

In this essay, Dr. Sidney B. Hoenig, a member of our Editorial Board and Dean of Yeshiva University's Bernard Revel Graduate School, responds to objections which have been raised against the views which he expressed in his widely discussed article in our Spring 1970 issue.

HISTORIC MASADA AND THE HALAKHAH

The historical question pertaining to the self-destruction of the last occupants of Masada in 72 C.E. has inveigled theologians to debate in the pages of *TRADITION*¹ whether such actions were Halakhically justified. Medieval commentators and code books are brought into the argument "to show that the actions were not in variance with the principles of Judaism even if we judge them from the perspective of the Halakhah *as we have it crystallized and codified today.*"²

It is such perspective that blurs the investigation of historic Masada. What is meant by *Halakhah* when mentioned by these writers on ancient Masada? Do they mean, according to rabbinic texts, ancient common law or unwritten laws, as differentiated from Pentateuchal law³ or majority rule?⁴ Or do they mean, in the talmudic sense, legal decisions, "codified law," as in the Mishnah,⁵ Gemara,⁶ Maimonidean Code,⁷ *Shulchan Arukh* and *Posekim*⁸ of today or yesteryear? A clear definition is needed as to what these authors refer when they assert "according to the Halakhah."

Be it what it may, in all instances of definition, one may simply ask: what early tannaitic evidence do the Masada authors in *TRADITION* have for "Halakhah" as observed in ancient Masada? One cannot and should not go beyond records of 72 C.E.⁹ It is wrong to argue that later modes of conduct reflect also definitely earlier practice. The historian only seeks sure proof that such was the "halakhic conduct" or even philosophic mode in 72 C.E. Only Josephus can be called upon as testimony for anything and everything that we may know about Masada.

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It is therefore futile to speak of Masada as related to any "halakhah" drawn from texts, opinions, decisions and notions of times after 72 C.E. Were these *TRADITION* authors to have called their essays, "The Masada occupants according to their Philosophies,"¹⁰ their writings would have been in the purview of correct historical research and not wishful thinking and conjecture, fantasy and *pilpul*. "Halakhah" does not belong here.

What concerns the present writer is only the historic truth of the events of Masada, as revealed by the available primary sources. One cannot deduce this from Bible phrases, tannaitic quotes, medieval comments and late rabbinic codes. Josephus is the only source; it is only through him that we can make any judgment on Masada.

A simple re-reading of Josephus' survey of the "four sects" in the Second Commonwealth period will establish the correct perspective and answer the question: were the occupants indeed martyrs? One should not read Josephus with the methodology and hermeneutics of the Talmud. The student can only interpret Josephus in the light of that historian's own statements, environment and background.

It should be first emphasized that all the *TRADITION* writers mention "Zealots" in their zeal to describe the occupants of Masada. This is erroneous.¹¹ There were no *Zealots* in Masada. It was occupied solely by the *Sicarii*.¹² The term *Zealots* is never mentioned in the narrative of Masada whereas *Sicarii* is. The two factions were not at all identical. Added evidence for this is Josephus' report that the Zealots summoned the Idumeans to aid them in the siege of Jerusalem and they (the Idumeans) are called "allies of the Zealots."¹³ On the other hand, it is narrated that the Idumeans, going forth to battle Simon ben Giora, left the mass of the population to protect their property against the incursions at Masada and they met Simon at the frontier.¹⁴ In other words, the Zealots were allies of the Idumeans whereas the *Sicarii* in Masada were their enemy.

Simon ben Giora had at first joined the occupants of Masada but they regarded him with suspicion for he was aspiring to despotic power and cherished ambition.¹⁵ He sought to be a lord, contrary to the philosophy of the *Sicarii* of "no lordship

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of man over man." He fought against the Zealots in Jerusalem.¹⁶ No mention is made of the Sicarii battling in or for Jerusalem. Josephus notes that the efforts of Simon "to tempt them (the occupants of Masada) to greater enterprises were unsuccessful, for the Sicarii had grown accustomed to the fortress and were afraid to venture from their lair."¹⁷ The Sicarii, being fearful, remained in their place of refuge — Masada. They did not protect or battle for Jerusalem.

It should also be recognized that Josephus was not concerned particularly with delineating religious observances and belief. He planned a book on the subject but such is not extant.¹⁸ His history deals only with *political* aspects; his "philosophies" on the factions as related to these aspects are only corollaries.

