

**Justifying One's Practices: Two Models of Jewish
Philosophy**

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At the London School of Economics and Political
Science**

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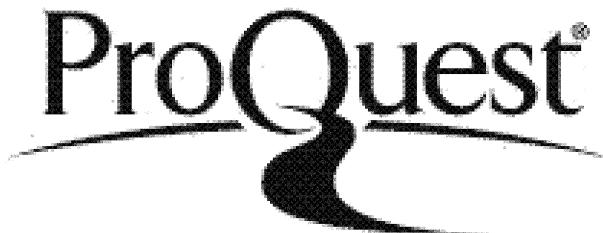
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Thesis Abstract

Judaism is a religion that emphasises the importance of a set of practical commandments and in the history of Jewish philosophy various attempts have been made to rationalise or justify these commandments. In this thesis I try to establish a general model for the justification of practices through a critical examination of two such attempted rationalisations. However, the study is framed within the more general question of whether or not there can be such a thing as Jewish Philosophy as a genuinely substantive discipline. Thus, I take the particular topic of rationalising the commandments as a 'case study' in order to see whether we can do substantive Jewish philosophy at least in the practical sphere.

In the main body of the thesis I look at the methods of rationalisation of Moses Maimonides and Joseph Soloveitchik and argue that despite being based on very different scientific models they share a central methodological presumption that I term the Priority of Theory (PoT). I outline the main features of this PoT approach to justification and offer a critique of it based primarily on the argument from uncodifiability. I then offer an alternative method of justifying practices - the Priority of Practice approach (PoP) - based on an analysis of the Judaic concept of faith and certain remarks by Soloveitchik that are in tension with his main model of rationalisation discussed earlier. This PoP method stresses the limits of propositional approaches to the justification of practices and the need for a more pragmatic approach.

In conclusion I consider again the framing question concerning Jewish philosophy, concluding that if we accept the meta-philosophical conclusions reached regarding practical justifications, the sense in which we can do practical Jewish philosophy is restricted more by the limits of philosophy in the practical sphere than by those of Judaism.

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Abbreviations of Frequently Cited Primary Sources

I. Aristotle

NE: *Nichomachean Ethics*, trans. (as *Ethics*) by J.A.K. Thomson, revised with notes and appendices by Hugh Tredennick (Harmondsworth: Penguin, 1976). Parenthetical references are to this translation, by book, chapter and page; e.g., (*NE*, I: 3, 65) refers to Part I, chap. 3, p. 65.

II. Moses Maimonides

GP: *The Guide of the Perplexed*, trans. Shlomo Pines, 2 vols. (Chicago: University of Chicago Press, 1963). Parenthetical references are to this translation, by part, chapter and page; e.g., (*GP*, I: 2, 23) refers to Part I, chap. 2, p. 23.

III. Joseph B. Soloveitchik

HM: *The Halakhic Mind: An Essay on Jewish Tradition and Modern Thought* (New York: Free Press, 1986).

HMN: *Halakhic Man*, trans. Lawrence Kaplan (Philadelphia: Jewish Publication Society, 1983).

Chapter one

Introduction: Jewish Philosophy or Philosophy of Judaism?

This thesis is intended, in part, to be a contribution to the field of Jewish philosophy. However, the very notion of Jewish philosophy is seen as problematic by a number of writers. Philosophy is often believed to be an enterprise that searches for objective, universal truths that are available in principle to all rational enquirers insofar as they are rational. In contrast, Judaism is a particular religion shaped by a particular normative system as set out in a Torah that was intended for a specific nation. And within this contrast lies an immediate problem for the very concept of Jewish philosophy, a problem that has been given a concise philosophical formulation by Ze'ev Levy (amongst others) who writes:

How can a certain concept be truly philosophical and simultaneously Jewish in its essence? . . . When one posits certain 'values' which are found in Jewish sources, then one of two conclusions must be valid: if the value has philosophical meaning, its Jewish origin is merely of historical interest: if it contains meaning that is uniquely Jewish, it ceases to be philosophical as the term is generally defined.¹

This dilemma, which we shall subsequently refer to as Levy's dilemma, asserts that the very particularity that would mark out a value as Jewish, at the same time singles it out as unphilosophical. The philosophical nature of the enterprise implies a search for universality whilst its essentially Jewish subject matter seems to be irredeemably particular and thus contrary to this universal nature of philosophy. The assumption therefore is that for a value to have philosophical meaning it has to have universal import and as such any Jewish content must either vitiate or be incidental to the philosophical nature of the enterprise.

Of course one could argue that there has to be such a thing as Jewish philosophy for it is the subject of those works written by Jewish philosophers throughout history. However, even with regard to the person who for many is the paradigmatic Jewish philosopher, Moses Maimonides, this has been disputed. Thus, Leo Strauss, one of the great Maimonidean scholars, has written concerning Maimonides' philosophical magnum opus, *The Guide of the Perplexed*,

that it is not a philosophic book - a book written by a philosopher for philosophers - but a Jewish book: a book written by a Jew for Jews. *Its first premise is the old Jewish premise that being a Jew and being a philosopher are two incompatible things. . . . A Jew may*

make use of philosophy and Maimonides makes the most ample use of it; but as a Jew he gives his assent where as a philosopher he would suspend his assent.² (Emphasis added).

It is this predicament that has led a number of thinkers to the conclusion that there can be no such thing as Jewish philosophy in the same way as there can be no Jewish science or Jewish mathematics. Indeed, those Jews who have contributed to science or mathematics have done so to the disciplines as a whole for these subjects cannot contain laws, principles or concepts that are only applicable to certain ethnic groups and, it is claimed, the same is true of Jewish philosophy. The question therefore, is whether or not this is a genuine dilemma or, put another way, whether there can be such a thing as Jewish philosophy as a genuinely distinct discipline (rather than there being Jewish philosophy in the sense that there are subjects like Greek or German philosophy which are not distinct from philosophy as a whole but are merely general philosophy done by Greeks or Germans respectively).³

As noted above though, Levy's dilemma presupposes a certain conception of rational enquiry – the universalistic conception. This view which has often been identified as the Enlightenment view is summed up by one of its most prominent critics Alasdair MacIntyre as follows:

Rational justification was to appeal to principles undeniable by any rational person and therefore independent of all those social and cultural particularities which the Enlightenment thinkers took to be the mere accidental clothing of reason in particular times and places.⁴

The assumption is that there is some pure abstract rationality common to everyone in so far as they are rational and that anybody has to use if they are to be counted as rational enquirers at all. This universal form of rationality is independent of any cultural or intellectual allegiances and though the truths that it yields may find different expressions in different cultural circumstances, they are, as Robert P. George writes (with respect to moral universalism in particular), 'nevertheless captured in sound practical judgements that may be formed by any thinking person.'⁵

It is this view of rationality that motivates our dilemma and it is certainly an attractive one, with echoes of an idea that traces right back to the ancient Aristotelian contention that rationality is the essence of man. To reiterate with regards to the dilemma, if a value contains meaning that is uniquely Jewish it ceases to be philosophical. Levy is therefore assuming that in order for a concept to be philosophical it has to be universal in the sense stated above, i.e. it must be available to all rational enquirers irrespective

of their religious, or indeed any other, allegiances, which implies that it must be justified according to the universal principles of rationality that all these rational enquirers supposedly accept. Thus any particular truths of Judaism that cannot be justified in this way are immediately discredited philosophically and are said to be opposed to reason. The general philosophical world view, by utilising the pure abstract rationality that the universalists see as exclusively constitutive of what it is to be rational, is identified as *the* rational world view.

However, MacIntyre believes, in opposition to such universalism, that it is an illusion to believe that there is one universal form of rationality that can be used to solve all of our disputes. In fact we find that there are competing accounts of rationality and these are most visible with respect to practical rationality, where we find the most intractable disputes stemming from these differing accounts. In the practical sphere there are social norms that do not extend to all of humanity but only govern conduct in particular groups, and these particularistic norms can only be justified by similarly particularistic conceptions of practical rationality:

There is no place for appeals to a practical rationality-as-such or a justice-as-such to which all rational persons would by their very rationality be compelled to give their allegiance. There is only the practical-rationality-of this-or-that-tradition and the justice-of-this-or-that-tradition.⁶

This statement, it seems to me, is of particular interest to the Jewish philosopher. Firstly, the passage appeals to the idea of practical rationality, seeming therefore to make an underlying assumption (that we could again trace back to Aristotle) that this can be distinguished from theoretical rationality. It would appear from this, therefore, that we could address our question concerning the possibility of doing Jewish philosophy to two different realms – the theoretical and the practical – since each has its own type of rationality that Judaism might grapple with.⁷ To take some examples drawn from the history of Jewish philosophy, questions such as those concerning the nature of God and His attributes we might term theoretical; those regarding the rationality or otherwise of Jewish practice one might assign to the realm of practical philosophy.

The immediate significance of this distinction is clear from the quoted passage itself. In the theoretical realm, the underlying universalist premise of Levy's dilemma might appear convincing. Certainly for a traditional realist about God, it might be thought that questions about His nature, for example, must have a single correct answer to which it

is hoped rational enquiry will lead us. However, if in the practical realm particularism can be upheld we might be able to find something of philosophical value in Judaism's particularistic approach to practical questions that need not live up to the universalistic standards of Levy's dilemma. The Jewish world view may have its own conception of practical rationality and thus have a view of practice that is particular to it but nevertheless still 'philosophical' (in some yet to be specified sense).

What makes this of even greater significance for the Jewish philosopher though, is the fact that Judaism is a religion that gives great emphasis to the practical sphere. Within Orthodox Judaism the emphasis is on a body of practice - the halakhah - which includes and extends the commandments and laws traditionally conceived to have been handed down in written and oral form since biblical times. Indeed, all the forms of Judaism, whether or not they adhere to the halakhah itself, see the practical import of Judaism as central. Thus, the reform philosopher, Steven Schwarzchild, believed that the most important characteristic of the coherent rational system of Judaism is the primacy that it gives to practical reason, which he calls the 'Jewish twist'. In his opinion it is this that all Jewish philosophers have introduced into the general philosophical systems with which they have grappled.⁸

Given the centrality of practice in Judaism, it is surely important for any philosophically minded Jew to address the question of whether or not Jewish practice, however conceived, is rational. And yet, while one of the central problems that exercised the minds of many medieval Jewish philosophers was that of *Ta'amei ha-Mitzvot* (rationalising the commandments), with one or two notable exceptions it is an area that has not been given much systematic attention in contemporary Jewish philosophy. If, though, Jewish practice is to be intellectually respectable, surely the question of its rationality (or otherwise) is a central one. Moreover, since it is in the practical sphere that particularist approaches have taken root, consideration of this issue might well yield an escape route from Levy's dilemma, at least in the practical sphere.

The topic that will form the main focus of the thesis therefore, is precisely that of whether and how we can rationalise the commandments, though we will be utilising our critical examination of Judaic approaches to the question of rationalising the commandments to generate a general model of rationalising practices. In essence therefore we will be confronting Levy's dilemma head on. For we will be looking at what we can find of general philosophical value in a Jewish approach to rationalising practice. To return to Levy's dilemma though, if what we find is of general

philosophical interest, to what extent is it substantively Jewish? Particularism may have a part to play, but evidently if the Jewish approach is particularistic, in what sense will it have general philosophical value? Thus, our investigation of the issue of rationalising the commandments can be seen as a ‘case study’ in order to answer the question of whether or not there can be such a thing as practical Jewish philosophy as a genuinely substantive discipline.⁹

In the remainder of this first introductory chapter therefore, we will be setting up the general question concerning the possibility of doing Jewish philosophy by looking at how some of the most popular attempts to define Jewish philosophy measure up against Levy’s dilemma. These introductory remarks are only intended to map out in a very general fashion the sorts of paths that can be taken by Jewish philosophers in their attempts to do Jewish philosophy. More rigorous and detailed definitions and considerations of arguments for and against the options, at least in their application to practical Jewish philosophy, will appear in the remainder of the thesis when we consider them in relation to our specific topic of *Ta’amei ha-Mitzvot*.

1. Jewish Philosophy as the Product of Confrontation

There have been many definitions of what constitutes Jewish philosophy, some more worthy of serious philosophical analysis than others.¹⁰ However, the definition that appears most often is the one implicit in the oft-quoted observation made by Julius Guttmann at the beginning of his classic book on the philosophies of Judaism:

The Jewish people did not begin to philosophise because of an irresistible urge to do so. They received philosophy from outside, and the history of Jewish philosophy is the history of the successive absorption’s of foreign ideas which were then transformed and analysed according to specific Jewish points of view.¹¹

It is generally accepted that Judaism did not begin to philosophise because of any internal compulsion to do so and Menachem Kellner in his article ‘Is Contemporary Jewish Philosophy Possible? – No’, takes this legitimate historical observation to be definitive of Jewish philosophy ‘in the classic sense’.¹²

Kellner’s basic idea is that Jewish philosophy was generated by the clash between two opposing world views: the Jewish world view and that of general philosophy. Limiting ourselves for the moment to the theoretical sphere, the thought is that we begin with two sets of conflicting truth claims about reality and Jewish philosophy is somehow generated by this clash. However, in order to understand how this clash yields Jewish

philosophy we need to make a number of important assumptions, summarised by Emil Fackenheim as follows:

That reason and revelation cover at least in part the same ground; that there is at least some apparent conflict between them; and that the conflict is apparent only, that it can be resolved without violence to either reason or Judaism. Without the first and third of these additional assumptions there would have been no possibility of a Jewish philosophy and without the second no necessity for it.¹³ (Emphasis added).

The first by no means obvious assumption is the idea that revelation must be interpreted as constituting, at least in part, a world view that makes truth claims about topics such as the nature of God or the problem of creation. The fact is that this assumption is not universally accepted. It is possible to take a quasi-Mendelssohnian or Hirschian line regarding revelation according to which it is senseless ‘to apply the term theology to the Torah . . . [O]f the inner essence of the Godhead and the supernatural we find in the Torah nothing at all.’¹⁴

On such a view there could not be any conflict between the world views of the Torah and philosophy since the Torah does not for the most part offer us such truth claims, at least not as part of a systematic world view. Nonetheless, the point is that for this definition of Jewish philosophy to get off the ground, one has to accept that Judaism is making serious truth claims in an attempt to offer solutions to the theoretical philosophical questions at issue.

Given this first assumption, the problem then arises of the apparent clashes between these two world views. For surely there can only be one correct answer to the question regarding, for example, whether the world is created or eternal. Given that there can only be one answer, Fackenheim’s further and most important assumption is that the appearance of conflict between the two world views must be just that – an appearance. Fackenheim is here stating unequivocally that there can be no genuine conflict between Judaism and reason if we are to produce Jewish philosophy. The assumption is that philosophy = reason and since this reason is universal in that it is assumed to use universal argument forms to yield universal conclusions, it defines what it is to be rational or philosophical. Judaism, therefore, must in reality be consonant with its conclusions if we are genuinely to speak of a Jewish philosophy.¹⁵

We can therefore summarise the conditions that we must accept if there is to be Jewish philosophy in the classic sense as Kellner defines it.

- i) The Jewish world view makes legitimate truth claims.
- ii) The opposing philosophical world view makes legitimate truth claims.
- iii) The two sets of truth claims apparently conflict.
- iv) The conflict is only apparent, since there can only be one truth.¹⁶

The essence of this view therefore is that despite appearances to the contrary, revelation and reason must speak with one voice if we are to do Jewish philosophy. Thus we see that the universalistic assumption comes into the very definition of Jewish philosophy inasmuch as it accepts that both world views must in fact converge upon a single truth since the very idea of there being such a universal truth is necessary for us to speak of philosophical rationality. If the reason/revelation distinction cannot be dissolved by the latter reinterpreting itself in accordance with the former, the universalist will rule out the particularistic revealed claims as unphilosophical.

What then does a Jewish philosopher do according to this model, which David Hartman has termed the way of integration,¹⁷ given the philosophical need for the Jewish (revealed) world view to conform to the general world view? Effectively, on those matters on which they differ, the Jewish philosopher must either reinterpret Judaism in accordance with the universal truths of the competing world view or admit philosophical defeat. According to this view, if reason can demonstrate certain truths and there are Jewish texts that, read literally, contradict these claims, we are licensed to reinterpret the texts in a non literal way so that they can in fact be seen to be making the same truth claims as the rational world view. The integrationists believe that we can use our reason to interpret God's thoughts as expressed in the canonical texts even though they may appear not to be subject to our rational procedures when taken literally. The claim again seems to be that the Jewish world view has to undergo this universalistic transformation in order to be philosophical. Of course it is possible that the 'philosophical' view might turn out to be mistaken in which case there would be no need for reinterpretation. However, in such a case, the reason for not reinterpreting the text would be that the philosophical world view was found to be wanting on rational philosophical grounds and as such was not actually a genuinely 'philosophical' world view.

Even according to this view of Jewish philosophy though, reason has its limits and it is when these limits are reached that we can rely on the truth claims of Judaism to fill in the gaps. Thus Judaism does not propound a doctrine that is contrary to reason in any

way but one that is entirely in accordance with it when reason is not overreaching itself. However, in those areas where reason cannot prove the point either way, revelation can be accepted on authority in order to provide answers to the supra-rational questions. It is extremely important on this view therefore, to identify those truths that have been genuinely demonstrated by reason in order that we only reinterpret the tradition where necessary.¹⁸ Generally though, according to the universalist Jewish philosopher, Jewish philosophy would consist of the investigation of the extent to which a harmonisation of two conflicting views is possible.

Of course one might take an approach to the clash of world views that disregards human rationality, rejecting the truth claims of the 'rational' world view in favour of those of the revealed world view. However, such a reaction would not yield a method of doing Jewish philosophy, but is a case of what one might call, borrowing some terminology employed by David Armstrong in his work on universals, Ostrich Judaism.¹⁹ Such Jews make truth claims about God and the universe but hide their heads in the sand rather than address any of the problems that these truth claims raise. The way of integration on the other hand encourages the use of our reason and holds that its conclusions do not conflict with the similarly universal truth claims of the tradition which, though often couched in non literal terms, is nonetheless making the same truth claims.

To summarise the argument so far then, we see that Kellner believes that classically Jewish philosophy was generated by the apparent clash between the Jewish and philosophical world views. Given an acceptance of the universalistic assumption, this leads to a specific way of proceeding to do Jewish philosophy - there are universal truths of the philosophical world view that can be demonstrated according to the universal canons of theoretical rationality and the Jewish world view must simply measure up to these or cease to be philosophical. Jewish philosophy is therefore the integration of these two world views.

In defence of this view, it is certainly true that many of the classic works of Jewish philosophy have been attempts largely to integrate Judaism to a greater or lesser degree with the particular philosophical system contemporaneous with the thinker in question. Thus, Moses Maimonides took it upon himself to show that the teachings of the Torah were, for the main part, compatible with the form of Arabic Aristotelianism that was the dominant philosophical system of his day and this picture of Jewish philosophy as satellite to the great systems of Western thought continued right up to the late

nineteenth and early twentieth centuries, for example, in Hermann Cohen's Neo-Kantian interpretation of Judaism.²⁰ However, in the late twentieth century it has been argued that there is no such dominant opposing system with which to make Judaism cohere. There are no twentieth century 'Great systems of Western thought' and we are just left with what Fackenheim calls 'the systematic labour of thought'²¹

How are we to do Jewish philosophy in such a situation? Kellner believes that without the conflicting world views we simply cannot do Jewish philosophy. He does in fact seem to believe that there is a current opposing world view supplied by science. However, according to Kellner the main problem for contemporary Jewish philosophy is that there is no agreed interpretation of *Judaism* that could be pitted against an opposing world view were there to be one. There are in fact many competing interpretations on the contemporary scene; Orthodox, Reform, Liberal, Reconstructionist etc. But, according to Kellner, in order for Jewish philosophy to be possible in the classical sense, we *have* to identify an agreed interpretation of the world view of Judaism as well as an opposing world view that we can integrate with it. The fact that we cannot identify the former means that there cannot be a contemporary Jewish philosophy but rather only hyphenated versions of it - Orthodox-Jewish-philosophy, Reform-Jewish-philosophy etc.

However, we should note that at this point Kellner's problem with contemporary Jewish philosophy is not the methodological problem that we quoted originally but a problem with finding the raw materials to work with in the first place. This is not a conceptual problem with the very idea of Jewish philosophy, simply a practical one with the current diversity of Jewish views.

2. Jewish Philosophy as Process

Kellner's view would appear to vindicate Eliezer Berkovits' claim that 'at this time we have neither a theology nor a philosophy of Judaism that does justice to the essential nature of Jewish teaching about God, man and the universe as expressed in the classical sources of Judaism, nor one that can be maintained with contemporary philosophical validity.'²² This contingent historical fact though is not the end of the matter for there is in fact a form of the conceptual problem that we started with that is relevant to the definition of Jewish philosophy that we have been discussing. In order for there to be a genuine Jewish philosophy of the form that Kellner describes, there have to be certain universal canons of rationality that we can use to decide whether or not a competing

world view has demonstrated a certain point that conflicts with Judaism (so that we know when to vindicate the alien world view and reinterpret the Jewish texts). But the assumption of universalism presupposes that the general philosophical world view has been formed according to these universal canons or else it would not be philosophical by definition. The Jewish world view must simply conform to its conclusions thus formed. This returns us to a modified version of Levy's original dilemma that I quoted at the beginning - if the content that is vindicated is that of the Jewish world view, then this can only be because its conclusion is the same as the universally valid opposing world view. If it is not, then its content is specifically Jewish and therefore not philosophical. The Jewish philosopher is therefore left with a choice between having to admit the irrationality of his views and giving up on philosophy altogether, or undertaking the literary enterprise of attempting to interpret Jewish texts in such a way as to make them say the same as the universally valid opposing world view.²³

We therefore encounter the first horn of Levy's dilemma if we accept Kellner's definition of Jewish philosophy, for its content is not distinctively Jewish. However, though it is the content that makes the philosophy fall foul of our dilemma, this is only so, because of the prior methodological assumption - that there are certain universal rational procedures that the Jewish world view must be measured against and that produce certain universal truths that all must subscribe to. This would obviously seem to eliminate any particularistic Jewish aspects of the philosophy, making Jewish philosophy universal or in other words showing that Jewish philosophy, if it is to be a valid enterprise must in fact reduce to general philosophy. By bowing to the dictates of universal reason, one is admitting that he has nothing to contribute to philosophy qua *Jewish philosopher* i.e. if revelation is universal, the philosophy is not Jewish in any substantive way. So we are led from the supposed clash between reason and revelation via the assumption that the truths of reason must be universal, to the denial of the possibility of doing Jewish philosophy in this way.

But what, therefore, is left for the Jewish philosopher to do? Firstly he could take issue with Kellner's definition of Jewish philosophy as the integration of two opposing world views. One could argue with the historical point that there ever was a commonly agreed interpretation of Judaism, as Barry Kogan does in his reply to Kellner's article, and therefore the problem of there not being one available today is in fact a pseudo problem. All we need to have in order for there to be Jewish philosophy according to Kogan is a shared agenda of philosophical problems generated by the canonical texts

and our commitment to them, though one might then argue over the universalistic definition of what makes something a philosophical problem. Moreover, even though Kogan is correct to stress that Judaism was never monolithic, the splits that existed previously were set against the background of a shared framework of fundamental beliefs and action - the halakhah - a unifying framework that is missing today (and that means that it might even be difficult to set a shared agenda of problems). However, it is Kogan's criticism of the other condition for the continuation of Jewish philosophy that is more interesting for our purposes. For Kogan argues, with respect to the point that there is no opposing world view with which Judaism could take issue, that Kellner is construing philosophy as product rather than process. What exactly is this distinction and what is its bearing on our problem?

If one sees philosophy as a product then one sees it as a set of substantive conclusions about the nature of reality and it is this philosophy as product that is no longer an option for Jewish philosophy if we follow Kellner's analysis. According to Kellner, integrating two such products generates a further product - Jewish philosophy. But since, in his opinion, there are no longer any universally accepted products for the Jewish philosopher to so integrate, there cannot be contemporary Jewish philosophy in this 'product' sense. However, there is, according to Kogan, philosophy as process in which the doctrine is less important than the activity of philosophising which he characterises as 'an unusually obstinate effort to think clearly',²⁴ an 'effort' that takes the form of the methods of modern analytical philosophy.

The extreme difficulty of defining either analytic philosophy or the analytic method has often been noted.²⁵ However it is often characterised in terms of the so-called linguistic turn. Thus, as Michael Dummett has written,

What distinguishes analytic philosophy . . . is the belief, first, that a philosophical account of thought can be attained through a philosophical account of language, and, secondly, that a comprehensive account can only be so attained.²⁶

The analytic philosopher attempts to clarify the nature of a conceptual system and the idea is that the focus on an objective product of thought such as language makes our investigation into the less accessible realm of thought itself more tractable. The analysis itself might involve defining the basic terms of a scheme, examining its rules of inference or looking at the conditions that it sets for meaningful discourse. But the main point that Kogan makes is that the analytic method is concerned less with providing substantive views about reality and more with analysing a certain conceptual scheme. It

is not concerned with the extralinguistic (or extraconceptual) reality under investigation at all but rather with the subject area itself of which it is supposed to give an ahistorical conceptual and critical analysis. Thus it is always the philosophy *of* some subject or other and applying this process of analysis to Judaism would therefore produce a philosophy of Judaism which is not Jewish philosophy in the classical sense of philosophy as product but in the modern sense of philosophy as process.

According to Kogan therefore, in contemporary philosophy, the methods of philosophy take precedence over historical products and these methods can certainly be brought to bear on Judaism, even if only on the different forms of it. This then yields our second definition of Jewish philosophy as the application of the modern analytical method to the subject matter of Judaism. The question is whether or not this constitutes doing Jewish philosophy according to the terms of our dilemma.

3. Product v Process

Kellner does not accept that Kogan's method of applying the general methods of philosophy to Judaism is a legitimate way of doing Jewish philosophy. He is aware of this product/process distinction but uses it precisely to distinguish Jewish philosophy from the philosophy of Judaism. According to Kellner it is only his philosophy as product that could qualify for the title of Jewish philosophy whereas philosophy as process yields something else - the philosophical analysis of Judaism. Whilst Kellner readily admits that one could approach Judaism in this latter way, he does not believe that this would constitute doing Jewish philosophy. What, though, is the precise basis for this supposed distinction?

Kellner seems to assume that if we want to call something Jewish philosophy, the semantics of the phrase are such that it implies that the word 'Jewish' in this composite is qualifying the word 'philosophy'. It implies that one is somehow philosophising Jewishly. So in order to be called Jewish philosophy, the Judaism has to define the form that the philosophising takes in the same way that in the phrases 'analytic philosophy' and 'historical philosophy' it is the first word in the phrase that describes the way that the philosophy is being done. So we end up with a distinction between Jewish philosophy and the philosophy of Judaism that turns on certain linguistic conventions. We use the grammatical form '_____ philosophy' when we wish to indicate that the philosophy is being done in a way that is dictated by the term that would fill in the blank. Thus, to call something Jewish philosophy requires that the

philosophy is being done Jewishly just as in analytic philosophy the philosophy is being done analytically. But, given universalism, it is precisely this that we have argued cannot be done in Jewish philosophy as product, for that would entail a specifically Jewish product, which would be ‘unphilosophical’.

The philosophy of Judaism though is described as the practice of applying the universal tools of philosophical analysis to the subject matter of Judaism, which, philosophically speaking, is a perfectly legitimate enterprise. However, Kellner’s point is that though we can certainly apply the universal methods of philosophy to the various interpretations of Judaism in order to offer a neutral philosophical analysis of them, this type of enterprise does not constitute Jewish philosophy, for that title implies that the Judaism is dictating the method of philosophising. But since there cannot be a religion-specific philosophical method, we cannot call Kogan’s philosophy as process Jewish philosophy for there can be nothing Jewish about the philosophical process being applied if it is to be genuinely philosophical. Thus again we see that the universalistic assumption is being used by Kellner to rule out Kogan’s definition of Jewish philosophy. Moreover, the philosophical process is, and if one accepts the universalistic assumption has to be, a neutral tool for the analysis of any subject matter. As such according to Kellner, it does not yield a product that could or could not be consistent with Judaism and therefore does not allow for Jewish philosophy in his ‘classic sense’ - as product.

However, there are two important points that we ought to raise concerning Kellner’s argument here. The first is that if he is correct, it becomes difficult to see why we should grace the medieval type of philosophy as product with the exclusive right to the title of Jewish philosophy as Kellner appears ready to do. He has ruled out the possibility of Jewish philosophy as process on the grounds that there cannot be a religion specific philosophical process as stated in our original dilemma. But why then should Jewish philosophy as product be graced with this title? Presumably if Jewish philosophy as process would require a specifically Jewish process in order to deserve the title of Jewish philosophy, then Jewish philosophy as product would require a specifically Jewish product. Perhaps Kellner believes that the Jewish world view determines at least to some degree or other, the final philosophical product to emerge from the clash of opposing world views. But as we have seen previously, he believes that the only way to do Jewish philosophy is to integrate Judaism with the universal views of philosophy and thus the content that is produced must be universal. But if that

is the case, why is this universal product any more Jewish than the universal process that Kellner dismisses as not having any relevance to a definition of Jewish philosophy? Once one accepts the universalistic terms that Levy's dilemma is stated in, it appears to me that it surely applies at both the level of Jewish philosophy as product and at the level of Jewish philosophy as process. Kellner, it seems to me, cannot consistently accept the former and reject the latter once he accepts these universalistic terms. Thus, whether one is dealing with two opposing products as the medievals had done, or with the analysis of one of the competing interpretations of Judaism as moderns do, one is using universal canons of rationality in either case, whether to produce substantive conclusions about reality or conclusions about a certain subject matter and it is this universalism rather than any product/process distinction that seems to cause problems for the concept of Jewish philosophy.

Thus, it appears to me that the conclusion that we must draw from Kellner's arguments is in fact more radical than those he would have us draw. If we accept both his universalism and the point that Jewish philosophy is supposed to be a substantively Jewish enterprise we would conclude that we could not do Jewish philosophy at all. We can, and could only ever, do what Kellner terms the philosophy of Judaism, which involves the application of universal canons of rationality to Judaism.

The second and more pertinent point, however, is that even if this is so, it seems that there is much work for the philosopher of Judaism to do, so why quibble about the semantics of whether to call this Jewish philosophy or the philosophy of Judaism? For, the conclusions that we have reached so far are as follows:

a.) Kellner's definition of Jewish philosophy as the product of a clash of opposing world views falls foul of Levy's dilemma which, in assuming that philosophical products must be universally valid in order to be philosophically valid, rules out the possibility that there could be anything substantively Jewish about Kellner's product if it is to be at the same time philosophical.

b.) Kogan's definition of Jewish philosophy as the application of a universal philosophical process to the subject matter of Judaism has similarly been ruled out on the grounds that there cannot be a specifically Jewish mode of philosophical analysis. One could do a subject called the philosophy of Judaism but this is not to be called Jewish philosophy according to Kellner.

We now though raise the question of whether it really matters what we call the enterprise that Kogan counsels. For we seem to have a definition of Jewish philosophy

as process that, if you so wish, you can call philosophy of Judaism, but that nonetheless seems to be a perfectly legitimate philosophical enterprise, or at least as worthwhile as any other 'philosophy of' whether it be philosophy of science, philosophy of law etc. The real question therefore is how this definition relates to Levy's dilemma.

4. Autonomous Jewish Philosophy

It appears to me that whether or not Kogan's philosophy as process yields a substantive form of Jewish philosophy depends on how one characterises the process of philosophical analysis. For Kogan defines his process as an atomistic conceptual analysis of a certain given content that allows both for systematisation and critique of that content. Thus he writes:

Analysis is a process of breaking down ideas or statements into their logical components, and tracing their interrelations, presuppositions, and implications. . . . Systematisation is the process of laying out in orderly fashion a network of concepts or statements in a given area according to some pre-established norm. . . . Thirdly, philosophy involves the critique of our concepts, systems and statements. This is not a matter of trying to tear apart or destroy a particular position, but of appraising its strengths and weaknesses in terms of truth and falsehood.²⁷

What we are presented with is an apparently neutral tool for linguistic philosophical analysis that can be applied indiscriminately to any subject matter. This universal form of linguistic analysis imposes certain systematic and it appears substantive conditions of rationality upon all modes of discourse and as such can be used as a critical tool for their modification. What is central here is the idea that this form of analysis can be used as a critical tool and we can assess our systems for truth and falsehood.

However, questions arise regarding this characterisation of rational analysis, especially when dealing with the practical sphere. Most importantly, one can ask whether there can be such a universal mode of analysis. As MacIntyre writes, certain logical laws are most probably a necessary condition for any attempt at analysis. However,

observance of the laws of logic is only a necessary and not a sufficient condition for rationality, whether theoretical or practical. It is on what has to be added to observance of the laws of logic to justify ascriptions of rationality – whether to oneself or others, whether to modes of enquiry or to justifications of belief, or to courses of action and their justification – that disagreement arises concerning the fundamental nature of rationality and extends into disagreement over how it is rationally appropriate to proceed in the face of these disagreements.²⁸

One would, in the case of analytic philosophy, look at a certain form of Judaism and analyse its basic terms and the nature of its truth claims by utilising the accepted canons

of rationality of modern philosophy. Thus it would be the accepted norms of rationality of this philosophical culture that will be deciding the question of the validity of the concepts and inferences made within the system of Judaism. However, if we question the idea that there is some neutral mode of analysis that is sufficient to yield rationality and that we can apply critically to all practices, then this may turn out to be a misguided approach to practices. That is not to say that we should rule out philosophical analysis altogether. However, much depends, as we have said, on how one understands this analysis.

The analysis of a particular practical system might well be a philosophically important enterprise in that it will reveal the rationality of the system being studied. But that is only so if we do indeed attend to the rationality of the system itself and that is almost always going already to include within it certain presuppositions other than the barest of logical principles. There may well be certain logical conditions to which all practices must conform. But when it comes to the justification of these practices, a thicker conception of rationality is more often than not necessary, one that is likely to make certain ethical assumptions that go beyond universal, neutral, logical criteria. Thus, it is not as if we can apply some universal form of rational analysis to any given subject matter. Rather, the very logic of a certain practical system might be governed by rational norms particular to that practice and it is this that we should be analysing. Given this, it seems to me that Kogan's attempt to define Jewish philosophy might still fall foul of Levy's dilemma inasmuch as it still grants a certain supposedly neutral universal mode of analysis sovereignty over the subject matter of Judaism which cannot therefore retain its particularity.

It is this sort of particularistic analysis that the modern thinker Joseph B. Soloveitchik has therefore attempted to introduce into the sphere of Jewish philosophy. Soloveitchik wishes to develop a system that would preserve the autonomy of a practical Jewish philosophy by allowing us to work out Judaism's own unique autonomous norms. Soloveitchik, therefore, attempts to avoid the whole problem of subordination to external norms by rejecting the second horn of Levy's dilemma and attempting to find Judaism's own canons of rationality via a specific method in order to yield an authentically Jewish philosophy.

Soloveitchik's explicit attempt to develop a method for forming this autonomous world view can be found in his 1944 work *The Halakhic Mind*, which begins with the statement that the contemporary philosophical climate was the most promising ever for

'the meditating *homo religiosus*', (HM, p. 3) given the methodological schism that had opened up between science and philosophy. It is this schism that is the central foundation for his assertion of methodological independence for the religious philosopher. According to Soloveitchik, whilst the scientist and philosopher were in agreement as to how one should study reality, the religious personality had to make a choice between three equally unpalatable alternatives: either a) developing an apologetic philosophy that utilised the scientific/philosophic approach, b) admitting his inability to understand the world or c) having to revolt against reason. The implication here again is that the supposedly unified scientific/philosophic approach is identified with the universal rational approach and the philosopher of religion either has to share this method or admit the non-philosophical nature of his enterprise.

The particular form of universalism that Soloveitchik is worried about here turns out to be the outlook known as scientism which is identified by Jurgen Habermas as the prevailing attitude towards science within the scientific community itself and has been defined by him as follows.

‘Scientism’ means science’s belief in itself: that is the conviction that we can no longer understand science as one form of possible knowledge, but rather must identify knowledge with science.²⁹

According to advocates of scientism the methods of the natural sciences have established themselves in the minds of many thinkers as the *only* legitimate method for uncovering truths about reality and in order, therefore, to understand reality one has to use those methods. Thus we find philosophers like Quine believing that it is science that inquires into the nature of reality, providing us with our world view. This scientific enquiry is not subject to further legitimisation by philosophy, which is supposed to confine itself to addressing the question of how we have come to have the thought of the objects of physical theory in general.³⁰ We therefore have scientific method and scientific knowledge held up as the paradigm to which all areas of discourse must measure up. This identification of rationality per se with the particular form of scientific rationality is obviously only one of the forms that the universalism that we have discussed can take, but it is a very attractive one given the consensus that the rational procedures of science seem to secure.

In opposition to this though, Soloveitchik believed that he could establish an autonomous method for the Jewish philosopher. However, he insists that the methodology of the *homo religiosus* whilst autonomous is not thereby non-

philosophical and the religious philosopher has to develop his own *rational* approach to the philosophical questions at issue.

The *homo religiosus* calmly but persistently seeks his own path to full cognition of the world. He claims freedom of methodology; he has faith in his ability to perform the miracle of comprehending the world; and notwithstanding the *mysterium tremendum*, he eschews non-rational methods as a means to the realisation of his goals. (HM, p. 4).

So for Soloveitchik rationality is not to be equated with scientific rationality or for that matter with any universal philosophic rationality. There are other *rational* methods of forming a philosophy and Soloveitchik believes, therefore, that the first question that we need to address is that of the method that should be used in order to produce our autonomous outlook.

It is for this reason that we must take care when speaking of the philosophical analysis of Judaism. For if we accept MacIntyre's claim that there is no such thing as practical rationality as such, then if we do not approach a practice through its own norms, we may well be subordinating it to an illusory and distorting form of 'universal' rationality. Indeed, according to Soloveitchik, such a universalist approach reduces religion to a form of instrumentalism or technical wisdom and this is exactly what Maimonides' approach to *Ta'amei ha-Mitzvot* achieves in his opinion. Judaism is seen as a means to the production of certain universal ends and as such can be changed and adapted as the efficacy of these means varies. For Soloveitchik therefore, part of the problem with Maimonides' scientific method is it is intimately bound up with a problematic universalistic conception of rationality that it applies in the realms of theory *and* practice.³¹ However, if we believe that we can engage in a mode of analysis, part and parcel of which is the revelation of the particularistic norms of the practical rationality of the practice itself, then we may very well be able to do a more substantive form of Jewish philosophy of the type that Levy's dilemma attempts to rule out. It is Soloveitchik's belief that we may be able to do Jewish philosophy in precisely that sense.

5. The project

We have so far sketched two suggested general models of Jewish philosophy. The former as set out by Kellner and Kogan and classically practised by Maimonides could be characterised as universalist and the latter as set out and practised by Soloveitchik might be termed particularist. The important point that we have attempted to outline in

this introduction is that the type of anxiety that Soloveitchik shows with respect to the Maimonidean approach may be well founded. The universalist assumes that there is an exclusive univocal notion of reason that is equated with the rational/philosophical world view. If revelation conforms to it, it ceases to have its own substantive content, and if it does not conform to it is by definition irrational. Soloveitchik, by taking a particularist line, wishes to upset the universalist's equation and say that it may in fact be the case that a particularly Jewish view is perfectly rational but according to a different conception of rationality. Of course certain truths of revelation could be universal, but the important point is that if there are certain particularistic claims, these needn't be seen as unphilosophical just because a particular conception of rationality may have led us to them. The Soloveitchikian argument therefore is that if we can find room for particularism, it is possible that the second horn of Levy's dilemma evaporates. The uniquely Jewish meaning of a philosophical truth may not mean that 'it ceases to be philosophical as the term is generally defined', but that it ceases to be philosophical as the term is narrowly defined by those who utilise a specific conception of rationality, which may not make it unphilosophical at all.³²

The title of this thesis is 'Justifying One's Practices: Two Models of Jewish Philosophy', and it might therefore be thought at this stage that the two models of the title refer to these two models that we have been discussing. Indeed, both the universalist and particularist approaches can be applied specifically to the realm of practice. The universalist approach would, as Oliver Leaman has put it, 'see how our religious customs and practices fit into a universal pattern of morally appropriate behaviour'.³³ The particularist approach on the other hand would attempt to fit the practices into a set of unique autonomous norms of Judaism. In chapters two and three we will critically examine these two contrasting approaches to Jewish practice by looking at the models of *Ta'amei ha-Mitzvot* of Maimonides and Soloveitchik respectively.

However, these two models are not in fact the two models of our title and we will begin in chapter four to develop the central argument of the thesis by showing that despite their differences, the models of both Maimonides and Soloveitchik share a central methodological presumption that I term the Priority of Theory (PoT).³⁴ This approach will be outlined in some detail before we argue in chapter five that it is in fact an inappropriate model for rationalising practices.

Gillian Rose has remarked with regard to the question of doing Jewish philosophy that the very question 'Is there a Jewish Philosophy?' allows philosophy to define 'the very form of the approach'.³⁵ Howard Wettstein in his article 'Doctrine' states the point that she is making more explicitly, arguing that 'theological doctrine is not a natural tool for thinking about biblical/rabbinic Judaism'.³⁶

It seems reductive and misleading to represent this as a system of doctrine, a set of well-formed beliefs, a system of thought.³⁷

As applied to the sphere of practice, the idea would be that whether the norms and concepts that we form are universal or particular is not the point. For maybe the very attempt to impose such a systematic straitjacket on the practice is misguided at the outset. Our main contention will be that the sort of philosophical approach that is shared by both the particularist Soloveitchik and the universalist Maimonides is inappropriate for doing practical Jewish philosophy.

At the same time though, this need not necessarily mean that we should give up on philosophy. Thus, in chapter six we will offer an alternative method of justifying practices, which I term the Priority of Practice approach (PoP), based on an analysis of the Judaic concept of faith and some of Soloveitchik's more tentative remarks on rationalisation. It is this possibility that I am primarily interested in – the development of a philosophical approach to the justification of practices that to some extent breaks out of the traditional universalist/particularist distinction altogether.

Apart, therefore, from the very general aim of resurrecting systematic reflection on the rationality (or otherwise) of Jewish practice, the intention in this thesis is to set up a new model for practical justification that arises out of consideration of the topic of *Ta'amei ha-Mitzvot* within Jewish philosophy. At the same time though the wider implications of this study regarding the relationship between Jewish and general philosophy in the practical sphere will also be considered. Thus, finally, in conclusion, we will look again briefly at the bearing of our investigation on the initial question regarding the possibility of doing practical Jewish philosophy.

¹ Ze'ev Levy, *Between Yafeth and Shem: On the Relationship Between Jewish and General Philosophy* (New York: Peter Lang, 1987), p. 101. The dilemma is noted in many books and articles. See, for example: Emil Fackenheim, 'The Revealed Morality of Judaism and Modern Thought', in Menachem Kellner ed. *Contemporary Jewish Ethics* (New York: Sanhedrin Press, 1978), pp. 61-83; Leon Roth, 'Is

There a Jewish Philosophy?' in Raymond Goldwater, ed., *Jewish Philosophy and Philosophers* (London: The B'nai B'rith Hillel Foundation, 1962), pp. 1-19; Kenneth Seeskin, *Jewish Philosophy in a Secular Age* (New York: SUNY Press, 1990), p. 2. A more general discussion of the issues raised by this dilemma can be found in Alan Montefiore, 'Philosophy in Different Cultural Contexts', in David Archard, ed., *Philosophy and Pluralism* (Cambridge: Cambridge University Press, 1996), pp.7-17.

² Leo Strauss, 'How to Begin to Study The Guide of the Perplexed', in *GP*, pp. xi-lvi. Quotation from p. xiv.

³ One could of course stipulate that Jewish philosophy be defined as philosophy done by Jews. See Levy, *Between Yafeth and Shem*, pp. 107-108 and Seeskin, *Jewish Philosophy in a Secular Age*, pp. 1-3. However, such a definition does not seem to call for any critical comments further to those made by the aforementioned writers.

⁴ Alasdair MacIntyre, *Whose Justice? Which Rationality?* (London: Duckworth, 1988), p. 9.

⁵ Robert P. George, 'Moral Particularism, Thomism and Traditions', *Review of Metaphysics*, vol. 42, no. 3 (March 1989), pp. 593-605. Quotation from p. 599. Though this quote is actually written about the Thomist tradition rather than the Enlightenment view, George identifies the former relatively uncontroversially as a universalistic view.

⁶ MacIntyre, *Whose Justice*, p.346.

⁷ Obviously, I am not claiming that these two spheres are entirely separate and that every topic of philosophical enquiry can simply be assigned to one or other of them. However, I feel that we can rely on our intuitive grasp of the general difference between these two realms in order to make the points that follow.

⁸ See Steven Schwarzchild, 'An Agenda for Jewish Philosophy in the 1980's' in Norbert Samuelson, ed., *Studies in Jewish Philosophy: Collected Essays of the Academy for Jewish Philosophy, 1980-1985* (Lanham, Md.: University Press of America, 1987), pp. 55-71.

⁹ Though escaping from this dilemma is, I believe, a philosophically valuable exercise, the fact that past Jewish philosophers may not have done so does not rule their work out as Jewish philosophy. There may not be a common denominator shared by all the various works that have fallen and will continue to fall into that category, but that needn't mean that they fall outside of it.

¹⁰ For an exhaustive list of suggested definitions of Jewish philosophy, see Levy, *Between Yafeth and Shem*, chapter 19. Our necessarily selective discussion will focus on some of the more widely discussed and philosophically interesting definitions.

¹¹ Julius Guttmann, *Philosophies of Judaism*, trans. David W. Silverman (New York: Holt, Rinehart and Winston, 1964), p. 3.

¹² Menachem Kellner, 'Is Contemporary Jewish Philosophy Possible? - No', in Samuelson, *Studies*, pp. 17-28. Quotation from p. 19.

¹³ Emil Fackenheim, 'The Revealed Morality of Judaism', pp. 62-63.

¹⁴ Quoted in I. Grunfeld's introduction to Samson Raphael Hirsch, *Horeb*, trans. I. Grunfeld (London: Soncino Press, 1962).p. xl ix.

¹⁵ Note that Kellner similarly states that philosophy is 'by definition committed to the rule of universal reason.' Kellner, 'Is Contemporary Jewish Philosophy Possible? - No', p.21.

¹⁶ Norbert Samuelson takes these assumptions to be definitive of what he calls 'Apologetic Philosophy'. See his 'Issues for Jewish Philosophy: Jewish Philosophy in the 1980's (1)', in Samuleson, *Studies*, pp. 43-59.

¹⁷ David Hartman, *Maimonides: Torah and Philosophic Quest* (Philadelphia: The Jewish Publication Society, 1976), p. 15.

¹⁸ For a classic statement of this view see Maimonides' *GP*, especially I:31, 65-67 and II:25, 327-330.

¹⁹ D. M. Armstrong, *Nominalism and Realism: Universals and Scientific Realism, Volume 1*, (Cambridge: Cambridge University Press, 1978), p. 16.

²⁰ Levy points out that it would be unfair to say that such philosophers merely attached the label 'Jewish' to particular systems of thought. See Levy, *Between Yafeth and Shem*, p. 115. Leon Roth on the other hand takes just such a line, suggesting that there is no Maimonidean philosophy for Maimonidean philosophy is just Aristotelianism. The originality of Maimonides' work is to be found in his application of Aristotelianism to Judaism rather than in the philosophical content of his work. See Roth, 'Is There a Jewish Philosophy?', p. 8. Whether or not this is true is in effect the very question that this thesis is seeking to answer, at least for the practical sphere.

²¹ Emil Fackenheim, *To Mend the World*. (Bloomington and Indianapolis: Indiana University Press, 1982), p. 5.

²² See the foreword to Eliezer Berkovits, *Major Themes in Modern Philosophies of Judaism*. (New York: Ktav, 1974), p. vii. A similar view can be found in Isaac Husik: 'There are Jews now and there are

philosophers now, but there are no Jewish philosophers and no Jewish philosophy.' *A History of Medieval Jewish Philosophy*, (Philadelphia: Jewish Publication Society, 1946), p. 432.

²³ Of course, the integration need not be as simple as this. One could believe that the way of integration produces a view that involves some higher synthesis of the two views rather than the simple vindication of one or the other. Norbert Samuelson describes such an approach under the title of historical philosophy, in his article 'Issues for Jewish Philosophy: Jewish Philosophy in the 1980's (1)' in Samuelson, *Studies*, pp. 43-59. Nonetheless, the critical assumption behind this way of doing philosophy according to Samuelson is that rational people, in so far as they are rational, will arrive at the same conclusions and that if they don't, this calls for investigation. Thus Levy's dilemma still applies.

²⁴ Barry Kogan, 'Jewish Philosophy in the 1980's: A Response to Professor Kellner', in Samuelson, *Studies*, pp. 29-41.

²⁵ See for example, Michael Corrado: 'There is no single method, nor any set of problems that can be called distinctively analytic, nor is there any single man around whose work analytic philosophy has been built.' *The Analytic Tradition in Philosophy: Background and Issues* (Chicago: American Library Association, 1975), p. ix.

²⁶ Michael Dummett, *Origins of Analytic Philosophy* (London: Duckworth, 1993), p. 4.

²⁷ Kogan, 'Jewish Philosophy in the 1980's', p. 35.

²⁸ MacIntye, *Whose Justice..*, p.4.

²⁹ Jurgen Habermas, *Knowledge and Human Interests*, trans. Jeremy J. Shapiro. (Boston: Polity Press, 1968), p. vii.

³⁰ See Willard van Orman Quine, 'Five Milestones of Empiricism', *Theories and Things* (Cambridge, Mass.: Harvard University Press, 1981), pp. 67-73.

³¹ It is significant that one of Habermas's criticisms of scientism is that it has permeated our *general* culture and this has allowed it free rein within the domain of human knowledge, so much so that scientific methods and ideas come to dominate spheres other than those traditionally seen as 'scientific,' orienting human action and culture and giving 'answers' to social problems.

³² One should note at this stage that it is always possible that the conception of rationality implicit in Judaism is in fact the same as one of the conceptions used in contemporary philosophy. In that case, though there would be no conception of rationality unique to Judaism, it could not be claimed that this shared conception was not authentically Jewish and we may have to admit that doing Jewish philosophy, given such a scenario, does amount to doing general philosophy.

³³ Oliver Leaman, 'Is Jewish Practical Philosophy Possible', in Daniel H. Frank, ed., *Commandment and Community: New Essays in Jewish Legal and Political Philosophy* (New York: SUNY, 1995), pp. 55-68. Quotation from p. 55.

³⁴ We will in fact be arguing that Soloveitchik has two different models, one of which is less committed to this method than the other, though it still shares some of its flaws.

³⁵ Gillian Rose, *Judaism and Modernity* (Oxford: Blackwell, 1993), p. 13.

³⁶ Howard Wettstein, 'Doctrine', *Faith and Philosophy*, vol. 14, no. 4 (October 1997), pp. 423-443.

³⁷ *Ibid.*, p. 441.

Chapter two

Rationalising the Commandments I: The Maimonidean Method.

In this chapter we will be discussing the first of our two models for rationalising the commandments, the Maimonidean method, as set out in his philosophical *magnum opus*, the *Guide of the Perplexed*.¹ One of the most significant aspects of the chapters of the *Guide* where we find his rationalisation is the constant emphasis he puts on the parallels between the realms of nature and law. Thus, David Hartman writes that Maimonides' rationalisation of the commandments was an attempt to 'achieve a unified understanding of nature and Torah revelation',² and Josef Stern states that Maimonides saw no discontinuity at all between the two domains of nature and law.

The parallel Maimonides constantly emphasises between the Law and divine i.e. natural, acts is not a parallel between two *different* domains but *within* one domain. Just as knowledge of God's attributes of action, His governance of nature, is attained through study of natural science, so one understands why and how the Mosaic commandments came to be legislated by studying their natural causes.³

Indeed, according to Stern, Maimonides' rationalisation of the commandments amounts to a natural science of the Law and in his opinion there are good reasons to believe that Maimonides believed explanations of human behaviour to be as deterministic as natural explanations.⁴

In what follows therefore, we will be putting particular stress on the scientific nature of the Maimonidean rationalisation and primarily we will be arguing that Maimonides uses an Aristotelian method of scientific explanation in order to rationalise the commandments. Thus, we will begin with an exposition of the Maimonidean method in the light of Aristotle's theory of scientific explanation before going on to look at some of the problems with it.

1. Maimonides' Question

The first thing that we need to be clear about is what question Maimonides is asking. Obviously he is asking whether the commandments are rational or not. However, this is a rather elliptical way of asking the question that Maimonides is in fact concerned with. Stern therefore, distinguishes between two different questions that Maimonides could be answering with respect to rationalising the commandments, calling them the commandment question and the performance question respectively. The former

question asks for the reason behind God's commanding a particular commandment. Thus we are attempting to understand why God should have legislated a particular law, or how rationality is manifest in that commandment's being given. The performance question on the other hand asks why it is rational for me to perform this commandment. Though the two questions often admit of the same answer, they can come apart. Thus it is important to stress that Maimonides' primary focus is, according to Stern, on the commandment question. As Hartman puts it, Maimonides was interested in the question of whether the laws 'reveal a God who acts by reasons that are intelligible to man.'⁵ He is not concerned with the question of the meaning that the commandments might have for us as individuals and was not 'attempting to inspire one to observe the commandments, but to convince his reader that nature and Torah reveal the same God.'⁶

The point here is that we can look at reason-explanations in two different ways, from a motivational perspective or a normative perspective. Maimonides is not interested in the former, in the actual reasons that a person would give to explain his performance of the commandments. Rather, he is asking why it is right to perform that commandment. He is interested so to speak in God's reasons for giving the commandments. The idea is that given that God is perfect, His reasons are bound to be rational from a normative perspective, whether that is because what He commands is constitutive of the rational or because He is bound to adhere to independent norms of rationality. The fact remains that His reasons are bound to be the right ones and they are the reasons that we should perform the commandments, regardless of the actual reasoning that we in fact use. Maimonides was concerned with the rational intelligibility of God's reasons and not with our subjective psychological states. By taking a first person perspective on the commandment question, which given that the 'person' is God constitutes taking a third person perspective on the performance question, he is asking what would make it rational for me to perform a certain commandment regardless of my own desires, attitudes or beliefs.

2. Maimonides' Intellectualism

According to Maimonides, there are those that do not believe that reasons should be given for any law, believing that if there were any utility in the laws for humans this would somehow lessen their divinity. Inscrutability is somehow supposed to be a mark

of divinity. Of course the question of whether or not God's commandments are merely dependent on His will or have some independent form of rationality that stems from their content is a question with a long history, given its best known formulation in Plato's *Euthyphro*. Within Judaism, the question of the *ta'am* (usually translated as reason) for the commandments had been discussed since Talmudic times, but more often than not, the request for a '*ta'am*' was a request for the scriptural basis for and subsequent derivation of a commandment, not its philosophical justification.⁷ In a philosophical context Philo had devoted much space to the philosophical question of the rationality of the commandments.⁸ However, it was Saadia Gaon, 'the first to undertake a systematic philosophical justification of Judaism',⁹ who brought the topic to the fore in the medieval context with his introduction of the specific category of rational commandments.¹⁰ Of course Saadia himself was much influenced by the Mu'tazilite school of Kalam theologians for whom God was subject to an objective standard of justice, a view opposed by the Ash'arite school according to whom God must be the only source of value since it would limit God's omnipotence to restrict Him to an independent moral standard. Against a background in which this Ash'arite view, with Al-Ghazali as its most influential proponent, had become the theological orthodoxy in the Islamic world, Maimonides comes down unequivocally on the side of intellectualism in an extreme form.

Maimonides begins his exposition of the rationalisation of the commandments (*GP*, III:25, 502-503) by first dividing actions into four classes with a view to explaining God's 'actions' in nature:

- i) Futile actions - those undertaken with no end in view.
- ii) Frivolous actions - Those that have low ends ("unnecessary and not very useful")
- iii) Vain actions - those in which the end aimed at is not achieved.
- iv) Good and Excellent actions - Those which have noble ends ('necessary or useful')

Maimonides argues that one is led by ones intellect to conclude that all of God's actions must surely fall into the fourth class for one cannot say that Gods actions are vain, futile or frivolous given His perfection. Thus we have a philosophical argument, according to Maimonides, for saying that there must be some rational purpose behind all of God's works in nature. Most central to our argument though is the extension of the same

reasoning in the subsequent chapter from God's actions in nature to the laws that He has commanded. Thus, by the simple application of his general reasoning regarding God's actions to the particular subset of those actions that is the commanding of laws, he concludes that the laws must all be 'good and excellent'. Here, therefore, we have the first example of Maimonides' using reasoning in the realm of nature to illuminate the realm of law and the use of this analogy at the outset is highly significant in dictating the route that the subsequent rationalisation takes.¹¹

The analogies become especially clear if we consider how Maimonides interprets phrases that attribute acts to God in nature. For the Torah often speaks of God as if He has acted directly in order to produce something. However, according to Maimonides, this in fact merely means that He is the First Cause of what is produced as indeed He is of the Universe *per se*. But this action is not therefore, to be seen as some sort of divine intervention in the natural order. Indeed, Maimonides' conception of God means that he wishes to minimise reference to such interventions as much as possible and he explicitly separates himself from those who would have us see direct divine intervention at every turn about whom he writes

They like nothing better, and, in their silliness, enjoy nothing more, than to set the Law and reason at opposite ends, and to move everything far from the explicable. So they claim it to be a miracle, and they shrink from identifying it as a natural incident. . . . But I try to reconcile the Law and reason, and wherever possible consider all things as of the natural order. Only when something is explicitly identified as a miracle, and reinterpretation of it cannot be accommodated, only then I feel forced to grant that this is a miracle.¹²

But what then does the Torah mean when it ascribes such acts to God? What it means, Maimonides tells us, is that he is the First cause of such 'action'.

