

One Life for Another in the Holocaust: A Singularity for Jewish Law?

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Millions of Jews who were committed to the Halacha, the Jewish code of law, were under Nazi rule and control during the Second World War. Various sources indicate that during the Holocaust, such Jews petitioned rabbis and Halacha sages with questions on halachic matters, both of a ritual nature as well as a legal nature. Due to the tremendous profusion during the Holocaust of situations in which the matter of preferring one life over another arose, one would expect to find an abundance of halachic questions dealing with subjects related to this matter. There are two main situations in which the matter of preferring one life over another emerges. The one typical case involves saving the life of a person in peril, where the central question that arises is whether there is a duty to endanger oneself in order to save the life of another, whether there is a prohibition on doing this, or whether this is permitted and, perhaps, even recommended, but not a duty per se. The second typical instance is when a power-wielding entity with authority demands that someone be handed over, and if this is not complied with, another person will be harmed. A great deal of comprehensive discussion was devoted to these two situations in the halachic sources throughout the ages, beginning from the period of the Talmud and thereafter. These matters were given particularly prominent and thorough consideration in the teachings of the halachic sages of Poland during the period in which the Jews enjoyed broad judicial and community autonomy. These sources could have served the halachic sages during the Holocaust, the overwhelming majority of whom were to be found in Poland and the neighboring countries in Eastern Europe. However, most surprisingly, we have almost no

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evidence of any real halachic grappling with situations of weighing one life against another during the Holocaust. The author maintains that the reason for this silence does not derive from a massive loss of testimonies during the Holocaust, but, rather, stems from the fact that the Holocaust is a "black hole" in the human experience. In the face of this experience, created by the Germans, even the Halacha, which regulates totally the life of the observant Jew, stood dumbfounded, regarding it as a Singularity, in the physics sense of the term — that is to say, a situation in which defined laws and legal rules cease to exist.

INTRODUCTION

One notable feature of the Holocaust was the tremendous incidence of situations that required a choice as to which one of two people would die. I will confine myself to the situation in Poland, where prior to the Holocaust, there were three and a half million Jews living in urban and rural settlements throughout the country, from the capital Warsaw, with over a third of a million Jews, to remote villages with maybe only one Jewish family. Only about ten percent of the pre-Holocaust Jewish population survived the five and a half years of German occupation, terror, and destruction. The great majority of the survivors were those who had fled to the Soviet Union at the outbreak of the War and a few groups of people who had joined the partisans in areas where this was possible. Of the Jews in ghettos, work camps, and concentration camps, only about 50,000, some 1.5 percent, survived.

A brief description follows of the Jewish code of law, the *Halacha*, and its decisive power during this period in Poland. The *Halacha* is the Jewish system of instructions and rules, which, because of their divine religious source, are mandatory for orthodox Jews. It encompasses numerous aspects of human life and determines behavioral norms in many fields, relating to ritual and other matters and including spheres that, in modern society, fall within the jurisdiction of the legal system.¹ Until the end of the eighteenth century, Jews in Poland enjoyed community and legal autonomy, so that the *Halacha* was in fact a system of norms that the Jews were required to obey and that could be enforced by the State's usual means of enforcement. When this autonomy was later rescinded, the *Halacha* ceased to have any mandatory legal status, and people's responses and obedience to it became

1 Menachem Elon, *Ha Mishpat Ha Ivry* [Jewish Law — History, Sources, Principles] 4-5, 93-94, 111-16 (1994) (Hebrew).

a matter of personal choice. Nevertheless, a large proportion of Polish Jewry consisted of orthodox Jews who willingly accepted the dictates of the *Halacha* and subjected themselves to its laws as formulated by the rabbis. It is interesting to note that many Polish Jews, and not just the orthodox, continued to make use of the *halachic* legal system even after it was no longer binding. Sometimes even non-Jews preferred a rabbi to adjudicate their case, despite the fact that his ruling would not have legally binding status in the eyes of the national legal enforcement agencies. This system, whose authority derived from the fact that a large part of the Jewish population accepted it of its own free will, is the legal system referred to in this paper.

It is well-established that human life is highly regarded by the *Halacha*, and this finds expression in the rule that all but three of the commandments in the *Torah* are rejected in cases in which there is danger to human life.² The *Halacha* also devotes intensive discussions to situations that pit one life against another, as part of its particular sensitivity to human life. We might have expected that this subject would have received significant treatment and discussion during the Holocaust. However, my strong impression is that the issue of choosing between lives during the Holocaust was given very little *halachic* consideration, in contrast with other fields of Jewish law, which were referred to very often and were very well-documented. However, I must emphasize that comprehensive research is necessary in order to come to any firm conclusion with regard to whether or not there was *halachic* discussion and consideration of this problem specifically during the Holocaust. One notable instance of this phenomenon is that of Rabbi Shimon Huberband.³ Rabbi Huberband was a scholar, descended from a line of other prominent rabbis, who engaged in rabbinical writing. He had also begun to engage in historical research during the period prior to the outbreak of World War II, as well as publish articles, including one on Jewish ethics and another on Jewish social laws. He arrived in Warsaw during the early stages of the War, after his wife and son were killed in an air raid, and he soon joined a group of young Jewish professional historians headed by Emmanuel Ringelblum.⁴ The task that the group took upon itself was to record the history

2 Babylonian *Talmud*, *Sanhedrin* 74:1.

3 Shimon Huberband, *Kidush Hashem* (1969) (Hebrew). All the biographical details in this article on Rabbi Huberband are taken from pages 9-29 in the Introduction to the book.

4 About Ringelblum and his project in the Warsaw Ghetto, see Emmanuel Ringelblum, *Diary and Notes from the Warsaw Ghetto: September 1939-December 1942*, at 7-24 (1992) (Hebrew) (Introduction).

of the Polish Jews, in general, and Jews in Warsaw, in particular, in order to aid future historians in researching Jewish history during that horrendous period. When they wrote, either during or immediately after the events, Ringelblum's group of historians was punctilious in exercising caution and maintaining scientific accuracy. Their writing is characterized by a dry, cold, factual style. They made several copies of their work and hid them in containers in the rubble of the Warsaw Ghetto; some of these were discovered after the War and published. Rabbi Huberband kept a diary for about three years, from the beginning of the War, September 1, 1939, until August 19, 1942, when he was deported to Treblinka. Most of his diary survived the War and was published in Hebrew as a 312 page-long book.⁵

Throughout the diary, there are references to various *halachic* matters that were discussed during those three years. In a chapter dealing with the activities of the rabbis in Poland, Huberband devoted a paragraph to the subject of *Dinei Torah* — legal claims heard by a rabbi and ruled upon according to Jewish law. He wrote:

During the flight to the East, "fixers" and smugglers were brought to *Dinei Torah* by people claiming that the smugglers had not taken them across the border as they should have. After the establishment of the Ghetto, there were disputes and such hearings amongst smugglers themselves, in many cases between Jews and Christians. Also, fixers who had undertaken to obtain the release of people arrested, or to supply apartments, or who were "document traders," etc., were called before Jewish *halachic* judges.⁶

Huberband referred to another incident, which occurred at the end of 1940 during the roundup of the Jews of Praga (a suburb of Warsaw) and their transfer to the Warsaw Ghetto, reporting that "during their transportation, the Jews of Praga suffered greatly from thefts of money and food. There were even hearings (*Dinei Torah*) held in front of the rabbi in connection with a long list of thefts."⁷

