YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**Halakha in the Age of Social Media**

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This *shiur* is dedicated in memory of Israel Koschitzky zt"l,

whose yahrzeit falls on the 19th of Kislev.

May the worldwide dissemination of Torah through the VBM

be a fitting tribute to a man whose lifetime achievements exemplified the love of

Eretz Yisrael and Torat Yisrael.

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**Shiur #08: Judging Favorably**

**Background**

Last year, when I was teaching in Toronto, an incident happened that brought some of the potential implications of social media on Halakha sharply into focus. Several students, as well as teacher in a local high school, had traveled to New York City for an NCSY Shabbaton. After Shabbat, while walking through Central Park, the students ran into Conan O’Brien. As they had not yet returned home to retrieve their phones, Conan took a selfie on his phone. He posted the picture, noting that they did not have their phones due to Shabbat. Rabbi Gil Student mistakenly thought the picture had been taken on Shabbat and published an article about the prohibition of taking selfies on Shabbat.[[1]](#footnote-1) The teacher with the students then reached out to him to correct the mistake. Rabbi Student subsequently published a retraction and apology. However, he then wrote an article explaining why he thought Halakha had not required him to judge these students favorably under the circumstances.[[2]](#footnote-2)

The following morning, the principal of the school, Rabbi Seth Grauer, used this as an opportunity to teach the students a lesson. He noted that in the world of social media, a small mistake, even a slight one, can instantly be publicized across the world and remain online forever. These can have effects on the jobs one gets, the schools one is admitted to, and the people one marries. Thus, he warned the students to exercise extreme caution that they act in such ways as to maintain a positive image.

This story highlights two complementary areas of Halakha that have been affected by our current communication technology, both of which relate to perception. The first relates to the viewers of ambiguous material: how has the obligation to judge favorably changed when we are no longer in contact only with those near us with whom we may have some familiarity, but rather with complete strangers from all over the world?

The second is our obligation as those being viewed. Halakha has a series of laws that obligate us to ensure that people do not suspect us of sin, even if we are not actually guilty, such as avoiding *marit ayin* (the appearance [of impropriety]) and *chashad* (suspicion). How has this obligation been altered by the extreme difficulty in protecting our image? When we no longer know who is watching, how much must we go out of our way to make sure that no one, anywhere on earth, will see a picture on Facebook or Instagram and suspect us of wrongdoing?

**Judging Favorably — How Favorably?**

The Mishna in *Avot* (1:6) introduces the obligation to judge favorably (*le-khaf zekhut* — literally, towards the pan of merit [as if balanced on a scale]) as follows:

Yehoshua ben Perachya says: Make for yourself a teacher, acquire for yourself a friend, and judge every person favorably.

The Gemara in *Shabbat* (127b) records several stories that seem to demand that we bend over backwards, almost to the point of incredibility, rather than judge someone negatively, even if that is what his or her actions seem to demand. We will cite two of those stories at length, as the combined effect of these anecdotes underscores the issues:

**The Sages taught** in a *baraita*: **One who judges another favorably is himself judged favorably. And there was an incident** involving **a certain person who descended from the Upper Galilee and was hired** to work **for a certain homeowner in the South** for **three years. On the eve of the Day of Atonement, he said to** the homeowner: **Give me my wages, and I will go and feed my wife and children.** The homeowner **said to him: I have no money. He said to him:** In that case, **give me** my wages in the form of **produce. He said to him: I have none.** The worker said to him: **Give me** my wages in the form of **land.** The homeowner said to him: **I have none.** The worker said to him: **Give me** my wages in the form of **animals. He said to him: I have none.** The worker said to him: **Give me cushions and blankets.** He said to him: **I have none.** The worker **slung his tools** over his shoulder **behind him and went to his home in anguish.**

**After the festival** of *Sukkot*, **the homeowner took** the worker’s **wages in his hand, along with a burden** that required **three donkeys, one** laden **with food, one** laden **with drink, and one** laden **with types of sweets, and went to the** worker’s **home. After they ate and drank,** the homeowner **gave him his wages.**

