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Sanctuary, Civil Disobedience, and Jewish Law

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Abstract Throughout the nation, houses of worship have declared themselves sanctuaries for refugees and asylum-seekers fleeing both repression in their native countries but also Immigration and Customs Enforcement (ICE). Synagogues have joined in this effort, but its basis in Jewish law remains obscure and under-developed. In this Essay, I present a Halachic (Jewish legal) analysis arguing that synagogues must sometimes offer sanctuary but not always. More specifically, I argue: (1) the synagogue is obligated to conceal the asylum-seeker's presence from immigration authorities, whether by hiding her in its building, renting an apartment for her, or providing her with funds to hide from ICE; (2) if returning her to her home country creates a reasonable probability of death, torture, or severe injury; *unless* (3) doing so creates a reasonable probability of death, torture, or severe injury to members of the congregation itself. I conclude that members of a congregation must take these steps even under the threat of imprisonment or financial sanctions. This is severe. It is, however, what Torah demands.

Keywords Halacha, civil disobedience, sanctuary, immigration, Judaism, human rights, Talmud

SANCTUARY IS IN. RELIGIOUS INSTITUTIONS (INCLUDING SOME SYNAGOGUES) around the United States have declared themselves to be “sanctuaries” for immigrants, and have offered help and assistance to immigrants, both authorized and unauthorized,¹ in their struggles with the federal immigration enforcement machinery.²

Yet the Halachic basis for these efforts remains obscure. Are Jews *obliged* to protect immigrants, or are such efforts simply moral choices detached from the law? If there are legal obligations, how far do they go? Which immigrants are covered, and to what extent should synagogues and their members risk their own legal liability for undertaking such actions?

For the last several hundred years, Jewish law has proceeded not through comprehensive treatises or code making, but rather through a process resembling (although not precisely the same as) the common law, namely case-by-case adjudication. Someone has a legal question, and a legal authority writes an opinion known as a *tshuvah*—literally, an answer—in response.³ Like common-law-style adjudication, individual decisions must consider broader issues without foreclosing further development. Halachic evolution in the present will likely take this form as well, as different segments of the Jewish community will adopt different principles over time and new issues arise that will require ongoing adjustment.

It makes sense, then, to put the question of sanctuary in the form of a question asking for a response.

“I know a young woman who was brought illegally by her parents from Honduras to the United States at the age of 3. That made her eligible under the Obama Administration’s ‘Deferred Action for Childhood Arrivals (DACA)’ program for a renewable two-year period of deferred action from deportation and an employment authorization document (work permit) in the U.S.⁴ She is now studying at UCLA and is terrified that when the DACA program ends, as President Trump had declared would happen,⁵ that she will be deported back to Honduras, to where she knows no one, has never been, and which has a series of severe human rights violations. She has asked me whether the synagogue can provide a place for her in the building without telling the Immigration and Customs Enforcement (ICE) about where she is, and if they can refuse to allow ICE agents to enter the building if they receive information that she is there. If this is not possible, she wants to know if members of the congregation can provide refuge, or failing that, can provide her with resources so that she can avoid ICE detection and capture.

“Although immigration is not a criminal matter, it is always a risk for our synagogue to resist legal authorities and I do not know what I should ask of our congregants.

“Question: What is the synagogue’s responsibility under Jewish law to accede to her request?”

My answer, in brief, is this:

1. the synagogue is obligated to conceal the woman’s presence from immigration authorities, whether by hiding her in its building, renting an apartment for her, or providing her with funds to hide from ICE:

2. if returning her to her home country creates a reasonable probability of death, torture, or severe injury; *unless*
3. doing so creates a reasonable probability of death, torture, or severe injury to members of the congregation itself.

I hope that this response will not only answer the specific question presented, but will shed light on more general questions of sanctuary and immigration law, and advance the issues of Jewish civil disobedience in Western democracies more broadly.

I. THE DUTY TO RESCUE

In contrast to Anglo-American law,⁶ Jewish law establishes a strong general Duty to Rescue, which applies for *all* who are in danger, whether Jew or gentile. It derives from the commandment that “you shall not stand by the blood of your neighbor” (Leviticus 19:16).

Maimonides sums up the general position well:

If one person is able to save another and does not save him, he transgresses the commandment *you shall not stand by the blood of your neighbor*. (Leviticus 19:16). Similarly, if one person sees another drowning in the sea, or being attacked by bandits, or being attacked by wild animals, and, although able to rescue him either alone or by hiring others, does not rescue him; or if one hears heathens or informers plotting evil against another or laying a trap for him and does not call it to the other’s attention and let him know; or if one knows that a heathen or a violent person is going to attack another and although able to appease him on behalf of the other and make him change his mind, he does not do so; or if one acts in any similar way - he transgresses in each case the injunction, *you shall not stand by the blood of your neighbor*. . . (ibid.)⁷

Unsurprisingly, the Shulchan Aruch comes close to repeating exactly Rambam’s formulation:

The obligation for a man to save his friend in body, money, or the like. One who saw his fellow drowning, or threatened by thieves or by a wild animal, and could have either saved him himself or hired others to save him—and he did not—or someone who heard that gentiles or informants are plotting against someone or preparing to ensnare him—and he did not reveal this to his friend and tell him—or someone who knew that a gentile or violent man was approaching his fellow, and

he could have appeased him and changed his attitude towards his fellow—and he did not appease him—in all such situations, he has transgressed, “You shall not stand by the blood of your neighbor.”⁸

The Shulchan Aruch’s repetition of Rambam’s holding from the Mishneh Torah is important for our purposes. Later in the Mishneh Torah, Rambam says that the Duty to Rescue is particularly important because “every person who kills a soul from Israel is considered as having destroyed the entire world, and every person who sustains/establishes one soul from Israel is considered as having established the entire world.”⁹ Such an addition would suggest that Rambam’s legal principle applies only to saving Jews. But the addition is not Halacha: it is merely Rambam’s justification for the Halacha. For that reason, the Shulchan Aruch does not repeat it: the Duty to Rescue is general, not restricted to Jews.

This universality makes sense, because the biblical text insists that one attend to the blood of “your neighbor” (*ra-echa*), a term that contains no connotation limiting it to Israel.¹⁰ Were Scripture to focus within Israel, it could use another term—*achicha*, or “your brother”—to express it, as indeed it does in verse 17. Even more importantly, the Mishnah does not state that one who sustains one soul *from Israel* is considered as having established the entire world: instead, it says:

Man was first created as one person [Adam], to teach you that anyone who destroys a life is considered by Scripture to have destroyed an entire world; and anyone who saves a life is as if he saved an entire world.” And also, to promote peace among the creations, that no man would say to his friend, “My ancestors are greater than yours.”¹¹

Indeed, the Mishnah goes out of its way to emphasize that someone who saves one life—Jewish or not—is considered as if she has saved the whole world.¹² The very source that Rambam uses to demonstrate particularity in fact demonstrates universality.

Some Orthodox commentators have been more circumspect about the meaning of *ra-echa*, insisting that it is indeed restricted to Jews.¹³ But these opinions reveal that when it comes to the Duty to Rescue, the case for universality is even stronger. Consider the opinion from Chabad Rabbi Yitzchak Ginsbergh, who denied that Leviticus 19:18, “you shall love your neighbor as yourself,” applies to non-Jews:

The Jew is commanded to respect all human beings. ***The Torah prohibits any negative behavior toward a non-Jew***, so long as he is not an enemy. He is instructed, however, not to become too close a companion to him. Thus the above

verse, *veahavta l'reyacha kamocha*, “You shall love your neighbor as your self”, does not imply a universal neighbor. To be honest with the text, the parenthetical “a fellow Jew” must appear.¹⁴

Whether or not we accept Ginsbergh’s argument as a general matter, in our case it reveals that *ra-echa* should be universal. Ginsbergh concedes that the Torah prohibits “negative behavior” toward non-Jews. But the commandment in Leviticus 19:16 is specifically framed as a negative commandment: “you shall not stand by.” It thus serves as precisely the sort of prohibition of negative behavior that requires a broader compass.

Consider, for example, Deuteronomy 5:16–17, the restatement of the Ten Commandments:

You shall not murder. You shall not commit adultery. You shall not steal. You shall not bear false witness against your neighbor. You shall not covet your neighbor’s wife. You shall not crave your neighbor’s house, or his field, or his male or female slave, of his ox, or his ass, or anything that is your neighbor’s.

In each of the highlighted references, “your neighbor” is denoted *ra-echa*.¹⁵ Yet it would be absurd to say that the Torah allows one to bear false witness against a non-Jew, or to covet his spouse and all his property.

If we choose a highly conservative approach, then, we might concede that while *ra-echa* might not *always* signify non-Jews as well as Jews, it must do so when a commandment is framed in the negative.¹⁶ As a general matter, this would enable Halachic Jews to maintain cordial relations with non-Jews while not extending them the protections they would extend to Jews. Yet precisely because the duty of rescue is framed as a negative commandment, Jews are being told that it extends to all, Jews and non-Jews alike.

Thus, whether we take such a highly conservative approach or whether we read *ra-echa* literally, we wind up with the same conclusion: the Duty to Rescue extends to all. Unsurprisingly, modern commentators discuss the duty without reference to any restrictions to Jews.¹⁷

The question remains as to whether the case of a DACA recipient parallels the cases discussed by Rambam in the general Duty to Rescue. Is someone illegally in the country similar to, for example, someone drowning, being attacked by bandits, or being attacked by animals? The answer is yes. First, in the case of DACA recipients, their presence in the United States is innocent: they were brought to the United States as children, and thus, to the extent that any moral culpability attaches to being in the United States without authorization, they have none of it. Halacha is quite clear about

children being not culpable for crimes, and even says that they are forbidden from reading the Megillah.¹⁸ Surely, then, they cannot be responsible for being brought thousands of miles across dangerous territory by their parents.

Moreover, even in the cases of being attacked by bandits, or wild animals, or drowning, any fault of the endangered person is irrelevant: perhaps someone was traveling in a dangerous area, or recklessly swimming in the ocean, but that does not in any way change the Duty to Rescue. Given the specifics of DACA and the Halacha of the Duty to Rescue, a DACA recipient qualifies: the issue is the danger, not the circumstances under which the danger attached.

The Duty to Rescue is not absolute; as we shall see, it includes crucial qualifications contained in the synthetic principle offered at the beginning of this opinion. But for now, we can say: (1) that Halacha includes a Duty to Rescue someone in danger; (2) this Duty is not restricted to Jews; and (3) it does include DACA recipients.

II. RESCUE FROM WHAT? ESTABLISHING THE SCOPE OF DUTY

As the California Supreme Court famously noted, we live in a “risk-infested society.”¹⁹ Must Jews rescue someone in danger from *any* peril? No. For our purposes, the duty extends at least to a reasonable probability of death, torture or other “cruel, inhuman, or degrading treatment.”²⁰

A. Rescue From Death

The Gemara stipulates as a general matter that if a person is told that he must transgress the law in order not to be killed, he may transgress to save his life. There are, however, three crucial exceptions: murder, idolatry, and certain sexual offenses.²¹ For our purposes, the discussion of murder is the most relevant:

The Gemara answers: **It is based on logical reasoning** that one life is not preferable to another, and therefore there is no need for a verse to teach this halakha. The Gemara relates an incident to demonstrate this: **As when a certain person came before Rabba and said to him: The lord of my place, a local official, said to me: Go kill so-and-so, and if not I will kill you, what shall I do? Rabba said to him: It is preferable that he should kill you and you should not kill. Who is to say that your blood is redder than his, that your life is worth more than the one he wants you to kill? Perhaps that man's blood is redder.** This logical reasoning is the basis for the halakha that one may not save his own life by killing another.

Why is this relevant to our inquiry? *Kal v'home*:²² if one is supposed to sacrifice one's *life* in order to prevent someone being murdered, all the more so that one is supposed to break the law or even suffer monetary punishment or incarceration to do it. If someone's action would lead to someone being killed, Rabba clearly states that one should refuse to take that action. It would thus strongly imply that one should not turn a DACA recipient over to ICE if she would face death.²³ As we will see, Jewish law does not actually require such self-sacrifice; but that is not demanded here. Instead, we can say that the strong Talmudic precedent for self-sacrifice to prevent death powerfully pushes in favor of preventing death through means far short of such self-sacrifice.

B. *Dina d'Garmei* and Proximate Cause

We might immediately see an objection to the above reasoning: *killing* someone differs from turning someone over with the reasonable probability that they would be killed. In Anglo-American law, this is generally referred to as the question of "proximate cause." As Judge Posner explained in typically wry fashion:

"[B]ut for" is rarely an adequate notion of cause. We do not say that since, in all probability, [the plaintiff] would not have had an accident on I-70 if Columbus had not discovered America, Columbus caused the accident. . . . What we pick out from the welter of necessary or sufficient conditions as "the cause" of some event depends on the nature of our interest in the event. If we were historians of technology we might attribute [the plaintiff's] accident to the inventor of the internal combustion engine.²⁴

Every event, whether it be an accident or a crime or something else, contains potentially endless causes. Thus, the critical question is how any legal system assesses the relevant interests and policy considerations in determining where to cut off the chain of causation.

