

בס"ד
Yeshiva Night
10.27.11

How Gilad Came Home

Revisiting Terrorist Negotiations in Jewish Law

I. The Great Mitzvah of Redeeming Captives

1. רמב"ם הלכות מתנות עניים פרק ה הלכה י

פדיון שבויים קודם לפרנסת עניים ולכסותן, ואין לך מצוה גדולה כפדיון שבויים שהשבוי הרי הוא בכלל הרעבים והצמאים והערומים ועומד בסכנת נפשות, והמעלים עיניו מפדיונו הרי זה עובר על לא תאמץ את לבבך ולא תקפוץ את ירך ועל לא תעמוד על דם רעך ועל לא ירדנו בפרך לעיניך, ובטל מצות פתח תפתח את ירך לו, ומצות וחי אחיך עמך, ואהבת לרעך כמוך. . . .

Maimonides, Laws of Gifts to the Poor, Chapter 8, Law 10

Redeeming captives comes before providing for the needs of the poor. And there is no mitzvah as great as redeeming captives because the captive is included in those who are hungry, thirsty, naked, and in mortal danger. Therefore, one who turns the other way from saving [a captive] violates the prohibition of “do not close your heart” and “do not close your hand” and “do not stand by while the blood of your brother is spilled” and “do not let him be worked hard in front of you”. And he also misses out on the mitzvah of “surely you should open your hand for him” and “and your brother should live with you” and “love your neighbor as yourself”

II. Limitations on the Performance of this Mitzvah

2. תלמוד בבלי מסכת גיטין דף מה עמוד א

מתני'. אין פודין את השבויין יתר על כדי דמיהן, מפני תיקון העולם;
גמ'. איבעיא להו: האי מפני תיקון העולם - משום דוחקא דצבורא הוא, או דילמא משום דלא לגרבו ולייתו טפי?
ת"ש: דלוי בר דגא פרקא לברתיה בתליסר אלפי דינרי זהב. אמר אביי: ומאן לימא לן דברצון חכמים עבד? דילמא
שלא ברצון חכמים עבד.

Babylonian Talmud, Tractate Gittin, p. 45a

Mishna: One should not redeem a captive for more than he is “worth”, because of *Tikkun Olam*.

Gemara: It was asked: This phrase, *on account of Tikun Olam*, is it (a) out of concern for the burden this will place on the community or maybe (b) so that they won't be enticed to kidnap more [people]?

Come and Listen: Levi bar Darga redeemed his daughter with 13,000 gold coins (presumably more than her value)?! Abaye answered: Who says Levi acted in accordance with the Rabbis? Maybe he was acting against their wishes.

3. רמב"ם הלכות מתנות עניים פרק ה הלכה יב

אין פודין את השבויים ביתר על דמיהן מפני תקון העולם, שלא יהיו האויבים רודפין אחריהם לשבותם

Maimonides, Laws of Gifts to the Poor, Chapter 8, Law 12

One does not redeem captives for more than their value because of *tikkun olam*. I.e. so that the enemies will not continue to pursue them to capture them.

4. שולחן ערוך יורה דעה הלכות צדקה סימן רנב סעיף ד

אין פודין השבויים יותר מכדי דמיהם, מפני תיקון העולם, שלא יהיו האויבים מוסרים עצמם עליהם לשבותם. אבל אדם יכול לפדות את עצמו בכל מה שירצה. וכן לת"ח, או אפילו אינו ת"ח אלא שהוא תלמיד חריף ואפשר שיהיה אדם גדול, פודים אותו בדמים מרובים. ואם אשתו כאחר דמי או לא, עיין בטור אבן העזר סי' ע"ח

Code of Jewish Law (Shulchan Aruch), Yore Deia, Laws of Charity, Section 252, Law 4

One does not redeem captives for more than their value, because of *tikun olam*, so that the enemies will not sacrifice themselves in order to capture them. However, a person is allowed to redeem himself with as much (money) as he chooses. And so, too, for a Torah scholar, or even if he's not a Torah scholar but he is very sharp and it is possible he will become a great [sage], one may redeem him even for a lot of money. And if his wife is considered like another (as opposed to himself) see Tur Even Ha'Ezer section 78.

