



Using Torture as Means of Interrogation

Divorce Crisis in Our Community: How Do We Create Happier Marriages

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תלמוד בבלי מסכת כתובות דף פו עמוד א-ב

א"ל, תנינא: במה דברים אמורים - במצות לא תעשה, אבל במצות עשה, כגון שאומרין לו עשה סוכה ואינו עושה, לולב ואינו עושה, מכין אותו עד שתצא נפשו.

משובב נתיבות סימן ג סוס"ק א

וגם להפרישו מאיסור נמי אינו אלא הכאה בעלמא, אבל בי"ד שכופין לקיים עשה מכין אותו עד שתצא נפשו, כגון באומר סוכה איני עושה, ואילו באיסורא אין מכין עד שתצא נפשו, דלא אמרו ניתן להצילו בנפשו אלא בעבירות הידועות כגון רודף אחר נערה המאורסה או במקום שקנאין פוגעין בו, ובשאר איסורין לא ניתן להצילו בנפשו כדי להפרישו. ומזה הוכיחו בעלי מוסר הראשונים [עיין שערי תשובה לר"י השער השלישי אות י"א] דעשה חמירא מל"ת, דבעשה מכין עד שתצא נפשו. וזה ודאי אם כבר עבר על העשה אין עונשין אותו, אלא קודם שקיים העשה מכין עד שתצא נפשו בכדי לכופו לקיים העשה, ובשאר איסורי ל"ת אינו ניתן להצילו בנפשו להפרישו מאיסור נבילות וטריפות, וכל זה ברור.

חידושי הגרי"ז מסכת נזיר דף כג עמוד א

ונראה עוד בזה, דמכת מרדות חלוק ביסוד דינו ממכות של תורה, דמכת מרדות אינו חיוב על הגברא שנתחייב על עבירתו מלקות מדרבנן כמו חיוב מלקות דאורייתא שהוא חיוב ועונש על הגברא, אלא שהוא דין על הב"ד שיש להם רשות להכות ולרדותו על שעבר באיסור דרבנן וכדו', וכעין שב"ד מכין ועונשין למיגדר מילתא בתורת כפיה, אבל הגברא בעצמו אינו נקרא שהוא מחוייב במכת מרדות, והכי משמע מלשונות הרמב"ם בכמה מקומות שכל בענין מכת מרדות, "בי"ד מכין אותו מכות מרדות", או "יש לבי"ד להכותו מכת מרדות", וכן בפיהמ"ש כאן כתב "אמנם מכות מרדות בזה המקום וזולתו עניינם תלוי לבי"ד יעשו כפי השתדלותם", ולא נזכר בדבריו בשום מקום בענין זה הלשון "חייב מכת מרדות", ומבואר בכ"ז דחיובם רמי על הבי"ד ולא על הגברא. [א"ה, ע"ע בזה בחידושי הגר"ח על הש"ס מנחות דף מא, ועי' בקובץ הערות סי' טז סק"ז עד"ז].

ולפי"ז י"ל דבמכת מרדות ל"ש כלל דין אומד, דהא מכת מרדות אינו חיוב על הגברא שיהא שייך בו אומד בשיעור חיובו, אלא דהוא דין על בי"ד שיש להם להלקותו כדי שיקבל עליו עתה וגם להבא לשמוע לדברי חכמים, ומשו"ה שייך בזה רק שיעור עד שיקבל עליו לשמוע דבריהם או עד שתצא נפשו, והיינו עד ולא עד בכלל, ועיקר החידוש הוא דאם אינו מקבל עליו מלקין אותו כמה שיוכל ללקות בלא שום שיעור ואומד עד שיבוא לפיקו"נ ואז מניחים אותו.

ולפי"ז ניחא גם קושית הר"ן על הערוך דס"ל דאף לשעבר מכין אותו עד שתצא נפשו, דא"כ חמור ד"ס מד"ת, דלמשנ"ת הרי אין ההכאה עד שתצא נפשו מדין עונש, אלא הוא רשות על בי"ד להכותו בתורת כפיה למיגדר מילתא, כדי שלא יעשה כן עוד פעם, ולכן שפיר יכולים לכפותו כדי לקבל דברי חכמים גם עד שתצא נפשו.

אמנם צ"ע מדברי הרמב"ם בפיהמ"ש בכתובות דף מט שכל "שהיה מן החיוב להלקות האדם עד שיעשה מצוה זאת שיש לו לעשותה באותו זמן או ימות", וכ"כ בסה"מ שורש יד, כל מצוה מהם כשתתחייב עשייתה יש לנו שנלקה הנמנע מלעשותה עד שימות או יעשה אותה, הרי שפירש דעד שתצא נפשו הוא בתורת עונש שהורגין אותו אם אינו מקבל וצ"ע.