In his *Bellum Judaicum* (written c. 73 C.E.) Josephus narrates the events of the time when Coponius came; this was after Archelaus' expulsion (c. 6 C.E.). Josephus writes: (II, 118):

Judas the Galilean incited his countrymen to revolt upbraiding them as cowards for consenting to pay tribute to the Romans and tolerating mortal masters after having God for their Lord. This man was a Sophist who founded a sect of his own, *having nothing in common with the others.*

Immediately thereafter in this context Josephus described the other three philosophies — Essenes, Sadducees and Pharisees. The three sects are again mentioned when Josephus wrote his *Antiquities* (c. 93 C.E.). He refers to them in *Antiquities* 13. 5. 9. because he tells of the appointment of Jonathan the Hasmonean as High Priest. This ruler was the first sacerdotal prince who was not of the family of Zadok. Differences of opinion arose among the sects about his eligibility to office and the political problem caused Josephus to mention the various sects at this point in the historic narrative.

In *Antiquities* 13. 10. 5. Josephus tells of the rift between John Hyrcanus and the Pharisees. The basic political controversy is also revealed in Talmud *Kiddushin* 66b: "Enough for you is the crown of kingship; leave the crown of priesthood to the seed of Aaron."

In *Antiquities* 18. 1. 7 (23) Josephus repeated what he wrote

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in *Bellum Judaicum* about Coponius; there again he mentioned the Pharisees, Sadducees, and Essenes, but added to these remarks a note on the Fourth Philosophy.

As for the fourth of the philosophies Judas the Galilean set himself up as leader of it. *This school agrees in all other respects with the opinions of the Pharisees except that they have a passion for liberty that is unconquerable since they are convinced that God alone is their leader and master.*

They think little of submitting to death in unusual forms and permitting vengeance to fall on kinsman and friend if only they may avoid calling any man master.

The description of the Fourth Philosophy, given in *Antiquities*, had first been fully elaborated upon in *Bellum Judaicum* II, 254, where the historian told of Felix, the procurator, who crucified brigands. Here Josephus described the *Sicarii* as those "who committed murders in broad daylight in the heart of the city. The festivals were their special seasons when they would mingle with the crowd, carrying short daggers concealed under their clothing with which they stabbed their enemies."

Can anyone deny that the victims of the *Sicarii* at these festivals were their own Jewish brethren?

The reader will recognize from the analysis given above that Josephus' various narratives of the sects always pertain to some political background. It is in such texts that the historian also stressed the factional philosophies, because therefrom did the attitude of the differing groups toward Fate and God, immortality and future reward and life stem. The perspective of each "philosophy" served as a justification for the mode of action toward the incumbent rulers.

Specifically, Josephus remarks:

The Pharisees attribute everything to Fate and God . . . The Sadducees do away with Fate altogether and remove God beyond (*BJ* 2: 164). The Essenes held that everyone must "ever keep faith with all men, especially with the powers that be, since no ruler attains his office save by the will of God" (*BJ* 2: 140).

These sources in all instances reveal that though the sects

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disagreed about Fate and God, yet all of the three parties at the same time did not deny human rule. But, as to the Sicarii, Josephus noted:¹⁹

This school agrees in all other respects with the opinions of the Pharisees, except that they have a passion for liberty that is almost unconquerable, since they are convinced that God alone is their leader and master.

On the one hand Josephus noted that the Sicarii “have nothing in common with the others”^{19a} and, on the other, “that this school agreed in all other respects with the opinions of the Pharisees.”²⁰ This is not at all contradictory, as may be apparent at first.^{20a} The Sicarii *agreed with the Pharisees* that “in each action Fate cooperates and that the soul is imperishable.” *They opposed the Pharisees* and the other sects only on the attitude toward mortal rulers. In this philosophy, the Sicarii “have nothing in common” with the other groupings.

The Sicarii did not believe in human leadership (as did the Sadducees, Pharisees, and Essenes). The three sects believed in temporal authority. The only difference was that the Sadducees stressed *aristocracy*, the Pharisees *democracy* (government of the people — *demos*), and the Essenes, though self centered, respected any ruler, since he was appointed by God. But the Sicarii “had nothing in common” with all of these. In the matter of political ruledom they were *anarchists*, denying any mortal ruler.

