

"DE REGIMINE JUDAEORUM:" A TRANSLATION AND CRITICAL ANALYSIS

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## PREFACE

Before an opinion on the moral aspect of St. Thomas' attitude towards the Jews is given, I think that it is necessary to give some background about the religious and civil position of the Jews during the time of St. Thomas in order to understand more fully his opinion.

### Religious Attitude towards the Jews in the Time of St. Thomas

The history of the general downgrading of the Jews which is generally called Anti-semitism had quite a long history by the time of St. Thomas in the thirteenth century. From the beginning of Christianity there have always been feelings of religious enmity between the Jews and the Christians. From a strong desire to protect monotheism from contamination, the Jews have always quite naturally and properly tended towards exclusiveness and therefore they had traditionally little dealing with their pagan neighbors. At the founding of Christianity the Jews were looked upon as the murderers of Christ and therefore guilty of any and all religious evil. The Universal Jewish Encyclopedia states that even some parts of the Christian scripture were written under the stress of this hatred which developed:

"In these parts the enemies of Jesus are no longer hypocritical laymen and souless priests but the Jews as a whole while the guilt of the crucifixion is transferred from the Roman governor to the Jewish people." (1)

Even disregarding the last phrase it is without doubt that, in the desire to spread their new faith, the Jews were gradually looked down upon by the Christians as being adamant in character and then gradually, as they set aside more and more aspects of Judaism, the Christians came to regard the Jews as one unit who stood against Christ and hence against the Christian Church.

It is doubtful whether any other religion, other than Christianity, has been so especially prejudiced against the Jews. Thus, throughout the centuries, the Jews were persecuted by many Christian groups, although the Popes often spoke out against this, as is evidenced by the Crusades. (2)

Thus when we reach the time of St. Thomas, we find the religious antagonism in Europe against the Jews multiplied considerably for two basic reasons. First of all, we know Europe to be almost completely under the influence of the Church and considering every other religious belief on Catholic standards. Secondly, the Jews are considered alien, wherever they dwell and the identification of their Nationality with their race is maintained strictly by them on their side and is intensified greatly by the Catholic viewpoint on the other.

As a result we find many of the practices of the Jews misunderstood as for instance their custom of the Purim. This is a custom wherein a mock figure of Haman is ritually killed in order to celebrate the deliverance of the Jewish people by Esther. Often the Jews would crucify this mock figure and, when this feast fell quite near to Easter, as it is celebrated in the Spring of the year, it could be easily taken to be a blasphemous parody of the Passion of Christ and often was. (3) It is also true that they sometimes used criminals as the figure of Haman and punished them on this day and the rumor grew that the Jews must sacrifice a Christian each year somewhere in the world. (4) From this comes the attitude that the Jews are enemies of the human race and, as such, are capable of any crime, including murder. (5)

Further, much religious bias came from the fact that the Jews were considered as having lost their title to be the Chosen People and were thus cursed by God and hence should be cursed by men. The amount of religious prejudice which was built around this subconscious idea in the Mediaeval mind is fantastic. For instance it was held that the Jews would only be let into heaven on the last day since they had lost, through their own guilt, the character of being the Chosen People. (6)

Further unpopularity against the Jews was enhanced by the numerous campaigns of the Church against heresy, as for instance the Crusades and the Inquisition. The Inquisition forced the Jews, under Charles the First, to wear a yellow badge and banned the building of new synagogues against the king's will. (7) In the thirteenth century we even find evidence of Jews being fined for converting Christians. (8)

However, it must be mentioned that the Church itself never outrightly persecuted the Jews. On this, Dr. Cecil Roth has said:

"Only in Rome have the colony of Jews continued its existence before the beginning of the Christian era because, of all the dynasties of Europe, the Papacy not only refused to persecute the Jews of Rome and Italy, but through the ages, the Popes have protected the Jews." (9)

Yet many of the Church's members were highly inimical towards them. We even see this evidenced in the third and fourth Lateran Council (1179 and 1215) which were very unfavorably disposed towards the Jews. (10)

#### Religious Attitude of St. Thomas towards the Jews

The attitude of St. Thomas towards the Jewish religion can be

easily understood from what he has written about them in the Summa. He says, first of all, that the Jews certainly were guilty of the death of Christ because they knew Who He was and any ignorance which they might have shown was affected ignorance and so they were even more guilty. (11) Further, he says that, although the Jews sin in following their rites, they should be tolerated because they forshadow, by their falsity, the faith that we hold. (12) Furthermore, he observes that the commonweal of the Jews in the Old Testament either prospered or suffered when God was pleased or displeased with them (13) and from this it is easy to reason that, since the Jews were suffering during his time, then God must be displeased with them and so they suffer under the curse of God.

Thus the Jews, in St Thomas' time, were looked down upon for their religious beliefs and since they, like the Catholic Church, would not compromise, they remained a strange and alien religion to the Christians of Europe.

