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### May 24, 2018: “The policy may be debatable, but the law is clear”

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Title: "The policy may be debatable, but the law is clear"

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5/24/2018—More legal positivism from Justice Neil Gorsuch: the law is the law. This quote is from Epic Systems Corp v Lewis on May 21, in which the Supreme Court, 5-4, allowed companies to require employees to waive their right to file class actions to enforce federal law in preference to individual arbitration. In each case, the employee was trying to enforce minimum wage law. But in the Lutheran Church case the law was clear that States do not have to give money to churches, but the policy overturned the law. This is all such hypocrisy. But Epic is worse than just a case in which big business wins again. (small business is largely unaffected because class actions usually require a lot of plaintiffs). The Court distinguishes between worker official collective action, as in unionization, and the informal collective action of a workforce trying to force an employer to pay minimum wage. What is missing is any sense of human solidarity. There is a certain kind of legal mind that cannot see any entities between corporations and unions, on the one hand, and the individual, on the other. To be fair, I guess I should add families. But the point is that human beings are not individuals. Our only state is relationship. The Court reaches its conclusion by assuming that collective action is the exception that needs legal recognition to be enforceable. The reality of human life, which the Justices should have seen, is that the human being as an individual is the exception and there needs to be a strong presumption against limiting people to that status. The people who should be most sensitive to the difference are religious people. That should include Justice Gorsuch. Where is the individual in the Torah? In the New Testament? In the Koran? The primary actor is the collective—the people Israel, the church, the umma. Nor can one turn to eastern religion, which tends to regard the individual self as illusion. Epic is anti-religion. And people don't even know it.