

## ON THE RAV'S PHILOSOPHY OF

## HALACHAH

Rabbi Mayer Twersky, in his article (“Towards a Philosophy of *Halachah*,” fall 2003), seeks to “clarify the concept of philosophy of the *halachah*,” which he attributes to Rav Joseph B. Soloveitchik. Regrettably, he has succeeded only in adding to the confusion. His presentation suffers from two fundamental misunderstandings regarding, first, the relevance of the Rav’s monograph *The Halakhic Mind* to Judaism in general, and to philosophy of *halachah* in particular, and, second, regarding the Rav’s understanding of the relationship between *halachah* and philosophy.

Regarding the first misunderstanding, the Rav doesn’t mention Judaism until page eighty-five of the 102-page work, *The Halakhic Mind*. Until then the subject is philosophy of religion in general. Of course, the Rav intended his theory to apply to Judaism as well. However, he makes no attempt to show that the eighty-four pages of the general theory are derived from Torah sources (except for an occasional footnote emphasizing the parallels between scientific and Torah notions). Therefore, whatever conclusions the Rav reaches at the end are hypothetical; that is, they follow only if one accepts the preceding general theory.

Against the background of early twentieth-century trends in phenomenology and existential philosophy, the Rav finds that there is room for a philosophy of religion with its own epistemology and metaphysics. In this view the God-man relationship expresses itself on three levels of human experience: 1. The subjective consciousness, which according to the Rav has cognitive significance and is most important; 2. The objective theoretical level of cognitive judgments and ethical norms and 3. The objective practical level of concrete deeds, prayer, rituals and cult. Since we have no direct access to the subjective level, the expression and, more importantly, the objectification of the religious consciousness in concrete cult and ritual (in Judaism, this is *halachah*) is to be regarded as the most fully developed and distinctive expression of religion and the Divine spirit. The philosophical material of a religion, according to this scheme, is to be found on level two among such propositions as, “God exists, He is omniscient, moral, the creator, You shall love God, fear Him, Love your fellow man, et cetera” (p. 69).

The method of “reconstruction” or “descriptive hermeneutics” advocated by the Rav is *not*, as Rabbi Twersky claims, a method by which to derive the *philosophy* of *halachah*. Rather, its aim is to reconstruct elements of the subjective religious consciousness that came to be objectified in the *halachah*. Rabbi Twersky repeatedly and incorrectly puts the two together. “Basic *philosophical ideas* and religious experiences . . . are objectified within *halachah*, . . . Within *halachah* fundamental *philosophical concepts* and religious experience have been translated into

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halachic norms.” In fact, nowhere does the Rav say that the *halachah* is the objectification of philosophy or that philosophical concepts have been translated into halachic norms. “Religious experiences,” yes, “Philosophical concepts,” no! In any event, it would be difficult to derive a finished philosophy of Judaism from *halachah* since *halachah* is only one aspect of Judaism. Whatever one would have managed to derive from *halachah* would first have to be integrated with concepts from Biblical texts and rabbinic *aggadah*. Nor can *halachah* alone be the source even for a philosophy of *halachah* for the same reason that you cannot generate a philosophy of chess from the rules of chess.

Second misunderstanding: Rabbi Twersky claims that at the end of *The Halakhic Mind*, the Rav promises a “comprehensive philosophy of *halachah*.” His source for this assertion is the following sentence: “To this end there is only a single source from which a Jewish philosophical

*Weltanschauung* could emerge; the objective order—the Halakhah” (p.101). The crucial words here are, “*To this end...*,” which sets the all-important context for the entire sentence. What “end” is being referred to?

In this last chapter of the monograph, the Rav attempts to trace the implications of his theory of religion for Judaism. He casts aspersions on all efforts at Jewish philosophy from the Middle Ages until the present for having ignored what he calls “the living historical religious consciousness,” which, being subjective, can only be reconstructed from the objective order whose most concrete expression is the *halachah*. Clearly, then, the “Jewish philosophical *Weltanschauung*” that would presumably emerge would be one that would provide insight into “the basic structure of religious consciousness” rather than any “philosophy of *halachah*.”