#### Medieaval Civil Law and the Jews

In order to understand the reason why the Jews were socially as well as religiously condemned in the Middle Ages, one must first understand the part that religion played in the life of the Medieaval man. Life was what might be called a unity, as it was by one author. (14), for those of the Middle ages. Law, ethics, religion and art all formed a harmonious whole. Furthermore it was religion, and the Christian religion, which was the axis around which Medieaval life revolved. It highly influenced all forms of life and was particularly evident in the formation of Civil Law. Canonical

institutions were an integral part of the social and political structure of the society. Many of the clergy held places in the schools of law. (15)

The whole idea of the religious influence upon Medieval law might be summarized as one author has said:

"Therefore it follows that, if God is Law then every legal infraction is a sin and every sin is a legal infraction. The world of Law is the world of Morality." (16)

Moreover there was no subordination of the law of the state to the law of the Church. These were merely two aspects of the same Divine established law; the Spiritual law governing the soul and the Secular law governing the body. Further, the term law not only encompassed law as we know it, but the aspect of duty and the three duties of man were considered to be justice, loyalty and truthfulness and hence a man could be punished for the infraction of any one of these. (17)

Keeping in mind, then, what was previously said about the religious attitude towards the Jews, it is not too difficult to see why they were severely restricted and degraded by Medieval Law in many cases. One of the most obvious instances that comes to our attention is the Ghetto. Though the Ghetto was a voluntary organization during the thirteenth century (18), it was also the policy of the courts to compel all Jews and all others of heretical (non-Christian) belief to live in a section of a particular town which was set apart from the Christian community, "in order that the Faith be protected." (19) The Jews were also forced in the courts to take a special oath in lawsuits with non-Jews so they would consider themselves legally bound to tell the truth and act accordingly. (20)

What further lead to the low social standing were the various fields of business in which they were engaged. The Jews fall into two main categories of social consideration during the Middle ages; they were Merchants and Medical men. As to why the Jews became merchants is not quite ad rem to this paper. Suffice it to say that, as one Christian source states:

"At various times, and in various places the Jews were forbidden to own land, to farm, to belong to guilds, to hold public office. Typically, as people of the town and city, they became merchants." (21)

The Jewish Encyclopedia attributes the fact to essentially the same thing saying:

"Forced to the position of no other means of livelihood, they took occupations of money-lending and speculative trading. They became a separate and distinct class and the Church emphasized this when it forced them in 1215 to wear a badge or distinctive dress." (22)

Now the Merchant class in general were hated by the poor because they had the money and they were feared by the royalty since it was they who controlled the purse strings of the kingdoms. The position of merchant taken by the Jews during the Middle ages for these reasons and also because of their ability at bargaining, made it doubly hard for them to eke out a living.

Those Jews who took up the Medical profession found it equally difficult. It was not until the fifteenth century that they were regularly allowed into the universities of Italy and before this the regular channels of medical knowledge were not open to them. (23) It seems however, that, though they might have enjoyed more personal toleration in this field, since they distinguished themselves so well in medical science and since the Jews as a whole suffered such unpopularity, "it was inevitable that they should



be associated with any ridiculous cure which the popular fantasy created." (24)

It seems that the movement for a more rigorous control of the medical profession during the thirteenth century seems to have begun in the South of France as part of a campaign against heresy. (25)

This is a small sample of what the restrictive laws were in the Middle ages against the Jews but it presents the general picture. They were not always strictly followed and in some places there was a general acceptance of the Jews, even though they were not officially tolerated. But, in general, they were a people apart and it was thought necessary to govern them by special laws.

#### Social and Legal Attitudes of St. Thomas towards the Jews

St. Thomas, in the Summa, reflects the attitudes of the Church during this time. He says that the only time that the Church can exercise any authority over the Jews is when they are dwelling among the Christians and are guilty of some misdemeanor, for the Church has no right to exercise any spiritual judgement over them. (26) He strongly emphasizes this idea of the temporal power of the Church. In another place he says that the Church has made a law that if the slave of a Jew becomes Christian then the slave should immediately receive his freedom, owing no debt to his master whatever. (27) And he goes on to say that the Church does no injustice to the Jew "...since these Jews themselves are subject to the Church, she can dispose of their possessions even as secular princes have enacted many laws to be observed by their subjects..." (28) In every instance he interprets the temporal law in the light of whether or not it will do harm to the Church, a

concept completely foreign to our mode of social and legal thought today. Thus he says that the unbelievers have absolutely no right to any authority whatsoever over those who believe (29), and any authority which they do have can be taken away by the Church since all authority is from God and the Church is the proper custodian of the Authority and Law of God. Therefore, "All unbelievers, in virtue of their unbelief, deserve to forfeit their power over the faithful who are converted into Children of God." (30) And in another place, "And so the Church altogether forbids unbelievers to acquire dominion over believers or to have authority over them in any capacity whatsoever." (31)

Here then is the religious, civil and legal attitude towards the Jews which influenced the times of St. Thomas and which is evidenced in his own doctrine. Whether these attitudes of him and his times were justified is matter for the following sections. The author here is aware that a much more penetrating study could be made of the matter just covered but that is not the purpose of this paper.

## TRANSLATION

I have received the letters of your Excellency and giving thanks to God Who has placed the seed of such virtues in your heart, I perceived both a serious solicitude for the governing of your subjects and a devoted concern for the brothers of our Order. However, the fact that you, moreover, in the letters, ask me to answer for you the questions, was quite difficult for me; both because of my duties which require lecture work and moreover I would have been pleased if, concerning your questions, you would have sought the advice of others who are skilled in such matters. However, because I have thought it unfitting that I might be found a helper who neglects your solicitude or else that I might appear ungrateful of your favor, I have taken care to answer the questions which you have proposed, for the present, without the prejudice to a better opinion.

