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## **Edah Happenings:**

**Israel  
Conference-  
Sun. Oct. 23rd  
in Jerusalem  
\*Register online  
NOW\***

**Regional  
Conference in  
Montreal- Nov.  
11th -13th**

**Regional  
Conference in  
Boston- Nov.  
18th -20th**

## **Standing Together**

Rabbi Alan J. Yuter

Parashat Nitsavim's introduction defines, in an exquisite narration, the core essence of Torah, the religion of the Jewish people. In Devarim 29:9, we are told by Moses that "you are all standing today before haShem your God, the heads of your tribes, your elders, your scribes, and all the men of Israel. [also standing with you are] your children, your wives, those who sojourn with you in your camp, from the woodcutters to the water carriers."

Here is the living religion that is unique to Torah. We are addressed as a "you," we are individuals who are constituted as a people, and we stand "today." And we are a collective, not a disorganized mob of individuals. The Torah was commanded to all of us, the entire Congregation of Jacob. R. Seadya Gaon, in **Emunot ve-De'ot** first observed that Israel is unique in its public revelation. Hammurapi's Code was given by the seeing eye sun god of justice, Shamshu, to the human king Hammurapi. As evidenced by his treachery toward other Mesopotamian city-states, Hammurapi, the giver of the law, was not himself bound by the law. For Hammurapi, law is an instrument of power, not a source of moral obligation.

Pharaoh's Egypt has no objective law; Pharaoh's whim is law. And the Torah describes Egypt as Beyt Avadim, the house of slaves. By appealing to a real God other than Pharaoh, the living embodiment of the god Horus, Moses was committing both heresy and treason against the religion and state of Egypt.

Christianity's founder claimed that he is "the salvation, the way, and the life," with no one reaching the Father except through him. His "revelation" was private, not public. And he claimed that his miracles prove he is right. Moses taught that miracles or exercises in the art of illusion are not sufficient to contradict God.

Similarly, Muhammed's revelation, given privately by Jibril/Gabriel was private. God's revelation was to all of the Jewish people, because we are all partners in the covenant. Unlike Christianity, for whom clergy are intermediaries between Man and God, we are a nation of priests and a holy people, because being religious is a personal as well as a national commitment, and not an office or a job.

Torah Judaism remembers the foundational events that made us a people. and, through ritual, remembers with acts of commemoration. The past happens "today." Religions that live in the past or fantasize about the future ignore "today," the moment in which we actually live. Pagan religions remember a glorious past and remember a future that did not happen. The medieval Church believed that nothing good could happen in this fallen, sinful world. A religion that lives only in the past has nothing to say to our present human condition; a religion that lives for a future pie in the sky will not nourish us in the here and now. By demanding that adherents ignore the present and suffer, non-Jewish faiths do not encourage people to be the best that they can be

Who counts in Israel? On one hand, there is a hierarchy of power. The heads of the tribes, the elders and recorders [ **shetar**, which means "document," derives from the Akkadian verb "to write," **shatarum**] But children, women, and those without family are included in God's covenant and protection. Exploitation of the individual person is an offense to the absolutely singular God. We become a nation "today" when we become aware of our nationhood as sworn to our ancestors, Abraham, Isaac and Jacob on one hand, and we commitment to our covenant the children yet to be born. Rav Soloveitchik's covenantal community is the modern idiom that describes this ancient formula. It contains the secret of our sanctity and explains the enigma of our endurance:

1. The covenant is real religion, to be applied In the here and now
2. The individual as part of the collective received God's command, attention, and protection
3. Every Israelite, from top to bottom, is Included in the covenant, horizontally, in the present
4. Every Israelite, from those who have passed on to those yet to be born, are Included in this contract/ covenant.
5. God requires that to endure from our past to our future, we must ensure that all participate in the Covenant. In order to enter the Eden of eternity, we are given the Torah, the social recipe, to establish Eden on earth. And when we succeed, "we will all be standing before haShem our God."