Petitions to rabbis were not confined to instances of disputes, but were also brought when questions arose relating to Jewish rituals, which are strictly adhered to by orthodox Jews and are set forth by Jewish law. There were queries relating specifically to the observance of ritual during wartime: whether to observe the seven-day period of mourning for a relative who

5 I estimate that this would be equivalent to about 400 pages of English.

6 Huberband, *supra* note 3, at 94-95 (author's translation).

7 *Id.* at 141. The Rabbi of Praga was Huberband's father-in-law.

had died or been killed; whether to recite the *kaddish* prayer (the prayer for the dead); whether to mark the anniversary of a death; whether to hold a traditional Passover *seder* (feast) in the absence of the prescribed four glasses of wine or the *matzah*.⁸

An example of this rabbinical involvement could be found also in Lodz, the city with the second largest Jewish population in Poland prior to the War. In 1941, the rabbinical committee in the Lodz Ghetto issued a ruling regarding the conditions in which non-kosher meat could be eaten. They wrote to the Head of the *Judenrat* (Jewish Council) in Lodz that

[o]n February 23, 1941, the rabbinical committee decided to clarify its views regarding eating meat and states as follows: a) women in confinement, whether before or after giving birth, who, according to medical opinion, must eat meat, may do so freely; b) people who feel that their strength is quickly deteriorating must approach the rabbinical committee or a rabbi individually to obtain an individual ruling. At the same time, we are honored to request of the esteemed Chairman to advise the worthy doctors of the great importance of their decisions on these matters, which may be made only in cases of possible mortal danger and with due seriousness and professional responsibility.⁹

The Jewish court, which was one of the official Jewish institutions in the Kovno Ghetto, was an extraordinary case. A description of the court appears in a report written in the Ghetto during the Holocaust and discovered after the War.¹⁰ The court's function was to deal with the civil, criminal, and labor matters of the inhabitants of the Ghetto, and the Council of Elders (the highest representative body of the Jews living in the Kovno Ghetto and recognized by the German regime) set out *Rules for Legal Procedures in the Jewish Court in the Williampola (Slobodka) Ghetto*.¹¹ According to the *Rules*, the court ruled, in principle, according to the laws prevailing in the Lithuanian Republic up until the Soviet occupation. The writer of the report noted that "in civil cases the court also had need of the *Halacha and Jewish customs*."¹² The great majority of the judges were professional jurists, and the chief judge of the

8 This is unleavened bread eaten during Passover. *Id.* at 94.

9 Isaiah Trunk, *Ghetto Lodz 445* (1962) (Yiddish) (author's translation). The petition to the Head of the *Judenrat* was signed by fifteen rabbis.

10 Abraham Tory, *Ghetto Everyday — Diary & Documents from the Kovno Ghetto 476-83* (1988) (Hebrew).

11 The Ghetto was located in the Williampola neighborhood of Kovno and was therefore known also by this name.

12 Tory, *supra* note 10, at 478 (emphasis added) (author's translation).

court was one of the most prominent lawyers in Lithuania who "undertook to pursue justice and to help maintain God's image in this period of tribulations and dangers." According to the writer of the report, "[i]t soon became apparent that the laws and regulations of the former Lithuanian Republic, from both the perspective of content and legal procedures, were inapplicable in the special conditions in the Kovno Ghetto. The judges therefore made basic decisions that had the force of law."¹³ This need to make special rulings arose following the huge *Aktion* of October 1941, in which ten thousand Jews out of the almost thirty thousand living in the Kovno Ghetto were murdered, and as per the instructions of the German urban administration, their property was transferred to the Council of Elders. The Council decided to recognize the relatives' right of inheritance, but the court, in a plenary session, defined heirs as the closest relatives only. The writer of the report also referred to the *Halacha*, noting that "[a]lthough the *Halacha* makes no reference to a missing wife ... the court, in a later ruling, in practice included a wife as one of the closest relatives."¹⁴

I. SILENCE IN MATTERS OF A LIFE FOR A LIFE

In contrast to what has been described so far regarding the degree of practical involvement of Jewish law in various spheres of life, there is deafening silence on the issue of weighing one life against another. Rabbi Huberband's work describes numerous cases dealing with this issue, but there is no hint of any *halachic* reference, either direct or indirect, to the issue. The truth of the matter is that whenever a Jew ventured out onto the street or undertook any activity, he was confronted with the question of the limits of the obligation to save life. I will quote just a short paragraph from Ringelblum's diary, dated April 26, 1941, though there were innumerable similar cases:

The death rate among the Jewish population is phenomenally high. It has risen from about 150 a week to between 500 and 600. People are dying in the streets. When a mother was asked why she was in the street with her children, she replied that she did not want to die in the house, but in the street. Vast numbers of people faint on the street ... even if you can ignore someone crying out for food, you are still

¹³ *Id.*

¹⁴ *Id.* at 479.

stopped by someone fainting in front of you; generally you give them a cup of tea, or some bread, ...¹⁵

The question arises as to the nature of the *halachic* obligation to save life that is incumbent upon someone who has or can obtain food. Is he obliged to share his bread with someone who is dying; or should the rule be interpreted to mean that one's own life takes precedence; or is one permitted, but not obliged, to save another out of piety? On the assumption that someone who shares his food or water with another will not die, but is exposing himself to the risk of suffering from hunger in due course, how much food may he hold back for himself? Enough for a day? A week? A month? A year? Does the rescuer have more of a duty towards some people than to others, for instance, towards his wife, parents, or children? If he has enough food to save one person, but there are two or more people in danger, whom must he choose? A member of his family, according to some given hierarchy? Or must he choose a person with a special quality, such as a scholar or the person who can contribute most to society? Assuming that the rescuer did not actually have food in his possession, but could smuggle some from the Aryan side due to his skills as a smuggler or his Aryan appearance, was he obliged to risk his life to save others, in general, or certain individuals, in particular?

II. TALMUDIC SOURCES CONCERNING THE DUTY TO RESCUE

The Polish rabbis had ample legal sources available to enable them to deal extensively with the above questions. I will present a number of sources, ranging from the *Talmud* to the writings of Polish scholars who lived at the beginning of the twentieth century.

The question of saving a life is discussed in two main *talmudic* sources. One focuses on the fundamental obligation under Jewish law to save life and the extent of effort and resources that one must invest to do so.¹⁶ The second source discusses the special circumstances in which saving someone's life would require the rescuer to sacrifice his own life, illustrated by the example of two people stranded in a desert. The *Talmud* does not directly discuss the matter of risking one's own life to save another, which falls somewhere between the obligation to save someone when there is no danger to the

15 I Ringelblum, *supra* note 4, at 274 (author's translation).

16 Aaron Kirschenbaum, *The "Good Samaritan" and Jewish Law*, 7 Dine Israel 7 (1976).

rescuer and out-and-out self-sacrifice. Later *talmudic* commentators tried to draw conclusions with regard to the question of risking one's own life to save another by various methods of interpreting the relevant texts in the *Talmud*. Many sages throughout the generations invested a great deal of intellectual effort into this matter, but all stopped short of clear-cut solutions.