The homeowner **said to him: When you said to me: Give me my wages, and I said: I have no money, of what did you suspect me?** Why did you not suspect me of trying to avoid paying you? The worker answered, **I said: Perhaps the opportunity to purchase merchandise [*perakmatya*] inexpensively presented itself, and you purchased** it **with** the money that you owed me, and therefore you had no money available. The homeowner asked: **And when you said to me: Give me animals, and I said: I have no animals, of what did you suspect me?** The worker answered: **I said: Perhaps** the animals **are hired to others.** The homeowner asked: **When you said to me: Give me land, and I said: I have no land, of what did you suspect me?** The worker answered: **I said: Perhaps** the land **is leased to others,** and you cannot take the land from the lessees. The homeowner asked: **And when** you said to me: Give me produce, and **I said: I have no produce, of what did you suspect me?** The worker answered: **I said: Perhaps they are not tithed,** and that was why you could not give them to me. The homeowner asked: **And when I said: I have no cushions or blankets, of what did you suspect me?** The worker answered: **I said: Perhaps he consecrated all his property to Heaven** and therefore has nothing available at present.

The homeowner **said to him:** I swear by **the** Temple **service** that **it was so.** I had no money available at the time because I **vowed** and consecrated **all my property on account of Hyrcanus, my son, who did not engage in Torah** study. The homeowner sought to avoid leaving an inheritance for his son. **And when I came to my fellow** residents **in the South,** the Sages of that generation, **they dissolved all my vows.** At that point, the homeowner had immediately gone to pay his worker. Now the homeowner said: **And you, just as you judged favorably,** so **may God judge you favorably.**

On a similar note, the Gemara relates that **the Sages taught** in a *baraita*: There was **an incident involving a certain pious man who redeemed a young Jewish woman** from captivity. When they arrived **at the inn he had her lie beneath his feet. The next day, he descended, and immersed** in a ritual bath to purify himself before Torah study and prayer, **and taught his students.** This conduct could arouse suspicion that the pious man kept the maiden for himself, as immersion in the morning is customary for men who have experienced a seminal emission by engaging in sexual relations.

**And** the pious man **said to** his students: **When I had her lie beneath my feet, of what did you suspect me?** They said to him: **We said: Perhaps there is a student among us whose** conduct **is not established** before **the rabbi,** and he wanted to make certain that this student would not inappropriately accost the young woman. Therefore, the rabbi kept the woman close by.

He said to them: **When I descended and immersed, of what did you suspect me?** They answered: **Perhaps due to the exertion of travel, a** seminal **emission befell the rabbi. He said to them:** I swear **by then** Temple **service** that **it was so. And you, just as you judged** me **favorably,** so **may God judge you favorably. (*Shabbat* 127b, Koren translation and elucidation)**

In both of these stories, the evidence seemed damning, yet the expectation seems to be that the viewers were supposed to deny what their eyes saw and judge favorably against all odds. Is this what the Talmud expects? Is this a righteous thing to do or an absolute obligation?

In the *She’iltot* (40), the worker is Rabbi Akiva, indicating perhaps that granting this level of benefit of the doubt is reserved for the most pious. This is what the Rambam implies by listing this as the practice of *talmidei chakhamim,* Torah scholars (*Hilkhot De’ot* 5:7).

However, while this might ease the expectations on the average person, the implications are still scary. How are we expected to root out evil and corruption if we don’t see it? Furthermore, the Rambam in *Sefer Ha-mitzvot* (*Aseh* 177) seems to think this is a formal obligation, which only compounds the problem.

**Whom do we have to judge favorably?**

This problem is partially solved by answering another question: whom do we have to judge favorably? Does it apply to people who have been known in the past to be righteous? Does it apply to people known to be evil? What about people who are average, or people about whom we know nothing — such as those we have never met, but only seen in pictures on social media?