It is very clear that everything that is produced in time must necessarily have a proximate cause, which has produced it. In its turn that cause has a cause and so forth till finally one comes to the First Cause of all things, I mean God's will and free choice. For this reason all those intermediate causes are sometimes omitted in the dicta of the prophets, and an individual act produced in time is ascribed to God. . . . We and other men from among those who study true reality have spoken about it, and this is the opinion of all the people adhering to our Law. (GP, II:48, 410).

In the Torah therefore, acts that are ascribed to God in fact have perfectly natural scientific explanations and the reference to God is a reference to Him as the First cause or ground of nature in general. The substantive explanatory work is done by the natural causes of which God is simply the ultimate ground. To call God the cause of something is therefore, as Stern points out, to presuppose a natural order in Maimonides' opinion,

rather than to deny it. Reference to God's action in nature is in fact reference to the laws of natural science.

Most importantly, for Maimonides, the act of commanding laws falls under the general category of God's actions. Thus, we see that according to Maimonides, to say that God commanded something is also simply to say that God is the efficient cause of that thing's coming into being.

The term 'command' is figuratively used of God with reference to the coming to be of that which He has willed. (*GP*, I:65, 159).

As such, this action is also to be explained by reference to a scheme of natural causation. A form of reasoning parallel to that used to understand God's acts in nature is therefore to be applied to the understanding of God's commanding the people as indeed is any notion of speech that attaches to God. Just as the ascription to God of actions in nature are to be understood in terms of their intermediate natural causes, so the ascription of commands to God are to be understood in terms of their intermediate natural causes and it is these that we must look to in order to understand the rationality of these laws. The extension of the reasoning regarding God's actions in general to His commandments in particular at the beginning of Maimonides' discussion of *Ta'amei ha-Mitzvot* does more therefore, than simply establish that the latter like the former are 'good and excellent' rather than futile, frivolous or vain. What it does is sets up the naturalistic parameters to which the subsequent investigation into the commandments must adhere. Thus, the generally scientific nature of the investigation is made clear from the outset.

This discussion also brings out a further important point about Maimonides' rationalisation. For we have said that we are looking at the purposes of the law and equated this with looking at their natural causes. And it is significant that Maimonides uses 'purpose' and 'cause', along with a number of other terms interchangeably in his discussion of rationalising the commandments as is made clear in the following passages.

There is a group of human beings who consider it a grievous thing that *causes* should be given for any law; what would please them most is that the intellect would not find a *meaning* for the commandments and prohibitions. What compels them to feel thus is a sickness that they find in their souls. . . . For they think that if those laws were *useful* in this existence and had been given to us for this or that *reason*, it would be as if they derived from the reflection of some intelligent being. If, however, there is a thing for which the intellect could not find any *meaning* at all and that does not lead to something *useful*, it indubitably derives from God; for the reflection of man would not lead to such a thing. It is

as if, according to these people of weak intellects, man were more perfect than his Maker; for man speaks and acts in a manner that leads to some intended *end*, whereas the deity does not act thus, but commands us to do things that are not useful to us and forbids us to do things that are not harmful to us. (*GP*, II:31, 523-4, emphasis added).

There are also people who say that every commandment and prohibition in these Laws is consequent upon *wisdom* and aims at some *end*, and that all Laws have *causes* and were given in view of some *utility* (*GP*, III:26, 507, emphasis added).

That Maimonides equates uncovering the wisdom of the commandments with uncovering their causes, utility and end, as well as with explaining their meaning can be attributed to his Aristotelianism, most particularly his Aristotelian concept of explanation.¹³ In order therefore to understand these links we must first look at the Aristotelian account of explanation.

3. The Aristotelian Conception of Scientific Explanation

The concept of explanation is central to Aristotle's view of scientific knowledge or *episteme*. For Aristotle, we can only gain deep understanding of something if we know 'the why' of it (*to dia ti*), the explanation that tells us what it is and how it has come to be such as it is. Moreover, Aristotle identifies understanding the 'why' of a thing with grasping its primary cause (*he prote aitia*).

Knowledge is the object of our inquiry, and men do not think they know a thing till they have grasped the 'why' of it (which is to grasp its primary cause).¹⁴

Thus, for Aristotle scientific knowledge requires explanation and having an explanation is a matter of having causal knowledge. However, we should note that the relationship between Aristotle's causes and our modern day notion of causation is a subject of some debate.¹⁵ Certainly for Aristotle understanding involves explaining *why* something is so, which is to cite its cause in a broad sense of the word. Moreover, Aristotle himself famously gives us his doctrine of the four causes. However, many scholars believe that we would do better to refer to these as the four 'because's' since we can make far better sense of what Aristotle writes if we understand him as being concerned more with types of explanation than with our modern notion of causation.¹⁶ Though we will sometimes retain the traditional terminology of causation in the ensuing discussion, it is this view that Aristotle is primarily giving an account of explanation that we will be following.

What then are these four 'causes' that yield explanatory knowledge? The material, formal, efficient and final causes are four different ways of answering the 'why'

question, a question that needs to be answered if we are to gain *episteme*. However, these four ‘causes’ are not four different ontological causes but are rather four ways of referring to the two ontological factors that are fundamental to explanation for Aristotle: form and matter. The material cause refers to the matter and the other three causes refer to the notion of form in differing ways.¹⁷ This latter concept of form is the fundamental explanatory concept in Aristotelian science. Indeed, according to Aristotle the fundamental explanatory premises of science are simply definitions that state what the forms of the various substances are. These forms, to which in the end result matter is subordinated, are the essential natures of substances that account for their being what they are.

Maimonides, as Pines points out, shares the Aristotelian idea that science should aim to ‘set forth the causes of the physical phenomena and disclose their natural order.’¹⁸ Moreover, the concept of form holds the same fundamental position in Maimonides’ thought as we see in the very first chapter of the *Guide* where he writes in his explanation of the term ‘image’ as predicated of God:

The term *image* is applied to the *natural form*, I mean the notion *in virtue of which a thing is constituted as a substance and becomes what it is.* (*GP*, I:1, 22, emphasis added).

We see, therefore, that if the Maimonidean rationalisation wishes to furnish us with knowledge of the reasons for the commandments, this will involve finding the explanation of the subject matter, which involves grasping its ‘causes’. And for our purposes, it is the Aristotelian idea of final or teleological explanation that is most central for it is this that Maimonides makes use of in his rationalisation and that allows us to account for his use of ‘explanation’, ‘causation’ and ‘purpose’ as virtual synonyms.

There is much controversy over how to interpret Aristotelian teleological explanation. What is not controversial though is that final causes in Aristotle explain something by being that for the sake of which something is done or exists. Thus, in natural science, teleological explanation is especially found in biology, where it explains how a part of an organism contributes to the realisation of that organism’s functioning and development. The ‘purpose’ is the *explanans* that renders the *explanandum* intelligible. The idea that certain things in nature are *for* something is therefore quite acceptable and does not require that one to impute conscious aims and purposes to nature, an idea that

has led many to dismiss Aristotelian natural teleology as an interesting but ultimately obstructive part of the history of science.¹⁹

What appears to interest Maimonides here though is the idea of teleology as what Wieland terms a concept of reflection: by ascribing a certain purpose to something we can enquire what the necessary conditions are for it to be achieved.²⁰ This is the Aristotelian notion of hypothetical necessity, a necessity that works backwards from the end to the process that would achieve that end. Thus with manmade artefacts we see the notion of hypothetical necessity at work in the deliberation of the artisan. If, for example, one is making a saw to cut wood, it must be made of a material capable of carrying out that function. Thus the end determines the form that the artefact must take and indeed the process of its production. This hypothetical necessity in the formation of artefacts is not a mysterious form of backwards causation but is the necessity of rationality which is present in the deliberation of the agent that allows us to reason backwards from the end to understand the process responsible for achieving it. What is immediately apparent here is the appearance of a normative rational element in the Aristotelian notion of explanation and thus Maimonides can utilise this Aristotelian concept of teleological explanation as a way of making the *rationality* of the commandments manifest.²¹

However, having a teleological explanation for something is not in itself sufficient to produce scientific knowledge of it. In order for something to qualify as *episteme*, and for us to therefore have a scientific explanation there are further constraints that have to be met as we see from the following passage

We think we understand something *simpliciter* (and not in the sophistical way incidentally) when we think we know of the explanation because of which the object holds that it is its explanation, and also that it is not possible for it to be otherwise. It is plain then that to understand is something of this sort. . . . Hence, if there is understanding *simpliciter* of something, it is impossible for it to be otherwise.

Whether there is also another type of understanding we shall say later: here we assert that we do know things through demonstrations. By a demonstration I mean a scientific deduction; and by scientific I mean a deduction by possessing which we understand something.

If to understand something is what we have posited it to be, then demonstrative understanding in particular must proceed from items which are true and primitive and immediate and more familiar than and prior to and explanatory of the conclusions. (In this way the principles will also be appropriate to what is being proved). There can be a deduction even if these conditions are not met, but there cannot be a demonstration - for it will not bring about understanding.²²

It appears from here that there are two basic conditions for *episteme*: knowing the explanation for something (as discussed above) and knowing that the conclusion cannot be otherwise, i.e. scientific knowledge must be of necessary truths. Moreover, we see from this passage that a scientific explanation must be demonstrative. Let us begin with this latter idea first.

For Aristotle, not every deductive syllogism yields scientific knowledge, for scientific knowledge must be the result of a demonstration which is a deduction in which the premises are true, primitive, immediate, more familiar than, prior to, and explanatory of the *explanandum*.²³

The most basic idea that Aristotle is appealing to here is that a scientific body of knowledge must form an axiomatic system. Such a system, of which Euclid's geometry is usually taken as the paradigm, takes a few true and certain simple principles or axioms as primary truths and derives by deductive proof all the other truths or theorems of the subject. The primary truths themselves though are not demonstrable but are rather acquired by induction, or the repeated perception of particulars through the intellectual virtue of *nous*. This is what Aristotle means when he writes that the premises must be primitive and immediate.²⁴ From these we deduce certain conclusions and from these conclusions in turn we deduce further conclusions. Thus a system of scientific knowledge for Aristotle is a stack of demonstrative syllogisms that can be traced back in the first instance to true and non-demonstrable first principles.

In a system such as this, the axioms must also be more familiar than and prior to the conclusions. These two conditions, held by Barnes to be equivalent,²⁵ are interpreted to mean that we must know the axiom, *P*, in order to know the conclusion, *Q*, but not *vice versa*. Finally, this in turn entails that the axioms also fulfil the final condition of being explanatory of the resultant theorems. The point here is that, to take Aristotle's example, we could deduce from the facts that certain planets do not twinkle and that nearby planets do not twinkle, that these planets are near. But these facts do not explain their being near. What we have in this case is what Aristotle would term a 'syllogism of the that' which allows us to infer facts but does not give us an explanation. What we want in our explanatory system is a 'syllogism of the because', one in which the premises explain the conclusions – the planets do not twinkle because they are near and not *vice versa*. It is this relationship that is the final condition on the premises of a demonstration.²⁶

Aristotle's second condition of scientific knowledge - that it can only be of necessary rather than contingent truths - though very difficult for the modern scientist to accept, can at least be explained from Aristotle's own perspective by recalling that for Aristotle, our scientific deductions must begin from definitions that state the forms of natural kinds. Thus, we begin with a statement that describes a certain natural necessity, an essential truth about a certain kind. But these statements of essences are statements of *de re* necessities rather than *de dicto* ones and Aristotle is not therefore claiming that scientific truths need be logically necessary truths. Rather, the truths that Aristotle is concerned with here are the fundamental (and necessary) laws of nature that state essences.²⁷ What is important is that being statements about forms, these premises will fulfil the various conditions that the premises of a demonstration need to fulfil.

What we find then is that in an Aristotelian science, we deduce the characteristics a given substance has in virtue of its essential nature as stated in a basic definition. Thus, we begin from 'necessary' premises and proceed deductively i.e. in a necessity preserving fashion, through further 'necessary' premises to what will therefore be 'necessary' conclusions. We can therefore at least understand why Aristotle might have believed that scientific knowledge must be of necessary truths at least in the *de re* sense, though of course many would continue to question this general picture of science as a body of such deductively linked *de re* necessities,²⁸ that cannot yield knowledge of particular facts or events but only of necessary laws.²⁹ Indeed, it has often been noted that Aristotle himself does not stick to the demonstrative model in his scientific writings, though it does seem to be the ideal form that he believes a scientific system should take.³⁰

To conclude this brief examination of the Aristotelian model though, what we see is that a scientific explanation must be 'causal' in Aristotle's sense, proceeding deductively from true and necessary 'definition-stating' first principles that among other things are themselves non demonstrable. And we should note that whatever the defects of the model, as Ackrill has pointed out, 'we can safely credit Aristotle with the important idea that sciences aim at generalisation and simplicity'.³¹ What is of major significance for us is that Maimonides takes just such a scientific approach and extends its sphere of application from nature to the rationalisation of the commandments.

4. Maimonides' teleological rationalisation of the commandments

We have said that Maimonides makes use of teleological explanations in his rationalisation of the commandments. How though do final causes rationalise the commandments? Very simply, God's revelation is shown to be rational in virtue of its being effectively directed to a certain specified end. As Eliezer Goldman notes, the rationality that is exhibited here is that of Weber's means-end rationality which is an important aspect of rationality in action.³² For Maimonides, again emphasising the parallel with nature, just as God has arranged nature so that things have been created such that they realise certain ends or structures, the laws that He has commanded are similarly to be explained in terms of what they are 'for the sake of.'

In order, therefore, to give a teleological explanation we will need to find what the ends that the commandments aim at are. Maimonides thinks it obvious that the commandments were given in order to bring about the perfection of man, and this would be the realisation of his form. However, the question of what for Maimonides constitutes man's perfection has been hotly disputed.

According to Maimonides, the commandments aim at two distinct types of human perfection – that of the body and that of the soul.

The Law as a whole aims at two things: the welfare of the soul and the welfare of the body. As for the welfare of the soul, it consists in the multitudes acquiring correct opinions corresponding to their respective capacity. . . . As for the welfare of the body, it comes about by the improvement of their ways of living with one another. (*GP*, III:27, 510)

As such, the commandments themselves can be split into intellectual commandments that were given to communicate a true opinion and perfect our souls, moral commandments that are there to build our moral character, and practical commandments that are there either to train one in acquiring the aforementioned intellectual and moral perfections or to regulate society. Thus, each commandment is related to either the intellectual or practical goal.

The True Law then . . . has come to bring us both perfections, I mean the welfare of the states of people in their relations with one another through the abolition of reciprocal wrongdoing and through the acquisition of a noble and excellent character. . . . I mean also the soundness of the beliefs and the giving of correct opinions through which the ultimate perfection is achieved. (*GP*, III:27, 511).

However, as hinted at in this paragraph by his use of the term 'ultimate perfection', for Maimonides the two aims of the Law are arranged in a hierarchical order just as they are in Book X of Aristotle's *Nichomachean Ethics*.

[K]now that between these two aims one is indubitably greater in nobility, namely the welfare of the soul. (GP, III:27, 510).

The final end for man appears therefore, to be theoretical rather than practical for Maimonides as he states quite unequivocally in a number of places in the *Guide*.³³

The fourth species is the true human perfection; it consists in the acquisition of the rational virtues - I refer to the conception of intelligibles, which teach the true opinions concerning the divine things. This is in true reality the ultimate end; this is what gives the individual true perfection, a perfection belonging to him alone; and it gives him permanent perdurance; through it man is man. (GP, III:54, 635).

This theoretical perfection which is gained by knowledge of God and 'divine things' is, of course, the form of man and as such is the fundamental explanatory concept in rationalising the commandments. Thus, since man's form is the starting point for a teleological explanation of the commandments Maimonides can therefore give a scientific explanation of the rationality of the commandments in terms of a causal connection between them and man's form. The commandments are rationalised either by virtue of their directly furthering the ultimate end by teaching true beliefs or by virtue of indirectly serving this end by inculcating moral virtues or being useful for society. The Torah is seen as a means to achieving these ends to the extent that is possible for all society. Moreover, since the Maimonidean explanations begin from our knowledge of the form of man we are able deduce the commandments from starting points that fulfil the various conditions of truth, necessity, 'primitiveness' etc.

However, there are problems with saying that Maimonides believes that we can have scientific knowledge of the commandments given that the commandments are often said by Maimonides to come under the rubric of generally accepted opinions and not primary intelligibles. Thus with regard to the Decalogue he writes that

the existence of the deity and His being one, are knowable by human speculation alone. . . . As for the other commandments, they belong to the class of generally accepted opinions and those adopted in virtue of tradition, not to the class of the intellecta. (GP, II:33, 364).³⁴

This being so we would be unable to talk of scientific knowledge in the sphere of the practical for it seems that we could not speak of them as necessary truths of the sort that

scientific deductions are supposed to produce. Indeed, the practical norms delivered by practical reason are said not to be susceptible of truth and falsity at all in the following famously problematic passage where Maimonides deals with the fall of man.

Through the intellect one distinguishes between truth and falsehood, and that was found in [Adam] in its perfection and its integrity. Fine and bad on the other hand, belong to the things generally accepted as known, not to those cognised by the intellect. . . . Now man in virtue of his intellect knows truth from falsehood; and this holds good for all intelligible things. Accordingly, when man was in his most perfect and excellent state, in accordance with his inborn disposition and possessed of his intellectual cognitions... he had no faculty that was engaged in any way in the consideration of generally accepted things and he did not apprehend them. (*GP*, I:2, 24-25).

It seems from this passage that according to Maimonides only the theoretical intellect deals with truth and falsity whilst the practical intellect deals with the relative distinction between the good and the bad. Such a distinction between the theoretical and practical sciences is apparently problematic for my contention that Maimonides is attempting to set up a science of practice in his rationalisation of the commandments equivalent to the science of nature.

The fundamental question here is whether or not Maimonides thought that the practical sphere was cognitive. Marvin Fox takes the view that he did not.

Maimonides has shown us that since moral rules are non-cognitive, they cannot be true or false and therefore cannot be the concern of the intellect. If all ethical distinctions are purely conventional, then it is a matter of special importance that we have the divine ethical teaching that alone can save us from the arbitrariness of social convention and positive law.³⁵

In opposition to this reading, Hermann Cohen famously argued as part of his general argument for a more Platonic reading of Maimonides, that like Plato, Maimonides held that ethics should be seen as a science. Indeed, since according to Maimonides we cannot know God's essence but only His ethical actions, knowledge of ethics becomes the highest form of knowledge since it is identified with knowledge of God.³⁶ The view that we will put forward here combines what is correct in both Cohen and Fox for I will argue that Maimonides would apply the appellation 'scientific' to the practical realm of the commandments of the Torah, though not to the ethical or practical realm *per se*.³⁷

Let us begin by noting that we wish to hold that for Maimonides the exercise of the theoretical intellect on the intelligibles is the ultimate perfection for man. As such it might appear as if we could not include knowledge of practical affairs by means of the practical intellect as a part of this perfection. Indeed, Howard Kreisel has noted that

Maimonides never explicitly mentions the Aristotelian idea of the practical intellect in order specifically to emphasise that ethics and politics are not subject matters for the intellect *per se*.³⁸

However, that does not imply that the realm of the commandments is not a realm for intellectual cognition. This can be made clear if we look at the way in which Maimonides distinguishes between secular and religious morality. According to Maimonides, human systems of ethics are geared exclusively to the lesser perfection of the regulation of society whilst the divine law on the other hand is connected to the final contemplative perfection of man.

Accordingly if you find a Law the whole end of which and the whole purpose of the chief thereof, who determined the actions required by it, are directed exclusively toward the ordering of the city and of its circumstances and the abolition in it of injustice and oppression; and if in that Law attention is not at all directed toward speculative matters, no heed is given to the perfecting of the rational faculty, and no regard is accorded to opinions being correct or faulty . . . you must know that that Law is a *nomos* and that the man who laid it down belongs, . . . to those who are perfect only in their imaginative faculty.

If, on the other hand, you find a Law all of whose ordinances are due to the attention being paid, as was stated before, to the soundness of the circumstances pertaining to the body and also to the soundness of belief – a Law that takes pains to inculcate correct opinions with regard to God, may He be exalted in the first place, and with regard to the angels, and that desires to make man wise, to give him understanding, and to awaken his attention, so that he should know the whole of that which exists in its true form – you must know that this guidance comes from Him, may He be exalted, and that this Law is divine. (*GP*, II:40, 383-384).

Maimonides therefore distinguishes between general morality and religious morality by virtue of their *telos*. As Kreisel writes, in Maimonides' system 'it is the ultimate *telos* of the order which determines the form it takes and our evaluation of it.'³⁹

What all of this means in our Maimonidean context is that certain people will not have the systematic scientific knowledge of the commandments that relates them to their final contemplative end. They will only reach a lesser cognitive state that allows them to see the link to some moral end, which establishes the system as one traditional and conventional ethical system amongst others. This sort of cognitive state would enable them to form Aristotle's practical syllogisms but not scientific demonstrations for the commandments that derive them from the ultimate form of man and establishes their laws as true and certain.

It is this that distinguishes a secular system from a religious system of morality. Religious morality is elevated from the status of a generally accepted opinion since the whole system is related to the higher contemplative end of theoretical perfection. This

relationship, once cognised, allows us to gain scientific knowledge of the commandments and this distinguishes the divine law from the ethical systems put into place by human rulers which are not necessarily related to that end at all. As Kreisel writes, the systematisation itself causes a qualitative change in the status of these laws.

In changing the ultimate telos of the prohibitions of conventional morality and directing them to the attainment of intellectual perfection, the Divine Law changes the very essence of these prohibitions.⁴⁰

Thus, we are arguing that it may be true that the intellect proper is the theoretical intellect and we can only directly cognise the forms that are its object. However, we can raise the status of our cognition of the practical sphere to that of scientific knowledge by drawing out the relationship of these practical matters to the form of man that serves as their end. Fox's contention that according to Maimonides *moral* rules are non-cognitive is therefore correct in a sense, for as long as these rules remain in a purely moral setting devoid of any relationship to God, they cannot be known in the fullest sense. They need to be placed within a religious context in order for us to understand them in their full cognitive light. According to Maimonides therefore we can have genuine knowledge of these commandments but only if we can gain the necessary explanatory knowledge of them that relates them to the ultimate end for man.⁴¹

Given this interpretation of Maimonides, how are we to understand the problematic passages quoted above? I believe that a careful reading of them shows that they make our epistemological distinction between different levels of knowledge rather than a metaphysical distinction that relegates the commandments in themselves to some lesser status than that of scientific truths. Taking the passage relating to Adam's fall first, Maimonides tells us that Adam was originally endowed with intellect and that

It was because of this that it was said of him that he was created in the image of God and in His likeness. It was likewise on account of it that he was addressed by God and given commandments, as it says: And the Lord God commanded, and so on. For the commandments are not given to beasts and beings devoid of intellect. Through the intellect one distinguishes between truth and falsity. (*GP*, I:2, 24)

What is significant here is that according to Maimonides, commandments were only given to Adam on account of his being endowed with an intellect that can distinguish between truth and falsity. The implication seems to be that, as we have argued, Maimonides believes that a divine system of Law – the commands - can be known by

the intellect. And Adam originally had such total demonstrative knowledge of the divinely ordained ethical norms.

Moreover, this interpretation allows us to answer one of the more general questions that people have regarding Maimonides' account of the 'fall'. For according to Maimonides, Adam originally only knew the distinction between truth and falsehood and not that between fine and bad, which he only acquired after his sin. The problem many people have with this explanation is that it seems paradoxically as if Adam has gained something rather than lost something as a result of his sin. i.e. knowledge of good and bad. However, according to our explanation what Adam originally had was the scientific knowledge of the commandments that comes as a result of philosophical speculation. After the fall though this knowledge is lost and he is therefore left in the lesser cognitive state that one has of a secular ethical system i.e. in terms of generally accepted standards of goodness and badness rather than in terms of their link to indisputable first principles. Adam becomes 'absorbed in judging things to be bad or fine.' (GP, I:2, 25).

The passage relating to the Decalogue at II: 33 is far more difficult to deal with.⁴² There Maimonides explicitly writes that excepting the first two, the commandments of the Decalogue 'belong to the class of generally accepted opinions and those adopted in virtue of tradition, not to the class of the intellecta.' (GP, II:33, 364). Nonetheless, if we look at this sentence in the context of the whole passage, it seems to me that we can understand this phrase in terms of our epistemological distinction. The chapter at this point is discussing a quote from the midrash on Song of Songs I: 2 which says that only the first two commandments were heard directly from God by all the people, the remainder being communicated to them by Moses. Maimonides goes on to explain this in the following way:

For these two principles, I mean the existence of the deity and His being one, are knowable by human speculation alone. Now with regard to everything that can be known by demonstration, the status of the prophet and that of everyone else who knows it are equal; there is no superiority of one over the other. Thus these two principles are not known through prophecy alone. The text of the Torah says: Unto thee it was shown, and so on. As for the other commandments, they belong to the class of generally accepted opinions and those adopted in virtue of tradition, not to the class of the intellecta. (GP, II: 33, 364).

We are initially told that regarding the first two commandments the status of the knowledge of the prophet and that of everyone else is the same. The implication in what follows - 'As for the other commandments. . .' - is that this somehow contrasts with the

remaining eight commandments and it would appear logical for the contrast to be that with respect to these commandments the cognitive states of the prophet and the masses differ, with the prophet presumably being in the stronger cognitive position. However, if these eight commandments are essentially in themselves ‘generally accepted opinions’ (or adopted by of virtue tradition) and cannot be known, then the two groups could not have different levels of cognitive awareness with respect to them. Regardless of whether you were a prophet or a member of the general public, they would remain generally accepted opinions’. If, however, we understand the phrase regarding the status of the last eight commandments as telling us about the manner in which they are generally appropriated by the masses, then we can argue that they are not essentially ‘opinions’. They *can* be known, but only by the prophet who can locate them within the sort of ultimate rational system that we have been discussing. What we are being told therefore is that in contrast to the first two commandments, which the masses can know in the same way as the prophet, the final eight are only ‘generally accepted opinions’ as far as the masses are concerned. If the problematic sentence is relativised to the masses we can again see it as referring to our epistemological distinction. On such a reading the passage as a whole seems to make more sense.

The intellectual religious task that remains for Maimonides therefore is to reconstruct this knowledge so as to come to know the commandments in their relationship to the ultimate end for man. Such a reconstruction is no easy task and Maimonides himself does not actually believe that he can construct such a system. Though all of the laws do have reasons, ‘we ignore the causes for some of them and we do not know the manner in which they conform to wisdom.’ (GP, III: 26, 507).⁴³ Thus whilst there is a cause for each commandment, this does not mean that we can always access them. As Stern puts it, we must separate the ontological claim that the commandments have causes from the epistemological point that we may not always be able to discover them. Indeed Maimonides gives specific reasons for our inability to understand certain commandments as being either because of ‘the incapacity of our intellects or the deficiency of our knowledge’ (*Ibid.*), points that we shall return to later

Nonetheless, Maimonides believes that in principle there is an ideal scientific demonstration of the commandments that could be reconstructed by utilising the explanatory method. He attempts to give us the ‘why’ of the commandments by showing how they fit into an overall theory that begins from minimal (by Maimonidean

standards) universal and necessary assumptions about human nature which allow for the deduction of the entire system of commandments. Thus, I would agree with Twersky who writes that the rationalisation of the commandments is an entirely deductive enterprise for Maimonides which 'at least in part is as precise and objective as any scientific discipline.'⁴⁴

However, whilst this form of explanation seems viable for the moral laws, it is more problematic for many of the ritual laws or *huqqim* where it seems to be more difficult to see how they could possibly connect to the ultimate end. How for example does the sacrificial cult lead to man's perfection? Maimonides, therefore, has to supplement his teleological explanations with historical/genetic explanations. The most informative example to look at in this connection is his explanation of sacrifices.

5. The rationalisation of sacrifices and genetic explanation

Maimonides believed that *all* the Laws have a cause.

It is, however, the doctrine of all of us - both of the multitude and of the elite - that all the Laws have a cause, though we ignore the causes for some of them and we do not know the manner in which they conform to wisdom. (GP, III:26, 507).⁴⁵

Such a thoroughgoing intellectualism seems to be a new departure. Whilst traditionally the *mishpatim* (judgements) were identified with general morality and accepted as laws that could be seen to be rational, the commandments known as *huqqim* (statutes) were believed to be dependent entirely upon the will of God and not susceptible to any such rational backup. Maimonides though recasts this distinction by saying that the only difference between these two categories is the transparency of their utility to the multitude. The utility of the *mishpatim* is clear to the multitude, whilst that of the *huqqim* requires more research. He believes that such a thoroughgoing intellectualism is licensed by Deuteronomy 4:6.

For this is your wisdom and your understanding in the sight of the nations which shall hear all these statutes and say, 'Surely, that great nation is a wise and discerning people.' (Deuteronomy 4:6).

How, the argument goes, could the nations of the world appreciate the wisdom and understanding of the Jewish people through their statutes if they are unintelligible in principle? Rather, there must be universal criteria of truth that we all share and that can be used to rationalise these laws.

How though can they be understood to be rational? Essentially, Maimonides does not deviate from the teleological model of explanation that we have been discussing. He rationalises sacrifices by subsuming them under the general category of laws of worship in which Gods 'first intention' was 'the apprehension of Him, may he be exalted, and the rejection of *idolatry*,' (GP, III:32, 527) which is part of the final intellectual perfection. Thus, the sacrificial laws were commanded in order to communicate 'correct opinions' to the masses and their instrumentality in producing this goal gives a teleological explanation of them akin to those given for the *mishpatim*. However, this explanation as it stands is extremely problematic since there does not seem to be any reason to assume that the sacrificial laws were either a necessary or sufficient condition for the communication of these correct opinions. Indeed, the sacrificial cult is a prominent part of what Maimonides refers to as the Sabian culture, the ancient polytheistic culture that utilised myth and magic in order to serve the stars and that according to Maimonides the Torah laws were supposed to be *effacing*. How therefore, would laws that incorporate seemingly idolatrous practices serve to produce correct opinions? In order therefore to give a full rationalisation of these commandments Maimonides supplements the teleological structure by adding a genetic or historical explanation. Such explanations explain the evolution of a certain system out of an earlier system, using historical information about the past together with certain general assumptions about the causal relevance of this information to the evolution of the system.

In the case of sacrifices therefore we find that Maimonides gives us a description of the Sabian modes of worship and explains how they were relevant to the evolution of the Judaic sacrificial cult via the psychological fact that people who become accustomed to certain ideas are unable to adopt a wholesale revision of those ideas. Had God commanded the abolition of sacrifices during that historical period it would have seemed to the people to be tantamount to abandoning the only possible form of worship. Taking this into account, God prescribed a modified version of the sacrificial cult, thereby safeguarding the people's trust in the law and purifying the sacrificial cult of all its idolatrous elements thus transforming it into a more legitimate form of worship.⁴⁶ Thus Maimonides combines certain psychological generalisations about human nature with historical information about the Sabian culture in order to show that the system of sacrifices were a kind of divine trick (termed 'wily graciousness' by

Maimonides). The trick consisted of God using modified idolatrous practices in order to wean the people *off* idolatrous worship altogether.

If you consider the divine actions - I mean to say the natural actions - the deity's wily graciousness and wisdom, as shown in the creation of living beings, in the gradation of the motions of the limbs, and the proximity of some of the latter to others, will through them become clear to you. . . . Many things in our Law are due to something similar to this very governance on the part of Him who governs. . . . For a sudden transition from one opposite to another is impossible. And therefore man, according to his nature, is not capable of abandoning suddenly all to which he was accustomed. . . . For just as it is not in the nature of man that, after having been brought up in a slavish service occupied with clay, bricks, and similar things, he should all of a sudden wash off from his hands the dirt deriving from them and proceed immediately to fight against the children of Anak, so it is also not in his nature that, after having been brought up upon very many modes of worship and of customary practices, which the souls find so agreeable that they become as it were a primary notion, he should abandon them all of a sudden. (*GP*, III:32, 525-8).

What we see here when faced with the *huqqim* is a clash between the ideal of what worship of God should be like and the demands of human nature given the historical circumstances of the legislation. Sacrifices are rational for they were necessary, given the exigencies of human nature, as a means to the final end of intellectual perfection. In general though we still end up with a teleological method of explanation for all the commandments and the genetic explanation merely shows how the *hukkim* are directed towards mans final end by God's wisdom.⁴⁷

There is though a problem with how these genetic explanations fit into the scientific model of rationalisation that we have been attributing to Maimonides. For these explanations must include mention of particular facts and therefore our explanations will not exclusively take the form of a deductive chain of necessary truths. In order to deal with this problem we need to distinguish between Maimonides' own model of rationalisation and what we can call the Maimonidean method of rationalisation. From Maimonides' own perspective, it does appear difficult to assimilate these historical explanations into the Aristotelian scientific system that we have described. One could argue that Maimonides might understand the particular historical facts contained in his explanations as expressing general deterministic trends in nature that could form part of a scientific rationalisation. Thus, we could see the particular facts from a 'universal perspective', as representing universal necessary truths about humanity.⁴⁸ Or, in keeping with the Aristotelian model, we might wish to say that Maimonides' pure teleological explanations are the ideal and that these genetic explanations would not form part of the ideal system. The textual evidence is at best ambiguous regarding

whether Maimonides thought that his system of rationalisation was absolute or whether he expressed some reservations concerning certain rationalisations.⁴⁹

However, as we have previously mentioned, the disregard for particulars in a scientific explanation seems to show up a fault in Aristotle's theory of scientific explanation rather than in the use of particular empirical facts. If therefore we were to admit such particular empirical facts into the structure of scientific explanation, we might be able to talk of a Maimonidean approach to the commandments that construe genetic explanations as genuine scientific explanations. This option is indeed open to us by virtue of the model of explanation put forward by Carl Hempel in his article 'The Function of General Laws in History'.⁵⁰

According to Hempel, the understanding of a historical event, E, can be modelled on the hypothetico-deductive model of scientific explanation. Understanding a historical event E consists in our ability to explain or predict it by 'indicating the causes or determining factors of E'.⁵¹ A full explanation therefore involves citing the antecedent causal conditions ($C_1 \dots C_n$) together with empirically well confirmed general laws ($L_1 \dots L_n$) that link these conditions to E in a lawlike fashion. From these factors we can deduce E in a logical fashion and we thereby understand the historical event as an instance of a general law, just as we would understand a natural event.

Hempel admits that the general laws used in historical explanations are often not cited, but this is only because we either take them for granted or cannot state them in the precise manner required for a scientific explanation. Nevertheless, the relations of dependence between the various historical events that the historian should be studying are related in a lawlike fashion. Nagel similarly admits that though certain social sciences cannot develop the degree of systematisation of the natural sciences, their explanatory objective is the same and the establishment of these relations of dependence between events is the mark of a scientific enterprise.

Returning now to Maimonides, the claim is that his approach to the commandments remains scientific if we construe his historical explanations in this way. This is not to say that Maimonides had a fully worked out Hempelian theory of historical explanation. Certainly Maimonides is no positivist, believing as he does that there are real causal mechanisms that the scientific explanations are setting out. However, it seems to me that Maimonides' explanations do naturally lend themselves to such an explication. He does give us a set of antecedent conditions together with psychological laws, some

explicit, others implicit and thus the approach can be seen to remain scientific in the Hempelian sense. So though for Maimonides these explanations would not be scientific in the strict Aristotelian sense, a modern day theorist who wished to use a Maimonidean method could be said to be taking a scientific approach in his use of such explanations. If therefore we speak of the Maimonidean method of rationalisation, we can portray it as an attempt to explain why the commandments should be as they are or could have been predicted to be so by appeal to scientific explanations in the most general sense. The Maimonidean method of rationalisation is an attempt to give us a scientific explanation of the commandments in the sense to which Von Wright appeals when he writes of explanation that is causal in a 'broad sense'.

It consists, more specifically, in the subsumption of individual cases under hypothetically assumed general laws of nature, including human nature.⁵²

6. Critique of The Maimonidean Method (1): The Genetic Attitude

The Maimonidean approach to rationalising the commandments raises a number of issues and for the remainder of the chapter we will be focusing briefly on some of the most salient points that arise out of the criticisms that have been levelled at it. Most significantly, Soloveitchik has written that the Maimonidean rationalisation is 'entirely valueless for the religious interests we have most at heart.' (HM, 92). Soloveitchik seems to believe that the Maimonidean approach is not relevant for the religious philosopher who should rather approach religious phenomena descriptively.

The 'how' question, the explanatory quest, and the genetic attitude determined Maimonides' doctrine of the commandments. Instead of describing, Maimonides explained, instead of reconstructing, he constructed. (HM, 92).⁵³

The religious philosopher, according to Soloveitchik,

is not interested in the genetic approach to the religious act nor does it raise the old problem of causality. It by-passes the 'how' question and turns it over to explanatory psychology. The focal problem is of a descriptive nature: What is the religious act? What is its structure, context and meaning? (HM, 86).

If we look at these two quoted passages from Soloveitchik, we see that he mentions three related things that are wrong with the Maimonidean approach to religious philosophy: the genetic attitude, the concern with causality and the concern with

explanation. We will structure our discussion therefore around these three interrelated issues, beginning with the alleged problem with the genetic attitude.⁵⁴

Why is the genetic attitude thought to be irrelevant? The first point to recall is that as previously noted Maimonides is interested in the commandments from a ‘normative’ standpoint. He wants to know why it would be rational to perform or command the commandments rather than why an agent performs or commands a certain action (though of course the two can and often do coincide). The problem though, given this interest, is that he seems to be open to accusations of committing the genetic fallacy.

The claim is that the historical origins of a practice are not relevant to its validity. Thus Nietzsche for example pointed out that though the institution of punishment has very dubious origins, this is no reason to abandon it; its validity is not affected by these origins.⁵⁵ As Soloveitchik writes

The truth of the matter is that the genetic background of a certain method does not in the least affect its cogency and validity. The ‘logos’ as a normative agent is still authoritative regardless of its ‘biography.’ Whatever be the psychological history of geometry, Pythagoras’ theorem is autonomously valid. (HM, 88).

Effectively Soloveitchik therefore is accusing Maimonides of missing the point by arguing for the rationality of a commandment from its evolutionary history when historical origins are of no consequence for the rationality of the commandment.

However, we should not accuse Maimonides of committing this fallacy quite so quickly for in fact his genetic explanations are not meant to be relevant to the validity of the commandments, at least not on their own. As we have argued, they are a supplementary stage in the Maimonidean rationalisation which is, for some commandments at least, a two-stage process:

1. A commandment is rational if it is a means to the moral/intellectual perfection of man.
2. Certain commandments do not appear to stand in such an instrumental relationship to these ends and must therefore be explained genetically in order to show how they fit into this teleological structure.

Thus, the genetic explanations are not meant to be free standing. The point of them is to show how ritual laws that seem *prima facie* to be irrelevant to the ends posited as the purpose of the commandments do after all lead the people to these ends. This means that Maimonides does not commit the genetic fallacy. His causal story is not meant to

be a free standing rationalisation of the commandments whose validity or rationality is still analysed in terms of their teleological relationship to man's natural (and thereby for Maimonides normative) end rather than in terms of their causal origins. The genetic explanations are only relevant to the Maimonidean rationalisation given its general teleological structure; once we situate the genetic explanations within this teleological framework we see that Maimonides is only interested in them as an explanation of how certain commandments can be understood to be causal means to man's natural end.

However, regardless of the validity of the criticism that Maimonides commits the genetic fallacy, there is a further criticism of his use of historical explanations which is the charge that they may lead people to heterodox conclusions. The problems here stem from his use of idolatrous practices in order to explain the *huqqim*. Indeed, such associations in themselves might be problematic in the eyes of many and lead them to doubt the validity of the commandments that have such associations. But the problem that has caused the most discussion in the literature is that the historical explanations imply that commandments like those connected to sacrifices have outlived their usefulness. If the sacrificial laws were understood to be means to the specified end, but only due to the historical circumstances, the fact that these circumstances no longer apply would appear to make it rational to choose more efficient means to the end, means that are more amenable to the modern religious consciousness for example. According to Maimonides' reasoning one could argue that since we are no longer held in thrall by idolatry and understand that one can communicate with God in other ways, by praying for instance, why not pray rather than sacrifice?⁵⁶

The problem then is that the historical approach does not furnish us with any sort of reason to perform the commandments. Indeed, it gives us reason to change them. However, one might answer the charge here by recalling that Maimonides was primarily interested in Stern's commandment question (or Hartman's intelligibility question) rather than in the performance question. It is true that the historical explanations cannot give us a reason today to obey the sacrificial laws. Indeed, from a performance perspective, according to Stern, recognition of these explanations would give me reason not to sacrifice:

[N]ot only is the reason why Israel was originally commanded to offer sacrifices not a reason for me at present to perform that commandment; assuming that I recognise the idolatrous associations of all sacrifice, even in worship of God, knowledge of these historical reasons for the commandment would be reason for me now not to sacrifice.⁵⁷

Moreover, the problem here is not simply that the historical explanations do not constitute a reason for me *at present* to perform the commandment. If we understand the performance question as Stern does i.e. as requiring an answer ‘that a human agent can use to justify his own performance of the commandments’,⁵⁸ then these explanations could *never* furnish an agent with an answer to the performance question. For these explanations show how God is in fact attempting to prevent the people from sacrificing by some sort of divine ruse. Any agent who was able to understand the reason therefore would understand that the commandment was in fact such a ruse and use it as a reason not to sacrifice. We can understand the ruse today, but in order for it to have been effective in the first place, the agent to whom the commandment was addressed must not understand it. Nevertheless, since, according to Stern, the commandment question is Maimonides’ primary concern, his rationalisation is at least a limited success for it does make intelligible God’s commanding these laws.

However, I believe that the problem is more pervasive than these approaches allow, for I do not think that Stern’s commandment question or for that matter Hartman’s related ‘intelligibility’ question, is answered satisfactorily by the historical explanations.

The problem for the performance question was the antinomian conclusion that such explanations lead to; from a performance perspective, the Maimonidean method would seem to allow, if not dictate, the heterodox conclusion that we should change the commandments. It seems to me though that the antinomian conclusions are reached even with regards to the commandment question. This is because, according to Maimonides the commandments are part of an *eternal* law. Thus Maimonides writes

The Law was not given with a view to things that are rare. For in everything that it wishes to bring about . . . , it is directed only toward the things that happen in a majority of cases and pays no attention to what happens rarely. . . . In view of this consideration, it will also not be possible that the laws be dependent on changes in the circumstances of the individuals and of the times, as is the case with regard to medical treatment which is particularised for every individual. . . . On the contrary, governance of the Law ought to be absolute and universal, including everyone, even if it is suitable only for certain individuals and not suitable for others. . . . For this reason matters that are primarily intended in the Law ought not be dependent on time or place; but the decrees ought to be absolute and universal . . . (GP, III:35, 524-5).

If this is a correct understanding of the law, then Maimonides’ historical explanations do not answer Stern’s commandment question since they cannot explain why it was rational for God to command the sacrificial cult as part of an *eternal* law. The historical

explanations only rationalise the commandments, even from the perspective of the commandment question, for a particular time and place. Similarly, they cannot show as Hartman wishes that the laws and nature reveal the same God since the rationalisation would appear to show that the commandments that He has given, unlike the laws of nature, are entirely mutable.

We should note that Maimonides does not draw such heterodox conclusions himself. As we see in the quote above, he believes that the law is 'eternal and absolute'. Our argument is simply that this is not a conclusion that he has a right to derive from his rationalisation.⁵⁹ However, again that it is not the historical explanation alone that is at fault in leading to these heterodox conclusions. If we were to criticise the commandments purely in terms of these historical considerations, we would indeed, be committing the genetic fallacy of judging the validity of the commandments in terms of their causal origins. The real problem is the teleological structure to which these historical explanations are subordinated. The reason we believe that the commandments are no longer rational is because they no longer serve the ends that Maimonides believes once rationalised them. The historical explanations merely serve to make this clear, showing that the ritual commandments no longer stand in any instrumental relationship to these ends. But it is the teleological structure into which they are then inserted that causes the problems of heterodoxy, for the commandments are no longer seen to lead to the end posited by Maimonides as the reason for their existence. The problem therefore is that the commandments are rationalised by Maimonides in terms of a means-end relationship and the historical explanations make it clear that this relationship no longer holds. The historical explanations though are only therefore relevant to our recognition of the rationality or validity of the commandments. But they are not thought to be relevant to the substantive rationality of the commandments themselves.⁶⁰ Thus, whilst the historical part of Maimonides' rationalisation has traditionally come in for the most criticism, it is only when combined with the teleological approach that any problems arise and we now turn therefore to consider the teleological enterprise itself.⁶¹

7. Critique of The Maimonidean Method (2): Teleological Explanations

The question of teleology bring us to the point that Soloveitchik makes under the more general heading of 'causality. For the teleological analysis to work, the commandments

must be understood as ‘causes’ that bring man’s form from potentiality to actuality, though one needn’t necessarily accept all of the Aristotelian metaphysical baggage here to appreciate the general point that is being made. The commandments are a causal means to an end.

Certainly for Maimonides the rationality of the ethical commandments is metaphysically guaranteed by the actual existence of man’s purpose. As we have shown, the concept of purpose as used by Maimonides in his rationalisation is not a subjective psychological state that varies from person to person but an Aristotelian essence that is part of the natural order. Maimonides, in using an Aristotelian paradigm of natural science that appeals to real qualitative essences that underlie real causal mechanisms can therefore appeal to man’s natural form to rationalise the commandments for all of humankind.

Not surprisingly, as we shall see, Soloveitchik rejects the essentialist Aristotelian scientific paradigm. However, once we reject the scientific picture according to which man has a given natural essence, we can no longer justify any set of religious or ethical norms as universally valid or rational by reference to it. Nonetheless, one might wish to justify these norms by appeal to some non-essentialist view of human nature that appeals to certain fundamental psychological needs for example.⁶² Allowing, for the sake of argument, that this is possible, it is interesting to note that Soloveitchik seems to reject the teleological approach *per se*, writing

We are not to ask for any generating cause or goals. (HM, 94).

Why though should this be so? The fundamental problem with this causal approach in general it seems, is bound up with the fact that it leads to a loss of autonomy in Soloveitchik’s eyes.

Whenever the causal question is raised, the philosopher must transcend the boundary line of religion in order to find his answer which lies beyond the religious domain. Both mechanistic and teleological concepts of causality explain the effect through the existence of an alien factor, be it within or without the system. Thus religion must avail itself of foreign elements. The net result of Maimonides’ rationalisation is that religion no longer operates with unique autonomous norms, but with technical rules, the employment of which would culminate in the attainment of some extraneous maximum bonum. In rationalising the commandments genetically, Maimonides developed a religious ‘instrumentalism.’ Causality reverted to teleology (the Aristotelian concept of *causa finalis*) and Jewish religion was converted into technical wisdom (*techne*). (HM, 93).

By explaining the commandments in the way that he does, Soloveitchik seems to believe that Maimonides is sacrificing the autonomy of the religious realm. It is this, for Soloveitchik, that seems to be the main problem with the Maimonidean approach.

8. Critique of The Maimonidean Method (3): Universalism and Autonomy

The problem of autonomy that arises for Maimonides might be thought simply to be that of universalism. That Maimonides believes in universal criteria of rationality rather than any ‘unique autonomous norms’ seems relatively uncontroversial. The main task of the *Guide of the Perplexed* is to show that ones allegiance to Judaism and the Torah, in particular the parables that he terms the Account of the Beginning and the Account of the Chariot, can be reconciled with an allegiance to the demonstrated truths of reason.⁶³

In fact Maimonides identifies these two particular parables with natural science and divine science (or metaphysics) respectively.

Certainly in the theoretical sciences, therefore, Maimonides was convinced by the power of universal reason as it manifested itself in Aristotelian science and philosophy writing that ‘in all things whose true reality is known through demonstration there is no tug of war and no refusal to accept a thing proven - unless indeed such a refusal comes from an ignoramus who offers a resistance that is called resistance to demonstration[.]’ (*GP*, I:31, 66). Indeed, in the realm of theoretical speculation, Maimonides believes that the litmus test of acceptability of the religious texts themselves was their conformity or otherwise to the universal canons of reason. Thus he is able to write

That the Deity is not a body has been demonstrated; from this it follows that everything that in its external meaning disagrees with this demonstration must be interpreted figuratively. (*GP*, II:25, 328).

The theoretical truths of Judaism are therefore the objective truths of science and metaphysics and by his own admission therefore, Maimonides is not adding anything to the purely philosophical arguments on these points ‘for the books composed concerning these matters are adequate.’ (*GP*, II:2, 253).⁶⁴ Universalism is therefore a central tenet of Maimonides’ system and since his rationalisation of the commandments is based on a demonstration from what for him was a universal scientific truth, it appears that such universalism is just as operative in the practical sphere. Indeed, Maimonides maintains that practice *must* proceed on the basis of (universal) philosophical knowledge if it is to express the philosophical form of religiosity that he takes to be the ultimate aim of

Judaism. As Hartman says the philosophical categories (that he refers to as *Aggadah*) are of primary importance for practice.

After Sinai, the primacy of practice cannot be denied by any religious Jewish writer who addresses a Halakhic audience. . . . Consequently, for a traditional Jew to accept the importance of theoretical knowledge for his service of God, he must be convinced that it also affects practice.

Maimonides, aware of the problem, proceeded to offer evidence that would point to the primacy of *Aggadah* after Sinai . . . showing how knowledge of *Aggadah* is, in fact, responsible for the different levels of Halakhic practice.⁶⁵

Now there are a number of problems with such an universalist approach as applied to practice. One of the most general would be that it does not seem to be autonomously Jewish, which of course is Soloveitchik's main concern. Thus, Eliezer Berkovits' has claimed that Maimonides (and indeed his predecessor Sa'adia Gaon) 'accomplished the task they set themselves by subordination of religion to the supreme authority of the intellect.'⁶⁶ Specifically with regard to his rationalisation of the commandments, we find him subordinating them to certain universal ends. Referring back to Levy's dilemma then, we find that since Maimonides accepts an universalist view of truth and subordinates statements of Jewish practice to this universal system, he might be accused of not doing 'Jewish' philosophy. Soloveitchik's objection to the Maimonidean method – that it leads to a loss of autonomy might therefore be understood in the spirit of the first horn of Levy's dilemma.

At the same time, it is interesting to note that Maimonides has in fact painted himself into a corner here. For, as we have seen, Maimonides in fact refuses to translate the heterodox conclusions of his rationalisation into practice and he therefore ends up in something of a philosophical bind over this matter. On the one hand he is accused by Soloveitchik of not doing 'Jewish' philosophy in this practical sphere, according to the reasoning of the first horn of Levy's dilemma. At the same time though, as we have seen Maimonides himself stops short of actually adjusting practice to the rational constraints of his own model. Thus, even if the reasons that he gives for the commandments are not 'autonomously Jewish', one might argue that at least he does not actually subordinate the practice to those reasons. But in so doing he is thereby hoist on his own petard as well as being impaled on the second horn of Levy's dilemma. For now there is a practice that cannot be seen to have general philosophical value according to his own philosophical criteria. And as such the problem is no longer one of a loss of autonomy. Rather, it is a loss of philosophical cogency.

The problem of autonomy for the Maimonidean method therefore might be thought to stem from his universalism and this is certainly an important factor. However, it is interesting that Soloveitchik in fact puts his autonomy objection in rather different terms. For the emphasis in the passage quoted seems to be less on universalism and more on the explanatory method in general. If we recall the point with which we started our critique, Soloveitchik's main complaint against the Maimonidean approach is its use of an explanatory rather than a descriptive method. The latter method, it would appear, leads to an understanding of the commandments based on unique autonomous norms whereas the former explains the commandments by means of 'foreign elements'. The most basic problem with the Maimonidean method therefore seems to be the use of the explanatory method in general. This is the most fundamental problem and it is one that underwrites the universalism that we find in Maimonides since it leads to the attempt to subsume the commandments under general laws of nature. But the problem, it seems, is not therefore with the specific Aristotelian scientific model that Maimonides uses but with the use of an explanatory scientific method *per se* in its most general form that requires that Jewish practice be rationalised by subsumption under universal explanatory laws. The claim is that the explanatory method leads us to ignore the autonomous norms that Judaism itself gives us to guide our understanding of the commandments. What the religious philosopher should do is interpret the commandments, whether ethical or ritual,⁶⁷ in terms of specific religious norms of rationality. In this way the religious realm retains its autonomy.

However, all that this does is raise a number of questions that we will need to tackle since precisely what constitutes an explanatory method, why it is problematic, and the advantages of Soloveitchik's descriptive method all remain to be seen. For even if it turns out to be true that the Maimonidean explanatory approach sacrifices autonomy in the sense that we have described, would this constitute a genuine philosophical objection to it? What is wrong with 'subordination to the intellect' or the use of universal criteria in order to rationalise the commandments? The Maimonidean approach gives us an Archimedean point from which we can rationalise and constructively criticise Judaism. The claim that this sacrifices Judaism's autonomy may be seen as no more than a refusal by the religious Jew to listen to reasoned argument. Correlatively, the use of so-called autonomous norms might be thought of as

tantamount to the fideistic type of Ostrich Judaism that we mentioned in the opening chapter.

The claim then is that whilst the Maimonidean method in itself is certainly philosophical, the question is whether or not it is 'Jewish.' The autonomy criticism says it is not. However, whilst the mention of an autonomous method by Soloveitchik holds out the hope for an autonomous Jewish philosophy, does it do so at the price of not being a genuinely philosophical alternative? What we need to discover is whether the autonomy criticism of the explanatory method is justified and whether Soloveitchik's descriptive alternative offers us an alternative that can stand up to philosophical scrutiny.

¹ We recognise of course that there is much material that is relevant to this topic in Maimonides' *Mishneh Torah* as well. However, it is in the *Guide* that we find the most systematic discussion of how to rationalise the commandments and it is the general system as set out in that latter work that interests us here. Moreover, for the most part, the two works approach the issue in the same way, though in chapter three we will come to some alleged differences that Soloveitchik discusses. For further discussion of the *Mishneh Torah* treatment of the topic see Isadore Twersky, *Introduction to the Code of Maimonides* (New Haven: Yale University Press, 1980), chapter 5, especially pp. 407-447.

² David Hartman, *Maimonides: Torah and Philosophic Quest* (Philadelphia: Jewish Publication Society, 1976), p. 143. This reflects Hartman's general view that reason plays an identical role for the religious consciousness in the realms of theory and practice and that we cannot therefore separate Maimonides the philosopher from Maimonides the jurist. See also Twersky, *Introduction*, chapter 5.

³ Josef Stern, 'The idea of a *Hoq* in Maimonides' Explanation of the Law,' in S. Pines and Y. Yovel eds., *Maimonides and Philosophy*. (Dordrecht: Martinus Nijhoff/Kluwer 1986), pp. 92-130. Quotation from p. 97.

⁴ *Ibid.*

⁵ Hartman, *Maimonides*, p. 183

⁶ *Ibid.*, p. 185. Though this is not identical with Stern's distinction, the general approach is related to that of Stern in that it accepts that Maimonides was primarily interested in taking a 'Gods-eye' view. Another similar distinction this time between a 'religious-theoretical' and 'religious-practical' approach is made by Isaac Heinemann in his *Ta'amei ha-Mitzvot be-Sifrut Yisrael* (Hebrew), 2 vols. (Jerusalem: Jewish Agency Press, 1954), Chapter 1.

⁷ For a survey of Talmudic approach to this issue see Heinemann, *Ta'amei ha-Mitzvot*, Chapter 3. A different and interesting discussion of the philosophical value of the Talmudic approach can also be found in David Novak, 'The Talmud as a Source for Philosophical Reflection', in Daniel H. Frank and Oliver Leaman eds. *History of Jewish Philosophy*, (London: Routledge, 1997), pp. 62-80.

⁸ See Philo, *De Decalogo*; *De Specialibus Legibus*; and *De Virtutibus*; all translated in *The Works of Philo*, New Updated Edition, trans. C. D. Yonge (Peabody: Hendrickson, 1997).

⁹ Julius Guttmann, *Philosophies of Judaism*, trans. David W. Silverman (New York: Holt, Rinehart and Winston, 1964), p. 61.

¹⁰ See Saadia Gaon, *Book of Beliefs and Opinions*, trans. S. Rosenblatt (New Haven: Yale University Press, 1948). See especially Treatise Three, pp. 137-179. Though Marvin Fox has argued that there is no sense in which Saadia can genuinely be said to have shown the rationality of the commandments, Saadia himself would certainly have intended to show that there was a category of rational commandments. See Marvin Fox, 'On the Rational Commandments in Saadia's Philosophy: A Re-examination', *Proceedings of the Sixth World Congress of Jewish Studies*, vol. 3 (1977), pp. 33-43.

¹¹ Much of what follows in this section has been influenced by Stern's 'The Idea of a *Hoq*'.

¹² 'The Essay on Resurrection', trans. A. Halkin in A. Halkin and D. Hartman, *Crisis and Leadership* (Philadelphia: Jewish Publication Society, 1985) pp. 209-245. Quotation from p. 223.

¹³ Lawrence Kaplan has also pointed out this connection in his article 'Rabbi Soloveitchik's Philosophy of Halakhah', *Jewish Law Annual*, Vol. 7 (1988), pp. 139-197. See especially p. 171.

¹⁴ Aristotle, *Physics*, II.3, trans., R. P. Hardie and R. K. Faye in Jonathan Barnes ed., *The Complete Works of Aristotle: The Revised Oxford Translation* (Princeton, NJ.: Princeton University Press, 1984), pp. 315-446. Quotation from p. 332.

