

'The Objectifying Instrument of Religious Consciousness': Halakhic Norms as Expression and Discipline in Soloveitchik's Thought

Yonatan Y. Brafman*

Referring to the title of his well-known philosophical work, Joseph Soloveitchik has been described as the "halakhic man."¹ Indeed, Avi Sagi identifies him, along with Yeshayahu Leibowitz and Eliezer Goldman, as a founder of the field of philosophy of halakhah.² However, the connection between philosophy and halakhah in Soloveitchik's thought is complex. At the close of *Halakhic Mind*, he makes the programmatic assertion that "out of the sources of Halakhah a new world view awaits formulation,"³ thus declaring his aim to develop a Jewish philosophy out of halakhah, or a *halakhic philosophy*. Yet, in that same work he offers a *philosophical account of halakhah*, describing it as "the objectifying instrument of our religious consciousness."⁴ Soloveitchik thus construes halakhah as both the source and object of philosophy, while he depicts philosophy as both emerging from and accounting for halakhah.

Ta'amei ha-mitsvot, or the reasons for the commandments, is the classical nexus of philosophy and halakhah.⁵ In offering reasons for the commandments,

* Jewish Theological Seminary of America, Department of Jewish Thought and Ethics.

1 For example, see David Hartman, "The Halakhic Hero: Rabbi Joseph Soloveitchik, Halakhic Man," *Modern Judaism* 9 (1989): 249–73.

2 Avi Sagi, "Reflections on the Challenges Confronting the Philosophy of Halakhah," in *The Cambridge History of Jewish Philosophy: The Modern Era*, ed. Martin Kavka, Zachary Braiterman, and David Novak (New York: Cambridge University Press, 2012), 501–18.

3 Joseph B. Soloveitchik, *The Halakhic Mind* (Ardmore: Seth Press, 1986), 102.

4 *Ibid.*, 85.

5 On *ta'amei ha-mitsvot*, see Issac Heinemann, *Ta'amei ha-Mitsvot be-Sifrut Yisrael*, 2 vols. (Jerusalem: Horeb, 1993); Arnold Eisen, *Rethinking Modern Judaism: Ritual*,

Jewish thinkers aim to justify them by setting them within an overarching philosophical framework.⁶ As such, corresponding to the two relations between philosophy and halakhah that Soloveitchik articulates, in this essay I suggest that he also presents two approaches to the reasons for the commandments. When he directly discusses the project of *ta'amei ha-mitsvot*, he argues that the reasons for the commandments must be generated out of reflection on the commandments themselves. Indeed, these internally generated reasons are the basis for his proposed halakhic philosophy. However, he also offers a more substantive position on the reasons for the commandments that emerges from his philosophical account of halakhah. In it he conceptualizes halakhah as the expression of collective Jewish consciousness's response to reality. In engaging in halakhic practice as a discipline the Jewish individual, in turn, guides his actions and shapes his emotions to respond appropriately to reality.

I also contend that these two approaches to *ta'amei ha-mitsvot* do not sit side-by-side. The latter, which derives from Soloveitchik's philosophical account of halakhah, is more fundamental. Because the commandments are the expression of Jewish collective consciousness's response to reality, he insists that, methodologically, the reasons for specific commandments must emerge out of reflection on the commandments themselves. Still, only his philosophical account of halakhah actually attempts to justify the commandments. Additionally, only it explains Soloveitchik's preoccupation with the category of "experiential mitsvot," the fulfillment of which requires the presence of specific emotional states. Finally, only it explains some of his views of halakhic-legal practice.

Commandment, Community (Chicago: University of Chicago Press, 1998); and Josef Stern, *Problems and Parables of the Law: Maimonides and Nahmanides on the Reasons for the Commandments (Ta'amei Ha-Mitsvot)* (Albany: SUNY Press, 1998).

- 6 On *ta'amei ha-mitsvot* as a philosophical project, see David Novak, "The Talmud as a Source for Philosophical Reflection," in *History of Jewish Philosophy*, ed. Daniel H. Frank and Oliver Leaman (New York: Routledge, 1997), 49–63; Daniel Rynhold, *Two Models of Jewish Philosophy: Justifying One's Practices* (New York: Oxford University Press, 2005); and Yonatan Y. Brafman, "Critical Philosophy of Halakha: The Justification of Halakhic Norms and Authority" (PhD diss., Columbia University, New York, 2014).

I. *Halakhic Mind*: Prolegomenon to Any Future Jewish Philosophy

Dov Schwartz has masterfully demonstrated that the views expressed in *Halakhic Man* about halakhah should not be attributed to Soloveitchik.⁷ The focus of my analysis of Soloveitchik's philosophy of halakhah is thus *Halakhic Mind*. However, because this work is susceptible to different interpretations and I will propose a new one, I must first offer a sketch of its argument. This sketch will necessarily be spare, as it will establish a baseline for different interpretations. The sketch will also flag two central difficulties for the argument. I will then offer an interpretation of it that resolves these difficulties and, in the process, reveals Soloveitchik's overarching strategy for justifying the commandments.

There are four steps in the argument of *Halakhic Mind*:

(1) Soloveitchik contends that epistemological pluralism is warranted. He argues that developments in early twentieth-century science and philosophy of science demonstrate that natural science is not the only approach to the world that offers knowledge. Far from presenting a unified account of reality, methodological and conceptual heterogeneity has been discovered within science itself. But if pluralism is recognized within science itself, there is no ruling out non-scientific cognitive approaches to reality.

Crucially, in arguing for epistemological pluralism, Soloveitchik rejects mere "methodological pluralism." Instead, he insists on a realist pluralism, writing that "in the final analysis pluralism is founded on reality itself.... [T]he object reveals itself in manifold ways to the subject."⁸ In some sense that is not specified, diverse cognitive approaches capture different aspects of one reality. Jonathan Sacks criticizes this feature of the argument, claiming that "the very force of the argument suggests that reality can be sliced up and interpreted infinitely many ways. And if reality corresponds to each of them, is it significant to say that it corresponds to any?"⁹ To him, Soloveitchik's

7 Dov Schwartz, *Religion or Halakha: The Philosophy of Rabbi Joseph B. Soloveitchik, Volume One*, trans. Batya Stein (Boston: Brill, 2013).

8 Soloveitchik, *Halakhic Mind*, 16.

9 Jonathan Sacks, "Rabbi Joseph B. Soloveitchik's Early Epistemology," in *Exploring the Thought of Rabbi Joseph B. Soloveitchik*, ed. Marc Angel (Hoboken: Ktav, 1997), 219.

pluralism *eo ipso* sacrifices its claim to being cognitive. Pluralism must be anti-realist. The next stage of the argument only deepens the puzzle about the realism of this pluralism.

(2) Soloveitchik turns to demonstrate that religion in particular offers knowledge. His aim is to substantiate the claim that “Religion too has a cognitive approach to reality.”¹⁰ Together with his rejection of methodological pluralism, he is thus committed to demonstrating the realistic nature of religious experience.

However, the execution of the argument reinforces Sacks’s criticisms. Soloveitchik appears to eschew arguments establishing the external existence of the objects of religious cognition in favor of simply analyzing the immanent intentional objects of religious psychic acts. This seems evident from the way he sets up what must be accomplished by the argument: “If and when an eidetic analysis discerns the cognitive components of the religious act, then the theory of cognitive pluralism will substantiate the claim of religion to theoretical interpretation.”¹¹ But in the phenomenological method introduced by Edmund Husserl eidetic analysis—the description of objects as they appear to consciousness—brackets out the issue of their actual existence or non-existence.¹² In fact, Soloveitchik seems to acknowledge this directly. He maintains that the theory of intentionality delivers a positive response regarding the cognitive nature of religion because “[n]o psychical act can be performed without coordinating it with an object; the existence, or subsistence or pseudoreality...of an object is warranted by the act itself.”¹³ Thus, according to him, “every intentional act is implicitly a cognitive one,”¹⁴ including emotional, volitional, and religious psychic acts. If this argument is meant to establish simply that religious psychic acts *purport* to refer to reality, then it is well taken. However, this would not prove that religion is a valid cognitive approach to reality alongside science. As Sacks points out again, according to Soloveitchik’s reasoning, since all psychic acts are intentional, they are all cognitive.¹⁵ But perhaps the objects of religious “cognition” refer

10 Soloveitchik, *Halakhic Mind*, 41.

11 Ibid.

12 Edmund Husserl, *Ideas: General Introduction to Pure Phenomenology* (New York: Macmillan, 1931), 101–11.

13 Soloveitchik, *Halakhic Mind*, 41–42.

14 Ibid., 43.

15 Sacks, “Rabbi Joseph B. Soloveitchik’s Early Epistemology,” 24.

5* 'The Objectifying Instrument of Religious Consciousness'

falsely to reality. Why not an "error theory" of religious experience? The argument for religious cognition thus seems to disappoint the expectations of realism that Soloveitchik encouraged.

(3) In any case, after establishing to his satisfaction that religion is cognitive, Soloveitchik contends that a modern method of scientific theory construction—reconstruction—should be emulated to access the contents of religious cognition, and, in the process, he presents a theory of religious experience. His argument involves a debate with the phenomenologist Max Scheler, whose influence on Soloveitchik, despite Soloveitchik's disagreements with him, are crucial. Scheler, like Soloveitchik, maintains that religion is an autonomous cognitive approach to reality. However, he also claims that the object of religious psychic acts is God and thus that the object of philosophy of religion should be the content of these religious cognitions of the divine.¹⁶ The researcher must use phenomenological intuition to access these contents. Soloveitchik rejects Scheler's views and holds, in contrast, that the objects of religious cognition are everyday phenomena and that the contents of immediate religious experience are inaccessible and thus not the objects of philosophy of religion.