The Rambam (*Commentary to the Mishna,* *Avot* 1:6) sets out the following guidelines: if someone has been known to be righteous, and the perceived offense is out of character, one must try very hard to explain it in a positive way. If someone is average, or one knows nothing about him or her, ambiguous things should be judged favorably, but there is no need to explain away activity that strongly seems negative. When someone has been known to be evil in the past, even those actions which seem positive should be suspect.

Rabbeinu Yona (*Sha’arei Teshuva* 3:218) argues similarly. He notes that the reason one bends over backwards to explain away the indiscretions of righteous people is that it is logical: when something does not fit with what we know about them, it makes sense that there is another explanation. This may not mean that we don’t have to keep our eyes open for further indiscretions which might demonstrate a pattern, but as long as an act remains anomalous, there is reason to explain it away.[[3]](#footnote-3) As for evil people, he goes further than the Rambam, arguing we should actively assume it is actually insidious. The *Chafetz Chayim* (*Hilkhot Lashon Hara* 3:3, 3:7) takes this general approach as well. However, he rules that judging a righteous person favorably in an obligation, but expending extreme mental energy to exonerate an average person is a pious thing to do, not obligatory.[[4]](#footnote-4)

Based on the above, Rabbi Student argued that while it would have been meritorious to judge these unknown students, with no presumption of exceptional piety, he was not technically obligated to do so. However, he also noted that in an age of superficiality, generated by modes of communication such as social media, there is good reason to take the extra step. This was his conclusion:

Obviously, I cannot be objective about my own behavior. Based on what I wrote above, it seems that on seeing a picture of people I don’t know in a situation that could be interpreted positively (taken after Shabbos) or negatively (taken on Shabbos), I was not obligated to judge favorably. However, as a pious or proper practice, I should have judged favorably anyway. While I am neither a Torah scholar nor a pious man, in these types of matters we should all act strictly. The world needs stringencies on interpersonal commandments.

In truth, it never occurred to me that there was a positive way to judge this case. I jumped to the negative conclusion without considering alternatives. I say this not as a justification but as a confession. Whenever we see something, we need to think carefully before we react. Superficiality is the great sin of our [TL;DR](https://en.m.wikipedia.org/wiki/TL;DR) world, a trait that blinds us to our own faults. Like mockery, superficiality prevents us from hearing others and therefore from accepting rebuke.[[5]](#footnote-5)

While I may not disagree with his technical conclusions, I think there is a more expansive discussion to be had.

**Why do we have to judge favorably?**

To fully understand our obligations in the age of social media, we must understand why we must judge favorably in the first place. Rabbi Eliyahu Dessler (*Mikhtav Mei-Eliyahu* Volume 5, page 431) argues that the obligation stems from the mitzva to love others. When we see someone we love doing something wrong, we do our best to explain it away. To the extent that we are meant to love all Jews, the same tendency should be extended to all Jews. The *Sefer Ha-chinnukh* (235), on the other hand, argues that this is necessary to create peace. If we are constantly suspecting others of wrongdoing, society will not function properly. Rabbi Shelomo Luria (Responsa Maharshal 64) writes similarly that this generates peace.

Maharil Diskin, however, suggests a radically different possibility. At the very end of his responsa (*Pesakim*, *Dan Le-khaf Zekhut*),[[6]](#footnote-6)he writes that it is important for people to believe they live among good people. When they do not, they will hold themselves to a lesser standard. People generally only feel the need to be a bit better than those around them. If they believe that the people around them are terrible, they will strive to be only bad. If, however, they think everyone is good, they will try to be great.

Meiri (*Chibur Ha-teshuva* 1:4, pages 84-85) writes similarly that the reason one who suspects a good person of evil is punished is because this will make it hard for him to accept rebuke. A similar position is presented by Rabbi Nissim Karelitz in the name of the *Chazon Ish (Chut Shani, Shemirat Ha-lashon*, Chapter 2).[[7]](#footnote-7) Based on this, Rabbi Daniel Feldman[[8]](#footnote-8) notes that in cases in which one knows that someone is evil, he cannot defend it, as this would create the same phenomenon. If known evil is tolerated, it will encourage society to become worse. This, he notes, is a position cited by Rabbi Moshe Sternbuch (*Responsa* *Moadim U-zmanim* 7:192) in the name of the Satmar Rebbe.

