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MASADA — IN THE LIGHT OF HALAKHAH

INTRODUCTION

Many articles have appeared in the recent past in learned publications commenting on the final events at Masada. A quick examination of their contents, however, reveals that, in the main, their emphasis has been on historical, national-political, or theological aspects.¹ One area of primary Jewish importance has to date received only minimal, and at times cursory, consideration, namely, what was the relationship of this suicide pact to the principles and practices of the halakhic tradition! This question has hardly been analyzed in depth despite its painful relevancy to the contemporary history of the Six Day War, a pertinence that has not escaped the attention of Israeli scholars.²

In attempting to fill part of this halakhic gap three problems will be confronted, which, either directly or indirectly, are related to what transpired at Masada. They are:

1. Were the Masada defenders permitted by Torah law to kill themselves?
2. If they were, which method of suicide would be halakhically least culpable and, therefore, most permissible?
3. Were the Jewish slaves brought from Jerusalem to build the "solelah" (pathway) to Masada legally obligated to resist even to the point of death or were they allowed by law to collaborate with the Romans?

A brief but important clarification is immediately in order. Care needs to be taken to differentiate sharply between the halakhah of suicide and the halakhah proclaimed by the Talmud³ regarding a Jew's obligation in the face of forced idolatry, adultery or murder. The decision at Lydda of "*yehareg v'al*

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ya'avor," let him allow himself to be put to death and not transgress, must be read literally. Sanction was given by the Sages to the duty to accept death voluntarily at the hands of one's oppressors as an act of sanctification. The text does not, however, seem to justify stretching the interpretation to include the kind of martyrdom which occurred at Masada, namely suicide.⁴

I

The injunction against suicide is traditionally derived from a verse in Genesis which reads:

And surely your blood of your lives will I demand; at the hand of man, even at the hand of every man's brother, will I ask for an accounting of the life of man.⁵

The Talmud analyzes this scriptural text in the following manner:

It has been taught: "and surely your blood of your lives will I demand." Rabbi Elazar states, (this means) "from your very being will I demand retribution for your own blood."⁶

The Torah prohibits suicide through its precise choice of words and their syntactical arrangement. This was the foundational principle. How was it to apply to life situations? This information is provided by the Midrash which continues, so to speak, the discussion.

The word "akh" comes to include anyone who hangs himself. Perhaps this also includes someone like King Saul? No! for the word "akh" delimits. Perhaps it also includes Hananiah, Mishael, and Azariah? No! The verse states "akh."⁷

It is obvious from the Sages that they understood the Torah to make some allowances for suicide under specified critical circumstances. The case of the three companions of Daniel is self-evident. The *mitzvah* of giving one's life *al Kiddush Ha Shem* (for the sanctification of the Divine Name), especially when involving the sin of idolatry is underscored repeatedly in

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rabbinic literature.⁸ The reasoning of the Teachers *vis a vis* Saul's conduct is, however, not so transparent. Yet this text is the single, most relevant source, bearing the greatest potential similarity to the events at Masada.

The simplest and most plausible explanation by the commentaries for King Saul's action is that he feared the Philistines would, in revenge, torment and torture him beyond his limits of endurance.⁹ The actual text bears this out.

Then said Saul to his armour bearer: "Draw thy sword, and pierce me with it; lest these uncircumcised come and thrust me through and make a mockery of me." But his armour bearer would not; . . . Therefore Saul took his sword and fell upon it.¹⁰

Here is the first working principle which might be applied to Masada. For many of the *Rishonim* and *Poskim* of the Middle Ages held that a person who fears that he will be subjected to unbearable pain is permitted under emergency conditions to take his own life. Such "crisis situations," intimate these scholars,¹¹ may extend even to those which may not involve the transgression of any religious precepts such as Saul's.

Similarly, the resisters of Masada, defying the might of the Roman Empire, surely must have anticipated very brutal treatment at the hands of their conquerors. That at least is what their leader Eliezer ben Yair, according to the historian Josephus, is alleged to have said to his trusting followers:

. . . While we formerly would not undergo slavery, though we were then without danger but must now, together with slavery, choose such punishment also, as are intolerable. I mean this upon the supposition that the Romans once reduce us under their power while we are alive.

