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"What" Hath Brisk Wrought: The Brisker Derekh Revisited

The "Brisker *derekh*," the mode of talmudic analysis developed by R. Ḥayyim Soloveitchik, has been the dominant method of talmudic study in the yeshivah world for more than a century. From its inception in turn-of-the-(previous)-century Volozhin and Brisk, to its widespread acceptance in the Lithuanian yeshivah world of the early twentieth century and the contemporary Torah world of Israel and America, it has remained the predominant approach to the analytical study of *gemara* in our times.

As with any system of thought that has held the field for so long, an examination of its current practice and its future prospects—both of the inherent opportunities and the possible pitfalls that may lurk within it—is in order after over a hundred years of development and practice. Such an effort is all the more important, as most of the practitioners of the Brisker method are disinclined to reflect upon their practice, preferring the actual application of the conceptual approach to the *sugya* (talmudic text) to a methodological examination of its logical and metaphysical axioms. Thus, many of the most able practitioners of the Brisker *derekh* have neither lectured nor published on the subject, so that our endeavor to do so is not uncalled for.

The attempt to engage in plotting a future course of development for the Brisker approach must begin with an analysis of its basic features and methods, so that we can address the future on the basis of our understanding of the past and present. We must therefore take our view of the Brisker achievement as the starting point for the discussion.

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The net result of R. Ḥayyim's approach is the creation of "thought constructs," which are far removed from the practical concerns of the *posek* seeking the practical implications and application of a particular *sugya,* thereby shifting the emphasis of the *beit midrash* from a practical halakhic orientation to an ideal theoretical one. The philosophical implications of this change in emphasis are indeed significant and were therefore emphasized by the Rav in his writings as the metaphysical ideal of "halakhic man" and as the essence of the Brisker revolution.[1] Our discussion, however, will not focus upon this aspect of the conceptual approach, but upon the mechanism of the talmudic method itself and the transformation that the Brisker approach effected in it.

In this regard, the basic change wrought by R. Ḥayyim was the refocusing of the learning process upon the hard halakhic data (of practically oriented rulings) that emerge from a *sugya,* instead of upon the mechanisms by which they were derived. To state the point in more technical terms, the Brisker approach shifted the learner's interest from the talmudic discussion itself *(shakla ve-tarya)* to the practical implications thereof *(nafka minah*'s*),* and from the perceived intent of the Torah *(ta'ama di-kera)* to the *sugya's* conclusion. The raw material for the conceptualization is neither the theoretical discussion nor the twists and turns of the *sugya* as it winds its way downstream, but rather the halakhic dicta which emerge from it. The generalizations that are thus derived are not rooted in the intentions of the participants as implied by the text or hinted at in the course of the talmudic give-and-take, but result instead from an analysis of their halakhic positions.[2]

This is the reason that Rambam occupies center stage in the Brisker orbit, for it is he who distilled the talmudic conclusions into pure halakhic form, systematically omitting any interpretation or mention of the accompanying discussion, presenting us only with the halakhic hard data without encumbering it with any explanations. Paradoxically, the very same feature of *Mishneh Torah* that for centuries was perceived as a major liability (if not worse)—namely, its apodictic, codificatory style— is precisely that which attracts the Briskers. The methodological transition from probing the inner workings of a *sugya* to assessing its final conclusion is what causes a book of applied halakhah—such, after all, is the essential character of the *Yad*—to become the major text of Talmud study. Suddenly, the work is perceived to be an invaluable asset to the endeavor of the *beit midrash,* rather than as a work of practical halakhah with occasional bearing on the purely intellectual or theoretical pursuit. As long as the focus of the *beit midrash* was upon the theoretical reason-

ing and structure of the argumentation of the talmudic discussion, a gap existed between the commentaries upon the text *ad locum* and a halakhic work such as *Mishneh Torah* that does not examine the various stages leading up to the final conclusion. Thus, *beit midrash* scholars addressed issues of textual analysis, focusing their attention upon the text itself and its previous commentaries, while the *ba'alei halakhah,* who were interested in *pesak,* utilized the corpus of *sifrei halakhah.* Although talmudic commentators indeed took note of instances when Rambam's *pesak* diverged radically from the mainstream because of an obviously different reading of the *gemara*, no systematic attempt was made to relate Rambam's rulings to *beit midrash* learning. The Brisker approach changed all of this precisely because of its focus upon the *nafka minah,* for which purposes Rambam was perfectly suited to their needs. Areas of disagreement between Rambam and Ravad (or other *rishonim*) were crucial *per se*–not simply because they implied divergent readings and interpretations of the talmudic text, but because they were the raw material which indicated different conceptual approaches. Simply put, Brisk's essential concern was not with how Rambam (or anyone else for that matter) interpreted the *gemara* but rather with what was wrought from it.[3]

An interesting analogy to these developments in the field of learning is the scientific revolution of the early seventeenth century. Here, as there, a shift was effected from the "why" to the "what," and from the final cause to the efficient cause. No longer is it the task of the learner to ascertain why a certain halakhah is as it is, any more than it is the role of the scientist to determine why nature behaves as it does.[4] Rather, in both cases, the goal of the analysis of the concrete phenomenon at hand is to understand what it is and how it works.[5]

An explicit formulation of this principle, implicit in so much of the Brisker canon, can be found in one of R. Yiẓḥak Ze'ev (Reb Velvel) Soloveitchik's published letters:

הנה ראיתי להדר"ג שתפס זה ליסוד **למה** מנחות שלא קדשו בכלי אינן קדושין רק קדושת דמים ובהמה קדושה מיד בקדושת הגוף **משום** דבהמה ראויה לקרבן מיד . . . ואני בעניותי לא נתישבה דעתי בטעם זה, דלבונה הבאה בפ"ע מאי איכא למימר . . . **ואין צורך לשום סברות וטעמים ע"ז כיון שכך הוא מעיקרי הדינים**.

