

Vayeishev 5781  
Majority Rule  
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“T’ruah: The Rabbinic Call for Human Rights brings together rabbis and cantors from all streams of Judaism, together with all members of the Jewish community, to act on the Jewish imperative to respect and advance the human rights of all people” (T’ruah website). T’ruah, of which I am a member, has designated this day as Human Rights Shabbat and asked that rabbis around the country speak about the right to vote.

When the request came, a couple of weeks ago, my first reaction was that the theme was already tired. We had done a lot of work leading up to the election, determined that every vote be counted in a free and fair election. But with the election past and nearly every challenge to the results filed at that time having been dismissed, I was hoping for a something else. But alas, we do have something to talk about.

Millions of Americans believe that the current President will continue as President for “four more years,” having won the election by a landslide, despite the certified results of an election in which the American people elected his opponent, in one of the most decisive defeats in American election history, in an election which the leading experts, have stated and demonstrated was the most secure election in decades. We have a system based on majority rule. Those who reject the election results are entitled to their disappointment, but I fear that the undermining of our democracy we are seeing will have far-reaching effects on the integrity of our democracy and our society, and I believe we should be concerned about that, regardless of who won the election.

My contribution to this national observance will be to take us on a little journey into how our tradition thinks about majority rule. So please, relax, and let’s learn some Torah together. I hope that we can simply spend a bit of time together in Torah.

We have a murky passage in the Torah, not in today’s parashah, actually, but in Exodus 23: “You shall not side with the many for evil, and you shall not bear witness in a dispute to go askew, to skew it in support of the many ” (Ex. 23:2, Transl. Robert Alter). The most straightforward way to read this verse is as an injunction to do what is right, no matter what popular opinion says, and especially if you believe that the majority is wrong. It also seems to want to say that we may not skew justice by using power, or majority, unfairly.

Rashi (11th c. France) explains this verse based on centuries of interpretation. He says that it comes to teach two different principles: First, that we should not let the view of one judge in a case tip the scales toward an unfair verdict. Whenever we rely on a vote, we must be very careful that the system itself protects against abuses. Second, we are to extrapolate that “thou shalt not follow a bare majority for evil” means that we *should*

follow it for good. And wait, there is more. Rashi adds that we assume good intentions in a system designed to be just. Therefore, as long as the system has integrity, we rule by majority, even when human life is at stake.

Let's give this idea some context. Ancient Israelite religion, where this law sits, centered on a sacrificial cult and a set of normative behaviors. With the advent of rabbinic Judaism, following the destruction of the Second Temple, our sages instituted a decision making process in which majority rule plays a role. It is fascinating that the rabbis chose that very verse about the danger of following the majority as the basis for following the majority. They did so based on its positive interpretation over the generations.

We have two famous stories that take us into some of the dangers inherent in a majority-rule decision making process. Both stories concern disagreements between the schools of Hillel and Shammai. They were the two, major rabbinic academies of the Mishnaic era; think: two major political parties. .

The first story (Mishnah Shabbat 1:4) goes like this:

In the upper story of the home of a certain rabbi (Ḥananya ben Ḥizkiya ben Garon), the sages met, voted, and counted the votes on a number of legislative items (*halachot*). What happened there? The students from the school of Shammai disagreed with the students of the school of Hillel and, although the school of Hillel usually won, on that day, Shammai's students held the majority, and they issued eighteen decrees against the views of the school of Hillel.

That day was as hard for Israel as the day of the Golden Calf... [How could it happen, people wondered? According to one story,] (Rabbi Yehoshua of Onye taught) that the students of the school of Shammai came upon their opposing colleagues from downstairs and killed the students of the school of Hillel on the upper floor. Another version relates: Six of Hillel's students were up there already, and the rest stood upon them with swords and spears. Either way you slice it, it was a dicey, deadly affair.

Writing in the 18th century, one of the major commentators on the Jerusalem Talmud, a rabbi known as P'nei Moshe (R. Moshe b. R. Shimon Margalit; Lithuania, 18th c.), softens the story somewhat, telling it like this:

Six students of *Shammai's* school went upstairs to vote, and their colleagues stood below, holding the students of the School of Hillel at bay with swords and spears so that they could not go up and cast their votes.

Talk about voter suppression. The rabbis were well aware of it.

Here's second story (Eruvin 13b):

[Rabbi Abba said in the name of Shmuel,] For three years, the School of Hillel and the School of Shammai argued. One said that by logic, the law should accord with their view, and the other said the law should accord with them. A heavenly voice spoke: "These and those are the words of the living God--and, the *halakha* follows the School of Hillel."

