This week’s article is the first of a two-part series concerning the halachah of rodef. The series will seek to explain the basic principles of the rodef law, and demonstrate how these principles can apply to a range of difficult issues. Questions such as the legitimacy of killing one person to save another, whether a baby can be a rodef, and how a novel approach to rodef saved the life of a Siamese twin, will be clarified in the article. This week’s Q & A will discuss winding up a mechanical watch on Shabbos.

The Halachah of Rodef: Killing the Deadly Pursuer (1)

This week’s parashah is named after Pinchas, whose act of zealotry in killing Zimri and Cozbi lifted the threat of Divine punishment from the nation of Israel.

The Gemara (Sanhedrin 82a) makes us aware of the tremendous selflessness exhibited by Pinchas in his performance of this daring deed. The halachah of “zealots punish him (i.e. that one may kill a Jewish man who is engaging in marital relations with a Gentile woman),” which Pinchas applied to Zimri, is a halachah that Beis Din does not instruct. The decision to go ahead with the deed, while the great leaders of the nation stood round helplessly, was bold indeed.

Moreover, the Gemara explains that had Zimri, seeing Pinchas approach with the intent of killing him, turned around and killed Pinchas, Zimri would not have been punished. The reason for this is that Pinchas, though acting according to halachah, was a rodef, a halachic ‘pursuer’ (to kill). Therefore, Zimri’s killing him in self-defense would have been legitimate.

Leaving aside the discussion of Pinchas’ courageous act of zealotry, we would like to focus in this two-part series on the halachic concept of rodef. Although the concept of self-defense is common to all legal systems, the Torah idea of rodef (when it is permitted to kill one who is attempting murder), has its own parameters and its own halachic ramifications.

This article will discuss the definition and parameters of...
to Me are the Children of Israel slaves, they are My slaves, which I brought forth from the land of Egypt” (Vayikra 25:55).

From being slaves of Hashem and under His dominion, the sin of the daughters of Moab caused the nation of Israel to “cling to Ba’al Pe’or.” As it were, the people rebelled against the dominion of their Divine Master, and entered the dominion of another power.

The courageous deed of Pinchas returned the ‘property rights’ of Hashem. He was jealous (the word zealous and the word jealous are almost synonyms) on behalf of Hashem, returning the nation of Israel to its true ‘owner.’ By so doing, he saved the nation from the terrible consequences that might have otherwise overcome them.

Hashem’s ‘ownership’ of His nation receives its deepest expression in the Temple service. By virtue of his heroic act, Pinchas was given the “covenant of everlasting priesthood”—the opportunity to participate in this great service.

An act of zealotry or jealousy does not always imply the violent act that Pinchas had to perform. Today, in a generation where the flaw in Hashem’s ‘property rights’ is sadly evident, and many of our Jewish brethren are distant from the service of Hashem, it appears that our ‘jealousy’ must take a specifically peaceful form.

Our duty is to demonstrate the pleasant ways of Torah, and to show those around us how being under the yoke of Torah is a wonderful merit. Thus, we take our share in returning Hashem’s ‘lost property’ to its original owner.

As we enter the time of the Three Weeks, let us add a prayer that we should hear no more evil tidings, and that we should speedily reach the time when “the lost ones will return from Ashur, and those cast out will return from Egypt, and they shall bow to Hashem in the Holy Mountain, at Jerusalem.”

rodef, including a number of fascinating applications. The second article of the series will expand the issue to address the difficult and highly sensitive question of killing one man for the sake of saving many, and how this issue affects the halachah of rodef.

**The Question of Conjoined Twins**

Early in September, 1977, a pair of Siamese twins was born to a family of Torah educators living in Lakewood, New Jersey. Shortly after their birth the twins were flown by helicopter to the Children’s Hospital in Philadelphia, where Dr. C. Everett Koop, who subsequently became the Surgeon General of the United States, was the Chief of Surgery.

Immediately after the initial evaluation, it was obvious to all the physicians involved in the case that both children would die unless they were separated. However, the only way one child could survive was if the other child was killed during surgery.

It was clear to all concerned that this was a major ethical issue that had deep ramifications for medical ethics, and the Chief Surgeon was fully aware of the ethical import of any decision in this case. Dr. Koop referred the case to the courts so as to avoid the possibility of being accused of premeditated murder. In addition, nurses and doctors at Children’s Hospital consulted with their religious guides, and many reported back that they would not be able to participate in the surgery.

A team of top surgeons was gathered to analyze the case. In spite of X-rays and wide-ranging tests, nobody could know what they might actually encounter during surgery, and virtually every surgical and medical specialty was therefore represented. In the meantime, the family referred the case to Rav Moshe Feinstein to decide if they could agree to proceed with the surgery.