I have noticed that his eminence adopts as axiomatic that the reason *why menaḥot* that have not been sanctified in a holy vessel have only monetary *kedushah* (*kedushat damim*), while animals are immediately sancti-

fied with intrinsic *kedushah* (*kedushat ha-guf*) is *due to the fact that* animals are ready to be offered immediately . . . yet my poor reasoning cannot accept such a rationale, for what is to be said regarding *levonah* that is offered independently . . . *and there is no need for any reasons or speculations regarding this, since such are the halakhot.*[6]

Furthermore, as in the scientific world, the transition from "why" to "what" achieved breakthrough results for talmudic learning; focusing upon the "what" enabled the establishment of a disciplined method, subject to verification and criticism. As long as learning was based upon a series of intuitions and hypotheses regarding elements of the *sugya* which do not express themselves in practice—reasonable though these intuitions and hypotheses may be—there was no mechanism of verification, since no practical ramifications which could serve as verification resulted from these surmises *(sevarot).* As in Aristotelian science, the inability to create an objective yardstick by which to measure results meant that, while argument could counter argument and suggestion could counter suggestion, no decisive conclusions could be reached that would enable discarding some claims and accepting others. With the introduction of the Brisker approach, practical implications *(nafka minah*'s*)* became the standard by which opinions *(sevarot)* could be examined, for positions were now held accountable for their halakhic manifestations in actual practice, whether in the *sugya* or implied in the conceptual analysis.

Brisker learning thus created a systematic approach that provided a consistent method and a mode of analysis that could be transmitted to others—due to its systematic nature and methodical application—thereby enabling the training of generations of students. Nevertheless, the loss of the "why" is the price paid by the Briskers for restricting their focus exclusively to the "what." Identification and formulation of two distinct concepts lurking beneath a given halakhic phenomenon was deemed sufficient for the task at hand, even if unaccompanied by an explanation of why such an approach was reasonable or should be preferred over others. In one common construct, an inquiry into the issue in question attempts to determine whether the law in a given case is linked to laws in other halakhic areas or whether it reflects the operating of an independent concept, often considering the inquiry to be satisfactorily concluded by proclaiming that the legal phenomenon under discussion reflects a "*ḥallot shem* (legal status or category) of X." The categorization is taken as self-explanatory, and the question of why there should be such a category is dismissed without further ado. The learning act is thus limited to

the act of classification and definition, consciously ruling out any attempt to fathom why the halakhah should be as it is.

Though our discussion has revolved around issues of talmudic methodology *per se*, focusing upon the technique developed by the Briskers and their *talmidim*, it is important to view it from a broader meta-halakhic perspective by attempting to understand the philosophical underpinnings beneath the system.

Just as the transition from medieval to modern science was accompanied by a corresponding change in the metaphysical outlook, so too is there a metaphysic associated with the Brisker method. Contrary to what many superficial critics of the Briskers have presumed, and despite blissful ignorance of the meta-halakhic foundations supporting their learning activity on the part of many of its most avid practitioners, there is a solid metaphysical foundation to the Brisker enterprise. The focus upon the "what" simply reflects the fact that man's primary goal in life is perceived as following God's dictates rather than understanding them. Just as the soldier following his commanding officer's orders or the servant obeying his master must understand and fulfill the task at hand rather than speculate on the reason for the order, so too the role of man is not to fathom why God imposed an imperative upon him but to perform what is required of him. *Middat ha-yir'ah* (the attribute of Awe)—in the Brisker perspective—engages man's obedience and demands that he accept and follow God's imperatives. Taking its cue from the verse that distills God's expectation of *Am Yisrael* into a concise formulation of obedience—"now, Israel, what does the Lord your God demand of you, only to fear the Lord your God and to observe His *miẓvot . . .* "—the relationship between the Almighty and man implies man's subordination to his Master. The point is forcefully made by the *gemara (Rosh ha-Shanah* 16a) which recoils in astonishment at the question "*why* do we blow shofar?!" The self-evident reason is the simple fact that we were so commanded.[7] No more and no less.

Moreover, not only is this presented as the proper relationship between Creator and created, but it is also regarded as the more productive one. For as Iyyov (Job) was notified long ago, God's will is beyond man's comprehension. It is therefore more proper and more enlightening to focus upon our challenge and mission of fulfilling His directive, rather than attempting to squint into the inscrutable.

In truth, the metaphysic of awe is the controlling element behind the ideal of *devekut*[8] developed by R. Ḥayyim of Volozhin in the fourth chapter of *Nefesh ha-Ḥayyim* and the key to the spiritual world of the ideal

halakhic personality that the Rav presented in *Halakhic Man*, the two major philosophical works written in defense of Lithuanian "Torah lishmah." It is no accident that the Brisker approach to practical halakhah, the psychological element notwithstanding, reflects the same preoccupation with compliance that the theoretical element addresses—the difference simply being that such an approach is not necessarily as advantageous and fortuitous in dealing with the pressures of applied halakhah as it is in erecting the ivory tower of ideas that *Halakhic Man* celebrates.