The second textual source in the *Talmud* on this matter is as follows:

Two people are in a desert, and only one of them has [a jug] of water. If he drinks it all, he will reach the next village, and if the two of them share it, they will both die. Ben Petura ruled that they should both drink, as it says, "And your brother shall live with you." Rabbi Akiva said to him that this quotation means that your own life comes first.¹⁷

Ben Petura makes rather far-reaching demands of the person with the water, i.e., to sacrifice his life. Another source gives the following reason: "so that he shall not witness his brother's death." Ben Petura's view and its decisiveness surprised legal sages and learned scholars, who asked, "Why should two people die instead of one?" One interesting line of reasoning is that of Professor Aaron Anker, who suggests that the case described took place under special circumstances in which the two were setting out together on a shared mission and were dependent on one another.¹⁸ Thus, an especially strong, exceptional obligation applies: neither can save his own life by drinking all the water and leaving the other to die of thirst. Others have offered the explanation that the circumstances of the case in point are such that there is an element of doubt regarding the risk of dying if the two share the water. Yet others considered that the short time left to live for someone who has only half a jug of water to drink is a factor important enough to justify the self-sacrifice. In any event, it is clear that according to Ben Petura, there is an obligation to risk one's own life in order to save the life of another. As the law follows the ruling of Rabbi Akiva and not that of Ben Petura, it is the viewpoint of the former that has drawn the attention of most legal adjudicators. The question was whether Rabbi Akiva's view was diametrically opposed to Ben Petura's, so that not only would it be forbidden to sacrifice oneself, but even to only place at risk one's own life. Or perhaps their views may not have been polar opposites, so that whereas Ben Petura held that there is an obligation to sacrifice oneself, Rabbi Akiva's view was that while there is no such obligation, there is an obligation to risk one's life. Essentially, it is not

17 Babylonian *Talmud*, *Baba Metziah* 60:1; *Torat Cohanim, Behar* 9, § 5.

18 Aaron N. Enker, *Duress and Necessity in the Criminal Law* 190 (1977) (Hebrew).

possible to decide in favor of either one of the interpretations, and it is difficult to draw a definite conclusion regarding this case.

Similar questions have arisen in various cultures, both ancient and modern. The tenth-century Arab philosopher Abu Bachar al Ra'azi discussed this question, but took a different approach: when two people find themselves in a desert and one has enough water to save only himself and not the other, the water should be given to the person who is of greater benefit to mankind.¹⁹ The value of the endangered person is a major consideration for the Arab scholar but not for the *talmudic* sages, for whom all people are equal in the matter of saving life. The crucial question is the extent of the obligation to sacrifice oneself to save another.

An earlier philosopher who dealt with a similar but not identical issue was Hecaton, who wrote, "What would two people do if their boat sank and they were both clinging to the same piece of wood, and they were both wise men?"²⁰ Hecaton's answer was that the one whose life was of lesser value, either intrinsically or to the State, must sacrifice his life for the sake of the other. The circumstances of this case are different, as the instrument of rescue is in their joint possession, i.e., they are both holding on to the piece of wood, and neither has a superior claim to the wood. This contrasts with the case of the two people stranded in the desert. When the instrument of rescue is in the possession of one of the two whose lives are at risk, even Hecaton determined that there was no right to take it from him, whatever the value of the other endangered person. Only when the instrument of rescue is in their joint possession does their relative merit become relevant.

Thus, two Jewish sages, a Greek philosopher, and an Arab philosopher all discuss the same issue but come to different conclusions due to their differing approaches with regard to the "value" of a person's life. The Jewish sages consider all people as equals in value and merit and give no consideration to personal qualities or functions people serve; the disagreement between them relates to the extent to which one is obliged to identify with the other and support him when he is in mortal danger. The Arab philosopher accords decisive importance to the relative value and merit of a given life and justifies taking the instrument of rescue from one person and giving it to the other one if the latter is of higher merit. Hecaton adopts an intermediate stance regarding the weight to be afforded to a person's character and value. If the instrument of rescue is in the sole possession of one of the people at

19 Shlomo Pines, *Studies in the History of Jewish Philosophy — The Transmission of Texts and Ideas 9-11* (1977) (Hebrew).

20 *Id.* (author's translation).

risk, then the higher merit of the other is irrelevant to the issue. If they are both holding the instrument of rescue, then the person of higher value is to be given preference.

III. THE DUTY TO RESCUE IN LATE MEDIEVAL SOURCES

The first sage known to have dealt directly with the issue of the obligation to endanger oneself to save another was Rabbi Meir HaCohen, who lived in Germany at the end of the thirteenth century.²¹ During this period, the anti-Jewish riots known as *Rhinefleisch* began, culminating in the destruction of the Jewish communities in Germany during the Black Plague.²² In his commentary on Maimonides' most influential code, *Mishneh Torah*, Rabbi HaCohen referred to the law that makes it obligatory to save life and added, "The *Yerushalmi* [Palestinian *Talmud*] deduces that [a person] is even obliged to put himself in a position where he may be in danger." The Palestinian *Talmud* was compiled in the land of Israel during the same period as the Babylonian *Talmud*, but is considered a lesser authority in legal matters. The Palestinian *Talmud* is, nonetheless, considered to be of great importance regarding situations that are not discussed in the Babylonian *Talmud*. Rabbi HaCohen did not indicate the exact source in the Palestinian *Talmud* from which he was quoting. Later rabbinical scholars tried to locate this source, some because they wanted to discover the basis for the law, and others because they wished to interpret it differently and, thus, contradict Rabbi HaCohen's standpoint.²³ Rabbi HaCohen regarded his source in the Palestinian *Talmud* as binding with regard to the duty to risk one's own life to save another, since nothing could be derived from the Babylonian *Talmud* on this matter.

Rabbi HaCohen's rule is quoted in several of Rabbi Joseph Karo's writings. Rabbi Karo was the last great codifier of Jewish law.²⁴ He was of Spanish origin, but settled and worked in Israel in the middle of the sixteenth century. Initially, in his commentary to Maimonides' code *Kesef Mishneh*, he quoted Rabbi HaCohen's ruling without adding any further comment. In *Beit Yosef*, his commentary to another code of Jewish law known as *Sefer Haturim*, which was compiled in Spain in the fourteenth century, Rabbi

21 7 Encyclopaedia Judaica 1110 (1972).

22 4 *id.* 1063-68.

23 Kirschenbaum, *supra* note 16, at 46-49.

24 Elon, *supra* note 1, at 1310-11, 1319-27.

Karo quoted Rabbi HaCohen's rule and added the explanation that "[t]he reason [underlying Rabbi HaCohen's rule] seems to be that the one [man] is certain [i.e., that the person in danger will die if unassisted], whereas the other [man] is in doubt [i.e., with regard to the element of danger entailed in the rescue attempt], and whoever saves one life, it is as if he has saved the whole world."²⁵

Rabbi Karo based his ruling that one must risk one's own life to save someone else on logical reasoning, and he, too, did not quote directly from the Babylonian *Talmud*. He argued that saving one life was equivalent to saving the whole world, and he thus deduced that it is justified to require someone to endanger his own life in order to prevent the certain loss of another life. This claim would be fine if a third party were asked to determine the allocation of the resources needed for the rescue of two people in peril, whether to assign them to the person who will certainly die if no assistance is rendered or to the one who would possibly perish if unassisted. In the case under consideration, however, it is the rescuer who is expected to place himself at risk to save another and to put his own interest aside. In such an instance, can one not take the rescuer's well-being into account in considering the duty to undertake the rescue?

In the *Shulchan Aruch*, the code compiled by Rabbi Karo, he presents only the basic obligation to save someone in danger, but does not quote the law imposing the same duty even when the rescuer himself would be placed at risk.²⁶ Some took the fact that Rabbi Karo omitted this law from his comprehensive code to mean that he did not accept Rabbi HaCohen's ruling requiring a person to place himself at risk in order to save another. This is not a convincing and decisive argument. In his code, Rabbi Karo cited mainly laws referred to by Maimonides; sometimes Rabbi Karo also included new rulings of Rabbi Asher and, rarely, those of other sages. Nevertheless, he never contested the validity of rulings that he had omitted for editorial reasons. My conclusion is that Rabbi Karo was of the opinion that there is an obligation to put oneself at risk in order to save the life of another.

