

# Sabbath Observance, Sabbath Innovation: The Hasmoneans and Their Legacy as Interpreters of the Law

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## Abstract

Both 1 Maccabees and 2 Maccabees portray the Sabbath law as a central point of contention during the struggle over Judean law and tradition in the second century BCE (e.g., 1 Macc 1:41-50; 2 Macc 6:4-6). The Hasmonean family in particular is at times highlighted as holding the Sabbath in high regard (2 Macc 5:27). In every available source, there is no question of the commitment to the inherited traditions concerning the Sabbath. However, in two passages, 1 Macc 2:29-41 and 9:43-53, the Hasmoneans are portrayed as acting in a way supported by few extant writings associated with Judean legal tradition: they engage in battle on the Sabbath. First Maccabees presents this as innovation on the part of the Hasmoneans. Josephus, who summarizes these events based upon 1 Maccabees, even recognizes this decision as the basis for normative practice (*Ant.* 12.272-277). As several scholars (e.g., Bar Kochva, Weiss, Scolnic) have pointed out, this event could hardly have been the first time in Judean history the issue arose. They argue against this reading of the sources. This paper contends that the plain reading of the texts is correct and 1 Maccabees is being used as the basis for legal practice in Josephus' writings.

## Keywords

Sabbath – 1 Maccabees – Josephus – Halakah – Hasmonean

A curious passage in 1 Maccabees alongside its apparent reception in Josephus' *Jewish Antiquities* has long aroused interest among scholars interested in

law and its interpretation in early Judaism.<sup>1</sup> This particular passage makes a bold claim: Mattathias, ancestor of the Hasmonean priestly and royal line, is singularly responsible for a change in Judean ancestral law, or at least its proper interpretation in the matter of defensive war on the Sabbath.<sup>2</sup> After Mattathias' decision there seems to be no problem among his followers and allies concerning fighting defensive war upon the Sabbath (1 Macc 2:42-43; 9:43-53).<sup>3</sup> Likewise, in Josephus' presentation of Judean history, he recognizes Mattathias' decision as a shift in the observation of the Sabbath for the whole community (*Ant.* 12.277). These passages raise important questions for legal interpretation: On what basis was the Sabbath being observed, both historically and for the authors crafting the literary representation? What kind of

- 1 Only limiting ourselves to relatively recent contributions produces a list including Martin Goodman and A. J. Holladay, "Religious Scruples in Ancient Warfare," *CQ* 36 (1986): 151-71, esp. 165-71; Joshua Efron, *Studies on the Hasmonean Period* (Leiden: Brill, 1987), 21, esp. the extensive n. 63; Bezalel Bar Kochva, *Judas Maccabeus: The Jewish Struggle Against the Seleucids* (Cambridge: Cambridge University Press, 1989), 474-93; Bar Kochva, *The Image of the Jews in Greek Literature: The Hellenistic Period* (Berkeley: University of California Press, 2010), 280-305, esp. 292-94; Herold Weiss, "The Sabbath in the Writings of Josephus," *JSJ* 29 (1998): 363-90; Lutz Doering, *Schabbat: Sabbathalacha und -praxis im antiken Judentum und Urchristentum* (Tübingen: Mohr Siebeck, 1999), 537-64, esp. 547-54. A more extensive bibliography including all the main contributions since Abraham Geiger, *Urschrift und Übersetzungen der Bibel* (2nd ed.; Frankfurt am Main: Mada, 1928), 217-18, can be found in Bar Kochva, *Judas*, 474, n. 1-2. An even more thorough list would include the thoughtful contributions of commentators on 1 Maccabees, most notably Jonathan Goldstein, *1 Maccabees* (AB 41; Garden City, N.Y.: Doubleday, 1976), 237; and Robert Doran, *The First Book of Maccabees: Introduction, Commentary, and Reflections* (NIB 4; Nashville: Abingdon, 1996), 46-47.
- 2 For scholars who share the opinion that this is a change in Judean law, see, e.g., Carl Grimm, *Das erste Buch der Maccabäer* (Leipzig: Hirzel, 1853), 43-44; John Bartlett, *The First and Second Books of the Maccabees* (Cambridge: Cambridge University Press, 1973), 38-39; J. Dancy, *A Commentary on 1 Maccabees* (Oxford: Blackwell, 1954), 86-87. For scholars who tend more to emphasize a change in the *interpretation* of the Sabbath law, see, e.g., Daniel Harrington, *The Maccabean Revolt: Anatomy of a Revolution* (Wilmington: Glazier, 1988), 66; and Menahem Stern, *Greek and Latin Authors on Jews and Judaism* (3 vols.; Jerusalem: Israel Academy of Sciences and Humanities, 1976-1984), 1:510-11. An occasional decision is envisioned by Benjamin Scolnic, *Judaism Defined: Mattathias and the Destiny of His People* (Lanham, Md.; University Press of America, 2010), 179-215, esp. 214-15; Bar Kochva, *Judas*, 483-84; and Efron, *Studies*, 21, who imagines a decision concerning opposition of the Seleucid army.
- 3 Pace Weiss, "Sabbath," 377, who reasons, based on the account in *Ant.* 13.12-14, that Jonathan's need to exhort his companions to fight shows their ignorance of the ruling that it is permissible to fight on the Sabbath. His reasoning would be persuasive were it not for the fact that the account in *Ant.* 13 is clearly based upon 1 Macc 9:43-53, in which context such exhortations before battle are not at all out of place (see 1 Macc 4:8-11; 9:8-10).

authority did Mattathias and later the account of his decision have for various communities from 168 BCE until the late first century CE when Josephus was writing the *Jewish Antiquities*? Further, how did this particular narrative, regardless of its historicity or authority, come to be understood as the basis of law for at least some Judeans? This article seeks to reflect on all these problems in order to resolve the tensions people have noticed between the account in 1 Macc 2, Josephus, and various other parascriptural writings. It is my contention that Josephus uses 1 Macc 2 as the basis for legal innovation and that this passage informs his presentation of warfare on the Sabbath throughout his writing.

As noted above, the investigation of these passages and their relevance for uncovering the history of halakah in early Judaism is not new. Traditionally, most scholars interested in the question have concluded that prior to Mattathias' decision the expected response to an attack on the Sabbath was pacifism.<sup>4</sup> A classic exponent of this near consensus position is Menahem Stern. In his magnum opus, *Greek and Latin Authors on Jews and Judaism*, he writes approvingly of the testimony provided by Agatharchides of Cnidus, as cited by Josephus (*Ant.* 12.5-6; *Ag. Ap.* 1.205-211), which claims that Jerusalem fell to Ptolemy I on account of his attack on the Sabbath. Stern cites 1 Macc 2:32 as support for this.<sup>5</sup> Further, in evaluating the testimony of Frontinus (*Strategemata* 2.1.17) concerning Vespasian's (sic) defeat of Jerusalem on the Sabbath due to the imposed inactivity, Stern is highly critical on the basis of the strength of the testimony from 1 Maccabees and the other sources available, which seem to show a development in the interpretation of this particular law.<sup>6</sup> Lutz Doering, the most recent exponent of the traditional view, argues explicitly that there appears to have been a development in Sabbath halakah based on the available evidence in 1 Maccabees and Josephus. However, he does recognize some variety in how widely this new interpretation spread and received approval, citing the examples of Anileus and Asineus in Babylon

4 See the discussion in Bar Kochva, *Judas*, 474-75, particularly n. 1, and the similar recognition by Efron, *Studies*, 21, who both disagree with this consensus.