In Jewish law, the issue is usually conceptualized under *dina d'garmei*, meaning the "law of causes," or more simply as *gerama*, which simply means "cause." After that, the sources disagree sharply, as they do in Anglo-American law, because of the inherent epistemological unintelligibility of the concept.²⁵

As with all proximate cause cases, it makes the most sense to try to find specific examples that are the closest to the matter at hand, rather than attempting to focus on broad principles that cannot explain cases adequately.²⁶ For present purposes, our closest analogue is a case where the Sages hold that if someone points out a field to bandits, and because of being directed to that field the bandits can occupy the

property, he who points out the field is held liable.²⁷ This scenario is extremely close to our own, as the question is quite literally whether someone should alert a third party to the existence of something.

The strongest contrary opinions generally involve the spreading of fires, a far less analogous circumstance, not only because it involves damage from a nonhuman source, but also because the initial action by the defendant was *negligent*, not knowing: put another way, perhaps the defendant *should have known* that damage would occur, but he did not *know* it would occur. Courts generally will be more circumspect in assigning liability when the damage is unintentional.²⁸

In any event, closer examination of the fire cases shows them to be inapposite in our case. In one case, the Sages state that if someone fans a fire, but that the fire would have caused damage anyway, the defendant is not liable.²⁹ Such a scenario is far from ours because the defendant is a not a but-for cause of the damage.³⁰ In another circumstance, the Mishnah states that someone who places a burning object in the hands of someone deaf, cognitively disabled or minor is exempt from the damage caused by the fire. This goes to the notion of foreseeability, a vexed term in Anglo-American proximate cause law: if the ultimate result is foreseeable, but there is an intervening cause, does it cut off the chain of causation? The Mishnah's answer appears to be yes, and this might also mean that someone who turns over the DACA recipient will not be liable because ICE will be an intervening cause cutting off the chain of causation.

But such a conclusion moves too fast. How this Mishnah plays out is instructive: the rabbis are profoundly uncomfortable with its implications and seek to cabin it. First, the Mishnah itself says that while someone might be exempt from the laws of humanity, he would not be exempt from the laws of God—a contrast that in the current situation, without state sanction for Jewish law, might well be a distinction without a difference. Second, Resh Lakish immediately says that the Mishnah applies only to a glowing coal, where the deaf, cognitively disabled, or minor individual would have had to have blown on it or otherwise taken active and unusual measures to set it alight; if it was a lighted torch, however, the initial person would be liable. In typical fashion, Rabbi Yochanan disagrees, and says that he who gave the torch is not liable.³¹

All the foregoing shows that the fire cases are not appropriate authority for our current case. Not only are their facts further away, but even the case most helpful for *not* finding liability—that of giving a burning object to a deaf, cognitively disabled or minor person—is highly qualified and perhaps not even authority at all, given Resh Lakish's cabining and the Mishnah's own recognition that the defendant should be liable under the laws of God.

C. Distinguishing Between DACA Recipients

The Talmudic demand that we sacrifice ourselves to prevent someone from being murdered requires a careful inquiry into the consequences for the DACA recipient if and when she is deported. A DACA recipient from South Korea, the home of 30,000 DACA cases,³² would be far less likely to require protection on the part of the synagogue because South Korea is a relatively free nation, where death, torture, and severe injury are rare.³³ Deporting a DACA recipient might be sad, and might cause terrible consequences for the family, but it would not trigger the obligation to save someone from death.

In the case of Honduras, however, the danger is much higher. The nation has been under a State Department travel advisory since January 10, 2018, and multiple other times in the last five years. The State Department has told Americans to reconsider travel there, because:

Violent crime, such as homicide and armed robbery, is common. Violent gang activity, such as extortion, violent street crime, rape, and narcotics and human trafficking, is widespread. Local police and emergency services lack the resources to respond effectively to serious crime.³⁴

If the United States Government has warned American nationals against traveling to Honduras, it follows that the same strictures would apply to a DACA recipient, especially a woman and one who has no knowledge of the country.

The State Department, in its 2017 Human Rights Report, also referenced:

arbitrary and unlawful killings; a complaint of torture; harsh and life-threatening prison conditions; arbitrary arrest or detention; unlawful interference with privacy; killings of and threats to media members by criminal elements and criminalization of libel; widespread government corruption, including in the judiciary; threats and violence against indigenous and Afro-descendent communities; and societal violence against lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons.

The government took steps to prosecute and punish officials who committed abuses. Impunity existed in many cases, however, as evidenced by lengthy judicial processes, few convictions of perpetrators, and failures to prosecute intellectual authors of crimes. Perpetrators in emblematic cases dating back many years, such as the 2009 killing of the antidrug czar Julian Aristides Gonzalez, continued to enjoy impunity. Organized criminal elements, including local and transnational gangs and narcotics traffickers, were significant perpetrators of violent crimes

and committed acts of murder, extortion, kidnapping, torture, human trafficking, intimidation, and other threats and violence directed against human rights defenders, judicial authorities, lawyers, the business community, journalists, bloggers, and women and other members of vulnerable populations.

Private non-governmental organizations, freed from the reserve of official responsibility, are even harsher. Human Rights Watch concluded that

Impunity for human rights abuses remain the norm in Honduras. Despite a downward trend in recent years, the country's murder rate is among the highest in the world. Efforts to reform the institutions responsible for providing public security have made little progress. Marred by corruption and abuse, the judiciary and police remain largely ineffective. . . . Gang-related violence is an important factor prompting people, including unaccompanied youth, to leave the country.³⁵

The themes of daily life in Honduras, noted the director of Human Rights Watch's Children's Rights Division, are common: "boys threatened to join gangs, girls facing rape by gang members, parents extorted and killed."³⁶

Under these circumstances, allowing someone to be returned to Honduras, while not creating a certainty of death, certainly advances a high probability. And in light of that probability, under Rabba's injunction against killing and the principles of proximate cause set forth above, the law forbids relinquishing a DACA recipient to ICE.

D. Torture and "Cruel, Inhuman, and Degrading Treatment"³⁷

If rescue from death is mandated, what about torture? This question is relevant because of the widespread use of torture in Honduran prisons. In other words, if torture is covered under Rabba's injunction, then it makes it more likely that the DACA recipient will face a "reasonable probability" of harm.³⁸

In order to untangle the problem, we need to understand more clearly what precisely makes torture wrong. Most commonly, torture is regarded as an affront to "human dignity,"³⁹ and to the extent that torture violates human dignity, such violation means that observant Jews must seek to prevent its use. As the Sages noted: "Great is human dignity, as it overrides a prohibition in the Torah."⁴⁰ Maimonides cautioned that while human dignity only overrides *halacha d-rabbanan*, the prevention of violations of human dignity looms large in any legal analysis:

A Rabbinic prohibition is always and everywhere superseded for the sake of human dignity. And even though we are explicitly enjoined in the Torah not to depart from the Sages' teaching either to the right or to the left, this negative precept itself is set aside in the interests of human dignity.⁴¹

The problem with enshrining the value of human dignity, as David Luban points out in an illuminating discussion,⁴² is that we know little about what the concept means and how it would connect to actual adjudication. He observes that in the Universal Declaration of Human Rights (UDHR), where it first became famous, this phrase was used more as a general placeholder—"an uncontroversial, neutral-sounding term for the unknown 'X' that anchors human rights."⁴³

The seven decades since the UDHR's promulgation have not clarified the matter. George Kateb bemoaned that "not much is said about what human dignity is,"⁴⁴ and a recent article characterized the concept as "mercurial" and "opaque."⁴⁵ Kateb, however, evocatively captures the issue. In "extreme situations" such as "war, many prisons and forms of captivity, torture, slavery, concentration and death camps," we do not say that the victims of such situations lose their humanity: rather, "[t]hey are human beings in ruins."⁴⁶

We can see why this ruin might occur. Human beings are *b'tselem Elohim*—in the image of God—by virtue of their ability to reflect, reason, feel empathy and kindness, and develop coherent and meaningful life plans.⁴⁷ Torture strips them of all these capacities because the overwhelming presence of pain—whether physical or psychological—makes the subject interested only in stopping the pain. Sleep deprivation, universally recognized as a form of torture, is not *painful* in the standard sense, but produces paranoia, hallucinations, and disorientation—in other words, it prevents someone from reflecting, reasoning, feeling empathy and kindness, or developing coherent and meaningful life plans.⁴⁸ Andrew Sullivan observes that "the central criterion of torture" lies in "the surrender of will to another because of intolerable pain or suffering. That's why a mock execution is also regarded as torture under the law—because it takes a person to the edge of psychological breakdown."⁴⁹ The surrender of will and psychological breakdown strip a human being of dignity because they rob her of precisely that which makes her in the image of God.

The prospect of torture, then, is Halachically equivalent to the prospect of death. Both destroy the human personality and thus destroy the image of God. It thus follows that the Duty to Rescue from death also applies to torture.

A second, more circumspect argument demonstrates the same point and actually expands the Duty to Rescue. Luban argues persuasively that one of its principal

aspects turns on the rejection of humiliation. We need not construct a complete theory of dignity, but simply say that whatever dignity might mean globally, it at least means not humiliating others.⁵⁰ This is not a metaphysical point but rather a practical, commonsense one: “dignity” in Hebrew is *kavod*, which can only be translated as honor, and the antonym of honor is humiliation.

Relying on this more modest view of dignity still makes clear that Judaism vehemently condemns torture. As Luban observes, torture techniques use humiliation and the threat of humiliation as a way of destroying someone’s will. And repeated statements in the Talmud make this out-of-bounds. Shimon Bar Yochai held that “it is better that a person should cast himself into a fiery furnace than that he should shame his fellow in public.”⁵¹ This statement occurs in a lengthy discussion emphasizing the prohibition on humiliating other people. Similarly, the Gemara holds that “if anyone makes his friend’s face turn white [from shame] in public, it is as if he had spilled his blood.”⁵² To this, one rabbi replies, “What you are saying is right, because I have seen how the red coloring leaves and his face turns white.”⁵³ Moreover, “a man who sleeps with another man’s wife must be punished, but he still has a share in the World to Come; but one who shames his fellow human being in public has no share in the World to Come!”⁵⁴ It even gets to the point where Rabbi Hisda rules that one can carry stones to the outhouse to wipe oneself on Shabbat because of “human dignity”—indicating that the non-humiliation principle can apply to even the most petty and mundane matters.⁵⁵ As Elliot N. Dorff, Daniel S. Nevins and Avram L. Reisner observe, Talmudic precedents indicate clearly that “when our Sages of blessed memory claimed to value human dignity, they truly meant it, and translated this value into normative practice.”⁵⁶ The value of human dignity was not merely a general expression, but concretized into actual legal rulings.

The foregoing analysis means that the Duty to Rescue applies to situations outside torture, because international law explicitly contemplates “cruel, inhuman, and degrading treatment” that does *not* rise to the level of torture.⁵⁷ These have included such activities as forcing prisoners to “relieve bodily functions in one’s clothing,”⁵⁸ or shackling of prisoners even if they posed no threat to themselves or others. Given the enormous emphasis that Halacha places on avoiding humiliation and at times comparing it to death, it is no stretch to include it in those instances where protection is legally required.⁵⁹

We can thus conclude that the Duty to Rescue, which forms the core of the obligation to protect our DACA recipient, adheres in cases where the fugitive faces a reasonable probability of death, torture, or cruel, inhuman, or degrading treatment. Since the situation in Honduras poses such a reasonable probability, it appears incumbent upon Halachic Jews to attempt to rescue the fugitive.

The question arises, however, about the Duty's applicability in a case of civil disobedience. The danger here arises from actions by legally constituted civil authorities. Surely Jews are not required to rescue anyone and everyone fleeing from the state. To what extent does the Duty to Rescue apply to such circumstances? That requires a discussion of the Halachic view of shielding those escaping from the state, to which we now turn.

III. RABBINIC PRECEDENTS FOR PROTECTION OF FUGITIVES

Several rabbinic documents suggest an endorsement of protecting fugitives from the state. The interpretive challenge lies in teasing out the precise meanings of these notoriously laconic texts. In particular, we must investigate: (1) the precise conditions that the passages indicate when the duty to protect arises; and (2) whether (as in the case of the general Duty to Rescue) the person protected must be Jewish.⁶⁰

A. When should a fugitive be relinquished?

The rabbis lived in a dangerous world, where travel was perilous and where the state did not recognize any inherent human rights of its subjects. These brutal facts of existence forced them to grapple with how and when to resist such power, most significantly in two portions of a *sugya* from the Yerushalmi:

1. Part One

It was taught in a Baraita (Tosefta 7:23): "Groups of people were walking on a road when gentiles attacked them and said: 'Give us one of you[r number] and we will kill him, but if you do not we will kill all of you.' Even if all of them would be killed, they should not hand over (*yimseru*) a single soul from Israel. [But if those gentiles] singled one out, such as Sheba son of Bichri, they should hand him over (*yimseru*) [so] they would not be killed."

