplexed*, see *Ibid.*, 273–6, and see further Michaelis, “Therefore,” 396–7.

This sugia is echoed in Maimonides' discussion of the writing down of the *Mishnah* by Rabbi Judah the Prince. More precisely, the words of the sugia are both hushed and concealed in the words of Maimonides, and at the same time intensified and broadened to a dramatic extent. Hushed in what sense? Indeed, the peril of Torah being forgotten remains explicit in the words of Maimonides, but his depiction of the response to this peril as an infringement of the Oral Torah's *modus operandi* is only faintly present.⁴⁴ While the prohibition on the act of writing is modestly stated at the beginning of the introduction – in the seemingly neutral statement that the “commandment,” meaning the interpretation of the Torah, that is, the body of Halakhot, Moses did not commit to writing – Rabbi Judah the Prince is presented as the one who authored “the book of *Mishnah*.”⁴⁵ Rabbi Judah's transgression is enshrouded in a question, posed non-conspicuously yet alluding strongly to the sugia discussed above: “And why did our holy master act thus and not leave the matter as it was? [...] [in order that it] could be promptly studied and not be forgotten.” In contradistinction to this clandestine embedding of the context of the sugia within the introduction, note how Maimonides simultaneously intensifies the sugia – which in its original context addresses the issue of writing matters of Halakha through a secondary discussion about written words of Aggadah – by situating it, unprecedentedly, in the history of the Halakha,⁴⁶ as a foundation for the *Mishnah* in its entirety.

Corresponding to his narrative of the compilation of the *Mishnah*, Maimonides proclaims a crisis taking place in his own times, along with the necessary response. In the forceful Hebrew formulation of Isadore Twersky, “The gloom of events and upheavals engulfed the generation. It left its impression on the nation and there came to be an hour of emergency that demanded reparation.” Maimonides' response to “this challenging situation in which knowledge of Torah is sadly lacking or exists very precariously [...] was the composition of a comprehensive Code which would facilitate halakhic study in every conceivable way.”⁴⁷

What constitutive discursive role does the designation of crisis, or an “hour of crisis” in Twersky's words, perform in the introduction to *Mishneh Torah*, and what exceptional procedures does it legitimize? Instead of discussing, like Twersky, the historical emergency as a circumstantial tool on which Maimonides relied in the writing of his work (though without undermining the possibility that Maimonides did in fact conceive of his age as a time of great distress), my own aim here is to discuss the declaration of a state of emergency as an intra-traditional apparatus utilized by Maimonides to set and stabilize the comprehensive Halakhic code, thereby significantly transforming the discursive space of Halakha.⁴⁸

⁴⁴ On the issue of the ‘Forgetting of the Torah’ in Maimonides' *Guide of the Perplexed* see Michaelis, “For the Wisdom.”

⁴⁵ Rashi, in his commentary to the *Babylonian Talmud*, as well as the French schools of medieval Judaism and most contemporary scholars of the Mishnah do not concur with Maimonides' view of the Mishnah as written by Judah the Prince but instead regard Judah and his school as oral redactors of the Mishnah. See Rashi on *BT Bava Metzia* 33b, “In the days of Rabbi this Mishnah has been recited.” See Lorberbaum, “Changes in Maimonides,” 119 n159, for a discussion and further references.

⁴⁶ The Geonic approach to the verse “It is time to act” and extremely limited utilization of it pale in comparison to Maimonides' bold employment of the verse in key moments of his treatise. For examples of Geonic usages, see Lewin, *Ozar ha-Geonim*, vol. 2, 77, 102.

⁴⁷ Twersky, *Introduction*, 51 in the Hebrew edition. This phrasing was originally penned by Twersky in his Hebrew essay “The Aim and Role,” modified in the English edition of the Introduction to *Mishneh Torah* and reintroduced in a translation of the modified version in the Hebrew edition of the book.

