PERSONAL AUTONOMY IN THE THOUGHT OF R. NACHUM ELIEZER RABINOVITCH

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In a 2016 article in Tablet magazine, Yair Rosenberg and Yedidya Schwartz compiled a list of ten influential Israeli rabbis that the English speaking world "should know" about. The list was eclectic, and contained rabbis from across the denominational and ideological spectrum. Nonetheless, the age range of the rabbis was fairly narrow. The one exception was the seventh rabbi on the list, Rabbi Nachum Eliezer Rabinovitch. Already in his 80s, R. Rabinovitch was referred to by the authors as the list's "old timer."

The fact that R. Rabinovitch is not well known among English speaking Orthodox Jews is puzzling. Intellectually, his resume could not be more impressive. He was a towering scholar who published a twenty-three volume, monumental commentary on Maimonides' Mishneh Torah. In addition to his doctorate in the history of science, he also wrote a book of Talmudic novella, two volumes of halakhic responsa, and books and articles on a wide range of contemporary topics in Jewish thought. Beyond his academic accomplishments, R. Rabinovitch had a successful career as a congregational rabbi in the United States and Canada. He helped establish the first Jewish day school in Charleston, South Carolina, and ultimately served as the head of Jews' College in London, as well as Rosh Yeshivat Birkat Moshe in Ma'aleh Adumim.

Rabbi Jonathan Sacks, in eulogizing his beloved teacher, said that R. Rabinovitch and R. Aharon Lichtenstein were the “gedolei hador,” the greatest rabbis of their generation. Yet while R. Lichtenstein is well known in the English speaking Orthodox world, R. Rabinovitch still remains relatively anonymous within the same ideological group.

There may be sociological factors that explain this phenomenon. After all, R. Rabinovitch doesn't fit neatly into any single subset of contemporary Orthodox Jewry. Educationally, he was trained in traditional yeshivot, and studied with great Torah sages who were culturally affiliated with the Yeshiva world. He even married the niece of his Rosh Yeshiva, Rabbi Yaakov Yitzchok Ruderman, of Ner Israel in Baltimore. Nonetheless, he earned a doctorate in the history of science from the University of Toronto and served as one of the halakhic advisors for the Centrist Orthodox Rabbinical Council of America. Even his Zionism was unique. He was the head of a religious Zionist Yeshiva, yet had no formal connection to the intellectual world of Rav Abraham Isaac ha-Kohen Kook, whose worldview shaped much of contemporary religious Zionism. In fact, R. Benny Lau penned an article protesting a headline that eulogized R. Rabinovitch as "the elder sage of religious Zionism." According to R. Lau, R. Rabinovitch was a "man of Torah," and any attempt to categorize him through denominational labels undermines his uniqueness and greatness.

Whatever the cause, R. Rabinovitch's anonymity outside of Israel makes it that much more critical to introduce his scholarship to the English speaking world. In this essay I would like to explore one essential theme in R. Rabinovitch's writing: the centrality of personal autonomy. This topic is not new, and R. Rabinovitch is not the first contemporary scholar to address this issue. However, R. Rabinovitch's perspective on this topic is extremely innovative and provides an important counterweight to the traditional voices who try to limit the role of human autonomy in the service of God.

While the theme of personal autonomy permeates many of R. Rabinovitch's theological writings, I want to focus specifically on two examples where his commitment to autonomy is particularly manifest. The first relates to his reading of a well-known Talmudic passage in tractate Shabbat. The second involves his understanding of rabbinic authority.

Shabbat 88a: From Coercion to Autonomy

The aggadic passage in Shabbat 88a is a classic. Expounding on a biblical verse in the book of Exodus, the Talmud embarks on an ambitious attempt to discuss the exact nature of the Jewish peoples' willingness to enter a covenant with God at Sinai:

"And they stood under the mount" (Exodus 19:17):

There are two different ways that the rabbis understand this passage. The first example relates to the two types of autonomy discussed by R. Rabinovitch in his theological writings. The second involves his understanding of the authority of the biblical verses that speak of man's role in creating that covenant.

