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To use the title of Simon Shama's wonderful book on 17th-century Amsterdam, this *parashah* contains an "embarrassment of riches" for a preacher. As we have seen, most of it is of a legal character, the first parashah to be devoted almost entirely to fundamental principles of Jewish law, on which hundreds of pages of the Talmud are based: laws of damages, bailment, theft, money-lending, assault and battery, the court system and judicial procedure. (I say *almost* entirely legal, because it concludes in chapter 24 with a rather enigmatic narrative passage in which 70 elders of Israel accompany Moses, Aaron, Nadab and Abihu as they ascend the mountain, *va-yir'u et elohei Yisrael*, "and they saw the God of Israel" without any untoward consequences; "They beheld God, and they ate and drank." Commentators have a field day with this, but I am not going there this morning.)

Rather, the legal material is the essence of the parashah. This includes laws that express the highest ethical insights of our tradition: "You shall not wrong a stranger or oppress him, for you were strangers in the land of Egypt. You shall not mistreat any widow or orphan. If you do mistreat them, I will heed their outcry as soon as they cry out to Me…. If you lend money to My people, to the poor among you . . . exact no interest from them. If you take your neighbour's garment in pledge, you must return it to him before the sun sets; it is his only clothing . .. in what else shall he sleep? Therefore if he cries out to Me, I will pay heed, for I am compassionate" (22:20–24). Alongside these, of course, are others that reflect a much more primitive outlook: "You shall not allow a sorceress to live. Whoever lies with a beast shall be put to death. Whoever sacrifices to a god other than the Lord alone shall be proscribed" (22:17-19).

Today I would like to focus on a single verse, which suggests an interesting question: what is the relationship between Judaism and democracy? A lot of apologetic literature has been written on this, particularly in the United States during a period when Jews were less secure than they do today, and felt the need to assert that the fundamental principles of American democracy were rooted not so much in the philosophy of the Enlightenment but in the Hebrew Bible. At the other extreme, I remember hearing Meir Kahana on several different occasions, arguing that democracy and Judaism were antithetical. "The objective of a democratic state", he said, "is to allow a person to do exactly as he wishes. The objective of Judaism is to serve God and to make people better. These are two totally antithetical conceptions of life."

The verse I would like to explore in this context pertains to a crucial component of democracy, the relationship between the individual and the majority. Here is the verse, 32:2, in the original Hebrew.

לא תהיה אחרי רבים לרעות ולא תענה על ריב לנטות אחרי רבים להטות

The first five words of the verse seem fairly straightforward. In the older translation, "Thou shalt not follow a multitude to do evil"; in the new translation, "You shall not side with the mighty (footnote: Others: multitude) to do wrong." In other words, if you are in a minority, and you believe that the majority is in the wrong, do not be

swayed by the numbers against you. As Rabbi Joseph Hertz wrote in his commentary, invoking an aphorism attributed to John Knox, "One, with God and the Right, are the true majority." But how is this principle to be applied? Consider the following three possible applications:

- To the right of individuals to hold firm to their opinions or beliefs even if they are in the minority? [This was Ibn Ezra's interpretation: "If you see that the majority bear witness to something you did not know, do not say to yourself, "these would not lie"]. No problem with this principle.
- To the right of a judge on a court composed of many judges to articulate a dissenting opinion rather then be silenced by the majority? Also beyond any serious question.
- To the right of an individual, or indeed the obligation of the individual (as this is a commandment) to refuse to be bound by a decision made by a majority of legislators that he believes to be a bad law, an evil law, a law that affects him adversely? This reading of the verse is, of course, much more problematic.

But let's continue to the rest of the verse, where the meaning is more obscure. [Hebrew] Beginning with *ve-lo*, it clearly indicates a second prohibition. In the old translation "neither shalt thou bear witness in a cause to turn after a multitude to pervert justice"; the new translation, "You shall not give perverse testimony in a dispute so as to pervert it in favour of the mighty (footnote: others: multitude)." Literally, perhaps: "you shall not respond to a dispute by inclining toward the majority, to turn aside." The function of the two verbs *lintot* and *le-hatot*, from the same root, is not entirely clear, but it does seem absolutely clear that the final phrase, *aharei rabbim le-hatot*, is still governed by the negative of the prohibition, you must not incline after the majority for any improper purpose.

The entire verse, therefore, is anti-majoritarian. The multitude, or majority,. is often wrong, the individual must hold to his hold to his own integrity. A paradigm for this principle might be the biblical narrative of Elijah on Mount Carmel confronting alone 450 prophets of Baal and insisting that his was the true God – an inspiring narrative, magnificently dramatized in Mendelssohn's Oratorio, but ending as we often forget with Elijah commanding the assembled people to "Seize the prophets of Baal, let not a single one of them get away," and slaughtering them in the Wadi Kishon (1 Kings 18:40).

The rabbis of the Talmudic period use this verse rather surprisingly to establish the principle that judicial decisions are to be made by a *majority* of judges, and that therefore every Jewish court must be composed of an uneven number: 3, 23, 71. [Rashi, Sforno].[1] This verse becomes the basis of the Jewish court system, discussed in Tractate Sanhedrin. And the last three words of the verse are used in an extraordinary way in one of the most famous and provocative and profound narrative passages

[1] Rashi (Talmud, Sanhedrin): judicial procedure
Sforno: if you are a judge in a court of 23 adjudicating a capital case: "When your fellow judges ask your view, your response should not be to follow the majority, If ten vote to acquit and eleven vote to convict, you should not (automatically) follow the majority to convict; rather, you should express your opinion and your reasoning. You must not say simply that one may follow the majority [in such a case] without presenting a reason other than that they are the majority."

of the Talmud, which is I hope familiar to many of you, but which I would like to review with you because of their use of words from our verse.

