

NAHUM RAKOVER

SACRIFICING LIFE

GIVING UP ONE
TO SAVE THE MANY

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English Summary

A. Introduction

The purpose of this book is to ascertain whether Jewish law recognizes a difference in the rescue of the individual, the rescue of many persons, and the rescue of the entire Jewish people. In particular, we shall discuss sacrificing the life of the individual for his fellow man's life. Does it matter whether the sacrifice is made on behalf of an individual, on behalf of many persons, or on behalf of the entire people?

This question has a number of aspects: Is it permitted or prohibited for a person to "volunteer" to rescue another when doing so entails sacrifice of his own life? And are there instances when such sacrifice is not only permitted but obligatory (and might it be permitted in such instances to "volunteer" a person against his will)?

Among the considerations: When discussing human life, are we capable of "weighing the value" of one person against the value of several persons? Does "quantity" have significance when we are discussing human beings? Or must we conclude that "quantity" is

irrelevant—that since every person is a world unto himself, his value is infinite, and there is no room for considerations of quantity?

B. One Life May Not Be Given Priority over Another

To begin considering these questions, we turn first to a source that establishes that “one life may not be given preference over another.” In the tractate *Ohalot*, the *Mishnah* declares:¹

When a woman has difficulty in giving birth, we dismember the fetus within her womb and extract it limb by limb, because her life has priority over its life. If the majority of the fetus has emerged, we may not touch it, as one life may not be given priority over another.

While the principle of the *Mishnah* is clear, the question that remains is whether the law will differ when against the one life of the newborn, there stand several lives. Will we then give priority to the several lives over the one?

On the basis of this *mishnah*, we cannot answer our question. We, therefore, turn to the *Tosefta* in the tractate *Terumot*, from which we learn that not only is it prohibited to give priority to the lives of many persons by actively killing one person, but that to save many lives it is prohibited even to cause one person’s death indirectly.

C. All Must Be Killed Rather Than Surrendering Even One

In the tractate *Terumot* of the *Tosefta*, we find:²

When heathens say to a group of Jews, “give us one of your group and we will kill him, and if not, we will kill you all,” all must be killed rather than surrendering even one Jew.

¹ *Mishnah Ohalot* 7:6.

² *Tosefta Terumot* 7:20.

Here many persons face the danger of being killed if they do not surrender one person; nevertheless, the *Tosefta* rules that one person may not be surrendered to save the many. Since it is prohibited to surrender one person to save many, it is certainly prohibited to actually kill one person to save many.

The *Tosefta*, however, qualifies its rule that it is forbidden to cause the death of one person to save many. The passage quoted continues:

But if they specified which person is to be surrendered, as they specified Sheva son of Bikhri,³ they surrender him—so that they all not be killed.

Moreover, in the *Jerusalem Talmud*,⁴ R. Yohanan and R. Shimon ben Lakish debate the meaning of the *mishnah*'s “if they specified” as it applies to the case of Sheva son of Bikhri:

R. Shimon ben Lakish says, “he must be guilty of a capital offense as was Sheva son of Bikhri.” R. Yohanan says, “[the qualification applies] even if he is not guilty of a capital offense.”

According to R. Yohanan, then, to save the entire group, it is permitted to surrender a specified person, even if he is not guilty of a capital offense.

In the dispute between R. Yohanan and R. Shimon ben Lakish, Maimonides rules according to the opinion of R. Shimon ben Lakish.⁵

Maimonides' opinion is not accepted by all authorities, however. In his *Beyt haBehirah*, R. Menahem haMe'iri rules according to the opinion of R. Yohanan⁶.

The same ruling is given by R. Efrayim haKohen of Vilna, who establishes priority for the lives of many persons over the life of one person.⁷ R. Efrayim haKohen discusses the case of a young man who

³ See text next to note 12.

⁴ *TJ Terumot* 8:4.

⁵ Maimonides, *M.T.*, *Yesodey haTorah* 5:5. *Kesef Mishneh*, ad loc., explains that Maimonides has several reasons for accepting the opinion of R. Shimon ben Lakish.

⁶ R. Menahem haMe'iri, *Beyt haBehirah*, *Sanhedrin* 72b (ed. Ralbag, p. 109).

⁷ *Resp. Sha'ar Efrayim* 72.

withdrew from an agreement to marry a particular woman. As a consequence, a ban was issued against any woman's marrying him. The young man subsequently requested that the ban be revoked, and there was reason to believe that were it not revoked, he would cause considerable damage to the members of the community. R. Efrayim haKohen discusses whether the potential danger constitutes sufficient cause for revoking the ban. In his discussion, he writes, on the basis of R. Yohanan's opinion:

It appears that sometimes we find that it is permitted to surrender one person's very life in order to remove a danger from many persons, and the proof of this is the case of Sheva son of Bikri.

R. Efrayim haKohen asserts that R. Yohanan's principle that it is permitted to surrender one person to be killed in order to save many persons applies with even greater force to the case before him, where

if the members of the community see that some damage or destruction will result if they do not revoke this ordinance concerning the young man, they are permitted to revoke the ordinance, so that no obstacle or damage will result from this to the community.

