The Jews in Christian Europe

A Source Book · 315–1791

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Jews and the Later Roman Law

A new era for the Jews begins with the advent to power of Constantine the Great (306–337). Following his conversion to Christianity, he was the first Roman emperor to issue laws which limited the rights of Jews as citizens of the Roman Empire, a privilege conferred upon them by Caracalla in the year 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 (534). Both of these monumental works are therefore 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 Jewish history is that it exerted a profound influence on subsequent Christian and even Muslim legislation. The second-class status 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 received religious sanction and relegated Jews to even lower levels.

In the first selection – laws of Constantine the Great – Judaism is denied the opportunity of remaining a missionary religion because of the prohibition to make proselytes. From this time and throughout the Middle Ages, it became a civil crime for Jews living in a Christian realm to accept Christians as converts.1

1 In response to this legal change, some rabbinic authorities began to speak of proselytes as a problem, and to assert that Judaism is NOT a missionary religion.

The laws of Constantius (337–361), the second selection, forbid inter-marriage between Jewish men and Christian women. A generation later, in 388, all marriages between Jews and Christians were prohibited. 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 by pagan slaves to Judaism; it was also a blow at the economic life of the Jew, placing Jews at a disadvantage with their Christian competitors, 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 offices that entailed huge financial losses and almost certain ruin, and they were not even granted the hope of an ultimate exemption. This Novellæ (New Law) 3 of Theodosius II also makes a direct attack on the Jewish religion by reenacting a law which forbade the building of new synagogues. This prohibition was known a generation earlier. It was reenacted now, probably to pacify the Christians in the Eastern Empire in their desire to crush the religious spirit of Jews who were massing at Jerusalem and looking forward to the coming of a messianic redeemer, following permission granted by the Empress Eudocia for Jews to pray again at the walls of the Temple.2 This disability, later taken over by some Muslim states, was re-enunciated by the Church, which sought to arrest the growth of Judaism, its old rival.

A Latin law of Justinian (527–565), the fourth selection, prohibits Jews from bearing 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. This discriminatory legislation, however, provided the ground-rules for a policy of toleration regarding Jews who continued to observe their religion, along guidelines formulated by St. Augustine (Chapter 6). By contrast, there was no toleration for pagans, whose temples were widely destroyed, and no toleration for Christians deemed to be “heretics.”

Selection five, Justinian’s Novellæ 146, is a fascinating text exemplifying the Emperor functioning as a final authority for internal Jewish disputes, in this case whether readings from the Torah in synagogue worship should be restricted to Hebrew in places where most of the congregation did not

3.1 Laws of Constantine the Great, October 18, 339.3

CONCERNING JEWS, HEAVEN-WORSHIPPERS4 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, anyone 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 anyone of the population should join their abominable sect and attend their meetings, he will bear with them the deserved punishments.

3.2 Laws of Constantius,5 August 3, 339.

CONCERNING JEWS, HEAVEN-WORSHIPPERS, AND SAMARITANS

This pertains to women, who live in our weaving factories and whom Jews, in their foolishness, take in marriage.6 It is decreed that these women are to be restored to the weaving factories. This prohibition [of intermarriage] is to be preserved for the future lest the Jews induce Christian women to share their shameful lives. If they do this they [the Jewish husbands] will subject themselves to a sentence of death.

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3 Marcus, following the modern editors of the Codex Theodosianus (1681), gave the date as 339, and indeed he used that date in the title of this section. See Ingham, "Theodosian Legislation," in the Cambridge Ancient History, 1: 11-13.4 "Heaven-worshippers" or "God-fearers" [Latin: Catholicae Graecæ; theodoti; Hebrew: avoda-zara] were a sect of pagans who revered the Jewish God. See Martin Goodman, Judaism in the Roman World: Collected Essays (Leiden: Brill, 2007), 348, especially n. 79.5 According to Liébault [Bibliography], 144-66, this law was issued by Constantius II, while the following one was issued by Constantine.6 The Latin word consortio can mean both "marriage" and "fellowship" and is used in both senses in imperial legislation. Liébault translates it here in the broader context (148 and 150 n. 5); perhaps because Jewish leaders would also have condemned "intermarriage," and converting such women to Judaism was already prohibited as a capital crime.

