

## ORAL LAW IN THE BOOKS OF MACCABEES

by

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Biblical testimony regarding laws and customs ends with Ezra and Nehemiah, while laws in talmudic literature belong mainly to the post-Second Temple period or are of a type whose antiquity is difficult to establish, so that our knowledge of the halakhic situation during the Second Temple period is incomplete. The hiatus between the biblical and talmudic literature can be bridged to some extent by external halakhah, meaning through statements about halakhic issues located in the Apocrypha, in the writings of Philo and Josephus and others.

The Books of the Maccabees are included among the Apocrypha containing testimony and traditions about halakhah. These works are not halakhic in aim and therein lies their value for our purposes; we can be certain that statements are not the result of academic discussions of the *beit midrash*, but a reflection of historical reality instead. The nature of the times during a rebellion was such that a need for new laws and changes in the existing ones was created by changes in circumstances. This material aids us in learning about the halakhic reality existing at the time of the Hasmonean rebellion and constitutes a stage in the development of the halakhah. This is important both for the understanding of the formation of laws and the halakhic situation at the time of the rebellion itself and for learning about the areas and problematics involved in the development of the halakhah throughout the generations.

The Sabbath was one of the central commandments in the Judaic world during the Second Temple and served to make the people of Israel unique in its own eyes and in the eyes of the non-Jews.

Before the Hasmonean rebellion there was apparently strong absolute prohibition against war on the Sabbath. Earliest testimony about it is in Josephus, in the name of Agatharchides of Cnidus,<sup>1</sup> where we learn that there was a general prohibition against the bearing of arms and weaponry on the

<sup>1</sup> Agatharchides of Cnidus was in Alexandria in the second century BCE. His statements are cited by Josephus in two places: *Antiquities* 12 §§ 1-7, and *Against Apion* I, 208-211, the latter being the more detailed. Also cf. M. Stern, *Greek and Latin Authors on Jews and Judaism*, Jerusalem, 1974, pp. 104-109.

Sabbath, a prohibition exploited by Ptolemy Lagus in order to enter Jerusalem on the Sabbath.<sup>2</sup>

Confirmation of the statements of Agatharchides concerning war on the Sabbath is found in literature containing sectarian laws.<sup>3</sup> In many instances, non-normative Jewish sects did not accept the legal innovations and regulations of the sages and institutions of leadership, and clung steadfastly to the ancient laws and customs. In this instance, too, the tendency which began with the Hasmonean period to be more lenient about war on the Sabbath was rejected, with the ancient, stricter law remaining in force.

We have no evidence as to when the proscription against Sabbath war came into being, and it is difficult to know what was done about it during the biblical period.<sup>4</sup> Prohibition against war on the Sabbath fits well against the background of the Persian period, when the people of Israel who were living in Judea formed a small, closed society trying to observe scrupulously the treaty of Ezra. Apparently this prohibition was not challenged then, since we know of no war in Israel during the Persian period.

The prohibition began to be less stringent at the time of the Hasmonean rebellion, when circumstances created a pressing need for a change in the earlier law. In I Macc. we are told of priests who, while hiding in the desert, were attacked on the Sabbath and chose to die rather than to fight and desecrate the Sabbath. When Mattathias and his men saw that, they decided that one must fight the enemy, even on the Sabbath (I Macc. 2: 29-40).<sup>5</sup>

The decision of Matthatias and his followers does not define precisely under what conditions one is permitted to fight on the Sabbath, but considering the circumstances under which it was made, and their explanations, we can see that the intention was to permit only defensive battles on the Sabbath.

A certain expansion of the reform of Matthatias can be seen in statements in I Macc. concerning the Sabbath battle between Jonathan and Bacchides. In this instance Jonathan did not wait for the attack of Bacchides but initiated battle (I Macc. 9: 43-45).<sup>6</sup> No conclusion can be drawn from

<sup>2</sup> For the issue of war on the Sabbath, cf. M. D. Herr, "Le-ba'ayat hilkhot milchamah be-Shabbat bimei bayit sheni u-bitqufat ha-mishnah we-ha-talmud", *Tarbiz* 30 (1961), pp. 242-256, 341-358, and the bibliography there. Cf. also L. Finkelstein, "Some Examples of the Maccabean Halakhah", *JBL* XLIX (1930), pp. 26-32.

