The Haredi Draft Crisis in Israel

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The Haredi Draft Crisis and the October 7th

Gazan Israeli War

The war between Israel and Hamas that began October 7, 2023 had evolved into a war of attrition with Israel being attacked by Hamas terrorists from Gaza, Houthis from Yemen, Hezbollah from Lebanon, militias from Syria and Iraq, and theocratic, Islamic Iran, the instigating patron of Middle Eastern terror aimed at conquering, destroying, and ultimately ending Western civilization.

The Israel Defense Force's [= IDF] urban warfare response to the October 7th pogrom extended hostilities and suffering. IDF's reoccupying Gaza required activating additional reserves, some of whom had served more than 400 days away from their civilian responsibilities.[i] The war bloated Israel's military budget by 65%,[ii] necessitating a 3.3% cut in public sector salaries, recovering 5 NIS billion[iii] while leaving Israeli society frustrated, weary, depressed, and very angry.[iv]

In order to relieve its immediate manpower shortage, the IDF asked to recruit more inductees to address the increased manpower demand, and sought to draft *Haredi* [= "ultra" Orthodox] military age men,[v] with Israel's Supreme Court's concurrence.[vi] In the wake of February 28, 2026's IDF Operation Lion's Roar, when the IDF, in cooperation with the American military's Operation Epic Fury, joined together to end the Iranian nuclear threat, the IDF mobilized 60,000 reservists of its citizen army, straining Israeli strength, endurance, and patience even further.[vii] The elite *Haredi* Great Rabbis protested vehemently,[viii] claiming that *Haredi* men's yeshiva learning protects the Jewish state and its residents from danger.[ix] R. Avrohom Karelitz, better known as the *Hazon Ish*, opposed drafting *both Haredi* men[x] and women.[xi] But instead of referencing a

supporting legal norm, *Hazon Ish* spoke of and wrote about the greatness of young *Haredi* men's yeshiva study, which to his view may not be interrupted. And disagreeing with the Great Rabbis' rulings is not only an insult to those rabbis, but is also seen as an implicit rebuff of the Divine Lawgiver Who is believed to have inspired those Great Rabbis,[xii] a topic to be addressed below. By claiming divine inspiration for themselves alone,[xiii] these Great Sages grant themselves a virtual if not actual infallibility as well as immunity from critical review.[xiv] Consequently, questioning these Great Rabbis' power to intuit divine prescriptions is taken to be disrespectful both to Torah and to God.[xv]

The canonical Oral Torah's military conscription mandate is unambiguously clear:

> "In the case of a *Mitsvah* War [a war of conquest or defense of the Holy Land, including the annihilation of Amaleq or a war in defense of Israel's borders and population],[xvi] *everyone* goes out [to battle, i.e. is subject to conscription], even the groom from his room and his bride from her wedding canopy."[xvii]

According to this Oral Torah norm, when Israel is at war with an invading enemy attacking its population, all Israel is subject to the draft, *Hazon Ish*'s vigorous opposition notwithstanding. Since Hamas called for and acted upon its expressed intention to destroy the Jewish state,[xviii] this declared and waged war fits the canonical definition of a *Mitsvah* War, for which there are *no* exemptions.[xix] *Hazon Ish* glosses the b*Sotah* 44b passage cited above with the unsupported claim that the bride and her Torah-learning groom may be drafted only if the war cannot be won without their participation.[xx] By attaching this particular condition to an unattested but presumed Oral Torah norm, *Hazon Ish* boldly declares that the exemptions *halakhically* approved for political or discretionary wars[xxi] also apply to *Mitsvah* Wars, implicitly justifying the relieving of *Haredi* men of their military obligation.[xxii] When objecting to a *Haredi* female draft, *Hazon Ish* appeals to "purity," "holiness," and the "religious conscience," again without referencing any *Halakhic* norm or explaining why b*Sotah* 44b's compulsory draft norm should not be enforced.[xxiii] In his very next letter,[xxiv] *Hazon Ish* explains that morally pure *Haredi* women may not participate in non-*Haredi* culture, which will not insist upon the gender segregation required by *Haredi* convention but not by any formal Oral Torah norm.[xxv] For optional or political wars, there *are* designated exemptions from military service that are public record,[xxvi] including newlyweds [=who are first establishing families], vineyard planters [= people starting a new business venture, or engaging in other productive, livelihood generating work], and arguably, even a confession of cowardice may qualify a petitioner for an exemption.[xxvii] *Yeshivah* students *may* claim their exemption from military service for an optional war. The *Urim* and *Tummim* oracles must approve initiating pre-emptive discretionary hostilities.[xxviii] Their current and apparently permanent inaccessibility may indicate a *Halakhic* disapproval of all offensive or political wars.[xxix]

The *Haredi* elite selectively references Maimonides,[xxx] who maintains that in addition to the ancient Levites, every adult Jewish male is *entitled* to engage in full-time Torah learning. But this *apologia* ignores Maimonides' vehement disapproval of learning Torah for financial consideration, who declares that

> "anyone who takes upon oneself to be [exclusively] occupied with Torah, and not engage in [income generating] work, and [expecting to] be supported by charity, that person profanes God's name, despises the Torah, extinguishes the light of the Law, brings ruin upon oneself, and removes oneself from the Eternity to come."[xxxi]

While an individual has a *right* to be a full-time learner, there is no *Halakhic* entitlement to financial compensation for that learning. These two *Haredi* positions, [a] avoiding military service when the Jewish homeland and/or its population are under attack, and [b] demanding public funding for full-time Torah learners, conflict with the canonical Oral Torah norms cited above. The claim that all Jewry ought to be full-time, salaried Torah students is plainly incompatible with the norm that outlaws receiving financial compensation for "professional" Torah study,[xxxii] because Torah learning is a sacred enterprise that precludes secularizing instrumentalization.

Second, as noted above, military service exemptions only apply for political or discretionary wars. Since the Hamas Charter calls for the destruction of the Jewish State, the October 7th conflict is a *Mitsvah War*, from which *neither* men *nor* women are exempt from service. Ironically, the seemingly most fervent, or "ultra" Orthodox, deny the legal validity of the explicit, legislated Oral Torah norm requiring universal conscription.[xxxiii] We now turn to Jurisprudence, i.e. the "science" of law, to explain *how* and *why* fervently religious, *Halakhically* committed Jews ignore these explicit *halakhic* norms.

Jurisprudence is now dominated by Legal Realists who maintain that judges *create* law by filtering the legal order's norms with their own enlightened, intellectually privileged intuitions, ideologies, and preferences to the cases brought before them. In contrast, Legal Positivists, also known as Legal Formalists, interpret and apply those norms as they are preserved in the legal order's canonical library, based on the most compelling or reasonable reading of the norm's syntax and semantics. Legal Formalists and Realists are found on both the political Right and Left. In American legal history, the Legal Positivist is the strict constructionist, Constitutional originalist "conservative" who is bound by the statute as it was initially formulated because the Constitution that validates the statute articulates the social contract by which the polity's convening members had consented to be governed. Alternatively, the American Progressive Legal Realist applies his or her intuition informed conscience to advance a social justice agenda which, according to its advocates, is the Law as it ought to be. In the Orthodox Jewish orbit, leading rabbis have adopted a Legal Realism that invokes an amorphous "Tradition,"[xxxiv] or *Mesorah*, which for them is the *Halakhically*

mandated, inherited religious *ethos* that the living community transmits from generation to generation, from parent to child, and from teacher to student.[xxxv] This "Tradition" celebrates the policy-driven, sectarian "otherness" that the living community deems to be sacred. R. Moshe Feinstein candidly concedes that he does not necessarily issue rulings based upon the pure, i.e. positive law, but he adjusts his rulings in order to be situationally appropriate.[xxxvi] Hans Kelsen's Legal Positivist *Pure Theory of Law****[xxxvii]***is anticipated by Maimonides' *Introduction to the Yad Compendium*, which views Torah Law as an ordered, logical hierarchy of legal norms.[xxxviii]

Both Maimonides and Kelsen maintain that a legal order postulates its Basic Norm, the rule that actuates the legal order's validity.[xxxix] The "orthodox" reading of the Oral Torah canon determines what the Torah's norms and precedents oblige, forbid, and when silent, in fact permits. God is posited to be the Author of the Torah law, the Basic Norm[xl] of which is "obey the Commander of the [Oral and Written] Torah[s]." Rabbinic jurists apply what H.L.A. Hart identifies as Rules of Obligation[xli] and Rules of Recognition[xlii] to the Torah's legal order. Rules of Obligation are the norms, or rules of the legal order. In the case of Judaism, these are the *mitsvot* which require or forbid specific acts.[xliii] The Oral Torah's Basic Norm is called "the yoke of Heaven's [=God's] kingdom," which in turn authorizes the canonical hierarchy of norms called the *"Halakhah,"* [xliv] the "walk/way of Jewish life."

