

Review: The Rightfulness of the Jews in the Roman Empire

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by Jean Juster

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## THE RIGHTFULNESS OF THE JEWS IN THE ROMAN EMPIRE

*Les Juifs dans l'Empire Romain. Leur condition juridique, économique et sociale.* Par JEAN JUSTER. 2 vols. Paris : Librairie PAUL GEUTHNER, 1914. Vol. I, pp. xviii + 510 ; vol. II, pp. viii + 338.

FRANCE for a period during the nineteenth century rivalled Germany as a centre of 'Jewish science'. It produced, among other savants of distinction, James and Arsène Darmesteter, Munk, and Salvador ; and its scholars have always preserved, down to our own time, a special interest in the history of the Jews in the Graeco-Roman period. M. Théodore Reinach, who has already distinguished himself in this field, is now bringing out an elaborately annotated edition of the works of Josephus ; and in the work before us we have a remarkable example of thorough and indefatigable scholarship in a similar sphere, which in a considerable measure should replace Schürer's history as the standard authority upon Jewish institutions in the early centuries of the Christian era.

Doctor Jean Juster is a French lawyer who has written in two large volumes a study of the legal, economic, and social conditions of the Jews in the Roman Empire. His work is striking alike as a piece of Jewish scholarship and as a contribution to the knowledge of Roman law and the development of European civilization. It is distinguished by two admirable qualities : (1) a mastery of the whole literature bearing upon the subject ancient and modern, permanent and periodical, Jewish and Gentile ; and (2) a very clear and definite point of view, which give unity and a plan to his mass of material. He writes throughout as the lawyer, and contrives from that standpoint

to trace the evolution of the Jewish people from the allied nation to the subject nationality, and from the subject nationality to the persecuted religious community. 'If we keep', he says in his preface, 'to the solid ground of facts—so often ignored in theoretical schemes—the investigation of the legal conditions of the Jews is the most suitable method of presenting their history in detail and bringing out from every point of view what was peculiar in their situation and compelled the people who desired or were forced to tolerate them to impose special measures. . . . Briefly this study leads to an understanding of the conflicts and practical solutions which the life of the Jews outside Palestine aroused in the pagan and Christian world of antiquity. And it is just for the purpose of measuring those conflicts and their solutions that the interpretation of the laws gives definite data—on condition that we investigate the actual life of the laws, their real purport, the cause of their promulgation, their evolution, and their abrogation, and that we analyse them as factors or results of social phenomena.'

It is, then, a legal philosophy of Roman Jewry which Doctor Juster seeks to present in these volumes, extracted from the legal and historical records of five centuries. The three chief topics of investigation are (*a*) the Jewish privileges; (*b*) the collective Jewish life in the Diaspora; and (*c*) the individual condition of the Jews in private and public law and in social and economic life.

The first three sections are taken up by a study of the sources, beginning with the Jewish historical writings, such as the books of the Maccabees, and ending with the Roman Codes and Digest. This is supplemented by a list of the towns in the Roman Empire (extending over thirty pages, of which the foot-notes occupy the greater part), where we have literary or monumental records of the existence of a Jewish community. In spite of the terrible vengeance which the Romans took for the century of Jewish resistance, the Jews remained until the fall of the Empire an important section of the population in almost every province, and everywhere the law took account of their

special requirements. They were a rock of nationality in the sea of cosmopolitanism.

It is a fundamental consideration of the Jewish legal position in the Roman Empire that the Jews had first come into contact with Rome as an allied people, and those of them who were scattered in the Hellenistic kingdoms were for the most part in enjoyment of equal civic rights when their cities passed under Roman dominion. They came thus into the Roman ken as a privileged nation. The Romans, like almost all the pagan peoples of Europe, were extremely tolerant in religious matters, holding that each nation was entitled to worship its own gods in its own ways: and they were moreover essentially a conservative and a legally-minded people, to an even greater extent than the English of to-day. Hence when the Jewish people as a whole came later under their rule, and no longer had the quality of an allied nation, but were a subject people, they made scarcely any attempt to change their legal condition, and preserved and fixed by special ordinances the privileges with which they were already invested. The law thus secured for them, so long as the pagan Empire remained, not merely the condition of a *licita religio*, a legalized religious community, but that of a privileged and nearly autonomous nationality. The 'rightfulness'—if we may coin the word—of the Jewish communities in the Graeco-Roman epoch is diametrically contrasted with their 'rightlessness' in the Middle Ages; and the connecting link between these two extremes is the intricate system of legal disability and legal persecution which marks the Jewish legislation of the early Christian Emperors and culminates in the laws of the Gothic and Visigothic rulers of the Western Empire.

