

Laws of War

Excerpted and adapted from a *shiur* by Dayan Yitzhak Grossman

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https://baishavaad.org/wp-content/uploads/2023/10/BER77_08_Vayishlach_Jus_In_Bello_The_Killing_of_Non_Combatants_During_War.mp3

And it came to pass on the third day, when they were in pain, that two of Yaakov's sons, Shimon and Levi, Dinah's brothers, each took his sword, and they came upon the city confidently and killed every male.

Bereishis 34:25

If Shechem and Chamor deserved death for kidnapping Dinah, why were the rest of the men liable?

Some *mefarshim*, including the Bechor Shor and Rav Hirsch, say that Shimon and Levi were mistaken, and this is why Yaakov criticized them. The other *mefarshim* say that the killing was justified, but they disagree about the reason.

The Rambam explains that under the *sheva* mitzvos *bnei* No'ach, non-Jews must appoint judges to enforce the mitzvah of *dinim* (civil laws). Because the people of Shechem did not enforce justice when Dinah was kidnapped and raped, they were *chayav misah*, because *bnei* No'ach are subject to death if they violate their mitzvos.

The Ramban maintains that the people were liable to death for other crimes, including immorality and idol worship, two of the *sheva* mitzvos.[1] The Ramban explains that Yaakov disapproved of Shimon and Levi's actions because they were not responsible for enforcing the punishment, but Shimon and Levi were permitted to kill the people because their blood was *hefker* due to their *aveiros*.

The Moshav Zekeinim Miba'alei HaTosfos says that when Shimon and Levi killed Shechem and Chamor, the rest of the population tried to kill Shimon and Levi, who then killed them as *rodfim* (pursuers).

The Maharal answers that when one nation battles another, it is permitted to kill anyone necessary for success, including civilians.[2]

[1] R' Shaul Yisre'eili in Amud Hayemini explains that the *machlokes* between the Rambam and the Ramban is whether the mitzvah of *dinim* includes judging the leaders.

[2] This Maharal is cited by a number of contemporary *poskim* in support of Israel engaging in military operations against its enemies even if civilians will be killed in the process.