

Morality and War - Source Sheet

Congregation Beth Shalom - Rabbi Mark Asher Goodman

The Toraitic basis for justifiable homicide

Exodus 22:1-2

אם־במחֶתֶת יִמָּצָא הַגֵּנֵב וְהִכָּה וְנָמַת אִין לוֹ דָּמִים: אִם־זָרְחָה הַשֹּׁמֵשׁ עָלָיו דָּמִים לוֹ שְׁלָם יִשְׁלָם

If the thief is seized while tunneling and is beaten to death, there is no bloodguilt in his case. If he robs in broad daylight, then it is an act of murder [to kill him].”

The Talmudic basis for self-defense

Talmud Sanhedrin 72a

והתורה אמרה אם בא להורגך השכם להורגו.

If one comes to kill you, rise up and kill them first.

Killing a pursuer - ‘rodef’

Talmud Sanhedrin 72b

קמ"ל דרודף הוא ואפילו אחר נמי אלא ומת בכל מיתה שאתה יכול להמיתו למה לי

Therefore, the *baraita* teaches us that **a burglar is considered a pursuer**, and he is subject to the same *halakha* as **anyone who pursues another in order to kill him**, namely, **that anyone may kill the pursuer** in order to rescue the one being pursued.

Saving lives is the highest mitzvah. However, doing so must be based on immediate cause and effect

Talmud Yoma 82a

שֶׁאִין לָךְ דְּבַר שְׁעוּמֵד בְּפָנֶי פְּקוּיֵי נַפְשׁ, חוּץ מֵעֲבוּדָה זָרָה וְגִילּוּי עֲרִיּוֹת וְשִׁפְכוֹת דָּמִים.

Saving a life takes precedence over all other *mitzvot*, with the exception of (when doing so would require one to violate the laws of) idol worship, sexual licentiousness, and murder (of an innocent person).

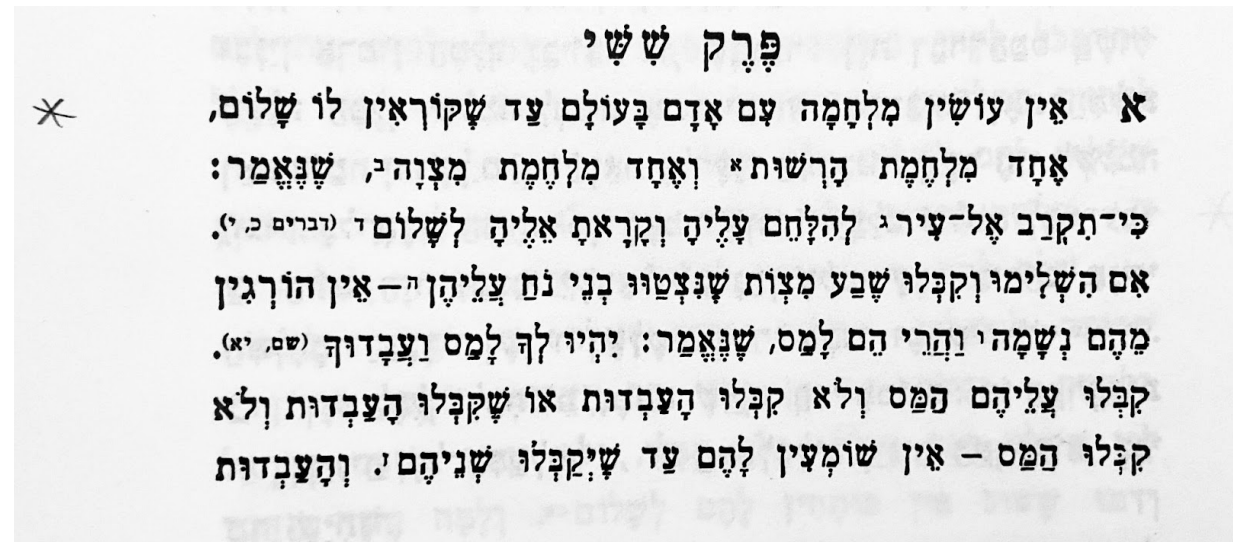
Rabbi Ezekial Landau, the Noda BeYehuda, on Chullin 11a (paraphrased)

In the case of a person who is dying, and another person comes and strikes them, may an autopsy be performed to determine the cause of death? No, because the benefit of *Pikuach Nefesh* must be immediate - *lifaneinu* - and not a 'potential benefit' in the future.

Before making war, an offer of peace - with subjugation - must be made

Mishneh Torah, Maimonides

Hilchot Melahim uMilhamoteihem, Kings and Their Wars, 6:1



One does not make war with any peoples of the world until after an offer of peace has been made, regardless of whether this is a war of commandedness or a war of volition.¹ As the Torah tells us: “When one draws near to the city to make war upon it, you must offer peace to them” (Deuteronomy 20:10). If they agree to peace, and accept the seven Noahide laws, you may not kill them.² And behold, they are subjugated.³ And the Torah says “They shall be subjugated and they shall serve you.” They must both accept subjugation and service.

¹ A *milhemet mitzvah*, ‘commanded war’, is a war fought against one of seven nations occupying Canaan, or a war against Amalek. The overwhelming majority of sources believes that these nations no longer exist as such, and thus there is no longer any such war that might be regarded as a *Milhemet mitzvah*.

