

## **EARLY MODERN WORKSHOP: Jewish History Resources**

**Volume 5: Law: Continuity and Change in the Early Modern Period, 2008, Yeshiva University, New York, NY**

### **The Jews and Ius Commune**

Kenneth Stow, Haifa University, Israel

**ABSTRACT:** From the sixteenth through eighteenth centuries, there was a gradually increasing integration of Jews into systems of *ius commune*, loosely, the law of the land, but actually a legal tradition based on Roman law, which subsumed local law, usually called *ius proprium*. The integration might be purely theoretical or in fact, as certainly occurred in the papal state and it seems elsewhere in Italy, too. This legal integration prepared the way for the major legal upheaval worked by the French Revolution. The implications are many. The details mostly unresearched. The *Tractatus de Iudaeis* of Giuseppe Sessa (Turin, 1713) is the fullest introduction to the issues. The *Tract on Jews* of Giuseppe Sessa is a watershed text. It lauds the medieval restrictions on Jews, perceives them in the most negative theological terms, yet equally anticipates full Jewish participation as citizens of a state, living under the identical laws as do others. The tradition of Jews as *cives*, citizens, actually began in the ancient world, but was properly resurrected only in the early fourteenth century in the writings of the major legal scholar Bartolus. The passage from Bartolus to full emancipation, however, took four centuries. The special worth of Sessa's tract is that writing in 1716, he was on the edge, looking backward and forward simultaneously, intimating, but never quite reaching. We see in him, therefore, the final resistance to the passage from the restricted Jew, living in a confessional state, where religion determines politics, to the Jew made a fully fledged citizen in a deconfessionalized, modern, post-emancipatory civil unit, where the secular government determines the state's direction.

**This presentation is for the following text(s):**

- *Tract on the Jews*

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The *Tractatus de Iudaeis* of Giuseppe Sessa is a fundamental text in understanding the passage of the Jews to modernity, certainly the passage from medieval legal restriction to Emancipation. Usually, Emancipation is described as the result of changing attitudes toward society and state, as well as toward the Jews themselves. Emancipation's root is sought in theories of toleration—tolerance would be more precise, since toleration, from the Latin *tolerare*, means simply privileges, as opposed to restrictions, *gravamina*. In fact, “tolerance,” as we understand the term, meaning full acceptance, not the grudging one in writers like Locke, is actually based heavily on the thinking of dissenters in Colonial New England, who wanted nothing to do with the established Congregationalist Church, but, rather, to be allowed to worship and educate their children as they chose. It was they, therefore, who were major protagonists in the battle to separate Church from State.

One finds these doctrines clearly in the writing of Roger Williams, who argued that since we cannot know what God thought, we have no right to proclaim our own religion as true and that of our fellow, which differs, as false, and, hence, we may not discriminate legally either. Ironically, Williams was following the lead of the Jewish physician David de Pomis, who in the later 16th century, had said the same thing. However, de Pomis also linked the free practice of religion to total equality in law. In 1786, Thomas Jefferson would put the idea succinctly, saying nobody should be restricted [legally] because of religion, but none is to be privileged either. Addressing the legal, indeed, the constitutional, ramifications of this thing, George Washington said that equal rights in law depend on persons being good citizens. Writing to the Jews of Newport RI in 1790, the subtext, which was right on the surface, to be sure, was that one's religious confession is irrelevant in defining either citizenship or legal rights. The state had been secularized—I think we do better by saying “deconfessionalized”—and the issue of Jews observing the laws of the state and enjoying those laws' full benefits was simply—by definition, if you will—assumed, taken for granted, as, in fact, practice in the United States (on the federal level, at least) confirmed.

Yet the deconfessionalized” state which offered these rights, a.k.a. in Europe as Emancipation, was not only, or even so much, an ideological development. It was much more the product of hundreds of years of legal and constitutional evolution, one of whose principal characteristics was the increasing reliance on concepts of citizenship embodied by the *ius commune*, namely, Roman law as that law, developed and was interpreted and ever more widely applied. That law provided that Jews were *cives* and that they should live by its laws in all matters. These, as Sessa makes clear many times extended from benefits to obligations, privilege and restriction. In theory, therefore, the civil state Washington attributed to Jews pre-existed. Formal emancipation was irrelevant. Did not the law already confer upon Jews full civil rights?

It, of course, did not, and what Washington was saying—and to no small extent Sessa, too, as we shall see—was really new. The Roman state itself in late Antiquity was a confessionalized one, which allowed the introduction of restrictive laws regarding Jews, despite its conferral upon them of the status of *cives*. Already then, there was a clash between the concept of all living under the same law as opposed to special privilege for those of a particular [read: Christian] confession. Ending this distinction, and granting legal (and constitutional) parity for all, meant ending religious privilege—in particular, the privilege of Christians as opposed to the limitations placed on Jews, i.e., through the deconfessionalization of the state. Alternately, one could eliminate dissidence, that is, with respect to Jews, by eliminating them, through conversion, expulsion, or, of course, violence. History has witnessed all three.