But we need to be precise here. There are actually two different meanings to the term “philosophy of *halachah*.” The first is to be understood in the same sense as “philosophy of science”; that is, (as acknowledged by Rabbi Twersky himself in his article) “the study of the assumptions, axioms and underlying principles of a particular system or discipline.” Yet the Rav does not deal with this in *The Halakhic Mind*, although he does in *Halakhic Man* and in his other writings. An alternative interpretation of philosophy of *halachah*—which is the way the Rav uses it in *The Halakhic Mind*—has to do with those philosophic aspects of Judaism that may be reflected in certain parts of the *halachah*. These may be discovered by ordinary language analysis. Thus, for example, when the Rav says that “problems of freedom, causality, God-man relationships, creation and nihility could be illuminated by Halakhic principles,” he is referring essentially to the contribution that an analysis of *halachah* can make to the philosophy of Judaism. [For a fuller analysis of the Rav’s philosophy of *halachah* see my article, “Rav Joseph B. Soloveitchik and the Philosophy of Halakhah,” *Tradition* 2 (1996).]

Since Rabbi Twersky is mistaken as to the Rav’s concept of “philosophy of *halachah*,” he wrongly identifies what he refers to as “fragments of the book that was never written.” The philosophical jury is still out on the precise nature of

time, space and causality. Today these problems are increasingly being seen as belonging to the philosophy of science rather than general philosophy. All of the wonderful insights that the Rav has given us as to the Torah concept of time have little to do with *halachah* and much to do with Biblical texts that affirm the concept of Creation ex nihilo as well as rabbinic *midrashic aggadah*, particularly those that elaborate on the Biblical concept of *teshuvah*. The fact that Rambam included *teshuvah* in his *Mishneh Torah* does not therefore transform it into a primarily halachic concept. Indeed, the Rav states explicitly that if one wishes to know the meaning of religion’s interpretation of the concepts of time, space and causality, et cetera, “then you must look into the (theoretical) objective series [my level 2] and examine norms, beliefs, articles of faith, religious texts.” Thus Rabbi Twersky’s review of Judaism’s concept of time as described by the Rav has nothing to do with an illusory “philosophy of *halachah*” that the Rav supposedly never was able to complete.

Rabbi Twersky’s statement, “Free will is axiomatic to all of *halachah*” is terribly misleading. It happens to be axiomatic to all of Torah and is central to the philosophy of Judaism. The Rav’s analysis of Rambam’s *Hilchot Teshuvah* is truly a tour de force, but it is hardly the philosophic breakthrough that Rabbi Twersky makes it out to be. In terms of philosophical theory, either man possesses counter-causal freedom or he does not. Judaism affirms that he does. Whether a particular decision results in a greater or lesser change in the individual personality may illuminate a passage in Rambam, but it is of no philosophical interest. Indeed, *many* aspects of Judaism reflect our strong commitment to the concept of free will. It is central to the Biblical concept of man having been created in the image of God. But, once again, this has nothing to do with the “never written” philosophy of *halachah*.

Perhaps the Rav never formulated the “new world view out of the sources of Halakhah” that he announced in 1944 because, as time went on, he entertained second thoughts about the premises upon which the earlier claim was based.

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## Rabbi Twersky responds

**B**”h I will respond sequentially to each of Professor Spero’s points.

Professor Spero insinuates that I erroneously attributed the concept of the philosophy of *halachah* to the Rav. Actually, the Rav himself developed the concept and coined the term. This indisputable fact is documented and illustrated in my very first note and subsequently throughout my article.

Professor Spero contends that I misunderstood the Rav’s essay *The Halakhic Mind*. According to Professor Spero, *halachah* is only a minor subtopic within this essay. This is certainly not the case. To properly understand *The Halakhic Mind* we must recognize that this essay, teeming with erudite, recondite philosophical concepts, references and allusions, was obviously geared to the philosophical community. This community is not especially interested in, or impressed by, the derivation of a philosophy of religion from halachic sources. Instead, the philosophical community is interested in the philosophical cogency and compellingness of a halachic philosophy of religion. The initial focus (in quantitative terms, the primary focus) must therefore be on philosophy of religion in general. Only subsequently is it appropriate to demonstrate that the ideal general philosophy of religion corresponds to *halachah*’s philosophy of religion in particular. Accordingly, the Rav adopts this approach and does not explicitly mention *halachah* until p. 85 of his essay. Moreover, this approach of moving from a carefully reasoned ideal philosophy of religion, in general, to philosophy of *halachah*, in particular, not only best suits the Rav’s intended audience, it also portrays *halachah* as the ultimate expression of the ideal philosophy of religion. Contrary to Professor Spero’s assertion, this is certainly one of the Rav’s major points in *The Halakhic Mind*.

