

# POSITIVIST RHETORIC AND ITS FUNCTIONS IN HAREDI ORTHODOXY

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*Haredi, or so-called "ultra-Orthodox," Jewry contends that it is the most strict and therefore the most authentic expression of Jewish Orthodoxy. Its authenticity is insured by the devotion and loyalty of its adherents to its leading sages or gedolim, "great ones." In addition to the requirements of explicit Jewish law, and, on occasion, in spite of those requirements, the Haredi adherent obeys the Daas Torah, or Torah views of his or her gedolim. By viewing Daas Torah as a norm within the Jewish legal order, Haredi Judaism reformulates the Jewish legal order in order to delegitimize those halakhic voices which believe that Jewish law does not require a radical countercultural withdrawal from the condition of modernity. According to Haredi Judaism, the culture which Eastern European Jewry has created to safeguard the Torah must be guarded so that the Torah observance enshrined in that culture is not violated.*

Haredi Judaism, often called "ultra-Orthodox Judaism,"<sup>1</sup> projects itself as the most strict and most authentic expression in contemporary Jewish life. This strictness is expressed in behavior patterns as well as in the ideology which supports these patterns. Since Haredi culture regards itself as the embodiment of the Judaism encoded in the "Book," or the sacred literary canon of Rabbinic Judaism, the

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explication of the Haredi reading of Rabbinic Judaism's canon yields a definition of Haredi Judaism's religious ideology.

## I. Following the Law Strictly

Haredi Judaism prides itself on its being that Orthodox expression which is most committed to keeping the laws of Judaism. The statistics assembled by Samuel C. Heilman and Steven M. Cohen document the pattern of observance by Haredim, or "Orthodox Traditionalists," with regard to dress, ritualized text study, synagogue attendance, Sabbath observance, and the so-called Laws of Family Purity which among other things require regular immersions of the menstruating wife in a *miqvah* (ritual bath).<sup>2</sup>

The signs of public ritual observance are more common among Haredim, such as the wearing of the modesty wig among women and the men's displaying of the ritual fringes outside of the garments "where it may be made easily visible and where it acts as a more public emblem of their contra-acculturation and fidelity to traditional Orthodoxy."<sup>3</sup>

For the journalist Amnon Levi, Israeli Haredi culture sees itself as an unchanging, total culture which is committed to uncompromising devotion to its cause.<sup>4</sup> According to S.C. Heilman's reading of contemporary traditional Judaism, which Haredi Judaism claims to replicate, people knew what Judaism demanded of them. They did not have to check code books and texts to know what was right and wrong. Instead, they relied on cultural competence that came from their living in an environment governed by a relatively stable tradition over which there was little or no debate.<sup>5</sup>

Indeed, because modernity is so threatening to traditional societies, Haredi Judaism, as a traditional society, makes every effort to maintain its countercultural distance from the secular world.<sup>6</sup> The strictness of this society is an expression of its countercultural identity. For R. Abraham Karelitz, better known as the Hazon Ish, religious authenticity is expressed in the "sweetness of extremism."<sup>7</sup> This extremism is expressed in a propensity for strictness, or *humra*. In a Yeshiva University publication, R. Israel Kagan, also known as the Hafets Hayyim, and *Mishnah Berurah*, which refers to an ethical tract and legal commentary that he had composed, are cited for preferring stringencies on matters of rabbinic debate.<sup>8</sup>

For R. Karelitz, submission to authority,<sup>9</sup> both legal and theological,<sup>10</sup> is required of the Haredi adherent. It is this "ethos of submission" that has become the hallmark of this society.<sup>11</sup> According to William B. Helmreich, the "ultra-Orthodox" are distinguished by

their clothing, black hats, full beards, and their avoidance of the secular university.<sup>12</sup> While social dating, as opposed to dating for the expressed purpose of finding a mate, is permitted in the modern Orthodox Yeshiva University, it is an unwritten rule of the Haredi culture and institutions that this practice is forbidden.<sup>13</sup>

Haredi Judaism is successful in maintaining its constituency because its singlemindedly devoted and able leaders, like the late saintly R. Aharon Kotler, are able to attract a "cadre of people whose loyalty was total and unquestioning."<sup>14</sup> For this community, the community ultimately determines Jewish normativity. While Kaplan<sup>15</sup> and Friedman<sup>16</sup> have argued that Haredi Judaism advocates a strict interpretation of the Law, a study of the words of Haredim themselves indicates that their culture is based on two very different and conflicting grounds of normativity. While Haredi Judaism is, in principle, bound to Jewish law, it binds itself to an extrasystemic behavioral regimen which it imposes upon the Law. It is suggested that modern, moderate Orthodox should have "ultra" Orthodox rabbis leading them, for their warmth and zeal, and by implication, purist authenticity<sup>17</sup> is more compelling than the moderate, intellectual, and secularly educated "modern" Orthodox rabbi.<sup>18</sup>

Avrohom Teichman reminds his Haredi readers to be wary of *kashrut* supervisions, for no authorization is fully independent, the slaughterers are not known, and he suggests that supervisors who know that their livelihood is contingent on "letting things pass" are likely to be less than scrupulous.<sup>19</sup> While not directing defaming criticism at anyone in particular, Teichman maintains that

Rabbi Moshe Feinstein of blessed and sainted memory is no longer with us and we lack the broad shoulders [of his learning, charisma and authority] to lean on when it comes to profound questions of *kashrus*....*Our spiritual poverty may well contain the seeds of a blessing, bringing us closer together in cooperation and in practice [emphasis mine].*<sup>20</sup>

Strictness provides a partial behavioral antidote for those who were born into the condition of modernity; the religious community must limit its recourse to leaders within its own restrictively ideological orbit, and this limitation is, for this community, "a blessing."<sup>21</sup>

Any alternative Orthodox locus of authority is rejected because, like the Israeli Chief Rabbinate, it accommodates the world, it is not sufficiently strict, and ultimately, because it does not accept the authority of the "Great Decisors" of the Haredi rabbinate. R. Shlomo Goren and the Chief Rabbinate are rejected because they maintained

that "the rabbinat is obligated to find in the *halakhah* all possibilities of leniencies."<sup>22</sup> Justice Moshe Silberg's view is dismissed because he claims that while rabbinic law must be a factor in determining state policy, it must accommodate state policy.<sup>23</sup> As will be demonstrated, Haredi Judaism does not object to flexible interpretations of Jewish law; it only objects to competing models of Jewish legal application which do not conform to its pieties and policies.<sup>24</sup>

For Haredi Judaism, sociology should have no impact on the determination of the law. For Prof. Haym Soloveitchik,

If law is conceived of, as religious law must be, as a revelation of the Divine will, then any attempt to align that will with human wants, any attempt to have reality control rather than to itself be controlled by the Divine norm, is an act of blasphemy and inconceivable to a God-fearing man.<sup>25</sup>

Chaim Waxman complains that there is "an almost reflex-action rejection of the role of social forces in *psak* [Jewish legal decision-making]"<sup>26</sup> and then argues, following R. Simha Elberg<sup>27</sup> and Menahem Friedman,<sup>28</sup> that the changes in practices that were initiated by the leadership of the "Higher Yeshivas"<sup>29</sup> are based upon this ethos of stringency and counterculture.<sup>30</sup> For Waxman, the fear of opening oneself to criticism in an age of rapid communication has silenced learned scholars who are too fearful to express their independent views,<sup>31</sup> and it is the silencing of dissent which contributes to the political success of this movement within Jewish Orthodoxy.

Haredi normativity is grounded in the textual tradition of Judaism, as well as the conventions of its community. According to Avi Shafran: "I am a rabbi, what most folks today would call an 'Orthodox' one. The average Jew tends to regard me with some discomfort when we meet. I wear a full beard, a black yarmulke, and tzitsis."<sup>32</sup> Shafran has not only identified himself as an Orthodox Jew who is committed to the totality of Jewish law, he is also a rabbinic virtuoso advocate of the culture which evolved from this law. His full beard, his black yarmulke, and his visible *tsitsis* are not expressions of Jewish law; they are semiotic emblems of his membership in Haredi society. His self-description follows the Haredi model, and indeed he identifies with and writes for the *Jewish Observer* as an articulate spokesman for its point of view. Shafran concedes that

in any halakhic question, there is typically a good deal of latitude in the application of legal precedents. Limits, though, there are as well. If any of those limits are exceeded...the result is something different, something clearly other than Judaism. Which is

why a convert to the Reform or Conservative movements — conversions being a clearly legalistic, halakhic realm — is not accepted as a Jew by Orthodoxy.<sup>33</sup>

Shafran titles his remarks a “defense of right-wing Orthodoxy.” He implicitly concedes, however, that there is in fact a range of legitimate opinion in Jewish law, and he claims that Reform and Conservative Judaism do not fall within this legitimate range. In his defense of right-wing Orthodoxy, Shafran concedes that his parochial emblems will cause outsiders discomfort.<sup>34</sup> While Shafran concedes a range of legitimate opinion, the modern Orthodox choice of less parochial options are, for Shafran, nevertheless religiously inadequate. Haredi Judaism not only demands fidelity to the letter of the Law, it requires that the traditional culture encapsulating the Law also be maintained.

## II. Haredi Jews Follow Their Leaders

From the Haredi perspective, the sin of centrist/modernist Orthodoxy is not in its rejection of Haredi rigor because, as N. Wolpin has conceded, less than fully observant benefactors are worthy of honor because, in their benefaction, they concede, validate, and support Haredi culture. While for H. Soloveitchik, Haredi Judaism is too textual,<sup>35</sup> it will be shown that Haredi Judaism’s criteria for normativity are not truly textual. Haredi Judaism’s leaders have become living texts, thereby replacing and superseding earlier legitimate opinions, which have been suppressed. For Bernard Weinberger, the great one, or *gadol*, becomes the living text who is invested with an inspiration called *Da’at Torah*, which is a Torah-saturated perspective. It assumes a special endowment or capacity to penetrate objective reality, recognize the facts as they “really are....It is a form of Ruah Hakodesh...which borders if only remotely on the periphery of prophecy.”

According to Weinberger, one is required to demonstrate “faith in ‘Gedolim’ and subduing” one’s “own alleged acumen in behalf of the Godol’s judgment of the facts.”<sup>36</sup> According to R. Elya Svei, disagreeing with a *gadol* is disrespectful to scholars and Torah, a heretical offense.<sup>37</sup> In a popular journal called *Country Yosi*, the reader is (mis)informed that the “Mishna Brura defines Apikurus [heretic] as ‘any alien thoughts that are against Daas Torah.’”<sup>38</sup> Rabbi Abraham Alter, the Gerrer rebbe, wrote in a letter to his followers that the will of the rebbe “is the will of heaven.”<sup>39</sup> When *Daas Torah*

is challenged by the centrist/modernist rabbinate, the challenge is taken to be "profoundly offensive."<sup>40</sup> The Jewish layperson and communal rabbi are both required to submit to the authority of those who possess *Daas Torah*. R. Moses Sherer, the chief executive of *Agudas Yisroel*, demands nothing less than "total subservience on all questions of policy to the *Daas Torah* of *Gedolei Yisrael*, the true leaders of the Jewish people."<sup>41</sup> For Sherer, "The Torah community in the United States is blessed, *boruch Hashem* [thank God], with tens of thousands of men and women who recognize and enthusiastically accept the *Gedolei Torah* as the true leaders of the Jewish people."<sup>42</sup>

It is claimed that R. Moshe Feinstein ruled that disagreeing with the Torah authority is a greater violation than disobeying a negative command in the Torah.<sup>43</sup> Rejecting the notion that education's purpose is to create independence, E. Dessler argues that the job of authentic Jewish education is to inculcate submission.<sup>44</sup> *Daas Torah* demands that the Jew have *emunas Chachomim*, faith in the sages, which for Dessler is the "Torah of truth"<sup>45</sup> *min ha-shamayim* (from heaven, the Hebrew idiom which signified God's revealed world) and he demands that the Jew nullify his desire which is contaminated by self-interest.<sup>46</sup>

It must be noted that the term *emunat hahamim* literally means the faith of the sages of the Rabbinic period, and not faith in the sages who happen to be living today.<sup>47</sup> By maintaining that the *Gedolei Torah*, the great ones of the Torah, are *hahamim*, or sages of the same genre, if not the same stature, of the classical sages,<sup>48</sup> the advocates of this doctrine make a very daring and unprecedented claim, for this community's leaders assume the *halakhic* authority of the Supreme Court of Israel sitting in plenum.<sup>49</sup>

### III. The Haredi Definition of *Daas Torah*

In defending the *Daas Torah* doctrine, Yaakov Feitman provides his readers with the clues and cues needed to explicate this doctrine. For Feitman,

Each epoch must accept and come to terms with...the *Gedolim* — that it requires. The question is not one of greater or lesser,<sup>50</sup> but of need. These *Gedolim* are of their era, yet are able to tap eternal wells. It is their judgments that embody the timeless word of Torah for their time, and it is their guidance which is DAAS TORAH.<sup>51</sup>



Without any citation or defense of his position, Feitman affirms that these *gedolim* speak for all Israel. Yet, none of these *gedolim* are Sephardic, Yemenite, or Lubavitch, nor do they have any secular education of which to speak; they all hail from or trace their roots to Eastern Europe, and they are all conversant in Yiddish. Maimonides does not mention *Daas Torah* in his thirteen articles of faith,<sup>52</sup> and he also denies the absolute authority of individuals' charisma in his formulation of the Law.<sup>53</sup> Since the classical sources make no mention of Eastern Europe or Yiddish, there are those within the observant community who remain unconvinced that *Daas Torah*, as formulated by Haredi Judaism, is an authentic theological Jewish doctrine. Indeed, Feitman concedes that "while the concept of *Daas Torah* as a source of authority is a fundamental Jewish teaching, some find it troubling." Feitman attributes this discomfort not to an anarchistic instinct, and not to a principled rejection of an idea whose documentation is wanting:

*avda b'hefkerta nicha lei* — a slave prefers a state of freedom without restraints. The most primitive instinct in man is to rebel against authority to give himself free rein. "No one is going to tell me what to do" can be rationalized as an expression of free will, but it is actually the natural retrogression into childlike defiance of parents or teachers, even when their inherent claim to authority should be obvious.<sup>54</sup>

Without distinguishing between the unwillingness to be bound by any authority and a principled rejection of *Daas Torah* authority, Feitman rails against the suggestion that *Daas Torah* is an invented doctrine as well as the possibility that its rejection could be based on principle rather than spiritual laziness:

One of the most subtle yet pernicious manifestations of this [the rejection of *Daas Torah* by otherwise observant Jews] phenomenon is the often emotional, occasionally outright illogical hostility to the concept of *Daas Torah*. One of the major criticisms against "*Daas Torah*" results from the impression that the phrase is of recent vintage.<sup>55</sup>

Feitman's only defense for this dogma is an argument from silence:

Although the Chofez Chaim and Reb Elchonon's accusers dutifully add the *zatsa*"<sup>56</sup> to these *Gedolim*'s names, in reality they are imputing to them a crime of monstrous proportion. Could it

be that these paragons of piety and virtue...would crassly and blatantly distort Torah simply to achieve some power for themselves or their successors. Not only our intuition about these sages, but even basic logic, dictates that this does not make sense. Even more bizarrely, one of the critics of these Gedolim notes that since he has no problem with innovations in Judaism,<sup>57</sup> he would, in principle, be able to accept the "new" doctrine of *Daas Torah*.<sup>58</sup>

Haredi Judaism holds that the intuition of the *gedolim* is sufficient warrant for their juridic authority, while legal positivists contend that the Torah did not authorize this particular ethic of submission and limitation of individual autonomy.<sup>59</sup> In response, Feitman claims that it is a serious error to confuse the *Daas Torah* idiom, which is recent, and the doctrine itself, which he believes is self-evident: "It is ludicrous to impute major corruptions of ancient tradition to those whose lives are defined to being the repository of that tradition."<sup>60</sup>

After exclaiming "how ludicrous it is to speak of them [the *Gedolim*] having improvised a new authoritarian structure,"<sup>61</sup> Feitman concludes that "*Daas Torah* is actually part of a venerable tradition,"<sup>62</sup> simply because it is affirmed by his rabbinic elite. A leading spokesman for this elite is R. Mordecai Gifter, who defines *Daas Torah* as "the mystery of Torah."<sup>63</sup> For Feitman, *Daas Torah* "is the constant process of uncovering and revealing what one has not yet understood."<sup>64</sup> The eternal truth of *Daas Torah* is expressed by the elite Council of [Agudas Yisroel's] Torah Sages, which is, for the Brisker Rov, "the *Beis Din* of *Klal Yisrael*."<sup>65</sup> This formulation affirms that the *Daas Torah* ideology is expressed by the Aguda's council sitting in plenum, and that this council possesses the authority of the Jewish Supreme Court, and as a consequence is authorized to redefine the contours of the classical Jewish legal tradition.

A striking recent example of a *Daas Torah* ruling is that of R. Elya Svei, who objected to a practice common in modern Orthodox circles, but not accepted in Haredi Judaism:

In our ranks, as well, *tzenius* [modesty] has suffered deterioration. Recently, in Orthodox circles...women have been delivering addresses at celebrations of their *simchas*, against their inherent nature as women. The *Midrash* relates that when G-d created Chava [Biblical Eve], He tapped her on every limb, commanding, "Be *tzanua* [modest]." ...Men have been given Torah as the antidote to their *yeitzer hora* [evil inclination] and women have been granted *tzenius* for this purpose.<sup>66</sup>



R. Svei argues that modern Orthodox practice is not only an inappropriate custom, he contends that it violates Divine intent, natural law, and is immodest. He assumes (1) there is an “inherent” nature to women; (2) speaking in public violates that nature, even though it is not specifically interdicted by Talmudic law; (3) that he, as *gadol*, is authorized to cite a midrash, not usually taken to be normative, and to assign a normative, prescriptive content to that midrash, which, in his view, reflects Divine intent. Ever respectful of the *gadol*, R. Mordecai Willig of Yeshiva University is reported to have put a softer spin on these daring remarks:

Also discussed [at a discussion on *qiruv*, on attracting non-Orthodox people to Orthodoxy, where social strictures need not be observed, but the letter of the law must be maintained] was the propriety of a woman delivering a presentation before a mixed [male and female] crowd. [At a recent Agudath Israel of America convention, a prominent American *rosh yeshiva* had brought this issue into the spotlight by strongly condemning the practice — ed.] Rav Willig said that each situation must be examined on its own merits, since the *halakhah* depends on the community and the context.<sup>67</sup> In some “communities it is unheard-of for a woman to deliver a speech to a group of men, whereas in others, it is commonplace.”<sup>68</sup>

R. Willig does not address the fact that what for him is a matter of policy, R. Svei, the *gadol*, claims is an issue of principle. R. Svei believes that he speaks for all Israel, not only his Haredi community, for he sits on the Council of Torah Sages.