In addition to the Oral Torah norm hierarchy, the *Haredi* rabbinic elite erects additional isolating culture barriers in order to preserve the countercultural otherness that it maintains the Oral Torah promotes.[xlv] In contrast to *Haredi innovations* that conflict with Oral Torah legislation, such as insisting upon the yeshiva student exemption from military service because it fears that its communal social cohesion will be compromised, other Orthodox rabbis require military service,[xlvi] even though this service *requires* a change in contemporary Jewish culture,[xlvii] like establishing and mandating IDF service that results in Shabbat violation. The fact that an act was not practiced in the past preserved in Israel's collective memory does not imply that the act must be forbidden in the present.[xlviii] A Modern Orthodox Legal Positivist would likely postulates that Torah Law is initiated by God butis exegeted and applied by the human members of the *Bet Din ha-Gadol*, or *Halakhic* Supreme Court, the norm creating body authorized by the Torah to legislate the norms that carry the legal valence of God's word.[xlix] An Orthodox positivist observes the formal rules and norms of the *Halakhic* order, thereby acquiring holiness, or sanctification.[l]Holiness is *not* generated by performing rites in the present just because they were observed in the past by the community. Canonical Oral Torah Law does *not* authorize a

commandment blessing recitation unless an actual positive, or “to do” Toraitic or Rabbinic command is about to be performed. This principle is inferred from the *Hoshanah Rabbah* “beating the willow” rite*,* which only carries the valence of custom, is not prefaced by a commandment blessing, its antiquity notwithstanding.[li] Unlike *mitsvot,* which are *commanded* norms that generate sanctity, customs are human conventions that do not generate sanctity, rendering the commandment blessing contextually inappropriate. However, the great medieval Legal Realist, R. Jacob b. Meir Tam, permits the commandment blessing to be recited on some occasions when an actual commandment is not being performed. He extends the commandment benediction’s application to acts not required of the person by formal enactment [= *taqannah*].[lii] R. Jacob Tam also extends the minor fast day obligation until dark, as opposed to sunset.[liii] According to the Oral Torah rule of recognition for resolving conflicts between opposing views of equal standing, Torah doubts are resolved stringently, while rabbinic disputes are decided leniently.[liv] Since the minor fast day observance is a rabbinic obligation, and this day’s dusk is a time that is doubtful day and doubtful night, the rabbinic fasting obligation would logically lapse at sunset.[lv] Extending the fast until dark is irregular because rabbinic doubts are usually resolved leniently. R. Jacob Tam justifies extending the fast until nightfall,[lvi]not by appealing to a canonical legal principle or precedent that might serve as a legitimating rule of recognition, but by invoking his own self-validating rule of recognition, “*our* [=his] ancestors' customs are Torah,”[lvii] an idiom that recurs in his Responsa,[lviii]and which should be taken literally, seriously, and not be dismissed as mere hyperbolic flourish. This bold claim, that what Israel *happens* to practice *is* what Israel ought to practice, because this behavior carries the valence of “Torah,” which as noted above, is also “the word of the Lord.”[lix] R. Jacob Tam’s approach is perplexing because it assumes that sacred people, i.e. his own rabbinic elite, do not err. However, Hebrew Scripture teaches that “there is no human so righteous who does [only] good and [who] does not sin,”[lx] “the entire community may be in error,”[lxi] and there is a specific sacrificial offering made when all Israel violates certain Torah prohibitions.[lxii] The Oral Torah also entertains the possibility that all Israel may indeed be at fault.[lxiii]

R. Jacob Tam’s doctrine, that what Jewry actually practices, if accepted by “our” ancestors, is reified into Torah, i.e. the “word of the Lord,” is incompatible with Maimonides’ view, that a custom assumes the valence of a Rabbinic norm only when it is adopted by all Israel because, like the Babylonian Talmud’s rulings,[lxiv] it was accepted as binding by all Israel.[lxv] And such a universally practiced

custom will still not trigger a commandment blessing obligation,[lxvi] at least

according to Maimonides.[lxvii] After Ravina I and R. Ashi, the rabbinic authority to issue apodictic legislation had lapsed,[lxviii] with the validating benchmark being the cogency of the claim [*da'at notah*] regarding the actual meaning of the canonical norm, but not in the charismatic, intuitive insight of any rabbi, however "great" that person may be.[lxix] If unvetted oral traditions, popular usage, and an individual's rabbinic charisma are sufficient to render and reify social conventions into Torah, we have identified two Orthodox iterations, the Maimonidean normative order described above, and the alternate Tosafist Orthodoxy that has been studied by Urbach,[lxx] Ta Shma,[lxxi] Reiner,[lxxii] and Faur, who focused on the Tosafist scholastic use of word play[lxxiii] that justifies a Legal Realism by redefining the words in which the legal norm is cast.[lxxiv]

Maimonides' Orthodoxy is popularly accepted by the living community in principle, is logical, accessibly readable, and understandable when read according to its plain sense semantic meaning. This Orthodoxy maintains that Israel committed itself at Mt. Sinai to uphold the Torah, which is its constitution, and which nullifies any subsequent legislation that contradicts this constitution's provisions.[lxxv] The other Orthodoxy, championed by the Tosafists and seconded by Nahmanides, is binding in practice, it does not subject its leaders to assessment, and its canonized texts are understandable and applicable only by its own rabbinic elite.[lxxvi] This alternative Orthodox elite is so charismatically endowed that it assumes a canonicity sufficient to override, and the case of the *Haredi* draft, ignore problematic Oral Torah norms. In order to empower the communal will to override canonized norms, the charismatic great rabbi becomes a canonized *person.**[lxxvii]*** But when a human elite assumes canonicity, it becomes hierarchically superior to its constituent and now subject population. [lxxviii] Hierarchical communities do not tolerate a reading public because reading empowers readers to think independently of the society's hierarchical leadership. According to Maimonidean Judaism, Jewish political sovereignty is limited, unlike pagan political thought and hierarchical Judaism for which "[t]he Rex's authority is absolute."[lxxix]

R. Joseph B. Soloveitchik's academic historian son, Prof. Haym Soloveitchik, astutely observed that

> "[t]he classic Ashkenazic position for centuries, one which saw the practice of the people as an expression of halakhic truth. It is no exaggeration to say that the Ashkenazic community saw the law as manifesting itself in two

forms: in the canonized written corpus (the Talmud and codes), and in the regnant practices of the people. Custom as a correlative datum of the halakhic system. And, on frequent occasions, the written word was reread in light of tradition. This dual tradition of the intellectual and the mimetic, the law as taught and the law as practiced, which stretched back for centuries, begins to break down in the … closing decades of the nineteenth century."[lxxx]

As a disciplined, emotionally detached academic observer, H. Soloveitchik concedes that the Ashkenazi Orthodox world into which he was born maintained that Torah law appears both [a] in the logical reading and parsing of the written tradition as well as [b] the socially appropriate and communally acceptable prescriptions of the mimetic culture tradition. He also concedes that these two normative orders occasionally conflict.

While Prof. H. Soloveitchik concedes that these two traditions occasionally conflict, his father, modern Orthodoxy's elite Great Rabbi, R. Joseph B. Soloveitchik, also adopts a "dual Orthodoxy" doctrine,[lxxxi] presenting the issue much more lucidly than his *Haredi* counterparts, but does not address the conflict directly. Like the *Haredi* leaders who claim but do not demonstrate that or how their Great Rabbis possess *ru'ah ha-Qodesh,* usually rendered "holy spirit,"[lxxxii] R. Soloveitchik exegetes the passage "Moses commanded us [=the people who constitute "Israel"] a Torah [= Law], an inheritance [=possession, Hebrew "*morashah"*] of the congregation of Jacob,"[lxxxiii] by citing an *aggadic midrash* that playfully emends "*morashah"* to *me'orasah,"**[lxxxiv]*the *Halakhic* engagement period during which a couple is legally married, but physical intimacy remains forbidden until after *nesu'in*, which is the concluding marital rite.[lxxxv] R. Soloveitchik then suggests that while most rabbis are only "engaged" to Torah, the very greatest of rabbis, like R. Yitzhak Ze'ev[lxxxvi] and R. Hayyim Soloveitchik[lxxxvii] of Brisk, possessed intimate and therefore precisely accurate understandings of Torah. Their intimacy with Torah both affirms and informs their Torah mastery, protecting them from error and immunizing them from assessment by lower grade sages who are not endowed with the charismatic greatness that nourishes the requisite intimacy that insures inerrancy.[lxxxviii] R. Soloveitchik's bold rendering of "[r]emember the days of yore, consider the years of many generations; ask your father, and he will inform you, your elders, and they will tell you,"[lxxxix] refers to his second type of Tradition that does not appear among the Oral Torah's validating rules of recognition.[xc] This passage's plain sense asserts that a Jewish child imbibes Israel's foundation narrative from one's father and *grand*father.[xci] R. Soloveitchik maintains that the "elders" in this context not only refers to the canonical library's Sages,[xcii] but includes post-R. Ashi latter-day Great Rabbis as well. For R. Soloveitchik, the first type of Tradition, which we will call "Tradition I,"[xciii] was the single sense of Tradition initially and duly defined by Maimonides.[xciv] But according to Maimonides, those [Oral] Torah laws not memorialized in the Pentateuch which were given to

Moses at Sinai are the *only T*orah norms that are not subject to exegetic dispute.[xcv] R. Soloveitchik boldly and creatively[xcvi] equates the inherited Orthodox mimetic culture with the Torah laws said to be transmitted to Moses at Sinai that do not appear in the Pentateuch, contending that *neither* set of laws are subject to dispute. We name this mimetic culture "Tradition II." The urbane Orthodox lawyer, R. Avrohom Gordimer, regards this second type of "tradition" to be the essential "uncodified part of Torah"[xcvii] that while cognitively accessible only to the rabbinic elite, it obliges all who profess an Orthodox identity. Since [a] the Orthodox rabbinic elite are virtually if not actually infallible, and [b] its patrician rabbis may not be subject to plebian, rabbinic review, it is *gauche* at best and impudently heretical at worse to expose this inconsistently, because the exposure of these facts will expose these rabbis to criticism. The Orthodox Legal Positivist focuses on the Torah's memorialized legal norms, while Orthodox Legal Realists in general and *Haredi* Great Rabbis in particular will ignore positive Oral Torah norms if their implementation might undermine communal coherence, or stability.

