

## Cognitive Biases in Deuteronomy

*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 memory, to the extent that they can overcome these biases.

*Fathers*, 1:6). Judging everyone accurately in our day-to-day interactions is improbable, if not impossible, so the sages support, with important