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Continuous or Discontinuous? 9th Century Individual Charters vs. 12th and 13th Century Communal Charters

There is a striking similarity between the charters of protection issued to specific Jews during the reign of Louis the Pious in the ninth century, and many of the charters that were written for Jewish communities during the twelfth and thirteenth centuries in England and Germany. Does this similarity indicate a continuity in the legal status of Jews between these periods? In my analysis, these textual similarities mask other changes in the context of these charters. Societal changes and the larger legal codes in force strongly influenced the interpretation and understanding of these documents at the time, and the resulting treatment of the Jews was radically different between the two periods in question. Given that the primary regulations set out in these charters were very similar, and documents from both periods specify that no-one was to “attack or assail [the Jews] on any illicit ground,”¹ something else must have changed either to encourage radically different interpretation of the laws, or to render these policies unenforceable in the atmosphere of a changed society. The changes in conduct towards the Jews indicate a real change of standing, despite the similarities in the texts of these laws. If there had truly been a continuous, uninterrupted legal status for the Jews, I believe that this uniformity would have been demonstrated through consistent treatment across the centuries. The rulers who issued these codes in the twelfth and thirteenth centuries could not have been unaware of the changes in

¹Chazan, *Church, State, and Jew in the Middle Ages*, p. 60.

law and society, so there must be some other explanation for their continued resemblance to the earlier charters.

The charters granted to individual Jews by Louis the Pious during the ninth century were backed by and understood within the framework of a persisting tradition of Roman law. This system was no longer officially in force in any real way in northern Europe in the ninth century; however, the absence of any other general code applying to the Jews in Carolingian society at this time leads me to believe that when the Jews arrived, they brought with them an essentially Roman understanding of how they fit into Christian society. There was a protected status built into this preexistent understanding that covered the entire Jewish population, and Louis' exclusive grants of privilege added to and extended the existing protections for certain individuals whose activities were of direct importance to the King. As such, they were only granted to specific merchants who were in need of such additional guarantees – and they were not alone: many Christian merchants fell into this category as well.² In the text, exemptions from the many taxes that would normally apply to merchants were made: "...you are not to demand from the Hebrews any tolls or taxes for horses, or for housing or for damage done to fields or for rights to dock on the riverbank or carting taxes, or taxes at the city gate or for crossing bridges or for pasturing their animals."³ The buying and selling of slaves within the empire was permitted: "These Jews also have the right to buy foreign slaves and to sell them within our empire...."⁴ Prohibitions were also made against seizing the property of the listed Jews or harming them in any way.⁵ These provisions were all oriented towards this class of merchant, and they were clearly limited

² Stow, *Alienated Minority*, p. 62.

³ Bachrach, *Jews in Barbarian Europe*, p. 68.

⁴ Bachrach, *Jews in Barbarian Europe*, p. 68.

⁵ Bachrach, *Jews in Barbarian Europe*, p. 68, 69, 70.

in their issuance to specific Jews who were engaged in this trade to the direct benefit of the royal palace: “These Jews are to be permitted to live quietly under our defense and protection and to serve the palace faithfully.”⁶ The Jews who were to receive this status were listed by name at the beginning of each such charter. No mention is made of any broader application of the laws set down for the benefit of these Jewish merchants.

There was no need at this time for Louis to prescribe special legislation concerning the entire Jewish community, because there was still a general understanding of their self-governing and protected status based in the concepts of Roman law. Jewish communities, like many other groups in western Europe, governed themselves internally by their own laws. It was no different for the groups of Jews who settled in northern Europe during the ninth century. The separate legal systems of different communities had to be reconciled in practice: one major topic discussed in these charters was the resolution of the inevitable legal disputes that arose between Christians and Jews. If a Jew wished to bring a case against a Christian, he “must have the support of Christian witnesses and with them they may win their case.”⁷ When a Christian brought a suit against a Jew, he “must have three worthy Christian witnesses and also three worthy Jewish witnesses so that his testimony will be accepted....”⁸ In either case, at an inquest “each one of the persons involved [was] to testify according to his own law.”⁹ These provisions highlight the existence of separate legal systems for the two groups – and the absence of a separate general body of law regulating the Jews demonstrates the persistence of traditions rooted in Roman law, which respected the right to self-governance of a *genus*.

⁶ Bachrach, *Jews in Barbarian Europe*, p. 68.

⁷ Bachrach, *Jews in Barbarian Europe*, p. 68.

⁸ Bachrach, *Jews in Barbarian Europe*, p. 68.

⁹ Bachrach, *Jews in Barbarian Europe*, p. 69.

