Hakham Yosef Faur: A Model for Orthodox Modernity

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It was the Fall semester of the Academic year 1970–1971 that I entered the Talmud class of Hakham Professor Jose Faur *zt"l* (1935–2020) at the Jewish Theological Seminary (JTS). And now, with his passing 50 years later, it still seems as if I have never left the shadow, direction, and guidance of the sage who was to become my *rav muvhaq*, that special Torah personality who shaped my own Jewish identity, worldview, and approach to Torah.

Born in Buenos Aires to a traditional Jewish family of Syrian descent, Hakham Faur studied Torah, Talmud, and Jewish law with Hakham Eliahu Freue, the head of the community, and other rabbis of that tradition. Hakham Faur's descriptions of his early mentors' manners provide the key to decoding his own unique understanding of Judaism:

> They [Hakham Faur's first teachers] never assumed an arrogant attitude toward their students or anyone else. They were accessible to all and encouraged contrary views and free discussion. The truth was the result of a collective effort in which everyone had equal access and share, rather than being imposed by an individual of a superior mind. Following Sephardic educational tradition, the teaching was methodical and comprehensive. Before one began to study the Talmud, it was expected of him to have a solid knowledge of the scripture, *Mishnayot*, the famous anthology *Eyn Yaaqov*, the *Shulhan Arukh*, and other basic Jewish texts.[1]

The Sephardic approach to Jewish learning into which Hakham Faur was initiated as a child presumed that the Torah library is readable, teachable, transmittable, and that divine truth is found in the canonical Torah text, and not in the oracular intuition of the charismatic rabbi. The ideal rabbi is an effective teacher, a personal example, and a mentor who is willing and able to understand and respect each student's unique potential and *individuality*. For these Sephardic sages, authentic Torah authority resides in the sacred canonical text,[2] which must be presented convincingly. Following the

Maimonidean criterion that the law is decided according to the view that makes the most sense,[3] Hakham Faur's model rabbi is authorized to interpret the Torah reasonably, convincingly, and impersonally, without fear or favor.[4]

This rationalist approach to legal authority, associated by Max Weber with modernity,[5] contrasts with "traditional" and "charismatic" authority, both of which locate the law in the subjective intuition and political authority of the community's elite. Hakham Faur dedicates his probing historiographic monograph, *In the Shadow of History*, "[t]o the memory of my father Abraham Faur, who believed that to be Jewish is to be modern, and vice versa."[6] His family tradition did not regard "modernity" and "Torah" to be conflicting impulses. For his Judaism, modernity presents a challenge, not a threat, to Jewish life. A Judaism that recoils in the face of modernity lacks confidence and credibility. While Hakham Faur's "modernity" is a neutral station in history, most institutional Orthodox thinkers regard "modernity" as a threatening state of mind, whose seductive attraction should be resisted**.**

In one of his lectures, Hakham Faur taught that from years five to ten, the child learns the Written Torah, the Israelite *nation's* national narrative and foundation document; ages ten to fifteen are devoted to the study of Mishnah, the canonical compendium of the Oral Law; and from years fifteen to eighteen, the student should be introduced to Oral Torah methodology,[7] in order to understand, control, and apply the hermeneutics according to which a valid Torah claim may be made. For this "Orthodoxy"[8] both teacher and student are bound by and to a shareid rational, readable Written and Oral Torah library. Torah truth is determined by a reasoned exegesis of the readable Torah library. Appeals to social inertia, according to which the way Israel was in the past is taken to be the way Israel ought to be in the present as well as in the future,[9] is an appeal to nostalgic, mimetic,[10] or street-culture tradition. This is not the prescriptive tradition transmitted from one generation's *Bet Din haGadol* to the next.[11]

Since there were no venues for advanced Torah learning in South America, the precocious Hakham Faur applied to and was accepted by R. Aharon Kotler, the firebrand visionary founder of the "Lakewood Yeshiva," the *Beis Midrosh Gavoah*. Reflecting on his student days in Lakewood, Hakham Faur observed,

> The first lesson I heard by Rabbi Kotler sounded like a revelation. He spoke rapidly, in Yiddish, a language I didn't know but was able to understand because I knew German. He quoted a large number of sources from all over the Talmud, linking them in different arrangements and showing the various interpretations and interconnection of later Rabbinic authorities. I was dazzled. Never before had I been exposed to such an array of sources and interconnections. Nevertheless there were some points that didn't jibe. I approached R' Kotler to discuss the lesson. He was surprised that I had been able to follow. When I presented my objections to him, he reflected for a moment and then replied that he would give a follow-up lesson where these difficulties would be examined. This gave me an instant reputation as some sort of genius (*iluy*), and after a short while, I was accepted into the inner elite group….My years in Lakewood were pleasurable and profitable.... At the same time the lessons of Rabbi Kotler and my contacts with fellow students were making me aware of some basic methodological flaws in their approach. The desire to shortcut their way into the Talmud without a systematic and methodological knowledge of basic Jewish texts made their analysis skimpy and haphazard....The dialectics that were being applied to the study of Talmud were not only making shambles out of the text, but, what was more disturbing to me, they were also depriving the very concept of Jewish law, Halacha, of all meaning. Since everything could be "proven" and "disproven," there were no absolute categories of right and wrong….Within this system of morality there was no uniform duty. It was the privilege of the authority to make special dispensations and allowances (*heterim*) to some of the faithful; conversely, the authority could impose some new obligation and duties on all or a part of the faithful.[12]

Hakham Faur's description of his own *Beis Midrosh Gavoah* experience provides a window into his mind, method, and worldview. While his halakhic commitments appear to be no less intense and sincere than R. Kotler's, his rational, reasoned readings—and applications—of the Oral Torah Canon reflect a very different sensibility. While Hakham Faur's description of his *Beis Midrosh Gavoah* experience is brutally factual, his narrative carefully avoids any assessment of R. Kotler's practice, policy, or program. R. Kotler provided Hakham Faur with the opportunity to hone his own methodological skills, reasoning abilities, and the leisure to master the entire rabbinic corpus. I suspect that R. Kotler indulged Hakham Faur's precocious genius because the Hakham's Torah understanding was intellectually pure, manifestly coherent, and logically convincing. In other words, Hakham Faur's Torah was not based on charismatic intuition; it was based upon the most reasonable understanding of the Torah's actual words. Hakham Faur's Judaism may be contrasted with R. Kotler's, which is charismatic, intuitive, and insists upon an unconditional submission to the authority person.

When I asked Hakham Faur why he never commented upon R. Kotler's impact on him or his greatness in relation to JTS's leading Talmudist, R. Saul Lieberman**,** he answered, "I'm too close to R. Kotler. You have the benefit of distance and objectivity. You are better able to answer your question than I am."

I am not the only person to pose this question to Hakham Faur. Dr. Joseph Ringel reports that

> Rabbi Professor Reuven Kimelman, a student of Faur's at the [Jewish Theological] Seminary and present-day expert in liturgy who teaches at Brandeis, once asked Faur, "[w]ho is greater? Rabbi Aharon Kotler or Rabbi Shaul Lieberman?" Of course, for Faur to answer such a sincere but loaded question honestly about two authorities under whom he studied would have been halakhically and politically problematic. Faur, known for his insistence on minimizing unnecessary words, answered simply and succinctly: "*zeh b'shello, v'zeh b'shello.*"[13]

Exquisitely consistent as he is proper in matters of protocol, Hakham Faur responded to Prof. Kimelman precisely as he answered me, as required by Maimonides.[14]

At *Beis Midrosh Gavoah,* Hakham Faur not only honed his technical learning skills and mastered the Oral Torah Canon; he now found a foil, the alternative sectarian, Hareidi Orthodoxy against which he could test the Judaism of his childhood teachers. He learned a great deal at *Beis Midrosh Gavoah*, albeit in ideological dissent.[15] On one hand, Hakham Faur accorded R. Kotler the respect due to one's primary teacher and would not subject him personally to account or criticism,[16] yet as will be shown below, Hakham Faur's approach is markedly different in tone, structure, and content from R. Kotler's. *Beis Midrosh Gavoah* afforded the teenage Hakham Faur the leisure to learn Torah extensively and intensely, undisturbed and without distraction. Because Hakham Faur learned a great deal from R. Kotler, Jewish law prohibited him from passing judgment regarding his teacher's opinions.