The Rav himself makes this point quite explicitly and

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forcefully. He first develops his (actually, *halachah*’s) ideal philosophy of religion, which stresses objectification and externalization of religious consciousness and critiques religious subjectivism. And then the Rav climaxes his analysis by stating that “We do not know of any other religion where the process of objectification has attained such completeness

as it does in the *Halakha*” (*The Halakhic Mind*, 99).

In *The Halakhic Mind* the Rav does not simply happen to espouse a philosophy of religion that stresses objectification and then happily discovers that *halachah* conforms to his theory. On the contrary, the Rav conceived the remarkable idea of a philosophy of *halachah*, and specifically a halachic philosophy of religion. He developed his “general” philosophy of religion from *halachah*. Accordingly, as one studies *The Halakhic Mind*, many passages from *Halakhic Man* resonate ever so loudly. Due to constraints of space, I can only mention the following representative examples.

On pp. 67-8 of *The Halakhic Mind* the Rav writes:

*There is a process of objectification . . . in the realm of inwardness. The morphological process of self-realization from the inward to the outward is typical of the spiritual act. The arrow points towards externality, spatialization and quantification; and subjectivity rushes along this route.*

(The Rav then segues into the three levels of the God-man relationship, to which Professor Spero refers in his letter.) As we study this passage, we hear unmistakable echoes from *Halakhic Man*. There the Rav writes:

*R. Shneur Zalman of Lyady, the founder of Habad Hasidism, that great luminary of Halakha and mysticism, sensed that the fundamental method of the Halakha is that act of quantification which is so integral a part of the mystery of tzimtzum. . . . The movement from quality to quantity, from experience to equations, which takes place in the real, empirical world, also finds its expression in the ideal realm of Halakha. . . . The Halakha, which was given to us from Sinai, is the objectification of religion in clear and determinate forms . . . It translates subjectivity into objectivity, the amorphous flow of religious experience into a fixed pattern of lawfulness.*

The symmetry of these two passages—the former, from the “general” section of *The Halakhic Mind*, the latter, from *Halakhic Man*—is tellingly obvious, and the significance of this symmetry could not be clearer.

Similarly, the Rav’s three-pronged critique of religious subjectivism in *The Halakhic Mind* is essentially the same as the halachic critique of subjectivism in *Halakhic Man*. I will not tax the reader with lengthy quotes, but a comparison of pp. 78-81 in *The Halakhic Mind* to pp. 41-46 in *Halakhic Man* readily attests to the halachic etiology of the Rav’s philosophy of religion in *The Halakhic Mind*.

Significantly, the Rav entitled his essay *The Halakhic Mind*. We would do well to take him at his word. This essay is indeed about the halachic mind.

Professor Spero repeatedly objects to my inclusion of philosophical ideas alongside religious experiences within the domain of the philosophy of *halachah*. He also maintains that the method of reconstruction serves only to uncover religious experiences that are objectified within *halachah*. Professor Spero’s criticism is based upon *The Halakhic Mind*. Yet I stated very clearly in the opening paragraph that my article does not focus exclusively on *The Halakhic Mind* or any other single source. Instead it draws

from all of the Rav’s writings. Within the Rav’s thought process and writings as a whole, the concept of the philosophy of *halachah* indubitably encompasses not only objectified religious experience, but also philosophical axioms. On p. 58 and in notes 1 and 54 of my article, I cited the following illustrative passages from *Out of the Whirlwind*. “I would like to try in this presentation to interpret the *halachic terms and concepts* that relate to mourning in *philosophical . . . categories*” [emphasis added]. Using the terms “Judaic” and “Judaism” as synonyms for the antecedent terms “halakhic” and “*halakhab*,” the Rav continues:

