

The Halachic Status of the Herodian Dynasty

By Yakov Shafranovich (torah /at/ shaftek [dot] org)

[WARNING: THIS IS “SVORAH V'PILPUL” AND SHOULD NOT BE RELIED ON AS A VALID HALACHIC OPINION.]

I. Introduction.

The era of the second Temple was plagued with many difficulties for the Jewish people. When the Greeks conquered the Land of Israel, they brought with them a culture that was attractive to a large segment of the Jewish People¹. Many Jews became Hellenized and left the faith of their fathers, there were many caught in between who were unsure of their beliefs². The Seleucid dynasty that was ruling at the time was very adamant in forcing the Hellenistic culture upon their subjects. This was expressed by King Antiochus IV (“the wicked”) more than any other king. He decided to uproot Judaism by forbidding its practice and defiling the holy Temple. A revolt sanctioned by the Sages begun at that time and was initially headed by Matisyahu, the founder of the Hasmonean family. After his death a year later, his sons who eventually became kings headed it. However, the monarchy of the Hasmoneans was not to last: they were punished for taking away the kingship from the Tribe of Judah³. After the events of Chanukah, many descendants of the Hellenized Jews joined the Sadducees (which were a sect that preached what they believed as the “modern” version of Judaism that only accepted the Written Torah)⁴; those who remained loyal to the Torah became known as the Pharisees⁵. The influence of the Sadducees and the Hellenists remained strong during the entire reign of the Hasmoneans.

Matisyahu’s grandson, Jochanan Hyrcanus son of Shimon Macabbi, conquered many surrounding lands including the land of the Edom, descendents of Esau. He converted them to Judaism retaining them as slaves to the crown⁶. After his death, his son Judah Aristobolus ruled for a short time. After he died, his wife married his brother, Alexander Yannai, via levirate marriage⁷ and he became king. Over the years, the Hellenist and Sadducee elements within the Jewish nation strengthened themselves to the point that they were able to come out publicly during the reign to Alexander Yannai. The Talmud⁸ relates to us one of his most horrifying acts⁹: after being convinced

¹ The Greek culture constitutes the bulk of today’s culture in fulfillment of the verse “*May G-d extend Japheth*” (Genesis 9:27).

² In Chapter 24 of *History of the Jewish People*, Rabbi Rabinowitz states that one of the reasons for them becoming Hellenized was due to the influence of Yosef ben Tuvia who was appointed as a tax collector over the entire region by the Egyptian authorities. He employed many Jews in his service that had to go to the Greek cities to collect taxes from their inhabitants. As the result of that interaction, many of these Jewish tax collectors became Hellenists. In addition, the mere presence of these cities and their inhabitants had a tremendous negative impact on the Jewish people (See chapters 24-27).

³ *Ramban* (Genesis 49:10), *Seder HaDoros*; see *Rambam* in the beginning of הילכות הנוכה who seems to argue).

⁴ History tends to repeat itself; this is not unlike today’s vision of the Reform and Conservative movements to preach the “modern” version of Judaism.

⁵ See *History of the Jewish People*, Chapter 55 for discussion about this term.

⁶ See *Ramban* in *Sefer HaGeulah* (p.284 in Shavall edition) and *Even Ezra* (Genesis 27:40).

⁷ Aristobolus died without children and thus his wife, Shlomitzion, the sister of Tanna Shimon ben Shetach, became a Yevomah. Since the Hasmoneans did not have a halachical status of kings (which would forbid their queens to marry anyone else) Yannai was able to marry her through a levirate marriage before he became the High Priest (avoiding the prohibition of not marrying a virgin). [See *History of the Jewish People*, Chapter 59 and footnotes there].

⁸ Kidushin 76a

⁹ See *Josephus* and others for details of his other actions.

by an evil man named Eliezer ben Pavarya that the Sages were undermining his power¹⁰, Yannai commanded that the Sages should be executed. Many Sages were killed and others escaped to Egypt¹¹. Eventually Rabbi Shimon Ben Shetach¹² convinced Yannai to stop his campaign and the Sages were able to come back. The failure of the Hasmonean family to rule properly as illustrated by the actions of Yannai spelled the end of the Hasmonean dynasty and the independence of the Jewish nation¹³. After Yannai died, his wife Shlomtzion became the ruler. After her death, her two sons from Yanni, Aristobolus and Hyrcanus, started fighting over the throne and invited the Roman general, Pompey, to settle their dispute¹⁴. As soon as the Romans had their foot in the door, they stayed: Pompey appointed the weaker brother as king. After Aristobolus refused to accept the judgment of Pompey, Pompey used this as an excuse to conquer the Land of Israel. In the process, he captured Jerusalem and slaughtered many of its inhabitants. He also captured Aristobolus and his son Alexander, and took them in chains to Rome. Hyrcanus stayed in Jerusalem as the High Priest and Nasi of the newly conquered Roman province of Judea. The Jewish people were now under the power of Rome and were ruled by the Roman procurator in Damascus¹⁵. At the same time, an advisor of Hyrcanus named Antipater was becoming more and more powerful in the country. He and his sons exerted more and more influence politically as the Hasmoneans lost their influence. Both of these events were a fulfillment of the verse: *“The stranger among you will ascend higher and higher, while you will descend lower and lower”* (Deuteronomy 28:43).

