HALAKHAH AS PSYCHOLOGY: EXPLICATING
THE LAWS OF MOURNING

Bereavement, grief and the socio-cultural elements of mourning have been perhaps the most enthusiastically studied psychological phenomena in relation to Halakhah and in understanding the general Jewish philosophical approach to death and dying. Several articles and at least five texts have addressed this topic—two of which are the subject of this review*—indicating, aside from omnivorous halakhic scholarship, one of the many adaptive ways in which religious man confronts the awesomeness of his inevitable non-being. Indeed, Rabbi Joseph B. Soloveitchik once remarked that Reb Hayyim of Brisk occupied himself with the intricacies of hilkhot tumat meit (the laws of ritual impurity imposed by contact with a corpse) as a means by which to conquer his fear of death and to incorporate this event within a halakhic world-view much the same as Tolstoi's The Death of Ivan Ilych, undertaken during Tolstoi's dying years, represents a literary genius' endeavor to transform death into terms essential to the latter's world-view.2

How does one understand Reb Hayyim's behavior? Was it a psychological defense mechanism—albeit particularized in a halakhic manifestation—utilized by Reb Hayyim's ego in coping with death? Or, was he utilizing Halakhah independently to supplant and perhaps eclipse the so-called psychological defense mechanisms for coping with death?


The tradition behind this line of questioning is, of course, whether it is appropriate to be 
\textit{doresh ta'am d'krah}; whether one may hypothesize explanations of halakhic variables in terms of 
naturalistic variables, for want of a better word. For example, if one maintains that the halakhot of \textit{Shabbat} are Divinely de-
nigned to promote social welfare and individual adjustment, etc., are these psychosocial variables therefore halakhic entities or 
are they always extra-halakhic; the only halakhic phenomena being the actual observance of \textit{hilkhhot Shabbat}? (note: I am not 
saying that such explanations \textit{exhaust} the purpose of any halakhic entity.) Similarly, if one posits that, say, \textit{hilkhhot aveilut} are de-
nigned to enable the mourner to grieve in a socially acceptable manner and to facilitate the expression of guilt, or that \textit{k'riah} 
provides for catharsis, does this then relegate halakhic status to the psychosocial variables of grief-work, catharsis and the working through of anger or guilt—admitting these to the world of 
halakhic reality? Or do such explanations merely suggest extra-halakhic notions which are analagous to what actually happens 
by observing \textit{hilkhrot aveilut}—the only halakhic entities being the observance of the ritual?

Obviously, those who maintain that such psychological interpretations reveal the halakhic status of the additional variables 
used in the interpretation, have difficulty making sense of the antipathy expressed by dissenters that such interpretations somehow malign or adulterate the supremacy of the halakhic approach to man. These dissenters view the many disparities between the halakhic view and the so-called “secular” psychological view of man—a model of man based on purely psychological notions which then took on dubious autonomy as an all-encompassing world-view—and point to the patent non-halakhic (or anti-halakhic) status of such variables and to their inherent ineligibility as halakhic descriptors. On the other hand, the advocates hold that such interpretations can expand the scope of our understanding of Halakhhah noting Halakhhah’s dynamic anticipation of the various scientific world-views. This seems consistent with the pan-halakhic sentiment \textit{histakel b'orayyah barah almah}.

Halakhhah, however, is not a passive recipient of natural reality but rather an active, \textit{a priori} set of behavioral categories which
are independent. That is, one does not have to conceive of Ha-
lakhah only as a ritual-system imposed upon extant psycho-socio-
cultural reality by some law-giver desirous of making such natu-
ral inclinations transcendent. For, on the contrary, it may be
more appropriate to conceive of Halakhah as reality—with our
psycho-socio-cultural systems representing behavior that either
accords to or conflicts with reality. In this latter sense, it is quite
tenable to entertain the following question: “What if Halakhah
required that people laugh during periods of bereavement. Would
that Halakhah not be in variance with ‘normal’ grief behavior?”
And we can ask this hypothetical question—and even answer it
hypothetically in the negative—because Halakhah does claim
that, naturalistic inclinations notwithstanding, halakhic behavior
is normal behavior. Halakhah is neither statistically or empirically
relative. Thus, no matter how many American Psychiatric
Association conventions decide to rescind homosexuality’s patho-
logical or deviant status, Halakhah must continue to understand
homosexuality as to‘evah, an abomination and perversion.

