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חירות ואחריות

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## A STUDY IN SCARLET

By Rabbi Aryeh Klapper

“Brisker learning” as currently practiced in YU Orthodoxy focuses primarily on defining halakhic concepts and very secondarily on resolving difficulties within halakhic texts. In Yeshivish terms, “the text is a *heikhi timtza* (=an illustrative context) for *sevara*”. However, the method as originated and practiced by Rav Chaim Soloveitchik of Brest-Litovsk, or at least as preserved in his written essays, is formally organized around the resolution of a difficult text.

As a college sophomore, I experienced Brisk as often beautiful in its own terms, but rarely true in the sense of deriving the authorially intended meaning from halakhic texts. The gap set off something of a religious crisis. So read what follows at your own spiritual risk.

Dr. Haym Soloveitchik’s shiur helped me through that crisis by joining conceptual learning with a rigorous pursuit of authorial intent. One of the many things he showed us was that audiences judge the thesis of a lecture by how well it resolves the difficulties they’ve been convinced are most important, even if that thesis resolves other difficulties poorly, or intensifies them. The same is presumably true of essays.

Most pre-Brisk essays therefore rise or fall by how convincingly they resolve the opening textual difficulty they present. I wonder whether this is true of a Brisker essay with a Brisk-aware audience. Perhaps we are trained to see the opening difficulty as a mere formality, and to care more about how well a conceptual framework organizes the subject as a whole.

To test that hypothesis together with you, I’ll present below a restructured version of Rav Chaim Brisker’s essay on Chapter 4 of Mishnah Shekalim. I’ll first present the opening textual difficulty and Rav Chaim’s resolution, and only then Rav Chaim’s conceptual structure as a whole. I’m interested in whether you think your evaluation of the essay is affected by the order of presentation, and how.

A second frustration with Brisk is its formal refusal to connect conceptual structures with religious experience. The Rav emphasized this refusal philosophically, but in learning practice often undid it, most dramatically via the claim that certain mitzvot are fulfilled only by a purely interior experience, such as sadness during obligatory mourning. But the Rav’s

approach, when accepted, is usually introduced after the beit midrash closes. I’ll try to integrate the approach instead in the below, and welcome reactions to that as well. But I need to be clear that Rav Chaim’s essay never relates to experience as a category separate from law.

Mishnah Shekalim 4:2 divides the Temple’s annual fund into two accounts, *terumat halishkah* and *shiyarei halishkah*. Since *shiyarei* translates as “remainders”, it seems clear that the first set is primary. The mishnah then assigns the budget lines for various items to one or the other account.

The (Red) heifer and the sent-away goat and the (wool) tongue of scarlet –

come from the *terumat halishkah*.

The ramp of the heifer  
and the ramp of the sent-away goat and the (wool) tongue  
tied between its horns,

and the canal of water and the walls of the city and its  
towers,

and all the needs of the city –  
all come from the *shiyarei halishkah*.

The Mishnah does not explain why different wool tongues fall under different accounts, nor does it identify which tongue comes from the *terumat halishkah*.

Rambam Hilkhhot Shekalim 4:1 assigns “the wool tongue between its horns” to the *terumat halishkah* rather than the *shiyarei halishkah*:

and the Red Heifer and the sent-away goat and the tongue  
of scarlet tied between its horns –  
all those are paid out of the *terumat halishkah*

Rambam makes no mention of any wool tongue under the *shiyarei halishkah* account. See Hilkhhot Shekalim 4:8. This divergence from the Mishnah is a textual difficulty.

Rav Chaim presents the resolution offered by Mishneh l’Melekh as a foil.

It seems to me that we do not include “tied between its  
horns” in the text (of Rambam),  
rather just “and a tongue of scarlet”,

and this refers to the tongue of scarlet that they would throw into the burning of the heifer.

Mishnah l'Melekh's resort to emendation may open the field for any plausible interpretation of the words.

