

Pinchas 5776

BS"D Parashat Pinchas 5776

Rabbi Nachman Kahana

Is Life and Inalienable Right or Privilege?

Zimri ben Salu, the prince of the tribe of Shimon, declared publicly before Moshe Rabbeinu and the Sanhedrin of his intention to commit a serious sin with the Midianite princess Kazvi bat Tzur. Pinchas, son of Elazar and grandson of Aharon the Kohen Gadol, entered Zimri's tent and killed him and the Midianite woman.

Pinchas acted in accordance with the halachic principle that zealots may strike down the sinner, which is in force in limited circumstances – one of which is where a Jew publicly commits such a sin with an idolatrous gentile woman, and may be killed by a proven zealot who seeks only to honor HaShem out of no personal interest.

This halachic principle which stood at the base of Pinchas' act is problematic. The halacha stipulates that capital punishment may be imposed on a sinner only after being warned three times by at least two witnesses of the penalty which he will have to face.

Where were the witnesses and the warnings in the matter of Zimri?

One answer given by Chazal is that the principle that guided Pinchas was an extrajudicial ruling told by HaShem to Moshe, with no questions asked.

I would like to explain the meaning behind HaShem's extrajudicial message:

A sin is a sin is a sin. However, there are certain sins which result from one's crossing a halachic red line from which there is no return and present a clear and present danger of affecting others. They are sins which touch upon the most basic, primitive human instincts and act as non-halachic killer viruses which have no known cure.

An inalienable (undisputable) right is totally distinct from a privilege. An inalienable right is a social or legal advantage granted to one by virtue of birth, social contract (agreement), group membership, or resulting from an investment of money, time or effort. The implementation of a right can be demanded either by moral consensus or in a court of law.

In contrast, a privilege is an advantage extended to one as an altruistic act which cannot be demanded, like a pure soul invested by HaShem into a Jew's material body.

The US Bill of Rights contains ten articles specifying the rights of an American citizen: Freedom of Speech, Press, Religion and Petition; Right to keep and bear arms; Conditions for quarters of soldiers; Right of search and seizure regulated; Provisions concerning prosecution; Right to a speedy trial, witnesses, etc.; Right to a trial by jury; Excessive bail, cruel punishment; Rule of construction of Constitution and Rights of the States under the Constitution.

Every American can avail himself of these rights by virtue of being a citizen; and if any of his rights are infringed upon he can take the matter to the courts.

The most basic right is the right to life, so eloquently articulated by Abraham Lincoln in his Gettysburg address of 1863, "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty

and the pursuit of Happiness”.

The Universal Declaration of Human Rights (UDHR) was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 as a common standard of achievements for all peoples and all nations. It sets out, for the first time, fundamental human rights to be universally protected. Article 3 states: Everyone has the right to life, liberty and security of person.

The most fundamental right of a human being as expressed in the above quoted documents is the right to life, that by virtue of just being born, one can demand his right to finish his life as long as God gives him breath.

The Torah is fundamentally opposed to the above statements regarding the right to life. To live is not an inalienable right. It is a God-given privilege which one cannot demand, but must offer thanks every moment to HaShem for the privilege of being alive. None of us has invested anything in order to be born! We were sent here by the Creator and He will withdraw each and every one of us from this world at the time He sees fit.

The Gemara (Nida 30b) relates that before a Jew is born HaShem warns the soon to be human being, “I will give you a pure soul. Guard it. If you defile the soul with sin, I shall take your soul from you”.

Every morning when rising from sleep we say:

אֲנִי מוֹדֵה לְפָנֶיךָ יְיָ אֱלֹהֵינוּ מֶלֶךְ עוֹלָם וְעַד וְעַל כָּל הַחַסְדִּים וְהַחַיִּים שֶׁעָשִׂיתָ לִּי וְעַל כָּל הַחַסְדִּים וְהַחַיִּים שֶׁעָשִׂיתָ לְעַמּוּךָ יִשְׂרָאֵל וְעַל כָּל הַחַסְדִּים וְהַחַיִּים שֶׁעָשִׂיתָ לְעוֹלָם וְעַד וְעַל כָּל הַחַסְדִּים וְהַחַיִּים שֶׁעָשִׂיתָ לְעַמּוּךָ יִשְׂרָאֵל וְעַל כָּל הַחַסְדִּים וְהַחַיִּים שֶׁעָשִׂיתָ לְעוֹלָם וְעַד וְעַל כָּל הַחַסְדִּים וְהַחַיִּים שֶׁעָשִׂיתָ לְעַמּוּךָ יִשְׂרָאֵל

I offer my thanks before You, Eternal King, who has compassionately restored my soul to me – great is my belief in you

The death penalty proscribed in the Torah for cardinal sins is

based on the premise that since it is a privilege to live, if one over-steps that privilege he may no longer benefit from life, and a Bet Din of 23 judges has the authority to commit the sinner to death through four methods, corresponding to the severity of the sin.