Rabbi Shimon ben Laqish said: "[They may only hand that person over if he] is liable for [the] death [penalty], like Sheba son of Bichri." But Rabbi Yoḥanan said: "Even if he is not liable for [the] death [penalty], like Sheba son of Bichri."⁶¹

The baraita forbids handing over "one of your number," but allows relinquishing a fugitive "like Sheba ben Bichri." Why would the Halacha make such a distinction?

R'Shimon b. Laqish's distinction is the most straightforward: Sheba b. Bichri was a rebel against the Davidic kingdom. He thus "deserved to be killed," and should be handed over on those grounds.⁶² Following R'Shimon b. Laqish's principle, then, would militate in favor of sheltering the Honduran DACA recipient: she is not a rebel against a legitimate Jewish government and indeed is not a rebel against any government at all; she simply wants to continue to live her life in safety. The dangerous entity here is ICE, not the fugitive.

R'Yochanan's principle is far more obscure. He suggests that individuals should be handed over even if, unlike Shimon b. Bichri, they are not subject to the death penalty. But why would that be? Perhaps R'Yochanan's idea is that if there is a specified person, then there is *some* reason for the government to want him or her, and that that is good enough: it is, at least, a colorable claim.⁶³

But subsequent commentators clarified R'Yochanan's statement. R'Yochanan argues for turning over the fugitive because of a credible threat from the public authorities to kill everyone in the community, including of course the fugitive himself, so refusing to relinquish him will save no one. There is thus no reason to protect him.⁶⁴ If, however, the public authority would threaten *others* with death but spare the prisoner if he is not handed over, then R'Yochanan did not hold that he must be relinquished.

Such a clarification militates in favor of protecting the DACA recipient. R'Yochanan only favors turning her over if doing so would result in the death of the entire synagogue membership, which is the relevant community here. As we will see below, this qualification applies just as strongly to the Duty to Rescue and other aspects of Halacha, so the commentators' interpretation also builds Halachic coherence and consistency. But the converse, then, is true: R'Yochanan agrees with the notion that one should *not* turn over the fugitive unless it would result in the destruction of the entire community.

2. Part Two

'Ula bar Qoshev was demanded by the government. He fled and went to Lod (Lydda) to Rabbi Yehoshua ben Levi. They (the soldiers) came and surrounded the city. They said to them (the city's residents): "If you do not give him to us we will destroy the city." Rabbi Yehoshua ben Levi came to him ('Ula bar Qoshev) and persuaded him; then [Rabbi Yehoshua] gave ['Ula bar Qoshev] to them.

Elijah—may he be remembered for good—had been accustomed to revealing himself to [Rabbi Yehoshua ben Levi], but he did not reveal himself [any more]. So he (Rabbi Yehoshua ben Levi) fasted several times and [Elijah] revealed himself to him [again]. He (Elijah) told him: "Should I reveal myself to *masorot* (informants or collaborators)?" He (Rabbi Yehoshua ben Levi) told him: "Did I not act

according to the Mishnah (*baraita*)?” [Elijah] said to him: “Is that the Mishnah (*baraita*) of the *hasidim* (pious ones)?”⁶⁵

Several commenters puzzled over the Halachic meaning of Elijah’s criticism: what in fact was Rabbi Yehoshua ben Levi supposed to have done? Some insisted that he should have allowed ‘Ula bar Qoshev to have been handed over but not done so himself—a rather bizarre argument given the nature of proximate cause discussed above and morally questionable in its own right. A better approach is that taken by the Meiri, who argued that Yehoshua ben Levi’s problem lay in his acting too hastily: had he delayed, perhaps the threatened danger could have been averted.⁶⁶

Virtually every commenter, however, finds that the case turns on the same principle that explains R’Yochanan’s position above: the state threatened to kill everyone in the community, and there is no point in saving someone if everyone will die anyway. Such a principle squares with Rabba’s injunction, and commands not turning over a fugitive if one could save him or her. And the Meiri’s gloss on the passage suggests that someone should attempt to delay in the hopes that conditions will change—precisely what giving sanctuary to a fleeing DACA recipient would achieve.

B. Does this only apply to Jews seeking protection?

The text of the Yerushalmi does say “Even if all of them would be killed, they should not hand over (*yimseru*) a single soul from Israel.”⁶⁷ Restricting the responsibility to protect only to Jews, however, is not the best interpretation.

As a matter of historical context, quite literally that is the only circumstance with which the rabbis would have faced the issue. In Roman-controlled Palestine, no gentile would have come to the rabbis for assistance against a gentile government. The very possibility was simply outside the rabbis’ imagination: asking them to consider would be roughly equivalent to asking modern scholars about the divine right of kings. Instead, we need to generalize the question of protecting “Israel” to protecting *any* vulnerable population.

And we need not generalize it at all, for the plain text of the Bavli does so. We must recall BT Sanhedrin 74a, which relies on Rabba’s rhetorical question: “is his blood redder than yours?” Barring any specific evidence to the effect that Rabba believed Jewish blood to be redder than gentile, we should assume that he spoke what we know to be true; that is, that every person’s blood is as red as every other person’s. And the Gemara seems to suggest this when it says that a certain “person” came before Rabba, not a certain Jew or even someone with a particular name (as was the case with the passage from the Yerushalmi).

Third, making a distinction here would violate the plain text of the Tanach, such as: Shmot 12:49—“the same law shall apply to the native and the foreigner who resides among you”; Vayikra 24:22—“You are to have the same law for the foreigner and the native-born. I am the Lord your God”; Bamidbar 15:15–16—“The community is to have the same rules for you and for the foreigner residing among you; this is a lasting ordinance for the generations to come. You and the foreigner shall be the same before the Lord: The same laws and regulations will apply both to you and to the foreigner residing among you.”

One could fairly state that such passages are taken out of context: they concern circumcision (Shmot) and sacrifice (Bamidbar), not general legal principles. But in Leviticus, they do concern general principles. In any event, this contextualization favors a more universalist interpretation: if there is one law for Israel and gentiles in regard to circumcision and sacrifices, which are specific to Israelite religious practice, all the more so in regard to saving someone's life!

Rashi insists, when discussing Sanhedrin 74a, that it only applies to the saving of a Jewish soul, but offers no textual justification for it⁶⁸ —a rare omission for him. Rambam, however, does not distinguish as a legal matter between saving Jewish and gentile souls.⁶⁹

C. Should Jews Cooperate in Enforcing Secular Law?

For the ancient rabbis, the question of the relationship to secular authority concerned more than the paradigmatic case of relinquishing a fugitive. They also had to answer the more general question of their responsibilities (or not) in cooperating with secular law enforcement. When R'Elazar ben Shimon agreed to arrest thieves on behalf of the Roman government,

Rabbi Yehoshua ben Korba sent Rabbi Elazar, son of Rabbi Shimon, the following message: You are vinegar, son of wine, i.e., you are wicked in comparison to your father, the righteous Rabbi Shimon, just as vinegar is spoiled wine. Until when will you inform on the people of our God to be sentenced to execution by the Roman court? Rabbi Elazar, son of Rabbi Shimon, sent a message back to him: I am merely eradicating thorns from the vineyard. Rabbi Yehoshua ben Korba sent back to him: Let the Owner of the vineyard, i.e., God, come and eradicate His own thorns.⁷⁰

Understanding and interpreting this passage, and applying it to our case, requires peeling away several layers. At the highest vantage point, the story seems to provide persuasive authority for resisting any governmental call to arrest lawbreakers: this is why Rabbi Yehoshua ben Korba could castigate Rabbi Elazar for agreeing to do the

job. By the same token, of course, modern-day rabbis or pious Jews generally should refuse to turn over a fleeing DACA recipient—whose offense is not even criminal, and thus nowhere near as harmful as thievery—to ICE.

The difficulty arises when Rabbi Yehoshua ben Korba complains about Rabbi Elazar “inform[ing] on the people of our God.” One might interpret this clause as implying that the principle of noncooperation only applies when the accused person is a Jew, and so at best the entire passage is irrelevant to our case.

Conversely, we could reach the entirely opposite conclusion, namely, that the clause concerning “the people of our God” is at best a throwaway line and has no broader impact on the overall principle of noncooperation. After all, the entire first paragraph of the story does not restrict the matter to Jews: merely because Rabbi Yehoshua ben Korba refers to the matter at hand hardly means that the specific case restricts the general principle.

But at least for our purposes in this particular case, we can find several middle positions for the use of this passage.⁷¹ At the time that the sugya occurred, “the people of our God” was essentially limited to Jews. This, however, is no longer the case, and that in turn means that the noncooperation principle for “the people of our God,” while perhaps not applying to all human beings seeking to use this sugya, can apply to those who do worship the God referenced by Rabbi Yehoshua ben Korba. After all, R’Yehoshua ben Korba does *not* refer to the “people of Israel” or the “children of Israel,” which would specify it more precisely as Jews.⁷² Nor does he speak of “the people of Yahweh” and use the Tetragrammaton, but rather simply says “our God,” *Eloheinu*, a more general appellation not indicating specifically the God of the covenant.⁷³

The recent statement *Dabru Emet*, signed by more than 200 distinguished rabbis and Jewish intellectuals, begins with the statement, “Jews and Christians worship the same God.” This clearly oversimplifies; after all, most self-identified Christians hold, and have held since 325 C.E., that Jesus is God.⁷⁴ Still, even though the critics of *Dabru Emet* point to this awkward complexity, they acknowledge that it is proper to emphasize that Christians “worship the God of Abraham, Isaac, and Jacob, creator of heaven and earth.”⁷⁵ Thus, for our purposes, it is fair to see Christians as “the people of our God,” and not subject to relinquishment to secular authority.

In their fundamental assertion that Jews and Christians worship the same God, the authors of *Dabru Emet* were not breaking new, modernist ground. Rabbi Eliezer Ashenkazi several centuries ago made it clear that Christianity and Islam worship the God of Israel when he discussed Psalm 79:6’s prayer to “pour out thy wrath on the nations”:

We only curse the idol worshipers who don’t believe in creation and who destroyed the Temple, not the nations who became Edom and Ishmael (Christianity

and Islam) because they were still not created . . . But now our Gentiles and the Ishmaelites know God, and acknowledge the Exodus, forefend for us to curse them from our religion. And when we do curse those who afflict us and unjustly persecute us, that curse is not from our religion, forefend, but as a person who curses one who afflicts another . . .⁷⁶

Ashkenazi's principle provided the basis for a later, famous argument from R'Moshe Rivkes, who held that:

The rabbis meant by the term idolaters those gentiles who in their own times would worship stars and signs and who did not believe in the Exodus and in the creation of the world. But these non Jews in whose shadow we, the Israelite nation dwell and are spread amidst them, they believe in the creation of the world and the Exodus from Egypt and in the principles of faith, and their entire intention is to the maker of heaven and earth . . . *So rather than a prohibition not to save them [if they were idolaters], on the contrary, we are required to pray for their welfare . . .* David's prayer for God to pour his wrath on the nations who do not know Him (Psalms 79:6) refers to the non Jews who do not believe in the creation of the world and the matter of signs and miracles that God did with us in Egypt and in the giving of the Torah. But the nations in whose shadow we live and dwell under their wings, they believe in all these, and we continually pray for the[ir] peace.

R'Moshe's interpretation of Christianity provides solid precedent for regarding Christians as monotheists, and thus the "people of our God."⁷⁷

Neither Ashkenazi nor Rivkes operated on a blank slate. The fourteenth-century Talmudist R'Menachem Ha-Me'iri famously rejected any equation whatsoever between modern Christians and Muslims and ancient idolaters, thus arguing that many if not all of Halachic prohibitions against dealing with *minim* or those who practice *Avodah Zarah* simply do not apply in regard to Christians and Muslims. For our purposes, the source of Meiri's rulings is significant: he argued that because Christians and Muslims believe in the same divinity as Jews, it makes no sense to conflate them with ancient idolaters.⁷⁸ It thus follows from Ha-Me'iri's reasoning that the "people of our God" in Bava Metzia 83b should also apply to Christians and Muslims; indeed, it is literally true.