Soloveitchik rejects Scheler's view on the objects of religious cognition on empirical and epistemological grounds: He claims that *homo religiosus* is directly concerned with the world and not the absolute, and he raises doubts about whether finite man could even cognize the absolute. He does not deny that religious cognition concerns God, but insists that God is apprehended through the world.¹⁷

Soloveitchik rejects Scheler's view on the object of philosophy of religion for two reasons as well. From a practical perspective, Soloveitchik identifies reliance on intuition with a dismissal of reason in favor of "emotional approaches to reality."¹⁸ This seems to be a reference to Scheler's notion of the emotional *a priori*, according to which the initial objects of cognition are not the ordinary objects of experience but values. These values are intuited through acts of perception that are emotional in nature; the intentional objects of feelings are values. This does not mean that value-perception is subjective,

16 On the method of philosophy of religion, or eidology, see Max Scheler, *On the Eternal in Man* (New Brunswick: Transaction Publishers, 2010), 130; on God as the object of religious psychic acts, see *ibid.*, 246.

17 Soloveitchik, *Halakhic Mind*, 45–46.

18 *Ibid.*, 53.

however. According to Scheler, there are correct and incorrect ways to feel and perceive values.¹⁹ Nevertheless, Soloveitchik suggests that such views are responsible for catastrophes like the Shoah.²⁰ From a theoretical perspective, he argues that such approaches illicitly move from epistemological pluralism to the claim that non-scientific approaches to reality can directly grasp “the core of nature.”²¹

In contrast, Soloveitchik argues that the object of philosophy of religion should be religion’s objective forms, that is, its doctrines, norms, and practices. He presents the debate between Kantians and Neo-Kantians regarding the relation between receptivity and spontaneity, or subjectivity and objectivity, in experience. While Kant maintained that both are required for experience, Neo-Kantians—and Soloveitchik seems to mean Hermann Cohen here—reduced receptivity and subjectivity to postulations of spontaneity and objectivity. At least from a methodological perspective, Soloveitchik sides with the Neo-Kantians.²² He argues that immediate experience is subjective and not an object of knowledge. Experience must become objective to be knowable.²³

In presenting his own view, Soloveitchik draws on Paul Natorp’s philosophy of science, according to which scientific knowledge of qualitative reality is not possible. Instead, the scientist objectifies reality by constructing a quantitative model of it. However, this is not the end of scientific inquiry. Quantification cannot entirely account for reality—structural models are necessary. These models are stated in qualitative terms and not quantitative formulae. Yet, the qualitative nature of reality is not introduced by returning to immediate experience but by reconstructing it out of the quantitative data.

19 For useful introductions to Scheler’s thought, see Zachary Davis and Anthony Steinbock, “Max Scheler,” in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, Winter 2011, <http://plato.stanford.edu/archives/win2011/entries/scheler/>; Manfred Frings, *Max Scheler: A Concise Introduction into the World of a Great Thinker* (Milwaukee: Marquette University Press, 1995); and Manfred Frings, *The Mind of Max Scheler: The First Comprehensive Guide Based on the Complete Works* (Milwaukee: Marquette University Press, 1997).

20 Soloveitchik, *Halakhic Mind*, 53.

21 *Ibid.*, 55.

22 *Ibid.*, 66.

23 *Ibid.*, 74.

7* 'The Objectifying Instrument of Religious Consciousness'

Soloveitchik recommends this indirect, reconstructive approach as opposed to Scheler's direct, intuitive approach for philosophy of religion:

We may gain access to religious knowledge of reality with its unique structural aspects in a two-fold way: First by coordinating two series in the religious sphere, the subjective and the objective; and, second, by reconstructing the former out of the latter.²⁴

The contents of religious consciousness cannot be apprehended directly; rather, such subjective elements must be reconstructed out of religion's objective forms.

Soloveitchik explains that, like the process of objectification in scientific cognition, there is a process of objectification in "the realm of inwardness," including ethics, aesthetics, and religion:

Religion, which is perhaps more deeply rooted in subjectivity than any other manifestation of the spirit, is also reflected in externalized phenomena which are evolved in the objectification process of the religious consciousness. The aggregate of religious objective constructs is comprised of ethico-religious norms, ritual, dogmas, theoretical postulates, etc. There is a definite trend towards self-transcendence on the part of the spirit. It strives to escape its private inwardness and infiltrate the concrete world encompassed by space and pervaded by corporeal forms.... The objectifying process consists of two incongruous parts. The first remains within the world where subjective and objective aspects are rooted in purely qualitative strata, differing only as to their degree of distinctness and as to their proximity to the psychophysical border. The second is an act of emergence of "spiritual" reality into outward tangible forms.... Religious subjectivity, for example, finds its correlate in a certain norm which, though remaining within spiritual bounds, strives towards the mysterious junction of psyche and physis. The norm is much nearer to the outer fringes of externality than its counterpart, the quasi-non-normative subjectivity.²⁵

24 Ibid., 62.

25 Ibid., 67–68.

Religious consciousness externalizes, or expresses, itself in the doctrinal, normative, and practical forms that constitute religion. Scheler too claims that religious experience is objectified into doctrines, norms, and worship.²⁶ The difference is that for Soloveitchik immediate religious experience is not available as an object for philosophy of religion. Instead, philosophy of religion's object must be these expressions of consciousness out of which it must reconstruct religious subjectivity.

(4) In the final step of the argument, Soloveitchik's theory of religious experience and approach to philosophy of religion is applied to halakhah and Jewish philosophy. He claims:

Objectification reaches its highest expression in the Halakhah. Halakhah is the act of seizing the subjective flow and converting it into enduring and tangible magnitudes. It is the crystallization of the fleeting individual experience into fixed principles and universal norms. In short, Halakhah is the objectifying instrument of our religious consciousness, the form principle of the transcendental act, the matrix out of which the amorphous religious hylō is cast. Rabbinic legalism, so derided by theologians, is nothing but an exact method of objectification, the modes of our response to what supremely impresses us.²⁷

Halakhah is the objectified expression of Jewish collective consciousness. It expresses the contents of its cognition in the objective form of doctrines, norms, and practices. These objectifications provide the only means for accessing the contents of Jewish religious cognition.

Consequently, Soloveitchik argues that the reconstructive method should be applied to halakhah. In this way, it can contribute to solving "the most perplexing problem...of the rationalization of the commandments (טעמי המצוות)."²⁸ He cautions, however, that reconstruction must be modified to be serviceable for philosophy of religion. It must eschew the "how" question or causal-genetic explanations of the commandments: "the reconstructive method is recommended, but it cannot generate a causal explanation of religion."²⁹ Soloveitchik's application of reconstruction to *ta'amei ha-mitsvot*

26 Scheler, *On the Eternal in Man*, 249; 264.

27 Soloveitchik, *Halakhic Mind*, 85.

28 Ibid., 91–92.

29 Ibid., 87.

9* 'The Objectifying Instrument of Religious Consciousness'

is set within a critique of Moses Maimonides's approach in *The Guide of the Perplexed*.³⁰ Soloveitchik's principal complaint is Maimonides's reliance on such causal-genetic explanations of the commandments, the result of which, Soloveitchik claims, is that "religion no longer operates with unique autonomous norms...and...was converted into technical wisdom." Because Maimonides understands the commandments as means for the achievement of moral, political, and intellectual ends,³¹ Soloveitchik contends that their "specific religious content and meaning [was] supplanted by a principle of foreign extraction."³²

Instead of this explanatory, causal-genetic "how" question, Soloveitchik insists that philosophy of religion, or philosophy of halakhah, should focus on the "what" question of "descriptive hermeneutics."³³ This approach was employed by Maimonides in his legal code, the *Mishneh Torah*, where he

does not pursue the objective causation of the commandments, but attempts to reconstruct its subjective correlative.... He freed himself from the genetic purview and employed a descriptive method of expounding the content and symbolic meaning of the religious norm. The "what" question was his guide in the [*Mishneh Torah*].³⁴

Soloveitchik describes the "what" question as interpretive and focused on the symbolic aspects of norms. As a consequence, reconstruction does not operate with necessity; it cannot establish that a norm was the only way to express its subjective counterpart.³⁵

Still, Soloveitchik claims that "by continuous observation and analysis of the objectified forms of the religious act, the general tendencies and trends latent in religious consciousness may be grasped." By employing descriptive reconstruction, "the philosopher of religion may glean some hints regarding the structure of the most basic religious cognitive concepts."³⁶ This method

30 See Moses Maimonides, *The Guide of the Perplexed*, 2 vols., trans. Shlomo Pines (Chicago: University of Chicago Press, 1963), vol. 2, pt. III: 26–49.

31 See *ibid.*, vol. 2, pt. III: 27.

32 Soloveitchik, *Halakhic Mind*, 93.

33 *Ibid.*, 91–98.

34 *Ibid.*, 94.

35 *Ibid.*, 95–96.

36 *Ibid.*, 99.

thus allows the development of an authentic Jewish philosophy. Instead of subordinating Jewish practice to alien philosophical systems, reconstruction of the commandments could expose the philosophy within halakhah. In a rejection of Cohen's *Religion of Reason out of the Sources of Judaism*, Soloveitchik proclaims, "Out of the sources of Halakhah, a new world view awaits formulation."³⁷

II. Two Approaches to *Ta'amei ha-Mitsvot*

The foregoing sketch of the argument of *Halakhic Mind* left unresolved the nature of the realism of Soloveitchik's epistemological pluralism. It was also intentionally vague about the method of reconstruction and how it justifies the commandments. Now, against the background of earlier interpretations of the argument of the work, I contend that appreciating Soloveitchik's realism is essential for understanding the (limited) role of reconstruction in the justification of the commandments as well as for comprehending their more fundamental justification.

1. Reconstruction as Justification

Lawrence Kaplan and Daniel Rynhold have both offered interpretations of reconstruction: While the former focuses on the scientific analogy with which Soloveitchik introduces the method, the latter fixes on the hermeneutic language that emerges when he applies it to halakhah. Neither, I claim, provides a full interpretation of Soloveitchik's argument.