2 https://www.makorrishon.co.il/judaism/230239/.
3 https://www.srugim.co.il/445678-%D7%94%D7%9B%D7%95%D7%AA%D7%A8%D7%AA-%D7%96%D7%A7%D7%9F-%D7%98%D7%91%D7%9A0%D7%99-%D7%94%D7%A6%D7%99%D7%95%D7%A0%D7%95%D7%AA-%D7%94%D7%93%D7%AA%D7%99%D7%AA-%D7%94%D7%95%D7%A9%D7%94-%D7%9C%D7%95.
4 So far, very little has been written to familiarize English speaking audiences with the work of this great sage. For two excellent essays in English, see Dr. Alan Nadler, "Maimonides in Maaleh Adumim," available at: https://jewishreviewbooks.com/articles/3235/maimonides-in-maale-adumim/, as well as Dr. Avraham Feintuch, book review essay at: http://www.hakirah.org/Vol%2012%20Feintuch.pdf. For a student's perspective, see R. Yoni Rosensweig, "My Rebbe: Rav Nachum Eliezer Rabinovitch," at: https://thelehrhaus.com/commentary/my-rebbe/.
R. Avdimi b. Hama b. Hasa said: This teaches that the Holy One, blessed be He, overturned the mountain upon them like an [inverted] cask, and said to them, 'If ye accept the Torah, 'tis well; if not, there shall be your burial.'

R. Aha b. Jacob observed: This furnishes a strong protest against the Torah.

Said Rava, Yet even so, they accepted it again in the days of Ahasuerus, for it is written, [the Jews] confirmed, and took upon them [etc.] (Esther 9:27): [i.e.,] they confirmed what they had accepted long before.

The imagery used by R. Avdimi describes God coercing the Jewish people into accepting the Torah. After all, the Jewish people at Mount Sinai were exposed to an unmediated interaction with God. That encounter seems by definition coercive. Who would possibly say no to a covenant being offered by God Himself?

Aware of the theological challenges posed by a coerced agreement, the Talmud proceeds to quote Rava, who argues that the real acceptance of the Torah actually took place during the time of Mordekhai and Esther. The clear implication of the Gemara is that Purim is the mirror image of Sinai. God's involvement in the Sinai revelation is undeniable. His strong hand, according to the Talmudic account, is what allows the covenant to be accepted. Purim, by contrast, involves God working from behind the scenes. The name of God is not found at all in Megillat Esther. It is exactly God's lack of overt involvement in the Purim story that allows the Jewish people to actively choose to attribute the miracle to the Divine and reaffirm their covenant with God. Sinai is about coercion and authority while Purim represents autonomy and choice.

The theological timeline that emerges from the Gemara is clear. Sinai is stage one of Jewish history, while Purim is stage two. R. Rabinovitch, however, reads the Gemara differently, setting up a model whereby Purim represents stage two of a three-stage process. The philosophical background that motivates R. Rabinovitch's reading of this passage is his insistence that man's uniqueness. Choice is only of ultimate value if one "chooses the good because it is good." A proper choice made "due to any external constraints, pressures, or incentives" does not accurately express man's "true essence." This is true with regard to observance of God's commandments as well. Any type of coercion of man denies him the ability to express his unique capacity to choose. As a result, "fulfillment of the mitzvot only has value if it stems from man's free will. Otherwise, it is mere apelike imitation."12

Given his commitment to autonomy, how can R. Rabinovitch account for the Talmudic statement that God forced the Jewish people into the Sinaic covenant? After all, in doing so God completely undermined their tzelem Elokim? To answer this question, R. Rabinovitch argues that just a child is educated in a way that acknowledges her own intellectual and spiritual maturation, so too, the Jewish people as a collective accepted the Torah in stages reflecting their own evolution as a people. Stage one was in fact coercive, and reflects the fact that it was essential for God to find a people to whom to give the Torah in order to justify the act of creation: "If there is no one to accept the Torah, which makes it possible to progress toward the goal of choosing good, then all of the world is not worthwhile, and it would be fitting for it to return to primordial chaos."13 This represents the earliest stage of Israelite history, that of Sinai.

