

# Ransoming Captives: A Vexing Dilemma



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## Meeting Netanyahu, families of Gaza hostages urge 'all for all' prisoner swap

PM says freeing captives is major goal of war, applying pressure on Hamas is key; families declare government should agree to full exchange to obtain freedom for those held in Gaza

28 October 2023, 11:39 pm



Prime Minister Benjamin Netanyahu met Saturday with representatives of families whose loved ones are being held captive in Gaza, and pledged that Israel “will exhaust every possibility” to bring about their return.

The representatives urged Netanyahu to agree to an “everyone for everyone” prisoner exchange with the Hamas terror group, trading Palestinians incarcerated in Israel on security offenses for the hundreds who were abducted from Israel earlier this month during a devastating attack by Hamas.

At the same time, at least 20 vigils of support for the families of the captives and memorials for those killed were held around the country on Saturday night. Many pushed the theme of a prisoner exchange to secure freedom for the captives held in Gaza. Some of the gatherings featured heavy criticism of Netanyahu.

Hamas’s leader in the Gaza Strip, Yahya Sinwar, said Saturday the Palestinian terror group was ready for an “immediate” prisoner swap with Israel.

“We are ready to conduct an immediate prisoner exchange deal that includes the release of all Palestinian prisoners from Israeli jails in exchange for all prisoners held by the Palestinian resistance,” Sinwar said in a statement.

# פְּדִיּוֹן שְׁבוּיִים - Pidyon Sh'vuyim

## The Importance of the Mitzvah

בבא בתרא ח' ב:א'-ו"ט

מנא הא מילתא, דאמור רבנן, דפדיון שבויים מצוה "אמר ליה רבא לרבה בר מרי. פדיון שבויים מצוה רבה היא ירמיהו טו, ב) "והיה כי יאמרו אליך אנה נצא ואמרת אליהם כה אמר ה': אשר למות א"ל "דכתיב "רבה היא כל המאוחר בפסוק זה קשה "ואמר רבי יוחנן ". "למות, ואשר לחרב לחרב, ואשר לרעב לרעב, ואשר לשבי לשבי האי קא מינוול והאי, אי בעית אימא סברא. אי בעית אימא קרא ואי בעית אימא סברא, חרב קשה ממות; מחבירו איבעית, רעב קשה מחרב. "תהלים קטז, טו) "יקר בעיני ה' המותה לחסידיו ואי בעית אימא קרא. לא קא מינוול איכה ד, ט) "טובים היו חללי חרב מחללי (איבעית אימא קרא. האי קא מצטער והאי לא קא מצטער; אימא סברא שבי קשה מכולם, דכולהו איתנהו בי. "רעב.

### 1. Bava Batra 8b:1-4

Rava said to Rabbah bar Mari, "From where do we know that, like the Rabbis said, redeeming captives is a great *mitzvah*?"

[Rabbah] responded, "It is written [in Jeremiah 15:2] "And it will be when they say to you "To where shall we depart?", and you shall say to them, "Thus said God: Those [destined] for death [by natural causes depart] to death [by natural causes], and those [destined for death] by the sword [die] by the sword, and those [destined for death] by hunger [die] from hunger, and those [destined] for captivity [go into] captivity.""

And R' Yochanan said that each [calamity] in this verse is harsher than the one [before]; [death by the] sword is harsher than death [by natural causes], and [this is clear] from scripture and from logic. If you want [then you can prove it] from logic [because the one who dies by the sword] is disfigured, but [the one who dies naturally] is not disfigured. And if you prefer [then you can prove it] from scripture [because] the verse [in Psalms 116:15 says], "Honorable in the eyes of God is the [natural] death of His pious ones".

[Death from] hunger is harsher than [death by the] sword, and [this is clear] from logic; [since] the one [who dies from hunger] suffers, [while] the one [who dies from the sword] does not suffer. [And] if you prefer then [you can also prove this] from scripture, [where it says in Lamentations 4:9] "More fortunate were the victims of the sword than the victims of the famine".

[It is clear, then, that] **captivity is harsher than all of them, since all of the [other calamities] are [included] in it.**

## 2. Maimonides, Mishneh Torah, "Gifts to the Poor" 8:10-11

10. "The ransoming of captives has precedence over the feeding and clothing of the poor. Indeed there is no religious duty more meritorious than the ransoming of captives, for not only is the captive included in the category of the hungry, the thirsty, and the naked, but his very life is in jeopardy. He who turns his eyes away from ransoming him transgresses the commandments "Do not harden your heart and shut your hand (Deut. 15:7)"; "Do not stand idly by the blood of your neighbors (Lev. 19:16), and "He shall not rule ruthlessly over him in your sight" (Lev. 25:53). Moreover, he nullifies the commandments "You must open your hand" (Deut. 15:8), "Let him live by your side as your kinsmen" (Lev. 25:36), "Love your fellow as yourself" (Lev. 19:18), "Rescue those taken off to death" (Prov. 24:11), and many other admonitions like these. To sum up, there is no religious duty greater than the ransoming of captives.

11. If the people of the city, having collected money for the building of a synagogue, find themselves confronted with a matter of religious duty, they must divert the money to the latter. If they had already bought stones and beams, they may not sell them in order to fulfill the religious duty, unless it is for the ransoming of captives. Even if they have already brought in the stones and set them up, and carved the beams, and thus made everything ready for construction, they must nevertheless sell everything, but only for the ransoming of captives. If, however, they have already completed the erection of the building, they may not sell the synagogue, but should rather make a new collection from the community for the redemption of those captives.

## 3. Mishnah Gittin 4:6

אין פודין את השבויין יותר על כדי דמיהן, מפני תקון העולם. ואין מבריחין את השבויין, מפני תקון העולם. רבן שמעון בן גמליאל אומר: מפני תקנת השבויין

We do not ransom captives for more than they are worth, due to *Tikkun HaOlam*.  
We do not help captives escape, due to *Tikkun HaOlam*.