⁴⁸ The very first critics of *Mishneh Torah* considered the book an excessive innovation in the realm of Halakha, as I demonstrate below. Even though the scope of the enterprise, according to the interpreters, was similar in scale to redaction of the Mishnah by Rabbi Judah the Prince, and though Maimonides himself certainly considered Rabbi Judah a model for his own *Mishneh Torah*, the *Mishneh Torah* differs from the Mishnah in fundamental aspects; see an apt discussion in Halbertal, *Maimonides*, 171–5. Furthermore, though Israel Ta-Shma is correct in pointing out that “it is proper to speak of a high measure of conservatism which is typical of Maimonides in most cases,” a characterization reflected according to him in the conservative quality of the *Mishneh Torah*, particularly in returning the ruling to former halakhic origins (mostly the *BT*), it is necessary to evaluate the question of innovation and conservatism with respect to the halakhic enterprise in its entirety and not only with respect to the character of its specific rulings and their sources; see Ta-Shma, “Did Maimonides?” This position is shared by Levinger, *Maimonides Halakic Thinking*, and Benedict, *Maimonides with No Deviation*. In order to adequately understand the aims of the *Mishneh Torah*, the unit of evaluation needs to encompass not only the micro-level of halakhot, or even chapters, but a larger framework of the *Mishneh Torah* considered as an intervention in the infrastructure of Halakha and its deliberation. Even if the

3 Crisis and authority in the introduction to *Mishneh Torah*

On these grounds, I, Moses the son of Maimon the Sefardi, bestirred myself, and, relying on the help of God, blessed be He, intently studied all these works, with the view of conjoining matters elucidated by all these works in regard to things forbidden and permitted, unclean or clean, and the other rules of the Torah—all in plain language and terse style, so that thus the entire Oral Law might become systematically known to all, without citing difficulties and solutions or differences of view, one person saying so, and another something else,—but consisting of statements, clear and convincing, and in accordance with the conclusions drawn from all these compilations and commentaries that have appeared from the time of Moses to the present, so that all the rules shall be accessible to young and old, whether these appertain to the (Pentateuchal) precepts or to the institutions established by the sages and prophets, so that no other work should be needed for ascertaining any of the laws of Israel, but that this work might serve as a compendium of the entire Oral Law, including the ordinances, customs and decrees instituted from the days of our teacher Moses till the compilation of the Talmud, as expounded for us by the Geonim in all the works composed by them since the completion of the Talmud. Hence, I have entitled this work *Mishneh Torah*, for the reason that a person, who first reads the Written Law and then this compilation, will know from it the whole of the Oral Law, without having occasion to consult any other book between them.⁴⁹

Maimonides' declaration regarding the crisis of his times is not exhausted by its "propositional" quality, that is, by its content representing a state of affairs and corresponding to the historical circumstances in which it was written.⁵⁰ Furthermore, it does not merely present the structural affinity between the writing of *Mishneh Torah* and canonical moments of gathering the Oral Torah, first and foremost by Judah the Prince and the redaction of the *Mishnah*. Above these goals, Maimonides' introduction is designed to establish an authoritative status for his treatise within the discursive realm of Halakha. In other words, Maimonides composes his introduction as a series of *performatives*.⁵¹ The performative speech act, as presented by J. L.

overall inclination of Maimonides' rulings is conservative, this hardly changes the measure of innovation required in order to establish, install and stabilize a conservative, homogenous and centralistic order in the field of halakhic ruling. Attesting to this innovativeness is the fierce opposition stirred in France and Ashkenaz by the codification of Halakha and the attempt to coerce the different centers to accept an halakhic authority that will impose its ruling on the entirety of Israel. Moreover, Maimonides' "great treatise," to quote his own terms, is not only a gathering of Halakhot, itself an effort that has precedents in the literature of abridgments, *Halakhot Gedolot* or in R. Isaac Alfasi *Halakhot*, an attempt at codification in which rulings were made, sometimes disputing earlier rulings, and presented according to the order of sugiyot in the tractates that he managed to encompass, and see Maimonides' epistle to Pinhas the judge, *Epistles of Maimonides*, 40. In addition to a gathering of halakhot, the novelty and uniqueness of the Maimonidean enterprise lies in the reorganization of the basic categories of Halakha, its ordering and unfolding according to the key he set up in the structure of his book, and furthermore, in the fact that the *Mishneh Torah* encompasses all the fields of knowledge of antiquity, including physics, metaphysics, theology, eschatology, astronomy and medicine, "as they are formulated from the perspective or the interests of Halakha," in Ta-Shma's phrasing in Ta-Shma, "Maimonides Between his Own Assertions," 317–8, also see Twersky's assertion that "Maimonides has taught us that teaching must be all-encompassing [...] all the fields of knowledge (Torah and wisdom) as they arise from all sources of knowledge," Twersky, "The Figure of Maimonides," 23; and see Maimonides' concluding sentence of the Laws of Sanctification of the New Month, "We have expounded [...] in order that everything be known to those who understand and they shall not miss one path of the paths of Torah, and they shall not wander to seek it in foreign books. Search and read it in the scroll of God, Not one of these shall be absent."

