

It's been phenomenal how widespread the expression of grief has been for the passing of Justice Ruth Bader Ginsberg. This is true not just among Jews but among American's in general. This feisty Jewish grandmother, diminutive in height but mighty in intellect, is an inspiration to all of us because she fought for full equality, in a social, cultural, and functional legal sense, for every human being.

Her passing in the earliest hours of Rosh HaShanah seemed poetically appropriate for someone so steeped in and informed by, a sense of being Jewish a sense that shaped her personality and her jurisprudence.

You may have heard that at her Jewish summer camp, RBG at her summer camp was dubbed camp rabbi. I have it on high authority that this was due to the lack of someone else who could or would lead Shabbat services. She didn't aspire to be a rabbi. Her passions were elsewhere.

Ruth's mother impressed upon her two core lessons: first, be independent, and second, be a lady. These messages were, in those days, at definite cross purposes. Be a lady meant: don't try to be independent.

Being Jewish meant being Justice Ginsberg was both an outsider and an insider. As a child, she would read in the bathroom at school to avoid being teased as overly bookish. As one of nine women in a class of 500 at Harvard Law School, the law school dean asked her why on earth was she taking a spot in the class away from a man. And when she was teaching at Rutgers, she had to disguise the fact she was pregnant so she wouldn't lose her job.

Having personal experience as a woman and a Jew, she nurtured a continuing search for justice, the passion of her life.

This passion was obvious to anyone who entered her chambers. There on the wall, were three pieces of art that included the Hebrew letters of the Torah's words: - צדק, צדק תרדוף - Justice, Justice shall you pursue. (*Deuteronomy 16:20*)

Being a pursuer of Justice meant that one was eternally on the cusp of change, relying on the wisdom of the past in service to building a better world for the future. Ruth Bader Ginsberg saw herself being a link in a chain between those who came before and those who would follow. Journalist Dahlia Lithwick tells the story that when she was interviewing RBG, her eyes were locked not on the journalist but rather on a young staffer. In keeping with Judaism's worldview, RBG was grateful to be standing on the shoulders of giants but also was firmly focused on the future.

There had been Jewish Justices on the court; Louis Brandeis, Felix Frankfurter, Arthur Goldberg and Abe Fortas come to mind. Yet, Ruth Bader Ginsberg was the first to be assertively Jewish. She had a mezuzah on the doorframe of her chambers. During her first few years on the Court, she worked on Yom Kippur. One year she told her colleagues she was taking the day off and why. In deference, they decided the court would never again be in session on Yom Kippur. It's impossible to imagine Brandeis or Frankfurter doing the same.

Years later, she was asked to speak at a dinner honoring one of the other nine women in her Harvard Law School class. She spoke about Tikkun Olam, the Jewish assertion that we each have a role to play in fixing this broken world. She defined Tikun Olam simply, yet profoundly, as "repairing a tear in the community."

Throughout her adulthood, Ginsberg led something of a double life. On one hand, she was an insider in the oldest of old boy networks. On the other hand, traveling with her family on car trips she would see billboards saying, "No Dogs or Jews Allowed." At one and the same time, she fought discrimination in order to open doors, even as she identified with those who were locked out.

At first, RBG was one of two women on the court, the other being Justice Sandra Day O'Connor. Every year that the two of them sat together, at some point an attorney would refer to Justice Ginsburg Justice O'Connor and call Justice O'Connor Justice Ginsburg. Eventually, the National Women's Law

Center had T-shirts made for them that said: “I’m Sandy. She’s Ruth.” “I’m Ruth. She’s Sandy.” When Justice O’Connor left in 2005 to take care of her sick husband, Justice Ginsburg was now the only woman, and it was her task alone to represent a woman’s perspective and wisdom.

This wasn’t always easy or pleasant. In 2009, the court argued a case about a little girl in middle school who’s been strip-searched for contraband ibuprofen. Dahlia Lithwick recounts the scene:

I remember sitting in the room for the oral argument, and everybody was making jokes. Justice Antonin Scalia was joking about whether they searched from the outside in or the inside out. And Chief Justice John Roberts was making jokes. And then poor Justice Stephen Breyer starts saying things about, “When I was in high school changing for gym, people would stick things in my underwear.” And, of course, everybody at this point is doubled over laughing.

And Justice Ginsburg, who never loses her cool, actually gets very angry. And she turns to her colleagues from the bench and says, “This is nothing like changing for gym class.” And she describes how this child was humiliated while the strip search was going on. And then, she gives an interview, while the case is pending, in which she says: *I can’t believe that I’m the only (one) on the bench who thought that was appalling. And if there were more women on the bench, it would not have been like that.* And then she said, which (are) fighting words for RBG, *I don’t think the men share my sensitivities on this.* And by the time the case comes down, all the judges, with two exceptions, mostly have conformed entirely to her vision of this as an inappropriate search. But it was her wielding a kind of soft power, and I had never seen her do it until then. That, to me, is when I carbon-date how she started to change.”

