

Robert Kirschner:

Rabbinic Responsa of the  
Holocaust Era, Schocken Books,  
N.Y. 1985

---

## RESPNSUM 9

Whether a father may ransom his son from certain death at the expense of another life; whether one may volunteer for certain death to save a Torah scholar (in Auschwitz, 1944), by R. Zevi Hirsch Meisels of Vac, Hungary (published 1955)

---

### INTRODUCTION

Whether one life may be spared at the possible or certain expense of another is one of the most chronic and agonizing questions to emerge from the responsa of the Holocaust era. The complex aggregate of legal sources bearing upon this question and its intrinsic dilemmas are discussed in responsum 6 by R. Shimon Efrati. Since R. Efrati's opinion was solicited some time after the fact, he had both the time and the clarity of mind to formulate a thoughtful and thorough reply. In contrast, the following ac-

count by R. Zevi Hirsch Meisels of Vac (Hungary) describes how the ultimate question of whose life takes precedence was submitted to him twice in a situation of utter extremity requiring immediate response. In such circumstances the rabbi's ruling is obviously no mere theory but a prescription for action (*halakhah le-ma'aseh*). R. Meisels' decision, in these two instances, was literally a matter of life or death.

The descendant of a distinguished line of rabbis, R. Meisels lived in Vac (Ger. Weitzen), Hungary, before the war. After the German invasion (19 March 1944) the Jews of Vac were deported to Auschwitz. Of the prewar population of 2000 Jews, only a few survived,<sup>1</sup> including R. Meisels. After the war he was appointed chief rabbi of the British zone in Bergen-Belsen. Later he emigrated to Chicago where his volume of responsa, *Mekaddeshei ha-Shem*, was published.

## DIGEST

R. Meisels describes a "selection" conducted by the Nazis at Auschwitz in which some 1400 boys of less than an arbitrary height were singled out for death. Some camp inmates sought to ransom certain boys by bribing the guards. However, the guards would not release any boy without capturing another to take his place. This trading in lives went on throughout the day.

The father of one of the condemned boys, aware that his son could be ransomed only at the expense of another life, asked R. Meisels whether under the circumstances the Torah permitted a father to save his son's life. R. Meisels did not wish to render an explicit decision in a capital case, especially without access to books of law, the counsel of other rabbis, or the calm objectivity necessary to make such a ruling.

Still, R. Meisels wonders whether or not there might be some rationale for permitting the ransom. The isolated block in which the boys were confined was guarded by Jewish inmates who presumably might refrain from the grave sin of condemning another boy in the place of the ransomed one. As long as the exchange had not yet occurred, it might be permissible for the father

to ransom his son on the assumption that another boy might never be captured.

However, it was the guards' procedure to capture a replacement before releasing a ransomed captive, nullifying this line of argument.

Reluctant to render a definite halakhic ruling (*pesak din*), especially in such a calamitous circumstance, R. Meisels refuses to answer the father's question. From the rabbi's refusal the father concludes that the ransom of his son is halakhically forbidden.

On the same day, R. Meisels was approached by a boy seeking permission to ransom a young man who was a superior student of Torah. R. Meisels replied that the ransom was forbidden since it would merely condemn someone else. The boy responded that he wished to offer himself as the substitute. R. Meisels prohibited this also, since in the case of mutual extremity the preservation of one's own life takes precedence.

## TEXT

### *1400 imprisoned children condemned to be burned*

May the generations be horrified and consciences stirred to turn the hearts of the children to their fathers, as I tell publicly of the fearful and exalted things my eyes beheld at Auschwitz on Rosh Hashanah and Simhat Torah; the magnitude of self-sacrifice, the sanctification of God's name by 1400 boys, fourteen to eighteen years old, who were chosen on the day of the eve of Rosh Hashanah (in a "selection") to be sacrificed upon the altar, to be burned for the sanctification of God's name.