Eliezer goes on to paint for his people — and for us as well — a vivid picture of what this "punishment" would be like:

. . . As to the multitude of those that are now under the Romans, who would not pity their condition: and who would not make haste to die, before he would suffer the same miseries with them? Some of them have been put upon the rack, and tortured with fire and

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whipping, and so died. Some have been half-devoured by wild beasts, and yet have been reserved alive to be devoured by them a second time, in order to afford laughter and sport to our enemies: and such of those as are alive still, are to be looked on as the most miserable, who being so desirous of death, could not come at it.¹²

In anticipation of such a barbaric fate, the Masada survivors appear to have had legitimate halakhic grounds for their resort to suicide.

There is, however, a second possible interpretation of Saul's conduct. According to R. Solomon Luria (1510-1574), King Saul was motivated by the religious principle of "*m'niat Chillul HaShem*" — the obviation of the Profanation of His Name. "It is also possible," writes the Maharshal, "that Saul was allowed to kill himself because he had the status of 'God's anointed one.' It was not fitting that he die at the hands of the uncircumcized who would kill him in both a shameful and torturous manner. Such an eventuality would be considered by our religious tradition a Desecration of the 'Name'."¹³ Support for this contention can also be found in the works of the *Semak*,¹⁴ the *Perush ha-Maharzav*,¹⁵ and the *Minchat Yehudah*.¹⁶

By extention it would seem reasonable to argue that a national disgrace, such as public dishonor of the king, would also fall under the category of *Chillul HaShem*. The king symbolizes in his person the corporate sanctity of the people of Israel, whose abasement is tantamount to a profanation of God's glory. If so, the fall of Masada might well have been considered by its desperate defenders a national shame and catastrophe. Its defeat would mark not only the end of the revolt against Rome but the last measure of Jewish sovereignty not to be regained until the rebirth of the modern State of Israel. Through their suicide, the Masada fighters were at least symbolically preventing the military defeat or formal surrender of the fortress, thereby avoiding the *Chillul Yisrael* which was equivalent to *Chillul HaShem*.^{16b} With one basic addition, both of these aforementioned principles are actually applied to the Masada situation by R. Shlomo Goren, Chief Chaplain of the Israeli Armed Forces. He states:

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When one is afraid that upon falling into the hands of the enemy, extreme torture will be inflicted upon him — even though it is not a matter relating to coerced religious transgression — and that his captors are so ruthless that they will certainly put him to death at the end of the matter by the kind of suffering that he cannot bear, then there are those authorities who permit suicide in such a case so that he may avoid falling into the hands of the enemy.¹⁷

He concludes:

When one's capture by the enemy would bring about a *Chillul Hashem* and would allow the enemy to glorify itself thereby, yet at the end of the matter they would still kill him, it is a *mitzvah* to commit suicide, rather than fall into the hands of the enemy, as we find in the case of Saul and the people of Masada.¹⁸

According to R. Goren not only were the men of Masada permitted by Torah law to commit suicide, but it was a *mitzvah* to do so. By such an act they would spare themselves not only excruciating torture but at the same time obviate any *Chillul Hashem*. What is moot, of course, is R. Goren's premise. He assumes unquestioningly that death would be the final reward of the Zealots — an indispensable factor in his *heter* for suicide. Yet no anticipation of certain death can be found in the final oration of Eliezer ben Yair. Nor is there any historic evidence that the death penalty was automatically the standard Roman penalty for captured prisoners. All that Eliezer ben Yair mentions is that the conquered were sold as slaves. Were they to surrender on their own, it is debatable whether their inevitable fate would have been death as Rabbi Goren presumes.

