THE LEGAL POSITION OF JEWS IN CHRISTENDOM

We can conclude that legal status is "the most deceptive of all standards of a people's well-being," as R. W. Southern writes in his Making of the Middle Age. Inevitably, there is a gap between theory and practice, and this was certainly true for the Jews in the Middle Ages. Nevertheless, a discussion of the legal position of Jews in a work such as this belongs near the beginning, because, alongside religion, legal status is the earliest aspect of the problem of gentile-Jewish relations that we can know with clarity. Moreover, since this book is a comparative study, the inquiry into legal position yields more useful information than might otherwise be the case.

There are many similarities between the legal status of the Jews of Islam and that of the Jews of Christendom. The most important similarity is that, in both societies, Jews enjoyed virtually complete autonomy in their practice of Judaism. In practical terms, this meant that, for most purposes of religious and personal status, such as ritual, marriage, and divorce, Jews governed by Jewish law—the law of the Talmud—administered by Jewish judges trained and licensed by Jewish religious authorities.

Differences in legal status between Christendom and Islam reflected or helped shape the dominant society’s contrasting attitudes toward the Jews. Along with differences in religious attitude between early Christianity and early Islam discussed in Chapter 2, the differences in legal approach help explain the lower incidence of persecution in the Muslim world. In Chapter 3, we review the rather complex legal status of the Jews in Western Christendom, to prepare the way for an analytical comparison with the legal position of Jews in Islam (Chapter 4).

JEWISH LAW IN CHRISTENDOM

The great legal scholar Guido Kisch has plumbed the subject of Jewish legal status. He gave the useful name "Jewry law" to Christian legal material concerning the Jews. In this way, Kisch distinguished "Jewry law" from "Jewish law," the term used for the vast corpus of legal matter written by Jews themselves which pertained to inner Jewish life and to the relationship of Jews to their surroundings.

The Christian Middle Ages knew numerous and sometimes overlapping systems of law. There was surviving Roman law in the age of the

ROMAN JEWRY LAW

Jewry law in Christendom had numerous sources, the earliest being Roman law. Although few pre-Christian Roman statutes concerning the Jews have survived, such nonlegal sources as Josephus’s description of Roman treatment of the Jews indicate that the Romans continued the tolerant policy they had inherited from Hellenistic and Persian antiquity. Judaism was recognized as a collegium (association) whose adherents were permitted to congregate for religious purposes and "live by their ancestral laws." "Collegium" was often applied to the Jews interchangeably with religio licita, or "licit religion." The latter, though not a legal term, was in use as early as the beginning of the third century.

In some ways, Roman legal policy toward the Jews exceeded the tolerant stance of the earlier regimes. Faced with a religion that prescribed such distinctive (and, to Romans, peculiar) customs as circumcision, worship of a single invisible God, abstention from work one day each week (the Sabbath), and sending donations to the Patriarch in Tiberias—peculiarities which fed an anti-Jewish strain in literature that some call "pagan antisemitism"—Rome was obliged to tolerate "ancestral laws" it did not allow even its own citizens.

An edict of Augustus from about 1 B.C.E. states that "Jews shall use their own customs in accordance with their ancestral law, just as they used to use them in the time of Hyrcanus, the high priest of their highest god." This law aptly illustrates Roman rulers' forbearance toward the Jews, a policy practiced consistently and steadfastly for centuries. They temporarily reversed themselves on the legality of Jewish observance about the time of the Jewish revolt of 132–35 C.E., when Emperor Hadrian proscribed Sabbath observance and circumcision. The decree was rescinded by Emperor Antoninus Pius (r. 137–61). Moreover, in the year 212, Emperor Caracalla granted citizenship to all non-Romans in the empire. Although the edict does not mention Jews by name (or any other "foreign" group, for that matter), scholars generally agree that Caracalla’s law included the Jews. Hence, during the final century of pagan Roman rule, legally Jews graduated from tolerance to near parity with other Roman citizens.

The "tolerance" accorded the Jews was derived from an essential feature
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of Roman society; its pagans, polytheistic religion. In polytheistic societies, the gods and their respective peoples tolerate one another’s existence. Polytheism breeds what the modern world would call “religious pluralism.” By contrast, monotheism is inherently exclusive. The unity of God has its counterpart in the desire of his adherents for all people to be united in worshiping him. Thus, in the ancient world, the monotheists par excellence—the Jews—did not reciprocate the religious tolerance of pagan Rome. Indeed, they sought to make converts among the Romans. Early Christians inherited from Judaism their monotheistic intolerance for the Roman “gentile.” At the same time, as the new monotheists on the scene, convinced of the veracity of their own version of God’s revelation, Christians found the continuing presence of the Jews both problematic and a source of contention. When, in the fourth century, Christianity replaced paganism as the state religion of the Roman Empire, the opportunity arose to reduce the influence of paganism and Judaism alike. It is the latter to which we now turn.