However, R. Efrayim haKohen ultimately rejects his own argument from the *Jerusalem Talmud*. The reason for permitting surrender of one person, R. Efrayim haKohen asserts, is not because surrendering him will save many, but rather because even if the particular person is not surrendered, he will be killed together with the others. According to R. Efrayim, the same principle will apply if there are just two persons and one of them is specified. Then too, it will be permitted to surrender the person specified in order to save the person not specified, even though he is but one. Rava's principle, "What makes you think your blood is redder than his..." (see below), applies only where refusal to cooperate will save the other person's life. If, however, the other person will in any case not be saved, if, for instance, the heathen says "If you do not kill him, I will kill you both," then one is permitted to save himself at the expense of the other's life. Therefore, R. Efrayim haKohen concludes, "The reason is not the rescue of many persons."

Me'iri⁸ also says that the above principle applies even where there are only two people:

If [the enemy] says, "I will kill you all," or "both of you," he surrenders him so that both, or all, will not be killed.

On the other hand, even if the person will be killed in any case if he is not surrendered, Me'iri permits only surrendering the specified person, but does not permit killing him. Other sources, as will presently be shown, permitted not only surrendering a person in such a case—thus causing his death indirectly—but actually killing him.

Concerning the *Talmud's* discussion⁹ of "a woman who has difficulty giving birth," and the principle that one life may not be given priority over another, Rashi raises a question from the case of Sheva son of Bikhri.¹⁰ In that case, the residents of the city executed Sheva son of Bikhri in order to prevent the city's capture, as we read, "...and they cut off the head of Sheva son of Bikhri, and threw it out to Joab..." (II Samuel 20:22), apparently giving priority to one life over another. The case of Sheva son of Bikhri seems to contradict the *mishnah* in *Ohalot*. On this apparent contradiction of the principle, Rashi explains:

There [it was permitted], because even if they had not surrendered him, he would have been killed in the city when Joab captured it, and they would have been killed with him. However, if he would have survived, even if they would have been killed, they would not have been permitted to surrender him to save themselves.

Rashi goes on to give an alternative reason: "Or perhaps it was because he had rebelled against the king."

What emerges from Rashi's comments is that where the person to be surrendered would be killed even if he were not surrendered, it is permitted even to kill him. This conclusion concerning Rashi's opinion was reached by R. Me'ir Eisenstadt, author of *Resp. Panim Me'ivot*.¹¹

⁸ R. Menahem haMe'iri, *Beyt haBehirah, Sanhedrin* 72b (ed. Ralbag, p. 109).

⁹ *Sanhedrin* 72b.

¹⁰ II Samuel 20:21.

¹¹ *Resp. Panim Me'ivot* III:8.

R. Eisenstadt was asked concerning a woman having difficulty giving birth where the fetus began to emerge feet first (i.e., breech delivery), whether it is permitted to amputate the fetus's limbs to extract it and save the mother. In answer, he asserts that from Rashi's comments mentioned above, it appears that if it is known that in this birth, both mother and fetus will die, then we do rescue one and give priority to one life over another. R. Eisenstadt does not rule, however, but asserts, rather, that the law in this case requires further consideration.¹²

In *Resp. Mahaneh Hayyim*,¹³ R. Hayyim Sofer makes a distinction: a fetus may not be killed even if otherwise both mother and fetus will die, because if the fetus dies, that will be an act of heaven, and it is forbidden to actively kill him. This is not the case where a person is ordered to kill another (and if he does not, both will be killed). There, if both are killed, they will be killed by another human being; therefore, only in such a case, is it plausible to permit one to kill the other in order to save himself.¹⁴

According to the opinion that it is prohibited to surrender a specified person unless he has committed a capital offense, why should he not be surrendered if, in any case, he will be killed together with everyone else? Concerning this question, R. Kook gives the novel explanation that owing to the severity of the prohibition of killing, it is preferable not to actively deliver a person to death; it is preferable, rather, that his death be caused without our intervention, even if he will die anyway together with the others.

Although we learn of this special severity from the principle "What makes you think your blood is redder than his?", this severity does not depend on the reasoning of "What makes you think, etc." Even in situations where the "What makes you think, etc." principle does

¹² *Yad Ramah* on *Sanhedrin* 72b, rules that if both mother and fetus will die, it is permitted to kill the fetus in order to save the mother. Maharam Halawa, in his comments on *Pesahim* 25b, writes that one authority holds that Rava's ruling that even under threat of death it is forbidden to kill, applies only when the ruler would kill A and leave B to live. Where, however, the ruler declares, "if you do not kill B, I will kill you both," then A should kill B and not let himself be killed.

¹³ R. Hayyim Sofer, *Resp. Mahaneh Hayyim* II, *Hoshen Mishpat* 50.

¹⁴ *Resp. Maharam Shik*, *Yoreh De'ah* 155 does not accept the opinion of *Mahaneh Hayyim*.

not apply, such as when all will be killed in any case, the severity of the prohibition of killing remains in force.

For a philosophical perspective on the relationship between the individual and the collective expressed in these laws, it would do well to quote R. Yosef Dov Soloveitchik,¹⁵ who asserts that the Jewish perception of man is twofold:

Judaism saw in him an individual in his individuality, and saw him as part of a collective, an organ of the body of the Jewish people [*Kenesset Yisra'el*]. On this subject, there is a continuing dialectic in Judaism in all generations. The question of questions is whether the individual stands above the collective and the collective must serve the individual, or whether the individual is subordinate to the collective and of no independent significance to it.