The Jews, as Doctor Juster points out, must in every age and every land either be privileged or persecuted. The difference of their religious and social standpoint from that of their neighbours requires special treatment. The Roman magistrates who had first to deal with Jewish citizens in Asia Minor and Greece, from time to time issued edicts assuring to the peculiar people the free exercise of their religious observances; and in the short

reign of Julius Caesar, these various grants were confirmed and consolidated into a kind of *Magna Charta*, as Niese has called it, which remained for centuries the basis of Jewish rights. The Jewish readiness to become Roman citizens, wherever they enjoyed local civic rights, and their loyalty to the central power which has always characterized them, attracted the Roman favour to them in the Diaspora. Their extraordinary religious sensitiveness—which was to the pagans almost incomprehensible—and the national exclusiveness rendered Palestine indeed a troublesome province to govern, but the more intelligent among the Emperors respected their tenacity and perhaps were anxious not to arouse their martial prowess. Hence in spite of the completeness of the destruction of their religious and political centre at Judea, very small inroads were made after 70 C.E. upon their position of juridical autonomy. On the other hand, when Christianity was installed on the throne of the Caesars, the Jewish liberties were immediately and radically curtailed. It was the policy of the Church to let the Jews exist as a separate community. They were the *testes veritatis*, and so they were not to be exterminated like the pagans. But their lot must be made miserable, and they must be placed in a condition of glaring inferiority to that of true believers, in order that the truth of the predictions against those who refused to accept the Messiah should be illustrated. Their privileges, sanctioned by the pagan codes, were turned to *privilegia odiosa*, and the doctors of the Church vied with one another in embittering their lives.

Doctor Juster marks the contrast between the two attitudes, and its reason. 'The pagan Emperors were free from religious intolerance because the State religion consisted only of rites, of the fulfilment of acts and ceremonies, and left the individual complete liberty of opinion. In view of the legal principle of liberty which had its roots in the tolerance of the deities between themselves, they sacrificed for the benefit of the Jews and their jealous God the requirements of the official religion by dispensing them from the accomplishment of the rites.' The Christian Emperors on the other hand, dissociating religion and

nationality, made it a cardinal principle to pay no respect to the national customs of the peoples of the Empire when they were religious customs. Outside Christianity, every other religion or even religious doctrine is more or less criminal, and its adherents are to be visited with penalties. Such a minimum of tolerance as was conceded for theological reasons to the Jews was exclusively for those born in the faith. Proselytism, so long as it did not involve circumcision, had been permitted under the pagan empire and freely practised, but it was repressed henceforth with all the rigour which a jealous and cruel ecclesiastical hierarchy could devise. Jewish exclusiveness, so often made a reproach by latter-day theologians, was the forced outcome of a deliberate Christian policy. Doctor Juster writes a very learned and complete excursus on the place of Jews and Judaism in the Christian Ritual, in which he traces the debt of the Church to the Synagogue and of the Christian calendar to the Jewish calendar, and notes the bitter irony by which the Church borrowed from the Jews the violent polemic in the liturgy against all who should accept Judaism. After the battle was won against Jewish influence, the polemic was kept in the ritual to maintain the hatred against the Jews, who, 'reduced and enfeebled, shut up in their ghettos, kept at a distance from the Christians, powerless and defenceless, had ceased to be a danger to the Church', but were none the less an object of abomination. It is instructive to notice how long this attitude lasted. As late as 1542 an Ecclesiastical Synod in Poland passed a resolution stating: 'Whereas the Church tolerates the Jews for the sole purpose of reminding us of the torments of our Saviour, they must not increase under any circumstances.'