The Rambam declares that one who mourns more (longer or
with excessive intensity) than required by Halakhah is a fool and
one who mourns with less awareness and feeling during the time
allotted for mourning by Halakhah is inappropriately self-disci-
plined.7 Halakhah, then, establishes the definition of pathology
with regard to the extent of the grief reaction. One is joyous on
festive occasions because one is enjoined ivdu et Ha-shem
b’simkah;8 one is anxious during sin because Solomon said ash-
rei adam m’fahed tamid;9 one mourns one’s loss because Aaron
said v’akhalti hatat ha-yom, ha-yitav b’einei Ha-shem,10 etc. As
Rabbi Feldman notes, Xenophon, when informed of his son’s
death, may continue to offer sacrifices to his gods if that is his
prevalent psychological inclination at that moment; yet the Is-
raelite High Priest is halakhically forbidden to partake of sacrif-
cial meat during his mourning.11

Does this imply that halakhic man has a radically different
psychology than his non-Jewish counterpart? Yes and no. To
the degree that all men are fashioned in the Divine image, it is
ultimately the halakhic blue-print which underwrites all human
psychology. In this sense, all true psychology is Halakhah.12 One
sees the same sort of neuroses, psychoses or abnormal grief reactions in a Jew or a non-Jew; many halakhically observant Jews have a harder time coping with grief than do Jews or non-Jews; both Jew and non-Jew receive succor from depression from the same sort of psychotherapy or psychoactive medication.13

On the other hand, for those who are covenantally bound to the Torah, there are unique levels of psychological status required. And it is here that one accepts Halakhah as psychology. For a simple example, both the mystic and his student have similar psychic equipment. Yet the mystic has transmogrified his needs, desires, understandings, methods of self-reinforcement, instinctual goals or what have you into forms not readily recognized by modern psychology. He is not therefore abnormal. Also, though both the mystic and his student are endowed with volitional capacities, there will be quantum differences in the scope and meaning of free will between the two individuals because of their different psychological levels.14 Similarly, while the basic psychic equipment of all humans is probably alike, differences occur precisely along those lines where Halakhah seeks to modify, sublimate, elevate, transcend or eliminate basic psychic endowments. I think this is expressed in the talmudic opinion that the proper halakhic attitude toward the object of sin is not necessarily to contrive an intrinsic disgust for the object as such but rather to cultivate a unique orientation or preparedness to follow the D’var Elokim.15 Generally, upon observing an individual refraining from eating non-kosher, we might say, “He is naturally disgusted by non-kosher.” Or, “He has taught himself to hate non-kosher.” All these affective references, however, are gratuitous from the standpoint of this understanding of mitsvah observance. Here, the unique psychological attitude required is the willingness to limit one’s natural appetative dispositions. In other cases, an affective response is a specific requirement of the mitsvah, yet the extent of this response will be regulated by Halakhah. Still other mitsvot are impressive in that their purpose, in addition to fostering the primary psychological attitude of willingness to sacrifice for the D’var Elokim, is to reinforce some secondary psychological state of mind; e.g., the mitsvah of hokhahah (social and interpersonal adjustment), the issur to not break the
Halakhah as Psychology: Explicating the Laws of Mourning

bones of the pascal lamb (the experience of royalty), and hilkhot aveilut.¹⁶

The different interpretations of the laws of mourning are dramatically reflected in Dr. Linzer's compendium and Rabbi Feldman's study. Essentially, the issue is whether one mourns and grieves at death because these are natural psychological reactions to (and the rituals, defenses against) death and loss or whether man is so designed that he must grieve or be made to grieve at death because of the halakhic status of death—regardless of whether death per se "bothers" individuals! And though neither author sets out to argue these positions as such, their separate works are each representative of two major trends. Rabbi Feldman's thesis represents a "new" trend against the backdrop of essays collected by Linzer, which represent the "old" trend.