Further on, R. Soloveitchik continues:

It is as though the individual and the collective find themselves on two sides of the balance and are dependent upon one another. Sometimes we find that the collective must sacrifice itself for the individual, for instance in the law concerning heathens who surround a city and demand one person—then, all must die rather than giving up one Jew. But there are times when the individual is obliged to sacrifice himself for the collective. The individual is never considered insignificant with reference to the collective, and the collective is not diminished on account of the individual or individuals. Each one has its own place.

D. One Versus Several in “Be Killed Rather Than Transgress”

In the tractate *Sanhedrin*,¹⁶ Rava is asked about one who is threatened that if he does not kill a particular person, he will himself be killed:

¹⁵ R. Yosef Dov haLevi Soloveitchik, *Al haTeshuvah*, ed. Pinhas Peli (Jerusalem: The World Zionist Organization, 1975) p. 86.

¹⁶ *Sanhedrin* 74a.

is he permitted to kill that person? Rava answers that he must be killed rather than kill, for, “What makes you think your blood is redder than his? Perhaps his blood is redder than yours.”

Does the reason, “What makes you think your blood is redder than his?” apply also when the dilemma involves giving priority to several persons over one? What will Rava say when not just one person is threatened that he will be killed if he does not kill another, but two or three are threatened that if they do not kill a particular person, they will be killed. In a case such as this, would Rava prefer the many over the one? We saw in the previous chapter that authorities differ on this question.

The question of giving priority to several persons over one person arises in a different context as well. Where a person is compelled to participate indirectly in an act of killing by being thrown upon an infant so that the infant will be crushed and killed, he does not perform any act at all—even indirectly—but rather serves as a mere “means” for the killer to accomplish his end. Concerning such a case, the opinion of the *Tosafot*¹⁷ is well known: The person is not obliged to sacrifice his life rather than allow himself to be thrown upon an infant, for here, since he is not directly performing an act, he may ask, “What makes you think the infant’s blood is redder than mine?”. Would the *Tosafot* say the same where the person is to be thrown on a number of infants?

1. Not Preferring the Many — Not Employing Common Sense Appraisal

As to the first case, where a threat is addressed to several persons who must kill a specific individual or be killed themselves, for R. Kook it is clear that Rava’s principle will apply. Preference may not be given to the many over the individual, and we say to them all, “What makes you think your blood is preferable to the blood of that individual?”.

Why, in fact, should we not say that the blood of many is preferable to the blood of one? To this question, R. Kook answers that we have no clear incontrovertible proof of the priority of the many over the individual, and preference of many over one is based only on common

¹⁷ *Tosafot, Sanhedrin* 74b, s.v. *veHa Ester*.

sense appraisal (*umdena*). It may be that the “weight” that we ascribe to an individual or to many is not correct. In terms of “absolute weight,” it may be that this particular individual’s worth equals or exceeds the worth of the many. Thus, we cannot rely upon logic or the common sense appraisal that ascribes greater value to several than to one, except as concerns purely religious obligations, where we do indeed rely upon common sense appraisal. On the other hand, when we are discussing killing one person for the purpose of saving another, as in the case that came before Rava, we are dealing in capital cases, and in capital cases, we do not rely upon common sense appraisal.¹⁸

Concerning common sense appraisal in capital cases, Maimonides writes:¹⁹

The court does not impose the penalty of death on mere conjecture but only on the conclusive testimony of witnesses. Even if the witnesses saw him [the assailant] chasing the other, gave him warning, and then lost sight of him, or they followed him into a ruin and found the victim writhing [in death agony], while the sword dripping with blood was in the hands of the slayer, the court does not condemn the accused to death, since the witnesses did not see him at the time of the slaying. Concerning this and similar cases, Scripture says: “And the innocent and righteous slay not” (Exodus 23:7).

In his *Book of the Commandments*, Maimonides explains the point further:²⁰

Hence, the Exalted One has shut this door, so to speak, ordaining that no punishment is to be inflicted unless there are witnesses who testify that they know for certain what happened, without any doubt whatever, and there is no other possible explanation. If we do not give judgment even on the basis of a very strong presumption, the worst that can happen is that the sinner will be acquitted; but if we punish on the strength of

¹⁸ R. Avraham Yitzhak haKohen Kook, *Mishpat Kohan* 143, pp. 310-311.

¹⁹ Maimonides, *M.T.*, *Sanhedrin* 20:1.

²⁰ Charles B. Chavel, *The Commandments; Sefer Ha-Mitzvoth of Maimonides* (London: Soncino Press, 1967), vol. II, Negative Commandment 290, pp. 269-271.

presumptions and suppositions, it may be that one day we shall put an innocent person to death; and it is better and more satisfactory to acquit a thousand guilty persons than to put a single innocent man to death.

2. *Situations in Which Preference is Given to the Many*

From here, R. Kook arrives at the circumstances when priority is given to several persons over one.