III. Possible exceptions to the rule: Imminent Danger & Great Torah Scholars

5. תלמוד בבלי מסכת גיטין דף נח עמוד א

ת"ר: מעשה ברבי יהושע בן חנניה שהלך לכרך גדול שברומי, אמרו לו: תינוק אחד יש בבית האסורים, יפה עינים וטוב רואי וקווצותיו: סדורות לו תלתלים. הלך ועמד על פתח בית האסורים, אמר: +ישעיהו מב+ מי נתן למשיסה יעקב וישראל לבוזזים? ענה אותו תינוק ואמר: הלא ה' זו חטאנו לו ולא אבו בדרכיו הלוך ולא שמעו בתורתו. אמר: מובטחני בו שמורה הוראה בישראל, העבודה! שאיני זו מכאן עד שאפדנו בכל ממון שפוסקין עליו. אמרו: לא זו משם עד שפדאו בממון הרבה, ולא היו ימים מועטין עד שהורה הוראה בישראל. ומנו? רבי ישמעאל בן אלישע

Babylonian Talmud, Tractate Gittin, p.58a

The Rabbis taught: Rabbi Yehoshua ben Chanania went to Rome. They said to him: "there is a child in prison, with beautiful eyes and features, and he has sidelocks." He went and stood at the entrance to the prison and he recited the first half of Isaiah 42:10 and the boy responded with the second half of the verse. He said, "I am sure this child will be a Rabbinic leader in Israel. I will not move from this place until I redeem him for all the money you require". He didn't move from there until he redeemed the child for a large sum of money, and it wasn't long before he began rendering halachic decisions. And who was this child? Rabbi Yishmael ben Elisha.

6. תוספות מסכת גיטין דף מה עמוד א

דלא ליגרבו ולייתו - . . . ור' יהושע בן חנניא דפרקיה להווא תינוק בממון הרבה בהניזקין (לקמן דף נח.) לפי שהיה מופלג בחכמה אי נמי בשעת חורבן הבית לא שייך דלא ליגרבו

Tosafos, Tractate Gittin, p.45a

So that they won't be enticed to kidnap more: And R' Yehoshua ben Chanania who redeemed that child for a lot of money, [it was permitted] because (a) this child was outstanding in his wisdom, or (b) at the time of the destruction of the temple the problem of not enticing the non-Jews is not relevant.

7. תוספות מסכת גיטין דף נה עמוד א

כל ממון שפוסקין עליו - כי איכא סכנת נפשות פודין שבויין יותר על כדי דמיהן

Tosafos, Tractate Gittin, p.58a

All the money they want for him: When there is danger to [the captive's] life one may redeem a captive even for more than they are worth.

8. חידושי הרמב"ן מסכת גיטין דף מה עמוד א

וי"א דכל היכא דאיכא חששא דמיתה פודין אותן בכל ממון שיכולין לפדותן, ולא מסתבר דכל שבי כולהו איתנהו ביה, ועוד דגבי אשה איכא חששא דעריות ולא חששו ואע"ג שקרקע עולם היא היה להם לחוש, ומסתברא תלמיד חכם פודין אותו בכל ממון שבעולם וליכא משום דוחקא ולא משום איגרוי שאם אבדו ישראל ממון או מתו משונאיהם הרבה יש לנו כיוצא בהם ות"ח אין לנו כיוצא בו וקודם לפדות למלך כדאיתא במסכת הוריות (י"ג א') הילכך אין לחמוד כסף וזהב עליו, ור' יהושע משום שהכיר בו בוודאי שהוא תלמיד ותיק פדאו בממון הרבה.

Commentary of Ramban on Gittin 45a

Rav Moshe ben Nachman, Italy/Israel, 1194-1270

There are those who say that whenever there is a concern for risk to the life of the captive one may redeem him with as much money as possible. However, this does not make sense, for every case of captives brings with it this concern. And furthermore, when it comes to women captives, there is the concern for immorality and we are not concerned for that.... However, it makes sense that when it comes to great Torah scholars we spend as much as is necessary, for if the Jewish people lose our money or our lives, there are many of each of those. However, a Torah scholar is not as easily replaced.... So Rabbi Yehoshua, because he saw this child was certainly an extraordinary student paid an enormous amount of money.

