

THE *COLLATIO* AND THE FUTURE OF ROME

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**1.- Introduction**

The main purpose of this paper is to examine the attitude of the authorship of the *Collatio Legum Mosaicarum et Romanarum* towards the Roman Empire. It seems that the primary authorship of the *Collatio* ought to be attributed to Jewish hands, and that the primary character of the work was apologetic. Yet, a chronological excursus, demonstrates that, although the work was first conceived at the end of the third century, or the very beginning of the fourth century, the text was later interpolated, giving a *terminus post quem*, not earlier than the end of the fourth century, and possibly, the beginning of the fifth. Thus, the use of the term "authorship" and not just "author".

The primary purpose of the treaty, which can be well understood through a detailed analysis of the first *titulus*, or chapter, is the demonstration of the diachronic, or temporal, primacy of Mosaic Law, Jewish Law, on Roman Law, as the Pentateuch was more ancient than Roman Law. Accordingly, as Roman law can be compared positively to the Law of Moses, it possesses an intrinsic eternal value. Besides, the synchronic, or spatial relationship between Jewish and Roman Law is well-defined. While Mosaic Law is eternal, albeit it could claim only authority for the Jews, Roman law, which mirrors Jewish Law, possesses a universal character, and it is valid for all the people, who were submitted to the mighty rule of Rome. Indeed, in the eyes of the Jewish author of the *Collatio*, Mosaic Law is presented not just as a term of comparison for the excellency of its Holy Law, more than that, it vehemently argues that Roman law, once it upholds and mirrors the Mosaic values, can be taken as a universal *Ius Gentium*. The text of the first *titulus*, or title, focuses the comparison of the offences and the penalties established in the Bible and in Roman law for murder and manslayer. As in the successive *tituli*, or chapters, the short excerpt of Mosaic Law, probably stemming in the *Vulgata Vetera*, is followed by short excerpts from books written by the most important Roman jurists such as Papinianus, Ulpianus, Paulus and Modestinus as well as from Imperial constitutions collected in the Codex Gregorianus and Hermogenianus.

This analysis throws light on the vision of the past, present and future of Rome uphold by the author of the *Collatio*. The image of the past and the present of Rome are intermingled. Thus, according to the author of the *Collatio*, the Roman Empire acquired the rule of *oikoumenè* as its laws emulated those of Moses, reflecting a Divine purpose. Yet, the future of Rome is problematic. The author envisioned the future of Rome as a

return to the past, in this case, the Golden Age of Roman Pagan jurisprudence. Roman Law in this period, not only mirrored the Law of Moses, but also granted to the Jews various legal privileges, first and foremost internal autonomy. Indeed, as the first redaction of the *Collatio* can be probably dated to the days of Diocletian, the composition reflects the fact that the emperor reestablished the protective attitude of the Roman state towards the Jews. This can also help us in establishing an audience, on the main, Jewish and possibly Pagan. Yet, the message of the *Collatio* continued to assume a tangible value all along the fourth century, when the Roman Empire became Christian, and, as result, the privileges enjoyed by the Jews were slowly eroded, as new laws limited and reduced the legal position of the Jews as individuals and as community. This can possibly explain why the work was interpolated. Thus, once the Roman Empire became Christian, the ideology of the author was even more relevant than before, as the Law of Moses was valid for the Jews as well as the new Christian ruling elite, and therefore this amazing document remained as a source of dialogue till the beginning of the fifth century.

Several similarities between this treatise and the more or less contemporary *Historia Augusta*, can help in strengthening our understanding of the author's ideology. The future of Rome, envisioned by the authorship of the *Historia Augusta*, shall be flourishing and prosperous only if the Roman ruler shall adopt the behavior of past emperors, such as Severus Alexander, a model of emulation. Thus, while for the anonymous author of the *Collatio* a happy and bright future for Rome, and for its Jews as well, is assured by the reiteration by the decisions taken by the Roman Pagan classic jurists, for the author of the *Historia Augusta* a positive future for the whole Empire is secured once the model embodied by the emperor Severus Alexander is taken as source of inspiration by the new Christian rulers. In either case, we are discussing a universal model valid for the future, but rooted in the past.

## 2.- The Jewish authorship and the chronology of the composition

The *Collatio Mosaicarum et Romanarum Legum*, or just *Collatio*, is a short treatise, probably incomplete with an obvious legal character. The *Collatio* includes 16 *tituli*, or titles, in which individual laws taken from the Pentateuch are compared to Roman laws. Except for the last *titulus*, number XVI, which discuss private law, all other previous *tituli* deal with criminal law. Therefore, most of the *Collatio* discusses criminal law.<sup>1</sup>

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<sup>1</sup> See M. Hyamson, *Mosaicarum et Romanarum legum Collatio*, London 1913. The *tituli* of the sixteenth chapters are the following: 1. Of Assassins and Man-Slayers; 2. Of Outrage; 3. Of the Legal Power and Cruelty of Masters; 4. Of Adulteries; 5. Of Debauchers; 6. Of Incestuous Marriages; 7. Of Thieves and Their Punishment; 8. Of False Testimony; 9. Of the Exclusion of the Testimony of Relatives; 10. Of Deposit; 11. Of Cattle-raiders; 12. Of Incendiaries; 13. Of the Removal of Boundary Marks; 14. Of Kidnappers; 15. Of Astrologers, Sorcerers and Manichaeans; 16. Of Statutory Succession, see pp. 56-133.

The comparison consists of juxtaposition of Mosaic and Roman law. In each title, the first introductory passage comes from the Pentateuch, and its purpose is to render a Biblical law. Pentateuch laws quoted in the *Collatio* span from the books of Exodus through that of Deuteronomy. However, passages taken from Exodus and Deuteronomy numerically outweigh those derived from Leviticus and Numbers. Following the introductory citation of Pentateuch law is a rich selection of Roman laws. Although these Roman laws deal with approximately the same subject matter as the Mosaic laws preceding them, they usually treat individual legal issues in greater detail. The Roman legal text quoted follow *iura* and the Imperial constitutions. The main Roman legal sources quoted by the author of the *Collatio* are the Twelve Tables, the *Lex Aquilia*, the Augustan jurist Marcus Antistius Labeo, the *Institutes* of Gaius, the four great Roman jurists Papinianus, Ulpianus, Paulus, Modestinus, and the two collections of Imperial constitutions, the *Codex Gregorianus*, and the *Codex Hermogenianus*.<sup>2</sup> Most of these passages quoted originated in the *Sententiae* of Paulus. According to Scherillo, Paulus's *Sententiae* was the main Roman legal work used by the author as corresponding base to the Bible. After Paulus, Ulpianus is the most used source for Roman jurisprudence. The list is especially remarkable in that it contains the name of exactly those five jurists whose works were later declared authoritative without further need of checking in the so-called "Laws of Citations" of 426 C.E.<sup>3</sup> Only in the last XVI *titulus* there is a long excerpt from Gaius' *Istitutiones*. Other sources found, albeit less frequently are Papinianus and Modestinus. Thirteen imperial constitution are quoted, of whom one of Caracalla, two of Alexander Severus, and ten of Diocletian. All of these are quoted from the *Codex Gregorianus* and *Codex Hermogenianus*. The only exception is an Imperial Constitution of Arcadius, Valentinianus II and Theodosius I dated to 392-394 C.E.<sup>4</sup>

A Jewish authorship of the *Collatio* had been considered possible, not to say quite likely, by most of the scholars, beginning with the breaking - ground study of Volterra. However, the dating and place of composition of the *Collatio* by a Jewish author vary. Each scholar points to a different period, oscillating from the last years of the third century C.E. till the last decade of the fourth century C.E., and even later. Thus, the dating of the *Collatio* spans for more than a century.

Rabello, the most important jurist who in the last years dedicated various studies to the *Collatio*, argues that the treatise was composed by a Jew, between the years 294 and 313 C.E., during the tetrarchy, still under the rule of Diocletian, in Rome. The use of Latin, as well as the knowledge of the so – called *Vulgata Vetera*, possibly the oldest translation of the Pentateuch to Latin, roughly based on the *Septuaginta*, compiled and

<sup>2</sup> See W.W. Buckland and P.G. Stein, *A Text-Book of Roman Law*, Cambridge 1968, 585-589. On Gaius, see T. Honoré, *Gaius*, Oxford 1962. On Ulpian, see T. Honoré, *Ulpian: Pioneer of Human Rights*, Oxford 2002. On the *Codex Gregorianus* see S. Corcoran, *The Empire of the Tetrarchs: Imperial Pronouncements and Government AD 284–324*, Oxford Classical Monographs, Oxford 2000. See also A.M. Honoré, *Emperors and Lawyers, second edition, completely revised, with a Palingenesia of Third-Century Imperial Rescripts 193–305 AD*, Oxford 1994. On the *Codex Hermogenianus*, see A. Cenderelli, *Ricerche sul "Codex Hermogenianus"*, *Studi di diritto romano, Serie 2, 4*, Milano 1965.

<sup>3</sup> See Cod.Th.1.4.3.

<sup>4</sup> See Coll. V, 3. See also Cod.Th. 16.5.28. However, the rendering in the *Collatio* and in the Theodosian Code is quite different. See A.M. Rabello, *Alcune note sulla "Collatio Legum Mosaicarum et Romanarum" e sul suo luogo d'origine*, in *Scritti sull'Ebraismo in memoria di G. Bedarida*, Firenze 1966, 177-186.

directed to a Jewish public, had been seen by Rabello as the main proof that the author composed the treatise in Rome. Besides, in Rome stood a rabbinic school established already at the beginning of the second century C.E. Even if the Jewish author of the *Collatio* did not attend this school, however, through the acquaintance with some of its teachers, he could have acquired good knowledge of the Jewish Bible, at least in Latin, and together with that, a general knowledge of Jewish law. Moreover, Rabello argues that it was easy for the author of the *Collatio* to study there in depth Roman law and to compare it to Jewish law, as in Rome there was a school of jurisprudence, established there already during the rule of Vespasian. Therefore, the *Collatio* was composed in Rome, and not in Palestine, Gaul, or North Africa, as suggested by other scholars. Indeed, the *Collatio* was not composed in Palaestine, as there is no Talmudic spirit reflected in it. Moreover, Palestinian Jews were quite hostile towards Rome. Last but not least the manuscript tradition does not permit to think to an Eastern origin. There is no certitude either that it was composed in Gallia, even if there was found the first manuscript known, although Jews lived there as merchants. Even North Africa, as the site of origin for the *Collatio*, cannot be taken as a serious option. Therefore, Rabello argues that the primary redaction of the *Collatio* must indeed be dated to the reign of Diocletian, even if it is clear that various materials were interpolated during the fourth century.<sup>5</sup>

In the past, Levy and Volterra also argued for a Jewish authorship and an earlier dating. Levy does not bring positive evidence for a Jewish authorship, but he demonstrates that it was quite unfeasible that the *Collatio* had been written by a Christian. To start with, if the author of the *Collatio* would have directed his work to a Christian audience, he would have compared Biblical law with the new laws, promulgated by Constantine onwards, quoted in the *Codex Theodosianus*, but which does not appear at all in the *Collatio*. Moreover, most of the laws quoted in the *Collatio*, were issued by Diocletian. Besides, Levy emphasizes a series of passages, which discuss various Roman laws, which, even if can be found in agreement with Biblical law, much offended Christian sensibility. A good example is the norm which permitted a wedding between a man and the daughter of his brother. This positive norm, clearly sanctioned in law by Pagan jurists, later on become an offense in the eyes of jurists imbued with a new Christian spirit which was punished with the death penalty. Another convincing example is the penalty of crucifixion. Thus, the *Collatio* brings the crucifixion as example of penalty, which a Roman court of law could still impose. On the other hand, one of the

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<sup>5</sup> See A.M. Rabello, *Sull'ebraicità dell'autore della Collatio legum Mosaicarum et Romanarum*, in *La Rassegna mensile di Israel* 33, 1967, 339-349. See also A.M. Rabello, *Sui rapporti tra Diocleziano e gli Ebrei*, in *Atti dell'Accademia Romanistica Costantiniana, 2<sup>do</sup> Convegno Internazionale*, Perugia 1976, 173-179. See also Rabello, *Alcune note sulla Collatio* cit., 177-186. See also A.M. Rabello, *La datazione della Collatio legum Mosaicarum et Romanarum e il problema di una sua seconda redazione o del suo uso nel corso del quarto secolo*, in *Humana Sapit. Études d'Antiquité Tardive offertes à Lelia Cracco Ruggini*, in J.M. Carrié, R. Lizzi Testa (eds.), Turnhout 2002, 411-422. See V. Colorni, *L'uso del greco nella liturgia del giudaismo ellenistico e la novella 146 di Giustiniano*, in *Judaica Minora, saggi sulla storia dell'ebraismo italiano dall'antichità all'età moderna*, Milano 1983, 13-14, 49, 54, 61-65. See also U. Cassuto, in *Vetus Latina e traduzioni medievali della Bibbia*, SMSR II, 1926, 151-158. See also A. Momigliano, *I nomi delle prime "Sinagoghe" romane e la condizione giuridica della comunità in Roma sotto Augusto*, in *Rassegna Mensile di Israel* VI, 1931-1932, p. 291. On Todros see BT, *Pesah*. 53a/b; On Mathia Ben Heresh see BT, *Sanh*. 32b.