The *Yismach Moshe (Avot* 1:6) suggests yet another reason: that assuming there is less sin in the world minimizes desecration of God’s name (*chillul ha-shem).*

There are many technical differences between these suggestions, but we will focus on a few that touch on our issue. In *Le-rei’akha Kamocha* (Volume 8, *Kuntres Ha-bei’urim* 2), Rabbi David Ariav notes that if this is an interpersonal mitzva, then it may be waived when there is practical benefit (based on *Kovetz He’arot* 70). He uses this to explain why the court is allowed to “suspect” the *Kohen Gadol* of wanting to diverge from the accepted practices on Yom Kippur. As there was a real concern that the Sadducees had infiltrated the *Beit Ha-mikdash*, they had to adjure the *Kohen* to follow the Halakha according to the rabbinate, even if he had given them no reason to suspect him (*Yoma* 18b). Based on this, he suggests that when there is an educational or societal reason to judge unfavorably, this is warranted.

**Implications**

If one judges favorably only to keep the peace locally, then perhaps Rabbi Student is correct. Judging a complete stranger unfavorably won’t do much to a non-existent friendship. However, if judging favorably is about promoting a perception about the world that will encourage holding oneself to higher standards, being consistently critical of every person seen doing something questionable on Facebook and Instagram is arguably worse, as it lowers one’s expectation of the whole world. Similarly, if the issue is *chillul ha-shem*, constantly assuming the worst about strangers does create the feeling that God’s Torah is not being kept anywhere.

However, there are times when it is important specifically to be critical. If a particular sin is rampant, judging favorably the pictures and stories one sees on social media creates a perception that that sin is condoned. This can be dangerous, and we will return to this later in the course.

This has been at the heart of the #MeToo movement: the belief that if we always judge the suspected abusers favorably, no one will believe that the behavior is really wrong. Thus, while we cannot jump to conclusions about any specific accused abuser, if we don’t judge society a bit more critically, we will never change.

However, without judging any individual in the court of public opinion, judging society as a whole less favorably is what might be needed to fix it. As *Le-rei’akha Kamocha* notes, one may specifically not judge favorably if it will be beneficial. When being critical is what is needed to fix society, then that is what should be done.

Of course, some of the detractors of the movement warn that creating a society that is too quick to judge will harm all men, as people who should have been in a neutral state and given the benefit of the doubt will be assumed to be offenders. Whoever is correct, what is critical is that we realize the resources that halakhic and philosophical texts from Torah sources provide to help us navigate the complex issues that have come to the fore in our age of social media.

1. Available at: <https://www.torahmusings.com/2017/11/celebrity-selfies-shabbos/>. [↑](#footnote-ref-1)
2. Available at: <https://www.torahmusings.com/2017/11/judging-a-stranger/>) I would like to thank Rabbi Student for reviewing this article and for his helpful contributions. [↑](#footnote-ref-2)
3. I note this with caution, as the assumption that rabbis are righteous has been what has enabled too many cases of abuse. It is clear to me that we cannot allow people to hide their predatory nature behind the obligation to judge favorably. [↑](#footnote-ref-3)
4. As for the exact definition for each of the three categories, see Rabbi Gil Student’s article here: <http://www.aishdas.org/student/zechus.pdf>. [↑](#footnote-ref-4)
5. See above, note 2. [↑](#footnote-ref-5)
6. See also his comments on the Torah, *Parashat Vayikra*. [↑](#footnote-ref-6)
7. He writes that if people think that others are violating Shabbat, they are more likely to violate it themselves, and the more cars they saw being driven on Shabbat, the more likely they were to feel this way. Hence, he thinks that people should tell themselves that all the cars they see being driven on Shabbat are the same ones over and over, simply to minimize the perception of Shabbat violation. [↑](#footnote-ref-7)
8. Rabbi Daniel Feldman, *The Right and the Good*, Chapter 8. [↑](#footnote-ref-8)