9. Yam Shel Shlomo (Rabbi Shlomo Luria), Tractate Gittin, Chapter 4

... if one doesn't redeem these captives, there is worry that they might kill them, and *when someone's life is in danger we pay more than what the captive is worth* ... I heard that when the Maharam from Rutenberg ז"ל who was being held in the tower in Eigzheim for a number of years, and the Czar was asking a large ransom from the community, and they wanted to redeem him, that he didn't allow them to do so. Because he said "we do not redeem captives for more than their value". And I didn't understand since he was an extraordinary Torah Scholar, as there was no one like him in knowledge and piety, and therefore it would be permitted to redeem him. And even if he didn't want to consider himself on such a high level, he should have at least been worried about the loss of Torah Study ... since the community needed him. Rather, he must

have thought that if they would redeem him, there was a worry that they would continue to do this with every Torah scholar in each generation until there wouldn't be enough money to support the community and all of Torah would be lost. And I even heard that this same Czar had in mind to capture the Rosh (Rabbeinu Asher) his student, but he found out and escaped to Italy.

10. Operation Antebbe in Halacha, Torah Sheb'al Peh, p.37

Rishon L'Tzion HaRav Ovadia Yosef, Former Sephardic Chief Rabbi of Israel

(שצריך לפדותם), כבר השיג ע"ז הרב יד שאול, ומ"מ בנ"ד שרוב הפוסקים ס"ל שבמקום סכנה פודין ביותר מכדי דמיהן, ולא מצאנו בגדולי הפוסקים שיאמרו להיפך, נראה שמצד הדין אית"ן לן למינקט הכי. ע"כ. וא"כ אף בנ"ד י"ל שאפי' אח"ל דחשיב בכה"ג כיותר מכדי דמיהן, מטעם דלא לגרו ולייתו טפי, מ"מ כשיש סכנה ממשיית בדבר, כבנ"ד, לא חיישינן להאי טעמא דדילמא מגרו בהו ומייתו טפי, ובלא"ה הם עושים כל מה שביכלתם לחסוף ולהרוג ולרצוח כדי לשבש מהלך החיים הרגילים במדינת ישראל, יה"ר שחרבם תבוא בלבם וקשתותם תשברנה. ואעיקרא אין לנו להוסיף

Quoting the Yad Shaul: "In our case, since most *poskim* (Halachic Decisors) are of the opinion that in the face of danger [to captive's life] we pay even more than their value, and we do not find any of the great *poskim* who disagree with this, it appears that according to the law this is how we should act". If this is so, even in our case we should say that even if you want to argue that this is considered more than their value and we should be worried that the terrorists will continue to try to kidnap more Jews, nevertheless when there is a real danger to their lives we pay no attention to this reason. And either way the enemy continues to do all it can to kidnap and kill in order to wreak havoc on the daily lives of Jews living in the State of Israel....

IV. Does it matter if the captive is a Soldier of the IDF as opposed to a regular Jewish citizen?

11. תלמוד בבלי מסכת כתובות דף נב-נב:

תנו רבנן: נשבית, והיו מבקשין ממנו עד עשרה בדמיה – פעם ראשונה פודה, מכאן ואילך, רצה – פודה, רצה – אינו פודה; רבן שמעון בן גמליאל אומר: אין פודין את השבויוין יותר על כדי דמיהם, מפני תקון העולם. הא בכדי דמיהן פודין, אע"ג דפרקונה יותר על כתובתה; ורמינהי: נשבית, והיו מבקשין ממנו עד עשרה בכתובתה – פעם ראשונה פודה, מכאן ואילך, רצה – פודה, רצה – אינו פודה; ר"ש בן גמליאל אומר: אם היה פרקונה כנגד כתובתה – פודה, אם לאו – אינו פודה! רבן שמעון בן גמליאל תרי קולי אית ליה.

