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Letting the Facts Get in the Way of a Good Thesis: On Interpreting R. Soloveitchik's Philosophical Method

Introduction

Many great thinkers, especially those whose legacy is not confined to the academy, suffer at the hands of their interpreters, and R. Joseph B. Soloveitchik is no exception. When one begins studying the thought of the Rav, one is struck by the at times diametrically opposed approaches to his work in the scholarly and not so scholarly literature that it has generated. For example, among the various communities that view themselves as the true heirs of R. Soloveitchik, we find, on the one hand, those that marginalize the philosophical import of his work and, on the other, those that emphasize it almost to the exclusion of anything else.¹ I initially thought that this was merely an expression of the particular conscious or unconscious prejudices of the scholars in question, myself included, but as I continue to engage with R. Soloveitchik's thought, it strikes me that while this is undoubtedly a factor, the varying views often each have a genuine foothold in his work, making for a rather more complicated picture of both his thought and its interpreters. In this paper, I wish to illustrate what I mean with reference to R. Soloveitchik's

1. For an analysis of the posthumous treatment of R. Soloveitchik's work, see Lawrence Kaplan, "Revisionism and the Rav: The Struggle for the Soul of Modern Orthodoxy," *Judaism* 48 (1999): 290-311.

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theory and practice of his philosophical method as presented in *The Halakhic Mind*.² In this case, I began with an initial interpretation of R. Soloveitchik's method, only to be convinced subsequently that it was erroneous, but then returned to my starting point.³



I recall, from my time as a philosophy undergraduate, once sitting among students and lecturers in Cambridge during a meeting of what was still quaintly called the Moral Sciences Club. During a discussion of some now forgotten metaphysical theory, someone objected to a particular position being taken and interjected, "But the facts are . . ." He was immediately interrupted by a professor, who shouted, "For goodness sake! We're philosophers. We're above facts." Along these same lines, the objection to my original reading of R. Soloveitchik's method was that although my interpretation of the text in question seemed coherent, I was ignoring the rather recalcitrant fact that R. Soloveitchik did not actually use the method I was attributing to him. At the time, this was a point that I felt I had to concede, but on further reflection, I have come to the conclusion that there is a sense in which both my interpretation and the objection have merit. It is this intellectual journey that this paper describes.⁴

I will begin with my reading of R. Soloveitchik's philosophical method and the central objection to it. I will then examine his philosophy of prayer as a basis for discussion of whether or not the method used in that context is indeed the one I have suggested. This will lead in conclusion to a brief observation on the implications of all of this for the interpretation of R. Soloveitchik's thought more generally.

The Method

What, then, was R. Soloveitchik's philosophical method as outlined in *The Halakhic Mind*? The method he ends up with is one that he terms "descriptive reconstruction," and it is with the details of this method that I am particularly concerned. In broad summary, the method can be presented

2. Joseph B. Soloveitchik, *The Halakhic Mind: An Essay on Jewish Tradition and Modern Thought* (New York, 1986). References to this work in the text will be in the form HMD followed by page number.

3. The objection to my interpretation was brought to my attention by David Shatz at the beginning of a dialogue that to this day remains a source of immense intellectual value.

4. This paper essentially makes good on a promise in an earlier piece to return to this topic and address these uncertainties. See my "The Philosophical Foundations of Soloveitchik's Critique of Interfaith Dialogue," *Harvard Theological Review* 99 (2003): 101-20, esp. 108-12.

as follows. In order to do Jewish philosophy, we must reconstruct our theory out of the halakhic data of Judaism. As R. Soloveitchik puts it, our philosophy cannot be formed “through any sympathetic fusion with an eternal essence, but must be reconstructed out of objective religious data and central realities” (*HMD*, 62). We will leave arguments regarding exactly how R. Soloveitchik understands the concept of objectivity in this context for another time. However, for R. Soloveitchik, it is clearly the Halakhah that is Judaism’s equivalent of this objective order.

At this point, I note that one would imagine from this that R. Soloveitchik’s method is to utilize halakhic data in order to construct a conceptual system that conforms to that data. We begin with the Halakhah and simply build our Jewish philosophy. However, on a closer reading of the work, the approach actually seems a little less straightforward than this uncomplicated one-way method. As William Kolbrener has pointed out,⁵ at the methodological center of this work is the modern scientist whose method becomes the model for the modern philosopher of religion. While I would emphasize that one can also clearly detect the influence of certain philosophers of the human sciences on the argument of *The Halakhic Mind*, Kolbrener’s essential (and to my mind correct) point is that it is as a result of engaging in a two-way rather than a one-way process that the modern scientist becomes paradigmatic for the philosopher of religion.

According to R. Soloveitchik, the Newtonian scientist could not be a role model for the philosopher of religion. The problem with the Newtonian scientist was his method, which R. Soloveitchik terms “atomistic.” In other words, the Newtonian scientist would build his mechanical picture of the universe through a piecemeal approach, taking each individual element in order to produce a picture of the universe that would be purely quantitative. What is important for our purposes is that such an approach is rejected as irrelevant to the most central concerns of the philosopher of religion. The religious philosopher is concerned with meaning, with what R. Soloveitchik calls the “subjective aspect”—the ideas that lie behind the observed phenomena of the objective order. The philosopher of religion is not interested in the purely quantitative universe of the Newtonian scientist.

It was quantum physics, according to R. Soloveitchik, that necessitated bringing a subjective element into the picture. This was occasioned by the discovery of quantum phenomena that could not be accounted for by the old atomistic approach. The quantum scientist was forced to

5. William Kolbrener, “Towards a Genuine Jewish Philosophy: *Halakhic Mind’s* New Philosophy of Religion,” reprinted in *Exploring the Thought of Rabbi Joseph B. Soloveitchik*, ed. Marc D. Angel (Hoboken, NJ, 1997), 179-206.

look beyond the objective information and take a holistic approach in order to understand this newly acquired recalcitrant data. R. Soloveitchik's "subjective aspect" was required to yield a conceptual scheme that would enable the understanding of the new "objective" data.

For R. Soloveitchik, the quantum scientist's interest in the holistic aspect of his universe—in the whole rather than just the parts—was essential if the method was to be of any use in the religious sphere. Thus, quantum physics becomes the savior of scientific method for the religious philosopher.

As long as physics operated with a single atomistic approach, its method could not benefit the humanistic sciences, which can ill afford to ignore the subjective aspect. . . . However, as soon as the modern physicist had evolved a subjective "cosmos-whole" out of the objective summative universe, the humanist found his mentor. . . . (*HMD*, 71).

Leaving aside the accuracy of R. Soloveitchik's account of modern science and the many other important aspects of this method that could detain us, I would like to focus purely on what appeared to be the most significant idea of all in my initial engagement with this method—that the approach being recommended here is a dualistic or two-way, rather than a one-way, approach. By R. Soloveitchik's own account:

The understanding of both nature and spirit is dualistic, both mosaic and structural—but (*and this is of enormous importance*) *the mosaic and structural approaches are not two disparate methodological aspects which may be independently pursued: they form one organic whole* (*HMD*, 60, emphasis added).

