# HISTORIA JUDAICA

A JOURNAL OF STUDIES
IN JEWISH HISTORY ESPECIALLY IN LEGAL
AND ECONOMIC HISTORY OF THE JEWS

VOLUME I

EDITOR

GUIDO KISCH

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# ABBREVIATIONS = ABKÜRZUNGEN

a. a. O. = am angeführten Orte
Abh. = Abhandlung(en)
AHDE. = Anuario de Historia del Derecho Espanol
AHR. = American Historical Review
Anm. = Anmerkung
Ann. = Annalen
Arch. = Archiv(e)
Aronius = Julius Aronius, Regesten zur Geschichte der Juden im Fränkischen und Deutschen Reiche bis zum Jahre 1273, Berlin 1887—1902
AKKR. = Archiv für katholisches Kirchenrecht
Baer I, II = Fritz Baer, Die Juden im christlichen Spanien I, II, Berlin 1929, 1936
Baron I, II, III = Salo W. Baron, A Social and Religious History of the Jews I, II, III New York 1937
Beitr. = Beitrag, Beiträge
Bibl. = Bibliothek(en)
Bondy-Dworsky I, II = Gottlieb Bondy und Franz Dworsky, Zur Geschichte der Juden in Böhmen, Mähren und Schlesien von 906—1620 I, II, Prag 1906
Bretholz = Bertold Bretholz, Quellen zur Geschichte der Juden in Mähren vom XI.—XV. Jahrhundert, Prag 1935
Bull. = Bulletin, Bulletino
Conc. = Concilia
Const. = Constitutiones
CQR. = Church Quarterly Review
DA. = Deutsches Archiv für Geschichte des Mittelalters
Diss. = Dissertation, Doctoral Thesis
DR. = Deutsche Rechtswissenschaft
DRW. = Deutsches Rechtswörterbuch
Dubnow = Simon Dubnow, Weltgeschichte des jüdischen Volkes, 10 Bände, Berlin 1928—1929
EHR. = Economic History Review
EJ. = Encyclopaedia Judaica
Festschr. = Festschrift
Forsch. = Forschung(en)
G. = Gesetz
Ges. Schr. = Gesammelte Schriften
GGA. = Göttinger Gelehrte Anzeigen
GJ. = Germania Judaica
Gött. Nachr. = Nachrichten von der Gesellschaft der Wissenschaften zu Göttingen
HB. = Hebräische Bibliographie
hgg. = herausgegeben
HJ. = Historia Judaica
HJb. = Historisches Jahrbuch
Hs(s). = Handschrift(en)
HUCA. = Hebrew Union College Annual
HZ. = Historische Zeitschrift
J. = Jüdisch
Jb. = Jahrbuch
JE. = Jewish Encyclopedia
Jew. = Jewish
JFF. = Jüdische Familienforschung
Jg. = Jahrgang
JGJČ. = Jahrbuch der Gesellschaft für Geschichte der Juden in der Tschechoslowakischen Republik
Jh. = Jahrhundert
JJGL. = Jahrbuch für jüdische Geschichte und Literatur
JJLG. = Jahrbuch der jüdisch-literarischen Gesellschaft Frankfurt am Main
JL. = Jüdisches Lexikon
JQR. = Jewish Quarterly Review (new series, if not otherwise stated)
JSS. = Jewish Social Studies
Korr. Bl. = Korrespondenzblatt des Vereins zur Gründung und Erhaltung einer Akademie für die Wissenschaft des Judentums
KS. = Kirjath Sepher
l. c. = loco citato
LL. = Leges
MA. = Middle Ages, Mittelalter
MGH. = Monumenta Germaniae Historica.
MVGDB. = Mitteilungen des Vereins für Geschichte der Deutschen in Böhmen
n. = note
NLM. = Neues Lausitzisches Magazin
no = Number
Nr. = Nummer
op. c. = opus citatum, in opere citato

p., pp. = page, pages
Qu. = Quellen
PAAJR. = Proceedings of the American Academy for Jewish Research
PAJHS. = Publications of the American Jewish Historical Society
Parkes I = James Parkes, The Conflict of the Church and the Synagogue, London 1934
Parkes II = James Parkes, The Jew in the Medieval Community, London 1938
PL. = I. P. Migne, Patrologiae Cursus Completus, Series Latina, 221 Volumes, Paris 1844—1890.
PMLA. = Publications of the Modern Language Association of America
Qu. = Quellen
REJ. = Revue des Études Juives
repr. = reprint, reprinted
RG. = Rechtsgeschichte
RGBl. = Reichsgesetzblatt
RGA. = Rechtsgutachten
S. = Seite, Seiten
SA. = Sonderabdruck
SB. = Sitzungsberichte
SdGuV. = Sammlung der Gesetze und Verordnungen
Scherer = J. E. Scherer, Die Rechtsverhältnisse der Juden in den deutsch-österreichischen Ländern, Leipzig 1901
Schr. = Schriften
Slg. = Sammlung
Spec. = Speculum
SS. = Scriptores
Stobbe = Otto Stobbe, Die Juden in Deutschland während des Mittelalters in politischer, sozialer und rechtlicher Beziehung, Braunschweig 1866.
Stud. = Studies, Studien
TJHSE. = Transactions of the Jewish Historical Society of England
UB. = Urkundenbuch
V. = Verordnung
Vf. = Verfasser
VSWG. = Vierteljahrschrift für Sozial- und Wirtschaftsgeschichte
Wiener = M. Wiener, Regesten zur Geschichte der Juden in Deutschland während des Mittelalters, Hannover 1862
Yearb. = Yearbook
Z. = Zeitschrift
ZGJD. = Zeitschrift für die Geschichte der Juden in Deutschland (new series, unless otherwise stated)
ZGJT. = Zeitschrift für die Geschichte der Juden in der Tschechoslowakei
ZHB. = Zeitschrift für hebräische Bibliographie (new series unless otherwise stated)
ZKG. = Zeitschrift für Kirchengeschichte
ZRG. = Zeitschrift der Savignystiftung für Rechtsgeschichte, Germanistische Abteilung
ZVRW. = Zeitschrift für vergleichende Rechtswissenschaft

# HISTORIA JUDAICA

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## THE "JEWISH LAW OF CONCEALMENT"

By

Guido Kisch

Contents.

Introductory Remarks.

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### INTRODUCTORY REMARKS.

In the first volume of *„Forschungen zur Judenfrage"* (Researches in the Jewish Problem) in a detailed study, Herbert Meyer, deals with the „Hehlerrecht of the Jews and Lombards"[1]. While this work describes primarily the medieval development and formation, a second treatise by the same author, *„Das jüdische Hehlerrecht"* in the periodical *„Deutsche Rechtswissenschaft"*[2], delves into the late medieval remnants and the modern offshoots of that legal institution.

The following investigation will submit Herbert Meyer's scholarly method and his principal results to examination. A discussion is possible only upon the basis of scholarly investigations and their results. Therefore all political

[1] Herbert Meyer, „Das Hehlerrecht der Juden und Lombarden", in *Forschungen zur Judenfrage* Volume 1, *Sitzungsberichte der ersten Arbeitstagung der Forschungsabteilung Judenfrage des Reichsinstituts für Geschichte des neuen Deutschlands vom 19. bis 21. November 1936,* Hamburg 1937, pp. 92—109. — All quotations, with merely the statement as to the page number, refer to this treatise.

[2] *Deutsche Rechtswissenschaft,* edited by Karl August Eckhardt, Volume 2, No. 2, Hamburg 1937. — This issue of the periodical, which contains some more contributions to the medieval legal history of the Jews in Germany, will subsequently be referred to by the abbreviation *DRW.,* with the number of the page.

and purely anti-Semitic assertions, and of these there is no lack, are left out of consideration. It need not be particularly stressed that the omission of positive opposition toward single arguments should at no time be understood as agreement with them.

Even as long as thirty five years ago, Herbert Meyer, in his book, *„Entwerung und Eigentum im deutschen Fahrnisrecht"* (Disseisin and Property in the German Law of Chattels), dedicated a section of more than a hundred pages to the so-called „Jüdisches Hehlerrecht" (Jewish Law of Concealment)[3]. A literary discussion in the *Monatsschrift für Geschichte und Wissenschaft des Judentums* followed Meyer's publication. Max Eschelbacher had attacked some of the principal theses and some of the important proofs of the author in a detailed critical review[4], to which the latter replied in the same periodical[5]. Some concluding remarks by Eschelbacher closed the discussion[6]. Perusal of these publications will facilitate the understanding of the following study.

In his publications of 1937, Herbert Meyer does not present any new source-material or any new results of research of fundamental significance. The only thing new, rather, is the standard of the National Socialist system of values, which Meyer applies to the scientific material that he had gathered thirty five years ago.

## I.

## THE „JÜDISCHES HEHLERRECHT" AND ITS LEGAL-ECONOMIC JUSTIFICATION.

The so-called „Hehlerrecht" of the Jews and Lombards constitutes a trade privilege to which a definite significance is attached in the medieval economic life of Europe.[7] The legal principle underlying it is: Jews and Lombards need deliver up stolen goods which they have bought or received as security, only for compensation to the amount of the purchase price of the object or of the money secured by it.

[3] Herbert Meyer, *Entwerung und Eigentum im deutschen Fahrnisrecht, ein Beitrag zur Geschichte des deutschen Privatrechts und des Judenrechts im Mittelalter,* Jena 1902, pp. 166—278.

[4] *Monatsschrift für Geschichte und Wissenschaft des Judentums* XLVII, 1903, pp. 181—192. — Abbreviation: Eschelbacher.

[5] „Entgegnung", *ibidem,* pp. 382—383. — Abbreviation: *MGWJ.* with the number of the page.

[6] „Nachwort", *ibidem,* p. 384. — Abbreviation: *MGWJ.* with the number of the page.

[7] The name *„jüdisches Hehlerrecht"*, according to H. Meyer, *MGWJ.*, p. 383, is derived from rabbinical literature. Meyer refers only to the Jewish historian

The Lombards or Caorsins took their name from the French city Cahors (hence Caorsini), but they were really burghers of the North Italian city Asti, who from the thirteenth century on carried on money and lending transactions throughout Europe.[8] They received trade privileges from the kings and town lords, which in their content exhibit marks of similarity to the medieval Jewry-Privileges.

According to the Roman and German law, the owner could at all times lay claim to the article stolen from him and demand it without paying any reimbursement. The other method of adjustment, by means of the so-called „Jüdisches Hehlerrecht", which is first met with in documentary form in the German Jewry-Privileges of Henry IV for Speyer and Worms of the year 1090[9], is said to call to mind the statements of the Talmud in Baba Kama 114 b, 115 a. The Jewish historian, Heinrich Graetz, had referred the non-Jewish legal historian, Otto Stobbe, to these passages in the Talmud[10]. Both these men lived and taught at Breslau in the middle sixties of the past century. Upon this basis

Marcus Brann, from whom he has heard this „juristic terminus for the legal maxims which could be beneficial to receivers of stolen goods". It is only on this that his assertion (p. 98) is supported that the „designation ‚Hehlerrecht' is in use among rabbinical scholars". However, Meyer has not produced documentary proof from the Talmudic and rabbinical literature. And yet that would be necessary. At the moment I do not see any possibility of getting at the root of the question.

[8] Based on the investigations of Aloys Schulte, *Geschichte des mittelalterlichen Handels und Verkehrs* I, Leipzig 1900, pp. 290—327; H. Meyer, p. 93; *DRW.*, p. 110 f.

[9] Concerning the privileges, cp. Robert Hoeniger, „Zur Geschichte der Juden Deutschlands im Mittelalter", Geigers *Zeitschrift für die Geschichte der Juden in Deutschland* I, 1887, pp. 136—151; Harry Bresslau, „Diplomatische Erläuterungen zu den Judenprivilegien Heinrichs IV.", *ibidem,* pp. 152—159; Otto Stobbe, „Die Judenprivilegien Heinrichs IV. für Speyer und für Worms", *ibidem,* pp. 205—215; Guido Kisch, „Die Rechtsstellung der Wormser Juden im Mittelalter", *Zeitschrift für die Geschichte der Juden in Deutschland* (= *ZGJD.)* V, 1934, p. 123 ff. with bibliographical notes (p. 4 ff. of the reprint); Raphael Straus, „Die Speyerer Judenprivilegien von 1084 und 1090", *ZGJD.* VII, 1937, pp. 234 ff. — A reproduction of the passages from the privileges that come into consideration at this point, follows below.

[10] Otto Stobbe, *Die Juden in Deutschland während des Mittelalters in politischer, sozialer und rechtlicher Beziehung,* Braunschweig 1866, p. 242 note 111. — This work by Stobbe will subsequently be referred to only by the name of the author.

Stobbe was the first to express the supposition „that this privilege has its origin in Talmudic law, and that the emperors and kings merely acknowledged a legal maxim which had already developed in Jewish trade"[11].

The regulation of the so-called „Jüdisches Hehlerrecht" in the Jewry-Privileges of the Emperor doubtlessly represents a bestowal of privilege. It is known why such a „preference for the Jews" came into existence. Since the Crusades they had been driven out of the wholesale trading which they had dominated up to that time. With the rise of cities and merchant guilds at the height of the Middle Ages, they also suffered the loss of the remainder of the commercial trade that had been left to them. At the same time they were barred from acquiring real property. Only the pursuit of money-dealing, pawnbroking, and trade in second hand goods remained for them. Moreover, they were burdened with heavy taxes by the three powers upon whom they were politically and economically dependent. Emperors, bishops, and town lords continually imposed new demands for money upon the Jews under the most varied titles. These excises actually exceeded their financial power. Therefore they needed a definite legal safeguard, which would, within specified boundaries, render possible and guarantee the only means of making a livelihood left to them. At the height of the Middle Ages, the Privilege-Laws

[11] Stobbe, p. 120. However he has not undertaken a more comprehensive study of the problem. — Andreas Heusler, *Institutionen des deutschen Privatrechts* I, Leipzig 1885, p. 151. — With express reference to the information given him by Stobbe, Max Neumann, *Geschichte des Wuchers in Deutschland bis zur Begründung der heutigen Zinsengesetze,* Halle 1865, p. 312 f., shared the same view. Cp. Levin Goldschmidt, „Über den Erwerb dinglicher Rechte von dem Nichteigentümer etc.", *Zeitschrift für das gesamte Handelsrecht* VIII, 1865, p. 266. Goldschmidt, who had likewise been referred by Stobbe to the pertinent passage in the Mishna, says: „The supposition suggests itself that at this point not as much a favoring of the Jews or even of illegal purchasing by them was aimed at, as rather originally only the recognition of their own law, later of the needs of trade, which made this clause necessary." Cp. moreover Ludwig Feuchtwanger, „Die Juden und das Wirtschaftsleben", Schmoller's *Jahrbuch für Gesetzgebung, Verwaltung und Volkswirtschaft* XXXV, 1911, p. 1442 f. — In Stobbe is found the most impartial and most carefully considered judgment of the so-called *„jüdisches Hehlerrecht"*. He presents the sources without suppressing the unfavorable features, and also without exaggerating them. But, without a doubt, H. Meyer has gathered the richest source material on the problem.

bestowed upon the Jews served primarily the money interests of those holding power over them. These are all recognized facts proven by legal history[12].

Herbert Meyer also does not leave these facts unmentioned (p. 95 f., DRW. p. 103). Indeed he even bases the necessity for the granting of merchant trading privileges to the Jews upon the requirements of commercial trading during the early Middle Ages. The Jew often could not know whether the article bought by him had come into the hands of the seller honestly. In the interests of safe trading a legal regulation had to intervene here (p. 97). The alleviation of trade conditions is the economic motive which at this point lies at the basis of the legal structure. Otto Stobbe and Andreas Heusler also had already recognized this[11]. Furthermore, by drawing the Lombard-Privileges into the field of his considerations, H. Meyer clearly points out that the Jews of the Middle Ages were by no means the only ones who carried on money transactions. On the contrary these Christian money-lenders also enjoyed the same, and even much more favorable privileges than the Jews. „Indeed", writes Meyer (p. 95; compare DRW. p. 110), „as Christian money-lenders they were the greatest competitors of the Jews"[13].

[12] Cp., e. g., Richard Schröder and Eberhard Freiherr von Künssberg, *Lehrbuch der deutschen Rechtsgeschichte,* 7. edition, Berlin and Leipzig 1932, pp. 505—508, with rich bibliographical notes. Especially Neumann, *Geschichte des Wuchers,* p. 305 f., 324 ff., offers numerous documents which bring forth positive proof that the facts and the considerations cited in the text were already recognized as motives and causes for the granting of privileges to the Jews in the Middle Ages.

[13] The emptiness of the reproach raised by Rudolf Ruth, „Wucher und Wucherrecht der Juden im Mittelalter", *DRW.,* p. 142, against „Jewish and pro-Jewish authors", on the grounds that they refer to the competition of these Christian usurers, could not have been proved more conclusively than through this evidence. Cp. the very recent book by Henri Pirenne, *Economic and Social History of Mèdieval Europe,* New York 1937, p. 135. On page 133 the prominent Belgian historian judges the economic role of the Jews in the Middle Ages as follows: „Compared with the efflorescence and ubiquity of Italian credit, that of the Jews appears a very small affair and the part which they played in the Middle Ages has certainly been much exaggerated." — For the character of the treatise by Ruth mentioned above, cp. Guido Kisch, „Otto Stobbe und die Rechtsgeschichte der Juden", in *Jahrbuch für die Geschichte der Juden in der Tschechoslowakischen Republik* IX, 1938, pp. 37 ff.

## II.

## THE ORIGIN OF THE „JÜDISCHES HEHLERRECHT".

Meyer's most fundamental thesis is: The Jews knew how to evade subjection to the German Law in the Germanic-Christian Middle Ages. Over and against this, however, they managed to obtain the application of Jewish National-Law also to their legal transactions with non-Jews and they knew how to hold fast to it century after century (p. 96). Furthermore Meyer makes the „general Jewish National-Law, which prevailed among the European Jews in the time after the Talmud", responsible for the general practice of concealment *(„Hehlerpraxis")* and for the suspicion of theft by the Jews during the Middle Ages (passim). „It is wrong to pardon and explain away the stains upon the *character of the Jewish people* by means of the persecutions and legal disadvantages which the Jews formerly had to suffer" (p. 104; anal. DRW. 97)[14].

With this Meyer revives the reproach cast upon Jewish Law and the Jews, which, in the year 1902, he denied having done, in the following words:[15]

„Herr Eschelbacher places the matter in such a light that it appears as if I had described as the „Hehlerrecht", not these single regulations, but the entire Law of the Jews. He puts it as if ‚I wrote without more ado that the Jewish Law is a Law of concealment *(„ein Hehlerrecht")*."

„From the Jewish Law, which in its entirety I consider one of the most magnificent legal structures that the human mind has devised, I have taken those legal maxims which favor the purchaser of stolen goods; and I have had to do this because I wished to show the influence of just these legal norms upon the Germanic Law."

„Herr Eschelbacher goes even further in his misunderstanding of my point of view. He says that ‚it appears to be my opinion that not only did the spirit of concealment *(„Hehlergeist")* reside in the Law of the Jews, but that moreover they considered deception and the act of concealing stolen property *(Hehlerei)*

[14] The italics are Herbert Meyer's.

[15] *MGWJ.*, pp. 382—383.

as harmless and justifiable', and in another passage: ‚It is wrong, however, for Meyer to assume that the Jewish religion has permitted concealment'. It would have been monstrous, indeed, had I asserted that! I affirm that nothing of the kind is to be found in my book."

H. Meyer places decisive importance upon the similarity of the so-called „Jüdisches Hehlerrecht" to certain regulations of the Talmudic and post-Talmudic rabbinical Law. He does this today with the same emphasis as was done thirty five years ago in his book, „Entwerung und Eigentum", to which he continually refers. But through the investigations in Oriental Legal History which has arisen since that time, we know that it is no rarity to find parallelisms and similarities in the development and structure of legal institutions in Germanic and Oriental Law. Turn the pages of Paul Koschaker's works which lay the foundation for the legal history of the Orient. There, as in numerous other works of his school, one will find, in frequent references, analogies from Germanic laws constantly taken into consideration. Even H. Meyer has alluded to such parallelisms in the legal structure and the legal development of various fields of law. In particular he has given special attention to the surprising correlation which the Chazaka, the fundamental legal institution of Jewish Chattel Law, shows with the Germanic seisin *(Gewere)*[16]. In considering the mutual influences of systems of law *(Rechtsrezeptionen),* one cannot be too careful with one's suppositions and conclusions[17].

Even Paul Rehme, upon whose agreement with his theory of the transference of the so-called „Jüdisches Hehlerrecht" from the Talmudic Law into the medieval German Jewry-Law H. Meyer places great value (p. 93; note 1), makes mention chiefly only of „parallelisms in Jewish Law". It is therefore not entirely conformable to the facts nor without contradiction, when Rehme continues: „The Hehlerrecht is therefore on the whole to be considered as an institution of commercial law, and according to what has been stated, it is based on a legal form of Jewish

[16] H. Meyer, *Recht und Volkstum,* Weimar 1933, p. 18 and p. 47 note 49.

[17] „Receptions" of law in general are dealt with in detail by Claudius von Schwerin, *Einführung in das Studium der germanischen Rechtsgeschichte und ihrer Teilgebiete,* Freiburg i. B. 1922, pp. 26—34; 21—25; cp. also H. Meyer, *Recht und Volkstum,* pp. 19—21, 29.

origin." However, Rehme concludes with the emphatic confirmation: „Further influences of the Law of the Jews upon medieval German Law have not been proven, as might already be stressed here, and have moreover scarcely taken place"[18].

Konrad Maurer, the great scholar of the history of Nordic-Germanic Law, had already, in a profound treatise, with striking arguments, firmly opposed Stobbe's opinion that the Hehler-privilege of the Jews has its origin in Talmudic Law[18a]: „The author is inclined to derive this privilege from the Talmud (p. 120); however, he also calls to attention that already in older German laws a similar conception appears without any connection with the Jews and their Law (p. 241—242; note 109), and with this he might in fact have hit upon the correct solution. In fact, the authoritative point of view may be that the innocent purchase and the innocent lending upon security, such as professional commercial intercourse brings into play, should be legally protected; and just as goods which have come across the sea or which were bought in public market should be freed from claim, because the credit of common trade requires this, so should the Jew also enjoy those privileges, because huckstering and lending on security would be impossible for him without them, whilst he is still dependent upon both for his livelihood." And it was no less a personage than the great German legal historian, Heinrich Brunner, who firmly denied any influence of Jewish Law upon the medieval German Jewry-Privileges[18b]: „One of the legal sources of the seventh century, which is certainly not influenced

[18] Paul Rehme, *Geschichte des Handelsrechts,* in Victor Ehrenbergs *Handbuch des gesamten Handelsrechts* I, Leipzig 1913, pp. 170, 171; also p. 131 f. Also Schwerin, *op. cit.,* p. 38, speaks only of an „occasional influence of Jewish Law."

[18a] Konrad Maurer in *Kritische Vierteljahrsschrift für Gesetzgebung und Rechtswissenschaft* IX, 1867, p. 570.

[18b] Heinrich Brunner, *Deutsche Rechtsgeschichte* II, Leipzig 1892, p. 507, note 82; cp. Alfred Schultze, „Gerüfte und Marktkauf in Beziehung zur Fahrnisverfolgung", reprinted from *Festgabe für Felix Dahn* I, Breslau 1905, p. 50 ff.; in opposition to it, but without convincing arguments, there is H. Meyer, *Entwerung und Eigentum,* p. 193 f. In spite of this opposition Brunner's original standpoint is held unchanged in the second edition of his work published in Munich and Leipzig 1928, p. 663 note 86. Its editor, Cl. von Schwerin, was able to add for its support a further documentary proof from English Municipal Law of the 12th century.

by Jewish Law, already shows the legal regulation which we meet later in Germany as a Jewry-Privilege and which is frequently traced back to Jewish Law."

The question, whether the Talmudic Law has really exercised influence upon the formation of the Privilege-Law which was granted the Jews of Speyer and Worms by Henry IV in the year 1090, must be tested with the greatest care and thoroughness.

Despite the contradiction of two of the most prominent German legal historians, this supposition, which goes back to Heinrich Graetz and Otto Stobbe, has up to now been accepted as established fact too generally and with too little of a critical attitude, especially since H. Meyer tried to produce evidence of this in his scholarly and painstaking work: „Entwerung und Eigentum"[19]. His reasons

[19] This is the prevailing doctrine in German legal history and in German private law; cp., e. g., Otto Gierke, *Deutsches Privatrecht* I, Leipzig 1895, p. 440; II, Leipzig 1905, p. 557; Rudolf Hübner, *Grundzüge des deutschen Privatrechts,* 5. edition, Leipzig 1930, p. 447; cp. also Werner Sombart, *Die Juden und das Wirtschaftsleben,* 12th and 13th edition, Munich and Leipzig 1922, pp. 93 f. It is not accepted, however, in Schröder-Künssberg, *Lehrbuch der deutschen Rechtsgeschichte,* p. 778. Even Eschelbacher, p. 184, agreed a priori, without careful examination, that „Jewish Law has exercised a great influence on the German in this field". — This opinion, however, was contradicted upon well established grounds by Isay Lewin, „Die Chasaka des talmudischen Rechts, zugleich verglichen mit der deutschrechtlichen Gewere", juridical dissertation of the University of Freiburg im Breisgau, reprinted from *Zeitschrift für vergleichende Rechtswissenschaft* XXIX, 1912, pp. 108, 137 ff., especially p. 140 note 351, p. 142 note 360. — In earlier treatises, in which the so-called *„Jüdisches Hehlerrecht"* had to be touched upon by me, I also rendered H. Meyer's doctrine in accordance with the prevailing opinion. But I already pointed out reservations at that time, although no occasion had been given for a special investigation and examination of all the scientific material, as is taking place now. In particular I have pointed out that the mention of the so-called *„Jüdisches Hehlerrecht"* in the *Sachsenspiegel Landrecht* III 7, 4 II goes back ultimately to the Jewry-Law of the Rhenish Jewry privileges and not directly to Jewish Law. Moreover I have stressed that, in the *Sachsenspiegel,* there is lacking any positive proof of the origin of that legal institution in Jewish Law. Finally I have called attention to the fact that H. Meyer neglects the fundamental and important difference between „Jewish Law" an „Jewry-Law" in the medieval legal sources. Besides, I have always spoken only of the so-called *„Jüdisches Hehlerrecht".* Cp. Guido Kisch, „Research in Medieval Legal History of the Jews", in *Proceedings of the American Academy for Jewish Research* VI, New York 1934—35, p. 244; „The Jewry-Law of the Medieval German Law-Books", *Proceedings* VII, New York 1935—36, pp. 120, 138—141; „Jüdisches

presented there (p. 193 f.), however, are by no means convincing. The interpretation of the expression „secundum legem suam" in the text of the privileges will presently be more closely investigated. In the bare fact that in medieval Speyer and Worms important Jewish legal authorities were at work and Talmudic schools existed, one will hardly be able to find „a further proof of the Talmudic origin of the regulations concerning the Hehlerrecht in the privileges" for the Jews in Speyer and Worms. The thesis that is supposed to be supported by this „further proof" proves itself incorrect.

The experiences of comparative law however exhort one to use the greatest care, whenever the problem of the mutual influence of two systems of law is dealt with, whose development was consummated upon entirely different bases and through entirely different paths. Strict scholarly method will have to demand twofold proof at this point. Firstly it will have to be established without a doubt that the legal institutions of which the one is said to have affected the development of the other, are in their nature analogous. Even such „best proof" of Meyer's has not been completely proved up to the present. Even if this proof be found it will still be necessary to ascertain what path the influence of the law or the „reception" of it *(Rezeption)* has probably taken. About this path in particular H. Meyer has so far had nothing to say. Thus, with respect to the so-called „Jüdisches Hehlerrecht" of the medieval German legal sources, we are at the moment far removed from definite knowledge on both counts.

In order to obtain a correct judgment with the greatest certainty, a scientifically reliable presentation of the so-called „Jüdisches Hehlerrecht", according to the Talmudic Law and the later rabbinical doctrine and practice, is needed from an authoritative quarter. At present, as is generally recognized, we possess no such study[20].

Recht und Judenrecht, ein Beitrag zur wissenschaftlichen Grundlegung für eine Rechtsgeschichte der Juden", *Festschrift für Dr. Jacob Freimann,* Berlin 1937, p. 96 note 2; 105 and note 13 (p. 5 note 2 and p. 14 of the reprint).

[19a] I have admitted Jewish influence as a hypothetical possibility in the deliberations, which might have preceded the issuing of the Speyer privilege. Cp. G. Kisch, „The Jewry-Law" (see the preceding note), p. 140.

[20] The presentations of the problem that have been offered up to now, are

But an influence of Germanic law on the development of the so-called „Jüdisches Hehlerrecht" does not lie entirely outside the realm of possibility. For according to some Germanic laws, the open purchase in a free market has the effect of giving the purchaser, through the public negotiation of the purchase, a counter claim upon that which he has publicly given up for the object (p. 94 and note 5).

Thus, considerations of safety in commercial trade were foreign neither to the Germanic nor the Jewish Law. Of course it would be wholly wrong, even absurd, to attempt to derive a negative evaluation of an entire legal system from such and similar legal regulations.

Whether Jewish or Germanic law decisively affected the early medieval structure of the „Jüdisches Hehlerrecht" can therefore hardly be ascertained with absolute certainty considering the present state of research. Moreover we are in general too little acquainted with the development of German private law from the Carolingian times up to the height of the Middle Ages. H. Meyer himself has regarded the influence upon the old Germanic law by the Jewish law as improbable[21].

## III.

## THE EXTENT OF THE VALIDITY OF JEWISH LAW IN THE MIDDLE AGES.

It is wrong, therefore, to assume, as does Meyer, that the Jews achieved the recognition of Jewish Law in the Speyer

not exhaustive, particularly H. Meyer, *Entwerung und Eigentum;* pp. 184—192; Johannes E. Scherer, *Die Rechtsverhältnisse der Juden in den deutsch-österreichischen Ländern,* Leipzig 1901, pp. 150—153, with a bibliography of older literature; Eschelbacher, p. 191 ff.; Moses Jung, *The Jewish Law of Theft,* Philadelphia 1929, pp. 90 ff. — H. Meyer, *MGWJ.* XLVII, 1903, p. 383, assigns the task to a Talmudist or Jewish historian of law: „Herr Eschelbacher finds my presentation of the development of those legal maxims incomplete. I should have shown that those regulations arose as a necessary result of Jewish Law on evidence. Herr E. forgets that I am not a Talmudist, nor a *Jewish* historian of Law. I was satisfied to point out the *existence* of those regulations, because my task was only the presentation of the law once valid in Germany, and the Talmudic Law interested me, not in itself, but only as a source for German Law." (The italics are H. Meyer's.)

[21] H. Meyer, *Entwerung und Eigentum,* pp. 256—261.

privilege of 1090 given by Emperor Henry IV, in order „to evade the regulations of the strict Germanic legal procedure" (p. 96). First of all there is lacking accurate proof that Jewish Law actually comes into play here. As a result, the assertion that „the Jews sought to evade the regulations of the strict Germanic legal procedure" is not well founded.

That such evasion did not occur in legal transactions with Christians is to be emphasized. For it is a well established fact in legal history that Jewish Law was practiced in medieval Germany only in controversies among Jews. This is expressly stated in Article 14 of both Rhenish Jewry-Privileges. In relation with non-Jews, the Jews were dealt with according to the generally valid legal norms. This principle is very clearly expressed in the most famous and influential German law-book of the Middle Ages, in the „Sachsenspiegel"[22].

In his book *„Entwerung und Eigentum"* (p. 174 and 198) H. Meyer, too, had recognized as a general rule, „that the Jewry-Law [the Jewish Law is meant] was valid in Germany only for internal transactions of the Jews". He had seen correctly the objection inherent within it against his theory of the influence of Talmudic Law upon German Privilege-Law: „The only objection which can be raised against the Talmudic origin of the Hehler-paragraphs in the Jewry-Privileges with any semblance of truth is, that the Jewry-Law in the Middle Ages [again the Jewish Law is meant] was generally valid only in relations of Jews among each other". To contradict this argument of page 198 of his book by saying, „that in a few cases Jewish Law is applicable also outside of the Jewish community" does not, of course, mean an invalidation. Meyer himself refutes his own counter-argument in that on page 174 he must admit that in the single source which he was able to produce as proof, in the very late Basle letter of 1386 protecting the Jews (Basler Judenschirmbrief), a „solitary" regulation is involved.

Without even so much as pointing out such counter-arguments,

[22] G. Kisch, „The Jewry-Law of the Medieval German Law-Books", pp. 129—133. That the principle presented in the text also was actually practiced is best proved by the decisions of the Jury Court *(Schöffenstuhl)* of Magdeburg, the most important and most influential Superior Court *(Oberhof)* on Saxon Law in the Middle Ages. Cp., for the present, Victor Friese and Erich Liesegang, *Magdeburger Schöffensprüche* I, Berlin 1901, p. 809.

Meyer now turns to another way of showing proof. He believes that his differing point of view can be traced back to the text of the Speyer-Privilege. And furthermore: „Concerning the manner in which the Jews attained it [namely, the evading of the regulations of the strict Germanic legal procedure], the privilege of Henry IV expressly teaches us; ‚secundum legem suam', in accordance with his own law, in accordance with *Jewish Law,* the Jew can protect himself. He need only take an oath that he has paid such and such an amount for the article and then he recovers the cost" (p. 96).

Article 6 of the Speyer Jewry-Privilege, which is in question here, reads in its entirety as follows[23]:

Si autem res furtiva apud eos inventa fuerit, si dixerit Judeus se emisse, juramento probet secundum legem suam quanti emerit, et tantundem accipiat et sic rem ei cujus erat restituat.[24]

But if a stolen article should be found among them, and the Jew maintains that he has bought it, he shall testify on oath, in accordance with his law, how much he has paid for it, and in return for compensation to the extent of its price, he shall give the article back to the owner.

An impartial interpretation of the text of this Article[25] cannot possibly lead to the assumption that it expresses a general adoption of the „Jewish National-Law" favoring the Jews even in legal intercourse with Christians. It is selfevident that in these relations there was no room for Jewish Law. Clear evidence of this is given in Articles 11, 12, and 14 of both of the Jewry-Privileges of 1090, in which certain exceptions to the general rules of legal procedure were allowed the Jews in legal intercourse with Christians. Consequently the only obvious possibility

[23] The numbering of the articles and their text are taken from Hoeniger (note 9 above), pp. 137—144. H. Meyer reproduces the text of the Speyer privilege according to the older printing in A. Hilgard, *Urkunden zur Geschichte der Stadt Speyer* I, 1885, No. 12. The Worms privilege is also printed in Heinrich Boos, *Urkundenbuch der Stadt Worms* II, Berlin 1890, No. 546a, p. 739 ff. Both privileges with German translations and bibliographical notes are to be found in Julius Aronius, *Regesten zur Geschichte der Juden im Fränkischen und Deutschen Reiche bis zum Jahre 1273,* Berlin 1902, Nos. 170, 171; pp. 71—77.

[24] The Worms privilege reads: „recipiat" instead of: „accipiat"; the word „sic" is missing.

[25] Cp. Stobbe, pp. 119—121; Scherer, pp. 147—155.

is that Jewish Law could come into application exclusively under Jewish jurisdiction, therefore only in controversies between Jews. How could it at all have been possible for the non-Jewish judge to have exercised control over the content and application of Jewish legal maxims to any great extent? Late medieval legal sources attest how difficult such control was for the non-Jewish judge even in the single case in which truly Jewish Law was applied before non-Jewish courts namely: in the taking of an oath by the Jews[26].

## IV.

## THE TAKING OF AN OATH BY THE JEW „SECUNDUM LEGEM SUAM".

The point in question also in Article 6 of the Speyer Jewry-Privilege quoted by Meyer can revolve only about a Jewish oath-taking of the type mentioned. The expression: *„juramento probet secundum legem suam"* signifies nothing other than this: If the Jew wishes to recover the purchase price expended by him in the purchase of the stolen article, he must establish the amount by means of „an oath taken in accordance with his law". He must, then, take his oath *„secundum legem suam"*, that is, according to the Old Testament.

Since the early Middle Ages and throughout the entire Middle Ages, the oath of the Jews was always taken in conformity with Jewish Law. Gothic Law is already acquainted with such an oath, in connection with which a series of events is cited from the Old Testament with special references to God[27]. According to the Meissen law-book of the second half of the fourteenth century, the oath is to be taken by a Jew „on the Books of Moses" or on the Torah Scroll[28]. The commentary, the so-called *„Glosse"*, to

[26] Even in the 15th century, in Nürnberg, for example, a very peculiar procedure was practiced which did not lack a certain amount of the comical in its supervision of the rendering of an oath by a Jew upon the Torah. I intend to publish this manuscript material in another essay.

[27] Cp. the very recent article by Hans-Curt Claussen, „Der Judeneid", *DRW.*, p. 166 ff.

[28] More detailed in G. Kisch, „The Jewry-Law of the Medieval German Law-Books", p. 144 f.

the *Sachsenspiegel* (III 7, 1 i. f.), although not exactly favorable toward the Jews, distinctly declares what is to be understood by the application of the Jewish Law in the taking of an oath: „The Jews shall take an oath according to their custom... The words of the oath may very well read thus, for the law states: The Jews shall take an oath according to their custom"[28].

The point concerning the taking of the oath, which is imposed upon the Jews in Article 6 of the Speyer and Worms privileges, may lie in nothing more than the form and the binding force of the Jewish religious oath under consideration[28a]. And it appears utterly unwarranted and impossible to deduce from such a specific assertion the attainment of the general „application of Jewish National-Law" in legal intercourse also with non-Jews in the Germanic-Christian Middle Ages.

Moreover, H. Meyer repeatedly neglects the fundamental difference at various points between „Jewish Law" and „Jewry-Law", and as a result he offers still more distorted interpretations (p. 107)[29]. One is of importance in this connection. Meyer writes concerning the Speyer Jewry-Privilege of 1090: „This royal letter is an extension of the Speyer privilege of Bishop Rüdiger from the year 1084, which proceeds from the supposition that the Jewish element is of tremendous importance for a trading place: *‚putavi milies amplificare honorem loci nostri, si et judaeos colligerem'* ". Therefore he grants them the most favorable law held by the Jewish people in German cities: *„Pro cumulo benignitatis concessi illis legem, quamcumque meliorem habet populus judaeorum in qualibet urbe Theutonici regni."* In his book, *„Entwerung und Eigentum"* (p. 194), Meyer has expressed much more clearly what he is aiming at in his interpretation: „The point here [i. e. in the Speyer Jewry-Privilege of 1084][29a] is clearly in the law which the Jewish people have, and the most favorable Jewish laws valid anywhere in Germany are granted to the Jews of Old-Speyer." Such an interpretation, however, is

[28a] After completion of this essay I discovered that Stobbe, p. 151, interpreted the passage in the same way.

[29] Cp. G. Kisch, *„Jüdisches Recht und Judenrecht"*, especially p. 96 note 2 (p. 5 note 2 of the reprint); G. Kisch, „Research in Medieval Legal History of the Jews", pp. 234—244.

[29a] See the text in Aronius, *Regesten zur Geschichte der Juden,* No. 168, p. 70.

impossible because it can in no way do justice to the sense of the statement. For insofar as *Jewish Law* was valid in medieval Germany it was everywhere the same Jewish legal maxims drawn from the Bible and post-Biblical sources of law. Everywhere it is the same uniform law. Consequently, „Jewish Law" which would have been now more favorable and now less favorable to the Jews, did not exist. Such was the case only with the so-called *„Jewry-Law"*, with those special norms through which the legal status of the Jews was determined by the medieval states which had granted them admission. Only in this legal sphere did the treatment of the Jews vary, being more favorable in one place and less favorable in another. Bishop Rüdiger, then, wanted to bestow an especially favorable law upon the Jews, corresponding to the economic importance which he ascribed to their settlement in Speyer. This could only happen thus: To the Jews in Speyer was to be granted the most favorable legal treatment enjoyed by their countrymen in any other German city. In other words a sort of „most-favored nation clause" for the Speyer Jews. Other Jewry-Privileges could very well have been known to the grantor of a Jewry-Privilege. It was not rare for later Jewry-Privileges to take older ones as a model. In short, Bishop Rüdiger wanted to grant an especially favorable „Jewry-Law" to the Jews in Old Speyer, not „the most favorable Jewish Laws which are valid in Germany". The Bishop certainly was not acquainted with such laws and their granting was really not required. This only correct interpretation, explained above, is to be concluded also from the position given to the „preferential clause" in the text of the privilege. As the most comprehensive privilege-clause it brings the enumeration of all special rights, which the Jews are granted by the bishop, to an end.

The truth is that a two-fold disadvantage for the Jews inheres in the provisions of the oldest German Jewry-Privileges, according to which the Jew is obliged to establish the amount of his claim to compensation by means of an oath „secundum legem suam". H. Meyer himself refers with emphasis and repeats (p. 94 and p. 99) that in the privileges for the Christian money-dealers a similar confirmation by oath of the purchase price, to the extent of which compensation is demanded, is out of the question. „The Lombards shall be paid well and fully for their capital and expenses, concerning which they or any one of them shall be

believed without casting any doubt upon their simple word and without their producing any further proof."[30] The privilege of Count Wilhelm von Hennegau in the year 1313 expressly frees the Lombards of the need for proof; they are to be believed upon their word as to how much they have paid, *„a leur simple parolle sans autre provance faire"*.

Entirely otherwise with the Jews. They are dealt with incomparably worse. The Jews had to enter formal proof of the same fact with respect to which the Lombards were believed upon their bare word. The necessity of giving this proof *„secundum legem suam"*, namely, according to the regulations and forms of the Jewish Law, merely constitutes a further burden. It is known by what a confused mass of fantastic formulae and humiliating ceremonies, the act of oath-taking by the Jews before non-Jewish courts had been enclosed, from the Carolingian period and during the entire Middle Ages till into the 19th century.[31] „The aversion for the Jews, prevalent in the German people from the time when the Jews appeared, an aversion which never died out and which burst into flame especially during the time of the Crusades, made the Jews take their oath under all conceivable precautionary measures, so that perjury was made impossible. And so it came about that the oaths became more extensive and embodied more and more scriptural passages, in which the might of God was depicted and in which his strong powers were recognized; and so it came about that the formalities of taking an oath were also greatly extended."[32] Through this was to be exercised the strongest compulsion upon the conscience of the Jew. In a similar sense the Speyer Jewry-Privilege also made it by no means easy for the Jew to recover his purchase price, since it became connected with a solemn oath-taking ceremonial. But in that legal re-

[30] Privilege of Count Wilhelm von Hennegau for the Caorsins of Quesnoy and Forrest of the 7th of October 1313, Art. 13, in H. Meyer, pp. 93, 94 note 1, 99; other similar documentary proofs in Meyer, *Entwerung und Eigentum*, p. 264 f.

[31] The literature on the history of the Jewish oath is presented in G. Kisch, „Research in Medieval Legal History of the Jews", p. 275 note 105; at present, in addition Claussen, „Der Judeneid", *DRW.*, pp. 166—189. Hereafter, G. Kisch, *Studien zur Geschichte des Judeneides im Mittelalter*, to appear in *Hebrew Union College Annual* XIV, 1939.

[32] Word for word from Claussen, *DRW.*, p. 176 f.

quirement of an oath there inhered at the same time the strongest protection which the law could give to the owner of the *„res furtiva"*. A more effective guarantee against the frivolous exercise of the „Jüdisches Hehlerrecht" cannot be thought of. With this, the assertion met with in anti-Semitic literature, that the decision of the legal question has been placed uncontrolled „upon the more or less elastic conscience of the Jew"[33], is refuted. And it is not even necessary to remember what sacredness the religious oath possessed for the Jews in those medieval times, when they had to be prepared at any moment in their lives to undergo martyrdom for their faith.

Considered in this light, the legal-historical picture takes on a different appearance from the one painted by H. Meyer. Not in order to grant the Jews a privilege was powerful legal compulsion placed upon the Jews, but rather in order to garantee the Christians additional protection and every conceivable safeguard against the improper exercise of a legal privilege granted to the Jewish tradesmen. They had to take a severe oath, that they might attain their rights at all. It is self evident that the oath moreover is under the control of the non-Jewish court. This clearly follows from Article 14 of the Jewry-Privileges, where the Jewish court is declared competent only in legal cotroversies among Jews. From this it is quite inexact for Meyer to seek to point out by this Article that „the Jews themselves are to decide concerning this Jewish Law" (p. 107). For the very „Jüdisches Hehlerrecht" does not deal with intra-Jewish legal controversies in the sense *„quod si judei litem inter se aut causam habuerint decernendam"* (Article 14). Rather do exclusively legal relations of Jews to non-Jews come under consideration here, which on principle are withdrawn from Jewish jurisdiction.

The taking of an oath according to Jewish Law, which Article 6 of the Jewry-Privileges demands of the Jews, presents, then, not a *privilegium favorabile,* but rather a *privilegium odiosum.* A more drastic example of such a „privilege" will scarcely be found.

[33] Ruth, *DRW.*, p. 137.

## V.

## THE „JÜDISCHES HEHLERRECHT" IN THE DEVELOPMENT OF EUROPEAN LAW.

Of the „Hehlerrecht of the Jews" framed in the manner described above according to „Jewish National-Law", H. Meyer maintains: „But it must have been their own interest only and their own desire that led to the recognition of the „Hehlerrecht" (p. 96). „It must have been connected with the Jews and must have been forced upon the surrounding Christian world by them and not the other way around" (p. 97).

Meyer has not offered any unquestionable proof of these assertions. It will hardly be possible to furnish any. For such an assumption completely contradicts the avowed sense and purpose of the provision of the privileges.

Meyer refers particularly to the uniformity in the development of the „Jüdisches Hehlerrecht" in countries of Europe outside of Germany although the legal systems in general varied so greatly during the Middle Ages. But this argument also cannot carry any weight and does not withstand legal-historical examination. For even the legal institution of the so-called „Serfdom of the Chamber" *(Kammerknechtschaft)* of the Jews, certainly as yet but inadequately investigated, is found to have developed along no less similar lines in various European countries, in Germany, France, England, Spain, Sicily[34]. There cannot be the slightest doubt however that Meyer himself would consider it absurd, if one tried to derive the same conclusion from this, which he draws for the so-called „Jüdisches Hehlerrecht", and to maintain: „The *Kammerknechtschaft* must have been connected with the Jews and been forced upon the surrounding Christian world by them, and not vice versa."

The reasons for the uniformity in the development of the European Jewry-Law in the Middle Ages are to be sought elsewhere. Stobbe has already said: „It is more likely that the same conditions have brought the same legal maxims into general use

[34] Cp. the article *„Kammerknechtschaft"* by Herbert Fischer in Encyclopaedia *Judaica* IX, Berlin 1932, pp. 860—862; G. Kisch, „Research", p. 273; G. Kisch, in *Savigny-Zeitschrift für Rechtsgeschichte,* German Section, LVII, 1937, p. 722 f. note 4.

in various places."[35] Aside from other reasons, this should also apply to Jewry-Legislation and Jewry-Law in medieval Europe.[36] However there is no room for further discussion of this point here.

## VI.

## RABBINICAL DECREES AGAINST THE ABUSE OF THE „JÜDISCHES HEHLERRECHT".

That the so-called „Jüdisches Hehlerrecht", in spite of the legal limitation, which has been proved above, may have led to improper practices, need not be denied. It is also quite unnecessary to bring up as the only excuse the oppressed condition of the Jews, which since the height of the Middle Ages had gradually become worse socially, economically, and legally, altough one must certainly recognize this as an important factor. The most varying factors in the structure and in the functioning or non-functioning of the medieval political organism worked together. It contradicts the facts to stamp the Jews alone as the scapegoats, although that has occurred often enough. And ultimately, where in the wide world are laws not eluded and violated?

From such abuses and errors of individual Jews there not infrequently arose in those medieval times danger to the safety, property, and life of the Jewish communities as such and of the Jews of whole provinces. Therefore their spiritual leaders early turn, with a sense of responsibility and with all their energy, to their co-religionists, in order to avoid the threatening dangers by means of preventive measures. Indeed, in order to nip them in the bud, the decrees *(Takkanot)* of the oldest medieval assemblies of the rabbis, which were held between 1150 and 1170, probably in Troyes or Reims, under the chairmanship of Rabbi Jacob ben Meir Tam (about 1100—1171), the most recognized rabbinical authority of that time[37], forbid the purchase or the acceptance as security of certain stolen goods, particularly sacred vessels, sacred garments, and sacred books, „because of the dangers to

[35] Stobbe, p. 120.

[36] Cp. Scherer, pp. 1—105.

[37] Concerning „Rabbenu Tam", as he was called, cp. *Encyclopaedia Judaica* VIII, Berlin 1931, pp. 843—848.

be feared from it"[38]. Contravention is threatened by the ban *(Herem),* the most severe punishment that was at the disposal of the rabbinical authority.

This decree was doubtlessly valid in Germany, although, to all appearances, it is not expressly reiterated in the preserved manuscripts of the decrees of the Rhenish rabbinical assemblies during the 13th century[39]. However that is probably due to a particular cause. First of all reference should be made to the fact that the German-Jewish communities were also represented at those first assemblies of rabbis; R. Elieser ben Nathan of Mainz and R. Elieser ben Samson of Cologne took part in the synod at Troyes[40]. The decree mentioned above is still met with, and significantly so, in the edition of the Takkanot in the collection of legal opinions by R. Moses Minz, who was a rabbi in Mainz, Bamberg, and other German cities in the second half of the 15th century[41]. Here and in another tradition it is attributed to Rab-

[38] Synoptic compilation of the Hebrew texts of this Takkana taken from manuscripts and accompanied by the English translation, in Louis Finkelstein, *Jewish Self-Government in the Middle Ages,* New York 1924, pp. 178 and 188 f. Those decrees are mentioned and referred to in Simon Dubnow, *Weltgeschichte des jüdischen Volkes* IV, Berlin 1926, pp. 327, 331; cp. already Heinrich Graetz, *Geschichte der Juden* VI, 4th edition, Leipzig, no year given (probably 1908), pp. 181 f.; Scherer, p. 198. The various manuscript versions are to be cited here in English translation [Upon penalty of the ban]: 11. „Not to accept church vessels as security for debt"; 7. „Not to buy a stolen chalice or cross or holy vestments or prayer books of a church or any of its vessels because of the peril"; 11. „Not to buy the chalice or the cross or holy vestments or prayer book of a church or its vessels." With respect to this compare the text of *Sachsenspiegel Landrecht* III 7, 4 I, rendered below.

[39] Concerning this cp. Finkelstein, *loco cit.;* Selig Auerbach, *Die rheinischen Rabbinerversammlungen im 13. Jahrhundert,* philosophical dissertation of the University of Würzburg, Würzburg 1932.

[40] Cp. Graetz VI, p. 182; Finkelstein, p. 42.

[41] Collection of Responsa by R. Moses Minz, Krakau edition 1616, No. 102. Cp. Moritz Güdemann, *Geschichte des Erziehungswesens und der Kultur der Juden in Frankreich und Deutschland im X. bis XIV. Jahrhundert,* Vienna 1880, p. 262; Finkelstein, p. 195, No. 19; p. 201, No. 19; Scherer, pp. 152, 198, has considered this decree as a statement of the „rabbinical synod at Mainz in 1223". — Concerning R. Moses ben Isaak Halevi Minz cp. *Jüdisches Lexikon* IV, Berlin 1930, p. 341 f.

benu Gershom of Mainz (960—1040)[42]. However it is now known that, in the written account of the resolutions of the Rhenish rabbinical assemblies, it was customary to exclude the decrees of Rabbenu Gershom, „whose regulations are numerous and require no reiteration"[43]. Their validity has therefore continued. Were the rabbinical prohibition upon the purchasing of sacred vessels and garments to have taken place at the same time as the Takkanot of Rabbenu Gershom, the age of the decree in question would of course be raised by about at least a hundred years. I do not consider that likely though not impossible. It is more plausible that some of the Takkanot ascribed to Rabbenu Gershom represent German-Jewish community statutes of the 12th century[44]. The validity for the Jews in Germany of the rabbinical prohibition under consideration here cannot be doubted for still another reason. The rabbinical assembly held in 1223 probably in Speyer even extended it in that it also forbade trading in wines which were used for non-Jewish religious purposes[45].

Such a legal reaction on the part of the Jews is entirely natural. This interference by the rabbis took place at a time when such procedure had by no means yet been made legally urgent by the state. Whether and in what respect the rabbinical decree has any connection with similar older Church prohibitions requires a separate investigation. In secular legislation the prohibition against accepting church articles as security was perhaps already

[42] Cp. Graetz VI, p. 182 note 1. — Concerning Rabbenu Gershom cp. *Encyclopaedia Judaica* VII, Berlin 1931, pp. 313—316.

[43] Finkelstein, p. 222; Auerbach, *Die rheinischen Rabbinerversammlungen im 13. Jahrhundert*, p. 68; cp. pp. 17 f., 25, 63 note 6, p. 65 note 2. In a similar manner and for the same reason the prohibition against the unauthorized reading of foreign letters, which in general is traced back to Rabbenu Gershom (cp. Finkelstein, pp. 31, 189, 201), is omitted in the manuscripts containing the resolutions of the second Rhenish rabbinical synod of about 1220; cp. Auerbach, p. 64 and note 4.

[44] With striking arguments Fritz Baer, *MGWJ.* LXXI, 1927, p. 395; LXXIV, 1930, p. 32 f.

[45] Cp. Finkelstein, p. 236; Auerbach, p. 82 No. 9, and p. 92. Yet Auerbach (p. 92) is wrong when he tries to find the motive for this prohibition in the supposition that „the Jew should not enrich himself through the purchase of the religious articles of other religions". The purpose was rather the same as in the prohibition against purchasing Church articles, namely, the prevention „of the danger made imminent by it".

directed at the Jews for the first time during Carolingian times. In the *Capitulare de Judeis* ascribed to Charles the Great and Ludwig the Pious, but apparently belonging to a later date, it is forbidden the Jews to accept church goods as security[45a]. At the height of the Middle Ages, however, the prohibition is not met with in the law before the 13th century[45b]. Even according to the *Sachsenspiegel* (Landrecht III 7, 4) neither the purchase of Church articles nor their acceptance as security was forbidden the Jews. They had to suffer the penalty of theft and to give up the articles without compensation only when they could not specify a warrantor *(„Gewähre")* for such objects found in their possession.

All this is well known to H. Meyer. Therefore the sense of responsibility underlying the procedure of the medieval rabbis must also have been understandable to him. He cites the prohibition of a very late German rabbinical synod of 1603 (p. 101)[46], while the rabbinical decrees of the 12th and 13th centuries have escaped his attention[47]. He derives, however, nothing more out of the severe penalty clauses of the Frankfort Rabbinical Synod of 1603 than the fact that „even the Jewish authorities granted the correctness of such reproaches" (p. 101). Meyer judges some-

[45a] Aronius, *Regesten zur Geschichte der Juden,* Nr. 76, pp. 27 f.; Stobbe, p. 123; Scherer, pp. 72, 197; Meyer, *Entwerung und Eigentum,* p. 209; H. Meyer, pp. 95, 99. No new points of view in Solomon Katz, *The Jews in the Visigothic and Frankish Kingdoms of Spain and Gaul,* Cambridge, Mass., 1937, p. 92.

[45b] Cp. Stobbe, pp. 123—125; Scherer, pp. 198—201; Meyer, *Entwerung und Eigentum,* pp. 210—219; Solomon Grayzel, *The Church and the Jews in the XIIIth Century,* Philadelphia 1933, p. 35 note 74.

[46] Cp. H. Meyer, *Entwerung und Eigentum,* p. 246; with respect to this Eschelbacher, p. 190 f.

[47] In H. Meyer, *Entwerung und Eigentum,* p. 210, however, the following sentence is found: „Even the rabbis forbade their countrymen the purchase of *res sacrae* for their own good." In the note the passage in Scherer, p. 198, is also given, in which the decrees of the rabbinical synods of the 12th and 13th centuries are mentioned. Now, in contradiction to this, H. Meyer refers in this connection (p. 100, note 1) to some quite unimportant passages from the book by Wilhelm Grau, *Antisemitismus im späten Mittelalter,* Munich 1934, which deal with conditions at the end of the 15th century. The exclusion of the application of the *„Jüdisches Hehlerrecht"* with respect to raw materials had been explained in an entirely different way by Meyer, *Entwerung und Eigentum,* p. 218, — and this in accord with the text of the sources!

what more judiciously in another place (DRW. p. 106). In that he acknowledges „that after the governmental removal of the Jewish Hehler-privilege, the rabbis bent all their efforts toward diverting the Jews from the dangerous Hehler-trade by means of their authority and threats of punishment". However in this respect it is incorrect to assume hat the interference first took place in 1603, „after the governmental removal of the Jewish Hehler-privilege". The prohibitions on pain of the ban and the decrees of the rabbinical assemblies from 1150 to 1170 and from about 1223 have remained unknown to H. Meyer. Not less than 450 years earlier than he assumes did the rabbis take a hand in the matter, indeed, at a time when such procedure had by no means as yet been made legally urgent by the state.

## VII.

## THE REQUIREMENT OF GOOD FAITH IN THE PURCHASE OF AN ARTICLE BY A JEW.

The text of the Worms and Speyer Jewry-Privileges does not offer any absolutely certain answer to the question, whether the oath demanded of the Jew refers only to the amount of the purchase price paid by him or whether it extends also to his good faith about its acquisition. Stobbe had already accepted the latter: „The Jew swears first to the honesty of the acquisition and then to the amount of the sum paid by him."[48] Johannes Scherer described the oath that had to be taken by the Jew according to the Austrian privilege of the year 1244 as *„juramentum bonae fidei"*[49]. Thus, he likewise advocated the point of view here offered, which in any event presents a possibility that is not to be excluded. H. Meyer disposes of it with the remark: „The error is founded on the philosemitic book by J. E. Scherer" (p. 98), and means that the requirement in the Austrian privilege that the Jew be ignorant of the quality of the article as *„res furtiva"*, „is to be interpreted purely objectively".

[48] Stobbe, p. 120. The same opinion is expressed in Konrad Maurer, *Kritische Vierteljahrsschrift für Gesetzgebung und Rechtswissenschaft* IX, 1867, p. 570.

[49] Scherer, p. 201 f.

But the doctrine already advocated by Meyer in 1902, which denies the requirement of good faith on the part of the Jew in connection with the purchase of an article, has up to now not been able to make its way into the science of German legal history and of German private law. Rudolf Hübner, in his *„Grundzüge des deutschen Privatrechts"* (Principles of German Private Law) is of the same opinion as Stobbe[50]. One can read even in the compendium, *„Germanische Rechtsgeschichte"* (History of Germanic Law) by Claudius von Schwerin[51], which appeared in 1936: „In purchasing in open market the buyer could demand compensation against the delivering up of the article to the extent of the amount paid. Jews need, in connection with Jewish Law, give up articles they have purchased in good faith likewise only for compensation to the extent of the purchase price (so-called „Jüdisches Hehlerrecht")." H. Meyer brands this „mistaken" doctrine a „serious deviation" (p. 98). And yet he has not been able to provide greater plausibility for his own point of view by means of new proofs. It has not even been accepted by Rudolf Ruth[52], who in other respects works along similar lines with Meyer.

„According to Jewish National-Law it was necessary to prove the Jew's *knowledge* that the article had been stolen; even the most ancient privileges are still based upon this condition" (p. 99). In behalf of this assertion of Meyer's, however, positive proof cannot be furnished from the privileges for Speyer and Worms. Even Ruth, certainly a trustworthy witness, contradicts the interpretation of Meyer in that he writes[53]: „Proof of the plaintiff that the Jew knew of the dishonest origin of the article was excluded." From this point of view too the question of the conformity with the Jewish Law must therefore remain open.

However that might be, one thing is certain. Even if according to the law of both the oldest German Jewry-Privileges of 1090 the Jew's claims to compensation were to be independent of his good faith at the time of purchase, which, to be sure, has not been proved as yet, then such a legal situation could not have

[50] Hübner (note 19 above), p. 447.

[51] Berlin 1936, p. 196. A similar opinion has been recently expressed by Hans Planitz, *Germanische Rechtsgeschichte,* Berlin 1938, p. 207.

[52] Ruth, *DRW.*, p. 136.

[53] Ruth, *DRW.*, p. 137, note 3.

been of long duration. For already the Sachsenspiegel, the fundamental North German law-book which was composed between 1221 and 1224, shows a considerable change in the legal condition of the Jews. H. Meyer himself describes it aptly, if not completely, with the following words: „The Sachsenspiegel applies the German principle of publicity in negotiation *(Kundbarkeitsprinzip)* also to the Jew: the latter obtains the claim of redemption only upon articles which he buys „not concealed and not stolen, in the light of day, and not behind locked doors" *(unverholen unde unverstolen bî dages lichte unde nicht in beslôteme hûs)*. He must call in two witnesses and establish his acquisition, not by means of an oath taken by himself only, but taken by him and the two others as assistants. In this way the point of the „Hehlerrecht" was broken; besides the Sachsenspiegel declared the Jew unfit to be the *warrantor* of a Christian. „Whoever bought of a Jew had only himself to blame if he thereby lost his money" (p. 100). It should be added that according to the Sachsenspiegel (III 7, 4) the Jew completely loses his claim of redemption if he cannot produce the proof in the manner described. Moreover the law-book states: „If the Jew purchases or takes as security sacred chalices, sacred books, or sacred garments, for which he has no warrantor, should it be found in his possession, he is to be judged as a thief." Of these legal regulations there appears to be only one new one, namely: the inability of the Jew to be the warrantor of a Christian, except for the case in which he submits to the law applied to Christians, that is, when he renounces his „Hehler"-privilege[53a]. The purchase of sacred vessels had been forbidden the Jews on religious grounds from the time of the Carolingian capitularies. The requirement also of publicity in negotiation to make a purchase legal, from which the Jew derives his claim to compensation or redemption, can only have been a long practised legal custom. For only ancient customary law is, as a matter of principle, recorded in the Sachsenspiegel.

Thus it is shown that a „Hehler"-privilege still unlimited by the requirement of publicity in negotiation can have existed at most one or two generations, if at all.

[53a] More detailed in G. Kisch, „The Jewry-Law of the Medieval German Law-Books", p. 138 f.

## VIII.

## CONCLUDING REMARKS.

In the law of the *Sachsenspiegel*, that is, already between 1221 and 1224, the so-called „Jüdisches Hehlerrecht" appears surrounded by every conceivable legal reservation and protecting clause, and accordingly in a very weakened form. Even H. Meyer does not deny that its „point was broken" (p. 100). And already about the middle of the 12th century an assembly of rabbis, without the slightest outside legal compulsion, had raised its voice in warning and had forbidden dishonest purchasing upon the penalty of the ban in order to meet the dangers of the „Jüdisches Hehlerrecht" in the general interest of the Jews.

Meyer also cites the point of view of both the younger South German law-books, the *Schwabenspiegel* of about 1275, and the Vienna Municipal Law-Book *(Wiener Stadtrechtsbuch)* of the second half of the 14th century (p. 100). Here we meet with works of pronounced anti-Jewish tendencies. The last mentioned reveals itself undisguised through its remark in Article 145 that „the cursed Jews have a much better law than the Christians"[54]. The provisions of no other German law-book of the Middle Ages had sunk to so low a level. No less odiously, yet with greater emphasis upon the legal standpoint, does the author of the *Schwabenspiegel* write in Article 261[55]: „Should a Jew give credit against a stolen or plundered article, and should the one from whom it was stolen, pursue it, according to law, the former shall give him back the article as the law requires a Christian to do. That is just, yet they have purchased a better law; against justice the kings have allowed them to give credit against stolen or plundered articles. They must do this, however, in broad daylight and outside the house on the open street. Should the individual to whom the article belongs pursue his possession, he must give back to the Jew the principle cost and no interest."

From such statements nothing more can be shown than that the great deterioration of the economic and social position of

[54] Heinrich Maria Schuster, *Das Wiener Stadtrechts- oder Weichbildbuch*, Vienna 1873, Art. 145, p. 131; cp. H. Meyer, p. 100, note 7.

[55] F. L. A. Freiherr von Lassberg, *Der Schwabenspiegel*, Tübingen 1840, Art. 261, p. 117; cp. H. Meyer, p. 100 note 5.

the Jews since the second half of the 13th century is now also expressed in the field of law. But neither in the *Schwabenspiegel* nor in the *Wiener Stadtrechtsbuch* can be found even one intimation that the so-called „Jüdisches Hehlerrecht" is Jewish National-Law or is founded upon it. The pronounced anti-Jewish attitude of the authors of both South German law-books secures them from the suspicion of having suppressed any such aspersion upon the Jews, if they had considered it either suitable or merely possible.

In behalf of his assertion that the Jews „at the very least had acquired the Hehlerrecht purely of their own free will and had known how to preserve it as a constituent part of their national law", H. Meyer has not been able to furnish even the shadow of scholarly proof.

As for the so-called „Jüdisches Hehlerrecht" of medieval European legislation in general, however, until the time when the discovery of new sources makes possible a better and more complete insight, we must content ourselves with a standpoint similar to the one which Meyer himself already formulated thirty-five years ago upon the question of the influence upon the old Germanic Law by the Jewish Law[56]: „There is still not sufficient material, and the various sources are too much separated from each other in time and space, for us to accept a uniform origin and correlation with certainty. It is also very easily conceivable that the legal maxim so favorable to trade could have arisen independently on different backgrounds."

[56] H. Meyer, *Entwerung und Eigentum*, p. 261; a similar opinion already expressed by Eschelbacher, p. 189.

# CHRISTIAN INFLUENCE ON THE STATUS OF THE JEWS IN EUROPE.

By

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As an influence in shaping Jewish political history in Europe the attitude of the Christian Church has been of paramount importance from the day when Constantine the Great made his peace with Christianity, and admitted the Church to a position of official influence in the Government of the Empire. Even today the attitude of the Church is not negligible; in the Christian Roman Empire, and in medieval Europe it was decisive.

In the Roman world, at the time when Christianity first made its appearance, the Jews enjoyed a measure of religious toleration and autonomy which allowed them to be loyal citizens of a pagan, polytheistic empire; and the revolt in Judaea with its repercussions elsewhere must not blind us to the general loyalty of the Jews, or the success with which the toleration of Rome had adjusted them to the normal circumstances of life in their non-Jewish environment. Only in the small city states of the eastern Mediterranean, where the number of citizens rich enough to bear the burdens of public office was so restricted that the exemption of the wealthier Jews was noticeable, was there temporary or serious friction. Even before Caracalla emancipated all the inhabitants of the Empire, and made citizenship universal, Jews could and did individually acquire it. The toleration extended to Jews was theoretically granted only to those born members of the Jewish community. Technically, proselytising among non-Jews was an indictable offence, but it was only in moments of stress, such as accompanied the second Jewish war, that the Roman authorities attempted to enforce the law. Otherwise they turned a blind eye to conversion to Judaism, knowing by experience that the convert was a better rather than a worse citizen after his conversion. The situation of the earliest Gentile converts to Christianity was made possible by this tacit permission to others to accept the faith of the Jews.

The Edict of Constantine radically altered the situation. More than two centuries had passed since the days when Christianity had been — from the Roman point of view — merely a Jewish

sect. It had become not merely a separate religion, but a rival, and a rival both jealous and intolerant of the older faith. It is therefore not surprising that the first law of the Empire in which the influence of the Church can be traced should have been a prohibition of Jewish missionary activity and the infliction of the death penalty upon the convert to that „nefaria secta"[1], and the use of a similar severity towards those who attempted violently to prevent conversion from Judaism to the now triumphant Church. The law thus passed in the beginning of the fourth century remained in force, — wherever the Church had authority to enforce it — until the disappearance of the Inquisition in the nineteenth.

A second point on which the opinions of the fourth century were destined to govern the conduct of the Church for more than a millenium concerned the relations of Judaism to Christian heresy. It would have greatly simplified the issue had it been possible to equate the two terms, and there are many signs among the theologians and religious writers of the fourth and subsequent centuries indicating their ambition to do so[2]. But at this point the traditions of imperial Rome were too strong to be dislodged. Judaism had an ancient record as a „licensed" religion of the Empire *(religio licita)* and in the western Empire at least no *legal* diminution in its status took place. When Ambrose compelled Theodosius the Great to cancel orders which he had given to the Christians of Callinicum to rebuild at their own cost the synagogue which they had burned[3], he was forcing the Emperor to commit an illegality, and Theodosius recognised this in his subsequent edict proclaiming the legality of Judaism[4].

In the East some of the language of Justinian and some of his actions, together with the fact that he omitted this edict of Theodosius in his Codex, suggest that he considered that Judaism itself might be attacked, but in the West, even in the days of the greatest power of the Inquisition, it remained lawful to be a Jew, if so born, and to practise that religion.

[1] *Codex Theodosianus* [C. T.], 16, 8, 1.

[2] E. g. Pseudo-Ambrose, *On Romans,* ix, 27, *PL.* XVII, c. 139; *Cod. Just.* 1, 5, 12; cf. ibid., 21.

[3] Ambrose, *Epistles,* I, xl and xli; PL. XVI, cc. 1101 ff. The event took place in A. D. 388.

[4] C. T. 16, 8, 9.