The last state to expel Jews entirely was Spain. Its neighbor Portugal resolved the conundrum through massive forced conversion. One state did seek true legal parity, albeit in combination with conversion, and, of all states, was that of the popes. Attempts at mass conversion began about 1555 (the groundwork was being laid since about 1513) with the establishment of the Roman ghetto, which was conceived of as a conversionary device. But the results were meager. No more than about ten Jews a year converted. To increase the number of conversions, a new path was taken, and it was here that one finds the paradox that forwarded the parity-conversion model. Conversion was to be pressed by punctilious observance of the law, which meant the Jews’ full inclusion in the system of *ius commune*.

The operative word is full. Jews in Italy were always governed by *ius commune*, once a community was founded. However, that law always had made room for Jewish law, where the two were not in conflict, allowing a good deal of de facto Jewish self-governance (the term autonomy is misleading). The popes now did everything they could to weaken this concept of legal condominium. The goal was to weaken the Jewish Community by denuding it of power, using the argument that *ius commune* negated Jewish communal power, which it does. More insidiously—I choose the word with

care—one particular tenet of *ius commune*, that of *patria potestas*, was to be reinterpreted, indeed, perverted, to make the effective kidnapping and forced conversion of Jewish children perfectly legal. Anticipating what the state itself would do formally in Italy only in the twentieth century, it transferred this right to any relative who would “offer” a child for baptism, allowing the state (the Papal one, not the later Italian one, of course) to sequester children, in fact, even to sequester pregnant Jewish women, so that their children would be seized and baptized at birth. Years ago, Steven Rowan pointed out that the basis for this action was in the thought of the legist Ulrich Zasius, at the end of the fifteenth century, and in this action, as Rowan correctly saw it, one finds a foundation of the modern state in terms of the powers it has successfully exerted in the field of direct power over citizens, including especially in matters of wardship.

The results, for Rome’s Jews, needless to add, were fearsome, although they were not cataclysmic. At the same time, legists began to reflect ever more on the ultimate implications of full inclusion in the system of *ius commune*. These implications were drawn in the United States and, of course, in France in 1791. The Jewish Community did lose all powers of effective self-governance. Indeed, one can make a very good case that many of those promoting the full absorption of Jews into the system of *ius commune* were doing so not to privilege Jews, but to keep them on an extremely short leash. For example, A whole German school of *Judenrechtswissenschaft*, whose Latin writings were known in Italy, was saying the same: *Atque coram Christiano Judice agere et conveniri debent. . . ut iudaei legibus propriis uti prohibentur . . . legisbusque Romanis vivere compellantur*. Portentously, as we shall see, this law, *ius commune*, was to be decisive even regarding Jewish marriage: *sed secundum jura et leges Romanas matrimonia contrahant*.

This is really what happened in France, regardless of it being called Emancipation. Yet, in return, Jews did become citizens in a state which did not discriminate against them based on confession. In Central Europe, the drama was more complex, but it, too, climaxed in Emancipation by about 1860—one so distasteful to so many, however, that it was cancelled after only 70 years.

Perhaps nowhere is the conundrum of the deconfessionalizing state and its legal implications for Jews more apparent than in the Tract of Giuseppe Sessa. His work is anything but transparent or devoid of internal contradiction. Sometimes, it looks medieval, sometimes it looks truly hostile to Jews. At others, it seems to point to the Jews’ legal situation as a model for an emerging secularized, deconfessionalized modern state. In 1716, when his book was published, Sessa had reached—just as his work symbolizes—a watershed. I now bring nineteen examples (I-XIX) that illustrate the quandaries Sessa had to face.

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### Tract on the Jews Tractatus de iudaeis 1713

Translated by Kenneth Stow, Haifa University, Israel

*Tractatus de Iudaeis*, Giuseppe Sessa  
Turin 1716

Selections with Translation,  
Kenneth Stow

#### 1. Chap. II

**p. 4.** Jews are part of the citizenry and the civic body where they live . . . and in our Patria (Savoy) by virtue of the privileges accorded them on 15 December 1603 by Carlo Emmanuele I . . . as this is expressly seen. And they are bound by all the statutes, whether favorable or burdensome, so that what is allowed or prohibited to others as individuals or in a group or organization is to be considered as permitted or prohibited to Jews, wherever they live. They enjoy the same immunities conceded to others, apart from those which pertain to the spiritual—internal—realm, for [otherwise] Jews are citizens in all matters, whether in the hateful and onerous or the grant of privilege or rights. This [rule] applies to all the laws, statutes, and indults and customs that now in force.

Proof of this is that a jailed Jewish debtor's expenses have to be paid by the creditor.

#### 2. Chap. III

**p. 6.** It is a question whether the privileges given them should be called odious or favorable, and speaking unequivocally [I say that] it is an absolute rule that privileges which are repugnant to *ius commune* must be considered odious, lest the neglect of one affect the other. . . ; those [privileges] which should be understood as diminishing *ius*

*commune*, known by the name of special law . . . are said to be privileges that weaken law.