¹⁵ For a good introductory discussion of the relationship between Aristotle's causes and our modern notion of an efficient cause see Jonathan Lear, *Aristotle: The Desire to Understand*. (Cambridge: Cambridge University Press, 1988), pp. 28-42.

¹⁶ See for example Max Hocutt, 'Aristotle's Four Because', *Philosophy*, vol. 49 (1974), pp. 385-399; Julius Moravcsik, 'Aristotle on Adequate Explanations', *Synthese*, vol. 28 (1974), pp. 3-17; David Hillel Ruben, *Explaining Explanation* (London: Routledge, 1990), p. 77ff.

¹⁷ Notably, this is a point that Maimonides himself makes: 'Aristotle has made it clear that in natural things the agent, the form and the final end are one and the same thing; I mean to say that they are one and the same thing in species.' *GP*, III:13, 449-450.

¹⁸ Shlomo Pines 'The Philosophical sources of the Guide of the Perplexed,' in *GP*, pp. lvii-cxxxiv. Quotation from p. lxx.

¹⁹ Such a view of teleological causation may have been what led Pines to writes that Maimonides in fact believed that 'only the efficient causes should be taken into account in a scientific account of the natural phenomena,' (Pines, 'Philosophical Sources', p. lxx). Pines therefore thinks that we should not overemphasise the importance of teleological causation in Maimonides; purposive action in nature is part of the natural order and does not determine the latter which can be accounted for by efficient causes. Whilst such a view would appear to make Maimonides' philosophy of science more respectable from a modern point of view it seems to me that teleological explanation does play a central role in Maimonides' thought. Moreover, though it is true that it is part of the natural order, it cannot be accounted for in terms of efficient causes, if efficient causes are supposed to be a substitute for our modern notion of causation. See Lear, *The Desire to Understand*, pp. 36-42.

²⁰ See Wolfgang Wieland 'The Problem of Teleology,' in J. Barnes, M. Schofield and R. Sorabji eds. *Articles on Aristotle* Vol.1 (London: Duckworth, 1975-9), pp. 141-160.

²¹ For further discussion of matters relating to Aristotle's natural teleology see J. Cooper 'Aristotle on Natural Teleology,' in M. Schofield and M. Nussbaum eds. *Language and Logos: Studies in Ancient Greek Philosophy Presented to G. E. L. Owen*, (Cambridge: Cambridge University Press, 1982), pp. 196-222, and Wieland, 'The Problem of Teleology'.

²² *Posterior Analytics* I.2, trans., Jonathan Barnes (Oxford: Clarendon Press, 1994), pp. 2-3. All translations are taken from this edition.

²³ Syllogistic reasoning for Aristotle can take place beginning from premises that are not certain. Maimonides, following Aristotle, writes that a syllogism based upon such premises that are generally accepted rather than certain is dialectical rather than demonstrative. I believe that such dialectical syllogisms did have cognitive significance for Maimonides, but they nevertheless do not constitute *episteme*. For this view of Maimonides attitude to dialectic see Arthur Hyman, 'Demonstrative, Dialectical and Sophistic Arguments in the Philosophy of Moses Maimonides,' and Joel L. Kraemer, 'Maimonides on Aristotle and Scientific Method,' both in Eric L. Ormsby ed. *Moses Maimonides and His Time*. (Washington: The Catholic University of America Press, 1989), pp. 35-88.

²⁴ According to Barnes, *P* is immediate is taken by Aristotle to mean that it is indemonstrable which in turn implies primitiveness – the idea that there is no proposition from which knowledge of *P* must be derived. See *Posterior Analytics*, pp. 94-95.

²⁵ *Ibid.*, p. 96.

²⁶ For further discussion of all of these conditions see Barnes' commentary on Barnes, *Posterior Analytics*, pp. 94-97, and Ruben, *Explaining Explanation*, pp. 101-108.

²⁷ While it is true that such a picture is unlikely to placate all modern scientists, the revival of interest in the ideas of essentialism and natural kinds makes this Aristotelian picture less of an irrelevance than it was once thought to be.

²⁸ Aristotle also writes that that 'it is necessary for the conclusion of such a demonstration . . . to be eternal. There is therefore no demonstration of perishable things.' *Posterior Analytics*, I.8, p. 13. However, as Jonathan Barnes points out, one could accept that a demonstration must be of necessary truths without having to hold that these truths were *about* eternal objects. Thus, Barnes dismisses this corollary of the necessity condition as a mistake. Jonathan Barnes, *Aristotle* (Oxford: Oxford University Press, 1982), p. 35ff. At the same time though, we might also understand the reference to eternal objects as a reference to the laws of nature themselves which cannot be destroyed rather than to 'objects' in the intuitive sense (see Ruben, *Explaining Explanation*, p. 98 for this view). If this is so, then Barnes'

criticism of Aristotle's insistence that we can only have knowledge of eternal objects might be misguided on this particular point, though his general point that science surely does deal with particulars and not only laws is still well taken. See Barnes, *Aristotle*, pp. 35-36.

²⁹ Aristotle's view of the status of knowledge of particular facts is not actually as straightforward as this and he struggles with the issue in a number of places. See, for example *Posterior Analytics*, I.8 and I.31, and Ackrill's account of the former passage in J.L. Ackrill, *Aristotle*, (Oxford: Clarendon, 1981), p. 97. See also Barnes' commentary on this passage on page 134 of his translation of *Posterior Analytics*. Similarly, in certain places Aristotle seems to consider our having scientific knowledge of laws that hold only 'for the most part', but for our purposes we do not need to deal with this added complication. For discussion of this problem and further references see Barnes' commentary on his translation of the *Posterior Analytics*, pp. 192-3.

³⁰ We should note that Hocutt thinks that Aristotle's whole notion of final explanation does not fit into his demonstrative model of *episteme*. However, as Hocutt also notes, Aristotle certainly believed that teleological explanation could be made to fit this model and there is no reason to assume that Maimonides felt any different given his use of reason and explanation as synonyms. See Hocutt, 'Aristotle's Four Causes', p. 397.

³¹ Ackrill, *Aristotle*, p. 106.

³² See Eliezer Goldman 'Rationality and Revelation in Maimonides' Thought', in *Maimonides and Philosophy*, pp. 15-23. It is important though, to distinguish this Maimonidean conception of rationality from the purely instrumental rationality that Eliezer Goldman describes which is entirely neutral with respect to the ends aimed at. Aristotle's teleological metaphysics guarantees the ultimate good as the unique end for man and part of being practically rational involves seeing this. Thus for Aristotle and therefore Maimonides the rationality of an act depends on the proper choice of ends as well as means. For Weber on the other hand the question of ends was beyond the realms of practical rationality. On questions of values reason has nothing to say. One can only be rational by acting so as to procure the end chosen but not in the actual choosing of the end.

³³ Of course this whole issue is highly controversial, though for our purposes the particular view that one takes on this issue will not affect the central thread of the argument. For a mere taste of the discussion that rages here, see Alexander Altmann, 'Maimonides' Four Perfections', *Essays in Jewish Intellectual History*, (Hanover, N. H.: University Press of New England, 1981), pp. 65-76; Miriam Galston, 'The Purpose of the Law According to Maimonides', *Jewish Quarterly Review*, vol. 69 (1978), pp. 27-51; Menachem Kellner, *Maimonides on Human Perfection* (Atlanta: Scholars Press, 1990); Shlomo Pines, 'The Philosophical Purport of Maimonides' Halakhic works and the Purport of the Guide of the Perplexed', in Pines and Yovel eds. *Maimonides and Philosophy*, pp. 1-14; and the articles by Lawrence V. Berman, Ralph Lerner and Steven Harvey in J.L. Kraemer ed. *Perspectives on Maimonides* (Oxford, Littman Library of Jewish Civilisation, 1991). Note though that our emphasis on the priority of the theoretical end need not mean that this end has no practical component.

³⁴ Aristotle himself makes the point that the practical sciences do not admit of the same degree of precision as the theoretical sciences and he warns us explicitly not to expect more precision in a certain subject than the subject matter allows. The main problem for ethics according to Aristotle is that 'in arguing about what is for the most part so from premises which are for the most part true we must be content to draw conclusions that are similarly qualified.' (*NE*, I.3, 65). This stricture therefore limits the degree of knowledge that we can attain in the practical sphere. This is not necessarily to say that we cannot gain knowledge in ethics according to Aristotle, but it does at least mean that such knowledge would be of a different order to the *episteme* that we have so far been discussing.

³⁵ Marvin Fox, *Interpreting Maimonides*. (Chicago: University of Chicago Press, 1990), p. 190. In line with this view, Fox goes on to give a rather different account of Maimonides' method of rationalisation according to which the commandments 'are not rational in the sense of being demonstrable' (*Ibid.* p. 142).

³⁶ Hermann Cohen, 'Charakteristik der Ethik Maimonis', translated into Hebrew by Zvi Wieslowsky as 'Ofyah shel Torat ha-Middot le-ha-Rambam', in *idem.*, *Iyyunim be-Yahadut uve-Be'ayot ha-Dor* (Jerusalem: Mossad Bialik, 1978), pp. 17-59. It is interesting to note that this type of 'practical turn' in Maimonides has come back into vogue recently, though often with a more political than strictly ethical emphasis. See for example Lawrence V. Berman, 'Maimonides, the Disciple of Alfarabi', *Israel Oriental Studies*, vol. 4 (1974), pp. 154-178 and Pines, 'The Philosophical Purport of Maimonides' Halakhic Works'.

³⁷ It is interesting to note in this regard that Soloveitchik's belief that Maimonides approaches the rationalisation of the commandments scientifically parallels that of Hermann Cohen, one of Soloveitchik's formative influences, who believed that Maimonides followed Plato rather than Aristotle

in regarding ethics as a science. See Aviezer Ravitzky, 'Rabbi J. B. Soloveitchik on Human Knowledge: Between Maimonidean and Neo-Kantian Philosophy', *Modern Judaism*, vol. 6 (1986), pp. 157-188. Quotation from p. 172.

³⁸ See Howard Kreisel, 'The Practical Intellect in the Philosophy of Maimonides', *Hebrew Union College Annual*, vol. 59 (1988), pp. 189-215.

³⁹ *Ibid.*, pp. 206-207.

⁴⁰ *Ibid.*, p. 208. Interestingly given the relationship between our view and that of Hermann Cohen who wished to give a Platonic interpretation of Maimonides, this understanding of Maimonides reflects a view of knowledge that has been attributed to Plato by Julia Annas. Annas writes that Plato's view of knowledge is one whereby 'the advance to knowledge is a progress to increased understanding, and this comes about. . . by setting the belief in a wider context of one's other beliefs and their mutually explanatory relationships'. Julia Annas, *An Introduction to Plato's Republic* (Oxford: Oxford University Press, 1981), p. 200.

⁴¹ Such knowledge it seems to me might well correspond to what Maimonides terms knowledge of 'the science of the Law in its true sense' as opposed to knowledge of the science of the law in its legalistic sense. For the latter would imply an exclusive concern with the practical legal aspect of the Law without regard to its true theoretical purpose. See *Guide*, Introduction to the First Part, p. 5. Menachem Kellner has argued in contrast that it was only with Joseph Albo that the commandments themselves were taken to be the subject matter of the true science of the Law. For Maimonides this term is supposed to refer to physics and metaphysics. See Menachem Keller, 'The Conception of the Torah as a Deductive Science in Medieval Jewish Thought', *Revue Des Etudes Juives*, vol. 146 (1987), pp. 265-279. However, I am not sure that there is any fundamental disagreement here between myself and Kellner since on my interpretation, it is the very relating of the commandments to the truths of physics and metaphysics that allows us to include them within the true science of the Law.

⁴² Indeed, Isadore Twersky who agrees that divine morality is 'immanently reasonable and its rationality is discoverable' has written that this passage requires 'special study'. Twersky, *Introduction*, p. 458, footnote 247.

⁴³ Yet again, we note that in the previous chapter he has placed a similar epistemological restriction on our knowledge of nature. See *Guide*, III: 25, 506.

⁴⁴ Twersky, *Introduction*, p. 402.

⁴⁵ It is important though to note that Maimonides appears to qualify this thoroughgoing intellectualism later in the very same chapter by noting that while there is a reason for all the generalities of the commandment, there may not be a reason for all the particulars of them. Thus he does not seem to think that there is a reason why a lamb rather than a ram might have been specified for a given sacrifice, though there would be a reason for doing the sacrifice. Stern in fact argues that Maimonides does give us reasons for these particulars, but wishes to keep them hidden from the multitude. See Stern, 'The Idea of a *Hoq*'.

⁴⁶ One should note that not all the *huqqim* were accommodatory in this fashion according to Maimonides. Some were given that were directly opposed to Sabian practices whilst others simply forbade such practices at all. The particular type of *hok* presumably depended on the psychological needs of the people regarding each of the particular Sabian practices that a commandment was addressing.

⁴⁷ This use of historical information in the explanation of the *huqqim* also helps to explain our ignorance of the causes for certain commandments. Thus, when Maimonides speaks of the deficiency of our knowledge as one cause of this ignorance, it is a deficiency in our knowledge of this very information that he is referring to. See (*GP*, III:49. 612). This would be one of the reasons that it may now be difficult for us to reconstruct a complete system for understanding the Torah in its entirety that would return us to the state of Adam before the fall. Of course, for many commandments, such as the ethical ones, we are far clearer about the wisdom manifested in them, though Maimonides makes some further rather cryptic remarks about the epistemological restrictions on our knowledge that I believe may be relevant to these commandments. See Stern in 'The Idea of a *Hoq*', pp.108-109.

⁴⁸ This would allow us to say that we can have scientific knowledge of these historical explanations for though we cannot have scientific knowledge of the particular facts, we can have it of the *kinds* of event they represent. Indeed, this is the explanation that Ackrill gives of an Aristotelian passage dealing with the problem of knowledge of particulars and was a strategy used later in Jewish philosophy, according to some scholars, by Gersonides in his discussion of God's knowledge of particulars. See Ackrill, *Aristotle*, p. 97, and Gersonides, *The Wars of the Lord.*, 3 vols, trans., Seymour Feldman (Philadelphia: Jewish Publication Society, 1984, 1987 & 1998), Book III. Of course it is questionable whether or not this approach is feasible. For discussion of this with respect to Gersonides see Norbert Samuelson, 'Gersonides' Account of God's Knowledge of Particulars', *Journal of the History of Philosophy*, vol. 10

(1972), pp. 399-416, and Tamar Rudavsky, 'Divine Omniscience and Future Contingents in Gersonides', *Journal of the History of Philosophy*, vol. 21 (1983), pp. 513-36.

⁴⁹ Thus, we find at *Guide* III: 26 that regarding his explanations 'there can be no doubt and . . . there can be no objection.' The same point is also made at III: 37. However, at III: 49, we find him offering 'one of the reasons . . . in my opinion'.

⁵⁰ Carl G. Hempel, 'The Functions of General Laws in History,' Reprinted in M. Martin and L. C. MacIntyre eds. *Readings in the Philosophy of Social Science* (Cambridge, Mass.: MIT Press, 1994), pp. 43-53.

⁵¹ *Ibid.*, p. 43.

⁵² Georg Henrik Von Wright, *Explanation and Understanding*, (London: Routledge and Kegan Paul, 1971), p. 4.

⁵³ I will, for the moment, leave the terms 'construction' and 'reconstruction' undefined. The distinction between them will be elaborated on when we deal with Soloveitchik's own method in detail in the next chapter.

⁵⁴ It is true that genetic explanations are a form of causal explanation, as we have mentioned previously and causal explanation is, obviously, a form of explanation. This means that we could immediately turn to the question of why the explanatory approach is thought to be inappropriate to the religious sphere for if explanation *per se* is inappropriate, then certainly causal or genetic explanations are. However, tracing the argument through each of the stages is important if we are to identify precisely what is and what is not wrong with the Maimonidean approach.

⁵⁵ See Friedrich Nietzsche, *On the Genealogy of Morals*, (1887), trans. W. Kaufman and R.J. Hollingdale (New York: Random House, 1969), pp. 76-79.

⁵⁶ We should note that Maimonides is well aware of the dangers inherent in his rationalisation. Indeed, according to Stern, Maimonides' great innovation in his discussion of the *huqqim* was his very interpretation of them as being problematic commandments. They are commandments whose reasons would, if revealed, cause problems for the faith of the masses given the idolatrous associations that those reasons reveal. However, this does not for Maimonides constitute a reason not to investigate such commandments. See Stern, 'The Idea of a *Hoq*'; and Twersky, *Introduction*, pp. 391-397.

⁵⁷ Stern, 'The Idea of a *Hoq*', p. 113.

⁵⁸ *Ibid.*, p. 93.

⁵⁹ Some interesting attempts have been made to rationalise this insulation. See, for example, Hartman *Maimonides*, pp. 176-186; and Oliver Leaman *Moses Maimonides*, (London: Routledge, 1990), chapter 9, especially pp. 137-144. We do not have the space to tackle these attempts here. However, I do not believe that any of them actually show that the unchanged commandment is rational in itself.

One interesting account is that given by Stern. He thinks that though Maimonides cannot give us a satisfactory general account of the positive grounds of our obligation to perform these commandments, at *GP*, III:51-52, Maimonides offers us an alternative rationalisation of the commandments that may allow us at least to find a reason for performing these commandments in the present. One can, according to his interpretation of this passage, exploit the very meaninglessness of the commandments and use them to train oneself to turn away from this world and focus entirely on God. See Stern 'The Idea of a *Hoq*', pp. 116-125. I am unconvinced by this interpretation, given that the very passage that Stern uses as the basis for it reads: 'If . . . you perform a commandment merely with your limbs . . . without reflecting either upon the meaning of that action or upon Him from whom the commandment proceeds or upon the end of the action, you should not think that you have achieved the end.' (*Guide*, III:51, p. 622).

⁶⁰ Note that even if we interpret the genetic explanations as being genuinely scientific in the Aristotelian sense (see above note 50) Maimonides would still not be committing the genetic fallacy, since the historical explanations are not, according to that interpretation, contingent historical explanations of the origins of the sacrificial cult. Rather they are explanations of the necessity for such a cult on an Aristotelian scientific basis given basic necessary truths about human nature. Moreover, even if we do understand the historical explanations in this fashion, it remains true that it is only once they are combined with the teleological structure of his enterprise that the various problems arise. For such an approach would consist of an attempt to show how these commandments lead, according to these necessary laws, to the realisation of man's purpose. And once we introduce the notion of man's purpose, we can always ask why this particular form of the commandment should be thought necessary to effect the realisation of that purpose.

⁶¹ Hartman, for example, writes that 'what has been shown about Maimonides' *historical approach* to the commandments obscures the most important danger it creates for the halakhic Jew.' Hartman, *Maimonides*, p. 176. Oliver Leaman on the other hand explicitly notes our point about the importance of the link to the teleological structure: 'Once we have discovered the purpose of the rules and we

understand what they are designed to do, can we not exchange them for other rules which we might find more efficient to that end, or more pleasant to perform?" *Moses Maimonides* p. 137.

⁶² However, one should note that the rejection of the essentialist view may well have ramifications for all attempts to justify ethics in terms of human psychology. See for example Bernard Williams, *Ethics and the Limits of Philosophy*, (Cambridge, Fontana Press, 1985) especially chapter 3.

⁶³ According to Maimonides these truths are to be found in the non-legal parts of the Talmud that Maimonides refers to as *derashot* in the introduction to his *Commentary to the Mishnah* and of which the two accounts that the *Guide* is concerned with are examples. *Commentary to the Mishnah*, translated into Hebrew by Y. Kapach (Jerusalem: Mossad HaRav Kook, 1976), p. 19.

⁶⁴ Thus Maimonides writes "[F]or works on logic, one should only study the writings of Abu Nasr al-Farabi. All his writings are faultlessly excellent... The works of Aristotle are the roots and foundations of all the works on the sciences. But they cannot be understood except with the help of commentaries, those of Alexander of Aphrodisias, those of Themistius, and those of Averroes... Aristotle's intellect [represents] the extreme of human intellect, if we except those who have received divine inspiration..." Alexander Marx ed. 'Texts by and about Maimonides,' *Jewish Quarterly Review*, vol. 25 (1935), pp. 378-380. The translation is taken from Pines 'Philosophical Sources', pp. lix-lx.

⁶⁵ Hartman, *Maimonides*, p. 44.

⁶⁶ Eliezer Berkovits, *God, Man and History* (New York: Jonathan David, 1959), pp. 3-4.

⁶⁷ According to Soloveitchik, this criticism applies as much to the ethical commandments as to the ritual ones. See *HM*, 69.

Chapter three

Rationalising the Commandments II: The Soloveitchikian Method

Having reviewed the Maimonidean approach towards rationalising the commandments, we will now look at Soloveitchik's method. Soloveitchik's general project was not the medieval one of giving substantive reasons for particular commandments. However, as Reinier Munk has written with reference to three of Soloveitchik's most important works, *Halakhic Man*, *U-Vikkashitem mi-Sham*,¹ and *The Halakhic Mind*, his 'objective in these essays is the articulation and *justification of halakhic man's thought and acts.*' (My emphasis).² Similarly, Lawrence Kaplan has shown that Soloveitchik makes some very important observations about the formal structure of the rationality of halakhah in a number of his works and that out of these discussions we can reconstruct a method for rationalising the commandments.³

As Kaplan points out, Soloveitchik, whose doctoral dissertation was written on Hermann Cohen's ontology and logic at the university of Berlin, would have been influenced by the Marburg school of Neo-Kantianism for whom the physical sciences and mathematics represented the highest form of objective knowledge. Soloveitchik therefore insists that we take a scientific approach to the study religion. The central focus of much of this discussion will again, therefore, be science for as Soloveitchik notes in *Halakhic Man*,

religion should ally itself with the forces of clear, logical cognition, as uniquely exemplified in the scientific method, even though at times the two might clash with one another . . . (HMN, 141, note 4)⁴

The attempt to 'intuit' the essence of the religious experience is 'a frank admission of defeat for reason.' (HM, 51).

It is not surprising therefore that Kaplan finds a scientific model for rationalising the commandments within Soloveitchik's reflections on halakhah. Moreover, in *The Halakhic Mind* Soloveitchik presents his general methodological views concerning how one ought to do Jewish philosophy that appear to lay the groundwork for Kaplan's model. However, these general scientific motifs in his work and his debt to Hermann Cohen in particular have often been stressed with little or no qualification, particularly with regard to *Halakhic Man*. It is generally thought that only later, in the 1960's, that the more humanistic and existentialist strands of his thought begin to show themselves, most notably in *The Lonely Man of Faith*.⁵

We will argue that as early as *The Halakhic Mind*, which was written in the same period as *Halakhic Man*,⁶ Soloveitchik explicitly qualified both his ‘scientism’ and his reliance on Cohen in certain very important respects.⁷ Specifically, humanistic and hermeneutic strands often reminiscent of those found in the later thought of Wilhelm Dilthey are very much in evidence in Soloveitchik’s general methodological reflections.⁸ Most notably, this leads him in part four of *The Halakhic Mind*, where he does explicitly discuss the issue of *Ta’amei ha-Mitzvot*, to set out a very different model of rationalisation to the one that Kaplan gleans from the other works. Our main aim in this chapter therefore will be to try and understand these two models of rationalisation and some of the questions they raise.

In what follows then we will begin in sections 1 and 2 with a summary of Soloveitchik’s general methodological views as presented in *The Halakhic Mind* which seem initially to provide the basis for Kaplan’s interpretation of Soloveitchik’s model of rationalisation. Sections 3, 4, 5 and 6 will then consider that scientific model of rationalisation that Kaplan attributes to Soloveitchik. In sections 7 and 8 we will begin to look at the contrasting model of rationalisation found in *The Halakhic Mind* and briefly consider some of the implications of the differences between the two models for the second half of the thesis.⁹

1. The method of reconstruction

As a prelude to our discussion of particular methods of rationalising the commandments, we will summarise Soloveitchik’s general methodological views concerning Jewish philosophy as set out in *The Halakhic Mind*, which begins with a detailed discussion of the methodological gap that had opened up between philosophy and the natural sciences.¹⁰ This gap, according to Soloveitchik, allows the religious philosopher to stake a claim for an independent approach to reality.

Soloveitchik writes that in the past the philosopher was forced to work within the confines of the scientifically constructed universe with which the scientist presented him, whether that be the ancient’s view of the universe or the mechanistic Galilean-Newtonian picture. Effectively, he was restricted to studying the quantitative universe of the scientist and using the mechanistic methods appropriate to such an object. However, Bergson’s awareness of the problems of reconciling the philosopher’s scientifically induced mechanistic methods with certain biological and psychical concepts gave the first indication that certain realms resisted this scientific approach.

Though Bergson's own observations were, according to Soloveitchik, largely ignored, at the beginning of this century science itself in the guise of relativity theory and quantum mechanics, presented the classical mechanistic view with similar problems. The quantum scientist, for example, discovered certain phenomena that did not conform to the existing scientific conceptual framework and required new theories and principles for their assimilation. Principles of science that had been taken to be axiomatic were thereby called into question and replaced by new principles which required a new philosophical framework. However, while scientists were prepared to revise their principles in accordance with these discoveries, philosophy found itself unable to cope with the new developments.

As a result certain philosophers such as the logical positivists conceded that the scientist alone could discover the nature of reality and their task was to analyse those scientific ideas and methods. However, a group referred to by Soloveitchik as 'insurgent metaphysicians and epistemologists' (*HM*, 12-13), parted company with the scientist and asserted the right to study the philosopher's own qualitative universe and develop the appropriate methods for doing so. Thus, science was no longer granted the exclusive right to call itself rational at the expense of all other approaches to cognition leading to the possibility of a pluralistic approach to reality.

While this opens up a window of opportunity for the religious philosopher, at the same time as we have seen, it is essential for Soloveitchik that the religious philosopher's independent approach be reined in by scientific or empirical considerations. Indeed, Soloveitchik believes that there are two criteria to which any methodology for doing religious philosophy must conform. The first criteria is practical and brings up a pragmatic strand that we find appearing time after time in his thought.

Regardless of the shortcomings of pragmatism as a solution to our most perplexing epistemological problems, it is nevertheless advisable to apply, at times, the pragmatic principle to the appraisal of certain philosophical theories. . . . The ethical implications of any philosophical theory, as to its beneficence or detriment to the moral advancement of man, should many a time decide the worth of the doctrine. (*HM*, 52).

That being so, Soloveitchik rules out the anti-intellectualistic or anti rational approaches to religious philosophy encouraged by the phenomenological school for such non-rational approaches have had terrible practical consequences. 'It is no mere coincidence' writes Soloveitchik 'that the most celebrated philosophers of the third Reich were outstanding disciples of Husserl.' (*HM*, 53).

This brings us directly to the second, theoretical criterion, which is most decisive for the actual formation of the methodology and here the scientific focus of Soloveitchik's methodological considerations comes to the fore. The religious philosopher, freed from certain scientific constraints must nevertheless not follow the anti rational approaches of the modern metaphysicians. Thus, paradoxically, it is the modern scientist's methodological innovations that must be utilised in order to allow the religious philosopher to be at once scientific and yet not slavishly adhere to a purely scientific picture of reality.

What we seem to find in Soloveitchik here in general is a very Diltheyan approach. For though Dilthey was concerned at the way in which positivism had ignored the realm of the human spirit or mind, he was equally concerned at the way in which the independent philosophical approaches had abandoned any empirical methodology at all. Thus whilst criticising positivism on the one hand, Dilthey was equally derisive, in Kantian fashion, towards the state that philosophy had got itself into by engaging in speculative metaphysics. If we are to study the human spirit whether in philosophy or the human studies more generally, we must base our study on the empirical expressions of that spirit and not on metaphysical flights of fancy. According to Dilthey, we must neither 'truncate historical reality in order to assimilate it to the concepts and methods of science', nor 'sacrifice the justifiable independence of the particular disciplines and the fruitful power of their empirical methods to a sentimental mood'.¹¹

With this Diltheyan picture in mind we can see that though Soloveitchik insists that science must provide us with the methodological paradigm for religious philosophy, it is a very particular 'scientific' approach that he recommends. Specifically, the Newtonian, according to Soloveitchik had made a methodological error – that of using an exclusively atomistic method in order to form his quantitative picture of nature. This atomistic approach attempts to explain all macrophenomena in terms of the behaviour of the individual 'parts' that make them up and leads us to a picture of a clockwork universe in which the parts are related in simple mechanical ways. According to Soloveitchik, it is the quantum physicist who must therefore provide us with a model of method. The quantum physicist, it is true, begins according to Soloveitchik by constructing his 'own object by duplicating nature and correlating numerical equivalents with intangible qualitative phenomena.'(HM, 60). The quantum physicist therefore, like the Newtonian before him, gives us the sort of precise quantified realm that was an anathema to the religious philosopher. However, the quantum scientist realises the paucity of this method due to the aforementioned discovery of quantum

phenomena that could not be understood in terms of the Newtonian principles. The quantum scientist realises therefore that he must deal with three orders of reality. He begins with a qualitative order (A1), which is our ordinary sensory world that cannot be quantified as such. In order to provide himself with a fit object for study, therefore, the scientist must construct a parallel objective order (B), which is the abstract mathematical equivalent of (A1), constructed according to the atomistic approach. But the picture achieved through this atomistic method could not account for the behaviour of newly discovered quantum phenomena according to Soloveitchik. A third level, (A2) is therefore needed in order to understand the ‘enigmatic behaviour of certain “strings of events”.’(HM, 60). A certain philosophical framework is required if we are to understand the behaviour of these parts.

What the quantum physicist understood therefore was the need to understand his ‘objective’ data in terms of a certain ‘subjective’ framework, the need for a structural whole in order to make sense of those individual phenomena that could not be accounted for by the atomistic method. We must be scientific inasmuch as we must base ourselves on objective data. Objectification is necessary both for the precise study of nature and for a study of the religious realm that will meet Soloveitchik’s scientific standards. However, the quantum physicist simultaneously applies a holistic approach to his study of nature and it is the introduction of this qualitative structural whole that allows the method of quantum physics to be used as a paradigm 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 . . . (HM, 71)

The religious philosopher is not just interested in an objective quantified realm since his subject area is meaningful. Indeed, this is the central difference between the subject matter of the human and natural sciences - human behaviour, unlike the ‘behaviour’ of a stone has an inner content that makes it meaningful - it has a certain semantic dimension. We do not attempt to understand the meaning of a stone falling as it does. We simply explain it by reference to a certain causal explanatory framework. However, human behaviour is not to be understood as a *mere* mechanical phenomenon but is informed by a set of values and purposes that we must understand in order to comprehend the visible manifestations that we observe. Again, it is Dilthey’s fundamental insight that the subject matter of the human studies in general is

distinguished from the causal order of nature by the fact that, in accordance with the structure of mental life, it creates objects of value and realises purposes: and this, not occasionally, not here and there, but as a result of the mind's dynamic structure to do this once it understands.¹²

Moreover, it is clear from this passage that this 'meaningful' aspect of behaviour is not merely incidental to it. It is essential to understanding human action as such, for it is precisely this that makes something an action rather than a simple bodily movement. Given this distinction, the religious philosopher is interested in the philosophical frameworks behind the objective quantified world of the scientist and therefore finds value in the quantum physicist's holistic approach.

Just as important though was the central realisation of the quantum physicist that there was no given objective framework in terms of which these parts could be understood. The idea of a neutral framework through which the neutral subject views his object could no longer be taken for granted. Soloveitchik points out that in the modern world 'scientists themselves differ in their employment of categorical apparatus.' (HM, 22). Within the scientific realm the mathematician and the physicist, for example, use different concepts of space for their different purposes. Scientists work with a number of different 'philosophical frames' and the idea of a neutral framework through which the neutral subject views his object could no longer be taken for granted. On account of this, the previously noted failure of Newtonian science to account for quantum phenomena did not lead the modern scientist to the simple formulation of a new uniform framework to replace the old one. Rather, the quantum scientist called into question the shared assumption of the Aristotelian and classical physicist – that there is such a given uniform framework to be discovered. Though the classical and modern scientist agreed therefore, that the world was to be understood in terms of abstract quantitative categories rather than in terms of Aristotelian essences, it was only the quantum scientist who realised that this abstract framework did not reflect some objectively given reality and thus different disciplines could work with different methods and frameworks.

So not only did quantum theorists find phenomena that could not be assimilated into the Newtonian philosophical framework. They also discovered that there was no given framework within which to work. Centrally for Soloveitchik, this realisation on the part of the quantum physicist led to an appreciation of the fact that one's theoretical framework determines to some extent the nature of the object being studied.

The claim of the natural sciences to absolute objectivity must undergo a thorough revision. . . . The pristine object, when intercepted by the experimenter, is transformed, chameleon like, from transcendent imperviousness to immanent merger with the subject. (HM, 25).

Paradoxically therefore it is the quantum scientist who here provides the impetus for the creation by the religious philosopher of an independent non-scientific framework for apprehending reality. What Soloveitchik calls epistemological pluralism allows the religious philosopher to interpret reality in terms of his own philosophical framework, one that is governed by his own goals and objectives. Thus, Soloveitchik writes:

Every system of cognition strives to attain a distinct objective. Systematic knowledge means the understanding and grasping of the universe in consonance with a definite *telos*. . . . the object reveals itself in manifold ways to the subject, and that a certain *telos* corresponds to each of these ontical manifestations. Subsequently, the philosopher or scientist may choose one of the many aspects of reality in compliance with his goal. (HM, 16).

However, of central importance for Soloveitchik here is the fact that such cognition nonetheless provides us with genuine knowledge of reality, albeit a reality that is itself only revealed by the use of a particular method. Indeed, he writes that the varying conceptual schemes that we use to interpret the world yield genuine knowledge and are grounded in reality and are not arbitrary inventions of our consciousness.

Teleological heterogeneity, however, does not invalidate the cognitive act, for, in the final analysis, pluralism is founded on reality itself. It is important to note that this trend of thought has nothing to do with operational pragmatism . . . epistemological pluralism does not deny the absolute character of Being. (HM, 16)¹³

Thus thanks to the quantum physicist, the religious philosopher can legitimately take an interest in the ‘structural whole’, the philosophical system behind the parts, and also posit his own such philosophical system in order to apprehend that reality.

The most important methodological twist as far as we are concerned though arises when we ask how the scientist can apprehend this structural whole. For we have already seen that Soloveitchik does not accept that this ‘whole’ can be approached directly, as certain ‘insurgent metaphysicians’ would have us believe. According to Soloveitchik, therefore, we can only construct, or rather reconstruct (A2) atomistically out of the objective parts of (B) that (A2) itself was intended to explain. What we find here therefore in more general terms is the insistence that we reconstruct the subjective whole out of the objective parts, the theory out of the observation.

It is notable that Soloveitchik parts company with Hermann Cohen on this point. For Cohen, the Kantian system in which knowledge has two sources - thought and intuition

- is replaced by a system in which thought is the only source of scientific knowledge. For Soloveitchik, such a system, which bases all of our empirical knowledge on thought alone, granting perception no independent standing as a source of knowledge, does not allow us to comprehend reality. Thus, Soloveitchik in his doctoral thesis is highly critical of Cohen's epistemology, especially in relation to the *Geisteswissenschaften*.¹⁴ In the religious sphere, to take the most pertinent example, we must base our knowledge on empirical realities and not only pure thought.

The structural designs of religion cannot be intuited through any sympathetic fusion with an eternal essence, but must be reconstructed out of objective religious data and central realities. (HM, 62).¹⁵

Soloveitchik therefore is utterly opposed to an *a priori* approach to the structural whole, whether in the scientific or religious sphere and insists that we use an 'empirical' method that reconstructs it out of the objective data. We should note though that this method of reconstructing subjective aspects from objective data does also hail from a neo-Kantian source, that of Paul Natorp, who insists on this method.¹⁶

However, the most significant point that Soloveitchik takes from the scientist here is the manner in which he has to combine the atomistic and holistic approaches in order to reconcile the subjective whole and the objective parts. A purely atomistic reconstruction of the whole out of the parts as would appear to be suggested by Natorp's reconstruction would be a return to the Newtonian approach. A purely holistic approach on the other hand would be a return to the methods of the metaphysicians of whom Soloveitchik is so critical. The quantum physicist appreciates that the parts are required in order to form the whole but at the same time the whole is required in order to account for the parts. We are led therefore into a circular method whereby we must simultaneously attempt to mutually adjust the two so as to arrive at a suitable equilibrium between them. The correct method therefore is one that combines the atomistic and holistic approaches. Soloveitchik's description of the methods of the scientist who must use the 'parts' (observations) to form the 'whole' (theory) and yet can only understand certain parts in the first place in terms of that whole suggests that he is taking the well-known method of reflective equilibrium to theory construction. Reflective equilibrium is a nonfoundational process of justification described as follows by Nelson Goodman.

The process of justification is the delicate one of making mutual adjustments between rules and accepted inferences; and in the agreement lies the only justification needed for either.¹⁷

The idea is that one constructs and justifies a theory of X by moving back and forth between ones considered judgements about X and the theoretical principles that one forms by considering them. The idea as applied to Soloveitchik's scientist would be that we construct a theory from our initial observations in order to justify them, but at the same time the theory itself can then force us to reinterpret certain observations. Moreover, as the theory and observations develop further, we will in all probability need to continue to make mutual adjustments to the whole scheme. The important point here is that nothing is taken to be an incorrigible foundational starting point. In principle anything could be subject to revision and the justification of theory and observation lies in the coherence of the package. But, as Soloveitchik notes, the point is that this is a package rather than two disparate methods.

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. (HM, 60, emphasis added).

How though are we to apply this method to the philosophy of Judaism? What is the so-called objective basis from which the religious philosopher must begin that corresponds to the quantified formulae of the scientist? Again Dilthey's later thought seems to provide a good point of reference here for understanding Soloveitchik's views on this question.

According to Dilthey the subjective mental life of a human being which he terms *Erlebnis*, experience, is the source of all our action and thought. But the most significant fact about this experience is that it has a seemingly natural tendency to force itself out into the objective realm. Dilthey's experience becomes public in what he calls 'expressions', which can include any public manifestation of experience from facial expressions to works of art. Many of these expressions are permanently objectified and make up the mind constructed world or objective mind which is 'a covering term for all modes of expression of human life as they manifest themselves in the external world.'¹⁸ We find similarly that what Soloveitchik calls 'spirit' (rather than 'experience') naturally exteriorises itself, whether in actions or in the various products of those actions be they artworks, buildings or indeed, religious or metaphysical systems. Thus, we find Soloveitchik writing in extremely Diltheyan fashion

There is a definite trend towards self-transcendence on the part of the spirit. It strives to escape its private inwardness and infiltrate the concrete world encompassed by space and pervaded by corporeal forms. (HM, 67)

These concrete expressions of spirit are the primary sources for those studying the humanities: individual and collective subjective experience can only be studied via its concrete expressions, the objective mind. It is these that make the mind ‘accessible to knowledge’,¹⁹ for these expressions, as products of *Erlebnis*, have meanings that can be understood.

Thus, Soloveitchik believed that in order to form a religious philosophy, we must begin from the religious equivalents of these expressions, the objective concrete products of religious experience. Only in this way can we attain any degree of objectivity. It is here that Orthodox Judaism comes into its own for Soloveitchik maintains that in Judaism the concrete ethical and ritual norms of the halakhah form just such an objective order for study. The norms of the halakhah amount to a quantification of the subjective religious experience into something objective and concrete.²⁰

What we have seen so far then is that the Jewish philosopher should utilise the method of reflective equilibrium in order to form his world-view and do so by using the norms of the halakhah as his ‘objective parts’ or ‘considered judgements’. There remains though one further aspect of Soloveitchik’s method that we need to take note of.

2. Descriptive reconstruction

Notwithstanding the fact that Soloveitchik draws on a scientific model in order to illustrate his method of reconstruction, he apparently tempers his scientism in an important respect. Soloveitchik wishes us to emulate the modern scientist by utilising objective data in a method of reflective equilibrium, but he believes that there is an important difference in the way we should treat this data stemming from the fact that the halakhah is a meaningful structure.

Human actions, which are at the centre of halakhah, are distinguished from mere bodily movements as we have noted by reference to the fact that they are undertaken with a purpose in mind and are governed by certain rules. Dilthey thought that the various products of human experience, his expressions, which include the many ‘mind-produced’ systems of philosophy, religion and politics had this semantic dimension.²¹ And despite the fact that for Soloveitchik halakhah would be seen as a product of the divine mind rather than of the human mind, it would still be such a meaningful structure and as such should not in Soloveitchik’s opinion be treated in the same way as natural objects.²²

The particular methodological differences between the scientist and the religious philosopher that stem from this recognition are illustrated by returning to the scientist’s

three orders of reality.²³ The claim is that the scientist is only interested in the causal inter-relations between the members of the quantified objective order (B). He wishes to explain the members of (B) causally and subject them to necessary laws. However, the reconstructed whole (A2) that was necessary in order to understand the behaviour of the members of (B) is not an object of scientific study. It is not subject to the causal relations that interest the scientist and he is only interested in it insofar as it allows him to work with the individual processes within it. The actual ‘whole’ itself for the scientist is ‘an empty phrase, not suitable for portraying nature as such.’(HM, 58).

Soloveitchik’s first point then is that in direct contrast to the scientist, the religious philosopher is interested primarily in the reconstructed subjective whole (A2) itself. In the realm of meaningful expressions, we are not interested in the causal relations between objective expressions. We wish to understand them in terms of the subjective order (A2).²⁴

But, this also means that the manner in which this subjective track must be studied is not simply causal as it is for the objective order explored in natural science. The relationship between the objective order (B) and the reconstructed (A2) is causal according to the natural scientist. But the religious philosopher must construe this relationship in a non-causal fashion. The causal explanatory method is to be rejected and replaced with the method of descriptive hermeneutics, a method that seems to be more appropriate to the sphere of religion where we are neither concerned with the causal relationship between the different practices of that religion, nor the causal relationship between the practices and the theory. We are concerned to discover what the various practices ‘mean’ and we need to use a descriptive rather than causal method in order to uncover this. Thus we arrive at the method that Soloveitchik calls descriptive reconstruction.²⁵

In summary then, the important aspects of the method that the religious philosopher needs to emulate are as follows:

- 1) Jewish philosophy should utilise the method of reflective equilibrium.
- 2) The Jewish philosopher must emulate the scientist by beginning from objective data.
- 3) We must take a descriptive approach to our reconstruction rather than a causal one.

3. Rationalising the commandments

How can we apply all of this to the idea of rationalising the commandments? The first thing to note is that the method of reflective equilibrium seems to be especially relevant

to rationalising the commandments. Over recent decades the method of reflective equilibrium has been a popular method of forming ethical theories for justifying ethical practices. The most famous modern exponent of this is John Rawls who uses this method to great effect in his *Theory of Justice*.²⁶ There the idea is that one forms the principles of a theory of justice out of our considered judgements about justice, i.e. those about which we are most certain.²⁷ At the same time though these principles that we form might actually show up some of our considered judgements to be incorrect and therefore in need of revision. A theory is therefore only justified when it matches our considered judgements in a reflective equilibrium, not simply our initial considered judgements.

What has been found particularly attractive about this method in the ethical sphere is its nonfoundational nature. As Rawls explicitly states, the method does not rely upon any foundational ‘self-evident’ true principles or judgements that are to bear the weight of justification. The existence of any such set of self evidently true principles is seen to be too contentious to ground a theory. The method therefore does not attempt to justify ethical norms from some supposed Archimedean point. In reflective equilibrium, rather, the justificatory weight ‘rests upon the entire conception and how it fits with and organises our considered judgements in reflective equilibrium.’²⁸

If we apply this general methodological procedure to rationalising the commandments, we seem to have ready-made considered judgements in the commandments themselves and thus our theory is to be formed out of considering them. We form the principles of our theory of commandments by consideration of the individual halakhot that make up our considered judgements, while at the same time using the principles to understand those very halakhot and presumably, possibly to revise them. In this way we get a set of halakhic principles for rationalising the halakhah rather than some set of principles imposed from without. And indeed this sort of model seems to be the one that Kaplan takes to be implicit in works such as *Halakhic Man* and *Mah Dodekh Mi-Dod*.

Therefore, for R. Soloveitchik, to explain the commandments means first and foremost to subsume halakhic rulings under highly general, abstract halakhic concepts and principles, concepts and principles of which the specific rulings will be concrete particularizations. In this respect, for R. Soloveitchik, the rationality of the halakhah is immanent to it and the discovery of that rationality is part of the halakhic enterprise.²⁹

The model that Kaplan is suggesting is one whereby we explain the commandments in terms of an abstract *halakhic* structure. And since we have seen that Soloveitchik does not believe that any such philosophical structure can be apprehended a priori, we must

presume that this halakhic structure that rationalises halakhah, is nonetheless drawn from consideration of halakhah itself. What Soloveitchik appears to be saying on this reading is that halakhah expresses a logical conceptual structure which, when revealed, enables us to understand halakhic norms in a logically perspicuous fashion. Thus 'the halakhist introduces unified logical structures, complexes of abstract concepts in order to integrate conglomerations of diverse seemingly unconnected laws.'³⁰ It is this structure, formed by the method of reflective equilibrium that exposes the rationality of the system.

There are a number of factors that we should note about this model of rationalisation. The first is that it is based on the revolution in halakhic study ushered in by his grandfather Rabbi Chaim Soloveitchik (R. Chaim Brisker). R. Chaim first developed the idea that the halakhah was more than just a set of practical rules to be understood in their own qualitative terms. It is rather the actualisation of an abstract rational system of concepts and principles. Soloveitchik therefore similarly believes that the halakhah does not merely yield practical norms. Indeed, for Soloveitchik it embodies an entire philosophical world-view.

If the philosophy of religion asks for example, how the homo religiosus interprets the concepts of time, space, causality, substance, ego, etc., then it would have to look into the objective series and examine norms, beliefs, articles of faith, religious texts etc. Out of this objectified material, the philosopher of religion may glean some hints regarding the structure of the most basic religious cognitive concepts. (HM, 99)

Generally, we see that for Soloveitchik, the practice of Judaism, widely conceived, is seen to express a meaningful structure that embodies an entire *Weltanschauung*, a Diltheyan 'expression' that expresses a certain world-view in the presuppositions that its practical rules embody.

The second central point for Soloveitchik is that the method of reflective equilibrium that we are using here allows a degree of autonomy to our rationalisation. For such a method begins from within the halakhic perspective rather than from some external Archimedean point and forms its principles out of the sources of the halakhah itself. Rather than having to explain the commandments teleologically in order to live up to a universal scientific standard of knowledge as, for example, Maimonides did, halakhic categories are explained by subsumption under autonomous halakhic rules and principles allowing the halakhah its autonomy whilst retaining its rationality. As Aviezer Ravitzky writes

Halakhic activity is intended to acquire absolute autonomy, to create its ideal world, one which precedes any other reality . . . and which transcends any temporal alterations. The halakhic system is thus protected from any attempt at reduction to another realm. It is open to innovation, to constructive creativity, but these are meant to be conducted by means of its own unconditional transtemporal conceptual system.³¹

Thus, individual commandments must be interpreted in terms of the ‘unique autonomous norms’ of the halakhah, rather than in terms imposed from without. By using the method of reflective equilibrium, we can rationalise individual commandments in this way by the creation of a system of autonomous halakhic concepts and principles that serve to organise these individual commandments into a coherent system. Thus, the method of reflective equilibrium yields a set of principles, but they are not necessarily, and indeed are highly unlikely to be universal.

The final point that we should make is that this method does not appear to yield causal explanations of halakhot but rather describes the general principles implicit in the halakhot that serve to justify them - the method does indeed seem to be one that we could term *descriptive* reconstruction. Yet the model remains scientific inasmuch as according to Soloveitchik the principles and categories of the scientist are not to be seen as representations of the way the world is but rather as descriptive constructions that classify and unify the data at hand.

Aristotelian physics wished to explain existence, in terms of its qualitative essence. . . . Many generations believed, in all innocence, in the possibility of rational explanation, concerning real-qualitative existence. Classical, as well as modern, physics relinquished this far reaching and daring claim. It understood the non-rational nature of the universe, when it manifests itself in its everyday, primitive image, and abandoned scientific understanding thereof. The deeper truth which revealed itself to the practitioners of the natural sciences was that man is unable to comprehend the essence of concrete phenomena and to know them, but he may make formal-quantitative constructions which parallel the concrete phenomena.³²

As such, though our model of rationalisation is scientific, it could happily be construed as descriptive rather than causal. So we end up with a model of rationalisation that utilises the method of reflective equilibrium and yields an autonomous set of descriptive principles that serve to show that the halakhic system is a rational one.

4. Reflective Equilibrium

Now that we have the method set out before us, we should turn to the obvious problems that arise for it from a philosophical perspective. For while the reflective equilibrium approach as we have so far described it allows the halakhah to be seen as an independent theoretical structure with its own inherent rationality, it also seems to

insulate it from the possibility of any external criticism or indeed any objective validation. Thus, we see that Soloveitchik's criticism that the Maimonidean method sacrifices autonomy by allowing that the commandments must be subject to validation by external norms might be justified when placed next to his own model in which Judaism's autonomous norms are used to validate the commandments. However, it seems to achieve this by utilising an entirely circular method that can only allow for a justification by the particular logic of the system under study. Indeed, this criticism might arise from the very fact that Soloveitchik says that his method is descriptive - how can the mere description of the scheme implicit in a set of norms be seen to justify them?

This reflects the general criticism levelled at the method of reflective equilibrium, which as Norman Daniels points out, makes the problem of justification 'intractable'.³³ The mere back and forth movement cannot yield an objective justification of a theory on its own, for it seems that all we are doing is systematising our own existing judgements, even if some of them might be revised subsequent to the formation of the principles.³⁴ If we are starting from within a certain perspective, even if we allow that judgements within that perspective are open to revision by theory, the fact that the only starting point for that theory is the judgements themselves still seems to put them in a privileged position of sorts that we cannot justify.

If Soloveitchik is a reflective equilibrium theorist, he has to deal with this very problem. For though the conservative insulation that comes as a result of this lack of objectivity might be thought to be a virtue of the theory for religious conservatives, it is not a virtue if one wishes to assert that we can give a genuine philosophical justification of the commandments. For, whilst by starting from within a certain perspective we may salvage a degree of autonomy as Soloveitchik wished, we do not appear to have the objectivity or indeed capacity for self criticism that would seem to be necessary for a justification. Thus, the question that we were left with at the end of chapter two regarding whether or not Soloveitchik offers us a genuinely philosophical alternative to Maimonides might be thought to hang on this issue.³⁵

It is with this problem in mind therefore, that Daniels introduces the distinction between narrow and wide reflective equilibrium. What we have been describing up until now is a form of narrow reflective equilibrium whose relata are the principles of a theory and a set of considered judgements. However, according to Daniels, Rawls' use of the original position in his reflective equilibrium in *A Theory of Justice* acts as an intervening step between these relata that adds extra justificatory weight to the theory.

In *A Theory of Justice* Rawls attempts to justify a certain conception of justice by appeal to a hypothetical contract that is agreed to in the original position. This original position though embodies certain philosophical assumptions that are thought to be rational so that whichever conception of justice is rationally derived from this position will similarly be rational and therefore justified. Now the assumptions of the contract are arrived at by philosophical arguments which Daniels believes can be construed as inferences from a set of relevant background theories such as a theory of the person and the role of morality in society. He therefore argues that Rawls' method is in fact that of wide reflective equilibrium.

A wide reflective equilibrium is a coherent ordered triple of sets of beliefs held by a particular person, namely, a set of considered moral judgements, (a); a set of moral principles, (b); and a set of relevant background theories, (c).³⁶

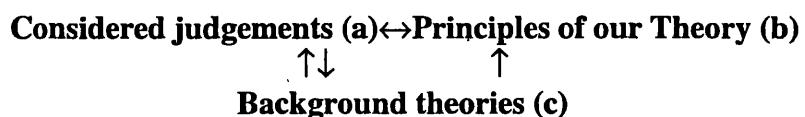
According to this approach, the original position itself, which embodies certain (b) level principles, is derived from a set of background philosophical theories (c) that serve to justify *its* assumptions. What we have therefore is a philosophical background for the original position and thus any principles chosen from that position have extra justificatory weight, beyond that which they get from the equilibrium with our considered judgements. To mark the distinction between these levels we will speak from now on of 'principles' when speaking of the principles of level (b) and 'background theories' when referring to these background philosophical theories of level (c)

How though, are these background theories supposed to add extra justificatory weight to the theory of justice itself? If we are to retain a nonfoundational approach they cannot be privileged foundational points. Daniels therefore states that these background theories must themselves be justified by the method of reflective equilibrium with our considered judgements. And this seems to reflect what Rawls himself says about the original position, for he tells us that we are to consider whether or not the assumptions embodied in the original position yield principles of justice that match our considered judgements about justice. As Rawls points out, if the choice of theory from the original position does not match our considered judgements, then we again can either modify our initial assumptions in the original position i.e. our background theories, or our considered judgements.

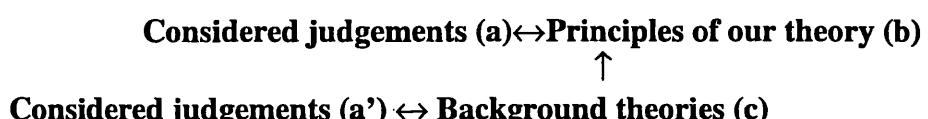
We can either modify the account of the initial situation or we can revise our existing judgements, for even the judgements we take provisionally as fixed points are liable to revision. By going back and forth, sometimes altering the conditions of the contractual

circumstances, at others withdrawing our judgements and conforming them to principle, I assume that eventually we shall find a description of the initial situation that both expresses reasonable conditions and yields principles which match our considered judgements duly pruned and adjusted.³⁷

However, the problem now is that the background theories cannot be justified by being in reflective equilibrium with our considered judgements, (a), for then we have made no progress. Our background theories would themselves be derived from the very judgements that we used to form our principles of justice. And if the same (a) judgements justify our principles, (b), and our background theories, (c) we have not gained any justificatory weight by invoking the background theories. All we have done is further developed the very same set of judgements. We can represent this picture as follows where arrows signify justificatory relationships



Daniels therefore believes that it is important that there be an independence constraint on the background theories. This means that the background theories must themselves 'not just be formulations of the set of considered moral judgements (a) to which we seek to 'fit' the principles in (b).'³⁸ The background theories, that is, must derive their plausibility from a set of considered judgements disjoint from those that were considered in the initial reflective equilibrium which served to match our principles of justice to certain considered moral judgements. The preferred picture therefore is:



Now the first thing to note is that we have already seen that according to Soloveitchik the halakhah does contain such philosophical background theories as would make for a wide reflective equilibrium. So if the method of wide reflective equilibrium works, Soloveitchik would seem to be in a position to rationalise the commandments.

However, through all of this the fact remains that we are still working solely with our own considered judgements in order to produce these background theories which do not therefore seem to have any independent justification and are no more objective than the original theory. Presuming that we can find a set of disjoint considered judgements to form our background theories, the fact is that they are still the considered judgements of the very same world-view. All we have achieved is a further articulation of the same

world-view. But we have still not managed to further its objective grounding. Daniels' claim that since we can reach a greater measure of agreement on such background theories they can be used to justify our ethical (or in our case religious) theories just seems contrary to the fact of the deep disputes that abound concerning them.³⁹ Thus, the problems remain for the reflective equilibrium theorist. However, it is possible that Soloveitchik has alternative resources at hand for dealing with this problem of objectivity.

5. Reflective Equilibrium and Halakhic Objectivity

The resource that Soloveitchik may be able to use to bolster the objectivity of his rationalisation is his belief in the objectivity of halakhah. Since the halakhah itself is in some sense objective for Soloveitchik, and our theory of justification arises out of it, this may in turn yield a more objective theory of justification. In what though does this halakhic objectivity consist?

On the one hand, we can say that halakhic norms are objective in the simple sense of having been externalised as concrete practices from the religious consciousness in order to become a public shared point of departure for study. This objectification is again given its typically Soloveitchikian scientific analogy, being compared to the way that physical scientists take their subjective common sense perceptions and quantify them into objective mathematical formulae.

The halakhah which was given to us from Sinai, is the objectification of religion in clear and determinate forms, in precise and authoritative laws, and in definite principles. It translates subjectivity into objectivity. . . . To what may the matter be compared? To the physicist who transforms light and sound and all of the contents of our qualitative perceptions into quantitative relationships, mathematical functions, and objective fields of force. (HMN, 59)

However, this comparison to the scientist is also used to bring out a more important sense in which the halakhah might be seen as objective.

In *Halakhic Man*, a well known parallel is drawn between the way that the scientist and halakhist approach reality. Both of them use the *a priori* ideal concepts and categories of their respective systems in order to cognise the world.

Halakhah has a fixed a priori relationship to the whole of reality. . . . Halakhic man orients himself to the entire cosmos and tries to understand it by utilising an ideal world which he bears in his halakhic consciousness. All halakhic concepts are a priori and it is through them that halakhic man looks at the world. . . . His world view is similar to that of the mathematician: a priori and ideal. Both the mathematician and the halakhist gaze at the concrete world from an ideal a priori standpoint and use a priori categories and concepts

which determine from the outset their relationship to the qualitative phenomena they encounter. (HMN, 23)

Significant questions have been raised regarding the sense in which these halakhic categories are genuinely ideal and *a priori*.⁴⁰ However, the fundamental point seems to be that both the scientist and the halakhist view the world from a certain theoretical perspective determined by their particular conceptual scheme. They both have what Kaplan later terms 'a fundamental mode of orienting oneself to reality'⁴¹. We have different conceptual orientations to reality which dictate the way that we cognise it. More significantly for our purposes though is his interpretation of halakhah's ideal nature. The central idea that Soloveitchik is trying to get across here is that the halakhah reflects an ideal *a priori* realm of ideas in that 'it does not require, as far as its validity and truth are concerned, precise parallelism with the correlative realm of concrete, qualitative phenomena.' (HMN, 19). It is akin to a Platonic realm of ideas that the halakhist discovers and that has some form of ontological status that is entirely independent of the sensible world making halakhah objective in the strongest of senses.⁴² The discovery of this abstract theoretical system is, for Soloveitchik, halakhic man's goal.