In the case of Zimri the sin was so blatant and exposed that it did not require the rule of law to investigate and conclude that Zimri had forfeited his privilege to live. Hence Pinchas acted in accordance with the law and spirit of the Torah in stopping this abominable act.

Sinners who forfeit their privilege to life

The following are two contemporary examples of sinners who forfeit their privilege to live.

1. A terrorist's right to life

It has been several weeks now that the moral conscience of the country is being challenged by alien gentile principles in the matter of Corporal El'or Azarya who killed a terrorist after the latter was mortally wounded and no longer presented a threat.

The national debate centered on the question of a terrorist who came to murder Jews, in this case IDF soldiers: what is his fundamental status regarding life as a result of his attempt or even just intent to murder a Jew? The Army's position today is that the Corporal had illegally killed the Arab terrorist and must be brought to trial, based on the gentle premise that even a terrorist has a right to life.

What is the Torah's position? Are there any Torah precedents to shed light on this question?

In parshat Shmot, Moshe kills an Egyptian for beating a Jew. The following day, Moshe witnessed a Jew about to hit another Jew, and the pasuk says (2,13):

וַיֹּאמֶר מֹשֶׁה אֶל הַרְשָׁעִי לָמָּה הִכְתָּ אֶת רֵעִי

And he (Moshe) said to the wicked one: Why would you hit your companion!?

A Jew who merely intends to hit another Jew is deemed in the pasuk to be a “rasha” (evil or wicked) even when he did not actually follow through with the act. That is certainly the case regarding a gentile who intends to harm a Jew and most certainly when he has actually harmed him (i.e., stabbed a soldier) which is an act of forfeiting his privilege to live.

The Egyptian task-master warranted death because he had overstepped his privilege to live.

The Tanach is replete with incidences of illustrious Jews who took the lives of others for what they did or intended to do to Jews.

In the case of Corporal Azarya, the halacha would declare that the terrorist had forfeited his privilege to live and his death is a technical procedure which can be conducted even without a court sentence. Corporal Azarya is innocent of murder, homicide and of manslaughter. The only accusation that could be leveled at the Corporal is that within the military framework of discipline he should not have acted on his own.

Corporal Azarya should be returned to his unit with a citation from his commanding officer.

2. The moral preferences of Jews were dictated by HaShem at Mount Sinai.

If left to mortal man to decide what is right and ethical, we

would quickly arrive at a dead end as did the Greek philosophers who struggled to establish the ethical path for man to follow.

For example, Democracy is based on the premise that the greater the number of people who adhere to a particular point of view are closer to the truth than the minority. In India which is home to 7-9 hundred million Hindus, the moral thing to do to a widow is to burn her to death in order that she may follow her husband to Nirvana. In the United States with its meager 350 million citizens, the moral thing to do is to assist a widow. So, democratically speaking, the ethical thing to do would be to follow the lead of the majority, the Hindus.

The conclusion is that right and wrong cannot be left to human discretion.

Am Yisrael has no problem defining what is right and what is wrong. HaShem dictated the way we must live, regardless of our understanding or agreement with the revelation.

The Torah (Vayikra 18,22) classifies male deviants as "to'ayva" – an abomination and abhorrence. The sinning participants after disregarding three warnings by witnesses, have resigned their privilege to live and the bet din must condemn them to the most severe death of sekila.

Contemporary male deviants can establish shuls and hire rabbis and talk themselves blue into believing that they are not culpable of a shameful capital sin, but the simple truth is that would there be a bet din today they would be sentenced to death.

The non-permissive attitude toward grievous sinners is the Torah way. It is not the way of the Western World nor of Israel's official establishment.

However, the day will come when the Jewish people will break out of our pitiful state of national amnesia and awaken to who

we really are – God's chosen people.

Shabbat Shalom,

Nachman Kahana

Copyright © 5776/2016 Nachman Kahana