Unable to forbid Judaism to exist, the Church took refuge in heaping contumely and humiliation upon it. The first Christian law of the Empire, already referred to, speaks of the synagogue by a word never used of a religious building, and meaning in slang a „brothel", and all the legislation of the Christian Empire, even when designed to protect their lawful rights, is couched in language of abuse and contempt — language singularly unsuited to impressing upon the recipients of the legislation the sincerity of the legislators[1]. Here also a tradition was created for medieval development, and medieval Popes adopted the same contradictory policy, that everything was legitimate which humiliated the Jews and kept them in a state of subjection, even when they were requesting their flocks neither actually to murder them nor to do them violence[2]. This belief in the necessity of humiliation did not, however, stop short at abusive language. It became a cardinal point of Christian policy that Jews were to be excluded from all the dignities of life, and from the possession of any office which gave them jurisdiction over Christians, and this policy which was first initiated by Honorius at the beginning of the fifth century[3] remained in force until the emancipation of the Jews in the nineteenth, even though the secular authorities frequently offended the Church by employing Jews in departments of state service where their capacities were of special value.

Only less significant than this attack on the civil liberties of Jewish citizens was the policy of limiting the religious activity of Judaism on any point which seemed offensive to the Christian outlook. The first step in this direction was taken by Theodosius the Great, when he permitted Jews to marry only according to the Christian table of affinity[4]. Justinian, in attempting to regulate the services of the synagogue introduced, for the first time, the question of the Talmud[5], the Visigothic king, Erwig, followed along the same line[6]; and in the Middle Ages the censorship of Jewish books became a primary concern of Christian scholars

[1] E. g. C. T. 16, 8, 26.

[2] See, e. g., the bull „Sicut Judeis non" and the letter of Innocent III to Philip Augustus of France, published in Solomon Grayzel, *The Church and the Jews in the XIIIth century,* Nos. 5 and 14.

[3] C. T. 16, 8, 16.

[4] C. J. 1, 9, 7. — [5] Nov. J. 146.

[6] XIIth Council of Toledo (681), ix, or Leg. Vis. 12. 3. 11.

occupied with the Jewish question, and wrought untold harm in the intellectual life of the Jewries of western Europe[1].

Galling as were these arbitrary restrictions on civic equality, and disquieting as were the abusive phrases of imperial legislation with their tacit invitation to the populace to violence and contumely, the Roman Jew still possessed his citizenship; and in the centuries following the break-up of the Empire a strong ruler, such as Gregory the Great or Theodoric the Ostrogoth, would still ensure that his rights were respected[2]. The fatal moment came when Roman law itself ceased to be the basis of western European society.

So long as the barbarian conquerors were separated from the Roman inhabitants of their newly conquered kingdoms by the fact that they were Arians, and the Romans Catholic, the Roman section of the population continued to live under modified forms of the Roman Codes, and the Jews were accounted as Roman citizens. This citizenship they lost, not by any deliberate action at any one time, but by the gradual disappearance of Roman conceptions of society during the „Dark Ages". In the south of France and in Italy it survived as a shadow well into the Middle Ages[3], but in the north and west it vanished, never to reappear. The ninth century found the Jews not citizens — even citizens of inferior status — but strangers within a society which was beginning to think of itself as „Christendom".

It would seem at first sight as though this situation left the master cards in the hands of the Church, and that the whole subsequent development of Jewish history would be determined by Christian considerations. Two facts prevented this from being so. In the first place the policy of the Church was purely negative. It was concerned entirely with preventing the Jews from achieving honours, or influencing the Christian population. There was no positive idea of how the Jews were to live in European society. In the second place the barbarity of the times in general, and the disappearance of the Syrian traders from western Europe in

[1] Cf. Scherer, pp. 46 ff.

[2] Cf., e. g. Theod., *Edictum*, Cap. 143, and Gregory, *Epistles*, VIII, 25.

[3] Cf. the decision issued in Narbonne in 1276 „attento quod Judaei subsunt legibus et jure romano vivere debent . . .", in G. Saige, *Les Juifs de Languedoc*, Paris 1881, p. 203.

particular, had thrown into high relief the value of the Jews to any enlightened or luxury-loving prince. A Roman Emperor could easily dispense with Jewish public servants, and Jewish commerce in Roman days was a negligible part of Mediterranean economic life. A Carolingian prince and his successors could receive invaluable services from his Jews, both in commerce and administration, services he could not obtain elsewhere.

The result was a conflict between princely and ecclesiastical authorities, of which the first act was played between Louis the Pious and Agobard, Archbishop of Lyons. It is a mistake to regard Agobard simply as an „antisemite". From his writings on other questions we can see that he was a worthy member of that great group of enlightened Churchmen which the Carolingian Age produced. He proposes no innovations in the ecclesiastical treatment or conception of the Jews. True to tradition he demands that they shall be allowed to live unharmed under Christian authority[1]; but he cannot tolerate their conquest of a position in society from which five centuries of Christian influence in imperial and conciliar legislation had been struggling to exclude them. The acerbity of his attack is due to his realisation that the dangers, which Roman legislators had attempted to ward off in their humiliation of the Jew, were doubly great in his own day. The standard of education in Roman days was such that the Church feared Jewish influence only with slaves and servants. Agobard saw that it was equally dangerous in the Court and among the ruling classes, and he leaves us enough evidence to see that, judged from his standpoint, he was right.

It is not possible to treat as inferiors, as „accursed deicides" those who by their intellectual and commercial gifts are the favourites of the Court, and it is evident that Louis and the Empress Judith found their Jewish subjects extremely agreeable. They freely criticized Christian doctrine and practice, and found Christians who agreed with them; they served in the financial administration, and perhaps elsewhere also; and they imported from the East beautiful stuffs which delighted the ladies of the Court[2]. If such a situation were allowed to continue unchecked,

[1] Agobard, *De Insolentia Judaeorum,* iv, PL. CIV, c. 74, and Amulo, *Contra Judaeos,* lix, PL. CXVI, c. 184.

[2] Agobard, *Epistola ad Nibridium,* PL. CIV, c. 111.

the slowly built up tradition of the Church would inevitably crumble. But, on the other hand, so long as princes were unable to obtain similar services elsewhere, it was unlikely that they would forgo the pleasure of protecting their Jewish subjects.

It is the word „protecting" which explains the gulf between the Roman and the medieval situation. For, unless some definite action was taken by the prince, the Jew had no legal protection against any humiliation which the Church might inflict upon him. He had no basic status on which he could rely. Theodosius the Great attempted to prevail over Ambrose in the struggle about the burnt synagogue of Callinicum by insisting that it was the function of the imperial power to see that *the law* was obeyed, and all his subjects equally protected by it. German Emperors claimed that it was *their special duty* to protect those who were *outside the laws* of Christendom[1], but the protection which the Jew obtained was a privilege and not an inalienable right. The Roman situation was thus reversed. In Roman days the Jews enjoyed all the liberty which the action of the Church had not withdrawn from them; in the Middle Ages they enjoyed no right except such as the princes directly conferred on them. It is out of this change in their situation, rather than out of any conscious consideration, that the direct dependence on the prince, the „servitudo camerae" came to be universally adopted, even in countries like Spain where a tradition of active citizenship had intervened between the humiliations of Visigothic days and the Christian Kingdoms of the Reconquest.

Unfortunately for the future of the Jews, the princes did not accord them the privilege of protection for nothing. It would seem that in the earlier period, there was no direct advantage in their minds in encouraging Jewish settlement, other than the obvious value of a group of experienced, enterprising and industrious citizens. Rüdiger, Prince Bishop of Spire, who granted the Jews the earliest surviving medieval charter in 1084, says that he believed that the prosperity of his city would be sensibly augmented by his encouraging Jews to settle in it[2]. But, with the rise simultaneously of the commercial prosperity of northern and western

[1] Charter of the Emperor Frederick II for the German Jews, 1236; R. Hoeniger, „Zur Geschichte der Juden Deutschlands im MA.", Geigers ZGJD., I, 1887, p. 137.

[2] Aronius, No. 168.

Europe and of the expenses of kingship, princes found that to extend privileges to Jews served also to augment the royal revenues, if they used their Jewish property as a sponge to collect, by way of usury, money from otherwise untaxed classes of the population. This discovery, which appears to have been made towards the end of the twelfth century, introduced a new phase into the conflict of Church and prince.

The use of the Jews as usurers for the advantage of the royal treasury involved the concession to them of very definite and extensive privileges, and these privileges not only allowed the Jews to acquire a position of wealth and influence, but also — and this was the tragedy — only allowed them to acquire this position by the exploitation of the other subjects of the prince. It was only an abstract conception of the consequences of deicide which had previously resented the admission of the Jews to equality with Christians, even if a more real fear of religious influence had led to legislation against intimacy between Jews and the Christian common-folk. In the struggle against the Jews from the twelfth century onwards a much deeper motive came into play — the need for protecting the poorer and weaker classes of society from merciless extortion, backed by all the protection of the royal courts. If it be legitimate to reproach the Church with her belief and propagation of the ideas of ritual murder, of the profanation of hosts, and of poisoning of wells, — and it is legitimate to level this reproach against her, — in her struggle against usury she was genuinely on the side of the angels. I have shown in detail elsewhere[1] that the struggle was directed even more against Christian usury than Jewish, and that the traditional conception of usury as a Jewish monopoly is a myth. But while this is true, it also remains true that a large number of Jews were usurers, and that, though medieval testimony is amusingly unanimous in preferring them to their Christian competitors[2], they were an abominable scourge in any medieval society. Any system by which revenue was collected out of the want, not the prosperity, of the contributor was bound to be such a scourge.

It is not often realised how short were the periods for which it

[1] Cf. Parkes, *The Jew in the Medieval Community*, London 1938, chapters VIII and IX.

[2] *Ibid.*, chapter IX, section vi.

was possible for the princes to maintain this curious system of raising revenue, or the extent to which politics rather than economics ruled the activities of the Jews as usurers. On two occasions at least they were allowed to charge twice the rate of interest permitted to Christians because of the large sums demanded of them by their owners[1]. By the fifteenth century such Jewries as were left in western Europe were ruined. When the financial value of the Jewish communities departed, it was no longer worth-while for princes to maintain their privileges against the hostility of the Church and the populace. Favoured individuals — court Jews — succeeded privileged communities, and the rest of the Jews were abandoned to their misery. But the public had not forgotten the extortion of the Jewish usurer, and the Church still considered the Jews as deicides, capable of ritual murder and every form of anti-Christian malice. It is these legends which still remain alive today in many parts of Europe, and make antisemitism a complex of historical as well as modern causes. And if the public remembers the usurer, the Churches, from the France of the Dreyfus Affair to the Roumania of the Cohorts of Saint Michael and the Iron Guard, have perpetuated the policy initiated in the first century in which ecclesiastics found themselves able to wield the power of secular legislation.

[1] Charters of John II of France, 1361 § 8, Laurière, *Ordonnances des Rois de France* III, pp. 473 ff., and of Vladislav of Bohemia, 1497 (Bondy-Dworsky, No. 292).

# DIE NATIONALITÄTENRECHTLICHE STELLUNG DER JUDEN IN DER TSCHECHOSLOWAKEI.

Von

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Berlin.

Im alten Österreich konnte von jüdischen „Nationalitätenrechten" keine Rede sein. Hier fehlte den Juden eine für derartige Befugnisse unumgängliche Voraussetzung: ihre Anerkennung als besondere Nationalität. Zwar garantierte Art. 19 des österreichischen Staatsgrundgesetzes von 1867 „allen Volksstämmen" der Monarchie eine gewisse eigennationale Lebenssphäre. Aber die inner- und außerhalb der Judenschaft wirkende Assimilationsideologie war so stark, daß diese Verfassungsvorschrift auf die Juden keine Anwendung fand. Ohne eine von *allen* Juden Österreichs gebrauchte „jüdische Sprache", so lautete die staatsrechtliche Begründung hierfür, sei ein jüdischer „Volksstamm" nicht gegeben. Die jüdische Bevölkerung als Gruppe besaß deshalb im alten Österreich weder Sprach- noch Schulrechte; der einzelne Jude, der sich einem der anerkannten nichtjüdischen „Volksstämme" zurechnen mußte, galt rechtlich als „israelitischer" Nationsgenosse der Ruthenen, Polen, Tschechen usw.[1]

Die Folge war, daß jeder „Volksstamm" sich bemühte, seinen nationalen „Besitzstand" durch Einbeziehung möglichst vieler „Israeliten" zu vergrößern. Die Juden selbst schwankten häufig, welchem „Volksstamm" sie sich zurechnen sollten. Vielfach fühlten sie sich keiner der rechtlich anerkannten Nationalitäten „näher verwandt ... als der anderen". Oft schlossen sie sich deshalb „der am Ort einflußreichsten Nationalität" an. Diese Erscheinung hat den Ausgangspunkt zu der Fortentwicklung des nationalitätenrechtlichen Status der Juden in der Tschechoslowakei gebildet.

[1] Einzelheiten über die Rechtslage bei K. Stillschweig, *MGWJ.*, 81, 1937, S. 330 ff.

# I.

Vor der Gründung eines selbständigen tschechischen Staates bekannten sich die deutschsprechenden Juden in den Sudetenländern überwiegend zum deutschen Volksstamm. Nur ein kleiner Teil der jüdischen Gruppe Böhmens vertrat eine national-jüdische Landespolitik. Als sich jedoch die Konstituierung des tschechoslowakischen Staates zu vollziehen begann, schienen viele der „radikal deutschnationalen Juden von gestern ... morgen zum größten Teil ebenso radikal tschechischnationale Juden" werden zu wollen[2]. Die Wortführer der nationaljüdischen Kreise suchten die Entwicklung aber in eine neue Bahn zu lenken. Nach Verkündung der Wilsonschen These vom Selbstbestimmungsrecht der Völker hielten sie die Zeit für gekommen, die Anerkennung der jüdischen Sondernationalität durchzusetzen. Infolgedessen überreichte der in Prag gebildete „Jüdische Nationalrat" im Oktober 1918 der tschechoslowakischen Regierung eine Denkschrift[3], die sich gegen die „fluktuierende unaufrichtige Assimilation" wandte. Sie gipfelte in dem Postulat der „Anerkennung der jüdischen Nationalität". Zwar sollte nach dem Memorandum niemand gezwungen sein, sich zur jüdischen Nationalität zu bekennen; „aber niemandem, der sich zu ihr bekennen will, darf dies offiziell oder inoffiziell gewehrt werden". In gleichem Sinne äußerten sich die Landesverbände der jüdischen Gemeinden Mährens und Schlesiens[4]. Entsprechende Wünsche wurden auch der Friedenskonferenz in Paris vorgetragen[5].

Die nationaljüdischen Wünsche fanden bei den tschechischen Führern eine durchaus günstige Aufnahme. Konnten doch die Tschechen, die die Formel vom Selbstbestimmungsrecht zur Grundlage ihrer eigenen Politik genommen hatten, die in den gleichen Gedanken wurzelnden jüdischen Wünsche nicht zurückweisen, ohne mit sich selbst in Widerspruch zu geraten. Vielleicht

[1] Vgl. R. Laun, *Der Wandel der Ideen Staat und Volk*, Barcelona-Berlin 1933, S. 213 ff.

[2] O. Epstein in *„Der Jude"*, Berlin-Wien 1918/19, S. 359.

[3] Abgedruckt bei Chasanowitsch-Motzkin, *Die Judenfrage der Gegenwart, Dokumentensammlung*, Stockholm 1919, S. 51 ff.

[4] Vgl. Chasanowitsch-Motzkin, S. 56.

[5] Vgl. Stillschweig, *Die Juden Osteuropas in den Minderheitenverträgen*. Berlin 1936 [= Stillschweig], S. 21 ff.

mag daneben auch die Erwägung maßgebend gewesen sein, daß ein nationalpolitisches Lavieren bestimmter jüdischer Kreise vom Standpunkt der tschechischen Mehrheit unerwünscht war. Jedenfalls erklärte der nachmalige Staatspräsident Masaryk, der den Juden seit jeher Sympathie bezeugt hatte, im Oktober 1918 Vertretern der zionistischen Organisation[1], das nationalpolitische Programm seines künftigen Staates, das eine „gerechte Regelung" der Nationalitätenfrage vorsehe, solle „auch... für die jüdische Minorität" gelten[2]. „Ich habe", so fügte Masaryk hinzu, „die zionistische und nationale Bewegung der Juden in Europa und in unserm Lande beobachtet und erkannt, daß sie... eine Bewegung... der moralischen Wiedergeburt Ihrer Nation ist". Ähnlich äußerte sich Eduard Beneš, der zweite Staatspräsident der Tschechoslowakei, im Frühjahr 1919. Auch er stand der Forderung nach nationaljüdischen Rechten verständnisvoll gegenüber[3].

Die politischen Erklärungen der tschechoslowakischen Führer fanden bald ihren juristischen Niederschlag. Zunächst wurde am 10. September 1919 zwischen den alliierten und assoziierten Hauptmächten und der Tschechoslowakei ein Minderheitenschutzvertrag abgeschlossen[4], der zwar die Juden als nationale Gruppe nicht ausdrücklich erwähnte[5], aber allen Staatsangehörigen „sans

[1] Chasanowitsch-Motzkin, S. 114 f.

[2] Authentisch wurden die Ziele der tschechoslowakischen Nationalitätenpolitik 1919 und 1920 in einer Reihe von Memoranden niedergelegt, in denen es heißt, „que le régime que nous appliquerions aux minorités nationales... serait celui de la plus grande liberté"; vgl. *Beiträge zum ausländischen öffentlichen Recht und Völkerrecht*, Berlin 1937, S. 54. — Masaryks Erklärung stellte natürlich nicht etwa eine völkerrechtlich bindende Zusage gegenüber den Juden dar, sondern war nur ein politisches Programm von unverbindlicher Form. Überdies waren die Juden nicht Völkerrechtssubjekt und die völkerrechtliche Stellung des tschechischen Nationalrates, in dessen Namen Masaryk sprach, war damals noch zweifelhaft.

[3] Vgl. O. Janowsky, *The Jews and Minority Rights*, New York 1933, S. 331.

[4] Vielfach abgedruckt, z. B. bei H. Kraus, *Das Recht der Minderheiten*, Berlin 1927, S. 82 ff.

[5] Im Gegensatz zur litauischen Minderheitendeklaration und dem polnischen und griechischen Minderheitenvertrag, in denen Bestimmungen über Sabbatheiligung und jüdische Schulen enthalten sind. Als Grund für das Fehlen besonderer Judenklauseln im tschechischen Vertrag gab Beneš, damals tschechischer Außenminister, im Jahre 1919 an, die Alliierten hätten „das absolute Vertrauen" gehabt, daß die Tschechen den Juden auch ohne ausdrückliche Bestimmungen die gleichen Rechte wie den anderen Minderheiten einräumen würden. Vgl. *Die Nationalitäten in den Staaten Europas, Sammlung*

distinction de race, de language ou de religion" gewisse nationale Rechte zuerkannte. Es war nicht zweifelhaft und wurde in der Folge nie bestritten, daß auch die jüdische Gruppe den völkerrechtlich garantierten nationalen Status genießen sollte.

Vielleicht mit noch größerer Klarheit als im Völkerrecht kam die Anerkennung der jüdischen Sondernationalität im tschechoslowakischen Staatsrecht zum Ausdruck. Zwar enthält die Verfassungsurkunde von 1920, die nur allgemein von Minderheiten der „Rasse, Sprache oder Religion" spricht (§ 128), ebensowenig einen ausdrücklichen Hinweis auf die nationale jüdische Position wie der Minderheitenschutzvertrag. Aber bereits bei den Vorarbeiten des Verfassungsausschusses der Nationalversammlung wurde dieses Schweigen so begründet, daß jeder Zweifel an der staatsrechtlichen Anerkennung der jüdischen Sondernationalität ausgeschlossen war. Der Motivenbericht des Ausschusses sagt nämlich[1]:

„Die Verfassungsurkunde zählt die nationalen Minderheiten nicht auf, denn sonst hätte sie auch wissenschaftlich strittige Fragen entscheiden müssen. Ist doch der Begriff der Nation selbst bisher nicht genau definiert... Strittig ist beispielsweise die Frage, ob die Juden eine Nation sind... Wenn... jemand die Juden als besondere Nation ansieht, ist er berechtigt, sich in nationaler Richtung als Jude zu bekennen, wenn er auch beispielsweise nach seinem Bekenntnis konfessionslos und nach seiner Muttersprache Tscheche, Deutscher usw. ist. Die Juden sind daher nicht gezwungen, sich bei der Volkszählung, bei Wahlen usw. zu einer andern ethnisch-nationalen Minderheit zu bekennen als zur jüdischen."

Somit ergibt sich, daß das tschechoslowakische Verfassungsrecht bei der nationalitätenrechtlichen Behandlung der Juden im Gegensatz zum alt-österreichischen Staatsrecht die Nationalität der jüdischen Gruppe als Kollektiv anerkennt und dem jüdischen Individuum gestattet, sich der jüdischen oder einer anderen Nationalität einzugliedern[2].

*von Lageberichten,* hgg. vom Europäischen Nationalitätenkongreß, Wien-Leipzig *[Lageberichte]* 1931, S. 279.

[1] L. Epstein, *Studienausgabe der Verfassungsgesetze der Tschechoslow. Republik,* Reichenberg 1923, S. 205.

[2] Das gilt freilich nur für die Bestimmung der *nationalen* Zugehörigkeit. Über die Mitgliedschaft zur israelitischen *Religions*gemeinschaft entscheiden die Vorschriften des noch in Kraft befindlichen altösterreichischen G. vom 21. III. 1890, RGBl. Nr. 57, das durch ein tschechoslow. G. vom 21. I. 1937, S. d. G. u. V., S. 48 ff. ergänzt wurde. Danach besteht der Grundsatz des sog.

## II.

In welcher Weise erfolgt nun die Eingliederung? Wann gehört der einzelne Jude zur jüdischen Volksgruppe und wann kann man ihn entweder der tschechischen Mehrheit oder einer nicht-jüdischen Minderheit, etwa den Ungarn oder Polen, zurechnen? Der Minoritätenvertrag schweigt hierüber. Auch der Motivenbericht und die Verfassungsurkunde beantworten diese Fragen nicht. Es war deshalb Sache der Spezialgesetzgebung, vor allem des Volkszählungsrechts, das Problem der nationalen Zugehörigkeit staatsrechtlich zu lösen.

Die erste für das gesamte Staatsgebiet geltende Regelung erfolgte durch eine Verordnung vom 30. Oktober 1920[1], die bis zum Jahre 1930 in Kraft blieb. Gemäß dieser Verordnung sollte bei Volkszählungen neben „Geschlecht, Familienstand, Alter, Heimatszuständigkeit, Religion und Beruf" auch die „Nationalität" des Einzelnen erhoben werden (§ 3). „Unter Nationalität", so erläuterte die amtliche „Anleitung" der Verordnung, sei „die Stammeszugehörigkeit zu verstehen, deren äußeres Merkmal in der Regel die Muttersprache ist". Demnach wäre — im Widerspruch zu den Grundsätzen des Verfassungsausschusses — den tschechisch, deutsch, polnisch oder ungarisch sprechenden Juden die Eingliederung in die jüdische Gruppe versagt geblieben, wenn nicht die Verordnung noch den besonderen Zusatz enthalten hätte: „Juden können die jüdische Nationalität anführen." Unter Juden wurden Angehörige der jüdischen Religionsgemeinschaft verstanden.

So ergab sich folgende Rechtslage: Die jiddisch sprechenden Juden, also vor allem die Juden in Karpathorußland und der Slowakei, gehörten zur jüdischen Minderheit schon nach der allgemeinen Regelung der Verordnung, gemäß der die „Muttersprache" das „äußere Merkmal" der Nationalität bildete. Aus dem gleichen Grunde konnten sich diejenigen Juden, welche die Sprachen ihrer Umwelt — tschechisch, deutsch, polnisch oder ungarisch — gebrauchten[2], der Gruppe zurechnen, der sie sprachlich

Parochialzwanges, d. h. „jeder Israelite gehört der Kultusgemeinde an, in deren Sprengel er seinen ordentlichen Wohnsitz hat" (§ 2 des G. von 1890). [Näheres bei Václav Paleček, *Die israelitische Religionsgesellschaft* (aus *Slovník veřejného práva československého)* Brünn 1932. — Erg. v. G. K.]

[1] S. d. G. u. V. Nr. 592.

[2] Welche Sprache jemand gebrauchte, wurde in erster Linie nach der

angehörten[1]. Statt dessen stand es ihnen aber auch nach der speziellen Klausel über die „jüdische Nationalität" frei, sich zur jüdischen Gruppe zu bekennen. Allerdings ist die Gültigkeit nationaljüdischer Bekenntnisse, die 1921 von deutsch sprechenden Juden abgegeben wurden, im Beschwerdeweg angezweifelt worden. Der Oberste Verwaltungsgerichtshof, dem die Beschwerde vorlag, hat jedoch entschieden[2]:

Es sei zulässig, daß auch solche Juden sich zur jüdischen Nationalität bekennen, die ihre „eigene nationale Sprache nicht gebrauchen oder durch die Macht der historischen Entwicklung ... gar nicht mehr besitzen, denn die nationale Sprache ist eben nur das normale, keineswegs aber das einzige Kennzeichen der nationalen Zugehörigkeit. Die ethnische und die nationale Zugehörigkeit müssen sich nicht notwendig decken, und gerade von dem ethnisch-jüdischen Zweige ist allgemein bekannt, daß er... teilweise nicht nur seine ethnische, sondern auch seine nationale Individualität erhalten hat, trotzdem er seine nationale Sprache, die für andere ethnische Zweige ein maßgebendes Merkmal der nationalen Zugehörigkeit ist, nicht erhalten hat".

Es hat jedoch nicht an Versuchen gefehlt, diese Rechtslage im Wege der Gesetzesänderung zu beseitigen. Im Jahre 1930 wurde der Regierung vom statistischen Staatsamt eine Vorlage zugeleitet, nach der die erwähnte Klausel über die jüdische Nationalität aus der Verordnung von 1920 gestrichen werden sollte.

„Die Nationalität", so lautete der Entwurf[3], „soll bei jedem Einwohner (nur) nach der Sprache eingetragen werden, die er am vollkommensten erlernt hat und am geläufigsten spricht: es ist dies in der Regel die Muttersprache. Als jüdische Sprache wird neben dem Hebräischen auch das Jiddische (Jargon) angesehen."

Eine derartige Regelung — wäre sie geltendes Recht geworden — hätte praktisch bedeutet, daß das Bekenntnis zur jüdischen Minderheit lediglich noch den Juden Karpathorußlands und der

Erklärung des Einzelnen festgestellt, daß er diese oder jene Sprache spreche. Doch konnte die Erklärung bei „offenbarer Unrichtigkeit" von Amts wegen geändert werden (§ 20 Abs. 3).

[1] Durfte sich ein jiddisch oder deutsch sprechender Jude etwa der ungarischen Minderheit zurechnen? Die Frage ist wohl zu verneinen, da nach § 20 Abs. 3 der V. der Zählungsbeamte befugt war, „die Angabe über die Nationalität ... dann zu ändern, wenn es sich um eine offenbare Unrichtigkeit handelt"; überdies waren „bewußt unrichtige" Angaben strafbar.

[2] L. Epstein, *Das Sprachenrecht der Tschechoslowakischen Republik*, Reichenberg 1927 [= Epstein], S. 72 f.

[3] *„Nation und Staat"*, deutsche Zeitschrift für das europäische Minoritätenproblem, Wien-Leipzig 1929/30, S. 800.

Slowakei, nicht aber den deutsch, polnisch, tschechisch und ungarisch sprechenden Juden möglich gewesen wäre. Indes hat der Entwurf nicht Gesetzeskraft erlangt. Vielmehr verkündete die Regierung am 26. Juni 1930 eine gegenwärtig noch geltende Verordnung[1], die zwar in Einzelheiten von der aus dem Jahre 1920 abweicht, hinsichtlich der Juden aber die bisherige Regelung beibehält. Die neue Verordnung bestimmt nämlich (§ 21): „Die Nationalität wird in der Regel auf Grund der Muttersprache eingetragen ... Juden können aber immer die jüdische Nationalität bekennen."

Die Juden haben von der ihnen gebotenen Möglichkeit eines nationaljüdischen Bekenntnisses in folgender Weise Gebrauch gemacht[2]: Zur jüdischen Gruppe rechneten sich bei der ersten Volkszählung (am 15. Februar 1921) von 354.342 Angehörigen der israelitischen Religion 180.855, d. h. 53,9 Prozent, bei der zweiten Volkszählung (am 1. Dezember 1930) von 356.830 Angehörigen der israelitischen Religion 204.427, d. h. 57,3 Prozent. Die übrigen Juden gliederten sich als „Israeliten" in die tschechische Mehrheit und die nichtjüdischen Minderheiten ein[3].

## III.

Die tschechoslowakischen Volkszählungen besitzen nicht nur statistische, sondern auch erhebliche nationalitätenrechtliche Bedeutung. Das zeigt sich namentlich im Sprachenrecht der Republik.

Seine völkerrechtliche Quelle bildet der Minderheitenschutzvertrag vom 10. September 1919, der den Minoritäten freien Sprachengebrauch im Privatverkehr garantierte (Art. 7 Abs. 3) und außerdem sprachliche „facilités appropriées" vor den Gerichten verhieß (Art. 7 Abs. 4). Demgemäß sah § 129 der tschechoslow. Verfassung vor, daß das Sprachenrecht durch ein besonderes Gesetz geregelt werden sollte, „das einen Bestandteil dieser Verfassungsurkunde bildet". Ein solches Gesetz erging am 29. Februar 1920[4]. Es be-

[1] S. d. G. u. V. Nr. 86.

[2] Vgl. *Lageberichte*, S. 170; M. Wischnitzer, *Die Juden in der Welt*, Berlin 1935, S. 155.

[3] Näheres bei Wischnitzer; A. Ruppin, *Soziologie der Juden II*, Berlin 1931, S. 125.

[4] S. d. G. u. V. Nr. 122.

stimmt, daß zwar „die tschechoslowakische Sprache ... die staatliche, offizielle Sprache der Republik" sei (§ 1 Abs. 1), daß aber den Minderheiten gewisse Spracherleichterungen in solchen Bezirken gewährt werden sollen, in denen „nach der letzten Volkszählung wenigstens 20 Prozent Staatsbürger derselben, jedoch einer anderen als der tschechoslow. Sprache wohnen" (§ 2 Abs. 2). Dem entsprechend gelten nach Art. 14 der Durchführungsverordnung vom 3. Februar 1926[1] als Minoritäten im Sinne des Sprachengesetzes „die Staatsbürger ... derselben, jedoch einer anderen als der Staatssprache, von denen nach dem amtlich verlautbarten Ergebnisse der letzten Volkszählung mindestens in einem Gerichtsbezirke 20 Prozent wohnen".

Überblickt man die Einzelergebnisse der Volkszählungen, so sieht man, daß die Juden in keinem Gerichtsbezirk 20 Prozent der Gesamtbevölkerung bilden[2]. Somit ergibt sich die eigenartige Erscheinung, daß die jüdische Gruppe in der Tschechoslowakei zwar im Sinne des Volkszählungs-, nicht aber des Sprachenrechts eine Minorität darstellt[3].

Die jiddisch sprechenden Juden Karpathorußlands und der Slowakei haben mithin keinen Anspruch darauf, daß der „Jargon" im Amtsverkehr berücksichtigt wird. Vielmehr muß sich die jüdische Bevölkerung dieser Gebiete vor den Behörden „der Staatssprache oder irgendeiner anderen Minderheitensprache" bedienen[4]. In Abweichung von Art. 7 Abs. 3 des Minderheitenschutz-

[1] S. d. G. u. V. Nr. 17.

[2] Vgl. Epstein, S. 154, 312 ff.

[3] Der Oberste Verwaltungsgerichtshof hat diese Konsequenz klar ausgesprochen, wenn er sagt: „Die praktische Folge dessen, daß sich die im Bezirke wohnenden (nicht 20% bildenden) jüdischen Staatsbürger bei der Volkszählung zur jüdischen Nationalität bekannt haben, ist einfach die, daß diese Staatsbürger keiner anderen nationalen Minderheit zugerechnet werden können" (Epstein S. 73). Das ist manchmal für nichtjüdische Minderheiten von Bedeutung geworden. So beispielsweise im Gerichtsbezirk Kaschau, wo die Ungarn nach der Volkszählung von 1921 19,03% der Bevölkerung bildeten und die 20% des Sprachengesetzes deshalb nicht erreichten (vgl. Epstein S. 331, Molnár in *„Nation und Staat"* a. a. O. S. 229), weil sich ein Teil der ungarisch sprechenden Juden zur jüdischen Nationalität bekannt hatte (vgl. Molnár a. a. O.). Die Ungarn konnten in diesem Bezirk demnach keine Sprachenrechte in Anspruch nehmen, so daß die ungarisch sprechenden Juden von Kaschau durch ihr nationaljüdisches Bekenntnis ebenfalls sprachliche Nachteile in Kauf nehmen mußten.

[4] Das Bezirksgericht Teplitz und das übergeordnete Kreisgericht hatten

vertrages ist aber auch im Privatverkehr der Gebrauch des Jiddischen eingeschränkt. So gilt noch ein altes österreichisches Dekret aus der josephinischen Ära, gemäß dem schriftliche Erklärungen in hebräischen Buchstaben nichtig sind[1]. Entsprechend bestimmt das Wechselgesetz vom Jahre 1927 (§ 109): „Wechsel und Wechselerklärungen sind ungültig, wenn sie in hebräischer Sprache oder Schrift geschrieben sind." Im übrigen besteht gegen den Gebrauch des Jiddischen oder Hebräischen „im öffentlichen Leben, also Presse, Büchern, Geschäftstafeln, Korrespondenz und Geschäftsbüchern kein Hindernis"[1].

Ähnlich liegt es bei den schulrechtlichen Verhältnissen. Nach Art. 8 des Minderheitenschutzvertrages, der mit einigen Einschränkungen in die Verfassung (§ 130) übergegangen ist, haben alle Minoritäten — auch die Juden — das Recht, „à leurs frais" Privatschulen und sonstige private Bildungsanstalten zu errichten, um dort „faire librement usage de leur propre langue et d'y exercer librement leur religion"[2]. Diese allgemeine Vorschrift findet ihre Ergänzung in einem Gesetz vom 3. April 1919[3], das die Privatschulen der Staatsaufsicht unterstellt (§ 10), die Verleihung des Öffentlichkeitsrechts regelt (§ 11) und außerdem vorsieht, daß eine staatliche Subvention gewährt werden kann (§ 13). Die Juden, die von dem Recht der Schulerrichtung in einigen Fällen Gebrauch gemacht haben, klagten jedoch vor mehreren Jahren darüber, daß die Subvention für die Volksschulen nur „unbedeutend" gewesen und für das hebräische Gymnasium in Karpathorußland überhaupt versagt worden sei[4]. Seither scheinen sich die jüdischen Schulverhältnisse aber gebessert zu haben.

Hinsichtlich der öffentlichen Schulen bestimmt § 1 des genannten Gesetzes von 1919[5]:

„Eine öffentliche allgemeine Volksschule kann in jeder Gemeinde errichtet werden, in der sich nach einem dreijährigen Durchschnitt mindestens vierzig schulpflichtige Kinder befinden, wenn in der Schulgemeinde keine öffentliche

eine in deutscher Sprache abgefaßte Privatklage eines Juden zurückgewiesen und Anwendung der Staatssprache verlangt. Das Obergerichtspräsidium Prag hob diese Entscheidung auf und vertrat die im Text mitgeteilte Auffassung; vgl. *„Jüdische Rundschau"* Nr. 40 vom 17. 5. 1935.

[1] *Lageberichte* S. 281.

[2] Einzelfragen bei Stillschweig, S. 137 ff.

[3] S. d. G. u. V. Nr. 189; Novellen hierzu vom 9. April 1920 und 13. Juli 1922.

[4] *Lageberichte* S. 280.

[5] Vgl. Art. 9 des Minderheitenschutzvertrages und § 131 der Verf.-Urk.

Schule mit der Unterrichtssprache besteht, welche die Muttersprache dieser Kinder ist."

Daraus folgt, daß die Juden überall dort, wo sie die Sprachen ihrer Umwelt sprechen, kein Recht auf Errichtung öffentlicher jüdischer Minderheitsschulen haben. Deshalb besuchen in der Tschechoslowakei „die jüdischen Kinder fast ausschließlich die allgemeinen Schulen"[1].

## IV.

Faßt man die Entwicklung des nationalitätenrechtlichen Status der Juden in der Tschechoslowakei zusammen, so läßt sich sagen: Der grundlegende Unterschied zum alten Österreich besteht darin, daß die Juden nunmehr als Nationalität angesehen werden. Darüber hinaus sind die Abweichungen von der Rechtslage vor dem Weltkrieg praktisch gering. Insbesondere ist den Juden, deren bürgerliche und politische Gleichberechtigung übrigens voll anerkannt ist, die „kulturelle Selbstverwaltung in innerjüdischen Fragen" nicht in dem 1918 gewünschten Umfang gewährt worden[2].

De lege ferenda beachtlich ist deshalb, daß in einer Reihe sudetendeutscher Gesetzesvorlagen[3] für alle Volksgruppen der Republik nationale Autonomie gefordert wird. Demgemäß sollen „Verbände des öffentlichen Rechts durch Zusammenfassung der Staatsbürger gleicher Volkszugehörigkeit" geschaffen werden, wobei jeder Verband die Aufgabe hat, „für die Pflege und Entwicklung der völkischen Eigenart sowie für die Erhaltung und Förderung des kulturellen, sozialen und wirtschaftlichen Besitzstandes" seines Volkstums Sorge zu tragen. Die Zugehörigkeit des Einzelnen zu den autonomen Körpern soll derart geregelt werden, daß „jeder Staatsbürger ... das Recht und die Pflicht des Be-

[1] Ruppin II, S. 159.

[2] Vgl. über die jüdischen Forderungen die oben I angeführte Denkschrift des „Jüdischen Nationalrats" in Prag. Durch G. vom 21. I. 1937, S. d. G. u. V. S. 48 ff. sind jedoch die jüdischen Kultusgemeinden in Böhmen und Mähren-Schlesien fortab „in eine einheitliche Gemeinschaft vereinigt" (§ 1), die Rechtspersönlichkeit besitzt (§ 3). Die Aufgaben der neuen Körperschaft bestehen allerdings nur in der Sorge für „die religiösen Bedürfnisse". Über Einzelheiten Stillschweig in *„C.-V.-Zeitung"* (Berlin) Nr. 25 vom 24. 6. 1937.

[3] Abgedruckt in *„Nation und Staat"* 1936/37, S. 578 ff.

kenntnisses seiner Zugehörigkeit zu dem Volke hat, dem er von Geburt angehört". Nur dann, „wenn der betreffende Staatsbürger seine Muttersprache weder in der Familie noch im Haushalt spricht und die Sprache des beabsichtigten Bekenntnisses vollkommen beherrscht", darf er eine andere Volkszugehörigkeit bekennen. „Juden können jedoch immer die jüdische Nationalität einbekennen".

Inwieweit eine Änderung des tschechoslowakischen Nationalitätenrechts die nationale Haltung der jüdischen Minderheit beeinflussen wird, läßt sich schwer vorhersagen. Nach Auffassung der Juden selbst liegen die wesentlichsten Schwierigkeiten einer nationalkulturellen jüdischen Entwicklung nicht so sehr in der Gesetzgebung wie „in der Struktur der jüdischen Bevölkerung und ihrer Besonderheiten"[1].

(Abgeschlossen Ende 1937.)

[1] *Lageberichte*, S. 289.

# DIE WIRTSCHAFTLICHE UND POLITISCHE LAGE DER JUDEN IN OST- UND MITTELEUROPA

Von

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## I.

Drei Erscheinungen der Nachkriegszeit haben die wirtschaftliche und politische Lage, Schicksal und Aussichten von ungefähr sechs Millionen Juden in Deutschland, Österreich, Ungarn, Rumänien, Tschechoslowakei, Polen, Lettland und Litauen grundlegend geändert.

1. Der Sieg der Mittelstandsideologie führte in den meisten dieser Länder zur Entwicklung eines ökonomischen Nationalismus. Dieser hatte die Entfernung der Juden aus ihren lange festgehaltenen wirtschaftlichen Stellungen und ihre Ausgliederung aus dem politischen und kulturellen Leben des Mehrheitsvolkes zur Folge. Die Ausgliederung der Juden aus dem sie umgebenden Leben, bald rechtlich begründet, bald ohne Rechtsänderung tatsächlich durchgeführt, verursachte eine gewaltige Pauperisierung und Deklassierung der großen jüdischen Massen, einen gewaltigen Niedergang der höheren und mittleren Klassen. Sie rief eine physische Unsicherheit und eine psychische Verzweiflung von katastrophalem Umfange hervor.

2. Der Zerfall der beiden größten Nationalitätenstaaten, von Rußland und Österreich, und die verwirklichte Selbständigkeit ihrer früher unterdrückten Völker hat die jüdische Bevölkerung, die vorher das ökonomische und kulturelle Bindeglied zwischen der herrschenden, höher entwickelten, industrialisierten Nation und den zurückgebliebenen agrarischen, beherrschten Völkern gewesen war, einer ganzen Menge lokaler nationaler Mehrheiten gegenübergestellt. In raschem Tempo und mit Hilfe staatlicher Mittel suchten diese verspätet, die Schaffung eines eigenen Beamtenstandes, einer eigenen Intelligenz, eines eigenen Handels- und Handwerkerstandes nachzuholen. Diese Urbanisierung der lokalen nationalen Mehrheit mit Hilfe eines politischen Apparates, der sich ausschließlich in ihren Händen befindet, und mit der ganzen ökonomischen Kraft, die ein moderner Staat, besonders ein faschistischer, besitzt, hat ihre ideologische Stütze und Be-

gründung in dem ökonomischen Nationalismus gefunden. Durch ihn wurde der Ausgliederungsprozeß nicht unerheblich verschärft.

3. Die unterbrochene Auswanderung aus Europa nach Übersee hat die Länder mit dichter jüdischer Bevölkerung in eine doppelt katastrophale Lage gebracht. Vor dem Weltkrieg pflegte die Abwanderung von Millionen von Bauern aus den Agrarländern in Ost- und Südeuropa das starke natürliche Wachstum der Dorfbevölkerung zu regulieren. Die Abwanderung hat das Tempo des Drängens des übervölkerten Dorfes nach der langsam heranwachsenden Stadt, nach der langsam sich entwickelnden Industrie, nach dem seit Jahrhunderten von Juden gehandhabten Handel und Handwerk geschwächt. Andererseits verminderte die Abwanderung von Millionen Juden aus denselben Ländern die Konkurrenz in Handel und Handwerk, die seit langem schon überfüllt waren. Sie schwächte gleichzeitig den Zustrom der jüdischen Stadtjugend zur Industrie, welche der Zufluchtsort der nichtjüdischen Dorfjugend wurde.

Seit mehr als zehn Jahren hatte die Einschränkung, seit fast fünf Jahren hat dann die völlige Einstellung der Auswanderung in den Dörfern dieser Agrarländer eine Überbevölkerung verursacht, da der natürliche Volkszuwachs noch jetzt sechs- bis siebenmal größer ist als in England, zehn- bis zwölfmal stärker als in Frankreich. Das mußte dazu führen, daß die Dorfbevölkerung sich in ganz anderem Tempo und mit ganz anderer Kraft auf die städtischen Berufe stürzte. Der sich in der Vorkriegszeit langsam entwickelnde, organische Vorgang des Anwachsens des Handels- und Handwerkerstandes bei der nichtjüdischen Bevölkerung, welcher schon lange das Fallen des relativen Anteils der Juden in diesen „monopolisierten" „jüdischen" Wirtschaftszweigen verursachte, nimmt in unserer Zeit ganz andere Maße an. Rasch verwandelt er sich in einen mächtigen Drang, in einen elementaren Angriff der großen Bauernmassen auf die sogenannten „jüdischen" Berufe. Die Eliminierung der Juden hat einen solchen Grad erreicht, daß ihre absolute Zahl im Handel bereits im Fallen begriffen ist. Dieses elementare Drängen der nationalen Mehrheit zu Handel und zu Handwerk wird von der herrschenden politischen Macht unterstützt und geradezu organisiert. Es geschieht mit Hilfe der unbegrenzten politischen und wirtschaftlichen Mittel, über die ein faschistischer oder halbfaschistischer Staat verfügt.

Man hätte eine Lösung des Problems in einer Agrarreform finden können. In Polen z. B. ist eine solche immer noch ein unverwirklichter Traum der Bauern. Aber anstatt nach Mitteln und Wegen zu suchen, um den inneren Markt zu heben, den Export zu stärken und so die industrielle Entwicklung zu beschleunigen, — wobei das jüdische Element ganz gut ausgenutzt werden könnte —, richtet sich der ganze Druck auf die von Juden besetzten Berufe. Die ganze Kraft aller in Betracht kommenden Faktoren, der Massen selbst, der Intelligenz und des Staatsapparates, wird dazu verwendet, um die Juden zu verdrängen.

Die Einschränkung und Einstellung der Auswanderung wirkte anders bei den Juden, bei einer nationalen Minderheit, die dazu verurteilt ist, die innegehabten Stellungen aufzugeben und neue zu suchen. Sie sind nicht in der Lage, auf eine neue soziale Ordnung zu warten oder sich zu gedulden, bis die Tore der Einwanderungsländer sich wieder öffnen. Denn sie stehen unter dem Drucke eines starken jüdischen Bevölkerungszuwachses, der in den Agrarländern die Konkurrenz in den „jüdischen" Beschäftigungen, in Handel und Handwerk, ungeheuer verschärft hat. Sie haben unter dem Zustrom der großen Masse des herrschenden Volkes zu den „jüdischen" Beschäftigungen zu leiden. Mächtig werden sie bedrängt, beim Ausmessen der Steuern, bei der Devisenzuteilung, bei der Arbeitsvergebung in staatlichen Unternehmungen. Ihr Einfluß bei den städtischen Verwaltungen und Ständeorganisationen wie bei den Handels- und Handwerkerkammern, den Brennpunkten der ökonomisch-nationalen Politik, wird ausgeschaltet. Physisch und moralisch werden die Juden unaufhörlich bedrängt, sie sind wirkungsvollen Pressefeldzügen und gesellschaftlichem Boykott wehrlos ausgesetzt. Schließlich müssen sie dem machtvollen Drucke nachgeben. Sie ziehen, oft ohne Sprachkenntnisse und Weltgewandtheit, meist unter großen Opfern und Gefahren, in ferne und unbekannte Länder. Sie kommen in Orte, die ein jüdischer Fuß noch niemals betreten hatte, suchen, versuchen, legen neue Fundamente, bauen neue jüdische Zentren. Tausende Chaluzim, Angehörige aller Klassen, Söhne von Ärzten wie von Wasserträgern, Töchter reicher Fabrikanten und armer Arbeiter, werfen sich mit ungeheurer Energie auf die schwersten Arbeiten, nur um sich zur Auswanderung nach Palästina vorzubereiten. Kein Opfer ist zu groß, kein Risiko zu schwer, um nur jenem Alpdruck, einem Leben ohne Hoffnung zu ent-

kommen. All das aber ist nur einem Tropfen im Meere vergleichbar. Hinter den Hunderten, die ausgezogen sind, stehen Tausende, die wegefertig sind, die davon träumen, sich zu retten, zu entlaufen, um ein neues Heim zu gründen, um ein neues, ein jüdisches Leben aufzubauen. Die deutsch-jüdische Emigration hat sich über mehr als sechzig Länder aller Weltteile verteilt. Die polnischen Juden haben im Laufe der letzten zehn bis fünfzehn Jahre in allen, auch in den zurückgebliebensten Ländern, in denen bis dahin Juden nur vereinzelt gelebt hatten, neue Zentren geschaffen. Dies war besonders in Amerika der Fall. In den letzten drei Jahren hat Palästina den größten Teil der jüdischen Auswanderung aufgenommen. Aber das Bedürfnis nach Einwanderungsraum wächst im umgekehrten Verhältnis zu den sinkenden Wanderungsmöglichkeiten.

## II.

Die Lage der Juden in der Welt ist in großem, ja entscheidendem Maße von den herrschenden Wirtschaftssystemen abhängig. Bei dem gegenwärtigen Chaos in der Weltwirtschaft könnte man glauben, daß jedes Land sein Wirtschaftssystem oder seine eigene Systemlosigkeit hat. Tatsächlich aber sind es doch grundsätzlich nur drei Wirtschaftssysteme, die in der Welt herrschen.

1. Es gibt Länder, in denen in großem Maße der liberale Kapitalismus besteht, mit einem Minimum an autarkischen Tendenzen, daher auch mit einem Minimum an ökonomischem Nationalismus. Es sind jene reichen industrialisierten Länder, die die besten und größten politischen Möglichkeiten besitzen, um die erreichte Expansion des 19. Jahrhunderts aufrechtzuerhalten: England, Frankreich, Belgien. Ferner die jungen reichen Kolonialländer, die selbst über Rohstoffe und einen wachsenden inneren Markt verfügen und genug Raum für die wachsende Bevölkerung besitzen, nämlich: die Vereinigten Staaten von Nordamerika, Kanada, Argentinien; Nordafrika; Australien.

Die Lage der Juden in diesen Ländern ist im allgemeinen die gleiche geblieben wie im vorigen Jahrhundert. Gesetzlich sind sie zwar gleichberechtigt, jedoch tatsächlich erreicht der Jude höhere Stellungen nur bei bedeutenderen Leistungen und größeren Fähigkeiten. Die Juden sind zwar politisch und ökonomisch in das sie umgebende Milieu eingegliedert, bleiben aber doch bis zu einem

gewissen Grade gesellschaftlich isoliert, oft werden sie sogar boykottiert. Grundlegende Änderungen bezüglich der Lage der Juden haben sich in diesen Ländern im allgemeinen nicht gezeigt. Jedoch ist ein Anwachsen des Antisemitismus festzustellen. Parallel geht eine größere Zurückhaltung der nichtjüdischen Welt gegenüber den Assimilationsbestrebungen der Juden, die in gewissem Ausmaß ein natürliches Resultat und auch eine Vorbedingung für jede politische und ökonomische Eingliederung einer nationalen Minderheit sind. Das Anwachsen des aktiven Antisemitismus und der Ablehnung der Assimilationstendenzen führt zu einer Selbstausgliederung auf Seite der jüdischen Bevölkerung selbst.

Das 19. Jahrhundert, das Zeitalter kapitalistischen Aufschwunges, imperialistischer Expansion und extensiven Nationalismus, hat die Beweglichkeit und Schnelligkeit der Juden, das jüdische Streben und Temperament, den Mangel an Bodenständigkeit und geschlossenem Volkstum bei ihnen sich zu Nutze gemacht zur Schaffung komplizierter Netze von ökonomischen, politischen und kulturellen internationalen Verbindungen, und ebenso beim Ausbau eines breitangelegten inneren Marktes. In unserer Zeit aber, die eine Zeit ökonomischer Stagnation, kapitalistischer Agonie und intensiven Nationalismus ist, erscheinen jene Eigenschaften der Juden überflüssig. Damit ist die zwar nicht starke und nicht allgemeine, aber doch tatsächlich bestehende Eliminierung der Juden zu erklären, die sich in den liberal-demokratischen Ländern immer mehr bemerkbar macht.

Jeder Eliminierungsprozeß aber begegnet, selbst bei der schwächsten Gruppe, wenn schon nicht aktivem Widerstand, so doch einer Resignation, einer Passivität, einem sich Zurückziehen, sich Distanzieren, einer Selbstausgliederung.

2. Den Gegenpol zu den hochliberalen Ländern stellt Sowjet-Rußland dar, wo der Kapitalismus völlig liquidiert ist. Statt privater Anarchiewirtschaft herrscht hier staatliche Planwirtschaft ohne Konkurrenz- und Klassenkämpfe. Wie in den kapitalistischen Anfängen erscheinen hier ganz neue Entwicklungskräfte auf der historischen Arena. Der intensivierte innere Markt ist an die Stelle des extensiven äußeren Marktes der kapitalistischen Epoche getreten.

Das Erwachen einer 150 Millionen zählenden Bauernmasse soll die Grundlage einer modernen Industrie schaffen. Die Pro-

duktion wird nicht den Konsumtionsmöglichkeiten angepaßt, sondern der umgekehrte Weg wird eingeschlagen. In einer solchen Wirtschaft werden jüdische Kräfte, die akkumulierte städtische jüdische Kultur, das jüdische Organisationstalent, die höhere intellektuelle Entwicklung, die psychische Beweglichkeit und das Temperament der Juden, sie alle werden in großem Maße ausgenützt. Keine bürgerliche Emanzipation hat eine so große Möglichkeit der Eingliederung und Absorbierung in der Mehrheit geschaffen wie die proletarisch-sowjetische. Keine der bürgerlichen Emanzipationen hat so weit alle Wirtschaftszweige und gesellschaftlichen Gebiete vor den jüdischen Massen geöffnet wie die sowjet-proletarische. Deshalb ist die Eingliederung hier nicht nur eine ökonomische und politische, sondern auch eine gesellschaftliche. Sie ist nicht stufenweise vor sich gegangen, ist nicht langsam erkämpft worden, sondern sie kam plötzlich und wurde mit einem revolutionären Schlage verwirklicht. Die kulturelle Angleichung wurde hier nicht als eine Bedingung für die Emanzipation betrachtet, sondern sie wurde von den jüdischen Massen freiwillig, und zwar nicht als Opfer, sondern als Geschenk und zum Dank für die wirkliche und unbedingte Gleichheit dargebracht. Die jüdischen Massen haben sich nicht nur über das ganze weite Rußland zerstreut, sondern sie sind auch in alle gesellschaftlichen Schichten eingedrungen, in den Militärstab und in das Bauerntum, in den Lehrerberuf wie in das industrielle Proletariat, in die höchste Führerschicht und in die niedrigste Schwarzarbeiterklasse. Die geographische und ökonomische Zerstreuung und Ausbreitung führen auf diese natürliche und organische Weise zur Assimilation. Die großen jüdischen Massen in Sowjet-Rußland, ihre Existenz inmitten von Völkern, die seit Jahrhunderten von Großrußland beherrscht wurden, die national tieferen Traditionen bei den konservativen Schichten, und der revolutionäre Geist bei der Arbeiterklasse, alles das hat ganz eigenartige und von den westeuropäischen Staaten völlig verschiedene Vorbedingungen für die Entwicklung eines parallelen nationalen Stromes geschaffen. Ein solcher existierte sogar bei kleinen Gruppen westeuropäischer Juden. Trotzdem er aber stärker und blutvoller bei den russischen Juden zu beobachten ist, vermag er doch nicht den assimilatorischen Hauptstrom aufzuhalten.

In Sowjet-Rußland wiederholt sich der Emanzipations- und

Assimilationsprozeß der Juden in einem neuen historischen Milieu, unter anderen Bedingungen und Umständen als in Westeuropa, dabei in größerem Umfang und rascherem Tempo. Ob sich auch der Ernüchterungsakt wiederholen wird, ob er ebenfalls rascher, plötzlicher und stürmischer, wie bei den bürgerlichen Emanzipationen hereinbrechen wird, ist eine Frage, die vorläufig offen bleiben muß.

3. Das Verbindungsglied zwischen den liberalen und zwischen den sozialisierten Ländern bilden jene Staaten, in denen ein gewisses Übergangssystem herrscht. Ein großer Teil der Wirtschaft ist schon verstaatlicht, mindestens vom Staate geleitet, trotzdem aber gibt es noch in weitem Ausmaß freie Konkurrenz. Neben Privateigentum und privater Wirtschaft besteht starke unmittelbare staatliche Beteiligung in der Wirtschaft, auf welche der Staat allenthalben Einwirkung sucht. Wirtschaftlich so geleitete Staaten werden von starken autarkischen Tendenzen beeinflußt. Diese sind bestimmt durch das Streben, alles im eigenen Land zu produzieren, den inneren Markt aufnahmefähiger zu gestalten und sich vom Ausland unabhängig zu machen. Autarkie, Selbstgenügsamkeit führt zu ökonomischem Nationalismus. Gruppeninteressen und Klassengegensätze bleiben zwar bestehen; aber unter ihnen muß Frieden herrschen im Interesse nationaler Einheitlichkeit und Stärke. Bedeutsam ist nicht die relative Verteilung des nationalen Einkommens unter den einzelnen Gruppen, sondern sein absolutes Wachstum.

Solcher Art sind die Zwischenlösungen des Kampfes zwischen Kapitalismus und Kollektivismus, es sind Übergangsformen in Wirtschaft und Recht, ein Nebeneinander privater und staatlicher Wirtschaft, freier Konkurrenz und staatlichen Einflusses, eine Negation sowohl völliger wirtschaftlicher Freiheit als auch vollständiger Zwangswirtschaft, großkapitalistischer, für fremde Märkte berechneter Perspektiven, wie auch kollektivistischer Wirtschaftsmethoden, die nur für die inneren Kräfte gedacht sind. Man läßt die Disharmonie der Klassen- und Gruppeninteressen bestehen, während politische Harmonie aufgezwungen wird. Derartige Zwischenlösungen und Zwischensysteme bilden die Wege, welche von völlig faschistischen, halb- und dreiviertelfaschistischen Ländern eingeschlagen werden, wo die Mittelstandsideologie den Sieg errungen hat.

Sie hat in Ländern von zwei verschiedenen Typen gesiegt: in

hoch industrialisierten Ländern wie in Deutschland und Österreich, welche sich zu schwach erwiesen, um die kolonialen Eroberungen und erreichten Positionen auf dem Weltmarkt zu behaupten; ferner in Ländern mit verspätetem Kapitalismus und verspäteter industrieller Entwicklung wie in Polen, Ungarn, Rumänien, Litauen, Lettland, welche die Welt bereits verteilt vorfanden, mit eingenommenen Märkten, gefährlicher Konkurrenz und gesperrten Einwanderungstoren rechnen mußten. Die zuerstgenannten Länder sind gezwungen, ihren zu weit vorausgeeilten Industrieapparat dem begrenzten inneren Markte anzupassen. Die letzteren mußten von vornherein mit einem engen inneren Markt und ungünstigen Bedingungen für sein Wachstum rechnen: mit einem minimalen Zustrom fremder Kapitalien, mit der gleichzeitigen Industrialisierung aller zurückgebliebenen Agrarländer und der kolonialen Gebiete, mit der Reagrarisierung der meisten Industrieländer und mit geschlossenen Toren der Einwanderungsländer. Denn diese hatten im Laufe eines Jahrhunderts, von 1825 bis 1925, Europa von etwa 50 Millionen Menschen entlastet.

Wenn der Spätkapitalismus mit seinen gebundenen Organisationsformen sogar in den politisch mächtigsten und mit Rohstoffen am reichlichsten versorgten Ländern stark nachhinkt, sodaß ihm von Zeit zu Zeit mit staatlichen Mitteln nachgeholfen werden muß, so kann er sich in den politisch besiegten und rohstoffarmen Ländern ausschließlich mit der ganzen Unterstützung des Staates halten. Der Staat muß daher die schwächsten Wirtschaftszweige übernehmen, andere stützen, die Wirtschaft vor jeder fremden Konkurrenz schützen, sie immer unabhängiger von fremden Märkten, insbesondere vom Weltmarkt und von den Weltmarktpreisen machen. Noch schwieriger ist die Lage des verspäteten Kapitalismus in den armen und zurückgebliebenen Agrarländern. Hier auf Privatkapital und Privatinitiative sich zu verlassen, hieße für Jahrzehnte auf ganze Industriezweige verzichten müssen, ohne welche eine politische Unabhängigkeit nicht denkbar ist, es hieße, für lange Zeit ökonomisch zurückbleiben, technisch hilflos, chemisch schutzlos, mit einem Worte politisch ohnmächtig sein. Deshalb mußte der Staat hier viele wirtschaftliche Funktionen übernehmen, die ihm bei Durchführung seiner nationalen Politik zu Nutze kamen. Dies diente der Schaffung einer Mittelstandsklasse bei der nationalen Mehrheit, der Schaffung einer größeren eigenen

Intelligenzschicht, der Nationalisierung der Städte, die größtenteils aus nationalen Minderheiten wie Russen, Deutschen, Juden bestanden (so teilweise in Polen und der Tschechoslowakei, fast vollständig in Litauen und Lettland).

Zusammengefaßt ist die Lage durch folgende Faktoren gekennzeichnet: kleiner innerer Markt, außerordentlich enge Entwicklungsgrenzen, Loslösung vom Weltmarkt mit der Tendenz, sich von ihm vollständig zu trennen, starke Übervölkerung ohne Bewegungsmöglichkeit, erwachte nationale Massen, bei denen der kulturelle Aufstieg den wirtschaftlichen Fortschritt überholt, stark aufgepeitschte nationale Empfindungen und Aspirationen. Unter derartigen allgemeinen Aspekten sind alle jüdischen Begabungen und Talente, Erfahrungen und Fähigkeiten, die im 19. Jahrhundert als guter und aktiver Motor für die wirtschaftliche Entwicklung dienten, besonders auf den Gebieten des Bank- und Börsenwesens, beim Eisenbahnbau, beim Export, bei den internationalen Verbindungen und Verknüpfungen, sie alle werden jetzt als überflüssig und unnötig, ja bisweilen als schädlich betrachtet. Denn sie würden das Gespann der nationalen Wirtschaft zu rasch antreiben, diese zu intensiv, zu übernational, zu international gestalten.

Der Mittelstand, in seiner wirtschaftlichen Tätigkeit lokal gebunden und deshalb nationaler gestimmt, stand sogar im liberalen 19. Jahrhundert der rascheren Entwicklung der erfahreneren jüdischen Konkurrenz feindlich gegenüber. Die ganze antisemitische Bewegung des 19. Jahrhunderts war im Grunde ein Kampf des nichtjüdischen Mittelstandes gegen den jüdischen Konkurrenten, der die kommende Entwicklung eher vorausahnte und in größerem Ausmaß am Goldregen des Kapitalismus veranteilt war. Mit dem Sieg der Mittelstandsideologie mußten natürlich an Stelle der Eingliederungstendenzen des 19. Jahrhunderts Ausgliederungs-, Isolierungs- und Herausstoßungsbestrebungen treten, die in den verschiedenen Ländern verschiedene Formen und Ausmaße angenommen haben. Überall aber haben sie zu demselben Ergebnis geführt: zu einer gewaltigen Pauperisierung und Deklassierung der breiten jüdischen Massen.

# REVIEWS OF BOOKS.
# LITERATUR.

## Salo W. Baron, *A Social and Religious History of the Jews.* Columbia University Press. New York, 1937. 3 Bände.

Der Literaturteil der „Historia Judaica" wird die in langjähriger Übung von der Zeitschrift der Savigny-Stiftung für Rechtsgeschichte entwickelten und bewährten Grundsätze der Wissenschaftlichkeit und Unparteilichkeit übernehmen und pflegen. War doch ihr Herausgeber 25 Jahre lang Mitarbeiter und Rezensent dieser führenden rechtshistorischen Zeitschrift. Zu ihren Traditionen gehörte es, Hand- und Lehrbücher von der Berichterstattung im Literaturteil auszuschließen, weil jede rechtsgeschichtliche Zeitschrift vor allem Spezialforschungen gewidmet sein muß. Wenn von diesem Prinzip gleich bei der ersten Buchbesprechung an dieser Stelle eine Ausnahme gemacht wird, bedarf das einer Rechtfertigung. Die Ausnahme ist zunächst nur eine partielle. Auf die beiden ersten Bände von Barons Sozial- und Religionsgeschichte der Juden soll ihrer großen Bedeutung wegen hier zwar hingewiesen, aber kritisch nicht näher eingegangen werden. Dies ist bereits in sehr zahlreichen und teilweise ausführlichen Besprechungen geschehen. Auch darf ich auf meine demnächst in der Zeitschrift „Speculum" erscheinende Rezension hinweisen, die sich allerdings nur mit den mittelalterlichen Teilen des Buches beschäftigen wird. Dem dritten Bande des Werkes aber, der Anmerkungen und eine Bibliographie enthält, gebührt unbedingt eine Würdigung in diesen Spalten.

Der zweibändigen Darstellung ist zum Vorwurf gemacht worden, daß nicht eigentlich eine Geschichte der Juden, sondern eher eine Anzahl lose aneinandergereihter Betrachtungen und Bemerkungen zu ihrer Sozial- und Religionsgeschichte geboten werde (Jacob R. Marcus, *JQR.* XXIX, 1938, S. 45 f). Dies trifft für den dritten Band sicherlich, ja unbestreitbar zu. Der gerügte Nachteil erweist sich aber hier als großer Vorzug des Werkes, der gegen den Verfasser erhobene Tadel muß in Anerkennung eines unschätzbaren wissenschaftlichen Verdienstes verwandelt werden. Es besteht darin, daß er aus einer reichen Fülle von Kenntnissen zu den zahllosen Problemen, die seine Geschichtsdarstellung ergab, in sorgfältigster Kleinarbeit „Anmerkungen" besonderer Art hinzugefügt hat. In ihnen werden Problemgeschichte, Problemlage und Problemkritik auf bibliographischer Grundlage vor dem Leser ausgebreitet. Die bibliographischen Angaben beschränken sich auf die seit 1930 erschienene Literatur. Sie folgen zunächst in sachlicher Anordnung der Systematik der Darstellungsbände. In einer 129 Seiten umfassenden „Bibliographie" sind dann alle Titel, genau bibliographiert, in alphabetischer Reihenfolge noch einmal wiederholt. Ein Personen- und Sachregister von 100 Seiten erschließt vortrefflich den reichen Inhalt des ganzen Bandes. Man kann sich daher leicht und schnell über den Stand jedes bemerkenswerten Problems auf dem Gebiete der Sozial- und Religionsgeschichte der Juden unterrichten.

In noch stärkerem Maße als die ersten beiden Bände des Werkes wendet sich der dritte vorzüglich an den wissenschaftlichen Benutzer. Er wird vor allem die Bibliographie, ebenso aber auch die Problemgeschichte als wertvolle Arbeitserleichterung begrüßen und fruchtbringend verwerten können. Denn sehr zahlreich sind die Probleme, die noch der Bearbeitung harren. Ich möchte nur einige erwähnen, unter Beschränkung auf das Mittelalter, ohne auf die Abgrenzung des Begriffes „Sozialgeschichte" näher eingehen zu können: die rechtliche und wirtschaftliche Lage der Juden unter moslemischer Herrschaft; Geschichte der Institution der Responsen; islamische und jüdische Responsenliteratur; jüdischer Sklavenhandel; die Judensteuern; Na-

tionalismus und Rassenantisemitismus; persönliche Beziehungen zwischen Juden und Christen; Geschichte der jüdisch-christlichen Polemik; gesellschaftliche Ausschließung der Juden in Europa; jüdische Volkskunde. Natürlich sind nicht alle diese Fragengebiete völlig unbeackert oder etwa neu. Aber auch eine große Anzahl origineller Problemstellungen ist zu finden. Zumeist begnügt sich der Verfasser nicht damit, die Problematik aufzuzeigen. Er nimmt größtenteils selbständig Stellung, auch wo er nicht zur Begründung der in seiner Darstellung vertretenen Ansichten genötigt ist. So werden die „Anmerkungen" oft zu „Exkursen". Die durch diese Form gebotene Kürze verhindert freilich bisweilen eine vollständige Klärung, indem sie den Verfasser nötigte, sich auf die Mitteilung seiner persönlichen Ansicht oder vorläufiger Forschungsergebnisse zu beschränken. In solchen Fällen wird natürlich die Kritik künftiger Spezialforscher umso vorsichtiger zu Werke gehen müssen. Manchmal hat die bibliographische Orientierung der Problematik auf Abwege geführt. So erscheint mir bei der Geschichte des mittelalterlichen Judeneides (S. 119[5]) das entscheidende Problem nicht in der Aufdeckung der byzantinischen oder islamischen Vorläufer zu liegen, sondern darin, ob alle mittelalterlichen Judeneide letztlich auf die jüdischen Eidesformeln zurückgehen. Wenn dem so ist, wofür manches spricht, würde die parallele Entwicklung dieser Rechtseinrichtung in verschiedenen Ländern eine natürliche Erklärung finden. Leider verbietet die Knappheit des verfügbaren Raumes, auf einzelne Probleme näher einzugehen.

Die Bibliographie ist mit unendlichem Fleiße gesammelt und mit großer Sachkenntnis zusammengestellt. Der streng durchgeführte Grundsatz, jede Abhandlung nur ein einziges Mal zu erwähnen, „auch wenn sie in anderem Zusammenhang von wesentlicher Bedeutung erscheinen mag", bildet zweifellos eine Erschwerung für den Benutzer. Auch liegt die Gefahr nahe, daß dadurch Unklarheiten entstehen können. Angesichts solcher Folgen hätten Raumgründe zurücktreten müssen. Wo die wissenschaftliche Erörterung es erforderte, wurden mit den Büchern zugleich literarische Kritiken angeführt, z. B. S. 104 [12], [13], 108 [18]. Es wäre äußerst wertvoll gewesen, wenn dieses Verfahren zu einem allgemein befolgten Grundsatz gemacht worden wäre. Denn es fehlt bisher an einer Zeitschrift, in der man sich leicht und zuverlässig über die wissenschaftliche Bewertung jüdisch-historischer Werke unterrichten kann. So viel über die allgemeinen Grundsätze. Ich notiere nur noch einige Bemerkungen, die sich mir bei der Benutzung ergaben. Man wird wohl bei aller Objektivität nicht gut W. Graus Buch *„Antisemitismus im späten Mittelalter"* als „das relativ beste Werk dieser Schule", nämlich der nationalsozialistischen Historiker bezeichnen können (S. 108 [18]). A. Lukyn Williams' „Haman-Agobard or Saint Agobard", *CQR.* CXV, S. 67—78, bringt im wesentlichen nur eine Wiedergabe der älteren Forschungsergebnisse von Friedrich Wiegands Abhandlung „Agobard von Lyon und die Judenfrage", SA. aus *Erlanger Festschrift für Prinz Luitpold von Bayern,* Erlangen 1901, welche vorläufig die maßgebende monographische Bearbeitung bildet. Valeriu Marcu's *Expulsion of the Jews from Spain* bietet keine wissenschaftliche Darstellung; vgl. die ungünstige Kritik von I. G. Llubera, *History* XXI, 1937, S. 380. Trotz großer Vollständigkeit der Bibliographie sind doch manche Aufsätze namentlich in nichtjüdischen Zeitschriften übersehen worden. In der Zeitschriftenschau am Ende dieses Heftes ist eine Reihe solcher Abhandlungen zu finden. Hier seien noch folgende angemerkt: Rudolf Stammler, „Voltaire gegen Hirschel" in Stammler, *Deutsches Rechtsleben in alter und neuer Zeit* I, Charlottenburg 1928, S. 357—369; Adolf Kober, „Karl Marx' Vater und das napoleonische Ausnahmegesetz gegen die Juden 1808", *Jahrbuch des Kölnischen Geschichtsvereins* XIV, 1932, S. 111—125; Izak Lewin, Przyczynki do dziejów i historji literatury zydów w Polsce (Beiträge zur Geschichte und Literatur der Juden in Polen), Lwów 1935.

