YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**Halakha and Israeli History**

**Rav Aviad Tabory**

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Dedicated in memory of Rabbi Jack Sable z”l and

Ambassador Yehuda Avner z”l

By Debbie and David Sable

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In loving memory of Rabbi Dr. Barrett (Chaim Dov) Broyde ztz"l

הוֹלֵךְ תָּמִים וּפֹעֵל צֶדֶק וְדֹבֵר אֱמֶת בִּלְבָבוֹ

Steven Weiner & Lisa Wise

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***Shiur* #04: 23 May, 1960**

**“We have Eichmann” — The Trial and Execution of Adolf Eichmann**

On 23 May, 1960, David Ben-Gurion, Prime Minister of Israel, announced before the Knesset:

I must inform the Knesset that not long ago the security services found one of the great Nazi war criminals: Adolf Eichmann, who was responsible, along with other Nazi leaders, for what they called the Final Solution to the Jewish problem — that is, the extermination of six million Jews in Europe. Adolf Eichmann is already under arrest in Israel and will soon face trial in Israel, in keeping with the laws governing justice for the Nazis and their helpers.

A few days earlier, Israeli Mossad agents kidnapped Adolf Eichmann, who was hiding in Argentina under the alias Ricardo Klement. In a daring mission, the Israeli agents were able to smuggle Eichmann out of the country and bring him to Israel to stand trial.

The response both in Israel and abroad was sensational. Argentina complained that Israel had committed a crime in their country and demanded reparations

**The Trial, Verdict and Appeal**

The trial began on 11 April, 1961, and ended on 15 December, 1961.

Gideon Hausner, Israel’s Attorney General, who served as the prosecutor, began his famous, passionate speech with the words:

When I stand before you here, judges of Israel, to lead the prosecution of Adolf Eichmann, I am not standing alone; with me are six million accusers. However, they cannot rise to their feet and point an accusing finger towards him who sits in the dock and cry: “I accuse.” For their ashes are piled up on the hills of Auschwitz and the fields of Treblinka, and are strewn in the forests of Poland; their graves are scattered throughout the length and breadth of Europe; their blood cries out, but their voice is not heard. Therefore, I will be their spokesman, and in their name I will unfold the awesome indictment.[[1]](#footnote-1)

In his testimony, Eichmann insisted he had no choice but to follow orders, as he was bound by an [oath of loyalty to Hitler](https://en.wikipedia.org/wiki/Hitler_oath). This defense was similarly used by some defendants in the 1945–1946 Nuremberg trials. On 15 December, 1961, Eichmann was sentenced to death by hanging.

In his appeal, Eichmann claimed,

There is a need to draw a line between the leaders responsible and the people like me forced to serve as mere instruments in the hands of the leaders. I was not a responsible leader, and as such do not feel myself guilty.

On 1 June, 1962, after his final appeal was rejected, Eichmann was hanged, his body cremated and his ashes scattered over the sea.

The trial was followed closely around the world and raised awareness of the atrocities of the Germans during the Holocaust. In Israel, it was the first time that the people were exposed to the personal stories of the many survivors living in the country.

At the same time, certain questions and dilemmas were raised regarding the trial and its verdict. Isaiah Berlin, the Jewish philosopher, questioned the purpose of conducting a trial. Requests from all over the world were sent to Yitzchak Ben-Zvi, Israel’s president, asking him to consider commuting the sentence to life in prison.

A petition, signed by famous people like Martin Buber, Hugo Bergman and poet Leah Goldberg, argued that executing Eichmann would belittle the magnitude of the Holocaust. In the letter attached, they said that if this Nazi criminal could make the Jews employ an executioner, that would be a victory for the Nazis. Jew-haters worldwide, they warned, would claim that Eichmann's death had atoned for the Nazis' crimes against the Jews.[[2]](#footnote-2)

Newly-published protocols[[3]](#footnote-3) from Ben-Gurion’s cabinet meetings prove that ministers Yosef Burg, Abba Eban and Levi Eshkol hesitated during the final decision not to grant clemency.

