Daughters of Zelophehad
Rabbi Dan Moskovitz
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Let me state the quite part outload first, as you listen to my drash this morning I want you to be thinking about the recent string of US Supreme Court decisions that have turned what many saw as settled law and common sense on its head.

Roe v Wade, removing restrictions on limits to carrying a gun in public, tearing down the wall between church and state, limiting the authority of the Environmental Protection Agency to protect the environment.

I want you to think not so much about these individual cases but a legal rational called Originalism that was used by the conservative majority of the court to justify their rulings.

Originalism means using the original understanding of the constitution as the main guide to its interpretation. It's now the dominate legal view on the US Supreme Court and according to an October 2020 article in the National Post it may be gaining traction in Canada.

Though to be clear we are a long way from the US in many respects, our Supreme Court, its construct, judicial term limits and a Canadian legal theory called the Living Tree Doctrine as a counter point to Originalism makes the physical and legal border between our two countries clear and distinct.

Nevertheless, I want you to think about this legal theory as we explore a story from this week's Torah portion, because while Originalism may have few champions in the Canadian Courts, it is the basis for nearly all fundamentalist arguments for why "Bible Values", "Judaeo-Christian Values" or more and more often of late simply "Christian Values" should be applied to our daily lives and should govern our society.

As I hope you will see, Originalism is perhaps as far from how Jews read the Torah as one can get and yet you only see that if you read the Torah as it was originally intended to be read. If that sounds like a riddle, "Originalism is perhaps as far from how Jews read the Torah as one can get and yet you only see that if you read the Torah as it was originally intended to be read" then strap in and listen to this story from our parasha.

In our parasha this morning we meet the Daughters of Zelophehad, Machlah, Noah, Choglah, Milkah and Tirzah – no that was not the cast of Fiddler on the Roof.

Their father dies without leaving any male relatives, which means that his land gets returned to the tribe. For the original application of the law stated that land could be inherited only by males. Since their recently deceased father had no male heirs, his inheritance would be

scattered to the other men of the tribe. Their father's name would be lost to history and his land would permanently enter into the possession of other families.

The sisters go and plead their case before Moses and the entire assembly of Israel asking that they be given the land so that their father's name is not erased from history. Moses recognizing the seriousness and complexity of challenging God's laws takes the matter to the holy one.

Immediately, God says the claim of these women is just, they should be given their father's land. And God doesn't **just** change the law in this one specific case, God recognizes the injustice of the inheritance system and allows daughters from that time forward to inherit.

Machlah, Noah, Choglah, Milkah and Tirzah went to Moses and said, "Why should our father's name be lost to his family just because he had no son! Give us land to possess along with the rest of our father's kin!" (Numbers 27:4). Moses heard their protest and could say nothing until he "brought the case before Adonai" (verse 5) because he doubted his own authority to interpret.

God instructed Moses that the daughters of Zelophechad were correct. When a man dies without leaving a male heir, God said, the daughters would be given possession of the land as the equals of their father's kinsmen. The previously pronounced law was challenged and changed through a new act of interpretation in order to meet an unforeseen need. God said that Moses had – and, by extension, we have – the power to interpret and change the law; and God says that and demonstrates that within the very original document that so many "true-believers", "fundamentalists" argue can never be changed or reinterpreted.

To understand why originalism is not a Jewish value you have to read the original meaning of the text.

The authority to interpret the Torah is embedded in the Torah itself! The Torah contains within itself the flexibility to change and to be rediscovered and reinterpreted. That friends is the secret sauce of Judaism and why we are still here as a people and a system striving for justice and truth.

When the US Supreme Court says, "Sorry, there is nothing in the Constitution about abortion. We cannot create a right, no matter how necessary or right it may be, that isn't specified in the Constitution," they are abandoning the principle of interpretation. So-called "originalism" is the plea of people who want the text to stay static forever and to preserve the rights only of the people whose power created the system in the first place.