Nonetheless, Hakham Faur had profound problems with R. Kotler's teaching style and worldview, which he presents without apology or approval. R. Kotler's worldview is expressed in a narrative, that Hakham Faur called a "revelation." This word subversively yet subtly suggests that R. Kotler is teaching an alternative Torah system that consists of a selective citation of disparate Torah sources that are woven into a narrative that only the Great Sage is able, and authorized, to formulate. Finding R. Kotler's understanding of Judaism to be inconsistent with claims, commands, and prescriptions encoded the plain sense of the Oral Torah canon, Hakham Faur respectfully confronted him, as Maimonides clearly requires the student to do.[17] Hakham Faur did not report R. Kolter's reply.

Hakham Faur discovered that many *Beis Midrosh Gavoah's* full-time Talmud learners did not know how to read the talmudic text according to its grammar, and he found that the scholastic dialectics applied to the learning rendered the Oral Torah Canon unreadable, so that its texts mean whatever the Great Rabbi claims that they mean. And R. Kotler presented himself as the arch traditionalist who

viewed the sacred Jewish past to be the polar opposite of materialist, secular modernity. The plain sense of the Talmud is, for Hakham Faur and the latter-day Maimonidean teachers of his youth, essentially readable. R. Kotler's sacred texts shed their plain sense [*peshat*] meaning so that "everything could be 'proven' and 'disproven,' there were no absolute categories of right and wrong."[18] For Hakham Faur, the Torah library is a public book the plain sense of which affords no one, not even God, sovereign immunity.[19] If detached from R. Kotler's charismatic person, R. Kotler's ideas and ideology would become subject to review based on objective halakhic benchmarks. As will be argued below, R. Kotler's Orthodoxy requires the individual Jew to be compliant with the rulings of the Great Rabbi, while Hakham Faur's Orthodoxy nurtures Jewish citizens to be compliant with the revealed, and readable, Oral Torah Canonical text.

Hakham Faur found R. Kotler, American Hareidi Orthodoxy's most charismatic, separatist, and strident spokesman, to be offering an Orthodox Judaism that, in spite of its zeal, remains socially, halakhically, and politically problematic. When Hakham Faur argued that violent, hierarchical societies are analphabetic, that they are unable to read,[20] I suggested that these societies' elites fear being challenged and are coercively analphabetic; these rabbis do not allow their students to read,[21] and he concurred. A society ruled by a readable "Book" binds its rulers to the rules of its Constitution. Authoritarian cultures forbid reading because reading is ultimately subversive. A tyrant cannot claim to have spoken to God when the Torah, the transcript of Israel's covenantal conversation with God is in Israel's possession, and might contradict the tyrant's claims.[22]

When R. Kotler presented a talk based on R. Jonah Gerondi's *Sha'arei Teshuva,* who joined with Christian clergy to burn Maimonides' writings, Hakham Faur reported to me that he sat in the back of *Beis Midrosh Gavoah's* study hall auditorium reviewing Maimonides' *Moreh Nevuchim*, in Arabic, in protest. R. Kotler reminded his precocious polymath that "we accept R. Jonah, not Maimonides." Hakham Faur rejoined, "R. Jonah was a *moseir* who turned to the Roman Catholic Church to burn the books of our 'heretics' along with theirs."[23] R. Kotler locates Torah authority in the charisma of the infallible, canonical person; Hakham Faur pinpoints authority in the canonical, covenantal text.

During Hakham Faur's years at *Beis Midrosh Gavoah*, the *kippah*, the ritual head covering of Jewish men, had adopted colors, patterns, and styles, including a style with a small decorative buckle. Hakham Faur told me that he wore such a *kippah* at *Beis Midrosh Gavoah*. Impatient with Hakham Faur's stylish but technically proper headgear,[24] R. Kotler admonished his student, "this is not the attire of a *talmid chochom* [Torah scholar, but literally 'student of the wise person']." Hakham Faur responded, "In my tradition, a *talmid hakham* is one who is able to explain a verse from Ezekiel according to its grammar." This sharp comment presents a three pronged rejoinder: [1] Hebrew grammar is not a high priority in the Hareidi Yeshiva world, even though it is a window into the words that are believed to express God's perspective; more critically, a knowledge of Hebrew and Aramaic grammar empowers the probing learner to read, parse, and apply Torah using one's own mind. [2] Recalling Hakham Faur's position cited above, Torah truth is not determined by the divinely inspired, charismatic intuition of the Great Rabbi, but that "[t]he truth was the result of a collective effort in which everyone had equal access and share, rather than being imposed by an individual of a superior mind."[25] [3] The Great Rabbi's authority resides in his ability to persuade the student what the Oral Torah Canon, logically understood, actually means and ultimately requires. Hakham Faur was reminding his eminent teacher that a sage's attire is not a uniform intended to condition students to uniformity of thought. Maimonides rules that scholars' clothing must be neat and clean, without stains, neither too flashy nor unduly drab.[26] It is possible that Hakham Faur was also calling into question the Ashkenazic Hareidi uniform of white shirt, dark suit, and black fedora.[27] Ironically, in his adult years Hakham Faur resumed wearing a black cloth *kippah*, exactly like his mentor, *dayyanut*-ordainer, and *rav muvhaq*, Hakham Shaul (Matlub) Abadi.[28]

The core tradition inscribed in Hakham Faur's very being was inculcated during his childhood in Buenos Aires, and it was tested, tried, challenged, and sharpened at *Beis Midrosh Gavoah*. By leaving *Beis Midrosh Gavoah* for academic Jewish studies, researching the Aramaic Targum Neofiti at the University of Barcelona and a fellowship and subsequent professorial appointment at the JTS, Hakham Faur adopted the learning approach and religious leadership of R. Saul Lieberman, under whom his

scholarly methodology matured. The choices made by Hakham Faur provide the answer to Prof. Kimmelman's question regarding the greatness and correctness of the alternative models of R. Kotler's and R. Lieberman's contrasting "orthodox" Judaisms.

R. Kotler's Judaism put a premium on a submissive uniformity of dress that nurtures a subservient pattern of thought. The required ritual and social details are filtered through R. Kotler's *hashqofo*, literally "perspective" and "worldview." It is the Great Sage's divinely inspired ideology that is *Da'as Torah*, or correct Torah opinion. This *Da'as Torah* narrative ideology may not be challenged because the Great Rabbi's intuition is said to be guided by divine inspiration.[29]

Hakham Faur left *Beis Midrosh Gavoah* for advanced academic studies in Semitic philology, earning his Ph.D. at the University of Barcelona. After completing his Ph.D., he then accepted a three-year fellowship at JTS, supervised by Prof. Lieberman.[30] By abandoning R. Kotler's *Beis Midrosh Gavoah* in order to earn a Ph.D. specializing in Semitic philology and by choosing to be guided by R. Lieberman, the generation's acknowledged master of the Oral Torah Canon's *peshat*, or plain sense meaning, Hakham Faur walked away from R. Kotler's charismatic Orthodoxy and affirmed the alternative "orthodox" religion encoded in the Oral Torah library. In his teaching at JTS, Hakham Faur taught that a proper legal ruling requires an accurate reading of the legal text.