As noted above, the Sicarii agreed with the Pharisees in the beliefs of future reward and punishment and that the soul is imperishable. This belief too influenced their action. With their passion for liberty and with the belief that everything was controlled by fate, they held strongly that the future was more important than the present. Thus they became “defeatists,” particularly when confronted realistically with the problems of “present-day” living. This defeatist attitude they displayed in Masada and hence committed suicide, showing their cowardice in not facing the situation of the *present*, as it was before them.

This is especially enunciated in Eleazar’s speeches:

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Maybe, indeed, we ought from the very first—when, having chosen to assert our liberty, we invariably experienced such hard treatment from one another, and still harder from our foes—we ought, I say, to have read God's purpose and to have recognized that *the Jewish race, once beloved of Him, had been doomed to perdition*. For had He continued to be gracious, or but lightly incensed, He would never have overlooked such wholesale destruction or have abandoned His most holy city to be burnt and razed to the ground by our enemies.²¹

For not even the impregnable nature of this fortress has availed to save us; nay, though ample provisions are ours, piles of arms, and a superabundance of every other requisite, yet *we have been deprived, manifestly by God Himself, of all hope of deliverance*. For it was not of their own accord that those flames which were driving against the enemy turned back upon the wall constructed by us; no, all this betokens wrath at the many wrongs which we madly dared to inflict upon our countrymen. *The penalty for those crimes let us pay not to our bitterest foes, the Romans, but to God through the act of our own hands.*²²

For from of old, since the first dawn of intelligence, we have been continually taught by those precepts, ancestral and divine—confirmed by the deeds and noble spirit of our forefathers—that life, not death, is man's misfortune. For it is death which gives liberty to the soul and permits it to depart to its own pure abode, there to be free from all calamity.²³

It is by God's will and of necessity that we are to die. For long since, so it seems, *God passed this decree against the whole Jewish race in common, that we must quit this life if we would not use it aright*. Do not attach the blame to yourselves, nor the credit to the Romans, that this war with them has been the ruin of us all; for it was not their might that brought these things to pass, but the intervention of some more powerful cause has afforded them the semblance of victory.²⁴

It is correct that "both the Pharisees and the Sicarii shared the passion for liberty."²⁵ But it must be stressed that the Pharisees applied their passion only when the Torah was in jeopardy, whereas the Sicarii applied their passion for God's Lordship as in a frenzy, politically waylaying high priests, Roman rulers and kinsmen to unfold their political philosophy. The Essenes who were essentially individualists, averse to the general community, and separatists living in their own communes, also stressed God's mastery: "After God they held most in awe the

name of their lawgiver; any blasphemy of whom is punished with death,"²⁶ but they did not use daggers to emphasize or implement their notions.

It is to be noted that whereas the Pharisees stressed the principle "not to pronounce the ineffable name of God,"²⁷ the Essenes went beyond this. They added to this rule also the name of Moses.²⁸ The Sicarii added further the rule not to call any one by the title *master*.²⁹ This fanaticism led to an extreme of disrespect for any authority, or in other words it was sheer *anarchy*. Such anarchy made them *defeatists* because the Sicarii felt that God was not with them, as noted above. They lacked therefore the hope in the mundane future or in the end of days, or in a better world, as entertained faithfully by the Pharisees.

In essence, the Pharisaic attitude was that *Torah supersedes politics*; this was carried on by the later Tannaim. Even those Rabbis who are classified by some writers³⁰ as Rabbis of resistance or of the War Party also had respect for the sovereign government. Only when Torah was in jeopardy was there any expression of revolt.

It is true that different personalities may have varying approaches about cooperation or resistance. Nevertheless the basic concept of all Tannaim was a firm respect for the Roman government,^{31a} except where a restriction of Torah became involved. It is particularly wrong to state that Rabban Simon b. Gamaliel was a member of the War Party. He is listed as a member of the provisional government by Josephus³² and he aimed to please, as the narrative there reveals. The actions of Rabbis Akiba,³³ Hananiah ben Teradyon,³⁴ Baba b. Buta,³⁵ Yehuda b. Baba³⁶ and Simon b. Yohai³⁷ involved resistance, *only* because Torah was at stake.