Babylonian Talmud, Tractate Kesubos 42a-b

Our Rabbis taught: [If a woman] was taken captive and a demand was made upon her husband for as much as ten times her value, he must ransom her the first time. Subsequently, however, he ransoms her only if he desired to do so but need not ransom her⁴⁸ if he does not wish to do so. R. Simeon b. Gamaliel ruled: Captives must not be ransomed for more than their value, in the

interests of the public.¹ [This then implies] that they must be ransomed for their actual value even though the cost of a captive's ransom² exceeds the amount of her kethubah. Has not, however, the contrary been taught: [If a woman] was taken captive, and a demand was made upon her husband for as much as ten times the amount of her kethubah³ he must ransom her the first time. Subsequently, however, he ransoms her only if he desires to do so but need not ransom her if he does not wish to do so. R. Simeon b. Gamaliel ruled: If the price of her ransom corresponded to the amount of her kethubah, he must ransom her; if not, he⁴ need not ransom her?⁵ — R. Simeon b. Gamaliel upholds two lenient rules

12. Responsa Chavos Binyamin 1:16

Rav Shaul Yisraeli, Slutsk/Israel, 1909-1995

[Rabbi Shimon ben Gamliel] also admits that even if the decree was that he must redeem her even for a lot of money, this would not be in conflict with the decree of the sages not to redeem a captive for more than he is worth, for this case is like redeeming oneself. And they did not make their decree in such a case.

Accordingly, one should view the responsibility of the Israeli government regarding its captives as follows: Since these soldiers go out to war as the agents of the government, to protect the nation that lives in Zion, there exists an unwritten but self-evident responsibility for the government to do whatever it can to redeem its soldiers who are taken captive. Just as there exists a responsibility to worry about their physical wellbeing when they are injured and to worry about their families if anything should happen to them, certainly there exists a similar responsibility to do whatever it takes to bring them home.

V. What about the fact that releasing terrorists puts the rest of Israeli population at risk?

13. תלמוד ירושלמי מסכת תרומות פרק ח דף מו טור ב/ה"ד

תני סיעות בני אדם שהיו מהלכין בדרך ופגעו להן גוים ואמרו תנו לנו אחד מכם ונהרוג אותו ואם לאו הרי אנו הורגין את כולכם אפילו כולן נהרגין לא ימסרו נפש אחת מישראל ייחדו להן אחד כגון שבע בן בכרי ימסרו אותו ולא ייהרגו אמר רבי שמעון בן לקיש והוא שיהא חייב מיתה כשבע בן בכרי ורבי יוחנן אמר אף על פי שאינו חייב מיתה כשבע בן בכרי.

Jerusalem Talmud, Tractate Terumot, Chapter 8, p.46, Law 4

A group of people who are traveling and they are accosted by a group of gentiles who tell them: “give us one of you who we will kill, otherwise we’ll kill all of you” even if everyone will be killed, one may not give them one person. If they specify one of them, like the case of Sheva ben Bichri, he should be handed over so that the rest of the people shouldn’t be killed. Reish

Lakish says: This is only if he is deserving of death like Sheva ben Bichri. Rabbi Yochanan says: Even if he is not deserving of death like Sheva ben Bichri.

*Sheva Ben Bichri: Revolted against King David, was sieged in Avel Beit Maachan. They decided to kill sheva in order to save the rest of the city from Yoav's army.

14. Responsa Node B'Yehuda, Yore Deia 2:210

**The question was regarding doing an autopsy in order to gain medical knowledge which could possibly save future patients.*

I am confused because you are calling this saving a life, but if that's true, what's the question? We know that anything that is even a realistic doubt that someone's life may be in danger allows one to violate Shabbos, the most strict of our laws . . . However, this is only true when there is a realistic doubt in front of us (*sakanas nefashos lifaneinu*), like a sick person . . . but in this case there is no sick person right now who will need this now. Rather, they want to learn this now because maybe someone will come along later who needs it, certainly we won't push aside any Torah or Rabbinic prohibition. Because if you call this a doubt of danger to life, then every action for a sick person will be considered a doubt of danger to life, and one could do anything and everything [on shabbos] because maybe someone will become sick and require these things.



www.TheJROC.com