(A) When a Person is to be Pushed onto Several Infants

Above we discussed what the law would be if a person were compelled to permit himself to be pushed upon an infant, and we saw that according to the *Tosafot*, he is not obliged to sacrifice his life rather than consent. The reason was that where the act is indirect, the “What makes you think your blood is redder,” principle may be applied to the potential assailant. When the potential victim is several infants, however, R. Kook asserts that a person may be obliged to sacrifice his life. R. Kook concludes, however, that “the matter requires study.”²¹

What is the rationale for requiring the person to sacrifice his life? The case under discussion is not a capital case in the sense of surrendering someone or permitting someone to kill a person. In the case of the infants, we are asking, rather, if the person is obliged to sacrifice his life. Here we are not committing an act equivalent to deciding a capital case but rather issuing a halachic decision. In this, it is a decision no different than all other decisions on whether according to Jewish law a particular act is permitted or forbidden. It may be, therefore, that in a case such as this, we do follow our common sense appraisal, according to which the lives of many take precedence over the life of one.

While the question of whether a person may permit himself to be pushed onto several infants was connected to the question of whether “to be killed or transgress,” there are a number of cases which must be discussed outside this context.

(B) Volunteering to Rescue Several Persons

The various considerations enumerated in the previous case may apply

²¹ Ibid., p. 312.

equally to one who of his own free will volunteers to sacrifice his life in order to rescue several persons. It may be that even Maimonides, who holds that a person is not permitted to volunteer to sacrifice his life when he is not obliged to do so, will admit that it is permitted to volunteer to sacrifice one's life to rescue several persons.²²

(C) Priority in the Rescue of the Many

We learn of the possibility of “weighing” one life against another, for the purpose of determining priority in rescue, from the final *mishnayot* of the tractate *Horayot*.²³ If it is possible to determine priority among individuals, why should it not be possible to give priority to the rescue of several persons over the rescue of one person?

When R. Kook explained why we cannot give priority to several persons over a single person, he based his explanation on the principle that we may not judge capital cases on the basis of a common sense appraisal. Since preference for several persons over the one is based upon common sense appraisal, we cannot sacrifice an individual's life to save several persons. However, according to R. Kook, we do rely on common sense appraisal

when we perform no act directly involved with the person's life, but are only passive, when we give priority to that which appears to us more important, whether it be according to the principles established by the Sages for when things are equal; or by means of evaluation and common sense appraisal when they are not totally equal, but when we know that they are equal in levels of wisdom and lineage, and so forth.

R. Kook continues, however, and asserts that all these criteria for evaluating the worth and preciousness of a life are not stronger than common sense appraisal. We are, therefore, forbidden to act upon these rules when judging capital cases. Thus, when we must decide which life to sacrifice, we are left with only the “What makes you think your blood is redder than his” principle, and we are, therefore, forbidden to perform any direct act which will result in loss of another person's

²² Ibid, p. 311.

²³ *Mishnah Horayot* 3:7-8.

life.²⁴ However, according to R. Kook, we can give priority to the rescue of several persons over the rescue of one person, because according to logic, many persons should have priority over one person.²⁵

E. Diverting an Arrow from Several Persons to One (The Opinion of Hazon Ish)

Another source relevant to our subject is the opinion of Hazon Ish on whether in order to save several persons it is permitted to divert an arrow already in flight, where doing so will result in the death of another.

Hazon Ish writes²⁶:

...where one sees a flying arrow about to kill several persons, and he is able to divert it to a different trajectory, such that only one person will be killed, and if he does nothing, several people will be killed, but the single person will remain alive: It may be that this is not comparable to the surrender of one person to be killed. For there, the surrender is a cruel act of killing, and is not by its nature an act of rescue. [In surrender,] it is the circumstances that now render the act an act of rescue, since the rescue of others entails delivery of one person to death. On the other hand, diverting the arrow from one trajectory to another is essentially an act of rescue and not at all connected to killing the single person on the other side. It is only that now, by chance, there is a person on the other side. And since on this side, several persons will be killed, and on the other side one person, it may be that we should try to reduce the loss of life as much as possible.

²⁴ Ibid., p. 311.

²⁵ See also *ibid.* 144, pp. 339-340.

²⁶ *Hazon Ish, Sanhedrin* 25.

Distinguishing Between an Act of Killing and an Act of Rescue

From Hazon Ish's remarks, it appears that under certain circumstances, the lives of several persons do take precedence over the life of one person. The specific circumstances are when the act to be performed is in essence an act of rescue. It is then permitted to perform an act that will save several persons, even though the consequence of the act will be that a smaller number of persons will be killed. Hazon Ish distinguishes, then, between surrendering a person to be killed and diverting an arrow. In "Give us one of your group and we will kill him," surrendering the individual is a cruel act of killing, and the act of surrendering the individual is not by its nature an act of rescue. It is only the circumstances that cause it to result in the rescue of others. The act of diverting an arrow, however, is by its very nature an act of rescue, which, in the present circumstances results in the killing of a person. In such a case, Hazon Ish writes, it may be that one ought to try to minimize the loss of life as much as possible, that is to say, to give priority to the rescue of several persons over the life of the individual.

