Remembering Rabbi Dr. David Weiss Halivni

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R. David Weiss Halivni [1927-2022] was not just a *gadol ha-dor*, a great sage of *our* generation, but he was a *gadol ha-dorot*, a Torah scholar whose impact will likely transcend his own time and culture horizon. Best known for his breathtakingly monumental *Meqorot u-Mesorot* [Sources and Traditions], his multi-volume, academic commentary on the Babylonian Talmud, R. Halivni has also written monographs on the Holocaust,[i] the difference between the plain or originalist sense of the canonical Torah and how the Torah was subsequently understood by the Oral Torah library,[ii] and the challenge that Bible Criticism poses for the Judaism of Tradition that is identified as "Orthodox."[iii]

R. Halivni most significant finding relates to the teaching that Ravina I and R. Ashi were the last rabbis to be authorized to issue *hora'ah,**[iv]* or apodictic legislation. Contrary to traditional belief, R. Halivni argues that they were *not* the actual editors or compilers of the Babylonian Talmud. Instead, R. Halivni maintains that the Babylonian Talmud was not formally edited,[v] but emerged out of the literary and exegetical work of the *stamma'im*, whose anonymous, Aramaic, casuistic, clarifying discourse expanded and reconstructed the historically earlier Hebrew, apodictic, *Amoraic* teachings they inherited.[vi]

My first connection with R. Halivni goes back to 1968. At R. Halivni's son, Baruch's*, bar mitsvah* at the Jewish Theological Seminary's [henceforth, JTS] Synagogue, the 13 year old prodigy delivered a discourse on the propriety of wearing *tefillin* on the intermediate festival days. As a first year student at the JTS's Rabbinical School, I understood nothing of Baruch's presentation, a most humbling experience.

Only JTS's most talented, Talmudically proficient, entering rabbinical students were assigned to R. Halivni's class, and I was not an appropriate candidate for that placement. In 1970, *Hakham* Prof. Jose Faur became my major Torah mentor [*rav muvhaq*] and at the time I was busy with Judaic studies at JTS and Ph.D. coursework in modern Hebrew literature at NYU.

Although not his student, R. Halivni took a personal interest in me. At the senior Rabbinical School dinner of 1973, R. Halivni reminded the graduating students that their mission is to spread Torah observance and learning, not to preach about social action, civil rights, interfaith dialogue, or partisan party politics. And when R. Halivni teasingly proclaimed that "rabbis ought not to waste their pulpit time and opportunities on book reviews," his eyes were fixed on me, being trained at JTS to be a Rabbi and at NYU to be a reviewer of Hebrew books.[vii]

When the JTS voted to accept women to its Rabbinical School by faculty vote, some *Halakhically* committed rabbis and laypeople then seceded from the Conservative Movement [viii] and formed what eventually became the Union for Traditional Judaism, the American UTJ,[ix] with R. Halivni at its helm as its spiritual guide.

The UTJ established a rabbinical ordination program under R. Halivni's direction, named *The Metivta le-Limmudei ha-Yahadut*, which in English is rendered "The Institute for Traditional Judaism," or the ITJ. The Hebrew/Aramaic name affirmed that the institution is a *metivta,* a traditional Yeshiva committed to advocating and advancing the Judaism encoded in the classical *Halakhah*, that applies academic tools to parse and decode Judaism's sacred library. In 1991, I was appointed to the ITJ faculty to teach Bible, Hebrew, Aramaic, and *Shulhan 'Arukh Yoreh De'ah Issur ve-Heter*, the *kashrut* laws that are the subject of the Orthodox Rabbinical ordination examination.

At the time, I was planning *aliyyah* and was advised by Rabbi Shlomo Riskin to acquire the *Yadin Yadin* ordination.[x] R. Halivni graciously agreed to supervise my *Yadin Yadin* studies, which was daunting, challenging, and thrilling. And as the *Reish Metivta*, the head of the school, R. Halivni also became my boss, who would examine and evaluate the *Issur ve-Heter* students whom I was assigned to prepare.