It is the certainty of death which other authorities constitute as the *sine qua non* in permitting suicide. The "ghost" of the prophet Samuel had forewarned him that it would happen. Saul could therefore act upon this. Anyone else could not. As the *Radak* declares:

And Saul did not sin in killing himself . . . because he knew that in the end he was bound to die in that war, for that is what Samuel had informed him. Moreover he saw that the archers had discovered his whereabouts and that he could not escape them. It was therefore better for him to take his own life rather than have the uncircumcized make sport with him . . .¹⁹

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This legal opinion is shared by other classical giants such as the Abravanel,²⁰ the *Knesseth HaGedolah*²¹ and the *Yephai Toar*. The latter is most explicit in insisting upon the principle of certitude. He writes:

But with another person, even if the enemy had surrounded him and a sharp sword is lying against his throat, he is still forbidden to take his own life. He should not exclude himself from the possibility of God's mercy, for the Lord in His grace rescues even those already taken to their death and about to be executed.²²

According to this source, however, the warriors of Masada did not have a right to any dispensation. They had no way of knowing in advance what was finally in store for them. Prophecy was no longer in operation. Their judgment could only be circumstantial and speculative. Under such conditions, suicide would be proscribed.²³ This decision differs sharply from Rabbi Goren's.

A fourth operational principle is proposed by such luminaries as the Ritva,²⁴ the *Tosafot Rash M'Shantz*²⁵ and others.²⁶ For them, suicide is permissible only when the fear of torture or any other form of violence or force is related to a violation of religion. Then one could act in anticipation of such an eventuality and take one's own life, if there were no other way out of the dilemma. This decision goes beyond the decree of Lydda. The latter, as previously noted, did not speak of suicide but only of martyrdom. One was under an obligation to submit to death at the hands of others. In addition, the decree applied only to the time of actual transgression not to some later consequence. The distinction is quite substantial but so was the source of authority. The author of this daring extension was Rabbenu Tam whose *psak*, though not without problems, nevertheless prevailed because of the great stature of his Torah learning. To this, a scholar of the rank of the Ritva bears witness: "There are matters," he writes "which require further study and analysis. However, the Sage has already rendered judgment. In addition we heard in the name of the Great Decisors of France that have permitted his decision in practice as well."²⁷ Moreover, there were other medieval teachers who, basing themselves on a vari-

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ant text of the Rebbenu Tam proceeded to declare suicide in a similar situation not only permissible but a *mitzvah* as well.²⁸

This opinion would certainly account for the many acts of self-martyrdom throughout Jewish history and particularly during the Middle Ages when Jews often faced the alternative of conversion. It would also be applicable to King Saul who, as the Ritva asserts, “feared that they would force him to betray his faith.”^{28a} It cannot, however, explain the actions at Masada. As Professor Sidney B. Hoenig insists:

Their suicide was not fundamentally to sanctify God's Name, though they believed in no lordship of man over man. This suggestion is upheld primarily because there was no problem of religious persecution or of transgression of Torah precepts involved in the Masada episode to be considered the cause of the suicide of the Sicarii. Their action was basically political. They cannot therefore be classified in any manner as religious martyrs.²⁹

A fifth ruling, presented by such scholars as R. Saadia Gaon³⁰ and the Tosafot³¹ would never permit a Jew to commit suicide even in the face of torture or religious transgression. To this school of thought also belongs the Maharash bar Abraham Hamekuna Ukhman who boldly reinterprets the seminal midrashic text so that Saul's conduct emerges as culpable and sinful.³² According to his stand, there can be no defense halakhically for the behavior of the defenders of Masada.

Although the majority of authorities, both quantitatively and qualitatively, proscribing the mass suicide of Masada far outnumber those supporting it, the former would not place the defenders of the fortress in the category of *m'abed atzmo l'daat* — wilfully taking one's own life. This group is by law stripped of many of the basic acts of reverence paid to the dead. Accordingly, the people of Masada would be exempt from such “dishonor.” This is clear from R. Joseph Karo's explicit ruling.

Any major who intentionally takes his own life while under duress, similar to the case of Saul, shall not be deprived of any honors.³³

This decision is expanded upon by R. Yechiel Epstein in his authoritative *Arukh Ha-Shulchan* as follows:

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The essential principle is that when dealing with a case of suicide, we ascribe his actions to any (extrinsic) motive we can find, as for example, to terror, despondency, insanity, to a misconception that such a suicidal act was a *mitzvah* in that it helped obviate any transgression whatsoever, or to a motive similar to these. For it is really incomprehensible that anyone would perform such an abominable act with a clear mind. Go and learn from Saul, the righteous one, who fell on his sword in order to prevent the Philistines from tormenting him. Any situation similar to his is considered "under duress."³⁴

Identical views are expressed by the *Chida*³⁵ and the *Chatam Sofer*.³⁶

II

The second major issue raised in the Introduction proceeds on the assumption that the suicide program of Masada was consonant with Jewish law. A question still remains, however, what is the most acceptable method for its implementation. Two options present themselves. Should each individual have killed his fellow, as Josephus records was actually done?³⁷ Or was it preferable for each person to have taken his own life by his own hands? The difference between these two alternatives revolves, of course, around the Sixth Commandment?