Eichmann’s wife also sent a telegram, pleading to spare his life. The president’s response to all these requests was negative. In a handwritten note which he [attached to the telegram](http://www.jumbomail.me/Downloads.aspx?sid=645A457974395655476744464B3342347436653838673D3D#201011478), he quoted the words of the prophet Shemuel as he kills the king of Amalek: “As your sword has made women childless, so will your mother be childless among women” (*I Shemuel* 15:33).

**Rabbinic Response**

In articles published by rabbis at the time, it seems that other questions and concerns were raised: How much money and effort should be invested in the hunting of Nazi criminals? Should the state assassinate Nazis or bring them to justice? Does Jewish law recommend the death penalty?

*Go’el Ha-Dam:* The Blood Redeemer

In normal situations, the court authorities are responsible for punishing trespassers and criminals. However, the Torah recognizes that in certain circumstances a person is permitted to avenge the death of his relative. If a *go’el ha-dam* (blood avenger) finds that the murderer of his relative has escaped from an *ir miklat* (city of refuge for people who have killed unintentionally), Rabbi Yosei the Galilean rules that avenging the blood of a relative is considered a mitzva.[[4]](#footnote-4)

The Rambam rules that the *go’el ha-dam* has responsibilities within the trial process:

It is a mitzva for the blood redeemer to kill the murderer, as the Torah states: "The blood redeemer shall put the murderer to death" (*[Bamidbar](https://www.chabad.org/9963" \l "v19)* [35:19](https://www.chabad.org/9963" \l "v19)). Whoever is fit to inherit the victim's estate becomes the redeemer of his blood. If the blood redeemer does not desire or is unable to kill the murderer, or if the victim does not have a relative to redeem his blood, the court executes the murderer by decapitation.[[5]](#footnote-5)

The Ramban considers the acts of the *go’el ha-dam* a mitzva in and of itself, and he counts it as one of the 613 *mitzvot*.[[6]](#footnote-6) He explains that the blood relative is responsible for chasing after the murderer and bringing him to justice. He adds that if there is no blood relative, then the court must appoint a representative to avenge the blood of the murdered person.

In the 17th century, Rav Menachem Mendel Krochmal (1600–1661), Rabbi of [Nikolsburg](https://en.wikipedia.org/wiki/Mikulov" \o "), was asked about a case in which a man was murdered and the murderer’s identity was known. Can one force the blood relative to chase the murderer? Is he expected by Jewish law to pay for the expenses involved in bringing the man to justice? It is important to understand the context of when this *teshuva* was written, which was around the terrible times of the [Khmelnitsky massacres (1648-1657).](https://en.wikipedia.org/wiki/Khmelnytsky_Uprising)

In his response, Rav Krochmal argues that this mitzva is similar to all other *mitzvot*, in which one is obligated to pay the normal expected expenses required to perform the mitzva. He adds that the law is the same if the murderer is a non-Jew.

At the end of his *teshuva,* he claims that one cannot expect the relative to pay large amounts of money, e.g. exorbitant bribes; rather, the community is expected to pay for these expenses. He testifies that he applied these laws in his community:

Our custom is to raise the money required to chase murderers even if we realize that we cannot always succeed in avenging the death of our murdered brethren, because Jewish blood is not to be considered *hefker* (ownerless, i.e. cheap).[[7]](#footnote-7)

Rav Shimon Federbush (1892-1969), Chief Rabbi of Finland, wrote an article about the Eichmann trial.[[8]](#footnote-8) After mentioning Rav Krochmal’s *teshuva*, he quotesRav Menachem of Riesbürg, (Germany, early 15th century), who argues that one may violate Shabbat in order to pursue murderers.[[9]](#footnote-9) This comes from an understanding that punishing murderers is an essential deterrent to prevent future attacks on the Jewish community.[[10]](#footnote-10)

Regarding Gideon Hausner’s opening remark, that with him stand six million prosecutors, Rav Federbush adds an interesting comment. As mentioned before, the Torah sees the *go’el ha-dam* as solely responsible for bringing the murderer to justice. Accordingly, he should also act as the prosecutor in the trial. He quotes Rabbeinu Nissim of Girona (1315-1376), who writes:

It is a mitzva for the *go’el ha-dam* to prosecute the murderer of his relative before the courts. If there is no *go’el ha-dam*, then the courts must appoint an alternate prosecutor to speak on behalf of the victim.[[11]](#footnote-11)

Therefore, concludes Rav Federbush, appointing the country’s head prosecutor to speak on behalf of the millions who perished in the Holocaust was correct.