Thus, there is a solid philosophic grounding for R. Velvel's insistence that he not be drawn into the sphere of divine intent but should instead limit himself to the phenomenon at hand. Indeed, anyone comparing the rigor of R. Velvel's work with that of the *Sefer ha-Ḥinukh*, for example, cannot but be reminded of Robert Frost's remark that free verse is akin to playing tennis without a net.

Nevertheless, this same characteristic of the Brisker approach that is the source of its strength is also its greatest weakness.

The Brisker narrowing of focus shuts out a great deal of creative opportunity and productive speculation. This claim is not meant to imply that Brisk should deal with a host of other issues that may arise in a *sugya* from a linguistic, practical, historical, geographic or various other such perspectives—a practice that is extremely characteristic of the *rishonim*,[9] as anybody who has struggled through their discussions regarding the composition of ink, the location of Akko or the attempt to map out the route which *Benei Yisrael* took through *Yam Suf* is well aware[10]—but rather that neglect of the "why" hinders the conceptual analysis itself, confining it to a restricted formal approach that suffers from its exclusion of any attempt to understand the underlying roots of the halakhah at hand.

The limitations thus created are of a dual nature. First, lack of consideration of the reasonableness of an idea, though formally viable, can lead us to accept untenable, unreasonable, or, at times, even absurd theories. The technical efficiency of a given inquiry (*ḥakirah*) and its ability to produce verifiable results (in the form of practical implications, *nafka minah*'s) can mask the question as to whether and why such a concept should make sense.[11]

An example from a well-known piece of R. Velvel regarding the prohibition of bathing on *Tish'ah be-Av (issur reḥiẓah)* can serve to illustrate this point. Because *Tish'ah be-Av* is both a fast day and a day of mourning, the prohibition of bathing can be understood as a bodily abstention that is deduced from the dietary injunction, akin to the pro-

hibition of bathing on Yom Kippur; alternately, it can be construed as a prohibition that reflects the mourning element inherent in *Tish'ah be-Av* as a day of mourning. R. Velvel presents these two alternatives and, in his usual clear and lucid style, demonstrates that both facets participate in the prohibition of bathing on *Tish'ah be-Av.* Furthermore, he explains, each element can be isolated and identified. On the face of it, it is a classic example of a Brisker conceptual analysis that exposes and isolates the individual elements of a composite halakhic ruling.

Nevertheless, if we take into account the "why" and do not restrict ourselves to the "what", an acute problem lurks beneath the surface of this analysis. Actually, there are three halakhic paradigms that must be considered when dealing with this issue: (1) the Yom Kippur mode (2) the *avelut* (mourning) mode and (3) the *ta'anit zibbur* (communal fast day) mode. Each of them creates a bathing prohibition, yet there are differences in their application. On Yom Kippur there is an absolute ban that includes even the dipping of one's finger in cold water. In contrast, the laws of mourning forbid bathing in cold water only if the mourner bathes his entire body. The prohibition of bathing in a *ta'anit zibbur,* though, is a function of pleasure and is applicable only when bathing with hot water.[12] Thus, there are three possible alternatives with which to associate the halakhic position regarding *Tish'ah be-Av.* The element of mourning regarding *Tish'ah be-Av* is already explicit in the *gemara* and therefore must be factored into the equation. R. Velvel—zeroing in on the halakhic expression—points out that it is prohibited to dip a finger in water on *Tish'ah be-Av,* just as it is on Yom Kippur and therefore concludes that "*Tish'ah be-Av* is unlike other fast days in which only bathing of the entire body is prohibited; rather it is like Yom Kippur in that even a single finger is prohibited." True to his method, he does not inquire why *Tish'ah be-Av* should be analogous to Yom Kippur but simply identifies a shared symptom as proof of a common denominator and rests his case.

However, if we do ask ourselves the "why" question, the Yom Kippur–*Tish'ah be-Av* analogy will become problematic. Since R. Velvel assumes that the laws of a fast day do not prohibit the dipping of a finger in water,[13] it cannot be claimed that the fast day in and of itself mandates abstaining from all contact with water; therefore, an additional element that establishes an absolute prohibition, as in the case of Yom Kippur, must be posited that is able to include *Tish'ah be-Av* within it. At this point, though, Yom Kippur and *Tish'ah be-Av* would seem to part ways. Regarding Yom Kippur, an obvious idea suggests itself as the rationale

for the absolute nature of the bathing prohibition—the concept of absolute rest (*shevitah*) which expresses itself in abstention from all bodily needs as well as from work. Thus, even though the concept of fasting alone does not generate an absolute prohibition against bathing, the concept of rest does. Naturally, this reason does not apply to *Tish'ah be-Av*, so it would seem that we must return to the original alternative of mourning and fasting (associated with *teshuvah*) and reinterpret the facts accordingly. Simply put, if attention is paid only to the factual information, then the claim can be made that *Tish'ah be-Av* is similar to Yom Kippur and different from the communal fast day; however, once we attempt to gauge the reasonableness of this claim—based on the perceived nature and character of *Tish'ah be-Av*—then we must reassess the issue and refuse to separate *Tish'ah be-Av* from the category of the communal fast day. For while the upshot of R. Velvel's interpretation is that there is a separate concept of bodily abstention (*innui*), independent of rest *(shevitah)* or fasting (*ta'anit zibbur),* which allows *Tish'ah be-Av* to be grouped with Yom Kippur, this contention seems eminently unreasonable, although formally possible. Unless an additional reason, other than the three outlined above, can be produced to explain the prohibition of bathing on *Tish'ah be-Av* that will satisfy our condition of a reasonable "why," we must reject the interpretation and reinterpret *Tish'ah be-Av* according to the categories of mourning and *teshuvah* that are inherent within it.