First of all, Your Excellency has asked if it is lawful for you, at any time and then at what time, to tax the Jews. To this question, as it is directly proposed, it can be answered that, although, as the law has stated, the Jews are justly blameworthy and are bound to perpetual servitude; thus the rulers of a land are able to take their (ie. the Jews) goods as their own: however they should exercise some moderation so that they, in no way, take away the conditions which are necessary for life in these matters. Moreover, since it is necessary for us to approach properly even those who are outside (the faith) lest the name of the Lord be blasphemed and, as the Apostle admonished the faithful through his example, "that they ought to be without offence to either the Jews, the Gentiles, or the Church of God;" it

seems the custom must be preserved that, as the court has decided, forced servitude is not to be placed upon those who have not been accustomed to it in the past, for those things which are strange are much more inclined to disturb the peace of men. Therefore, according to whatever your moderate opinion is concerning the custom of your predecessors, you may tax the Jews, if, however, nothing else stands in the way.

It seems, moreover, that I can detect from this, an increase in your doubt about which you inquire further on namely that the Jews in your land seem to have nothing except that which they acquire through the evil of usury; whence you consequently ask if it is, in any way lawful to collect from them since whatever they have extorted must be returned.

Now to the above question the answer seems to be thus, that, whatever the Jews have extorted from others through usury they can not lawfully keep and it consequently follows that, if you take this money from them, you can not retain it legally, except perhaps that the money be such which was extorted from you or from your ancestors up to this time. And if they hold that which they have extorted from others, you ought to return that which has been taken from them to those to whom the Jews are forced to return it: wherein if the exact persons are found upon whom the usurers have practiced, then the money ought to be returned to them or otherwise it ought to be put to a religious use according to the advice of the local ordinary and other worthy men or lese you should put it into the common fund for the land, if the necessity arises, or else if the common good demands it. Moreover, neither is it wrong if you take such things from the Jews for the first time,

having followed the custom of your predecessors with this intention namely for it to be applied for religious reasons.

Secondly you have asked me, if, when a Jew sins, he should be punished by a financial penalty although he has nothing except that which is made through usury. To which question it seems that it must be answered, according to what has already been said, namely that it is advantageous to punish him with a financial penalty, lest he gain an advantage from his iniquity. For it seems to me that it is a greater punishment to fine, by a financial penalty, a Jew or any other usurer, more so than anyone else in a similar circumstance, in so far as the money which is taken from him is known to belong to him less. Therefore you can add on another penalty over and above the average fine, less this alone seem to be sufficient for the penalty namely for him to cease to possess money which is owed by him to others. However, the money of the penalty taken away from the usurers in the name of a penalty, cannot be kept but ought to be given back as according to the previous procedure if they have nothing but what is their money from usury.

If however, it is said that the rulers of the world will be hurt for this act, the condemnation is imputable to them in so far as it comes from their negligences. It would be better that they compell the Jews to work so they may gain a sufficient sustenance, as they do in parts of Italy, rather than that they who live leisurely become rich on usury alone, and thus the rulers are defrauded of their own returns; for the rulers, through their own fault, are defrauded of money which is really theirs if they permit their subjects to become rich by such robbery and stealing. For then

they would be bound to return whatever they have taken from them.

Thirdly you ask if moreover they offered money or a gift on their own accord; whether it is lawful to accept it. It seems that the answer must be that it is lawful to receive it, but it is expedient that the money accepted be thus returned to those to whom it is owed, or else, as has been previously mentioned, that it be used, if they have nothing else but their usury.

Fourthly you have asked that, if you should take more from a Jew than the Christians require of him, what should be done with that which is left over. Now the answer to this question comes from what has already been said. For the fact that the Christians do not require any more from the Jews, happens for two reasons. Either because a Jew has some finances over and above that of usury, and, in such a case, it is legal for us to keep it if one follows moderately that advice given before; and it seems that the same must be said if they have extorted usury from them who afterwards with good will, have given to them, provided that the Jews promptly offer to return that which was taken in usury. Or else it can happen that those from whom the usury was taken have gone out of our midst, either through death or else through living in foreign lands, then they ought to return it. If, however, no particular people appear to whom it can be returned, then you should proceed as above. Now this is primarily of the Jews, but it must be understood of the Italean merchants or anyone else who persists in the crookedness of usury. (1)

Fifthly, you have asked concerning the position of bailiff and your other officials, if it is lawful to sell offices to them or to accept in exchange a hundred pounds until they can make such an amount from the offices which you have considered them for. To this I must answer that it seems that the question has two difficulties; the first of which is the selling of offices. Now on this point it seems that we must consider that, as the Apostle said, many things are lawful which are not expedient. Now since you give to the bailiffs and the other officials, nothing except the temporal power of the office, I do not see why it would not be lawful for you to sell such an office, provided it can be preserved that they will carry out the duties of such an office and further that it not be sold for such a great price that they cannot recover this without grave loss to your subjects.

