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THE MASADA MARTYRS ACCORDING TO THE HALAKHAH

I have read with great interest both articles on the defenders of Masada, the case for the prosecution, "The Sicarii in Masada—Glory or Infamy" by Prof. Sidney B. Hoenig, and the case for the defense, "In Defense of the Defenders of Masada" by Rabbi Shubert Spero in the Spring 1970 issue. I have chosen the metaphors of counsels for the prosecution and defense deliberately, for both, to my mind, are excellent examples of special pleading. Both authors judiciously select quotations and references to bolster their case and consciously ignore passages which contradict them. To give but two examples from each. The statement of Chaninah, the deputy of the priests, that "respect for government and authority was taught by the rabbis" cannot be denied. That Dr. Hoenig should, however, gratuitously insert the word "always" — "*always* taught by the rabbis" destroys the objective nature of the statement. Was such "respect for government and authority" taught by Akiba, Chananiah b. Teradyon, Baba bar Buta or, especially Simeon b. Yochai? Throughout the whole period of Roman overlordship there was a pacifist party who are represented by such figures as Hillel, Jochanan b. Zakkai, Joshua b. Chananiah, Jose b. Kisma, Jochanan b. Torta. There was also a "War Party" which believed in resistance to, and defiance of, alien government, to which belonged Simeon b. Gamaliel, Akiba, Simon b. Yochai, and other martyrs.

Prof. Hoenig reveals his preconceived ideas concerning Masada when he discusses the "demolition" of the Synagogue and *mikveh* in Masada. In the face of clear evidence to the contrary,

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as I hope to show, Dr. Hoenig states that the Sicarii were infamous gangsters who rejected “religiosity” and “orthodoxy” of the “heroes” of Masada. Prof. Hoenig claims that “Herod’s Masada pools were thus only bathing pools in the Roman style.” Had he visited Masada, and Herodion, which existed during the same period, his views would have been different. He would no doubt have been impressed as I was by the significant fact that in addition to those “pools” there were elaborate “bathing pools in the Roman style” replete with hypocausts and all the luxuries of such pools. The contrast between those elaborate baths and the utterly simple and modest *mikveh*, just large enough for ritual immersion, is striking. They were built by Herod a century before the events with which the article deals. Thus the Zealots or Sicarii upon their arrival found them there. Whether they were *mikvehs* or not—and everything points to the fact that they were—is completely irrelevant to the “religiosity” or “orthodoxy” of the Sicarii.

Similarly with regard to Rabbi Spero. His aim was to “argue that the action of the defenders of Masada was not at variance with the teachings of the Talmud” as though the “teachings of the Talmud” were crystallized in 73 C.E. and the “Torah attitude” fixed. It is true that Nachmanides declares that the “conquest of the Land of Israel is a positive Torah command applicable at all times to all generations.” But his is an individual view which is not adopted by any other major authority. It is a far cry from the sweeping generalization that calls it “the original Torah approach,” justifying the mass self-immolation of the defenders of Masada. Whatever motive there was in that act, it was surely neither a fulfillment of “the Torah (which) commands that the sovereignty of the Jewish people be defended at all costs,” nor was it the “resistance by force . . . when an invading army bent on plunder threatens a nation.”

The most important question is whether the self-immolation of the members of the garrison is in accordance with the *Halakhah*. Dr. Heller’s approach (“Masada and Talmud,” Winter 1968), is from the strange fact that the Talmud is silent with regard to this episode, concluding therefore that according to the rabbis it was an act of murder, not martyrdom. Rabbi Spero,

The Masada Martyrs According to the Halakhah

on the other hand, argues that their action "was not at variance with the teachings of the Talmud, on the contrary."

As for Dr. Hoenig, the denigrating account which he gives of the activities of the defenders of Masada regrettably overlooks one salient fact. These activities took place after the destruction of the Temple and the defeat of the Jews. The triumphant procession had already taken place in Rome; the leaders of the revolt had been executed. There was no question of continuing the war. There was only one of two alternatives before these "bitter enders:" to submit or to die as free men. When the time came they chose to die. This is the one salient point upon which we have to concentrate; everything else is irrelevant. The question, therefore, is: Was their action in accordance with the Halakhah or not?

