

1. Stuart Winer, *Israeli medics told to treat terrorists the same as victims*, Times of Israel 12/16/15

Medics at terror sites must treat the wounded according to the severity of their injuries, even if that means helping an attacker before his victims, the Israeli Medical Association said in rules published this week. The new rules, formulated by the IMA's Ethics Bureau, came into effect at the beginning of the week and replace an earlier directive based on the principle of "charity begins at home," which enabled medical professionals to treat victims first, the Hebrew-language Israel Hayom newspaper reported Wednesday...

While Israeli doctors and medical staff see it as an ethical duty to attend to the injuries of terrorists and treat them the same as victims, until the recent change they could give priority when doing triage to victims rather than perpetrators.

2. Stuart Winer, *Volunteer medic group rejects treating terrorists and victims equally*, Times of Israel 12/17/15

In a statement, ZAKA chairman and founder Yehuda Meshi-Zahav made it clear that the organization's medics would turn their attention to the victims first, regardless of the injuries sustained by their attacker.

3. Ofer Merin, Sara Goldberg, Avraham Steinberg, *Treating Terrorists and Victims: A Moral Dilemma*, Lancet Apr '15

After treating the Boston marathon suspected terrorist, the head of emergency medicine at Beth Israel Deaconess Medical Center admitted "some staff battled second thoughts and anxiety over saving the life of a suspected terrorist". This has also been our experience. It is easy to take to the moral high ground when an issue is purely theoretical, and quite another matter when shock, frustration, and anger enter into play. The Boston example emphasises the need for unambiguous guidance and a crystal clear message to caregivers confronted with these stressful and emotional circumstances.

In our opinion, all patients entering the hospital are unequivocally equal without exception. As difficult as it might be, the medical staff must not be judgmental. Punishment is not the role of the medical staff; rather, their duty and obligation is to preserve life and restore health. Judgment should be the exclusive provenance of the legal system and physicians should practice their art without discrimination and with a clear conscience.

1: The Pure Physician

4. Talmud, Bava Kama 85a

בי ר' ישמעאל אומר + שמות כ"א + ורפא ירפא מכאן שניתן רשות לרופא לרפאות

In the yeshiva of R' Yishmael they said: 'He shall heal' – From here we see that permission is given to doctors to heal.

5. Rambam (12th century Egypt), Mishneh Torah, Hilchot Melachim 10:12

צו חכמים לבקר חולים, ולקבור מתיהם עם מתי ישראל, ולפרנס ענייהם בכלל עניי ישראל, מפני דרכי שלום, הרי נאמר טוב ד' לכל ורחמיו על כל מעשיו, ונאמר דרכיה דרכי נועם וכל נתיבותיה שלום.

The Sages have instructed us to visit their sick, to bury their dead as we bury Jewish dead, and to support their indigent along with Jewish indigent, to promote peaceful paths, as it is written, "Gd is good to all, and His mercy is upon all of His creations," and "Her paths are pleasant paths, and all of her ways are peace."

6. Rambam (12th century Egypt), Mishneh Torah, Hilchot Avodah Zarah 10:1-2

... וגר תושב הואיל ואתה מצווה להחיותו מרפאים אותו בחנם.

... And one heals a *ger toshav* for free, because you commanded to give him life.

7. Rabbi Yosef Karo (16th century Israel), Shulchan Aruch Choshen Mishpat 261:4

המאבד ממנו לדעת אין נזקקין לו

One need not aid a person who destroys his own property knowingly.

8. Talmud, Ketuvot 68a

האומר אם מת הוא לא תקברוהו מנכסיו אין שומעין לו לאו כל הימנו שיעשיר את בניו ויפיל עצמו על הציבור

If one says they should not bury him from his assets, we do not listen; he cannot enrich his children and make the community responsible.

2: The Pure Dayan

9. Tosafot (12th-13th century Western Europe) Avodah Zarah 26b ולא

וא"ת הא אמרינן במסכת סופרים [פט"ו] כשר שבכנענים הרוג וי"ל דבירושלמי דקדושין מפרש דהיינו בשעת מלחמה ומביא ראיה מ"ויקה שש מאות רכב בחור", ומהיכן היו? מ"הירא את דבר ד'".