### 3. Chap. XV

**p. 41. How to handle the problem when princes ignore that Jews originating from Spain and Portugal were surely baptized at one point and then reneged. Here he cites de Suannis, Part III, chap. 2, paragraph 5.**

To wash themselves anew in what the Jews called idiomatically in Latin purification, and to shave the head with pumice, as Eymerich notes in his *Directorium* . . . and the unfortunate recidivists [read: apostates] are led to running water [nails to the quick, and the rubbing of sand over the entire body following venerable custom], where, hair shaved, too, they are asked if they wish *Tevila*, that is the bath or laver of flowing water, and should they respond positively, the master of the ceremony says: *baal tesuva*, meaning, to return to a state of sin . . . And they [those rejudaizing] exclaimed Blessed God who has commanded us to be sanctified in this water and bath of *Tevila*. I heard this from converts to the Catholic faith. [Sessa adds that to stop them from seducing Christians to Judaism, Nicholas IV introduced *Turbato Corde* and he notes Oldradus, *cons.* 36.]

### 4. Chap. XVII

**p. 48. Jews use *Dintorà* to regulate rents, specifically, the Taqqanah of R. Tam on housing, which then becomes the *ius cazagà* of Italian ghettos. Admittedly, making the house into a *hyptotheca* [something pledged or mortgaged] removes the house from the control of the owner. The approval of Jews living by this rabbinic, decision, *de quo nihil reperitur in Pentateucho dispositum* (that is, it is a law whose sanctioning means recognizing the rabbinic jurisdiction Christian theologians and legists had been deprecating, and worse, since the thirteenth century) is found in a decision of the Roman Rota of 20 November 1609 (which Sessa appends). However—and this is the news—when Jews do not live in a ghetto (as in Turin prior to 2 August 1679), they have full rights:**

When Jews are not confined to a ghetto and have the legal capacity to possess property as full owners, or goods, then all [the laws] apply concerning neighborhoods or consortia, the same as Christians. For Jews are citizens and empowered by all the

statutes and privileges pertaining to the former, even those based on equity and the modes of comportment among Christians. Deluc. *De servit. Disc.* 70; Marquard. *De Jud.* II, 2, 6.

## 5. Chap. XXI

**p. 64,** Jews are not slaves, certainly not because of the Passion, or as [might appear] from the canon *etsi iudaeos* in the *Decretals*, which would mean they do not have their children in the power. Rather, if Jews are subservient to princes [in all civil matters, etc.] it is as citizens, whence, there is no question that rejecting the contrary opinion, their children are under their power (*patria potestas*) [albeit this right obligates Jewish parents to feed, dower, and leave legacies even to children who have converted. Ricciulo, *de iure pers.* 2, 29, 1; Pignatell. *Cons.* 14.

## 6. Chap. XXIV

**p. 77. No inheritance to the *Comunità*.** Jews should enjoy the legal capacity to have institutions and inheritances, whether from a last will or whether a blood relative has died intestate, and even if the relative had become a Christian. [However,] it is unacceptable that Jews should inherit anything from unrelated Christians if the legacy is to the Jews' Community or to their *Collegium*—to which nothing may be left by a Christian, as in Justinian's Code, 1,9,1 and in the *Decretals* in the Title *de Iudaeis*, the second law beginning *iudaei*. Indeed, a Christian leaving anything as a legacy to the *Università* or *Collegium* of the Jews is excommunicate after his (her) death; Gratian, *Decretum*, Distinction 24, question 2, and *de Susannis* [*de Iudaeis*] 2,5,23. This is because legacies to a base person are unsustainable . . . [and we have already said Jews are] vile, and notorious, certainly compared to Christians [as shown because of limitations on the testimony they are permitted to give].

## 7. Chap. XXVI

**p. 81. Jews use *ius commune* in court and in making wills. They use Mosaic Law only for circumcision, marriage, ritual, and ceremonials. Thus Sessa; but not everyone was so clear. Ricciulo, for one, said Jews must use *ius commune* without exception (he also was a strong supporter of the *Casa dei cathecumeni* and of “kidnapping” offered children); and see too Peter Cuneus, *de Republ. Hebr.* 1, 6.**

If the Jews have a custom or statute that has been properly approved allowing them to devolve property according to Mosaic law, this should be followed. In Mantova, the custom is that they inherit not following *ius commune*, but by the rules of the Old

Testament.

## **8. Chap. XXVI**

### **p. 88. As Ricciulo points out, the dowry is to ensure:**

The dowry, as Ricciulo points out, is to ensure [the birth of] children. But this motivation fails in the case of the Jews, who infest the towns of Christians, . . . and thus the Republic of Cunaeus speaks of them not multiplying. C. Boralevi, *Introduzione a P. Cunaeus, De Republica Hebraeorum*, Firenze 1996, pp. VII-LXVII. \*

## **9. Chap. XXXIII**

**p. 107,** Among the Jews, marriage may not be designated a sacrament, but a simple contract. [Their marriages though] are valid, although they are not indissoluble as among Christians [for marriage is the figure of God's assumption of the flesh, which Jews deny, and, therefore, any] litigation [about the] validity of marriage, as well as matters pertaining to divorce, should be carried on only before a secular Christian judge. For their marriage contracts are strictly secular [lit., temporal]. Hence, in contracting marriage, the matter is clear: Jews are bound by Mosaic, not civil law. De Luca, *Disc.* 15, 3. [as the matter is regulated by] *l.nemo, C. 1, 9.*

## **10. Chap. XXXXIV**

### **p. 111. The conversion of only one spouse:**

If the wife of one who has converted refuses to convert, even after every effort has been made, she should be left in her infidelity. But under no circumstances should the [converted] husband give her a writ of divorce following Jewish law. Should he do so, he is to be punished for Judaizing. Nor should he cohabit with this wife because of the danger of the subversion of the faith and of blasphemy. What should be safeguarded is that the husband must remain faithful to her should this wife ever become a Christian. Pigna. Consult. 14, n. 215.