[Halakhic Man's] deepest desire is not the realisation of the Halakhah but rather the ideal construction which was given to him from Sinai. . . . The theoretical Halakhah, not the practical decision, the ideal creation, not the empirical one, represent the longing of halakhic man. (HMN 23-24).

As Kaplan points out, the halakhah that Soloveitchik appears to be referring to here is the revealed corpus of law given to Moses at Mount Sinai. The revealed nature of this law means that it is objective in the sense that it is independent of man, as is the natural world. Thus in the same way that science has been seen to be objective in the sense that its truths are independent of man's concerns, the law as given at Sinai is seen to be a similarly independent objective realm, one that is ideal in the sense noted and used to orient ourselves to reality.

Admittedly, the idea of such an ideal realm with some independent ontological status seems very difficult to understand. However, allowing for the moment that this 'Platonic' conception of the halakhah is correct, the problem now is that though we have objectivity, we no longer seem to have a method of reflective equilibrium. If halakhah is taken to be objective in this way, we seem to have severely limited, if not nullified, the extent to which any mutual adjustment between principles and individual halakhot can take place and as such we cannot be reflective equilibrium theorists at all.

It seems as if the halakhist can construct a theoretical system out of the commandments that he has been given. But they are an objective given that are discovered and cannot be adjusted and if this is the case any method of rationalisation would seem to return to the atomism of the Newtonian scientist that Soloveitchik had previously attacked. He now appears to be building up a philosophical system out of the halakhic parts without regard to any kind of two way process.

It seems then that objectivity has been regained for the reflective equilibrium approach by privileging the considered judgements. Such privileging gives the halakhic component of the equilibrium the type of foundational role required for an objective justification. However, this means that Soloveitchik cannot use the method of reflective equilibrium. We have a seeming conflict therefore, between his view of the 'given' nature of the halakhah that seems to be beyond revision and his methodological remarks commending the method of reflective equilibrium according to which 'nothing is sacred' as far as revision goes.

6. Halakhic creativity

So far we have seen one level of conflict in Soloveitchik's thought regarding how we should go about rationalising the commandments. But this is not the only level of conflict that we find for this model. For Soloveitchik draws a second science-halakhah analogy in *Mah Dodech Mi-Dod* in which he stresses a further factor that causes him problems - creativity.

Up until now we have been looking at the parallel Soloveitchik draws between the way that the scientist and halakhist approach reality itself. We can see that this analogy actually breaks down at a highly significant point. For our halakhic structure on this picture supposedly comes to us ready-made from God and we passively receive it. The scientist, or at least the modern scientist who is the paradigm of rationality for Soloveitchik, creates his own scientific structure. As we have noted previously, Soloveitchik shifts from the classical and Aristotelian paradigms of science to that of quantum physics. The modern scientist constructs abstract *a priori* mathematical models that parallel the qualitative world that he encounters. He himself constructs an abstract conceptual system and is not merely copying an objectively given reality, which is the way that God's revelation is represented in the above discussion.

In the second analogy made primarily in *Mah Dodech Mi-Dod*, the above problem is remedied in the parallel drawn between the scientist's relation to the world and the halakhist's relation to the halakhah itself (rather than his relationship to the world

which was the concern in the first analogy). The halakhist, we are told, is confronted with innumerable texts that provide him with various problems and contradictions. What the halakhist has to do therefore is organise this data by imposing a logical conceptual structure upon it. And as Soloveitchik stresses both here and elsewhere, this activity is highly creative.⁴³

Freedom of inquiry and speculation in the field of halakhah is exceedingly great and broad. The sage is obligated to engage in original, creative interpretation (*hiddush*) to construct new, original concepts, and carefully delineated methods, and to plot distinct realms of thought. Profound and probing reflection and the discovery of new, enchanting cognitive horizons constitute the very essence of halakhah.⁴⁴

The central idea here is that in same way that the scientist creates a certain conceptual structure in order to understand the sense data that he is presented with, the halakhist creates an analogous system in order to understand the halakhic data that he is presented with. This structure does not fall off the page ready-made. It is constructed by the halakhist himself just as the scientist's system is constructed by the scientist. Though the halakhist does not create the halakhic system itself, he must create the conceptual structure by which to understand it, just as the scientist does not create nature but does create the system by which to understand it. The point being made here about the halakhah is that as it stands it is not simply a given natural artefact that we can explain in terms of some objective causal system. The Halakhah is rather a meaningful cognitive structure that requires creative interpretation.

Thus, on the one hand we have seen Soloveitchik insist that the Halakhah must be understood as objective inasmuch as it is a revelatory 'given' and this is very much the traditional conception of the halakhah. On this model we can use the halakhah as an objective foundation for our rationalisation but must give up on the method of reflective equilibrium. However, Soloveitchik also departs from the traditional conception in stressing that the halakhist himself creates the conceptual scheme, by which he understands the halakhic norms, an idea that undermines the previous thought that the halakhah is a given and that the halakhist is simply revealing some pre-existent ideal Platonic realm of concepts or laws.

On this understanding, the concepts that on the Platonic model were said to be *a priori* in the sense of determining our orientation to reality turn out to be *a priori* in the more strictly Kantian sense of being a contribution of our own minds to reality, albeit a consciously created one rather than one that is a necessary condition for the possibility of experience. Thus, Soloveitchik seems to be caught between the traditional belief that

the halakhic norms are there to be discovered, being given and objective in some strong Platonic sense and his belief in the creativity of the halakhist according to which the system is a human creation sanctioned by God. And the problem with this latter point is that it undermines the objectivity of the halakhah, or at least the objectivity of any philosophical rationalisation of it. For once we allow for such creative interpretation, the question of competing interpretations is bound to arise. The problem is especially stark if one combines the notion of halakhic creativity with Soloveitchik's observation that the philosophical frameworks we create determine to some extent one's interpretation of the 'objective' data. Given this there seems to be no 'given' objective data to which we can appeal in order to justify one interpretation over another.

This implicit questioning of the idea of objectivity of course lends itself to a nonfoundational reflective equilibrium approach to justification again. Indeed, in *Mah Dodekh Mi-Dod* Soloveitchik himself explicitly links his emphasis on creativity to the parity between principles and particular judgements regarding revision that is characteristic of that very approach.

The doctrine of the creation of pure constructions does not distinguish between that which is primary and that which is peripheral, between the general principle and the particular instance. Everything, from top to bottom, is important. Even if the scholar is convinced of the truth of his line of thinking . . . he will not rest if even a slight detail does not fit into his general conceptional complex.⁴⁵

At the same time though, Soloveitchik does insist that the halakhist cannot play as freely with his 'halakhic postulates' as the scientist generally can with his. For given his insistence on the traditional conception of the halakhah as a revealed corpus of law, whilst the scientist as described by Soloveitchik seemed free to manipulate the data of the natural world, Soloveitchik's orthodox conception of the Halakhah yields the following qualification on the creativity of the halakhist.

Naturally the freedom of halakhic inquiry is bounded by categorical limits. The halakhah cannot free itself from its subjection to the complex of a priori postulates. . . . It need not be said that halakhic thought which is set firm in a revelational foundation cannot, unlike scientific thought, dominate its postulational complexes. It must accept them as they are.⁴⁶

Thus, on the one hand Soloveitchik commends the modern scientist for his creativity and recommends that the religious philosopher emulate the scientist in this regard. Moreover, this emphasis would appear to encourage the sort of nonfoundational reflective equilibrium approach that Soloveitchik appears to favour when rationalising the commandments. However, at the same time he seems unwilling to allow that the

theory that is created from the considered judgements can be subsequently used to revise those judgements which are taken as given which returns us to a purely atomistic method that he had previously thought inadequate and that privileges the considered judgements, insulating them from any rational criticism.

It is possible that Soloveitchik's more conservative remarks concerning creativity here are specifically meant to guard against the sort of reductionism that subordinates halakhic norms to external forms of rationality. Soloveitchik is not unaware of the possibility of innovation within the practical halakhic realm. But the point is that this innovation must proceed in accordance with halakhic principles rather than in accordance with principles derived from some external source. However, the fact is that if we are working with the method of reflective equilibrium then the principles that we form, since they are formed out of the halakhah itself, will presumably be autonomous halakhic principles. As such, any revision of the actual practical halakhah that they dictate will be in accordance with halakhic logic which means that the limit that Soloveitchik seems to put on halakhic innovation is built into the method of reflective equilibrium from the start. In using that method, any innovation forced by principles can only be forced by halakhic principles.

It is impossible to say whether Soloveitchik simply did not recognise this and therefore put a strong restriction on the creativity of the halakhist, or that he did and the offending passages are supposed to merely make the point that one cannot revise the halakhah in accordance with external norms. Whatever the truth of the matter though, this very saving grace of the method of reflective equilibrium from the perspective of Orthodox Judaism simply returns us to our original concerns with that method from a philosophical perspective as a genuine method of justification. The theories we form cannot yield an objective justification of the practice. The method is essentially conservative.

In the final analysis then, Soloveitchik is caught in a dilemma. His preferred method of rationalisation appears to be that of reflective equilibrium. However, such a method leaves everything open to revision so Soloveitchik tries to insulate the considered judgements from theoretical revision by appeal to the objectivity of halakhah. At the same time his emphasis on creativity seems to undermine this objectivity and push us back towards the more flexible reflective equilibrium approach, an approach that is itself criticised for its inherent conservatism.

7. Description Revisited

We have seen that tensions in Soloveitchik's thought create problems for his use of the reflective equilibrium approach. What is more notable though is that in part four of *The Halakhic Mind*, where he explicitly discusses the matter of *Ta'amei ha-Mitzvot* in terms of the model of descriptive reconstruction, he seems to be after a very particular type of descriptive meaning that would undermine any use of the reflective equilibrium method at all.

Soloveitchik here is looking for the meaning of the commandments and he appears to deal with two particular accounts of meaning - the intentionalist and hermeneutic accounts. According to the intentionalist account, the meaning of a text or text analogue is what the author had in mind when creating it. In order, therefore to find this meaning we have to reconstruct this initial authorial intention. Such an intentionalist account of ordinary linguistic meaning has been put forward most notably by Paul Grice,⁴⁷ but our concern is mainly with experiential meaning in the human sciences. With reference to this, Collingwood proposes that the meaning of an act is to be identified with the inner psychological experiences that occurred in the author's mind, which we have to re-enact.

The historian of philosophy, reading Plato, is trying to know what Plato thought when he expressed himself in certain words. The only way in which he can do this is by thinking it for himself. This, in fact, is what we mean when we speak of understanding the words. . . . The history of thought, and therefore all of history, is the re-enactment of past thought in the historian's own mind.⁴⁸

Such overtly psychologistic theories have since been called into question and more modern intentionalist theories focus instead on what the agent in question was doing by acting a certain way rather than on the actual re-enactment of his mental processes. Thus we can distinguish between the intention *to do* something and the intention *in doing* something. Whilst the former is concerned with reconstructing the agent's psychological processes, the latter sees the understanding of the intentionality of an act as involving its interpretation within the intentional context that lays bare the reasons behind these acts. This is an expiatory rather than psychological exercise couched in terms of the aims and purposes of the agent rather than in terms of the re-enactment of the conditions of its actual psychological generation.⁴⁹ However, for all intentionalist accounts, the meaning of an expression is a function of the intentions of the agent who has produced it, however one goes on to interpret that meaning.

The rival theory to intentionalism is the hermeneutic theory, most fully developed by Hans Georg Gadamer in recent times, though again found in its embryonic form in the later work of Dilthey.⁵⁰ For Dilthey ‘investigating the human studies is more like finding the meaning of a poem than like researching in physics or chemistry.’⁵¹ Taking up this theme, Gadamer believes that rather than looking for the generating conditions of meaningful expressions, the meaning that we should be interested in is the type of substantive meaning that one is referring to when one says that one has understood the meaning of a painting or a book. The important point for Gadamer is that before we can explain why someone produces an expression, we must understand what that expression is. We require an interpretative understanding of the individual content of the expression and such an interpretation must be prior to any form of explanation. As Peter Winch points out

Unless there is a form of understanding that is not the result of explanation, no such thing as explanation would be possible.⁵²

This type of understanding is the understanding of truth content or *die sache* as Gadamer refers to it and it is the meaning that corresponds to this type of understanding that we are after in the social sciences. We want the ‘what’ rather than the ‘why’ of the expressions.

According to this Gadamerian account, such meaning is found in the relation between a text and its interpreter. For an intentionalist, meaning is produced *by* an agent, but once it is produced the meaning exists independently and does not itself depend on an interpreting subject for its existence. For Gadamer though, meaning only comes about when the subject confronts the expression in question. Thus unlike in intentionalism where the meaning is found in the intentions of the author where it lies complete and ready to be discovered, for Gadamer meaning is not found in the expression alone, but is created in the confrontation between the expression and the interpreter. Meaning therefore does not exist independently of the interpreting subject as it does for the intentionalists but comes about as the result of the dyadic relation between text and interpreter.

Moreover, any interpreter arrives with a certain perspective or ‘horizon’ which influences the way he interprets the expression. It forms a certain given scheme within which he performs his act of interpretation. In that case though, meaning cannot be simply identified with the intentions of the author and cannot be seen as something objectively ‘out there’ awaiting discovery. Rather, meaning becomes multivalent.

Different interpreters with their different horizons will find different meanings in a certain expression. Such an account of meaning would appear to be highly relativistic and the spectre of relativism is one with which Gadamer has to grapple.

For our purposes it is highly significant that Soloveitchik appears to take this latter Gadamerian approach to meaning rather than the intentionalist one and many of his criticisms of Maimonides' approach are based on the fact that it is quasi-intentionalist.⁵³

Maimonides is looking in his rationalisation, for the reasons why the commandments were given. Therefore, in order to understand the commandments, we have to reconstruct God's intentions in giving them. Now it is true that Maimonides would not wish to talk of God's intentions for such anthropomorphism was an anathema to Maimonides, so in order to circumvent this problem he builds God's intentions into the natural world. But, according to Maimonides, in order to understand the commandments, we have to answer the question 'Why did God command them?' and the answer is given in terms of the goals that they naturally lead to. What Maimonides is in effect doing therefore, is reconstructing God's intentions in a non-psychologistic fashion, as they are made manifest in the lawlike structure of nature and the reconstruction of this natural order gives us the meaning of the commandments. Such a view is quasi-intentionalist since

- 1) To understand a commandment is either to understand the antecedent conditions that lead up to it or the purpose that it serves and this explains why one ought to perform the commandment.
- 2) It implies that the meaning is out there crystallised in an objective causal structure awaiting discovery.

Now we would expect Soloveitchik to give a similar type of intentionalist account of meaning given his talk of investigating the 'subjective track' behind the objective commandment. However, Soloveitchik is quite explicit in his rejection of such approaches in favour of the more Gadamerian concern with substantive meaning.⁵⁴

[Modern philosophy of religion] is not interested in the genetic approach to the religious act, nor does it raise the old problem of causality. It bypasses the how question and turns it over to explanatory psychology. The focal problem is of a descriptive nature; What is the religious act? What is its structure, context and meaning? (HM, 86)⁵⁵

Moreover, it is not just the psychological approach that he is rejecting here. Soloveitchik goes further than this in rejecting any approach that attempts 'the explanation of religious norms by antecedence'.(HM, 86). The 'why' question is not his

concern. It is the 'what' of the commandments that the religious philosopher must attempt to discover. Any attempt to retrace the causal antecedence of the commandments, whether in terms of psychological re-enactment or in terms of aims and goals miss out the most important aspect of the commandments.

[T]he causalistic method invariably leads to circumrotary explanation and never to penetrative description. The enumeration of causes. . . discloses the 'what has gone before' but never the 'is' of the subject matter. (*HM*, 98).

We are not to look for any generating cause or goals. (*HM*, 94).

Thus we see Soloveitchik saying quite explicitly that we should not take any kind of intentionalist approach to the commandments but should rather take a more Gadamerian approach that undertakes to reveal their substantive meaning.⁵⁶

Soloveitchik's pronouncements on meaning therefore seem to square with the hermeneutic account of meaning rather than with the intentionalist one. However, in the form that Gadamer presents it, the hermeneutic theory of meaning seems to lead to relativism. If the meaning of anything depends to such an extent on the horizons of the interpreting subject, then surely different subjects with different horizons will find different meanings in phenomena. What this means though is that with reference to interpreting practices, how do we judge whether we have justified our practice? We can only appeal to the interpretation that makes sense of the originally obscure commandments. But how are we to convince someone of the sense of this interpretation? We can only show this imaginary interlocutor how the meaning that we have given to a commandment coheres with the system of meanings of which it is a part. We can therefore take him on an interpretative journey through the system, showing him how it all fits together. But if he is not a party to the system in which all the various meanings are implicated, then no appeal to the other parts of the system is going to convince him. We cannot get beyond our own hermeneutic circle and convince our interlocutor if he is unwilling to enter its circumference. Thus, we immediately allow for a pluralistic universe of meanings corresponding to all the various different systems. The approach implies that there is no way to break out of our own interpretative circles in order to test the objective validity of our interpretations.

Maimonides of course does not have this particular problem. For Maimonides Judaism is a particular form of a universal rational structure. The commandments are not treated as meaningful expressions for interpretation, but as quasi-scientific objects that play a causal role in taking us from our potentially rational state to an actualised such state.

Their meaning or rationality is exhausted by this instrumental role that they play in the causal structure. There is no question of competing circular interpretations, only the question of whether the commandments can be subsumed under a universally applicable causal structure. This also of course links up with the quasi-intentionalist account of meaning that the Maimonidean approach works with. If the meaning of the commandments is given by God's intentions naturalistically construed, we can break out of any interpretative circle by locating the commandments in this objective causal structure.

This objectivity though is attained at the price of autonomy according to Soloveitchik. Maimonides is ignoring the central hermeneutic aspect of the commandments and is thereby misinterpreting Judaism altogether by imposing his universalistic approach. However, if we accept Soloveitchik's model for understanding the commandments, we attain autonomy but at the price of losing objectivity. Once we divorce the understanding of the commandments from God's intentions and turn instead to the meanings they have for interpreters, we have no objective starting point for our understanding, especially given Soloveitchik's belief that the halakhah is a meaningful structure containing an entire conceptual scheme that we must create. It might be thought therefore that Soloveitchik would be led into the type of relativistic tangle that we mentioned was a corollary of the Gadamerian account of meaning that he chose to accept. This thought is reinforced by the fact that Soloveitchik does accept a form of pluralism in *The Halakhic Mind* as we have noted earlier in this chapter, which again would allow for the sorts of plural interpretations that would cause this problem.

At the same time, we noted that Soloveitchik was keen to avoid relativism and therefore combined his pluralism with a form of realism. As Jonathan Sacks points out though, Soloveitchik's realistic stance here appears to be a little ad hoc. Once we have established that reality can be interpreted in many ways and that reality corresponds to each of them, is it significant to say that it corresponds to any?⁵⁷

The fear of course is that if we cannot find an objective grounding for our interpretation, we are left with a completely relativistic epistemology according to which all interpretations of the world are legitimate. Soloveitchik insists that the Jewish philosophy that he is advocating though is a cognitive matter and is resistant to such relativism. That there may be as Soloveitchik puts it, different keys to the ontological kingdom, does not automatically mean that any key will fit. How we are supposed to judge which keys do and do not fit though is not clear, especially once Soloveitchik

accepts the quantum physicist's points that one's theoretical framework is both formed from and partly determines the nature of the object being studied.

Thus, we return again to the central tension in Soloveitchik's thought concerning the rationality of halakhah. On the one hand we have a method of rationalisation that utilises a hermeneutic theory of meaning. This theory seems to allow for various different interpretations of halakhah without giving any objective grounding to any one of them. Moreover, Soloveitchik himself propounds a form of pluralism that would seem to agree with this. At the same time though he attempts to bring a realistic stance to the theory in order to safeguard some form of objectivity. But these two strands do not seem able to accommodate each other comfortably. More significantly though, this more hermeneutic stance seems to lead Soloveitchik to a rather different model of rationalisation to that discussed earlier.

8. Soloveitchik's Two Models

The first model of rationalisation that Kaplan gleans from the pages of *Halakhic Man* and *Mah Dodekh Mi-Dod* is scientific. The model is supposed to rationalise particular halakhic decisions by subsuming them within a theory that contains general halakhic concepts and principles discovered by the method of reflective equilibrium. Indeed, Sagi even writes that Soloveitchik sees this theoretical construction as a deductive system like that of the mathematical scientist on which it is modelled.

The Halakhah is like a deductive system whose first principles are the Sinaitic laws and whose rules are the a priori legal framework also given at Sinai. The system proceeds from its premises on the basis of these rules themselves and not on the basis of external influences.⁵⁸

Thus, despite our earlier assertion that the method could be seen to be descriptive rather than explanatory, Kaplan writes that in fact the approach is explanatory and it is simply that Soloveitchik's conception of what constitutes a satisfactory explanation of the commandments differs from that of Maimonides. Maimonides' explanation is in terms of final causes to be found in nature. For Soloveitchik explanation is achieved by understanding a phenomenon as falling under an abstract halakhic principle. Such a method could certainly be seen to be descriptive rather than causal, appealing to general norms that do not explain the causes for the commandments, whether historical or teleological, but that rather '[impose] categories and groupings upon otherwise disorganised data.'⁵⁹ However, significantly it remains a subsumptive theory and can be seen as explanatory in the sense just mentioned.

It is true that Soloveitchik's reflective equilibrium approach, even if explanatory, leads to a theory of the commandments that appeals to particular laws of the halakhah rather than to more general psychological or scientific laws. He thereby avoids the criticism that the explanatory approach sacrifices the autonomy of religion by imposing alien concepts upon the halakhic system. However, he retains the general structure of the scientific explanatory approach in his use of the reflective equilibrium approach. Individual halakhot must be rationalised by being seen as instances of a set of general, albeit *sui generis*, halakhic principles with which they are in reflective equilibrium.

The question though that arises from the model of *The Halakhic Mind* is whether meaningful structures such as the halakhah are to be explained by subsumption under a set of laws at all. For Soloveitchik's hermeneutic approach in that work seems to bear little relation to the sort of appeal to subsumptive principles characteristic of the reflective equilibrium approach. Thus, the type of rationalisations that he gives in *The Halakhic Mind* couldn't be further from the subsumptive model that we have been discussing. Thus take for example his rationalisation of the commandment to sound the Shofar (ram's horn) on the Jewish New Year. Referring to Maimonides' interpretation of this commandment in his *Mishneh Torah* he writes

His view that the shofar *alludes* to repentance and self-examination is not a classical causal interpretation based upon a two valued logic which entails necessity. The mechanistic relation between A and B is unique and necessary. However, there is no relational necessity between the sounding of the shofar and conversion. . . . The call to repent could have been realised in many ways and there is no necessary reason why the Torah selected the means of the sounding of the shofar. . . . The reconstruction method does not operate with the principle of necessity. . . . It merely points at the stationary trail left behind the religious "logos" and indicates parallel tendencies in the both the subjective and objective orders. (HM, 95).

Whether or not this sort of description yields a genuine justification of the commandments is a question that we will have to address, along with the fact that this hermeneutic model is being applied to the commandments in general rather than to particular judicial decisions as was Kaplan's scientific model.

However, there is little doubt that to characterise the above example of a rationalisation in terms of the sort of subsumptive model that Kaplan discusses would be to utterly misrepresent it. It seems to me therefore that at this point the more humanistic strands of Soloveitchik's thought point him in a more radically hermeneutic direction altogether and one that is totally at odds with the former more scientific approach. The sort of description that he seems to be concerned with here is a thick singular description of the meaning of the commandment, what he terms 'penetrative

description', rather than the weaker sense of description that we find in Kaplan's model.⁶⁰

Indeed, it seems to me that there is a general trend running through *The Halakhic Mind* that implies a certain scepticism regarding our ability to give a principled justification of Jewish practice at all. It is with this in mind that Soloveitchik therefore, describes the following important distinction between the methods of the natural and human sciences.

Knowledge for science is not concerned with content but form, not with the 'what' but with the 'why' and 'how.' It does not investigate A and B, but attempts to determine the interdependencies of these relata. . . . The methodologist of the humanistic sciences is not interested in the genetic or historical problem of the 'why' and 'how' but in the functional problem of the 'what.' The psychologist and historian penetrate the 'thickness' of their object rather than survey its relational surface. . . . Object and subject fuse and become one. The meaningful content and structure of A and B and not their relational character is the outstanding problem of the humanist. (HM, 31-34).

What Soloveitchik is pointing out here is that the explanatory methods of the natural sciences are inappropriate for the human sciences and the main reason for this stems from the intentional content of the subject matter of the human sciences. In order to understand actions we have to understand this content, or in other words understand the meaning of the action. The human sciences are more interested in what the phenomena being studied mean and this means that methods other than those of the natural sciences are needed in this field.

This issue of whether or not we should apply such broadly scientific approaches to the practical realm is a direct corollary of the debate in the philosophy of social science between naturalists and antinaturalists. Whilst naturalists believe the methods of the natural sciences to be appropriate to the social sciences, antinaturalists believe that the social sciences cannot be understood in this way. They believe that social phenomena cannot and should not be studied by using the natural scientific paradigm because of the previously noted differences between the respective subject matters of the natural and human sciences. The difference in methods that this calls for is often described in terms of a difference between explanation and interpretation. The explanatory objective of the natural sciences is well summarised by Ernest Nagel in his work *The Structure of Science* where he writes that

the sciences seek to discover and to formulate in general terms the conditions under which events of various sorts occur, the statements of such determining conditions being the explanations of the corresponding happenings.⁶¹

Nagel continues by writing that this is achieved by finding 'repeatable patterns of dependence'⁶² between the properties that we are interested in. Thus, in order to gain scientific knowledge, we explain the phenomena by subsuming the individual phenomena under universal laws and it is the general laws and the interdependencies between the phenomena that they draw our attention to rather than the concrete phenomena themselves. Explanation in the natural sciences aim at subsuming particular events under general laws in order to explain past occurrences or predict and control future ones. According to naturalists it is precisely this method that we must apply to the human sciences. Our use of Hempel to illuminate the Maimonidean approach in the previous chapter would be an example of just such an approach.

Basically the natural sciences are concerned with why something has occurred. The human sciences in contrast are more interested in what the phenomena being studied mean and for Dilthey the attempt to subsume meaning bearers such as human action under universal laws and concepts such as those provided in scientific explanations is misguided. The subject matter of the human studies 'refer to special kinds of limited contexts' and require a different approach – that of interpretation.⁶³

We need not for our current purposes enter into a detailed exposition of the precise method of interpretation. However, for the modern hermeneutic theorist Hans Georg Gadamer the distinction between explanation and interpretation is particularly well brought out by looking at historical research for historical events are not instances of general laws that are repeated or that could be manufactured so as to be so repeated. The type of knowledge by subsumption that is applicable in the natural sciences is not applicable to the historian. Thus Gadamer writes that the aim of historical research is not 'to achieve knowledge of a law, for example, how men, people, states in general develop themselves but instead how this man, this people, this state is what it has become - how it can have happened that this is so.'⁶⁴ The same idea is then applied to the study of the social sciences in general.

one has not rightly grasped their nature if one measures them by the yardstick of a progressive knowledge of regularity. The experience of the sociohistorical world cannot be raised to a science by the inductive procedures of the natural sciences. . . The individual case does not serve only to confirm a law from which practical predictions can be made. Its ideal is rather to understand the phenomenon itself in its unique and historical concreteness.⁶⁵

Understanding rather than causal explanation the focus of the social sciences according to the antinaturalist and for this the explanatory method is unsuited. What we must do in this sphere is use the cognitive process of understanding in order to interpret the

meaning of expressions. This understanding, for Dilthey, is the common everyday process by which we understand things rather than some form of technical specialisation, though there are certainly techniques of interpretation that may need to be used to gain this understanding.⁶⁶ However, the central claim is that there is a form of interpretative understanding that is central to the social sciences that cannot be captured by the use of natural scientific methods for which involve subsumption under universal laws. As Soloveitchik writes:

A scientific law is universal and refers to the genus as a whole. The mathematical sciences operate with universals and not particulars. . . . The humanist is concerned not only with the conceptual and universal, but with the concrete particular and individual. Mental reality is characterised by uniqueness and otherness. By reducing spiritual reality to common denominators we *eo ipso* empty it of its content. (HM, 32-35)

Though Soloveitchik in the scientific model that we have been attributing to him does not appeal to universal laws or meanings, he does seem to nonetheless appeal to common denominators in order to understand the commandments. Though he does not look for an explanation in terms of generating conditions or general goals for the commandments, he is looking for Nagel's 'repeatable patterns of dependence'. He is looking for general abstract principles that would serve to justify halakhic decisions by showing how they can be subsumed under these principles. Yet at the same time we see him saying that the search for such common denominators empties a religion of its content. Now, it is possible that he is simply unhappy with the universality of Maimonidean explanations and would not reject an explanatory approach that uses descriptive categories for halakhic laws that are only general within the particular circumference of Judaism. Thus, through the method of reflective equilibrium he would be giving us a particular set of descriptions that apply generally within Judaism. As such, the method would remain explanatory in a sense though it would also have a higher degree of autonomy than that of Maimonides. At the same time though, Soloveitchik himself has said above that the structures of spiritual reality 'elude conceptual abstraction' (HM, 35). It almost seems here as if Soloveitchik does not want to capture the rationality of the commandments in a set of abstract subsumptive laws at all but wishes us to focus entirely on the particular.

In conclusion then, it appears then that we have found two models of rationalisation in Soloveitchik's work. And it is interesting to note in relation to this the following quote cited by Kaplan from Professor Jacob Taubes.

R. Soloveitchik's use of the model of mathematics or mathematical physics for explaining how the halakhist understands halakhah is unacceptable. For the fundamental task of the halakhist is to read and interpret texts and there are no two greater opposites than the hermeneutic required for textual interpretation and the construction of mathematical systems. Unfortunately, R. Soloveitchik when he studied in Berlin went "barking up the wrong tree." He came under the dominant influence of Hermann Cohen when he should have followed the path of Heidegger and later on of Gadamer and Ricouer.⁶⁷

Taubes is arguing here that in looking to portray the halakhist's understanding of the halakhah, Soloveitchik mistakenly opted for a scientific model when he should have gone for a hermeneutic one. Whilst our first model of rationalisation appears to bear this out, I have argued, contra Taubes, that Soloveitchik did in fact recognise the need for an interpretative approach as well. Moreover, it seems that Soloveitchik's central insight into the nature of the commandments as meaningful expressions requiring creative interpretation actually ends up undermining any attempt of his to justify them. However, where Taubes is correct is in his assertion that these two approaches are utterly at odds with each other. One takes a subsumptive scientific/naturalist approach towards rationalisation and the other that appears very generally to be an antinaturalist approach. Our analysis of Soloveitchik's approach then leaves us with a question and a problem, both of which we will state here but which we will only address when we begin to develop our own model rationalisation in the remainder of the thesis.

The question is why we have two different approaches at all. One might say that this is an instance of the sort of productive dialectical tensions that constantly appear in Soloveitchik's thought. This is not a solution that appeals to me. The issue of contradictions in Soloveitchik's thought is a thorny one that requires more than the passing comment that I can make here. However, I believe that while it is possible to accept that people have to deal with conflicting tendencies at an experiential level of the sort that Soloveitchik describes in 'The Lonely Man of Faith', it is far more problematic to simultaneously hold two contradictory statements of a theory of rationalisation. With regard to this Marvin Fox has written

We must distinguish clearly between the contradictory phenomena that a thinker discerns in the world which he describes and explicates, and the actual presence of contradictions in his own thought.⁶⁸

I believe that our contradiction would be an instance of the latter rather than the former, which is not to say that there could not be such a contradiction in Soloveitchik's thought. However, I do not think that that is the explanation for what is going on in this instance. It seems to me rather that Soloveitchik in *The Halakhic Mind* and indeed in the tensions that are present even in his scientific model might well be expressing

doubts as to the efficacy of a subsumptive scientific approach to the justification of practices.

So much for the question. ‘The problem’ is that both approaches suffer from similar problems that are concerned with a lack of objectivity. The autonomy that both the naturalist reflective equilibrium method and the antinaturalist hermeneutic method may afford us, both undermine the objectivity of any rationalisation produced by their methods. An autonomous alternative to the Maimonidean approach that stands up to philosophical scrutiny is yet to be found; if Soloveitchik’s model is to be that alternative, we will need to deal with this problem.

With that then we complete the expository half of our thesis. We have before us three models of rationalisation – Maimonides’ naturalist approach, Soloveitchik’s naturalist approach, and Soloveitchik’s somewhat underdeveloped antinaturalist approach that we find in *The Halakhic Mind*. In what follows we will further discuss the fundamental assumption that causes problems for the two naturalist models and will then attempt to show that these problems might be avoided by the development of our third antinaturalist model.

¹ ‘U-Vikkashtem Mi-Sham’, in *Ish ha-Halakhah Galuy ve-Nistar* (Jerusalem: World Zionist Organisation, 1979), pp. 115-235. [All page references to ‘U-Vikkashtem mi-Sham’ refer to this volume].

² Reinier Munk, *The Rationale of Halakhic Man: Joseph B. Soloveitchik’s Conception of Jewish Thought* (Amsterdam: J. C. Gieben, 1996).

³ Lawrence Kaplan, ‘Rabbi Joseph B. Soloveitchik’s Philosophy of Halakhah,’ *The Jewish Law Annual*, Vol. 7, (1988), pp. 139-197. Whether or not Soloveitchik intended the method that Kaplan reconstructs as a method of justifying the commandments is not our central concern, though we will be treating it as such. However, we are more concerned with the fact that the method, as we will see, parallels a method that could be and indeed, has been used to justify practices.

⁴ The term ‘science’ when unqualified is used in what follows to signify natural science.

⁵ ‘The Lonely Man of Faith,’ *Tradition*, Vol. 7 no. 2, (1965), pp. 5-67. Notably, these existentialist themes do also appear at the beginning of *Halakhic Man*. However, Soloveitchik ignores these themes in the main body of the work, as it seems do many of his interpreters. See David Singer and Moshe Sokol, ‘Joseph Soloveitchik: Lonely Man of Faith,’ *Modern Judaism*, Vol. 2, (1982), pp.227-272, for a discussion of the significance of this fact.

⁶ *The Halakhic Mind*, though only published in 1986, was written in 1944, the year in which *Halakhic Man* made its first appearance in print.

⁷ Steven Schwarzschild in his review of *The Halakhic Mind* has noted the anti-Marburg tendencies contained in the work. See Steven S. Schwarzschild, ‘The Halakhic Mind - An Essay on Jewish Tradition and Modern Thought’, *Sh’mah*, vol. 16, no. 316 (September 1986), pp. 127-8.

⁸ We will be stressing the conceptual links between their ideas rather than speculating on the extent to which Dilthey’s work directly influenced Soloveitchik. However, Dilthey does merit explicit mention a number of times in Soloveitchik’s writings. In *The Halakhic Mind*, for example, he is cited as a pioneer of the methodological independence of the human sciences, a topic that is central to Soloveitchik’s argument in that work and Munk notes how *Halakhic Man* reflects the influence of Dilthey (Munk, *The Rationale of Halakhic Man*, p. 128). Indeed, although Soloveitchik explicitly cites Eduard Spranger as a source for his use of a typological approach in that work, it was Dilthey’s use of this method that influenced Spranger. See H. Rickman, *Dilthey: Selected Writings* (Cambridge: Cambridge University Press, 1976), p. 1. Moreover, the fact that Soloveitchik was a philosophy student at the university of

Berlin from 1925 until 1931 and that Dilthey occupied the chair in philosophy at the same institution from 1882-1905 makes it inconceivable that Soloveitchik would not have been familiar with his ideas.

⁹ Note that the primary intention in much of this chapter is to get clear on Soloveitchik's methodological views and the manner in which they contrast to those of Maimonides. Most of the critical reflection on the themes discussed will follow in the latter half of the thesis.

¹⁰ For an excellent summary of this work, that I have drawn from in this section, see William Kolbrener, 'Towards a Genuine Jewish Philosophy: Halakhic Mind's New Philosophy of Religion', reprinted in Marc D. Angel ed. *Exploring the Thought of Rabbi Joseph B. Soloveitchik*, (Hoboken, NJ.: Ktav, 1997), pp. 179-206.

¹¹ Wilhelm Dilthey, *An Introduction to the Human Studies* (1883). Selections translated in H. Rickman, *Dilthey Selected Writings*. Quotations from p. 161. Subsequent references to Dilthey's writings will refer to this volume.

¹² *Idem.*, *The Construction of the Historical World in the Human Studies* (1910) in Rickman, *Dilthey Selected Writings*, pp. 196-7.

¹³ It is interesting therefore to note that Soloveitchik seems to make a distinction between the natural sciences and what would probably be called the *Geisteswissenschaften* in terms of both approach and subject matter. While the former was the main basis of the distinction for Windelband and Rickert, the latter was the main basis for the distinction in the early writings of Dilthey. See Theodore Plantinga *Historical Understanding in the Thought of Wilhelm Dilthey* (Toronto: University of Toronto Press, 1980), Chapter 2.

¹⁴ For further discussion of Soloveitchik's criticism's of Cohen see Munk, *The Rationale of Halakhic Man*, Chapter 2.

¹⁵ Munk also mentions this difference, but seems to me to minimise its centrality in a way that is quite unwarranted. See *ibid.*, pp. 67-68.

¹⁶ Soloveitchik notes his debt to Natorp at *HM*, p. 126 note 75 and p. 128 note 83.

¹⁷ Nelson Goodman, *Fact, Fiction and Forecast*, (Indianapolis, Ind.: Bobbs-Merrill, 1973), p. 64. Again, though Soloveitchik himself appropriates this method from the quantum physicist, it appears to be none other than the method of the hermeneutic circle, which was again a central theme in the work of Dilthey, though he believed it to have been first used by Schleiermacher. See Ilse N. Bulhof, *Wilhelm Dilthey: A Hermeneutic Approach to the Study of History and Culture* (The Hague: Martinus Nijhoff, 1980), p. 69; and Rickman, *Dilthey: Selected Writings*, pp. 10-11.

¹⁸ Rudolph Makreel, *Dilthey: Philosopher of The Human Studies*, (Princeton: Princeton University Press, 1992), p. 308.

¹⁹ Dilthey, *The Construction of the Historical World*, p. 194.

²⁰ It is this use of halakhah as the objective basis for the 'Natorpian' reconstruction, a fact noted by Kolbrener ('Towards a Genuine Jewish Philosophy', p. 193) that is particularly Diltheyan, though this (at least) conceptual link between Dilthey and Soloveitchik has never been noted to my knowledge.

²¹ For a detailed discussion of how we can extend the linguistic concept of meaning to non-linguistic expressions see Charles Taylor, 'Interpretation and the Sciences of Man,' in Michael Martin and Lee C. McIntyre eds. *Readings in the Philosophy of Social Science*, (Cambridge, Mass.: MIT Press, 1994), pp. 181-211.

²² Strictly speaking, therefore, many would wish to separate off religion as a realm of divine rather than human science. However for the purposes of the thesis religion is to be included within this rubric to reflect the fact that it must be treated the same methodologically as the human sciences. The important differences that arise as a result of the divine origin of religion will not be ignored though when they are significant.

²³ See *HM*, pp. 63-4.

²⁴ Soloveitchik gives an example here of the causal relation that we speak of as existing between Maimonides and Thomas Aquinas. We believe that there is some similarity between the *Guide of the Perplexed* and the *Summa Theologica*. But obviously, Soloveitchik writes there can be no literal causal nexus between two books, or indeed between the systems contained within them. So in order to find this relation we need to explore 'the subjective track'. See *HM*, 73-4.

²⁵ We will, for the moment, leave the term 'descriptive' deliberately vague and rely on the intuitive difference between describing and explaining. We will be returning though to what Soloveitchik means by description in some detail later.

²⁶ John Rawls, *A Theory of Justice*, (Oxford: Oxford University Press, 1973).

²⁷ A more detailed account of the nature of these considered judgements can be found in John Rawls, 'Outline of a Decision Procedure for Ethics', *Philosophical Review*, vol. 60 (1951), pp. 177-197; and more recently in *A Theory of Justice* pp. 46-53.

²⁸ Rawls, *A Theory of Justice*, p. 579.

²⁹ Kaplan, 'Rabbi Joseph B. Soloveitchik's Philosophy of Halakhah,' pp. 171-2.

³⁰ *Ibid.*, p. 164.

³¹ Aviezer Ravitzky, 'Rabbi J. B. Soloveitchik on Human Knowledge: Between Neo-Kantian and Maimonidean Philosophy.' *Modern Judaism*, vol. 6, no. 1 (1986), pp. 158-9.

³² 'Mah Dodekh Mi-Dod', in P. H. Peli, ed., *Be-sod ha-Yahid ve-ha-Yahud* (Jerusalem: Orot, 1976), pp. 189-254. Quotation from p. 221. [All page references to 'Mah Dodech Mi-Dod' refer to this volume]. Translation taken from Ravitzky, 'Rabbi J. B. Soloveitchik on Human Knowledge', p. 166.

³³ Norman Daniels, 'Wide Reflective Equilibrium and Theory Acceptance in Ethics', *Journal Of Philosophy*, vol. 76, (1979), pp. 256-282.

³⁴ For a more detailed account of this problem see Kai Nielsen, 'Our Considered Judgements', *Ratio*, vol. 19, (1977), pp. 39-46.

³⁵ One could of course privilege either the considered judgements or the principles of the theory as being self-evident. Such privileging would, it is assumed, give one or other of the two components the type of foundational role required for an objective justification. However, it would also mean that the method of reflective equilibrium was no longer a nonfoundational method.

³⁶ Norman Daniels, 'Reflective Equilibrium and Archimedean Points' *Canadian Journal Of Philosophy*, vol. 10, No. 1 (March 1980), pp. 83-103. Quotation from pp. 85-6.

³⁷ Rawls, *A Theory of Justice*, p. 20.

³⁸ Daniels, 'Reflective Equilibrium and Archimedean Points', p. 87.

³⁹ Norman Daniels 'Wide Reflective Equilibrium and Theory Acceptance in Ethics,' p. 262. This problem is further exacerbated for Soloveitchik given the pluralism that is sanctioned in such areas in Judaism, a subject to which we will be returning. See Jonathan Sacks, *One People*, (London: Littman Library of Jewish Civilisation, 1993), pp.92-98.

⁴⁰ For more detailed discussions of this issue see Rachel Shihor, 'On the Problem of Halacha's Status in Judaism: A Study of the Attitude of Rabbi Josef Dov Halevi Soloveitchik,' *Forum*, vols. 30-31, (1978), pp. 149-153; and Kaplan 'Rabbi Joseph B. Soloveitchik's Philosophy of Halakhah,' pp. 151-163.

⁴¹ Kaplan 'Rabbi Joseph B. Soloveitchik's Philosophy of Halakhah', pp. 160-161

⁴² The Platonic Nature of Soloveitchik's enterprise is noted in Michael L. Morgan 'Soloveitchik's Halakhic Platonism', *Journal of Religion*, vol. 66 (1986), pp. 194-198; and Avi Sagi, 'Rav Soloveitchik and Professor Leibowitz as Theoreticians of the Halakhah', *Daat*, vol. 29, no.1, (1992), pp. 131-148 (Hebrew).

⁴³ Indeed, the idea of creativity is central to Soloveitchik's philosophy of man in general. See Walter Wurzburger, 'The Centrality of Creativity in the Thought of Rabbi Joseph B. Soloveitchik,' reprinted in Angel, ed., *Exploring the Thought of Rabbi Joseph B. Soloveitchik*, pp. 277-289.

⁴⁴ 'U-Vikkashtem mi-Sham', p. 205. Translation taken from Kaplan, 'Rabbi Joseph B. Soloveitchik's Philosophy of Halakhah,' p. 176. This emphasis on creative interpretation of the halakhah further reinforces the analogy between the methods of the modern physicist and that of the religious philosopher. For we see that just as the scientist has to construct his objective order (B) out of the original qualitative realm (A1), the religious philosopher has a large degree of input into the construction of his objective realm out of the original texts.

⁴⁵ 'Mah Dodekh mi-Dod', p. 232. Translation taken from Kaplan, 'Rabbi Joseph B. Soloveitchik's Philosophy of Halakhah', p. 179.

⁴⁶ *Ibid.*, pp. 205-6. Translation taken from Kaplan, 'Rabbi Joseph B. Soloveitchik's Philosophy of Halakhah', pp. 177-8.

⁴⁷ Paul Grice, 'Meaning' *Philosophical Review*, vol. 66, (1957) pp. 377-88.

⁴⁸ R. G. Collingwood, 'Human Nature and Human History,' in Martin and McIntyre eds. *Readings in the Philosophy of Social Science*, pp. 163-171. Quotation from p. 169.

⁴⁹ For a fuller, though still introductory account of these issues see Brian Fay, *Contemporary Philosophy of Social Science* (Oxford: Blackwell, 1996), pp. 138-141.

⁵⁰ In his earlier work the more psychologistic model prevailed. See Plantinga *Historical Understanding in the Thought of Wilhelm Dilthey*, especially Chapter 3.

⁵¹ Rickman, *Dilthey: Selected Writings*, p. 10.

⁵² Peter Winch, *The Idea of a Social Science and its Relation to Philosophy*, second edition, (London: Routledge, 1990), p. x.

⁵³ Obviously Maimonides himself is not an avowed intentionalist. Apart from the obvious anachronism of attributing such a theory to Maimonides, when it comes to the rationalisation of the commandments, theories of meaning were not uppermost in his mind. However, I feel that it is not unfair to see Maimonides' rationalisation as embodying a quasi intentionalist approach.

⁵⁴ Again, we are not saying that Soloveitchik had a fully worked out Gadamerian theory of meaning, which apart from anything else would be an anachronism. However, the views that he does express seem to reflect the type of approach that Gadamer subsequently developed in a more rigorous fashion.

⁵⁵ Indeed, despite Soloveitchik's generally negative attitude to Maimonides' negative theology, he does seem to agree that in this sphere we cannot look to uncover God's 'intentions'. See Abraham R. Besdin, 'May we Interpret Hukkim?' in *Man of Faith in the Modern World, Reflections of the Rav* Volume Two, (Hoboken, NJ.: Ktav, 1989), pp. 91-99. See especially p. 93. It is interesting to note again here the move away from the Marburg approach. Indeed, Soloveitchik's words here seem to reflect an approach more akin to that of the Southwest German school of neo-Kantianism based on the work of Wilhelm Windelband.

⁵⁶ It is worth mentioning that one could argue, as Brian Fay has done, that these two accounts of meaning should not be seen to be mutually exclusive but rather complementary. They answer questions about different senses of meaning that relate to intentions and significance respectively. Moreover, any Gadamerian account of meaning must take some account of authorial intention for such intentions play a large part in allowing us to understand what an act's significance is. Thus he writes that Caesar's act of crossing the Rubicon is the kind of act that it is i.e. a deliberate strategic move by a Roman commander, because of Caesar's intentions: "This was not an accidental manoeuvre, or the deed of a sleepwalker or someone drugged or otherwise unaware that he was indeed crossing a river with deep political significance. . . this intentionality itself is vital in fixing the identity of the act about which later historians may inquire as to its significance either for Roman politics or its meaning for us today." Fay, *Contemporary Philosophy of Social Science.*, p. 150. The acceptance of this qualification though would do little to damage Soloveitchik's central point. We can readily admit that God giving the commandments fixes their identity as religious ordinances rather than as aesthetic ones say. But this minimal concession still leaves us with the need to interpret the precise significance of each of those ordinances and that must be done it seems in hermeneutic terms.

⁵⁷ See Jonathan Sacks, 'Rabbi Joseph B. Soloveitchik's Early Epistemology.' *Tradition in an Untraditional Age* (London: Valentine Mitchell, 1990), pp. 287-301.

⁵⁸ Sagi, 'Rav Soloveitchik and Professor Leibowitz', p. 136. The translation is my own.

⁵⁹ Besdin, 'May we Interpret Hukkim?', p. 92.

⁶⁰ It is worth noting that this argument for a methodological distinction between the natural and social sciences is based on the meaningful nature of the subject matter of the social sciences alone. This means that one could accept the distinction without having to resort to the more thoroughgoing constructivism with respect to the natural sciences that we find in Soloveitchik's initial espousal of epistemological pluralism as the basis for this distinction.

⁶¹ Ernest Nagel, *The Structure of Science* (Indianapolis, Ind.: Hackett, 1979), p. 4.

⁶² *Ibid.*

⁶³ Dilthey, *The Construction of the Historical World*, p. 113.

⁶⁴ Hans Georg Gadamer, *Truth and Method*, (1960), ed. J. Cumming, trans. G. Barden and W. Glen-Doepel (1975), revised by J. Weinsheimer and D. G. Marshall. (London: Sheed & Ward, 1989), p. 6.

⁶⁵ *Ibid.*, pp. 4-5.

⁶⁶ See Dilthey 'The Construction of the Historical World', pp. 218ff. For discussion of the methods see Makreel, *Dilthey: Philosopher of The Human Studies*, Part Three; Plantinga, *Historical Understanding in the Thought of Wilhelm Dilthey*, Chapter 6; and H. P. Rickman, *Wilhelm Dilthey: Pioneer of the Human Studies* (London: University of California Press, 1979), Chapter 10.

⁶⁷ Kaplan, 'Rabbi Joseph B. Soloveitchik's Philosophy of Halakhah,' pp. 172-3.

⁶⁸ Marvin Fox, 'The Unity and Structure of Rabbi Joseph B. Soloveitchik's Thought', in Marc D. Angel ed. *Exploring the Thought of Rabbi Joseph B. Soloveitchik*, pp. 25-53.

Chapter four

The Priority of Theory

In the previous two chapters we set out the methods of rationalisation of Maimonides and Soloveitchik together with some of the possible criticisms of each of them. In essence, the problem with the Maimonidean model was that it subordinated the practice of Judaism to an explanatory method that utilised an external set of supposedly universal values and principles thereby robbing it of its autonomy. Whilst this criticism may originally have been seen to be a dogmatic assertion of the claims of an authoritarian tradition against Maimonides' attempts to reconcile reason and revelation, we have seen in the previous chapter that this may not in fact be so.

For, according to our second model of rationalisation, the central fact about the commandments is that they are meaningful and we cannot thereby treat them simply as 'scientific' objects amenable to universal causal explanations. We must rather attempt to set out the meaning of these commandments and must do so by appeal to the halakhic system itself from which they derive their meaning. We do this by using the method of reflective equilibrium in order to formulate a set of descriptive halakhic principles that enable us to understand the commandments. However, that approach, seems to leave us without any way of justifying any such set of principles as being objectively correct. Thus, whilst there may be legitimate philosophical reasons based on the meaningful nature of the commandments for asserting the autonomy of a practice from a supposedly universal theoretical structure, the price we pay for autonomy appears to be loss of objectivity. We can no longer objectively justify our practice. We are left then with a tension between autonomy on the one hand and objectivity on the other with each model asserting one at the expense of the other. How are we to address this dilemma?

I believe that at the basis of this problem are certain related assumptions about the nature of rationality and the relationship that subsequently holds between a theory and a practice that both Maimonides' and Soloveitchik's naturalist models, despite their differences, share. It is only by transcending these fundamental assumptions, something that Soloveitchik begins to do in his second antinaturalist model, that we can escape this dilemma. In this chapter therefore, we will attempt to identify the approach that Maimonides and Soloveitchik for all their differences, nonetheless share.

1. The Priority of Theory.

Though we have been focusing on the differences between the Maimonidean and Soloveitchikian models of rationalisation, both share a certain view of the relationship between theory and practice that we will term the priority of theory (PoT from now on). Important differences remain between their respective PoT approaches, but at a fundamental level, it is Soloveitchik's inability to extricate himself entirely from this approach that means he only takes the first step towards forming a method for doing autonomous Jewish philosophy.

What though does PoT signify? There are in fact a variety of different ways of being a PoT theorist, some of which are logically distinct from others. Our first task therefore will be to discuss these various PoT theories and their interconnections.

One sense in which one might hold the priority of theory over practice that we can deal with quite briefly is related to one's evaluation of the relative values of theoretical and practical activity. Thus, one can be a PoT theorist in the sense in which Aristotle writes in the tenth book of the *Nichomachean Ethics* that 'contemplation is . . . the highest form of activity (since the intellect is the highest thing in us, and the objects that it apprehends are the highest things that can be known)', (*NE*, X, 7, 328). This relegates the exercise of the practical moral virtues to a secondary activity that is to serve the ultimate contemplative goal. Thus, for Aristotle the life devoted to *theoria* is superior to the life of *praxis* which though necessary if we are to be able to lead the contemplative life, is not sufficient for *Eudaimonia*.

It is, as we have previously mentioned, a subject of great debate as to whether or not Maimonides subscribed to the priority of theory in this sense, though he certainly asserts it unequivocally, at the exoteric level, in a number of passages in the *Guide* as we saw in chapter two. Soloveitchik is more openly ambivalent on this question, at times appearing to subscribe to such a view in his discussion of the halakhah and at other times asserting the priority of practice. Thus in the former mode we find:

[Halakhic Man's] deepest desire is not the realisation of the Halakhah but rather the ideal construction which was given to him from Sinai. . . . The theoretical Halakhah, not the practical decision, the ideal creation, not the empirical one, represent the longing of halakhic man. (HMN 23-24).

Yet in the very same work we find:

Halakhic man cognises the world in order to subordinate it to religious performances. . . . Cognition is for the purpose of doing. (HMN, 63).¹

This aside, the basic stance of this type of PoT theorist is that theoretical activity is in some sense more important as a way of life than practical activity. However, what we are assigning priority to here is the activity of theorising rather than the products of such activity - the theories themselves. The term 'theory' here designates a process rather than a product. We can speak here therefore of being a PoT theorist in the process sense. In contrast, the forms of PoT theory that will interest us assign priority to theories as products. It is these PoT theories, that will be our main concern and what we need to find is the sense in which they hold that theories are prior to practices.

2. Theory and practice.

Before going on, we should attempt some definition of what we mean by the terms theory and practice. Let us begin with the following very general definitions of theory and practice taken from Kant:

An aggregation of rules, even of practical rules, is called a *theory* as long as these rules are thought of as principles possessing a certain generality and, consequently, as being abstracted from a multitude of conditions that nonetheless necessarily influence their application. Conversely, not every undertaking is a practice; rather, only such ends as are thought of as being brought about in consequence of certain generally conceived principles of procedure are designated practices.²

Note that Kant makes the following significant points:

- 1) Theories are made up of rules or principles 'possessing a certain generality'.
- 2) Practices are undertakings 'brought about in consequence' of those principles.

Firstly, then, theories are sets of principles that are in some yet to be specified sense general. Now one would imagine that they have to be more than this for they cannot just be any set of general principles. For example, one may think that they need to conform to certain canons of theoretical rationality such as consistency, or be ordered in some way so as to allow us to deal with any clashes, an issue that we will be returning to. Moreover, given that we are interested in rationalising practices, they obviously also need to be relevant to those practices in some way.

This brings us to his second important point: that the practice must somehow be a consequence of the theory. We are to imagine a set of principles in virtue of which practices are 'brought about'. This would seem to imply some loose sense in which the theory is prior to the practice. But how are we to construe this sense of priority more

precisely? What does it mean to say that the practice is brought about ‘in consequence of’ the principles? There are, it seems to me, a number of ways of understanding this that each yield a different type of PoT theory.

However, before we look at these, we should note that Kant does not seem to mean exactly what Maimonides and Soloveitchik mean when speaking of theory and practice. Firstly Kant sees the term theory as applying even to ‘practical rules’ which I take to be such directly practical principles as ‘all acts of kindness are right,’ in which we actually mention the action types of which real life applications are tokens. Maimonides and Soloveitchik on the other hand seem to take the directly practical rules that Kant includes under the rubric of theory as practices. The practical rules of the halakhah, for example, are for them the general norms that constitute the practice and it is rationalising practices in this sense, i.e. rationalising their constitutive norms, that interests them.

But if this is what they mean by practice, what do they mean by theory and what kinds of principles do *their* theories contain? They are, it seems, working at a higher level of abstraction and looking for the ‘higher’ principles that lead us to the directly ‘practical rules’ or ethical principles.

Initially it will suffice for us to understand this distinction between these ‘higher’ principles and those that we have termed directly practical principles in the following intuitive way.³ Taking ethics as an example, we can on the one hand speak of ‘high’ theory, examples of which would be ethical theories such as utilitarianism or Rawls’ theory of Justice. These theories do not contain the direct practical principles that Kant mentions but operate at a higher level of abstraction. Thus the higher principle of classical utilitarianism, for example, is some variation on the idea that right action is that which produces that greatest happiness for the greatest number.

The idea then, for a PoT theorist would be that the directly ethical principles that recommend specific action types are in some sense a consequence of this more general and abstract ‘high’ theory. The directly ethical principles can then be spoken of as ‘low’ theory and they constitute the theory of particular moral problems, or applied ethics. This low theory would include the actual explicit practical norms of the practice.⁴ Finally, we should also mention that there is the actual application of these theories to the world (applying applied ethics), which is practice in the actual concrete sense of action.

