

Bamidbar 35 states that a court, or society, must not allow financial compensation to substitute for criminal penalties with regard to unjustified killing. Maimonides (Laws of Murder) explains that this is because the *nefesh* of the victim is the property of God, rather than the property of the blood-avenger.

Some have used this statement of Maimonides in support of the broad thesis that Judaism is in fundamental conflict with the value of bodily autonomy, because we believe that G-d rather than we “owns” our bodies. I argued in SBM this week, however ([sourcesheet](#), [audio](#)), that this text actually says nothing relevant to that issue, for one of two reasons:

- a) If *nefesh* here refers to the body, the point may be that G-d rather than relatives inherits the person’s rights to the body after death, granting that the person owns it in life
- b) If *nefesh* here refers to the soul, the point may be the wrong done here was (also) to the soul, in separating it prematurely from the body, rather than to the body; if the wrong were seen as done to the body, perhaps the relatives could accept compensation, as they in fact inherit the body from the person.

The introduction of inheritance as a category here is reasonable, as Maimonides earlier in the chapter states that “all who inherit become blood-avengers”, meaning that they are in the line of responsibility for justice.

Note also that Sefer HaChinnukh 26 explains that among the reasons that accidental killing is punished by exile is so that relatives of the victim do not have to experience the pain of meeting the perpetrator on the street; the ban against accepting compensation in place of exile for the accidental murderer is thus specifically necessary for that case.

I want to focus this week, though, on Netziv’s Harchev Davar to Bamidbar 35:34. Netziv includes in the category of accidental murderer those who kill not because of physical error, but rather because they believe mistakenly that the killing was justified. He further claims that such murders caused the destruction of the Second Temple, in that the Jews of the time of Destruction genuinely believed that murdering religio/ideological opponents was service of G-d. These are described as “Destroyers of Jerusalem who fear G-d and anticipate returning (to Jerusalem) each day

Stopping there, Netziv can be read as a straightforward critique of excessive zeal or fanaticism. However, he goes on to say that such murderers are qualitatively distinct from those who kill without noble motives – they do not need outreach to be brought within reach of persuasion, and they require less punishment to atone. And having completed their punishment, they can be honored as heroes for their selflessness.

This understanding is of a piece with Netziv’s notion of aveirah lishmah, that sins for the sake of Heaven can be legitimate, but that the punishment for doing so in error is great.

The notion of honoring the character of those who killed for insufficient reason troubles me. I don’t believe that will ever become appropriate to put up plaques praising Yigal Amir’s willingness to risk himself. At the same time, I find Netziv’s capacity to appreciate the personal values of those he disagrees with highly attractive. Your thoughts as to how this is best navigated are welcome; in the interim, let us seek to anticipate the return to Jerusalem without being responsible for any of its current troubles.

Shabbat Shalom

## במדבר פרק לה:לא-לב

ולא תקחו כפר לנפש רצח אשר הוא רשע למות כי מות יומת:  
ולא תקחו כפר לנוס אל עיר מקלטו לשוב לשבת בארץ עד מות הכהן:

### Bamidbar 35:31-32

You must not take atonement-money for the soul of a murderer who has been convicted-for-execution; rather, he must surely die.

You must not take atonement-money *lanoos* his city of refuge to return and dwell in the land until the death of the cohen.

### ספר החינוך מצוה תי

מצוה על בית דין להשליך מכה נפש בשגגה מעירו לערי מקלט ועל הרוצח בעצמו ללכת שם . . . ועוד תועלת בדבר לבלי יראו קרובי המוכה הרוצח לעיניהם תמיד במקום שנעשתה הרעה, וכל דרכי התורה נועם .

### Sefer HaChinnukh 410

The court has the commandment to throw one who kills a nefesh by accident out of his city to a city of refuge, and the murderer has the responsibility to go there . . .

Another purpose this accomplishes is so that the relatives of the victim need not constantly see the murderer in the place where the evil was done, when all the ways of Torah are pleasant.

### רמב"ם הלכות רוצח ושמירת הנפש פרק א:א-ד

כל הורג נפש אדם מישראל עובר בלא תעשה,  
שנ' (שמות כ' י"ד) לא תרצח.  
ואם רצח בזדון בפני עדים - מיתתו בסייף,  
שנאמר (שמות כ"א כ') נקם ינקם - מפני השמועה למדו שזו מיתת סייף.  
בין שהרג את חברו בברזל בין ששרפו באש - מיתתו בסייף.

מצוה ביד גואל הדם,

שנ' (במדבר ל"ה י"ט) גואל הדם הוא ימית את הרוצח.

וכל הראוי לירושה הוא גואל הדם.

לא רצה גואל הדם, או שלא היה יכול להמיתו, או שאין לו גואל דם - בית דין ממיתין את הרוצח בסייף.