It was only after much deliberation and consultation with the team of experts that Rav Feinstein came to his decision. While awaiting the decision, Dr. Koop had to quiet his group of experts, who were anxious over the lapse of time—aside from personal considerations, the babies shared a single six-chambered heart, which was showing signs of failure due to the load of supplying blood to two infants.

Dr. Koop calmed his team with the following statement (as quoted by Rabbi M. D. Tendler, ASSAI, Vol IV, No 1, February 2001): “The ethics and morals involved in this decision are too complex for me. I believe they are too complex for you as well. Therefore I referred it to an old rabbi on the Lower East Side of New York. He is a great scholar, a saintly individual. He knows how to answer such questions. When he tells...”
me, I too will know.”

Finally, Rav Moshe gave his reply, permitting the operation to go ahead. In order to understand the answer he gave, we must first introduce a basic analysis of the Torah principle of rodef.

**The Jewish Value of Life**

There is almost no greater value in Judaism than the value of life. The verse states that life is the essential will of Hashem (Tehillim 30:6), and life takes precedence over all the mitzvos of the Torah but three. The Tosefta (Shabbos 16:14) clarifies the idea: “The mitzvos were given to Israel to live by them, as it is written (Vayikra 18), ‘that a person will do them and live by them’—to live by them, and not to die by them. There is nothing that takes precedence over life besides idolatry, forbidden sexual relationships, and murder.”

The Gemara (Sanhedrin 74a) reiterates the same teaching: “With regard to all the sins of the Torah, if somebody tells a person, ‘transgress in order to avoid death,’ he should transgress and save himself, apart from idolatry, forbidden sexual relationships, and murder.”

On the one hand, the value of life permits a person to transgress almost any sin of the Torah for the sake of preserving life. Yet, on the other hand, the same value of life forbids us from taking another’s life for the sake of saving one’s own—the prohibition of murder is not deferred by the need to save one’s own life.

The Gemara explains that this principle is derived by means of sevara, human logic: “Why do you think that your blood is redder—perhaps the blood of that man is redder?” When one of two people will inevitably die, the Torah is not prepared to prefer one above the other, and to sacrifice one life for the others’ sake. There is therefore no permission for a person to save his own (or somebody else’s) life by means of taking the life of another.

**Protection from a Pursuer**

Although the Torah forbids murder, even for the sake of saving one’s own life, it is permitted for a person to kill somebody who threatens to kill him. Rava coined the famous Talmudic dictum (Sanhedrin 72a), “If someone comes to kill you, rise up and kill him first.”

This principle is not limited to acts of self-defense, but obligates a third party to save a victim from his pursuant, even if this requires killing the pursuer (Sanhedrin 73a): “If one chases after his fellow to kill him, it is permitted to save the chased at the expense of the life of the pursuer.”

Moreover, unlike modern legal systems where the right to save someone developed from the initial claim of ‘self-defense,’ the Mishnah (Sanhedrin 8:7) makes no mention of self-defense: “These may be saved by taking their lives: one who chases after his fellow to kill him. . . .” Self-defense is a particular case of the general justification of coming to the aid of a victim (though as we will mention later, the justification of self-defense can possibly go further than saving another).

An important point is that there is no permit to kill the pursuant where there is a possibility of preventing him from killing by alternative means. The Rambam (Rotze’ach 1:13) rules that where a murder can be prevented by striking at the aggressor’s limbs (for instance, shooting at his legs) rather than killing him, one who kills him “is a murderer, and is liable to punishment by death”—though in practice, Beis Din does not actually put him to death.

**The Rodef Problem**

The halachah of the pursuer, which permits a person to kill a pursuer in defense of his victim, requires some scrutiny. Surely, we have learned above that it is forbidden for a person to save one life by taking another? Is not the halachah of rodef an example of taking one life (the pursuer’s) for the sake of saving another?

One approach to this problem, which emerges from a number of Talmudic sources, is that the halachah of killing the rodef is a form of punishment. The Mishnah (Sanhedrin 72a), indeed, teaches that a pursuer who causes damage to a person’s property is not liable to pay damages. The reason for this is that since the pursuer is liable to the death penalty,
he is automatically exempt from paying smaller penalties (such as damage compensation). This clearly indicates that killing the rodef is a form of punishment.

However, the Rambam rules (Rotze‘ach 1:6, based on the Gemara in Sanhedrin 72b) that even a child who pursues a victim with intention to kill is considered a rodef, and must be stopped even at the cost of his life. This halachah suggests that killing a rodef is not a punishment, for minors are exempt from all punishment.