first acts of Constantine I, as Christian ruler, was to abolish this type of death penalty in 320 C.E. Therefore, Levy argues that the *ante quem* law for the dating of the *Collatio* is the Imperial edict against the Manichaeans, enacted under the tetrarchy between 296 and 302 C.E. On the other hand, according to Levy, it is difficult to suggest a date after 313 C.E. for the composition of the *Collatio*.<sup>6</sup> Volterra was the first scholar who argued for a Jewish authorship of the *Collatio* as well as for an earlier dating of the treatise, namely to the early fourth century, from 302 till 324 C.E. Thus, Volterra argued, that as in the treatise there are no reference whatsoever to the Gospels or to any other work of Christian literature, discards the possibility that the author was a Christian, strengthening, on the contrary, the possibility for a Jewish authorship. Besides, it is clear that the author did not use as source the *Vulgata* of Jerome, from which much differs. Instead, the author of the *Collatio* used an earlier version, whose text reflects the Greek *Septuaginta* and an ambiance nearer the Jewish tradition. Similarly, the author of the *Collatio*, while quoting Biblical passages, uses them to fit in a juridical framework, following a Jewish tradition. Moreover, according to Volterra, an earlier dating of the treatise is corroborated by the use of texts written by jurists and Imperial constitutions, which originated in Pagans, not Christians. The imperial constitutions quoted from the *Codex Gregorianus* or the *Codex Hermogenianus*, which include much material dated to the tetrarchy, characterized by the last great persecution of Christians, has a clear-cut Pagan character. The fact that the Imperial constitution of Arcadius, Valentinianus II and Theodosius I dated to 392-394 C.E. is a later interpolation, and therefore useless to find out the earlier date of composition of the *Collatio*, is corroborated by the fact that earlier Imperial constitutions, promulgated by Christian Emperors, as Constantine and his sons, Valens and Valentinianus I, are completely missing, nor the author hints at any knowledge of these laws. Therefore, Volterra argues that all imperial constitutions, which had a clear Christian imprint in the text, are in fact completely omitted. Thus, Volterra dates the composition of the treatise between 302 and 324 C.E. Volterra concludes arguing that the treatise is one of the first rare examples of systematic comparison between two different legal systems, the Jewish and the Roman, characterized by a different spirit. The “analytic” method used by the author is substantiated by the fact that although it was quite easy to find examples of Roman legislation which discussed in detail a certain topic, it was quite difficult to find the corresponding passages in the Bible, and yet the author was much successful.<sup>7</sup> Three other scholars, Scherillo, Barone-Adesi, and Pugliese also opt for a Jewish authorship and an early dating. Scherillo, an important Italian jurist, accepts the positions of Volterra and Levy and favor a Jewish authorship as

<sup>6</sup> See E. Levy, *Review of Volterra*, in *ZRG* 50, 1930, 698-705. On the norm permitting a wedding between a man and the daughter of his brother, see Coll. VI, 2; 3, 1; and 4, 5. See also Cod. Th. 3.12.1. The law is dated to 342 C.E. Another interesting example, quoted by Levi, is the differentiation in the treatment of a slave, if he was murdered or if he was beaten, resulting in his death. The Pagan jurists paid attention to the “dierum distinction”. However, in laws enacted by Constantine in 319 C.E., quoted by the Codex Theodosianus, this distinction was by then denied. See Coll. III, 1. See also Cod. Th. 9.12.1. On the penalty of crucifixion see Coll. I, 2, 2; VIII, 4, 2; XIV, 2, 2.

<sup>7</sup> See E. Volterra, *Collatio Legum Mosaicarum et Romanarum*, in *Atti della Reale Accademia Nazionale dei Lincei. Memorie* 6.3.1., 1930. See also Rabello, *La datazione della Collatio* cit., 411-422. See also Rabello, *Sull'ebraicità dell'autore della Collatio* cit., 339-349. see also C.Th. 16.5.28. See also Rabello, *Alcune note sulla Collatio* cit., 177-186.

well as an early dating of the *Collatio*. The Imperial constitution of Arcadius, Valentinianus II and Theodosius I is therefore an interpolation.<sup>8</sup> According to Barone-Adesi, the *Collatio* was redacted by a Jew in the last years of Diocletian's reign. A second redaction can be dated to the reign of Theodosius I, and a later revision to the reign of Valentinian II.<sup>9</sup> Also Pugliese favors an early dating. The purpose was all but practical, to apply Roman law in the framework of a non-Roman community, bearing a different juridical tradition, the Biblical legislation, or *Lex Dei*. Thus, each passage of the Bible, known by the Jewish public to whom the *Collatio* was dedicated, was followed by a series of passages dealing with the relevant Roman Laws, which therefore could easily be consulted. This treatise was useful enough that its use continued all along the fourth century C.E. As new needs arose, to answer to new conditions, new material was added. It is possible therefore to speak of new additions to the original text but not of successive stratifications.<sup>10</sup>

The arguments of Pugliese, who argues for a stratification brings us to the possibility that the text could be dated much later, towards the end of the fourth century and the beginning of the fifth century. By then, however the composition of the audience had changed, and by the end of the fourth century, probably included an increased number of Christians. Lucrezi, who dedicated various studies to the dating of the *Collatio* argues that, once considering a late dating, the earliest date is 390 C.E. In this year, in fact, Valentinian, Theodosius and Arcadius enacted a law against male prostitution, which is mentioned in the fifth *titulus* (5.3).<sup>11</sup>

However, it is Rutgers, who, once more, demonstrated very convincingly in details the Jewish authorship of the *Collatio*, also argues for a late dating of the *Collatio*. Thus, there is no doubt that the author of the *Collatio* was a Jew, Latin speaking, who probably lived in Rome. Even, if it is quite improbable that the author of the *Collatio* studied in a Rabbinic school, it is probable that he had the occasion to study Jewish law in one of the various libraries owned by the synagogues or the communitarian centers of the various Jewish communities, established in Rome.<sup>12</sup> Moreover, as the epigraphic data coming from the Jewish catacombs of Rome suggests, Jews were familiar not only with Greek, still spoken by the vast majority of the Jews, but with Latin as well, probably the language written and spoken by the Jewish elite of Rome. Moreover, all along the fourth

<sup>8</sup> See G. Scherillo, *Recensione a Volterra*, in *Archivio giuridico Filippo Serafini* 104, 1930 (XX, II), 255. See also G. Scherillo, *Collatio legum Mosaicarum et Romanarum*, *Nuovissimo Digesto Italiano* 3, Torino 1959, col. 446 ff. See also Rabello, *La datazione della Collatio* cit., 411-422. See also Rabello, *Sull'ebraicità dell'autore della Collatio* cit., 339-349.

<sup>9</sup> See G. Barone Adesi, *L'eta' della Lex Dei*, Naples 1992.

<sup>10</sup> See G. Pugliese, *A Suggestion on the Collatio*, in *Festschrift Reuven Yaron*, *Israel Law Review* 29, 1995, 161-171. See also Rabello, *La datazione della Collatio* cit., 411-422.

<sup>11</sup> See F. Lucrezi, *Ancora sulla data della 'Collatio legum Mosaicarum et Romanarum'*, in F. Sturm, Ph. Thomas, J. Otto, H. Mori (eds.), *Liber amicorum Guido Tsuno*, Frankfurt am Main, 2013, 193-210. See also the earlier, F. Lucrezi, *Sulla data di redazione della 'Collatio' alla luce di due costituzioni costantiniane*, in *Atti dell'Accademia romanistica costantiniana*, Napoli 2003, 599-613. Lucrezi, however, does not associate a Jewish authorship to this dating.

<sup>12</sup> In a letter written in 384 C.E., Jerome notes that he borrowed various books from a Jew, who in turn borrowed these books from a synagogue. See Jerome, *Epist.* 36.1. See also L.V. Rutgers, *The Hidden Heritage of Diaspora Judaism*, *Contributions to Biblical Exegesis and Theology* 20, Leiden 1998, 118.

century, Jews could be found in all branches of Imperial administration, and, at least till 418 C.E. in various tasks, which necessitated certain knowledge of Roman law, even at its lowest levels. Most of these Jews, possibly originated in Rome, or at least probably studied at Rome. Yet, Rutgers carefully argues that the Jewish author of the treatise, even if a member of the lower echelons of the Imperial administration, was no jurist, given the inconsistency of the material used. This betrays the authorship of someone who had enough knowledge of Roman law, but that was no jurist. A good example is indeed the laws on crucifixion, quoted by the author. These laws, by then outdated, were quoted, as the author had no knowledge of Roman law as a jurist but only as an apologist. In fact, the juridical material, researched by the author, does not serve a legal purpose, but only an apologetic aim.<sup>13</sup> Moreover, Rutgers supports a later date, arguing that one of the main purposes of the author was to defend the internal jurisdiction of the Jewish communities from the external interference of the Romano-Christian authorities, which would culminate at the beginning of the fifth century, in the abolition of the Jewish patriarchate in 429 C.E. In fact, Rutgers argues that at least two laws were enacted in the last decade of the fourth century C.E., with the purpose of reducing Jewish internal jurisdiction. Hence, these laws, quoted in the *Collatio*, contemporary with the imperial constitution of Arcadius, Valentinianus II and Theodosius I, are not an interpolation, but an integral part of the text. Thus, in 393 C.E. Roman imperial legislation hindered Jewish marriage customs, till then respected by Roman law, with a prohibition to contract marriages following long established Jewish customs, and forbidding Jews in entering in several matrimones at the same time. Some years afterwards, in 398 C.E. the Emperor Theodosius I enacted a law which limited Jewish juridical powers only to those cases which were deemed strictly religious. Thus, according to Rutgers, the *Collatio*, composed between 394 and 398 C.E., was probably one of the last apologetic works, written by a Jew in Late Antiquity, together with the *Letter of Annas to Seneca*, which was directed to a Gentile public, Pagan as well as Christian.<sup>14</sup>

Also, Cracco-Ruggini, who claimed a Jewish authorship of the *Collatio*, dates the last redaction of the *Collatio* before the battle of Frigidus in 394 C.E., which sets the Christian Emperor Theodosius I against the Pagan usurper Eugenius. Besides, Cracco – Ruggini argued that the Jewish author ignored all the Constantinian – Christian legal material, which developed all along the fourth century, as it cannot be set together with the original Mosaic legislation. However, on the other hand, in its final form, the author shows that he is quite aware of the changing legislation, as he presents the Imperial constitution of Arcadius, Valentinianus II and Theodosius I as well as the legal material which originated in the *Sententiae* of Paulus. These two “interpolations” reveal clearly that the author was aware of the changing surroundings and the stronger influence that

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<sup>13</sup> On the law, which hindered Jewish marriage customs, see Cod. Iust. 1.9.7. On the law enacted by Theodosius I, which limited Jewish juridical powers see Cod. Th. 2.10.100. See also Rutgers, *The Hidden Heritage* cit., 276-278.

<sup>14</sup> See Rutgers, *The Hidden Heritage* cit., 235-284. On arguments for a Jewish authorship see especially 265-272.

Christianity had by now on Roman jurisprudence. This material was therefore interpolated as the work was becoming anachronistic.<sup>15</sup>

Lucrezi also suggests, as a possible dating, the year 398 C.E., as in this year, Arcadius and Honorius enacted a law which aimed to limit the activity of the rabbinical courts for the sole voluntary arbitration (Cod. Theod. 2.1.10). Thus, the Jewish author of the *Collatio* would have felt the need to offer an apology of Judaism to the Imperial authorities, emphasizing the similarity between Jewish and Roman law.<sup>16</sup> This dating had, previously, been argued by Oestersetzer. Accordingly, the treatise was written at the end of the fourth century C.E., before the Imperial constitution dated to 398 C.E. The purpose of the author was to avoid the abolishment of Jewish jurisdiction.<sup>17</sup> Moreover, as *terminus post quem*, Lucrezi suggests also the years 406, 426 and 427, 439 C.E., till the early reign of Justinian. Thus, Lucrezi argues that as the translation of the Pentateuch given in *Collatio* can be associated not just to the text of the *Septuaginta*, but also to the *Vulgata* of Jerome, which saw the light in 406 C.E., this year can be seen as the *terminus post quem*. Yet, clearly, in this case, it is quite difficult to associate the *Collatio* to a Jewish authorship. As already previously stated, the fact that the only Roman jurists mentioned in the work are Gaius, Modestinus, Paul, Ulpian and Papinian, who were the five jurists whose works were later declared authoritative without further need of checking in the so-called “Laws of Citations” (Cod. Th. 1.4.3), can date the *Collatio* to 426 C.E. Moreover, Lucrezi suggests that, as there is a strong similarity between a fragment of the *Collatio* and one of the code of the Pseudo-Augustine’s *Liber de Scripturis* (also called *Speculum quod Fertur Sancti Augustini*), it is possible to date the latest redaction of the *Collatio* to 427 C.E. Yet, once more, if we accept this date, it is quite difficult to argue for the attribution of the *Collatio* to a Jewish author. Furthermore, as in the *Collatio* (Coll. 5.3), there is an explicit reference to the Theodosian Code; it is possible to argue for 439 C.E., as the term *post quem*. Last but not least, Lucrezi argues in favor of a date not earlier than the fifth or even sixth century C.E. This may be indicated by the fact that the Latin used for the translation of the text of the Pentateuch is clearly more modern than the Latin used for the transcription of the classical sources of Roman law, as well as Jerome’s *Vulgata*, as previously stated, dated to 406 C.E. According to Lucrezi, a *terminus post quem* later than the second half of the fifth century, for example 476 C.E., or the early years of Justinian’s rule, have to be ruled out.<sup>18</sup>

The fortuitous discovery of the *Letter of Annas to Seneca*, a Jewish apologetic treatise in Latin, also dated to Late Antiquity, strengthen the possibility that the *Collatio* was composed by a Jew. In 1984 the German scholar Bischoff published a fragmentary

<sup>15</sup> See L. Cracco Ruggini, *Ebrei e Romani a confronto nell’Italia tardoantica*, in *Italia Judaica. Atti del I convegno internazionale*, Bari 18-22.V.1981, Rome 1983, 38-65. See also L. Cracco Ruggini, *Intolerance: Equal and Less Equal in the Roman World*, in *CPh* 82, 1987, 187-205. See also Rabello, *La datazione della Collatio* cit., 411-422.

