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## SUICIDE – A HALAKHIC AND MORAL ANALYSIS OF *MASEKHET SEMAHOT*, CHAPTER 2, LAWS 1-6<sup>1</sup>

All civilizations have had to contend with the problem of suicide—coping with its existence and formulating a response to it.<sup>2</sup> Throughout the ages, and especially in recent times, many significant changes have taken place in attitudes towards suicide, as modes of thought have evolved and cultures assimilated.<sup>3</sup>

The general position adopted by *Hazal* can be said to bear a dual aspect: with one hand *Hazal* unequivocally reject the right to kill oneself, while with the other extend maximum consideration to the surviving relatives of one who takes his own life.

Suicide is covered in the *Mishna* and Talmud and the earliest responsa.<sup>4</sup> *Masekhet Semahot* (2:1-6) represents the primary halakhic sources for the laws pertaining to suicide.<sup>5</sup> For the benefit of the reader, the entire unit is reproduced here:<sup>6</sup>

1. For a suicide (lit. “one who kills himself intentionally”), no rites whatsoever should be observed. Rabbi Yishmael said, “He may be lamented: ‘Alas, misguided fool! Alas, misguided fool!’” Whereupon Rabbi Akiva said to him, “Leave him to his oblivion; neither honor him nor curse him.” Clothes are not rent for him, nor are shoulders bared, nor is he eulogized, but people should line up for him and the mourner’s blessing should be recited over him, since this displays respect for the living. The general rule is that whatever is performed out of respect for the living should be observed for him; anything that is not performed out of respect for the living [but rather out of respect for the deceased] should not be observed for him by the community.

2. Who is to be accounted a suicide? Not someone who climbs to the top of a tree or to the top of a roof and falls to his death, but rather one who says, “Behold, I am going to climb to the top of the roof or to the top of the tree and then throw myself down to my death,” and

he is [thereupon] observed climbing to the top of the tree and falling to his death. Such a person is presumed to be a suicide, and for a suicide no rites whatsoever are to be observed.

3. If a person is found strangled and hanging from a tree, or slain and impaled upon a sword, he is presumed to have taken his own life unwittingly, and no rites are denied him.

4. It once happened that the son of Gorgos of Lod ran away from school. His father threatened to box his ears. In terror of his father he went off and cast himself into a cistern. The incident was brought before Rabbi Tarfon, who ruled, "No rites are to be denied him."

5. Another incident concerns a child from Benei Berak who broke a flask on Shabbat. His father threatened to box his ears. In terror of his father the child went off and cast himself into a cistern. The incident was brought before Rabbi Akiva, who ruled, "No rites are to be denied him."

6. As a result [of these incidents] our Sages taught: "A man should not threaten a child; rather, he should spank him at once or otherwise hold his peace and say nothing." Rabbi Shimon ben Elazar said, "With respect to the sexual urge, a child and a woman—the left hand should hold them off while the right hand draws them closer."

The excerpt opens with a firmly negative attitude towards suicide: "For a suicide no rites whatsoever should be observed" (law 1). But following an affirmative definition of the subject (law 2) there is a detailed discussion of borderline examples which involve some degree of uncertainty (law 3) and of incidents involving children too young to understand what they were doing and who are therefore to be considered as having killed themselves unwittingly (laws 4-5). After the clear affirmative definition of suicide in law 2 it would seem that no additional examples are required, but the borderline cases come to teach us that the slightest doubt is enough to remove an incident unequivocally from the category of suicide, canceling altogether the applicability of the laws pertaining to a suicide—"He is presumed to have taken his life unwittingly." The final law contains an educational directive for parents and teachers to treat children with a great measure of responsibility in order to prevent the phenomenon of suicide. The formulation is an exact reaction to the narrative in laws 4-5: "As a result [of these incidents] our Sages taught: "A man should not threaten a child; rather, he should spank him at once or hold his peace and say nothing." Concluding the entire unit we find, at the end of law 6, the famous dictum of Rabbi Shimon ben Elazar: "With respect to the sexual urge, a child and a woman—the left hand should hold them off while the right hand draws them closer."

The thematic development throughout these six laws reveals the basic approach of *Hazal* towards the subject of suicide: at first there is an absolute rejection of suicide, accompanied by support for the family members out of "respect for the living" (laws 1-2). Thereafter there is a description of borderline cases which are defined as "taking one's life unwittingly," despite the great probability that the deceased took his life knowingly and intentionally (laws 3-5). Finally, there is an emphasis on a preventive and supportive attitude on the educational level in order to prevent the incidence of suicide (law 6).

From a literary perspective it seems that the entire unit is built on the principle of "the left hand holds off while the right hand draws closer," as becomes clear from an examination of the conclusion of the six laws: following a double rejection of the act of suicide itself on the part of the community—"No rites should be observed for him" (laws 1-2)—there is three-fold positive support in questionable or borderline cases: "No rites are to be denied" (laws 3-5). The doubtful cases are judged favorably on the basis of this same principle (law 6).

This principle describes with great accuracy the basic approach towards suicide: "*le-khathila*" (at the outset) there is doctrinal rejection of the person who intentionally takes his own life, but reality demands positive and supportive treatment in every actual instance.<sup>7</sup> Although the law pertaining to one who commits suicide is clear by its definition in law 1, the subsequent laws (2-5) describe the difficulty in ruling out mitigating circumstances and motives. And so long as we lack absolute certainty, with unequivocal proof that the person knowingly and intentionally took his own life, we rely on the negative assumption: "He is presumed to have taken his own life unwittingly."