The reason that *Daas Torah* must be accepted in modernity, according to its advocates, is because of *yeridat ha-dorot*, the diminution of the generations. The Hazon Ish argued that the sages of our age no longer have the right to make new enactments, because they are spiritually inferior.<sup>69</sup> According to R. Chaim Keller, modern Orthodoxy has become an idolatry because it is a *shituf*, a syncretistic partnership of true Orthodoxy and false modernity: “The basic error of those who advance the *shituf*-partnership of modernism and Orthodoxy [is to] equate modernism with progress and effectively deny the principle of *yeridas hadoros*, the continual spiritual descent of the generations.”<sup>70</sup>

For R. Norman Lamm, *yeridas ha-doros* is not a dogma but a mood.<sup>71</sup> He cites Scripture,<sup>72</sup> Tosafot<sup>73</sup> and, among others, R. Isaac mi-Trani,<sup>74</sup> who argue that latter-day authorities stand on the shoulders of giants.<sup>75</sup> Dismissing the precedents cited by Lamm, Keller contends that moderns are so deficient that they cannot appreciate

the perspective of the giant's shoulders because modernity is chronologically later and spiritually debased, and Orthodoxy's selective, critical encounter with modernity is therefore sinful, rebellious, and dangerous.<sup>76</sup> Since times have changed, the classical rules of Jewish legal application and protocol must also be modified. When challenged in a letter to the *Jewish Observer* that he had misused the "dwarfs on the shoulders of giants" idiom in his attack on R. Lamm,<sup>77</sup> R. Keller contended that "merely quoting an authority from a previous generation does not settle a question when there are other earlier authorities with different opinions."<sup>78</sup> R. Keller implies only the *gadol* is authorized to apply the relevant applicable precedents to the condition of modernity. While maintaining that the doctrine of *yeridas ha-doros* exists in the sources, he concedes that not all authorities take it to be a *halakhic* norm, and then adds that not all dwarfs sitting on the shoulders of giants are equal, for those who advocate alien ideologies, in which the dwarf claims "I am bigger than you, see nothing."<sup>79</sup> It should be noted that this last claim is incorrectly imputed to R. Lamm by R. Keller, it was not made by R. Lamm himself,<sup>80</sup> and R. Keller presumes to know how to define what is and what is not an alien ideology.

When rabbis of centrist/modernist orientations challenge *Daas Torah*, the popular as opposed to original meaning of *Emunas Chachomim*, and *Yeridas ha-doros*, they are subject to criticism in the Haredi press. R. Shlomo Riskin, the spiritual advisor to the *Avi Chai* organization (which fosters cooperation between those who believe in Jewish commandments and others who accept only Jewish culture), is an advocate of a serious integrationist modern Orthodoxy and, as a consequence, becomes a target of Haredi attack. Yonason Rosenblum assumes, and then concludes without demonstration, that R. Riskin believes in the priority of culture over commandments.<sup>81</sup> R. Riskin is also taken to task for portraying the patriarchs in human rather than angelic terms:

For an Orthodox rabbi [whom N. Wolpin, the editorialist, denies the rabbinic honorific], a one-time leading figure in *kiruv*, no less — to write in such an outrageous manner regarding seminal figures in Jewry, who were closer to *malachim* [angels] than to mortals, indicates that something is deeply wrong with his basic, fundamental understanding of the *Avos* [patriarchs].<sup>82</sup>

Eli Teitelbaum has also written extensively regarding R. Riskin's column in *Jerusalem Post*<sup>83</sup> in which R. Riskin claims that Moses was not an adept politician. Whether R. Riskin's reading of the Mosaic character is consistent with a traditional or philological reading of

Scripture is not here relevant; the criticism that he received is crucial for an understanding of the *yeridas ha-doros* ideology. The very presentation of Moses as human is, for Teitelbaum, "blasphemy."<sup>84</sup> Fred Ehrman complains that Teitelbaum did not address R. Riskin's essay, and that he failed to show exactly what "error" was made by R. Riskin.<sup>85</sup> Teitelbaum's indignant retort protests Ehrman's "defense" of R. Riskin<sup>86</sup> without addressing the issues.

Another illustration of this phenomenon, whereby a scholar outside of the theologically correct *Daas Torah* orbit is subject to criticism, occurred with the publication of R. Adin Steinsaltz's Talmud and his approach to the oral tradition. In his objections to "Popularizing the Talmud," Joseph Elias associates the historical relativism of Heinrich Graetz, S.R. Hirsch's critique of the Historical School, and the "heresy" of American Jewry's Conservative Judaism, with R. Steinsaltz's writing.<sup>87</sup> In his defense of R. Steinsaltz, Matis Greenblatt notes that Elias's association of Steinsaltz with the Historical School (which historically was the traditional/nostalgic wing of Reform Judaism!) is a misrepresentation. Greenblatt notes that the *Edah ha-Haredis* refused to condemn the work and R. Moshe Feinstein, "the greatest posek of our time, gave the Steinsaltz Talmud a warm approbation."<sup>88</sup> Elias knowingly responds that R. Feinstein would not have approved of the work because R. Steinsaltz's ideology does not conform to that of the *gedolim*. Elias is particularly vexed when some scholars do not take literally the idiom *Halakhah le-Moshe mi-Sinai*, the Law is given to Moses at Sinai.

Elias's critique of R. Steinsaltz parallels a similar polemic which had taken place thirty years earlier between R. Yitshaq [Irving, Yitz] Greenberg and R. Shlomoh Danziger. It was Danziger who objected to modern Orthodox thinkers like Dr. Michael Wyschogrod, R. Eliezer Berkovits, of blessed memory, and R. Greenberg's critique of the Orthodox "fundamentalists."<sup>89</sup>

For Danziger,

the essential element in Jewish "*emunah*" is *Torah min Hashamayim*, by G-d to Mosheh, *literally speaking, as an objective fact*, and not in any vague, naturalistic subjective sense....Any attempt, expressed or implied, to qualify the external objective reality of this revelation of the Written – Oral Torah, any tendency to rationalize it philosophically as a historical development of spiritual insight and response, must be considered a critical departure from *Torah min Hashamayim*.<sup>90</sup>

Danziger complains that Greenberg also flirts with heresy by cooperating with Reform and Conservative Judaism, he protests that Greenberg denies Orthodox doctrines, and he rejects Greenberg's call for a "thorough re-examination of the Shulhan Aruch."<sup>91</sup> However, when Haredi culture outlaws practices permitted by the Shulhan Aruch, it too "reconsiders" past rulings on the basis of the opinions of rabbis great enough to overrule the Shulhan Aruch.<sup>92</sup>

While Danziger affirms his faith in Maimonides' "thirteen Ikkarim [theological root principles of faith] to be fundamental to Torah Judaism,"<sup>93</sup> he nevertheless ignores Maimonides' theory of negative attributes,<sup>94</sup> according to which nothing can be positively said about God. Because God does not have a speaking apparatus, whatever God's communication to Moses might have been, it was not human speech, even if it was perceived as such by Moses. Furthermore, Danziger errs when he requires that *Va-yomer* be read as "and He said." The Hebrew root *amr* usually refers to speech, but, following Aramaic and Arabic, can also mean *command*, as in Ps. 33:9, and possibly, following R. Sa'adia, "and God commanded 'let there be light!'" (Gen. 1:3). The Akkadian equivalent cognate means "to see," which is well within the semantic field of Gen. 1:3, which deals with the creation of light. And among all early authorities, Maimonides would be least sympathetic to the *Daas Torah* world view.<sup>95</sup>

In his response to Danziger, R. Greenberg adopts the Maimonidean position that the rabbis used the power of interpretation granted to them by the Torah,<sup>96</sup> while Danziger follows the view that through midrash, new Torah is developed. Sephardic and rationalist scholars have adopted the Maimonidean view; Nahmanides, almost all Ashkenazic scholars, and mystics have adopted the position espoused by Danziger. Ironically, the position maintained by Danziger, that new Torah can be developed by midrash, echoes the Conservative Judaism<sup>97</sup> that Danziger believes is heretical. The difference between the Conservative and Haredi position is not in the theory of law, but in who applies the law and to what end. For Danziger, the *gadol* may intuit the will of God, which is what is ultimately normative. And since this power, if unchecked by cultural limits, could and indeed did result in Reform theology,<sup>98</sup> consequently, the authority for developing and evolving Jewish law resides only in the *gedolim*, and they alone have the power to implement God's kingdom and glory in modern times. *Daas Torah* is not to be placed in the hands of those who might dim the luster of Eastern European learning and piety.<sup>99</sup>

#### IV. Loose Construction and the Haredi Social Order

Like all legal orders, Jewish law has a structure.<sup>100</sup> Toraitic laws enjoy a higher value than rabbinic laws, and customs are less authoritative than rabbinic law.<sup>101</sup> Torah law is the “constitutional” law of Israel, whereas rabbinic law derives from the authority that the Torah invested in the Sanhedrin, Judaism’s norm creating body.<sup>102</sup> Just as Jewish law has rules which oblige, called *mitsvot*, there are also rules which enable the participant in a legal culture to recognize which norms are laws and which are not.<sup>103</sup> The function of this rule of recognition is to provide the legal system’s criteria of legal validity and its rules of adjudication.<sup>104</sup> Now, if *halakhah* is to be understood as law, then the Haredi approach to Jewish law reflects a culturally strict application that is only comprehensible in loose constructionist terms. While the Haredi application of the norms it believes are important is very strict, the methods which justify rigorous Haredi application reflect exegetical flexibility. This methodological leniency is necessary because the statutes of Jewish law are not sufficient to insulate Jewry from the contamination of modernity which undermines traditional culture<sup>105</sup> and hence, Haredi Judaism, like Conservative Judaism, requires the occasional reinterpretation or emendation of the *halakhic* order.<sup>106</sup>

This phenomenon whereby Jewish legal requirements are suspended is exemplified by the following incident. Although a literal reading of the *halakhic* statute mandates military service in order to conquer or defend the Land of Israel,<sup>107</sup> this *halakhic* norm is not observed with consistency by the Haredi community. In his interview with Yisrael Eichler, the editor of the Belzer Hassidic newspaper, *ha-Machane ha-Haredi*, Samuel C. Heilman reports that while Eichler’s father fought in Israel’s early wars, including the Yom Kippur War, Eichler and his children would not participate in military service:

I could never join [the Israeli army]. My father thought he was fighting for Am Yisrael [the nation of Israel], not the State. But I would be drafted into the State army. What was possible for my father would not be possible for me. The army is now a force that pulls people away from being Jews; it no longer protects their being Jewish.<sup>108</sup>

The conscription of women into the Israeli army was an issue of critical concern for the Israeli Haredi community. The conscription of women was taken to be “an absolutely wicked decree which must

be resisted at all costs."<sup>109</sup> While the Hazon Ish forbade women's participation in the Israeli army as well as *Sherut Leumi*, or national service, he cited no *halakhic* source. In strictly legal terms, the Hazon Ish did not deny that there is a rule of obligation requiring such service.<sup>110</sup> His real objection is the forcing of modest women "to go out of their environment, to observe the life of pleasure and the desires of flesh, eye opening beauty, to smell foreign incense."<sup>111</sup>

Haredi doctrine is based not only upon the literal statutory requirements of Jewish law, but on public policy considerations which are not always consistent with the statute. By describing the foreign quality of culture in terms of idolatrous incense, the Hazon Ish considers participation in modernity to be the contemporary equivalent of idolatry, for both the secularity of modernity and idolatry in antiquity seduce Israel from its spiritual moorings:

There is an approach which puts the Torah into two parts, rulings of the forbidden and permitted [ritual matters constitute] one part, and rulings regarding the public square, a second part.<sup>112</sup> [They are] prepared to submit to the great sages for the first [ritual] part, and to affirm autonomy with regard to the second part....This distinction between [accepting] ritual law and rulings regarding decrees and fences is a falsification of Torah, and a demonstration of disrespect of sages.<sup>113</sup>

A similar argument is made by the late Lubavitcher Rebbe, R. M.M. Schneerson:

The argument as to what constitutes Judaism can start in the most subtle form. It may begin with those who say that they accept the Written Torah and the Oral Torah, and even the decisions of the Sages of the Talmud. They are not, however, obligated to observe those rulings of the *Gaonim* [first post-Talmudic sages] which they find too difficult<sup>114</sup> or the findings of the *Achronim*, the later Sages. Form, the Written Torah and the Oral Torah is sufficient, but the *halakhic* verdicts of the Rama in *Shulhan Aruch* (or perhaps the *Shulhan Aruch* itself!), this they do not consider binding upon them *who adds innovative definitions within the Laws of the Torah*....If they do not observe them, they claim that it does not affect their Judaism. This is only a "slight" redefinition of Judaism [emphasis mine].<sup>115</sup>

Like the Hazon Ish, R. Schneerson believes that Torah does evolve, that innovations are authorized when innovated by the theologically correct accepted authorities, but individuals, however



learned, have no right of conscience to challenge what the *gedolim* have "accepted." When noting the dissonance between the "official" sources of Jewish law and their historical application on the issue of female conscription in the Israeli army, R. Alfred Cohen concedes that there may be sociological considerations in the issuing of a ruling, in spite of Prof. H. Soloveitchik's observation, noted above, to the contrary: "at times, authentic Jewish leadership is not constricted by the niceties of academic [unambiguous textual] precedent, but acts from a broader and deeper appreciation of *halachic* norms, which may take precedence over other considerations."<sup>116</sup> Now, *Daas Torah* advocates could have ruled that their deflections from the simple, philological meaning of the Talmudic statute were grounded in the *halachic* version of "clear and present danger," or the *hora'at sha'ah* principle in Maimonides,<sup>117</sup> which permits the suspension of the law in moments of emergency, but this strategy would be an expression of leniency that would alert attention to the loose construction of the Haredi approach to Jewish law's rules of recognition.

A recent modernist Orthodox response to *Daas Torah* charismatic law is formulated by L. Kaplan, who understands *Daas Torah* to embody an "ethic of submission" which directs its adherents to obey the designated authorities, and he complains that this doctrine delegitimizes what he believes is "the more affirmative approach of the modern Orthodox."<sup>118</sup> In his defense of *Daas Torah* against Kaplan's polemic, Berl Wein notes that Kaplan concedes that the Jew is required to submit to authority, for "the knitted *kippa* [a modern Orthodox identity emblem] is as much a uniform and a form of submission as the *shtrimmel*."<sup>119</sup> Wein rhetorically questions how Kaplan might resolve a conflict between "modern values" and Torah values. The strict constructionist would respond that as long as Jewish laws are observed, autonomy is granted.

Neither "modernity" nor "antiquity" are legally relevant concepts in Jewish law. Jewish values are expressed exclusively in the norms of Jewish law, and not in the policies or pieties of anybody not explicitly authorized by Jewish law to issue legislation. When the law is silent, autonomy is authorized.<sup>120</sup>

Were Kaplan a strict constructionist, he would argue that the juridic power claimed by the *gedolim* is unauthorized by the rules of recognition of Jewish law, for the *gedolim* are neither community rabbis nor are they sitting on the Great Sanhedrin, the supreme court of Israel which is authorized to make the kinds of rulings which are issued as *ex cathedra* and taken to be *Daas Torah*. Rabbis Svei, Keller, Sherer, and Wein do not demonstrate that the Council of Torah Sages

is in fact Judaism's norm creating body in the situation of modernity.<sup>121</sup>

More threatening to *Daas Torah* theology than non-observance is non-recognition. According to R. Keller's rendering of R. Elya Bloch, "we no longer have to fear Conservatism — that is no longer the danger. Everyone knows that it is *avoda zara* [idolatry]."<sup>122</sup> When the learned rabbinic scholar, Prof. Yitshaq Gilat of Bar-Ilan University, suggested that "as religious educators we see it as our duty to give support to the girls who enrolled or will enroll in National Service [*Sherut Leumi*],"<sup>123</sup> the *Daas Torah* community was scandalized. And when Bar-Ilan, "proud of its co-educational Talmud courses marked by their 'modernity' and critical scientific approach to Talmud and Codes," was considering founding a rabbinical seminary,<sup>124</sup> a proclamation from the Israeli Haredi rabbinate was issued to oppose what would be "an attack [on] the integrity of the Torah."<sup>125</sup> On one hand, there is fear that the new type of rabbi will be "modernized and adaptable," and the aforesaid proclamation also decried "the concept of training progressive rabbis."<sup>126</sup> By associating modern Orthodox scholarship, sociology, and ideology with the "progressive" epithet and the Reformist innuendo, Haredi Judaism views the alternative Orthodoxy of the modernists as illegitimate as Reform Judaism.

Just as the creation of an alternative Orthodox rabbinate, with an alternate locus of authority, threatens the Haredi claim that it alone represents the pristine tradition, the very existence of learned, committed, pious dissent is much more threatening than overt secularism. Although R. Shlomo Goren had been an object of criticism by the *Daas Torah* community, he is cited with approval by Yonason Rosenblum in order to undermine the current Chief Rabbinate.<sup>127</sup> When R. Goren praised the late Rector of the Jewish Theological Seminary, R. Shaul Lieberman, for being a model of piety and learning,<sup>128</sup> N. Bulman demurred because the "most acceptable of them [Conservative affiliates] are truly the most serious threat to a healthy Torah society."<sup>129</sup> Since Bulman's scholarly accomplishments paled before those of R. Goren, his right to tender this criticism is due to the fact that Bulman accepts Haredi ideology, and R. Goren, ever the religious Zionist, did not. True *gedolim* are cultural heroes, and are not to be subject to the critical evaluation of lesser lights.

While R. Aaron Soloveitchik accepted "Torah U'Madda" in principle,<sup>130</sup> he nevertheless regarded R. Lieberman to be so religiously deficient, by dint of his academic affiliation, that he would be ineligible to serve as a *kosher* witness,<sup>131</sup> which is the identifying feature of what Orthodox Judaism, in all of its varieties, understands

to be a good Jew.<sup>132</sup> The only area of scientific study that R. Soloveitchik deemed to be inadmissible is the historical criticism of sacred sources, which is to his mind endeavors "to undermine the *k'dushas ha-Torah*,"<sup>133</sup> which is the area of scholarship for which R. Lieberman was highly regarded. R. Soloveitchik's aversion to Conservative Judaism's *bona fides* is so intense that he even denied their access to a communal *miqva*.<sup>134</sup> Since R. Aaron Soloveitchik does flirt with secular knowledge, having earned a *juris doctor* degree, a defensive concern for theological correctness may underlie his ideological stridency. Ironically, the Hazon Ish spoke much more approvingly of R. Lieberman's learning, methodology, and commitment to truth in his learning.<sup>135</sup>

Like his Haredi colleagues, R. Soloveitchik allows his subjective intuition to determine what does and what does not undermine the sanctity of the sacred canon. By affirming this position, the defender of the text becomes the embodiment of the text, for he determines the operational canons by which that text may be parsed. Neither R. Soloveitchik nor the Agudas Yisroel ideologues make note of the Hazon Ish's view of R. Lieberman.

The Haredi critique of Rabbis Lieberman and Goren is necessary because the *gedolim* are supposed to be the most learned and therefore most accurate transmitters of Torah. If there are indeed others who are equally or, in the case of the two sages cited above, more erudite and who nevertheless understand and apply Torah differently, the Haredi claim to exclusive legitimacy may be questioned. Since R. Lieberman was tainted by the Conservative seminary at which he taught, and R. Goren looked for leniencies when he was the Chief Rabbi of the Zionist heretical state, their piety was polluted, their learning flawed, and their *bona fides* impugned.

In the case of R. Samson Raphael Hirsch, the founder of German neo-Orthodoxy, the issue is more complex. Hirsch was very deferential to the Eastern European rabbis, even though he charted his own unique path that he thought was appropriate for his community in Frankfort a. Main. Because he was loyal to the ideological Haredi ideal, he became acceptable to Haredi Judaism as a worthy individual, if not as a leading light, a *Gadol be-Yisrael*.