רמב"ם פ"א מהל" רוצח ה"ח-ט

ענין הכתוב שכל החושב להכות חברו הכייה הממיתה אותו מצילין את הנרדף בכפו של רודף, ואם אינן יכולין מצילין אותו אף בנפשו, שנ' ב לא תחוס עינך. הרי זו מצות לא תעשה שלא לחוס על נפש הרודף. לפיכך הורו חכמים שהעובר שהיא מקשה לילד מותר לחתוך העובר במיעיה בין בסם בין ביד מפני שהוא כרודף אחריה להורגה, ואם משהוציא ראשו אין נוגעין בו שאין דוחין נפש מפני נפש וזהו טבעו של עולם.

מאירי מסכת סנהדרין דף עב עמוד ב

עובר שהיתה מקשה לילד ונסתכנה מרוב קשויה מותר לחתוך העובר שבמעיה בין בסם בין ביד ולהוציאו חתיכות חתיכות שאין זה נקרא נפש הואיל ולא יצא לאויר העולם יצא ראשו הרי הוא כילוד ואין נוגעין בו לרעה שאין דוחין נפש מפני נפש ואין דנין אותו ברודף כדי להציל את האם הנרדפת בנפשו שמן השמים רדפוה: זה שביארנו שכל שאין שם רודף אין דוחין נפש מפני נפש לא סוף דבר באחרים שאין מצילין את זה בנפשו של זה אלא אף בעצמו אסור לו להציל עצמו בנפש חברו וכו' ובתלמוד המערב של עבודה זרה ראיתי ששאלו בפרק שני מהו לדחות נפש קטן מפני גדול וכשהשיבו להם מיצא ראשו אין נוגעין בו שאין דוחין נפש מפני נפש הם תירצו שניא היא שאין אנו יודעין מי הורג את מי ולא נתבררה שם, ונראה שאף שאלתם במי שאמרו לו הרוג קטן זה ואם לאו נהרוג אותך אם מותר להציל עצמו בנפשו ומ"מ מסוגיא שבכאן יראה שהקטן דינו כגדול לענינים אלו שאם לא כן תהא האשה עצמה הורגתו אף ביצא ראשו, אלא שחכמי הדורות שלפנינו כתבו כן ר"ל שהאשה עצמה יכולה לחתכו שנרדף היא ונרדף מיהא במקום שאין אחרים מחזיקין את הרודפו ברודף

הוא עצמו רשאי ומ"מ מסוגית קטן הרודף אנו למדים שדינו כגדול אלא שיש לו ראייה ממנה על הטרפה וחברתה שמצילין עצמן באלו:

משנה למלך הלכות חובל ומזיק פרק ח הלכה י

א"ה עיין בדברי ה"ה הבא בפרקין שכתב כדברי הריב"ש הנז' ובתשובת הריב"ש סי' רל"ח כתב או אפשר שאין הנרדף הבא להציל את עצמו בנפשו של רודף צריך להתרות ברודף לפי שהוא בהול על נפשו להציל עצמו לולא חייבוהו להתרות כו'. וכתוב שם מ"י של הרב המחבר ז"ל וכיוצא בזה כתבו ז"ל דהא דאמר דאם יכולין להציל באחד מאיבריו של רודף שאין הורגין אותו שדין זה לא נאמר אלא באיש אחר הבא להציל אבל הנרדף אינו מדקדק בזה.

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תפארת ישראל יבמות פרק ז משנה ב יכין אות ז

שניסת. [נ"ל לפעמים נקט שנשאת ופעמים שניסת, ע"ש ב' בחינות שבאשה, לעזר וכנגדו, בזמן שהיא לו לעזר, היא לו כמתנה, כמו וישא משאות מאת פניו, ובזמן שכנגדו היא לו לנסיון, או איפכא בזמן שלעזר היא כנס מתנוסס לבעלה, ואם לאו, היא כמשא עליו, או נ"ל דנישאת הוא ע"ש לא תשא שם ד"א לשוא, ובל"א "אנגעשווארען ווארדען", כמ"ד כי ה' העיד בינך ובין אשת נעורך, וניסת הוא לשון למען ענותך לנסותך, שגם היא מורגלת ע"י הנשואין בדברים קשים, והם אעפ"כ להיטיב באחרית, כדכתיב הרבה ארבה עצבונך, ואח"כ תגל האם בפרי בטנה]:

ספר חסידים סימן פח

אמר החכם מי שזורע את השנאה יקצור את החרטה. אחרית קטטה חרטה.

Los Angeles Times

Cheney Gave Order to Shoot Down Jets

9/11 commission staff seems to question whether Bush OK'd the command. Fighter pilots never received the vice president's directions.

June 18, 2004

Esther Schrader — Times Staff Writer

WASHINGTON — Vice President Dick Cheney was huddled with top U.S. officials in a bunker below the White House on the morning of Sept. 11, 2001, when a military aide told him that a hijacked aircraft was 80 miles from Washington and closing in fast. The aide needed to know: Did Cheney want to give warplanes scrambled over Washington orders to shoot it down?

Cheney did not hesitate. He authorized fighter aircraft “to engage the inbound plane.”

