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Redeeming Captives in Exchange for Releasing Terrorists

Question: Is it permissible to release terrorists in exchange for a captured soldier?

Answer:

1. Captives may not be ransomed for more than their value

It is already stated in the Mishnah: "Captives may not be ransomed for more than their value" (Gittin 4:6). A fixed payment for a captive - whether he was Jewish or non-Jewish - was therefore established (Pitchei Teshuvah, Yoreh Deah 252:5).

The Mishnah explains that this Halachah is "because of the good order of the world" (Tikkun Olam). That is to say, because we must act responsibly for the entire Nation of Israel. We must weigh the welfare of the community against the welfare of the captive. The Gemara gives two reasons for this ruling: 1. Preventing a "burden on the community," since collecting large sums of money to free a captive harms the community and causes it great strain. 2. Discouraging blackmail, since paying exorbitant sums of money in exchange for captives inevitably leads to more kidnapping. The first reason relates to an immediate problem, the second to a future one.

Our halachic authorities also describe a situation which is seen to be life-threatening: that is to say, if the captives are not redeemed immediately, they will likely be killed. Determining whether or not to redeem these individuals would appear to depend on

the two reasons that were brought in the Gemara: not burdening the community, and not perpetuating kidnapping. In fact, the first issue does not apply in this case, since here we are talking about saving a life, and one who is in a life-threatening situation should be redeemed even if the community will be financially strained because of it. The second issue, however, may be of great relevance, because if we are faced with the real possibility that freeing this endangered captive will cause other Jews to be kidnapped, and therefore also to become endangered, then saving the present captive cannot be justified (see Tosafot, Gittin 58a d.h. kol mamom and Pitchei Teshuvah ibid. #4). The Rambam (Hilchot Matanot Ani'im 8:12) and the Shulchan Aruch (Yoreh Deah 252:4) explicitly favor this second line of reasoning, and conclude that we do not redeem captives for more than their value in order not to encourage blackmail. As in their times, so in ours: we should not surrender to blackmail, no matter what the price, because blackmail simply begets more blackmail.

2. Maharam Mi-Rotenberg

It is well known that Rabbi Shlomo Luria relates in Yam Shel Shlomo (Gittin 4:10) that Maharam Mi-Rotenberg – the leader of Ashkenazic Jewry – was taken captive by the German Emperor King Rudolf I. The Maharam was leaving to make Aliyah, was captured and was held for a huge ransom. He gave a ruling regarding his own captivity: he refused the ransom money raised by his students and the community, arguing that accepting it would encourage the kidnapping of prominent Rabbis in the hopes of exchanging them for outrageous sums of money.

Although the Halachah is that an outstanding Torah scholar may be redeemed for an excessive amount (Shulchan Aruch, Yoreh Deah 252:4), and the Maharam Mi-Rotenberg was an outstanding Talmid Chacham whose learning and piety was matched by none other in his generation, he refused to be ransomed. He held that it is better to lose some wisdom than to endanger all other Rabbis. He remained in prison, where his principal students, the Tashbetz (Rabbi Shimon ben Tzadok) and the "Hagahot Maimoniyot" visited him and asked him halachic questions. He was there until his death, seven years later. His body was held hostage for another fourteen years, until a wealthy Jew finally ransomed it.

3. In our Day – We are at War

In this day and age, there is a new factor that influences when and how we are permitted to redeem captives: our State and our Army. When we were in the Exile, under foreign rule, what could we do? It was out of our hands. But now we have a State, and a State should not negotiate for captives. A State should wage war to save even one person.

Avraham Avinu, in his time, went to war with another 318 soldiers in order to save one man - Lot (Bereshit 14:14). Israel later waged war against the Canaanite King Arad who had taken a captive (Bamidbar 21:1-3). And even later, King David went out to save captured members of his family (Shmuel 1 30:2). Going to war – yes. Rewarding blackmail - no. We do not surrender, in any way, at all.