As noted above, according to both Written[xcviii] and Oral Torah[xcix] accounts,

> human sanctity is generated solely and only by complying with the Torah's norms. However, Nahmanides claims that one may also become holy by doing more than the Law requires, by avoiding impurity, and by "not being a law-abiding scoundrel."[c] How Nahmanides "knows" or intuits that God expects this particular set of unlegislated behavior of Jewry is unaddressed. And R. Joseph Soloveitchik's loyal and learned disciple, R. Menachem Genack, reports that R. Soloveitchik placed himself in the Nahmanidean "tradition"[ci] according to which a Great Rabbi's charismatic intuition is indeed a validating normative source. But the Oral Torah canon does not recognize unvetted intuitions or unaccountable charisma to be sources of normative law.[cii] Furthermore, Nahmanides makes the remarkable claim, also unattested in the Written and Oral Torah libraries, that the remains of righteous Jews do not defile[ciii] because these persons died by the kiss of God,[civ] and not as punishment for an original sin or for succumbing to the evil impulse.[cv] This doctrine, that the remains of righteous Jews do not defile, did find its way into the Zohar.[cvi] Ever exquisitely consistent, R. Soloveitchik does not consider Maimonides to be an *Halakhic M*an[cvii] because Maimonides opposed including unvetted, intrusive poetry [*piyyut*] into the canonical liturgy.[cviii] Since Maimonides regards *Halakhah* to be a systematically pure, positive law, he would not likely recognize R. Soloveitchik's second, mimetic folk Tradition II Orthodoxy as carrying significant normative valence in his jurisprudence.[cix]

We are now in a position to explain both how and why *Haredi* Orthodoxy opposes its adherents' military service, while ignoring the Oral Torah norm requiring that service. *Hazon Ish*'s not only disapproves of pressuring full-time yeshiva students into mandatory military service, he also demands an unquestioning deference to the *Haredi* rabbinic elite's virtual infallibility regarding practice, belief, and social policy.[cx] This Orthodoxy also requires that its contemporary elite rabbis be regarded as angelic by the faithful, further immunizing themselves from peer review by those Orthodox rabbis who are not charismatically endowed.[cxi] Because those rabbis lack the requisite religious charisma, they are not really peers who are capable of assessment. While R. Soloveitchik maintains that one may argue with the canonical texts of Tradition I, he insists, by affirmation but not by demonstration, that Tradition II does not tolerate dissent, disagreement, or dispute. Jewry is obliged to defer to the leading Sages of the age in social policy matters as well as ritual *Halakhah*.[cxii] Like R. Jacob Tam and *Hazon Ish*, R. Soloveitchik is also a Legal Realist for whom the Law is not limited to the canonical norm's dry letter; it is the charismatically endowed, exceptional rabbinic *person* who, with God's guidance, is empowered to intuit a suitable synthesis of official religion Oral Torah norms and socially accepted, folk religion expectations.

In their zeal to preserve the unchanging "traditions" of mimetic culture's collective memory, Orthodox Legal Realists can be boldly innovative. R. Soloveitchik's most outstanding living disciple, R. Herschel Schachter denounces women prayer groups for violating the putative principle that he calls "*ziyyuf ha-Torah*," the counterfeiting, forging, or distorting of Torah.[cxiii] While this idiom is unattested in the Oral Torah canon, it does appear in R. Moses Isserles' writing as "*mezayyefei ha-Torot yatsriah* [sic],[cxiv] which may be rendered "the [Written and] Oral Torahs' falsifiers will scream [in protest]." R. Isserles does not identify the *persons* to whom he refers or to what falsification he is addressing. This idiom recurs in R. Ahron Kotler's lectures collected by his students, where the idiom serves a polemical function, to identify and condemn those Orthodox rabbinic "accommodators" or *persons* who cooperate with non-Orthodox rabbis, whom R. Kotler calls "*zayyafanim*,"[cxv] or habitual falsifiers of Torah, and whose Orthodox *bona fides* he forcefully rejects. The Orthodox rabbis who interact professionally with non-Orthodox rabbis argue that their conduct is a matter of policy, which allows for discretion and disagreement. R. Kotler contends that only a Great Sage, like himself, is authorized to interpret Torah normativity precisely, accurately, and with presumed or assumed infallibility. Justifying opinions solely on the basis of a logical reading of the canonical text, i.e. any act that is not formally forbidden is in fact implicitly permitted,[cxvi] is to his view a misrepresentation of Torah. The classical idiom, "*megalleh panim ba-Torah shel-lo ke-Halakhah*," or one "who interprets the Torah contrary to its true intent,"[cxvii] is appropriately not

> referenced. The issue is *not* the meaning of the positive Oral Torah norm, but the divinely guided charismatic sage's ability and authority to intuit what God, through the medium of the Oral Torah, really intends and truly requires. Accordingly, Jewish propriety may not be determined by the legal norms memorialized in accessible compendia alone. For both Rabbis Kotler and Soloveitchik, this propriety is revealed in and by the communally accepted and rabbinically approved mores, habits, and expectations. When expressed by Rabbis Isserles and Kotler, the word "*mezayyef*" refers to *persons* who falsify Torah. R. Schachter appropriates the idiom to formulate an abstract noun, "*ziyyuf*," to refer to a *principle* that expresses his own unwavering disapproval of the women's prayer group *institution*, which violates the socially conditioned expectations of Tradition II even though it may not violate any identifiable norm of Tradition I.

R. Schachter presents a brilliant rhetorical strategy that reifies social policy into what he is convinced ought to be accepted as a legal norm. In order to realize this end, he invents a novel rule of recognition that empowers its implementor to veto dissenting voices by invoking his own charismatic authority. However, according to Tradition I Orthodoxy, as noted above, no body and nobody has the legal authority to promulgate apodictic Oral Torah norms after Ravina I and Rav Ashi's *Bet Din ha-Gadol*. Simply put, Tradition I Orthodoxy is unaware of this suggested norm.

Since IDF military service inevitably removes the young *Haredi* man or woman from *Haredi* authority, supervision, and most critically, social control, the *Haredi* elite must formulate a legitimating *apologia* to keep its young adults in its community. The innocent *Haredi* adherent may not be permitted to find a place outside of *Haredi* social control. The IDF is a military organization, not a religious institution. It is led by generals whose mission it is to defend the polity and people of Israel, but not to test God's patience by relying on miracles.[cxviii] The military's mission is to provide protective, deterrent lethality, not reverential piety or religious revival.[cxix] The *Haredi* young man and woman will find military life challenging, if not hostile, to the social reality in which she or he are raised.

Haredi Orthodoxy presents itself as a religion of law, and attaches the force of *Halakhic* norm to its policies. Its legitimating authority is located in the personal charisma of the ruling's author.[cxx] R. Jacob Tam's claim that "the customs of *our* [=his] ancestors are [also] To[AY1] rah,"[cxxi] invests those customs with the status of the "word of the Lord."[cxxii] While this doctrine is unattested in the canonical library, it appears in what is claimed to be the divinely inspired intuition possessed by post-Talmudic charismatic Great Rabbis, initially and most prominently by R. Jacob Tam. Even though the compulsory conscription norm is memorialized at m*Sotah* 44b, it must be disregarded, superseded, and essentially repealed because the divinely inspired Great Rabbis have, with the authority generated by their charisma, so declared.[cxxiii]

For the *Haredi* world and those modern Orthodox who view the *Haredi* approach to be the Jewish religious ideal,[cxxiv] authentic authority is vested in the *gavra,* the charismatic *person* who is presumedly inspired and guided by God, providentially protected from error, and thus immune to review. However, other Orthodox voices find normative Jewish teaching in the canon's *peshat*, the plain sense *heftsa*, or object, of the canonized Written and Oral Torah readable libraries. This Orthodoxy allows its adherents to read, think, and apply Torah if they are able to do so.[AY2]

This classical understanding of Torah, maintains that the Law is no longer in heaven, and dismisses *ad hoc* oracular legislation as invalid.[cxxv] What God had to say [or command] has been memorialized in the canonical library, and concurring with R. Soloveitchik's Tradition I's rule of recognition, that there are no valid secret or oracular laws in the *Halakhah* and all claims to the contrary are invalid. Authentic Jewish normativity is discovered by reading, explicating, and applying canonical Torah norms to everyday life.

