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EMERGENCY IN TALMUDIC LAW

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submitted in competition for the  
Fannie Isaac Remembrance Fund of the Daughters  
of Israel Prize

May 1, 1953

Referee

Dr. Alexander Guttman

The subject of this essay is limited to emergency in Talmudic law dealing with the preservation of human life by agreement with the referee.

C o n t e n t s .

|                       |             |
|-----------------------|-------------|
| Historical background | pp. 1 - 20  |
| Legal aspects         | pp. 21 - 50 |
| Bibliography          | pp. 51 - 52 |

This paper will devote itself to several occasions which necessitated a swift change in the legal requirements obligatory upon Jews in rabbinic times; this situation was due to the danger to human life which became connected with the observance of these laws. The reasons for the changes are sometimes historical, while at other times they arose from the nature of the law itself as it contained a heretofore undiscovered flaw; when this was brought to the attention of the rabbis through a case in a court of law, the necessary changes were readily made.

The alterations which took place in each case did not go unopposed, nor were the rulings fully accepted by all rabbis after a decision had been made. This essay will attempt to discuss these cases historically and legally. It will also show that in several instances modifications of the original decision took place at a later time as the earlier decision of the rabbis was thought to be too liberal; thus a nullification of these judgements was attained by surrounding them with strict limitations; all benefits

to be derived from them were removed in this manner. This is neither strange, nor did it impose any real hardships upon the people concerned as the conditions of the times had sufficiently changed so that the emergency no longer existed and that the law was no longer necessary; it might on the otherhand have led to laxness without adequate cause. The basic importance of the emergency decision, however, remained as it could now be evoked at any time of crisis, moreover also setting the pattern for later drastic changes. Herewith the spirit of a changing and developing Judaism is very clearly shown; a Judaism which permitted the most radical alterations for the sake of preserving the religion and its adherents.

The practice of altering laws drastically either in order to preserve life or for other reasons was not begun in Mishnaic or Talmudic times, but is as old as the existence of law itself. Instances of special provisions to face emergency situations already occur in the Bible. In connection with the

laws of Passover the problem of those who were unclean at the time set for the holiday arose; the book of Numbers relates that these men may celebrate the holiday one month later when their state of uncleanness is past.<sup>1.</sup> An emergency of grave import arose regarding blood revenge; although the Bible stated that "vengeance is Mine,"<sup>2.</sup> the practical situation could not be met in this manner; it therefore became necessary to arrange cities of refuge throughout the land as vengeance could be restrained in this manner.<sup>3.</sup> It may thus be clearly seen that even in the most ancient times, the necessity for dealing with special occasions in a unique manner was realized and carried out in a very effective manner.

Perhaps the best illustration of an emergency situation in pre-rabbinic times is that which arose in the time of the Maccabees. Antiochus Epiphanes who

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1. Numbers, chap. 9: 6 - 12.
  2. Deuteronomy, chap. 32: 35.
  3. Numbers, 35: 6 - 8.

attempted to unify his empire through hellenizing it, became more ardent in his efforts after being driven out of Egypt. As Egypt stood as a rival power it was important for his security to thoroughly control Palestine, the empire's most southern province. Upon his return from Egypt he reoccupied Jerusalem with a strong force and built a citadel, known as the Acra, there; then he devoted his efforts to the forced hellenization of the land through the imposition of very severe laws which were directed toward wiping out Judaism.<sup>4.</sup> Thus the account in Maccabees I states: "The king wrote unto his whole kingdom, that all should be one people, and that everyone should give up his (religious) usages. And all the nations acquired in accordance with the command of the king ... . Furthermore, the king sent letters by the hand of messengers, to Jerusalem and to the cities of Judah (to the effect that) they should practice customs foreign to (the traditions of) the land, and that they should cease the (sacrificing of) whole burnt offerings,

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4. Zeitlin, S., The First Book of Maccabees, Harpers and Brothers, New York, 1950, Introduction, p. 10f.

and sacrifices, and drink offerings in the sanctuary, and that they should profane the sabbaths, and feasts, and pollute the sanctuary and those who had been sanctified; that they should (moreover) build high places, and sacred groves, and shrines for idols, and that they should sacrifice swine and (other) unclean animals; and that they should leave their sons uncircumcised, and make themselves abominable by means of (practising) everything that was unclean and profane, so that they might forget the Law, and change all the (traditional) ordinances. And whosoever should not act according to the word of the king, should die."<sup>5.</sup>

These were severe prohibitions which many Jews chose to disregard and suffer martyrdom rather than transgressing the Law; we possess two detailed tales of such occurrences.<sup>6.</sup> The struggle which then arose was waged for religious and political freedom; it was therefore quite natural that those involved should be unwilling to disregard any religious precept even though it endangered the lives of those who fought; two sources

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5. Maccabees I chap. 1: 41 - 50, (trans. Oesterly), in Charles, R. H., The Apocrypha and Pseudepigrapha of the Old Testament, Clarendon Press, Oxford, 1913, vol. 1, p. 70.

7. 8.  
Maccabees I and Josephus, report the reluctance of the Jews to fight their enemies on the Sabbath; they preferred to die in the observance of the Law to its full extent. Mattathias, the great leader of the rebellious forces, soon recognized the fact that this would prove to be an insurmountable obstacle to victory against the much more powerful enemy, so "they took counsel on that day, saying, 'Whosoever attacketh us on the Sabbath day, let us fight against him, that we may not in any case all die, as our brethren died in their hiding places.' Then there were gathered unto them a company of Chasidim, mighty men of Israel who willingly offered themselves for the Law, everyone of them."<sup>9</sup> Here one may recognize a very clear abrogation of a law of the Torah for a practical reason arising from an emergency; the change was simply made by an eminent leader on the field of battle without the assistance of trained legal specialists. The change is made without any attempt to refer to Biblical

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6. Maccabees II chap. 7: 1 - 42, 6: 18 - 31, (trans. Moffatt), Ibid., p. 140 - 41.

