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Jews in Early Christian Law: Byzantium and the Latin West, 6th-11th centuries

John Tolan, Nicholas de Lange, Laurence Foschia, Capucine Nemo-Pekelman

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Jews in Early Christian Law:
Byzantium and the Latin West, 6th-11th centuries



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Religion and Law in Medieval Christian and Muslim Societies

2

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In the middle ages, from Baghdad to Barcelona, significant communities of religious minorities resided in the midst of polities ruled by Christians and Muslims: Jews and Christians throughout the Muslim world (but particularly from Iraq westward), lived as *dhimmi*, protected but subordinate minorities; while Jews (and to a lesser extent Muslims) were found in numerous places in Byzantine and Latin Europe. Legists (Jewish, Christian and Muslim) forged laws meant to regulate interreligious interactions, while judges and scholars interpreted these laws.

Religion and Law in Medieval Christian and Muslim Societies presents a series of studies on these phenomena. Our goal is to study the history of the legal status of religious minorities in Medieval societies in all their variety and complexity. Most of the publications in this series are the products of research of the European Research Council project RELMIN: The Legal Status of Religious Minorities in the Euro-Mediterranean World (5th-15th centuries) (www.relmin.eu).

Au moyen âge, de Bagdad à Barcelone, des communautés importantes de minorités religieuses vécurent dans des Etats dirigés par des princes chrétiens ou musulmans : dans le monde musulman (surtout de l'Iraq vers l'ouest), juifs et chrétiens résidèrent comme *dhimmi*, minorités protégées et subordonnées ; tandis que de nombreuses communautés juives (et parfois musulmanes) habitèrent dans des pays chrétiens. Des légistes (juifs, chrétiens et musulmans) édictèrent des lois pour réguler les relations interconfessionnelles, tandis que des juges et des hommes de lois s'efforcèrent à les interpréter. La collection *Religion and Law in Medieval Christian and Muslim Societies* présente une série d'études sur ces phénomènes. Une partie importante des publications de cette collection est issue des travaux effectués au sein du programme ERC RELMIN : Le Statut Légal des Minorités Religieuses dans l'Espace Euro-méditerranéen (Ve-XVe siècles) (www.relmin.eu).

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JEWES IN EARLY CHRISTIAN LAW:
Byzantium and the Latin West,
6th-11th centuries

Edited by
John TOLAN, Nicholas DE LANGE, Laurence FOSCHIA
and Capucine NEMO-PEKELMAN



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Summary

| | |
|--|-----|
| Capucine Nemo-Pekelman & Laurence Foschia, Introduction | 7 |
| I - Rank and status of Jews in civil and canonical law | |
| 1. Ralph W. Mathisen, The Citizenship and Legal Status of Jews in Roman Law during Late Antiquity (ca. 300-540 CE) | 35 |
| 2. Céline Martin, Statut des juifs, statut de libre dans l'Occident du haut Moyen Âge : l'exemple ibérique | 55 |
| 3. David Freidenreich, Jews, Pagans, and Heretics in Early Medieval Canon Law | 73 |
| II - Lawyers at work : from the adaptation of Roman Law to the creation of canonical collections and false canons | |
| 4. Bruno Judic, Grégoire le Grand et les juifs. Pratique juridique et enjeux théologiques | 95 |
| 5. Jessie Sherwood, Interpretation, negotiation, and adaptation: Converting the Jews in Gerhard of Mainz's <i>Collectio</i> | 119 |
| 6. Philippe Depreux , Les juifs dans le droit carolingien | 131 |
| 7. Capucine Nemo-Pekelman, <i>Signum mortis</i> : une nouvelle explication du signe de la rouelle ? | 153 |
| III - Juridical sources as indications of Jewish life and institutions? | |
| 8. Alexander Panayotov, Jewish Communal Offices in Byzantine Law and Jewish Inscriptions from the Balkans | 167 |
| 9. Bat-Sheva Albert, Les communautés juives vues à travers la législation royale et ecclésiastique visigothique et franque | 179 |
| 10. Raul González -Salinero, The Legal Eradication of the Jewish Literary Legacy in Visigothic Spain | 195 |
| 11. Johannes Heil, Getting them in or Keeping them out? Theology, Law, and the Beginnings of Jewish Life at Mainz in the 10 th and 11 th centuries | 211 |
| IV - From the Law to Violence, from Violence to Law | |
| 12. Paul Magdalino, 'All Israel will be saved'? The forced baptism of the Jews and imperial eschatology | 231 |
| 13. Rachel Stocking, Forced Converts, "Crypto-Judaism," and Children: Religious Identification in Visigothic Spain | 243 |
| 14. María Jesús Fuente, Jewish Women and Visigoth Law | 267 |