In the decision to issue a lethal order without precedent in American history — to shoot down a plane filled with American civilians — Cheney both struggled with the confusion of that morning and personified it, according to a staff report issued Thursday by the national commission investigating the terrorist attacks.

The order given by Cheney was never received by the fighter pilots, and, in the end, it came too late to interrupt the assault.

Perhaps in his haste to act — President Bush was in Florida at the time — Cheney might have shortcut White House protocol, the report said. The normal chain of command for military “engage” orders goes from the president to the secretary of Defense, and not through the vice president, it said.

Although Cheney said he conferred with the president before giving the order, the commission staff could not confirm that a phone call took place in that time frame. Several minutes after giving the order, Cheney informed Defense Secretary Donald H. Rumsfeld that he had done so.

“So we’ve got a couple of aircraft up there that have those instructions at the present time?” Rumsfeld asked.

“That is correct,” Cheney replied. “And it’s my understanding they’ve already taken a couple of aircraft out.” That understanding turned out to be mistaken.

By then, three hijacked airliners had already been crashed into the World Trade Center and the Pentagon. The airliner Cheney ordered shot down had already been

forced by passengers to crash in a Pennsylvania field. And another seemingly hostile aircraft turned out to be a medevac helicopter, headed to the Pentagon.

The events at the White House underscored the chaotic nature of a day that was filled with events the nation had never encountered and was not prepared to meet, the report said.

Just before 9 that morning, Cheney was seated in his White House office for a meeting with his speechwriter when an aide came in and told him to turn on the television. A plane had just struck the World Trade Center.

“The vice president was wondering ‘how the hell a plane could hit the World Trade Center’ when he saw a second aircraft strike the South Tower,” according to the commission staff report.

After that, things started happening quickly. According to accounts Cheney had given earlier, he called Condoleezza Rice, national security advisor; Mary Matalin, his top aide; and other advisors to his office. The group was interrupted by Secret Service agents, who grabbed Cheney and moved him “very rapidly” down several flights of stairs to a tunnel deep under the White House.

Halfway down the tunnel was a secure telephone, a bench and a television. Cheney asked to speak to the president. By the time the call was connected, according to the report, Cheney had flipped on a television to see smoke pouring out of the Pentagon.

With his wife, Lynne, who had been brought to the bunker by Secret Service agents, at his side Cheney told Bush of the three planes missing and of the hit on the Pentagon. In what would be the first of a series of counsels, he urged Bush not to return to Washington.

Bush had resisted the idea of staying away, according to the commission’s chronology. But Cheney was persuasive. After the two got off the phone, Air Force One would take off from a Florida airport with no destination in mind, its only instructions to get airborne and fly high and fast enough to reach safety.

From the command conference room in the bunker, according to witnesses, Cheney quickly sought to take charge.

Cheney has told the commission that during one call to Bush, moments after he arrived at the command center, he asked the president to decide on the rules of engagement for combat planes being deployed over Washington. Bush said he authorized that hijacked planes be shot down.

But the commission staff seemed to question whether the call took place. Its report noted that there were no logs of that phone call between Cheney and Bush. “Others nearby who were taking notes, such as the vice president’s chief of staff, [I. Lewis] Scooter Libby, who sat next to him, and Mrs. Cheney, did not note a call between the president and vice president immediately after the vice president entered the conference room,” the report said.

Lee H. Hamilton, co-chairman of the Sept. 11 commission, told reporters “there’s

no documentary evidence” that Cheney conferred with Bush before issuing the shoot-down order.

“And the only evidence you have is the statement of the president and the vice president, which was that the president gave the order to shoot down,” Hamilton said.

Among those at the conference table in the bunker was White House Deputy Chief of Staff Joshua Bolten.

According to the commission report, Bolten watched the exchanges between Cheney and his military aide as they monitored the progress of what they thought was United Airlines Flight 93. The jet actually had crashed in Pennsylvania at 10:03 a.m., but military officials did not learn of the crash until later.

Sometime between 10:10 a.m. and 10:15 a.m., the Cheney aide said the aircraft was 80 miles out and Cheney was asked for authority to shoot down the plane. He issued the order, the commission staff said. Minutes later, the military aide reported that the plane was 60 miles out and Cheney again was asked for authorization. Again, he said yes.

“And after what he called ‘a quiet moment,’ [Bolten] suggested that the vice president get in touch with the president and confirm the engage order.” The vice president is logged, at 10:18 a.m., as making a two-minute call to the president that obtained that confirmation.

Bolten, the report noted, “said he had not heard any prior conversation on the subject with the president.”

Cheney’s group got word later that a plane was down in Pennsylvania, and people in the conference room wondered whether it had been shot down at Cheney’s direction, according to the report.

About 10:30 a.m., officials with Cheney began getting reports of another hijacked plane, five to 10 miles out. Cheney issued yet another order to engage the aircraft, but it turned out to be the medevac helicopter.