## **11. Chap. XXXIV**

**p. 115. Who judges Jews? *Antiqua improbitas* of Gregory XIII says that when an ecclesiastical crime has been committed, it is the Inquisition. Otherwise:**

[the judge is ecclesiastic; and, indeed, it is up to *ius commune* to establish the penalties for adultery or usury, which is always a civil judge's competence].

Otherwise, offenses violating laws of sexual behavior [lit, delicts of the flesh] are handled by a lay judge. Indeed, we note that if it is a question of the validity or nullity of

a marriage between two Jews, or that a divorce is sought by reason of adultery or cruelty, it is never an ecclesiastical judge, but a secular one who has the competency in the matter. After all, a Jewish marriage contract is truly temporal and pertains to secular jurisdiction, . . . However, if one of the spouses converts, then we are speaking of a case between a Jew and a Christian in which the plaintiff must make his petition in the forum of the defendant. Hence, should an infidel seek a divorce, or an annulment, he must convoke the believer in an ecclesiastical court. If, on the other hand, the plaintiff is the believer, he must convoke the defendant before a secular judge, who is his, the infidel's, proper judge . . . The opinion of de Susannis is just wrong, who gives competence to a lay judge only when the marital dispute is incidental to a dispute between two Jews, whereas if the marital issue is the principal one he says the judge is to be ecclesiastic. This, however, is just as we confuted de Susannis (I,11,9) on the subject of usury in chapter 4, above [that an ecclesiastic judge might be left to decide whether a contract was usurious, but the actual case comes up before a secular judge].

## **12. Chap. XXXV**

**p. 117.** Indeed, among Jews I have never seen anyone who does not labor in some art or commerce . . . such as the ones in which Jews customarily engage [if he wishes to have food] to eat. This begins as soon as childhood is over, for Jews without a special permit have no right to own fixed property (from which they can provide for themselves). They meet their needs strictly from their own endeavors. [must earn their keep, as says De Luca, *de alien., et contr. prohib.* disc 60, n. 10].

## **13. Chap. XXXVII**

**p. 122. Sessa wonders why Jews practice such acts as being receivers of stolen goods. He had just spoken of Jewish industriousness, but here, he introduces the example of one Emanuel Bacchi, who was hanged for this crime. He is perplexed and thus adds:**

These things thus show us that at least by legal presumption, Jews are harmful, thieves, and detrimental [lit., pernicious] to the Christian Republic, . . . so that Christians insulting Jews should never be punished.

## **14. Chap. XXXVIII**

**p. 126. On the subject of closing Jews inside houses—within ghetto—on feast days. He objects:**

Since not all Jews possess appropriate quarters, not the least because of their poverty as well as the limited size of their homes, they are forced actually to live in their workrooms or shops, in the lower floors of their residences, or right next to public ways and the

heavily divided spaces of these buildings, in which they cook and do everything else needed for domestic activity . . .

## 15. Chap. XL

**p. 134, on blasphemy. We know that in Modena, blasphemy was punished directly by the Inquisition. However, not so, according to Sessa: who says it is to be punished by a secular judge, He limits the Inquisition to purely ecclesiastical crimes and heresy.**

It is the common opinion of the doctors [of law] that the proper judge in a case of blasphemy should be an inquisitorial one if the Jew is guilty of what is normally called heresy (he does not define how this could be, but one assumes he means such things as denying God, as Nicholas Eymerich established in 1378). An ecclesiastic judge also has jurisdiction if the crime is *wholly* ecclesiastic. Blasphemy however pertains to both (mixed) jurisdictions, which [both] should prevent it. Indeed, in Piedmont, it is the secular judge who has jurisdiction here. More, should an ecclesiastical judge take first cognition, and the penalty he inflicts is too light to suit the crime, then a lay judge may punish [the offender] a second time. In Piedmont, cases of a “mixed forum” regarding Jews are handled, in practice, by the Conservatore and his Vice Conservatori; the same applies in the Kingdom of Naples, the rule being that in a mixed forum, ecclesiastic judges have no jurisdiction over laymen. The clear deduction, therefore, is that in cases of blasphemy by Jews, they are to be punished by lay, not ecclesiastic judges. Guido and Marq. de Susannis II, 9, 5. At in hac patria in causis mixti fori quoad Iudaeos, statutum legitur ex *Regio memoriali* 27 Junii 1617. ad cap. 4, cognitionem ad Conservatorem generalem et eius Vice-Conservatores pertinere privative, et ita practicari in Regno Neapolitano, quod in delictis mixti fori Iudices Ecclesiastici non exercent jurisdictionem contra laicos, et sic non detur locus praeventioni testator Baiar. *Ad Car. Par blasphemia* 17 . . . Sed de hoc superfluum est disceptare dum Iudaei blasphemantes debent puniri per Iudicem laicum, et non per Ecclesiasticum [yet if lay judge does not act, then, indeed an ecclesiastic one may intervene].

