Democracy, Populism, or Something Else: Jewish Sources on Forming Governments With People You Don’t Trust

Texts compiled by Rabbi Rory Katz and Rabbi Leora Perkins

Both democratic and populist movements identify themselves as expressing “the will of the people.” What is the line between fair democratic process and a populist agenda that pits “the nation” against “outsiders”? How should majorities behave, and what protections does Judaism envision for minorities? The sources below help us explore these questions.

I. Majority rules, but when?

Based on a difficult-to-understand verse in Exodus, the rabbis do adopt majority rule as a governing principle, but not in every circumstance. These verses appear in parshat Mishpatim, the Torah’s first legal code, amidst verses about interactions among people in our own community who don’t get along. (We offer two translations to aid in unpacking the dense Hebrew.)

Exodus 23:2-3

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<tr>
<th>Everett Fox Translation</th>
<th>NJPS Translation</th>
<th>Even a poor-man you are not to respect as regards his quarrel.</th>
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<tbody>
<tr>
<td>You are not to go after many (people) to do evil.</td>
<td>You shall neither side with the mighty to do wrong—you shall not give perverse testimony in a dispute so as to pervert it in favor of the mighty—nor shall you show deference to a poor man in his dispute.</td>
<td>(ב) לא תהי אתניה רחים לערות ואל תמענה על רא בר לכות: איהר רbeits לכות: (ג) ודלא אתניה ברכיה:</td>
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<td>And you are not to testify in a quarrel so as to turn aside toward many—(and thus) turn away.</td>
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The Hebrew word *rabim* is key here. The New JPS translation renders it “mighty,” while Fox translates using the more conventional “many.” What is the connection between numbers and power? Is that relationship inherent or can the two be disconnected?

- How does verse 3 shape the meaning of verse 2 when it comes to siding with the many?
- What do you think verse 2 is saying?

**Rashi on these verses**

Rashi (11th c. France) explains this verse in the context of legal procedure, which is how it has been interpreted for centuries:

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**THOU SHALT NOT FOLLOW THE MANY FOR EVIL — There are Halachic interpretations of this verse given by the Sages of Israel but the wording of the text does not fit in well with them. They derive from here that we must not decide a person’s guilt by a preponderance of one judge. And the end of the verse they explained thus: אָחָרֶיךָ רַבִּים — but if the judges who declare the defendant guilty are two more than those who declare him innocent, then decide the matter as they declare — that he is guilty (Sanhedrin 2a). ...**

Therefore the exegesis of the verse according to the words of our Rabbis is as follows: “thou shalt not follow a bare majority for evil” — to sentence a man to death on account of the one judge by whom those who condemn him are more in number than those who acquit him;... **[T]here is, however, a majority to whose view thou must incline. When is this the case? When there are two who preponderate amongst those who vote for condemnation over and above those who vote for acquittal. For from what is implied in, “thou shalt not follow a bare majority for evil”, I may infer: but thou shall follow it for good. Hence they (the Rabbis) said (i. e. they established the general rule): In capital cases we may decide by a majority אָחָרֶיךָ רַבִּים לָטֹט — but if the judges who declare the defendant guilty are two more than those who declare him innocent, then decide the matter as they declare — that he is guilty (Sanhedrin 2a). ...**

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of one for acquittal, but only by a majority of at least two to condemn...

- What’s at stake here is the life of the person on trial—which is to say, an image of God. How does that raise the stakes for the decision-making process?
- How do you think Rashi is understanding/employing the phrases “to do good” and “to do evil”?
- How might you translate this case of a single person being on trial to matters that affect the entire community? What are some analogous cases on a national level?
- How does this analogy of nation-as-courtroom work for you? What are its strengths? Its drawbacks?
- Why do you think the rabbis might have chosen a verse about the danger of following the majority as the basis for following the majority?

This verse from *Mishpatim* and its traditional interpretation show us that, under certain circumstances, we do follow the majority, even though we are aware of the dangers that implies. Consider the following two stories about Beit Hillel and Beit Shammai, the major rabbinic academies (read: political parties) of the Mishnaic era. What do they teach us about majority rule?

II. Majority rules, but how?

Case A: Mishnah Shabbat 1:4

And these are among the *halakhot* that the Sages, who went up to visit him, said in the upper story of Hananya ben Hizkiya ben Garon. They counted, [the students of] Beit Shammai outnumbered [the students of] Beit Hillel, and they [Beit Shammai] issued decrees on eighteen matters on that day.

- Beit Hillel’s version of the halakha usually prevailed. How does the Mishnah represent this story? Do you think it has a moral valence?
Jerusalem Talmud Shabbat 1:4 (Vilna edition)

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<tr>
<th>Paragraph</th>
<th>English Translation</th>
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<tbody>
<tr>
<td>Jerusalem Talmud Shabbat 1:4 (Vilna edition)</td>
<td>That day was as hard for Israel as the day of the Golden Calf... Rabbi Yehoshua of Onye taught: The students of beit Shammai stood upon them from below and killed the students of Beit Hillel. Another teaching: Six of them went up and the rest stood upon them with swords and spears.</td>
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- How does the Jerusalem Talmud’s version of the story raise the stakes? What message does this send about majority rule?

P’nei Moshe commentary (R. Moshe b. R. Shimon Margalit; Lithuania, 18th c.)

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<td>“Six of them” — of the students of Beit Shammai. They went up to the upper story [to be present for the vote], and the rest of them stood below against the students of Beit Hillel with swords and spears so that they would not go up. [That way,] those of Beit Shammai upstairs would outnumber those of Beit Hillel.</td>
<td>ששה מהן מתלמידי ב&quot;ש עלו לעלייה והשאר עמדו מלמטה על תלמידי ב&quot;ה בחרבות וברמחים כדי שאל מחו ויובו אתן שלח מ&quot;ש עלmeno על אמן של ב&quot;ה</td>
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- The P’nei Moshe, one of the major Rashi-like commentators on the Jerusalem Talmud, softens the story somewhat. How do you feel about his interpretation compared to the plain text above? Is one more reassuring than the other? More frightening?