It would seem that *Hazal* award the suspected suicide offender the "benefit of the doubt" (*Avot* 1:6) more so than they do other suspected criminals. Whereas, say, a suspected murderer is investigated exhaustively, one who by all appearances seems to have committed suicide is by comparison left alone.<sup>8</sup> The "perpetrator," after all, is already dead, and the proof of his act is not necessary for him to be put to death. The principle that "the left hand holds off while the right hand draws closer" reflects a supportive predisposition to the subject, like other practices instituted "for the perfection of the world."<sup>9</sup>

In accordance with the development of the halakhot in *Masekhet Semahot* and the transition from utter rejection of the act of suicide on the doctrinal level ("the left hand holds off") to reconciliation and support in every *a posteriori* instance ("the right hand draws closer"), the

later authorities likewise seek any opportunity to rule out the definition of suicide in every instance:

The general rule pertaining to suicide is that one finds extenuating circumstances. Which circumstances? Any—such as that the person killed himself out of fear, or out of sorrow, or that he lost his mind, or that he believed that he was commanded to act thus in order not to stumble and commit other sins, and the like . . . they are considered instances in which the person was forced to act as he did, and especially a minor who commits suicide; he is considered as having taken his own life unwittingly.<sup>10</sup>

This approach is adopted even when the assumptions upon which it is based are highly improbable, in order not to damage the honor of the living:

If he threw himself into the sea, since the waters lift and lower him until he is (eventually) carried down into the depths and dies, (we assume that) he certainly regretted his act (in the time) before he was carried down and died. . . .<sup>11</sup>

The tendency of the halakhic authorities to find some “extenuating circumstances” in every actual instance is entirely compatible with the spirit of *Masekhet Semahot*.

## DEFINITIONS

The Talmudic concept of suicide (*lit.* “killing oneself intentionally”) highlights the intent of the act as an essential component of its definition, thus significantly limiting its application, for intent to destroy one’s own life cannot in most cases be determined with legal certainty.<sup>12</sup> Depending upon the mindset of the doer, a self-killing may be classified halakhically as accident, suicide or in some instances sanctification of the Divine Name (*“met al kiddush Hashem”*).

The prohibition of suicide can be traced back to a number of sources and, accordingly, the act of suicide has different names: “You shall not kill” (*Shemot* 20:13)—you shall not kill yourself;<sup>13</sup> “But your blood for your lives”—this comes to include one who strangles himself;<sup>14</sup> the commentators interpret the verse, “If a person sins and commits a trespass against God” (*Vayikra* 5:21) as hinting at suicide;<sup>15</sup> the concept of *me’abed atsmo la-da’at* is linked to the commandment to return an article to its owner (*hashavat aveda*): “. . . so shall you do

concerning any lost article of your brother's which he has lost, and which you have found; you may not hide yourself" (*Devarim* 22:1-3). In the case of suicide, that which is "lost" is perhaps the person's own good sense, for his wish to kill himself arises from a lack of will to live, or from acute psychological distress.<sup>16</sup> Concerning suicide, one cannot speak of the lost article being "lost from the mind" as in the case of a person who loses an article and, after some time, forgets about it (see *Bava Metsia* 21b), for it is the mind itself that has been lost. According to *Hazal*, the obligation of "returning a person's body" (his physical well-being) is also included in the command to return a lost article: "and you shall return it to him"—including the loss of his body" (see *Sanhedrin* 63a). The Talmud (*Bava Kamma* 81b) derives from the command to restore a lost article the obligation to show a person the right path if he has lost his way: "His body—this means that if your friend has made a mistake, you have to put him back on the right road."<sup>17</sup> Modern halakhic authorities find a direct link between the person who delays returning a lost article and the person who commits suicide, reasoning that he who kills himself has "lost"—intentionally and knowingly—his way."<sup>18</sup>

It is interesting to compare *Hazal's* definition with the concept of suicide as accepted in legal and medical literature. Linguistically, a suicide consists of an act of killing (*cide*) that a person does to himself (*sui*). The term does not address in any way the *motives* for the act, but rather defines the act itself as one of *killing*. In accordance with the original significance of this classification, suicides were punished in the past by contemptuous treatment of their bodies, their burial rites, even their plots.<sup>19</sup> Today the term "suicide" is not used in order to condemn the act as one of murder or as a forbidden act. It was recently suggested that the German term *Selbstmord*, meaning self-murder, be replaced with *Freitod*, meaning death out of choice or free will.<sup>20</sup> The proposed change in terms reflects the change in perspective towards suicide among different cultures.<sup>21</sup>

From the negative formulation of the beginning of the *Semahot* excerpt, which serves as a sort of heading for the unit as a whole, it would seem that the corpse of one who committed suicide is not to be handled or attended to in any way at all, and that even the minimal burial rites performed for one who is found dead in an abandoned area (*met mitsva*) do not apply to him. But immediately following this categorical opening statement there is a discussion recording the conflicting views of Rabbi Akiva and Rabbi Yishmael. The halakhic conclusion is in accor-

dance with the view of Rabbi Akiva, and therefore the accepted principle is that "whatever is performed out of respect for the living should be observed for him."<sup>22</sup> The negative approach at the beginning of the excerpt is modified by the more moderate treatment at the end of the halakha: not only should people line up and the mourner's blessing be recited out of "respect for the living," but in fact "*whatever* [emphasis added] is performed out of respect for the living" is to be observed here too. Rashba reconciles this contradiction within law 1 by means of the halakhic ruling that the family is always obligated to attend to the deceased, "and even when they [*Hazal*] say 'no rites should be observed for them,' they did not mean this to include burial and shrouds, but rather that we do not rend clothes or bare shoulders or recite a eulogy for them, but we do line up."<sup>23</sup>

We may ask why the formulation of the beginning of the unit of laws pertaining to suicide is not compatible with the halakhic conclusion that arises from an analysis of *Masekhet Semahot*. It is our contention that this formulation in itself represents the application, as it were, of the principle of "the left hand holds off" which is transformed, by the end of law 6, to the more sympathetic and compromising approach of "the right hand draws closer."<sup>24</sup> Rabbi Akiva's ruling, "Leave him to his oblivion; neither honor him nor curse him," reflects both the fundamental reservation towards suicide and the supportive approach, and therefore even when there is clear proof that the person knowingly and intentionally ended his own life, we do not curse him, based on the principle that "the right hand draws closer."

