

Consent, Dissent, and the Day after the Elections: What Can Judaism Teach us about Keeping Civics Civil?

A source Sheet and Discussion for Rav Siach

(Sources and English translations from *The Jewish Political Tradition*, Vol. 1, M. Walzer, M. Lorberbaum, N. Zohar)

The 2016 US Presidential Election has been considered to be a particularly divisive one that has raised many questions about the state of politics and American society. This study will attempt to look at what Judaism has to say about accepting governance, both as a general rule, and also specifically when there is controversy and disagreement surrounding it.

A. Consent to be Ruled by God's Law, Consent to be Ruled by Civil Law

The following text is a Midrash on the beginning of the Ten Commandments. As is often the case with Midrashim, not only does the parable (משל) teach about the original text (נמשל), but the converse is also true. In this case, the text shows the necessary component for a ruler in relation to the ruled people: they must consent to the rule.

Mekhilta de Rabbi Yishmael, Bahodesh, 5, 6

"אנכי יי אלהיך" מפני מה לא נאמרו עשרת הדברות בתחלת התורה?
משלו משל, למה הדבר דומה? לאחד שנכנס במדינה. אמר להם: "אמלך עליכם!"
אמרו לו: "כלום עשית לנו טובה, שתמלך עלינו?"
מה עשה? בנה להם את החומה, הכניס להם את המים, עשה להם מלחמות,
אמר להם: "אמלך עליכם!" אמרו לו: "הן והן!"
כך המקום: הוציא את ישראל ממצרים, קרע להם את היים, הוריד להם את המן, העלה להם את הבאר,
הגזי להם את השלו, העביר במעוף, עשה להם מלחמת עמלק,
אמר להם: "אמלך עליכם!" אמרו לו: "הן והן!"
"לא יהיה לך אלהים אחרים על פני!"
למה נאמר? לפי שנאמר: "אנכי יי אלהיך." (שמות כב.)
משל למלך בשר ודם שנכנס למדינה.
אמרו לו עבדיו: "גזר עליהם גזרות!"
אמר להם: "לאו! כשיקבלו את מלכותי, אגזר עליהם גזרות. שאם מלכותי לא יקבלו, גזרותי לא יקבלו."

כָּה אָמַר הַמֶּקוּם לְיִשְׂרָאֵל: "אֲנִי יי אֱלֹהֶיךָ, אֲשֶׁר הוֹצֵאתִיךָ מֵאֶרֶץ מִצְרַיִם, מִבֵּית עֲבָדִים, לֹא יִהְיֶה לְךָ אֱלֹהִים אֲחֵרִים עַל פְּנֵי!" : (שְׁמוֹת כ,ב)
אָמַר לָהֶם: "אֲנִי הוּא שֶׁקִּבַּלְתֶּם מַלְכוּתִי עֲלֵיכֶם בְּמִצְרַיִם?"
אָמְרוּ לוֹ: "כֵּן!"
"וְכַשֵּׁם שֶׁקִּבַּלְתֶּם מַלְכוּתִי עֲלֵיכֶם, קִבְּלוּ גְזֵרוֹתַי!"

"I the Lord am your God" (Exod. 20:2). Why were the Ten Commandments not proclaimed at the beginning of the Torah? A parable: what is this like? Like a human king who entered a province and said to the people: Shall I reign over you? They replied: Have You conferred upon us any benefit that you should reign over us? What did he do [then]? He built the city wall for them, he brought in the water supply for them, and he fought their battles. [Then] he said to them: Shall I reign over you? They replied: Yes, yes. Similarly, God brought the Israelites out of Egypt, parted the sea for them, sent down the manna for them, brought up the well for them, brought the quails for them [and] fought for them the battle with Amalek. [Then] He said to them: Shall I reign over you? They replied yes, yes....

"You shall have no other Gods besides Me" (Exod. 20:3)....

A parable: A human king entered a province. His servants said to him: Issue decrees upon the people. He answered: No! Once they have accepted my reign I shall issue decrees upon them. If they do not accept my reign, why should they accept my decrees?