<sup>16</sup> See Lucrezi, *Ancora sulla data della ‘Collatio* cit., 193-210.

<sup>17</sup> See I. Oestersetzer, *La “Collatio Legum Mosaicarum et Romanarum”. Ses origines – son but*, *Revue Etudes Juifs* 97, 1934, 65-96. See also Rabello, *Sull’ebraicità dell’autore della Collatio* cit., 339-349. See Cod. Th. 2.1.10.

<sup>18</sup> See Lucrezi, *Ancora sulla data della Collatio* cit., 193-210. See for example, on the use of “modern” Latin, the verb *stuprare*, in Coll. 5.2.1 e 5.4.2, or *plagiare* in Coll. 14.1.1.



letter in Latin, known today as the *Letter of Annas to Seneca*, dating it to the beginning of the fourth century C.E., possibly around 325 C.E. According to the German scholar, the purpose of the work was missionary, to convert to Judaism the Pagan elite of Rome, using arguments coming from philosophy, one of the leisure pursuit, which characterized the literary taste of the rich Senatorial aristocracy of Rome all along Late Antiquity. Therefore, as the work has a missionary purpose, it must be dated before Constantine forbade and banned any missionary activity on the part of the Jews. Moreover, as suggested by Wischmeyer, the quotation of Genesis, present in the work, corresponds to that of the *Old Vulgata*, also used by the author of the *Collatio*.<sup>19</sup>

Last but not least, some words on the possibility, albeit quite remote that the author of the *Collatio* was a Christian. The classic argumentation that the *Collatio* had been written by a Christian author was upheld by Bossowski at the end of the thirties of the last century. Bossowski argued that the author of the *Collatio* was a Christian who wanted to demonstrate the superiority of the Laws of Moses, on those of Pagan Rome. Bossowski adduces as a further proof that the author of the *Collatio* was a Christian, namely that it was used all along the Middle Ages. Only the work of a Christian would have had authority, but not the work a Jew, *infidelis*.<sup>20</sup> Also Lauria, who dates the *Collatio* after 394 C.E., argues for a Christian authorship.<sup>21</sup> Other interesting, but quite unconvincing arguments to uphold the Christianity of the author of the *Collatio*, were argued by Liebs, Pieler, and Schrage. According to Liebs the author who was a member of the ecclesiastical elite wrote the *Collatio* on the order of Pope Siricius (384-399 C.E.). Pieler argues a Christian authorship as no Rabbinic text is quoted by the author of the *Collatio*. Last but not least Schrage as well argues for a Christian authorship of the *Collatio*. His arguments are similar to those of Liebs. Thus, Schrage suggests that the *Collatio* was composed in North Africa in 427 C.E., and its purpose was to bridge

<sup>19</sup> See B. Bischoff, *Anecdota Novissima. Texte des vierten bis sechzehnten Jahrhunderts*, Stuttgart 1984, 1-9. The manuscript is preserved in an early ninth century manuscript (MS 17) in the archiepiscopal library of Köln. See also Momigliano, *The New Letter by "Anna" to "Seneca"*, in *Athenaeum* 63, 1985, 217-219. See also Cod. Th. 16.9.3, dated to 415 C.E. and 16.8.23. See also L. Cracco – Ruggini, *La lettera di Anna a Seneca nella Roma pagana e cristiana del IV secolo*, in *Augustinianum* 28, 1988, 301-325. On Jewish ideas present in the treatise, see Wis, 13 and 14. See also *Syb. Or.* III-V. On the Latin used in the Biblical passages quoted in the treatise see Gen 2, 7. See also W. Wischmeyer, *Die Epistula Anne ad Senecam. Eine jüdische Missionsschrift des lateinischen Bereichs*, in J. van Amersfoort and J. van Oort (eds.), *Juden und Christen in der Antike*, Kampen 1991, 72-93. On the other hand, Rutgers dates the work to the end of the fourth century. Rutgers argues successfully that the fact that the author of the treatise used the *Old Vulgata*, could only mean that the author was probably a Jew. He could have used this text at the beginning of the fourth century as well as at the end of the century. Moreover, the purpose of the was to win the sympathy for the plight of Jews and Judaism, though philosophical argumentations. See also Rutgers, *The Hidden Heritage* cit., 279-281.

<sup>20</sup> See F. Bossowski, *Suntne in iure romano, suadente usu forensi audientiae episcopalis, quaedam praecepta ad instar iuris privati hebraici introducta?*, *Rocznik Prawniczego Wilénskiego* 10, 1939, 1ff. See Rabello, *Sui rapporti tra Diocleziano e gli Ebrei* cit., 173-179.

<sup>21</sup> See M. Lauria, *Lex Dei*, *SDHI* 51, 1985, 257ff. See also M. Lauria, *Il Decalogo della dottrina cristiana*, *SDHI* 52, 1986, 543. The articles are characterized by strong anti-Semitic undertones. See Rabello's review in Rabello, *Sul decalogo "cristianizzato"* cit., 133-135.

between the imposing Pagan past jurisprudence and contemporary Christianity.<sup>22</sup> Lately Frakes also propounded a Christian origin for the *Collatio*.<sup>23</sup>

Thus, in concluding, while probably the *Collatio* was first conceived at the end of the third century C.E., by a Jewish author, all along the fourth century, and even later, the work had been reused and interpolated, possibly by Jews, but also, maybe, by Christians, as its apologetic purposes changed with the evolving circumstances.

### 3.- The apologetic purpose of the composition and its public

It is clear from an immediate reading of the *Collatio*, that its main purpose was apologetic. The primary purpose of the treatise was to uphold the absolute primacy of Mosaic Law, while its secondary purpose was to demonstrate that this law was not in conflict with Roman law.<sup>24</sup> The author of the *Collatio* argues that the legal teachings of Moses are earlier and superior to the tradition of Roman jurisprudence, and it does not contradict it. Thus, the *Collatio* is quite similar to the earlier apologetic works of Philo, as the *De Vita Moysis*, and of Flavius Josephus, as the *Against Apion*. As these earlier apologetics, the *Collatio* as well demonstrates the antiquity and superiority of Moses's teachings. Besides, this primacy does not contradict the basic tenants of the Greco-Roman civilization.

Indeed, according to Rutgers, the primary purpose of the *Collatio* was to show the primacy of Mosaic Law, and that the injunctions of Mosaic Law not at variance with later ordinances of Roman law. First of all, according to Rutgers, the handling of the legal material does reflect earlier and contemporaries' Jewish attitudes towards the Pentateuch. According to the author of the *Collatio*, all the laws and ordinances found in the Pentateuch are binding. Therefore, it is clear that there is and cannot be any dichotomy between the Decalogue and the rest of the laws and ordinances found in the Pentateuch. This attitude is mirrored in the earlier writings of Philo and Flavius Josephus, as well as in various contemporary passages stemming from Rabbinic literature. Thus, Philo states in a passage from *De Decalogo* that that the only difference between the Decalogue and all the other divine commandments found in the Pentateuch is that the first had been given by God in person, while the others were given to mankind through the agency of Moses. In another passage from *De Specialibus Legibus*, Philo explain that the Ten Commandments are just a summary of all the other laws and ordinances contained in the Five Books of Moses.<sup>25</sup> Flavius Josephus states in two passages of *Jewish Antiquities* that

<sup>22</sup> See D. Liebs, *Die Jurisprudenz im spätantiken Italien, 260-640 n. Chr.*, Berlin 1987. See P.E. Pieler, *Lex Christiana, Akten des 26 Deutschen Rechtshistorikertages*, Frankfurt am Main 1987, 485ff. See E.J.H. Schrage, *La date de la Collatio legum Mosaicarum et Romanarum*, étudiée d'après les citations bibliques, *Mélanges Wubbe*, Fribourg 1993, 401 ff. See also Rabello, *La datazione della Collatio* cit., 411-422.

<sup>23</sup> See Robert M. Frakes, *Compiling the Collatio legum Mosaicarum et Romanarum in late antiquity*, *Oxford Studies in Roman Society and Law*, Oxford 2011.

<sup>24</sup> See Coll. 7. 1.

<sup>25</sup> See Philo, *Decal.* 18 and *Spec.*

the Pentateuch is relevant in its entirety, as nothing had been added to the law for the sake of embellishment and that the Book of the Law was held in special awe by the Jews. In *Against Apion*, Flavius Josephus argues that as the laws of the Pentateuch do regulate every aspect of daily life between the Jews, great care was taken that the Law was not forgotten. Besides, it is important to emphasize that various Biblical passages dealing with legal topics, earlier quoted by Flavius Josephus in the *Jewish Antiquities*, are mentioned also in the *Collatio*. Therefore, for the author of the *Collatio* as well as for Flavius Josephus, the laws found in the Torah cannot be categorized in relevant or irrelevant laws, but must be seen as an articulated and consistent entity.<sup>26</sup> According to most Rabbis, the Torah or the Pentateuch was viewed as rational body of laws, in which nothing was redundant and even each detail was crammed with significance. Thus, according to a passage of the tractate *Sanhedrin* of the Mishna, the author for Torah clearly intended all the set of laws and ordinances found in the Pentateuch, and not only the Decalogue. A passage from the tractate *Avoth* of the Mishna defines the Torah as “an instrumental tool of the Creation”. Most of the Rabbis strived to remove the Decalogue from the center of attention and devotion. Thus, a passage from the treatise *Berachot*, found in both the Jerusalem and the Babylonian Talmud argues that only heretics believed that the Ten Commandments, and that the Torah, as a whole, had been given on Sinai.<sup>27</sup> Yet on the other hand, Rabbinic attitude to the relationship between the Decalogue and the Pentateuch as a whole corpus of law could be more complicated than that. Thus, for example in the same passage of *Berachot*, Rabbi Levi gives, contrary to the other Rabbis, a special prominence to the Decalogue as the foundation of Judaism.<sup>28</sup> It is possible to conclude that the attitude of the author of the *Collatio* vis a vis the Pentateuch as a source of law, reflected that upheld by the earlier Jewish apologists in Greek, Philo and Flavius Josephus, and the mainstream of contemporary Rabbinic literature. Thus, the *Collatio* first and foremost, following in the steps of the apologetic works of Josephus and Philo, addresses issues which were current in the Graeco-Roman world, focusing on legal matters. The apologetic answers given by the *Collatio* fit in the wider panorama of Jewish apologetics vis-à-vis both a Jewish public and a wider Pagan audience.

Moreover, according to Rutgers, a further purpose of the *Collatio* was to forward the primacy of Mosaic Law as part of the debate between burgeoning Christianity and Judaism. The Jewish author of the *Collatio*, therefore, wishes to demonstrate the legitimacy of the Jewish Law in a period in which it is attacked by Christian theologians. Contrary to the view upheld by the author of the *Collatio* and other Jewish apologists,

<sup>26</sup> See Josephus, *A.J.* IV, 115 and 196. See Josephus, *C. Ap.* II, 173-175. On the passages of the Bible quoted by both Flavius Josephus and the *Collatio* see Josephus *A.J.* III, 274 as *Coll.* 4; *A.J.* IV, 219 as *Coll.* 8; *A.J.* IV, 225 as *Coll.* 13; *A.J.* IV, 277 as *Coll.* 2; *A.J.* IV, 279 as *Coll.* 4.

<sup>27</sup> See m., *Sanhedrin* 10, 1. See m., *Abot* 3: 14. See JT, *Ber.* 1: 5 and BT, *Ber.* 9b.

<sup>28</sup> See JT, *Ber.* 1: 5 and BT, *Ber.* 9a-b. Are these, according to Urbach, conflicting views, different stages in an ongoing discussion, or, are these, according to Brooks, “two apparently contradictory themes”? Urbach used both Talmuds as source for his arguments, while Brooks used only the Jerusalem Talmud as his primary source. See E.E. Urbach, *The Role of the Ten Commandments in Jewish Worship*, in B. Segal and G. Levi (eds.), *The Ten Commandments in History and Tradition*, Jerusalem 1990, 161-189 and R. Brooks, *The Spirit of the Ten Commandments, Shattering the Myth of Rabbinic Legalism*, San Francisco 1990.

according to the Fathers of the Church, all the legal commandments found in the Pentateuch, with the exception of the Ten Commandments, are just redundant and were given to the Jews to correct them from their evil inclination. These latter were seen as having universal value, and thus binding. Although the Christian has an obligation to respect the Ten Commandments, all the laws and ordinances found in the Pentateuch are perceived only in spiritual terms, and therefore these are not legally binding.<sup>29</sup> According to early Christians, apparently, the whole set of Biblical laws and ordinances found in the Pentateuch were considered binding for early Christian as well as for Jews. However, according to Paul, Mosaic Law, or the whole set of laws and ordinances found in the Pentateuch, is not binding for the Gentiles who recognized Jesus as the Messiah.<sup>30</sup> By the second half of the fourth century, Paul's attitude towards the Pentateuch had been accepted by most Christian theologians and leaders. By then, Christian theologians had developed a well-defined distinction between the various parts of the laws, which reflected the evolution of human history. Three stages were distinguished. The first stage, the period of the Patriarchs, was characterized by the preeminence natural unwritten laws, in a continuous state of transformation. The second stage, called the stage under the law, was characterized by two phases, first the giving of the Decalogue, than the giving of the whole Pentateuch. The Decalogue, which is seen as the written version of the previously observed natural laws, is sanctioned by Jesus. The Decalogue, on the other side, triggered by the accident of the Golden Calf and the second ascension of Moses on Mount Sinai, was seen as a whole set of laws and ordinances to help the Israelites to amend their ways. Therefore, Pentateuch Law as a whole is binding only for the Jews, but not for the Christians.<sup>31</sup> By the fourth century, various Christian theologians as Marius Victorinus, and Ambrosiaster reopened the debate on the relationship between the Decalogue and the Pentateuch in their own commentaries on the writings of Paul. By the end of the fourth century Jerome, commenting on Paul, could argue for the primacy of faith on law, which therefore was no more necessary to be observed. Also, Augustine could contrast *fides*, or faith, as against *opera legis*, or the observance of the law. It is thus clear, once we analyze the attitude of the Christian theologians and that of the Fathers of the Church all along the third and fourth centuries C.E. that in no way the *Collatio*, with its insistence on the Law of Moses, reflected the attitude of the Fathers of the Church.<sup>32</sup> Additionally, Rutgers argues that of all the twenty one Biblical passages found in the *Collatio*, only two passages bear any interest for the Fathers of the Church as both passages concern

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<sup>29</sup> On the problematic of a Christian authorship see Rutgers, *The Hidden Heritage* cit., 242-258.