## THE ROLE OF COMMUNITY

Attention should be paid to the role of the "community" in the laws pertaining to suicide: those actions which are not performed out of respect for the living are not observed by the public ("The community should not observe any rites for him"), but individuals and family members are nevertheless required to observe all the regular rites. Perhaps the difference between the obligation of individuals and family members and that of the community at large can be explained in terms of educational and social considerations: the communal attitude towards a person who has committed suicide is fundamentally different in its value judgment in light of the social significance of the deed, and therefore the community is not required to observe any rites in these circumstances. There can never be public legitimization of suicide. But a different law applies to

the family members, who are mourning the loss of their loved one and who are obligated to show respect for the deceased—also out of respect for the living—just as in the case of any other cause of death.

Despite the essential negation of suicide, “respect for the living” is of greater importance than any other consideration involved, and therefore “whatever is performed out of respect for the living should be observed for him.” The pain suffered by the family members affects them deeply and may significantly change the lives of the mourners, especially in light of the unfortunate background to the suicide. Feelings of guilt may accompany family members for many years, perhaps even leading to thoughts of committing suicide themselves (“survivors’ guilt”). In order to ease the pain of the family members, they are permitted to observe all the regular rites even though by law the obligation of mourning for a suicide is limited and applies only partially.

The meaning of Rabbi Yishmael’s words, “Alas, misguided fool (*netula*),” is not entirely clear, and a number of interpretations have been proposed: the expression may be based on the phrase “lifted (*netilat*) up from the earth” (Daniel 7:5), implying that “he has taken (*natal*) his life from the world.”<sup>25</sup> It is also possible that the reference is to the fact that he has removed himself from the nation of Israel: “. . . who says, I am removed (*netula*) from the Jews” (*Nedarim* 90b). There are also other versions of the text which reflect different attitudes towards suicide: “*nashla*,”<sup>26</sup> apparently implying a mistake made out of ignorance,<sup>27</sup> “*nashlat*”<sup>28</sup>—as in Job 27:8, “What hope is there for the hypocrite though he gains, when the Lord takes away (“*yishal*”) his soul;”<sup>29</sup> or “*nitla*” (alas) (written with a *tav* instead of a *tet*), meaning “hanged one”—so termed because of his end.<sup>30</sup>

The authorities are divided as to the obligation to rend garments in the case of a suicide: some exempt the mourners altogether from the obligation of rending and the laws pertaining to the days of mourning,<sup>31</sup> while others obligate close family members to mourn the death with rending of garments and observance of the period of mourning.<sup>32</sup> But if the relatives themselves wish to mourn then they are obligated to do so out of “respect for the living,” according to most opinions.<sup>33</sup>

As to the place of burial, *Masekhet Semahot* mentions nothing of the suicide being buried outside of the cemetery, as was apparently customary in Greece and Rome<sup>34</sup> as well as in other countries up until about two hundred years ago.<sup>35</sup> There is likewise no biblical source for this custom,<sup>36</sup> and halakhic authorities have always been opposed to it since it is entirely incompatible with the spirit of the halakha in *Masekhet Semahot*.<sup>37</sup> On the basis of this same principle, the mourners should recite kaddish,<sup>38</sup> and according to some opinions there is in fact a spe-

cial obligation to recite kaddish specifically in the instance of suicide.<sup>39</sup>

An examination of Law 2 reveals that in order for a death to be categorized as suicide there must be an explicit declaration of intent followed by immediate execution of the act.<sup>40</sup> In principle there is a halakhic assumption that “a person does not generally kill himself willingly,”<sup>41</sup> and every person is presumed to be psychologically fit,<sup>42</sup> since “God has created man upright.”<sup>43</sup> If the slightest suspicion arises as to other motives, we say, “One may exaggerate without having any practical intention.”<sup>44</sup> Perhaps, in other words, he exaggerated and his death was actually caused by something else.<sup>45</sup>

Even when no doubt exists, the definition is never unequivocal, but rather an assumption; he is “presumed” (*hazaka*) to have committed suicide. Consequently, the formulation of the halakha here is that “he is presumed to be a suicide, and for a suicide no rites whatsoever should be observed.” Thus we can understand the distinction in the language of the halakha: the suicide announces his intention with the words, “I shall throw myself (*apil*) down to my death.” He intends, thus, to jump off the roof. But those who observe him climbing to the top of the roof testify only to the fact that “he fell and died” (*nafal*). It is forbidden to interpret all his actions retroactively based on the ultimate discovery of the body as unequivocal proof that he in fact committed suicide. There remains a real element of doubt, and it is only on the basis of very strong probability—*hazaka* or presumption—that we explain his action according to his declaration of intent: “Such a person is presumed to be a suicide.”<sup>46</sup> The linguistic precision comes to teach us the extreme care that must be exercised in objective reporting: the facts may not be explained in accordance with our impressions and retroactive interpretation when we lack clear proof.<sup>47</sup>

Laws 3-5 describe instances of doubt, where the intention was not declared explicitly (law 3) or where not all of the necessary conditions for the definition of suicide are fulfilled (laws 4-5). Even when the probability is very high, the facts that exist are not to be taken as proof—“We do not say, ‘His end explains his initial intention,’”<sup>48</sup> even though the act almost proves the intention.<sup>49</sup> In contrast to law 2, law 3 lacks the clear declaration of intent just prior to the act and despite the high probability, we may not interpret the deed retroactively accordingly to the given data and probability alone.