⁴⁹ *Mishneh Torah*, Introduction, 4b.

⁵⁰ In his collection of essays *Blindness and Insight*, and especially in his "Criticism and Crisis," Paul de Man inspects the rhetoric of the discourse of crisis, accentuating that the mobilization of the rhetoric of crisis cannot be treated only by examining its adequacy as a proposition. Rather, the rhetoric of crisis must first be *understood as such*, and then examined and interpreted by its reader, in a process that involves analyzing which assertions and arguments are expressed by mobilizing the trope of crisis, and which are repressed. Moreover, as suggested in this article, one should be attentive not only to the utilization of terms or clusters that express the crisis, but also to their specific moment of appearance in the overall structure of a given text, determine which chapters or units render the very occurrence of crisis and which relying upon the crisis. See de Man, "Crisis and Criticism."

⁵¹ Austin begins his investigation of the sentences to be analyzed by indicating that their apparent identity as propositions is misleading. The "ruse" of the performative is that it may "masquerade as a statement of fact, descriptive or constative." *How to do*, 4. As presented by Kenaan, "In using the term masqueraders Austin does not imply that performatives belong to a linguistic

Austin, is neither “true” nor “false,” and indeed cannot be so precisely because it does not “‘describe’ or ‘report.’” It does not represent a state of affairs, and is not uttered or written in order to affirm or deny an existing fact. The performative *performs* differently. Indeed, what distinguishes the performative is its being an act, a dynamic intervention in a prevailing state of affairs. The question in the present context, then, is this: How can Maimonides intervene in such a manner in the realm of Halakha without his act being condemned as insolence with respect to the predominant modes of Halakhic deliberation? Put otherwise, the principal difficulty that arises from the treatise is condensed in the question whence and in what sense can Maimonides be invested with the authority to generate the *Mishneh Torah* when the very act of writing the treatise challenges the predominant structures of authority and seeks to undermine them insofar as Maimonides’ aim is to alter them forever?⁵² Paradoxically, the introduction to *Mishneh Torah* does not challenge the Halakhic discourse primarily through contentious rulings but instead seeks to transform it radically through the very act of its writing. Unlike those actions performed within the confines of the prevalent Halakhic discourse, that is, decisions that in Maimonides’ phrasing pertain to the “rules, decrees, ordinances and customs” generated by authorized representatives of the community, Maimonides performs an act whose very enactment seeks to acquire the authority to be enacted, an authority that at the time of the writing of the *Mishneh Torah* has yet to be acquired.⁵³ The narrative unfolded by Maimonides in his introduction not only revisits the past times of the Oral Law and addresses the present in which Maimonides claims to “bestir” himself and write his “great treatise,” but also deals, to no lesser extent, with projections for the future. The introduction addresses the treatise’s foreseeable future in a complex manner, and in

form distinct from statements of fact. On the contrary, the performative is a type of sentence whose own grammatical form not only appears to be fact stating but is actually indistinguishable from that of fact-statements;” Kenaan, *Present Personal*, 73–4. Distinguishing performatives from constatives thus requires shifting out attention and considering the sentence not as an abstract linguistic construct, bereft of context, but as embedded in a specific context, described by Austin as a “speech-situation.” Heeding this idea requires the interpreter to be attentive to the “primacy of the situatedness of language,” as Kenaan writes, that is, attending to the question of how a specific utterance functions in its context, who it addresses and what it seeks to perform.