## 16. Chap. XLIII

**p. 143-144. Since Jesus, lex mosaica fuit penitus extincta ac amisit vim obligandi. Hence, Jews retain powers only in ceremonial matters, meaning rabbinical power depends on princes or the Jews’ *conservatore generale*, who, for instance, decides whether excommunication may be used.**

Jews are deemed totally to lack powers of jurisdiction; . . . how much the more, then, should the decisions [*lauda*] of Jewish arbiters not be carried out, as in the Code C.1,9,8 and reiterated by de Susannis 2,6,23. . . . [Hence], with respect to the decisions of Jewish arbiters, it was decided that the party/ies may always appeal of the *Conservatore*

*Generalis***17. Chap. XLV**

**p. 147.** [Jews have arbiters], for among the Jews when their laws differ from [those of] *ius commune*, this [law] must be the basis [for decisions and action], rather than *ius commune* or Roman law, as Calderini says in his *consilia* nos. 2 and 10, depending on the nature of the case and its circumstances, as Ricciulo says (on whom see below). Thus should there be a case related in one way or another to succession to male and female children from an intestate Jewish parent, the question will have to be decided according to Mosaic law, not *ius commune* or Roman law, so that the successory custom [of Jews] will be preserved just as it must also be when the matter is one of the statute excluding a daughter of a Jew [in favor of] male siblings, as I said above.

**18. Chap. XLIX**

**p. 157.** Time and again Jews are summoned to court on their Sabbath. [Jews protest in vain—(actually Roman law exempts them)] since they are in fact subject to the laws of the Christians (not Christian law; note). Jewish law, it appears, is observed with respect to “ceremonies,” *ius cazagà*, matrimony, divorce, and inheritance.

**19. Chap. LXIV**

**p. 262.** *Judaeorum gentem ubique peculiare habere Judices, a Magistratu tamen Christiano constitutos apparet ex his quae tradit Matth. De Afflictis dec. Neap. n. 32*  
**This refers to the *Conservatore*, who has full powers in just about everything, including the primary jurisdiction over Jews. Cases in court begin with him. Sessa, himself the *vice conservatore*, notes the privileges of 1603, 1616, and 1626, now abrogated by that of 1667. In the earlier privileges,**

**p. 267** Jews always have special justices appointed over them, as Matthew de Afflicis explains. [These, like the *Conservatore* have seen their powers increase]. In earlier privileges, Jews were *forced* to choose arbiters and obey rabbinical sentences with no hope of appeal or to acquiesce according to Jewish rites and laws. [Under the new privilege, there is] appeal, which is made to the *Conservatore*.

**Segre, Jews in Piedmont, Privilege of 1667, #2322** vol.2, p. 1156, par. 42:  
 l'autorità de rabini si limita alla decisione delle differenze ceremoniali dalle sentenze dei quali, come dal laudo delli arbitri, si *farà l'appellatione al conservatore in caso d'aggravio*, al qual conservatore spetterà la cognitione di tutte le altre cause e dalle sentenze del conservatore si dovrà appellar al senato.

**Text of 1616**, #1952 vol. 2 p. 951, fu tra loro fatto parte a dover in ogni loro differenze elegger arbitri . . . da quali non si possa dimandar appellatione, ne revisione alcuna.

**Text of 1603**, #1761, 2:859, possano . . . haver ricorso da loro rabini a quali si da ogni autorità necessaria per decidere tra loro, si in questo [banking matters] come in ogni altre cause loro, conforme alle loro leggi.

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### Tractatus de iudaeis

Tract on the Jews

1713

Prepared by Kenneth Stow, Haifa University, Israel

*Tractatus de Iudaeis*, Giuseppe Sessa

Turin 1716

**Selections with Translation,  
Kenneth Stow**

#### 1. Chap. II

**p. 4.** Ideo dicendum est, eos dici de populo et corpore civitatis ubi commorantur . . . et in Patria nostra ex privilegiis concessis sub 15 Decembris 1603 a Carlo Emanuele I . . . inter cetera id expresse decernitur et ligantur generaliter omnibus Statutis sive commodum, sive onus afferentibus (refs to De Luca and Surd.) ubi quod concessa, aut prohibita alicui populo, vel universitati censentur concessa, vel prohibita Iudaeis ibi habitantibus et gaudere immunitate aliis concessa (Gratian) et exceptis iis quae concernunt forum spirituale, seu internum, Hebraeos dici in omnibus Cives, tam in odiosis et onerosis, quam etiam in favorabilibus et privilegiativis, et ideoque sub legibus, statutis, et consuetudinibus aut indultis contineri firmat; de Luca.

#### 2. Chap. III

**p. 6.** Sed quaestionis est, an privilegia eisdem concessa dicantur odiosa vel favorabilia: et conclusive loquendo, absolute tenendum est in iis (privilegiis) que repugnant iuri communi odiosa esse reputanda, nec trahenda vel extendenda de uno casu ad alium . . . eaque sunt intelligenda quominus iuri communi derogent cum dicantur esse iuris extraordinarii . . . ideo dicuntur privilegia qui privant legem . . .