## 4. Talmud Bavli Gittin 45a

האי "מפני תיקון העולם", משום דזחקא דצבורא הוא, או דילמא משום דלא לגרבו ולייתו: איבעיא להו ומאן לימא לן דברצון חכמים", אמר אביי. ת"ש, דלוי בר דרגא פרקא לברתיה בתליסר אלפי דינרי זהב? טפי! דילמא שלא ברצון חכמים עבד? עבד

:"רשב"ג אומר מפני תקנת שבויין. ואין מבריחין את השבויין מפני תיקון העולם"

איכא בינייהו, דליכא אלא חד? מאי בינייהו

They asked: [When the Mishna says] "due to *Tikkun Olam*", [does this mean the law was made] because of the **burden on the community**, or maybe because **we do not [want to encourage them] to capture more people** and bring them [to ransom]?

Come, hear [about an incident that will answer our question]: Levi the son of Darga ransomed his daughter for thirteen thousand golden dinars [of his own money].

Abaye said, "But who says that he acted with the consent of the Sages? Maybe he acted without the consent of the Sages!"

### 5. Rashi on Ketubot 52b:3:1

תרי קולי" - ...דמיה שהיא ראויה לימכר בשוק"

"Two leniences" - [This means]...her value as calculated [if she were] sold in the market

### 6. Maharam Lublin, Section 15

אע"פ שאין בזמנינו מקח עבדים, ולפיכך אין לבני אדם מחיר, בכ"ז שמין לפי ערך שהיה שווה במקום שיש עבדים

Although the slave trade no longer exists, and therefore there is no price on human beings, we nonetheless appraise according to the value that (the man) is worth in a place where there are slaves, for we have not found any opinion in the commentators that the law today is different from Talmudic times."

### 7. Marginal glosses to folio 85 of the "*Minhagbuch*" of Worms, written in 1625, quoted by Lewysohn, "*Sechzig Epitaphien*," p. 36; comp. also S. Back, "*R. Meir ben Baruch*," pp. 62 *et seq.*

R. Meir b. Baruch was about to go abroad with his wife, his daughters, his sons-in-law, and all his family, and had proceeded as far as a city in the mountains of Lombardy, where he intended to stay until all his traveling companions had gathered about him, when suddenly the wicked Bishop of Basel passed through the city on his journey from Rome, accompanied by a baptized Jew named Knepe. The latter recognized Meir and informed the bishop, who brought it about that the lord of that city, Count Meinhard of Görz, seized Meir on the fourth of Tammuz [= June 28], 1286, and delivered him to Emperor Rudolph, who cast him into prison."

### 8. Yam Shel Shlomo, 4:66

שמעתי על מהר"ם מרוטנבר"ק ז"ל שהיה תפוס במגדול אייגזהם [!] כמה שנים, והשר תבע מן הקהלות סך גדול, והקהלות היו רוצים לפדותו, ולא הניח, כי אמר אין פודין השבויים יותר מכדי דמיהם

I heard that the Maharam of Rothenberg z"l was held captive in the tower of Ensisheim for a few years. The Emperor demanded a large sum from the community, and the community wanted to redeem him, but he would not agree to it, since he said that we don't redeem captives for more than their worth.

**Biographical note:**

**Meir of Rothenburg** (c. 1215 – 2 May 1293)

Along with many others, Meir left Germany with family and followers, but was captured in the mountains of Lombardy, having been recognized by a baptized Jew named Knepe, and imprisoned in a fortress near Ensisheim in Alsace. Tradition has it that a large ransom of 23,000 marks silver was raised for him by Asher ben Jehiel, but Rabbi Meir refused it for fear of encouraging the imprisonment of other rabbis. He ruled on his own abduction in light of Talmudic law.

Meir died in prison after seven years. Fourteen years after his death, a ransom was paid for his body by Alexander ben Salomon Wimpfen, who was subsequently laid to rest beside him in the Jewish cemetery of Worms.

## Exceptions

### 9. Gittin 58a:9-10

תינוק אחד יש בבית האסורים, יפה "מעשה ברבי יהושע בן חנניה שהלך לכרך גדול שברומי. אמרו לו: ת"ר  
"עינים טובות רואי וקווצותיו סדורות לו תלתלים

ישעיהו מב, כד) "מי נתן למשיסה יעקב וישראל לבוזזים ענה?" אותו) הלך ועמד על פתח בית האסורים אמר  
"הלא ה'... זו... חטאנו לו, ולא אבו בדרכיו הלוך, ולא שמעו בתורתו" תינוק ואמר

אמר "מובטחני בו שמורה הוראה בישראל; העבודה שאיני זז מכאן עד שאפדנו בכל ממון שפוסקין  
אמרו לא זז משם עד שפדאו בממון הרבה, ולא היו ימים מועטין עד שהורה הוראה בישראל. "עליו

ומנו?

רבי ישמעאל בן אלישע.

The Rabbis taught: It once happened that Rabbi Yehoshua the son of Chananya was travelling to a great city in Rome. They said to him, "There is a baby in the prison who has beautiful eyes and a fine appearance, and his locks are arranged in curls".

[Rabbi Yehoshua] went and stood by the door of the prison, [and he] said ([quoting] Isaiah 42:24), "Who has given Jacob over as loot and Israel to the robbers?" That baby responded [quoting the continuation of the verse], "Is it not God [who punished us]...for this:...We sinned against Him, and our fathers did not go in His ways and they did not listen to His Torah".

[Rabbi Yehoshua] said, "I am certain that he will teach the law in Israel; [I swear] by the Temple service that I will not move from here until I have redeemed him for whatever [amount of] money that they demand."

They say that he did not move from there until he had redeemed [the baby] with a large [amount of] money, and it was only a short time before he was teaching the law in Israel.

And who was he? Rabbi Yishmael the son of Elisha.

## 10. Tosafot, Gittin 58a

בל ממון שפוסקין עליו.

גבי מוכר עצמו (כי איכא סכנת נפשות, פודין שבויין יותר על כדי דמיהן, כדאמרינן בפרק השולח (לעיל דף מז ואת בניו לעובדי כוכבים, כ"ש הכא דאיכא קטלא

:אי נמי משום דמופלג בחכמה היה

[Tosfot quotes the Gemara:] "for whatever [amount of] money that they demand."