According to R. Jacob Tam's Orthodoxy, the Great Sage possesses the charisma that empowers him to read, discover, and decode God's will, without being subject to account for the accuracy or consequences of his rulings. By disregarding the troublesome norm requiring universal military conscription for a defensive war, this Orthodoxy applies Legal Realism to reify the charismatics' normative intuition into Torah law. Alternatively, Maimonides' Orthodoxy, grounded in Legal Positivism, locates legal "truth" in the Covenantal canon's readable, public, human language words. Therefore, if one adopts the Tradition I Orthodoxy encoded in the sacred library, one commits to the legal norm memorialized in the canon that requires universal` conscription. But according to R. Jacob Tam's Legal Realism, Torah truth is located in the living, sacred community, vetted and approved by the Great Sages, who is guided by God to issue legally and theologically correct rulings, even if those rulings conflict with the textually memorialized canonical norm.

By placing the locus of Jewish normative value in the object of the readable, sacred text, Tradition I Orthodoxy posits an understandable Torah, a capable laity, and a leadership that empowers its population to *read* and to *discover* Torah *peshat*, or plain sense meaning.[cxxvi] Institutional Orthodoxy affirms Tradition I Maimonidean legal theory in principle but applies Legal Realism in practice in order to respond immediately and effectively to disruptive social challenges. R. Jacob Tam would likely regard Maimonides' approach to be incomplete, because it denies the post-Talmudic Legal Realist the authority to create necessary law.[cxxvii] R. Jacob Tam, R. Joseph Soloveitchik, and *Hazon Ish* all agree that mimetic Orthodoxy, with its laws, values, and attitudes, makes valid, mandatory demands of Jewry.[cxxviii] Maimonides, the formulator of Tradition I and R. Soloveitchik's first type of Tradition, focuses on legal norms, not attitudes, principles, or values. And R. Soloveichik very correctly did not

associate Tradition II mimetic Orthodoxy, his second type of Tradition, with Maimonides, who would view R. Jacob Tam's Orthodoxy to be in error.[cxxix]

In sum,

1. Because the State of Israel has been at war since October 7, 2023, and its armed forces consists of a citizen's army that constantly musters its reserves to meet the needs of the moment, there is an outcry that the *Haredi* world share the military service burden.

2. At b*Sotah* 44b, the *canonical* Tradition *obliges* both women and men to perform military service when Israel is under attack. *Haredi* Judaism ignores this Oral Torah mandate, appealing instead to its subculture's ideology to justify its position.

3. In Judaism, "Tradition" appears in two forms, Tradition I, the transfer of the Written and Oral Torah library object [*heftsa*] from one generation's *Bet Din ha-Gadol* to the next, and Tradition II, the inherited mimetic culture Tradition that is lived and transmitted by the community of the committed from one generation to the next, guided by a charismatic rabbinic elite that proclaims the ability to "read between the Torah's lines."

4. Maimonides regards Tradition I to be the necessary and sufficient boundary marker of normative Jewish propriety, viewing Tradition II as a fact to be described, but not as an "ought" that commands compliance.

5. The medieval R. Jacob Tam and Nahmanides and the 20th Century's R. Ahron Kotler and R. Joseph B. Soloveitchik all assign a normative valence to Tradition II, that valence being determined by the Great Sage's intuition. By assigning a normative valence to Tradition II conventions and regulations, *Haredi* religion and its more urbane admirers believe that it is better equipped to respond to immediate challenges because its rabbinic elite is empowered to intuitively read the mind of God.
6. The institutional Orthodox community *professes* and *confesses* commitment to the normative order of Tradition I but lives its life according the popular religion sensibilities of Tradition II. Tradition I locates authority in the saved *Book*; Tradition II finds this authority inf the charisma of the sacred person.

[i]https://www.jta.org/2025/05/05/default/israel-announces-plan-to-conquer-and-occupy-gaza-in-a-shift-for-warsgoals

[ii]https://en.globes.co.il/en/.

[iii]https://en.globes.co.il/en/article-treasury-plans-pay-cuts-for-doctors-teachers-and-civil-servants-1001502991.

[iv]https://pmc.ncbi.nlm.nih.gov/articles/PMC10213554/.

[v]http://timesofisrael.com/ultra-orthodox-incensed-as-idf-chief-orders-boost-in-communitys-conscription/.

[vi]http://timesofisrael.com/ultra-orthodox-incensed-as-idf-chief-orders-boost-in-communitys-conscriwwption/ and "[t]he court ruled that a government decision from June 2023 instructing the army not to begin drafting eligible Haredi men — issued after the law allowing for blanket military service exemptions expired — was illegal, and that the government must therefore actively work to conscript ultra-Orthodox recruits to the IDF." https://www.timesofisrael.com/in-historic-ruling-high-court-says-government-must-begin-drafting-haredi-men-into-idf/#:~:text=The%20court%20ruled%20that%20a,Orthodox%20recruits%20to%20the%20IDF . The Haredi parties hope to protecting the yeshiva learning exemption by enacting a Basic Law in order to raise the exemption policy to a Constitutionally protected institution. See https://www.timesofisrael.com/liveblog_entry/haredi-parties-seek-to-enshrine-torah-study-in-basic-law-to-protect-draft-exemptions/.

[vii] YNET reports that "The IDF Chief of Staff warned yesterday [3/25/2026] in a cabinet discussion that the IDF will collapse from within in light of the fact that the government has not passed a law to regulate ultra-Orthodox conscription, has not amended the reserve duty law and has not acted to extend mandatory service. 'The reserves won't hold up, I'm raising 10 red flags,' Zamir added, in remarks first reported by Channel 13 News." (Ynet) https://www.ynetnews.com/category/3089 .

[viii] "[I]n changing its longstanding draft policy, the Israeli government is engaging in religious persecution and threatening the continued existence of our people as the nation of Torah, and putting the entire nation in danger." https://www.shtetl.org/article/u-s-haredi-leadership-consensus-lamenting-israel-yeshiva-draft. Former Sefardi Chief Rabbi Yitzhak Yosef threatened

“If the government arrests yeshiva students for dodging the draft, then the ultra-Orthodox community will be forced to leave Israel.” https://www.timesofisrael.com/ex-chief-rabbi-if-haredi-draft-dodgers-arrested-ultra-orthodox-will-leave-israel/. Natan Slifkin reports that "[l]eading figures of the major chassidic sects - Gur, Tzanz, Vizhnitz, Belz - along with a major Sephardic authority and R. Machpud have signed an announcement - a *halachic* ruling! - that is is forbidden for *any* religious Jew to enlist in the IDF, period. It is specifically addressed to those who are *not* involved in Torah study. While there is no letter from Litvishe rabbinic leaders, they have made it clear that their position is the same.” https://www.rationalistjudaism.com/p/the-charedim-officially-secede.

[ix] https://www.timesofisrael.com/ultra-orthodox-parties-slam-dictatorial-high-court-for-ruling-haredim-must-enlist/.

[x]*Hazon Ish, Orah Hayyim,* 6:3.

[xi] “It is known that there exists, against the prevalent [cultural] current, modest young women under the ethos of their parents, who are a holy seed, glaring as the sky. Their fathers are in [constant] enjoyment from the splendor of purity of their offspring, who have neither taste nor flavor of sin. The damage to their daughters in forcing them [to join the army], in any possible way, would, in the present situation, cause unparalleled heartbreak for both the fathers and daughters, on the one hand, and truly endanger the entire path of purity and sanctity of our precious students who remain for us as a remnant. *The feeling of my soul rules* that it is a matter of ‘yehareg ve’al ya’avor’ (that one must die rather than transgress), and maybe this is also true from the halakhic point of view.” Avrohom Karelitz, *Collected Letters* [Hebrew],)B’nei B’raq: 1948) 1:112 [my italics], translation by Benjamin Brown. N.B. that for *Hazon Ish*, the “feeling of his soul” is attributed to God’s presumed gift of charisma. The Written Torah argues otherwise. Deuteronomy opens [1:1] with demonstrative pronoun, “*these* are the words,” implying that Deuteronomy’s Mosaic *soliloquy* is no more *and no less* than what the text reports. Deut. 4:2 outlaws both adding to and subtracting from the Law, Deut. 13:1-6 proclaims that prophets and dreamers, i.e. charismatics who profess the ability to read God’s mind, are judged by “these [same exoteric, readable] words,” which “are *not* in Heaven” [Deut. 30:12]. To mystify the Written Law is to mis define it.

[xii] Benjamin Brown, “Lightning Responsa: Toward a *Halakhic Realism* [Hebrew],” *Dine Israel* 35-36 (5782), pp. 127-128. Brown’s keenly insightful observation that the implicit

authority assumed by the laconic responses to the “lightning queries” addressed to carriers of *Da’at Torah* charisma, is inconsistent with classical Rabbinic legal doctrine. As a critical scholar in search of “objective” truth, Brown applies ideologically neutral analytic tools and methods when explicating his data. By calling attention to the differencs between *Da’at Torah* “orthodoxy” and the Orthodox religion encoded in the canonical Rabbinic library, Brown is also a participant observer in the struggle to define Orthodoxy’s normative parameters. At “*Orthodox Halakhah and Custom: The Decisions of the Hazon Ish as a Case Study”* (Hebrew), in *Orthodox Judaism: New Perspectives,* ed., (Hebrew) Yosef Salmon, Aviezer Ravitsky, and Adam Fergizer (Jerusalem: Magnes, 2006), p. 221, B. Brown summarizes his findings regarding *Hazon Ish*’s position, that [a] the Oral Law sages define Jewish Orthodoxy, but [b] only the great rabbis of the generation have a right to express a legitimate opinion. This finding anticipates our conclusion, that we are dealing with two distinct iterations of Jewish Orthodoxy.