| | |
|--|-----|
| 15. Oscar Prieto Domínguez, The mass conversion of Jews decreed by Emperor Basil I in 873: its reflection in contemporary legal codes and its underlying reasons | 283 |
| 16. Amnon Linder, The Jewry-Oath in Christian Europe | 311 |
| Nicholas de Lange and John Tolan, Conclusion | 359 |



INTRODUCTION

UN APERÇU DES SOURCES JURIDIQUES LATINES ET GRECQUES RELATIVES AUX JUIFS DU VI^e AU XI^e SIÈCLE

Capucine NEMO-PEKELMAN
et Laurence FOSCHIA

Celui qui veut écrire l'histoire des juifs au début du Moyen Age occidental et à Byzance du VI^e au XI^e siècle se trouve inévitablement confronté à la question de la valeur historique des sources dont il dispose et des prismes au travers desquels les interpréter. De fait, les vestiges archéologiques découvrant la présence de populations juives sont exceptionnels dans les premiers royaumes latins d'Occident¹. Dans l'Empire byzantin des premiers siècles, ils varient beaucoup en qualité et en quantité d'une région à l'autre et même d'un site à l'autre, et les cités où la présence d'une communauté juive a été attestée sont inégalement fouillées, de même que les édifices (synagogue, *mikveh*) qu'on y a éventuellement trouvés². Il ne nous reste plus rien, en

¹ Pour une présentation de l'état de la recherche archéologique sur le judaïsme en France, on peut se reporter au site de la *Nouvelle Gallia Judaica* disponible sur <<http://ngj.vjf.cnrs.fr/>> ainsi qu'à P. BLANCHARD et al., « L'apport de l'archéologie préventive dans la recherche des vestiges du judaïsme : l'exemple des pratiques funéraires », in *Archéopages. Nouveaux champs de la recherche archéologique*, Hors série n°3 – 03, 2012, p. 180-189 ; P. SALMONA & L. SIGAL, eds, *L'Archéologie du judaïsme en France et en Europe* (Paris, 2011). Parmi les études spécialisées, citons : B. BLUMENKRANZ, « Les juifs en Gaule romaine », in *Archéologia* 38, Fontaine-lès-Dijon, 1971, p. 62-65 ; *id.*, « Les premières implantations de Juifs en France du I^{er} siècle au début du V^e siècle », *Comptes rendus - Académie des inscriptions et belles-lettres*, 1969 fasc. nov.-déc. 1969, disponible sur <http://www.persee.fr/web/revues/home/prescript/article/crai_0065-0536_1969_num_113_1_12357>, *id.*, « Les Synagogues », dans B. BLUMENKRANZ (éd.), *Art et archéologie des Juifs en France médiévale* (Toulouse 1980), p. 33-72 ; Voir aussi F. HUTTENMEISTER, « Synagogues et cimetières juifs en Champagne médiévale », in G. SED-RAJNA (éd.), *Rashi : 1040-1990, Hommage à Ephraïm E. Urbach*, Paris, 1993, p. 579-585. Sur les inscriptions, voir D. NOY, *Jewish Inscriptions of Western Europe* (2 vols, Cambridge, 1993-95) ; *idem*, *Inscriptiones Judaicae Orientis. Vol. III, Syria and Cyprus*, 3 vols (Tübingen, 2004) ; G. Nahon, *Inscriptions hébraïques et juives de France médiévale* (Paris, 1986) ; J. CASANOVAS MIRÓ, *Las inscripciones funerarias hebraicas medievales de España* (Turnhout, 2004) ; G. SECALL I GUÉLL, *Les jueries medievals tarragonines* (Valls, 1983) ; M.A. MOTIS DOLADER, *Los judíos en Aragón en la Edad Media* (Zaragoza, 1990) ; L. CRACCO RUGGINI, *Gli ebrei in età tardoantica : presenza, intolleranza, incontri* (Roma, 2011) ; C. COLAFEMMINA, *The Jews in Calabria* (Leiden, 2012).

