

The Value of Life: Situations Where One is Obligated to Give Up His Life "יִהְיֶה נֶאֱלָ יֵעָבֵר"

One of the most enjoyable elements of learning Gemara is digging ones intellectual-teeth in to the depths of Rashi. To see, for example, how, in one word, Rashi can open up a whole new horizon of broadened understanding of the Gemara, is an awesome experience in learning. In this session we'll explore 3 examples from a very engaging Gemara in Sanhedrin on the topic of "יִהְיֶה נֶאֱלָ יֵעָבֵר" – situations where one is obligated to give up his life rather than transgress. These examples will give a good taste of the world of "Gemara with Rashi".

We'll utilize one of the most traditional approaches to bringing out the depths of Rashi: "*What's bothering Rashi*"?! We'll try to understand what our initial understanding of the Gemara might be, what that problem with that understanding is, and how Rashi comes to save the day! Enjoy!

Another one of the juiciest elements of Gemara is a 'bomb question'. After some hard work, to come out with a good understanding of a topic...only to then see it blown-up from another contradictory source...crack ones head for a resolution...and then come out with an answer...wow!! A taste of the World to Come!!

In this session we'll delve in to 2 illustrations of a bomb-kasha on our Gemara in Sanhedrin.

Part 1: “Digging in to a Rashi”

1 – KILL OR BE KILLED: WHAT WOULD LOGIC DICTATE?

Source 1. Gemara, Sanhedrin 74a

R' Yochanan said in the name of R' Shimon the son of Yehotzedek: In the attic of the house of Nitzeh (the name of a person), in the town of Lood, they (the Sages) voted and decided: all transgressions in the Torah, if they say to a person “transgress, and don’t be killed” – transgress, and don’t be killed; except for idol-worship, illicit-relations, and murder.

Is that in fact true regarding idol-worship, no?! But wait, R' Yishmael taught: from where do we know that if they say to a person “serve idols, and don’t be killed”, that he *should* transgress and not be killed? Because verse says “*And you shall live in them (the mitzvohs)*” – and not that you should die in them. I could have thought that also means even in public, comes along another verse and says “*Don’t profane my name, rather, I should be made holy...*”

He (R' Yochanan) holds like **R' Eliezer**... (see continuation below)

א"ר יוחנן משום ר"ש בן יהוּצְדָק נִימְנוּ
וְגָמְרוּ בְעֵלְיִת בֵּית נִתְזֵה בְלוּד כָּל עֲבֵרוֹת
שֶׁבְתוּרָה אִם אוֹמְרִין לְאָדָם עֲבוֹר וְאַל
תִּהְרַג יַעֲבֹר וְאַל יִהְרַג חוּץ מֵעֲבוֹדַת כּוֹכָבִים
וְגִלּוּי עֲרִיּוֹת וְשִׁפְיֻכוֹת דָּמִים

וְעֲבוֹדַת כּוֹכָבִים לֹא וְהָא תְּנִיָא א"ר
לְשִׁמְעֵאל מִנֵּין שָׂאֵם אָמְרוּ לוֹ לְאָדָם עֲבֹד
עֲבוֹדַת כּוֹכָבִים וְאַל תִּהְרַג מִנֵּין שֶׁיַּעֲבֹד וְאַל
יִהְרַג ת"ל (וַיִּקְרָא כב) "וְחַי בְּהֵם" וְלֹא
שְׂיָמוֹת בְּהֵם. יְכוּל אֶפְלוּ בְּפִרְהָסִיא תְּלִמוּד
לוֹמַר (וַיִּקְרָא כ) "וְלֹא תִחַלְלוּ אֶת שֵׁם קְדוֹשִׁי
וְנִקְדַּשְׁתִּי"

אִינְהוּ דְאָמֹר כְּר"א דְתַנְיָא...

The Gemara presents a scenario where one is confronted with the decision as to either give up his own life or perform an act explicitly prohibited by the Torah. Let’s think: using critical thinking, what should one do in this situation?