At first I thought Hakham Faur was simply unwilling to give me a straight answer regarding the relative greatness of Rabbis Kotler and Lieberman. He was unable to answer me directly because, as noted above, sitting in judgment of one's teacher and father violates the deference that is their halakhic due. However, Hakham Faur did answer the question as evidenced by his own personal and professional choices. His penchant for plain sense *peshat* readings was initially instilled by the Sephardic rabbis who taught him in Bueno Aires. R. Lieberman's approach to Academic Rabbinic studies applies philology to better understand what the words of the Canon actually mean. For R. Lieberman, the Oral Torah Canon reflects God's divine will expressed in human language.[31] Personally meticulously "Orthodox," R. Lieberman found in Hakham Faur a younger kindred spirit, a religiously motivated, superbly informed searcher and researcher for God's message that is encoded the Torah's human language divine words using the best philological tools available. Like the Orthodoxy of the Spanish Golden Age, JTS's Orthodox faculty members celebrated participation in the larger culture; secular learning was respected; and this faculty appropriated academic tools to decode the divine message they discovered in the canonical Jewish library.

Historically, JTS was initially founded as a moderate Orthodox alternative to late nineteenth-century radical Reform. Among its founders were the Sephardic Rabbis Sabato Morais and Henry Pereira Mendes, culture-accommodating Orthodox leaders both. Hakham Faur saw himself as a link in their culture chain of tradition.[32]

For the brand of Orthodoxy advocated by R. Lieberman and Hakham Faur, the ideal rabbi explicates the Canon precisely and applies the findings reasonably and appropriately. Judaism's halakha is a law that is no longer in heaven;[33] it is a rational legal order[34] according to which Jewry's leaders are themselves subject to review.[35] Israel is ruled by the divine king, whose will is revealed in the Torah's public laws.

Dr. Menachem Kellner demonstrates that the Maimonides imagined by R. Kotler would likely neither be recognized by nor approved of by the historical Maimonides.[36] R. Kotler's Maimonides has to explain why and how "the great sages of Israel were cutters of wood and carriers of water,"[37] for whom manual labor was a legitimate and honorable enterprise. Maimonides actually argues that to be worthy of the crown of Torah,[38] one cannot be obsessed with money or deference;[39] Maimonides does not disdain the earning of a living, secular learning, or the right to defend one's principled position.[40] The Oral Torah observes that it is difficult to be successful at both business and Torah study.[41] While Maimonides valued the study of philosophy, R. Kotler did not value rational, secular thought of any kind. But Maimonides vehemently disapproved of people studying Torah "professionally," for which they receive financial support:

> Whosoever takes it upon himself that he be occupied in Torah, not engage in work, and be supported by charity, profanes God's Name, despises the Torah, extinguishes the light of the

> Law, and causes evil to himself, and removes himself [from eligibility for] the eternity to come, because it is forbidden to take [material] benefit from the Torah's [holy] words in this [mundane] world.[42]

Hakham Faur's Maimonides affirmed the religion called "Torah."[43] Accepting the "yoke of Heaven's [God's] Kingdom"[44] is the political and legal doctrine known as the "Basic Norm,"[45] the content of which is "obey the Commander of the [Oral and Written] Torah," using the Rules of Obligation[46] and Recognition[47] of the Torah's legal order, with no manipulation or misrepresentation tolerated. Rules of Obligation are the norms, or rules of the legal order, in the case of Judaism, the mitzvoth, understood as "commands" which require or forbid specific acts.[48] When an act is neither commanded nor forbidden, that act is authorized or permitted.[49]

R. Kotler contends that the Hebrew language is holy and therefore not fully comprehensible, except by those sages who have learned Torah "in sanctity and purity man from man [Great Rabbi to Great Rabbi]."[50] The ability to read and understand the Torah is contingent upon that person's possessing "sanctity and purity." This is a coded idiom proclaiming an ideological zealotry requiring that R Kotler's narrative be adopted unconditionally. Authority resides in the charismatic rabbi, not the reasoned read of the Canon.

Hakham Faur's critique of medieval zealotry, in light of his dedication of *In the Shadow of History* to his father, may be viewed as a critique not of R. Kotler's person, but of the Judaism he prescribes. Echoing his response to R. Kotler's complaint regarding Hakham Faur's attire choices, Hakham Faur argues that God must be worshipped according to the Covenant, according to the law, but "not by pious impulse or religious zeal."[51] Hakham Faur also attributes the collapse of medieval European Christendom to the Conversos, the Jews who gave up their Judaism, but were unable to fully accept Christianity because it was a coercive society. Rejecting the popular claim that Maimonidean philosophical rationalism was the cause of Iberian Jewry's mass conversion, Hakham Faur counters that the assimilationists had internalized their oppressors' ideology,[52] "hounding Jews who did not adhere to their ideology."[53] Hakham Faur's description of the anti-Maimonidean ideology is strikingly similar to R. Kotler's own professed opinions:

> The Jewish golden age [in Spain] was displaced by casuistry and love of the occult. Scholarship dwindled to a trickle, and Hebrew poetry and the study of the humanities was a rarity….the anti-Maimonidean made creative thinking unacceptable…all forms of creative thinking were ousted from the Jewish community.[54]

R. Kotler not only outlawed secular, or Enlightenment studies at *Beis Midrosh Gavoah*,[55] he also opposed applying the scientific method[56] in Jewish discourses. He also claimed that the pure Torah learning that takes place in this world somehow impacts and influences the upper worlds to provide the true learners with their worldly needs.[57] He stated with unqualified certainty that only "through the chain of tradition are we able to understand anything according to their capacity [in learning the] holy Torah…law and lore, statute and story; it is not possible [or permissible] for a person to assess them with his mental abilities."[58]

R. Kotler requires that the pious faithful zealously accept everything that the Sages say and that one ought not to rely on one's finite mental prowess.[59] But Menachem Kellner convincingly demonstrates that Maimonides himself *did* rely upon his own human intellect,[60] indicating that for Maimonides, one is permitted to think.[61] Hakham Faur explains that for Maimonides,[62] the Jew is obliged to obey duly recorded, legislated legal norms which are the *takanot* [positive, or "to do" legislation, to which commandment blessings are attached], *gezeirot* [decrees, or "not to do" legislation], and *hanhagot* [customary usages to which commandment blessings are not attached].[63] *Aggadah* cannot be normative because descriptive statements are about what "is." A norm is a prescriptive "ought" statement. Hakham Faur's explication of Maimonides' Introduction to the *Yad* is a frontal, fundamental, and unambiguous alternative to the Judaism prescribed in *Mishnas Rabbi Aharon* . Nowhere does Maimonides endorse R. Kotler's claims that Torah Tradition may only be transmitted

from one charismatic and unaccountable great rabbinic individual to another.[64] Maimonides actually argues that the Torah Tradition is transmitted from one norm creating body to another, the *Bet Din haGadol* of one generation to the *Bet Din haGadol* of the next. A post-talmudic rabbinic authority is not required to defer to any other post-talmudic saintly synod; post-talmudic rabbis are obliged to submit to the most reasonable reading of the Oral Torah library, or *da'at notah*.[65] As long as any post-talmudic rabbi's ruling does not violate any rule canonized by the last *Bet Din haGadol*, i.e., the court of Ravina I and Rav Ashi,[66] that ruling is fully valid.[67]

According to R. Kotler, Orthodox Jewish men may not attend college,[68] but must only learn Torah according to the pure, ideological filter of R. Kotler's worldview.[69] Seeking a career as a rabbi or teacher is also not an ideal career course, according to R. Kotler.[70] The Lithuanian yeshiva elite saw itself as the ultimate source of rabbinic authority, diminishing the local rabbi's "authority" to be "apostolic," i.e., sent and commissioned to teach the Great Rabbis' ideological narrative. Just because someone was "ordained" and vetted to be able to render logical decisions regarding forbidden and permitted matters, does not mean that the rabbi is actually authorized to issue a reasoned opinion in those matters.[71] The real reason R. Kotler opposes secular learning is that he objects to the secular Enlightenment project and its democratizing critical thinking among the masses. A Jewry that is able to access Torah directly might assess and reject, its supposedly inerrant rabbinic leadership. R. Kotler complains that by engaging in this enterprise, "we mimic the non-Jewish nations of the world…in their eyes human fulfillment is found in secular [literally, 'Enlightenment'] studies."[72]