Finally, we might interpret the notion of the "people of God" to include all those who believe in and adhere to the Noahide laws, which are strictures that apply to all nations.⁷⁹ After all, since God gave all seven Noahide laws to the whole of humanity, there is a nontrivial sense in which their adherents are part of a covenant. Crucially, during the period in which R'Yehoshua ben Korba admonished R'Elazar, the vast

majority of people in the Roman Empire did *not* adhere to these laws, as they prohibit idolatry, the official religion of the Empire. Thus, conceiving of the “people of God” as Noahide still makes it a serious, intelligible category: it is not a way of simply reading it out of the passage. The rabbis were sympathetic to gentiles who adhere to the Noahide laws, noting that they would have a share in the world to come.⁸⁰ If they have a share in the world to come, it follows a fortiori that they are deserving of rescue.⁸¹

In general, then, Bava Metza 83b provides a robust precedent⁸² for refusing to cooperate with secular law enforcement, whether or not a fugitive is Jewish. Indeed, in the case of the DACA recipient, its strength is even amplified, because while in the Talmud the suspects were thieves—*criminal* offenders—in the DACA context, they are simply unauthorized to be present in the United States, a *civil* offense. In the case of the DACA recipient, the Gemara points to the same answer as provided by R’Yehoshua ben Arba: let the Owner eradicate His own thorns.

D. Dina D’Malkhuta Dina: A False Limitation

No statement concerning resistance to civil authority, however, can be taken seriously unless it grapples with the principle of *dina d’malkhuta dina*, that is, “the law of the realm is the law”—one of the best known Halachic dicta. Enforcement of immigration law obviously reflects the law of the realm: although Immigration and Customs Enforcement is a brutal and often rogue agency,⁸³ at least in the question presented, it is enforcing public law. Thus, if *dina d’malkhuta* really is *dina*, then there would be no basis for protecting the woman from Honduras.

If taken literally, the dictum could form the basis of obeying all state laws, no matter how oppressive and/or no matter how destructive of Halacha and Jewish ethics. And for precisely this reason, Halachic authorities have never taken it literally: instead, it is a flexible principle highly dependent upon facts and, importantly, political context.⁸⁴

From the beginning, “the operative applicability of *Dina* was, from the beginning, reduced to two categories of civil and fiscal jurisdiction: (1) taxes, fines, and expropriations by state authority; and (2) contracts and other legal documents written and validated in non-Jewish courts.”⁸⁵

Early medieval authorities resisted applying the principle broadly, if at all.⁸⁶ Ramban, for example, commenting on Bava Batra 55a, contended that

Dina D’Malkhuta is only accepted by Halacha when they are laws which are known and accepted throughout the kingdom, and they were previously enforced by all the kings who preceded the present ruler. These laws must be recorded in the chronicles of the land and in the legal volumes of the kingdom.

As European nation-states formed, however, demanding more adherence from their subjects, and the theory of law became more positivist, *dina d'malkhuta* became somewhat more deferential to state power.⁸⁷ By the end of the eighteenth century, Moses Mendelssohn used the *dina d'malkhuta* principle in order to persuade Jews to embrace *haskalah* and become more secular citizens and subjects.⁸⁸

The scope and meaning of *dina d'malkhuta* then, reflects both ethical theory and a sensitive consideration to political facts. When the Communists seized power in Russia and converted synagogues into communal meeting halls, Rabbi Soloveitchik was asked whether the government's acts must be obeyed. He replied that these acts were *chamsa d'malkhuta*, not *dina d'malkhuta*. The Soviet government did not meet the standards of justice to qualify for *dina d'malkhuta* because the same standards did not apply to all houses of worship and, in a harkening back to older precedents, they were certainly not part of the traditional Russian legal system.

As Rabbi Aaron Rakeffet-Rothkoff explained in the pages of *Tradition*:

Besides being subsumed under the category of *mammona*, the laws must be just, equitable, and applicable to all citizens and residents of the state. The basic idea is that law *dina d-malkhuta* is acceptable, but *hamsa d'malkhuta* or *gazala d-malkhuta*, malevolent, ill-disposed, and unjust laws, is not. The Jew must only observe the decrees of a just government, but is not obligated to observe the ruling of a despotic government.⁸⁹

Rakeffet-Rothkoff concludes that even in the case of conscription, unjust wars, imperialistic wars, and wars of conquest might not qualify as *dina d'malkhuta*. In cases where a war is defensive, or based upon genuine humanitarian inclinations, then government conscription would indeed be *dina d'malkhuta* and thus obligatory.

This distinction between just and unjust wars raises an absolutely crucial point about *dina d'malkhuta*: Halacha cannot simply accept a secular law on its face as *dina* deserving of absolute deference. No nation, upon going to war, ever says that it is doing so for the purposes of conquest: no nation at least since Westphalia has ever happily termed itself an aggressor. Even Hitler claimed to be fighting an international Jewish Communist conspiracy.⁹⁰ Thus, determining if *dina d'malkhuta* applies to a specific case must be made by a Halachic authority: it cannot be the case that the government's word must be taken at face value.

Put another way, Mendelssohn's and other *maskilim*'s arguments concerning *dina d'malkhuta* did not concern secular law per se, but those particular laws and his assessment of their quality: they believed that the secular state's inchoate promise of equal citizenship was ethically desirable, and thus saw the state's demand for Jews to adhere to secular laws as *dina* worthy of loyalty. This does not imply that the state's

law is only *dina* to the extent that the Halachist would have supported or advocated for it herself. Rather, it stipulates, in Rakeffet-Rothkoff's words, that if a law is equitable and non-arbitrary, and neither malevolent, ill-disposed, nor unjust, then it is *dina*. While we might oppose many laws, we can acknowledge that they were enacted through fair procedures, taking into account legitimate interests, without no invidious intentions, based upon some coherent notion of justice, and resting upon a realistic assessment of facts.⁹¹

This is essentially what Rabbi Yochanan was squinting at when, in his colloquy with Resh Lakish in JT Terumot 46b, he said that if the government wanted one particular person, then that person should be given up: he was suggesting that there must be *some* legitimate reason. American law describes this notion as substantial evidence. Substantial evidence, the United States Supreme Court has noted, means "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."⁹² It does not mean that a reviewing court believes that the initial decision-maker is correct, but rather that it contains "such relevant evidence as reasonable minds might accept as adequate to support a conclusion even if it is possible to draw two inconsistent conclusions from the evidence."⁹³ We do not need to accept Rabbi Yochanan's statement as the Halacha—Resh Lakish did not and neither do other poskim—to understand its value and worth in constructing a synthetic Halachic standard for *dina d'malkhuta dina*.

In light of the early medieval authorities including Ramban, the later adjustments for the purposes of deferring to the secular state, and twentieth-century commentaries from Soloveitchik and Rakeffet-Rothkoff, we need to consider which posture to take concerning *dina d'malkhuta dina* in the present situation. In other words, we must examine whether the repeal of DACA contains the basic elements of procedural and substantive fairness.

Even a cursory examination of the repeal reveals it to virtually epitomize arbitrary and capricious action. The Obama administration's defense of the program rested upon a closely reasoned thirty-three-page memorandum from the Department of Justice's Office of Legal Counsel.⁹⁴ By contrast, Attorney General Sessions's repeal of the program came from a one-page letter with a bald assertion that the original program was created "without proper statutory authority" and lacked even an attempt to refute the original memorandum.⁹⁵ Sessions's only citation of legal precedent concerned a related but different program, the Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), which the Attorney General claimed had the "same legal and constitutional defects" as DACA but never bothered to even assert what those defects were.⁹⁶ Moreover, Sessions claimed in the letter that DACA has caused a surge of immigration at the United States' southern border, that DACA recipients had caused Americans to lose

their jobs, and that administering DACA cost the federal government more than its benefits. These assertions were facially absurd—a sharp assessment but well justified from the record. DACA could not have caused an influx of immigrants because it only applies to those who came to the United States and had been in the United States for at least five years in 2012. Experts also ridiculed Sessions’s claims that DACA depressed wages in the United States.⁹⁷

Instead, it became clear after Sessions’s letter appeared that, to the extent that President Trump had a coherent policy justification for the repeal, it derived from an attempt to use DACA as a bargaining chip to achieve his other political priorities concerning immigration policy. At times the President, seeing that repeal was politically unpopular, claimed that it was the Democrats who forced him to cancel the program. Then, after Senate Democratic leader Charles Schumer offered to agree to fund Trump’s “Wall” in exchange for putting DACA in statute, President Trump rejected the offer.⁹⁸

The preceding paragraphs do not serve to comment on the administration’s immigration policy per se, but rather to make clear that for the purposes of *dina d’malkhuta dina*, there is no justification for saying that repeal of the program comes anywhere close to constituting *dina*. There is in fact no policy justification adduced by the administration that passes the slightest scrutiny, and claims of legal necessity have likewise fallen flat. Instead, on the most generous reading, the administration was using repeal—and the lives of DACA recipients—as bargaining chips for other political goals. Political necessity sometimes requires hard choices and hard bargaining in order to achieve policy goals, but when it comes to ordering people to encounter trauma, torture, and death, Halacha forbids Jews from acquiescing to such calculations. Israel has a Duty to Rescue that cannot be Trumped by the state’s political expedience. I thus conclude that in this case, ICE’s efforts to enforce federal law cannot be deferred to under the *dina d’malkhuta dina* principle.

IV. CANONS OF CONSTRUCTION: LOVING THE STRANGER AND RETURNING THE SLAVE

Although the foregoing would be adequate to establish the general Halachic duty to protect the DACA recipient in our case, two other general principles of Halacha—(1) the obligation to protect slaves freeing their masters; and (2) the general duty to love the stranger—serve to buttress this conclusion. They do so, however, in an oblique way, namely by establishing “canons of construction” that can be applied in ambiguous circumstances.

A. Canons of Construction

The idea of a canon of construction is one of the most familiar in law: it essentially serves as a tiebreaker in cases of uncertainty. American jurists have used it commonly in cases of statutory interpretation.⁹⁹ Sometimes canons are purely interpretive. For example, courts should not construe a statute to raise constitutional difficulties¹⁰⁰; or have extraterritorial application¹⁰¹; or contravene international law.¹⁰² At other times, they reflect substantive commitments. For example, the “rule of lenity” requires that criminal statutes be narrowly construed.¹⁰³ The Supreme Court has held that federal statutes impinging in traditional areas of state regulation must have a clear statement to preempt¹⁰⁴; federal law must be construed to favor Indian tribes¹⁰⁵; and that the Fair Housing Act must be read broadly to achieve its remedial purpose.¹⁰⁶ Canons sometimes conflict with each other, but they are useful as a way of resolving problems of interpretation.

Canons can relate to Halacha because they offer a constructive role for biblical principles that have been inadequately crystallized into precise legal form. Rabbinic exegesis serves to move general principles into concrete cases. “You shall not see the kid in its mother’s milk”¹⁰⁷ thus became the entire corpus of kashrut. Some principles, though, never went through this process because there was no occasion for it, or more commonly, they went through this process only in specific historical circumstances and/or never reached consensus. Having these principles serve as canons of construction for more well-developed Halacha gives them a role in legal development without moving too quickly in the process. To see how, let us consider the two principles referenced at the beginning of this section.

B. Loving the Stranger

One cannot read the plain text of the Tanach without seeing the mitzvah of caring for and protecting the stranger. These verses are famous and essentially a commonplace for progressive Jewish advocates and organizations. Typical is Devarim 10:18–19: “God does justice for the widow and the orphan, and loves the stranger, giving him food and clothing; therefore you too shall love the stranger, for you were strangers in the land of Egypt.”¹⁰⁸ This sort of injunction is repeated several times in Chumash.¹⁰⁹ The provision is quite clear, and would seem to militate very strongly in favor of a Halachic duty to protect immigrants.

Subsequent rabbinic and Halachic interpretations, however, quickly cabined these verses, reinterpreting *ger* as signifying not “strangers” or “sojourners” but rather “converts.” Maimonides adopts the rabbinic reading, declaring that the command to love the *ger* applies only to Jews and particularly to proselytes.¹¹⁰ A more sensitive

reading reveals some play in the joints. His listing of the positive mitzvot makes no reference to the rabbinic cabining of the principle.¹¹¹

More importantly, this cabining did not receive unanimous or even majority support. Nachmanides, seems to resist the rabbinic narrowing, noting:

And that which is correct in my eyes is that when it states, “do not oppress the stranger and do not harry him,” you should think that he has no one to save him from your hand, since you know that you were strangers in the land of Egypt, and you saw the harrying that Egypt harried you and that I took vengeance for you, “since I see the tear of the oppressed who has no comforter and has no power from the hand of their oppressors” and I save every person “from the hand of one stronger than he.” And so [too], do not afflict the widow and the orphan, since I hear their cries. As all of these do not rely on themselves and [so] upon Me do they rely. And in a different verse, it adds another reason (Exodus 23:9), “and you know the soul of a stranger, since you were strangers in the land of Egypt.” This is to say, you know that the soul of any stranger is lowly towards himself, and he sighs and cries, and his eyes are always to God - and He will have mercy upon him, as He had mercy upon you, as it is written (Exodus 2:23), “and the Children of Israel sighed from the work and they cried out, and their prayer ascended to God, from the work.” This is to say that not because of their merit [did God hear], but rather He had mercy upon them due to their [heavy] work.¹¹²

Ramban’s saying that Israel was a *ger* in the land of Egypt makes it clear that he does not view *ger* as equivalent as a proselyte: Israel clearly were not proselytes in Egypt!