Maccabees I chap. 1: 62f, (trans. Oesterly), Ibid., p. 71.

7. Maccabees I chap. 1: 29 - 38, (trans. Oesterly), Ibid., p. 72.

sanctions for it; none of the counselors arises and states "v'chay bohem" as does R. Ishmael<sup>10.</sup> when confronted with a similar situation at a later time. The people acted to relieve themselves of the intolerable burden placed upon them; the decision of their great leader was fully accepted, even by the most pious of the fighters who associated themselves with the group as the concluding verse of the quotation has shown. In this manner one of the principle weaknesses in the unequal combat against the armies of Antiochus was overcome and undoubtedly enabled the Maccabees to win their victory with much greater speed.

We hear nothing further of changes along these lines after this time; it may be supposed that the decision made by Mattathias was no longer considered as valid as the emergency had passed, but we do not know of any action taken to state this clearly. It undoubtedly pointed the way for similar action in later emergencies;

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8. Josephus, F., Antiquities of the Jews, (trans. Whiston, W.), J. G. Rigg, Philadelphia, 1829, Book 12, Chap. 6, Sec. 2.

9. Maccabees I chap. 2: 39 - 42, (trans. Oesterly), Ibid., p. 73.

✓ 10. Talmud, Yoma, p. ✓

however, we fail to hear of any similar actions during the great struggle against the Romans in 70 C. E. or at the time of the persecutions in Alexandria in 39, or 66 C. E. Even the great revolt under Trajan of 114 - 117 C. E., of which few facts are known did not leave us an account of such an action either in Palestine or in the Diaspora cities, as Cyrene, those on the island of Cyprus and in Egypt.

A situation of desperate emergency only arose again among the Jews during the time of Hadrian's attempt to force the abandonment of Judaism. He acted in a manner quite reminiscent of Antiochus Epiphanes; his laws appear to have been very similar, but he did not make the mistake of coercing the Jews to the worship of foreign deities. His total concern was the rotting out of Jewish law and observance.

After the failure of the revolt under Trajan and following his death, Palestine remained quiet. His successor, Hadrian, did not follow his predecessor in attempting to extend the boundaries of the Empire; he busied himself with cultural efforts within the Empire, supervising them personally. The population of Palestine

remained restive throughout these years, but was aroused to a bitter struggle when the Emperor ordered a temple to Jupiter to be built upon the site of the now destroyed Jewish Temple. Some historians claim that this action followed a promise by the Emperor to restore the Jewish sanctuary.<sup>11.</sup> The order of Hadrian along with Messianic hopes of the people led to a final revolt against the Romans in 132 C. E. The victory of the Romans was assured from the beginning, but it necessitated the use of the greatest Roman general of the time, Julius Severus,<sup>12.</sup> as all previous leaders had been defeated. Severus came from Britain to lay siege to the land; he hoped thereby to avoid a major battle and to slowly starve the land into submission.<sup>13.</sup> His initial attacks were limited to small raids which disappointed the hopes of Bar-Kochbar who wished to stage a large pitched battle. Later he moved through the land attacking one fortress after the other and thus slowly destroying all resistance, until Bethar, the last point

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11. Graetz, H., Volkstümliche Geschichte der Juden, Oskar Leiner, Leipzig, vol. 2, p. 64.

Schürer, E., A History of the Jewish People in the Time of Jesus Christ, T. and T. Clark, Edinburgh, 1908, vol II, division I, p. 289. (He opposes this view.)

of resistance was taken in 135.<sup>14.</sup> The result of the war was a very nebulous victory for the Romans whose losses were so great that Hadrian omitted the usual introductory formula in his letter to the Roman Senate; it began without "he and the army were well."<sup>15.</sup> Of greater significance was the great destruction inflicted upon the once prosperous land; "all Judea was well-nigh a desert; fifty fortresses, 985 villages were destroyed, 580,000 Jews (?) fell in battle, while the number of those who succumbed to their wounds and to famine was never reckoned."<sup>16.</sup> In spite of the decimation of the population and the utter destruction of the province, Hadrian desired assurance that no similar rebellion would occur in future times; he, therefore, undertook the task of destroying Judaism as an effective religious force through his decrees. The task of administering these edicts rested in the hands of the

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12. Graetz, H., Geschichte der Juden, Oskar Leiner, Leipzig, 1923, vol. 4, p. 143.

13. Ibid., p. 145.

14. Ibid., p. 149.

15. Dio Cassius 69. 14, in Schürer, E., Op. Cit., p. 314.

16. Schürer, E., Op. Cit., p. 314.

previously unsuccessful general, Tinnius Rufus; he succeeded in carrying out his task with much thoroughness through the help of apostates.

So as to feel certain that no further revolt would be stimulated through a hope in the rebuilding of the Temple or of the city of Jerusalem, the city was totally destroyed. A new city was built upon a site slightly north of the former one, while a temple to Jupiter was raised upon the site of the old Temple after a plow had been drawn over it as a sign of the complete domination of the Romans. Hadrian settled the city with old soldiers, Phoenicians, and Syrians; the settlement of Jews within its walls was strictly prohibited; even their entrance into it was not allowed. In order to repel the Jews, a sow's head was mounted upon one of the main gates; so that the old rebellious city would be forgotten, the rebuilt one was called Alia Capitolina; the new name actually displaced the ancient one, so that a citizen of Alia Capitolina asked a bishop of the following century where the city of Jerusalem lay.<sup>17.</sup>

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17. Eusebius de Martyribus Palaestinae, chap. 11, in Graetz, H., Geschichte der Juden, vol. 4, p. 153.

