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On the Nature of Psak and Poskim, with specific reference to Techumin

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There are two kinds of halakhic decisors.

Some like to make decisions based on rules of authority or procedure. "The halakhah does not follow the position of a student when in dispute with their teacher"; "When Rabbi Akiva disputes with a peer, the halakhah follows Rabbi Akiva"; "The law follows the later authority (within the same era)"; and the classic "When a doubt arises regarding a Biblical law, follow the stringent position; when a doubt arises regarding a Rabbinic law, follow the lenient position". (See the article הלכה in the Encyclopedia Talmudit.)

Other like to make decisions based on the merits of the issue.

The second category can be subdivided. "Merit" can mean the position that best fits the language of Tannaitic and Amoraic sources; or that best fits what one sees as the mainstream interpretation of those sources; or that best fulfills what one understands as the purpose of the law; or that best coheres conceptually; or that best coheres intuitively.

All the above relates to abstract questions; "What is the law?" rather than "What is the law in this case?". There are also two sorts of cases: those in which all the human interests are on one side, and those in which two or more parties have opposed interests.

Decisors may be radically different as case-judges than as law-judges. Those who use rules of authority to decide law may be focused entirely on the needs of justice or piety or health in deciding specific cases; those who focus on merits when deciding the law may decide cases mechanically on the basis of the law as it has been determined, without considering the impact of decisions on the specific people involved.

"Merit" decisors must acknowledge the existence of rules of authority. But they correctly point out that those rules are mostly presented as defaults in case of doubt, not as overriding principles. When one is certain that the lenient side of a dispute about Biblical law is correct, one may follow it; when one is certain that the stringent side of a dispute about Rabbinic law is correct, one **must** follow it.

So "rules of authority" decisors may be oxymoronic in the sense that they are unwilling to make decisions, or alternatively, may be unable to tolerate the uncertainty inherent in any substantive decision.

Unwillingness to make decisions can spread to the rules of authority. Is this a case of a student arguing with a teacher, or of a later authority arguing with an earlier? What if Rabbi Akiva's position is disputed by a later Tanna? This leads to a third kind of decisor, the one who seeks to satisfy all positions. This third kind of decisor can also emerge out of those focused on substance, if they give themselves over entirely to understanding their predecessors' positions rather than to evaluating them.

Rhetoric and method must be carefully distinguished. For some poskim, the mechanical rules somehow end up disproportionately favoring the positions they see as "meritorious".

Actual decisors, like actual human beings, are generally hybrids rather than ideal types. For example, a decisor may be rule-based generally but merit-based in a few specialties where they have greater substantive confidence, or merit-based except for areas where they find the overall contours of the law unintelligible (*chukim*). Also, even decisors with generally strong and self-aware methodological commitments may override them roughshod when dealing with issues that activate them ideologically.

All the above is intended as pure description, and to a certain extent as autodescription. Let's move now to a brief and sketchy (its SBM prep week!) forward-looking conversation about the way a particular rule-of-authority might interact with substantive concerns in a specific area of halakhah.

Halakhic practices can be revived, or go dormant, as the result of personalities or technology. For example, the revival of shatnez checking in America is often attributed to the indefatigable [Mr. Joseph Rosenberger](#), who came up with both new methods of testing and catchy ad campaigns. (My favorite was the person, first zapped by lightning and then turned away at Gan Eden, moaning: "But the salesman told me it had no linen in it!") I've explained in [episode three of the ongoing Efschar Leverurei podcast series](#) that it's not at all clear how necessary shatnez testing is for which garments as a matter of pure halakhah, or perhaps more sharply, that Mr. Rosenberger made it much more necessary halakhically by making it much more easily accessible. By the same token, the ritual of "checking ingredients" before purchasing food was largely obsolesced by the advent of industrial kashrut organizations. (It is encouraging and educationally necessary to publicize the occasional comic bloopers like certified ham, lest the next generation grow up to believe that certification **makes** food kosher. Indeed, in the bad

old days, fraudulent rabbis would offer to “bless” products for manufacturers.)

My sense is that the issue of *techumin* on Shabbat (very **very** roughly the prohibition against travelling more than 2000 *amot* in any direction from one’s point of origin) was largely out of public consciousness in America until thirty years ago. Part of this may have been the result of ignorance. But my suspicion is that *talmidei chakhamim* and *amei baaretz* alike shared an intuition that *techumin* were not intended to forbid walks that were perceived of as staying within one’s urban space, which halakhically is considered to be “4 *amot*” no matter how large it gets, rather than travelling to a different space. The issue is that the halakhic definition of “urban space” does not match our intuition. For example, halakhah appears to define any space where houses are more than approximately 235 feet apart (depending on the size one chooses for an *amah*) as distinct. But there are many “cities” which contain spaces where such distances are common.

The conventional explanation for this discrepancy is that the Talmudic city was the highly concentrated center of an agricultural settlement, with the farmers clustering together and walking out to their fields in various directions. This seems a plausible but insufficient explanation for why the issue has become stark now rather than much earlier in the post-Talmudic era. I would instead point to two other factors. The first is the development of “urban sprawl” in the age of the automobile. This really should have created a crisis, but a combination of suburban halakhic indifference and intuition let us ignore the issue. Then GPS technology and Google Earth made the gap between apparent law and reality too obvious to ignore. Technohalakhists who’ve never left their own *daled amot* can produce maps for anywhere in the world – your suburban estate, your bungalow colony, etc. – that show exactly how far apart houses are in your area, and therefore draw your halakhic Shabbat-walk border with absolute clarity.

Except this clarity is often an illusion. Halakhah contains an array of devices for expanding the *techum*. Some of these are consensus, but many, many questions seem to have first arisen recently, and I suspect that more attempts at comprehensive restatements of the law have been written in the past three decades than in the previous three millennia.

To give one example. I said above “2000 *amot* in any direction from one’s point of origin” – actually it is the square within which one can inscribe a circle with a radius of 2000 *amot* centered on one’s point of origin. One gets more than 2000 *amot* ‘in the corners’ of the square. This is simple enough when one’s point of origin is indeed a point (or even “the square within which one can inscribe a circle with a radius of 4 *amot* from one’s ur-point of origin”). But halakhah expands the point of origin to include the entire urban area surrounding it. More – for many cities, halakhah expands the point of origin to include the North-South oriented square circumscribed around the city using the furthest point on each directional axis as the basis for its line. (Then to find the *techum* one

extends that square 2000 *amot* in every direction, and then squares the result of that. I’m leaving out steps, and possibly making mistakes – please do not use this as a guide for practice.)

It should be clear that one city’s square may include part or all of what initially seemed to be a wholly separate city, or that two cities’ squares can intersect. The question then is whether the intersection of squares unifies them halakhically (and whether one then squares the resulting unit before extending the 2000 *amot*.) If intersecting squares are enough to create a unitary “point of origin”, many of the clashes between intuition and law can be avoided. On the other hand, clashes may develop in the opposite direction, where e.g. intuition rebels against the notion that the entire Eastern Seaboard is one point for *techum* purposes.

Talmud Eiruv 46a records a rule of authority that “the law follows the lenient authority regarding issues of *eiruv*”. Let’s assume (I think very defensibly) that this includes all matters of *techum*, and not just those associated with the institution of *eiruv techumin*, and that it applies to post-Talmudic disputes as well, and that it applies even to newly-raised issues where many outcomes are plausible.

What I tentatively suggest is that decisors can and should see this rule not as a mandate to mechanically adopt the “lenient” position in every dispute, but rather as license to construct a coherent body of law that makes intuitive sense to their constituents.

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