If one of our soldiers is taken captive, or is injured in battle and remains in enemy territory, we must place even ten soldiers in a life-threatening situation to save him. Why? Because in war, there is another outstanding principle: all for one and one for all. Every warrior knows that "the crew" (Ha-Chevra) will not abandon him. When Eli Cohen, may Hashem avenge his blood (an Israeli spy who succeeded in penetrating the Syrian political establishment), fell into enemy hands, Tzahal planned an extensive military action in order to rescue him. And this was despite the fact that an operation such as this would quite possibly require more than a few human sacrifices. Operation Entebbe is another modern example.

Rav Yitzchak Hutner – former Rosh Yeshiva of Rabbi Chaim Berlin in New York, and author of "Pachad Yitzchak" – once visited our Rabbi Ha-Rav Tzvi Yehudah in Israel. Our Rabbi asked him which airline he was flying. Rav Hunter mentioned the name of a foreign airline. Our Rabbi pressed him: "You need to fly El Al." Rav Hutner responded that terrorists were beginning to hijack planes and he was therefore concerned about flying an Israeli airline. Our Rabbi stood firm, but Rav Hutner did not change his flight. In the end, the plane on which Rav Hutner flew was hijacked to Jordan (Iturei Cohanim #176). His students wanted to ransom him from the terrorists and began negotiations. Ha-Rav Yaakov Kamenetzky – a leading Rosh Yeshiva in America - ruled that it was forbidden to negotiate with the terrorists, since we are at war and cannot bow to terror (Be-Ikvei Ha-Tzon of Ha-Rav Herschel Schachter, pp. 206-208).

The State of Israel exhibited this same approach when terrorists kidnapped children in Ma'alot. Although the rescue mission ended in disaster, Israel's response was not to negotiate but to attack.

When the airplane Sabena was hijacked, Israel did not negotiate. Israeli commandos – disguised as technicians – took over the airplane.

In a similar vein, American policy too has been to attack for the sake of saving captives, even if many soldiers are killed in the process. They do not negotiate for captives and there are no exchanges. This is the proper way to act.

According to all of the above, the exchanges which are now being made on behalf of Gilad Schalit are a mistake. Our case is doubly severe, since here "the burden on the community," is not just a financial burden but a "burden of lives." Hundreds of murderers will now move around freely. And the second issue too, that of encouraging future kidnappings, is also quite real. Terrorists will no doubt rise up to perpetrate a terrorist attack, knowing full well that if they are captured they will be released in exchange for an Israeli captive. They will therefore make every effort to obtain more and more captives.

The State of Israel does not need to capitulate to kidnappers. According to the organization of Terror Victims, approximately 180 Israelis have been murdered by terrorists who were released in earlier exchange agreements. One of every two released terrorists is involved in new murders. We are therefore saving one person's life by endangering the lives of others. It is untenable. Only by not capitulating can we show our enemies that kidnapping soldiers has no reward. Only by being unwilling to exchange terrorists for captives can we discourage, rather than encourage, future kidnappings.

Question: And what if you were the Prime Minister or the Minister of Defense? It seems difficult for them not to succumb to the pleas of the parents of captive soldiers.

Answer: Someone once argued with me: "Let's see what YOU would do if you were the mother of a captive..." We do not resort to arguments such as these. We need to clarify issues according to the truth. If I were the mother of a captive, I would certainly be in favor of the exchanges. But this fact does not transform the "exchange of prisoners" into a proper (kosher) act. This is human weakness, not objective truth.

Question: And what if there is an exchange?

Answer: The Halachah states that if one's wife gives birth to a boy and dies during childbirth, the husband recites two blessings: "Blessed be the True Judge" over his wife's death and Shehechyanu over his son's birth. Similarly, if a person's father dies and the son receives an inheritance, he recites: "Blessed be the True Judge" over his father's death and Shehechyanu over his inheritance (Berachot 59, Shulchan Aruch, Orach Chaim 223:1-2).

If the exchange for Gilad Schalit goes through, we will be in a similar situation, and will respond accordingly. We will mourn the release of hundreds of terrorists. Yet, at the same time, we will be overjoyed that Gilad Schalit is returning home, and will recite Shehechyanu over the release of our holy soldier.



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