

Compassion in Law

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Is compassion a virtue? And if it is, should it play a role in judicial decisions? This article introduces the debate on the moral and legal status of compassion and suggests ways in which it can play a role in judicial decision-making. The first part is devoted to the moral status of compassion. It reviews the main positions in the philosophical tradition, both those that negate its moral status and those that affirm it and see compassion as the foundation of moral behavior. The article analyzes the concept of compassion that is reflected by each of these positions, and then presents an updated analysis of compassion that establishes its moral status. The second part discusses the legal status of compassion.

The objection to taking any feeling of compassion into consideration in judicial decisions is based on the perception that such consideration is tantamount to surrendering to emotion and deviation from justice. This article suggests that compassion is not necessarily a deviation from justice, but a mental tool that can aid the judge in understanding the situation and the figures involved in it. In light of this, the article discusses the role of compassion in Jewish law and Israeli law in punishment and in civil matters. Many writers hold that compassion contradicts the principle of just desert in sentencing. From this perspective, a judge must follow the principle and should not consider compassion in sentencing. This article suggests that compassion does not necessarily deviate from the principle of just desert, but can improve upon it or make it more accurate. Compassion reflects an assessment of the particular and personal circumstances of the person who stands on trial and thus enables the judge to determine the just desert. The same is true for civil matters. Compassion is not an external consideration that leads to waiving a litigant's debt or granting him a right which he does not deserve. It is a mental tool that can aid the judge in assessing the interests and rights of the parties and reaching a just decision.