<sup>30</sup> On the attitude of early Christian to the Pentateuch see Matt 5: 17. On Paul, see Gal 2-3 and Rom 3-4.

<sup>31</sup> On the first stage see Tertullian, *Adv. Iud.* 2 and 2. 7. See also Novatian, *De cibis Iudaicis* 3.2-3 and Eusebius, *Prep. Ev.* 7.6 and 7.8.20. On the second stage see Irenaeus, *Haer.* 4.14.3. On the Pentateuch as binding only for Jews see Eusebius, *Prep. Ev.* 8.1. On the third stage see Trypho, *Dial.* 24.1. See also Irenaeus, *Haer.* 4.34.4 and Tertullian, *Adv. Iud.* 3.9.

<sup>32</sup> See Paul, Gal 2-3 and Rom 3-4. See also on Paul, Marius Victorinus, *In epistolam Pauli ad Galatas* 83.2 and 95. see also Ambrosiaster, *Quaest.* 7.2, *Quaest.* 19, *Quaest.* 75.2, *Quaest.* 69. 4. See Jerome, *Patrologia Latina* 26, 38; 359-360; 367; 374. See Augustine, *Exp. Gal.* 84, 76-77. See also Augustine, *Exp. Quaest. Rom.* 84, 7. See Rutgers, *The Hidden Heritage* cit., 252-258.

commandments from the Decalogue.<sup>33</sup> Last but not least, Rutgers argues that the author of the *Collatio*, if on one hand, shows a deep knowledge of Biblical law, on the other hand, it completely ignore any Christian work, including the Gospels. Besides, Rutgers argues that it was quite unlikely that the purpose of a Christian author was to demonstrate the superiority of Biblical law to a Pagan audience. On the contrary, the writings of the Fathers of the Church such as Ambrose, Augustine, Chrysostome argues that Jewish and Roman law were mutually exclusive, although Late Antique and Medieval Christian jurists continued to follow the attitude of the earlier Pagan jurists. In concluding, Rutgers points that, once considering the running debate between the Jews and the Christians on the primacy of Jewish Law, the few possible references to the *Collatio*, often seen as a proof that the *Collatio* had been written by a Christian, only shows that the small treatise was possibly known, not that it was written by a Christian.<sup>34</sup> Moreover, the Jewish author of the treatise join the debate, with the purpose to demonstrate not only the validity of the injunctions of Mosaic laws, which Christians found redundant, but also that Biblical law reflected the same penal practices developed by the similar, but later Roman legal tradition. This, is in line with Julian, who took sides in favor of the Jews, attacking contemporary Christians in his *Contra Galileos*, for their ambivalent treatment of Mosaic Law, which was not seen as abiding. Therefore, a further, possibly, once considering the chronological issue, secondary apologetic purpose of the author of the *Collatio* is to demonstrate the legitimacy of Jewish law, in a period in which it is attacked by Christian theologians, who use Pauline literature as source for their attacks.

The possible audience, or audiences, of the *Collatio*, Jewish, Pagan, and Christian deserves a few lines. The continuous interpolations and redactions of the *Collatio* shows that the document remained an important source of Jewish apologetic all along the period considered. This makes clear that this work could have been primarily written for a Jewish public. Thus, Barone-Adesi argues that the treatise was directed to Jewish public, in particular the Latin speaking Jewish communities located in the Western half of the Roman Empire.<sup>35</sup> Also Pugliese argues that the *Collatio* was directed to a Jewish public.<sup>36</sup>

On the other hand, Cracco-Ruggini, argues that the text was directed to the Pagan senatorial elite of Rome, which could empathize with the plight of Judaism and show a certain interest in it.<sup>37</sup> The Pagan aristocracy, or at least the Pagan bureaucracy, had been perceived as the main audience of the *Collatio*, also by scholars who argued for a Christian origin. According to Liebs, the author of the *Collatio*, who stemmed in the ecclesiastical elite and did not possess a juristic background, wrote the treatise on the

<sup>33</sup> See Exod 20: 13 and Exod 20: 16. Other passages as Lev 20: 10 on adultery are seen relevant only as are considered as an elaboration of a passage of the Decalogue. See Rutgers, *The Hidden Heritage* cit., Table 1, 259.

<sup>34</sup> See Rutgers, *The Hidden Heritage* cit., 263-264, 275.

<sup>35</sup> See Barone Adesi, *L'eta' della Lex Dei* cit.

<sup>36</sup> See Pugliese, *A Suggestion on the Collatio* cit., 161-171. See also Rabello, *La datazione della Collatio* cit., 411-422.

<sup>37</sup> See Cracco Ruggini, *Ebrei e Romani a confronto nell'Italia tardoantica* cit., 38-65. See also Cracco Ruggini, *Intolerance* cit., 187-205. See also Rabello, *La datazione della Collatio* cit., 411-422.

order of Pope Siricius (384-399 C.E.). The purpose of the work was to convert the Pagan aristocracy of Rome to Christianity, showing them that Christian and Roman law are in fact very similar. It is interesting that, on the main, most scholars tend to view the *Collatio* as a treatise directed to the Pagan aristocracy, no matter if the author was a Jew or a Christian.<sup>38</sup>

Rutgers, however, makes clear that the audience, which the Jewish author addressed, could have been Christian as well. On the other hand, Bossowski argued that the author of the *Collatio* was a Christian who wrote for a Christian audience. Thus, the author wanted to demonstrate the superiority of the Laws of Moses, bearer of universal concepts of “just and right” to those of Pagan Rome. Moreover, as the legal trend observed by Roman Pagan jurists generated laws opposed to the tenants of Christianity, the purpose of the author was obviously to invite the Christian audience to which the work was addressed to abide to the Laws of Moses and not those of Rome.<sup>39</sup>

And yet, it seems to me that the intrinsic apologetic nature of the work, so much emphasized by Rutgers, can only point to the possibility that this work was first and foremost directed to a Jewish, Latin speaking, public. This public, the elite of the Jewish communities, wanted a sense of belonging to the outside world, without losing their identity, in a period of change, in which Jews slowly but inexorably were losing their legal standing, and as consequence the community was closing in itself. Besides, contrary to the *Letter of Annas to Seneca*, and, as well emphasized by Lucrezi, the literary level of the *Collatio* is so low, that it could not have been in any way, aimed to the refined tastes of the Late Antique Pagan aristocracy. Yet, it is possible that, once public readings of the work were given, some elements of the lowest levels of the Pagan, and Christian as well, Late Roman bureaucracy could have taken a certain interest in it. Thus, it is probable that, all along the fourth century, the main purpose of the work as well as its outer public evolved. If at the beginning of the fourth century, the outer audience was on the main composed of Pagans, by the end of the century, it is probable, as well argued by Rutgers, that most of the outer audience was made of Christians.

#### 4.- Textual analysis of the first surviving *titulus*

As the collection of the *tituli* present a similar structure, in this framework, it is enough to analyze only one of the *tituli*, in this case, the first *titulus*, which bears the title “Of assassins and manslayers, whether by accident or willfully”.

The chapter opens with a quotation from the book of *Numbers*, in which Moses states the penalty for willful murder or manslayer, death.<sup>40</sup> As previously stated, the Biblical text, quoted by the anonymous author, stems from the *Vulgata Vetera*. Contrary, to both the Hebrew text and the *Vulgata* of Jerome, the author makes use of the present tense. Thus, Moses, who is presented as *Dei sacerdos*, or Priest of God, utters his

<sup>38</sup> See D. Liebs, *Die Jurisprudenz im spätantiken Italien, 260-640 n.Chr.*, Berlin 1987. See also Rabello, Rabello, *La datazione della Collatio* cit., 411-422.

<sup>39</sup> See Bossowski, *Suntne in iure romano* cit., 1ff. See Rabello, *Sui rapporti fra Diocleziano e gli Ebrei* cit., 173-179.

<sup>40</sup> See Num XXXV, 16-17, 20-21.

statement in the present tense, not in the past tense. The use of the present tense, instead of the past, is a key element in the meta understanding of the text. Indeed, the use of the present tense does not focus on when and where the law was given. In fact, in the Biblical text as well as in the *Vulgata* of Jerome, the use of the past tense suggests that the event is temporally and spatially circumscribed, as it took place on Mount Sinai. Thus, the author of the *Collatio* wishes to make clear that, although the event took place in the past, it is still valid in the present. More than that, the fact that the statement is adiachronic and asynchronic, a temporal and without a spatial limit, completely detaches the statement from a spatial and temporal framework, while emphasizing its eternal value. Jewish Law, enacted in the past is valid in the present, but also in the future, because it is eternal. As already remarked by Hyamson, the author describes Moses as a priest of God. In fact, Moses was no priest, although he instituted priesthood, appointing his brother Aaron as high priest. Although the author, who primarily addressed a Jewish public, was aware of that, yet, the use of the title “priest of God”, not only served to emphasize the relationship between the Law and God, its Enactor, but it gave to Moses a sacral standing.<sup>41</sup> Therefore, what gives to Jewish Law its primacy is first of all its nomothetic character, as it was handed to Moses by God.

This opening statement is followed by various quotations and excerpts of Roman law. To Moses, the Jewish priest, who possesses an intrinsic sacral value, is opposed the Roman jurist, a figure, who upholds “secular and universal values”, but, who clearly is not inspired by the Divine Whim. The anonymous author often amends the text with two purposes, the first to make the texts more clear and comprehensible to his public, evidently not jurists, and of course to make the Biblical precepts agree with the dictates of Roman law. In fact, contrary to Jewish Law, Roman law cannot pretend to any superiority because it is not nomothetic, but it is only a rational development over the centuries. Besides, while Jewish Law is rooted in the far away past, Roman law is rooted in a much nearer past. Hence, for the author it is enough to quote Moses. Therefore, there is no need to quote further juridical developments in Jewish Law. On the other hand, Roman law, because of its rational, human character, when possible, is quoted from its early developments, i.e. the *Law of the Twelve Tables*, otherwise, only later Imperial *Rescripta* are quoted. Although the author of the *Collatio* always indicates the provenance of the Roman legal texts he quotes, it seems rather unlikely that he himself bothered to consult all these works separately. According to Schulz the author of the *Collatio* used excerpts in which earlier Roman legal materials had been arranged in groups, according to their author. Furthermore, Schulz and Nidermeyer have suggested that textual differences between the *Collatio* and the original juristic writings should not be attributed to the author of the *Collatio* himself, but rather resulted from activities of previous, post-classical revisers.<sup>42</sup> Thus, to the Biblical passage are opposed quotations from the most important Roman jurists, Paulus, who quotes the *Lex Cornelia*, and Ulpian. Once more, to the Biblical past and present, are compared the Roman past, as well as the

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<sup>41</sup> See Hyamson, *Collatio* cit., 56.

<sup>42</sup> See Rutgers, *The Hidden Heritage* cit., 235-284. See also F. Schultz, *Die biblischen Texte in der Collatio Legum Mosaicarum et Romanarum*, in *Studia et Documenta Historiae et Iuris* 2, 1936, 20-43. See also H. Nidermeyer, *Vorjustinianische Glossen und Interpolationen* etc., in *Atti del congresso internazionale di diritto romano Vol. I, Bologna e Roma 17-27.IV.1933*, Pavia 1935, 353-384.