⁵² In this respect, it is crucial to distinguish between two modes of halakhic transformation: an intra-framework transformation and an inter-framework one, the latter entailing a dramatic shift of the framework itself. Local decisions of the former type were termed by Maimonides “Hora’at Sha’a,” or temporary decisions, and were part of an array of possibilities available to jurists when encountering a halakhic problem. This type of provision, which was considered temporary and bound to be removed, has received detailed studies: see Rosenthal, “For the Most Part;” Pines, “Comparison of Religious Legislation;” Rosenberg, “For the Most Part;” Englund, “The Problem of Equity;” Levinger, *Maimonides as Philosopher*, 61–3, 83–5; Lorberbaum, *Politics and the Limits of Law* 39; Lorberbaum, “Maimonides’ Conception of Tikkun;” Ben-Menahem, “Maimonides on Equity.” Conceptually, *hora’at sha’a* can be added to a variety of halakhic terms that made it possible, as Maimonides writes, “in certain circumstances or with a view to certain events to abolish certain actions prescribed by the Law or to permit some of the things forbidden by it.” (Guide 3:41)

⁵³ Several studies were dedicated to the relationship between speech acts and authority. Austin himself remarked that performatives are enacted as part of a set of conventions shared both by the enunciating subject, that is, the one who performs, and the addressee or addressees of such an act. The conventions delineate the array of possibilities for the performative, allocate the authority to employ it to certain authorized parties and expropriate it from others who are not entitled to enact it. In a similar vein, Bourdieu has claimed in the essay “Authorized Language” that the performative is always authority-dependent, and can only be enacted as a result of power delegated to a party because of its status or role in a given system or institution. The power of words to perform deeds, or the “illocutionary force,” depends according to Bourdieu “on the social position of the speaker, which governs the access he can have to the language of the institution,” Bourdieu, “Authorized Language,” 103–16. The power latent in both the content and the very manner of pronouncing this content attests first and foremost, according to this approach, to the authority held by the speaker. This formation of power and authority takes a concrete shape in the set of conditions that has to be fulfilled in order for the speech act to be successfully enacted. These conditions relate, for the most part, to the extent to which the speaker is indeed authorized to perform the specific act, and involve the communal or institutional function held by the speaker, and the discursive norms of that community or institution. A speech act is bound to fail, as Bourdieu points out, whenever enunciated by a speaker who lacks the power, or position, to pronounce it. Another important aspect is raised by Émile Benveniste who claims that the performative, indeed precisely because it “performs,” is unique each time it is performed, even if the linguistic formula employed is general. A performative cannot be “generally” spoken, but only in specific circumstances, in a given time and place, and is each time enacted anew as an act that can either succeed or fail, and which is not repeatable by the sheer fact that a formula has been reiterated.

effect, by anchoring the treatise in the discourse of crisis, aims to bring forth the future conditions that will allow for the acceptance of the treatise.⁵⁴ The authority sought by Maimonides will be invested in his treatise only if the transformation in the structure of authority that the treatise itself seek to bring about through the declaration of crisis in the realm of Halakha is successfully completed. Yet at the time of writing, this future, in which Maimonides' depiction of a grave crisis *and* his far-reaching response to it will be acknowledged and affirmed, is but a speculative future, a wish that might well be frustrated since only the test of time stands to fulfill it.⁵⁵

How does Maimonides handle this problem of authorizing the treatise? In order to gain authority he leads the Halakhic authority to its limits: "In our days, severe vicissitudes prevail, and all feel the pressure of hard times. The wisdom of our wise men has failed; and the prudence of our prudent has vanished," and it is from this limit that he takes the permission to write the treatise. The crystal lucidity of Maimonides' prose, the steady hand with which he guides the reader through the introduction to the *Laws Concerning the Foundations of the Torah*, is in fact misleading, for his words carry the vibration of a provocative, hanging on a thin thread, its status as yet undecided. Maimonides' ambitious enterprise, which he describes as necessitated by his time, is an audacious dare, which at the time of its writing throws its full weight on the future possibility that it will be accepted by "all Israel" and retroactively acknowledged as binding.