Justice Ginsberg always understood the value of an outsider’s perspective and once the senior associate justice, set about cultivating that perspective on the court. In addition to challenging her male colleagues’ assumptions she also mentored younger colleagues. In 1994, the *Town of Greece v. Galloway* presented the question of prayers being offered at town council meetings. RBG assigned the dissent to Justice Elena Kagan, who was very junior at the time. RBG said of that decision:

“...she (Justice Kagan) was an outsider even in her own religion as she had to fight to be the first girl to celebrate becoming bat mitzvah at her orthodox synagogue. I think it’s something my colleagues don’t really get because they’ve never been in that situation.”

It was that logic that shaped how she argued six cases before the Supreme Court, of which she won five, and each case advanced the interests of a male plaintiff, for example, a man denied a right to be a caregiver for his mother, or *Weisenfeld*, a man’s right to take care of his son. A recent article by law school professors Pam Karlan and Aziz Huk maintains this was not the crafty move of a committed feminist. Rather, she maintained the 14th amendment, the equal protection clause, applied to everyone, male or female. In *Weisenfeld*, she argued that giving social security benefits to widows but not to widowers was patently unfair. The solicitor General, Robert Bork, made light of the idea that *Weisenfeld* wanted to take care of his young son. He actually said out loud that he thought that *Weisenfeld* was making it up.

In her bones, Justice Ginsberg knew that was wrong. Her view was that if men were locked out of opportunities to take time to care for family, if women were locked out of serving in the armed forces, then all of our rights were unfulfilled.

When Justice John Paul Stevens retired, Ginsberg became the senior associate Justice and the leading liberal voice on the court. She moved away from her style of writing carefully constructed, elegant opinions and began to voice wider concerns.

This was especially apparent in her powerful dissents. She once said: “dissents speak to a future age. It is not simply to say colleagues are wrong and I would do it this way. But the greatest dissents do become court opinions and gradually their views become the dominant view. That is the dissent’s hope.”

In such comments, Justice Ginsberg echoed the formidable Jewish tradition of dissent. The first collection of Jewish laws assembled in the second century is called the Mishnah. The core document of the Talmud, is also. the first legal text to preserve dissenting opinions, a feature not found in the Torah.

At one point, the Mishnah poses the question: “why do we bother to preserve dissenting opinions? The Mishnah says:

“Why remember a minority view if the halacha is according to the majority? So that if in the future, should court would want to reverse the law from a prior court, even if they are not as big a court as the prior court, it can rely upon their dissent view to override the majority view.”

Which means this, Jewishly: Majorities do not define what truth is. They are a procedure to decide, in a nonviolent fashion, what to do. A majority should be humble enough not to crush a minority but to leave them preserved so that future courts can benefit from that wisdom in future conversation, in which a prior dissenting view can count as a vote in future deliberations.

I'd like to share two other Jewish sources that speak to the matter of dissent. Maimonides's 12th century code of Jewish law, the Mishneh Torah (Hilchot Sanhedrin, 9:1), in a discussion of capital punishment, asserts that if a Sanhedrin dealing with capital punishment is unanimous in its opinion to convict, the accused goes free. Why? Because a majority without a dissent, one not facing any counter argument, is a blind opinion that cannot be trusted. Unanimity means that there was something defective in the discussion. In this case, in contrast. With the Mishnah, dissent is not preserved for a future deliberation. It serves instead to validate the current decision.

The last sacred text comes from the Talmud and discusses how to distinguish between a true prophet and a false prophet. The short answer – if a group of prophets are unanimous and relate exactly the same message, they are false prophets. Why? Because God doesn't speak through prophets but rather to prophets. Accordingly, true prophets will relate substantially the same message, but not with identical words and phrases.

All of these texts make the same point: in a legal setting where the majority rules, dissent prevents the community from blindly following the majority. Whenever a powerful dissent arises in subsequent legal arguments; or a unanimous legal decision with no dissent speaks to a faulty process; or unanimity among prophets signals an inauthentic prophecy – each of these practices has served to prevent a tyranny of the majority.

A final true story: My dear friend Rabbi David Stern relates that a few years ago, the Beehive Class, the 3 and 4 year-olds at his synagogues early education program, decided to name their new class fish Ruth Beta Ginsberg. They were very proud of that. They dictated to the teacher – a letter to Ginsberg with a photograph of the fish. And she wrote back a handwritten note on supreme court stationery. It said: I loved your letter and I am glad you named your fish after me. Cheers, RBG

I conclude with a less whimsical quote but one that documents Justice Ginsberg's Jewish foundations and acknowledgement in her own voice.

“In striving to drain dry the waters of prejudice and oppression, we must rely on measures of our own creation-upon the wisdom of our laws and the decency of our institutions, upon our reasoning minds and our feeling hearts. And as a constant spark to carry on, upon our vivid memories of the evils we wish to banish from our world. In our long struggle for a more just world, our memories are among our most powerful resources... My heritage as a Jew and my occupation as a judge fit together symmetrically. The demand for justice runs through the entirety of Jewish history and Jewish tradition. I take pride in and draw strength from my heritage, as signs in my chambers attest: a large silver mezuzah on my door post, gift from the Shulamith School for Girls in Brooklyn; on three walls, in artists' renditions of Hebrew letters,

the command from Deuteronomy: "*Zedek, zedek, tirdof*" - "Justice, justice shall you pursue."
Those words are ever-present reminders of what judges must do that they "may thrive."

May we continue to be inspired by Ruth Bader Ginsberg's life and carry forward her work for equality and justice.

AMEN

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