Similarly, God said to Israel: "I the Lord am your God who brought you of the land of Egypt. You shall have no other gods." He [thus] said to them: "Am I He whose reign you have accepted in Egypt?" They replied: "Yes"; [so He went on] -- "Now, just as you have accepted My reign, accept My decrees."

Questions for Discussion:

- 1) Central to this Midrash is that even God required the people's consent before becoming their ruler. In a democracy with contested elections, what constitutes consent?
- 2) Can a person be said to not give consent if their chosen candidates are not elected?
- 3) Who plays the role of "King" in a modern democracy? Does that role belong to the elected official or to the government as a whole?

B. Consent and Dissent.

The following sources address the intersection of consent and dissent. What happens when two sides accept the law and the source of government (in these sources, Torah and the rabbis) but disagree about how to best institute the law?

משנה עדויות א:ד

ולמה מזכירין דברי שמאי והלל לבטלן: ללמד לדורות הבאין, שלא יהא אדם עומד על דברו--שהרי אבות העולם לא עמדו על דבריהם.

Mishna Eduyot 1:4

And why are the opinions of [both] Shammai and Hillel recorded in vain? So as to teach generations to come that a person should not hold fast to his opinion for the fathers of the world did not hold fast to their opinions.

Questions for Discussion:

1. What exactly is this source? Who's opinion is expected to change?
2. Is the minority-opinion holder meant to adopt the majority? Or is the source teaching that even the majority opinion may one day give way to what was once a minority opinion?

The following three sources should be read together, paying particular attention to the narrative that they tell as a whole. Clarifying comments can be found after each source.

תוספתא יבמות א: י-יא

אע"פ שנחלקו בית שמאי כנגד בית הלל בצרות, ובאחיות, ובספק אשת איש, ובגט ישן, ובמקדש את האישה בשווה פרוטה, והמגרש את אשתו ולנה עמו בפונדק, לא נמנעו ב"ש לישא נשים מב"ה ולא ב"ה מב"ש, אלא נהגו האמת והשלום ביניהן, שנאמר (זכריה ח) האמת והשלום אהבו. אף על פי שאלו אוסרין ואלו מתירין, לא נמנעו עושין טהרות אלו על גב אלו, לקיים מה שנאמר (משלי כא) כל דרך איש זך בעיניו ותוכן לבות ה'. ר' שמעון אומר, מן הספק לא היו נמנעין, אלא נמנעין מן הודאי.

Tosefta Yevamot 1:10

Even though Bet Shammai and Bet Hillel disagreed regarding co-wives and sisters, an uncertain marriage, an old *get* (writ of divorce), betrothal with a *perutah*, and the case of a man who divorced his wife and then shared a room with her at an inn--Bet Shammai did not avoid taking wives from Bet Hillel, nor Bet Hillel from Bet Shammai. Instead they acted with truth and peace between them, as written, "Love truth and peace" (alt: Love

honesty and integrity) (Zech. 8:19). Even though these forbid while those permit, they did not avoid relying on each other in producing pure foods. Thus they fulfilled that which is written, “Every man’s path is pure in his eyes, while the Lord appraises hearts” (Prov. 21:2). Rabbi Shimon says, They did not avoid the unknown, but did avoid known [cases].

The subjects of disagreement between Bet Shammai and Bet Hillel relate to questions of permitted versus forbidden marriages. In these instances, one school would consider the offspring of such a relationship to be legitimate children, while the other would consider them to be the product of a forbidden marriage, a mamzer. Because Jewish law prohibits the mamzer and their descendants to marry “legitimate” offspring, the fact that the two schools permitted their children to marry one another is particularly noteworthy.

The second half of the statement, regarding the “these forbid while those permit” can be understood in two ways. One way to understand the statement is that despite their very different understandings of what is permitted and what is forbidden, they still trusted one another’s food. However, a parallel statement in the Mishna makes clear that the statement is even stronger: the two schools even disagreed about what kinds of vessels can make a food impure or not, and nevertheless trusted the other.

