II

SOME REMARKS ABOUT LEVIRATE MARRIAGE IN *YERUSHALMI QIDDUSHIN* 1:1 AND *CTH.* 3.12.2, *C.I.* 5.5.5. A COMPARATIVE EXAMINATION*

Mariateresa Amabile
(University of Salerno)

Good morning, I am very pleased to participate in this important conference. I would like to thank Professor Willems, for inviting me and all the kind people I've met these days in this wonderful city of Marburg.
My presentation will discuss how a Jewish marriage rite, the levirate marriage, that was described in the Ancient Scriptures, in *Talmud Yerushalmi*, was understood and structured in Roman laws about Judaism.

The Levirate in the Torah

In Deuteronomy 25:5-10 it is written that if two brothers live together and one of them dies childless, his widow will be taken as a wife by one of the surviving brothers, and the firstborn of the new marriage is going to be legally considered as the son of the deceased. If the brother refuses to fulfill this task, his sister-in-law shall go before the elders of the city and they shall attempt to persuade the man; if, however, he still refuses, the ceremony of *chalitzah* will be performed: the rejected widow shall remove a sandal from her brother-in-law's foot and spit in front of him: this is what has to be done to someone who does not recreate his brother's house, and his family shall be called the family of *"the one whose shoe has been removed*". The law is described in only two episodes in the Old Testament, both of which are difficult to analyse: the story of Tamar and that of Ruth.
Gen. 38 describes the story of Tamar, given in marriage to Er, son of Judah, who dies leaving no heirs. Following the levirate law, Tamar is given in marriage to her brother-in-law Onan, who refuses to have children with her by spilling his own semen on the ground, therefore being severely punished by the Lord. Judah then promises his daughter-in-law that she would marry his last son once he is grown; however, he forgets. Tamar will then trick her father-in-law into sleeping with her in order to produce an heir and thus not let her deceased husband's name disappear. This episode highlighted how the custom of levirate was imposed on all the living brothers of the man who died without an heir.
In the book of Ruth 1:1-12, Naomi, wife of Elimelech and mother of Mahlon and Kilion, loses her husband and her two sons, who had produced no heirs. She is therefore left alone with her daughters-in-law, whom she urges to return to their homeland, since she has no other sons to take them as wives. Ruth, one of the daughters-in-law, decides to stay with her mother-in-law and will, eventually, be married to a relative of her husband's family. With him she will have a son who will be considered a son of her late husband.
Rut's story, as we can see, draws the dynamic of the levirate, that is, the necessity for the widow to be given in marriage if not to a brother-in-law (in this case no existent) to a relative of the family,

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with that of the so-called *go'èl*, that is, a 'redeemer,' a 'defender' expected to intervene in certain cases, to protect an Israelite brother.

An example could be given from Leviticus 25:47-49: if a son of Israel had to sell himself to pay a debt of his own, the *go'èl*, i.e., one of his closest relatives, will redeem him; if an Israelite has to sell his property, the *go'èl* has the right of precedence over anyone else. In the case of Ruth, she can be redeemed by one of her husband's closest relatives along with the land and property: in fact, before Boaz, who will marry her, the right of redemption should be exercised by another relative, who, however, refuses to take her in marriage. As a result the *go'el* will be Boaz.

The episode of Ruth shows, however, how the destination of the childless widow was also a kind of affair of the clan to which she belonged for having contracted marriage with a man, and this, as is evident, reflects the requirements of a tribal organisation that tended to strongly establish bonds of family ties and to ensure that a man's name and blood would not disappear with his departure.

The ancient scriptures seem to emphasize that levirate marriage arises in response to the need to keep alive the 'name' and 'house' of the deceased, and in fact the son, born of the widow and the *levir*, was to be considered the legitimate son of the deceased. A son guarantees the non-dispersion of the deceased's heritage, the possibility for the father to 'live on' through his son, and the preservation of the cult of the dead, according to a concept deeply rooted in ancient peoples.