Hillel did not disown Herod;³⁸ Johanan ben Zakkai acknowledged Vespasian;³⁹ Joshua b. Hananiah preached submission to Rome,⁴⁰ Jose b. Kisma⁴¹ upheld the same rule, and Eleazar b. Torta⁴² too supported the government — for basically the concern of all these Sages was Torah. No political aspect was involved in their activism. They sought only to carry on the religious teachings and practices. Torah (*nomos patri*)⁴³ alone was the Jewish "way of life," the (Biblical) *Derekh* or (Rab-

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binic) Halakhah.⁴⁴ In the case of the Sicarii, however, the approach was purely political. From the records before us it is established that no Rabbi displayed dishonor⁴⁵ to the Emperor or procurator in the same vein as did the Sicarii. Only when restrictions of the "laws of the fathers" became the issue did these Sages revolt.

It should be reiterated that the Sicarii did not actually help in the war against Rome. Josephus mentions the full participation of the Zealots in military activity against the Romans, but not that of the Sicarii. The Sicarii only made forays against the Jews in En Geddi and the areas surrounding Masada in order to obtain food. Also, they murdered Jews on the Passover to gain their end.⁴⁶

The Zealots, on the other hand, fought feverishly against the Romans during the war; with the fall of Jerusalem they disappeared. The Zealots span was thus limited only from July 66 to August 70 C.E. The Sicarii, however, functioned sporadically during the *whole* era of the first century till the death of their leader Menahem in 65 C.E.⁴⁷ After his death, they fled to Masada and remained in their refuge till the fall of the Jewish State and the mopping up by Silva in 72.⁴⁸ As noted above, "the Sicarii had grown accustomed to the fortress and were afraid to venture far from their lair." Only after 72, for a short time, did they aim to stir up trouble in Alexandria.⁴⁹ Generally, then, every act of theirs was that of political anarchy and of worldly defeatism; there is no evidence at all that they resisted Rome during the war for existence (65-70).

An interesting historic mode to uphold the law — a fact not recorded in Josephus about the Sicarii at any time during their long period of activity — may be illustrated in the protest against Pilate's desire to bring *ikons* into Jerusalem. Josephus relates that there was a passive resistance:⁵⁰

Pilate, being sent by Tiberius as procurator to Judaea, introduced into Jerusalem by night and under cover the effigies of Caesar which are called standards. This proceeding, when day broke, aroused immense excitement among the Jews; those on the spot were in consternation, considering their laws to have been trampled under foot, as those laws permit no image to be erected in the city; while the in-

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dignation of the townspeople stirred the country-folk, who flocked together in crowds. Hastening after Pilate to Caesarea, the Jews implored him to remove the standards from Jerusalem and to uphold the laws of their ancestors. When Pilate refused, they fell prostrate around his house and for five whole days and nights remained motionless in that position.

On the ensuing day Pilate took his seat on his tribunal in the great stadium and summoning the multitude, with the apparent intention of answering them, gave the arranged signal to his armed soldiers to surround the Jews. Finding themselves in a ring of troops, three deep, the Jews were struck dumb at this unexpected sight. Pilate, after threatening to cut them down, if they refused to admit Caesar's images, signalled to the soldiers to draw their swords. Thereupon the Jews, as by concerted action, flung themselves in a body on the ground, extended their necks, and exclaimed that they were ready rather to die than to transgress the law. Overcome with astonishment at such intense *religious* zeal. Pilate gave orders for the immediate removal of the standards from Jerusalem.

Sica — daggers — were not used, as did the Sicarii to enforce their aim. Pilate thereafter succumbed. This description by Josephus is worthy of recollection, and especially the phrase therein: "they were ready rather to die than transgress the law." This feature, and not the Sicarii activity, is a paragon of martyrdom. Years later the Sages, particularly Rabbi Akiba, fought to maintain Torah, but the kind of action inherent in the Sicarii politics was not the mode of rabbinic conduct. We cannot even speak of the Sicarii in the same light as we do highly of the average Jew — even of the country folk, *ek tas choras laos*, the *am ha-aretz*, as described by Josephus in the Pilate incidents, for these simple folk were indeed loyal to God and the Judaeen State to the very end.