Moreover, if the halachah of rodef is merely punishment for a pursuer who wishes to transgress the sin of murder, why does it not apply to all other sins that carry the death penalty? Although there is a discussion of tana‘im concerning somebody who ‘pursues’ other sins, the Mishnah rules explicitly that a person ‘pursuing’ idolatry, or desecration of the Shabbos, is not considered a rodef, and may not be killed without proper legal procedure after the deed is done. Surely, then, there is more to the halachah of rodef than merely a punishment for wrongdoing.

Combination of Punishment and Salvation

It would appear that the halachah of rodef combines the concept of saving the victim’s life and punishing the aggressor into a single law.

For ordinary sins—even those that carry the death penalty—a person cannot be punished before the sin is actually committed. With regard to a potential killer, however, whose murderous sin is liable to cause irreparable damage, the Torah obligates the killing (if necessary) of the rodef, punishing the evil deed in advance of its commission.

This combination emerges from the writings of the Rambam in Moreh Nevuchim (Part 3, Chap. 60):

This law... is only permitted in two cases, which are the case of somebody pursuing his fellow to kill him, and the case of somebody pursuing a married woman, for this is a wrong that cannot be repaired after it is done. However, other sins that carry the death penalty, such as idolatry and Shabbos, do not include an injustice to others, and are only evil dispositions, and therefore a person is not killed for their intention, but only after they are committed.”

The idea of rodef thus comes to save a person from sin (see also Rashi on the Mishnah, Sanhedrin 72b), but only on condition that another person is being saved from irreparable harm.

Rav Shlomo Ha-Cohen of Vilna (cited in Kuntress Yedei Moshe no. 3) explains how the halachah of rodef can apply even to a child. Although children are not punished for their misdeeds, the reason for this is not because their actions are devoid of intent or consciousness, and not because their sins are not considered to be sins. Although transgressions of children remain transgressions, and their intent is true intent, the Torah’s punishments do not apply to children.

Based on this idea, even the deed of a child can be deemed a wrongdoing and a transgression. Combined with the need to save the victim, the unlawful redifah of the child may be stopped by any means.

The Case of the Baby Rodef

Several authorities have discussed the horrifying halachic question, which arose on many tragic occasions during the Holocaust, of killing a baby to avoid discovery by Nazi murderers. Is it permitted to smother a baby, causing his death, in order to prevent his revealing a group’s hiding place, or is this prohibited as an act of murder?

The Gemara cites the opinion of Rav Huna, who states that a child rodef may be treated as every other rodef, and killed if necessary. Rav Chisda is quoted as challenging this position from a teaching of a beraisa: “If the head [of the child] has emerged [from the mother], he is not touched, because one life is not deferred before another.” In the case of a mother whose newly-born infant endangers her life, the beraisa teaches that once the child is born, he may not be touched (even though the mother will lose her life). Rav Chisda thus poses a question on the ruling of Rav Huna: Why isn’t the child a rodef?

Rav Huna replies: “This case is different because it is considered as though Heaven is pursuing her.” The process of childbirth is a natural...
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process, directed by Heaven and not by the child. Therefore, the child is not considered a rodef, for nature, and not the child, is threatening the mother’s life. In the words of the Rambam (Rotze’ach 1:9), “this is the natural order of the world.”

Based on the explanation given above for the basic concept of rodef, it is possible that the rationale of Rav Huna extends beyond a case of childbirth, to include any case in which a child lacks basic awareness of his own deeds. Only a child who consciously commits a wrongdoing can fall under the ‘punishment’ of rodef; an infant who functions not by conscious choice but by the ‘natural order of the world’ will not be subject to the law of rodef.

This, indeed, is the ruling given by Shut Divrei Renanah (Rav Natan Nata Kahana, of the early seventeenth century, no. 57), who writes that the cry of an infant is considered the ‘natural order of the world,’ and the infant is not considered a rodef.

It is possible, however, to distinguish the case of the crying infant, in which the infant himself is causing the danger, from the case of childbirth, in which the birth, rather than the infant, causes the danger.

Moreover, Shut Panim Me’iros (Vol. 3, no. 8) writes that where both mother and child are in danger of death, it is permitted to kill the child even after he has emerged from his mother. Thus, in the case of a crying baby, where discovery will mean the inevitable death of everybody present, it would be permitted to suffocate the baby in order to save others.