Passing to the measures which the pagan Romans took for the protection of the Jewish cult, Doctor Juster examines in detail the legal dispensations from the rites of the state religion which were accorded to the Jews because of their peculiar scruples. We are apt in our popular Jewish histories to associate the Hellenistic epoch essentially with the attempt of Antiochus Epiphanes to compel the Jewish people to worship the pagan

deities, and the Roman epoch with similar attempts of Caligula and Nero to force their personal worship upon the Jews. But, in fact, these outbreaks of tyranny were shortlived incidents in a general era of tolerance, which extended over the whole of the Diaspora as well as Judea. Doubtless it was their martial valour more than any spontaneous respect of their rulers which won for the Jews the special treatment. They were permitted to address the Emperor by titles which avoided what they deemed blasphemy; they took the oath of allegiance in a particular inoffensive form, they offered sacrifices in the temple of God, not of Caesar, and not to the head of the State, but for his well-being. Out of regard for their religious ideas, moreover, the Jews were exempted from military service, because they would not march on the sabbath day; and they were exempted from taxation in the year of release until the Imperial Treasury was too straitened to afford the immunity. Doctor Juster refutes the suggestion of Mommsen that the Jews were debarred by any law from using the Hebrew language. If Hebrew died out at all in parts of the Diaspora, it was the force of assimilation, not the repression of the legislature, which killed it.

Again, the legislation of the Christian Emperors offers a complete contrast with pagan tolerance. The celebrated 'Novel' of Justinian, No. 146, 'About the Hebrews', orders that, whenever the Jews of the locality wish it, the Scriptures may be read to the persons assembled in the synagogues in Greek or in the national language (i. e. Italian), or any other tongue according to the locality, so that all present may understand, on pain of corporal punishment and forfeiture of goods against the dignitaries of the Jewish clergy who shall excommunicate or penalize in any way those who read the books in any but the Hebrew language. That was a propagation of radical reform by Imperial rescript more thorough than any Rabbi of the far West has to-day dared to dream of. Justinian goes on to prohibit the use of the Mishnah (which no doubt included the Gemara) in the service, thus anticipating by a thousand years the anti-Semitic machinations of a Pfefferkorn; while by way of recompense he menaces with exile those

Jews who dare deny that there is a resurrection and last judgement, and that the angels are divine creatures. Heresy, which was a capital offence for Christians, becomes a capital offence for Jews if it takes the form of denying those parts of the Jewish creed which are also parts of the Christian belief. It is an interesting by-the-way reflection that the Imperial rescript goes far to prove the survival to the sixth century of forms of Judaism which derive directly from the old Sadducee sect, and are the prototypes of the Karaite cleavage.

Another aspect of Roman tolerance in the pagan epoch was the legitimization of the patriarchate after the fall of the Temple, and the permission given to the patriarch for imposing on all Jewish communities a tax for the maintenance of his office. The annihilation of the Jewish State by Titus and Hadrian was complete, but the Roman Conquerors, with their positive outlook and their freedom from theological rancour, having destroyed the political power of the foe, had no feud against their spiritual independence. Since the Jews in any case would take to themselves a leader, it was deemed better to give them one recognized by the sovereign who would be under a debt to the authorities, and who instead of fomenting sedition would moderate any outbreak. The patriarch, then, was permitted to exercise very large functions of national leadership, and to wield the same general control over the whole Jewish community of the Roman Empire as the Chief Rabbis of Western Europe sometimes have held over the national congregations. 'Centralize and rule'—through a central delegate—was the liberal policy of the pagan empire. Justinian is silent about the privileges of the Jewish spiritual functionaries, but our author has not found any text on which to support a suggestion that he suppressed them. We may safely presume, therefore, that no known text exists. But under Christian rule the patriarchate of Palestine soon lost its pride of place.