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# Jewish Lessons on Selecting a Jurist

by Rabbi Aryeh Klapper

When Moses creates the first Jewish judiciary, God instructs him to appoint men of strength, in awe of God, men of truth, haters of corruption. The first lesson Jewish tradition teaches is that judicial character is more significant than judicial politics.

Today's nominees will likely make their most critical decisions about issues that do not yet appear on the legal horizon. What matters most is not their specific positions but their temperament, and their understanding of the responsibility of the Supreme Court. The purpose of a constitution is to place basic principles beyond the reach of the powerful.

The second lesson Jewish tradition teaches consists of a model for the long-term success of a text-ordered society. In Judaism, Texts restrain power through authority, and texts gain authority because they are have meanings that are discovered rather than produced by their interpreters. When judicial rulings are perceived as reflecting judges political opinions rather than painstaking scholarship, they lose their authority.

Thus the public perception, justified or not, that *Gore v. Bush* was decided on the basis of party affiliation cost the Court tremendously. The Talmud records similarly that the Great Sanhedrin's capacity to prevent disputes in Israel ended when its members were perceived as ruling on the basis of affiliation with the School of Hillel or the School of Shammai rather than on the basis of individual judgment.

The third lesson is that even though the Torahs constantly exhorts us to care for the poor, nevertheless the Torah bans favoring them in legal disputes. Over much of the latter part of the Twentieth century, the federal judiciary has tended to be more liberal than the electorate, and certainly than the Senate. Liberals have accordingly sought to expand the discretion of the courts, especially with regard to constitutional interpretation. Some of the hugely important advances of the civil rights movement were made possible by these theories.

The liberal gains, however, enabled by creative but intellectually unconvincing readings of the constitution have made the text less capable of resisting political agendas. The fear inspired in liberals by the prospect of a conservative Court, however, brings home the price that has been paid for those theories. If the text of the constitution were seen as controlling, the political leanings of potential justices would have far less potential impact.

Jewish tradition offers a straightforward if difficult prescription stick to the traditional meaning of a text except when urgently necessary. The

Talmud celebrates legal adaptation, but maintains its received lore with almost fanatic obsession to detail.

When teaching rabbinic students, I gradually bring them to the realization that authoritative interpreters have nearly absolute power over texts, and that real creativity is possible. At the same time, I teach them that this power must be used with extreme caution. If a text can mean anything, it means nothing.

Sometimes, as for example in the face of disaster, one must reread the text and find new wine in old barrels through legitimate legal interpretation. In the aftermath of the destruction of the Second Temple, the Rabbis found creative ways to compensate for the loss of the sacrificial order, and in medieval times, the Rabbis found creative ways to justify commercial transactions banned by the plain meaning of the Talmud. But this creativity took place against a static traditional background.

Crucially, the Rabbis were continuously aware that their capacity to innovate stemmed from their predecessors resistance to innovation and their own reliance on precedence. They realized that judicial discretion is not an easily renewable resource, but rather a capital account built up by years of judicial restraint. When they used this resource, they spent it carefully and wisely.

**“Judicial character is more significant than judicial politics.”**

Finally, the Rabbis understood that the authority of law, and its capacity to protect the weaker members of society, depends on a combination of judicial humility and self-confidence. The Talmud teaches that the Torah cannot be properly learned by any but the exceedingly humble. Moses, the greatest of lawgivers, is portrayed as the humblest of men. Yet, the Talmud saw excessive rabbinic humility in a time of crisis as causing the destruction of the Second Temple. The complex task of a judge is to be exceedingly humble without being excessively so.

As the nomination hearings of John Roberts occur this week, the question that we should be asking is not whether he agrees with our political positions. Rather, the Jewish tradition teaches that we should be asking whether he has the humility to bow before the text and its history of authoritative interpretation, and the character, self-confidence, and ingenuity to stand against that history when necessary to preserve the authority of the text.

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