<sup>3</sup> The Book of Jubilees, 50:12; Scroll of the Sons of Light against the Sons of Darkness, ch. 3, (2), 8-9), ed. Yadin, p. 268.

<sup>4</sup> "The rules about the Sabbath, Festival offerings, and Sacrilege are as mountains hanging by a hair, for Scripture is scanty and the rules many" (*Chagigah* I, 8).

<sup>5</sup> Compare Josephus, *Antiquities* 12, §§ 271-277.

<sup>6</sup> In a parallel description in *Antiquities*, Josephus claims that Bacchides instigated the war on the Sabbath thinking that Jonathan and his men would not fight at all because

this one instance of a general licence for war, including offensive war. on the Sabbath, since the basic initiative here was on the part of Bacchides, and it was he who challenged them to a war on the Sabbath. In any event, the advance tactical move of Jonathan does constitute something more than just a plain defensive war.

In II Macc. there is some evidence of attempts to avoid battle on the Sabbath and of abstention from secondary activities involved with war. In the chapter concerning the battle of Judah Maccabee and his brothers against Nicanor, which ended with Judah victorious, there is emphasis on the cessation of chasing the defeated enemy as the Sabbath approaches (II Macc. 8:25-27). Elsewhere it is related that Nicanor decided to attack the Jews specifically on the Sabbath, since that allowed him to "attack them without any risk" (II Macc. 15:1). That Judah and his men refrained from bearing their slain on the Sabbath is stressed elsewhere (II Macc. 12:38-39).

Different methods are used by scholars to explain the differing approaches to the subject of war on the Sabbath as expressed in I Macc. Some present this difference as one of the main proofs of the Sadducean nature of the former and of the Pharisaic nature of the latter.<sup>7</sup> Others try to show that the two books actually complement each other in the end.<sup>8</sup> The latter approach is more reasonable, especially since one can prove nothing from the absence of the reform of Mattathias in II Macc., since the beginning of the rebellion is not treated there. A review of the events mentioned in II Macc. shows that they do not contradict the reform of Mattathias as permission for defensive war only. The battle between Judah and Nicanor was stopped after the enemy had already suffered defeat and no longer presented any immediate danger to the Hasmonean forces. Nicanor's decision to attack the Jews on the Sabbath is not to be explained by his expecting that the Jews would not defend themselves at all, but rather that his confidence would be greater in a Sabbath day attack. Perhaps Nicanor meant to exploit the fact that the Jews did not keep their weapons with them on the Sabbath, something not included in the reform of Mattathias.

of the day's sanctity (*Ant.* 13 § 12). In general, Josephus tends to stress the stringent side of Sabbath laws. On the issue of war on the Sabbath, Josephus adds his pacifistic view (*The Jewish War*, 2 §§ 392-394).

<sup>7</sup> Geiger stressed this most, and claimed that I Macc. was written by someone with Sadducean tendencies, while II Macc. is Pharisaic. As proof of this claim he cites the permission for war on the Sabbath in I Macc. in contrast to the emphasis on keeping the Sabbath in II Macc. This supposition was unfounded, and was rejected by many. There was no disagreement between the Pharisees and the Sadducees on the issue of war on the Sabbath. (A. Geiger, *Urschrift und Uebersetzung der Bibel*<sup>2</sup>, Frankfurt a/Main, 1928, pp. 200-230).

<sup>8</sup> Herr, op. cit. Y. Efron, "Mered ha-chashmona'im be-historiografiah ha-modernit, historyonim, we-askolot", (Lectures delivered at the seventh convention of the Historical Society of Israel), Jerusalem, 1962, pp. 131-133, and elsewhere.