*The whole concept of avelut, mourning, at both an individual and a historical level, is nurtured by a unique doctrine about man and his emotional world. It actually represents, I would say, the Judaic philosophy of man and his relationship to both God and the world. . . . The freedom to adopt and accept emotions or to reject and disown them is within the jurisdiction of man.*

And, of course, the method whereby this philosophical doctrine—not religious experience—of *halachah* is derived is one of reconstruction, as described by the Rav in *The Halakhic Mind*. The Rav reconstructs the underlying philosophical axiom of *hilchot avelut*. Yet another instance where the Rav treats and speaks of the philosophy of *halachah* in its fuller, broader sense and reconstructs philosophical axioms, can be found at the conclusion of the chapter “A Halakhic Approach to Suffering.” The Rav summarizes his basic idea. “Halakha wants man to be conqueror and also to be defeated. . . .” He then concludes, “What I have developed is . . . more a philosophy of Halakha.” Moreover, the range of examples adduced in my article readily attests to the fact that the Rav clearly uses and intends the term “philosophy of *halachah*” to encompass both philosophical axioms as well as religious consciousness objectified within *halachah*. As I presented in my article, the Rav, in *Halakhic Man*, *The Halakhic Mind*, and *Out of the Whirlwind*, reconstructs how a Jew experiences time, according to *halachah*. On the other hand, in “UVikkashtem MiSham” and the *yahrtzeit shiurim*, he reconstructs the philosophy—not the experience—of the God-man relationship. And, he clearly perceives both as elements of the philosophy of *halachah*.

Accordingly, in order to faithfully reflect the Rav’s teachings on the philosophy of *halachah*, I repeatedly grouped philosophical ideas and religious experiences together. Concurrently, in order to prevent misunderstanding, I also commented on the narrower purview of *The Halakhic Mind*. I wrote in note 12 that, in *The Halakhic Mind*, the philosophy of *halachah* “denotes a halachic philosophy of religious experience. The Rav, in speaking of the philosophy of *halachah*, is not referring to abstract philosophical or theological concepts but exclusively to philosophical or theological concepts that are experienced by halachic man.” (This point was reinforced in note 15 as well.)

Professor Spero criticizes me for not recognizing that sources other than *halachah* are necessary for a finished phi-

losophy of Judaism. Contrary to his assertion, I did not even address this topic, its importance notwithstanding, because it lay beyond the purview of my article. I certainly did not claim that for the Rav *halachah* is the sole source for all of Jewish philosophy. Nor would I ever make such a claim because the Rav himself never did so. The Rav’s concept of philosophy of *halachah* asserts that there is philosophy embedded or latent in *halachah*, but not necessarily that *halachah* is the sole source of authentic Jewish philosophy. The exclusivity implied by the Rav at the conclusion of *The Halakhic Mind* relates to the dimension of religious experience. The Torah demands the objectification of reli-

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gious experience. Accordingly, authentic, normative religious experience can only be reconstructed from *halachah*, the objective order. Other elements of Jewish philosophy can be and are derived from other sources as well.

Professor Spero alleges that I misunderstood the Rav’s understanding of the relationship between *halachah* and philosophy. Then he, relating exclusively to *The Halakhic Mind*, proceeds to advance what he considers to be the correct understanding. His criticism is mistaken because my article focuses on the concept of philosophy of *halachah* as developed by the Rav throughout his writings, not just in *The Halakhic Mind*. **Pull Quote 2 here**

Professor Spero faults me for presenting the Rav’s insights into the concept of time and *teshuvah* because they “have little to do with *halachah* and much to do with Biblical texts . . . and rabbinic *midrashic aggadah*.” Contrary to Professor Spero’s assertion, however, even the most cursory reading of *Halakhic Man* incontrovertibly shows that the Rav unequivocally felt that these are halachic concepts. On p. 54 of my article, I excerpted from the following passage:

*Here there comes to the fore the primary difference between the concept of repentance in Halakha and the concept of repentance held by homo religiosus. . . . Halakhic Man is engaged in self-creation, in creating a new “I.” He does not regret an irretrievably lost past but a past still in existence, one that stretches into and interpenetrates with the present and the future (Halakhic Man, 113).*

Professor Spero feels that the sentence “free will is axiomatic to all of *halachah*” is terribly misleading. Indeed if one uproots that sentence from its rightful context, it is misleading. In truth, virtually every statement can be misconstrued and judged misleading if quoted out of context. In its rightful context (p. 56), that sentence introduces, and is immediately followed by, a quotation from Maimonides.