Rabbi David Ben Zimra,²⁷ a contemporary of Rabbi Karo's who also was born in Spain and who worked in Egypt and Israel, discussed in greater depth the matter of a person's duty to place himself at risk in order to save another. We have two *responsa* that he wrote on the subject, one printed in Livorno,

25 *Beit Yosef, Hoshen Mishpat* 426.

26 *Shulchan Aruch, Hoshen Mishpat* 426.

27 See Israel M. Goldman, *The Life and Times of Rabbi David Ibn Zimra* 1-16 (1970).

Italy, in 1815, and the other in Venice, in 1749.²⁸ The publication dates of the *responsa* play an important role in the later development of Jewish law.

In the later *responsum*, the questioner asked for an explanation of Maimonides' repetition in the section dealing with the obligation to save life. Rabbi Ben Zimra answered that in the first reference, Maimonides was determining the basic requirement to save life, whereas the second reference extended the duty to situations in which the act of rescue presents a danger to the rescuer. Rabbi Ben Zimra wrote:

Even if there is a slight doubt as to the danger, such as he [the rescuer] saw someone drowning in the sea or being attacked by robbers or by a wild beast, in all of which [circumstances] there is some doubt as to the danger [posed to him], yet he must save him [the other person] ... But to save a life ... even when there is doubt as to the danger [to the rescuer's life], he [the rescuer] must rescue him [the imperiled person], and this appears in the *Yerushalmi* [Palestinian *Talmud*].²⁹

Rabbi Ben Zimra states here, very clearly and unambiguously, that one has to put oneself in danger to save another's life. This is the conclusion drawn from his interpretation of several examples that Maimonides used to illustrate the obligation to save a life even in situations that, in addition to the fundamental duty to save life, generally entail danger. And indeed, there is a considerable element of danger in most of the examples, such as saving someone from drowning or rescuing someone who is being attacked by robbers. The fact that Rabbi Ben Zimra relies on the Palestinian *Talmud* is noteworthy, and it may be assumed that he was referring to the same source to which Rabbi HaCohen referred in his essay on Maimonides first printed in 1509. Rabbi Ben Zimra and Rabbi Karo both based their arguments on the Palestinian *Talmud* source mentioned by Rabbi HaCohen, and both apparently concurred with his views.

We now need to clarify the words "a slight doubt as to the danger" in order to both ascertain the limits of the obligation according to Rabbi Ben Zimra and determine whether his view in fact differs from others presented below. Rabbi Ben Zimra himself addressed this question when he tried to quantify the extent of the danger. He wrote:

In any case, if the doubt tends towards certainty, he [the rescuer] does not need to sacrifice himself to save his fellow Jew, and even when there is significant doubt, he does not need to do so, for who said that

²⁸ Boaz Cohen, *Kuntres H'teshuvot* 47 (1930) (Hebrew).

²⁹ 5 *Res. Radbaz* 1582.

your fellow's blood is redder? Perhaps your blood is redder. But if the doubt is not significant, but tends towards rescue and he did not endanger himself and did not save the person, he has transgressed the commandment "Do not stand idly by the blood of your neighbor."³⁰

Here, Rabbi Ben Zimra distinguishes between three levels of risk at which the rescuer may find himself: 1) a situation in which death is almost certain; 2) a situation in which there is a high probability of the rescue attempt succeeding; and 3) a situation in which the chances of survival are equal to the chances of dying in the rescue attempt. The obligation to take the risk to try to save someone who would otherwise face certain death is imposed only in a case where the rescuer's chances of survival are greater than fifty percent. If in the first danger category above, Rabbi Ben Zimra meant that the risk of death to the rescuer was more than fifty percent and, in the second category, he meant that the risk was less than fifty percent, then his *responsum* imposes a greater obligation to undertake the rescue. To clarify this point, I will draw on a particular instance that I came across when first researching this subject twenty-six years ago. The mortal danger facing a soldier on the battlefield under artillery attack is less than twenty percent, and apparently, in all the battles in all the wars in which Israel has been involved, the risk has been below fifty percent. Note the argument that Rabbi Ben Zimra used in deciding that when there is high risk, there is no requirement to attempt a rescue — "for did you see that your blood is redder?" This argument is based on the discussion in the *Talmud* of a person who is threatened with being killed if he does not kill another person.³¹ The *Talmud* rules that the person under threat must sacrifice himself rather than kill the other person, on the grounds that the blood of his fellow is no less red than his own, and he may not kill him in order to save himself. This reasoning is used by Rabbi Ben Zimra in the context of saving a life and is relevant here, too, in that the rescuer is not asked to sacrifice himself. Rabbi Ben Zimra considers undertaking a high-risk rescue to be self-sacrifice — the endangered person's blood being no less red than that of the rescuer.

This viewpoint of Rabbi Ben Zimra, however, stands in contradiction to the one he adopted in another *responsum* regarding the issue of saving life, where he wrote: "And if there is doubt regarding whether there is mortal danger, the rescuer is foolishly pious, as the doubt is preferable to certain death."³² This second *responsum* was summarized in a useful and widely-

30 *Id.*

31 Babylonian *Talmud*, *Sanhedrin* 72:1.

32 2 *Res. Radbaz* 1052.

distributed digest called *Pitchei Teshuva*,³³ compiled at the beginning of the nineteenth century, and has come to the attention of a great many legal experts. The first *responsum* of Rabbi Ben Zimra mentioned above, in which he took the view that there is a duty to endanger oneself, is not quoted in the digest and did not reach the general public. This may be because this *responsum* was published only in 1815, whereas the other one was published (i.e., printed) as early as 1749 and, hence, reached the attention of the author of the digest. This fact has implications regarding the continued development of Jewish law, but what interests us at this stage of our discussion is whether the discrepancy between the two *responsa* can be reconciled. To do so, we must first examine Rabbi Ben Zimra's second *responsum* in which he ruled that it is forbidden to endanger oneself in attempting to save a life. The *responsum* was in answer to a request that Rabbi Ben Zimra respond to an issue that had arisen in *halachic* literature several generations previously and had been discussed by an Italian sage, Rabbi Menachem Recanati.³⁴ The scenario was as follows. A non-Jewish ruler presented a Jew with the following choice. He would either cut off one of the Jew's limbs or non-vital organs, so that the Jew would not die as a result, or he would kill another Jew. The question was whether the Jew had to sacrifice one of his limbs or organs to save another person from death. The sage who first asked this question wrote that there are some who hold that the Jew must make such a sacrifice to save another's life. Yet Rabbi Ben Zimra did not accept this view, claiming that there is no legal requirement to sacrifice a limb in order to save someone else's life, and such an altruistic act can be justified only on grounds of piety. He gave several reasons for rejecting the opinion that obliges one to make the sacrifice, the last being especially interesting:

As it is written, your ways are ways of pleasantness, and the judgments of our *Torah* must be sensible and reasonable, and how could we envisage someone agreeing to be blinded in the eye or having a hand or foot cut off so that they [others] should not kill his fellow. Therefore, I see no reason for this law other than piety, and happy is he that can face up to this. And if he may be placing himself in mortal danger, he is foolishly pious.³⁵

Rabbi Ben Zimra based his conclusion on reason and logical argument, using them to reject the viewpoint of Rabbi Recanati. At the same time, he

33 See Elon, *supra* note 1, at 1441-42.

34 *Sefer Recanati* ¶ 470.