CHRISTIAN-ROMAN JEWISH LAW

The Theodosian Code, compiled by order of Emperor Theodosius II between 429 and 438, incorporates Roman imperial legislation dating from the beginning of the Christian period. Jewish law in the Code is a mixture of tolerance (the legacy of polytheistic Rome) and the intolerance inherent in monotheistic Christianity. Because the Code had considerable influence in the Latin West during the early Middle Ages, both in its own right and in its epiphanizations, it is the foundation of Jewish law in Latin Christendom.

Ammon Lindner’s study of Jewish law in Roman imperial legislation provides an excellent guide to this subject. The Theodosian Code contains thousands of laws divided topically into “books” and “titles.” Laws concerning the Jews comprise a minuscule portion of the whole.

The vast majority (fifty-one out of sixty-eight) of the citations concerning Jews in the Theodosian Code occur in the final section, Book 16, which covers the relationship between the established Christian church and other religions. Not surprisingly, this book departs from the religious pluralism that underlay pagan Roman law. We find a series of ordinances which, on one hand, grant special privileges to the Christian clergy and, on the other, combat early Christianity’s principal foes—heresy, paganism, and Judaism. For example, Title 5, “On Heretics,” impugns Jews along with heretics as partners in anti-Catholic enmity, calling them “a pestilence and a contagion it should spring forth and spread abroad more widely.” Reissued some two months later, with strengthened admonitions to Roman officials to be vigilant about such offenses, this same

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law couples Jews with heretics and “the gentiles, who are commonly called pagans.” Lindner comments that, from the beginning of the fifth century, the regular association of Jews with pagans and heretics in laws “indicates a fundamental change in the Jewish policy of the imperial government” which “was bound to affect the legal status of the Jews during that period.”

Titles 8 and 9 of Book 16 deal exclusively with the Jews. By consolidating in two consecutive titles so many texts concerning the Jews, even at the expense of repeating laws left embedded in other contexts, the Code focused attention on the Jews as a problem of special concern, for whom special regulations were needed. This consolidation marked a departure from the situation that obtained between Caracalla’s law of 212 and the Christianization of the Roman state—a century during which the Jews were brought under Roman law. It also foreshadowed the later evolution of Christian Jewish law into a special law for a people living on the margins of the Christian commune, or even outside it. As is generally recognized, Title 8 perpetuates the features of the old pagan-Roman toleration. At the same time, some of the phraseology reflects the new concerns of the church. Carried over from the pre-Christian period is the all-important recognition of the legitimacy of Judaism and the resulting guarantee of Jewish assembly for worship. The first law on this matter, dated 303, begins with the affirmation: “It is sufficiently established that the sect of the Jews is forbidden by no law.”

Although this may seem a rather negative way of expressing toleration, the formulation could simply reflect an attempt by codifiers to anticipate and preempt clerical objections to the continuation of an intolerant policy deeply rooted in pre-Christian Roman tradition. Other, more specific guarantees of the freedom to practice Judaism are included—for instance, the age-old assurance of noninterference in observance of the Sabbath.

Essential elements of the policy of toleration inherited from the pagan period are the provisions of the Theodosian Code that protect Jews against wanton assault on their persons and property. The earliest statute dates from 397: “All insults of persons attacking the Jews shall be averted (and . . . their synagogues shall remain in their accustomed quoductus).” Similarly, a law of 420 combines protection of synagogues with safeguarding Jewish lives: “No person shall be trampld upon when he is innocent, on the ground that he is a Jew, nor shall any religion cause any person to be exposed to continual. Their synagogues and habitations shall not be burned indiscriminately.” The statute closes with a statement characteristic of Christian stringency to the effect that “the Jews also shall be admonished that they perchance shall not become insolent and, shamed by their own security, commit any rash act in disrespect of the Christian religion.”
This qualification of assurances of protection by an admonition not to take protection for granted may have been anticipated in pre-Christian Rome. In 41 c.e., following riots against the Jews in Alexandria, Egypt, for demanding new privileges, Emperor Claudius wrote to the Alex-
andrians, insisting that they desist from violence. In his letter, Claudius specified the limits of toleration of the Jews, ordering them to stop their demands for “more privileges.”

In the same spirit, the Theodosian Code frequently enforces safeguards for the Jews and their property in grudging, often threatening language: “We have suppressed the spirit and audacity of the abominable pagans, of
the Jews also, and of the heretics. Nevertheless . . . it is Our will . . . that those persons who commit many rash acts under the pretext of venerable Christianity shall refrain from injuring and persecuting [the Jews].”