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A JEW SHALL NOT MALE A CHRISTIAN SLAVE

If anyone among the Jews has purchased a slave of another sect or nation, that slave shall at once be appropriated for the imperial treasury.7 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.7 If, indeed, a Jew does not hesitate to purchase slaves—those who are members of the faith that is worthy of respect—then all these slaves who are found in his possession shall be removed. No delay shall be occasioned, but he is to be deprived of the possession of those men who are Christians.

3.3 A Law of Theodosius II, January 31, 438, Novella 3.

CONCERNING JEWS, SAMARITANS, HERETICS, AND PAGANS

Wherefore, although according to an old saying "no cure is to be applied in desperate sickness,"8 nevertheless, in order that these dangerous sects which are unmindful of our times may not spread in our lifetime 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 anyone 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 stifly 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.9 However, the propelling up of old synagogues which are now

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7 Talmudic law actually allowed Jews to circumcise male slaves who were purchased, or who were born to female slaves in their homes (5. Shabbat 15a).
8 "A heretic is not a scholar of the gulf of medicine."
9 This prohibition was consistent with a policy of toleration for the status quo, prohibiting expansion through the building of new synagogues, as well as through accepting new proselytes.
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.

Whoever shall build a [new] synagogue must realize that he has worked to the advantage of the Catholic Church [which will confiscate the building]; whoever has already secured the badge of office shall not hold the dignities he has acquired. On the contrary, he who wormed 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 not for the purpose of repairing it, he shall be punished by a fine of fifty gold pounds for his daring. Moreover, if he will have prevailed with his evil teaching over the faith of another, he shall see his wealth confiscated and himself soon subjected to a death sentence.

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 officials 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.¹⁰

This forbidding limitation is to be observed, namely, that these public servants from these above-mentioned sects shall not, 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. Furthermore, it may be doubted that they have been justly imprisoned.

3.4 A Law of Justinian, July 28, 533.

CONCERNING HERETICS, 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

³⁵ A Law of Justinian, February 8, 533 (Novella 146).

PERMISSION TO USE ALL LANGUAGES IN THE SYNAGOGUES, AND PROHIBITION OF THE MISIH

Preface

Necessity dictates that when the Hebrews listen to their sacred texts they should not confines themselves to the meaning of the letter, but should also devote their attention to those sacred prophecies which are hidden from them, and which announce the mighty Lord and Saviour Jesus Christ. And though, by surrendering themselves to senseless interpretations, they still err from the truth doctrines; yet, learning that they disagree among themselves, we have not permitted this disagreement to continue without a ruling on our part. From their own complaints which have been brought to us, we have understood that some speak only Hebrew, and wish to use it for the sacred books, and others think that a Greek translation should be added, and that they have been disputing about this for a long time. Being apprised of the matter at issue, we give judgment in favour of those who wish to use Greek also for the reading of the Sacred Scriptures, or any other tongue which in any district allows the hearers better to understand the text.

Chapter 1

We therefore sanction that, wherever there is a Hebrew congregation, those who wish it may, in their synagogues, read the sacred books to those who are present in Greek, or even Latin, or any other tongue; ... so that all present may understand, and live and act according to what they hear. Thus there shall be no opportunity for their interpreters, who make use only of the Hebrew, to corrupt it in any way they like, since the ignorance of the public conceals their depravity. We make this proviso that those who use Greek shall use the text of the Septuagint, which is the most accurate translation, and the one most highly approved, since it happened that the translators, divided

¹⁰ Jews have to accept financially ruinous public offices without hope of exemption.
into two groups, and working in different places, all produced exactly the same text. ... This therefore they shall primarily use, but that we may not seem to be forbidding all other texts we allow also the use of the translation of Aquila, though he was not of their people, and his translation differs not slightly from that of the Septuagint.