Roman present. Thus, on one hand, the author quotes from the books of Ulpian and Paulus, which are perceived as representing the present. In fact, once we accept the earliest redaction as dating to the tetrarchy, it is clear that for the author, the two jurists, who lived not a long ago, could be considered as quasi contemporaries. In fact, Ulpian, Gnaeus Domitius Annianus Ulpianus born in 170 C.E., possibly at Tyre, was murdered by the praetorians in 223 C.E. Ulpian started his career as assessor in the *auditorium* of Papinian and as member of the council of Septimius Severus. Under Caracalla he was appointed *magister libellorum*. Although Elagabalus banished him from Rome, on the accession of Alexander Severus in 222 C.E. he was reinstated, and finally became the emperor's chief adviser and *praefectus praetorio*.<sup>43</sup> Also Paulus, Julius Paulus Prudentissimus, was a quasi-contemporary. Of Greek descent, the jurist was born in an unknown Phoenician town or at Patavium, in Italy. During the reign of the emperors Septimius Severus and Caracalla, Paulus served as a jurist. Exiled by the emperor Elagabalus, he was recalled from exile by his successor, the emperor Alexander Severus, who, together with his mother Julia Avita Mamaea, appointed him in 222 C.E. among the emperor's chief advisers. In 228-235 C.E. Paulus was appointed Praetorian prefect. Due to his cautious politic nature and opinion, the emperor Gordian III, awarded him the honorific title of *Prudentissimus*.<sup>44</sup>

Yet Paulus, to uphold his judgment, quotes from the *Lex Cornelia De Sicariis and Beneficiis*, a law which originated in Rome's far away legal past. This law, which was enacted during Sulla's dictatorship, in 82 B.C.E., in fact followed various provisions on homicide, which first appears in the *Law of the Twelve Tables*. This juridical source, enacted between 462 and 450 B.C.E., can be considered as the foundation of Roman law, as it formed the focus of the constitution of the Roman Republic and the core of the *mos maiorum*. The anonymous author of the *Collatio* quotes the *Law of the Twelve Tables* more than once in the surviving passages of the work. The original law enacted by Sulla encompassed different topics, such as death or fire set off by *dolus malus*, and enactments against persons, who armed themselves with the purpose of murdering or stealing. Besides, this law dealt with poisoning. Last but not least, it provided the penalties for a magistrate or a senator who schemed to have a citizen unjustly condemned in a *judicium publicum*. The *lex* was later modified by various *senatusconsulta* and imperial rescripts, most notably during the reign of Domitian and of Hadrian.<sup>45</sup> Thus, the two jurists, Paulus

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<sup>43</sup> Ulpianus wrote *Ad Sabinum*, a commentary on the *jus civile*, in over 50 books; *Ad edictum*, a commentary on the *Edict*, in 83 books; collections of opinions, responses and disputations; books of rules and institutions; treatises on the functions of the different magistrates, as the *De officio proconsulis libri* in 10 books, being a comprehensive exposition of the criminal law; monographs on various statutes, on testamentary trusts, and a variety of works. See Honoré, *Ulpian: Pioneer of Human Rights* cit.

<sup>44</sup> Paulus wrote 319 various legal publications. His surviving works are extremely prolific. The *Sententiae* and *Filius* have the longest fragments of Paulus' surviving works. In Valentinian's *Law of Citations*, dated to 426 C.E., Paulus is classed with Gaius, Modestinus, Papinian and Ulpian, as one of the five jurists whose recorded views were considered decisive. Another legacy from Paulus is the inclusion of his writings in the *Digesta* of Justinian. One sixth of the *Corpus Juris Civilis* in the *Digesta* consists of Paulus' work.

<sup>45</sup> See Pliny, *Nat. XVIII.3* on the *Law of the Twelve Tables*, which focused on homicide and served as the basis for the successive *Lex Cornelia De Sicariis and Beneficiis*.



and Ulpianus, described the various types of offences and penalties for manslayer and murder established by the *Lex Cornelia*.<sup>46</sup>

The second part of the *titulus* is dedicated to the offences and the penalties established in the Bible and in Roman law for death that resulted from an accident and not from a willful murder.<sup>47</sup> Once more, the author opens the part, quoting from two passages of the book of *Numbers*.<sup>48</sup> As in the previous part, the Biblical quotations are followed by various Roman legal sources, which deal with accidental death. Once again, the author offers to the reader a great variety of legal sources to corroborate the similarity between Biblical and Roman law. Thus, the various sources include Ulpian, quoted twice, who refers to two rescripts of Hadrian, and Paulus, who deals with in general terms with the passages of the *Lex Cornelia* concerning accidental deaths.<sup>49</sup> However, this time, are also quoted the Modestinus and the *Gregorian Code*. Modestinus was a jurist who lived in the Severan period, and, thus, he can be considered as well quasi-contemporary. Herennius Modestinus, a native of Dalmatia, was a student of Ulpian who flourished about 250 C.E. He is mentioned in a rescript of Gordian III dated to the year 240 C.E. in relation to a *responsum*. In this framework, the author quotes a general analysis of the law.<sup>50</sup> Although not mentioned here, Papinianus is also often quoted all along the *Collatio*. Aemilius Papinianus (142–212 CE), possibly a native of Emesa, in Syria, started his career as jurist, possibly under the wings of Quintus Cervidius Scaevola, *magister libellorum*, and becoming in 205 CE, under the reign of Septimius Severus, praetorian prefect.<sup>51</sup> The *Code Gregorianus* is the title of a collection of constitutions, or legal pronouncements of Roman emperors from circa 130 C.E. till 290 C.E. The *Codex* takes its name from its author, a certain Gregorius or Gregorianus, maybe the *magister libellorum* to the emperors Carinus and Diocletian from 280 C.E. till 290 C.E. circa. Here, the author makes use of the *Codex Gregorianus* with the purpose of quoting two imperial rescripts, a constitution of Alexander Severus and an imperial letter of Diocletian.<sup>52</sup>

<sup>46</sup> See Paulus, *Sententiarum V*, sub titulo *ad legem corneliam de sicariis et veneficis* and Ulpian, *De Officio proconsulis VII*, sub titulo *ad legem corneliam de sicariis et veneficis*.

<sup>47</sup> See Hyamson, *Collatio* cit., 58-59.

<sup>48</sup> See Num 35, 22-25.

<sup>49</sup> See Ulpian, *De Officio proconsulis VII*, sub titulo *ad legem corneliam de sicariis et veneficis*, which quote two rescripts of Hadrian, the second directed to Taurinus Egnatius, proconsul of Baetica; Paulus, *Sententiarum V*, sub titulo *ad legem corneliam de sicariis et veneficis*.

<sup>50</sup> Modestinus wrote *Responsorum*, in 19 books, the *Pandectarum* in 12 books, the *Regularum* in 10 books, the *Differentiarum* in 9 books, the *Excusationum* in 6 books, the *De praescriptionibus* in 4 books, the *Ad Quintum Mucium*, *De ritu nuptiarum*, *De manumissionibus*, *De legatis et fideicommissis*, *De heurematicis*, *De inofficioso testamento*, *De differentia dotis*, and *De testamentis*. No fewer than 345 passages in the *Digesta* of the *Corpus Juris Civilis* are taken from his writings. See Modestinus, *Differentiarum VI*, sub titulo *de scientibus et ignorantibus*.

<sup>51</sup> Papinianus wrote the *Quaestiones* in thirty-seven books, before 198 CE; the *Responsa*, dated between 204 and 212, the *Definitiones* and *De adulteriis*.

<sup>52</sup> The *Codex Gregorianus* does not survive intact, though it is clear that it was a multi-book work, subdivided into thematic headings (*tituli*) that contained a mixture of rescripts to private petitioners, letters to officials, and public edicts, organized chronologically. Scholars' estimates as to the number of books vary from 14 to 16. See Corcoran, *The Empire of the Tetrarchs* cit. See also Honoré, *Emperors and Lawyers* cit. See *Codex Gregorianus IV*, sub titulo *ad legem Cornelianam de sicariis et veneficiis*, which

It is interesting that Roman Law is presented as stemming in a faraway past, yet not so far as that of Jewish Law, and in any case lacking its nomothetic character. However, the author does not even hint to the future of Roman law. Therefore, Roman law, contrary, to Jewish Law is not depicted as Eternal. As we shall see, the eternity of Roman Law, in fact the eternity of the Roman empire is conditioned by the role that the Jews shall occupy in roman law. Only, if Roman law shall uphold Jewish privileges, the Roman empire shall be eternal.

### 5.- The threat to Jewish privileges as primary background for the composition of the *Collatio*

The fact that the *Collatio* had probably been composed by a Jew, who was part of the lower ranks of the Roman army or bureaucracy, as well as the fact that all along the fourth century, the text had been revised, and probably adapted to the new circumstances, point to the fact that the main background of the *Collatio* was a generally felt threat to the privileges that the Jews enjoyed in the Roman Empire. Thus, although a loss, or at least a partial loss of privileges menaced the Jews at the very beginning of Diocletian's rule, from the reign of Constantine onwards, the slow but definite loss of Jewish privileges became the reality.

First of all, the presence of Jews is attested in the Imperial administration from the joint reign of Marcus Aurelius and Commodus onwards. Jews could serve in any position at least till the beginning of the fifth century C.E. From then onwards, a series of laws, which shall be discussed later on, barred the Jews from various positions. Yet, by the reign of Justinian, Jews could still found a position in the lower rank of the Imperial administration. Thus, as stated by Modestinus in his *De Excusationibus*, Marcus Aurelius and Commodus allowed the Jews who were Roman citizens to be elected to the municipal council (*decurionate*) and dispense with Pagan cultic ceremonies. According to Ulpianus, who in his *Libri de Officio Proconsulis*, cites briefly the statutes concerning the possibility of Jews attaining public office, Severus and Caracalla permitted some year later to the Jews once more to enter offices, but “also imposed upon them liturgies such as should not transgress their religion”. Although Modestinus refers only to municipal offices, it is clear, in the light of the later of the later Severan rescripts, that in fact, Jews were allowed to enter not just municipal offices, but also the Imperial administration. Indeed, according to the *Historia Augusta*, Alexander Severus reconfirmed the legal privileges of the Jews.<sup>53</sup> As consequence of the reforms first of Diocletian and then of Constantine, by the beginning of the Late Antique the Imperial administration had

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quotes a constitution of Alexander Severus to Aurelius Flavius and an imperial letter of Diocletian to Athago; Modestinus, *Differentiarum* VI, sub titulo *de scientibus et ignorantibus*.

<sup>53</sup> On Modestinus, see *Dig.* 27.1.15.6. On Ulpianus, See *Dig.* 50.2.3.3. On Alexander Severus, see SHA, *Alexander Severus* 22, 4. See also M. Stern, *Greek and Roman Authors on Jews and Judaism* II, Jerusalem 1976, no. 520, 629-630. See A.M. Rabello, *The Legal Condition of the Jews in the Roman Empire*, ANRW 2/13, Berlin 1980, 685, 687, 725-727. See also A. Linder, *The Jews in Roman Imperial Legislation*, Detroit 1987, 103-106

become a much wider organization than in the previous periods. Hundreds of new offices were created, especially at the lower levels.<sup>54</sup> Therefore till the beginning of the fifth century the Imperial administration was opened to talented or at least “recommended” Jews. At the upper levels of the Late Antique Imperial administration stood the Patriarch.<sup>55</sup> Besides, various inscriptions show that numerous Jews hold various positions in the lower ranks of the Late Roman administration, as *agentes in rebus*, and as *archieratros*.<sup>56</sup> It is, thus, clear, that there were plenty of Jews, who were in familiar terms with Roman jurisprudence, from the reign of Diocletian to the death of Justinian, who could have authored the *Collatio*, and later on revised it.

Besides, the various authors of the *Collatio* probably wrote the treaty, or edited it once more, when they perceived that Jewish privileges were menaced. In fact, on the eve of Diocletian’s reign, Jews enjoyed various privileges as a community and as individuals. From the reign of Augustus’s onwards, the Jewish communities were given the legal status of *collegia licita*. or legal voluntary associations. This status recognized to the Jewish community a certain measure of internal autonomy. Yet, in the aftermath of the Jewish Wars, Jews were subject to certain disabilities, which were confirmed by Septimius Severus and his successors. Thus, Jews still had to pay the *fiscus iudaicus*, proselytism was forbidden, and slaves owned by Jews could not be circumcised.<sup>57</sup> Yet, as stated by Cassius Dio, the legal situation of the Jews living in Roman Italy improved even more in the Severan period.<sup>58</sup> In fact Septimius Severus and Caracalla confirmed the previous laws which dated back to the Antonine period and, as previously stated, regulated the participation of Jews in public offices.<sup>59</sup> Moreover, the *Constitutio Antoniniana de Civitate*, enacted by Caracalla, in 212 C.E. granted Roman citizenship to all the inhabitants of the Roman Empire, with the exception of the so-called *peregrini - dediticii*. According to Rabello, most of the Jews living in Roman Italy, who had the status of *peregrini*, probably received Roman citizenship, improving their status.<sup>60</sup> Thus,

<sup>54</sup> On the imperial administration in Late Antiquity, see A.H.M. Jones, *The Later Roman Empire 284-602, A Social Economic, and Administrative Survey I-II*, Baltimore 1986, passim.

<sup>55</sup> See *Cod. Th.* 16.8.22. See also Linder, *The Jews in Roman Imperial Legislation* cit., 267-272. At least two high-ranking Jewish officials are documented, one in Palaestina Prima, and the other in the Balears. According to an inscription from Jaffo, Menahem was *legatus* and *comes*. See J. Juster, *Les Juifs dans l'Empire Romain* II, Paris 1914, 249. Meletius was *praeses* of the Balears at the end of the fourth century. See *Vita Sancti Severi*, PL 20, 744. See also Juster, *Les Juifs dans l'Empire Romain* II cit., 250.

<sup>56</sup> An inscription from Jaffa records Benjamin the centenaries, an *agens in rebus* from Palaestina Prima. On Adamantius, a teacher of medicine at the Museum of Alexandria, see Socrates, *Hist. eccl.* 7.13.17. On Domnus, another physician from Alexandria, see Suidas on Gesius. See Ps. Oribasius, *Comm. In Aphorism.* See also Juster, *Les Juifs dans l'Empire Romain* II cit., 253-255. On Faustinus, see D. Noy, *Jewish Inscriptions of Western Europe 1, Italy excluding Rome, Spain, Gaul*, Cambridge 1993, no. 76, 100-103.

<sup>57</sup> See on the Law of Septimius Severus against proselytism, SHA, *Vita Severi* 17, 1. See also STERN, *Greek and Roman Authors on Jews and Judaism* II, cit., no. 515, 625. See P.S. 5.22.3-4 and see Dig. 48.8.11 pr. See also Rabello, *The Legal Condition of the Jews* cit., 687.

