

"Jews and the Later Roman Law"

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Jews and the Later Roman Law

315-531

THE Middle Ages, for the Jew at least, begin with the advent to power of Constantine the Great (306-337). He was the first Roman emperor to issue laws which radically limited the rights of Jews as citizens of the Roman Empire, a privilege conferred upon them by Caracalla in 212. As Christianity grew in power in the Roman Empire it influenced the emperors to limit further the civil and political rights of the Jews. Most of the imperial laws that deal with the Jews since the days of Constantine are found in the Latin *Codex Theodosianus* (438) and in the Latin and Greek code of Justinian (529). Both of these monumental works are therefore very important, for they enable us to trace the history of the progressive deterioration of Jewish rights.

The real significance of Roman law for the Jew and his history is that it exerted a profound influence on subsequent Christian and even Moslem legislation. The second-class status of citizenship of the Jew, as crystallized in the Justinian code, was thus entrenched in the medieval world, and under the influence of the Church the disabilities imposed upon him received religious sanction and relegated him even to lower levels.

In our first selection—laws of Constantine the Great—Judaism is denied the opportunity of remaining a missionary religion because of the prohibition to make proselytes.

The laws of Constantius (337-361), the second selection, forbid intermarriage between Jewish men and Christian women. A generation later, in 388, all marriages between Jews and Christians were forbidden. Constantius also did away with the right of Jews to possess slaves. This prohibition to trade in and to keep slaves at a time when slave labor was common was not merely an attempt to arrest conversion to Judaism; it was also a blow at the economic life of the Jew. It put him at a disadvantage with his Christian competitor to whom this economic privilege was assured.

The third selection, a law of Theodosius II (408-450), prohibits Jews from holding any advantageous office of honor in the Roman state. They were compelled, however, to assume those public of-

fices which entailed huge financial losses and almost certain ruin, and they were not even granted the hope of an ultimate exemption. This *Novella* (New Law) *III* of Theodosius II also makes a direct attack on the Jewish religion by reenacting a law which forbade the building of new Jewish synagogues. This prohibition was known a generation before this. It was reenacted now, probably to pacify the aroused Christian mob in the Eastern Empire which desired to crush the religious spirit of the Jews who were massing at Jerusalem and confidently looking forward to the coming of a Messianic redeemer in 440. This disability, later taken over by some Moslem states, was renounced by the Church which sought to arrest the progress of Judaism, its old rival.

A Latin law of Justinian (527-565), the final selection, does not allow a Jew to bear witness in court against an orthodox Christian. Thus as early as the sixth century the Jews were already laboring under social, economic, civil, political, and religious disabilities.

I. *Laws of Constantine the Great, October 18, 315*—CONCERNING JEWS, HEAVEN-WORSHIPPERS,* AND SAMARITANS

¶ We wish to make it known to the Jews and their elders and their patriarchs that if, after the enactment of this law, any one of them dares to attack with stones or some other manifestation of anger another who has fled their dangerous sect and attached himself to the worship of God [Christianity], he must speedily be given to the flames and burnt together with all his accomplices.

Moreover, if any one of the population should join their abominable sect and attend their meetings, he will bear with them the deserved penalties.

II. *Laws of Constantius, August 13, 339*—CONCERNING JEWS, HEAVEN-WORSHIPPERS, AND SAMARITANS

¶ This pertains to women, who live in our weaving factories and whom Jews, in their foulness, take in marriage. It is decreed that these women are to be restored to the weaving factories. [Marriages between Jews and Christian women of the imperial weaving factory are to be dissolved.]

This prohibition [of intermarriage] is to be preserved for the future lest the Jews induce Christian women to share their shame-

* Heaven-Worshippers were a sect closely allied to Judaism.

ful lives. If they do this they will subject themselves to a sentence of death. [The Jewish husbands are to be punished with death.]

A JEW SHALL NOT POSSESS A CHRISTIAN SLAVE

If any one among the Jews has purchased a slave of another sect or nation, that slave shall at once be appropriated for the imperial treasury.