By the side of the generous recognition of a central religious authority over the Diaspora, the Romans granted each Jewish community full liberty of association and meeting. While the



general policy of the Empire was very jealously to restrict *Collegia* which seemed to conflict with the requirements of the civic authorities, the synagogue was remarkably favoured and privileged. It was recognized and legalized rather as a national than a religious body, *universitas* endowed with legal personality and with capacity to receive gifts and legacies. As Doctor Juster says, again refuting Mommsen, 'the complexity of its functions makes the community resemble rather a city than a religious association'; it has civil and penal jurisdiction: it forms part of the whole Jewish nation: it is subordinate to the central Jewish authority. The Jews were veritably an *imperium in imperio*, a semi-autonomous people, even while they possessed the equal citizen rights with the rest of the population. They enjoyed separation without ghettos, and differentiation without degradation. Doctor Juster sees in the sect of the 'New Alliance', of which Schechter has discovered a record in the Genizah fragments, an example of the liberty of association which was conceded to the members of the Jewish nationality.

Here, too, on the establishment of the Christian Church as the State religion, legislative repression came to the support of theological intolerance. Jews were forbidden, under severe penalties, to build new synagogues, and when the older houses of meeting were burnt to the ground by fanatical mobs, redress was refused. Just as the Church desired the Jews to survive as a separate people, but to survive miserably, so it permitted Judaism to remain a separate faith on condition that its existence should be precarious and its progress ruthlessly impeded.

In his second volume the author treats of the private rights of the individual Jew, which depended primarily on his *status civitatis*. He might be *peregrinus*, i. e. a foreigner; and this was the condition of all those who had not a local citizenship or the full Roman *civitas*. The latter privilege was exceptional till the edict of Caracalla bestowed it on the subjects of the Empire. As *peregrini*, however, while endowed with limited political rights,

the Jews had their own system of law for all personal matters ; or, as it is called to-day in the East, they had their own ' personal statute ', which depended on their national institutions. By this law the questions of marriage, divorce, and guardianship were ruled, and the courts which decided on them were Jewish courts. The Jews enjoyed a legal system similar to that which the European Powers have obtained in non-Christian countries by the so-called Capitulations made with the sovereign. They preserved this advantageous position till the breaking-up of the Roman Empire into a number of separate and exclusive nations made the personal application of law, which in the vast Roman Empire had been freely accorded, an anomalous exception that could not be tolerated for long. It was as inheritors of the ideas of the Roman Empire that the Jews incurred their rightlessness in the mediaeval State, and—another ironical paradox—they were compelled by the Christian Emperors to adopt the Roman private law to govern their family relations at the very moment when, deprived of their political rights, they became less fully Roman subjects.

It is interesting to consider briefly the rules of private law which applied to them in the heyday of the pagan Empire, and Doctor Juster, though the documents are here not as full as in other parts of his study, has by deduction from well-defined principles, made the position clear. Under the pagan Empire the Jew could follow his national religious law in matters of marriage and divorce at his option, even though he was entitled to the benefit of the ordinary Roman law: after 393 C.E., when his national customs in such affairs were declared illegal, he was bound to comply with the civil rules. In the tolerant period the Roman tribunals (as the Talmud records) would compel a Jewish husband to give the bill of divorce which a Jewish authority has directed (Gittin, 9. 8). On the other hand the Christian Emperors introduced against loyal Jews a series of special restrictions on the testamentary capacity, so as to give a baptized member of the race a special right of inheritance. The civil jurisdiction of the Jewish tribunals in Palestine was only slightly