Stage two begins at the time of Purim. While this stage does not involve direct divine coercion, it still cannot be described as a time when the Jewish people choose to observe mitzvah observance from a place of complete freedom. Why not? R. Rabinovitch highlights a subtle comment of Rashi in the Talmudic passage described above.14 Commenting on Rava's claim that the Jews again accepted the Torah during the time of Purim, Rashi notes that they did so out of a "love of the miracle" that God performed for them. For R. Rabinovitch this is a red flag. Referencing Maimonides' description of how we educate children, R. Rabinovitch notes that as a student matures, we transition our educational strategy from a model rooted in fear to an approach based on incentives.15 The transition from Sinai to Purim reflects this shift. At Sinai, God coerced the people into accepting the covenant. During Purim, there was no active coercion. Nonetheless, by saving the people from physical destruction, God "incentivized" the people of Israel to accept the Torah anew: "Like a youngster who studies Torah in order to receive treats, Israel accepted the Torah out of love for the miracle."16 The Jewish people were overjoyed after being saved from Haman's decree. This joy was the source of their willingness to accept the Torah and therefore contained "an element of coercion."17 This subtler form of coercion prevented the Jewish people from fully expressing "the Divine image within [them]."18

While the Talmudic discussion ends here, R. Rabinovitch adds another layer. He begins by referencing Antigonos of Sokho's

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5 See, for example, Meshek Hokhmah to Exodus 19:14.
8 Mesilot Bilvavam, ibid. R. Rabinovitch argues that this is the view of Rambam as well. This creative Maimonidean reading is discussed at length in Ido Pachter's doctoral work, The Ideological Development of Modern Orthodoxy in America: Models and Methods (Hebrew), (Bar Ilan University: 2016), 295-300.
10 Ibid., 5.
11 Ibid.
12 Ibid., 18.
13 Ibid., 19.
14 Shabbat 88a s.v. “bimei.”
15 Maimonides, Laws of Repentance 10:5, as well as Maimonides, Commentary on the Mishnah, Introduction to the Tenth Chapter of Sanhedrin (Perek Heleq), 131.
17 Ibid., 21.
18 Ibid.
teaching in Avot: "Do not be as servants who serve the master in order to receive reward. Rather, be like servants who serve the master regardless of reward." In R. Rabinovitch’s reading, Antigonus articulates the most pristine form of faith. In this paradigm, there is no coercion and no room for compliance motivated by a desire for reward.

For R. Rabinovitch, this represents stage three of Jewish history: a time when faith can be appreciated on its own terms, divorced from external pressure. Purim symbolizes faith rooted in an appreciation for a miracle performed by God. For Antigonus, by contrast, faith should reflect the idea that one "should believe in the truth for the sake of truth."20

Yet while R. Rabinovitch accepts Antigonus’s model as a philosophical ideal, he faults Antigonus in prematurely introducing this idea to the Jewish people. Antigonus mistakenly thought that stage two had come to an end. The Jewish people, however, had yet to achieve the theological maturation needed to accept his teaching. In fact, the Rabbis note that two of Antigonus’s students misunderstood their master’s ruling, erroneously thinking that he denied the existence of reward and punishment.21 As a result, they decided to abandon traditional rabbinic Judaism and found other sectarian groups. It requires a deep appreciation for nuance to understand that Antigonus was affirming the metaphysical truth of reward and punishment while simultaneously rejecting it as a legitimate motivator to inspire authentic faith. R. Rabinovitch affirms that Antigonus was correct in principle. His challenge was the timing, not the content of his teaching.

At what point, then, are we intended to transition into stage three of Jewish history? When will the Jewish people be sufficiently ready to choose to worship God divorced from external pressure and motivated by a commitment to truth? Interestingly, R. Rabinovitch sees modernity as providing a unique theological opportunity that didn’t exist in previous generations. He notes that "until the modern era, an authoritarian worldview, which viewed obedience as the supreme value, prevailed. Today, however, freedom is at the top of our priority scale."22 The rise of post-enlightenment modernity posed significant theological challenges to traditional Judaism. Reason, not revelation, became the preferred medium for attaining truth. This philosophical shift forced Jews to struggle with classical faith categories that do not easily harmonize with a scientific worldview. R. Rabinovitch is aware of this, noting that "in our times, there has been an increase in the number of people who are not impressed by the notion of reward and punishment."23 How are religious leaders to respond to this challenge? Instead of rejecting this modern ambivalence, R. Rabinovitch decides to embrace it. In a fascinating twist, R. Rabinovitch argues that it is exactly this orientation that makes authentic faith more accessible. Obviously, traditional Judaism believes in reward and punishment. However, in pre-modern times Jews were more emotionally enamored with this idea, and it often served as their motivating factor for religious compliance. While the net outcome was positive, this type of observance is by definition compromised. Modern Jews, influenced by scientific thinking, often lose this direct religious connection to the world of reward and punishment. Paradoxically, it is modern man’s experiential disconnect from certain traditional categories that allows him to connect with tradition in its most authentic form.