R. Kotler requires that Orthodox Jews not rely unflinchingly on reason, but demands a faith that God will miraculously provide and sustain the yeshiva student with a confidence that defies rational considerations.[73] Finkleman astutely notes that the European Lithuanian yeshivot, whose "pure" Orthodoxy R. Kotler hoped to replicate and transplant in America, did not require R. Kotler's hyper-rigorous demands. His religious vision imagines an institution transcending time, like the Torah itself, which precludes considering temporal circumstances.[74] A true *ben-Torah* must not even be tempted to engage the world outside of the yeshiva.[75]

According to the plain sense of the rabbinic narrative, [76] Jewry is entitled, permitted, and perhaps obliged[77] "to gather your grain,"[78] i.e., to earn a living, which conflicts with the approach of R. Shim'on bar Yohai, who narrowly interpreted "the words this Torah may not depart from your lips." [79] Ignoring the plain sense of the Oral Torah narrative, R. Kotler suppresses R. Yishmael's world affirming pragmatism,[80] arguing that R. Yishmael's alternative view permitting earning a living must be viewed as a special circumstance.[81] The exclusive right, authority, and discretion to make these determinations belongs to the Great Sages presiding at the time.[82]

Hakham Faur's professional trajectory may be understood as a response to his *Beis Midrosh Gavoah* experience. Before accepting the JTS appointment in 1967, Hakham Faur consulted with Rabbi David de Sola Pool and his own *rav muvhaq*, Hakham Sha'ul Matlub Abadi,[83] from whom he received permission to accept the appointment. The Hareidi elite called Hakham Faur a "Conservative rabbi," [84] who should not be permitted to teach in an Orthodox community.[85] Among the "*gedolim*," who signed the ban are Rabbis Menachem Schach and Joseph Harari Raful.[86] According to Jewish law, disqualifying a person's *bona fides* requires an act of a Bet Din, an identification of the explicit norm being violated, and evidence of willful violation of the uncontested norm.[87] Hakham Faur and Hakham Abadi should have been consulted before a ruling invalidating a sage's *bona fides* is issued. Accusing a rabbi of *kefira* [heresy] is a very serious violation of Torah law.[88]

Hakham Faur's standing in the Syrian Orthodox community was discussed by the leading Hareidi decisors in the United States and Israel, Rabbis Moshe Feinstein and Ovadia Yosef. Their reasoning and conclusions reveal their political-social program, their respective philosophies of Jewish law, and their model of the ideal Jewish layperson.

R. Avraham Hecht,[89] Rabbi of the Shaare Zion Sephardic congregation in Brooklyn, asked R. Moshe Feinstein if it is proper to appoint a teacher at JTS, i.e., Hakham Faur, to the rabbinic staff of this Orthodox synagogue. Very concerned with maintaining doctrinal Orthodoxy, R. Feinstein avoids directly addressing the actual rules regarding halakhic *bona fides*[90] because there are policy issues at stake. By referring to R. Hecht as *shalit"a*,"[91] R. Feinstein signals to the astute reader that the rabbi

being answered is an exceptionally worthy person,[92] and by describing the object of inquiry as holding an office in a Conservative *synagogue*, which permits mixed-gender seating,[93] R. Feinstein signals to his readers that Orthodoxy's ideological boundaries may never be breached.

But Hakham Faur taught Torah at JTS, whose in-house synagogue in those years observed separate-gender seating and whose ritual was strictly Orthodox. For R. Feinstein, working for a Conservative institution indicates bad affiliation, bad faith, and as a consequence blemished *bona fides*. Even if a person's religious faith and observance are otherwise in order, the mere servicing of what is posited to be an idolatrous cult should invalidate the offender's *bona fides*.[94] By defining Conservative Judaism as idolatry and not merely an error, the identification with it in any fashion becomes an exceedingly grave Torah violation, disqualifying the violator from teaching in a Torah compliant synagogue.[95] R. Feinstein disqualifies a *shoheit* [ritual slaughterer] who took a position with a microphone that is used on Shabbat because the *Agudas haRabbonim*, whose members are "great Torah sages,"[96] has the prerogative of dismissing and nullifying dissenting opinions.[97] However, once the *shoheit* withdraws from the offending appointment and behavior, R. Feinstein rules that the offender's *bona fides* may be restored if approved by two recognized Orthodox rabbis.[98]

Although R. Feinstein writes like a Legal Positivist,[99] for whom halakha is a divine normative order of a hierarchy of rules that does not tolerate distortion or manipulation,[100] in the Introduction to his Responsa, he concedes that he *functions* as a Legal Realist, for whom the Law is what the judge says it is.[101] He does not always rule according to the heavenly, or formal, positive statute, but according to his sense of what the Orthodox community requires in an imperfect world[102] at a given moment. Therefore, in order to avoid theological confusion, deviant ideologies must be avoided at all cost, and people like Hakham Faur are, for R. Feinstein, too risky to be allowed a potentially corrupting entry into an Orthodox setting.[103] R. Feinstein concluded his responsum by referring to Maran Joseph Karo's words: "The rabbi who is not walking in the good path [*derekh tovah*], even if he is a Great Sage and the masses need him, one ought not to learn from him until he returns to the good path."[104] Ever the consistent Legal Realist, R. Feinstein here defines "the good way" as complying with his own subjective determination that teaching at JTS violates the law forbidding servicing idolatry, thereby deviating from the "good path." [105] Unaddressed by R. Feinstein is the fact that R. Shabbatai Cohen [known by the acronym *Sha"ch*] takes the idiom "not walking in the good path" to refer to violations of explicit norms that would require sanctioning the offender with *niddui* [shunning],[106] but not for violations of rabbinic policy that might be contested. Furthermore, Abaye ruled that a Samaritan, a member of an ethnically Jewish sect that rejected the Oral Torah, including the belief in the resurrection,[107] may nevertheless be considered to be a *haver*, if s/he is a scrupulously compliant adherent of the antique rabbinic "orthodoxy" of the time.[108] Ironically, R. Feinstein is very well aware of and indeed cites Abaye's talmudically uncontested observation that an Oral Torah compliant Samaritan enjoys the status of a fully acceptable rabbinic Jew.[109] With exquisite consistency, R. Feinstein maintains that just as the *tannaitic* and *amoraic* rabbis are in fact empowered to consider religious rebels to have the status of non-Jews,[110] so too are the Great Rabbis who lead Orthodox Jewry today.[111]

The reason R. Feinstein does not forbid smoking cigarettes[112] is because "some Great Torah Sages of past generations and in our own generation are smokers."[113] Realizing that a Positivist reading of the Oral Torah statute yields a restriction of clapping and dancing on Jewish holy days,[114] yet Tosafot contends that since the stated reason for the decree, that one may come to fix musical instruments on holy days, no longer applies neither does the decree.[115] This originally Tosafist claim, that a duly enacted rabbinic decree the reason for which is no longer applicable, does not require a formal legislative act to be overridden, seems to contradict the Oral Torah principle that a rule enacted by the *Bet Din haGadol* sitting in session, *baMinyan*, requires a court of similar authority standing to repeal an earlier ruling.[116]

R. Feinstein's rulings aim to preserve the social cohesion of the Orthodox community. Similarly, R. Feinstein discouraged, but did not explicitly forbid, a yeshiva teacher taking a teaching position at a Conservative congregation's religious school.[117] He argued that it is possible that in that situation, the teacher might inspire her/his students to adopt Orthodoxy, but there remains a concern that the

teacher's non-Orthodox appointment might confuse uninformed lay people. R. Feinstein further clarified his position, conceding that there is no positive norm forbidding such hiring, but institutional public policy does rule this out.[118] Since Hakham Faur had demonstrated that he is bound by Jewish Law as he understands it, he must still be denied a legitimating platform in an Orthodox setting. While the official flaw that R. Feinstein finds in Hakham Faur is his professional affiliation, R. Ovadia Yosef objects to Hakhkam Faur's teaching "unfit students," which is also presented as an unpardonable wrongdoing.