Eingehende Beschäftigung mit Einzelproblemen wird sicherlich noch hie

und da sachliche Berichtigungen oder Verbesserungen und bibliographische Ergänzungen bringen. Das liegt ganz in der Natur der Sache und entspricht zweifellos auch den Intentionen des Verfassers, weitere Forschung anzuregen. Deshalb können solche — am ganzen Werke gemessen — bloß geringfügige Nachträge in keiner Weise sein großes wissenschaftliches Verdienst schmälern. Barons dritter Band ist *das* problemgeschichtliche und bibliographische Handbuch der Sozialgeschichte der Juden, für das dem Verfasser der aufrichtige Dank der Wissenschaft sicher ist.

New York. *Guido Kisch.*

## Solomon Katz (Instructor in History, University of Washington), *The Jews in the Visigothic and Frankish Kingsdoms of Spain and Gaul.* Monographs of the Mediaeval Academy of America, No. 12, Cambridge, Massachusetts, 1937. XI und 182 Seiten mit VI Tafeln.

Mit nicht geringen Erwartungen muß jeder an die Lektüre dieses Buches herantreten, der an der Rechts- und Sozialgeschichte der europäischen Juden im frühen Mittelalter interessiert ist. Unsere Kenntnis von den Juden in Spanien während der westgotischen Epoche, die Nachrichten über Auftreten und Schicksale der Juden im Frankenreich bis zum Ende der Karolingerzeit verdanken wir größtenteils rechtsgeschichtlichen Quellen. „Keiner von den jüdischen Historikern Jost, Graetz oder Dubnow", so bemerkt der Verfasser in seiner Vorrede, „hat ein ausreichendes oder gar vollständiges Bild von der Geschichte der Juden in dieser Periode entworfen." Deshalb hält er eine „kritische Untersuchung der Quellen", vor allem der Rechtsquellen, für den gegebenen Weg, um Klarheit zunächst über die rechtliche Lage und damit über die Frühgeschichte der Juden in Westeuropa überhaupt zu erlangen. „Die kirchliche und staatliche Judengesetzgebung in Spanien und Gallien soll in ihren Einzelheiten untersucht werden." Die Vollendung dieser Forschungen wurde, so berichtet das Vorwort weiter, durch die Freigebigkeit des bekannten amerikanischen Mäcenas Lucius N. Littauer ermöglicht. Die Mittel für die Veröffentlichung des Buches hat zum Teil die Carnegie Corporation of New York bestritten. Die Publikation selbst erfolgte unter den Auspizien der Mediaeval Academy of America als Band 12 ihrer Monographien zur Geschichte des Mittelalters. Die äußere Ausstattung des Buches ist geradezu verschwenderisch, prächtiger Druck auf kostbarem Papier, ohne Sparsamkeit in der Raumausnutzung, dazu schöne Bildtafeln und Kartenskizzen, kurz ein Meisterstück amerikanischer Buchtechnik.

Im Vorwort und im Schriftenverzeichnis zollt der Verfasser hohe Anerkennung und uneingeschränkte Bewunderung dem ausgezeichneten Werke von Jean Juster, *Les juifs dans l'empire Romain, leur condition juridique, économique et sociale* (2 Bände, Paris 1914)[1]. Auch erwähnt er daselbst Justers Monographie: „La condition légale des juifs sous les rois Visigoths", die in der Festschrift für Paul Frédéric Girard *Études d'histoire juridique* im Jahre 1912 in Paris erschien.[2]) An ihr hat er freilich auszusetzen, daß darin

[1] Im folgenden zitiert als „J. I. II.".

[2] Im folgenden zitiert als „J".

„die Sozial- und Wirtschaftsgeschichte fast vollkommen vernachlässigt worden ist", weshalb dieser Abhandlung nur beschränkter Wert zukomme. Naturgemäß werden dadurch die Erwartungen, die der Leser an das vorliegende Buch stellt, wenn möglich, noch weiter gesteigert. Denn jeder, der einmal Gelegenheit hatte, sich mit Justers rechtshistorischen Arbeiten bekannt zu machen, weiß, daß es sich hier in der Tat um eine hervorragende wissenschaftliche Leistung handelt. Juster hat auch für die frühe Rechts- und Sozialgeschichte der Juden in der europäischen Diaspora die Quellen sorgfältig gesammelt und eindringlich durchforscht. Um über seine Ergebnisse hinauszukommen, wird es einer ähnlichen Leistung bedürfen, einer Leistung, die auf ausgebreiteten Kenntnissen beruht, mit der gleichen wissenschaftlichen Sauberkeit gearbeitet und von ähnlichem wissenschaftlichem Verantwortungsgefühl getragen ist, die aus jeder Zeile Justers hervorleuchten.

Das vorliegende Buch ist kein Werk von solchen Qualitäten. Schon bei der ersten Orientierung über seinen Inhalt fällt die große Ähnlichkeit, ja weitgehende Übereinstimmung mit Aufbau und Einteilung von Justers zweibändigem Werk und seiner Abhandlung über die Rechtslage der Juden unter den westgotischen Königen auf. Die Überschriften der einzelnen Abschnitte stimmen großenteils überein. Am Ende der Lektüre angelangt, ist man überrascht, feststellen zu müssen, daß der Verfasser über die Ergebnisse von Juster und der nicht sehr reichhaltigen späteren Literatur in keiner Hinsicht hinausgekommen ist, auch nicht für das Gebiet der Sozial- und Wirtschaftsgeschichte. Im Hinblick auf die Armut an ursprünglicher Quellenverarbeitung und auf die Dürftigkeit an selbständiger Gedankenführung, die keinem einigermaßen Sachkundigen verborgen bleiben können, taucht sogar die Frage auf, wozu dieses Buch überhaupt geschrieben und überdies noch veröffentlicht worden sein mag. Die Bemühung des Rezensenten, einen vernünftigen Grund für die Daseinsberechtigung des Buches ausfindig zu machen und irgendwelchen wissenschaftlichen Fortschritten darin auf die Spur zu kommen, führte aber zu einer noch unerfreulicheren Entdeckung. Das Buch ist nicht nur unselbständig im Aufbau, sein Inhalt verrät noch größere Unselbständigkeit. Der Text der Darstellung umfaßt 138 Seiten. Bringt man von ihnen 7 Seiten in Abzug, die ganz oder teilweise unbedruckt sind, so verbleiben noch 131. Von diesen enthalten nicht weniger als 77 Seiten, also weit mehr als die Hälfte des Buches, ganz oder teilweise wörtliche Übersetzungen größtenteils aus Juster. Justers Abhandlung aus der Girard-Festschrift ist bis auf geringfügige Kürzungen vollständig in wortgetreuer Übertragung aufgenommen. Katz hat nach folgender Methode gearbeitet. An die Spitze jedes Kapitels seines Buches stellte er eine allgemeine Betrachtung über die Geschichte des untersuchten Teilproblems, zum Beispiel über jüdische Proselyten, jüdischen Kult, Bevorrechtigung und rechtliche Benachteiligung der Juden, Rechtsgewalt jüdischer und nichtjüdischer Gerichte usw. Sodann folgt jedes Mal je ein Abschnitt über die Verhältnisse in Spanien, an den sich ein anderer über die Lage in Gallien anschließt. Die allgemeine Betrachtung an der Spitze ist in der Regel wörtlich aus Justers erstem oder zweitem Bande genommen, die Ausführungen über Spanien stammen zumeist wörtlich aus Justers Abhandlung über die Rechtslage der Juden unter den westgotischen Königen. Die Darlegungen über Gallien scheinen auf andere Quellen zurückzugehen, möglicherweise sogar zum Teile selbständig

zu sein. Auf Grund von Stichproben ließen sich immerhin einige Entlehnungen feststellen, die als solche nicht ersichtlich gekennzeichnet sind.[3]) Anderen nachzuforschen, erschien mir zu zeitraubend. Die dafür aufzuwendende Mühe steht sicherlich außer Verhältnis zu dem zu erwartenden Ergebnis. Sogar soweit sich etwa völlig selbständige Arbeitsleistung feststellen lassen sollte, könnte sie angesichts der zahlreichen Entlehnungen zugunsten des Buches quantitativ nicht ins Gewicht fallen, unter gar keinen Umständen aber qualitativ das Bild verändern.

Der Gesamteindruck von Katz' Arbeitsweise ist außerordentlich ungünstig. Die Grenzen der ungeschriebenen, aber international anerkannten Gesetze der Wissenschaftlichkeit sind von ihm in bedenklichster Weise überschritten worden. Er hätte sich offen und ehrlich dazu bekennen müssen, mit dem weitaus größeren Teile des Buches nichts anderes als eine wortgetreue Übersetzung von Justers Arbeiten geboten zu haben. Wären diese in ihrer Komposition unangetastet ins Englische übersetzt worden, unter Hinzufügung und Einarbeitung der in den fünfundzwanzig Jahren seit ihrem Erscheinen veröffentlichten Literatur, so hätte damit der Wissenschaft und besonders manchem Forscher, der der französischen Sprache nicht mächtig ist, ein wertvoller Dienst erwiesen werden können[3a]. Nichts dergleichen ist aber geschehen. Katz' Buch tritt nicht als bescheidene Übersetzung auf, wird vielmehr anspruchsvoll als selbständige Leistung ausgegeben. Das ist es aber mindestens zum größeren Teile keineswegs. Das hohe Lob, das in Vorwort und Literaturverzeichnis Juster und seinen Werken gezollt wird, kann Katz weder decken noch auch nur entschuldigen. Die im Vergleich zu der großen Anzahl von Entlehnungen nur spärlichen Hinweise auf Juster in Text und Fußnoten können nicht als wissenschaftlich ausreichende Kennzeichnung und Rechtfertigung betrachtet werden[4]. Die vom Übersetzer angewendete Arbeitstechnik ist nicht ohne Sorg-

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[3] K 27 I = Friedrich Wiegand, „Agobard von Lyon und die Judenfrage", Sonderabdruck aus der Erlanger *Festschrift für Luitpold von Bayern*, Erlangen 1901, S. 28 II; zu K 109 IV vgl. Johannes E. Scherer, *Die Rechtsverhältnisse der Juden in den deutsch-österreichischen Ländern* I, Leipzig 1901, S. 252—253; K 136 II 1,3 = Ignaz Schipper, „Anfänge des Kapitalismus bei den abendländischen Juden im früheren Mittelalter", Sonderabdruck aus der *Zeitschrift für Volkswirtschaft, Sozialpolitik und Verwaltung* XV, Wien 1906, S. 33, V 1, 2; K 137 IV = Julius Aronius, *Regesten zur Geschichte der Juden im fränkischen und deutschen Reiche bis zum Jahre 1273*, Berlin 1887—1902, Nr. 104 I. — In diesem ebenso wie in den folgenden Zitaten wird das Buch von Katz bloß mit „K" angeführt, unter Hinzufügung der Seitenzahl. Die römischen Zahlen beziehen sich auf die Absätze der betreffenden Buchseite, die ihnen folgenden arabischen Zahlen auf die Sätze innerhalb der Absätze. Die hochgestellten kleinen Zahlen verweisen auf die Anmerkungen.

[3a] Katz selbst hat nach Erscheinen seines Buches eine neue Auflage von Justers Werk angeregt; vgl. *Jewish Quarterly Review* XXVII, 1937, S. 400, Anm. 3.

[4] Aus K 133[4] geht deutlich hervor, daß der korrekte wissenschaftliche Brauch Katz wohlbekannt war. Beispiele für ordnungsgemäße Zitate: K 34[5], 47[7], 103[4], 104[6], 126[4]. Irreführend dagegen ist es z. B., wenn K 79[8] bloß für das

falt und nicht ohne Kenntnisse zur Ausführung gebracht. Hier ist, wie bereits angedeutet wurde, ein Mosaikbild an wörtlichen Übersetzungen zusammengefügt, zu dem die einzelnen Steinchen vor allem Juster geliefert hat[5]. Seine beiden Werke sind ausgiebig exzerpiert. Wortgetreue Übernahme[6] wechselt mit bloß auszugsweiser Wiedergabe[7]. Verkürzungen[8], Zusammenziehungen[9], Auslassungen[10], kleine Hinzufügungen[11] sind nicht selten. Die Abteilung der Absätze wird verändert[12], der Inhalt von Anmerkungen bisweilen dem Text einverleibt[13]. Im Text werden Umstellungen vorgenommen[14], manchmal kleine Zusätze beigefügt[15]. Mehrere Anmerkungen werden in eine einzige zusammengezogen [16]. Durch Beibehaltung von Justers Notenapparat wird der Eindruck hervorgerufen, als habe der Übersetzer das weitschichtige Quellenmaterial unabhängig von seiner Vorlage durchforscht und so die im Text wiedergegebenen Forschungsergebnisse selbst gewonnen. In Wahrheit sind sie aber Justers geistiges Eigentum. Selbst Anmerkungen mit höchst persönlichen kritischen Bemerkungen Justers über Quellen und Literatur sind nicht als solche erkennbar[17]. An diesen Stellen hätte Juster unbedingt ausdrücklich zitiert werden müssen. So aber gewinnt es den Anschein, als sei Katz selbst auf Grund eigener Quellenstudien zu jenen scharfsinnigen Beobachtungen oder Schlußfolgerungen gelangt[18]. Man kann ein solches Verfahren im allge-

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Ende der Seite auf J I 446[1] verweist, während nahezu der ganze Text dieser Seite aus J I 440—443 stammt; oder wenn K 82[1] anmerkt: „J II 1—27 hat die Quellen hinsichtlich der Juden im römischen Reich untersucht", während die beiden Seiten K 82—83 mit der Darstellung der Rechtslage in westgotischer und merowingischer Zeit auf J II 25—26 und J 277[3,4] zurückgehen.

[5] Beispiele: K 51 = J 312, 313, 315 (verkürzt); K 57 I = J I 409, 412, 413; K 57 II = J 301, 301[2]; K 77 = J I 394, 394[4], 395, 399, 400; K 79 = J I 440, 441, 442, 443, 446[1]; besonders charakteristisch K 88 im Vergleich mit J II 45—48; K 89 mit J 317—319.

[6] Vgl. z. B. K 13—22 = J 280—298.

[7] Vgl. z. B. K 71 und J I 368, 372—374; K 96—97 und J II 71 f., 74—76; K 118 I und J II 243—245.

[8] Vgl. z. B. K 58 III und J 302; K 61 III und J I 365—367.

[9] Vgl. z. B. K 77[3] = J I 395[8,10]; K 110 III und J 330.

[10] Vgl z. B. K 48 II a. E. und J 310; K 51 IV und J 314; K 71/72 und J 306.

[11] Vgl. z. B. K 22[1] mit J 297[5]; K 49[4] mit J I 272[1]; K 50[3] mit J 311[2].

[12] Vgl. z. B. K 58 mit J 302.

[13] Vgl. K 19[2] mit J 290[3]; K 31 mit J I 115[3]; K 58 mit J 302 f.[8]; K 61 62 mit J I 367[4], 367[1].

[14] Vgl. z. B. K 98 I mit J 322—323.

[15] Vgl. z. B. K 79 II mit J I 443; K 89 I mit J III 318; K 121 I mit J II 261[9].

[16] Vgl. z. B. K 77[3] mit J I 395[8,10]; K 83 I mit J 277[3,4]; K 89[2] mit J 318[5,6,7].

[17] Vgl. z. B. K 10[1] = J 276[1]; die Kritik an Zeumer, bzw. Graetz bei K 14[7,8] stammt wörtlich aus J 282[1,2]; ebenso die Kritik an Graetz und Paul à Wengen bei K 20[3] aus J 294[7]; vgl. noch K 50[3] = J 311[2] mit Zusatz; K 120[3] = J II 250[1], jedoch setzt K „mss" statt richtig „ms".

[18] Z. B. K 16 f.[8] = J 286[4]; K 22[1] = J 297[5]; K 34[1] = J I 76[4]. Charakteristisch ist der Umbau der Anmerkung K 88[7] gegenüber J II 48[5].

meinen gar nicht scharf genug mißbilligen. Im vorliegenden Falle greift es noch dazu in die wissenschaftlichen Verdienste eines Gelehrten ein, der sich leider nicht mehr selbst dagegen zur Wehr setzen kann. Denn Juster fand, erst dreißigjährig, 1916 den Tod für sein Vaterland[18a].

Bei den bisher angeführten Beispielen mag es bewenden. Sie dürften wohl ausreichen, um das hier angedeutete Urteil über eine derartige Arbeitsweise nicht als unbegründet erscheinen zu lassen. Zahlreiche Einzelheiten sind in meinem Exemplare des Buches vermerkt. Auch auf die große Zahl von Ungenauigkeiten[19], besonders schlimm in der Wiedergabe hebräischer Ausdrücke[19a], kann hier nicht eingegangen werden.

Dagegen gebietet noch die Gewissenhaftigkeit, in eine Prüfung des wissenschaftlichen Wertes jener Teile des Buches einzutreten, welche sich nicht als Entlehnungen aus Juster darstellen. Sicherlich nicht kenntnislos und nicht ohne Fleiß hat Katz versucht, sich mit der Literatur zum Probleme des Buches aus den letzten 25 Jahren vertraut zu machen. Das war aus verschiedenen Gründen notwendig. Daß er Vollständigkeit nicht erzielt hat, sei ihm nicht zum Vorwurf gemacht. Schwerer wiegt die Unzulänglichkeit der wissenschaftlichen Verarbeitung. Dafür nur das eine oder andere kennzeichnende Beispiel. Schon im Jahre 1902 hatte Karl Zeumer, dem wir die unübertroffene Ausgabe der westgotischen Rechtsquellen verdanken, erklärt, oft genug und mehr als genug wiederholt seien nun jene bekannten, vernichtenden Worte Montesquieus über die angeblich „kindischen, linkischen und törichten" Gesetze der Westgoten, die — nicht aus wirklicher Kenntnis der Quellen entstanden — bloß ein Zerrbild wiedergeben[20]. Katz wärmt Montesquieus Urteil nun von neuem auf, um Graetz' gegenteiliger Überschätzung der westgotischen Gesetzgeber entgegenzutreten[21]. Auch sonst begnügt sich Katz damit, bloß an der Oberfläche haftend, die Ansichten der von ihm herangezogenen Verfasser zu einer bestimmten Frage, zum Beispiel zum Problem der Rechtsstellung der Juden im Frankenreich wiederzugeben, ohne nach einem eigenen Lösungsbeitrag in den Quellen zu forschen, ja ohne überhaupt zur Problematik selbst vorzustoßen[22, 22a]. Dabei fehlt es ihm durchaus nicht an kritischem Sinn. Aber infolge seiner Oberflächlichkeit müssen seine Urteile oft schief ausfallen. Was soll man zum Beispiel dazu sagen, wenn Katz zu Michael Tangls feiner paläo-

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[18a] *Encyclopaedia Judaica* IX, Berlin 1932, S. 616.

[19] Nur ein Beispiel: In K 137 und Index heißt der Name der Gräfin Dodana von Toulose ständig Dodona.

[19a] Vgl. auch Alexander Marx, *American Historical Review* XLIII, 1938, S. 589.

[20] Vgl. Eugen Wohlhaupter, *Gesetze der Westgoten,* Weimar 1936, S. XI.

[21] K $20^3$; vgl. dazu J $294^7$.

[22] K 84—87; vgl. zum Problem „Fremdenrecht und Judenrecht" G. Kisch, „Otto Stobbe und die Rechtsgeschichte der Juden", *Jahrbuch der Gesellschaft für die Geschichte der Juden in der Tschechoslowakischen Republik* IX, Prag 1938, S. 14 f. mit weiteren Literaturangaben; G. Kisch, „The Jewry-Law of the Medieval German Law-Books" I, *Proceedings of the American Academy for Jewish Research* VII, New York 1935—36, S. 64—66.

[22a] Vgl. eine ähnliche Haltung bei K 11 u. a. a. O.

graphischer Studie: „Zum Judenschutzrecht unter den Karolingern“[23] ohne jede Begründung trocken bemerkt: „Tangls Beweisgründe sind nicht sehr überzeugend“[24]. Oder wenn er einem Forscher wie Georg Caro Oberflächlichkeit und unzulängliche urkundliche Belegung seiner Forschungen vorwirft[25]. Man kann noch mehr ähnliche Fehlurteile in der dem Buch beigegebenen kritischen Bibliographie finden[26].

Abschließend muß das Gesamturteil über das Werk entschieden ungünstig lauten. Es hätte nicht veröffentlicht werden dürfen. Durch den unbestreitbar großen Fleiß, der auf Kompilation und Übersetzung verwendet wurde, hätte der Wissenschaft ein erheblicher Dienst geleistet werden können, wenn die unverrückbaren Grenzen der Wissenschaftlichkeit eingehalten worden wären. In diesen Feststellungen liegt auch die allgemeinere Bedeutung des Falles für Wissenschaftlichkeit und Verantwortungsbewußtsein. Wer die unsäglichen Schwierigkeiten kennt, die sich heute der Publikation wissenschaftlich wertvoller Werke entgegenstellen, diese jahrelang hinausschieben oder gar gänzlich vereiteln, der muß aufs tiefste bedauern, daß so reichliche Mittel nicht einer Arbeit zugute kamen, die solcher Förderung wirklich wert war. Und schon meldet sich ein Rezensent zum Worte, um Katz' Buch als „außerordentlich wertvolles Werk auf Grund umfangreicher Quellenforschungen“ zu preisen[27]. Videant consules, ne quid respublica litterarum detrimenti capiat!

New York. *Guido Kisch.*

## Zur Geschichte des Judenrechts in Deutschland. *Deutsche Rechtswissenschaft,* herausgegeben von Karl August Eckhardt, II. Band, 2. Heft. Hamburg 1937. S. 97—192.

Auch judengegnerisch eingestellte Literatur kann anregend wirken und verdient daher, nicht unbeachtet zu bleiben. Freilich wird man die Einschränkung machen müssen, daß es sich um Leistungen handelt, die den billigermaßen zu stellenden wissenschaftlichen Anforderungen entsprechen und somit die rechtshistorische Erkenntnis fördern. Dies gilt von einigen Beiträgen in

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[23] *Neues Archiv für ältere deutsche Geschichtskunde* XXXIII, 1907, S. 197—200.

[24] K 86[8]. — Ähnlich K 29 über Friedrich Wiegand.

[25] K 172.

[26] Übrigens K 174 zu Graetz, *Die westgotische Gesetzgebung in Betreff der Juden* = J 276[1].

[27] So wörtlich Ernst Fraenkel in seiner „Besprechung“ in *Zeitschrift für die Geschichte der Juden in Deutschland* VII, 1937, S. 189. Ähnlich lautet das Urteil von Eugen Wohlhaupter, *Savigny — Zeitschrift für Rechtsgeschichte,* German. Abt. LVIII, 1938, S. 851: „Obwohl das Buch von Katz ... keine Pionierleistung auf wissenschaftlichem Neuland darstellt, bietet es doch auf quellenmäßiger Grundlage und unter achtsamer Berücksichtigung des Schrifttums eine gediegene Zusammenfassung dessen, was wir heute über die Juden im Westgotenreiche und in Gallien wissen können.“

dem Sonderhefte der Zeitschrift „Deutsche Rechtswissenschaft", das ausschließlich der Rechtsgeschichte der Juden gewidmet ist[1].

Eine solche Arbeit ist Hans-Kurt Claussens Studie *„Der Judeneid, ein Beitrag zur Geschichte des Rechtsschutzes"* auf S. 166—189. Maßvoll in ihren judengegnerischen Bemerkungen bietet sie einen willkommenen geschichtlichen Überblick über die Judeneidesformeln von der Zeit der Volksrechte bis zur Abschaffung des besonderen Judeneides im 19. Jahrhundert. Sie sucht dieses Quellenmaterial entwicklungsgeschichtlich und systematisch zu ordnen und hat handschriftliche Texte herangezogen. Freilich ist dem Verfasser, der auch die Arbeiten jüdischer Autoren sachgemäß berücksichtigt, die neueste, sehr beachtenswerte Abhandlung über seinen Gegenstand entgangen, nämlich Thea Bernsteins *Die Geschichte der deutschen Judeneide im Mittelalter,* philosophische Dissertation Hamburg 1922, bloß maschinenschriftlich vorhanden in der Preußischen Staatsbibliothek in Berlin; ein Auszug ist gedruckt in Königsberg Pr. 1922[2].

Ein Beispiel dagegen, wie eine Arbeit nicht sein darf, wenn sie wissenschaftlich voll genommen werden will, bildet der Aufsatz von Günther Franz *Der Jude im katholischen Kirchenrecht,* S. 157—166. Der Verfasser hat selbständige Quellenstudien kaum unternommen, auf Grund dürftiger Literaturauszüge wird nur durchaus Bekanntes, und keineswegs gerade glücklich, wiedergegeben, um nachzuweisen, daß die mittelalterliche Judengesetzgebung der Kirche bereits „eine ausgesprochene Rassengesetzgebung" gewesen sei. Äußerungen antisemitischer Schriftsteller des 19. Jahrhunderts müssen dabei die keineswegs überzeugenden Andeutungen in den Quellen ergänzen.

Schließlich der umfangreichste Beitrag, die Abhandlung von Rudolf Ruth, *Wucher und Wucherrecht der Juden im Mittelalter,* S. 111—157. Ihre Mängel liegen vielleicht für den nicht rechtshistorisch geschulten Leser weniger kraß zu Tage als bei Franz. Sie lassen aber, einmal erkannt, die Wissenschaftlichkeit der Leistung in keinem günstigeren Lichte erscheinen. Schon die Sprache klingt für eine wissenschaftliche Abhandlung ungewöhnlich scharf. Hier ein Beispiel, S. 148: „Talmudische Verdrehungskünste haben diese so eindeutige Lage des deutschen mittelalterlichen Wirtschaftslebens, in dessen Rahmen die Juden durchaus als Fremdkörper und Schädlinge auftreten, in ihr Gegenteil verkehrt. Mit raffinierter Geschicklichkeit ist es den zahlreichen jüdischen Schriftstellern, die sich hauptsächlich mit der Geschichte der Juden beschäftigen — dem Druck ihrer völlig einmütigen Meinung vermochten sich auch deutschblütige Forscher auf die Dauer nicht zu entziehen —, gelungen, den jüdischen Geldhändlern die Rolle des ausgesaugten, grausam verfolgten und willkürlich beraubten, gemiedenen und verachteten Volkes zuzuschieben. Die Dinge werden einfach auf den Kopf gestellt: Das Wuchergeschäft der Juden

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[1] Zu dem ersten Beitrag H. Meyer, *Das jüdische Hehlerrecht,* vgl. G. Kisch, *Das „jüdische Hehlerrecht", HJ.* I, S. 1 ff.

[2] Zur Geschichte des Judeneides befinden sich folgende Arbeiten von *mir* zurzeit im Drucke: 1. „Studien zur Geschichte des Judeneides im Mittelalter", *HUCA.* XIV, 1939; 2. „Zum Landshuter Judeneid", *ZGJD.* VIII, 1938; 3. „Nürnberger Judeneide", *Alim* 1939; 4. „Ein unbekannter süddeutscher Judeneid aus dem 14. Jahrhundert", *HJ.* I, 1939.

ist den Juden „aufgedrängt", weil man die christliche Bevölkerung vor der damit verbundenen moralischen Schädigung zu bewahren sucht und deshalb, da nun einmal der Kredit unentbehrlich war, es geradezu gern sieht, daß die Juden in diese durch das kanonische Zinsverbot in Verkennung zwingender wirtschaftlicher Bedürfnisse gerissene Lücke treten. Man hat, so folgert man weiter, den Juden jede andere Erwerbsmöglichkeit, insbesondere den Handel, dessen Träger sie bis in die Frühzeit des Mittelalters gewesen waren, verschlossen." „Wir denken heute anders darüber", sagt der Verfasser auf der vorangehenden Seite. Aber zu seiner „geläuterten Erkenntnis" kann er unmöglich „auf Grund gewissenhafter Erforschung des zur Verfügung stehenden Quellenmaterials" gelangt sein, wie er es für seine, in der Festschrift für Ernst Heymann *Beiträge zum Wirtschaftsrecht* I (Marburg 1931) früher erschiene Abhandlung „Das kanonische Zinsverbot" behauptet (S. 111). Denn selbständige Quellenforschungen hat er seither für die Behandlung seines wucherrechtlichen Themas überhaupt nicht unternommen. Lediglich drei Quellenzitate könnten ursprünglich sein: S. 114 Anm. 5; S. 143; S. 145 Anm. 1. Es dürfte die Mühe nicht lohnen, ihre Herkunft zu überprüfen. Denn alles andere Material ist restlos aus den bekannten Werken von Stobbe und Scherer genommen, ferner aus Arthur Rosenberg, *Beiträge zur Geschichte der Juden in Steiermark* (Wien und Leipzig 1914) und aus Max Neumann, *Geschichte des Wuchers in Deutschland* (Halle 1865). Das reiche Urkundenmaterial über die Juden und ihre Rechtsverhältnisse im Mittelalter, das seither ausschließlich von nichtjüdischen Forschern bereitgestellt wurde und sicherlich viele wertvolle Aufschlüsse besonders für das Thema Wucherrecht der Juden hätte geben können[3], ist überhaupt nicht verwertet oder auch nur herangezogen. Manche Behauptungen Ruths sind daher sehr vage (vgl. z. B. S. $116^{2}$, $117^{1}$, 123, 129), wie er selbst erkennt. Summarische Verweisungen auf Stobbe, Rosenberg und I. Kracauer, *Geschichte der Juden in Frankfurt a. M.* (Frankfurt a. M. I 1925, II 1927) bilden durchaus die Regel (z. B. S. 117, $118^{2,3}$, $120^{1,4,5}$, $121^{2}$, $122^{3}$, $127^{1}$, $129^{2}$, $130^{5}$, $133^{1}$, $137^{1}$, 139, 140, $141^{1}$: „Das von Stobbe, Caro, Kracauer beigebrachte Material liefert hierfür genügenden Beweis"; $146^{1}$, $150^{2}$, 154). Ab und zu wird eine Polemik gegen Stobbe eingestreut (z. B. S. $127^{2}$, $130^{4}$, 132, $134^{1}$); bisweilen werden jüdische Schriftsteller, wie Georg Caro und Kracauer, kritisiert (z. B. S. 150, $151^{2}$, $152^{1}$). Der Verfasser glaubt, dieses Verfahren mit folgender Bemerkung entschuldigen zu können: „Das für eine Untersuchung über die Geschichte der Juden vorhandene Quellenmaterial ist im wesentlichen offengelegt und veröffentlicht und ist schon

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[3] Vgl. G. Kisch, „Otto Stobbe und die Rechtsgeschichte der Juden", *JGJČ.* IX, 1938, S. 11 f.; G. Kisch, *ZRG.* LVII, 1937, S. 113 ff. — George Löning, *ZRG.* LVIII, 1938, S. 257 Anm. 2, findet meine ausführlich begründete Behauptung daselbst, „daß zur Erforschung der mittelalterlichen Rechtsgeschichte der Juden von jüdischer Seite bisher überaus wenig beigetragen worden ist", *recht merkwürdig.* Aber er ist den Gegenbeweis schuldig geblieben. Er beruft sich „demgegenüber" nur auf den „Kenner" R. Ruth und auf das für die mittelalterliche Rechtsgeschichte der Juden unbewiesene Schlagwort, „daß die neuere Geschichte der Juden fast ganz ihnen allein als Arbeitsfeld überlassen wurde".

eifrig ausgewertet worden. Von einem umfangreichen wissenschaftlichen Apparat glaube ich deshalb, mit Rücksicht auch auf den beschränkten Raum, absehen und mich mit Verweisungen auf zuverlässige Literatur begnügen zu können." Aus seiner wissenschaftlichen Schulung heraus hatte Ruth offenbar gefühlt, daß die vollkommene Umdeutung Jahrzehnte lang anerkannter wissenschaftlicher Forschungsergebnisse einer breiteren und festeren wissenschaftlichen Fundamentierung bedarf.

Dem gleichen Gefühl ist anscheinend auch die erste von den drei Entschuldigungen entsprungen, die Ruth in Form von Verwahrungen zum Inhalt einer „Vorbemerkung" zu seiner Abhandlung macht. An ihrer Spitze wird die Tendenz der Arbeit zum Ausdruck gebracht: „Es gibt kaum ein Gebiet der deutschen Rechtsgeschichte, in dem festgewurzelte wissenschaftliche Ansichten so sehr einer Überprüfung im Lichte geläuterter Erkenntnis und neuer Weltanschauung bedürfen als gerade die Geschichte der Juden im deutschen Mittelalter." Indem sich Ruth auf seine Studie „Das kanonische Zinsverbot" beruft, die übrigens nicht 1930, sondern 1931 erschienen ist, fährt er fort: *„Diese Vorarbeit, deren geradlinige Fortsetzung die hier vorgelegte Studie bildet, bewahrt mich wohl vor dem Verdacht, daß meine wissenschaftliche Überzeugung einer vorgefaßten Meinung entspringe,* wenn in den nachstehenden Ausführungen eine Auffassung sich zu Worte meldet, die mit feststehenden bisherigen Ansichten sich in wichtigen Punkten nicht deckt." Danach muß man also annehmen, daß die vorliegende Studie als „geradlinige Fortsetzung" mit ihrer „Vorarbeit" aus dem Jahre 1931 in der wesentlichen Einstellung zum behandelten Quellenstoff und in der Beurteilung von grundsätzlichen Problemen weitgehende Übereinstimmung aufweist. Durch eine solche allein würde allerdings am überzeugendsten dargetan, daß für den „Verdacht einer vorgefaßten Meinung" kein Raum bestehen kann. In einer streng wissenschaftlichen Abhandlung wird freilich die Verwahrung gegen einen solchen Verdacht immer etwas Ungewöhnliches bleiben. Sie reizt außerdem zu Vergleichen zwischen der Vorarbeit und ihrer geradlinigen Fortsetzung, von deren Ergebnissen ich hier zwei Proben vorlege. Ruths Äußerungen aus dem Jahre 1931 stelle ich seine entsprechenden Ausführungen aus dem Jahre 1937 gegenüber. Ihr Inhalt mag für sich selber sprechen.

## I.

Ruth 1931, S. 330:

„Ein gewerbsmäßiges Geldleihertum, das sich lediglich mit bankmäßigen Geschäften befaßte, bestand noch nicht. Erst im 14. Jahrhundert bauen die Juden und Kawerzen diesen Geschäftszweig in großzügiger Weise aus, als sie von dem Gebiet des Handels, mit dem sie sich bis dahin vorzugsweise befaßt hatten, abgedrängt wurden."

Ruth 1937, S. 143:

„Und die Juden waren in diesem Geschäft [dem gewerbsmäßigen Geldleihertum] schon seit Jahrhunderten erfahren und gewitzigt. Es ist nicht so, daß die Juden erst infolge ihrer Verdrängung aus dem Gebiet des Warenhandels sich dem Geldleihgeschäft gewidmet hätten. Im Gegenteil, das Geldleihgeschäft war eine stete Begleiterscheinung ihres Warenhandels."

II.

Ruth 1931, S. 331 und Anm. 26:

„Die Kirche kann sich ferner um ihrer moralischen Reputation und der Erhaltung ihres Kredits willen nicht der gleichen skrupellosen Mittel gegenüber ihren meist christlichen Gläubigern bedienen wie die Landesherren, die durch schlimmsten Machtmißbrauch häufig in sattsam bekannter Weise sich ihrer Schulden bei den Juden entledigten.[26])

[26]) Vgl. Süßmann, *Die Judenschuldentilgung unter König Wenzel,* 1907 (Schr. d. Ges. z. Förderung d. Judentums) mit zahlreichen Belegen auch für frühere Zeiten."

Ruth 1937, S. 127 und Anm. 2:

„Die weiteren Judenverfolgungen in späterer Zeit können wir übergehen. Sie bieten besonderes Interesse nur insofern, als regelmäßig mit ihnen allgemeine oder lokale Judenschuldentilgungen[2]) einhergehen, ein Beweis dafür, daß die Frage des Judenwuchers immer wieder die treibende Ursache war und dringende Abhilfe erheischte."

[2]) „Von jüdischen Schriftstellern (vgl. insbesondere Süßmann, *Die Judenschuldentilgungen unter König Wenzel,* Berlin 1907) wird dieser Vertrag meist als Kronbeispiel übelsten Schachers mit dem Schicksal der armen Juden bezeichnet. Auch der historisch so zuverlässige *Stobbe* ist von solcher Auffassung keineswegs frei."

„Ohne zwingende Veranlassung würden die Inhaber des Judenschutzes — jetzt vornehmlich die Landesherren, die mit größerer Sorgfalt, als sie der kaiserlichen Gewalt möglich war, die Verwaltung ihres Gebietes handhabten — sich nicht dazu bereit gefunden haben, die Steuerkraft der Juden, von der ihre Finanzen in erheblichem Umfang abhingen, in solchem Maß durch immer wiederkehrende Vermögenskonfiskationen zu mindern."

S. 156: „... steigerte sich auch die Gegenwirkung in Gestalt von Verfolgungen und Vermögensreduktionen ... Schon das zeigt deutlich an, daß es um andere Dinge ging, als um skrupellose Beraubung der Juden."

Vgl. auch noch die bereits oben abgedruckte Stelle aus Ruth, S. 148.

**So diamentral entgegengesetzte Werturteile hätten sich immerhin aus neuen Quellenforschungen ergeben können. Solche liegen jedoch nach Ruths eigener Bekundung durchaus nicht vor.**

Ihre Unterlassung hat sich auch sonst gerächt. Ruth ist argen Irrtümern zum Opfer gefallen. Ein einziger sei hier hervorgehoben, weil er nicht un-

widersprochen bleiben darf. Auf Seite 122 schreibt Ruth: „Anläßlich der angeblich von Juden in Fulda begangenen Ritualmorde hat Friedrich II. jene berühmte absolucio durch den Spruch einer von ihm einberufenen Kommission gelehrter Männer erwirkt, der freilich *nicht,* wie meistens behauptet wird (z. B. Scherer, S. 75; Kracauer, S. 10), *eine völlige Freisprechung der Juden von dem Vorwurf des Ritualmordes enthält,* sondern lediglich besagt, man könne nichts Gewisses darüber erfahren, ob die Juden bei ihren religiösen Gebräuchen Christenblut notwendig hätten. (Stobbe, S. 184, gibt diesen Spruch allein richtig wieder. Jedoch war der Spruch den Juden eine mächtige Stütze. Immer wieder haben die Juden in späteren Zeiten durch Berufung auf die absolutio die gegen sie erhobenen Vorwürfe zu entkräften versucht.)" Hätte sich Ruth nicht damit begnügt, lediglich die Darstellung bei Stobbe, Scherer und Kracauer zu vergleichen und einer subjektiven Wertung zu unterziehen, wäre er vielmehr auf die Quellen selbst zurückgegangen, auf die ihn das Zitat bei Scherer, S. 75 Anm. 2, deutlich hinwies, dann hätte er eine so unrichtige Behauptung nicht aufstellen können. Stobbe (S. 184, vgl. Anm. 178) gibt nämlich jenen Spruch überhaupt nicht wieder, sondern bloß den subjektiv gefärbten Bericht der Annales Argentoratenses über die Angelegenheit. Wir besitzen aber heute das reichsgerichtliche Urteil selbst, das schon vor vielen Jahrzehnten im Archiv der Stadt Köln entdeckt wurde. Es bezieht sich ausdrücklich auf den Spruch der von Friedrich II. einberufenen Gelehrtenkommission, dessen Inhalt genau wiedergegeben wird. Das Urteil ist seither oft in der Literatur angeführt und wiederholt gedruckt worden, zuerst auf Grund einer vom Kölner Archiv selbst gefertigten Abschrift von R. Hoeniger, „Zur Geschichte der Juden Deutschlands im Mittelalter", Geigers *ZGJD.* I, 1887, S. 142—144; Julius Aronius, *Regesten zur Geschichte der Juden,* Nr. 474, 497, wo die weitläufige Literatur über diesen Reichsspruch verzeichnet ist; besonders Moritz Stern, „Die Blutbeschuldigung zu Fulda und ihre Folgen", Geigers *ZGJD.* II, 1888, S. 194—199.

Die von Ruth geleugnete völlige Freisprechung der Juden von dem Vorwurf des Ritualmordes ist aber in der Tat erfolgt, und zwar mit folgenden Worten: „Quorum super hoc assercionibus publicatis, quia compertum non est in testamento veteri vel in novo, Iudeos avidos esse humani sanguinis hauriendi, immo, quod est predicto prorsus contrarium, quod ab omnis omnino sanguinis fedacione caveant in biblia que dicitur ebrayce berechet, preceptis Moysi datis, decretis iudaicis que dicuntur ebrayce talmilloht, expressius habeamus, presumentes eciam presumpcione non modica, hiis quibus sanguis prohibitus est et animalium permissorum sitim non posse humani sanguinis superesse, rei horribilitate, nature prohibicione ac speciei comoditate qua Christianos eciam amplectuntur, et quod pro eo quod expositum de animalibus de virorum municionibus habere possent pro nichilo, non exponerent periculo substancias et personas, Iudeos loci predicti ab obiecto crimine ac alios Iudeos Alemannie a tam gravi infamia dictante sentencia principum pronunciavimus penitus absolutos."

Deutsche Übersetzung: Ihre [der Kommission] Aussagen darüber haben wir veröffentlicht und es ergibt sich daraus folgendes: Weder im Alten noch im Neuen Testament ist zu finden, daß die Juden nach Menschenblut begierig wären. Im Gegenteil, sie hüten sich vor der Befleckung durch jegliches Blut.

Dies ergibt sich aus dem Buche, das hebräisch „Berechet" [Bereschit, für Tora] genannt wird, und in Übereinstimmung mit den Vorschriften des Moses aus den jüdischen Gesetzen, die hebräisch „Talmillot" [Talmud] heißen. Es spricht auch eine nicht geringe Wahrscheinlichkeit dafür, daß diejenigen, denen sogar das Blut erlaubter Tiere verboten ist, keinen Durst nach Menschenblut haben können. Es spricht gegen diesen Vorwurf seine Scheußlichkeit, seine Unnatürlichkeit und das natürliche menschliche Gefühl, das die Juden auch den Christen entgegenbringen. Auch ist es nicht wahrscheinlich, daß sie [durch ein so gefährliches Vorhaben] Gut und Leben aufs Spiel setzen sollten. Wir haben daher die Juden zu Fulda des ihnen zur Last gelegten Verbrechens und die übrigen deutschen Juden eines so schändlichen Verdachtes nach dem Spruch der Fürsten für völlig unschuldig erklärt. *(Julius Höxter, Quellenlesebuch zur jüdischen Geschichte und Literatur III,* Frankfurt a. M. 1927, S. 19 f.)

Nach diesen Proben glaube ich, auf eine weitere Analyse der Ruthschen Abhandlung ruhig verzichten und das endgültige Urteil über ihren Wert getrost der Wissenschaft überlassen zu können.[4]

New York. *Guido Kisch.*

Hermann Dicker, *Die Geschichte der Juden in Ulm, ein Beitrag zur Wirtschaftsgeschichte des Mittelalters.* M. Rothschild. Rottweil a. N. 1937. 125 S.

Eine wertvolle Züricher Dissertation. Der Verfasser hat das ganze handschriftliche Material im Ulmer Stadtarchiv durchgesehen und die Urkunden des Stuttgarter Staatsarchivs hinzugenommen. Die Ausführungen über die rechtliche Stellung der Juden, die im 14. Jh. in Ulm wie in anderen Städten als „Bürger" bezeichnet werden, bedürfen noch weiterer Klärung. Im übrigen sei auf die wichtigen Bemerkungen und Ergänzungen hingewiesen, die Moritz Stern zu diesem Buche in ZGJD. VII, 1938, S. 243—248, veröffentlicht hat.

New York. *Guido Kisch.*

Cecil Roth, *The Ritual Murder Libel and the Jew, the Report by Cardinal Lorenzo Ganganelli (Pope Clement XIV).* The Woburn Press. London (sine anno). 111 pp.

To its lasting credit, the Catholic Church — even when the night of mediaevalism was at its darkest — never gave the slightest countenance to the calumny of Ritual Murder. Immediately the Holy See first became cognizant of it, in the thirteenth century, its remonstrances began: and they continued afterwards in unbroken sequence. It is noteworthy that some of the most vehement protests emanated from the Pontiffs who otherwise showed themselves least sympathetic towards the Jews, their objectivity thus being all the

[4] Die neueste Untersuchung über Wucher und Wucherrecht der Juden, James Parkes, *The Jew in the Medieval Community,* London 1938, hat Ruth's Arbeit unbeachtet gelassen.

more obvious. One of the most remarkable documents of this kind is the Report by Cardinal Lorenzo Ganganelli the later Pope Clement XIV. It was Abraham Berliner the historian of the Jews in Rome who, in 1888, discovered an Italian original of it in the archives of the Roman Jewish Community and published a German translation. Since that time the document appeared in print in several editions. Cecil Roth re-publishes its Italian text and adds, for the first time, an English translation. His learned introduction on the ritual murder libel and its history, presents valuable historical information. In four „appendices" he reproduces important pronouncements against the blood accusation. The select bibliography that completes the volume will be of use to interested students.

New York. *Guido Kisch.*

Herbert I. Bloom, *The Economic Activities of the Jews of Amsterdam in the Seventeenth and Eighteenth Centuries.* Bayard Press. Williamsport, Pa. 1937. XVIII und 332 S.

Im 17. und 18. Jahrhundert gehörte Amsterdam zu den führenden Handelszentren Europas. Die merkantilistische Ideologie jener Zeit suchte mit allen Mitteln für die Vermehrung der Bevölkerung und die Steigerung ihres Wohlstandes zu wirken. Deshalb waren auch die Juden mit ihrer kommerziellen Begabung in Städten wie Amsterdam gerne gesehen. Im 18. Jh. entwickelte sich dort eine der bedeutendsten und einflußreichsten jüdischen Gemeinden Europas. Bald erblühte ein bedeutsamer jüdischer Warenhandel, hauptsächlich in Tabak, Zucker und Gewürzen. Die Diamanten- und Juwelenindustrie lag großen Teils in jüdischen Händen. Von Amsterdam aus zogen jüdische Händler in die verschiedensten Länder Europas, nach der Levante und Westindien. Das weite Gebiet aller dieser wirtschaftlichen Betätigungen der holländischen Juden bildet den Gegenstand von Blooms sorgfältiger Arbeit. Sie ist auf reichem handschriftlichem Material aufgebaut, das der Verfasser in niederländischen und amerikanischen Archiven gesammelt hat. Die Liste der von ihm benützten gedruckten Quellen und der Literatur (S. 229—259) ist nahezu lückenlos. Vermißt habe ich eigentlich nur die berühmte Sammlung der Rechtsgutachten des Rabbinerseminars Etz Chaim zu Amsterdam, von welcher kürzlich Auszüge in deutscher Übertragung von M. M. Hirsch veröffentlicht wurden (Berlin—Antwerpen 1936). Hier ist ein reiches Material auch zur Handelstätigkeit der Amsterdamer Juden enthalten, durch dessen Heranziehung die Darstellung hätte wesentlich bereichert werden können. Auf Grund seiner Untersuchung kommt der Verfasser zu dem Schluß, daß es nicht die Juden gewesen sind, die den Geist des Kapitalismus nach Amsterdam gebracht haben. Das Interesse am Geldgeschäft und an unpersönlichen kapitalistischen Methoden war keine spezifisch jüdische Angelegenheit. Aber es liegt auf der Hand, daß in einer typisch kapitalistischen Stadt wie Amsterdam die Juden durch ihre überwiegende geschäftliche Betätigung einen Faktor von nicht zu unterschätzender Bedeutsamkeit bildeten. Die Arbeit, eine Doktordissertation der Columbia Universität in New York, Salo Baron gewidmet, liefert einen wertvollen Beitrag zu einer Sozial- und Wirtschaftsgeschichte der Juden, die sich nur auf ähnlichen sorgfältigen Spezialstudien wird dereinst aufbauen lassen.

New York. *Guido Kisch.*

Franz Kobler, *Juden und Judentum in deutschen Briefen aus drei Jahrhunderten.* Saturn-Verlag, Wien 1935. 416 S.

Die hier zusammengestellte Briefsammlung ist so vielseitig und inhaltsreich, die Auswahl aus der ungeheuren Menge vorhandenen Materials so geschmackvoll, die knapp bemessenen einleitenden Bemerkungen und Fußnoten so aufklärend, daß der Leser von vornherein eine Fülle von Anregungen erwarten darf. Es liegt in der Natur einer solchen Sammlung, daß sie nicht die Vielfarbigkeit des historischen Geschehens wiedergeben, sondern bloß Momentaufnahmen führender Personen und mehr oder weniger markanter Episoden aneinanderreihen kann. Es ist aber dem Herausgeber gelungen, sie vor dem Ableiten ins rein Anekdotenhafte, vor dem Verwandeln der zu behandelnden Geschichte in eine Aufeinanderfolge von Geschichtchen zu bewahren. Obwohl in der Hauptsache für das breite Lesepublikum gedacht, ist diese Quellensammlung auch für den Forscher der neueren deutsch-jüdischen Geschichte nicht ohne Wert. Es ist nur zu bedauern, daß sich der Herausgeber bewußt (mit Ausnahme einiger Herzlbriefe) auf bereits anderswo veröffentlichtes Material beschränkt hat, während doch zahlreiche unveröffentlichte Dokumente verhältnismäßig leicht zugänglich gewesen wären, die den wissenschaftlichen Wert des Buches wesentlich erhöht hätten.

Die Sammlung beginnt mit einer Anzahl von „Privatbriefen" aus dem Jahre 1619 und schließt mit einem ergreifenden Bekenntnis Walter Rathenaus von 1921, wenn man von einem späteren Briefe Bubers im „Nachwort" absieht. Die Hauptmasse fällt jedoch in das Aufklärungs- und Emanzipationszeitalter (1750—1897). Die vorhergehende Periode („Das Ende des jüdischen Mittelalters") findet — abgesehen von den genannten Privatbriefen und der ebenfalls hochinteressanten Korrespondenz anläßlich der drohenden Judenaustreibung aus Prag — ihren höchsten geistigen Ausdruck in dem mitgeteilten Briefwechsel zwischen Spinoza und Oldenburg, der allerdings weder zu den „deutschen Briefen" noch zum „jüdischen Mittelalter" gehört. Die zeitgenössischen Führer des Volkes sind durch einen nichtssagenden Brief Sabbatai Kohens an Valentini Widrich vertreten, während nicht nur die reichhaltige Responsenliteratur deutscher Rabbiner — dies sind schließlich auch „Briefe" —, sondern auch z. B. die erschütternde „Haßrolle" des Jom Tob Lippmann Heller vernachlässigt sind. Die neueste Zeit seit 1897 ist abermals nur durch einige, allerdings recht typische Briefe von Herzl, Brandes (auch ein deutscher Jude?), Landauer und Rathenau beleuchtet, während noch viele andere Persönlichkeiten und Strömungen hätten zu Worte kommen können und sollen.

Desto schärferes Licht fällt auf jene schicksalsschwere Periode von Mendelssohn bis Herzl. Die Zwiespältigkeit des Mendelssohnschen Kreises, die Problematik der Berliner Salons und die Zaghaftigkeit der Emanzipationsstreiter vor Rießer kommen ebenso deutlich zum Vorschein, wie das, bei aller Sympathie, gründliche Verkennen des jüdischen Wesens durch die großen Deutschen, Goethe, Kant, Schleiermacher. Dazwischen die halbpathologische Episode der zum Judentume bekehrten Gräfin Cosel und das erlösende reine Freundschaftsverhältnis von Jean Paul und Osmund. Die Fortschritte der Assimilation und Emanzipation bis herab zum Zeitalter des Liberalismus

und Sozialismus können hier am Lebensgang von Heine, Börne, Rießer, Auerbach, Marx, Heß, Lassalle und an Hand der Äußerungen der Brüder Humboldt, von Hebbel, Keller u. a. verfolgt werden. Die jüdische Reformbewegung kommt durch Geiger, die Neo-Orthodoxie durch S. R. Hirsch und die Wissenschaft des Judentums durch Zunz zu Worte. Von pikantem Reize sind die Abschnitte über Wagner und Nietzsche.

Trotzdem die Sympathien des Herausgebers für den Zionismus und seine Ablehnung der Assimilation klar hervortreten, ist die Auswahl wesentlich unparteiisch und auch — was bei einer solchen Aufgabe besonders schwierig ist — im ganzen frei von Apologetik. Natürlich kann man in Bezug auf die Wahl bestimmter Briefe verschiedener Meinung sein. Man kann z. B. bei Lassalle an Stelle der letzten beiden wenig besagenden Zuschriften an seine Eltern (S. 286 ff.), seine ausführliche theologische Auseinandersetzung in einem anderen Briefe an die Mutter und einen Auszug aus seinem vielzitierten „Manuskriptbriefe" vorziehen. Auch vermißt man dabei einen Hinweis auf seinen sechsbändigen, von G. Mayer herausgegebenen Nachlaß. Viele Leser würden auch an Stelle der das Judentum nur indirekt berührenden Ausführungen eines getauften Juden wie Koreff lieber die Stellungnahme jüdischer Denker wie Frankel, Steinheim, Lazarus, Cohen, jüdischer Politiker wie Bamberger, Lasker, Bernstein, — oder führender Nichtjuden wie Stein, Metternich, Bismarck oder Schopenhauer kennen lernen wollen. Das Fehlen vieler leicht feststellbarer biographischer Daten im „Verzeichnis der Briefschreiber" ist ebenfalls schwer erklärlich. Aber dies sind Geringfügigkeiten. Man wird mit dem Herausgeber weniger wegen seiner Unterlassungen rechten, als ihm für das so schön und in guter Ausstattung Dargebotene dankbar sein.

New York. *Salo W. Baron.*

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Im Folgenden werden Abhandlungen und Aufsätze jüdisch-historischen Inhalts verzeichnet, die in nichtjüdischen wissenschaftlichen Zeitschriften erschienen sind. Aus anderen Zeitschriften werden nur rechtsgeschichtliche Arbeiten angeführt. *Die Herren Verfasser werden ersucht, Sonderabdrucke zwecks Berücksichtigung an dieser Stelle dem Herausgeber einzusenden.*

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# PERSONAL

## *Chronik*

Am 10. Juli 1937 verschied in München im 70. Lebensjahre Dr. phil. *Max Freudenthal,* vormals Rabbiner in Nürnberg. Von einer Studie über die ersten Emanzipationsbestrebungen der Juden in Breslau ausgehend, hat er eine reiche und bedeutende Forschungstätigkeit zur neueren Geschichte der Juden in Deutschland entfaltet. Seine Arbeiten sind durch Exaktheit der Quellenforschung, strenge Wissenschaftlichkeit und Gediegenheit der Darstellung ausgezeichnet. Mit seinem ersten Buche „Aus der Heimat Mendelssohns" (1900) suchte er, auf Grund archivalischer Forschungen in das Geheimnis dieser Persönlichkeit einzudringen, in der Bearbeitung und Fortsetzung von David Kaufmanns „Die Familie Gomperz" (1907) wies er der neueren Familiengeschichte die Wege und in seinem Werk „Leipziger Messgäste" (1928) erschloß er der Wirtschafts- und Personengeschichte der Juden eine wichtige und neuartige Quelle. In der Zeitschrift für Geschichte der Juden in Deutschland, deren Begründer und Mitherausgeber Freudenthal war, ist eine vollständige Bibliographie seiner Schriften zu finden (VII, 1937, S. 131—137). *G. K.*

Am 6. Juli 1938, kurz nach seinem 70. Geburtstage, starb in Berlin der ordentliche Professor des Kirchenrechts, der deutschen Rechtsgeschichte und des deutschen Privatrechts, Geheimer Justizrat D. Dr. jur. et phil. h. c. *Ulrich Stutz,* der anerkannte Meister der Kirchenrechtsgeschichte in Deutschland. Durch vierzig Jahre hat er nach den höchsten Grundsätzen der Wissenschaftlichkeit und Unparteilichkeit die Zeitschrift der Savigny-Stiftung für Rechtsgeschichte herausgegeben. Während dieser Zeit wurden bisweilen in ihren Spalten auch streng sachliche Abhandlungen und Rezensionen zur Rechtsgeschichte der Juden veröffentlicht.

*G. K.*

# HISTORIA JUDAICA

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## A PRE-ZIONIST PLAN FOR COLONIZING PALESTINE

### THE PROPOSAL OF A NON-JEWISH GERMAN-AMERICAN IN 1852.

By

N. M. Gelber

Jerusalem

Revised and translated from the German by Guido Kisch

An interesting pamphlet entitled: *Die Israeliten in Jerusalem eine Denkschrift gewidmet allen Israeliten*, appeared in Stuttgart Germany in 1852. Its author was Ch. F. Zimpel, who described himself as "Doctor Medicinae et Philosophiae, member of the Grand Ducal Saxon Society for Mineralogy and Geognosy at Jena[1]".

A Gentile doctor, Zimpel had visited Palestine in 1852 where he had carefully studied conditions, returning with the desire to bring the condition of the Jews in Jerusalem to the attention of the Jewish public. Unfortunately, little is known about his life. Born in 1801, Zimpel was raised in Germany. He lived for some time in Jena, Thuringia, and later in America, where he took some part in the construction of railroads. From the 1860's on he devoted himself chiefly to scientific work and literary activities. Through his extensive knowledge of the Bible and his religio-historical studies, Zimpel arrived at the conclusion that the Messianic idea would be realized for the Jews during the nineteenth century. It is possible that the English movement for "the return of the Jews to Palestine" influenced his ideas. At any rate, he was convinced that Palestine had to be restored to the Jews as their ancient historical homeland. In the efforts of various societies in England, Germany, and France to establish schools and hospitals in Palestine, he recognized the first signs

[1] On its title page, the pamphlet bears the following remark: "Gedruckt in der E. Schweizerbartschen Buchdruckerei in Stuttgart". No publisher's name is mentioned.

of a renascence of the country and of a growing interest of the Jews in the future fate of the land of their fathers. When he visited Palestine, he was concerned principally with the position of the Jews in Jerusalem, where according to the estimates of the rabbis, at that time, about 10 000 Jews lived, comprised of about 7 600 Sephardim, 2 400 Ashkenazim, and 20 Karaites. In Jerusalem, Zimpel, himself a doctor, came in contact with the Jewish Doctor Simon Fränkel, who had lived in Palestine for a long time. From him he received exact information on the political status and the living conditions of the Palestinian Jews.

Zimpel recognized the Halukkah as the greatest hindrance to the development of the Jews in the Holy Land. The rabbis and the directors of the Halukkah saw fit to keep the Jewish population in a state of idleness and poverty, for only in this way could the significance of the Halukkah be established. Thus the Jews in Palestine who in the course of a thousand years had always remained peasants became beggars who spurned agriculture. It is true that Christians had attempted to change this condition, but all efforts necessarily failed, since they were bound up with missionary work which the Jews naturally opposed. The English, Prussian and French missionary societies which were active during this time in Palestine, founded schools and hospitals with the expectation of converting the Jews to Christianity. However, this very activity could augur no good. The missionary work succeeded neither in attaining its religious goal nor in improving the lot of the Jews in Palestine.

Even an American Christian society without religious aims which sought to win the Jews over to farming and in this way prepare them for the return to Zion could not achieve any lasting success. In 1850 a Christian society whose aim was to emigrate to Palestine was established in the United States of America[2]. By 1851 seven colonists had entered the Holy Land and settled in Wadi-Urtash. This American society desired primarily to instruct the Jews in Jerusalem in farming, so that they would be able to make a living. However, even with the reestablishment

[2] [Not mentioned in Max J. Kohler, "Some Early American Zionist Projects", *PAJHS.* VIII (1900), 75—118. Cp. also Zev Vilnay, "American Christian Settlers and the Jews in Palestine" (Hebrew) in *Moznayim* VIII (1938), 69—75. — G. K.]

of Jewish settlement in Palestine as the primary consideration, missionary tendencies still stood in the foreground. The first purpose of the society touched upon plans which J. Meshulam, a Jew of English descent, pursued[3]. He had come to Jerusalem by way of Tunis and Malta, where he was baptized in 1840. In 1848 he rented a piece of land in Wadi-Urtash back of Bethlehem, and planted fruit and vegetable gardens from which he made considerable profits. The American emigrés to Palestine settled on Meshulam's land. The workers, for the most part Jewish, were instructed in farming. Soon, however, quarrels arose between Meshulam and the American settlers. He drove them off his property and they, in retaliation, distributed a pamphlet in which they charged Meshulam with being a swindler. This interesting plan of Jewish colonization was shattered.

Such were the conditions of the Jews in Jerusalem and in Palestine when Zimpel visited the Holy Land. Through his own experiences, Zimpel reached the conviction that the betterment of the position of the Jews in the Holy Land could be achieved in only two ways, namely, by a return to farming and by persuading the European Jews to aid in lifting the moral and economic culture of the Palestinian Yishub.

Zimpel saw that this was necessary to effect the return of the Jews to the one place which rightfully belonged to them, — Palestine. As the true heirs of Palestine the Jews were summoned to become again a farming people. "Ask yourself now," he wrote, "if it did not lie in Yahwe's wise purpose that they should not be shackled to the various countries through the possession of land but should always and eternally remain the inhabitants of the Land of Promise, which Yahwe has for all time promised them." Many Jews are even today prepared to devote themselves to agriculture, "instead of begging and supporting themselves on alms." "The correctness of my point of view is proven by the fact that a Jew in Jerusalem has already joined with an Arabic-Mohammedan farmer (Fellah) in order to carry on farming; futhermore by the fact that several Jews have turned to my American friends in Urtash with the request to give them the opportunity to test their power in the fields although

[3] Cp. F. C. Ewald, *Journal of Missionary Labors in the City Jerusalem* (London, 1846), p. 90; C. W. A. van de Velde, *Reise durch Syrien und Palästina in den Jahren* 1851 *und* 1852, II (Leipzig, 1856), pp. 64 ff., 104, 216; L. A. Frankl, *Nach Jerusalem* II (Leipzig, 1858), pp. 182 f.; *Reminiscences of Mrs. Finn* (London-Edinburgh, 1929), pp. 90 f.

it is forbidden them by the rabbis; finally by the fact that approximately a hundred others have presented a similar petition to the English Consul".

Before Zimpel left Jerusalem for Europe, he resolved to appeal to the educated Jews of the world to aid their brothers in Palestine. He did this in his pamphlet, offering the following positive suggestions:

"1. A moral education for the youth, especially for the females, and the awakening of pure religious principles;

2. Introduction and instruction of the adult able-bodied class in farming; and

3. A hospital to fit the needs of the conditions and a poorhouse for the support of the sick and the old incapable of work."

Although Zimpel recognized the value of the efforts of Sir Moses Montefiore in behalf of the Jews in Palestine, he could not conceal the fact that all which had been done up to then seemed to him inadequate. The fulfillment of his own proposal necessitated the establishment of a central committee and local committees which were to raise the necessary money and begin the actual work on the land under the supervision of European specialists. "The Palestinian representatives are to be completely independent, especially of petty oriental intrigues so that a really practical administration not a mere imitation of the German bureaucracy, would result. It should not exist merely on paper, but actually be visible to the eyes of the entire world." In Zimpel's opinion, "the conditions in the United States of America under the truly practical inhabitants of that country" appeared everywhere as a model for the future state of Palestine. Zimpel was the first to offer a contribution toward the fund which he called for in his pamphlet. He contributed 500 florins in behalf of the American colony in Palestine accompanying his gift with the following words: "I feel such deep interest for the success of the Americans who live in and around Jerusalem for this purpose and whom I have already backed with 500 florins from my own pocket, that I, when I bear in mind the length of time which must pass before this central committee, even under the most favorable conditions, can be established and before the arrangements to prepare the way for culture can be made, that I (I repeat) beseech you to support me with an adequate sum for these Israelite Americans, so that they will not perish in their first attempts, but will be enabled to flourish. If those of you who are well-off, gentlemen, were to offer a proportionate contribution toward this first step (and there is no time to be lost, nor should there be) you will at least pave the way toward a complete material improvement for your fellow believers primarily in Jerusalem and even in all of Palestine."

Zimpel attached a subscription list to his pamphlet "for the support and furtherance of the agriculture begun by the Americans near Jerusalem for the benefit of the Israelites living there, that they might once again enjoy the ancient agricultural conditions in the land promised them by Yahwe and to alleviate their suffering as much as possible as proposed by the above memorial."

The call of the Christian Doctor Zimpel, however, appears to have found no material response among "the more intelligent class of Israelites in Europe", whom he had chiefly addressed. Nothing is known of any attempt being made to establish Jewish agriculture in Palestine or even to further the American colony there. The times were evidently not yet ripe for such an experiment.

Zimpel's pamphlet, on the other hand, evoked heavy opposition from those very Jewish circles to which he especially directed his appeal. In the *Allgemeine Zeitung des Judentums* edited by Ludwig Philippson (volume 16, 1852, p. 557 f.) an anonymous article appeared opposing Zimpel's essay. Its heading marks it as having been written in Hamburg, but its author remains unknown. It is possible that the unknown author and the editor of the *Allgemeine Zeitung des Judentums* are one and the same.

The article argued that, Zimpel's aim to direct the attention of the Jews toward the sad plight of their brothers in Palestine did not reveal the entire truth. According to the critic, Zimpel's proposal to direct the energies of the Jews in Palestine to agriculture and cattle breeding was all very well, but climate, insecurity in the country, and the fact that Ashkenasic Jews were forbidden to possess land, made it difficult to accomplish. In the opinion of the anonymous writer the entire problem bore a highly significant Jewish-political aspect. "The general lie upon which the leading spokesmen of our orthodox Jews almost universally rest, is the alleged longing for a Messiah, for a return home to Palestine." They will therefore oppose every reform. These pious people are favored by the governments in the countries of the diaspora, for they see in Palestine their true homeland and are inimical to every reform in Jewish life. In times such as those, the writer felt, it would be wrong to place material in the hands of the enemies of Israel with which they could prove that the German Jews recognized not Germany, but rather Palestine as their fatherland. "Surely it cannot be expected that we German Jews, in more than holy simplicity, would add wood to our own funeral pyre, that we would place new weapons in the hands of our honorable as well as our dishonorable enemies." If it were really necessary to give economic

aid to the Jews in Palestine and to guarantee them new opportunities of making a living by opening up agriculture to them, then everything would be done to help them.

"Since, however, we do not feel called upon to befriend a brood consisting partly of blind, partly of feignedly blind beggars, some of whom return and disseminate the wildest ideas among the weak minded group of European Jews, the first condition will be that a powerful lock will at the same time be placed upon further immigration into Palestine and it must consist principally in that our orthodox comedians of today will be forced to follow the example of their predecessors, the former truly religious rabbis. They, to be sure, advised the highly religious ascetic to emigrate to the 'Land of Promise' but strongly warned the rest of the people against this fanaticism." The Jews were inseparably joined, continued the article, with the nations of the diaspora. "Ask Rothschild if he is indifferent to his title of baron, to his Crosses of the Order, or his consulship, which he could no longer use once the Messiah came." The free thinking Jews were interested in fighting "those hypocritical misrepresentations" connected with any experiments in Palestine.

Such was the attitude of the mouthpiece of the Jewish intelligentsia of Germany toward Zimpel's Palestinian plan. Since 1839, Philippson fought every plan of a return of the Jews to Zion, because the emancipation of the German Jews could thereby have been thwarted.[4] Concern over a danger of this kind affected him and his followers much more than the Renaissance of the Jewish people in Palestine.

Zimpel was probably well aware of these views. Even the express opposition of the Jews and the failure of the American colonization experiment through lack of funds could not divert him from his plans. In 1864 he again visited Palestine to study conditions there. After his return, he again raised his voice in an appeal to Christians as welle as Jews. In 1865, he published a small essay: *Mahnruf an die ganze Christenheit und nicht minder an die Juden zur Befreiung von Jerusalem* (Warning Appeal to All Christendom as well as to the Jews for the Liberation of Jerusalem). This pamphlet appeared in several languages; 10 000 copies were sold.