² Pour la période protobyzantine, voir les travaux de A. KRAABEL, « The Diaspora Synagogue », in *ANRW II.2* (1979), p. 477-510 ; voir aussi une synagogue récemment identifiée et fouillée en Albanie : E. NALLBANI, « Une nouvelle synagogue de l'Antiquité (tardive ?), identifiée à Saranda (Albanie) », in *Hortus Artium Medievalium* 8, 2003, p. 167-172. Pour l'Orient byzantin, on se reportera par exemple aux nombreux programmes de recherche menés par les universités israéliennes (l'une des dernières découvertes en date est celle d'une synagogue monumentale en

Occident, des écrits des juifs avant le X^e siècle³, et l'Empire byzantin avant le XI^e siècle nous livre relativement peu d'écrits venus de milieux juifs⁴. Si bien qu'une partie importante de notre documentation nous vient d'écrits produits par les milieux ecclésiastiques ou par les autorités séculières. L'image que nous nous faisons de la vie et des institutions des populations juives, de leurs relations avec leurs voisins chrétiens et de leurs rapports aux différents pouvoirs séculiers et ecclésiastiques dépend ainsi en bonne part de ces sources. L'histoire des juifs pendant le Haut Moyen Age occidental et les premiers siècles de l'Empire byzantin présente en conséquence cette difficulté qu'elle doit se deviner au travers de documents presque toujours orientés et souvent polémiques, qu'il s'agisse d'ouvrages de controverse antijuive proprement dite (traités *Adversus Iudaeos*, lettres et dialogues fictifs), de passages d'exégèses bibliques, de sermons, de témoignages, de récits de miracles, de chroniques, de lois romaines, d'édits royaux, de canons conciliaires, de décrétales pontificales ou de compilations juridiques⁵. Toutes ces sources paraissent témoi-

Galilée en juillet 2012. Informations disponibles sur <http://www.mfa.gov.il/MFA/History/Early+History+-+Archaeology/Monumental_synagogue_uncovered_Galilee_2-Jul-2012.htm>

³ Les premiers écrits d'auteurs juifs nous viennent des milieux champenois et rhénans du X^e siècle et du début du XI^e siècle. Pour une introduction à ces sources, cf. A. GRABOÏS, *Les sources hébraïques médiévales, I : chroniques, lettres et responsa*, Turnhout, 1987. Sur la rareté des sources juives en Europe occidentale avant le XI^e siècle, cf. M. TOCH, « The Jews in Europe. 500-1050 », in P. FOURACRE (éd.), *The New Cambridge Medieval History*, Cambridge, 2005, p. 547-570.