Dr. Heller deals with this question and expresses his opinion in the following words: "Their resolve to slay the members of their families and then one another was a violation of a pivotal commandment of the Decalogue 'thou shalt not murder' (Ex. 10:13, Deut. 5:17)." Does Dr. Heller maintain that the similar act of whole communities during the First Crusade also constituted murder, instead of the martyrdom? Aren't their deaths *Al Kiddush Ha-Shem*? Dr. Heller realizes this difficulty and is quick to qualify his general prohibition by adding "It also contravened the Rabbinic injunction which constrained martyrdom impelled by superfluous zeal. To this end they asserted that a person should expose himself to death only if he is coerced to practice idolatry, to commit murder, or to indulge in adultery (TB *Yoma* 85b, *Sanhedrin* 74a, *Baba Metzia* 62, *Pesachim* 25b)."

Even that is not strictly accurate. The passage in *Sanhedrin* makes an important reservation, to the effect that this applies only when there is no "royal decree," and when there is no "demonstrative" aspect to the refusal. But when it is a question of a public demonstration of religious loyalty in defiance of government discriminatory decrees which aimed at destroying Judaism, one was obliged to incur martyrdom even with regard to a minor precept, and Raba b. Isaac in the name of Rav underscored this aspect by adding "even to the extent of changing

TRADITION: *A Journal of Orthodox Thought*

one's shoelaces." In view of this, if one speaks generally of "rabbinic injunctions" one could well justify the action of the defenders of Masada by maintaining, and with justice, that it was a public demonstration of religious loyalty. The Talmud relates the circumstances under which this far-reaching and fundamental law was originally arrived at. "They numbered and decided (i.e., it was voted upon and decided by a majority vote) in the attic of the House of Nitza in Lydda." Graetz places this fateful session during the Hadrianic persecutions following the failure of the Bar Kochba War, after 135. According to Halevy it was a few years earlier, before the fall of Betar. But it was certainly more than half a century after the martyrdom or murder or suicide, as the case may be, ordered by Eleazar b. Yair. Before that decision was taken the Halakhah on the circumstances under which one was obliged to make the supreme sacrifice was still fluid. The very fact that this decision was arrived at by a majority vote in itself presumes a heated discussion and different opinions. One can surely assume that the final decision represented a compromise between two extreme views. Those who maintained that on the principle of "and ye shall live by them" (Lev. 18:5) but not die by them where one was permitted to transgress all commandments in the sacred cause of preserving life, and those who maintained that one should make the supreme sacrifice rather than transgress any of the Biblical commandments. Until that final decision was taken the burning question of death or submission, and the circumstances under which one of them was to be preferred, had not been decided. There was no definitive "Torah attitude" or "teaching of the Talmud."

Both Dr. Hoenig and Rabbi Spero quoted *verbatim* (though from different translations) the well-known passage from Josephus in which he gives the principles of the "Fourth Philosophy": "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. They think little of submitting to death in unusual forms and permitting vengeance to fall on kinsmen and friends if only they may avoid calling any man

The Masada Martyrs According to the Halakhah

master.” The whole discussion on the justification of the action of the defenders of Masada concerns this fundamental statement. It contains two facts each of which is of equal weight and importance. It states both in what they saw eye to eye with the Pharisees and how they differed. That Dr. Hoenig should ignore the implications of the first half is indeed strange and almost incomprehensible. “This school,” states Josephus “agrees in all other respects with the opinions of the Pharisees.” Therefore, with the single exception mentioned, they were indistinguishable in their “opinions” and in the observance stemming from these opinions. One does not need archaeological evidence to prove that they believed in and practiced ritual immersion or frequented synagogues, or observed the Sabbath and dietary laws and tithes and other offerings. As the Pharisees did, so did the Sicarii. That surely is the only reasonable deduction to make from that statement. If, as Dr. Heller maintains, they were “fanatical nationalists” they were strictly observant nationalists, adhering to all Pharisaic practices. They parted company in their “passion for liberty.” They would submit to God alone, and preferred death rather than “call any man master.” Does this mean that the Pharisees had “no passion for liberty” while the Sicarii did, and therein lay their difference? It is quite impossible to entertain such a distinction. Rabbi Spero points out that this “passion for liberty” is itself a fundamental teaching of Rabbinic Judaism. He quotes as an example the explanation given for the boring of the ear of the Hebrew slave who elected to remain in his servitude: “the ear that heard at Sinai, these are my servants, but not servants of my servants — let it be bored.” But having come so close to the core of the question he slides away from it, using the quote as a proof of the *identity* of the love of liberty between the Fourth Philosophy and the Pharisees. Both the Pharisees and the Sicarii shared the passion for liberty; they differed *fundamentally* in their application of it.