5 Stern, *GLAJJ*, 1:107-09.

6 Ibid., 510-11. See also his discussion, at 549, of Plutarch, *De Superstitione* 8, in which Stern notes that while Plutarch's understanding of the Sabbath playing a role in the defeat of Jerusalem agrees in principle with Agatharchides, his evaluation may be based on the mistaken impression seemingly prevalent among ancient authors as to the prohibition of fighting on the Sabbath. Stern, *GLAJJ*, 2:347-407 registers a similar complaint concerning Cassius Dio's (*Historia Romana* 37.15.2-17.4) account of Pompey's sack of Jerusalem. He takes seriously the evidence of 1 Maccabees and Josephus.

(*Ant.* 18.32).<sup>7</sup> Though Doering looks at the issue in greater depth, and adds nuance to the consensus, he principally agrees. Before the decision of Mattathias, the common understanding of the Sabbath custom prohibited warfare of any type. Afterward defensive, and occasionally offensive, warfare gained acceptance. This consensus betrays what Aharon Shemesh terms a “developmental” idea of legal interpretation, though scholars describe this development with varying degrees of linearity.<sup>8</sup>

This majority view has been opposed by a number of scholars. The opposition has come from a several directions. Joshua Efron, for example, argues that Jewish law and its interpretation on this point remained unchanged, with evidence for this conservatism at least from the time of Ezra and Nehemiah.<sup>9</sup> In this account, the Judeans were always allowed to fight on the Sabbath. For Efron this is bolstered by an appeal to common sense: how could the Judeans have survived in an era which had them surrounded by hostile neighbors and empires if they did not defend themselves on the Sabbath, after all? Further, such evidence as *Jub.* 50:12-13, 2 Maccabees, and Josephus should be ignored because of their suspect nature, as should unsympathetic Gentiles like Agatharchides.<sup>10</sup> First Maccabees 2:39-41, far from arguing for defensive war on the Sabbath, is only showing evidence of a debate whether to take on the whole Seleucid host. Efron thus concludes that no Judean sources provide evidence for a prohibition on defensive war in Sabbath regulations.

7 Lutz Doering, “Jewish Law in the Dead Sea Scrolls: Some Issues for Consideration,” in *The Hebrew Bible in Light of the Dead Sea Scrolls* (ed. Norá Dávid et al.; Göttingen: Vandenhoeck & Ruprecht, 2012), 449-62, esp. 459.

8 Aharon Shemesh, *Halakhah in the Making: The Development of Jewish Law from Qumran to the Rabbis* (Berkeley: University of California Press, 2009), 3-4. The developmental model, which posits older interpretations that are transformed at some point into a newer type of interpretation, is contrasted by Shemesh with a reflective model. This reflective model insists that rabbinic halakah represents disputes that already existed during the Second Temple period. That is, varieties of opinions existed simultaneously on any given subject of Judean law. Shemesh develops this terminology for studying the relationship between the legal interpretation of the Dead Sea Scrolls and rabbinic literature, but given the proximity in time and space between this material and that of our study, the shift seems appropriate. Doering, “Jewish,” 459, makes this case explicitly.

9 Efron, *Studies*, 21, bases this on Neh 4 and 6:15 in which soldiers are put on constant guard by Nehemiah in order to ward off an attack of Sanballat and the Tobiads for 52 days straight.

10 *Ibid.*, 21, n. 63.

Bezalel Bar Kochva engages in a far more in-depth study evaluating all available sources that would seem to show any hesitance to fight on the Sabbath.<sup>11</sup> He begins his argument, however, with an appeal similar to Efron's. Bar Kochva states plainly, "a prohibition against self-defense on the Sabbath could never have been viable in any period and would not have been the norm in any case."<sup>12</sup> Though he notes that many secular Jewish scholars are in agreement on this principle, Bar Kochva is careful to point out that they diverge on almost every other question.<sup>13</sup> Nevertheless, as the most recent and notable member of this camp, Bar Kochva raises some important objections to the texts traditionally read as evidence for any prior prohibition to defensive warfare on the Sabbath. Included among these texts is the Mattathias episode reported in 1 Macc 2 and *Ant.* 12.272-277. For Bar Kochva, 1 Macc 2 is merely emphasizing an already existing rule in the specific context of a Seleucid force encouraging impiety. That is, there is nothing wrong with defense on the Sabbath, but because the Gentiles do not know that, they might think they are succeeding in their mission by forcing the Judeans to fight on the seventh day.<sup>14</sup> Since Bar Kochva's original analysis, his assessment of the history of interpretation of this law has received some endorsement. Martin Goodman and A. J. Holladay have wholeheartedly accepted Bar Kochva's analysis on their way to concluding that there was a persistent question as to warfare on the Sabbath.<sup>15</sup> Robert Doran has noted that Bar Kochva has proven that the strict interpretation of Sabbath law was impracticable, especially while Judeans served in foreign armies.<sup>16</sup> Stewart Moore, in a recent dissertation, has allowed for the possibility that Bar Kochva is correct: the gentile evidence for Judean inactivity in war on the Sabbath,

11 Bar Kochva, *Judas*, 474-93; and Bar Kochva, *Image*, 280-305. The latter argument is focused on just one source, Agatharchides (though in two fragments), but the argument necessarily veers in the direction of the broader question at 292-94.

12 Bar Kochva, *Image*, 292, presents this as the common opinion of not a few "secular Jewish scholars."

13 *Ibid.*, 292.

14 Bar Kochva, *Judas*, 402-3. Scolnic, *Judaism*, 179-215 takes an entirely different approach from Bar Kochva, revealing the variety of interpretations on the Sabbath, but broadly agrees with the conclusions of Bar Kochva, that this is an extraordinary event and a one-time decision. His own contribution is that Mattathias did not intend to reinvent halakah.

15 Goodman and Holladay, "Religious," 168-69. The two are reacting to the original Hebrew version of Bar Kochva's *Judas Maccabeus*, but the points seem to be identical.

16 Doran, *First*, 42-43.

including Agatharchides, could reveal a trope among Gentiles who disparaged Judeans and their practices.<sup>17</sup>

These recent contributions reveal that what was once a near consensus on the history of the interpretation of Sabbath laws in the matter of defensive warfare has now been seriously questioned. Moreover, this brief review shows how interconnected the historical issue is with the aim of this paper. It is impossible to thoroughly judge why and how 1 Maccabees and Josephus interpret Sabbath custom without a clear picture of the prevailing understanding of those issues in their own day. Thus in order to solve the problem of how 1 Maccabees is able to advertise ostensibly creating a new legal interpretation, and why Josephus endorses that claim, we must understand what the author of the passage believes Mattathias is interpreting. The process has multiple parts: (1) It must involve a determination of what 1 Maccabees actually argues and how it communicates its ideas, including possible interaction with conventional legal terminology in scriptural and parascriptural texts. (2) Mattathias' halakic statement must also be placed in the context of the literary work in which it appears. (3) 1 Macc 2:29-41 ought to be compared to other, especially contemporary, bodies of Judean law and interpretation in order to find similarities or deep divergence. The preceding process is based upon the methodology for investigating halakah proposed by Doering.<sup>18</sup> Contrary to the comparative model developed by Larry Schiffman, which emphasizes halakah as a primarily exegetical practice, Doering notes that it is often difficult to establish the connection between ostensible interpretations and legal texts, rather than everyday life. This is primarily because passages, at least in Qumran texts about which he is reflecting, rarely present themselves as interpretation or exegesis.<sup>19</sup> It seems wise to be just as cautious with the texts we investigate here. The relationship to practice and to text is under dispute for the accounts of Mattathias' decision, as is the broader context of popular ideas