[He was legally allowed to do this because where] there is a threat to life, we redeem the captives for more than their value. [This is like what] we say in Chapter 'Hasholeach' about one who sells themselves and their children to idol-worshippers, [and this is true] here where there is a murderer.

Alternatively, [he was allowed to redeem the baby for more than its worth] because [it possessed] great wisdom.

## 11. Ramban, Tractate Gittin p. 45a

ו"א דכל היכא דאיכא חששא דמיתה פודין אותן בכל ממון שיכולין לפדותן, ולא מסתבר דכל שבי כולהו איתנהו ביה.

And there are those who say that wherever there is a fear of death, we redeem [the captive] with all the money we can [collect], but this does not seem [like] a logical [distinction], since every captive has [some threat of death].

## 12. R. Yosef Karo, Shulchan Aruch, Yoreh De'ah 252:1-6

פדיון שבויים קודם לפרנסת עניים ולכסיתן. ואין מצוה גדולה כפדיון שבויים. הלכך, לכל דבר מצוה שגבו (א) ...מעות בשבילו, יכולים לשנותן לפדיון שבויים

.הוי כאלו שופך דמים, כל רגע שמאחר לפדות השבויים, היכא דאפשר להקדים (ג)

אין פדיון השבויים יותר מפדי דמיהם, מפני תקון העולם, שלא יהיו האויבים מוסרים עצמם עליהם (ד) לשבותם. אבל אדם יכול לפדות את עצמו בכל מה שירצה. וכן לתלמיד חכם, או אפלו אינו תלמיד חכם, אלא ואם אשתו כאחר דמי או לא, עין. שהוא תלמיד חריף ואפשר שיהיה אדם גדול, פודים אותו בדמים מרבים בטור אבן העזר סי' ע"ח



(1) The redeeming of captives takes precedence to sustaining the poor and clothing them. And there is no *mitzvah* as great as redeeming captives. Therefore, if one has designated money for any [other] *mitzvah*, they can redirect it to redeeming captives...

(3) Every moment that one delays redeeming captives, where it is possible to do it sooner, **it is as if one is spilling blood.**

(4) We do not redeem captives for more than their worth because of *Tikkun Olam*, **so that our enemies will not endanger themselves to kidnap [us]. But an individual can redeem themselves if they wish to. And for a great scholar, or even one who is not a great scholar but is a sharp student with the potential to be a great individual, we redeem them with a large amount of money.**

## Redeeming in return for release of terrorists

**Poll: 79% of Israelis Support Shalit Deal, YNet News, Yedioth Ahronoth, Oct. 17, 2011**

The vast majority of Israel's citizens are in favour of the deal securing the release of kidnapped soldier Gilad Shalit in exchange for 1,027 terrorists, a public opinion poll commissioned by Yedioth Ahronoth shows.

Asked whether they were in favour of Shalit's release in exchange for 1,027 terrorists, 79% of the respondents said yes and only 14% said no...

Among male respondents, 74% support the deal and 19% oppose it, while 86% of the women support it and only 5% are against it...

**Pileggi, T., July 20, 2015. *Palestinians freed in Shalit deal killed 6 Israelis since 2014.* Times of Israel**

The suspected mastermind behind a deadly West Bank terror attack last month was among 1,027 Palestinian inmates freed by Israel in exchange for the release from Gaza of the captured Israel Defense Forces soldier Gilad Shalit in 2011. On Sunday, the Shin Bet announced it had detained four members of a seven-member Hamas cell who allegedly opened fire on a car near the settlement of Shvut Rachel in June, killing Malachy Rosenfeld, 25, and wounding three others.

Rosenfeld was the sixth Israeli to be killed in attacks carried out or planned by Palestinians released under the Shalit deal since April 2014.

**Bloomfield, A., Oct. 18, 2011. *Palestinian militants vow to abduct a 'new Gilad Shalit'.* The Telegraph**

The Popular Resistance Committees, the Hamas-dominated militant coalition that captured Sgt Maj Shalit, vowed that it would seize another Israeli soldier to force Israel to release the 6,000 Palestinian prisoners that remain in its custody.

"We are going to capture another soldier and cleanse all the Israeli jails of our prisoners," said a masked spokesman using the nom de guerre Abu Mujahid... "The people want a new Gilad, the people want a new Gilad," chanted the tens of thousands who gathered at a Hamas-sponsored rally in Gaza city to welcome home the freed prisoners.

**Counter-Terror Soldiers Protest Shalit Deal, Khan. G., Oct. 14, 2011, Israel National News**

Active duty and reserve soldiers from elite counter-terrorism units who risked their lives during previous missions to capture terrorists submitted a petition to the Netanyahu government protesting the wholesale release of terrorists in exchange for the release of kidnapped Gilad Shalit after six years in Hamas captivity.

The organizers write, "We, soldiers past and present, vehemently oppose return of terrorists to their homes, which undermines years of work and raises the overall risk of soldiers being killed in the line of duty,

"We are very hurt by the cabinet's attitude on this matter, and the next time we soldiers are asked to stop terrorists again we will have to think twice about whether it is worth risking our lives to capture killers who will only be released again We the undersigned demand that the State of Israel not release murderers we will only have to risk our lives yet again to capture later in our service,

"We note, that according to the sequence of the deal to release Gilad Shalit, which was revealed today, 450 murderers with blood on their hands will be released, in addition to 550 other prisoners, for the release of one kidnapped soldier."

## Knowing the cost, will Israel again negotiate with terrorists?

Despite the catastrophic price of past prisoner-exchange deals, experts can't rule out the possibility that Israel may once again make the same mistake.

Yehezkel Laing October 15, 2023

### The massacre's mastermind

In 1988, Yahya Sinwar organized the abduction and murder of two Israeli soldiers, as well as the murder of four Palestinians whom he suspected of collaboration with Israel. For these crimes, he was arrested, convicted of murder and sentenced to four life sentences in 1989. In 2011 he was one of 1,026 terrorists freed in exchange for Shalit.



The consequences of this foolish move were devastating. In February 2017, Sinwar was elected Hamas leader in the Gaza Strip, taking over from Ismail Haniyeh. Israel has singled out Sinwar as the mastermind of the Simchat Torah massacre.