### 3. Chap. XV

**p. 41. How to handle the problem when princes ignore that Jews originating from Spain and Portugal were surely baptized at one point and then reneged. Here he cites de Suannis, Part III, chap. 2, paragraph 5.**

. . . de novo lavare (after baptism and after circumcision) quo Hebrei vocant idiomate latino purificationem et cum pumice caput radere ac ut refert Eijmeric *direct. inq.*, p.2, q.44 ac infelices recidivi ad amnem ducuntur iuxta antiqui moris consuetudinem et interrogati, an agere velint *Tevila*, idest in balneum, aut lavacrum influentis aquae ingredi? ubi respondeant affirmative caeremoniarum Prefectus ait, *baal tesuva*, idest regredere a statu peccati [then they are stripped, nails cut to the quick, rolled in sand, as if to roll of the oil of Chrism]. . sicque rasorum capitater in amneam merguntur exclamantes Benedictus sis Dom. Rex Coelorum cur praecipisti super hanc aquam et Balneo *Tevila* nos sanctificare. [Then they go back to their original name and promise to observe the law and blapheme Christ]. . id quoque sic fieri audivi a quibusdam Hebraeis ad fidem catholicam conversos . . [Sessa adds that to stop them from seducing Christians to Judaism, Nicholas IV introduced *Turbato Corde* and he notes Oldradus, *cons.* 36.]

### 4. Chap. XVII

**p. 48. Jews use *Dintorà* to regulate rents, specifically, the Taqqanah of R. Tam on housing, which then becomes the *ius cazagà* of Italian ghettos. Admittedly, making the house into a *hyptotheca* [something pledged or mortgaged] removes the house from the control of the owner. The approval of Jews living by this rabbinic, decision, *de quo nihil reperitur in Pentateucho dispositum* (that is, it is a law whose sanctioning means recognizing the rabbinic jurisdiction Christian theologians and legists had been deprecating, and worse, since the thirteenth century) is found in a decision of the Roman Rota of 20 November 1609 (which Sessa appends). However—and this is the news—when Jews do not live in a ghetto (as in Turin prior to 2 August 1679), they have full rights:**

Verum quidem est, quod in Hebraeis non restrictis intra Ghattum, atque capacibus possidendi in proprietatem et dominium verum, et absolutum, domos, vel bona, tunc procedunt omnia, quae de retractu vicinitatis, vel consortii disposita reperiuntur quoad Christianos, cum reputentur Cives, atque Civium statutis et privilegiis potiantur etiam

ubi sint fundata cum aequitate ac res agatur cum Christianis. Deluc. *De servit. Disc.* 70; Marquard. *De Jud.* II, 2, 6.

## 5. Chap. XXI

**p. 64, *patria potestas.*** [Jews not true *servi* as some say] per passionem D.N.I.Christi [which] factos esse servos Principum, *c. etsi Judaeos, de Iud.*, unde filios Iudaeorum in potestate parentum minime esse tenendum sit. [Rather Jews are subservient to princes] quae sunt civium Romanorum; Marq. III, 4, 10.. Ex quo deducitur quod filii Judaeorum sprete opinione contrarium tenentium sunt in potestate parentum; Ricciulo, *de iure pers.* 2, 29, 1; Pignat. *Cons.* 14.

## 6. Chap. XXIV

**p. 77. No inheritance to the *Comunità*.** Iudaei . . . sint capaces institutionum et haereditatum tam ex testamento, quam ab intestate respectu consanguineorum, qui ad fidem converse sint . . . Non est tamen ferendum quod aliquid capere possint a Christianis penitus extraneis si ageretur de relicto universitati hebraeorum, vel eorum Collegio, cui nihil prorsus per Christianum reliqui potest [as] C.1,9,1 et cap. Iudaei, el 2, X. de iud. Imo Christianus quidpiam legans Universitati sive Collegio Hebraeorum excommunicaretur post mortem 24. q.2; de Susannnis 2,5,23 cum relicta turpi personae non sustineatur ....[and we have already said Jews are] personas viles et infames comparative ad Christianos [chap. 18, supra]

## 7. Chap. XXVI

**p. 81. Jews use *ius commune* in court and in making wills. They use Mosaic Law only for circumcision, marriage, ritual, and ceremonials. Thus Sessa; but not everyone was so clear. Ricciulo, for one, said Jews must use *ius commune* without exception (he also was a strong supporter of the *Casa dei cathecumeni* and of “kidnapping” offered children); and see too Peter Cuneus, *de Republ. Hebr.* 1, 6.**

Si tamen inter Judaeos adesset consuetudo vel statutum legitime approbatum, eorum successiones deferens juxta legem Mosacium ea essent servanda, et consuetudinem adesse in Patria Mantuana succedendi non ex dispositione juris communis, sed veteris testamenti.