I will not go on at length with stories like these, for the paper would run out and they would still not suffice. Much ink has already been spilled in writing about the events and calamities of the days of the Nazis, may their names be blotted out. Each person writes according to his intellect, understanding, and perception in order to derive benefit from the fruits of his pen. But I will not refrain, for the sake of the glory of the sanctification of His blessed

name, from bringing up here in the introduction to Mekaddeshei ha-Shem this incident that I myself saw, from among an ocean of incidents and events that were engraved upon my heart and mind, which I personally witnessed while under the yoke of the Nazis. I promise to be brief even though it is possible to go on and on. So I begin with the help of God, may He be blessed.

On the eve of Rosh Hashanah [17 September 1944], the Nazi guards and their helpers in the camp seized and assembled the boys of eighteen years of age or less who were still scattered throughout the camp, who by various methods and pretexts had managed to elude the inspection of the Nazi camp commander, may his name be blotted out, when [the Nazis] entered the camp. About 1600 boys were assembled in an empty lot behind the camp blocks, and all of them knew the destiny that awaited them. (My dear son Zalman Leib, may his light shine, a boy of fourteen years who was with me at Auschwitz, was saved by a miracle with the help of God, may He be blessed. He was not taken with the other youths.)

Then the Nazi camp commander came there and ordered that a wood pole be sunk into the ground, and at the top of the pole a board laid [horizontally across] and fastened with nails so that it appeared like a kind of letter *dalet* [ד]. He then gave the order that all the boys pass by one by one under the board. Those whose heads touched the board remained alive and were sent back inside the camp; but those whose heads did not touch the board were taken separately into a closed block. In this way the enemy estimated for himself their ages and their fitness for work. Since the boys knew what the failure to touch the board meant—that whoever failed to touch it was considered a child and condemned to be burned—many of them rose up on their toes at the moment they passed beneath the board so that their head would touch it. But this oppressor stood near them, and the instant he saw anything like this—a boy elevating himself to touch the board—he struck him hard on the head with the heavy rubber club in his hand, with such force that the unfortunate boy would drop to the ground covered with blood and die right there; or else if he were still barely alive they would take him this way straight to the crematorium. This happened to many of the boys.<sup>1</sup>

After this examination and procedure, about 1400 boys remained on the site, and they were taken immediately to an isolated locked block until the next day when their doom would be sealed. They received nothing more to eat or drink. The *kapo*<sup>2</sup> guards stood at the entrance, and no one could go out or in.

### *Trading Lives with the Kapos*

The next day, the first day of Rosh Hashanah, when all the people of the world pass before [God] like sheep, there was panic and confusion. By word of mouth the news spread throughout the camp that on that evening they would take the boys away to the crematorium (since during the day they did not bring new victims to the ovens, but only during the night). In the case of many people in the camp, their only children, the only survivors left to them, were among these boys condemned to be burned; or else they had close relatives or beloved friends from their own towns [among the condemned boys]. These people ran around bewildered all day outside the closed block. Perhaps a ray of light would appear to rescue their beloved child from there before the sun went down.

But the *kapo* guards paid no attention to all their pleas and tears to release this or that boy from among the prisoners condemned to burn. As is known, most of these *kapos* were wicked and hard-hearted, the dregs of the wicked among our people. Yet in this instance their argument was somewhat justified, since they were liable for the number of boys they had been ordered to guard, which was a precise number. In the evening it would be their responsibility to deliver to the SS<sup>3</sup> the same number that had been delivered to them. If one was missing, they themselves would be held accountable and would be taken away to be burned, a life for a life.

Even so, at last after much effort and bargaining between the relatives and the *kapos*, the *kapos*' greed conquered them and they agreed—in exchange for large payments—to free this or that boy. But immediately they snatched another boy in his place from those they could capture inside the camp (who had managed to elude yesterday's round-up, or who had been freed during the

selection because their heads touched the board). Then they shut up the new captive in the block in place of the ransomed boy in order to meet the quota.