⁴ Les sources juives (en grec, araméen et hébreu) antérieures à la conquête arabe du VII^e siècle sont rares et dispersées et ne nous viennent que de Palestine. Entre la seconde moitié du VII^e siècle et le début du IX^e siècle, Byzance connaît un « Dark Age » qui concerne aussi le monde juif, dont il ne nous reste aucun écrit en langue hébraïque. A partir du début du IX^e siècle et pendant le X^e, nous disposons d'inscriptions funéraires et d'écrits venus majoritairement du sud de l'Italie (Venosa, Oria, Bari, Otranto, Apulie). La Genizah du Caire fournit une Ketouba (contrat de mariage) provenant de Mastaura (1022) qui, en l'état actuel des recherches, est le document daté d'origine byzantine le plus ancien sur les juifs. A partir du début du XI^e siècle, la masse documentaire, d'origine karaïte et rabbanite, devient substantielle. On recense plusieurs douzaines d'œuvres dont beaucoup n'ont pas encore fait l'objet d'éditions critiques. Cf. M. Rabello, *Giustiniano, Ebrei e Samaritani alla luce delle fonti storico-letterarie, ecclesiastiche e giuridiche. Monografie del Vocabolario di Giustiniano*, 2 vols, Milan, 1987-1988 ; N. DE LANGE, « A Thousand Years of Hebrew in Byzantium », in W. HORBURY (éd.), *Hebrew Study. From Ezra to Ben-Yehuda*, Edinbourg, 1999, p. 147-164. Disponible sur <http://cambridge.academia.edu/NicholasdeLange/Papers/1517005/A_Thousand_Years_of_Hebrew_in_Byzantium>; id., « Byzantium in the Cairo Genizah », in BMGS 16, 1992, p. 34-47. Disponible en ligne sur <http://cambridge.academia.edu/NicholasdeLange/Papers/1513822/Byzantium_in_the_Cairo_Genizah>; 'Hebrew scholarship in Byzantium', in id. (éd.), id., *Hebrew Scholarship and the Medieval World* (Cambridge, 2001), pp. 23-37.

⁵ Bernhard Blumenkranz a réalisé un recueil de sources littéraires à nouveau disponible. On y trouve une documentation très riche dont l'auteur propose une analyse critique. Cf. B. BLUMENKRANZ, *Les auteurs chrétiens latins du Moyen Age sur les juifs et le judaïsme*, Paris, 2007 (1963). L'ouvrage complète celui de J. ARONIUS, *Regesten der Geschichte der Juden in fränkischen und deutschen Reiche bis zum Jahre 1273*, Berlin, 1902. Les traités *Adversus Iudaeos* sont réunis dans H. SCHREKENBERG,

gner plus sûrement d'une histoire de la pensée chrétienne et de la manière dont les « intellectuels » chrétiens se représentaient les juifs que d'une histoire réellement sociale et juridico-politique des juifs⁶. Partant, il semble entendu qu'elles doivent être largement détachées de la réalité qu'elles décrivent, réalité qui n'en constituerait que la très indirecte cause et justification.

Il convient cependant de relativiser l'importance de ces difficultés méthodologiques⁷. D'abord, elles ne sont pas le propre de l'étude des judaïsmes haut-médiéval et byzantin. Tout historien médiéviste désireux d'écrire une autre histoire que celle des élites n'a en effet d'autre choix, pour saisir son objet, que de recourir aux discours que tiennent sur lui les détenteurs du pouvoir et de l'écrit⁸. Ensuite, toutes les sources ne possèdent pas la même valeur historique, certaines paraissant plus poreuses à la réalité que d'autres⁹.

Die Christlichen Adversus-Judaeos-Texte und ihre literarische und historische Umfeld (1.-11. Jh), Frankfurt-sur-le-Main, 2001 ; S. Krauss & W. Horbury, *The Jewish-Christian Controversy: From the Earliest Times to 1789*, Tübingen, 1996. Les sources juridiques byzantines et altimédiévales ont été rassemblées par Amnon Linder dans un ouvrage de référence pour qui veut étudier la condition juridique des juifs au début du Moyen Age. L'auteur reproduit les textes, les traduit en anglais, et les assortit d'une bibliographie. Cf. A. LINDER, *The Jews in the Legal Sources of the Early Middle Ages*, Detroit, 1997. On peut aussi se reporter, pour les décrétales pontificales, à S. SIMONSOHN, *The Apostolic See and the Jews, Documents : 492-1404*, Toronto, 1988.

⁶ Jeremy Cohen parle d'un « 'hermeneutical Jew', that is the Jew as constructed in the discourse of Christian theology, and above all in Christian theologians' interpretation of Scripture [...] the origins, the character, and the role of the hermeneutical Jew derive from a theological agenda encompassing much more than the Jews themselves. » Cf. J. COHEN, *Living Letters of the Law. Ideas of the Jew in Medieval Christianity*, Berkeley, 1999, p. 2-3.

