**The Brisker Derech:**

 **What is it?**

**Where has it been?**

**And where is it going?**

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1. **Introduction: Brisk, the Golden Age of Yeshivos and Jewish Emancipation**
2. **The classical Brisker: Examples and Features.**
3. *Warm up round: Destruction of hametz. (hefta and gavra)*

Classic Brisker dichotomies

|  |  |
| --- | --- |
| Internal | External |
| Essential | Circumstantial |
| Intrisic | Extrinsic |
| Universal | Local |
| Legal  | Factual |
| *heftza* | *Gavra* |
|  |  |

2. *Shaatnez* in the Kohanic Vestments: Legal and factual states of nature

**רמב"ם הלכות כלאים פרק י**

כהנים שלבשו בגדי כהונה שלא בשעת עבודה אפילו במקדש לוקין מפני האבנט שהוא כלאים ולא הותרו בו אלא בשעת עבודה שהיא מצות עשה כציצית.

+/השגת הראב"ד/ כהנים שלבשו בגדי כהונה וכו'. א"א טעה בזה שהרי אמרו ביומא בפרק בא לו כהן גדול במקדש אפילו שלא בשעת עבודה מותר ומאי דקאמר (נמי) מפני האבנט שהוא כלאים אינו דאטו חושן ואפוד מי לית בהו כלאים.

Grach “*stensil*” § 60.

אכן נראה, דלכולי עלמא אין העבודה המתרת אלא הלבישה, ורק דפלוגתתם היא אם יש על הלבישה בגדי כהונה שלא בשעת עבודה דין לבישת בגדים, דהרמב"ם ס"ל [סבירא ליה] דדוקא אם הלבישה היא לעבודה אז הוא דיש על הלבישה דין לבישת בגדי כהונה, והיא המתרת לאיסור כלאים, אבל שלא צורך עבודה אין עלה שם לבישת בגדי כהונה כלל, והראב"ד חולק וסובר דגם שלא בשעת עבודה יש על הלבישה דין לבישת בגדי כהונה, ויש כאן מה שיתיר איסור כלאים

According to both opinions, service in the Temple does not act as the “permitting factor,” but rather, the wearing of the Kohanic vestments themselves is what permits *sha’atnez*. But the argument between [Rambam and Raa’vad] concerns whether there is *din* [status; legal effect] of “wearing the vestments” when one is not performing Temple service. Rambam holds that the *din* [status] of “wearing the vestments” only applies when they are worn for the purpose of performing Temple service, and this the “permitting factor” for the *sha’atnez*. But when a kohen wears the vestments and is not performing service, then it has no legal status of “wearing the vestments” at all. The Raa’vad, by contrast, holds that even when one is not performing temple service, he has the status of “wearing the vestment” such that the sha’atnez is permitted.

3. From Facts to Law: Brisker *halakhic* Abstractions

R. Baruch B. Leibovitz, *Birkhat Shmuel* Yevamot s. 61

To explain the matter we shall investigate the disqualification of drawn water. Is it so disqualified that **the status of water does not attach** [to the drawn water] (*d’lo hal shem ma’yim*) and it is as if there were no water at all . . . . Or is it not like there is no water at all, and that the status of water attaches to it [the drawn water] but rather, that **there is a principle of disqualification that attaches to the drawn water**, (*din p’sul d’hal a’laihu*), a principle of disqualification with respect to the *mikva*.

*Birckhat Shmuel*, (Introduction).

Spirituality [*Ruchniyut*] and anything understood through the logic of the Torah took on a physical existence. This was emphasized in all his mannerisms and especially in his explanations of *halakhic* concepts. He would thus explain that that an ox that is ownerless and is not included within the legal category of an “ox that damages” [since there is no one to pay for the damage] is therefore ***not an ox***! . . . Similarly with regard to the *heftza*, which according to his understanding and expression every spiritual [halakhic] matter was considered a *heftza* [object; reality]. For example, regarding the concept of will/intent in a transaction, he would explain that the will creates an onset of the object [reality?] of the transaction,(*she’hadda’at hu ha’ose halot heftza shel kinyan*) and many similar examples.