R. Yosef introduces his questioner, R. Yosef Harari Raful, by praising his pedigree, his many good works, impeccable piety, sweetness, purity, as well as his depth and breadth in Torah learning,[119] R. Yosef thereby signals to the attentive Orthodox insider that R. Raful is a recognized member of the authentic Orthodox rabbinic elite, whose authoritative charisma must be trusted and accepted, in contrast to Hakham Faur, whose alleged culture deviance must be identified and condemned.

R. Yosef cited the rule that teaching an unfit student is akin to throwing a stone at Mercury,[120] who will go down to *Gehinom*.[121] He defines the "unfit student" to be one who "learns" Torah with bad or unworthy *intentions*.[122] Maimonides' rules that one may teach someone whose deportment is appropriate, or simple, naïve, and innocent. Although R. Yosef does cite Maimonides in support of his conclusion, that one may not teach Torah to an unfit student, he fails to address the fact that his redefined "unfit student" expresses bad *attitudes*, while Maimonides unworthy student "walks in a path that is not good," which refers to bad *behavior*.[123] This talmudic narrative describes *conduct*, leaving the idioms "unworthy student" and "walking in a path that is not good" undefined, indicating that the Oral Torah Sages were formulating a social policy, and not legislating a legal norm. Maimonides[124] and Maran Karo[125] do take these idioms to be normative law, providing R. Yosef with his *devar Mishnah*, the statutory benchmark cited to condemn Hakham Faur's actions. R. Yosef's Legal Realism empowers him to redefine "unfit student" in order to disqualify Hakham Faur for the "sin" of finding employment at JTS.

R. Yosef first postulates that there is a relevant norm forbidding teaching Torah to unworthy students, and then designates *all* of JTS's students to be unworthy because they are defined by affiliation to be non-Orthodox, thereby nullifying their teacher's *bona fides* as well. It must be noted that for the Hareidi rabbinic elite, Jewish Orthodoxy not only requires fidelity to proper Jewish belief and observance; this elite also requires an unquestioned fidelity to its own policy, politics, and most critically, its authority claims.

As noted above, Hakham Faur received permission to accept the JTS teaching position from his mentor, Hakham Abadi, because since it *is* permissible to teach Torah to Karaites,[126] who professed the non-Orthodox Judaism of Maimonides' times, it is permissible to teach Torah at JTS in our time.[127] The merits of this opinion is beyond this paper's purview; the fact that Hakham Faur was condemned without discussion violates Jewish legal procedure. Mijal Bitton reports that

> [i]n 1988, perhaps the apex of the controversy, a letter titled "The Torah view on Dr. Faur" went out criticizing Hakham José Faur and banning him from teaching Torah in this community. The letter included quotes attributed to 17 famous rabbis. Some, like R. Baruch Ben Haim, R. Shaul Kassin, R. Yosef Harari-Raful, and R. Elazar Menachem Man Shach, named Hakham Faur and banned him from teaching Torah in the community. Other quotes were *teshubot* of R. Ovadia Yosef and R. Moshe Feinstein, arguing that rabbis who had taught in Conservative seminaries should not be accepted as Torah teachers…. The accusations in the letter do not describe the precise ideological sins of Hakham Faur. The letter mentions that he taught at a Conservative seminary, a charge that "his books emit an odor of Heresy [sic.]," arguments that he was controversial, and an assertion that he was "a threat to the purity of faith and religion in the congregation."[128]

Bitton astutely and correctly observes that Hakham Faur did not violate any explicit rabbinic norm,[129] which is the threshold for halakhic culpability, and given that the violation is unclear, that

Hakham Faur asked his teacher if accepting the JTS appointment is proper and was informed that it was, one may still argue that Hakham Faur's professional choice was incorrect or unwise; but the personal condemnation would still be considered to be slander, from a Positivist reading of the Oral Torah.[130] Sadly, Hakham Faur was not accepted by his detractors even after he resigned from the JTS faculty, and several supporters withdrew their endorsement due to political pressure,[131] one of whom, R. Mordecai Eliyahu, "would later state about the incident: 'the greatest Sephardic Hakham living in the US today is Rabbi Faur.'"[132]

Hakham Faur's descriptions of the anti-Maimonidean movement, when read through the filter of his own Lakewood experience and his JTS teaching controversy, reveal an autobiographical intensity. He posits that "the anti-Maimonidean movement sweeping French and Iberian communities was itself the result of Christian assimilation."[133] Mimicking the practice of the Church, "the anti-Maimonideans hounded Jews who did not adhere to their ideologies."[134] This ideology advocated "casuistry and love of the occult….scientific knowledge, the study of the humanities, and all forms of creative thinking were ousted from the Jewish community."[135] The Maimonidean/Andalusian ground for religion is the law; for the anti-Maimonidean, the ground for religion is "pious impulse" and "religious zeal."[136]

The most articulate medieval anti-Maimonidean thinker was Nahmanides, who "no longer recognized the law as the sole constitutive of humankind's relation with God."[137] The command to "be holy" [138] in both biblical and rabbinic thought is fulfilled by commandment observance, i.e., the Law. [139] Nahmanides also claims that one must avoid pollution (*tum'a*), even though this norm is not attested in the Oral Torah, but he rejects the Maimonidean doctrine that the Written Torah authorizes the Rabbis sitting on the *Bet Din haGadol* the legal power to legislate.[140] Hakham Faur notes that Nahmanides rejects Aristotle's rationalism but accepts demonology as science.[141] Hakham Faur concludes that Jewish "anti-rationalism was not the affirmation of Jewish authority against non-Jewish culture, as modern historians insist, but of one culture pattern against another."[142] R. Asher of Toledo shared Nahmanides' antipathy to philosophy and secular studies or dissenting challenges to his authority.[143] Nahmanides' undocumented conjecture, that the remains of the righteous do not defile, [144] is not adopted by Orthodox Jewry but this rogue opinion[145] is nevertheless not subject to review, likely due to Nahmanides' charisma.[146]
Since Nahmanides is an accepted Great Sage, institutional Orthodoxy has adopted the approach of the anti-Maimonideans, for whom the Law is "Tradition" that may be understood by those jurists who are believed to be blessed with inspired intuition. Hakham Faur's alternative Maimonidean Judaism empowers anyone who is able to read Hebrew to be authorized to participate in the Jewish people's public discourse. Institutional Nahmanidean Orthodoxy encourages subservience, submission, conformity, and deference to non-assessable elites. Maimonidean Orthodoxy takes God at His revealed word, commanding, forbidding, and when silent, permitting autonomous choices. It is no wonder that Hakham Faur was rejected by the Hareidi rabbinic elite, even after resigning from JTS. He teaches his students how to read, think, and act. For him, the Torah projects and prefers a "horizontal society," without artificial or conventional hierarchies.