Christian animosity toward Judaism is rampant in the stipulations of
Title 8, which, in turn, are consistent with the tone of Christian supremacy that characterizes Book 16. The right of the Jews to send money to the Patriarch in Tiberias was rescinded. Henceforth, contributions were to be diverted to the imperial treasury. Another law (of 415) denoted the patriarch Ganalille, restricted his authority to build new synagogues, and commanded him to destroy synagogues located in deserted places. The same Emperor Honorius who enacted the law of 415 reversed himself in 423, prohibiting the destruction of old synagogues. In his “new law” of 438, Emperor Theodosius II extended the concession: “With no equally reasonable consideration also, We prohibit any synagogue to arise as a new building, but license is granted to strengthen the ancient synagogues which threaten immediately to fall in [into] ruin.” After conquering the Byzantine lands of the eastern Mediterranean, Islam adopted a more repressive policy, forbidding new construction and the repair of existing houses of worship.

Prejudicial language about the Jews tempos the principle of Roman toleration carried over into the Theodosian Code. The extensive use of the term superstition is conspicuous. A pejorative in pre-Christian Roman usage, the term designated any non-Christian religion; but Roman writers also referred to Judaism, using a neutral designation, religio. This duality con-
tinued after the Christianization of the empire. By the beginning of the fifth century, religio was reserved for Christianity, whereas superstition, now restricted to Judaism, was henceforth qualified by such pejorative adjectives as “abominable” and “nefarious.” Other language in the Code calls attention to the Jews’ obdurate rejection of Christ, to the perversity—even to the impurity of Judaism (“a plague . . . that spreads like contagion”)—and to the ineradicable hostility of the Jews toward the Roman Empire. Jewish power over both Christians and potential Christians among the pagan population was a major irritant to the Catholic church. An injunc-

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tennis. 42 Promulgation of the law amounted to interference in the freedom to practice Judaism, which radically contradicted the age-old policy of pre-Christian and Christian-Roman law. 42

Justinian’s Code—in circulation in the eastern Roman Empire in various, shortened forms—was unknown in the West until the revival of the study of Roman law at the end of the eleventh century. 43 It was the more moderate Theodosian Code that lingered in the memories of European jurists and churchmen in the early Middle Ages. Ammon Linder notes that, apart from Visigothic Spain (where the Code was replaced in 506 by an abbreviated epitome), "in other parts of the West the Code was never formally abrogated, and its legal status was comparable to that of other legal sources." 44 Especially in southern Europe—where, in general, continuity with the Roman past was strong—memory of Roman law and the persistence of many Roman legal procedures contributed to the creation of an environment that, for Jews, was considerably more secure than it was in northern Europe.

THE CHURCH: CANON JEWRY LAW

Inevitably, Jewry law appeared in pronouncements by the Catholic church. Influenced by Roman law, canon law, in turn, influenced the Jewry law of the state. Book 16 of the Theodosian Code, with its mix of toleration and restriction of Judaism, was accepted by the church "as an authoritative source of canon law." 45 During the early Middle Ages, edicts of ecclesiastical councils and pontifical opinions, often in the form of letters, steadily expanded the corpus of canon Jewry law.

Nearly all the canons of diocesan and ecumenical church councils regarding the Jews—whether in Spain, Gaul, or the East—are repressive, reflecting the intolerant streak in Christianity. 46 Compared to the hard line evident in the Jewry law of church councils, Pope Gregory the Great (590–604) expressed more moderate views in concordance with the Roman traditions he knew from his aristocratic upbringing and from an earlier career in civil administration. In twenty-six pastoral letters regarding Jewish-Christian relations, Gregory adhered to the tolerationist features of the Theodosian Code, notably by opposing forced baptism and upholding the inviolability of synagogues. He set a standard on Jewish matters that guided the papacy for centuries. 47

Most important, in one sentence of a letter, Gregory enunciated what was to become the emblem of papal policy toward the Jews: "Just as it should not be permitted the Jews [Sicut Judaei non] to presume to do in their synagogues anything other than what is permitted them by law, so with regard to those things which have been conceded them they ought to suffer no injury." 48 True to the spirit of equilibrium between repression and tolerance in the Theodosian Code, Gregory’s formula first limits the Jews to the observance of laws and customs permitted in the past; then guarantees them protection from interference in the practice of any of those laws and customs. The pronouncement is also reminiscent of the formulation in Chaldis’s letter to the Alexandrines (where, however, the guarantee precedes the restrictions). 49

The most significant pronouncement of ecclesiastical Jewry law appears as a bull that opens with Gregory’s very words and is known as the papal bull Sicut Judaeis. Another appendix attached to it in some medieval collections—"Constitutio pro judaeis" (Constitution in favor of the Jews)—clearly indicates its protective intent. The earliest pope to issue this decree was apparently Calixtus II (1119–24), though the existence of his precedent-setting and influential edict is known only through reference to it in later renewals. It is believed that Calixtus issued the bull in response to a petition from Jews hoping to improve the security of a people whose vulnerability had been distressingly revealed so recently during the massacres of the First Crusade. On the other hand, the request may have sprung from concern about localized anti-Jewish violence in Rome or elsewhere in Italy. 50