With the terms "mosaic" and "structural" standing in here for "atomistic" and "holistic" respectively, it seems to me that this quotation is highly significant. If we are to carry the point through, while initially the idea of descriptive reconstruction suggested a one-way system of interpretation from the halakhic data to the concepts it yields, in fact, these conceptual underpinnings *themselves* are required to correctly understand the parts. If we simply use the parts to understand the whole, we are taking the rejected Newtonian atomistic approach. But if we ignore those parts, we are back to the sorts of "sympathetic fusions" with the mind of God that R. Soloveitchik cannot abide because they bypass any form of objective constraint. The appearance of this two-way approach—in which we not only construct the theory out of the halakhic parts but also use the theory to comprehend those parts and, indeed, at times to come to an entirely new understanding of them—seems to me to be the very essence of the approach that he is arguing for in *The Halakhic Mind*.

As I have argued elsewhere,⁶ the method of descriptive reconstruction as I interpret it looks very much like the method of reflective equilibrium that has become a focus of philosophical attention since its use by John Rawls in *A Theory of Justice*.⁷ The method of reflective equilibrium, which appears to be much the same as that termed the hermeneutic circle⁸ by those working in a Continental idiom, has over recent decades become a popular method of forming ethical theories for justifying ethical practices. Rawls believes that in constructing a theory of justice, we ought to begin our deliberations from our settled convictions about justice at various degrees of generality—what Rawls terms our “considered judgments”—and “try to organize the basic ideas and principles implicit in these convictions into a coherent political conception of justice.”⁹ The process through which this is achieved is the taking of sets of moral principles, along with the background philosophical arguments for them, and seeing which best fit the considered judgments. Norman Daniels has termed this a “wide reflective equilibrium” that attempts “to produce coherence in an ordered triple of sets of beliefs held by a particular person, namely, (a) a set of considered moral judgments, (b) a set of moral principles, and (c) a set of relevant background theories.”¹⁰ But significantly for Rawls, these judgments are merely a provisional starting point. The idea behind reaching a reflective equilibrium is that once formed, the principles of the theory might actually force us to rethink some of our considered judgments and revise or even withdraw some of them.¹¹ What we have here, therefore, is a process that continually works both from the considered judgments to the theory and back again in order to adjust the two into a mutually justificatory system.

At this point, I ought to enter a couple of caveats. First, I am obviously not intending to make any sort of anachronistic historical claim—Rawls

6. The most detailed account can be found in my *Two Models of Jewish Philosophy: Justifying One's Practices* (Oxford, 2005), chapter 2. This paper contains further developments and clarifications of some of the themes discussed there.

7. John Rawls, *A Theory of Justice* (Oxford, 1973). Coincidentally (or not), much as R. Soloveitchik is seen as indebted to Kant and his Neo-Kantian successors, Rawls was seen as proffering a form of modern-day Kantianism in his political thought.

8. The term originates in the field of textual interpretation, describing the need for the same back and forth movement between part and whole that we have described, in that context between the individual parts of the text and the nature of the structural whole.

9. John Rawls, *Political Liberalism* (New York, 1993), 8. A more detailed account of the nature of these considered judgments can be found in Rawls' “Outline of a Decision Procedure for Ethics,” *Philosophical Review* 60 (1951): 177-97 and in *A Theory of Justice*, 46-53.

10. Norman Daniels, “Wide Reflective Equilibrium and Theory Acceptance in Ethics,” *The Journal of Philosophy* 76 (1979): 257.

11. Rawls uses both terms in *A Theory of Justice*, 20.

wrote far later than R. Soloveitchik. My concerns here are conceptual, and the method that R. Soloveitchik is using, conceptually speaking, appears to be very close to this Rawlsian method, such that we can profit from studying R. Soloveitchik's method in light of it. Second, however, and of greater conceptual import, while R. Soloveitchik speaks of "understanding" in his use of the method of descriptive reconstruction, Rawls speaks of "justification" as the aim of the method of reflective equilibrium. The former idea is used in the realm of interpretation, in the attempt to find the *meaning* of *mizvot*, but is not, it could be argued, intended to justify them. Finding the meaning of the *mizvot* is not a justificatory enterprise, whereas Rawlsian reflective equilibrium is just that, so it is wrong to speak of R. Soloveitchik utilizing the Rawlsian method.¹²

The possible significance of this distinction can be seen if we take note of what could be at stake were R. Soloveitchik indeed to apply the method of reflective equilibrium as a *justificatory* enterprise in the realm of Jewish philosophy. In that case, the idea would be that we do indeed create a conceptual underpinning for Judaism by descriptive reconstruction out of halakhic sources (which would be the equivalent of the Rawlsian considered judgments). But the implication of taking the two-way approach of reflective equilibrium is that at the same time, those very halakhic sources would be at the mercy of the philosophical theory that is discovered to best fit them. A particular philosophical position might force the withdrawal of a considered halakhic judgment. This leads to a fear of the potentially antinomian implications the method might have for one bound to the halakhic system, as was R. Soloveitchik.

In terms of the interpretation of R. Soloveitchik's work, this would be a perfect example of his using a philosophical method consonant with significant contemporary philosophical trends, thus yielding support, if it were needed, for his credentials as a serious philosopher and giving a boost to those who would give primacy to R. Soloveitchik's unapologetic commitment to philosophy. Moreover, it is an approach with potentially radical implications, which would further enhance his modernist credentials—or harm his traditionalist ones, depending on one's perspective.

It is here that the facts encroach on the thesis. As David Shatz pointed out to me, although certain quotes in *The Halakhic Mind* might support

12. I am extremely grateful for the insightful comments of the anonymous reviewer for *The Torah u-Madda Journal* on this piece, in which he pointed out this distinction, enabling me to state my position with greater care and clarity than in the original Hebrew version of this article. While I imagine that he might well still disagree with the views I express, our disagreements would now be of a substantive philosophical nature rather than a result of my inattention to the distinction that he correctly pointed out.

my thesis, in practice, it is not at all clear that R. Soloveitchik took this approach. When actually engaged in doing philosophy, it appears as if R. Soloveitchik did, in fact, take a one-way approach. The halakhic data was utilized for the formation of the conceptual underpinnings, rather than *vice versa*. R. Soloveitchik would use the Halakhah in order to form his Jewish philosophy, but the philosophy itself would not be used to revise the halakhic data. Philosophy might allow us to penetrate the meaning of the Halakhah, but is not meant to explain or justify it in a manner that might lead to its revision. As R. Soloveitchik tells us, he would “never say that the message I detected in the *mizvah* explains the *mizvah* . . . however, I am permitted to raise the question of what the *mizvah* means to me” (emphasis added).¹³

As has been noted by a number of scholars, for all his philosophical originality, in the halakhic realm R. Soloveitchik was often very conservative. Even Walter Wurzbarger, in the course of a piece that champions the Rav’s modernity, notes,

[I]n many areas, such as *hilkhot avelut*, the construction of *eruv* in cities, [and] refusal to grant a *shetar mechirah* authorizing non-Jewish workers to operate Jewish factories or commercial establishments on Shabbat, the Rav has consistently issued rulings that surpass in stringency those of right-wing authorities.¹⁴

As several writers have since pointed out, stringent rulings are not necessarily an argument against one’s modernism.¹⁵ Our issue here, however, is not whether R. Soloveitchik’s rulings themselves imply a modern or traditionalist approach to the Halakhah. Rather, the point on which all agree—that the end result of R. Soloveitchik’s halakhic determinations is conservative—inevitably raises the question of whether he would really apply a philosophical method such as we have described, with its potentially antinomian consequences. The general question that is raised, then, by the abstract methodological issue is whether R. Soloveitchik is forced to stop short of the full application of the reflective equilibrium method—indeed, whether he uses it at

13. Rabbi Joseph B. Soloveitchik, *Out of the Whirlwind*, ed. David Shatz, Joel B. Wolowelsky, and Reuven Ziegler (Jersey City, NJ, 2003), 44. This is but one of many examples that might appear to limit the justificatory pretensions of his method.