The reign of the Hasmoneans had a glorious start during the events of Chanukah when the Hasmoneans successfully fought off the Greeks and revived the spiritual state of the Jewish people. Nevertheless, it ended ignominiously at the hands of a slave named Herod who exterminated the family and reigned in their stead¹⁶. In addition, if that was not enough, he took the name of the Hasmoneans for himself and was associated with them to such extent that the Talmud¹⁷ found it necessary to rule that anyone from the House of the Hasmonens descended from slaves. The Talmud¹⁸ describes how Herod took power: *“Herod was a slave of the house of the Hasmoneans. He had set his eyes on a certain young girl [from that family]. One day he heard a Heavenly voice that said: ‘Any slave that revolts now will succeed’. He rose and killed all of his masters but left that girl alive. When she saw that he wanted to marry her, she ascended to the roof and raised her voice saying: ‘Whoever comes and says: I am descended from the house of the Hasmoneans is a slave, for no one was left from them except this maiden (herself) and this girl is hurling herself from the roof to the ground’ (then she killed herself)”*.

Herod and his descendants ruled the Land of Israel until the Second Temple was destroyed around 70 CE by the Roman hordes under the command of general Vespian and his son Titus¹⁹. Even though Herod and his descendents were not exemplary individuals, nevertheless G-d gave

¹⁰ There was a dispute to whether Yanni was able to serve as High Priest since his mother was captured by the Greeks during the war (see Rashi on Kidushin 76a).

¹¹ Among those who escaped to Egypt was the Tanna Rabbi Yehoshua ben Prachiya, whose student named Yeschu left the faith (Sotah 46b). According to some opinions, many years later the story of Yeschu was used by Paul as the basis for Christianity.

¹² He was a brother of the queen (Brochos 48a)

¹³ *History of the Jewish Nation*, Chapter 60.

¹⁴ See Sotah 49b, Bava Kama 82b and Menachos 54b where the Talmud elaborates on how they fought over Jerusalem.

¹⁵ *History of the Jewish Nation*, Chapters 62-64.

¹⁶ According to *History of the Jewish People* and *Josephus*, Herod captured and killed the Antigones, the son of Aristobolus, the last direct male descendant of the Hasmoneans and killed the rest of the family.

¹⁷ Bava Basra 3b and Kiddushin 70b.

¹⁸ Bava Basra 3b.

¹⁹ See Gittin 53b-57a for some of the details surrounding these events.

them the kingship over the Jewish people²⁰. In this brief article, we seek to discuss the Halachic status of Herod and his descendants as seen from the Talmud, Rishonim and various commentators.

II. Herod's Father.

According to many sources Hyrcanus, son of Yannai, had an advisor named Antipater who was Herod's father²¹. He had five children including Herod and he got them appointed to various positions throughout the country. During the reign of Shlomtzion, Hyrcanus's mother, Antipater assisted with the governance of the Trans-Jordan region²² and since Shlomtzion considered him "a friend of the crown", it is assumed that he led an observant lifestyle²³. Concerning his status, one opinion²⁴ holds that he was a descendant of the Edomites that Hyrcanus's grandfather, Jochanan Hyrcanus, forcibly converted. Thus, he was considered a slave to the House of the Hasmoneans²⁵. Another opinion²⁶ holds that he was a full-fledged Jew who married a woman of dubious descent²⁷. In regards to his descendants, his personal status does not matter since the mother determines the status of the child²⁸ and thus we will not concentrate on him.

III. Herod.

Herod earned a place of notoriety in the annals of Jewish history for the evil committed during his reign²⁹. According to some opinions³⁰ he was an evil individual and there was little positive that can be said about him. However, according to others³¹ he only did evil in the beginning of his reign and later repented. During his reign, he rebuilt the holy Temple³² and did not interfere with the Sages³³ (aside from the persecution of Sages in the beginning of his reign³⁴).