## 8. Chap. XXVI

### p. 88. As Ricciulo points out, the dowry is to ensure:

. . . liberis, quae ratio cessat in Iudaeis cum sint Oppido Christianis infesti, c. cum sit nimis, e c. etsi Iudaeos, de Iudaei, ideo Reipublicae [of Cuneus] refert eos non multiplicari..C. Boralevi, *Introduzione* a P. Cunaeus, *De Republica Hebraeorum*, Firenze 1996, pp. VII-LXVII. \*

## 9. Chap. XXXIII

**p. 107.** Inter Iudaeos matrimoniam non dicitur Sacramentum, sed simplex contractus. Ricciulo, *De pers.* 2,3,11. [Their marriages are, however] verum, . . . non tamen est ratum et indissolubile sicut inter Christianos. [This is because Jews deny the assumption of God of human form, and, therefore, any] lite inter ipsos mora de initi matrimonii validitate , aut circa divortium celebrandum conspicimus solem Judicem secularem esse competentem, , cum is contractus sit mere temporalis [De Susannis had spoken of an ecclesiastical court]. Unde in matrimonio contrahendo lege Mosaica et non civili ligari Iudaeos certissimi iuris est. De Luca, *Disc.* 15, 3. [as the matter is regulated by] *l.nemo, C. 1, 9.*

## 10. Chap. XXXIV

**p. 111. The conversion of only one spouse:** Si tamen uxor conversi ad fidem venire noluerit post omnem adhibitam diligentiam, dimitti debet in eius infidelitate obdurata; sed cavendum est ne vir ei unquam libellum repudii, secundam legem Mosaicam, tradat, quia id faciens puniretur tamquam judaizans, nec cum ea posset cohabitare propter periculum subservionis fidei et blaspheme; quod etiam servandum est, si uxor converteretur ad fidem et vir permaneret fidelis. Pigna. Consult. 14, n. 215.

## 11. Chap. XXXIV

**p. 115. Who judges Jews? *Antiqua improbitas* of Gregory XIII says that when an ecclesiastical crime has been committed, it is the Inquisition. Otherwise:**

. . . ad iudicem laicum cognitionem delictorum carnis, immo videmus quod si quaestio

sit inter iudaeos de validitate aut nullitate matrimonii aut quod petatur divortium ratione adulterii vel sevitiae (is this a hint such would be valid causes among Christians, too?) nullo modo iudex ecclesiasticus, sed secularis tantum iudex est competens, et adeundus quia is [jewish marriage] contractus est meri temporalis et jurisdictionis secularis, . . . ac si alter coniugum ad fidem redierit et sic agitur inter Christianum et Iudaeum vel e contra, actor debet sequi forum rei, ac proinde, si infidelis agat ad divortium, vel ad nullitatem matrimonii, debet convenire fidelem coram iudice ecclesiastico, qui in causa matrimonii est iudex fidelium. Si vero fidelis est actor, debet infidelem convenire coram iudice seculari, qui est eius iudice ut iuridice . . . . [Indeed] inepta est opinio, seu distinctio, quam facit Marq. de Susannis (II,6,17) ubi dicit Iudicem laicum esse competentem, si quaestio matrimonii agatur inter Iudaeos incidenter, secus si principaliter sit intentata, quo casu dicit esse ventilandum coram iudice Ecclesiastico, cuius partes tuendo etiam firmavit supra cap. 4, n. 6, quod Iudaei in materia usuararum subjiciantur Iudici Ecclesiastico, quo ibi non immerito confutavimus.

[the judge is ecclesiastic; and, indeed, it is up to *ius commune* to establish the penalties for adultery or usury, which is always a civil judge's competence].

## 12. Chap. XXXV

**p. 117.** Sed quia inter Judaeos neminem unquam ex eis vidi qui non laboret (si vult manducare) et in aliqua arte vel mercature . . . quas exercent Judaei, vix expleta infantia se se non exercent, dum Judaei ob incapacitatem possidendi bona stabilia (nisi ex privilegio) et necessitatem vivendis ex solis industriis [must earn their keep, as says De Luca, *de alien., et contr. prohib.* disc 60, n. 10].

## 13. Chap. XXXVII

**p. 122. Sessa wonders why Jews practice such acts as being receivers of stolen goods. He had just spoken of Jewish industriousness, but here, he introduces the example of one Emanuel Bacchi, who was hanged for this crime. He is perplexed and thus adds:**

Unde ex iis videretur dicendum saltem presumptione iuris Judaeos esse malos, fures, et Reipublicate Christianae perniciosos, . . . Et consequenter nullatenus puniendos esse Christianos injuria verbali afficientes judaeos.

These things thus show us that at least by legal presumption, Jews are harmful, thieves, and detrimental [lit., pernicious] to the Christian Republic, . . . so that Christians insulting Jews should never be punished.

#### 14. Chap. XXXVIII

**p. 126. On the subject of closing Jews inside houses—within ghetto—on feast days. He objects:** quia cum non omnes Hebraei cubacula possideant attenta, non minus eorum paupertate, quam habitationum angustia, cum habitare cogantur in eorum officinis et sagariis existentibus in solario inferiori domuum hospitalis, sive iuxta vias publicas, et curtes dictarum aedium in quibus coquinam facium et omnia ad usum rei familiaris necessaria exercent . . .

