

## Vayishlach 5784: Of Hostage Crises and the Antinomian Impulse

### The Hostage Plaza

On Tuesday of my week in Israel I stood on a sun-baked plaza in Tel Aviv in front of the Museum of Art, across from IDF headquarters. Many families of hostages were camped out there, with sleeping bags and pictures of their loved ones, sharing their stories. Our group spoke with some of the families, and the common refrain was this: We want the government to do more.

I was confused; the army had just gone into Aza a few days earlier, what else could they be doing? The answer was that they wanted Israel to turn over whoever and whatever Hamas wanted in order to bring back their relatives.

These families were intelligent. They knew that terrorists freed in the Gilad Shalit deal went on to plan and execute the Shemini Atzeret massacre – they were the reason these families were in that position at all. But that didn't matter; these hostages were their spouses, their boyfriends and girlfriends, their siblings, their parents – and their children. So they wanted the government to do anything to bring them home.

### Gittin 45a

The debate about ransoming hostages at any price is not new to the Jewish world; villains have been holding Jews for ransom since Roman times. In those days, if we didn't come up with funds, the Romans would sell the captives as slaves.

A mishnah<sup>1</sup> speaks to this moral challenge, and decrees, אין פודין את השבויים יותר על כדי דמיהן מפני תיקון העולם – One may not redeem captives for more than their value (on the slave market), for the sake of the world. Lest the community be bankrupted redeeming the current hostages, or Lest the high ransom incentivize kidnapping Jews, so that more people will be kidnapped in the future.

If we were to take this gemara at face value, then the answer to the families in Tel Aviv would be straightforward: No. I'm very sorry for your situation, it's horrible, but we don't negotiate with terrorists. Rav Shlomo Goren paskened that way in a hostage situation in the 1980s.<sup>2</sup> Columnist Yedidia Stern quoted the gemara in a controversial Op-Ed in Yediot Acharonot this past week.<sup>3</sup>

But there is another side to the discussion.

- That same gemara tells of a man named Levi bar Darga who ransomed his daughter for an exorbitant sum. The gemara asks: doesn't this prove that if we have the funds, we can pay whatever we want? But the gemara says not necessarily; Levi may have done that on his own, without rabbinic approval.
- Then another gemara<sup>4</sup> says that a husband pays any sum to ransom his wife. Tosafot there adds that to ransom one's self one may pay any amount. Why? Because it's unreasonable to expect otherwise; people will pay whatever they need to pay, to save themselves and their families. You can't stop them.

The acknowledgement that Levi bar Darga went rogue and ransomed his daughter, the acknowledgement that a person is not going to stop at some pre-set number when ransoming himself, his family, speaks to the Antinomian Impulse – the human insistence that sometimes people cannot live by the rulebook. They aren't wicked outlaws; they just can't follow the law in this circumstance.

### Shimon and Levi

That's what drives the families of the hostages to demand any agreement possible, and I believe that our parshah shows Shimon and Levi facing that Antinomian Impulse as well.

It's always hard to say something negative regarding figures in Tanach, who were so much greater than us – they talked with Hashem! - and who we really don't know. We're working with very little information, really. But we need to learn from the story as conveyed to us in Tanach, and I'm proceeding on that basis.

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<sup>1</sup> Gittin 4:6 (45a)

<sup>2</sup> See Torat Chayim, issues 3 and 4, for the views of Rav Chaim Dovid HaLevi and Rav Shaul Yisraeli

<sup>3</sup> <https://www.ynet.co.il/news/article/yokra13692338>

<sup>4</sup> Ketuvot 52a

Dinah was raped by Shechem, who then sought to win her over. He approached her family for their approval. The sons of Yaakov<sup>5</sup> tricked Shechem into leaving the city vulnerable; then Shimon and Levi massacred the city. Yaakov rebuked Shimon and Levi; he had thought they were just going to rescue Dinah! And then later on, he even cursed them with an enduring curse that they should not receive proper portions in Israel.

Ramban asks the basic question: how could such righteous ancestors as Shimon and Levi do this? And if they really were right – then how could Yaakov curse them for it? Ramban argues that Shimon and Levi acted based on a valid point, but their outrage moved them to take it too far:

- The people of Shechem were wicked, deserving of death. Shimon and Levi were right about that
- But as Ramban says, they were wrong because *דין בעשות בהם דין*, they were not halachically empowered to carry out this judgment. That's why Yaakov criticized them.
- To which Shimon and Levi responded in outrage, "So should we let them treat Dinah this way?" Aren't you outraged too? How can we go on with business as usual??"