עירובין יג ע"ב

א"ר אבא אמר שמואל שלש שנים נחלקו ב"ש וב"ה הללו אומרים הלכה כמותנו והללו אומרים הלכה כמותנו יצאה בת קול ואמרה אלו ואלו דברי אלהים חיים הן והלכה כב"ה וכי מאחר שאלו ואלו דברי אלהים חיים מפני מה זכו ב"ה לקבוע הלכה כמותן מפני שנוחין ועלובין היו ושונין דבריהן ודברי ב"ש ולא עוד אלא שמקדימין דברי ב"ש לדבריהן

Babylonian Talmud Eruvin 13b

Rabbi Aba, citing Shmu'el, said: For three years, Bet Shammai and Bet Hillel disagreed. These said: The law should be according to us, while those said: The law should be according to us. [Then] a *bat kol* was pronounced: “These and those are the words of the living God (alt: the living words of God); and the law is according to Bet Hillel.” But since these and those are the words of the living God, why was it granted to Bet Hillel that the law be established according to them? Because they were tolerant and meek, and related both their own words and Bet Shammai’s words. Moreover, they placed Bet Shammai’s words before their own.

A bat kol is a “heavenly voice.” According to this saying, God needed to intervene and tell the people which interpretation of Jewish law to follow despite the equal validity of multiple opinions.

יבמות יד ע"א

רב אומר, לא עשו ב"ש כדבריהם ושמואל אמר עשו ועשו. אימת? אילימא קודם בת קול, מאי טמא דמאן דאמר לא עשו ואלא לאחר בת קול מ"ט דמ"ד עשו? אי בעית אימא קודם בת קול, ואי בעית אימא לאחר בת קול. אי בעית אימא קודם בת קול, וכגון דב"ה רובא, למ"ד לא עשו דהא ב"ה רובא, ומ"ד עשו, כי אזלין בתר רובא, היכא דכי הדדי ניהו, הכא בית שמאי מחדדי טפי. ואי בעית אימא לאחר בת קול, מ"ד לא עשו, דהא נפקא בת קול, ומ"ד עשו, רבי יהושע היא דאמר, אין משגיחין בבת קול. ומ"ד עשו, קרינן כאן (דברים יד) לא תתגודדו, לא תעשו אגודות אגודות. אמר אביי, כי אמרינן לא תתגודדו כגון שתי בתי דינים בעיר אחת, הללו מורים כדברי ב"ש והללו מורים כדברי ב"ה; אבל שתי בתי דינים בשתי עירות, לית לן בה. אמר ליה רבא והא ב"ש וב"ה כשתי בתי דינים בעיר אחת דמי! אלא אמר רבא, כי אמרינן לא תתגודדו כגון ב"ד בעיר אחת, פלג מורין כדברי ב"ש ופלג מורין כדברי ב"ה, אבל שתי בתי דינים בעיר אחת לית לן בה....תא שמע, אף על פי שאלו אוסרים ואלו מתירים, לא נמנעו ב"ש מלישא נשים מב"ה ולא ב"ה מב"ש. אי אמרת בשלמא לא עשו, משום הכי לא נמנעו. אלא אי אמרת עשו, אמאי לא נמנעו?! בני חייבי כריתות ממזרים ניהו...שמע מינה, לא עשו, לא לעולם עשו, דמודעי להו ופרשי.

Babylonian Talmud Yevamot 14a (commentary on the teaching of the Tosefta above)

Rav says, “Bet Shammai did not act on their opinions,” whereas Shmu’el says, “They certainly did!” When was this? If it was prior to the *bat kol*, then what is the reason for holding that “they did not (act on their opinions)?” If, however, it was after the *bat kol*, what is the reason for holding that “they did”?

If you wish, I can say it was prior to the *bat kol*; and if you wish, I can say it was after the *bat kol*. If you wish, I can say it was prior to the *bat kol*, assuming that Bet Hillel constituted a majority. Those who hold that “they did not”--well, Bet Hillel were a majority. Those who hold that “they did” [can] explain: We follow the majority only when both sides are equal; here, however, Bet Shammai were more astute.

If you wish, I can say it was after the *bat kol*. Those who hold that “they did not”--well, the *bat kol* had been pronounced! While those who hold that “they did” follow Rabbi Yehoshua, who said “We take no heed of a *bat kol*” (BT Bava Metzia 59b).