When any doubt at all arises in the definition of the incident, the category of suicide falls away, and therefore law 3 rejects unequivocally in its formulation the law of suicide: “He is presumed to have taken his



own life unwittingly.”<sup>50</sup> Therefore the formulation of the halakhic conclusion is likewise the opposite of the preceding halakhot, i.e. instead of “no rites are performed for him” (laws 1-2), we find from here onwards “no rites are denied him” (laws 3-5).

In laws 1-3 the discussion centers on the definition of the term “intentionally” and of the intention itself preceding the act in instances where the motives for the act are unclear. The subject of laws 4 and 5 is a minor who, by very definition, cannot fall into the category of one who “kills himself intentionally,” for “a minor has no (recognized) intention,”<sup>51</sup> and therefore the word “intentionally” is absent in these laws: “. . . and cast himself. . . .”<sup>52</sup>

The law pertaining to the minor is extended by the *posekim* to include others who are not recognized as having intention: “One who is deaf, one who is insane and a minor, none of whom have intention,”<sup>53</sup> “one who is inebriated, one who is despairing, the elderly, the terminally ill and the confused.”<sup>54</sup> But *Masekhet Semahot* chooses specifically to use the example of minors in order to teach us that the problem is fundamentally rooted in the education of children and each person’s childhood experiences. The slightest threat, even when not accompanied by any physical harm (“his father threatened to box his ears,”<sup>55</sup>) can give rise to far-reaching and long-term anxieties and fears. Therefore the laws of suicide lead to the positive conclusion that one should educate children in a way that will not create anxieties (law 6), in order to prevent those factors that lead to a danger of suicide occurring.<sup>56</sup>

*Masekhet Semahot* considers two factors that could lead to a child or adult intentionally ending his own life. In laws 4-5 the relationship between the child and the parent is damaged on two different levels: the prolonged fear and anxiety of academic competition and achievements at school (law 4),<sup>57</sup> and religious fear of desecrating *Shabbat*, with all the educational and social ramifications that this involves (law 5).<sup>58</sup> Rabbi Tarfon was approached in Lod,<sup>59</sup> and Rabbi Akiva in Benei Berak,<sup>60</sup> for their rulings in their respective towns.

Halakha demands that we examine the social roots of the phenomenon of suicide in society at large, with the aim that “the living should take it to heart.”<sup>61</sup> In light of this we can understand the location of law 6 at the end of the unit of laws pertaining to suicide per se.<sup>62</sup>

Two teachings appear in law 6. The first is directly related to the incidents recounted in laws 4-5, and therefore the practical conclusions are also presented here: “As a result our Sages taught, ‘A man should

not threaten his child. Rather he should spank him immediately, or hold his peace and say nothing to him.” The second teaching is different: “With respect to the sexual urge, a child and a woman—hold them off with the left hand and draw them closer with the right.” This is an educational principle of great importance in many spheres. There is a hint at the fact that it is the left hand—the weaker side—that holds off, while the stronger right hand draws closer. This has significance not only on the personal level for the educator and his students, but also has far-reaching implications: the struggle against the sexual urge is important, but there should also be supportive consideration for this urge as a creative factor.<sup>63</sup> In the sphere of education the principle is of critical importance.<sup>64</sup> In the context of suicide the principle demands very careful and supportive application, in order to prevent such incidents.

According to the conclusion of law 6 there is no need to back down on educational principles when they are constructive, but first and foremost it is forbidden to intimidate children. In order to prevent fear and anxieties in the child it is sometimes preferable not to insist on an educational principle, so that the factors that may lead to suicide are not created in the first place: “It is time to act for God; they have overturned your teaching.”<sup>65</sup> Anxieties and social pressures can lead to disastrous actions. The end of the excerpt conveys the message that such pressures and situations should be avoided at all costs.<sup>66</sup>

## TWO INCIDENTS OF SUICIDE IN THE TALMUD

The following two anecdotes illustrate the spirit of the *Semahot* approach in separate contexts.

Rav Kahana used to sell women’s baskets woven from palm leaves. A certain woman tempted him to immorality. He said to her, “Let me first go and tidy myself.” He climbed to the roof and fell from the roof to the ground. Eliyahu (the Prophet) came and caught him. Eliyahu said to Rav Kahana: “You troubled me to walk four hundred *parsim*<sup>67</sup> in order to come and save you.” He replied, “What made me do it? Was it not poverty, because of which I was compelled to be engaged in such an occupation, with women?” Eliyahu gave him a basket full of dinars<sup>68</sup> so that he would no longer have to engage in it.” (*Kiddushin* 40a)

Attention should be paid to Rav Kahana’s particular motives, and Eliyahu’s gentle approach in this story, in order to glean some practical guidance as to the proper attitude towards attempted suicide: Rav Kahana

was forced, because of his poverty, to engage in lowly work, selling from door to door, but in reality this did not create any objective necessity to accede to the demands of the woman in question. It was his subjective feelings of despair that led to Rav Kahana's perception of his situation as hopeless and led him to attempt suicide.

Eliyahu hurried to Rav Kahana's assistance and succeeded in miraculously saving him as he fell, at the very last moment before his death—"Eliyahu came and caught him." In times of need one is obligated to make every effort with no delay in order to practically save a life, in order to prevent irreversible damage. Immediately following the rescue, Eliyahu tries to speak to him; his brief opening consists in the Aramaic of only four words: "You troubled me four hundred *parsim*." He succeeds in drawing Rav Kahana into a dialogue and allows him to explain, in a brief therapeutic discussion, the motives that led to his attempted suicide. At the same time, Eliyahu clarifies to Rav Kahana the great exertion required of the rescuer, but he does not directly accuse him. Rav Kahana describes his disastrous financial situation, answering with a rhetorical question to avoid the impression of attempting to justify his act: "What made me do it? Was it not poverty?" As a result, Eliyahu offers Rav Kahana practical assistance in his dire financial straits—"He gave him a basket full of dinars." By offering generous financial assistance, Eliyahu is aiming to prevent the recurrence of such a problem in the future. Through his generosity he expresses his empathy for Rav Kahana. In this way he demonstrates that something can be done to alleviate his situation, and that suicide is not the solution to the problem.