R. Halivni's JTS students were advanced academic Talmudists who learned how the Oral Torah literary canon came into being. And at JTS, R. Halivni was rightly honored as an academic professor; at the ITJ, he was cherished both for his immense learning and his profoundly religious character, example, and consistent moral excellence. At the UTJ/ITJ, R. Halivni provided religious as well as academic leadership.

My mission at the UTJ was also only partially academic. Studying *Halakhic* compendia[xi] like the *Shulhan 'Arukh* in order to *prescribe* appropriate behavior is a *normative* enterprise with religious as well as academic significance. In point of fact, there are actually no official, *Bet Din ha-Gadol* approved codices in Jewish Law. Both Maimonides' *Yad* and *Maran Yosef* Karo's *Shulhan 'Arukh* are resource *compendia* and as such are neither the last nor only word in Jewish Law. R. Halivni's logical mind forced me to appreciate the dynamic taxonomy of the *Halakhah, a*nd he expected those who earned his ordination to think logically as well.

All but my first *farher* [traditional oral examination] took place at the Hebrew University *Giv'at Ram* campus Jewish studies reading rooms of the Israel National Library. R. Halivni's unofficial but permanent library seat [*maqom qavu'a*] was at the right side end seat of the first reader's row of tables, with a small reference library placed neatly before him. This scene recalled his JTS office, where R. Halivni formerly said his *shi'ur* to his small cadre of advanced students. The walls were lined with both *sefarim* and books, tomes of sacred as well as secular writings,[xii] in elegant order, meticulously and logically arranged, all to aid in the search for the Torah's meaning. R. Halivni's JTS office was a miniature *bet midrash, a* statement of sacred subversion,[xiii] an island of order and purpose in an ocean of chaotic

disorder, a world where there is no apparent Judge or judgment.[xiv] At Hebrew University's Giv'at Ram library, R. Halivni was not hidden behind an office door; he naturally assumed the role of informal *shoeil u-meshiv*, the reference resource person of the *bet midrash.* In the traditional *bet midrash*, the *shoeil u-meshiv* must be conversant with the Babylonian Talmud, the major early commentaries [*Rishonim*], Maimonides' *Yad compendium,* and the *Shulhan 'Arukh* with its commentaries. At the large Giv'at Ram Judaica reading room, R. Halivni not only exhibited total control of the *entire* Rabbinic corpus, occasionally playfully employing the "Brisk"/"analytic" approach, which he did not teach, as well as the academic/critical method that he adopted, because he believed that method leads to truth. R. Halivni was also well informed in all fields of academic Judaica. Simply put, undergraduate students, doctoral candidates, and tenured professors all sought out R. Halivni's memory, expertise, guidance, wisdom, and generosity.

In addition to dispensing information to everyone who asked him for help, R. Halivni also communicated friendship, warmth and personal concern.[xv] Like his leadership role at the ITJ, at the National Library the professor was also a rebbe. R. Halivni loved people because he loved the Torah that requires that the Jew love one's compatriot with intensity.[xvi] R. Halivni's ethical deportment and personal warmth generated an atmosphere where secular, academic monographs wafted the scent of *sefarim*, because they became volumes that make Torah more readable, understandable, and applicable.

R. Halivni also"presided" over the National Library *minhah minyan* at the campus library. It would not possibly occur to R. Halivni to seek this unofficial position of honor; the Jewish Studies Library's attendees saw in R. Halivni an individual who was at once a giant in Torah, a master of academic Judaica, and a model of ethical excellence.[xvii] R. Halivni's interactions with others provided both academic enlightenment as well as a spiritual thrill to everyone who sought his presence. After the daily *minhah minyan* and just before our scheduled *farher*, I asked R. Halivni "why at this *minyan* is the '*amidah* not repeated, as the repetition is required by an explicit Rabbinic norm?"[xviii] Pleased that the question was raised, R. Halivni responded, "while one should take the time to say the *minhah* prayers, the salaried librarians would be stealing time work from their employer, the National Library, were the '*amidah* to be repeated."