[xiii] Benjamin Brown, “Jewish Political Theology: The Doctrine of ‘Da‘at Torah’ as a Case Study,” *The Harvard Theological Review,* 107:3 (July 2014) , p. 282, “[I]n the view of those who attribute to Da'at Torah a halakhic status, such as the *Hazon Ish* and the Brisker Rov, there is no feasible way to criticize Da'at Torah, since it exists on a plane completely above that of the test of outcomes: the Great Torah Sages rule on the proper course of action, and believers must follow their guidance, without any expectation of a reward in this world.” See Natan Slifkin, ”R. Elefant, in his presentation [at the Agudah Yerushalayim Yarchei Kallah], claimed that nobody, *including himself*, is actually allowed to have an opinion on this [drafting yeshiva students into the IDF]. Only the Charedi Gedolim are allowed to have opinions, because it’s ‘the ultimate *Klal Yisroel* issue… it’s about the clash of right and wrong and good and evil’ (which, ironically, I think we all agree on), and only the Charedi Gedolim have pure Daas Torah views.”] https://www.rationalistjudaism.com/p/the-elefant-in-the-room.

[xiv] Brown, *Ibid.* and Bernard Weinberger, The Role of the Gedolim," *Supra., Jewish Observer* (October 1963), p. 6. This idiom is properly rendered “spirit of holiness.”

[xv] “The [*Daas* Torah] doctrine posited a special kind of divine inspiration with which great Torah scholars were endowed, which enabled them to offer the best solutions for political and social problems of the day,” in Gershon Bacon, *Daas Toyre, https://encyclopedia.yivo.org/article/1427* . See also Yitzhak Blau, “’*Daas Torah’* Revisited: Contemporary Discourse about the [Orthodox] Rabbinate,” *Tradition* 48:2-3 (2015), pp. 8-28. See also Benjamin Brown, “Jewish Political Theology,” p. 285, “the fact that the ‘Great Sage of the Generation’ was expected to employ Daat Torah on a daily basis and not just once in several decades. As a result, the doctrine was expected to withstand the test of outcomes. Although it would still be possible to defend Daat Torah by means of a dogma of infallibility, it was clearly more palatable to defend it through more nuanced, even banal means, such as those of Rabbi Dessler: we, who are so

‘small,’ simply cannot comprehend the thought processes of the Great Torah Sages; even more so, we cannot [=may not] judge them.”

[xvi] See Maimonides, Laws of Kings 5:1.

[xvii] b*Sotah* 44b, *Sifri* Deuteronomy 198:9, and Maimonides, *Supra.*, 6:4 [my italics]. At *Hazon Ish, Even ha-‘Ezer, Hilkhot Ishut*, 27:20 adopts this position.

[xviii] Hamas Charter Article XIII, http://www.acpr.org.il/resources/hamascharter.html.

[xix] *Hazon Ish* only intended to exempt full-time Torah students, not every individual *Haredi* person. Benjamin Brown, “*The Chazon Ish —The Decisor, the Believer, and the Leader of the Charedi Revolution*” (New York and Jerusalem: Magnes and Yeshiva University Press,2011), p. 304.

[xx]*Hazon Ish, Orah Hayyim 112/114***,** 6:3, conveniently at https://www.theyeshivaworld.com/coffeeroom/topic/chazon-ish-ztl-zya-and-military-draft-exemptions.

[xxi] Deuteronomy 20:5-7 and 21:10 as understood by *Sifri* to Deuteronomy 21:10, *pisqa* 211.

[xxii] which requires that “*everyone* goes out (to battle).”

[xxiii]*Collected Letters* 1:111, p. 123.

[xxiv]*Ibid.* 1:112, p. 124.

[xxv] See https://etzion.org.il/en/halakha/studies-halakha/philosophy-halakha/mechitza. For relevant sources on this topic, see https://joshyuter.com/wp-content/uploads/2011/08/Preserving-Gender-Roles-1-Mechitzah11.pdf.

[xxvi] Deuteronomy 20:5-7.

[xxvii] Deuteronomy 20:8.

[xxviii] b*Yoma* 73b.

[xxix] In Alfred Cohen, "On Yeshiva Men Serving in the Army," *Journal of Halachah and Contemporary Society* 23 (Spring 1992), conveniently at https://www.daat.ac.il/daat/english/halacha/cohen_1.htm, takes pains to avoid addressing the conflict between the pure law that requires wartime military service and *Haredi* policy, that opposes *Haredi* Jews living under non-*Haredi* authority. This *apologia* is not the only Orthodox opinion. See Chaim Jachter, https://www.koltorah.org/halachah/should-yeshivah-students-serve-in-the-israeli-army-part-two-by-rabbi-chaim-jachter: "There does seem to be a strong Halachic basis for claiming that there is a Mitzvah to serve in the IDF, as it defends the Jewish people. Nonetheless, many rabbis argue that service in the Israel Defense Forces is a Mitzvah that others, who do not study full-time, are able to perform. However, there are prominent rabbis, such as Rav Aharon Lichtenstein, who view army service for Yeshivah students as a moral imperative." See also https://etzion.org.il/en/halakha/studies-halakha/laws-state-and-society/should-yeshivah-students-serve-israeli-army. Jachter locates legal authority in both the canonical text and, when the canon's legal conclusion is indeterminate, turns to the charisma of authority person to reach his conclusion. At *Jerusalem Post,* June 28, 2024, *Israel ha-Yom*, June 30, 2024, and

https://davidmweinberg.com/2024/06/28/haredi-draft-ideology-debunked/, David M, Weinberg presents a passionate polemic based on fairness and exposing self-serving *Haredi* hyperbole. Our study examines the contours of an Orthodox Judaism that ignores its defining legal system that it proclaims to be God-given and immutable.

[xxx]*Sabbatical and Jubilee Years* 13:13.

[xxxi]*Talmud Torah* 3:10.

[xxxii] m*Avot* 4:6.

[xxxiii]Deuteronomy 17:11 as understood by *Sifre Shofetim 154:11, s.v. 'al.*

[xxxiv] The first Rabbi Joseph B. Soloveitchik (1820-1892) disallowed the renewal of the blue *tallit* tassel on the *tallit* "despite the presence of convincing evidence

otherwise, rabbinic authority has no right to either introduce or reinstate practices without a tradition that attests to its legitimacy. Thousands of years ago there was a tradition that identified the dye but that was lost long ago and we are powerless to restore it, regardless of the evidence. Perhaps it will be revealed to us in the future, but for now we cannot resurrect this tradition." Chaim Burman, "The invocation of *mesorah* in contemporary Orthodox Jewish legal discourse: polysemic and reified usages, "*Journal of Modern Jewish Studies* 20:1 (2021) p. 24.

[xxxv] Joseph B. Soloveitchik, "*Two Types of Tradition*" [Hebrew], in *Shi'urim le-Zecher Abba Mori* [Jerusalem: Aqiva Yosef, 1983), p. 226.

[xxxvi] *Introduction to Iggerot Moshe, Orah Hayyim* vol. I.

[xxxvii] Hans Kelsen, *Pure Theory of* Law, trans. Max Knight (Berkeley, Los Angeles, and London, University of California, 1967), p. 1, the "pure theory of law…only describes the law and attempts to eliminate from the object of this description everything that is not strictly law. Its aim is to free the science [=in the sense of systematic study] of law from other elements [like theology, sociology, or politics]."

[xxxviii] See Alan J. Yuter, "Positivist Rhetoric and its Functions Haredi Orthodoxy," *Jewish Political Studies* 8:1 & 2 (Spring 1996).

[xxxix] Kelsen, *Supra.*, p. 194.

[xl]*Ibid.,* pp. 198-214, and https://plato.stanford.edu,/entries/lawphil-theory/.

[xli] H.L.A. Hart, *The Concept of Law* (Oxford: Clarendon, 1979), p. 73.

[xlii] The Rule of Recognition provides "the criteria by which the other norms of the system are assessed." *Ibid.,* p. 103. These are the rules that validate the norms, or Rules of Obligation, of a legal order.

[xliii] Kelsen, *Supra.*, p. 5.

[xliv] https://www.arachim.org/ArticleDetail.asp?ArticleID=13634]/

[xlv] According to this view, the holiness referenced in Leviticus 19:2 is achieved by being "other," as evidenced by the *Halakhic* Midrash S*afra Qedoshim Parashah* 1 1:1 and Rashi to Leviticus 19:2.

[xlvi] Aharon Lichtensstein, "The Ideology of Hesder," at https://www.haretzion.org/about-us/ideology-of-hesder.

[xlvii]*Bet Yosef to Yoreh De'ah* 1:1, where *Maran* Qaro contends that absent an explicit, restrictive norm, one may not infer that a restriction is attended. The fact that in Ashkenazi Judaism women did not perform ritual slaughter does not imply that women are in fact forbidden by statutory norm to perform that rite.

[xlviii] See Gm*'Eduyyot* 2:2 for the *Halakhic* rule of recognition that requires evidence of a duly promulgated norm is required in order to argue that a prohibition is in fact present. The fact that an act was not done does not mean the act is prohibited.

[xlix] Deuteronomy 17:8-12 and Isaiah 2:3. The designated, legislative assembly is sanctioned by the Written Torah to legislate what became known as "Oral Torah," and is what Isaiah calls a "Torah" that originates from Zion—and *not* Sinai—is also the "word of the Lord."