In opposing the "Historical Approach" of the modernists of Breslau, Hirsch writes that "the Law, both written and oral, was closed with Moses at Sinai."<sup>136</sup> Now, if Hirsch meant this statement literally, his opinion would approach the heretical because he denies the plain sense of Scripture. The introductory passages of Leviticus, Numbers, and Deuteronomy indicate that the Biblical Author did not claim the entire Torah was completed at Sinai, but that it was presented to Israel over a forty year period. The Talmud even

records a dispute as to whether the laws of Shabbat boundaries were given at Sinai or later.<sup>137</sup> And when Isaiah affirmed that "Torah will come forth from Zion, and the word of the Lord from Jerusalem" (Isaiah 2:3), he was saying something rather different about the Torah than what Hirsch was claiming. The fact that there is a view within the tradition that God dictated the entire Torah at Sinai is not to say that is the only view, or even the normative view.<sup>138</sup> R. Ovadia mi-Bartenora argues that the idiom "Torah from Sinai"<sup>139</sup> refers to the authorization of the oral law. This is also the view of Maimonides.<sup>140</sup> Hirsch incorrectly renders the Mishnah "Moses received the Torah from Sinai."<sup>141</sup> If the Mishnah were to claim that the Torah given by God to Israel was done so in totality at Mt. Sinai, it would render the idiom *Moshe qibbel et ha-Torah be-Sinai*, Moses received the Torah [document] at Sinai. Since the Mishnah does not use the definite article, the Mishnah must be rendered, following Maimonides and R. Ovadia mi-Bartenora, as Moses receiving a Torah, referring to the oracle of the oral law, and does not here refer to the written law.<sup>142</sup>

Hirsch's polemic is an attempt to distinguish his position from that of the moderate Reformers, of whom he takes Fraenkel to be one, and he invents a dogma to accomplish this end.<sup>143</sup> It is not beneath Hirsch to besmirch the mission and method of Maimonides,<sup>144</sup> whose "philosophical spirit" he associates with Mendelssohn,<sup>145</sup> "who showed the world and his brethren that it was possible to be a strictly religious Jew and yet shine forth as a German Plato."<sup>146</sup> R. Norman Lamm takes ironic note of the fact that R. Hirsch was found by some to be a follower of Hegel.<sup>147</sup>

This Hegelian tendency in Hirsch is exemplified by the attempt to define the "underlying" meaning of Judaism, which is presented by proclamation rather than by demonstration. Hirsch often speaks of the "spirit [*Geist*] of Judaism."<sup>148</sup> He rejoices in emancipation and equality without compulsion so that everyone can live "through the power of their own inner truth,"<sup>149</sup> and he waits for the time in which there will "awaken in Israel the true *spirit* which strives to fulfill the mission of Israel regardless of whether or not there will be emancipation, to elevate and ennoble ourselves, to implant the *spirit* of Judaism in our souls" [emphasis mine].<sup>150</sup>

According to Hirsch,

the Law and the *Spirit* sought refuge in two academies, but passion and error soon sapped the foundations of these noble institutions and destroyed them. The Law went into exile, the letter and its external practical fulfillment were saved, but the

*spirit* [preserved only in the symbolical concealment of the letter] disappeared. The *spirit* can be discerned only by deduction from the letter and from the symbol that veils it, with the help of the higher insight which certain individuals had preserved [emphasis mine].<sup>151</sup>

Now, nowhere in Talmudic Judaism is there any discussion of the "spirit" of the law which "certain individuals" may intuit. Hirsch maintains that "it must be possible to find the *spirit* inherent in them [the various statutes of the law]" [emphasis mine].<sup>152</sup> This Hegelian *Geist* does not appear in rabbinic literature, but it is found in Christian Scripture.<sup>153</sup> Hirsch apparently believes that he is one of those "certain individuals" who is capable of divining this "spirit" of the law which represents God's original intent. The "spirit" used by Hirsch is borrowed from his environment, and through which the "dry" letter of Torah law was processed.<sup>154</sup>

Hirsch was an anti-Maimonidean (even though he had assimilated the neo-Kantianism of the age), anti-Reform, anti-Zionist,<sup>155</sup> and he remained a staunch believer in a doctrine of revelation so intense that it contradicted the plain sense of Scripture and the Mishnah. He was, however, sufficiently zealous to try to win the approbation of the Eastern European rabbis. However, Hirsch spoke in German,<sup>156</sup> and received a university education.<sup>157</sup> In the Haredi world which has accepted Hirsch as a member of its rabbinic elite, the historical Hirsch has to be ideologically sanitized if the Hirschian name is to be included among other *gedolim*. His piety is expressed in the political act of leaving the "official" Jewish community because he would not abide a Reform presence in the community.<sup>158</sup> He would accept non-Orthodox Jews in his community, but not ideological deviants. A theologically correct Sabbath violator is, for Hirsch, more worthy than R. Zechariah Fraenkel, a most learned, very pious individual who stood "in the synagogue with the prayer shawl over his head."<sup>159</sup>

Hirsch interprets the sacrificial cult as a symbol,<sup>160</sup> implying that he is aware of Divine intent, a skill which approximates the position imputed to those who possess *Daas Torah* prowess. This antipathy toward theological heterodoxy is expressed in the Hirschian *Austritt*, the "going out" or secession from the official Jewish community, and his establishing an alternative autonomous Orthodox community so that his spiritual charges would not be associated with or contaminated by the non-Orthodox elements of the Jewish community. R. J. David Bleich concedes that R. Hayyim Ozer Grodzinski understood the disagreement between Rabbi Hirsch and those who opposed *Austritt* to be an issue of policy rather than Jewish law.<sup>161</sup>



R. Joseph Elias, a leading Agudist spokesman, offers a theologically sanitized reading of S.R. Hirsch, referring to him with the *zatsa"l* epithet, literally meaning "may the memory of the righteous be for a blessing," which indicates that the person to whom it is appended was a person of religious distinction. Elias dismisses what he takes to be the modern Orthodox reading of Hirsch as "the champion of acculturation to the modern world and interprets 'Torah im Derech Eretz' as mandating a college degree for every Jew....Others consider him the driving force behind Orthodox separation, and believe that he was only concerned that *frum* Jews be able to 'make *shabbos*' for themselves."<sup>162</sup>

For Elias, Hirsch "was an extraordinary *Gadol ba-Torah* (no less a personality than the *Ksav Sofer* expressed admiration for his *Gadlus* in Torah)."<sup>163</sup> However, Ellenson reminds the reader that R. Seligmann Baer Bamberger, the eminent Orthodox sage of German Jewry at the time, actually opposed Hirsch's separatist ideology.<sup>164</sup> According to Ellenson, modernity was a challenge so unique that the modern Orthodox community decided to consolidate rather than to engage in outreach to the nonobservant.<sup>165</sup> While the *Daas Torah* community praises Hirsch's secession from the larger Jewish community, no note is made of the fact that this policy was not approved by all of the *gedolim*. Only those *gedolim* whose positions conform to *Daas Torah* policy are preserved in the sacred memory of the Haredi community.

Yehuda Levi's essay, "*Torah Im Derech Eretz: Torah Proper or Hora's Sha'ah*,"<sup>166</sup> examines whether the Hirschian duality of combining a Platonic Torah to a mundane world represents a religious ideal or a minimalist strategy designed to restore assimilating backsliders to a full Torah commitment. Levi first cites R. Y.Y. Weinberg, who only earns the limited *z"l*, or blessed memory, epithet, for he claimed that *Torah im Derech Eretz* "sees the world as the matter, which is to receive its form as described in the Torah."<sup>167</sup> This formulation not only echoes the Platonic mind/body dichotomy, it sounds strikingly similar to the views of R. Joseph B. Soloveitchik. Now, R. Soloveitchik's *Ish Ha-Halakhah*, or "Man of Law," is a composite or synthesis of two polar archetypes, an *ish ha-Dat*, a man of "religion," and an *ish ha-Da'at*, a man of science. The former thinks like a transcendental Platonist, the latter appears as an Aristotelian empiricist. R. Soloveitchik's Man of Law, applies the Torah, the Divinely ordained ideal, to the empirical, unfinished creation in the real world.<sup>168</sup> For Levi, this view applies only in the abstract, because "for practical purposes...the Torah invests the spiritual leadership of the Jewish people with the authority within well-defined limits,



to promulgate modifying directives as emergency regulations when special circumstances warrant it."<sup>169</sup>

On one hand, Levi applies the pagan/Platonic mind/body archetype to describe how Torah affects reality in principle, and he invests the contemporary rabbinate with the *hora'at sha'ah* authority to modify the law, in "special circumstances." What those circumstances happen to be and which rabbinate is intrusted with this task must be inferred from the specific audience which Levi addresses. Citing R. Solomon b. Aderet, the *Rashba*,<sup>170</sup> and his ban on philosophy, Levi argues that the Maimonidean model is no longer appropriate in modern times. By what authority the *Rashba* suspends the Maimonidean warrant is not discussed. According to R. J. Faur, *Rashba* shared the anti-rational bias of Ashkenazic Jewry which he had inherited from his mentor, R. Moshe b. Nahman, and formulated his anti-philosophical stance "within the semantic context of Christian society."<sup>171</sup> For R. Faur, it was not Maimonides who was deflecting from tradition, but his neo-Platonic detractors.

Eliyahu Klugman, the late "student of R. Hirsch's student," reports that R. Simon Schwab of Breuer's community in Washington Heights, New York, "attended neither high school or college; knowledge of the world and the wonders of Creation were self-taught." When R. Schwab commented to R. Chaim Ozer that the Alps were beautiful, R. Chaim Ozer responded that "a Jew with a beard is even more beautiful."<sup>172</sup> Klugman redefines the *Torah im Derech Eretz* approach to mean the "subjugation and control of all mundane affairs by the royal sovereignty of the Torah" [my emphasis].<sup>173</sup> Just as Mordecai M. Kaplan retains the "God" word in his theological system but denudes it of content, Klugman retains the *Torah im Derech Eretz* idiom, but removes from it any appreciation of Western culture, thereby rendering a recasted Hirsch acceptable to the *Daas Torah* elite. For Klugman, R. Schwab's commitment to truth was so strong that

his views on the relevance of *Torah im Derech Eretz* as expounded by Rabbi S.R. Hirsch was no longer relevant, not as an educational program and certainly not as a *Weltanschauung*....The only path for the Torah-observant German Jew was to return to the Torah-only approach, and to shun Western culture as much as possible. Rabbi Hirsch's *Torah im Derech Eretz* ideal...was only a *hora'as sha'ah*, a temporary situation.<sup>174</sup>

While this approach may be appropriate for the devotees of *Daas Torah*, it does not reflect the historical record. In point of fact, Hirsch was the driving force behind *Denkglaubigkeit*, or enlightened Ortho-

doxy, which in context is a modern Orthodox critique of Eastern European Orthodoxy's parochialism.<sup>175</sup> While the idiom *Torah im Derech Eretz* does not appear in Hirsch's major writings, it has become, according to Isaac Breuer, "only a slogan inscribed on a flag" of "a Judaism which knows itself, a Judaism which does not separate itself from nature or history in its constant changes."<sup>176</sup> Schwab's professed commitment to and understanding of Hirschian piety notwithstanding, Hirsch did not view *Torah im Derech Eretz* as an emergency measure which ought to be rejected if times and conditions change, but as a critique of Eastern European Orthodoxy. He not only advocated secular learning in order to make a living, but the "arts and sciences" as well.<sup>177</sup> In fact, Hirsch proclaimed: "I bless emancipation when I notice that no spiritual principle, not even one of foolish fanaticism, stands in its way, but that it is opposed only by those passions which are degrading to humanity, namely, greed for gain and narrow selfishness."<sup>178</sup>

Hirsch believes that the excesses of oppression "drove Israel away from a normal life, limited the free development of its noble character."<sup>179</sup> While Eastern European Jewry viewed the Hirschian experiment as an emergency measure, an honest reading of Hirsch shows that this was not the historical Hirschian position. Indeed, R. Lamm reports that

Hirsch has been faulted as well for being overly fond and respectful of contemporary derekh erez, namely, such towering personalities as Kant, Beethoven, Goethe, and Schiller; the humanistic culture and idealistic philosophy he espoused proved incapable of resisting the political and historical developments that originated in his much admired "enlightened" Germany.<sup>180</sup>

While Hirsch critiqued Moses Mendelssohn for what he took to be the sterility of his aesthetic approach,<sup>181</sup> R. Lamm finds in Hirsch "a lack of a sweeping religious feeling, of an underlying spirituality...in the rather rarefied and desiccated theory that he spins out for us."<sup>182</sup>

According to R. Schwab, "modern Orthodox halakhic foolishness which is flirting with the anti-Torah establishment may border on heresy," and a scholar, however learned, who endorses this position loses his *da'at ha-Shem*, whether it be with Zionism or with non-Orthodox Jewish ideologies.<sup>183</sup> Schwab only accepts those elements of Hirsch that were shared by the Agudist *gedolim*; embarrassing elements are refocused through the prism of historical revisionism which portrays Hirschian urbanity as a well intentioned strategy whose time has passed. Rabbi Dr. Joseph Breuer, the grandson of R.

Hirsch, is described by Ernst L. Bodenheimer and R. Nosson Scherman as

his era's leading exponent of the Hirschian concept of *Torah im Derech Erets*. It embraced every facet of a Jew's human existence on earth: his means of livelihood, general decorum, civility, propriety of dress, interaction with his fellow, level of integrity in business and personal relationships, fulfilling the law of the land, relationship to non-observant Jews, attitude toward purveyors of non-halachic "streams" of Judaism.<sup>184</sup>

Although "he subjugated all levels of life, from the so-called religious to the commercial and secular to the authority of Torah,"<sup>185</sup> it is conceded that he earned a PhD in philosophy and political economy.<sup>186</sup>

The *Daas Torah* rabbinic elite has always stressed the theological unacceptability of Moses Mendelssohn. Avi Shafran describes Mendelssohn as having studied Talmud in his youth, but "lived his adult life in those houses of intellectual ill repute, the salons of Berlin...on the very edge of his lineage's Jewishness."<sup>187</sup> By associating the salon with brothels, Shafran's innuendo implies that Mendelssohn had sewn the illegitimate seeds of his children's apostasy, which is the ultimate ground for the failure of Mendelssohn's foray into modernity. Shafran does concede that Mendelssohn was Orthodox in practice and in theology, and Shafran quotes the many authorities who refused to ban Mendelssohn's *Biur*, his translation commentary to the Torah.<sup>188</sup> It is Shafran's thesis that

Mendelssohn's mistake can be seen as nothing more than varied manifestations of one central, pervasive theme: a lack of regard for the opinions and Torah scholars of his time....He was not a bad Jew in any clear way; he was just convinced that he knew better than the unchallenged giants of his time as to what response was required of Judaism in those times.<sup>189</sup>

Since Shafran's article reveals the fact that many *gedolim* actually approved of Mendelssohn's work,<sup>190</sup> a subsequent issue of the *Jewish Observer* was constrained to concede that it is an error to write positively regarding the historical record regarding Mendelssohn,<sup>191</sup> especially when those comments are not only "too kindly" but distort the truth of current *Daas Torah* thought. For R. Yaaqov Perlow, the Novominsker Rebbe and recognized *godol* (who happens

to hold a BA from Brooklyn College), Mendelssohn's "synthesis" was

worse than a departure from Jewish tradition. It was nothing less than a schizophrenia of values, a falsification of the Torah ideal, that is doomed to fail....Seen from this perspective, the life and meaning of Moses Mendelssohn at the core was hardly "Jewish." It was a radical shift away from the path of Jewish existence. No veneer of formal adherence could thus prevent the harsh sentence that the Judge of History [or at least R. Perlow] — and Torah Jews — imposed upon him.<sup>192</sup>

For R. Perlow, Shafran's mistake was the presentation of Mendelssohn as an observant Jew whose non-adherence to the *gedolim* was the source of his failure to transmit his Judaism to his children. Like Hirsch's critique of Fraenkel, R. Perlow's dismissal of Mendelssohn's religiosity as counterfeit requires a revisionist history on the part of Haredi Judaism.<sup>193</sup> Religious probity is primarily defined by *orthodox*, politically correct loyalties, and not mere orthopraxis; to this view, salvation is primarily by faith in the judgment of *gedolim* and loyalty to their leadership, and only secondarily to religious observance which is only evidence of theologically correct opinions.

The untimely passing of the late R. Joseph B. Soloveitchik, who was once a member of Agudas Yisroel but who refused to be bound by Agudist discipline, provoked a "eulogy" which demonstrates the weight that Haredi Judaism assigns to ideological correctness and the actual letter of Jewish law. As a consequence of his independence, R. Soloveitchik was subject to a rebuke no different than those received by Rabbis Lieberman and Goren. In Nison Wolpin's eulogy,<sup>194</sup> R. Soloveitchik receives the *z"l*, or "may his memory be for a blessing," which, as noted earlier, is the epithet given any observant Jew, but he is denied the *zatsa"l*<sup>195</sup> epithet. In his critique of this "eulogy,"<sup>196</sup> R. Moshe D. Tendler observes that the appropriate *zatsa"l* honorific is deleted and that Mrs. H. Clinton received greater attention, for she at least merited a listing in the table of contents. R. Soloveitchik's legitimating rabbinic pedigree is suppressed and he was portrayed as a secular professor rather than as a Torah scholar. His intellectual independence and secular education were presented as evidence of a character flaw. Attention is drawn by R. Tendler to the fact that R. M.M. Schneerson, the late Lubavitcher Rebbe, R. Yitshaq Hutner, and, as has been noted above, R. Perlow, also attended college, just like R. Soloveitchik. R. Tendler's trenchant critique takes note of Haredi Judaism's rewriting of history, its

suppression of the historical record when that record undermines Haredi doctrine, and its opposition to intellectual independence and integrity. Wolpin concedes, albeit with condescension, that R. Soloveitchik remained an observant Jew, even though he failed to submit to the authority of the *gedolim*.<sup>197</sup> While subsequently conceding that his column was “a mistake,” Wolpin, ever the master of ambiguity and innuendo, does not explain whether the mistake was in his tactical judgment or whether he had committed a gross violation of Jewish religious law.<sup>198</sup> In his *Jewish Press* column, R. Samuel Turk reports that the Agudist leaders absented themselves from R. Soloveitchik’s funeral, which for Turk was a consequence of R. Soloveitchik’s refusal to join in a ban against mixed rabbinic and synagogue organizations.<sup>199</sup> Consistent with its political ideology, *Daas Torah* rabbis equate independence with virtual heresy; failure to submit to *Daas Torah* authority diminishes one’s religious stature.

The memorandum given by the *Jewish Observer* to the late R. Menahem M. Schneerson illustrates this point as well. R. Schneerson received the *zatsa”l* epithet because he remained within the Haredi consensus. Attention is called to the *gedolim*’s

deep differences with various aspects of the Chabad<sup>200</sup> movement...particularly the tragic rise of misplaced Messianic fervor that surrounded him and consumed so many of his Chassidim. The separatism and isolation of Lubavitch from the large mainstream of the Chareidi community was also a source of pain and frustration for many Torah leaders.<sup>201</sup>

While credit is given the Rebbe for his Haredi accomplishments, his “isolation” or independence is seen as a flaw. N. Wolpin accords the Orthodox educator R. Joshua Silberman, a pious, obedient, and learned Haredi educator, whose learning paled before Rabbis Soloveitchik and Schneerson, a glowing eulogy with the *zatsa”l* epithet.<sup>202</sup> Haredi Judaism puts a greater premium on ideological loyalty to its elite than it does to the learning or observance of the Law.