- On the one hand, *intuitively*, one may argue that the value of life is so great that it supersedes everything, even transgressing a Biblical prohibition.
- On the other hand, one could argue that if God Himself, so to speak, said “Don’t do X!”, then that’s it! Who am I to decide “oh, I know God said *not* to do X...but this case is an exception”?!?

What do you think??

Let’s look closely at how Rashi explains this Gemara:

Source 2. Rashi [ד"ה יעבור]

Transgress and don’t be killed – “*You shall live in them*”, and not that you should die in them

יַעֲבֹר וְאַל יִהְרַג – "וְחַי בְּהֵם" וְלֹא שְׂיָמוֹת בְּהֵם

How does Rashi explain what the source for “transgress & don’t be killed” is: a logical deduction, or a halachic derivation based on a verse? Rashi explains like the 2nd side, and says that the source for transgressing a negative prohibition even in the face of losing one’s life is from the verse “וּחַי בָּהֶם”. In other words, without the explicit-verse (גזרת הכתוב) of “וּחַי בָּהֶם”, logic would dictate that one would indeed have to give up his life, rather than do an aveirah!

2 – LOVE HIM WITH ALL YOU’VE GOT!

The Gemara continues and presents that opinion of R’ Yishmael, mentioned earlier in source 1, who maintains that even in regard to idol-worship one must be willing to give up their life rather than transgress:

Source 3. Gemara 74a

<p>It was taught in a Baraisa: R’ Eliezer said (the verse says) “<i>You should love G-d, your Lord, with all of your heart, with all of your body, and with all of your possessions.</i>” Once it already says “with all of your body” why does it say “with all of your possessions”, and once it already says “with all of your possessions”, why does it say “with all of your body”? If there is a person to whom his body is more valuable than his monetary-possession, that’s why it says “with all your body”. If there is a person to whom his monetary-possession are more valuable than his body, that’s why it says “with all of your possessions”.</p>	<p>תַּנְיָא ר"א אוֹמֵר (דְּבָרִים ו) "וְאֶתְהַבֵּת אֶת ה' אֱלֹהֶיךָ בְּכָל לִבְךָ וּבְכָל נַפְשְׁךָ וּבְכָל מְאֹדְךָ" אִם נֶאֱמַר בְּכָל נַפְשְׁךָ לָמָּה נֶאֱמַר בְּכָל מְאֹדְךָ וְאִם נֶאֱמַר בְּכָל מְאֹדְךָ לָמָּה נֶאֱמַר בְּכָל נַפְשְׁךָ? אִם יֵשׁ לָךְ אֲדָם שְׂגוּפּוֹ חָבִיב עָלָיו מִמְמוֹנּוֹ לָכֵן נֶאֱמַר בְּכָל נַפְשְׁךָ וְאִם יֵשׁ לָךְ אֲדָם שְׂמֻמוֹנּוֹ חָבִיב עָלָיו מִגּוּפּוֹ לָכֵן נֶאֱמַר בְּכָל מְאֹדְךָ</p>
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[Question] How exactly does the verse “You shall love ה'” imply that one should give up his life rather than worship idols? Where is the absolute prohibition against serving idols and having other gods implied in the verse; all it says is “Love G-d!”??

What do you think??

Source 5. Rashi [ד"ה וְאֶתְהַבֵּת]

<p>“You shall love ה', Your Lord” – This implies that one should not exchange Him for idols (anything else)</p>	<p>וְאֶתְהַבֵּת אֶת אֱת ה' אֱלֹהֶיךָ – מִשְׁמַע שְׂלֵא תַמְיִרְנוּ בְּעִבּוּדַת כּוֹכָבִים</p>
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(Answer) Rashi answers that the implication is from the fact that the verse says to love ה' with *all* that you’ve got, in other words, not to ‘trade’ (“תמורוה”) Him, so to speak, for anyone/anything else. In other words: *no cheating on G-d!*

3 – WHOSE BLOOD IS REDDER?