Linzer's text is the result of collaboration between Yeshiva University and the Jewish Funeral Directors of America. It is actually the proceedings of the October 1974 educational conference, "The Consequences of Bereavement and Grief," and their 1975 conference, "The Impact of Bereavement and Grief on the Family." Accordingly, the reader who expects to see in this collection an assortment of some of the better known works—psychiatric or halakhic-psychological—on grief and bereavement will be disappointed but will understand that Dr. Linzer was probably committed to recording the conference proceedings.¹⁷ Though the reader gets no sample of Linzer's own thinking on grief and bereavement other than a brief summary, he has serviced us by providing neat categorizations of the material:

"General Aspects" dealing with the broad psychiatric and social considerations in death and loss; "The Widow," "The Widower" (with some overlap between these two), "The Children," "The Parents," "The Role of the Nurse," "The Role of the Social Worker," and "The Role of the Funeral Director."

Within these chapters, one will find a useful primer for pastoral counseling. Some chapters are so brief and pointless as to be otiose. For example, Sister Bernardine Zecca's essay on the coping tasks of the widower, both of Edgar K. Jackson's essays—surprisingly; Rabbis Applebaum and Denberg give all too ele-
mentary accounts of the psychological appropriateness of the Jewish mourning ritual, Burton Hirsch's comments on the role of the funeral director are nugatory compared to the other four essays in that section. There are several excellent essays dealing with the basic psychiatric and counseling information one would expect from such a text—notably, R. Bjork's delineation of the phases of psychological readiness to accept death, his descriptions of the trauma of loss; A. Weiner's discussion of the symptomatology of grief; Martha Wolfenstein, Earl Grollman and G. Kliman on children's reactions to death; I. Levitz's essay on parental reactions to children's death is relevant for those working with parents of Tay-Sachs children. Especially noteworthy is Phyllis Silverman's analysis of the differences in bereavement of widows, children, siblings, funeral rituals and varying expressions of grief with frequent application to the Israeli community and its experiences with four major wars. There is nothing essentially Jewish about her remarks, but they are lucid and indicate that psychological theory cannot be merely transplanted into all cultures without modification to the specific needs and characteristics of the recipient culture.

Of course, the trend of all of these essays is based on acceptance of the manifestations of grief and bereavement as symptoms of loss and of the cultural systems of rituals surrounding mourning as defense mechanisms designed to ameliorate the trauma of death. Thus, in the section called "The Spiritual Component," Rabbi Menachem M. Brayer presents an exhaustive analysis of near-Eastern and Jewish mourning customs which also seems to accept the notion that rituals of mourning have in them the element of palliative to trauma. Following a brief review of various theories of grief and melancholia, Brayer notes three theories alternatively utilized to explain the development of the rituals of mourning:

1. The Appeasement Theory (the mourner appeases the spirit of the deceased in order to avert evil consequences);
2. The Disguise Theory (the mourner disfigures or disguises himself so as to escape the influence of the spirit of the deceased);
3. The so-called Defense Theory (the mourner's physical sufferings provide relief from mental and emotional stress).
Brayer considers these unsatisfactory explanations of the halakhic system of mourning. To the Jew, the laws of mourning represent "the response of the man of faith to his God in this time of crisis."

Brayer's psychological analysis of the latent psychotherapeutic benefits of hilkhon aveilut specifically focuses on ways in which these laws facilitate the bereavement and grief processes—in short, how they serve as palliatives to trauma and incorporate, even if they did not evolve out of, man's ambivalent emotions during loss. Brayer means to say, of course, that though, for example, the act of nihum aveilim is satisfactorily understood as mitigating the pain of separation from one's loved ones or that the s'udat havraah is a device through which the community overrides the mourner's subconscious wish to die or self-punish, these psychological explanations do not exhaust the ultimate purpose of hilkhon aveilut. He states: "While the Gentile was motivated to mourn by a need either for self-protection or for self-comfort from mental agony, the Jew was motivated by his desire to reach out to and reaffirm his ties with God in this moment of tragedy" (p. 61). It is not clear, however, that Halakhah could demand the reaffirmation of religious ties during mourning if it did not first address those emotional crises which could otherwise block religious strivings. In this regard, Halakhah does not require that one use one's prayer as a means by which to cope with crisis until certain propadeutics have been completed; i.e., that one's state of mind is prepared for prayer, that one's body is clean, that one is relatively m'yushav b'dat. Similarly, I think it is to drive an unnecessary wedge between psychological needs and the apparent "fit" Halakhah has in relation to such needs to claim that the desire to mourn is primarily a desire to reach God in times of crisis. Rather, having first been assisted through grief via hilkhon aveilut, the mourner is then prepared to find existential meaning in loss and to exercise the strength of his faith through these halakhon.