17 Stewart Moore, "Judean Identity in Hellenistic Egypt" (Ph.D. diss., Yale University, 2014), 203-4, n. 126.

18 Lutz Doering, "Parallels Without 'Parallelomania': Methodological Reflections on Comparative Analysis of Halakhah in the Dead Sea Scrolls" in *Rabbinic Perspectives: Rabbinic Literature and the Dead Sea Scrolls: Proceedings of the Eighth International Symposium of the Orion Center for the Study of the Dead Sea Scrolls and Associated Literature*, 7-9 January, 2003 (ed. Steven Fraade et al.; Leiden: Brill, 2006), 12-42, esp. 15. Doering is himself adapting the comparative method of investigating Qumran halakah developed by Schiffman.

19 Ibid., 16.

on the subject.<sup>20</sup> In order to clarify the significance of legal and narrative texts for the interpretation of 1 Maccabees and Josephus on this subject, we will follow Doering's methods.

### 1 Maccabees on Defensive War

First Maccabees 2:29-41 contains the most important information concerning Sabbath warfare, as it provides Mattathias' actual decision (2:39-41) and the event (2:29-38), which ostensibly inspires the change in interpretation. The episode narrated in 2:29-38, in which Judean refugees are killed on the Sabbath, seems to present the deaths as a martyrdom for the sake of the Sabbath. They do not fight because Sabbath custom demands inactivity in this area. This can be seen most obviously in verse 32 which underlines that Antiochus' officers engaged them in battle on the day of the Sabbath, and verse 34 in which the refugees themselves state: "We will not come out. Nor will we act according to the king's decree to desecrate the day of the Sabbath."<sup>21</sup> This reading is bolstered by verse 38, which reiterates that the refugees were attacked on the Sabbath as it reports their sad fate. Further support comes from the reaction Mattathias and his friends have in verses 40-41 which explicitly contrasts the slaughter of the refugees with the decision to fight on the Sabbath.

Few scholars, even those who dispute Mattathias' innovation, disagree with this reading. Efron includes this group among the Hasidim, mentioned later, and notes that they were "called upon to fulfill the precepts strictly." It is not quite clear how a group can be following rules strictly if the claim is that this was never the rule for fighting on the Sabbath in the first place. However, since even Efron does not deny that the dispute is over Sabbath observance, I shall not deal with this problem here. Dancy argues that the primary act under dispute for both the king's officers and the refugees was leaving the caves.<sup>22</sup> This contention is buttressed to some extent by the demand of the officers to come out from the caves, and the refugees' subsequent refusal (2:33-34). However,

20 On this see, e.g., Weiss, "Sabbath," 383-84, who allows for the possibility of halakic development in the area of defensive war on the basis of Mattathias' account, but notes that there is no record of anyone actually citing it. Thus he doubts this was actually the case.

21 Translations of 1 Maccabees are taken from Francis Borchart, *The Torah in 1 Maccabees: A Literary Critical Approach to the Text* (Berlin: De Gruyter, 2014), here 244.

22 Dancy, *Commentary*, 86. Goldstein, *1 Maccabees*, 237, concurs. Bar Kochva, *Judas*, 481, agrees that it is the act of leaving the cave that would have constituted a break with Sabbath observance. Though, he doubts that this is the reason for the refugees' death.



this would only explain why the refugees were attacked; it would not explain why they died without defending themselves in the caves. Verse 36 makes clear that “they did not respond to them and did not throw a stone toward them.” This refusal to defend must then be part of the Sabbath ethic of the refugees. Dancy admits as much, but only wishes to stress that this might not have been the primary motivator for either party.<sup>23</sup> In either case, it is the Sabbath that is at issue.

Bar Kochva originally mounts an argument claiming that the refugees are *not* martyred because of their observance of the Sabbath, but instead chose to die in order to display the iniquity of Antiochus before the world.<sup>24</sup> He bases this upon their statement in verse 37, which exhorts heaven and earth to bear witness that they are wrongfully slaughtered, and upon the fact that there is not a single word about a prohibition on fighting on the Sabbath. Bar Kochva goes so far as to assert that the refugees would have refrained from fighting on any day of the week.<sup>25</sup> The problem with this conclusion is that it is reached by artificially separating the very reason for the refugees’ escape into the wilderness from their desire to die as martyrs. The claims to innocence, which are borne out by a lack of activity on the Sabbath (including defensive warfare), must betray an understanding that such activity was illicit. Bar Kochva himself has recanted this position more recently and now accepts that, “the group that died in caves did in fact apply stricter rules, of the type also found in later books, such as *Jubilees* (50:12), and the *Damascus Document* (CD 12:6).”<sup>26</sup> Thus, it seems certain that 1 Maccabees presents the refugees as observing a Sabbath custom prohibiting defensive war, among other activities.

Mattathias’ reaction, presented in verses 39-41, reveals a wealth of information concerning his stance on defensive warfare. First, Mattathias and his companions learn of the event, and deeply mourn the refugees. There is no indication of judgment against the group for either this decision or their broader performance of ancestral customs, including the Sabbath. This finding should not be surprising because the refugees are imitating Mattathias and his sons by withdrawing to the wilderness in the first place (2:28-30).<sup>27</sup> Indeed,

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23 Dancy, *Commentary*, 86.

24 Bar Kochva, *Judas*, 482. Bar Kochva here specifically employs the language of martyrdom to stress this point.

25 *Ibid.*, 482.

26 Bar Kochva., *Image*, 292, n. 59.

27 Efforts to draw a sharp, and sometimes hostile, distinction between the Hasmoneans, who leave everything behind, and the refugees, who take their children, wives, and livestock along with them (e.g., Dancy, *Commentary*, 86; Doran, *First*, 46; and most vocifer-



the Hasmoneans and their supporters appear to have been of one mind with the refugees up to this point. This is shown by the epiphany Mattathias and his friends reach immediately after they have mourned (2:40): “if we all do as our brothers did and do not fight against the peoples for our lives and for our statutes, then they will quickly annihilate us from the land.” At this point in the narrative, though, they recognize the importance of keeping the Sabbath, and acknowledge that the refugees were keeping it correctly. Mattathias and his friends also realize that following this principle means certain death.<sup>28</sup> It is this realization that inspires, or even forces, them to change their interpretation concerning Sabbath observance. This point is made explicit in their decision, which cites their own self-preservation as necessary so as not to suffer the fate of their brothers (οἱ ἀδελφοὶ ἡμῶν).