The Pharisees are rarely mentioned as such in the Talmud; one of the few references specifically makes Jochanan b. Zakkai their leader. It is Rabban Jochanan b. Zakkai who is the author of the beautiful saying quoted by Rabbi Spero, emphasizing, almost in the very words, with which Josephus describes the

TRADITION: *A Journal of Orthodox Thought*

passion for liberty of the "Fourth Philosophy" — that the Jew should have only God as his master but no human master. In yet another passage R. Jochanan b. Zakkai contrasts the ideal of servitude to heaven with the evil of servitude to human rule. In *Cant.* 1:8 he comments, "Ye were unwilling to be subject to heaven, and as a result ye are subject to the nations of the world" (*Mechilta Yitro, ha-Chodesh*, 1). Thus Rabban Jochanan ben Zakkai, and the Pharisees whose spokesman he was, emphasized no less than did the Zealots the value of personal freedom and independence, and the "passion for liberty" burned as brightly in their hearts as in those of the "fanatical nationalists." They deplored subjection, whether it was to a fellow Jew ("has aquired a master for himself") or whether to foreign rule ("he has caused the yoke of flesh and blood to rule over him"). Both agreed that to be "servants to my servants" was forbidden. Where they differed whether this servitude constituted one of the cardinal sins of Judaism, equivalent to those three which were so established half a century later in the attic of Lydda, and as such there applied to it the rule of *Yehareg Ve'al Ya'avov* or not. The Pharisees, with all their passionate love for liberty, did not regard it in this light; the Sicarii as is explicitly stated in this passage differed from them in laying down as a religious principle "freedom or death."

The difference expressed itself not only in theory but in practice. In the same way as the defenders of Masada carried their principles into effect, so did Rabban Jochanan b. Zakkai. His arranging to be carried out of Jerusalem and brought to the camp of Vespasian, his request for "Yavneh and its scholars" with its corollary of the acceptance of a foreign yoke as long as the Torah could be saved was a dramatic expression in practice of his belief.

There is surely something significant if not even symbolical in the story of the discussion between R. Jochanan b. Zakkai and the head of the Biryanim (Sicarii) Abba Sikra, who was his nephew, during the siege of Jerusalem. R. Jochanan invites him for a discussion and reproves him for disregard of human life. The Sicarii leader on his part, without conceding that R. Jochanan was right, nevertheless connived at and arranged

The Masada Martyrs According to the Halakhah

his uncle's escape from Jerusalem to intercede with Vespasian (*Gittin* 56a).

That conclusion is reinforced by a quotation from the final speech of Eleazar b. Yair to his followers. (Whether they constitute his actual words as related to Josephus by the woman who survived, or whether the speech was "edited" by Josephus is beside the point.) "Unenslaved by the foe let us die; as free men with our children and wives let us quit this world. This our laws enjoin." Thackeray, in his notes in the *Loeb Classics* edition comments that this last sentence is a "rhetorical statement. The Law contains no such express injunction." He is right that "the law," the accepted Halakhah as worked out by the Pharisees which limited martyrdom to the three cardinal sins, contains no such express injunction.

But Eleazar b. Yair was giving them "our laws," the law adopted by the Sicarii in which, as explicitly stated, they differed from the Pharisees. The heroic act of Masada was in accordance with the Halakhah of the Sicarii which had not been adopted by normative Judaism.