² The Ra”Avad (12th C, France) holds that even if they refuse to accept the seven Noahide commandments, one may not kill them.

³ *Mas* meant ‘forced labor’, and also ‘taxation.’

In war, it is permitted to kill military age males, but not women or children

Hilchot Melahim uMilhamoteihem, Kings and Their Wars, 6:4

ד ואם לא השלימו, או שהשלימו ולא קבלו שבע מצות –
עושין עמהם מלחמה והורגין כל הזכרים הגדולים י ובזוין
כל-ממונם וטפם, ואין הורגין אשה ולא קטן, שנאמר: (ו)הנשים
והטף יג (הברים כ, יד) זה טף של זכרים. נמה דברים אמורים? י
במלחמת הרשות שהוא עם שאר האמות: אבל שבועה עממין
ועמלק שלא השלימו – אין מניחין מהם נשמה, שנאמר: כן

And if they do not accept peace, or they accept peace but do not accept the seven Noahide laws – make war on them, and kill all the adult males, and loot all their valuables and children. But do not kill the women or the children, as the Torah says (Deuteronomy 20:14). In what circumstances does this apply? In a war of volition with one of the nations [i.e., not the seven Canaanite nations]...

Civilians in war must be allowed to flee from combat

Mishneh Torah, Hilchot Melahim uMilhamoteihem, Kings and Their Wars, 6:7

שפג

שופטים, הלכות מלכים פ"ו

ז כשצדין על עיר לתפשה – אין מקיפין אותה מארבע *
רוחותיה אלא משלש רוחותיה, ומניחין מקום לבורח
ולכל-מי שיצה להמלט על נפשו, שנאמר: ויצבאו על-מדין
כאשר צוה ה' את-משה (במדבר לא, ז) מפי השמועה למדולי
שבכה צוהו.

When a siege is begun on a city to seize it, it should not be surrounded on all four sides, but rather, only three. This is so that there is space to flee to, and that anyone that desires to flee for their lives may do so, as it is written: “And they went to battle against Midian, as God had

commanded Moses” (Numbers 31:7) And the Midrash tells us that thus [siege on three sides] was commanded.⁴

The *Mitzvah* of Redeeming Captives is the most important *mitzvah*

משנה תורה, הלכות מתנות עניים ח"י:
פְּדִיּוֹן שְׁבוּיִים קוֹדֵם לַפְּרִנְסַת עֲנִיִּים וְלִכְסוּתָן. וְאִין לָךְ מִצְוָה גְּדוּלָה כְּפְדִיּוֹן שְׁבוּיִים שֶׁהַשְּׁבוּי הָרִי הוּא בְּכָלֵל הַרְעֵבִים וְהַצְּמָאִים וְעֲרוּמִים וְעוֹמֵד בְּסַכַּנַת נַפְשׁוֹת. וְהַמַּעֲלִים עֵינָיו מִפְּדִיּוֹן הָרִי זֶה עוֹבֵר עַל (דְּבָרִים טו ז) "לֹא תֹאמֵץ אֶת לְבָבְךָ וְלֹא תִקְפֹּץ אֶת יָדְךָ" וְעַל (וִיקְרָא יט טז) "לֹא תַעֲמֹד עַל דָּם רַעֲךָ" וְעַל (וִיקְרָא כה נג) "לֹא יִרְדְּנוּ בְּפִרְךָ לַעֲיֹנֶיךָ". וּבִטֵּל מִצְוֹת (דְּבָרִים טו ח) (דְּבָרִים טו יא) "פֶּתַח תִּפְתַּח אֶת יָדְךָ לוֹ". וּמִצְוֹת (וִיקְרָא כה לו) "וְחִי אֲחִיךָ עִמָּךְ". (וִיקְרָא יט יח) "וְאַהֲבֵת לְרַעֲךָ כְּמוֹךְ". (מִשְׁלֵי כד יא) "וְהִצַּל לְקַחִים לְמוֹת" וְהִרְבֵּה דְבָרִים פְּאֵלוּ. וְאִין לָךְ מִצְוָה רַבָּה כְּפְדִיּוֹן שְׁבוּיִים:

Mishneh Torah, Gifts to the Poor 8:10

The redemption of captives held for ransom takes precedence over sustaining the poor and clothing them. **You do not find a *mitzvah* greater than the redemption of captives**, for captivity is in the same category as famine, drought, or exposure, and one stands in danger to one's life. One who averts his eyes from redeeming [the captive] transgresses [the commandment], (Deut. 15:7) *Do not harden your heart and shut your hand*, and (Lev. 19:16) *Do not stand upon the blood of your neighbor*, and (Lev. 25:53) *He shall not rule ruthlessly over him in your sight*, and nullifies the commandment (Deut. 15:8) *You must open your hand*, and the commandment, (Lev. 25:36) *Let him live by your side as your kin*, and (Lev. 19:18) *Love your fellow as yourself*, and (Proverbs 24:11) *If you refrained from rescuing those taken off to death*, and many such sayings. **You cannot find a greater *mitzvah* than the redemption of captives.**

⁴ Sifrei BaMidbar 157:5 -

ויצבאו על מדין – הקיפוא מד' רוחותיה. ר' נתן אומר: נתן להם רוח רביעית כדי שיברחו: "And they went to battle against Midian" - They surrounded on all four sides. Rabbi Natan said: (three sides) - they gave them the fourth side so that they could flee.