“It’s obvious that the terrorists released in the Shalit deal took a leading part in Hamas terror since then, including the current massacre,” said Kuperwasser. “So there is an understanding that releasing more terrorists is a bad idea, especially as long as Hamas controls Gaza.”

**R. Abraham Kilav; "Releasing Captives in Exchange for Hostages", 1983**

...Furthermore, it seems that nowadays, when terrorists declare their desire to kidnap and murder Jews and, in fact, act upon these declarations without any compassion for the victims whether men, women or children, that releasing terrorists is actual danger and is therefore forbidden. This is true even according to those who maintain that [the prohibition] is based on "the burden imposed on the community", since the danger [here] is tangible and arises immediately upon their release. Added to this is the fact that they join the forces that battle us from their countries with long range weaponry and thus represent a threat even if they don't actually penetrate our borders.

Furthermore, their compatriots will not hesitate to act against us knowing that they don't endanger their lives if they fall captive since they will be released soon thereafter. We are also in a permanent state of war with them which cannot be halted because of danger to the soldiers...

It, therefore, seems that it is forbidden to release terrorists and murderers in exchange for captives, not just an exchange of many [terrorists] for one [Jew], but even one for one, because of the future danger.

**R' Kilav, "Releasing Terrorists," in Crossroads: Halacha and the Modern World, vol. 1 (Gush Etzion, Israel: Zomet Institute, 1987), 201-210**

If the prohibition is based on the need to discourage future abductions, it will be prohibited to release terrorists, as experience has shown that this will surely encourage more abductions in the future.

**R. Shmuel Tanchum Rubinstein, "Releasing Terrorists in Exchange for Captives – Halakhic Views, 1990**

If we were going to compare the case of releasing terrorists with the law of [not] ransoming captives beyond their value, we should permit the release of one terrorist in return for one captive, but not to release hundreds of terrorists in exchange for two or three soldiers in captivity as their malicious organizations demand. The people have already reacted to "the Jabril Deal" claiming that the government made a terrible mistake in releasing hundreds of terrorists in exchange for two of our soldiers, especially considering the fact that the released terrorists return to resume murdering our soldiers and civilians.

On the other hand, what value do a hundred degenerate, contemptible terrorists have in comparison to one of our soldiers in captivity, whose life is more precious than a hundred of theirs? How can this exchange be considered "more than their value"? Is a terrorist considered of equal value to one of our soldiers?

This exchange cannot be included in the concept of "their value". This is particularly true given the tradition in the I.D.F. never to abandon even one prisoner of war, and an entire battalion is put at risk to save one prisoner from the enemy. This is the feeling that guides the Israeli soldier who never despairs while in captivity because he is secure in the knowledge that we will come to his rescue at any price. After all, as our emissary, he embarked on a mission to fight to protect our country and to secure our lives. It is as though we made a sacred promise that we will never abandon or forsake him under any circumstances.

**Rabbi Chayyim David HaLevi, The Release of Terrorists in Exchange for Jewish Captives, A Problem that Calls for Halachic Innovation (1986)**

The halachic decision mentioned above, which is based on the discussion in Tractate Gittin and the halachic rulings of leading Rishonim and Achronim is clear and correct. Nevertheless, it still seems to me, in my humble opinion, that there is still no conclusive proof for our case.

For all the sources above relate to highway bandits whose entire objective is to extort the maximum amount of money for the release of their captives or their sale as slaves. It is, thus, clear and obvious that any capitulation to their demands will only whet their appetites for and encourage their seizure of specifically Jewish captives, whose [communities] are prepared to pay high sums for their release. We, however, are mired in a protracted difficult war with the entire Palestinian nation, from which groups have emerged who are fighting mercilessly against the Jewish people in its land, on national-political grounds. It is a war, which as long as no solution is found, will become increasingly bitter. These terrorist groups do everything in their power to inflict the greatest possible harm upon the Jewish people. There is no doubt that were they able to sacrifice their lives to capture Jewish prisoners, they would do so, on a daily basis, in order to free their own prisoners and captives who are in Israeli hands, and perhaps also to achieve further political goals...

We must preface that difficult problems arise in our lives that lack clear cut halachic resolutions. For where in all the halachic discussions of the issue mentioned above, do we find a situation, that parallels the one we find ourselves in today. **That is why we require, at this moment, halachic innovation, in the spirit of and in accordance with ancient halachic sources – a reassessment of the halacha...**

Regarding this issue, we have already written, in the spirit of Tosafot's second answer – that "they should not seize even more (delo legrbu)" does not apply at the time of the destruction of the Temple – that so too in our present war, delo legrbu does not apply. Reality proves day after day that they are unable to capture Israeli prisoners. The prisoners who did fall into their hands, did so during a state of war in Lebanon, under conditions, that are still not fully clear. **The reason of delo legrbu is, therefore, not applicable, and thus neither is the principle that we do not redeem prisoners for more than their worth. In any case, we cannot learn a prohibition from the mishnah above...**

We must, however, reiterate, that there is no conclusive reason, based on the previous sources to prohibit prisoner exchanges, since any proofs from them can be refuted.

### R' Yuval Sherlow, Jewish Ethics (25): Redeeming Captives

ההשפעה המוראלית על הצבא עלולה להיות משמעותית ביותר. בשעה שיידע חייל כי לא נעשה הכל כדי לשחררו - כולל נכונות לשחרר רוצחים בתמורה להשבתו - תיפגע המוטיבציה שלו להילחם.

The impact on the morale of the army could be significant. Once a soldier knows that [the state] will not do everything it can to free him - including a willingness to release murderers in exchange for his freedom - it will diminish his motivation to fight.

### Rav Shaul Yisraeli, Chavat Binyamin, Section 16:9

אין דוחים ודאי סכנה מפני, "לא קיימת שום הגבלה בפדיון השבויים ואעפ"י שקיים החשש "דלא ליגררו ולייתי ספק סכנה.

In every situation of a tangible danger no restriction was established for the redemption of captives, and even though we established a concern for "not encouraging [the captors] to kidnap", we do not ignore a certain danger because of an uncertain danger.