[l] See Numbers 15:40. The rabbinic commandment blessing formula praises the Lord "Who has sanctified Israel by means of the commandments." A *halakhic* norm's features are determined by the legislation by which it was enacted as legal commandment norm, but *not* by its antiquity.

[li]*bSukkah* 44a.

[lii] Tosafot to b*Berachot* 14a s.v. *yamim* and Tosafot to b'*Arachin* 10a, s.v. *yod het. See also* R. Jacob Tam's gloss to *bRosh ha-Shanah 43a,* s.v. *ha Rabbi Yehudah,* where the license for permit women to say the commandment blessing for rites that men are obliged to perform but women are not. R. Jacob Tam regards faulty blessings less severely than the plain sense of the Oral Torah as memorialized at Maimonides, *Hilkhot Berachot* 1:15 and *Shulhan Aruch Orah Hayyim* 215:4. R. Jacob Tam argues that the exegesis of "not taking the Lord's name in vain" should be read as a rhetorical flourish and not be taken literally. As Faur, *Supra.,* has shown, this argument is a powerful tool for jurists who claim the authority to legislate, and declare that the statute's plain sense semantic meaning need not be taken literally.

[liii] Tosafot to b*Menahot* 20b, s.v. *nifsal.*

[liv] b*'Avodah Zarah* 7a.

[lv] b*Ta'anit* 12a.

[lvi]*Tosafot* to b*Menahot* 20b, s.v. *nifsal mi-sheqiyyyat ha-hammah.*

[lvii] *Sefer ha-Yashar 48:6. Tosafot* to b*Menahot* 20b, s.v. *nifsal mi-sheqiyyat ha-hammah*. See Ta Shma**,** *Supra.*, p. 21. Like Brown, Ta Shma is not just a disinterested, academic scholar. By contrasting R. Jacob Tam's Judaism with the "orthodox" Judaism encoded in the Oral Torah library, both Brown and Ta Shma call attention to the fact that the canon they *describe* is incompatible with the Judaism R. Jacob Tam *prescribes*. For a magisterial explication of R. Jacob Tam's immense legacy, see Avraham Reiner, *Rabbebu Tam: Interpretation, Halakhah, Controversy* [Hebrew] (Ramat Gan: Bar Ilan, 2021). Reiner is Ta Shma's doctoral student and continues his mentor's project, of understanding the *Halakhah* in its historical contexts.

[lviii]*Tosafot* to b*Menahot* 20b, s.v. *nifsal mi-sheqiyyat ha-hammah.*

[lix] Isaiah 2:3.

[lx] Ecclesiastes 7:20.

[lxi] Numbers 15:26.

[lxii] Leviticus 4:13.

[lxiii] m*Horayyot* 1:1-3.

[lxiv] See b*Sanhedrin 33a, where* it is reported that an act of Rabbinic legislation does not shed its force if the circumstances that motivated the legislation are no longer present. An act of legislation by a *Bet Din ha*-Gadol, or *Halakhic supreme court.* requires a legislative act of repeal by a Supreme Court that is greater in wisdom and number than the court that issued the legislative act in the first place.

[lxv] Introduction to the *Yad* compendium. This doctrine maintains that a custom that is universally accepted by all Israel has the force of din, or settled law. See R. Yitshaq ibn Jiyyat, *Hilkhot Pesahim* 327, *Shulhan 'Arukh, Orah Hayyim, Megillah u-Furim* 690:7, and R. David Ha-Levi, '*Aseh Lekha Rav* 3:21.

[lxvi] See *bTa'anit* 28b for the Oral Torah rule of not reciting a commandment blessing for the Hallel [Psalms 113—118] prayers on the New Moon semi-holiday. There are 18 days in the Holy Land [and 21 days in the Diaspora] on which one is *obliged* to *complete* the Hallel. By deleting two section passages of Hallel on the New Moon, [a] one is not saying "'*the*' Hallel," because [b] there is no claim being made that this practice is a commandment. At b*Sukkah* 44b, the Amora Abayyee reports that R. Isaac [4th-5th generation Babylonian *Tanna*] observed the beating of the willow rite of the 7th day of the Sukkot festival *without* saying the commandment blessing. The Sukkot willow rite is a "practice" or custom, and not a positive commandment, which does not occasion a commandment blessing because the observance does not generate sanctity. *See* discussion, see https://etzion.org.il/he/halakha/orach-chaim/prayer-and-blessings/berakha-al-minhagim-2.

[lxvii] At *Hilkhot Megillah Ve-Hanukkah* 3:7, Maimonides synthesizes the two *Gemariyyot*: "In Places Where The Festivals Are Celebrated For Two Days, Hallel Is Recited On 21 Days: On The Nine Days Of Sukkot, The Eight Days Of Chanukah, The First Two Days Of Pesach, And The Two Days Of Shavuot. In Contrast, The Recitation Of Hallel On Rosh Chodesh Is A Custom And Not A Mitzvah. It Is Observed Only Communally. To Emphasize That It Is A Custom, Passages Are Skipped When It Is Read. A Blessing Should Not Be Recited Over This Reading, Since A Blessing Is Not Recited Over A Custom. A Person Praying Alone Should Not Recite The Hallel At All On Rosh Chodesh. If, However, He Began Its Recitation, He Should Complete It, Skipping The Passages The Community Would Skip As He Reads It. Similarly, On The Other Days Of Pesach, The Hallel Is Read While Skipping Passages"[sic]. This translation is found conveniently, at https://www.chabad.org/library/article_cdo/aid/952008/jewish/Megillah-vChanukah-Chapter-3.htm#v7. The capital letters are original to the essay.

[lxviii] b*Bava Metsi'a* 86a and R. David Halivni, "Introduction to Bava Batra," '*Introduction to "Sources and Traditions*: *Studies in the Formation of the Talmud* "[Hebrew], (Jerusalem: Magnes Press, 2009), pp. 2-4, who suggests that the

idiom not be taken literally, but is hyperbolic praise of Ravina I and Rav Ashi by their Amoraic students. The *Amora'im* died out one hundred years before the anonymous [*Setamma'itic*] Talmud emerged.

[lxix] Maimonides, Introduction to the *Yad* Compendium.

[lxx] E. E. Urbach, *The Tosafists*: *Their History, Writings, and Methods* [Hebrew] (Jerusalem: Mossad Bialik, 1968), pp. 80-91.

[lxxi] Ta Shma, *Early Franco-German Ritual and Custom* [Hebrew] (Jerusalem: Magnes, 1994), p. 28. This position, that apodictic *Daat Torah* declarations are binding Jewish law, is deemed by Brown, *Supra.*, pp. 257-259 to be an innovation, and not a canonized Oral Torah doctrine.

[lxxii] Reiner, S*upra.*, pp. 290-299, for a description of the authority claimed by R. Jacob Tam. By describing the gap between the canonized Rabbinic norm and popular mimetic practice, both Ta Shma and Brown imply that Tosafist Orthodoxy is incompatible with the canonized benchmarks of normative Jewish teaching.

[lxxiii] This phenomenon may be present in Nahmanides' thought, as well. R. Michael Rosensweig in "Mesorah as Halachic Source and Sensibility," at http://www.ou.org/jewish_action/05/2011/mesorah_as_halachic_source_and_sensibility/: " According to the Ramban [=Nahmanides], the letters of the Divine text embody metaphysical significance as well, recombining into different manifestations of the Divine name. The oral tradition…equally of Divine origin and authority, was entrusted to Moshe Rabbeinu and by extension to his successors, the chachmei hamesorah [the wise men of Masoretic tradition, i.e. the rabbinic elite] of each subsequent generation, as a received oral tradition consisting of principles, details, and values." This is an eloquently lucent reformulation of the Nahmanidean doctrine of revelation, according to which God's will cannot be derived from a pedestrian reading of a divine text, but requires a charismatically inspired reading of an otherwise unreadable text.

[lxxiv] Conveniently at Jose Faur, http://moreshetsepharad.org/media/-The_Legal_Thinking_of_the_Tosafot_A_Historical_Approach_by_Jose_Faur.pdf., pp. 19-21, originally published at *Dine Yisrael*, 6 (1975), pp. 43-71. By applying philology to the semantic sense of statute that prescribes the norm, one discovers the norm by reading.

This is why, for Prof. Faur, tyrants forbid reading and in some Orthodox circles, only Great Sages are authorized to read or render an opinion.

[lxxv] Deuteronomy 28:69 begins with a demonstrative pronoun, "*These* are the words of the covenant, which the Lord commanded Moses to make with the children of Israel in the land of Moab, besides the covenant which he made with them in Horeb." "These," and no other words, constitute the Torah covenant. At b *Shavu'ot* 27a, it is taught that oaths undertaken that impinge upon Toraitic priority and obligation do not take effect because the Sinai pact [a] went into effect first and [b] is in effect forever. The Torah commitment supersedes subsequent legislation that would negate the Torah's requirements. See https://etzion.org.il/en/talmud/seder-nezikin/massekhet-shevuot/already-bound-oath-mount-sinai-supercedes-later-oaths.

[lxxvi] Herschel Schachter, *Divrei Soferim: The Transmission of Torah Shebe'al Peh* (Jerusalem: Magid, 2024), p. 20, maintains that elite rabbis are able to "read between the lines of the [written] *Torah*" in order to discover embedded laws, thereby describing these elite rabbis as oracles.