If this is indeed the correct interpretation of Hazon Ish's opinion, there is no place for the objection of R. Binyamin Rabbinowitz-Te'omim,²⁷ who writes:²⁸

These words are extremely difficult to understand, for they seem to contradict the principle that we do not save several persons by sacrificing one. It was permitted to surrender Sheva son of Bikhri only because both he and they were to be killed, or because he was in fact guilty of a capital crime. How then could we try to rescue several persons by killing one? And this is true only when we have a choice between one person and several. If, however, the arrow were already aimed to one side, by diverting it to the other side, one kills the individual person. How will this be permissible, when even according to the

²⁷ R. Binyamin Rabbinowitz-Te'omim, "Hasgarah leMa'asar Nokhrim," No'am 7 (1964), 336ff.

²⁸ Ibid., p. 357.

opinion of Me'iri, it is permitted only when they specified a particular person?

According to what we have suggested, the basis of Hazon Ish's opinion is not that several persons are saved, but rather the fact that the act is an act of rescue by its very nature.

Diverting an Arrow from One Person to Several

Hazon Ish discusses diverting an arrow from several persons to one person. What will be the law concerning diversion of an arrow from one person to several, or from one person to one other person?

As we saw, in his conclusion, Hazon Ish writes: "And since on this side, several persons will be killed, and on the other side one person, it may be that we should try to reduce the loss of life as much as possible."

This rationale is not applicable in the above cases. Nevertheless, even in those cases, where one life can be saved only at the expense of another life, the law may be the same: When the act is by its very nature an act of rescue, there is no difference between rescue of several persons and rescue of one person. The only qualification would be that in the rescue of several persons at the sacrifice of one person, the act is permissible and even desirable, since "we should try to reduce the loss of life as much as possible." On the other hand, in the rescue of one person at the sacrifice of another, there would be no mandate to try to rescue, but if a person does save someone who is his relative or friend—or himself—at the sacrifice of another or of others, it may be that he will not be considered a murderer, since the act that he performed was by its nature an act of rescue.

Does the Principle Apply Only to Diversion?

Another aspect that must be considered is *Hazon Ish's* example—diversion of an arrow. What would be the law if a hand grenade falls in a place where it will kill several persons, and someone takes it and throws it towards a place where it will kill a single individual? In a case such as this, will Hazon Ish also find that the act is an act of rescue? It appears that he would not go this far. Hazon Ish discusses an arrow shot by another person, where the damage done is the result

of the act of the person who shot the arrow, and the “rescuer” merely diverts the arrow, with the consequence that the arrow will land elsewhere. Hazon Ish does not discuss a case where the rescuer does not merely divert the arrow but rather picks it up and transfers it to another place.

Further on, however, Hazon Ish seems to equate diverting an arrow with a direct act of killing. He clearly refers to one who diverts an arrow as one who “kills with his own hands.” Nevertheless, this expression does not prove that Hazon Ish would permit actively transferring a lethal arrow or hand grenade from one place to another. It is only by comparison to surrendering another, where the person’s death is a secondary consequence of the act [*gerama*], that diverting an arrow is considered a direct act of killing.

If this is the correct interpretation of Hazon Ish, then he does not permit a direct act of killing as a consequence of rescue, and the various objections of those who attribute to him more than he actually says are obviated.

Hazon Ish is said to have stated his opinion in response to a case in which a bus driver lost control of his brakes, and instead of colliding with a group of persons, chose to steer his bus to the side of the road, where the bus turned over and killed the driver himself.

F. Preferred Status for a Group of Persons in Rescue from Injury

The special status of a group of persons as opposed to one has implications for various areas of Jewish law. We must, therefore, consider whether it is possible to apply principles from these areas to our question of surrendering an individual to save many.

Risk of Injury to the General Public as a Matter of Saving Life — “A Piece of Super Hot Metal in a Public Thoroughfare”

In the tractate *Shabbat*,²⁹ we find in the name of Shemu’el an example

²⁹ *Shabbat* 42b.

of an act that is permitted to prevent risk of injury to the public, though the same act is not permitted in order to prevent danger of injury to an individual:

It is permitted [on the Sabbath] to extinguish a super hot piece of metal located in the public thoroughfare, so that the public will not be injured, but it is not permitted to extinguish a burning coal.

What is the difference between a super hot piece of metal and a burning coal? R. Hai Ga'on explains that a super hot piece of metal does not glow; thus, people do not realize that it is hot and do not take care to avoid it. A burning coal, on the other hand, glows, and people avoid it, and when it is not glowing red, it is no longer dangerous.³⁰

The final ruling establishes that extinguishing the super hot metal is permissible only where the act of extinguishing involves only rabbinic prohibitions.³¹ Nevertheless, certain of the *Ge'onim* and the Earlier Authorities hold that the permission applies to biblical prohibitions as well. This is the opinion of the author of *Halakhot Gedolot*, R. Hai Ga'on, and *Rabbenu Hananel*.³²

Ran explains their opinion as follows:

The author of *Halakhot Gedolot* permits this even with regard to a biblical prohibition. And this is strange, for how could [the talmudic Sage] Shemu'el permit a biblically prohibited activity on the Sabbath where there is no danger to life? Thus, it appears that the author of *Halakhot Gedolot* considers risk of injury to the public, equivalent to danger to life.

This ruling is an innovation of major proportions, particularly in view of the fact that although it would be possible to prevent the damage by stationing a person near the source of danger to warn the public, it is, nevertheless, permitted to extinguish the super hot piece of metal.