The decrees of Emperor concerned themselves mainly with the observance of the Sabbath, circumcision, and the study of Jewish lore; however, in actual practice the laws were applied to much more than these three points; penalties were soon exacted for the observance of any Jewish law or custom; the extension of the prohibitions was done through the zeal of the governor, Rufus.<sup>18.</sup> As these laws reached the most essential parts of Judaism and as the penalty for the infraction of even the slightest of them might cause either a very heavy fine, or perhaps death, depending upon the whim of the judges,<sup>19.</sup> the truly faithful and pious Jews were left in a dilemma; a solution to the problem had to be discovered speedily. The situation became so unbearable that a contemporary who fled to Babylonia refers "to the Jews who live in Palestine and risk their lives for the commandments. 'Why art thou about to be burnt alive?' 'Because I read in the Torah.' 'Why art thou about to be crucified?' 'Because I ate mazzah.' 'Why art thou beaten a hundred stripes?' 'Because I carried the lulab.'"<sup>20.</sup>

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18. Graetz, H., Geschichte der Juden, vol. 4, p. 154.

19. Ibid., p. 156.

20. Mekilta Jethro Bahodesh, chap. 6 (edit. Friedman, 68b);

As no regular meetings of a court took place at this time, an emergency session was brought together at Lyddah to consider these questions which involved the sacrifice of life in the observance of a religious precept. 21. Although the decision made there after much debate and argument between the strict and liberal parties was quite liberal and required a Jew to give up his life only in the case of three instances, if he were commanded to perform incest, idolatry, or murder, 22. a very large number of Jews refused to abide by it. Among this number there were also many of the rabbis who had helped to formulate the change at Lydda. Contrary to the time of the Maccabees, we possess numerous stories of great martyrs of this period. Many suffered the most hideous types of death imaginable for small infractions of the law; Graetz states that the Romans of this time were only a

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in Finkelstein, L., "The Ten Martyrs", Essays and Studies in Memory of Linda R. Miller, The Jewish Theological Seminary of America, New York, 1938, p. 42.

21. Sanhedrin 74a.

22. Halevy, I., Doroth Harischoim Ie, Louis Golde, Frankfurt a. M., 1918, (states that this meeting took place before the fall of Bethar.), p. 353.

23. Sanhedrin 74a.

little inferior to the Inquisition in their methods of torture and slow death.<sup>24.</sup> The rabbis suffered because of their efforts to continue the tradition of the Law by teaching it inspite of the death sentence which was certain to follow discovery; one following the other, a whole generation of leaders was wiped out in the most horrible manner. Thus the Talmud relates the tales of the ten martyrs (although only seven can really be identified)<sup>25.</sup> as well as the death of countless pupils of these great men. In order to commemorate their suffering and martyrdom the period of Omer between Pesah and Shevuot has been considered one of sadness and semi-mourning up to the present day.

The task of destroying Judaism as an effective religion was simplified through the help of various apostates and through enemies of the Jews who were thoroughly familiar with the Jewish law and with their way of life so that they were able to detect infractions of the law which would have escaped even the

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24. Graetz, H., Geschichte der Juden, vol 4, p. 157.  
25. Lamentations Rabboh, (edit. Buber, S.), p. 50b

watchful eyes of the Romans. As their identity remained secret, they were a much more formidable foe than the Roman troops, government forces, or settlers. These men could be divided into two groups; those who attempted to curry favor of the new Roman government, and those who hated the Jews for reasons of religious principle.<sup>26.</sup> The names of only a few of these men have come down to us; one of the most effective was Acher,<sup>27.</sup> who was able to discover the smallest infractions of the law, such as a Jew requesting another to share his burden when required to labor on the Sabbath, thereby the former would decrease his own sin.

In spite of the watchful zeal of the Romans, the Jews either continued their religious observances secretly, or followed the decision of Lidda . The rabbis who risked their lives by teaching the Torah followed a rabbinic injunction which stated that the study and the teaching of the Law was of greater importance than the fulfillment of the requirements of the commandments; therefore, even those rabbis who had opposed martyrdom among the people at Lidda and who

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26. Graetz, H., Geschichte der Juden, vol. 4, p. 157.

27. Ibid., p. 157.

were unwilling to suffer for the sake of religious practices, were, however, willing to die for the sake of the continuity of the tradition. There were also some like R. Jose ben Kisma who believed the conquest of the Romans and their persecution to have been brought upon Judah by God as a divine punishment, therefore no action against this force could be taken, nor would any opposition avail.<sup>28.</sup> The vast majority of the leaders, however, continued in their duties, some quite boldly while others attempted to execute their tasks surreptitiously.<sup>29.</sup> Unfortunately neither method saved the men from the hands of the Romans; almost all of them suffered death at the stake or through the sword. Rome was almost successful in destroying the tradition and would have been able to do so had an old courageous teacher, R. Judah ben Baba, not been willing to risk his life in the ordination of the last of the disciples of the other martyrs.<sup>30.</sup> The Romans had heard rumors of this event and so sent their troops to the appointed place, but found that the old sage had just finished his task. The young students succeeded in escaping the

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28. Sifre to Deuteronomy 11: 13.

30. Sanhedrin 11a.

Roman band and continued the chain of tradition.