Here Zimpel describes the persecutions which Christians and Jews in Palestine had to suffer at the hands of the Turks and concluded that

[4] Cp. N. M. Gelber, *Zur Vorgeschichte des Zionismus* (Vienna, 1927), pp. 89 f., 199 ff., 303.

the time had come to liberate the Holy Land from the yoke of the Turk. In this struggle, the chief rôle rested upon the Jews even though there could as yet have been no thought of the establishment of their national state in Palestine. As a result of their well being and widespread influence in the various countries of Europe, they were called upon to participate most in the task of liberating Palestine, the land which was held out to them as a possible homeland, the rightful possessors of which were the Jews. According to Zimpel, Russia, Austria, and Prussia would be completely indifferent toward this struggle. England and Catholic France would play a much more active rôle. Napoleon III in particular could be expected to further it for he wished to fulfill all of Napoleon I's ideas, even those with regard to Palestine. (Napoleon I desired to establish a Jewish state in Palestine, but was forced to abandon the plan)[5]. Napoleon III promised the Alliance Israélite in 1862 to revive the plan, for the fulfillment of which they were to strive from now on. England and France could force Turkey to abandon Palestine. If this were to succeed, then a peaceful life between Christians and Jews in the Holy Land would have to be established after the example of the free constitutions of Hamburg or Frankfurt am Main. Zimpel's plan proposed that delegates of Christians and Jews should institute a common government in Palestine, at the head of which the president of the Palestinian republic would stand. "Would to God that now England and France, especially Napoleon III would feel themselves moved to undertake this holy work immediately," he wrote, so that the prophecy of Isaiah (66, 10 f.) would be fulfilled: 'Rejoice ye with Jerusalem, and be glad with her, all ye that love her: rejoice for joy with her, all ye that mourn for her: that ye may suck, and be satisfied with the breast's consolations: that ye may milk out, and be delighted with the abundance of her glory." Zimpel therefore demanded that every one should offer his aid in order to "give his proposal a strong push forward that it may roll like a little snowball, and thereby give rise to an avalanche which shatters atoms and buries everything which may try to halt its onward rush."

The new appeal of Zimpel to the Jews also found no response. This time not even Philippson's paper gave answer.

Later, in 1865, a third pamphlet by Zimpel appeared: *Die Strassenverbindung des Mittelländischen mit dem Toten Meere und Damaskus über Jerusalem mit Heranziehung von Bethlehem, Hebron, Tiberias, Nazareth* (Connecting the Dead Sea and Damascus with the Mediterranean by transitways to Jerusalem, Bethlehem, Hebron, Tiberias, Nazareth).

[5] Cp. Gelber, *op. cit.*, p. 42 ff.

Zimpel endeavored to obtain a concession to build a railroad line in Palestine, thinking that the Turkish government would back him. Therefore, in his third pamphlet, he pointed out that the Mediterranean Sea binds the railways of three parts of the world. The cities were of primary significance in the erection of a trading route, and of them all, a special rôle falls to Jerusalem, the spiritual centre for hundreds of millions. Although about eighty thousand tourists and pilgrims came to Jerusalem every year, a railway only between Jerusalem and the ports would be entirely inadequate. For lack of a railroad, the pilgrims lost much time, since they made their way to Jerusalem under conditions which were far from favorable. This alone was sufficient reason for the construction of a railway from Jaffa to all the more important cities of the country as well as to the Dead Sea and from there to Damascus. From the main route, branch lines would lead to Sichem and Nazareth, and from Jerusalem to Bethlehem and Hebron. The line was to be about eighty miles long and the cost approximately four million dollars. The original expenditure would be covered in four and a half years by ticket sales and freight charges.

On January 1, 1865, Zimpel actually received a message from the Turkish Minister of the Interior, Edhem Pasha, stating that the government would perhaps offer him a concession if within half a year he could procure the necessary capital to build the railway.

Aside from the purely technical proposals for the construction of a railroad, the author of the pamphlet was interested in still another question. The development of the situation in Europe, even in those countries where the Jews enjoyed equal rights — according to him — would make clear to the Jews that emigration to Palestine would in time be the only salvation for them. The Jews were hated by all; upon the slightest provocation they were made the victims of robbery and persecution, for all desired to be rid of them. What more then will remain for these Jews than to return to Zion, to their long promised homeland?

A glance at these conditions, he continued, revealed the necessity of establishing a modern system of traffic in Palestine. Furthermore, there need be no fear that the capital invested there could be lost. On the contrary, it is necessary to begin immediately with preparations for the construction of the railway from Jaffa to Jerusalem and the other cities. A harbor must also be built in Jaffa. In all these suggestions, Zimpel proceeded from the conviction that in a short time Palestine would be

returned to the Jews. It is possible to procure the necessary capital, and those who contribute are not to forget that they are investing in a worth while undertaking. The Jewish capitalists should think of the fulfillment of the prophet's predictions and prevent themselves from being led astray by the preachers and reform rabbis. These believe that assimilation is the only salvation for the Jewish people. Their words are merely opium which poisons the heart. The people should not be struck blind, but consider the development with open eyes. The day is already near when the resurrection of the Jewish people would be fulfilled in their own land.

This pamphlet, written with inspiration and religious fervor, contains many of the thoughts which were expressed only half a century later in the ideology of political Zionism.

However, even Zimpel's third essay received but little consideration from the Jews. In a short article in the *Allgemeine Zeitung des Judentums* (vol. 29, 1865, p. 170), Philippson devoted some attention principally to the technical aspect of the plan. As for the Jewish problem of Palestine, he only had this to remark:

"The reasons which Mr. Zimpel offers are not convincing to us, and all the less so, since he takes recourse to rather strange arguments. He refers to the present volcanic nature of European society, which, in a short time, would end in a terrible explosion; a general persecution of the Jews would set in; they would be able to do nothing but flee to Palestine and would have great use there of the railway from Jaffa to Jerusalem. Through this, Mr. Zimpel tries to prove both the profitableness of his railway and also its advantage over a highway. This part of the discussion does not inspire great confidence in the practical part of the pamphlet."

In this ironic manner, Philippson believed that he set aside the Jewish problem in its relation to Palestine.

The Christian, Doctor Zimpel, however, had understood the path of the development of Jewish history far more deeply than the Jew, Philippson. The latter was convinced that his people were eternally assured equal political rights, at least in Germany. Zimpel had arrived at an understanding of the necessity of a Jewish renascence in Palestine primarily through religious and political considerations. His aim however was by no means to win the Jews over to Christianity by showing them the way to a return to agriculture. He had no thought of such missionary work. He stressed that "he himself was neither Catholic nor Protestant,

but a pupil and disciple of his Lord Jesus Christ". He was not interested in converting the Jews, but he did believe in the prophecies of the Bible and was convinced that the Jews alone were entitled to possess Palestine, the homeland promised them by God, and to renew their political and economic life there. Through this purely human feeling and through his moral understanding based on the teachings of the prophets, he arrived at those national ideas which appeared as political phantasmagories to his contemporaries. Although Zimpel was no longer the only one to propose a renascence of the Jewish people in Palestine, his ideas gained no currency. It is possible that he was acquainted with the works of Moses Hess, Joseph Salvador, and Zwi Hirsch Kalischer, nevertheless, he was not the least bit influenced by them in his views, for his thoughts move in quite another direction. Among the precursors of Zionism, Zimpel was the first and only one to speak of the establishment of a mixed Palestinian republic under the joint leadership of Jews and Christians, without any consideration of the Arab majority in Palestine. Zimpel's original idea was neither copied in later literature nor ever utilized in practice.

# JEWISH TRADE IN THIRTEENTH CENTURY ENGLAND

By

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The problem of the extent and the variety of the commerce of the Jews in thirteenth century England acquires special significance when it is considered in relation to their financial enfeeblement and their subsequent expulsion in 1290[1]. From an examination of the tallage payments made by the Jews to the Crown, it is apparent that from about 1255 they were no longer able to pay the large amounts such as were paid during the middle decades of the century. Assuming that the Jews were neither traders nor land owners, the causes of this virtual bankruptcy must be sought in their money-lending activities. This paper is concerned with the assumption that Jews were not traders.

The question before us has two aspects; one, that of primary capital accumulation; the other, that of the means whereby the Jews managed to conserve and extend their stock of capital once it was concentrated in their hands. Three views have been put forward to solve the problem for general European conditions[2]. According to *Werner Sombart*, the Jews were able to retain in their possession during the chaotic times that followed the disruption of the Roman Empire the precious metals they had accumulated through trade in the last centuries of the Empire, and these treasures made it possible for them to carry on trade during the Dark Ages. *Ignaz Schipper*, on the other hand, adopts a more Sombartian view in maintaining that the source of Jewish capital is to be found in the ground rents the Jews acquired before the growth of the feudal system excluded them from the ownership of land. Finally, *Moses Hoffman* believes that we must look to the profits of trade, basing his point of view on the fact that there was no serious break in the trading activities of the Jews because of the break-up of the Empire. He suggests also that until the thirteenth century, trade and not finance was the

[1] The latter question is more fully discussed in P. Elman, "The Economic Causes of the Expulsion of the Jews in 1290", *EHR.* VII (1937), pp. 145 ff.

[2] M. Hoffmann, *Der Geldhandel der deutschen Juden während des Mittelalters* (Leipzig, 1910), pp. 10, 12—13, 15, 81—82.

chief occupation of the Jews and that the subsequent transformation was due not to the Crusades but to the competitive activities of French and Italian merchants and the rise of the German cities. It is to be noted that all three views have a common assumption, that for the greater part of the Middle Ages the Jews were merchants and not money-lenders or financiers.

As far as English conditions are concerned, none of these theories stand the test of facts. Ultimately, the question of Jewish primary capital accumulation in England cannot be answered. Sombart's suggestion is obviously useless, since all the evidence brought to support the contention that there were Jewish settlements in England prior to the eleventh century is, to say the least, highly inconclusive.[3] The Jews, so to speak, came to England with William the Conqueror, but where they came from and the kinds of economic calling they pursued in their place of origin are matters that are clouded with doubt.

It may be said at once that there is no evidence of any Jewish export trade. No Jew is mentioned in the lists of those merchants who had sworn, in the reign of Edward I, not to export wool or other goods to Flanders, or in the lists of the grants of wool licences. Does the solitary payment in 1244 of 20 marks to one Halegre, a foreign (?) merchant, bear any great significance[4]? And in view of all this, what importance may be attached to the fact that in Southampton the Jewry was situated near the chief quay[5]? As for internal trade, the evidence is at times ambiguous and at times inconclusive. It is true that in London Jewish property was concentrated around the chief market centre, the Chepe, and that in Cambridge and Canterbury the Jewry itself was adjoining the market centre[6]. But there is reason to believe that this propinquity

[3] Cp. A. M. Hyamson, *History of the Jews in England* (London, 1928), ch. 1.

[4] J. M. Rigg, *Plea Rolls of the Exchequer of the Jews*, Vol. I (London, 1905), p. 80; hereafter referred to as *PREJ*.

[5] Cp. J. Jacobs in *Papers Read at the Anglo-Jewish Historical Exhibition*, (London, 1888).

[6] Cp. *op. cit.*; J. P. Stokes, *Studies in Anglo-Jewish History* (Edinburgh, 1913); *TJHSE* VII, p. 23. Aaron the son of Abraham had houses in London near to the river wharves, *Select Pleas of the Jewish Exchequer* (Selden Society), pp. 16—17.

has more to do with the indirect financing of trade than with trade itself. With one exception, there is nothing to show that the Jews were important traders, but rather that some of them were peddlers in small luxury articles. As an example of this we may quote the writ of aid granted in 1279 to Henry de Winton who had bought the goods of a number of condemned Jews, "to wit, cloths, robes, furs and books of Christians and Jews, copper lamps and girdles of silk[7]". To this may be added the inventory of the property of condemned Jews extant for 1285[8], which mentions gold brooches, gold rings, silver cups, goblets, basins and spoons, silk and leather girdles, mantles, pillows and linen sheets.

This aspect of the question requires further examination in order to facilitate a quantitative judgment. During the baronial wars, it is found that quite a number of Jews had placed their movables in the custody of their Christian neighbours, sometimes monasteries, for safe-keeping. Occasionally, the Jew concerned had some difficulty in securing the return of his goods and consequently took legal action, a turn of affairs which bring these matters to our attention. Thus, Alan and Dinosia, his wife, were attached to answer Aaron of Sidingburn on a plea of unlawful detinue of two mantles and cloaks of lawn, four silver brooches and other chattels. The defendants did not deny receipt but argued that they had placed the goods in question in the church whence these had been stolen by certain armed men[9]. Aaron of Kingston prosecuted in a similar fashion for two bowls of mazer wood, value 20 shillings, a sack containing cloths, napkins and towels etc., value 6 marks, brazen pots, platters, carpets, coverlets, linen cloths and other utensils, value 5 marks[10]. Even assuming that these articles were not for personal use their value is 12 1/2 marks, which seems to show, if anything, that the Jew was a petty trader. Sometimes mention is made of jewels, but here also the monetary value is not sufficiently high to make them

[7] *Calendar of Patent Rolls* (1272—81), p. 320; hereafter referred to as *CPR*.

[8] *Miscellanies of Jewish Historical Society of England*, II (London, 1937), pp. 56—71.

[9] *PREJ*. I, pp. 132—133.

[10] *Select Pleas*, pp. 31—33.

of any trading importance[11]. Some Jews appear to have been booksellers[12]. Occasionally, there is a list of the chattels found on the person of a Jew who had been found dead or was a fugitive; the chattels are almost all luxury articles and of relatively little value[13]. The value of the goods of the individual Jews, appearing in the list of 1285 mentioned above, are rather high. Twenty six Jews are named, and the total value of their movable possessions is about £ 926. But as an examination of the list shows, most of the articles must have been used personally by the Jews themselves. Four cases are extant of Florentine merchants who were released in the charge of buying the goods of a number of condemned Jews, on payment of a fine equal to the value of the goods, in sum total £ 600[14]. A rich Jew like Elias the son of Magister Moses left at his death in 1284, a number of small articles worth £ 266-13-4d., his dwelling house worth 100 shillings per annum, rents in London yielding £ 19-16-0 d. and debts of the capital value of £ 966-13-4 d.[15]

In general, it must be said that if there did exist any Jewish trade, this was confined to such articles of luxury which as far as the evidence goes, appear to have been not sufficiently high in value to make them an important source of income or a reservoir from which any new capital in large amounts could be drawn. It must be emphasised that we can never be quite certain whether many of the articles mentioned as being the property of Jews were either possessions for private use or goods given as pawn or security for money lent, which had been forfeited on default of payment[16]. If the Jews did deal in the latter type of goods, that trade was merely a by-product of their main business activity of money-lending[17].

In addition of the foregoing there are two other aspects of trade in

[11] Ibid., p. 37; *PREJ.* I, pp. 142, 173—174.

[12] Ibid., p. 252; III, p. 42.

[13] Ibid., pp. 47, 239—240.

[14] *CPR.* (1281—92), pp. 173, 176.

[15] *Public Record Office, Exchequer Plea Rolls (Jews)*, E 9/44, m. 6; hereafter referred to as P. R. O.

[16] See e.g. *CPR.* (1266—72), p. 155; *Miscellanies JHSE.* II, p. 60.

[17] In 1253, Jacob the son of Moses sold for 100 shillings a codex worth 10 marks pawned by a cleric, *PREJ*, I, p. 123.

which Jews seem to have taken some part. These are the trade in silver and gold species and what appears to be exchange transactions. At different dates in the thirteenth century, Jews had been accused of coin clipping, but it is only in the reign of Edward I that this reached appreciable dimensions. A special commission was set up under Hamo Mauteyn to inquire about certain Jews who were dealing with foreign merchants and others in "plateas" made of the clippings, and also in tin sheets silvered on the outside[18]. Many Jews were condemned and their property confiscated[19]. Quite a lively trade was carried on in this silver plate, which was really a form of species[20]; and the reason for that trade was the general debasement of the coinage, to remedy which Edward I took active measures. This debasement of the coinage explains the harsh treatment meted out to those Jews who were convicted of clipping and other kindred offences, although, as was to be expected, the trouble persisted even after the Jews were expelled. The Jews were not the only people who were guilty of such misdeeds; there were also, as a later chronicler states, "othir certayne goldesmythys"[21].

Even under Henry III, Jews are frequently mentioned in the orders relative to "cambium". Thus in 1222 and 1232, there were general prohibitions addressed to Christians and Jews not to make "cambium aliquid" of new and old money except at the king's exchange[22]. In 1259, the Wardrobe received the chattels of Solomon le Evesque, consisting of 85 marks 40 pence of gold made up of 24 1/2 marks in bezants, 31 marks in "obulis Musci", 3 1/2 marks "in diversa moneta et in cuneo" and 26 marks 40 pence in "folio"[23]. In 1273, Lumbard of Crickelade was confused with Lumbard of Bristol and amerced in 50 marks for trespass of the king's exchange[24]. Coins minted at Tournois were found among

[18] *CPR.* (1281—92), p. 56.

[19] *Miscellanies* II, pp. 56—71.

[20] *CPR.* (1281—92), pp. 79, 98, 128, 187.

[21] *Historical Collections of a Citizen of London*, ed. J. Gairdner, (Camden Society), p. 70.

[22] *Patent Rolls* (1216—25), p. 359; (1225—32), p. 502.

[23] *CPR.*(1258—66), p. 48; *Close Rolls* (1259—61), p. 1; hereafter referred to as *CR.*

[24] *Calendar of Close Rolls* (1272—79), pp. 9—10; hereafter referred

the chattels of Benedict of Winchester convicted of coin clipping in 1285[25]. Most interesting of all, the opinion of Rabbi Eliyah of London is mentioned in the *Perushei Ba'alei ha-Tosafot* and accepted over that of Rashi and Rabbenu Tam, just in this matter of exchange[26]. But such isolated pieces of evidence do not carry us very far. The most that can be said in this connection is that the Jews were reacting in a normal way to the economic tendency that good money is driven out by bad money[27]. It should however be noticed that most of the information on this point dates from the reign of Edward I, under whom the financial importance of the Jews was without doubt on the downward grade, which brings us to the final matter necessary to be considered in the question of Jewish trade.

In the extant rolls of Jewish debts which were drawn up in 1290, a large number of the bonds refer to corn and wool. The total value of the bonds is about £ 9 100, of which £ 4 000 is in terms of money, £ 2 700 in terms of corn and £ 2 400 in terms of wool. These figures would seem to point to a very considerable trade in the goods mentioned were it not that a closer analysis of the rolls raises a number of serious complications, all of which cannot be completely and satisfactorily unravelled[28].

In the first place, it must be noted that in 1275 the taking of usury by Jews was forbidden, even on those debts which had already been entered into. The latter part of the decree seems never to have been acted upon, for in Easter term 1278, the justices of the Jews ruled that all debts made before this statute were to bear interest[29]. Be this as it may, the rolls of debts of 1290 suggest that the prohibition of usury did have some effect upon the nature

to as *CCR*. In Canterbury the Jews dwelt near to the "domus cambii", *CR*. (1251—53), p. 225.

[25] *Miscellanies*, II, p. 60.

[26] *Da-as Z'kenim v'hi Perushei Ba'alei ha-Tosafot* etc., (Livorno, 5543), 46 a. I owe this information to my friend Ch. Abramsky of the Hebrew University.

[27] See the interesting case that came before the Jewish Exchequer in Easter term 11 Edward I, P. R. O., E 9/42, m. 2, dorso.

[28] These rolls were subjected to a fairly detailed examination by B. L. Abrahams many years ago, *TJHSE*. II.

[29] P. R. O., E 9/26, m. 2.

of Jewish business activities. As we have said, the debts fall into two categories, those in terms of money and those in terms of wool or corn. In all the other extant lists of debts prior to 1290 the debts are solely in terms of money. The money debts of 1290 with a few exceptions are all dated before 1276, the rest after 1280, except one which is dated 1278. The following headings are found on the rolls: Old Chest, New Chest, Tallies. The first covers all debts made before 1276, the second and third all those made after 1280. All the tallies (48) are in terms of money, the greater majority under 40 shillings. Of the New Chest debts (646), there are some for money (138) and some in which there is a choice between the goods mentioned and their monetary value (33), the residue being in terms of corn or wool. All the Old Chest debts are in terms of money (377). The money debts in the New Chest are all dated after 1284, in which year the Regulations concerning Jewry permitted once more the taking of usury within certain limits. These Regulations had lamented the persistence of usurious loans "under colour of trading and good contracts and covenants". May not the bonds in which corn or wool are mentioned be those referred to in the Regulations? If the answer is in the affirmative, we must then ask why they persisted after the removal of the usury prohibition.

It is probable that the majority of the obligations listed in 1290 were indeed fictitious sales in as far as they were redeemed with money, but a number of them must have been genuine sale credits rather than simple loans of money and therefore had an intimate connection with the exchange of goods. For evidence of fictitious sales there is no need to seek far. The lists of 1290 are obviously full of these, bearing in mind the fact that all have the prices of the corn or wool in round figures and that most of them are more than two years old. Moreover, payments of money on account of such debts have been found[30], as well as debts where the choice rests with the creditor whether he will take payment in goods or in their money value (always in round figures)[31], and entries where the first is for goods and the one immediately following word for word the same, except that a sum of money takes the place of the goods[32].

[30] Ibid., m. 6 dorso; 37, m. 4; 34, m. 6.

[31] Ibid., 28, m. 10, 11; 38, m. 8 dorso.

[32] Ibid., 37, m. 10 dorso.

It will be noticed that there is a lapse of two years between the last dated debt in the Old Chest and the first in the New Chest. This gap can only be regarded as that in which the Jews faced with the prohibition of usury had to find a new way of carrying on their money-lending activities. They used a form of debt to which they were somewhat accustomed, the "false chevisaunce". This, it is interesting to note, was not always employed primarily to disguise interest but to satisfy an immediate want of cash, i. e. it was a short-time mercantile loan[33]. There is an instance for 1272, which combines the features of a "false chevisaunce" with that of a sale credit[34]. But the Jews could also have used a form of obligation made out for a sum representing both capital and interest[35]. This was probably the case with many of the goods debts as well as the money debts after 1275[36]. It appears, however, that this form of obligation was not fully legal. In 1220, a debtor brought a plea touching such a loan which he claimed to be against the Assize and Custom of Jewry[37]. Yet in 1275 a transaction of this kind went through without any objections being raised[38]. In the second place, this form of obligation was not commonly used by Jews, perhaps because of this doubt as to its complete legality. The extant Jewish letters of obligation in the Public Record Office are letters patent made out in the name of the Jewish money-lender. They all contain a term on which the debt is payable, usually five or six months after the making of the debt. This is followed by a clause for the payment of "lucrum" of 2 pence per £ per week, to commence after the date assigned for the repayment of the loan. Sometimes there is also included a personal surety which takes the form not of co-debtorship but of an independent surety contigent upon non-payment[39]. That this form

[33] See M. Postan, *EHR.* 1928, p. 246.

[34] *PREJ.* I, p. 300.

[35] Ibid., II p. 206.

[36] See e.g. ibid., III, p. 108, where there are acknowledgments of indebtedness with warranty of lands and chattels in the event of non-payment, but no mention of any rate of interest; for an instance in 1273, see ibid., p. 1591.

[37] Ibid., I, p. 43.

[38] Ibid., III, p. 9.

[39] P. R. O., King's Remembrancer, Exchequer (Jews) 249/5, 7.

in which interest becomes chargeable after a fixed period was most common is to be seen from those very old debts, some of them dating back twenty or thirty years, wich appear on almost every list of Jewish debts which have survived from this period.

But the question why the fictitious loan was still employed after the suspension of the usury probihition remains. There appear to be two reasons for this. Once the Jews had been compelled to use one or other of its forms, they continued to do so from sheer inertia. In addition they were never quite sure of the exact legal position regarding the taking of usury. Indeed the edict of expulsion of 1290 makes no reference to the Regulations of 1284, and gives the impression that in law usury had been prohibited since 1275 without a break. If this was the case, then there is a simple explanation of the problem raised above. But the presence of money debts after 1284 militates against its adoption and compels one to look for another reason. Some of the debts in the lists of 1290 must therefore represent true sale credits. In Hilary term 1276, Anselm de Gyse, a knight of Bedford, acknowledged before the justices of the Jews that he owed Aaron the son of Vyves, in return for an advance of £ 15 sterling, 75 quarters of corn "good, dry and clean, so that better corn is not to be found at this time in the City of London" according to the London measure, to be delivered to Aaron or his attorney in London within the octaves of Pentecost 1276, warranted in the event of default or death[40]. This recognizance cannot be regarded other than a genuine sale credit, because the specification of the corn is given in such great detail and no fixed price is set for it as is the case with most debts of this kind. What is still more important is that this is no isolated transaction[41]. The Jews not only gave credit to those from whom they bought but also to those to whom they sold. In 1278, William Giffard of Essex acknowledged his indebtedness to Cok the son of Hagin for 100 shillings "pro uno sacco lane sibi ab eodem

[40] *PREJ.* III, pp. 104—105.

[41] Ibid., pp. 309, 310. It is important to compare the recognizance of Alice de Beauchamp for corn on p. 310 and her recognizance for £ 12 on p. 318. See also *Select Pleas*, p. 94, for an acknowledgment of 12 sacks of wool " clean and well washed, without cot, gare or any cheap fleece" with the details from which parts of England the various sacks should come; no price is mentioned. See also P. R. O., E 9/26, m. 6; 38, m. 8.

Judeo vendito"[42]. In 1279, a transaction occurred in which both aspects appear: Jacob the son of Hagin acknowledged that he owed Henry de Winton £ 25-5-0 "pro pannos quos ab ipso emit" and in lieu of payment gave a written obligation for £ 80 owing by two Christians "pro mercandisis que ab eodem Judeo emerunt"[43]. Such credit transactions however are not very numerous.

If all the foregoing does point to Jewish participation in trade, it becomes pertinent to inquire where and how they disposed of the goods thus acquired. There is not the slightest indication, of any foreign trade[44]. In 1281, Richard Ille received a writ of enquiry because he had shown that he owed Isaac the son of Benedict 40 quarters of wheat, for which Isaac had undertaken to pay for him £ 8 owing to Martino del Hull, formerly a merchant of Bordeaux and now defunct. The Jew had not paid, nor had he acquitted Richard in any other manner, the reason being that he had been imprisoned and hanged for some offence before the merchant had arrived in England[45]. Surely if the Jews had had foreign connections it would have been unnecessary to wait for the arrival of the merchant creditor in England. The surprising thing is that English Jews had other than trade relations with Europe. In 1242 a number of them were summoned before the king's council to answer "quare miserunt in Franciam ad Judeos Francie pro capitulo tenendo super Judeos Anglie" in spite of a recent prohibition[46]. In 1280 Elias the son of Magister Moses was called to Flanders because of his medical skill[47]. But these

[42] Ibid., 29, m. 7.

[43] Ibid., 33, m. 4.

[44] The statement made in the text must perhaps be qualified. In 1243, Bartholomew de Crioil, constable of Dover, was ordered to restore 10 marks 5 shillings he had taken from a Jew "latere presencium", which had been given to the Jew by Aaron of York "ad emendum vina ad opus suum in partibus marinis", *CR.* (1242—47), p. 111. That it was wine suggests that the purchase was to be of wine made according to Jewish rite and for personal use. It also suggests that it was not usual to go abroad except for very special requirements. In 1280, a Gascon merchant supplied Elias the son of Moses and Aaron the son of Vyves with 7 tuns of such wine, *CCR.* (1279—88), p. 60.

[45] P. R. O., E 9/37, m. 2.

[46] *CR.* (1237—42), p. 464.

[47] *REJ.* XVIII, pp. 256—261.

connections do not seem to have developed in a commercial direction. It is indeed true that in 1278 the barons and bailiffs of the port of Winchelsea were ordered to search all merchants, including Jews, who wished to pass through and to arrest those on whom were found silver plate, clipped money and other broken silver, on the export of which there was a ban[48]. Although Jews are mentioned here, no evidence has yet been found to demonstrate that they really did go abroad with the silver; it has already been seen that they sold their clippings to foreign merchants.

As to the alternative possibility of home trade there is much too little evidence. Some of this has already been presented. We may add the sale of 1 1/2 sacks of wool for £ 8-10 by Abraham the son of Benedict of Wynton[49]; the order to the sheriffs of Southampton to allow Deudone of Winchester to dwell there and ply his merchandise, and also a somewhat similar order to the sheriffs of Cambridge in favour of Joceus the son of Samuelotus[50]. There is also an interesting series of transactions between Peter Beraud, an Italian merchant, and Hagin de Lincoln and Cok the son of Aaron, both of London[51]. In August 1266 there is a recognizance for £ 180-6-8 made by Beraud to the Jews being the residue of a debt of £ 500. This is followed by an acknowledgement from the Jews to Beraud for 40 sacks of wool which they owed him. Finally comes an acknowledgment of quittance of Beraud by the Jews of the £ 500 less the sum still owing. The proximity of these three documents and the fact that the money seemingly paid would price the wool at the round figure of 12 marks per sack suggest that it was not a real sale. Why the Jews should go to such lengths to conceal an ordinary loan of money, which was still legal in 1266, is difficult to say. But even if the sale was genuine, the fact that it is a solitary instance diminishes the importance of its implications.

Some inquiry must still be made into the reasons for the lack of Jewish trading operations in medieval England. The usual explanation is briefly that the deep social and religious feeling with which they were regarded effectively hindered Jewish

[48] *CCR.* (1272—79), p. 518.
[49] P. R. O., E 9/39, m. 9.
[50] *CCR.* (1272—79), pp. 259, 370.
[51] *Select Pleas*, pp. 33—35.

participation in trade. That this was an important factor no one can deny, but to leave the question at that is to overlook the operation of certain important economic factors which were actually in the given conditions more effective obstacles.

As far as home trade is concerned, the exclusive spirit of the towns and the functioning of the local markets for purely local purposes are sufficient to account for the absence of the alien Jews[52]. Except for London, all the towns until the middle of the fourteenth century were content to limit production to the needs of their own inhabitants and of the surrounding country. In such circumstances it is surely not surprising that the Jews did not take a very active part; the returns could not have been very great in face of the difficulties, social, religious and economic, which confronted them. Far more important, however, especially in view of the part played by Jews in the trade of Continental Europe, are the reasons which kept them out of England's foreign trade.

Generally speaking, there was a revival of European commerce at the end of the tenth and the beginning of the eleventh centuries[53]. This was very largely a result of the Crusades: the pilgrim and the merchant travel side by side. Economic life became very active along the northern coast of the Mediterranean Sea. Concurrently in the north, the other great trade avenue of the Middle Ages in the Baltic Sea also reawoke to a vigorous existence. These two vast coastal trades very early began to penetrate into the interior along navigable rivers and other natural routes. The north and south eventually met in the Low Countries in the early part of the twelfth century[54]. This expansion of trade throughout the west of Europe resulted not only in the influx of Italian merchants but contributed very much to the rise of the German and Flemish merchant classes. The medieval town as a centre of trade and industry was born. Now at this point two observations, highly significant for Jewish economic history, must be made. In the first place, in the Netherlands "it is curious to notice that the more active, economically, a region showed itself the less the Jews

[52] L. F. Salzman, *English Trade in the Middle Ages* (Oxford, 1931), ch. IV—VII.

[53] H. Pirenne, *Medieval Cities* (Princeton, 1927), ch. IV.

[54] H. Pirenne, *AHR.* XIX (1914), p. 501.

appeared in it"[55]. Some explanation may be gathered from a similar phenomenon that occurred in Germany, where the intensely keen competition of the Italians and of the native German merchants practically anihilated Jewish trade and forced it to turn to a less exploited region in the east, the Slavonic countries[56]. The function of the Jewish money-lender and trader during the Middle Ages was to serve as an intermediary in those parts and at such times when economic life was not very advanced. The moment that trade became vigorous, either from foreign or from local stimulus, the Jews became superfluous. It was so in Germany and in Flanders. In England as well, the influx of the ubiquitous Italians, with their mastery of exchange operations and 'clearing house' practice, is to be directly connected with the expulsion of the Jews[57].

We have still to deal with the absence of the Jews from English foreign trade. Similar reasons must be advanced, native and foreign competition. Although England, alone of European countries, possessed a fairly efficient national government and a comparatively superior economic administration, her commerce was almost entirely in the hands of foreign merchants, principally the Flemish and the Italians who had so adversely affected Jewish commercial enterprise in other lands. In the twelfth and thirteenth centuries, English trade went in three directions, due West to Ireland, to the South and West of Europe and to the East and North. The Irish trade was in the hands of native merchants; salt, iron and cloth being exchanged for fish, timber and Irish rugs. The southern trade was naturally controlled by the Italians, and the western European by the Gascons who were subjects of the English king; it was carried on mainly in wool, cloth, wine and a number of luxury articles. The eastern and northern trade was dominated by the Flemish and the Germans, organized in the Hanse. It was here, however, that native English merchants first began to invade foreign commerce, especially the wool trade. We have already mentioned the fact that in the large lists of wool export licences granted to English merchants in the reign

[55] H. Pirenne, *EHR.* 1929, p. 29.

[56] M. Hoffmann, *op. cit.*, passim. I. Schipper, *Der Anteil der Juden am europäischen Grosshandel mit dem Orient* (Czernowitz, 1912), p. 8.

[57] See Elman, *EHR.* VII (1937), pp. 145—154.

of Edward I no Jewish names appear at all. There was obviously no room here for any Jewish merchants.

The further the problem of the lack of Jewish trading operations is considered, the greater becomes the conviction that the part played by the Jews in medieval economic life was to act as a continuative link in periods of decline, a link becoming unnecessary and therefore discarded when things begin to move once more towards a new level or stage of economy. As long as the native merchants are not ready for commercial expansion, as long as other merchants are absent, the Jew is able to carry on. The moment these conditions are removed he has to find a new field of activity[58]. In England, the Jew was never able to get a grip upon trade itself because the others were already in control. In finance, however, and there to a very limited extent, he had a purpose to serve until the more-widely experienced and better organized Italians began to become active.

Finally the question of Jewish trading activity in thirteenth century England may be summarized briefly. In spite of the proximity of a number of Jewries to important market centres, there is little evidence that the Jews carried on any large-scale trading operations. Some of them most certainly were peddlers in the usual luxury articles, but the monetary value of these in all recorded instances was not very high. Furthermore, the possibility that these articles had been placed in pawn with the Jews and then forfeited — so that the trade in them was a by-product of money-lending — must always be borne in mind. Towards the end of their stay in England, the Jews appear to have busied themselves in selling plate made from clipped coins. And there is also some very doubtful evidence that as a result of the prohibition of usury in 1275 the Jews began to grant sale credits on corn and wool. But the paucity of the evidence and the frequent vagueness of its import must forbit arguing from it that the English Jews were important traders.

[58] [Cp. Wilhelm Roscher, "Die Juden im Mittelalter", in Roscher's *Ansichten der Volkswirtschaft* II, 3rd ed. (Leipzig, 1878), pp. 321 ff. — G. K.]

# A TALMUDIC LEGEND AS THE SOURCE FOR THE JOSEPHUS PASSAGE IN THE *SACHSENSPIEGEL*

By

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No complete monographic treatise has recently been devoted to the Jewry law of the *Sachsenspiegel*[1], the most important German law-book of the Middle Ages[2]. One passage of the laws regulating the legal relations of the Jews with their non-Jewish environment has aroused particular scientific interest. It is the passage in *Sachsenspiegel* Landrecht III 7, 3 treating of the king's peace as the basis of legal protection for the Jews.

| | |
|---|---|
| Sleit ouch die kersten man eynen joden, men richtet uber ine durch des kuninges vrede, den her an ym gebrochen hât, oder dûth her eyn ungerichte an ym. Dissen vrede irwarf one Josaphus weder den | Should a Christian slay a Jew or commit a crime against him, he shall be judged under the king's peace, which he has broken in him. It was Josephus who gained this peace for them from |

[1] Among all European law-books of the thirteenth century the *Sachsenspiegel* is not only the oldest but by far the most original and most profound. It contains a presentation of Saxon, and more specifically Eastphalian, territorial and feudal law. The German version of the original Latin text probably originated in the territory of Anhalt between 1221 and 1224. Its author, the knight Eike von Repgow, is justly regarded as the greatest German jurist of the Middle Ages.—Literature on Eike von Repgow and the *Sachsenspiegel* hereafter in Guido Kisch, *Sachsenspiegel und Bibel, Quellenforschungen zum Sachsenspiegel, zugleich ein Beitrag zur Geschichte des biblischen Einflusses auf das deutsche Recht im Mittelalter*, probable date of publication: Fall 1939; G. Kisch, "The Sachsenspiegel and Its Sources," *The Germanic Review* XIV (New York, 1939), pp. 3—13; G. Kisch, "Biblical Spirit in Mediaeval German Law," *Speculum* XIV (1939), pp. 38—55; G. Kisch, "Biblische Einflüsse in der Reimvorrede des Sachsenspiegels," *Publications of the Modern Language Association of America* LIV (1939), pp. 20—36.—*Sachsenspiegel Landrecht* is referred to as *Sachsenspiegel.*

[2] Cf. Kisch, "The Jewry-Law of the Mediaeval German Law-Books," *Proceedings of the American Academy for Jewish Research* VII (1935—36), pp. 93—96, 114—122; also G. Kisch, "The Jewry-Law of the *Sachsenspiegel*," in "*Orient and Occident*", *Gaster Anniversary Volume* (London, 1936), pp. 306—311.

koning Vaspasianum, dô her sînen sonen Tytus gesunt machede von der icht[3].

King Vespasian when he cured his son Titus of the gout.

According to the Saxon law-book, the Jews were included among those people who were granted a special peace: "On all days and for all time, priests and clerics, girls and women, and *Jews* are to have peace for their goods and their persons" (*Sachsenspiegel* II 66, 1). A permanent peace was to benefit them. Every act of violence committed against an individual granted this special peace was deemed a most grievous breach of the peace carrying with it more severe penalties than a crime against a person not included in the peace. Eike von Repgow, the author of the *Sachsenspiegel*, knew the king's Jewry protection, the so-called *Judenschutzrecht*, and rightfully saw in it the basis of the legal security of the Jews[4]. He then sought for an explanation of the genesis of this king's peace and found one by cleverly combining it with an historical record. "Dissen vrede irwarf one Josaphus weder den koning Vaspasianum, do her sînen sonen Tytus gesunt machede von der icht" (*Sachsenspiegel* III 7, 3 II).

The surviving Jews became slaves of Emperor Vespasian after the conquest and destruction of Jerusalem, finally losing all their rights. Nevertheless, Vespasian showed them his favor. This was a reward for the medical skill of Flavius Josephus, who had cured the imperial Prince Titus of the gout. The former was supposed to have benefited his co-religionists by extracting this concession from the grateful Emperor. Therefore—this is necessarily the conclusion to be inferred—the German kings, who considered themselves the successors of the Roman Emperors, continued to favor and protect the Jews.

In this conception of history, bold as it is ingenious, the author of the *Sachsenspiegel* believes he has found the reason for the extraordinary legal position of the Jews in Germany during the Middle Ages.

From the *Sachsenspiegel* the Josephus passage was taken over

[3] Karl August Eckhardt, *Sachsenspiegel Land- und Lehnrecht*, MGH., Fontes Juris Germanici Antiqui, Nova Series, vol. I (Hannover, 1933), p. 112.

[4] Cf. Kisch, The Jewry-Law of the *Sachsenspiegel*, pp. 308—310.

unaltered into the *Deutschenspiegel*[5]. The South-German law-book, the *Schwabenspiegel*, written in Augsburg in 1275, contains the following version[6]:

Daz reht hant in die Roemischen kunige gegeben. Swaz si gnaden unde rehtes hant, daz erwarp in Josephus umbe den kunig Tytum. Daz geschach, do Jerusalem gewunnen wart; do nerte si Josephus, swaz ir dannoch lebete[7].

They were granted this privilege by the Roman kings. Josephus acquired for them from King Titus whatever of privileges and rights they possess. This was accomplished when Jerusalem was conquered; Josephus fed those of them still alive at that time.

The legal-historical significance of this interpretation of the *Sachsenspiegel* is beyond the scope of this present inquiry and must be reserved for a comprehensive presentation of the Jewry-law of the medieval German law-books, now being prepared by the writer. What is of primary concern here is the problem of *source history* only.

In more recent times the Josephus passage of the *Sachsenspiegel* quoted above has aroused the interest of all authors in the field of legal and constitutional history. It has often been quoted in general literature and especially in the studies devoted to the *Sachsenspiegel*. Most references have been merely cursory[8], and only two scholars have been seriously interested in the source of the passage.

[5] Julius Ficker, *Der Spiegel deutscher Leute* (Innsbruck, 1859), Article 208, 3, p. 124; not in Eckhardt-Hübner, *Deutschenspiegel* (Hannover, 1933).

[6] F. L. A. Freiherr von Lassberg, *Der Schwabenspiegel oder Schwäbisches Land- und Lehenrechtbuch* (Tübingen, 1840), Article 260; ed. Wackernagel, Art. 214; ed. Gengler, Art. 214, 2, 3.

[7] See the continuation of this passage in note 24 below. Cf. *Freisinger Rechtsbuch* (1328), Chap. 172, Georg Ludwig von Maurer, *Das Stadt- und Landrechtbuch Ruprechts von Freysing* (Stuttgart and Tübingen, 1839), p. 191: "Das ist darumb gesetzt, das sy der kunig Vespasianus in seinen frid genommen hat, do Josephus der jud seinen sun Titum gesundt macht von dem vergifft."

[8] Cf. Selig Cassel, Article "Juden (Geschichte)", in Ersch und Gruber, *Encyklopädie der Wissenschaften und Künste* II 27 (Leipzig, 1850), pp. 83, 87; Otto Stobbe, *Die Juden in Deutschland während des Mittelalters* (Braunschweig, 1866), p. 13; Johannes E. Scherer, *Die Rechtsverhältnisse*

Ferdinand Frensdorff's conclusions about the historical sources are completely negative[9]. "It is obvious that the legend behind the regulation has no historical value. It was merely an attempt to explain in terms of history the actual legal status of the Jews." "According to the *Spiegler*, the king's peace, in which the Jews are included, goes back to Vespasian who, in his gratitude to Josephus for having cured his son, Titus, of the gout, has extended peace to the Jews also (Ssp. III 7, 3). A relationship among the individuals mentioned in the law-book could be shown as far as dates are concerned; for the author of the Greek works on the Jewish War and the Antiquities of the Jews came in contact with the Roman Emperors Vespasian (69—79) and Titus (79—81) and lived for some time in Rome as a full-fledged Roman citizen. The legend is amplified in the *Schwabenspiegel*. The *Deutschenspiegel*, Article 208, merely repeats the *Sachsenspiegel;* cf. *Schwabenspiegel*, Articles 260 and 261. The role of Josephus as a doctor may be related to the fact that Jews early became physicians to princes." "The Jews were disdainfully treated by the law, but not entirely deprived of rights. And since it seemed reason-

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*der Juden in den deutsch-österreichischen Ländern* (Leipzig, 1901), p. 86: "Both hypotheses namely the rewarding of Josephus by Vespasian and the selling of the Jews to the imperial Chamber are fictitious and lack any historical basis"; similarly Rudolf Hübner, *Grundzüge des deutschen Privatrechts*, 5th ed. (Leipzig, 1930), p. 97; *Germania Judaica* (Breslau, 1934), p. XXV; Herbert Fischer, *Die verfassungsrechtliche Stellung der Juden in den deutschen Städten während des dreizehnten Jahrhunderts*, (Breslau, 1931), p. 6; *Encyclopaedia Judaica* IX, p. 860; Emanuel Leser, "Die rechtliche Stellung der Juden nach dem Sachsenspiegel", in *Wissenschaftliche Beilage zum Israelit* XI (1870), p. 149, note 1; Ludwig Weiland, *Sächsische Weltchronik*, *MGH. Deutsche Chroniken* II 1 (Hannover, 1876), pp. 52 f.; Gustav Roethe, *Die Reimvorreden des Sachsenspiegels* (Berlin, 1899), p. 29; Georg Cohn, "Der Kampf um den Sachsenspiegel", *Festgabe der Universität Zürich* (Zürich, 1914), p. 45; Eduard Eichmann, "Die Stellung Eikes von Repgau zu Kirche und Kurie", *Historisches Jahrbuch* XXXVIII (1917), p. 751; Jonas Cohn, *Die Judenpolitik der Hohenstaufen*, (Hamburg phil. Diss. 1934) p. 29, note 108.

[9] Ferdinand Frensdorff, "Beiträge zur Geschichte und Erklärung der deutschen Rechtsbücher II: Sachsenspiegel II 66 ff. und der Landfriede", in *Nachrichten der K. Gesellschaft der Wissenschaften zu Göttingen* (1894), p. 32; V I: "Die Rechtsbücher und die Königswahl", *ibidem* (1923), p. 69. Frensdorff II, p. 32, note 1, refers to Andreas Heusler, *Institutionen des deutschen Privatrechts* I (Leipzig, 1885), p. 149, with regard to early sources concerning Jews as physicians to princes.

able to go back to the very beginning, it was quite natural to hit upon the period of the destruction of Jerusalem and the related scattering of the Jews among all peoples."

In all probability this is true from the viewpoint of legal history, but as for source history, Frensdorff's exceptional critical sagacity has failed for once to come up to expectations. He has not realized that Eike's daring historical interpretation did not arise wholly from his own constructive talent but that it actually rests upon an historical basis.

Karl Zeumer, on the other hand, has come considerably closer to the source for the Josephus passage[10]. He assumed that Eike used a collection of legends from which the story of the cure of Titus by Josephus could have been taken. A collection which also contains this tale was published by Ludwig Weiland from a Copenhagen manuscript of the fifteenth century[11]. Perhaps from a similar collection "Eike knew of the story in which Josephus cured Titus of the gout which he had brought upon himself by his overbounding joy at the rise of his father, Vespasian, to the emperor's throne. From what this source and still other sources report about Josephus, it might have appeared to Eike as though Josephus had been a sort of negotiator between the Roman rulers and his own people and in this way had struck upon the idea of using the gratitude of Vespasian to benefit them. Eike, though, overlooked the fact that, according to the tale, the cure of Titus was put off to the period before the vanquishing of the Jews, the destruction of Jerusalem by Titus and the enslavement of the surviving Jews, that is, before the events which, according to the *Sächsische Weltchronik*, led to the proscription of the Jews *(Verhängung der Oberacht)*. This deprived them of all rights, which was later alleviated through the king's peace[12]". It is evident in Zeumer's opinion that Eike attributes legal views of his own time to Vespasian's era. But Zeumer satisfied himself with these conclusions and did not consider the possibility of tracing further the historical origin of the Josephus legend.

Weiland, however, had already realized that the stories of the Copenhagen collection of legends must go back to very early

[10] Karl Zeumer, "Die sächsische Weltchronik, ein Werk Eikes von Repgow", in *Festschrift für Heinrich Brunner zum siebzigsten Geburtstag* (Weimar, 1910), pp. 139, 143 f., 147; hereafter referred to as "Zeumer".

[11] Ludwig Weiland, "Niederdeutsche Pilatuslegende", *Zeitschrift für deutsches Altertum*, neue Folge V (XVII) (Berlin, 1874), pp. 147—160.

[12] Zeumer, pp. 143 f.

times[13]. He pointed out that they can be found in similar form as early as the *Legenda Aurea* written sometime between 1263 and 1273[14] by Jacobus de Voragine (ca. 1230—1298), who refers to an apocryphal history of the destruction of Jerusalem.[15] Weiland ultimately traces back to Josephus' *De bello Judaico*[16] the description of the siege of Jotapata, the story of the imprisonment of Josephus, his prophecy that Vespasian would become emperor, all of which precede the tale of the cure of Titus by Josephus.

Before proceeding any further I would like to relate the story of the cure of Titus by Josephus as it is recorded in the Copenhagen collection of legends, because its text published by Weiland is difficult to procure. Moreover, another passage, which precedes this story and which is to be considered in the subsequent investigation, is added from the same collection. For comparison, I am also reproducing the text of the *Legenda Aurea* translated by William Caxton[17].

*Copenhagen Collection of Legends.*

Unde also se Christum vorkoften vor 30 sulvere penninge, also vorkoften se 30 Joden umme enen pennig.

Do dit Tytus sin sone vornam, [namely the rise of his father to the imperial throne] de noch in der reise was varende, he wart so vro, dat eme de gicht van vrouden dat ene ben benam, also dat he nicht gan mochte. Do Josephus, de noch in deme here was, dit vornam, woraf dat he sik was geworden, do vragede he in deme here, gift dar

*Legenda Aurea.*

After this then, when Vespasian had been emperor two years, Titus took Jerusalem and destroyed all, and the temple also; and like as the Jews had bought our Lord for thirty pence, so gave he thirty Jews for one penny.

And Josephus said: The emperor of Rome is dead, and the senate has made thee emperor; and Vespasian answered: If thou be a prophet, why hast thou not prophesied to the people of this city that they shall be taken by my hand? And

[13] Cf. Weiland, "Niederdeutsche Pilatuslegende", *loc. cit.*, pp. 159 f.

[14] *Jacobus de Voragine, Legenda Aurea, deutsch* von Richard Benz, 2 vols. (Jena, 1925), p. XX.

[15] Benz, *Legenda Aurea* I, p. 451; F. S. Ellis, *The Golden Legend or Lives of the Saints as Englished by William Caxton*, III (London, 1900), p. 165.

[16] Cf. also the miniature illustration in a Fulda manuscript of the twelfth century "Josephus before Vespasianus" in *Enc. Jud.* IX, pp. 403 f.

[17] Ellis, *The Golden Legend* III, pp. 167 f., 165 f.

iement were, de Tytus viende were. Do wart en knecht gevunden, des Tytus sin viant was, dat he ene nicht mochte anseen efte nomen horen. Do dit Josephus hadde vornomen, do sprak he to Tytum: Heere, wultu sunt werden van diner suke, so schaltu nummende bedroven, de mit mi to dime hove kumpt. Dat lovede Tytus Josephum. Darna do dit vorgeten was, segede Josephus Tyto, he wolde vor eme eten, unde het dat etent bereden unde het sine taflen maken rechte over jegen Tytus taflen, unde nam mede sinen gesellen, deme Tytus viant was, unde settede ene to siner rechteren hand jegen Tytum over. Do Tytus sinen viand dar sitten sach, do wart he so tornich unde also bedrovet, dat id ummate was, unde van deme groten torne, den he over der taflen leit, dat he sinen viand dar sitten sach, wart he sunt van der groten suke, de eme wart van vrouden. Do eme Josephus berichtede worumme dat he dat ghedaen hadde, do wart Josephus van der vengnisse vorlaten unde de knape van des vorsten unhulde Tyti.

Josephus said: I have well forty days warned them. And in the meanwhile came the messengers from Rome and affirmed that Vespasian was made emperor, and led him to Rome. All this recounteth Eusebius in his chronicle. Josephus said tofore to Vespasian as well of the death of the emperor as of his election to be emperor. And Vespasian left his son Titus at the siege of Jerusalem.

It is read also in the same history, though it be apocrypha, that when Titus heard that his father was enhanced into the empire, he was so glad and had so much joy, that all his sinews were shrunken and were so feeble that he was sore tormented with the palsy. And Josephus hearing thereof diligently enquired the cause of the sickness, the time thereof and the manner. The cause ne the sickness were not known, but the time was when he heard of the election of his father to the empire. Josephus, a wise and a prudent man, considered the time of the coming of the sickness, and conjectured that it came of overmuch joy and abounding gladness, and remembering that contraries, for that which cometh of love is cured by hate ofttimes, and began to enquire if there were any man that the prince hated much. And it was that he had a servant whom he held in prison, and hated him so much that in no wise he might look on him ne hear him named. Then he said: Titus if thou desire to be whole, who that ever come in my fellowship must be here sure and safe. Then Josephus made the dinner to be ready and set himself against him, and the servant that Titus most hated sat on his right side, whom as soon as Titus had beholden he began to chauffe and to be marvellous angry for anguish. Then he which was infrigidate and cold for joy, stretched out his sinews, and was made all whole by the

burning heat of anger and was all whole. All this foresaid of Josephus, I remit it to the reader's judgment whether he will believe it or not.

Weiland's assertion that all the stories about Josephus ultimately go back to Flavius Josephus' history of the Jewish War is generally correct. When one reads the *Bellum Judaicum* one finds the story of the siege of Jotapata in book III, Josephus' imprisonment and prophecy in III, 8, 8—9, his liberation in IV, 10, 7.

But the tale about Josephus curing Titus' gout, which is really the only point of interest and significance in the source history of the Josephus passage (*Sachsenspiegel* III 7, 3), does not appear to be fully explained. For it alone does not go back to Josephus but has its basis in a later rabbinical tradition. The fact that Vespasian, during the conquest of Palestine, was proclaimed emperor had some effect upon the Jews even in later times. A legend which is handed down in a tradition of about the third century of the Christian era attributes the prophecy of Vespasian's proclamation as emperor to Rabban Johanan ben Zakkai (first century of the Christian era)[18]. According to the tradition of the *Talmud*, *Gittin*, 56 a—b, this rabbi succeeded, through a strategem, in leaving Jerusalem, by feigning he was dead and having himself borne outside the limits of the city. Through this he was in a position to carry on successful negotiations with Vespasian concerning the preservation of the spiritual possessions of the Jews[19]. In connection with this tale, the legend of Vespasian having been healed by R. Johanan ben Zakkai, is reported in the Talmud[20]. The Talmudic tale follows here translated by Maurice Simon[21]. For comparison

[18] Cf. *Enc. Jud.* IX, p. 400; Wilhelm Weber, *Josephus und Vespasian, Untersuchungen zu dem jüdischen Krieg des Flavius Josephus* (Stuttgart, 1921), pp. 43 and note 5, 47 f.

[19] Cf. *Enc. Jud.* IX, p. 225.

[20] In 1935, on the occasion of my Academy lecture "The Jews in the Mediaeval German Law-Books", Professor Louis Ginzberg, New York, called my attention to the passage in the *Talmud*, Gittin, 56 a—b. This passage as well as its parallel in Midrash *Ekah Rabbati* are already discussed in D. Spiegel, *Die Kaiser Titus und Hadrian im Talmud und Midrasch sowie bei den zeitgenössischen Geschichtsschreibern* (Vienna, 1906), pp. 10—14.

[21] *The Babylonian Talmud Translated into English* under the editorschip of Isidore Epstein, *Gittin* by Maurice Simon (London, 1936), pp. 258 f.

the slightly different version of the Midrash Ekah Rabbati[22] I 5 is added.

*Talmud, Gittin*, 56 b:

At this point a messenger came to him [Vespasian] from Rome saying: Up, for the Emperor is dead, and the notables of Rome have decided to make you head [of the State]. He had just finished putting on one boot. When he tried to put on the other he could not. He tried to take off the first but it would not come off. He said: What is the meaning of this? R. Johanan said to him: Do not worry: the good news has done it, as it says, *Good tidings make the bone fat* [Prov. 15, 30]. What is the remedy? Let someone whom you dislike come and pass before you, as it is written, *A broken spirit drieth up the bones* [Prov. 17, 22]. He did so, and the boot went on. He said to him: Seeing that you are so wise, why did you not come to me till now? He said: Have I not told you? — He retorted: I too have told you.

He said: I am now going, and will send someone to take my place. You can, however, make a request of me and I will grant it. He said to him: Give me Jabneh and its Wise Men, and the family chain of

*Midrash Ekah Rabbati* I 5:

Three days thereafter Vespasian went bathing in the Gufna. After had bathed, he came out and dressed. And it occured that when he had put on one of his shoes, he was brought letters from Rome, reporting that the emperor had died and the Romans had chosen him as ruler. Thereupon he desired to put on his other shoe but could not make his foot fit in. Whereupon he spoke: 'Go and fetch me this Jew [Rabban Johanan ben Zakkai]'. Thereupon they went and fetched him. He said to him: 'Why is it that on all other days I was able to put on both shoes and they fit me well, yet today the one fits but the other does not?' Then R. Johanan ben Zakkai said to him: 'Thou hast heard good news and hast become stout, as is written [Prov. 15, 30]: "Good tidings maketh the bone fat". 'What can I do?' asked Vespasian. 'Hast thou not one enemy or creditor [literally: one who has a debt]? Let him pass before thee and then thou wilt be vexed and thy body will shrink; the shoe will fit. For it is written [Prov. 17, 22]: 'A depressed spirit

[22] It is assumed for various reasons that this work was not completed before the second half of the seventh century; cf. *Jewish Encyclopedia* VIII, p. 559; *Jüd. Lex.* II, p. 231. Salomon Buber, *Midrasch Echa Rabbati* (Wilna, 1899), fol. 34 a. The English translation of this passage is based on Wünsche's German translation which, however, was rectified by Professor Louis Ginzberg; cf. August Wünsche, *Der Midrasch Echa Rabbati* (Leipzig, 1881), pp. 67 f.

Rabban Gamaliel, and physicians to heal R. Zadok. R. Joseph, or some say R. Akiba, applied to him the verse, '[*God*] *turneth wise men backward and maketh their knowledge foolish*' [Jes. 44, 25]. He ought to have said to him: Let them [the Jews] off this time. He, however, thought that he would not grant so much, and so even a little would not be saved.

drieth up the bones'. Thereupon he did as directed and was able to put on the other shoe.

When Vespasian came to conquer the city, he said to R. Johanan ben Zakkai: 'Requesteth whatever thou wilt of me; I will grant it thee'. Thereupon he said to him: 'I request of thee that thou leave the city in peace and withdraw'. Then said he to him: 'The Romans have elevated me to emperor only because of this city and thou sayest: Leave the city in peace and withdraw [Request something else of me].' Thereupon he said to him: 'If that is so, then I request that thou leaveth open for three hours the West Gate of the city, which leads to Lydda, that everyone who joineth in emigrating [in order to save himself] will not be killed.' When Vespasian was about to conquer the city, he said to him: 'If thou hast someone who is close to thee, send for him and have him led forth.' R. Johanan ben Zakkai had all the scholars come forth.

In order to clarify the connecting links from the point of view of source history it must first of all be established that the Copenhagen collection of legends and the *Legenda Aurea* presumably go back to a common source (*Vorlage*). For the tale of the healing of *Titus* by *Josephus* with its related act of gratitude and favor shown to the latter is found in both texts and they correspond quite accurately with each other. Aside from other common characteristics, which cannot be considered more closely here, both texts include the remark that Titus sold the Jews in groups of thirty for a piece of silver, because they had sold Christ for thirty pieces of silver. This motif[23], which recurs in the *Schwabenspiegel*[24] is not

[23] Stobbe, *Die Juden in Deutschland*, p. 13 note **), offers proof that these legends were widespread in the beginning of the twelfth and during the thirteenth century; cf. also Herbert Fischer, *Die verfassungsrechtliche Stellung der Juden*, p. 6, note 1.

[24] Schwabenspiegel, Lassberg Art. 260 (Wackernagel, Art. 214; Gengler, Art. 214, 3): "Der juden wart besessen in Jerusalem dristunt ahzeg tusent. Der starp ein teil hungers, das ander teil wart erslagen, das dritte nerte Josephus. Doch furte man die selben veile, unde gab je drizzeg umbe einen boesen phenning. Dieselben gab der kunig Tytus ze eigen

mentioned in the *Sachsenspiegel*[25]. This, however, cannot be used as an argument to show that Eike could not have been acquainted with the same source. The reason may perhaps be sought elsewhere. The legal institution of the so-called *Kammerknechtschaft*, which in the late Middle Ages designated the Jews as the only *servi camerae imperialis* and which obligated them to pay certain taxes, is not distinct in this form in the *Sachsenspiegel*[26]. Therefore its author had no basis for establishing this legal relationship in his law-book. The *Sächsische Weltchronik*, on the other hand, is acquainted with the myth of the sale of the Jews, as is shown in Chapter 44. The story here was taken from another source.[27] It is noteworthy, however, that the *Weltchronik*[28] contains the legend of Josephus' prophecy and its reward through his liberation

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in dez kuniges kamer; und da von suln si sin dez Richez knehte, unde er [der romische kunic] sol sie schirmen."—Cf. *Freisinger Rechtsbuch* (1328), (above note 7), chap. 172, p. 190: "Dise recht erwarb in Josephus von den kaisern Tito und Vespasiano, do sy Jerusalem zerstörten, das sy ye XXX juden umb ain pfennig gabn; dy selben pfening legtn sy in des reichs kamer. Darumb sind dy juden des reichs knecht; darumb sol sy das reich beschirmen." The passage is missing in Hermann Knapp, *Das Rechtsbuch Ruprechts von Freising* (Leipzig, 1916); chap. 121, p. 70, reads: "Daz recht habent in di roemischen chueng geben."

[25] The *Deutschenspiegel* that, in art. 208, follows the model of the *Sachsenspiegel* III 7, 3 also does not show this motif.

[26] Cf. Georg Caro, *Sozial- und Wirtschaftsgeschichte der Juden im Mittelalter und der Neuzeit* I, 1st ed. (Leipzig, 1908), 2nd ed. (Frankfurt a. M., 1928), pp. 402, 512; Kisch, "The Jewry-Law of the Sachsenspiegel," p. 309; Kisch, "Otto Stobbe und die Rechtsgeschichte der Juden," *JGJC.* IX (1938), pp. 15 f.

[27] Weiland, *Sächsische Weltchronik*, p. 101, and the somewhat unclear note 5; p. 24. Cf. above, note 23. The legend is evidently of Christian origin. The report in Josephus, *Bellum Judaicum* VI 9, reads differently.

[28] Weiland, *Sächsische Weltchronik*, chap. 44, p. 101: "Den selven Josephum hadde gevangen Vespasianus. Do wickede he eme, dat he Keiser sulde werden, darumbe leis he in vri." Cf. Josephus, *Bellum Judaicum* III, 8,9; IV 10,7.—The "C"-Version of the *Sächsische Weltchronik*, in chap. 43, contains the following passage: "Do Vespasianus to Alexandrie was, de boden van Rome quamen dar to ime unde sageden ime, he were koren to keisere". It also goes back to Josephus, *Bellum Judaicum* IV 11, 5, a fact not mentioned by Weiland, p. 100.

from imprisonment in the version of the *Bellum Judaicum*[29]. The report in the Copenhagen collection of legends also goes back to this version; but there it is Titus who offers the act of favor, instead of Vespasian.

Evidently, however, in the *Sachsenspiegel* (III 7, 3), the stress lies upon the idea that Josephus had obtained the king's peace for his co-religionists as a favor from King *Vespasian*, as an act of grace by the emperor in reward for his successful medical service rendered to Titus. This idea, that Josephus who was to be granted any request he desired, used Vespasian's gratitude to benefit his fellow-believers, is not found in the *Bellum Judaicum;* and it is likewise missing in the *Legenda Aurea* and the Copenhagen collection of legends, and therefore it was, doubtlessly, not in their common source. This idea, however, is the most prominent and characteristic motif of the rabbinical story. The reference to *Vespasian* as the granter of the act of grace in the *Sachsenspiegel* is to be noted[30] while in both the collections of legends Titus is mentioned in this connection.

Both arguments lead to the assumption that in the last analysis Eike's hypothesis may very well go back to the rabbinical legend. This view is further supported by the consideration that the question concerns an interpretation decidedly favorable to the Jews. Eike has apparently taken this interpretation from an intermediary source. Probably he did this in the same way as it is assumed he has done in the *Sächsische Weltchronik* with regard to the condemnation of the horrors perpetrated against the Jews

[29] The facts stated in the two last sentences of the above presentation seem to offer satisfactory reason for Eike not to repeat his hypothesis on the King's peace, in the *Weltchronik*. In my opinion, this explanation is more in conformity with the source history than the interpretation by Zeumer, pp. 143—144. But, perhaps, both motives were concurrent.

[30] The fact that in the *Weltchronik*, chap. 44, it is also *Vespasian* who bestows the favor upon Josephus (see, above, note 28) certainly originates in the version of the *Bellum Judaicum*.

[31] Weiland, *Sächsische Weltchronik*, chap. 191, p. 179: "It volgede oc en grot here eneme moneke, de was Peter geheten. Se voren umbeschedenlike; se slogen alle de Joden in allen steden, dar se se vunden"; cf. Kisch, "The Jewry-Law of the Medieval German Law-Books", p. 96, note 59 b.

by the crusaders of Peter of Amiens[31]. Furthermore, it is possible that he was also acquainted with the common source of both the collections of legends, a source which can not longer be identified. One must think, perhaps, of a forerunner of the *Legenda Aurea*[32]. That these assumptions really lie within the realm of possibility, is difficult to contest. The Josephus passage in the *Sachsenspiegel* (III 7, 3) could then be the product of a contamination of both sources. If this is true, the method which is so characteristic of Eike's technique of composition in other respects, once again becomes manifest.[33]

## Note

Only after this essay was set in type did Hans Lewy's study "Josephus the Physician: A Mediaeval Legend of the Destruction of Jerusalem," in *Journal of the Warburg Institute* I (London, 1938), pp. 221—242, come to my attention. Lewy arrives at conclusions similar to mine, although his approach is somewhat different. Both essays, however, complement each other, creating a more complete study of the subject. In my article, in particular, attention is directed toward the legal historical literature on the problem and the Copenhagen collection of legends both of which are not mentioned by Lewy. Moreover, my assumption that the Josephus passage in the *Sachsenspiegel* could be the product of a contamination of two sources, seems worthy of consideration. The significance of this passage in Eike's law-book from the point of view of legal history will be discussed later, as has been previously pointed out. The opportunity will then be offered for a detailed discussion of Lewy's interpretation.

Another essay that was published after my essay was already in press should be mentioned here: Irving Linn, "If All the Sky Were Parchment," *PMLA*, LIII (1938), pp. 951—970. The paper is confined to the study of this single rhetorical phrase which made its appearance more than two thousand years ago and still lingers in folk rhymes of the present day. It can be traced all the way from the Orient to Western Europe and thus serves as a floating straw to mark the currents and eddies in the stream of literary tradition. With respect to the problems discussed in my essay the following conclusion of the author is of especial interest

[32] Cf. Weiland, *op. cit.*, p. 23.

[33] For more details on the technique of composition in Eike's *Sachsenspiegel* and *Weltchronik*, see G. Kisch, *Sachsenspiegel und Bibel*, cited above, note 1. Compare also G. Kisch, *Jewish Thought in the Sachsenspiegel* (New York, 1938).

(p. 967): "The materials assembled in the present paper... suggest rather forcibly still another medium, namely the Jews, who from ancient times had been in close contact with the literature and traditions of the Orient. In the course of their migrations they penetrated to every part of Europe and learned the languages of the peoples among whom they settled. They were specially qualified, therefore, to serve as agents in transmitting tradition from the East to the West."


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# THE LANDSHUT JEWRY OATH

By

Guido Kisch

New York

My research in the history of the mediaeval German Jewry oaths[1] made it necessary to treat the Landshut Jewry oath of the fourteenth century. This memorial of mediaeval Jewry-law, in itself noteworthy, gains interest through the fact that it is accompanied in the parchment volume of the Landshut Municipal Archive by an illuminated picture, which bears the title, *Feifelein der Juden Chunch.* In this way the text is graphically illustrated by the picture. The text and the illustration have been reproduced by Raphael Straus elsewhere[2]. In a prefatory note Straus quotes the archivist of Landshut, Dr. F. J. Knoepfler, as saying: "Until now practically nothing was known about the history of the Jews of Landshut in the fourteenth century. This lucky find in the municipal archive of a valuable illustration and text from the middle of the fourteenth century will be of great interest."

Unfortunately, both Knoepfler and Straus overlooked a previous publication. They did not know that the Landshut Jewry oath had already been published from the same manuscript of the municipal archive more than fifty years before, by the legal historian of Jena, the late Eduard Rosenthal[3].

Whoever includes the Landshut Jewry oath in the sphere of scientific investigations should see Rosenthal's publication. Even the few lines of the reprint by Straus which can be examined on the basis of the photostatic original (p. 44), show a distortion of the meaning. The photographic reproduction of the manuscript clearly reads: *eins pfantz schedlich verlaugen* (i. e. *verleugnen*, to deny) while Straus prints: *verlangen*, to demand. Inasmuch as a judgment is possible without examining the complete manuscript

[1] "Studien zur Geschichte des Judeneides im Mittelalter", to appear in *Hebrew Union College Annual* XIV (1939).

[2] *Zeitschrift für Geschichte der Juden in Deutschland* V (1935), pp.42 ff.

[3] Rosenthal, *Beiträge zur deutschen Stadtrechtsgeschichte*, Heft I und II: Zur Rechtsgeschichte der Städte Landshut und Straubing nebst Mitteilungen aus ungedruckten Stadtbüchern (Würzburg, 1883), p. 198.

itself, in comparing Rosenthal's with Straus' publication, one must unconditionally favor the former. This text is much more accurate and more in accord with the sense. Straus' transcription on the other hand, contains numerous inaccurate and doubtful, sometimes even false, readings.

Straus, whom we must otherwise thank for many an interesting contribution to Jewish history, is wrong even in the explanation of the picture of the Jew in the Landshut *Stadtbuch*. His opinion (p. 43 and note 1) that the Jew taking an oath in the picture is holding a slaughtering knife (!) is misleading. A symbol of this kind in the hand of one taking an oath would be as unusual as it would be out of place. In all printed Jewry oaths and in a number of them handed down only in manuscript form, which I have examined, there is nothing like that either in words or in illustration. The supposed slaughtering knife in the Landshut illustration of the Jewish oath ceremony is really—the Torah. In accordance with the general custom, the Jew is touching the Scroll of the Law with his right hand, while he raises the left hand in the gesture of the oath. This is the correct interpretation, which Rosenthal has naturally not misunderstood.

Rosenthal's book for all its emphasis upon legal history has some material for Jewish history, but is little known to most Jewish historians. It is to be especially recommended for its exposition on the legal status of the Jews in Landshut and Straubing during the Middle Ages. It remained unknown also to the author of the article on Landshut in the *Germania Judaica*.

# BOOK REVIEWS

Julius Hoexter and Moses Jung, *Source Book of Jewish History and Literature with Hebrew Supplement.* Shapiro, Vallentine & Co. London, 1938. XVI + 330 + XXII pp.

