

So, we must thrust Sulla's father back into the obscurity from which he seemed briefly to have emerged. If this should seem a depressingly negative conclusion we may, perhaps, console ourselves with the thought that the father's continuing obscurity serves only to underline, once more, the remarkable nature of his son's rise and achievements.²⁰

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20. The authors wish to thank an anonymous referee for some helpful observations.

ROMAN EDICTS AND *TA'ANIT* 29A

Babylonian Talmud, *Ta'anit* 29a:¹

When the wicked Turnus Rufus plowed the Temple [site],² it was decreed that R. Gamaliel be put to death. The *hegemon* came to the house of study and said, "The man of the nose is wanted; the man of the nose is wanted."³ R. Gamaliel heard this and hid. The *hegemon* came to him secretly and asked, "If I save you, will you bring me to the world to come?" R. Gamaliel said yes. "Swear to me," he said. R. Gamaliel did. The *hegemon* went up to the roof, fell, and died. Now they [the Romans] have a tradition that when they make a decree and one of them dies the decree is annulled. A heavenly voice announced, "The *hegemon* merits the world to come."

The next to the last sentence of this curious passage has puzzled historians of Roman government.⁴ Richard Talbert associates it with the assertion in Deuteronomy

1. For a treatment of the difficulties of this passage, see G. Alon, *The Jews in Their Land in the Talmudic Age (70–640 C.E.)*, vol. 2, ed. and trans. G. Levi (Jerusalem, 1984), pp. 666–67. For an account of the Bar Cochba revolt generally and the scholarly problems in connection with it, see E. Mary Smallwood, *The Jews under Roman Rule from Pompey to Diocletian: A Study in Political Relations* (Leiden, 1981), pp. 428–66; Alon, *Jews in Their Land*, 2:592–634. The text here translated is that of the manuscripts as reported in *Dikdukei Soferim* ad loc., and available, e.g., in the Steinsaltz edition of the tractate, and in H. Malter, *The Treatise of Ta'anit of the Babylonian Talmud* (Philadelphia, 1928), p. 225. The Soncino English edition translates the standard printed edition, in which variance at two points of significance obscures the solution to problems. A slight palaeographical change results in "destroyed" for the manuscripts' "plowed." The correct manuscript reading eliminates the difficulty faced in Smallwood, *Jews under Roman Rule*, p. 459, n. 122. Secondly, *hegemon* of the manuscripts and early printed editions was removed by Christian censors, apparently because of the medieval and modern Hebrew use of the word for "bishop," and replaced by *adon*, "master," "important person."

2. The plowing of the Temple site is presumably connected in some way with the founding, or preparation for the founding, of Aelia Capitolina on the site of Jerusalem. For the chronological problems in connection with the founding of Aelia Capitolina, see Smallwood, *Jews Under Roman Rule*, pp. 432–35; for the significance of the plowing, *ibid.*, p. 459.

3. "Man of the nose" appears to be a play on words on the Latin *nasi*, "of the nose," and the Hebrew *Nasi*, "president of the Sanhedrin, patriarch," which was the position held by R. Gamaliel. See e.g., Alon, *Jews in Their Land*, 2:666. Given the clandestine nature of Rufus' mission, *amar*, "said," should not be translated more vigorously as "called" or "proclaimed," but perhaps rather as "hinted," "indicated."

4. The major problem for students of the passage has been the chronological difficulty in taking Turnus Rufus and R. Gamaliel to be contemporaries. See Alon, *Jews in Their Land*, 2:667. Scholars have variously suggested replacing the name of R. Gamaliel with that of whoever would have been *Nasi* at the

Rabbah 2.24, that in Rome upon the death of a senator the activity of the senate is suspended for thirty days and decrees due to come into effect lose their force.⁵ "This practice," he writes, "as represented by the two rabbinic passages was no part of Roman senatorial procedure, and it is difficult to see how it ever came to be imagined." A solution to the puzzle of the passage in *Ta'anit* 29a may be found, I suggest, in Roman magisterial rather than senatorial practice, specifically in that edicts of Roman magistrates were in force only during the tenure in office of the issuing magistrates. The passage thus interpreted will then serve as confirmation in a disputed point concerning the edictal practice. I stress that I make no statement at all on whether the incident described in the passage took place in fact, but only on the one bit of background.