One might say that two events helped to save Judaism from utter destruction in this time of grave crisis. Foremost was the great decision made at Lidda which removed the burden of suffering from the majority of the people and yet enabled them to remain loyal to Judaism in their inmost hearts. Also of great importance was willingness of the teachers of the age to continue in their path inspite of the assured martyrdom which awaited them. These measures allowed Judaism to be kept alive for the following generations which did not need to fear such persecutions. Neither of these acts would, however, have succeeded had the reign of Hadrian continued for a longer period; fortunately the very tolerant Emperor Antonius Pius (138 - 161) ascended the throne three years after the final defeat at Bethar. Under his rule the restrictive laws of Hadrian were removed and the Jews were allowed to live in peace in their land; only the prohibitions against circumcising proselytes and that against entering

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29. Glatzer, N. H., Geschichte der Talmudischen Zeit, Schocken Verlag, Berlin, 1937, p. 46, (the source there mentioned is Avodah Sarah 18a.

31.  
Jerusalem remained in effect.

This concludes the history of the period during which all of the cases to be discussed took place. Only the first decision, which has already been referred to, is closely connected with the historical background. The history is, however, also of some importance for the remainder of the cases.

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31. Ibid., p. 56.

The historical setting in which the decisive meeting at Lidda took place has been clearly stated, but the manner in which the rabbis met the needs of the times not only in this matter, but in other emergency decisions as well remains to be discovered. The teachers who met at Lidda were not discussing a theoretical problem, nor were they leisurely deliberating the case in the manner of a court of law; they had joined together to find a practical remedy for their people in the hour of their greatest need. Each of the men was an outstanding scholar who commanded much respect among the people; each represented a point of view toward which he attempted to sway the remainder of the scholars, so the final result was a compromise between the great men. It was agreed by all that martyrdom need not be suffered except in connection with the three most basic points of law; if a command to transgress these three - idolatry, incest, and murder - suffering and martyrdom was required rather than their transgression. It is interesting to note that this limitation of Judaism goes even beyond the requirements of the Noachian Laws which prohibited

blasphemy, idolatry, adultery, bloodshed, robbery, the eating of flesh taken from a living animal and which also provided for the establishment of courts; this is the most liberal form of these laws; other formulations would include emasculation, drinking the blood from a living animal, etc.<sup>32.</sup> until some rabbis reached thirty commandments, but R. Ulla ( Second Generation of Amoraim, 257 - 320 )<sup>33.</sup> ironically states that only three of these are observed - they do not draw up a kethuba for males, they do not weigh out the flesh of the dead in the market place and they have respect for the Law.<sup>34.</sup> In any case the basic limits of Judaism were more liberal than the laws required of all mankind.

In the discussion which took place at the house of Nithza in Lidda<sup>35.</sup>, a town in southern Palestine also called Diospolis, two dominant views clashed until a compromise decision was reached. R. Ishmael, famous for his hermeneutical rules as well as for the authorship of the Mechiltah and Sifreh, defended the view that

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32. Sanhedrin 56a.

34. Hullin 92a.

33. Mielziner, M., Introduction to the Talmud, Bloch Publishing Co., New York, 1925, p. 47.

35. Sanhedrin 74a, the passage discussed from here onward.

it was not necessary to die the death of a martyr if commanded to worship an idol; he based this decision on the Biblical passage "he shall live by them", and therefore not die in their observance.<sup>36.</sup> Yet he placed a restriction upon this liberal interpretation by stating that this idol worship might not be practiced openly; if one were bidden to do so publicly, martyrdom was preferable to life as he further proved by stating, "neither shall ye profane My holy name, but I will be hallowed."<sup>37.</sup> The decision in this matter, however, followed R. Eliezer who cited the passage, "and thou shalt love the Lord thy God, with all thy heart and with all thy soul, and with all thy might."<sup>38.</sup> The last section was interpreted by him to include even the sacrifice of ones life for the religion; therefore martyrdom was thought preferable to idolatry.

The decision to request death rather than commit murder was unanimous; the proof in this case was derived from the case of a betrothed maiden who must suffer death rather than undergo violation;

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36. Leviticus 18: 5.  
37. Leviticus 22: 32.  
38. Deuteronomy 6: 5.

by analogy the person ordered to commit a murder must rather allow himself to be killed than commit this crime, as we do not know that one life is more valuable than another one would not be justified in saving oneself. Loss of life is also preferred in this case as it entails a passive state while murder causes the person to violate the commandment "thou shalt not murder." The prohibition against incest was included without further discussion.

Herewith the discussion originally held at Lidda is closed; the remainder of the material in this section stems from a much later time as the authorities quoted are either of the third generation of Amoraim (320 - 375) or of the fourth generation of Amoraim (375 - 427).<sup>39.</sup> A part of this time was one of difficulty for the Jews of Babylonia as they suffered from some disabilities and persecutions under the reign of Schabur II (309 - 379); it was during this time and due to these persecutions that the great teacher Rabbah died.<sup>40.</sup> It was therefore a period during which the problem of martyrdom

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39. Mielziner, M., Op. Cit., pp. 48 - 52.

40. Graetz, H., Volkstümliche Geschichte der Juden. vol. 2, p. 146.

again became a living issue. The persecutions did not reach the heights of severity of the hadrianic period; they were sporadic rather than continuous and therefore the teachers of the time could afford to be much more stringent than those of the time of Akiba. The decision made at Lidda was too liberal for the needs of their age; R. Dimi, who presided over the academy at Nahardea for three years (385 - 388)<sup>41.</sup>, restricted the concentration of Judaism to three basic prohibitions to those times of persecution during which no royal decree forbidding religious observances had been issued. At any time during which the persecution was guided by royal laws, the Jews were to suffer martyrdom rather than transgress even the most minute of the ritual laws.

R. Rabbin sought to place even further restrictions upon the validity of the decision of Lidda by limiting it to application in private life alone; in the open public a Jew was to suffer death rather than transgress any commandment. There he should desire to be a martyr and in this manner strengthen the belief of his fellow Jews through his example of courage.