To glorify the Sicarii as observant Jews who "believed in and practiced ritual immersion or frequented synagogues or observed the Sabbath and dietary laws, and tithes and other offerings, (and) as the Pharisees did, so did the Sicarii"⁵¹ is another instance of misreading history.

In fact, not even among the Pharisees were all persons fully observant, even as the Mishnah records various categories of *haber*, *ne'eman* and *am ha-aretz*.⁵² It is also misleading to de-

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clare that the Sicarii frequented synagogues. As shown, there were no *synagogues* in Judea in the Second Temple era.⁵³ The Sicarii, however, went⁵⁴ to the Temple, as did most Jews, observant or not, during the Second Commonwealth.

As for the *Mikveh* in Masada, Professor Rabinowitz notes that had I visited Masada,⁵⁵ my views would be different. He is aware that I had been there; I had even discussed my impressions with him on his own veranda on a Sabbath afternoon in July 1968! Is Rabinowitz sure that the "modest *Mikveh*" in Masada, large enough for ritual immersion, was built by Herod a century before? Were the *Mikvaot* in Masada for the "pious Jews" in Herod's entourage, or for use by his harem? Did he build *mikvaot* in Masada to make an impression of his piety upon the Jews? Did the Sicarii later use both the Roman luxurious pools, with the sufficient quantity of 40 *seah* and the modest *mikvaot* on the mountain tops for ritual purity⁵⁶? What evidence does Rabinowitz have for all this? Is it syllogistic that because there were Sicarii in Masada and because there were pools of sufficient quantity of water there, *Q.E.D.*: the Sicarii observed ritual purity. Surely, Rabinowitz is logical and pragmatic enough, living in modern Jerusalem (where there are many *mikvaot*) to recognize that such syllogism is not convincing; one cannot determine from apparent Masada pools any proof of observances for the ancient Sicarii in Masada.

Moreover, that the Masada pools were *mikvaot*, in the traditional sense needs corroboration. The word *mikveh* basically is a *gathering*. It is Biblically applied to men as well as to water. We read of "A pool of merchants"⁵⁷ and a "pool of water."⁵⁸ The ritual requisite was that a cistern, trench, cavern, groove, etc., contain sufficient water that had come directly and naturally from a source — spring or rain — without being drawn by a receptacle. If a vessel was used, the contents was called "drawn water" and its prohibition was enacted by the Sages.⁵⁹

Mention is also made in the Mishnah of pools of gentiles. Those outside of *Eretz Yisrael* were valid for immersion by men suffering pollution, even if filled by a swing-beam for drawing water. Within the Land the pools of gentiles were valid even for menstruants, if outside the city gates. This is because it is

assumed that those pools far from the city were not used for washing clothes, thus not containing "drawn water."⁶⁰ The rule that there be a minimum of 40 *seah* water was a rabbinic enactment,⁶¹ considering the need *to cover the entire body*.⁶²

Many sages held this need to be the criterion; rabbinic measurement only set 40 *seah* as the minimum. Basically, natural running water was the determining factor. One therefore must recognize that in Masada, with the various ducts cut through the stone, and with reservoirs to hold the rain waters, that every pool thereon was supplied in this manner. Numerous cisterns were cut into the top of the mountain, particularly on the west ensuring an abundant water supply. There were huge underground water gates. One must therefore believe that the water-supply conduits for the Roman type baths, swimming pools or mikvaot were all of a similar style — rain water collected in cisterns dug into the ground and conveyed through the ducts to the places needed.⁶³

Despite these basic elements there were still problems in the Schools of the Second Century about the ritual *Mikveh* decisions.⁶⁴ The Tosefta records that Rabban Simon ben Gamaliel declared that "*he had no Halakhah.*" It is also related that Rabban Gamaliel immersed himself in a *bathhouse* in Ashkelon or perhaps in the ocean (not necessarily in a ritual *mikveh*).⁶⁵ Finalization of the ritual rules came only in the Second Century. The fact that the Masada pools may have been in accord with ritual measurements, as later finalized, and that the water came in naturally from the rain reservoir in the cut stone, still does not prove the religiosity of the inhabitants of Masada, namely that they piously followed set rules of *mikvaot*. The gathering of waters in Masada only proves that the inhabitants had sufficient supply for washing clothes and for their bathing. One may well ask, were the beautifully decorated and lavish pools on the lower stratum, where Herod lived, "pools of gentiles, i.e., Roman baths, while those on the very top of Masada were Jewish *mikvaot* specifically prepared by the Sicarii who did not use the "gentile pools"? Archeologists may be able to determine the age of an artifact from their findings, but surely this does not provide any evidence of the exact ritual mode or religious use of a

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Masada "pool."