Let us first examine some of the details of the passage. Turnus Rufus, as the name appears in several passages in rabbinic literature, is generally identified as Q. Tineius Rufus, *cos. suff.* A.D. 127, imperial legate of the province of Judaea from 131 or earlier until he was replaced by, or subordinated to, Sextus Julius Severus during or at the end of the Bar Cochba revolt in A.D. 132–35. Nothing is known of him subsequently.⁶ *Hegemon*—the Greek word appears in the text in Hebrew transliteration—is frequently found in rabbinic literature in the sense of "military general" or "ruler." It can certainly bear the technical sense the Greek word had in the eastern provinces of the Roman empire, "provincial governor."

In choosing "decree" to translate the Hebrew *gezerah* I intend the English generic meaning of the word as "an order usually having the force of law," reflecting the same broad sense of the Hebrew *gezerah*, not the technical Latin sense of "judicial verdict."⁷ Since R. Gamaliel in the story is at large, the "decree" could hardly have been a judicial decision in a criminal proceeding. More likely what is meant is an edict of the provincial governor forbidding some practice and threatening violators with death. There certainly was a major persecution of the Jewish people and suppression of Jewish religious practice in this period.⁸ Specifically, the operation of the Sanhedrin, of which R. Gamaliel was president, was suppressed, as was ordination of its members, in which, in his capacity as president, R. Gamaliel would certainly have been directly involved. The form such suppression would take would likely be that of an edict, or edicts, of the provincial governor, whether at the specific initiative of the emperor or otherwise, forbidding particular practices. Probably, then, the "decree" of our passage was one such edict to which R. Gamaliel was particularly liable.

time of Rufus, perhaps R. Simeon ben Gamaliel; or treating the name Turnus Rufus as a sort of generic name for any "wicked Roman governor," and assigning the role of Turnus Rufus to some appropriate Roman governor contemporary with R. Gamaliel, perhaps Lusius Quietus; or treating the entire story as a pure fiction. For the purpose of the argument here it makes no difference which if any of these approaches is taken.

5. R. Talbert, *The Senate of Imperial Rome* (Princeton, 1984), appendix 10 on "The Roman Senate in Rabbinic Literature," pp. 511–12.

6. E. Schürer, *The History of the Jewish People in the Age of Jesus Christ*, vol. 1, revised by G. Vermes and F. Millar (Edinburgh, 1973), p. 518; Smallwood, *Jews under Roman Rule*, p. 550.

7. *Gezerah*, feminine, commonly refers to an order of general application issued by a ruler or legislative body; whereas for a judicial verdict, which applies to a particular defendant, the common term is the masculine, in the construct form, *g'zar din*. The lexica do, however, cite an instance of *gezerah* for verdict, Mishna *Mo'ed Katan* 3.3.

8. See Smallwood, *Jews under Roman Rule*, pp. 429–31, 464–66. The Jewish sources are vague as to the chronology.

It was an essential characteristic of the edicts of Roman magistrates that they expired at the end of their issuers' tenure in office. They were not *lex* in the formal sense, but rather a personal statement of the intended policy of the magistrate. Succeding magistrates might, and usually did, adopt and reissue edicts of their predecessors, but were not bound to do so.⁹ The same is true of provincial governors, who upon their assumption of office would promulgate edicts setting out their policy concerning jurisdiction in the province, following or not, as they saw fit, the edicts of their predecessors. This is reflected in Cicero's letters, *Epistulae ad Familiares* 3.8.4 and *Epistulae ad Atticum* 6.1.15.¹⁰ In theory, this ought to be equally true of the occasional edicts governors issued on particular matters during the course of their tenure of office,¹¹ and the case can be made that it so appears in the evidence of an inscription from Asia and Pliny's correspondence with Trajan.¹²

Though it has been disputed, it appears that during the Principate governors of imperial, in contrast to senatorial, provinces, *legati Augusti pro praetore*, also had the authority to issue edicts, *ius edicendi*. This is the plain meaning of Gaius *Institutiones* 1.6, where it is stated that governors, *praesides*, by implication of both senatorial and imperial provinces, had the *ius edicendi* as did praetors, but that in the imperial provinces the aedilician edict was not issued. As far as edicts were concerned, then, the difference between the two types of provinces was limited to the aedilician edict. At least two edicts of *legati* have been found on stone, one of which explicitly refers to itself as an *edictum*.¹³ Presumably, then, edicts of *legati* also expired with their tenure of office.¹⁴