R. Rabinovitch is certainly also aware of the challenges posed by modernity to halakhic commitment. For example, assimilation is a greater threat now than it ever was. R. Rabinovitch directly acknowledges this point, stating that, "our generation, relative to earlier generations, is lacking with respect to faith and mitzvah observance."24 His broader claim about the nature of faith, however, is theological, not sociological. Given his profound commitment to human autonomy, he is particularly intrigued by modernity’s commitment to freedom. The more autonomous man is, the more he can truly express his tzolem Elokim:25 "Our generation is approaching national maturity, the age in which the human spirit recoils from any attempt to coerce it. There is no greater guarantee that mankind is on the verge of a great age, when the divine image within man will appear in all its radiance."26

What emerges from his reading of this Talmudic passage is that any form of coercion27 limits a truly authentic affirmation of traditional commitment. Because man’s defining quality is his ability to choose, external pressure can pose a threat to classical faith. While modernity creates significant challenges to traditional observance, it also provides the philosophical framework for Jews to experience an authentic connection to Torah. Divorced from both social as well as theological pressures of previous generations, modern Jews are blessed with a unique opportunity to activate their tzolem Elokim in its purest form.

Rabbinic Authority: Restoring the Autonomy of the Questioner

The second area where R. Rabinovitch’s commitment to autonomy is overtly expressed is in his understanding of the traditional category of emunat Hakhamim.28 On the surface, rabbinic authority poses a direct challenge to R. Rabinovitch’s vision of personal autonomy. After all, turning to rabbinic sages for halakhic guidance seems to undermine the autonomy of the questioner. Shouldn’t a learned Jew, capable of navigating rabbinic texts, be able to answer a halakhic question for himself? Wouldn’t this be the greatest expression of his divine spark?

Interestingly, some contemporary Orthodox thinkers express the opposite idea. They claim that deferring one’s autonomy to rabbinic sages is one of the defining features of classical faith. In its most extreme form, this ideology, sometimes called Daas Torah, assumes that great sages "possess a special endowment or capacity to penetrate objective reality, recognize the facts as they really are, and...

19 Avot 1:3.
20 Maimonides, Commentary to Avot, 1:3.
21 Avot de-Rabbi Natan 5:2. See also Maimonides on Avot 1:3.
22 Mesilot Bilvavam, trans. Fischer, 22.
23 Ibid.
24 Ibid.
25 There are challenges with this model. For example, what if one chooses to reject the tradition on philosophical grounds? Would this be at least partially an affirmation of one’s tzolem Elokim? Assuming the answer is no, does R. Rabinovitch think that the epistemological claims of traditional Judaism are clearly rationally demonstrable? If so, how would he respond to some of the contemporary challenges posed against the rational defensibility of traditional faith? R. Rabinovitch’s writings do provide guidance in trying to answer these questions. I hope to address these in an upcoming essay.
26 Ibid.
27 R. Rabinovitch is aware of the challenges of neutralizing external pressures entirely. He recommends limiting external constraints "to the extent possible." Mesilot Bilvavam, trans. Fischer, 5.
apply the pertinent halakhic principles." Rabinovitch argues for a different model. On one hand, he wants to preserve the dividing line between the scholar and novice. After all, the Shulhan Arukh rules that only a sage who achieves a certain level of scholarship (hakham she-higia le-hora'ah) is allowed to issue halakhic rulings. While later scholars debate the exact parameters of this rule, it is clear that only certain sages are truly autonomous in terms of their ability to decide matters of Halakha. Other Jews must seek their counsel and not rely on their own limited knowledge of halakhic material.