*Ein Shaliach Li-dvar Aveira*

As mentioned before, Eichmann claimed that he was following the orders of his superiors and therefore should not be culpable.

Rav Moshe-Zvi Neria, the founding Rosh Yeshiva of Yeshivat Kfar Ha-ro’eh, member of Knesset and founder of Bnei Akiva**,**argues that there is no halakhic basis for this argument.[[12]](#footnote-12) In *Yehoshua* (1:18) we are taught that the punishment for disobeying the king is death. However, the Gemara in *Sanhedrin* 49a teaches us that this is not true if the king’s order contradicts a law of the Torah.

Rav Neria quotes other sources that indicate that if a *ben Noach* (non-Jew) is commanded or even forced to kill, he must object even if he is killed for disobeying the order

The source for this law is based on *sevara* (common sense). "*Mai chazit de-dama didakh sumak tefei?*" “What makes you think your blood is redder than his?” This line appears in *Sanhedrin* 74a (in Rashi’s version of the text). Obviously, this logical statement applies equally to a Jew or a non-Jew.

Some might argue that Eichmann didn’t actually kill anyone directly; rather, he gave orders to others. Rav Natan Tzvi Friedman (1914-1993), a neighborhood rabbi in Bnei Brak, comments that this argument has no basis in Jewish law.[[13]](#footnote-13) He quotes the Rambam, *Hilkhot Melakhim* 9:4:

A non-Jew who slays any soul, even a fetus in its mother's womb, must be executed in retribution for its death. Similarly, if he slays a person who would have otherwise died in the near future, places a person bound before a lion or starves a person to death, since ultimately he has caused a death, he must be executed. Similarly, he must be executed if he used deadly force against an assailant who could have been neutralized by wounding. This is not the case when it comes to a Jew.

This law proves that a non-Jew is responsible for murder even if it is committed indirectly. Furthermore, Jewish law does not exempt those who send others to perform murder.

This *sugya* is discussed by Rav Neria and has to do with the concept of *shelichut* in Jewish law. Normally, Jewish law recognizes that a *shaliach* (appointed emissary) can perform legal acts on behalf of the *meshale’ach* (dispatcher). The Gemara in [*Kiddushin* (42b)](https://www.sefaria.org/Kiddushin.42b?lang=he-en) limits this by introducing the concept of *“Ein shaliach li-dvar aveira*.” This means that one is held accountable for an *aveira* (transgression) one commits even if commissioned to do so by another. The *meshale’ach* is not punished for the *aveira* despite having sent the violator to commit the act.

The Gemara cites textual sources from the Torah for this *halakha* but also suggests a logical argument: *“Divrei ha-rav ve-divrei ha-talmid, divrei mi shomin*?” This literally translates as: “The words of the teacher and the words of the student — whose words does one obey?” Essentially, the *meshale’ach* cannot be held responsible for commissioning the act, because he could not have expected the *shaliach* to carry out the *shelichut*. The *meshale’ach* did not actually anticipate the *shaliach's* compliance with his request, as it involved violating the Torah. If so, argues Rav Neria, this logic should apply in our case — and Eichmann could use this for his defense?!

When the *Meshale’ach* Is Liable

The answer is found in the works of Rav Shimon ben Tzemach Duran (Spain, 1361-1444), who limits this logic to circumstances where the *meshale’ach* could actually claim that he did not anticipate that the *shaliach* would listen to him.[[14]](#footnote-14) If it clear to the *meshale’ach* that the *shaliach* would follow his orders, the *meshale’ach* is liable. Accordingly, if an officer gives an order to soldiers to commit murder and he knows without doubt that the soldiers will carry out the task, the *meshale’ach* is guilty of murder.

Furthermore, Rav Neria quotes many opinions that *ein shaliach le-dvar aveira* does not apply in the case of a non-Jew.

Death Penalty

As mentioned before, many Posekim have discussed the Torah’s opinion regarding the application of the death penalty today.[[15]](#footnote-15) In 1954, the [Knesset](https://en.wikipedia.org/wiki/Knesset) voted to abolish the death penalty for the crime of murder. The death penalty was retained for war crimes, crimes against humanity, crimes against the Jewish people, treason and certain crimes under military law during wartime. Unfortunately, this question comes up every few years and is a sensitive matter both among the Israeli public as well in the halakhic literature.