However, one cannot ignore the fact that II Macc. does demonstrate greater stringency concerning war on the Sabbath. This strictness can be explained as part of the aims of the book, and by its sources in the western diaspora about the year 100 BCE. One of the central motifs of the book, if not the central one, is the devotion to religion and to the fulfilment of the precepts. The book repeatedly emphasises the supreme value of observing the commandments and develops a type of prophetic conception by explaining suffering against a background of sins and good chances for the future on the basis of repentance.<sup>9</sup> Thus we can understand the emphasis on keeping the Sabbath and the selection of those stories which provide proof of strict Sabbath observance even in times of war. Moreover, as the Jews of the western diaspora were religiously dependent upon Israel, we cannot assume that there developed among them different or stricter ways of observing the commandments. The combination of the excessive pietism of II Macc. with the lack of any military danger in the diaspora at that time brought about emphasis on Sabbath observance, but this does not detract from the authenticity of the reform of Mattathias, and as has been proven, all of the testimony offered by the book does not negate a defensive war on the Sabbath. Thus, there is no justification for the claim that evidence from II Macc. is automatically untrustworthy because of the seeming contradiction between it and the reform of Mattathias in I Macc.

Another issue concerning the Sabbath found in the Books of the Maccabees is that of ritual purification in honour of the start of the Sabbath. During the Second Temple period, applications for the laws of ritual purification were continuously expanded, and they acquired a central position in Judaism. The sages themselves speak of the purity which "burst forth" in Israel.<sup>10</sup> The halakhah applies the laws of ritual purity to the Sabbath and holidays by stressing the importance of purification through ritual immersion in honour of the sanctity of the day.<sup>11</sup> The story related about Judah and his army purifying themselves for the Sabbath should be understood with this in mind (II Macc. 12:38). It follows from this that the roots of this law go back at least as far as the Hasmoneans.

In his letter to the Jewish nation, Demetrius I emphasises that they will be free on the Sabbath from all official duties of the kingdom.<sup>12</sup> Pre-

<sup>9</sup> See, for example, II Macc 3:1, 4:2, 5:15, 10:38. The book emphasises that a loyal Jew prefers the laws of Moses to the orders of the king (7:30). Jews who were forced to serve in Nicanor's army asked that he not exploit the Sabbath when a Sabbath attack was planned, and in his reply Nicanor contrasts the Lord's commandment to his own order (15:2-5).

<sup>10</sup> TJ *Sabbath*, I, 3b.

<sup>11</sup> Concerning the commandment of ritual purification for Sabbath and holidays, see G. Alon, "Techuman shel hilkhot tohora", in: *Mechqarim be-toldot yisrael* I, Tel Aviv, 1957, pp. 156-158.

<sup>12</sup> I Macc. 10:34-35; compare Philo, *On the Migration of Abraham*, 91. For the

sumably this also means that one could not prosecute a Jew on the Sabbath.<sup>13</sup> The halakhah prohibits judging on the Sabbath,<sup>14</sup> thus this prohibition was created in, or existed prior to, the Hasmonean period.

Both the books of the Hasmoneans and the talmudic law relax the restrictions limiting a man on the Sabbath, on the one hand, especially those limitations involving actions to save the life of a man, and emphasise, on the other hand, the value of the Sabbath and its nature. In general, both the relaxation of restrictions of some Sabbath laws and the increase in depth of approach to the Sabbath which are found in the halakhah of the Hasmonean books constitute some key bases for the development of talmudic law in the generations which followed.

In the Hasmonean books there are other halakhic developments which, like the issue of Sabbath war, were caused by the immediate circumstances. For example, II Macc. negates and proscribes in detail the establishment of "a gymnasium and ephebeum"; this attitude sprang up no doubt at the time of the request of Jason of Antioch to obtain permission to establish a "gymnasium and ephebeum" in Jerusalem (II Macc. 4:7-12). For this request, and his other deeds, Jason is defined as one who "seeking to overthrow the lawful modes of life, he introduced new customs forbidden by the law" (II Macc. 4:11). Obviously there is no mention in the Torah of these types of institutions and no prohibition against them can be learned from the plain interpretation of the written text.<sup>15</sup> Here the general aim of keeping at a distance from non-Jews and their culture was certainly at work. To reinforce the halakhah which developed for this purpose, they connected it to the Torah.<sup>16</sup>

Another issue to be compared to the halakhah is the attitude towards suicide. In II Macc. the suicide of Razis is described in detail (II Macc. 14:37-46). Razis, who is described as a person of special standing among the elders of Jerusalem, is pursued by Nicanor and, in order to avoid falling

authenticity of the document, see M. Stern, *Ha-te'udot le-mered ha-chashmona'im*, Tel Aviv, 1965, pp. 103-104. Note that the period of three days prior to and following a festival does not appear with "festivals of Israel" but is found in connection with "festivals of the Gentiles" (*Avoda Zara* I:1-2, and elsewhere).