Indeed, Brayer seems to be bothered—as is Feldman and many others—by the similarities between various cultural expressions of grief and Halakhah and then, in turn, by the suggestion that both Jewish and non-Jewish rituals of mourning have common roots in the instinctual needs of man to fend off fear and anxiety.
surrounding death. In fact, it is quite plausible that all socio-cultural expressions of mourning go back to primordial halakhic norms—which molded man’s psychology to the halakhic dynamic—much the same as the Theory of Independence postulates that all the pre-Mosaic law codes were wittingly or unwittingly based on the ancient Noahide revelation, with apparent differences reflecting only varying cultural needs, stresses or misconceptions. This is an explanation quite anthropologically as well as halakhically tenable. In this light, all the theories about why man mourns and why man mourns the way he does have their place as explanations of the various deviations which occurred in society’s understandings of death and the purpose of grief. It is therefore also conceivable that halakhic man—despite the original existential import death and mourning still retain in his world-view—undergoes similar flux inability to deal with death and loss psychologically/halakhically.

Rabbi Maurice Lamm’s essay also seeks to underline the psychological palliative provided by hilkhon aveilut while stressing, like Brayer, that the essential function of these laws and rituals is reaffirming ties with God and negating, while absorbing, the mourner’s perception of God as powerless. Thus, while Rabbi Lamm also accepts the spiritual function of hilkhon aveilut, one clearly senses the trend that these laws and customs allow for a working-through process of the crises of bereavement—psychological or spiritual—which accepts both man’s natural psychological reactions to loss as well as his spiritual reactions. To the degree that reaffirming one’s faith requires tremendous strength at a time when the sense of loss is so pervasive—and to the degree that Halakhah recognizes these factors and so enjoins man to engage in a psychological corrective so as to facilitate spiritual growth—it seems clear that hilkhon aveilut are examples of Halakhah as psychology.

Rabbi Feldman’s text emphasizes a different trend in approaches to hilkhon aveilut (and tumat met): for him, these laws are less cathartic or therapeutic as they are educational. While Feldman in no way intends to belittle the psychological or sociological insights into Jewish rituals of mourning, he finds these grossly insufficient in interpreting the fullest import of the rab-
Halakhah as Psychology: Explicating the Laws of Mourning

binic-philosophic view of death. Indeed, precisely for this reason does Rabbi Feldman address at least half of his study to an understanding of the rabbinic conception of tuma, translated as defilement, as a preliminary to understanding the halakhic concept of death and, in turn, the significance of mourning.

Feldman's conclusion is that tuma connotes the absence of Divine kedushah (sanctity). For, indeed, wherever Halakhah posits the status of tamé, one finds the nexus between life, productivity, activity and death, stagnation, passivity. Thus, the menstruant, the leper,* the corpse of a Jew, the person who contacts the remains of the para aduma and the sa'ir l'azzazel, and the ba'al keri are all "defiled" in that they stand in such a status where kedushah—which takes on here the connotation of Eros, the life-force—is absent. Mourning, then, is an educational system whereby the bereaved is reminded of the absence of kedushah in death, as if the physical loss were not enough. Having known and experienced this absence of sanctity, the mourner is commanded by Halakhah to crystallize this awareness into concrete observance. Only Shabbat can supersede mourning because it is so suffused with kedushah as to somehow fill the mourner's vacuum and to enable him to give testimony to Shabbat.