### Rav Shaul Yisraeli, Chavat Binyamin, Section 16:7

ועולה מהדברים האמורים שאם למשל אדם יבטיח את עצמו בחברת ביטוח תמורת תשלום שמשלם לה שבמקרה של שבי יפדוהו בדמים מרובים, מאחר שבכגון זה החיוב של החברה הוא כלפי האדם שהבטיח את עצמו בה, והם אינם אלא עושים את שליחותו, רשאים הם ואף חייבים לפדותו בכל ממון שהוא, כפי שחייבו את...עצמם כלפיו תמורת התשלום ששילם להם עבור התחייבותם

ועל פי זה נראה שמנקודת מבט זו, יש לראות את חובת המדינה בפדיון שבויי המלחמה. שכיוון שאלה יצאו למלחמה בשליחות המדינה ומטעמה להגנת העם היושב בציון, הרי קיימת ועומדת התחייבות בלתי כתובה אבל מובנת מאליה, שכל טצדקי [תחבולות] שיש בידי המדינה לעשות (בגבולות סבירים שאינם פוגעים בביטחונה הכלכלי) כדי לפדותם במקרה שיפלו בשבי. וכשם שקיימת התחייבות מעין זו לדאוג לרפואתם והבראתם במקרה של פציעה ונכות, וכן לדאוג למשפחותיהם במקרה של היפגעים ח"ו במלחמה. כן לא נופל מזה החיוב לנקוט כל פעולה שהיא לשם הוצאתם מן השבי

וכיון שמה שהמדינה יכולה לעשות בזה הוא מכוח החיוב שקבלה על עצמה תמורת השירות שלהם, הרי אין זה אלא כאילו הם פודים את עצמם, שבזה כמבואר לעיל לא קיימת שום הגבלה, ולא שייך בזה התקנה 'שאין פודים'. את השבויים יתר על כדי דמיהם

If a person would, for example, take out insurance with an insurance company, in exchange for a premium paid by him, that in the event he is taken captive he will be redeemed for a large sum of money; since an obligation would then be owed by the insurance company to the insured person, and they are merely his agents in this regard, they are entitled and even

obligated to redeem him at any cost, in accordance with their undertaking to him... The Rabbis' restriction against redeeming captives for greater than their value does not prevent this; because [as we have seen] a person is allowed to redeem himself at any cost. And the State's obligation to redeem those taken captive in time of battle, must also be viewed in this light. Since our soldiers have gone out to fight as an extension [*shaliach*] of the State and on its behalf, in defense of the people who dwells in Zion, there exists an unwritten but implicitly understood undertaking that the State will utilize all means at its disposal (within reasonable limits which do not detrimentally affect its overall security) to redeem them in the event that they should fall into captivity...And because the State's ability to do all this derives from the obligation it accepted upon itself in exchange for their IDF service, it as if they were redeeming themselves, concerning which no limitation exists, such that the rule of 'not redeeming captives for more than their value' does not apply.



## Evolving Halakhah

Rabbi Dr. Moshe Zemer

...How can we apply these halakhic principles to the redemption of captives in our own time? First of all, we must confront the difficult choice between the immediate danger to the prisoners and the potentially disastrous future results of paying an exorbitant price. In antiquity the ransom extorted was pecuniary; but today the price demanded is the release of terrorists and murderers, which only increases the danger to all of us.

According to Halakhah, we must do everything to fulfill the great and meritorious precept of ransoming Jewish captives and use all available means to do so. Nevertheless, there is a limit: We may not endanger others by releasing these terrorists. We must consult with experts in antiterrorism and ask whether submitting to this extortion will only whet the terrorists' appetite for hostage taking and whether paying so high a price will encourage the terrorists to take more prisoners with the aim of freeing their comrades from Israeli prisons. Are we exposing all or some of the Israeli public to mortal danger by releasing murderers who are likely to return to their old ways and kill more Jews? If the experts answer these questions in the negative, we can ransom our captives at any price. If their answer is in the affirmative, however, we must not pay such a high price and endanger others.

The choice between the two approaches—ransoming captives at any price or protecting the community—must take account of the cruel reality of our own time, just as our Sages did in theirs.

In the years that have passed since this chapter was first written, many of the terrorists released in 1983 and 1985 have returned to their old ways. Many of them assaulted property and people, murdering Israelis and others.

These distressing facts add another dimension and historical perspective to this issue.

## TFN NO.5753.5

### CCAR RESPONSA

## On the Redemption of Captives

### 5753.5

She'elah

What does Jewish tradition teach us concerning the ransom of captives? Specifically, both Maimonides (Yad, Hilkhhot Matanot Aniyim 8:10) and the Shulchan Arukh (YD 252:3) indicate that we must pay the ransom and negotiate with those who take hostages. What can we learn from these teachings that might help us shape an appropriate response to those who would kidnap Jews for any purpose? (Rabbi Douglas E. Krantz, Armonk, NY).

Teshuvah

Jewish tradition indeed speaks directly to this issue which is, regrettably, of more than theoretical interest to the Jewish community, whether in Israel or elsewhere.

The Talmud refers to the redemption of captives (pidyon shevuyim) as a high obligation, greater even than that of tzedakah.<sup>1</sup> Maimonides, in the passage cited above, expresses the Talmudic law as follows: "The redemption of captives takes precedence over supporting the poor...One who ignores the responsibility to redeem the captive violates the following negative commandments: 'do not harden your heart and do not shut your hand (from your brother in need)' (Deut. 15:7); 'do not stand idly by the blood of your neighbor' (Lev. 19:16); 'he (the master) shall not rule rigorously over him (the indentured servant)' (Lev. 25:33). He similarly annuls a number of positive commandments: 'you shall surely open your hand to him' (Deut. 15:8); 'your brother shall live with you' (Lev. 25:36); 'you shall love your neighbor as yourself' (Lev. 19:18)... There is no mitzvah as great as the redemption of captives." The Shulchan Arukh notes: "each instant that one fails to redeem captives when it is possible to do so, it is as though one has shed blood."<sup>2</sup>

Yet despite its exalted status, this obligation is not without limits. The Mishnah<sup>3</sup> instructs that we are not to redeem captives "for more than their monetary value" (yoter al kedey demeyhen)<sup>4</sup> on account of "the welfare of society" (mipney tikun ha-olam). What could "welfare" mean in this context? The Talmud<sup>5</sup> offers two explanations: payment of exorbitant ransoms might bankrupt the community; alternately, the knowledge that the Jews will pay dearly to redeem their captives might tempt would-be kidnappers to seize more Jewish hostages.