Indeed, the custom of levirate does not seem to have belonged only to the Jewish people. A similar rite is represented, by the Indian *niyoga*, where, however, once the purpose had been achieved, namely, to generate an heir for the deceased, relations between brothers-in-law were forbidden. In this case, the union between brothers-in-law is not formalized as an actual marriage, but rather has the value of a temporary arrangement. The *chakar* marriage of the Persians was also similar to the Levirate rite: in this case, half of the children born from the second marriage were attributed to the first husband, although the second husband could decide to adopt them. And the Assyrian laws also specified this rite, but did not make the absence of children a requirement for its implementation; moreover, even in the case of an engagement dissolved by the man's death, the girl had to be married by his brother.

As can be seen, the levirate probably represents one of the rites common to many ancient peoples, and this manifests the importance attached by them to the preservation of the family name and to blood ties: with regard specifically to the Jewish tradition, turns out to be founded, according to the sources, on a patriarchal basis according to a blood bond or through an artificial creation of such bonds.

The Levirate in the Talmud Yerushalmi

In the *Kiddushìn* tractate of the Talmud Yerushalmi it is written that a woman may be married by a by money (a *perutah*, or the equivalent of a *perutah*), by document, or by sexual intercourse (*uba'alah*). A sister-in-law is married by levirate with sexual intercourse and becomes free again with the rejection or death of her brother-in-law. The law states that the sister-in-law who does levirate cannot be married by money but by sexual intercourse.

Rabbi Huná states that a verse in the Torah says that if two brothers live together and one of them dies, without a child, the wife of the dead man will not be of a stranger but will be married by levirate and the brother will take her as his wife and sister-in-law. This implies that if she has already a child, the woman can marry a foreign man.

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Levirate can be performed without ceremony, with a declaration intended to forbid the woman to the other brothers. Cohabitation, however, completes the marriage, while the declaration must be completed. For Rabbi Simeon, cohabitation, like the declaration has definitive value for the purpose of completing marriage. Also according to Rabbi Eleazar ben Harak the declaration has definitive value because the formula follows that of marriage. In Levirate marriage the declaration is: you are hereby married to me by coin or equivalent object.

The Latin word *levir* translates the Hebrew *yavam*, meaning brother-in-law. It is on him, as we have seen, that rests the duty of levirate: to take in marriage the widow of his deceased brother without children, and to conceive with her an heir for the deceased. The passage in Deut. 25:2 ("If brothers live together ... ") means that the obligation of levirate applies brothers born before the levirate; therefore, if the *levir*'s birth precedes his brother's death by at least one day, the widow will have to wait thirteen years and one day until the *levir* can marry her and fulfill his duties, or choose *chalitzah*. If the deceased had several brothers, the obligation falls on the eldest, but the fulfillment of one of the youngest equally accomplishes the duty, and even if illegitimate brothers bind the woman to the levirate, only the child conceived with a slave or a non-Jew is excluded. If the deceased had multiple wives, all of them would go into marriage through the levirate rite, although the fulfillment of one would dissolve all the others.
The bond between the widow and the levir arises immediately and automatically upon the death of the husband without children, without the need for a formal marriage with the blessing of the *kiddùsh*, and yet no levirate or *chalitzah* may be performed until three months have passed since the death of the deceased, for whom the widow is obliged to grieve.

As Boaz Cohen has pointed out in *Jewish and Roman Law*, from the dictate of Scripture, no preparatory formalities would seem to be required for the accomplishment of the levirate (Deut. 25:5). Moreover, while the Tosefta requires the pronouncement of a kind of declaration of commitment by the Levirate it is to be believed that in less ancient times the declaration was equated with the promise of marriage. In the event that the *levir* also inherits property from his brother, he would lose the right to the *kethubah*, so he would not easily consider divorcing his new wife. Moreover, even in the case of refusal of marriage, the *levir* would lose the right to the *kethubah*, which had to be given to the widow, taking it from the deceased's heritage.
The obligation of *chalitzah* was to be imposed on the *levir* only in the event that he expressly refused the marriage, not, if he was incapable of fulfilling the duty because he was ill, or because he was too old.
The question arises as to how is it possible to reconcile the provisions of Deut. 25:5-10 with the dictate of Lev. 16-18, which as we know forbids a man from having relations with his brother's wife or his daughters, or with his own wife's sister. The two provisions on closer inspection, are not in conflict, but rather complement each other: Lev. 16-18 applies when the deceased has descendants, thus living heirs; Deut. 25:5-10, on the other hand, applies in the case of a man who died without heirs.