The papal bull Sicut Judaeis elaborates on the second half of the Gregorian formula, the "guarantee" clause. It specifies what the twelfth-century church deemed to be the Jews’ rights, including freedom from forced baptism, protection of persons and property from unwarranted assault, the unimpeded right to practice Judaism, and the inviolability of Jewish cemeteries. These guarantees are backed up with a commitment to punish Christians who trespass them. The bull was issued by five more popes before the end of the twelfth century, by another ten in the thirteenth, and then not again until 1348. The one promulgated by Pope Clement III (between 1187 and 1191) was incorporated into "authoritative" canon law in the Decretals of Pope Gregory IX (1227–41), promulgated in 1234. 51

Papal assertion of the right of Jews and Judaism to protection and toleration, anchored in Roman law and mediated into medieval Christianity by Pope Gregory I, had already found its theological rationale in the thought of St. Augustine. God allowed the Jews to survive and live among Christians because they played the multifaceted role of "witness." 52 In keeping with both Augustinian doctrine and the protections guaranteed in the bull Sicut Judaeis, throughout the Middle Ages the papacy maintained staunch and fairly consistent opposition to forced conversion of the Jews as well as to unwarranted physical brutality toward them. Indeed, from time to time, a Pope might even add a clause to the "Constitutio pro Judaeis" defending the Jews against some new, current threat. For example, in 1497, Innocent IV revised his own version of the bull within a year of the first promulgation, adding a section denouncing the newly risen blood libel. 53 I do not mean to imply that the papacy went out of its way to nurture
Jewish life among Christians. Quite the contrary, during the eleventh, twelfth, and especially the thirteenth centuries, as the papacy struggled to assert its supremacy over secular rulers, it also asserted its authority over the Jews. This was done by incalculating the complementary ideas of Jewish subservience and inferiority. Beginning with Pope Innocent III in 1235, the idea of subservience was expressed in the revival of an old patristic doctrine about the "perpetual servitude" of the Jews, which gave ideological ballast to Innocent’s newly intensified campaigns to segregate and subjugate the Jews. It was Innocent III who introduced the unfriendly qualification at the end of the "Constitutio pro Judeis" when he renewed it in 1199: "We wish, however, to place under the protection of this decree only those Jews who have not presumed to plot against the Christian Faith." A disparaging preface mentioning "Jewish perfidy" was not included in subsequent papal renewals of the bull.

The Fourth Lateran Council

At the Fourth Lateran Council, in 1215, Innocent III and his prelates legislated against improper subordination of Christians to Jews. A handful of the seventy canons enacted concerned what was considered intolerable Jewish influence over Christians. For instance, "Since it is quite absurd that any who blaspheme against Christ should have power over Christians, we... forbid that Jews be given preferment in public office since this offers them the pretext to vent their wrath against the Christians" (Canon 69). This restatement of the old law of the Thedosian Code, barring Jews from positions in the imperial service and from other public offices, had over the centuries been adopted by ecclesiastical legists. I will return to this point when I take up the subject of the place of the Jews in the social order of Christendom and of Islam (Chapter 6).

Canon 68 of the Council promulgated for the first time a prescription that is perhaps the most infamous piece of ecclesiastical Jewish law during the Middle Ages. The law decrees that where normal external signs fail to differentiate Jews and Saracens (Moslems) from Christians (Spain, especially, but also, likely, the Normal Kingdom of Sicily appear to have been intended), Jews and Saracens must henceforth be distinguished from Christians by their dress (no particular form was stipulated). The Council wished to prevent "accidental" communing of Christians with members of the two inferior, infidel religious, especially "polluting" sexual contact. The order was qualified in a subsequent letter of Innocent, in which he stated that Christians should "not force [the Jews] to wear such as would lay them open to the danger of loss of life." It is difficult to imagine how this rider could have been implemented.

The same canon forbade Jews to appear in public during Eastertide or to blaspheme Christ, an old law founded on the widespread presumption——

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not entirely untrue—that many Jews hated Christians and ridiculed their beliefs and practices.