The quality attention that R. Halivni gave to all comers at the National Library was the same care that he provided to the American UTJ and its *Metivta*, and it was same care he gave to me, his *Yadin Yadin* student. R. Halivni provided me with a tutorial in his approach to normative, prescriptive Jewish law. At one session R. Halivni posed the question, "why *do* we study Torah?" I answered "because it is a *mitsvah*." He responded,
"the 'Litvaks' study Torah for the sake of Torah; I study Torah in order to know how to behave. Torah study is equal to all the other commandments because Torah study shows us how to observe the other commandments."[xix] I understood him to be saying that proper Torah study is simultaneously a commandment in its own right and also an exercise in 'a *vodah*, or prayer. R. Halivni could play at thinking like a Litvak, but his personal religious synthesis remained Hassidic.

Two-thirds of R. Halivni's two hour *farher* sessions examined my control of the material assigned for that year's test, and the last third was a conversation in learning during which R. Halivni spoke to me as a peer, and not as a novice. He was challenging me to formulate my own *Halakhic* hermeneutic, and to apply an appropriate jurisprudential methodology.[xx]

My very first *farher* covered the Laws of Judges and the Laws of Testimony. Focusing on *Hoshen Mishpat* 34. R. Halivni opened with "what is at stake in the Laws of Testimony?" I answered with guarded hesitation, "we are dealing with a matter of personal status, whether someone is a *tsaddiq,* a righteous Jew with proper communal standing upon whose word in court the community may rely, or a *rash'a*, a wicked person whose behavior does not conform to Jewish Law."[xxi] Jewish Law here defines the parameters of *Halakhic* pluralism. If a person buries one's dead on the first Festival day mistakenly believing that there is an obligation to bury one's dead on the first Festival day,[xxii] that person does *not* necessarily lose one's *bona fides.**[xxiii]*** Similarly, charging and collecting interest by lending capital from the orphans' estate does not automatically disqualify the offender, who may mistakenly reason that taking interest in order to grow the orphans' estate is a worthy act.[xxiv] Those who trespass rules that are not well known must be informed of their error before their *bona fides* are disqualified, because everyone is entitled to a generous benefit of the doubt assessment.[xxv] We should not jump to hasty, negative conclusions.[xxvi] The "other" might be correct; we have the right to think for ourselves.[xxvii] R. Halivni was pleased, and again, I was *extremely* relieved.

Since part of my *Metivta* teaching responsibility was to prepare the ITJ rabbinical students for R. Halivni's test on *Issur ve-Heter*, R. Halivni required that I be re-examined by him on that material as well, in order to ascertain that I was preparing my *Issur ve-Heter* students adequately, that they mastered the assigned material to R. Halivni's standards. R. Halivni was teaching *me* how as well as what to teach *our* students. R. Halivni's conversations in learning with me were, retrospectively, the programming of my *Halakhic* thinking with his particular perspective regarding the *Halakhic* Tradition. He was well aware of my *talmid muvhaq* relationship with his own close friend and professional colleague, *Hakham Faur*, and was also pleased that I was exposed to the *Halakhic system* of Rabbis Moshe Feinstein and Moshe Tendler. Rather than impose his template on me, R. Halivni encouraged me to develop my own system, and to be a Rebbe as well as a Rav, with a heart as well as a mind.

After studying and being tested on the laws of damages, R. Halivni inquired about my secular education. I had majored as an undergraduate in Philosophy, in order to get a handle on the Western mind and thought. R. Halivni then went into personal mode, confessing that is *exactly* why he studied Philosophy for his B.A. at Brooklyn College and earned his M.A. at NYU, also in Philosophy, and especially to master Logic and Legal Theory, in order to learn Torah more effectively. Jurisprudence teaches how law is applied; logic reveals the Law's coherency. R. Halivni then asked me if I had done any reading in legal theory and, if so, who was my favorite legal theorist. *Hakham* Faur also applied legal theory in his *Halakhah* classes at JTS and I had discovered Hans Kelsen's "Pure Theory of Law," whose Legal Positivism was anticipated by Maimonides' *Yad* compendium.[xxviii] According to this approach, a legal order is a hierarchy of legislated norms, the validity of which are conditioned by [1] being properly legislated and [2] their not contradicting higher grade norms.[xxix] R. Halivni then told me that had I not studied legal philosophy, he would have required me to do readings in the field.[xxx]