Source 6. Gemara, Sanhedrin 74a

Murder itself, from where do we know? It's logic: like, for example, in the case of an individual who came before Rabba and told him “Mari Durai (some evil fellow) told me ‘kill so-and-so, and if you don’t, you’ll be killed!’” Rabba responded “You should be killed, and don’t kill, who says your blood is redder, perhaps his blood is redder than yours!?”

When Rav Dimi arrived (from Israel), he said over in the name of R’ Yochanan: that rule (that for almost all transgressions in the Torah, one saves his life) only applies when there is not a royal/government-decree. However, in times in which there is a royal/government-decree, then even for the smallest mitzvah one must give up his life! [So that the oppressing-powers should not soften the hearts of the Jews to become accustomed. **Rashi**]

Moreover, even in times in which there is no royal/government-decree that rule only applies in private. But, in public, even for a small mitzvah one must give up his life! What’s a “small mitzvah”? Rabba the son of Yitchak said in the name of Rav: even to change style of how a Jew ties his shoe-laces.

[If there is a specific way the Jews tie their shoes, for any legitimate reason based in Jewish tradition (*kaballah* etc...), which is different than the societal-norm, even a minor thing such as this – which is only a custom! – a Jew is obligated to sanctify G-d’s name! **Rashi**]

How much is considered “public”? R’ Yaakov said in the name of R’ Yochanan: ‘public’ means at least 10 people. Obviously!?! 10 Jews, specifically, as it says in the verse “*And I shall be made holy amongst the children of Israel*”

רוצח גופיה מנא לן סברא הוא דהוא
 דאתא לקמיה דרבה ואמר ליה "אמר לי
 מרי דוראי זיל קטליה לפלגנא ואי לא
 קטלינא לך?" אמר ליה "לקטלוד ולא
 תיקטול, מי יימר דדמא דיך סמק טפי
 דילמא דמא דהוא גברא סמק טפי"

פי אתא רב דימי א"ר יוחנן לא שנו אלא
 שלא בשעת גזרת המלכות אבל בשעת
 גזרת המלכות אפי' מצוה קלה יהרג ואל
 יעבר

פי אתא רבין אמר רבי יוחנן אפי' שלא
 בשעת גזרת מלכות לא אמרו אלא
 בציועא אבל בפרהסיא אפי' מצוה קלה
 יהרג ואל יעבר מאי מצוה קלה אמר רבא
 בר רב יצחק אמר רב אפלו לשנויי
 ערקתא דמסאנא

וכמה פרהסיא? אמר רבי יעקב אמר רבי
 יוחנן אין פרהסיא פחותה מעשרה בני
 אדם פשיטא ישראלים בעינן דכתיב
 (ויקרא כב) "ונקדשתי בתוך בני ישראל"

The Gemara says that the source for יהרוג ולא יעבור in regards to murder is a סברא: “who says that your blood is redder than his?!” (i.e. who really knows who’s life is more valuable). Let’s dig in to this logic, and see where Rashi takes us:

- At first glance, seems pretty simple: who says my life is more valuable than his, and, therefore, what gives me the right to decide that he should go, and not me??

[Question] Upon closer examination, though, it’s not that simple. What exactly is the problem with killing someone? It’s an aveirah; “Thou shalt not murder”...ok, so, nu nu, “וְחַי בָּהֶם” says that in order to save your life you can do an aveirah! So go ahead: kill, and save your life!! No??

What do you think??

Rashi explains:

Source 7. Rashi [ד"ה סברא וד"ה מאי]

“It’s logic” - ...that one should not put his life in front of that of his friends, where there are serious-problems: the loss of life, and an aveira. Whereas, if one is killed, there is only one issue: loss of life, but no aveira. For when G-d said that one should transgress the Torah, it was only because of the verse *“And you shall live in them”*, since a Jewish soul is very precious in His eyes. But here, in regards to murder, since, at the end of the day, there will be a loss of life either way, why should it be permitted to transgress; who knows that one’s life is more precious to his Maker than his friends? Therefore, the word-of-G-d (ie Torah) cannot be pushed aside.