If, indeed, he shall have circumcised the slave whom he has purchased, he will not only be fined for the damage done to that slave but he will also receive capital punishment.

If, indeed, a Jew does not hesitate to purchase slaves—those who are members of the faith that is worthy of respect [Christianity]—then all these slaves who are found in his possession shall at once be removed. No delay shall be occasioned, but he is to be deprived of the possession of those men who are Christians.

III. *A Law of Theodosius II, January 31, 439*—NOVELLA III: CONCERNING JEWS, SAMARITANS, HERETICS, AND PAGANS

¶ Wherefore, although according to an old saying [of the Greek Hippocrates, the “father” of medicine] “no cure is to be applied in desperate sicknesses,” nevertheless, in order that these dangerous sects which are unmindful of our times may not spread into life the more freely, in indiscriminate disorder as it were, we ordain by this law to be valid for all time:

No Jew—or no Samaritan who subscribes to neither [the Jewish nor the Christian] religion—shall obtain offices and dignities; to none shall the administration of city service be permitted; nor shall any one exercise the office of a defender [that is, overseer] of the city. Indeed, we believe it sinful that the enemies of the heavenly majesty and of the Roman laws should become the executors of our laws—the administration of which they have slyly obtained—and that they, fortified by the authority of the acquired rank, should have the power to judge or decide as they wish against Christians, yes, frequently even over bishops of our holy religion themselves, and thus, as it were, insult our faith.

Moreover, for the same reason, we forbid that any synagogue shall rise as a new building. [Fewer synagogues meant less chance of Christians becoming Jews.] However, the propping up of old synagogues which are now threatened with imminent ruin is permitted. To these things we add that he who misleads a slave or a freeman

against his will or by punishable advice, from the service of the Christian religion to that of an abominable sect and ritual, is to be punished by loss of property and life. [That is, the Jew who converts any one to Judaism loses life and property.]

On the one hand, whoever has built a synagogue must realize that he has worked to the advantage of the Catholic church [which will confiscate the building]; on the other hand, whoever has already secured the badge of office shall not hold the dignities he has acquired. On the contrary, he who worms himself into office must remain, as before, in the lowest rank even though he will have already earned an honorary office. And as for him who begins the building of a synagogue and is not moved by the desire of repairing it, he shall be punished by a fine of fifty pounds gold for his daring. Moreover, if he will have prevailed with his evil teachings over the faith of another, he shall see his wealth confiscated and himself soon subjected to a death sentence.

And since it behooves the imperial majesty to consider everything with such foresight that the general welfare does not suffer in the least, we ordain that the tax-paying officeholders of all towns as well as the provincial civil servants—who are obligated to employ their wealth and to make public gifts as part of their burdensome and diverse official and military duties—shall remain in their own classes, no matter what sect they belong to. Let it not appear as if we have accorded the benefit of exemption to those men, detestable in their insolent maneuvering, whom we wish to condemn by the authority of this law. [Jews have to accept financially ruinous public offices without hope of exemption.]

This further limitation is to be observed, namely, that these public servants from these above mentioned sects shall never, as far as private affairs are concerned, carry out judicial sentences, nor be wardens of the jail. This is done in order that Christians, as it sometimes happens, may not be hidden away and suffer a double imprisonment through the hatred of the guards. [Imprisonment is bad enough without having a Jewish jailer.] And furthermore it may be doubted that they have been justly imprisoned.

IV. *A Law of Justinian, July 28, 531*—CONCERNING HERETICS AND MANICHAEANS AND SAMARITANS

¶ Since many judges, in deciding cases, have addressed us in need of our decision, asking that they be informed what ought to be done with witnesses who are heretics, whether their testimony

ought to be received or rejected, we therefore ordain that no heretic, nor even they who cherish the Jewish superstition, may offer testimony against orthodox Christians who are engaged in litigation, whether one or the other of the parties is an orthodox Christian. [But a Jew may offer testimony on behalf of an orthodox Christian against some one who is not orthodox.]

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