There is a significant halakhic difference between these two explanations. Should we conclude that ransoms are limited due to the crushing burden they impose upon community treasuries, then there would be no restriction imposed upon the amount that wealthy individuals may pay out of their own funds to redeem their relatives. On the other hand, should we adopt the second theory, concern that high ransom payments encourage further kidnappings, then even the wealthy would be prohibited from paying more than the limit set by the Mishnah.<sup>6</sup>

The Talmud does not resolve this issue, and the halakhic authorities are in dispute. The Rambam declares that ransoms are limited in order to discourage future kidnappings.<sup>7</sup> R. Asher ben Yechiel,<sup>8</sup> by contrast, rules that a private individual may exceed the ransom limit in order to redeem himself, his wife,<sup>9</sup> or a Torah scholar.<sup>10</sup> Others expand the permit, allowing an individual to redeem any family member at any price.<sup>11</sup> Such lenient rulings would imply that the limitation was instituted to safeguard the public treasury. The Shulchan Arukh strikes a balance between these alternatives: it simultaneously accepts Rambam's explanation for the ransom limitation and R. Asher's exceptions to the rule.<sup>12</sup>

While some, if not all, of these authorities permit individuals to exceed the Mishnah's limitation upon ransom payments, none of them allows the community to do so. This distinction between the private and the public realms is eminently reasonable. The primary ethical responsibility of individuals, when confronting the captivity of loved ones, is to the captives themselves; that duty may be said to take precedence over their responsibilities toward society at large.<sup>13</sup> Governments, meanwhile, may not set such priorities; they are charged with the protection of the entire community. As such, they are forbidden to yield to the extortionate sums demanded by the kidnappers, for to do so would encourage future attempts at hostage-taking and thereby expose the rest of their citizens to danger.

The government of Israel, in its dealings with hostage-takers, wrestles with the very dynamic described in the rabbinic sources. Though the question may not involve the "monetary value" of captives, it does go to the issue of price: at what point do the demands of the kidnappers become "unreasonable", so that the government, which is ultimately responsible for the security of the people as a whole, must refuse to give in to them? In return for prisoners of war or civilian hostages, captors will set an exorbitant price, often the release of hundreds of imprisoned terrorists or criminals for each liberated Israeli. To yield to this demand might well entice other potential kidnappers to seize captives in the future; the freed prisoners, in addition, would pose a serious security risk to the Israeli public. The government may regard this price as excessive and, faced with a choice between the lives and freedom of its captive citizens and the safety of its population as a whole, refuse to pay it. Difficult as this decision must be, it is well in keeping with the Jewish legal tradition which, in the name of *tikun ha-alam*, sets limits on what communities may pay to redeem their captives.

Still, a case can be made for the opposing view, that no demand is too excessive or unreasonable when the lives of the captives are at stake. Some authorities rule that the limits imposed upon ransom payments apply only when the captors are interested solely in money. When they threaten to kill their hostages, however, the commandment to save life (*pikuach*

nefesh) takes precedence over all else. While others disagree,<sup>14</sup> this theory has been adopted by a leading contemporary halakhist, R. Ovadiah Yosef,<sup>15</sup> who argues that in such instances the clear and present danger (vadai sakanah) to the lives of the hostages outweighs the potential danger (safek sakanah) to the rest of the population should the ransom be paid. On this basis Yosef concludes that Israel ought to pay the price, whatever it may be, which terrorists demand for the release of its captive citizens.

His opinion, however, is subject to a number of criticisms. First, it is by no means clear under Jewish law that individuals or societies are required (or even permitted) to subject themselves to safek sakanah in order to rescue those in vadai sakanah.<sup>16</sup>

Second, it is arguable that the danger posed to society by the payment of exorbitant ransoms, while not as direct as that to the hostages, is no less "certain".<sup>17</sup>

Third, R. Yosef bases his argument in part upon his claim that by giving in to terrorist demands we do not thereby invite further intimidation, since the terrorists are committed to a campaign of violence and murder against Israel and its people whether we give in to their demands or not. He may be right; still, much political and strategic thinking disputes him, holding that surrender to the demands of hostage-takers does encourage future acts of violence.

Fourth, R. Yosef does not consider the fact that Israel is a sovereign nation in a state of war with its neighbors. Since its enemies have shown themselves willing to pursue this war against its civilian population, it is not unreasonable for Israel to regard all its citizens as soldiers in the conflict. If soldiers are called upon to risk their lives in defense of the nation, Israel's civilian hostages may be said to share that duty. R. Yosef's ruling is, to be sure, a compassionate one; he would place the safe return of hostages in the first rank of Israeli security priorities. In so doing, however, he would tie the hands of Israel's civilian and military leaders who must somehow, in painful dilemmas such as these, strike an acceptable balance between the lives of the hostages and the welfare of an entire nation.

This balance, we think, can be established solely on a case-by-case basis. In any hostage situation, the government must determine whether and to what extent payment of the ransom demanded by the kidnappers would threaten the safety of the rest of the population. In some situations the government will decide that to pay the ransom is the lesser of two evils, that to obtain the freedom of its captives justifies whatever danger the public may face at some later date.<sup>18</sup> In others, it will conclude that the price is too high. In each case, the decision must reflect, on the strength of careful consultation with military, diplomatic, and political experts, the best available judgement as to the likely results of either course of action.<sup>19</sup>

This is no guarantee that mistakes will not be made; experts, like the rest of us, can be wrong. It is, however, the surest means by which the government of Israel (and indeed, any government or communal authority) can hope to discharge its ethical responsibilities to its people against the backdrop of one of the harshest realities of our time.

