

The Assassination of Prime Minister Yitzhak Rabin z"l

HM 4251

Question:

Yigal Amir, the murderer of Prime Minister Yitzhak Rabin z"l, justified his despicable deed by claiming that Rabin was a rodef (pursuer) and a moser (turncoat) who was about to hand over Jews or Jewish land to non-Jews. 2 Is there any halakhic justification for what Amir did?

Responsum:

Shakespeare once wrote that "The devil can cite Scripture for his purpose" (The Merchant of Venice, I, iii, 93); we now know that the devil can cite Talmud as well. Amir's interpretation is a gross distortion of Jewish law and tradition. What he did is murder, pure and simple, and entirely without legal justification.

There is nothing more sacred in the Jewish tradition than human life. As a rule, Jewish law posits that since God gave us life, only He has the right to take it away (Job 1:21; Avodah Zarah 18a). As a result, murder is forbidden. When Cain kills Abel, God is furious (Genesis 4:10): "What have you done? Your brother's blood cried out to me from the ground!". When Noah disembarks from the ark, God commands him the seven Noahide laws which include the prohibition of murder (Genesis 9:5-6). This prohibition is reiterated in the sixth Commandment which states (Exodus 20:13 and Deut. 5:17): "You shall not murder!" For the same reason, Judaism is opposed to suicide (Genesis Rabbah 34:13; Maimonides, Laws of Murder 2:2; Sefer Hassidim, ed. Margalio, par. 675). Furthermore, there is the legal principle of pikuah nefesh which means that one is commanded to transgress almost every commandment in the Torah including the Sabbath, Yom Kippur and the dietary laws in order to save human life (Yoma 82a and parallels, 83a, 85a-b). Finally, the sacredness of every human life is encapsulated in the warning given to witnesses in capital cases: Why did God create all of mankind out of one single person? "To teach you that whoever destroys one life is considered as if he had destroyed the entire world, and whoever saves one life is considered as if he had saved the entire world" (Mishnah Sanhedrin 4:5). 3

Thus, Judaism views human life as sacrosanct and only allows the taking of a life under four very special and unique circumstances. We shall now examine those circumstances and prove that by no stretch of the imagination can they apply to the case in question:

1. Capital punishment: The Mishnah allows capital punishment for a number of very specific crimes (Mishnah Sanhedrin 7:4, 9:1, 11:1). Relinquishing Israeli territory for the sake of peace is certainly not one of those crimes. Furthermore, only the Sanhedrin, or high court of Jewish law, may judge capital cases, and they stopped doing so around the year 30 C.E. (Sanhedrin 41a and parallels). Nonetheless, the sages of the Talmud continued to discuss capital punishment and to oppose it. Indeed, they added so many conditions that it would be almost impossible to execute a person:

A Sanhedrin which kills once in seven years is considered murderous. Rabbi Elazar ben Azariah said: once in seventy years. Rabbi Akiva and Rabbi Tarfon said: if we had been in the Sanhedrin, no one would have ever been killed.. . (Mishnah Makot 1:10).

This assassination was obviously not based on the laws of capital punishment. Nonetheless, these laws teach us how reluctant the rabbis were to impose capital punishment even if it was preceded by due process of law.

2. Self-defense: The Rabbis ruled: "If someone is coming to kill you, rise early and kill him first" (Sanhedrin 72a and parallels). This principle, in turn, was based on the law of the intruder: "If a thief is seized while tunneling and he is beaten to death, there is no blood guilt in this case. If the sun has risen on him, there is blood guilt" (Exodus 22:1-2). Thus, it is permissible for a person to kill an intruder at night lest the robbery lead to murder (Sanhedrin 72a and Maimonides, Laws of Theft 9:7-10). Clearly, these laws bear little resemblance to the case in question, but they establish the basic principle that one may only kill in self-defense when the act is carried out without premeditation and when one's own life is in imminent danger.

3. The law of the pursuer (rodef): We have learned in the Mishnah (Sanhedrin 8:7) that, if Reuven sees Shimon running after Levi in order to kill or rape that person, then Reuven may kill Shimon in order to prevent the crime. This law was explained at length by the Talmud and later codes of Jewish law. 4 Amir stated that Rabin was a "pursuer"

who was poised to spill the blood of many Jews by giving up control over part of the West Bank and it was therefore permissible to murder him. This is a gross distortion of this law. First of all, the law of the pursuer only applies to a spontaneous act, whereas Yigal Amir planned this assassination for two years. Secondly, the law of the pursuer is only intended to save a potential victim from imminent death. There is absolutely no proof that withdrawing from certain territories will directly lead to the death of any Jews. On the contrary, Prime Minister Rabin, over half the members of the Knesset, and over half the population of Israel believe exactly the opposite - that it will save Jewish lives.

Lastly, this law does not refer to elected representatives, for if Yitzhak Rabin was really a pursuer, then so are all his followers and that would mean that Amir should have killed over half the population of Israel! In other words, even according to the law of the pursuer, this act was totally futile and senseless since the peace process will continue.