The *Minchat Chinukh* asserts clearly:

One who intentionally kills himself does not fall under the category of "Thou shalt not murder." He is only subject to the death penalty from heaven, as explained by the Rambam in Chapter 2 of *The Laws of Murder* . . .³⁸

Proceeding along this assumption, Rabbi Goren avers:

If so, it is probable that in such a situation it is preferable that we follow the principles regarding *Pikuach Nefesh* where we transgress that which is most lenient. Consequently each person should die at his own hands, for then there is no transgression of "Thou Shalt not murder."³⁹

However, he later concludes:

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In all of these cases, it seems logical that it be permissible to die by one's own hand and not bid another Jew to take his life. Yet (judging) from the actions of the people at Masada and the case of King Saul and his squire, it appears that there is really no difference and that it is also permissible to ask another to kill him.⁴⁰

This judgment corresponds exactly to the view expressed in the *Responsa of Rabbi Meir of Rothenburg*.⁴¹ A contrary position is voiced by R. Joshua Rosanis, the author of the *Mishneh La-Melekh* who states the following in his *Perashot Derakhim*:

Just as in the law under human jurisdiction there is no agent for a culpable action, so in matters under Divine judgment, there is a distinction between one who dies at his own hands, and one who tells another to kill him, etc. Similarly one who commits suicide though he is punished from heaven, nevertheless when he asks another to kill him his punishment is of a lesser degree. This we find in the case of Saul who had to commit suicide in order that the Philistines might not torture him; still anything he could do to lessen the punishment, he did. That is why he did not take his own life but had someone else do it.⁴²

Evidently, while R. Goren maintains that it is more meritorious to kill oneself, R. Rosanis is of the opinion that it is preferable to be killed by another. Taking note of this disagreement, R. Goren attempts a reconciliation with the proof which the *Perashat Derakhim* adduces from Saul by pointing out that the latter's agent was an Amalekite.

Since it was an Amalekite youth, it did not concern Saul that the lad would transgress the commandment of "Thou shalt not murder" . . .⁴³ Our proof, however, is from Saul's own squire who was, most assuredly, a Jew and nevertheless Saul first commanded the squire to kill him. Whereupon the squire refused, either because he feared assaulting God's anointed one or for some other reason, as discussed by the commentaries. In this case the contention of the *Perashat Derakhim* does not stand up. After all, the squire, as a Jew, was also commanded not to murder. Consequently it would have been better for Saul to have killed himself rather than have his squire transgress the commandment of "Thou shalt not murder." For the rule that applies is similar to that of the case of *Pikuach Nefesh* where we do that which is most lenient, as stated before.⁴⁴

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In substance R. Goren is conveying his thought that there is a rank order of preference in the methods of suicide that are permitted. The contention is the same principle governing the laws of *Pikuach Nefesh*, namely, “do that which is most lenient.” But apart from rank order, he would actually permit all ways of suicide.

As pointed out earlier, R. Goren built his case on the decision of the *Minchat Chinukh*. Yet, as one continues to read on in the latter text, a contrary conclusion begins to emerge.

This seems to me very self-evident. If one should ask another to kill him, as we find with King Saul, then certainly he would be liable to the death penalty in a court of law, provided there were witnesses and a proper, legal warning.⁴⁵

The *Ralbag*⁴⁶ makes a similar point. So does the Abravanel who observes:

And so we find that David commanded that the Amalekite be put to death. For, according to the Torah, one who requests that another injure him, the latter should not do so. If he does, he is guilty, as explained in the Talmud (*Baba Kama* 92a). How much more so where we are dealing with a matter of death, especially with putting a king to death. The command of Saul to the Amalekite is no ground for the latter exempting himself from punishment because (of the principle) “the words of the master and the words of the student, whose words are to be heeded?”⁴⁷

This stand is taken by the Abravanel even though he holds clearly, as indicated, that Saul acted within the law in committing suicide. Nevertheless, to ask someone else to do the task is forbidden. It was legitimate for Saul to do so himself, but not through anyone else. Accordingly, the *Minchat Chinukh*, the *Ralbag* and the *Abravanel* accept no hierarchy of methodology. For them there is only one way in which the halakhah will tolerate death—by the martyr’s own hands. If this be the norm, then the people of Masada should not have proceeded as Josephus recorded they did. Even assuming, as we now do, that their suicide was allowable, each person had the obligation to carry out his own self-sentence. This conclusion relates to adults.