Many people had money or gold pieces or jewels concealed in hiding places or in their shoes for a time of emergency, and of course there were some simple people of little understanding who gave no thought to what would be done to replace the ransomed boy. At great sacrifice they collected all the wealth that remained to them, or else managed to gather the required amount from friends or acquaintances, and ransomed their imprisoned child from certain annihilation. This trading continued throughout most of the Day of Judgment [Rosh Hashanah] before the eyes of all the people in the camp. (For it was known that the SS men did not walk around inside the camp during the day, but only around its perimeter. Within the camp itself the Jewish *kapos* ruled.)

However, there were of course many people of conscience in the camp who would not run to ransom their children at the expense of another boy's life, in accord with the statement of our sages of blessed memory [Pes. 25b], "What [reason] do you see [for thinking your blood is redder? Perhaps his blood is redder]."<sup>4</sup> Never will I forget one fearful incident that I myself witnessed during the time described above, an incident that symbolizes the holiness of the Jews and their sacrifice for the ways of the holy Torah offered in perfect piety, even in the time of their anguish and fearful suffering.

#### *The Self-Sacrifice of a Father by Not Saving His Only Son*

I was approached by a Jewish man who appeared to be a simple Jew from Oberland.<sup>5</sup> In innocent piety he said to me something like this: "Rabbi! My only son, my dear one so precious to me, is over there among the boys condemned to be burned; and I have the ability to ransom him. Yet we know without a doubt that the *kapos* will seize another in his place. Therefore I ask of the rabbi a question of law and practice:<sup>6</sup> according to the Torah, am I permitted to save him? Whatever you decide, I will do."

When I heard this question I was seized by trembling. Could

I decide a matter of life and death? I answered him: "My dear friend, how can I render a clear decision for you on a question like this? In such a situation, even when the Temple stood, a question concerning matters of life and death came before the Sanhedrin.<sup>7</sup> But I am here in Auschwitz without any books of law, without any other rabbis [to consult or join in a *bet din*], and without a clear mind because of so much suffering and grief."<sup>8</sup>

If it were the way of the wicked *kapos* to release the ransomed prisoner first and afterward take another in his place, it might be possible to incline a little toward permitting [the ransom], since after all the *kapos* were Jews, and for them it was certainly forbidden by law to do such a thing with their own hands and endanger another life whose fate had not been to burn. Such an act is included in the prohibition, "One should suffer death rather than transgress."<sup>9</sup> If so, it is possible to assume that it was not certain that the *kapos* would take another life in place of the ransomed one. For perhaps at the last moment their Jewish soul would be stirred and they would not transgress a severe prohibition like this. See Tosafot to Ket. (72a) s.v. "If . . ." in the name of the Rashba<sup>10</sup> that even if a wife wanted to feed her husband a forbidden thing, she does not leave [the marriage] without her *ketubbah* [the sum guaranteed by her marriage contract], for she could say, "I was only joking, and if you had actually started to eat I would have stopped you." Likewise one could say that as long as the sin was not actually committed, it could be that it would never be committed at all, that the Jewish soul would awaken and a severe prohibition like this would not be violated.

However, to my sorrow I knew with certainty that it was the *kapos'* practice to first take someone else from the camp and only afterward release the ransomed prisoner. Thus they would be sure that none was lacking from the exact number delivered to them by the SS, for which they were responsible. If they released the ransomed prisoner and did not succeed in taking another in his place, they would pay with their own lives when the SS found that one was missing from the number handed over to them. Obviously there were not [sufficient] grounds to allow anything.<sup>11</sup>

Still the man mentioned above wept and pleaded with me. He said to me: "Rabbi, you must decide for me now what the law

is in this case, for it is very urgent that I save my only son while it is still possible to save him." I begged him, "My dear, precious friend, leave off from asking this question, for I cannot say anything at all to you without studying a book, [especially] in a situation as fearful and dreadful as this." But he continued to plead with me and said the following: "Rabbi, does this mean that you cannot permit me to ransom my only child? Is it not so? Then I will accept with love the decision."

