

Halakhic Process Consensus

I. What is "Consensus?"

1. Mark Washofsky – "Taking Precedent Seriously: On Halakhah as a Rhetorical Practice"

Over time, a question that has long been a subject of lively dispute within a legal community will become settled. Though the community may have in the past entertained disagreement and divergent approaches to its solution, this multiplicity of views becomes out of place once a widely accepted answer has been arrived at. That answer now holds the status of "law," so that the burden of proof rests heavily on those who claim that it is not in fact the only correct answer or even the best answer. This process occurs in Jewish law whenever the community of *poskim* reach a consensus as to the right answer to a previously-disputed halakhic issue. At that point, while students of the *halakhab* will continue to study the "rejected" approaches, those will be regarded as purely theoretical possibilities. The law in practice (*halakhab lema'aseh*) will be identified by most observers with the consensus view among the *poskim*. Other, conflicting views, however plausible they may be as interpretations of the halakhic sources, will be seen as incorrect.

This consensus forms a precedential function in *halakhab*, a constraint upon the freedom of rabbinic scholars to derive solutions to legal problems that differ from the consensus view. We see evidence of this consensus throughout the history of Jewish law, every time a community adopts through formal or informal process the practice of deciding their legal issues in accordance with a single *posek* or a group of *poskim*. We see it in the form of "rules" for halakhic decision-making, designed to create a uniform interpretation of legal sources that in theory could be read in two or more different ways. And we see it operating on substantive halakhic questions as well, forging agreed-upon solutions to issues otherwise susceptible to a variety of approaches. In a significant sense, what we today call "Orthodox Judaism" is an example of halakhic consensus, a collective stipulation by a particular Jewish community to adhere to the particular halakhic interpretations championed by a particular set of rabbinical authorities. Consensus thus enables the Orthodox community to identify itself, to its own members and to the rest of the Jewish world. (P. 28-29)

III. Examples in Rhetoric

<p>2. R. Ovadia Yosef – Yehaveh Da'at 1:32 Therefore, even though there are those who are lenient in igniting electricity on Yom Tov, one does not protest to them strongly, for specifically there are those who do so in several communities outside of Israel based on the rulings of their rabbis. In any event, it is very proper to explain to them in a gentle language that according to the opinion of the majority of our later rabbis, there is to be strict not to ignite electricity on Yom Tov, and we are to follow the majority.</p>	<p>2. שו"ת יחווה דעת חלק א סימן לב לפיכך, אף על פי שהמקילים להדליק חשמל ביום טוב, אין למחות בהם בחזקה, בפרט שנהגו כן בכמה קהלות בחו"ל על פי הוראות רבותיהם, (וכמו שכתב ג"כ בספר שרי המאה חלק ו' עמוד קט"ו), מכל מקום נכון מאוד להסביר להם בלשון רכה, שלפי דעת רוב רבותינו האחרונים יש להחמיר שלא להדליק חשמל ביום טוב, ואחרי רבים להטות.</p>
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3. Rabbi Michael Broyde / Rabbi Howard Jachter

The Use of Electricity on Shabbat and Yom Tov

"The consensus of opinion - accepted by nearly all rabbinic authorities - is that turning on an incandescent electric light on Shabbat violates a biblical prohibition, although the precise prohibition is in dispute; most authorities maintain the prohibition is lighting a flame, and a minority contends that the prohibition is either cooking or ma'keh bepatish."
(RJJ Journal 21) P. 8

Did you know? The word "consensus" found 114 times in first 54 issues of RJJ Journal, 195 uses in approx. 180 issues of Tradition

III. Halakhic Rationale

<p>4. Exodus 23:2 Do not follow the crowd in doing wrong. When you give testimony in a lawsuit, do not pervert justice by siding with the crowd</p>	<p>4. שמות כג, ב (ב) לא תהיה אַחֲרֵי רַבִּים לְרַעַת וְלֹא תַעֲנֶה עַל רֵב לְנִטַּת אַחֲרֵי רַבִּים לְהַטֹּת :</p>
<p>5. B. Sanhedrin 3b Has it not been taught; R. Eliezer the son of R. Jose the Galilean says: 'What is the signification of the phrase to incline after many to arrest judgement?' The Torah implies: Set up for thyself <u>a court of an uneven number</u>, the members of which may be able to incline to one side or the other?</p>	<p>5. תלמוד בבלי סנהדרין ג:ב והתניא : רבי אליעזר בנו של רבי יוסי הגלילי אומר : מה תלמוד לומר + שמות כג + לנטת אחרי רבים להטת, <u>התורה אמרה : עשה לך בית</u> <u>דין נוטה.</u></p>

IV. Questions

1. Does consensus equal correctness or infallibility?
2. How is consensus determined? Who is included in the equation?
3. Does the rabbinic application of "majority" regarding court cases automatically bestow the same halakhic authority on later halakhic disputes?

Bibliography

Washofsky, Mark. "Taking Precedent Seriously: On Halakhah as a Rhetorical Practice." *Re-examining Progressive Halakhah*. Ed. Walter Jacob, Moshe Zemer. (2002) P. 1-70

Rabbi Dr. Yehudah Abel - Halakhah – Majority, Seniority, Finality and Consensus

<http://www.mucjs.org/Consensus.pdf>