(a) *Kaplan's Quasi-Scientific Interpretation*

Following Soloveitchik's lead, Kaplan contrasts his approach to justifying the commandments with that of Maimonides in the *Guide of the Perplexed*. Both are interested in rationalizing the commandments and draw on the model of scientific explanation of their day. Maimonides, following Aristotle, views explanation as revealing final causes and presents a teleological account of the commandments. In contrast, Soloveitchik operates with a modern conception of science, which eschews final causes. Modern science, according to him, utilizes a subsumptive model of explanation, according to which "to explain a physical phenomenon means to understand it in light of a general,

37 Ibid., 102.

11* 'The Objectifying Instrument of Religious Consciousness'

abstract formal-mathematical equation that will account for the largest variety of physical phenomena possible and that will be integrated with other such abstract mathematical principles to form a unified coherent system."³⁸ On this interpretation, by advocating reconstruction, Soloveitchik offers a classificatory model of rationalizing halakhic norms, according to which "to explain commandments means first and foremost to subsume halakhic rulings under highly general, abstract halakhic concepts and principles...."³⁹ The rationality of halakhah is thus not the instrumental rationality of being an adequate means for achieving an end but the immanent rationality of systematicity.

Rynhold explains Kaplan's interpretation. He notes the similarities between this view of reconstruction and the Brisker method of talmudic learning.⁴⁰ Most importantly, he notes the similarity between Soloveitchik's description of reconstruction and the method of reflective equilibrium in theory construction. Just as the scientist begins with his observations to construct a theory and then returns to reinterpret the observations in view of the theory, in providing reasons for the commandments one begins with the commandments to construct a unifying framework and then returns to reinterpret the commandments in view of the framework. Rynhold provides examples of Soloveitchik's use of this method in his theoretical halakhic writings.⁴¹ In each case, the commandments and their details are explained by being unified into a system of abstract concepts. This systematization is autonomous; commandments are explained by categories that emerge out of themselves.⁴² Halakhah is thus not made the handmaiden of non-halakhic purposes.

But Rynhold raises two central questions about Kaplan's quasi-scientific interpretation. He notes that Soloveitchik's employment of the method of reflective equilibrium is truncated. In scientific theory construction, there is a readjustment of both the observations and the theory. Similarly, in John Rawls's application of reflective equilibrium to the normative domain, though the theorist begins with his considered judgments about justice, these

38 Lawrence Kaplan, "Rabbi Joseph B. Soloveitchik's Philosophy of Halakha," *Jewish Law Annual* 7 (1988): 171.

39 Ibid.

40 Rynhold, *Two Models of Jewish Philosophy*, 71.

41 Ibid., 61-70.

42 Ibid., 73-74.

judgments can be revised in view of the emergent theory of justice. However, in Soloveitchik's scheme the adjustment is one-sided: The commandments never get modified as a result of the halakhic theory.⁴³ Moreover, Rynhold questions whether even full-fledged reflective equilibrium could provide the sort of validity that is required for justification. He argues that "it seems that all we are doing is systematizing our own existing judgments, even if some of them might be revised subsequent to the formation of principles."⁴⁴ But how can such systematization be justificatory? It seems that the commandments are privileged without warrant.

(b) Rynhold's Hermeneutic Interpretation

Rynhold views these criticisms as an opening to offer what he considers a more philosophically plausible reading of Soloveitchik's approach—one that is hermeneutically oriented. He interprets Soloveitchik's comparison between Maimonides's method in the *Guide of the Perplexed* and the *Mishneh Torah* as centered on the issue of meaning. Soloveitchik rejects a causal-genetic explanation of the commandments, according to Rynhold, because it destroys the semantic content of the norms. He also rejects an intentionalist account of meaning in favor of a hermeneutic account. The intentionalist account conceives of meaning as the objective contents of the author's intention; thus, it too is a form of causal-genetic explanation. In contrast, the hermeneutic account, which stems from the work of Hans-Georg Gadamer, conceives of meaning as created in the confrontation between an interpreter and the object of interpretation. On the hermeneutic account of justification, the goal is to

show [our] imaginary interlocutor how the meaning that we have given to a commandment coheres with the system of meanings of which it is a part. We can therefore take him on an interpretive journey through the system showing him how it all fits together. But if he is not party to the system in which all the various meanings are implicated, then no appeal to other parts of the system is going to convince him. We cannot get beyond our own hermeneutic circle and convince our interlocutor if he is unwilling to enter its circumference.⁴⁵

43 Ibid., 74–78.

44 Ibid., 80.

45 Ibid., 88–89.

13* 'The Objectifying Instrument of Religious Consciousness'

According to Rynhold, for Soloveitchik justification thus involves reflecting on practices to create a system of meaning that exposes their significance. This significance is not expected to convince everyone but only those who are already inducted into the universe of meaning constituted by the practice.

However, Rynhold notes that on standard philosophical premises this hermeneutic approach is also exposed to the problem of the objective validity of its interpretations. The issue is two-fold: There is the possibility of competing interpretations and, more crucially, the problem of justification. How is interpretation supposed to justify norms any better than systematization? Once again, the commandments seem to be privileged without warrant.⁴⁶

While Rynhold insists that he is engaged in a reconstruction of Soloveitchik's thought rather than a historical interpretation, it is unclear whether it is a textually accurate or philosophically plausible reconstruction. He claims that Soloveitchik inherits the shift from the "how" to the "what" question from Wilhelm Dilthey, despite there being no reference to him when Soloveitchik discusses reconstruction.⁴⁷ Further, Soloveitchik seems more concerned with the reductive consequences of causal-genetic explanation than its negation of semantic content. First, he is worried about the reduction of validity to causal history. He charges causal-genetic approaches with committing something like the genetic fallacy in the realm of religion. In the same way that causal-genetic explanations of beliefs often reduce epistemological questions about their validity to psychological questions about their origins, they eliminate the object of philosophy of religion by reducing religious beliefs and practices to their psychological and historical pedigrees.⁴⁸ Second, he is concerned about the reduction of religion to other cultural domains. The problem with causal-genetic explanations of religious

46 Rynhold uses these questions to expand Soloveitchik's account beyond his intentions and to question standard philosophical premises about justification. He rejects what he calls Priority of Theory (PoT) approaches to justification in favor of a Priority of Practice (PoP) approach. Rynhold's own approach to justification and *ta'amei ha-mitsvot* is not my current concern, however.

47 Dilthey is mentioned by Soloveitchik in his discussion of the development of independent methods in the human sciences (*Halakhic Mind*, 14); however, ultimately he is critical of the adoption of such methods, in which there is the claim of the fusion of subject and object through understanding, by philosophers since it encourages the notions that they can grasp the "unknown Absolute world order" (30).

48 Soloveitchik, *Halakhic Mind*, 86–88.

norms is that they deny the autonomy of religion as an area of consciousness and culture by identifying them with moral laws, hygienic techniques, or aesthetic expressions.⁴⁹ Furthermore, against the claim that Soloveitchik rejects an intentionalist account of meaning in favor of a hermeneutic one, his comments comparing the “what” question of reconstruction to the “how” question of psychology are instructive:

The only difference between the psychologist and the philosopher is that, while the psychologist, guided by the “how” question, coordinates subjective religious aspects with those of the mundane cultural consciousness, the philosopher, searching for the “what,” limits his investigation to the religious domain and explores objective forms only in retrospect.⁵⁰

Soloveitchik is thus concerned with the autonomy of religion more than anything else. Rynhold’s contention that he articulates a hermeneutic approach to the justification of the commandments due to concerns with semantic content is not sustainable.⁵¹

2. Halakhah as Expression and as Discipline

More important than Rynhold’s interpretation of Soloveitchik’s argument is his criticism that it illegitimately privileges the commandments. Both quasi-scientific and hermeneutic interpretations understand Soloveitchik’s approach to *ta’amei ha-mitsvot* as taking the commandments as a starting point for justification without warrant. That is, on neither interpretation does Soloveitchik ground the *prima facie* validity granted them. Indeed, Nathan Rotenstreich points out that mere systematization of norms neglects the question of whether they ought to be observed. The rationality of systematicity

49 Ibid., 93.

50 Ibid., 129 n. 94.

51 In addition to *Halakhic Mind*, Rynhold bases his argument on the lecture, “May We Interpret Hukim?,” in *Man of Faith in the Modern World, Reflections of the Rav*, vol. 2, ed. Abraham R. Besdin (Hoboken: Ktav, 1983), 91–99. While the hermeneutic language in that essay is stronger, it too can be comprehended by my interpretation. Furthermore, the strength of my interpretation of *Halakhic Mind*, a work that Soloveitchik wrote and published himself, outweighs whatever remaining difficulties are presented by a lecture that was recorded and published by someone else.

underdetermines normativity.⁵² Similarly, as Rynhold writes, “we lack...any argument for...its being a set of data that has some independent rational justification,”⁵³ so that it should serve as the starting point for reflection.

Is it true, though, that Soloveitchik does not give *any* argument for the independent rational justification of the commandments? In fact, I argue that when his view about reconstruction is set in the broader context of the argument of *Halakhic Mind* this criticism is exposed as misguided. Understood properly, the philosophical account of halakhah given in the earlier stages of the work aims to warrant the privileging of the commandments in reconstruction.⁵⁴ To appreciate this, the philosophical account must be reinterpreted in view of some of Soloveitchik’s other writings and philosophical sources. Drawing on these other texts resolves the first interpretive difficulty in *Halakhic Mind*—Soloveitchik’s realism—and, in the process, resolves the second difficulty—his seeming privileging of the commandments. Indeed, they show how his philosophical account of halakhah as the “objectifying instrument of... religious consciousness” provides a two-fold justification of halakhah. The duality of this justification hinges on two senses of “objectification”: expression and discipline. Halakhah is justified (a) as an accurate expression of religious cognition of reality, and (b) as a discipline for guiding one’s actions and shaping one’s emotions to respond appropriately to reality.

(a) Objectification as Expression

There are two steps to understanding how the philosophical account of halakhah justifies the commandments as expressions of religious cognition of reality: (i) appreciating the realism of Soloveitchik’s pluralism and (ii) recognizing the type of content of religious cognition. Both steps require an evaluation of Scheler’s positive influence on Soloveitchik’s thought.