The issue of legal theory arose again when R. Halivni and I were at a UTJ conference in Teaneck, N.J., and a buffet luncheon was served. At that moment I was speaking to a lawyer and UTJ leader, Mr. Doug Aronin. I told him that we may not eat in the UTJ's Orthodox synagogue sanctuary[xxxi] because the Oral Torah regards that eating and/or drinking in a designated, sanctified prayer room to be an act of levity, and is therefore forbidden by an explicit *Halakhic* norm.[xxxii] Taking understandable offense for what he took

to be a slight and insult to our teacher and spiritual guide, by being stricter than R. Halivni, Mr. Aronin went out of his way to bring our teacher to challenge me to explain why I should not eat in the UTJ's synagogue sanctuary. After citing the source of the law, R. Halivni replied that Diaspora synagogues are built on condition, because they will be abandoned when the Messiah arrives. I countered that when Diaspora synagogues are in good repair, the *qallut rosh* restrictions remain in force.[xxxiii] R. Halivni said, "*nu nu*, Hassidim are lenient on this issue." While here R. Halivni revealed that he decided cases as a Legal Realist,[xxxiv] which also explains Hassidic antinomianism,[xxxv] he *never ever* hinted that I should abandon my more mechanical Legal Positivism.

After surviving R. Halivni's *farher* on *Issur ve-Heter*, R. Halivni then told me that logically, we really should first study the laws of mixtures [*ta'arovot*], and only after mastering the legal principles of mixtures would it be logical to apply the principles of mixtures in general to the rules of salting meat and the legal status of milk and meat mixtures. He then asked, "why am I assigning you to learn the Passover *kosher* laws for next year's examination? Why do I make this assignment now?" My answer was "we apply the logic of the mixtures rules to the contaminating *hamets*." R. Halivni's logical mind was beginning to shape how I think.

R. Halivni's assignment of *Even ha-'Ezer* 17, the laws of the "*'agunah*," the "chained woman" who is legally married to a man who is either unable or unwilling to commission the writing of the writ of divorce, came with a research question, "how are we able to free the *agunah*?" He then confided to me that he earned his own *Yadin Yadin* ordination when he was 15 years old in order to permit Holocaust *agunot* widows to remarry and resume their lives after World War II. We discussed the case of a woman for whom two witnesses testified that her husband had died, a *bet din* gave her permission to remarry, which she did,[xxxvi] yet both Maimonides [xxxvii] and R. Ovadiah of Bartenora[xxxviii] ruled according to the flow of the Bavli[xxxix] determined that should her first husband reappear alive and well, they forbid the woman to both men, even if the *bet din* permitted the woman remarry on the basis of two properly vetted witnesses.[xl] In order to defend what my intuition deemed to be morally appropriate in the case, I suggested that we consider and apply R. Halivni's suggested approach to Talmud to Jewish law. Maimonides and R. Ovadiah rule, understandably, according to the conclusion of the *stam*, the post-Amoraic, post-*hora'ah* level of Talmudic text tradition. On the other hand, R. Moses Isserles decided that if the woman acted according to the good faith direction of the *bet din*, even if the *bet din* made an honest error in permitting the woman to remarry, the horrible sanction that she be forbidden to both men ought not to apply to her.[xli] And the *Amora* Rav, whose legal opinions do carry canonical, Oral Torah valence, ruled that a woman who remarries on the basis of two witnesses has done nothing improper and should therefore not suffer any sanction or penalty. While the *stam* suggests that we cannot ignore the actual, factual reappearance of her first husband, mistakenly thought to be deceased, Rav implies that the *Bet Din* is indeed empowered to create *legal* facts that may contradict empirical facts, a legal strategy that might be applied in emergency situations [*she'at ha-dohaq*].[xlii]

Some Orthodox voices are troubled by this approach because it calls the reliability of the Rabbis who formulated the Oral Torah documents into question.[xliii] The Talmudic Rabbis possessed *legal* authority, not intellectual inerrancy. The tractate *Horayyot* deals with the possibility that people in authority may make mistakes. By identifying rulings which, on literary grounds may post-date Rav Ashi, we may rely on authorities, like R. Isserles, who appears, at first glance, to be ruling against the Talmudic norm. The Talmud's norms are "ought" statements called

prescriptions and are on that basis mandatory; Talmudic *descriptions* are [a] acts of telling, narratives, in Hebrew, *Agadah*, which are as a matter of Law not legally binding because they are not commands by dint of their syntax, and [b] are subject to empirical review and revision because they are descriptions and not descriptions. I am unaware of any Orthodox rabbi who requires the application of Talmudic medicine as opposed to modern medical science in our time.