To that idea, Rabbinic Judaism -- and even the Torah itself -- say, No. The instruction of Torah is that we have the flexibility to challenge and change previously pronounced laws through interpretation in order to meet the needs of justice and truth.

I would argue that this is why Judaism has survived, adapted and thrived for more than 3,000 years and why inflexible institutions and legal systems see their legitimacy eroding, their voice and views out of step with the majority of the populations they are charged to represent; and why we see that conflict not only playing out in courtrooms and legislatures, but sadly, violently in our public spaces and even private conversations amongst people that used to be friends.

Should society change to address new facts and emerging truths or should society not change in an effort to hold back those unsettling forces? That is as Hamlet said, "is the question".

Consider just this story of these women in our parasha, and here I am borrowing Rabbi Rebecca Rosenthal's summary as she said it so beautifully and succinctly:

"A group of women challenge God's laws, and God says, you're right, my original framing, didn't take into account half the population of Israel. And we have to change that, not just for these five women, but for all Israelites for all time, God and Moses are able to do something that is really hard for most people, they are able to hear the voices of these women, marginalized and vulnerable without the protection of either father or husband, and not only hear them, but respond, change and grow.

God and Moses do not hide behind their positions of power, behind the absolute certainty that they are right. Instead, they open their minds and their hearts to the pain of those who are standing before them. They are not threatened by these women asking to be included, they are inspired.

So, the law changes. It expands to be more inclusive, to give people more rights than they had before. And what is the root of the change? The idea that if people are invisible, our society cannot be just, laws cannot be just if they exclude whole groups of the population, even if those people were omitted in the first draft."

To quote Rabbi Sally Preisand, the first woman to be ordained a rabbi in the modern era, "Change comes about only when those who are being discriminated against demand it."

How did Rabbi Preisand change 2,000 years of Jewish tradition to become the first woman rabbi? How did a new generation of Jews begin to reverse hundreds of years of discrimination against LGBTQ members of our community? How will our society defeat the forces of originalism and fundamentalism that seem to want to march us backward in time, to a time when the only voices that mattered were white, wealthy men of a certain age and social status?

They made these changes, and we will make these changes by the application the Jewish values of *Rachmanus* and *Tikvah*, compassion and hope.

In the sifrei an ancient Midrash on the book of Numbers the rabbis tell the behind-the-scenes story of this, of Zelophehad, and how the sisters planned to plead their case to Moses. The sisters speak to one another saying, "the compassion of human beings is different than the

compassion of God. Human beings, value men over women. They have more compassion for the needs of men than for the needs of women, but God, God has compassion for all equally. And without reservation. If we point out this injustice to God, God's compassion for us and for all of humanity will come through." (Paraphrase attributed to Rabbi Rebecca Rosenthal)

Last night I spoke about the story of Pinchas which precedes this story in our parasha. I mentioned that ultimately God rejects the jealousy and rage that caused God to bring about a plague and that motivated Pinchas to kill the cohabitating interfaith couple.

We know God rejects that, that God changes because God declares a *Brit Sholom*, a covenant of peace upon Pinchas and upon God's self, similar to the Covenant of Peace symbolized by the rainbow following the flood in the time of Noah where God declares that never again will God destroy the earth. God sees then and again in the story of Pinchas what a failure to apply compassion and a failure to look with hope causes people and God's self to do. The Covenant of Peace is not a reward endorsing Pinchas' violent actions, it's a constraint that he and we his descendants, and yes even God, must never allow our anger to overtake our compassion.

That is why this story follows Pinchas; God changes, the law changes, compassion replaces anger and rage, hope replaces despair.

That is the original voice of Torah, that is the original application of biblical values for our modern society. Not harshness and inflexibility but compassion and hope. Not because it is innate to human beings, it is clearly not, but because it is the essence of God; and human beings the Torah teaches us are all created in God's image; thus to show compassion, to extend hope is the most original and God like thing a human being could ever do.