With regard to mourning and bereavement, Feldman's thesis is that Israel's rigorous defilement legislation is less a manifestation of fear of the dead than it is an expression of the fact that death estranges people from God. I think it must be explained that Feldman is not here creating a Christian theological sacred/profane ontology. Rather, his view accepts that Halakhah "religionizes" all aspects of life and that what is sacred about even defilement is precisely the refraining from incorporating defiled objects or persons into the sphere of kedushah. Thus, a halakhic dialectic is preserved: death is antithesis while hilkhot aveilut

--

* (Here, Rabbi Feldman's case wants for more substantial clarification, as having suggested that tuma is more "defilement" and "lack of kedushah" than it is a demarcation of health hazard [a la Finkelstein], the metsorah represents a less obvious situtation of "defilement." This, Rabbi Feldman notes, is also a case of defilement as the leper is considered as dead by the Talmud. If this is so, then Rabbi Feldman needs to explain why a blind person or a childless individual, whom the Talmud also consider as dead, are not tamé.)
TRADITION: A Journal of Orthodox Thought

represent phases of synthesis towards *kedushah*, thesis. There is retreat during *anninut* followed by forward movement during *aveilut*.

There may be a disagreeable implication in Rabbi Feldman’s thesis that the estranged *onan* is somehow, temporarily, suspended from the halakhic world. While one must admit that a great number of *mitsvot* are suspended during *anninut*, which tends to support Feldman’s thesis, it is not as if the bereaved individual exits from the *berit*! The very fact that the *onan* must refrain from fulfilling certain *mitsvot* is precisely what points to the continuation of his unique halakhic dialectic vis-a-vis his new status as an *onan*.

I would illustrate this point by noting that even the non-Jew partakes of a halakhic relationship with God; e.g., the non-Jew who participates in the Sabbath experience is punished by death, which essentially means that the non-Jew’s halakhic dynamic in this situation is passivity and abstinence. In exactly the same sense, the *onan* is just as much as ever bound to the halakhic world, though the dynamic of his halakhic obligation changes from activity to a conspicuous passivity. God does not withdraw from the presence of defilement and death; *man* simply cannot contend with both *kedushah* and *tuma* simultaneously. Thus, it is quite conceivable that death and *tuma* have significance as nexi between life and inactivity and between the sacred and the absence of sanctity, as Rabbi Feldman maintains, but not that they represent any suspension of the halakhic momentum in the mourner’s life.

Rabbi Feldman’s thesis, then, is unique in that it focuses not on the defensive needs which give rise to or are served by *hilkhot aveilut* but rather on the *in vivo* sensitization these customs perform for the mourner. They are educational tools by which Halakhah imposes its understanding of man’s ability to tolerate death and loss. One can speculate whether Rabbi Feldman’s thesis inevitably leads to the conclusion that, for some, the trauma of death is that one can no longer experience *kedushah*? *Avot* 4:29 tells us that man does not go willingly to his grave. Yet we are left to speculate on the cause of this reluctance. Indeed, some unfortunate persons reach circumstances where they do very
much desire the “tranquility” of sheol. Is the reconciliation of
this paradox that we only fear the loss of kedushah upon death—
the thought of having fulfilled one’s halakhic requirements being
quieting to some; the thought of ultimate judgment on their trans-
gressions being terrifying to others? Clearly, such a view is naive,
for it ignores the meaning and strength of human relationships
and love of one being for another. It is within the domain of
these latter elements that much of the psychological trauma of
death and loss occur; the loss of the unique earthly (halakhic)
relationship with God causes its own sort of trauma.

Halakhah addresses both of these elements just as Halakhah
has addressed both man’s psychical, spiritual and mundane needs.
To the degree that hilkhut aveilut anticipate psychological in-
sights, one is dealing with psychology as Halakhah; to the degree
that these halakhot point to a unique status attained by the onan,
one is dealing with Halakhah as psychology.