35 *Res. Radbaz*, *supra* note 32.

did not forbid anyone from making the sacrifice out of considerations of piety, and he thereby added another dimension to the question. No longer is this regarded as a choice between an obligation and a prohibition; rather, an intermediate level of piety allows the individual freedom of choice in the matter, and he is considered praiseworthy if he opts to follow the course of rescue.

Only towards the end of his *responsum* does Rabbi Ben Zimra refer to a situation in which the sacrifice of an organ may endanger the victim's life; in such circumstances, he forbids such a step to save someone else, and anyone who thus acts is considered foolishly pious. Nevertheless, this ruling should not be divorced from the special circumstances of the case and his basic principal that there is no duty to volunteer sacrificing a limb to save someone in danger, even though it would be considered pious to do so. But if the sacrifice involves mortal danger, the rescue is forbidden, as a person may not risk his life without very special reason. On the other hand, where the basic obligation to save a life exists, for example, where the rescuer does not need to sacrifice a limb, the duty is binding, even if the rescuer endangers himself in the process. Thus, the two *responsa* of Rabbi Ben Zimra are consistent and can stand side by side, and the obligation to endanger oneself to save a life exists.

Rabbi Shmuel di Medina, another sage of Spanish origin who resided and worked in the Ottoman Empire during the sixteenth century, adopted the approach of Rabbi Karo and Rabbi Ben Zimra. In one of his *responsa*,³⁶ he relates to the duties placed on a would-be rescuer and, basing himself on the Palestinian *Talmud*, also states that there is an obligation to endanger oneself to save a life. It may, therefore, be claimed that three of the most prominent *halachic* sages of the Ottoman Empire during the mid-sixteenth century quoted and agreed with the Palestinian *Talmud* text that states that there is an obligation to endanger oneself to save another person's life, and they apparently ruled accordingly.

IV. THE DUTY TO RESCUE IN THE RULINGS OF THE POLISH SAGES

The Polish sages adopted a different approach. Around the year 1600, Rabbi Falk HaCohen of Krakow³⁷ took the view that Jewish law did not impose such an obligation. In his commentary to Rabbi Karo's *halachic* code, the *Shulchan*

³⁶ *Res. Rashdam, Yoreh De'ah* 204.

³⁷ See *Elon, supra* note 1, at 1303-04.

Aruch, he wrote that the author ignored the ruling in the Palestinian *Talmud* because the leading *halachic* adjudicators — Maimonides, Rabbi Yitzchak Alfassi, and Rabbi Asher — also ignored it. Rabbi Falk HaCohen thought that the law did not follow the dictates of the Palestinian *Talmud* and that there was no requirement to risk one's own life to save that of someone else. His commentary became one of the pillars of Jewish law in Poland and greatly influenced later rabbinical rulings. Another Polish sage of the same period, Rabbi Joel Sirkes of Krakow, discussed the issue in his commentary to the code *Sefer Haturim*.³⁸ *Sefer Haturim* refers twice to the basic ruling of the fundamental duty to save a life. In the first reference, the code writes simply, "He who sees someone drowning in a river ... is obliged to save him, either personally, or with money." In his second reference to this issue, he cites the law from Maimonides' *Mishneh Torah* as follows: "And the *Rambam* [Maimonides] wrote that someone who sees another person drowning ... and is *able* to save him is obliged to save him." In the view of Rabbi Sirkes, Maimonides held that the duty to save someone applies only in a case where the rescuer can save the other person and "there is no doubt that he can carry out the rescue, but he is not obliged to put himself into a possibly dangerous situation to save him." Thus, the double reference to this issue in *Sefer Haturim* is, in fact, the presentation of two opposing views — the one, that there is an obligation to endanger one's own life to save that of another and, the second, that no such obligation exists. Rabbi Sirkes ends with Rabbi Meir HaCohen's quotation from the Palestinian *Talmud* indicating that such an obligation does indeed exist. It is difficult to conclude what Rabbi Sirkes' own view was. My impression is that he opposed the ruling that one is obliged to risk one's life to save someone else's life.

The first comprehensive discussion of the issue of risking one's life to save the life of another appears in the *responsum* of a Polish sage from the second half of the seventeenth century, Rabbi Eliahu of Lublin. He presents the question as follows:

Is someone obliged to put himself in mortal danger to save another who is definitely in mortal danger, or is he not obliged to do so but permitted to do so out of piety or out of love for the endangered person, or is he not allowed to risk his own life at all to save another?³⁹

The question is clear: how should a person act in a situation in which in order to save a life, he risks his own life? Is he *obliged* to try to save the

³⁸ *Bait Chadash, Choshen Mishpat* 426:2.

³⁹ *Res. Yad Eliahu from Lublin* 43.

other person, is he *forbidden* to do so, or is he *allowed* to do so? The sage introduces a new factor right at the outset of the discussion, a factor that did not appear in previous discussions of this issue — the "personal merit" of the rescuer as compared with that of the person in danger. Consideration of the merit of the endangered person is mentioned in *halachic* sources in the context of situations where the rescuer is an external factor, outside the area of risk,⁴⁰ but it does not appear in the sources that discuss the question of the rescuer endangering himself to save another. Rabbi Eliahu's position regarding a situation in which the rescuer and the person in danger are of equal merit is very definite: there is no obligation or even authorization for the rescuer to endanger himself; indeed, he is forbidden to do so. However, in a case where there is a qualitative difference between the two in favor of the endangered person, then the rescuer is allowed to place himself at risk to carry out the rescue, and it is even considered a good deed (*mitzvah*), though not an obligation, to do so. This leads to the conclusion that if someone has to save one of two endangered people, one who would definitely die if unassisted and one who might not (i.e., there is doubt as to the extent of the risk the latter faces), the rescuer would have to save the person who would definitely die if unassisted. If the person exposed to a lesser degree of danger is a scholar (*talmid chaham*) and the other is not, then the scholar takes precedence, even though there is doubt as to whether he would die if not assisted and the non-scholar would definitely perish.

What accords one person higher value than another in order to justify the latter risking his life to save the former? Rabbi Eliahu was absolute in his opinion that only one characteristic imparts such higher value, namely, scholarliness. Clearly, this rule has no actual base in *talmudic* sources and can be refuted easily, especially in a legal system as highly formalistic as Jewish law. As shown below, later sages absolutely and sharply rejected this view, considering it devoid of all substance. In any event, Rabbi Eliahu's view reflects the order of values of Polish Jewry, which gave the highest value to the study of the *Torah* so that the scholar, the *talmid chaham*, stood at the top of the social ladder.

The introduction of personal merit as an element to be considered in a situation where life is at risk was previously unknown in Jewish law and later became the target of harsh criticism. Other legal and philosophical systems did, in fact, consider personal merit to be a factor in situations of rescue or choosing between one life and another.⁴¹

40 Babylonian *Talmud*, *Horayot* 13:1.

41 Thus, for example, Greek philosophers discussed circumstances similar to the instance mentioned at the beginning of this article — two people stranded in a

Rabbi Eliahu's *responsum* is outstanding in terms of the depth of its analysis and in its incorporation of numerous and varied sources, both direct and indirect, from the *Talmud* and the later *halachic* adjudicators. It seems that sages in later periods could find only a few new sources on this issue and mainly gave their own interpretations of the sources cited by Rabbi Eliahu. Rabbi Ben Petura's treatment of the instance of two people stranded in a desert is noteworthy: he set a limit to the obligation to save someone, ruling that there was an obligation to sacrifice one's life to do so. Although Ben Petura's view was eventually rejected, ruling as he did posed an obstacle: for if Ben Petura took the view that there is a duty to sacrifice one's life, then the words of Rabbi Akiva, who disagreed with him, could be interpreted as forbidding the *sacrificing* of one's life, but not forbidding the *risking* of one's life to save another. This was the conclusion reached by Rabbi Yair Bacharach, a German contemporary of Rabbi Eliahu, who wrote that there is a requirement to risk one's own life to save someone else.⁴² Rabbi Eliahu therefore presented the case of two people stranded in a desert, where death is not certain, and in these circumstances, Rabbi Akiva and Ben Petura disagree. Rabbi Akiva's view, accepted as the prevailing law, is that one does not have an obligation to risk one's life to save another, whether or not the other will definitely die.