We see from all of this that Kant’s use of the terms ‘theory’ and ‘practice’ do not exactly match that of Maimonides and Soloveitchik. While Kant includes under theory

the directly ethical principles that relate to our actual token acts (or practices), Maimonides and Soloveitchik are exclusively concerned with the more abstract principles of ‘high’ theory and take the low theory principles to be part of the practice that needs rationalising. But despite this slight shift in terminology, Kant’s general points are of the utmost importance for our discussion. The principles of the high theory must still be general (in the sense yet to be specified) with respect to the principles of the low theory, or our practices, and these practices themselves must still somehow be seen as a consequence of the high theory. What is crucial now is for us to understand this ‘consequential’ relationship between the principles and the practices in order to see in what senses the principles can be prior to the practices.⁵

3. Varieties of PoT theory.

To say that something is prior to something else according to the *Oxford Dictionary* means that it is ‘existing or coming before something in time, order, or importance’⁶. So, the first sense in which a theory might be prior to a practice could be a literal temporal sense. The idea here would be that in order to work out which practices are the correct ones, we must first apprehend the principles of a theory and then actually derive from this theory a practice that conforms to it.⁷ Thus, the practice could be said to have literally come about as a consequence of the theory and the theory is prior to the practice.

There are in fact two aspects of this view that we can distinguish. For the empirical claim that we actually derive our practices from a set of principles requires one to take up a corresponding epistemological position whereby we apprehend the principles of the theory ‘first’; in order to be able to say that the practice is actually derived from the principles, it seems that one would need to hold that we arrive at our knowledge of these principles independently of the practice. The idea might be that we have some form of direct *a priori* knowledge of the principles, a view that Jonathan Dancy calls generalist epistemology.⁸ We therefore can distinguish the following positions:

Epistemological PoT - We apprehend principles directly and independently of practices.

Derivational PoT - We derive our practices from such principles (and not conversely).

So we have two related ways in which theories can be said to be prior to practices – they can be known directly and prior to our having any knowledge of the practices and

they provide the ‘premises’ from which our practice, including the judgements we continually make within it, is actually derived. However, these are not the senses of PoT that we are interested in for these are not the senses in which Maimonides and Soloveitchik are PoT theorists. Firstly, Maimonides is not a Derivational PoT theorist. As we have seen in our discussion of Maimonides, he does not believe that we have sufficient knowledge to actually derive all of our practices from his principles. Though it is true that in principle we could derive all the various practices from our knowledge of the relevant principles together with the relevant historical and psychological knowledge, as a matter of empirical fact we lack too much of this additional empirical knowledge and cannot therefore actually derive the practices in this way. One might ask how, in that case, we arrive at the practices. This, of course, is not a problem for Maimonides since the practices do not need to be ‘derived’. They have been given to us through revelation.

What of his epistemological position? Maimonides does not believe that God directly imparts the theoretical rationalisation of the commandments to us in the way that He imparts the commandments themselves so it appears that this is knowledge that we must derive by ourselves. However, our grasp of the principles involved in this rationalisation, for example that stating the form of man, are apprehended in particular examples through the faculty of *nous* and are not therefore known *a priori*. The laws of nature for Aristotle, though necessary, are *a posteriori*. Thus it appears as if Maimonides is not an Epistemological PoT theorist either.

Similarly, Soloveitchik is neither an Epistemological nor a Derivational PoT theorist. Indeed, he rejects all of these PoT approaches in favour of the priority of practice (PoP). The PoP theorist would reject the idea that we can directly apprehend principles and then derive our practices from them in favour of the idea that we can only derive the principles from the practices. This approach again gives us a derivational sense in which practices are prior to theories, and an epistemological one. On the one hand the theories are actually derived from the practices (though we are using ‘derived’ here in a loose and non-technical sense – it might be that the principles are perceived in the practices so to speak rather than derived from them in an inferential manner):

Derivational PoP theorist – We derive our principles from our practices (and not conversely)

As we have seen in the previous chapter this seems to be the approach that Soloveitchik takes. We need not derive our practices from a set of principles in order to know what to do and indeed cannot do so for according to Soloveitchik any theory of the commandments must be found in the practices and cannot be immediately intuited in some *a priori* fashion. But this also means that Soloveitchik is not willing to contemplate the sort of generalist epistemology of the PoT theorist that has us in direct intuitive contact with these principles. We must begin with the objective products of any theory i.e. the practical norms it yields, in order to reconstruct the theory. Thus, Soloveitchik is neither a Derivational PoT theorist nor an Epistemological PoT theorist. Again, if this is the case, the question of how we come to know the correct practices arises. If it is true that in order to know the principles we must have some prior grasp of the correct practices, this would seem to require that we know of the correct practices independently of the principles, yielding an epistemological sense in which practices are prior to theories.

Epistemological PoP theorist – We know which are the correct practices directly and independently of principles.

Such a stance would appear to be problematic for rationalising the commandments. For though it *might* seem plausible to say that we can directly apprehend ethical principles such as that ‘wanton cruelty is wrong’, is it really plausible to think that we can similarly directly intuit all the various religious principles that constitute the practice of Judaism?

We needn’t though think that Soloveitchik believes that we can directly intuit the correct practices for on his view our prior knowledge of the practices is not intuited. It has, as for Maimonides, been given to us through revelation. It is important therefore to note that a Derivational PoP theorist such as Soloveitchik, need not be committed to some strange faculty of intuition that allows him to read God’s mind and directly intuit the correct practices. He is though committed to some way of coming to know the practices independently of the principles and in the case of Soloveitchik this is of course through the no less problematic concept of revelation. Nonetheless we see that a Derivational PoP theorist who holds that the principles are derived from the practices, does not necessarily need to take up the epistemological position that the practices are directly apprehended by us, if he thinks that God can inform us of them.⁹

But if our knowledge of the practices is *de facto* prior to that of the principles as it is for both Soloveitchik and Maimonides, there is no question of having to derive our practices from a set of theories. And if neither of them therefore are actually PoT theorists in the derivational sense, in what sense *do* they hold that practices are prior to, or a consequence of theories?

One possibility here would be that a theory must be formulated in order for us to understand a practice. This seems to be the sense in which Rawls thinks that theories are important. Indeed he explicitly states in *A Theory of Justice* that we *need* a set of principles in order to understand the judgements that we make and which constitute our sense of justice:

We do not understand our sense of justice until we know in some systematic way covering a wide range of cases what these principles are.¹⁰

Thus, principles perform the epistemological function of enabling us to understand practices.

However, there are different sets of principles that correspond to different forms of understanding, and our PoT theorist is concerned only with a specific form of understanding. Let us take as an example the attempt to understand the halakhic prohibition against eating certain foodstuffs. How could one understand this prohibition? One could try to form an explanatory theory that enabled one to understand why a certain person would not eat such food by imputing certain beliefs to that person. These might include his beliefs that God exists, that the prohibition is a Divine imperative and that he ought to obey such imperatives. This theory would allow us to explain why he would not eat the food in question. In this case we would say that the theory has explanatory priority over the practice. This is because we are faced with a piece of behaviour that as it stands cannot be understood. The only way to understand it is to form some explanatory theory for it and it is only once we have certain principles that explain this person's behaviour that we can be said to have understood it. The point here is that the practice requires a theory for its explanation. The practice is the *explanandum*, the theory the *explanans*. In our terminology therefore the theory is prior to the practice from an explanatory point of view for the practice cannot be explained and therefore understood without it. We have an Explanatory PoT approach here according to which theories are prior to practices in the sense that they are required in order for us to explain and understand the practice which is not in any sense self-explanatory.

However, the central point here is again that such an explanation would not amount to the type of rationalisation that Maimonides and Soloveitchik are after. The whole point of a rationalisation for them was that we understand why each particular commandment is rational. We are not looking for a psychological or indeed historical explanation of why someone carried out a certain action. For one might understand an action in terms of some explanatory scheme and yet believe that the action itself is not rational. The idea of priority that we are interested in is normative rather than explanatory and is an attempt to show that the practices themselves are rational. We are after justification, not explanation. Thus we are led to another sense in which theories might be taken to be prior to practices. We can now talk of the Normative PoT theorist who believes, to put the point very basically before we start to refine it in subsequent sections, that if a practice is rational there must be some theory that justifies it.

Thus, we have another two versions of PoT theory:

Explanatory PoT theory – Principles enable us to explain practices and understand why certain actions are performed.

Normative PoT theory – Principles enable us to justify practices and understand why certain actions are rational.¹¹

Note that this Normative PoT theory is not dependent on the derivational version discussed earlier. It is not that we must actually apply the principles of our theory in order to form our practices or make our judgements as the Derivational PoT theorist believes. Rather we must be able to reconstruct a theory, if only after the fact as with Maimonides and Soloveitchik, if we are to show that it is justified. This distinction can be illustrated by analogy to the use made of the idea of the social contract in political philosophy. Many contract theorists are less concerned about whether or not societies actually made these contracts and more concerned with the question of whether or not society can be thought of hypothetically as having been brought about in this way. If it can, then it can be seen to be rationally justified. In the same way, maybe the significant point is that practices, as Kant says in our original passage, can be ‘thought of’ as having been brought about in consequence of a set of principles. If, after the fact, we can *think of* the practice as having been brought about as a consequence of these principles, it can be seen to be rationally justified. But this justification does not depend on whether or not we actually derived our practice from the principles, as our Derivational PoT theorist believes.

It is this granting of normative priority to theory that for all their differences, Maimonides and Soloveitchik seem to share and it is in this sense that I speak of the priority of theory over practice; practices require theories if they are to be rationally justified and this task cannot be achieved without the theory.¹² From now on then, when we speak of PoT theory it is this normative version that we will be referring to and we will only explicitly distinguish the various types of PoT theory when it is required.¹³

4. Strong Foundationalism, Weak Foundationalism and the PoT approach.

We now need to be a little more specific about what a PoT theorist holds. So far we have established that Maimonides and Soloveitchik are PoT theorists inasmuch as they are both looking for principles of a high theory that would serve to justify the low theory and the actual actions that make up the practice of Judaism. However, there are in fact varying strengths of PoT theory and we must therefore distinguish those aspects that are and are not essential to the position.

If we begin with the stronger Maimonidean PoT theory, we find that Maimonides tries to reveal the deep underlying rationality of the commandments by identifying a single scientific principle that tells us the purpose of man and showing how the commandments lead to the fulfilment of that purpose. What is significant about this is that he believes therefore that he is appealing to a universal scientific truth that can be used as the ultimate foundation for the rational assessment of any practice. The form is the ultimate explanatory concept in Aristotelian science, the definition from which our scientific demonstrations can start that is not itself capable of demonstration. In this case the statement about the form of man is a truth that is not capable of further analysis and is one that is self evidently true.

Maimonides' approach therefore is universal and foundational. It is universal since it holds for all people in all contexts and is formed independently of any particular practice or set of practices. And it is foundational since it gives us a set of privileged truths that are the ultimate basis for the rational assessment of any practice and that we are compelled to believe, insofar as we are rational. This rational structure stands in judgement over the practice and allows it to be seen to be rational. Maimonides believes that he has uncovered certain privileged self-evident principles that all rational thinkers will agree on that serve to assess our individual practices. There are therefore four central aspects of Maimonides' PoT theory:

- 1) It uses a single principle.

- 2) The principle is universal.
- 3) The principle cannot be further analysed.
- 4) The principle serves as the basis for the rational assessment of all practices.

We will call the combination of these four assumptions strong foundationalism, which is summarised as (F1).

(F1): There is a single universal principle that cannot be further analysed and that serves as the basis for the rational assessment of all ethical and religious practices.¹⁴

What is important is that only the fourth factor is in fact crucial to what we are calling the PoT approach. We will look at each of these aspects in turn as they appear in the methods of Maimonides and Soloveitchik in order to explain this.

The first point concerns the number of principles a theory posits. The number of principles that one holds is not in itself relevant to whether or not one is a PoT theorist. For Maimonides the self-evident truth that provides us with our foundational theoretical structure is the truth that the human good is to achieve the contemplative perfection of man. This allows us to justify any commandment that is a means to this natural contemplative end and Maimonides attempts, therefore, to reduce all reasons for the commandments to a single reason. The reason for performing the commandments (or the justification for them) is that they lead to our contemplative end; they can all be subsumed within this theoretical structure. However, as Williams points out such a thoroughgoing reductionism that masquerades as the neutral notion of simplicity, itself needs to be justified and cannot be merely taken as a self evident requirement of a theory.¹⁵ Indeed, one of the motivations that he mentions for it is the assumption that the rational assessment of principles requires that they can be compared on some common scale, which the reduction to a single principle allows. But this of course is just the reductive view reasserting itself at a higher level and is therefore no justification of it.

Soloveitchik's approach is far more pluralistic and this pluralism is based on a fundamental assumption about human nature: 'Man is a dialectical being; an inner schism runs through his personality at every level.'¹⁶ Moreover, this dialectic is irreconcilable:

Judaic dialectic, unlike the Hegelian, is irreconcilable and hence indeterminable. Judaism accepted a dialectic, consisting only of thesis and antithesis. The third Hegelian stage, that of reconciliation, is missing. The conflict is final, almost absolute.¹⁷

Judaism, according to Soloveitchik allows for the expression of this dialectic by itself positing a halakhah that allows for the expression of this conflict by making conflicting demands upon us. The halakhah therefore may well contain conflicting norms that do not admit of any higher reconciliation. Thus with respect to Jewish ethics in particular he writes:

It is obvious that dialectical man cannot be committed to a uniform, homogenous morality. If man is dialectical, so is his moral gesture. Judaism has indeed formulated such a dialectical morality.¹⁸

So Maimonides approach is monistic in the sense of appealing to a single privileged principle whereas Soloveitchik's approach is pluralistic. But this is not in itself relevant to whether or not they are PoT theorists, for both of them are still appealing to principles to justify the practices. The number is irrelevant.

Concerning the second aspect of strong foundationalism, universalism, we have seen in the previous chapter that Soloveitchik rejects Maimonides' universalism and therefore the claim that the principles of his theory need be self evident to any rational human being. A combination of pluralism and the idea that Judaism is a meaningful practice that must be understood from within allows for the possibility, indeed likelihood of there being practices that cannot be understood by those outside of the practice. The concepts and principles used in the theory are formulated out of the practice itself rather than from some abstract universal theory and need not be self-evident to any rational being. The principles therefore are only common to the particular group whose practice is in question, not to all of humanity. We can say that they are general but not universal.

Finally, with respect to the requirement that our principles be incapable of further analysis, if Soloveitchik's approach is one of reflective equilibrium, surely it cannot appeal to such a set of final principles. The whole point of the method of reflective equilibrium is that it accepts the necessity of taking lived experience into account and does not unthinkingly impose theoretical principles on our practices unless such an imposition accords with the considered judgements made from within that practice. And since new judgements can always conceivably lead us to revise our principles, it seems as if the possibility of further analysis is always in principle left open.

What though of the fourth condition of strong foundationalism? The basic idea is simply that principles are the basis for the rational assessment of practices. Our

judgements have to be capable of systematisation in a set of principles if they are to be seen as rational or justified. Thus, Susan Brison writes

It is now commonplace to acknowledge that practice *requires* a theoretical foundation . . . to justify the practice [and] to accurately construe the nature of the practice itself.¹⁹ (Emphasis added).

Similarly, Rawls begins his *Theory of Justice* with this very point, implicit in the assumption that it is the principles that justify choosing one set of arrangements over other possibilities:

To this end it is necessary to work out a theory of justice in the light of which these assertions can be interpreted and analysed. . . . A set of principles is required for choosing among the various social arrangements which determine this division of advantages and for underwriting an agreement on the proper distributive shares.²⁰

Reference to principles is required therefore in order to underwrite the rationality of our choosing one set of judgements over another. The possibility of setting out principles that account for the practices is apparently seen to be a necessary condition of their rationality. Thus, the PoT theorist holds:

(C1): It is a necessary condition of the rationality of any practice that it be capable of being articulated in a set of principles to which it must therefore conform in order to be rational.

This is where the fourth condition of strong foundationalism seems to lead us. There must be some set of principles that serve as the basis for the assessment of any practice and this certainly seems to be a central component of Soloveitchik's method. Indeed it is this point, and this point alone, that is essential to being a PoT theorist.

What else does this PoT approach entail? The PoT approach assumes that the rationality of a practice is something that must be capable of being set out in principles. As such it is equating the rationality of a practice with discursive rationality. The central idea is that the practices must contain certain principles implicitly if they are to be rational. Uncovering the rationality of the practice is equated with uncovering this set of discursive principles. Thus, in a most significant statement we find Rawls writing in his description of the method of reflective equilibrium, that it is the appeal to and articulation of the principles that counts as the reflective part of the method.

It is an equilibrium because at last our principles and judgements coincide; *and it is reflective since we know to what principles our judgements conform and the premises of their derivation.* (Emphasis added)²¹

The implication here is that it is the formation of a set of principles to which our judgements conform that constitutes the reflective part of our thinking about our practical judgements. The central point then for the Normative PoT theorist is that practices are never self sufficient when it comes to understanding them, if understanding them is construed here as accounting for their rationality. Practices cannot be rational in themselves. Their rationality is only granted if it can be articulated in a set of principles.

This in turn would seem to mean that *all* the judgements that make up the practice in its entirety must be justified by the principles of the theory if the practice is to be judged rational. Indeed Rawls makes this explicit when he writes that a theory must be comprehensive:

[A]n explication, to be completely successful, must be comprehensive; that is it must explicate . . . all considered judgements; and it is expected to do this with the greatest possible simplicity and elegance.²²

At the very least, if the theory is not actually comprehensive, it should be potentially so. Robert Nozick makes this position very clear in his example of a judge applying a principle based on precedents to decide which judgement is correct in a particular case.

The general position is

Any correct judgement is yielded by *some* true acceptable general principle, that particular judgements are consequences of general principles applied to specific situations. Failure to uncover an acceptable general principle that yields some judgement in particular may mean that there is no such acceptable principle, in which case that particular judgement is mistaken and should be abandoned. Or perhaps you have not been astute enough to formulate the correct principle.²³

The point, according to Nozick is that we must be capable of coming up with a principle that would subsume each practice. Each individual practice must fall under one of the general principles in order to be rational, even if it has not yet been explicitly formulated. This is a very strong position for though he does not mention the possibility here, it does seem possible that certain parts of the practice might not be understood in terms of principles and yet nevertheless be kept in the practice as long as they do not contradict the conception of rationality embodied in the theory. At the very least then one must say that no individual practice must instantiate principles that contradict those set out in the theory. If they do so, they are open to criticism and the principles get to assert what we will call their revisability rights over the practice. For a theory to have revisability rights over a Practice means that if any individual practice contradicts our theoretical structure, it is, by definition, not rational and should therefore be revised in

order to bring it into line with the principles of the theory. The other alternative of course is to admit the irrationality of the practice and reject it. The fundamental point is that the judgements must be abandoned if they contradict some principle. In this way the principles not only help us to understand and justify the practice. They also allow us to critically appraise it and adjust it.

Nonetheless, the extent to which such discursive justifications can justify our practices varies between different types of PoT theorist. The most extreme PoT theorist might, as discussed earlier, hold that something is only ideally rational if it reduces to an instance of a single reason-giving principle as with Maimonides. Other PoT theorists would, as we see with Soloveitchik, allow for a plurality of such principles. However, this pluralistic approach raises the possibility of conflicts between the first order practical principles. Now we can distinguish two different reactions to such conflicts. On the one hand we find Rawls who believes that we must have some kind of further ordering principle in order to adjudicate rationally between such conflicts. Indeed, his criticism of intuitionism rests on its lack of any priority principles that would allow us to adjudicate such conflicts. Rawls does admit that it is possible that we will be unable to find these priority principles for all cases and in such a case an appeal to intuition would not be irrational. However, he explicitly states that this lacuna nonetheless is one that limits the rationality of the practice.

If we cannot explain how these weights are to be determined by reasonable ethical criteria, *the means of rational discussion have come to an end.*²⁴ (Emphasis added).

The idea seems to be that to retain rationality for the practice ‘all the way down’ would require that in addition to the principles that justify the practices, we have some further principles for resolving conflicts that may arise between these first order principles. Soloveitchik’s pluralistic approach on the other hand allows for such conflicts to remain unresolved and does not seem to require ordering principles. Now we may call such a theorist a PoT theorist, and say that the essential point for a PoT theorist is simply that he takes the initial step of subsuming all particular practices under principles and holds that this and this alone shows them to be rational. However, as a PoT theorist, for whom stateable principles constitute rationality, the lack of any principles for adjudicating between conflicting first order principles must nonetheless be seen as a limit to the rationality of the theory and indeed the corresponding practice. One can certainly therefore hold that there are no such principles for deciding on conflicts and remain a PoT theorist at the first order level. The theory would simply

state a set of first order principles without ordering them, or at least without ordering all of them. But limiting our principles to this level is still seen as a limit on the rationality of the practice in question.

We see therefore that there can be different strengths of PoT theory. One can be a monist who believes that one principle justifies all of the practices or a pluralist who believes that there are a number of such principles. Moreover, within the pluralist camp one may or may not make the further assumption that one needs ordering principles to adjudicate between conflicts. One who does make this assumption is a thoroughgoing PoT theorist and this seems to be the ideal Rawlsian line; one who does not is only what we can call a first order PoT theorist for whom irresolvable conflict may exist. However, the conflict is based on the fact that each of the practices makes its own claim to rationality based upon a certain principle. Thus it is still the principles that constitute the rationality of the practices that are in conflict and therefore we still have a first order PoT theory.

To reiterate then, the Normative PoT approach only grants rationality to a practice (or indeed to anything else) if it can be justified by a stateable set of principles. And our understanding of a practice would require the ability to set out this discursive set of principles.²⁵ There is no sense in which practices are self-sufficiently rational independently of their ability to be articulated as a set of principles. We must appeal to a theory to do the all-important justificatory work that the practices cannot do for themselves. The theory therefore is prior to the practice in the sense of being the discursive tribunal to which the practice must conform in order to be understood as rational.

If, therefore, we bracket out those features of our definition of strong foundationalism (F1) that are not relevant to Soloveitchik, we are left with the following position that we will call weak foundationalism:

(F2): There is a set of general principles that can always in principle be further analysed that serve as the basis for the rational assessment of all ethical and religious practices.

The only crucial PoT assumption then is that the rationality of the Practice is ultimately assessed in terms of the principles of the theory and cannot be seen to be rational otherwise. It is then, the holding of (C1) rather than (F1) that is essential to being a PoT theorist.

5. Is the Method of Reflective Equilibrium a PoT approach?

We must now raise a crucial question about the PoT approach. For we are claiming that Soloveitchik, a reflective equilibrium theorist, is a PoT theorist. And yet if the reflective equilibrium approach requires not only that the practices or considered judgements conform to the principles, but that the principles also conform to the judgements, is it really a PoT approach at all? Since no party to the equilibrium is privileged as foundational in the sense of being the ultimate basis for the overall assessment of the practice, in what sense is the theory prior to the practice in terms of the justificatory burden? Indeed according to Rawls the considered judgements serve to justify the principles and can lead to their being revised:

[T]here is only one way of showing an explication to be unsatisfactory, and that is to show that there exist considered judgements of competent judges on specifiable cases for which it either fails to yield any judgements at all or leads one to make judgements inconsistent with them. Conversely, the only way to show that an explication is satisfactory is to evidence that its explicit and conscious application can be, or could be, a cause of the judgements in its range.²⁶

This seems to imply that the judgements in a reflective equilibrium serve to justify the principles as much as the principles do the judgements. For if the principles do not conform to the considered judgements, they can be revised in accordance with the judgements. The judgements themselves, it seems, justify the principles of the theory.

We can make this problem clearer by looking at the idea of revisability rights as it appears in Maimonides' more straightforward form of PoT theory. We have seen how his approach takes a certain rational theory that allows for critical reflection on the practices. The sacrificial cult, for example, appeared anomalous from the perspective of the principles set out as the requirements of rationality for the practice. Indeed it seemed to contradict the principles of Maimonides' theory inasmuch as it apparently inhibited the achievement of the rational ends posited as the purpose of the commandments. Maimonides therefore attempted (unsuccessfully) to force the sacrificial cult into his theoretical straitjacket. The logic of Maimonides' position therefore, though not Maimonides himself, tells us that if the practice does not conform to the theory, it is not rational and must be revised. Moreover, there is no question here of revising the theory to conform to the practice. The theory is self-evidently rational and anything that contradicts it is not.

Since the practice is a divine command and therefore *must* be rational according to Maimonides, he in fact assumes that the practice must somehow fall under the terms of the theory. It is simply accepted therefore that the theory will never need to assert its

revisability rights and change the practice. The practice is bound to be covered by the rational principles. The important point though is that to retain the rationality of the sacrificial cult, it must be forced into this theoretical structure which dictates what practical rationality is for Maimonides. So his position leads to C1 – that it is a necessary condition of the rationality of the commandments that they conform to the theory. Basically, if the theory genuinely has normative priority over the practice, this would grant exclusive revisability rights to the theory over the practice. The theory, being rational, could revise any recalcitrant judgement.

But with the reflective equilibrium approach it seems as if the theory does not have exclusive revisability rights over the practice and is not therefore the only ground of rationality. The considered judgements that make up the practice can lead us to revise the theory, implying that they have some independent rational standing that does not itself rely upon that theory. This of course would mean that C1 was being violated for here we would have a practice that did not conform to a set of principles but this, rather than leading to its rejection, leads us to assert its rationality at the expense of the principles. We have the idea then that a recalcitrant judgement which by definition does not conform to the principles, can lead to their revision. Articulation in terms of principles would not seem to be a necessary condition of the rationality of such practices. But by allowing this, we seem to be allowing the practices some form of self-sufficient rationality that vitiates the priority of the principles - the practices come to justify the principles as much as the principles do the practices.²⁷

If this is so there is no sense in which theory is prior to practice in our normative sense for the reflective equilibrium theorist (and therefore for Soloveitchik). However, I would like to argue that whilst this method does accord importance to our considered judgements and utilises them in the formation of a theory, it does not thereby grant the practice revisability rights in itself or any form of self-sufficient rationality. The rationality that is granted to the practices in such an approach will be seen to be a methodological postulate rather than a substantive form of rationality and in the final analysis we will see that the rationality of the practices is still entirely dependent on the articulation of principles. They have no independent rationality that cannot in principle be given such an articulation.

6. Why the Method of Reflective Equilibrium is a PoT approach.

What we need to show is that the reflective equilibrium theorist, despite appearances to the contrary, upholds C1 and does not allow the practices any other substantive form of

rationality that justifies the principles. Effectively we need to establish the kind of one way relationship that we find in Kant whereby ‘the worth of practice rests entirely on its appropriateness to its underlying theory.’²⁸

I believe that we can show that this is indeed the picture of justification that the reflective equilibrium theorist uses. We can do this if we consider why a practice might be granted revisability rights over a theory. It seems to me that there are two options here:

- a) Implicit in the practices are certain principles which show that our original principles were mistaken.
- b) The practices embody some independent form of rationality that is not dependent on principles that show our original principles were mistaken.

I shall argue that option a) seems to be the route taken by reflective equilibrium theorists on revisability and commits one to a form of the PoT approach. Option b) on the other hand allows one to avoid the PoT approach but means that one cannot remain a reflective equilibrium theorist. Therefore, any reflective equilibrium approach deserving of the title is a PoT approach.²⁹ Let us look at each of these options in turn in order to explain these points.

Option A.- Firstly we must recall that according to the reflective equilibrium theorist, any theory must be comprehensive. The rationality of any practice is only granted if it falls under a principle. But this in turn leads to the conclusion that any recalcitrant case that is rational and leads us to revise our principles must itself embody certain rational principles since only principles can be constitutive of the rationality of the recalcitrant case. This in turn means that any cases that lead us to reject our current principles can only do so if we are able to formulate a new set of principles that cover both the old judgements and this new recalcitrant case.³⁰ Thus, in the final analysis, any recalcitrant judgement that leads us to reject our former principles can only do so if it can itself be subsumed under a reformulated principle or set of principles. And it is the principle that is latent in that particular recalcitrant judgement that therefore justifies any revision of the principles as being a rational revision. What this means though is that even the reflective equilibrium theorist is giving normative priority to the principles for he is holding that practices are only rational if they can somehow be seen to satisfy a discursive set of principles which are always the bottom line as far as rationality is concerned. And this means that the judgements themselves are not actually being granted any self-sufficient form of rationality – C1 stands.

Thus, despite our saying that in reflective equilibrium the principles must conform to the practices which thereby justify the principles, all that we are really doing is simply rejecting our principles in favour of other principles latent in the practices. The practices do not pull any independent justificatory weight in the equilibrium independently of the principles. It is just the *discovery* of the principles rather than their justification that relies on the considered judgements and it is the discovery of different principles latent in the recalcitrant judgements that lead us to see whether or not our original principles were correct.

It is true that Rawls says that these considered judgements must be formed in specific ways by competent judges and that they must be intuitive and 'not be determined by a systematic and conscious use of ethical principles'.³¹ It might be thought that this can be seen to constitute some independent form of rationality for them. But it seems that these factors are simply taken to be good indicators that these practices are rational and can therefore be given a principled explication. The *rationality* of the judgements though is not guaranteed by these indicators and cannot be defined by recourse to them. For such judgements might well appear to satisfy the aforementioned requirements and yet, if they are found not to conform to our principles, they will be rejected. Indeed, in *A Theory of Justice* Rawls seems to grant that principled rationality takes precedence in justifying practices over any of the marks that usually accompany these considered judgements:

In describing our sense of justice, an allowance must be made for the likelihood that *considered judgements are no doubt subject to certain irregularities and distortions despite the fact that they are rendered under favorable circumstances*. When a person is presented with an intuitively appealing account of his sense of justice . . . he may well revise his judgements to conform to its principles even though the theory does not fit his existing judgements exactly.³² (Emphasis added).

It seems therefore as if the features of considered judgements that make them a reasonable starting point for our enquiry are just symptoms of the rationality that we lay out in a set of principles. They often accompany it and therefore they are a good indicator of which judgements are likely to implicitly contain the principles that will constitute the theory. But any initial plausibility that is granted to our considered judgements and that allows them to revise our principles is seen as a promissory note to be cashed out at some point in terms of further theoretical principles. The plausibility of the judgement is in effect seen as a 'place holder', which has to be filled in by a principle if the judgement is to be truly rational. They are therefore granted rationality as a methodological postulate, but this has to be made good by articulation in principles

at some stage and it is the implicit theory that is ultimately responsible for any revision of principles. Despite Rawls' protestations, it just does not seem to me as if the practices or judgements play any independent justificatory role in the equilibrium. The judgements are simply used as a route to the principles and this only because they are presumed to be repositories of this principled form of rationality in the first place. Thus, it is not that the practices justify the principles; the theory is still doing the substantive justificatory work.³³

Indeed, Rawls himself writes, what we have here is a 'heuristic device'³⁴ for finding the correct principles. The bottom line though is that what makes the principles rational is simply the fact that they are principles that have been arrived at in a suitably self-critical, but ultimately theory driven fashion to account for the considered judgements in which they were always supposed to be latent.³⁵

Thus when Rawls says, 'the fact that the principles constitute a comprehensive explication of the considered judgements of competent judges is a reason for accepting them',³⁶ it seems that the only 'reason' that the judgements might give us for accepting the principles is purely subjective, to do with the fact that we have 'certitude' concerning them. But in the final analysis, the only way that the judgements can be substantively rational is if they can be explicated by principles and they therefore give us no independent reason to accept the principles. The principles are not justified by any independent form of rationality contained in the practices.

What we in fact have here, it seems to me, is Rawls asserting an Epistemological PoP theory whereby we intuitively know of the correct moral judgements that then require explication in terms of principles. The principles are therefore derived (in the loose sense) from these judgements (Derivational PoP theory) though these principles themselves can then be used in turn to revise actual judgements (Derivational PoT theory). It is here that we find a form of back and forth movement characteristic of reflective equilibrium. But it is the principles alone, however derived, that account for the rationality or otherwise of these considered judgements (Normative PoT theory) which do not themselves justify the principles in the same way.

Option B – What would the reflective equilibrium theorist need to assert in order to avoid the charge of being a PoT theorist?

The basic idea is that one could avoid the PoT approach if one were to say that the practices have some independent form of rationality that does not depend on the principles. From the reflective equilibrium theorist's perspective, this would require the

possibility of there being a genuine recalcitrant case. Effectively, what we have seen so far is that any recalcitrant case only remains a recalcitrant case until it has itself been subsumed under a revised theory. If it cannot be so subsumed, it is rejected as a mistaken judgement. In effect, therefore, there can be no genuinely recalcitrant judgements that remain stubbornly recalcitrant. However, if we allow the possibility of there being a genuine recalcitrant case that could not be subsumed under any principle and that despite not being capable of assimilation to any such theoretical structure is not rejected, we would be able to say that practices are genuinely rational independently of the principles of any theory and can pull some independent justificatory weight. Here, the independent rationality of the practice (and not some principle latent within it) would cause us to question the principles. If we take Maimonides' problematic sacrificial cult again as an example and imagine that we cannot find any principle that will allow us to account for it, the idea here would be that if practices have some form of independent rationality, why should we not simply accept the practice at the expense of the principles rather than reject it (or, as Maimonides does, force it into a theoretical scheme in which it has no place)?

This would allow for the self-sufficient rationality of the practice and would take away the normative priority of the principles in the sense that we are interested in it. The practice would be rational in itself, violating C1, and could lead us to reject the principles without needing to then conform to some expanded set of principles. But if we do allow for this possibility, the method of reflective equilibrium seems to become very difficult to carry out for reflective equilibrium requires that we be able to subsume particular cases under principles and thus we must be able to 'translate' all practices into discursive terms. If though, we introduce a recalcitrant judgement with a form of substantive practical rationality that cannot be so reduced to principles we would not be able, or indeed need to form this revised set. By definition there is no way of forming such principles for these recalcitrant practices. They cannot be captured by any principle and yet they remain rational.

This is the sort of picture that would vitiate the PoT theory, a picture that is admittedly extremely vague and begs all sorts of questions, not least one of plausibility. For the moment though, we introduce the notion simply to emphasise that the reflective equilibrium theorist cannot grant such a form of independent rationality to practices and still remain a comprehensive (Rawlsian) reflective equilibrium theorist. For according to reflective equilibrium, to be viable the rationality of a practice must in

principle be translatable into a set of principles. It cannot be seen as rational in any other way.

In conclusion then, PoT theorists hold that the existence of an underlying theory is a necessary condition for the rationality of a practice while the practice ultimately plays no such role in accounting for the rationality of the principles. It is the holding of (C1) and the exclusion of the possibility of principles relying on the rationality of the practices (except inasmuch as those practices themselves embody principles) that makes one a PoT theorist. Thus, despite all the genuine differences between those traditionally termed foundationalists and reflective equilibrium theorists, both are PoT approaches in this sense.

7. How do theories justify practices?

We have so far discovered that according to the PoT theorist, in order for a practice to be rational, it must be a practical instantiation of a theoretical structure that can be formulated as a set of general principles. This theory is essential for enabling us to understand, justify and critically assess or revise the practice. However, we must now understand why the PoT theorist believes this - what is the nature of the justificatory relation such that principles can arbitrate 'rationality questions' in this way? The central feature of the principles that differentiates them from the practices is that they have what Kant referred to as 'a certain generality', and we must now clarify this idea and understand how it enables principles to justify practices.

Let us consider an agent A in situation S who decides to perform an action of type P. What is it that justifies his doing action P? The claim of the PoT theorist is that a particular action, P, is justified if it can be subsumed under a general principle. But how does such subsumption serve to justify a particular act or judgement?

Robert Nozick suggests that one of the central intellectual functions of principles is to transmit support between particular cases.³⁷ The idea here is that if a principle applies to a number of other cases S_1, S_2, \dots , and also subsumes our situation S in the same way, always yielding the conclusion that we ought to do P, then our decision in this case receives extra support from these other cases. Thus, the principles act as transmission devices.

Principles are transmission devices for probability or support, which flow from data or cases, via the principles, to judgements and predictions about new observations or cases whose status otherwise is unknown or less certain.³⁸

According to this view then, which Nozick links explicitly to justification,³⁹ the function of principles is to transmit support to a particular case, by subsuming it under the same principle as a whole group of cases about which we are more certain. This is particularly useful in difficult cases in which the principle so to speak rounds up the clear cases as support for the difficult case. If that difficult case can be subsumed by the principle, then the more evident rationality of the clear cases brings extra conviction to bear on our case which is shown to be of the same general type. And it is only because the principles are general and cover a variety of cases that they can do this. It is because they can subsume different cases that this transmission function can work. Generally, principles transmit support between particular cases and can therefore be used in difficult cases as 'devices for reaching correct decisions'⁴⁰.

Does this justificatory function lead us to the normative priority of theory? It seems to me that this simple transmission function taken by itself is not sufficient to yield the type of justification that a PoT theorist would wish to appeal to in justifying a practice. The problem is that the transmission function seems to be parasitic on the rationality of particulars. Rather than the general principle justifying the practice, we seem to have the particular practices justifying the practices. We can understand why this is so if we look at an analogous idea of Mill's in his discussion of real inferences. The following passage that comes under the heading 'All inference is from particular to particular' poses the problem.

If from our experience of John, Thomas, etc., who once were living but are now dead, we are entitled to conclude that all human beings are mortal, we might surely without any logical inconsequence have concluded at once from these instances that the Duke of Wellington is mortal. The mortality of John, Thomas, and others, is, after all, the whole evidence we have for the mortality of the Duke of Wellington. Not one iota is added to the proof by interpolating a general proposition. Since the individual cases are all the evidence we can possess, evidence which no logical form into which we throw it can make greater than it is; and since that evidence is either sufficient in itself, or if insufficient for the one purpose, cannot be sufficient for the other; I am unable to see why we should be forbidden to take the shortest cut from these sufficient premises to the conclusion, and constrained to travel the 'high priori' road, by the arbitrary fiat of logicians.⁴¹

His reasoning here as set out in the passage quoted is that since particular instances constitute our inductive evidence for a general principle, which is therefore based upon them, inferring a particular premise from a general principle is a logically otiose step. The general principle itself presupposes the truth of all the particular propositions that it generalises and as such cannot be used as the basis for an argument to a particular proposition as a conclusion. We can move directly from particular to particular. What Mill is doing here is setting out a form of inference that he believes to be at the basis of both deductive and inductive reasoning. Indeed, he argues that all deductive reasoning

is therefore circular - our knowledge of particular propositions is enough to license an inference to other particular propositions and we need not go through any general proposition as we do in a deductive syllogism.

However, we must note that the principle, according to this account, is merely seen as a convenient way of collating all the various particular inferences under a general heading. Indeed Mill writes that general principles are 'merely abridged statements, a kind of shorthand, of the particular facts.'⁴² If this is so, they do indeed assume the validity of such particular inferences and cannot be used to validate them on pain of circularity. As Mill puts it:

[I]n short, no reasoning from generals to particulars can, as such, prove anything, since from a general principle we cannot infer any particulars, but those which the principle itself assumes as foreknown.⁴³

Now the fact is that even if we were to accept Mill's view of inference, there would still be a number of important functions for principles to fulfil. However, if principles are simply classificatory devices, their substantive contribution to the questions of the rationality of particular actions would be formal and classificatory, the sort of rationality that Horkheimer termed 'subjective reason' and that he thought was a particularly modern conception of rationality:

[T]he force that ultimately makes reasonable actions possible is the faculty of classification, inference and deduction, no matter what the specific content.⁴⁴

Rationality is identified here with the purely formal aspects of reasoning, and asking whether or not a certain practice is rational, is tantamount to asking about the way in which it has been organised and classified by humans. But what Mill illustrates is the point that the mere subsumption of particulars by principles cannot in itself add anything to the rational standing of those particulars.

Returning now to Nozick and the transmission function of principles, our point is that if all that the principles do by virtue of their generality is *transmit* support, then they cannot have normative priority over particular practices. Nozick speaks of the transmission of support from clear cases to other cases. But if it is genuinely the clear cases that support the case in question, then it is not the principle that is doing the justificatory work. The principle is simply treated in this instance as collating the cases and acting as the conduit through which the particular cases support each other. Our conclusion regarding the rationality of our practices is, as Mill puts it when discussing the place of general principles in deduction, 'not an inference drawn from the formula,

but an inference drawn according to the formula.⁴⁵ The principle is merely seen, in virtue of its generality, as the medium for transmitting rationality. What it is actually transmitting is the rationality of the individual cases for unless the particular practices that the principles subsume are themselves rational in some substantive sense there will be no possibility of justification of the new case from other individual cases.

Basically, the picture that we are presented with is one whereby we judge that a certain practice is rational on the grounds that it can be categorised together with a like practice that instantiates the same general principle. But how do we judge the rationality of these like practices? Again in terms of the cases that came before and that were similarly judged to be rational according to the general principle. The problem though, seems to be that unless a certain particular case was inherently rational, then no principle can work to transmit support between like cases for there will be nothing to transmit.⁴⁶ Thus the real justificatory relation is that between substantively rational particulars. But that of course is no longer a PoT theory. We would now have to say that the practices were rational in themselves and the principles do not constitute their rationality. Principles are not the justificatory ground for the practice, just as for Mill they are not, logically speaking, the inferential ground from which particular conclusions are drawn.⁴⁷ Whether or not particulars can be inherently rational in this way is still an open question at this stage. However, the point we are making though is that the PoT theorist must appeal to more than the transmission function if he is to say that principles have normative priority over practices. If this transmission function is a complete account of the role principles, then they do not seem to contribute anything to the substantive rationality of the practice but are simply assumed to be classificatory devices.

Of course though, all the PoT theorist needs to do is deny that transmission is the sole function of the principles. In order to do so it seems as if the PoT theorist must deny that principles are simply empirical generalisations from the particular cases since this would only allow them to pick up their rationality from the particulars that they generalise. He must reject the account of principles that sees their rationality exclusively in terms of their ability to organise chunks of experience into groups, as modes of categorisation that make no substantive contribution to the rationality of the particular cases. The principles themselves need to be substantively rational in their own right in order to contribute to the rationalisation of particular practices in a more substantive way than the transmission function allows. Their rationality must be, as

Horkheimer puts it, 'a principle inherent in reality' rather than a 'subjective faculty of the mind'.⁴⁸

Let us return then to the idea of the generality of the principles to see how else it can be used to justify practices. So far we have understood this generality as if it were simply a matter of the principles being types which subsume the practices as tokens. And whilst this is true, it is misleading to leave matters at this macro level. For if we look at the features of the principles that enable such subsumption to take place, we find something that can play the more substantive justificatory role that the PoT theorist is looking for.⁴⁹

How do the principles subsume instances? The principles are law-like statements that pick out only those generally relevant features or properties that give us reasons to act in particular cases. They do not appeal to the particular features of cases that are not relevant to the normative decision, such as the names of the people involved or the location of the act. The principles thereby cover all those cases that exhibit these generally relevant properties. And the idea is that these generally relevant properties are doing the substantive justificatory work. Thus, if agent A's doing P in situation S falls under the principle in virtue of having such a property, it is the possession of this general property that justifies our doing P. A particular act P is justified if we can identify in situation S those general relevant properties mentioned in the principle. The general properties do the justificatory work.

The properties are general in the sense that their normative relevance is general – if a property is identified as being normatively relevant in a certain situation, it retains this same normative relevance in all situations. The idea now is that our practices are justified if they exhibit some such generally relevant property. And one of the main reasons that this picture is so plausible is that the identification of such properties shows our judgements to be consistent with our previous judgements. Such consistency is seen as essential to the rationality of a set of judgements and it is the possession of the general properties identified in the principles that allow for this consistency. Generality in this sense seems to yield rationality by showing how our judgements are the result of consistently applied criteria rather than arbitrary whims.

In summary, what we find here is a link between generality, reason and rationality which is formulated as follows by Nozick.

If reasons are, by their nature, general, and if principles capture the notion of acting for such general reasons . . . then to act or think rationally, one must do so in accordance with principles.⁵⁰

The generality of the principles that depends on these properties seems to make for rationality and we end up with is a very powerful and plausible subsumptive picture of rationality that holds that in order to justify a practice or a judgement, we must make appeal to general principles that utilise general properties. However, all we have now done is shifted focus. What we now have are general properties as the vehicle for subsumption by principles and it seems as if *these* properties will need to have some sort of substantive rationality in order to do the justificatory work within the principles and not fall prey to the Millian criticism of principles that we have discussed. The properties must, it seems, have some form of *a priori* rationality that is not simply picked up from particular cases. Certainly this commitment to some form of *a priori* rationality for the principles seems to be the route that a PoT theorist needs to take if the approach is to work. And it is significant therefore that Maimonides' Aristotelianism and Soloveitchik's repeated discussions of the *a priori* nature of the halakhic system imply that they do take some such view of the rationality of principles. What we have therefore are certain properties that in virtue of being general can be codified into principles that subsume a variety of like cases. But these general properties do not themselves gain their rationality from the particulars. Certainly they might only be known through the particulars, but this is an epistemological point rather than a metaphysical one.⁵¹ If we are asking about the actual nature of their rationality, it seems to be an *a priori* form of rationality. The principles perform their justificatory role in virtue of their own inherent rationality that stems from that of the general properties that they contain.

This appears to be the manner in which the PoT theorist has to speak if he wishes to genuinely hold that the principles have normative priority over the practices. And it is worth pointing out that on this view, the transmission function has a very different role to play in any justification. For according to our revised PoT view, if a case falls under a principle, then that case is rational in virtue of having those general properties identified in the principle and the actual accumulation of other cases does not have any bearing on the rationality of the case at issue. The transmission function may therefore serve some psychological purpose. It may be a way of making us feel more certain about a difficult case if we recognise that it relies for its justification on the same property as other cases with which we are more comfortable. But at the end of the day, what justifies the particular practice is simply the possession of this general, and

therefore rational, property. Its actual possession by other cases seems to be beside the point.⁵²

So to conclude briefly, we have seen that the fundamental assumptions of the PoT theorist are:

- 1) (C1): It is a necessary condition of the rationality of any practice that it be capable of being articulated in a set of principles to which it must therefore conform in order to be rational.
- 2) The principles must identify certain substantively rational general properties.

For a PoT theorist what makes an individual practice rational is some repeatable property that has some form of *a priori* rationality which is captured in a principle. What we will attempt to do in the remainder of this thesis is show that this PoT picture cannot work for rationalising practices and suggest an alternative approach.

¹ This latter comment is qualified by the addition of a definition of action as 'determining the ideal norm' (HMN, p. 64) rather than 'implementing the ideal norm in the real world' (*Ibid.*), but this is then followed by the comment that 'cognition itself is directed toward the ethos, not toward the logos.' (*Ibid.*). In 'U-Vikkashtem mi-Sham' though, we find Soloveitchik make explicit reference to 'concrete deeds' and 'moral acts' as part of the purpose of thought. See 'Uvikkashtem mi-Sham', in *Ish ha-Halakhah Galuy ve-Nistar* (Jerusalem: World Zionist Organisation, 1979), pp. 194-5. Soloveitchik's ambiguous comments on this matter (also mentioned in David Singer and Moshe Sokol, 'Joseph Soloveitchik: Lonely Man of Faith,' *Modern Judaism*, vol. II, 1982, pp. 227-272, see esp. p. 233 and endnote 13) indicate that working out his precise stance towards this first sense of the priority of theory would require a far more thorough investigation than we can attempt here.

² Immanuel Kant, 'On the Proverb: That May Be True in Theory but Is of No Practical Use' in *Perpetual Peace and Other Essays*, trans. Ted Humphrey (Indianapolis, Ind.: Hackett, 1983), pp. 61-89. Quotation from p. 61.

³ I owe the terminology that follows to Frances M. Kamm's article 'High Theory, Low Theory, and the Demands of Morality,' in *Theory and Practice*, eds. Judith De Cew and Ian Shapiro (New York: New York University Press, 1995), pp. 81-107.

⁴ John McDowell seems to make a similar distinction to that made here between low and high theory when he distinguishes moral theory which 'seeks to formulate acceptable principles of conduct', from ethics which looks at 'the nature and justification of principles of behaviour.' See John McDowell, 'Virtue and Reason', reprinted in *Virtue Ethics*, eds. Roger Crisp and Michael Slote, (Oxford: Oxford University Press, 1997), pp. 141-162. Quotations from p. 140.

⁵ While we are on the subject of terminology we should also just mention that we will often speak interchangeably of practices and judgements, since the principles of the low theory that we, following Maimonides and Soloveitchik, are terming practices can also be referred to as general judgements - the practices of Judaism can be seen as the considered judgements of Judaism that are to be used in any reflective equilibrium approach.

⁶ *The New Oxford Dictionary of English* (Oxford: Clarendon Press, 1998), p. 1474.

⁷ Of course strictly speaking one would be deriving a statement about the practice from the principles rather than the practice itself. However, for ease of expression we will speak simply of deriving practices from principles.

⁸ See Jonathan Dancy, 'Ethical Particularism and Morally Relevant Properties.' *Mind*, vol. 42 (1983), pp. 530-547.

⁹ Similarly, the converse relationship needn't always hold. An Epistemological PoP theorist needn't be a Derivational one. For one could believe that though we first come to know certain practices

(Epistemological PoP) and then derive principles from them (Derivational PoP), there is no reason why we should not, once we have gained such principles, actually use them in the future to make decisions about practices in difficult cases (Derivational PoT). As we will see, this is highly significant for reflective equilibrium theorists.

¹⁰ John Rawls, *Theory of Justice* (Oxford: Oxford University Press, 1973), p. 46.

¹¹ Of course, these two PoT theories are often very closely related for the same principle that justifies a practice might form the content of one of the beliefs that explains one's carrying it out, as long as one does not take Jonathan Dancy's line in his 'Why there is really no such thing as the Theory of Motivation, *Proceedings of the Aristotelian Society*, vol. 95 (1995), pp. 1-18.

¹² Indeed, this sense of PoT theory is, it seems to me, the most fundamental of all. One of the main attractions of being a derivational PoT theorist, for example, would seem to stem from the thought that by deriving one's practice from these principles, one is also justifying it, which depends on our Normative PoT theory.

¹³ Note that the various PoT approaches discussed in this section are distinct from the first sense discussed, in which it was the activity of theorising that was said to be prior to practical activity. It is perfectly consistent for one to believe that the life of practical virtue is more important than the life devoted to contemplation, thus holding the priority of practice in the process sense, and yet believe that this practical way of life must be either derived, explained or justified by appeal to a theory, thus being a PoT theorist in the product sense.

¹⁴ This is very similar to a definition of foundationalism put forward in Rom Harre and Michael Krausz, *Varieties of Relativism* (Oxford: Blackwell, 1996), p. 5.

¹⁵ See Bernard Williams, *Ethics and the Limits of Philosophy* (London: Fontana Press, 1985), pp. 16-18.

¹⁶ Soloveitchik, 'Majesty and Humility,' *Tradition*, vol. 7, no. 2 (1978), pp. 25-37.

¹⁷ *Ibid.*, p. 26.

¹⁸ *Ibid.*

¹⁹ Susan Brison, 'The Theoretical Importance of Practice,' in De Cew and Shapiro, eds. *Theory and Practice*, pp. 216-238. Quotation from pp. 216-217.

²⁰ Rawls, *A Theory of Justice*, p. 4.

²¹ Rawls, *A Theory of Justice*, p. 20. Similarly, Robert Nozick writes: 'Rationality provides us with the (potential) power to investigate and discover anything and everything; it enables us to control and direct our behaviour *through reasons and the utilisation of principles*.' (Emphasis added). Robert Nozick, *The Nature of Rationality* (Princeton, NJ.: Princeton University Press, 1995), p. xi. The idea again is that rationality does its work through principles.

²² John Rawls, 'Outline of a Decision Procedure For Ethics.' *Philosophical Review*, vol. 60, 1951, pp. 177-197. Quotation from p. 186.

²³ Nozick, *The Nature of Rationality*, pp. 3-4. What Nozick is talking about here is the rationality of a decision about a particular situation in the world, but we can apply the same picture to our theories of rationalisation that would require the same relationship between the 'principles' of high theory and the 'practices' of low theory.

²⁴ Rawls, *A Theory of Justice*, p. 41.

²⁵ For Kant himself in our original passage, it seems, a practice is *only* designated as such if it instantiates such a set of principles. These Kantian definitions may well be too strong, implying that there can be no such thing as an irrational practice.

²⁶ John Rawls, 'Outline of a Decision Procedure in Ethics', p. 185.

²⁷ As Rawls puts it 'Thus the fact that the principles constitute a comprehensive explication of the considered judgements of competent judges is *a reason for accepting them*.' (*Ibid.*, p. 187, emphasis added).

²⁸ Kant, 'On the Proverb: That May Be True in Theory but Is of No Practical Use', p. 62.

²⁹ In the same vein, Dwight Furrow argues in *Against Theory*, chapter 1 that the reflective equilibrium approach is what he calls 'theoretical'. Similarly Bernard Williams, when describing a conception of theory closely related to the PoT approach does so whilst elucidating Rawls' reflective equilibrium approach. See *Ethics and the Limits of Philosophy*, Chapter 6 pp. 93-119.

³⁰ We find the same idea in Popper's discussion of the refutation of hypotheses by basic statements in science. Thus, as Harold Brown puts it '[T]he new hypothesis must explain all the basic statements that the original hypothesis explained, plus those basic statements that led us to reject the old hypothesis.' See Harold I. Brown, *Rationality* (London: Routledge Kegan and Paul, 1988), p. 60.

³¹ Rawls, 'Outline of a Decision Procedure', p. 183.

³² Rawls, *A Theory of Justice*, p. 48.

³³ One might argue that once we do reach a final stable equilibrium and no further revision is called for, we find the principles justifying the practices and the practices justifying the principles. However, in the next chapter we will be arguing against the possibility of reaching such a stable equilibrium.

³⁴ Rawls 'Outline of a Decision Procedure for Ethics', p. 184. For a different interpretation of the heuristic merits of the method see Joseph Raz, 'The Claims of Reflective Equilibrium', *Inquiry*, vol. 25 (1982), pp. 307-330.

³⁵ We should note that an appeal here to wide reflective equilibrium does not help us. The background theories are themselves discursive theories – so the priority of theory over practice is simply reasserted rather than avoided if we talk in terms of a wide reflective equilibrium. It is just a different theory that is now bearing the justificatory weight.

³⁶ Rawls 'Outline of a Decision Procedure for Ethics', p. 187.

³⁷ This intellectual function of principles is only one of the many functions that such principles perform according to Nozick. They also perform a number of interpersonal and personal functions. See Nozick *The Nature of Rationality*, chapter 1. However, the intellectual function is the function that is directly relevant to our topic.

³⁸ *Ibid.*, p. 5.

³⁹ *Ibid.*, p. 6.

⁴⁰ *Ibid.*, p. 7. Note that this picture can apply to transmitting support between particular acts using principles of low theory, or for transmitting rational support between low theory principles using the more abstract rational principles of high theory.

⁴¹ John Stuart Mill, *A System of Logic*, Book II, chapter iii, section 3, in *Collected Works of John Stuart Mill*, ed. J. M. Robson, (Toronto Ont.: University of Toronto Press and London: Routledge Kegan and Paul, 1974), vol. 7, p. 186.

⁴² *Ibid.*, Book II, chapter ii, section 3, p. 192

⁴³ *Ibid.*, Book II, chapter ii, section 2, p. 184.

⁴⁴ Max Horkheimer 'Means and Ends,' *The Eclipse of Reason* (New York: Seabury Press, 1947), p. 3.

⁴⁵ Mill, *A System of Logic*, Book II, chapter iii, section 4, p. 193.

⁴⁶ Dancy makes essentially the same point about Hare's subsumptive picture of moral rationality writing that the 'internal rationality of a judgement grounded in good reasons is something about which he has prevented himself from speaking. . . it seems odd to feel bound by rationality to make a judgement here that coincides in some way with one made previously, when the previous one can itself lay no claim to rationality.' See Jonathan Dancy, *Moral Reasons* (Oxford: Blackwell, 1993), p. 83.

⁴⁷ Note though that this does not actually question the rationality of the principles. Rather, we are arguing that their rationality is at best conditional: if the principles are rational, this is only because the particulars are.

⁴⁸ Horkheimer 'Means and Ends', p. 5.

⁴⁹ We should mention that Nozick himself appeals to more than just the transmission function of principles when speaking of the way in which they justify judgements, speaking also of their 'face appeal' (Nozick, *The Nature of Rationality*, p. 6) a notion that we will be discussing further in the next chapter.

⁵⁰ Nozick, *The Nature of Rationality*, p. 40.

⁵¹ Thus, we can still hold onto Soloveitchik's empirically attractive idea that the principles cannot be directly apprehended in some *a priori* fashion but can only be apprehended in the practices. For we can agree that we come to know the principles only by recognising them in our practices, and yet believe that the justification of the practices depends on those general principles. Their rationality does not depend on that of the instances – it is *a priori*. It is just that our knowledge of those properties is not *a priori*. For an example of such a view see David Ross, *Foundations of Ethics* (Oxford: Clarendon Press, 1939), p. 170.

⁵² Again, the analogy with Mill on real inferences is instructive here, for though Mill thinks that general principles are logically irrelevant to real inference, they have an important role to play in the actual psychological inferences that we make. See Alan Ryan, *The Philosophy of John Stuart Mill*, second edition (New Jersey: Humanities Press, 1970), pp. 26-32 for further discussion of this issue.

Chapter five

Problems with principles

We have seen that according to the PoT approach, rationalising a practice essentially involves subsuming its norms under general principles that form a theory which has what we have called normative priority over the practice. With regard to rationalising the commandments therefore, the job of the Jewish philosopher is to reveal the abstract theoretical structure that provides this rationalisation for the commandments. We have already seen how two particular applications of this PoT approach, those of Maimonides and Soloveitchik, come up against certain specific problems. In this chapter though, I intend to argue more generally against the PoT approach by looking at what is known as the uncodifiability thesis which questions the central assumption of the PoT theorist – that we can codify a practice in a set of principles. Having argued against this central pillar of all PoT theories, in the remainder of the chapter we will introduce an alternative approach to thinking about the whole issue of justifying practices that we will then put into practice in the remainder of the thesis.