52 Nathan Rotenstreich, *Iyyunim ba-Maḥashavah ha-Yehudit ba-Zeman ha-Zeh* (Tel Aviv: Am Oved, 1978), 57–58.

53 Rynhold, *Two Models of Jewish Philosophy*, 85.

54 I say “aims” because I have reservations about whether this argument is ultimately successful. However, whether or not it succeeds, understanding it sheds important light on Soloveitchik’s philosophy of halakhah. See Brafman, “Critical Philosophy of Halakha,” for a critique of the argument.

(i) Realism

Contrary to the halakhic idealism expressed in *Halakhic Man* and the implication of Sacks's criticisms, Soloveitchik's view of religious cognition in general and halakhah in particular in *Halakhic Mind* is robustly realist. In fact, Soloveitchik's realism differs from ordinary forms in recognizing elements of experience usually attributed to the subject—like values and ends—as deriving from reality itself. In a crucial passage, he writes,

Our pluralistic cognitive approach is warranted by...ontological heterogeneity.... Methodology...is determined not only by ontological aspects but also by axiological and teleological considerations *presented by Being itself*. Modern axiology plays a major role in this respect. Every system of cognition strives to attain a distinct objective. Systematic knowledge means the understanding and grasping of the universe in consonance with a definite telos. It is interested primarily that *reality reveal itself* in a fashion which is suited to a final noetic goal; the telos is the determining factor in the methodological construction employed by the scientist and philosopher. *Teleological heterogeneity, however, does not invalidate the cognitive act, for, in the final analysis, pluralism is founded on being itself*. It is important to note that this trend of thought has nothing to do with operational pragmatism. While pragmatism, in its essence, is positivistic and annuls the idea of the absolute, epistemological pluralism does not deny the absolute character of Being. On the contrary, it is ontologically conscious of, and reserves a central position in its perspective for, absolute reality. Pluralism asserts only that *the object reveals itself in manifold ways* to the subject, and that a certain telos corresponds to each of these ontical manifestations.⁵⁵

In contrast with Sacks's interpretation, Soloveitchik does not claim that reality can be cognized from any perspective whatsoever; rather, he simply maintains that "there are many keys to the ontological kingdom."⁵⁶ Moreover, these "keys" or approaches to reality are guided by values and purposes that are given by reality itself. Being corresponds, in some sense, to each cognitive approach. Further, he writes, "reason leads the physicist, psychologist, phi-

55 Soloveitchik, *Halakhic Mind*, 16; italics added.

56 *Ibid.*, 18.

osopher, and *homo religiosus* to a pluralism of viewpoints. The heterogeneity of knowledge, however, is not based on a manifold of methods employed by theoreticians, but upon a plurality of the objective orders they encounter."⁵⁷ There are many ways to cognize reality, including science and religion, but they are finite and determined by reality itself.

Soloveitchik recognizes a few allies in his argument for epistemological pluralism, including absolute idealism, pragmatism, and Neo-Kantian critical idealism. However, he rejects them because they are not realist enough. In fact, while much has been made of his influence by Cohen's Neo-Kantianism, a better way of describing Soloveitchik's philosophical *oeuvre* is as an effort to get out of its grips.⁵⁸ His concern with realism and disagreement with Cohen is evident as early as his dissertation. Entitled *Das reine Denken und die Seinskonstituierung bei Hermann Cohen*, it argues that Cohen's epistemology is inadequate on account of its idealism. While Kant recognized that cognition requires both intuitions and concepts,⁵⁹ Cohen, according to Soloveitchik, denies intuitions any epistemological standing. Pure thought is entirely immanent, generating being out of itself. The thing-in-itself, which for Kant is the source of intuition, is posited by thought and constantly recedes from it. Thus, Soloveitchik argues, Cohen's epistemology never makes contact with reality. Symptomatic of this is its enthroning natural science as the paradigm of cognition, rejection of the cognitive claims of other areas of experience, like emotion and religion, and avoidance of the qualitative nature of reality.

Reinier Munk points out that in rejecting Cohen's "generative" epistemology, "Soloveitchik is of the opinion that thinking is a process of ordering reality by abstracting the general out of the historical, or form out of matter."⁶⁰ His epistemology is thus more Aristotelian than neo-Kantian. More recently, Schwartz has linked Soloveitchik's position with that of his dissertation advisor, Heinrich Maier, for whom sense perception is the substratum for

57 Ibid., 56.

58 Indeed, a self-declared proponent of Neo-Kantianism, Steven Schwarzschild, notes and criticizes Soloveitchik's straying from critical idealism in *Halakhic Mind*. See "The Halakhic Mind – An Essay on Jewish Tradition and Modern Thought," *Sh'ma* 16, no. 316 (1986): 127–28.

59 Immanuel Kant, *Critique of Pure Reason*, Unified Edition, trans. Werner S. Pluhar (Indianapolis: Hackett, 1996), A51/B76.

60 Reinier Munk, *The Rationale of Halakhic Man: Joseph B. Soloveitchik's Conception of Jewish Thought* (Amsterdam: J.C. Gieben, 1996), 17.

cognition.⁶¹ Indeed, Soloveitchik argues that such qualitative elements of experience attest to the insufficiency of Cohen's epistemology, being (*Sein*) that transcends thought, and the cognitive claim of other psychic acts besides those of science. He summarizes his objections as follows:

[The contention] that Being [*Sein*] only amounts to objects of judgment [*Urteilsgegenständen*] is a matter of course according to a consistent idealistic view; however, that is far from entitling us to equate the concepts [of Being and of such objects] with one another. Certainly, the specific character of an object of judgment consists in its establishment of actuality [*Wirklichsetzung*]; however, in order to form [*formen*] an object, one must already presume as given the category of "Being." Otherwise, we would lack the peculiar and characteristic in the object of judgment. For all of the psychic functions, not only cognitive judgments, are intentional acts that are directed toward an object. Feelings [and] willings refer to affective and volitional objects. Emotional thought, as an intentional act, performs formation of objects [*gegenständliche Formung*]. The uniqueness of the object of judgment just consists in its complete claim on Being. Being must therefore be considered as an originary datum of thought, which first grounds the object of judgment and bestows dignity on it. The identification of Being with the object [of judgment] degrades both the former and the latter... In order to secure Being, the postulate of a transcendent component is indispensable.⁶²

Soloveitchik here expands on his discussion of intentionality in *Halakhic Mind*. He rejects Cohen's position that simply reduces Being, or reality, to the objects of scientific cognition. Instead, he insists that the particular qualitative features of objects attest to their givenness in reality. They indicate the receptivity of human reason to a reality that transcends it. Indeed, this is a recurring theme in Soloveitchik's work: Autonomous reason runs up against the brute givenness of qualitative reality. Colors, textures, smells, and

61 Schwartz, *Religion or Halakha*, 131.

62 Josef Solowiejczyk, "Das reine Denken und die Seinskonstituierung bei Herman Cohen" (PhD diss., Friedrich-Wilhelms-Universität zu Berlin, 1932), 86–87; 90; translation and brackets mine.

sounds signal human receptivity.⁶³ Soloveitchik consequently maintains that other psychic acts, including emotions and volitions, besides the scientific, are intentional and directed towards objects.

As mentioned, Soloveitchik's teacher, Maier, stimulated his quasi-Aristotelian epistemology. However, there is also a great deal of influence from Scheler. A number of scholars have discussed Scheler's influence on Soloveitchik, in particular his conception of time and repentance.⁶⁴ Attention to his use of Scheler's epistemology has been neglected. This is regrettable, for in addition to the negative comments about Scheler in the body of *Halakhic Mind* the footnotes reveal a more ambivalent relationship in which certain elements of Scheler's thought are rejected, while others are accepted. Indeed, Soloveitchik writes, "One of the foremost proponents of autonomous religious knowledge and of a unique epistemology of religion was Max Scheler, to whose *Vom Ewigen im Menschen* this work is indebted in several important points."⁶⁵ As discussed, Soloveitchik rejects Scheler's views on the objects of religious cognition and philosophy of religion; yet, crucially, he accepts his epistemology at least as it relates to values.

Scheler articulated what has been described as a realist phenomenology,⁶⁶ which thus also serves as an epistemology. As mentioned, Husserl maintained that in eidetic analysis the investigator brackets out the existence in the external world of the objects he describes.⁶⁷ Scheler rejects this characterization of phenomenology, and writes that such analysis is

totally independent of the epistemological antithesis of idealism-realism.... What remains after the deactualization of the

63 See Joseph B. Soloveitchik, "Majesty and Humility," *Tradition* 17, no. 2 (1978): 51; idem, *Halakhic Man*, trans. Lawrence Kaplan (Philadelphia: Jewish Publication Society of America, 1983), 9–19; and idem, *And from There You Shall Seek*, trans. Naomi Goldblum (Jersey City: Ktav, 2008), 11.

64 Eliezer Goldman, "Repentance and Time in the Thought of Rabbi Soloveitchik," in *Emunah bi-Zemanim Mishtanim: Al Mishnato Shel Ha-Rav Yosef Dov Soloveitchik*, ed. Avi Sagi (Jerusalem: ha-Kibbutz ha-Dati, 1996), 175–90; and Yitzchak Blau, "Creative Repentance: On Rabbi Joseph B. Soloveitchik's Concept of Teshuva," in *Exploring the Thought of Rabbi Joseph B. Soloveitchik*, ed. Marc Angel (Hoboken: Ktav, 1997), 263–76.

65 Soloveitchik, *Halakhic Mind*, 120 n. 62.

66 Davis and Steinbock, "Max Scheler."

67 Husserl, *Ideas*, 101–11.

world is indeed the 'ideal' world of essence, but not something that can be automatically considered merely immanent to consciousness. Husserl's assertion, that 'immanent essence' precedes 'transcendent essence and that therefore the laws of the 'consciousness' of something must also be the laws of the objects of consciousness'...in no way follows.... It is an epistemological standpoint which comes from elsewhere and follows from the well-known principle, first expressed by Descartes, that every given is originally immanent to consciousness. We have already rejected this principle.⁶⁸

Herbert Meyer explains that for Scheler the objects of phenomenological analysis are not immanent to consciousness; rather, they are "essences of autonomous realities" that "do not have their origin in the activity of the subject."⁶⁹ Scheler writes, "the ontological and value contents of the world reveal itself, and the difference between 'thing in itself' and 'appearance' falls away."⁷⁰ While phenomenological analysis is a specific analytical standpoint, it has only the contents of everyday consciousness with which to work. The objects of ordinary psychic acts are thus also not immanent to consciousness but contain elements given by reality itself. If Soloveitchik's arguments about the cognitive nature of religious psychic acts are interpreted along these lines, the basis for his realism is evident. Since they are intentional acts directed at the qualitative world, religious psychic acts intend objects that transcend consciousness.

