THE LEGAL STATUS OF JEWS IN THE BYZANTINE EMPIRE

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I. General

The legal status of the Jews in the Byzantine Empire was determined by the particular nature of that state—a Roman polity undergoing a process of Christianization. Two major forces interacted in its course: the Roman tradition in law, government, and societal self-perception, and the Christian drive to remold that society in accordance with an unequivocal Christian vocation. Christianization consisted, in this context, in the absorption of the Roman legacy by the Christian state, a long and complex process that was never fully completed. An immanent duality marked, therefore, Byzantine legal-political life, not unlike the iconic double-headed Byzantine eagle, though the relative strengths of the two forces, Christianitas and Romanitas, varied in time and circumstance. The legal status of the Byzantine Jews was determined by this process since Judaism inhered in both forces, in the Roman legal tradition and, to an even greater extent, in the Christian

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1 Footnote references have been limited to primary sources, mainly in order to reduce space. Readers are advised, therefore, to consult the following works for different historical perspectives and for bibliographical orientation to the relevant secondary literature: 1) J. Starr, The Jews in the Byzantine Empire, 641–1204, (Athens, 1939); 2) A. Sharf, Byzantine Jewry from Justinian to the Fourth Crusade, (New York, 1971); 3) S. Bowman, The Jews of Byzantium (1204–1453), (Alabama, 1985); 4) A. Linder, “The Legal Status of the Jews in the Roman Empire,” in The Cambridge History of Judaism, Vol. IV, ed. S. T. Katz, (Cambridge, 2006), 128–73.

The Classical Roman legal texts have been quoted from the following editions: 1) Theodosiani Libri XVI cum Constitutionibus Sirmondianis, edidit adsumpto apparatu P. Kruegeri Th. Mommsen, (Berlin, 1905), (= CTh.); 2) Codex Justinianus, recognovit et retractavit Paulus Krüger, (Berlin, 1929), (= CJ.); 3) Digesta, recognovit Theodorus Mommsen, retractavit Paulus Krüger, (Berlin, 1828), (= Dig.); 4) Novellae, recognovit Rudolfus Schöll, opus Schöllii morte interceptum absolvit Guilemimus Kroll, (Berlin, 1912), (= Nov. Just.). The Byzantine legal sources are quoted from editions referred to throughout the article. To facilitate further consultation of the quoted texts all citations from the Classical Roman legal sources are also given their references in A. Linder, The Jews in Roman Imperial Legislation, (Detroit, 1987), (= JRIL), while the Byzantine texts are given their references in A. Linder, The Jews in the Legal Sources of the Early Middle Ages, (Detroit, 1997), (= JLSM). Both volumes provide bibliographical orientation for each source.
Weltanschauung—in a world perceived as the historical unfolding of God’s Economy of Salvation. As a sociological phenomenon, that legal status derived from the underlying legitimation of the Jews in the Byzantine Empire, i.e. from the social recognition that their presence conformed to the norms of the Byzantine state in its dual configuration, Roman as well as Christian. And vice versa: their legal status was diminished or entirely abrogated in close correlation with their illegitimation in regard to the same norms.

II. Roman Pagan Foundations

A. General Characteristics

The Roman pagan policy towards the Jews derived from the premise that “Iustitia est constans et perpetua voluntas ius suum cuique tribuens” (“Justice is the constant and perpetual will to render to everyone his right.”) Jews were thus granted the right to maintain their peculiar identity, as individuals and as a national and religious entity. This was hardly unusual, for pagan Rome tended to identify common denominators across cultural differences and practically validate these differences, provided that they fell within the boundaries of the conventionally accepted deviation. Reducing natural heterogeneity to a universal Law of Nature and legal multiformity into the Law of Nations meant, in essence, recognizing natural as well as national-legal multiplicity, in the same way that the reduction of different cults into few prototypical cults and numerous deities into a handful of essentially exchangeable deities validated, in effect, religious peculiarities. Because the practice of Judaism by Jews was generally considered to fall within the boundaries of the accepted deviance it was granted the usual recognition, occasionally attended with hostility, mockery, ignorance, or indifference, but recognition nonetheless. Julian’s publicly declared intention to rebuild the Temple and restore the sacrificial cult in Jerusalem in the context of his grand pagan restoration is a telling example of that acceptance of Judaism into the pagan Big Tent.

Legitimizing the Jewish presence in the Roman state created, all the same, a highly ambiguous and potentially inflammable situation, for the Jews claimed both the right to engage in a broad range of activities

2 Inst. I.1.