impaired by the fall of the nation in 70 C.E. Before that date their competence was exclusive when both parties were Jews : afterwards it was concurrent with that of the pagan courts ; but it was none the less a recognized, legal *forum* whose sentence was executed by the State officers. The Theodosian Code took away this privilege, and reduced the Jewish courts to the rank of arbitration tribunals, which had competence only by consent of the parties. Nevertheless the award of the tribunal retained the character of a binding decision, which was executed by the Roman authorities. The position of the Beth-Din in England to-day offers a close parallel. In the Diaspora the Jewish courts exercised under the early Empire an optional but regular jurisdiction over the Jewish communities, and their transformation under the influence of Christian legislation into arbitration tribunals followed the same lines as the process in Palestine. The penal jurisdiction which in the times of national independence had been fully exercised by the Sanhedrin in Judea, was likewise not completely swept away so long as the Empire lasted. Doctor Juster, controverting a great body of Jewish and non-Jewish authority, maintains that the Jewish court had both the power to pronounce the capital sentence and to have that sentence executed. He relies principally on the evidence of Josephus and Philo, and thinks the testimony of the Christian Gospels altogether vague and inconclusive. But after the fall of Jerusalem the only power to pass a capital sentence left to the Jewish penal court was in regard to religious offences, and this was by way of tolerance rather than of right. In the Diaspora the penal jurisdiction of the Jewish community was always restricted to cases of religious offences, and was not therefore affected by the change in the political *status* of Palestine. Nor was it altogether abolished by the Christian legislation, though it was considerably curtailed. Its survival is a remarkable testimony to the peculiar character of the national privileges of the Jews throughout the history of the Roman Empire : because no other community, not organized in separate cities, enjoyed in any measure the exercise of a right which is essentially attached to sovereignty. Doctor Juster

elaborately analyses the criminality of the Jews in the Roman Empire as evidenced by all the available literary and monumental records. He regrets that he cannot actually provide his readers with criminal statistics relating to the Jews of the period; and doubtless he would have liked to draw comparative results between Jewish and Gentile criminality and ancient and modern Jewish crime. But this would be a work of imagination, for which his volumes have no fit place. In his collection, however, of every recorded crime committed either by an individual Jew or a Jewish community, he has prepared the field of comparative study for some less cautious follower.

He is as thorough in his researches into the Jewish names found in the Empire; he classifies them into pure Roman, Greek, Hebrew, and mixed names, and he notes that as they were forced into a position of legal inferiority by the legislation of the Christian Emperors, so the Jews tended to adopt more and more the biblical names which they had hitherto neglected, and abandoned their pagan names. This provides a novel illustration of the principle that persecution strengthens the Jewish consciousness.

The final section of the book deals with the economic condition of Jewry in the Roman Empire: and in this part of the work only we feel that Doctor Juster is not exhaustive and has not said the last word. Yet he has brought together here too, a large amount of most suggestive material, and never fails to point out the contrast between pagan liberality and Christian jealousy. Under the Emperors of the first three centuries Jews filled high places at the court, and were not excluded from any calling or dignity; under the Christian rule they were shut out from the army, from the rank of *Palatini*, from the position of public professors and from the profession of advocacy,—it is interesting to note that so early they were distinguished by their skill in medicine and law,—and from municipal office and public functions generally, save such as were purely onerous and provided revenue. By a refinement of unfavourable discrimination, Justinian permitted them to keep these offices, or

rather compelled them to be appointed and stripped them of the privileges attached to the rank.

Our author also demonstrates clearly that agriculture was the dominant calling of the Jews as well in the Diaspora as in Palestine, till a harsh legislation drove them from the soil to commerce. They spread to the furthest limits of the Empire and beyond in their quest of liberty, and formed a kind of Jewish fringe colouring the life of every province. It was from these frontier Jewries that the communities of the Middle Ages in Western Europe derived their origin. Doctor Juster does well to show by abundant documentary evidence that (1) the Jews had no remarkable trend towards commerce till after the fifth century, when they were being consistently excluded from all liberal callings, and (2) that when Christian persecution began, the age-long harrying and hounding that has not ceased in our days, they were not noted for the number of their rich men but rather for their poverty. Jewish degradation as well as Jewish disabilities date from the union of the Church with the Roman State. We may hope that they may end with the dissolution of that union in the Empire which is the heir of the tradition and a large part of the dominions of Justinian. It is the principal lesson of Dr. Juster's work that the Jews have suffered from a false political idea that for fifteen hundred years has dominated European thought.

NORMAN BENTWICH.

Cairo.