1. Justificatory theories.

Before looking into the objection from uncodifiability, we should make some preliminary remarks regarding practical justifications in general. For Rawls issues a warning to those who say that the reflective equilibrium approach does not afford us a justification, Rawls writes:

To this I should say that we ought to inquire whether the person making the objection is not expecting too much. Perhaps he expects a justification procedure to show him how the decision is deducible from a synthetic a priori proposition. The answer to a person with such hopes is that they are logically impossible to satisfy and that all we should expect is that moral decisions and ethical principles are capable of the same sort of justification as decisions to believe and inductive criteria.¹

Rawls, it seems to me, is making a significant point here. As Kai Neilsen remarks, ‘it is plainly more reasonable to believe that moral judgement is justified than to believe the general claim . . . that no moral judgement is justified’². This appears to be an intuitively sensible approach to take to a theory of justification since certain considered judgements just do seem to tell against such a radically sceptical position. To take Neilsen’s example, if a theory leads us to conclude that our judgement that needlessly torturing children was wrong is not justified, so much the worse for the theory. Rawls,

it seems to me, is therefore correct to say that if we expect so much of a justification that it makes justifications impossible, we maybe should be a little less stringent about what would count as a justification rather than conclude that nothing is justified.³ The question though, is how much ground we can concede to the PoT theorist on this. For the sake of argument, we will in this section grant them the maximum possible leeway. One concession that we have to make here concerns the notion of objectivism. One of the most important features of theories is that they are often taken to correspond in some manner to reality itself. Dwight Furrow for example writes:

Theories . . . produce an increasingly accurate representation of reality and, on the basis of this representation, generate prescriptions for practical action.⁴

In the normative sphere therefore we might find certain strong objectivists who see the ethical realm as a realm of facts existing independently of any inquirer. The idea then is that because a particular practical judgement can be subsumed under this general theory, it is seen to be *objectively* rational for it is linked to some independent reality through this representational theory.

Such objectivism is generally also going to bring universalism along with it for if the ethical sphere contains facts whose nature is independent of any inquirer, it is thought that the corresponding ethical beliefs must hold true for all ethical inquirers in all contexts, regardless of their own actual beliefs. Thus, for Maimonides the general principles of his theory are universal scientific truths concerning the human good and the real causal relations between the commandments and that good. These universal truths afford us an Archimedean point from which to survey and justify practices. Thus, if we can indeed show that our practice conforms to this theoretical model, our justification of religious norms will find, it is supposed, a foothold in an external reality and in this way we link the rationalisation to notions such as truth and objectivity.

There are though a number of problems with the strong form of objectivism (and therefore universalism) in the practical realm. The basic argument from disagreement which has been put forward in various forms has led many to the conclusion that there is no ‘way things are’ by which to justify our ethical beliefs.⁵ And Bernard Williams has argued in some detail that moral theories cannot secure convergence of moral belief by appeal to some absolute conception of the way things are in the way in which scientific theories can.⁶ We need not re-rehearse these arguments here. However, if one accepts these criticisms what is important is that the reflective equilibrium approach

does not purport to begin from any such Archimedean point and as such need not look to present an objective universal theory in this sense.⁷ One could form any number of particular theories based on the different considered judgements of different cultures. The point is that the reflective equilibrium PoT theorist is not committed by virtue of his method to any particular stance on this question.

If the PoT theorist wishes to secure a form of objectivity, he need not appeal to objects in some Platonic sense, much as the objectivity of mathematics for example need not fall back on some Platonic realm of numbers. We can have, as Renford Bambrough has put it, objectivity without objects.⁸ However, the reflective equilibrium PoT theorist it appears is less concerned with the language of objectivity and more with the attempt to yield a justification for our practices that shows how it can be subject to rational constraints and open to rational reflection. It would, I believe, claim to be a cognitive approach, according to which a practice can be seen to instantiate some theoretical structure that is not the arbitrary creation of humans and that shows a certain moral theory to be true.⁹

Given this loosening of the requirements of objectivity, we could ignore the problems regarding objectivity that were raised for Soloveitchik's reflective equilibrium method. One could say that the strong notion of objectivity that we were criticising him for not attaining, one corollary of which was universalism, is a chimera anyway. Let us concede then that all we need to show is that the practice can be justified in terms of principles that show the practice ~~not to~~ to be a non-arbitrary reasoned response to the practical issue of how we should live. What we can and indeed must do is systematise our practices by exhibiting their rationality in a set of principles, but they needn't be considered universal or objective in the strong sense.

Indeed, for a PoT theorist it must be conceivable that someone could have a thorough understanding of the world-view of a given culture that shares its propositional content with that of a practitioner and yet not be convinced that he ought to, or could (from a practical perspective), participate in it. Moreover, it seems to me that this sort of pluralism can be argued for on purely empirical grounds. As Isaiah Berlin put it:

Members of one culture can, by the force of imaginative insight, understand . . . the values, the ideals, the forms of life of another culture or society, even those remote in time or space. They may find these values unacceptable, but if they open their minds sufficiently they can grasp how one might be a full human being, with whom one could communicate, and at the same time live in the light of values widely different from one's own, but which nevertheless one can see to be values, ends of life, by the realisation of which men could be fulfilled.¹⁰

In cases such as that described by Berlin a theorist would have the very same theory as a practitioner, yet for him, the theory is only explanatory, not normative. Referring back to the distinction that we made in chapter four, the Explanatory PoT theorist may be able to locate the practice within some explanatory structure but that does not justify it for him if the explanation does not yield a confidence in that practice. For the Normative PoT theorist though, the same propositional structure would yield a confidence in the relevant practice. Thus, we can give explanations for practices that might actually be seen as justifications by certain people but not by others.

The reflective equilibrium theorist might therefore allow for such cultural variation. Indeed, its accommodation of such pluralism might be thought to be one of its great advantages over foundational approaches. But even allowing this, we must admit that different cultural groups use different sets of properties as provisional foundational points that have what Nozick refers to as 'face appeal'¹¹. And if, as it seems, we need appeal to such properties in order to justify our practices, we should at least attempt some account of their rationality and the fact that they can play such a fundamental role in our justifications. It seems to be a severe weakness for PoT accounts that they do not actually account for the rationality and variation of these 'face appeal' principles that is so fundamental. If more than one system can indeed be substantively rational, there should be some account of how this can be given that some of these systems will have clashing principles.

The problem is especially clear if we remember that in the previous chapter we found that systematisation alone is not enough to yield the normative priority of theory. What has to do the justificatory work for a PoT theorist are the properties that the principles make reference to, via their *a priori* rationality. However, it seems to me that our reflective equilibrium PoT theorist will have great difficulty introducing such properties.

Let us first note that such PoT theorists it seems to me, must accept that different practices appeal to different such properties and principles. The properties that make for rational principles for one group may not do so for another. But if this is so, how can those properties have some form of *a priori* rationality? Surely any such *a priori* rationality would be objective and universal. Now it is true that we have already expressed the intention to avoid this universalism as a constraint on our justification.

The question though is whether or not the PoT theorist can give this up and retain the

idea that the principles genuinely rationalise our practices via some form of *a priori* rationality.

Indeed, it seems that the reflective equilibrium theorist is likely to want to give up the idea of the *a priori* rationality of these properties anyway. For invoking such *a priori* properties does not sit comfortably with the sort of empiricist methodology being insisted upon here, which would presumably wish to construe moral properties as ordinary empirical properties rather than *a priori* ones. As Rawls states explicitly, his theory of justice is set up ‘without invoking *a priori* considerations’,¹² and while it is true that Soloveitchik, for example, is not necessarily concerned to construe the properties in such naturalistic fashion, his insistence on an empirical scientific methodology, though not formally inconsistent with such a view of properties, does sit uneasily with it. The empirical approach to methodology seems undermined somewhat by the sudden appeal to these strange properties.¹³ Thus, what we appear to be left with on the reflective equilibrium PoT approach is a set of justificatory principles that merely systematise our judgements and that only do so within each practice. All we can do is appeal to these principles and their properties in order to make sense of each practice from an internal perspective. Conceding the utmost to the PoT theorist, we might say that maybe this is all that we can hope to achieve in the practical sphere. We can merely appeal to the internal consistency of our practices by appeal to a set of quasi-foundational principles that systematise our judgements.

However, returning to Rawls’ point quoted at the beginning of this chapter, it is all very well to say that we need to hold onto a theory of justification for our practices that should not be too stringent. However, it seems to me that there is a genuine question regarding whether this is really enough for a justification. If there were a genuinely distinct concept of justification here to speak of, then we could argue about the extent to which it had to live up to various strictures. But it seems to me that we have not been offered any such concept. We simply have a quasi-scientific concept of explanation being applied to practices in order to do something other than explain. And this, it seems to me, it cannot do. The problem here is not one of stringency or otherwise, but rather one of illegitimately speaking of justification when all we have is explanation.

2. The uncodifiability thesis.

Even if one were to allow that the sorts of explanatory systematisations discussed in the previous section could justify our practices, the argument from uncodifiability shows

that even the minimal conditions for such an explanatory theory cannot be met. The simplest statement of the uncodifiability thesis is that given by John McDowell in the paper 'Virtue and Reason' where he questions the possibility of codifying a moral outlook in a set of principles.

[T]o an unprejudiced eye it should seem quite implausible that any reasonably adult moral outlook admits of any such codification. As Aristotle consistently says, the best generalisations about how one should behave hold only for the most part. If one attempted to reduce one's conception of what virtue requires to a set of rules, then however, subtle and thoughtful one was in drawing up the code, cases would inevitably turn up in which a mechanical application of the rules would strike one as wrong – and not necessarily because one had changed one's mind; rather, one's mind on the matter was not susceptible of capture in any universal formula.¹⁴

The point that McDowell seems to be making here is that we cannot form a set of subsumptive principles that would serve to codify our ethical practice since there will always be individual cases that these principles cannot subsume. The PoT approach would therefore seem to be in trouble for we would be unable to form the principles that supposedly justify our practices. However, we need to look at this thesis far more closely if we are to make into a cogent objection to the PoT approach. In order therefore to analyse this uncodifiability thesis I would like to address the following three questions:

- i. What exactly is being said to be uncodifiable?
- ii. Why is it thought to be uncodifiable?
- iii. How is uncodifiability relevant to PoT theory?

3. What exactly is being said to be uncodifiable?

Before addressing this question directly, we should notice McDowell's comment that the problem of uncodifiability is one of not being able to capture our moral outlook in *universal* formulae - we can only form principles that hold for the most part. The problem with such an uncodifiability thesis though, is that while it might be effective against the Maimonidean form of PoT theory, according to which rational practices must be susceptible of such universal codification, it would leave our more minimal PoT approaches untouched. Soloveitchik for example, and indeed any non-universalist reflective equilibrium theorist, can accept that his principles are not universally applicable and yet still believe that they were what justified the practices of the particular moral outlook being studied. What we would need to show, therefore, in order to make this objection effective against such a reflective equilibrium theorist is

that moral outlooks, even those that are only applicable within a certain culture, cannot be codified in a set of formulae. The basic idea is that even *within* cultures, any codification will only hold for the most part. No set of principles can finally capture and justify the practice. We must therefore see whether we can develop the uncodifiability thesis in such a way that it can be made effective against all the varieties of PoT theory.¹⁵

With this target in view, let us return to our question of exactly what is said to be uncodifiable. The term that McDowell uses is our ‘moral outlook. We can narrow down what McDowell means by this by looking at what he says about practical syllogisms. If we consider the practical reasoning of a virtuous person, it seems that we can reconstruct his reasoning by appeal to a major premise specifying a general concern of the agent and a minor premise that identifies this situation as one in which this concern is relevant and requires acting upon. McDowell’s example is of someone with a general concern for his friends who notices on a particular occasion that the friend is depressed and therefore misses a party to comfort the friend. Such a syllogism seems to explain our actions by appeal to the interaction between those principles that form the major premises of such practical syllogisms and our perception of the particular situation. One might therefore think that we can, after all, codify our moral outlooks by listing the major premises that would feature in the practical reasoning of a virtuous person.

However, the fact that we may be able to codify such a set of concerns according to McDowell only suffices to explain the motivation for an action. What it cannot do is explain why it is a virtuous action. In our terms, it does not in itself justify the action. It gives us what McDowell terms a ‘core explanation’ for the action which fully explains why the person was motivated to act, but would do so whether or not acting in this way were correct or not. Effectively, what the core explanation appeals to is a principle that may have explanatory priority over the practice, but not normative priority. Thus, in order to show that the action is virtuous, it needs be shown how acting on this concern in this situation was acting on the right concern and this requires that it mesh with what McDowell terms the agents ‘entire conception of how to live’. The appeal to principles stating general concerns cannot therefore explain the action as a *virtuous* action unless it is seen against this background, for only that would explain why it was this principle rather than any other that was operating here.

The core explanation must at least be seen against the background of the agent’s conception of how to live; and if the situation is one of those on which any of several

concerns might impinge, the conception of how to live must be capable of actually entering our understanding of the action, explaining why it was this concern rather than any other which was drawn into operation.¹⁶

McDowell's point here seems to be that as we have pointed out, if we are to justify our practices, we would need principles to do more than simply subsume particular situations as instances. We would need a set of principles that identify certain properties as rational and this can only be done by invoking our conception of how to live. And the central point is that this cannot be codified. We might be able to list a set of concerns *for the agent* and explain his actions. But the conception of how to live that explains why we should act on certain concerns in certain situations at the expense of others, why certain properties are seen to be salient at certain times, cannot be set out in advance in any set of principles according to McDowell.

If the conception of how to live involved a ranking of concerns, or perhaps a set of rankings each relativised to some type of situation, the explanation of why one concern was operative rather than another would be straightforward. But uncodifiability rules out laying down such general rankings in advance of all the predicaments with which life may confront one.¹⁷

As set out here then, what seems to be uncodifiable is any set of ranking principles that would justify the perceived salience of particular properties amongst the competing properties or principles that apply to a given situation. This 'entire conception of how to live' would seem therefore to refer to the set of directly practical concerns of low theory ordered according to a set of ranking principles. In the final analysis then, it is the set of complex ranking principles held to be necessary for rationalisation by those we termed thoroughgoing PoT theorists that is uncodifiable. Moreover, if we cannot form principles of low theory it seems implausible to think that we could form principles at the level of high theory to justify the rankings of our ethical concerns, especially if these high level principles are to be partially derived from low level principles as in the reflective equilibrium process. As Dancy writes:

If there is a holism of reasons, as the particularist supposes, the prospects for substantial moral principles looks bleak... And this is true, not just for what one might think of as ordinary principles such as 'Do not lie', but for the sort of principles that moral theorists seem especially interested in. Here I have in mind the attempt to construct a moral theory by proving true one or many crucial principles such as the Principle of Moral Indifference... or the Utilitarian principle... There is something unrealistic about the whole enterprise.¹⁸

What we still need to understand though is exactly why this enterprise cannot be realised.

4. Why is our moral outlook thought to be uncodifiable?

McDowell's argument so far seems limited to our thoroughgoing PoT theorist. A pluralist like Soloveitchik who believes that we cannot have the kinds of ordering principles that McDowell thinks uncodifiable, would seem to be unaffected since McDowell's argument does not rule out the possibility of identifying the kinds of general properties or concerns that were discussed in the previous chapter. There we argued that principles identify morally relevant properties which are rational and that can justify our actions across a variety of situations. The principles are then taken to justify judgements in particular cases and therefore be action guiding if the same morally relevant property referred to by the principle is present. McDowell does not appear to have ruled out the possibility of forming such principles, even if he has ruled out the possibility of forming more complex exception stating principles.

However, we can extend the uncodifiability thesis so as to question the very idea that moral properties have the kind of general relevance that is appealed to by the simplest of principles. The point can be made most effectively by appeal to what Dancy calls the holism of reasons. The idea of the holism of reasons is simply that the relevance of any given property can, and most likely will vary across different situations. Thus, for example, Dancy suggests that though the pleasure that a given act produces is generally seen to be a positive reason for action, the pleasure that a crowd might take in witnessing the public execution of rapists would seem to be a reason against reinstating such events. Indeed, it is even possible for a property to be a positive reason for action in one case and a reason not to act in another, as Dancy relates in the following personal anecdote.

I sent an article to a philosophical journal some years ago, taking it that the fact that I had already had two articles published there on the same general area was some reason for them to publish the third in the series. The editor persuaded me tactfully that it was a greater reason for them not to.¹⁹

How are these considerations relevant to uncodifiability in terms of our moral principles? The problem at its simplest is just that the principles ignore the competing morally relevant properties of actual situations that makes for this holism of reasons. What the principles do is identify a single relevant property and state that this property makes for the rightness of an action. But in doing this, the principle ignores the details of the actual situations to which it is being applied. Now on the one hand this is

necessary if the principles are to be general and apply to multiple cases. However, the basic principle derived from a particular situation or set of situations, states that a certain property in isolation makes for rightness in any given situation in which it appears. But, in stating that a certain property is morally relevant in the absence of any other competing properties, the principle is restricting its application to those situations in which there are no such competing properties. And our extended uncodifiability thesis argues that almost all situations involve some such complexity, meaning that in the vast majority of situations we will need to pay attention to the way in which this property interacts with these other features. The problem therefore is that the 'holistic' interaction of properties in real situations will affect the relevance of the property cited in the principles so that we can no longer depend on its general relevance in isolation.

What the principle states does not apply to the situation at hand. As Furrow puts it

The fact that a property is decisive in the absence of morally relevant competing properties does not give me a reason to think that it will decide in the presence of competing properties. The principle provides us with no device for attaching weight to a particular property, independently of evaluating the significance of that property in the present situation...²⁰

Principles therefore are of no use for they pick out properties in this atomistic fashion thereby becoming irrelevant to the vast majority of actual situations in which the property is not the only one that is relevant. Thus, by ignoring the trade-offs between the various relevant properties that constitute the very stuff of our moral reflection, principles lose their relevance to those very situations in which we require justifications. Indeed, this is precisely the point made in the example of the article quoted from Dancy above. In that case one might argue that we wouldn't expect the single principle that, say, 'if an article in a general area by a particular author has been accepted by a journal, another article in the same area will be accepted by the same journal', would be relevant in the various situations that Dancy describes since the situations differ. The second article is sent in after one has been previously accepted and the third after two have been previously accepted. However, this is to concede the very point that the uncodifiability thesis is making. For the point about principles is that they are intended to pick out general features of a situation so as to apply to cases that differ in certain respects. But real life moral reflection often requires us to pay attention to these very respects which may affect the way that moral properties interact. This difference in interaction though changes the moral shape of the situation and as in the case Dancy cites, the principle therefore becomes irrelevant to this new situation.

What is being stressed here is that the real question at issue is about the nature of the case before us, not other cases that it may or may not resemble. We are mistakenly employing what Dancy terms a switching argument, ‘an attempt to determine what to say here by appeal to what we say about something else’²¹. And here the problem is that the ‘something else’ does not seem relevant to the case at hand. Indeed, the idea that there could really be cases like those described in the principles we supposedly refer to is one of the very assumptions that our extended uncodifiability thesis is questioning. In real life situations the properties referred to by the principles are highly unlikely to turn up on their own and if we want to make a decision in a complex case, the important point is how *in this case* a certain property is behaving, not what the principle supposedly tells us: that if no other property made a difference then the one identified in the principle would be the only relevant one for our decision.

Now of course, one could argue that the initial principle could be reformulated to take these more complex circumstances into account and tell us which properties override those contained in our initial principle. Indeed this appears to be exactly what reflective equilibrium theorists do when they adjust their principles. However, such a move takes us back to the thoroughgoing PoT theorist’s point that in order to justify our practices we need to have some form of higher principle that would tell us how to adjudicate between competing first order principles. The uncodifiability thesis, therefore, by pointing out the inadequacy of our initial first order principles, seems to force us to consider the possibility of adjudicating between such principles on the grounds of further principles that would give some order of priority to the various properties involved in real life situations. This would seem to force PoT theorists like Soloveitchik to formulate some sort of priority principles for deciding between first level conflicts if they want their theories to be of any interest at all. But the point is that we cannot form such ranking principles. The problem for forming such principles is that again, once we generalise this more complex situation we simply appeal to a certain property that has defeated some other property but again inevitably leave out all the other competing properties that will be relevant in other cases. Different circumstances can always exhibit a novel mixture of properties and no principle will ever be able to both remain general and capture all the morally relevant competing properties that a new situation may yield. As such though, it cannot tell us what to do in those very situations in which we would want the principles to help us. The principles will still be treating properties in a misleadingly atomistic fashion and thus be irrelevant to those real life situations.

The extended uncodifiability thesis therefore ends up arguing that though we may well attempt to form principles, they cannot justify a particular course of action for they are inapplicable to those real life situations to which they are being erroneously applied. The point of the principles is supposedly to cover a range of cases particularly those cases which are novel and require reflection. But in order to do this the principles must pick out only one the most general features of the cases in isolation. Thus, any situation that calls for any degree of moral reflection cannot be judged by appeal to principles alone for the principles will not apply to it.

5. Uncodifiability and complexity.

The uncodifiability thesis seems to be relying on the idea of the complexity of the moral situations that we face. It is the idea that moral experience involves so many critical variables that can interact in myriad ways that seems to vitiate any attempt at a principled codification that speaks of the 'general' relevance of a property in the manner that is required for a principle. As such, what we seem to have here is the general argument against the possibility of formulating general laws for explanation or prediction in the social sciences applied to the specific area of the codification of ethical judgements. And in this particular case, as in the general case, the problem, as Michael Scriven writes, is that

[T]he fundamental experimental element is the human being, or his responses, enormously complex in structure and function and reared in an enormously complex environment.²²

Scriven here makes reference to two central points that make for difficulties in formulating any set of general laws for explaining or predicting human behaviour – the complexity of the world itself and the complexity of the human beings that inhabit it. One may simply see the former point in terms of the novel and unpredictable situations that will continually arise in the world for us to deal with. This systematic unpredictability²³ stems from the idea that the world will continually throw out new and more complex situations for us to deal with that our current best set of principles will be unprepared for. It is this sheer unpredictability that causes problems for codification in our ethical cases for we never know what new situations will arise given the open nature of the system.

The second point tells us that this systematic unpredictability applies not only to ‘the world’ but also to human beings and in particular to their continually evolving conceptual schemes, causing further forms of uncodifiability.

The problem here is that conceptual innovation, it is said, is unpredictable since to predict it at any sufficient level of complexity would involve familiarity with a whole range of concepts that have not yet been thought of. Basically, the idea is that it seems implausible that such innovation can take place ‘before its time’ so to speak. As Fay writes, for example, the prediction of Marxist theory in the 1600’s would require our predictor to be familiar with all sorts of concepts such as exploitation and alienation that themselves depend on various philosophical schemes. And surely the prediction of all of this is a practical impossibility.²⁴

In fact the two factors that Scriven mentions maybe very closely related if one accepts the sort of cognitive pluralism that we saw Soloveitchik advocating in chapter three. For the fact that according to him our very own conceptual schemes partially constitute the very subject matter that we are studying in the social sciences means that the situations that the world presents us with will vary with those very conceptual schemes. Brian Fay gives us a good illustration of this in his discussion of the emergence of the idea of individual political rights in seventeenth century Western Europe which also serves to illustrate the direct relevance of this point to the kinds of ethical questions that we are focussing on.

[P]eople gradually came to understand themselves and others as the possessors of individual rights. Now, this new self-understanding marks the occurrence of a real conceptual innovation that not only changed the way people . . . talked about their political relationships and institutions, it also altered the very nature of these relationships and institutions as well. For example, governments had limits placed on their activity which they never had before, and they had duties to perform – such as defending the civil liberties of their citizens – that were essentially new.²⁵

This particular example shows us how certain ‘principles’ that may have been considered true under one conceptual scheme, such as the denial of any justifiable rebellion for example, could be considered false under a new one in which the violation of certain rights might now be seen to justify rebellion in certain circumstances. This means that as well as having to limit our principles to certain societies, we also have to limit them to certain times within those societies. Thus the complexity of the social world is dependent on our interrelationship with the social world. What we find therefore is a feedback mechanism of complexity between the world and our conceptual schemes which leads to the problem of uncodifiability. Specifically with reference to

our ethical problem, any set of ethical principles is bound to be confounded either by a novel situation or, over time, by a change in the conceptual framework through which we view our ethical situation.

However, it has been argued that this complexity can in fact be eliminated. Thus Lee McIntyre has appealed to the fact that situations are only complex under descriptions, not as such. This of course means that in the social sciences we may be able to redescribe the situation so as to eliminate the complexity and formulate a set of laws. What McIntyre suggests is simply that we may be able to redescribe the phenomena in terms of a new social scientific scheme. The idea here it seems to me is not that the social sciences contain Davidson's heteronomic generalisations - generalisations that lead us to believe that a precise law can only be stated in terms of some other conceptual scheme. We need not hold that the social phenomena can only be subject to law if redescribed in natural scientific terms. Redescription can go on 'in-house'. Thus, in physics itself for example, redescribing complex phenomena that do not seem to fall under any current law so as to bring them under a set of different, but nonetheless physical, laws has been part and parcel of scientific progress. Were it not, we would still all be attempting to explain things in terms of the Aristotelian notions of matter and form. But this redescription does not mean that physics is full of heteronomic generalisations. What science has done is created new *physical* concepts in order to recategorise the data which may well have been too complex to be captured at one level of description, but can now be explained at this new level. Similarly then one might hold that the same could hold of the social sciences.

Why think that the subject matter of social science is fixed by a single level of interest, at which laws are unavailable? Surely there are more descriptive categorisations than have been previously discovered in our social scientific enquiry. Thus the prospect of redescription holds out the possibility of social scientific laws.²⁶

However, it seems to me that McIntyre is committing a *petitio principii* here. The argument seems to be that it must be possible to formulate laws for the social sciences since the so called obstacle of complexity can be eliminated in the same way that recalcitrant phenomena in natural science have been subjected to law - by redescription. But why are we to assume that redescription in the social sciences can always eliminate the problems of complexity? To say that it can is to assume that the successful method of redescription that is used in the natural sciences can be assumed to have similar success in social science. But that is precisely the question at issue here. For the

problem of whether or not we can always redescribe phenomena so as to be able to formulate laws in the social sciences is an instance of the general question of whether or not the social sciences are amenable to a natural scientific treatment. And surely therefore one cannot argue that the social sciences are amenable to natural scientific treatment by supposing that we can eliminate complexity in the natural sciences through redescription and must therefore be able to in social science. For that is to assume that the social sciences must be amenable to natural scientific treatment, which is precisely the point at issue.

Thus, it seems that there are indeed different levels of discourse here that we must deal with. And even if the two are co-extensive, that one is reducible without remainder to another cannot be assumed. Indeed, the level at which complexity exists seems to be the one that we are interested to study and we feel that any recategorisation would therefore need to retain this complexity in order to be genuinely explanatory of the subject matter that we are concerned with. Complexity seems to be constitutive in some way of human experience rather than some accidental accretion to be eliminated. With specific reference to uncodifiability in the moral case, moral conflicts may be thought to illustrate this point. For the elimination of the complexity in such cases would seem to deny their very essence as moral conflicts. That is not to say that in some cases we might be able to eliminate conflicts by utilising a new conceptual scheme. Indeed, we are not saying that redescription cannot take place. But the possibility in principle of eliminating all such conflict seems to misrepresent our moral experience.

While McIntyre is therefore correct to say that Scriven is 'wrong to think that social inquiry must therefore be carried out only in terms of the particular vocabulary that has heretofore framed our interest'²⁷, he is wrong if he thinks that an adequate redescription can avoid the problem of uncodifiability. The evidence seems to show that no redescription can take into account the problems of complexity and unpredictability and formulate principles that will hold for future situations that may call upon entirely new conceptual schemes. Indeed, this unpredictability may even help us to explain the sense we have that the levels of description (and even of redescription) that we are interested in as social scientists will have to retain the complexity that McIntyre wants us to remove. For the unpredictability of our conceptual schemes seems to be a function of what it is to be reflective human beings who change (or more optimistically progress) over time to new standpoints. It is because we are reflective and creative beings that we cannot predict the future of our conceptual schemes. And it is the fact

that we are such creatures that stimulates an interest in social science. Thus the very factor that creates the discipline of social science also makes for the problem of unpredictability that belies its attempts to form laws. It seems to me therefore that we cannot eliminate the problems that make for uncodifiability and at the same time do justice to the contribution of human creativity to our practices.

We must concede, as Scriven does, that we can never rule out the possibility that there are such principles that we could eventually formulate by some *a priori* argument. Scriven believes that he is giving an argument based on empirical evidence that helps to explain *why* the social sciences have been so unsuccessful in formulating laws. However, it seems as if we are being asked to believe that there just are certain principles despite that fact that we cannot presently formulate them and have no good reason to believe that we ever will be able to. Indeed, all the evidence seems to point us in the opposite direction.

Let us then attempt to sum up our uncodifiability thesis. The basic idea is that our moral outlook, which, according to McDowell, has to involve some sort of justification of those concerns that we act upon rather than a simple statement of what they are, cannot be codified in a set of principles that are at once true and applicable to our experience. This is because the principles pick out properties atomistically and therefore though they might strictly speaking be true, they do not apply to the real life situations that concern us. Furthermore, any attempt to fill out the principles so as to make them apply to these real life situations can never keep up with the inevitable complexity and unpredictability of our moral experience. The sheer unpredictability of the moral situations that we are presented with means that any set of principles will inevitably be outstripped and falsified by experience. Any set of principles will turn out in the fullness of time to treat too specific a set of properties.

This extended uncodifiability thesis therefore ends up as a problem even for our minimal PoT theorist. The problem is that any set of principles will be refuted by the holistic behaviour of the properties that they appeal to, and this will hold true whether these principles are in any way objective and universal or not. The important point that the uncodifiability thesis makes is that whatever principles the reflective equilibrium theorist holds will always inevitably turn out to be the wrong ones. The principles will always be, so to speak, one step behind the judgements for according to the uncodifiability thesis the process of forming the correct principles out of our considered judgements is going to be never-ending given the continual surprises thrown up by

experience. We would never therefore arrive at the correct principles that codify the practice for they will always eventually be shown to be inadequate. Any code that appeals to a set of principles will be inadequate to the task of subsuming the practice.

6. How is uncodifiability relevant to the PoT Approach?

It is very important now to link up the points regarding uncodifiability to our PoT theory directly. For Furrow concludes that what the uncodifiability thesis leads to is the idea that moral principles ‘are not action-guiding in any case requiring deliberation... I am claiming that moral evaluation is not mediated by principles.’²⁸ Now it seems to me that this conclusion can be taken in two ways – pragmatically or metaphysically. On a pragmatic reading, the point would be that as a matter of psychological fact, we do not use principles in moral evaluation. Thus they are not action-guiding in the literal sense of actually guiding our actions. However, the PoT theorist is less concerned with the pragmatic question regarding our use of principles in deliberation and more concerned with what we will term the metaphysical question of whether or not the principles are true and can therefore justify our judgements. The concern for the PoT theorist is, as Richard Hare has written, not ‘to take too utilitarian an attitude towards philosophical theses; let it suffice that they are true, and let it be left to the future to determine whether any useful results follow from them.’²⁹ Let us look then at the pragmatic and metaphysical questions in turn in order to distinguish them and work out exactly how the uncodifiability thesis is relevant to the PoT theorist.

Beginning with the pragmatic question, according to Furrow, the complexity and unpredictability of real life situations means that our principles cannot be action guiding in situations requiring deliberation. What though would it mean for them to be action guiding? Take the everyday example of going into a shop to buy a chocolate bar. The fact that I go in and pay for the bar rather than stealing it might be thought to be guided by the principle that stealing is wrong. Now phenomenologically this does not actually seem to be what goes on. We seem just intuitively to know what to do and do not need to derive it from some principle. Nonetheless, derivation from principles is not a possibility that we need rule out on grounds of complexity. For though it might be true that we cannot state our principles in such a way as to make them exceptionless, it seems undeniable that in such cases we could allow for the possibility of deliberation using such false principles. And given this, Furrow should not and seemingly does not deny that we could use moral principles in an action guiding fashion in clear cases. We

could carry out our deliberations in this way. However, Furrow's conclusion is only that principles are not action guiding in cases requiring deliberation, for they do not apply to those more complex cases.³⁰ It seems to me though, that we can extend the argument that principles may be action guiding even to situations requiring deliberation, contra Furrow.

We can illustrate this by analogy to a point made by Nancy Cartwright in her use of a form of our extended uncodifiability thesis for physics. Cartwright argues that in physics there are no exceptionless laws.³¹ The universal law of gravitation for example states that the force between two bodies varies inversely with the square of the distance between them and directly as the product of their masses. But the law as stated is false of the majority of situations in the actual world that we wish to explain, given the variety of other factors that affect this relationship in real situations. Implicit in this law therefore are a number of *ceteris paribus* clauses so that the law that is in fact true is a *ceteris paribus* law that 'other things being equal' the universal law of gravitation holds as stated. The problem of course is that other things rarely are thus equal in the actual world and any attempt at an exhaustive statement of these *ceteris paribus* conditions in order to end up with the true law will always fall prey to exceptions and will anyway only apply, if at all, to those very few cases in which all these *ceteris paribus* conditions hold, i. e. under laboratory conditions. This just seems to be another example of the point that we have been making regarding moral cases. Basically, we state that a certain property makes an act right, which as it stands would be a false statement. In the moral case therefore we need a *ceteris paribus* clause that isolates this property from all others. But this makes our moral principle true at the expense of making it irrelevant to the real life situations in which we do not have these 'laboratory conditions' to work with. Thus, as in Cartwright's example, the true principle does not apply to real life situations and as such cannot subsume them.

However, Cartwright believes that physics provides us with an example of a discipline in which the false laws are used to great pragmatic effect for in physics false laws can be used to explain real situations. Indeed, Cartwright believes that most of our explanations are of this sort. Thus, for example, she holds that the explanation for her camellias dying was that they were planted in hot soil, even though there is no true law that states that camellias planted in hot soil will die.³² Moreover, in this case some of the camellias did not die, for the soil was also rich and some camellias flourish in rich soil. Thus we have a complex case here in which there are many competing properties.

Nonetheless we explain by appeal to a false law that only appeals to one of them – that camellias die if planted in hot soil. It seems therefore that these laws have at the very least an important pragmatic role to play in explanation in science despite being false.³³ The same, it appears to me, can be said for our ethical principles. The (false) principle that stealing is wrong might well serve to guide our action, and it might even do so in a case with competing properties. As Dancy concedes, moral principles should be seen as ‘reminders of the sort of importance that a property can have in suitable circumstances’.³⁴ Some properties are morally relevant more often than others and our principles remind us of this and therefore can be helpful in our moral deliberations. So Furrow is wrong to say that the principles cannot be used in an action guiding fashion or cannot mediate our decisions, even in cases involving deliberation. It is just that the ones that would do so, if indeed they do, are inevitably false.

Now there are certainly all sorts of important questions that Cartwright’s particular application of the uncodifiability thesis to physics raises.³⁵ But allowing for the sake of argument that false principles could play a pragmatic role in our deliberations, the important point here is that these principles, even when they do guide our action, are acknowledged to be false and this leads us back to our metaphysical question. For the important point for our PoT theorist is that what we are interested in here is the normative priority of principles. And this means that even if we accept that false principles may be a useful heuristic device in decision making the fact that they are false means that they cannot possibly be the factors that justify our actual practices. They may be capable of playing a pragmatic role in my thought processes, but they cannot be what actually justifies the action from a normative perspective. The fact therefore is that they can play a pragmatic role in our deliberations much as false principles play a pragmatic role in scientific explanation according to Cartwright. But in our normative situation we are looking to justify our practices which we can only do if we have the correct principles to work with. One could not appeal to a principle to justify an act as being correct if the principle is false.

The point that the uncodifiability thesis makes therefore is that the *ceteris paribus* principles are either true of cases that we will rarely if ever encounter and thus simply not applicable to real cases and at best useful heuristic devices. As false heuristic devices, the pragmatic point is all very well, but will not serve any normative purpose for the PoT theorist. For surely we cannot use false principles to justify our practices. Moreover, even if the principles appear true of certain limited cases, given the problem

of unpredictability they will inevitably be falsified in due course anyway. The point then is that though we might well use principles to guide our actions, they cannot justify those actions for the principles that so guide our actions are false. And this it seems to me is the real force of the uncodifiability thesis. Thus we turn Hare's aforementioned claim regarding principles on its head. It turns out that maybe we could take a utilitarian attitude towards them, but even so, they are not in fact true.

The point that we therefore end up making against the PoT theorist is not that every situation presents morally competing properties that render us incapable of making our moral decisions. We can and do make such decisions, though there is a genuine question about whether or not we do so using principles. The problem rather is that the simple principles that we supposedly use to make these decisions are actually false. And the specification of the conditions that would make the principles true would always remain an endless task.³⁶

In conclusion then, what the uncodifiability thesis shows us is that the generality of the principles that was thought to be the factor that allowed them to classify various diverse actions together turns out to be something of an illusion. The principles do not subsume the very cases they were formulated to cover. This of course is something of a hindrance to their deliberative and justificatory utility and therefore a significant problem for our PoT theorist, since the necessary condition for rationalising a practice cannot now be met. We cannot formulate a set of principles that serve as the basis for the assessment of our practices for we cannot formulate a set of principles that might subsume the practice at all. The PoT theorist seems to have set himself a practically impossible task.

7. Uncodifiability and Rationalising the Commandments.

We can now apply our arguments directly to our models of rationalising the commandments. If we take the Maimonidean attempt at rationalisation, it just does seem implausible, as Dancy said, to think that all the very different practices and judgements of Judaism share some common property that always justifies them. At the level of individual practices our craving for generality leads us to attempt to reduce each particular practice to some common rational essence. But it seems artificial to isolate one component that they supposedly all have in common and more importantly that this common property, even if it does exist, acts in precisely the same way in each particular practice. Each practice differs to such a great extent that it seems implausible

to think that just because a certain property makes a particular practice rational, it can be codified into a principle that can then be used to justify all the various practices regardless of their other properties. Particularly when justifying the very different norms of law theory, it would seem as if each practice has its own unique features that we are abstracting away from in attempting to form general justificatory principles. So looking again to our Maimonidean model, though a commandments' means-end relationship to man's contemplative end would rationally justify it in the absence of any other properties, with the sacrificial cult for example, the existence of a whole variety of other important factors, be they historical, moral, or whatever, seems to vitiate the so-called general relevance of that means-end relationship.

A similar argument holds for Soloveitchik who attempts to understand each halakhic decision in terms of a halakhic principle that that serves to systematise a set of such decisions. Though he does not appeal to a single foundational principle, the plural principles that he does posit will inevitably be outstripped by the unpredictable nature of the world to which they are being applied. The halakhic norm cannot be finally codified and will need to adapt to the changing world, and any properties or concepts that are thought to justify the norm can be expected to turn out not to do so. Indeed, it is interesting to note in this regard that one of the problems that Sagi has with Soloveitchik's halakhic philosophy is that the theoretical construct that is Soloveitchik's halakhic system is supposed to justify our actual halakhic decisions. And the problem is that in many real cases, the deductive paradigm that Soloveitchik thinks applies to the conceptual system in the abstract may not actually work in reality. Indeed, Sagi points out that Soloveitchik himself mentions certain areas where the deductive paradigm does not hold for real situations that cannot be seen to fall under the halakhic concepts that we have formed. In such cases, writes Sagi, an 'intuitive response' is called for, or at least a response that cannot be deduced as the logical conclusion of a deductive argument from a set of abstract principles. Soloveitchik himself therefore seems to tacitly recognise the problem of uncodifiability in his philosophy of halakhah

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Having said that though, in Judaism it appears as if the halakhah itself just *is* a set of principles at least at the level of law theory. We do seem to have a law theory codification in the Halakhah, which has been set out in various codes in post-Talmudic times. Thus it appears as if Judaism might be an empirical counterexample to the uncodifiability thesis. It is interesting therefore to note that a form of the uncodifiability

thesis seems to exist as an undercurrent within Judaism itself. Nachmanides writing in full knowledge of the Maimonidean codification, comments as follows on *Deuteronomy* 6:18:

AND THOU SHALT DO THAT WHICH IS RIGHT AND GOOD IN THE SIGHT OF THE ETERNAL. . . . At first he [Moses] stated that you are to keep His statutes and His testimonies which He commanded you and now he is stating that even where He has not commanded you, give thought, as well, to do what is good and right in His eyes, for He loves the good and the right. Now this is a great principle, for it is impossible to mention in the Torah all aspects of man's conduct with his neighbours and friends, and all his various transactions and the ordinances of all societies and countries. But since he mentioned many of them . . . he reverted to state in a general way that, in all matters, one should do what is good and right including even compromise and, going beyond the requirements of the law.³⁸

The point that Nachmanides is making here is that the Torah can cite particular cases and give general guidelines but this does not and cannot amount to a definitive codification of how to live. All that we can do is say that one should do what is right and good which as a general principle is true but trivial as far as guiding action is concerned. Similarly, Walter Wurzburger, quoting R. Naftali Tzvi Berlin notes

Jewish morality transcends mere obedience to explicit rules of a legal code. R. Berlin notes that, although the Torah contains numerous specific commandments, the Sinaitic covenant cannot dispense with the general norm 'to become a holy people,' because ever changing historic realities make it impossible for any finite set of specific legal ordinances to meet the requirements of all possible circumstances.³⁹

Indeed, it has been argued that in a sense attempts at codification are actually an anathema to the original intent of Judaism. From the outset Judaism has appreciated the problems of applying a written text such as the Torah to the ever-changing lives of its adherents. This problem of how to apply the seemingly simplest rules to the ever-changing realities of life was solved by Judaism in the form of the Oral Torah or *Torah she'baal Peh*, which is intended to be the interpretation of the written Torah that allows for its continuing application to the world. This is what produces the halakhah. As Eliezer Berkovits has written:

The essence of the Oral Torah is the Halakhah. As the root of the word indicates (*halokh*, to walk, to go), the Halakhah teaches the way along which the Jew is required to walk in accordance with the Torah. Halakhah is the application of the Torah to life. But since there is no such thing as life in general, since it is always a certain form of life at a specific time of history, in a specific situation, Torah application means application to a specific time in a specific situation.⁴⁰

The idea of the halakhah was supposed to reflect the truth of the uncodifiability thesis and allow for the continuing application of the written Torah to the ever-changing

realities of Jewish existence. What was needed was the continual assessment and reassessment of particular situations rather than the mechanical application of a set of subsumptive principles that were set down in stone. However, the political upheavals endured by the Jewish people led to the felt need to commit this oral tradition to writing in various stages and this reaches its apotheosis in the codes of Jewish law that were intended to give a comprehensive list of principles for Jews to live by. Yet Berkovits insists:

The very idea of codification violates the essence of the *Torah she'baal Peh*. According to one formulation in the Talmud, those who write down halakhot are like people who burn the Torah. . . . Codification is contrary to the very nature of Halakhah. It works like shackles upon its creative vigour.⁴¹

The point here is that the commandments have to be applied to the very same real life situations that we apply our ethical 'principles' to. But the nature of that experience is such that we cannot in fact apply a rigid set of principles in such a way as to dictate what to do in each particular situation or justify that decision. The existence of exceptional cases means that in fact the simple principles would be false and would not in fact be any use in those cases from the justificatory point of view. We can of course nonetheless admit that many commandments do seem to be applied unproblematically to clear-cut cases despite their inevitable *ceteris paribus* nature. But again this is a pragmatic point rather than one concerned with justification. Indeed, Berkovits appreciates the pragmatic necessity of codification at a certain time. He believes that codification was an example of 'dissolving the Torah in order to act for God' i.e. an example of the need in exceptional circumstances to disobey the Torah in order to preserve its long-term efficacy. So the initial empirical objection that Judaism has been codified should not be taken to imply that it is genuinely codifiable. Codification might in fact deform Judaism for the very reasons that the uncodifiability thesis draws our attention to.

In conclusion then, we have now seen that we can question the very possibility of forming the sorts of systematising principles that the PoT theorist holds to be necessary for justification. Where then does this leave us with regards to practical justifications? Does it mean that we are left without the possibility of justifying practices? This, of course would only be the case if there were no other options. However, in order to find these other options we need to approach the whole issue of practical justification from a different angle

8. A Functional Approach.

Nozick comments that to ‘justify a principle, you specify its function and show that it effectively performs that function and does this more effectively than others would given the costs, constraints and so forth.’⁴² What I intend to do in what follows is take a just such a functional approach to the analysis of the nature of justification itself. I have drawn this approach from Edward Craig who uses it in his *Knowledge and the State of Nature*⁴³ to analyse our concept of knowledge. Traditional attempts to define knowledge by formulating a set of necessary and sufficient conditions for the application of the term have failed. Craig therefore suggests a different, practical approach to the whole enterprise.

We take some *prima facie* plausible hypothesis about what the concept of knowledge does for us, what its role in our life might be, and then ask what a concept having that role would be like, what conditions would govern its application.⁴⁴

This he terms a ‘practical explication’ of the concept of knowledge and with it he hopes to improve our understanding of the concept without falling into the traps to which the traditional approach leaves itself open.

Now, we have so far seen that the concept of justification has been applied to a practice if and only if it can be subsumed under a set of relevant general principles. This is seen as a necessary and sufficient condition of the practice being justified. However, we have seen that this ‘traditional analysis’ of justification can be called into question with regard to practices. A new approach to the question therefore would seem to be worthwhile and given that we are searching for a practical form of rationality, Craig’s practical approach to conceptual analysis may well serve our purposes for justification.

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What though is the function of a justification? It is interesting to note Joseph Raz’s comments regarding the method of reflective equilibrium as a justificatory method in relation to this.

The method of reflective equilibrium cannot be *the* method of moral theory unless it provides us with grounds for confidence in our views, and not only with an understanding of their implications regarding which we were in doubt.⁴⁶

We cannot, according to Raz, construe the method of reflective equilibrium as a justificatory method since it does not give us confidence in our beliefs even if it gives us a form of understanding.⁴⁷ Both, it appears, are necessary for us to have a

justification. We have mentioned now a number of times the difference between Explanatory and Normative PoT theories and it seems as if this difference can be understood in terms of the presence or absence of such confidence. Let us take it therefore, that what we require of a justification is that it yields both understanding and confidence.

However, in order for us to speak of a justification the nature of the relationship between the understanding and the confidence is central. Confidence, as a psychological state, can of course be engendered by any number of factors. The mere simultaneous existence of understanding and confidence therefore cannot be a mark of a justification. What would be required is that the confidence be related to this understanding in some non-accidental fashion. If we accept for the moment a PoT rendering of this understanding in terms of discursive beliefs we can probably best put this link counterfactually:

If A did not have beliefs $B_1 - B_n$ concerning P then A would not have confidence in P.

It is this reasoned confidence that interests us, one that is grounded in the understanding of the practice and that is a result of this understanding. I suspect that stating the precise nature of this link in some general indefeasible way will turn out to be a futile exercise that will meet the same fate as bygone attempts to delineate necessary and sufficient conditions for knowledge. No doubt clever Gettier type counterexamples could be found in which the confidence is convolutedly linked to the understanding and yet we would balk at the suggestion that we had an example of a justified belief. However, it seems to me that we can state generally that the question of the justification of practices is a question of how we gain confidence grounded in understanding, leaving discussion of when this grounding is in evidence to a case by case analysis. Let us take it therefore that the function of a justification is to produce a reasoned confidence in rational agents. What would produce this reasoned confidence?

The first thing to note here is that in the theoretical sphere the PoT approach creates such reasoned confidence very well. What gives us a reasoned confidence in a proposition is the possession of some form of propositional argument. For example, if we take a mathematical proposition, the way that we justify it is by appeal to further propositions that make up a proof. Mathematical proof consists of a relationship,

usually deductive, between propositions. This allows us to explain the proposition in question and have confidence in it.

Now in this particular example it might seem somewhat strange to separate the notion of a proof and our confidence in it. On the one hand, whether or not I have confidence in a proof seems irrelevant if the proof meets various requisite logical conditions such as soundness and validity. If we are speaking from the perspective of a rational agent, then insofar as he is rational, he is (rationally) bound to hold a belief with confidence once he is in possession of a proof. The idea of having two things here, a belief and confidence in it, strikes us as artificial for there is no gap that needs be bridged by confidence for a rational agent once he is in possession of a proof. The very belief in the proposition in itself constitutes ones confidence in it. Should one not have this confidence in the conclusion, one would assume that it was because of a perceived fault in the propositional reasoning and therefore one would not believe the proposition either. However, I will hold onto this artificial structure since it may be in order for non-deductive propositional arguments and more centrally it is important for drawing the contrast that we will be making between justifying propositions and justifying actions.

We should also note that this confidence can be gained by being told by an expert on a subject that a certain proposition, say, is true. But the reason we have confidence in the judgement of the expert is our belief that he or she has the form of understanding that we have been appealing to. In the theoretical sphere then let us propose the following structure to a justification for a rational agent A in a belief S:

A has a justification for S iff

1) A's belief that S is a result of accepting a propositional proof P,

Or

A's belief that S is based on the judgement of an expert who accepts P as a result of a propositional proof

2) A has confidence in his belief that S as a result of condition 1.

The main point is that we have to have a reasoned confidence in whatever it is we are justifying and in the theoretical sphere, the PoT idea of justifications as propositional structures produces this state.

Let us now turn though to the practical sphere. Here we are interested in justifying an action for an agent. We wish here for a reasoned confidence in an action that will lead us to the practical equivalent of believing S in the theoretical case, which would be being disposed to perform the action in appropriate circumstances as a result of our reasoned confidence. But here I do not believe the PoT approach will give us this reasoned confidence.

Firstly of course, there are the considerations regarding uncodifiability. These considerations, if correct, would mean that we could not construct a general propositional argument for the action in the first place. But even conceding for the sake of argument that it might be possible to do so, our point is that our confidence in a certain action is not ultimately a function of such arguments. For it is, as we have mentioned, entirely possible for an agent to have a thorough propositional understanding of a certain practice, of all the various conceptual structures within that practice and the manner in which they are embodied in action, without actually having confidence in it. In the practical sphere, it seems that a propositional structure can only account for the understanding in an explanatory sense. I might well have a whole network of beliefs regarding a certain practice that are true at a descriptive level and that I would accept as such, but I would not have a reasoned confidence in the practice at a prescriptive level. Our distinction therefore between having a belief and having confidence in it ceases at this point to be artificial.

Of course, one might argue, in the manner of John McDowell, that in this case the observer's conception of the practice is not the same as that of the practitioner for whom it is justified.⁴⁸ We cannot speak of them as having the same understanding if there remains such a difference in their practical dispositions. In a sense this is precisely the point that the anti-PoT theorist will be making. For he will argue that though we share a certain propositional understanding, the fact that we have different understandings of those propositions must stem from something extra-propositional. Propositional understanding is not the whole of practical understanding and it is this further element that is missing from an explanatory PoT theory.

In conclusion therefore, we have encountered a whole variety of problems for the PoT approach. We firstly saw that even if we relax the conditions of justification so as to allow simple systematisation to count as a justification, the whole enterprise of systematic codification seems doomed to failure. Moreover, even if we could codify our practices, the principles so formed would not actually justify our practices in terms of

giving us a reasoned confidence. As Bernard Williams correctly perceives, confidence in a practice cannot be seen as a form of propositional knowledge for regardless of the considerations regarding uncodifiability, a propositional approach ‘ignores the obvious fact that no amount of faith in cognitive certainty will actually bring about ethical conviction if we cannot agree on what we are supposed to be certain.’⁴⁹ The point here seems to be that propositional arguments cannot convince if we are beginning from different propositions, or indeed if we are beginning from the same propositions but as observers rather than practitioners. On the one hand the reflective equilibrium theorist seems to appreciate this by insisting that ethical reflection begin from lived experience. However, the main emphasis in the subsequent process of justification is on the principles, which is problematic not only because of uncodifiability but also because of our inability to agree on those principles as certain justificatory foundations. We illegitimately assume that as in science the explanatory function of such principles also shows that our theory, and by implication therefore our practice, is justified. We have argued that this is not the case. But what would give us our reasoned confidence in a practice if not these propositional arguments? It is to this question that we finally turn.

¹ John Rawls, ‘Outline of a Decision Procedure in Ethics.’ *Philosophical Review*, vol. 60 (1951), pp. 177-197. Quotation from p. 197.

² Kai Neilsen, ‘In Defense of Wide Reflective Equilibrium.’ In D. Odegard (ed.) *Ethics and Justification* (Edmonton, Canada: Academic Printing and Publishing, 1988), pp. 19-37. Quotation from p. 32.

³ If one is unconvinced by this line of argument then the positive part of what follows will have to be taken in a hypothetical sense i. e. if there is any such thing as practical justification, this is what it would have to be like.

⁴ Dwight Furrow, *Against Theory* (London: Routledge, 1995), p. xi.

⁵ A famous example can be found in John Mackie, *Ethics: Inventing Right and Wrong* (Harmondsworth: Penguin Books, 1977), pp. 36-38.

⁶ Bernard Williams, *Ethics and the Limits of Philosophy* (London: Fontana Press, 1985), chapter 8.

⁷ Indeed, Rawls himself has been criticised for drawing universalistic conclusions from his method of reflective equilibrium in *A Theory of Justice*. See, for example, his view of objective principles as those we would want ‘everyone’ to take up (*A Theory of Justice*, p. 516). However, one of the main changes in Rawls’ own thinking, as evidenced in his later work *Political Liberalism*, is a move away from universalistic claims about any objective core towards a more pluralistic stance. See on this Stephen Mulhall and Adam Swift, *Liberals and Communitarians*, second edition (Oxford: Blackwell, 1996), Part II; and Richard Arneson, ‘Introduction [to a Symposium on Rawlsian Theory of Justice: Recent Developments]’, *Ethics*, vol. 99, no. 4, (July 1989), pp. 695-710.

⁸ Renford Bambrough, ‘Objectivity and Objects’, *Proceedings of the Aristotelian Society*, vol. 72 (1972), pp. 65-81.

⁹ Whether or not one wishes to call this objectivism in any sense is rather a moot point given the variety of definitions of objectivity that abound. Thus, just to quote one example, Jonathan Lear has discussed what he terms ‘sophisticated cognitivism’ in terms of the combination of claims to objectivity with the idea that ethics is a human construction. See Jonathan Lear, ‘Ethics, Mathematics and Relativism’, *Mind*,

vol. 92 (1982), pp. 38-60. Geoffrey Sayre-McCord on the other hand writes that objective truth claims make *no* reference to 'people, their capacities, practices, or their conventions.' See Geoffrey Sayre-McCord, 'The Many Moral Realisms', in G. Sayre-McCord ed. *Essays on Moral Realism* (New York: Cornell University Press, 1988), pp. 1-23. Quotation from p. 15. What is central though is the idea that, as Nozick writes, principles are those things that make our particular judgements true, terming this the ontological primacy of the principles. See Robert Nozick, *The Nature of Rationality* (Princeton, NJ.: Princeton University Press, 1995), p. 38.

¹⁰ Isaiah Berlin, *The Crooked Timber of Humanity: Chapters in the History of Ideas*, ed., Henry Hardy (London: Fontana, 1991), p. 10.

¹¹ Nozick, *The Nature of Rationality*, p. 6.

¹² Rawls, *A Theory of Justice*, p. 261.

¹³ Indeed, the very thought that there must be a theoretical structure underlying our practice that justifies it seems to be one that is generally naturalistic in stance. The reflective equilibrium PoT approaches that we have encountered seem to follow a very specific scientific picture of justification that David Copp has termed Confirmation theory (hereafter CT). This assumes that theories of moral justification can be based upon theories of empirical confirmation as used in scientific inquiry. CT holds that 'a moral code or normative moral theory, such as a theory of justice, is justified just in case it is empirically confirmed according to the canons of scientific methodology.' David Copp, 'Explanation and Justification in Ethics', *Ethics*, vol. 100 (1990), pp. 237-258. Indeed, Richard Boyd who is cited by Copp as an adherent of CT explicitly discusses the scientific nature of the method of reflective equilibrium in his 'How to be a Moral Realist', in G. Sayre-McCord ed., *Essays on Moral Realism*, pp. 181-228.

¹⁴ John McDowell, 'Virtue and Reason', reprinted in Roger Crisp and Michael Slote eds. *Virtue Ethics*, (Oxford: Oxford University Press, 1997), pp. 141-162. Quotation from p. 148. This scepticism regarding our ability to codify our moral outlook can also be found attributed to Aristotle in Miles Burnyeat 'Aristotle on Learning to be Good', in Amelie O. Rorty ed., *Essays on Aristotle's Ethics* (California: University of California Press), pp. 69-92, esp. p. 72; Nancy Sherman, *Making a Necessity of Virtue: Aristotle and Kant on Virtue* (Cambridge: Cambridge University Press, 1997), pp. 262-276; and David Wiggins, 'Deliberation and Practical Reason', in Rorty ed. *Essays*, pp. 221-240, esp. p. 231.

¹⁵ Similarly, Dancy points out that the uncodifiability thesis in the form that McDowell puts it would not be effective against an intuitionist theory such as that of David Ross. See his *Moral Reasons* (Oxford: Blackwell, 1993), pp. 92-3. Nonetheless, the points that he does make against Ross to be what Dwight Furrow understands as extensions of the uncodifiability thesis in his *Against Theory*.

¹⁶ McDowell 'Virtue and Reason', p. 157.

¹⁷ *Ibid.*

¹⁸ Dancy, *Moral Reasons*, p. 66.

¹⁹ *Ibid.*, p. 62.