Meanwhile, in the skies over Washington, two F-16s, scrambled from Virginia’s Langley Air Force Base, were armed and under the control of the North American Aerospace Defense Command. But the Langley pilots were never told why they were sent up.

“In short, while leaders in Washington believed the fighters circling above them had been instructed to ‘take out’ hostile aircraft, the only orders actually conveyed to the Langley pilots were to ‘ID type and tail’ “ — identify the aircraft and follow them, the commission concluded.

In the absence of clear guidance, the pilots didn’t know what to think.

At one point they thought they were looking for an incoming Russian missile.

“I reverted to the Russian threat,” the lead pilot told the commission staff. “I’m thinking, cruise missile threat from the sea. You know you look down and see the Pentagon burning and I thought, the bastards snuck one by us.... You couldn’t see any airplanes, and no one told us anything.”

Soon after, Cheney told Rumsfeld of his mistaken belief that “a couple” of planes had been shot down.

Rumsfeld replied: “We can’t confirm that. We’re told that one aircraft is down but we do not have a pilot report that they did it.”

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Shooting Down a Hijacked Plane: Killing a Few to Save the Lives of Many

The devastating tragedy of 9/11 introduced to the world a frightening new form of terrorism — the use of hijacked planes as torpedoes to blow up crowded buildings and skyscrapers, רחמנא ליצלן. The dreadful prospect of another 9/11-style attack gives rise to the difficult and ever so painful moral and halachic question of whether a hijacked plane may be blown up to save the civilians in the targeted building. If it is certain that the hijackers are steering the plane toward a building, would it be permissible, forbidden, or obligatory to fire a missile at the plane, killing the innocent passengers on board for the sake of saving the lives of the people down below?

I. Killing One to Save Many

Our point of departure in addressing this question is the Mishna's discussion in *Terumos* (8:12) regarding a case in which enemies demand that the Jews in a town hand over a woman for them to rape, warning that they will otherwise rape all the women in the town. The Mishna rules that in such a case, the townspeople should refuse; they may not hand a woman over to the enemy even at the expense of the defilement of all of the town's women.

The Tosefta in *Terumos* (7:23) addresses the similar case of enemies who demand that the Jews hand over one person to be killed, warning that they will otherwise kill all of the townspeople. In such a case as well, the Tosefta rules that the townspeople should refuse and submit themselves to murder rather than hand over a fellow Jew. However, the Tosefta then proceeds to note a critical distinction: “אבל אם ייחדוהו להם כגון שייחדו לשבע בן בכרי יתנו להן ואל יהרגו כולן.” The Tosefta rules that if the enemy identifies a particular Jew by name and demands that he or she be handed over to be killed, then the townspeople should acquiesce. The Tosefta points to the example of Sheva ben Bichri, a man who led a failed revolt against King David. Sheva sought refuge from David's forces in the town of Avel Beis Maacha, and Yoav, David's general, demanded that the townspeople hand him over. In such a case, the Tosefta rules, the townspeople should hand over the wanted person in order to spare the rest of the city.

The Tosefta then cites Rabbi Yehuda as clarifying that this applies only if the wanted person is in the city and would also be killed along with the rest of the townspeople if they refuse to hand him over. If, however, the situation is such that the townspeople would be killed **instead of** the wanted person and not **along with** the wanted person, then they may not hand him over to save their lives. It is only when the wanted individual is condemned to be killed regardless of the townspeople's decision that they are permitted to hand him over to the enemy.

Rashi cites this Tosefta in his commentary to *Sanhedrin* (72b) in the context of a discussion regarding a woman whose life is threatened by a difficult labor. The Gemara establishes that if the infant had not yet exited the woman's body, it may be killed to save the woman's life, but once the head has emerged, the baby is considered a full-fledged living human being, and may not be killed to save the mother's life.¹ Rashi raises the question of why this case differs from the situation in which townspeople are permitted to hand over a wanted individual in order to save their lives as long as the wanted individual was specifically identified by the enemy. Seemingly, in the situation of childbirth, there is also a "named" individual — the newborn — who threatens the life of another person (the mother). Rashi explains that in the Tosefta's case, the wanted individual would be killed regardless of whether the townspeople choose to hand him over. In the case of the newborn, however, the infant's life is not at risk, and it is thus forbidden to kill the newborn to rescue the mother.²

This *halacha* is also addressed by the Talmud Yerushalmi (*Terumos* 8:10), which presents a debate between Rabbi Yochanan and Reish Lakish on the issue. Reish Lakish maintains that even if the enemy specifies a particular person by name, the townspeople may not save their lives by handing that person over. According to Reish Lakish, the people of Avel Beis Maacha were allowed to hand over Sheva ben Bichri only because he was guilty of treason and thus deserving of death. Barring such exceptional circumstances, a town may not, according to Reish Lakish, hand over a person to the enemy to save their lives, even if the enemy demands specifically that person.