## Pidyon shvuyim (The Redemption of Captives): How Far Should Israel Go in Order to Redeem Captives from Terrorist Organizations?

Rabbi Prof. David Golinkin Oct. 14, 2003

### I) Introduction:

For the past few months, Israelis and the Israeli media have been conducting a fierce debate on the subject of pidyon shvuyim (the redemption of captives). Should Israel exchange 400 Arab terrorists including Sheikh Obeid and Mustafa Dirani for Elhanan Tanenbaum and the bodies of three Israeli soldiers kidnapped and killed in Lebanon in October 2000. This has been further complicated by the fact that this exchange will not include Lt. Col. Ron Arad, who was captured in Lebanon seventeen years ago, nor information about his fate, even though Obeid and Dirani were captured by Israel for the express purpose of exchanging them for Ron Arad. Indeed, this is not the first time Israel has debated a lopsided prisoner exchange. There follows a chart comparing similar exchanges in the past:

Event	Released to Israel	Released by Israel
Six Day War	11 soldiers, 3 soldiers' bodies, and 1 civilian body	6,000 Egyptian/Syrian soldiers
War of Attrition	3 soldiers	46 Syrian soldiers
Yom Kippur War	242 soldiers	8,400 Egyptian soldiers
April 1975	39 soldiers bodies	92 Egyptian security prisoners
March 1979	1 soldier	76 Lebanese terrorists
November 1983	6 soldiers	4,500 soldiers; 99 security prisoners
June 1984	3 soldiers, 3 civilians, and 5 soldiers' bodies	291 soldiers, 13 civilians, 74 bodies
May 1985	3 soldiers	1,150 Palestinian prisoners
September 1991	1 soldiers body	2 Palestinian terrorists
July 1996	2 soldiers bodies	123 bodies of terrorists
January 2004	3 soldiers' bodies 1 civilian	430 Palestinian prisoners, 60 terrorist bodies
July 2008	2 soldiers bodies	6 Lebanese terrorists, 200 bodies

### II) Arguments in Favor of the Current Exchange

Prime Minister Sharon and others in favor of the current exchange say as follows: Israel has a moral obligation to do whatever it takes to redeem its citizens." A bird in hand is worth two in the bush": Better to save Elhanan Tanenbaum now, since no-one knows the fate of Ron Arad. Tanenbaum has been tortured and is sick. We must save him now, because he is in immediate danger. Israel must do everything it can to redeem captives like Tanenbaum because if not, our

soldiers will retreat in battle rather than risk capture. Most of the 400 terrorists to be released do not have “blood on their hands”.

### III) Arguments Against the Current Exchange

Israel should not redeem captives at any price. If terrorists know that they will always be freed, Israel loses its power of deterrence. This exchange is a betrayal of Ron Arad. Obeid and Dirani were captured in order to exchange them for Ron Arad. They should not be released until Iran discloses information about Ron Arad. Many have emphasized that Tanenbaum was captured in Abu Dhabi where he flew in order to buy drugs or engage in criminal activity. Israel should not release terrorists in order to redeem a criminal. Exchanging hundreds of terrorists for one Israeli encourages future kidnappings of Israelis. There is no such thing as a “harmless” terrorist. Many of the 1150 terrorists released in 1985 returned to terror. A number of recent suicide bombings were carried out by terrorists released in previous exchanges and amnesties. Hizbullah is on the wane in Lebanon. This exchange will give Hizbullah tremendous prestige and help revive a deadly terrorist organization.

...

### VII) Recent Responsa about Exchanging Terrorists for Israeli Soldiers

Since 1971, many rabbis have written responsa or halakhic articles about our current dilemma. Most have ruled that Israel may not exchange hundreds or thousands of terrorists for a few Israeli soldiers. We shall summarize the opinions of Rabbi Shlomo Goren who was against such exchanges, and of Rabbi Hayyim David Halevi, who justified Israel’s actions in 1985 after the fact.

Rabbi Goren says that we must learn the law from the Mishnah in Gittin that we do not pay more than their value. It is true that Tosafot in Gittin 58a said that when there is danger to the captive we may indeed pay more than the captive is worth. But Ramban (Spain, 1195-1270) and Rashba (Spain, 1235-1310) disagree. Furthermore, all captivity in ancient times was dangerous (see Bava Batra 8b quoted above) and the Mishnah nonetheless ruled that one does not pay more than the captive’s value because this will encourage the kidnapers to kidnap more Jews and endanger the public. He adds that the safety of one or a few Jews in captivity does not take precedence over the safety of the entire public. In addition, he agrees with the Radbaz, and not R. Yosef Karo, that a person does not have to put himself in possible danger in order to save his fellow Jew from definite danger. Finally, in our case, freeing hundreds or thousands of terrorists definitely endangers the public because they will all be free to attack Israel and to take more hostages. Therefore, everything Israel did is against the halakhah of the Mishnah and the legal authorities and against the security of the Jewish people in Israel and the Diaspora (At the very end of his article, Rabbi Goren changes his mind and justifies the prisoner exchange without citing one source! In any case, his arguments against such an exchange stand on their own merits).

Rabbi Hayyim David Halevi, who was Chief Rabbi of Tel Aviv, admits that Rabbi Goren's ruling, based on Gittin and on the rulings of leading authorities, is "clear and correct". Nonetheless, he disagrees with Rabbi Goren. All of the sources quoted deal with robbers who kidnap people for money, but we are dealing with a war based on Palestinian nationalism. They will continue to kidnap Jews regardless of what we do, so the price we pay for captives is not a factor and does not increase terror. In our case, we need halakhic innovation just as R. Yehoshua innovated that one may pay excessive ransom for a Sage and just as Tosafot innovated that the Mishnah doesn't apply after the Destruction. The Radbaz too innovated a lenient approach as we saw above. The Government of Israel decided that if an Israeli soldier sees that the State will not redeem Israeli soldiers for a high price, they will prefer retreat to capture. This too can be considered a halakhic innovation. Therefore, he does not think that the State of Israel acted against Jewish law in exchanging 1150 terrorists for 3 Israeli soldiers.