<sup>13</sup> Compare with Josephus telling of the Jews of Ionia complaining that they were forced to be judged on the Sabbath (*Ant.* 16 § 27).

<sup>14</sup> For example, *Betzah* V, 2.

<sup>15</sup> Even if the concept of *πολιτεία*, translated 'Torah', appears in the law mentioned and does not refer precisely to the Torah but to laws or ways of life, the emphasis here is that Jason changed things in comparison with the ancient custom.

<sup>16</sup> There is found in Josephus a similar criticism of Herod, who set up a theatre and amphitheatre in Jerusalem (*Ant.* 15 § 267-276). The midrash bases this avoidance of such institutions on the biblical text, "And in their statutes ye shall not go," (*Sifra* 9, Ed. Weiss 86a). Concerning the whole issue, see: G. Alon, *Mechqarim be-toldot yisrael* I, pp. 118-120.

into the hands of his soldiers, slays himself. The description of the incident is written with admiration for Razis and includes praise for his act, such as "he preferred to die a noble death rather than fall into the scoundrels' hands and suffer outrages unworthy of his noble character" (II Macc. 14:42). The talmudic law has a totally negative attitude towards suicide and forbids it,<sup>17</sup> yet even the talmudic law cannot ignore instances of suicide which showed courage and were symbolic, such as the act of Saul.<sup>18</sup>

The First Book of Maccabees associates the outbreak of the Hasmonean rebellion with the act of Mattathias who killed the Jew sacrificing to the gods in Modin (I Macc. 2:23-27). This story itself compares the act of Mattathias with the killing of Zimri by Phineas, a sort of prototype for the cases of execution by zealots (I Macc. 2:24, 26). In III Macc. we are told of those Jews who did not surrender to the decrees of Ptolemy Philopator and who finally injured Jews who did not remain faithful to the Torah (III Macc. 7:10-16). The execution of the transgressors by zealots is attested to in various apocryphal sources and in talmudic law.<sup>19</sup>

Laws and precepts in the Hasmonean literature refer to the Temple and religious services in it. There are two instances related in the Maccabees which tell of non-Jews offering sacrifices in the Temple, Heliodorus (II Macc. 3:35) and Ptolemy Philopator (III Macc. 1:9). In the halakhah of the talmudic literature there is controversy over the extent to which it is possible to accept sacrifices from a non-Jew. Some think that only a burnt offering can be accepted from a non-Jew, while in the two cases mentioned it is clear that a thank-offering is involved.<sup>20</sup>

Another type of sacrifice which is difficult to understand as acceptable to the law is a sacrifice on behalf of the dead. Judah and his men prayed and offered a sin-offering for those who died in the war with objects of idol worship found on their bodies.<sup>21</sup> Fundamentally it seems that the issue in-

<sup>17</sup> Thus, for example, TB *Baba Kamma* 91b.

<sup>18</sup> *Bereshit Rabba* 34, ed. Theodor-Albeck, p. 324. In a number of instances, talmudic literature mentions acts of suicide with a positive tone. For example: the priests who committed suicide when the Temple was destroyed (TB *Ta'anit* 29a), the launderer who committed suicide at the time of the death of R. Judah Hanasi (TB *Ketubot* 103b) and elsewhere. Cf. S. Lieberman, "Some Aspects of After Life in Early Rabbinic Literature", H. A. Wolfson Jubilee Volume II, Jerusalem, 1956, p. 516, n. 22. The argument over whether certain sufferings are within the realm of "Let him be killed and he shall not transgress" (TB *San.* 74a and elsewhere) are not relevant here, since these cases do not involve situations where it is incumbent upon the man to kill himself.

<sup>19</sup> Philo, *On the Special Laws* I 51-53; *The Acts of the Messengers* 9:23-24; *Sanhedrin* IX:6; and elsewhere.