On the other hand, he argues that a reality whereby ordinary Jews cannot adjudicate on their own is far from ideal: "Until one has studied sufficiently and become capable of issuing halakhic rulings, he has no choice but to choose a rabbi to ask what to do and what path to take." Instead of seeing submission to great sages as a sign of piety, he argues that true commitment requires one to take responsibility for his own religious life. This should certainly be done in consultations with great scholars. Nonetheless, in the ideal sense, every Jew should become a scholar capable of issuing rulings. Only then is one truly halakhically autonomous.

Moreover, he provides a quasi-autonomous model even for those Jews who are not yet able to issue their own rulings. Instead of rooting their piety in an ethic of submission, these Jews have a responsibility to actively try to understand the rationale for a halakhic ruling given to them. Addressing this point, Rabinovitch argues that "even one who asked a rabbi for instruction and was indeed given a ruling is not absolved of his duty to try to understand the reasons for the ruling." Quoting from the Ba'al ha-Maor, Rabinovitch notes that an individual questioner can actually be held legally liable if he follows the view of a sage that contained an obvious error; "one who consults even an outstanding rabbi can be considered negligent if he does not ascertain that the ruling he received is correct."

This allows Rabinovitch to restore a maximal amount of autonomy to the questioner. While he is certainly not able to offer a halakhic opinion on his own, the requirement to fully investigate and understand the logic of the rabbinic ruling given to him provides the non-scholar with at least some degree of autonomy in the halakhic process. Blind obedience cannot be seen as an expression of religious virtue. Understanding, not submission, must be the motivating factor in navigating our halakhic lives. As Rabinovitch notes, "One must not think that since a great rabbi gave him a ruling, he must therefore follow blindly." Ultimately, even the non-scholar has a perpetual responsibility to "learn, so that he can understand his rabbi's instruction." By doing so, he activates his tzelem Elokim.

R. Joseph Soloveitchik also tries to limit the halakhic autonomy of the layman. In his famous essay, the "Common Sense Rebellion," he challenges attempts to bring common sense into the realm of halakhic discourse. Halakhah is an a priori construct that contains its own inner logic. "The Oral Law has its own epistemological approach which can be understood by a lamdan who has mastered its methodology and its abundant material." For Rav Soloveitchik, to commit to the halakhic system means to "surrender to the Almighty the every-day logic...the logic of the businessman...and...embrace another logic—the logic m’Sinai." A full treatment of both Daas Torah as well as R. Soloveitchik conception of rabbinic authority, is well beyond the scope of this essay. Nonetheless, both Daas Torah theology as well as Rav Soloveitchik’s rejection of "common sense" assumes limited autonomy given to a non-scholar in navigating one's halakhic life. True commitment requires one to suspend his thoughts in service of the view of Gedolim (Daas Torah) or the "logic of Sinai" (R. Soloveitchik).

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R. Rabinovitch is an extremely creative theologian. While much of contemporary Orthodoxy embraces the language of submission and authority, R. Rabinovitch provides a nuanced voice advocating for autonomy, while still deeply rooted in the world of traditional learning and commitment. For R. Rabinovitch, autonomy is a traditional category, emanating from the bible’s earliest description of man. It is this insistence that allows him to see religious possibility in modern man’s experiential disconnect from the world of reward and punishment. Nonetheless, while advocating autonomy, he still preserves traditional reverence and respect for the word of the scholar. Seeking halakhic guidance when we are unsure or untrained reflects a posture of humility. Only a truly arrogant individual would think that he has all the answers. Ultimately, R. Rabinovitch articulates a unique model that prioritizes autonomy while still validating the self-transcendent quality of authority.