#### VIII Summary and Conclusions

We have seen that pidyon shvuyim is a major value in our tradition and that Jews have exerted great efforts to redeem captives. The Mishnah in Gittin ruled that one does not redeem captives for more than their value and this was codified by all major codes of Jewish law. However, the Talmud itself and later authorities found ways to circumvent this Mishnah, and captives were frequently redeemed at excessive prices. Rabbi Goren and many rabbis compare our dilemma to the Mishnah and say that hundreds or thousands of terrorists is an excessive price to pay for a few Israeli soldiers. This type of exchange will endanger the public by increasing kidnapping and setting loose thousands of terrorists. Rabbi Hayyim David Halevi says that the Mishnah in Gittin is not really relevant to our dilemma because at that time robbers kidnapped for money, while Palestinian terrorists kidnap for nationalistic reasons and the price we pay will not alter their attempts to kidnap.

I was not asked by the Israeli government for my opinion, but if I were asked, I would have to reluctantly agree with the majority of Israeli rabbis who have written on this subject. I am certainly in favor of halakhic innovation as advocated by R. H. D. Halevi, but I think he is missing the plain meaning of the Mishnah. We do not pay excessive ransom "mipney tikkun olam", for the public good. In other words, the public takes precedence over the individual, even if this endangers the individual. Exchanging hundreds or thousands of terrorists for one Israeli encourages kidnapping of Israelis, and frees hundreds or thousands of terrorists who will pick up their weapons and attack Israel. In other words, it endangers the public and should not be done.

## Does Halacha mandate releasing hundreds of terrorists to free captured soldiers?

SHLOMO BRODY

JULY 2, 2009

The dilemma over what price to pay for redeeming captives has, alas, engaged the Jewish people since antiquity. The capture of soldiers like Gilad Schalit and the demand to release terrorists only further complicates this quandary. I will try to present the debate's parameters, without giving an opinion, in hope that clarity of the issues can aid public dialogue.

The Talmud praises redeeming captives (*pidyon shevuyim*) as a great mitzva, superior even to charity because it liberates a person from the emotional (and sometimes physical) pain of captivity (*Bava Batra* 8a-b). Consequently, Jewish law allows communal leaders to reallocate money dedicated to different causes, like synagogue building funds, toward collecting ransom money, with some going so far as to permit selling Torah scrolls to raise money (*Tosafot*). Maimonides lists no less than seven biblical mandates fulfilled by liberating a captive (*Matanot Le'ani'im* 8:10), while Rabbi Joseph Kolon conversely compares one who needlessly delays in freeing a captive to a murderer (YD 252:3).

The Bible further highlights stories about redeeming captives, including Abraham's rescue of Lot (Genesis 14) and Moses's (Numbers 20) and David's (I Samuel 30) liberation of war captives. Nonetheless, the sages limited, in the name of *tikkun olam* (repairing the world), the sum of the ransom, asserting that one cannot pay more than the person's market value (*Gitin* 45a). Some believed that this decree aimed to limit the financial burden on the community, thereby allowing a wealthy individual or community to voluntarily pay an exorbitant sum to free a captive.

Most medieval commentators, followed by Rabbi Yosef Karo, adopted an alternative talmudic explanation that these limits prevent providing lucrative incentives for further kidnappings, thereby forbidding excessive payments even from people with deep pockets (YD 252:4). However, a number of exceptions were made to this rule. While Rabbi Menahem Hameiri contended that one cannot overpay even to redeem himself, normative Halacha asserted that one can use an unlimited amount of his own money to buy himself liberty.

Despite Maimonides's protest (*Hilchot Ishut* 14:19), similar dispensations were granted for redeeming one's spouse (*Tosafot Ketubot* 52a). Indeed, part of the marital contract ordains that men must redeem their wives, with Halacha further ruling that, in general, communities should give preference to freeing female captives to prevent ignoble acts against them (*Horayot* 13a). While the community can force a wealthy member to pay for the fair-rate redemption of his



other relatives (YD 252:11-12), it remains forbidden for a person to voluntarily overpay, although the Talmud testifies that some did not follow this stricture (*Gitin* 45a).

The Talmud further relates that after the Roman conquest, Rabbi Yehoshua ben Hanania redeemed for an exorbitant price a promising youth who grew into the great sage Rabbi Yishmael. Some medieval authorities explained that given the preponderance of wartime captives, it remained futile to try to prevent future kidnappings, which inevitably happen in such periods (*Tosafot Gitin* 45a). As such, some believe that the sages' rules do not apply to contemporary prisoner swaps following wars, especially since these exchanges follow conventional protocols.

A more controversial interpretation asserted that one may redeem scholars for inflated sums, since their value to the community is immeasurable and irreplaceable. In one celebrated incident, Rabbi Meir of Rothenburg (Germany, 13th century) died in prison after refusing to be redeemed for Emperor Rudolph I's inflated ransom demand, fearing that other despots would imprison fellow scholars (*Yam Shel Shlomo Gitin* 4:66).

Others contended that the ransom limitations did not apply in cases where the captive's lives are endangered, as in Yishmael's case (*Tosafot Gitin* 58a). Nahmanides (*Gitin* 45a) and others disputed this interpretation, contending that one cannot save the captive's life by threatening the lives of future captives. By the 16th century, however, it remains clear that Jewish communities throughout the world created special funds to redeem as many captives as possible, fearing for both their lives and the future of the nation (*Shu"t Radbaz* 1:40).

Israel has particularly suffered from this dilemma, which culminated in the 1985 "Jibril deal" that released 1150 prisoners for three living soldiers captured during the First Lebanon War. At the time, Rabbi Shlomo Goren vociferously criticized the deal for endangering soldiers by providing incentives for future kidnappings. He further warned of the prisoners returning to terror, fears borne out by Ahmed Yassin (future head of Hamas assassinated by Israel in 2004) and other released terrorists later engaging in massive terrorist activities. When Goren later republished his essay, however, he concluded like Rabbi Shaul Yisraeli, who believed that the government must take full responsibility for its soldiers, deeming it analogous to someone paying an exorbitant price to redeem himself. Which position is right? Perhaps both, and hence the continuing debate.