²⁰ Furrow, *Against Theory*, p. 14.

²¹ Dancy, *Moral Reasons*, p. 64.

²² Michael Scriven, 'A Possible Distinction between Traditional Scientific Disciplines and the Study of Human Behaviour', reprinted in Michael Martin and Lee C. McIntyre eds. *Readings in the Philosophy of Social Science* (Cambridge Mass.: The MIT Press, 1994), pp. 71-77. Quotation from p. 75.

²³ I borrow the term from Alasdair MacIntyre, *After Virtue*, second edition (London: Duckworth, 1985) chapter 8, pp. 88-108.

²⁴ Brian Fay, 'General Laws and Explaining Human Behaviour', in Martin and McIntyre eds. *Readings*, pp. 91-110. Quotation from p. 102. Michael Martin has advanced a number of arguments against unpredictability in the social sciences. See Michael Martin, 'Taylor on Interpretation and the Sciences of Man', in Martin and McIntyre eds., *Readings*, pp. 259-79. However, it seems to me that even if his arguments are valid, they would only effect what we will be discussing in 5.6 as the pragmatic reading of the uncodifiability thesis.

²⁵ Fay, 'General Laws and Explaining Human Behaviour', pp. 100-101.

²⁶ Lee. C. McIntyre, 'Complexity and Social Scientific Laws', in Martin and McIntyre, eds. *Readings*, pp.131-143. Quotation from p. 135.

²⁷ McIntyre, 'Complexity and Social Scientific Laws', p. 137.

²⁸ Furrow, *Against Theory*, p. 14

²⁹ Hare *Freedom and Reason*, p. 12.

³⁰ It is though also questionable whether or not he thinks the principles can actually be action guiding even in clear cases. For though he is willing to concede that principles might be used in such cases as "a handy way of invoking...clear cases", this is not the same thing as saying that they are action guiding in these cases. See Furrow, *Against Theory*, p. 15.

³¹ See Nancy Cartwright, *How the Laws of Physics Lie* (Oxford: Clarendon Press, 1983), essays 2 and 3, pp. 44-73.

³² *Ibid.*, pp. 51-52.

³³ It is actually unclear to me whether Cartwright means that we use a false law – that camellias die in hot soil – that nonetheless explains, or a true law – that camellias die in hot soil *ceteris paribus* – that does not cover the non-ideal situation that we are trying to explain. Indeed, though it is not central to our application of the thesis, there seems to be a degree of equivocation in her use of the term '*ceteris paribus* law' to cover both of these types of law.

³⁴ Dancy, *Moral Reasons*, p. 67.

³⁵ Such as why certain false laws are kept "on the books" whilst others are just rejected for being false, and how it is that false laws can actually explain anything at all. For discussion of these issues see Harold Kincaid 'Defending Laws in the Social Sciences', in Martin and McIntyre ed. *Readings*, pp. 111-130, esp. pp. 119-123.

³⁶ And, to return to our pragmatic point, pragmatically speaking it would render them too complicated to be of any practical use.

³⁷ This might be one explanatory factor in Soloveitchik's retreat to a PoT theory in the process sense discussed in chapter 4.1.

³⁸ Moses Nachmanides, *Commentary on the Torah: Deuteronomy*, trans. Charles B. Chavel (New York: Shilo, 1976), pp. 87-8. I disagree with Wurzburger's comment that this passage implies that the Torah proceeds 'by intuitive induction from particular instances to general rules.' Walter Wurzburger, *Ethics of Responsibility: Pluralistic Approaches to Covenantal Ethics*, (Philadelphia: Jewish Publication Society, 1994), p. 27. The point that is being made is rather that one cannot formulate general rules at all out of such instances, at least not useful action guiding ones.

³⁹ Wurzburger, *Ethics of Responsibility*, p. 26.

⁴⁰ Eliezer Berkovits, *Not in Heaven: the Nature and Function of Halakhah*. (New York: Ktav, 1983), pp. 1-2.

⁴¹ *Ibid.*, pp. 89-90.

⁴² Nozick, *The Nature of Rationality*, p. 36.

⁴³ Edward Craig, *Knowledge and the State of Nature*, (Oxford: Clarendon Press, 1990).

⁴⁴ *Ibid.*, p. 2.

⁴⁵ It is significant for Craig that the concept of knowledge is so ubiquitous and this allows him to further justify this practical approach to it, regardless of whether one thinks that the traditional approach is flawed in principle. For given its appearance in all known languages, the question of why this concept should be so prevalent is one that needs answering regardless of the success or failure of the traditional attempts to analyse the concept of knowledge. It seems as if the concept of knowledge must answer to some fundamental human need and by finding what this need is we can begin our practical explication. Furthermore, the very ubiquity of the concept casts further doubt on the traditional approach for the more complex such a traditional analysis turns out to be, the less likely we will be to understand why such a complex concept enjoys such widespread use.

The question arises then as to whether the same approach is really appropriate to analysing justification. The need for justification certainly seems to answer to a less fundamental need than that of knowledge, though as our society becomes increasingly reflective, it is certainly not a need limited to philosophers. Firstly though, the fact that there is such a concept for practices that we have argued cannot be analysed in theoretical terms leads us to try a different approach. Furthermore, it seems that in some sense the notion of justification must be fundamental to our culture given the fact that it plays a central role in the very concept of knowledge that Craig is assessing and takes to be so fundamental. Indeed, the most famous of the traditional attempts to analyse the concept of knowledge has it that knowledge is nothing other than justified true belief. Justification does therefore seem to be an important and quite prevalent concept given its close link to the concept of knowledge.

⁴⁶ Joseph Raz, 'The Claims of Reflective Equilibrium', *Inquiry*, Vol. 25 (1982), pp.307-330. Quotation from p. 311.

⁴⁷ Kai Nielsen reinforces this link between confidence and justification by arguing that reflective equilibrium does give us good grounds for confidence in our views and therefore is a justificatory method. See Kai Nielsen, 'In Defense of Wide Reflective Equilibrium', esp. pp. 22-24.

⁴⁸ John McDowell 'Are Moral Requirements Hypothetical Imperatives?' *Proceedings of the Aristotelian Society, Supplementary Volume* 52 (1978), pp. 13-29.

⁴⁹ Williams, *Ethics and the Limits of Philosophy*, p.170.

Chapter six

The Priority of Practice

We have been arguing that according to the PoT theorist, just as naturalistic theories explain particular propositions by subsumption under general propositions, justificatory theories for practices must be sets of general propositions, in this case practical principles at some level of abstraction, that similarly justify particular instances by subsumption. However, given the problems that we have seen to be inherent in such an approach, the belief that the PoT approach is the exclusive one to justification in all realms, be they theoretical or practical appears to me to be an unjustified prejudice.¹ In this chapter therefore we will be arguing for an alternative approach that we will term the Priority of Practice (PoP). It is an approach that I believe has its roots in a Jewish world view and the first steps towards it are found in some of the tentative remarks that Soloveitchik makes in his second model of rationalisation. Moreover, though never explicitly developed as such, it seems to be latent in the approaches of certain contemporary philosophers, in particular Charles Taylor.

The failure of the various discursive approaches to justification that we have discussed seems to open a gap for the rather different account of the justification of practices that we will be offering. Foundationalism, construed in the strong sense as an attempt to find an Archimedean point independent of any of our beliefs with which we can confront those beliefs has been alleged, not only in the ethical sphere, to be inherently absurd. But the retreat to a coherentist picture such as reflective equilibrium leads one into circular justifications. In a general discussion of justification that focuses on the work of Donald Davidson, Ernest Sosa therefore asks whether such argumentative or discursive justification is always required for knowledge.

For if some sort of epistemic authority can come to a belief independently of any *justifying* of it by argument from premises, and if such epistemic authority can help to make a belief knowledge even in the absence of any justifying of that belief by argument from premises, then we might after all have a source of epistemic authority that is neither 'confrontational' nor 'coherentist. . . . No argument we have yet seen rules out the possibility of a source of justification or authority *not* constituted by any reasoning or arguing *at all*, or by any testing properly so-called'.²

It is just this sort of approach that I believe Jewish philosophy can offer as an alternative to the various 'argumentative' alternatives. For the simple idea that I believe we find in classical Judaism is that practice yields the reasoned confidence that we are seeking in our practices, giving us the very epistemic authority for those practices that

Sosa seeks more generally. Practice we will argue, is the non-argumentative foundation that would fill the epistemic gap. However, the gap in itself establishes nothing of course. In order to argue for the PoP picture, we need to set it out in a positive fashion. The PoP hypothesis itself is quite simple to state. The PoP theorist holds that the rationality of a practice cannot be reduced to that of a set of discursive principles. The practice itself rather than any alleged propositional representation of it, contains its own rationality, a non-discursive form of rationality that is irreducibly practical. Corresponding to this ‘metaphysical’ claim concerning rationality, the PoP theorist makes the epistemological claim that there is such a thing as practical knowledge in a substantive sense that cannot be reduced to knowledge of principles and that can only be fully understood by participation in the practice itself. To put it in terms of our functional approach, practice yields a reasoned confidence in a practice. Actual practice rather than abstract theorising is the mode of access to a practical form of rationality and as such it becomes indispensable for practical justifications.³

All of this contrasts to the PoT approach, which only allows that there can be such a thing as practical knowledge if it is in fact reducible to some set of propositions. As Joel Weinsheimer comments

The human sciences are characterised by a practical knowledge that is itself knowledge, rather than merely the subsequent application of knowledge in practice. Technologism, the principle that we must first ‘know’ and only afterwards ‘do’ has not faded away...⁴

This PoT prejudice is certainly deeply ingrained and these initial comments regarding the PoP approach may therefore seem counterintuitive. Our task therefore will be to further elucidate the PoP approach in order to make it more plausible. However, in a sense the PoP approach will be pulling itself up by its own bootstraps since inevitably it does not justify itself by means of a PoT approach. Then again, the PoT approach could not justify itself by means of a PoT approach either on pain of circularity so we are simply left with our models of justification and the decision regarding which is more compelling must be taken on other less algorithmic grounds. My object will be to elucidate this PoP approach by first discussing a classical Jewish view of the relationship between theory and practice and then locating it within a more general philosophical framework. We will then show how this PoP approach can address a number of problems that the PoT approaches left open.

1. Theory and Practice in Judaism

Generally, a distinction is made in Judaism between two realms of discourse: the Aggadic and the Halakhic. The Halakhah as we have already seen is the normative legal framework of Judaism, the rules and regulations. Aggadah, on the other hand, was the term originally used to denote the non-legal parts of the Talmud involving for example, homiletic interpretations of the bible and it was traditionally seen as the repository of Jewish philosophy. Thus, for Maimonides, the subject matter of Aggadah was in fact the universal subject matter of physics and metaphysics ‘with which philosophers consumed a whole lifetime’,⁵ albeit clothed in a homiletic form so as to be amenable to alternative interpretations for those uninitiated into the rigours of such disciplines. More recently Jonathan Sacks has used the term Aggadah as the generic term for anything that falls outside of the legal Halakhic realm, thereby including, for example, all modes of philosophical and mystical discourse.⁶ According to this definition, the commandments themselves and the legal developments of them i. e. the practice, would constitute the halakhah, while the theory that serves to rationalise them would fall under the rubric of Aggadah.

What is significant from our perspective is that classically Jews and Judaism defined themselves primarily in terms of halakhah. Thus a Jew was a Jew in virtue of his practice of the halakhic norms of Judaism rather than because of adherence to any philosophical theories derived from Aggadic sources. This was famously summed up in Sa’adia Gaon’s statement that the Jewish nation was ‘a nation only in virtue of its laws.’⁷ To define oneself as a Jew meant identification with and practice of a specific practical way of life, that is, in terms of Halakhah rather than Aggadah. As Yeshayahu Liebowitz points out, the concern with theology was, from a criterial point of view, secondary.

Judaism was embodied not in an abstract set of beliefs attained by many who had never heard of Abraham or the Mosaic Torah, but in the Torah and the Mitzvot. . . . Articles of faith were the subject of violent dispute. The very idea of divine unity was interpreted in ways which were almost antithetic. Nevertheless, the unity of the community remained unimpaired. What Judaism created was a community that maintained the Torah and observed its mitzvot, a community that retained its identity despite extreme differences in theological opinion. . . . It was thus not beliefs or opinions that determined the identity of Judaism. Its continuity was that of its religious praxis.⁸

Thus, whilst Christianity and Islam required assent to a set of dogmas, Judaism was more concerned with the actual behavioural expressions of faith set down in the practical laws of the Torah. With reference to the distinctions made in chapter four, we

see that Judaism, classically at least, asserted the priority of practice in the process sense.⁹

The problem though is that this heightened value that Judaism places on practice over theory has often been taken to show that it takes an arid legalistic approach to religion. It is not simply the lack of theology that is thought to be problematic here but the emphasis on a practice that it appears must be accepted on the basis of external authority regardless of one's own rational understanding.¹⁰ The lack of both a general theology and any more particular philosophical rationalisation of the commandments seems indicative of a 'pre-philosophical' religion at odds with the rational approach – the approval of blind faith in an inchoate conception of God leading to blind faith in a non-rational practice. Indeed, as mentioned in chapter two, though Philo engaged in rationalisation of the commandments in his work, it is commonly acknowledged that his influence on mainstream rabbinic thought and even on the medieval philosophers who engaged in the project of *Ta'amei ha-Mitzvot* was virtually non-existent.¹¹ Judaism it seems requires adherence to a practice based not on cognition but on trust. Systematic theology in general and rationalisations of the commandments in particular seem at best optional.

Thus the Jewish faith was classically defined in terms of its practice and a similarly behavioural emphasis is found in discussions of Judaism's attitude to 'faith' as a particular type of cognitive state (like belief or knowledge). We can look here to the well-known distinction between two types of faith corresponding to the distinction between 'belief-in' and 'belief-that'. 'Belief-that' is a propositional attitude, involving an affirmation of certain propositional claims with truth-values. 'Belief-in' on the other hand is generally taken to involve an evaluative attitude towards something that as H.H. Price has argued consists, at least, in esteem for and trust in the object of that belief.¹²

Faith can be modelled on either one of these types of belief. Thus, faith might involve the affirmation of certain truths on the 'belief-that' model. Indeed, the very term for faith in Hebrew, *emunah*, is related etymologically to the term *emet* meaning truth.¹³ This propositional model of faith is formulated most famously in the twelfth century in Maimonides' thirteen principles of faith. This comprehensive set of principles was set down as necessary and sufficient for salvation and identification as a Jew. Nonetheless, it has been convincingly argued by Menachem Kellner that this credal formulation of the Jewish faith did not reflect the classical Jewish view according to which the halakhic way of life was seen to be definitive of Judaism rather than the affirmation of any canonical set of theoretical dogmas concerning God or the universe. Classically,

Kellner argues, Judaism saw faith in terms of a trust relationship on the ‘belief-in’ model rather than in terms of the affirmation of certain dogmas.¹⁴

What we find in classical Judaism therefore is a further definition of faith analogous to ‘belief-in’. However, *emunah* is not simply an attitude of esteem and trust or a certain subjective attitude which is a necessary prerequisite for the performance of the commandments. According to Judaism, in order to be true *emunah* this attitudinal component has to be expressed in a behavioural commitment to the commandments. It cannot remain purely attitudinal. *Emunah* involves an objective behavioural counterpart to the subjective state in order truly to deserve the appellation, again reflecting Judaism’s preoccupation with practice. To say that a person has *emunah* as a term of approbation can only be understood if that *emunah* manifests itself in a behavioural commitment to the commandments.

According to Eliezer Berkovits therefore, ‘the Jewish concept of the law and the deed is not to be separated from the Jewish concept of faith.’¹⁵ Thus, Berkovits has argued that the Pauline criticism of the concept of law as the antithesis of faith reflects the fact that Christianity and Judaism have very different concepts of faith rather than any Judaic rejection of faith in favour of law. The very concept of faith is seen as a practical matter rather than a strictly cognitive one. Practice is seen to be central to its definition.¹⁶

However, does this emphasis on practice in Judaism necessarily reflect a rejectionist approach towards philosophy or might it rather express an alternative philosophical approach? The latter might be suggested by the fact that in Judaism participation in a practice which is identified with faith is thought in itself to have cognitive effects as Norman Lamm points out in a discussion about the relationship between cognitive faith and what he calls functional faith.

[T]he relationship between the cognitive and the functional does not proceed in only one direction, from the cognitive to the functional, or from theory to practice. When a Christian theologian states that ‘It cannot be required of the man of today that he first accept theological truths. . . . Wherever the church in its message makes this primary demand, it does not take seriously the situation of many today,’ he is discovering a truth that Judaism proclaimed a long time ago: *naaseh* comes before *nishma*, halakhah precedes and remains unconditioned by theology. Judaism has always maintained that behaviour influences belief, that the cognitive may be fashioned by the functional.

The particular cognitive ideas that Lamm is referring to here are traditional theistic beliefs such as that God exists and is a unity. Participation in a practice, he believes, reinforces the propositional form of faith, ridding us of cognitive doubts concerning it. It is not therefore that practice can teach us these propositions. It is rather that it can reinforce them. What we find here then is a type of dialectical attempt to hold onto both

the traditional centrality of the commandments and the medieval rationalist idea of a discrete cognitive state of propositional *emunah* as the ultimate (propositional) end.¹⁷ There is though the possibility of a different way of understanding the relationship between practice and cognition that would retain priority for the account of faith that sees it as the confidence in and performance of certain practices. The idea here would be that functional faith affects our cognitive stance towards functional faith itself rather than towards a set of propositions. It is this possibility that is most significant for the PoP theorist.¹⁸

2. Aristotle and the Cognitive Effects of Practice

The idea that we are beginning to develop here, that practice has cognitive effects, is one that is first emphasised in a philosophical milieu by Aristotle. For Aristotle, practice is central to our moral development. As Burnyeat puts it, according to Aristotle

we first learn (come to see) what is noble or just not by experience of or induction from a series of instances, nor any intuition (intellectual or perceptual), but by learning to do noble and just things, by being habituated to noble and just conduct.¹⁹

What is stressed here is the idea that only by virtue of practice itself, not theoretical instruction, can we develop the moral (or in our specific case religious) capacity to judge situations.

It is interesting that this approach which we are claiming has echoes in Jewish attitudes to faith follows from the uncodifiability thesis.²⁰ Given the uncodifiability thesis, we cannot possibly teach morality by teaching a set of general rules or principles that will cover every eventuality for there are no such principles. But how then are we to teach people to be moral? Since we cannot simply check our judgements against some principle, what needs developing is an ethical sensibility that allows us to judge any new situation that presents itself. Aristotle's ethics, therefore, which stresses uncodifiability has to focus on something other than the teaching of principles and as such is virtue based. What we need to do according to Aristotle is enable people to judge each novel situation as it comes along and this can only be done by inculcating dispositions in people so that they become such as to act virtuously. But it is in Aristotle's opinion, by doing just acts that we become just, by doing generous acts that we become generous. The central factor in the acquisition of moral virtue is training and habituation rather than formal instruction.²¹

The question that arises for such an account though is whether such entry into a mode of life is at all rational. Certainly the acquisition of virtue by training rather than

instruction appears to be less than fully rational as a teaching process. Moreover, such a form of learning would seem to lead us to a non-rational result, a form of blind obedience to a practice that becomes a matter of unthinking rote, as Sarah Broadie writes:

[R]eason giving is not only part of the result at which teaching aims, it is essential to the method of teaching. But the training of character, as Aristotle understands it, aims to create dispositions to act properly. The ability to understand why what is right is right is not an essential part of that goal, which will have been achieved if the subject comes to have such dispositions whether or not he can explain to himself and others why what is right is right. Similarly, such reason giving is not a necessary part of the training process.²²

Of course, even if the training process is so to speak, non-rational, this would not mean that the virtues themselves once formed, have no rational component. To say that the seemingly non-rational genesis necessarily leads to a non rational end would be to commit the genetic fallacy. Nonetheless, it is certainly correct to say that Aristotle does not think that reasons of an abstract philosophical sort enter either the training itself or the results of it.

However, that is not to say that neither the process of moral development nor the results of it are rational. Looking at it in terms of our functional approach, the question is one of whether or not habituation leads to a reasoned confidence in a practice. To begin with, such habituation certainly yields confidence. What we have here initially in Aristotle it seems to me is the recognition of a fundamental fact that Bernard Williams points to when discussing the place for philosophy in ethical enquiry. Speaking of what he calls ethical conviction or what we have called confidence, he writes

It is basically a social phenomenon. . . . The point of bringing in this conception is not that philosophy, which could not tell us how to bring about conviction, can tell us how to bring about confidence. It is rather that this conception makes it clearer than the other models did why philosophy cannot tell us how to bring it about. It is a social and psychological question what kinds of institutions, upbringing and public discourse help to foster it. The first questions that come to mind are questions of social explanation.²³

Williams' central contention here is that confidence is a social phenomenon fostered by participation in practices themselves. Practice explains the confidence that is expressed in our behavioural commitment to a practice and it is precisely this point that one gets from the Aristotelian emphasis on habituation.

However, though the word 'habituation' inclines us to think of a mere repetitive mechanical process, Aristotle's *ethismos* would seem to be far more complex. Thus, it is only through such habituation that true virtue as opposed to natural virtue is gained²⁴

and this genuine virtue includes a rational component as part of its definition.²⁵ As Aristotle writes

So virtue is a purposive disposition, lying in a mean that is relative to us and determined by a rational principle, and by that which a prudent man would use to determine it. (NE, II: 6, 101-102, emphasis added).

Thus, according to Aristotle, in order genuinely to possess the various virtues of character, which are formed by *ethismos* one must possess the intellectual virtue of *phronesis* or practical wisdom.

One may think that while habituation is a necessary component in the formation of the character virtues, the intellectual virtue of *phronesis* that is required if we are to be virtuous is acquired in some other way. Certainly, one cannot doubt that Aristotle categorises the moral virtues as virtues of character and *phronesis* as an intellectual virtue. One would therefore expect the former to be acquired by habituation and the latter by instruction, in accordance with Aristotle's well known comments at *NE* II, 1. However, for Aristotle it seems that when dealing with *phronesis* we cannot abstract the rational component away from the practical component. Indeed, just as the definition of virtue makes essential reference to *phronesis*, his definition of *phronesis* makes essential reference to the virtues of character. At *NE* VI, 12 therefore, *phronesis* is contrasted with mere *deinotes* or cleverness. The latter is simply a matter of being 'capable of carrying out the actions conducive to our proposed aim,' (*NE*, VI, 12, 222-223) while the former cannot be attained unless one is virtuous, leading Aristotle to conclude 'that one cannot be prudent (*phronimos*) without being good.' (*Ibid.*). The intellectual virtue of *phronesis* and the character virtues cannot it seems be separated in reality or indeed definition and as Nancy Sherman states, 'the artifice of trying to discuss moral virtue independently of the excellence of practical reason is not one Aristotle can easily abide by'.²⁶ Thus, having genuine moral virtue essentially involves having the intellectual virtue of *phronesis* and being a *phronimos* essentially involves ethical behaviour. The point is that there is a behavioural aspect to *phronesis* that is absolutely central to its possession (as with the concept of *emunah* in Judaism).

What is true though is that this intellectual virtue is not purely rational in the modern Humean sense that is often given to the term. For the intellectual virtue of *phronesis* itself contains prescriptive and appetitive components and is not therefore just a formal ability to perform deductions from a set of 'affective-neutral' principles. Indeed, in Book VI of the *Nichomachean Ethics*, Aristotle states that part of having the intellectual virtue of *phronesis* involves having a reason responsive appetitive part that

accepts the prescriptions set before it and acts on those prescriptions. Even in his more rationalistic moments, as at the end of Book I where the appetitive component is part of the non-rational soul, it is still said that it ‘partakes of reason in a sense’ (NE, I, 13, 89).²⁷

What Aristotle does therefore is cut through Hume’s reason/passion dichotomy that has so influenced modern ethical theorists. Part of what it *is* to be practically rational for Aristotle is to feel in the correct way about the actions that one judges to be correct. The character that we form for Aristotle is, as John Cooper writes, ‘a function both of (developed) desires and (trained) instincts, and of rational judgements.’²⁸ For Aristotle the good man is not just the one who acts in accordance with the mean but one who also feels in accordance with the mean.²⁹ The point therefore seems to be that according to Aristotle habituation gives us the capacity for a reasoned response that we have confidence in. What it yields is an ability to deliberate about practical matters and to understand them in a substantive, if not altogether discursively clarified manner. This again is well expressed by John Cooper.

As the trainee becomes gradually used to acting in certain ways, he comes gradually to understand what he is doing and why he is doing it: he comes, to put it vaguely, to see the point of moral policies which he is being trained to follow, and does not just follow them blindly.³⁰

It seems therefore that according to Aristotle, practical habituation itself allows us to see the point of our practices. It does not simply yield the psychological crutch of confidence, but it yields the capacity to deliberate about moral problems and act accordingly. In our terms, it yields a reasoned confidence in our practices.

To put all of this in terms of our earlier discussion of faith, the fundamental idea here is that practice does not lead to blind faith. We need to begin with some form of purely functional faith in order to undertake to practise a certain way in the first place, but once we so practise, that leads us to a certain rational confidence or cognitive faith in the practice itself. But what is important about this picture is the development that we find from an initial faith in our teachers to a form of faith in the practice. What we actually find is that we initially gain many of our ethical and religious convictions through a combination of cultural factors that work within society, through family, schools, public institutions etc. It is our confidence in these that leads us to a certain form of practice. Once we participate in that practice, we become behaviourally committed to the practice through the reasoned confidence that we thereby gain in the practice itself. Thus we begin with faith₁, which is a minimal form of behavioural

commitment that is a result of our confidence in our teachers, and end up with faith₂, confidence in our practice.

Interestingly it is precisely this sort of process that Soloveitchik describes as leading to the highest form of relationship between man and God, that of *devekut*.

Let us consider the formula of the halakha regarding the command of devequt – ‘to cleave to Him’. As is emphasised in the foregoing, the halakha tells us to cling to those who know Him. In other words, those who know Him conjoin with Him, and through joining those who know Him, man attains the situation of cleaving to God. However, the question remains: how do those who know Him conjoin with God? The obvious answer is through their knowledge. It is understood that the halakha does not aim at abstract knowledge that is without any relevance. Learning is a great thing for it leads to practice. . . . When thought is converted into volition, and volition into concrete deeds which take the form of faithful love, justice, and righteousness, the person who thinks, intends and acts achieves the status of cleaving to God . . . ‘Those who know Him’ are men of God, endowed with insight and yearning, in which reflection and action, the faculties of cognition and volition are merged into a homogenous spiritual unity.³¹

What we find here in Soloveitchik is this very idea that initially it is by ‘cleaving’ to people who practise correctly that we are enabled to know God. Moreover, according to Soloveitchik this knowledge of God is itself practical and thus the knowledge that we arrive at through imitating these mentors is a form of insight into the practice itself that blends ‘cognition and volition’.

There are undoubtedly all sorts of interesting psychological questions regarding how these dispositions become installed in our brain given that they cannot be set out as a group of principles. These are not questions on which Aristotle dwells or upon which we can be detained at present. What is important though is that despite the lack of a detailed cognitive psychology, as an account of the manner in which we acquire the virtues and a capacity to judge situations, it seems highly realistic. It seems that this Aristotelian account of how we form the virtues and how we gain what one might call our ethical sensitivities is just empirically true as an account of what goes on in our moral education. As children we are not simply taught a set of principles to enable us to work out what to do. We do not simply learn what to do in classrooms or lecture theatres on a blackboard but actually do those things that we are supposed to do. We are told what to do with reference to particular situations and over time develop an ability to go on doing so on our own. Habituation is not therefore a case of installing a blind habit but is rather a method of installing a cognitive process by which we can make the correct discriminations in practical cases. What is important is that as a matter of empirical fact, we form our capacity for ethical judgement by habituation to a practice, which yields virtues that according to Aristotle have a central rational

component. Habituation or practice itself does seem to create a reasoned confidence in our practices.³²

However, does this point bear any relevance to the concept of justification? As it stands the Aristotelian approach would appear to yield the following practical parallel to our earlier definition of justification of belief in chapter five.

A has a justification for a certain action F iff

- 1) A's disposition to do F is a result of participation in a practice P that contains the action F.

Or

A's disposition to do F is based on the judgement of an expert who is disposed to do F as a result of his participation in P

- 2) A has confidence in his disposition to do F as a result of condition 1

The problem is that it would seem to be perfectly reasonable to reject such a definition of justification on the basis that it is the statement of a social or psychological truth that has no bearing whatsoever on whether or not we have a justification. What we want remember is a reasoned confidence in our practices. As it stands we could be seen to be willingly entering into an illusion that will eventually create confidence in itself. The question that arises for this account as it stands is - is the confidence a reasoned confidence or a confidence that is engendered by some blind social or psychological mechanism?

3. Justification as Description

We have argued that what we are looking for in a justification is a reasoned confidence in our practices. As Williams pointed out it seems that as a matter of empirical fact, confidence in our practices is best explained sociologically rather than normatively but as such our practices can be explained rather than justified. In contrast, the Aristotelian picture suggests that this practically engendered confidence is a reasoned confidence inasmuch as it leads to a capacity for rational deliberative decisions and discussions about the practical realm.

In what sense though is this a reasoned confidence? Aristotle is arguing that the correct sort of habituation creates a form of understanding in our practices that leads to actual practice. But it is not the form of understanding modelled on scientific understanding of the PoT theorist and does not lead us merely to the acquisition of an explanatory

framework for our practice. To say then, as Broadie does, that reason giving is neither part of the process nor the result of habituation does make the valid point that the reasons given are not the PoT reasons that are usually honoured with that designation. However, Aristotle recognises that we are able to arrive at deliberative conclusions in the practical realm that differ to the paradigm of the rational that is scientific knowledge and this need not be taken as an argument against the rationality of moral judgements. Aristotle's alternative route here is to speak of practical truth:

We are here speaking of intellect and truth in a practical sense: in the case of contemplative (as distinct from practical and productive) intellect, right and wrong are truth and falsehood. To arrive at the truth is indeed the function of the intellect in any aspect, but the function of practical intellect is to arrive at the truth that corresponds to right appetition. (NE, VI, 2, 205).

According to Broadie, what Aristotle wants to stress here by using the term 'truth' is that 'practice like theory is an exercise of reason, its success a success of reason.'³³ The question is what sort of reasoning is applicable in this realm.

Within this sort of approach appeal is often made to the sort of descriptive justification that we find in Soloveitchik's second model of rationalisation. According to the Aristotelian model, if one has undergone the correct sort of practical training, the result should be the ability to judge for ourselves what is right and act on that judgement. And this ability to judge itself is a rational capacity but again, it is not the capacity to give a PoT reason for one's action. Indeed, what Aristotle famously stresses is the perceptual nature of what we learn.³⁴ We gain an ability to perceive situations under a certain description and it is this mode of perception, which we can lay out in descriptive terms, that constitutes our reason for acting for many of those who reject the principled approach. The justification of our action would appeal to the way we see the situation. And this perception would not only utilise certain descriptive categories, but also yield a sense of the relative importance in that situation of the various particular properties that are relevant to the evaluation of the action. What we find then is that the training process yields a perceptual capacity or what Wiggins has termed 'situational appreciation'.³⁵ This perception needn't be immediate but may require one to analyse the situation, whether to oneself or in dialogue with others,³⁶ so as to reach a certain way of perceiving the situation - deliberation is a central component of *phronesis* for Aristotle. And it is this perception that constitutes our reason for acting in a certain way. Thus the *phronimos* can justify his actions, but his reasons are at best of this particular descriptive type.

However, it is often alleged that if all we are really doing is pointing to the way that we see a certain situation this would not constitute a justification of our judgement. For a description of how one views a situation or a practice is often seen to be different to giving a justification, which is taken to be an argument that delivers a judgement as conclusion. However, as Dancy writes

To justify one's choice is to give the reasons one sees for making it, and to give those reasons is just to lay out how one sees the situation, starting on the right place and going on to display the various salient features in the right way. . . . In giving those reasons one is not arguing for one's way of seeing the situation. One is rather appealing to others to see it . . . the way one sees it oneself, and the appeal consists in laying out that way as persuasively as possible. . . . Moral justification is therefore not subsumptive in nature, but narrative.³⁷

To a large extent this seems to me to be correct. We can give reasons for our practical judgements in terms of the way that we see a situation. This need not be some form of immediate perception but may come about as the result of descriptions and redescriptions of the situation, the point being that this is a reasoned response that is neither arbitrary nor some form of strange intuition. The reasons given are not given in the form of some general principle that subsumes one's judgement as an instance but as a description of a situation arrived at by means of one's practical wisdom as do the narrative theorists that Dancy refers to.

What we end up with then according to theorists like Dancy is a form of particularism that eschews all talk of principles at the level of decision making for particular decisions. The particular reasons we give cannot be seen as general principles as in the reflective equilibrium approach that would serve to rationalise our practice. One must of course use general concepts, as one would obviously have to do in order to form any coherent sentence. But that is not to say that one uses general principles involving properties that will always contribute in the same way in all situations. Moreover, it does not yield principles that subsume that situation and justify it. Rather, a 'narrative theorist' of the sort that Dancy is referring to, unpacks the rationality of the act into descriptive categories that cast the situation as a particular type of situation and a certain act as the right thing to do in that situation.

I believe that this sort of account of the giving of reasons is largely correct as far as it goes. However, it seems to me that it does not go far enough. It leaves a number of questions unanswered because it leaves out the fundamental justificatory foundation of practices and it is this that the PoP theorist puts into place.

4. Justification and Description: A PoP Approach

In this section we will attempt to articulate to the extent that is possible the nature of the PoP approach before subsequently explaining some of the reasons why we should take such an approach. Let us first state again the basic hypothesis. The central claim of the PoP theorist is not simply that in the practical sphere doing temporally precedes understanding which could be read as a restatement of the reflective equilibrium view according to which we can only reason from within a certain practice. It is that embedded within the practice itself is a form of non-discursive practical rationality that we gain through practice. This form of practical rationality can only be accessed through participation in that practice and it is this that therefore serves as our mode of justification, allowing us to experience the practical rationality of the practice. What we have therefore are rational practices whose rationality must be experienced rather than set out propositionally.

We can put this another way by exploiting the process/product ambiguity that we find with the word 'justification'. As with words such as 'explanation' or 'deduction', there are two senses of the word 'justification' – a process sense and a product sense. On the one hand there is the process of justification that individuals actually go through in the act of justifying something. But what this generally yields of course is a certain result – a product with, in most cases, a certain propositional content. In effect, our argument will be that there are no justificatory products that we can set down propositionally for people to use. In the realm of practice the process of justification does not yield a discursive product. What it does yield is a reasoned confidence, but this is not itself the justification. In effect the process of justification is the only sort of justification available for a practice. We can simply participate in a practice in order to gain a reasoned confidence in that practice based upon a non-discursive form of practical rationality that it contains and that provides the basis for this reasoned confidence.³⁸

In order to further elucidate the PoP approach we should recall something that Soloveitchik writes in his discussion of rationalisation in *The Halakhic Mind*. As we have seen, Soloveitchik seems to appeal to two different methods of rationalisation. On the one hand, he sets out a scientific PoT model in order to justify the halakhic decisions of the Rabbis. Even at that level his model is problematic since his approach there is vulnerable to the uncodifiability thesis. However, leaving that aside, in his discussion in *The Halakhic Mind* in which he returns to the commandments themselves rather than to particular halakhic decisions, he appeals to a very different model of rationalisation more akin to our particularist descriptive model, though Soloveitchik's

descriptions are more symbolic than narrative in nature. At the end of chapter three we asked why he should have put forward two theories at all and it seems to me that maybe Soloveitchik recognised the need for two different modes or levels of justification. As we noted at the time, Soloveitchik's scientific model is put forward as a model of halakhic reasoning and as such he is not really addressing the same issue as Maimonides for whom the biblical commandments are the central focus. It appears therefore as if Soloveitchik believed that we could portray the post biblical reasoning of the halakhist by way of such a model. However, at the basis of this halakhic reasoning are the original biblical commandments to which Soloveitchik applies his antinaturalist model. Thus, on the one hand we have the basic biblical practices which are approached in an antinaturalist fashion and the subsequent applications of these principles to new and varied cases which Soloveitchik seems to believe he can justify naturalistically on the basis of these initial biblical principles. This, maybe, is the reason for the two models and is the first move towards a different approach to justifying practices for it is as if he recognised that the ultimate rational foundation of our current practice cannot be stated as a set of principles but requires a different approach. More importantly though, Soloveitchik is even aware of the limits of the descriptive method, writing that 'we cannot expect to bring the descriptive method to full perfection' (HM, 98), but that it is the only method that we can use 'despite its shortcomings' (HM, 99). With regard to this therefore it is interesting to note the following significant statement that Soloveitchik makes regarding this mode of justification

The criterion of evidence and adequacy is not the transcendent source but the indispensability of certain concepts and their constitutive experience. (HM, 88).

This seems to suggest two aspects of a justification. On the one hand we have the indispensability of certain concepts. These would be the descriptive concepts that, as discussed, we come to understand through practice itself and that are indispensable for deliberation to take place concerning particular cases. Indeed, as we shall see later, these descriptive categories may well be indispensable if we are to see the practice as rational at all.

At the same time though Soloveitchik speaks of the constitutive experience of those concepts as a 'criterion of evidence and adequacy'. The notion of the constitutive *experience* of a *concept* seems to make little sense. However, one of the premier 'narrative' theorists, Alasdair MacIntyre, in his use of the notion of an internal good

helps to make sense of this link between experience and concepts. On the one hand there are the goods that are externally linked to a practice. To use MacIntyre's example, I may be a wonderful chess player who makes a living by playing chess exhibitions. The money that I receive for these exhibitions is a good external to the chess playing - it could be gained by any number of other activities and it is just a matter of contingent circumstance that I happen to gain this good in this particular way. However, there are on the other hand goods internal to chess playing to do with excelling at chess by developing ones combinatorial or strategic powers. What makes these goods internal is that 'we can only specify them in terms of chess . . . and by means of examples from such games *and they can only be identified and recognised by the experience of participating in the practice in question.*'³⁹ (Emphasis added).

The idea here is that there are certain goods, knowledge of which is inextricably bound up with the participation in the relevant practice.⁴⁰ It is only by habituation to a specific practice that one can come to understand fully the value of the acts prescribed within that practice and gain certain forms of knowledge that are inextricably linked to that practice. One comes to appreciate the various particular practices that constitute the practice in general only through participation in the practice and only then will one be able to give any sort of reason for acting in a certain way. The practice therefore actually has a cognitive effect due to the actual experience of practice itself. The idea is that this practical knowledge 'need not be given its substance independently of the distinctive values that are instilled in someone who acquires [its] virtues[,]'⁴¹ and these values and virtues can only be thus acquired by practical habituation.⁴²

The point for Soloveitchik might therefore be that the descriptive concepts that we are speaking about are bound up with the experience that gives rise to them. The point here would be that we must appeal to the experience of practice itself if we are to see any particular description as part of our 'criterion of evidence and adequacy' since the felt indispensability of the concepts relies on this experience rather than upon any discursive argument. Experience constitutes the criterion of evidence and adequacy for the descriptive categories and is what makes them appear convincing.

Central to the PoP theorist therefore is the fact that while descriptions may allow us to express certain aspects of our experience, understanding those descriptions themselves so as to be persuaded that they are in any sense reasons for action depends on having participated in the practice and experienced the practical rationality of the experiences that the descriptions are attempting to set out. The descriptions are entirely parasitic upon the practice for any justificatory effect they may or may not have. What the PoP

theorist says therefore is that the ultimate basis for justification of a practice is the rational and non-discursive experience of practice itself. The reasoned confidence that one gains in the practice as a result of this can then be articulated to some extent in descriptive terms. But the perceived effectiveness of these descriptive terms always relies upon both the prior and continued practical habituation to the practice, the constitutive experience of participating in the practice. Or as Charles Taylor puts it

What you get underlying our representations of the world – the kinds of things we formulate, for instance, in declarative sentences – is not further representation but rather *a certain grasp of the world that we have as agents in it.*⁴³ (My emphasis).

Taylor's point is more general than our own which is to apply to practices. But the basic idea that the PoP theorist utilises here is that of a certain irreducible practical form of understanding of our practices. Our practical knowledge is therefore seen in Rortian terms, not as 'a matter of getting reality right, but rather as a matter of acquiring habits of action for coping with reality.'⁴⁴ And it is because of the non-discursive rationality of practices themselves that our practical knowledge is of this type. Indeed, the practice, it seems, forms what Taylor calls 'the background', the conditions for the intelligibility of our experience.

The background is what makes certain experiences intelligible to us. It makes us capable of grasping them, makes them understandable. So it can be represented as 'a form of explicit understanding, or pre-understanding in Heidegger's term. To bring it to articulacy is to take (some of) this and make it explicit. But the reason for the two words in parentheses in my preceding sentence is that the idea of making the background completely explicit, of undoing its status as background, is incoherent in principle.⁴⁵

The PoP theorist argues that it is precisely the practice itself that forms this background to the various 'justifications' that we attempt to articulate. We might be able to describe what we take specific practices to symbolise as Soloveitchik does. But these descriptions are not constitutive of the rationality of the practice. Narrative is not the foundation for the justification but is merely an *ex post facto* articulation.⁴⁶

Thus, it is only practice itself that can validate the sorts of descriptive theories that we have been discussing. Any social theory helps us to articulate the nature of the practice, to make it explicit. Moreover, their use, according to Taylor, is not limited to this self-defining aspect, for they can be used as a constructive and critical tool and it is important to emphasise this use even on the PoP approach. For despite the non-discursive nature of their rationality, according to the previously discussed Aristotelian picture practice does yield a capacity to discuss and make reasoned decisions on practical issues, and this is central to the PoP picture. For if we admit that we have no

Archimedean point to allow for the ‘objective’ grounding of a practice and furthermore emphasise the priority of practice as opposed to theory, it may appear that we have no vantage point from which to reflect critically on the practice and thus can easily fall prey to conservatism and ideological distortion. The PoP theorist therefore recognises the importance of a discursive level of analysis that will allow for reasoned debate and the solving of problems that may arise within the practice. Thus Dancy’s emphasis on description is indeed central if we are to recognise the rationality of a practice and it is notable that Judaism, which we have argued exemplifies the PoP approach, places great value on interpretive debate within the halakhic sphere.

The methodology of halakhic *pesak* – even halakhic *pesak* involving questions of *hashkafah* – with its citation and analysis of sources, use of argumentation, and all the rest, acknowledges the possibility and, more important, the legitimacy of different viewpoints, based upon differing modes of argumentation, analysis and interpretation. Halakhic *pesak* allows for, nay, encourages, halakhic debate and halakhic pluralism. . . . Halakhic *pesak* allows for, indeed encourages, reasoned debate and disagreement – within of course the framework of the halakhic system.⁴⁷

However, this sort of justificatory enterprise is not the same as the ultimate philosophical justification of the very practice within which such debate is taking place. For an outsider will not necessarily understand such debate as advocating practically rational conclusions that he could accept as such. The foundation for the rationality of the practice is itself practical and the discursive debate may only be understood by those who have the requisite practical understanding. However, evidently the ability to argue reasonably within the system is essential if the system is not to stagnate. Systems require various guidelines and mechanisms to accommodate critical discussion and the possibility of development and change. This it seems is a practical requirement and it would therefore be practically irrational to refuse to engage in such discussion altogether.

However, it is also extremely important to note that despite our abstract talk of discrete practices, no practice is an island. Practices share many discrete practices and affect each other in numerous ways.⁴⁸ It is though essential therefore to recognise that there will be many issues on which we can have constructive inter-practice dialogue to facilitate further critical reflection on our practices.⁴⁹ Thus, the constant attempt to articulate one’s position has an essential part to play if there is to be *evidence* of the non-discursive form of rationality of a practice. While the ability to set out one’s view in discursive terms does depend ultimately on *practice*, the very ability to set out one’s views discursively to a certain degree is essential if the practice is to show evidence of its rationality. Indeed, this discursive debate may well lead to changes in the practice

and therefore in the non-discursive rational basis. However, the practical validity of such change will ultimately always, as mentioned previously, be subject to practical verification according to Taylor

Put tersely, our social theories can be validated because they can be tested in practice. If theory can transform practice, then it can be tested in the quality of the practice it informs. What makes a theory right is that it brings practice out in the clear; that its adoption makes possible what is in some sense a more effective practice.⁵⁰

What validates the theory is its leading to a more effective practice. However, when speaking of what constitutes a more effective practice, Taylor retreats into metaphors of 'stumbling' versus 'clairvoyant' practices.⁵¹ Indeed, the fact is that we cannot analyse this idea of an effective practice in sharp conceptual terms. If we could set certain criteria for what constitutes an effective practice, we would be able to return to a PoT approach. We might say that the description of a practice is justified pragmatically in terms of whether the practice works as a mode of successfully negotiating our way in the world. However, the manner in which we measure this success is again not according to theoretical criteria but is rather practical. What is central here is that however one attempts to cash these metaphors out, as Taylor indeed tries to do, the discursive level of reason giving will never reach a non question begging foundational principle or set of descriptions. That is not to suggest that in such cases we can therefore describe or evaluate the practice independently of the theory, for the theory can certainly affect how we understand the practice. However, the point is that whether or not the theory that affects the practice in this way is seen to be convincing ultimately depends on the practical success of that theory-infused practice. The PoP theorist argues that one cannot ultimately reason to any discursive foundation or set of foundations that can act as independent normative criteria for a practice. The ultimate justification will be non-propositional practice, even if infused with a certain theory.

In effect, what the PoP theorist is proposing then is that the best explanation of our practically inculcated rational capacities and therefore our reasoned confidence in our practices is their substantive practical rationality. And part of what makes the confidence a reasoned confidence is the ability to discuss matters using the descriptive categories for which the practice itself is the intelligibility condition. The ultimate rationality of the practice can, to rewrite a Wittgensteinian phrase, be experienced but not said. The practice itself is the foundational background that defies our attempts to set out discursively the ultimate basis for our practice. However, once one is inculcated into the practice we see how it enables us to make our way in the social world that we

find to be appropriate. And part of the reason that we come to see the practice as rational in this way is the ability we subsequently have to reason about it in a descriptive manner and thus develop the practice. But these are not the reasons that the practice as a whole is rational. Rather they are part of the pragmatic evidence for the substantive non-discursive rationality of the practice.⁵²

Before concluding this part of our discussion, we should point out a number of important implications that flow from this approach to justification. Firstly the sort of justification that we are speaking of will not yield a discrete discursive justification for each particular act, especially when one is speaking of religious ritual. On the one hand, in Judaism in particular, any halakhic decision must be discursively justified in traditional terms, and there is scope for argument regarding such decisions within those traditional terms. A number of arguments may be put up for consideration, each derived by accepted hermeneutic rules from an authoritative textual basis. However, there is a general underlying acceptance here of a basic halakhic practice and the question is how to go about carrying it out. The underlying philosophical justification for the practice is not subject to ultimate discursive justification. Yet we do not necessarily require a one-to-one correspondence between each facet of that practice and some discrete justification. The idea of justification that we are advocating it seems to me is more holistic than this, allowing that there may be elements of the practice that one is unable to understand either in terms of being able to give a discursive justification for it or in terms of being experientially convinced by it.⁵³ However, one can nonetheless commit oneself to it as an element of a practice by which one is generally experientially convinced.

The very idea of a reasoned confidence allows for this flexibility inasmuch as reasoned confidence is not an all-or-nothing concept. One can have degrees of reasoned confidence in various aspects of a practice corresponding to one's understanding of those aspects. What is important though is that a commitment to certain aspects of practice in which one has a low degree of reasoned confidence can be seen to be rational according to the PoP theory. For according to the PoP approach understanding a practice requires actually participating in the individual practices that make it up. It is only by doing so that one is able to gain the practical understanding that is of the essence of practical justifications. Certainly, if one comes to doubt the validity of the practice, these concerns must be raised. But at the same time the idea that practice itself yields substantive practical knowledge means that it can be practically rational to commit oneself to a part of the practice by which one is not as yet convinced. The idea

here would be that it can be rational for one's reasoned confidence in the practice as a whole to allow one to participate in aspects of the practice to which one is less attuned, since it is only by virtue of participation that one can understand the practical rationality of the practice.

A further facet of the PoP approach is that it seems to encourage a form of pluralism, at least at a practical rather than cognitive level. For it leads us to understand the value of our own practice, while accepting that others might be unable to understand why we see that practice as rational and may differ in the practices that they accept and can justify to themselves. They cannot justify them to us as we cannot justify our practice to them, for to do so requires that one is habituated to the practice in the first place. So we need not accept that an alternative practice is correct in a cognitive sense, or indeed in a practical sense from our own perspective. At the same time though we must recognise that the PoP approach implies that others will accept different practices to be reasonable and that it is both futile and contrary to the idea that practices can have their own practical form of rationality to try to argue that they should convert to one's own practice. The important point is that practice performs the function of producing a reasoned confidence in one's own practice.⁵⁴

It is interesting to note in this regard the pluralistic strain that runs through Judaism concerning other religions. For Judaism does recognise that other religions may be valid, as long as they observe the minimum requirements of the seven Noahide laws. Moreover, following the logic of this position, Judaism is not a missionary religion.⁵⁵ This would all seem to follow from the logic of the PoP approach according to which we cannot justify all the intricacies of a practice to those that do not participate in it and cannot therefore expect them to either believe in or behave in accordance with its practical demands. At the same time though, this is not to say that it is not justified and that those within the practice should not continue to adhere to it. Thus, as Jonathan Sacks writes.

To be sure, a Jew is not allowed to abandon Judaism, but non-Jews are not called on to embrace it. There are other equally legitimate ways of serving God.⁵⁶

The idea therefore that there is more than one practically rational approach is allowed for, but the fact that this is not 'our' approach means that it is not rational for us to accept it.

In a similar vein it is interesting to note that Soloveitchik approach sets out a number of conditions for interfaith dialogue which include the following:

It is self-evident that a confrontation of two faith communities is possible only if it is accompanied by a clear assurance that both parties will enjoy equal rights and full religious freedom. . . . I do not deny the right of the community of the many to address itself to the community of the few in its own eschatological terms. However, building a practical program upon this right is hardly consonant with religious democracy and liberalism.⁵⁷

Soloveitchik's point here is specific to faith communities, which in his opinion could never understand each other's faith gestures. The fundamental point for Soloveitchik is that the reason for this is the incommunicable nature of faith. If the PoP theorist is correct, certain practical justifications can fall into a similar category given that practical justifications are ineliminably practical and cannot be fully set out at a discursive level. Thus Soloveitchik's practical point seems to be the very one that we are making. The PoP theorist must recognise that members of an alien practice might be perfectly rational to stick to their practice given their reasoned confidence in it that is nurtured by the practice itself. Thus no practice need acquiesce in its claims to rationality and may even assert this in dialogue with other practices. The fact that we cannot gain this practical insight is a function of the practical nature of such justifications. But unless one is willing to advocate a program of forced 'conversion' the PoP approach encourages a pluralistic approach to other practices at the practical or political level.

To conclude then, what the PoP approach argues is that we can justify decisions within a practice by giving descriptive reasons for action. But these are based upon the practice itself which is understood to be rational in itself on the basis of the experience of participating in it rather than on the basis of some set of principles. The central idea is that a practice is only to be seen to be justified based upon participation in the practice which allows us access to its specifically practical rationality. The PoP theorist stresses therefore that we cannot always know before we do but must do before we know. But even then, this knowledge may not be capable of presentation in such a form as to convince members of another practice or indeed be capable of total articulation to oneself. We can merely appeal to our practice and say that it makes sense to us since it allows us to make sense of the world and decide upon courses of action in all situations in a way that makes sense to us. As such therefore, according to the PoP theorist, one cannot present a justification for a practice in the product sense of the term, by presenting a completed argument that justifies the practice for all time. Rather practical justifications can only be gained through a process of habituation. The experience of participating in the practice is not simply the foundation for our ability to make the descriptive discriminations but is itself the process of justification.

5. The Explanatory Scope of the PoP Approach

We have been appealing to an approach that posits a non-discursive yet rational foundation for the rationality of practices. Yet why need we posit such a form of rationality? Indeed, MacIntyre, for example, simply introduces further ‘discursive’ concepts into his theory in which to locate the appeal to the particular internal goods of a given practice: those of the narrative unity of a single human life and that of a tradition.⁵⁸ The former is supposed to locate one’s account of the virtues within a coherent life history that gives them their meaning and an overall sense of purpose. The latter serves the same purpose for the narratives of individual lives by locating them within a sustained attempt to reflect critically on the nature of the good life that traditions afford according to MacIntyre. Both of these ideas therefore emphasise the extent to which the content of the virtues is drawn from the social roles that we inherit from the past and project into the future and they allow us to justify the appeal to internal goods by means of discursive categories.

It seems to me, however, that the PoP approach has a certain explanatory power that is lacking even in these narrative approaches. Let us begin by noting the particular problems that even arise for the narrative approaches, beginning with the problem of circularity. We have previously seen how this is a problem for reflective equilibrium theorists. But the problem reappears for narrative theorists such as MacIntyre, for the choice between different narrative structures and traditions is as arbitrary as that between the different practices that they were supposed to ground. Goods are internal to a certain set of virtues that are internal to a specific narrative unity that is internal to a tradition which itself is partially constituted by those goods and as such we do not seem to have moved out of our original circle of descriptions. And this basically is the problem with any retreat to this sort of narrative account that still attempts to locate the rationality of practices and their justifications at the discursive level. While the subsumptive picture has been eliminated, the discursive foundation of practical justification has been retained and problems of circularity remain.

Moreover, while the narrative theorists are correct to move away from a subsumptive PoT picture, utilising descriptions that are derived from traditions as their ultimate justificatory basis does not allow them to address the question of how incompatible and incommensurable descriptions can be rational. To simply halt the search for reasons at the various incommensurable descriptions in order to avoid a regress seems rather arbitrary and leaves a number of questions unanswered. Firstly, if one wishes to speak of justifying various alternative practices by means of true propositional descriptions, it

appears that one will come up against the problem of how contradictory descriptions can be true. Secondly if all there is to the rationality of the practice is the description and we can genuinely understand these propositions as Berlin thinks, why are we not convinced by them? Why do they not justify the practice to ‘outsiders’? On a traditional foundationalist account, the choice of foundations is often thought to look arbitrary given the variations that we find between practices. At the same time though, it seems just as arbitrary to refuse to look beyond the nonfoundational circular descriptions if different practitioners are unconvinced by a single set of descriptions. The fact is that narrative theorists such as MacIntyre appear to accept the possibility of the rationality of alternative and even incommensurable practices. If we accept this picture, it seems that we must be able to accommodate competing descriptive schemes that are rational. Yet the attempt to ground this rationality in propositional descriptions leaves us unable to account for this rationality in a way that is consistent with our understanding of the nature of propositional rationality.

The PoP approach in contrast would firstly allow us to halt the possibility of a regress of argumentative reasons that one might encounter on the traditional discursive foundationalism of many PoT theorists. We need not appeal to any dubious foundational principles that might involve us in an infinite regress of reasons. We can find a non-propositional end to this regress – practice. On the other hand, it also allows us to understand how different practices can be rational yet incompatible and incommensurable, as reflective equilibrium and narrative theorists may hold, and why certain people might be blind, practically speaking, to their rationality. The point is that their ultimate rational foundation is practical rather than propositional. It is this practically accessed practical rationality that ultimately justifies the descriptive scheme of a given practice and explains why we see one practice as superior to another. And since we are members of a specific practice with access to its practical rationality rather than to that of another practice, we are unlikely to be motivated to behave in accordance with a practice to which we are not habituated. Thus, the PoP approach seems to be the best explanation of the variation in the principles and considered judgements of different reflective equilibrium theorists. According to the PoP theorist, the very confidence that one has in them as considered judgements depends on habituation (or practice) itself and we are only habituated to one set of such judgements.⁵⁹

All of this does mean though that as McDowell says, if you just can’t see things in the way that the person describes them when giving his reason for the action, then there is

little more that one can say. The point that McDowell is correctly making is that at some point discursive reasons give out. But the reason for this is that discursive reasons be they subsumptive or narrative cannot be the foundation for practical rationality. Only the practice itself provides it and this does leave something that one can say or rather do: practise in order to understand. For it is only practice that will yield the requisite understanding and the practitioners have the advantage of actually trying out this particular mode of life in the world and seeing the benefits that accrue from it. Evidently, becoming convinced of the rationality of a practice would therefore require an initial plunge into the practice before it can be seen to be rational, a plunge that someone who is already a practitioner of another practice is unlikely to take. But that is for the very good reason that they are already attuned to the practical rationality of a different practice. The existence of different forms of practical rationality in no way impugns the rationality of the practice that you affirm as superior. What the PoP approach does is explain the reason why you see one approach as superior and why certain others appear to have little to recommend them.

What though of the central criticism of circularity that has been raised regarding both the reflective equilibrium approach and the narrative approaches? Rather than solving this problem, the PoP approach seems to exacerbate it. For on our PoP picture, the justification of the practice can only be cashed out in experiential terms that themselves simply refer to actual practice and the evidence of rationality afforded by the very judgements that constitute the practice in the first place. We avoid the use of principles but we have no more external justification of the practice than the theorists we have criticised.

At this point though it is important to stress what sort of approach the PoP approach is in contrast to the PoT approach. The PoT approach, with its particular ideas about what constitutes a justification of a practice, see theory and practice to be related in a certain way. One of the central assumptions of the PoT approach is that the norms of a practice are akin to propositions that need to be given a propositional justification. Any practice must be capable of subsumption by the principles of a theory. Then, since the principles are in some sense thought by the PoT theorist to be rational, the practices that derive from them are justified. Any justification though, according to this approach must take the form of an argument that can be represented as a set of propositions with the norms of the practice as the conclusion.