14. Walter Wurzbarger, “Rabbi Joseph B. Soloveitchik as *Posek* of Post-Modern Orthodoxy,” in *Exploring the Thought of Rabbi Joseph B. Soloveitchik*, 4.

15. *Ibid.* See also David Shatz, “Rav Kook and Modern Orthodoxy,” in *Engaging Modernity: Rabbinic Leaders and the Challenge of the Twentieth Century*, ed. Moshe Z. Sokol (Northvale, NJ, 1997), 101; and Moshe Sokol, “*Ger ve-Toshav Anokhi*: Modernity and Traditionalism in the Life and Thought of Rabbi Joseph B. Soloveitchik,” in *Exploring the Thought of Rabbi Joseph B. Soloveitchik*, 125-143, esp. 129ff.

all—due to religious constraints. This would support the view that R. Soloveitchik's philosophical endeavors must always come a poor second to his Judaic commitments.

We cannot, in my view, simply ignore the method outlined in *The Halakhic Mind*. The entire thrust of the argument there seems to militate against any sort of one-way approach. Taking such an approach to the objective data would commit the sin of Newtonian atomism. But similarly, any direct approach to the conceptual realm is prey to the dangers of a purely subjective intuitionism that “finds the whole even before he has apprehended the components” (*HMD*, 61). It seems to me, therefore, as if the dualism of reflective equilibrium is essential to the argument of *The Halakhic Mind* if we are to avoid the exclusive choice between a purely quantitative universe and recondite mysticism. Moreover, it is of a piece with the just as radical epistemological pluralism with which R. Soloveitchik begins the book.¹⁶

Nonetheless, there does appear to be a distinction between R. Soloveitchik's project of interpretation and Rawls' project of justification. Thus, we will need to look at how R. Soloveitchik actually utilizes his method in order to investigate whether it can appropriately be dubbed a method of reflective equilibrium.

R. Soloveitchik's Analysis of Prayer

With my interpretation of the method before us, the only way to ascertain whether or not R. Soloveitchik actually used it is to look at the method in practice. To do full justice to this question would require the detailed study of many topics. Here we can but make a start by looking at R. Soloveitchik's philosophical treatment of prayer,¹⁷ with specific reference to his thoughts on the petitional elements of the *Amidah* presented in the collection *Worship of the Heart*.¹⁸ The purpose here is neither to be

16. I will be dealing with R. Soloveitchik's epistemological pluralism in an article entitled “Perspectivism and the Absolute: Rabbi Soloveitchik's Epistemological Pluralism,” forthcoming in *Revue Internationale de Philosophie*.

17. In the original oral presentation of this paper, I focused on the well-known example of repentance, a discussion of which can still be found in *Two Models of Jewish Philosophy*. The discussion that followed led me to believe that prayer might be a more productive area for exploration. I am particularly grateful to Lawrence Kaplan and David Hartman for their contributions to that discussion, which led me to consider this topic. For a critical appreciation of the Rav's thought on prayer more generally, see David Hartman, *Love and Terror in the God Encounter: The Theological Legacy of Rabbi Joseph B. R. Soloveitchik* (Woodstock, VT, 2001), vol. 1, chapter 6.

18. Rabbi Joseph B. Soloveitchik, *Worship of the Heart*, ed. Shalom Carmy (Jersey City, NJ, 2003). It is worth noting that this volume is composed of manuscripts that

exhaustive nor critical, but simply to lay out the conception of prayer that R. Soloveitchik presents for the purpose of our methodological question.

As our starting point, we will take the following definition that R. Soloveitchik gives of prayer:

Basically, prayer is a mode of expression or objectification of our inner experience, of a state of mind, of a subjective religious act, of the adventurous and bold attempt of self-transcendence on the part of the human being and of his incessant drive toward the infinite and eternal.¹⁹

The first thing to note is that R. Soloveitchik has made a definite conceptual choice here. To view prayer as essentially an “expression or objectification” of human experience is by no means a necessary conception of prayer. Yeshayahu Leibowitz, for example, would describe prayer as a form of pure worship that, given his understanding of a religious act, must be devoid of such psychological connotations to so qualify. Prayer consists almost entirely of the verbal performance.²⁰ Notwithstanding the rather radical nature of Leibowitz’s stance, it is significant in this context for illustrating that R. Soloveitchik’s definition does not exhaust the logical space of conceptions of prayer and therefore indicates a positive and significant choice. Moreover, R. Soloveitchik himself points out that this subjectivism with regard to prayer “is not unanimously asserted in the medieval classics.”²¹

How, though, can we “reconstruct” R. Soloveitchik’s arrival at this conception of prayer? First, we must refer to a distinction that comes up many times in R. Soloveitchik’s analyses of particular commandments—the distinction between actional and experiential *mizvot*. The former are *mizvot* the fulfilment of which is exhausted in their actual physical performance (*ma’aseh ha-mizvah*). R. Soloveitchik often uses the example of eating *mazzah* on the first night of Pesach as a commandment that is fulfilled

R. Soloveitchik wrote, but did not himself publish (with the exception of the chapter “Reflections on the *Amidah*”). The use of such material can be a vexed question for scholars. Nevertheless, while one must always give priority to published works, we cannot neglect the manuscript material penned by R. Soloveitchik himself that is now appearing. The volumes in the Meotzar HoRav series always note the provenance of the texts that they utilize and in this particular case, Shalom Carmy, the editor of *Worship of the Heart*, notes on page xxviii that R. Soloveitchik began to review for publication the essays from which I have quoted in this piece. In conversation, R. Carmy further said that the Rav had reviewed these opening essays with him a number of times.

19. “Prayer and the Media of Religious Experience,” in *Worship of the Heart*, 3.

20. See Yeshayahu Leibowitz, “Of Prayer,” in *Judaism, Human Values and the Jewish State*, ed., Eliezer Goldman (Cambridge, MA, 1992), 30-36.

21. “Intention (*Kavvanah*) in Reading *Shema* and in Prayer,” in R. Soloveitchik, *Worship of the Heart*, 87-106, 94.

simply through action and does not express or require any inner subjective correlate (other than possibly the intention to fulfil one's duty).²² In contrast, experiential commandments²³ are a type of commandment that can only be truly fulfilled if the concrete actions that the Halakhah has prescribed are accompanied by a certain mental state, which is itself the *sine qua non* for the genuine fulfillment of the commandment (*kiyyum ha-mizvah*). As R. Soloveitchik puts it,

Ma'aseh ha-mizvah denotes a religious technique, a series of concrete media through which the execution of the *mizvah* is made possible, while *kiyyum ha-mizvah* is related to the total effect, to the achievement itself, to the structural wholeness of the norm realization.²⁴

Examples of such *mizvot* would include those of mourning or rejoicing on a festival and, returning to our central topic, prayer, as should be obvious from the initial definition, with its emphasis on subjectivity. Rather than simply asserting this, however, following his methodological stipulations, R. Soloveitchik makes this conceptual categorization based on halakhic sources.