The story of Rav Kahana and of Eliyahu's "therapeutic approach" provides important guidance for the understanding of a potential suicide. Eliyahu's gentle approach opens theoretically, with a general accusation. The person who has attempted suicide will receive full assistance, but Eliyahu does not wish him to take this assistance for granted. Ultimately, with the aid of an extremely brief conversation—a total of nine words—Eliyahu succeeds in grasping the root of the problem. He offers assistance that will address the root of the problem in the long term and prevent the danger of suicide in the future. Beyond his "crisis intervention," Eliyahu offers practical assistance that addresses the root of the problem by removing the motives for the suicide act.

The approach of Eliyahu in this story is therefore quite compatible with the perception that arises from our analysis of *Masekhet Semahot*. Rav Kahana's action is not defined in effect as suicide, but rather as attempted suicide; however, both the Talmud and Eliyahu avoid any mention of the concept of suicide in this context.

In a second story, *Hazal* address a practical instance of suicide in a moderate fashion, taking social factors into consideration:

It once happened that a Torah scholar placed his *tefillin* in a sheltered place close to the public domain. A certain prostitute came and picked them up, came to the *Bet Midrash* and said, "Look what so-and-so gave me as my payment!" Upon hearing this, the scholar climbed to the top of the roof and fell to his death. It was then that the rule was made that one should carry them (*tefillin*) in one's clothing or in his hand and thus enter [the *Bet Midrash*]." (*Berakhot* 23b)

Although the scholar had not actually sinned, his shame clouded his thinking and so he was not judged as one who had committed suicide "intentionally."<sup>69</sup> Although his act is completely unjustified from the objective perspective of principle, *Hazal* do not condemn him for it, nor even raise the possibility of judging him as falling into the category of one who "killed himself intentionally." On the contrary, they institute a halakhic-social practice aimed at preventing any recurrence of this phenomenon in the future. This approach echoes the turning point in law 6 of *Masekhet Semahot* chapter 2. Just as in the story in *Masekhet Berakhot* the sanctity of *tefillin* was limited under certain circumstances in order to prevent shame—"Observe how great the power of shame is"<sup>70</sup>—so too according to *Masekhet Semahot* it is proper to yield sometimes even in Torah values in order to prevent children from developing anxieties that could ultimately lead to suicide. The story in *Berakhot* is an interesting illustration of how the concern for possible suicides led to halakhic change with regard to the sanctity of *tefillin*.

In both stories the act is described in a manner similar to the wording in *Masekhet Semahot* ("... who climbs ... to the top of the roof and falls to his death"); in *Kiddushin* the incident describes an attempted suicide ("He climbed to the roof and fell from the roof to the ground"); in *Berakhot* the suicide was accomplished ("he climbed to the top of the roof and fell to his death"); in both instances a declaration of intent prior to the deed is absent. Although the context makes the intention behind the act quite clear, the law of suicide is not mentioned in either of these stories. In keeping with the principle that "the left hand holds off while the right hand draws closer", *Hazal* do not regard either instance as belonging to the category of "killing oneself intentionally."

# TRADITION

## NOTES

I am indebted to Rabbi Prof. Moshe D. Tendler (NY), Prof. Yohanan Silman (Jerusalem), Prof. David Novak (Toronto), Yitzhak Kurtz (Toronto), Prof. Menahem Kahana, Dr. Shaul Solberg, Rabbi Eliakim Krombein and Amos Safrai (all Alon Shevut) for their helpful comments.

1. See Emile Durkheim, *"Suicide—A Study in Sociology"*, Paris 1897, translated by John E. Spaulding, 1951, NY, Free Press.
2. See Brody, Baruch A. ed. *"Suicide and Euthanasia: Historical and Contemporary Themes"*, Dordrecht, Netherlands, Kluwer, 1989; Novak, David *"Suicide and Morality: The Theories of Plato, Aquinas and Kant and their Relevance for Suicidology"*, NY, Scholars Studies Press, 1975.
3. A comprehensive summary with detailed sources on the subject is to be found in the *Encyclopedia of Medicine and Halakha* (Hebrew) by Avraham Steinberg, Jerusalem, Schlesinger Institute Press, 1988, see "suicide"; Yechiel Michel Stern, "Suicide in Halakha" in *"Medicine in Light of Halakha"* (Hebrew), Jerusalem, Institute for the Study of Medicine in Halakha, 1988, vol. 4; Goldstein, Sidney *"Suicide in Rabbinic Literature"*, N.Y., Ktav Publishing House, 1989; Spero, M H *"Handbook of Psychotherapy & Jewish Ethics"*, Jerusalem / N.Y., Feldheim, 1986, pp. 257-269.
4. See *Rambam*, Laws of Mourning, chapter 1, law 11; *Shulhan Arukh, Yoreh De'a* 348.
5. We were aided here by the scientific editions of Michael Higger *Treatise Semahot*, Newark, Bloch Press, 1931 and Dov Zlotnick, *The Tractate Mourning*, New Haven and London, Yale University Press, 1966. We have used the Vilna Talmud edition, and added updated versions in the notes.
6. Similar to the principle that "this is the law, but we do not rule thus," in *Masekhet Sanhedrin* 82a.
7. See *Sanhedrin* 2a, 3b, 69a and *Makkot* 10b.
8. See, for example, the "law of 'chained women'" (women unable to obtain a divorce from their husbands) (*Gittin* 26b), "law of prisoners" (*Gittin* 45a), "law of those who return" (*Gittin* 55a), etc.
9. *Arukh ha-Shulhan, Yoreh De'a* 345: 75.
10. Notes of the Maharsha on *Yoreh De'a, siman* 345.
11. For a definition based on linguistic analysis, see Perles A. *"Der Selbstmord in der Halacha"* in MGWJ 1911 Jahrgang 55, S. 287 ff.
12. As well as *Pesikta Rabbati* (Ish Shalom), *parasha* 24—"You shall not kill."
13. *Bereshit* 9:5, and *Bereshit Rabba* (Theodor-Albeck), *parasha* 34,5.
14. See *Hida Nahal Kedumim*, quoted by Avraham Steinberg, "Encyclopedia of Medical Halakha" (Hebrew), Jerusalem, Schlesinger Institute Press 1988, under "suicide" ("me'abed atsmo la-da'at"), note 15.
15. *Hazal* recognized the concept of "mental frenzy"—insanity—although in a different context: *Mo'ed Katan* 26b, *Yoma* 87b, *Sota* 8a, *Sanhedrin* 43a and 89b, etc.
16. Rashi on *Bava Kamma* 81b—"you shall return it to him"; *Midrash Tana'im* on *Devarim* 22:3 (Hoffman edition): "whatever of your brother's is lost—the loss of his body; teaching that one is obliged to heal him if he