On the one hand, those who oppose the death penalty quote this famous passage:

A *Sanhedrin* which executes once in seven years is considered murderous. Rabbi Elazar ben Azarya says: Once in seventy years. Rabbi Akiva and Rabbi Tarfon say: If we had been on the *Sanhedrin*, no one would have ever been executed. (*Mishna, Makkot* 1:10)

On the other hand, those who are in favor quote opinions of the Gemara and Poskim emphasizing that the government is permitted and even obligated to use extreme measures in order to sustain law and order and to ensure that justice prevails.

The Rambam is very clear, as he writes:

When a Jewish king desires to slay any of these murderers and the like — who are not liable for execution by the court — by virtue of his regal authority, in order to perfect society, he has the license.

Similarly, if the court sees a need for a temporary measure to execute them, because this is required at the time, they have the license to do as they see fit. (*Hilkhot Rotze’ach U-shemirat Nefesh* 2:4)

In their conclusions, Rav Neria, Rav Federbush and Rav Friedman all believe that, based on Jewish law, the Israeli government has the right and obligation to bring murderers of the Jewish people to justice and, if need be, to put them to death.

I wish to end with the powerful words of Rav Friedman

Now that the *tzorer* (enemy) has been caught and put on trial, there are those who are merciful to him. Let us listen to the words of our prophets. Yeshayahu (5:16) declares: “The Lord of Hosts is exalted through justice and the Holy God is sanctified through righteousness.”

In the Midrash, Rabbi Shimon bar Yochai claims that God appears in his greatness when the wicked are punished.

In *Yechezkel*, it says (38:23): “And I will reveal Myself in My greatness and in My holiness and will be recognized in the eyes of many nations, and they will know that I am the Lord.”

The Name of God will be exalted in Yerushalayim, the city of justice, with the judgment of this great enemy who slaughtered and murdered millions of our people.

1. *Reshumot Mishpato shel Adolf Eichmann, Misrad Ha-mishpatim* (Jerusalem: 1982), Vol. I, p. 55. [↑](#footnote-ref-1)
2. The complete letter, with list of signatories, can be found at: http://www.archives.gov.il/archives/#/Archive/0b0717068001c167/File/0b07170684d1cd84/Item/0907170684d1ce34. [↑](#footnote-ref-2)
3. See: http://www.archives.gov.il/archives/#/Archive/0b0717068031be30/File/0b0717068034835a/Item/0907170680348915. [↑](#footnote-ref-3)
4. *BT Makkot* 11b. [↑](#footnote-ref-4)
5. *Hilkhot Rotze’ach* 1:2. [↑](#footnote-ref-5)
6. Ramban’s Glosses on Rambam’s *Sefer Ha-mitzvot,* Positive Mitzva 13. [↑](#footnote-ref-6)
7. *Teshuvot Tzemach Tzedek* #111. [↑](#footnote-ref-7)
8. “*Mishpat Eichmann Le-or Ha-halakha,*” *Chikrei Yahadut*, 1966, pp. 236-242. [↑](#footnote-ref-8)
9. It is unclear if he permits violating rabbinical laws or even biblical ones. [↑](#footnote-ref-9)
10. *Nimukei* *Maharam Mi-Riesbürg*, printed at the end of *Teshuvot Mahari Weil.* [↑](#footnote-ref-10)
11. *Chiddushei Ha-Ran, Sanhedrin* 45a. [↑](#footnote-ref-11)
12. “*Mishpat Tzorer Ha-Yehudim Be-halakha,*” *Shana Be-shana,* 1961, pp. 105-119. [↑](#footnote-ref-12)
13. “*Mishpat Eichmann Le-or Ha-halakha,*” *Gevilin* 14-15, Tammuz 1961, pp. 25-27. [↑](#footnote-ref-13)
14. *Tashbetz*, Vol. I, 156. [↑](#footnote-ref-14)
15. For a detailed summary of the many opinions, see Yaron Unger at: http://main.knesset.gov.il/Activity/Info/LegalDepartmentSurveys/Survey251113.pdf. [↑](#footnote-ref-15)