But it does not seem however, that the selling of offices is expedient. First of all because it frequently happens that those who are more suitable for the exercise of such an office, are poor men and consequently they are unable to buy them; and moreover, if it is the rich men who are better, they do not ask for them nor do they want them for the purpose of acquiring money from such a position. It follows that a greater number of those receive offices in your land who are the more evil, being both ambitious and lovers of money; and it is probable that those both oppress your subjects and fail to take proper care of your interests. From this it seems to be more expedient that you should select upright and capable men and force into office those who are unwilling, if the necessity demands it; for they will increase, through their efforts, well-being and progress,

for you and your subjects, more so than you will fare by any increase through the selling of the above offices: and concerning this point, his kinsman gave this advice to Moses, "Select," he said, "from all of the people, wise men and those who fear the Lord, in whom there is truth and men who hate greed and make of them tribunes and centurians and men in charge of fifty and of ten, who are to judge the people for all time."

Now there is another problem about this situation concerning this exchange. Now it seems that about this point it must be said that if they give the exchange by this agreement in order to obtain the office, without doubt this is an agreement based upon usury because, through this exchange they gain the power of the office; whence you give them, in this instance, an occasion for sin and thus they are obliged to resign the office which is acquired in this way. If however, you give these offices freely and later on accept a remuneration from them which they are able to make from their office; this can be done without any sin.

On the sixth point you ask me if it is lawful for you to put a tax or some other obligation on your Christian subjects. Now on this point you must consider that the rulers of the world have been invested by God, not to seek their own advantage but for the purpose of providing the general welfare of the people. Thus in rebuke of certain rulers it is said, in the book of Ezechiel, "Her princes in her midst are as wolves, ravishing the prey in order to spread blood and destroy souls and to seek richer through avarice." And elsewhere the same prophet says, "Woe to the shepherds of Israel who have fed themselves. Should not the flocks be fed by the shepherds? You



have consumed the milk and have clothed yourselves with the wool and you have killed that which was fat; but my flock you did not feed." Whence revenues have been established by the rulers of the earth so that they may live from them and abstain from taking the spoils of their subjects. Now concerning this, this same prophet, by the counsel of the Lord, has said, "A prince will have possession in Israel and the leaders will no longer rob my people."

Now it is possible, in certain instances, that rulers do not have sufficient returns in order to protect their land and other such matters which are of the same type which rulers must reasonably be expected to pay for. And, in such a case, it is just for the subjects to offer something so the common good can thus be safeguarded. And thus it is that, in certain lands, by ancient custom, the rulers collect certain taxes from the subjects which, if they are not immoderate, they are able to do without sin: as according to the Apostle Paul who says that no soldier serves at his own expense. Moreover, the rulers who fight for the common welfare ought to live off of these common funds and ought to settle the affairs of the community either by taxes which have been established or, if at any time, these will not be sufficient then they ought to do these things through taxes which are collected from individuals. And for the same reason it seems, if any new situation emerges in which it is necessary to spend a great deal for the common welfare or to preserve the appropriate position of the ruler wherein the average taxes or customary collections are not enough; consider for instance if an enemy invades the land or some similar case arises; then the

rulers of the world are lawfully able to collect something from their subjects for the common good, over and above the customary amount. If however, they wish to collect over and above that which has been established for them, for the mere desire of having it or because of some inordinate and immoderate expenditure, this, by all means, is not lawful for them. Whence John the Baptist said to the soldiers who were coming to him, "You should take from no one nor accuse anyone falsely but be content with your pay." Now the taxes collected are like wages to the rulers, for which they ought to be content so that they do not collect anything extra, except for the above reasons, for the cause of the common welfare,

Seventhly, you have asked whether, if your officials, without the rule of the law, extort anything from your subjects which has come into your hands, or perhaps not; what are you to do about it. Now about what has just been said, the answer is plain, for if such money comes into your hands, you ought to return it either to the correct people, if you are able, or else to spend in in a religious use, for the common welfare, if you are not able to find the people to whom it belongs. If however, it does not come into your possession then you ought to compell your officials to similar restitution; moreover, if you do not know the exact people from whom the money was taken, or else if, through their own injustice, they gain a profit by not returning it; then these men must be punished by you more severely because of this so that others may abstain from similar activities in the future; for, as Solomon has said, "The wicked man being scourged, the fool shall become wiser."

Last of all you ask if it is good to force the Jews to wear a sign which will distinguish them from the Christians in your province.

Now the answer to this is also clear, that, according to the decision of the General Council, the Jews of both sexes should be distinguished by some form of dress, from all the other people in every Christian province and at all times. This is also demanded of them by their own law, namely that it is necessary that they put fringes upon the four corners of their pallia whereby they will be distinguished from others.

These are the answers, illustrious and venerable Duchess, which are given to your questions as they must be answered for the present, concerning which however, I do not put forth my own opinion over the general opinion of men much more skilled in these matters than I, which should be held. May your reign be blessed throughout its entire length.

1. The Cahorsini were a very famous family of Italian merchants who existed in the time of St. Thomas and who were known for their dealings in usury. They practiced their trade especially around France.  
John Perrier, O.P., Opuscula Omnia. Paris: P. Lethielleux, 1949.  
Vol.1, p. 216, ftnt. 30.