There can be little doubt that this decision is presented as a change by 1 Maccabees. The use of βουλεύω in concert with the time marker (τῇ ἡμέρᾳ ἐκείνῃ) is a strong indication of the momentousness of the ruling. Further, as Doering has noted, the *Pendenskonstruktion* used for the resolution is quite similar to that used in passages more readily recognized as halakhic in other sources.<sup>29</sup> As we shall see, Josephus also understands a new rule to have been created here (*Ant.* 12.277). The resolution is remarkable for being presented as the product of a communal decision. Mattathias at no point is the agent of change. He and his friends mourn, they realize the risk, and, most importantly, they come to a decision. This too points in the direction of innovation as it provides the context in which the ruling was formulated. The influence is instantly expanded by the context, wherein the Hasideans and other refugees join Mattathias and his group after this decision.<sup>30</sup> This evidence can be combined to make a strong case for 1 Maccabees presenting a novel interpretation. The narrative is not uncomplicated. Sure enough, anyone who comes against the Judeans in battle on the Sabbath will be opposed. Thus, *defensive* war is allowed. But what constitutes such an attack, what type of opposition is permitted, to whom this innovation applies, and whether there is any time

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ously Goldstein, *1 Maccabees*, 235), are probably overblown. There is no hint of negative appraisal against this group for either act.

28 So also Doran, *First*, 47.

29 Doering, *Sabbat*, 548, esp. n. 37, wherein the similarity between this passage and CD 11:16 is illustrated.

30 Though it is not indisputable that the other Judeans are attracted to Mattathias and his friends *because* of this resolution, other scholars such as Goldstein, *1 Maccabees*, 237 and Doran, *First*, 47, recognize this as well, relying on the particle τότε as an indicator of the connection. This support is not negated by the possibility of these verses being secondary, as in Borchardt, *Torah*, 58-60.

limit on this decision is left obscure. This has allowed for the reactions of Scolnic, Bar Kochva, and Efron, among others, who would read in this ruling only an occasional resolution.<sup>31</sup>

The one passage that would otherwise clarify some of these questions is of little help. First Maccabees 9:43-53, which is the sole passage describing a Sabbath battle, is remarkably similar to every other battle in the book. As the enemy approaches, the Hasmonean hero encourages the troops and exhorts them to pray to heaven for aid before entering battle. In this case, as in many others, he emerges victorious. Aside from the notice that this takes place on the Sabbath, there is nothing remarkable. No deliberation is required as to whether this fits a specific situation. The most we can say is that the Judeans appear to have been surrounded, and there seems to have been no choice between fighting and being annihilated. However, because this is not cited as the reason to fight on the Sabbath, it is ill-advised to read too much into this piece of information.<sup>32</sup>

One of the positions argued by people on all sides of the question is whether any decision could have applied to all Judeans everywhere. Whether these scholars cite evidence from 2 Maccabees, Josephus, *Jubilees*, or the *Damascus Document*, they claim that Mattathias' judgment does not seem to be heeded.<sup>33</sup> First Maccabees is actually rather transparent on this matter. It presents no less than three approaches to Sabbath observance among Judeans. There

31 Efron, *Studies*, 21, n. 63, believes we have here an expression of doubt about whether to fight the regnant imperial power. This position ignores the matter under dispute for the refugees, the royal officers, and the Hasmoneans, all of whom mention the Sabbath as their motivation. It also centers this question on only the war at hand. Bar Kochva, *Judas*, 482-83 breaks Mattathias' response into two parts: the first deals with the problem of martyrdom, which Mattathias and his friends reject outright. The second part deals with the problem of fighting when the enemy's specific goal is to have the Judeans break the Sabbath. Bar Kochva believes the Judeans knew Greeks might not have known that Judeans were allowed to fight, and so did not want to appear as if they were breaking the law for them. While this line of argument is possible, it certainly receives less textual support than a plain reading of a Sabbath dispute. Bar Kochva, therefore limits the decision to Judeans in a the specific context of the attack on Judean customs in 168 BCE. Scolnic, *Judaism*, 223, disagrees with Efron and Bar Kochva on the topic of the prevailing interpretation of Sabbath warfare, but also limits Mattathias' decision to his own group, a group which apparently does not include his own sons.

32 Pace Doering, *Schabbat*, 549. The exhortation to fight on behalf of the lives of those present can be found in 1 Macc 3:18-22, and nobody would argue this reasoning was based on Mattathias' decision.

33 Cf. Scolnic, *Judaism*, 188 (no linear development); Weiss, "Sabbath," 380 (never resolved, an open question); Doran, *First*, 47 (Judeans in foreign military).

are those who willingly transgressed the Sabbath and other Judean customs (1:43, 52), most likely including the taboo against warfare. Then there is the group of refugees mentioned above, who prefer to die as martyrs on behalf of the Sabbath (2:37-38). Finally, there is the group surrounding Mattathias, which considers itself observant of the Sabbath, but allows for defensive warfare (2:41). This probably indicates that 1 Maccabees never has in mind a rule that covers all Judeans everywhere. It recognizes that Judeans have various opinions on the matter.

The question then arises, for whom does the resolution apply? A relatively simple answer emerges from the text: a population comprised of Judeans who formerly would have abstained from fighting on the Sabbath. First Maccabees does not imagine Mattathias and his friends will change the minds of those who do not observe the ancestral customs with the same emphases. Though the so-called outlaws and lawless are driven out of many Judean cities throughout the book (e.g., 10:14; 13:43-50), they are never converted. However, as we have seen, Hasideans, specifically noted for their observance of the law, and all the refugees (πάντες οἱ φυγαδεύοντες), no doubt of a similar mind to those martyred, are presented as being won over by the new resolution (2:42-43). Jonathan, Mattathias' son, is the only Hasmonean depicted as acting upon this resolution in the book. He does so successfully and without the need to recall the decision in order to convince his militia (9:43-53).<sup>34</sup> Thus, 1 Maccabees leads one to believe that all the pious, however narrowly that term is defined, are persuaded to fight on the Sabbath when attacked.<sup>35</sup>

Trying to determine how this narrative employs legal material that might be known from scriptures and parascriptures is a bit of a challenge.<sup>36</sup> On the one hand, neither the refugees nor Mattathias' group explicitly cite a text as the basis for their practice of pacifism on the Sabbath. Moreover, there is never any indication of the etiological explanation for the Sabbath, which could otherwise provide links to specific texts. Additionally, as we have seen, Mattathias and his friends are presented as innovators, who base their interpretation

34 Attempts by Scolnic, *Judaism*, 217-19 to read hesitation because of the Sabbath into his army are unfounded. The speech Jonathan gives is typical of battles in 1 Maccabees. See 1 Macc 3:18-22; 4:8-11; 9:8-10.

35 Goldstein, *1 Maccabees*, 237, is surely correct in pointing out that many pietists likely found this ruling unacceptable. The historical question is here not the focus, however. Discerning the way in which 1 Maccabees interprets the Sabbath custom is our aim.

36 The implicit assumptions of Efron, *Studies*, 21, and Scolnic, *Judaism*, 190-99, and the explicit claims of Goldstein, *1 Maccabees*, 235, concerning textual basis for the practice are not borne out in the narrative.

on real world needs, rather than on rereading a text. On the other hand, 1 Maccabees presents torah observers as being in frequent contact with books of the Torah, books of the covenant, and holy books (1:56-57; 3:48; 4:47, 53; 12:9).<sup>37</sup> Further, Mattathias and his friends cite the need to defend their ordinances (δικαίωμα) as part of the reason for the change in Sabbath interpretation. Though δικαίωμα can have the sense of “custom,” it is used in 1 Maccabees almost exclusively for particular Judean laws.<sup>38</sup> This may provide additional evidence of a perceived textual basis for a rather severe Sabbath observance.