Similarly, Rashi adopts a broader reading of the term *ger*:

Hayitem Garim Ki (For Ye Were Strangers)—If you vex him he can vex you also by saying to you: “You also descend from strangers.” Do not reproach thy fellow-man for a fault which is also thine (Mekhilta d’Rabbi Yishmael 22:20). Wherever *va-yigar* occurs in Scriptures it signifies a person who has not been born in that land (where he is living) but has come from another country to sojourn there.¹¹³

Not surprisingly, then, the Siftei Chakhamim for Exodus 22:20:2 embraces similarly broad language:

The term *ger* . . . a person who was not . . . Rashi is explaining that all Yisrael were *gerim*, even Avraham, Yitzchak and Yaakov, [not just the Bnei Yisrael in Egypt]. For the term *ger* means someone who is not a native citizen of that country. [And

about the Avot it says (Bereishis 21:34), *va-yigar* (“He sojournd”), which comes from the same root as *ger*.]

So following Rashi and Ramban, we can hold that passages referring to the *ger* actually refer to outsiders, strangers, or sojourners—and thus to what in the modern context are immigrants.

Yet this hardly ends the inquiry, because “loving the stranger” hardly gives us any precise directions. What exactly does it mean? It expresses a general value, not a policy platform. It does not require “open borders,” the common (although inaccurate) conservative accusation of progressive proposals. Nor does it demand, as a matter of legal obligation, that in all circumstances citizens must contribute a certain amount of money to support immigrants or open up their homes to support them.

Instead, it expresses a mood and a general principle. And that is precisely what a canon of construction does. It does not mandate specific actions, but rather states that when two courses of action are possible, the one implementing a particular interpretation or substantive value is favored. Here, the Halachic canon states: when in doubt, favor the interpretation that aids the stranger. So, if we wonder if the Duty to Rescue protects them, or the “people of God” includes them, we answer that it does. Similarly, if we ask whether *dina d’malkhuta* applies, or whether an obligation exists to relinquish a fugitive, we answer that it does not.

C. Returning the Slave

Devarim 23:15–16 commands, “If a slave has taken refuge with you, do not hand them over to their master. Let them live among you wherever they like and in whatever town they choose. Do not oppress them.” The plain text of the verse provides powerful support for the proposition (1) that the Duty to Rescue does *not* simply apply to Jews; and (2) that Jews have the duty to protect those in extreme danger.

Rabbinic interpretations of the verse have employed it in specific circumstances, generating seemingly contradictory applications.

- Rabbi Yehudah Ha-Nasi employed it in a case where someone bought a slave in order to free him, an instance supported by Rabbi Nachman bar Yitzhak.¹⁴
- A baraita applied it to a circumstance where an idolatrous slave fled from outside Eretz Yisrael to inside the land, promising to reject idolatry: in such circumstances, the slave need not be returned,¹⁵ and subsequently, R’Ahi bar R’Josiah adopted this explanation.

- R'Hisda¹¹⁶ used it to justify reclaiming a slave of his from Samaritans, who were fond of quoting Torah against the rabbis. He reasoned that since his slave had previously lived outside Eretz Yisrael, and the return would also apply outside the land, the verse did not apply in that case.¹¹⁷
- Conversely, Mar Samuel held, following a baraita, that “if one sells his slave to an idolater or outside Eretz Yisrael, he goes out free.”¹¹⁸

Some translations seem to suggest that these cases interpret the *meaning* and *scope* of the verse from Devarim; in other words, they imply that the verse is limited to these applications. And this is the interpretation of Rabbeinu Bachya, which of course is always worthy of great respect.

Yet at the end of the day, it hardly seems plausible. First and foremost, this narrow interpretation not only contradicts the plain text of the verse, a problem referenced elsewhere in the Gemara,¹¹⁹ but it also ignores its straightforward historical context, which Rashi and Ramban clearly state being that of a conquering army. Second, the interpretations conflict with each other: Yehuda Ha-Nasi and R'Ahi bar R'Josiah say that it only applies *inside* Israel, whereas Mar Samuel says that it applies *outside* Israel, and R'Hisda assumes facts not in evidence in order to escape from a ticklish intercommunal conflict.

Instead, given the widely differing interpretations of Devarim 23:16, it stands to reason that the rabbis adopted a flexible interpretation, not wanting to foreclose possibilities: that might be the only way to understand the Gemara accepting both the interpretations of R'Hisda and R'Ahi, who stated that the verse only concerned slaves escaping *to* Eretz Yisrael, while simultaneously accepting the interpretations of R'Josiah, Mar Samuel, and the baraita, which stated that the verse concerned the manumission of slaves *outside* Eretz Yisrael.

Rambam reflects the equivocal Halachic reading of Devarim 23:16. In Negative Mitzvot 254, he simply restates the verse, writing that it is forbidden to return a fugitive slave to its master. But in Slaves 8:1, he states that “[in the case of] a slave who escapes from outside the land to the land, we do not return him to slavery,” with the provisions of writing a debt contract to the former master.

How can we explain these sorts of contradictions? Unquestionably, the rabbis were wary of reading the passage broadly, for to do so would imply a far-reaching and impractical principle of always shielding runaway slaves. Many Jews, including the rabbis themselves, held slaves—understood here more as bonded or indentured servants rather than as American chattel slavery: a wholesale command for manumission might have been simply infeasible in the circumstances.¹²⁰

More directly, embracing a general principle of freeing slaves would put the Jewish community in severe peril with Roman and Babylonian authority, under which

slavery was a legal—and legally protected—institution. It might be difficult enough to tell the entire Jewish community to free their slaves: it would have been suicidal to challenge states where Jews lived at sufferance from the start. After two disastrous revolts against Rome, the rabbis surely did not relish another.¹²¹ Certainly it is no accident that the verse from Devarim takes place during a period of growing Israelite political and military power.

A similar theme thus emerges from the consideration of returning the slave as evinced in BT Sanhedrin and JT Terumot as well as the *dina d'malkhuta dina* principles, namely that Halachic obligations often remain contingent upon political realities and practical dangers. What, then, do we do with Devarim 23:16? It makes the most sense to see it as a canon of construction in the same way that we did with loving the stranger: the plain text creates a strong bias toward the protection of fugitives, tempered with an acceptance of political realities and other specific Halachic rules. All other things being equal, Jews should shelter those who face cruel, inhuman, and degrading treatment, such as slavery. A fortiori, the prospect of death would also qualify.

V. LIMITATIONS

In light not only of the Halachically-established Duty to Rescue and the provisions in both the Babylonian and Jerusalem Talmuds, as well as the canons of construction identified above, a synagogue has a clear obligation to protect the DACA recipient in this case, as well as other similarly situated cases. We need to know, however, how far such an obligation extends.

Jewish law insists on a highly contextual and fact-based determination, particularly regarding the level of danger that a would-be protector or rescuer might face. The level of danger can, in some circumstances, substantially reduce the legal obligation of a would-be protector or rescuer. Is one obligated to come to the rescue of his neighbor in distress if the rescue operation *may* involve a risk to one's life and to one's well-being? How serious must the risk be in order to qualify it under the exemption of self-sacrifice? Or, at what point does the danger to the life or the well-being of the bystander become so remote as to be inconsequential in the face of one's duty to save someone in peril?

The late Rabbi Aaron Kirschenbaum asked whether someone must put herself in *possible* danger to save someone from *certain* death:

Summarized briefly, *rabbinic law today declares officially that there is no such duty*, but qualifies this declaration in a number of ways: (1) it exhorts the citizen, "One

must not overly protect oneself”; (2) it urges each case to be judged on its own merits, “It seems that everything depends upon the individual circumstances”; (3) the volunteer who does endanger his life and limb is extolled as acting above and beyond the call of duty and as performing a saintly act (*middat hasidut*); (4) the degree of jeopardy which legally exempts the bystander from his duty must be a most substantial one, great enough to deter him from saving his most precious possessions had they been in similar circumstances; and (5) exceptionally, the medical practitioner is expected to treat patients even under circumstances which represent serious danger to his own life.¹²²

I attempt to flesh out the contours of these below with regards to our DACA recipient in this section.

A. Risking One's Life

These are particularly live issues in modern Halachic discussion because of their relevance to medical ethics, particularly the fraught issue of organ donation. The classic opinion derives from the Radbaz, given a hypothetical in which a wicked ruler tells someone, “cut off a limb that you do not need to survive or I will kill your friend.” Is there an obligation under such circumstances? It might seem that there would be: after all, he asked, “if Shabbat which is stringent and is put off for saving a soul, is it not logical that we should cut off the part of a person which is unnecessary for saving a soul?” And the Radbaz was asked this question not as a stray hypothetical, but rather because an earlier authority, R'Mordecai Recanati, had in fact ruled 250 years earlier that a Jew must actually agree to have his limb amputated.

Yet at the end the Radbaz's answer is no for two reasons:

1. The effects of cutting off a limb, even one that is allegedly not necessary, are unforeseeable. After all, the Radbaz noted, someone might begin to bleed uncontrollably, and, in an inversion of Sanhedrin 73a, who is to say that one friend's blood is redder than his?
2. The Torah never says that you have to help your friend to the extent that you die. “You should try to help with him with the full extent of your wealth, but not with your life. . . . Furthermore, the ways of Torah are gentle, and the laws of the Torah need to make sense. It makes no sense to blind his eye, or cut off his hand or foot so that his friend should live.” It might be an action of great Chassidut to act in such a way, conceded the Radbaz, but if someone will lose his own life in the process, “he is a Chassid who happens to be a fool.”

In a second responsa,¹²³ the Radbaz further develops the issues involved in entering danger to save others. He was asked about a technicality in Maimonides's ruling that "anyone who can save his fellow and does not save him has transgressed the commandment: 'do not stand over your neighbor's blood (but rather save him)'" The Radbaz explained that Maimonides's ruling applies when the rescuer undergoes no danger to himself whatsoever, such as warning a person asleep beneath a shaky wall to get up or to share lifesaving information with someone else. He then adds that:

not only this (saving a life when it entails no risk to the rescuer), but [he must save his friend] even if there is a small possibility of danger (*safek sakana*). For example, if he sees his friend drowning in the sea or bandits coming to assault him or [sees him] being attacked by a wild animal- all of which entail a possibility of danger- nevertheless, he still must rescue [his friend]. . . . But to save the life of your neighbor . . . even in a place that there is a questionable danger, there is an obligation to save, and this is [found] within the Jerusalem Talmud. However, if the questionable danger approaches certainty, one is not obligated to take the risk to himself of saving his friend. And even if there is [only] an even danger, one is not obligated to risk himself because who says that his blood is more valuable, perhaps your blood is more valuable. But, if the [degree of] questionable [risk] is not significant, rather rescue seems likely and without [significant] risk to the rescuer, and he does not [attempt to] rescue, he has transgressed [the prohibition of] "do not stand over your neighbor's blood."

Do these rulings contradict each other? Although some have suggested as much, they actually dovetail quite nicely. The Radbaz is establishing something of a sliding scale, in which greater degrees of danger reduce the obligation on the part of the putative rescuer.¹²⁴ Rav Ovadia Yosef held that one is a pious fool when the odds of the danger to the rescuer are 50% or greater—the Radbaz's "even danger." But the lower the odds, the more the obligation attaches.¹²⁵

B. Sacrifices Short of Life

So now we know that although one does not need to sacrifice herself to save another, (1) lower risks of danger increase the obligation to rescue; (2) one must not overly protect oneself; and (3) the danger would be such that it would stop someone from saving his most prized possessions.

What if there is no danger to life, but there is a danger of incarceration? Would the Duty to Rescue attach even if one could go to prison?

Rav Acha said in the name of Resh Lakish: “a kohen gadol that sinned is flogged.” . . . Resh Lakish said that if a Nasi (Patriarch) sinned, he is flogged by a court of three. . . . Rabi Yudan Nesiah heard this and was furious and issued a warrant for his arrest. Resh Lakish fled to Mugdala, and others say to Kfar Yitia . In the morning Rabi Yochanan went to the House of Meeting and Rabi Yudan Nesiah went to the House of Meeting. [Rabi Yudan] asked Resh Lakish: Why did you do this? Resh Lakish said [to R. Yudan]: “Did you think that for fear of you I would stop [proclaiming] the teaching of God?!”¹²⁶

Resh Lakish was prepared to go to prison in order to challenge the authority of the Nasi. If one would go to prison for disobeying a Nasi, then all the more so for disobeying a secular authority. We can thus deduce at this point that while one is not obliged to incur a substantial risk to one's life to save another, one is obliged to risk going to prison. After all, if Resh Lakish would go to prison in order to speak out against the sin of the Nasi, it surely stands to reason that one should go to prison in order to save a life.