But the Mishnah, or as they call it the Second Tradition, we prohibit entirely. For it is not part of the Sacred Scriptures, nor is it handed down by divine inspiration through the prophets, but it is the handwork of human beings, speaking only of earthly things, and having nothing of the divine in it. Let them read the holy words themselves, rejecting the commentaries, and not concealing what is said in the sacred writings, and disregarding the vain writings which do not form a part of them, which have been devised by them themselves for the destruction of the simple-minded.

Chapter 3

If any among them seek to introduce impious vanities, denying the resurrection or the last judgment, or the work of God, or that angels are part of creation, we require them everywhere to be expelled forthwith, so that no backslider raise his impious voice to contradict God's evident purpose. Those who utter such sentiments shall be put to death, and thereby the Jewish people shall be purged of the errors which they introduced.

Chapter 3

We pray that when they hear the reading of the Sacred Scriptures in one language or another, they may guard themselves against the depravity of the interpreters, and, not clinging to the literal words, come to the point of the matter, and perceive their divine meaning, so that they may start afresh to learn the better way, and may cease to stay vainly, and to err in that which is most essential, we mean hope in God.

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This appears to be a more moderate version of a tradition found in Babylonian Talmud Megilla 2a-b that the seventy-two translators selected by King Ptolemy to render the Hebrew Pentateuch in Greek worked in separate rooms, but each produced an identical Greek text.

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Surveys


Additional Sources

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Augustine
397–425

Augustine of Hippo (354–430) was one of the most profoundly influential among the Fathers of the Church, who were contemporaries of the rabbis who produced the Talmud and Midrash. Unlike the rabbis, however, whose creativity was preserved not in individual works but in corporate collections, Augustine and his colleagues produced works that reflected their own individual style and – within certain limits – their own presentation of Christianity and its biblical heritage.

Characteristic of the first two passages is the typological approach to biblical interpretation. This presents biblical narratives not merely as stories about individuals in the ancient past, but as types or prefigurations of later, more important personalities and events. Such interpretations fortified the argument that Christianity was a religion with deep roots in the ancient past. It was the influence of the preaching of Ambrose, with its focus on the "spiritual" meaning of biblical texts rather than the literal meaning, that inspired Augustine to abandon his earlier Gnostic convictions. In a polemical work against a Manichean Gnostic who denied that the Hebrew Scriptures predicted the later Christian truth, Augustine presents the figure of Cain as a type of the Jewish people: bound up with earthly matters, guilty of violence against one of their own, cursed to wander throughout the world but given a mark to show divine protection. The second passage comes from a sermon in which – following an established exegetical tradition – Augustine presents Esau as a figure of the Jews, a sinful man denied the divine blessing.

In the passage from his theological masterpiece, The City of God, Augustine went beyond the prohibition of violence as a divine command to argue that the continued survival of Jews throughout a Christian Empire actually served the needs of Christianity, which still faced significant antagonism from pagans as well as Christian heretics.

Passages such as the following certainly do not pass muster by contemporary standards of politically correct discourse about the Other, let alone as a basis for inter-religious dialogue. But imposing contemporaneous values on a totally different age can lead to misunderstanding. Augustine has taken a totally different position from that of his teacher Ambrose (Chapter 5) and their contemporaries, Chrysostom, who seemed to recognize absolutely nothing of value in continued Jewish existence, Jewish devotion to the Hebrew Scriptures, and Jewish observance of ancient traditions. Augustine's innovation was a theological ratification of the ongoing contemporaneity of significance of the truth of the Jewish people, scattered throughout the world, as witnesses to the truth of Christianity. His unambiguous insistence that Jews, like Cain, were under permanent divine protection was undoubtedly more important to Jews in his time and in the centuries that followed than his pejorative discourse. The position taken by Augustine is especially striking in that he was the theologian who first articulated a doctrine justifying the use of force, including capital punishment, against those Christians deemed to be heretics.