And if you will ask, Sofrim 15 says, "The kosher among the Canaanites, you shall kill," one could note that the Talmud Yerushalmi (Kiddushin) explains that this is during war, and it brings proof from "And he took 600 choice chariots (Shemot 14:7)", and where were they from? From "Those who revered the word of Gd. (ibid. 9:20)"

10. Rabbi Levi ben Gershom (Ralbag) (14th century France), Commentary to Kings I 22:38 #34

ראוי לאדם כשיפול בידו במלחמה מי שהוא תמיד לו ולעמו לקוץ מכאיב, שלא יחמול עליו, אך יבער אותו מן הארץ פן ימצא לו מקום אחר זה אם ימלט להשחית הוא ועמו לפי היכולת.

If someone who was always a painful thorn for him and his nation should fall into his hands in war, it would be appropriate not to have mercy on him, but to eliminate him from the land, lest he find another opportunity, should he escape, to destroy him and his nation as he is able.

11. Rabbi Shlomo Zalman Auerbach (20th century Israel), Minchat Shlomo 1:7

מה שמותר בימות החול לקום על ישראל הבא במחתרת ולהורגו ולא אמרינן שינחנו ליטול ממנו, היינו משום דהריגת הרודף היתר גמור הוא אף כשאינו אלא ספק שהרי כל הבא במחתרת אינו ודאי רודף

The fact that one may rise up against a Jewish invader on a weekday and kill him, and we don't say to let the invader take his money, is because killing a pursuer is entirely permitted even where his intentions are only uncertain. Anyone who tunnels in is not definitely a pursuer.

12. Rabbi Moshe Feinstein (20th century USA), Igrot Moshe Choshen Mishpat 2:69:2

להרוג את העובר יהיה אסור עד שתהיה האומדנא להרופאים גדולה קרוב לודאי שתמות האם, דמאחר דהוא מצד שנחשב רודף צריך שיהיה כעין ודאי שהוא רודף.

Killing a fetus is prohibited until the doctors have great reason, close to certainty, that the mother will die. Since the permission is due to the fetus's status as a pursuer, it must be near-certain that he is a pursuer.

13. Rabbi Yehudah heChasid (12th century Germany), Sefer Chasidim 683

כתיב (משלי כ"ח י"ז) "אדם עשוק בדם נפש עד בור ינוס אל יתמכו בו." אם בורה רוצח אליך, אל תקבלהו, בין יהודי בין נכרי, כמעשה דר' טרפון בנדה.

Mishlei 28:17 says, "A man who oppresses the blood of a life will flee to the pit; no one will support him." If a murderer flees to you, do not accept him, Jew or non-Jew, like the story of Rabbi Tarfon in Niddah 61a.

14. Rabbi Yisrael Meir Kagan (19th-20th century Poland), Shaar haTziyun 331:17

אם עבר ומלו, אף דעביד איסורא בזה אפילו הכי מותר עתה לחלל

If they transgressed and circumcised [without medicine present], then even though they violated the law, one still may violate Shabbat...

3: The Pure Soldier

15. Rabbi Yaakov Ariel (21st century Israel), <http://www.yeshiva.org.il/ask/96644>

באיסלם מצות גאולת דם היא מצווה גדולה, ואין צורך להוסיף שמן למדורה. הריגה לא בהכרח מרתיעה, משום שההרוג הופך לשהיד. צריך לשקול היטב עם המומחים לביטחון.

In Islam, the commandment to redeem blood is a great commandment, and one need not add fuel to the fire. Killing them will not necessarily deter, because the executed person becomes a martyr. One must weigh this well, with security experts.

16. Rabbi Dov Lior (21st century Israel), *Striking a Neutralized Terrorist*, http://pisrael.com/giluy_daat/2015/275/index.html#p=5

מחבל מפגע בא בשם עמו, ומטרתו לפגוע בכל יהודי באשר הוא, ולכן אין זה נחשב כמעשה עבריינות אלא כמלחמה נגד עם ישראל.
An attacking terrorist comes in the name of his nation, and his goal is to strike any Jew in any way, and therefore this is considered not a criminal act but a war against the Jewish nation.

17. Rabbi Yehudah Loeb (Maharal) (16th century Poland, Moravia, Prague), Gur Aryeh to Bereishit 34:13

ואף על גב דאמרה התורה (דברים כ, י) "כי תקרב אל עיר להלחם עליה וקראת אליה לשלום", היינו היכי דלא עשו לישראל דבר, אבל היכי דעשו לישראל דבר, כגון זה שפרצו בהם לעשות להם נבלה, אף על גב דלא עשה רק אחד מהם - כיון דמכלל העם הוא, כיון שפרצו להם תחלה - מותרים ליקח נקמתם מהם.