It is not known whether the great interest of Rabbi Eliahu in the issue of saving lives was related to the fact that he lived during the period following the destruction and massacre of Jewish communities in Poland between 1648 and 1649 in the wake of the Bogdan Chmielnicki uprising in Eastern Poland.⁴³ There is no doubt that during this period, there were more than just a few instances of danger and rescue to arouse the interest of *halachic* scholars. Rabbi Eliahu's discussion took place many years after the destruction and massacre in Poland, and it prompts the thought that perhaps Jewish law plays a role in these matters only in retrospect and not during the transpiring of the actual events.

The opinion of Rabbi Eliahu, who forbade risking one's life to save another, was the one most widely accepted by the Polish sages. However, there were some, such as Rabbi Naphtali Zvi of Veloczyn⁴⁴ and Rabbi Moshe Feinstein⁴⁵ (who wrote in Eastern Europe before the Holocaust and later

desert. As noted, Hecaton considered the person who was more useful to the State of higher quality

42 *Res. Chavot Yair* 146.

43 5 Encyclopaedia Judaica, *supra* note 21, at 480-83.

44 4 *id.* at 660-62.

45 6 *id.* at 1213.

became a leading rabbinical authority in the US), who took an intermediate path. While they did not impose the obligation to risk one's own life to save another, they also did not forbid it. They viewed it as a commendable, pious act. Rabbi Weinberg from Lithuania and Germany, a Holocaust survivor himself, held that one is permitted to sacrifice one's life for another, not far removed from Ben Petura's view that one is only permitted and not obliged to sacrifice one's own life.

The new element introduced by Rabbi Eliahu of classifying people according to value and giving the highest priority to the *talmid chaham* in the matter of saving a life was not generally accepted. The founder of the *Gur chassidic* sect, Rabbi Yitzchak Meir Alter, ruled very clearly that a *talmid chaham* has no priority over a lay person in the case of saving a life. Rabbi Moshe Feinstein also expressed strong reservations regarding the claim that one person should be given preference over another on the grounds of value. Some gave importance to subjective factors of quality such as family ties or deep friendship between the rescuer and the endangered person. The issue was summarized by Rabbi Epstein⁴⁶ at the end of the nineteenth century in Eastern Europe in his compilation *Aruch Hashulchan*. After discussing the question of the duty to endanger oneself, he concludes, "And yet it all goes according to the individual instance, and the matter must be weighed up on a scale, and anyone who saves one Jewish life, it is as if he had saved the whole world."⁴⁷

V. COLLABORATION IN TALMUDIC SOURCES

As opposed to the subject of endangering oneself to rescue another, on the issue of sacrificing one person to save another, the rabbis had available detailed sources from the *Talmud*. The Babylonian *Talmud* describes the following case:

A person came before Rava and said, "The head of a gang, called *Meri Durai*, ordered me to kill someone, or he would kill me." Rava answered him, "Then they should kill you, and you should not kill. Who said that your blood is redder? Perhaps your fellow's blood is redder."⁴⁸

46 On Rabbi Epstein, see Elon, *supra* note 1, at 1448-50.

47 *Aruch Hashulchan*, *Hoshen Mishpat* 426:4.

48 Babylonian *Talmud*, *Sanhedrin* 72:1.

This law is clear and unambiguous: all men are equal, and one is strictly forbidden to kill someone else to save one's own life. This is a relatively simple case compared to the following situation mentioned in the Palestinian *Talmud*:

A group of people were walking along, and non-Jews met them and said, "Hand over one of your group and we will kill him, or else we will kill all of you." Even if they will all be killed, they shall not hand over a single Jew. They shall hand over only someone like Sheva Ben Bichri.⁴⁹ Rabbi Shimon Ben Lakish said, "And he should be deserving of death like Sheva Ben Bichri," and Rabbi Yohanan said, "Even if he is not deserving of death as Sheva Ben Bichri was."⁵⁰

It is forbidden to hand someone over if a general demand is made, even if at the cost of death to the entire group. Only if one particular, identified person is demanded, may someone be handed over. The sages differ, however, on the question of whether it is sufficient for a particular person to be singled out or if there is an additional requirement that the person should be deserving of death. It should be noted that those demanding that someone be handed over do not represent a legitimate authority, but a group that happened along the way, possibly a gang. Nor is it clear under which law the wanted person is deserving of death — under Jewish law or the law of those making the demand. This section in the *Talmud* continues with another case, in which the demand to hand someone over comes from the authorities and not a gang.

Ula Bar Koshav was wanted by the authorities. He fled to Lydda, to Rabbi Yehoshua Ben Levy. Soldiers came and surrounded the town and said, "If you do not give us Ula, we will destroy the whole town." Rabbi Yehoshua turned to him and persuaded him to give himself up. Elijah [the Prophet] said to him, "This is the law of the pious?"⁵¹

Here it is the official authority that is demanding that someone be handed over. The request existed even before the wanted person reached the community, and in effect, he arrived as a fugitive from the law. Apparently,

49 Sheva Ben Bichri was a Biblical figure who rebelled against King David. 2 *Samuel* 20:1.

50 Palestinian *Talmud*, *Terumoth* 8:10. For a comprehensive discussion of the issue of cooperation with an evil regime, see David Daube, *Collaboration with Tyranny in Rabbinic Law* 1-104 (1965).

51 *Id.*

his crime was against the Roman authorities then governing the country and was not in breach of Jewish law. Rabbi Yehoshua Ben Levy persuaded the fugitive to hand himself over, and according to the *Talmud*, he acted in accordance with the regular law, but contrary to the law of piety.

In his code, Maimonides quoted the case of a group of non-Jews and ruled according to Rabbi Shimon Ben Lakish, who had set two preconditions to handing over the wanted person: that he be singled out by those making the demand and that he be deserving of death. Nevertheless, Maimonides stressed that these requirements were only according to regular law and not according to the law of piety.

VI. EXTRADITION AND COLLABORATION IN POLISH RABBINICAL LAW

In his glossary of the code *Shulchan Aruch*, Moshe Isserlish, considered the leading authority on Polish Jewry,⁵² added the case from the Palestinian *Talmud*.⁵³ He presented the conflicting views of Rabbi Shimon Ben Lakish and Rabbi Yohanan, without expressly deciding in favor of either.⁵⁴ Later Polish sages took his view to be consistent with that of Maimonides, who ruled according to Rabbi Shimon Ben Lakish. A generation later, Rabbi Joel Sirkes followed this position and also adopted the strict approach of Maimonides. In his well-known book *Bait Chadash*, he determined the following principles. 1) If the wanted person is deserving of death under the law of the *Torah*, like Sheva Ben Bichri, he should be handed over. 2) If the wanted person must be punished by death according to the laws of the non-Jews but not according to Jewish law, he may be handed over, but that is not the way of the pious. 3) If the wanted person is deserving of death according to the laws of the non-Jews only (not according to Jewish law), but it is uncertain whether those demanding his surrender will kill him, then he may be handed over even according to the way of the pious. In all other events, Rabbi Sirkes emphasized, it is forbidden to hand someone over whether there is mortal danger, danger of great suffering, or danger of financial loss.⁵⁵ A generation afterwards, in the middle of the seventeenth century, Rabbi David Halevy, a leading Polish *halachic* scholar, took a similar position and ruled according to Maimonides.⁵⁶

52 Elon, *supra* note 1, at 1349-66.

53 See text at *supra* note 50.

54 *Yoreh De'ah* 157:1.