## V. The Haredi Critique of Alternative Orthodox Voices

Whenever the centrist modernist camp takes a position which differs from the Haredi consensus, it is attacked by Haredi leaders, ideologues, and journalists. Yonason Rosenblum criticizes R. Norman Lamm’s *Torah U’Madda*<sup>203</sup> because Lamm advocates, no less than S.R.

Hirsch, a study of humanities and sciences not only for the purpose of earning a livelihood, but for the intrinsic worth of the enterprise. According to Rosenblum,

*Gedolei Yisroel* have prescribed different approaches to this challenge. R. Elchonon Wasserman...limits secular studies to areas that do not deal with prohibited topics — such as alien forms of worship or atheism — and are essential for career preparation....By contrast, R. Samson Raphael Hirsch, exponent of *Torah im Derech Eretz*, assigned a place to secular knowledge as auxiliary of Torah knowledge, but only to the extent that it first pass the test of consonance with Torah. In the Hirschian worldview, there is no place for the sciences or the humanities as a source of values, or as a co-equal to Torah as an area of study.<sup>204</sup>

Rosenblum misstates and then derides R. Lamm's claims that when one studies Torah and synthesizes that study, it "is thus a fulfillment of the study of Torah,"<sup>205</sup> for R. Lamm never suggested that the humanities provide a source of religious value. In context, R. Lamm only argues that Torah informs and sanctifies the real world by providing a context for its application, an idea derived from his teacher, R. Soloveitchik.<sup>206</sup>

In dismissing what R. Lamm takes to be precedents for *Torah U'Madda*, Rosenblum claims that any new enterprise must be prohibited unless it is explicitly permitted by a *gadol*. According to Jewish classical legal theory, all that R. Lamm has to do to validate his view is show that secular learning is not forbidden by statute and corroborate the observation with the empirical fact that pre-modern sages who were accepted members of the medieval "accepted" canon of authorities actually engaged in secular learning. But since Rosenblum's rabbis frown upon secular studies, R. Lamm is wrong, not because of his misreading of facts or texts, but because of his disloyalty to the *gedolim* who view those classical precedents to be inappropriate for contemporary application. The *gedolim* become the living canon of the *Daas Torah* community before whom the entire Torah tradition must be processed.

The current controversy regarding the different definitions of brain death is not only an issue of what Jewish law says, but of who is authorized to make that determination. Chaim D. Zwiebel's "A Matter of Life and Death,"<sup>207</sup> which opposed the modernist Orthodox Rabbinical Council of America's Health Care Proxy, clarifies the Haredi consensus on the issue. Rather than evaluate the issue of brain death, Agudas Yisroel turned to R. Shlomo Zalman Auerbach and R. Yosef Sholom Elyashiv, who ruled, as *Daas Torah*, the opinion



of the Torah (and its Author) itself, that a "brain dead" patient whose heart is beating is alive and it is forbidden to harvest the organs.<sup>209</sup>

For Rabbi Moses Tendler, the author of the Rabbinical Council of America's Health Care Proxy and chair of its bioethics commission, citing R. Moshe Feinstein,<sup>210</sup> who is acknowledged to be a *gadol* by Haredi Judaism, total brain death is similar to decapitation.<sup>211</sup>

While certain of R. Feinstein's view, R. Tendler relates a second-hand report from R. B. Walfish, then Executive Vice President of the RCA, who confirms that this was also the view of R. Joseph Soloveitchik. R. Tendler also reports that he asked R. Moses Sherer for the opportunity to present his views before the *Moetses Gedolei ha-Torah*. While this writer has no evidence that R. Tendler's request was honored, Zweibel gleefully notes that there are members of the RCA who favored the Agudist position, issued as "*Daas Torah*," which indicates that there are those in the Rabbinical Council who concede that the *Daas Torah* rabbis are more correct than those who speak for what they take to be their own rabbinical trade union.<sup>212</sup> R. Tendler's synthesis of scientific and Torah expertise is so threatening to the *Daas Torah* elite that his position must be dismissed.<sup>213</sup> For *Daas Torah* ideologists, Torah reality must be determined by those who possess *Daas Torah*, while learned, informed scholars, especially those tainted by advanced secular education, are incorrect because they are theologically stigmatized by the taboo of secularity.

Recently, Yeshiva University (YU), the flagship institution of modern Orthodoxy in America, has been confronted with a public gay and lesbian club at its law school. YU defines itself as a university under Orthodox Jewish auspices, and is committed to *Torah U'Madda*, the study of Jewish religion and the academic study of worldly wisdom. Since, however, Jewish law outlaws homosexuality,<sup>214</sup> the presence of the club on university premises presents a challenge to the institution's self-definition and mission. In an Open Letter, the rabbinic faculty of the Rabbi Isaac Elchonon Theological Seminary (RIETS), the rabbinical school affiliated with YU, decried the presence of the homosexual club on YU's premises, which "has besmirched the name of our yeshiva and caused us untold embarrassment in addition to offending our most basic moral values as believing Jews."<sup>215</sup>

Significantly, these rabbis did not call for the closing of the law school in order to prevent the gay club from meeting. R. Chaim Keller, whose views have been cited earlier, publicly challenged R. Lamm, as YU's president, to either close the law school or close down the offending club and sanctify God's name. By refusing to follow his suggestion, R. Keller contends that "the lesson is simple: The Torah component of Torah U'Madda is expendable when it

conflicts with secular laws governing the nondenominational mode of Madda dispensed at Yeshiva University. This flies in the face of all the pious pronouncements in your [R. Lamm's] published manifesto, *Torah U'Madda*.<sup>216</sup>

Now, according to Jewish law, one must be willing to die in order to avoid committing acts of sexual immorality. But one is not obliged to die, or even to lose money, in order to prevent others from sinning. And the sufferance of a homosexual club is not the same offense as the commission of the (male on male) homosexual act. To aid and abet the violation of a Torah delict is but an act of "placing a stumbling block before the blind."<sup>217</sup> This command is violated only when the one who would violate Torah law could not do so without the aid of another.<sup>218</sup> The meeting of homosexuals is not *per se* prohibited, especially since YU could and does enforce civil laws against public lewdity, and the rabbinic rule against "staying the hand of those who trespass"<sup>219</sup> would not apply because of the rabbinic faculty's strong protest. R. Keller does not cite sources; he merely proclaims that YU is desecrating God's name, he offers impossible alternatives, and berates YU for not submitting to his will. Inasmuch as the prohibition "do not take an abomination into your home"<sup>220</sup> applies only to idols, and not to people who happen to be homosexual, and Maimonides rules that one may not sell a domicile to an idolater,<sup>221</sup> there would be greater warrant for the Haredi rabbinate to outlaw the renting of apartments to Roman Catholics or Shintoists who might bring statue cult objects into their domiciles for veneration than there is for the closing of homosexual clubs at Orthodox colleges. Since, however, YU represents the ideological enemy of Haredi Judaism, and real estate management is a source of income for Haredi Jews, YU becomes an object of ideological attack. It should be noted that Touro College, an Orthodox academic institution in New York, is more highly regarded in the Haredi community than YU, and no mention was made of the homosexual presence at its law school.

## VI. The Reformulation of *Halakhic* Process and its Implication in Haredi Judaism

While advocates of *Daas Torah* argue that its expositors, the *gedolim*, are exclusively authorized to apply Torah to contemporary times, there happens to be a formidable body of rabbinic literature which rejects this paradigm. For example, Maimonides rules that all Israel is obliged to observe the rules, prohibitions, and customs of

the last rabbinic court, that of Ravina and Rav Ashi, which brought the legal component of the Talmud to closure.<sup>222</sup> The function of Maimonides' Code is to make the decisions of the court accessible to the masses, so that Israel would be ruled by the Law and not by people.<sup>223</sup> After the Talmudic legal corpus came to juridic closure, Maimonides argues that while every rabbi is only bound to the decisions of the Talmud, no rabbi must accept any post-Talmudic authority, for the "Sages of Shinar" are no more authoritative than the Sages of Spain.<sup>224</sup> For Maimonides, only a court recognized as authoritative by all Israel enjoys the jurisdiction to legislate for all Israel. Now, if any and every Jew who can read simple rabbinic Hebrew has access to the Law, the power of the individual rabbi, however charismatic, is limited, for every Jew who knows the Law limits the authority of charismatic rabbis. In the Maimonidean system, the local rabbi has complete autonomy to rule in the gaps of Talmudic law, i.e., where the Talmudic court did not issue legislation, and is free to follow either his own view or the view that makes the most sense to him.<sup>225</sup> Authority is defined by erudition and jurisdiction, not claims of charisma or esoteric knowledge of Divine intent. Consequently, R. Hayyim Palachi argues that "the Torah gave permission to each person to express his opinion according to his understanding....It is not good for a sage to withhold his words out of deference to the sages who preceded him if he finds in their words a clear contradiction."<sup>226</sup>

In R. Abraham b. David's critique of Maimonides' Code, the following objection is raised:

Maimonides deviated from the classical method [by not citing the names of the authors of rulings]....If a judge knew that there was a greater [authority] than himself, he would reverse himself. And now, how would I know why I should retract my traditions and reasoning for the book of this author. If the one who disagrees with me is greater than me [*gadol mimmeni*], fine and good; and if I am greater than him, why should I nullify my view for his.<sup>227</sup>

In point of fact, Ra'avad and Maimonides are applying two different systems to the understanding and processing of Judaism's legal corpus. According to Maimonides, law is binding because it is legislated, and the power of the judge is one of jurisdiction; for Ra'avad, the greatness of the individual is the normative determinant, and the lesser sage ought to nullify his view before that of the master.

The second major critique of Maimonides was authored by R. Asher of Toledo, who objected to codified law with the argument that a code, by definition, is too general, and only the *ad hoc* rulings of the rabbi, who understands the Talmudic sources completely, has authentic jurisdiction.<sup>228</sup> On the other hand, R. Asher believes that he is bound only by the decisions of Ravina and Rav Ashi, and not by anyone else as long as (a) the issue is not explicitly resolved in the Talmud; and (b) he has clear proofs for his position.<sup>229</sup> On the matter of the absolute weight of Talmudic authority, R. Asher and Maimonides agree; the divide between them is in their respective approaches of application for the post-Talmudic Jewish communities who are bereft of an accepted central authority.<sup>230</sup> Maimonides argues that the rabbinate must be held accountable to a publicly accessible text; R. Asher maintained that it is his prerogative, as rabbi, to address and mediate the tradition as a virtual living text. Now, nowhere in the Talmud is the study of philosophy forbidden. But R. Asher believed that one who studies philosophy will be so corrupted that "he would never be able to grasp the wisdom of the law."<sup>231</sup> R. Asher made an *ad hoc* ruling, on the basis of his authority and his reading of the intent of the law, which will enhance, to his view, the purity of religious spirit of his spiritual charges.<sup>232</sup>

A third critique of Maimonides stems from Nahmanides, who does not believe that Jewish normativity can be defined solely on the basis of the absolute, hard, cold statute. According to R. David Novak's systematic presentation of Nahmanides' thought, the positivism of Maimonides leaves no room for the speculative subjectivity of natural law which humanizes and refines the legal subject and which authorizes what is taken to be legitimate rabbinic interpretative creativity.<sup>233</sup> Jay M. Harris<sup>234</sup> astutely observes that for Maimonides and the Gaonic tradition he had inherited, the Law is determined by the legislation of the court, with the *derashot*, or justifactory citation of biblical verses, serving as rhetorical flourish and no more, whereas for Nahmanides and virtually the entire rabbinic tradition from R. Solomon b. Aderet, Nahmanides' student, to Hatam Sofer, the Law was generated by the *midrash*. To this view, the *midrash* becomes the medium whereby one determines Divine intent.<sup>235</sup> This position is eminently consistent with the Nahmanidean understanding of the biblical passage "you shall be holy" (Lev. 19:2). Over and above obedience to the Law, one must, to this view, avoid impurity, even though this avoidance is not mandated by the Law.<sup>236</sup> If *midrash* is indeed a medium whereby God's mind might be mediated, and "if there is a source, independent of the Law, determining human duty toward God,"<sup>237</sup> then the Maimonidean concept of Law which allows individuals who are not *gedolim* to have access to the

Law must be rejected. All of the components of *Daas Torah* ideology are in place in medieval Judaism, if not in the Talmud, and they are all expressed by exponents of the anti-Maimonidean school of Jewish thought and jurisprudence.

Those who adopt the position of the Maimonidean school focus singularly on the sources in the determination of Jewish law. According to Talmudic law, the judge has discretion to read the sources and reality after his own lights.<sup>238</sup> For R. Hayyim David Ha-Levi, Chief Rabbi of Tel Aviv, "a judge's decision must be based solely upon the depth of his understanding of the relevant Halakhah....No precedent binds him, even if it is a ruling of a court composed of scholars greater [*gedolim*] than he."<sup>239</sup>

R. Shimon b. Zemah conceded that the latter day sages on occasion contradicted the earlier sages, "for it is appropriate for every sage and scholar not to favor one who is greater than himself if he finds obvious errors in the words of the other."<sup>240</sup> Now, this view is consistent with the Maimonidean position which invests the decisor with the authority and jurisdiction as being authorized to render rulings, and no consideration is given to the subjective category of "greatness." This point of view is not confined to Sephardic authorities. R. Hayyim Volozhin, the father of the yeshiva movement from which much of the *Daas Torah* community derives its spiritual legacy, demands that the student is required to disagree with the teacher if he is convinced that the teacher is wrong, for sometimes "the student is right."<sup>241</sup> Even R. Moshe Feinstein, who was respected by both modern Orthodox and Haredi Jewish communities, rules that a sage may disagree with other latter day authorities if one is convinced that he is correct,<sup>242</sup> and one even has a right to disagree with a sage as eminent as the Hazon Ish. According to R. Feinstein, "there is no reason to be concerned about objecting to the opinions and differing with the great Sages of our generation, even to the greatest of the great as long as it is done with deference and respect."<sup>243</sup>

The father of normative Ashkenazic practice, R. Moses Isserles, also authorizes the judge to disagree if the issue of disagreement is not mentioned in the Talmud.<sup>244</sup> Because of its penchant for suppression, these precedents are not discussed in the Haredi literature.

In light of the precedents to the contrary outlined above, the role of *Daas Torah* and its ethic of submission demands explanation and explication. Just as R. Asher outlawed the study of philosophy because this intellectual enterprise was, to his view, bad for Jewish faith, he, like the *Daas Torah* leader in modernity, selects those elements in the tradition which are deemed to be most appropriate. In dealing with the fact that *halakhic* disputes are a matter of fact, R.

Yosef Gavriel Bechhoffer, in *Mezuzos, Mochlokes, and Eilu va'Eilu Divrei Elokim Chaim*,<sup>245</sup> argues that the Sages are entrusted with the application of the Law, "and only those people whose thoughts and conclusions meet these criteria of total commitment to truth as revealed at Sinai, without a trace of *negi'ah* [vested interest] — only such people are qualified to create *divrei Elokim Chaim*.<sup>246</sup>

Like the "individuals" whom R. Hirsch believes are able to understand the "spirit of the law," R. Bechhoffer maintains that "*Hashem* [God] helps *poskim* to reach legitimate conclusions that are *divrei Elokim Chaim*, and suitable for the *Avodas Hashem* [Divine Service]" of the relevant people, place, and time.<sup>247</sup> Uncited and unaddressed in Bechhoffer's study is R. Michael Rosensweig's earlier study which examines the same issue by reviewing the different ways in which disputes in Jewish law were resolved,<sup>248</sup> and which does not assign any alleged metaphysical prowess to charismatic authorities. In order to limit the right of the rabbi to rule on the basis of the parameters of the Maimonidean school which insisted on the prerogative of confronting the tradition, Bechhoffer claims, hidden in a footnote,<sup>249</sup> that "it is debatable whether the classic concept of *Mara d'Asra*<sup>250</sup> still exists." If the *gadol* becomes the authority, the local rabbi must be denied authority; for this change in the locus of authority to take place, the canons of Jewish legal rules of recognition, or how one identifies legitimate rule makers, must also be reformulated, if not reformed. According to Eli Teitelbaum, the function of the communal rabbi is not that of *mara de'atra*, but the presenter of "the views of our *gedolim*."<sup>251</sup>

Aaron Kirschenbaum, a professor of law at Tel Aviv University, also questions the authority of the rabbi as *mara de'atra*. The rise of the rosh yeshiva "has contributed much to the near demise of the traditional *mara de'atra*."<sup>252</sup> Now, it is unclear whether Kirschenbaum is stating a fact, that the *mara de'atra* is no longer taken seriously in Haredi Orthodoxy, for his authority has been usurped by the "rising" rosh yeshiva, or whether this phenomenon constitutes a reform of Jewish legal procedure or the rules of recognition whereby legitimate rulings are identified.<sup>253</sup> According to the Maimonidean model, the local rabbi has jurisdiction by dint of his communal office; for the *gedolim*, salvific jurisdiction is theirs because they, by dint of their learning, piety, and professed disinterestedness in the outcome of their decisions, are alone able to determine Divine intent or *Daas Torah*. Kirschenbaum is quite aware that he is conceding to a select set of individuals a "sacred subjectivity," for after outlining the legal sources of Jewish law recorded in the classical tradition,<sup>254</sup> he, like S.R. Hirsch, rejects Maimonides' view and affirms the view that the rabbis, in their ruling, "conform to the true meaning and true intent



of the divine Legislator."<sup>255</sup> How contemporary rabbis are indeed able to determine "the true meaning and true intent of the divine Legislator" is unaddressed by Kirschenbaum.