I entreated him and protested, saying, "Dear Jew, I did not say this either, that I do not permit you to ransom your child. I do not decide either yes or no. Do as you wish as if you had not asked me at all." But still he stood there and pleaded with me to give him a clear answer. When he saw that I stood firm in my opinion that I did not want to render a legal decision,<sup>12</sup> he responded with emotion and great fervor: "Rabbi, I did what I could, what the Torah obligated me to do: I asked a question of a rabbi, and there is no other rabbi here. Since you cannot answer me that I am allowed to ransom my child, this is a sign that according to the law you may not permit it. Were it permitted without any hesitation, you surely would have answered me that it is permitted. This means to me that the verdict is that by law I am not allowed to do it. This is enough for me. It is clear that my only child will be burned according to the Torah and the law, and I accept this with love and rejoicing. I will do nothing to ransom him, for so the Torah has commanded."

Nothing I said to him was of any use. I urged him not to lay the responsibility for this upon me, that I was as if I had never heard his question. But he repeated once again with pious fervor and weeping what he had said, which tore the heart into twelve pieces.<sup>13</sup> So he carried out his words and did not ransom his son. All that day of Rosh Hashanah he walked around talking to himself, murmuring joyfully that he had the merit to sacrifice his only son to God, for even though he could have ransomed him, nevertheless he did not because he saw that the Torah did not permit him to do so; and that his sacrificial act should be considered by God like the binding of Isaac which also occurred on Rosh Hashanah.<sup>14</sup>

And you, my dear brother, look closely and consider the righ-

teousness and perfect piety of this Jewish man. I have no doubt that his words caused a great commotion among the celestial host; and the Holy One, blessed be He, gathered together all the host of heaven and was, so to speak, very proud: "Behold the creatures that I created in my world." Justifiably it is said of this man [Is. 49:3]: "Thou art My servant, Israel in whom I will be glorified."

### *A Young Man Ready to Be Burned as a Substitute for His Friend, a Torah Scholar*

I will tell here another incident from that very bitter day which is engraved upon my heart forever. Among this isolated group of boys awaiting their bitter fate was my dear student, a lovely young man outstanding in the study of Torah and piously religious by the name of Moshe Rosenberg (may God avenge his blood) from the community of Shalgo-Toryan (Hungary). He was almost twenty years old, but short of stature. Because the examination and selection were conducted in the manner described previously—anyone whose head did not touch the wood board was added to the young boys condemned to be burned—obviously it happened that a boy who was older but small in stature would be condemned together with the young boys, just as a young boy of about fourteen or fifteen years but tall in stature would escape the sentence of the young. This young man Moshe was a diligent and superior student of Torah, and when he studied at the yeshivah in Weitzen he taught the boys younger than he.

I was approached by a young man of about fifteen years from my town of Weitzen. His name was Akiva Mann, the son of my friend, the pious and illustrious R. Barukh Mann (may God avenge his blood), director of teachers. This young man said to me: "Rabbi. What will happen to Moshele?" I answered him: "What can be done? Is there any way of saving him?" "Yes," he replied, "I have in my possession enough money to ransom him." I said to him: "Surely you know that this ransom would take place at the expense of another boy's life, since the count must be complete. Who can take upon himself the responsibility to give permission to save him this way?" He answered me that he had a

plan for this too. I asked him: "What plan? Tell me." He replied with great fervor: "The plan is that I will go instead of him. And I accept this with great joy, to be sacrificed in his place." When I heard this I rebuked him, telling him, "Certainly I will not permit you under any circumstances to place yourself in danger, for the law was long ago determined that your life takes precedence."<sup>15</sup> With that he left.