This volume contains a compilation of source material in excerpts sufficiently varied to afford the student a glimpse into the workshop of Jewish history. The authors present a selection of records, ancient, medieval, and modern, bearing on the political, social, religious and cultural life of the Jews. The book is based on Hoexter's German work *Quellenbuch zur jüdischen Geschichte und Literatur* (Frankfurt a.M., 1935) which is abridged from the same author's five volume *Quellenlesebuch.* The aim of the English edition is to provide a source book of Jewish history and literature for the English speaking countries that will meet the needs of high schools and colleges as well as those of the interested layman. In view of this purpose the emphasis on German Jewish history is counterbalanced by additional material on the history of the Jews in England, America, France, Russia, Poland, and other countries not sufficiently represented in the original edition. Also the sections on modern Hebrew literature, religious movements, and Jewish nationalism have been considerably enlarged in a skillful manner. Thus in many ways this is a new book that will, beyond any doubt, prove very useful and informative for the general reader. For research, however, one must always refer to the original sources. The English translation sometimes falls short, especially when based on the German translation of documents originally written in Latin. Bibliographical references are complete for Hebrew and ancient sources whereas the quotations with respect to medieval and modern material do not provide for quick and exact orientation.

New York. *Guido Kisch.*

Guido Kisch, *Jewish Thought in the Sachsenspiegel.* Bulletin of the Jewish Academy of Arts and Sciences, No. 5. New York, 1938. 22 pp.

The literary intercourse between Jewish and Christian scholars in France and Germany during the twelfth and thirteenth centuries is a fascinating subject of study which has hitherto received but scant attention. Recent research on Andrew, a canon of St. Victor's Abbey at Paris in the twelfth century, by Miss Beryl Smalley of Girton, the results of which will be published in forthcoming numbers of the *Recherches de Théologie Ancienne et Médiévale* (Louvain), has established beyond a shadow of

doubt that Christian scholars of Northern Europe sat eagerly at the feet of contemporary Jewish exegetes. Thus there was a constant and steady infiltration of Jewish scholarship and learning into the works of Christian scholars. Both Andrew and his master, Hugh of St. Victor, make explicit reference to *Judaeus meus* and *Hebreus meus* as the source of their exposition. Similarly, an anonymous thirteenth century North French manuscript in the Vatican on Canticles translates the Midrash to Canticles almost verbatim, even quoting the Rabbis who were the authors of the statements.

Guido Kisch in his pamphlet under review has established beyond question a similar influence in thirteenth century Germany. He has shown how the author of the *Sachsenspiegel*, the distinguished jurist Eike von Repgow, transmits Jewish traditional biblical exegesis which is not to be found in Christian sources, and which probably came to him by oral transmission from contemporary Jews. The author qualifies his conclusion with the statement: "Only the discovery of as yet unknown intermediary sources of Eike of non-Jewish origin could disprove this assumption." His caution is justified in view of the fact that, as Miss Smalley will show Andrew's commentary is the source of many of the Jewish traditions in Petrus Comestor's *Historia Scholastica*. But from what has been said concerning the parallel phenomena in Northern France even fifty years earlier, oral intercourse is by no means excluded. Through Kisch's proofs, it has been fully established that the Jews were well acquainted with the vernacular in mediaeval France and Germany.

The Christian scholars took full advantage of the given opportunities in order to inform themselves of the Jewish traditional exegesis of the time, which they regarded with respect as founded on a living tradition. The thanks of the few scholars engaged in this interesting branch of twelfth and thirteenth century scholarship are due to Dr. Kisch for his convincing and stimulating essay.

London. *L. Rabinowitz.*

Peter Browe S. J., "Die Judenbekämpfung im Mittelalter." Reprint from *Zeitschrift für katholische Theologie* LXII (1938), pp. 197—231, 349—384.

On several previous occasions the author has dealt with various phases of the question of the Jews in the Middle Ages. This time he presents an essay on Jewish persecutions down to the period of the Counter-Reformation. He divides his study into five parts. In the first are listed and discussed those conversions and expulsions which resulted from the decrees of regularly constituted political authorities, and were accompanied therefore with little bloodshed. Most of them aimed to enforce the well-known medieval Church policy. The "illegal persecutions"

treated in the second chapter, were due to fanatical mob action, and were contrary not only to the desires of the local authorities but also of the Church. The third section presents the statements made by the Popes and by some of the Church Councils as well as by other churchmen in condemnation of the illegal persecutions and for the protection of Jewish life. The fourth chapter, of particular importance, touches upon the number of victims of medieval Jewish persecutions, which, according to Browe, has been exaggerated. He, therefore, lists all the available figures for both the so-called legal and the illegal persecutions, including Jewish suicides. Finally, a contrast is drawn between the reaction to martyrdom on the part of Jews and Christians.

The author's scholarly approach and his efforts to be fair and accurate, are evident. But at various points and all through the fifth chapter, he goes beyond history in arriving at psychological and theological conclusions. Naturally, any discussion of the theological portions must be omitted here. Therefore, I merely wish to point out two statements that are not based on scientific grounds. One is the assertion that Christians were not as bitter in their attacks on Judaism as were Jews in their attacks on Christianity (p. 210, 212, n. 5). The fact is that a much longer list of insults levelled against Judaism can be collected from the works of Christian authors; and, while the few Jews in question spoke in a language current only among themselves, the Christians spoke in a generally known tongue and appealed to popular emotions thus often arousing the "illegal persecutions". There is, moreover, no proof that the Jews charged high rates of interest because of their desire to do harm to the Christians, or even that the Jews returned the hate which they received (p. 381). Jewish usury was an evil, but enough has been written about it to establish the economic and political forces which caused it. That many Christians charged rates quite as high as those charged by the Jews, is also well established. Everyone will agree with the final statement of the essay that persecution "gerade das Gegenteil von dem erreichte, was man damals erreichen wollte".

Philadelphia, Gratz College. *Solomon Grayzel.*

Jorjo Tadič, *Jevreji u Dubrovniku do Polovine XVII Stoljeca.* La Benevolencia. Sarajevo, 1937. 521 pp.

Research in the History of the Jews in the Balkan countries is greatly needed as a glance at the scant bibliography on this interesting subject in A. Freimann's *Katalog der Hebraica und Judaica der Stadtbibliothek Frankfurt am Main* clearly reveals. Many phases of study await able and competent historians. Tadič's History of the Jews in Dubrovnik, i. e., Ragusa, Dalmatia, is a significant contribution in this direction. The

author begins with the appearance of the Jews there in the fourteenth century and concludes with the earthquake of 1667. As early as 1326, a Jewish physician served the community. More important, however, were those Jews who participated in the flourishing commerce maintained by this medieval republic with all Mediterranean countries and the Orient. The middle of the fifteenth century witnessed an inexplicable decline of the Jewish community which was rejuvenated only after 1492 by the influx of refugees from Spain. Drawing upon the pertinent archival material, the author describes the vicissitudes of the Dubrovnik Jews whose lot differed little from that of Jews everywhere. Significant in their commercial life were their relations with the Jewish communities at Sofia and Serajevo, and also their activities in the slave trade. Distinguished doctors such as Amatus Lusitanus and his friend, the poet Didacus Pirus, i.e., Doctor Isaie Cohen (1517-1599), made important cultural contributions. Attention is also given to the organization and religious activities of the community. The book is written in the Croatian language and is accompanied by a resumé in French. Detailed indices and many illustrations enhance the text.

New York. *Guido Kisch.*

Guido Kisch, *Die Prager Universität und die Juden* 1348—1848. Historia Judaica. New York. X + 240 pp. 2 plates.

Close association with the University of Prague, both as student and teacher, and the collection of a vast amount of material over a decade, have enabled Dr. Kisch completely to master his subject. All who are not indifferent to important developments in the history of civilization will find it interesting. The University of Prague was the first, and for a long time, the only German University having any relations with Jews and Judaism. The author gives full consideration to this, but he also proceeds to unfold the educational problem of the German Jews in its entirety. In doing this he considers the University of Halle, the first of the German universities to offer tolerance to Jewish students. Here too the author can write authoritatively; for he was a member of its faculty and published studies on the history of the Jewish communities in Halle as well as in Prague.

From the book we gain unexpected perspectives into cultural relationships in meeting the sharply defined contrasts and conflicts of two differing spheres of culture.

The University of Prague was strictly Catholic; most of the professors were clerics. Since church membership only could open its doors, the entrance of a Jew into the clerical circle was unthinkable. The author observes that, in Prague, Halle, Vienna, and Frankfurt-an-der-Oder,

Jewish homes and synagogues were utilized by newly founded universities just as synagogues were converted into churches. This was true, as well, in neighboring Silesia. The act showed, symbolically, the victory of the true belief over the false one.

Next to the "Ghetto of Scholars" of Prague stood that of the Jews, two worlds which knew of each other only in disputations and in religious controversies. The talmudic school of Prague was as famed in the diaspora as was the university in its world, and "the Home of the Bahurim", where the scholars dined, reminds one of the student associations and cloister societies. In the talmudic school intellectual interests transcended the purely Jewish, and interest in history, science, mathematics, and archeology was shown. Teachers such as the High Rabbi Löw and David Gans were the leading authorities. Indeed, even the name "university" itself was applied to the Yeshibah—sometimes Yeshiboth—of Prague. The designation, "Mother Community in Israel", is further supported in that the scholars of Prague were summoned in great numbers to accept rabbinical positions in Poland and become leaders in communities and synods. Additional support for the usage arises from the fact that the Prague ritual was instituted in Eastern communities to an extent unknown as yet; that many communities traced their founding to exiles coming from there; and that synagogual architecture in the East was influenced by the Prague style.

The school of medicine at the Prague University, which supervised hygienic matters, had direct relations with the ghetto; and the censor of Hebrew books was maintained from about the middle of the 16th century on by the university, by the Jesuits from 1560 on. However, the doctors practicing in the Jewish community of Prague did not receive their medical education there. In one of the most engaging chapters of the book, the author assiduously follows up the medical education of these doctors, their graduation, the sources of their knowledge, and the hindrances in their way. The German universities which gradually opened their doors to Jewish medical students, pass in review in a carefully detailed presentation. New light falls upon Dr. Abraham Kisch, the teacher of Mendelssohn, whose career is carefully described on the basis of newly disclosed sources. The school of medicine at the University of Prague examined Jewish surgeons and barber surgeons beginning in 1774, and, by 1777 was their recognized educational institution. In 1781 the attendance at the schools of Law and Medicine was permitted to Jews by Kaiser Joseph. But the fear of irreligiousness for a long time restrained pious circles from entering and the difficulties met with by the first graduating Jewish doctor juris were formidable. Not until 1873 did the university lose its confessional character.

The chapter on the first Jewish university professors in Prague is also highly interesting in many respects. The formal admission of Wolfgang Wessely as a lecturer in Hebrew Language and Literature, in 1846, set loose a struggle in which, significantly enough, almost all the non-Jewish authorities and persons involved eagerly supported him while all the Jewish critics, among them S. L. Rapoport, M. I. Landau, and Samuel Freund, strongly opposed him. A large portion of the book consists of extraordinarily instructive archival material published in full, thus making it possible for the reader to form his own opinion. Our historians on the history of Jewish Civilization, Moritz Güdemann and David Kaufmann, have found a worthy successor.

Breslau, now Tel Aviv. *Louis Lewin.*

Simon Hurwitz, *The Responsa of Solomon Luria (Maharshal).* Bloch Publishing Co. New York, 1938. XVI + 181 pp.

One of the most fertile sources of information about Jewish life and endeavour is found in the rabbinic *Responsa.* Although written primarily in reply to questions addressed to rabbis on a wide variety of subjects, the *Responsa* throw much light on contemporary affairs, on Jewish external and internal organisation, and political, social, economic, and moral relations. But that is not the only aspect from which the *Responsa* can be studied with advantage. Apart from their historical interest, they enable us to trace the development of Jewish law in all its manifold windings and branchings, revealing the interplay of Jewish and outside forces in the shaping of various legal institutions in Judaism.

But the task of extracting the mass of detail and information embedded in these miscellaneous writings is beset with many difficulties—difficulties, that can be surmounted only by a familiarity with that intricate and abstruse branch of study, the Halakah. Jewish scholars as a rule fight shy of this, with the result that a fruitful field of research and investigation has for long been allowed to remain uncultivated. It is, however, gratifying to note that the *Responsa* literature is gradually being restored to the position of interest which its importance demands, and a number of valuable studies based on the systematic use of *Responsa* have appeared within recent years.

The present work, which deals with the *Responsa* of Solomon Luria (1510—1573), designated as the Rabbenu Tam of the sixteenth century, is a welcome addition to this slowly-expanding domain of Jewish study. These *Responsa*, embracing in their sweep Russia, Poland, Lithuania, Germany, Italy, and Turkey, introduce us to the social, intellectual, and religious activities of the Jews in those countries. The author does not profess to reconstruct out of the available data a picture of the various

phases of contemporary Jewish life. He contents himself with a bare digest, presenting in substance the *Responsa* of Luria, arranged in groups according to subject-matter, avoiding any comment as to the historic or halakic significance of the contents. Despite the author's self-imposed limitations, he has contrived to produce a book of sufficient interest to the general reader, though its main value must remain as a source for the student of Jewish history and Jewish law. The book is introduced by a rather fragmentary and sketchy biography of Luria—his life, his work, his literary activity—and includes an appendix giving a complete list of Luria's chief disciples.

London. *Isidore Epstein.*

Simon Segal, *The New Poland and the Jews.* Lee Furman. New York, 1938. XIII and 213 pp.

An objective study of parties, politics and economic trends in the new Poland and their effect on the situation of the Jews in the country. In his chapter, "Conclusion", the author maintains that the policies of the Polish Government have too often "not been conceived in the interest of the nation as a whole, but in the exclusive interest of one class of society or of one group as against another." He effectively destroys the argument that mass emigration of the Jews would aid in the solution of the economic problems of Poland. A lasting solution for the economic ills of the country, according to the author, would be an agrarian reform and the extension of democracy in politics and economics. In the final analysis he maintains "the outcome of the struggle now going on in Poland is a factor in the peace of the world, and the future of democracy."

New York. *Abraham G. Duker.*

Hugo Sinzheimer, *Jüdische Klassiker der deutschen Rechtswissenschaft.* Hertzberger. Amsterdam, 1938. 312 pp.

Like every nation, the Jews had their own law and their own jurisprudence. Their law and religion were intimately bound together. That is why Jewish law survived the downfall of the Jewish State. The study of its most important sources, such as, Bible, Talmud, and rabbinical decisions, was always eagerly fostered within the sphere of Jewish life. However, as a result of their dispersion throughout the world, the Jews also came into early contact with the legal systems of other nations. These systems first assumed practical significance for them when, in the nineteenth century, the State, through the granting of emancipation, placed under its control almost every field of activity of its new citizens. From that time on, Jewish law lost its validity more and more among the eman-

cipated Jews. With their complete acceptance into European civilization its practice well nigh ceased. It was quite natural that henceforth the Jews should occupy themselves with the law of the state in which they lived. In consequence the relationship of the Jew to general jurisprudence became a problem requiring consideration.

This problem may be approached from various angles. In France, Germany, Holland, England and America, the Jews participated early in the study of jurisprudence and in the administration of justice. The article "Jews in Jurisprudence" ("Juden in der Rechtswissenschaft") in volume four of the *Jüdisches Lexikon* names the most prominent Jewish jurists, theoreticians, and legal practitioners. The question whether inherited talent has led to the comparatively vigorous participation of the Jews in jurisprudence, can only be alluded to here. To the adherents of the modern race theory, that question seems superfluous. To them, every Jew is a representative of the "Jewish race", every Jewish jurist a bearer of Jewish legal thought. For this reason the Jews were excluded from participation in legal theory and practice in Germany. In order to define the guiding principles for the process of eliminating the Jews, the theme, "The Jews in Jurisprudence" (*Das Judentum in der Rechtswissenschaft*), was discussed by German university professors in Berlin, in October, 1936. The discussions and the results of this conference appeared later in print. They inspired the work under review.

Its main purpose is to show what the Jews have accomplished for German jurisprudence. Accordingly, the scientific works and thought of twelve leading German jurists are presented and analysed. These twelve outlined ergographies constitute the bulk of the book. The choice of scholars is well made. They are immortal names of note, the memory of which will be honored "as long as the marks of German jurisprudence are not stamped out": Friedrich Julius Stahl, Levin Goldschmidt, Heinrich Dernburg, Joseph Unger, Otto Lenel, Wilhelm Eduard Wilda, Julius Glaser, Paul Laband, Georg Jellinek, Eugen Ehrlich, Philipp Lotmar, and Eduard von Simson. The author describes their scholarly achievements, seeks to penetrate into their thoughts, and to clarify the inner relationship of their teachings and principles. His aim is "to understand the convictions of the individual scholar in order to reveal the inner spring which gave rise to his scientific accomplishments". He attempts to disclose what "the individual Jewish thinker received from the rich store of the science of his day, what new thoughts he added to it, and how these new ideas were received by German jurisprudence." Then, in an "epilogue" of a few pages, the so-called "Jewish influence" in German jurisprudence is analysed, the problem is examined with respect to the "Jewish spirit" and the catchword, *justizprofessorales*

*Rabbinertum* ("the professorial rabbinate") is evaluated. A final conclusion is summarised thus: there is no evidence that a specifically Jewish mentality existed among those jurists. "The spirit of the Jewish classics of German jurisprudence is a scientific spirit only."

The author, who is himself a competent legal practitioner as well as an excellent scholar of jurisprudence, has placed the scientific achievement of some of the leading German Jewish jurists of the nineteenth century in the correct light. His presentation rests upon a rich juristic literature and upon the biographical sources available. The biographical facts are historically and psychologically well comprehended and stated. To me, it seems that the author has greatest success in his sketches of Eugen Ehrlich and Philipp Lotmar in whose special fields of work he himself is a master. Some of the other essays, however, are not so well rounded. The legal historian will miss among the works on German legal history Laband's two books: *Das Magdeburg-Breslauer Systematische Schöffenrecht* and *Magdeburger Rechtsquellen* which even today—after 75 years—are still fundamental and unsurpassed. The memoirs of Laband which appeared in 1918 in a private printing have remained unknown to the author; likewise my biography of Wilda (*Mitteldeutsche Lebensbilder V*, [Magdeburg, 1930], pp. 339—352) with the rare picture of this investigator of German criminal law. The opinion that Wilda was attracted to his work only through his love for the subject of his research is expressly confirmed there by Friedrich Bluhme (p. 343): "His pure love of science and his unassuming thoroughness are sufficient security that he will always be a worthy honor to the faculty." The little space awarded this review does not permit the further discussion of other similar gaps. But one is delighted to find here many a beautiful thought, many an expression of unbounded respect gleaned from almost forgotten tributes to these men, manifestations worthy of being saved from oblivion. In my opinion, the value of the work consists in the fact that the significance of the scientific accomplishment of great German Jewish jurists is brought before a large public, and that the praise given them by their contemporaries and by posterity is recalled to memory.

It is doubtful, however, whether it was at all necessary to offer twelve new biographies as proof that the work of those men was based solely on a scientific spirit and had nothing to do with a specifically Jewish mentality. It seems to me that it could have been done much more simply. It is maintained today: "There is Jewish law, which conforms with the Jewish people's mode of life, and there is German law, which conforms with that of the German nation." Of the twelve scholars treated in Sinzheimer's book, only four belonged to the Jewish community: Goldschmidt, Lenel, Ehrlich, and Lotmar. Only Goldschmidt is known to have taken

a positive attitude toward Judaism; notable evidence of this is found in his well known letter to Heinrich von Treitschke, which is reprinted on pages 89 to 92. Very few of the other eleven had any relationship with judaism at all; some were unfriendly or even inimical toward it. Most of them were wholly ignorant of Jewish law. Barely one of them had studied it in the familiar traditional manner. It is therefore inconceivable how these men, who were in every respect emancipated and who had been merged wholly in the German culture, could have acquired the spirit of Jewish law. One could go further and maintain: not a vestige of the specific method of Jewish legal thought can be traced in them or in their work.

Opinions concerning the value and the effect of apologetic literature may differ. Such works will never eradicate indoctrinated philosophies of life. However, the search for truth alone can overcome mistaken conceptions. Even if apologetic it is still meritorious to reveal errors, to expose scientific shortcomings, and to point out any change of opinions arising from opportunistic motives (cp. pp. 69, 296 f., 304). This could probably have been brought about more impressively, in a more objective manner, if the author had concentrated particularly upon the scientific problems and refrained entirely from arranging the biographical material according to polemical points of view. The controversial discussions could have been better presented in a separate publication of moderate size. The scholarly achievement of the great German jurists of Jewish origin is secure. Certain assertions to the contrary require no refutation. Yet it is an essential and important task to establish, in the individual fields of study, the share to which German Jewish jurists may lay claim in the advancement and the world wide esteem of German jurisprudence. The work under consideration, even if it constitutes only a beginning, is a valuable contribution toward this goal.

New York. *Guido Kisch.*

Ludwig Herz, *Die Geschichte der Familie Seligman*, 1680—1930. Privatdruck. Berlin, 1935. 134 pp. and 6 plates.

Important contributions to general Jewish history are to be expected from the special history of Jewish families being written in recent decades. For American Jewish history in particular this difficult and, as yet, neglected branch of scholarship may open up interesting perspectives. The book under review offers valuable proof of this assertion. It presents a hasty but illuminating picture of the fortune, good and bad, of an American Jewish family which through more than a hundred years played an outstanding role in the commerce and industry of America as well as in its political and intellectual life. The Seligman family had its origin in

Baiersdorf, Bavaria. Eight sons of David Seligman emigrated in the eighteen thirties and formed mercantile establishments in the chief commercial centers of the United States. In 1850, following the outbreak of the gold fever in California, Jesse Seligman established a store in San Francisco, in the only brick building then existing, one which, fortunately, escaped the fire of 1851. As early as 1857 the clothing business was supplemented by a banking house. Later connection with the finances of the United States was established, and finally the firm rose to world importance. The Seligman brothers, long personal friends of General Grant, became influential bankers during the Civil War. In three American states, Missouri, Arizona, and Nevada, cities are named after the family "Seligman". The outstanding economist and sociologist of Columbia University, Edwin R. A. Seligman, is a representative of a later generation.

Dr. Herz, himself a member of the European branch of this family, bases his presentation upon copious primary and secondary sources. He strives to portray the general historical background which influenced the destiny of the family and was in turn influenced by the development and rise of the Seligmans. Though only sketchy and in some parts incomplete, the book contains much interesting historical information. To give one instance, the little known remarks concerning the Jews by Carl Schurz, personal friend and pallbearer of Jesse Seligman, deserve mentioning:

"I have heard it said that a Jew cannot be a patriot, because he has no fatherland. Those who say so do not want the Jew to have a fatherland, and would, if they had their way make it impossible for him to be a patriot. A country can hardly expect those of its inhabitants to be ardent patriots whom it treats as aliens or outcasts. In the same measure as an anti-Semitic spirit prevails, a Jew is a patriot under difficulties. If he is a patriot in spite of anti-Semitic persecution, that patriotism is in him a virtue of especial merit".

At times the feeling prevails that Herz's work should be supplemented by American literature and sources. Perhaps the day will come when a complete family history of the Seligmans will be published and become accessible to research.

New York. *Guido Kisch.*

Rebekah Kohut, *His Father's House, the Story of George Alexander Kohut.* Yale University Press. New Haven, 1938. XII + 246 pp.

This is the fascinating life story of a great lover and enthusiastic Maecenas of Jewish learning. The book will help to keep alive G. A. Kohut's memory for his friends. Beyond this main purpose, moreover, it presents many an interesting contribution to the history of the *Wissenschaft des Judentums* in Europe and America during the last three decades.

Edward D. Coleman's bibliography of G. A. Kohut's writings shows all the scientific accuracy so characteristic of this author.

New York. *Guido Kisch.*

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## PERSONAL

Dr. phil. MORITZ STERN, formerly Chief Librarian of the Jewish Community in Berlin, died a few months ago at the age of seventy five. In the eighteen eighties he searched as a travelling research fellow of the *Historische Kommission für die Geschichte der Juden in Deutschland* in the most important archives of Germany and Italy after documents relating to the history of the Jews. His harvest was extremely rich, and for nearly half a century he lived on the results of that trip. Among his foremost publications are : *Urkundliche Beiträge über die Stellung der Päpste zu den Juden* (1893-95); *König Ruprecht von der Pfalz in seinen Beziehungen zu den Juden* (1898); *Die israelitische Bevölkerung der deutschen Städte* (7 vols., 1890-1937); *Quellenkunde zur Geschichte der Juden in Deutschland I* (1892). Stern was co-editor with Robert Hoeniger of *Das Judenschreinsbuch der Laurenzpfarre in Köln* (1888), and with A. Neubauer of *Hebräische Berichte über die Judenverfolgungen während der Kreuzzüge* (1892). He rediscovered and published the lost book *Andreas Osiander's Schrift über die Blutbeschuldigung* (1893); to Stern too belongs the anonymous publication *Die päpstlichen Bullen über die Blutbeschuldigung* (1893, 2nd. ed. 1900). He was also a student of Judeao-German and published *Iwri-taitsche Sprachdenkmäler* (1922) being important glossaries and translations of the Bible. His popular *Tables to the History of the Jews* (3rd. ed. 1934) were translated from the German by Isidore Koplowitz (1901).

*New York.* ISMAR ELBOGEN.

*Printed in Belgium.*

# HISTORIA JUDAICA

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# HISTORIA JUDAICA

Volume II APRIL, 1940 Number 1

## THE AVIGNON POPES AND THE JEWS

By

Solomon Grayzel

Philadelphia

During the fourteenth century the large and luxurious court maintained by the popes at Avignon employed the services of Jews. From the accounts of daily expenditures[1] one may obtain an idea of the number of ways in which Jewish residents of Avignon and its vicinity provided for the needs of the popes and their courts, dependents, and retainers. The mattresses, sheets, and pillows upon which the pope slept, and the quilts with which he covered himself, the curtains and rugs with which his rooms were furnished, the shirts, clothes, hats, and ecclesiastical vestments which he wore, and the oven in which his food was cooked, at one time or another were bought from Jews. Jews sold the papal Court table-cloths and horses, fish and prayer-books. A Jew by the name of Padonus is referred to as *sartor papae*, the pope's tailor[2], and that official position no doubt brought him business from other members of the papal retinue. His closeness to the court is evident from the fact that on various occasions he advanced money to a nephew of the pope and to the pope's sister, whose papal pensions he took as security. The money was subsequently repaid to Padonus by the treasurer of the papal household who deducted it from the stipends of the individuals concerned[3]. One would like to know whether the loans carried interest, but unfortunately the brief record is naturally silent on that point. Another Jew is referred to over a long

[1] K. H. Schaefer, *Die Ausgaben der apostolischen Kammer* (Vatikanische Quellen zur Geschichte der päpstlichen Hof- und Finanzverwaltung, 1316—1378), 1911—1937.

[2] *Ibid.*, Ausgaben... Greg. XI, p. 615.

[3] *Ibid.*, Ausgaben... Greg. XI, pp. 390, 393, 452, 494, 511; see also under date of April 10, 1374.

period of time as the official provider of parchment, *pergamentarius camerae*[4]. This last was a particularly thriving business, for there was a great deal of letter-writing at the papal chancery, and on occasions when an encyclical letter had to be dispatched, the sum paid for parchment ran into hundreds of marks. Frequently also the official bookbinder was a Jew, and sometimes he was asked to make an especially beautiful binding for a missal or for a book on Canon law which the pope intended as a gift to a friend or a relative[5]. The Jews were obviously not the only nor the most important merchants and artisans in touch with the papal court, but they were in touch with it, and, it would seem, helped particularly to provide the court with articles of the better and more unusual kind which other merchants did not handle.

That the Jews, like all residents of Avignon, did good business during the period when the city contained the papal court may be taken for granted. More important is the problem whether the period saw a change in papal policy toward the Jews as a distinct group within Christian society. A comparison of papal documents of the thirteenth and fourteenth centuries may aid us in answering this question, and for this purpose these two centuries may be divided into four parts : the first half of the thirteenth century till the end of the reign of Pope Innocent IV (1254)[6]; the second half of the thirteenth century till the end of the reign of Pope Boniface VIII (1303); the Avignon period (1305 to 1378); and, finally, the period of the Great Schism (1378 to 1415). The total number of papal bulls and other expressions about the Jews during this period of a little over two centuries is 365, divided as follows : 120 for the first half of the thirteenth century, 73 for the second half, 97 for the Avignon period, and 75 for the period of the Schism. No doubt there are papal expressions which are not included in this number, but these at hand are sufficient for conclusions to be drawn about the change in emphasis and

[4] *Ibid.*, Ausgaben... Inn. VI, p. 591 et passim.

[5] *Ibid.*, Ausgaben... Urbani V, p. 86, 271; Ausgaben... Greg. XI, p. 439.

[6] Cf. S. Grayzel, *The Church and the Jews in the XIIIth Century*, (Philadelphia, 1933). The documents for the other periods are drawn from a collection of material made by myself, to be published in the near future.

in interest on the part of the popes of the respective periods with regard to the Jews in Christian Europe.

It is not hard to see why most of the numerous references to usury should concern France during the thirteenth century and Germany during the fourteenth, since during the latter century Jews lived in France for rather short periods. Moreover, while the Jews were engaged in money-lending in France in the fourteenth century, since that was the primary purpose of their repeated re-admissions, the popes were not likely to say much about it, since the popes of Avignon were then less inclined to interfere with France than with Germany. Similarly, the reason is not far to seek why there are so many references to the Jews for non-payment of tithes to the diocese in which their property lay during the first half of the thirteenth century, and practically no references to this matter during the later periods. It seems fairly clear that the Jews had either been compelled to give up their property in land or to pay the tithe. More difficult to explain are the changes with regard to restriction upon Jewish living conditions, protection afforded them, and converts and conversion.

Under restrictions upon Jewish life I include such matters as the enforcement of the Jewish badge, the prohibition of the employment of Christian servants and nurses, such steps in the direction of the ghetto as the prohibition for Jews to appear in public during Christian holidays and the compulsory removal of Jews to certain districts within a city, and the appointment of Jews to office. During the first half of the thirteenth century, there were many references to such matters in the papal correspondence, especially in relation to France and Spain as well as some to Eastern Europe. After 1254, there is a noticeable falling off of such references. During the period of Avignon[7] the largest number referred to Spain. The paucity of these references does not prove that the popes of the fourteenth century had given up the policy of restriction. Papal utterances on the subject, as in the case of Spain, are as vigorous as ever. The reasons must be sought elsewhere. One is that to some extent the problem had been solved. The expulsion of the Jews from England,

[7] More than 30 down to 1255, and only 17 from 1255 to 1378.

the periodic expulsions from France and the re-admissions on hard terms, and the upheavals during the German interregnum and subsequently, had considerably lowered Jewish vitality. That these events, however, had not yet resulted in that complete separation of Jews from the Christian community which was the aim of Church policy is clear from the history of almost every German and East-European town, as well as from the decrees of the local Church councils which expressed themselves on the subject[8]. A second reason for the comparative papal silence may be the fact that, during the fourteenth century, the international situation and the fortunes of the papacy required concentrated attention. Politically the popes had to step warily. It was a world in which Innocent III's dictatorial methods and interference in local situations were no longer possible.

For along with the weakened papal power during the fourteenth century there was an evident strenghtening of the local political and civic power, and it is here that one must seek the most important reason for the failure of the popes to push ahead the policy of restriction. Wherever Jews were to be found, they lived under a definite charter in which were outlined, more or less in detail, the conditions of their relationship with the government and the population. Such were the charters which regulated Jewish life in France after each re-admission[9]. Such, too, were the charters under which they lived in the German towns[10]. It was clear that, although these charters might fall short of the

[8] Councils dealing with restrictions during the period of Avignon: Mainz, 1310, I. D. Mansi, *Sacrorum conciliorum amplissima collectio*, 31 vols. (Florence and Venice, 1759-89), 25, col. 333 ff.; Ravenna, 1311, Mansi, col. 462 ff.; Avignon, 1326, Mansi, col. 773 ff.; Avignon, 1337, Mansi, col. 1104; Maienfeld, 1332, Mansi, col. 977; Prague, 1346, Mansi 26, col. 97 ff.; Prague, 1355, Mansi 26, col. 403 ff.; Apt, 1365, Mansi 26, col. 455; Varenne, 1368, Mansi 26, 506 ff.; Magdeburg, 1370, Mansi 26, 583 ff.—Spanish Councils have been excluded from the above.

[9] July 20, 1365, Urban V complained to the authorities of the Provence and of the City of Arles that they were not enforcing upon the Jews the wearing of the badge and the separation from Christians by means of a *locus clausus*. Regesta Vaticana, 247, fol. 298 v.

[10] Cf. James Parkes, *The Jew in the Mediaeval Community* (London, 1938), chap. 5.

requirements of Church policy, they were of advantage to the ruling powers. Unlike the popes of the early thirteenth century, those of Avignon were too anxious for the good will of the authorities in France, Germany, and Italy, to attempt any interference with the financial and political arrangements of the latter. In Spain, on the other hand, the fourteenth century witnessed a struggle between the Christian merchants and the kings with regard to the Jews. At meetings of the Cortes complaints were frequent about royal favor to the Jews which was galling also to the clergy. On several occasions, therefore, the popes backed the demands for restriction[11].

During the period of Avignon the Jews themselves no longer turned to the pope for protection as frequently as they used to. The figures at hand are instructive. Between 1198 and 1254 the popes had issued the official bull of protection, the one beginning *Sicut Judeis*, five times, and eleven other bulls of protection for particular occasions[12]. Between 1254 and 1305 the official *Sicut Judeis* bull was issued five times[13], and one other bull in 1291 for the protection of the Jewish community in Rome itself[14]. But during the longer Avignon period, despite the numerous misfortunes which were befalling the Jews in various

[11] Papal pronouncements against the Jews of the Iberian Peninsula during the Avignon Period are : Benedict XII, Jan. 8, 1340, J. M. Vidal, *Lettres closes et patentes du Pape Benoit XII*, nos. 2640—43, *Pridem inter cetera*. Benedict XII, on same subject to King of Aragon, Jan. 9, 1340, ibid., no. 2671, *Inter cetera que*. Gregory XI, April 21, 1372, to Henry of Castile, Reg. Vat. 268, fol. 135 v., *Gaudemus et letamur*. Gregory XI, Oct. 27, 1375, to Henry of Castile, Reg. Vat. 271, fol. 67 v., *Novit circumspectio regia*. In this the Pope expresses deep disappointment at Henry's failure to restrict Jewish activity.

[12] Cf. Grayzel, pp. 76-82; nos. 5, 35, 81, 111, 118.

[13] Urban IV, April 26, 1261, *Armarium* II 38, fol. 222—242; Gregory X, Oct. 7, 1272, in Moritz Stern, *Urkundliche Beiträge über die Stellung der Päpste zu den Juden* (Kiel, 1893), no. 1; Idem, Sept. 10, 1274, in L. Ennen, *Quellen zur Geschichte der Stadt Köln*, III (Cologne 1860), 64; Nicolas III, Aug. 2, 1278, in B. and G. Lagumina, *Codice Diplomatico dei Giudei di Sicilia*, I (Palermo, 1884), no. 82; Martin IV, Aug. 2 (?), 1281, ibid., no. 81.

[14] Nicolas IV, Jan. 30, 1291, Reg. Vat. 45, fol. 147, no. 724, *Orat mater ecclesia*.

parts of Europe, the official bull of protection was issued only twice[15]. To be sure, there are seven papal pronouncements on the special subject of the protection of the Jews from the Shepherds in 1320, but this protection was extended only incidentally. John XXII saw in the Shepherd uprising not only heresy and rebellion, but even a threat to his own lands and authority[16]. In addition to the *Sicut Judeis* bull of 1348 mentioned above, two further bulls of protection are expressions of Clement VI in connection with the Black Death of 1348-9. One[17], of October 20, 1349, is a general bull directed against the Flagellants in Germany, and the attacks upon Jews are mentioned therein among other causes for the repression of the hysterical bands. The other[18], of September 26, 1348, is a somewhat modified *Sicut Judeis* bull, in defense of the Jews against the accusation that they had poisoned the wells in order to spread disease among the Gentiles. In connection with this bull, the Church historian Baluze noted the belief current in the fourteenth century that the pope's defense had been bought and paid for. That the Jews paid for this bull is more than likely. They probably paid for all the others as well, since no one, Jew or Gentile, cleric or layman, could obtain a document from the papal chancery of that day without a contribution. Knowing Clement VI's character, however, his easy-going ways as well as his sympathetic nature and intelligence, one need not doubt that his desire to defend the Jews against this monstrous and ridiculous charge was sincere.

The suspicion cast upon the pope's motives is but another indication of the growing inefficacy of that kind of defense, an

[15] Clement VI, July 4, 1348, Reg. Vat. 187, fol. 21, no. 106, cf. O. Raynaldus, *Annales Ecclesiastici* (Lucca, 1747-56), a. a. 1348 par. 33; Urban V, June 7, 1365, in *Bullarium Romanum*, III, pt. II, p. 327. It is possible that the bull mentioned by F. Baer, *Die Juden im christlichen Spanien*, I (Berlin, 1929), p. 358, was also one of these. I did not find it in the Papal Registers.

[16] Cf. J. M. Vidal, "L'Émeute des Pastoureux," *Annales de Saint-Louis-des-Français*, III (1899).

[17] Gustav Schmidt, *Päpstliche Urkunden und Regesten aus den Jahren* 1295-1352 (Halle, 1886), pp. 390-392.

[18] *Quamvis perfidiam Judeorum*, Reg. Vat. 187, fol. 20v—21r; cf. Raynaldus, a. a. 1348, par. 33.

inefficacy which the Jews apparently appreciated. For from the very first the bull *Sicut Judeis* was re-issued only upon request, and if it does not appear more frequently during that troubled age, the chief reason must be that the Jews did not ask for it. One can understand why. A papal request for tolerance on the basis of Christian charity, and a mild warning against killing Jews, might serve their purpose when the Jews were accused before a court of law, or when the constituted authorities had control of the situation. But documents could not be waved in front of a howling mob. Nor could they have the desired effect upon the lowly masses of the fourteenth century enraged by the grinding oppression of the patricians and by the intolerable burden of usury-bearing debts. Two of the three *Sicut Judeis* bulls of the Avignon period, those of 1363 and 1365, were probably issued at the instance of the Jews of Castile at the time when the situation involved was the civil war between Henry of Trastamara and Pedro the Cruel. Upon Henry and his partisans the papal words might have been expected to exert some influence.

One may conclude, therefore, that, on the whole during the Avignon period, the Jews expected neither serious attack nor much defense from the direction of the papacy. Of Thomas Aquinas' assumption that "the Jews are the slaves of the Church," there was no longer a trace, not even in the matter of jurisdiction by ecclesiastical courts. In Germany and, in an altogether opposite sense, in Spain their fate had become attached to the fortunes and influence of the upper middle class. This view is further corroborated by the nature of similar documents during the post-Avignon period, that of the Schism. Outright restrictive expressions, other than such as concerned usury, on the part of the Roman popes are fewer than ever. Benedict XIII, however, was zealous in his anti-Jewish policy, probably because he felt that it would gain for him support among the Spanish population. There are, moreover, only two bulls which are clearly bulls of protection, both by the Avignon pope, Clement VII. The first,[19] in 1379, deals only with conditions in the county Venaissin; the other[20], dispatched on November 12, 1393, was

[19] *Sicut Judeis non*, Oct. 18, 1379, C. Eubel in *Römische Quartalschrift*, XIII (1899), p. 30, no. 2.

[20] *Sicut Judeis non, ibid.*, XVII (1903), p. 184.

apparently intended for conditions in Spain. The Roman popes during the Schism issued no *Sicut Judeis* bulls. The next one dates from 1422, by Martin V, after the Schism had been over for a number of years[21]. Yet the Roman popes of the Schism period issued other bulls of protection which possess some interest. Four of them are of minor, purely local importance. But there are as many as seventeen others in which individual Jews in and about Rome are granted high favor[22]. It would seem as though in some way, not only as physicians, these Jews had rendered aid to the Roman popes during that trying period for the papacy.

There is one more group of documents of the thirteenth and fourteenth centuries which indicate a profound change in the conditions of Jewish life. In the documents of the first half of the thirteenth century there are a good many references to converts and conversion, as well as a number of bulls which deal with the problem presented by converts who relapsed into Judaism, as the Church picturesquely and unappetizingly called it, "returned to their vomit." But the references are to particular, individual converts rather than to converts in general, and the problem of reversion to the old faith is met by exhorting princes and churchmen to make the converts' life more comfortable than it was when they were Jews[23]. During the second half of the thirteenth century references to these matters are fewer, but they take on a different color. Offers of support alternate with angry accusations that the Jews attempt to lure converts back to Judaism, and include orders to the inquisitors to treat relapsed converts as heretics[24]. This attitude remains equally emphatic and frequently expressed during the period of Avignon. There are,

[21] Stern, *Urkundliche Beiträge*, no. 21. There is another bull in which Clement VII grants a local privilege and defense to a Jewish community, *Quamvis perfidiam Judeorum*, Nov. 15, 1380, analyzed by Eubel, *ibid.*, XIII (1899), p. 31, no. 8.

[22] Cf. Stern, *ibid.*, nos. 3-8. Others have been culled from the Papal Registers.

[23] Grayzel, passim.

[24] Cf., for example, *Vineam Soreth velut*, of Aug. 4, 1278, *Bullarium Franciscanum* (Rome, 1759), III, 331, no. 50.—In my possession are photostats of thirteen others, between 1260-1300, expressing similar sentiments.

of course, the usual reminders that charity granted to converts is particularly worthy, and that the property of a convert must not be confiscated by the state. But it is well to note that for the most part these converts are spoken of in the plural, the implication being that large numbers are involved.

This last is even more apparent from a number of other bulls which speak of relapsed converts. It seems that frequently such converts fell under suspicion and would take refuge in a church. The Dominican and Franciscan inquisitors were ordered on several occasions to disregard the rights of sanctuary[25]. Sometimes the relapsed convert would flee the country and start life all over again as a Jew in some foreign land. Spain and Northern Italy figure as the places to which such flight was directed[26]. In this respect the Jews were following the example of the Albigensian heretics. Inquisitors armed with papal extradition orders to kings and clergy of the lands of refuge were dispatched to bring the heretics back for trial. But not only the relapsed converts were involved in this heresy hunt; the Jews of their lands of origin were under constant suspicion of being behind the reversion of the temporary Christians. The inquisitors were constantly interfering with Jewish life and Jewish freedom because of suspicions of this nature. On the complaints of the syndics of the Jewish communities of Arles and Marseilles, Pope Innocent VI, in 1360, expressly enjoined upon the local inquisitors not to molest the Jews by citing them before their courts, by refusing to listen to their defense, by subjecting them to torture, and by failing to grant them knowledge of the charges against them[27]. There are several other instances when the Pope withdrew the Jews from the jurisdiction of the inquisitors even in matters which concerned the faith.

Most of the papal pronouncements with regard to converts concerned the territory of France, in particular the Provence. A few dealt with Germany. From this, one might draw the

[25] *Ex Parte vestra*, Aug. 13, 1317, *Bullarium Romanum*, III, pt. II, p. 154; repeated a number of times subsequently.

[26] *Pro parte dilecti*, July 6, 1338, *Bullarium Franciscanum*, VI, p. 60, no. 92.

[27] J. M. Vidal, *Bullaire de l'Inquisition Française* (Paris, 1913), p. 343, no. 230. Similarly in 1372, *ibid.*, p. 389, nos. 269-270.

somewhat obvious conclusion that every expulsion and every persecution during the fourteenth century resulted in a large number of converts many of whom had merely feigned conversion. In other words Marranism on a large scale had not begun in Spain in 1391, but goes farther back, at least to 1306 in France, possibly even to the 1280s in England. For already in 1286 Honorius IV had written to the Archbishop of Canterbury, the same John Pecham who had instituted conversionist sermons in 1282, accusing the Jews of England of causing converts to relapse[28]. This effect of persecutions is nowhere more clear than in the territory under the immediate suzerainty of the popes. I have indicated above that John XXII made strenuous efforts to protect the Jews from the persecution of the Shepherds. At the very same time three bulls were addressed to various personalities in the county Venaissin to safeguard for Jewish converts the property they had owned as Jews[29]. The question of conversion under duress which had at least been raised during the thirteenth century, is not raised during the fourteenth except in the *Sicut Judeis* bull which aimed to prevent further excesses. Once the excesses had been committed, however, every effort was made to safeguard the souls illegally saved.

In general the popes of Avignon were fairly zealous in the work of converting the Jews. That, of course, must be accepted as natural, being part of the duties of a pope. Of all the Avignon popes of the legitimate line, John XXII was the most zealous in his own county Venaissin as is witnessed by two synagogues which he converted into churches after expelling the Jews, one in Bédaride[30] and the other in Carpentras[31]. Still a third synagogue, in Chateauneuf of the diocese of Avignon, was converted into a church at the request of the converted Jews themselves[32]. On the other hand, royal protection of the Jews in Spain, and the lesser zeal of John's successors, are evident from the grant by Clement VI of permission to build a larger synagogue in the

[28] *Nimis in partibus*, Raynaldus, a. a. 1286, par. 25.

[29] G. Mollat, *Lettres Communes du Pape Jean XXII* (Bibliothèque des Écoles Françaises d'Athènes et de Rome III 1), nos. 11842-3, 12205.

[30] Mollat, *ibid.*, nos. 14244—5.

[31] Mollat, *ibid.*, no. 18130.

[32] Coulon, *Lettres Secrètes et Curiales du Pape Jean XXII*, nos. 1722—4.

city of Seville[33]. The Jews of Spain were destined to undergo only in the fifteenth century the same conversionist attack that carried a large number of French Jews into Christianity during the fourteenth.

During the years of Schism neither the Avignon line of popes nor the Roman had much time to devote to the problems of conversion. The number of bulls dealing with the subject falls off perceptibly. But we know from other sources that Benedict XIII occupied himself with the subject to a considerable extent, especially after he had been driven from Avignon and had taken up an attitude of defiance under Spanish protection. His activity in the matter of conversion is evident not so much through direct statement, but rather in the number of synagogues which by his permission were converted into churches. In several instances the procedure was for the converts within a town to petition that the synagogue be taken away from the Jews who still remained, and given to them for Christian worship[34]. Expressions on the part of the Roman popes were exhortations for the support of needy converts in Italy and Germany, and prohibition of confiscating the converts' property.

In evaluating the relations of the popes and the Jews during any period, a number of factors must be considered; the policy of the Church, the general political and economic situation, and the character of the men who reigned as popes. During the fourteenth century, as I think I have demonstrated, though extreme claims were abandoned, the policy of the Church with regard to the Jews remained as it had developed during the first millenium of Christian history and as it had begun to be applied in the first half of the thirteenth century. In the general European political and economic situation, the fourteenth century witnessed a series of unparalleled misfortunes and upheavals. Wars, plagues, and social uprisings were almost constant. Over this situation the papacy had far less influence than it had had during the thirteenth century. Indeed, the papacy itself was now

[33] Reg. Vat. 155, fol. 174v—175r, no. 38; cf. Baer, *Die Juden im christlichen Spanien* II (Berlin, 1936), p. 163 f.

[34] C. Eubel, *Röm. Quartalschrift*, XIII (1899), p. 36, nos. 11, 12, 13; see *ibid.*, no. 14 for a similar petition by the former rabbi of the synagogue.

under attack from within the Church as well as from without. It was justly accused of lacking religious zeal. In a world thus shaken to its foundations the Jews were bound to suffer. It is not difficult to show the intimate connection between the political and social disarrangements of the age and the attacks upon Jewish life. One is tempted to speculate what the fate of the Jews would have been during the fourteenth century had the papacy been in strong and generally respected hands. A Gregory the Great, or even an Honorius III, might have given more effective protection. Under an Innocent III the Jews might have disappeared altogether from western Europe, or, at least, been forced into ghettos a century earlier. But the Avignon popes, generally speaking, were content to leave well enough, or ill enough, alone. With the possible exception of John XXII, they were not strong men. They were preoccupied in defending their own position, in fighting for the papal states in Italy, in maintaining their court, in aggrandizing their families, and in asserting their theoretical authority. They applied the Church policy weakly and spasmodically, interfering as little as possible with any local situation, and with the temporary exception of John XXII, defending their own Jews of the county Venaissin and of Avignon who were doing so much to make comfortable the life of the papal court and of the popes themselves.

# THE HEREM HA-YISHUB AND THE MERCHANT GUILD IN GOSLAR

By

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During the Middle-Ages a certain form of trade protection existed among Christians as well as Jews in France, Germany, Italy and England. It aimed at establishing a monopoly of trade for the residents of a certain borough. Among Christians this protection took the form of the guild merchant *(gilda mercatoria)*; among Jews that of the *Herem ha-Yishub*, whereby a prohibition was enacted against outsiders coming to settle in a town for purposes of trade without the unanimous permission of the resident community. Thus a virtual monopoly of trade was established almost with the same effect as that of the guild merchant, namely to exclude non-residents from any trade within the borough. The close connection of the *Herem ha-Yishub* with the guild merchant and a certain dependence of one on the other, has been shown by the present writer elsewhere[1]. Furthermore, it is remarkable that the *Herem* prevailed only in towns which possessed a guild. This fact becomes particularly interesting in considering the parallels between the two institutions as they existed in one and the same town, the town of Goslar am Harz, in the district of Hildesheim, Germany.

The history of the guild merchant in Goslar is characterized by its vicissitudinous existence[2]. In 1219 the guild was prohibited, probably on political and economic grounds. In May, 1252, a guild merchant was instituted again in the town. The text of the privilege[3] includes the words : *Quod nullus sine consensu*

[1] L. Rabinowitz, "The Medieval Jewish Counterpart to the Guild Merchant," *EHR.* VIII (1938), 180-185; cp. Rabinowitz, "The Talmudic Basis of the *Herem ha-Yishub*," *JQR.* XXVIII (1938), 217-223.

[2] Cp. Gunnar Mickwitz, *Die Kartellfunktionen der Zünfte* (Societas Scientiarum Fennica, Commentationes Humanarum Litterarum VIII 3) (Helsingfors, 1936), p. 131. Cp. also the most recent literature on Goslar in the " Remarks" following this essay.

[3] Cp. C. Gross, *The Guild Merchant* I (Oxford, 1890), p. 295 and note 1.

*ipsorum pannos incidere presumat.* Some time between 1252 and 1290 the guild apparently once more had been abolished since in the latter year Rudolf I. restored to Goslar all its old privileges including the guild merchant. Thus four periods in the history of the Goslar guild merchant can be observed : 1. from 1219 (or earlier) to 1252, when there was no guild; 2. 1252 to a date prior to 1290 when the guild was in existence; 3. from the date of its abolition to 1290; 4. from 1290 on when Rudolf I. re-instituted it.

Certainly it cannot be dismissed as a mere coincidence that, from rabbinical *responsa* it is possible to trace exactly the same periods during which attempts were made to institute the *Herem ha-Yishub* in Goslar. A *responsum* found in one of the collections of the *responsa* of R. Meir of Rothenburg[4] seems to be of sufficient importance to justify a full translation[5].

"To the honored leaders of the Community of Magdeburg[6].

It is indeed a matter of difficulty in my eyes that you have placed upon me and upon my master and teacher Rabbi Meir [of Rothenburg] the decision in the case of the men of Goslar. For who am I that I should sit in judgment with the greatest figure of this generation, I who am the least of all his disciples; and although in your letter you put the 'B' before the 'A' it was only because you wrote in the form *Tashrak*[7].

In my opinion the truth seems to be as I have decided that the said

[4] *Responsa* of R. Meir of Rothenburg, ed. Lemberg 1860, No. 476.

[5] Cordial thanks are due to Professor Louis Ginzberg, New York, who revised the following translation of the *responsa*.

[6] It is a significant fact that both parts of this *responsum*, separated though they are from one another by a generation, and both concerning Goslar, are addressed to Magdeburg. It is obvious that Goslar applied to Magdeburg which submitted the question to the two Rabbis named for decision. Such procedure is strongly reminiscent of the famous Jury Court at Magdeburg and would suggest a similar institution among the Jews of Germany. Cf. Or Zarua I, 115; on the Magdeburg Jewry Court *JE.* VIII, 251; G. Kisch, "The Jewry-Law of the Medieval German Law-Books," *PAAJR.* VII (1935/36), p. 91.

[7] *Tashrak* is a system commonly employed in poetical liturgical compositions whereby the alphabet is read backwards. The questioners had placed Eliezer's name before that of Meir. He modestly assumes that they were writing "backwards" !

R. Mattaniah and his sons have no legal right to exclude R. Isaac, his son-in-law and his associates from settlement [*Yishub*] in the city of Goslar, according to the decision of my grandfather R. Isaac [ben Moses] of Vienna [Or Zarua] that there is no *Herem-ha-Yishub* there.

Moreover, how can they expel them on the basis of the *Herem* which exists in all the other settlements[8], when they themselves [R. Mattaniah and his associates] only acquired the right to settle by virtue of the decision which was given to the father-in-law of R. Mattaniah that there is no *Herem ha-Yishub* in Goslar. And since they have no legal power to expel them on the basis of the *Herem ha-Yishub*, similarly it appears to me that also the *Herem* which they accepted upon themselves needs no annulment[9], as I wrote in my first letter[10]. For it is explicitly stated in that document of R. Mattaniah and his sons, that it was on account of the *Herem ha-Yishub* that they were obliged to promise to leave after a time. They therefore acted under duress since they were forcing them to leave. And even though a vow taken by consent of the general public cannot be annulled, in this case annulment is unnecessary since the vow was taken in error, and there is no need to prove this..."

And my master and teacher R. Meir wrote in the same strain...[11] and according to his proof we can decide that the said R. Mattaniah cannot expel them... "for there was no benefit to them in the extension of their period of stay, since legally they might have remained. And even although they were unaware of this [at the time] they subsequently inquired and found out the truth before their departure[12].

Moreover, it had already been annulled, nor did they accept the *Herem* "on the consent of the general public" [that its annulment should only become possible by the general consent] as has been written and as is clear from the wording of the promise, since all they said was, "We accept upon us with a *Herem* from now on." Whether, therefore, there be or there be not a *Herem ha-Yishub* in Goslar, the said R. Mattaniah

[8] This would imply that, by the end of the XIIIth century, the *Herem ha-Yishub* was almost universal in Germany.

[9] R. Mattaniah having applied the *Herem* to expel R. Isaac and his company, made assurance doubly sure by exacting from them a solemn vow *(Herem)* that they would leave in a specified time.

[10] This *responsum* is the second communication on the subject. The previous one referred to here is non-extant.

[11] Here follows a legal discussion.

[12] R. Mattaniah had extended the time limit agreed to by Isaac. During this period R. Isaac had appealed and the decision came before his departure.

and his sons have no greater right to the *Yishub* than they have, in anything. And they [R. Mattaniah and his sons] did not give a complete account of the case as it really was before my master and teacher R. Meir and the other great men, but they only wrote as they saw it fit. But in fact there is no one to disagree, and I know nothing other than my decision that every Jew has a portion in Goslar[13], and neither R. Mattaniah and his sons, nor R. Isaac and his party have the right to prevent any man from dwelling among them. Nor can the descendants of the original settlers who inherited [the right of residence] from their ancestors prevent [others from settling], according to the decision of my master, my grandfather R. Isaac of Vienna, of blessed memory[14]. Peace! Eliezer ben Solomon, may he rest in Eden[15]."

" With reference to the case[16] wherein R. Mordecai[17] entreats us against R. Moses called Taku[18] who called him a transgressor because he dwells in the *Yishub* of Goslar which he [Moses] has from his ancestors. To which R. Mordecai replies : "Have I not had a lawsuit with your kinsfolk, and we won the case concerning the right of residence?" To which R. Moses replies : "When my kinsfolk had a lawsuit with you, my late father of blessed memory was not then in the town, and he did not relinquish his rights; and I wish to enter into a suit with you before R. Perez[19] or before the [other] rabbis of [Northern] France."

In truth our elders still have a recollection of these things[20], but now

[13] A neat application of the well-known Mishnah, Sanhedrin X, 1 : "Every Israelite has a portion in the world to come."

[14] This seems to be a later addition. R. Isaac of Vienna died probably in 1260.

[15] This is, of course, a later addition.

[16] The *responsum* quoted above was resuscitated because of the case which follows.

[17] Mordecai ben Hillel, author of the "Mordecai" and disciple of R. Meir of Rothenburg, died in 1298; see *JE.* IX, 10-13.

[18] Not the anti-Maimunist of that name.

[19] The famous French Tosafist, of Corbeil died circa 1295. He was an unquestioned authority of his time. It is noteworthy, however, that Moses of Taku should wish to submit the case to French rabbis. He probably feared local influence in favor of the famous Mordecai. R. Perez was well-known in Germany, being acquainted with Meir of Rothenburg, *JE.* IX, 600.

[20] Of the fact that Eliezer ben Solomon and his grandfather Isaac of Vienna had declared Goslar a free town. According to the interpretation given below, nearly 30 years had elapsed since then and only the old men knew of it.

there have arisen new ones who neither saw nor heard what was [then] done. Therefore have we renewed these things now in the year 51 [5051=Oct. 1290—Sept. 1291] and we declare with full approval, with our young and our old that the *Yishub* in Goslar is permitted to every Jew in accordance with the decision of my master R. Eliezer of blessed memory. And he who comes to dispute it shall be rebuked; for not only those who entered into the lawsuit have no right to object, but even the sons of those who did not take part in the suit, since those who did take part brought the matter to their knowledge without provoking their protest which proved that they also were satisfied with the decision.

Moreover, it is a daily occurrence that a man who had the right of residence but left his place, and another man enters and finds it free, he acquires the right to it[21]. And in this case since they succeeded in their suit with the dwellers in the town, while those who did not enter into the suit were outside the town[22]; hence it is as though those who entered into the lawsuit found it vacant, since the others were not longer there anymore; therefore, there is no consideration to be given to their claim of prohibition; their prohibition is no prohibition, their protest is of no effect, and they have no power to forbid that which is not theirs.

And that which was spoken till now was because they relied upon their documents, but since they know now that their documents are of no avail, if they should keep these documents, they transgress against the commandment, "There shall not dwell in thy tent wrongdoing...[23]" [Job 11, 14.]

If they say any more and are still presumptuous, they should suffer for it from us more or less in that they "retort to the lion after its death[23]." A fence to wisdom is silence [Aboth III, 17] to hand about such matters is worse than he who handles a carcass, and he who guards his mouth and tongue guard his soul from trouble. The community of Magdeburg, Haim Paltiel, worm[24]."

[21] Probably by purchase or by the assent of the community.

[22] It appears that a number of the residents of Goslar, including the father of Moses Taku, were absent from the town at the time of the lawsuit, and their place was thus "vacant."

[23] A talmudic proverb, Baba Kamma, 117a. They ventured to disagree with the "lions" namely Eliezer ben Solomon and Isaac of Vienna after their death.

[24] An appellation of excessive modesty, based upon Isaiah XLI, 14. [Cf. Siegbert Neufeld, "Jüdische Gelehrte in Sachsen-Thüringen während des Mittelalters," *MGWJ*. LXIX (1925), p. 285 f.—G. K.]

For some undisclosed reason the original decision of Isaac of Vienna that Goslar was a "free town" was maintained by all later authorities, so that the residents were denied the right of subsequently instituting the *Herem ha-Yishub*, although it seemingly existed in nearly every other settlement. In the *responsum* three attempts to reenact this law are mentioned : 1. in the time of the father-in-law of R. Mattaniah when Isaac first decided against the existence of a *Herem ha-Yishub* in Goslar; 2. in the time of Eliezer ben Solomon the grandson of Isaac, when R. Mattaniah wished to expel R. Isaac and his company; 3. in 1291 when Moses of Taku wished to expel R. Mordecai ben Hillel.

Corresponding with these three attempts four strata of Jewish settlers are found in Goslar : 1. the original inhabitants; 2. those who entered at the same time as the father-in-law of R. Mattaniah; 3. R. Isaac and his party; 4. R. Mordecai.

Furthermore, it is noteworthy that despite the unanimous decision in favor of the "freedom" of Goslar, Jewish popular opinion seems to have favored the *Herem*. R. Isaac agreed to leave and entered into a solemn promise to this effect "with the knowledge of the majority," and Mordecai ben Hillel not only had to go to law to establish his claim, but even after the decision of Haim Paltiel in his favor, the feeling against him was so strong that he had to leave the town[25].

To what dates can these events be ascribed? Only one can be stated with certainty. The year of the attempt of Moses Taku to institute a *Herem ha-Yishub* and to exclude R. Mordecai from Goslar, is 1291, the same year as the re-establishment of the guild merchant in Goslar. It is difficult to resist the conclusion that the enactment of that system of trade monopoly among the Christian inhabitants was the motive force behind the attempt to set up its counterpart in the Jewish community.

The dates of the other two attempts cannot be stated with certainty. An indication of the approximate date of the first part of the *responsum* is afforded by the statement in the second part that the old men of the community still had a recollection of the decision of R. Eliezer ben Solomon, while the "new ones" were unaware of it. This would suggest a period of some

[25] Cp. *JE.* IX, 10.

20—30 years between the two parts of the *responsum.* In the first Isaac ben Moses is mentioned twice; once with the addition of "of blessed memory," once without. Isaac ben Moses died about 1260, but it is quite possible that the words were added by the transcriber of the *responsum*, as were certainly the words "may his rest be in Eden," after the signature of Eliezer ben Solomon.

Taking the remarkable coincidence of 1291 as our guide, we can suggest the following dates for the various incidents in the *responsum :* The original settlers settled in the town prior to 1252, when there was a *Zunftverbot* in Goslar and when there was therefore no question of any restriction of Jewish settlement. In 1252 the guild merchant was instituted as a result the Jewish inhabitants tried to institute a *Herem ha-Yishub* and to exclude the father-in-law of R. Mattaniah. It was on this occasion that Isaac ben Moses of Vienna decided against the institution and permitted R. Mattaniah's father-in-law to take up settlement. Despite this fact the existence of the guild merchant caused a tacit acceptance of the idea of a *Herem ha-Yishub*, and when, some time after 1260, the approximate date of Isaac's death, the guild merchant lapsed or was abolished, R. Isaac and his company came to settle in Goslar. The community headed by R. Mattaniah tried to expel them; Isaac agreed to go, but on referring the case to Eliezer ben Solomon, it was decided in his favor. Some years later Mordecai ben Hillel came to settle in the town, and no question was raised until, with the re-establishment of the guild merchant in 1291, Moses Taku attempted to make a similar restriction in the form of a *Herem ha-Yishub.* Despite the fact that the case was decided in favor of Mordecai, public opinion was so strong that he had to leave.

These dates, except for the last, are only approximate, but they do afford striking confirmation of the fact that there was a close interdependence between the merchant guild and its Jewish counterpart, the *Herem-ha-Yishub.*

## A NOTE ON THE HEREM HA-YISHUB

The medieval Jewish town settlements formed exclusive associations of their members complete in themselves and endowed with definite privileges of self-government. One of their important franchises was the right to admit new members or to deny admittance to newcomers. It was an old prerogative of the Jewish communities to sanction this right of admittance by inflicting the *Herem* i.e. excommunication upon a transgressor. Thus whoever wanted to settle in a Jewish community without obtaining its necessary special permission, could be barred from any social intercourse and from all business relations with the legitimate members of the community. This *Herem ha-Yishub* was practised in Germany as late as the beginning of the eighteenth century as is proven through an interesting *responsum* by the famous Prague chief rabbi, David Oppenheim, who refers to such medieval authorities on the subject as R. Mordecai ben Hillel, R. Asher ben Jehiel, and R. Jacob ben Asher. A German translation of this *responsum* is printed in G. Kisch, "Entwicklung und Verfassung der jüdischen Gemeinde zu Halle," in *Jahrbuch Sachsen und Anhalt* VI (Magdeburg, 1930), pp. 331—333.

The *responsa* concerning the *Herem ha-Yishub* in Goslar, for the first time published in English translation above, are documents of great interest for medieval Jewish history. They are already mentioned in *GJ.*, 118, yet without any comment. Louis Finkelstein, *Jewish Self-Government in the Middle-Ages* (New York, 1924), p. 14 f., collected several rabbinic decisions on the question and attempted to offer an explanation from a legal as well as from an economic point of view. Then H. J. Zimmels, *Beiträge zur Geschichte der Juden in Deutschland im* 13. *Jahrhundert auf Grund der Gutachten des R. Meir Rothenburg* (Vienna, 1926), pp. 37—39, 98—100, discussed profoundly the problem of the Jewish right of settlement in medieval communities and quoted several pertinent decisions from the *responsa* literature. However, the first to call attention to the assumed relationship between the *Herem ha-Yishub* and the medieval merchant guild is L. Rabinowitz in his two essays published elsewhere to which he has now added the preceding article.

Though this attractive observations and conclusions seem

plausible and, at any rate, worthy of consideration, we must refrain from premature generalizations. For the problem is to be studied on the basis of more complete and comprehensive rabbinic source material, and in connection with the general history of medieval town administration.

These considerations notwithstanding, Dr. Rabinowitz' essay is very illuminating with respect to the history of the Jews in Goslar. A remarkable example is here offered for the correctness of the assertion that both types of sources, of Jewish as well as of non-Jewish origin, are needed for drawing a complete picture of the Jewish status in the medieval towns.

As to Goslar, we possess now a scholarly study on its complex political history during the Middle-Ages by Karl Frölich, "Die Verfassungsentwicklung von Goslar im Mittelalter" in *ZRG.* XLVII (1927), pp. 287—486, offering especially a detailed history of the merchant guild. Cp. also Frölich, "Kaufmannsgilden und Stadtverfassung im Mittelalter," in *Festschrift für Alfred Schultze*, (Weimar, 1934), pp. 85—128. Rabinowitz' conclusions concerning the differentiation within the Jewish population of Goslar are fully confirmed through the list of Jewish taxation from the first half of the fourteenth century published by Herbert Fischer, "Die Judenprivilegien des Goslarer Rates im 14. Jahrhundert" in *ZRG.* LVI (1936), p. 145. According to this document two groups of Jewish inhabitants are found in Goslar at that time, 1. persons belonging to the so-called *consortium judeorum*, taxed as a group with a lump sum, and 2. those who were exempted from the *consortium aliorum judeorum* by individual special privileges and, therefore, were separately taxable. Thus two conclusions enter the realm of possibility: 1. the *Herem ha-Yishub* was recognized by the Goslar Jewry legislation, and on this basis an exclusive Jewish community had grown in the town; 2. in spite of this, through special privileges extended by the municipal authorities some Jewish families were granted admission and residence in Goslar outside the *consortium* or *communio judeorum*. This practice of *exemptio a consortio judeorum* proves, on the other hand, a disregard or evasion of the Jewish *Heremha-Yishub* on the part of the non-Jewish authorities. A strikingly similar situation is found in Halle at the end of the 17th and at the beginning of the 18th centuries. Here too lived

a number of Jewish families who were not included in the Jewish community but admitted by special privileges of settlement. It is obvious that the Jews *extra consortium judeorum* usually were not on good terms with the regular Jewish community.

Naturally, these few remarks provoked by Dr. Rabinowitz' essay do not aim at an exhaustive discussion of the problem. Their author would be fully satisfied if they should stimulate further research in this interesting subject.

New York. *Guido Kisch.*

# NUREMBERG JEWRY OATHS

By

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New York

## I*

### *Literature on the History of the Jews of Nuremberg*

Careful investigation has thoroughly informed us of the history of the Jews in Nuremberg during the nineteenth century. Yet that important Jewish community, which was sheltered by the *Reichsstadt* of ancient fame in South Germany in the Middle Ages, and in which Jewish scholars such as R. Meir of Rothenburg, R. Jacob Mölln and R. Jacob Weil lived and taught, has remained a stepchild of Jewish historiography even up to the present day[1]. For orientation on the medieval period of the history of the Jews in Nuremberg one must still refer to the well known works of Andreas Würfel and Hugo Barbeck. Würfel's book, *Historische Nachrichten von der Judengemeinde, welche ehehin in der Reichsstadt Nürnberg angerichtet gewesen, aber Anno* 1499 *ausgeschaffet worden*, published in 1775 in Nuremberg, is based upon archival material and remains still worthy of scientific consideration. Its author, however, did not work conscientiously nor was he unbiased. Barbeck's *Geschichte der Juden in Nürnberg und Fürth*, issued in 1878, offers no historical sources and even at the time of its appearance it did not come up to the expectations reasonably demanded of such a work. More recently Ernst Mummenhoff, the excellent historiographer of Nuremberg, attempted to draw a brief and unprejudiced picture of the external history of the Jews in Nuremberg, discussing especially the topography and the statistics regarding the Jewish population as well as the

* Dedicated to my esteemed friend, Professor *Alexander Marx*, New York, on the occasion of his sixtieth birthday.

[1] Cp. the bibliography in *Jewish Encyclopedia* IX, (New York, 1905), p. 362; *Jüdisches Lexikon* IV, (Berlin, 1930), p. 541 f.; A. Freimann, *Katalog der Judaica und Hebraica der Stadtbibliothek Frankfurt am Main* (Frankfurt a. M., 1932), p. 277; H. Tykocinski, Article "Nürnberg" in *Germania Judaica* (Breslau, 1934), p. 252.

culturally significant details of their inner life[2]. From the point of view of legal history, Otto Stobbe's study, "Die Juden zu Nürnberg," is still valuable and important[3].

To meet the demands of modern scholarship, a presentation of the history of the Jews in Nuremberg during the Middle Ages must utilize the rich literature concerning Nuremberg's general local history produced in the past decades. Above all the primary historical sources must be investigated, while consideration of the older literature on the subject can be pushed into the background. Only in this way will it be possible to gather sufficient information regarding the political, economic and social conditions of the Jews, which constitute a basic component of the complete historical picture. For these fields, Moritz Stern collected valuable source material in the third volume of his studies, *Die israelitische Bevölkerung der deutschen Städte, Nürnberg im Mittelalter*[4]. Unfortunately, however, Stern's book is not clearly arranged and is therefore difficult to use. This may very well be the reason why, until the present, its full value has not been recognized and its contents not expounded for historical research. Furthermore it must be supplemented in many places. It is regrettable that since the publication of Stern's volume more than forty years ago, nothing has been done in this field.