Moreover, even if limiting the scope of inquiry does not conceal a problem with the logic of the halakhic claims, it nevertheless confines the inquiry to the sphere of the "what," preventing it from rising above the expression of the phenomenon at hand. At times, the issue is one of terminology; even though the duality exposed by the analysis is real and reflects utterly different approaches to the problem at hand, the terminology is wholly self-referential, an analytical technical language rather than a synthetic non-technical one. The following passage is a good example of this style:

> והיינו דאם איכא בו חלות שם פיגול, נמצא דשריפתו הויא מחמת חלות
> שם פיגול. משא"כ אם לא חל בו שם פיגול א"כ נשאר דשריפתו הויא רק
> מדין פסולי המוקדשין, אבל לא מחמת חלות שם פיגול.

> . . . if it has the *ḥallot shem* (legal status) of *piggul*, then its burning is due to the *ḥallot shem* of *piggul*; however, if it does not have the *ḥallot shem* of *piggul* then its burning is because of the rule of disqualified offerings but not because of the *ḥallot shem* of *piggul*.[14]

But this limitation is not only a question of style; it is also often one of substance. The inquiry limits itself to the realm of the halakhic expression and makes no attempt to go any further. Thus, proponents of the Brisker approach are well acquainted with R. Ḥayyim's theory that the status of *terefah* (an animal the eating of which is prohibited due to certain physical defects in it) is a deficiency in the *sheḥitah* process and not an independent prohibition.[15] They are also well aware of the practical implications that support his theory. Yet few stop to ask why this should be so, wondering what indeed is the logic behind such a mechanism. Similarly, one of the most striking things about R. Elchonon Wasserman's famous discussion regarding the mechanism of *migo*,[16] the means by which a litigant is able to prevail in a legal dispute despite a faulty claim, because he had the ability to make a valid one, even in the event that he did not in fact make that better claim in court, is that he never pauses for a moment to ponder whether the concept of *koaḥ ha-taʿanah* (legal privilege) that he suggests is reasonable, nor why in the world a person should have the right to mix and match his claims as long as they produce the desired result. Having proven the existence of such a mechanism and demonstrated its forms of expression (e. g., *migo de-haʿazah*), no further steps need be taken and R. Elchonon can rest his case.[17]

The field is thus narrowed and all questions regarding the "final cause" eliminated. The Brisker transformation of the learning effort has been extremely successful in its goals of explaining the material world of applied *pesak halakhah*, but it has done so at the price of eliminating all speculation regarding the motivating forces behind the *halakhot*.

Having thus diagnosed the present, we now arrive at the point of departure from which to present a program for the future. If to engage the scientific analogy for the final time, let us quote a passage or two from the Rav:

> Adam the second is, like Adam the first, also intrigued by the cosmos. . . . However, while the cosmos provokes Adam the first to quest for power and control, thus making him ask the functional "how" question, Adam the second responds to the call of the cosmos by engaging in a different kind of cognitive gesture. He does not ask a single functional question. Instead his inquiry is of a metaphysical nature and a threefold one. He wants to know: "Why is it?" "What is it?" "Who is it?" (1) He wonders: "Why did the world in its totality come into existence? Why is man confronted by this stupendous and indifferent order of things and events?" (2) He asks: "What is the purpose of all this? What is the message that is

embedded in organic and inorganic matter, and what does the great challenge reaching me from beyond the fringes of the universe as well as from the depths of my tormented soul mean?"

In order to answer this triple question, Adam the second does not apply the functional method invented by Adam the first. He does not create a world of his own. Instead he wants to understand the living, "given" world into which he has been cast. Therefore, he does not mathematize phenomena or conceptualize things. He encounters the universe in all its colorfulness, splendor, and grandeur, and studies it with the naiveté, awe and admiration of the child. . . .[18]

Though the analogy is admittedly incomplete, the basic truth that our interest in God's revelation to us, whether through Nature or through Torah, is not limited solely to an understanding of the phenomenon at hand but also includes a need to engage the non-quantitative element and to ask "what is the purpose of all this?," holds true in the realm of halakhic analysis no less than in scientific and metaphysical inquiry.

The major goal for proponents of Brisk, therefore, should be a greater integration of the "why" element into the current search for the "what." Let me emphasize that I am not preaching a rejection of the Brisker "what" in favor of a more teleologically-oriented learning which seeks to soar upon the wings of an intuited *telos* or perceived spiritual paradigm without having withstood the critical rigor of the Brisker analysis. Unless the "what" has been firmly established and the topics at hand identified, all is idle speculation. The imagination must be held down to the shackles of the fact. The imperative first step remains determination of what we are dealing with.

Having claimed above that the metaphysic of Brisk is predicated upon a *yir'ah* that deems it unnecessary for man to aspire to an understanding of why Halakhah has expressed itself in particular forms, we are hereby advocating the inclusion and integration of this latter element into our learning. In the framework of the above terminology, the quest for the "why" can be associated with the attribute of *Ahavah* (Love), expressed as an attempt to fathom the idea and to achieve a halakhic performance based upon identification with it. If it be argued that this an oversimplified paradigm, let us not call it *Ahavah*; nevertheless, the need to integrate the "why" into the "what" remains in effect.