According to Kirschenbaum, "the authentic *talmid hakham* embodies the living Word."<sup>256</sup> The capital "Word" reminds the reader of the introduction to the Fourth Gospel,<sup>257</sup> and the "embodiment" metaphor is strikingly similar to the Christian doctrine of "incarnation." Kirschenbaum endorses the doctrine of *emunat Hakhamim*, which, to his view, carries the authentic authority to mediate the tradition.<sup>258</sup> Kirschenbaum adopts the Christian epistemology of authority, for the simple Jew may have no access to the sources, but must have *Emunat Hakhamim*, which is taken to mean that the Jew must have faith in the rabbinic elect.<sup>259</sup> By de-authorizing and "spiritualizing" the Law, by denying the authority of the *mara de'atra*, which enjoys historical juridic precedence, and by affirming the *legal* implications of *Daas Torah* which override precedents deemed to be unacceptable, Kirschenbaum actually provides operational Haredi Judaism with a theoretical theology. Kirschenbaum's system's structure echoes the Fourth Gospel, according to which Christianity's founder is claimed to have said that he is "the way, and the truth and the life. No one comes to the Father except by me."<sup>260</sup>

In order to preserve what is taken to be the spirit of Judaism, as expressed in its Eastern European manifestation, the *Daas Torah* proclamation, justified by *Emunat Hakhamim* and faith in the *gedolim*, has become a new "rule of recognition" of the Haredi *halakhic* normative order. While elements of this scheme enjoy precedent in the early authorities, its formulation, articulation, and dogmatic status are "of recent vintage."<sup>261</sup>

In a recent *Tradition* Symposium,<sup>262</sup> R. Mayer Schiller is critical of most modern Orthodox Jews. He justifies as appropriate spiritual strictures, like the size of the *peyot*, rabbinic earlocks worn by some Haredim. He contends that "we all must be wary of lowering our standards.... We must preserve the outer forms of our Yiddishkeit as well as their inner essences."<sup>263</sup> For Schiller, Judaism is not a law but a sacred culture; there is an essence of Judaism which is preserved through historical usage. More demanding standards are, for Schiller, by definition better standards. It should be noted that Jewish legal thought does not look upon indiscriminate stricture with favor, Schiller's remonstrance notwithstanding.<sup>264</sup>

A more thoughtful formulation is offered by R. Irving Breitowitz. He notes but refuses to address "the notion that greater *humra* [religious stricture] means greater religiosity."<sup>265</sup> Since Breitowitz is a professor of law, it would have been helpful for him to justify this position on the basis of classical Jewish legal theory. Like Schiller

and other Haredi spokesmen encountered above, Breitowitz asks a series of rhetorical unanswered questions which smugly demean the religious integrity, intensity and seriousness of the "centrists," and he concludes with the query: "Is centrist Orthodoxy as practiced a truly integrated philosophy of life or a cop-out?"<sup>266</sup> Breitowitz assumes that the non-textual dogmas of Haredi Judaism are in fact legitimate Jewish expressions rather than deviations and deflections from pre-modern Judaism, while the position that he espouses is not subjected to a critical evaluation. He also claims that

if a true rapprochement [between the different Orthodox communities] is to be attained, the Centrist camp must learn to be intolerant of ideas that are fundamentally incompatible with Torah and must unequivocally dissociate itself from spokesmen and statements that degrade *Da'at Torah*, denigrate *gedolim*, or dilute *halakhah*.<sup>267</sup>

What diluting *halakhah* means is unstated; given his tone, it seems to refer to the public performance of *humra*/stringency that he refused to directly address in the first place. The idiom "degrading *Da'at Torah*" is similarly ambiguous. If Breitowitz believes that contemporary Orthodox sages have a right to legislate for all Israel as if they are the *de facto* Sanhedrin, there are those who would contend that the position which he purports to advance would regard him, like Kirschenbaum, as mistaken at best and as a heretic at worse. Also unclear is Breitowitz's view of *gedolim*. I suspect that Breitowitz's pattern of innuendo implies that centrist Orthodoxy has a right to exist as long as it accepts the Haredi version as the truly authentic ideal; any attempt to institutionalize alternative approaches that does not privilege the Haredi leadership, which is correct by definition, is both ideologically and theologically unacceptable.

Haredi Judaism is not really about standards, it is about standard bearers. Observance of standards is but an indication of loyalty to the standard bearers, especially when the standards are not mandated by the letter of the Law, as in Shafran's full beard and black *yarmulke*. In the ArtScroll Bible series, only those authorities who are "approved" are cited.<sup>268</sup>

While the ArtScroll authors do not claim to be the last word, the presentation of traditional information leads B. Barry Levy to conclude otherwise.<sup>269</sup> Levy notes that those scholars of the Italian school are, in the main, ignored, as are those who confronted the issues raised by the contemporary biblical critical schools.<sup>270</sup> Levy calls attention to the lack of linguistic training on the part of the authors, and argues that their use of language approximates the

linguistically inaccurate polemical approach of S.R. Hirsch, whose views were examined above. Unlike Maimonides, who requires that the Jew "accept the truth from whatever its source,"<sup>271</sup> ArtScroll only uses Orthodox commentaries which are "approved," and deviations from this policy are sloppy lapses. Levy observes that Rav Kook, R. Joseph Soloveitchik, and Prof. Nehama Leibowitz were all excluded from ArtScroll citation even though they are Orthodox.<sup>272</sup> Given the findings outlined above, each of these scholars violates the Haredi culture code in one way or another. R. Soloveitchik's independence was discussed above, R. Kook was a Zionist and Chief Rabbi of Israel, and Liebowitz is (a) a woman; (b) is learned in religious as well as literary studies; and (c) confronts classical Torah sources inductively. Any of these stigmatic mindsets is sufficient to exclude its exponent from the living canon of theologically correct *Daas Torah* approval.

The subjectivity of Haredi Judaism does have its precedents. As has been noted above,<sup>273</sup> Nahmanides claims that one must avoid impurity, and not be a scoundrel while observing the letter of the law. Similarly, Nahmanides' comment to Deut. 6:18, which requires that one do "what is good and right," indicates that he believes that there is a source of normativity that is extrinsic to the law.<sup>274</sup> Once one is committed to establishing that there is a Jewishly authentic source of value extrinsic to the law, the canons of control for this subjectivity must be defined. For Haredi culture, the preservation of Eastern European Yeshiva and Hassidic culture is the ultimate control which protects the Covenant of God with the nation of Israel. Any assault upon the integrity of this world is taken to be an assault on the Covenant itself. In order to defend the integrity of this shell, the rules by which Jewish norms are recognized must be redefined, and this redefinition is a small price to pay for religious Jewish survival in the age of a virulently hostile secularity.

As a stratagem of survival, Haredi Judaism provides an approach within the historical Jewish tradition. In order to mute the voice of alternative traditions within the canon of rabbinic literature, an extrasystemic *Daas Torah* discipline must be invoked. Schiller and Bechhoffer concede that there are, in principle, a multiplicity of Torah options, but those "which may lead masses of Jews to an easy acceptance of American life styles, values, and dogmas"<sup>275</sup> must be rejected.

While Haredi Judaism is strict in the implementation of its policy, it is not strict in its reading of the written word. Suppression of dissent and "dangerous" ideas within the tradition is implemented by the transfer of authority from the written word to the living rabbinic authority. Only the *gedolim* possess the *Daas Torah*,

which is the embodiment of God's revealed will to them and to their agenda. Once these sages are invested with this newfound authority, rejection of the opinions of *gedolim* becomes a rejection of God's will and is therefore heretical. Not all Jewish sources or historical facts may be placed in the possession of the faithful, who cannot be trusted to process Torah information and options appropriately. It is for this reason that in the Great Yeshivot, Jewish law is studied theoretically with regard to Talmud, and practically, from the tracts of *gedolim* who are living exemplars of Haredi ideals. Haredi students are not trained to replicate objective Jewish law on the basis of the methodology and findings of the *gedolim*. The Yeshiva encourages only theoretical studies, in which nothing of significance is at stake. The practical application of Torah is the mission of the elite, not the learned student or, for that matter, the ordained communal rabbi. The emphasis on the "spirit" of Judaism which is intuited only by *gedolim* and which is attainable only by the elect, with no access to God possible except through them, may be a strategy of affirming control, but the "spirit" idiom reflects an assimilation that Haredi Judaism would not happily concede.<sup>276</sup>

Consistent with this doctrine is the fact that in Haredi Judaism, salvation and acceptability is by faith and affiliation as much as by deed and devotion. As has been noted, S.R. Hirsch was more tolerant of non-observant Orthodox affiliates than he was of R. Zechariah Fraenkel, who was Orthodox in practice but "Historical" in his worldview. For contemporary Haredi ideologues, the ultimate heresy is the example of those who observe and profess Orthodoxy while refusing to submit to Haredi authority. These audacious spokesmen for modern Orthodoxy "have placed our *gedolei haTorah* outside of the line of tradition, declaring that they are not aware of its true spirit."<sup>277</sup>

Haredi Judaism is not fundamentalism; its application of *midrash* and continuous revelation are not wedded to the written word. Unlike liberal Judaisms, whose use of *midrash* validates, at least to the apparent satisfaction of its practitioners, their deflections from antecedent Jewish culture, practice, and doctrine, Haredi Judaism uses the *midrash* of the past in order to maintain and sustain the culture of the past as remembered by the community of the committed in the secular present. Fundamentalist movements are bound to their sacred canon, literally understood. For Haredi Judaism, the ultimate book is the consensus of its elite *gedolim*, who alone are authorized to derive and divine rules from the textual canon. Since the recognition of the *gedolim* is the crown of the Haredi creed, Haredi Judaism denies recognition to those, albeit otherwise Orthodox, who refuse to recognize the Haredi claim to privileged author-

ity. When there is a conflict between historical fact and sacred memory, memory displaces fact, as in the case of the Haredi treatment of Moses Mendelssohn. When statute and culture conflict, as in the case of men and women serving in the Israeli army, culture defines when and how the statute is to be applied. If fidelity to the statute might undermine the larger socio-religious structure of the community, cultural habits will be preserved, even at the cost of "reinterpreting" or ignoring precedential statutes. Unlike liberal Judaism, which also advocates "creative *midrash*," the agenda for change in Haredi Judaism is controlled. The Law structures change precisely so that the recognized culture does not change, and, unlike liberal Judaism, Haredi Judaism does command loyalty of a living constituency that obeys its leadership with utmost seriousness, reverence, and awe. Whether the phenomenon of Haredi Judaism will endure is a question for historians to debate, believers to affirm, and Providence to determine in the fullness of time.

### Notes

1. The idiom "ultra-Orthodox" is a misnomer. Once one keeps the Law out of commitment, one is Orthodox. Adding laws not commanded by the Law is actually a violation of the Law. See R. Tsevi Hirsch Chayes, "Mama'ar bal Tosif, in *Torat ha-Niv'im*," in *Kol Kitvei Maharits Chayes* (Jerusalem: Divrei Hahamim, 1958), pp. 77-96.
2. See *Cosmopolitans and Parochials* (Chicago: University of Chicago Press, 1989), pp. 58-9 and 61-2, which shows that Haredi Jews are more consistently careful in their observance than those who identify as centrist/modern Orthodox.
3. *Ibid.*, p. 62. While women's head covering is accepted almost universally among the *haredim*, and is mandated by Jewish law (TB Ketubot 72a), wearing the fringes outside of the garment is not only not mandated, but is questioned by some authorities. See also R. David Novak, "Is Wearing a *Tallit Katan* (*tzitzit*) Required Today," in *Tomeich KaHalakhah* (Mt. Vernon: Union for Traditional Judaism, 1994), pp. 4-5, who outlines the views of the authorities, but prefers the views of R. Isaac Luria, R. Y. Epstein, and R. Mesas. R. Novak astutely juxtaposes the view of R. Luria to R. Israel Kagan, the author of the *Mishnah Berurah*, to show that greater authorities than he opposed wearing of the fringes outside of one's trousers. R. Novak does not evaluate the normative implications of these authorities. R. Epstein, who ruled that the fringes not be worn outside of one's trousers, possessed the authority of a communal rabbi, while R. Kagan did not. Furthermore, R. Kagan's comment that those who do not wear the fringes visibly are disrespecting the commandment and not fulfilling

the biblical obligation of "you shall see them" (Num. 15:39) is both legally and theologically problematic, for no contemporary authority may invent a practice and declare that practice to be normative based on a personal idiosyncratic reading of Scripture. See TB Menahot 43b and Sh.A. O.H. 24:1. R. Kagan's creative exegesis exemplifies the Haredi approach to Jewish law, as will be explicated below. On the other hand, modernist women who are not part of the centrist/modernist religious elite view the women's head covering to be "discretionary," p. 71.

4. Amnon Levi, *ha-Haredim* (Jerusalem: Keter, 1989), p. 19. Israeli and American Haredim share similar cultures, but the Israeli Haredi tends to be somewhat more parochial. Our study focuses upon the American Haredi phenomenon, but the ideology which undergirds the two communities, like the rabbinic heroes who lead them, is the same.
5. Samuel C. Heilman, *Defenders of the Faith: Inside Ultra Orthodox Jewry* (New York: Schocken, 1992), p. 20. For the distinctions between Israeli and American Haredi Judaism, see p. 99.
6. *Ibid.*, p. 47. For a study of this tension in American culture, and the place of the Haredi Orthodox in this spiritual conflict, see James Davison Hunter, *Culture Wars: The Struggle to Define America* (New York: Basic Books, 1990), which shows how cultural conservatives who oppose religious pluralism join in common cause in order to combat the onslaught of secularity, p. 132. See also R. Elijah Dessler, *Michtav mi-Eliyahu* (Jerusalem: Committee for the Publication of the Writings of Rabbi E. Dessler, 1987), who claims that devotion to Torah must be expressed in extremism, *Qitsoniut*, I, p. 244. According to R. Chaim Keller, "a man, unless he is in direct contact with the Almighty — or unless he is a thinker of the caliber of Abraham, must be influenced by what he sees and what he hears. If he is subjected throughout the majority of his working hours to the sights and sounds, the ideas and opinions of a Godless society, he cannot expect to remain unaffected"; "The Nature of a People," *Jewish Observer* (hereafter, "JO"), 3:4 (March 1966):5-6; "Americanization Cannot be Resisted," p. 3. In the next article, "The Yeshiva Bochur and College," Bernard Weinberger maintains that "college is a dangerous place where the yeshiva student is exposed to many forms of apikursus and minus [which are different categories of heresy] where remaining a *ben Torah* is far from certain," p. 6. This view is corroborated by the report of the rosh yeshiva in Heilman, *Defenders*, pp. 272-3. For Lawrence Kaplan, *Daas Torah* is identified with the position that is more "traditional, the more *frum*, the less — heaven forbid! — modern." "Daas Torah, A Modern Conception of Rabbinic Authority," in Moshe Sokol, ed., *Rabbinic Authority and Personal Autonomy* (Northvale New Jersey: Jason Aronson, 1992), p. 53.
7. Hazon Ish, *Letters*, III, no. 61, p. 65. The Hazon Ish is best known for his commitment to larger measures, *sheurim*. R. Ezekiel Landau of Prague suggested that in contemporary times, the egg, the *halakhic*



standard for consumption in order to fulfill a Jewish legal mandate, has become smaller, and larger quantities are required in order to satisfactorily fulfill that mandate. For the Hazon Ish, this diminution of the size of the egg is taken to be a matter of fact. See Menahem Friedman, "The Lost Kiddush Cup," in Jack Wertheimer, ed., *The Uses of Tradition* (New York: Jewish Theological Seminary, 1992), pp. 180-181, for sources and discussion. The diminution of the size of the egg is a metaphor for the diminution of the generations, or *yeridat ha-dorot*, which requires greater submission and stricture, and which will be discussed below. In point of fact, by "translating" egg volume as ounces, one unwittingly assimilates non-Jewish definitions, for in Jewish law, volume is defined in terms of eggs, whatever size they might happen to be. There is no word for, and hence no concept embodying, "ounce."

8. *HaMevaser*, 34:4 (May 1995):1. The Israeli Belzers are considered by some to be derelict because they, like Agudat Israel, "accepted too many innovations and compromises," *Defenders*, p. 49. The issue is not what Jewish law requires, but what the community's countercultural ethos demands as emblems of Orthodoxy.
9. Larry Kaplan, "The Hazon Ish: Haredi Critic of Traditional Orthodoxy," in Jack Wertheimer, ed., *The Uses of Tradition*, *op. cit.*, p. 156.
10. *Ibid.*, p. 167, where the Hazon Ish, in his letters, forbids speculation regarding the *aggadot*, or theological narratives, in the Talmud, even though the classical tradition was more lenient on this matter, *Letters I*, no. 15, pp. 42-3. In this essay, we will demonstrate several examples of how the classical tradition has been modified in order to implement the Haredi agenda.
11. Kaplan, p. 173. The notion of stringency for its own sake in Israeli Haredi Judaism is examined by Menahem Friedman, "Life Tradition and Book Tradition in the Development of Ultra-Orthodox Judaism," in Harvey Goldberg, ed., *Judaism Viewed from Within and Without* (Albany: SUNY, 1987).
12. William B. Helmreich, *The World of the Yeshiva: An Intimate Portrait of Orthodox Jewry* (New Haven: Yale University Press, 1986), pp. 52-3. Helmreich notes that modern Orthodox live a co-ed culture, engage in mixed swimming, and participate in American culture, p. 53. He also notes that there is a "strictly Orthodox" group, which is as meticulous as the "ultras," or Haredim, but are not as self-consciously countercultural. For Helmreich, this population has not been studied, p. 54. In point of fact, the modern Orthodox rabbinic elite would be "strictly Orthodox," as would many of the laity of the ultra, or Haredi, world. As we shall see, the Haredi leadership constantly reminds its "strictly Orthodox" audience that more countercultural efforts are required for religious authenticity.
13. Helmreich quotes a yeshiva dean: "We don't have to write down rules about dating and movies. A student who gets this far knows what's *asur* [forbidden] and what's not," p. 196. Helmreich does not apply an

approach to Jewish law in his sociological study, for the idiom *asur* implies textual, legislated prohibition. But this "prohibition" is communal, not covenantal, and the extension of religious categories beyond their classical range is a modern phenomenon, even when practiced by anti-modernist Haredim. This phenomenon was noted by Mendel Peikarz, *Hasidut Polin: Megamot Ra'ayoniyyot ben Shtei ha-Melhamot u-ve-Gezerot* (Jerusalem: Mosad Bialik, 1990), pp. 81-96.

14. Helmreich, p. 44.
15. Kaplan, p. 151.
16. Friedman describes the Hazon Ish asking his students to be more scrupulous than their parents in the observing of *sheurim*, or required *halakhic* quantities. For Friedman, "this attitude paved the way for new stringencies within a society which purports to maintain authentic tradition," p. 185. Rabbi Hillel David, in his "Bungalow Judaism: A Guide to Safe and Kosher Weekends," *JO*, 20:5 (1987), cites the Hazon Ish, R. Abraham Karelitz, with the view that distinguishes between Jews who are not as strict as they should be, and those "who make a *shitta* [an ideology] out of religious mediocrity. They are happy as *beinoni'im* [people in the middle, who follow the Law, are not wicked, but are not overly stringent]. This is unprecedented in Klal Yisroel and totally unacceptable."
17. See the discussion of Jose Faur, *In the Shadow of History* (Albany: SUNY, 1992), pp. 9-27.
18. Simon Wein, "For a Rabbi Dressed in Black," *JO*, 27:9 (1984):37. Subsequent references to this journal will be made in the body of the text.
19. *JO*, 19:1 (1986):11.
20. *Ibid.*, p. 10.
21. *Ibid.*, p. 10.
22. *JO*, 26:1 (1993):12.
23. *JO*, 8:1 (1971):10.
24. When challenged that Haredi institutions could not exist with Haredi support alone, but must raise funds from affluent benefactors who are not Haredi, N. Wolpin stresses the "tolerance" of the Haredi leadership: "There is no state of war between the leaders of the yeshiva world and its supporters of more modern bent. The *yeshivos* historically were established and supported by wealthy Jews because these founders appreciated Torah study and meticulous mitstva observance at its purest, even when they did not personally conform to its most exacting standards in their personal life. They were not treated as demons, nor are they heirs-in-philanthropy"; *JO*, 27:3 (1994):22. The financial support of non-Haredim is put in the best ideological light. The fact that these supporters may be non-observant is of minor consequence. According to Wolpin, this largesse is not construed as an expression of nostalgia, but an ideological concession that Haredi Judaism is the authentic Jewish Orthodoxy which is

expressed in Torah study and in "meticulous mitzva observance at its purest," which refers not to the satisfying and discharging of the obligation, but to the zealotry of true believers.