After a while he came back again and said to me: "Rabbi, my soul will find no rest if Moshele is burned and I who am so inferior that I do not even reach the soles of his feet should walk among the living. I have decided to do this, to go in his place, even without the rabbi's explicit permission. Promise me only this, Rabbi: that I shall not be considered, God forbid, as one who committed suicide and has no share in the world to come." I rebuked him once again, saying, "I cannot promise you even this, since you are not required to do this thing; it is very doubtful that you are permitted to do it at all. What is the difference in heaven if he is killed or you are killed?"

To this he answered in a tearful voice: "Rabbi, certainly there is a big difference between me and Moshele, for Moshele is a young scholar diligent in his studies, and the world will have use for him, but not for someone as lowly as me. I am foolish and ignorant;<sup>16</sup> I am worthless. Already I have seen with my own eyes the destruction of my family, my parents and brothers and sisters who were led away to the left side,<sup>17</sup> to be burned in the crematorium while I remain alone and bereft. In what way am I better than they? What is my life now worth on the face of the earth? But if I can still have the merit to do one exalted thing like this by sacrificing my life, which obviously is worth nothing, then perhaps I can save dear Moshele, whose life is worth much, whom the world needs. Why should I not gladly and eagerly do such a thing?" So this young man pleaded with me.<sup>18</sup>

I was stunned. I felt that a little more of this dear boy's tearful pleas and my heart would break. But I did not give him my consent under any circumstances, and I rebuked him a second time. Finally, after many entreaties and supplications, he left in great disappointment.

My brother, consider for a brief moment this incident, and what

was said in heaven about the plea of this young boy which came from deep inside his heart in truth, simplicity, and fervor. Surely he was raised at that moment to the exalted level of the holy ones of old. May their portion be my portion, and would that our portion be with his.<sup>19</sup>

Zevi Hirsch Meisels  
[Mekaddeshei ha-Shem 1:7-9]

## NOTES

### INTRODUCTION

1. *Encyclopedia Judaica* (Jerusalem, 1972), vol. 16, col. 51.

### TEXT

1. According to the testimony of Joseph Kleinman at the Eichmann trial (cited by Gideon Hausner, *Justice in Jerusalem* [New York, 1966], p. 172), a nearly identical selection ritual was conducted at Auschwitz on Yom Kippur, when 2000 boys were assembled on the SS football grounds and forced to pass under a plank nailed to the goalpost. Since there are many striking similarities between Kleinman's account and that of R. Meisels, it is possible that despite the confusion of dates they are describing the same incident.
2. *Kapo* was concentration camp slang for a Jewish prisoner in charge of a section of Jewish inmates. There are different theories of the word's origin, e.g.: an abbreviated form of the French *caporal*; a German slang word for "foreman"; a borrowing from the Italian *capo*, "head"; or an abbreviation of *Kamp Polizei*.
3. One of the subdivisions of the SS (*Schutzstaffel*, defense corps) was the *Totenkopfverband* (death's head units) who were assigned to the concentration camps.
4. Cf. Pes. 25b, Sanh. 74a. The issue is discussed at length in responsum 6.
5. Part of Slovakia occupied by Hungary.
6. The rabbis differentiate between the purely theoretical study of a legal question and its common application. Only decisions handed down in connection with an actual case constitute practical law. Cf. Bez. 28b, BK 30b; Boaz Cohen, *Law and Tradition in Judaism* (New York, 1969), p. 49.