In the formulation of this law concerning possible danger to the

³⁰ Rav Hai Ga'on's opinion is cited by *Hiddushei Rashba*, *Shabbat* 42b.

³¹ See *Shul. Ar. Orah Hayyim* 364:27.

³² *Halakhot Gedolot* 24 (*Halakhot Gedolot* is quoted by Ran, *Shabbat*, chp. 3, p. 19b of Rif); *Rabbenu Hananel*, *Shabbat* 42b.

public, there is no mention of possible danger to life, no mention that a member of the public may actually have his life endangered. Even Ran writes only that the danger is considered danger to life. Thus, it is possible to understand the approach of R. Hayim Zvi Tietelbaum,³³ who, based on this ruling, finds in other cases, too, that the law distinguishes between the public and the individual.

Public Property and Pain to the Public — as an Equivalent to Human Life

A broad interpretation of the opinion that it is permitted to extinguish a super hot piece of metal on the Sabbath to prevent damage to the public, even when doing so involves a biblical prohibition, is advanced by R. Yosef Engel in his work, *Ben Porat*.³⁴ R. Engel first writes: “Many years ago, I heard in the name of a particular righteous person that public property is comparable to human life.”

R. Engel explains a biblical passage using this principle. In the first paragraph of *Shema* (Deuteronomy 6:4-9), we find: “You shall love the Lord your God with all your heart, and with all your soul, and with all your might.” The phrase, “with all your might,” is interpreted as referring to one’s property—a person must be willing to give up his property rather than violate a commandment. In the second paragraph of *Shema* (Deuteronomy 11:13-21), the parallel passage reads: “...to love the Lord your God and to serve him with all your heart and with all your soul...”

Here there is no mention of “all your might,” that is to say, no mention of the obligation to sacrifice property for the love for God. The first passage is written in the singular and addressed to the individual. The second passage is formulated in the plural and addressed to the community as a whole. R. Engel explains that in the second passage there was no need to mention the community’s property, since that is comparable to life, which is already mentioned.

R. Engel goes on to cite the opinion of Ran, cited above, concerning permission to extinguish a hot piece of metal on the Sabbath and adds:

Although this concerns bodily injury, nevertheless, since there

³³ *Resp. Atzei Hayim, Yoreh Deah* 34.

³⁴ R. Yosef Engel, *Ben Porat* II:10.

is no danger [to life], its value is monetary in nature. See *Avodah Zarah* 27a, where it is established that bodily injury that does not endanger life has the status of damage to property. See also *Shulhan Arukh, Hoshen Mishpat* 388:9, 12, concerning the distinction between one who harasses an individual and one who harasses many. It appears that the pain of many is equivalent to life, and one who harasses many is considered as one who comes to kill. If so, the same applies to the property of many, and even more so to property of the poor.

Restricting the Applicability of the “Piece of Super Hot Metal” Principle

A different approach is taken by R. Sha’ul Yisraeli.³⁵ According to R. Yisraeli, the basis for permitting violation of a biblical prohibition where there is danger to the public, is the same basis for permitting discretionary wars. One of the purposes for which discretionary wars may be waged is to improve the national economic standing, and even so it is permitted to endanger life in such wars. The reason for this, according to R. Yisraeli, is that such wars may save lives indirectly. R. Yisraeli writes:

Everything concerned with the public welfare and removal of potential damage to the public is considered equivalent to saving human life...; since it will surely happen that one person out of many may require food of higher quality, and his life may depend on this. Additionally, every war that results in a better economic situation creates the possibility of giving better care to the sick and weary.

R. Yisraeli further asserts that even Nahmanides, who disagrees with the opinion of the *Ge’onim* on extinguishing a super hot piece of metal, does not reject the principle that potential damage to many is considered danger to life. Nahmanides disagrees with the *Ge’onim* only because he is of the opinion that a super hot piece of metal is not considered a danger to the public, as it is unusual for any damage to result from a super hot piece of metal.

³⁵ R. Sha’ul Yisraeli, *Amud haYemini*, p. 208.

Damage to the Community

We find discussion of the special status of a hazard to the community in the responsa of R. Efrayim haKohen of Vilna.³⁶ The matter under discussion concerns whether it is permitted, for fear of possible harm to the community, to cancel a ban imposed upon a young man because he withdrew from an agreement to marry a particular woman.

Above, we saw that R. Efrayim of Vilna attempted to rule in this case, on the basis of the “Give us one of your group” principle, that it is permitted to surrender one person for execution in order to save several people, but that in the end he rejected the applicability of this principle. R. Efrayim haKohen does, however, bring other arguments to show that harm to the community is more serious than harm to an individual.

The Sages were greatly concerned with damage to the community, as we find in the second chapter of *Baba Batra*, where they ask, “What is the question, perhaps damage to the community is different than damage to the individual?”. And *Mordekhai* writes that the Sages were concerned with damage to the community.... Moreover, we find in *Hagahot Maimoniyot*... that the Sages were greatly concerned with loss to the community.³⁷ Thus, because a transgression of many is different, in order to remove a stumbling block from the many, we are willing to override a biblical imperative and compel the individual to commit a transgression in order to prevent transgression of many....³⁸

G. Voluntary Self Sacrifice to Rescue One or Many

The Sages inferred from the verse, “And surely your blood of your lives will I require...” (Genesis 9:5), that suicide is prohibited. Does this prohibition apply to sacrificing one’s life in order to rescue another

³⁶ *Resp. Sha’ar Efrayim* 72.