<sup>20</sup> See the dispute between R. Akiba and R. Yose Hagalili in *Sifra Emor* 7, ed. Weiss 98a; and with variances in the system TB *Mena'hot* 73b; and in parallel places. Also, compare Tosefta *Shekalim* I:7.

<sup>21</sup> II Macc. 12:38-45.

volves the belief in the resurrection of the dead and the idea that one can and should atone for the sins of the dead after their demise.<sup>22</sup> In talmudic literature we do not find any law or specific tradition about sacrifice or even about prayers which are supposed to atone for the deceased.<sup>23</sup>

In the conditions prevailing at the start of the Second Temple period the custom of bringing tithes (and other gifts) for the priests and the levites to Jerusalem and the Temple and distributing them there among them became firmly established. This is in opposition to the halakhah in talmudic literature, which allows tithing anywhere and permits it to be given to any priest or levite who wishes to take the produce.<sup>24</sup> This custom began in the days of Ezra and Nehemiah and perhaps already at the time of the First Temple, and we learn about it even from the books of the Hasmoneans. In I Macc. a fast in Mizpeh is described<sup>25</sup> and among other things we are told how Judah and his men brought tithes there while complaining that there was no possibility to fulfil the commandment of tithing since the Temple was in the hands of non-Jews (I Macc. 3:49-50). From this we learn that the bringing of the tithes to the Temple and Jerusalem was the only proper way of tithing, just as it was obligatory to bring the first-fruits, the priestly vestments, and the sacrifices of the Nazirites, items also mentioned there, to the Temple.

The fast which took place at Mizpeh included the following features depicting sadness: the wearing of sackcloth, putting ashes on the head, tearing one's clothing, the unrolling of the Torah scrolls, blowing of trumpets, and praying aloud. These expressions of sadness and their order are practically identical to the order of fasting mentioned in the Mishnah (*Ta'anit* II:1).

<sup>22</sup> Likewise, also, from the story in II Macc. itself (12:42-43). It might be that one should see some influence of the Egyptian culture in whose surroundings II Macc. was formed.

<sup>23</sup> Note that all laws in Judaism which are acts on behalf of the dead and his soul are late customs. Talmudic law explicitly negates the sacrifice of a sin-offering on behalf of the dead, even in the case where the owner had designated a future sacrifice and died before it was offered (*Temurah* IV:9; *Kinnim* II:5; cf. also TB *Temurah* 15b concerning a public sin offering whose owners had died).

Prof. S. Safrai informed me of an exception on this point in a midrash which states that the dead need atonement (*Sifre Deut.* § 210, ed. Finkelstein, p. 244), but there this is a non-essential addition to *Sifre* (cf. the notes of Finkelstein there).

<sup>24</sup> There is no mention in all the talmudic literature of the custom of bringing tithes to Jerusalem (except for the vague testimony of the Amora R. Joshua ben Levi - TJ *Ma'aser Shenit* V:56d; TJ *Sota* IX:24a). About this subject in general, see my article, "Ha-frashat ma'aser rishon halakhah le-ma'aseh", etc., Benjamin de Vries Memorial Volume, Jerusalem, 1968, pp. 70-83.

<sup>25</sup> I Macc. 3:42-54.

The books of the Hasmoneans attest to the establishing of the holiday of Chanukah for generations to come.<sup>26</sup> From the testimony of II Macc. one understands that they celebrated the purification of the Temple for eight days as a substitute for the Succot festival which they had not been able to celebrate that year under the conditions of the rebellion. This would seem to imply that the holiday of Chanukah was not essentially of an independent nature but only a substitute for Succot. This idea does not stand up under close scrutiny, and in fact one should consider the statements in II Macc. only as an attempt to explain celebrating the dedication for eight days and not for seven as Moses did for the sanctuary or Solomon for the Temple.<sup>27</sup>

From II Macc. it follows that the feast of dedication was celebrated with a bouquet reminiscent to a great extent of the four kinds of plants used on the Succot festival (II Macc. 10:7). Yet this was not necessarily a substitute for an uncelebrated Succot festival, but rather a common expression of joy of the people. In other instances, too, with absolutely no connection to the Succot festival there are descriptions of the waving of a palm branch and even of a bouquet containing the four kinds of plants or some of them, such as in the description of the entrance of Simon into Gazara (I Macc. 13:51) and in the reception given for Jesus in Jerusalem (John 12:13). When the midrash discussed the four plants of Succot it compared their usage to the method of victory celebrations,<sup>28</sup> and certainly this serves as an illustration of the dedication festivals. Elsewhere, where the bringing of the ark to Jerusalem is described, the midrash combines it with the waving of the palm branch<sup>29</sup> – this tradition of the midrash should not be considered as going back to the days of King David but as an attempt to show later methods of rejoicing as being based on those of earlier times.