“Who says your blood is redder?” – Who knows that his blood is more precious and beautiful to his Creator from the blood of his fellow?!? Therefore, one cannot apply in this context the concept – *“And you shall live in them”*...and not die in them – since the verse only allowed for this leniency because of the value of Jewish-life to G-d. Here, though, where there is the loss of life, regardless, then the word-of-the-King, who prohibited killing, cannot be pushed aside.

סברא הוא – שלא תדחה נפש חברו (דאיכא תרתי: אבוד נשמה, ועברה) מפני נפשו (דליכא אלא חסד: אבוד נשמה, והוא לא יעבר), דכי אמר רחמנא לעבור על המצוות משום וחי בהם משום דיקרה בעיניו נשמה של ישראל והכא גבי רוצח כיון דסוף סוף איכא אבוד נשמה למה יהא מתר לעבור? מי יודע שנפשו חביבה ליוצרו יותר מנפש חברו?? הלכך דבר המקום לא נתן לדחות

מאי חזית דדמא דידך סמך טפי – מי יודע שיהא דמה חביב ונאה ליוצרך יותר מדם חברך הלכך אין פאן לומר וחי בהם ולא שיימות בהם שלא התיר הכתוב אלא משום חביבות נפשו של ישראל להקב"ה וכאן שיש אבוד נפש חברו לא נתן דבר המלה לדחות שצנה על הרציחה

(A) Rashi comes to explain specifically why *“וחי בהם”* does not apply in this scenario: What is the underlying principle of *“וחי בהם”*? The absolute value of life, at all costs. But, in this scenario, a life will be lost regardless, one way or the other... and, therefore, the principle of *“וחי בהם”* goes out the window!!

Once *“וחי בהם”* is gone → all we’re left with is an *aveirah* (i.e. don’t kill!) → which he has no right to transgress → so he’s gotta give up his life!!

Armed with a solid understanding of this Gemara, along with Rashi’s beautiful explanation of the underlying logic of *“whose blood is redder”*, the following 2 sources found elsewhere in the Talmud should come as a big shock...

Part 2: “A Bomb Question”

BOMB #1 – THE ORDER OF SAVING LIFE

The Gemara in Horios discusses halachos pertaining to the system of priority in life-saving situations (for example, if multiple people are drowning in a river: who’s rescued first?):

Source 8. Horios 12b & 13a

Mishna: He who is holier than his fellow, comes before him...A Cohen precedes a Levi, a Levi precedes a regular Jew (who’s neither a Cohen or Levi), a regular Jew precedes a mamzer (someone born from illicit relations), a mamzer precedes a nesin (a particular type of convert), a *nesin* precedes a (standard) convert, a convert precedes a freed-slave.
When does this whole hierarchy apply? Only when they are all equal, however, if the mamzer is a Torah-scholar, and the Cohen is an ignoramus, then the mamzer supersedes.

משנה כל המקדש מתברר קודם
לתברו...כֹּהֵן קודם ללוי לוי לישראל
ישראל לממזר וממזר לנתין ונתין לגר
וגר לעבד משחרר

אימתי בזמן שפלים שנים אבל אם היה
ממזר תלמיד חכם וכהן גדול עם הארץ
ממזר תלמיד חכם קודם לכהן גדול עם
הארץ

Amazingly, Chazal have a whole hierarchy of who’s rescued first in life-threatening situations. What is this hierarchy based on exactly? The **Rambam** explains simply: whomever is holier than the other – in so far as he’s obligated in more mitzvos – is given precedence!

In other words, not only does this Gemara seem to be saying that one person’s life can *yes* be ‘valued’ more than another’s, but, in fact, Chazal have a whole shopping-list of exactly *who is holier/more-valuable than the other!* ***This seems to fly in the face of the principle established in Sanhedrin of “who’s blood is redder?”!!***

This bomb-question is raised by R’ Elchonon Wasserman, one of the great European Roshei HaYeshivo’s, who was murdered along-side his students during the Holocaust:

Source 9. R’ Elchonon Wasserman [קובץ שעורים, פסחים ס"ה]

Rashi (in Sanhedrin) explains the Gemara’s (Sanhedrin 74a) reasoning of “whose blood is redder” in the following way: who could say that your life is more precious than your friends?? And even if you’re the greatest of the greats, and the other guy is the lowest of the lows, even still, since you can really never know whose life is more valuable, you’ve got to die rather than kill the other.