Rabinowitz's statement⁶⁶ "whether they were *mikvehs* or not — and everything points to the fact that they were — is completely irrelevant to the irreligiosity or orthodoxy of the Sicarii" is unacceptable. To the contrary, if these pools were "*mikvehs* built by Herod a century before the events and the Zealots or Sicarii upon their arrival found them there," would not Josephus have mentioned them in his detailed and elaborate description of Masada? Why did he refrain from mentioning their ritual values if the pools expressed the "religious zeal" of the people — a subject Josephus always stressed?

The notion that "The Fourth Philosophy was the practiced thought of oneness — a practice which made the event of Masada not only possible but inevitable,"⁶⁷ as expressed by another writer, is a slur on the other ancient Jews in the Second Commonwealth — be they Sadducees, Pharisees, or Essenes. In those days all believed in the oneness of God and practiced it; evidence for this is the historic incident of Caius Caligula who sought to install in the Temple statues of himself. Jews in Jerusalem and in Alexandria (led by Philo) were ready to die for Judaism, its belief and practice, rather than submit. Josephus relates:⁶⁸

When the Jews appealed to their law and the custom of their ancestors, and pleaded that they were forbidden to place an image of God, much more of a man, not only in their sanctuary but even in any unconsecrated spot throughout the country, Petronius replied, "But I too must obey the law of my master; if I transgress it and spare you, I shall be put to death, with justice. War will be made on you by him who sent me, not by me; for I too, like you, am under orders." At this the multitude cried out that they were ready to endure everything for the law. Petronius, having checked their clamour, said, "Will you then go to war with Caesar?" The Jews replied that they offered sacrifice twice daily for Caesar and the Roman people, but that if he wished to set up these statues, he must first sacrifice the entire Jewish nation; and that they presented themselves, their wives and their children, ready for the slaughter. These words filled Petronius with astonishment and pity at the spectacle of the incomparable devotion of this people to their religion and their unflinching resignation to death.

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The belief in the *Shema* and its basic principle of monotheism was firm, equally approved, held and observed by all Jews. The Sicarii, who as anarchists, were opposed to mortal rulers, likewise upheld it despite their sentiments and actions of defeatism. A universal belief in the Divine Being does not at all prove that the Sicarii were observant of *mitzvot maasiot* nor does it negate the fact that Sicarii were violent anarchists. They did not accept any human sovereignty; they believed only that "there is no lordship of man over man," for God alone is Ruler. This alone gave them the singular strength of battling against the ancient Jewish State and contributing to its final, complete unfortunate fall in 72 C.E."

My portrayal of the Sicarii is, as Rabinowitz indeed notes, a "denigrating account" of them. But this is as it should be. Does not Rabinowitz recognize the horrendous activities of the Sicarii during the Great War? Such are not my "preconceived ideas." I hopefully await Rabinowitz's proof from Josephus that the Sicarii did aid in the war against the Romans?

It is fallacious to honor and to title the last occupants in Masada as observant Jews and as "martyrs." The salient fact is not that "the activities (of Masada) took place after the destruction of the Temple . . . and that they were bitter enders in Alexandria."⁶⁹ To the contrary it was only a stubborn continuance of their political anarchy. Now that the State had fallen, what could the bitter enders gain as heroes in Alexandria? They surely were not battling for Judaea! They were only displaying their fanatic anarchy against Rome rule everywhere. Surely in the eyes of the Jewish *gerousia* (the council) and leaders of Alexandria, these Sicarii, who constituted themselves as a continuous Jewish defense league even after the War of Independence of 65-70 C.E., despite their sacred and inherent love of liberty, were still dangerous to the Jewish community. The many historians, theologians and publicists who have written on Masada have not refuted Josephus' description of the Sicarii as the anarchists and defeatists who contributed to the Fall of the Judaeian State.