However, this still does not rule out the possibility that religious psychic acts systematically misdescribe their objects. Scheler does not grapple with this problem, for according to his philosophy of religion the object of religious psychic acts is the absolute, and he holds that everyone—no matter their religious proclivities—intends some absolute object.⁷¹ And while one can erroneously perceive the absolute, Scheler's goal is not to establish its accurate perception. Yet, as has been shown, Soloveitchik explicitly rejects

68 Max Scheler, *Selected Philosophical Essays* (Evanston: Northwestern University Press, 1992), 317.

69 Herbert H. Meyer, "Max Scheler's Understanding of the Phenomenological Method," *International Studies in Philosophy* 19, no. 1 (1987): 22.

70 Cited in *ibid.*, 23.

71 On Scheler's conception of religious psychic acts, see Scheler, *On the Eternal in Man*, 173; 248.

21* 'The Objectifying Instrument of Religious Consciousness'

this position and claims that the object of religious cognition is the ordinary world. Indeed, this is the crux of his critique of Scheler's philosophy of religion.⁷² Nonetheless, Soloveitchik is silent on what warrants the accuracy of particular religious cognitions. In fact, he seems to dismiss justifying them. He is impatient with attempts to secure the accuracy of religious cognition *a priori* and, instead, encourages the articulation of a religious description of reality.⁷³ Yet, he still insists on the realist claims of religious cognition.⁷⁴

This seems due to Soloveitchik's view regarding the inaccessibility of the immediate contents of religious cognition. While from an epistemological perspective he agrees with Scheler, contra Cohen, that there is givenness in cognition, he agrees from a methodological perspective with Neo-Kantianism, contra Scheler, that these contents are inaccessible except through their objectifications. But if the contents of religious cognition are inaccessible directly, there is no immediate way to assess their correspondence to reality. Instead, one should focus on understanding their objectifications. Additionally, Soloveitchik may agree with another of the defenders of religious realism that he cites,⁷⁵ E.W. Lyman, that if religious cognitions "become... the clue for a synthetic intuition of a comprehensive process or for one yielding a world view, then both the objectivity and the moral worth of the religious experience is strengthened. For synthesis is one of the marks of objectivity."⁷⁶ The ability of religious cognitions to cohere into a comprehensive worldview, even if they can only be accessed indirectly by reconstruction, attests to their validity. Perhaps for Soloveitchik, too, coherence implies correspondence.⁷⁷

72 Soloveitchik, *Halakhic Mind*, 120 n. 62.

73 Ibid., 118 n. 58.

74 Ibid., 119 n. 61.

75 Ibid., 118 n. 56.

76 Eugene William Lyman, "Can Religious Intuition Give Knowledge of Reality?," in *Religious Realism*, ed. D.C. Macintosh (New York: Macmillan, 1932), 271–72.

77 Indeed, this possibility may help resolve some of Soloveitchik's claims that seem inconsistent with realism. Soloveitchik's statements in *Halakhic Man* that appear to indicate a conventionalist philosophy of science can be explained, following Schwartz, as part of his typological project in that work to closely associate his protagonist with the modern scientist. Just as Soloveitchik does not fully identify with the halakhic man, so too does he not endorse a conventionalist philosophy of science. In *Halakhic Mind*, in contrast, one can assume that Soloveitchik endorses his depiction of science. Still, despite his acknowledgment that scientists coordinate quantitative formulae with qualitative reality, this depiction

(ii) The Content of Religious Cognition

Despite Soloveitchik's rejection of Scheler's view on the object of religious cognition and the direct accessibility of its contents to philosophy of religion, there is another feature of Scheler's thought that he adopts—the type of content of religious cognition. While Soloveitchik is adamant in *Halakhic Mind* that the specific contents of religious cognition cannot be directly accessed, in stray comments there and in his posthumously published essay "Theory of Emotions," he is clear that the content of religious cognition is emotional perceptions of value.

Soloveitchik's passing but negative comment about Scheler's notion of the emotional *a priori* has been noted. However, a closer look at his example of objectification in *Halakhic Mind* exposes certain Schelerian features:

To illustrate, we may analyze the God-man relation: first, the subjective, private finitude-infinity tension; second, the objective normative outlook; and third, the full concrete realization in external and psychophysical acts. A subjective God-man relation implies various contradictory states. These are wrath and love, remoteness and immanence, repulsion and fascination (on the part of divinity), tremor and serenity, depression and rapture, flight and return (on the part of man), etc. This subjective attitude in man is in turn reflected either in the form of logico-cognitive judgments or ethico-religious norms, e.g., God exists... He is vengeful... You shall love God; You shall fear Him.... These judgments and norms lying on the immediate proximity of the psychophysical threshold tend to externalize themselves. They find their concrete expression in articles of faith, in prayers, in

is not conventionalist. In fact, Soloveitchik appears to accept Natorp's position in which concrete-sensorial experience sets the task (*Aufgabe*) and direction for cognition in contrast to that of Cohen, in which such experience merely stimulates autonomous cognition. This position has affinities with Soloveitchik's realism, in which the values and ends of cognition, including those of science, are given by reality itself. Additionally, for Natorp, the task and direction of scientific cognition involves reconstruction of a unified explanatory system to account for concrete-sensorial experience. For Natorp, like Soloveitchik, the success of such unification may be an indication of its truth. For discussions of Soloveitchik's views in relation to those of Cohen and Natorp, see Schwartz, *Religion or Halakha*, 44–58; 71–81; 128–32; 343–45.

23* 'The Objectifying Instrument of Religious Consciousness'

physical acts of worship, and in other practices and observances, all of which lie in the external world.⁷⁸

The most primitive elements of religious cognition that can be articulated are emotions. Soloveitchik would argue against Scheler that these subjective elements of religion must be accessed through their objectified forms, but he seems to agree with him about their priority.

This impression is verified by the essay "Theory of the Emotions," where Soloveitchik articulates a realist phenomenology of emotional psychic acts. Indeed, his discussion of emotions parallels his analysis of religious cognition in *Halakhic Mind*. Given that his dissertation, which itself foreshadows the argument of *Halakhic Mind*, used emotions as an example of non-scientific cognition of reality, this should not be surprising. He claims:

The affective act...is an intentional experience, having reference to an object; in other words, it is correlated with something.... The same challenge to which the intellect responds with a noetic performance, is also encountered by feeling-consciousness. The latter, in meeting this challenge, naturally employs intentional acts of feeling that are directed upon the challenging realia.⁷⁹

While Soloveitchik recognizes that a particular emotional psychic act may fail to correspond to reality,⁸⁰ he insists that it is directed at an intentional object that transcends consciousness.

More surprising is his explicitly Schelerian view about the specific nature of this intentional object. Soloveitchik continues:

The objective reference inherent in the affective experience is of a twofold nature: theoretical cognitive predication and axiological assessment.... In every emotional act, one intuitively feels something as real and as valuable. Emotions are the media through which the value-universe opens up to us.⁸¹

78 Soloveitchik, *Halakhic Mind*, 67–69.

79 Joseph B. Soloveitchik, *Out of the Whirlwind: Essays on Mourning, Suffering and the Human Condition*, ed. David Shatz, Joel B. Wolowelsky, and Reuven Ziegler (Jersey City: Ktav, 2003), 180.

80 *Ibid.*, 181.

81 *Ibid.*

And further, "Judaism believes that the emotional experience is suffused with ethico-moral meaning. Axiological structures and moral ideas are intuited through our emotional experiences."⁸² Like Scheler, for Soloveitchik values are the intentional objects of emotional psychic acts. Values are perceived through feelings. Crucially, feelings and their axiological objects are not just an individual's idiosyncratic evaluations. Soloveitchik too claims that there are normative standards for feelings: "In view of the underlying noesis and valuation of our affective life, feelings may be classified as meaningful or degrading depending upon the correctness and truthfulness of the noetic-co-axiological judgments which form the base of these attitudes." According to Soloveitchik, there is such a thing as "an axiological error," a misperception of value, which "results in unwarranted emotional activity."⁸³

The criteria of adequacy for emotional perceptions of value that Soloveitchik articulates are realist. He writes,

The appraisal of the worth of an emotion must not be a performance detached from the external experience to which a person reacts emotionally. Each feeling must be seen as a response to a message received from an external reality, which, battering upon the self continuously, keeps on stimulating and tantalizing him. The value judgment about the worth of a particular affect depends not upon an isolated emotional attitude...but rather on the feeling-event-relatedness, on the commensurability or incommensurability of the objective content of the message and its inward decoding, on the correspondence between impressions pouring in from the outside and the interpretations the person gives to these impressions. If this balance is lacking, then the emotion is unworthy.⁸⁴

For Soloveitchik there are no intrinsically good or bad emotions, just as there are no intrinsically good or bad perceptions. What matters is the correspondence of an emotion to its axiological object. An emotional response must be appropriate to the value.

Soloveitchik also specifically discusses religious emotions, which are distinguished by their object: "the totality of being." This identification

82 Ibid., 197.

83 Ibid., 182.

84 Ibid.

25* 'The Objectifying Instrument of Religious Consciousness'

initially seems to violate his stricture in *Halakhic Mind* that the object of religious cognition must be the “here and now reality” and not the absolute. However, this contradiction is only apparent. There he never denied that religious cognition aspires to cognize the absolute but only that it must be seen from the perspective of everyday reality. Similarly, he identifies the objective referent of religious emotion here with “the totality of being,” but also with “finitude in its relationship to the Infinite.”⁸⁵ The object of religious emotions is the totality of reality as given in human experience. Still, this experience must be understood realistically; the standard of correspondence remains in effect.