The first step, therefore, must remain the classic Brisker inquiry (*ḥakirah*)—clarifying the facts and concepts. This being done, the next step should be an attempt to align these concepts with their theoretical foundations and to develop them accordingly. For example, let us recall R.

Ḥayyim's famous theory that the *ḥuppah* element of marriage and the act of *ḥaliẓah* are not merely technical acts that transform personal status by means of legal fiat but are a reflection of a change in the actual state of affairs between the man and woman; in essence, the legal situation changes in response to the changed relationship, rather than being altered by the formal act. In addition to establishing the proofs that this indeed is the mode of action of these halakhic acts, the treatment of this theory must be supplemented and developed so as to attempt to understand why these particular mechanisms indeed reflect such situations. In this particular case, for instance, the point is relatively transparent in regard to *ḥuppah*[19] and does not require a major shift in focus. Regarding *ḥaliẓah*, though, it is far from apparent why the *ḥaliẓah* ceremony, which—unlike the halakhic *ḥuppah*, whose lack of ceremony R. Ḥayyim emphasizes—seems to be a full-fledged ceremony and not a reflection of the current situation between the brother and the widow, should not be a legal act. Though the first step of defining the mechanism has been achieved, the second step of understanding how and why it is so must follow.

The "why" can confront us on different levels. At times, all we can do is state: *gezerat ha-katuv*–Divine decree! However, such an answer—though clearly true and just—is an answer of last resort, inherently less desirable than the ability to justify and explain the ways of God to man.[20] The reliance upon Divine fiat exposes our inability to arrive at the real meaning of the halakhah and is best avoided when possible.

Every effort should therefore be made to move beyond this initial stage and to seek a governing rationale for the *miẓvah* at hand. If, however, we cannot begin to comprehend why a halakhah should be as it is, yet the Brisker analysis conclusively proves that the seemingly incomprehensible concept is indeed so, we have no choice but to accept the data and hope for future success in our attempt to understand why the halakhah is so. The Divine decree must be recognized and accepted even absent a more satisfying explanation. Great effort and ingenuity should be expended, though, prior to arriving at such a conclusion.[21]

On other occasions, the first stage may be discernible and self-evident, but additional layers must still be sought. At each stage, the goal of the learner should be to analyze the phenomenon at hand, expose the underlying concepts and view them in light of their purpose. Though the ideal of total integration of phenomenon and ultimate purpose may be unattainable in most instances, there are many intermediary stages, to be attempted along the way. The closer we are to the original expression, the firmer the ground that we tread upon; the further we travel

along this path, the more speculative it becomes. We must proceed to advance along this path responsibly, to the best of our ability and understanding, as we seek to integrate the "what" and the "why," as long as we are reasonably confident that we are not running too far ahead of the factual anchor.

Practically speaking, the primary goal is to break out of the formal sconce of defining without explaining, to insist upon reasonable explanations for the discovered data and to expand the field to take into account the "why" question as well. If you are studying the *sugya* of *issur melakhah* on *ḥol ha-moed* (the prohibition to work on the intermediary days of a festival), don't stop at the first point of definition—whether the Torah prohibited acts which are burdensome (*tirḥa*) or those that are akin to work on Shabbat and Yom Tov (*issur melakhah*)—but continue to proceed to an analysis of the nature of *ḥol ha-moed* and Yom Tov. Delve into the verses, think about the idea of Yom Tov, the nature and intent of *issur melakhah* and so on. If one is learning the issues pertaining to *maẓẓah* and concludes that there is a dual element reflected in the laws of *maẓẓah*, one should next devote time and energy to the possibility of a basic duality regarding the very essence of *maẓẓah*. This effort may entail paying close attention to the texts of the Torah that discuss *maẓẓah* and utilizing categories of the *Sefer ha-Ḥinukh* in addition to the classic Brisker categories.[21]

Our discussion until now has focused upon the basic approach of the Brisker method and its underlying logic. In conclusion, I would like to devote some space to an issue of technique as well. The Brisker emphasis upon Rambam is legendary. R. Ḥayyim published on Rambam exclusively; his children and followers, although including discussions of the *gemara* in their published works, also placed Rambam at center stage, devoting the lion's share of their published work—in volumes arranged according to the sequence of the *Mishneh Torah*—to discussions of Rambam's position. The Rav's famous description of his father's routine, though not written as historical memoir, accurately reflects this bias:

> The Rambam was a regular guest in our household. . . . Father always spoke about the Rambam. Thus he would teach: he would open the *gemara* and read the text of the *sugya*; then he would proclaim: this is the interpretation of the Ri and the Tosafists, let us now open the Rambam and see how he interpreted it. . . .[23]

The reasons for the renewed attention regarding Rambam and the relative neglect of the *gemara*'s dialogue were explained above. At a

somewhat later stage, the conclusions of other *rishonim* were also incorporated into the Brisker corpus. After all, there are many significant positions of Rashi, Rabbenu Tam, Ramban and many other *rishonim* that can be isolated and analyzed in the same manner that Rambam's were, even though they are not presented in the *Mishneh Torah* format.