55 *Bait Chadash*, *Tur Yoreh De'ah* 157:4.

56 *Turei Zahav*, *Shulchan Aruch*, *Yoreh De'ah* 157:7.

These questions emerged in the sixteenth to eighteenth centuries, when Jewish legal and political autonomy in Poland was at its peak and the legal system governing the Jews throughout the vast Polish kingdom was Jewish law. A typical case is one in which a Jew committed an offense in the eyes of the Polish authorities, and they demanded that he be handed over to them. If he was not handed over, they dealt harshly with the entire Jewish community, especially its leaders. One group of offenses consisted of criminal acts such as theft or forgery, which were viewed in a negative light by Jews and as deserving of censure and even punishment. A second group of offenses was related to conversion. The non-Jewish authorities claimed that a Jew who had converted to Christianity was forbidden by law to revert to Judaism and thus remained a Christian, and they usually demanded the handing over of converts who wanted to return to Judaism. This situation posed a dilemma for *halachic* experts. On the one hand, they wanted to encourage the convert to return to the Jewish faith. On the other hand, the convert himself was responsible for his situation, having chosen to become a Christian of his own free will, so why risk the lives of others to make it possible for the convert to return to Judaism? In most cases that appeared in Jewish law literature, the *halachic* experts decided to hand such converts over to the authorities.

It is clear from the available sources that the issue of handing over an individual to avoid harm to the general public was a major legal matter. The Polish *halachic* scholars gave their opinions on this matter and adopted variant positions as part of their activity in determining the law for the Jewish communities in Poland. These sources were available to the Polish *halachic* sages of the Holocaust era and were close to their intellectual environment.

One example, of many, is notable: during a certain period, there was close cooperation between the Jewish law courts and the Polish courts, to the extent that they sometimes sat jointly as tribunals and the Jews recognized the Royal Court of Appeal as an appellate court to the Jewish courts. This comes out strongly in the words of Rabbi David Halevy regarding a discussion about handing over a wanted person:

Like one who engages in such activities as forgery or other matters that carry the simple risk that he will be handed over, and it is right to hand him over, even if he has not been identified, as he is like someone persecuting the Jews through his evil deeds, as he engages in crime.⁵⁷

57 *Turei Zahav, Yoreh De'ah* 157:8.

Hence, according to this sage, it is permitted and fitting to hand over someone who engages in crimes against the laws of the State, and it is not necessary to wait for a demand to hand him over, even if the authorities are still unaware of his existence.

VII. COLLABORATION IN THE CONTEXT OF THE HOLOCAUST

Some of the *talmudic* sources have been discussed at length in *halachic* texts and by researchers and were even referred to by the Jerusalem District Court and the Israeli Supreme Court in their judgments in the *Kastner-Gruenwald* matter.⁵⁸ The President of the Jerusalem District Court, Judge Halevy, was of the opinion that Kastner had acted contrary to Jewish law by not informing the Hungarian Jews of the danger of annihilation that they faced, in exchange for which, the Nazis allowed him to save a few hundred privileged Jews.⁵⁹ Judge Halevy quoted the rule of Rava⁶⁰ and the case from the Palestinian *Talmud*⁶¹ as relevant sources. He concluded that if it was forbidden to deliver one innocent individual into the hands of murderers to save the majority of the people, how much more so was it forbidden to hand over the majority to save the few. The judge did not give a definite ruling as to whether Kastner had given people up as is demanded in the *halachic* sources. He did state, however, that it was clear to him that the behavior of Kastner "was no different — from a moral, public and even legal point of view — from handing over the majority to their killers."

In the Israeli Supreme Court, Justice Agranat criticized Judge Halevy's application of the Rava rule and the Palestinian *Talmud* case. Agranat argued that it was not at all clear whether the fact that Kastner did not pass on information to the Hungarian Jews about the deportation to Auschwitz should be considered abandoning the majority of those Jews to the Germans to save a minority.⁶² Justice Agranat held that the matter of *Kastner* "is reminiscent to some extent of the *Baraita* [Rabbi Ben Petura's case] of two people in a desert."⁶³ As the law follows Rabbi Akiva's standpoint, Kastner was not obliged, under Jewish law, to sacrifice himself or those whom he might have

58 Cr.C. (Jm.) 124/53, Attorney General v. Gruenwald, 1965 P.M. 3.

59 *Id.* at 112.

60 See text at *supra* note 48.

61 See text at *supra* note 50.

62 Cr.A. 232/55, Attorney General v. Gruenwald, 12 P.D. 2017, 2178.

63 See text at *supra* note 17.

been able to save in order to save the lives of all the Jews of Hungary. In my opinion, the *Kastner* case is situated between the two *talmudic* cases. Ben Petura's case is characterized by the fact that the survivor did not cause the other person's danger; he is not collaborating with a tyrant, and his survival is not related to the harm to the other. In contrast, in the case from the Palestinian *Talmud*, the survival of the one is directly based on harm to the other and is accompanied by direct collaboration with a tyrant. Kastner and his group collaborated with tyranny, and their rescue entailed harm to others, although not directly, as in the Palestinian *Talmud* case.

The *Kastner* case was a complex one, with different interpretations and assessments of the facts and the defendant's actions. Situations more clearly defined than the *Kastner* case of collaboration with tyranny and choosing between life arose in the Polish ghettos during the early years of the War, especially in the context of the demands the Nazis made of Jewish leaders to allocate manpower. Initially, these were allocations for work and then for forced labor under the harshest conditions with very low chances of survival, and finally, they were allocations for deportation to the death camps. No doubt there were innumerable cases such as these, but I have no information regarding the extent to which they gave rise to *halachic* discussion. In a collection of articles published some years ago,⁶⁴ several scholars presented about ten cases in which rabbis and *halachic* experts were involved in discussions about cooperating with the Nazis in organizing some of their *Aktionen*. The findings were based mainly on a study of diaries and essays written after the Holocaust,⁶⁵ including the *responsa* of Rabbi

64 Yosef Nedava, *Problems of Jewish Law in the Ghettos*, in Dapim L'cheker tkufat ha'shoah, Collection 1, at 44, 44-56 (Shlomo Derech et al. eds., 1979) (Hebrew); Meir Eyalli, *One Person for Another in Saving Life, in the Literature of Queries and Responsa in the Time of the Late Commentators and the Holocaust Period*, in Dapim L'cheker tkufat ha'shoah, Collection 3, at 43, 43-59 (Leni Yachil et al. eds., 1984) (Hebrew); Pnina Feig, *Sanctification of the Holy Name, Priorities in Saving Life in the Holocaust*, in 12 Zechor 171, 171-79 (1991) (Hebrew) (documentary file on self-sacrifice in the area of slaughter) (see editorial note at the beginning of the article); Shmuel Shiloh, *Rejecting One Life for Another — Borderline Cases in the Halacha*, in Faith in the Holocaust, A Study of Jewish Religious Significance of the Holocaust 31, 31-36 (1980). See also Dan Machman, *Research into the Lifestyle of the Religious Community under the Nazi Regime*, in The Holocaust in Historiography, Lectures and Discussions at the Fifth International Conference of Holocaust Researchers 605, 605-13 (Y. Guttman & J. Grieff eds., 1987).