Deuteronomy 20:10 says, "you shall call to it for peace", but that is where they have not acted upon Israel. Where they have acted toward Israel, such as here [Shechem] where they had broken forth, doing this repellent thing, then even though only one of them had done it, since they had attacked first, Israel was permitted to respond. So, too, for all wars, even where only one of them had acted, he is part of the nation. Since they attacked first, we were permitted to go to war against them...

18. Rabbi Yaakov Ariel (21st century Israel), Self Defense in War, Techumin 10

מלחמה, דווקא משום שהיא נושאת אופי ציבורי, חייבת להתנהל על ידי המלכות או על ידי סמכות מרכזית אחת, ולא על ידי אנשים פרטיים. יתירה מזאת, הצלחתה של המלחמה מותנית ראשית כל במשמעת הפרט למסגרת הכללית. פריקת המסגרת הציבורית מסכנת את הכלל ואת הפרט גם יחד. הנצי"ב בהעמק שאלה סי' קמב האריך להסביר עפ"י הנחה זו הלכות רבות הנוגעות לשעת חירום. ולדעתו, המפר משמעת בשעת חירום נחשב לרודף, וחייב מיתה.

אולם היא הנותנת. אם אמנם השעה היא שעת מלחמה, אין לראות כל יוזמה פרטית אזורית כפוגעת במסגרת הכללית. בהחלט תיתכן אפשרות שאזרח פרטי ייתקל בשעת מלחמה באויב מסוכן, ויפגע בו ללא פקודה וללא משפט, אולם במעשה זה הציל את העם כולו. האמנם נדון אותו כפושע חלילה? וכי מי נתן פקודה ליעל להרוג את סיסרא?

War, specifically because it has a public character, must be run by the government or some authorized public agency, and not by individual people. Further, the success of a war depends, first of all, upon the individual's loyalty to the communal structure. Overthrowing the communal structure endangers the community and individual alike. The Netziv (Haamek She'eilah 142) went on at length to explain, based on this assumption, many laws relating to a state of emergency. In his view, one who disobeys an order during a state of emergency is considered a *rodef*, and is liable for death.

But this also teaches the opposite point: if it truly is a time of war, one should not say every private, civilian initiative as damaging the communal structure. It is certainly possible that a private citizen will encounter a dangerous enemy during war, and strike him without an order and without due process, but in this action save the entire nation. Would we truly judge him as a criminal, Gd forbid? Who ordered Yael to kill Sisera?

4: The Pure Prime Minister

19. Rabbi Chaim David haLevi (20th century Israel), Aseh Lecha Rav 7:53

נגד עיני הממשלה שהחליטה עמדה נקודה חשובה נוספת, והיא מורל של חיילי צה"ל. כאשר חייל יודע שאם יפול בשבי, מדינת ישראל כולה ניצבת מאחוריו לשחררו, ימסור נפשו בשעת קרב ללא פחד ומורא.

Before the eyes of the determining authority was an additional, important point: the morale of the soldiers of the IDF. When a soldier knows that should he fall captive, the entire State of Israel would stand behind him to free him, he will risk his life in battle without fear.

20. Rabbi Shaul Yisraeli (20th century Israel), Torah sheb'al Peh 17

שכיון שאלה יצאו למלחמה בשליחות המדינה ומטעמה, להגנת העם היושב בציון, הרי קיימת ועומדת התחייבות בלתי כתובה, אבל מובנת מאליה, שכל טצדקי שיש בידי המדינה לעשות (בגבולות סבירים שאינם פוגעים בבטחונה הכללי) כדי לפדותם במקרה שיפלו בשבי.

Because they went to war on a mission of the nation and for its sake, to defend the nation dwelling in Zion, there is an unwritten, understood obligation, that the nation will use every means at its disposal – within reasonable boundaries so as not to endanger national security – to redeem them, should they fall captive.

21. Talmud, Ketuvot 74b-75a

ר' יהודה אומר: כל נדר שידעו בו רבים - לא יחזיר... מאי טעמא דר' יהודה? דכתיב: "ולא הכום בני ישראל כי נשבעו להם נשיאי העדה." Rabbi Yehudah said: A vow which is known to the public may not be recanted... What is Rabbi Yehudah's reason? Yehoshua 9:18 says, "And the Children of Israel did not strike them, for the leaders of the nation had sworn to them."

22. Talmud, Sotah 9b-10a

"והוא יחל להושיע את ישראל" - אמר רבי חמא ברבי חנינא הוחל שבועתו של אבימלך רש"י: לפי שהם עברו על השבועה תחילה.