Yet another canon ruled that Jewish converts to Christianity should be prevented from backsliding, consistent with church teaching on the irreversibility of baptism. A fourth law prohibited Jewish moneylenders from oppressing Christians with their "heavy and inordinate usury." The canons on distinctive dress and Jewish officeholding entered authoritative canon law in the Decretals of Pope Gregory IX, while rulings on Eastertide came into that same code from the pronouncement of an earlier pope, Alexander III. Following the lead of Innocent III, the church witnessed considerable erosion of the papacy’s protective policy during the thirteenth century. Beginning with Gregory IX in 1239, the papacy, briefly and unprecedentedly, interfered with the free practice of Judaism by investigating the Talmud, and ordering that copies of it be burned. The burning of twenty-four cartloads of books of the Talmud in Paris was carried out in 1242 by order of the French king. Louis IX. Gregory had learned from a Jewish apostate, Nicholas Donin, that the Talmud contained anti-gentile "heresies" and other impieties, which, as Gregory as- serted in his letter to the archbishops of France ordering them to seize the Jewish books, was "the chief cause that holds them in their perfidy." In 1280, Donin, the Pope’s "mentor," represented the Christian side in a great public dispute on the Talmud in Paris, at which the Jewish books were formally sentenced to destruction. Pope Innocent IV (1243–54), who renewed Gregory IX’s ban on the Talmud and similarly ordered it burned, justified this departure from the ecclesiastical guarantee of religious freedom to Jews in a comment on one of the Decretals of Pope Gregory IX. He declared that the papal had jurisdiction over Jews when it came to teachings in their own books that perturbed the true meaning of the Torah—that is, as it should be understood, namely, christologically—if the Jewish authorities failed to act. Among various likely motives (as distinguished from rationalizations) for this foray into inner Jewish life, one that stands out is the wish to assert papal sovereignty over all of Christendom in the face of the supremacist claims of monarchs, especially those of the Holy Roman Emperor.

Further erosion of the principle of Sicut Judicis occurred later in the thirteenth century. The papacy asserted its jurisdiction over Jews in a new way with the bull Turbae empte ("With a troubled heart..."), first issued in 1267 by Clement IV and repronounced three more times before the end of the century. In this edict, the Inquisition established by the papacy in the 1250s to find and prosecute Christian heretics was granted extended authority to prosecute professing Jews suspected of influencing Christians (former Jews who had converted to Christianity) "to join their excrable rites"—that is, by re-Judaizing—"itself an act of heresy.

Modern assessments of papal pronouncements, and of ecclesiastical Jewish
laid down their religious beliefs. Chapter Three discusses the history of the Crusades, particularly the First Crusade, and examines the role of canon law in shaping the legal rights of Jews during this time. The chapter also explores the role of canon law in the context of the Inquisition and its impact on the Jewish community. The final section of the chapter deals with the legal position of the Jews in Christendom, and discusses the role of canon law in shaping the legal status of Jews in Christendom. The chapter concludes with a discussion of the impact of canon law on the legal rights of Jews, and the ways in which these rights were protected and maintained throughout history.
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decretals and conciliar decrees did not immediately influence the state's Jewry legislation,
they nevertheless seriously affected the status of the Jews; for, as a rule, medi-
eval Christians . . . would not openly incur the ecclesiastical sanctions ex-
tending even to excommunication and interdicts. Thus the effects of canon
Jewry legislation were promptly felt by the Jews. . . . Their economic and
social position was adversely affected and their life made miserable. 79

The story of the papal attempt to enforce segregation by requiring Jews to
wear a distinctive sign on their outer garments provides a case in point.
Some monarchs acceded to the papal directives that began in 1215, with
Lateran Council IV. Others used the law as an excuse to extract money
from the Jews in the form of bribes intended to obtain exemption. Jews
feared that wearing such a sign would make them more vulnerable to
physical attack.

The wearing of distinctive garb was first enforced in England, begin-
nings with the reign of King Henry III. The sign was to consist of “two
white tables made of white linen or parchment” worn “upon the fore part
of their upper garments.” 80 As its use spread to other lands, particularly to the High
and late Middle Ages, the stigma assumed a variety of forms, mainly
yellow in color. The Holy Roman Empire did not apply the church’s law
until the fifteenth century, probably because the Jews under the empire’s
jurisdiction wore a distinctive conical hat that already distinguished them
from Christians. In the fifteenth century the custom was enforced in the
form of a yellow wheel sewn on the outer garment. 81 This was the fore-
runner of the infamous Nazi “Jewish badge.”

MOVEMENT TOWARD EXPULSION

In the thirteenth century, church leaders began to move away from their
protective policy on the Jews, toward one of restriction and exclusion.
Secular powers began to enforce the policy, albeit unevenly. The harden-
ing of policy by both church and state boded ill for the security of the Jews,
leading to their expulsion.

Jeremy Cohen, in his Priests and the Jews, argues that vehement anti-
Jewish preaching and writing of the mendicant orders (Dominicans and
Franciscans) in the thirteenth century undermined the Augustinian tradi-
tion of preserving Jews within Christendom as witnesses. 82 With this prop
removed, the way was open to ultimate exclusion of the Jews: physical re-
moval from Christian society.