Case B: Talmud Eruvin 13b

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<td>Rabbi Abba said in the name of Shmuel, For three years, the House of Hillel and the House of Shammai argued. One said, 'The halakha is like us,' and the other said, 'The halakha is like us.' A heavenly voice spoke: &quot;These and these are the words of the living God, and the halakha is like the House of Hillel.&quot; Since &quot;Both these and those are the words of the Living God,&quot; why did Beit Hillel merit to establish the halakha according to them? It is because the students of Hillel were kind and gracious. They</td>
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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.

Like that which we taught: One whose head and majority of his body are in the sukkah and his table is in the [adjacent] house, Beit Shammai said it is invalid, and Beit Hillel said it is valid. Beit Hillel said to Beit Shammai: Is there not a story in our hands that the elders of Beit Shammai and Beit Hillel went to visit R’ Yochanan ben HaChornit, and they found him sitting with his head and majority of his body in the Sukkah and his table in the house? [Doesn’t this imply it’s permissible?]

Beit Shammai said back to them: From there you bring a proof? Even they said to him that if this is how you act, you never fulfilled the mitzvah of Sukkah in your life! [This story is] to teach you that whoever degrades themselves, the Hol Blessed One raises them, and whoever raises themselves, the Holy Blessed One degrades them. Whoever runs toward greatness, greatness flees from them, and whoever flees from greatness, greatness runs toward them. Whoever uses their time wisely, the time stretches out, and whoever procrastinates, the time stands still.

How does this text advise the majority to behave? The minority?

How can opposite things both be true and yet one of them be accepted as the law of the land?

The Talmud raises the specific example of Sukkot here. What associations does this raise for you? How might the sukkah imagery shape your ideas about majority vs. minority rule?

Taken together, what do these two case studies imply about how to conduct public business in a time of great disagreement?
IV. Majority rules — but really?

In this next text, Rabbi Chayim David Halevi, a renowned modern halachist who served as Chief Sephardi Rabbi of Tel Aviv, summarizes the halakhic consensus that limits the idea of majority rule flowing from our Mishpatim verse above.

Responsa Mayim Chayim 3:52

The only place in the Torah where we find majority rule is in the sitting of the Sanhedrin — that is, both the highest court [in Jerusalem] and all other courts in Israel — as it says, “Incline after the many.” From here our sages learned that halachah follows the majority (see Talmud Chullin 7a and the first chapter of Rambam’s Hilchot Mamrim; the matter is lengthy).

Now we shall see how constrained is the power of majority rule via “Incline after the many,” and these are the words of the rabbi who wrote Sefer HaChinuch (commandment #78): “[It is a mitzvah] To follow the many, in a case where there is a disagreement among the sages regarding one of the Torah’s laws...and by way of explanation our sages said, ‘Majority [rule] comes from the Torah.’” (And here comes the limitation that nullifies all the democratic shading of this mitzvah.) “And this 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, even if they [had merit] like the generation that left Egypt. But through comparing their wisdom, the Torah informs us that the majority opinion will generally agree on the truth more so than the minority.”

The rabbi who wrote “Minchat Chinuch” found a source for this innovation in the Talmud (Yevamot 14a), according to those who said that
Beit Shamai who act according to their reasoning against Beit Hillel, who were the majority, “When do we follow the majority? When they are equal [in wisdom]. Here, Beit Shamai was sharper.” That is to say, Beit Shamai was ‘spicier.’ It is explained that when the minority side is spicier and smarter than the majority, ‘majority rules’ does not hold. (This discussion is reminiscent of Rousseau’s contention that “The merit of numerical preference alone is not always sufficient to make a decision made by the majority into a righteous or correct one.”) ...

However, 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.

What new factor is Halevi introducing into our thinking about public decision-making? How does it strike you? Can you think of contemporary examples where this standard is applied — or when it has failed to be applied?

Who gets to decide what is “correct” outside the realm of halachah? Is there an objective standard?

V. Minority rule

Jewish law and practice imagines that there are also situations in which the minority may rule over the majority. Consider this passage from the Shulchan Arukh, the preeminent halachic code written in the 16th century and still considered widely authoritative today, and gloss of the Rema (Rabbi Moshe Isserles) that adapted the Shulchan Arukh’s Sephardic halakha for Ashkenazim. Rabbenu Yerusham was a 14th century French rabbi.
Residents of a town can force one another (even the minority can force the majority - Rabbneu Yerucham 6:31) to put up a wall with gates and a bolt for the town; and to build a synagogue and to buy a book of the Torah, Prophets and Writings so that anyone from the community may read from them.

<table>
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<tr>
<th>Gloss/Rema: And the same is true for all the needs of the town and see Orach Chaim 55 - Laws of Hiring a Cantor for the People of the Town; and also ibid., 53. 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.</th>
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- What is surprising to you about this halakha? What about it seems logical?
- Is there a common thread among these acts that the minority can force on the majority? Is there a general principle you would extract from here?
- What analogies might you draw to present-day debates about public policy?
- What is beneficial about this sort of minority rule? What is dangerous about it?

**VI. A closing thought**

This excerpt from the Shabbat morning liturgy, right before the Torah is returned to the Ark, prays for those who serve the community.

- What do you think it means to deal with communal needs faithfully (b’emunah)? Can this directive/aspiration be a bridge between people who disagree with one another?