To them, this painful situation was a time to throw out the rulebook, and yes, to be the executioners.<sup>6</sup>

### Horaat Sha'ah

Shimon and Levi are wrong, and they are punished – but we should recognize that Halachah sometimes accepts that the demands of the rulebook are too much. Then Halachah invokes *hora'at sha'ah*, and a prophet or a posek<sup>7</sup> decides that the needs of a special circumstance require a different approach.

- Sometimes a situation is unique because an important value warrants that we throw out the rulebook; consider Moshe breaking the luchot.
- Sometimes a situation is unique because following the rules would be painful beyond what someone could bear; consider the person who pays any sum to ransom himself or his family.
- Then the usual rulebook is suspended, and it's time to ask a posek how to proceed.

### Why this is important

I chose to speak this morning about *hora'at shaah* in unique situations for two reasons which tie into our parshah.

First, because I think our parshah is acknowledging something important by showing us what happens with Shimon and Levi, as well as Reuven later in the parshah.<sup>8</sup>

- Yaakov condemns and punishes Shimon and Levi – but they remain "in". They arrive in Israel. Shimon receives cities within Yehudah's portion. Levi becomes the shevet that will work in the Mishkan and Beit HaMikdash.
- And after Reuven makes his mistake with Bilhah's bed, also in a moment of outrage and anger and throwing out the rulebook as explained in the gemara,<sup>9</sup> we are told that the children of Yaakov are still 12 – Reuven is not drummed out.

I've read many articles, like Yedidia Stern's article, an interview with Professor Robert Aumann,<sup>10</sup> that are critical of the demand for a ceasefire and for freeing terrorists. Speaking for myself that day on the plaza in Tel Aviv – I certainly felt that judgmental tendency.<sup>11</sup> But it's important for us to recognize when people are dealing with challenges that they simply cannot handle. We need to acknowledge when people are overwhelmed.

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<sup>5</sup> Not just Shimon and Levi, all of the sons of Yaakov, as Ramban to Bereishit 34:13 explains

<sup>6</sup> I could bring *עת לעשות לדי הפרו תורתך* as well, but this is sufficient for a derashah. And consider the case of an *onein*, someone who just lost a relative. Until the funeral, the *onein* is exempt from *mitzvot aseh* (commandments). The fact that a human being is helpless and needs others to take care of them demands that we drop our other pursuits to do it. (Aruch HaShulchan Yoreh Deah 341:4, and see Taz Orach Chaim 108:1) The rulebook suspends itself. Or consider the case of *yeihareg v'al ya'avor*, the law that one must give up his life rather than worship idols. What if someone faces such a test, and instead saves his own life by worshipping Avodah Zarah? The Rambam rules that we don't punish him; we understand that he couldn't live up to the rulebook. (Mishneh Torah, Hilchot Yesodei haTorah 5:4)

<sup>7</sup> For example, see Rav at the bottom of Ketuvot 15a regarding Rabbi Yochanan ben Nuri's psak

<sup>8</sup> Bereishit 35:22

<sup>9</sup> Shabbat 55b

<sup>10</sup> <https://www.israelnationalnews.com/news/381058>

<sup>11</sup> There is a natural tendency to write off Shimon and Levi as brutal criminals, especially knowing what they would go on to do to Yosef. (Rashi to Bereishit 49:5)

And second, I'm speaking about this because I think our parshah also shows us, indirectly, how we deal with these difficult situations. Hopefully we never face such a circumstance! Many, perhaps most Jews live their lives without ever encountering such a case! But if one does - what should one do? The practical answer is to go to a posek – but how does a posek know what to do, when facing a person whose emotions have made the mitzvot too much to bear?

### Flexible Principles

I think our parshah gives us an answer, not via what it says, but via what it doesn't say.

Yaakov, returning to Israel at the start of our parshah, sent a message to Esav: עַם לְבֵן גֵרְתִּי, I lived with Lavan. Rashi comments, וְתִרְי"ג מִצְוֹת שִׁמְרָתִי,<sup>12</sup> I observed all of the 613 mitzvot. But the Torah never shows us Yaakov observing any of those 613. We don't see Yaakov perform shechitah, or separate terumah, or observe Shabbat. Why not?

The same question applied two weeks ago, in Parshat Toldot. Hashem declared that Avraham guarded His “mitzvot, statutes and Torot.” On this the gemara<sup>13</sup> teaches that Avraham observed all of the Torah's mitzvot that were relevant for him, the written Torah and Torah sheb'al peh. So why did we never see Avraham set up an Eruv Tavshilin?