With respect to the present status of research which has been lightly sketched here, the following documentary contribution to the legal history of the Jews in Nuremberg might well be of

[2] Mummenhoff, "Die Juden in Nürnberg bis zu ihrer Vertreibung im Jahre 1499 in topographischer und kulturhistorischer Beziehung," *Fränkischer Kurier, Unterhaltungsblatt*, Nos. 20, 22, 24, 26 (Nürnberg, 1908); Mummenhoff, "Die Juden in Nürnberg bis zu ihrer Austreibung im Jahre 1499, *l. cit.*, Nos. 34, 36, 38, 40, 42, 44 (Nürnberg, 1908); Mummenhoff, *Gesammelte Aufsätze und Vorträge* I (Nürnberg, 1931), pp. 301—366; cp. Max Freudenthal and Wilhelm Kraft, *ZGJD.* III (1931), p. 216 f.

[3] Otto Stobbe, *Die Juden in Deutschland während des Mittelalters in politischer, sozialer und rechtlicher Beziehung* (Braunschweig, 1866), pp. 49-66.

[4] Kiel 1894—1896.—Cp. also Siegmund Salfeld, *Das Martyrologium des Nürnberger Memorbuches* (*Quellen zur Geschichte der Juden in Deutschland* III) (Berlin, 1898).

interest and value. It goes back to the archival studies which the present writer made in the early part of 1916 in the Royal Bavarian District Archive *(königlich bayrisches Kreisarchiv)*, now called Bavarian State Archive *(Bayrisches Staatsarchiv)* in Nuremberg.

## II

### *The Nuremberg Ratschlagbuch No. 52A*

The *Bayrisches Staatsarchiv* in Nuremberg possesses a series of manuscript codices from the fifteenth to the eighteenth centuries, the so-called *Ratschlagbücher*. They are collections of legal material, opinions of juridical experts, and bills which were reported to the Nuremberg Town Council by native counsellors as well as by foreign advisors. Of these *Ratschlagbücher* the folio volume number 52A (Rep. 51, page 7, VI, 2/5) contains a rich collection of important documents pertaining to the medieval legal history of the Nuremberg Jews. They are partly the legal opinions and resolutions of the type described, partly copies of older laws and statutes which were of significance for the political status of the Jewish citizens and residents of Nuremberg.

The manuscript volume, *Ratschlagbuch* 52A, stems from the last quarter of the fifteenth century. Several of the deeds contained therein bear the date 1477. The regulations of Jewry-law may have been written in part in 1478. In 1916, in Nuremberg, no accounts existed concerning the contents and scientific appreciation of the codex. On July 11, 1935, the archive administration informed the author that "publications from this codex are not known to the *Staatsarchiv*."

There is no doubt that the Nuremberg *Ratschlagbuch* 52A is identical with "the thick folio volume with the wooden book covers no. 438" mentioned by Daniel Waldmann in his study, "Die Entstehung der Nürnberger Reformation von 1479 (1484) und die Quellen ihrer prozessrechtlichen Vorschriften"[5]; for the draft of the oath formula of the Jews which Waldmann has added

[5] *Mitteilungen des Vereins für Geschichte der Stadt Nürnberg* XVIII (Nürnberg, 1908), p. 7.

as appendix II on pages 90—97 of his treatise, agrees with the copy completed by the present writer from pages 30a—33 in the codex 52A. Also by counting the pages, it is clear that Waldmann's *Vorlage* is the same as mine. However Waldmann did not print the conclusion of the text from pages 33a—34.

From the rest of the contents of the codex pertaining to Jews, —so far as can be seen at the moment—the German version of a papal document of September 20, 1451, which is on page 23a—24 is the only one known. The register preceding the manuscript reads as follows : "Ain gebottbriefe von dem bapst an den kaiser, dazumal Römischen künig, die juden in seinen landen und gebieten bey irem alten herkomen und gewohnhait beleyben zu lassen" [An order from the Pope to the Emperor, then Roman king, to allow the Jews in his lands and territories to enjoy their old rights and customs]. This decree of Pope Nicholas V was taken by Moritz Stern from a contemporary parchment deed of the Nuremberg *Kreisarchiv* and published in his *Urkundliche Beiträge über die Stellung der Päpste zu den Juden* (Kiel, 1893), no. 49, on pages 54—56. The papal document is important with regard to the history of the Nuremberg codex, for it offers a very valuable criterion for judging the questions whether the documentary material in the *Ratschlagbuch* 52A is authentic, and whether it is transmitted in a reliable form. Both questions can be unhesitatingly and decisively answered in the affirmative. It may be presumed that the copy of the papal document handed down in codex 52A goes back to the forementioned parchment deed of about 1451 in the Nuremberg *Kreisarchiv*, which Stern has employed as the basis for his reproduction. The writers copy from the *Ratschlagbuch* repeatedly shows better readings than Stern's reproduction from the original.

Also for other reasons which cannot be discussed here, the reliability of the Nuremberg codex is not to be doubted. It may be considered as a significant source on the legal history of the Nuremberg Jews in the Middle Ages.

## III

### *The Nuremberg Jewry Oaths*

Space does not allow full presentation of the contents of the Nuremberg *Ratschlagbuch* 52A on Jewry law. The formulae of the Nuremberg Jewry oaths, unknown until now, offer an interesting insight into the legal content of the codex and at the same time are a contribution to the history of Jewry-law of the Middle Ages. The few explanatory comments accompanying the text of the Nuremberg Jewry oaths must be of a special kind. More extended comment on the legal nature and the ceremonial of the Jewry oath in medieval Germany are found in the author's essay, "Studien zur Geschichte des Judeneides im Mittelalter[6]." The reader may also be interested in the forthcoming publication of the very singular text of a South German Jewry oath from a Donaueschingen manuscript of the fourteenth century, the wording of which has been heretofore unknown[7].

When the reform of the legal procedure was begun in Nuremberg around 1477, the form of the oath taken by Jews in civil suits also underwent a change. For this purpose, the Council formed a commission to seek suggestions for the new oath formula from its legal advisers. These suggestions, through their contents, were to exclude any possible protest on the part of the Jews. A resolution of the Council of 1478 refers to this : "Item verners rats pflegen des juden aids halb mit vurhaltung der sorgveltigkeit der appellacion, die da wider durch die juden alz ein neuikeit mochte furgenommen werden, bei den gelerten und auch den prediger zu den predigern." (Furthermore there should be a consideration concerning the Jewry oath, with special regard to the appeal to be expected on the side of the Jews; the jurist and the preacher of the Dominicans should be consulted.) The advisers were G. Imhof and Ulrich Stromair. Numerous drafts appear to have been handed in until finally one was passed by the Council after various omissions and insertions had been made. However, before it determined to accept the oath formula into

[6] *Hebrew Union College Annual* XIV (Cincinnati, 1939), pp. 431-456.
[7] *Speculum* XV (Cambridge Mass., 1940).

the municipal law reform *(Stadtrechtsreformation)* the Council sought the opinions of foreign jurists : "Doctor Merten (Martin) should be approached for his opinion concerning the new Jewry oath, whether it is to be permanent; likewise the scholars at Frankfurt." This was the origin of the oath formula which was finally embodied into the Nuremberg *Stadtrechtsreformation* of 1479 (1484) as an appendix under the title : *Form und Ordnung des Judenayds, so geprauchт wird zu Nuremberg.* Its history is all the more interesting since those drafts have been preserved as the only ones handed down of all the preliminary drafts of the Nuremberg *Reformation*[8]. This oath formula, interesting in its source history, was, as has already been mentioned, not offered in full by Waldmann nor was it even free of reading errors which marred the meaning. Moreover the text was published in a periodical restricted to local history only, and is therefore not easily accessible. For these reasons the present author is offering a complete and corrected version under section IV, no. 5.

A number of other Jewry oaths from Nuremberg extending from pages 27a to 29b of the manuscript mentioned precede this one. Of them all, special attention is to be called to the oaths which were taken by Jews upon acquiring and renouncing citizenship. On both occasions, they had to take a specially formulated oath just as did the Christians, in which were contained all the duties relevant to the legal act referred to. The oath formulae to follow are especially valuable from the point of view of legal history because they complete the fragmentary picture which one could draw up to now only upon the sources produced by Würfel, Stobbe, Stern, and Johannes Merkel[9]. The fact that this special subject of the Nuremberg Jewry-law was not provided for in the final form of the Nuremberg *Stadtrechtsreformation* of 1479 (1484), which was decidedly anti-Jewish in its tendency, makes the historical documents of the *Ratschlagbuch* even more valuable. For they offer indubitable evidence of the legal form which the acquisition and renunciation of citizenship by the

[8] *Waldmann* (above note 5), pp. 6—7.

[9] Cp. Würfel, pp. 27, 39-49, 69; Stobbe, p. 63; Stern, pp. 221, 229, 233; 236-240; Johannes Merkel, "Quellen des Nürnberger Stadtrechts," in *Festgabe der Göttinger Juristenfakultät für Ferdinand Regelsberger zum siebzigsten Geburtstage* (Leipzig, 1901), p. 141 f.

Jews in Nuremberg had to go through according to ancient tradition, and give evidence of the legal practice concerning this subject in the period immediately preceding their final expulsion from this old South German *Reichsstadt.* The entire question of the citizenship of the Jews in medieval Nuremberg requires further independent investigation[10].

The texts published here follow the original word for word. Only the punctuation has been inserted to aid the meaning. Numbering and classification by means of titles from the point of view of legal history are also mine. Aside from this, however the original titles are retained from the manuscript. Where these were lacking, the excerpts have been added in parentheses which the medieval writer had prepared and had placed at the beginning of the manuscript in the form of a register.

## IV

### *The Nuremberg Jewry Oath Formulae*

#### 1

#### *Customary Jewry Oath.*

[Ain judenaid mitsampt seiner beswernus und notdurftigen artickeln darzu gehorig.]

Item so ain jud ainen aid schweren will, so sol er Moyses buch, darinn die X gebot geschriben steen, bei im haben.

Item man sol den juden, ee dann er den aid schwert, mit den hernach geschriben worten beladen und beschwern.

Ich beschwer dich jud bei der ee, die gott schraib und gab Mosy uff dem berg Synay, das du wollest bedencken und sagen, ob dis das puch sei, daruff ain jud ainem cristan oder ain jud dem andern schweren solle und mog.

Spricht dann der jud, das es dasselb buch sei, so sol man in beschwern bei der obgemelten ee, das er solle suchen die wort lu sissa in den zehen geboten [2 Mos. 20, 7];

Und wann er die wort hat gesucht, so sol er sein rechte hand uff die-

[10] Cp. for the present, G. Kisch, "Otto Stobbe und die Rechtsgeschichte der Juden," *JGJC.* IX (1938), pp. 16—18.

selben wort in das puch legen bis an seinen knorrn und sol die hernach geschriben wort nachsprechen.

Als dir N zugesprochen hat umb n guldin, die du im schuldig sollest sein, also habestu in gantz und gar betzalt und seiest im an demselben zuspruch nichtzit schuldig on alles geverde, also helf dir gott, der himel und erden geschaffen, und als dir helf die ee, die gott gebot und sie gab Moysy uff dem perg Synay in zwaien stainin tafeln, dir und aller judischait zu trost; und ob du unrecht schwerest, so mussen dir enthelfen die funf pucher hern Moysi; und ob du unrecht schwerest, so müsst du versincken in die erden, als geschach Datan und Abiran; und ob du unrecht schwerest, so musse dein leib verflucht sein und dein sele muss nimer komen in Abrahams baren; und als recht du geschworen hast, also muss dir helfen der gott Abrahams, Isaacks und Jacobs, bei herem bess fua.

2

*Jewry Oath of Purgation*

Ains juden betzig als hienach geschriben steet.

Als ain leumunt uff dich erschollen ist, und dich N geschuldigt hat, das du im sein gut und hab gestoln und empfurt sollest haben, des hastu nit getan und bist des gantz unschuldig on allerlai geverde, also helf dir gott etc. ut supra in priori juramento.

3

*Jewry Oath Upon the Occasion of Acquiring Citizenship*

Item wann man ainen juden in ainer statt uffnimpt, so sol er die hernach geschriben artickel schwern.

Item ob er mit ainem burger oder undertan ichtz zu tun gewinn, das er von im vor unserm stattgericht recht nemen und sich daran genugen lassen wolle.

Item ob er mit ainem andern juden, bei uns gesessen, zu tun gewinn, darumb sol er in nindert anders dann vor unserm stattgericht anclagen; und was da erkandt wirt zu recht, des sich genugen lassen; es were dann, das es iren judischen glauben antreffe, so sollen sie vor irem rabi und was juden wir dartzu geben, ainander gerecht werden.

Item ob zwen juden ire kinder mit ainander verhairaten und elichten, dieselben zwai kind oder eeleuten sollen in den nechsten vier wochen

nach irem beilagen uss unser statt gantz ziehen; beliben sie aber uber die zeit in unser statt, so sollen sie all tag der statt ain guldin geben als lang, als sie in unser statt sein und sich mit dem rate nit verainigt haben. Nemen aber ain usswendig jud oder judin ain juden oder judin in unser statt zu der ee, die oder derselb sollen in den nechsten XIIII tagen hinaus uss unser statt zichen, oder darnach all tag ain guldin geben in obgeschribnen massen.

Item sie sollen auch alle und ain jeglicher jud geloben ainem burgermaistere, der statt und der iren schaden warnen und frumen furdern.

Item es sol auch kain jud, der bei uns heuslich und wesenlichen sitzt, bei seinem judischen aid kain andern juden wit wesen oder in der kost bei im halten, er gelobe dann auch sollich obgemelt sach dem burgermaister und rat.

Item sie sollen auch geloben und schweren, was sie in irem judischen rat sagen oder zu rat werden, das ir kainer unserm burger oder der unsern kainem offen wolle, es sei dann sach, das sie das alle oder der mertail in irem rate umb ir notturft beschliessen.

4

*Jewry Oath Upon Renouncing Citizenship*

[Forma so ainer sein burgerrecht aufgibt.]

Wie aber ain jud schwere, so er burgerrecht uffgibt; er schwert in allermassen als von den cristan, die ir burgerrecht uffsagen, hienach geschriben steet; und des mer, das er ainen erbern juden, dem zu getrauen ist, in diser statt gesessen, bei dem man das zu vinden waiss, alle seine pfand bei seinem judischen aide, wie und wer die sind, nichtz ausgenomen, eingeben woll, bei dem jederman das sein losen möge.

Forma, so ainer burgerrecht uffgibt.

Ich A thu kundt und zu wissen etc. Als ich den N. mein burgerrecht in irem rat offenlich uffgeben, und sie es von mir uffgenomen haben, das ich darumb ainen gelerten aid mit uffgereckten vingern zu gott und den h[eiligen] geschworn han, was ich mit ir statt, irem rat, iren burgern und den iren von verlaufner und vergangner sach wegen zu tun, zu vordern und zu sprechen habe, das sol und wil ich durch mich oder mein machtboten in ainem freuntlichen rechten gen der statt oder dem rat furfordern, nemen und mich daran genugen lassen an den enden, da sie pflichtig von freihait, auch aitem herkomen nur schuld sein, gerecht zu werden. Berurt es aber nicht die statt oder den rate, besunder ain burger, die iren oder das ir, das ich dann von den oder demselben

recht vordern, nemen und mich genugen daran vor irem stattgericht lassen sol und wil. Ich sol und wil auch furbas kain wonung noch wesen in ainer viertail meil wegs umb ir statt haben. Ich sol und will auch furter kain aigen rauch in ir statt haben, noch mich in die cost da verdingen, sondern wann ich da bin, mein pfenung zu ainem offen wirt zeren in masse als ain ander gast und aussmann on geverde. Ich sol und will auch alle meine guter, zins, rent und nutz in dem nachstk[omenden] jar verkaufen in oder ir burger ainem und sust nieman, die ich da und in irem marckt han; ob ich sie aber in derselben zeit nit verkauft, so sullen all zins, rent, vell und mitz, die ich da han, nach demselben jare gefallen furbas der statt uff das rathaus on eintreg mein und menigklichs von meinen wegen. Des zu urk[unt] etc.

5

*Detailed Formula of the Customary Jewry Oath*

[Ain juden aid mitsampt seiner beswärd dem obgeschriben gleichlautend.]

Item so ainem juden ain aide aufgelegt wirdet, so sol er zuvoran, ee er den aid thut, vor handen und augen haben ain buch, darinnen die gebot gottes, die Moysi uff dem perg Synay von gott geschriben gegeben sind, und sol darauf den juden mit den worten bereden und besweren :

Ich beswer dich jud bei got dem allmechtigen und bei seiner ee, die er gab hern Moysi auf dem perg Synay, das du wollest warlich sagen und verjehen, ob dis buch sei das buch, daruff ain jude ainem cristen oder ain jude dem andern einen rechten geburlichen aide tun und vollfüren muge.

So dann der jud auf sollich beswerung bekennt und sagt, das es dasselb buch sei, so sol man ine verrer besweren bei den vorgeschriben worten, das er in demselben buch suche dise wort mit namen lo sissa.

Und so er dieselben wort hat gesucht und funden, alsdann sol er sein recht hand bis an den knoren in dasselb buch und mit namen auf die vorgemelten wort legen und sol dis nachvolgende wort nachsprechen.

Als dir N zugesprochen hat umb N sovil gelts oder umb den handel, das du im daran gar nichtz schuldig noch pflichtig seist, weder wenig noch vil, getreulich und one alles geverde, also helf dir der war got Adonay, der himel und erde, laub und grass und aller ding beschaffen hat, und der Moysi in dem prynnenden busch erschinen ist; und ob du unrecht oder unwar swerest, das dir dann enthelfe die war gotheit Adonay und dir in keinen deinen sachen oder nötten zu hilf oder zu statten kome. Auch ob du unrecht und unwar swerest, das dich dann

die erden verslinden als Dathan und Abyron, und dich das hellisch feuer verprenn und ubergee, als Sodoma und Gomorra beschehen ist. Wo du auch nit recht swerest, das dann uber dich und alles dein geslecht und erben ergee alle die ubel, straffe, fluche und maledeiung, die an der tora und in den büchern hern Moysi und aller prophetten geschriben steen und von euch niemer abgewandt werden; und dein sele muss auch nimer mer zu ruw noch in Abrahams schosz komen. Und das dir auch in disem deinem aid nit zu hilf, zu statten noch zu beschirmung komen, noch furtragen solle, ob du von den und andern aiden in vergangen oder kunftigen zeiten von einichem deiner obersten rabbi oder andern juden entledigt oder geurlaubt werest oder wirdest, sunder dich des und aller ander liste, aufsetze, behelfe, gesetze, geverde und sunde, wie jemant die erdacht hat, oder erdencken möcht, gar und gentzlich hiemit vertzeihest und begebest, und auch disen aide nit bereuen noch zu vergeben bitten oder begeren wöllest; alles one allerlai geverde und argliste und als war und recht du swerest, also musse dir helfen der war got Abrahams, Isaacks und Jacobs alles getreulich und ungeverlich.

Item zu bedencken, ob man sie in vollfürung irer aide nach inhalt des Sachsenspiegels[1] damit besweren wolle, das sie mit parfüssen füssen auf einer sweinshaut sweren.

## 6

### *Old Jewry Oath*

Wie ain jeder jud schweren sol, ut supra.

Als dich N beschuldigt, des bistu unschuldig, das dir gott so helf. Ob du unrecht schwerest, das dich gott schent, der himel und ertreich, laub und gras geschaffen hat; und ob du unrecht schwerst, das dich der gott schendt, der Adam gepildet hat nach seiner antlitz, und Evas macht von ainer seiner ripp; und ob du unrecht schwerst, das dich der gott schent, der Noe selb acht, mann und weip, in der archen von der sintflut ernert; und ob du unrecht schwerest, das dich der gott schent, der Sodomam und Gomorram verbrant mit den hellischen feur; und ob du unrecht schwerest, das dich der gott schent, der mit Moysi redt aus dem feuren pusch; und ob du unrecht schwerest, das dich der gott schent, der Moysi die zehen gepot gab geschriben in zwayen stainen tafeln, geschriben mit seinen fingern; und ob du unrecht schwerest,

[1] Thus in the manuscript, however the *Schwabenspiegel* is doubtlessly meant (Edition by Lassberg, art. 263; Wackernagel and Gengler, art. 215); cp. Stobbe, p. 155.

das dich der gott schent, der Pharonen schlug und die juden durch das rot mer furt und er sie bracht in ain landt, das mit milch und honig floss; und ob du unrecht schwerest, das dich der gott schent, der die juden speist mit dem himelbrot virtzig jar in Egiptenland; und ob du unrecht schwerest, das dich der gott schendt, und dich dem teufel sende mit leib und mit sele, nu und immermer, amen.

## 7

### *Draft in* 1478 *of the Jewry Oath for the Nuremberg Municipal Law Reform of* 1479, *printed in* 1484

[Aber ain judenaid mit manicherlai beswerung und erzelung des mainaids, das der jud sich des nit entschuldigen, sonder dem cristen ainen gerechten aid als wol als dem juden zu sweren und zu halten schuldig sei.]

So ainem juden ain aid aufgelegt würd, so soll er zuvoran, ee er den aid thut, vor handen und augen haben ain buch, darinnen die gebot gots, die dem Moscheh auf dem berg Sinay von gott geschriben gegeben sind, und soll darauf den juden mit den wortern bereden und beschweren.

Ich beschwer dich jud bei dem ainigen lebendigen und allmechtigen Gott, schopfer der himeln und des ertreichs und aller ding, und bei seiner thora und gesetz, welchs er gab seinem knecht Moscheh auf dem berg Sinay, das du wollest warlich sagen und verjehen, ob diss buch sei das buch, darauf ain jud ainem cristen oder ainem juden ainen rechten geburlichen aid thun und volfüren mug und sol.

So dann der jud auf solch beschwerung bekennt und sagt, das es dasselbig buch sei, so sol man in drei frag fragen und soll sprechen der, welcher den aid ervordert.

Jud, ich frag dich zum ersten, ob du das wol waist, und erkenst oder glaubst, als stet geschriben in dem puch Jehoschüah [Joshua 9], das obwol der Joschüah und die nesie oder haubtleut der zwelf geschlecht Israhel wurden betrogen von den mennern Gischon [Gibeon], der stat also genant; jedoch darumb, das die haubtleut des volcks Israhel hetten in geschworen in dem herrn got Israhel, darumb wolten sie ir stat Gischon [Gibeon] und ir volck nicht vertreiben, verderben und tödten, sunder sie wolten in halten das beris oder die versünung. Und das haben sie getan, das sie nicht wolten ertzurnen den Herrn Got Israhel, darumb das sie bei im geschworen hetten. So sprech der jud : Ja ich glaub das.

So sprech der crist : Jud ich verkund dir warhaftiglichen, das wir cristen niemant anbeten, dann allain den ainigen almechtigen und lebentigen Got. Und das sag ich dir darumb, das du nich mainest, das du werst entschuldigt vor gott aines va[l]schen aids in dem, das du mainest välschlichen, das wir cristen treiben abgotterei und beten an frembde götter oder treiben ketzerei, welchs gelogen ist. Und darumb sind die nesie oder haubtleut des volcks Israhel schuldig gewesen zu halten das, welchs sie hetten geschworn den mennern von Gischon [Gibeon], welche dienten den frembten gottern. Vil mer bistu schuldig uns cristen ainen warhaftigen aid schwern und halten, darumb das wir cristen anbeten den ainen lebentigen und allmechtigen gott.

Der krist : Darumb jud frag ich dich zum andern mal, ob du das glaubst, das ainer schendet den allmechtigen gott, indem das er schwert ain valschen aid. So sprech der jud : Ja.

Der crist : Jud ich frag dich zum dritten, ob du wilst aus bedachtem mut und on alle arglist anrufen den ainen lebentigen und allmechtigen Gott zu ainem zeugen, das du wilst war reden und nit liegen in allen disen spruchen, welche du wirst hie hernach reden oder antwurten. So sprech der jud : Ja.

Der crist sprech : Jud ich vermane und betzeug und beschwere dich durch deinen ainen lebendigen und allmechtigen Gott, das du suchest die zehen gebott des allmechtigen Gotts geschriben in dem puch elleh schemos und das du lesest das ander gebot in der judischen sprach und dulmetzest das in der teutschen sprach laut und verstentlich.

So hör der crist dem juden zu mit fleiss ob er das ander gebot lese und recht tulmetsch in diser weise [2 Mos. 20, 7] :

| | | | | | | |
|---|---|---|---|---|---|---|
| Nicht | erheb | den namen | des Herrn | deines Gots | unnutzlich, | wann nicht |
| lo | tissa | etschem | adonai | eloecha | lasschaf | qi lo |

| | | | | |
|---|---|---|---|---|
| wirt undschuldig oder ungestrafen lassen jenaqqe | der Herr adonai | den, der do et asscher | erhebt sei- nen namen issa etschemo | unnutzlich. lasschaf. |

So der jud das hat gelesen und getulmetscht, so soll er die rechten hanndt bis an den knorren in das buch und auf dise gelesne worter legen und soll dise nachvolgende worter nachsprechen.

Der aid laut also.

Jud sprich mir nach : O Adonai, ain schopfer himels und ertrichs und aller ding und mein und diser menschen, die hie steend, ich ruf an dich durch dein namen und alle malachim und alle meine veter und hailigen auf dise zeit zu der warhait. Als und der N mir zugesprochen hat umb etc., und als sich der handel und die sache etc., so bin ich im nichtz

darumb schuldig oder pflichtig und hab kain verschlagen oder falsch zeugknuss mit briefe oder zeugen gebraucht, sunder wie es gelaut hat umb haubtschuld oder sunst, was die sach ist etc. Also ist es war on alles geverd, listikait, verborglichait. Also bit ich mir Got Adonai und alle malachim und alle heilige veter unsers geschlechtes, dise warhait zu helfen besteten, und wa ich falsch unwarhait prauchet, mich zu strafen. Amen, amen. Und ich sei herma und verflucht und alle mein geschlecht und die frucht meines leibs, wa ich anders schwer oder in dem gemut hab, dann als die wort gemainlichen werden verstanden. Amen, amen.

Darnach so stelt den juden gegen seiner widerparthei die sol 1 pfennig in der hand haben und der jud soll sprechen nach : Ich bekenn und betzeug hie offenlich und nim Gott zu ainem zuigen, wa ich dich mit worten oder falscher aufsetzung oder verschlahung oder falschem anrufen des namen Gottes betrogen hab, das ich nimmer soll tail haben an kainer freud, wollust, gemainschaft, trost, wartung, der da wartend sind die frumen juden; und gib dir mein tail auf vor dem Gott Adonai und verkauf dir das umb disen pfennig, den du mir gibst und nim den von dir und will den also haben darfur. Und sprech der jud : Ja, amen.

Ich[1] rat auf besserung der weisen, das ain hochweiser rat beschick drei oder vier juden, und die gelert seien, und ainen on den ander haimlich haiss suchen in der thorah, das ist in dem funfften puch Moysi, den sie nennen Mosse Rabeno, und such in dem andern puch genant elles [!] schemos, und das er zaig, wa sich die gebot anfahen und haiss in das teutschen und auch in ebraisch lesen und merck ainer auf die ebraischen wort, als sie in des predigers zettl verzaichnet sind. Darnach lass man den juden hinausgan und merckt das platt etc. Also du man dem andern, driten, ob sie gleich zaigen; so merckt man haimlich das plat etc., doch also das kainer den andern warne.

Darnach[1] so der den aid will thun, so beschwert man den juden also, Item.

Ich[1] betzeug und ruf zu meiner diser warhait an den allmechtigen ewigen, ainigen Gott Adonai, der erschinen ist Mosse Rabeno und im die thora gegeben hat, das da vor mir ligend und geschriben steend sein gepot, die er unsern vätern gegeben und darinn er mir verpoten hat, das ich kainen menschen soll bei seinem namen Adonai falsch, trüglich oder hinderlistiglich schweren noch betriegen, auch kein unwarhait bestetigen, noch kain warhait laugnen. Also ruf ich an sein namen Adonai und sein ewige machtikait.

[1] Marginal note on this paragraph : vacat.

Zu dem andern mal. So sol der jud legen sein hand etc. in das buch auf das gebot etc. und sprechen :

Adonai, ewiger Gott, ain herr uber all malachim, ain ainiger Gott meiner väter, der uns die hailigen thorat gegeben hast, ich ruf dich und den hailigen namen Adonai an und dein allmechtichait und alle dein malachim und alle mein väter, das ir mir helft bestaten mein aid, den ich jetz soll thon und wa ich unrecht schwer oder trugenlichen, so sei ich aller gnad beraupt des ewigen ainigen Gottes, und mir werd hie in diser zeit aufgelegt alle straf und fluch, die Gott und sein hailig freund handt getan den verfluchten juden und mein sel noch mein leib hab nimmer kain tail an der versprechung die uns Gott getan hat. Und mein sam noch ich sollen nicht tail haben an Messias noch an dem versprochen ertrich des hailigen saligen lands. Amen.

Ich versprich auch und betzeug das bei dem ewigen Adonai, das ich nit will begeren, noch biten, noch aufnemen kain erclerung, auslegung, abnemung, vergebung von kainem menschen, von kainem juden, noch erbarmung von Gott begeren, wa ich betrieg ain menschen oder mer mit disem aid. Amen.

Als[1] dir N etc. zugesprochen hat umb ain N etc. summ gelts oder umb den handel, das du im darumb gar nichtz schuld und pflichtig seiest, weder wenig noch vil, getreulich und on alles geverd, also helf dir der warhaftig ainig und allmechtig Gott, der himel und erd, laub und grass und alle ding beschaffen hat und der dem Moscheh in dem prinnenden pusch erschinen ist. So sprech der jud : Amen, amen.

Und ob du unrecht oder unwar schwerest, das dir dann enthelfe der warhaftig ainig und allmechtig Gott und dir in kainen deinen sachen oder nöten zu hilf oder zu statten kome. Auch ob du unrecht oder unwar schwerest, das dich dann die erde verschlind als Datan and Abiram und dich das hellisch feur verprenne und ubergeen als Sodom und Hamorah [!] geschehen ist. Wa du auch nicht recht schwerest, das denn uber dich und uber alles dein geschlechte und erben ergee alle die ubel straf, fluch und vermaledeiung, die in dem thorah oder in dem puch des gesetz oder in dem himesch [Chumesch] oder in aller puchern des knecht Gottes Moscheh und aller nebiim oder propheten geschriben steen, und von euch nimmer mer abgewendt werd ; und dein sel muss auch nimmer mer zu noch in das arez haiim, das ist in das land der lebendigen komen; und das du werest beraubt und enterbt des erbtails deiner veter Abraham, Izhaq und Jahaqob und des volcks Gottes Israhel; und das du mir all dein erbtail, welchs dir nach deinem glauben zugeburt in dem gelobten land, wolst geben on alles widerrufen umb ainen pfennig.

[1] Marginal note : vacat.

Das sol der crist dem juden geben ainen pfennig und soll den nicht wider nemen.

Und[1] das dir auch in disem deinem aid nicht zu hilf, zu staten noch in beschirmung komen noch furgeen soll, ob du von den andern aiden in vergangnen oder in kunftigen zeiten von ainichen deiner obersten Johanin [!] [Kohanim] oder maister, oder wie man die nennen mög, es sei einer oder vil, entledigt oder geurlaubt werest oder wurdest, sunder dich des und aller andrer list, aufsess, behelf, gesetz, geverd oder sunde, wie jemant die erdacht hett oder erdencken mocht, gar umd gentzlich hiemit verzeihst und begebest und auch disen aid nicht bereuen noch zu vergeben bitten oder begern wollest, alles on allerlai geverd und arglist; und als war und recht du schwerest, also muss dir helfen der war Gott Abraham, Izhaq und Jahaqob, alles getreulich und ungeverlich. So sprech der jud : Amen, amen.

[1] Marginal note : vacat.

# THE PALESTINIAN QUESTION AND THE CONGRESS OF BERLIN

By

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## I

During the Russo-Turkish War in 1877 and before, voices were raised in periodicals and newspapers in England favoring the re-establishment of a Jewish Palestine. In connection with the disturbances in the Orient, it was frequently pointed out that with the solution of the Oriental problem the Jews should be given the opportunity to lead an independent national existence in their ancient fatherland. In England, committees were formed which proposed to bring the problem of the reestablishment of a Jewish home in Palestine into harmony with the demands of the politics of the day. In July 1876 under the leadership of Hayim Guedalla, head of the committee for the control of the Turkish national debt rising from the state's loan in 1865, a society was established with a capital of eight million pounds sterling to purchase Palestine from Turkey. The surrender of the Holy Land, however, was to become effective only with the consent of the Great Powers. On the other hand, there were rumors in London that the Turkish government had offered a large part of Palestine to their English creditors in payment of their debts. Williams Newton, in his article, "Palestine of Jews," in *The Northern Echo* of December 27, 1876, made a special plea in favor of purchasing the country. He emphasized that needy Turkey would certainly surrender Palestine in return for a loan which wealthy Jews could raise. A Jewish State would thus be established under the protectorate of the European Powers, while many influential Gentile financiers would support such an undertaking, for a Jewish State would surely be advantageous to the Orient. The *Times* in several articles also favored the various suggestions for the sale of Palestine to the Jews; and even the *Oriental Star*, the organ of the Christian Society for the Protection of Christian Interests in Turkey supported similar ideas. But with the outbreak of the Russo-Turkish war, these plans were abondoned.

In connection with the final solution of the Eastern problem, the Palestine question was again openly and actively discussed. The well known political writer Goldwyn Smith, published a detailed proposal in the highly respected periodical, *Nineteenth Century*, for May 1878 wherein he claimed that the unsettled position of Turkey made it the duty of England and the other States to return Palestine to the Jews and to revive the Jewish Empire. Lord Shaftesbury, who thirty years before had discussed the return of the Jews to Palestine in connection with the Syrian problem, again opened the question as to whether Palestine was to remain a desert and a plaything in the hands of the diplomats[1].

From the standpoint of English colonial policy, he believed, Palestine could attain great importance. Cities would be erected to play a significant role as centers of trade. The Jews would thereby find a broad field for activity, for which Jews could supply both money and people. Shaftesbury counselled that Palestine should belong to England and for this reason England would have to invite the Jews to return to Palestine. As a trading and seafaring people the English had the historic role of preparing for the re-settlement of Palestine through the Jews.

Edward Cazalet an English industrialist, (1827—1883), who lived for many years in the Orient and was well-acquainted with the Russo-Turkish affairs contributed an exhaustive article on England's politics[2].

The high hopes placed in Turkey had not been fulfilled, he said, and it would, therefore, be better for all those interested to demand that Turkey give up Syria, Palestine included, "into more able hands." Since the Arabs were uneducated and undependable, not particularly truth-loving, even immoral, and therefore not in a position to participate as an administrative partner in the direction of the country, a more capable and industrious people had to be found to re-populate these regions. Cazalet saw the Jews as the people who would be able to accomplish this reconstruction. He had been in contact with them in Russia and had become thoroughly acquainted with the Jewish problem. The sufferings of the Jews which he saw there as well as his belief in

[1] Cp. N. M. Gelber *Zur Vorgeschichte des Zionismus* I (Vienna 1927), pp. 133, 137, 141, 256; [Franz Kobler, *Jüdische Geschichte in Briefen aus Ost und West* (Vienna, 1938), *passim*].

[2] Cazalet, *The Eastern Question. An Address to Workingmen* (London, 1878); cp. also Cazalet, *Berlin Congress and the Anglo-Turkish Convention* (London, 1878).

their character and talents awakened in him the desire to aid them. The great attraction of Palestine for the Jews, and the realization of how closely the country was linked with British interests induced him to recommend the re-establishment of a Jewish state in the historic land under a British protectorate. At the same time he saw this as the only practical means of civilizing and repopulating Syria.

In his pamphlet *England's Policy in the East, Our Relations with Russia and the Future of Syria*, he stressed that the restitution of a Jewish Palestine would create no complications and would require no investment on the part of England. England had merely to create the political conditions whereby a great number of Jews could be brought to Syria and Palestine at their own expense. He was convinced that, should colonization in Palestine be resumed, the Jews could establish a centre of culture there and spread civilization throughout the Orient. The very restoration of a cultural centre in Palestine would induce many Jews to come to the Holy Land with their families. The position of the Jews in Russia was so deplorable, Cazalet felt, that they would certainly prefer only such a center than to remain a 'state within a state,' in which they were denied civil rights, even the right to buy land. In the last thirty years as many as 250 000 Jews had migrated out of Russia, he noted, and under an English protectorate this stream of emigrés would turn to Palestine, which could absorb a goodly number of people. He indicated that Jews everywhere looked upon Palestine as their fatherland, as a spiritual symbol which evoked dreams of reestablishing their state and their temple. Hebrew language and literature, Jewish legislation and religion already showed that the Jews were still an indivisible nation ready and capable to build their own country and to protect it with their own strength. The writer noted Jewish accomplishments in every field of endeavor, qualifications necessary for building a new state. In the last Turkish war Jews had also proven their ability as soldiers. Cazalet concluded that "none who know the Jewish character can doubt for an instant that in case the Jews should return to their land under an English protectorate, they would be loyal to our nation (England) and that Syria will be bound with England just as if it were inhabited by our own people." After the Congress of Berlin, Cazalet propagated the idea of the re-establishment of a Jewish Palestine and even formulated practical colonization projects[3].

[3] This can be seen from a letter of August 3rd, 1882 addressed to Magnus Meyer, the president of the Jewish community in Berlin, found in the Schwadron collection of the Library of the Hebrew University. It reads as follows :

It must also not be forgotten what an impression George Eliot's novel, *Daniel Deronda*, made and how it strenghtened the idea of the reestablishment of a Jewish Palestine. The very fact that much of the criticism agreed with the soundness of the point of view taken in the novel proves how earnestly the serious intellects of England believed in the restoration of a Jewish Palestine as the only possible solution to the Jewish problem.

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Dear Mr. Magnus :

I might have written to you long ago to thank you for your kind letter of fourth July and for all the trouble you have been good enough to take in behalf of the scheme I have taken in hand. I have defered writing in hope of being able to acquaint you with some progress made towards the object in view, but the political disturbances caused throughout Europe by the events in Egypt, have rendered it necessary to defer for the present the question of the Euphrates Valley Railway. I have been urged from Constantinople to take part in the Euphrates scheme on a small scale, but I fear to embark in such an enterprise, as I doubt very much whether the safety of the Jewish colonists could be secured in a remote country like Mesopotamia and even nearer the coast without the rapid communications and the opening of the country trade and commerce which would be alone effected by the construction of a railway.

My belief is that without the railway a colonization scheme would not succeed; and without colonization a railway would not pay. It is a question of carrying out but simultaneously or of abandoning the project. On the other hand I am assured by members of the Cabinet that the English Government are disposed to support my scheme and there would therefore be no necessity for the Jewish Consortium at Berlin which I was anxious with your assistance to form. There would be no difficulty in colonising the country or in finding the required capital for the construction of the railway provided that interest is guaranteed and the undertaking supported by the English Government and without this support I fear there would be little chance of success.

I have hope of being able to carry out the double scheme, but for the present must be content to wait till the Egyptian riddle has been solved.

Please excuse my answering your letter in English and accept the assurance of esteem and regard.

Faithfully yours,
*Ed. Cazalet.*

On the part of the Jews, Abraham Benisch, the editor of the *Jewish Chronicle* was an ardent exponent of the re-settlement of Palestine since the thirties. He was the only one to express the thought that after the end of the Turkish war Palestine might be relinquished to England[4].

All this shows that the question of the Jews and Palestine engaged the attention of several serious-minded people in connection with the questions arising from the Russo-Turkish War. This view, however, was not adopted by the statesmen at the Congress of Berlin, in 1878, whose interest in the Jewish problem was largely limited to guaranteeing civil rights to persons of all faiths in Bulgaria, Rumania and Serbia. This was as much as the *Alliance Israélite Universelle* and the Berlin Committee in Aid of the Rumanian Jews could hope to accomplish. But the Congress did have its attention drawn indirectly to the need for the re-settlement of Palestine, an incident which we may profitably examine.

## II

In the middle of June 1878, while the Congress of Berlin was deep in debate over the equal civil rights to be granted to the Balkan Jews, a short memorandum was handed to the secretary of the Congress by four Jews from Breslau[5]. The document read :

Esteemed Congress ! To Prince Bismarck and Lord Beaconsfield and delegates. Breslau, middle of June 1878. Like the other Oriental peoples we poor oppressed Jews also humbly ask of your Excellencies' power and good-will through your esteemed sovereigns to give us

[4] Concerning Benisch, cp. Gelber, *op. cit.*, pp. 203-209, 305-308; [now Salo W. Baron, "Abraham Benisch's Project for Jewish Colonization in Palestine, 1842," in *Jewish Studies in Memory of George A. Kohut* (New York, 1935), pp. 72-85. — G. K.]

[5] Acts of the Congress of Berlin in the Vienna *Haus-, Hof- und Staatsarchiv* as well as in the acts of the Congress of Berlin in the Berlin *Geheimes Staatsarchiv*. [Comp. Adolf Böhm, *Die zionistische Bewegung bis zum Ende des Weltkrieges* (2nd. ed. Tel Aviv, 1935), p. 71, note *; Josef Meisl, "Ein Judenstaatsantrag an den Berliner Kongress (1878)," in *Der Jude* VIII (Berlin, 1924), pp. 247—249. — G. K.]

a home in our ancient fatherland as an independent constitutional monarchy in accordance with the enclosed proposal by Istoczy. In behalf of the many hundreds of thousands of Israelites, M. Levy[6], Th. Freund, C. Meyer, Rössler.

In the minutes of the secretary of the Congress, there is a notation that this memorandum was not placed before the Congress because—as President Bismarck thought—it seemed to come from madmen. Despite painstaking investigations of the present author, nothing could be discovered concerning those who made the proposal, their importance in the Jewish life of that day or in their more limited communities. These four Jews were earnest in pleading for the re-establishment of the Jewish homeland in Palestine even though they were spurred on to do so by a resolution of the Hungarian antisemite, Istoczy. Certainly it will be of interest to throw some light on the history of this episode.

On June 12, 1878, one day before the opening of the Congress of Berlin, a member, Dr. jur. Victor of Istoczy, made the following motion in the Hungarian Chamber of Deputies :

" The House may declare that, during any phase of the solution of the Oriental problem and the final settlement of the future of the Orient, should the idea arise on the part of the leading Jewish circles or on the part of the government of any European state that not only the claims of the Christian peoples of the Orient must be settled in accordance with European interests, but that at length the Jewish people, too, driven from their homeland destroyed eighteenhundred years ago, must receive justice in that their deeply beloved fatherland, Palestine, be restored either as an autonomous province under the sovereignty of the Sublime Porte or as an independent Jewish State so that the Jewish people, who in their present dispersion hinder the progress of the European nations and endanger Christian civilization, could become a lively, powerful new element, an effective factor in civilization under the benefits of their own national government and national institutions, admist allied Semitic nations in the Orient, now backward and in decline—in this case, the desire of the House is that the Hungarian government see to it that the ministry of the foreign affairs of the [Austro-Hungarian] Monarchy does not contradict any proposal having this as its ultimate goal, rather that

[6] It is possible that he was identical with M. G. Levy a member of the Society for Founding Orphanages for the Jews in Palestine, cp. *Hamaggid* 1876, no. 42, p. 365.

it support it both in European interests as well as in the interests of the Monarchy and especially of Hungary[7]."

In the general session of the Hungarian Parliament of June 24, 1878, and while the Congress was meeting in Berlin, Victor of Istoczy explained his plan for the re-establishment of the Jewish state in a long speech purely antisemitic in character.

Through the Congress of Berlin, Istoczy explained, the nations would be freed of their fear of Islamic power as a result of the subjugation of Turkey. Europe, however, faced the fact that a new force—the Jews—was striving to dominate the European nations and to enslave them. According to Istoczy, the Jews would completely rule over the peoples of Europe. The very fact that in the past 150 years, the Jews have increased markedly in Hungary proved that, with the continuation of this development, they would in time outnumber the Hungarian population. Besides, there was the danger that the Jews acquire strong economic positions "whereby they are enabled to influence the Hungarian people and the entire Hungarian state." In his speech, he introduced a series of facts gathered from various antisemitic pamphlets. In his opinion, conditions similar to those in Hungary exist in the other European states, in which the Jews had a disastrous influence on the state and economy through their financial and economic superiority. He believed he could see signs of Jewish supremacy everywhere and opined that it was to the interest of European society and Christian civilization to find a solution which would avoid a catastrophe for Europe. Therefore the European nations must attempt a solution of the Jewish question in cooperation with the Jewish people. However, there was but one solution—the re-establishment of the ancient Jewish fatherland. In eighteenhundred years there had never been as favorable an opportunity as now to make up for the injustice done the Jewish people, driven from their homeland, to right the "world historical wrong" which resulted from the dissolution of the independent statehood of a people so capable and tenacious of life. Only the restitution of the Jewish state could with one sweep wipe away all those conflicts which existed between the Jews and the peoples among whom they lived. The history of the last decades showed, according to Istoczy, that it was possible for peoples who have lost their independence to retrieve their national and political freedom. Hungary, Italy, and the nations of the Balkan peninsula were sufficient proofs that it was possible to re-establish former states. This would certainly be

[7] Publications of the Hungarian Chamber of Deputies B XXVI, p. 132, no. 809.

possible with the Jewish state. Even though certain levels of Jewish society have already been assimilated, the fact still remains that the majority of Jews holds fast to their national tradition, and were inwardly bound to Palestine.

It was Istoczy's conviction that it would be possible in a very short time to restore the Jews to Palestine. The State created by them would certainly have a sound development since the Jews would come there as a fresh element the more so since they commanded large resources of labor, and in time they could take over the leading role in the Orient, where they would aid in the regeneration of the Turkish Empire. In Palestine they would no longer be looked upon as parasites, but, as citizens of the Jewish state following their national tendencies to become champions of civilization, culture and the humanitarian principles now preached by them in Europe.

Istoczy thought that the fulfillment of this idea would be easy since the desire for the restitution of Palestine always existed within the Jewish people and required merely an outside impetus in order to start it in its way. He believed, however, that opposition would be given only by the Jewish politicians and the Jewish press since it would appear more advantageous to them, "to pursue Jewish tendencies in order to attain control over the European nations" instead of establishing a homeland in Palestine in behalf of their own people. He appealed, therefore, to "Jewish patriots" to grasp the opportunity which the Congress of Berlin offered for the re-attainment of a Jewish Palestine. He was convinced that the establishment of an independent Jewish state or of a province under the sovereignty of the Porte in Palestine was now a possibility. He therefore thought it possible that in the course of the proceedings of the Congress of Berlin which was definitely to settle the future of the Orient, the question of the establishment (i.e. the re-establishment) of the Jewish state would enter the discussion. This would arise, he thought, either directly from the side of the leading circles of European Jewry or from any of the European governments. He hoped that perhaps the English Prime Minister, Lord Beaconsfield-Disraeli, whom he believed to be the most powerful bearer of the Jewish tendency to world supremacy would in his old age finally turn to another point of view concerning the Jewish question and in behalf of the re-establishment of the Jewish state would of his own accord bring the matter to discussion. The Turkish government, Istoczy believed, would strongly oppose the establishment of an independent Jewish state unless the great European powers indicated their strong preference. He therefore demanded that Austro-Hungary, should not offer any difficulties, in case the question were opened at the Congress of Berlin.

In the same meeting of the Parliament, the Hungarian minister of public worship and education, August Trefort, declared that he was sorry to see doctrines discussed in the Parliament which "stand in opposition to the humanitarian principles of the generation and the noble spirit of this House and to a large extent with the actual facts" and which moreover, could give rise to false and harmful interpretations. For the rest, he considered the entire proposal as a literary essay which could also have been omitted. He presumed that the discussion of this proposal would be omitted. Thereupon, Istoczy declared that in face of the fact that he could not hope for a discussion of his proposal, he withdraws it[8]. Istoczy hardly realized that his proposal and his parliamentary speech which naturally called forth mocking laughter in the liberal press[9] would induce four unpretentious Breslau Jews to take a cue from his remarks and to hand a memorandum to the Congress of Berlin.

However, the question of the re-establishment of a Jewish Palestine was not discussed in Berlin. Neither the representatives of Jewish bodies nor Lord Beaconsfield—as Istoczy would have been so happy to see—thought it necessary to place this problem on the agenda of the Congress. The leading English weekly, *Spectator*, wrote on May 10, 1879 : Had Lord Beaconsfield, instead of dealing with the affairs of Rumelia and Afghanistan, freed the Holy Land and brought the Jews there, and it was in his power to do so, he would have died a dictator."

The re-establishment of a Jewish Palestine was to receive more detailed discussion only during the period of the World War.

[8] Minutes of the Hungarian Chamber of Deputies of the session called for the 28th of August, 1875, vol. XVIII, p. 265, 415, session of June 24, 1878. Istoczy's motion and speech appeared also in pamphlet form under the title *Die Wiederherstellung des jüdischen Staates in Palästina, aus den Reden Victor von Istoczy's gehalten im ungarischen Abgeordnetenhause während der Reichstage von* 1872—1896, *ins Deutsche übersetzt von ihm selbst* (Budapest, 1905).

[9] In the Viennese *Neue Freie Presse*, no. 4969, June 28, 1878 the literary historian, Dr. Marcus Landau, mentioned ironically in a *feuilleton, Hellenen und Juden :* "The diplomats sit about the table, Mr. Istoczy offers his proposal of the re-establishment of a Jewish empire. A successor of King Solomon is to be found, David's throne to be restored."

It was only then that it was to be brought close to fulfillment. Perhaps it was a sign of destiny that Arthur Balfour the young secretary of the English representative at the Congress of Berlin, Lord Salisbury, was to be called upon in his declaration to open up for the Jews the possibility of establishing their own homeland in Palestine.

Translated from the German by

*Guido Kisch.*

# BOOK REVIEWS

Leon Bernstein, *Flavius Josephus. His Time and His Critics.* Liveright. New York, N. Y., 1938. XVI+366 pp.

In his Preface Mr. Bernstein attempts to disarm critics by writing, "Not being a professional historian, I am fully aware of the numerous imperfections my work embraces, and of its falling far short of that degree of excellence which another writer might have attained. However I trust to the broad understanding of those for whom my book was intended, and to the lenity of critics who, while it will be very easy for them to find those faults, will also appreciate the immense disadvantages under which I labored."

It is a pity that the author did not treat his scholarly predecessors with at least a tithe of the charitableness he expects from his own critics. In his fanatical eagerness to vindicate Josephus from the charges of insincerity, selfishness, unscrupulousness and unpatriotism (at least during his period of service in Galilee), of the truth of which most fair-minded readers are convinced merely by reading Josephus' own story, Mr. Bernstein does not hesitate to make the most savage, intemperate and almost libelous charges of inaccuracy, insincerity, prejudice and the like against such distinguished and conscientious scholars as Graetz and Thackeray, as well as against other scholars, who deserve criticism but not the tirade to which the author here subjects them.

Two thirds of the book is a paraphrase of Josephus' account of the events preceding and during the War with Rome. This paraphrase is accompanied by notes drawn chiefly from such standard works as those of Schuerer, Moore, Klausner and others. Of original research or critical analysis there is hardly a trace in this portion of the book. The last chapter, on Josephus' critics, may claim some originality, but hardly of an enviable kind. What the author does is to show that earlier scholars were guilty of various inaccuracies (mostly minor, except in the case of Eisler, whose fantastic theories, incidentally, have been much better refuted by various scholars not mentioned in this work), and on the basis of these few inaccuracies he proceeds to attack them with a ferocity and vindictiveness almost without parallel in recent times.

Of the many examples of carelessness and ignorance on the part of the author himself (in comparison with which the shortcomings of the scholars he so arrogantly denounces are negligible) I can cite only a few.

The Hebrew name of Josephus is given as Josef ben Mattathias (p. 24); "Xistus" (p. 41 et al.); Chanujoth—note the borrowed German spelling (p. 42); ha-cohen ha-godel (p. 73); Basileos Antigonon (ibid.); Brundusium (p. 74); Sameas is identified with Shimeon ben Shetah (p. 79); the text of the Greek inscription

forbidding foreigners to enter the Temple is full of errors, as is the translation (p. 86 plate); "a Greek by race but a Lacedemonian by birth"—can a Lacedaemonian be non-Greek? (p. 93); Caponius (p. 103); Assassinius Gallus (p. 121 note 84); Hyppicus (p. 148); numerous misspellings and mistakes in topography in the map facing p. 160—Scythopolis is distinguished from Beth-Shean and is located half way between the Jordan and the coast in the Plain of Esdraelon; Paul's teacher is identified with Gamaliel II (p. 172 note 28); the author seems to accept without question Josephus' statement that a stone catapulted by the Romans took off a man's head and carried it three furlongs, i.e. about 1/3 mile (p. 191); the topography of Jerusalem is very "approximate" (p. 231 map); the author speaks of John Hyrcanus II, evidently unaware of the fact that the only John Hyrcanus was Hyrcanus I (p. 232); Pharaoh Necho is called the conqueror of Joshua (p. 235 note 21); Jehoiachim is supposedly mentioned in the Pentateuch (p. 245 note 52); the author believes that Schuerer's *Geschichte* is as great in bulk as Graetz' *Geschichte* (p. 304 note 18); because Graetz and Salvador paraphrase Josephus similarly, the author accuses the former of plagiarizing from the latter (p. 307); Cheshbon Hoeisim—for Ḥeshbon Ha-'Ittim (p. 310); Lishkath ha-gaziz (p. 312).

Of the numerous peculiarities of English style nothing need be said here except that the publisher is to blame for not having had his editor revise the MS. more carefully and so avoid certain ludicrous blunders, such as the reference to the ulcer on Apion's "privy."

The reviewer can only conclude by remarking that the reading of this book takes time that might much better be spent in reading some of the works which the author so savagely criticizes.

Jewish Institute of Religion and Columbia University. *Ralph Marcus.*

James Parkes, *The Jew in the Medieval Community.* Soncino Press. London, 1938. XVI+440 pp.

This book is the second part of a comprehensive five volume work on the history of antisemitism projected by the author. In the first volume published in 1934 he discussed "The Conflict of the Church and the Synagogue" from its beginnings in the early days of Christianity down to the times of the Carolingian empire. In the present work he analyzes the political, economic, and social status of European Jewry to the end of the fifteenth century. A separate volume is reserved for their relations with the Church and the populations in the various countries. The last two volumes will deal with the era of Jewish emancipation ("The Breakdown of the Ghetto") and with present day Jewish problems ("The Return of Antisemitism") respectively.

Many decades have elapsed since the appearance of the well known standard works on the medieval history of the Jews in Central-Europe by Stobbe, Scherer, and Caro. Since that time many valuable new sources have been opened to research, numerous special problems have

found ample discussion in a fairly large-sized literature. Dr. Parkes is the first to present a comprehensive monograph of distinction on this period of Jewish history. In the first part of his book he discusses the general political and religious, economic and sociological background that is of basic importance for an understanding of the complex paths of the history and destiny of the Jews during the "dark ages." Part two describes and analyzes the legal status of the Jews and Jewish communities in the internal sphere of their existence as well as in their relationship to the surrounding world. The third part aims at an economic history of the Jews depicting their special role and function in the medieval economic system. Every chapter is preceded by brief bibliographical notes that will prove to be of great use. Appendices contain specimen charters in Latin and specimens of records of indebtedness in J. Jacobs' English translation. An index of thirty pages will serve the general reader though it is far from being complete.

Dr. Parkes' book represents an historic monograph in the best sense of the term. It concentrates upon a definite problem, the Jewish-Gentile relations during the Middle-Ages. It strives for a history of their development and an unbiased analysis of the motivating factors and underlying ideas. The author is well acquainted with the primary and secondary sources (except those in Hebrew) and shows, in particular, a mastery of the material on church history. Thus he continues in a very dignified manner the noble scientific tradition of his great predecessors, Stobbe and Scherer, but his achievements are of a different type. They had to search for the individual bricks for their historical structures. They had to unravel the thread of historical development out of a thicket of source material. Dr. Parkes had another task, for in his presentation events and trends in medieval Jewish history assume only their proper place and significance in the general historical development, as they are viewed with the search-light of modern historical research and reflected upon by his keen analytical mind.

In Dr. Parkes' opinion, the true conclusion to be drawn from the scarcity of Jewish charters of the Carolingian era is that few were issued, because few were needed; and that few were needed because there was nothing sufficiently abnormal in the Jewish situation to demand continual regulation. "They lived the lives of ordinary townfolk, shared in the privileges and responsibilities of their fellows, and were distinguished from them only by their religion" (p. 40). Similar conclusions were arrived at by Hugo Steinthal, as early as 1922, in his doctoral dissertation *Die Juden im fränkischen Reiche, ihre rechtliche und wirtschaftlich-soziale Stellung*, which remained unprinted and therefore could not be known to Parkes. Steinthal also maintained : "The *status civitatis* of the Jews

remained untouched in the Frankish era; they were members of the folk but of different faith. They were not treated, as is frequently asserted, as 'aliens' according to so-called alien-law, and were in no way deprived of freedom or in need of special protection of the king" (printed summary; Breslau, 1922). In contradistinction to this, however, Parkes still holds to the traditional theory of "alien-law"; i.e. to the opinion that, in accordance with Germanic custom, the Jews remained in the position of "strangers." There are, however, some statements of Dr. Parkes' that might be contradictory to his opinion. On p. 106, he correctly points out that in the imperial *Landfrieden* of 1103 the Jews are classed with women and clergy as people who cannot protect themselves, but it is to be noted that they are classed with groups which by no means were placed outside the pale of the law. Furthermore, in drawing comparisons, Parkes emphasizes that, according to Spanish regulations, Jews and Christians possessed equal rights in all legal matters. Finally the treatment of the Jews in medieval German law-books (pp. 196-199) as well as the fact that "citizenship" was conferred upon them in various German towns as early as the thirteenth century (pp. 199—204) points toward the same direction in the legal historical development as stressed by Steinthal. Thus, to a certain extent, Parkes' conception of the legal status of the Jews in the Middle Ages requires correction. On the other hand some of his fine sociological observations will prove very stimulating; e.g. when he states that lack of political influence did not distinguish the Jews from large sections of the Christian population but that it was their actual homelessness which often caused their weak political and personal situation; or when he remarks : "The Carolingian age was a birth premature by nearly half a millenium. Men were not ready for the freedom of thought which for a brief epoch had dawned among them. The long and more formal discipline of the medieval church still had its work to do in shaping European life" (p. 52).

One of the basic historical concepts of Dr. Parkes', recurring throughout his work, is his conviction that the only difference between the Jews and their surrounding medieval world was an exclusively religious one. Even when certain other points of view were concurrent, in his opinion, the religious factor was, as a rule, decisive. "When hatred against the Jews broke into violence, there was always his religious otherness to lend it an air of respectability and even piety" (p. 206). According to Dr. Parkes who presents a painstaking analysis of the significance of the Crusades for Jewish history with some new and interesting aspects, even these massacres "owed their origin entirely to religious fanaticism" (p. 66). However, we must refrain from an overemphasis of religion as being the only and decisive cause for a hostile attitude toward the

Jews. Rather a careful historical, sociological, and psychological analysis will reveal other definite factors such as those of a purely political or economic character which pushed the religious motive into the background and used it only as a pretext. In the history of medieval "antisemitism" various causative factors were intertwined in the same way as in almost every historical development, but no racial considerations in the concepts of modern racial theories could have played any role in the mind of the Middle Ages.

Only a few errors in details and some supplements may still be called to the reader's attention. The note on p. 20 must be corrected in accordance with the more recent criticism on the book mentioned there. Among the works on Agobard (p. 22) the most important though not unbiased monograph is missing, namely *Agobard von Lyon und die Judenfrage* by Friedrich Wiegand, in *Festschrift für Luitpold von Bayern* (Erlangen, 1901). To the almost complete bibliography concerning the Hebrew reports on the Crusades on p. 60 an important essay must be added: A. Kristianpoller's "Einiges zu den Orts- und Zeitdaten des ersten Kreuzzuges" in *Jahresbericht der israel.-theol. Lehranstalt in Wien*, 1933. Among the books dealing with the charters of Worms and Speyer on p. 97 f. the *Festschrift zum 900 jährigen Bestehen der Synagoge Worms* (*ZGJD.* V, 1934) is omitted; similarly missing is Selig Auerbach's useful monograph *Die rheinischen Rabbinerversammlungen im 13. Jahrhundert* (Würzburg, 1932). On p. 78 the designation of the city "Wessel in Bohemia" is misleading; the town in consideration is Prague (cp. *GJ.* p. 509). Concerning the *Formulae Imperiales* of the Carolingian period mentioned on p. 156 M. Tangl's essay, "Zum Judenschutzrecht unter den Karolingern," in *N. Arch. f. ältere deutsche Geschichtskunde* XXXIII, 1907, pp. 197-200, must be considered. The "Magdeburg Law" is by no means to be simply identified with the law of the *Sachsenspiegel* as is pointed out on p. 179. The concept of "the Jew as private property" seems very disputable. Here as well as in some other respects modern legal concepts partly based upon Roman law are applied whereas the general conception of medieval law does not provide for such implications.

This list of remarks could easily be continued. However, the impression should by no means be created that the author's great achievement and invaluable service to historical research should be diminished through such criticism. Therefore it might be repeated that Parkes' second volume—and this cannot be doubted—will rank with Stobbe's and Scherer's monumental works. It forms another milestone on the path of research in medieval Jewish history. The problems discussed by Dr. Parkes in a manner as profound as it is stimulating, are too varied and numerous to be considered or even touched upon in a short review.

Even in cases when the reviewer cannot agree with the author the latter's contribution to the scientific discussion is interesting and valuable.

"The story of antisemitism is long and complicated. If it requires for its understanding neither the supernatural maledictions beloved of the theologians of a past age, nor the racial mysticism of the present, yet it needs the slow and patient following of its thread through the successive periods in which Jewish history is inextricably interwoven with that of the nations among whom the Jewish people have lived, worked and suffered" (Preface).

New York. *Guido Kisch.*

Jacob R. Marcus, *The Jew in the Medieval World, A Source Book* 315—1791. The Union of American Hebrew Congregations. Cincinnati, Ohio, 1938. XXVI+504 pp.

The present writer remembers the numerous talks he had with the author of this collection about source material on Jewish history, and greets the book which is a product of thoughtful and methodical labor. What is a commonplace in teaching general history that the student is to be given access to the original sources, is so far neglected in the curriculum of Jewish studies; this book is the first one of its kind in the English language. It is intended "for the use of high school students and adults who are studying medieval Jewish history", i.e. the period "from Constantine the Great's submission to the influence of Christian religious totalitarianism to the proclamation of political and civil emancipation in France 1791." The sources are arranged topically in three sections : The State and the Jew (§§ 1—18), the Church and the Jew (§§ 19—37). The third section, devoted to a study of the Jew "at home" is composed of such incongruous matters as : A. Jewish Self-Government (§§ 38—44), B. Jewish Sects Mystics and Messiahs (§§ 45-56), C. Jewish Notables (§§ 57-70), D. The inner life of the Jew (§§ 71—96); it might have been more consistent to divide that varied material into at least two sections. Nearly every selection in the book throws some light on the economic life of the Jews. Each item is preceded by a detailed introduction aiming to illuminate obscurities of the sources and followed by a bibliography which refers to standard text books and suggests literature and additional sources for the more advanced students. Many notes have been inserted within the text 'in the hope of resolving difficulties.'

The book "attempts to reflect the life of the Jews as seen through the eyes of contemporaries." The author's selection out of the rich store aggregated in a world-wide space during so many centuries has been

motivated by the principles "of importance, interest, clarity, and diversification." While there can be no discussion about the soundness of these principles, no two scholars will fully agree about the details. (E.g. the present writer does not find the official decree of expulsion from Spain (1492) dry, for it is a very expressive document of religious totalitarianism.) He misses an item "Ecclesia et Synagoga" as presented in different sculptures, paintings, passion-plays and disputations. Instead of the Austrian Charter of 1244 (§ 6) with its numerous details he would have inserted the fundamental Charter of Worms, 1236 which was extended by the Emperor Frederic II to all Jews of Germany "serfs of his Chamber," which contains furthermore the Emperor's absolution of the Jews from the slander of ritual murder. The loquacious Charter of Frederic II for the Jews of Prussia, 1750 (§ 18 p. 212 misprinted 1756), could have been spared after the edict of readmission of the Jews into Brandenburg was given (§ 16). Likewise a more important Constitution could have been substituted to that petty one of little Sugenheim (§ 44). Whether the book will give an adequate idea of the Shulhan Aruk is open to doubt (p. 201, 2 "every man" belongs to p. 202 Eben Ha-Ezer). However, the popularity of the book is dependent on the use, the teacher or the seminar leader will make of it. It is bound to become a full success, if they understand to evaluate its rich and interesting material and to breathe life into the dead letter.

New York. *Ismar Elbogen.*

Peter Browe, S.J., "Die religiöse Duldung der Juden im Mittelalter." Reprint from *Archiv für katholisches Kirchenrecht* Vol. CXVIII (1938),, pp. 3—76.

The title of this interesting essay might read, 'The Intolerance toward the Jews during the Middle Ages,' notwithstanding the fact that the Jewish religion was generally not forbidden by law except in the Visigothic empire. Writing directly from the sources, the author describes vividly how the Church strove its utmost in attempting to encumber and paralyze the religious life of the Jews. In accordance with the conception of the Church, the Jews were to be relegated to a status of legal and social inferiority befitting a deicide people. "In the Middle Ages the Jewish religion was by no means recognized as legal or sustained by custom. Rather it was tolerated by the law only upon apologetic and other grounds. It received so much leeway that it was able to exist and the Jews could perform their religious duties." The difficulties under which this was done, sometimes at the risk of their lives, are clearly discernible in all spheres of the religious life of the medieval

Jews, whether it was in relation to erecting a synagogue, the maintenance of schools, hospitals or cemeteries, or whether it concerned the holding of services, the contents of prayers, internal affairs of the cult, or the study of the Talmud. The Jews met fierce animosity and purposeful spite everywhere.

It is of major historical value that the author has carefully collected numerous documents of the type from scattered sources. Two examples will serve to throw light upon the historical situation. A number of decrees by popes and princes forbade and punished praying aloud and singing in the synagogue. In the accounting books of the French king a sum of money is entered for 1239 which the Jews had to pay because they had prayed too loudly. In 1431 the Jewish cemetery at Zürich was closed to foreign Jews who, until then, had buried their dead there. Only the Jews of Bremgarten, Mellingen and Rapperswyl were still to have this right. The ordinance reads : "Everyone who is borne here and buried shall pay one florin. Deceased Jews of other than the forementioned cities shall not be buried in Zürich, unless the Jews first come to an understanding with the mayor and both councils as to what they must give the city. If the Jews are prepared to pay the sum that is demanded of them then the burial shall be permitted. In cases to the contrary, however, they must bear the dead Jew from our city and our jurisdiction and they may not bury him anywhere within our territory" (p. 22 n. 8).

The author has studied his sources thoroughly and does not fail to recognize the strong pressure which was placed upon the freedom of conscience of the Jews in the Middle Ages by the Church and State. But his lack of impartiality must be noted when he denies that religious intolerance was the principal cause for all the odious coercive regulations. He does not discuss the "other causes which for the most part played a major or even the most decisive role." In fact he does not even mention them individually. In a concluding note, however, he points out that oppressions like the incriminations against the Talmud were responsible for the shortcomings with which he reproaches the Jews, especially for the hate against the Christians which they allegedly "hand down from generation to generation." The recognition of this is indeed noteworthy for an impartial critical examination of the medieval situation.

New York. *Guido Kisch.*

Joshua Starr, *The Jews in the Byzantine Empire* 641—1204. Byzantinisch-neugriechische Jahrbücher, Beiheft Nr. 30. Athens, 1939. VIII+266 pp.

A provisional short account of this book is offered here to call the

attention of interested scholars to an important addition to the literature on Byzantine-Jewish history.

As is evident e.g. from the article *Byzantinisches Reich* in *EJ.* IV 1237 ff. our knowledge of this special portion of Jewish history is based upon very sparse and scattered source material. The limited attention which it has received up to date made a scholarly approach rather difficult. Dr. Starr, a pupil of Professor Baron, after having made a preliminary survey of the whole Byzantine-Jewish field, gathered together an exhaustive collection of the sources covering the epoch from the death of Heraclius to the Fourth Crusade, that is, the middle period of Byzantine history. These are chronologically arranged and consist of all the essential documentary reports available (pp. 81—242). The texts appear in the author's English translation. The original sources are quoted in notes which present a rich bibliographical material as well as extensive discussions of the problems involved. However the author restricted himself to gathering this material and made no effort to go beyond the results of the specialists in the various fields. Thus his source collection appears in aim and method similar to the well known standard work on Central European Jewish history by Aronius. The usefulness of the book would have been considerably enhanced if the author had placed short summaries at the head of every item. This would be especially useful since the seven page index is not exhaustive in expounding the subjects contained in the sources. This material, is, however, discussed in eight chapters of a rather sketchy character under the following titles : persecution and intolerance, taxation, legal aspects, economic activities and population, communal and social life, intellectual interests and literary products, aspects of religion and culture.

The work gives the impression of painstaking scholarship, of great completeness in its material, and of bibliographical exactitude. It will be indispensable for any research in Byzantine-Jewish history.