In sum, anti-Maimonidean Orthodox Judaism is a *religion* of submission for which a charismatic elite presides over an undefined sacred "Tradition" and a sacred past. For the Maimonidean Hakham Faur, Torah Law is a command in the immediate present that empowers the individual, where reason rather than intimidation determines what is right. God has not made Jewry slaves to mortals, but free to become moral agents who possess the learning, conscience, and capacity to do "what is right and the good."[147]

Notes

[1] https://en.wikipedia.org/wiki/Jos%C3%A9_Faur.
[2] By "canon" I mean the Hebrew Scripture and the Oral Torah library that was accepted to be canonical by all Israel and its content is listed in Maimonides' Introduction to the *Yad* compendium.
[3] Hebrew, "*da'at notah*," Maimonides, *Introduction to the Yad Compendium.* See b*Hullin* 90b.
[4] *Deuteronomy* 16:19.
[5] See https://counstein rses.lumenlearning.com/alamo-sociology/chapter/reading-types-of-authority/ and https://opinion.inquirer.net/85293/max-webers-3-types-of-/authority.
[6] Jose Faur, *In the Shadow of History*: *Jews and Conversos at the Dawn of Modernity* (Albany: SUNY Press, 1992).
[7] He was explaining m*Avot* 5:21.
[8] I use the term "orthodox" to refer to the Judaism that is encoded in and prescribed by the Written and Oral Torah library, and should not to be taken anachronistically. Hakham Faur had taught that "Orthodox" Judaism, the religion of authentic doctrine, emerged in Russia, under the shadow of the Russian Orthodox Church [Poland's Catholicism may be understood as a statement that Poles are not Russians and, whose roots are in the West. The persistence of Yiddish among secular Eastern European Jewry reflects a similar Jewish ethnic consciousness]. Reform Judaism rose in Germany, the land of the Reformation, and the Romanian born Solomon Schechter of JTS invented the term "Catholic Israel," an idiom that reflects Romanian Christianity. According to Hakham Faur, all three adjectival, denominational designations reflect a mental assimilation of categories alien to Judaism.

[9] b*Ketubbot* 58b memorializes the wife's right to waive her right to refuse spousal support and refuse to service her husband's person, violating convention but not Law. The Jewish *law* does *not* legislate gender roles. This perspective contrasts with Moses Meiselman, *Jewish Woman in Jewish Law*, (New York: KTAV and Yeshiva University Press, 1978), who castigates the "observant Jewish secularist," one who accepts the formal norms of the Oral Torah but also accepts "the goals and values of the secular environment." [p. xv.] The divine will must be intuited by the right rabbis. Meiselman maintains that the *descriptive* "mother of all life" (Genesis 3:20) is an "essential part of role definition." p. 11. Meiselman appeals to an assumed culture tradition that supersedes the norms of the Oral Torah.
[10] See Haym Soloveitchik, "Rupture and Reconstruction: The Transformation of Contemporary Orthodoxy,' *Tradition*, 28 (1994), pp. 64–130, conveniently at https://www.lookstein.org/professional-dev/rupture-reconstruction-transformation-contemporary-orthodoxy/: "[T]he question arises: did this mimetic tradition have an acknowledged position even when it went against the written law? I say 'acknowledged,' because the question is not simply whether it continued in practice (though this too is of significance), but whether it was accepted as legitimate? Was it even formally legitimized?" Prof. Soloveitchik is troubled by the fact that official religion Orthodoxy and its popular religion sibling are *not* identical twins.
[11] This is the religious Supreme Court, authorized at Deuteronomy 17:8–13, among whose roles is the transmission of the Oral Torah Tradition from one generation's Supreme Court to the next.
[12] https://en.wikipedia.org/wiki/Jos%C3%A9_Faur.
[13] Personal communication.
[14] See Maimonides, *Mamrim* 6:3, where it is ruled that the honor due an authority person, be that person a parent or a teacher, precludes articulating an assessment of that person. Maimonides, *De'ot* 5 records the moral code that the *talmid hakham*, one who is the follower of and trained by the sage, must behave in a particularly fine and proper fashion.
[15] Hakham Faur's response is exquisitely consistent with Maimonides, *Talmud Torah* 5:1–2. Since his Torah acuity and breath expanded under R. Kotler guidance, Hakham Faur accords him the honor due one's major teacher, or *rav muvhaq*. Hakham Faur was a stickler for Torah propriety.
[16] b*Sanhedrin* 110a.

[17] Maimonides, *Talmud Torah* 5:9. See Proverbs 21:30 as understood by b'*Eruvin* 63a.
[18] https://en.wikipedia.org/wiki/Jos%C3%A9_Faur and "The Legal Thought of Tosafot," *Dine Israel* 5 (1975), pp. 43-72, conveniently at http://moreshetsepharad.org/media/-The_Legal_Thinking_of_the_Tosafot_A_Historical_Approach_by_Jose_Faur.pdf.
[19] Personal communication.
[20] See Jose Faur, *The Horizontal Society*: *Understanding the Covenant and Alphabetic Judaism* (Boston: Academic Studies Press, 2008), pp. 23–28. Greek "logic" is merely the mythic anthropology of the Greek mind; the Greek audience accepts and does not respond to the activity on stage. In contrast, Hakham Faur calls attention to the fact that the Torah's human readers must supply the vowels, making the reading the shared creation of divine writer and human reader. The Greek model of apodictic authority is based on power; the Hebrew model is based on a covenant that obliges both God and the covenanted people.
[21] Personal communication.
[22] See Deuteronomy 13:1–6 and Maimonides, *Hilkhot Yesodei haTorah* 10:1–3.
[23] See Maimonides, Repentance 3:12.
[24] See Maimonides, *De'ot* 5:9, which requires that the "*talmid hakham*'s attire must be fine and clean, it is forbidden that a stain or oil mark or the like [be found] son his clothes, he should not dress [extravagantly] like kings…so that everyone stares at him, and not the dress of the poor, which demeans its wearer."
[25] *Supra.*
[26] Maimonides, *De'ot* 5:9.
[27] According to talmudic norm, the Jewish male who is bent upon sexual misbehavior is advised to dress in *in cognito* black, do what he feels impelled to do, and avoid a public scandal. b*Mo'ed Qatan* 17a.
[28] Personal communication.
[29] Psalms 25:14 as interpreted homiletically by Genesis Rabbah 49:2 refers only to circumcision, after the end of the verse, "*verito leHodi'em,*" to inform or make known their covenant, which is understood to refer to circumcision. *Midrash Tehillim* 25 claims that God makes special revelations to those who revere God. In biblical Hebrew, "*sod*" means "counsel," and in rabbinic Hebrew it also means "secret." The verse is spun to claim that God reveals the Torah's secrets to those Great Rabbis who are sufficiency pious.
[30] Prof. Lieberman titled his *magnum opus Tosefta keFeshuta*, the Tosefta according to what it really means based upon the best textual evidence. One cannot but notice a similar perspective in R. Nachum Rabinovich's commentary on Maimonides' compendium called *Yad Peshuta*, a pun meaning both "open" or "extended hand," or accessible Torah, and *Yad*, whose two letters *yod* and *dalet*, carry the value of the number "fourteen," which refers to the fourteen major subdivisions of categories of Jewish law as formulated in the *Mishnah Torah*.
[31] b*Makkot* 12a,b*Kereitot* 11a, b*Nedarim* 3a, and elsewhere.
[32] Mijal Bitton, "The Torah of Hakham Yosef Faur," *Tablet Magazine*, August 3, 2020, https://www.tabletmag.com/sections/arts-letters/articles/hakham-jose-faur-memorial. This essay is the authoritative intellectual biography of Hakham Faur.
[33] Deuteronomy 30:12
[34] *Ibid.*, 4:6
[35] Leviticus 4:22, 10:1–3, Numbers 20:12, Deuteronomy 13:1–8, II Samuel 12:7–12, I Kings 21:19. And *Ruth Rabba* to Ruth 1:1. Hakham Faur referred to Moses' striking rather speaking to the rock] Numbers 20:12], David's seduction of Batsheva and arranged death of Uriah, her husband [II Samuel 12:7–9], and Elijah's challenging Ahab's and Jezebel's arranging the death of Naboth and the confiscation of Naboth's vineyard [I Kings 21:16–19].
[36] "*Dor Dor veRambamav*: *haRambam shel haRav Aharon Kotler*," in ed. Uri Ehrlich, Howard Kreisel, and Daniel J. Lasker, *'Al Pi haBe'er*: *Mehqarim beHagut Yehudit uMahshevet haHalakhah Mugashshim leYa'aqov Blidstein*," (Beer Sheva: University of the Negev, 2008), pp. 463–487.
[37] *Mishnah Torah, Talmud Torah,* 1:9.
[38] Hakham Avraham Faur, Hakham Yosef's Faur's learned son, eulogized his father with this theme.