One should also be willing to give up status, and the wealth and power that goes with it. When Saul suspected the priests of Nob of having conspired with the outlawed David, the King commanded his men to “go round and put the priests of the Lord to death, for they too are David's partisans. But the king's servants were unwilling to lift their hand to harm the priests of the Lord.”¹²⁷ To this, the Yerushalmi asks:

Who were those servants? R.Samuel b'Isaac said: they were Abner and Amasa. They replied to Saul, “Do we owe you anything beyond this belt and mantle (i.e. the insignia of office)? Here, take them back.”¹²⁸

To this, Israel Prize winner Rabbi Moshe Greenberg comments, “they would rather resign their high position held by them rather than accede to the king's demand,”¹²⁹ and concludes that when faced with an illegal order, the Halacha is that a Jew “must refuse to carry out the order even if it means a fall in rank and status.”¹³⁰ Such a conclusion conforms to Kirschenbaum's, which emphasizes that a Jew must not overly protect herself, and the risk must be a very substantial one. Declines in rank and status, and even imprisonment, are serious, but they come nowhere close to threatening life.¹³¹

What about financial commitments? The sources on the precise amount of monetary expenditure demanded to save someone are spare, but suggest at least a substantial commitment. The Gemara states that not standing idly by the blood of your neighbor requires the hiring of workers in order to rescue the endangered person.¹³² And Rashi comments: “You shall not stand idly by the blood of your neighbor,”

means ‘You shall not rely on yourself, alone’: Rather, you must turn to *all available resources* so that your neighbor’s blood will not be lost.”¹³³ If we take this literally, “all available resources” might mean a congregation’s or a person’s complete worth. We need not conclude this now, but merely find that a rescuer bears a significant financial responsibility for saving the endangered person’s life.

VI. RISKS

As noted above, Halacha does not require Jews to take a substantial risk to their lives in order to effect the Duty to Rescue. But it does require them to give up status, wealth, and perhaps even their freedom. These risks are relevant in the present case.

Federal law states that any person who knowingly “conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection . . . in any place, including any building or any means of transportation” any alien who has “come to, entered, or remains in the United States in violation of law” has committed a crime.¹³⁴ It further provides that anyone guilty of this crime shall be imprisoned for not more than 5 years for each alien so concealed.¹³⁵ A conspiracy to do so, which is to say, to agree to it, and to aid and abet it, also falls under the law’s terms.¹³⁶ By the plain language of the statute, then, if the congregation or any member of it participate in any action to conceal the Honduran DACA recipient, they could be imprisoned for several years.

Religious-based sanctuary is not a defense under current law. A broader view of the antiharboring statute indicates quite clearly that it is designed to focus on traffickers who bring people illegally to the United States for profit: penalties increase if there is a profit motive, and other statutory provisions authorize the civil forfeiture of “conveyances” used for importing unauthorized immigrants.¹³⁷ So far, people of faith trying to protect unauthorized immigrants have not been prosecuted. In the mid-1980s, the Rev. John Fife and other Arizona activists were convicted of harboring unauthorized immigrants, although they did not serve prison time.¹³⁸ More recently, activists in the Arizona nonprofit No More Deaths have been prosecuted for putting out water and supplies for immigrants crossing the southwestern desert. In general, the federal government has avoided arresting people in sensitive locations such as places of worship, schools, hospitals, and community centers.

But this is a matter of discretion and policy optics, not law. Former Attorney General Sessions frequently stated that he wanted to substantially increase harboring prosecutions. Although as of this writing the risk of imprisonment appears to be relatively minimal, the risk is still present.¹³⁹ Indeed, DOJ is now prosecuting members of No More Deaths for what it claims are efforts to assist unauthorized immigrants to

escape detection at the border, even though No More Deaths leaders have said that they are simply leaving food and water in the Sonoran Desert for those immigrants making the dangerous trip. When No More Deaths leader Scott Warren's trial ended in a hung jury, with 8 out of 12 members voting to acquit, DOJ said that it would re-prosecute.

For Halachic purposes, however, the risk is not particularly relevant. Resh Lakish was prepared to go to prison to challenge the Nasi; all the more so to challenge a gentile ruler. Similarly, congregations must be prepared to take at least some significant monetary risk to protect innocent lives.

For now, we can conclude that the congregation must do whatever is feasible in order to protect and conceal the DACA recipient from danger, which in this case means protect and conceal her from Immigration and Customs Enforcement.

CONCLUSION

The current political moment, notes *New York Times* columnist Michelle Goldberg, has "revived the Jewish left."¹⁴⁰ Much if not most of this revival involves protest over public policies and attempts to organize to change them. This article shifts the focus somewhat to Jewish collective and personal behavior assuming state backing for those policies. One might hope for change in state policy: one must also be prepared for moral choices if that policy does not change.

Ensuring that behavior complies with Halacha involves risks. Protests—even with the minor inconvenience of a short arrest—come nowhere close to exhausting Halachic commands. Protest may be the new brunch, as the popular saying goes,¹⁴¹ but Halacha is more than brunch. To obey Jewish law, Jews must hazard legal sanction, even imprisonment and fines. They need not risk their lives, or torture, or cruel, inhuman, or degrading treatment, but they must bear the costs of the tradition. And perhaps that is not so much: those whom they purport to defend face far greater danger. If we are not for ourselves, who will be for us? But if we are only for ourselves, what are we?¹⁴²

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NOTES

1. I prefer the term “unauthorized immigrant” for someone not lawfully present in the United States. The traditional term “illegal immigrant” not only carries unfounded connotations of danger, but also suggests that such persons have committed some sort of crime. Someone not lawfully present in the United States, however, has committed no crime and is subject only to the *civil* penalty of deportation. Conversely, the preferred term by many immigration advocates—“undocumented”—represents something of an equivocation. The legal problem is not that such persons lack proper documents, but rather that they are not lawfully present in the country. I believe that the term “unauthorized” better expresses the actual legal issue while avoiding the invidious term “illegal.”

2. See, for example, Goodstein, “Houses of Worship Poised to Serve as Trump-Era Immigrant Sanctuaries,” and Gunn, “The Sanctuary Movement: How Religious Groups Are Sheltering The Undocumented.” Jewish institutions have become involved as well. See, for example, T’ruah: The Rabbinic Call for Human Rights, “Mikdash: The Jewish Sanctuary Movement,” and Sales, “A Guatemalan asylum seeker is being sheltered in a Washington state synagogue.”

3. Thus, in English this form of literature is known as a responsum.

4. The Deferred Action for Childhood Arrivals (DACA) program promised that an unauthorized resident of the United States would not face deportation proceedings and could receive permits to work if he or she: “came to the United States under the age of sixteen; has continuously resided in the United States for at least five years preceding [June 15, 2012] and is present in the United States on [June 15, 2012]; is currently in school, has graduated from high school, has obtained a general education development certificate, or is an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; has not been convicted of a felony offense, a significant misdemeanor offense, multiple misdemeanor offenses, or otherwise poses a threat to national security or public safety; and is not above the age of thirty.” See Napolitano, “Exercising Prosecutorial Discretion,” June 15, 2012.

5. On June 28, 2019, the United States Supreme Court granted certiorari and consolidated three cases to consider whether the Trump Administration could end the program: *Department of Homeland Security v Regents of the University of California*; *Trump v NAACP*; and *McAleenan v. Vidal*. See <https://www.scotusblog.com/case-files/cases/departments-of-homeland-security-v-regents-of-the-university-of-california/>. In *Department of Homeland Security v Regents of the University of California*, 519 U.S. --- (2020), 140 S. Ct. 1891, the Supreme Court held that the Trump Administration’s rescission of DACA was arbitrary and capricious and reversed the order.

The Biden Administration maintained the program and issued regulations in order to strengthen the program’s legal foundations. Several states brought suit, and in *Texas v United States*, 50 F.4th 498 (5th Cir. 2022), the Fifth Circuit held that the program could continue but that no new applications for the program could be entertained. The Biden Administration has

petitioned the Supreme Court for review.

6. The classic statement can be found in comment (b) to §315 of Restatement (Second) of Torts, which states in relevant part:

In the absence of either [a special relationship between the actor and the negligent party which imposes a duty upon the actor to control the third person's conduct, or a special relationship between the actor and the injured party which gives to the injured party a right of protection], the actor is not subject to liability if he fails, either intentionally or through inadvertence, to exercise his ability so to control the actions of third persons as to protect another from even the most serious harm. This is true although the actor realizes that he has the ability to control the conduct of a third person, and could do so with only the most trivial of efforts and without any inconvenience to himself.

7. Maimonides, *Torts*, "Murder and the Preservation of Life" 1:14.

8. Chosen Mishpat 426:1.

9. Murder and the Preservation of Life 1:16.

10. See *The Brown-Driver-Briggs Hebrew and English Lexicon*, at 945–46 (giving multiple definitions and connotations for *ra-ah*, but never suggesting that it applies only to Israelites). See also Rashi to Exodus 2:13 (interpreting *ra-echa* as connoting similar ethical and unethical behavior, not membership or not of Israel).

11. Mishnah Sanhedrin 4:5.

12. Some extent copies of the Mishnah during the Middle Ages did qualify the statement of Mishnah Sanhedrin 4:5 as stating that if one saves a soul from Israel then he is considered to have saved the whole world. But these were adulterated copies; earlier versions of Mishnah maintained the universal language and modern copies use that language. See Philologos, "The Origins of the Precept."

13. Ernst Simon argues that *re'a* only applies to Jews. See Simon, "The Neighbor (*Re'a*) Whom We Shall Love," 29–56. But for a scholar as distinguished as Simon, his argument is surprisingly weak. Simon concedes that "Scripture alone does not offer us a satisfactory solution to our problem." (33). But then when he canvasses rabbinic opinion, this falls short as well. For example, he quotes Mekhilta d-Rabbi Ishmael to Exodus 21:14, which begins "if a man schemes against his neighbor." Simon *translates* this as "*re'ehu*, his neighbor, this is meant exclude others [i.e., gentiles, who are not considered member of the class of *re'a*]." (42). But the interpolation is not in the text! All the text says is "*re'ehu*, his neighbor, and this is to bring out [*l'hotzea*] the others [*ha-aherim*]." We do not know who "the others" are. No other comment in Mekhilta is forthcoming. Indeed, Stern cannot find a single statement in the Talmud forthrightly endorsing the particularistic version. And he consistently downplays the more universalistic sources, although he is clearly correct that there are more particularistic sources as well. In this sense, Simon demonstrated his own generosity of spirit, by carefully attending

to and highlighting sources that counter his own universalistic predilections. But his essay is unpersuasive.

14. Ginsbergh, “Love Your Jewish Neighbor.” (Emphasis mine.)

15. *Ra-echa* is used in the original Decalogue as well. See Exodus 20:13–14.

16. It hardly should surprise anyone that the meaning of a term should depend upon context. For example, the term *Elohim* almost universally means “god,” but in Psalm 82, when God speaks *b-kerev Elohim*, long tradition sees the word there meaning “judges,” not “gods.” See Berkhof 6a; Sanhedrin 7a.

17. Kirschenbaum, “The Bystander’s Duty to Rescue,” 204–26; for a secular commentator, see Nahmod, “The Duty to Rescue.”

18. Megillah 19b/20a.

19. *Tarasoff v. Regents of the University of California*, 551 P.2d 347 (Cal. 1976).

20. UN General Assembly Resolution 39/46, “Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,” A/RES/39/46 (10 December 1984), Article 16, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>.

21. See BT Sanhedrin 74a:

Rabbi Yohanan says in the name of Rabbi Shimon ben Yehotzadak: The Sages who discussed this issue **counted** the votes of those assembled **and concluded in the upper story of the house of Nitza in the city of Lod:** With regard to **all other transgressions in the Torah, if a person is told: Transgress this prohibition and you will not be killed, he may transgress** that prohibition and not be killed, because the preserving of his own life overrides all of the Torah’s prohibitions. This is the *halakha* concerning all prohibitions **except for those of idol worship, forbidden sexual relations, and bloodshed.** Concerning those prohibitions, one must allow himself to be killed rather than transgress them.

This text is from the William Davidson edition of the Babylonian Talmud, which includes the translations and interpolations from Rabbi Adin Even-Israel Steinsaltz. The original text is in bold; the interpolations are from Steinsaltz.

22. Literally, “simple and strict”: the Halachic principle of an a fortiori reference.

23. There is an issue about whether breaking secular law is appropriate in circumstances as this, under the well-known principle *dina d’malkhuta dina*, or “the law of the land is the law,” which will be considered below. Yet in the first instance, Halacha makes it quite clear that taking a risk in order to save a life constitutes a mandate of high importance.

24. *Milam v. State Farm Mut. Ins. Co.*, 972 F.2d 166, 169 (7th Cir. 1992) (internal citations omitted).

