

Is It Forbidden to Rescue Hostages?

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In the wake of the excitement over the daring rescue of hostages Louis Har and Fernando Marman by Israeli security forces, more than a few observers have pointed out that such an operation apparently violates the *halakhah*.

The problem is rooted in the *Mishnah, Gitin* 4:6, which addresses the community's response to kidnapping. The first part of that *mishnah* places a limit on the amount of ransom we are allowed to pay to rescue the captives. (We deal with that subject [here](#).) The remainder of the text reads:

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

We do not help captives escape; this is an enactment for the welfare of the community (*mipnei tikkun ha'olam*). Rabban Shimeon ben Gamliel says: it is for the welfare of the captives.

In other words, while the original law (*d'oraita*, the law of the Torah) permits individuals or the community to engage in efforts to free hostages, the ancient Rabbis legislated (i.e., they made a *takkanah*) to prohibit such action. Two different *ta'amim* (reasons) are given to explain the policy considerations that led to the *takkanah*. The difference between those reasons, according to the Talmud, has to do with an instance when only one hostage is taken. Here's how Rambam puts it in his *Commentary to the Mishnah*:

אם נבריחם מאצל אדוניהם יאסרום בשלשלאות של ברזל ויוסיפו בעינוייהם. ואם היה שבו אחד לרבן שמעון בן גמליאל מותר לנו להבריחו שהרי אין עמו שבו אחר שנחוש שיענוהו ויאסרוהו בשלשלאות של ברזל, ולדעת חכמים שאומרים מפני תקון העולם אסור להבריחו שמא יאסרו שבויים אחרים להבא. והלכה כחכמים.

If we rescue them, their captors will put their other hostages in iron chains and treat them more harshly. If there is but one captive, Rabban Shimeon ben Gamliel holds that it is permissible to help that person escape, since there are no other captives to be chained or treated more harshly. In the opinion of the Sages, we say

that it is forbidden to help captives escape as an enactment for the welfare of the community, it is forbidden to help that one captive escape, because that would encourage the captors to seize other hostages. The *halakhah* is according to the Sages.

The *Shulhan Arukh* (*Yoreh De`ah 252:5*) codifies this as follows:

אין מבריחין השבויים, מפני תיקון העולם, שלא יהיו האויבים מכבידים עולם עליהם
ומרבים בשמירתם.

We do not help captives escape. This is an enactment for the general welfare, to prevent our enemies from treating them more harshly and guarding them more strictly.

So: did the Israeli operation (to say nothing of future rescue efforts) transgress this provision of Jewish law? On a *p'shat* or surface reading of these texts you can certainly make an argument that it did. But here are some other considerations.

1. There is an obvious difference between the world described in our sources and the world in which we live today. A sovereign Jewish state does not operate under the same limitations as the politically subjugated Jewish communities of former times, and its political and military interests are substantially different. This is simply a way of saying that the *halakhah* and its interpreters must find ways of accommodating the texts, rules, and principles of Jewish law to the context of modernity and of a modern Jewish state. To be more impolite: leading halakhic authorities who speak to matters of social and political life in Israel (and not only in Israel) should check their calendars and realize that the Middle Ages are over.

2. Does the *ta`am* given for the prohibition apply to this situation? The Rabbis made a pragmatic judgment that rescue efforts harm those who will remain in captivity when the operation is over. Okay, but pragmatism runs in both directions. One can argue that the Israelis kidnapped on October 7, 2023 are already suffering from harsh treatment (the testimony of released and rescued hostages tends to confirm this), so that rescue attempts will not cause the situation to deteriorate substantially. One can also argue that rescue operations are part of the campaign of military pressure that offers the best (and maybe the only) chance at a resolution of the conflict. And as for Rambam's concern that rescue attempts will only encourage the enemy to take other hostages, isn't that what Hamas does in any event? They don't need any more "encouragement" to act as they have always acted. On the contrary, one can argue that the best way to discourage their hostage taking is to defeat them in battle, which includes rescuing hostages from their hands whenever possible. These are all "pragmatic" arguments, and they may or may not be persuasive in any given context. But a government charged with the protection of its citizens must be permitted to make those arguments and must not be chained to the pragmatic judgments of scholars who lived in very different circumstances nearly two millennia ago.

3. Finally, the prohibition itself is not absolute. Rabbi Yair Bachrach, a 17th-century *posek* in Germany, rules that just as one is entitled to pay an exorbitant amount to free him- or herself from captivity despite the halakhic limitations on the amount of ransom (*Shulhan Arukh Yoreh De`ah 252:4*), so one is entitled to escape from captivity when one can do so despite the harsh

consequences this may entail for the remaining captives: מ"מ פשוט דכל יחיד שיכול לברוח בורח ואין לו לחוש על אחרים – “It is obvious (*pashut*) that an individual who is able to escape should do so; they should not worry about the others” (*Resp. Havat Yair*, no. 213). Indeed, he writes, it is contrary common sense (דבר נגד השכל) to do otherwise, to refrain from benefiting oneself due to concern for the harm that might cause to others. The implications Bachrach’s statement, taken to extremes, gives us pause; is selfishness truly the ideal we stand for? But he teaches us a valuable lesson about how to learn and understand the *halakhah*. A purely logical interpretation of this rule would deny to human beings the opportunity to escape captivity, perhaps even death, and to return to their homes and their families. But such an interpretation is an offense against reasonability and common sense (*sekhel*). And that’s not how we should read our legal tradition.

To put this another way, when the sources give us pragmatic *ta`amim*, reasons or purposes behind a particular rule or enactment, they invite us to consider whether those reasons apply to the world as we face it and whether those purposes might be better accomplished by other means. When we put out of considerations of pragmatism set aside that rule or enactment, we do not ignore or abandon the *halakhah*.

We fulfill it.