³⁷ *Ibid.*, p. 43b.

³⁸ *Ibid.*, p. 44.

person? Even if it does, perhaps it does not apply to sacrificing one's life in order to rescue many persons, in light of the special status of the many?

The principle that preservation of human life overrides all other commandments exempts one from the obligation to rescue another person at the risk of his own life. The question is, does preservation of the potential rescuer's life merely exempt him from the obligation to rescue at the risk of his own life, or does the principle actually prohibit him from sacrificing his life? The answer to this question would appear to depend upon a disagreement between Earlier Authorities.

“And Live by Them”³⁹ — Obligation or Option?

It is the opinion of Maimonides that⁴⁰: “if a person is obliged to ‘transgress rather than be killed,’ and he [allows himself to be] killed rather than transgress, he is guilty of a capital offense.”

By contrast to the opinion of Maimonides, however, *Kesef Mishneh* reports:⁴¹ “Many are they who hold that if he [allows himself to be] killed rather than transgress, it will be held to his credit. It appears that those who hold this way take the [the talmudic dictum], ‘he transgresses rather than being killed,’ to mean that he is permitted to transgress so that he will not be killed.”

It appears, then, that to Maimonides the matter is straightforward. Since Maimonides writes that one who sacrifices his life when he is not obliged to do so is guilty of a capital offense, voluntary sacrifice of one's own life in order to save another person is clearly prohibited. Nevertheless, R. Kook expresses doubt, asserting that even according to Maimonides it may be permissible to sacrifice one's own life to save the life of another. In other words, R. Kook believes that according to the opinion of Maimonides, there is reason to distinguish

³⁹ “You shall therefore keep My statutes and My ordinances, which man shall do, and live by them, I am the Lord” (Leviticus 18:5). From this verse, the Sages of the *Talmud* (*Yoma* 85b) conclude, “and ‘live by’ them – not die by them”: that (with certain significant exceptions) preservation of life takes precedence over all other commandments.

⁴⁰ Maimonides, *M.T., Yesodey haTorah* 5:4. See also *ibid.*, 5:1, ad fin.

⁴¹ *Kesef Mishneh, Yesodey haTorah* 5:4.

between danger to life—where one is permitted to sacrifice his own life even when he is not obliged to—and all the other commandments, where one is not permitted to sacrifice one’s life when he is not obliged to. R. Kook’s approach to Maimonides is explained below.

“And Live by Them” — The Obligation Devolves Not Only on the Rescuer But on the One Rescued As Well

How does R. Kook arrive at his distinction between rescue and every other instance of voluntary sacrifice of life? On the basis of Rashi’s commentary on the tractate *Sanhedrin*,⁴² R. Kook asserts that according to Rashi’s opinion, the passage “and live by them,” is not addressed only to the individual who acts, refrains from acting, or comes to inquire concerning his immediate obligation concerning himself, but rather to every individual. The other person’s life is also included in “and live by them,” and it is permitted to forgo one’s own “and live by them” in order to fulfill the “and live by them” of the other.

If Maimonides agrees with Rashi that “and live by them” is not addressed to the individual but is rather a general obligation devolving on the entire nation, then Maimonides too, will agree that in order to save someone else’s life, a person is permitted to sacrifice his own life, even when he is not obliged to. Only for all other transgressions does Maimonides hold that the passage “and live by them,” is an obligation and not simply an option, and that it is forbidden therefore to sacrifice one’s life voluntarily rather than transgress. Where the matter is one of rescuing another, however, the passage “and live by them” is fulfilled when the person in danger is rescued; hence one who voluntarily sacrifices his life in effecting rescue has not violated the obligation.

Elsewhere, however,⁴³ R. Kook takes a different approach, and the result seems to be that Maimonides’ holds that a person is forbidden to sacrifice himself for another. R. Kook asserts that even Maimonides will admit that the source, “and live by them” permits one to transgress rather than be killed but does not obligate one to do so.

⁴² Rashi, *Sanhedrin* 74a, s.v. *Mai hazit*.

⁴³ *Mishpat Kohen*, 148, p. 357.

Thus, it would seem that according to all authorities it is permitted to sacrifice one's life for another. Maimonides, however, parts company with other authorities in his opinion that the principle that preservation of life overrides all other commandments is learned from a different source cited by the *Talmud*. Concerning one whose life is in danger, the Sages applied Exodus 31:16, "...keep the Sabbath, to observe the Sabbath throughout their generations...", the Sages expounding:⁴⁴ "Violate one Sabbath for him, so that he may observe many other Sabbaths." Therefore, a person is forbidden, in the opinion of Maimonides, to sacrifice his life in order not to transgress, because it is preferable that he transgress one time, so that he will be able to "observe many other Sabbaths." According to this logic, the result would seem to be that Maimonides would not permit a person to sacrifice his life even to save someone else's life.⁴⁵

In any case, R. Kook says that one is permitted to sacrifice one's life in order to save many lives. But R. Pines prohibits even that. Their reasons are propounded in the correspondence they kept up.