The Talmud³⁵ states: "*Herod was a slave of the house of the Hasmoneans*". The term "slave" used by the Talmud in this context means an עבד כנעני³⁶ and not an עבד עברי³⁷ or a regular servant as seen from the commentary of the Maharsha (ad loc). This is also seen from Tosfos (ad loc) that discusses

²⁰ At times G-d may appoint certain individuals to the positions of kingship even though they might not be exemplary individuals; nevertheless, we are obligated to honor them since G-d decided that they deserved these positions. We see this from Elijah who honored Ahab, king of Israel, by running in front of him, even though Ahab was an evil man (heard in the name of Rabbi Yissocher Frand שליט"א).

²¹ *Seder Olam Zutab* (Chapter 8), *Rabbeinu Gershom on Bava Basra* (4a), *Josephus, History of the Jewish People* (Chapter 62).

²² *History of the Jewish People*, Chapter 60, p. 278, *Josephus*.

²³ *Ibid*, Chapter 62, p. 286.

²⁴ *Rabbeinu Gershom* according to *Dibros Mosbe* (פרק השותפים) הערה י"ג על פרק השותפים). This also happens to be the prevalent opinion of most gentile historians.

²⁵ See *Dibros Mosbe* (ibid.) who holds that Herod's father had a status of עבד כנעני.

²⁶ *Abarbanel* (Isaiah, end of chapter 35) and *Seder HaDoros*.

²⁷ *Abarbanel* (ibid.), also mentioned by *Josephus*.

²⁸ "If a slave or a gentile that has relations with a Jewish woman, the child of such relationship is considered a Jew" (*Yevomos* 45b)

²⁹ *History of the Jewish People*, Chapter 67.

³⁰ *Doros HaRishonim* by Rabbi Yitzhak HaLevi, *Torah Nation* by Rabbi Avigdor Miller and *Josephus*.

³¹ *Rashbam* (cited by Tosfos on *Yevomos* 45), *Tzemach Dovid* by Rabbi Dovid Ganz (a disciple of the Ramoh) and *History of the Jewish People* by Rabbi Chaim Dov Rabinowitz (author of *Daas Sofrim*).

³² *Bava Basra* 4a.

³³ *History of the Jewish People*, Chapter 69.

³⁴ This incident is described in *Bava Basra* 3b.

³⁵ *Bava Basra* 3b.

³⁶ A gentile who becomes a slave of a Jew and undergoes a partial conversion. Such slave is obligated to keep all commandments kept by women.

³⁷ A Jew who an indentured servant of another Jew, this is a status higher than a slave.

how the Sages learned from the Torah that an עבד כנעני cannot serve as a king (*Seder HaDoros* also states that Herod was a slave to Hyrcanus).

Now that we had established that Herod was a slave, how or why was he a slave? We know that a gentile can become a slave either by his mother being a slave³⁸ OR via the purchase of the gentile by a Jew to be a slave³⁹. However, aside from the forceful conversion of Edomites by Jochanan Hyrcanus that took place two generations before, we do not find any other source that mentions Herod or his family being bought as slaves by the house of the Hasmoneans. As for the conversion of the Edomites, it would not affect Herod's status since it was his father who descended from them (and as mentioned before one's status is determined by the mother). Even though such occurrence is possible, we would like to leave this possibility aside and explore his mother's ancestry.

IV. Herod's Mother.

A slave may acquire his status from his parents, however only from his mother and not his father⁴⁰. Only in regards to tribal ancestry, for ex. being a Cohen or a Levi, the ancestry follows the father⁴¹. Thus, it is clear that Herod acquired his personal status of being a slave from his mother.

The commentary of Rabbeinu Gershom⁴² states the following: "*Hyrcanus*⁴³, the father of Herod, once went out to fight the Romans and won. Among the captives, he saw a certain slave-woman, beautiful of form and desirable. He took her in accordance to the law of Torah, cohabited with her⁴⁴ and from her was born this Herod". Rabbeinu Gershom seems to refer here to law of "יפת תאר" or "a woman captured in war" whom the Torah permits to marry after certain requirements are met⁴⁵. According to his opinion as clarified by *Dibros Moshe*⁴⁶ Herod's mother was a gentile slave who was captured during war, she partially converted⁴⁷ and became a שפחה כנענית⁴⁸. Thus, Herod acquired her slave status and was considered a full-fledged slave.