At first glance, it would seem that the question of torpedoing a hijacked plane hinges on this debate among the *Amora'im*. According to Rabbi Yochanan, although the passengers are innocent and certainly not deserving to die, their lives threaten the lives of the hundreds or thousands of people in the targeted

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1. The infant is not considered a פורס ("pursuer"), who may be killed to save the person being pursued, because, as the Gemara states, משמיה קא רדפא לה — it is God, and not the newborn infant, who threatens the woman's life.
 2. See also Rashi's commentary to *Shmuel II* 20:22.

skyscraper. Thus, just as in the case in which the enemy requests a particular resident of the town, where — according to Rabbi Yochanan — the people may hand him over since he would die either way, in our case, in which the passengers are bound to be killed regardless of whether the plane is shot down, the plane may be destroyed to spare the people below. Reish Lakish disagrees with this ruling and forbids killing a person to spare others even if he would in any event be killed.

This analysis, however, does not help us in our quest for a halachic conclusion, as no consensus has been reached among the halachic authorities on this issue. The Rambam (*Hilchos Yesodei Ha-Torah* 5:5) codifies Reish Lakish's ruling and forbids handing over a wanted individual to save the other townspeople's lives unless that wanted person is guilty of treason, as in the case of Sheva ben Bichri. The *Hagahos Maimoniyos*, as well as the *Beis Yosef* (Y.D. 157), question why the Rambam accepts Reish Lakish's view, in light of the fact that the Halacha always follows Rabbi Yochanan's rulings in his disputes with Reish Lakish. Indeed, as the *Beis Yosef* notes, the Rash and the Ran follow Rabbi Yochanan's view.³ Both opinions are cited by the Rama (Y.D. 157:1), leaving this debate unresolved.⁴

II. Whose Blood is Redder?

However, we may find a basis for allowing blowing up the plane in the *Hagahos Ha-Ramach*, who, commenting on the Rambam's ruling, questions the rationale underlying the unanimous ruling regarding a case in which no particular person is named. He notes the Gemara's comment in *Sanhedrin* (74a) that the reason why one may not kill to save his own life is מאי חזית דדמא דידך סומק טפי. Loosely translated, this means that one may not assume that his "blood his redder" — that is, that his life is more valuable — than that of his fellow. Killing another person to save one's own life reflects the presumption that his own life is worth more, and since no person can make such an assumption, the Torah forbids rescuing oneself at the expense of another human being's life.

The Ramach notes that this rationale clearly does not apply in the case in which townspeople must decide between handing over one person and being killed. Under such circumstances, we can indeed determine which misfortune is graver, as whomever the people choose to hand over to the enemy would otherwise be killed along with the rest of them. This is not a decision of whose blood is redder, but rather a decision between having one person killed or having him

3. The Meiri in *Sanhedrin* also appears to accept Rabbi Yochanan's ruling.

4. The *Bach* writes that the Rama appears to side with the Rambam's ruling, but the *Chazon Ish* (*Sanhedrin* 25, ד"ה והר"ש) notes that the *Bach*'s claim has no basis.

and many others killed. Thus, since the rationale of מאי חזית דדמא דידך סומק טפי does not apply, we should seemingly apply the standard principle allowing the suspension of Torah law for the sake of saving human life.

The *Kesef Mishneh* answers that in truth, the rationale of מאי חזית דדמא דידך סומק טפי does apply even in such a case. Any individual selected to be handed over could legitimately argue that his blood is no less “red” than that of any others, and there is thus no justification for choosing him to die over any other person in the town. As such, the townspeople have no right to choose any one person over others if he was not singled out by the enemy.

The *Kesef Mishneh* then acknowledges that his answer does not resolve the Ramach’s question as it applies to Reish Lakish’s view — that even if the enemy specifies the person whom they want to kill, the townspeople may not hand him over (unless he is deserving of execution for a crime he committed). In this case, it seems, since the individual will in any event be killed, the rationale of מאי חזית דדמא דידך סומק טפי does not apply and the townspeople should be allowed to save themselves by handing over the named individual. The *Kesef Mishneh* suggests that according to Reish Lakish, the rationale of מאי חזית דדמא דידך סומק טפי is not the real reason that one may not save himself by killing another; rather, this law was in truth transmitted through oral tradition and is therefore relevant even when the reasoning of מאי חזית דדמא דידך סומק טפי does not apply.⁵

We may also suggest an additional answer. As mentioned earlier, the Mishna applies this ruling even to situations in which the enemy demands not a life, but a woman to defile. Even in such a case, if no particular woman is named, the townspeople are forbidden from choosing a woman, even if this means that all women in the town will be defiled. This would seem to prove that this *halacha* has nothing at all to do with the issue of מאי חזית דדמא דידך סומק טפי, of whose blood is “redder.” Apparently, the Mishna and Tosefta deal here not with the