"And he [Shimshon] *yache*/to rescue Israel (Shoftim 13:5)" – Rabbi Chama, son of Rabbi Chanina, said: Avimelech's oath became mundane.

Rashi: Because they violated the oath first.

23. Ted Lapkin, *Does Human Rights Law Apply to Terrorists?* Middle East Quarterly, Fall 2004

But to what extent do the laws of armed conflict really apply in the war against terror? The answer resides primarily in the text of the 1949 Third Geneva Convention, intended to ensure humane treatment for captured legal combatants...

Yet, treaties are more like commercial contracts in that they are traditionally viewed as binding only among their parties... The Third Geneva Convention explicitly states that parties need not apply it to all conflicts, especially when the foes are not parties, and when enemies do not abide by its terms.

No terrorist group is a party to the Geneva Conventions. They have not signed, much less ratified, those treaties. Moreover, it is evident that Hamas, Hezbollah, and members of the global Al-Qaeda network spurn both the spirit and the letter of international treaties designed to ameliorate the cruelty of war. Bloody attacks in New York, Jerusalem, Bali, Madrid, and Beslan are testament to the fact that these groups seek to kill civilians rather than to take captives. And when Islamist terrorists do seize hostages, brutality rather than protection appears to be the rule.

24. Rabbi Yehuda Herzl Henkin (21st century Israel), Bnei Banim III 4:7

אמנם חילול ד' שייך גם במה שמותר מן הדין ואפילו בשעת מלחמה. לגבי הגבעונים בספר יהושע (ט) "ולא הכום בני ישראל כי נשבעו להם נשיאי העדה", אמרו במסכת גיטין מו. שבאמת לא חלה השבועה ומכל מקום לא הרגום "משום קדושת השם", ופרש"י "שלא יאמרו העובדי כוכבים [ישראל] עברו על שבועתם".

In truth, there is desecration of Gd's Name even with actions that are legal, and even during war. Regarding the Givonim in Yehoshua 9, "The Children of Israel did not strike them, for the leaders of the nation had sworn to them," the Talmud (Gittin 46a) says that the oath was not truly binding, but they still did not kill them "because of the sanctity of the Name." Rashi explained, "Lest the idolaters say that [Israel] had violated their oath."

25. Rabbi Yitzchak Zylbershtein (21st century Israel), Shiurei Torah l'Rofim IV #289

אמנם המחבלים האומרים "לכו ונכחידם מגוי ולא יזכר שם ישראל עוד" (תהילים פג:ה), ועליהם התפלל דוד המלך לאמר, "אלקים אל דמי לך, אל תחרש ואל תשקוט וכו' היו דומן לאדמה", לאויבים מעין אלו, ספק גדול אם יש מקום מהדין להגיש להם עזרה. אולם, מאחר וקיים חשש ששייבו כך לישראל השבויים בידם, ודאי שחייבים לעשות דברים המועילים בלבד ואין להתחשב ברגש.

וידוע הדבר שלפני דורות ניתנה רשות ליהודים מאומות העולם להקריב קרבן פסח במקום המקדש. כשהובאו הדברים לפני גדולי ישראל, דנו בשאלות ההלכתיות הקשורות בהקרבת קרבן פסח בזמן הזה... ומספרים שהגאון בעל 'בית הלוי' אמר: יכול אני למצוא פתרון לכל הבעיות הנ"ל ולהתיר את הקרבת הפסח, אולם אינני יכול למצוא היתר לדם של יהודי אחד שישפך ע"י המוסלמים עקב קרבן הפסח...!... על אחת כמה וכמה שעלינו לכבוש את רגשותינו, ולא לגרום לאיבת האומות על ישראל.

In truth, regarding the terrorists who say, "Let us go and eliminate them from nationhood, and the name of Israel will be mentioned no longer (Tehillim 83:5)," regarding whom King David prayed, "G-d, do not be speechless, do not be mute and do not be silent... they should be dung upon the earth," for enemies such as these, it is highly doubtful that there is any legal basis for helping them. However, since there is concern that they would respond likewise to Jews they take captive, we certainly are obligated only to aid them, and not to consider emotion.

It is known that generations ago permission was granted by the nations to Jews to bring the korban pesach on the site of the Beit haMikdash. When the matter was brought before the leaders of Israel, they dealt with the halachic questions tied to bringing the korban pesach today... And they say that the great Beit HaLevi said: I could find answers for all of these questions and permit bringing the korban pesach, but I could not find permission for the shedding of the blood of a single Jew by the Muslims because of the korban pesach...!...