There is some question whether this thesis, focusing as it does on theol-
ogy, can be upheld in its categorical form.83 Simonsson has shown that the
Augustinian formula continued to appear in papal writings down to the
end of the Middle Ages. 84 Whatever the outcome of the scholarly debate
about the impact of ecclesiastical thought on Jewish status in the High and
late Middle Ages, the actual expulsions from Christendom were to be the
work not of the church but of the medieval state.

SECULAR JEWRY LAW IN THE MEDIEVAL STATE

The legal position of the Jews in the medieval state (an anachronism com-
mmonly used for territorial entities under royal sovereignty) originally was
fashioned by incorporating special privileges into charters, not by legisla-
tive codes or the law of the church. Charters (the earliest extant ones are
Cassilinian) consisted in grants of privileges to Jewish merchants—first
to individuals and their families, later to entire Jewish communities, and
eventually to all Jews in an area controlled by a monarch. These charters
attest to the important function fulfilled by Jewish traders in early medi-
evial Europe and their economic utility to governing authorities. The chart-
ers exemplify the beginning of a process whereby Jews, over time, came
to belong (in the sense of nearly absolute control) to a secular ruler and thus
to have special, but limiting, status under the law.

From a legal standpoint, we lack explicit evidence regarding how the
Jews were viewed by the Germanic invaders of the western Roman Em-
pire. Based on their interpretation of Germanic customary law, some
scholars believe that the Jews were considered unfree aliens. That is why
the Jews needed every bit of special legislation they could get from kings. 85
Most students of the period believe that, from the outset, Germanic rulers
regarded the Jews as Roman citizens, hence subject to Roman Jewish law.
The Barbarians had epitomes, or models, of Roman law compiled for the
benefit of the Romans within their realm (Romans were much more nu-
merous in the south, near the Mediterranean, than in the north). The most
influential epitome was the Lex Romana Visigothorum (506 c.e.), an abridg-
ment of the Theodosian Code intended for Romans living under Visigoth
rule in Spain and southern Gaul. Also called the “Breviary of Alaric,” this
epitome contained nine laws from the Theodosian Code regarding the
Jews, plus Theodotius II’s own Novella 3 from the end of the same corpus
and two more from another source, all meant to apply to the Jewish subjects
of the Visigothic king. 86 Many scholars believe that the Breviary of Alaric
reflects the tone of the Theodosian Code, as well as a tendency toward
tolerance regarding the Jews that was characteristic of Arian Christianity,
something the Visigoths professed at the outset of their Christianization. 87

Unfortunately for Jews living in the Visigothic Kingdom, after the con-
version (589) of the Visigothic royal house to “orthodox” Nicene Cathol-
icism, the way was open to revocation of the Breviary and, with it, Roman
law as it applied in Spain. In 654, the Breviary was replaced by Leges
Visigothorum (Laws of the Visigoths) a new, unified code for both Visigoths and Romans. The protection Jews had enjoyed by virtue of their Roman citizenship disappeared. All the Jewish provisions in the new code were restrictive and intolerant in the extreme. This was one of several factors that set the stage for the rapid decline of Visigothic Spanish Jewry during the remainder of the seventh century. The Germanic Franks continued to apply the Visigothic Breviary of Alaric to Romans in parts of southern and eastern France which they conquered, mainly Burgundy. The employment in Frankish courts of scribes and notaries familiar with Roman laws and legal procedures helped ensure this continuity.

Very few Romans, but many different Germanic tribes, lived in northern France and Germany, the original area of Frankish settlement. There, the Franks applied Barbarian customary law, with its principle of the personality of the law—the idea that the law for an individual depended on the tribe or group to which that person belonged, rather than on the region in which he lived. We have little hard data about Merovingian Frankish policy toward the Jews. The edict of King Lothar II (614), in many of its clauses echoing the church Council of Paris held a week earlier, cannot be said to provide insight into the nature of its provision prohibiting Jews from holding public office over Christians. Clearer evidence issues from the legislative remains of the Carolingian king, Louis the Pious (813–40), Charlemagne's son and successor. Louis set out to induce itinerant Jewish merchants to settle permanently in his realm by issuing standard Carolingian charters of privileges, including the all-important right to live by their own laws, in addition to generous dispensations to facilitate their commercial activities. This privilege conformed with the pluralistic premise underlying the principle of the personality of law, which the Franks, more than other Germanic groups, perpetuated in the early Middle Ages. As was true of the pagan Roman world, the pluralism of the tribal world of the German Barbarians carried advantages for the Jews. The relatively secure position of the Jews in northern Europe during the early Middle Ages owes much to this feature.