### ETHICAL STUDY OF ST. THOMAS' OPINION

This study will be made, discussing each point as St. Thomas mentions it in his letter. There are five answers to the Duchess' questions which directly concern the Jews and so this study will follow the outline that St. Thomas presents in the letter.

Question 1: "Is it lawful to tax the Jews?"

Part 1: "Can the Jews be taxed in general?"

Judicial Law against the Jews and St. Thomas' reference to it.

In the first few lines of the letter (cf. pg. 9 of translation) St. Thomas makes reference to a law which he accepts without question and whose ethical stature must be examined since he bases his own opinion upon what this law implies, namely: 1) the guilt of the Jews for the death of Christ and 2) their consequent perpetual servitude, coming from this fact.

In his treatise on Guilt in the Summa, St. Thomas says, in effect, that no man can incur the guilt of another, if by this we mean being "guilty" of the evil of another, because guilt for sin is personal and so each man is guilty of his own sins. (31) Immediately the problem of Original sin arises but a distinction must be made. St. Thomas does not say that the effect of the guilt of the sin of one man cannot be suffered by another but rather that the sinful action itself is what is personal because it is proper to each individual agent. Consequently he states that no man suffers any loss in his soul, except through his own fault. (32) Now nowhere in his discussion of the guilt of the Jews, although he draws a distinction between the elders and the common people as to the degree of guilt, does St. Thomas draw this

distinction in favor of the Jews. What he says, in effect, is that the Jews are guilty of the death of Christ.

Now the referral of the guilt of the death of Christ to the Jewish nation, as a whole or as a unit, has some basis. For every man is responsible for the acts of his society or institution in so far as he identifies himself or is identified with it. Thus the German people can be held responsible for the purges of Hitler and the Catholics for the outrages of the Inquisition. But this "guilt" so to speak, can only be placed upon the individuals of a group in so far as they cooperate with those who actually commit the sinful action. Outside of this there is no personal sin involved. St. Thomas himself tells us that the guilt of any particular sin cannot be transmitted from the parents to the children:

"Yet, if we look into the matter carefully, we shall see that it is impossible for the sins of the nearer ancestors, or even any other but the first sin of our first parents, to be transmitted by the way of origin. The reason is that a man begets his like in species but not in individual. Consequently, those things that pertain directly to the individual, such as personal actions and matters affecting them, are not transmitted by parents to their children..." (33)

This then is the essence of the unique judgement which has always fallen upon each Jew individually. It is true that the killing of Christ could have been more than a personal action, even to the extent of being a social action of the state, such as the killing of criminals in our day by the state. However it is almost unheard of to condemn a particular man for the guilt of his race or nation. This is really a fundamental error in logical thinking, i.e., to predicate the singular of the universal. Yet it has been done in the case of the Jews throughout the centuries. As was

mentioned in the introduction, the fact that the whole of the Jewish race was considered as having a personal guilt for the death of Christ is understandable since the Jews were always considered as a unit or group but, although this position is understandable, it is not morally justifiable. Even if God has reserved a special punishment for His People, this is God's judgement and His right; it is in no way our right. As one author puts it:

"Why are the Jews forever persecuted? Can it be connected with some terrible crime committed by some of them 2000 years ago and the incredible curse called down upon themselves...? But all this has nothing to do with the duty of Christians. God may be especially permitting Anti-Semitism as a continuing call to His People to come back to Him. But God cannot condone the sin of Anti-Semitism and it is wrong for us to do so. What God's designs are as to the Jews He has never clearly told us. What our duty to our neighbor is, He has!" (34)

#### Forced Servitude in relation to the Jews

The second point which this law affirms and which St. Thomas relies upon is that it seems to indicate that the Jews are perpetually slaves but that forced servitude can be at the discretion of the ruler. Now the topic under consideration does not permit a lengthy discussion of St. Thomas' position on slavery. Suffice it to say that St. Thomas based his reason for holding that servitude is from nature, mainly because there seems to be this natural tendency for the intellectually weak to follow the intellectually strong. (35) Now it is obvious that St. Thomas does not speak of servitude here in the natural sense, for he knew of the high intellectual capacity of many of the Jews of his time. St. Thomas means servitude here to be a punishment for sin; the sin of killing Christ.

St. Thomas' conception of slavery could probably be related more

closely to our idea of some type of mitigated serfdom,(36) nevertheless, St. Thomas would seem to indicate that it is precisely because of the fact that they are Jews and guilty of the death of Christ that they are therefore slaves. St. Thomas bases his own opinion on this question, not only from what was said here but also in the Summa when he says:

"The Jews are slaves of rulers by civil slavery, which does not exclude the order of the Natural and Divine Law." (37)

Again, he seems to take for granted the fact that Jews are slaves. Yet, even if this form of slavery were justified; for instance perhaps by the economic setup of the times, St. Thomas' opinion that the Jews are perpetually slaves because they are Jews, seems to be at variance with the general opinion held upon this matter today. For there is no place in the Catholic ethical doctrine that says that the Jews are condemned to slavery because they rejected Christ. The Jews very definitely lost a position in rejecting Christ but they lost it in regard to God, and not in regard to other men. Again, it might be remarked that this attitude could have been an outgrowth of the identification, in St. Thomas' time, of the "Jews" as a religion and the "Jews" as a nation. And also, as Maritain says in his study of the Jewish question, that the Church and the affairs of the state were so intertwined in the time of St. Thomas that the good and evil of social life depended greatly upon religious beliefs. (38) Yet it does not seem possible to admit the fact that, even understanding what St. Thomas means by servitude, the Jews, precisely because they are Jews, are bound to servitude. For, just as no man can be bound personally for the guilt of his state as a whole, so also no Jewish person can be condemned and persecuted merely for being a Jew, because his race or nation was guilty of a social evil nearly 2000 years ago.

