



Cognitive Bias • Parshat Devarim

Sefer Devarim is also known in Hebrew as *Mishneh Torah* and in Greek as Deuteronomy. All three terms reflect the essential function of the book: Moses' repetition and elucidation of the Bible's laws and narratives. One of Moses' first reiterated mandates is the creation of a network of judges. Moses reflects on his previous inability to adjudicate for the entire people and the subsequent tiered judicial system. The judges were charged: "Hear the disputes among your people and judge fairly, between one person and another" (Deut. 1:17), and "Do not show partiality in judgment: listen equally to the small and the great. Do not be intimidated by any man, for judgment belongs to God" (Deut. 1:18).

While the verses note explicit corruption, the sages are sensitive to subtler perversions of justice. Echoing the teaching of the Men of the Great Assembly in *Ethics of the Fathers* (1:1), one midrash teaches, "If a similar case comes before you one, two, or three times, do not say: I've already ruled on this several times; rather be deliberate in judgment." What judicial distortion is this midrash cautioning against?

In his *New York Times* bestseller *Thinking Fast and Slow*, Israeli psychologist Daniel Kahneman describes in detail the numerous cognitive biases that sway us from making rational decisions. Snap, intuitive judgements, what Kahneman terms System 1 errors, can lead to costly business, political, or personal consequences. By being aware of these biases and taking steps to counteract their influence, we can better avoid these mistakes.

Eyal Peer and Eyal Gamliel, in their article "Heuristics and Biases in Judicial Decisions," review how these cognitive biases can potentially impact the verdicts of judges. One bias they describe is "when judges make repeated sequential rulings, they tend to rule more in favor of the status quo over time." This finding reflected a pattern in the parole decisions of Israeli judges. Researchers found that judges began the day with more lenient rulings and became stricter over the course of the day. After taking a food break, their rulings would once again lean towards leniency but then regress towards stringency until the next snack break. Without realizing, the judges were influenced by hunger and fatigue. But for justice to be served, it is critical that these implicit biases are overcome.

Judges may also be in danger of taking mental shortcuts after hearing similar cases. For instance, the availability heuristic influences people to focus primarily on information that is easily recalled in memory, to the exclusion of other available data. Hearing related cases may bias the judge into mentally blurring similar ideas and ignoring key differences. The sages of the midrash emphasize the importance of judges deliberating and debiasing, ensuring just and truthful rulings.

When it comes to the interpersonal realm, the sages advocate an even more extreme position. Since our System 1 snap judgements of other people are prone to negative biases, we are encouraged not just to avoid biases and judge others fairly, but also to overcompensate and "judge every person favorably" (*Ethics of the*

Fathers, 1:6). Judging everyone accurately in our day-to-day interactions is improbable, if not impossible, so the sages support, with important exceptions, judgments that are positively biased.

Quoting a daring midrash related to the opening of *Parshat Devarim*, Rabbi Jonathan Sacks notes that Moses subtly defends the Israelites' sin of the Golden Calf from God's accusations by deflecting

the blame from the Israelites and placing the blame on God ("Counsel for Defence," *Covenant & Conversation*). Moses models for us what judging others favorably looks like. Even in situations where it would be easier and even justified to judge negatively, Moses overcorrects and emboldens us to be intentionally biased to judge others favorably.

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Character Challenge: Who is often the recipient of your negative bias? What could you do to judge this person more favorably?

Quote from Rabbi Lord Jonathan Sacks zt"l: "We hear... one of the most striking and humane motifs in rabbinic thought. It is called being *melamed zechut*, judging favourably, or arguing the case for the defence. It means placing a positive construction on events, pleading a cause, putting the case for mercy or at least mitigation of sentence. The Sages sought to exonerate Israel. Yes, to be sure, judging by appearances, they may have been guilty of waywardness, backsliding and ingratitude. They may at times have failed to live up to the highest ideals of the Torah. Yet consider the difficulties they faced, the dangers they went through, the temptations that surrounded them. Even the making of the golden calf, their greatest sin, was in some measure excusable" ("Counsel for Defence," *Covenant & Conversation*).