In the countries of northern Europe, royal and imperial charters governing and protecting Jews evolved into direct, unmediated, legal dependence on a central ruler. As enmity and physical attack became more prevalent after the First Crusade, this dependence was of considerable benefit to the Jews. An example is the charter issued by the German emperor, Frederick I, in 1157, for the Jews of Worms. The charter confirms a previous one granted by Frederick's great-grandfather, Henry IV, apparently around 1090; its date is inferred from its similarity to a charter of Henry IV for Jews in Speyer, dated February 1090. Certain concepts and privileges, most of them dating from the earliest Carolingian charters, are common to many of these documents.
more conception of Jewish history," has pointed to the benefits that accrued to the Jews as a result of being placed under the direct protection of secular rulers. One important advantage Jews had over unfree Christian serfs was their freedom to live wherever they wished—in most places, a freedom denied Christians. Another advantage was membership in recognized, "corporate" Jewish communities whose autonomy in matters of Jewish law effectively bestowed on them rights that, in many ways, offset their technical "serfdom." 102 Cecil Roth argues that the status of the Jews as direct dependents of the king of England (where the phrase servi caesarei seems not to have been used) entailed stringent, absolute proprietorship with attendant exploitation but also with "unmistakable privileges." 110

We should avoid the temptation, when tempering the "lachrymose conception," to overstate the virtues of Jewish serfdom. Neither should we jump to apply the dismissive (similarly, anti-lachrymose) approach to the assumed degradations of Christian serfdom found in some recent revisionist work by medieval European historians. The urge to achieve freedom—

We would do well, too, to bear in mind R. W. Southern's comment on serfdom: "To nearly all men serfdom was, without qualification, a degrading thing." Men, Southern says, "well knew, however theologians might seem to turn common notions inside out, the difference between the yoke of servitude and the honour of liberty... What men feared and resented in serfdom was not its subordination, but its arbitrariness." 110 According to Southern, a serf lacked two crucial things: liberty and the protection of law—liberty because he was totally dependent on the will of his lord, and law, because the serf needed the inherent, dependable protection that could come only from law and its enforcement. "The higher one rose toward liberty, the more the area of action was covered by law, the less it was subject to will... At the bottom of society was the serf, who could least appeal to law against the arbitrariness of his superior." 110

From Chapter Serfdom to Exclusion

Guido Kisch and Gavin Langmuir, who have analyzed Jewish serfdom, explain its evolution as well as the way in which it ultimately acquired the degrading characteristics of serfdom in general. Kisch 109 traces a regressive path in medi eval Germany from the compact and security that accom-

panied inclusion in evolving public law, to the insecurity and unfreedom that resulted from relegation to a special, dependent status as "serfs," with concomitant exclusion from society. Until the thirteenth century, he argues, the German monarchy followed a dual policy of protecting Jews and integrating them into the normal apparatus of secular law. For the charters issued to Jews belonged to a class of documents that served as the standard vehicle by which kings legislated in the early Middle Ages.

The massacres of the First Crusade in 1096 convinced the German emperor, Henry IV, that the Jews, along with other vulnerable groups such as merchants, clerics, and women, needed increased protection. Beginning in 1103, Henry inaugurated a secular version of the older, ecclesiastical Peace of God (or Truce of God)—the Land Peace Law, a kind of truce which stipulated no one might harm a specified person or group over a defined period of time. Though included under Henry's law, Jews as a group were no longer allowed to bear arms. This revival of a principle of Christian-Roman Jewry law thus robbed Jews of what in medieval times was an important source of honor.

As Kisch shows, Jews continued to receive charters. Christian hostility toward Jews steadily increased during the Crusades, but the German charters (for instance, that of Frederick I, in 1157) offered extra protection by placing the Jews under direct imperial control. In 1236, a year after introduction of the blood libel in Germany, the German monarchy took the final—in a sense, regressive—step. It declared Jews servi caesarei mutare, terminology which was inspired by the recently revived papal doctrine of servitus judaeorum (servitude of the Jews). Kisch believes that this church-inspired idea marked the beginning of Jewish unfreedom. From then on, he says, Jews were no longer part of the organic legal structure of the Land Peace Law, which had briefly imparted to Jews an aura of inclusion in society, albeit as members of a class especially vulnerable. Henceforth, the legal status of Jews was governed by special legislation designed specifically for them, a jus singular. 109 Already diminished when they lost the right to bear arms, the honor of the Jews fell to a new low. In the view of Friedrich Lorfer, German imperial law on the Jews in the mid-thirteenth century began to yield to ecclesiastical pressure, in order to eliminate the old privileges granted Jews in Carolingian and Salian times. This setback was reflected in the large-scale persecution of the Jews in the last two decades of the century.