It is triggered by a dispute by a technical matter in the law of purity and impurity, in which we are told that R. Eliezer ben Hyrkanos declared a certain kind of oven to be ritually clean, and the Sages declared it unclean. That could have been the end: There are hundreds of such disputes recorded in the Talmudic literature; minority dissents are recorded, and it is generally just left at that. But in this one case, the narrative continues that Eliezer was not content to let the matter rest: "On that day, R. Eliezer brought every imaginable argument, but they were not convinced." He then moves on to a different mode of persuasion.

- "If the halacha is as I say, let this carob-tree prove it!" Thereupon the carob tree was uprooted and moved 100 cubits from its original place. The sages replied, "No proof can be brought from a carob tree."
- "If the halacha is as I say, let this river prove it." Thereupon the river began to flow in the opposite direction. The sages replied, "No proof can be brought from a river."
- "If the halacha is as I say, let the walls of the academy prove it." Thereupon the walls inclined at an angle as if to fall. But R. Joshua ben Hananiah rebuked them, saying, "When scholars are engaged in a halachic dispute, what business do you have to interfere?" Therefore they did not fall, in honour of R. Joshua, nor did they return to an upright position, in honour of R. Eliezer, and they are still standing askew.
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Finally, R. Eliezer said, "If the halacha is as I say, let it be proved from Heaven." Thereupon, a Heavenly Voice cried out, "Why do you dispute with R. Eliezer, seeing that in all matters the halacha agrees with him?" At this point, R. Joshua arose and explaimed, *Lo ba-shamayim hi* … "It is not in the heavens." What did he mean by this? [the passage continues]. Said R. Jeremiah, Since the Torah had already been given at Mount Sinai, we pay no attention to a Heavenly Voice, because You have already written in the Torah at Mount Sinai, "*aharei rabbim le-hatot*", the last three words of our verse.

How do these words clinch Joshua's case against God? He takes these last three words, which—as I noted—are in their original context part of the negative, what you must *not* do, and makes them an affirmative: *Aharei rabbim le-hatot* : "to incline after the majority.": In other words, one rabbi, even with God on his side, does *not* constitute a majority that should be followed, and this can be proven by words from God's own Torah—even though it's a little like taking *lo tahmod beit re'ekha*, "You shall not covet your neighbour's house," and quoting it as *tahmod beit re'ekha*, "Covet your neighbour's house."

At the end of the narrative, an epilogue is added: a later rabbi once met Elijah—not the fanatical prophet of Mt. Carmel but his reincarnation as figure in Jewish folklore who was understood to commute frequently between the heavenly and the earthly realms. This rabbi, somehow recognizing Elijah, asked how did God react when Joshua ben Hananiah refused to accept the heavenly voice as decisive? Elijah replied—according to the rabbinic narrative, of course—"God laughed and said, *Nitz-*

huni banai, “My children have defeated Me”—by using my own words to refute My claim.

Seems like a nice ending. But Eliezer was not convinced. This one man with God on his side refused to back down from his position. And his colleagues refused to tolerate his dissent: “On that day all objects which R. Eliezer had declared clean were brought and burnt in fire. Then they took a vote and excommunicated him.” And things continue to deteriorate from that point (BM 59b).

How are we to understand this story? We can read it as a powerful assertion of human independence from the rigid restrictions of divine decree. Once the Torah was revealed on Sinai, it was turned over to human beings to interpret and apply in accordance with their best understanding, following the procedure of majority rule. The very exercise of human ingenuity and initiative in interpreting the divine text, even if it diverges from God’s original intention, is said to have been ratified by God, attributing to God the pride we all feel the first time our child, whom we taught to play chess, achieves a valid check-mate against us, defeats us in tennis, or paints something that surpasses anything we could every do. This reading is a validation of a progressive approach to Judaism, legitimizing change as a majority of serious, studious, committed Jews see fit. It is a validation of a democratic. humanistic process.

But what about poor R. Eliezer, for whom exhaustive argumentation, the carob tree, the river, the walls of the academy, and even the heavenly voice, fail to convince the majority that they are wrong, and who is severely punished for his unwillingness to concede defeat? What about the rights of the lonely individual conscience to defy the majority—Elijah on Mount Carmel, or Eliezer in debate with his colleagues?

What about the claim today—in the absence of rivers changing their course to flow uphill and heavenly voices intervening from above—that multitudes of believers may indeed *pervert* the meaning of God’s revelation by claiming it for purposes that were never intended, and that the only safeguard against this is the individual who will *not* compromise,
who will not be swayed by the majority,
who insists on saying ‘no’,
who come what may clings to the original meaning of our biblical verse: that we must *not* follow the majority when it is wrong?

The epilogue about the report of God’s laughter provides an overly simplistic way out of this quandary. The truth is that there is no simple way of reconciling the democratic right of the majority to make decisions that bind everyone, and the democratic right of the individual conscience to remain free to maintain a wildly unpopular view, no simple way of reconciling between the rabbinic reading of our verse and its original, simple meaning. It is one of the glories of the Jewish tradition that such tensions often remain unresolved.