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"Taking Responsibility for Torah"

A TALE OF TWO KINDS OF LAW ABOUT CITIES: SBM 2022 Week 3 Summary

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Some systems create the basic premises and realities of the spaces they apply to, whereas others guide people within their preexisting premises and realities. (The philosopher John Searle describes these as constitutive and regulative systems, respectively. RAK).

For example: The rules of basketball generate the significance of dribbling as opposed to carrying the ball. There is nothing wrong with carrying balls and throwing them into baskets, it's just that one won't be playing basketball. The rules of basketball are constitutive.

On the other hand, the laws regarding theft may be regulative. "Ownership" as a concept exists prior to law (at least according to R. Shimon Shkop: RAK). People perceive things as owned, and see taking someone else's property as wrong, regardless of whether the legal system of their state defines a specific act as theft.

Torah contains both kinds of systems. The laws of melekhet Shabbat generate a system based on the creative premise that one day of the week is different from the others. (However, one might understand Genesis 2:1-3 as a claim that Shabbat is "really" different in a way that halakhah merely regulates: RAK.) On the other hand, the Torah has laws such as the prohibition of geneivah/theft, the requirement to pay for being mazik/damaging, and so forth that guide us to act ethically given our preexisting acknowledgement of private property.

I emerged from our learning this week thinking that many issues regarding techum shabbat depend on whether we view its rules as constitutive or regulative. In other words: Is the halakhah trying to define spaces based on preexisting concepts of "city" and such, or are we creating new premises as to what constitutes urban space, regardless of whether these match the ways that spaces are used and defined in the world outside halakhah?

SBM this week focused on a few ways of defining and/or extending a city, including

- 1) Rules defining a city in the absence of an external wall
- 2) using structures other than houses to expand the boundaries of a space defined as a city
- 3) Ribua = "squaring" (more precisely rectangling, but "squaring" is conventional) the boundaries of a space already defined as a city.

Squaring a city means taking a city whose occupied spaces form a shape that is not bounded by four right angles and circumscribing a rectangle around that shape that includes the furthest protrusion of the city in each direction along each axis of the rectangle's perimeter. For example, if a city's maximum extensions are Points A and B on the X axis, and Points C and D on the Y axis, its rectangle's sides would be lines AC-AD, AD-BD, BD-BC, BC-AC.

The Chazon Ish understands Eruvin 56a as requiring a round city to be squared beribuo shel olam/, with the sides of the rectangle aligned North-South and East-West (=the cardinal directions). However, the Noda b'Yehuda reads Rabbeinu Yonatan al haRIF as saying that beribuo shel olam is only a suggestion or a default, and the rectangle may be oriented differently if the consensus of the people of the city adopts a specific alternative. This allows cities to choose orientations that have the effect of including specific areas or landmarks within their techum, or of excluding them. Chazon Ish reads Rabbeinu Yonatan as speaking about where to build physical additions to a city rather than about how to construe the city's boundaries halakhically.

I suggest that Chazon Ish understands the term "ir" (literally: city) as a constitutive halachic concept that does not necessarily match our reality. He assumes that the

laws of techumin exist in order to help us create these ideal dwelling areas, that differ from those existing in reality. An ideal city faces the cardinal directions, even if this is not true of the cities we occupy.

By contrast, perhaps Noda b'Yehuda holds that the laws of techum Shabbat should conform with contemporary notions of "city". Thus, the ways that citizens perceive the spaces they live in can certainly affect the halakhic shapes of cities.

The law of squaring cities is not only important regarding the shape of a single city. It may also allow combining two cities whose houses are not otherwise close enough but have overlapping ribuas (areas that are not inhabited but are within the city limits after the squaring).

Eiruvim 55a presents a case of a walled "city" whose walls have gaps of at least 142 amot on two sides. The spaces on each side of the gap are considered separate cities for the purposes of techumin. Rashi explains that this is so only if the two gaps face each other, and the space between the gaps is not occupied by residential buildings (like this []). However, if the gaps are not facing each other (like this !, imagining the two open sides as solid), then even if there is a wide deserted area running on the diagonal between the gaps, the space is considered one city. Chazon Ish explains this to be because the triangular space on each side of the gap is squared, and therefore each space overlaps the other's square.

Rabbi Pinchas Eliyahu Falk (Shu"t Machaze Eliyahu) cites this Rashi to argue that the cities of Gateshead and Newcastle in England can be combined for the purposes of techumin. These cities ran on either side of a wide river shaped like a snake. As a result, each city overlapped the other's square, and their techumin were combined.

However, the part of Gateshead that extends into Newcastle's squaring, and whose square overlapped Newcastle, has been redeveloped in a way that creates gaps of more than 70 amot between residential buildings, so that the first-level criterion for viewing the space as a city, or as appended to the city of Gateshead, are no longer present. Rabbi Falk argues that factories with restaurants in them and stores that sell essentials can be considered along with residences. Considering all such structures together, the space can be considered a "city"

on its own, and then can be combined with Gateshead, and then both together with Newcastle.

Why can such non-residential structures be considered? Mishnah Eiruvim contains a list of structures that can and cannot be used to extend a city. The basic criterion is that we can use those which have some form of beit dirah in them, meaning they are made for dwelling. Rabbi Falk makes halachic arguments for why factories with cafeterias and certain stores should be included in this category. These arguments inspired heated discussions in our Beit Midrash. I think these arguments came back to the question of how we should develop the definition of "city". Is it a purely and intrinsically halachic category, or should the halachic definition in the context of techumin be influenced by the way our society views a city (or other form of urban dwelling)? In other words, it depends on whether hilkhoteh techumin are constitutive or regulative.

SBM benefited greatly from a ZOOM presentation by Dr. Greg Newmark, Associate Professor of Regional and Community Planning at Kansas State University. Dr. Newmark focused on the requirement that houses be within 70 amot of each other in order to form a city or be appended to one. (Note: Many understandings of the halakhot of city-formation, even those that use being within 70 amot as a formal rule, will in practice sometimes allow the houses to be further apart.) While some of us felt that this measurement was probably based on the way cities used to be built, and may not be relevant to contemporary urban spaces, Dr. Newmark saw the 70 amot measurement as a guide for an ideal city and proposed that modern cities should be planned using this measurement, as it creates an ideal level of density.

I haven't decided yet whether it is more correct to see hilkhoteh techumin as constitutive or as regulative. Each side has arguments that are convincing halachically, sociologically, and ethically.

I believe that understanding the purpose of defining an "ir" is crucial to being able to make decisions about defining techum Shabbat in the modern world. I therefore plan to delve further into this issue in preparation for writing my own t'shuva as SBM concludes.

Shabbat Shalom!