

Parshiot Acharei Mot - Kedoshim 5773, 2013:

Judge Your Fellow Man Favorably

Rabbi David Etengoff

Dedicated to the sacred memories of my mother, Miriam Tovah bat Aharon Hakohen, father-in-law, Levi ben Yitzhak, sister-in-law, Ruchama Rivka Sondra, sister, Shulamit bat Menachem, Shifra bat Chaim Alter, and Yehonatan Binyamin ben Mordechai Meir Halevi, and the *refuah shlaimah* of Yosef Shmuel ben Miriam.

You shall commit no injustice in judgment; you shall not favor a poor person or respect a great man; you shall judge your fellow with righteousness. (*Sefer Vayikra* 19:15, this and all Bible translations, *The Judaica Press Complete Tanach*)

Our underlined phrase, “you shall judge your fellow with righteousness,” is found in the second of the two *parshiot* we read this Shabbat. As noted in *Talmud Bavli, Shevuot* 30a, one of the interpretations of this expression is the obligation to judge our fellow Jews in a favorable fashion: “Our Rabbis taught: ‘You shall judge your fellow with righteousness’ - judge your neighbor to the side of merit (*Hevay dan et chaverchah l’kaf zechut*).” This idea is echoed in the famous words of Rabbi Yehoshua ben Perachyah, head of the Sanhedrin in the latter half of the 2nd century BCE: “Establish a permanent and lasting connection with your Rabbi, acquire a friend (i.e. intimate confidant), and judge all people in a meritorious manner.” (*Pirkei Avot* 1:6)

At first blush, it appears that the exhortation to “judge all people in a meritorious manner” may very well be a morally positive act devoid of any clear halachic mandate - i.e., a mere description of ideal behavior that lacks prescriptive force. In reality, however, nothing could be further from the truth. No less than two 13th century giants among the Rishonim (11th-15th century Torah Sages), the anonymous author of the *Sefer HaChinuch* and Rabbeinu Yonah in his *Shaarei Teshuvah* (Gate III, section 218), assert that the

action (*ma'aseh*) of judging one's fellow to the side of merit is a fulfillment (*kiyum*) of "...You shall judge your fellow with righteousness." Therefore, it is a positive Torah commandment that is counted in the *Taryag Mitzvot* (613 Commandments). Accordingly, the *Sefer HaChinuch* states:

Moreover, included in this commandment [you shall judge your fellow with righteousness] is the concept that it is fitting and proper for everyone to judge his friend in a positive way. As such, he should only interpret someone's actions and words in a virtuous manner... The underlying reason inherent in this mitzvah is to engender peace and good will between all people. We, therefore, find that the essence and overall intention of this Divine directive is to facilitate peace in the communities of men – through fair, generous, and righteous judgment – replete with the removal of any doubts regarding the intentions of their fellow man's actions. (Rabbi Chaim Dov Chavel edition, Commandment 217)

Rabbeinu Yonah (op. cit.) provides us with a well-defined roadmap for implementing this commandment in our daily lives:

Behold, when you see someone that says a certain thing, or performs a particular action wherein you can judge his words or actions in either a negative or positive manner, if the one who has performed this act is known to be a G-d-fearing individual (*yireh Elokim*), then you are obligated to judge him as being absolutely guiltless in this behavior. This is the case, even if the matter – upon due reflection – logically appears to place him in the category of one who is, indeed, guilty.

If the individual who has performed the questionable action is considered to be on the middle level (*bainoni*) of human behavior i.e., wherein he usually is careful and holds himself back from sinning – yet, on occasion, does sin – here, too, one should remove his doubts regarding the actor's undefined conduct and judge him as being guiltless. (Underlining my own)

Fulfilling this commandment, and the concomitant development of the *middah* (ethical characteristic) of judging one's fellow man favorably, were deemed to be so important in the overall scheme of Jewish living that our Sages declared: "One who judges his fellow man in a positive manner will be rewarded by having the Omnipresent One (*haMakom*) judge him in a positive fashion." (*Talmud Bavli, Shabbat 127*) Therefore, Rabbeinu

Yonah concluded this section with the following words: “[In the case of the *bainoni*,] if the action appears to be negative in nature, you should perceive it as only being doubtfully so (*k’mo safek*) – and do not judge him as being guilty.”

It should be noted that we extend the benefit of the doubt only to the *yireh Elokim* and the *bainoni*. A *rasha* (one whose behaviors are deemed to be consistently negative and in purposeful violation of the Torah’s ethics and values) who performs problematic actions, however, is judged as guilty in order to protect the fabric of society from being ripped asunder.

Rabbi Baruch Halevi Epstein (1860-1941), author of the monumental commentary on the Torah entitled, *Torah Temimah*, opined that the halachic principle underlying the Torah obligation to judge all men favorably is that of *chezkat kashrut* (the pre-existent assumption of positive status). Fascinatingly, this legal concept is partially echoed in American jurisprudence wherein the general operating norm is the presumption of innocence:

presumption of innocence *noun* a fundamental protection for a person accused of a crime, which requires the prosecution to prove its case against the defendant beyond a reasonable doubt. This is opposite from the criminal law in many countries, where the accused is considered guilty until he/she proves his/her innocence or the government completely fails to prove its case. (Gerald N. Hill and Kathleen T. Hill, <http://legal-dictionary.thefreedictionary.com/Innocent+until+proven+guilty>)

The above sources and commentaries allow us to understand *Chazal*’s (our Sages) prologue to each chapter of *Pirkei Avot*: “Every member of the Jewish people has a share in the World to Come, as the text states: (*Sefer Yeshiyahu* 60:21): ‘And your people are

all righteous, they shall inherit the land forever. They are the branch of My planting, the work of My hand in which to take pride.” (Underlining my own)

May each of us be *zocheh* (merit) to judge our fellow man favorably and with mercy and compassion. Then, we, too, will be among those about whom our Sages declared: “One who judges his fellow man in a positive manner will be rewarded by having the Omnipresent One (*haMakom*) judge him in a positive fashion.” *V'chane yihi ratzon*.

Shabbat Shalom

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