It should be noted however, that St. Thomas encourages the Duchess not to place servitude upon those Jews who have never had it before. This seems to indicate that St. Thomas wishes to abolish this idea but, since it is a social custom, he advises the Duchess to move slowly, granting freedom only at first to those who have never known slavery.

Thus, with these two points established, we come to the content of the question itself; "Can the Jews be taxed in general?"

#### The Taxation of the Jews in general

Before a definite answer can be given to this question, we must establish just who St. Thomas wishes to designate when he says "Jews" here. Now, if the Jews are here merely considered as the subjects of the kingdom of Brabant, then there is no question about the power of the Duchess to tax the Jews, as St. Thomas himself says in answer to her sixth question, that every ruler has the right of support from his subjects and the subjects have the reciprocal duty to support the ruler and the kingdom. However, if the Jews here are considered as merely the Jewish class then the legality of the law would depend upon the circumstances. For, if they were being taxed because they were Jews, then the law must be further examined.

Now, if the Jews of Brabant represented, as a class, a particular business or occupation, the tax might then be justified since everyone should contribute to the support of his state in so far as he is able. And it seems from what follows that the Jews can be taken here to mean that class of people who represent the trade or market of usury in Brabant and it is with this



understanding that St. Thomas says that the Jews can be taxed. It would seem that it would be a morally justifiable law to tax the system or trade of usury in St. Thomas' time since it was an economic institution which might be compared to a loan corporation today, provided that the law fulfilled the basic requirement of Civil Law which says that a law must be directed to the common good. However, if usury was being taxed because it was an evil thing and not an economic institution then we must pass a judgement upon the moral rectitude of usury itself.

Part 2: "Can the Jews be taxed since they only have money which has been acquired by usury since this must be returned?"

#### St. Thomas and Usury

Although St. Thomas never directly answers the above question in the answer that he gives to the Duchess, nevertheless he has a great deal to say about the subject of usury in the Summa. St. Thomas considers usury as the price of money lent and says that it is wrong because this is to sell something which does not exist and this evidently leads to inequality which is contrary to justice. (39) According to his idea and Aristotle's, the proper use of money was merely for the purpose of exchange and therefore its principal use was for consumption. (40) However, it was lawful to borrow from a usurer since one could make use of the sin of another for a good end. As St. Thomas says:

He who borrows for usury, gives the usurer an occasion, not for taking usury but for lending; it is the usurer who finds an occasion for sin in the malice of his heart. (41)

Now St. Thomas is correct in as far as he goes, making the distinction

between goods consumed and not consumed in use. (42) However, his analysis of the full nature of the use of money as a commodity is incomplete. What St. Thomas understood by usury is generally understood to be interest in our economic system today. We consider interest as the price paid or imputed for the use of capital. (43) Today the interest paid on a loan is for; a) the cost of the investors saving the money, b) the payment of the risk, c) and the service of the money itself. In discussing interest, William Keikhofer explains this and it is worth quoting the whole passage:

"The taking of interest was long in disrepute. This is not surprising, for the recognition of capital as a distinct factor in production and its use on the colossal scale that we know today are comparatively recent developments. What is more, the extensive use of borrowed capital in the conduct of business operations is distinctly modern. When borrowing was largely for the occasional exigencies of life or the necessities of personal expenditure, the asking and taking of interest were usually condemned. Aristotle had said, 'Money does not breed,' and also, 'Money is intended to be used in exchange, but not to increase at interest.'" (44)

Slowly, with the growth of a larger and much more complex economy in the world, a fuller concept of the use of interest gradually emerged. He says in conclusion of this section of his work:

"When money could be used productively, interest came to be regarded as compensation for the sacrifice of possible opportunities by the lender in letting others employ his money instead of using it himself. Ultimately, interest was justified whenever the recipient of a loan employed it in a profit-making venture. For when borrowed capital funds are no longer primarily used for consumption purposes but rather in acquisitive enterprises, why should not the owner of the funds receive some reward? As the demand for loanable funds greatly increased with the steady growth in the capitalistic character of modern industry, the old view of interest as taking advantage of a man's necessities gave way to the modern conception of the necessity of interest as compensation for waiting or saving." (45)

Now it is certainly allowable to collect a tax from a loan firm today and was even so allowable in the day of St. Thomas; not because the loan firm was a loan firm and therefore illegal, for if this was the case then the ruler had no duty to collect a tax but to put the organization out of existence for the welfare of the community; but because the loan firm was a business and consequently had the duty to support the state just as any other business.

However, it might be added that, although this is the way we must analyze the ethical aspect of interest in our own day with our complex economy, it must be realized that interest or usury in the economic society of St. Thomas could have possibly been a factor of disturbance in an almost entirely agrarian society and consequently, in some instances, could have been classified as a disrupting influence and therefore a social evil.