There was a delicate balance between the practical conclusion and the rationale: Jews should be tolerated and protected, but they must live under conditions that would serve as a constant reminder to all concerning the conditions that would lead to the divine consequences of their failure to recognize and to properly honor the Christ. When future Christians turned violently against the Jews, popes and other Church leaders proclaimed his doctrine: "Let no Christian dare to kill Jews." But when political rulers, for whatever reasons, allowed Jews to prosper in their realm, the same Church leaders would often condemn such policies as a violation of Augustine's teachings and God's will. We shall see examples in Agobard of Lyons (Chapter 10) and Pope Innocent 11 (Chapter 18).

6.1 From Reply to Faustus the Manichean, 397–398

9. As Cain's sacrifice of the fruit of the ground is rejected, while Abel's sacrifice of his sheep and the fat thereof is accepted, so the faith of the New Testament preachers and the harmless service of grace is preferred to the earthly observances of the Old Testament. For though the Jews were right in practicing these things, they were guilty of unbelief in not distinguishing the time of the New Testament when Christ came, from the time of the Old Testament. Abel, the younger brother, is killed by the elder brother; Christ, the head of
the younger people, is killed by the elder people of the Jews. Abel dies in the field; Christ dies on Calvary.

10. God asks Cain where his brother is, not as if He did not know, but as a judge asks a guilty criminal. Cain replies that he knows not, and that he is not his brother’s keeper. And what answer can the Jews give today, when we ask them with the voice of God, that is, of the sacred Scriptures, about Christ, except that they do not know the Christ that we speak of? Cain’s ignorance was pretended, and the Jews are deceived in their refusal of Christ. Then God says to Cain: “What have you done? Your brother’s blood cries out to Me from the ground” (Gen. 4:10). So the voice of God in the Holy Scriptures accuses the Jews. For the blood of Christ has a loud voice on the earth, when the responsive “Amen” of those who believe in Him comes from all nations. This is the voice of Christ’s blood, because the clear voice of the faithful redeemed by His blood is the voice of the blood itself.

11. Then God says to Cain: “Cursed are you from the earth, which opened its mouth to receive your brother’s blood from your hand. If you till the earth, it shall no longer yield its strength to you. Groaning and trembling shall you be on the earth” (Gen. 4:11-12). It is not, Cursed is the earth, but, Cursed are you from the earth, which opened its mouth to receive your brother’s blood from your hand. So the unbelieving people of the Jews is cursed from the earth, that is, from the Church, which in the confession of sins has opened its mouth to receive the blood shed for the remission of sins by the hand of the people that would not be under Grace, but under the Law. And this murderer is cursed by the Church; that is, the Church admits and avows the curse pronounced by the apostle: “Whoever are of the works of the Law are under the curse of the Law” (Gal. 3:10). ... The Church admits and avows the Jewish people to be cursed, because after killing Christ they continue to till the ground of an earthly circumjacent, an earthly Sabbath, an earthly Passover, while the hidden strength or virtue of making known Christ, which this tilling contains, is not yielded to the Jews while they continue in impurity and unbelief, for it is revealed in the New Testament.

12. “Groaning and trembling shall you be on the earth” (Gen. 4:12). Here no one can fail to see that in every land where the Jews are scattered, they mourn for the loss of their kingdom, and are in terrified subjection to the immensely superior number of Christians. So Cain answered and said, “My fate is worse: if You drive me out this day from the face of the earth, and I am hidden from Your face, then I shall be a mourning and an outcast on the earth, and whoever finds me shall slay me” (Gen. 4:13-14). Here he groans indeed in terror, lest after losing his earthly possession he should suffer the death of the body. This he calls a worse case than the ground not yielding the death of the body. This he calls a worse case than the ground not yielding to him its strength, or than that of spiritual death. For his mind is carnal; he thinks little of being hidden from the face of God, that is, of being under the aegis of God, but only that he may be found and slain. This is the carnal mind of God, that is, of being under the aegis of God. But what does God do to the ground, but does not obtain its strength. ... But what does God do to the ground, but does not obtain its strength. 