The central source here is the fifth positive commandment of Maimonides' *Sefer ha-Mizvot*, which R. Soloveitchik presents as follows:

Commandment 5 is that He has commanded us that we are to serve Him. This commandment is repeated twice in His words, "And ye shall serve the Lord your God" and "Him shalt thou serve." Now although this commandment also is of the class of general precepts . . . yet there is a specific duty: the commandment pertaining to prayer. In the words of the Sifre: "And to serve Him [with all your heart]"—this refers to prayer.²⁵

22. This depends upon the view one takes on the dispute as to whether or not *mizvot zerikhot kavvanah*; see *Berakhot* 13a.

23. This category itself can be divided into two subgroups, since there are certain experiential commandments that have no prescribed external form, such as the commandment to fear God. See "Prayer, Petition and Crisis," in R. Soloveitchik, *Worship of the Heart*, 13-36, esp. 15-19. A list of further experiential commandments that are externalized can be found in Reuven Ziegler, *Majesty and Humility: The Thought of Rabbi Joseph B. Soloveitchik* (Jerusalem, 2012), 86-87.

24. R. Soloveitchik, *Worship of the Heart*, 17-18. The matter is actually rather more complicated than this brief discussion makes it appear. For while the Rav does state that in the example of mourning, one who performs the external rituals without the internal corollary "has failed to fulfil the precept of mourning" (*ibid.*, 17), in *Family Redeemed*, he notes that while it is not the ideal, in the case of love and fear of one's parents, one can fulfill one's obligation through external actions alone. See *Family Redeemed: Essays on Family Relationships*, ed. David Shatz and Joel B. Wolowelsky (Jersey City, NJ, 2000), 126-30. For an excellent analysis of the complex relationship between *kiyyum* and *ma'aseh* in R. Soloveitchik's thought, see Alex Sztuden "Grief and Joy in the Writings of Rabbi Soloveitchik, Part II," *Tradition* 43:4 (2010): 37-50.

25. Moses Maimonides, *Sefer ha-Mizvot*, Positive Commandment 5, as quoted in "Prayer, Petition and Crisis," 19.

According to R. Soloveitchik, the general precept of *avodah she-ba-lev* had previously been “sentenced to temporary isolation,”²⁶ and its resurrection had been a central component of the Maimonidean system. Moreover, two of Maimonides’ greatest innovations in R. Soloveitchik’s mind were this subsumption of prayer under the category of *avodah she-ba-lev* and, following from this, the classification of prayer as a biblical commandment. As R. Soloveitchik goes on to say,

This great halakhic achievement and philosophical innovation has become a basic principle of our worldview, both in halakhic thought and in the religious experience of our people.²⁷

R. Soloveitchik uses the duality that Maimonides presents of the general injunction coupled with its specific expression in prayer as proof of the experiential nature of prayer. Prayer is simply the concretized expression of the more general requirement of *avodah she-ba-lev*, which is clearly addressed to our emotional relationship with God. This is a perfect example of the threefold process of objectification of the religious consciousness that R. Soloveitchik describes in *The Halakhic Mind*, where mention of prayer is conspicuous.

We may analyze the triad in 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. . . . This subjective attitude in man is in turn reflected either in the form of logico-cognitive judgments or in ethico-religious norms, e.g., God exists; He is omniscient. . . . You shall love God; you shall worship Him. . . . These judgments and norms lying in the immediate proximity of the psychophysical threshold tend to externalize themselves. They find their concrete expression in articles of faith, in prayers. . . . (HMD, 69)

As an objectification of the subjective relationship embodied in the general injunction of *avodah she-ba-lev*, the experiential nature of prayer is evident. It is therefore essential that any act of prayer have the concomitant subjective correlate. This, of course, is further emphasized in the halakhic literature in its insistence on the centrality of having the correct intention or *kavvanah* in prayer, with Maimonides again quoted as one amongst many who insist that one who prays without *kavvanah* must pray again.²⁸

26. “Reflections on the *Amidah*,” in *Worship of the Heart*, 145.

27. *Ibid.*, 146

28. Maimonides, *Mishneh Torah, Hilkhot Tefillah* 4:15.

At this juncture, we have seen only a one-way influence, from the Maimonidean *halakhah* to the conceptual understanding of prayer. But having established that the effective performance of the *mizvah* of prayer is conditional upon a certain subjective state, R. Soloveitchik turns to the issue of what state we are supposed to be expressing. What is the nature of the inner experience that the performance is supposed to be objectifying?

First, R. Soloveitchik analyses the idea of *avodah she-ba-lev* as described by Maimonides in *The Guide of the Perplexed* (3: 51). According to R. Soloveitchik, there are two levels evident in the Maimonidean description. The first, which he terms psychological, centers on the exclusivity of its focus, what R. Soloveitchik terms its “mono-ideism, the giving of attention to one idea exclusively.”²⁹ The second strand he terms mystical and is simply the idea that “*avodah she-ba-lev* is identical with communion, with closeness to God.”³⁰ Having defined the general injunction of *avodah she-ba-lev*, the internal *kavvanah* that is essential to its fulfillment through prayer is defined by Maimonides as containing precisely these two elements in the *Mishneh Torah*:

Now, what is *kavvanah*? One must free his heart from all other thoughts and regard himself as standing in the presence of God.³¹

At this point R. Soloveitchik is still drawing his subjectivism regarding prayer primarily from Maimonidean Halakhah and defining the structure of the *kavvanah* required within prayer in the same manner. But while the structural nature of that *kavvanah* is now clear, R. Soloveitchik goes on to define the content of the subjective relationship that is at the heart of this conception by turning to the connection between prayer and crisis (*zarah*), culminating in his famous analysis of the dispute between Maimonides and Nahmanides over the status of the *mizvah* of prayer. For while Maimonides believed the fundamental obligation to pray to be of biblical origin (*de-Oraita*), the majority of halakhic authorities—most notably and in direct criticism of Maimonides’ view, Nahmanides—held it to be rabbinic in origin (*de-Rabbanan*).

R. Soloveitchik begins by establishing the link between prayer and *zarah* through an analysis of biblical and rabbinic sources, as well as the standard format of the *Amidah* itself. From King Solomon through both Maimonides and Nahmanides, the link between prayer and distress is a

29. “Prayer Petition and Crisis,” 24.

30. *Ibid.*

31. Maimonides, *Mishneh Torah, Hilkhot Tefillah* 4:16, as quoted in R. Soloveitchik, “Petition, Prayer, and Crisis,” 24.

constant theme according to R. Soloveitchik. Thus, while Nahmanides disagrees with Maimonides on the biblical nature of our daily obligation to pray, he does hold that there is a biblical obligation to pray at times of distress, according to R. Soloveitchik. Indeed, Maimonides precedes Nahmanides in making this link in *Hilkhot Ta'anit* 1:1, in which he writes of the commandment “to cry out and blow the trumpets... whenever trouble befalls the community.”

Most significant here, however, is R. Soloveitchik’s analysis of the true nature of the disagreement between Nahmanides and Maimonides on the status of prayer. Having stated that both assert the relationship of dependence between our biblical obligation and *zarah*, R. Soloveitchik believes that their true disagreement is located in their differing understandings of *zarah* and the human condition.