New York. *Guido Kisch.*

L. Rabinowitz, *The Social Life of the Jews of Northern France in the XII—XIV Centuries as Reflected in the Rabbinical Literature of the Period.* Edward Goldston. London, 1938. 268 pp.

Though medieval Jewish literature, for the most part, consists of Talmudic commentaries and legal codes, it offers, nevertheless, important information to the historian. The rabbinical writings often employ homely incidents of daily Jewish life and experience to illustrate their meanings. Hundreds of scattered references are found bearing upon the social conditions of life, the distribution of the Jewish population,

their economic life, the social organization of the Jews both internally and externally, the family, religion and morals, the system of their education and use of leisure, their way of working and the relationship to their non-Jewish neighbors. All this is touched upon only incidentally in this literature. It is this fact, the very unpretentiousness of its presentation that singles out this source material and endows it with especial historical value. It represents an invaluable supplement to the historical sources of non-Jewish origin. Whereas up to now research in this field centered mostly on the *responsa* of individual scholars only, Rabinowitz has dug into the Tosafot on the Bible and the Talmud and similar rabbinical sources of French and non-French origin covering a period of intense literary activity from the twelfth to the fourteenth centuries. The scope of his task is broadened by the fact that the influence of the Northern French scholars upon Germany was of paramount importance. In ten chapters the author presents an attractive and colorful picture of all aspects of the inner-Jewish life in Northern France. Apart from the numerous interesting details throwing new light on Jewish culture and social life in the Middle Ages the general conclusions are noteworthy. The social and economic environment modified and molded Jewish ways of life. Two facts emerge with patent clarity. The first is that apart from the purely religious life, there was an almost complete social assimilation of the life of the Jews with that of the general community. In their language, their names, their dress, they were indistinguishable from non-Jews. As a result, until the double pressure of Church and State weighed down to degrade and isolate them, they lived on the best of terms and on the friendliest social footing with their non-Jewish neighbors. The second fact is that different conditions of life, the effect of environment and the economic needs of existence caused a considerable and marked adaptation of the Talmudic code to harmonize with them. Of no less an interest are the author's observations concerning the economic life of the Jews in Northern France. The rise of the cities and the commercial class, and the consequent decline of the feudal system, influenced deeply the Jewish status. The growing importance of the burghers created disastrous economic competition for the Jews. Not only was moneylending one of the few occupations left to them, but it filled an important gap in the economic system. Nevertheless, the occupations of the Jews were by no means confined to moneytrading. At first, with the exception of menial occupations and military service, Jews were found in every sphere of occupational life. According to a definite statement by non-Jews, Jewish moneylenders were more humane than, and therefore preferred to, Christians.

Rabinowitz' monograph is based upon painstaking and thoroughgoing research in very scattered but carefully collected source material. In order to build up an economic and social history of the Jews in the Middle Ages we need other meritorious studies of this type.

New York. *Guido Kisch.*

Ralph L. Rusk, *Letters to Emma Lazarus in the Columbia University Library.* Columbia University Press. New York, 1939. IX+84 pp.

At the present time, a renascence of interest in the almost forgotten American-Jewish poetess, Emma Lazarus (1849-1887), is beginning to develop. The best account of her graceful personality is the brief sketch which her sister Josephine published in *The Century* in October, 1888, and reprinted in volume I of *The Poems.* There is also Allen Lesser's felicitous sketch in his *Weave a Wreath of Laurel* (New York, 1938), pp. 55-69, including a bibliography. The volume of correspondence under review presents a valuable reflection of Emma Lazarus' literary enthusiasms, her ardor as a propagandist, and her character as a citizen of a larger world. The writers of the letters published with editorial skill and scholarly accuracy in Professor Rusk's volume are almost all familiar figures in literature, art, or the theatre. More than once subjects of Jewish historical interest are touched upon. The letter by Laurence Oliphant written in Haifa and that by Alberc Edward W. Goldsmid produce evidence that Emma Lazarus was known as a keen and active advocate of the project for Jewish colonization in Palestine, as early as the eighties of the past century.

New York. *Guido Kisch.*

Allen Lesser, *Weave a Wreath of Laurel.* The Coven Press. New York, 1938. 75 pp.

These felicitous sketches of "the lives of four Jewish contributors to American Civilization" are distinguished by their penetrating analysis and literary charm. Francis Salvador, descendant of Marranos, English gentleman, was forced by family circumstances to emigrate to America in 1773. Throwing his lot in at once with the revolutionary group in South Carolina, Salvador played an active role, was elected to the Provincial Congress at Charleston, took part in the military operations, and died in a battle with Indians. A brief career, it was an interesting and proud one from the American point of view. The sketch of Aaron Lopez, the Newport merchant, is a more important contribution, largely

because the fates were kinder to Lopez in permitting him to live longer. Also a Marrano, Lopez adopted the Jewish faith in his new home and became a leader in Jewish life in Rhode Island. His fight for citizenship is an important aspect of the evolution of American institutions. Contrasted with these gentlemen are two ladies, Emma Lazarus, the delicate poetess, and Adah Isaacs Menken, the robustious actress and authoress. The former still lives through her magnificent sonnet engraved upon the base of the Statue of Liberty. Her deeply religious life was the core of her poetry and her Zionism. The latter who once stood in the full glare of publicity, has fallen into oblivion, a pall now lifted by Mr. Lesser to her benefit. His scholarship and style are worthy of comment, and one can wish that he continue to illumine other Jewish contributions to American life and character.

New York. *Harold J. Jonas.*

*The American Jewish Year Book* 5700. Volume 41, edited by Harry Schneiderman for the American Jewish Committee. Jewish Publication Society of America. Philadelphia, 1939. XXIX+ 790 pp.

If any among the forty-one volumes of the *American Jewish Year Book* deserves the special attention of the Jewish and non-Jewish historian, it is the present one for 5700. Indeed, it represents the best and most complete information on current Jewish history of which historians may avail themselves. Among the biographical sketches of Jewish leaders who have died during the past year are those of two great scholars in the field of medieval Jewish history, the one of Israel Davidson (Hebrew poetry) by Louis Finkelstein, and that of Isaac Husik (Jewish philosophy) by Julius H. Greenstone. There is also a valuable essay by Solomon Zeitlin commemorating the 900th anniversary of the birth of Rashi. Special articles are devoted to the history of American Jewish relief activities in European countries from 1914—1939, and to the number and distribution of the Jews in the United States of America. The review of the year (5699) is not so detailed as in previous issues but it remains very useful. The volume was completed under the brilliant editorship of Mr. Harry Schneiderman, who has been responsible for twenty preceding year books. The *Contemporary Jewish Record*, a bi-monthly review of events and digest of opinion published by the American Jewish Committee is a valuable supplement for use in conjunction with the Year Book. The *Record* presents useful source material in chronological order and greater detail.

New York. *Guido Kisch.*

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*Printed in Belgium.*

HISTORIA JUDAICA

Volume II OCTOBER, 1940 Number 2

# *ISRAELS HEROLD*: THE FIRST JEWISH WEEKLY IN NEW YORK

By

Guido Kisch

New York

## I

### *Israels Herold* and Isidor Busch

The history of Jewish periodicals in America presents a broad field which has been seldom touched by historical research. The beginnings of the American-Jewish press in German are still in the dark. That is why the periodical, *The Asmonean,* which first appeared on October 19, 1849, could be designated as "the first Jewish weekly in New York."[1] In reality, however, this title applies not to *The Asmonean* but to a German weekly, *Israels Herold,* which began its short career about a half year earlier in New York on March 30, 1849.

The bibliographers of the Jewish press have been aware of the existence of *Israels Herold.* The encyclopedic works and the lists of the Jewish periodicals, however, give no more than the name of this first Jewish weekly of New York. The most detailed report appears in a note in the article, "Periodicals," found in the *Jewish Encyclopedia.*[2] It reads: "In 1849, appeared in America *The Asmonean* (until 1858), the first weekly there; *Israels Herold,* short-lived but noteworthy as the first German-American paper. Both of these appeared in New York." Evidently, this is the origin of the designation of *The Asmonean* as "the first weekly." How was it possible that such an error could enter into this otherwise complete survey on the history of the Jewish press? Most probably its authors did not see a copy of *Israels Herold.* Indeed, neither the *Union List of Serials in Libraries of the United States and Canada* nor R. S. W. Rosenbach's *American Jewish Bibliography* has listed or located any copy of this extremely rare item of Americana. Only a few years ago in his last published essay, George Alexander Kohut, the book-lover and bibliographer remarked:[3] "No complete copies of *Israels Herold* are known to exist in any public library;" and only recently,

[1] Hyman B. Grinstein, "The 'Asmonean': The First Jewish Weekly in New York," *Journal of Jewish Bibliography* I (1939), 67.

[2] IX (1905), 604; by Richard Gottheil and William Popper; cf. also *Jew. Enc.* III, 442; IX, 272.

[3] G. A. Kohut, "Jellinek and America," *PAJHS.* XXXIII (1934), 240; cf. XXVI (1918), 273.

the present writer was informed by Dr. Joshua Bloch, the chief of the Jewish Division of the New York Public Library, that he had been searching for a complete file or individual issues of *Israels Herold* for many years without success. In view of the present war conditions, it is impossible to ascertain whether a copy can perhaps be found in a European library.[4]

By good fortune, a complete file of all the published numbers of *Israels Herold* came to the attention of the writer of this essay. Through the kind mediation of Mrs. Stephen S. Wise, the present owner of the small quarto volume of ninety-six pages has made it available for examination and study. The title page introducing the twelve numbers of the periodical is reproduced here in facsimile. A table of contents follows it on a special page, on the back of which appears a concluding word (*Schlusswort*) of the editor dated, New York, ninth of Tamus, 5609. The periodical is printed on a cheap and perishable paper which accounts in part for its present rarity. The cheap paper used, however, is not the only reason for this fact. The early Jewish weeklies of the type of *Israels Herold* were meant as reading material for popular "consumption" by the man-in-the-street. As a rule, such journals entered the collections of public libraries even in Europe only when the editor was compelled to send in a copy free of charge, the so-called *Pflichtexemplar*.[5] But this custom never existed in America. Furthermore, the circle of subscribers to *Israels Herold* was very small according to the evidence of the published subscription lists, and the paper, therefore, from the very beginning could only have had a limited edition. Confirmation of this may be found in the periodical itself. Its second number which appeared on April 6th, 1849, was completely sold out after a few weeks. In the ninth number of May 25th and in the tenth number of June 1st, "everyone who had received a sample copy or perhaps two copies of number two was asked kindly to return it since this number was already lacking." The first number appears to be the only one

[4] No copy is listed in [A. Freimann] *Katalog der Judaica und Hebraica der Stadt-Bibliothek Frankfurt am Main* (Frankfurt a. M., 1932), one of the most complete Judaica collections of Europe. As far as I know, none of the prospectuses mentioned in the first issue of *Israels Herold* has been preserved.

[5] For instance, to the best of my knowledge, only one complete file of the Jewish weekly *Neue Israelitische Zeitung* which appeared from 1878 until 1880 in Zurich, Switzerland, under the editorship of Alexander Kisch, a valuable source of the history of the Jews in Switzerland, has been preserved, although eight hundred copies were printed. It is part of the library of the present writer.

[6] Cf. *Israels Herold,* pp. 32, 40, 48, 56, 64, 72, 80, 88, 96.

# Israels Herold.

Versuch

einer

## Zeitschrift für Israeliten

in den

Vereinigten Staaten,

herausgegeben von

ISIDOR BUSCH.

April, Mai, Juni 1849.

5609.

New-York.

Gedruckt bei J. Mühlhäuser, 231 Division-Str.

of which a larger edition was published, for even in the sixth number, the "*Israels Herold* office" announced that "number one was to be given gratis to everyone as a sample copy."

*Israels Herold* appeared every Friday morning and was printed in the printing house of J. Mühlhäuser at 231 Division Street in New York. Subscriptions could be made both through the editor and at the printing house. The price was $1.50 semi-annually; $ .75 quarterly. For advertisements of twelve lines, $ .50 was charged for a single insertion; $1.00 for three. The paper was also to be sold outside of New York. A number of agents were appointed for this purpose: in Baltimore, E. Bamberger and Rabbi Dr. Günzberg; in Cincinnati, Dr. J. K. Gutheim; in Philadelphia, Isidor Binswanger; in New Haven, L. Waterman; in Hartford, Jacob Lithauer; in St. Louis, S. Taussig. They gave their services without remuneration apparently out of interest in the project.

But after three months, the paper ceased publication with the issuance of its twelfth number. One of the reasons may have been the rates, for, in the fourth number, the editor had to answer a complaint concerning the high subscription price. As to the reason for discontinuing, he wrote:

"It is too early! That is the unfortunate explanation. There is but little interest in the undertaking. . . . I am modest enough to say quite frankly that my paper was not sufficiently attractive; it satisfied only a few. Naturally the literary support was very weak here, and even in Europe there is no especial interest to be found at this time; the parties oppose each other so that they do not desire any rapport or understanding;—still that should not excuse me, nor should it discourage others. I believe and hope that another will soon publish such a paper with greater ability and success."

We can believe the editor when he says that "he was not enriching his own pocket but, on the contrary, had sacrificed many a dollar in the undertaking." It is not known if the periodical received financial support from the B'nai B'rith. In the list of periodicals of the *Jewish Encyclopedia, Israels Herold* is described as "an organ of B'nai B'rith."[7] Lacking a source or any other proof, the correctness of this statement cannot be verified. It is, however, possible since the editor of *Israels Herold* had personal connections with the Order

[7] Cf. *Jew. Enc.* III, 442: "Busch was assisted in producing it [*Israels Herold*] by leading members of the Order B'nai B'rith"; cf. also *Enc. Jud.* IV, 1227.

B'nai B'rith in which he later played a leading role though he was not one of its founders. Moreover, advertisements of B'nai B'rith lodges repeatedly appeared in the advertising section of his paper.

The disappointed editor of *Israels Herold* was Isidor Busch whose personality and career in American as well as in Jewish life still awaits adequate treatment.[8] Busch was born on January 15, 1822, in Prague, Bohemia, son of the Jewish scholar and printer, Jacob Busch. On his mother's side, he was descended from Israel Hönig of Hönigsberg, known as the first Jew who was raised to the nobility in Austria. In 1837, the family settled in Vienna. Busch's father entered as a partner in the printing house of Anton Edler von Schmid which, at the beginning of the nineteenth century, played a great role in the publication of Hebrew works especially of Talmud editions. As a young man, Busch already was active in the field of Jewish letters and carried on a lively literary correspondence with all the contemporary prominent heads of the flowering *Wissenschaft des Judentums*. From 1842 to 1847, he edited the first popular scientific periodical in the German language in Austria, the *Kalender und Jahrbuch für Israeliten*. It was his plan to unite the scientific and literary accomplishments of leading Jewish scholars and writers of varying *Weltanschauung* and of various religious factions on common ground and thus to emphasize and further the unity of the science of Judaism. Among his collaborators were Leopold Zunz, Solomon L. Rapoport, Samuel David Luzzato, Ludwig Philippson, Michael Sachs, Noah Mannheimer, Gotthold Salomon, Joseph Wertheimer, Theodore Creizenach, Ludwig August Frankl, Leopold Kompert, Leopold Löw, Simon Szanto. Some of these made their first appearance as writers in the pages of Busch's *Jahrbuch*. This first short flourishing of Jewish literature in Vienna, which is to be accredited to Isidor Busch's talents and intellectual activity, deserves a permanent place of honor in the early history of the science of Judaism.

The year of the awakening of the *Voelkerfrühling,* 1848, filled Isidor Busch also with enthusiasm for the ideals of political and religious freedom. Under the motto "freedom and love" in the

[8] P. Cowen, "Isidor Bush", *Jew. Enc.* III, 442f.; Leon Ruzicka, "Isidor Busch", *Jüdisches Archiv* I, neue Folge, no. 1/2 (Vienna, 1928), pp. 16-21. Biographical bibliography in *Enc. Jud.* IV, 1227; to be added: G. A. Kohut, *loc. cit.*, 240f; *Salvatore Sabbadini*, "Relazioni epistolari fra I. S. Reggio e Isidoro Busch", *Festschrift Armand Kaminka zum siebzigsten Geburtstage* (Vienna, 1937), pp. 119-124.

midst of the storms of the March days, he founded the *Oesterreichisches Central-Organ für Glaubensfreiheit, Kultur, Geschichte und Literatur der Juden* (Austrian Central-Organ for Religious Freedom, Culture, History and Literature of the Jews). This periodical appeared in Vienna as a weekly from March 24th till October 20th, 1848. Busch once more gathered on common ground the leaders of orthodoxy and reform, (among them Samson Raphael Hirsch and Abraham Geiger), Jewish writers and scholars, statesmen and champions of liberty and united them in the struggle for political and religious freedom. Every essay in the *Central-Organ* is inflamed with the revolutionary spirit and the love of Judaism. Soon, however, doubts apparently arose in Busch's mind as to the ultimate victory of the ideals of freedom. Already on May 6, a significant date in the history of the Viennese revolution, the *Österreichisches Central-Organ* began to propagate an "On to America" movement (*Auf nach Amerika*!) in which Busch played a very active part.[9] After the lamentable failure of the revolution, he like so many other champions of freedom in 1848 set forth for America. Whether Busch was merely unsatisfied in his urge for freedom or whether he was himself politically compromised will probably never be clarified, since the archives of the Viennese police with all the records which would have given information concerning this were burned during the Viennese riots in July, 1927.

Busch landed in New York on January 8, 1849. The first number of *Israels Herold* is dated March 30, 1849. It would appear that Busch's plans were immediately begun in America and that he desired as quickly as possible to resume his literary activity in the service of freedom and Judaism. The financial backing for it was to come from a book store which he opened on May 1st at 411 Grand Street under the name "Bookstore, neue Buch-, Kunst- und Schreibmaterialienhandlung." According to his advertisements, it was a combined general and Jewish book store which offered works in German, other foreign literature, newspapers and periodicals, as well as Hebraica and Judaica, and objects of Jewish ritual. But

[9] Up to the present, the history of this emigration movement and of the contemporary "Societies for Jewish Emigrants to the United States of America" has been treated only very superficially; cf. Albert M. Friedenberg, "An Austro-Hungarian Movement to Encourage the Migration of Jews to America, 1848," *PAJHS*. XXIII (1915), 187-189.

Busch's business and literary enterprises in New York both failed. After he had tried to make a living as a portrait painter, he left in the summer of 1849 for St. Louis, Missouri. There, until his death, Busch carried on important business, agronomic, political and philanthropic activities the description of which go beyond the bounds of this essay. These activities of Busch are recorded in the annals of American and American-Jewish history. Busch could consider himself richly compensated for the failure of his Jewish journalistic undertaking in the East through his literary success in the non-Jewish field[10] in the West. But in 1849, when he was compelled to cease publication of *Israels Herold,* he bore his disappointment with cool resignation. An honest consciousness of his noble striving which showed him to be far ahead of his times is expressed in his farewell word to his readers:

"No one can deny that this first attempt still constitutes an achievement. *Israels Herold* was the first German paper of its kind in America. It was instrumental in inspiring many valuable ideas. It was of assistance in laying the foundation of many a beneficent society. It never indulged in enmity . . . and always entirely avoided obsequiousness."

## II

## The Jewish Scene in New York in 1849

What were the religious, intellectual and social conditions which Busch entered into among the Jews in New York in 1849? To what task was *Israels Herold* dedicated? How did it tend to fulfill it? We shall seek as far as possible to answer these questions from the pages of *Israels Herold* and thus obtain a cross-section of the religious, intellectual and social life of the Jews in New York ninety years ago in so far as it has found expression in this periodical.

The contemporary accounts of the religious status and the congregational life of the Jews at the time of Busch's arrival in New York are both scanty and onesided. Nevertheless, as the descriptions of eyewitnesses they are interesting and significant. It is necessary to picture the Jewish scene in New York, though only hastily, in order to understand what problems and aims Isidor Busch had in mind when he undertook the publication of a Jewish weekly.

[10] In 1869, after years of preparation, Busch published a catalogue of grapes, *The Buschberg Catalogue,* with a "Grape Manual," which has gone through several editions and has been translated into several foreign languages.

"In 1846 there were seven Jewish congregations in New York," Isaac M. Wise reports in his *Reminiscences*,[11] "two communal schools a number of Jewish mutual benefit associations, and two charitable societies, one German, the other English. The Portuguese congregation was the oldest, and the oldest Portuguese was a Polish Jew." Wise found the Portuguese ritual just as antiquated as the German and the Polish, although more decorous and dignified. The increase of Jewish population in New York in those days was due chiefly to the growing immigration from Germany, especially from Bavaria, Baden, and Württemberg because of the oppressive marriage laws. Of the German congregations, three were orthodox. One of them worshipped on Henry Street, the other two on Attorney Street. The well-known reformer, Max Lilienthal, who only a few years before had to flee from Russia was Chief Rabbi of these three congregations and preached every Saturday in a different synagogue.[12] The youngest congregation was the German reform-temple Emanu-El whose rabbi and preacher was Dr. Leo Merzbacher.[13] In an interesting plan for a *Minhag America,* Isaac M. Wise said:[14] "Daily experience teaches that dissensions in communities arise largely from the circumstance that every immigrant brings a particular *Minhag* from his European home; the German is unwilling to yield to the Pole, nor the latter to the Englishman, nor the last named to the Portuguese. This evil prevents the peaceful development of the young congregations." It was even aggravated in succeeding years. "Such was the status of the synagogues of New York in 1846," Wise continues, "outside of Lilienthal and Merzbacher there was not one leader who could read unpunctuated Hebrew or, with the exception of a few private individuals, had the least knowledge of Judaism, its history and literature."

It was quite natural that for *Israels Herold* the German language was chosen although Busch had mastered several other languages. Even some years later, the editor of *The Asmonean* felt the need for a German supplement in view of the large number of German

[11] Edited with an introduction by David Philipson (Cincinnati, 1901), pp. 20ff., 71ff.; cf. also *Jew. Enc.* IX, 270 ff.; J. J. Benjamin II, *Reise in den östlichen Staaten der Union und San Francisco* (Hannover, 1863), p. 44 ff.

[12] David Philipson, *Max Lilienthal, American Rabbi, Life and Writings* (New York, 1915).

[13] Strangely enough, the *Jew. Enc.* has no article on Merzbacher.

[14] Philipson, *Max Lilienthal,* p. 55.

Jews throughout the country. The German Jews of America read little or no English at that time.

## III

### *Israels Herold's* First Issue

The very first number revealed that the character and aims of *Israels Herold* were based on the same journalistic plan which Busch, a year before, had set up for his *Oesterreichisches Central-Organ für Glaubensfreiheit.* The first page is taken up with an article by Busch explaining his program, *"Ein Bekenntnis,"* at the same time, his personal Credo. The *Leitmotiv* is to be the God-inspired urge to truth. This truth is to be striven for and attained only on the basis of the Torah, which Busch, in agreement with Mendelssohn's conception, describes as "God's revealed legislation." Investigation is the sacred duty of man; the Torah is to be merely a "guide to the perplexed," which should be followed day and night in our investigation. Whereas the keynote in the program of the *Central-Organ für Glaubensfreiheit* was a revolutionary call for freedom, the *Bekenntnis* of the editor of *Israels Herold* shows a strongly religious coloring with quotations from the prophets, and is sermon-like and moralizing in its tone. *Israels Herold* wished to disclose the truth, it would not serve any party and would further only the exchange of ideas. "Only permit the various opinions and convictions to be expressed, and the truth will and must emerge from the struggle of the contending parties purified, just as gold is separated from baser metals when in the fire." "Our most zealous effort will be to aid in establishing harmony in Judaism." "Just as there are no two faces exactly alike, so are there also no two types of thinking alike; and yet, despite this difference, and perhaps in part, even because of it, men can and shall love one another and likewise, in spite of the varying forms, they can still worship God truly and honestly." "He has pronounced to you, o man, what is good and what the Eternal demands: righteousness, love and humility. That must we strive for, in that must we be united, for that must we gather all our strength. To this end I dedicate these pages from the bottom of my soul." Lilienthal's essay on the status of the Jews in the United States, also in *Israels Herold's* first issue, bears the same conciliatory tone, from which one must conclude that there were

sharp differences among the New York Jewish communities. Lilienthal offers an interesting picture of the rise of Jewish communities and the flourishing of Jewish life under the protection of the most liberal constitution of the world. An essay bearing the initials L. M. —apparently Leo Merzbacher—treats in a journalistic manner the problem of identifying the gold country, California, with the biblical Ophir.

It is not surprising to meet three of Busch's former collaborators from the *Kalender und Jahrbuch für Israeliten,* who continued to contribute to the following numbers of *Israels Herold.* The investigator and lexicographer of the German language, Daniel Sanders of Strelitz (1819-1897), whose translation of the Canticles made his name popular also among the Jews, published in a special column, *"Sprichwörtliches und Spruchartiges,"* proverbial and aphorismatic specimens of the wisdom of the Talmuds, in poetic form. Simon Szanto wrote political reports from Austria while Ludwig Philippson's *Jahresrückblicke* from the *Jahrbuch* were used in Busch's *"Berichte aus der alten Welt."* The column, *"Denkwürdige Sterbetage"* by L. Zunz runs through all the numbers of *Israels Herold.*[15] It met the requirements for biographical essays in a very modest way.

The local news, written by Busch himself, reports in detail on a Jewish agricultural and craftmen's society then being founded, and treats of the problem of American anti-Semitism and the means of combatting it. The "weekly news" reports on a benefit concert of the Hebrew Benevolent Society, the dedication of new synagogues in Louisville and Philadelphia, the purchase of a new burial site for the community *Ahavat Hesed* and the collections in behalf of Jews in the Promised Land.[15a]

Two contributions to the first issue belong to the field of belleslettres. Prominence is given to a noteworthy dedicatory poem, *"Ermutigung"* by Leopold Wassermann, which, in inspired and impressive verses, sings the praise of the liberation of Israel and its promising development in the land of freedom. In a later issue, Wassermann published a second poem, *"Gebet,"* which not only displays deep inspiration but also the unusual gifts of the poet. Un-

[15] Cf. M. Steinschneider, *Die Schriften des Dr. L. Zunz* (Beigabe zu *Hebräische Bibliographie* No. 82; Berlin, 1874), p. 7, no. 10; L. Zunz, "Meine Schriften," in *Jahrbuch für jüdische Geschichte und Literatur* XXX (Berlin, 1937), p. 154, no. 22 f.

[15a] Cf. also p. 78.

fortunately, little is known of this talented and romantic dreamer of Palestine whose devoted activity for Judaism in America met an untimely end. Still in the prime of his youth, he lost his life when the ship on which he was travelling from Boston to New Haven sank. Isaac Wise spoke of Wassermann as "a noble man, a poetically gifted idealist."[16] The second literary contribution to *Israels Herold,* Isidor Busch's novel, *"Die Auswanderer"* (The Emigrants), was not on the same high plane. It was originally to be published in the Viennese *Jahrbuch für Israeliten* but was prohibited from going to press by the Austrian censor. The romantic and sentimental tale runs in installments through the twelve numbers of *Israels Herold.* It is interesting as an historical description of the life and mentality of certain Jewish circles in the Vienna prior to the March Revolution. According to an introductory note by Busch, the characters were depicted exactly as they were in reality. From this, we may assume that there was a true background behind the story of the exchange at birth of a Jewish boy with a Christian girl of princely descent. After decades, dramatic complications arise which are finally settled by three happy marriages in America, a Jewish, a Christian, and a mixed marriage with Jewish children. At the end, the idea behind the novel is expressly revealed: "Education, not birth determines one's religion." Tolerance alone produces "good, happy people." It is not easy to determine whether this novel was in accordance with the taste and sentiment of the reading public in New York in 1849. This much, however, is certain, that Busch was not tempted again to publish a similar novel.

The eighth and last page of the first number of *Israels Herold* contains the general and Jewish calendar for the month of Nissan and advertisements follow this. The congregation Emanu-El offers an invitation to the auction and leasing of the temple seats. A "manufacturer of fringes, gimps, and elastic suspenders," a merchant tailor, the German drugstore of Drs. Waterman and DeForest, the German book and art shop of Helmich and Company, offer their goods for sale. At L. Joachimssen's, not only all the Hebrew books

[16] No article on Wasserman is found in the *Jew. Enc.* His name is mentioned, however, by I. M. Wise, *Reminiscences,* p. 27 f.; and in *Israels Herold,* p. 78. He was very active in the Jewish congregational life of New Haven. An unpublished volume of his poems and some manuscript sermons in the German language are in the possession of Mrs. Stephen S. Wise, New York.

can be bought but also all kinds of kosher and Passover wines. *Israels Herold* itself offers for sale a *Sepher Torah* "of exceptional beauty and perfection, with very large and unsurpassably attractive lettering, which will arrive within a few days on the steamer Hermann." The text of the number ends with a request by Busch for interesting news from the entire country, which would serve his readers and promote his paper.

## IV

### *Israels Herold's* Course and Significance

The literary-intellectual program and the Jewish-political aim of *Israels Herold* as expressed in the first number remained unchanged throughout the entire period of its publication. Since space does not permit to go into further detail, it must suffice to summarize the contents of the remaining eleven numbers and to call attention to matters of particular interest to the historian. This will probably be the proper way to gauge the editor's approach and attitude to the political, religious, literary, and social problems which in those days faced the Jews in America.

If we glance at the names of the American and European authors who contributed to *Israels Herold,* we find the leading personalities of the Judaism of that time among them. The contributions of Zunz and Szanto have already been mentioned. A series of essays under the title, *"Lebensbilder aus der Geschichte der Juden im Mittelalter,"* by Zunz appeared in four of the issues, nine to twelve, and represented portions from his book, *Zur Geschichte und Literatur.* Interestingly enough these essays were not identified in Zunz' own bibliography in which otherwise every item of his writings is listed so carefully.[17] In this connection, it is perhaps of interest to recall that Zunz, as early as 1833, was considering an offer of a rabbinical position in New York.[18] He also contributed to *Israels Herold* on page 63 an anonymous *"Brief aus Berlin,"* for the most part of political content in which, in typical "Zunz style," he does not sup-

[17] Cf. L. Zunz, "Meine Schriften" (above note 15), p. 156 no. 25. *Israels Herold* no. 9 p. 65 f. = Zunz, *Zur Geschichte und Literatur* (Berlin, 1845), pp. 167-170; *Israels Herold* no. 10 p. 77 f. = Zunz, *op. cit.,* pp. 170-174; *Isr. Her.* no. 11 p. 82 = Zunz, pp. 174-177; *Isr. Her.* no. 12 p. 93 = Zunz, pp. 177-179.

[18] Cf. David Kaufmann, *Gesammelte Schriften* I (Frankfurt a. M., 1908), p. 343. - Cf. also Samuel Oppenheim, "A Letter to M. M. Noah from Eduard Gans and Leopold Zunz," *PAJHS.* XX (1911), pp. 147 ff.

press his sympathy for the revolutionaries.[19] From this document which also remained unnoticed as yet and unmentioned in any of the Zunz bibliographies, the following lines may be of special interest for a future biography of the "father of the science of Judaism."[20] Zunz complains bitterly about the "wretched niggardliness of the wealthy Jewish community of Berlin" (*"elende Knickerei der reichen Gemeinde Berlin"*).

"Berlin, April 30, 1849. You ask me for reports on Jewish conditions at a time when no one is a Jew, and no one a Christian, when perhaps the Jews feel more sympathy for Pope Pius IX who, with the aid of the French, is now entering Rome quite peacefully and grants amnesty, than many a Catholic; when many a Christian is a more ardent admirer of the Jews of Jacob than of his Saints! A time when our brothers in Hungary put on the knapsack instead of the *Zidakel* [*Zizit*] and even the walls of Bremen do not collapse at the acceptance of Jews as citizens within it!?

For instance, who is concerned when the wealthy [Jewish] community of Berlin, in wretched niggardliness, withdraws the small annual stipend from an old man highly deserving for his work in science, a precious jewel of Israel of whom one might well be proud, and abandons him to misery, a man like Zunz; when there were no good-hearted friends who gladly effaced this disgrace by contributing the money toward it themselves? Berlin is still besieged, a second Chamber elected by the people is dissolved once more, again a few human sacrifices fall before the Moloch kingdom, the purple is revived with blood. . . .

. . . and with all this, you still wish reports on Judaism?! Pardon but I cannot give them; still I will send you the [*Allgemeine*] *Zeitung des Judentums* and the *Orient* by steamer; even here they are not read widely."

Besides Zunz' report, there appeared in numbers two and three a contribution of another orientalist, famed in later years. It was Gustave Weil's essay, *"Die Wunder Moses und Israels Auszug aus Egypten"* (Moses' Miracles and the Exodus of Israel from Egypt), a translation from the Arabic of the fanciful description by Mohammed.[21] Interesting though by no means remarkable, is a political essay, *"Das jüdische Element in der jüngsten europäischen Be-*

[19] Cf. also Ludwig Geiger, "Zunz in Verkehr mit Behörden und Hochgestellten," *MGWJ.* LX (1916), p. 246.

[20] At the same time, they are a welcome supplement to the material published by Ismar Elbogen, "Leopold Zunz zum Gedächtnis," *50. Bericht der Lehranstalt für die Wissenschaft des Judentums* (Berlin, 1936), p. 18 ff.

[21] Cf. *Jew. Enc.* XII, 491.

*wegung"* (The Jewish Element in the Most Recent European Movement) by J. L. Bernays, French consul to Haiti and a former Parisian journalist. He represented a peculiar example of the contemporary attitude toward the achievements of the emancipation and the ideals of liberty in 1848. The extolling of the universal ideals of humanity which placed the differences of religion and nation in the background caused Busch, in a precautionary editorial note, to protect himself and his paper against the reproach of atheism. The tone which Bernays sounds in his essay appears almost prophetic:

"I believe and foresee that the Jewish persecutions in Europe will take place once again. Their religion and their nationality will be used as a pretext, as has occurred so often already, to strike all the more severely at radicalism and religious candor. Be courageous, Jews, and bear this blow also, for it is the last. Whoever dare touch the *human being* in the Jew must answer to mankind and history knows no example that does not prove the revenge of mankind to be terrible."

The contributions of the American collaborators to *Israels Herold* are of much greater significance. They are, above all, the leading spirits of the American reform movement, Max Lilienthal, Isaac M. Wise, Leo Merzbacher, who,—according to the custom of that time—popularized their opinions by publishing their sermons and their lectures on religious problems. Valuable material on the early history of the reform movement in America is to be found here which, till now, has not been used and has remained unknown even to David Philipson, the careful biographer and scrupulous collector and editor of Lilienthal's and Wise's writings. In 1849 a society, *"Verein der Lichtfreunde"* for the discussion and dissemination of the teachings of the reform movement was founded in New York, the aim being "to remove the stumbling block, ignorance, through the spreading of light and instruction in matters of religion," "to bring enlightenment to Judaism."[22] Lilienthal who, shortly before, had resigned his office as rabbi of three orthodox congregations of New York City and directed the private "Hebrew Commercial and Classical Boarding School" was one of the founders and became one

[22] Cf. The scanty remarks in *Israels Herold*, p. 21; Mayer, "Geschichte des religiösen Umschwunges unter den Israeliten Nordamerikas," *Sinai* I (Baltimore, 1856), pp. 203f.; David Philipson, *The Reform Movement in Judaism* (New York, 1931), p. 340.

of the most active spirits in this organization. His first lecture, with which the public activity of the society was inaugurated, is published in full in *Israels Herold.*[23] It is an interesting attempt to establish a synthesis between the Jewish past and the enlightened *Weltanschauung* with the aid of the science of Judaism. Lilienthal's thoughts move completely in the path which is known from the early period of reform in Germany and which was represented in literature by the periodical, *Sulamith.*[24] It goes back to the tradition of the *Meassefim,* and Lilienthal professes this in his boundless admiration for Mendelssohn, whose translation of the Bible he considers an accomplishment equal to that of Luther. The newly discovered science of Judaism and the awakened sense for Jewish history were to be the guides to the new path of development which Judaism was to travel under the protection of universal freedom.

"From the times of Mendelssohn on, Judaism was allowed to speak; with him, for the first time, it entered the ranks of German literature and now it desired to claim its rights. . . . O, we cannot greet this epoch of Jewish science with anything but joy and exultation. . . . But the struggle, which it must put up against the Christian world is not the most difficult; the struggle which was necessarily unleashed internally, that was, that is the direst one. . . . Science is aware of its mission, to teach and preach Judaism to the world and to offer it to her purified. . . . Thus scientific enlightenment must clear away the disagreement, must becalm doubt and fear, must reconcile the hearts of Israel in the worship of the One Lord, must banish indifferentism and fanaticism alike and make Israel reconciled in love and peace, the herald of peace for the world."

Whatever stand one may take toward these ideas, it cannot be denied that in Lilienthal's lecture a fine modern education and a high idealism found expression with stylistic elegance. This is perhaps even more evident from his second lecture. It deals with the "Essence of Religion" and touches upon an intricate philosophical theme in the problem of freedom of the will. A similar theme was treated by Isaac Wise in his lecture, *"Die Grundlagen des Mosaismus."* Starting from 5 Moses 30. 15-16, he contrasts the freedom of the doctrines of Judaism with the "slavish system" of pantheism. Wise,

[23] Lilienthal, "Erster Vortrag im Vereine der Freunde," *Israels Herold,* pp. 25 ff., 34 f.

[24] Cf. Siegfried Stein, "Die Zeitschrift Sulamith," *Zeitschrift für die Geschichte der Juden in Deutschland* VII (1937), pp. 193 ff.

however, went much further than Lilienthal in his practical conclusions:

"Rise, ye sons of the earth; thine is strength, thine is freedom. Thus does Judaism teach. But to assure this, to make it easier, to provide it for those who have too little spirit for thought, too little moral strength for exultation (for religion should be the common possession of all) Mosaism has prescribed a ceremonial law which touches on all the conditions of life and consecrates and sanctifies them guiding man step by step to that moral pinnacle which is expressed in our text, 'to love the Eternal, thy God, and to walk in His ways'.

Let us now ask ourselves: must we still consider this ceremonialism as an essential part of Judaism after it has lost all value and significance? No, we must not. Our religion has given us the task of each of us rising to moral perfection, loving the Eternal, God, and walking in His ways. Every ceremony which secures and furthers this belongs to the essence of Judaism; those, however, which do not secure it, do not further it, in fact disturb, hinder it, belong to the past, to hoary antiquity, to the dead, not to the living present. Thou shalt elevate thyself to God but not allow thyself to be oppressed by any burden whatever. Thus, the second principle of Mosaism."

This went too far even for the editor, Isidor Busch, who came from the much more moderate Viennese atmosphere around Noah Mannheimer. True to his principle of giving equal freedom of opinion in his paper to all the factions in Judaism he published Wise's essay unaltered but, as with Bernays' article, he added a detailed and well founded counter-argument. This met with violent opposition at the hands of Wise, and naturally Busch did not remain silent. A philosophical-theological dispute on pantheism and panentheism and freedom of will in the light of the Bible appeared as a result in the eleventh number of *Israels Herold.*

It is evident that the readers of *Israels Herold* were not in a position to follow such scholarly arguments with references to Maimonides' and Kant's doctrines, for it did not fit in with the average Jewish reader of New York in 1849, who had neither extensive general nor even a suitable Jewish education. Such debates would perhaps have been more suitable for rabbinical assemblies after the German model. Entirely taken up with the whirlpool of the struggle for existence, the American reader could hardly have had very great interest even in the historical and biographical essays of the European collaborators or in the political reports from the Old

World. These, furthermore, were already many weeks old by the time they reached America. If, according to Zunz, even the *Allgemeine Zeitung des Judentums* found only few readers in the German Jewish public, how much more unfavorable must the American conditions have been for a periodical like *Israels Herold* edited along European lines and in the German language? Now, most probably, one can fully appreciate the concluding word by Busch when his paper had to cease publication: "it is still too early;" and it is now that we can recognize it in its true light. It is not without sympathy that one can read his opinions, *"Unser neues Programm,"* in the last issue of *Israels Herold.* Here he comments on the failure of his periodical, on its immediate as well as its more remote causes. One quotation will suffice: "A Jewish literary periodical is a complete impossibility here. There are hardly ten people who would have any interest in it."

It is evident that the failure of the first Jewish weekly in New York was the result of the general conditions prevailing. This was to be foreseen and was not to be avoided despite the high idealism and the noble efforts of Busch and his friends. All the work and financial sacrifice was to no avail. "It was too early" in America for a weekly in the style of the *Allgemeine Zeitung des Judentums.* And still this unsuccessful literary attempt had not only at that time its psychological justification but nearly a hundred years later it has once again won historical significance. In the columns of *Israels Herold* a valuable source is opened which permits interesting insight into the Jewish life of America, especially the daily life of the Jews in New York. It awaits the historian who will understand how to expound fully its diverse material. A hasty survey will indicate the wealth of the historical material which is contained in the twelve numbers of *Israels Herold.*

First, there is the regular "News from the Old World," often with many details, under the motto: *"Nur immer langsam voran"* (Going forward but slowly). Here the reaction of the agitated political events of those days on the Jews was described, its American interpretation offered. Most regular and detailed are the original letters from Vienna and Prague; especially worthy of note are those of the struggle of the emancipation of the Jews in England.

Much more important, however, is the material on the history

of the Jews in America. In number twelve a short essay is published, "Sketches on a History of the Jews in New York," by the councellor at law, P. J. Joachimssen. It deserves attention for two reasons. In the first place, this was probably the first attempt of this kind; and secondly, despite its primitiveness and inadequacy it is not without value, because documentary material has been used. A regulation of the 26th of Nissan, 5512 (1752), from the archives of the congregation *Shearith Israel* is reproduced, whereby everyone must fulfill his religious duties in the synagogue upon penalty of a twenty dollar fine. On the eve of the new year, 5518 (1757), it was resolved: "Since the transgression of several religious laws such as eating *trefo* and breaking the Sabbath rest, has sharply increased, every transgressor will be excluded from the community after having been duly warned." But the strong threats seemed to have availed little and the judicial practice seems to have become less severe. In 5535 (1774) in a charge against Betty Hays, who had been convicted of purchasing forbidden (*trefo*) meat, she was merely instructed to *kosher* the spoons used in eating the forbidden meat.

Also interesting reports on the early history of other Jewish communities appear in *Israels Herold;* thus, for instance, on the congregation *Anshe Chessed* and its school founded in 1845, and on the congregation *Emanu-El* in New York; on the *Har-Sinai* congregation in Baltimore which "found a worthy model to imitate in the Hamburg Temple society"; on the dedication of the new synagogue in New Haven. Unfortunately, Busch did not carry out his intention expressed in his third issue to write a history of the New York Jewish societies. Since the article, New York, in the *Jewish Encyclopedia,* contains only a meagre account on this subject, the reports in *Israels Herold* on the following Jewish societies in New York are of all the more value: Hebrew Benevolent Society at whose head was Mordecai M. Noah; Society of Friends; Reading Club Harmony; Mendelssohn Society; the Israelite Handicraft Society of New York; Agriculture and Handicraft Society; B'nai B'rith lodges; Women's Order of the True Sisters; United Brothers, formerly Bohemian Brothers; Society for the Support of Immigrant Israelites; Jewish Women's Penny Society whose meetings "were to be held without any male supervision" (*"ohne irgend eine Bevormundung der Herren der Schöpfung"*). Heretofore not even the

names of some of these societies have been known; and even if the activity of all of them was not of equal significance, still their very existence proved the high social sense and the cultural feeling of the New York Jews ninety years ago although at that time most of them had been only a short time in America.

In this connection, Dr. N. Waterman's enthusiastic discussion in the fifth and sixth issues of the necessity of erecting a Jewish Hospital in New York should be mentioned. Apparently the efforts of the German-speaking Jews in New York to erect a Jewish hospital together with their "Portuguese and English brothers" were unsuccessful because of the opposition of the latter. The $25,000 necessary for the magnificent building planned could not be raised and there was the danger that the entire project would remain unrealized. In view of this threatening situation, Dr. Waterman turned to his German co-religionists. On the basis of his own medical experiences, he described stirringly the lamentable situation of the sick and dying Jews who had immigrated from Germany and who had to enter general hospitals or find a bed in poor "huts of misery and poverty," in wretched "cellars and hovels." The conditions ridiculed any conception of medical hygiene. Every incoming ship was bringing sick and exhausted immigrants from the German speaking regions of Europe. For them the hospitals on hand were of as little use as for the German Jews already settled in New York. "The doctors, who speak only their own, the English language, do not understand these sick people and cannot recognize their illness merely from their appearance." The invalid feels strange and alone, "he throws himself in his death bed in indescribable despair" and he has no helping friend who can read with him the *Sh'ma Yisroel* when the shudder of death runs through his frame." We would fulfill one of the most gracious tasks of Judaism if we "would make provisions for the ill and the dying"; "whoever is not satisfied with these reasons for erecting a hospital for Jews does not feel himself a Jew and would be difficult to convince." For the Portuguese and English Jews of New York who mastered the English language and to whom the immigrants from Europe were of little importance, the needs and conditions were quite different. Therefore Dr. Waterman directed a ringing appeal to his co-religionists of the German tongue to take this great humanitarian work into

their own hands and to do without the aid of their English and Portuguese brothers. "We would rather build up from the bottom, lay one stone upon the other, rather complete the work securely step by step, than to enter upon gigantic undertakings. From powerful co-operation a hospital will soon arise which, at first, will operate modestly and, little by little, would develop into a tremendous institution." These were words which bear witness to Dr. Waterman's warm Jewish feeling in equal measure as his rich medical experience and his sober sense for practical social work. It appears either that they were not well received at that time or that the power of the German-Jewish community of New York was not sufficient without the support of the Portuguese and English Jews. The third article by Dr. Waterman announced in the seventh number of *Israels Herold* on the question of a Jewish hospital was not published. From the advertising section of *Israels Herold,* we learn more concerning the activity of this versatile doctor who also managed a drug store. In the last issue of the periodical, he offers an allegedly very effective medicine for cholera and in the next column, invites subscriptions for a prayer book for the entire year which was to appear in eight installments with an English translation.[25] We also hear of the opening of a Jewish printing house at 205 Houston Street by the German printer H. Frank "who, driven from his homeland by the unhappy confusion in Europe brought his type as well as his stock of Hebrew books from Europe with him." Later he published Hebrew prayer books with English translations.

The subscription list of *Israels Herold* was published three times during the paper's brief history (pp. 31, 71, 79). There were subscribers in New York, Albany, Baltimore, Cincinnati, Chicago, New Haven, Philadelphia, St. Louis and a few smaller towns. Unfortunately the professions of the subscribers are not given but these lists contain valuable material for a history of American Jewish individuals and families. Such material can also be obtained from the announcements of marriages, which concerned almost exclusively immigrants from Bavaria and Bohemia. New light falls on the still unwritten history of the immigration from Bohemia. In the "letter

[25] It is doubtful whether this prayer book was ever published. The present writer was unable to locate any copy. No copy is found in the New York Public Library, in the Jewish Theological Seminary Library, and the Library of the Hebrew Union College in Cincinnati, or in the Library of Congress.

of an emancipated Austrian Jew 'tired of Europe' to his friends in America," dated Prague, March 24, 1849 (p. 39) we read, in connection with a description of the conditions of the Jews after the publication of the March constitution:

"It is conspicuous that, despite the emancipation, the desire for emigration, especially to North America, increases daily. Hundreds of Bohemians emigrated even this year. The second class cabins of the steamer that is leaving Bremen on April 15th are completely taken by Jews from Prague. The captain was even ready to give them a *kosher* table if they so desired. The number of those in Prague alone who are willing to emigrate this year is reckoned at about 400. One can see then that there is little faith in the future of Austria. From Hungary too a large number of Jews is emigrating to America. Since you are certainly interested to learn something about our leaders, Fischhof and Goldmark, I can give you some reliable information. Fischhof is still under criminal arrest and there is great anxiety for him; in particular Windischgrätz is threatening him. Although there is no fear for his life, still a five year sentence is probably in store for him. Fischhof has thus become a political martyr and I prophesy a great future for him. Goldmark lives quietly in Breslau. . . . Farewell and be happy in the good fortune of having true freedom in your beautiful and peaceful America."

At the beginning of June (p. 85) there is another report on Jewish immigrants from Bohemia, whose passage was paid by the *Israelitischer Kreuzerverein* in Prague. Among them H. G. Wehle, the former president of the Jewish community at Prague is mentioned. For those who know that from Busch's mother's family of Hönigsberg and from the family Wehle came the leaders of the Frankist movement in Prague at the beginning of the nineteenth century[26] the meeting and the relations of members of these two Prague families in America gain historical significance.

Thus the reader experienced in history can find much interesting material in the columns of *Israels Herold.* The future investigators in the history of the Jews in New York will recognize and appreciate *Israels Herold* as a valuable source for historical information.

[26] Cf. Josephine Goldmark, *Pilgrims of '48* (New Haven, 1930), pp. 189ff. and passim; Václav Záček, "Zwei Beiträge zur Geschichte des Frankismus in den böhmischen Ländern," *Jahrbuch der Gesellschaft für Geschichte der Juden in der Tschechoslovakischen Republik IX* (Prague, 1938), pp. 362ff.

# AGATHIUS GUIDACERIUS 1477?-1540

## *An Early Hebrew Grammarian in Rome and Paris**

By

Helmuth Galliner

New York

"The revival of Hebrew studies, which is so striking a feature of the fifteenth and sixteenth centuries . . . was one of the results of that mighty quickening of the human spirit that goes under the name of the Renaissance."[1] In this period the study of Hebrew became a recognized part of general culture. Nothing could better illustrate the difference, in this respect, between the Middle Ages and the Renaissance than the fact that in the days of Thomas à Becket (1118-1170) to be of *trilinguis eruditio* meant a knowledge of Latin, French, and English, but to Erasmus (1467-1536) a *trilinguis homo* was one who knew Latin, Greek, and Hebrew.

It is the merit of the late Gustav Bauch[2] to have shown that Hebrew studies originally were the favorite child not of the Renaissance but of the *ecclesia militans*. Missionary work was the true purpose of the Church in promoting Hebrew studies. This intention was very clearly expressed by the Council of Vienne in 1312: It was decided to teach missionaries Hebrew, Aramaic, and Chaldaic for use in their work with the infidels. At the residence of the Holy See, at the Universities in Paris, Oxford, and Bologne two scholars were to hold such chairs.[2] One century later, the bull of Pope Benedict XIII renewed this decree with the stipulation that these scholars should receive an adequate remuneration.

At the time of the Reformation when the interpretation of the Bible was no longer based upon the text of the Vulgate, suspicion arose with regard to Hebrew studies. The instructors of Hebrew met with opposition on the part of the theologians at the universities, e.g. in Paris and Louvain. In this connection the policy of

* It is with great pleasure that the author acknowledges his indebtedness to Professor Alexander Marx, New York who first aroused his interest in this subject and to whom he owes much valuable advice.

1 G. H. Box, "Hebrew Studies in the Reformation Period and After," in *The Legacy of Israel* (Oxford, 1927), pp. 315ff.

2 Gustav Bauch, "Die Einführung des Hebräischen in Wittenberg," *MGWJ.*, XLVIII (1904), 22ff.

Francis I (1515-1547) is of particular interest. The conduct of public affairs by this French king, confusing if one considers each of his actions individually, was guided by three aims; loyalty to the Roman Catholic Church, promotion of independent research in art and letters, and suppression of heresy. His attitude towards the Reformation, usually thought inconsistent, was justified in a recent work,[3] according to which Francis I did not know Protestants or Lutherans as such but only as revolutionists or harmless scholars.

In this atmosphere at the French court the scholarly career of one such Christian Hebraist finds its place. He is not a scholar of great distinction, but since our knowledge of early Hebraists is slight, a new contribution might be welcome. Although some monographs deal with Hebraists in Germany and the Low Countries, no biography of early Hebraists in France has yet been written.[4]

## I

The name Agathius Guidacerius is mentioned twice in connection with the installation of Hebrew chairs at academies: in 1514 in Rome at the *Sapienza*; in 1530 in Paris at the *Collège de France*. Little is known about his life and works in spite of inquiries made throughout four centuries. Even the almost contemporary biographical notes by Barrio[5] (1571) and Zavarroni[6] (1753) do not tell much more than the most recent by Casati[7] (1933). Only scanty remarks are found in the *Jewish Encyclopedia*,[8] in *Joecher*,[9]

[3] Georg Florian Münzer, *Franz I. und die Anfänge der französischen Reformation*, phil. diss. (Freiburg, 1935).

[4] Ludwig Geiger, *Das Studium der hebräischen Sprache in Deutschland vom Ende des XV. Jahrh. bis zur Mitte des XVI. Jahrh.* (Breslau, 1870). - Bernhard Walde, *Christliche Hebraisten Deutschlands am Ausgange des Mittelalters* (Münster, 1916). - Félix Nève, *Mémoire historique et littéraire sur le Collége des Trois-Langues à l'Université de Louvain* (Brussels, 1856). - V. Chauvin et A. Roersch, *Étude sur la vie . . . de Nicolas Clénard* (Brussels, 1900). - Berthold Altaner, "Zur Kenntnis des Hebräischen im Mittelalter," *Biblische Zeitschrift* XXI (1933), 288-308.

[5] Gabriele Barrio, *De antiquitate et situ Calabriae* (Rome, 1571); reprinted in J. G. Graevius, *Thesaurus antiquitatum et historiarum Italiae . . .* (Leyden, 1725), IX, 5, p. 120 C.

[6] Angelio Zavarroni, *Bibliotheca Calabra . . .* (Naples, 1753), p. 77.

[7] Giovanni Casati, *Dizionario degli scrittori d'Italia* III (Milan, 1933), p. 254, No. 880.

[8] VI, p. 106; cf. J. Ch. Ferdinand Hoefer, *Nouvelle Biographie générale* XXII (Paris, 1858), p. 537.

[9] C. G. Joecher, *Allgemeines Gelehrten Lexikon* I (Leipsic, 1750), p. 135 and *Fortsetzung* I (1784), p. 295. Steinschneider, *Bibliographisches Handbuch* (Leipsic, 1859), p. 56 remarked : "In Ersch und in Joecher sucht man vergeblich unsern Autor." The paragraph about Guidacerius is placed under his first name Agathius.

and the *Encyclopaedia Judaica.*[10] In the general historical field results are no better. Scattered remarks throughout a vast literature supply occasional fragments of source material. One of the chief reasons for this lack of data about Guidacerius is the rarity of his works.

In 1937, the Librarian of the Jewish Theological Seminary of America,[11] Professor Alexander Marx, succeeded in securing one of the few extant copies[12] of the first work of Agathius Guidacerius' *Grammatica Hebraicae Linguae.* This booklet contains twenty-six unnumbered pages and gives neither year nor place of printing. However, it shows the following manuscript dedication: *"F. Wolffgango Volprecht, Eremitae Dono dat: F. Joannes* Ελαφωκερος *Augustinianus.* -1518- *Ex Senna Veteri Civitate Virginis."*[13] A woodcut border on the title page, repeated on the following page, represents a deer chased by a dog. On the reverse side of the title page the author expresses his opinion why one should study Hebrew, supporting his thesis by quoting St. Augustine and St. Jerome:

Grammatica hebraicae linguae. Quae necessaria pueris; iocunda senibus; dulcis et divinorum secretorum comes. Unde Divus Augustinus de doctrina Christiana libro secundo contra ignota inquit signa; magnum remedium est linguarum cognitio; et idcirco latinae linguae homines, quos erudiendos suscepimus, duabus aliis opus habent ad cognitionem divinarum scripturarum: hebraea et graeca etc. (*PL.* XXXIV, 42, chap. XI, 16 and XXII, 444, §150, 13).

In a prefatory note dedicated to Pope Leo X (1513-1521) Guidacerius himself gives some autobiographical information. He tells us that he was born in "Rocca Coragia" in Upper Calabria. It is not quite clear which city is meant by this name. P. S. Allen[14] suggested "Catanzaro", but Barrio gave the name in the form "Arrocha"[15] which was a citadel near Nascaro

10 VII, p. 1086.

11 Cf. *Register of the Jewish Theological Seminary of America* 1938-39, p. 75.

12 *Catalogue général des livres imprimés de la Bibliothèque Nationale* LXVI (Paris, 1926), p. 138; *Catalogue of the Printed Books in the Library of the British Museum* (London, 1881-1905): Guidacerius, p. 231; Aron Freimann, "Der hebräische Buchdruck im 16. Jahrh. in Rom," *Festschrift für Jakob Freimann* (Berlin, 1937), p. 56f; *Katalog Bibliothek der Morgenländischen Gesellschaft* (Leipsic, 1900), p. 219.

13 Whether Joannis Elaphokeros is identical with Euchar Cervicornus, printer at Cologne, remains an open question. Guidacerius himself might have left this copy of his book in the city of Siena when he travelled from Rome to Avignon in 1518.

14 P. S. Allen, *Opus Epistolarum Des. Erasmi,* (Oxford, 1906 ff.), IV, Ep. 1221, p. 547, n. 6.

15 Amato Amati, *Dizionario corografico dell' Italia* I, p. 427; V, p. 576.

close to Montepettinella in Upper Calabria. According to the *Enciclopedia Popolare Sonzogno*[16] he was born in 1477 which, however, could not be verified. Guidacerius praises the Pope for all he has done on behalf of the study of the Greek and Oriental languages. He himself claims to have studied Hebrew for seven years under the guidance of the learned rabbi Jacob Gabbai and to have used the grammar of Moses Kimhi. But he emphasizes, at the same time, that he has no Jewish blood in his veins. He acknowledges the Pope's generosity in making available the Vatican Library, as well as his own, to every student. Finally he speaks briefly of the book by Cardinal Adriano of Castello, *De sermone latino et modis latine loquendi,* adding *"nuper edita."* After the dedication one finds the following phrases: *"Consecratio hebraicae Graecae latinaeque linguae. In titulo Crucis: hoc est triumphi; Salvatoris nostri Jesu Christi Dei optimi maximi."* Then follows: *Jesus, Nazarenus Rex Judaeorum,* in Hebrew, Greek, and Latin. This formula has its model in Aldus Manutius' *Alphabetum Hebraicum* (Venice, 1501) where the phrase: *Titulus Graecae Latinae et Hebraicae in Cruce Domini: Jesus Nazarenus Rex Judaeorum* is found. The last four words are likewise in Hebrew and Greek.

The contents of Guidacerius' book deal with the explanation of the Hebrew alphabet and are based on the first chapter of David Kimhi's grammar *Mikhlol.* The grammar concludes with the chapter 52.13;53 of Isaiah in Hebrew and Latin. The reason why Guidacerius chose this chapter is evidently his desire to demonstrate his true Christian faith, for according to the interpretation of Jerome this chapter prophesies the coming of Jesus.

Since this grammar probably contains the first or second Hebrew text printed in Rome in the sixteenth century, a discussion of the identity of the printer and the time of its publication is worth while. The pattern of the woodcut of the booklet is found in Bonetus' de Latis *Anulus astronomicus* printed by Andreas Fritag at Rome in 1492 or 1493.[17] Fritag worked together with Johannes Besicken from 1496. Besicken, however, after having taken over Fritag's printing equipment continued to print books in Rome until 1512 when Jacobus Mazzochius, the official bookseller at the Roman University, succeeded him in business.[18] The first Hebrew book

[16] *Grande Enciclopedia popolare Sonzogno* VIII, p. 580.

[17] Bonetus de Latis, *Anulus Astronomicus* (Rome, 1492 or 1493), in the Jew. Theol. Sem. Library; cf. *Gesamtkatalog der Wiegendrucke* IV, p. 498, No. 4841.

[18] Konrad Haebler, *Die deutschen Buchdrucker des XV. Jahrh. im Auslande* (Munich, 1924), pp. 100 ff.

with the imprint "Rome" was published by Mazzochius *probably* in the year 1508. "Es ist nicht bekannt," says Freimann, "dass in seiner (Mazzochius') Druckerei ein anderes Buch mit hebräischen Typen gedruckt wurde."[19] However, the facts that finally Fritag's printing apparatus passed into the hands of Mazzochius, that the woodcut in Fritag's *Anulus astronomicus* is very similar to that in Guidacerius' grammar, and that Mazzochius published a Hebrew book about the same time as our grammar was published, may justify the supposition that he was also the printer of Guidacerius' *Grammatica hebraicae linguae.*

The dedication to the Pope puts the date of appearance between the years 1513 and 1521. Almost every one of these years has been suggested: 1518 by Moïse Schwab,[20] 1520 in the Catalogues of the British Museum[12] and of the Bibliothèque Nationale de Paris,[12] 1517 by P. S. Allen,[14] and 1514 by Abbé Goujet.[21] Cardinal Adriano's book *De sermone latino . . .* , quoted by Guidacerius as "recently published" is printed for the first time in Paris without date. But it must have been printed before 1513 because it is dedicated to Pope Julius II who died in February of this year. The second edition appeared in Rome in 1515.[22] These facts were confused by the first historian of the Collège de France, Claude Pierre Goujet[21] in assuming that Adriano dedicated his book to the later Emperor Charles V in 1512 or 1513 and, therefore, "que ce fut en 1513 même ou l'année suivante, que parut la Grammaire en question."

A more detailed research provided by our fuller knowledge of the history of the Popes will enable us to designate the *terminus ad quem.* Cardinal Adriano[23] was probably mentioned by Guidacerius because of his influence at the curia.[24] Later Adriano became involved in the conspiracy of Cardinal Petrucci against the Pope. In the night

19 Freimann, *loc. cit.* (note 12), pp. 54, 56.

20 Moïse Schwab, *Les Incunables orientaux . . . aux commencement du XVI^e siècle* (Paris, 1883), No. 222.

21 Claude Pierre Goujet, *Mémoires historiques et littéraires sur le Collège Royale de France* (Paris, 1758), I, 1, pp. 243 ff.; cf. *La Grande Encyclopédie* XIX, 48.

22 *Cat. Brit. Mus.*, Castellensis, p. 121: "De Sermone latino . . . [1510?] and *Répertoire des ouvrages pédagogiques du XVI^e siècle* (Paris, 1886), p. 347 f (Hadrianus).

23 Died in December 1521 or January 1522. Ludwig Pastor, *History of the Popes* VIII (London, 1908), p. 196; *Enciclopedia Italiana* IX, p. 354.

24 L. Geiger, *Johannes Reuchlin's Briefwechsel* (Stuttgart, 1875), No. CLXXXIII, p. 214; L. Geiger, *Reuchlin sein Leben und seine Werke* (Leipsic, 1871), p. 306.

of June 20, 1517 he fled to Tivoli, and two days later at the consistory the Pope spoke about his flight. On the 5th of July of the following year he was deprived of his dignities.[25] It is unlikely that Guidacerius when dedicating his book to the Pope should praise a person who had fallen into disgrace with Leo X. (While it is known that Reuchlin had dedicated his book *De accentibus et ortographia linguae Hebraicae* to Cardinal Adriano in the very year 1518, he learned of the change at the curia only many months after his dedication was made.[26]) Therefore the *terminus ad quem* must be 1517.

The argumentation of Abbé Goujet in dating the book 1514 is very weak because it is unknown whether Guidacerius referred to the first edition of *De sermone latino* . . . (Paris, [1510?] ), or to the second (Rome, 1515) while the word *nuper* might mean a few months as well as a few years. 1514, however, may be the correct year according to other statements in the grammar. Guidacerius had noted that Magno Laurencio was instrumental in the collection of Greek manuscripts made in 1492; but he did not speak of the *Gymnasio Greco* at the Quirinale in Rome. The erection of this school in 1516[27] was a milestone in Leo X's patronage of art and letters. Guidacerius remarked, however, that libraries were freely opened to all men of learning, and we know that one of the first administrative acts of Leo X was connected with his own library and that of the Vatican.[28] Guidacerius was already holding his professorship of Hebrew at the University in Rome in 1514,[29] and his remark that he studied for seven years under Jacob Gabbai was meant to testify that he was well fitted for holding such a position. Guidacerius' teacher was a member of the Sephardic family Gabbai[30] hitherto unknown. But there is evidence that Jacob Gabbai signed his name in 1505 as a witness to the purchase of a Hebrew manuscript[31] which contained the grammar of Moses Kimhi. This is the

25 Pastor, pp. 180f., 195.

26 Geiger, *Reuchlin's Briefwechsel,* No. CCLXVI, p. 304; No. CCLXXI, p. 307.

27 Emile Legrand, *Bibliographie Hellénique . . . ouvrages publiés au XV^e et XVI^e siècles* (Paris, 1885), I, pp. CXXXII ff.; CLI.

28 Pastor, p. 263.

29 Nicola Spano, *L'Università di Roma* (Rome, 1935), p. 340.

30 H. Vogelstein and P. Rieger, *Geschichte der Juden in Rom* (Berlin, 1895-96), II, p. 288.

31 David Solomon Sassoon, *Ohel David, Descriptive Catalogue of the Hebrew and Samaritan Manuscripts in the Sassoon Library* (London, 1932), I, p. 287.

book repeatedly mentioned by Guidacerius as his first textbook.[32]

The Pope was pleased and showed his satisfaction by giving a large reward[33] to Guidacerius. This comprises our record of Guidacerius up to 1518.

## II

A clear picture of the *literati* at the Roman University is drawn by Aristide Joly in his *"Études sur Jaques Sadolet."* A golden era seems to have begun for artists and scholars when Giovanni Medici became Pope Leo X. But this bright and glorious age was shortly overshadowed by the Pope's pecuniary troubles.

As early as "the Spring of 1515 the papal treasury had reached low watermark and never after this time was Leo X free from his financial difficulties." "The troops had to wait for their pay, the university professors for their stipend. . . . At the time of Leo X's death things had come to such a pass that a professor of jurisprudence could write: There is a crowd of professors who have been appointed without selection, the salaries are not sufficient to live upon, and worst of all are paid so irregularly that it cost more trouble to raise the money than to give a whole course of instruction."[34]

Such circumstances might have induced Guidacerius to long for a new position. His own words written in Paris in 1529, express his feelings: "Francis I made me more happy and peaceful than all the Medicis and all the Popes could have done."[35] Although it is not known whether he succeeded in obtaining a professorship elsewhere at that time, his efforts to secure another position are evident from two letters written by André Alciat in 1518 and by Erasmus in 1521.

On November 30th, 1518, André Alciat (1492-1550),[36] professor of jurisprudence at the University in Avignon, wrote to François Calvus[37] of Ticino or Como (a bookseller who had made on his business journeys many friends among the literary men of his time, and had later settled in Rome as a printer): "Agathius, *'vir*

[32] This applies to Nos. 1, 11, 13, 14, of the Guidacerius' *Bibliography* in the appendix to this essay.

[33] F. M. Renazzi, *Storia della Università Romana* (Rome, 1803-06), II, p. 77f.

[34] Pastor, pp. 93, 100, 275.

[35] Preface to Guidacerius' *Institutiones* . . . . (Paris, 1529), quoted by [Gabriel Henri] Gaillard, *Histoire de François Ier* (Paris, 1819), III, p. 187.

[36] Cf. Paul Emile Viard, *André Alciat (1492-1550)* (Paris, 1926).

[37] Allen, *Opus Ep. Erasmi,* II, p. 558, n. 30.

*trilinguis,'* came to see me. His assurance that you are still alive although I have heard nothing from you for two or three years, made me very happy."[38] The purpose of Agathius' journey to Avignon is not quite clear. There are two possibilities: one that he travelled upon his own affairs, or, that he came to Avignon with one of the papal missions sent there when Jacopo Sadoleto, secretary to the Pope, was elected to the bishopric of Carpentras near Avignon in 1517 but was unable to enter upon his duties during the lifetime of Leo X. "Men judiciously selected for the task" had to care for the see in the meantime.[39] Unfortunately, the available sources[40] do not mention the names of these men. If one, however, assumes that Agathius came to Avignon to teach, again one is confronted with lack of material. No detailed history of the Avignon University has yet been published.[41] All we know is a letter of December 1525[42] in which Gérard Roussel, the noted reformer, expressed his regret that he had not attended the Hebrew courses at Avignon. At that time the great Christian hebraist Xantes Pagninus[43] lived there. Pagninus, originally appointed as Hebrew lecturer in Rome under Leo X, had left for Avignon after the death of the Pope in December 1521, and remained there until 1525.

Again in 1521 Guidacerius applied for the position as Hebrew lecturer at the "College of the Three Languages" at Louvain. His letter of application[44] seems lost, but Erasmus' answer is found in a message[14] sent on the 5th of July 1521 to Daniel Tayspil,[45] a member of the Praemonstransians of St. Augustine near Terouenne. Erasmus, living in Louvain at that time, was the spiritual leader of the "College of the Three Languages" established in 1518. He re-

38 Marquardt Gude, *Gudii et doctorum virorum ad eum epistolae* (Utrecht, 1697), p. 75.

39 E. F. Campagnac and K. Forbes, *Sadoleto on Education* (Oxford, 1916), p. XV f.

40 Jules de Terris, *Les Evêques de Carpentras* (Avignon, 1880), p. 225; C. F. H. Barjavel, *Dictionnaire historique, biographique et bibliographique du Département de Vaucluse* . . . (Carpentras, 1841), I, p. 371, II, p. 378.

41 Hastings Rashdall, *The Universities in the Middle Ages* II (Oxford, 1936), p. 173; V. Laval, *Cartulaire de l'Université d'Avignon* (Avignon, 1884).

42 Herminjard, *Correspondance des reformateurs dans les pays de la langue française* I (1866), p. 405; Abel Lefranc, *Histoire du Collège de France* (Paris, 1893), p. 97.

43 Wetzer und Welte's *Kirchenlexikon*, IX² (1895), p. 1270.

44 Cf. however, *Les Quatre Siècles du Collège de France* (Paris, 1931), p. 73: "Agathie Guidacier. Lettre relative à l'enseignement de l'hébreu, 1521; autographe."