However, according to the commentary of *Abarbanel*⁴⁹, Herod's mother was an Edomite princess (*Seder HaDoros* and *Josephus* state that she was from the royal family of Edom and her name was Kapidon the Edomite). As mentioned above, Jochanan Hyrcanus forcibly converted the Edomites to Judaism and made them slaves to the House of the Hasmoneans. Thus, since Herod's mother was an Edomite, she was considered a slave and passed on that status to her son (it is also possible to reconcile the two opinions by saying that Herod's mother was an Edomite who was captured during a war with the Romans but *Dibros Moshe* seems to learn that Herod's mother was originally a gentile).

V. Herod's Siblings and Family.

³⁸ Rashi on Leviticus 22:11.

³⁹ Ibid.

⁴⁰ Rambam (הילכות איסורי ביאה פט"ו הל' ג).

⁴¹ Rambam (שם פי"ט הל' י"ג).

⁴² Bava Basra 4a.

⁴³ As mentioned above Herod's father was Antipater not Hyrcanus. There seems to be a copying mistake in Rabbeinu Gershom's commentary. I have seen two other versions of his commentary recently published as well as the version of the story mentioned in *Seder Olam Zutah* (Chapter 8), and they all state that Antipater was Herod's father.

⁴⁴ In other versions of Rabbeinu Gershom's commentary this phrase reads: "married her".

⁴⁵ The relevant laws are learned from Deuteronomy 21:10-14 and can be found in the Rambam (הילכות מלכים פ"ה)..

⁴⁶ Bava Basra, הל' ג, הערה י"ג, פרק השותפים.

⁴⁷ Also, see סימן בענין חיוב עבד כנעני ביפת תואר by this author.

⁴⁸ A slave woman owned by a Jew who is obligated to keep all commandments.

⁴⁹ Commentary on Isaiah, end of chapter 35.

By the time Herod came to power two of his brothers were no longer alive. The remaining brother and sister did not play any active role. Since all of Herod's siblings were from the same mother, they all shared the status of slaves.

Herod had numerous wives but following example of his father who married a slave, he married Edomite slaves descended from the ones converted by Jochanan Hyrcanus. However, there is a question whether Herod ever married a Jewess. *Rashbam*⁵⁰ states that Herod never married a Jewess. Others⁵¹ contest that Herod had two Jewish wives, one of whom might have been Miriam, the granddaughter of Hyrcanus (this Miriam might have been the same girl who killed herself as described in the Talmud⁵²). According to these opinions since the children of Herod never married Jews anyway, the status of their mothers did not matter since the status of their grandchildren followed their daughter-in-laws who were not Jewish (this is supported by Rashi⁵³ who states that the children of Herod did not marry Jews).

Seder HaDoros concurs with this opinion that Herod had two Jewish wives. However, he states that when Herod rebelled against his masters, he killed his Jewish wives and his children. The girl mentioned in the Talmud is a very different person: she was the last remaining Hasmonean after the massacre and Herod planned to marry her in order to become a free man. After he became king, he never married a Jewess, only other slaves.

VI. Herod's Children.

Herod left three children: Archelaus, Phillippe and Antipater (also called Herod). Archelaus, which was the most evil of the three, inherited Jerusalem and the main portion of the Judea from his father. Antipater and Phillippe were given other areas like Trans-Jordan with minor Jewish populations (neither of the latter two played a great role in the Jewish nation, Phillippe ruled until his death and Antipater was eventually exiled by the Romans). When Archelaus became king, the people revolted against him and after a ten-year struggle succeeded in ousting him. When that happened, the Romans exiled him and confiscated his property; Judea was annexed to the Syrian territories of the Roman Empire and was put under the rule of Roman procurators⁵⁴.

As far as their personal status is concerned, there is no doubt that they were slaves. Herod married various slaves as his father had done and his wives passed on their status to the children. According to the opinions⁵⁵ that hold that he repented, he was only able to marry other slaves; according to the dissenting opinions,⁵⁶ it is unlikely that any Jewess would have married Herod. Even according to the opinion of *Seder HaDoros* mentioned above that Herod married Jewish women, they were killed with their children during the slaughter of the Hasmonean family. Thus, the three living children of Herod were born from slaves.

VII. Agrippa and Other Herodians.

⁵⁰ Cited by Tosfos on Yevomos 45.

⁵¹ *History of the Jewish People, Seder HaDoros, Josephus.*

⁵² See Rabbi Rabinowitz's explanation on pp. 310-312.

⁵³ Kidushin 70b.