The description of the Succot festival in Nehemiah raises some doubt as to the halakhah concerning the four kinds of plants (Neh. 8:14-15). This description raises the possibility that according to the concepts at the beginning of the Second Temple era the four kinds of plants were used in the building of the *succah* and were not taken in the hand.<sup>30</sup> The description

<sup>26</sup> I Macc. 4:36-53; II Macc. 10:1-9.

<sup>27</sup> Cf. G. Alon, "Ha-hishkikhah ha'uma we-chakhamehah et ah-chashmona'im", in: *Mechqarim be-toldot yisrael* I, Tel Aviv, 1956, pp. 15-25. Similarly, Alon explains the talmudic question of "What is Chanukah?" (TB *Sab.* 21b) by claiming that the question deals with the reason for which the festival lasted eight days, and this is explained by the miracle of the oil flask. In support of Alon's view, one should note that the *sheiltot* of the talmudic question begin with "What is the Chanukah candle?", i. e., not a question about the essence of the holiday but an explanation about candle lighting (*Vayishlach*, *Sheilta* 26).

<sup>28</sup> *Wayyikra Rabbah* 30, 2, ed. Margulies, pp. 694-695.

<sup>29</sup> *Bamidbar Rabba* 4, 20. For the whole issue of the four kinds of plants cf. S. Safrai's *Ha-aliya le-regel bi-yemei bayit sheni*, Tel Aviv, 1965, pp. 190-191.

<sup>30</sup> Such is the view of the Samaritans and the Karaites. Cf. Ch. Albeck, *Das Buch der Jubiläen und die Halacha*, Berlin, 1930, pp. 17-18.

of the joy of the dedication in II Macc. proves that it was common at public celebrations to take the four kinds of plants in the hand, and moreover the celebration of the Chanukah festival is compared there to that of the Succot holiday.

The description of the celebration of the Chanukah festival in II Macc. reinforces the view that the taking in hand of the four kinds of plants on Succot at the time of the Temple was part of the ceremony and ritual of the Temple and not a commandment obligatory on each individual everywhere. However, it turns out that in the Temple period, or at least at the end of the era, the commandment concerning the four kinds of plants was observed on the first day of the Succot festival even in areas outside of Jerusalem,<sup>31</sup> but here, too, one should not consider the act as an independent commandment but as a waving of the plants carried out in each settlement in correspondence to the main waving of the Temple ceremony.

In summation, the books of the Hasmoneans are not overly abundant in halakhah, but those places which do deal with legal topics are bound up with the reality of the period and with the aims and nature of the Hasmoneans.<sup>32</sup> Likewise, there is in general in the laws of the Hasmoneans a basis for Pharisaic laws and an illustration of the development of the law.

In general, the laws in Hasmonean literature, even those which differ greatly or slightly from later laws, are not identical to the laws of the sects which separated from the normative Jewish community, such as the Samaritans, the Dead Sea sect, or the Karaites. The Hasmonean laws expressed the legal concepts of the mainstreams of Judaism and served them as one of the bases or steps in the stages of the development of the halakhah.

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<sup>31</sup> *Rosh Hashana* IV:3. Cf. G. Alon, *Toldot ha-yehudim be-eretz yisrael bi-tequfat ha-mishnah ve-ha-talmud*<sup>3</sup>, I, Tel Aviv, 1959, pp. 68-69; and S. Safrai, "Be-chinot chadashot le-bay'at ma'amado u-ma'asav shel rabban Yochanan ben Zakkai le-achar ha-churban", *Sefer Zikkaron le-Gedalia Alon*, Tel Aviv, 1970, p. 217.

<sup>32</sup> It might be that some of the laws in II Macc. do not reflect reality absolutely but are derived from the background and aims of the book.