25. Haym Soloveitchik, "Religious Law and Change: The Medieval Ashkenazic Example," *AJS Review*, 12:2 (Fall 1987):205, cited in Chaim I. Waxman, *Tradition*, 25:3 (Spring 1991):12. It is not at all clear that human input has no place in the formulation of Jewish law. Legislative intent is, for the Jewish system, legally irrelevant. Laws command, forbid and, with their silence, authorize behavior. See Hans Kelsen, *Pure Theory of Law* (Berkeley: University of California, 1978), pp. 15-17. The Divine law authorized the human rabbinic court, the Kelsenian norm creating body, to legislate in the intentional gaps in the law. See Maimonides, Introduction to the *Code*. In the Jewish legal system, Divine intent is legally irrelevant (TB B. Metsia 59a, and Alan J. Yuter, "Legal Positivism and Contemporary *Halakhic* Discourse," *Jewish Law Annual VI*, pp. 162-3).
26. Waxman, p. 13.
27. "This policy of identifying piety with stringency is, to this view, religiously refreshing and rejuvenating, and the *humra* [stricture] becomes the norm which he [the Hazon Ish] established in his home and which he realized in his daily life." Editorial in *ha-Pardes*, (Kislev 5754):5, cited in Waxman, p. 14.
28. In this society, the rosh yeshiva becomes the new parent, whose ethos replaces that of the student/child's parent. See Friedman, p. 242, cited in Waxman, p. 14. The rosh yeshiva has taken over the role of the Hassidic rebbe by being the ultimate father of the group. See Heilman, *Defenders*, where the rosh yeshiva functions as a matchmaker, p. 260, and the rebbe's Shabbat table is that of an extended household, with the rebbe the symbolic father, p. 88.
29. Haym Soloveitchik, "Rupture and Reconstruction: The Transformation of Contemporary Orthodoxy," *Tradition*, 28:4 (1994), argues that this rigor stems from "Lakewood and Bnei Brak," p. 65. For Soloveitchik, the *Aruch ha-Shulhan* of R. Y. Epstein of Navrodok emphasizes the law and the living tradition, while the *Mishnah Berurah* of R. Kagan only deals with the written word, p. 67. While it is true that the *Mishnah Berurah* is, according to R. Yissochor Frand, the last word (*poseq aharon*) for Haredi Judaism (in a tape on repentance), it is not because this code focuses only on the written word, for it does not. *Mishnah Berurah* follows the rigorous views of R. Abraham Gumbiner, the author of the *Magen Avraham*. Soloveitchik is correct in noting that, unlike *Aruch ha-Shulhan*, the *Mishneh Berurah* is more authoritarian, and fits well within the Haredi agenda. When faced with disputes in rabbinic law, the *Mishnah Berurah* prefers programmatic stringency, which is not standard rabbinic policy. Soloveitchik argues that the popular tradition is made to bend to theoretical knowledge, p. 69. When children replace the traditions of the parents with the traditions of the rosh yeshiva, based on personal loyalty rather than to a

- commitment to the rosh yeshiva's demonstration, the children are, from a traditional Jewish perspective, not behaving properly.
30. See Heilman, *Defenders*, pp. 104-5, who cites a Hassidic Jew called Eichler who finds that the "outside world is dangerous." R. Yissochar Frand bemoans "The Invasive Spirit of Modern Values," *JO*, 27:4 (1994), which he argues is the source of Haredi Judaism's problems. M. Herbert Danziger, *Returning to Tradition: The Contemporary Revival of Orthodox Judaism* (New Haven: Yale University Press, 1989), views the resurgence of Haredi Orthodoxy as a countercultural impulse, pp. 74-77 and 81-90.
  31. Waxman, p. 22.
  32. See note 3, above, and R. Ovadia Yosef, *Yalqut Yosef II* (Jerusalem, 1978), pp. 5-11. Regarding the "obligation" to wear a head covering at all times, see *Responsa* R. Shelomo Luria, 72, and R. Moses Isserles, *Darkei Moshe Orach Hayyim* 2:2, who indicate that the original Ashkenazic practice was not to require the male head to be covered at all times. The full beard is not mandated by Jewish law. Maimonides writes that when one removes facial hair with scissors, one is *patur*, *Hilkhos Avoda Zara* 12:7. According to Lubavitcher Judaism, Maimonides' use of *patur* implies prohibition, following R. Menahem Mendel (1789-1866) also known by his responsa, *Tsemach Tsedeq Yoreh Deah* 94, p. 158. But Maimonides explains that the word *patur* implies prohibition only in Shabbat law. See *Hilkhos Shabbat* 1:2. Ironically, the Hazon Ish only requires the maintenance of facial hair so as to keep a traditional Jewish image, and he does not object to the trimming of the beard. *Letters*, no. 197, p. 179.
  33. "The Perils of Pluralism: In Defense of 'Right Wing' Orthodoxy," a letter of the *Association of Jewish Outreach Professionals*, 1:1 (July 1995).
  34. See his entry in the *Jewish Observer* Symposium, "Why Do They Say Those Things about Us," *JO*, 27:2 (March 1994):21-24. He believes that the "average" nonobservant Jew "bears us no inherent malice," p. 22. The real enemy are those Orthodox who opt for different *halakhic* options within the "limits" of Jewish law. For the rosh yeshiva interviewed by Heilman, "Some people say that the people you call the modern Orthodox are worse than the secular Jews. A secular Jew knows that he is secular, but a modern Orthodox thinks that he is religious and can do all sorts of things and not lose faith — and that is the error," *Defenders*, p. 270. Citing his mentor, R. E. Bloch, R. Chaim Keller contends that "the *avoda zara* of modernity is to say that whatever is modern is *ipso facto* better than whatever existed before," *JO*, 27:4 (1993):13. This definition of idolatry may be contested. See Maimonides, *Hilkhos Avoda Zara*, 1:2, and Jose Faur, *Iyyunim be-Mishne Torah le-ha-Rambam* (Jerusalem: Rav Kook, 1978), pp. 237-238. According to R. Faur's reading of Maimonides, *avoda zara*, hated worship, must be *worship*. The extension of an idiom beyond its plain meaning for legal application and normative evaluation makes for good polemic but bad scholarship and religious heresy. The source of

- law that the classical tradition recognizes is the Law, the command, as in the idioms *asher qiddeshanu be-mitsvotav*, "who has sanctified us by means of the commandments," and *qaddeshenu be-mitsvotecha*." Kelsen correctly contends that the only source of legal value is the norm, which commands or forbids normative behavior, pp. 15-17.
35. For Soloveitchik, "the shift of authority to texts and their enshrinement as the sole source of authenticity have had far reaching effects," p. 87. The effect of the Haredi use of text is, for Soloveitchik, the loss of "the touch of His Presence, [and consequently] they seek now solace in the pressure of His yoke," p. 103. By formulating the problem of the Haredi redefinition this way, Soloveitchik reflects the same subjectivity that he finds objectionable in Haredi culture. If Haredi rigor is not mandated by Jewish law, it is a human rather than Divine yoke. And the whole thrust of a textual tradition which is public is to afford the power of review that is given to any and every learned Jew. The transfer of authority from the communal rabbi to the rosh yeshiva is not only a deflection from the tradition, it represents the replacement of the text with the charismatic sage, p. 94.
  36. *JO*, 1:2 (1963):11, TB Hullin 90b, and Maimonides, *Moreh Nevuchim* III, p. 17, where *da'at Toratenu* is the position of Torah theology.
  37. "Torah: A Source of Guidance in Every Phase of Jewish Activity," *JO*, 20:1 (1987):43-45, cited in Kaplan, *Daas Torah*, p. 18. Kaplan comments that R. Svei blurs the distinction between respect for and obedience to scholars. I have been unable to locate Kaplan's citation. Perhaps he is referring to R. Svei's "The Challenges of our Current Golus," *JO*, 20:10 (1988):8-11. R. Svei emphasizes that one ought to be obedient to the Torah perspective of *gedolim* in order to remain spiritually grounded in a secular age, and the *gedolim* of our age are the only sources of authority that we have, p. 10.
  38. Response of a Rabbi Shapiro to a PhD from Los Angeles, *Country Yosi*, (April 1994):70. I have been unable to find this citation in the *Mishnah Berurah*.
  39. Cited in Heilman, *Defenders*, p. 22.
  40. *JO*, 23:6 (1990):9.
  41. *JO*, 25:4 (1992):7. According to Aharon Feldman, in his "Gedolim Books and the Biography of Reb Yaakov Kamenetzky," *JO*, 27:8 (1994), these important books portray the "*gadol* as one who is an embodiment of all the values, attitudes and behavior that the Torah demands from a Jew. The loss during the Holocaust of hundreds of such outstanding Torah figures meant for the surviving generations not merely a diminution in their collective level of Torah learning, but also a diminution of their spiritual aspirations," p. 32. Feldman finds that the *gedolim* book genre overemphasizes the intellectual quality of *gedolim*, and does not show what is unique about them. He suggests that *gedolim* are not only natural geniuses, but men of spirit who grew as they matured, p. 33.

42. *Ibid.*, p. 9.
43. *JO*, 12:9, 20-23, in Kaplan, p. 19. Kaplan reports that R. Feinstein's son-in-law (who is also my mentor), R. Moshe D. Tendler, objected to the invocation of *Daas Torah*, p. 19. R. Feinstein did not read English comfortably, the report in the *Jewish Observer* was a transcript of an address, R. Feinstein never mentioned *Daas Torah* in his responsa, and in *Igrot Moshe Yoreh Deah* I, p. 101, R. Feinstein rules that an individual rabbi has a right to disagree with other contemporary and latter day rabbis if he has good reason to do so. R. Tendler's report of R. Feinstein's attitude seems to be more credible than the *Jewish Observer* transcript. While Kaplan regards this discrepancy as an "inconsistency," I believe that it is a deliberate misrepresentation based upon ideological considerations.
44. Hebrew, *hachna'ah*. See *Michtav mi-Eliyahu* III, p. 361. See, however, Simhah Friedman, "Emunat Hakhamim: Faith in the Sages," *Tradition*, 27:4 (1933):1-33.
45. *Michtav mi-Eliyahu* I, p. 59.
46. *Ibid.*, p. 60. The word for desire, *yetser*, refers to the human, appetitive impulse, and the nullification of personal intellect is identified with desire. All but the elite are contaminated with *negi'ot*, literally, "touches," which is an idiom that refers to dishonest, non-objective considerations which render one's learning impure. Because of Israel's inherent sinfulness, each Israelite is required to suspend trust in himself and have faith in the elite, who obtain their revelation directly from God. We shall return to this conceptual paradigm later in our discussion.
47. See Kaplan, p. 46, who reports this insight as an oral communication from R. Norman Lamm, President of Yeshiva University. The original use of the idiom is M. Avot 6:6.
48. Elya Svei, "The Challenges of our Current Golus [Exile]: An Agenda for Greatness," *JO*, 20:10 (1988):8.
49. Maimonides, Introduction to the *Code*.
50. Feitman claims that there is a seeming decline in the luster of Torah scholarship, which is expressed in the doctrine of *yeridat ha-dorot*, to be discussed below, and a natural tendency "to reject one's leadership when compared with that of previous generations." *JO*, 25:4 (1992):12.
51. *JO*, 25:4 (1992):12.
52. Maimonides, *Igrot ha-Rambam* (Jerusalem: Rav Kook, 1961), Introduction to *Heleq*, pp. 109-159.
53. In his Introduction to his *Code*, Maimonides argues that while one is required to obey the decision of the Sanhedrin and the court of Rabina and Rav Ashi, who are *sof hora'ah*, the last court plenum authorized and formally accepted by all Israel, a learned individual has a right and obligation to follow that post-Talmudic view which, to him, makes the most sense (*le-mi she'ha-da'at noteh*).



54. *Ibid.* In Jewish law as classically and positively understood, there are no norms which are "understood" or obvious. They must be legislated. Consequently, TB B. Mezia 32a and Rashi to Lev. 19:2 link parental authority not to the natural law of power, but Divine law. The child obeys the parent because the Law requires this obedience, and in the instance of parental wrongdoing, the child is obliged to disobey the parent and to obey the Law which authorizes parental authority. Feitman confuses obedience to Torah authority and obedience to the specific human Torah personality that he takes to be authoritative.
55. *Ibid.*, p. 13. See Gershon Bacon, "Da'at Torah ve-Hevlei Mashiah," *Tarbiz*, 52:3, (1983):497-508. For Bacon, *Daas Torah* is an innovative doctrine which gives its advocates a power that they deemed necessary, but which could not be justified by legal precedent, p. 500.
56. This epithet means "may the memory of saintly sages be for a blessing," and it is assigned to exceptionally learned, pious people who do not waver in piety and who are enduring examples of righteous living.
57. Feitman disingenuously misstates Kaplan's position. For Kaplan, rabbinic input in communal policy is appropriate, and he has found different models of rabbinic authority operating at different points in Jewish history (Kaplan, p. 53).
58. *Ibid.*, pp. 13-14. Kaplan notes that the *Daas Torah* doctrine is attributed to the Hafez Hayyim, and does not appear explicitly in his writings (*Daas Torah*, pp. 7-8). However, this authority's treating of wearing the ritual fringes outside of one's trousers can only be justified on the basis of a *Daas Torah* reading of the Law, as noted above, n. 3.
59. Kaplan, p. 26, and M. Herbert Danziger, *Returning to Tradition: The Contemporary Revival of Orthodox Judaism* (New Haven: Yale, 1989), p. 167. Danziger's depiction of the modernist's rejection of *Daas Torah* dogma has its basis in Maimonides, see note 42. Berel Wein, "Daas Torah: An Ancient Definition of Authority and Responsibility in Jewish Life," *JO*, 27:7 (1994), concedes that Kaplan identifies the problem correctly. Modernists who reject *Daas Torah* refuse to submit to individuals not authorized by the Law to be its charismatic interpreters, while those who accept *Daas Torah* accept this creed of submission. Ever the theologically correct historian, Wein suppresses the fact that R. Soloveitchik left Agudah because he no longer was willing to submit to their discipline when he thought that it was misplaced. See *ha-Pardes* 14:7 (1940). While Wein affirms the *Daas Torah* doctrine, he fails to offer any proof, source or citation in support of his position.
60. *Ibid.*, p. 14.
61. *Ibid.*, p. 17.
62. *Ibid.*, p. 18.
63. *Ibid.*, p. 20.

64. *Ibid.*, p. 26.
65. *Ibid.* R. Moshe Shmuel Shapiro, *JO*, 15:10 (1981):30. What authorizes this council to be the supreme court of all Israel is neither stated nor demonstrated. The context of this remark was the Brisker Rav's submission to the Moetses Gedolei ha-Torah of the Land of Israel, which decided to "accept" the Jewish state, against the view which he had held, that the modern Jewish state, being modern, secular, and divorced from Torah standards and leadership, was inherently invalid. R. J. David Bleich suggests, hidden in a politically correct footnote, that there may be "other equally binding decisions" other than those of the Supreme Court of Israel, and he refers to R. Elchanan Wasserman, *Kuntres Divrei Soferim*, 2, appended to *Kovez Shiurim II*, (Givatayim, 5720), which advances the *Daas Torah* perspective. Bleich applies *Daas Torah* by preferring the positions of those who, in the Haredi world, possess *Daas Torah*, but he cautiously avoids calling direct attention to the doctrine in his reasoned arguments. See his *Contemporary Halakhic Problems* (New York: Ktav and Yeshiva University, 1977), I, xvii, n. 1. According to Hillel Goldberg, an expert on the *Mussar* movement, R. Yisrael Salanter uses this idiom in his letters to express his nullifying view in deference to other great scholars. Like Feitman, Goldberg claims that the Haredi leadership felt the need to respond quickly to changing events, apparently without time to issue detailed legal reasoning for an opinion. While Goldberg seems to endorse the doctrine, his basis for doing so is not stated. The "need to respond quickly to changing events" also motivated the Reform movement to dispense with responsa. According to Walter Jacob, the chair of the CCAR (Reform) Responsa Committee, "the writing of responsa was halted (in nineteenth century Reform) because of the pace of the Reform revolution. The life of our people was changing rapidly, and it became impossible to argue about each detail. When thousands were using streetcars on Shabbat, an essay justifying the practice was hardly necessary." Walter Jacob, ed., *American Reform Responsa* (New York: CCAR, 1983), xv.
66. *JO*, 26:10 (1994):7.
67. Note the concession that sociology does impact *halakhic* decision-making. For Bleich, "it is a travesty of the *halakhic* process to begin with a preconceived conclusion and then attempt to justify it by means of *halakhic* dialectic," p. xv.
68. *Ha-Mevasser*, 34:1 (Kislev 5755/November 1994):11. R. Willig ignores the leniency of the *Shulhan Aruch* and forbids women singing in front of men because "all *gedolei Torah* have been vocal in their opposition to this being accepted as the norm," p. 9. For the *Shulhan Aruch*, one ought to avoid mixed singing during the recitation of *shema*, but even in this context, it seems that the practice is not really prohibited. See *Orah Hayyim* 75:3. See *Shulhan Aruch*, *Orah Hayyim* 74:3, which only restricts, as policy (*yesh le-hizzaher*) from hearing women singing during the recitation of the *shema*, and R. Isserles does not demur. R. J. David Bleich cites the restrictive sources in *Even ha-Ezer* 21:1,

without explaining that in context, female singing is forbidden when and where female vocalists are, by nature, "provocative" (Bleich's translation of *ervah*). He casts the lenient ruling of R. Yehiel Weinberg, *Seridei Esh* II, p. 14, as an "innovative" minority view. See Bleich, *Contemporary Halachic Problems* II, pp. 147-152. For a study of this matter from a philological, historical, and legal perspective, see R. Saul Berman, "Kol Ishah," in Leo Landman, ed., *Rabbi Joseph H. Lookstein Memorial Volume* (New York: Ktav, 1980).

69. *Hazon Ish, Letters*, I, 97, p. 113, cited and discussed in Kaplan, *Hazon Ish*, p. 166.
70. *JO*, 27:4 (1994):3.
71. *Torah U'Madda: The Encounter of Religious Learning and Worldly Knowledge in the Jewish Tradition* (Northvale, NJ: Jason Aronson, 1990), p. 90. Because of his public position, R. Lamm has been critiqued quite regularly by parochial Orthodox opponents who often avoid using the rabbinic epithet when referring to him. See Aaron Twerski, "An Open Letter to Dr. Norman Lamm," *JO*, 21:3 (1988):6-9 (emphasis mine).
72. See however Ecc. 7: 10, where it is taught that one should not say that the former days were better than the latter days, cited in Lamm, p. 88.
73. Tosafot to Rosh ha-Shanah 25b, cited in Lamm, p. 90. See also Hillel Levine, "Dwarfs on the Shoulders of Giants: A Case Study in the Impact of Modernization on the Social Epistemology of Judaism," *Journal of Social Studies* 40, 63-72.
74. *Teshuvot ha-Rid* (Jerusalem: Machon ha-Talmud, 1967), 3, no. 62, pp. 301-303, cited in Lamm, p. 96.
75. According to R. J. Faur, this posture is one of natural and mutual respect between generations. *Golden Doves with Silver Dots* (Bloomington: Indiana University Press, 1986), pp. 146-147.
76. R. Keller refers to Dr. rather than Rabbi Norman Lamm, as he regards R. Lamm's position to be syncretistic and heretical. See Lamm, p. 86, who argues that those who apply *yeridas hadoros* are arguing that moderns are too deficient to directly mediate the tradition (pp. 86-87), and the Maimonidean precedent and contemporary weakness "does not permit us to risk involvement in non-Torah disciplines" (p. 89). Ironically, the otherwise very strict adherents of the law are untroubled by the Maimonidean prohibition regarding professional, lifetime students. See *Hilkhot Talmud Torah* 3:10. When defending himself from criticism, R. Keller does accord Rabbi Lamm the traditional honorific. See "A Letter and Two Responses," *JO*, 37:9 (1994):31.
77. *JO*, 7 (1994):29.
78. *Ibid.*, p. 30.
79. *Ibid.*, p. 33.
80. A rhetorical technique of Haredi polemic is the attaching of a view to an opponent, and then attacking the opponent for the view that was

assigned to him. On the other hand, when eulogizing the late R. Dovid Lifshitz, of sainted and blessed memory, R. Keller noted that while he taught at Yeshiva University, he stemmed from the authentic yeshiva tradition from which he did not depart. See his remarks in *JO*, 26:8 (1993):30.