5. This answer is also given by the *Chemdas Shlomo* (O.C. 38). The question of whether or not this *halacha* is based upon מאי חזית דדמא דידך סומק טפי has been discussed at length by numerous *Acharonim* and yields several important ramifications. For example, the Meiri (*Sanhedrin* 72b) rules that if the enemy did not name a particular person, the townspeople may save themselves by handing over a טריפה (a person suffering from a terminal illness who is certain to die). He clearly works with the assumption that it is the rationale of מאי חזית דדמא דידך סומק טפי that would prevent them from handing over someone to be killed and that this rationale does not apply to a טריפה. Similarly, the *Minchas Chinuch* (295–296:24) rules that one may kill a fetus (in a manner that does not endanger the mother) in order to save his own life. (See also *Chazon Ish*, *Hilchos Rotzei’ach* 1:9; *Tiferes Yisrael*, *Boaz*, *Ohalos*, end of chapter 7; and *Iggeros Moshe*, C.M. 2:69:4, וגם לענין אונס, ד”ה) By contrast, the *Noda Bi-Yehuda* (*Tanina*, C.M. 59) rules that one may not save his life by killing a טריפה or a fetus. See below in our discussion of חיי שעה.

prohibition of רציחה (murder), but rather with a more general prohibition against assisting an enemy by handing a fellow Jew over to them to be killed or raped. Thus, even if an argument could be made to permit handing over a fellow Jew on the grounds of פקוח נפש (saving human life), as the Ramach contends, it is nevertheless forbidden due to the separate prohibition against assisting enemies bent upon killing Jews.

This analysis directly affects the question concerning a hijacked airplane. In such a case, the enemies are not demanding any action on our part, and thus there is no issue of assisting a foe. Rather, there is simply the question of whether we may kill a small number of people who are bound to die anyway in order to save a larger number of people. As the Ramach observed, it seems clear that this would be permissible, and there is thus room to argue that the plane can and should be shot down in order to save the people in the building below.

III. Killing a Fetus to Save the Mother

Another basis for authorizing shooting down the hijacked aircraft is the ruling of the *Panim Meiros* (3:8) concerning a case that appears to involve the precisely identical question. He addresses the situation in which a fetus' head has already exited the mother's body and the doctors have ascertained that the infant is bound to die, and the mother will die as well if she completes the delivery. The *Panim Meiros* rules that this situation is akin to the case described in the Tosefta in which the enemy specifies a particular person whom they seek to kill and the townspeople are allowed to hand over the wanted individual since he is going to die in any event. Similarly, if the newborn is bound to die regardless of what happens to the mother, then it may be killed so that the mother may continue living. (The *Panim Meiros* concludes on an ambivalent note, however, writing, רוצ"ע להתישב בדין זה.)

Surprisingly, the *Panim Meiros* here appears to assume the view of Rabbi Yochanan — that it is indeed permissible to hand over a person wanted by the enemy if he is specified by name and would be killed either way. As noted, however, this issue is subject to a debate among the *Rishonim* and the Rama cites both opinions, seemingly leaving this question unresolved.⁶

In truth, however, we might contend that even Reish Lakish would agree in such a case that the infant may be killed for the sake of rescuing the mother. The basis for this claim is the approach taken by the *Chazon Ish* (*Sanhedrin* 25, ד"ה ירושלמי תרומת) to explain the debate between Rabbi Yochanan and Reish

6. This may be the reason for the ambivalence expressed by the *Panim Meiros* at the end of his discussion.

Lakish. He claims that according to Rabbi Yochanan, if the enemy names a person whom they want handed over, that individual attains the status of a רודף (“pursuer”), as his life poses a direct threat to the rest of the townspeople. As such, he may be handed over to the gentiles, just as any רודף may be killed for the purpose of rescuing his victim. Reish Lakish, however, maintains that the wanted person cannot be considered a רודף unless there is a particular reason why he was chosen, such as in the case of Sheva ben Bichri, who was wanted because he instigated a rebellion. Whereas Rabbi Yochanan views the wanted person as a רודף under all circumstances, since he in effect threatens the townspeople, Reish Lakish contends that he cannot be considered a רודף if he was selected arbitrarily. He attains this status only if there is a substantive connection between him and the enemy’s threat. Thus, if the enemy randomly selects one person to be handed over, that person does not, in Reish Lakish’s view, obtain the status of רודף.

According to this approach, it would appear that the ruling of the *Panim Meiros* could follow even Reish Lakish’s view. The newborn’s existence directly threatens the mother’s life, and as such, it has the status of a רודף and may therefore be killed. This is not a random connection, but a natural, physical reality; the woman’s life is endangered by the infant, and under such circumstances, even Reish Lakish would agree that the infant should be killed to save the mother’s life.

Accordingly, in the case of a hijacked plane as well, Reish Lakish would agree that the passengers are regarded as a רודף with respect to the people in the building. They were not randomly selected to die in place of the others; rather, they pose an immediate threat in light of the fact that the plane is headed toward the building and threatens its occupants and the people in the area. In this case, there is a clear and direct connection between the passengers and the threat posed to the people below, and thus according to all opinions, they have the status of רודף and it would be permissible to destroy the plane to save the people on the ground.