Regarding those who hold that “they did,” we might cite the verse “You shall not cut yourself up” (Deut 13:1), [midrashically interpreted to mean] “You shall not become divided into factions.”

Said Abbaye: “You shall not become divided” only applies to two courts in the same town, one ruling according to Bet Shammai and the other ruling according to Bet Hillel. With two courts in two [separate] towns, there is no problem. Rava retorted: but Bet Shammai and Bet Hillel are like two courts in the same town!

Rava therefore said, “You shall not become divided” only applies to a [split] court in one town, with one faction ruling according to Bet Shammai and another faction ruling according to Bet Hillel. With two [separate] courts in the same town, there is no problem....

Come and hear: “Even though these forbid while those permit,...Bet Shammai did not avoid taking wives from Bet Hillel, nor Bet Hillel from Bet Shammai.” If we suppose they did not [act on their opinions], it is clear why they did not avoid [taking wives]. But if we suppose they did [act on their opinions], why did they not avoid [taking wives]?...[The offspring] would be *mamzerim!*..Does this not prove that they did not [act on their opinions]? No, they informed [each other of mutually problematic cases] and refrained from marriage.

This Talmudic sugya is a classic example of how the Talmud addresses a textual difficulty. The question of how Bet Hillel and Bet Shammai approached their different legal interpretations is approached from many different angles, including logic and textual proofs, but the conclusion remains that no answer is a definitive one.

Questions for Discussion

1. How do these texts present the responsibility that a victorious side in a political match has to its opponents and vice-versa?
2. To what extent are the holders of a majority opinion expected to accept the validity of differing opinions?
3. When is it acceptable for “the losing side” to hold fast to their practices? To what extent can a given society accept not only variant belief systems but also variant practices?

4. Is there an equivalent in today's political climate to the case in which the majority opinion need not be followed, because the minority opinion is considered to be better thought-out?

What is the ultimate message of the commentary on Bet Hillel and Bet Shammai and their willingness (or lack thereof) to marry within one another's families? At first glance, it seems that the original statement (that they were unconditionally willing to inter-marry) describes a utopian vision of pluralism and coexistence. However, the addendum that "they informed one another" implies that they respected one another's differences and did not always expect the other side to simply accept their understanding. Which situation allows for a healthier society? Within the modern political climate, can we succeed in creating situations in which two deeply opposed sides can live together and simultaneously respect that there are some areas where they should remain separate?

The conversation began with the question of consent: even God ruled the Jewish people only after receiving their consent. What role, if any, does consent play in the stories of Hillel and Shammai and their schools? Does a person automatically consent to the rules and opinions of someone else even when they disagree fiercely about them?

Add-ons with modern texts:

- A satiric song broadcasted on the eve of the Israeli elections of 1981 - how and if is this skit relevant to elections in Israel and the U.S today - https://www.youtube.com/watch?v=rA1su_wvyHq

Declaration of Independence Mois Benarroch

I am a one man
country
In my country
I am tolerant
of everyone
My country is secular and religious
Fundamentalist and liberal
I hold elections whenever I decide to do so
And cross the border without any problem
I have no representative in the U.N.
And cause no trouble to anyone
In my country I am the Prime Minister
And the eternal immigrant
I take my borders with me everywhere I go
And my government does not ask me for more
money
I am a one man country
I never declare war
I do not have territorial claims
From my neighboring countries
I am a country of one man
Who gets along very well with his wife.

שיר: הכרזת עצמאות מואיז בן הארש

אני מדינה של
איש אחד
בארצי אני סובלני
כלפי כלם
מדינתי היא חילונית ודתית
פונדמנטליסטית וליברלית
אני עורה בחירות כשרצוני בכה
ועובר את הגבול ללא בעיות
אין לי נציגות באו"ם
ואיני גורם בעיות לאיש
בארצי אני ראש הממשלה
והמהגר הנצחי
אני לוקח אתי את גבולותי לכל מקום
וממשלתי אינה מבקשת ממני תוספת תקציב
אני מדינה של איש אחד
לעולם איני מכריז על מלחמה
אין לי דרישות טריטוריאליות
מהמדינות השכנות לי
אני מדינה של איש אחד
שמסתדר טוב מאד עם אשתו