Sacrificing Temporary Life

A special case is of one who will surely die after a short interval and can save someone else's life by sacrificing his own life now, thus losing "temporary life." R. Kook holds that his duty is to give up his temporary life, in order to save the other person's "permanent" life.

H. The Legality of War

The principle that the life of one person may not be sacrificed against his will in order to save the lives of many, raises the question of the legality of war, in which the individual is compelled to sacrifice his life for the benefit of the group. R. Kook explains that the legality of war is not to be considered in the context of laws concerning the

⁴⁴ *Yoma* 85b.

⁴⁵ *Mishpat Kohan*, 148, p. 358. R. Kook's approach requires further clarification, however, given that from Maimonides' wording in *Yesodey haTorah* 5:1, his source appears to be "and live by them."

individual. The legality of war is based upon public law: the authority to send the people to war is one of the powers granted to the king. R. Kook suggests another approach: the legality of war is based upon the authority entrusted to the court to deviate from regular legal norms in exigency rulings known as “*migdar milta*”.⁴⁶

I. Rescue of the Jewish People

The concept of *migdar milta* serves R. Kook as the basis for another innovation: all that has been said thus far concerning the status of the many having no priority over the individual does not apply to the rescue of the Jewish people. Here the individual is obliged to sacrifice his life for the group. The special status of the Jewish people as a basis for violating commandments such as prohibited sexual relations, appears in rulings that greatly preceded R. Kook. R. Kook, however, expands this principle to include sacrifice of one’s life for the sake of the nation. He bases this finding on the court’s jurisdiction to permit prohibited actions for *migdar milta*. The innovation here is that according to R. Kook, *migdar milta* is not limited to spiritual matters—prevention of transgression—but applies with even greater force to physical rescue of the nation. R. Pines reaches the same conclusion, but he bases it upon the prescribed law, not on the exceptional powers of the court. This disagreement and other related points are found in a voluminous correspondence between the two Rabbis. R. Kook’s letters were printed in his responsa, *Mishpat Kohen*, while R. Pines’ letters are printed in an Appendix to the present work.

Conclusion

The main part of our discussion centered on the question of whether Jewish law distinguishes between the rescue of one person and the rescue of many persons. From the *Tosefta*, we learned that it is

⁴⁶ *Mishpat Kohen* 143, pp. 315 and *ibid.*, 144, p. 338.

prohibited to surrender one person in order to save many. However, this prohibition has a qualification: when the enemy specifies who is to be surrendered, it is permitted to surrender the person specified. The Sages disagreed over whether this is permitted only when the person specified has committed a capital offense.

According to the opinion that finds it permissible to surrender a specified person even if he is not deserving of death, he may be surrendered even to save only one person, if the situation is such that if he is not surrendered, both will be killed.

Why if the many are told that if they do not kill one person all will be killed, so the many have no priority over the individual? R. Kook explains that the priority of the many over one is a matter of reason, since we have no clear proof that the many rather than the individual ought to be saved. It could be that the “weight” we assign to the individual or to the many is not the correct weight. It could be that the particular individual is “equivalent” or has even “greater weight” than the many against whom he is being weighed. The preference assigned to the many is only a matter of common sense appraisal, and we cannot depend on common sense appraisal when judging capital cases. On the other hand, when we are not judging capital cases but rather ruling on what is permitted and what prohibited, then, common sense appraisal is applied, and the many are given priority over the individual. Therefore, if a person is threatened to agree to be pushed onto several infants who will be thereby crushed to death, it may be that he is obliged to sacrifice his life (even though one who is to be pushed onto one infant is not obliged to sacrifice his life).

When rescue of the many stands against rescue of the individual, priority will be given to rescue of the many. Similarly, even if Maimonides’ opinion is that a person is not permitted to “volunteer” to sacrifice his life for another, the person might be permitted to do so in order to rescue many persons.

Hazon Ish raises the possibility that if a flying arrow is about to kill many people, one may divert the arrow, even if doing so will cause the arrow to kill someone else. Some have interpreted his words to mean that there are situations in which it is permitted to actually kill an individual in order to save the many: for example, if a hand grenade

falls next to a group of people, it would be permitted to pick it up and throw it to a place where it will kill only one person. However, it appears that Hazon Ish's opinion should be interpreted in a more restricted way, according to which it is permitted only to divert a lethal object, but not to take such an object that has already landed and throw it in another direction.

In certain areas, we find special weight assigned to the many, such as in preventing injury that might be caused to the many or in rescue of the many. For this purpose, it might be permitted to sacrifice certain values in the area of ritual law. So, for instance, it might be permitted to desecrate the Sabbath to prevent risk to the many. But we cannot draw any conclusions from here concerning priority of the many over the life of the individual.

R. Kook makes a novel distinction between rescue of the many and rescue of the entire nation. While a person is not obliged to sacrifice himself to rescue the many, he is obliged to sacrifice himself in order to save the entire nation. The basis for this obligation of the individual is *migdar milta*, in other words, the authority contained in Jewish law to deviate from the regular law for special purposes. This principle applies not only to spiritual rescue, but also to physical rescue, and with even greater force.