Finally, it is interesting to note, as was mentioned before, that St. Thomas never tells the Duchess whether or not she can tax the Jews since they will have to give up everything they have made to start off with, which is really the question, but instead he tells what is to be done with the money which the Jews have extorted from others. It can be said that the Duchess had every right to tax the Jews but only in so far as usury was a business and, as such, could be taxed, but not because the Jews were Jews or because usury was a sin.

Question 2: "Should a Jew be punished by a financial penalty for sin since he only has the money that he has made through usury and this must already be taken away from him?"

Since St. Thomas answers this question in the affirmative, the answer could be interpreted to say that a Jew may be forced to pay a financial penalty by the ruler of a state by the mere fact that he had sinned. This concept is completely foreign to our society today. It, again, is a reflection of the close and overlapping cooperation and union between the Church and the State which existed in the thirteenth century. The Church would never recognize a legislator who would presume such a thing today. The State certainly has the right to punish usury, if it is a crime, with a financial penalty. The Church certainly has the right to punish usury, if it is a sin, with a financial penalty. But the State cannot condemn because an act is a sin nor can the Church condemn because an act is a crime; they are in two separate categories of law.

However, if St. Thomas would be greeted the point that usury would be a sin, it seems that his conclusion is correct in this answer. For, since he insists upon the qualifying fact that all of the usurers' money cannot be taken away from them, for the right to the sustaining of the usurers' lives superseded the "right" to take away all the money they have made, if it has all been made by usury, he then says, in effect, that the mere returning of stolen property does not take away the guilt of the sin and therefore a penance for the sin itself can be imposed upon the penitent. Moreover, the Church can impose this penalty for sin only upon those who are subject to her.

Question 3: "Is it lawful to accept and keep the money of a Jew if he offers it as a gift of his own accord?"

Just who the "they" are in this question is a bit vague. It is most

probably the Jews but, considering the circumstances of the Jews at this time, it does not seem that the Jews would be giving "gratuitous" gifts to the rulers of the Country. Nevertheless, if this was, for some reason, the case, then St. Thomas' opinion here would differ very slightly from what would be held today. Again, granted that usury is a sin, he says, in effect, that a gift of money, freely given but dishonestly gotten in the first place, should be accepted but should be returned to those from whom it was originally taken, provided that the man giving the gift still has enough to sustain his life. He confirms his opinion here when he says in the Summa, that even a usurer can accept something in return for lending his money, provided that it is given as a gift. (46)

Question 4: "If more than what is required is taken from the Jews, then what is to be done with the extra money?"

First of all, it might be mentioned that, since the Duchess took the trouble to write to St. Thomas about this problem, it can probably be concluded that this practice of taking more from the Jews than was generally customary was itself a somewhat customary occurrence. However, the question that St. Thomas seems to answer here is whether or not the usury money itself can be kept and he seems to say that it can if the usurer has any other income over and above his usury, which is not quite the question that is asked.

Now it seems that St. Thomas is saying, in effect, that it is lawful to keep money which has been taken from a guilty person which is more than what is demanded by the actual fine, merely because the guilty person has another source of income. The money which is, "more than the Christians

require of him," must refer to money over and above the actual fine which is either accidentally or maliciously taken or else the question would have the same meaning as the second question which asks whether or not a Jew can be fined over and above the mere fine of the usury. Now the justice of a penalty can only extend lawfully to the extent of the crime committed. Anything over and above this, no matter how much money the guilty person has, is not just and would generally be considered stealing.

Now the author here does not intend to draw the conclusion that St. Thomas told the Duchess of Brabant that it was legal for the Christians of her country to steal from the Jews. The author would conclude rather that St. Thomas did not answer the actual question which was proposed to him.

Question 8: "Should the Jews wear something which distinguishes them from all others?"

St. Thomas' answer seems to bring the same question to the fore which has run throughout this whole letter. He does not say that the Jews should wear something which distinguishes them from everyone else because they have committed the sin of usury, which can be justified since public punishment was much more in vogue in his day. But rather he declares that the Jews should be distinguished because they are Jews. He would say this because he ultimately believed every Jew to be personally guilty of the death of Christ, which, as has been shown, is not the case.

The fact that the Jews wished to distinguish themselves, which is one of the reasons that St. Thomas gives, does not enter in here. The fact that a particular piece of clothing is worn because of something that is believed

is the basis of the dress of many lodges, clubs and even ultimately the reason that priests do not wear secular clothes. But this is a far cry from the fact of the state forcing a race of people to wear something distinguishable in order to degrade their race. The author feels that it is this second condition which St. Thomas is condoning and not the first.

#### CONCLUSION

It is not the wish of the author that the reader take from this work the fact that St. Thomas was wholly and diabolically against the Jews and would have led the first crusade against them that would have come along.

The author has two good reasons for wishing this. First of all because he realizes that such a work as this is a very cursory study. He realizes that each one of these questions which were brought up could be studied with a great deal more thoroughness. Secondly, the author feels it only correct to state that it would be next to impossible for a man, no matter how great his intellect, to react against almost thirteen centuries of prejudice which was backed, at least implicitly, by his own Church, and further, which he himself admits that he by no means considers himself an authority on the point. Yet, if the reader insists that, "All of this may be true, but what must be concluded, must be concluded," the author would then say this. It must be concluded that this anti-semitic feeling that runs through St. Thomas is not a personal fault of his but a fault of his age and also of ours. All his other works which comprise the ocean of his intellectual endeavour attest to the fact that he was a great intellect and a constant searcher for the

truth. This one little drop attests only to the fact that he was human and subject to human prejudice.