Rav Chaim proposes that Rambam translated the Mishnah as follows:

The ramp of the (Red) heifer,  
and the ramp of the sent-away goat WITH the (wool)  
tongue that is between its horns,

and interpreted that to mean that the wool tongue is used only to identify the ramp; the goat and tongue themselves are paid for out of the *terumat halishkah*. Thus the tongue that Rambam assigns to the *terumat halishkah* is in fact that of the goat, and we understand why Rambam assigns no tongue to the *shiyarei halishkah*.

The obvious weakness with this interpretation is that since there is only one sent-away goat, the mishnah has no need to identify it in any further detail. Rav Chaim counters that the Mishnah is seizing the opportunity to teach that the tongue – unlike the ramp – is an essential part of the goat ritual.

“Essential part” is a Brisker term of art. In other words, Rav Chaim justifies his textual interpretation on the basis of a claim that Mishnah as a text is interested in teaching conceptual truths.

We can go one step further. The *terumat halishkah* is certainly the account which pays for all public *korbanot*. Perhaps the accounts are defined as “for *korban* purposes” and “for non-*korban* purposes”. The Mishnah is therefore teaching us that the tongue is an essential part of a *korban* ritual.

Now the sent-away goat is an obvious halakhic oddity. It is paralleled with a goat that is sacrificed to G-d, which suggests that it too is considered a *korban*. Yet calling it a sacrifice risks the idea that it is a *korban* to the demons. How can a sacrifice be killed outside the Temple?

Rav Chaim uses Rambam Laws of the Doing of the Korbanot 18:11 to reverse the question:

The two goats of the Day of Atonement,  
if he slaughtered them outside (the Temple),  
if (the slaughter happened) before (the High Priest)  
confessed over them –  
(the slaughterer) is liable to receive karet for each of them,  
since they are fit to come before G-d to be confessed over;  
but if (the slaughter happened) after (the High Priest)  
confessed over them –  
(the slaughterer) is exempt regarding the sent-away goat,  
since it is no longer fit to come before Hashem.

The prohibition against slaughtering outside the Temple applies only to *korban*s. Therefore, the sent-away goat must be classified as a *korban*, but only until after the High Priest confesses over it. Confession and slaughter are therefore alternate ways for an animal to be brought as a *korban* “before G-d”.

However, the sent-away goat fulfills its *korban*ness before it is sent away. The sending-away is a separate and different kind of ritual, not the bringing of a *korban*. Since the tongue of scarlet is tied to the goat before the confession, it must be part of the *korban* ritual rather than the sending-away ritual.

The obvious problem is that the role of the scarlet tongue is to whiten or not, depending on whether G-d has accepted atonement, and when whitening takes place, it takes place only after the goat has been killed in the desert.

On the other hand, a beraita on Rosh haShanah 31b teaches that the scarlet tongue was originally not tied to the goat at all, but rather displayed publicly at the Temple. So we can conceptualize the sending-away ritual as a condition-subsequent to the *korban* ritual. The *korban*-ritual takes place entirely within the Temple, and perhaps includes all elements done in the Temple. (Note: The final form of the tongue-use involved splitting it and tying half to a rock and half to the goat. I'm not clear on whether the half tied to the rock, which either whitened or didn't, was at some point brought back to the Temple.)

All this is astonishing, as the Torah makes no mention of the scarlet tongue as all! The Mishnah and Talmud cite two sources, one pragmatic – to keep it from being confused with other goats – and one homiletic – Yeshayah 1:18 “*If your sins are scarlet, they will become white as snow*”. So how can it be classified as an essential part of the Torah mitzvah?

For this Rav Chaim to hold up meaningfully, I think one has to argue something along the following lines: Confession does not have the psychological effect of slaughter. How, then, can the sent-away goat be a *korban*? The answer is that the death of the sent-away goat registers for the people via the whitening of the tongue. In years when the tongue failed to whiten, there was a certain circularity, because that meant that the sacrifice was never completed, and therefore could not atone.

I admit that this approach does not fit will with the beraita on Rosh HaShannah 31b reporting that the Sages consistently reduced the public transparency of the whitening. I welcome comments and alternatives.

*Shabbat shalom!*