25. See, e.g., *Palsgraf v. Long Island R.R. Co.*, 248 N.Y. 339, 351–52 (1928) (Andrews, J., dis-

sentencing):

What is a cause in a legal sense, still more what is a proximate cause, depend in each case upon many considerations, as does the existence of negligence itself. Any philosophical doctrine of causation does not help us. A boy throws a stone into a pond. The ripples spread. The water level rises. The history of that pond is altered to all eternity. It will be altered by other causes also. Yet it will be forever the resultant of all causes combined. Each one will have an influence. How great only omniscience can say. You may speak of a chain, or if you please, a net. An analogy is of little aid. Each cause brings about future events. Without each the future would not be the same. Each is proximate in the sense it is essential. But that is not what we mean by the word. Nor on the other hand do we mean sole cause. There is no such thing.

More prosaically, the great mid-century Torts scholar Fleming James, Jr. commented: “You can call it Thucydides or you can call it mustard plaster, but it’s all proximate cause just the same.” See Calabresi, “You Can Call It Thucydides.”

26. Citations to many of these cases and an illuminating discussion is found in Friedell, “Nobody’s Perfect.”

27. Bava Kamma 116b.

28. Compare, e.g., *Vosburg v. Putney*, 50 N.W. 404 (Wis. 1891) (finding liability for freak injury when initial action was intentional) with *Overseas Tankship (UK) Ltd v Morts Dock and Engineering Co Ltd (Wagon Mound No. 1)* [1961] UKPC 2, [1961] AC 388; [1961] 1 All ER 404 (18 January 1961), Privy Council (on appeal from NSW) (holding that in order to find a party liable for negligence the damage must be “reasonably foreseeable”).

29. Bava Kamma 60a.

30. Anglo-American law usually assigns liability in these circumstances, probably for deterrence and compensation purposes, under the rubric of the “substantial factor” test. See, e.g., *Mitchell v. Gonzales*, 819 P.2d 872, 878–79 (Cal. 1991); *Kramer v. Lewisville Memorial Hospital*, 858 S.W.2d 397, 401 n.3 (Tex. 1993).

31. Bava Kamma 59b.

32. See Batalova and Mittelstadt, “Relief from Deportation,” 7.

33. U.S. Department of State, “2021 Country Reports on Human Rights Practices: South Korea.”

34. U.S. Department of State, “Honduras Travel Advisory.”

35. Human Rights Watch, “Country Overview: Honduras.”

36. Neff, “Why Families Flee Central America.”

37. UN General Assembly Resolution 39/46, “Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.”

38. I use “reasonable probability” here in reference to *Strickland v. Washington*, 466 U.S. 668 (1984), which considered claims of ineffective assistance of counsel under the Sixth Amendment to the United States Constitution. The Court defined “reasonable probability” not as a preponderance of evidence that the original verdict was wrong, but rather “sufficient to undermine confidence in the outcome of a trial.” *Id.* at 691–96. Similarly here, I define it as sufficient to undermine confidence that a person will be free of death, torture, and cruel, inhuman, or degrading treatment.

39. See, for example, Luban, “Human Dignity, Humiliation, and Torture,” 211–30.

40. Berakhot 19b.

41. Mishneh Toreh, Mishnayot Kilayim 10:29.

42. Luban, 211–30.

43. Luban, 213.

44. Kateb, *Human Dignity*, 1. Kateb’s own treatment for our purposes does not advance the discussion much.

45. Riley and Bos, “Human Dignity.”

46. Kateb, 20–21.

47. Maimonides argued that the divine image rests in our ability to reason and contemplate. See *The Guide for the Perplexed*, Volume I, Chapter I. Elliot N. Dorff suggests that “[l]ocating the divine image within us may also be the Torah’s way of acknowledging that we can love, just as God does, or that we are at least partially spiritual and thus share God’s spiritual nature.” Elliot N. Dorff, *Matters of Life and Death*, 19. I do not argue here that *only* human beings can do these things, and indeed, if we found that certain animal species—most probably chimpanzees and dolphins—could do the same, then they would possess dignity as much as human beings do. Obviously, considering the degree of animal dignity lies far beyond the scope of this tshuvah. Rabbi David Seidenberg provides a comprehensive examination and analysis, rejecting any form of human-centeredness, in *Kabbalah and Ecology*.

48. See, e.g., Lane and Wheeler, “The Real Victims of Sleep Deprivation.” Lane and Wheeler quote Menachem Begin’s famous description of sleep deprivation torture at the hands of the KGB:

In the head of the interrogated prisoner, a haze begins to form. His spirit is wearied to death, his legs are unsteady, and he has one sole desire: to sleep . . . Anyone who has experienced this desire knows that not even hunger and thirst are comparable with it.

I came across prisoners who signed what they were ordered to sign, only to get what the interrogator promised them.

He did not promise them their liberty; he did not promise them food to sate themselves. He promised them - if they signed - uninterrupted sleep! And, having signed, there was nothing in the world that could move them to risk again such nights and such days.

49. Sullivan, "What Torture Is."
50. Luban, 214.
51. Bava Metzia 59a.
52. Bava Metzia 59a.
53. Bava Metzia 59a.
54. Bava Metzia 59a. We need not worry about the *public* character of shaming being a reason not to condemn torture, even if torture is in some ways a quintessentially private activity: in the excerpt, King David is complaining about being shamed in the World To Come. If that is public, then virtually anything is "public."
55. Shabbat 81a-b.
56. Dorff, Nevins, and Reisner, "Homosexuality, Human Dignity, and Halakhah," 12.
57. UN General Assembly Resolution 39/46, "Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment."
58. Several European Court of Human Rights decisions have involved this. See, for example, *Hurtado v. Switzerland*, Application no. 1754/90, Judgment of 28 January 1994.
59. An illuminating discussion on the definition of "cruel, inhuman, and degrading treatment" can be found in Waldron, "The Coxford Lecture: Cruel, Inhuman and Degrading Treatment." Waldron notes in this context that the notion of "humiliation" is also found in Common Article 3 of the Geneva Convention (prohibiting, with regard to civilians and soldiers outside combat, in conflicts not of an international character "in any time and any place whatsoever . . . outrages upon personal dignity, in particular humiliating and degrading treatment."). A full discussion of these circumstances lies outside the scope of this opinion, but could very well apply to refugees escaping other circumstances. Scholars are still working through the definition of "CID" treatment with varying degrees of success. See, for example, Weissbrodt and Heillman, "Defining Torture."
60. Note: my finding that the general Duty to Rescue applies to non-Jews as well as Jews does not specify whether such inclusivity applies in cases of disobedience to legally constituted civil authorities. Further analysis of this issue is thus required in such cases.
61. J.T. Terumot 46b. Question: Whose assessment of the danger to the fugitive should we accept? The government's? Must we make an independent judgment? Or is there a review standard?
62. 2 Sam. 19:41–44; 20:1.
63. Accepting this interpretation would essentially make R'Yochanan's position as a restatement of *Dina d'malkhuta dina*. One might think of it as a "review standard": if the government has *some* sort of claim against someone within the color of law—a valid arrest warrant, for example—then it is good enough. I will consider *dina d'malkhuta dina* in greater depth below, but in the meantime, we can foreshadow the *machloket* between R'Shimon and R'Yochanan as reflecting two considerations: (1) protection of innocents (R'Shimon), versus (2) realistic appraisal of resistance in the face of state power (R'Yochanan). My proposed standard attempts

to balance the two: we do not need to fully choose between the opinions in terms of crafting an answer to this question in the present day.

64. Yad Ramah to Sanhedrin 72b; Kesef Mishnah to Sanhedrin 72b.

65. Question: what do we know about the nature of the Hasidim in Gemara? Does it have legal implications (i.e. if Hasidim would not do something, does that imply all Jews should not do it, either)? Daube contends that *Hasidim* means the Essenes, which once was a popular theory, but has since declined due to lack of evidence. Daube, *Collaboration with Tyranny in Rabbinic Law*; for the current disfavoring of the theory, see Jacobs, *Holy Living*, 6.

66. This is in the Artscroll Edition of the Yerushalmi to Masechet Terumot, paginated as 84b, n.14.

67. J.T. Terumot 46b.

68. Rashi to Sanhedrin 74a. “It is logical” That the soul of his fellow should not be set aside, since there would be 2: destroying a soul, and a sin. With his life, there is only 1: the destruction of his soul. And he should not transgress, since when God said to transgress a commandment based on “that you will live,” it is because a Jewish soul is valuable in His eyes. Here, with the murderer, since eventually there will be a destroyed soul, who would it be permissible to transgress? Who knows that his soul is dearer to his creator more than the soul of his fellow? Therefore, the decree of the Omnipresent cannot be placed aside.

69. Mishneh Torah, Hilchot Yesodei Torah, 5:3.

This rule [that one must submit to violating Halacha rather than die] applies to all the commandments, except the prohibitions of idolatry, in chastity and murder. With regard to these: if an Israelite should be told “transgress one of them or else you will be put to death,” he should suffer death rather than transgress. The above distinction only holds good if the idolater’s motive is personal advantage; for example, if he forces an Israelite to build him a house or cook for him on the Sabbath, or forces a Jewess to cohabit with him, and so on; but if his purpose is to compel the Israelite to violate the ordinances of his religion, then if this took place privately and ten fellow-Israelites were not present, he should commit the transgression rather than suffer death. But if the attempt to coerce the Israelite to transgress was made in the presence of ten Israelites, he should suffer death and not transgress, even if it was only one of the remaining commandments that the idolater wished him to violate.

70. B.T. Bava Metzia 83b.

71. It is imperative to clarify the interpretive philosophy underlying this section. By investigating the meaning of the phrase “people of our God,” I am *not* claiming to determine R’Yehoshua ben Korba’s particular subjective intent. Rather, I am attempting to arrive at an intellectually honest understanding of what meaning the phrase can bear, given the fact that we are interpreting it in a modern context. It might well be called the Halachic equiva-

lent of “living constitutionalism”—an approach that itself has strong Talmudic authority. BT Menachot 29b. Thus, it is not necessarily relevant that in the immediate preceding context, R’Eliezer is searching for thieves and notes that some in the inn are falling asleep because they woke early to their Torah studies. I do not doubt that the rabbis in question used “the people of our God” as a synonym for Jews. Rather, I argue that the appearance of the phrase “people of our God” allows in the modern context for a wider interpretation.

In the same way, we know close to an absolute certainty that the Congress that wrote the Fourteenth Amendment, which formed the basis of the Supreme Court’s landmark decision in *Brown v Board of Education*, unquestionably believed that racially segregated schools were permitted. Indeed, this Congress, acting under its plenary power to legislate for the District of Columbia, established segregated schools there. But this does not matter, because we do not interpret the Constitution in such an originalist fashion.

72. The rabbis took the specific name “Israel” very seriously and focused on it as the proper denotation for people whom we now call Jews. Thus it stands to reason that if the rabbis did *not* refer to “Israel” or the “children of Israel,” it carries significance. See BT Sanhedrin 44a:

When God explained to Joshua the reason for the Jewish people’s defeat at the city of Ai, He said: **“Israel has sinned”** (Joshua 7:11). **Rabbi Abba bar Zavda says:** From here it may be inferred that **even when** the Jewish people **have sinned**, they are still called **“Israel.”** **Rabbi Abba says:** **This** is in accordance with the adage **that people say:** Even when **a myrtle is found among thorns, its name is myrtle and people call it myrtle.**

73. See Exodus 6:3: “I appeared to Abraham, Isaac, and Jacob as El Shaddai, but I did not make Myself known to them by My name יְהוָה.”

74. This is standard history. See, e.g., describing the Council of Nicaea, MacCulloch, *Christianity: The First Three Thousand Years*, 214.

75. Institute for Public Affairs of the Orthodox Union, “Statement by Dr. David Berger.”

76. Brill, “Rabbi Eliezer Ashkenazi on ‘Pour Out Thy Wrath.’”

77. Although R’Moshe’s statement could be interpreted as applying *only* to those non-Jews who explicitly make certain professions of beliefs, i.e. those who believe in the creation of the world, the Exodus from Egypt, and the principles of faith. But it is obvious that R’Moshe himself does not intend this—otherwise, he would not have issued such a general statement that his assessment applies to entire nations.

78. Moshe Halbertal provides a careful and thoughtful discussion of Ha’Me’iri’s rulings. Halbertal, “Ones Possessed of Religion.”

79. The seven Noahide laws as traditionally enumerated are the following: (1) Not to worship idols; (2) Not to curse God; (3) To establish courts of justice; (4) Not to commit murder; (5) Not to commit adultery, bestiality, or sexual immorality; (6) Not to steal; (7) Not to eat flesh torn from a living animal. The most extensive discussion of these

laws and their application through history is found in Novak, *The Image of the Non-Jew in Judaism*.