<sup>58</sup> See Cassius Dio, *Hist. Rom.* 37, 15: 2 - 17: 4. Cassius Dio rightly observed, writing in the late Severan period, that the contemporary Jews “through often repressed has increased to a very great extent and has won its way to the right of freedom in its observances”.

<sup>59</sup> On Modestinus, see Dig. 27.1.15.6. On Ulpianus, See Dig. 50.2.3.3. See also Rabello, *The Legal Condition of the Jews* cit., 687, 725-727.

<sup>60</sup> See Rabello, *The Legal Condition of the Jews* cit., 729.

the author of the *Collatio* was aware that Jews, by the end of the Severan period enjoyed an enviable position. On one hand, as corporate body, Jews enjoyed a wide internal autonomy, by then secure under the protective eyes of the Patriarch. In fact, all along the third century, the Jewish Patriarch, known in this period as the *ethnarch*, had risen to pre-eminence. Thus, the Roman authorities recognized to the Jewish Patriarch the right to levy taxes from the Jews living in the Land of Israel and in the Roman Diaspora, and probably recognized him as the supreme head of the Jews living in the Roman Empire.<sup>61</sup> On the other hand, as individuals, they could seek any public office. The very few disabilities were not relevant. Thus, for example it seems that the *fiscus iudaicus* was not collected, as its levy is not attested anymore, or the law, which forbade the circumcision of slaves, could be evaded through adoption.

Yet, it seems, that with Diocletian's reforms, as emphasized by Rabello, Jewish internal autonomy was challenged by Roman authorities. Therefore, the difficult circumstances brought to the light the need to redefine once more the right framework of internal autonomy of the Jewish communities and of course the legal power of the jurisdiction of the Patriarch. First, from the beginning of his rule, Diocletian reverted to the traditional state cult of the Roman state, embodied by Jupiter. The new imperial ideology emphasized the sacral role of the ruler of Rome, by now vicar of the supreme god. The emperor, who ruled on the *oikouménè*, was in fact a reflection, a mirror, a representative of the supreme god who reigned in the heavens. This attitude also reflected the relationship between Diocletian as Augustus and Maximian, his junior co-ruler, as Caesar, and then, between Diocletian and Maximian on one hand as Augusti, and Galerius and Constantius Chlorus, on the other hand, as *Caesares*, from 293 C.E. This attitude resulted in a wave of persecution against the Christians, the Great Persecution of 303 C.E., sanctioned by an imperial edict. Yet, the Jews were not persecuted.<sup>62</sup> More than that, at the end Diocletian, as his predecessors, recognized the right of Jewish internal autonomy. Thus, the author of the *Collatio* directs his work to the attention of Diocletian and the Imperial court, with the purpose to defend the right of the Jews to internal autonomy and jurisdiction, represented by the Patriarch. Thus, according to the author of the *Collatio*, the primacy of Jewish Law does not contradict the basic tenants of the Greco-Roman civilization, by then embodied by the harsh rule of Diocletian.<sup>63</sup>

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<sup>61</sup> Judah I, ha Nasi, the compiler of the Mishnah, was probably the first Patriarch recognized as such by the Roman authorities. On the Patriarch see Rabello, *The Legal Condition of the Jews* cit., 712-713. See on the condition of the Patriarch in the third century, I.L. Levine, *The Jewish Patriarch (Nasi) in Third century Palestine*, ANRW II, 9, 1, Berlin – New York 1976, 46ff. See also M. Goodman, *The Roman State and the Jewish Patriarch in the Third century*, in *State and Society in Roman Galilee*, Totowa (N.J.) 1983, 11-118. See also D.M. Goodblatt, *The Monarchic Principle*, TSAJ 38, Tübingen 1994, 131-137 on the position of the Patriarch in the third century.

<sup>62</sup> For a while, during the rule of one of Diocletian's predecessors, Aurelianus, the solar god, *Sol Invictus*, had displaced Jupiter as the supreme god of the Roman state. See S. Williams, *Diocletian and the Roman Recovery*, Routledge, London 1997, 5-50 on Diocletian's reforms, and pp. 58-59 on Diocletian's attitude to religion, and p. 176 on the persecution of Christians.

<sup>63</sup> See Rabello, *Sull'ebraicità dell'autore della Collatio* cit., 339-349. See also Rabello, *Sui rapporti tra Diocleziano e gli Ebrei* cit., 173-179. See also Rabello, *Alcune note sulla Collatio* cit., 177-186. See also Rabello, *La datazione della Collatio* cit., 411-422. See Colorni, *L'uso del greco nella liturgia del giudaismo* cit., 13-14, 49, 54, 61-65. See also Cassuto, *Vetus Latina* cit., 151-158. See also Momigliano, *I*

Jewish privileges, were, however, curtailed, for the first time, under the rule of Constantine, at the beginning of the fourth century. Indeed, although the disabilities introduced by Constantine and his immediate successors, only in surface indented the privileges enjoyed by the Jews, however, it is clear that, already during the rule of Constantine, the Jews felt the radical transformation of the Roman empire, from a Pagan pluralistic entity to a monolithic Christian state, once Constantine embraced Christianity. Therefore, Constantine initiated a new legal trend, which forbade proselytism or conversion to Judaism, and, as consequence it menaced the right of possession of non – Jewish slaves, owned by a Jew, once the former showed any inclination to convert to Christianity. Thus, from the first half of the fourth century the Roman state imposed two prohibitions, first the conversion to Judaism of slaves, which for males mean circumcision, and the purchase and possession of Christians as well as Gentile-Pagan slaves by Jews. While the owning or purchasing of Christians and Gentile-Pagan slaves was subject to relatively light punishment, the conversion of non-Jewish slaves, particularly Christians, was punished severely. Thus, on one hand Constantine, in 329 C.E., was enacted the first law, in which Jewish proselytism was forbidden in any form. Besides, Constantine gave to Jewish converts to Christianity protection from violence, condemning the perpetrators to death. In 353 C.E., his successor, Constantius II, enacted a further law, punished the proselytes with property confiscation only. Moreover, in 335 C.E. Constantine decreed that a non-Jewish slave who had been bought or circumcised by a Jew should go free. Then, in 339 C.E. Constantine II decreed that the State treasury should sue for slaves purchased and probably circumcised by Jews. Moreover, he imposed the death penalty and confiscation of property on those Jews who converted their slaves, while those who purchased non-Jewish slaves were to suffer only the loss of these slaves. Christian women, who were formerly held in a state *gynaeceum*, and later converted to Judaism, should be returned there. On the other hand, however, according to a law of 330 C.E., the Jewish communitarian leadership was exempted from personal and civic liturgies. These privileges were in fact an identical counterpart in the privileges given to the Christian clergy.<sup>64</sup> Thus, a primary writing of the *Collatio*, or its early revision, could be dated to the reign of Constantine and his dynasty, no less than to the previous rule of Diocletian.

Indeed, by 337 C.E., with the death of Constantine, Christianity was becoming also one of the most important constituents of Roman identity.<sup>65</sup> This resulted all along

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*nomi delle prime "Sinagoghe" romane* cit., 291. On Todros see BT, *Pessach*. 53a/b; On Mathia Ben Heresh see BT, *Sanh*. 32b.

<sup>64</sup> See A. Linder, *The Legal Status of the Jews in the Roman Empire*, in S.T. Katz (ed.), *The Cambridge History of Judaism IV, The Late Roman - Rabbinic Period*, Cambridge 2006, 162-164. On the law enacted in 329 C.E., see Cod. Th. 16:8:1. See also Cod. Iust. 1:9:3. On the law enacted in 330 C.E., see Cod. Th. 16.8.2; 16.8.4. On the law enacted in 339 C.E., see Cod. Th. 16:9:2; 16:8:6. See also Cod. Iust. 1:10:1. On the law enacted in 353 C.E., see Cod. Th. 16:8:7. See also Cod. Iust. 1:7:1.

<sup>65</sup> See A.H.M. Jones, *Constantine and the Conversion of Europe*, New York 1982 and R. MacMullen, *Constantine*, New York 1971. On more recent books see C.M. Odahl, *Constantine and the Christian Empire*, London 2004. See on the rise of Christianity as the state religion see R. Lane Fox, *Pagans and Christians, in the Mediterranean world from the second century AD to the conversion of Constantine*, Harmondsworth 1986, 609-683 and R. MacMullen, *Christianizing the Roman Empire (A.D. 100-400)*, New Haven 1984.

the fourth century in a slow erosion of the legal status first of non-Christians, such as Jews, Pagan, and Samaritans, and then, of non-Catholic Christians, such as Arians. Thus, in 380 C.E., Theodosius I, with the Edict of Thessalonica made the Nicene Creed the only legitimate religion. Thus, from 389 till 392 C.E., those Christians who did not follow the Nicene creed were removed from their offices in the church as well as from imperial service. The pagans fared even worst. In 393 C.E., Theodosius enacted a law, which definitely outlawed the public display of pagan religious ceremonies. Christianity was then declared the state religion.<sup>66</sup> Thus, only in the last quarter of the fourth century, and on the main, at the beginning of the fifth century, and during Justinian's rule, Jews and Judaism were once more discriminated with new laws. This time, however, the discriminating laws, not only limited the Jews in slave ownership, circumcision, proselytism, as the laws already enacted by Constantine and his immediate successors, but also barred the Jews from the municipal and imperial administration. Moreover, from the beginning of the fifth century, mainly after the demise of the Patriarch in 429 C.E., various laws limited Jewish internal autonomy. Yet, it is clear that, even then, the process was very slow. Once more, considering the various possibilities of revision, partial or anew of the *Collatio*, especially at the end of the fourth century, and at the beginning of the fifth, it is clear that the authorship was aware of the new discriminating laws, passed by various emperors.

Therefore, concerning laws which dealt with conversion from Judaism, only in 397 C.E., the status of Jews who converted to Christianity was revised by Arcadius. Thus, the emperor prohibited the baptism of Jews burdened with debts or subjects to legal proceedings, and in 416 C.E., Honorius not only reiterated this policy, but permitted such converts to return to Judaism under state protection. Yet, in 426 C.E., Valentinianus III prohibited Jews from disinheritting apostate children. All these measures were reintroduced by Justinian in 527/528 C.E. On the other hand, at least five laws, which spread from 388 C.E. till 438 C.E., deal with Jewish proselytism. In 384 C.E., Gratianus, in the West, denied to the proselytes the right to leave property in a will and imposed harsher penalties than usual upon those who converted them. In 388 C.E. Theodosius I prohibited intermarriage, both between a Jew and a Christian woman and viceversa. The law would punish such marriages, considered illegal, with the same penalties reserved to adultery. Moreover, not only relatives, but also peoples not related to the family had the unlimited right to prefer charges. In 409 C.E. Honorius and Theodosius II further legislated against Jewish proselytism. This law punished only the Jews that tried to make proselytes, circumcising them, but not the proselytes themselves. This time the punishment was the same as that for high treason, permanent exile and confiscation of the property. This law was repeated in 423 C.E by Theodosius II. On the other hand, in 416 C.E., in a law, Honorius and Theodosius II permitted Jewish converts to return to Judaism, if their conversion was motivated by material considerations or the wish to escape punishment. However only in 438 C.E., Theodosius II enacted a law, which

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<sup>66</sup> See G. Friell, *Theodosius: The Empire at Bay, Roman Imperial Biographies*, London 1998.

threatened anyone who converted a Christian with the confiscation of property and death.<sup>67</sup>

Contrary to proselytism, which was on the main a religious problem, slavery was on the main a social problem. Various laws enacted in the aftermath of Constantine laws, limited the rights of the Jews to possess slaves. Thus in 384 C.E. a new law stated that slaves purchased and circumcised by Jews, had to be redeemed by Christians who should pay to the rightful Jewish owner “the right price” for them, and only then they were to be removed from the owner possession. This law is important for two reasons. In 415 C.E. was enacted another law, which decreed that the ownership of these slaves, bought from Jews, should be transferred to the Church. Therefore, Honorius's decree can be seen as a de facto recognition that it was legally impossible to forbid Jews from owning non-Jewish slaves. However, two years later, in 417 C.E., Theodosius II enacted a law in which was decreed that all slaves illegally acquired by Jews who would report their masters to the authorities would be freed. Moreover, Jewish owners of slaves, who were illegally acquired and who reported their masters, would have their right of ownership invalidated, through the law did not specify who was to take possession of their slaves afterwards. However, when in 423 and 438 C.E. Theodosius II enacted further laws, he tried a more stringent line. Only during Justinian's rule, in a series of laws enacted in 527, 534 and 535 C.E., the Roman State established once more the principle that Christian and Gentile slaves were to be emancipated from their Jewish owners, and freed in any way whatsoever, according to previously enacted laws. Thus, Justinian ruled that the Jewish owners of Christian slaves were to forfeit ownership and pay a fine of thirty pounds of gold. In 534 C.E., once more Justinian imposed to the Jews who still possessed Christian slaves in the North African provinces to forfeit their ownership.<sup>68</sup>

The laws, which barred Jews from taking part in the municipal administration and in the imperial service had been already partly discussed. In 383 C.E., Constantine law, which exempted the Jewish communitarian hierarchy from municipal duty, was repealed in 383 C.E. in the whole Empire, but reinstated in the East quite soon. In 398 C.E., in the West Honorius obliged the leadership of the Jewish community to share in the burden of municipal *decurionate*. Last but not least, in 537 C.E., Justinian reproved the *Praefectus Praetorius* of the East for hearing claims of Jews that they should be free from curial obligations. Thus, Jews maintained their curial obligations, without enjoying the positions and ranks of the municipal administration. Concerning the imperial administration, in 404 C.E., a law enacted by Arcadius and Honorius probably expelled all the Jews and the Samaritans from the office of *agens in rebus*. Only in 418 C.E., a law enacted by Honorius and Theodosius II determined the limits of employment of Jews in the Imperial administration. Any rank or position as *agentes in rebus*, and in the upper

<sup>67</sup> See Linder, *The Legal Status of the Jews* cit., 162-164. On the law enacted in 384 C.E., see Cod. Th. 3:1:5; in 388 C.E., see Cod. Th. 3:7:2; 9:7:5; in 409 C.E., see Cod. Th. 16:8:19; 2:8:25. See also Cod. Iust. 1:9:12., in 423 C.E., see Cod. Th. 16:5:60; 16:8:26; 16:8:27; 16:9:5; 16:10:22; 16:10:24; 16:5:59. See also Cod. Iust. 1:9:16; 1:11:6., in 438 C.E., see Theodosius, Nov. 3. See also Cod. Iust. 1:9:18; 1:7:5; 1:5:7.