4. The law of the turncoat (moser): A moser is one who informs against his fellow Jews or hands over Jews or Jewish land to non-Jews. In the Middle Ages, Jews were often at the mercy of gentile rulers. When a Jew informed against his fellow Jew or handed him over to the authorities, this was considered a heinous crime because it frequently endangered not only the direct victim of the slander but the entire Jewish community. The Talmud records two cases where an informer was killed by one of the Sages (Berakhot 58a and Bava Kamma 117a), and these stories were codified by Maimonides (Laws of Wounding 8:10). Yet this was the exception to the rule, as is made clear in Maimonides' code (ibid., 8:11). In actuality, Jews throughout the Middle Ages did not execute informers. In Germany they simply excommunicated them, while in Spain such an informer was judged by a court of rabbis who would pass sentence and hand the informer over to the gentile authorities for punishment.⁵

Amir compared Prime Minister Rabin to a turncoat who deserves death. This too is patently absurd. First of all, Prime Minister Rabin was not a turncoat; he was simply carrying out his job as the democratically elected Prime Minister of Israel trying to make peace with the Arabs. Secondly, the law of moser developed in the Diaspora when Jews were being ruled by gentiles, whereas Rabin was the sovereign, elected head of a Jewish State. Lastly, as mentioned above, Jews did not summarily execute turncoats without trial. Thus, this argument too falls by the wayside.

Until now we have simply reacted to Amir's twisting of the Jewish laws regarding murder. But the real tragedy is that Amir and his ilk have totally missed the entire point of religious Zionism, which views the State of Israel as the beginning of the redemption of the Jewish people. The democratic institutions of the State of Israel are not something to be "tolerated" outside of Jewish law. Rather, they are part and parcel of Jewish law - and living in accordance with its laws is as important as observing the Sabbath and keeping kosher. There are three ways of proving this assertion:

a) The Talmudic sage Samuel, who lived in third-century Babylonia, coined the phrase "the law of the land is the law" (Nedarim 28a and parallels), which meant that Jews must obey the laws of the countries in which they reside. But many rabbis state that this applies to a Jewish state as well. ⁶ If so, Jewish law requires Jews to observe the secular laws of the State of Israel.

b) Throughout Jewish history, every Jewish kahal, or community, was governed democratically on the basis of a passage in the Talmud. ⁷ The State of Israel is the modern equivalent of the kahal, and its democratic institutions must be treated with the same respect and authority as the medieval kahal.

c) Rabbi Abraham Isaac Kook and Rabbi Shaul Yisraeli, two of the foremost religious Zionists of the twentieth century, have explained that, in our day, the democratically elected government and leaders of Israel have taken the place of the king and must be obeyed accordingly. ⁸

Thus, not only did the assassin misread the Jewish laws of murder, but he totally misunderstood the significance of religious Zionism which he supposedly represents.

How did this occur? How could religious Zionism which has done so much for the State of Israel spawn such a person? Rabbi Menahem Mendel of Kotzk once said that the Torah warns us not to turn God's commandments into idols. ⁹ Since the Six Day War, some religious Jews in Israel have turned their love of the Land of Israel into a form of idolatry which is used to justify all sorts of unethical behavior. When one commandment takes precedence over all others, it can lead to aberrations such as Baruch Goldstein and Yigal Amir. The dreadful actions of these two Jews must force the leaders of religious Zionism to search their souls and to overhaul their priorities and their educational system. The Land of Israel is very important, but so are a host of other Jewish values such as the value of human life, the State of Israel and the pursuit of peace. One commandment must not make us forget all of the others. I hope and pray that this will be a positive result of the terrible tragedy which has befallen us.

NOTES

1. This responsum was written on 3 Kislev 5756 as a spontaneous reaction to the Rabin assassination. My thanks to Rabbi Eliezer Diamond who critiqued the first draft. After appearing in *Moment*, it appeared in Hebrew in *Responsa of the Va'ad Halakhah of the Rabbinical Assembly of Israel* 6 (5755- 5758), pp. 313-317.
2. *The Washington Post*, Nov. 12, 1995, pp. A1 and A30.
3. This is the correct reading of this Mishnah - see E.E. Urbach, *Tarbitz* 40 (5731), pp. 268-284 = idem., *Mei'olamam Shel Hakhamim*, Jerusalem 5748, pp. 561-577.
4. *Sanhedrin* 73ff.; Maimonides, *Laws of Murder* 1:6-16; *Shulhan Arukh*, *Hoshen Mishpat* 425.
5. *Encyclopaedia Judaica*, s.v. "Informers"; Maimonides, *ibid.*; *Shulhan Arukh*, *Hoshen Mishpat* 388:9 ff.
6. *Entziklopedia Talmudit*, vol. 7, cols. 307-308.
7. *Bava Batra* 8b. Regarding this passage, see Menachem Elon, *Jewish Law: History, Sources, Principles*, Philadelphia and Jerusalem, 1994, Chapter 19; Ephraim Kanarfogel, *Proceedings of the American Academy of Jewish Research* 58 (1992), pp. 71-106.
8. *Responsa Mishpat Kohen*, Jerusalem, 1984, no. 144, pp. 337-338, and *Amud Hayemini*, Tel Aviv, 1965, part I, nos. 7, 9.
9. Martin Buber, *Tales of the Hasidim*, vol. 2, New York, 1948, p. 279.