As discussed earlier in this article, R. Rabinovitch’s personal biography is eclectic and transcends simplistic categorization. He was loosely affiliated with the Yeshiva world, Centrist Orthodoxy, and Religious Zionism simultaneously. Clearly, R. Rabinovitch’s commitment to personal autonomy was not simply theoretical. This central religious virtue was instead a guiding principle both in the works and in the life of this great Torah scholar.
**Pidyon Shevuyim and the Pandemic**

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Eary as we are of the shutdown, few of us have known true captivity. It is a ghastly thing which Jewish law deems worse than famine and slaughter—and decrees that “no commandment is as great as pidyon shevuyim,” the Hebrew term for the redemption of captives (Mishneh Torah, Hilkhot Matnot Aniyim 8:10). American courts, including the one I work for, are handling a wave of lawsuits from prisoners seeking release on the grounds that it is unsafe to keep them locked up during the pandemic. Confronted with these difficult cases, I began to wonder: Does the concept of *pidyon shevuyim* apply in these and other situations presented by the pandemic?

One historical precedent is illuminating. An outbreak of the plague tore through Europe in the years 1709–1713. Some Jews were fortunate, like Rabbi Samuel of Danzig, who, as his famous grandson relates in his *Hokhmat Adam*, fled a year earlier after being warned in a dream by his dead grandmother. But most did not escape the misery. When the epidemic hit Prague around 1713, Rabbi Jacob Reischer (author of *Shevat Ya’akov*) was forced to evacuate and endured a wretched homeless spell scavenging for food and shelter (*iyun Ya’akov*, Introduction). He was later asked the following halakhic question:

A man on his deathbed had donated a portion of his estate to charity, to be used only for *pidyon shevuyim*. Some do-gooders wanted to divert these funds toward relief for Jews impacted by the plague, and they asked R. Reischer whether that was permissible (*Shevat Ya’akov* II, 84). Such a diversion would typically be forbidden, since an earmarked gift generally cannot be redirected against the donor’s wishes. But R. Reischer creatively argued that, because of the plague, these relief funds would in fact be going toward *pidyon shevuyim*.

He first acknowledged that the Talmud (*Bava Batra* 8b) implies that *pidyon shevuyim* is a worthier cause than aid to those suffering famine or other natural disasters, clearly suggesting that the Talmud views *pidyon shevuyim* and natural suffering as different. “Nevertheless,” he wrote,

> in my view, that applies only in earlier times when, if the hand of God struck the world, people did not withdraw from the Jews at all (*lo hayu mudalim mi-Yisrael kelal*) and [everyone] would help one another in times of distress. But now, due to our sins, the exile weighs heavily upon us, and our enemies spread slander and libel as if the plague arrived because of the Jews in particular. During the plague in the year 5473 [1713] the Jewish streets were closed off in most areas where our people live; literally no one could come or go. Only grudgingly and after much lobbying were people allowed to bring them food. In some areas Jews had to hide in forests or caves, and those who were on the roads or in the fields were truly left to die—fortunate is he who did not see them in such grave distress and sorrow. There is no greater captivity than this, since it is worse than all other [types of suffering] and encompasses them all. Thus it is clear that this act [of charity] is in fact *pidyon shevuyim*, and perhaps greater. The donor’s intent has therefore not been violated for there is no greater time of need.

R. Reischer’s reasoning is somewhat opaque. What was it that made these desperate Jews eligible for *pidyon shevuyim* funds? The simplest explanation might be that any situation of extreme suffering and helplessness counts as “captivity.” Yet I don’t think that reading is correct. There are many dreadful and hopeless situations that one would be hard-pressed to describe as *pidyon shevuyim*. For example, the Talmud famously discusses a case of two people stuck in the wilderness with enough water for only one of them to make it back to civilization (*Bava Metzia* 62a). Sending them another jug of water would be a supreme act of charity, but I doubt anyone would categorize it as *pidyon shevuyim*. Likewise, rescuing people from various extreme predicaments, such as drowning in a river or being mauled by a wild animal (*Sanhedrin* 73a), is not *pidyon shevuyim*.

Why, then, did R. Reischer rule that giving money to Jews languishing under plague conditions was *pidyon shevuyim*? I would like to offer two plausible explanations. The first is that the status of “captives” derived from the strict quarantine. Many Jews were apparently confined to their homes, or the neighborhood, in abysmal conditions. Others were trapped outside the city and had to hide in forests or caves. R. Reischer may have interpreted these restrictions on movement as a form of confinement that amounted to “captivity.” It’s easy to see why someone sealed off in that manner might feel like a prisoner.