Curiously, R. Halivni's application to the JTS's Rabbinical School was almost rejected by its Admissions Committee because R. Halivni did not project the "image" of the "successful" Conservative rabbi. This Conservative rabbinic ideal must be sufficiently "traditional" to register as "authentic" to the minimally informed, non-observant laity who are that Movement's target client population, but not so obsessively observant that one's Judaism appears to be more intense than one's Americanism, rendering that rabbi too parochial, "too 'Orthodox,'" and thus alienating to their communities. R. Halivni was thought to be so hopelessly provincial that he would be neither appreciated nor appropriate in a mid 20th Century Conservative synagogue setting. R. Saul Lieberman intervened, insisting that R. Halivni was to be groomed for Talmud scholarship, the enterprise for which he proved to singularly appropriate and universally appreciated, and R. Halivni was then accepted into the JTS's Rabbinical School. In hindsight, the JTS's Rabbinical School's Admissions Committee's initial reservations regarding R. Halivni's ability to "fit in" to the Conservative Movement as it was developing were not entirely misplaced. American Conservative Jewry was led by Rabbis who were appropriately and unambiguously American in dress and deportment. They are also invariably well-spoken, politically and theologically liberal, and are passionately committed to accommodating Judaism to the ethnic Jewish taste culture of its client community. R. Halivni could not meet that benchmark, as he was from and lived in other worlds.

R. Halivni's "problem" was that he was programmed to be a "*Rov*," not a "Rabbi." His Judaism defined his core commitments, his Torah provided the benchmarks and guidelines for the challenges that was his to confront. This tension, between the Jewish religious Tradition and the militantly secular Ivy League Columbia University campus was noted by R. Channa Lockshin Bob, who described R. Halivni as

> "a person whose sensibilities and demeanor were that of a *rosh yeshiva*, yet who found himself in the Department of Religion of an Ivy League university, and the implications of that setting for himself and for his students."[xliv]

During one of our f*arher/*conversation sessions, R. Halivni confided to me that many of early Reform Judaism's changes could be *Halakhically* justified. And he always stressed that Torah has to be doable and that it is not more pious to be gratuitously strict.[xlv]

R. Halivni was also an amazing religious model. He never spoke with the implied apodictic certainty of prophetic voice, as do some rabbis in all of the ideological streams. While well aware of his own greatness, R. Halivni remained a model of refined, ethical excellence. He always made his interlocutor feel like she or he was the center of the world by listening so very attentively to whomever his interlocutor happened to be at the moment. While always generous with his time, R. Halivni rarely if ever said *mussar/*words of moral reproof and betterment. He was a master of teaching by example. R. Halivni loved God by showing love to people, God's creatures. When asked by one of my ITJ students, "how really great is R. Halivni," I suggested that

> "Most if not all of us will ever be able to make that assessment, but when you hear R. Halivni speak, you observe how he respects God's image in the other person, and when he speaks to each of you, you also become the most important person in his world at that moment. While we are unable to measure the Torah that he went through, we *are* able to assess the effect of the immense amount Torah went through him."[xlvi]

R. Halivni's *mussar* message was not "how inadequate are you now," but "how holy are you able to become? All of us are works in progress. Let's be better together."

A Rabbinical Council of America colleague recalled a sermon delivered by R. Halivni that called attention to the difference between a *tashmish mitsva*, an object that generates holiness by its being used in a *halakhically* prescribed way, like a *lulav, shofar*, and *matsa,* and *tashmishei qedushah*, objects that are themselves inherently holy, like a *mezuzah,* a Talmudic tome, or a Torah scroll. R. Halivni explained that in this life we are objects that generate holiness by observing the commandments.[xlvii] For R. Halivni, our mission as mortals is to become persons who become inherently holy, who touch, and inherit, eternity. [xlviii]

[i] *Breaking the Tablets: Jewish Theology After the Shoah* (Lanham, Md.: Rowman & Littlefield, 2007).