ובעקר טעמא דמאי תזית דפירש"י מי יודע
שנפשו חביבה יותר מנפש חבריך ואפלו
הוא גדול שבגדולים ותברו קטן שבקטנים
ואפלו רשע כל זמן שלא יצא מקלל עמיתך
מ"מ אמרינן מאי תזית וצריך למסר נפשו
שלא להרגו

But this is seemingly very difficult to reconcile with that which is taught in Horios “*He who is holier than his fellow, goes before his fellow (in being saved): A Torah-scholar before an ignoramus, etc...*”, and this halacha is also equally applied if there is an option of saving only one of them: we give precedence to the holier one, and we do **not** say “who knows if the life of the ignoramus is more valuable than that of the Torah-scholar”!?!

ולקאזרה קשה מהא דתנן שילהי הוריות
 כל המקדש מחברו קודם לחברו ות"ח
 קודם לעם הארץ להחיותו והוא הדין
 בראה שניהם טובים בנהר ואינו יכול
 להציל אלא אחד מהן צריך להקדים
 בהצלת המקדש יותר ולא אמרינן מאי
 חזית שמא נפשו ע"ה חביבה יותר מנפשו
 של ת"ח

These 2 sources seem to be impossibly reconcilable! How can the Sages in Sanhedrin, on the one hand, say “we don’t know who’s life is more valuable!”, and yet, on the other hand, give a whole list of whose life is indeed more valuable?!?

How would you answer this bomb-question???

Let’s look closely at the response of R’ Elchonon:

By force, we’ll have to say that this reasoning of “*whoever’s holier*” is only applicable in a situation of **passive-inaction**, but, to **actively** go ahead kill the less-holier individual in order to save the holier one, regarding *this* we apply the logic “who’s blood is redder?”.

It seems that the Sages are in doubt about the following: does the fact that one person is **holier** than the other also make him more **beloved**? (In other words, in so far as he’s obligated in more mitzvoh’s, as the Rambam explained earlier, does this imply that his life is more **valuable**?) Given this doubt, it’s forbidden to **actively** kill the less-holy individual in order to save the holier one, and that’s what is implied by the Gemara’s phrase “who knows who’s blood is redder” (i.e. who really knows for sure?!?)

וע"כ צ"ל דלא מהני טעמא דמקודש
 אלא לענגן שב ואל תעשה אבל להרג
 בידיים את שאינו מקדש בשביל הצלת
 המקדש אמרינן מאי חזית

ונראה מזה דמספקא לן אם המקדש
 חביב יותר ומספיקא אסור לעשות
 מעשה בידיים להרג את שאינו מקדש
 כדי להציל את המקדש והיינו דטעמא
 דמאי חזית משויא ליה לספיקא

Let's summarize:

There are 2 critical points which R' Elchonon raises in order to formulate his answer to this perplexing contradiction:

1. Firstly, there is a subtle but important distinction between the 2 gemara's, in so far as one is dealing with a situation of **passive-inaction** (Horios – He's not actively killing the 2nd drowning-person, but, rather simply not rescuing him), whereas the other is dealing with a **proactive-action** (Sanhedrin – In order to save his own life, he needs to actively kill the other)

This distinction, though, is not sufficient in and of itself to resolve the contradiction. The second point R' Elchonon makes is the critical ingredient:

2. Although we know who is in fact '**holier**' than the other (which is an objective reality, based on one's capacity to perform more mitzvoh's, as explained by the Rambam above), we do not necessarily know who is more **beloved** in the Eyes of his Creator.