To conclude, if, as is not unlikely, in the story in *Ta'anit* 29a the order that put the life of R. Gamaliel in danger was a governor's edict, and if edicts of *legati* expired with their term of office, it follows that the death of the governor would indeed have nullified the order. The succeeding governor may very well have reissued the edict immediately, putting R. Gamaliel back into danger. The point of the story,

9. See e.g., H. F. Jolowicz and B. Nicholas, *Historical Introduction to Roman Law*³ (Cambridge, 1972), p. 98; A. Arthur Schiller, *Roman Law: Mechanisms of Development* (Hague-New York, 1978), pp. 410–13.

10. A. J. Marshall, "The Structure of Cicero's Edict," *AJP* 85 (1965): 185–91; Schiller, *Roman Law*, pp. 414–15.

11. W. W. Buckland, *Textbook of Roman Law from Augustus to Justinian*³ (Cambridge, 1963), p. 8, n. 8.

12. See R. Katzoff, "The Provincial Edict in Egypt," *Tijdschrift voor Rechtsgeschiedenis* 37 (1969): 415–37, esp. 431–33, against the doubts of E. Weiss, *Studien zu den römischen Rechtsquellen* (Leipzig, 1914), pp. 96–97.

13. F. F. Abbott and A. C. Johnson, *Municipal Administration in the Roman Empire* (Princeton, 1926), nos. 65a and 131. For the texts and an account of the modern controversy, see R. Martini, *Ricerche in tema di editto provinciale* (Milan, 1969), pp. 134–40. Martini admits that *legati* had *ius edicendi*, though he rejects the evidence of Gaius 1.6 for their general jurisdictional edict. Cf. R. Katzoff, "Review of R. Martini, *Ricerche in tema di editto provinciale*," *Tijdschrift voor Rechtsgeschiedenis* 40 (1972): 565–69, esp. 569.

14. U. Wilcken, "Zu den Edikten," *ZRG* 42 (1921): 124–58, esp. 133–44, suggested edicts of imperial *legati* had permanent validity, past the expiration of their terms of office, on the model of the edicts of the emperors themselves. The very question of whether imperial edicts remained valid under succeeding emperors was much controverted, but the balance of opinion does seem to be affirmative. See Schiller, *Roman Law*, pp. 514–16. Wilcken himself, however, admitted that the general edicts issued by imperial legates upon their assumption of office were limited to their own period in office. The evidence he found for the extended validity of occasional edicts was limited to those of the *praefecti Aegypti*. The evidence from Egypt, however, may be interpreted otherwise, as reflecting Egypt's Ptolemaic heritage, and thus cannot serve as evidence for the provinces governed by *legati*. For the view that Egypt was exceptional in this respect, see R. Katzoff, "The Validity of Prefectural Edicts in Roman Egypt," in *Bar Ilan Studies in History*, ed. P. Artzi (Ramat Gan, 1978), pp. 45–53; and idem, "Sources of Law in Roman Egypt: The Role of the Prefect," *ANRW* II 13 (1980): 807–44, esp. 823–25.

however, is not the fate of R. Gamaliel but that of Turnus/Tineius Rufus. The suppression, which Rufus initiated, of the Bar Cochba revolt involved a Roman massacre of the Jews that was, by both Jewish and non-Jewish accounts, of monstrous proportions; and, the rabbinic story relates, even a hard-bitten Roman general could not live with what he had done. By sacrificing his life to save that of R. Gamaliel, whether successfully or not we are not told, Rufus atoned for his monstrous sins, and merited the world to come. Whatever be thought of the historicity of the story, then, the circumstantial details of the account, including the statement of the Roman rule on edicts, make perfect sense. Though not evidence for the *ius edicendi*, they are consistent particularly with the view that governors of imperial provinces had the *ius edicendi* on the same footing as other Roman magistrates.¹⁵

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15. I wish to express my thanks to A. Baumgarten and to *CP*'s anonymous reader for their useful comments.