

AVODAH: The Jewish Service Corps
Torah Portion: *Kedoshim*

EQUAL JUSTICE

לֹא־תַעֲשֶׂוּ עֹל בְּמִשְׁפָּט לֹא־תִשָּׂא פְּנֵי־דָל וְלֹא תִהְדָּר פְּנֵי גֹדֹל בְּצַדֵּק תִּשְׁפֹּט עַמִּיתָךְ:

Do not render an unfair decision; do not favor the poor and do not show deference to the wealthy. Judge your people fairly.
[Leviticus 19:15]

On the face of it, this passage seems to enshrine a principle of fairness for all under law, similar to the equal protection clause of the US Constitution and the expression, “Justice is blind.”

Rabbi Akiva, one of the leading Sages of the second century, defended this idea of equal justice in a disagreement with one of his colleagues, Rabbi Tarfon.

מִי שָׁמַת וְהִנִּיחַ אִשָּׁה וּבָעַל חוֹב וְיֹרְשִׁין, וְהָיָה לוֹ פְּקֻדוֹן אִו מְלוּאָה בְּיַד אַחֵרִים,
רַבִּי טַרְפוֹן אָמַר, יִנְתְּנוּ לְבוֹשֶׁל שְׂבָהָן. רַבִּי אֶקִּיבָא אָמַר, אִין מְרַחֲמִין בְּדִין
אַלְא יִנְתְּנוּ לְיֹרְשִׁין, שְׂבָלָן צְרִיכִין שְׂבוּעָה וְאִין הַיֹּרְשִׁין צְרִיכִין שְׂבוּעָה:

1. *If a person who died left behind a spouse, an heir and a creditor, who among those three should receive an asset that the deceased had left for safekeeping with a third party? Rabbi Tarfon said: The poorest of the three should receive it. Rabbi Akiva said: We do not turn the law into an instrument for pity! The heir should receive it...*
[Mishnah Ketubbot 9:2]

QUESTIONS: Rabbi Tarfon suggests a solution that would take into account the needs of the parties involved in a legal matter in order to determine the outcome of the case. Does this seem like a reasonable approach to you? How can Rabbi Tarfon suggest such an approach in light of the Torah’s prohibition against judges giving special treatment to the poor? Are there other ways to interpret the verse?

Why do you think Rabbi Akiva argues so strongly against Rabbi Tarfon? What does he mean when he says, “We do not turn the law into an instrument for pity?”

Finally, some social context. Rabbi Tarfon was among the wealthiest men of his generation, while Rabbi Akiva began life as a poor shepherd and only achieved a measure of wealth later in his life.