81. Yonason Rosenblum, "Good News from Israel," *JO*, 27:3 (1994):27f.
82. "Second Looks at the Jewish Scene," *JO*, 24:2 (1991):51. According to a free translation by R. Moshe Kolodny of an essay of the late, sainted R. Aaron Kotler which deals with the portrayal of Israel's sacred heroes, "the laws of our Holy Torah obligate me to react to this unheard of profanation of truth [the terrible blasphemies of the sanctity of our Holy Patriarchs and Matriarchs that they contained]." *JO*, 24:2 (1991):50. The "profanation" of the patriarchs is, for R. Kotler, a "defamation of the Creator." It should be noted that R. Riskin violated no Talmudic statute, and R. Kotler cited no such statute. By subjecting the sacred heroes of Israel to critical judgment, R. Riskin entertains the possibility that even latter day great rabbis might be subject to critical evaluation. Also unstated is that Torah law which prohibits a critical evaluation of a biblical hero.
83. *Jerusalem Post*, June 10, 1994.
84. *JO*, 27:8 (1994):43.
85. *JO*, 27:10 (January 1995):37.
86. See *New York Times*, December 16, 1994, p. A6, which reports that Shimon Peres argued that King David sinned (*hatta*) with Bathsheva, after which Rabbi Ravitz of Degel Torah, which reflects the ideology of the *Daas Torah* community in America, cited the Talmudic view that whosoever says that David sinned is in error. TB Shabbat 56a. But this is the view of R. Shemuel b. Nahmani. In TB Shabbat 30a, David asks, and is granted, forgiveness for *oto avon*, that wrongdoing, and the reader is informed that David is forgiven. Not only is an *avon*, a conscious act, more grievous an infraction than a *het*, a mistake, a missing of the mark, the TB Shabbat 30a view is anonymous, while R. Shemuel b. Nahmani's is that of an individual. Since in matters of theology, legally binding votes were not generally taken by the court, R. Shemuel b. Nahmani's view need not be suppressed. But because mention of David's *avon* would impugn the luster of a sacred hero, the majority theological view must be repressed. It should be noted that Abarbanel disagrees with R. Shemuel b. Nahmani. TB Yevamot 24 rules that Scripture never loses its plain sense. For Maimonides, Abarbanel, and the Sephardic tradition, it is not the unmeasurable greatness of the person, but the objective jurisdiction and stature of the court that is normative. Since R. Shemuel b. Nahmani's view is ideosyncratic, its being recorded in the Talmud does not make it authoritative, especially in light of TB Shabbat 30a.
87. *JO*, 22:10 (1990):18-19.
88. *Ibid.*, p. 18.

89. Citations are taken from Danziger's "Modern *Orthodoxy* or Orthodox *Modernism?* An Analysis of Some New Trends in Modern Orthodoxy," *JO*, 3:8 (1966). The italicized words indicate that for Danziger, the Orthodox modernists are modern secularists in theology, while maintaining the social posture of Orthodoxy.
90. *JO*, 3:8 (1966):3.
91. Reported by Danziger, p. 3. It should be noted that R. Isserles's glosses, the comments of the latter day decisors, Shach, Taz, Magen Avraham, Mishneh Berurah, and Hazon Ish, have done exactly what R. Greenberg wanted to do, albeit with a different agenda. Danziger, who argues that Greenberg, like R. Zecharia Fraenkel, understood *halakhah le-Moshe mi-Sinai* as an idiom for an old tradition, does not deal with the fact that this is also the view of R. Asher, a very important medieval authority. See David Ellenson, "German Jewish Orthodoxy: Tradition in the Context of Culture, in Werthhemier, ed., *The Uses of Tradition*, p. 16. The fact is that on this matter, R. Fraenkel had a legitimate precedent which was suppressed. Suppression is a recurring weapon in the Haredi polemic against dissent, and may underly its objection to secular education. See Yonason Rosenblum, "Electioneering in the Holy Land," *JO*, 26:1 (1993), who objects to the Chief Rabbinate because, among other vices, it is independent of *gedolim*, it sees as its constituency not Agudas Yisroel but *am Israel*, the Jewish people, and because it fills the role of a "state functionary," p. 11. Similarly suppressed is the fact that the same R. Asher, who argued that *halakhah le-Moshe Mi-Sinai* can mean old tradition, claimed that his authority derived, in part, from the fact that he was also a state appointed rabbi! See *Teshuvot ha-Rosh*, 21:8, 9.
92. See n. 67.
93. *Ibid.*, p. 8.
94. *Moreh Nevuchim* I, p. 52.
95. See R. Jose Faur, *Iyyunim be-Mishneh Torah le-ha-Rambam* (Jerusalem: Rav Kook, 1978), 60, where Maimonides tries to limit the authority of the post-Talmudic rabbinate. Additionally, a belief in *Daas Torah* of any self-defined elite is not found in my count of Maimonides' 13 articles of faith.
96. "A Letter to the Editor," *JO*, 3:10 (1966):13. See Jay M. Harris, *How Do We Know This* (Albany: SUNY, 1995), pp. 88-93, and Jose Faur, *Iyyunim*, p. 25-32. Harris believes that the rabbis took the *midrashim* seriously, and that the Ashkenazic tradition does so as well, as through *midrash* one can "read God's mind." Harris argues that since some of the rabbinic interpretations are called *mi-de-oraita*, which he incorrectly defines as "from the Torah," he claims that Maimonides and the Gaonic schools' rejection of the generative quality of *midrash* was an overreaction to the Qaraitic assault on rabbinism. For R. Faur, *oraita* legislation is Toraitic, from the Torah, and Rabbinic, for it is the rabbinic court that generated the exegesis that created the *oraita* legislation. While some laws are *halakhah le-Moshe mi-Sinai*, others

were promulgated by the court on the authority of the Torah covenant granted to the court, the norm creating organ of law in Israel. And since the Gaonic tradition was contiguous in time with the Talmud, its readings, and not those of medieval Ashkenaz, as contended by Harris, reflect Talmudic Judaism's operational theology. Only when an exegesis convinced the court would it be authoritative, and that authority comes from the power of the court, not in the mystical merits of the exegesis. And if one were to adopt the view that midrash in fact generates law, the idioms *derasha shel dofi*, the illegitimate misrepresentation of Israel's cultural code, would be meaningless, TB San 99b. While Greenberg suggests, against our view, that the rabbis derived their laws through interpretation, Danziger demands that rabbinic *derasha* is revelation. Greenberg is closer to the Maimonidean model, while Danziger adopts, like his Ashkenazic antecedents, the notion that an elect, with the power of *midrash*, can read God's mind. In point of fact, M. Avot 1:1 says that God surrendered the Torah (*masar*) to Israel. A non-Jew can understand Judaism on the *peshat* level, but not on a semantic or cultural level. See J. Faur, *Golden Doves with Silver Dots* (Bloomington: Indiana University Press, 1986), pp. 14-15.

97. Eliot Dorff, below, n. 106.
98. Harris, pp. 157-172.
99. Danziger reminds Greenberg that Orthodox scholars who have an interest in the matter will write refutations of the higher critics, but he does not want to subject yeshiva students "to the systematic poison of Bible Criticism, or any other non-Orthodox conception of *Torah she Ba'al Peh*," *JO*, 22:10 (1990):17-19. To expose the learning student to heresy is not only a waste of time, it is dangerous.
100. The norm that confers legal meaning "is itself created by an act, which, in turn receives its legal character from yet another norm." Kelsen, p. 4. The first act, the *Grundnorm*, which is the first norm of the legal order which authorizes the promulgation of other norms, furnishes "the reason for the validity of...[any particular] constitution and of the coercive order created in accordance with it," Kelsen, p. 201.
101. Maimonides, Introduction to the *Code*. Since custom is local, its jurisdiction is less limited, and therefore less binding, than rabbinic law. Menachem Elon, *Ha-Mishpat ha-Ivri* (Jerusalem: Magnes, 1973), pp. 198-199. Consequently, the popular idiom "a custom breaks, nullifies a law" is anarchistic and invalid, at least according to the principles of Orthodox theology.
102. Faur, *Iyyunim*, pp. 19-25. On the problem of the "sources of law" in the *halakhic* system, see Elon, pp. 211-222.
103. See H.L.A. Hart, *The Concept of Law* (Oxford: Oxford University Press, 1979), p. 97.
104. Hart, p. 113.



105. An example of this policy phenomenon is the Satmar opposition to the Belzer Hassidim's acceptance of secular Zionist funds for the building of its institutions. When Belzers certified meat for their own community, Hungarian Hassidim complained, as this competition impacted their ability to raise funds for their institutions. See Heilman, *Defenders*, p. 52.
106. See Gordon Tucker, "A Philosopher's View on the Problem of Scholarship and Belief," in *The Seminary at 100: Reflections on the Jewish Theological Seminary and the Conservative Movement*, Nina Beth Cardin and David Wolf Silverman, eds. (New York: Rabbinical Assembly and the Jewish Theological Seminary of America, 1987), p. 257, who argues "God's creation of a historically unfolding world necessarily carried with it a decision that the divine will shall unfold through the historical understanding and expression of human beings." Eliot Dorff makes a similar observation in *A Living Tree: The Root and Growth of Jewish Law* (Albany: SUNY Press, 1988), p. 218, whereby through study one may become "personally involved in the discovery of the law."
107. M. Sota 44b, Maimonides, Melachim 7:4, and R. Aharon Lichtenstein, "The Ideology of Hesder," *Tradition*, 19 (1981):119-217.
108. *Defenders*, pp. 101-2. Although not noted by Heilman, Eichler's response to army service, i.e., that the secular state is bad for Judaism and should not be engaged, does not apply to the accepting of state funds for its institutions. The problem with military service is not that it keeps young men from Torah study, but it removes them from the protective, pious community. Heilman reports that a pious but unaccomplished student called Beryl remained on the student body to stay out of the army and to remain a more attractive marriage candidate. The yeshiva administration did not complain when he stopped attending the yeshiva regularly after finding work in a *tifilin* (phylactery) factory, *Defenders*, p. 322. For an insight into the pragmatism of Belzer Hassidut, see Kaplan, "Daas Torah," and Wein's rejoinder, "Daas Torah," *JO*, 27:7 (1994):8-9.
109. Alfred S. Cohen, "Drafting Women for the [Israeli] Army," *Journal of Halacha and Contemporary Society*, 21 (Fall 1988):26. See however, the rejoinder of Marc Shapiro, who calls the reader's attention to the fact that there are Israeli rabbis who ruled that women may engage in national military service as long as proper precautions for modesty are observed. See Shapiro's letter to the editor, *Journal of Halachah and Contemporary Society*, 17 (Spring 1989):125.
110. Maimonides concedes that post-Talmudic sages have a right to issue decrees which are binding locally; Introduction to the *Code*. But for Maimonides, this decree is binding only on the community upon whom it was issued, and Hazon Ish did not possess a rabbinic office authorizing him to make a ruling that would be binding on anyone. See Kaplan, *Hazon Ish*; p. 171.

111. Incense was used in ancient Israel's sacrificial cult, and Hazon Ish's use of the idiom implies that the sweet smelling incense of modernity is idolatrous. *Igrot ha-Hazon Ish* I, n. 113, p. 125. Public service offends the *regesh ha-dati asher be-lev ha-horim u-venoteihim yahad*, the religious spirit shared both by parents and children, I, n. 112, p. 123. But this is a social and psychological rather than legal objection.
112. Magen Avraham and R. Elijah of Vilna often disagreed with the *Shulhan Aruch*, which was written not as code but as a compendium. Judaism knows of no official codes, for no such code was ever legislated by the Sanhedrin.
113. *Igrot ha-Hazon*. The Hebrew idiom *gilluy panim ba-Torah*, in the Talmudic original, *she-lo ke-halakhah*, refers to M. Avot 3:11. In his commentary to the Mishnah, *ad loc*, Maimonides understands this idiom to mean public disregard of the commandments. See also *Hilkhot Teshuva* 3:11, according to which public demonstration of willful disrespect is intended. Since TB San 99b refers to the wicked king Menasseh, Maimonides seems to prefer this rendering. R. Ovadia mi-Bartenora understands the idiom to be the willful misrepresentation of Torah truth and interpretation. Hazon Ish's use of this argument precedes R. Svei's. See n. 37, above.
114. In the Introduction to his *Code*, Maimonides rules that the Gaonim do not have the right to legislate for all Israel, and he, and any other post-Talmudic rabbi, has a right to reject their opinions not only if he finds them too difficult, but even if he finds them to be wrong.
115. M.M. Schneerson, "Torah and Judaism," in *A Thought for the Week*, 11:1 (October 1977):5. See Feitman, n. 50-51, who does not deal with the possibility that the *gadol's* view might be rejected on the basis of principle rather than weakness.
116. Cohen, p. 42.
117. Maimonides, *Hilkhot Mamrim*, 2:4.
118. Kaplan, *Daas Torah*, p. 25.
119. Wein, *Daas Torah*, p. 6.
120. When the law neither commands nor forbids, individual autonomy is authorized. See Kelsen, p. 16, and Maimonides, Introduction to the *Code*.
121. There is no organ, as far as I know, authorized by Jewish law to serve the function that the *Daas Torah* advocates claim is the prerogative of the *gedolim*. For Maimonides, the *gadol* is only the honorific head of the Sanhedrin and does not, as a person, possess individual norm-creating power. See TB B. Mezia 59b and Maimonides, Introduction to the *Code*.
122. *JO*, 6:8 (1970):4.
123. David Meyers, "The [Israeli] Rabbinate at Bay," *JO*, 8:1 (1971):11.
124. *Ibid.*, p. 15.
125. *Ibid.*, p. 16.

126. *Ibid.*, p. 16.
127. Yonason Rosenblum, "Electioneering in the Holy Land," *JO*, 26:1 (1993):10-16.
128. Reported in *National Jewish Post and Opinion*, 10 February 1976.
129. *JO*, (March 1976):3.
130. Aaron Soloveitchik, *Logic of the Heart, Logic of the Mind* (Brooklyn: Judaica, 1991), pp. 35-39, by which he means knowing God through creation.
131. R. Aharon Soloveitchik, "be-Inyan Qeddushei Shomeranim" (On the Matter of Conservative Conversions), *ha-Pardes*, (Marcheshvan 5747):18.
132. *Shulhan Aruch Hoshen Mishpat*, p. 34.
133. Soloveitchik, *Logic of the Heart, Logic of the Mind*, p. 96.
134. *HaDarom* (5746), cited and summarized in Bleich, *Contemporary Halakhic Problems* III (1989):102-113.
135. Shraga Abramson, "R. Shaul Lieberman's Method of Investigating Talmudic Literature," *Le-Zichron shel Shaul Lieberman* (Jerusalem: Israel National Science Academy, 1984), p. 29, cited in Kaplan, *Hazon Ish*, p. 155. See Zevi Yehuda's reading of Hazon Ish's objections to the use of text criticism in authenticating correct *halakhic* readings, in his "The Hazon Ish on Textual Criticism and Halakhah," *Tradition*, 18:2 (1980):172-180; and S.Z. Leiman, "The Hazon Ish on Textual Criticism and Halakhah: A Rejoinder," *Tradition*, 19:4 (1981):301-310. While Hazon Ish is committed to traditional life, he was unwilling to falsify the historical record in order to maintain that traditional life. Variant readings in and of themselves do not give warrant for change in praxis, for they have to be verified, and verification of correct readings was a critical concern of R. Lieberman. Because Hazon Ish was so wedded to his world, R. Lieberman's quest for truth was, for him, not threatening; because R. A. Soloveitchik had internalized the secularity of modernity, he compensates by joining the popular Haredi rejection of R. Lieberman.
136. Samson R. Hirsch, *Horeb* (London: Soncino, 1962), I, p. 20, cited in Ellenson, *German Jewish Orthodoxy*, in Wertheimer, p. 15.
137. TB Shabbat 87b. See Nosson Scherman, *ArtScroll Torah* (Brooklyn: Masora, 1993), pp. 938-939, comment to Deuteronomy 1:1, where the plain sense of Scripture rather than the ideological Hirschian hyperbole is presented.
138. TB B. Batra 14a-15b.
139. Commentary to M. Avot 1:1.
140. Commentary to M. Avot 1:1, referring to this Torah as *Qabbalah*, the received tradition.
141. S.R. Hirsch, *Chapters of the Fathers* (Jerusalem and New York: Feldheim, 1967), p. 5.

142. TB B. Batra records the debate regarding the Torah verses ostensibly written after Moses' death. Whether those passages were written by Moses, in tears, or by Joshua, his successor, is not here relevant. From this Talmudic statement, it is clear that the rabbinic sages were not committed to a Torah document that was closed at the Sinaitic theophany. TB Gittin records the debate as whether the Torah was written scroll by scroll (*megillah megillah*) or in one theophonic act (*hatuma*, i.e., sealed). According to a literal reading of the Pentateuch, it would be appropriate to distinguish between the initiating of the covenant at Sinai and the recording and depositing of the Torah document.
143. See discussion of Ellenson, pp. 8-9.
144. See Chaim D. Keller, "Modern Orthodoxy: An Analysis and Response," *JO*, 6:8 (1970):12, who argues that we are not bound to accept Hirsch's evaluation of the Rambam (Maimonides). When Hirsch is disrespectful toward Maimonides, Keller denies him the rabbinic honorific.
145. Norman Lamm, *Torah UMadda: The Encounter of Religious Learning and Worldly Knowledge in the Jewish Tradition* (Northvale: Aronson, 1990), p. 112.
146. S.R. Hirsch, *The Nineteen Letters* (Jerusalem: Feldheim, 1969), p. 123. R. Lamm takes note of the irony in the fact that Hirsch was found by some to be a follower of Hegel (Lamm, p. 122).
147. Lamm, p. 122.
148. *Nineteen Letters*, p. 102.
149. *Ibid.*, p. 110.
150. *Ibid.* The concept of the Mission of Israel is an idea not found in Jewish sources, but was a tenet of nineteenth century European and twentieth century American classical Reform Judaism. See Michael A. Meyer, *Response to Modernity, A History of the Reform Movement in Judaism* (New York and Oxford: Oxford, 1988), pp. 137-138, who dated this idiom to Mendelssohn and shows, as evidenced in the citation quoted above, that it was used by Hirsch!
151. Hirsch, p. 118.
152. *Ibid.*, p. 126.
153. Galatians 3:14 and Romans 8:1-11.
154. See Faur, *In the Shadows of History*, pp. 13-15, for a similar phenomenon in medieval Judaism.
155. Klugman, p. 27.
156. In Haredi Judaism, Yiddish is the language of choice. See Heilman, *Defenders*, pp. 166-167; *JO*, 21:4, in which Bernard Fryshman advocates teaching in Yiddish, and the discussion in *JO*, 21:5, where R. Yaakov Bender reports that teaching in English over Yiddish is more effective, and that the *gedolim*, whose mother tongue is Yiddish, actually approved the change, p. 34.