One further challenge is that while the Sabbath is spoken of rather frequently in scriptural and parascriptural texts as a day on which no work is to be done, what work is proscribed is very rarely explicit.<sup>39</sup> In fact, the only explanations within Pentateuchal material come at Exod 16:29-30 (leaving one's place), Exod 35:3 (kindling fire), and Num 15:32-36 (gathering wood). Even adding material from elsewhere in the scriptures and parascriptures, such as Isa 58:13-14 (doing or talking business), Amos 8:5 (selling goods), Jer 17:21-27 (carrying burdens), and Neh 10:32; 13:15-22 (buying and selling goods and carrying burdens), yields surprisingly few and vague prohibitions when compared with texts like *Jub* 50, CD 11, and rabbinic texts. This openness almost necessitates the sort of variety we see down to the Babylonian Talmud in all matters of its interpretation, including defensive warfare.<sup>40</sup> It is thus difficult to determine whether the particular interpretation espoused by the refugees or Mattathias and his allies can be tied to exegesis or is filtered through broader cultural channels. Our best efforts can probably only yield similarities, rather than generative developments.

Dancy and Goldstein have noticed in the refusal of the refugees to leave the caves a rather literal reading of the command to the Israelites in the desert not to leave one's place on the Sabbath in Exod 16:29.<sup>41</sup> Understanding the refu-

37 Though the precise content and extent of these books cannot be determined with available evidence something like the Pentateuch seems very likely, possibly with the inclusion of many more texts. See Francis Borchardt, “Concepts of Scripture in 1 Maccabees,” in *Early Christian Literature and Intertextuality, Volume 1: Thematic Studies* (ed. Craig A. Evans and H. Daniel Zacharias; Library of New Testament Studies 391; London: T&T Clark, 2009), 24-41.

38 Borchardt, *Torah*, 11-12, 190, contra Bernard Renaud, “La loi et les lois dans les livres des Maccabées,” *RB* 68 (1961): 39-52, esp. 39-40.

39 See, e.g., Gen 2:1-4; Exod 20:9-11; 31:12-17; Lev 19:3; 23:3; 26:1-4; Deut 5:12-15.

40 *Erub.* 45a differentiates between attacks on the Sabbath demanding money and those threatening the lives of Judeans. In the former instance defense is not permissible, but in the latter it is.

41 Goldstein, *1 Maccabees*, 237; Dancy, *Commentary*, 86.

gees' behavior as at least analogous seems sensible. Though Exod 16 could be interpreted in various ways, a literal interpretation, in which Judeans took on the role of Israelites, would require total stasis. This seems to be exactly what the refugees do. Only Exod 16 has the explicit instruction to refrain from leaving one's place. Here a narrative text may be the source for the particular legal interpretation of a later group.

Exodus 16, however, only uncomfortably fits with the refugees' refusal to throw stones or block up their hiding places. There is no prohibition on other types of work in this passage and no particular ban on carrying burdens, or engaging in war. It might be that in this particular instance 1 Maccabees envisions that these activities, too, would require leaving the cave, but it is more likely that the Sabbath observance of this group is analogous to, or even drawn from, some combination of sources. For instance, it seems quite possible that the call to refrain from all work and have a Sabbath of repose, which we find in Exod 20:10; 31:14-15; 35:2; Lev 23:3; Deut 5:13-14, could be the source of this interpretation. After all, both blocking up the hiding places and engaging in defensive battle would certainly disturb one's rest. There is no support for this basis in the text, but it may be that only the practice of abstaining from defensive warfare was known to the author without recalling any possible basis for why this was so. Discerning the path of interpretation is complicated by the fact that the only legal text to explicitly forbid warfare on the Sabbath is *Jub.* 50:12; which, according to the majority of scholars can be dated to the middle of the second century BCE, making it a near contemporary of this passage in 1 Maccabees.<sup>42</sup>

The chronological proximity of these interpretations allows for the possibility of direct literary dependence, a widely accepted cultural custom that has lost any direct ties to writings it may have once had, or a commonly accepted interpretation of specific laws having to do with the Sabbath. If the last, then it may well be that some combination of Exod 16 and later tradition is behind it, as VanderKam has argued in the case of *Jub.* 50:12.<sup>43</sup> In this case, Exod 16's

42 See the discussion of especially the verses dealing with the Sabbath laws in James VanderKam, "The End of the Matter? Jubilees 50:6-13 and the Unity of the Book," in *Heavenly Tablets: Interpretation, Identity, and Tradition in Ancient Judaism* (ed. Lynn LiDonnici and Andrea Lieber; JSJSup 119; Leiden: Brill, 2007), 268-86, wherein VanderKam evaluates the various proposals concerning the secondary character of this passage in *Jubilees*, and arrives at the conclusion that they are integral to the text, which comes from some time in the mid-to-late second century BCE. For the dating of this passage in 1 Maccabees, see Borchardt, *Torah*, 173.

43 VanderKam, "End," 282-83.

prohibition on movement might be combined with Jer 17:21-27 or Neh 13:15-22, both of which evince an understanding of the Sabbath in which the carrying of burdens is prohibited. Presumably such burdens would include stones, whether for hurling or barricading, and weapons of other types.<sup>44</sup> Here again, no literary links are evident, and the specifics of the Jeremiah and Nehemiah passages may even stand as obstacles.

In both cases, it is explicitly Jerusalem that is the focus of the prohibition on bearing burdens (Jer 17:21, 24; Neh 13:15, 19).<sup>45</sup> Additionally, the narrative that describes Nehemiah establishing/enforcing the rule against carrying burdens into Jerusalem includes both guards and a threat of violence (13:19, 22). It may be that these guards are unarmed, as they are described as purified Levites and household servants. However, elsewhere at Neh 4, armed guards are placed in Jerusalem for 52 days around the clock, presumably including the Sabbaths, though this is never explicit.<sup>46</sup> In any case, the differences between Jeremiah, Nehemiah, and the description of the refugees in the caves are such that knowledge of these texts cannot be presumed. It is probably wiser to view these as evidence of an expanding explication of customs related to the Sabbath among various groups of Judeans. Such explication, even dictating the realms of war and life-saving can be observed in the roughly contemporary 2 Maccabees and *Damascus Document* (2 Macc 5:25-26; 6:11; 15:1-5; CD 11:16-17).<sup>47</sup>

44 Scolnic, *Judaism*, 196, notices the possible connection. However, this fact is conveniently passed over by Bar Kochva, *Judas*, 479 and *Image*, 294-95, in his analysis of the question, when he claims that there is a prohibition on bearing arms, but not upon defense. He bases this upon tractate *Erub.* 3[4] 6 in the Tosefta. I can only comment that it is difficult to defend a city if one is not willing to carry weapons.

45 Scolnic, *Judaism*, 196, 199, notes this with particular interest. He even theorizes that this law might be the basis upon which later attacks on Jerusalem were reportedly met with passivity.