Before Sinai, our Torah presents us with role models who did follow the rulebook, but it shows us how they lived without letting us see any rulebook. Instead, the Torah expects us to glean broader principles from watching their actions.<sup>14</sup>

Those broader principles are what guide a Jew, even in a moment when they cannot follow the rules. Those are the principles that Yaakov was trying to teach Shimon and Levi in our parshah. Those are principles which embody great values – and are flexible enough that even when someone is in so much pain that they cannot follow specific laws, they can still find inspiration and guidance in them.

Before Sinai, those principles are demonstrated by the Avot and Imahot. After Sinai, the Torah actually tells us those broad principles directly:

- קְדוּשִׁים תִּהְיוּ – Be holy!
- וְעָשִׂיתָ הַיָּשָׁר וְהַטוֹב – Do that which is righteous and good!
- וְהִלַּכְתָּ בְּדַרְכֵי יְיָ – Emulate Hashem!
- וּבְעֵרַת הָרַע מִקִּרְבְּךָ – Eradicate evil from your midst!

Rabbi Vidal of Toulouse, a.k.a. the Maggid Mishneh, explained in the 14<sup>th</sup> century that these principles are intentionally broad, so that people will be able to apply them based on their unique situations.<sup>15</sup>

Or as Rav Yosef Dov Soloveitchik put it, these broad principles were:<sup>16</sup> “handed down to... each Jew as a separate, autonomous, one-timely and singular being... Each individual fulfills his moral commitment in his own private and unique fashion.<sup>17</sup>”

### For our children

These principles give the prophet or posek tools to work with, the means of governing an ungovernable situation.<sup>18</sup> And they are important principles for every Jew to embrace.

It's particularly important that we train our children to identify these principles as they learn Sefer Bereishit. These principles articulate a Vision. And while it can be easier to teach children clear halachic obligations – davening, Shabbos, the mechanics of kashrut – our children need to perceive a broader moral code and to absorb the values it conveys, to

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<sup>12</sup> Rashi to Bereishit 32:5

<sup>13</sup> Yoma 28b

<sup>14</sup> This fits with Ramban to Bereishit 1:1 on using Sefer Bereishit to calibrate what Hashem approves of and disapproves of

<sup>15</sup> Maggid Mishneh Hilchot Shecheinim 14:5

<sup>16</sup> Halakhic Morality, pg. 186

<sup>17</sup> For more, see my 2017 shiur on CRISPR: Gene Editing and Jewish Values at <https://www.yutorah.org/lectures/889095/>

<sup>18</sup> This may also be part of the concept of רִצּוֹן הַתּוֹרָה, which Rav Asher Weiss invokes frequently in his teshuvot, or halachic intuition, which Rav Hershel Schachter speaks of frequently.

build a halachic personality for themselves that will inspire them - even when, **חס ושלום**, the rulebook doesn't seem relevant or achievable.<sup>19</sup>

#### When we get it wrong: Moshe vs Chizkiyahu

Moshe Rabbeinu was very good at applying these principles. A gemara teaches us that Moshe Rabbeinu had three Antinomian situations where he felt there were overriding concerns - delaying Matan Torah by one day to give the Jews time to prepare, breaking the luchot, and separating from Tziporah - and in each case, **הטכים הקב"ה עמו** - Hashem agreed with him.<sup>20</sup> That's intimidating; Moshe succeeded all the time!<sup>21</sup>

But another gemara<sup>22</sup> speaks of the righteous King Chizkiyahu, a man who almost qualified as Mashiach, and it says that he made six decisions on his own. Six times, he suspended the rules, choosing a course of action based on his understanding of Hashem's broader principles. On three of them, the Sages agreed with him. But for three the Sages protested that he was wrong. Fifty percent - and if King Chizkiyahu can only get fifty percent, maybe we can be forgiven for managing less.

The key for us is that we learn the values, that we teach the values to our children, and that with the guidance of psak, we do our best with them, As Rav Soloveitchik said, "Each individual fulfills his moral commitment in his own private and unique fashion." May we merit to rise to that challenge, in our private and unique fashions.

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<sup>19</sup> This is particularly relevant for children who choose not to follow mitzvot; at the least, let them have the Torah personality that comes from these broad principles.

<sup>20</sup> Shabbat 87a

<sup>21</sup> Ditto Yehoshua's decision re rendering the spoils of Yericho **cherem**, per Bamidbar Rabbah 23:6 and Malbim to Yehoshua 6:27. And see Radak to 6:17. But note that some say it was Hashem's decision in the first place (see Abarbanel and that Malbim), and that some see Hashem's **לך קום** in Perek 7 as a statement that Yehoshua's audible was incorrect. And of course, we could add in Shaul's mistake re Agag and the animals of Amalek. And was Moshe hitting the rock a case of him trying to figure out without the rulebook, incorrectly?

<sup>22</sup> Berachot 10b