

### שמות פרק כג:א-ג

לא תשא שמע שוא  
אל תשת ירך עם רשע להיות עד חמס: ס  
לא תהיה אחרי רבים לרעת  
ולא תענה על רב לנטת  
אחרי רבים להטת:  
ודל לא תהדר בריבו: ס

### דברים פרק ל:א-יד

כי המצוה הזאת אשר אנכי מצוך היום  
לא נפלאה הוא ממך  
ולא רחקה הוא:  
לא בשמים הוא  
לאמר  
מי יעלה לנו השמימה ויקחה לנו  
וישמענו אתה ונעשנה:  
לא מעבר לים הוא  
לאמר  
מי יעבר לנו אל עבר הים ויקחה לנו  
וישמענו אתה ונעשנה:  
כי קרוב אליך הדבר  
מאד  
בפיך ובלבך  
לעשתו

### תלמוד ירושלמי מסכת מועד קטן ג:א | פא:ד

ולית הלכה כרבי אליעזר?!  
אמר רבי חנינה: משניתנה לא ניתנה אלא אחרי רבים להטות.  
ולית ר' אלעזר ידע שאחרי רבים להטות?!  
לא הקפיד אלא על ידי ששרפו טהרותיו בפניו.

### Talmud Yerushalmi Moed Kattan 3:1

But does the Halakhah really not follow Rabbi Eliezer (in the matter of the Oven of Akhnai, despite all his supernatural proofs)?

Said R. Chaninah: Once (Torah) was given, it was given only to "incline after the majority".

Did Rabbi Eliezer really not know that one must "incline after the majority"?!?

He was particular only because they burnt the things he declared tahor to his face.

### בבא מציעא נט

עמד רבי יהושע על רגליו ואמר: "לא בשמים היא!"

מאי (דברים ל') "לא בשמים היא"?

אמר רבי ירמיה: שכבר נתנה תורה מהר סיני.

אין אנו משגיחין בבת קול, שכבר כתבת בהר סיני בתורה (שמות כ"ג) "אחרי רבים להטת".

### Bava Metzia 59

Rabbi Yehoshua stood up on his legs and said: "Torah is not in Heaven!"

What is meant by "Torah is not in Heaven"?

Said R. Yirmiyah: Because it was already given at Sinai.

We pay no attention to Heavenly Voices, as You already wrote at Sinai in the Torah "Incline after the majority".

The climax and fulcrum of the famous story of the Oven of Akhnai (Bava Metzia 59) occurs when Rabbi Yehoshua “stands up on his legs” and declares “Lo bashomayim hee” – “She (the Torah) is not in Heaven”, and thus rejects the supernatural evidence Rabbi Eliezer had brought for his halakhic position. This statement is usually taken as a pure negative, with a positive implication – since the Torah is not in Heaven, it follows that it must be left to human beings to interpret.

The Talmud, however, presents Rabbi Yehoshua’s response as itself needing explication – what did he mean by saying that the Torah was not in Heaven? The response, in the name of R. Yirmiyah, is that the Torah writes “after the majority incline”, and therefore majority rules.

Professor Daniel Boyarin argues that these verses are circular justifications, as they are relevant in context only if one accepts their rabbinic interpretations. Moreover, those rabbinic interpretations so remove the verses from their original contextual meaning that they can be legitimated only on the presumption that the Torah is not in Heaven, meaning that human beings have the right to reunderstand Torah as they wish.

However, Boyarin correctly notes, the import of Rabbi Yehoshua’s statement here is not individual human autonomy; rather, it is the necessity for human intellectual autonomy, symbolized by Rabbi Eliezer’s conviction that he understands what G-d wants, to bow to human political authority, in the person of the majority of the rabbinic community.

What seems to emerge, then, is that Rabbi Yehoshua uses the verse as a power play against another human, and then denies G-d the right to intervene. If he were doing this consciously, I would have a hard time justifying him, and indeed, contemporary interpretations of the story often emphasize that it’s not clear whose side the narrator is on. But there’s no question that in the metahalakhic tradition, Rabbi Yehoshua’s point wins the day, and Rabbi Eliezer’s last stand is given the Torah status of Beit Shammai when disagreeing with Beit Hillel.

The justifications would work better, if less cleverly, if Rabbi Yehoshua and Rabbi Yirmiyah genuinely believed them to be substantively G-d’s intention – whether the intention of the specific verses they cite, or whether the verses simply function as catchy crystallizations of obvious truths. Here it is worth noting that Yerushalmi Moed Kattan’s version of the story has only R. Yirmiyah’s verse (in the name of R. Chaninah), and immediately asks: Didn’t Rabbi Eliezer know “after the majority incline”? In other words, for the Yerushalmi it may be that the principle of majority rule was obvious and incontrovertible, and what required justification was Rabbi Eliezer’s defiance.

