

CENTER FOR MODERN TORAH LEADERSHIP



WHAT DOES IT MEAN TO FOLLOW HALACHA K'DIVREI HAMEIKIL B'ERUV?

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The Talmud and Jewish tradition make a point of preserving halakhic disputes. Mishnah Avot declares that disputes for the sake of Heaven are perpetuated. Nonetheless, the practical discipline of halakhah often requires choosing one side of a dispute over the others. On what basis have such choices been made, and how should they be made going forward?

Some past decisions seem based on evaluating whose reasoning is stronger. Other times, the Talmud or later authorities provide rules that apply throughout a broad topic or to a whole class of disputes. For example, Talmud Moed Kattan 20a cites Shmuel as stating “halacha k'divrei hamekil b'avel” = “the law follows the more lenient position in the context of mourning practice. Rabbi Shmuel Hain’s guest SBM shiurim discussed why this rule might be appropriate for avelut specifically. We noted that it’s not obvious what constitutes being mekil in avelut cases. The simplest reading might say that if we have an option to allow you to clip your nails or go to the movies during a specific stage of avelut, or to forbid such an action, we should always allow it. However, Rabbi Hain suggested that maybe the reason this rule applies to avelut specifically is that grief is such a subjective and varied emotional experience that the halakhah needs to be modulated differently for each individual. The rule is not about leniency, but rather really about flexibility. The halakhah should be decided depending on what is a pastorally appropriate expression of grief for the person asking.

Talmud Eruvin 46a cites Rabbi Yehoshua ben Levi as applying the same principle - halacha k'divrei hamekil – to the topic of “erubin”, which in context includes the whole topic of techumin.

We discussed whether or not this principle must mean the same thing, and be applied in the same way, in the context of techumin as in avelut. Could we accept Rabbi Hain’s explanation in the context of avelut but understand the rule for techumin to simply be that we decide for leniency?

Rabbi Hain’s interpretation led some of us to try and think why techumin might also be a subjective and varied emotional experience. Did people have very subjective experiences about place or walking or travel or home that might lead this to be a particularly sensitive topic? But finding a convincing way in which specifically hilchot eruv is like avel has been a challenge for us.

We also asked: How far back or forwards does halakhah k'divrei hamekil extend? Is this a technical rule about choosing final binding halachic opinions within disagreements laid out explicitly in the gemara, or is it a larger principle related to the purpose of hilchot techumin? Does it suggest that violations of hilchot techumin are somehow ‘less serious’ than other areas of halakhah, or that lenient opinions are more likely to fulfill the intent of the halakhah?

Rabbi Yaakov Jaffe’s SBM guest shiur took a very different approach from Rabbi Hain’s. He understood halakhah k'divrei hamekil in both contexts as a choice that the rabbis at the time of the gemara made with regard to specific disputes, without reference or implications for any subsequent issues. There is nothing really significant about the principle, and it should not influence how we pasken contemporary issues.

This stance pushed us to think about the various levels to which one could take the idea of following the lenient opinion. Even assuming

that all *hilkhot techumin* is *derabanan*, and understanding it as simply permitting you to choose lenient opinions - how lenient? There is a really big range of how far in physical distance the various positions allow you to travel on Shabbat. Whose opinions are solid or authoritative enough that you can lean on them without any further basis? How can we follow this principle while still being thoughtful and maintaining care?

The *gemara* itself sometimes seems to follow the stringent opinion. And parallel to our questions last week about whether the purpose of *techumin* was lost/forgotten in the medieval period, was the practice of using the principle of *halacha k'divrei hamekil beruv in psak* lost? In the medieval *teshuvah* we studied recording an active practical dispute, neither side invoked or responded to this principle. Why not?

One way to examine the purpose of *hilkhot techumin* is to look for their source, and to look at Chazal's positions in the context of other Jewish sects. An essay by Rabbi Evan Hoffman, "Traveling on the Sabbath", offers a very useful survey. His essay was shared for *parashat beshalach*, because the *parsha* includes the story of the *maan*, which is the first story we have of *bnei yisrael* keeping *shabbos*. *Shemot* 16:29 reads: See that Hashem has given you the Shabbat and therefore he gives you two days of bread on the sixth day; remain, each man, in his place, let no man go out of his place on the seventh day." [While out of context this *pasuk* seems to be pretty explicit about limiting where one could go on *shabbat*, within the context of the story of the *maan* the *psat* seems to be that it's a reiteration that *Bnei Yisrael* shouldn't go out looking to collect *maan* on *shabbat*.]

Rabbi Hoffman writes that other groups, like the *Essenes*, took this verse extremely strictly and literally, and would not move at all on *shabbat*, while others would only walk up to a specific distance. While in some cases the *mishna* and *gemara* restrict people to a 4-*amot*-squared area for the course of *shabbat*, showing that we don't

fully abandon the literal reading, *halakhah* generally expands people's *shabbat* travel borders to much bigger spaces, like cities. Rabbi Klapper contended that by combining all leniencies it might become possible to view the entirety of the continental US as one *shabbat* travel boundary area. Which leads us back to the question of whether an absolute commitment to deciding disputes leniency is really an appropriate translation of the idea of *techumin*.

Rabbi Hoffman suspects that "the original limitation imposed on *Shabbat* travel was not connected to any particular Biblical verse..." and rather that "arduous travel, and even lengthy walks, were regarded by Jews of yore as being out of character with a day of rest." This suggests that what we should care about is maintaining the feeling of rest, and we should only be walking to the extent that it still feels like a restful activity. A stroll rather than a hike. This is also the explanation given by *Sefer HaChinukh*.

Rabbi Eliezer Melamed's contemporary series *Pninei Halacha* introduces *hilchot techumin* with a slightly different explanation. The need to travel comes from what is lacking in a person-- that they don't find satisfaction and *parnasa* in their place where they are, and therefore need to go outside their *techum*. But *shabbos* is about taking a break from the stresses and worries and instead contemplating the inner wholeness of the world and rejoicing in Hashem's goodness. To navigate this, the *chakhamim* instituted *techumin*. According to this explanation, maybe we should care about how including something in your *techum* helps you best reflect on creation and rejoice in Hashem's goodness.

How should we decide which, if any, of these potential reasons for *techumin* should impact our *psak* and to what extent, if any, should we take *Halacha K'Divrei HaMekil b'eruv* into account? What can we learn from the approaches that previous *poskim* have taken on *techumin* questions that first came up in their times?

Stay tuned! *Shabbat Shalom*.

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