<sup>68</sup> See Linder, *The Legal Status of the Jews* cit., 164-167. See on the law enacted in 384 C.E., see Cod. Th. 3:1:5; in 415 C.E., see Cod. Th. 16:9:3; in 417 C.E., see Cod. Th. 16:9:4. See also Cod. Iust. 1:10:1; in 423 C.E., see Cod. Iust. 1:9:16; in 438 C.E., see Cod. Iust. 1:7:5. On Justinian enactments in 527, 534, and 55, see Cod. Iust. 1:10:2; 1:3:54. See also, Iust., Nov. 37.

and lower ranks of the *militia palatina* was by now forbidden to Jews. However, Jews who were still serving in the Imperial administration could terminate their career in statutory terms. Moreover, Jews “educated in the liberal studies” could still practice as advocates. In 425 C.E., Galla Placidia, acting for Valentinian III, enacted at Aquileia a law, which once more forbade to the Jews to hold any office in the Imperial administration. If this law renewed the prohibition to serve in the Imperial administration already enacted seven years before in 418 C.E., however this time Jews were also forbidden to practice as advocates. This law enacted in Italy can suggest that there were still Jews serving in the Imperial administration of Late Roman Italy. A successive law enacted conjunctly by Theodosius II in the east and Valentinian III in the west in 438 C.E. from Constantinople once more bar Jews from serving in the Imperial administration, with the exception of the office of *cohortalini*. Those Jews still serving in the prohibited offices are to be immediately dismissed. In 527 C.E. and in 537 C.E., during Justinian’s reign was renewed once more the prohibition to serve in the Imperial administration. By then the only positions in the Imperial administration opened to Jews was the subaltern fiscal office of *taxeota*.<sup>69</sup>

The Roman State did not only give to the Jewish communitarian leadership various privileges, but as well it recognized their legal power inside the communities. A law from 392 C.E. recognized the validity of the excommunication enacted by a Jewish Court, and the provincial governor was prohibited from interfering. However, this internal autonomy was reserved only to religious matters. In all other non-religious cases, Jews had to recur to a Roman Court of Law as they were Roman citizens. Obviously, all litigations between Jews and Christians were the competence of a Roman Court. The Roman Christian Emperors, as the previous Pagan Emperors extended the protection of the state to synagogues, the physical center of the Jewish communities, as well as the main place of worship, all over the Roman Empire. A series of laws enacted from 393 till 423 C.E. stated clearly that the synagogues were to be protected against violence, arson, spoliation, seizure, and conversion to churches. However, a series of laws enacted first in 415, then in 423, and in 438 C.E., at the beginning directed to the Patriarch, and then, after its demission, to the Jewish communities, forbade the erection of new synagogues. The only real infringement of Jewish religious autonomy came during the reign of Justinian. In a law enacted in 527 C.E., and once more in 553 C.E., Justinian forbade the reading of the Torah in Hebrew in synagogues and prohibited the study of the Mishnah.<sup>70</sup>

Thus, once we consider the legal background of the *Collatio*, it is clear that the renewed authorship of the treaty strived to answer to the new challenges to Judaism, posed by the new laws, all along the end of the fourth century and the first half of the

<sup>69</sup> See Linder, *The Legal Status of the Jews* cit., 222-224, 356-367 and 393-398. See on the law enacted in 383 C.E., Cod. Th. 12.1.100; 12:1:99. See also Cod. Iust. 1.9.5. On the law enacted in 398 C.E., see Cod. Th. 12.1.158 (on Jews); 12.1.157 (general rule). On the law enacted in 404 C.E., see Cod. Th. 16.8.16. On the law enacted in 418 C.E., see Cod. Th. 16.8.24. On the law enacted in 438 C.E., see Th., *Nov.* 3. See also Cod. Iust. 1:9:18 and 1:7:5. On the laws enacted by Justinian, see Cod. Iust. 1:5:12. On the law enacted in 537 C.E. see Iust., *Nov.* 45.

<sup>70</sup> See Linder, *The Legal Status of the Jews* cit. 157-163. On the law enacted in 392 C.E., see Cod. Th. 16:8:8. On the law enacted in 415 C.E., see Cod. Th. 16:8:22; on the law enacted in 423 C.E., see Cod. Th. 16:8:25. On the law enacted in 438 C.E., see Th., *Nov.* 3 and Cod. Iust. 1:9:18. See on the laws enacted by Justinian in 527 and in 553 C.E., Iust., *Nov.* 146.



fifth century. So Lucrezi is right, when he warns that the *Collatio* could have been edited once more in the years 406, 426 and 427, 439 C.E., till the early reign of Justinian.<sup>71</sup>

## 6.- Comparison with the *Historia Augusta*

It is worthwhile to emphasize a compelling similarity between the *Collatio* and the *Historia Augusta*. First of all, both compilations look back to a not so far away Roman past as a primary model. Thus, while the *Collatio* looked back with some awe to three of the great Roman jurists Papinianus, Ulpianus, and Paulus, the *Historia Augusta* looks back to Alexander Severus as the prototype of the rightful and just emperor. In common with the earliest redaction of the *Collatio*, also the *Historia Augusta* was dedicated to the emperor Diocletian, as well as to Constantine, although, in fact, the collection was much later. Moreover, the *Historia Augusta* presents a positive attitude towards Jews and Judaism. Last but not least, a late fourth century dating for the *Historia Augusta*, fits well with the last editing of the *Collatio*, also in the same period. By then, both compositions offered an apology, the *Historia Augusta* of Paganism, and the *Collatio* of Judaism, to a public, which by then was overwhelming composed by Christians.

The *Historia Augusta* presents itself as an assemblage of works by six different authors, Aelius Spartianus, Iulius Capitolinus, Vulcacius Gallicanus, Aelius Lampridius, Trebellius Pollio, and Flavius Vopiscus collectively known as the *Scriptores Historiae Augustae*. The six *scriptores* dedicated their biographies to Diocletian, Constantine and various private persons, and so ostensibly were all writing around the beginning of the fourth century, but the true authorship of the work, its actual date, and its purpose, have long been matters for controversy. In 1889, Hermann Dessau proposed that the six authors were all fictitious personae, and that the work was in fact composed by a single author in the late fourth century, probably in the reign of Theodosius I. In the decades following Dessau many scholars fought rearguard actions to try to preserve at least some of the six *scriptores* as distinct persons and some first-hand authenticity for the content. As early as 1890 Mommsen postulated a Theodosian 'editor' of the *Scriptores's* work, an idea that has resurfaced many times since. Others, such as Norman H. Baynes, abandoned the early 4th century date but only advanced it as far as the reign of Julian the Apostate, arguing the work was intended as pagan propaganda. In the 1960s and 70s however Dessau's original arguments received powerful restatement and expansion from Syme and dated the writing of the work closely in the region of 395 C.E. Other recent studies also show much consistency of style, and most scholars now accept the theory of a single late author of unknown identity. However, to what extent this is because portions of the work are obviously compiled from multiple sources is still unclear.<sup>72</sup>

<sup>71</sup> See Lucrezi, *Ancora sulla data della Collatio* cit., 193-210.

<sup>72</sup> See N.H. Baynes, *The Historia Augusta. Its Date and Purpose*, Oxford 1926; R. Syme, *Ammianus and the Historia Augusta*, Oxford 1968; R. Syme, *Emperors and Biography*, Oxford 1971; R. Syme, *Historia Augusta Papers*, Oxford 1983. See also A. Momigliano, *An Unsolved Problem of Historical Forgery: The Scriptores Historiae Augustae*, in *Journal of the Warburg and Courtauld Institutes* 17, 1954, 22-46, in

The *Historia Augusta*, dated by Syme to the very end of the fourth century also see in Alexander Severus the prototype of the good and rightful ruler, model for future generations. Thus, while Elagabalus is seen as the archetype of the evil emperor, and as such he is often opposed to his successor, Severus Alexander is presented as the paradigm of the good emperor.<sup>73</sup> Together with the *Historia Augusta*, the two-other extant literary sources that can throw light on this emperor's reign are Cassius Dio and Herodian. Both present a less flattering image of the emperor. Yet, the *Historia Augusta* was written for a fourth century's audience. Thus, the depiction, quite exaggerated, of a Pagan emperor who was not just tolerant, but respectful, of both Christianity and Judaism, was very important in a period when paganism was waning, and the emperors who sat on Rome's throne were, by then, Christians, and as such not very well disposed towards Paganism.

The *Historia Augusta* presented, therefore, Severus Alexander as the epitome of the perfect ruler. The authors praise his *paideia* or education, stating that the future emperor "had been nurtured from his earliest boyhood in all excellent arts, civil and military. Not a single day, indeed, did he allow to pass in which he did not train himself for literature and for military service."<sup>74</sup> To his education, or acquired qualities, were opposed his natural qualities, as the heir to the throne was graceful and strong. Indeed, "as to his physique, in addition to the grace and the manly beauty still to be seen in his portraits and statues, he had the strength and height of a soldier and the vigor of the military man who knows the power of his body and always maintains it."<sup>75</sup> More than once, the fact that the emperor observed the golden rule, or *metriotes*, is emphasized. Thus, "his banquets were neither sumptuous nor yet too frugal, but always characterized by the greatest good-taste".<sup>76</sup>

His moral attitude was mirrored by his personal generosity, modesty and parsimony. Thus, the emperor, who "envied no man his wealth", gave aid to the poor and supported modest men who run for public office with his own funds. He possessed very few silk garments and he frequented the public baths together with the plebs.<sup>77</sup>

As his predecessors, the new emperor wished to present himself as a member of the Antonine dynasty, whose rule was perceived as the most successful period in Roman imperial rule. Thus, according to the *Historia Augusta*, Severus Alexander, once emperor, assumed the name Antoninus. Indeed, on various issues minted by the young ruler, he

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*Secondo contributo alla storia degli studi classici e del mondo antico, Storia e Letteratura, Raccolta di studi e testi* 77, Roma 1984, 105-144. See also A. Momigliano, *Pagan and Christian Historiography in the Fourth Century A.D.*, in A. Momigliano (ed.), *The Conflict between Paganism and Christianity in the Fourth Century, Oxford Warburg Studies I*, Oxford 1963, 1-16, in *Terzo contributo alla storia degli studi classici e del mondo antico, Storia e Letteratura, Raccolta di studi e testi* 109, Roma 1966, 87-109.

<sup>73</sup> It is possible to divide the biography of Severus Alexander as presented in the *Historia Augusta* in three parts. In the first part, chapters 1-28, the biographer discusses the emperor background, his family, the accession to the throne, and his early rule. In the second part, chapters 29-52, the main topic is anecdotic, hence his private life and character is related. The third and last part, chapters 53-68, is analyzed his last years, his campaigns and his death.

<sup>74</sup> On the emperor's education, see SHA, *Severus Alexander* 3.

<sup>75</sup> On the emperor's physical strength, see SHA, *Severus Alexander* 5.

<sup>76</sup> See SHA, *Severus Alexander* on *metriotes* in banquets, 37.

<sup>77</sup> On the emperor's personal generosity, modesty and parsimony, see SHA, *Severus Alexander* 40-42.

appears as imperator, Caesar Marcus Aurelius Severus Alexander Augustus, pontifex maximus, or high priest of the Roman state religion, holder of the *tribunicia potestas*, consul, and *pater patriae*, or father of the fatherland. Thus, on coins, the names Marcus Aurelius serve to associate the emperor with the previous rulers of the prestigious Antonine dynasty. Besides, to the name Antoninus, was associated the name Pius, as he was “regarded him as a holy man and one of great value to the state.” Thus, in the inaugural speech attributed to the young ruler, the latter emphasized that he wished to partake in the “righteousness and honesty” of Lucius Verus as well as the “bravery” of Caracalla. The author, indeed, does not set apart the Antonines from their successors, the Severans. Indeed, the senators acclaim the emperor, claiming that he shall “add lustre to the name of Antoninus”.<sup>78</sup>

Yet, the young ruler wished also to associate himself with other “good” Roman rulers. Thus, once more in his inaugural speech, he emphasizes his wish to be associated with good emperors of old, such as Augustus, Vespasian, Titus, and Trajan. Yet, the *Historia Augusta*, more than once emphasizes that the young emperor took Trajan as his primary source of inspiration. Besides, more than once, the *Historia Augusta* makes clear, that, together with Trajan, the main model for Severus Alexander was no less than Alexander the Great. Thus, he observed customs first introduced by Trajan, but who was inspired to Alexander the Great, with the purpose of emphasizing his position of first amongst peers amongst his fellow officers. As Alexander the Great and Trajan, Severus Alexander is presented as a good soldier, who set the example to his subordinates and as a good strategist. The Roman army facing the Parthians was, therefore, well equipped, well trained and disciplined. Thus, the emperor “made every effort to appear worthy of his name and even to surpass the Macedonian king”. Yet, there were traits, such as his informality or the fact that he gave back the primacy to the Senate, which specifically associated him to Trajan, *optimus princeps*.<sup>79</sup>

Last, but not least, as also made evident by various issues, minted during his reign, the young emperor not only reduced the taxes, but more than once, he distributed largesse. Moreover, the *Historia Augusta* celebrates more than once the bestowal of the *annona*, the annual supply of grain to the city of Rome, to the population of Rome. Thus, Severus Alexander “ameliorated the supply of grain (and of oil) to the population of Rome”. Besides, the emperor reduced the luxury at court, amongst other considerations, so that “in order that the food for these might not become a burden to the grain-supply”.<sup>80</sup>

Yet, in common with the *Collatio*, one of the main characteristics of the biography of Severus Alexander is that the authorship emphasizes his closeness to his advisers, such as the jurists Ulpian, Papinian, and Paulus. In fact, all three jurists, Papinianus, Ulpianus and Paulus served in various capacities under the Severan emperors. Hence, Aemilius Papinianus (142–212 C.E.), was master of the requests, or *magister libellorum* and, after the death of Gaius Fulvius Plautianus in 205 C.E.,

<sup>78</sup> On the names Antoninus and Pius, see SHA, *Severus Alexander* 1 and 5. On the attributes of the Antonines, see SHA, *Severus Alexander* 9-11.