46 Efron, *Studies*, 21, n. 63, and Bar Kochva, *Judas*, 476, cite this as a evidence of continuous permission to fight on the Sabbath.

47 Goldstein, *1 Maccabees*, 78-79, suggests that Jason of Cyrene, who wrote the work of which 2 Maccabees is an epitome, left out Mattathias entirely because of his impiety with regard to the Sabbath. It is claimed that he had a much stricter Sabbath observance that did not allow for defensive warfare. Bar Kochva, *Judas*, 484-92, opposes this reading, and suggests that 2 Maccabees thinks of abstaining from self-defense as *exceptionally* pious rather than a commandment of the law. The Damascus covenant in this section focuses on Sabbath laws in a variety of particular instances, including saving an individual's life. It is possible to read this as allowing for transgression of the Sabbath in certain instances, or as Doering, "Sabbath and Festivals" in *The Oxford Handbook of Jewish Daily Life in Roman Palestine* (ed. Catherine Hezser; Oxford: Oxford University Press, 2010), 568, has noted, the

For 1 Maccabees, Mattathias and his friends expand upon this trend even further, but do so by allowing for defensive war.

### Josephus' Reading of 1 Maccabees 2:29-41 and Legal Precedent

Now that we have established what 1 Maccabees has to say about defensive war let us look to Josephus to see how he inherits this narrative and incorporates it into his presentation concerning defensive warfare on the Sabbath. Three operative questions emerge for this problem: (1) What does Josephus actually write in *Ant.* 12.272-277? (2) Can we be sure he bases this on 1 Maccabees? (3) Are Josephus' statements on the subject of defensive warfare borne out in the rest of his writings? Answering these questions should be able to establish whether Josephus is in fact using an explicitly late and narrative text as the basis for orthodox practice on the Sabbath.

*Antiquities* 12.272-277 is clearly reporting a version of the same event as we see in 1 Macc 2:29-41 and 2 Macc 6:11. Though we will deal with the relationship between these texts in a moment, there is no dispute over the historical/mythological event they report.<sup>48</sup> Therefore it is not surprising that much of this story will be familiar. Josephus reports that after Mattathias flees Modein for the desert, many others follow suit, settling in desert caves. The Seleucid forces in Jerusalem chase the group and ask them to repent of breaking the king's decree. After the refugees refuse, they are burnt in their caves on the Sabbath without defending themselves or blocking up the entrances of the caves. Josephus reports they do so because "even during trials, they were unwilling to transgress the honor of the Sabbath, on which it is our custom to be idle." Following this massacre, many of those who were able to escape join up with Mattathias and proclaim him to be their leader. He subsequently instructs them to fight on the Sabbath because failing to do so, by keeping the custom, their enemies would still be hostile to them on that day, so they would all die without fighting when their enemies attacked. Josephus concludes that the survivors are thus persuaded and it remains into his own day "for us" to fight even on the Sabbath whenever it is demanded.

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ruling might allow for life saving as long as the Sabbath is not violated in other ways, such as carrying, or leaving one's place.

48 See Dancy, *Commentary*, 86; Goldstein, *1 Maccabees*, 236-37; Bartlett, *First*, 39; Doran, *First*, 46; Bar Kochva, *Judas*, 491; Scolnic, *Judaism*, 221, for a wide variety of scholars expressing the same opinion.



Josephus' version of events is in basic agreement with the story with which we are already familiar. However, Josephus adds some important details. First, the former practice of pacifism on the Sabbath is explicitly and clearly tied to a demand for total idleness (12.274). This makes explicit a connection we only saw as a possibility in 1 Maccabees. It is not possible through philological or contextual links to further specify the source of Josephus' interpretation here but it is possibly from his reading of Exod 20, 31, 35, Lev 23 or Deut 5. Both the honor for the day, which the refugees were unwilling to transgress, and the requirement to remain idle are at the core of all these sources. Because the reason for the honor and the specific type of work that should be stopped are not specified, this is likely the most we can conclude. Even the Greek verb for rest, ἀργέω, which is used by Josephus, is not used in any of the Greek versions of the passage in question, nor in Josephus' paraphrase of them. This word does happen to be used by Agatharchides, at least in Josephus' retelling (*Ag. Ap.* 1.209), so it is possible that the emphasis on idleness might be influenced by the broader polemic against the Sabbath by Greeks and Romans, more than by any combination of Judean texts.

A second difference between this account and that in 1 Macc 2 is that Josephus provides more details on the circumstances of massacre. Although this does not have particular significance for our understanding of legal interpretation, it will reappear as an important datum for deciding whether Josephus uses 1 Maccabees here as his source. Whereas 1 Maccabees speaks only of hiding places (κρύφος) and does not specify how the refugees were killed, Josephus notes that the hiding places were caves (σπήλαιον) and the victims were burnt (καταφλέγω) and suffocated (ἐμπνέω), presumably from the smoke. Josephus provides a richer description that may problematize the relationship with 1 Macc 2.

The third and most important difference for our purposes is the role of Mattathias. Unlike 1 Macc 2, Josephus presents the new interpretation as emanating entirely from him. Moreover, instead of being implicit leader of the group of refugees, he receives explicit endorsement from the survivors of the preceding episode. There is no community decision to fight on the Sabbath. Rather, an appointed leader issues a teaching on the observance of the Sabbath in special circumstances that becomes authoritative for his followers.<sup>49</sup> However, Josephus goes one step further in making this rule not only applicable for this group, or in the immediate situation, but for all Judeans.

49 As noted by Louis Feldman, "Josephus' Portrayal of the Hasmoneans Compared with 1 Maccabees," in *Josephus and the History of the Greco-Roman Period: Essays in Memory of Morton Smith* (Leiden: Brill, 1994), 41-68, esp. 44.

This is the plain sense of Josephus' statement in 12.277, and, as we shall see, it is evident in the behavior of Judeans Josephus presents before and after the edict.<sup>50</sup> Mattathias' status is thereby considerably raised in Josephus' account. From a first among equals in 1 Maccabees, he becomes a leader. From merely being part of a communal decision, he becomes a rabbi. From forming a rule with an inexplicit time horizon applied to the pious, Mattathias changes the way Judeans observe the Sabbath.

The content of the decision is basically the same, despite considerably different language used. Only two points deserve special consideration. The first is that Josephus seems to understand Mattathias' ruling as permission to transgress the standing rule, rather than a new aspect of the rule. This is different from 1 Maccabees which essentially formulates this as a new aspect of Sabbath halakah.<sup>51</sup> The practical difference is probably small, but significant. In both situations Judeans are permitted to fight on the Sabbath under special circumstances. However, there is a possibility of reading the hortatory subjunctive of 1 Macc 2 as compelling action, while the optative conditional construction of Josephus might only allow it. This is not the only possible reading, and there is some danger of over-interpretation here, but it is worthwhile to take note of the difference.