R. Soloveitchik distinguishes between two “distinct and incommensurate”³² forms of *zarah*. There is, on the one hand, surface *zarah*, something that strikes a person from without and that causes him distress in its most obvious objective forms, the sort of pain and suffering that occurs at particular moments in time as a result of specific external factors. As R. Soloveitchik puts it,

Many a time, a crisis develops independently of man, brought about in the main by environmental forces. . . . This crisis, this *zarah*, strikes man suddenly, uninvited by the people who succumb to its crushing force. Their plight is obvious, exposed to the public eye, its apprehension as natural as the perception of lightning or thunder. . . . Under the category of surface *zarah* we may classify all forms of conventional suffering: illness, famine, war, poverty. . . .³³

Such distress, which on the whole R. Soloveitchik believes to be communal in nature, is dealt with by the Torah through communal prayer. According to R. Soloveitchik’s interpretation, it is this surface crisis that occasions our biblical obligation to pray for Nahmanides. While our daily obligation to pray was only rabbinic, a person is under a biblical obligation to pray when suffering from external crises.

But there is a further form of distress, which R. Soloveitchik terms “depth crisis.” This is not a temporary response to external events, but rather an existential condition. This sort of crisis, R. Soloveitchik tells us,

is encountered in the strangeness of human destiny, of which man is not aware at all unless he is willing to acquaint himself with it . . . which stems from the deepest insight of man—as a great spiritual personality, endowed

32. “Prayer, Petition and Crisis,” 30.

33. *Ibid.*

with Divine wisdom and vision—into his own reality, fate, and destiny. Man is not thrown into this kind of crisis but finds it within himself.³⁴

Most significantly of all, for R. Soloveitchik, Judaism, he writes, “wants man to discover the tragic element of his existence,”³⁵ which is not an accident of circumstance but rather a universal truth about the human condition.

This in turn accounts for the centrality of petitionary prayer in Judaism. As R. Soloveitchik’s pithy summary has it, “Man is always in need because he is always in crisis and distress.”³⁶ Petition is the expression of this need. The depth crisis that is the human condition yields feelings of dependence that translate into our crying out in need. The *Amidah* therefore is centrally concerned with petition, which is the subject of its lengthiest section. Our human crisis can only be alleviated by petitionary prayer that allows for “the metaphysical formation of a fellowship consisting of God and man.”³⁷ Returning to our initial definition, then, we see through an analysis of various canonical texts that prayer is an expression of this experience of crisis and dependence.³⁸

All of the above ultimately explains R. Soloveitchik’s decision to side with Maimonides over Nahmanides on the halakhic status of prayer. First, according to R. Soloveitchik, it is presumably because the human condition is tragic and conflicted in this manner that the commandment to pray on a daily basis as an expression of this inner experience has to be biblical. We are biblically obligated to pray at a time of crisis, and as humans, crisis is at the root of our very being. The fact that we are in a constant existential crisis therefore means that we are likewise under a constant biblical obligation to pray, an obligation that is actualized in daily prayer, and not simply at those moments when we are responding to a crisis that external conditions impose upon us. Second, given that this condition leads to the centrality of petition, there is the question of how one can have the audacity to trouble God, the King of Kings, with our

34. *Ibid.*, 32.

35. *Ibid.*

36. *Ibid.*, 35.

37. *Ibid.*

38. It is important to note that this does not mean that each person who prays has discovered such existential levels of crisis. R. Soloveitchik’s understanding here surely does not describe the experience of most Jews. He seems to admit this when he writes that the awareness of distress needs to be concretized for “the average reader, who lacks philosophical training” (“The Human Condition of Prayer,” *Worship of the Heart*, 37). Presumably, prayer is supposed to elicit such awareness through reflection on the petitionary elements that present the sense of dependence at an exoteric level for those as yet unaware of the depth-crisis.

petty human requests. For R. Soloveitchik, it appears, only the full force of a biblical obligation could justify approaching God in this way. The fact that our forefathers prayed—as well as the commandment of sacrifice, which legitimates approaching God—gives us biblical precedent for such behavior. This puts the finishing touch on our justification of the definition with which we began. For this constitutes permission to engage in the absurdity that is the yearning to transcend our finitude and approach the infinite, yearning reflected in the prayers of praise that precede our petitions. It permits us to express the love of God that is also a part of this paradoxical religious consciousness.

Applying the Method?

What exactly is going on in this example? One might say that this is a perfect illustration of the one-way approach. We begin with the halakhic data and find that it yields a certain picture of prayer—as an experiential *mizvah*, closely related to the concept of *zarah* and therefore fundamentally about petition and dependence. All of this allows us a more integrated understanding of the original data, not least the dispute between Maimonides and Nahmanides. One might argue that the original data do not at any point seem to be up for revision, and thus the process remains a one-way process more concerned with meaning than with justification. This, together with the many other cases for which a similar methodological description could be given, leads directly to the critique of my interpretation.

More to the point, R. Soloveitchik appears to advocate a similar one-way approach in his second order discussions of the nature of the halakhic process, most significantly in parts of *Mah Dodekh mi-Dod*³⁹ and *U-Vikkashtem mi-Sham*, where Halakhah, it is said, “cannot free itself from its subordination to a system of *a priori* postulates.”⁴⁰ A number of scholars have noted that for all his emphasis on the creativity of the Halakhic Man, creativity is confined to his “laboratory”—the *Beit Midrash*—and does not translate into *halakhah le-ma’aseh*. As Lawrence Kaplan writes, “R. Soloveitchik unnecessarily diminishes the powerful, free, creative spirit of the halakhist . . . if he takes halakhic texts, cases,

39. Joseph B. Soloveitchik, “*Mah Dodekh mi-Dod*,” in *Be-sod ha-Yahid ve-ha-Yahad*, ed. Pinchas H. Peli (Jerusalem, 1976), 189-254.

40. Joseph B. Soloveitchik, “*U-Vikkashtem mi-Sham*” in *Ish ha-Halakhah: Galuy ve-Nistar* (Jerusalem, 1979), 205. In English, see *And From There You Shall Seek*, trans. Naomi Goldblum (Jersey City, NJ, 2008), 108.

rulings, as fixed postulates rather than simply as data posing the problems which the halakhist answers.”⁴¹

Indeed, while there is some controversy surrounding the precise relationship between the Neo-Orthodoxy of R. Samson Raphael Hirsch and the Modern Orthodoxy of R. Soloveitchik,⁴² in this instance, rather than following the method of reflective equilibrium, R. Soloveitchik’s approach seems closer, if not identical, to that described by Hirsch in his introduction to *Horeb*:

Wherever a personal opinion either wholly or in part is likely to conflict with a legal dictum, the opinion must give way to the dictum, not *vice versa*; for the law as transmitted by tradition can alone set the standard for an idea about the law, not the reverse; the idea cannot dominate the law to the extent of altering it, for the very fact that the idea about a law conflicted with the content of the law it would show itself to be wholly or partly mistaken. . . .⁴³

Thus, while R. Soloveitchik’s more liberal interpreters might prefer to emphasize the methodological discussion that led us to a two-way method, with its potentially radical implications, those of a more conservative disposition can apparently emphasize R. Soloveitchik’s actual practice and its seeming independence from these methodological strictures. Although it may be that no revision is called for in this case, if we are to argue that his method is that of reflective equilibrium, we still have to face the problem of his apparently principled objection to revision *ab initio* in the meta-halakhic statements above. Would we not, therefore, be better off seeing his method as one of attributing meaning to the *mizvot*, rather than as one that attempts to justify them via the method of reflective equilibrium? On further consideration, there may actually be rather less to this apparent distinction than meets the eye, but in order to understand this, we need to consider again precisely what R. Soloveitchik does and the nature of the method of reflective equilibrium.