IV. Diverting a Missile

We might also approach this issue in light of the question addressed by the *Chazon Ish* (שם ד”ה ויש לעיין) concerning the permissibility of diverting a missile away from a large group of people toward one person, so that only one life is lost. In discussing this case, the *Chazon Ish* observes that handing over a Jew to an enemy is inherently an act of cruelty which, under the circumstances, has the effect of rescuing a large number of people. In the case of a missile, the precise opposite is true — the act of diverting its path is fundamentally an act

of rescue, which happens in this situation to result in a person's death. In light of this distinction, the *Chazon Ish* suggests, even Reish Lakish would agree that one may divert a missile off course to save the lives of a large group of people, even if this would cause it to kill somebody else.⁷

The *Chazon Ish* cites in this context the story of Lulinus and Papus (which appears in Rashi's commentary to *Ta'anis* 18b), two men who falsely confessed to a murder in order to save the Jews from the government's decree. The Gemara lauds Lulinus and Papus for their selfless act, setting a clear precedent for killing a small number of people for the purpose of rescuing the lives of a large number of people. In the situation of the missile as well, we might conclude that it would be permissible to divert a missile toward one individual for the sake of rescuing the lives of many. It should be noted, however, that a clear distinction exists between the story of Lulinus and Papus and the case under discussion. Lulinus and Papus were condemned to execution along with the rest of the Jews, and thus they would have been killed even if they had not made their false confession. Their willingness to sacrifice their lives thus does not set a precedent relevant to the case of a missile, in which rescuing the large group requires killing someone who would not have otherwise been killed.⁸

It is not entirely clear how the *Chazon Ish's* distinction would affect the question concerning the hijacked aircraft. On the one hand, shooting down the plane is an act of *הצלה*, rescuing the targeted building, much like diverting a missile is an act of rescuing the targeted group of people. On the other hand, one who diverts the missile does not directly kill the victim, whereas in the case of the hijacked plane, the passengers are killed directly through the firing of a missile. We thus cannot reach any definitive conclusions regarding our question on the basis of the *Chazon Ish's* discussion.

V. חיי שעה

Another consideration that must be taken into account is the fact that shooting down the plane will cause the passengers to die several minutes earlier than they would otherwise have died. While it is true that they are going to die regardless of whether the plane is shot down or allowed to continue to its target, allowing

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7. The *Chazon Ish* then acknowledges that the reverse argument could be made: those who hand over a Jew to the enemy do not commit a direct act of murder, whereas when one diverts a missile away from its target towards a person, he directly kills the person who is ultimately struck by the missile. When the question is viewed from this angle, we might conclude that to the contrary, even Rabbi Yochanan would agree that it would be forbidden to divert the missile.
 8. This point was made by Rav Eliezer Waldenberg in *Tzitz Eliezer* (15:70).

the plane to continue flying grants them an additional few minutes of life. Do these extra moments warrant forbidding shooting down the plane, compelling us to allow it to continue into a skyscraper and to kill hundreds or thousands of civilians?

This issue appears to be subject to debate among the halachic authorities. The *Yad Avraham* commentary to the *Shulchan Aruch* (Y.D. 157:1) asserts that the Tosefta's ruling allowing the townspeople to hand over a wanted person applies only if the enemies would otherwise kill the entire town immediately. In this case, since the wanted individual would die at the same time regardless of whether he is delivered to the enemy, we allow the townspeople to rescue themselves by handing him over. If, however, refusing to hand him over will result in the townspeople's deaths at a later time, then the Tosefta's ruling does not apply, and the people may not hand the person over to be killed, as they would thereby be denying him short-term survival.

The *Yad Avraham's* ruling is predicated on the assumption that we may not sacrifice a person's *שעה חיי* — the brief period he still has to live — even for the sake of the long-term rescue of others. According to the *Yad Avraham*, no distinction is drawn between short-term and long-term rescue. Thus, just as it is forbidden to kill one person to save another, it is forbidden to deny a wanted individual the brief period in which he could still remain alive by handing him over to the enemy.

By the same token, it would be forbidden to blow up a hijacked plane in order to rescue the people below, even according to the ruling of Rabbi Yochanan. Since destroying the plane would end the passengers' lives several moments before they would otherwise be killed by the plane's collision with the building, this would amount to killing some people for the sake of rescuing others, which is clearly forbidden.

However, the *Chazon Ish* (*Sanhedrin* 25, ומש"כ בגליון) disputes the *Yad Avraham's* view and maintains that once the enemy singled out a particular person for execution, it makes no difference whether he would otherwise be killed immediately or at some future point.

This debate hinges on the question of how to classify *שעה חיי* — whether or not it is equivalent in all respects to long-term survival. A number of *Acharonim* address this question in the context of the famous debate between Rabbi Akiva and Ben Petura (*Bava Metzia* 62a) concerning the case of two people traveling in a desert, one of whom has no water while the other has enough water to sustain only one of them. Ben Petura rules that the fellow must share his water with his companion, even though they will then both die, rather than drink his entire ration to sustain himself at the expense of the other man's life. Rabbi Akiva, however, citing the verse *וחי אחיך עמך* ("Your fellow shall live with you")

— *Vayikra* 25:36), establishes the rule of לחיי חברך, which means that one's life takes precedence over his fellow's life. In his view, the traveler with the jug of water may drink as much as he needs to sustain himself, even if this results in his fellow's death.