As can be seen, it is probable that the levirate rite responded to multiple needs, for example, that of ensuring the continuity of ancestor worship, or still it could be considered, as De Vaux suggests, as

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the remains of a fratriarchal society. It is probably to be traced back to that phase in which Israel matured the idea of union in a common bond of worship and blood in the protection of a common heritage. This idea brings out such figures as the *levir* and the *go'èl*, the one placed to protect family unity, thinking of the obligation to marry the widow of the man who died without having been able to produce children, the other to defend any circumstance in which personal identity and family heritage might be endangered.

Roman laws

As we have seen, the Levirate rite in ancient Israel assumed the character of a procedure necessary for the maintenance in life of a family destined, in the event of the man's death and lack of heirs, to disintegration.

Let's observe more closely, now, some roman laws that seem to refer to the levirate marriage.

The two constitutions have some basic similarities, primarily the prohibition of the rite itself. However, there are differences between the two laws.

In CTh. 3.12, 2 Constantius II forbids marriage with the wife of the deceased brother, otherwise imposing the sanction of non-purity and unrecognizability of the children, thus going so far as to invalidate what, as we have seen, was probably the fundamental purpose of Levirate marriage, namely to ensure a descendancy and thus the preservation of the patrimony even of those who had no children. It was a lex perfecta, presenting the configuration of the offence and also of the eventual punishment

Theodosius' rule, CI. 5.5.5 similarly presents the prohibition of marriage with the wife of the dead brother, but the prohibition of levirate, is likely to be related with a prohibition of polygamy.

Theodosius specifies that the prohibition also applies regardless of whether the original marriage was dissolved by divorce or death of the first husband. However, no punishment is described: the criminal conduct is described in great detail, but no punishment is provided for violators.

Before beginning the analysis of the two laws, it may be interesting to take a look at another Roman law on Jewish marriage.

An earlier law of Constantius, CTh. 16.8.6 addressed to Evagrius, had stated that women whom the Jews have united to their turpitude, and who were formerly employed at the imperial *gynaeceum*, were to be returned to the *gynaeceum*, and this was to apply to the future as well, so that the Jews would not unite Christian women to their shame; otherwise, they would be condemned to capital punishment.

First of all is interesting the use of the term consortium to refer to the unions of these women with Jews: such unions would be so disreputable, that they could not even be called *matrimonia*, but mere *consortia*, that is, something different, a union in any case deplorable and which not only could not have been recognized by Roman law (like the *contubernia* of slaves) but would have led, in case of its non-dissolution or transgression of the prohibition, even to a death sentence.

The use of the term here seems intended to mark a parallel with *iustae nuptiae*: this one would indicate an actual marriage, while consortium, on the other hand, would represent unions that were not only unrecognized, and therefore, *extra ius*, but also forbidden, *contra ius*.

The reference to an actual *coniugium* seems deliberately avoided; consortium thus represents the de facto situation, that is, the Jews' making Christian women participants in their condition.

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Attention is aroused by the crudity of the words *turpitudo* and *flagitia* used to refer to the Jews, which clearly shows the great despise Constantius had for them and the unions they performed with Christian women. Indeed, the actual use of the term *turpitudo*, hardly used in the Codices, indicates a condition so infamous that it would lead to the certain exclusion of the subject from the social context.

Some authors have questioned the relevance of enacting such a prohibition, since, as is well known, it was not the Jewish custom to unite in marriage with women who did not share the Jewish faith, and one also wonders, therefore, how many instances of such unions could occur, so as to provoke imperial intervention.

