

AVODAH: The Jewish Service Corps
Torah Portion – Devarim

Arbitration – Are Some Things More Important than Justice?

וְאַצְוָה אֶת־שֹׁפְטֵיכֶם בְּעֵת הַהוּא לֵאמֹר שְׁמַע בֵּין־אֶחֶיכֶם וּשְׁפֹטֵתֶם צְדָק בֵּין־אִישׁ
וּבֵין־אֶחָיו וּבֵין גֵּר: לֹא־תִזְכְּרוּ פָנִים בַּמִּשְׁפָּט כַּקָּטָן כַּגָּדוֹל תִּשְׁמָעוּן לֹא תִגְוְרוּ מִפְּנֵי־
אִישׁ כִּי הַמִּשְׁפָּט לַאֱלֹהִים הוּא וְהַדָּבָר אֲשֶׁר יִקְשֶׁה מִכֶּם תִּקְרְבוּן אֵלַי וּשְׁמַעְתִּיו:

[Moses said] I further charged your magistrates as follows: “Hear out your brothers and sisters and decide justly between any person and a fellow Israelite or a stranger. You shall not be partial in judgment: hear out high and low alike. Fear no man, for judgment is God’s

[Deuteronomy 1:16-17]

רבי אליעזר בנו של רבי יוסי הגלילי אומר: אסור לבצוע, וכל הבוצע - הרי זה חוטא, וכל המברך את הבוצע - הרי זה מנאץ, ועל זה נאמר: “בצע ברך נאץ ה’.” אלא: יקוב הדין את ההר, שנאמר: “כי המשפט לאלהים הוא.” וכן משה היה אומר יקוב הדין את ההר...

רבי יהושע בן קרחה אומר: מצוה לבצוע, שנאמר: “אמת ומשפט שלום שפטו בשעריכם.” והלא במקום שיש משפט - אין שלום, ובמקום שיש שלום - אין משפט. אלא איזהו משפט שיש בו שלום? הרי אומר: זה ביצוע.

Rabbi Eliezer the son of Rabbi Yossi Ha-Galili said: It is forbidden to arbitrate [disputes], and anyone who does arbitrate commits a sin...Let the law cut through a mountain if necessary, as it says: *judgment is God’s*. (Deut. 1:17) Indeed, Moses’ motto was “Let the law cut through a mountain.”

Rabbi Yehoshua ben Korha said: It is a meritorious act to settle a dispute through arbitration, as it says: *Execute the judgment of truth and peace within your gates*. (Zechariah 8:16) But [how]? Isn’t it true that where there is strict justice [=truth] there is no peace, and that wherever there is peace there is no strict justice? Rather, employ the kind of justice that incorporates peace. What kind of justice is that? Arbitration. [Sanbedrin 6b]

The *halakha* [Jewish law]...believes that absolute right and wrong can be realized only in heaven. In dealing with imperfect humans, we posit that no person is totally wrong or right and that, in the case of the litigants, both are partially right and wrong. The application of [strict justice] can only take account of obvious surface conditions; it fails to perceive subtleties underneath, which dilute our certainty about the right and the wrong of the litigants. Each has some responsibility for the situation and is partially guilty of the misunderstanding, for misleading innuendoes, and for contributing indirectly to a climate in society that places others at a disadvantage. Strict justice deals with plain facts and salient reality. Real responsibility, however, goes much deeper, and is obscured from the scrutiny of the court...*Tzedek* (justice in the broadest sense) is therefore truly realized only through arbitration, which declares both parties winners and losers.

[Rabbi Joseph B. Soloveitchik, *Reflections of the Rav*, pp. 56-57]

Questions: In the Talmudic debate above, Rabbi Yehoshua’s opinion – that arbitration is not only permitted, but meritorious – prevails. In your opinion, should every dispute be arbitrated? Are there some conflicts where strict justice should prevail?