The second difference in the content of the decision has to do with the situation in which fighting is permitted on the Sabbath. For 1 Macc 2, whenever anyone comes against the Judeans in battle on the Sabbath, the Judeans are called to fight against them. We discussed above that this is not entirely specific. It does not describe what constitutes such a situation. Is it only direct attack? Or does it also include a siege? Might it even include situations in which an army is marching against a Judean army, but not actively engaged in battle? The only situation in which a Hasmonean force fights on the Sabbath in 1 Maccabees is one of direct attack, but this does not mean the other situations are excluded. For Josephus, the interpretation is even broader. He claims that if it is necessary, then the Judeans will fight. This formulation obviously allows for a far wider set of situations in which the Judeans might decide to fight. They might decide, for instance, that it is necessary to attack an enemy encamped some distance away, or to attack an enemy town in order to draw a hostile army away from a sensitive target. As we shall see, Josephus does not seem to hold valid such a broad interpretation in his presentation of Judeans at war. Nevertheless, he does present Judeans doing just such things, at times even making reference to Sabbath custom. There is already some hint to this conservatism in

<sup>50</sup> So also Weiss, "Sabbath," 375, n. 32.

<sup>51</sup> See Doering, *Schabbat*, 548.

*Ant.* 12.276, wherein the reasoning for Mattathias' teaching is presented. As in 1 Maccabees, *Ant.* 12.276 suggests that fighting is permitted only in situations in which the Judeans would be slaughtered if they did not enter battle.

Turning toward the question of Josephus' source for this new legal interpretation, we face a challenge. While it is well accepted, since Destinon, that Josephus' source for much of the Hasmonean revolt is 1 Maccabees, there is some evidence that he has employed 2 Maccabees, at least in part of the account concerning Sabbath warfare.<sup>52</sup> Geiger has argued, compellingly, that because Josephus reports on the death as being by burning (cf. 2 Macc συμφλέγω; *Ant.* καταφλέγω) and specifies that the event takes place in caves (2 Macc and *Ant.* σπήλαιον), as does 2 Maccabees, it must be his source for this event.<sup>53</sup> Clearly it is not the only source, since 2 Maccabees does not contain any reference to Mattathias, nor does it tie the event to a change in legal interpretation.<sup>54</sup> Nevertheless, these details do appear in the account of the martyred refugees for both texts. Even if we do not accept Geiger's reasoning, these factors at least show that there was a separate tradition in existence of which Josephus was probably aware, which could have served as his source. One possible source for this tradition could have been the work of Jason of Cyrene. This would put in doubt my thesis that the narrative in 1 Maccabees is understood to be the basis of law for Josephus.

As strong as this argument is for the details in question, there are indications that the rest of the account comes directly from 1 Maccabees. The first argument for this is the order of each account. Like 1 Maccabees, Josephus progresses from Mattathias' murder of the "apostate" Judean on the illicit altar (1 Macc 2:23-26; *Ant.* 270), to the withdrawal to the wilderness (1 Macc 2:27-28; *Ant.* 12.271), followed by the episode in the caves and decision to revise procedure regarding Sabbath warfare (1 Macc 2:29-41; *Ant.* 12.272-277). No other extant source makes such a connection, and no source outside 1 Maccabees follows this episode with an account of Mattathias and his army tearing down altars and forcibly circumcising the uncircumcised, as Josephus does. A second related point in favor of 1 Maccabees being the source is that Mattathias is entirely unknown outside of this writing and those places upon which it is

52 For 1 Maccabees as the source of Josephus' account see Justus Destinon, *Die Quellen des Flavius Josephus in der Jüd. Arch. Buch XII-XVII = Jüd. Krieg Buch I* (Kiel: Lipsius and Tischer, 1882), esp. 90 and Harold Attridge, *The Interpretation of Biblical History in the Antiquitates Judaicae of Flavius Josephus* (Missoula: Scholars, 1976), 31, esp. n. 1.

53 Geiger, *Urschrift*, 229.

54 Jonathan Goldstein, *II Maccabees* (AB 41A; Garden City, N.Y.: Doubleday, 1983), 279, notes that for Jason of Cyrene, Mattathias is wicked and so is removed from the account.

presumed Josephus relies.<sup>55</sup> This has led several scholars to develop theories as to the reason for Mattathias' primary role in 1 Macc 2.<sup>56</sup> Given this state of affairs, it is remarkable that Mattathias not only figures in Josephus' account of the revolt, but that he is also singled out as the source for the law, in a similar way as is told in 1 Maccabees. It is true that we cannot be sure of Josephus' full reliance on this narrative for every aspect of this story, or some other source or tradition which shares the same perspective as 1 Maccabees, but the same could be argued for any account, even from the Pentateuch. Thus, it seems most probable that 1 Maccabees is in fact the source for Josephus' law, which he claims to be a standing rule for all Judeans to his own day.

As we turn to our final question we must show that Josephus, in fact, proves his statement in his account of warfare on the Sabbath throughout his writings. It is here particularly where we find significantly divergent opinions. Herold Weiss has argued that though Josephus presents Mattathias as making an innovation in this passage, nobody references his decision in later accounts within Josephus' writings.<sup>57</sup> He further posits that Josephus does not consider any Judean who fights on the Sabbath to be pious.<sup>58</sup> Doering has noted particular episodes wherein it seems Josephus allows for a diversity of opinions among Judeans, particularly in the episodes concerning the Babylonian Judean leaders Asineus and Anileus.<sup>59</sup> Bar Kochva has tried to show that even before this decision, the treatment of defeats on the Sabbath does not concern opposition to defense on the Sabbath, but trickery.<sup>60</sup> Each of these opinions poses a considerable challenge to Josephus' understanding of Mattathias' role in the creation of a novel law or legal interpretation. It could be argued that Josephus is simply following his source closely in *Ant.* 12 without really considering the consequences in his retelling of history. Therefore we must establish Josephus' integrity on the matter, if we are to show that the narrative in 1 Maccabees has become law for Josephus just a few centuries later.

Let us begin with Weiss' criticism, since it is the most general in nature. Taken to its core, Weiss' argument essentially claims that Josephus does not

55 This argument is all the stronger if as Benedictus Niese, *Kritik der beiden Makkabäerbücher* (Berlin: Weidmann, 1900), 46, argues, Mattathias is an invention of the author of 1 Maccabees, and for this reason is not spoken of in 2 Maccabees.

56 See the thorough review in Scolnic, *Judaism*, 9-27, wherein all the major explanations are discussed and evaluated.

57 Weiss, "Sabbath," 383-84.

58 Ibid., 382.

59 Doering, "Jewish," 461, writes that the Judeans here have to be persuaded to fight, despite Mattathias' decision being prior to the episode.

60 Bar Kochva, *Image*, 294-95.

seriously consider Mattathias' permission to fight on the Sabbath as law. Weiss even goes so far as to contend that there is internal tension in Josephus by contrasting the Mattathias episode with his statement rebutting Agatharchides in *Ag. Ap.* 1.212, which evinces a preference for piety over personal safety because divine providence is the true source of victory.<sup>61</sup> Weiss marshals the support of various passages in which Josephus shows Judeans who fight upon the Sabbath being judged harshly and leading to unfortunate outcomes for the Judean people as a whole. One problem with Weiss' argument is that he takes far too narrow a view of these episodes without attending to the broader description. Weiss' claim that "Josephus does not report a single incident in which [Mattathias'] rule informed action" is only true insofar as it is not explicitly cited by characters or Mattathias.<sup>62</sup> It cannot be maintained, however, that the actions of Judeans are the same before and after the decision. A second oversight on Weiss' part is that he does not consider that expectations of piety might expand or otherwise change over time. So, when Josephus at one point, before Mattathias, considers it pious to observe the Sabbath instead of defending oneself, he can at another point allow for the possibility of self-defense on the Sabbath because of a new teaching.