7. The Talmud (Yer. Sanh. 1:1, 7:2; Shab. 15a; Sanh. 41a) records that Jewish courts lost authority over capital cases forty years before the destruction of the Second Temple in Jerusalem (70 C.E.). See Hugo Mantel, *Studies in the History of the Sanhedrin* (Cambridge, 1965), pp. 291–94, 316. Cf. the possibly contradictory texts cited by Alexander Guttman, *Rabbinic Judaism in the Making* (Detroit, 1970), pp. 20–21.
8. There is halakhic warrant for R. Meisels' reluctance to make a ruling in this instance. While it is a positive commandment for a duly qualified Torah scholar to render halakhic decisions when asked (Lev. 10:11; cf. Sefer Mizvot ha-Katan 111), it is forbidden to decide the law while intoxicated or otherwise disoriented (Rashi, Lev. 10:11; Ker. 13b; Ket. 10b; Er. 64a).
9. See Sanh. 74a: "R. Yohanan said in the name of R. Shimon b. Yehozdek: They decided by vote in the upper chamber of Bet Nizah in Lod: [Concerning] all of the prohibitions of the Torah, if they say to a man, 'Transgress or you will be killed,' he should transgress rather than be killed, with the exception of [the prohibitions of] idolatry, unchastity, and murder."
10. Referring not to R. Shlomo b. Adret but to R. Shimshon b. Avraham of Sens (late twelfth to early thirteenth century, France).
11. In his own gloss to this account, R. Meisels cites the view of Rema (Sh.Ar. HM 388:2) that one may save himself from impending danger even if his action may endanger others. However, this appears to apply only in the case of potential danger; if one is in immediate peril, he may not save himself at the certain expense of another life. The Shakh (HM 163:11) cites the view that if a man is imprisoned and held for ransom, he may not be rescued if another will be seized in his place; but according to Yad Avraham, YD 157, the prisoner himself may certainly try to escape. In the present case, it might be argued that father and son should be considered "the same person," thus permitting the father to bribe the kapos. But R. Meisels finds no definitive warrant for such a view.
12. Shlomo Rozman, an eyewitness to this encounter, understood R. Meisels to render a definite decision forbidding the father to ransom his son. See Irving Rosenbaum, *The Holocaust and Halakhah* (New York, 1976), p. 158.
13. Cf. Jud. 19:29.
14. One of the explanations given by the Talmud (RH 16a) for the sounding of the ram's horn on Rosh Hashanah is to recall the ram substituted for Isaac. The biblical account of the binding of Isaac (Gen.

- 22:1–19) is read on the second day of Rosh Hashanah (Meg. 31a).
15. See BM 62a: Two men are traveling on a journey far from civilization. One of them has a jug of water. If both of them drink, neither will get enough water and both will die; if one drinks, he will live but his companion will die. Ben Paturah expounded, "Better that both should drink and die than that one should witness the death of the other," until R. Akiva came and taught (Lev. 25:36), "' . . . That thy brother may live with thee,' [meaning that] your life takes precedence over your companion's."
16. Cf. Ps. 73:22.
17. See responsum 10.
18. According to M. Hor. 3:7, the life of a priest (kohen) has the highest priority, the life of a bastard (mamzer) the lowest. Yet if the mamzer is a scholar in the law and the High Priest is an ignoramus, the mamzer's life should be saved first. So important is knowledge of the law that one is obligated to redeem his teacher from captivity before his own father, unless his father happens also to be a sage (M. BM 2:11). Sefer Ḥassidim (edited by Margulies, Jerusalem, 1978, sec. 698, p. 426) describes two Jews, one a scholar, one not, who are told by assailants that one of them must be killed. In this circumstance "it would be meritorious for the non-scholar to say, 'Kill me but do not kill my companion.'" The reverence for Jewish learning expressed by these passages is also evident in the instant case. A similar example of sacrifice for the sake of a scholar is mentioned in "Extract from the Diary of Abraham Levin," *Yad Vashem Studies* 6 (1967): 317n. When the Germans heard of the activities of the rabbi of Radzyn, Shmuel Shlomo Leiner, they came to his house to arrest him. By chance he was not there, but one Reb Moshe, the old synagogue attendant, gave himself up to the Gestapo in the attempt to pass himself off as the rabbi. He was executed even though the Germans knew of the deception. Subsequently R. Leiner was also shot.
19. Cf. Nu. 23:10.