

JEWISH LAW LIVE
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The key factor has always been to maximize Jewish security



YAHYA SINWAR – Hamas leader in Gaza, released in the Schalit deal – at a rally in Gaza City, 2021. (Atia Mohammed/Flash90)

Concerning captives

Michael Manekin, described as “an Israeli anti-occupation activist and leader of the Faithful Left, a faith-based movement of Jews committed to equality and peace,” recently penned a *New York Times* op-ed under the title “Why the Safety of Israeli Hostages Must Come First.” He draws upon traditional Jewish sources to argue that a core Jewish ethos prioritizes bringing back the 200 hostages recently taken captive by Hamas.

This means, in his mind, paying the high price of a prisoner swap with Hamas, in spite of the fact that this will be seen as a victory of Hamas. (Hamas subsequently announced it wants all 6,000 Palestinian prisoners released from Israeli jails.)

Tradition teachers, he further contends, that we forgo natural temptations for “revenge” or a ground invasion that will surely come at the expense of those in captivity. The foundational Jewish ethos of “communal responsibility,” in his words, is endangered by “political winds.”

I agree with Manekin that the *mitzvah* of redeeming captives (*pidyon shevuyim*) is certainly stressed in Jewish law. However, Manekin’s read of traditional sources lacks any nuance and reflects a distorted read of a complex religious history. In particular, he insufficiently recognizes that the key factor has always been to maximize Jewish security, of both individuals and the community.

In spite of the importance of *pidyon shevuyim*, the sages limited, in the name of *tikkun olam* (reparation of the world), the sum of the ransom, asserting that one cannot pay more than the person’s market value. Some believed that this decree aimed to limit the financial burden on the community. Most medieval commentators, followed by Rabbi Yosef Karo, adopted an alternative Talmudic explanation that these limits prevent lucrative incentives for further kidnappings, thereby forbidding excessive payments even from people with deep pockets.

While Rabbi Menahem Hameiri contended that one may not overpay even to redeem oneself, normative Halacha asserted that one may use an un-

limited amount of one’s own money to buy oneself liberty. Despite Maimonides’s protest, similar dispensations were granted for redeeming one’s spouse. While the community can force a wealthy member to pay for the fair-rate redemption of other relatives, it remains forbidden for a person to voluntarily overpay, although the Talmud testifies that some did not follow this stricture. Jewish scholars were clearly balancing different values and factors, while emotional ties clearly pulled people in different directions.

The Talmud further relates that after the Roman conquest, Rabbi Yehoshua ben Hananiah redeemed for an exorbitant price a promising youth who grew into the great sage R. 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. As such, some believe that the sages’ rules do not apply to contemporary POW (prisoner of war) swaps following conventional wars, especially since these exchanges adhere to international protocols.

Others contended that the ransom limitations did not apply in cases where the captives’ lives are endangered, as in Yishmael’s case. Nahmanides 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, Jewish communities throughout the world created special funds to redeem as many captives as possible. Critically, the logic was that maximizing the number of lives saved was crucial for saving the future of the nation. In their state of political vulnerability – when captive-taking was relatively easy and common – the best way to keep Jews alive was to redeem them.

SOVEREIGNTY, HOWEVER, changed the calculations, as Israel was empowered to defend its people. In the first decades of Israel’s existence, it made regular prisoner exchanges after wars while pointedly refusing lopsided deals for captives. The approach changed with the 1985 Jibril Deal, which released 1,150 pris-

oners 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 terrorism, fears borne out by Ahmed Yassin (future head of Hamas, assassinated by Israel in 2004) and other released terrorists who later engaged in massive terrorist activities. This position was similarly adopted by Rabbi Shlomo Aviner before the 2011 deal to free Gilad Schalit for 1,027 jailed terrorists.

Interestingly, when Rabbi Goren later republished his essay, he agreed with Rabbi Shaul Yisraeli, who at the time asserted that the government must take full responsibility for its soldiers, deeming it analogous to someone paying an exorbitant price to redeem themselves. Rabbi Hayyim David Halevi further asserted that one may justify deals to free captured soldiers, since Israel’s enemies will always continue to kill or capture soldiers.

Scholars who support such exchanges note that they are not mandatory and are subject to various political and military considerations. After the Schalit deal, a high-profile government commission asserted that Israel needs to recalibrate how it approaches these situations. This is particularly true in cases of deceased captives, when Israel has released terrorists to get back Jewish corpses for burial. It’s also crucial to note that Hamas’ Gaza leader, Yahya Sinwar, was released in the Schalit deal. Did Israel incentivize this hostage-taking by offering such lopsided deals in the past? That’s a difficult question to answer.

Israeli leaders are going to face some morally complex decisions as we seek to end the Hamas threat while having 200 Israelis in captivity within Gaza. Jewish tradition will not give us simple answers to these dilemmas but can provide us with a nuanced framework to think about how to balance individual needs and communal security. ■

The writer is the executive director of Ematai and is the author of Ethics of Our Fighters: A Jewish View on War and Morality, forthcoming from Maggid.