A further consideration is the ruling of the Me’iri (Sanhedrin 82), who distinguishes between a third party, who is forbidden to touch the baby after his head has emerged, and the mother herself. For the mother, who is herself endangered by the baby, it remains permitted to kill the infant. In a similar vein, those in the hideout are directly threatened by the crying infant, and according to the Me’iri, it would be permitted for them to suffocate him (see Mishnas Pikuach Nefesh, no. 45; see also Shut Migei Ha-Harigah, no. 1–3, who writes that his brother was killed by the Nazis after he refused to smother a crying baby).

Separating Conjoined Twins

We can now return to the question of the conjoined twins. As noted above, after much deliberation, Rav Moshe came to his decision permitting the operation based on the principle of rodef.

His rationale (see J. David Bleich, Tradition, Fall 1996, pages 92–125) was based on a novel explanation of above Gemara, which states that something following the ‘natural order of the world’ is not considered redifah. According to the simple understanding of the Gemara, the limitation should apply to the case of the twins: Although one twin is causing the other to die, neither twin can be designated a rodef, because the ‘pursuit’ is only a natural (if uncommon) phenomenon.

Yet, based on a teaching of the Yerushalmi, Rav Moshe (Iggros Moshe, Yoreh De’ah Vol. 2, no. 60) gives a different interpretation. According to the Yerushalmi, the reason why the baby and mother are left alone during childbirth is because they are both considered to be mutual antagonists, two people who are both pursuing each other. As a result, neither has the status of rodef. Thus, if two people are fighting a duel, neither is considered a rodef, because the threat is mutual; so, too, the mother and child are endangering each other’s lives, and the law of rodef does not apply.

As mentioned above, the conjoined twins, who were designated Baby A and Baby B, shared one six-chambered heart. The wall separating the essentially normal four chambers from the other two, most likely the stunted heart of Baby A, was too thin to be divided. It was not possible to give the two chambered heart to Baby A so that she would survive for as long as a two-chambered heart could carry her physiological needs. Therefore, the only solution was to give the entire six-chambered heart to Baby B, thereby sacrificing the life of Baby A. As Rav Moshe clarified several times with the medical team, there was no way that any heart could be given to Baby A, allowing her to live. The issue was only if both should die, or if an attempt should be made to save Baby B.
Based on Rav Moshe’s interpretation, Baby A, the weaker of the two babies, was therefore considered a rodef. This is because by their continued attachment, Baby A threatened Baby B. However Baby B was not considered a threat to Baby A, because Baby A’s life was not viable, with or without the operation. Since there was no mutual threat, and Baby A was the only cause of danger, she was considered a rodef and the exclusion of the Gemara did not apply.

The operation was successfully carried out, and Baby B was given a chance to live.

Halachic Responsa to Questions that have been asked on our website dinonline.org.il

Question:
Can a person wind a mechanical watch on Shabbos? Does it make a difference if the watch is stopped or ticking? What about a self-winding watch?

Answer:
It is not permitted to wind up a mechanical watch on Shabbos. This applies even when the watch is ticking, unless there is an urgent need, for which it is permitted to wind an already-ticking watch. It is permitted to wear an already-ticking, self-winding watch on Shabbos.

Sources:
The Chayei Adam (44:19) rules that winding a stopped watch is prohibited because of tikun mana, an act of repair, and therefore a Torah prohibition. It is a chiddush to consider the watch to be ‘broken’ in its stopped state, and several poskim therefore dispute this logic (see Panim Me’iros 2:123; Ya’avatz 1:41; Kesav Sofer 55; Sho’el U-Meishiv 6:53).

Yet, the general consensus is that there is at least a rabbinical prohibition involved in winding up the watch (see Da’as Torah 338:3; Minchas Shabbos 80:241), and as the Mishnah Berurah (338:15; see also 252:50) rules, it is therefore forbidden to wind up a watch on Shabbos. This is also the prevalent custom (see Kesav Sofer 55; Minchas Shlomo 9).

Interestingly, according to the Chazon Ish (Orach Chaim 50:9) winding up a watch is considered “bringing it to life,” and prohibited on account of boneh (much like electricity).

In the case of an already ticking watch, neither rationales apply (fixing a broken vessel and boneh), and the Da’as Torah 338:3 thus writes that the custom is to be lenient. However, the Mishnah Berurah (338:15) is stringent even concerning a ticking watch, and this is the accepted custom (see Shemiras Shabbos Kehilchasah 28:19), unless there is an urgent need.

There is no problem in wearing a self-winding watch while it is ticking. However, if the watch has stopped, one should not put it on and cause it to begin ticking. See Shemiras Shabbos Kehilchasah 28:28, and sources cited in the footnote.

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