[ii] *Peshat and Derash*: *Plain and Applied Meaning in Rabbinic Exegesis* (New York: Oxford, 1991).

[iii] *Revelation Restored*: *Divine Writ and Critical Responses* (Boulder, Colorado: WestviewPress, 1997).

[iv] b*Bava Metsi'a* 86a.

[v] David Halivni, *Introduction to Sources and Traditions*: *Studies in the Formation of the Talmud* (Jerusalem: Magnes, 2009), pp. 63-64 and 75-76.

[vi] *Ibid.*, pp. 128-136.

[vii] When R. Halivni teased a student, it was *always* an expression of playful affection. When attending his Hebrew University Talmud class after *aliyyah*, in my rush get settled, I inadvertently placed my copy of R. Halivni's *Meqorot u-Mesorot* on top of my Talmud. He chided me, "while I'm proud of my work, it must be placed under, and not over, the Talmud." R. Halivni was also reminding *me* as well as all who were present, that we all should be more precise in our *halakhic* observance.

[viii] Mordecai M. Kaplan, *Judaism as a Civilization* (Philadelphia and New York: Jewish Publication Society, 1981), maintains that the "modern ideology," which is essentially dogmatic secularism [pp. 36-46], can neither be resisted nor denied. For Kaplan, the Conservative Movement is a coalition of style consisting of the
"Right" wing of Reform [pp.126-132] and the "Left" wing of Neo-Orthodoxy [pp. 160-169. Kaplan argued that maintaining Orthodox theological and/or ritual commitments is hopelessly arcane and morally deficient.

[ix] Not to be confused with the Israeli *Haredi* political party, United Torah Judaism, in Hebrew, "*Yahadut ha-Torah*," literally "The Judaism of the Torah," implying it alone is Torah faithful. The party is currently on the brink of schism because its *Degel ha-Torah* faction forbids any non-Torah studies, like mathematics and English, to be taught in its *yeshivot.* See https://www.theyeshivaworld.com/news/headlines-breaking-stories/2108588/is-degel-hatorah-on-the-way-to-a-split-with-agudas-yisrael.html. In contrast, the

American UTJ embraces secular learning.

[x] During these happenings, I had resigned from the Conservative Rabbinical Assembly, received Orthodox ordinations from R. Oscar Fasman of Chicago's [actually, Skokie] Hebrew Theological College, R. Moshe D. Tendler of Yeshiva University's Rabbinical program [RIETS] and R. Mordecai Eliahu, at the time the *Sefardic* Chief Rabbi of the State of Israel, and then joined the Rabbinical Council of America, served as the Rabbi of Congregation Israel of Springfield, N.J. and B'nai Israel Congregation, the recently revived Orthodox Synagogue of downtown Baltimore, Maryland.

[xi] Menachem Elon. *Jewish Law*: *History, Sources, Principles* (Jerusalem: Magnes, 1973), pp. 1210-1212, is impatient with the major Jewish codes because, to his view, codes radically and artificially freeze Jewish Law in place and time. For a similar view from a source critical rather than jurisprudential perspective, see David Halivni, *Midrash*, *Mishnah*, *and Gemara*: *The Jewish Predilection for Justified Law* (Cambridge and London: Harvard, 1986), where R. Halivni shows that the Mishnah's apodictic diction, which is similar to the syntax of Codes, is the exception to the Rabbis' preference for *Midrash Halakhah* and the Babylonian Talmud's *stammaitic*, justificatory discourse [p. 115].

[xii] This is the major difference between the Israeli and American UTJ's. The Israeli UTJ rejects non-sacred learning, while the American UTJ embraces it.

[xiii] My thanks go to R. Daniel Landes, who introduced me to this idiom.

[xv] According to m*Avot* 1:15 and 3:12, this deportment is mandatory.

[xvi] Leviticus 19:18 very subtly commands intense love, as the Hebrew verb "to love" is a transitive verb. Deuteronomy 6:5 employs the Hebrew particle "*et*," which marks direct objects, when commanding the loving of the Lord. The "*lamed*" prefix, when preceding a noun and following a verb, also marks the direct object of a transitive verb. This "*lamed*" accusative marker is standard in Aramaic, as in the Passover poem, *Had Gadya.*

[xvii] As described at Maimonides, *De'ot* 5:1 and 5.