The discussion now turns to a definition of a minor precept for which martyrdom is required to be suffered; even customs are included in this area, so that a Jew asked to tie his shoes in the manner of a gentile should suffer martyrdom rather than transgress this custom publicly. This action is to be taken so that other Jews will not think that he has converted. An action committed publicly is defined as one taking place before ten men. In this case the clever Abaye attempted to introduce an objection from the example given by Esther in the Bible; it is quite certain that she submitted to King Ahasuerus publicly, but the rabbis answered the objection by stating that her submission was purely passive; Raba (320 - 375)<sup>42.</sup> stated that the intent of the gentile king in this case was not directed toward destroying her religion; he acted only for his own pleasure; thus her submission was not a transgression of a religious precept as the intent of the gentile was of major importance. The same type of reasoning was also used in another case; a Jew was required to

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41. Mielziner, M., Op. Cit., p. 52.

42. Ibid., p. 48.

to do work for a gentile on the Sabbath; he was to suffer martyrdom rather than do this unless the gentile requested it of him only for his own pleasure, but without any thought of harming his religious beliefs. In a similar manner Naaman of the Bible is willing to accompany his royal master in his worship of Rimmon as this is only done for the pleasure of the king, but he swears that he will not longer publicly worship Rimmon.<sup>43.</sup>

The prohibition against incest is discussed at some length; it is clearly shown that any action remotely connected with incest or lewdness is strictly prohibited. The rabbis take a rather doubtful view of sexual pleasures here stating that since the destruction of the Temple they are taken from those who practice them lawfully and given over to sinners.

The later discussion here added to the original decision made at Lidda demonstrates the complete annulment of that great decision. The three basic precepts for which one must suffer martyrdom rather than transgress them are surrounded by such impos-

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43. Kings II 5: 18f.

sible restrictions that they could be of no further value. This change shows the spirit of an age during which some persecution was suffered; it was sufficient for Jews to utilize the decision made at Lidda as a pretext for general laxness in regard to all laws. The rabbis of the time, however, realized that this time of oppression was not sufficiently severe to warrant the use of this decision; they recognized the grave danger involved in permitting the old decree to remain uninterpreted, thus leaving the path open for defection with little or no real cause. As they were not able to revoke the decision and as it had not been forgotten as might have been the case with the Maccabean ruling regarding the permissibility of fighting on the Sabbath, they simply interpreted it out of the realm of practical value. A major wave of persecution must take place under the auspices of the government and must concern itself with public humiliation of the Jews, so the two interpretations which denied the validity of the law in these instances actually abrogated it.

This concept of action permissible during

periods of emergency remained as the accepted tradition until another period of great emergency arose as was the case in the time of Maimonides. He permitted action even more liberal than the decision of Lidda; the superficial acceptance of conversion in order to save ones life was thought permissable by him; he was forced to write his Igereth Shemad before this idea was accepted by other teachers. This was only to be used as a last resort as emigration was considered preferable; the decision was followed by other teachers during the Middle Ages.<sup>44.</sup>

The stratification of this passage into two distinct sections is quite clear. The original intent of the rabbis was that of limiting Judaism to three basic commandments in a time of grave crisis; their decision met a great need in their time. At a later time the law no longer served a beneficial purpose, but was probably used as a pretext for personal laxness; the rabbis once more met the challenge of the times and interpreted it out of existence. In the report from Lidda the emergency of the situation

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44. Zeitlin, S., Maimonides, A Biography, Bloch Publishing Co., New York, 1935, pp. 6 - 12.

may be recognized by the brevity of the discussion, while the later additions came from a time when minutiae and fine points could be leisurely discussed. The original decision did not survive without additions in the Talmud, but we find it in a midrash in which it is stated that it was for the transgression of these three basic legal precepts that the generations of the deluge and of Sodom and Gemorrah were wiped out.<sup>45.</sup>

Another discussion which stems from the same emergency meeting at Lidda is reported in Kidushin; ✓ the question of the comparative value of study and practice is raised. R. Tarfon believed practice to be of greater importance while R. Akiba emphasized study. The remainder of the rabbis agreed with Akiba as study eventually leads to action. This type of reasoning is the basis for the decision to limit the essentials of Judaism to three elements for which martyrdom must be suffered; it also formed the basis of the rabbis' defiance of Rome in that they continued to teach in spite of the certain death which awaited them, in that they taught even after they themselves were no longer willing to risk their lives for the

practice of the law.

The decision to limit the basic elements of Judaism to three moral precepts is the most liberal decision of an emergency nature discussed in this paper, but it is not the first to be found in <sup>45</sup>almudic literature. Perhaps the earliest of such decisions is found in the second chapter of the Mishna Yoma<sup>46</sup> which concerns itself with a series of accidents which occurred in the Temple and which led to some legislation which radically changed the Temple procedure. As the passage speaks of the Temple and of actual cases which could not be invented purely for the sake of discussion, the event must have occurred prior to 70 C. E. Further evidence for this is found through the connection of R. Zadok, a priest, of whom legend declares that he fasted forty years before the destruction of the Temple, with this case; this would limit the events to the time immediately preceding the destruction of the Temple.

The case concerned itself with the removal of ashes from the altar which was usually done by anyone

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45. Bereshit Rabbah, 31: 6.