80. BT Sanhedrin 105a.

81. Maimonides adhered to the stricter view that gentiles only merit entering the world to come if they adhere to the Noahide laws *and* believe that they were commanded through God in the Torah. But “if he observes them because he convinced himself, then he is not considered a Resident Convert and is not of the Righteous of the Nations of the World, but merely one of their wise.” Mishneh Torah, Laws of Kings and Wars, 8:11. Even such strictness, however, does not obviate the notion that those abiding by the Noahide laws are “people of God” for several reasons. If someone is “one of their wise,” this indicates that they *are* people of God by virtue of their wisdom, since under Maimonides’s own framework, wisdom itself is a gift of God. Indeed, acceptance of the Noahide laws based upon wisdom is itself a form of spiritual or divine connection just as fitting of protection as someone who believes that they were divinely “commanded.”

Moreover, Maimonides puts this notion in the concept of a *Ger Toshav*, a Resident Convert. The question in the context of “people of God” is whether non-Jews who make no pretense to conversion must be rescued. Maimonides holds that they should not be treated as a convert, but such a question is not apposite to this case.

82. I use “precedent” here in the colloquial, not technical-legal sense, since Halacha does not follow the traditional Anglo-American doctrine of *stare decisis*. Previous opinions form a web of persuasive authority, in which different *poskim* use their *svara* to come up with what they perceive as the most halachically appropriate decision.

83. Foer, “How Trump Radicalized ICE.”

84. Indeed, from the very beginning, Rambam was skeptical that *dina d’malkhuta dina* was anything more than a limited principle:

Anyone who fails to obey the king’s orders because he is engaged in the performance of Commandments, even of one simple Commandment, is exempt. This is so since whenever a dictate of the Master (G-d) conflicts with a dictate of the servant (the king), the dictate of the Master takes precedence. Needless to say, the king is not heeded if he decrees something which cancels a Commandment. (Rambam, Mishneh Torah, Laws of Kings and Wars 3:9).

From where does Rambam derive this law? As is typical, he provides no citation, but Yosef Karo in the Kesef Mishnah cites BT Sanhedrin 49a. There, Avner says that he killed Amasa because the latter took more than three days to gather the men of Judah to go to war (2 Samuel 20:4). King Solomon replies that Amasa delayed because he found the Israelites engaged in studying a tractate. In other words, God’s command to the Jewish people to study Torah takes precedence over the King’s command to gather the troops.

A similar opinion is found in Numbers Rabbah (Naso, 14:6), which was edited in the twelfth century, apparently in Provence. Mack, “The Time, Place and Distribution of Midrash in Madbar Rabbah,” 91–105.

“I obey the king’s orders” (Kohelet 8:2) means that you should not rebel against his command. Does this mean even if he tells you to transgress the words of God? Therefore it says “and uttering an oath by God”—the verse comes to inform you that the [utterance of God] takes precedence over the command of flesh and blood [=the King].

See also Golinkin, for an excellent discussion of similar issues: “The Jewish Attitude Towards Non-Violent Protest and Civil Disobedience.”

85. Faber, “Review of *Dina de-Malkhuta Dina*,” 345–46. This might sound shocking, because at first glance it might appear that Halacha does *not* require Jewish observance of secular criminal or other public law, and this would be absurd. But this need not be implied. *Dina d’malkhuta dina* becomes most relevant when it appears that adherence to Jewish law might conflict with secular law. However, regarding the prohibition against murder, Jews would have to adhere to the secular law because such law and Halacha are coextensive. It simply would not constitute a problem. Indeed, this would be the case for any statute (criminal or civil) that would fall under the general category of *mala in se*, namely, things banned by the government because they are wrong in and of themselves. During the period of Jewish legal autonomy, crimes by Jews against Jews would be handled by Jewish courts, and crimes between Jews and gentiles were handled by gentile courts.

By contrast, English common law had recognized a category known as *malum prohibitum*, namely, things that are banned because the state has decided to prohibit them, but that are not *inherently* wrong. Many health and safety regulations, such as labor, employment, public health, and environmental regulations, take on this character. But here, too, *dina d’malkhuta dina* would not apply, for there would be no Halachic prohibition to obeying them. Indeed, many such *malum prohibitum* offenses requiring state action in secular societies, such as timely payment of workers, would already be forbidden by Halacha.

Basing his viewpoint upon Rashi’s Talmud commentary, a contemporary rabbinical authority, the late Rabbi Isar Zalman Meltzer of Jerusalem, explained that the concept of *dina d’malkhuta dina* was an extension of the Noahic Law. Seven basic universal commandments were given to Noah. The charge of *Dinzm* required that an equitable legal system and courts of justice be established for mankind. The king was therefore permitted to promulgate laws which were legally binding upon the residents of his kingdom. Even HaEzer to Maimonides Nizkei Mammon 8:5, based upon Rashi’s commentary to Gittin 9B.

86. Landeman, *Jewish Law in the Diaspora*.

87. Graff, *Separation of Church and State*.

88. Hillier, "The Rationalism of Jewish Law."
89. Rakeff-Rothkoff, "Dina D'Malkhuta," 11.
90. See, e.g., Herf, *The Jewish Enemy*, 4, 27.
91. Modern scholarship, particularly Tom Tyler's now-classic study, has found that current law-abidingness rests upon similar factors, particularly procedural fairness and ability to be heard. Citizens might disagree with the law substantively but see it as legitimate. Tyler, *Why People Obey the Law*.
92. *Richardson v. Perales*, 402 U.S. 389, 401 (1971).
93. *Landes v. Royal*, 833 F.2d 1365, 1371 (9th Cir. 1987). Of course this formula is not self-executing, because no such formula can be. "General principles do not decide concrete cases. The decision will depend on a judgment or intuition more subtle than any articulate major premise." *Lochner v. New York*, 198 U.S. 45, 76 (1905) (Holmes, J., dissenting). And indeed, it would have to be this way; otherwise, there would be no role for the Halachist.
94. Thompson, "The Department of Homeland Security's Authority to Prioritize Removal of Certain Aliens," Nov. 19, 2014. This memorandum postdated the original establishment of the DACA program, which was in 2012, and was based on a shorter memorandum from then-Secretary of Homeland Security Janet Napolitano. See Napolitano, "Exercising Prosecutorial Discretion," June 15, 2012.
95. Sessions III to Duke, Sept. 5, 2017.
96. Sessions III to Duke, Sept. 5, 2017.
97. See, e.g., Associated Press, "AP Fact Check: What the Trump Administration Said About DACA."
98. Berman, "How the Democrats Stopped Worrying and Learned to Accept Trump's Wall."
99. An excellent and thoughtful discussion in the context of American statutory interpretation can be found in Eskridge, Jr. and Frickey, "Quasi-Constitutional Law."
100. See, e.g., *Ashwander v. Tennessee Valley*, 297 U.S. 288, 347 (1936) (Brandeis, J., concurring) ("The Court will not pass upon a constitutional question, although properly presented by the record, if there is also present some other ground upon which the case may be disposed of. This rule has found most varied application. Thus, if a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law, the Court will decide only the latter.").
101. See, e.g., *EEOC v. Arabian American Oil Co. ("Aramco")*, 499 U.S. 244, 248 (1991) (quoting *Foley Bros. v. Filardo*, 336 U.S. 281, 285 (1949)) ("It is a longstanding principle of American law 'that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States.' . . . This 'canon of construction . . . is a valid approach whereby unexpressed congressional intent may be ascertained.'").
102. *Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804).
103. See, e.g., *Chiarella v. United States*, 445 U.S. 222 (1980).
104. See *Gregory v. Ashcroft* 501 U.S. 452 (1991).

105. See *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832).
106. See *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205 (1972).
107. Exodus 23:19.
108. Fox translates *ger* as “sojourner,” and this seems more accurate: it is someone who is residing among a population. For current purposes, I will use the traditional translation. Fox, *The Five Books of Moses*, 898.
109. See, e.g., Exodus 22:21; Leviticus 19:34; Deuteronomy 23:8; Deuteronomy 24:22.
110. Mishneh Torah, Human Dispositions 6:3–4.
111. Mishneh Torah, Positive Mitzvot 207: “To love the *ger*, as it is written, ‘And you shall love the *ger* (Devarim 10:19).’” I do not translate *ger* here for the obvious reason that the debate turns on the meaning of the word.
112. Ramban to Exodus 22:20.
113. Rashi to Exodus 22:20.
114. Yevamot 93b; Kiddushin 63; Gittin 45a.
115. Gittin 45a.
116. The Gemara relates that R’Josiah found it hard to accept the idea of an idolatrous slave rejecting idolatry, and so decided to read the verse fragment “from his master” as “from his father,” meaning a slave sold outside his religion. R’Josiah then read the verse to apply to a circumstance where a slave was sold *outside* Eretz Yisrael. The problem with this interpretation, as his son R’Ahi pointed out, is that it would require the original verse to “escaped from you” whereas it clearly states “escaped to you.”
117. Concerning R’Chisda, see Gittin 45a:

“Rav H̄isda’s slave escaped to Bei Kutai, a place where Samaritans lived. He sent a request to the residents of that place: Return him to me. They sent a response to him: The verse states: “You shall not deliver to his master a slave,” so we will not return this slave to you. He sent a response to them: The verse also states with regard to lost items: “And you shall restore it to him . . . and so you shall do for his donkey and so you shall do for his garment and so you shall do for anything your brother has lost” (Deuteronomy 22:2–3). They sent a response to him again: But isn’t it written: “You shall not deliver to his master a slave”? Rav H̄isda sent a response to them: That verse is referring to a slave who escaped from outside of Eretz Yisrael to Eretz Yisrael, and in accordance with the explanation of Rabbi Aḥai, son of Rabbi Yoshiya, and my slave escaped from one location outside of Eretz Yisrael to another location outside of Eretz Yisrael.”

118. Arachin 29b. This discussion occurred in the context of determining whether one may sell land in Israel within one year of the Yovel, but the statements regarding the sale and manumission of slaves stand on their own.
119. Gittin 45a (noting that R’H̄isda’s explanation, unlike all the others, comports with a some-

what more straightforward reading of the verse, and was thus more acceptable to Samaritans).

120. For background on this topic, see generally Hezser, *Slavery in Jewish Antiquity*.

121. C.f. Shabbat 21b (downplaying Hasmonean revolt against Seleucids and inventing miracle of oil as an explanation for Chanukah).

122. Kirschenbaum, “The Bystander’s Duty to Rescue.” Generally speaking, as Kirschenbaum notes, this is a standard Halachic position. R’Moshe Feinstein ruled that it is permissible to risk one’s life to save someone else, but not required. Igrot Moshe Yoreh Derech 2:174.

123. Eisenberg, “Self-Endangerment to Save Others.”

124. Such sliding scales are common in Anglo-American jurisprudence. They are often conceived of as “balancing tests,” but are sometimes viewed in more continuous terms. See, e.g., *San Antonio Bd. Of Educ. V. Rodriguez*, 411 U.S. 1, 98–99 (1973) (Marshall, J., dissenting) (“A principled reading of what this Court has done reveals that it has applied a spectrum of standards in reviewing discrimination allegedly violative of the Equal Protection Clause. This spectrum clearly comprehends variations in the degree of care with which the Court will scrutinize particular classifications, depending, I believe, on the constitutional and societal importance of the interest adversely affected and the recognized invidiousness of the basis upon which the particular classification is drawn.”).

125. See Nishmat Avraham, Orach Chaim, 329:6, cited in Eisenberg, “Self-Endangerment to Save Others.”

126. JT Sanhedrin 9b.

127. 1 Samuel 22:17.

128. JT Sanhedrin 29a.

129. Greenberg, “Rabbinic Reflections on Defying Illegal Orders,” 214.

130. Greenberg, “Rabbinic Reflections on Defying Illegal Orders,” 218.

131. If conditions in a prison are so severely bad that they do approach loss of life, injury, or trauma, then imprisonment could serve as a justification for violating the law or even agreeing to give someone up. See, e.g., *Brown v. Plata*, 563 U.S. 493 (2011) (holding that conditions in California maximum security prisons were so awful as to require judicial intervention).

132. BT Sanhedrin 73a.

133. Rashi to BT Sanhedrin 73a (emphasis mine).

134. 8 U.S.C. §1324(a)(1)(A)(iii).

135. 8 U.S.C. §1324(a)(1)(B)(ii).

136. 8 U.S.C. §1324(a)(1)(A)(v).

137. 8 U.S.C. 1324(b)

138. Hanna, “Can Churches Provide Legal Sanctuary to Undocumented Immigrants?”

139. Rappaport, “Harboring Undocumented Aliens Is Still A Crime.”

140. Goldberg, “Mazel Tov, Trump.”

141. See Jen Doll, “Is Protesting the New Brunch?” “Protest Is The New Brunch” became

such a popular slogan that a new clothing line, Activist Shirts, advertised it. One of the most popular liberal podcasts, *Pod Save America*, also named an episode after it.

142. Avot 1:14 (statement of Hillel the Elder).

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