Initially, we presented R. Soloveitchik’s philosophy of prayer as if it were a straightforward process of drawing that philosophy from the halakhic texts. If, however, we look again at our case study, the

41. Lawrence Kaplan, “Rabbi Joseph B. Soloveitchik’s Philosophy of Halakhah,” *The Jewish Law Annual* 7 (1988): 180. See also Avi Sagi, “Rav Soloveitchik and Professor Leibowitz as Theoreticians of the Halakhah” (Hebrew), *Daat* 29:1 (1992): 131-48, esp. 133-4.

42. See Chaim Waxman, “Dilemmas of Modern Orthodoxy: Sociological and Philosophical,” *Judaism* 42 (1993): 59-70.

43. Samson Raphael Hirsch, *Horeb*, trans. I. Grunfeld (London, 1997), clix.

process turns out to be a little more complex. First, we can distinguish between the actual practical laws concerning prayer and certain higher-level principles that govern the halakhic process, which Joel Roth has termed “systemic principles.”⁴⁴ One of these fundamental systemic principles is the existence of the distinction between those laws that are *de-Oraita* and those that are *de-Rabbanan*. Thus, in our case study, in which R. Soloveitchik decides to follow Maimonides in the dispute over the status of the *mizvah* of prayer, he is making a decision at the level of principle, rather than at the level of what we might have taken to be the considered judgments that are not up for revision—the practical *halakhah*.

But this principled decision, according to which the *mizvah* is *de-Oraita*, does have practical halakhic effects. To take the simplest of examples, if one is in doubt as to whether or not he has prayed during the day, if one takes the Maimonidean view, one would need to pray, according to the further systemic principle that any doubtful case that arises concerning a biblical law must be treated stringently (*safek de-Oraita le-ḥumra*). If the obligation is simply rabbinic, then, as the Talmud itself states (*Berakhot* 21a), one ought not to do so, since any doubtful case that arises concerning a rabbinic law should be treated leniently (*safek de-rabbanan le-kula*). This in turn means that taking the Maimonidean view has further ramifications for how one understands the statement of the Talmud that appears to contradict him. According to R. Yosef Karo, in order to maintain consistency with the Talmudic statement, Maimonides must believe that when the Talmud states that one is not required to pray in this case of doubt, it must be speaking of a case in which one had already prayed once, thereby discharging the biblical obligation. The doubt of which the Talmud is speaking must relate to whether or not one had prayed one of the further *rabbinic* prayers of that day. Maimonides must maintain that the Talmud presumes that one has already fulfilled the biblical obligation, in which case even Maimonides would agree that one ought not pray again, since one would now only be in doubt regarding a rabbinic prayer.⁴⁵

44. See Joel Roth, *The Halakhic Process* (New York, 1986).

45. See R. Yosef Karo, *Kesef Mishneh* on *Mishneh Torah*, *Hilkhot Tefillah* 1:1. One could, of course, take the simpler alternative and say that Maimonides simply rejected that particular talmudic opinion. See also R. Teumim, *Peri Megadim*, *Petiḥah le-Hilkhot Tefillah* to *Shulḥan Arukh*, *Orah Ḥayyim* 89, for a useful summary of a number of halakhic issues raised by the *de-Oraita/de-Rabbanan* dispute.

Thus, what we have at this stage is a decision taken at the level of systemic principles that has practical ramifications when we return to the micro level of practical Halakhah and which also informs our interpretation of talmudic passages. This is hardly out of the ordinary, being the sort of thing that goes on in traditional talmudic study on a daily basis. One might argue that here we do have something that comes closer to a two-way process, at least inasmuch as we have general principles having effects on practical judgments.⁴⁶ In this case, however, everything is taking place within the halakhic system. Halakhic decisions at the systemic level filter down to practical and interpretive results in the system. The halakhic system itself is still the sole basis for all of the ideas presented.

But from this starting point, we can go on to pressurize further the straightforward one-way view of R. Soloveitchik's process by tracing the precise nature of his argument for accepting the *principle*—that is, the *de-Oraitā* status of prayer. In terms of the study we have set out before us, the primary reason seems to be the interpretation that R. Soloveitchik gives to the human condition.

As we have noted, it is R. Soloveitchik's description of the universal depth crisis that can be viewed as leading him to side with Maimonides for two reasons. First, the fact that we are always in such crisis, whether we are conscious of this or not, means that the necessary connection between prayer and *zarah* is always present. As such, our obligation to pray is not simply occasioned by external crisis, and therefore must be continually present as a biblical commandment. Moreover, it is because of this crisis, which in turn leads to utter helplessness and dependence, that we need the biblical permission in order to redeem ourselves from this pathetic state and enable us to take the radical step of petitioning God. As such, the decision to side with Maimonides appears to be occasioned by R. Soloveitchik's philosophical stance regarding human nature, stated explicitly in his discussion there:

Human existence exhausts itself in the experience of crisis, in the continual discovering of oneself in distress, in the steady awareness of coming closer and closer to the brink of utter despair, the paradoxical concept of being born out of nothingness and running down to nothingness. This is part of the ontic consciousness of man.⁴⁷

46. Indeed, it seems to me that whether consciously or not, a two-way process is always and inevitably the method of all human theorizing, but this is not the place to elaborate further on this point.

47. "Prayer, Petition and Crisis," 32.

Regardless of the apparent connection that R. Soloveitchik finds in halakhic texts between prayer and crisis, what forces him into this interpretation? Why not settle for the idea of external crisis occasioning a biblical obligation to pray? The reason for this, of course, is that the theme of the conflicted and paradoxical nature of the human condition runs through R. Soloveitchik's entire corpus, in particular when discussing the condition of the man of faith. To quote but two extracts from his best known works:

The role of the man of faith, whose religious experience is fraught with inner conflicts and incongruities, who oscillates between ecstasy in God's companionship and despair when he feels torn asunder by the heightened contrast between self-appreciation and abnegation, has been a difficult one since the time of Abraham and Moses. . . . The Biblical knights of faith lived heroically with this very tragic and paradoxical experience.⁴⁸

That religious consciousness in man's experience which is most profound and most elevated, which penetrates to the very depths and ascends to the very heights, is not that simple and comfortable. On the contrary, it is exceptionally complex, rigorous, and tortuous. Where you find its complexity, there you find its greatness. The religious experience, from beginning to end, is antinomic and antithetic.⁴⁹

This suddenly casts a rather different light on the process through which R. Soloveitchik arrives at his view of prayer. We now see that while it is true that the philosophical picture of prayer is built up out of the texts, at the same time, there is a primary philosophical stance that lies deep in the background, and that itself pushes the principled decision on the *de-Oraita* status of prayer. We have here a philosophical background that explains the choice between Maimonides and Nahmanides, which in turn goes on to play itself out in the realm of practical Halakhah. Moreover, this philosophical background of underlying existential crisis that, as quoted above, brings us to "the brink of utter despair" has at least one direct halakhic consequence, as noted by David Hartman: R. Soloveitchik's decision to forbid the voluntary offering of prayer, *tefillat nedavah*:⁵⁰

Were it not that scriptural passages speak of prayer, we would have no right to pray. For that reason, one should not add to the standard format of prayer. . . . No Jew has the right to add to the three prayers ordained by the

48. Joseph B. Soloveitchik, *The Lonely Man of Faith* (New York, 1992), 2.

49. Joseph B. Soloveitchik, *Halakhic Man*, trans. Lawrence Kaplan (Philadelphia, 1983), 141, endnote 4.

50. Hartman, *Love and Terror in the God Encounter*, 188-9.

sages of Israel; we have no license to compose new prayers. . . . We today are no longer competent in the articulation of elective prayer (*nedavah*); hence we do not have such prayers.⁵¹

This is all the more striking given the fact that Maimonides codifies the permissibility of *tefillat nedavah* in *Hilkhot Tefillah* (1:9)⁵²—because, of course, Maimonides forms a central pillar of R. Soloveitchik’s data set.