Finally the author might offer a further comment upon what might be a question in the reader's mind, namely, just how are we to regard the Jews? To the author it is St. Paul who, being himself a Jew and keeping in mind their favored position, states:

"Tribulation and anguish shall be visited upon the soul of every man who works evil, the Jew first and then the Greek (and Gentile). But the glory and honor and peace shall be rewarded to everyone who does good, to the Jew first and then the Greek (and Gentile). Because God is no respecter of persons." Rom. 1, 2, 9-11.



## FOOTNOTES

1. "Anti-Semitism," Universal Jewish Encyclopedia. Vol. I, p. 350.
2. The Mohamedans had taken the Jews into their milieu because Mohamed had said that the Jews were not to be persecuted since they were "people of the Book." Therefore there were many Jews in the Mohamedan society when the Crusades started, besides their being also in the Holy Land. So they suffered further persecution because of this.
3. Cecil Roth, "The Feast of Purim and the Origins of the Blood Accusation," Speculum. Vol. 8, No. 4, (Oct. 1933) p. 519.
4. op. cit., p. 523.
5. op. cit., p. 525.
6. Guido Kisch, "A Fourteenth Century Jewry Oath of South Germany," Speculum. Vol. 15, No. 3, (July 1940) p. 337.
7. Joshua Starr, "The Mass Conversion of the Jews in Southern Italy," Speculum. Vol. 21, No. 2, (April 1946) p. 204.
8. op. cit., p. 206.
9. John E. Coogan, S.J., "End Jew-Gentile Indictment," Social Order. Vol. 2, No. 4, (Apr. 1952) p. 163.
10. "Anti-Semitism," Universal Jewish Encyclopedia. Vol. I, p. 352.
11. Summa Theol., III, Q. 47, a. 6, Resp.
12. op. cit., II, II Q. 10, a. 11, Resp.
13. op. cit., I, II, Q. 99, a. 6, obj. 3.
14. Guido Kisch, "Biblical Spirit in Mediaeval German Law," Speculum. Vol. 14, No. 1, (Jan. 1939) p. 38-39.
15. Stephan Kuttner, "The Scientific Investigation of Mediaeval Canon Law: The Need and Opportunity," Speculum. Vol. 24, No. 4, (Oct. 1949) p. 494.
16. Guido Kisch, "Biblical Spirit in Mediaeval German Law," Speculum. Vol. 14, No. 1, (Jan. 1939) p. 39.
17. op. cit.

## FOOTNOTES CONT'D

18. John E. Coogan, S. J., "End Jew-Gentile Indictment," Social Order. Vol. 2, No. 4, (Apr. 1952) p. 165.
19. Peter Charanis, "The Jews in the Byzantine Empire under the First Palaeologi," Speculum. Vol. 22, No. 1, (Jan. 1947) p. 77.
20. Guido Kisch, "A Fourteenth Century Jewry Oath of South Germany," Speculum. Vol. 15, No. 3, (July 1940) p. 331.
21. American Jewish Committee, "No.9: Science Looks at Anti-Semitism," This is Our Home. p. 8.
22. "Anti-Semitism," Universal Jewish Encyclopedia. Vol. 1, p. 352.
23. Cecil Roth, "The Qualification of Jewish Physicians in the Middle Ages," Speculum. Vol. 28, No. 4, (Oct. 1953) p. 835.
24. \_\_\_\_\_, "The Feast of Purim and the Origins of the Blood Accusation," Speculum. Vol. 8, No. 4, (Oct. 1933) p. 524.
25. \_\_\_\_\_, "The Qualification of Jewish Physicians in the Middle Ages," Speculum. Vol. 28, No. 4, (Oct. 1953) p. 838.
26. Summa Theol., II,II, Q. 10, a. 9, Resp.
27. op. cit., a. 10, Resp.
28. loc. cit.
29. loc. cit.
30. loc. cit.
31. loc. cit.
32. op. cit., I,II, Q. 87, a. 8, Resp.
33. loc. cit.
34. Nicholas Rieman, S.J., "Anit-Semitism," Social Order. Vol. 3, No. 7.
35. Aristotle, Politics, I, 5, (1254b 25)
36. Summa Theol., I, Q. 94, a. 5, Rep. obj. 3.
37. op. cit., II,II, Q. 104, a. 5, Resp.

## FOOTNOTES CONT'D

38. Jacques Maritain, A Christian Looks at the Jewish Question. p. 38.
39. Summa Theol., II,II, Q. 78, a. 1, Intro.
40. op. cit., Resp.
41. op. cit., a. 4, Rep. obj. 2.
42. op. cit., a. 1. Resp.
43. William Kiekhofer, Economic Principles and Problems and Policies. p. 517.
44. op. cit., p. 519.
45. op. cit., p. 520.
46. Summa Theol., II,II, Q. 78, a. 2, Resp.

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