- is ill.” It appears, on the basis of this derivation, that the Rambam expanded the command of returning a lost article to include the very occupation of medicine, since the doctor restores a person’s health: “... The obligation of the doctor from the Torah is to heal the ill of Israel, and this is included in the interpretation of the biblical phrase ‘and you shall return it to him’—to heal his body, when he sees him endangered and is able to save him, either physically or with money or through his wisdom. . . .” (Commentary to the *Mishnayot*, *Nedarim* chapter 4, *Mishna* 4).
17. Rabbi Eliezer Yehuda Waldenberg in his responsa *Tsits Eliezer*, part 9, *siman* 45:8, and part 10, *siman* 25 section 7.
  18. For some impressive historical sources, see Brody, Baruch A ed. “*Suicide and Euthanasia: Historical and Contemporary Themes*”, Dordrecht, Netherlands, Kluwer, 1989.
  19. See Amery, Jean “*Hand an sich legen zum Freitod*”, Stuttgart, Klett Cotta, 1979, Einleitung. Translation by John D. Barlow “On Suicide: A Disclosure on Voluntary Death”, Indiana University Press, 1999, preface. Perhaps it is significant that this proposal was made specifically in German, a language in which the concept “Selbstmord” is clearly understood by all who speak it, as opposed to the professional concept “suicide”, which is understood in English only through its etymological source in Latin.
  20. See Daube, David “The Linguistics of Suicide” in *Philosophy and Public Affairs* I no. 4:387-437.
  21. See *Eruvin* 46b: “The halakha follows Rabbi Akiva”.
  22. See responsa of the Rashba, part 1, *siman* 763. Substantiation for the resolution by the Rashba can be brought from a similar contradiction in the law pertaining to those put to death by the *Bet Din*: in *Masekhet Semahot* chapter 2 law 7 there is a clear ruling that “no rites whatsoever are observed for those put to death by the *Bet Din*. . .” but this is in clear opposition to that which is described in the *Mishna Sanhedrin* chapter 6, *mishna* 5: “Two cemeteries were established for (those put to death by) the *Bet Din*—one for those killed with the sword or by strangulation, the other for those put to death by stoning or by fire;” in reality, those put to death by the *Bet Din* were certainly buried, as the Mishna teaches, but *Masekhet Semahot*, at the beginning of the halakhot pertaining to those put to death by the *Bet Din*, emphasizes categorically the negative attitude, even though this does not represent the actual practical halakhic ruling. It should be noted that according to Or Zaru’a (part 2: 422, chapter 6:3) one is not to engage in the funeral rites of a wicked person at all—quite literally.
  23. Perhaps the formulation “no rites whatsoever should be observed” should be interpreted in accordance with the halakhic conclusion: in other words, not “anything whatsoever” should be done for him, but rather only some of the needs of the deceased should be attended to. In fact, the excerpt does not obligate us to refrain completely from any involvement with or attending to the suicide.
  24. See *Mishna Avot* chapter 4, *mishna* 5.
  25. As according to Higger and Zlotnick.
  26. “For it is (done out of) ignorance” (*Bamidbar* 15:25).
  27. According to Rashi’s explanation: “‘when the Lord takes away’—when God removes his soul from him, as in ‘Remove your shoes’” (*Shemot* 3:5),