Yet it is likely that the association of quarantine with confinement had little to do with R. Reischer’s decision. From his use of the past tense, it appears that the quarantine had already been lifted when he authored the responsum. And, in fact, confinement itself may not be an essential facet of *pidyon shevuyim*. Some sources indicate that a combination of perils—“death,” “the sword,” and “hunger,” in the language of the Talmud (*Bava Batra* 8b, building on *Jeremiah* 15:2)—are sufficient proxies for confinement or its functional equivalent. According to some, the halakhic notion of “captivity” need not involve confinement when the victims are exposed to serious deprivation and violence by other means.

For example, Rabbi Simeon b. Tzemah (d. 1444) ruled based on his reading of the Talmud (*Bava Kama* 117b) that a crowd of impoverished refugees who had landed in Ténès, Algeria were “captives” because they were being beaten by people on the street (*Tashbetz* II, 293), even though they were apparently not held in custody. And consider the opinion of R. Twi Hirsh b. Azriel of Vilna, who addressed the same plague as R. Reischer, but had a somewhat different take (*Beit Lehem Yehudah* 252:1):

> I saw with my own eyes in the year 5471 [1711] in Lithuania that, contrary [to R. Reischer’s account], the [non-Jews] acted with great kindness toward the Jews. Still, many died of hunger, so there was “death” and “hunger.” And because of the hunger people would stab one another and steal whatever food and drink they had—I saw that with my own eyes. Thus, there was “death,” “hunger,” and “the sword,” and that is certainly tantamount to captivity, which includes all of those.

Notably, R. Twi Hirsh places no halakhic weight on the existence of a quarantine but instead highlights the threats of violence and hunger. R. Reischer, in contrast, focuses on the quarantine, along with the barbaric and unjust behavior of the gentle authorities. Perhaps he thought that the quarantine itself was a bona fide confinement, and
that was the straightforward basis for his ruling. But I believe that a careful reading of his reply indicates another approach.

In explaining why the Talmud’s hierarchical progression of agonies (captivity is worse than hunger, which is worse than the sword, etc.) no longer applied, R. Reischer emphasizes that “in earlier times” people “did not withdraw from the Jews” since everyone “would help one another in times of distress”—whereas in his day the Jews were blamed for the plague and left to suffer on their own. One gets the impression that the marker of “captivity” was less the quarantine itself than its weaponization against the Jews. The antisemitism mattered for both practical and symbolic reasons. Practically, it aggravated the suffering of the Jewish victims through a brutal lockdown. On the symbolic plane, the enmity colored the Jewish rescue effort as an act of quasi-resistance. In other words, *pidyon shevuyim* is the Jewish imperative to rescue helpless and persecuted members of the community.

This leaves us with two alternate readings of R. Reischer’s ruling that Jews in the plague of 1713 were “captives”: it was either (1) due to the restrictions on movement caused by the quarantine, or (2) because the gentle antagonism demanded a communal response.

These two approaches may have important ramifications in the context of today’s coronavirus pandemic. If a quarantine is, legally speaking, a form of captivity, then the obligation of *pidyon shevuyim* may apply to those under lockdown in circumstances that threaten their basic ability to make a living. It is not hard to imagine, for example, that poor and vulnerable elderly people trapped in their apartments or in a nursing home may halakhically be considered “captives,” like the Jews of Prague in 1713. Perhaps the same might be said for those on the verge of destitution by the loss of their jobs or businesses, as the Talmud (Bava Kama 117b) is clear that preventing “captivity” in the first place is as good or better than rescuing a captive. If *pidyon shevuyim* is primarily a defense of Jewish lives and identity from a human antagonist, however, its scope would be more limited.