On this point we find different opinions. According to Gotofredo, whose opinion is shared by Gaudemet, the measure came from an intent to repress proselytism; Albanese, on the other hand, sees in the provision a discriminatory intent aimed at preventing relations between Christians and Jews. Of a different opinion is Falchi, according to whom the intention of the measure was to prevent polygamy, a consideration that is somewhat confusing, because the measure was aimed only at Christian women employed in the *ergasteries*, and especially because polygamy, at the time, had practically disappeared.

As has been pointed out, assuming that this law had really intended to prevent the unions of Christian women in general with Jewish men, in order to prevent conversions to Judaism, it would seem rather strange that no punishment was provided for the *pater* who gave his consent to such a union, much less an *excommunicatio*. It therefore seems appropriate, to limit the purpose of the law to a contingent situation: the logic of the law should probably be traced not only to the problem of conversions to Judaism, but to the attempt to restrict Jewish factories and businesses by preventing the transmission of textile processing techniques through the transfer of specialized personnel (such *gynaecearias*), thus blocking one of the channels of subsistence for the Jewish population.

Even in this case, however, the chosen sanction, the *capitalis poena*, seemed to some so severe that it must necessarily have been motivated by some specific incidents of the theft of skilled workers in imperial textile factories carried out by some Jews.

In our opinion, we can also see in the law, a desire on the part of imperial authority to control workers employed in state factories and their private life choices.

In CTh. 3.12.2 of 355, addressed to prefect at the *praetorium* of Italy Volusianum (428-429), it is ordered that (although the ancients believed that it was lawful for a man to marry his own brother's wife, once the previous marriage had been dissolved, and also that, after the death of one's wife or after divorce, it was lawful to contract marriage with her sister) all should abstain from marriages of this kind, and that no legitimate children would be born of such unions: those that were to be born should be considered "spurious." .

The Visigothic Interpretatio summarizes the meaning of the law by stating that it is forbidden for a man to marry his brother's wife and, for a man, to unite with two sisters: in fact, those born from such a union will not be considered legitimate children.

Already by CTh. 3.12.1, of 342, Constantius II prohibited marriages between uncle and niece, addressing the prohibition to the Phoenicians of Antioch, a land of strong Jewish presence.

Some authors have speculated that the later constitution of 355 on levirate was intended to reinforce and extend the prohibition already provided for in the rule of 342, aimed at a small part of the

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population - *provinciales foenices* - so that the Eastern-style malpractice, which could involve marriages between members of the same family, would be definitively and everywhere interdicted, even though it had been accepted in the past by the *veteres*.

The question has been raised as to who were the *veteres* to which the norm refers: Tertullian, in his work *Ad uxorem*, where he argues for the continuity but also for the necessity of an adaptation of the Old Testament to the New, indicates how, although in the past (by this he was referring to the Jewish patriarchs), customs such as those of polygamy or concubinage had been accepted, the coming of Jesus would regulate these aspects, in order to eliminate what was unnecessary and immoral that had been used to be practiced previously. Even Augustine of Hippo, in *De bono coniugali*, emphasizes, taking up Pauline discourses on the virtue of continence, how virginity is considered a virtue, but, in case it is impossible to practice it, it seems necessary instead to exercise continence: in fact, not even monogamous marriage saves from sin, much less can it be compared, from the aspect of chastity, to the marriages, even polygamous ones, of the patriarchs. Indeed, these, even when, just to fulfill the divine will, they had to have more than one wife, "... they treated them more chastely than a husband today treats the only one he has."

St. Paul, in the First Epistle to the Corinthians, had argued that marriage is ultimately a *remedium concupiscentiae*, a kind of necessary evil for those who are incapable of exercising continence, and yet those who are virgins would do well to remain so, and this applies even more to the widow. Therefore, the Christian inability to understand the levirate rite: in case of the death of the husband, even in the absence of heirs, it would be right for the widow to remain in a state of *casta viduitas*, naturally avoiding 'forced' unions such as the levirate rite.