- "the head (of the axe) comes away (is removed)" (*Devarim* 19:5). Cf also *Bamidbar Rabba parasha* 22:4.
28. In accordance with Ramban in *Torat ha-Adam*.
  29. In accordance with the Gaon of Vilna in his comments on *Masekhet Semahot*, chapter 2, law 1.
  30. Rambam, Laws of Mourning, chapter 1 law 11.
  31. See *Torat ha-Adam* in "Writings of the Ramban" (Hebrew), vol. 2, p 83 onwards. See also the discussion in the *Bet Yosef*, *Yoreh De'a siman* 345, "Who is (presumed to be) a suicide. . . ."
  32. See responsa of Hatam Sofer, *Yoreh De'a siman* 326; *Gesher ha-Hayyim* part 1, chapter 25; *Yabi'a Omer*, part 2 *Yoreh De'a, siman* 24.
  33. See Josephus Flavius *The Jewish War*, VI I, 65 and a detailed discussion on the subject of burial in Saul Lieberman "After Life in Early Rabbinic Literature" in *Harry A. Wolfson Jubilee Volume*, Jerusalem, American Academy for Jewish Research, 1965, vol. II, 495-532.
  34. It could be that the misconception of having to bury a person having committed suicide in a separate section of the cemetery is based on these non-Jewish cultures.
  35. See description of the death of Ahitofel in *Samuel* II 17:23 and onwards.
  36. Notes of the Maharsha on *siman* 345, comments of R. Ya'akov Kasatro, *Yoreh De'a* 345, but see *Or Zaru'a* part 2, 422 chapter 6:3.
  37. Responsa of Hatam Sofer, *Yoreh De'a siman* 326, *Even ha-Ezer* part 1 *siman* 69.
  38. See *Sedei Hemed*, Mourning 120; *Yabi'a Omer* part 6 *Yoreh De'a siman* 36; *Yehaveh Da'at* part 6 *siman* 60; Responsa of Rabbi Yehuda Asad, *Yoreh De'a siman* 355.
  39. There are detailed halakhic discussions as to whether the writing of a "suicide note" is likewise to be considered notification of intent, or whether the act must immediately follow an oral declaration; the scope of this article does not allow for elaboration.
  40. *Bereshit Rabba parasha* 82:9.
  41. For a lengthy discussion see Talmudic Encyclopedia (Hebrew), "Hezkat Kashrut" ("assumption of fitness").
  42. *Kohélet* 7:29.
  43. See *Shevu'ot* 46b.
  44. Responsa of the Hatam Sofer *Yoreh De'a siman* 326.
  45. And the halakha is accordingly formulated with precision in the responsa of the Hatam Sofer, *Yoreh De'a siman* 326: "This is what the Ramban meant in *Torat ha-Adam* when he quotes *Bet Yosef* and the *Bah* on *siman* 345, meaning that although they did not see him cast himself down, since he said (he would) he is presumed to have done so intentionally. In other words, although we did not witness that the casting down was done by himself, nevertheless because we saw him fall from that same height from which he promised to cast himself down, therefore we say that he may be presumed to have done it intentionally, but if we did not see the fall itself either then even if we find him dead at that location, we do not consider him as having intentionally killed himself."
  46. The Rambam alters the formulation of *Masekhet Semahot* in this halakha: "They saw that he climbed immediately in anger, or in sorrow, and he fell

- and died" (Rambam, Laws of Mourning, chapter 1 law 11). In fact, we do not rule leniently in accordance with his ruling in cases where other later authorities ruled leniently (see note 68 below). The Rambam relies here on a beraita in *Semahot Evel Rabbati*, chapter 3 law 5: "A suicide who said, 'I shall ascend to the roof,' and he was seen immediately going there, in anger or at a time when he was depressed, and he fell and died—he is not mourned nor is he eulogized, but people line up for him. . . ." The Rambam does not rule in accordance with *Masekhet Semahot*, but rather takes into consideration factors of mood that preceded the act of suicide, as set out in *Evel Rabbati* chapter 3 law 5.
47. According to *Gittin* 6a *Mishna* and *Gemara*: "There was once a man who said, 'Write up a divorce document for my wife,' and he climbed to the top of the roof and fell to his death. Rabbi Shimon ben Gamliel said, 'If he fell of his own volition, then this divorce is valid. If the wind blew him over, the divorce is not valid.'" Concerning falling from a roof as a form of suicide, see also *Ta'anit* 29a, *Ketuvot* 103b, *Bava Batra* 3b.
  48. In light of this we can understand the change in the Rambam's wording, "upon his sword," instead of the formulation in *Masekhet Semahot* "upon the sword," since killing by "his sword" increases the probability of the instance being judged as falling into the category of suicide.
  49. This is obviously the meaning in the wording of the Rambam, who intentionally changes the wording of *Masekhet Semahot* and makes no mention at all of the possibility of suicide in the instance of doubt: "But if they saw him strangled and hanging from a tree, or killed and impaled upon his sword—he is considered like any other casualty; the rites are performed for him and nothing is denied him" (Laws of Mourning chapter 1, law 11). But the Gaon of Vilna presents a different version.
  50. See rulings of the Rosh, *Mo'ed Katan* chapter 3 *siman* 94 and the subsequent ruling in *Shulhan Arukh Yoreh De'a* 345:3, *Arukh ha-Shulhan* 345:2 and responsa *Mishpat Kohen siman* 144.
  51. There is no explanation for why the child chose specifically to cast himself into a cistern, or pit; previously the examples concerned one who cast himself from the roof or from the top of a tree. Perhaps the following idea could suggest a solution: the children in these examples experienced guilt, and therefore took upon themselves the laws applicable to the burial of sinners: in ancient Greece and Rome it was customary to bury sinners in pits. The Mishna seems to recognize the purpose of such a "pit", but negates its "burial connotation": "(In the instance of) a pit into which aborted fetuses and those put to death by the court are placed: the bones are gathered up and all are pure" (*Mishna Ohalot* chapter 16, mishna 5). Testimony to the influence of the Roman custom of casting the dead into "the pit" can be found in its parallel in the Tosefta: "(Corpses from) a pit ('fossa') into which those put to death by the court are placed, and one who was buried without permission. . . ." (*Tosefta Ohalot* 16:12). Instead of the Hebrew term for a pit, "bor," we find here the Latin term "fossa," owing to the Roman source of this custom. In light of this we may hypothesize that out of a sense of guilt these unfortunate children judged themselves as falling into the "category of sinners" during their very lifetime, and therefore cast themselves specifically into such a pit. Although a minor is not recognized