However, the treatment of the *gemara* remained and remains underdeveloped.[24] Lest I be misunderstood, let me clarify that I am not arguing, in the context of a paper dealing with future prospects for the Brisker approach, for the adoption of other methods that treat the *gemara* extensively (each with their respective approach), but for the adaptation of the Brisker *derekh* to treat the *gemar*a more thoroughly. What I have in mind is a twofold shift of emphasis. First, somewhat of a shift in balance from Rambam-Ravad and other *rishonim* back to the disagreements in the *gemara* itself. The very same analytical method that so successfully analyzes the underlying concepts lurking beneath the factual surface of a disagreement between Rambam and the Ravad can achieve similar results regarding the disputes between Rav Sheshet and Rav Yosef as well. Second, a much more detailed conceptual analysis of the play-by-play within the *sugya* itself. Rather than immediately "jumping to (the *sugya's*) conclusions" which is what is effectively being done when the discussion begins with Rambam and other *rishonim*, effort should be devoted to the fleshing out of the conceptual implications implicit throughout the twists and turns of the *sugya*. It is often possible to follow the scent of the *sugya* as question-and-answer, point-and-counterpoint, that are not merely technicalities or practical problems, but the result of differing conceptual points of view reflected in the dialogue. At times, particularly in certain *mishnayot*, the conceptual standpoint is virtually explicit. On other occasions, it is nearly transparent, while in still other cases, much subtlety and effort are required. Nevertheless it is often possible to arrive at a conceptual diagram of the *sugya's* argument, thereby informing it with added significance and a newly revealed meaning.

It is important to note, as was stated above regarding the previous point, that I am not necessarily claiming that this has never been done or is never done; quite the contrary. Nonetheless, it does seem to me that analysis of the talmudic text is conducted less frequently and less intensely than is analysis of *rishonim* and it is for further effort in this regard that we are advocating.

ואף אמנם שגיתי אתי תלין משוגתי

Notes

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1. The Rav makes this point with explicit reference to the Brisker approach in "Mah Dodekh mi-Dod," *Divrei Hagut ve-Ha'arakhah* (Jerusalem, 1981), 78-82; furthermore, it is implicit throughout *Halakhic Man,* which assumes the Brisker model as the halakhic ideal.
2. Though I am obviously generalizing somewhat in such a sweeping statement, the accuracy of the claim that this is *the* basic shift brought about by the Briskers remains undiminished.
3. The above remarks are in disagreement with the description of the Brisker method advanced by my uncle, Rabbi Prof. Yitzhak Twersky, *z"l*, in his article "The Rov," *Tradition* 30,4 (1996): 23-24, who emphasizes the interpretive function thrust upon Rambam's shoulders by the Briskers.

    A comparison between the work of the *Leḥem Mishneh*, who indeed took upon himself the task of systematically figuring out how Rabbi Mosheh ben Maimon dealt with the *sugyot*, and that of R. Ḥayyim or any other of the Briskers will clearly illustrate how much the Briskers were interested in the positions of Rambam (or of other *rishonim*) themselves and how much less they devoted their energies to a reconciliation of these halakhic positions with the relevant *sugyot*. Reconstruction of Rambam's interpretation of a particular *sugya* is not a hallmark of *Ḥiddushei R. Ḥayyim ha-Levi*; the conceptualization of Rambam's rulings is.

    A comparison with the work of *Sha'agat Aryeh* will prove similarly enlightening. *Sha'agat Aryeh's* overt purpose in his work is to take a position on a particular halakhic issue—often on matters already disputed by *rishonim*—based upon his interpretation of the *gemara*. Since his interest is in arriving at a conclusion by evaluating a particular position's compatibility with the *sugya,* he subjects each position to rigorous inspection—according to his *derekh ha-limmud*—to determine how alternative interpretations stand up to this test, and decides accordingly. In essence, he is taking sides based upon the success of a *rishon* in comfortably interpreting a *sugya*. Consequently, he is constantly rejecting the position of one *rishon* in favor of a different position, whether that of a different *rishon* or his own. R. Ḥayyim, however, basically is not interested in the success of different *rishonim* in interpreting the nitty-gritty of a *sugya,* since interpretation is not his main concern; therefore, he axiomatically accepts both sides of a dispute as legitimate if the debate is among recognized authorities, and does not concern himself with the merits of the respective interpretations. Instead he devotes his energies to understanding and conceptualizing the positions as they stand.

    In this regard, it is worth mentioning a personal recollection. When I was in the Rav's *shi'ur* in the summer of 1976, he taught the *sugya* of *ḥezyo eved ḥezyo ben ḥorin* (a person who is half slave and half free), devoting much time and effort to Rambam's unique ruling in that *sugya;* however, almost all of his energy was spent attempting to understand the inner logic

of Rambam's position. The Rav himself remarked that priority must be given to establishing consistency within *Mishneh Torah,* and only having done so would he proceed to the secondary task of reconciling Rambam's opinion with the *gemara.* From both his prefatory remarks and subsequent treatment, it was quite clear that the claimed priority was not only chrono-logical (a preliminary stage to understanding the *gemara*), but also an implied value judgment as to the relative importance of the two tasks. He was clearly bent on figuring out what Rambam was actually claiming, as well as the underlying logic, and was much less concerned with ascertaining the interpretation of the *sugya* that brought about such a position. One could simply rely on Rambam, *siyyata di-Shemaya* or whatnot, as a basis for assuming that Rambam and the *gemara* could somehow be reconciled; one did not have to be too concerned with figuring out what that reconciliation might actually be, and what interpretation of the *sugya* it implied.