[lxxvii] According to the popular, second version of orthodoxy, dancing on Simhat Torah is an accepted, and expected, positive religious practice. But at b*Betsa* 30a and b*Betsa* 36b, the Oral Law forbids clapping hands, slapping thighs, and dancing on Jewish holy days, lest someone forget the norm or the holy day's obligations and repair a musical instrument. Tosafot, ad. loc., s.v. *tenan*, explain that these three acts are permitted in the Tosafot's time because that Jewry was no longer adept in broken instrument repair. Faur, http://moreshetsepharad.org/media/-The_Legal_Thinking_of_the_Tosafot_A_Historical_Approach_by_Jose_Faur.pdf, p. 14, reports that the Tosafists argue that "the norm automatically lapses when, in the judge's judgment, the circumstances that initiated its promulgation have lapsed," appears among Christian scholastics. But an act of rabbinic legislation requires a formal act of rabbinic legislation for its repeal. See *Ibid.*, Faur, p. 15, "Abelard made explicit reference to the *davqa* methodology when he declared that one must determine a whether a precept "is general [=*lav davqa*] or particular [=*davqa*]. When interpreting a legal text, the Tosafot were especially concerned with validating local custom. This concern was particularly true in the German communities, for whom ancestral custom was always right, even when

contradicting rabbinic or biblical law."

[lxxviii]Jose Faur. *The Horizontal Society: Understanding the Covenant and Alphabetic Judaism* (Boston: Academic Studies Press, 2008), The divine lawgiver requires its public "to generate meaning from the written word of God." p. 8.

[lxxix] *Ibid.,* pp. 146-147. Accordingly, for Maimonidean Judaism, "the [pagan] king *is* god and in all circumstances *his* will is supreme.... The norms and administrative rules of government do not have the force of law in regard to the sovereign.... The Rex is a supernatural being, the possessor of n=magical powers, not shared with ant other human being. " p. 147.

[lxxx] Haym Soloveitchik, "Rupture and Reconstruction: The Transformation of Contemporary Orthodoxy," *Tradition* 28;4 (1994), pp. 66-67.

[lxxxi] These two "orthodoxies" are the two senses of "*Tradition*" that are identified by Joseph B. Soloveitchik, "Two Types of Tradition" [Hebrew], in *Shi'urim le-Zekher Abba Mori* (Jerusalem, 1993), pp. 220-239.

[lxxxii] Bernard Weinberger, "The Role of the Gedolim," *Supra,* and Brown, *Supra.*, p. 258. The idiom should be better rendered "spirit of holiness."

[lxxxiii] Deuteronomy 33:4.

[lxxxiv] Deuteronomy Rabbah, *Ve-Zot ha-Berakhah,* n. 345, s.v. *davar aher.*

[lxxxv] For the relevant definitions see https://www.daat.ac.il/encyclopedia/value.asp?id1=204

[lxxxvi] Joseph B. Soloveitchik, "*Mah Dodekh mi-Dod*" in *In Alone, In Togetherness: A selection of Hebrew Writings* ed. Pinehas Peli [Hebrew] (Jerusalem: Orot, 1976), p. 209-211, and Soloveitchik, "Two Types of Tradition," pp. 228-229.

[lxxxvii]*Ibid.,* pp. 212-214.

[lxxxviii] See Yosef Gavriel Bechhofer. “Mezuzos, Machlokos and Eilu va'Eilu Divrei Elokim Chayim,” at https://www.aishdas.org/rygb/eilu.htm: “Obviously, prowess in Lomdus and Halachic methodology is a precondition for acceptance as a Posek. Sometimes semicha recognizes that prowess. More often, haskamos or verbal recognition of universally accepted Gedolei Hora'a validate the positions of aspiring Poskim. Reb Tzadok (ibid.), however, addresses an additional qualification. Once upon a time Shevet Yissachar (who were "yod'ei bina l'ittim" (Divrei Hayamim 1:12), i.e., they understood what Halachic behavior was suitable for each generation) and Shevet Levi decided what Halachic approach was suitable for whom when (Yuma 26a). Rabbi Yochanan in Chagiga 15b identified their qualification. He explains the pasuk in Malachi: ‘For the lips of a Kohen guard wisdom and they will seek Torah from his mouth, because he is a malach of Hashem Tzevakos.’ Said Rabbi Yochanan: ‘Only if a Rov is like a malach of Hashem Tzevakos may one seek Torah from his mouth.’ A malach is an agent (a shaliach) of Hashem. An individual who views himself only as an agent of Hashem and focusses on the fulfillment of that agency, is qualified to generate divrei Elokim chayim. The Gemara (Yuma ibid.) explains the description of Dovid HaMelech as ‘Hash’em imo,’ to mean that Halacha always followed his opinion.” Bechhofer believes that

the Torah is readable, understandable, and applicable by the *Haredi* elite alone, who by dint of their holiness are not be subject to review by those lacking their sacred charisma.

[lxxxix] Soloveitchik, *Two Types of Tradition,* p. 228, commenting on Deuteronomy 32:7.

[xc] Hart, *Supra*.

[xci]*Onqolos*, loc. cit., who translates “your elder” as “your grandfather.” [Aramaic, *sabakh*]

[xcii]*Kallah Rabbati* 4:3. The Hebrew *“va-yomeru*” should be understood according to the root’s Aramaic and Arabic meaning, which is “command.” This reading yields “your [Oral Torah] Sages will [issue Oral Torah] commands.” This Rabbinic Hebrew understanding of *zeqenekha*/elders also occurs at *Seder Olam Rabbah* 30, *Sifre* Deuteronomy, *Ha’azinu*, n. 310 , s.v. *she’al avikha*, and *Pisqta Zutarta, Qohelet*.12:12, p. 21b.

[xciii] Following R. Soloveitchik penchant for dialectic binaries, as evidenced by First and Second Adam of *Lonely Man of Faith,* conveniently at https://traditiononline.org/wp-content/uploads/2020/08/Lonely-Man-of-Faith-original.pdf, I refer to his two traditions as Tradition I and II.

[xciv] Soloveitchik, “Two Types of Tradition,” p. 220, references *Hilkhot Mamrim*, 2:1-3 and 5-7.

[xcv] Maimonides, Introduction to his Commentary to the Mishnah and *Hilkhot Mamrim* 1:3,

[xcvi] See Daniel Rynhold and Michael J. Harris, *Nietzsche, Soloveitchik, and Contemporary Jewish Philosophy*

(Cambridge: Cambridge University Press, 2018), and Alex Ozar’s book review at https://thelehrhaus.com/scholarship/nietzschean-man/. Rynhold and Harris have discovered the creative life-affirming vitality that R. Soloveitchik’s *Halakhic Man* and Nietzsche’s *Overman* share, their undeniable, significant differences notwithstanding. Because Tradition I is democratic in that it fosters collegial debate, only Great or Masoretic Sages are allowed access to the conversation. And since R. Soloveitchik's Tradition II, like the Oral Torah laws given at Sinai but go unreferenced in Hebrew Scripture do not tolerate dispute, the masses, the Nietzschean "Undermen"who live Tradition II ought to defer to the Great Rabbi "Overman" aristocracy should rule the Jewish polity, by dint of their superior morality, piety, learning, and wisdom.

[xcvii]http://www.cross-currents.com/archives/2013/07/18/from-openness-to-heresy/.

[xcviii] Numbers 15:40.

[xcix]*Safra Qedoshim* 10:2.

[c] See Jose Faur’s trenchant critique of Nahmanides’ position at *In the* Shadow of *History: Jews and Conversos at the Dawn of Modernity* (Albany: SUNY Press, 1992), *pp*. 12-13. Acutely aware of Prof. Faur’s Maimonidean –and devastating—critique of Nahmanidean theology, R. Shalom Carmy, a passionately devoted disciple of R. Soloveitchik, invokes the position of the American Legal Realist, Oliver Wendell Holmes, to dismiss the legal positivist who is committed to only uphold the letter of the legal norm, as a “bad man.” Shalom Carmy, "If You Want to Know the Law and Nothing Else," *Tradition* 42:2 (Summer 2013), pp. 1-7. Like R. Soloveitchik, Carmy seems to maintain that official religion Orthodox Judaism posits that nobody is authorized to make normative claims about Judaism except their own elite rabbinic leaders who, being “married to Torah,” are singularly able and authorized “to read between its lines” and discover, recover, or impose the living, mimetic Tradition II upon the canonical library. In

his eagerness to parry this assault upon his own Nahmanidean Orthodoxy, Carmy does not consider the possibility that, like Maimonides, Prof. Faur only regards duly promulgated norms to be binding law, thereby validating individual autonomy and personal discretion when the law is silent on an issue. And designating a scholar to be **"**a bad man" based upon a superficial or incomplete reading of the available evidence conflicts with the Oral Torah norm that requires that all humankind be judged as generously as possible [m*Avot* 1:6] and the benchmark by which one judges others is the benchmark by which one will be judged. *Ruth* Rabbah 1:1 teaches "woe to the generation that judges its judges, and woe to the generation whose judges need to be judged." However, Carmy is, however, consistent in his protesting Eliezer Berkovits' critique of Nahmanides' attitude toward women, at Ross Singer, https://seforimblog.com/2026/03/review-of-rabbi-eliezer-berkovits-jewish-women-in-time-and-torah/. Accordng to the Tosafist/Nahmanidean orthodoxy advocated by Carmy, both Berkovits and Faur are out order for subjecting Nahmanides, a great or *Masoretic Sa*ge, to assessment. It is also unclear that Justice Holmes should be the judge of who is "a bad man," given his tolerance for racial inequality. See Thomas Halper, *Justice Holmes and the Question of Race* https://reference-global.com/download/article/10.2478/bjals-2020-0025.pdf, abstract, "Notwithstanding his youthful dalliance with abolitionism, Holmes' votes and opinions in Supreme Court cases involving race reveal a stubborn indifference to discrimination on a range of issues. Whether this reflects a cold personal aloofness, a preoccupation with life as struggle, a commitment to judicial restraint or merely an insensitivity pervading the enlightened opinion of the day, his performance will continue to stain his reputation."