[xviii] b*Rosh ha-Shanah* 34b. See also comprehensive summary at https://www.etzion.org.il/he/halakha/orach-chaim/prayer-and-blessings/repetition-shemoneh-esrei-1 and https://www.yeshiva.org.il/midrash/2789.

[xix] m*Pe'ah* 1:1. It was reported a family member that R. Halivni, who resided in Jerusalem's high rise Wolfson Towers, would not avail himself of the building's Shabbat elevator, even though rabbinic decrees do not apply to the infirmed [see b*Ketubbot* 60a and *Shulhan 'Aruch* 328:14]. This "stricture" testifies to the degree R. Halivni took Torah to heart.

[xx] My preparation for Chief Rabbi Mordechai Eliahu's ordination included *Bet Yosef* and *Kaf ha-Hayyim* and my learning under R. Tendler's supervision was a personal tutorial in R. Moshe Feinstein's method, mind, and approach to religious leadership. R. Halivni pushed me to formulate my own approach to resolving *Halakhic* conflict, being both fair to my questioners and honest to God.

[xxi] *Shulhan 'Aruch Hoshen Mishpat* 34:1-3.

[xxii] Deuteronomy 21:23.

[xxiii] *Shulhan 'Aruch Hoshen Mishpat* 34:4.

[xxiv] *Ibid.* 34:11.

[xxv] m*Avot* 1:5

[xxvi] m*Avot* 1:1.

[xxvii] m*Avot* 4:8.

[xxviii] See my "Legal Positivism and Contemporary Legal Discourse," *The Jewish Law Annual* 6 (1987), republished in ed., Martin P. Golding, *Jewish Law and Legal Theory*, (New York: l Press, 1993).

[xxix] Hans Kelsen, *Pure Theory of* Law, trans. Max Knight (Berkeley, Los Angeles, and London, University of California, 1967), p. 5 and pp. 198-214, and https://plato.stanford.edu,/entries/lawphil-theory/. For Legal Positivists, the judge applies the legal norm, but does not create or legislate norms.

[xxx] This was the teaching culture at JTS 50 years ago. In my JTS classes in Hebrew literature, the literary texts were read along with relevant literary theory, providing the student with a logical, methodological toolbox.

[xxxi] The synagogue of the UTJ had a partition between the women's and men's section, which followed Ashkenazi Orthodox practice.

[xxxii]*bMegillah* 28a.

[xxxiii] *Ibid.*, 28b.

[xxxiv] Legal Realism maintains that judges apply their policy intuitions to generate Law. See https://intranet.mruni.ot 10"/upload/iblock/b15/008_tumonis.pdf. Orthodox Legal Realists often invoke *Da'as Torah* to justify their dismissing or ignoring problematic Oral Torah norms. My Legal Positivism moved me to don *tefillin* on the intermediate festival day, because the permission to write *tefillin* the intermediate festival day indicates that *tefillin* are to be worn at that time occasion [b*Mo'ed Qatan* 19a]. At Laws of *Tefillin, Mezuza* and Torah scroll, 4:10, the Sefardi Maimonides observes that *tefillin* are *not* worn on Shabbat or *Yamim Tovim*, that is *full* holidays, clearly implying what b*Mo'ed Qatan* 19a is requiring, that . The Ashkenazi school of Rashi [*Mahzor Vitry*, n. 513], R. Asher, Laws of *Tefillin* n. 15, and R. Isserles' gloss to *Shulhan 'Aruch Orah Hayyim* 31:2 articulate the old Ashkenazi tradition, which conforms and confirms the canonical record at b*Mo'ed Qatan* 19a. At *Bet Yosef Orah Hayyim* 31 Maran concedes that the original Sefardi practice was that *tefillin* be worn on the intermediate festival day, but just like the Greek classics were being discovered during the Renaissance, Maran mistook *Zohar Hadash* 2:8, *Canticles*, which disallows *tefillin* donning on the intermediate festival day, to be composed by the *Tanna* R. Shim'on bar Yohai, and consequently assigned Oral Torah canonicity to the work. Simply put, the forbidding of *tefillin* on the intermediate festival is based, or biased, not upon a "'holy' Zohar" vetted and approved by the *Bet Din ha-Gadol*, but on a forgery. At stake in this debate is whether "tradition" is an integrity driven spiritual ethos or an inertia driven nostalgic preference.

