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COERCION IN CAPTIVITY – A STUDY IN RESPONSA CHAVOT YAIR

By Rabbi Aryeh Klapper

Why is the redemption of captives given such importance in halakhah? Granting its significance, why does the Torah not specifically mandate it? I'll take a somewhat circuitous route to answering those questions.

Responsa Chavot Yair #183 illustrates the gap between halakhic abstraction and human experience in several important ways.

We rule that Jews (may or) must violate most halakhic prohibitions rather than be killed. In the standard abstract case, an idolater presents the Jew with an either/or: "Violate this prohibition or I will kill you!" The ruling is that Jew should violate the prohibition rather than be killed.

But in the real world, the Jew cannot know whether the either/or is real. The idolater may or may not kill them regardless of whether they agree to violate the prohibition. In such a case, do we rule that any risk that the terms of the bargain are honest justifies the violation? Or do we require some evaluation of the degree of risk?

One might argue that the rule *safeik nefashot lehachmir* means that any possibility that one's life is in danger justifies violation. But that rule is not absolute; for example, as Noda B'Yehuda argues, it would be unreasonable to allow all potentially lifesaving medical research and training to take place on Shabbat, even if the potential is infinitesimal.

Allowing Jews to submit to a mere threat might have terrible social consequences in an antisemitic cultural context, particularly once the antisemites learn of this ruling. Halakhah tries to account for this by declaring that all prohibitions must be violated rather than submitting to a threat made for the sole purpose of forcing the violation. But motivations are hard to know with certainty.

Chavot Yair's case is as follows: A nonJew threatened a Jew: "If you don't drink *yayin nesekeh* (wine dedicated via libation to idolatry) with me, I will cut off your ear!". The Jew (chose

not to embrace his inner Van Gogh and instead) drank the wine. At least some of his fellows reacted with horror and publicly tagged him a libertine. Was drinking the wine justified?

One might argue that since the nonJew plainly derives no physical enjoyment from the Jew drinking the wine, his motivation must plainly be forcing the violation. If he merely wanted the Jews' social company, he could have ordered kosher wine! But perhaps he is not interested in religion per se, only in demonstrating that he can utterly dominate the Jew. Or perhaps kosher wine was commercially unavailable, or too expensive, or (in those primitive times before flash-pasteurization) of insufficient quality.

Chavot Yair might have evaded the question by asserting that the wine wasn't truly *yayin nesekeh* but rather *stam yaynam*, wine touched by a nonJew, which is only Rabbinically prohibited (formally because of concern that it might have become *yayin nesekeh*; actually because the purpose of the Rabbinic prohibition is to prevent uninhibited socializing.) He mentions in passing the standard ruling that "there is no *yayin nesekeh* at all today as is well-known". But since the rule is that one may submit, there may be no formal difference between Rabbinic and Biblical violations. Or the rule about not drinking nonkosher wine with nonJews may have had great social significance, so that a technical defense would not have rung true with the community.

Chavot Yair's halakhic bottom line, if I understand him correctly¹, captures the human ambiguity.

... אם הוי דיבור בעלמא וגיוזום –
לא היה לו למהר לשתות.
ומ"מ, אם באמת ירא לנפשו
פן יחרה אפו ויריק חרבו פתאום ויעשה אשר זמם –
אין לו חטא ...
ואם ה' יכול להציל עצמו בממונו ולא עשה –
חוששני לו מחטאת, וצריך תשובה קלה ...
If this was mere speech and threat –

¹ I owe this understanding in significant part to Davida Kollmar.

he should not have hurried to drink.
 Nonetheless, if he was truly afraid for his life
 lest the nonJew be enraged, and his sword strike
 suddenly, and he do as he plotted –
 the Jew bears no sin . . .
 But if he had been able to save himself by bribery, and
 did not do so –
 I am concerned that he may ‘owe a sin-sacrifice’, and
 he needs ‘a light penance’.

However, in a later edition of his responsa, Chavot Yair
 added an aside which sets aside much of this complexity in
 one kind of case:

[ובקונטרסים הוכחתי
 דשבוי שאמר לו אדוני 'עשה לי מדורה' בשבת לחמם או לבשל
 אצלו, אפילו לא גזים כלל –
 שרי,
 אם לא ישמע לקול תחנוניו ובכיותו,
 אפילו לא גזים,
 דמידי ספק נפשות לא יצא,
 ושבי כלהו איתנהו ביה.]

[In my notebooks I have proven
 that a captive whose master told him on Shabbat
 “Light a hearth for me” to heat or cook,
 even if he did not threaten at all –
 (the captive is) permitted to obey, if the master refuses
 to heed his entreaties and tears,
 even if he did not threaten,
 because this situation has not departed the bounds of
 risk to life,
 and “captivity included all of these within it”]

A captive is always under ultimate threat, even if the captor
 is too polite to make the threat explicitly².

The discussion of captivity ends with a quote from Rabbi
 Yochanan on Bava Batra 8b, cited by Rabbah bar Mari as
 the source for the Rabbinic maxim that “Redemption of
 captives is a great mitzvah”. Rabbi Yochanan asserts that
 captivity is worse than famine and death-by-the-sword
 because it includes them all. I suggest that this means that
 captivity includes the constant awareness that the captor can
 starve or kill one at will.

² This awareness of situational threat is *mutatis mutandum* also necessary in contemporary divorce cases: husbands need not mention the possibility of withholding a *get* for women to correctly feel threatened.

³ My analysis of the obligation to redeem captives follows Rav Yehudah Herzl Henkin, *Responsa Bnei Banim* 1:43, rather than Rav Ovadiah Yosef, *Responsa Yabia Omer* 10:CM:6. For more detail please listen to the series “Redeeming Captives – At Any Price?” on the Taking Responsibility for Torah podcast. The analysis of and argument from the obligation to redeem slaves is my own based on Kiddushin 20. I welcome critiques and challenges.

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Chavot Yair’s extension and insight is that being under
 constant threat makes one a slave. In such a circumstance
 there is no halakhic obligation to calibrate how far to resist
 in any particular case (although it may be psychologically
 vital to find pockets of resistance). This is what makes
 redeeming captives such an important mitzvah – it is the
 equivalent of redeeming slaves from captivity. And the evil
 of slavery is the fact of power-over-others more than the
 extent to which masters utilize their power.

Redeeming Jewish slaves from captivity is a stand-alone
 Biblical commandment. Talmud Kiddushin 20 interprets
 Vayikra 25:47-49 as establishing an obligation to redeem a
 Jew even though he has sold himself voluntarily to a
 nonJew. *Kal vachomer* one is obligated to redeem Jews who
 have been enslaved against their will. So redeeming captives
 is a “great mitzvah”, an intensification of the Biblical
 commandment to redeem slaves. It is also an act of *imitatio
 dei*, of emulating the G-d Who took the Jews out of
 Mitzrayim.

But – and this is a very important but – I suggest tentatively
 that Kiddushin 20b interprets Vayikra 25:50-54 as limiting
 the obligation to redeem slaves to paying market value for
 them. This is implied by establishing the means for
 calculating the redemption price for such slaves in a market
 under Jewish law. In other words, the Rabbinic decree
 against redeeming captives above market value is not a
 suspension of the law, but rather a prohibition against
 voluntarily going beyond the requirement of the law.³

Shabbat shalom!