Having recently taught the sugya of *bi'at kullekhem* (*Ketubot* 25a), I was once more struck by how R. Ḥayyim, who deals with Rambam's patently at odds with the *gemara*'s position on this subject, discusses at length the impli-cations of Rambam's *pesak,* but makes no attempt whatsoever to address its compatibility with the *gemara.* Moreover, the Ravad's opinion is described as the opinion of the 12th century Provençal sage who argued with Rambam, with no mention of the fact that his opinion is merely that recorded in the *gemara*'s second opinion. See *Ḥiddushei R. Ḥayyim ha-Levi: Ḥiddushim u-Beurim al ha-Rambam, Terumot* 1:10, s.v. *u-lefi zeh,* and *Shemittah ve-Yovel* 12:16, s.v. *ve-hineh* and s.v. *ve-ha-nireh* .

The Rav's recollection in *U-Bikkashtem mi-Sham (in Ish ha-Halakhah: Galui ve-Nistar* [Jerusalem, 1979], 230) of his father's statement that he wanted to figure out Rambam's interpretation of the *sugya* obviously was not meant to take a position on this issue; it is simply the reminiscence of a mature adult attempting to convey the memories of a five-year-old child impressed by his father's preoccupation with Rambam. Even if R. Moshe actually did state that he was out to investigate Rambam's interpretation, all that is implied is that, technically, the next stage in the *shi'ur* would be to investigate Rambam and his position regarding the issue that was being taught. Although it is probable that R. Moshe Soloveitchik also attempted to explain a *sugya* according to Rambam, this was not the primary role of Rambam in his *shi'ur.* These quoted remarks were not a methodological statement that addressed the issues that we are discussing, nor should they be construed as such.

On the problem of "authorial intent" in the Brisker approach to Rambam, see Marc B. Shapiro, "The Brisker Method Reconsidered," *Tradition* 31, 3 (Spring 1997): 78-102 [review of Norman Solomon, *The Analytic Movement: Hayyim Soloveitchik and His Circle*].

4. The Rav discusses these categories in relation to *miẓvot* in *The Halakhic Mind* (New York and London, 1986), 91-99 and in "May We Interpret Ḥukkim?" in *Man of Faith in the Modern World: Reflections of the Rav, Volume Two, Adapted from the Lectures of Rabbi Joseph B. Soloveitchik by Abraham R. Besdin*, (Hoboken, NJ, 1989), 91-99. His position, though, is opposed to the position that we are advocating in our remarks.

5. Hence the pun in the title of this article. It is interesting to note the correla-

tion between our description of the Brisker analytic approach and the format of papers in the natural sciences that are published in contemporary scientific journals. Rather than having a running text that intermingles results and interpretation, as in the humanities, the articles are divided into independent sections of results and discussion.

6. Letter of 19 *Sivan* 5693, published in *Ḥiddushei Maran Yiẓḥak Ze'ev ha-Levi,* (Jerusalem, 5727), 162. The emphases are mine.

7. "Why do we blow on Rosh HaShanah? Why do we blow?!—God said to blow!"

8. In the context of R. Ḥayyim of Volozhin's thought, *Devekut* is probably best translated as "association" rather than as "communion" or other phrases that are more appropriate for a mystical experience.

9. Though *rishonim* (some, such as Ramban and *Tosafot Rid*, more than others) occasionally offer conceptual analysis similar to the Brisker method, they do it not systematically but intuitively. The change brought about by R. Ḥayyim, which justifies the claim that he created a new method, is precisely the fact that conceptualization and analysis of the phenomenon were transformed into a system. No longer are queries (*ḥakirot*) the result of intuitive reasoning haphazardly coupled together with various other observations and thoughts on the *sugya* by an original mind alighting on a concept; from R. Ḥayyim onward, the learner methodically uses this approach. Therefore, the significance of Brisk is not in the fact that an approach never before attempted was introduced into the world of learning, but that a system has been created. The results of this are twofold. On the one hand, all *sugyot* are conceptualized and subjected to the Brisker mode of analysis, not only random *sugyot* that have caught the learner's imagination. This expands the scope of the endeavor, yet the same effect restricts the treatment of the *sugya* solely to the conceptual issue, to the exclusion of other queries. Issues relating to the dialogue's (*shakla ve-tarya*) cogency, or to textual or practical problems, are pushed aside insofar as they are deemed essentially technical issues that have nothing to contribute to the essence of the *sugya*. An additional result of the systematization that R. Ḥayyim introduced into the learning process and its transformation into a method was the ability to train students. Intuitive reasoning cannot be transmitted to others; therefore, only those learning approaches that are methodical and can impart to students a thought sequence to be followed in each *sugya* have the inherent ability to systematically train students.

Actually, the contemporary *aḥaron* most resembling the *rishonim* in the scope of his curiosity and the intuitive nature of his work is the Ḥazon Ish, who discusses all aspects of any given *sugya*, and neither limits his interest to a particular perspective nor uses a consistent method. Intuition, not method, reigns supreme. It is no accident that the Ḥazon Ish's halakhic rulings, in contrast to those of the conceptual Brisker approach, take the practical elements into much greater account.

10. See, respectively, *Tosafot, Gittin* 19b, s.v. *kankantam*; *Ḥiddushei ha-Ramban, Gittin* 7b, s.v. *amar*; *Tosafot, Arakhin* 15a, s.v. *ke-shem*.

11. The more popular and widespread the conceptual approach became, the greater such a danger became. I have attempted throughout (with one exception) to provide examples from the Briskers themselves, though more extreme examples are to be found in the work of some of their followers.