In contrast to the authority of a derivation of a law in accordance with the hermeneutic principles for legal reasoning, or the authority of the court as representative of the community, both of which are grounded in the prior authorization of an institution or a practice, Maimonides' introduction turns authority into a contested arena within which the rest of his treatise plays itself out. His words, which seek to "conjoin matters elucidated by all these works in regard to things forbidden and permitted, unclean or clean" to the point that "a person who first reads the Written Law and then this compilation will know from it the whole of the Oral Law, without having occasion to consult any other book between them,"⁵⁶ are uttered in a space that has been voided of authority due to the critical situation declared. They demand to be considered as resulting from circumstances in which it is not only unforbidden to perform such an act (the act of writing them in such a manner), but indeed required in light of the threat to the stability of the *Halakha* as a cohesive corpus. That being said, Maimonides does not wish to prolong or extend this zone of indeterminacy created by his introduction, but rather, ultimately, to nullify it by the future authority accorded to his treatise, that is, by the acceptance of the whole code as a fitting response to the emergency declared in its introduction. The tension between the establishment of Torah and its destabilization is at its height in the introduction to the *Mishneh Torah*, for it is here that Maimonides simultaneously draws the authority to write the treatise in its entirety *from* the critical time and seeks to *overcome* that critical time by writing the treatise. In other words, the treatise summons the calamitous time into its realm in order to be written, all the while wishing to banish it. The introduction you have just read, Maimonides seems to suggest, is the first step toward overcoming the crisis of Halakha declared within it; a deviation from the historical path

⁵⁴ On "futurity" in Perlocutionary acts, characterized by Austin as "what we bring about or achieve *by* saying something," see Puchner, *Poetry of the Revolution*, 23–32.

⁵⁵ Maimonides' words on the breath of his *Mishneh Torah*, from his celebrated epistle to Pinhas the judge, are quoted frequently. In addition, Maimonides foresaw the fierce opposition to his aim to erect, after generations of halakhic deliberation, a homogenous Halakha that will overcome disputations once and for all and will encompass the entirety of Israel; see *Epistles of Maimonides*, 301. Indeed, Maimonides' enterprise faced contestation in his own lifetime, and for generations after his death – "words of resentment and malice, bites of a fox and stings of a scorpion," in the words of Twersky (alluding to Avot 2:10), who also remarked that "from the literature of emendations and words of contestation that were said on him a 'book of libel' can be compiled." Here suffice it to quote but one of the critics, Hasdai Crescas, who wondered in his *Or Adonai*: "It is a great puzzle and an immense wonder how it occurred to him and how he imagined that all the books of his predecessors will be left aside and the entirety of the Oral Torah will be handed down to his book which he indeed titled *Mishneh Torah*." Twersky, "Figure of Maimonides," 10; See further Twersky, "The Beginnings of Mishneh Torah Criticism;" Strousam, *The Beginning of the Maimonidean Controversy*, 126; Silver, *Maimonidean Criticism*, 69–97.

⁵⁶ *Mishneh Torah*, Introduction, 4b.

that is leading the Halakha to its ruin; a daring effort to address the Halakha's destabilization in the hour of Israel's diasporic existence.

