ROMAN ANTI-JEWISH LEGISLATION AND ADVERSUS-JUDEAEOS
LITERATURE

by

DITLEV TAMM (Copenhagen)

Ad: H. Schreckenberg, Die christlichen Adversus-Judaeos-
Texte und ihr literarisches und historisches Umfeld (1.–11.
Jh.), Frankfurt am Main [1990]*

The author of this most recent book on the medieval controversies between
Christians and Jews is a philologist and a professor of the University of Münster.
In this book that was first published in 1982 he has taken up the task of collecting
texts that were in some way related to the controversies between Christians and
Jews in the Middle Ages, the 'adversus-Judeos'-literature.

After a chapter dedicated to the Old and New Testament themes in this litera-
ture, he meticulously lists the authors who have left work within this field. It is
an impressive register of names and works listed chronologically from the Rab-
binic literature, the Apostolic Fathers, the Fathers of the Church, and texts from
the Theodosian Code and the Codex Justinianus until the end of the eleventh
century.

From the legal historian's point of view the book is especially interesting for
its information about those texts that form the intellectual background upon
which the anti-Jewish legislation in the Roman Codes should be understood.

Most of this legislation is contained in the Codex Theodosianus (429-438).
The main part of legislation regarding the Jews is found in title 8 of the six-
teenth book: De judaeis, caelicolis et samaritanis – a total of 29 orders – as well
as title 9 of the same book: Ne christianum mancipium judaeus habeat – contain-
ing 5 orders. These orders are supplemented by a number of acts scattered under
various titles such as de jurisdicctione (administration of justice), de contrahenda
(on the entering into contracts), de metatis (on lodging), de decurionibus (on the
position as decurion), de apostatis (on apostates), and a few others. But the Jews
did not come under the section de haereticis (on heretics) – Jews were Jews, not
heretics; heresy presupposed that one was a Christian.

No legislation on Jews has been conserved from the period between 438 and
534, but a major part of the provisions of the Codex Theodosianus was included
in the Codex repetitae praelectionis of 534 of Emperor Justinian. Title 9 of the
first book of the Codex is called De judaeis et caelicolis and contains 18 orders.
Title 10 of the same book which contains only two acts is called: Ne Christianum
mancipium haereticus vel paganus vel judaeus habeat vel possideat vel circum-

* 2., überarbeitete Auflage, [Europäische Hochschulschriften, Reihe XXIII: The-
ologie, 172], Peter Lang, Frankfurt am Main–Bern–New York–Paris [1990], 749 S.
Only very few of the provisions regarding Jews of the Justinian Code had not been included in the *Codex Theodosianus*.

The Justinian Code contains the legislation on Jews which was in force after 438, but we cannot take it for granted that the *Codex Theodosianus* and the *Codex Justinianus* have retained all legislation on Jews issued in the period from Constantine until 438. Nothing has been retained from the period between 438 and 534, but presumably at least as many acts as those retained were lost. However, so much has been preserved in the *Codex Theodosianus* that we are able to trace the numerous changes to which imperial legislation on the Jews was subjected during the fourth century, simultaneously with the triumph of Christianity which completely changed the foundation of life in the Roman Empire.

There is a close relation between Christian anti-Jewish propaganda of the first centuries and imperial legislation against the Jews. The Christian campaign against the Jews created the background to the legislation which it provoked. As far as Jewish legislation is concerned two periods emerge. The first period runs from the time of Hadrian until Constantine. Once the Jews had been destroyed as a nation, whereby the political danger of a revolution was eliminated, imperial legislation protected the exercise of their religion. Anti-Jewish polemics of this period were a continuation of the dispute dating back to the New Testament. The issue was who was *Verus Israel*. According to the Christian concept the Jews had been rejected by God because of their disobedience. At this stage the Christians were the ones who were persecuted, and the legal condition of the Jews was not inferior to that of the Christians, except for the fact that Jews were prohibited from settling in Jerusalem.

The second period began the very moment Christianity obtained power under Constantine. It was not until then that the Christian concept of the Jews gained influence on legislation. At the same time there was an escalation of attacks upon Jews as a disgraceful sect and upon the Jewish religion. *Adversus Judaeos* is the title of several volumes from Tertullian to Augustine — and these attacks constitute an essential part of the background against which imperial legislation must be assessed. From the fourth century one may mention Eusebius of Caesarea and his historical description of the Jews, or the systematic attack upon the Jews by John Chrysostome in eight speeches in Antioch 386-387. John Chrysostome not only invoked the fall of the Jews from being the chosen people, but also vigorously attacked their way of life. Zeno of Verona and Ambrose of Milan are other examples of distinguished churchmen who personally intervened in order to prevent the emperor from protecting the Jews. The points of view which we find in the imperial legislation originated in the works of the Church fathers, in the resolutions of early church meetings, and in theological works from the fourth century.

4. On the council decision against the Jews in the fourth century cf. Parkes, p. 174, who refers to a Spanish church meeting in Elvira around 300, which, among other things, prohibited marriage between Jews and Christian women.