In other words, says R' Elchonon, there's an underlying, unspoken question that the Sages of the Talmud are grappling with: **is the fact that one person is 'holier' than the other (which does not mean 'better'!!!) also mean that he's more beloved (חביב), or not??**

When we put these two factors together, the result is as follows:

→ We do not know for sure who's more beloved/valued...but we do have a strong argument which *would* give us an indication (i.e. holy = beloved). Therefore;

- In a situation of proactive-action – to go ahead and kill the other guy to save ones life – that, one may not do, since we cannot say *for sure* that one life is more beloved/valuable than the others.
- In a situation of passive-inaction, however – where *at least one person* needs to be saved (i.e. we'll not let them both drown!) – we **can** indeed employ the argument that *perhaps* X's life is more valuable than Y's!!

BOMB #2 – THE CARAVAN CRISIS

The Sages, in the Yerushalmi Talmud, discuss a situation where a group of people is confronted with the harrowing ultimatum of handing-over a particular member of the group in order to save the rest of the group:

Source 10. Talmud Yerushalmi, Trumos Chp 8

It's Taught in a Baraisa: There's a caravan of people travelling on the road, when a group of bandits comes upon them. The bandits tell them: "Hand over one of you, and we'll kill him, and if you don't, we'll kill all of you!" (The halacha is) even if they will all in fact die, they may not hand-over one Jewish soul.

If, however, the bandits singled-out one of the Jews, for example like 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 townpeople hand him over), then they may hand him over, and they needn't all die. **Reish Lakish** says this is true only when the one they've singled-out is liable for death anyways, like Sheva ben Bichri, but **R' Yochanan** holds that the halacha is true even if the individual is not liable for death (and, rather, Sheva ben Bichri was simply an example)

תנני סיעות בני אדם שהיו מהלכין
בדרך פגעו להן גוים ואמרו תנו לנו
אחד מכם וננהרג אותו ואם לאו הרי
אנו הורגים את כלכם אפלו כלן
ננהרגים לא ימסרו נפש אחת מישראל

ייחדו להן אחד כגון שבע בן בכרי
ימסרו אותו ואל ינהרגו א"ר שמעון
בן לקיש והוא שיהא חיב מיתה כשבע
בן בכרי ורבי יוחנן אמר אע"פ שאינו
חיב מיתה כשבע בן בכרי

To Summarize, there are 2 scenario's in the Gemara:

1. No individual has been singled-out:
 - a. All must perish.
2. An individual has been singled-out:
 - a. According to **R' Yochanan**, that individual may be handed over.
 - b. According to **Reish Lakish**, that individual may not be handed over – and they all must perish – unless that individual is already liable for death.

Upon closer examination, this Gemara seems to present a severe challenge with our foundational idea of "*Who's blood is redder*": as was explained earlier, this concept dictates that, in the context of loss-of-life, the verse "יחי בהם" ceases to be applicable...but, in this context they will *all* die if not for handing over *one* individual!!

This challenge is raised by R' Moshe HaKohen from Lunil, one of the early commentators on the Rambam:

Source 11. Ramach (Yesodei HaTorah 5:5)

<p>I simply do not understand the reasoning (of this Talmud Yerushalmi), didn't the Gemara already say, in Sanhedrin 74a, that by murder there is the logic of "who knows whose blood is redder?", but that logic obviously doesn't apply in this context: they're all going to die anyways!! It would be better for one individual to be killed, rather than all of them together. This matter requires much further investigation.</p>	<p>לא ידענא טעמא מאי דהא אמרינן בגמ' סנהדרין עד. דמשום הכי אמרינן בשפיכות דמים דיהרג ואל יעבר דסברא הוא דמאי חזית דדמי דרך סמך טפי והכא ליכא האי סברא דהא יהרגו כלם והוא עצמו ומוטב שיהרג הוא עצמו ואל יהרגו כלם והוא עצמו וצ"ע</p>
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R' Yosef Karo (author of the Shulchan Aruch, who also wrote a famous and very lengthy work on the Rambam, called the Kesef Mishna) answers the Ramach's question:

Source 12. Kesef Mishna, ibid.