Several *Acharonim* note that Ben Petura appears to fully equate חיי שעה with long-term survival. In his view, one may not ensure his own long-term survival at the expense of his fellow's short-term survival, and the traveler with the jug must therefore share the water with his fellow so that his fellow can live for another few moments. Although Rabbi Akiva disputes this ruling, he does so only due to the inference from the verse, וחי אחיך עמך, indicating that were it not for this inference, he would accept Ben Petura's position and require sharing the water. This discussion thus perhaps lends support to the *Yad Avraham's* view equating short-term survival with long-term survival, such that one may not save a life by killing someone who will in any event die later.

By contrast, the *Shevus Yaakov* (3:75) asserts that long-term survival indeed overrides short-term survival, drawing proof from the Gemara's ruling in *Avoda Zara* (27b). The Gemara there establishes that although it was considered dangerous to seek medical treatment from idolaters (as they were regarded as potential murderers), it was permissible to seek medical treatment from them for a terminal illness. Since the patient in any event is certain to die, he may risk his life by seeking treatment from a dangerous physician. The Gemara explains, לחיי לא חיישינן — meaning, we do not take into account the short-term survival that one potentially forfeits by taking this risk, as this brief period of life is not significant. Based on this, the *Shevus Yaakov* proves that short-term survival is not deemed halachically equivalent to long-term survival, and in some respects is considered insignificant.⁹

Clearly, however, we may distinguish between the Gemara's ruling in *Avoda Zara* and the discussion between Rabbi Akiva and Ben Petura. In *Avoda Zara*, the Gemara addresses the question of whether an individual may put **his own short-term survival** at risk for the sake of possible long-term survival. In such a case, it indeed stands to reason that the prospects of long-term survival warrant risking the patient's short-term survival. Rabbi Akiva and Ben Petura, however, address the question of whether one's long-term survival overrides **another**

9. The context of the *Shevus Yaakov's* discussion is the case of a gravely ill patient who, according to the doctors' prognosis, cannot survive in his condition for another day or two, but there is a procedure that could cure him of his illness, but might also kill him within an hour or two. The *Shevus Yaakov* draws proof from the Gemara's discussion in *Avoda Zara* that the patient may take the risk and undergo the procedure, since in any event he is going to die and the חיי שעה that he may be forfeiting is insignificant.

person's short-term survival, and the answer, in principle, is that it does not. With regard to our question, then, we might indeed draw proof from Rabbi Akiva and Ben Petura that one may not sacrifice another person's short-term survival to secure his own long-term survival, as the *Yad Avraham* claims.

As mentioned, however, the *Chazon Ish* disputes this ruling. In his view, we may indeed apply Rabbi Yochanan's ruling to our case to allow shooting down a hijacked airplane to save the people on the ground, even though this means ending the passengers' lives several minutes earlier than they would have otherwise ended.¹⁰

VI. Conclusion

Based on what we have seen, there is room to allow and even require shooting down a hijacked plane to protect the people in the targeted building. In addition to the fact that several *Rishonim* accept Rabbi Yochanan's view, allowing handing over a wanted person to rescue a town, we noted that even Reish Lakish would allow shooting down the plane, as the passengers have not been randomly "selected." Moreover, since this situation does not involve the issue of assisting an enemy threatening the Jewish people, it is likely that the entire discussion between Rabbi Yochanan and Reish Lakish does not apply and the rationale of מאי חזית is likewise inapplicable, thus warranting killing the few to rescue the many.

10. One might examine the possible relevance of the *Chazon Ish's* ruling with regard to the controversy surrounding organ transplants, which can generally be performed only when a patient is brain dead but still breathing. Contemporary halachic authorities have debated whether or not brain death constitutes halachic death such that organs may be removed from a brain dead patient. One might perhaps argue that regardless of this question, the organs may be taken because the donor's שעה חיי does not override the recipient's long-term survival. Even if we consider the brain dead patient halachically living, he is at very least a טריפה and has only a short period of time left to live, in which case his short-term survival should not take precedence over other patients' long-term survival according to the *Chazon Ish's* ruling.

In truth, however, we must distinguish between the situation addressed by the *Chazon Ish*, in which the enemy has stated their intent to kill the person in question, and the case of an ill patient. Clearly, it is inconceivable that we may remove the organs of any elderly hospital patient since in any event he or she has only שעה חיי in contrast to the young patients in need of a transplant. The *Chazon Ish's* ruling was said in reference to a case in which the person is condemned to death, and thus allowing him some extra moments of life should not, according to the *Chazon Ish*, come at the expense of the lives of all the townspeople.