By taking this approach, it seems to me that one does open oneself up to the charge of circularity. For what is the problem of circularity? Circularity is a logical property of

arguments whereby the premises that lead to the conclusion themselves rely upon that conclusion. The problem with a circular argument is not that it is invalid. It is just that it is not very useful as an argument if one is attempting to persuade somebody of a certain conclusion. A circular argument such as this is hardly likely to convince a person of the correctness of a conclusion given that one is relying upon that conclusion in the argument itself. Thus, in the reflective equilibrium approach what we have is a set of considered judgements treated as propositions from which we derive a set of principles and a set of principles from which we are supposed to derive the very same judgements. But as such, given that the function of a practical justification is to yield a reasoned confidence in the practice, this sort of PoT argument, if indeed it could actually be formulated, would be open to the charge of circularity. It does not yield the requisite reasoned confidence, which according to our functional approach is a legitimate reason for not accepting that it justifies the practice in question.

It seems to me though that the PoP approach is not open to these criticisms. For the very point that we have been stressing is that as an empirical matter of fact, practice does engender a reasoned confidence in a practice. Thus even if we were to agree that technically the PoP approach was circular, the *problem* of circularity, being a problem regarding the lack of persuasiveness of an argument, simply does not apply to the PoP approach. The fact is that *in practice* participation is a persuasive method of reaching a reasoned confidence in our practices that we have been identifying as the function of a justification. Practice therefore yields a reasoned confidence in our practices that is non-propositional and as such the problems associated with circularity do not arise.

However, in fact to apply the logical notion of circularity to the PoP approach in the first place is to commit a category mistake. Firstly the PoP approach does not portray the justification of a practice as an argument that takes a propositional form. The point is that once we move away from the idea of argumentative or discursive justification, talk of circularity becomes irrelevant. There are no premises or conclusions to speak of in practical justifications. According to the PoP approach we have a non-propositional justification based on the practical rationality of the practice itself.

It appears to me therefore that the PoP approach is able to account for the sort of pluralism that narrative and reflective equilibrium theorists justifiably believe in without falling to objections concerning circularity. Indeed, the PoP theory gives us the sort of ultimate justification of foundationalism without falling into the regresses or absurdity that is the symptom of discursive foundations.

Now one might be reluctant to accept this since we are inclined to think in terms of a PoT approach whereby only a propositional foundation could or could not be rational. What the PoT approach ignores though is the fact that we are not trying here to justify propositions but rather actions or commandments. The propositions of science can be assessed for truth or falsity and via logically correct argumentation we can therefore show that a given proposition is true by relating it to true premises. But a central feature of practical judgements is their prescriptive nature and the acceptance of the judgement has motivational effects lacking in purely factual propositions such as those of science. But the internally motivating practical judgements it can be argued are not the kinds of things that can be true or false. The conclusions of these arguments are prescriptions that do not state how things are but rather how things should be. They can be seen to be right or appropriate but surely not true or false, at least not in the same sense as a proposition.⁶⁰ But if that is so their justification is unlikely to be straightforwardly propositional. Indeed practices should not be expected to yield to reasons of this type. But one should not therefore think of them as downgraded sciences. Rather than glancing over our shoulders at the PoT theorist we should be looking at the nature of practice itself and the types of reasons that it can yield.⁶¹

From a PoP theorist's perspective therefore, the unwillingness to allow the term knowledge to the non-propositional reasoned confidence that we have in our practices is problematic. Certainly, it is important to distinguish this conviction from the propositional knowledge gained in other areas. But at the same time the honorific status of the term and the corresponding degradation of anything to which the term is denied can mislead one into dismissing the effects of practice as being of purely sociological interest. Whilst it is true that confidence is sociologically installed by practice, the important point that is obscured by the continual wish to model all justification on the PoT model is the fact that practices lead to a non arbitrary way of understanding the world, engendering a confidence in the rationality of the practice itself.

Indeed, Williams himself seems to tacitly recognise this when he writes: 'We may not be able, in any real sense, to justify [our practice] even to ourselves[,]' but then goes on to say that a practice 'may be so directly related to our experience that the reason *it* provides will simply count as stronger than any reason that might be advanced for it.'⁶² (Emphasis added). Williams here seems to say therefore that experience itself might provide the 'reasons', suggesting that in fact we can justify the practices to ourselves but it is just that the justification is practical rather than theoretical. The central point then is that given that we are talking about practices, their justifications are likely to

appeal to practical rather than ‘theoretical’ criteria. Why then should we expect to be able to justify them by relating them to further propositions in some subsumptive relationship as we do scientific propositions? Rather than expecting practices to live up to a standard of justification set by natural scientific disciplines and then being disappointed by their inability to live up to these strictures, we should rather set practical criteria for their justification and see whether or not they live up to them. The PoP approach emphasises that in the sphere of practice it should be practical criteria that decide whether or not our practices are justified or not, not theoretical ones.

In relation to these points it is interesting, given our claim that Judaism embodies a PoP approach, to note briefly that David Kraemer states how in the Babylonian Talmud ‘in recognition of the elusiveness of a single, definitive truth, practice is effectively divorced from truth’⁶³, showing instead ‘a primary concern for human (rabbinic) community’.⁶⁴ Such a separation between truth and practice or between theoretical validity and practice can be found in many classical Jewish sources.⁶⁵ One that is particularly interesting from a PoP perspective and worth considering briefly is the case of the *Zaken Mamre*, the rebellious elder. The *Zaken Mamre* is an ordained judge who dissents from the authoritative halakhic ruling of the Supreme Jewish court. The Torah itself prescribes capital punishment for such a person (*Deuteronomy*, 17: 12). However, this is only if the *Zaken Mamre* actually issues a practical ruling for himself or others.⁶⁶ He is though perfectly at liberty to teach his views. The *Zaken Mamre* is therefore expected to act contrary to his own theory in this case but is not required to stop teaching his opinion from a theoretical perspective.

The point here is that there is certainly a concern with the giving of argumentative reasons for halakhic decisions within Judaism. These reasons are generally given in terms of derivations by accepted hermeneutic procedures from authoritative texts. Moreover, there is an explicit recognition of the theoretical value of a number of such derivations. Indeed, from the perspective of theoretical reasoning or ‘truth’, a number of derivations might be ‘correct’ including that of the *Zaken Mamre*.⁶⁷ This view is classically embodied in the claim that ‘these and these are the words of the living God’,⁶⁸ which is often read as conferring substantive theoretical legitimacy on the differing opinions. However, from a practical perspective, a decision must be reached and adhered to.⁶⁹

From a PoP perspective we can begin to understand this stance, since according to the PoP theorist it is only through practice itself that we can understand a practice. Thus it is seen to be important that arguments against the practice are set within a framework

of shared practice if they are to be taken seriously.⁷⁰ What we find therefore is a PoP approach to understanding and justifying practices expressed in the manner in which Judaism accommodates a loss of reasoned confidence. For it is this that the *Zaken Mamre* has lost, and yet it appears that such a loss is accommodated as long as it is kept out of the realm of actual practice. One can continue to argue for one's views, but one's arguments can only be heard if one continues to practise. Indeed, only then could one be a party to the practical rationality of the practice in question and therefore expect one's dissent to be seriously discussed.

There is one further problem that is worth mentioning here that is related to the sort of justifications we get on a PoP approach which is that the PoP approach undercuts itself by making the PoT approach appear justified according to PoP criteria. For it appears that many people have a reasoned confidence in practices due to the PoT approach to practical justification. What we find here, it might be argued, is a practice of theorising that engenders a reasoned confidence in our practices. As such, according to our functional approach, a PoT argument would justify a practice.

The fact is that the PoT approach does justify theoretical propositions and theorists therefore have confidence in the approach. However, the central point to recognise is that the reason for the PoT theorist's confidence in the practice of theorising in the theoretical sphere is that his arguments do in fact bear the logical relations to his conclusions that he believes they bear. This is why his confidence is a reasoned confidence – it is based on logical relations between propositions. Indeed, this it seems to me is a perfectly legitimate PoP justification of the PoT approach to theoretical arguments.

The problem arises when the PoT theorist applies his method to practices. For when it comes to practices the confidence gained is not actually the result of the reasons that the PoT theorist gives since those reasons, according to our uncodifiability arguments, do not bear the justificatory relation to the practices that the PoT theorist thinks they do. As such therefore, by the PoT theorists own criteria, his arguments could not yield a *reasoned* confidence in the practice - the principles of the PoT theorist do not bear the logical relation to the practice in question. Thus, on the one hand, it would be a hollow victory for the PoT theorist if he was to claim that his argument justified the practice but not according to his own criteria of rationality.

In fact, though, it seems to me that the PoT argument does not justify the practice, even according to PoP criteria. What the PoT theorist has, it seems to me, is a reasoned confidence in the practice of theorising, not a reasoned confidence in the practice itself.

This reasoned confidence in theorising leads the PoT theorist to apply the theoretical method to practices. But the confidence thus gained in the practice is external to the practice itself (as well as to the purported reasons that the PoT theorist gives for it). The confidence is actually a confidence in a different practice - that of theorising - illegitimately transferred to the ethical or religious practice we are actually trying to justify. The PoT theorist has confidence in a method that they then apply to the practice, not a reasoned confidence in the practice. What the PoP approach insists upon is that for something to constitute a reasoned confidence in a practice, it must be based upon the actual participation in the practice itself. One might put the point in the following way - participation in practices is non-transitive for purposes of justification. The reasoned confidence in the theoretical method of the PoT theorist is non-transferable to the practices to which the PoT approach is subsequently (incorrectly) applied. Thus, the confidence that the PoT approach might yield in a practice does not make it a justified approach according to PoP criteria since it does not yield a *reasoned* confidence *in the practice*. It takes a reasoned confidence in its own method and transfers it to a practice that it cannot justify according to its own criteria.

6. The Problem of Relativism

What we have set out here is the beginning of a new account of practical rationality and practical justification. There remains much work to do on it which time and space do not here permit. However, there is one evident problem for the PoP theory that relates to some of the considerations just discussed and that needs to be addressed if only in a preliminary fashion. For it might be felt that the answer to the charge of circularity suggested in the previous section was a mere technical manoeuvre that does not address the real felt concerns regarding the status of our practices.

Regardless of the logical status of the prescriptions that we are trying to justify, the PoP approach would appear to allow for the internal practical justification of any practice at all and as such we would have no reason for giving preference to one practice over another. Effectively, the Aristotelian mechanism of rational habituation can work for any practice. Obviously, if we leave this as a sociological insight this is not a problem. But if we attribute cognitive value to habituation we appear to be able to justify anything and are led into a form of relativism whereby we can ask whether or not our practice is justified any more than any other. Can we make a rational choice between practices? Moreover, the flipside of this problem is that of evil practices. For if each practice can justify itself internally through practice itself, what do we do about those

with practices that we would consider to be radically evil? Are we powerless to argue against and condemn the Nazis, for example?

Let us begin by noting that there are two aspects to the problem of relativism. For on the one hand there is an epistemological problem concerned with judging which is the best practice given that each practice will justify its demands from different and often incommensurable starting points. And the first thing to note here is that as soon as one moves to the reflective equilibrium approach, one has already admitted that there is no single Archimedean point from which to judge the superiority of one practice over another. Thus both PoP and some PoT theorists will have the same problems to deal with here. According to the PoP approach, though, as we have mentioned, a reasonable pluralism seems to be allowed for and indeed is claimed as a positive implication of such an approach. However, the question arises as to how the PoP approach can nonetheless allow for rational choice between practices. Moreover, over and above this epistemological problem there is the metaphysical question of whether or not there exists more than one correct morality. The question that arises for the PoP approach at this level is whether it is forced to accept evil practices as in some sense correct. Whether or not the PoT approach also has the resources to deal with this question will not be our central concern.⁷¹

Let us then take an imaginary practitioner in what we will term his home practice and ask whether he can rationally choose to affirm that this practice is more rational than any other. The first point to consider is whether or not this is a choice that he has to make. The fact is that one is not born and faced with the question of deciding without prejudice which practice to live in. One is born into a practice and is habituated into it by 'training' as we have seen. Significantly, therefore, in Judaism the definitive Halakhic criteria for membership of the religion is birth rather than the acceptance of any set of abstract principles. You are born into the Jewish religion, into a certain pre-existing framework, and practically habituated into the norms of that framework. But as such you are born into a set of obligations and do not just freely choose them. This expresses the truth that we do not start from a neutral standpoint and simply choose a certain way of life from an array of theoretical options set before us in accordance with which we work out which is the best way to live. We neither do so nor indeed could do so for in order to be able to make such an informed decision, we must have some criteria to enable such a choice.

This reflects the communitarian view that 'to have character is to know that I move in a history I neither summon nor command, which carries consequences none the less for

my choices and conduct.⁷² Such a view is at odds with the modern individualist view that my identity is entirely a matter of choice. According to the alternative view, in order to attain any sort of moral or religious identity, we have to be habituated into a certain mode of life and this is effected by participation in the practice itself. That is not to say that individuals are just ciphers who do not in any sense form their own identities. But it does mean that, as MacIntyre writes

Without those moral particularities to begin from there would never be anywhere to begin. . . . Particularity can never be simply left behind or obliterated. The notion of escaping from it into a realm of entirely universal maxims which belong to man as such. . . is an illusion and an illusion with painful consequences.⁷³

If one accepts such a view of the self then by the time one is given to rational reflection on one's practice, one is reflecting very much *with* prejudice. Once we are in a position to make any reflective choice about practical options, we have already been inculcated into a certain way of life and according to the PoP approach, that very habituation enables us to understand the practice to be rational. What this means though is that we can at this stage rationalise our practice, if only *ex post facto*, and therefore we can see it to be rational and better than others that cannot be seen to be rational from the perspective of the home practice.

From a PoP perspective all of this is to be expected. For we will have a reasoned confidence in our practice as a result of participating in it and will not have a corresponding confidence in those in which we have not participated. The point is that according to the PoP approach, given the practical nature of practical justifications, other practices are not seen as live options from a practical point of view. Thus the question of the correctness of another system is unlikely to arise for as long as one can justify one's own, even if that justification is internal to the practice and understood as such. Practically speaking we can continue to affirm our own practice until such time as it ceases to make sense to us. We cannot accept the claims of the other practice from a *practical* point of view and the fact that we cannot reject it from some foundational *theoretical* standpoint has no positive bearing on its claims nor any negative effect on our own, as long as they remain coherent from the experiential point of view.⁷⁴

The critic of the PoP approach seems to assume that if one reflects on practices in this manner, it will make one believe that one's own practice is not therefore objective. However, it seems that we neither can nor need to gain the type of objectivity that our critics are using to beat us with here in order to judge the rationality of our own practice. The PoP approach of course would not expect there to be such a structure to

our practical reasoning and is therefore not disappointed to find that this is the case. The PoT approach on the other hand in treating practices in a quasi-scientific way end up with a scientific model that does not live up to the expected criteria for scientific objectivity and is therefore seen as degenerate science rather than a cognitively respectable practice. There is no foundational theoretical reason for the choice of one practice over another that we require for practical objectivity. The very idea that there could be is illusory to begin with. What we need is the ability to understand our own practice as rational and as such, what is important is that we retain a reasoned confidence in our practice and continue to see it as the most viable way of life for ourselves. As long as the practice continues to make sense internally, the mere *de facto* existence of other practices need not lead us to accept that our practice is not the correct one and that some other one is.

However, the problem remains that if it is practice that ultimately justifies practices, are we led to have to conclude that the practice of the Nazi's for example, was justified, at least from their own perspective? One point that the PoP theorist must admit is that we cannot show a Nazi that he is wrong by utilising principles as the PoT theorist does. As Taylor writes

If "showing them" means presenting facts or principles which they cannot but accept and which are sufficient to disprove their position, then we are indeed incapable of doing this.⁷⁵

However, as Taylor goes on to say, such an approach reflects a mistaken view of what practical reason is. According to Taylor, the Nazi's did not really reject the fundamental principle against violating human life. Rather, they accepted the principle and excluded certain classes from it on specious grounds. Thus, says Taylor this sort of appeal to irrational special pleading shows that the very challenge itself is not a rational one. But what Taylor is saying here is that the real problem with the Nazi regime was in fact the use of a false pseudo-scientific race theory which can be fought on theoretical grounds rather than practical ones. He assumes that the problem here was in the theoretical realm which was thought to justify a certain modification to the practical norm, a modification that is exposed by similar appeal to considerations that are theoretical rather than practical. According to Taylor's analysis therefore, the fundamental practical issue is agreed upon and what we find is the intrinsic irrationality of a certain theoretical stance that has grave practical implications. The refusal by the Nazis to countenance the theoretical arguments against such a stance constitutes their irrationality.

What though if one cannot expose such theoretical problems or we are confronted with a bloody-minded refusal to countenance such evidence? Here it is essential to note that the PoP theorist may appeal to certain minimal universal moral standards in order to argue against evil practices. The fact is that a practical justification of a certain discrete practice such as that against violating human life may constitute evidence for practitioners to conclude that certain of their practices are justified universally. Generally, what is important here is the idea that these practical justifications can afford us evidence of the *intrinsic* practical rationality or irrationality of certain practices. It is true that recognising this might depend on one's experience. As Rorty notes

The pragmatists' justification of toleration, free inquiry, and the quest for undistorted communication can only take the form of a comparison between societies which exemplify these habits and those which do not, leading to the suggestion that *nobody who has experienced both would prefer the latter.*⁷⁶ (Emphasis added).

As such, even for the Nazi's themselves, we need not say that their practice is justified 'from their own point of view'. The fact is that the PoP approach can recognise that this experience is wrong simpliciter. Certainly the evidence for this assertion is experiential. But that is an epistemological point rather than a metaphysical one. The recognition that something is wrong may well depend for the PoP theorist on the constitutive experiences of practitioners. However, that the PoP theorist cannot prove this to those who are practically irrational does not constitute an objection to his general approach. It is no objection to the PoP theorist that certain Nazis did not recognise the practical irrationality of their practices any more than it is an objection to correct science that they refused to accept the falsity of their pseudo-scientific race theories.

Practice itself therefore can lead to an understanding of certain acts as universally prohibited and just because the same conclusion may be justified in different ways by different practices does not affect the fundamental intrinsic rationality of those conclusions.⁷⁷ Thus, within Judaism for example there is the category of the seven Noahide laws, which are those laws that Judaism regards as incumbent on all human beings as such. The fact is that the constitutive experience of living according to these norms within Jewish practice leads to a reasoned confidence in their universality. Thus, evil practices such as those of the Nazi's are ruled out as practically irrational given the fact that the PoP theorist understands their practice as violating a prohibition that is universally practically justified.

Notwithstanding this, it has to be recognised that should enough people accept such evil practices, the failure to recognise the intrinsic irrationality of that practice would have grave practical consequences. But the fact is that these would be unlikely to be a result of some failure to follow an argument properly. And this returns us to Taylor's analysis of the Nazis. For one might well attempt to show that the problem with the Nazis stems from their special pleading, but the fact is that arguments showing them these inconsistencies are unlikely to have any effect. What we have here is a grave practical problem stemming from an inability to recognise the practical evidence for the intrinsic practical irrationality of their practice. This inability might well stem from habituation to evil practices, but it is that practical starting point that is fundamentally irrational from a practical perspective, not some theoretical principle. The apparent 'ethnocentricity' of such an assertion is only seen to be problematic since as Rorty observes, 'the philosophical tradition has accustomed us to the idea that anybody who is willing to listen to reason . . . can be brought around to the truth.'⁷⁸ The fact remains that should a majority decide to act in such a manner, then the PoT theorist is no more likely to succeed in stemming the tide than the PoP theorist. But what the PoP theorist stresses, correctly in my view, is the essentially practical nature of this problem.

7. The PoP Approach: Summary

In summary, we have reached the following position. What we are looking for is a reasoned confidence in our practices. According to the PoT approach, the only way to gain such confidence is by setting out a propositional account of the practice that constitutes its rationality. The PoP theorist does not believe that this approach can be successful but believes that practice itself is a rational way of gaining a reasoned confidence in a practice. The process of habituation yields this reasoned confidence in two ways. Firstly, it yields a capacity to make reasoned decisions regarding practice based upon a certain situational appreciation of particular instances. This confers a retrospective confidence in the practice that led to this very appreciation, acting as evidence for the rationality of the practice itself. At the same time this process leads to what can best be described in vague terms as a practical understanding of the practice based on an experience that constitutes that understanding. It is this practical understanding that underlies our reasoned confidence in these descriptive categories and that we appeal to as evidence of the practical rationality of our practice when discursive justifications cease to convince. For in the final analysis, people from other practices might not recognise the validity of our descriptive categories given the

absence of this practical justification. The very descriptive terms that we use are only convincing to one who has practised a certain way. At this point the notion of irreducible practical rationality comes into the equation, and the only justifications are non-discursive.

Nonetheless, the descriptive capacity that we do gain, while neither the foundation of our reasoned confidence, nor constitutive of the rationality of the practice plays an essential role in the critical development of the practice and the avoidance of conservatism. For mere participation in a practice that yields a certain form of understanding and practical justification is not sufficient for a reasoned confidence. A reasoned confidence requires that one can both develop one's own practice in the face of changing realities and assert that one's own practice is justified in full recognition of the existence and possible rationality of other practices. It is the ability to set out one's views in a discursive manner that underlies these capacities, though they are to be seen as the tools for the upkeep and development of practical rationality rather than the fundamental rational foundation of the practice. We must accept that fundamentally we may not give a principled justification at the level of actual decision making nor a propositional justification at the most basic level of our general practices. But practice need not therefore be a matter of blind faith. It can be a matter of acting on a reasoned confidence. There are many further refinements that need to be made to this PoP theory.⁷⁹ But what we have here in essence is an alternative approach to rationalising practices in general that grows out of consideration of a model of Jewish philosophy that seems to me both truer to the nature of practices and greater in its explanatory power than a PoT approach.

¹ For the idea that this view of rationality is a prejudice see John McDowell, 'Virtue and Reason', reprinted in Roger Crisp and Michael Slote eds. *Virtue Ethics*, (Oxford: Oxford University Press, 1997), pp. 141-162; and Jonathan Dancy, *Moral Reasons*, (Oxford: Blackwell, 1993), pp. 82-84.

² Ernest Sosa 'Circular' Coherence and 'Absurd' Foundations', in Ernest Lepore ed., *Truth and Interpretation: Perspectives on the Philosophy of Donald Davidson* (Oxford: Blackwell, 1986), pp. 387-397. Quotation from pp. 392-3.

³ In fact therefore there are senses in which both 'practice' and 'practise' are granted priority in the PoP approach, and though when stating what PoP stands for we have utilised the form Priority of Practice, the ambiguity of the acronym is rather useful in expressing this dual sense of priority.

⁴ Joel Weinsheimer, *Gadamer's Hermeneutics*, (New Haven and London: Yale University Press, 1985), p. 35.

⁵ See Moses Maimonides, *Commentary to the Mishnah*, translated into Hebrew by Y. Kapach (Jerusalem: Mossad HaRav Kook, 1976), p. 19. English translation of this passage by E Yagod and E Kohlberg, quoted in David Hartman, *Maimonides: Torah and Philosophic Quest* (Philadelphia: The Jewish Publication Society, 1976), pp. 29-30.

⁶ See Jonathan Sacks, *One People*, (London, Littman Library of Jewish Civilisation, 1993), p. 95.

⁷ Sa'adia Gaon, *The Book of Beliefs and Opinions*, trans., Samuel Rosenblatt (New Haven and London: Yale University Press, 1976), Book iii, Chapter 7, p. 158.

⁸ Yeshayahu Liebowitz 'Religious Praxis,' in Eliezer Goldman ed., *Judaism, Human Values, and the Jewish State*, trans. Eliezer Goldman et al., (Cambridge Mass.: Harvard University Press, 1992), pp. 3-29. Quotation from pp. 5-6.

⁹ Things are not actually as straightforward as this slightly glib comment may suggest. Indeed, the Talmud debates the relative value of study and practice, concluding that study is greater. See *Babylonian Talmud* (Hereafter B. T.), Baba Kamma 17a; Kiddushin 40b; and Megillah 27a. However, the reason that study is greater is stated to be that it results in practice, leading the great tenth century French commentator Rashi to comment that in fact therefore practice retains its priority (See Rashi on Baba Kamma 17a). Moreover, study itself is a positive commandment and thus itself constitutes a form of Jewish practice. See Moses Maimonides, *Sefer ha-Mitzvot*, no. 11, translated in two volumes by Charles B. Chavel as *The Commandments* (London and New York: Soncino Press, 1967), vol. 1, p. 16.

¹⁰ This sort of criticism was famously advanced in modern times by Kant and is discussed in Nathan Rotenstreich, *The Recurring Pattern* (London: Weidenfeld and Nicolson, 1963).

¹¹ Even in medieval times there remained those who thought such a project was at best needless. See Isaac Heinemann, *Ta'amei ha-Mitzvot be-Sifrut Yisrael* (Hebrew), 2 vols. (Jerusalem: Jewish Agency Press, 1954), pp. 46-48. Moreover, according to David Kraemer even the non-philosophical reasons for the commandments that would draw on rabbinic derivations from authoritative texts were not preserved in rabbinic writings until the late third to early fourth century at the earliest. See David Kraemer, *The Mind of the Talmud* (Oxford: Oxford University Press, 1990).

¹² H. H. Price, 'Belief 'In' and Belief 'That'', *Religious Studies*, vol. 1 (1965), pp. 5-27

¹³ See Norman Lamm, 'Faith and Doubt' in *Faith and Doubt: Studies in Traditional Jewish Thought* (New York: Ktav, 1986), pp. 1-40. Quotation from p. 6.

¹⁴ See Menachem Kellner, *Dogma in Medieval Jewish Thought: From Maimonides to Abravanel*. (Oxford: Oxford University Press, 1986) and *Must a Jew Believe Anything*, (London: Littman Library of Jewish Civilisation, 1999); and Kenneth Seeskin 'Judaism and the Linguistic Interpretation of Faith', in Norbert Samuelson, ed., *Studies in Jewish Philosophy: Collected Essays of the Academy for Jewish Philosophy, 1980-1985* (Lanham, Md.: University Press of America, 1987), pp. 215-234. Along with Kellner, I would dispute Bleich's assertion that Judaism is 'rooted in dogma.' See J. David Bleich *With Perfect Faith: The Foundations of Jewish Belief* (New York: Ktav, 1983), p.1.

¹⁵ Eliezer Berkovits, *Major Themes in Modern Philosophies of Judaism* (New York: Ktav, 1974), p. 139. Similarly Liebowitz has stated, 'Halakhah is founded on faith, yet at the same time constitutes this faith'. See Liebowitz, 'Religious Praxis', p. 11.

¹⁶ Indeed, as mentioned in chapter two, a number of scholars have attempted on Maimonidean grounds to reduce faith in God to faith in religious practice. See, for example, Hermann Cohen, 'Charakteristik der Ethik Maimunis', translated into Hebrew as 'Ofyah shel Torat ha-Middot le-ha-Rambam', in *idem.*, *Iyyunim be-Yahadut uve-Be'ayot ha-Dor* (Jerusalem: Mossad Bialik, 1978), pp. 17-59; and Kenneth Seeskin, *Jewish Philosophy in a Secular Age* (New York: SUNY Press, 1990), pp. 44-50.

¹⁷ Shalom Rosenberg has discussed this sort of approach in 'The Concept of *Emunah* in Post-Maimonidean Jewish Philosophy', in Isadore Twersky, ed., *Studies in Medieval Jewish History and Literature*, vol. 2 (Cambridge, Mass.: Harvard University Press, 1984), pp. 273-307.

¹⁸ Indeed, this idea could be founded on the very statement that Lamm himself makes use of - the pivotal statement recorded in *Exodus*, 24:7: *naaseh v'nishma*. This statement, made by the Jewish people as they await the giving of the Torah at mount Sinai, is literally translated as 'We will do and we will hear.' However, the term *nishma* as Maimonides pointed out can also denote understanding (*Guide I*: 45, 96). This idea that is the basis of the PoP approach is, therefore, that one can come to actually understand a practice through doing those things that it prescribes.

¹⁹ Miles Burnyeat 'Aristotle on Learning to be Good,' in Amelie A. Rorty ed. *Essays on Aristotle's Ethics*. (California and London: University of California Press, 1980), pp. 69-92. Quotation from p. 73.

²⁰ It is similarly interesting to note that as with classical Judaism Aristotle does not occupy himself with questions of abstract justification in his ethical writings but is rather concerned with how we determine what to do. What he is certainly not offering us is some sort of PoT reason for ethical judgements that would take the form of a subsumptive principle dealing in abstract ethical concepts. See John M. Cooper, *Reason and Human Good in Aristotle* (Indianapolis, Ind.: Hackett, 1986), p. 5.

²¹ One should point out that Aristotle certainly appreciates that learning to be moral requires that general advice be given, but as discussed in the previous chapter such advice is useless without the training and habituation that affords us the ability to perceive what is required in the myriad novel circumstances that we will encounter in our lives.

²² Sarah Broadie, *Ethics with Aristotle* (Oxford: Oxford University Press, 1991), p. 73. Burnyeat similarly notes that on this account 'moral development must be less than a fully rational process'. See 'Aristotle on Learning to be Good', p. 80.

²³ Bernard Williams, *Ethics and the Limits of Philosophy* (London: Fontana Press, 1985), p. 170.

²⁴ See NE, VI, 13, 223-224.

²⁵ As Broadie herself recognises, 'the concept of virtue makes essential reference to the *orthos logos*'. *Ethics with Aristotle*, p. 77.

²⁶ Nancy Sherman, *Making a Necessity of Virtue: Aristotle and Kant on Virtue*, (Cambridge: Cambridge University Press, 1997), p. 242.

²⁷ Thus, according to Broadie, this desiderative part of the human soul 'is essentially related to reason as that to which it should respond'. Broadie, *Ethics with Aristotle*, p. 63. Broadie's excellent but complex discussion of this issue can be found on pp. 61-72.

²⁸ John Cooper, *Reason and Human Good in Aristotle*, p. 61.

²⁹ Thus Richard Sorabji has spoken of one who is habituated as coming 'to like reacting in accordance with his intuitive perception of what is required.' Richard Sorabji 'Aristotle on the Role of Intellect in Virtue in Rorty ed, *Essays* pp. 201-219. Quotation from p. 216. Similarly Burnyeat speaks of us taking the proper pleasure in our virtuous acts as a result of habituation. Burnyeat, 'Aristotle on Learning to be Good', pp. 76-79.

³⁰ John Cooper, *Reason and Human Good in Aristotle*, p. 8.

³¹ 'U-Vikkashtem mi-Sham', in *Ish ha-Halakhah Galuy ve-Nistar* (Jerusalem: World Zionist Organisation, 1979), pp. 115-235. Quotation from pp. 194-195. Translation taken from Reinier Munk, *The Rationale of Halakhic Man: Joseph B. Soloveitchik's Conception of Jewish Thought* (Amsterdam: J. C. Gieben, 1996), pp. 114-115.

³² As Burnyeat states, Aristotle is not merely telling us that virtue takes practice but that 'practice has cognitive powers, in that it is the way we learn what is noble or just.' Burnyeat 'Aristotle on Learning to be Good', p. 73.

³³ *Ibid.*, p.221.

³⁴ See for example, NE, VI, 8, 215-216.

³⁵ David Wiggins, 'Deliberation and Practical Reason', in Rorty ed. *Essays*, pp. 221-240. Quotation from p. 327.

³⁶ For a discussion of the complex nature of this 'intuitive' perception see Sherman, *Making a Necessity of Virtue*, pp. 154-262; and Cooper, *Reason and Human Good in Aristotle*, pp. 62-71. Cooper also argues that Aristotle believes contact with others in the strongest Aristotelian sense of friendship is bordering on essential for the study of good actions. See John M. Cooper, 'Aristotle on Friendship', in Rorty ed., *Essays*, pp. 301-340.

³⁷ Jonathan Dancy, *Moral Reasons*, p. 113.

³⁸ This is in marked contrast to justification in the theoretical sphere where, as with explanation according to David Ruben, the product sense is by far the more important. See David Hillel Ruben *Explaining Explanation* (London: Routledge, 1990), pp. 6-9.

³⁹ Alasdair MacIntyre, *After Virtue*, second edition (London: Duckworth, 1985), pp. 188-9.

⁴⁰ This raises the question of whether this practical justification can be imparted by one who has it to one who does not practice and therefore lacks the practical experience. Certainly one can be persuaded to practice even if one lacks the knowledge oneself by one with such knowledge. However, it would be true that one who does not practice cannot gain the full justification.

⁴¹ See John McDowell 'Eudaimonism and Realism in Aristotle's Ethics', in Robert Heinaman ed. *Aristotle and Moral Realism*, (London: UCL Press, 1995), pp. 201-218. Quotation from p. 209.

⁴² This seems to be linked to Burnyeat's idea of taking the proper pleasure in something. Burnyeat, 'Aristotle on Learning to be Good', pp. 76-9. Taking the proper pleasure in something seems to require taking pleasure in its internal goods. For taking the proper pleasure in chess would surely involve appreciating the goods internal to it rather than taking pleasure in it for the money one will get out of it. This though can only be achieved by habituation.

⁴³ Charles Taylor, 'Overcoming Epistemology', in *Philosophical Arguments* (Cambridge, Mass.: Harvard University Press, 1995), pp. 1-19. Quotation from p. 12.

⁴⁴ Richard Rorty, 'Introduction: Antirepresentationalism, ethnocentrism and liberalism', *Objectivity, Relativism and Truth: Philosophical Papers Volume 1* (Cambridge; Cambridge University Press, 1991) pp. 1-17. Quotation from p. 1.

⁴⁵ Charles Taylor, 'Lichtung or Lebensform: Parallels between Heidegger and Wittgenstein', *Philosophical Arguments*, pp. 61-78. Quotation from p. 69.

⁴⁶ As Rorty notes explicitly with respect to philosophers' attempts to articulate the philosophical background of liberal democracy. They are 'not thereby justifying these institutions by reference to more fundamental premises, but the reverse . . . putting politics first and tailoring a philosophy to suit.'

Richard Rorty, 'The Priority of Democracy to Philosophy', *Objectivity Relativism and Truth*, pp. 175-196. Quotation from p. 178.

⁴⁷ Lawrence Kaplan, 'Daas Torah: A Modern Conception of Rabbinic Authority', in Moshe Sokol ed. *Rabbinic Authority and Personal Autonomy* (Northvale, N.J.: Aronson, 1992), pp. 1-60. Quotation from pp. 22-3.

⁴⁸ Indeed, the very problem of individuating practices itself requires serious philosophical analysis.

⁴⁹ We will not dwell on the particular mechanisms for such criticism since a number of sophisticated analyses are already available that I believe could be effectively built upon by the PoP theorist. See, for example, Alasdair McIntyre *Whose Justice Which Rationality* (London: Duckworth, 1988), esp. Chapter 18; Charles Taylor, 'Explanation and Practical Reason' in *Philosophical Arguments*, pp. 34-60; and Michael Walzer, *Interpretation and Social Criticism* (Cambridge, Mass.: Harvard University Press, 1987).

⁵⁰ Charles Taylor, 'Social Theory as Practice', in *Philosophy and the Human Sciences: Philosophical Papers* vol. 2 (Cambridge: Cambridge University Press, 1985) pp. 90-115. Quotation from p. 104. In this vein Taylor constantly refers to 'living' in his elucidation of our understanding of the practical rationality of a given practice: 'We are convinced that a certain view is superior because we have *lived* a transition which we understand as error-reducing and hence as epistemic gain.' (Emphasis added). Charles Taylor, *Sources of the Self*, (Cambridge: Cambridge University Press, 1989), p. 72.

⁵¹ Taylor, 'Social Theory as Practice', pp. 111ff.

⁵² Given our discussion of Aristotle, it is interesting to note that Cooper comes close to attributing a PoP approach to Aristotle, writing that 'the practically intelligent man's knowledge of the ultimate end, which determines his conception of good living, must be *practical and nontheoretical*. And since . . . this knowledge is *not founded on any discursive process of deliberative selection*, it must be a kind of intuitive knowledge, not based on reasons of any kind.' *Reason and Human Good in Aristotle*, p. 62 (my emphases).

⁵³ Indeed, many details of the laws governing the practice may simply not require this level of rationalisation. This is something Maimonides recognised when he wrote that having a reason to sacrifice did not necessarily mean having a reason for the particular form each sacrifice took, such as whether one used a ram or a lamb. They are simply the technical rules that have been agreed upon for the performance of the general commandment.

⁵⁴ We will see in the final section of this chapter that this PoP approach does though have limits and need not lead to relativism.

⁵⁵ It is not relevant here whether or not Judaism ever was a missionary religion. The important point here is that it has now developed into a non-missionary religion, whether as a result of its own volition or as a result of its contact with other religions. As we will see presently, the fact that this might have developed over time in response to other religions does not question its validity as a statement about Judaism.

⁵⁶ Sacks, *One People*, pp. 143-4.

⁵⁷ Joseph B. Soloveitchik 'Confrontation', *Tradition*, vol. 6 (1964), pp. 5-28. Quotation from pp. 21-23.

⁵⁸ See MacIntyre, *After Virtue*, Chapter 15.

⁵⁹ Moreover on the PoP account the problems regarding the appeal to some *a priori* rationality of the properties utilised in the PoT theory disappear for the rationality of the practice turns out to be entirely *a posteriori* and dependent on habituation to particular practices.

⁶⁰ Thus, Copp argues that the reason that the scientific CT model discussed in the previous chapter does not work to justify what he calls moral standards is that moral standards are not propositions that can be given truth-values. Since we cannot bring evidence for the truth of something that cannot be assessed for truth in the first place, we evidently cannot therefore empirically confirm (or refute as the case may be) moral standards via CT. See David Copp, 'Explanation and Justification in Ethics', *Ethics*, vol. 100 (1990), pp. 237-258. What seems to me important to retain though is the idea that such standards do nonetheless have what John Skorupski has called 'judgeable contents' and as such can be assessed for some form of correctness. See John Skorupski, 'Value-Pluralism', in David Archard ed., *Philosophy and Pluralism* (Cambridge: Cambridge University Press, 1996), pp. 101-115.

⁶¹ David Wiggins makes a similar point in his Aristotelian discussion of akrasia, saying that we should not expect a perfect analogy between practical and theoretical syllogisms. Once one has a propositional demonstration in the theoretical case, there is nothing the will can (or should) do to affect whether or not one accepts the conclusion. In the practical case, where the conclusion of the syllogism is an action the operations of the will are of paramount importance. See David Wiggins, 'Weakness of Will, Commensurability, and the Objects of Deliberation and Desire', in Rorty ed. *Essays*, pp 241-265, esp. section V.

⁶² Bernard Williams, *Ethics and the Limits of Philosophy*, p. 114.

⁶³ Kraemer, *The Mind of the Talmud*, p. 139.

⁶⁴ *Ibid.*, p. 170.

⁶⁵ The best known of these is probably the story of 'The oven of Akhnai' in B. T. Baba Metzia 59b.

⁶⁶ See B.T. Sanhedrin, 86b-89a and Moses Maimonides, *Mishneh Torah*, Hilchot Mamrim (Laws Concerning Rebels), III: 3-8, translated by Abraham M. Hershman in *The Code of Maimonides Book 14: The Book Of Judges* (New Haven, Conn.: Yale University Press, 1949), pp. 143-146.

⁶⁷ However, the 'truth' of these derivations does not justify the commandment from some abstract philosophical point of view, it merely grounds it in the text. The philosophical justification is what remains out of the reach of these arguments.

⁶⁸ B.T. Hagigah 3b and Eruvin 13b. There are many interpretations of the precise meaning of this phrase and many complex issues that surround it. For discussion of the issues see Avi Sagi, *Eilu ve-Eilu: A Study of the Meaning of Halakhic Discourse* (Hebrew) (Tel Aviv: Hakibbutz Hameuchad, 1996); and Michael Rosensweig, 'Eilu ve-Eilu Divrei Elohim Hayyim: Halakhic Pluralism and Theories of Controversy', in Sokol ed. *Rabbinic Authority and Personal Autonomy*, pp. 93-122.

⁶⁹ Moreover, it seems to me highly significant that the final practical decision is not thought to correspond to some propositional standard of theoretical truth. Indeed, after noting that the opposed schools of Beth Hillel and Beth Shammai both speak 'the words of the living God', the Talmud records that the Halakhah is fixed according to Beth Hillel 'because they were kindly and modest, they studied their own rulings and those of Beth Shammai, and even were so humble as to mention the actions of Beth Shammai before theirs.' (B.T. Eruvin 13b). The decision in favour of Beth Hillel could be seen therefore to be taken on practical grounds rather than on grounds of theoretical 'truth'.

⁷⁰ Thus as Lamm points out, within Judaism, 'doubt can be acknowledged as part of cognitive faith . . . [but] the functional commitment must be absolute'. 'Faith and Doubt', p. 19. Though he somewhat overstates the case here, the fundamental point is correct. More generally, the concept of Rabbinic authority has an important part to play here in considering the case of *Zaken Mamre*. For more detailed consideration of these issues see Moshe Sokol ed. *Rabbinic Authority and Personal Autonomy* (Northvale, N.J.: Aronson, 1992). The relationship between the various concepts discussed here and the PoP approach would be fertile areas for future research.

⁷¹ The move away from a traditional model of theoretical truth in the practical sphere may well allow the PoP approach to deal with some of the awkward questions that arise when attempting to formulate such a pluralistic view in terms of truth. Obviously though, this statement merely marks out an area for future research rather than any sort of argument. Indeed, the whole notion of 'practical truth' that we have appropriated from Aristotle needs to be developed far more rigorously than space here allows. Some of the relevant issues though that would need to be approached are discussed in Harry Bunting, 'A Single True Morality? The Challenge of Relativism' in Archard, ed., *Philosophy and Pluralism*, pp. 73-85; C. J. McKnight, 'Pluralism, Realism and Truth', *ibid.*, pp. 87-99; and Skorupski, 'Value-Pluralism'.

⁷² Michael Sandel, 'The Procedural Republic and the Unencumbered Self', in Shlomo Avineri and Avner de-Shalit eds., *Communitarianism and Individualism*, (Oxford: Oxford University Press, 1994), pp. 12-28. Quotation from p. 23. Such communitarian considerations form the explicit background to Jonathan Sacks' discussion of the 'Traditional Jewish Self' in *One People*, pp. 156ff. Moreover, the tension between freedom and necessity contained in this view is one of the focal points of Soloveitchik's discussion of cleaving to God's commandments in 'U-Vikkashtem mi-Sham'.

⁷³ MacIntyre *After Virtue*, p. 221.

⁷⁴ This of course is to reject views such as those of Alan Gewirth for whom it must be possible 'to present rationally grounded moral criticisms, in a non-question begging way', and find the 'necessity and universality that can be achieved by rational argument as applied to the context of action and morality.' See Alan Gewirth, 'Is Cultural Pluralism Relevant to Moral Knowledge' in Paul, Miller and Paul eds., *Cultural Pluralism and Moral Knowledge*, pp. 22-43. Quotation from p.29.

⁷⁵ Charles Taylor, 'Explanation and Practical Reason', p.35.

⁷⁶ Richard Rorty, 'Solidarity or Objectivity' in *Objectivity Relativism and Truth*, pp. 21-34. Quotation from p. 29. I would though, for all the reasons discussed, reject Rorty's claim that *any* justification of these 'habits' is inevitably circular.

⁷⁷ Note that appeal to universality does not vitiate our claims regarding uncodifiability, for a value can be universal without being overriding, i.e. without its being the case that it always takes precedence over other values. See John Kekes, 'Pluralism and The Value of Life', in Ellen Frankel Paul, Fred. D. Miller and Jeffrey Paul eds., *Cultural Pluralism and Moral Knowledge* (Cambridge: Cambridge University Press, 1994), pp.44-60.

⁷⁸ Rorty, 'The Priority of Democracy to Philosophy', *Objectivity Relativism and Truth*, p. 188.

⁷⁹ Two of the most important issues to discuss would be: 1) The development of the Aristotelian notion of practical truth; 2) If a practice is justified by practice, how can someone who has been habituated to a practice and is a participating member secede from it? One significant factor here would of course be *akrasia*. But it would be patronising to assume that this was the explanation for all such secession.

Chapter seven

Conclusion: Autonomous Jewish Philosophy

We began this thesis by looking at a particular topic discussed in the works of those who have been taken to be Jewish philosophers doing Jewish philosophy – that of *Ta’amei ha-Mitzvot*. We have discussed the models of rationalisation of Maimonides and Soloveitchik and attempted to set out a contrasting model of rationalisation that we claimed was to be found implicit in classical Judaism. On the surface therefore it might seem as if we have been doing Jewish philosophy.

However, we also began this thesis with Levy’s dilemma concerning the very concept of Jewish philosophy. On the one hand the universal nature of philosophy seems to rule out the possibility of there being anything that Judaism qua Judaism can contribute to philosophical discussion. Any philosophical contribution would in the final analysis have to be universal and the Jewish origin of such a contribution would be of historical interest alone. Were any specifically Jewish content to remain it would fail to be philosophical by definition. To conclude this thesis therefore I would like to make some brief observations regarding how what we have done in this thesis relates to this dilemma.

Jewish practice, inasmuch as Jewish practice is particular to Jewish people, would seem to be a perfect subject for Jewish philosophy. However our historical studies at the beginning of the thesis seem to exemplify Levy’s dilemma perfectly. For what Maimonides does in his rationalisation is attempt to show that this particular practice is in fact an expression of a universal mode of rationality. Thus while making the practice intelligible to a universal philosophical readership, he has been accused of removing its Jewish content. We are presented with a universal philosophical practice rather than a Jewish one, as the first horn of Levy’s dilemma would have it.¹

It is precisely this universalisation of Jewish practice that Soloveitchik criticises, holding that Jewish practice must retain its autonomy and as such should not be the handmaiden of some presumed universalistic mode of rationality. Soloveitchik attempts therefore to retain particularity by analysing Jewish practice in terms of specifically Jewish principles and concepts, an approach that as we have seen has been taken in the general philosophical field of ethics. For in the practical sphere many might reject universalism and accept that there are a number of different forms of rationality that practices can exemplify. However, we have argued that the problem with any such

discursive approach to justifying practices is the circular nature of the justification that it yields. This problem of circularity seems to be a problem for the very reason that both the premises and the practice, while mutually coherent, cannot be justified beyond their own cultural boundaries and thus we end up with a particular coherent scheme that cannot be justified universally.² As such its philosophical content is called into doubt according to the second horn of the dilemma. We therefore find that our models of rationalisation perfectly exemplify the very dilemma facing Jewish philosophy.

However, we have attempted to locate an alternative approach to the whole issue of justifying practices that questions the presumption that the ultimate justifications of practice are discursive. Moreover, we have claimed that this is an approach that can be found in Jewish sources. Nonetheless, the manner in which we presented this alternative is as an approach to justifying practices that is philosophically and presumably therefore universally valid, thus still impaling ourselves once more on the first horn of Levy's dilemma. In what sense then have we done, or can we do, Jewish philosophy?

Our reflections on approaches to justification are very much second order reflections at the meta level and it does seem *prima facie* implausible to think that such second order considerations can be limited to particular groups. If our arguments against PoT justifications and for a PoP approach work, they surely work across the board and as such, what we have been doing is not Jewish philosophy according to Levy's dilemma. However, taking this approach at the meta level has certain ramifications for this dilemma at other levels.

The first point is that practical philosophy does not only take place at the meta level. Thus we find normative ethical theories that purport to give us substantive conclusions concerning what is right and wrong, Rawls' theory of justice itself being a classic modern example. Now it is often claimed that we cannot do normative Jewish ethics any more than we can do meta Jewish ethics. Thus as Kellner notes, since Kant it has been accepted by philosophy at large that normative ethics has to be universally acceptable and universally applicable.³

We have seen that there is good reason to question this assumption. However, what the PoP approach shows us is that in fact the question of the particularity or universality of Jewish practice and Jewish practical philosophy is not the issue here. The reason that we cannot do practical Jewish philosophy at the normative level has less to do with this issue and more to do with the limits of philosophy in the practical sphere. What we have discovered is that the sort of discursive normative theory that would dictate the

form that practice should take is not in fact possible. As such, it seems as if our meta-Jewish philosophy has an important critical function. It is critical of the positive contribution that philosophy as traditionally conceived as an exclusively discursive discipline can make to practices. That is not to say that we cannot reflect on our practices. It is just that such reflection is less abstractly philosophical than concretely practical. Again, this is not a particularistic Jewish conclusion. Bernard Williams in his *Ethics and the Limits of Philosophy* makes very much the same point and thus the conclusion is again maybe philosophical rather than Jewish. Nonetheless it is highly significant that though we might conclude that there can be no normative Jewish philosophy in the practical sphere, it is not for the reasons that we originally thought, certainly not for the reasons posited by Levy's dilemma. The problem is that the formation of philosophical ethical theories in general as traditionally conceived is a futile task.

This in itself is a very notable conclusion for though it means that we may not therefore be able to do autonomous Jewish philosophy in this sphere, we have preserved the autonomy to some extent of Jewish practice, which need no longer be dictated to by any external theory. Certainly total autonomy is a chimera. Dialogue is a central part of the practice and since practices do not exist in vacuums, it is possible for different practices to have reciprocal influences. However, the PoP approach retains the idea that the litmus test of the acceptability of a practice is its practical acceptability to Judaism in the eyes of its expert practitioners who are fully aware of the practical rationality of Jewish practice (and ideally of the value of external contributions). The halakhic decision is final and authoritative within Judaism.

At the same time, despite our rejection of the idea that we can form a normative theory of the commandments we need not reject Soloveitchik's idea that the commandments embody a certain world view. Indeed, it seems to me that this may indeed be in part correct. According to Soloveitchik the commandments are meaningful 'expressions' in Dilthey's sense of the word that embody all sorts of presuppositions about the world and our place in it. What this leads to is a picture of Jewish philosophy as an interpretive task modelled on the later Wittgensteinian approach to philosophy according to which 'we must do away with explanation, and description alone must take its place.'⁴ Jewish philosophy would therefore become an enterprise whereby we uncover the concepts and ideas embodied within the practice. Indeed, this interpretive task has been undertaken by many a Jewish philosopher throughout history and as Seeskin notes 'Jewish thinkers did not have to wait for the latter part of the twentieth

century to take seriously the goals of interpretation and critique.⁵ Though we cannot in this conclusion evaluate the validity of such a conception of philosophy, it would need more than the simple statement of Levy's dilemma to rule it out.

Whatever the value of this approach turns out to be, it is important to note that the halakhah seems in fact to overdetermine world views. The practice it seems embodies a variety of views about man and his relationship to God and the world. Indeed, in Judaism the realm of Aggadah is open to plural interpretations as recognised in the idea of Aggadic pluralism.⁶ Thus, it seems that what we have is a very pluralistic view whereby a number of philosophical frameworks can inform the same behavioural practice. What we end up with is what Rawls has, in a different context, termed an overlapping consensus. In Rawls an overlapping consensus describes the situation in which different reasonable doctrines can all affirm the same political conception and 'the reasonable doctrines endorse the political conception, each from its own point of view'.⁷ In effect, what we are arguing is that within Judaism, we find that clustered around the same halakhic way of life are very different philosophical views that all in support this halakhic way of life in different ways. We find an overlapping consensus in the realm of halakhah of reasonable philosophical doctrines.

But what is most important here is that as in Rawls' picture, such philosophical views are not allowed to directly affect halakhic behaviour, which of course is precisely what we would expect of a PoP approach. There are a variety of different frameworks within which one can continue to act according to the dictates of the Halakhah. These frameworks might well hold the practice up in a different light to different people, but the outward behaviour remains the same for the theories do not generally dictate the content of the practice.⁸

As such what we seem to find therefore is a value in reflecting on these philosophical frameworks for their own sake rather than for the sake of the practice. The working out of a theoretical framework in which to locate one's practice is a worthwhile intellectual enterprise in itself, which may affect how you conceive of your practice without necessarily affecting its behavioural form.⁹ In Judaism then the motivation to do philosophy is not primarily connected to its practical effects, for philosophy as traditionally conceived should more often than not be divorced from direct influence on practice. According to the PoP approach we do not ultimately justify practices by reference to these views. For the PoP theorist's conceptual framework is not there to justify the practice. It is there to interpret its presuppositions and whilst this may well help us to understand more about Judaism, it cannot lead to a justification of its

practical norms, but then again nothing discursive could; that justification can only be gained practically. Theoretical concerns in Jewish philosophy remain just that, but in that resides their very value.

Thus, it would appear that in Judaism appreciates the limits of philosophy in the practical sphere and the value of the interpretive task in the theoretical sphere. At the same time though, this does restrict Jewish philosophy in the theoretical sphere. One could, for example, elaborate a philosophical anthropology out of the sources of halakhah as Soloveitchik does, and tackle certain topics such as repentance. However, other questions on which there must be a single universal answer, cannot form part of Jewish philosophy. Thus, for example, the question of whether or not the world was created, one of the central questions in medieval Jewish philosophy, has it would seem a single correct answer and no 'Jewish' thinking on this can have any independent philosophical value. This of course would rule out much of what has passed for Jewish philosophy in the past. In relation to this, though it is significant that throughout this thesis we have been suggesting the inadequacy of a certain model of rationality in the practical sphere and suggesting an alternative in its place. Yeshayahu Leibowitz criticises the form of rationality we have rejected as follows:

A prevalent conception, which stems from a shallow rationalism, distinguishes the kernel from husk in religion; the eternal ideational content of absolute value becomes incarnate in various external forms, which may, without loss, be exchanged for others and ought to be superseded from time to time to fit changing circumstances. This distinction is baseless. Substance is embodied in form. The essence of a given content is inseparable from the particular form which it takes on. Were it clothed differently, it could not be the identical content.¹⁰

Now it is true that we have been stressing in this thesis the differences between practical and theoretical rationality. However, if we may conclude on a rather open ended note, it is interesting that this very general idea about rationality implicit in the PoP approach to practices, that 'the essence of a given content is inseparable from the particular form which it takes,' is an idea that has been much discussed by contemporary continental philosophers as having a wider application. We find the idea that while there may be a certain translatable propositional meaning common to different philosophies, other non-propositional 'forces' explicit and implicit, will also be involved that affect the nature of the philosophical act. As Alan Montefiore has written

Any unit of discourse whatsoever is bound to contain within it some complex and never determinable interplay of what we may characterise here as meanings and

forces. This must be as true of philosophical discourse as of any other . . . explicit argumentation and conclusion never constitute the whole message (or messages) of any text or discourse whether they be philosophical or of some other kind; and . . . there can in principle be no apodeictically conclusive definition of determinate frontiers between that in the overall message which is of philosophical relevance and that which is not.¹¹

This though leaves open the idea that we may even be able to do Jewish philosophy in those areas which admit of only one universal answer. For the very fact that this answer has been derived from classical Jewish texts and within a certain traditional mode of discourse may itself turn out to be of philosophical relevance. What is and is not philosophical may not be capable of being abstracted away from the mode of presentation of a certain type of philosophy, any more than the rationality of a practice can be abstracted away from the practice. Thus, the PoP approach to practice leaves an interesting track open for the Jewish philosopher in the realm of theory.

¹ The interesting question that arises out of Maimonides' analysis is whether or not he held that in virtue of its universal rationality, in principle every rational being could, and from a rational perspective should, take up this Jewish practice. In his writings on the days of the Messiah he notes only that all will be occupied with knowing God – not that all will practise as Jews. See Maimonides, *Mishneh Torah*, *Hilchot Melachim*, Chapter 12. Translated by Raymond Weiss as 'Laws of Kings and Their Wars' in Raymond L. Weiss and Charles Butterworth, *Ethical Writings of Maimonides* (New York: Dover Publications, 1975).

² Of course, our alternative PoP approach also cannot justify itself beyond its own boundaries. However, on the PoP approach we can understand why this should be the case and of course can avoid the problem of circularity. Neither of these can be achieved on PoT approaches.

³ See Menachem Kellner, 'Is Contemporary Jewish Philosophy Possible? - No', in Samuelson, *Studies*, pp. 17-28.

⁴ Ludwig Wittgenstein, *Philosophical Investigations*, trans., G. E. M. Anscombe (Oxford: Blackwell, 1953), I § 109.

⁵ Kenneth Seeskin, *Jewish Philosophy in a Secular Age* (New York: SUNY Press, 1990), p. 11.

⁶ Jonathan Sacks, *One People* (London, Littman Library of Jewish Civilisation, 1993), pp. 92-98. It is significant though that Sacks notes that Aggadic Pluralism extends to those areas that do not have direct legal consequences. Our argument has been that philosophical matters have this very characteristic.

⁷ John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), p. 134.

⁸ There are though debates concerning what does and does not constitute a halakhic issue and this is very much affected by one's philosophical stance. See Lawrence Kaplan, 'Daas Torah: A Modern Conception of Rabbinic Authority', in Moshe Sokol ed. *Rabbinic Authority and Personal Autonomy* (Northvale, N.J.: Aronson, 1992), pp. 1-60.

⁹ Thus, Soloveitchik might have had a point when he wrote that 'theoretical Halakhah, not the practical decision, the ideal creation, not the empirical one, represent the longing of halakhic man'. (HMN 23-24). Though we would say that theoretical philosophy rather than theoretical halakhah was the longing of the philosophical Jew.

¹⁰ Yeshayau Leibowitz, *Judaism, Human Values and The Jewish State*, trans. Eliezer Goldman (Cambridge, Mass.: Harvard University Press, 1992), pp. 7-8.

¹¹ Alan Montefiore, 'Philosophy in Different Cultural Contexts', in David Archard, ed., *Philosophy and Pluralism* (Cambridge: Cambridge University Press, 1996), pp. 7-17. Quotation from pp. 16-17.

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