<p>I can respond to the Ramach's question. In the Talmud Yerushalmi's scenario there's a critical difference between whether or not they've singled-out an individual from the group, or not: in the 1st-case, where they've not singled-out anyone, but, rather, simply said "give over one of you, and we'll kill him", regarding every individual who may be 'chosen' to be given over, the argument can be made "who says his blood his redder than anyone else's in the group...take someone else!!", and so on and so forth for each individual in the group.</p>	<p>ואני אומר טענה לטענתו דאיכא למימר דהתם שאני שיהרגו אי לאו טעמא דמאי חזית דדמא דדך סמך טפי לא הוה אמרינן דיהרג ואל יעבר וקיינו דקתני סיפא יחדוהו להם אכל ברישא שלא יחדוהו שלא אמרו אלא תנו אחד מכם ונהרג אתו בכל אחד מהם שירצו למסר אותו איכא למימר להו מאי חזיתו שמחסרו את זה מחסרו אחד מכם ותצילו את זה דמאי חזיתו דדמא דהאיך סמך טפי דלמא דמא דהאי סמך טפי וע"פ טענה זו אי אפשר להם למסר שום אחד מהם</p>
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The 1st scenario in the Yerushalmi, says the Kesef Mishna, is not difficult to reconcile with our Gemara in Sanhedrin: the reason why they all must perish, as opposed to handing over one individual ("one, to save many") is that regarding every individual the logic of "who's blood is redder" applies. In other words, it may be *theoretically* true to say that the reasoning of "we don't know who's blood is redder" does not apply when the choice is one vs both, but, since *practically* what would be necessary is to select *one* particular individual to be 'given over', the concept of "who's blood is redder" remains intact.

The Kesef Mishna, however, proceeds to drop his own bomb question:

<p>What is difficult, however, is the opinion of Reish Lakish, who says that even if they've singled-out an individual to be killed, unless he's already liable for death (for some other reason), he may not be given over. In this case, the logic of "who's blood is redder" simply does not apply: he and everyone else will die if he's not given over!!</p>	<p>אבל אי קשיא על ריש לקיש קשיא דאמר שאע"פ שיהרגו להם אם אינו חייב מיתה לא ימסרוהו דהא ליכא הכא סברא דמאי חזית דדמא דידך סמך טפי שיהרי הוא ונהם נהרגין אם לא ימסרוהו!!!</p>
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The Kesef Mishna drops a bomb question on Reish Lakish: if we're talking about an individual who's been identified for death – in other words, he's going to be killed one way or the other!! – why should he not be handed over, and the rest of the group saved?!?!?

How would you answer this bomb-question???

The Kesef Mishna gives a shocking answer...

We can suggest to answer that Reish Lakish holds that, that which is stated by murder “It’s logic: who says your blood is redder...”, is not the main reason for the halacha, but, rather, that the Sages had a tradition in their hands that, by murder, the halacha is “be killed, and don’t kill”. Only, that they gave a reason for the halacha in as much as that reasoning is typically applicable. But, really, even when the ‘reasoning’ is not applicable, such as in our scenario, the halacha nevertheless remains the same the one must be killed, and not kill.

וְאֶפְשָׁר לִזְמַר דְּסַבִּירָא לִיהָ לְרִישׁ דְּבַשׁ"ד
 סַבְרָא אֵינּוּ עֵקֶר הַטַּעַם דְּקַבְלָהּ הִיתָה בְּיָדָם
 דְּש"ד יְהָרַג וְאֵל יַעֲבֹר אֶלָּא שְׁנִתְּנוּ טַעַם
 מִסַּבְרָא לְהִיכָא דְּשִׁיף אֶבֶל אִין הָכִי נְמִי
 דַּאֲפִילוּ הִיכָא דְּלֹא שִׁיף הָהוּא טַעַמָּא הָוִי
 דִּינָא הָכִי דִּיהָרַג וְאֵל יַעֲבֹר

CASE STUDY

SHOOTING DOWN A HIJACKED PLANE: KILLING A FEW TO SAVE THE LIVES OF MANY

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."