האב שהרג את בנו - אם היה לנהרג בן - הרי זה הורג אבי אביו, מפני שהוא גואל;  
ואם אין לו בן - אין אחד מן האחים נעשה גואל הדם להמית את אביו, אלא בית דין ממיתין אותו.  
ואחד הזכר ואחד הנקבה בגאולת הדם.

ומוזהרין בית דין שלא ליקח כופר מן הרוצח, ואפילו נתן כל ממון שבעולם, ואפילו רצה גואל הדם לפטרו.

שאין נפשו של זה הנהרג קנין גואל הדם אלא קנין הקב"ה.

שנאמר (במדבר ל"ה ל"א) ולא תקחו כופר לנפש רוצח.

ואין לך דבר שהקפידה תורה עליו כשפיכות דמים

שנאמר (במדבר ל"ה ל"א) ולא תחניפו את הארץ כי הדם הוא יחניף את הארץ.

All in the line of inheritance become blood-avengers . . .

Courts are commanded not to take atonement-money from the murderer, even if he gives all the money in the world, and even if the blood-avenger wishes to exempt him, because this killed person's *nefesh* is not the property of the blood-avenger, rather the property of the Holy Blessed One . . .

### הרחב דבר לה:לד

. . . בית ראשון חרב מפני שפיכות דמים באיסור . . . ובית שני חרב מפני שפיכות דמים בהיתר, שסבורים היו שמצוה להרוג את חברו, שהוא צדוקי וכדומה . . .  
וישעיה הנביא אמר "ציון במשפט יפדה ושביה בצדקה ושבר פושעים וחטאים יחדו ועוזבי ה' יכלו" – פירוש: החוטאים בשוגג בהוראת היתר, ונקראו גם פושעים, כדאיתא בב"מ סוף פרק ב על מקרא דישיעיה "הגד לעמי פשעם" – אלו תלמידי חכמים, ששגגות נעשו להם כזדונות כו";  
הכי נמי ההורג נפש בשגגת מחשבה הרי זה פושע וחוטא יחד, וההורג נפש בזדון הרי זה עוזב ה',  
על זה אמר דשבר של פושעים וחטאים יחדו, וגם שבר עוזבי ה' יכלו, שלא יהיו שתי הכתות אלו בישראל.  
והנחמה אמר עוד: "נחמו נחמו עמי יאמר אל-היהם, דברו על לב ירושלים וקראו אליה כי מלאה צבאה כי נרצה עונה כי לקחה מיד ה' כפלים בכל חטאתיה" . . . בשביל שיש מחריבי ירושלים שהם יראים את ה'  
ומצפים לשוב בכל יום, לכת כזו אין צריך לקרא אלא לדבר על לבם . . . "כי מלאה צבאה" – עונשה קבלה בשלמות, מעתה כי נרצה עונה, שהרי סבורים היו לעשות לשם שמים, ומסרו נפשם בסכנה על זה.  
ואחר שקבלו עונש יזכרו לטוב על מסירות נפשם כמו שכתבתי לעיל יז: . . .

The First Temple was destroyed because of forbidden bloodshedding, but the Second Temple was destroyed because of permitted bloodshedding, that they thought it a mitzvah to kill their fellow, since he was a Sadducee and the like . . .

The prophet Yeshayah said "Zion will be redeemed with *mishpat*, and her returnees with *tzedakah*, and the breaking of *posh'im* (deliberate sinners) and *chattaim* (accidental sinners) together, whereas those who abandon G-d will cease to be" – this means that those who sin accidentally, ruling that it is permitted, (who are called *posh'im* as well as *chattaim*, as per the end of Bava Metzia Chapter 2 on the verse in Yeshayah "My people have had their *pasha* told them" – this refers to scholars, whose accidental sins are considered deliberate);

here too, one who kills on the basis of an accidentally mistaken thought is called 'a *posheia* and *chotei* together', whereas one who kills deliberately is called 'one who abandons God' –

about this it says that there will be the breaking of *posh'im* and *chattaim* together, but also the breaking that the abandoners of G-d will cease to be, so that neither of these groups will exist in Israel.

But the prophecy of comfort further says: "Be comforted, be comforted, My people", their G-d will say, 'speak to the heart of Yerushalayim and call to her, for her sentence is filled and her sin is requited, for she has received from Hashem a double punishment for all her sins' . . . because there are destroyers of Yerushalayim who are fearful of Hashem and anticipate returning (to Yerushalayim) each day, and that group does not need calling to, but only speech affecting their hearts – "because their sentence is filled" – she has received her punishment in full, and therefore now "her sin is requited" – because the thought that they were acting for the sake of Heaven, and risked themselves to that end. Having received their punishment, they are mentioned with favor for their willingness to risk themselves, as I wrote with regard to Bamidbar 17:4...