



***Shogeg*: The Rabbinic Treatment of the Accidental Killer and the Sliding Scale of Guilt, Atonement and Responsibility**

Shoshana Cohen

1.	Kol Nidrei, from Koren Yom Kippur Mahzor, 74–75	1
2.	Mishnah Makkot 2:1	3
3.	Babylonian Talmud Makkot 7b	3
4.	Maimonides, <i>Mishneh Torah</i> , Laws of Murderers and Saving Lives 6:1–4	4
5.	Leviticus 16:21–22	5

*This source sheet was prepared for **A Day of Learning for Our Hostages** on September 30, 2024, a day of learning together as a community to honor the shloshim of the six hostages murdered in August, show solidarity with the hostages still in captivity, and call on the Israeli government and the international community to prioritize their return.*

Rabbi Shoshana Cohen is a Senior Faculty member and serves as teacher and mentor for North American gap-year students studying in Israel, preparing them for Jewish life in college, and supporting them after they return to their campuses in North America. She was also a member of Cohort II of the Created Equal Fellowship. Prior to coming to Hartman Shoshana was a senior faculty member at the Conservative Yeshiva in Jerusalem for over a decade where she taught Talmud, Midrash and Gender Studies. She has served as scholar-in-residence in communities across the US.

Shoshana was the educational director of ATZUM's Takum, a social justice beit midrash housed at the CY. She has completed advanced studies at Hebrew University, Matan and the Hartman Institute and has rabbinic ordination from Rabbi Daniel Landes. She is a founding member of Reshut haRabim, the Jerusalem Forum for Jewish Renewal Organizations. Lecturing in Hebrew and in English she has been on the faculty of the Drisha Institute, the Hartman Girl's High School, Yeshivat Talpiot, and Yeshivat Hadar.

The Shalom Hartman Institute is a leading center of Jewish thought and education, serving Israel and North America. Our mission is to strengthen Jewish peoplehood, identity, and pluralism; to enhance the Jewish and democratic character of Israel; and to ensure that Judaism is a compelling force for good in the 21st century.

Shalom Hartman Institute of North America
475 Riverside Drive, Suite 1450
New York, NY 10115
212-268-0300
info@shalomhartman.org | www.shalomhartman.org

1. Kol Nidrei, from Koren Yom Kippur Mahzor, 74–75

כל נדרי _____ ליל יום הכיפורים • 75

במדבר טו

The שליח ציבור recites three times, then the קהל repeats three times:

וְנִסְלַח לְכָל-עֲדַת בְּנֵי יִשְׂרָאֵל
וְלִגְרֵי הַגֵּר בְּתוֹכְכֶם, כִּי לְכָל-הָעַם בְּשִׁגְגָה:

The שליח ציבור continues:

במדבר יד

סְלַח-נָא לְעוֹן הָעַם הַזֶּה כַּגְּדֹל חַסְדְּךָ
וְכַאֲשֶׁר נִשְׂאָתָה לָעַם הַזֶּה מִמִּצְרַיִם וְעַד-הַנְּהַיָּה:
וְשֵׁם נְאֻמְךָ

The קהל recites three times, then the שליח ציבור repeats three times:

שם

וַיֹּאמֶר יְהוָה, סְלַח-תִּי כְדַבְּרְךָ:

The שליח ציבור recites the following blessing and the קהל (except those who have already recited it at נרות הדלקת נרות) recite it quietly along with him.

בְּרוּךְ אַתָּה יְהוָה אֱלֹהֵינוּ מֶלֶךְ הָעוֹלָם
שֶׁחֲחִינּוּ וְקִיַּמְנוּ, וְהִגִּיעֵנוּ לְזִמְנָהּ הַזֶּה.

The ארון קודש are returned to the ספרי תורה.

The Leader recites three times, then the congregation repeats three times:

וְנִסְלַח וְנִסְלַח And all the congregation of Israel are forgiven,
along with the strangers living in their midst;
for they acted without knowing what they did.

Num. 15

The Leader continues:

סְלַח-נָא Please, forgive this people's iniquity
in the abundance of Your kindness,
as You have forgiven this people
from the time of Egypt until now,
and there it is said:

Num. 14

The congregation recites three times, then the Leader repeats three times:

וַיֹּאמֶר And the LORD said, I have forgiven as you asked.

Ibid.

*The Leader recites the following blessing and the congregation
(except those who have already recited it at candle lighting) recite it quietly along with him.*

בְּרוּךְ Blessed are You, LORD our God, King of the Universe,
who has given us life, sustained us, and brought us to this time.

The Torah scrolls are returned to the Ark.

2. Mishnah Makkot 2:1

אלו הן הגוליון, ההורג נפש בשגגה. היתה מעגל במעגילה ונפלה עליו והרגתו, היתה משלשל בחבית ונפלה עליו והרגתו, היתה יורד בסלם ונפל עליו והרגו, הרי זה גולה. אבל אם היתה מושף במעגילה ונפלה עליו והרגתו, היתה דולה בחבית ונפסק החבל ונפלה עליו והרגתו, היתה עולה בסלם ונפל עליו והרגו, הרי זה אינו גולה. זה הכלל, כל שבדרך ירדתו, גולה. ושלל בדרך ירדתו, אינו גולה. נשטט הברזל מקתו והרג, רבי אומר, אינו גולה. וחכמים אומרים, גולה. מן העץ המתבקע, רבי אומר, גולה. וחכמים אומרים, אינו גולה:

The following are exiled [to the city of refuge]: one who kills a person accidentally. If he was pushing a roller [on a roof] and it fell on him [a bystander] and killed him, or if he was lowering a barrel [from a roof] and it fell and killed him [a bystander], or if he was descending a ladder and he fell and killed him [a bystander], all of these cases he [the killer] is exiled. However, if he was pulling a roller and it fell and killed the person, or if he was raising a barrel and the rope tore and it fell and killed a person, or if he was climbing a ladder and he fell and killed a person, in these cases he [the killer] would not be exiled. This is the principle: If the killer was involved in a downward movement, he is exiled. If it is not a downward movement he is not exiled. If the blade came off the handle and killed, Rabbi says he is not exiled but the Sages say he is exiled. If it came from the wood being chopped, Rabbi says he is exiled but the Sages say he is not exiled.