“This doctrine is an important principle, the *pillar of the Torah and commandment...*” Thus there is obviously no implication in my introductory statement that free will is axiomatic to *halachah*, but not to Torah as a whole. Obviously, the statement stresses *halachah* because the insight the Rav provides into free will, which I discussed in that section of the article, is reconstructed from halachic sources.

Professor Spero’s dogmatic denial of the significance of the Rav’s philosophical breakthrough regarding free will notwithstanding, the Rav’s analysis is obviously highly significant. The existence of free will is not logically an all-or-nothing proposition. Hence the centrality and significance of the Rav’s analysis of free will as being absolute.

Professor Spero concludes by conjecturing that the Rav had second thoughts regarding the new world view to be derived from the sources of *halachah*. First of all, the fact that the Rav did not follow up and formulate this world view does not provide any basis whatsoever for Professor Spero’s speculation. In 1935, the Rav’s father wrote that his son had completed a volume on the entire *Mishneh Torah* “that would soon be published.” (The letter is reprinted at the end of Volume I of the *Sefer HaYovel* in honor of the Rav.) The Rav never published this volume. Does Professor Spero think that the Rav had second thoughts about the premises of that work as well?

Moreover, such speculation is not only unfounded but is also patently untrue. Throughout his life, the Rav spoke and wrote about the philosophy of *halachah*. The passages, quoted above from *Out of the Whirlwind* about the philosophy of *halachah*, date to the 1960s, the former of the two to 1969. In addition, Professor Spero himself in the *Tradition* article he referred to earlier quotes Rabbi Jonathan Sacks who recorded his memories of an audience with the Rav in 1967, at which time the Rav expounded upon the same assertions he made twenty-three years earlier in *The Halakhic Mind*. Moreover, although *The Halakhic*

*Mind* was written in 1944, it was first published, on the Rav’s initiative, in 1986. It is preposterous to suggest that the Rav published—without revision or disclaimer—an essay whose climax he had already recanted. In truth, the Rav never wavered regarding the philosophy of *halachah*, and understandably so. Despite the fact that he did not systematically expand upon the concluding section of *The Halakhic Mind* and the philosophy of *halachah*, the Rav, as I discussed in my article, did provide sufficient examples to buttress his assertion in *The Halakhic Mind* and establish the existence of the philosophy of *halachah*. Moreover, it is clear that in his own mind the Rav had even more overwhelming proofs to his assertion in *The Halakhic Mind* and to the existence of a philosophy of *halachah*. “Problems of freedom, causality, God-man relationship, creation, and nihilism would be illuminated by halachic principles” (*The Halakhic Mind*, 101). The Rav could only have made such an unequivocal assertion if he had already developed all these elements of the philosophy of *halachah*. Otherwise how could he know for certain that “creation and nihilism would be illuminated by halachic principles?”

In his *Tradition* article, Professor Spero critiques (wrongly, in my opinion) the Rav’s concept of the philosophy of *halachah* and, in particular, the Rav’s statement in *The Halakhic Mind* that I quoted at the beginning of my article. (“Out of the sources of *halachah*, a new world view awaits formulation.”) In his letter, he critiques me for these views as though I had imposed them upon the Rav. In effect, Professor Spero’s letter projects onto the Rav his own (incorrect) views. The Rav never had second thoughts about the concept of philosophy of *halachah*; Professor Spero does. Similarly, the Rav clearly considered his analysis of time and *teshuvah* to be halachic; Professor Spero, as indicated in his *Tradition* article, does not. We stand to enrich ourselves by honestly striving to understand the words of our Torah giants. Projecting our own views onto them only skews their teachings, while we remain impoverished. **JA**