NOTES

1. J. Spiro, A Time to Mourn: Judaism and the Psychology of Bereavement,
New York: Bloch, 1966; J. Riemer, Jewish Reflections on Death, New York:
Schocken, 1976; M. Lamm, The Jewish Way in Death and Dying, New York:
Jonathan David, 1969. The recent Yesodei S’makhhot is merely a compendium
of the laws of mourning in English and is not in this class of scholarship.

2. Ish Ha-halakhah (Talpiot, 1944(1) in P. Peli (Ed.), B’sod Ha-yahad V’ha-
yihud, Jerusalem, Orot, 1976, p. 39-188, p. 120, note #79.

3. See the discussion in Sanhedrin 21a-b. Rambam notes that all the mitsvot
are designed to reinforce social well-being (Moreh 3:27 on Deuteronomy 6:24;
Perush Ha-mishnayot: Peah 1:1; c.f. also B’reishit Rabba 44:1).

4. I discuss this issue in greater length in my article “The Psychotherapeutic
Mode and the Ish Ha-halakhah,” to be published. The notion of “secular
psychology” is in many ways a straw-dog and drives an unwholesome wedge be-
tween the ability to incorporate this science into a halakhic framework and the
readiness of truly apathetic or antipathetic psychologists to cooperate.

5. See, for example, A. Amsel’s Judaism and Psychology (New York: Feldheim,
1969) and Rational Irrational Man (New York: Feldheim, 1975) which are re-
plete with this accusation. I deal at greater length with psychology’s ability to
produce a religious language system in “Religious Anxiety and the Experience
of God,” Judaism, 1977, 26 (2).

6. B’reishit Rabba 1:2, see also Avot 1:2; Psakkim 68b; see also the Rambam’s
discussion of “Ein lo le-Hakadosh-barukh-hoo b’olamo elah arbah amot shel
halakhah”— (Rambam, Sefer Ha-maor: Hakdamat Ha-mishnah, Rishonim edition,
1940, p. 80.)

8. Psalms 100:2.

9. Mishlei 28:14 and see *Berakhot* 60a.

10. Leviticus 10:19; also based on Genesis 50:10 (*Yerushalmi Ketubot* 1:1 and Rambam, *Yad: Hilkhوت Aveilut* 1:1).

11. P. 166, note no. 10.

12. See *Eruvin* 100b—"Had the Torah not been given, we would learn not to rob from the ant; not to commit adultery from the dove, etc."—which points to the independence of psychology.

13. See *Sifra* on Leviticus 26:44 (*Yalkut B'hukotei* 26:91)—"If Israel would not keep the Torah, they would be (in all aspects?) like non-Jews."

14. *Sukkot* 52a-b; Psalms 37-32-33—one's yetser is commensurate with one's needs.


16. Hinukh no. 16 and no. 239.


19. This is similar to Rambam's explanation of the development of idol worship.

20. *Nedarim* 64b.

20a. Rabbi Feldman writes: "When death enters, man's relationship with God is temporarily suspended" (p. 82-83), "at the depth of mourning, when the dead is yet unburied . . .—that is, when the bereaved is an onen—God, as it were, withdraws himself" (p. 83) and again, "It is important to note, incidentally, that the concept of death as affecting the divine image in man is a key concept in the laws of mourning" (p. 168, note 29).

21. See Rambam's discussion in *Shemoneh Perakim* no. 7 on "ein ha-n'vuah shoreh to mitoh atsilut . . . hareini nah k'vodekhah . . ." see also *Moreh* 3: end of chap. 10.

22. Rabbi Soloveitchik points out that the "problem" of anninut is man's reaction—not God's withdrawal: man becomes too despairing, too bewildered, too self-ridiculing to be allowed to perform mitzvot and to claim that he is a man of faith. Thus, *hilkhوت aveilut* come to objectify this phenomenon called grief. But, of course, here too one cannot make the mistaken assumption that Halakhah, or God, somehow withdraws from man in his agony—the very thought is halakhically inconceivable. Such an assumption would possibly be valid if there was no Halakhah for dealing with death; i.e., showing that even Halakhah withdraws from death. But such is not the case. (cf. *Shiurei Harav*, "A Eulogy for the Talner Rebbe," New York, 1974.)


184