These competing perspectives may lurk behind the open question whether *pidyon shevuyim* extends to freeing non-Jewish captives (see Beit Yosef, Yoreh De’ah 254). The logic of applying it to non-Jews is simple and cogent: *pidyon shevuyim* is basically a form of charity (tzedakah), and Jews are commanded to give charity to gentiles as well (see Ritva, Bava Batra 8b). Yet some of those who disagree, like Rashi (Bava Batra 11a), assume without explanation that *pidyon shevuyim* cannot apply to non-Jewish captives, as if the point were self-evident. Rashi’s view makes perfect sense if *pidyon shevuyim* is fundamentally a remedy for communal persecution—and, indeed, that is *pidyon shevuyim*’s most familiar historical role.41

Yet it may be that Rashi’s narrow conception of *pidyon shevuyim*, which categorically excludes non-Jews, no longer strictly holds in our times, at least in America—just as R. Reischer ruled that new social conditions had altered the definition of “captives.” In the United States, by and large, non-Jews have not “withdrawn from the Jews” and neither have the Jews withdrawn from their neighbors. People do “help one another in times of distress.” This reality means, thankfully, that Jews today are better off than they were in Prague during the plague of 1713. It also means that, for all our uniqueness, Jews participate in a single community with the rest of society and must do our part to rescue those who are persecuted, whether Jewish or non-Jewish. The commandment of *pidyon shevuyim* bends to the shape of today’s society.

In an important responsum, Rabbi Joseph B. Soloveitchik relied upon the “halakhic-historic tradition which has always wanted to see the Jew committed to all social and national institutions of the land of his birth or choice which affords to him all the privileges and prerogatives of citizenship” (Community, Covenant and Commitment, p. 57). Perhaps this social integration, lamentably absent in Prague in 1713, implicates the American Jewish community in the *mitzvah* of rescuing society’s lowly and persecuted people of all faiths as a facet of *pidyon shevuyim*.

Prisoners are beneath society’s concern. In describing the plague of the firstborn, the Torah tersely sums up the social range of Egyptian life: “from the first-born of Pharaoh that sat on his throne unto the first-born of the captive that was in the dungeon; and all the first-born of cattle” (Exodus 12:29). Only the animals are lowlier. Of course, some people are lowlier. While the American criminal justice system is rife with unfairness, irrationality, and savagery, many people locked up have committed serious crimes and ought to serve time. Halakhic authorities debate whether *pidyon shevuyim* applies to a criminal who is rightly imprisoned (see, e.g., Responsa of R. Meir Lublin no. 15; Yam Shel Shloma, Gittin 4, 72). Yet that debate extends only to lawfully imposed consequences of the crime. When the conditions of confinement are more dangerous or cruel than is reasonably justified by law, all agree that the prisoner must be rescued. That, arguably, is the case during this coronavirus pandemic in many prisons, where social distancing is effectively impossible and some locked inside have medical conditions placing them at grave risk.

Maimonides emphasized that all prisoners, whether Jewish or gentile, retain their human dignity and must be treated accordingly (Hilkhot Sanhedrin 24:10). And in several places he instructs that Jews are commanded to imitate God by showing compassion and giving charity to all people (Hilkhot Melakhim 10:12; Hilkhot Avodim 9:8; Hilkhot De’ot 1:6). Those tenets stand firm whether or not *pidyon shevuyim* applies to the circumstances of this pandemic.42 In light of the precedent from the plague of 1713, however, I suggest that unique opportunities to perform the “great *mitzvah*” of redeeming captives now await us.

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41 The element of persecution should be understood in a nuanced and contextual fashion. For instance, a Jew sold as a slave to a gentile must be redeemed, even when the Jew sold himself. This would seem to be far removed from the typical cases of *pidyon shevuyim*, such as arbitrary imprisonment by a hostile government or capture by pirates for ransom. Yet redeeming this enslaved individual is also a defense of Jewish identity—“so that he will not become assimilated among the gentiles” (Maimonides, Hilkhot Avodim 2:7). With Jewish identity at stake, the case may be analogous to communal persecution. Alternatively, the oppressive socio-economic forces which drove the Jew to sell himself into slavery—“he acted for his life,” the Talmud Yerushalmi explains (Gittin 4:9, 25b)—may rise to the level of persecution.

42 It is worth noting that Israeli jurisprudence on the rights of prisoners has been heavily influenced by Jewish law. In a 2017 Supreme Court decision, for example, Justice Elyakim Rubinstein relied significantly on halakhic principles in ordering the Israeli government to reduce crowding in the nation’s prisons—and he also included a thoughtful rumination on the proper role for Jewish law within the Israeli legal system (Association for Civil Rights in Israel v. Minister of Public Security, HCJ 1892/14; English translation here).