How much more so must we overcome our emotions, and not cause enmity of the nations upon Israel.

26. Rabbi Moshe Feinstein, Igrot Moshe Yoreh Deah 1:184

הנכון לע"ד בזה דאיבה מעכו"ם שאמרו חכמים לנו לחוש יש בזה שני דברים (א) שיש איבה כזו שירצה העכו"ם בשביל זה שעשה הישראל לנקום מהישראל (ב) דגם בלא זה, ואף שלא עשה לו הישראל דבר שירצה לנקום בשביל זה, אבל אם נעשה לו שונאו...

אבל ממילא יש חלוק לדינא דמצד שנעשה שונאו כדבר הב' אף שזה עושה שיהרגו כשיזדמן לו בקל וגם ישתדל שיזדמן לו כפי האפשר לו בקלות, אף שהוא מדה שהיה שייך לחלל שבת ע"ז, מ"מ אסור לעבור איסור דאורי', דהוא רק כניתוסף עוד מזיק בעולם שצריך לייזהר ממנו.

In my humble opinion, it appears correct that concern for enmity from the nations involves two matters:

- (1) Enmity that would cause the nations, because of what the Jew has done, to take revenge against Israel;
- (2) Even without this, even without the Jew having done something for which he would desire revenge, he would become his enemy...

But there is a legal distinction in that if he would become an enemy like the second concern, then even though this would cause [the non-Jew] to kill him when an easy opportunity arose, and even if it rose to the level mandating violating Shabbat [to prevent it], still, one may not violate a biblical prohibition [to prevent this]. It is only like the addition of another danger to the world, to be avoided.

5: The Pure Humanitarian

27. Talmud, Yevamot 79a

"ויאמרו לו הגבעונים אין לנו כסף וזהב עם שאול ועם ביתו ואין לנו איש וגו' יותן לנו שבעה אנשים מבניו והוקענום לד' וגו'." מיפייס ולא פייסינהו. אמר, שלשה סימנים יש באומה זו: הרחמנים, והביישנים, וגומלי חסדים; רחמנים, דכתיב... כל שיש בו שלשה סימנים הללו ראוי להדבק באומה זו.

"And the Givonim said to him: We have neither silver nor gold with Shaul and with his household, and we have no man [to kill in Israel]... Let seven men of his children be given to us, and we will hang them before Gd." (Shemuel II 21:4-6) King David tried to appease them, and they would not be appeased. He said, "There are three signs for this nation: Merciful, bashful, and generous... One who has these three signs is suited to cleave to this nation."

28. Rabbi David Stav (21st century Israel), <http://mizrachi.org/eliminating-a-neutralized-terrorist/>

These days, when the boiling blood is mixed with civilian willingness and resourcefulness, it's important to maintain our moral superiority: To avoid harming a person who is not involved in murderous activity, and to avoid harming those who have already been neutralized and no longer pose a danger. It's not because they are innocent. They deserve to die, but that is not our way. Harming a terrorist who has been neutralized causes double damage: The collateral damage is when these images are distributed, and the main damage is harming our moral norms. We will not stoop down to our enemies' despicable behavior, and we will not contaminate ourselves with a moral breakdown.

29. Rabbi Aharon Lichtenstein, *Ethics and War*, Techumin 4, pg. 184-5

The beginning of the calculation of a war's justification is the concept of *milchemet mitzvah*. The category of *milchemet mitzvah* includes war to help Israel before an enemy who attacks. (Mishneh Torah, Hilchot Melachim 5:1) But note, "the aid of Israel". We must ask whether a particular war will actually help Israel; not every war aids Israel...

Third, war harms the nature of the individual and society which battle. As Ramban wrote, regarding Devarim 23:10, "And you shall be on guard against every bad thing," "The most naturally righteous of people will be clothed with cruelty and rage when going to war against the enemy, and therefore the verse warned, etc." King David was denied the opportunity to build the Beit haMikdash because "he spilled much blood upon the earth (Divrei haYamim I 22:8)", even though that was in *milchemet mitzvah*. Even the sword used in a *milchemet mitzvah* is unsuitable to aid in building the altar, as is written in the Mechilta on Shemot 20:22, "For you have raised your sword upon it, and desecrated it."

30. Rabbi David Kimchi (Radak) (12th-13th century France), Commentary to Kings I 20:35

והחמלה על הרשעים אכזריות, כי ידוע כי סופם לעשות מלחמה.

Mercy on the wicked is cruelty, for it is known that they will wage war in the end.