#### 15. Chap. XL

**p. 134, on blasphemy. We know that in Modena, blasphemy was punished directly by the Inquisition. However, not so, according to Sessa: who says it is to be punished by a secular judge, He limits the Inquisition to purely ecclesiastical crimes and heresy.**

Quis denique sit Judaeorum Iudex competens in hoc blasphemiae crimine, communis est DD. [doctores] distinctio, quod si Judaeus delinquat in iis, quae haeresim sapiant inter Christianos, tunc cognitio, et punitio ad Inquisitorem pertineat, sin autem extra hunc casum delictum committatur in aliquo criminum omnino Ecclesiasticorum, de quibus in *c. cum sit generale, de foro compet*, tunc cognoscat Ordinarius Ecclesiasticus. [Fully secular crimes pertain of course to a secular forum] . . . Verum cum crimen blasphemiae sit mixti fori, locum esse praeventioni tenent . . . et quod in Patria nostra Pedemontana Iudex laicus cognoscat de hoc blasphemiae delicto testatur in puncto Guid. Papa *Gratianopolitanus* . . . Sed si Iudex Ecclesiasticus praeveniendō puniverit quidem, sed leviter, ac poena gravitati delicti non adequata non prohibetur Iudex secularis iterum punire . . . Guido and Marq. de Susannis II, 9, 5. At in hac patria in causis mixti fori quoad Judaeos, statutum legitur ex *Regio memoriali* 27 Junii 1617. ad cap. 4, cognitionem ad Conservatorem generalem et eius Vice-Conservatores pertinere privative, et ita practicari in Regno Neapolitano, quod in delictis mixti fori Iudices Ecclesiastici non exercent jurisdictionem contra laicos, et sic non detur locus praeventioni testator Baiar. *Ad Car. Par blasphemia* 17 . . . Sed de hoc superfluum est disceptare dum Iudaei blasphemantes debent puniri per Iudicem laicum, et non per Ecclesiasticum [yet if lay judge does not act, then, indeed an ecclesiastic one may intervene].

#### 16. Chap. XLIII

**p. 143-144. Since Jesus, lex mosaica fuit penitus extincta ac amisit vim obligandi.**

**Hence, Jews retain powers only in ceremonial matters, meaning rabbinical power depends on princes or the Jews' *conservatore generale*, who, for instance, decides whether excommunication may be used.**

. . . dicantur carere totaliter iurisdictione . . . a fortiori dicendum nec lauda Iudaeorum habere executionem paratum C.1,9,8 and de Susannis 2,6,23. . . Prout ab arbitrorum Iudaeorum laudis sancitum fuerit posse appellari ad conservatorem generalem.

### 17. Chap. XLV

**p. 147.** [Jews have arbiters] quod inter Hebraeos quando eorum iura differunt a iure communi, illud inspiciendum sit, et non ius commune vel Romanorum, ut defendit Calderini, cons. 2 & 10. [However, there are many issues that are treated] iuxta casuum diversitates et circumstantias [following Ricciulo. Thus] si agaretur de controversia tangente, seu pertinente ad successionem filiis masculis et foeminis ab intestate delatam a genitore Iudaeo, questio ab arbitris dirimenda foret iuxta ius Mosaicum, neglecto iure communi aut Romanorum, si ita ferret consuetudo succedendi prout idem servandum esset si agaretur de excludenda vigore statute filia(m) Iudaei per fratres Iudaeos, ut alibi dixi.

### 18. Chap. XLIX

**p. 157.** Quotidie accidit die Sabbati [Iudaei] conveniuntur in iudicio. [Jews protest, but usually without success, since they] subijciantur legibus Christianorum; [with exceptions] servatur ius mosaicum ut puta in ceremonialibus, iure kazagà, matrimoniis, et quandoque repudiis vel successionibus [as these apply to Jews alone].

### 19. Chap. LXIV

**p. 262.** Iudaeorum gentem ubique peculiare habere Iudices, a Magistratu tamen Christiano constitutos apparet ex his quae tradit Matth. De Afflictis dec. Neap. n. 32 **This refers to the *Conservatore*, who has full powers in just about everything, including the primary jurisdiction over Jews. Cases in court begin with him. Sessa, himself the *vice conservatore*, notes the privileges of 1603, 1616, and 1626, now abrogated by that of 1667. In the earlier privileges,**

**p. 267 . . .** Hebrei in eorum controversiis arbitros eligere *cogerentur*, et Rabbiorum sententiis absque ulla appellationibus spe, aut medio aquiescere iuxta ritus Hebraicos ac eorum leges. . . [Under current privileges] a laudo arbitrorum prout a sententiis

Rabbinorum appellationis devolvatur ad Conservatore generale.

**Segre, Jews in Piedmont, Privilege of 1667, #2322** vol.2, p. 1156, par. 42:  
l'autorità de rabini si limita alla decisione delle differenze ceremoniali dalle sentenze dei quali, come dal laudo delli arbitri, si *farà l'appellatione al conservatore in caso d'aggravio*, al qual conservatore spetterà la cognitione di tutte le altre cause e dalle sentenze del conservatore si dovrà appellar al senato.

**Text of 1616, #1952** vol. 2 p. 951, fu tra loro fatto parte a dover in ogni loro differenze elegger arbitri . . . da quali non si possa dimandar appellatione, ne revisione alcuna.

**Text of 1603, #1761, 2:859**, possano . . . haver ricorso da loro rabini a quali si da ogni autorità necessaria per decidere tra loro, si in questo [banking matters] come in ogni altre cause loro, conforme alle loro leggi.

**Publisher:** The book was completed in 1713/4, published in 1717 in 1600 copies. It is readily available, awful to read. See Renata Segre, *The Jews in Piedmont*, doc. no. 2582 for information.

**Archive:** in such libraries as Columbia, Jewish National Library, Jerusalem

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