46. Yoma 2: 1, 2.

who desired to do so; in those times when many were interested in participating in this action they raced to the altar in the competition for the privilege; in the case of a tie, the decision was made by lot. The Mishna states that one of the contestants once fell from the altar during the race and thereby broke a leg; this led to the decision to clear the altar by choosing a person by lot. The Gemarah, in commenting upon this Mishna, states that an eager aspirant once murdered his opponent at the very foot of the altar. The following discussion revolves around two points - whether the decision to choose by lots was made because of the murder or following the breaking of the leg, and the uncleanness of the Temple with its implications. The emergency decision here made for one or the other reason was that of changing the procedure in the Temple and clearing the altar through a person chosen by lot, rather than allowing free competition for the honor. The teachers began by suggesting that the change in the law would surely not have been made for the mere breaking of a leg if the event of the blood-

shed had preceded it, so the accident must have preceded the murder. This, however, raised the difficulty of accounting for the murder all together; there would be no possibility for such an event taking place if the person was already chosen by lot. The problem was solved by admitting that the incident of the bloodshedding was earlier than the other, but that the rabbis had thought this to be an unfortunate accident and had therefore proposed no change in the procedure at this time. At the occurrence of the broken leg, however, they recognized the fact that danger to life existed even when such unfortunate accidents did not occur; this led to their decision to choose the person by lot henceforth rather than through swiftfooted eagerness.

The remainder of the discussion is concerned with the purification of the Temple after bloodshed had taken place within it; this problem was of such importance that one rabbi inquired whether the shedding of blood or the uncleanness of the Temple was of greater importance; the conclusion proposed stated

that the matter of the bloodshed was of lesser concern. In spite of their interest in the purity of the Temple, the rabbis showed sufficient interest in the preservation of life to bring about this change in the Temple ritual. Every incident which endangered human life or threatened to bring about any serious injury was to be avoided.

This case differs quite radically from the first one discussed in the paper as it concerns itself with a very specific matter which was of importance to a small number of people and which ceased to have any meaning or applicability a few years later because of the destruction of the Temple. It shows the concern of the rabbis with every individual life and with their desire to restrain him even in a part of the Temple ritual. The danger which was there incurred was not imposed by outside forces, but was brought about through the individuals own desire to participate in the Temple service. The danger was easily removed through the modification of the law. Although a decision in this case had to be reached

quickly, the aura of extreme urgency which surrounded the previous example is absent here. The case demonstrates the willingness of the rabbis to act on any matter which endangered life, even if an institution as holy as the Temple was involved.

A third type of case which also concerned the individual rather than the group is found in the discussion of the eighth chapter of Yoma; <sup>47.</sup> whenever any danger to human life was the result of ritual observance, that observance could be abrogated without even relying on the testimony of experts. This passage may be dated from approximately the same period as the first discussed in the paper; R. Mattithiah ( Third Generation of Tanaim, 120 - 139 ) <sup>48.</sup> is mentioned in the following Mishna.

The case deals with a pregnant woman who yearns for food on the Day of Atonement; it is stated that she may be fed until she feels well, so even the most holy day of Judaism may be profaned for the sake of assurance that no harm will befall the unborn child. The teachers of the Gemarah quote a Baraitha which

is even more liberal as the question there revolves about a request for pork on the part of a pregnant woman; again it is clearly stated that her desire should be satisfied. This should be done through degrees so that the woman may satisfy her yearning before she has actually transgressed the law. In the beginning only the placing of a straw into her mouth is advocated, later she may be allowed to sip of the juice of the meat, but if these actions do not satisfy her she is permitted to eat the meat itself.

At this point the three essential elements of Judaism for which one must be willing to suffer martyrdom are once more discussed; nothing new is added to the first section and only minor variations in illustrations are added by Raba ( Third Generation of Amoraim, 320 - 375 )<sup>49.</sup> to the second part of the discussion.

The whole discussion enters only as incidental to the statement "there is nothing that can stand

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47. Yoma 82a - 85b.

48. Mielziner, M., Op. Cit., p. 28.

49. Ibid., p. 30.

before saving life, with the exception of idolatry, incest, and bloodshed." R. Jehudah Hanasi reverts to the original subject under discussion and adds that the woman should be made fully aware of the day upon which she is making her request; the fact that it is the Day of Atonement may cause her to change her mind. In order to impress the seriousness of the request upon the mind of the people a little tale is told; the child of that woman who heeded the warning became a famous rabbi while that of one who did not accept the hint grew to be an evil man. The addition shows us that R. Jehudah Hanasi took a stricter view on the matter than his predecessors; he sought to curb the freedom left by their decision. In reality this entailed a partial nullification of the law which had previously been expanded and liberalized from the Mishnaic version.

The Mishna continues by stating that an emergency is not only caused by a pregnant woman, but by any sick person; such an individual may be fed either through the testimony of experts, or if none are pre-

sent through his own statement. The Mishna is expanded through the Gemarah by R. Jannai, a semi-<sup>50.</sup> Tanai living at the beginning of the third century; he interpreted the Mishna to indicate that a sick person is fed at his own wish even if this be opposed by the testimony of a physician; as proof for the legality of his point of view he quotes the Biblical passage, "the heart knoweth its own bitterness."<sup>51.</sup> The remainder of the Mishna is read to indicate that the decision of the physician is accepted if he favors the bringing of food contrary to the wish of the patient; the argument is buttressed by the fact that a sick person may not be quite conscious of the action he is taking and may, therefore, not fully realize the danger into which he is placing himself through the refusal of food. The Gemarah continues with a more complicated analysis of the passage, but arrives at the same conclusion; the basic consideration which always predominates is danger to human life; whenever this is present, the more lenient legal view is followed. This ruling is further clari-

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50. Mielziner, M., Op. Cit., p. 39.