In sum, successful religious cognition involves accurate value-perception of and appropriate emotional responses to reality. Drawing on the description of objectification in *Halakhic Mind*, these responses objectify themselves into different religious doctrines, norms, and practices. Indeed, it may be helpful to describe Soloveitchik as articulating a “fitting attitude” theory of value, in which values are analyzed “in terms of evaluative attitudes endorsed as fitting...or appropriate.”⁸⁶ Soloveitchik’s view could then perhaps be profitably compared with another more recent cognitivist fitting attitude theory—John McDowell’s sensibility theory of values and “no-priority” view on whether values are the result of human projection or real features of the world.⁸⁷ However, it is unclear whether McDowell’s ambivalent ontology would satisfy Soloveitchik’s realist commitments.

In any event, when viewed from the perspective of the argumentative arc of *Halakhic Mind* as a whole, and when his realist commitments are appreciated, it becomes apparent that Soloveitchik privileges the commandments because he believes they express religious cognitions of reality in an objectified form. He discusses *ta’amei ha-mitsvot* under the rubric of reconstruction because that is the only method to access the specific content of particular commandments. However, what justifies the commandments, making them fit objects for reconstruction in the first place, is his philosophical account of halakhah.

85 Ibid., 190.

86 Daniel Jacobson, “Fitting Attitude Theories of Value,” in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, Spring 2011, <http://plato.stanford.edu/archives/spr2011/entries/fitting-attitude-theories/>.

87 John McDowell, “Projection and Truth in Ethics,” in *Moral Discourse and Practice: Some Philosophical Approaches*, ed. Stephen Darwall, Allan Gibbard, and Peter Railton (New York: Oxford University Press, 1997), 215–17.

(b) Objectification as Discipline

However, even supposing Soloveitchik's philosophical account of halakhah is correct and Jewish religious consciousness does accurately perceive values, respond with appropriate emotions, and express them as commandments, two related questions remain: First, on this account, why should halakhic practice be normative, for should it not simply be an individual's immediate response to reality? Second, if that is not the case, what benefit is there in actually practicing halakhah? Why not simply engage in reconstruction of the commandments in order to access religious cognition, thus gaining a new type of knowledge? The answer to these questions exposes another aspect of Soloveitchik's justification of the commandments: objectification as discipline. To understand this sense of objectification, and thus the second and more directly normative component of Soloveitchik's position, it is necessary to explore two other issues: (i) the subject of religious cognition and (ii) experiential *mitsvot*.

(i) The Subject of Religious Cognition

In *Halakhic Mind* Soloveitchik does not identify the subject of religious cognition with the individual but with the collective consciousness of a religious community. He writes, "It is not only the individual ego, even though endowed with supernatural faculties, but the entire community that meets God. Revealed religion rests upon the idea of a charismatic social ego that is the living incarnation of the faith.... The objective religious order is identical with the psychophysical religious act in which the living historical religious consciousness comes to expression."⁸⁸ It is the objectification of this collective consciousness's religious experience that constitutes the forms of a religion. The Jewish people as a whole engage in religious cognition that expresses itself as halakhah. The individual Jew might not cognize reality and respond with the right value-perceptions, emotional responses, and practice.

The fact that it is the community that engages in religious cognition and objectification, and not the individual, clarifies Soloveitchik's somewhat peculiar combination of realism with particularism. One might think that since religious cognition is realistic, it should deliver the same contents to every subject. However, Soloveitchik insists on the diversity of religious experiences, cognitions, and practices. In the essay "Confrontation," he

argues that differences in religious practice and thought are witness to the incommensurable religious experiences of historical faith communities: "The *logos*, the word, in which the multifarious religious experience is expressed does not lend itself to standardization or universalization.... It reflects the numinous character and the strangeness of the act of faith of a particular community...."⁸⁹ The subject of religious cognition is not the individual that confronts a universal reality but a religious community that confronts a common reality and its particular historical experience.

Finally, Soloveitchik holds that the participation of the entire religious community in religious activity results in the further development of religious forms: "This history and psychology of religion will attest to the fact that the force and effectiveness of religion, grows commensurately with the increasing participation of the entire society in the religious drama, with continuing embodiments of its formless subjectivity and with the expansion of its objectified form and symbol."⁹⁰ As I will show, this position has an important influence on Soloveitchik's view of halakhic authority. However, at least initially—prior to a certain amount of internalization—the individual member of a religious community confronts the religion's norms as external to her. They meet her simply as actions to be done. But why should the individual actually do them? An answer is suggested by Soloveitchik's theoretical halakhic analyses.

(ii) Experiential *Mitsvot*

A number of commentators have noted that Soloveitchik devoted significant effort to studying one particular type of commandment.⁹¹ In fact, Aharon Lichtenstein credits him with inventing this type.⁹² The medieval Jewish

89 Joseph B. Soloveitchik, "Confrontation," *Tradition* 6, no. 2 (1964): 23–24; for the philosophical links between *Halakhic Mind* and this essay, see Daniel Rynhold, "The Philosophical Foundations of Soloveitchik's Critique of Interfaith Dialogue," *HTR* 96 (2003): 101–20.

90 Soloveitchik, *Halakhic Mind*, 79.

91 See, for example, Aharon Lichtenstein, "R. Joseph Soloveitchik," in *Great Jewish Thinkers of the Twentieth Century*, ed. Simon Noveck (Washington, D.C.: B'nai B'rith Books, 1985), 281–98; and Marvin Fox, "The Unity and Structure of Rabbi Joseph B. Soloveitchik's Thought," in *Exploring the Thought of Rabbi Joseph B. Soloveitchik*, ed. Marc Angel (Hoboken: Ktav, 1997), 25–56.

92 Lichtenstein, "R. Joseph Soloveitchik," 295. Lichtenstein recognizes a focus on experiential commandments as one of two central pillars of Soloveitchik's

philosopher Bahya ibn Pakudah divides the commandments into two categories: commandments of the body and commandments of the heart.⁹³ Soloveitchik recognizes these categories and adds a third—experiential commandments. In describing them, he writes:

The Halakhah enters a new dimension of human life, that of subjectivity and inwardness. In contrast to the actional *mitzvot*, the experiential *mitzvot* postulate a way not of doing but of experiencing as well. The Halakhah attempts to regulate not only the body but also the soul. . . . Halakhic examination reveals the primary characteristic of that group of *mitsvot* which finds expression in parallel action. It is that in each *mitzvah* we must carefully discriminate between *ma'aseh ha-mitzvah* (the piecemeal process of actual execution) and *kiyyum ha-mitzvah*, compliance with the norm. *Ma'aseh ha-mitzvah* denotes a religious technique, a series of concrete media through which the execution of the *mitzvah* is made possible, while *kiyyum ha-mitzvah* is related to the total effect, to the achievement itself, to the structural wholeness of the norm realization.⁹⁴

Experiential commandments require certain physical acts (*ma'asim*) but the latter are not sufficient for their fulfillment (*kiyyum*); rather, the commandment is only fulfilled when the individual experiences a particular emotional state. The physical act is referred to as the *ma'aseh ha-mitzvah*, while the emotional state is referred to as the *kiyyum ha-mitzvah*. The precise nature of each and their relation are unclear, however, and are discussed below.

exposition of the implementation of halakha. The other is sanctification, which Soloveitchik understands as concerned with the negative commandments and withdrawal from instinctual drives so as to redeem them. As I note below, there is a case to be made that negative commandments are experiential in a looser sense.

93 Bahya Ben Joseph ibn Pakudah, *The Book of Direction to the Duties of the Heart*, ed. and trans. Menahem Mansoor (Portland: Littman Library of Jewish Civilization, 2004), 87–100.

94 Joseph B. Soloveitchik, *Worship of the Heart: Essays on Jewish Prayer*, ed. Shalom Carmy (Jersey City: Ktav, 2003), 15–18.

29* 'The Objectifying Instrument of Religious Consciousness'

Soloveitchik recognizes a number of norms as experiential, including: prayer,⁹⁵ honoring and revering parents,⁹⁶ reading the Torah,⁹⁷ mourning the dead, and rejoicing on the festivals.⁹⁸ Mourning the dead and rejoicing on the festivals are particularly instructive examples because he analyzes them together, and this shows the significance of the distinction in his thought.⁹⁹

Some background is necessary: There is a commandment to mourn the death of one's close relatives, including one's parents, spouse, children, and siblings.¹⁰⁰ There are several stages of mourning beginning with the period from the time of death until burial (*aninut*), the seven days following the burial (*shiv'ah*), thirty days following the burial (*sheloshim*), and for a parent the twelve months following the burial (*sheneim asar ḥodesh*). During *shiv'ah*, a number of activities are forbidden, including cutting one's hair, laundering clothing, washing oneself, anointing oneself, sexual intercourse, wearing leather footwear, working, and learning Torah.¹⁰¹ There is also a commandment to rejoice on festivals, including Passover (*pesah*), Tabernacles (*sukkot*), and Pentecost (*shavu'ot*).¹⁰² During the time of the Temple in Jerusalem, rejoicing during the festival primarily involved bringing a *korban shelamim*, peace offering. However, Maimonides adds that presently each individual must rejoice in his or her own manner, children with nuts and other delicacies, women with new clothing and ornaments, and men with meat and wine.¹⁰³

Soloveitchik raises a number of questions concerning Maimonides's rulings on the laws of mourning and its relation to other areas of halakhah, including the different implications for mourning practices of the occurrence of the Sabbath and festivals. It would be an undue detour to recapitulate this

95 Ibid., 19–26.

96 Joseph B. Soloveitchik, *Family Redeemed: Essays on Family Relationships*, ed. David Shatz and Joel B. Wolowelsky (Jersey City: Ktav, 2002), 127–57.