This leads us to the arguments of Bar Kochva and Doering, each of whom interprets specific episodes in Josephus' writing in a way that would support Weiss' claim. Other than the martyrdom of the refugees, which is the immediate inspiration for the change in legal interpretation, Josephus presents only one situation illustrating the prior position and its consequences. This is the capture of Jerusalem, reported in both *Ag. Ap.* 1.208-212 and *Ant.* 12.4-6. Bar Kochva has tried to argue on several occasions that these narratives show only that Jerusalem was lost on account of trickery by Ptolemy 1, who feigned piety, and thereby entered the city, catching the Judeans off guard and unable to respond in time.<sup>63</sup> He blames the focus on Sabbath observance on Agatharchides, who is quoted by Josephus in both passages. This fundamentally misrepresents Josephus' introduction to the quotation and the reasons he may have had for employing it.

At *Ant.* 12.4 Josephus mentions that Ptolemy Soter captured Jerusalem by deceit and lies because he entered the city on the Sabbath day as if to sacrifice, leaving the Judeans free from suspicion and in complete idleness. It is true that

61 Weiss, "Sabbath," 373, 390, wants to show that Josephus demands total inaction on the Sabbath, and any step away from that is a step towards impiety.

62 Ibid., 384.

63 Bar Kochva, *Judas*, 492; Bar Kochva, *Image*, 294.

Josephus' report could be read as supporting Bar Kochva's perspective,<sup>64</sup> but when the report is combined with his citation of Agatharchides, Bar Kochva's argument loses all support. At 12.5 Josephus introduces Agatharchides' words as a support for what he has written (μαρτυρεῖ δὲ τῷ λόγῳ τούτῳ). In this introduction, Josephus mentions only Agatharchides' belief that the Judeans lost Jerusalem on account of their superstition, saying nothing of the supposed trickery that accompanied it. This suggests that Josephus believes Agatharchides' version of events, and understands that version to show that Jerusalem was taken on account of the Judean respect for the Sabbath. In the paraphrase of Agatharchides itself, once again it is only the idleness of the Judeans on account of their superstition that is highlighted. There is no mention of the deceit that accompanies it. In *Against Apion* the citation is even clearer.<sup>65</sup> The paraphrase or quotation of Agatharchides is slightly altered here, and more specifically discusses the Sabbath before introducing it as the reason for the Judeans losing Jerusalem. More importantly, Josephus follows this quotation with a specific endorsement of the practice, even calling the preference for observation of the laws over self-preservation praiseworthy.<sup>66</sup> Why would Josephus cite Agatharchides twice (!) without contradicting him if he did not believe Agatharchides' report?<sup>67</sup> It is important to recall that this is not a question of the historicity of Agatharchides' account of the fall of Jerusalem, but a question of whether Josephus endorses this version of events. That much seems now irrefutable.

With the standard for piety before the decision now established we may now turn to Doering's point that several passages, especially those relating to Asineus and Anileus, reveal that Josephus knows of Judeans who do not obey the teaching of Mattathias. In this case too, a careful reading might solve the problem. Although, as we have seen, Josephus' version of Mattathias' rule allows for the possibility of a broader interpretation of the permission to fight on the Sabbath, a later passage reporting the fall of Jerusalem to Pompey shows the limits on this rule as Josephus understood them. *Ant.* 14.63 and *J. w.* 1.146

64 Scolnic, *Judaism*, 204, does just this, claiming that according to Josephus' own words Ptolemy had to use deceit despite it being a Sabbath.

65 This is true whether *Against Apion* contains the fuller original quotation as Scolnic, *Judaism*, 204, argues or each derive from different writings of Agatharchides, as Bar Kochva, *Image*, 291, puts forth.

66 John Barclay, *Flavius Josephus Translation and Commentary, Vol. 10: Against Apion* (ed. Steve Mason; Leiden: Brill, 2007), xlv, notices the same.

67 Bar Kochva, *Image*, 294-95, who argues that Agatharchides is being cited to support an unnamed Judean source here, is simply nonsensical. Similarly, Scolnic's, *Judaism*, 206, claim that Agatharchides is cited because he must be receives no support from the text.

state that Pompey was able to build up ramparts and construct siege engines around Jerusalem because he did this work on the Sabbath. Josephus goes on to write that, though the law permits the Judeans to fight on the Sabbath to defend themselves from striking and attacking enemies, it does not permit them to do anything to enemies who do otherwise. This understanding is further testified to in Agrippa II's speech to the Judeans in *J. w.* 2.392-394. The law in question can be none other than Mattathias' pronouncement, and the limits on it are quite strict. Active attack is necessary for the Judeans to be permitted to make war on the Sabbath.<sup>68</sup>

Bringing this information to the story of Asineus in *Ant.* 18.318-324, we can see why there was dispute about fighting on the Sabbath in this context. The governor of Babylonia, who prepares an attack against Asineus and his troops, is purposefully and slowly proceeding so that he can fall upon the Judeans on the Sabbath, assuming that they would not defend themselves. While this does reveal ignorance about the intricacies of Sabbath law among foreigners, that is hardly surprising. Asineus, the Judean leader, first hears and then spies out the enemies slowly approaching. The important detail is that the enemy has not yet struck. Josephus then presents a debate about the proper interpretation of the law between Asineus and his spy. The spy considers their hands to be tied by the prohibition requiring rest, while Asineus argues that it is more agreeable to break the law and attack on the Sabbath on account of necessity. As we can see this goes beyond the strict standards set by Josephus in the account of Pompey's sack of Jerusalem. Asineus wants to attack an encamped army. Therefore we learn here of Asineus' opinion on whether offensive war is permitted, or at least of his expanded definition of defensive war. We do not learn of his or this spy's opinion concerning the basic question of whether the Judeans are allowed to defend themselves when under active attack. Presumably Asineus agrees. This is all the more true of the account of Anileus in *Ant.* 18.354-356, where it is reported that he attacks Mithridates on the eve of the Sabbath. It would seem Doering and Weiss both misread the situation.<sup>69</sup>

In most other cases in which Josephus shows Judeans engaging in war on the Sabbath, or debating it, the situation is beyond the scope of Mattathias' teaching as at *J. w.* 2.455-456, 517 and *Ant.* 13.252. In all the remaining cases, the trustworthiness of the speaker is openly questioned by Josephus, as in the case of John of Gischala (*J. w.* 4.99-102). Thus, we can conclude that Josephus is

68 Barclay, *Against*, 119, notes this among several other verses in support of the Mattathias decision.

69 Weiss, "Sabbath," 379.



consistent in showing a change in behavior of Judeans who defend themselves on the Sabbath after the ruling of Mattathias is introduced.

### Conclusion

Because of the way Josephus repeats and interprets Mattathias' ruling originally found in 1 Macc 2, it is clear that he perceives this narrative to be the source of law valid for Judeans in his own day. This provides firm evidence of a very late narrative text being received by at least some Judeans as law. The broader context of Josephus' writings further makes it possible to see that in the reception of texts as law, details can be changed and characters can exceed the boundaries of said law. Though we can make no major conclusions concerning the historical development of Sabbath warfare halakah, we can at least note that Josephus considers such a development to be possible.