Over the course of the tenth century, the enforcement and use of the codes of Roman law diminished and eventually disappeared altogether¹⁰ – and the understanding of their position that the Jews had brought with them to northern Europe faded as well. Under the developing system of canonical law eventually codified in the *Decretum* of 1012 AD, the legal context of these charters was substantially altered. While the canonical laws of the *Decretum* and its imitators were often ostensibly based on Roman precedent, the religious tenor of the code was radically different. Roman law had embodied a religious tolerance and pluralism that derived from its polytheist past. Canonical legislation was an entirely Christian formulation with Christian goals, and made substantially less accommodation for heterodoxy of any sort. It did, however, make the same claims of universality that the Roman codes had adopted. Even when the specific laws regarding Jews were not followed in practice, their existence and promulgation as universal code was damaging to the delicate understanding that had preserved the Jews status as Roman citizens. In specifically regulating Jewish behavior and placing more restrictions on the communities, canon law departed from the Roman tradition of self-governance. Under this new system, which already theoretically regulated Jewish actions, what role did these separate Jewish charters play in determining the legal status of Jews? An examination of the text of these charters reveals differences that are instructive.

The new Jewish charters issued by local Bishops such as Rudiger of Speyer, and later by Kings and Emperors, while textually very similar to the earlier documents, were no longer backed by or coupled with the remembrance of the comparatively tolerant Roman legal code. They stood against a harsher background of canon law that was markedly more hostile towards the Jews, and more specific in its relation to Christianity. This change in the background of

¹⁰ Stow, *Alienated Minority*, p. 63.

these codes is reflected in the language of some of the provisions: while the ninth century charters addressed regulations concerning Christian slaves owned by Jews, and legal cases between Jews and Christians, these are the only two times that Christianity per se is discussed in the text.¹¹ In other words, these contact points between the two communities were the ones that aroused the greatest potential for conflict at the time. In the later codes, more issues that pertained to an increasingly legally Christianized society also had to be addressed. The 1084 AD code issued by Bishop Rudiger specifies the legality of Jews selling to “Christians slaughtered meats which they consider unfit for themselves...Christians may legally buy such meats.”¹² Specific legislation of this type reflects a background of stronger and more highly specific religious law, and the interactions with this law had to be considered in the Jewish regulations. In later charters, more explicit regulations appeared regarding baptism of either Christian slaves owned by Jews or of the Jews themselves: “No one shall presume to baptize their sons or daughters against their will...No one will divert their pagan slaves from their service, baptizing them under the pretext of Christian faith.”¹³ In the ninth century charters, there had been no mention of the legality of baptizing the Jews themselves – only their slaves. The twelfth and thirteenth century charters also included laws regarding the sale of wine and other specific items to Christian customers, “they have the right to sell their wine and their dyes and their medicine to Christians.”¹⁴ New laws also covered the specifics of Jewish burials: the Bishop of Speyer states that he had “given them out of the land of the Church burial ground to be held in perpetuity,”¹⁵ and

¹¹ Bachrach, *Jews in Barbarian Europe*, p. 68-71.

¹² Chazan, *Church, State, and Jew in the Middle Ages*, p. 59.

¹³ Chazan, *Church, State, and Jew in the Middle Ages*, p.61,.

¹⁴ Chazan, *Church, State, and Jew in the Middle Ages*, p. 62.

¹⁵ Chazan, *Church, State, and Jew in the Middle Ages*, p. 58.

King Richard of England was concerned that “If any of the aforementioned Jews shall die, his corpse shall not be detained above ground.”¹⁶ All of these items were contentious under the new more explicitly Christian code of law. These small additions to the text are partially indicative of the changing legal status of the Jews in the larger law codes of the time.

These new charters also covered entire Jewish communities, not individuals as was the case of the ninth century charters. This broader applicability was particularly important in a society which was increasingly antagonistic to the Jews: the charter issued by Bishop Rudiger of Speyer makes an explicit reference to the need to build walls to protect the Jewish community from “the insolence of the mob,”¹⁷ and later codes such as that of King John of England in 1201 AD include specific commands to “guard and defend and protect them.”¹⁸ The statements of protection in the earlier charters were not as emphatic, limited to a statement that no-one was permitted to “harm the aforementioned Hebrews through any kind of illegal action.”¹⁹ The new, strengthened provisions addressed a growing need for increased protection by these communities, and are proof of a more dangerous environment for the Jews. This increasing danger could not have been entirely extra-legal; some of it must have derived from the new centrality of canon law, beginning in the eleventh century. In these circumstances, the most interesting feature of these new charters is their continued close resemblance to the individual codes issued in the ninth century. If society, and the general code of law, had changed so much in their attitudes towards the Jews, why did the text of the Jewish charters follow the older charters so closely, literally according the Jews special privileges and protection? What had previously been special

¹⁶ Chazan, *Church, State, and Jew in the Middle Ages*, p. 68.

¹⁷ Chazan, *Church, State, and Jew in the Middle Ages*, p. 58.

¹⁸ Chazan, *Church, State, and Jew in the Middle Ages*, p. 79.

¹⁹ Bachrach, *Jews in Barbarian Europe*, p. 68. Note the explicit reference to an external legal code.

treatment now became defined as general policy for the Jews, but with the general understandings of Roman law behind the original provisions replaced by canon law, the resulting effects became quite different.