- as having intention, perhaps in this instance "his intention is observed through his deeds" (*Hullin* 13a), but nevertheless the halakhic ruling here is lenient. See also Erwin Rohde "*Psyche—The Cult of Souls and Belief in Immortality among the Greeks*" (Translated by W B Hillis), London, 1925, 8th edition, p. 163: "Condemned criminals, indeed, are thrown by the state, unburied, into a pit."
52. *Yoma* 43a etc.
  53. See *Sedei Hemed*, Mourning 121, responsa *Hekhal Yitshak* part 2 *siman* 85.
  54. This concept does not appear anywhere else in the Talmud as a threat made to children.
  55. Based on the principle of "Educate the child according to his way; then even when he is old he will not depart from it" (*Mishlei* 22:4). See the interesting discussion "On the subject of punishing students and threatening them" in the responsa *Iggerot Moshe*, section *Yoreh De'a* vol. 4 *siman* 30, in which there is a halakhic discussion of *Masekhet Semahot* chapter 2.
  56. We were unsuccessful in discovering any details about the character names Gornos or Gorgios from Lod. It seems that the intention of the Mishna is not to teach us a law concerning a specific personality in his historical context, but rather to bring a well-known example. The Greek name would seem to suggest the educational influences of Greek culture. I am grateful to Prof. Yehoshua Schwartz and Prof. Daniel Schwartz (Hebrew University of Jerusalem) for clarifying these details.
  57. This explanation is based on the version which specifies "on Shabbat." It is not only in the case of minors that the presence of anxieties as motives for the deed negate the definition of suicide; in adults, too, such anxieties can lead to suicide. See discussion below on *Berakhot* 23b, and other examples.
  58. See *Ta'anit* 19a, *Megilla* 20a, *Hagiga* 18a, *Kiddushin* 40b, *Bava Metsia* 49b. But "in Lod" does not appear universally in all versions.
  59. See *Sanhedrin* 32b.
  60. See *Kohelet* 7:2, and *Masekhet Semahot* chapter 12, law 5: "But the ancient pious ones would sooner go to a house of mourning than to a house of celebration, for it is written, 'It is better to go to a house of mourning than to go to a house of celebration, for that is the end of every man, and the living should take it to heart' (*Kohelet* 7:2)."
  61. According to other versions law 6 is not a law in its own right, but rather forms the conclusion of law 5.
  62. See *Bereshit Rabba* (Vilna) *parasha* 9:7: "Rabbi Nachman bar Shmuel bar Nachman in the name of Rav Shmuel bar Nachman said, 'Behold it was very good'—this refers to the good inclination, "and behold, it was very good"—this refers to the evil inclination. Is the evil inclination then "very good"? Surely not; but were it not for this inclination a person would not build a house nor marry a woman; he would not raise children nor engage in business. So said Shlomo (*Kohelet* 4:4): "For it comes of a man's rivalry with his neighbor" (similarly *Kohelet Rabba* (Vilna) *parasha* 3:3). See Efraim Elimelekh Urbach *The Sages—Their Concepts and Beliefs* (Hebrew), Jerusalem, Magnus, 1983, pp. 415-427 in the chapter "Two Inclinations".
  63. According to the Gemara, Jesus the Nazarene was slighted by Rabbi Yehoshua ben Perahia and as a result turned to questionable behavior:

“Our Sages taught, ‘It should always be the case that the left hand pushes off while the right hand draws closer, not like Elisha who pushed Gehazi with both hands, nor like Yehoshua ben Perahia who pushed off Jesus the Nazarene with both hands’; see *Sota* 47a and *Sanhedrin* 107b; these sections are censored in most editions of the Talmud. At the end of the discussion the words of Rabbi Shimon ben El’azar are quoted—the same words that conclude the laws of suicide in *Masekhet Semahot*. “With respect to the sexual urge, a child and a woman—hold them off with the left hand and draw them closer with the right”. A deviation from the rule that “the left hand holds off while the right draws closer” can lead to suicide or to important historical processes—such as the birth of Christianity, with all its historical ramifications for the Jewish nation.

64. See *Tehillim* 119:126, and *Berakhot* 54a etc. In accordance with this principle, halakha demands consideration of educational factors even when Torah values will need to be put aside.
65. Rabbi Moshe Feinstein codifies this as *halakha* in his responsa *Iggerot Moshe*, section *Yoreh De’a* part 4 *siman* 30: “Since it creates the possibility of a danger that the child will imagine that this (the threat) is worse than death; the same possibility exists for a teacher who threatens his pupil, or any instance where someone is under the control of someone else, and it is forbidden to a teacher just as it is to a parent. And thus it is clear that this prohibition applies in the case of any adult who fears him, and all the more so, since in the case of a father the child knows that the father loves him. In any event it is forbidden since it seems to him that he will be punished with something awful and terrible—particularly if there is room for the possibility that the child will imagine that others will inflict upon him something which, to his mind, is worse than death itself.”
66. Lit. a Persian mile “parsang”, derived from “parsa” = “split hoof, foot, toes”.
67. A silver or gold coin, called “denarius”.
68. In this regard see the detailed halakhic discussion with sources in the responsa *Shevut Ya’akov*, part 2 *siman* 111, “A question concerning someone who transgressed the prohibition of relations with a married woman, and took upon himself as his repentance the four death sentences of the *Bet Din* by drowning himself in a river, which is (represents death by) strangulation. Is he to be considered one who committed suicide or, since he performed this act out of (a wish for) repentance, should he be considered like one who died a natural death?” It should be pointed out that the motive for attempted suicide, both in *Berakhot* 23b and in *Kiddushin* 40a, involves a prostitute—better to illustrate the principle in *Masekhet Semahot*, that “with respect to the sexual urge, a child and a woman—hold them off with the left hand and draw them closer with the right.”
69. *Gittin* 57a.