[39] *Talmud Torah*, 3:6.
[40] Introduction to the *Yad* compendium.
[41] m*Avot* 3:8.
[42] *Mishnah Torah, Talmud Torah* 3:10.
[43] *Mishnah Torah, Me'ilah* 8:8,
[44] m*Berachot* 2:2.
[45] Hans Kelsen, *Pure Theory of Law*, trans. Max Knight (Berkeley, Los Angeles, and London, University of California, 1967), pp. 198–214, and https://plato.stanford.edu,/entries/lawphil-theory/. Hakham Faur was, to my knowledge, the first JTS faculty person to teach Jewish law by referring to general legal theory.
[46] H.L.A. Hart, *The Concept of Law* (Oxford: Clarendon, 1979), p. 73.

[48] Kelsen, p. 5.
[49] m'*Eduyyot* 2:2 and *Bet Yosef* to *Yoreh De'ah* 1:1. The absence of evidence that women do not engage in kosher slaughter may not be taken to be evidence of a hidden, implicit or virtual restriction.
[50] *Mishnas Rabbi Aharon* 3:177, cited in Kellner, *Supra.*, p. 465.
[51] *In the Shadow of History*, p. 10.
[52] *Ibid.*, p. 1
[53] *Ibid.*, p.2.
[54] *Ibid.* Recall Hakham Faur's description of R. Kotler's lecture, above.
[55] *Mishnas Rabbi Aharon.*, 3:210, at Joel Finkleman, "War with the Outside World: Rabbi Ahron Kotler [Hebrew], in ed., Benjamin Brown and Nisim Leon, *Gedolim*: *Ishim she –'Itsevvu et Penei haYahadut haHareidit beYisrael* (Jerusalem: Magnes and Van Leer, 2017), p. 415.
415.
[56] *Ibid.*, 1: 9 and 17, at Finkleman, p. 422.
[57] *Ibid.*, 1.17–21,
[58] *Ibid.*, 1:377 at Kellner, p, 465.
[59] *Ibid.*
[60] Commentary to m*Hagigah* 2:1, Kafih edition, p. 251, cited in Kellner, p. 469.
[61] When teaching at an Orthodox high school in New Jersey, I noticed that the students were told that claiming that David sinned by his seducing Bathsheva and his arranging the death of her husband, Uriah, in accord with b*Shabbat* 56a are in error. To this view, those of high status are not subject to assessment by lower grade Jews who are not permitted to assess their betters, or aristocracy, even by making logical claims. But not even addressed was b*Shabbat* 30a, where it is reported that David petitioned forgiveness for "that sin," which Rashi tells us is Bathsheva's seduction. Neither the Oral Torah nor Maimonides recognize sovereign immunity, but there are Orthodox voices that believe that great rabbis are immune to assessment, like R. Kotler. See also Avraham Israel Karelitz, *Igrot Hazon Ish* 3:48, who also requires total submission.
[62] Introduction to the *Yad* compendium. For a code to be halakhically binding, a *Bet Din haGadol*, or Supreme Court, would have to issue the requisite legislation.
[63] See the magnificent explication of Jose Faur, "*Haqdama leMishnah Tora*," in '*Iyyunim beMishnah Torah le-haRambam* (Jerusalem: Rav Kook. 1978), pp. 11–60.
[64] According to the Oral Torah, the Writen Torah is written *like* human language [b*Berachot* 31b and elsewhere] whose plain sense may not be dismissed [b*Shabbat* 63a, b*Yevamot* 11b, and24a]. Although the Torah's words are God's, their plain sense is readable by literate human beings.
[65] The view to which "knowledge tilts," i.e., the most plausible opinion(s). *Introduction to Yad Compendium.*
[66] b*Bava Metsi'a* 86a.
[67] According to R. Abraham Karelitz, the authority of the *Bet Din haGadol* derives from the greatness or charisma of its individual members, a view shared by R. Kotler. Maimonides regards the authority of the *Bet Din haGadol* to derive from God's directive at Deuteronomy 17:8–13. See R. Karelitz, *Collected Letters* 2:24. They also share the doctrine that the Great Rabbi's authority is

charismatic and absolute. He contends that these rabbis are [virtually] inerrant [1:15], they must be regarded as if they are angels, implying that they also possess sovereign immunity [1:32], and their opinions carry the gravitas of the *Bet Din haGadol* [2:41].
[68] Joel Finkleman, "The War Against the Outside World: Rabbi Aharon Kotler," in ed. Benjamin Brown and Nissim Lion, *HaGedolim: Ishim she-'itsevu et penei haYahadut haHareidit beYisrael* (Magnes: Jerusalem, 2017), p. 415, citing R. Aharon Kotler's *Mishnas Rabbi Aharon* [Rabbi Aaron's Doctrine] 4:194.
[69] Finkleman, p. 416.
[70] *Ibid.*, p. 420, citing *Mishnas Rabbi Aharon*, 3:2 10.
[71] See "It is debatable whether the classic concept of Mara d'Asra still exists. Once, however, local psak determined local reality. HaGaon HaRav Yechiel Michel Gordon zt"l of Lomza related that an individual in Volozhin suffered from a certain form of lung disease. The person intended to leave the city and move to a place with better air. The individual's father appeared to him in a dream and told him that his specific form of lung disease was the subject of a machlokes between the Rema and the Sha'agas Aryeh. The Rema held that if this particular form of lung disease occurs in a cow, then the animal is tried, as it is incapable of living for another year. The Sha'agas Aryeh, however, had paskened that an animal with this disease was nonetheless kosher…. The father therefore warned his son to remain in Volozhin. His rationale was that in Volozhin, the Sha'agas Aryeh's town, the psak—and therefore the Ratzon Hashem—followed the ruling of the Sha'agas Aryeh. The disease would not threaten this person's life as long as he remained there. Were he, however, to leave Volozhin, he would fall under the ruling of the Rema and would be at mortal risk," at https://www.aishdas.org/rygb/eilu.htm. Note well that this Judaism invests the decisions of Great Rabbis with enchanting power.
[72] *Mishnas Rabbi Aharon*, 3:216, at Finkleman, p. 415. Hakham Faur found that old Sefarad's Judaism was rational and urbane, and with the victory of the anti-Maimonideans, "pietism displaced morality." *In the Shadow of History*, p. 27.
[73] *Mishnas Rabbi Aharon*, 1:9, at Finkleman, p. 422.
[74] Finkleman, p. 416.
[75] *Mishnas Rabbi Aharon*, 1:146-149, at Finkleman, p. 419.
[76] b*Berachot* 35b.
[77] Genesis 3:17-19, understanding '*amar* as it appears in Arabic and Aramaic, and Psalms 33:9, where 'amr is parallel to *tsivva*, the standard Hebrew root meaning "command."
[78] Deuteronomy 11:14
[79] Joshua 1:8.
[80] *Mishnas Rabbi Aharon*, 3:153, at Finkleman, p. 421.
[81] *Mishnas Rabbi Aharon*, 2:212, at Finkleman, p. 421. At *Mamrim* 2:4, Maimonides memorializes Jewish law's emergency clause, granting to the local rabbi the authority to suspend, i.e., *not* abolish, Jewish laws when circumstances require such accommodations. See also my *Hora'at Sha'ah:* The Emergency Principle in Jewish Law and a Contemporary Application**,"** *Jewish Political Studies Review* 13:3–4 (Fall 2001), 3–39.
[82] *Mishnas Rabbi Aharon*, 4:198, at Finkleman, p. 428. The Great Rabbi doctrine is nicely explained by Yosef Gavriel Bechhofer at https://www.aishdas.org/rygb/eilu.htm, where he understands b'Eiruvin 13b, which proclaims that both the Hillel and Shammaite schools of Torah thought are "the words of the living God," or legitimate opinions. Ritva *ad. loc.* claims that the law is ultimately indeterminate. Bechhofer reports that 'HaGaon HaRav Eliyahu Meir Bloch zt"l (Shiurei Da'as, "Darka shel Torah," chap. 5) writes: "When the Torah was given to Yisroel, the characteristics of its nature were imparted to the Torah Sages. They, through their thought, determine the characteristics of nature, which follows the logic and secrets of their Torah. They decide the reality of Torah, and the reality of the Creation linked to the Torah.' What is the cause, and what is the effect? The cause is not reality, which demands the effect of figuring out relevant Halachos. On the contrary, the cause is Halacha, and the effect is the reality of the worlds."
[83] Personal communication.