⁵⁴ *Seder HaDoros, Josephus and History of the Jewish People, Chapter 72.*

⁵⁵ *Rashbam* (cited by Tosfos on Yevomos 45), *Tz'emach Dovid* by Rabbi Dovid Ganz (a disciple of the Ramah) and *History of the Jewish People* by Rabbi Chaim Dov Rabinowitz.

⁵⁶ *Doros HaRishonim* by Rabbi Yitzhak HaLevi and *Torah Nation* by Rabbi Avigdor Miller.

After a period of rule by Roman procurators, the Romans appointed a new king over Judea roughly 30 years before the Destruction. His name was Agrippa, commonly known as Agrippa I. According to those that hold that Herod was married to Miriam, granddaughter of Hyrcanus⁵⁷, he was the son of Aristobolus, son of Herod from Miriam. As mentioned before, Herod killed his Jewish children during the extermination of the Hasmoneans. However, in light of Rashi's comment⁵⁸ that Herod's children did not marry Jews; Aristobolus's children were children from slaves⁵⁹ and apparently were not killed by Herod. According to another opinion cited by *Seder HaDoros* Agrippa was a son of Aristobolus, who was a son of Alexander, son of Herod. It seems that this Alexander was already dead when his father died. According to this opinion Agrippa was for sure a slave since his father married a slave. Various Rishonim say explicitly that Agrippa had a status of a slave. However, Rashi⁶⁰ states, in disagreement with his commentary elsewhere⁶¹, that Agrippa's mother was Jewish and thus he was a full-fledged Jew.

Agrippa ruled for a very short period before he died. After his death, his brother Herod ruled for a small period until he was replaced by Agrippa II, the son of Agrippa I. As for this Agrippa, it is unknown who his mother was, but logically it would follow what his father was. Since Agrippa I was a righteous individual he would not have married a Jewess if he was a slave. According to the Rishonim that hold that, he was a slave, his son Agrippa II was also probably a slave from an Edomite mother. According to the other Rishonim that hold that Agrippa I was Jewish, it would follow that Agrippa II was also Jewish.

Agrippa II was expelled from Jerusalem by the Zealots who then proceed to rebel against the Romans. The Zealots were not supported by the Sages. The rebellion was crushed by the Romans around 68-70 CE, the holy Temple burned and our people entered the long night of exile in which we are still today.

It is noteworthy to mention that Bar Kochba who led the revolt against the Romans a century after the Destruction was considered by Rashi⁶² to be a descendent of Herod. At the same time, we find that Rabbi Akiva considered him the Messiah⁶³. It is well known that the Messiah must be descended from the House of King David⁶⁴ and that a king cannot be a slave⁶⁵. To answer this difficulty some⁶⁶ suggest that there were Herod's descendants that married Jews and eventually were united by marriage with the descendants of King David. Others suggest that Bar Kochba was a descendant of Agrippa I who was Jewish according to Rashi's comment cited above.

VIII. Conclusion.

Based on the above we can now explain the statement of the Talmud⁶⁷ "Whoever comes and says I am descended from the House of the Hasmoneans is a slave". According to either opinion cited above Herod's mother was a slave, thus making Herod himself a slave. After he became king,

⁵⁷ *Seder HaDoros, History of the Jewish People.*

⁵⁸ Kiddushin 70b.

⁵⁹ The Talmud (Bava Basra 3b) stated that there was only one surviving member of the Hasmonean family. Agrippa was not considered a Hasmonean since his mother was a slave in light with the rule that a Jew who marries a slave has children who are slaves.

⁶⁰ Sotah 41.

⁶¹ Kidushin 70b

⁶² Sanhedrin 93b

⁶³ Rambam ((הילכות מלכים פי"א)).

⁶⁴ *ibid.*

⁶⁵ Tosfos (Bava Basra 3b)

⁶⁶ *The History of the Jewish People*, Vol. I, Chapter 88.

⁶⁷ Kiddushin 70b and Bava Basra 3b.

he only married other slaves of the Hasmoneans, which are the Edomites converted two generations before by Jochanan Hyrcanus. He did that because he was unable to marry either Jews or gentiles due to the Halacha. His descendants did the same, marrying other slaves with the possible exceptions of Agrippa I, Bar Kochba and their families. There is also a disagreement among the various commentators whether this custom of marrying slaves continued into later generations. Some hold that they did not continue this custom and eventually married Jews. Thus, the statement of the Talmud would mean that anyone from the House of the Hasmoneans is considered a descendant of slaves, not an actual slave. Others disagree and learn that the Talmud teaches us that even their later descendents are slaves since they continued to marry slaves.