Judaism, as is well known, historically considered it a duty to God to secure a descendancy, and the levirate norm clearly fits into that context.

Many precepts, in fact, of various kinds, are expressed in the Torah, and then in the Mishnah and Talmud.

In Gen. 2:18-24 is formulated immediately after the creation of the woman, the primary need for the man to leave his home and parents to join her and start a new family unit. From this it follows that marriage in the Bible is considered a sacred and inviolable divine institution, ordained and blessed by God not only for the purpose of individual sustenance, but also to ensure the continuation of the human species.

Even in the Talmud, the first of all the commandments given by God to man in Gen. 1:28: "Be fruitful and multiply, fill the earth...," carries numerous invitations to members of the Jewish people to enter into marriage and form new families: "The unmarried person is not a man in the full sense of the word"; or that "To live without marriage is to live without joy, without blessing, without happiness, without religion, without protection, without peace".

Marriage and levirate, then, seem to be two aspects of the same biblical principle, namely contracting marriage to perpetuate the species and to give life and substance to a new family. In order for a new family to be born and for its heritage not to be dispersed, it is necessary, if a man dies childless, for his widow to contract a new marriage with the *levir*, the eldest brother of the deceased, and for the child he produces to be considered a legitimate son of the first brother.

These concepts, as we can see, express the considerable distance of Jewish thinking from the Christian view of *pudicitia* and *continentia*.

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The second roman law we analyse is C.I. 5.5.5.
The Permission to take one's brother's wife in marriage or to marry two sisters is revoked, even if the previous marriage has been, in any way, dissolved.
The thematic affinity of the two constitutions must be acknowledged: while both include a prohibition against Levirate marriage (not specifically mentioned as such, but with obvious references to that Jewish custom), it is only the law of Constantius II that provides, along with the Interpretatio, the severe sanction of illegitimacy of the child born by such a union, thereby defeating, by itself, the ultimate purpose of the Deuteronomic precept.
As we have seen, the Theodosian provision, in addition to confirming the prohibition of Levirate marriage, also states that it is impossible for one to marry two sisters, no matter how the previous union was dissolved. So, the prohibition of marriage between brothers-in-law would apply both in case of death and divorce. The Interpretatio to CTh. 3.12.2 seems to absorb the dictate of Theodosius' law and expand it into a more general prohibition of polygamy, while retaining the sanction of Constantius II, (this for reasons not easily deducible), probably because of a lower interest in the specific issue.

In CI. 5.5.5 the prohibition against celebrating marriage by levirate rite is reaffirmed. In this case, as we have seen, the prohibition is not followed by a sanction, since children born of the incestuous marriage will not be considered spurious, as in CTh. 3, 12, 2. This is therefore a *lex imperfecta*, without sanction. Indeed, it would seem that the norm under consideration here may have been a simple restatement of the law of Constantius II, without the effect of the illegitimacy of children born of such a marriage. The failure to provide a sanction, in this sense, raises a question about the meaning of the prohibition: did Theodosius really want to take up and re-enforce the already existing prohibition, or rather did he want to abolish it, though he did not do so clearly in order not to appear pro-Judaic? In this case, the failure to provide a penalty for transgressors would find meaning. Indeed, the contradictory nature of the Theodosian attitude toward the Jews is, as is well known, evident throughout the emperor's *de Iudaeis* legislation: on the one hand, it seems to obstruct the normal course of Jewish life according to biblical traditions, while on the other hand, in some ways, it seems to protect their diversity. His laws on Judaism are characterized precisely by this inconsistency, the highlight of which is the note CTh. 16, 8, 9, with the admonition: *Iudaeorum secta nulla lege prohibita*, that is, the assertion that despite what has been previously ordained and established, Judaism would remain a permissible religious practice in the Empire.
The Levirate norm, however, has its own peculiarity, which appears peculiar to its subject matter.
If, with regard to CTh. 3.12, 1, one could easily detect an interest on the part of the legislator in preventing the use of customs that he considered degenerated, it is not easy to understand, at first analysis, what interest the legislator might have had in prohibiting a marriage with Jewish rite among Jews, not intended therefore to involve Christians.
If Constantius II, as is well known, produced legislation on Jews that can be called anti-Jewish (with the provision, among other things, of what has been called by some a "crime of Judaism", which instead appears more properly a "crime of conversion to Judaism"), not so did later Theodosius I, who in regulating relations between Jews and the empire, alternated, as we have seen, strongly interdictory measures of freedom of belief with others that instead appear clearly protective in nature.

