

Mishpatim: V'shochad Lo Tikach

- Rabbi Rabinowitz asks why the rabbis were so meticulous in disqualifying themselves as judges in any litigation where one of the parties even so much as smiled at them, or did them an insignificant favor. Didn't the rabbis pursue truth with a passion? In fact the Torah permits rabbis to decide a halakhah for themselves, even if it involves a great deal of money. Why, then, were they so careful with litigation? He answers that if someone does you even a small favor, there is a conflicting value or mitzvah of hakarat hatov. The rabbis therefore disqualified themselves. In deciding a halakhah there was no such conflicting value.

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By Rabbi Jacob Rabinowitz

(Selected from his excellent newly published book, YEMIN YAAKOV (Hebrew) which can be obtained in Hebrew book stores or directly from the author, 804 East 8th Street, Brooklyn, NY, 11230, 718-434-7772. See Rabbinic Resources. I have translated this piece myself [NES])

Our sages were extremely careful of the danger of taking bribes. The Talmud (Ketuvot 105a) cites a number of stories of Sages who disqualified themselves from judging in any case in which there was the slightest possibility of undue influence. For instance: Shmuel was passing over a river and a man gave him a hand to help him (out of the ferry). Shmuel asked him: "What are you involved with at this time?" The man answered, "I am a litigant in a din Torah". Whereupon Shmuel replied, "I am disqualified from judging your case, since you gave me your hand to help me". Rava explained the extreme caution the sages used, by saying that receiving (even a smile or any kind of help) brings me closer to the giver, and it is as if I am judging myself, and we know that no person sees anything wrong in his own conduct "Ein adam roeh chova leatzmo". So just as a person is disqualified from acting as a judge on his own case, so he is disqualified from judging anyone who has shown him any favor, even if it is subtle and psychological.

This needs to be understood. Why is this? Our sages were dedicated to truth with all their might! King David testifies "Nishba lehara velo yamir" (Tehilim 15:4) and Rashi explains, "He swears to his own hurt and will not violate his oath. He certainly will not violate his oath (of truth) in any matter, even when not to his own hurt". Why then should we suspect great sages of becoming prejudiced in judgment for such little things as a smile or a greeting, or lending a hand at a ferry?

I suggest the answer is that here there operates another value that contradicts the impartiality of the judge, and that is the basic principle that we must acknowledge a good turn anyone does to us, "hakarat hatov". This is a fundamental virtue, and the sages were especially sensitive to it, to the point that it might influence the righteous man even unconsciously, and even against his will and best efforts to the contrary. When a person does any kind of a favor or shows any special consideration to a judge, even if it is not in the form of a bribe, there arises this feeling of thankfulness, which might influence impartiality. And that is what our sages were concerned about when they required the judge to disqualify himself even if the favor was insignificant.

And, this applies even though the righteous judge knows full well that the man who showed him

favor had a primary motive to help himself, as the Hovat Halevavot explains (Hakdama Leshaar 3) “Kavanat kol metiv lezulato mibnei adam hi letoelet atzmo techila... ve’ein kol ze monea mishvacham vehodaatam, miyirah veahava otam, umehashiv lahem gemulam...”

Evidence to this approach is to be found in “Sefer Havruta” on Ketuvot (Helek 4 daf 105b) citing the decisions of the Hazon Ish in Hoshen Mishpat in the following words: “Shesamcha haTorah al hachacham sheyachol lehorot halakhah leatzmo afilu bedavar hanogea lo veyesh behachraato negiah lemamon rav, kemo lehachalit al behema shelo, shehitorera ba sheela al kashruta, ki natna haTorah efsharut lachacham o ladayan lehachria lefi haemet gam bidevarim hanoge’im lo ishit”. The Hazon Ish decides that a sage can decide a halakkah for himself, such as when he decides if his slaughtered animal is kosher or treif, and he is trusted in this.

According to my suggestion, the reason, and the difference from acting as a Dayan, is very clear. In the case of the Hazon Ish, when a sage decides a halakhah about his own money or animal, there is no opposing factor of “hakarot hatov” that would prejudice him. And the principle enunciated by King David “Nishba lehara velo yamir” applies. But in connection with “shohad”, even the slightest suspicion of favor evokes the virtue of thankfulness that destroys the judge’s objectivity.