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NOTES

1. S. Spero, "In Defense of the Defenders of Masada," *TRADITION*, Spring 1970, p. 31ff; L. Rabinowitz, "The Masada Martyrs according to the Halakhah," *ibid.*, Fall 1970, p. 31ff; Zvi Kolitz, "Masada—Suicide or Murder?," *ibid.*, Summer 1971, p. 55ff; D. Frimer, "Masada in the Light of Halakhah," *ibid.*, Summer 1971, p. 27ff.
2. S. Spero, "Communication on the Defenders of Masada," *ibid.*, Fall 1971, p. 136. Also see reply of L. Rabinowitz (in the same issue), p. 138.
3. Orlah 1:3,
החדש אסור מן התורה בכל מקום והערלה הלכה והכלאים מדברי סופרים.
4. Eduyot 1:3, הואיל ואין הלכה אלא כדברי המרובין.
5. Erubin 6b, הלכה כבית הלל.
6. Ber. 43b, הלכה כדברי המכריע.
Shab. 46a, הלכה כסתם משנה.
Shab. 14b, הלכה ואין מורין בן.
7. Introduction to *Yad*,
וראיתי לחלק חיבור זה הלכות הלכות בכל ענין וענין.
8. *Tur*, Introduction, לא נשארה הלכה פסוקה שאין בה דעות שונות.
9. Masada fell in May 72, just 1900 years ago.
10. Rabinowitz (*supra*, note 1) is correct in stating (p. 34) that "The Halakhah on . . . supreme sacrifice was still fluid (in the time of Elazar b. Yair). There was no Torah attitude or teaching of the Talmud." Nevertheless, he insists on using such a phrase as "The Halakhah of the Sicarii" (p. 37), without submitting any instance of "their Halakhah."
11. One cannot rely on Spero's references drawn from secondary sources, C. Roth, Farmer, Klausner, and Yawitz. Spero (p. 32) also misquotes the Josephus text in Ant. 18:1:6 when he writes "in all other things the Zealots are in agreement." The Greek text reads "Sicarii"—not *Zealots*. Compare also notes by L. Feldman in the Loeb edition of Josephus, Vol. 9, p. 21. "It should be noted that the identification of the Fourth philosophy with the *Zealots* which scholars so often assume is not found in Josephus here or in the account in it."
12. See my "The Sicarii in Masada—Glory or Infamy," *TRADITION*, Spring 1970.
13. *B.J.* IV, 228, 291 *symmachois*.
14. *B.J.* IV, 516.
15. *B.J.* IV, 505.
16. *B.J.* IV, 514, 558.
17. *B.J.* IV, 507.
18. Ant. XX at very end, *peri tou nomon*.
19. Ant. 18:23.
- 19a. *B.J.* 2:118.
20. Ant. 18:23.
- 20b. See note in Loeb ed., *B.J.* II, 118, p. 368 note a.
21. *B.J.* VII, 327.

