

Advice for President Biden: The Torah's Guide for How to Choose a Judge

Welcome to a perennial Washington favorite – the guessing game. The subject of this week's game is – Who will President Biden pick to fill the seat of Justice Breyer?

How interesting and ironic that the same week when our attention is focused on the Supreme Court due to the announcement by Justice Breyer of his decision to retire from the Court, this week's Torah portion contains laws pertaining to how courts and judges should conduct themselves.

If President Biden were to show up in shul this shabbas, any shul, or if he were to study this week's Torah portion, he would find some advice that would be helpful as he decides who to nominate to take Justice Breyer's place.

Speaking of the president showing up in shul on Shabbat, I am reminded of the joke that made the rounds a few years ago. President Bush was increasingly frustrated and wanted to find out how it was that Jews always knew things before anyone else, even in his own administration. The FBI investigated and reported back to him that it was because Jews communicate with each other in synagogue on Shabbat. The President decided he wanted to go to a synagogue to see how this worked. The Secret Service disguised him as a Hasidic Jew and off he went to Shabbat services, taking extraordinary measures to be sure no one leaked where he was going. As he took his place and sat down, he turned to one of the congregants and asked what was going on, there seemed to be a special fuss. The member said to him, "Shh, don't tell anyone, but President Bush is going to show up at services today."

Exodus 23:2 has several pertinent clauses that could help President Biden decide what qualifications a judge needs. The first part of the verse says: "*Lo teheyeh aharei rabim liraot...* You shall not follow the majority to do wrong." Rashi explains that this means a judge must voice his opinion in accordance with his understanding of the law and the evidence.

As our Art Scroll Humash explains, "Even if he is heavily outnumbered by others, he must not change his opinion to agree with them." In order to ensure that a judge was not swayed by others, for this reason, the Talmud mandated that in a court, the youngest and newest member of the Sanhedrin would state his position first– so as not to be influenced by the opinion of senior members of the Court.

The verse in Exodus continues, "*V'lo ta'aneh al rov lintot aharei rabim lehatot* – Do not respond in a dispute by distorting justice by favoring the mighty". In other words, one must not be inclined to curry favor with the powerful.

And then the very next verse offers an instructive and significant counter and corollary to the previous verse. It says, "*V'dal lo tehedar be'reevo* – Nor shall you show deference to a poor person in his dispute." The Art Scroll translation is even more explicit, "Do not glorify a destitute person in his grievance."

The law is important because so much of the Torah, including this week's reading, centers on how we are to treat the poor and vulnerable in society. We are constantly commanded to care for the widow, the orphan and the stranger and that it is our responsibility to give tzedekah to help the needy among us. As a result of the imperative to care for the weak, a judge might conclude that they should have mercy and judge in favor of the weaker, poorer litigant. Yet the Torah is admonishing judges not to assume that just because a poor person has a dispute with a person of means, that the poor person should be favored and assumed to be in the right.

The Talmud considers the case of a poor claimant who has no case, but he clearly needs the money more than the wealthy defendant. The judge is forbidden to automatically rule in the poor person's favor to help him out. Instead, he must find in favor of the rich person who is the defendant if he is the one in the right, and give money out of his own pocket to help the poor person.

What our rabbis sought to create was a legal system where non-legal considerations did not unduly influence the court. It strives for a balance between the inclination to help the needy, which is a positive and desirable trait, with the attribute of justice. In the interest of establishing impartial justice, no preference is to be given to the social standing of the litigants. For a society to feel that justice prevails, it must be administered fairly and objectively. As the Etz Hayim commentary explains, "If people lose faith in the fairness of the courts, and the poor will suffer more from that loss of faith."

And if President Biden were to come to shul regularly, he would learn some other lessons about what kinds of people are qualified to be judges in other Torah readings. Last week we read that the people Moses appointed to be judges had to be impartial "able, capable individuals, God-fearing people of truth, who hate unjust gain and who are wise, understanding and full of knowledge."

The great medieval Jewish philosopher Maimonides summarized for us and listed the qualifications necessary for a person to be appointed as a judge. He wrote: Judges must be wise and sensible, learned in the law and full of knowledge, who are acquainted with some other subjects such as medicine, arithmetic, astronomy and astrology....

The seven fundamental qualities of a judge are wisdom, humility, fear of God, disdain of money, love of truth, love of people, and a good reputation. A judge must show patience, indulgence, humility, and respect for persons when sitting in court. A judge must have a good eye, a humble soul, be pleasant in company, and speak kindly to people; He must be very strict with himself and conquer lustful impulses; He must have a courageous heart to save the oppressed from the oppressor's hate, cruelty, and persecution, and eschew wrong and injustice.

He also added -- Playing cards for money or other games of chance and lending money on interest disqualify a person from being selected as a judge. And finally, he advises -- He must, on the one hand, proceed with deliberation and care, and reconsider again and again before finally pronouncing his verdict, but may not, on the other hand, unduly delay justice.

So, for President Biden and the members of the Senate who will deliberate, we see that once again, as is so often the case, we find the Torah and ancient Jewish wisdom is relevant and can help guide our decisions.

Stuart Weinblatt
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