A particularly important aspect related to these two norms concerns the relevant Visigothic Interpretatio: in fact, it does not reproduce the text of Constantius, but rather the Theodosian text with its prohibition of polygamy. As a matter of fact, the Interpretatio states that one cannot practice levirate and cannot have two sisters as wives. It seems evident how the Visigothic interpreter's choice left out the prohibition of levirate marriage to fall back on a more easily understood prohibition of polygamy, most likely intended to reach a wider part of the population. What is interesting is that the Interpretatio shifts the content of the later law of Theodosius containing the prohibition of polygamy to the earlier law of Constantius.
Why? Could this have been a mistake? It would seem difficult. Could it then be considered a choice, an intended 'misunderstanding'? In this case, the reason may have been the Visigothic interpreter's intention to diminish the anti-Jewish spirit contained in Constantius' law by linking the more oppressive and unjustified prohibition of levirate (which in fact prevented a practice that was still in force and certainly harmless) to the more understandable prohibition of polygamy, a custom that had long since been abandoned but could still provoke general disapproval.

In CTh. 3.7.2, 388, of Theodosius 1, (addressed to the prefect Cynegius), it is ordered that no Jew shall take a Christian woman in marriage and that no Christian shall take a Jewish woman as wife. If anyone has engaged in such conduct, he or she will have committed a crime comparable to adultery and can be publicly accused by anyone. The Visigothic Interpretatio reiterates that neither a Jew may take a Christian wife nor a Christian a Jewish woman. Those who violate this prohibition must be punished as adulterers, and the accusation will be allowed to anyone who had knowledge of the incident.
Marriage between Jews and Christians is therefore prohibited and equivalent to *adulterium.*

The Theodosian constitution CI.1.9.7, of the year 393, orders that no one among the Jews may maintain their marriage customs, nor contract marriage according to their religion, nor contract multiple marriages at the same time. As can be seen, the scope of the law is particularly oppressive, as it also prohibits the celebration of Jewish marriages among Jews, thus the possibility of celebrating according to Jewish custom and living according to Jewish precepts the marriage bond.
This would therefore be a provision that strikes at the heart of Jewish religion and identity, given the absolute centrality of the institution of marriage within the framework of Mosaic life and observance. One wonders whether and to what extent this provision was actually applied. Rabello argues that it was probably basically ignored, but he however points out that such prohibitions already existed in Diocletian's time, such as the prohibition of bigamy (CI. 5.5.2), the prohibition of marriage between maternal uncle and niece (Coll. 6.4.5; CI. 5.4. 17), marriage of someone with his brother's daughter, and the question therefore arises whether such prohibitions were enforced in the places with a strong Jewish presence. The constitution under consideration is therefore intended to dismiss any doubt: all Jews would be subject to the general rules of Roman marriage law, a general principle that, as we can see, was also confirmed by Justinian.

Then there is an important Justinian novella, the Novella 139 (536-537) of Justinian which refers to those who live in the village of Syndis and the inhabitants of the city of Tyre.

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Who among them that have forgotten what is established in the matter of illegitimate unions and do not give the fourth part of their possessions according to how it is appointed for this offense, and now not a few of them are elderly and fathers of children and therefore beg in tears not to be forced now to send away their wives. Let them therefore keep their wives, the children born of them or unborn be their heirs and fear no condemnation.