157. Ellenson, p. 10.
158. Eliyahu M. Klugman, "Eretz Yisroel, Zionism and Medinas Yisroel in the Philosophy of Rabbi Samson Raphael Hirsh," *JO*, 22:1 (1990):20-21.
159. Ellenson, p. 16.
160. S.R. Hirsch, *Leviticus* (Frankfurt a. Main: Kaufmann, 1873), p. 390, cited in Ellenson, p. 144.
161. *Teshubot Ahizer* I, 140, and discussion in Bleich, *Contemporary Halakhic Problems*, III, p. 89. According to Bleich, mixed rabbinical bodies are by definition religious rather than communal organizations and even those who would not leave the organized European community ought not to participate in American mixed rabbinic bodies, p. 90.
162. *JO*, 21:9 (1988):5.
163. *Ibid.* Elias makes no mention that Hirsch's championing of German over Yiddish and his adoption of Western garb was strongly opposed by Hungarian Orthodoxy. Ellenson calls attention to R. Akiva Y. Schlesinger in Alexander Guttman, *The Struggle Over Reform in Rabbinic Literature* (New York and Jerusalem: World Union for Progressive Judaism, 1977), pp. 289-291, and the memoir of R. Hildesheimer's daughter, Esther Calavary, in "Kindheitserinnerungen," *Bulletin des Leo Baeck Instituts*, 8 (1959):187-192, cited in Ellenson, p. 8, n. 6.
164. Ellenson, p. 10.
165. *Ibid.*, p. 11.
166. *JO*, 21:9 (1988):7.
167. Toras Chayim, in *HaRav S.R. Hirsch: Mishnato ve-Shittato* (Rabbi S.R. Hirsch, his Teaching and Method) (Jerusalem, 5722), p. 192, cited in Levi, p. 6.
168. *Ish ha-Halakhah—Gilluy ve-Nistar* (Jerusalem: WZO, Torah Department, 1979), part 6, p. 28, "when the man of law approaches reality, he comes with his Torah from Sinai in his hand. He is connected to the world with fixed a priori rules and principles" (my translation).
169. Levi, p. 7.
170. Responsa I, 415, 6.
171. Faur, *In the Shadows of History*, p. 15. This same phenomenon occurred in the area of *parshanut*. See Eliezer Tuito, "Shittato ha-Parshanit shel Rashbam al reqa ha-historit shel zemano," *Mehqerei ha-Universita ha-Petuha le-Toledot Yisrael ve-Tarbuto* (Tel Aviv: Open University, 1984), pp. 54-66.
172. *JO*, 28:5 (1995):17.
173. *Ibid.*, p. 16.
174. *Ibid.*, p. 19.
175. Lamm, p. 111.

176. Cited in Moshe Arend, "Torah im Derech Eretz be-Mishnatam shel Dovrei Yahadut Germania ha-Haredit lifnei ha-Shoah," (Torah and Manners in the Teaching of Parochial Orthodox German Jewry before the Holocaust), in Mordecai Breuer, ed., *Torah im Derech Eretz* (Ramat Gan: Bar-Ilan University Press, 1987), p. 47, cited in Lamm, p. 114. It is reported by Bodenheimer and Sherman that Breuer "even encouraged it [higher secular education] for most young people." *JO*, 15:6 (1981):7.
177. S.R. Hirsch, *The Nineteen Letters* (New York: Feldheim, 1969), p. 115.
178. *Ibid.*, pp. 109-110. For Hirsch, emancipation is "a means of fulfilling the mission of man-kind" (p. 108), a doctrine which does not appear in classical sources and which is ignored in Haredi sources. It does appear in the writings of nineteenth century Reform Judaism.
179. Hirsch, p. 109.
180. Lamm, p. 121.
181. Hirsch, pp. 123-124.
182. Lamm, p. 122.
183. Letter in *Mitteilungen: Bulletin of K'hal Adath Jeshurun*, 49 (April/May 1989):2.
184. "Rabbi Joseph Breuer, zatsa"l, One Year Since His Passing," *JO*, 15:6 (1991):5-6.
185. *Ibid.*, p. 6.
186. *Ibid.*
187. "The Enigma of Moses Mendelssohn," *JO*, 19:9 (1986):13.
188. Two years after this essay appeared, Meir Hildesheimer, whose name bespeaks his Hirschian legacy, as Azriel Hildesheimer was the son-in-law of Hirsch, wrote "Moses Mendelssohn in Nineteenth Century Rabbinical Literature," *PAAJR*, 55 (1988). He notes the approbations that Mendelssohn had received from the great rabbis of his day.
189. *JO*, 19:9 (1986):17.
190. While opposition of R. Shelomo Kluger to Mendelssohn was based on an ideological objection to Enlightenment, Rabbis Mordecai Baneth, Moses Mintz, and Jacob Ettlinger (author of the Responsa Binyan Tsiyon) were much less critical. R. Zevi Mecklenburg, author of *Ketav ve-ha-Qabbalah*, refers to Mendelssohn as RaMaD. Azriel Hildesheimer referred to Mendelssohn as the "worldly sage." R. Joseph Wolgemuth describes Mendelssohn as "a pious man, but at times an imperfect Jew." Meir Hildesheimer, pp. 90-127; the quotation is taken from pp. 126-127.
191. *JO*, 19:10 (1986):13.
192. *Ibid.*
193. See Shnayer Z. Leiman, "Moses Schick: The Hatam Sofer's Attitude Toward Mendelssohn's *Biur*," *Tradition*, 24:3 (1989):83-85, where it is shown that R. Moses Sofer did view Mendelssohn as a heretic.



194. *JO*, 26:4 (1993):42.
195. See n. 128, above.
196. The word "eulogy" means "good words," and the words contained in the memorium were hardly flattering. In "An Open Letter to the Moetzes of Agudas Yisrael," published in the *Algemeiner Journal*, June 4, 1993, p. B4, R. Moshe D. Tendler offers a biting critique of the eulogy's author, to whom he refers as "Mr. N. Wolpin." By violating the honor of a Torah sage, one forfeits one's portion in the eternity to come. TB San 99b. See n. 37, which documents R. E. Svei's view where the disagreement with a *godol*, or great sage, is equivalent to shaming the scholar.
197. *Algemeiner Journal*, August 13, 1993, also reports Eli Teitelbaum's nasty evaluation of Soloveitchik. Teitelbaum is also responsible for the critique of R. Soloveitchik's student, R. Shlomo Riskin, *JO*, 27:8 (1994):43, cited above.
198. *Jewish Week*, July 1-7, 1994, p. 19.
199. *Jewish Press*, May 21, 1993, p. 56.
200. *Chochma, Bina, and Deah*, wisdom, understanding and knowledge, taken from one version of the mystical *sefirot*, became the identifying acronym for Lubavitch Hassidut.
201. *JO*, 27:5 (1994):3.
202. *JO*, 27:8 (1994):22. In the initial eulogy, published in *JO*, 27:3 (1994):11, Silbermintz only received the *z"l* epithet. However, Silbermintz was faithful to the *gedolim*, and is therefore a *tsaddiq*, an exceptionally worthy person. R. Soloveitchik did not observe this discipline, and as a consequence must be denied full rabbinic honors, in spite of his learning and piety.
203. For bibliographic information, see note 76.
204. *JO*, 25:2 (1992):27.
205. Lamm, p. 165.
206. See n. 168.
207. *JO*, 24:4 (1991):11-15.
208. *JO*, 24:7 (1991):11.
209. Both of those referred to have *shelita*, an acronym meaning "may he live for a long and good life, amen," whereas *zatsa"l* is the dignity conferred upon a *godol* who has died. It is little wonder that *JO* denies R. Tendler the *shelita* epithet, just as R. Soloveitchik was denied the *zatsa"l* epithet.
210. *Responsa Igrot Moshe Yoreh Deah III*, 132.
211. R. Tendler cites M. Ahelot 1:7 and Hullin TB 21a to demonstrate how R. Moshe's reading of the actual situation of brain death is akin to an animal who has no brain because the head had been removed from the body. See Dr. Fred Rosner and R. Moshe Tendler, *Journal of Halacha and Contemporary Society*, 17 (1989):14-31, 32-40, for R. Herschel

- Schacter's entry, and 41-48 for R. Aharon Soloveitchik's essay on establishing the *halakhic* time of death. See also R. J. David Bleich, "On Cerebral, Respiratory, Cardiac, and Death," *Tradition*, 24:3 (1989):44-66, and *Contemporary Halachic Problems* IV, pp. 316-350.
212. At an RCA conference, I had asked R. Mordecai Eliyahu, the sitting Sephardic Chief Rabbi of Israel at the time, to address the issue of brain stem death, and his position on the matter happened to be identical to R. Tendler's. The fact that the Israeli rabbinate has a detailed protocol is an issue of policy. It has been noted that the Israeli rabbinate's position, as a matter of principle, is not highly regarded by the *Daas Torah* Agudist community.
213. R. Marc D. Angel reports that when the Orthodox Roundtable, a modernist Orthodox rabbinic "think tank," issued a paper on outreach to the intermarried, he was told by an angry rosh yeshiva that the paper's authors "should have consulted with some *gedolim*," *Seeking Good, Speaking Peace* (Hoboken: Ktav, 1994), p. 239. The merits of the Roundtable's position is not the issue; the consensus of *gedolim*, whose experience in dealing with intermarriage is "irrelevant," represents the *Daas Torah* ideology.
214. Torah law prohibits male homosexuality at Lev. 19:22, and lesbianism is outlawed, according to rabbinic law, at Maimonides, *Hilkhos Issurei Biah* 21:8.
215. *Algemeiner Journal*, June 30, 1995, p. B1 (English section).
216. *JO*, 28:5 (1995):30-32. In a letter to the editor in *Jewish Voice* (Av 5755), Yitzak Ben Chaim, of the Council for Authentic (read non-modern Orthodox) Judaism, complains that the funding of the club is a *shonda* (Yiddish word for shame), and that YU is guilty of hypocrisy and immorality in funding the club, p. 45.
217. Leviticus 19:14, TB Pesachim 22b, TB Mo'ed Qatan 5a, 17a, and B. Mezia 75b.
218. TB Aboda Zara 6b.
219. See R. Nissim to the Rif, TB Aboda Zara 1b.
220. Deuteronomy 7:26
221. *Hilkhos Avoda Zara* 9:13.
222. Maimonides, Introduction to the *Code*, and B Mezia 86a.
223. Faur, *Iyyunim*, pp. 46-50.
224. Shinar is the ancient biblical name for Babylon. Gen. 10:10, 11:2, Is. 11:11, and Dan. 1:2. The Israelites agree to follow Joshua only if "God is with him" as God was with Moses, i.e., he is guided by the Law. See Josh. 1:17-18. For Maimonides, sitting on the seat of the Head of the Yeshiva does not invest that individual with juridic authority.
225. See R. Zerachia ha-Levi, *Teshuvot ha-Geonim*, Harkavay, ed. (Berlin 1887), p. 175, n. 348, and discussion of Joel Roth, *The Halakhic Process: A Systemic Analysis* (New York: Jewish Theological Seminary, 1986),

- p. 97. Like Maimonides, R. Zerachia believed that he possesses the jurisdiction and authority to evaluate authorities who preceeded him.
226. Responsa Hikekei Lev I, Orah Hayim 6, and Yoreh Deah 42, cited in Marc D. Angel, *Seeking Good, Speaking Peace*, Hayyim J. Angel, ed. (Hoboken: Ktav, 1994), p. 14.
227. Ra'avad, on Maimonides, Introduction to the *Code*.
228. *Teshuvot ha-Rosh* 31:9.
229. See R. Asher to San.4:6 and discussion of Elon, *Ha-Mishpat Ha-Ivri*, pp. 232-233 and 1013-1016.
230. Faur, *Iyyunim*, p. 60.
231. *Teshuvot ha-Rosh* 55:9.
232. See earlier, n. 91, end.
233. David Novak, *The Theology of Nahmanides Systematically Presented* (Atlanta: Scholars Press, 1992), pp. 4-14.
234. Harris, *How Do We Know This*, pp. 90-93.
235. See Ezra 7:10, when one seeks God in the Torah book.
236. See Nahmanides, *ad loc.*, the critique of J. Faur, *In the Shadows*, pp. 12-13, and the tantalizing essay of R. Aharon Lichtenstein, "Does Jewish Tradition Recognize an Ethic Independent of Halakhah?," in Marvin Fox, ed., *Modern Jewish Ethics* (Columbus: Ohio State University Press, 1975), pp. 62-88. While R. Lichtenstein does not explicitly take a position, the frame he provides leads me to surmise that he indeed accepts the notion that there is a binding extrasystemic morality. However, R. Moshe D. Tendler prefers the positivist position, arguing that he feeds the poor "because the Torah so ordained," and not because of a subjective sense of empathy. See *The Condition of Jewish Belief* (New York: Macmillan, 1966). R. Tendler himself uses the idiom *Daas Torah* to represent the ideology of the Torah, which is not the same as the conclusions reached by a post-Talmudic rabbinic synod. A Jew cannot be a racist, Communist, fascist, or Shintoist (an idolator by any definition) and be a committed Jew (p. 242). See also Nahmanides to Deuteronomy 17:11, where he rules, against TB Horayot 2a and Maimonides, *Hilkhot Sheggagot* 13:5, that a knowledgeable person must follow the court even when he knows that the court makes an error.
237. Faur, *In the Shadows*, p. 13.
238. *En la-dayyan ella ma she-eiynav ro'ot*, B. Batra 131a.
239. *Aseh Lecha Rav* II (Tel Aviv: n.p., 1989), n. 61, cited in Jeffrey R. Woolf, "The Parameters of Precedent in Pedak Halakhah," *Tradition*, 27:4 (1993):42.
240. Cited in Lamm, *Torah Umadda*, p. 98.
241. Ruah Hayyim (Commentary to *Ethics of the Fathers*) 1:4.
242. Responsa Igrot Moshe, Yoreh Deah I, p. 101.
243. *Ibid.*, III, p. 88; Woolf's translation, p. 43.

244. Hoshen Mishpat 25:2. Note that in theory, R. Isserles's view approaches that of Maimonides.
245. This idiom occurs at TB Eruvin 13b, TB Gittin 6b, TP Berachot 1:4, TP Qiddushin 1:1.
246. *JO*, 27:10 (1995):18. This point was made by R. J. David Bleich, n. 50.
247. *Ibid.*, p. 23.
248. "Eilu ve-Eilu Divrei Elohim Hayyim," in Sokol, ed., *Rabbinic Authority and Personal Autonomy*, pp. 100-110. R. Rosensweig deals with the range of opinion, from those who argue that there is an "objective" truth, following the Netsiv, and Rema, in his *Responsum* (Jerusalem, 1977), n. 107, who explains that the Torah provides a range of possibilities (Rosenzweig, p. 105), and the Ritba, responding to the Tosafist query at TB Eruvin 13b, how conflicting views might both be true, contend that Moses was taught a Torah with 49 stringent and 49 lenient approaches. Ritva, *ad loc*, in Rosenzweig, p. 107. It is possible, but by no means certain, that Bechhoffer's essay is a *Daas Torah* response to R. Rosensweig, for the latter shows that the medievalists did not appeal to a supernatural "*Daas Torah*" authority and he, like Shafrin on Mendelssohn, is constrained to explain the dissonance between the historical record and conflicting dogma.
249. *Ibid.*, n. 2, at 19. This is the same technique employed by R. Bleich, n. 50! It is plausible, but not certain, that Bechhoffer derived this notion indirectly from Hirsch, who, as we have seen above, believed that the *gadol* can intuit the spirit of the law. Breuer married into the Hirsch family, and the late R. Joseph Breuer's daughter is Mrs. Jerry Bechhoffer! Bodenheimer and Scherman, *JO*, 15:6 (1981):5. It should also be noted that R. Bechhoffer teaches at Bet Midrash le-Torah in Skokie, Illinois, where he functions as a *poseq*, a legal authority, and a popular preacher. These are precisely functions of the community rabbi, or *matra de-atra*, that the rosh yeshiva and perspective *gadol* wishes to replace. By dint of his yeshiva position, R. Bechhoffer offers himself in the American religious market as a communal spiritual leader.
250. Master of the place, local rabbi, which for Maimonides is the *bet din shel yahid* whose *halakhic* autonomy begins where the Talmud closes.
251. Citation in *JO*, 11:15 (1976):40.
252. Aaron Kirschenbaum, "Mara De-Atra, a Brief Sketch," in Sokol, p. 38.
253. See note 103.
254. Kirschenbaum, "Subjectivity in Rabbinic Decision-Making," in Sokol, p. 69.
255. *Ibid.*, p. 77. The Ochnai oven narrative of TB B. Mezia 59b would seem to indicate that Divine intent is legally irrelevant, even if that intent could somehow be divined.
256. *Ibid.*, p. 86.

257. "In the beginning was the Word [*Logos*] and the Word was with God, and the Word was God" (John 1:1).
258. Kirschenbaum, p. 90.
259. Elaine Pagels, *The Gnostic Gospels* (New York: Vintage, 1981), argues that the difference between Orthodox and Gnostic Christianity is that the former emphasized that salvation is found only within the hierarchy of the Church, while the latter maintained that salvation is obtained in discovering oneself. Now, the ultimate sin of the Gnostics was not in the "error" of their particular beliefs, but their challenge of the Bishop "to define what he considered to be his own Church. They had the audacity to debate whether or not catholic Christians participated" in the Church. "The Bishops would tolerate no dissent on doctrine, ritual, and hierarchy — and the gnostics challenged them all" (p. 142). For Kirschenbaum, even the deviations from the statute, when made by the *gedolim*, are legitimate because they are right by definition and, to his view, possess the power by which the mind of God is read. Kirschenbaum's Christian idiom reflects a syncretism much more significant than the occasional inconsistencies of the centrist/modernist Orthodox layperson. He seems to accept what he takes to be the fact of *halakhic* change, but only when enacted by the *gedolim*, who, to his ironic rendering, would be exponents of a "Reform Judaism" of the theological right.
260. John 14:6.
261. Mendel Piekarcz, *Hasidut Polin: Megamot Raayoniyot bein Shtei ha-Milhamot u-ve-Gezerot 1940-1945* (Jerusalem: Bialik, 1990), pp. 81-96, and Bacon, *op. cit.* Wein, *op. cit.*, concedes that the idiom is of recent vintage.
262. "A Symposium on Divided and Distinguished Worlds," *Tradition*, 26:3 (1992).
263. *Tradition, op. cit.*, p. 62.
264. TB Hullin 44b.
265. *Tradition*, p. 19.
266. *Ibid.*, p. 20. Breitowitz decries lay Haredi smugness, but not the core beliefs of Haredi culture.
267. *Ibid.*, p. 21.
268. B. Barry Levy, "Our Torah, Your Torah, and Their Torah: An Evaluation of the Artscroll Phenomenon," *Truth and Compassion: Essays on Judaism in Memory of Rabbi Solomon Frank*, Howard Joseph, Jack Lightstone, and Michael Openheim, eds. (Waterloo, Ontario: Wilfrid Laurier University, Canadian Corporation for Studies in Religion, 1993), p. 138.
269. *Ibid.*, p. 142.
270. *Ibid.*, p. 145.
271. Introduction to *Shemona Peraqim*.
272. Levy, p. 174.