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SHOULD POSKIM SEEK TO MAKE ALL HALAKHAH PRACTICALLY RELEVANT IN ALL CIRCUMSTANCES? SBM DAY 1 SUMMARY.

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History is the past viewed from the outside, as an objective observer; collective memory is the past from the inside, a record of intersubjective experience. This highly valuable distinction nonetheless risks having us misconceive both memory and history as photographic, as the recall of impressions left in the mind by sense data. Collective memory and history are better understood as imaginative acts. They are attempts to recreate in minds what once existed in matter.

How do we go about this recreation? In some cases, we can build off impressions left in the mind as sense data. In others, all we have are words.

Take for example the *parah adumah*. It has been several millennia since we last had access to the ashes of a certified authentic red heifer. The Mishnah records a few fleeting details of actual experience. But mostly what we have are words of Written and Oral Torah.

In Halakhic Man, Rabbi Joseph B. Soloveitchik argues that the words of halakhic records are sufficient to recreate the experience of a mitzvah. Halakhic Man does not miss the sensory or sensual experience of the Passover sacrifice, or the full Yom Kippur Service, because he can read and understand the texts that describe them. But is the "sweet savor" of the sacrifices really comprehensible if we don't know what it smelled like?

I wondered whether there is a difference in this regard between what are conventionally described as "mishpatim" and "chukim", meaning mitzvot with human comprehensible rationales and mitzvot without. Maybe the experience of mishpatim can be mostly replaced by the ideas they represent. But how do we do that for chukim, when we can't understand the ideas they represent, assuming that we are committed to the proposition that they stand for ideas at all?

Halakhic Man isn't bothered, because he denies that any mitzvot have humanly comprehensible rationales. Such rationales are often Procrustean beds. We generally fit the halakhah to them rather than deriving them from the halakhah, and the rationales we find comprehensible before learning the halakhah are the same as those we attribute to the halakhah afterward. All we are doing with alleged mishpatim is matching up the mitzvot in Column A with the preapproved rationales in Column B. So Halakhic Man thinks that the most we can ever do is look at the effects that halakhah produces.

But here's the thing. We can't do even that with a mitzvah that hasn't been practiced for ages, like the *parah adumah*. The most we can do is imagine what effects the halakhah might have if practiced, and most likely our imaginations will be limited to what we already find reasonable.

What if we found a parah adumah today? Suppose one of the photos we often see advertised turns out to be genuine, and our poskim are convinced that the "red" of these heifers sufficiently matches the "edom" of the Torah. Could we properly recreate the ritual if all we had were the words of halakhic texts, with no live connection to experience? If we can't legitimately predict effects, how will we know that we've gotten it right?

This years Summer Beit Midrash is focused on *techum Shabbat*, the halakhic limits on the distance that people of objects may travel on Shabbat. With the questions above as background, I want to take you through some of the conversations the students and I had on the first day of the program.

The first source we covered was an article titled "Imaginary Space Meets Actual Space in 13th Century Cologne: Eliezer ben Joel and the Eruv", by Micha J. Perry, Senior Lecturer at the University of Haifa. The article shows how key Talmudic terms for Shabbat-space could not be directly mapped onto the Jewish living areas of medieval cities. R. Eliezer ben Joel

(RAAVYAH) set out to define or translate those categories in terms that did apply to his lived urban reality.

But how to go about that translation? Dr. Perry seems to use geometric or topographical concepts. What sorts of spaces can be enclosed in the same way as Talmudic spaces, or are contiguous to the same spaces that Talmudic spaces were contiguous to? Thus in one sense the Talmudic *chatzer*, a front yard shared by multiple houses, is translated into the public street onto which medieval houses opened. In another sense the Talmudic *mavui*, the private alleyway open at both ends onto which multiple *chatzeir*s opened, was translated into a whole complex of intersecting streets, so long as one could symbolically close off all openings – however many openings - to the whole area. (Dr. Perry notes that these enclosures eventually become more than symbolic – a century after Raavyah, the wall enclosing the Jewish Quarter follows the same route.)

This mode of translation appealed to fellows steeped in Halakhic Man. But fellows trained in different traditions thought that social concepts would be a better basis for translation. What medieval spaces served the same human physical and social needs as the *chatzer* and the *mavui*?

I wondered why it was obvious that translation was necessary and appropriate. Why wasn't the eruv chatzeirot allowed to go the way of the *parah adumah* and become solely an object of study?

Here is my theory. The spectacular Jon Stewart Show eruv episode at one point translates "eruv" into English as "loophole", and that line resonates with many students. But I think it is an error.

A loophole is a way to evade the fundamental purpose of a law, to make exceptions while acknowledging that the default should be otherwise. What is the fundamental purpose of the law that the *eruv chatzeirot* circumvents?

Halakhah deoraita forbids carrying from an enclosed space (*reshut hayachid*) to a unenclosed radically public space (*reshut harabim*) and vice versa, and also carrying objects beyond 4 cubits within a *reshut harabim*. Rabbinic law gives almost all remaining unenclosed spaces (*carmelit)* the stringencies of both deoraita categories. Rabbinic law also forbids carrying from one *reshut hayachid* to another unless they are owned by the same person or partnership. The *eruv chatzeirot* is a "communal meal" that symbolically makes that community the "sole owner" of all the relevant spaces, and therefore permits carrying between them

In its original context, the relevant space was a shared front yard, or for the similar institution of *s***ufei mevo'ot,* an alleyway accessible in its middle only via a few *chatzeirs*.

But – did the rabbis really want people to be unable to carry into their front yards, or to share with their neighbors? I think not. Rather, the prohibition's real purpose was to compel neighbors to consciously form symbolic communities, in the hope that this would foster real communities.

This means that as the spaces of the Jewish community changed, it would not be sufficient to say either to permit or to absolutely prohibit carrying to and from the new kinds of spaces. Either approach would have made the *eruv chatzeirot* obsolete. Properly translating the purpose of the law of *eruv chatzeirot* into the medieval city, or into modernity, required there to be a space permitted only via an *eruv*.

Our topic this summer is *techum Shabbat*, the Shabbat boundary for people and objects. Techumin also involve defined spaces. We noted that in Mishnah Eruvin 2:5-6 alone, space is defined by area (length x width), use (vegetable garden, *karpaf)*, enclosure (surrounded by a physical border 10 tefachim high), proximity (near a city), and contents (cistern, etc.), shape (square), and that these definitions might be related to Biblical archetypes the Tabernacle courtyard or contemporaneous realities. Many of these ways of defining space likely didn't map perfectly onto medieval spaces, and don't onto modern spaces – for example, our animals are much larger, so perhaps the minimum size of a pasture lot should increase as well. . But the kind of mapping Raavyah did for *eruv chatzeirot* seems absent in *rishonim* with regard to techumin, and then revives in Israel in the early 20 century, and in the US in the 1970s.

Was the purpose of *techumin* lost in the medieval period, or could it be fulfilled purely through study? If it was revived in the past century purely on the basis of ancient words, can we be confident that we're not doing it all wrong, and at cross-purposes with the original intent of the Rabbis? Can we reshape it as we gain more data about its effects, or must we assume that all effects are features rather than bugs?

Stay tuned! Shabbat Shalom.