45 *Biographie nationale* XXIV (Brussels, 1929), p. 654.

plied to Tayspil's inquiry about the possibility of Agathius obtaining a lecturership at the college in the following words:

"I have read Agathius'[46] letter to you and I have read the letter you wrote to Busleiden (chairman of the trustees of the College). . . . The College has few teachers but the attendance at the courses is very large, sometimes numbering three hundred students. The professors do not receive a high salary but it is in proportion to the present income of the College. There seems to be reasonable hope that the resources of the institution will be increased in the future by the generosity of the princes and the nobles. If Agathius will appear in person he will be treated with respect by these righteous men and he will receive permission to give special lessons in Hebrew or in Greek according to his own wishes."

Erasmus' answer is puzzling because the chair of Hebrew at Louvain had been occupied by Johannes Campensis[47] since 1520. According to P. S. Allen, since "Erasmus seems to consider Agathius' election a possibility it is perhaps to be inferred that the original appointments were only for a year as in Barland's case; or as the Hebrew chair had its fourth occupant in three years he may have expected a further change which did not, however, occur till 1531." The first suggestion does not present a possible solution because there was no one year probation, but Barland, the professor of Latin at the College *resigned* because of unsatisfactory payment.[48] That Erasmus, however, might have expected a further change can be verified. The theological faculty disliked the three predecessors of Campensis because they were suspected of heresy. The humanists who ultimately held the chairs at the College were strictly Roman Catholic. "At this moment, therefore, the difficulties between Bus-

[46] According to Allen, *Opus Ep. Erasmi*, l. c., the name Agathius "probably" refers to Agathius Guidacerius. But the fact that Erasmus calls Guidacerius only "Agathius" resulted in a confusion with Hieronymus Agathius a doctor of law at the University of Turin; Hieronymus Agathius and Erasmus exchanged letters in 1528; Allen VII, Ep. 2020, p. 433. The confusion is due to the index in Erasmus' works, Leyden 1703-06, III, s. v. Agathius. - Félix Nève relied on this work and mistook Hieronymus Agathius for Guidacerius in his *Mémoire* . . . , pp. 79; XIV, n. 1. The letter under consideration is quoted by Paul Colomiès, *Italia et Hispania Orientalis* . . . (Hamburg, 1730), p. 60, among his sources on Guidacerius. André Alciat in his letter of November 1518 likewise refers to Guidacerius as "Agathius." Guidacerius often calls himself "Agathius;" cf., e.g., his *Commentary of Canticles* (Rome, 1524), colophon, and Vatican Library Register: "Ego Agathius lector . . ."; and his *Alphabetum hebraicum* (Paris, 1533 and 1534): "Agathius Lectori S.".

[47] Nève, *op. cit.*, pp. 235-244.

[48] Etienne Daxhelet, *Adrian Barlandus, Humaniste Belge 1486-1538* (Louvain, 1938), p. 15.

leiden and the University were ended: *there may have been some dissension* but one does not find any trace of grave enmity. . . ."[49] Such minor quarrels might, indeed, have taken place at the time when Erasmus wrote to Tayspil thinking that Agathius might have a chance for a position at the College.

## III

Since the chair of Pagninus had become vacant in January 1522 Guidacerius was left the only Hebrew teacher at the Roman University. Meanwhile having increased his knowledge of the Hebrew language he began to write commentaries on parts of the Bible. In July 1524 there appeared his commentary to Canticles. Four copies of this very rare book are found in the Vatican Library.[50] The colophon is reprinted in Fumagalli[51] and reads as follows:

"Expliciunt feliciter Nova Commentaria super Canticum Canticorum Salomonis nuper edita per Agathium Clericum in Romana Academia linguae Hebraicae Graecae professorem eximium. Impressa per Antonium de Bladis de Asula. Anno Domini MDXXIII (!) die XXV Julii."

It is noteworthy that the commentaries of the early sixteenth century on the Bible dealt again and again with the same parts of the Holy Scripture, the Psalms being a favorite subject of numerous scholars. Guidacerius seems to have been one of the first Christian scholars who studied the Hebrew commentaries on Psalms and on Job by Abraham Ibn Ezra as is shown by the following entry in the register of the Vatican Library:

"Ego Agathius lector Romani studii confiteor habuisse a custodibus bibliothecae de mandato Reverendissimi Brundusiui librum Abenezza (!) hebraicum super Psalterium hebraicum supra Job . . . die X julii 1526."[52]

Yet the progress of his learning was interrupted when the sack of Rome in May 1527 put a sudden end to the instruction at the University. Like so many other scholars he lost his precious library[53] when he was forced to flee from Italy.

[49] H. de Jongh, *L'Ancienne Faculté de Theologie de Louvain . . . (1432-1540)* (Louvain, 1911), p. 246.

[50] Freimann, *loc. cit.*, p. 59.

[51] Guiseppe Fumagalli, *Catalogo delle edizioni Romane di Antonio Blado Asolano ed eredi (1516-1593)* (Rome, 1891-96), p. 3.

[52] Eugène Muentz, *La Bibliothèque du Vatican au XVI^e siècle* (Paris, 1886), p. 67.

[53] Zavarroni, *l. c.;* Ferdinand Gregorovius, *History of the City of Rome* VIII (1912), p. 650.

## IV

Fifteen days before the army of Emperor Charles V raided the City of Rome, Cardinal Sadoleto had left for Avignon where he arrived on May 3, 1527.[54] It was probably in June of the same year that Guidacerius also came to the old papal residence, and to find there his first place of refuge after having met "a thousand sorrows and a thousand perils."[35]

It is well known that the impression of these terrible days gave the impulse to the regeneration of the Church. Even at that time Sadoleto recognized that such would be the outcome. "If through our suffering," he wrote to Pope Clement VII (1523-1534), "a satisfaction is made to the wrath and justice of God, if these fearful punishments again open the way to better laws and morals, then is our misfortune perhaps not of the greatest. . . .[55] But, for the moment, the blow was very hard and shocked the literary world in particular. Erasmus wrote to Sadoleto in October 1528: "The terrible occurrence has affected all nations . . . the fall, in truth, was not of the City but of the world."[56] The contemporary poet Pierius Valerianus described the misery of the scholars in his: *"De litteratorum infelicitate"* compiled in form of a dialogue in 1529.[56] A reflection of this disaster is found in Agathius' Commentary on the Sermon on the Mount as late as 1531. There he wrote with regard to the sentence: "Beati qui persecutionem patiuntur propter justitiam," this should be a consolation for all those who have been persecuted during the recent destruction of the City of Rome.[57]

Guidacerius mentions that he was protected by the vice-legate, Jean Nicolai,[58] a friend of Sadoleto, when he arrived at Avignon. It was probably Nicolai who brought him to Paris[35] where Guidacerius in 1530 accepted a lecturership in Hebrew at the Collège de France.

54 Terris, *op. cit.*, p. 227.

55 J. Burckhardt, *The Civilization of the Renaissance in Italy*, transl. by S. G. C. Middlemore (London, 1928), p. 123.

56 Gregorovius, *op. cit.*, pp. 653, 651.

57 *Bulletin du Bibliophile* . . . (Paris, 1883), p. 417f; cp. note 67.

58 Bajarval, *op. cit.*, II, p. 209f.

## V

The intention to found the Collège de France goes back to 1517, and the king's assent for its establishment was given to Guillaume Budé after the peace of Cambrai in 1529. In November of that year the "royal lecturers" were appointed; and probably in March 1530[59] courses in Hebrew, Greek, and Mathematics were opened. The instructors of Greek were Pierre Danès and James Toussain (Tussanus). The Hebrew lectures were given by three scholars: Guidacerius, Paulus Paradis,[60] and François Vatable.[61] The latter openly favored the Reformation movement. Paradis, known as the Hebrew teacher of Queen Marguerite of Navarre, Francis' I sister, published in 1534 a grammar: *De modo legendi hebraice, dialogus.* Its preface contains a dedicatory poem to Marguerite, his former pupil. Guidacerius too had already demonstrated his qualifications for the post by publishing a Hebrew grammar in 1529.

The royal lecturers received a fixed salary from the king's treasury while the professors at the Sorbonne were paid by their students only. The Abbé Goujet[62] believed that this was the real cause for the hate and jealousy which arose at the Sorbonne against the Collège. Indeed, we learn from a letter[63] by Erasmus that even in a University as far away as Louvain the professors at the College of the Three Languages were jealous of the more favorable conditions in Paris at the royal college. Under such circumstances one understands why André Alciat wrote to François Calvus in September 1530:

"Perhaps you are not aware of the manner in which the king shows his generosity of those engaged in study. It is indeed admirable that your friend Agathius Guidacerius has been elected to teach Hebrew. He receives two hundred crowns for his effort in the form of a pension."[64]

However, the opposition of the theological faculty at the Sorbonne to the new trend in learning was already a matter of tradition. It

[59] *Collège de France 1530-1930* (Paris, 1932), pp. 30ff; Lefranc, *op. cit.*, p. 109.

[60] Colomiès, *op. cit.*, pp. 68ff.; Meyer Abraham [Halévy], *Légendes juives apocryphes sur la vie de Moise* (Paris, 1925) edited Paradis' French translation of *Dibre ha-Yamim shel Moshe;* cf. Zunz, *Gottesdienstliche Vorträge der Juden* (Frankfort, 1892), p. 153.

[61] *Realenzyklopädie für protestantische Theologie und Kirche* XX[3] (1908), p. 431.

[62] Goujet, *op. cit.*, pp. 82ff.

[63] Nève, *op. cit.*, p. 87.

[64] Marquardt Gude, *op. cit.*, p. 109; Lefranc, *op. cit.*, p. 116f.

was typical of the general antagonism of the theological faculties of the universities to the new Humanism. As early as the 30th of April a decision of the Sorbonne condemned the instruction at the Collège which is described as *"scandaleux, téméraire, hérétique et entaché du lutheranisme."*[65] It was only the strong protection of the king himself that saved the Collège in the early years of its existence.[66]

On the occasion of the coronation of the king's second wife, Eleanore of Austria, in April 1531 Guidacerius, presenting his commentary on the Sermon on the Mount[67] expressed his opinion on the question of heresy. The study of the sacred language he said, would be advantageous for the refutation of the exegesis of the heretics who misinterpret the Holy Scripture.[57] This must have pleased the king. In Guidacerius' view the Hebrew text was not responsible for the heretical point of view, rather the translation from the original would rectify the heretical exegesis.

A great number of students, interested in this field of learning, registered at the Collège, but later some of them became affiliated with the Reformation movement. The French poet Clement Marot listened to Vatable's courses. Even John Calvin and Etienne Dolet were students at the Collège.[68] The intensified teaching of Hebrew is indicated also by the growing use of the so-called *Alphabetum Hebraicum* booklets, the first Hebrew primers.[69] Seeing the progress of the College, the Sorbonne tried every means to prevent its flourishing. The syndic of the Sorbonne, Noël Béda, who over a period of years had condemned many heretics to death or prison, put forward a charge against four professors at the Collège: Guidacerius, Paradis, Vatable, and Danès. The accusation was based on the

65 Lefranc, p. 122.

66 Allen, *Opus Ep. Erasmi*, IX, Ep. 2449, pp. 182ff.

67 1531 is given as date of publication in *Cat. Brit. Museum* and in J. G. Th. Graesse, *Trésor de livres rares et précieux* III (1922), p. 179. Only the *Bulletin du Bibliophile* described a copy printed in "MDXXX5." It is unlikely that it was printed in 1535 because a passage refers to the marriage of the king with Eleanore of Austria performed secretly in 1530. The coronation, however, was in April 1531; and the figure "MDXXX5" is probably a mistake in copying. Cf. also Michaud, *Biographie Universelle* XII (Paris, 1880), p. 348.

68 *Collège de France 1530-1930*, p. 56.

69 H. Omont, Alphabets Grecs et Hébreux publiés à Paris (Paris, 1885); editions of 1528, 1531, 1533, etc. Cp. Wilhelm Meyer, "Henricus Stephanus über die Regii Typi Graeci", *Abh. d. koenigl. Gesell. d. Wissensch. in Goettingen* New Ser., VI, No. 2 (Berlin, 1902), p. 24, n. 1.

placards announcing the lectures given at the Collège. Thanks to the subsequent trial the text of the placards was preserved, and Agathius' read as follows:[70]

"Agathius Guidacerius, royal professor at the Collège de Cambrai will tomorrow at seven o'clock continue his course of lectures on the 20th Psalm. On Tuesday at two o'clock one of his pupils will expound both the Hebrew alphabet and the grammar of Moses Rinitius.[71] Copies of the latter's work may be obtained for one Bale crown at Christian Wechel's."

On the 15th of January 1534 the royal lecturers appeared before the *cour souveraine.*

The prosecution based their cause on the fact that scholars such as Erasmus and Lefèvre of Étaples would alter the text of the Vulgate which had been recognized for over 1100 years disregarding "certaine règle de la Sainte Escriture." Further Greek and Hebrew books were brought mainly from Germany where they had been printed by Jews who are Lutherans and consequently were suspect although they would declare: *ita habent hebraea.* The court should permit the continuation of the lectures providing the professors would not be allowed to deviate from the accepted translation of the Church and would take care to say nothing in favour of the Lutherans. — The counsel for the defense of the four professors pointed out that they had taught for four years without the slightest suspicion of heresy. Reading of the Hebrew text of the Bible was indispensable because study of Hebrew grammar was not sufficient. He proposed that the members of the theological faculty should be present at the lectures. If they were not able to follow the lessons there could be no point in discussing the meaning of specific passages in the Bible. — The king's procurator maintained that although it was necessary to comprehend *sensum medullarum et mysticum* in order to translate correctly as only theologians were able to do, these professors could be recognized as theologians on account of their knowledge of the sacred language. The pope himself, he said, had permitted the exegesis of the Bible and he reminded the court of the decrees issued by the council of Vienne. — The court admonished the professors to be careful, pending the final judgment of the king, not to contradict the traditions of the Church.[72]

The king was not willing to allow his college to fall under the yoke of a rival institution. The continuation of the instruction proceeded

[70] Lefranc, p. 144.

[71] Probably Moses Kimhi (Kimichius).

[72] *Collège de France 1530-1930.* pp. 45-50: "Ce précieux texte n'a figuré jusqu' à présent que dans l'ouvrage de [César Egasse] Du Boulay, [*Historia Universitatis Parisiensis* . . .] (Paris, 1665-1673), VI, pp. 239-244 aujourd' hui devenue rare."

without restriction. He himself assured liberty for the college since the Council of Parliament abstained from pursuing this trial.

An interesting passage is found in the protocols of this trial. The defender of the royal lecturers remarked: "There is more danger in interpreting the Epistle of Paul for uneducated people than in explaining the Psalms and the Proverbs for learned students." If, indeed, the exegesis on Psalms at the Collège in 1534 seemed harmless its meaning becomes comprehensible only in the light of the events in the second half of this century. In 1541 the former disciple of Vatable, Clement Marot published a French translation of the Psalms. In 1543 an augmented edition appeared with a preface by John Calvin; in the same year another edition was printed by Etienne Dolet at Lyon, and numerous editions followed. Even a retranslation into Hebrew appeared in 1623.[73] Félix Bovet who has made an exhaustive study of the rôle of the Psalms in the Reformation said: "Les psaumes devinrent le drapeau, le symbole et si l'on peut ainsi dire le synonyme de la Réforme."[74] The martyrs went to the stake singing the Psalms and the soldiers sang them when entering the fight.

Guidacerius had no inclination for the Reformation. His commentaries on the Psalms and Canticles, wrote Lefranc[75] who must have read them, do not bear the stamp of the new movement. From his early days at Rome Agathius had emphasized his Catholic loyalty. His remarks about the heretical exegesis in the preface to his commentary on the Sermon on the Mount represented his true convictions, and he did not change his mind even after the trial at which the royal lecturers triumphantly gained their freedom of teaching. Some weeks later at the beginning of April 1534 a contemporary Lutheran reported that

> Jérôme Sallignas, *monachus trilinguis, extra synagogam ejectus et Theologorum,* was preaching at the Louvre. The bishops of Paris and Senlis had a bad reputation for their inclination towards Lutherism, and even Vatable, Danès, and Toussain went daily to listen to his sermon.[76]

[73] Félix Bovet, *Histoire du Psautier des Eglises réformées* (Paris, 1872), p. 305: Methodus SS. Theologiae, autore J. H. Alstedio (Hanoviae, 1623); 4°.

[74] Bovet, p. 123.

[75] Lefranc, p. 181.

[76] Herminjard, *op. cit.,* III (1878), p. 160; *Collège de France,* p. 51.

Guidacerius' absence from the list is significant. His aim seems to have been studying and teaching. His literary activities at Paris are remarkable, for within ten years he published twelve books. His last work, an edition of Kimhi's *Mikhlol* appeared in March 1540. We know that he died in the same year, for in December Guidacerius' estate, by a royal deed of donation, was presented to Guillaume Postel[77] who had been a professor at the Collège since 1538. The property of Agathius had passed into the hands of the king "par droit d'aubaine, à cause que ledit défunt est natif de Calabre et non de ce Royaume et est décédé sans avoir obtenu de nous lettres de naturalité et congé de tester. . . ."[78] The following books were excepted and were to be placed in the royal library:

"Commentarii legis Rabi Mosse Barnachman[79] in quinque libros Mosis, Sephere Satarassin dictionarius Kimichi,[80] grammatica hebrea Rabi Habraham a Balmis,[81] grammatica hebrea manuscripta, vetusta Commentaria quinque magistri Michel, trecenta precepta hebraice grammatice Kimchi manuscripta."

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77 Lefranc, p. 159f; Paul Ravisse, "Un Ex-Libris de Guillaume Postel", *Mélanges offerts à M. Emile Picot* (Paris, 1913), pp. 315-333.

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# THE JEW IN THE TRANSITION FROM GHETTO TO EMANCIPATION

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In attempting a survey of the intellectual and spiritual transformation of the Jew during the so-called Emancipation Period, that epoch when the Jews passed through their greatest economic, social, political, and intellectual changes, it may be noted that this development extended over three generations; the first lived in the time of Moses Mendelssohn's birth, the second witnessed his active life, the third continued and completed his work. The Jews who lived most fully through the experiences of their adaptation to the modern state and to the spirit and culture of their surrounding world, were the German Jews. Only in Germany, in those days, the great and tragic attempt was made to unite the two differing worlds of the Jew and the European. For these reasons, then, most of the following discussion will be limited mainly to Germany whereas other countries will be mentioned only incidentally. At the same time, it must be stated, no uniform type of German Jew can be presented for even a particular period. For instance, the North-German Jew differed in his cultural status and economic prospects from the Jew of South-Germany or southern France; the Ashkenazic Jews born in the ghetto of Frankfurt had a different mode of life from the Sephardic Jews, living in the more cosmopolitan atmosphere of seaports like Hamburg or Bordeaux. The members of ancient, tradition-bound communities like Halberstadt, Fürth, Worms, Mayence, and Avignon, differed from the more progressive inhabitants of the settlements newly formed in Berlin, Halle, Koenigsberg, and Paris. In turn the community and social structure of the latter was completely different from Jewish rural communities found, at that time, along the Rhine and in Westphalia, Pomerania, Baden, the Neumark, Alsace, and in many other provinces. On the other hand, a common Jewish feeling and experience, stemming from the practices of generations, tended to create a recognizable common culture; and this common bond of experience was stronger than provincial differences.

In order to understand the Jew as he is presented in the first half

of the eighteenth century, it is necessary to know the world in which he lived. It was a world in which an enlightened despotism characterized the State, mercantilism the economy, and rationalism was already beginning to supplant the baroque culture of an older era. These factors, interacting upon each other, had already changed the ponderous states of the previous century into the pliable organization of the eighteenth century, in which a hard-working regal official displaced a divine-right monarch in administration. The ruler of the state, in favoring public as against private interests, in suppressing the nobility and in creating a new officialdom, in raising a standing army in place of a mercenary force, and in centralizing the administrative government, dissolved the old ties of society, and substituted new ones in their place in the interests of national state administration.

The Jew, too, found the factors of absolutism, mercantilism, and rationalism acting as powerful reagents upon the ties and bonds of his life. For the first time, the state, by bringing all its subjects into direct relationship with itself, made a place for the Jews in the complicated order of the social structure. No longer were Jews appurtenances of the ruler, "serfs of the Chamber," *Kammerknechte,* but they now became subjects, gradually assimilated into the surrounding world, participating in the prevailing economy. Furthermore, mercantilism which placed the doctrine of the power, of the wealth and the independence of the State in the center of its system, which demanded a large scale money and credit system, flourishing trade, strong industry, the subordination of individual interests of the classes and corporations to the interests of all,[1] encouraged and favored the settlement of Jews; for in them it saw a class living outside society, dependent only upon the ruler, who could be used for commerce and new business enterprises, for army and money supplies, for banking and colonial enterprises, as well as 1or the exchange of mass products and articles of luxury. At the same

1 Wilhelm Roscher, *Geschichte der Nationalökonomik in Deutschland,* (Munich, 1874), pp. 356ff. — Gustav Schmoller, "Studien über die wirtschaftliche Politik Friedrichs des Grossen und Preussens überhaupt", *Schmollers Jahrbuch* VIII, IX, XI. — G. Marchet, *Studien über die Entwicklung der Verwaltungslehre in Deutschland,* (Munich, 1885). — *Hjalmar Schacht, Der theoretische Gehalt des englischen Merkantilismus* (Dissertation; Berlin, 1900). — K. Zielenziger, *Die alten Deutschen Kameralisten* (Jena, 1914). — Georg von Below, *Probleme der Wirtschaftsgeschichte* (Tübingen, 1926). — W. Sombart, *Der moderne Kapitalismus* (Munich, 1928) I 1, pp. 319ff.; I, 2, pp. 533ff.; II, 2, pp. 708ff. — Eli F. Heckscher, *Der Merkantilismus,* translated from the Swedish by G. Mackenroth (Jena, 1932).

time he was entering into a new relationship with the state and its economy, the Jew also discovered that the early rationalistic ideas of the period were making Christian society less inimical toward him than it had been in earlier days.[2]

Just as the prince's policy toward the Jews exhibited tension and contradiction, just as patronage and concessions, rewards and privileges were always followed by restrictions, regulations, and limitations, just as the Jews, except for a few court Jews, bankers and privileged Jews, lived without civil and political rights, just as they were separated by the body tax and other taxes, by restrictions on settlement and migration, from the rest of society, so was the temper of this society, their surrounding world, ambiguous and divided. While one part ushered in a new era of tolerance and humanity,[3] the others were filled with belief in demons and witches, in heresy and sorcery.[4] While, for instance, Christian Thomasius spread the doctrine of natural religion and rejected all ceremonies as superfluous, the Berlin court preacher Jablonsky, discovered the Jewish religion to be in itself a blasphemy because it contradicts God speaking in His own words, and denies and rejects the Saviour of the World.[5] While the social philosophers of the time, the cameralists, believed that it was all the same to trade, whether a Jew or a Christian did the trading, the representatives of a different faction, the traditionalists and anti-capitalists, demanded the exclusion of the Jews from the economy. Following Luther's natural law and the theological-ethical and scholastic theories of the Middle Ages,[6] these theorists saw in the natural organization of "estates" the system in which every class found the work apportioned to it by God and protected by the ruling body. This according to their doctrine, fulfilled the divine law and therefore in the Jew they fought not only the alien of a different faith but also the representative of free initiative and free profession, the bearer of a new economic concept.

2 G. Mehlis, *Lehrbuch der Geschichtsphilosophie* (Berlin, 1915), pp. 411 ff., 672 ff.-
3 Christian Wolff, *Vernünftige Gedanken von dem gesellschaftlichen Leben der Menschen* (Halle, 1721).- Werner Frauendienst, *Christian Wolff als Staatsdenker* (Berlin, 1927).— Emil Utitz, *Christian Wolff* (Halle, 1929).— Max Fleischmann, *Christian Thomasius* (Halle, 1929).
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6 E. Troeltsch, "Die Soziallehren der christlichen Kirchen und Gruppen" in *Gesammelte Schriften* I (Tübingen, 1912).— Max Weber, *Die protestantische Ethik und der Geist des Kapitalismus* (Tübingen, 1934).

The contrasts which characterize the relation of the surrounding world to the Jewish question are to be noticed also in the Jew. While the more favorable economic situation and the incipient integration into the state enhanced their social position, while the pedlar gradually became a trader, the craftsman a manufacturer, the money changer a banker and court purveyor, while contact with the state authorities and municipal magistrates assimilated them with the people of the baroque era in speech and dress, in form and demeanor, still they remained imprisoned spiritually and intellectually in the ghetto. The basis of all intellectual existence was still the science of the Talmud, guarded by the rabbis and scholars, studied and pondered over day after day, taught in the talmudic academies and transmitted to the youths. The Talmud was for the Jews school and university, *Weltanschauung* and science, a mental system and innermost personal experience. It segregated them from the world but guarded the traditional law for them. It was limited and inflexible but, at the same time, it gave them the power of patience, of endurance and of self-denial. It did not allow for reverie and emotion, for one's own search for God and knowledge but it preserved unity and concord of living and held tradition, hallowed by the centuries.

In a certain sense, one can also speak of a historical consciousness of the Jews of that time when one considers their familiarity with the Bible, their vital closeness to all the figures of Israel, their chronicles, memor-books, and legends of suffering. One must also credit them with a certain amount of general education when, for instance, the various encyclopedists of that century are considered: the physician Tobias Cohen, whose encyclopedia proves a wide knowledge of the secular sciences, such as natural science, philosophy, medicine, astronomy and anthropology; Raphael Levi of Hannover who called himself the pupil of Leibniz; and, Meir Neumark who published the Hebrew translation of a German cosmography and mathematical geography; or, the Jewish students of medicine who were permitted at that time to study at Halle, Frankfurt on the Oder, and other universities.[7] Likewise the Jewish laity was not entirely banned from intellectual circles. We know of German-Jewish books deep and sincere, instructive and edifying, as well as

[7] Guido Kisch, *Die Prager Universität und die Juden 1348-1848* (Mährisch-Ostrau, 1935).

uncouth and droll popular books which took material not only from the Holy Writ, but also from German, Indian and Arabian tales. There were books on morals and dreams, volumes of wise sayings, and magical "mirrors" (*Zauberspiegel*), editions of patriotic hymns and Eulenspiegel sayings, poems and songs of punishment, death, pestilence, and fire.[8] There were even a few German-Jewish Bible dramas. This shows what Jews drew from general culture.

Despite all this, the German Jews of that epoch, however, possessed neither a literature nor a science in the true sense. The flexibility, the power of the understanding and adaptation of the Hellenistic Jew, the depth and philosophical speculation of the Spanish, the general education and the high cultural status of the Dutch Jews, the creative fantasy of the Italian, the religious ecstasy of the Polish Jews were completely lacking in them. The spiritual torpidity created under external pressure had not yet passed off. The mathematical, geographical, medical knowledge which the surrounding world imparted, the adaptation and use of the German myths, legends, and plays were merely external collections of material of which a hungry spirit took possession without understanding it intimately and making it an educational experience. The Jews of that time were moved by the controversy between Kabbalah and rabbinism, the struggle between mystical vision and revealed Law, the Sabbathian movement, the struggles within the individual communities, the fortune and end of great Jewish personalities such as Elkan Fränkel of Ansbach, Samuel Oppenheimer in Vienna, Jew Süss in Württemberg. No Jewish writer or speaker, however, has pictured any of this as the Jewish expression of that epoch. The entire feeling of the Jew was bound to religion. Great was the scholar's knowledge; his understanding was sharpened by the halakic *pilpul,* by dialectics and casuistics, but his scholarliness dispensed with the boldness of speculation and the freedom of research. They did not wish to penetrate into the language, they wanted to preserve the word; they did not wish to comprehend their existence, but to regulate and ennoble life through the traditional doctrine; they did not wish to recognize the laws of the universe, but to proclaim the power and glory of God.

[8] M. Steinschneider, "Jüdische Literatur" in Ersch und Gruber, *Allgemeine Encyclopaedie* II, 27, pp. 357ff. — Steinschneider, "Über die Volksliteratur der Juden," *Archiv für Literaturgeschichte* II (1872), pp. 11 ff. — M. Grünbaum, *Jüdischdeutsche Chrestomathie* (Leipzig, 1882).

The cultural difference between the Jew of that time and his environment is recognized only when it is realized what problems that century dealt with. The finest example lies in the science of history because it reveals best the gulf between the two cultures. General historiography was freed of all teleology; it became politically speculative, pragmatic and rational in that it critically analyzed the causes and results of historical events and linked them logically with one another. Jewish historiography on the contrary, still lived completely in the biblical conception of the kingdom of God. The past was not an end in itself for it, nor was it significant in understanding the present. It possessed value only with regard to the future, its only purpose was to prepare for the Messianic Empire. Historical events, personalities, and details were of no interest for it, since they were not explanatory as to the interdependence of cause and effect but were explainable only as parables to reveal the splendor and power of God on earth. The causes of all suffering and persecution which the Jewish people had undergone were neither described and explained rationally, nor had they historically been brought into relationship with general developments. Martyrdom was rather considered as a great mission which Israel, God's servant, has voluntarily assumed in order to redeem itself and all other peoples.

If the Jews of that time lacked intellectually a general worldly and humanly free educational ideal, which the Renaissance and Humanism had created, and Enlightenment was to complete, still they revealed sociologically and psychologically a status which, in their attachment to social and religious regulations, recalls the Middle Ages. The characteristics of the ghetto-Jew lay in the strength of his community experiences and his community conscience, in the collective feeling of obligation and responsibility, to which the individual's conscience and the individual experience was secondary. The individual was absorbed by the community; the norms and observances, laws and customs, prescribed by it, defined the path and the direction of its members and left no room for personal development or individual freedom. All accomplishments of a political, intellectual, spiritual nature were accomplishments of the community. Its organization made one person responsible for the other, made the community answerable and obligated for each individual. Thereby that spirit of solidarity was created which filled every member

with the same will, the same interests, the same devotedness. Only membership in the community gave the individual dignity, respect, and importance, made possible the practice of his profession, the fulfillment of his religious duties, the preservation of his existence. The knowledge of being a member of a large and famed community gave even the most insignificant individual consciousness of self and strength and something of the splendor which surrounded this community. Whoever drew away from the community simply withdrew from Judaism, lost the meaning of his life, the basis of his existence. In the same way there were no isolated intellectual accomplishments. Worship of God made the community necessary, study of the Talmud required question and answer, demanded teachers and pupils, the rabbi needed a congregation. Even the great intellectual movements of the time, mysticism and hasidism, were mass movements in which the ecstasies, desires, dreams and emotions of the masses played as important a role as the individual creative thoughts and the religious consecration of their leaders. Indeed, the maggid and prophet found effect and significance only through the mystical bond with the masses, through the suggestive power of those who led them.

For the same reason, that era knew hardly a single personal poem, a single confession of the soul, an expression of subjective sorrows and joys. The songs, legends, tales, and plays, like the folk songs, spread from mouth to mouth, from generation to generation without the names of their composers, their lives or their fate being known. If the essence of modern man consists in that he develops his personality in accordance with individual laws, and claims the right of forming his own life freely, then the ghetto did not know of such a man. The period of emancipation only was to develop this type.

A further medieval characteristic was the social structure of the Jewish community. Despite all ties of race, sentiment and faith, the Jewish community was similar to the Christian, split up into several classes strictly separated from each other, into a patrician class, a middle, and a lower class. In the patrician group were included the old established families with special charters of protection, like the Viennese exiles admitted into Berlin in 1670 or the old families living for generations in Cleve, Halberstadt, Fürth, or Frankfurt. Moreover, the very wealthy Jews, the court purveyors, the *Fak-*

*toren* and agents, the financiers, the bankers, the manufacturers, and doctors also belonged to this group. Its most important and respected group, however, were the scholars, the rabbis, the Talmud teachers and students. There existed, so to speak, an aristocracy by birth, a monied and an intellectual class. The Jewish patrician class possessed the typical class characteristics of the patricians of all times; a pronounced feeling for their dignity and honor, an expression of solidarity when one of its members was threatened; an attitude of exclusiveness and distinction; and, a feeling for form and grandeur; but it also exhibited spite, arrogance, consciousness of power, and conservatism of opinion. Contrary to other aristocracies, among the Jewish patricians, neither birth nor wealth alone were of decisive importance. The truly aristocratic Jews had to possess talmudic education and religious learning, had to prove their superiority through their conduct of life and ethical behavior, by the purity of their ethics, and the preservation of tradition. Typical representatives of the Jewish patrician class were neither Jew Süss in Württemberg nor Elkan Fränkel in Fürth[9] who amassed wealth out of ambition and their desire for power and thereby won worldly honors. The true representatives of the Jewish patricians were men like Gumperts in Cleve,[10] Berend Lehmann in Halberstadt,[11] Moses Benjamin Wolf[12] in Dessau, or Samson Wertheimer in Vienna.[13] Such men founded houses of learning, published Hebrew books and made possible an untroubled existence for years for many scholars while they calmly and soberly carried on their banking business, carried out diplomatic actions, and administered their office as representatives of the Jewish community.

In contrast to the gulf between the patricians and the middle class, there was no great difference in the social relationship between the middle and lower class. The only thing that separated the latter from the middle class, which consisted of merchants, traders, community officers, and craftsmen, was the greater poverty, the greater

[9] S. Haenle, *Geschichte der Juden im ehemaligen Fürstentum Ansbach* (Ansbach, 1867), pp. 73-80.

[10] David Kaufmann and Max Freudenthal, *Die Familie Gomperz* (Frankfurt a. M., 1907), pp. 18-77. — Fritz Baer, *Das Protokollbuch der Landjudenschaft des Herzogtums Cleve* (Berlin, 1922).

[11] Guido Kisch, "Die Anfänge der jüdischen Gemeinde zu Halle," *Jahrbuch Sachsen und Anhalt* IV (Magdeburg, 1928), p. 145 note 32.

[12] Max Freudenthal, *Aus der Heimat Moses Mendelssohns* (Berlin, 1900).

[13] David Kaufmann, *Samson Wertheimer, der Oberhoffaktor und Landesrabbiner* (Vienna, 1888).

deprivation of rights, and lack of independence. This class possessed the typical characteristics of a group oppressed by the surrounding world, ruled by a superior class, living under limited and even poor conditions, restricted to only a few occupations. If the community records of that century are filled with endless charges, suspicions, intrigues and strife of one against the other, if the lower class rebelled against the patricians, the unprivileged (*Unvergleitete*) against the privileged (*Vergleitete*), and the entire community opposed the newly accepted or successful Jew, we do not have to go far to find the reason. Behind this contentiousness, this selfishness and fear of competition was the need for release and change of a community spiritually cramped by centuries of persecution. Because the surrounding world did not recognize them, they had to try to bring about recognition themselves, for themselves. Because they were always considered inferior, they had to elevate their own feelings of inferiority to self-consciousness and arrogance. Because the injustice suffered could not be transformed into creativeness and accomplishment, into research and action, salvation remained denied to them.

Thus, within those political, social, and economic transitions from the Middle Ages to modern times, the Jew too represents a transitory type, a connecting link between ghetto dweller and emancipated Jew, between the religious type of the Middle Ages and the rational Jew of the modern era. While, as an active factor in economic life, he recognized the demands of his time and even became the pathfinder of the mercantilist system and the capitalistic world, still he lacked the compulsion to penetrate his surrounding world and come to an understanding with its spiritual and intellectual forces.

Only about fifty years lie between this generation and the generation of the era of Emancipation. But this period witnessed a complete change in the nature of Jewish man. It was not a self-initiated, nor a Jewish-founded movement of the Jews that was decisive in this change; it was rather extra-Jewish events and developments in the political, social, economic realms and, above all, the intellectual transformations in the surrounding world. The rough and ruthless military state of the beginning eighteenth century became, under the influence of the ideas of Enlightenment, the humanitarian and cultural state of the later eighteenth century which, as Frederick the Great said, was to have sympathy with the weaknesses of man and

humanity for all. Since "the interests of the state no longer found it necessary to use the religious unity of the subjects as a clamp upon the obedience of its subjects," the state could become more ethical and liberal. The prince, who designated himself now as the first servant of his state, considered the improvement of his subjects, their liberation from prejudice and superstition, the unloosing of their spiritual and intellectual powers, as the greatest task of a ruler. He sought to remove the Jews from one-sided trading, to teach them handicrafts and farming, to assimilate them with their surrounding world in speech, education, and instruction.

Along with this change in the state came a change in the social, intellectual and spiritual structure of society, all of which, in turn, changed the theoretical conception about the Jew. If free reason suppressed superstition, then also the conviction disappeared that this wicked, unbelieving sect was to blame for every misfortune of the princes and the peoples. No longer could one maintain that Jews poisoned the wells, desecrated the hosts, and caused pestilence. If one preaches the doctrine, as does Kant, that man is indeed profane, but that humanity is sacred within him, then one could not offend this humanity by deriding and persecuting one of its members. In the name of nature the court justice, Gossler, in his *Versuch über das Volk* (1786) demanded the "civic improvement" of the Jews; in the name of politics Baron von Hardenberg postulated the alleviation of the sad lot of this unfortunate people; in the name of humanity, justice and enlightened politics the state councillor, Wilhelm Dohm, desired to better the condition of the Jews.[14] Contemporary pedagogic thought became even more significant than these general philosophical ideas. The separate ideas of Rousseau, Pestalozzi, Campe, Basedow, and Kant all quickened the desire to liberate the most oppressed and abased section of the population from its segregated status and, through education and culture, guide it to "humanity." The supposed characteristics with which the Jews were reproached, such as their alleged greed, desire for litigation, religious fanaticism, and "unsocial separation from the rest of mankind" were to be eradicated by Enlightenment; they were to be-

14 Christian Wilhelm Dohm, *Ueber die bürgerliche Verbesserung der Juden* (Berlin and Stettin, 1781). — Willy Cohn, "Christian Wilhelm von Dohm," *ZGJD.* I (1929), p. 255 note 1. — A. Eckstein, "Hardenberg und die Frage der Judenemanzipation in den preussisch-fränkischen Fürstentümern," *Festschrift für Martin Philippson* (Leipzig, 1916), pp. 267-274.

come a respected part of mankind by liberation from the chains of orthodoxy and the Talmud.

The ideas of the physiocrats on the right of man to possession, to a favorable status and existence, to profession and freedom of trade, above all, though, the idea of the educational and economic significance of farming—this played as equally great a role as did the pedagogic reforms. If, according to the doctrine of the physiocrats, the peasant was alone the productive power in the state, and trade was harmful and unfruitful, then they had to attempt to discourage a class of people from trade who, until now, had had trading as practically their only occupation. If trade corrupted character then the merchant was not to blame for this but the occupation itself. If merely contact with the earth made one naturally free, then those had to be filled with the blessings of the earth who, heretofore, had stood furthest from nature.

How then did these social philosophies affect the Jews? How did the problematical type of the Enlightenment arise from the medieval religiously and intellectually cloistered Jew of the ghetto? How did the autonomous individual of modern times, developing freely according to his own laws, arise from the man bound to tradition and his clan, born into his profession, customs, and ideology?

For Mendelssohn's generation it was possible to accomplish this transition without internal rupture or tragic compromise. It accomplished what no other generation had done before it and no other generation was to do after it: the synthesis of Judaism and European culture, harmony between Jewish religion and the religion of reason. Moses Mendelssohn and his friends joined their general worldly and human ideals with the values of their traditional Judaism, they freed themselves from the bonds and regulations of the ghetto, and could still remain loyal to their ancestral religion. This was possible because their demands for civil, social, and economic equality were in harmony with the literary, pedagogic, and philosophic ideas of their age. The belief of their century that one could orientate oneself in concepts and principles and live one's life in accordance with general laws and norms, that one could form anew the state, society, man himself, on the basis of eternally valid truths established by human reason, convinced Mendelssohn and his circle also that a purer better Jewish man could be formed through education and enlightenment. The unhistoric sense of the period

which did not recognize organic development, which denied the man individualized through speech, region, nation, race, and culture, and which placed a universal man in his stead, led them also to replace the Jew, isolated and differentiated through destiny and history, with a Jew who was the same at all times and in all countries, in all classes and all ranks. The attitude of this generation toward emancipation is to be understood from this universal and anthropological trend of the age. Emancipation was important for them not so much from the political and economic as from the ideological point of view, not so much as a question of the Jew as a question of mankind. In that they protected a persecuted and oppressed part of mankind, they protected humanity itself and restored its dignity and honor. This generation did not demand the liberation of the Jews because injustice had been done, but because it represented the great ideas of its century: toleration, humanity, reason, freedom of thought and conscience, the necessity of tolerating all faiths within the same state.

In this agreement between the spirit of the age and Jewish demands, lies the inner reason why the first generation of the Emancipation appears so harmonious and complete in itself, why its representatives, such as Wessely, Euchel, Marcus Herz, Homberg were at the same time good philosophers and talmudists, upright Jews and enlighteners. Naturally, even this generation was not without enemies. But, in case of compulsion to defend Judaism, as did Mendelssohn in his disputation with Lavater, such a dispute could be held with the surety and firmness which deeply experienced Judaism and profound Jewish learning offered. As joyfully as they had accepted European education, as proudly did they place Judaism, which had remained a completely independent force for this generation next to the new values. The original experience of Jewish religion stood equal with the educational experience of European culture. Both elements were consistent and compatible for this generation without discord or conflict. They considered it quite natural to read Maimonides as thoroughly as Kant, to criticize modern literature and publish a Hebrew journal, to translate Gessner's Idylls into Hebrew and the book of Job into German.

This simple solution of the Jewish question was denied to the following epoch, to the generation of Romanticism. Mendelssohn could combine the Jewish religion with the religion of reason, the

Jewish truths with the eternal truths. But now, it was no longer possible to harmonize the Jewish concept of God with the concept of Romanticism or to establish unity between the Judaism of the Enlightenment based on universal laws of reason and Schleiermacher's own particular Christianity, which "no longer had anything to do with reason." For Romanticism which recognized the development of the national spirit, the *Volksgeist* in tale and legend, in myth and history, and searched for the unique in every phenomenon, characterized through language, region, nation, race, clan, and state, law and custom, the essence of Judaism was equally a distinct element almost incompatible with the special nature of Germanism. If like Achim von Arnim, one saw in the partaking of the common past a motive for unity binding all classes of the people, or if like Adam Müller, one considered the *Volk* as the magnificent society of the long series of past, present and future generations, then there was no place in this society for the Jews. Likewise, the Christian-German state following upon absolutism, hoped for the moral-religious revival of true Christianity; the German student body, the *Burschenschaft,* felt itself to be the new Christian knighthood destined to wipe out all non-Christian elements. This society was in its nature to tolerate neither the Jewish official nor the Jewish officer within its closed and exclusive ranks.[15]

Romanticism, of course, agreed with the Enlightenment in the demand for civil and social equality of the Jews with the Christians; but this equality was dependent upon conditions of which the Enlightenment did not as yet know or no longer knew. They were prepared to recognize the Jews as human beings, but they were not yet ready to integrate them as Jews in the state. If the truly ethical life among Christian peoples could be only a Christian life, then the Jewish question could be solved only by compelling the Jewish community to accept the faith of the Christian community. It was a continually preached doctrine that the idea of the Christian nation is incompatible with the idea of the Jewish nation, that the Jews could fit into the life, the customs, and the order of the Christian state only after they had laid aside their nationality identified with their faith.

15 H. von Sybel, "Die christlich-germanische Staatslehre," in *Kleine Schriften* I (1852). — W. Roscher, "Die romantische Schule der Nationalökonomik in Deutschland," *Z. f. d. gesammte Staatswissenschaft* XXVI (1870). — E. Dietz, *Die deutsche Burschenschaft in Heidelberg* (1894). — G. Seidler-Schmid, "Adam Müller," *Z. f.*

How did the German Jews answer these suggestions of the Christian society, linked with attacks on rabbinism and the Talmud, on the economic, moral and social behavior of the Jews, which found vigorous expression in the Hep-Hep movement of 1819?[16] What impression did the sudden change of ideology have on a community which saw the coming of a Messianic Empire in the attainment of political freedom and civil rights?

When one reads the writings, the memoirs and letters of the first post-Mendelssohnian generation, one gains the impression that most of them did not grasp or understand the changed mood of the era. The first generation of the Emancipation could stand together in a closely knit comradeship because of the similarity of their *Weltanschauung.* The title, *ha-Measef* ("The Collector") of their first periodical signified the harmony of their ideals, the unity of their will. The following generation, however, estranged from Judaism, overpowered by strange new forces of education, split up into various groups and had to travel different paths in order to study the problem of Jewish existence, now grown unintelligible to them.

The first group includes those enthusiasts aroused by German culture, whose character was no longer formed by Judaism but by the education and influence of their surrounding world. It made no difference whether they, like Rachel Varnhagen, Dorothea Schlegel, and Heinrich Heine, exchanged the Synagogue for the Church or, like Michael Beer, remained Jews. Common to them all was the emotional experience of the classical and romantic literature before which Judaism sank into unreality. This surrender had been so unlimited, the feeling of being liberated from the long suppression so upsetting and overpowering that they considered the Jewish storm of 1819 as the greatest humiliation of their existence. The disappointed love betrayed and hurt in its strongest and purest sentiment, withdrew behind its walls with a bitter resentment toward mankind and found merely sufficient power to cry out against the

*Volkswirtschaft und Sozialpolitik,* N. F. II (1922). — J. Baxa, *Einführung in die romantische Staatswissenschaft* (Vienna, 1923). — J. Baxa, "Adam Müller," *Z. f. gesamte* Staatswissenschaft 1929. — F. Scheuer, *Burschenschaft und Judenfrage* (Berlin, 1927). — A. Rapp, "Deutscher romantischer Geist in verschiedenen politischen Lagern," *Aus Politik und Geschichte, Gedächtnisschrift für Georg von Below* (Berlin, 1928).

16 See bibliography concerning the second antisemitic movement in Germany in V. Eichstädt, *Bibliographie zur Geschichte der Judenfrage* I (Hamburg, 1938), pp. 49-57.

thousands of years old suffering in melancholy melodies or to bewail the sad martyrdom of a pitiless fate in quiet elegies.

This group which, suffering and self-tormenting, experienced the great Jewish sorrows and swayed precariously between Germanism and Judaism, was opposed by a second group that left Judaism without internal rupture and made the decision in favor of Germanism and Christianity. Their literary leaders, Friedrich Julius Stahl and David August Neander, are merely the most talented exponents of a faction in which varied elements and characters are met. Protestant Christianity transformed their nature, dominated their existence, fired their scientific and public activity. Even if their strict, sometimes stubborn faith (as with Stahl) were the heritage of their ancestors faithful to the Law, still their personal dissociation from their own people was irrevocable, once and for all. It occurred in the conviction that "Christianity is the political faith of the century," that Judaism fulfilled its task after it had spread the belief in the one God and had presented Christ to the world.

While the first group experienced Judaism as a sorrowful fate, and the second suppressed it out of its existence, it was honestly affirmed by a third group and heatedly protected against the attacks of the surrounding world. Whereas the first two groups bowed before the new powers of the time and recognized their force, the protectors of Judaism attempted to solve the question in that they negated the modern ideas. Since they could not bring their faith into harmony either with the doctrine of the German-Christian state nor with the contemporary philosophical systems, they rejected them as blind fanaticism, as a new mystic poetic politics, as the unimportant fantasy of a few professors and writers unacquainted with mankind and the world, filled with the Jacobinic spirit.[17] Their weapons against the new ideas were borrowed from the ideology of the Enlightenment. Judaism, with which they countered the doctrine of the German-Christian state, was the natural law, the moral philosophy of Moses Mendelssohn; their God was the only God, the highest ideal of the love and virtue of deism, their religion was the religion of rationalism. This group of protectors included the theoreticians of Jewish reform who also were rooted

[17] See *op. cit.* (supra, note 16), under M. Hess, J. Weil, S. Zimmern, J. Wolf and G. Salomon.

in the Enlightenment and sought to find a solution by way of compromise. This compromise consisted in denying their own nationality as the state desired, in negating the century old Jewish tradition, rejecting their common Jewish origin and heritage, their common laws, the community life and the common language, in putting aside their old national characteristics, in fitting the entire ritual and the ceremonies into the forms of worship of their surrounding world and making the religion which had governed and permeated the lives of their ancestors merely a Jewish religious doctrine, an ethical *Weltanschauung*.[18]

The ideas of a fourth group whose representative is Ludwig Börne, took still a different direction. Its members were indifferent, strange, even inimical to Judaism, but they took it under their protection out of a deep feeling for human rights. Their struggle was not so much concerned with the liberation of their co-religionists as with the political and civil emancipation of German society, which, in their opinion, was closely linked to Jewish Emancipation.[19]

In contrast to the tired resignation of the *Weltschmerz* group and the naïve policy of compromise by the reformers, a fifth group borne by holy enthusiasm and a powerful clear will sought to investigate scientifically not only Judaism as an idea but the Jew in his actual life, his attitudes toward mankind, religion, the community, the state, the past and the future, in order to lift the misunderstanding which existed, according to Moses Moser, between the culture of the Jewish nation and the State. They were the men of the Berlin *Kulturverein* including Hillmar, List, Auerbach, Jost, Zunz, Gans, and Moser, who in 1819, in answer to the Hep-Hep movement, founded the "Society for the Culture and Science of the Jews." Reared in German idealism and modern historical science, it was no longer possible for these men like the reformers to eliminate religion from the concept of Judaism and to stabilize it merely as an ethical *Weltanschauung,* much less to identify Judaism with the dogma and the laws of orthodoxy. They recognized the individuality and character of each *Volkstum* and, therefore, considered Judaism as whole in itself, as inseparable and living. As List once vaguely defined it, a permanent and solitary phenomenon, an awareness that we exist,

18 Max Wiener, *Jüdische Religion im Zeitalter der Emanzipation* (Berlin, 1933).
19 Ludwig Börne, "Der ewige Jude," in *Die Wage* (1821), pp. 1-39.

a force to preserve ourselves, a consciousness of an eternal inner life which the perishable life outside cannot do away with.[20]

To penetrate into this living internal principle was to be the task of *Wissenschaft des Judentums,* the science of Judaism, by which was meant not only the investigation of all the characteristics and accomplishments of the Jews in relation to religion, philosophy, history, law, literature and civil life, but also the inquiry into the influence of the ideas of Judaism on the development of human spirit. This was not to be a matter of science for the sake of science alone. The investigation of the past was to serve in filling a tired and discouraged generation with new pride in its literature, its heroes and prophets, and in forming the ancient cultural heritage into a creative element of Jewish life. At the same time, it was to enlighten an inimical world on the basic religious idea of Judaism in which the universal spirit was once revealed as it had been in Hellenism and Christianity; it should point out the possibility of deciding on the value or non-value of the Jews, on their fitness or unfitness to be awarded equality and equal rights.

Science of Judaism had still a third task to fulfill. It was to solve the problem over which the generation of those days fought most bitterly: the complete acceptance of and surrender to the surrounding world versus the self-preservation and with that, the separation and segregation from it. If science, as this enthusiastic period now becoming conscious of its spirit believed, was the true and only bearer of truth, the mediator of inimical worlds, the reconciler of all conflicts and disputes, then it alone was, at the same time, in a position to unite the special and segregated with the common, the individual with mankind, the nation with the world. This role played by science in the conception of this era could also offer it the possibility to make Judaism conscious of itself and reconcile it with its surrounding world, enrich the European organism with the Jewish idea without compelling the Jews to deny their own individuality and nature.

It would be interesting to follow further the transformation in the Jew, to study how the state, the social, the communal, and economic changes and the religious, intellectual, and national move-

[20] *Zeitschrift für die Wissenschaft des Judentums* I (Berlin, 1823). — S. Ucko, "Geistesgeschichtliche Grundlagen der Wissenschaft des Judentums (Motive des Kulturvereins von 1819)," *ZGJD.* V (1934), pp. 1-34.

ments in the nineteenth and twentieth centuries further formed and molded him, till finally the modern Jew had nothing more in common with the Jew of the Ghetto beyond certain features and gestures. Such a study, however, goes far beyond the limits of this essay. Our task was merely to depict the Jew during a period of transition which stirred him deeply and compelled him to clarify for himself the complex occurrences in his existence and his history. At the same time, we wished to describe how through the changes in history, new and till then unknown Jewish types arose which fled from the ghetto along different paths and with different goals without being able to escape their immutable and tragic fate.

## BOOK REVIEWS

Oskar Wolfsberg, *Zur Zeit-und Geistesgeschichte des Judentums.* Verlag "Die Gestaltung." Zurich, 1938. 295 pp.

The author who, throughout his life as a busy practitioner of medicine, had extensively read and thought about the basic problems of Judaism and its manifestations in the modern world and occasionally published a thought-provoking essay on one or another phase of this ramified subject—his appreciation of a revered master, Anton Nobel of Frankfort, written in 1929, comes most readily to one's mind—has utilized the Nazi-enforced leisure during the period of his settlement in Palestine to put down on paper the results of his studies. That the personal experiences during these eventful years, equally eventful for his people and mankind at large, likewise colored this new presentation of the intellectual history of the Jews during the last generations goes without saying. The result has been a sincere, well-written and often stimulating monograph which will deserve a place in the extensive, but far from penetrating, literature on modern Jewish history.

After a lengthy introduction devoted to a philosophic discussion of the fundamentals of history as a science and of the peculiarities of Jewish history—an introduction which could profitably have been shortened and better integrated with the subsequent presentation—the author analyzes in three extensive chapters the fundamental trends in the period of Enlightenment, the conflict between the hasidic and the mitnagdic movements, and the more recent clashes between Reform and Orthodoxy. The last of these chapters is amplified by a brief sketch of the rise of the "science of Judaism."

The volume concludes with a general analysis of assimilation and Jewish nationalism both in regard to their position in modern Jewish history and to their contemporary significance. The entire work is written with a valiant attempt at objectivity, even though the author's personal bias, his "national-religious approach," unmistakably comes to the fore on almost every page. The reader, however, clearly forewarned on this score in the preface, has no legitimate cause for complaint of any unfair treatment of views uncongenial to those of the author or of their leading exponents. It was perhaps in the very nature of the dynamic trends in modern Jewish history that he was forced to assign much space to the description of personalities and ideologies, unsympathetic to his own point of view.

In its entirety, however, even including the relatively most substantial chapter III, the work is rather disappointing. There is, for example, the geographic limitation to developments in the German and East European areas to which we have long been accustomed in the literature emanating from those regions. Even in a book having in its title the characteristic reservation "zur," an analysis of modern Jewish trends without the mention of a Benamozegh and a Salvador or of any of the developments in the Anglo-Saxon countries—though complete silence cannot be definitely ascertained in view of the unfortunate absence of an index—will of necessity remain lop-sided. More serious is the author's evident failure to make a fresh and independent reworking of the vast extant source material. In both his factual information and interpretation he is much too dependent upon his well-known predecessors, including Dubnow, whom he criticizes on more than one occasion, but beyond whose methodological and factual approach he is unable to reach. Despite quite a few happy formulations and the general felicitous use of the customary German philosophic verbiage, the author does not seem to have advanced our knowledge to any significant extent. The intellectual history of the Jewish people in modern times, even that of modern German as well as East European Orthodoxy which are closest to Dr. Wolfsberg's heart, are still awaiting their truly penetrating as well as comprehensive investigator.

Columbia University. *Salo W. Baron.*

Raphael Straus, *Regensburg and Augsburg.* (Translated from the German by Felix N. Gerson). The Jewish Publication Society of America. Philadelphia, 1939. X + 261 pp.

Adolf Kober, *Cologne.* (Translated from the German by Solomon Grayzel.) The Jewish Publication Society of America. Philadelphia, 1940. XIII + 412 pp.

The authors of both monographs under review have proved their competence through profound researches and studies of the source material concerning two of the oldest communities in Germany. The early existence of an organized Jewish community in Cologne is confirmed by the edicts of Emperor Constantine the Great. Of Regensburg we know only that the Jewish quarter from the beginning up to the expulsion (1519) was "situated in the line of the main thoroughfare where this extends toward the barracks." In both cities the Jewish quarter during the Middle Ages was within the old Roman walls. Dr. Kober, like all historians, takes it for granted that Jews had lived there since the Roman period. Dr. Straus believes that Jews could not have settled in that part of Regensburg before the Roman barracks had been evacuated, without being able to show why and by whom later, when Christians held the city under control, the Jews were located at such a favorable place. Since the documentary evidence is sparse, one has to consider the facts of topography.

Since Dr. Straus starts his history of the Jews in Regensburg at the period covered by the documents, he does not discuss Eugen Täubler's hypothesis concerning a privilege granted by Emperor Henry IV about 1090 to the Jews of Regensburg as well as to those of Speyer and Worms. At the time he wrote the present volume, Straus expected that the rich source material he had collected and examined would one day appear in print. Unfortunately, this was not the case, and a main support of his references is missing. The nature of the source material influenced Straus in becoming mainly interested in the problem of the equilibrium of the different rulers or pretenders of sovereignty over the city of Regensburg and her Jewry. He prefers reasoning about these problems to stating historical facts and, while his method may interest scholars, it will not satisfy the ordinary reader's needs. One has the impression that the author shuns to give concrete facts or plastic utterances out of real life. Such details had vivified the picture and maybe filled the volume without bringing in the communities of Augsburg and Munich in a secondary rank. There is no illustration of either community. The present writer cannot find that the volume has gained through the "Comparative View" in the chapters II-V (pp. 9-86). The development was altogether different in Regensburg and in Augsburg—not to say Munich—and comparable documentary materials are lacking. We possess, for instance, no special reference about the legal conditions of Augsburg's Jewry prior to 1276 when the municipal law regulated Jewish affairs (p. 26). The comparison between the medieval rabbinical schools of Augsburg and Regensburg is not very happy either, because we know nothing of those of Augsburg before 1350 (p. 69 ff.). The author does not mention that a certain sophisticated method of Tal-

mud-interpretation was called after Regensburg, while another was named after Augsburg. It is probably an error of the translator that Isaac Halaban (p. 53) is mentioned as "the Wise" instead of "the White," while the author is in error in saying that Antonius Margherita (p. 68 f.) was a son of the Regensburg rabbi Jacob Margolis instead of a grandson of the Nuremberg rabbi of the same name. The reader welcomes the chronological presentation of the 'Communal Developments' separated for Regensburg (p. 87) and Augsburg (p. 171). The discussion of the economic activities is very useful, especially the analysis of the Jewish money lending business (pp. 38-43), which is explained in detail. But, in that connection, the author uses conceptions like "cancellation of debts" (p. 33), "ecclesiastic reform synods" (p. 35) as popular notions and forgets that the average reader is not quite familiar with these topics. Dr. Kober commits the same error when he cites Cardanus or Ludwig Mathar or Vogts (Kober, p. 115, 117) without explaining the reference in a note or in the bibliography.

Kober's presentation, in general, is absolutely clear and illuminating. It is amazing what an amount of erudition and exactness is deposited in his volume on Cologne in the text and even more in the notes, (pp. 351-386), some of which are almost complete chapters. Especially valuable is note 42 on the expulsion, note 12 on the "Jewish bishops," notes 19-24, 45-62, 79-86b, on rabbis, scholars, scribes of Cologne (note 65, however, is not clear). There is probably no available document or fact which the author has not seen and examined, although sometimes one would like to read more about the dynamic ideas and everyday life of a certain period and dispose of the numerous details. No name, no date, no title, no honor is spared, even when they are not of first rank importance. Everyone familiar with Cologne and the Rhineland will find this book filled with details and reminders of an historic, and, at times, great past. Readers may well consider this volume as a monument to the old congregation which ten years ago was still flourishing and is now gradually declining.

We put down the present volumes voicing again Dr. Kober's anguished question whether these communities will once again rise from the ashes!

New York City. *Ismar Elbogen.*

Beryl Smalley, *Hebrew Scholarship Among Christians in XIII th Century England as Illustrated by Some Hebrew-Latin Psalters.* Shapiro, Valentine and Co. London, 1939. 18 pp.

B. Smalley, "Andrew of St. Victor, Abbot of Wigmore: A Twelfth Century Hebraist." Reprinted from *Recherches de Theologie ancienne et médiévale.* Louvain, 1938. Vol. X, pp. 358-373.

Miss Smalley treats the evidences of Hebrew scholarship among Christians of the twelfth and thirteenth centuries not as episodes, or as biblical exercises for their day, but as scenes in acts of a long drama. The whole line of investigation as represented by these studies is praiseworthy, and to many of us, who now for some years have felt and foreseen the growth of this field of study, it is also significant and to be appreciated.

In the first study, the author begins by pointing out that the Church Fathers, notably St. Jerome, set an example to the Christian scholars of the later Middle Ages as to the correct approach to the study of the Old Testament: it ought to be studied in the original Hebrew, and it ought to be understood with the help of Jews who are capable of relating what the Jews themselves said about the Bible throughout all the centuries of Jewish exegetical treatment of the Scriptures. Had Miss Smalley gone somewhat deeper in her already wide comprehension of this field, she might have pointed out in a brief statement that there lay in the Christian Fathers the content of Jewish ideology and methodology which had, already in the New Testament, been incorporated into Christian method. Isaac Hirsch Weiss, in his great history of Jewish tradition, *Dor Dor ve-Dorshav* (Wilna, 1910; III$^{5}$, 115), makes a significant observation upon the continuity between the New Testament writers and the Church Fathers as seen in their common use of the Jewish midrashic material and method. He points out that in adopting the methodology of the Jewish Sages, in order to apply it to their own commentaries, the Fathers were really treading the paths of the writers of the Gospels and were accepting the methods already established by the Gospels and Epistles of the New Testament. The writings of the New Testament reveal that the authors remained within the sphere and mode of Jewish *midrash* in that their concepts of the Old Testament Scriptures remained close to the spirit of Palestinian hermeneutics. The Fathers *continued* the same pedagogic. This suggestion of the present reviewer though a detail seems pertinent in the light of the spirit of *historical continuity* which otherwise characterizes Miss Smalley's studies.

The Hebrew-Latin Psalters which Miss Smalley describes are part of the history and procedure of the *Correctoria* of the thirteenth century. They "form part of a literal Latin translation from the Hebrew, for most of the Old Testament, which survives in English libraries." The interlinear translation is "superscribed" in these Psalters so that the Latin words come exactly over their Hebrew equivalents. And here again, the work of St. Jerome, which cast a long shadow across the centuries, had also a definite effect. It is not well enough recognized how widely, and for how long, an interest in *textual criticism* in the Middle Ages was stimulated by the existence of Jerome's three successive versions of the Psalter:—(1) his re-

vision of the *Itala*, called the *Psalterium Romanum* (used until the time of Pius V, 1504-1572), (2) the version founded on Origen's *Hexapla*, known as the *Psalterium Gallicanum*, and (3) his rendering of the Hebrew original. Miss Smalley's description and analysis of four MSS. is done carefully, and with sound philological and historical insight. This published study contains four interesting photographic reproductions of pages of the MSS. which Miss Smalley used to illustrate her lecture, and which help to establish the literary evidence for the originality of these Hebrew-Latin Psalters.

One does not understand precisely what the author means in her statement: "St. Augustine hallowed the teaching of St. Jerome by recommending the study of Hebrew in his *De Doctrina Christiana*" (pp. 1 f.). Even as late as the time of the *De Civitate Dei*, St. Augustine still maintained his position as to the primary authority of the Septuagint. (See edition of B. Dombart,-Leipzig, 1905,-Lib. XVIII, Vol. II,[3] pp. 320ff.). And in a letter written to St. Jerome, about three years before St. Augustine began his *De Doctrina Christiana*, St. Augustine writes: "For my own part I cannot sufficiently express my wonder that anything should at this date be found in the Hebrew MSS. which escaped so many translators perfectly acquainted with the language." (See J. Schmid, *S. S. Eusebii Hieronymi et Aurelii Augustini Epistulae Mutuae*,-Bonn, 1930,-pp. 28f.). With reference to the author of the pseudo-Jerome *Quaestiones Hebraicae* of the eighth or early ninth century, Miss Smalley says that he "seems to have been a Jewish convert" (p. 2). Louis Ginzberg in his *Die Haggada bei den Kirchenvätern, I: Die Haggada in den pseudo-hieronymianischen "Quaestiones"* (Amsterdam, 1899; pp. V f., 105, and *passim*) proved beyond any doubt that the author could not have been a Jew. He was evidently a Christian who, of course, had the help of one or more Jews learned in the Haggadah. A clear understanding of what *"Hebraica veritas"* (p. 2) means when used by men of the eleventh century is important for all research in this field. The "Hebrew truth" rarely means the original Hebrew; it means nothing more than what *Jerome said* when checked with the Hebrew. Thus when Sigebert of Gembloux (taught at Metz, 1070) was "distinguishing the Hebrew truth from other editions,"—this means: distinguishing St. Jerome's version from *other copies* of the Vulgate, which by now was seven hundred years old! This construing of *"Hebraica veritas"* is clear even from the internal evidence in the statement quoted by Miss Smalley,—"he agreed with what they told him, if it were in accordance with the Hebrew truth." That is to say, Sigebert agreed with what the Jews told him, if it were *in agreement with St. Jerome's version.* The date of Lyra's death is definitely 1349, and not 1340, as usually given (p. 5). Ch. Langlois, "Nicolas de Lyre, Frère Mineur," *Histoire Littéraire de la France*, XXXVI, p. 326, footnote reference 2, has proved this conclusively. Ordinarily, one should not quibble

over a date, but nine years difference is important here,—as it helps to understand better how Lyra could have done his stupendous work on the *Postillae Perpetuae,* and on many other writings besides.

For the second article we are greatly indebted to the author since it helps to fill out very important information about Andrew of St. Victor (d. 1175). Miss Smalley dates the career and lists the writings of this twelfth century biblical commentator, who, in the time long before Nicolas de Lyra was unique in that he depended upon *contemporary* Jews for information—saying so—and set out, primarily, to explain the Bible *ad litteram.* A careful examination of Andrew's writings should yield information about Andrew's use of Jewish material of the Northern French school (Rashi and his successors), as is already indicated by the author herself. It is probable, that a further and more thorough examination of Andrew's writings will reveal the possibility of using so early a post-Rashi Christian Hebraist for the purpose of correcting the traditional Rashi texts, even as William de la Mare (*fl.* 1280) has already been used for that purpose. It is heartening to know, from this article, that Dr. Louis Rabinowitz of London is investigating the problem of Andrew and his relation to Jewish exegetical materials. (Since the time that the above was written, the present reviewer received a communication from Dr. Rabinowitz stating that his investigation reveals that "Andrew and his teacher Hugo show clearly a profound and close knowledge of Rashi.")

Pittsburgh, Duquesne University. *Herman Hailperin.*

Lee M. Friedman, *Rabbi Haim Isaac Carigal, His Newport Sermon and His Yale Portrait.* Privately printed. Boston, 1940. IV+45 pp.

With this excellently printed and illustrated monograph Mr. Lee M. Friedman, well-known as a devoted lover and successful investigator of early American-Jewish history, has added one more valuable and fascinating contribution to this little cultivated field of research. It tells the story of a visitor to the New World, Rabbi Raphael Haim Isaac Carigal of Hebron, Palestine, who after extensive travels in the Orient and Europe came to America in 1761. After serving as substitute rabbi in Curaçao he went to Jamaica in 1771 and visited Philadelphia, New York, and Newport in the following years. In the Rhode Island Jewish community he performed rabbinical functions through several months. His sermon, *The Salvation of Israel,* delivered on May 28, 1773 was the first Jewish sermon to have been both delivered and printed in the United States. At that time the Reverend Ezra Stiles, later President of Yale College, lived in Newport. Interested in the study and teaching of Hebrew, Stiles found the presence of a Hebrew scholar from Palestine a welcome opportunity to gather information

about the oriental languages. When the American met the rabbi, he heard "for the first time the true pronunciation of Arabic," as he recorded in one of the numerous and lengthy entries on Carigal in his diary. A personal friendship developed between the two men and lasted even after the rabbi's departure for Surinam and Barbados where he lived as minister until his death in 1777. An interesting correspondence was carried on. Carigal's letters to Stiles, probably preserved in Yale University library (no specific reference is given), and published by Friedman, inform about the rabbi's personal life but shed little light on his ministry in the Barbados, at that time an outstanding Jewish center. The significance of Carigal's American visit lies in its indirect effect on American Hebrew scholarship. Stiles' further study and research in Semitics was obviously inspired by Carigal's instruction. As President of Yale, Stiles set a standard in his day and made the knowledge of Hebrew an important part of the liberal education of a scholar and a necessity for a minister. Although much of what is here told was already known through previous researches, especially those of George A. Kohut, Mr. Friedman has collected many scattered fragments from available sources into a connected narration. In adding the newly discovered letters, he earns the appreciation of all interested in early American Jewish history.

Jewish Institute of Religion. *Guido Kisch.*

Solomon R. Kagan, *Jewish Contributions to Medicine in America.* Boston, Medical Publishing Company. Boston, 1939. 792pp.

At a time, when in many European countries the share of the Jews in science, the fine arts, industry, and all fields of human culture is not only passed over in silence but even denied, a book like the present is of especial value. Dr. Kagan has not only compiled the data of some prominent American-Jewish physicians, but he has, indeed, created a real *Who's Who* in American medicine with regard to the Jews. Unfortunately, there is no similarly detailed record of Jewish contributions to medicine for any European country, and it speaks for the quality of the book as well as for the American reading public that a work like this could appear in a second edition after five years. Through this encyclopedia the author, whose works on medicine in the Talmud and on the Jews' part in the development of medical art and science in ancient times are widely appreciated, has added a new merit to his previous ones. One can only wish that in a later edition the supplementary part of the book will be worked into the main part so that the division into two separate sections will disappear and the volume will be easier to use.

New York, Beth Israel Hospital. *Bruno Kisch.*