97 Joseph B. Soloveitchik, *Shi'urim le-Zekher Abba Mari Zt"l*, 2 vols. (Jerusalem: Akiva Joseph, 1985), 2:229–30.

98 See below.

99 Published in Hebrew in Soloveitchik, *Shi'urim le-Zekher Abba Mari*, 2:197–212; translated into English with slight changes as "The Essential Nature of Mourning," in *Out of the Whirlwind*, 49–85. All citations are from the translation.

100 Codified by Maimonides as Positive Commandment #37.

101 *Mishneh Torah*, Book of Judges, Laws of Mourning, 8:1.

102 Codified by Maimonides as Positive Commandment #54.

103 *Mishneh Torah*, Book of Times, Laws of Rest on Festivals, 6:17–18.

masterful discussion. Suffice it to note that, in attempting to resolve these difficulties, Soloveitchik is led to reflect on the reason why the obligation to rejoice on festivals supersedes the obligation to mourn, in that the mourning practices of *shiv'ah*, referred to as *avelut*, are suspended on festivals. It is not readily apparent that this should be the case. The Sabbath does not supersede the obligation to mourn in the same way (only public mourning practices are suspended). Moreover, the practices required by the obligations to mourn and to rejoice seem compatible. For example, one could refrain from sexual intercourse and still partake of meat and wine.

Soloveitchik argues, however, that the obligation to mourn is not comprised simply of the various prohibitions described above:

[A]velut entails, in its very essence, carrying out the positive commandment to mourn; and it encompasses in the first instance, not the observance of prohibitions but the affirmative *kiyyum* of mourning as a phenomenon.... [T]hese prohibitions are merely the mechanism for realizing the state of *avelut*, the concrete means by which the commandment to mourn is carried out. Conceptually, mourning remains a *kiyyum*, a positive realization.¹⁰⁴

Beyond the individual prohibitions, there is thus a positive commandment to mourn. Achieving the inward state of bereavement is the *kiyyum*, or fulfillment, of the obligation. The specific prohibitions are “merely the mechanism” for realizing this emotional state. Similarly, in reference to rejoicing, he writes,

Notwithstanding the ways in which we have been commanded to fulfill the *mitzvah* of rejoicing on a festival (in Temple times, by eating sacrificial meat; nowadays by other practices such as eating meat and drinking wine), it is plainly-clear that this *mitzvah* in fact entails a joyful heart in the simplest sense, requiring the individual to be joyful on the festival. The specific *halakhot* pertain only to how the commandment is to be carried out in a technical sense, but the essence of the commandment, it is clear, pertains to the person’s inner state on the festival.

104 Soloveitchik, *Out of the Whirlwind*, 60; brackets mine.

31* 'The Objectifying Instrument of Religious Consciousness'

In formulating specific details, the Torah simply directed how the inner joy is to be actively affirmed.¹⁰⁵

The obligation to eat from the sacrificial offering during the time of the Temple or for men to eat meat and drink wine in the present is not the "essence" of the commandment. Rather, the fulfillment of the commandment is the achievement of the emotional state of joy. The actions are simply the way in which the joy is to be "carried out in a technical sense" or "actively affirmed."

With these conceptions of the nature of the obligations to mourn the dead and to rejoice on the festivals in hand the reason their fulfillment is incompatible becomes apparent:

Mourning on a festival thus appears to be contradicted not by the activities that concretize the festival joy.... Rather, it is the *kiyyum* of festival joy through the heartfelt experience that is incompatible with mourning. Seen in this light, mourning and rejoicing are, indeed, inherently opposites; and since a mourner could not possibly realize the essential commandment of inner joy, it follows that all his gestures on the festival, such as eating meat, would lack real substance. Those actions, after all, are simply means for concretizing the goal of inner joy. It appears that mourning too—although in practice realized through the mandated eleven prohibitions—constitutes in its essence and basic *kiyyum* an element of inward experience. In effect, the Torah has required that inward soulful mourning be expressed through observance of the eleven prohibitions, but the central *kiyyum* consists of a psychological state of dejection and sadness.... This then is the meaning of the...determination that a mourner does not follow the mourning practices on a festival because the community's positive commandment to rejoice on the festival displaces the individual's positive commandment to mourn. Mourning and festival rejoicing are mutually exclusive; the *kiyyum* of one cancels that of the other and the two cannot be achieved simultaneously. The external actions, to be sure, can co-exist, and one could practice outer, concrete expressions of mourning while eating sacrificial meat. But these actions were intended merely as expressions of psychological states,

105 Ibid., 65; brackets mine.

as means for effecting the *kiyyum* of inner mourning or inner rejoicing, and one commandment is displaced by the other.¹⁰⁶

Further reflecting on these obligations and their interaction with other laws, Soloveitchik connects each with a different experience: “[J]oy is merely an emotional expression of the human experience of standing before God,”¹⁰⁷ while mourning is the emotional expression of “distancing before God.”¹⁰⁸ Each of these emotional states thus reflects diverse human experiences: closeness to God and estrangement from God.

Alex Sztuden offers a helpful discussion of Soloveitchik’s position regarding the relation between the *kiyyum* and the *ma’aseh* of commandments by focusing on this particular analysis.¹⁰⁹ He correctly links Soloveitchik’s position on experiential commandments with the description of halakhah as objectification in *Halakhic Mind* and then offers a number of criticisms of the position from psychological, philosophical, and halakhic perspectives. The adequacy of Soloveitchik’s halakhic analysis is not of concern presently. Sztuden’s psychological criticism is that Soloveitchik builds implausible expectations into the obligations of halakhic norms. If the basic fulfillment of the norm of rejoicing on the festival requires one to be joyful, which is incompatible with mourning, an individual who has recently sustained the loss of a loved one is required to reject her feelings of bereavement and rejoice. Sztuden believes that this demanding view is inconsistent with Soloveitchik’s position, expressed elsewhere, that halakhic observance is achievable by the average person.¹¹⁰

Sztuden rightly notes that Soloveitchik identifies the *ma’aseh ha-mitsvah* with objectivity and the *kiyyum ha-mitsvah* with subjectivity. The *ma’aseh* is an objective act; the *kiyyum* is a subjective state. However, he argues that

106 Ibid., 69–71.

107 Ibid., 78; brackets mine.

108 Ibid., *Out of the Whirlwind*, 81.

109 Alex Sztuden, “Grief and Joy in the Writings of Rabbi Soloveitchik, Part I: Psychological Aspects,” *Tradition* 43, no. 4 (2010): 37–55; idem, “Grief and Joy in the Writings of Rabbi Soloveitchik, Part II: Philosophical Aspects of the Ma’aseh/Kiyyum Distinction,” *Tradition* 44, no. 1 (2011): 9–32; and idem, “Grief and Joy in the Writings of Rabbi Soloveitchik, Part III: Halakhic Aspects,” *Tradition* 45, no. 2 (2012): 67–79.

110 For citations see Sztuden, “Grief and Joy in the Writings of Rabbi Soloveitchik, Part I: Psychological Aspects.”

33* 'The Objectifying Instrument of Religious Consciousness'

Soloveitchik describes their relation inconsistently. Sztuden identifies four ways Soloveitchik describes the relation between *ma'aseh*/objectivity and *kiyyum*/subjectivity:

- 1) Objective act *triggers* subjective state....
- 2) Objective act *expresses* subjective state....
- 3) Objective act *shapes* subjective state....
- 4) Objective act *realizes* subjective state....¹¹¹

Sztuden specifically rejects the first relation because he thinks that it runs afoul of Soloveitchik's critique of Maimonides's approach to rationalizing the commandments in the *Guide of the Perplexed*: It turns the commandments into mere instruments for the attainment of emotional responses. However, as noted above, Soloveitchik's actual problem with Maimonides's approach is the reduction of religion to another realm of consciousness or culture. But in this relation the action is conceived of as the means for triggering specifically religious emotions.

More broadly, Sztuden argues that the three relations subscribe to a form of dualism of inner experience and outer deed or, alternatively, that the means can be specified without reference to the end.¹¹² However, Soloveitchik does not hold that there is such a separation. First, the *ma'aseh ha-mitsvah* is nearly always necessary (except in derivative cases) for the fulfillment of the commandment. Second, Soloveitchik does not think that the external actions and internal state are unconnected to one another. Festival joy is nearness to God, which corresponds to certain specific behaviors; mourning is distance from God, which also corresponds to certain specific behaviors. The actions and the emotional states are codetermining.

Furthermore, Sztuden takes an overly static view of halakhic practice and does not recognize the two different subjects and senses of objectification in Soloveitchik's philosophical account of halakhah. Conceptually, halakhah is initially the objectification of Jewish collective consciousness's cognition of reality, including such occurrences as nearness and distance from God. This cognition is originally emotional, including joy and bereavement, and directed at values, which Soloveitchik does not identify here; but it expresses itself as commandments, such as mourning and rejoicing practices. Temporally,

111 Sztuden, "Grief and Joy in the Writings of Rabbi Soloveitchik, Part II: Philosophical Aspects of the Ma'aseh/Kiyyum Distinction," 32.

112 Ibid., 31.

for the individual Jew experiential commandments are initially actions that aim to trigger certain emotional responses: mourning and rejoicing practices attempt to stimulate the emotions of bereavement and joy, respectively. However, halakhah is a discipline that is practiced over a lifetime, and through continuous engagement in halakhic practice the individual's subjectivity is shaped by its norms. She comes to experience the appropriate emotions and perceive the correct values without the norms needing to trigger them. This is the sense of objectification as discipline. Indeed, halakhic practice can be described as a form of *bildung*, in which an individual is formed by and eventually appropriates a religious culture.¹¹³ Thus, once the discipline is complete, the commandments become expression once again. They express the individual's subjectivity that has been shaped under their influence. Sztuden is thus correct that there is a fourth relation in which the external actions fully realize the internal state and there is no longer any dichotomy between internal state and external action. However, this is achieved only after a process in which the individual's actions are guided and emotions are shaped by halakhic discipline.