There is admittedly a tension here. On the one hand, R. Soloveitchik writes that we are “no longer competent” to articulate such prayers, echoing previous halakhic concerns regarding *tefillat nedavah* predicated on our inability to have the proper *kavvanah* or to introduce something original into our prayers.⁵³ All of this implies that once upon a time, humanity did have such a capacity. Yet, on the other hand, R. Soloveitchik’s rejection of *tefillat nedavah* appears to run deeper than this, given that the underlying point is that our ontic consciousness renders us unworthy in principle to add such prayers.⁵⁴

Leaving aside this tension, however, the question that now arises is the extent to which this ought to be characterized as the justificatory enterprise of reflective equilibrium or the interpretive enterprise of finding meanings for our practices. Despite the possible objections that we have rehearsed, it nonetheless seems to me that R. Soloveitchik’s method is indeed that of wide reflective equilibrium—the mutually supportive set of considered moral judgments, moral principles, and background theories, even though R. Soloveitchik might not always explicitly distinguish each level. We have here a philosophical background theory that takes the form of a general conceptual approach to the human condition as essentially conflict-ridden and existentially lonely, a theme that runs through R. Soloveitchik’s writing. This ultimately leads R. Soloveitchik to a certain choice of principle—that prayer is *de-Oraita*—in the manner

51. “Reflections on the *Amidah*,” 151-2.

52. This rather suggests that R. Soloveitchik’s interpretation of the Maimonidean texts tells us more about R. Soloveitchik’s philosophy than it does about what was going through Maimonides’ mind at the time. The same point has been made regarding his interpretation of Nahmanides as believing that the obligation to pray at a time of crisis is *de-Oraita*. See Ehud Benor, *Worship of the Heart* (New York, 1995), 85.

53. See, for example, R. Yeḥiel Mikhel Epstein, *Arukh Ha-Shulḥan* 107:12.

54. Such tensions run through R. Soloveitchik’s account of prayer. For example, on the one hand, as we have seen, he believes that only biblical precedent can justify our having the audacity to approach God with our petty needs—we need a *mattir* to overcome our unworthiness before God. Yet, on the other hand, petitionary prayer is a basic need given the human ontological condition, which would appear to obviate the need for such a *mattir*. In this connection, Reuven Ziegler cites R. Aharon Lichtenstein’s observation that R. Soloveitchik de-emphasized the notion of the *mattir* in his later thought. See Ziegler, *Majesty and Humility: The Thought of Rabbi Joseph B. Soloveitchik*, 227.

that we have described. These are now the theory and the principle that in R. Soloveitchik's eyes "best fit" the considered judgments of the Halakhah. But at the same time, these theories do induce a level of "revision" of the Halakhah, whether in terms of the trickle-down effect of the decision on the *de-Oraita* status of prayer or in more directly affecting the issue of *tefillat nedavah*. We see, therefore, that while considered halakhic judgments are used in order to build up a theory of prayer, the theories and principles that best fit them in R. Soloveitchik's eyes go on to affect our interpretation of the halakhic data, such that ultimately there does seem to be a philosophical commitment affecting the manner in which the halakhic material is utilized.

However, the key question is whether or not the idea that R. Soloveitchik's theory and principle "best fit" the halakhic data is equivalent to saying that they justify it. This brings us to a more substantive philosophical question regarding the nature of justification that is best articulated by considering again the original objection—that R. Soloveitchik *cannot* be using the method of reflective equilibrium given his treatment of halakhic postulates as beyond revision.

There does remain a kernel of truth in the objection. In our case, we have a philosophically informed decision taken at the systemic level over the status of our obligation to pray, a decision that has practical halakhic ramifications, although only inasmuch as it yields specific decisions and interpretations from among the various halakhic options. There is a level of pluralism within the halakhic realm widely conceived, such that all these choices remain within it. And thus, contra Daniels, who speaks of "drastic theory-based revision"⁵⁵ as characteristic of the method of wide reflective equilibrium, it is not at all clear that the reflective equilibrium approach would lead to anything particularly radical in *any* sphere, whether halakhic or not. For example, in the sphere of justice or morality, while a principle that has been formed on account of theories and considered judgments might well cause us to revise some of those judgments, one would hope that they would not lead us to decide that, for example, the wanton torture of children is a moral obligation. If they did, then we would probably reject the theories or principles that led us there and start again. Similarly, just because R. Soloveitchik is "restricted" by the halakhic data, it does not mean that he fails to utilize the method of reflective equilibrium. Using the method simply may not *require* withdrawing "absolute

55. Daniels, "Wide Reflective Equilibrium and Theory Acceptance," 266.

halakhic postulates.” In utilizing a particular set of considered judgments, one is “constrained” regarding the types of theories and principles that one is likely to accept, given that they must be in equilibrium with the judgments as much as the judgments are with them. Which of the two will give way when there is a contradiction will always be an interpretive question, as indeed will the question of what constitutes a revision that is “too radical.”

Thus, the kernel of truth in the objection that R. Soloveitchik does not apply a justificatory two-way method is that, indeed, R. Soloveitchik would balk at any radical antinomian consequences of his philosophical method. But the key point here is that it is a mistake to think that reflective equilibrium would lead to any such conclusions. Indeed, one of the central criticisms of the method of reflective equilibrium when used as a method of justification in moral philosophy is that it is a highly conservative method; it begins with what we already believe, and is thus likely at best simply “to make people better aware of the implications of views which they already hold.”⁵⁶ It merely establishes a set of theories and principles that “best fit” the data with which one begins. The real question, it appears to me, is not whether R. Soloveitchik’s method is that of reflective equilibrium, but rather whether the method of reflective equilibrium really does yield something that we can call a justification,

My point here is that while R. Soloveitchik and Rawls do indeed use the same method, they may well have different views of what it produces. Rawls appears to speak the language of justification, while his critics believe he at best is entitled to the language of coherence, or perhaps the language of description. R. Soloveitchik, in contrast, uses the language of description and interpretation, and in so doing he finds theories that “indicate parallel tendencies in both the subjective and objective orders” (HM, 96), rather than theories that “justify” the objective order. But these theories are not simply arbitrary subjective parallels to the objective Halakhah; they are the theories that in his mind “best fit” his data. Moreover, they enable him to appropriate his practice in a meaningful way and they affect the manner in which he treats the original data, as we have noted.

This type of coherent balance between all of these elements might be all the discursive justification that we can hope for. The method of reflective equilibrium simply requires that R. Soloveitchik’s philosophical standpoint inform the reading of the texts as much as those texts inform

56. Joseph Raz, “The Claims of Reflective Equilibrium,” *Inquiry* 25 (1982): 311.

the philosophy, allowing him to plot a particular path within the halakhic tradition.⁵⁷ There is little doubt that this is indeed what is going on. The fact that this does not result in thinking that is entirely “outside of the box” is of the very essence of this method. That, in the eyes of those who criticize halakhic conservatism, is a problem for the method, but for R. Soloveitchik, it may be its saving grace. Whether or not this yields a full “justification” can certainly be questioned, but just because Rawls might overegg the pudding with his claims to have justified a practice in a manner that R. Soloveitchik avoids does not mean that they are not using the same method.