[ci] 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. When serving as a student aid to R. Soloveitchik, R. Stuart Grant asked his mentor, "who was his greatest rabbinic influence?" R. Soloveitchik answered him, "the Ramban!" Oral communication.

[cii] This doctrine is articulated at b*Bava Metsi'a* 59b, with the Ochnai oven narrative, according to which even intuitions reliably confirmed by a divine oracle lack legal legitimacy and are therefore rejected because God's unvetted opinion is not a recognized rule of the *Halakhic* legal order. We will return to this theme below

[ciii] Nahmanides to Leviticus 19:20.

[civ] Deuteronomy 34:4, "by the mouth of the LORD," is homiletically taken to be a kiss, but the idiom's philological sense is that Moses died at the "LORD's command," following *Targum Yonatan,* an understanding likely grounded in the plain sense of Deuteronomy 32:50, where the Lord orders Moses to die, using the imperative form, *u-mut*, "and die!"

[cv] According to Ecclesiastes 7:20, there is no human who is has not sinned.

[cvi] Zohar Genesis I *Va-Yishlah* 108b. See also Israel M. Ta Shma, *ha-Niglah she-ba-Nistar* : *ke-Heqer Sheqiei ha-Halakhah be-Sefer ha-Zohar* (Tel Aviv: ha-Kibbutz ha-Meuhad, 2001), pp. 35-37.

[cvii] Soloveitchik, *Halakhic* Man (Philadelphia: Jewish Publishing Society, 1984), p. 58.

[cviii] Maimonides, *Responsum* 180. It is no accident that R. Jacob Tam approved of including *piyyutim* in the liturgy. See Reiner, pp. 184-198.

[cix] Maimonides, Introduction to the *Yad* Compendium.

[cx]*Collected Letters*, 1:15, pp. 42-43.

[cxi]*Ibid.,* 1:32-33 and pp. 57-61.

[cxii]*Ibid.,* 3:92, pp. 115-116.

[cxiii] *Nefesh ha-Rav,* (Jerusalem: Reshit Yerushalayim, 1994) p. 33.

[cxiv] Moshe Isserles, *Darkei Moshe*, Introduction, on line text, no page number is available. The subject is a plural participle and the predicate is a third person singular verb.

[cxv] *Mishnat Rabbi Ahron*, (1996) 3:153-155.

[cxvi] This doctrine was made explicit in Maran Karo's *Bet Yosef* to *Yoreh De'ah* 1:1, cited above.

[cxvii] m*Avot* 3:11. The Mishnah continues, "although he may possess Torah knowledge and good deeds, he has no share in the World to Come." The operative norm is the prohibition of willful misrepresentation of Jewish law, b*Sanhedrin* 99b reports that wicked King Menashe issued *derashot shel dofi* , false interpretations intended to mislead.

[cxviii] Deuteronomy 6:16 and p*Yoma* 1:4.

[cxix] A literary reading of I Samuel's narrative advances the doctrine that ultimate power resides with God, Who gifts divine potency, the power of holiness [Psalms 150:1], to those whose belief and confidence in God's Presence is steadfast. Tall King Saul is the *de jure* Israelite Commander-in-Chief who lacks the nerve to face Goliath, his seasoned, giant, blaspheming, Philistinian adversary, which contrasts with the faith-filled confidence, moral authority, and principled restraint exhibited by both Jonathan and David, whose power was a product of their personal piety, not their professional prowess.

[cxx] David Halivni explains Judaism's "predilection for a justified law" in his *Midrash, Mishnah, and Gemara: The Jewish Predilection for a Justified Law* (Boston: Harvard, 1986).

[cxxi] Tosafot to b*Menahot* 20b, s.v. *nifsal mi-sheqiyyat ha-hammah.* The Tosafot are in way denying the sanctity of the Law; they contend that there are competing and conflicting norms in the *Halakhic* legal order. At *Mamrim* 2:4, Maimonides provides for the suspension, but *not* abrogation, even of Torah law, "to restore the masses to the law."

[cxxii] Isaiah 2:3.

[cxxiii] Citing *Hazon Ish Orah Hayyim* 67:12), Burman, *Supra*., p. 24: "The accepted mesorah, which is considered to be versions of texts currently prevalent amongst the rabbinic community, have been subject to generations of rigorous textual criticism by scholars who are guided by Divine intervention, which has assured its arrival to contemporary scholars in the state it was intended to be. Although these versions might reflect an inaccurate transmission of the original text, that too is the will of God as are the decisions of rabbis that will be made based upon these deviant texts."

See also Bacon, *Supra.*

[cxxiv]R. Shaul Robinson defends this view at https://www.lss.org/lss-blog.html?post_id=19439. His personal view is found at https://www.lss.org/lss-blog.html?post_id=20402/ .

[cxxv] Deuteronomy 30:12 as understood by b*Bava Metsi'a* 59b, which tells a story that clarifies a major Halakhic Rule of Recognition. The story is a structured triad.

Opening with [a] R. Eliezer the Great [= b. Hyrcanus] citing “all the proofs in the world” [that a broken clay oven reduced to useless shards, is no longer a tool susceptible to acquiring ritual impurity] and recalling that R. Eliezer was described as “a sealed cistern, who does not lose a drop [of Torah], that he enjoyed what will come be known as a photographic memory. The narrator is hereby informing the reader/listener [the *Bavli* was likely an oral literature before it was committed writing] that R. Eliezer’s *description* of the Oral Torah *prescription* is without question reliable. The contending Sages rejected R. Eliezer’s position. Having failed to win his colleagues with *reason*, [b] R. Eliezer offers three proofs from Nature, [1] a carob uprooted itself and moved 100 or 400 *ammot,* [2] a stream/aqueduct reversed its flow direction, and [3] the walls of the *bet midrash* tilted, not crashing to the ground, in deference to R. Joshua but not remaining erect, in deference to R. Eliezer. The wall’s indecision reflects divine discomfort with the dispute, anticipating the third element of the triadic pericope [c] where the Natural Law, reflected by reason, seconded by three confirming natural events, ultimately is summoned, “appears” as an oracle [*bat qol*] in support of R. Eliezer’s absolutely correct reading of Torah law. Even though God reveals to the Rabbis that R. read God’s mind correctly, R. appealed to Heavan [=God] for vindication. By ruling that reconstructing the clay oven the with now not defiled shards defiles by rabbinic norm, [a] they acted within their Torah ordained authority [Deut. 17:8-11] and [v] by illegally appealing to God, R. Eliezer violated a Rule of Recognition of the *Halakhic* order. The Sages remind God that the Law is no longer in Heaven. The Torah’s Rules of Recognition may be revisited by the *Bet Din ha-Gadol*, but not by God and not by any individual rabbi, however great, even R. Eliezer the Great.

[cxxvi] See Yehuda Rock, “Morechai Breuer,” https://etzion.org.il/en/tanakh/studies-tanakh/biblical-commentaries/r-mordechai-breuer, who writes that R. Mordechai Breuer’s “basic innovation was in disseminating the pursuit of *peshat* [plain sense meaning, a.y.] within the community of those studying *Tanakh*. Before R. Breuer, the study of *Tanakh,* within the religious Jewish world in general and the yeshiva world in particular, was focused mainly on the Midrashic expositions of *Chazal* and more recent compositions of the sort (e.g. in the Chasidic world); or on studying the classical biblical commentators (e.g. following the method of Nechama Leibowitz). R. Breuer taught in Yeshivat Har Etzion and other places, and it is to his credit that it is now commonplace in the yeshiva world to study *Tanakh* by treating *peshat* as having independent and primary meaning. This approach to *peshat* is of course not the exclusive innovation of R. Breuer, but in practice it appears that the widespread adoption of the study of *peshat* in the yeshiva world is ultimately a

result of his efforts, directly and through his students."

[cxxvii] At *Mamrim* 2:4, Maimonides provides for rabbinic discretion in emergency settings.

[cxxviii] Rosensweig, "Mesorah as Halachic Source and Sensibility," *Supra.*

[cxxix] See https://www.chabad.org.il/Concepts/Item.asp?ArticleID=104&CategoryID=200 for a discussion of the 9th of Maimonides' 13 root doctrines, that the Torah does not undergo change. W.hile this unchangeable Torah does not forbid philosophical speculation, Maimonides' opponents believe a laity capable of logical, philosophical, or critical thinking will be unwilling to defer to a leadership that is legitimated by charisma.

[AY1]

[AY2]