3. Babylonian Talmud Makkot 7b

ת"ר "בשגגה" - פרט למזיד "בבלי דעת" פרט למתכוון

מזיד פשיטא בר קטלא הוא

[אלא] אמר רבא אימא פרט לאומר מותר

א"ל אביי אי אומר מותר אנוס הוא

אמר ליה שאני אומר "אומר מותר קרוב למזיד הוא.

...

מתכוין פשיטא בר קטלא הוא, אמר רבה פרט למתכוין להרוג את הבהמה והרג את האדם לכותי והורג ישראל לנפל והרג בן קיימא

The Sages taught in a braita "Unintentionally" (Numbers 35:11); to exclude [from exile] the one who kills with full intent (*mezid*) "Unawares" (Deuteronomy 19:4); to exclude the one who kills with intent (*mitkaven*).

The one who kill with full intent (*mezid*) – it is clear that they should be killed! (and not exiled) [so no derivation from the verse is necessary]

Rava said: Say that the [type of] intentional killer referred to is meant to exclude the one who says that it is permitted to kill the victim. [this person is neither killed nor exiled]

Abaye said him: If the reference is to one who says that it is permitted, he is a victim of circumstances beyond his control (*anus*), [as he did not know any better]

Rava said to him: That is not a problem, as I say that with regard to one who says that it is permitted, he is close to one who action intentionally (*karov l'mezid*)

...

One who acts with intent (*mitkaven*) – It is obvious that they are not exiled; they are subject to death. Rabba said: to exclude the one who acted with the intent to kill an animal and he killed a person inadvertently, or one who acted with the intent to kill a gentile and he killed a Jew, or one who acted with the intent to kill a non-viable newborn and he killed a viable newborn.

4. Maimonides, *Mishneh Torah*, Laws of Murderers and Saving Lives 6:1–4

א שלושה הם ההורגים בלא כוונה : [ב] יש הורג בשגגה והעלמה גמורה, וזה הוא שנאמר בו "ואשר לא צדה, והאלוהים אינה לידו" (שמות כא, יג). ודינו שיגלה לערי מקלט, וינצל כמו שביארנו.

1 There are three categories of unintentional killers. [2] There is a person who kills unintentionally, without at all knowing that this will be the consequence of his actions. Concerning such a person, Exodus 21:13 says: "Who did not lay in ambush." The law applying to such a person is that he should be exiled to a city of refuge, as we have explained in the previous chapter.

ב [ג] ויש הורג בשגגה, ותהיה השגגה קרובה לאונס ; והוא שיארע במיתת זה מאורע פלא, שאינו מצוי ברוב מאורעות בני אדם. ודינו שהוא פטור מן הגלות ; ואם הרגו גואל הדם, נהרג עליו.

2 [3] There is a person who kills unintentionally, whose acts resemble those caused by forces beyond his control - i.e., that the death will be caused by an extraordinary phenomenon that does not commonly occur. Such a person is not liable to be exiled, and if he is slain by the blood redeemer, the blood redeemer should be executed for killing him.

ג ויש הורג בשגגה, ותהיה השגגה קרובה לזדון ; והוא שיהיה בדבר כמו פשיעה, או שהיה לו להיזהר ולא נזהר. ודינו שאינו גולה : מפני שעונו חמור, אין גלות מכפרת לו ; ואין ערי מקלט קולטות אותו, שאינן קולטות אלא המחוייב גלות בלבד.

ד לפיכך אם מצאו גואל הדם בכל מקום, והרגו--פטור

3 [4] There is a person who kills unintentionally, whose acts resemble those willfully perpetrated - e.g., they involve negligence or that care should have been taken with regard to a certain factor and it was not. Such a person is not sentenced to exile, because his sin is very severe and exile

cannot bring him atonement, nor do the cities of refuge serve as a haven for him. For they serve as a haven only for those obligated to be exiled.

4 Therefore, if the blood redeemer finds this killer anywhere and slays him, he is not liable.

5. Leviticus 16:21–22

כא וְסָמַךְ אֶהְרֹן אֶת-שְׁתֵּי יָדָיו, עַל-רֹאשׁ הַשְּׂעִיר הַחַי, וְהִתְנַדָּה עָלָיו אֶת-כָּל-עֲוֹנוֹת בְּנֵי יִשְׂרָאֵל, וְאֶת-כָּל-פְּשָׁעֵיהֶם לְכָל-חַטָּאתָם; וְנָתַן אֹתָם עַל-רֹאשׁ הַשְּׂעִיר, וְשָׁלַח בְּיַד-אִישׁ עֹתֵי הַמִּדְבָּרָה. **כב** וְנִשָּׂא הַשְּׂעִיר עָלָיו אֶת-כָּל-עֲוֹנוֹתָם, אֶל-אֲרָץ גְּזֵרָה; וְשָׁלַח אֶת-הַשְּׂעִיר, בַּמִּדְבָּר.

21 Aaron shall lay both his hands upon the head of the live goat and confess over it all the iniquities and transgressions of the Israelites, whatever their sins, putting them on the head of the goat; and it shall be sent off to the wilderness through a designated agent. **22** Thus the goat shall carry on it all their iniquities to an inaccessible region; and the goat shall be set free in the wilderness.