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What about minors? What does the Halakhah say about their conduct in the face of such a crisis? For young people under 13 for males, and 12½ for girls, there are some who permit suicide. These authorities also allow the parents or other adults to take the lives of these young ones under aforementioned conditions of duress.⁴⁸ The underlying logic is that it would be expecting too much of a minor to have him carry out such a task. In a real sense, therefore, there is no other alternative but for the adult to take the child's life. With adults, however, there is another option. He can kill himself.

III

As a tourist to Masada begins to approach the fortress, he is invariably regaled by his Israeli guide with the heroic tales of its last days. He is also told how the *solelah*, the actual pathway used by the Roman soldiers to penetrate the defenses, was built and secured on the mountain top by Jewish slaves who had been brought for this very purpose from Jerusalem. The Roman Legions had not succeeded in doing this job. Their casualties from the guerilla "hit and run" attacks and from the heavy boulders hurled down by the Sicarii perched on top of the mountain had been too excessive. The road-building had to stop. The Roman High Command, according to the guides, then devised a plan of bringing in the Jews to complete the road. They counted on the strong nationalistic feeling of the Sicarii not to attack their brethren. Their calculations proved correct. So far, little historical evidence is available to document this claim; nevertheless the legend persists.

Assuming the veracity of this story, the halakhic question arises: Did these Jewish slaves have any religious obligation to defy their Roman captors? Or were they permitted to obey them despite the peril that the *solelah* presented to Masada? Were we to maintain, as does R. Goren, that the Romans would have indubitably put the defenders to death, the participation of the slaves clearly constituted a case of *gerama deretzichah*—murder. This covers any deed which is directly promotive of and contributive to the final act of murder. In such a situation, Chief

Rabbi I. Yehuda Unterman rules that the guilt is patent. "Reason tells us," he writes, "that even though *gerama* does not incur the death penalty, nevertheless the "promoter" is considered a murderer, if he acted with intention. He is therefore liable to punishment at the hands of heaven. It is also permissible to save your own life at the expense of his."⁴⁹ Rabbi Yaakov Emden, basing himself on a *Radvaz* had even decreed that in a case of "causal murder," the obligation "to die and not to transgress" applied.⁵⁰ According to these views, then, the Jerusalem slaves had no right to cooperate. It was their duty to resist and, if necessary, to allow themselves to be put to death. On the other hand, if the Romans would not have killed their captives but only sold them into slavery, then there was no obligation to defy Roman authority. To have been concerned with the fact that the defeat of Masada would have meant the enslavement of its defenders was beyond the call of duty. The responsibility for deciding whether to die fighting or surrender and live as slaves was solely that of the Sicarii. In this kind of dilemma, the Talmudic principle "why do you assume your blood to be redder? Perhaps your neighbor's blood is redder"⁵¹ is aptly applicable. There is no duty "to die and not transgress." On the contrary, the slaves did have a duty to save their own lives even if that meant obeying the Roman taskmasters and building the road. That, at least, would be the norm of the Halakhah, which places the supreme value of an individual's human life above the reflex of sentiment or symbol.

This analysis by no means exhausts the legal sources or halakhic considerations which touch upon the issue of suicide. There are many more which involve questions of national security, endangering the lives of other Jews, and the like. They do not, however, relate directly to the situation of Masada and were therefore omitted. Yet these principles and some of those examined in this paper do have contemporary pertinence in practical religious terms. The pronouncements of the Arab leaders, especially just prior to and after the Six Day War as well as the reports of the treatment of Israeli prisoners are ample evidence that brutal torture might — God forbid — well be a real possibility for those unfortunately captured or for the inhabitants