12. The above is based upon the *sugyot in Pesaḥim 54b and Taʿanit* 13a-b; it goes without saying that this is not the place for a detailed discussion of the inter-relationships between the two sources and of the interpretations in *rishonim* regarding these issues.

13. The *gemara* does not state this explicitly; all it claims is that cold water is permitted, without mentioning the scope of the prohibition when using hot water.

14. *Ḥiddushei ha-Gram ve-ha-Grid* (Riverdale, NY, 1993), 47.

15. Quoted in *Ḥiddushei Maran R. Y. Z. ha-Levi,* 79a.

16. *Koveẓ Shiʿurim* v. 2, ch. 3.

17. Though I have chosen this case to illustrate the narrowing of the learner's interest and the elimination of all interest in questions of "why," it is also a good example of how neglect of this aspect will result in questionable conclusions regarding the very issues under discussion. Though R. Elchonon quite clearly succeeds in demonstrating that a concept of legal privilege (*koaḥ ha-taʿanah*) is inherent in *migo*, the rationale for this—in this writer's opinion, corroborated by colleagues with whom I have discussed the matter—is rooted in basic principles of monetary relationships and is obviously not applicable to issues of personal status (*ishut*) or *miẓvot*. R. Elchonon, though, who is unconcerned with this aspect, does not hesitate to explain issues of personal status along the lines of *koaḥ ha-taʿanah*, a highly unlikely, if not an outright unreasonable conclusion.

18. *The Lonely Man of Faith* (New York, 1992), 21-23. The same ideas inform a good deal of *U-Bikkashtem mi-Sham*; a parallel passage with the same formulation is to be found there, 125-127.

19. For the illustrative purpose at hand, I am assuming either of the two major positions regarding this halakhah: (1) that *ḥuppah* is an intimate setting that provides for the possibility of marital relations, as Rambam stipulates *(Hilkhot Ishut* 10:1), or (2) that the bride's move from her parents' home to that of the groom is for the purpose of establishing their common household, as Ran understood the matter (in *Ketuvot, Dappei ha-Rif,* 1a, s.v.*, o she-pirsah).* The significance and status of some of the other suggestions regarding the ceremony of *ḥuppah* require a separate discussion that is out of place in the present context.

20. Let me make it clear, lest I should be misunderstood on such a basic and sensitive topic, that I am not referring to the humility and humbleness expected of man regarding his compliance to the word of God, but to the endeavor to understand the reasons for His commands.

21. This is the reason that *Bava Kamma,* with its plethora of exemptions from its basic systems, is so difficult. I am reminded of a conversation that I once had with a full-fledged Brisker as to the relative level of difficulty involved in analyzing *Bava Kamma* as compared to *Bava Meẓiʿa.* My claim was that while the textual difficulty and complexity of reasoning in the *sugyot* of *Bava Meẓiʿa* indeed may be more logically exerting than their counterparts in *Bava Kamma,* the more vexing of the two is *Bava Kamma,* since the basic logic at the bedrock of *Bava Meẓiʿa* is readily understandable, as the vast majority of it is rooted in human reasoning *(sevara)* and not divine decree. *Bava Kamma*, though, which presents a system derived from *pesukim* and is not an autonomous one developed by the Sages, has at the core of its system

many elements that our troublesome to our human understanding. The *halakhot* exempting concealed matter from fire damages; artifacts and human beings from compensation when they are damaged by a stationary obstacle; the partial payment to a party damaged by a tame animal; fourfold and fivefold rates of payment by a thief who has stolen and slaughtered a sheep or an ox—these are all *halakhot* whose rationale is not always clear to us. My friend—who, as befits a card-carrying Brisker, was utterly unconcerned by such questions and dismissed the need for further explanation by invoking the concept of divine decree—considered *Bava Meẓi'a* the more difficult and complex of the two.

22. These are only a few schematic examples of the direction along which the Brisker *derekh* should seek to develop. This is not to imply that these *sugyot* have never been approached from these angles in the past or that there is anything novel in these examples. They were simply chosen as well known and fairly obvious instances of such an approach.

23. *U-Bikkashtem mi-Sham*, 230. The rest of the passage reiterates at length and in great dramatic detail the central role of Rambam in R. Moshe Soloveitchik's *shi'ur*.

24. R. Yitzchak Adler's description of the analytic approach clearly reveals the bias in favor of *rishonim* over *amora'im*: "Generally, the method of lomdus entails a description of a series of *machlokot rishonim* followed by an associated analytic or 'lomdishe' distinction. The next step is to show how the position one takes with respect to the *machlokot rishonim* depends on the position one accepts with regard to the *hakirah*." (*Lomdus* [New York, 1989], vii.) The preference for *rishonim* over *amora'im*, implied in R. Adler's methodological formulation, can be viewed from the experiential perspective in the Rav's famous description of his relationship with the *Ḥakhmei ha-Masorah.* All of the members of the group that figuratively assemble in his room around his desk are *rishonim*! "When I sit down to learn, I am immediately in the presence of the *Ḥakhmei ha-Masorah.* We have a personal relationship. Rambam is at my right side, Rabbeinu Tam on the left; Rashi sits at the head of the group engaged in interpretation, Rabbeinu Tam argues with him, while Rambam rules and Ravad debates him. They are all in my room, seated around my desk. . . ." (*U-Bikkashtem mi-Sham*, 233). There is no mention whatsoever of *tanna'im or amora'im.* The group that the Rav intuitively engages in learning and that he most identifies with are *rishonim.*