65 Isaiah Trunk, *Judenräte — The Jewish Councils in Eastern Europe under Nazi Occupation* 420-36 (1972). It would appear that the author did not go beyond what is cited here from other sources.

Ephraim Oshri of the Kovno Ghetto.⁶⁶ In the great majority of cases, the rulings handed down were not reasoned, and we do not know if the rabbis made such *halachic* rulings or if they acted as public spiritual leaders just expressing their views.

The case of Rabbi Avraham Shapira-Kahana is exceptional. He was the Rabbi of Kovno and a central figure in the rabbinical world of Lithuania and Poland for decades, as well as the highest rabbinical authority of the Kovno Ghetto for the two years he resided there. At the beginning of the German occupation, from June to September 1941, several *Aktionen* were carried out, in the course of which, thousands of Jews were murdered, and unlike in Poland, the murderous nature of the Nazi regime was apparent.⁶⁷ Shortly before the major *Aktion* at the end of October 1941, the Jewish Council (*Judenrat*) was asked to gather all the Jews together in one place, and it was clear to the community leaders that there would be a blood-bath. The issue caused great anguish and turmoil for the Council, and finally, it decided to ask Rabbi Shapira-Kahana for his opinion on what should be done. The venerable Rabbi considered the matter very deeply, and after seventeen hours of intense consideration of all the aspects, he gave his opinion. According to one testimony, this was a ruling forty pages in length.⁶⁸ His opinion was that the *Judenrat* should cooperate with the Germans and gather the Jews together as demanded in order to save part of the Jewish community.⁶⁹ In most other instances in which rabbis expressed their views, they rejected cooperation with the Nazis;⁷⁰ such was the case with the communities of Vilna

66 Rabbi Oshri lived in the Kovno Ghetto and was an unofficial member of the Jewish Council — the *Judenrat*. After the War, between 1959 and 1979, he published in Hebrew queries that he had been asked during the Holocaust under the title *Queries and Responsa from the Depths* in five parts. It seems, however, that he wrote the *responsa* after the War.

67 Tory, *supra* note 10, at 21, gives a chronological list of the events that occurred in the Kovno Ghetto from the invasion of the Germans on June 22, 1941, until the final liquidation on July 11, 1944. According to the list, between June 25, 1941, and July 8, 1941, 6000 Jews were murdered near Kovno.

68 *Id.* at 548 n.5 (regarding the events of October 28, 1941); *cf.* Trunk, *supra* note 65, at 425.

69 Tory, *supra* note 10, at 62-63; 5 Ephraim Oshri, *Queries and Responsa from the Depths* at chap. 1 (1979) (Hebrew).

70 Trunk, *supra* note 65. See also the *responsum* from the Lvov Ghetto in D. Kahana, *Diary of the Lvov Ghetto* 63 (1978) (Hebrew). This diary was written during the Holocaust after the *Aktionen*. The position taken by the rabbis was basically a moral one. In any event, this is a reference to one incident of many. It should be noted that in the Kovno Ghetto, too, there were rabbis who opposed cooperation with the Nazis. *Cf.* Tory, *supra* note 10, at 63.

and Sosnovich, although the Jewish leaders did not, in these two communities, accept the rabbis' opinions. There is no known concrete ruling by any of these rabbis.

In any event, ten cases are a minute amount compared to the thousands of communities in Poland and Eastern Europe and the huge number of Nazi *Aktionen* all across Europe, including in the Kovno Ghetto.⁷¹ Additional information about *halachic* rules may possibly be found in various documents, but further research into such material is beyond the scope of this article. From the diaries of Rabbi Shimon Huberband and Emmanuel Ringelblum, it is clear that in the Warsaw Ghetto, the *halachic* scholars did not adopt a position on this issue. We should recall that Warsaw had the largest Jewish community in Europe, over a third of a million in size, and its numbers swelled during the War with the addition of tens of thousands of refugees from the Polish provinces.

I have mentioned that the *talmudic* sources are referred to in *halachic* research and articles written after the War due to the circumstances of the War period. In my opinion, the *talmudic* sources that were referred to cannot be used as direct legal sources of discussions of events during the Holocaust; but, rather, the rulings and *responsa* given in similar situations by Polish sages must form the basis of such discussions. However, there is still a wide gulf between the realities that were the subject of these legal rulings and the reality of the Holocaust. First, we must stress that the Polish Jews considered the Polish regime to be a legitimate one, and they themselves formed part of the governing and legal system through the autonomy they enjoyed within the Polish regime. Contacts with the Polish authorities were not considered to be cooperating with the enemy, but, rather, part of a proper system of relations between the autonomous Jewish community and a supportive, or at least tolerable, ruler.

Of course, none of this applied in the context of the Holocaust. The Jews,

71 I know of no other reference by Rabbi Shapira-Kahana to the issue of rejecting one life in favor of another, a situation that arose on innumerable occasions. Rabbi Oshri discusses the question of the handing out of craftsmen's passes before the *Aktion* that was expected to take place in September 1941 (Oshri, *supra* note 69). The *responsum* was written after the War, however, while the essays relating to this occurrence do not mention whether people approached the rabbis with this query, although the issue gave rise to bitter disputes. See Tory, *supra* note 10, at 54; Lev Garfunkel, *Jewish Kovno in its Destruction* 64-66 (1959). Rabbi Oshri justifies the step taken, which was, in fact, cooperating with the Nazis (Oshri, *supra* note 69). See the opposing view of Rabbi Yehuda Gershoni, *Faith in the Holocaust — A Study of the Jewish Religious Significance of the Holocaust* 9-17 (1980) (Hebrew).

as well as some other nations, did not consider the Nazi regime a legitimate one. Demands to hand someone over whose only crime was being a Jew could not be considered legitimate requests by a legitimate authority. In most cases, the wanted people were, without a doubt, completely innocent, and none of the justifications given by the Polish sages could put them into the category of the above rulings. At best, these sources could be used as a general and remote guide, but not as direct legal precedent.

CONCLUSION

To summarize, we have scant information on discussions during the Holocaust on the issue of sacrificing one life to save another. I assume that in the majority of instances, there was no reference to *halachic* sources. In some cases, rabbis agreed to cooperate with the Nazis, while in other cases, rabbis rejected collaboration. The Eastern European sages of the Holocaust period could have made use of detailed Polish *halachic* sources on the subject. The only conclusion to be drawn from these sources as such is that it was forbidden to cooperate with the Nazis. Nevertheless, the extreme difference in the circumstances of the Holocaust and those discussed in the *halachic* sources raises the question of whether the sources have any relevance in the context of the Holocaust. In any event, the rabbis in the Holocaust did not develop this issue in any other way.

I do not presume to offer an explanation for the silence of the *halachic* sages with regard to pitting one life against another during the Holocaust period, as I do not have one. Perhaps Jewish law simply turned a blind eye, having no solution to the staggering, incomprehensible phenomenon of an industrial machine created by man for the sole purpose of annihilating another people because they were Jews. The Holocaust was a Singularity, in the physics sense, in the human experience or perhaps a black hole, in the astrophysical sense. In other words, in a situation where laws were no longer effective, even Jewish law stood by on the sidelines and was unable to penetrate and enforce its laws and order.