[84] *Yated Neeman*, February 8, 1988 and https://www.liquisearch.com/jos%C3%A9_faur/biography/opposition_of_leading_jewish_rabbis
[85] Bitton, https://www.tabletmag.com/sections/arts-letters/articles/hakham-jose-faur-memorial.
[86] *Ibid.*
[87] *Shulhan Aruch Hoshen Mishpat* 34.
[88] b*Sanhedrin* 90a,
[89] Hecht was an affiliate of the Lubavitcher movement, a member and president of the Hareidi *Iggud haRabbonim*, and a consistent advocate of very right wing political, theological, halakhic, and social causes. See https://en.wikipedia.org/wiki/Abraham_Hecht. He is sadly best known for calling for Israeli PM Yitzhak Rabin's assassination after Rabin agreed to territorial compromise by signing the Oslo Accords.
[90] *Shulhan Arukh Hoshen Mishpat* 34.
[91] An acronym meaning "may one live a long and good life, amen," and is attached to rabbis who are believed to be exceptionally learned, pious, and renown.
[92] *Igrot Moshe Yoreh De'ah* 2:108.
[93] *Ibid.*, *Orah Hayyim* 1:39. R. Feinstein derives his ruling from I Chronicles 28:19, an argument that conflicts with the rabbinic rule that Torah law is not derived from *Kabbalah*, here the biblical Prophets and Writings. For a non-polemical treatment of the issue based on a philological rendering of the Oral Torah canon, see https://www.etzion.org.il/en/shiur-07-mechitza. Unaddressed is the Tosafot to b *Shabbat* 125b, s.v. *ha-kol modim*, which views the *mehitsa* as conventional modesty, *le-tsene'uta be-'alema.*
[94] b*Qiddushin* 20a–b.
[95] *Igrot Moshe Yoreh De'ah* 2:108.
[96] This power lapsed with the *Bet Din* of Rabina I and Rav Ashi, as per b*Bava Metsi'a* 86a.
[97] *Igrot Moshe Yoreh De'ah* 2:4-5.
[98] *Ibid.*, 2:6.
[99] Hans Kelsen, *Pure Theory of* Law, trans. Max Knight (Berkeley, Los Angeles, and London, University of California, 1967), pp. 74-75, conveniently at https://plato.stanford.edu,/entries/lawphil-theory/.
[100] The willful misrepresentation of Jewish law is designated *megalleh panim baTorah she-lo keHalakhah*, a violation so grievous the violation of which is grounds for forfeiting one's portion in the Eternity to Come [b*Sanhedrin* 99b]. Kelsen regards the imputation of values to the legal norm, misstating the "ought" value of the legal norm, as "ideology," "nonobjective presentation of the [legal] influenced by subjective value judgments." Kelsen, p. 105.
[101] Oliver Wendell Holmes, "The Path of the Law," 10 *Harvard Law Review* 457 (1897). pp. 1–20. For Holmes, the jurist is an oracle whose inspired intuition transcends the mundane statute and rules according the Law's "manifest purpose" to which he is uniquely privy. 18.
[102] *Igrot Moshe, Orah Hayyim* I, Introduction.
[103] b*Qeddushin* 20a–b.
[104] *Shulhan Arukh Yoreh De'ah* 246:8.
[105] R. Feinstein could have cited Maimonides, *Mamrim* 2:4, which entitles the rabbi to suspend the Law when confronting emergencies.
[106] Sha"ch, *loc. cit.*
[107] See Daniel 12:13 and m*Sanhedin* 10:1.
[108] b*Berachot* 47b, b*Gittin* 10b, b*Niddah* 33b,
[109] *Igrot Moshe, Yoreh De'ah* 5:41.
[110] Deuteronomy 17:10
[111] *Igrot Moshe, loc. cit.*
[112] Deuteronomy 4:15 as understood and legislated at b*Berachot* 32b.
[113] *Igrot Moshe, Yoreh De'ah* 2:49.
[114] b*Betsah* 30a.
[115] *Loc. cit.* s.v. *ein metappehin.*
[116] b*Bestah* 5b.

[117] *Iggrot Moshe Yoreh De'ah* 1:139.
[118] *Ibid., Yoreh De'ah* 2:106.
[119] *Yabi'a Omer 7 Yoreh De'ah* n.18. For R. Raful's ties to R. 'Ovadia Yosef, see https://vimeo.com/79795059,
[120] b*Hagigah* 10b.
[121] b*Hullin* 133a. Throwing stones was the ritual act by convention this "god" was worshipped.
[122] b*Berachot* 17a, Literally, "it would be better if such a student not have been born."
[123] *Talmud Torah* 4:5. On the colloquial and legal sense of *rash'a*, or wicked person, see https://www.torahmusings.com/2017/07/teaching-daughter-conservative-rabbi/.
[124] *Supra.*
[125] *Shulhan Arukh Yoreh De'ah* 246:7.
[126] At Responsum n. 265, Maimonides only excludes Karaites from Rabbanite rites that they do not accept. At n. 449, he advises good relations when Karaites behave as Rabbinic Jews.
[127] Personal communication.
[128] https://www.tabletmag.com/sections/arts-letters/articles/hakham-jose-faur-memorial.
[129] *Ibid.*
[130] See *Shulhan Arukh Hoshen Mishpast* 34:4, where violations Torah based on faulty understandings does *not* nullify one's *bona fides.*
[131] https://www.tabletmag.com/sections/arts-letters/articles/hakham-jose-faur-memorial.
[132]https://www.liquisearch.com/jos%C3%A9_faur/biography/opposition_of_leading_jewish_rabbis. For full disclosure, R. Eliyahu is one of my ordaining rabbis. While I am neither permitted nor competent to make this assessment, R. Eliyahu most assuredly was entitled to make this assessment.

[133] *In the Shadow of History*, p. 1.
[134] *Ibid.*, p. 2.
[135] *Ibid.*
[136] *Ibid.*, p. 10.
[137] *Ibid.*, p. 12.
[138] Leviticus 19:2.
[139]Numbers 15:40 , *Safra Kedoshim* 4:10:2, and *Sifre Numbers Shelah Pesiqa* 115, s.v. *le-ma'an tizkeru*.
[140] Nahmanides, *Critical* glosses to Maimonides, *Sefer ha-Mitsvot*, *Shoresh* 1.
[141] *In the Shadow of History*, p. 223, n. 28, citing Nahmanides to Exodus 20:3.
[142] *In the Shadow of History*, p. 14.
[143] *Ibid.*, pp. 18-19 and *Teshuvot ha-Rosh* 55:9.
[144] Nahmanides to Numbers 19:2.
[145] As far as I can tell at this time.
[146] R. Menachem Genack maintains that R. Soloveitchik's rabbinic model was Nahmanides. Menachem Genack, "Walking with Ramban," in ed., Menachem *Genack, Rabbi Joseph B. Soloveitchik: Man of Halacha, Man of Faith* (Hoboken, New Jersey: KTAV, 1998), pp. 208-221. In light of R. Soloveitchik's denying the lofty status of "*Halakhic* Man" to Maimonides, who in the Introduction to the *Yad* compendium, does define Judaism as normative legal order. In an oral communication, R. Stuart Grant confirmed that when he was assigned to be R. Solovietchik's assistant, R. Soloveitchik told him of his Nahmanidean preference in an oral communication.

[147] Deuteronomy 6:18.