The twelfth and thirteenth century rulers who issued the later charters and codes frequently highlighted the similarity or exact copying of earlier codes, making reference to the codes of their father or grandfather. In the most extreme examples of this, King John of England's code of 1201 claims to be continuing the "liberties and customs, which they [the Jews] enjoyed at the time of the aforesaid King Henry, our great-grandfather."²⁰ Emperor Frederick I of Germany also claims continuity to the same degree: "we have confirmed...by our authority as an abiding law the statutes of great-grandfather Emperor Henry..."²¹ In these statements, the Christian community and rulers claimed to be upholding a continuous and consistent tradition of Jewish law and Jewish status, while the sense of this law had been altered by social circumstances and the emergence of other law codes outside the explicit text in question. The rulers' literal continuance of earlier policies stood in contrast to the changing position of Jews in society – rich irony for those who derided the 'literal understanding' of the Jews in spiritual matters as blindness to the truth. For instance, the code issued by Bishop Rudiger in Speyer in 1084 AD, and subsequently reinforced in 1090 AD by the Emperor, was dramatically ignored in the actions of the Crusaders in 1096 AD. The literal continuity of these texts masks a real change in the social and legal status of the Jews between the ninth and the twelfth and thirteenth centuries.

Whatever the literal sense of these charters, we must also examine the differing treatment of the Jews in these two periods. The difference in the welfare of the Jewish communities in

²⁰ Chazan, *Church, State, and Jew in the Middle Ages*, p.78.

²¹ Chazan, *Church, State, and Jew in the Middle Ages*, p. 63.

these periods was very clear: in the ninth century, Jews were immigrating into northern Europe, and opportunities for trade and settlement made the area attractive to them. In the 12th and 13th centuries, the Jewish communities were increasingly under attack in this region, and persecuted regularly. Even when not under direct persecution, the Jews were to an increasing extent a marginalized community, and tensions were high. Whether these law codes themselves contributed directly to this change or not, the discontinuity of treatment is revealing of the dramatic changes in the societal context, which cannot be indicative of an unchanging legal status for the Jews.

Given that these charters do not seem to represent a basis for the actual treatment of the Jews, what purpose did they serve? They allowed the Kings to preserve the illusion of continuity, and paid lip service to the Augustinian Christian tradition of toleration and preservation of the Jews as living evidence of the truth of biblical prophecies. This was an important theological precept for medieval Christians, and could not be abandoned easily. In these documents, the King or Emperor takes personal charge of the Jews, and is seen to be personally exercising this role of pious preservation. The charter for the Jews of Speyer by the Bishop Rudiger in 1084 set down all of the basic regulations that have been discussed above, and established them to remain “throughout the generations.”²² However, just six years later the Emperor Henry IV reissued a charter which restated essentially the same laws for the Jews, and prefaced the laws with statements of ownership: “May all our faithful know that this has been done...by the royal declaration of our majesty....”²³ This allowed him to claim the preservation of the Jewish community for himself. The charter of Worms, issued in 1157 by Emperor Frederick I, reveals the full extent of the proprietary nature of these claims as they grew more complete. The Jews were dis-

²² Chazan, *Church, State, and Jew in the Middle Ages*, p. 59.

²³ Chazan, *Church, State, and Jew in the Middle Ages*, p. 60.

cussed as the property of the royal treasury,²⁴ and the only appeal open to them beyond their own law was direct “recourse to the Emperor.”²⁵ He even specifically denied the authority of the local Bishop over the Jews: he allowed their employment of Christian servants, and stated that “neither the Bishop nor any other cleric can negate this.”²⁶ The rulers established their spiritual credentials versus the bishops and the church by issuing these codes in support of the Jews; but they were perhaps more interested in the appearance of protection than in any actuality of it, based on the persecution of Jewish communities during this period. In the developing battles for authority between the Catholic church and the rulers of the European states, the treatment of the Jews and their position in society became another chip in the game.

Examined on their own, these documents initially seem to be evidence of a continuous legal status for the Jews in western Europe. It is only when viewed in combination with the changing legal and social environment that the true explanation for their similarity in contrast with the changes in Jewish treatment becomes apparent. Since these laws didn’t prevent the mistreatment and persecution of Jewish communities, the only explanation for their continuance is purely ideological. This reading is reinforced by the extreme similarity between the documents – they record not a consistent image of the Jews, but a consistent image of Christian rulers of the Jews. This image was very important to the rulers who issued them, as it allowed them to add to their spiritual role during a period of the resacralization of monarchy. These documents show that the Kings and Emperors were carefully exercising their position as Christian rulers, and part of this role had traditionally become the subjugation and preservation of the Jews. The consistency of the structure and the wording of these charters over the centuries implies a clear and un-

²⁴ Chazan, *Church, State, and Jew in the Middle Ages*, p. 64.

²⁵ Chazan, *Church, State, and Jew in the Middle Ages*, p. 66.

²⁶ Chazan, *Church, State, and Jew in the Middle Ages*, p. 65.

changing ideology of the ideal treatment of the Jews, which stood in stark contrast to the changing reality. This reality was created in part by the changing attitudes of medieval society towards minority groups, and in part by the universally Christian formulations of canon law. These charters of the twelfth and thirteenth centuries, despite their statements of apparent protection for the Jews and definition of a place for them in Christian society, represent in fact a step towards the expulsion of the Jewish communities; the tension that was created between the supposed, idealized status of the Jews and their actual social position and treatment was ultimately untenable.