Hear Rabbi J. J. Schacter at http://www.yutorah.org/lectures/lecture.cfm/728404#, who demonstrates that the *Zohar* often overrode *Halakhic* principle, and see Israel M. Ta Shma, *Haa-Nigleh she-ba-*

Nistar: Ie-Heqer Sheqi'ei Halakhah be-Sefer ha-Zohar (Tel Aviv: Kibbutz ha-Meuchad, 2001). This very debate is an example of Orthodox religious pluralism. Each side believes that the other side errs, but as we discovered in the Laws of Testimony, a generally observant Jew who, perhaps in error, sincerely believing that she or he is behaving in accord with the *Halakhah* does not forfeit one's *bona fides.* Therefore, while my understanding leads me to the position that *tefillin* are mandatory on intermediate festival days, I may not condemn another Jew who on principle will rule according to the *Zohar* or Maran. One has a right to be wrong in the eyes of the "other."

[xxxvi]m*Yevamot* 10:1.

[xxxvii] Commentary to the *Mishnah, ad. loc.*

[xxxviii] Commentary to the *Mishnah, ad. loc.*

[xxxix] b*Yevamot* 88a. Another *stammaitic* voice here formulates the policy "because of the 'chained' woman['s plight] the rabbis ruled leniently." *loc. cit.*

[xl] Deuteronomy 19:15.

[xli] *Shulhan 'Aruch 'Even ha-'Ezer* 17:58.

[xlii] In an oral communication, R. Moshe D. Tendler explained that a whole non-kosher animal is called a *beriyya* [a "creation"], whose very being constitutes a quantity the consumption of which is a Torah violation, even if its bulk is less than the "olive" standard benchmark [b*Makkot* 13a]. However, the animal must be visible to the naked human eye. One-celled animals do not meet this benchmark, and are therefore not legally present as a point of Jewish Law. Similarly, a mixture that possesses one unidentifiable, undetectable part non-kosher contaminant to fifty-nine parts of kosher edibles is both an empirical reality and a legal nullity.

[xliii] See R. Ahron Soloveitchik, *Logic of the Heart, Logic of the Mind: Wisdom and Reflections on Topics of our Times* (Genesis Jerusalem Press, 5751/1991), 45-57, which to his view "undermine(s) *k'dushas haTorah* [the sanctity/authority of Torah]." p. 46. R. Soloveitchik, who also graduated from NYU, either opposes the exposure of rabbinic fallibility in the transmission of the Oral Tradition or he disputes the "humanizing" of the Oral Torah, which would deny the "great rabbi" the right, power, and privilege of intuiting rather than demonstrating his position,.

[xliv] https://thelehrhaus.com/timely-thoughts/the-maculate-conception-introducing-a-symposium-on-rabbi-prof-david-weiss-halivni/. See also Dr. Elana Stein Hain, "a student of Prof. Halivni over the course of twenty years, addressing his pathbreaking theory about the formation of the Babylonian Talmud, the intuitions and methods that he developed around his historical theory, and the abiding love of Torah study that animated his entire project." *Ibid.* This perspective is *not* compatible with John Dewey's militant secularism that came into neighboring JTS via Mordecai Kaplan's naturalistic "modern ideology."

[xlv] b*Berachot* 6oa and elsewhere. See https://www.hamichlol.org.il/%D7%9B%D7%95%D7%97_%D7%93%D7%94%D7%99%D7%AA%D7%A8%D7%
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[xlvi] This recalled rendering is the gist but not my exact words at the time which I no longer remember because I failed to record the comment at that time.

[xlvii] This doctrine, that holiness is generated by obeying God's commandments, first appears at Numbers 15:40, and occurs in the Rabbinic commandment blessing formula, "who has sanctified us by means of the commandments."

[xlviii] See Isaiah 60:21 and Maimonides, *Teshuva* 8:4.