51. Proverbs 14: 10.

fied by an example given in the tractate Sabbath;<sup>52.</sup>  
the discussion concerns the desecration of the  
Sabbath and takes place between Mar Zutra, who pre-  
sided over the academy at Pumbeditha from 411 - 414,<sup>53.</sup>  
and R. Ashi, who headed the academy at Sura for fifty -  
two years,<sup>54.</sup> Here the former represented the point  
of view of leniency while the latter favored strict-  
ness; both are quoting Mar Samuel ( First Generation  
of Amoraim, 219 - 257 )<sup>55.</sup> indirectly, but their quo-  
tations differ. Rabina then asks Meremar ( Fifth  
Generation of Amoraim, 427 - 468 )<sup>56.</sup> which is the  
accepted tradition; Meremar followed Mar Zutra as  
leniency is always preferred in cases of doubt over  
human life; this whole case also dealt with the  
question of a pregnant woman.

This in itself is a most interesting and far  
reaching decision which shows the very liberal spirit  
which governed the views of these teachers. It may  
be of greater importance than any previously discussed

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52. Sabbath 128 b.  
53. Mielziner, M., Op. Cit., p. 52.  
54. Ibid., p. 51, also see p. 202.  
55. Ibid., p. 41.  
56. Ibid., p. 53.

case as it was not limited to an isolated incident, nor to any specific time. It may be seen from the quotation in Sabbath that this remained the dominant attitude throughout the Talmudic period and was not changed at a later time; the attitude may even have become more liberal during later times as Mar the son of R. Ashi ( Fifth Generation of Babylonian Amoraim, 427 - 468 )<sup>57.</sup> states that the desire for food by an individual overrides the opinion of one hundred experts who would deny him food.

The following Mishna displays further liberalism as it would allow anyone seized by a ravenous hunger to be fed unclean things until "his eyes are brightened."<sup>58.</sup> This passage is from the same time as the previous one. A Barathai then states that one acts here as with a pregnant woman who yearned for food; the food is offered to the person by degrees. Rabbah ( Third Generation of Amoraim, 320 - 375 )<sup>59.</sup> continues the discussion which concerns itself with the preferability of eating tebel ( untithed foods )

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57. Ibid., p. 53.

58. Yoma 83a.

59. Mielziner, M., Op. Cit., p. 48.

or terumah ( the first levy given of the produce to the priests ), but this discussion adds little to the general view which is accepted without modification; it is made clear that one may even eat food for which the terumah would have to be separated on the Sabbath. Certain of the teachers believed this to be selfevident as the prohibition against removing terumah on the Sabbath was only a rabbinic one and so might be abrogated without difficulty. The remainder of the passage is irrelevant to our discussion as it deals with the recipes of the different rabbis for curing a person of hunger and producing brightened eyes; after this follows a long tale which does not concern itself with this subject matter.

In a quotation of R. Matthiah ben Heresh one may find permission to administer medicine to sick persons on the Sabbath; "because it is a possibility of danger to human life and every danger to human life suspends the laws of the Sabbath."<sup>60.</sup> The Mishna continues this theme by permitting the rescue of anyone trapped under fallen debris on the

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60. Yoma 83a.

Sabbath; this action may be taken even if doubt exists as to his being there, or if doubt prevails as to the person being a heathen or a Jew. Only if it is quite definite that the person buried under the debris is dead, may the task of his removal be postponed until the Sabbath has passed.

In this instance the Gemarah is found to greatly increase the scope of the law through its very liberal interpretation. The restrictions of tending the sick is removed not only from this Sabbath, but also from the following one; although the crisis may be of such a nature that it lasts eight days, one does not wait until the Sabbath is over to tend the sick. An example of warming water is given; this is not only permitted if the sick person desires to drink it, but also for the sake of refreshing him. Nor is such an action to be left to minors, or servants, but a Jewish adult shall feel free to carry them out. Furthermore in matters of life and death persons ordinarily considered inferior are allowed to register their opinions on an equal level with others; this is applicable to women and to Samaritans. One

may see that every attempt is made to provide the quickest recovery and the utmost comfort for a sick person; any measure which might cause delay is swept aside without hesitation.

The same type of reasoning is followed as the theme of rescue from physical danger is discussed. The course of action must always be the speediest one possible; it is never required to receive the permission of a Beth Din before acting, although the action will break a law of the Sabbath. The basis for this reasoning is taken from a Baraitha; one may even conduct a rescue from which one is certain to receive some benefit; thus the saving of a drowning child may lead to a catch of fish; the digging out of a trapped child may cause a man to build steps to the pit, which he had intended to do following the Sabbath anyhow; the breaking down of a door may bring the rescuer wood for a fire; the extinguishing of a fire may lead him to only subdue the flames into a charcoal fire; however, none of these problems should cause the slightest hesitation as the danger to human life is great in each one.

In a case in which debris fall upon a house, no thought is to be given to the fact that the majority of those living therein were not Israelites, the rescue is to proceed on the Sabbath; majorities are disregarded in cases of danger to human life; this follows the opinion of Mar Samuel ( First Generation of Amoraim, 219 - 257)<sup>61.</sup> Some discussion of the composition of a majority and a minority is held, but this does not alter the original decision. Thus permission to desecrate the Sabbath is given in cases of doubt and in those instances in which the Jewish population is in no danger as the heathens would undoubtedly come to rescue their fellows from the debris.

The further elaboration of the Mishna leads to the conclusion that a search must be conducted even if a person's presence is doubted. The rescue must even proceed in those instances where it is quite clear that the person has but a short time to live. The permission to remove a corpse is not granted except in the case of a fire; there R. Jehudah Hanasi reasons that were such permission not granted, the

upset relatives and friends of the deceased would probably attempt to extinguish the fire thereby not only transgressing the rabbinical ordinance against moving an object on the Sabbath, but would also transgress a Biblical law. All carelessness in the rescue operations is to be avoided; the death of a person left in the debris must be certain; it may not be assumed that all these trapped are dead because those at the top have been killed. In all cases it is necessary to search until one is able to examine the nose or the heart, a difference of opinion existing as to which is decisive; only after such an examination may death be assumed.