Augustine • 33

6.2 Sermon on Jacob and Esau

So that Jacob, whom you have just heard about in the reading, stands for the Christian people. He is the younger son, you see, because Esau is the Jewish people. It is true, the Jewish nation sprang from Jacob, but figuratively the Jews are rather to be understood as Esau, because the elder people was rejected, while the younger people took the first place. ... Esau was born shaggy and hairy that is, full of sins — sins that stuck to him. But Jacob, in order to take the first place, took on his arms the skins of the

1. Reprinted with permission of the Augustine Heritage Institute.

2. As in Jewish practice, the Christian sermon followed a reading from Scripture and discussed it.
kids, and so his father blessed him, feeling his arms and finding him shaggy. But those hairs and sins were being borne by Jacob, they weren’t sticking to Jacob. So too the Church of God bears the sins of others, not its own, putting up with them to the end, just as the Lord Jesus Christ bore the sins of others. And the father blessed the younger son. . . .

Observe the mystery. . . . Take a look at the actual story, and you will see that the words “The elder shall be slave to the younger” (Gen. 25:23) were not fulfilled in the case of the two men themselves. We read that Esau became very rich, and began to rule over a vast property, while Jacob went off to feed another man’s sheep. . . . But the reason why these things were not fulfilled in the actual history of the two men is to make us understand that they were said of a future Jacob. The younger son received the first place and the elder son, the Jewish people, lost the first place. See how Jacob has filled the whole world, has taken possession of both nations and kingdoms. The Roman emperor, now a Christian, has ordered the Jews never to go near Jerusalem. And scattered through the world they have become as it were the keepers of our books, like slaves who carry their masters’ books behind them when they go to the lecture room, and sit outside themselves, that’s what the elder son has become for the younger son. Or sometimes there are some things in the Scriptures that puzzle us, and the true solution is to be found in the Hebrew volumes of the Jews. So the reason they have been scattered among us is to keep these books for us. In this way, the elder serves the younger.

63 From The City of God: Jews as Witnesses to the Truth of Christianity, ca. 415–425

However, the Jews, who killed him, refusing to believe in him— as it was necessary for him to die and be resurrected— were brutally crushed by the Romans and uprooted from their kingdom, where they had already been governed by foreigners, displaced and dispersed through various lands, with no place devoted to them, so that through their Scriptures they might serve as testimony that we have not forged the prophecies about Christ. Indeed many of the Jews, considering these prophecies, both before the Passion and especially after his Resurrection, believed in him; of those it was prophesied,

This is a fine example of the triumphalist argument: that the truth of Christianity is proved by its political, economic, and military power and success, and that Judaism is refuted by Jewish subordination. Obviously this was not an argument used during the earlier centuries when Christians were a struggling, often persecuted minority.

“...as the sand of the sea, a remnant of them shall be converted” (Isa. 10:22), but the rest of them were blinded. . . . For in refusing to believe our Scriptures, their own Scriptures, which they read blindly, are fulfilled in them. . . .

There is a prophecy of this matter in the Psalms, which they also read: “Do not kill them, lest they forget your law; scatter them with your power” (Pss. 59:12). In this way God has shown the Church His gracious mercy through its enemies the Jews, as the Apostle says, “Their offense is the salvation of the gentiles” (Rom. 11:11). Therefore He did not kill them, meaning that that although they would be defeated and oppressed by the Romans, they have not lost their awareness of being Jews, for otherwise, if the law of God in this matter that concerns us were forgotten, their testimony would be of no avail. Thus it was insufficient to say “Do not kill them, lest they forget your law,” without also adding “scatter them.” For if their scriptural testimony was not present throughout the world, the Church, which indeed is omnipresent, would be unable to have those testimonies from the Prophets about Christ accessible to all the nations.

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