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22. *Ibid.*, 331ff.
23. *Ibid.*, 343.
24. *Ibid.*, 359ff.
25. Rabinowitz (See note 1), p. 35.
26. *B.J.* II, 145.
27. Sanhedrin 11:1 כל ההוגה את השם באותיותיו אין לו חלק לעולם הבא
Yer Sanh. 28b and B. Kidd. 71a.
לא כשאני נכתב אני נקרא נכתב ביוך הא ונקרא באלף דלח
See my "New Light from the Prophets?", *JQR*, LXII, 4 (April 1972), p. 236
and my "Pre-Karaism and the Sectarian (Qumran) Scrolls," *Joshua Finkel Festschrift*, Yeshiva University 1973, note 85.
28. *B.J.* II, 146 "After God they hold most in awe the name of their law-giver."
29. Ant. 18:23 "... if only they avoid calling any man master (*despote*).
30. See Rabinowitz (*supra*, n. 1), p. 31.
31a. This principle of respect for sovereignty may be seen in Ber. 58a:
הרואה מלכי אומות העולם אומר ברוך שנתן מכבודו לבריותיו
Later R. Johanan even said
לעולם ישתדל אדם לרוץ לקראת מלכי ישראל . . . אלא אפי' לקראת מלכי אומות
העולם.
32. *Vita* 191.
33. Ber. 62a
פעם אחת גזרה מלכות שלא יעסקו ישראל בתורה . . . ומצאו לר"ע שהיה מקהיל
קהילות
34. *A.Z.* 17b: אמאי קא עסקת בארייתא . . . אמאי לא עסקתי אלא בתורה . . .
35. The reference is to Herod. *B.B.* 4a:
שבקוה לבבא בן בוטא למשקל עצה מיניה
Rabinowitz erred in this citation. No doubt he meant Yehuda ben Baba. See
next note.
36. Sanhedrin 14a: פעם אחת גזרה מלכות הרשעה גזרה על ישראל
שכל הסומך יהרג . . . יהודה בן בבא הלך . . . וסמך שם ה' זקנים
37. Ber. 35b:
רשב"י אומר אפשר אדם חורש בשעת חרישה תורה מה תהא עליה
though in *A.Z.* 2b and *Shabbat* 33 we read שמעון שגינה (יהרג)
38. Ant. 15:1:1; 15, 10:4.
40. Bereshit Rabba 64 end; *A.Z.* 18a.
41. R. Jose believed, as did the Essenes, (in questioning R. Hananiah b.
Teradyon)
אי אתה יודע שאומה זו מן השמים המליכוה ואני שמעתי שאתה יושב ועוסק
בתורה וספר מונח לך בחיקך
42. *A.Z.* 17b, R. Elazar b. Parta held
אי סייפא לא ספרא מ"ט תנית . . . מ"ט קרי לך רבי
43. *Patrious nomous B.J.* 6.6:2 (334). See my "The Peshet Nahum Talmud,"
J.B.L., LXXXVI, 4 (1961), p. 442.
44. The Biblical הלכה אשר ילכו בה was called by the Rabbis

Historic Masada and the Halakhah

- Gen. 18, 19 'ישמרו דרך ה'
Deut. 5:30 בכל הדרך אשר צוה ה' . . . תלכו
See my "Dead Sea Scrolls Bible," *J.Q.R.*, 47 (April 1957), p. 305.
45. Ber. 58a. See above n. 31a.
 46. *B.J.* 4:402-403.
 47. *B.J.* 2:448.
 48. *B.J.* 7:252ff.
 49. *B.J.* 7:11:1 (437) ff.
 50. *B.J.* II, 168-171.
 51. Rabinowitz, *TRADITION* (Fall 1970), p. 35.
 52. Mishnah and Tosefta Demai.
 53. Cf. S. B. Hoenig, "The Suppositious-Temple Synagogue," *J.Q.R.* 54 (Oct. 1963), p. 130.
 54. *B.J.* 2:444.
 55. Rabinowitz, *op. cit.*, p. 32.
 56. See Y. Yadin, "The Excavations at Masada" in *Masada*, Jewish Museum, Jewish Theological Seminary, 1968, p. 30.
 57. I Kings 10:28 מקוה סוחרים המלך
Cf. Rashi אסיפת סוחרים סוסים
58a. Gen. I. מקוה מים
59. Cf. Maimonides, *Yad*, Hilkhoh Mikvaot 4:1.
- מד"ם שהמים השאובין פסולין לטבילה
See also *Tur*, *Yoreh Deah* 201.
- ומיהו פר"י דשאיבה אינה פוסלת . . . אלא מדרבנן שמן התורה אפ' כולו
שאוב כשר.
- See also Pesahim 17a. R. Joseph Karo points out that the requisite is that the gathering of waters be on the ground earth and not in any vessel. This is natural and so were the pools in Masada.
60. *Mikvaot* 8:1.
 61. *Mikvaot* 5b.
- כל מקוה שיש בו ארבעים סאה טובלין ומטבלין
62. See Maimonides, *op. cit.*
- והיא שיהיה בהן כדי להעלות בהן כדי טבילה לכל גוף האדם בבת אחת . . . שיערו
חכמים . . . ושיעור זה היא מחזיק מ' סאה מים.
63. See *B.J.* 7, 291 "at each spot for habitation . . . he (Herod) had cut into the rocks numerous large tanks as reservoirs for water."
 64. *Mikvaot* 7:1.
 65. *Tosefta Mikvaot* 6:2.
 66. Rabinowitz, *op. cit.*, p. 32.
 67. Z. Kolitz, *TRADITION* (see supra n. 1), p. 26.
 68. *B.J.* II, 195ff.
 69. Rabinowitz, *op. cit.*, p. 33.