The teachers desired to find a Biblical justification for their interpretation; this problem was solved upon a journey of four famous rabbis - Ishmael, Akiba, Eleazar b. Azariah, and Levi ha-Saddar - who give their proof texts. R. Ishmael cites the text, "if a thief be found breaking in"<sup>62.</sup>; there clear permission is given to take his life, although it is doubtful as to whether he is a thief or a murderer.

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61. Mielziner, M., Op. Cit., p. 41.

62. Exodus 22: 1.

One may certainly desecrate the Sabbath to save human life if this action which pollutes the whole land is permitted; Raba ( Third Generation of Amora<sup>63.</sup>im, 320 - 375 ) would reject this on the basis that the Bible recognizes the impossibility of controlling a man at a time when his money is endangered. R. Akiba proposed the citation, "if a man come presumptuously upon his neighbor, etc. thou shalt take him from My altar that he may die;<sup>64.</sup> this is thought to refer to the interruption of the Temple service in order to obtain the testimony of a witness who may save the life of an accused person. If the holy service of the Temple may even be interrupted to save a life, how much more readily may the Sabbath be desecrated for the same purpose; this argument was also refuted by stating that it would be applied only in cases in which the death penalty was quite certain, but we do not know whether the case at hand is not a doubtful one. R. Eleazar attempts to bring his proof from the fact that circumcision which is only concerned with one of

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63. Mielziner, M., Op. Cit., p. 48.

64. Exodus 21: 14.

the two hundred and forty-eight limbs of the body supercedes the Sabbath, so danger to the whole body most assuredly suspends it. Again the refutation of the case under consideration being a doubtful case is brought forward. The opinion of Levi ha-Saddar is not preserved, if he gave one, but we find three attempts by other rabbis. R. Jose ben Judah ( Fifth Generation of Tanaim, 165<sup>65.</sup> - 200 ) cited, "only ye shall keep my Sabbaths"<sup>66.</sup>; the word only is understood to allow for exceptions to be made. R. Jonathan ben Joseph ( Fourth Generation of Tanaim, ca. 140<sup>67.</sup> ) based<sup>68.</sup> the interpretation upon "for it is holy unto you;" it is given into your hands and not you into its hands, which approximates the final answer as it intimates the primacy of human life over law and ritual. R. Simeon ben Menassia would state "and the children of Israel shall keep the Sabbath"<sup>69.</sup>; he infers from this that one Sabbath may be profaned so that the person may live to keep others in the future.

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65. Mielziner, M., Op. Cit., p. 36.

66. Exodus 31: 13.

67. Bernstein, D. J., Encyclopedia Judaica, vol 9, p. 290.

68. Exodus 31: 14.

69. Exodus 31: 16.

R. Simeon ben Menassia was a contemporary of Jehudah Hanasi.<sup>70.</sup> Samuel ( First Generation of Amoraim,<sup>71.</sup> 219 - 257 ) then stated that his proof text would have been, "he shall live by them,"<sup>72.</sup> and not die because of them. This is the interpretation which is accepted by Raba who had rejected all the previous ones on the ground that they referred only to certain cases, but not to doubtful ones. This last and quite simple proof text is accepted and admired even by Rabina ( Sixth Generation of Amoram, 468 - 500 )<sup>73.</sup> The final text clearly states the supremacy of human life over all considerations of legality and ritual law.

Several examples of law dealing with cases in which human life was endangered have been examined in this paper; it may be readily seen that the rabbis speedily set aside the obstacles of law and ritual in order to preserve life; life always remained of primary importance. No distinction was made by them whether only one life was endangered or whether many were imperilled. In

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70. Lauterbach, J. Z., Jewish Encyclopedia, vol. 11, p. 355.

71. Mielziner, M., Op. Cit., p. 41.

72. Leviticus 18: 5.

73. Mielziner, M., Op. Cit., p. 54.

the first decision discussed the recognition of the needs of the time could be clearly seen; the teachers of this period did not believe religion to be an absolute force to which man must adhere, regardless of the consequences to his life, but they thought of it as benefiting the life of the person and enabling him to develop. This was the point of view taken by the more liberal element, but it was not the universally accepted point of view as may be illustrated by a midrash<sup>74.</sup> attributed to R. Joshua ben Hananiah ( Second<sup>u</sup> generation of Tanaim, 80 - 120 )<sup>75.</sup>; in this tale Hadrian challenges the superiority of Moses over him as Moses is dead while he yet lives; a rabbi proposes that the <sup>H</sup>emperor issue a decree which shall not be trespassed for thirty days; this shall be a test of Hadrian's powers. He agreed and forbade the lighting of fires for that period of time, but on that very evening while he and the rabbi are on the roof of the palace, they see smoke rising from the residence of

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74. Koheleth Rabbah 9: 32.

75. Mielziner, M., Op. Cit., p. 25.

one of his officers; upon inquiry they discover that he had become sick and required warm water; thereupon R. Joshua chided the king as his law had so readily been broken while the Law of Moses which was given thousands of years before had never been transgressed; no Jew had ever kindled a fire on the Sabbath for any reason. This outlook challenged the view of the majority, although I do not know how prevalent it was. In all later times, both post-Talmudic and modern, the more lenient attitude prevailed in all instances in which these types of emergency conditions arose.

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Midrash Rabbah Bereshit

Midrash Rabbah Koheleth

Talmud Yoma

Talmud Sanhedrin

Talmud Sabbath

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