Consequently, Sztuden's criticism of Soloveitchik's approach because of its psychological demandingness falls away. Soloveitchik is clear in his essay "Catharsis" that "[t]he Torah...has also tried to control the inner life of man. Laws such as 'thou shalt not covet,' 'thou shalt not hate thy brother,' are as integral a part of the [halakhic] normative system as are those related to human external action. In a word, the [halakhah] thinks there is an ethic, not only of action, but of feeling, as well. Man is master over his own emotional

113 Alternatively, and as my use of the term "discipline" suggests, halakhic practice could be understood as *assujettissement* in the sense developed by Michel Foucault and translated variously as "subjection," "subjectivation," or "subjectification." See *Discipline and Punish: The Birth of the Modern Prison*, trans. Alan Sheridan (New York: Random House, 1995), especially 135–94. I have chosen to use the term "objectification" instead of "subjectification" because this is the term that Soloveitchik himself uses to describe both the expression of norms (where the direction is from the collective subject to normative object) and the discipline of the individual (where the direction is from the objective norm to the individual subject). It would be confusing to introduce a term to gloss a sense of Soloveitchik's "objectification" that seems to mean the opposite of it. I have developed the connection between Soloveitchik's understanding of halakhic practice as a discipline and Foucault's notion of practices of freedom in "Halakhic Practice as Critical Praxis: Cataphatic and Apophatic Forms of Bodily Resistance in Recent Jewish Thought" (in preparation).

35* 'The Objectifying Instrument of Religious Consciousness'

world..."¹¹⁴ Elsewhere, he writes, "Freedom of will, according to Judaism, is not limited to external action. Its application extends to the inner life of man. Man freely forms his living experience by selecting ennobling and worthwhile emotions out of a pile of unorganized and amorphous moods, and molds them into a great experience, endowed with constancy and directedness."¹¹⁵ Doubtless, this seems to demand an impossible task if one takes a static perspective. However, if one views halakhah as a discipline in which an individual's subjectivity is shaped by halakhic practice, the task of responding with the requisite emotions is not as difficult.

Returning to the broader issue of *ta'amei ha-mitsvot*, recall that halakhah is not simply a practice but the expression of cognition of reality. There is then a specifically normative justification of halakhic practice for the individual: Through engaging in halakhic practice as a discipline she is formed so as to have appropriate emotional responses to and accurate value-perceptions of reality. Indeed, Soloveitchik writes, "the basic moral criterion by which Judaism has been guided in the formulation of a normative system consists in the need for a relationship of congruity between reality and emotional attitudes."¹¹⁶ In keeping with his methodological strictures, one can only reconstruct the specific value-perception and emotional response underlying a commandment out of the commandment itself; however, the reason to perform the commandment is to achieve these states and perceptions.

One might object, however, that the experiential commandments comprise a small number of halakhic norms. That is correct; however, there is evidence that Soloveitchik views them as prototypical commandments, the features of which are evident, though not fully realized, in others.¹¹⁷ In fact, he seems to attempt to extend the *ma'aseh/kiyyum* analysis to include

114 Joseph B. Soloveitchik, "Catharsis," *Tradition* 17, no. 2 (1978): 47.

115 Soloveitchik, *Out of the Whirlwind*, 168–69.

116 *Ibid.*, 182.

117 A similar point is made by Gerald J. Blidstein in *Society & Self: On the Writings of Rabbi Joseph B. Soloveitchik* (New York: OU Press, 2012), 132. However, like Sztuden, Blidstein has a static view of halakhic practice and argues that internalization is meant to precede behavior and thus that behavior is not meant to stimulate the appropriate state. Additionally, he does not recognize that other commandments approximate the form of the experiential norms.

all interpersonal commandments¹¹⁸ as well as all negative commandments.¹¹⁹ Whether or not these extensions of the strategy are successful, it is clear that Soloveitchik recognizes the experiential *mitsvot* as prototypical commandments. This is because they precisely fit his philosophical account of halakhah and make clear its implications. By engaging in halakhic practice as a discipline one shapes one's subjectivity. It is training for Jewish religious cognition, allowing one to accurately perceive values and appropriately respond with emotions. Thus Soloveitchik's philosophical account of halakhah provides his fundamental approach to *ta'amei ha-mitsvot*. It undergirds the method of reconstruction for reflection on specific commandments, normatively justifies halakhic practice, and explains his preoccupation with experiential *mitsvot*.

III. Coda: Implications for Halakhic-Legal Practice

In concluding, it is significant to note that this revisionist account has the potential to illuminate elements of Soloveitchik's view of halakhic-legal practice as well. As Gerald Blidstein has shown, as a result of focusing too heavily on *Halakhic Man*, many students and scholars of Soloveitchik have attributed to him a formalistic view of halakhic-legal practice, in which halakhah is "the realm of the a priori, impervious to social reality, and as subject to a method partaking more of mathematics than of the human sciences."¹²⁰ In contrast, a number of Soloveitchik's other texts, including those that discuss practical halakhah, present a non-formalist view, in which substantive values guide decision-making. This non-formalism is especially apparent in his conceptions of halakhic authority and decision-making.

In his essay, "Two Types of Tradition," Soloveitchik identifies two types of halakhic traditions and authorities: one which is intellectual and whose locus is the intellectual elite, and the other which is practical and whose

118 See Joseph B. Soloveitchik, *Community, Covenant and Commitment: Selected Letters And Communications*, ed. Nathaniel Helfgot (Jersey City: Ktav, 2005), 333–34; and Soloveitchik, *Shi'urim le-Zekher Abba Mari*, 2:71–72.

119 In this case the emotional state would be that of catharsis, recoil, or self-limitation. See Soloveitchik, "Catharsis"; idem, *Family Redeemed*, 49–50; and idem, *The Emergence Of Ethical Man*, ed. Michael S. Berger (Jersey City: Ktav, 2005), 154–55. See Brafman, "Critical Philosophy of Halakha," for a full defense of these claims.

120 Blidstein, *Society & Self*, 38.

locus is the whole Jewish people.¹²¹ While Soloveitchik, as always, masterfully derives this innovative notion of practical, lay authority from the halakhic sources, it is not immediately obvious how it coheres with a formalistic view of halakhah. In a quasi-mathematical approach halakhic norms would be entailed by the conceptual structure that underlies the halakhic system; the community's practice should have no bearing. However, in view of the philosophical account of halakhah I have derived from *Halakhic Mind*, this position is understandable. The Jewish people as a whole engage in religious cognition of reality that expresses itself in the commandments. Their behavior thus has a type of authority that can ground practices, which then do not require intellectual support.¹²² Soloveitchik's description of this tradition elsewhere as experiential is also consistent with this account.¹²³ Collective religious cognition results in practices, but first it is emotional.

Since in *Halakhic Man* Soloveitchik writes that its protagonist "recognizes no authority other than the authority of the intellect,"¹²⁴ it is tempting to attribute to him a formalistic conception of rabbinic decision-making. However, in a number of places, including recently published responsa letters, he remarks on the roles of "intuition,"¹²⁵ "intuitive feeling,"¹²⁶ and "subjective moods"¹²⁷ in adjudication. Halakhic decision-making thus does not involve merely operating formal halakhic relations, and it is not simply a matter of discursive knowledge. But how then is this halakhic intuition achieved and what is the basis for its authority?

Soloveitchik hints at an answer in *Ma-Dodekh mi-Dod*. In it he describes his uncle, Rabbi Yitzchak Zev Soloveitchik, as having had a uniquely intimate relationship to Torah:

When the division between Man and Torah shifts entirely from its place not only do the forty-nine gates of halakhic thought

121 Soloveitchik, *Shi'urim le-Zekher Abba Mari*, 1:249.

122 See Soloveitchik, *Halakhic Mind*, 79.

123 Joseph B. Soloveitchik, "A Tribute to the Rebbetzin of Talne," *Tradition* 17, no. 2 (1978): 73–83; Blidstein identifies the two, see *Society & Self*, 103.

124 Soloveitchik, *Halakhic Man*, 79.

125 Joseph B. Soloveitchik, *The Rav Speaks: Five Addresses on Israel, History, and the Jewish People* (Brooklyn: Judaica Press, 2002), 50.

126 Soloveitchik, *Community, Covenant, and Commitment*, 24–25.

127 *Ibid.*

and cognition open before him, but also the forty-nine gates of halakhic vision and feeling. Not just the intellectual soul, but also the soul possessing halakhic vision is given to him by God. The logical halakhic thought is provisioned from the pre-intellectual vision and prophecy, which bursts in a storm from the depths of his personality, which the holy presence washes over him. This mysterious intuition is the source of halakhic creation and innovation. The strict intellect, the master of precise definition and enlightening formula, only thinks what the visionary soul provides it. The man of halakhah to whom the Torah is wed and joined 'sees' halakhic contents, 'feels' halakhic ideas like they were aural, optical, or olfactory contents.¹²⁸

According to Soloveitchik, halakhic intuition results from a profound internalization of the Torah. Surely the process by which the Torah is internalized involves intellectual study. But it also requires engagement in halakhic practice as a discipline. As a result, the individual is granted the ability to "feel" and "see" halakhic ideas. One who is wed to the Torah feels the emotional responses encoded in it and perceives the values to which it grants access. Consequently, he is able to draw on its emotional and axiological content to arrive at halakhic decisions, both theoretical and practical.¹²⁹ The rabbinic decisor possesses authority on the basis of the intuitive nature of his decision-making, which is the result of his formation by halakhic discipline. Consequently, this interpretation of Soloveitchik's philosophy of halakhah illuminates his philosophical and theoretical-halakhic thought as well as his view of halakhic-legal practice.

128 Joseph B. Soloveitchik, *Be-Sod ha-Yahid ve-ha-Yahad: Mivhar Ketavim Ivriyim*, ed. Pinchas H. Peli (Jerusalem: Orot, 1976), 219; translation mine.

129 I am aware that *Ma-Dodekh mi-Dod* is generally, though not entirely, focused on theoretical halakhic thought, or *lomdus*, and not practical halakhic decision-making, or *pesak*. My aim in discussing this essay is to illuminate Soloveitchik's other comments about the role of intuition and subjective mood which do concern practical halakhic decision-making.