In this sense, it is important to see the crisis that Maimonides declares – that is, his rendition of the destabilization of Halakha and the demand to take the risky act of transforming and reorganizing the Oral Law – in its full complexity, for the crisis is not merely a negative principle in the production of the *Mishneh Torah* but rather a necessary and productive element in the dialectic that generates the great enterprise of *Mishneh Torah*. The loss of the binding force of Oral Law, due to the statement that in his time “only a few individuals properly comprehend them,” and the weakening of Halakhic authority from the time of the Geonim onward are the very factors that made such a work of codification possible. The Halakhic void created by the crisis is the treatise's condition of possibility, and acknowledging Maimonides' claim about the unique distress of his period is the condition of its reception. In order to achieve the canonical status sought by its author, *Mishneh Torah* must overcome its problematic starting point as an act performed without permission.⁵⁷ In other words, the treatise must gain its aspired authority by gaining a binding status for an act performed in aberration from the very framework of the prevailing *modus operandi* of Jewish Halakha. This status Maimonides hopes to secure through the future influence of the treatise's introductory words, that is to say, through the broad acknowledgement, first, of his time as a time of distress comparable in scale to the threat foreseen at the time of the redaction of the *Mishnah*, and second, of his response as an adequate one, analogous to that of Rabbi Judah the Prince.⁵⁸ Maimonides' effort to stabilize the Halakha by means of the crystalline structure of the *Mishneh Torah* is achieved at the cost of a radical, even if only temporary, undermining of the stability of the Halakha as an all-encompassing discursive framework that provides the measure and matrix for every act. His lucid legal ruling, which unfolds throughout the work and seeks consistently to clarify and thus remove disputes, casts a light so blinding that it conceals the chasm upon which the treatise is founded as well as the uncertainty of its future at the time of its writing.⁵⁹

57 “It can be assumed,” claimed Twersky, “that the beginning of the criticism of the very title *Mishneh Torah* [...] is related to the topic under discussion. Sages wanted to evade the name, for they saw in it an ostentatious expression and aspiration to exclusive Halakhic authority;” Twersky, “Figure of Maimonides,” 20.

58 To a large extent, the praising names given to Maimonides in Yemen, “Maor ha-Afe'la” [*Nūr al-Ḥalām*], the light of darkness, and “Meir Afelatenu,” the illuminator of our darkness, encapsulate an adherence both to Maimonides' narrative of crisis and to his response as befitting such a critical time; see Natanel ben Yesha'ya, *Nūr al-Ḥalām*, 5.

59 As enigmatically put by Paul de Man, “The rhetoric of crisis states its own truth in the mode of error. It is itself radically blind to the light it emits,” *Blindness and Insight*, 16. What is the light to which the rhetoric of crisis remains blind? In this complex figure introduced by de Man, there is light that remains, so to speak, in the shadows, a projection that is not disclosed in the common usage of the rhetoric of crisis. In order to shed more light on de Man's utterance, let us first consider the structure of the common employment of the rhetoric of crisis, composed on the one hand of a declaration that the time at issue is a time of crisis, bringing up the reasons and circumstances for such a declaration, and on the other hand of the alternatives available to those beset by the crisis. What is left in the shadows of such presentations and which is the light veiled by them? The declaration of crisis in a given field or a traditional framework inevitably involves an act of negation with respect to the cohesion of that field or formation, it points toward or even forms a hiatus that opens up a space and temporalizes the framework from within. In contradistinction to assertions that are maintained based on an application done in accordance with the criteria of the framework itself, that is, the array of possibilities offered by that very framework, the declaration of a state of crisis subjects the given framework or field to a challenge that cannot be framed or tamed by the common interpretational resources, for if such a move were possible, the situation would not have been termed critical to begin with, but would be confined within the boundaries of the framework and given a traditional response. In face of such a challenge the basic tenets of the field are undermined, or put otherwise, the grip of the discourse that grants meaningfulness to any statement invoked in its frame, including the statement of a state of crisis, is loosened. The rhetoric of crisis disjoins the frame, in a disjunction that fissures its internal-referentiality, transgresses its continuous order, and opens up a space of tension between the framework and its possibilities at a given moment and the sudden unfurling of its future as an open potentiality. The rhetoric of crisis thus destabilizes the grip of a discursive regime and weakens its measure as the essential measure for judgement. It reveals, at times against the intentions of its announcers, the inherent instability of a discursive framework that, at least allegedly, provided hitherto a safe ground. Even if the framework, and the discursive regime, were considered stable and secure, the rhetoric of crisis entails a breach in the edifice of a discursive framework and a shattering of the illusion of encompassing wholeness (an illusion that may be called “transcendental”) that was maintained by the discourse in its pre-critical state.

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