[But wait, if "both these and those are the words of the Living God,"] why did the House of Hillel merit to establish the law, as a general rule? It is because, say the sages, the students of Hillel were kind and gracious. [In what way?] They taught their own ideas as well as the ideas from the students of Shammai. And not only that, they would teach Shammai's opinions first.

...[And they go on, adding:] Whoever degrades themselves, the Holy Blessed One raises them up, and whoever lifts themselves above others, the Holy Blessed One degrades them. Whoever runs toward greatness, greatness flees from them, and whoever flees from greatness, greatness runs toward them...

We see from this story that there are times strong supporters can be found on either side of an issue, yet a policy must be determined. We do not negate the validity of the other side. What's real for people is real for them. But the path forward must be paved with humility and decency, and not self-aggrandizement. And the greater the stakes, the more that is true, because when it comes to public policy, God is invested in the outcome.

Now I will share a source from Rabbi Chayim David Halevi, a renowned modern halachist who served as Chief Sephardi Rabbi of Tel Aviv. Understanding the concerns about following the majority, he explores many interpretations of the Exodus verse and summarizes as follows (Responsa Mayim Chayim 3:52):

The only place in the Torah where we find majority rule is in the sitting of the Sanhedrin — meaning, the highest court [in Jerusalem] and all other courts in Israel. The Torah says, "Incline after the many," and our sages have shown us that Jewish law is decided by majority vote among the rabbis. However, significant constraints also must be followed...the decision of the majority holds when both of the disagreeing parties know the *halakhah* equally well, for we would not say that a small group of the wise would not hold sway over a large group of fools...The Torah informs us that the majority opinion will generally agree on the truth more so than the minority, [and] when the minority side

is...smarter than the majority, 'majority rules' does not hold.

[Now, all of that concerns rabbis making decisions among themselves, for Jewish communities.] However, continues Halevi, when we are not dealing with a society all of which believe in Torah from heaven, and when we do not have a Sanhedrin as stated above, we have no option left to us except to follow, in our public lives, the democratic way according to the terms of our day. And our prayer to God is that we soon merit the return of our judges and advisers as at the beginning, and that the earth be filled with knowledge of God as waters fill the sea.

In summary, this scholar, closer to our time, informed by his colleagues and his own sense, teaches us that within the Jewish community, we follow the majority when there is a dispute among the sages, who are presumed to be equal in wisdom, but if the minority clearly is wiser, we do not necessarily vote. And in a secular society--like the State of Wisconsin, or the United States of America--where not everyone is Jewish, we are to follow the majority according to the terms that have been established.

Finally, Jewish tradition imagines situations where the minority may rule over the majority, regardless of anyone's level of scholarship. A minority of residents of a town can force the community to put up a wall with gates and a bolt for the town; and to build a synagogue and to buy a book of *Tanakh* for anyone to use (Rabbeinu Yerucham in *Shulchan Arukh* 6:31). And the same is true for all the needs of the town... And the residents of the town can force one another to provide hospitality for guests, and to give them *tzedakah*, and to give *tzedakah* to the communal fund (Rema's gloss on R'Yerucham).

Okay. So there's our tradition on majority rule, in a nutshell, more or less (there's only so much time). Now here's a little spin just for us today: At Hanukkah, we rededicate ourselves to our Jewish way of life. Clearly our tradition favors a democratic process and sees places where it can go wrong and also sees places where the majority should not rule. The important thing for the religious person to take very seriously is how a leader's behavior and policies fall in line with the spirit of truth and justice. We have many clues about what it looks like when they do, chief among them humility and putting concern for the public over personal interests. We would do well to scrutinize our leaders for those qualities, and while we're at it, we should look for them in ourselves.

The strife between brothers in today's Torah reading reminds us of how quickly communities can be unsettled and undone when we decide we cannot find a way to live with those we may not like or understand. The juxtaposition of the Joseph story with

Hanukkah calls us to remember that words and actions shape culture, that what we do and what we tolerate shape the future.

A few minutes ago, Jerry chanted the famous words of the prophet Zechariah, “Not by might, nor by power, but by my Spirit, says the Lord” (Zachariah 4:6). Governments will come and go. Our job is to do our best to root ourselves in the highest principles we can discern, and to grow a world where justice and goodness flourish. I pray that we will do that.