<sup>79</sup> On Trajan and Alexander the Great as the primary source of inspiration for the young emperor, see SHA, *Severus Alexander* 10, 39, 47, 50.

<sup>80</sup> See on the reduction of taxes and distribution of largesse, SHA, *Severus Alexander* 39; on the distribution of the *Annona*, see 22.

praetorian prefect. Ulpianus made his first appearance in public life as assessor in the auditorium of Papinian and member of the council of Septimius Severus; under Caracalla he was master of the requests. Although Elagabalus banished him from Rome, however on the accession of Alexander (222 C.E.) he was reinstated, and finally became the emperor's chief adviser and *praefectus praetorio*. Julius Paulus Prudentissimus was also a praetorian prefect under the Severus Alexander. For example, the biography refers that amongst the men who sat in the imperial council were two of the most important jurists of the age, “Domitius Ulpianus, the learned jurist...and Julius Paulus, the learned jurist”. More than once, the primacy of Ulpian is emphasized. Thus, the *Historia Augusta* states that Ulpian was a member of Alexander's council as well as chief of a bureau. On the other hand, in another passage, it is stated that the emperor followed the suggestions of Ulpian, “because he was so preeminently just”, and he received him alone, first amongst his friends, emphasizing once more his primacy. Indeed, the emperor, even in his leisure, enjoyed the company of Ulpian, as the latter's writings; even those with a literary character “refreshed and nourished him”. Moreover, towards the end of the biography, it is clearly stated that the emperor's rule was so excellent, because “he ruled chiefly in accordance with Ulpian's advice”. Yet, also to Papinian is given an important place. Thus, it is stated that, the young emperor as well as Ulpian, had studied under Papinian. Clearly the importance of the latter jurist is emphasized by the fact that he was the master of the heir to the throne, the person who nurtured the future emperors not just in the intricacies of Roman law, but in its primacy. In every occasion, the importance of the jurists' s opinion is well emphasized. Thus, it is stated that the emperor decided to abandon a decision which he wanted to take, namely to assign a peculiar type of clothing to each imperial staff, as it met with the disapproval of Ulpian and Paulus. Clearly the authors wish to emphasize that the emperor subordinated his decisions to the judgment of the jurists, emphasizing the primacy of the rule of law, clearly embodied by the figures of the jurists.<sup>81</sup>

Besides, and this is another common element with the *Collatio*, a positive trend towards Judaism and Jews, once more exemplified in the description of the emperor Severus Alexander. No matter if some of the anecdotes are spurious; still it reflects the much more favorable ambiance of the Severan period towards the Jews. Thus, Severus Alexander “respected the privileges of the Jews”. It seems that this Emperor was so favorably disposed towards the Jews that the mob of Antiochia and Alexandria called him “archisynagogus”. Moreover, Severus Alexander kept in his Lararium, not only the portraits of his ancestors, but also the statues of the most positive deified emperors, but also the statues of Apollonius and those of Jesus, Abraham, and Orpheus. It seems that the young emperor liked to announce his future plans publicly, and when he wished to appoint any man governor of a province same, he declared that he was following the Jews and the Christians, who always announced the names of those who they ordained as priests. Furthermore, Severus Alexander often said as the sternest rebuke, “Do you desire this to be done to your land which you are doing to another's?” a sentence probably heard

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<sup>81</sup> See on the composition of the imperial council SHA, *Severus Alexander* 68; on Ulpian's primacy, 31 and 34; on the excellency of Ulpian's advice, 51; on the close relationship between Severus Alexander and Ulpian and Papinian, 26; on the fear to meet with the disapproval of Ulpian and Paulus, 27.

by a Jew or a Christian. Moreover, he had the well-known rule “What you do not wish that a man should do to you, do not do to him” carved on a monumental inscription on the walls of the Imperial Palace and on other public buildings.<sup>82</sup> Indeed, Pucci Ben Ze’ev rightly argues that this positive attitude towards Judaism and Jews attributed to emperors such as Alexander Severus in fact probably mirrors the positive attitude towards Judaism of the fourth century Pagan aristocracy.<sup>83</sup>

The similarities between the two texts do not end here. Hence, in both the *Collatio* and the *Historia Augusta*, the future of Rome can be successful only if it takes the past as model and repeat it. The difference, that while for the anonymous author of the *Collatio* a happy and bright future is assured by the reiteration by the decisions taken by the Roman Pagan classic jurists, for the authors of the *Historia Augusta* the future is embodied by the model presented by the emperor Severus Alexander, who took in his council these very jurists, mentioned in the *Collatio*. In both cases, we are discussing a universal model valid for the future, but rooted in the past.

## 7.- Conclusions

How the author of the *Collatio* envisioned the future or the possible futures of Rome? The author of the *Collatio*, or indeed his epigones, was quite uneasy with the future of the Roman Empire as well as that of its Jewish citizens. The Roman Empire was changing in a Christian empire. With the exclusion of the well-known interpolation, the Imperial Constitution of Arcadius, Valentinianus II and Theodosius I dated to 392-394 C.E, the author of the *Collatio* is not exactly supportive of the new trend adopted by Roman jurists of mixing Roman law with Christian ethics.<sup>84</sup> According to the author of the *Collatio*, Jewish and Roman jurisprudence, which are rooted in the past, and are valid in the present, are perceived as parallel but never converging. The two legal systems can live together, side by side, but can never become one. And this, because, Jewish law is dominated by "particularism", as it assumes a legal value authoritative only in the eyes of the Jews. Roman law, on the contrary, is universal. The ideology of the authors of the *Collatio* stood in opposition to that of the Late Roman Christian jurist. The latter wished to blend and combine together Roman law with Christian ethics. Indeed, once the Empire became Christian, the ideology of the author was even more relevant than before, and therefore this amazing document remained as a source of dialogue all along the fourth century. The author of the *Collatio* still envisions a “neutral” state, which abides to a universal law, which is not tainted with Christianity ethic. On the contrary, Roman law

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<sup>82</sup> See *SHA, Alexander Severus*, 22; 28, 29, 45, 51.

<sup>83</sup> See M. Pucci Ben Zeev, *Cosa pensavano i Romani degli Ebrei?*, *Athenaeum* 75, 3-4, 1987, 353-354. That does not mean of course that in this case the historical narrative of the *Historia Augusta* cannot be accepted as face value.

<sup>84</sup> See Coll. V, 3. See also C.Th. 16.5.28. However the rendering in the *Collatio* and in the Theodosian Code is quite different. See Rabello, *Alcune note sulla Collatio* cit., 177-186.

but ought to continue upholding the universal values, which till then characterized Roman law.

The author, therefore, envisioned the future as a return to the past, the Golden Age of Roman Pagan jurisprudence, which paralleled the reign of Severus Alexander, the prototype of the good emperors, at least in the eyes of the Late Antique Pagan intellectuals. Thus, the Roman Empire shall rule eternally on the universe only on condition that Roman law shall mirror Jewish Law. As the Law of Moses is the Law granted by God to the Jews, thus a Divine Law, only if Roman law reflects the basic tenants of Jewish law, it assumes a divinely “inspired” status with an added value as a universal *Ius Gentium*. Yet, beyond that, the main concern of the authors is the legal condition of the Jews, first and foremost Jewish autonomy. In conclusion, the *Collatio* conceals a warning. Once Roman law shall no more reflect the Law of Moses, or in other words, the Roman ruler shall assume a discriminating attitude towards their Jewish citizens, depriving them of their autonomy, or their exclusive right to abide to the Law of Moses, the Roman Empire shall come to an end.

And yet, the *Collatio* is in fact one of the last documents of humanism, before the coming of the Age of darkness. Thus, the authors postulated the existence of a universal law, revealed by God to the Jews, and fruit of their Rational Thinking to the Romans, but, all the same, the identical law.

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## Abstract

Lo scopo di questo articolo è quello di esaminare l'atteggiamento dell'autore della *Collatio Legum Mosaicarum et Romanarum* nei confronti dell'Impero Romano. È probabile che la composizione della *Collatio* debba essere attribuita ad un ebreo, che probabilmente visse a Roma, nel periodo che va dall'avvento della tetrarchia al regno di Costantino il Grande. Lo scopo primario dell'opera è apologetico, e cioè stabilire il primato della Legge mosaica sul diritto romano. Quindi, la stesura primaria della *Collatio* risale probabilmente ai tempi di Diocleziano. Il pubblico a cui l'opera si rivolgeva può essere identificato con l'élite delle comunità ebraiche sparse nell'occidente latino, ed in un uditorio legato al mondo pagano. Tuttavia, lo scopo apologetico della *Collatio* ha perdurato per tutto il quarto secolo, periodo in cui l'impero romano ha assunto le forme di uno stato cristiano. Così, l'opera è stata parzialmente rielaborata per adattarla alle nuove condizioni socio-politiche. Probabilmente, il pubblico, a cui l'opera si rivolgeva, rispecchiava questo cambiamento. È quindi probabile che verso la fine del quarto secolo, la *Collatio* si rivolgesse oramai anche ad un'udienza cristiana.

Attraverso l'analisi del primo capitolo, o *titulus*, è possibile chiarificare la visione diacronica del passato, del presente, e del futuro di Roma, avallata dall'autore della *Collatio*. L'immagine del passato e del presente di Roma si confondono. Così, secondo l'autore della *Collatio*, l'impero romano ha acquisito il dominio sull'*oikoumenè*, sul mondo conosciuto, poiché le leggi di Roma, frutto della saggezza dei suoi giuristi, hanno emulato quelle di Mosè, che, invece, sono uno specchio del' ordine Divino del *Kosmos*. Eppure, il futuro di Roma è incerto e problematico. La visione dell'autore concepisce per Roma un futuro, che è in realtà, è un ritorno al passato, l'età d'oro della giurisprudenza romano-pagana. Inoltre, diverse analogie tra questo trattato ed il più o meno contemporaneo e parallelo *Historia Augusta*, rafforzano l'ideologia, che probabilmente caratterizza il redattore della *Collatio*. Così, mentre per l'anonimo autore della *Collatio*, la reiterazione dalle decisioni prese dai giuristi classici pagani, sarà garante di un radioso futuro per Roma, così come per le comunità ebraiche sparse all' interno dell'impero, allo stesso modo, per l'autore dell'*Historia Augusta*, la ripresa e l'imitazione del modello incarnato dall' imperatore Alessandro Severo come fonte di ispirazione da parte dei nuovi imperatori cristiani, potrà assicurare, un futuro sicuro a Roma ed al suo impero. In entrambi i casi, stiamo discutendo un modello universale valido per il futuro, ma radicato nel passato.

The purpose of this paper is to examine the attitude of the authorship of the *Collatio Legum Mosaicarum et Romanarum* towards the Roman Empire. It seems that the primary composition of the *Collatio* ought to be attributed to Jewish hands, and that the main character of the work was apologetic, to establish the primacy of Mosaic Law on Roman law. While the first redaction of the *Collatio* probably dates to the days of Diocletian, and its primary audience was, on the main, Jewish and Pagan, yet, the message of the *Collatio* continued to assume a tangible value all along the fourth century, when the Roman Empire became Christian. Thus, the work was partially rewritten to fit in the new socio-political conditions. Probably, by then, the audience mirrored this change.

Through an analysis of the first chapter, or *titulus*, it is possible to throw light on the diachronic vision of the past, present, and future of Rome uphold by the Jewish author of the *Collatio*. The image of the past and the present of Rome are intermingled. Thus, according to the author of the *Collatio*, the Roman Empire acquired the rule of *oikoumenè* as its laws emulated those of Moses, reflecting a Divine purpose. Yet, the uncertain future of Rome is problematic. The author envisioned for Rome a future, which was in fact a return to the past, the Golden Age of Roman Pagan jurisprudence. Besides, several similarities between this treatise and the more or less contemporary and parallel *Historia Augusta*, strengthen the ideological background, which can be attributed to the authorship of the *Collatio*. Thus, while for the anonymous author of the *Collatio* a happy and bright future for Rome, and for its Jews as well, is assured by the reiteration by the decisions taken by the Roman Pagan classic jurists, for the author of the *Historia Augusta* a positive future for the whole Empire is secured once the model embodies by the emperor Severus Alexander is taken as source of inspiration by the new Christian rulers. In either case, we are discussing a universal model valid for the future, but rooted in the past.