Justinian accepted the request of the inhabitants of Syndis and the Jews of Tyre, allowing the applicants, and only them, in case they had contracted illicit marriages, to obtain the validity of the marriage and the legitimacy of the children born of such unions upon payment of a fine of 10 pounds of gold to be allocated to the princeps' private *res*.

However, marriages not permitted by Roman law, like, those between relatives of one degree while permitted by biblical-Talmudic law and unions of the polygamous type, remain prohibited, confirming the fact that Justinian preserved the validity of almost all the imperial constitutions concerning Jews issued by his predecessors.

The dictate of the Justinian rule should therefore not be surprising: if, in the course of the Late Antiquity, the entire *de Iudaeis* legislation appears to be marked almost always by a divarication between the sense of the biblical-Talmudic precepts and the interpretation that the Christian legislator tried to give of them, in a predominantly negativist sense (usually without any real interest in understanding them), the Justinian laws must be read from the perspective of the continuation of the 'punishment' of the Jews, considered by then long since enemies of Christians and the Empire, authors of deicide, carriers of Judaic contagion. However, in the Justinian age, Judaism is now less scary and legislation is therefore stabilized in a less repressive and violent sense.

Conclusions

The analysed constitutions relating to marriage law, express and confirm those repressive-type tendencies that we have already noted, with variations, in the review of other fields of investigation. They appear, in our opinion, completely without 'tolerance', of pietas: it is not possible to perceive in them any tendency of a 'protective' type, nor, even less, references to needs of 'necessity and urgency' that would have motivated and determined (even in a pretentious way) the enactment of such invasive measures.

On the contrary: the actual recipients of the imperial measures, the Jews, are invited, from time to time, to acknowledge the disintegration of their personal and civil liberty.

To those who would attempt to find the motivations and intentions of such laws, they will see the presence, in these constitutions, of a substantial anti-Jewish basis, in the specific sense of planned, studied 'ghettoization' and necessary isolation of the perverted and contaminating ethnic group, with the consequent absolute prohibition, for others, to mix with it.

The attempt to examine the meaning of such a prohibition, as well as the specific interests or ideals it was intended to protect, rests for the moment on the awareness of a diversity between the Roman legislator's alleged contingencies and normative needs and the actual meaning of the Jewish precept. It is clear that on the part of the Christian emperors there was no specific knowledge of the reasons for the Levirate rite, nor any actual interest to know them.

In several late imperial constitutions concerning the Jews there appears to be a recurring misunderstanding, a misunderstanding between the ethical meaning of a Jewish precept and the supposed and presumed necessity and mode of intervention of the imperial norm. In fact, the Roman

norm almost always introduces denials and obligations in order to protect the pre-existing socionormative framework from possible Eastern-style invasions, but almost never succeeds in understanding the actual purposes of other people's customs: there is to be kept in mind, in fact, that Judaism, as we know, never conceived of the necessity or even the aspiration for the conversion of those who belonged to other religions, nor of the need to import customs that belonged to its own tradition and that only within it found meaning.

Precisely for this reason, to have introduced the prohibition of Levirate marriage, to have thus forbidden a Jewish rite that could have been performed only among Jews, in order to avoid the 'contagion' of the ancient Roman customs, would turn out to have been an act of *imperium* at least unnecessary or unfairly invasive and in any case indicative of a considerable difficulty of the understanding between the Roman Christian legislator and Judaism. A confrontation made even more difficult by a claimed superiority of the ancient pagan customs to Judaism and at the same time by the Christian fervor raging in those years. A 'conflict,' then, that at least in that era found resolution only in the imposition of a will constituting positive law and a provision of sanction.

Ultimately, we might conclude that the Levirate marriage prohibition expressed the Christian legislator's attitude of prejudice and hostility toward Judaism and also, not least, the distorting conception that was often given of the Mosaic religion. This one, in fact, would have been, as is well known, during the Late Antiquity interpreted and governed according to a distorted perspective, tending, in its oscillation between forms of protection, repression and control, to a decidedly negative aspect.

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