In the Bavli, it seems clear that this is not the case. But there is a way of bridging the sensibilities, as follows: Rabbi Eliezer agreed that majority ruled. However, he thought that the majority should be bound by their best approximation of Divine truth, however obtained. Accordingly, once he had shown to what he believed to be everyone’s satisfaction what G-d thought, he assumed that the majority would *change its mind* and agree with his position. Until they changed their mind, the halakhah would continue to follow them. Possibly, however, their refusal to change their minds in the face of incontrovertible evidence would delegitimize them, so that their votes would no longer count.

Rabbi Yehoshua’s response is not that majority rules, but rather that rabbis may not take supernatural evidence into account when making halakhic decisions. This, it

turns out, is a highly plausible reading of “lo bashomayim hee” in its context, where it serves as an assurance that Torah is not beyond the capacity of human beings to comprehend without direct access to the Divine.

In that light, we should perhaps revisit the question of R. Yirmiyah’s proof-text as well. As Boyarin notes, the interpretation that R. Yirmiyah (or R. Chaninah) uses is not original with him, but rather seems to exist as far back as we know. And yet, just about any translation that is not self-consciously traditional will render Exodus 23:2 along the lines of JPS:

“You shall not side with the multitude to do wrong – you shall not give perverse testimony in a dispute so as to pervert it in favor of the multitude”.

(Note that JPS actually prefers “mighty” to “multitude” in both sections of the verse). In other words, they read the verse as directly contradicting R. Yirmiyah’s reading, and commanding opposition to the majority. The phrase “acharei rabim lehatot” is part of the second such imperative, rather than a separate command to follow the majority. As Daat Mikra notes, this also seems to be the interpretation required by the cantillation marks.

Everett Fox, however, renders the verse as follows:

“You are not to go after many (people) to do evil. And you are not to testify in a quarrel so as to turn aside toward many—(and thus) turn away”.

This is not substantively distinct, but by being more word-for-word faithful, it points out the grave difficulties with the reading. The redundancies are made more obvious – “to turn aside - and thus turn away”. More importantly, by making manifest that the verse is playing with the verb נָטָה, it makes the stylistic awkwardness of the verse problematic.

I suggest, accordingly, that the rabbinic reading is built on the stylistic point. If this verse were in Yeshayahu rather than in Exodus – in fact, if it were in anything other than a law collection – the rhyme would make it obvious that the verse should be divided into three sections, not two, with the lines ending leraot, lintot, lehatot.

This of course raises the question of the significance of style in reading Biblical law. And in that light, we can ask the following: R. Yirmiyah was surely aware that he was citing the end of the verse and not the beginning, and that the beginning was a command to stand against the majority. Why would Rabbi Eliezer not be entitled to simply quote the beginning back at him, and thus recreate the standoff?

Another way of asking this question is: How, really, did R. Yirmiyah read the verse? As containing two contradictory imperatives? If he read it as saying “Follow the majority except when they are doing wrong”, would he not be justifying Rabbi Eliezer rather than Rabbi Yehoshua?

There are, I think, a variety of possible technical solutions. But it is also possible that R. Yirmiyah was comfortable with a Torah that embraced a contradiction, along the lines of those who translate Mishnah Avot 3:15, “Hakol tzafui vehareshut netunah” as “All is *foreseen* yet free will is granted”, rather than as “Everything is seen and free will is granted”. In other words, Rabbi Yirmiyah read the verse as saying that sometimes one must follow the majority, and sometimes one must not.

The question then becomes – when must one, and when must one not? The Yerushalmi says that R. Eliezer rejected the majority because they had “burned the things he declared tahor in his face”; this may mean that he had no argument as to why he could resist the majority, but acted out of wounded feelings, or else that he felt the majority had abused their power, and so forfeited their authority. But neither of these readings seems

possible in the Bavli, where the majority burns his taharot only after they defy R. Eliezer's Divine evidence.

It may be, in the end, that there cannot be any set rules as to when one should bow to authority or convention, and when must act in perfect fidelity to conscience, and that this is the point of the pasuk. However – by acknowledging that there are times when majority rules, the Torah grants authority to that majority to enforce its decisions. The true meaning of Not in Heaven, then, is not that Torah means whatever the majority chooses to make it mean, but that there are times when the majority has to take responsibility for enforcing its understanding of the Divine Will against a minority's conscience, in full knowledge that the minority may be correct, and that G-d may be angered rather than pleased by their actions on His behalf.

Shabbat Shalom  
Aryeh Klapper