Gavin Langmuir concurs in the belief that the condition of Jewish "serfdom of the chamber" constituted an abasement of the legal status of the Jews. Actual employment of servi caesarei was less important, however, than the practice of exclusive royal dominion over the Jews and the exploitation of them. For instance, the words servi caesarei do not appear in English royal charters. 110 But, Langmuir observes, England by the twelfth
century already had a strong central monarchy, at a time when the Jews' perceived dependency on royal whim and protection was real. Thus the terminology was superfluous. At the other extreme, in Germany and Spain, where centralization was least developed, royalty employed the terminology of servi cameae in asserting direct control over the Jews. In France, where Jews were never described as servi cameae, the appearance of judaei servi (our Jews) in royal legislation as early as 1198 anticipated the growing dependency of Jews on the monarchy. Moreover, in France, barons maintained possessory rights over the Jews in their respective domains.

The concentration of authority over the Jews in the hands of the French monarch thus was a process that moved slowly yet organically. In 1230, in legislation regarding the Jews, the Capetian monarchy asserted the barons' exclusive dominion over their Jews, wherever the Jews happened to be—even as fugitives in the domain of other barons. This legislation became a milestone on the road to full, centralized royal authority and administration in France. For the first and only time in French ordinances, and strictly as an analogy, this law used the terminology of serfdom for the Jews, stating that a Jew who fled to the domain of another baron could legally be seized by his lord tanquam proprium servum (like his own serf). Whereas a true serf earned his freedom by living unchallenged in the territory of another lord for a year and a day, a Jew could be forcibly returned to his original lord regardless of where a Jew lived as a fugitive or how long he had lived there. 112 This law set a precedent that continued the erosion of freedom that had long privileged Jews in feudal France, compared to Christian serfs. Ultimately, the legislation confined Jews to a status more restrictive than ever before.

The very principle of possessory rights (with or without the terminology of serfdom, and regardless of whether the rights were exercised in the domain of a monarch or a baron) that were exercised by secular authorities over Jews with increasing vigor as the Middle Ages wore on included the right to tax Jews to the limit. Because of their vulnerability, Jews proved compliant prey for royal and baronial tax collectors. With variation from place to place, the tax obligations of Jews might include annual levies on households or communities, fees connected with loans, tolls, and, most vexatiously, periodic "unscheduled" arbitrary exactions or confiscations to meet various pressing financial needs of an overlord. 113 Because they needed protection, Jews had no choice but to pay.

By the thirteenth century, Langmuir says, "as a result of the efforts of ecclesiastics, kings, and barons to exploit Jews, each for his own ends, Jews had been given a degraded legal status that set them apart from all others in European society and denied them even the protection usually accorded serfs. "113 To invoke Southern's perspective on medieval serf-
Jews. Unlike the Christian urban majority, Jews, even where they boasted some form of municipal “citizenship,” nonetheless suffered degradation. They were excluded from municipal political rights, including the right to hold public office, and they bore the burden of special taxes. Assessing the “meaning of citizenship” for the Jewish urban resident, Baron writes:

It is somewhat difficult to envisage all Jews sharing with the rest of the burghers the repeated, sometimes annual, ceremony of retaking the oath of fidelity to the city, wherever such reiteration was required by law, without leaving any trace in the contemporary records. The ever present social differences between Christian and Jewish burghers must also have in many ways impinged on the latter’s legal status. 103

Thus, Jews, while benefiting from fair treatment in municipal courts, and often acquiring some form of official membership in the town, continued to occupy a marginal place compared to Christians, with their full citizenship. In extreme cases, municipal authorities requested from an overload the right not to tolerate the Jews in their midst. Increasingly as the Middle Ages wore on, towns decided to do away with the “Jewish problem” altogether by the draconian act of expulsion. In a word, marginality degenerated into exclusion.

We have revisited territory well trod by specialists in medieval European Jewish history, though the ground may be less familiar to the lay reader and the general historian. The overarching theme is the variation and changeability of the legal status of Jews in Latin Christian lands. Christianity inherited from Roman law the idea that Jews are entitled to protection from wanton violence and from interference in the practice of Judaism. Within those limits, both the church and the state manipulated Jewish status in keeping with their own needs and ideologies. In the ecclesiastical realm, popes struggled to balance their obligation to preserve the Jews as “witness” with a desire to exclude them from the company of Christians. Secular authorities at the imperial, royal, baronial, or municipal level followed the law of utility regarding the Jews.

In the early Middle Ages, when Jews performed vital commercial services not otherwise fulfilled, rulers applied the most tolerant features of the legal traditions at their disposal, sometimes to the extent of going beyond them. As the need for Jewish commerce decreased, rulers found the Jews, now heavily concentrated in moneylending, a ready source of revenue through heavy taxation and extraordinary exactions—what William Jordan, referring to France and England, has labeled “fiscal terrorism.” 104 This brought with it ever-increasing direct Jewish dependency on their overlords, along with an attendant arbitrariness. Such an arrangement undermined Jewish security, for, in the absence of a corpus of Jewry