The method of reflective equilibrium would always view the Halakhah—widely conceived to include the various opinions between which R. Soloveitchik can legitimately choose—as a factor informing or mutually adjusting in accord with one’s philosophical views. The delicate interplay between all the various influences in R. Soloveitchik’s thought would seem to render impossible any attempt to reconstruct the precise strands of his thinking in such a way as to trace direct and independent lines of thought that could be seen as exclusively philosophical or exclusively halakhic.⁵⁸ It is rather the balance between these influences that leads to the particular interpretative system that R. Soloveitchik produces in this field and others. The ultimate provenance of a view is impossible to second guess, but it is unlikely to have been formed in so simplistic a manner as the one-way process would suggest.

Furthermore, this gives the lie to the claim that R. Soloveitchik’s philosophical ideas float quite as freely above Halakhah as some seem to think. David Hartman, for example, goes so far as to conclude that the picture of prayer that we have presented is a product of R. Soloveitchik’s philosophy alone, rather than a product of any halakhic reconstruction:

When he is reflecting on the “bold adventure” of standing in the presence of God in prayer, R. Soloveitchik allows his God consciousness to be informed by sources independent of the Judaic halakhic tradition. . . . God consciousness, when not filtered and controlled by the normative

57. It is worth noting that despite his general conservatism, in the realm of prayer, the Rav appears to have followed many minority traditions, as evidenced by the lengthy *Hanhagos HaRav* sections in the Rosh Hashanah and Yom Kippur editions of *Machzor Mesoras HaRav*, ed. Arnold Lustiger (New York, 2006).

58. Regarding this point, it turns out that David Shatz and I agree on this substantive issue. See his “On a Seeming Disconnect Between Halakhah and Theology,” in *Mishpetei Shalom: A Jubilee Volume in Honor of Rabbi Saul (Shalom) Berman*, ed. Yamin Levy (Jersey City, NJ, 2010), 447-48.

halakhic tradition, explodes into existential antinomies and sharp dialectical movements.⁵⁹

While I would not dispute the very obvious philosophical influences here—in part, their emphasis has been the aim of this essay—the point that I would make contra Hartman is that this God consciousness is constantly being filtered by the halakhic tradition. After all, we have the *two-way* process of reflective equilibrium at work here. The philosophical theories float no freer of the halakhic practices than do the practices of the theories.⁶⁰

It seems, then, that we can happily say that we do not have here a simple process of reconstruction from halakhic texts. What we find instead is a fit between background theories, principles, and data that has been arrived at by the mutual adjustment of the three. That is precisely why these same texts can be and have been used to derive very different philosophies of prayer. There is not a single philosophy that falls fully formed off a page of Talmud or the *Mishneh Torah*. Indeed, one could ask how a one-way approach would allow R. Soloveitchik to make the significant choices at varying degrees of generality within the tradition that he does, for surely that would require certain criteria that inform those choices. When one thinks about it critically, the very idea of a one-way process of interpretation begins to look like an oversimplified abstraction that cannot possibly be of any use.⁶¹

Thus, it is indeed true that the halakhic data, widely conceived so as to include more than just majority views that have become normative practice, is never withdrawn. But if the method of reflective equilibrium is one in which theories can force us to reconsider our interpretation of certain considered judgments rather than forcing a total and radical withdrawal of them, it seems to me that there is little doubt that R. Soloveitchik's method goes through this process. Moreover, it often does

59. Hartman, *Love and Terror in the God Encounter*, 202.

60. However, it is worth mentioning here Ya'akov Blidstein's review of the collection of R. Soloveitchik's writings titled *Family Redeemed: Essays on Family Relationships*, ed. David Shatz and Joel B. Wolowelsky (New York, 2000). Blidstein notes that for a number of its themes, the "link with halakhic traditions is also problematic." See Ya'akov Blidstein, "All You Need is Love," review essay at www.haaretzdaily.com (December 17, 2002). It may well be then that there are cases for which Hartman's statement is true.

61. In support of my argument more generally, we find clear interplay between Halakhah and philosophy in certain decisions included in the collection of R. Soloveitchik's letters found in *Community, Covenant, and Commitment*, ed. Nathaniel Helfgot (Jersey City, NJ, 2005). This is noted explicitly in Gerald J. Blidstein, "Rabbi Joseph B. Soloveitchik's Letters on Public Affairs," *The Torah u-Madda Journal* 15 (2008-09): 1-23.

so in relatively radical ways that allow for the minimizing or rejection of highly traditional modes of thought found in traditional texts, and this may occasionally have certain practical effects, whether in his treatment of prayer or elsewhere. The method of reflective equilibrium by its very nature may not allow for radical thinking “outside of the box,” but the fact that the particular box that R. Soloveitchik is dealing with is Halakhah does not mean that he is not fully utilizing that method.

Where does this leave us with respect to the interpretation of R. Soloveitchik’s thought? Initially, the impression was that R. Soloveitchik’s philosophical method might create the impression of a freethinking philosopher, especially given the potentially antinomian consequences of the theory. Those with an interest in portraying R. Soloveitchik in a certain light might be attracted to such a picture. But here the facts got in the way of a good thesis, since his commitment to fundamental halakhic postulates and the fact that he confines himself to the halakhic tradition seem to suggest a limit on such philosophical freedom and thus almost to a rejection of the method altogether. This, of course, would be an attractive picture for those interested in portraying R. Soloveitchik in the opposite light. In fact, however, it seems to me that the method is used, just without the antinomian consequences. The point is that the method itself need not have such consequences, for to a large extent, the limits on R. Soloveitchik’s philosophical “freedom” are built into the philosophical method of reflective equilibrium from the start. All of which means that the brakes that R. Soloveitchik apparently puts on the application of his method might not simply be dictated by his religiosity overcoming his philosophical inclinations; they may be partly a function of his very choice of philosophical method. But that, in turn, might be influenced by his halakhic commitments—and so the circle continues.

The tensions that are undoubtedly there in much of R. Soloveitchik’s thought can be described in different ways, and many of the descriptions can be grounded in R. Soloveitchik’s life and work. Do we have his Orthodoxy preventing the full application of a philosophical method of reflective equilibrium? Or do we have a conservative philosophical method that is being given full rein? Is the very choice of such a conservative philosophical method dictated by his Orthodoxy? If his method is that of reflective equilibrium, these questions might prove very difficult to answer. Indeed, our answers may ultimately be less relevant as descriptions of how R. Soloveitchik thought and more reflections of how we as readers choose to use his philosophy as a springboard for further thought, which

ultimately might be a more important legacy. To conclude with the wise words of Aviezer Ravitzky,

We have learned a great deal from R. Soloveitchik, and there has not yet arisen another like him. But it is precisely for this reason that when we learn from him an orientation towards modernity, we are students; however, when we learn from him what modernity means, we are not students but *hasidim*—and he never wanted *hasidim*.⁶²

62. Aviezer Ravitzky, “*Ḥadash Min Ha-Torah?* Modernist vs. Traditionalist Orientations in Contemporary Orthodoxy,” in *Engaging Modernity*, 47.

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