4. Transactions and digging: Reb Shimon Skop’s sense of halakhic space.

5. Brisker Jokes: *keli sheini ayno mevashel*

6. A more Philosophical Account, Rabbi Joseph B. Solovietchik

 *Ma Dodekh MiDod*  (Eulogy for his uncle Reb Velvel (HaGriz))

Torah scholars used to denigrate those who studied the laws of kashrut: only those who were about to enter the rabbinate would study this area of the law. Who could guess the day would come [with the development of the *Brisker* approach] and these laws would be freed from the bonds of facticity, external and common sense explanations, and become transformed into abstract concepts, logically connected idea that would link together to form a unified system. . . . Suddenly, the pots and pans, the eggs and onions disappeared from the laws of meat and milk; the salt, blood and the spit disappeared from the laws of salting. The laws of kashrut were taken out of the kitchen and removed to an ideal *halakhic* world. . . constructed out of complexes of abstract concepts.

7. Characteristics of Brisker Analysis

* Hakira/ creation of 2 sub-categories of a mitzva
* Investigation into the “essential nature” of a mitzvah
* explanation of both sides of a debate on the basis of these categories
* Proofs are used to substantiate the existence of the hakira not to decide not in deciding who is right.
* Not much interest in the practical elements of the halakha.
* Thingification /abstracton (*matir*; water, oxen)
* Halakhic events happen in real space. Digging vs. transaction
* Essentialism. Halakhic concepts have an ontologic reality. “heftza”
* Concepts take primacy over halakhic texts – text is *evidence* of halakha
* Relative neglect of works of 16-18th century *Achronim*.
* Shift from “on the daf” to more conceptual discussions.
* No attempt to collect all the existing opinions and reconcile them with the authoritative texts.
* Unique mode of expression, synthetic terminology

Advantages-Attraction of Brisker method. (internal)

* Make sense of numerous machloket in rabbinic canon. Each position given a respectable accounting from both text and reason.
* Give meaning to halakhic minutia. No longer little debates about the finer points of law that hasn’t been applies for 1500 years, but queries into the essential foundations of halakhic (and thus God’s) thought.
* Give meaning to words, and laws that are no longer part of halakhic practice. (oxen, temple, Kohanic clothes, tumah and tahara.). Shows eternal elements of God’s law
* Method is novel, but a great number of Talmudic sources display a more primitive version of this mode. Many Talmudic passages cry out for a brisker-styled analysis.
* Conceptual investigation seen as more sophisticated than *pilpul* or simply plowing through texts
* Understanding of Talmud does not require data about Rabbinic times or current conditions.

**III. The Varieties of the Brisker Experience**

1. Scope of the hakira.

Classical hakirot do not probe issues relating to:

* Philosophy
* Theology/ spirituality
* Morality
* Practicality
* History and development
1. What does “conceptual” mean:
* Grach’s Chiddushim v. 19th c Codes
* R. Shimon Shkopf—doresh ta’ama de’kra?
* The *Rav –*spiritual meaning of halakhic categories
1. Haredi Brisk v. MoDox Brisk
* Matanot la’evyonim and tzedaka
* Kibbud av va’Em *:* kavod v. yira’h
1. The Debate within Modoxy: hakirot and value tradeoffs.
2. R. Joseph B. Soloveitchik, *Ma Dodekh MiDod*

Reb Hayyim purified *halakha* from all exogenous influences. Based on his approach, one rejects the psycholization or historicization of halakha. . . . *Halakhic* thinking follows a path of its own. Its rules and principles are not psychological-factual but ideal-normative, as is logical-mathematical thinking. The historical and factual context does not impinge on truth or correctness of halakhic judgments. . . . Just as the validity of mathematical thought is not assessed through psychological analysis.

1. Mortgage Buybacks – *shuma hadar*
2. The off-duty police officer
3. Meta- hakirot: Wave of the Future?
* Liberty vs. Equality
* Compensation vs. Deterrence
* Individualist v. Communitarian
* Corrective justice v. Distributive Justice
* Or la’goyim v. Am levadad yishkon