⁷ Ces difficultés méthodologiques ne sont d'ailleurs pas l'unique facteur expliquant le peu de place longtemps réservé aux juifs de Byzance dans les histoires juives et byzantines. Nicholas de Lange dénonce à raison (et ce constat vaut de notre point de vue également pour l'Occident haut-médiéval) les préjugés expliquant ce « meurtre historiographique ». Ainsi, explique-t-il notamment, « même si la présence des juifs est admise, on suppose qu'ils vivaient à part de la population chrétienne, dans un compartiment hermétiquement scellé, dépourvu de tout contact avec leur environnement. Ainsi l'historien se trouve-t-il dégagé de l'obligation d'étudier les juifs comme faisant partie intégrante de son sujet. » Cf. N. DE LANGE, « Qui a tué les Juifs de Byzance ? », in D. TOLLET, *Politique et religion dans le judaïsme ancien et médiéval*, Paris, 1989, p. 329-333.

⁸ Ainsi par exemple l'historien des « marges » doit-il, pour restituer le portrait et le langage des « marginaux d'autrefois », soumettre les archives qui émanent du « centre » à un traitement spécifique lui permettant de saisir entre les lignes les traces « discrètes de mots échappés au silence ». Cf. J.-C. SCHMITT, « L'histoire des marginaux », in J. LE GOFF (dir.), *La Nouvelle Histoire*, Paris, 1988 (1978), p. 299.

⁹ Lire dans un sens identique V. DÉROCHE, « Forms and functions of Anti-Jewish Polemics : Polymorphy, Polysemy », in R. BONFIL, et al. (éd.), *Jews in Byzantium. Dialectics of Minority and Majority Cultures*, Leiden-Boston, 2012, p. 535-548.

Il en va ainsi, par exemple, des sources juridiques, sur lesquelles les coordinateurs du présent ouvrage ont souhaité attirer l'attention. Trop souvent, la matière qui nous intéresse ne les considère pas pour elles-mêmes mais comme des œuvres ancillaires au service d'un programme théologique sur les juifs et le judaïsme. Or les textes normatifs sont suscités par un contexte social réel, généralement conflictuel. Ainsi par exemple le pape Grégoire I^{er} (590-604) réagit-il, dans ses décrétales, à des cas concrets – possession et commerce par des maîtres juifs d'esclaves ou de serviteurs chrétiens, destructions ou occupations de synagogues, syncrétismes judéo-chrétiens ...etc. – soumis à lui par les évêques des provinces suburbicaine et insulaire et des royaumes voisins¹⁰. De même les prélats gallo-francs qui se réunissent régulièrement en concile édictent à propos des juifs – notamment entre les années 535 et 541 –, des solutions adaptées aux réalités du moment. Pour ce qui concerne par exemple la réglementation sur les esclaves des juifs, un canon du concile de Mâcon fait explicitement allusion à des affaires en cours¹¹. Les collections canoniques elles-mêmes ne sont pas forcément l'œuvre doctrinale de compilateurs travaillant détachés de toute contingence extérieure. Ainsi les collections de Florus (c. 822 - 827) constituent-elles des travaux préparatoires en défense de poursuites engagées contre l'épiscopat de Lyon par des *missi* de Louis le Pieux¹². Ces divers documents répondent, en somme, à des préoccupations pratiques et immédiates. En cela, ils constituent un révélateur sociologique privilégié¹³.

Les règles de droits sont susceptibles de révéler non seulement les causes sociales auxquelles elles répondent mais aussi les effets sociaux qu'elles produisent. En effet, les règles juridiques, en définissant des situations et des comportements légaux, ont une empreinte réelle sur ceux qu'elles concernent. De nature pénale pour la majorité, les mesures qui incriminaient certains faits des juifs et des chrétiens « judaïsants » les rejetaient dans l'illégalité. Certes, l'effectivité des lois est bien souvent, et plus encore pour les époques anciennes, mise en cause. Beaucoup considèrent que la répétition des mesures

¹⁰ Qu'on lise pour s'en convaincre B. JUDIC, « Grégoire le Grand et les Juifs, pratiques juridiques et enjeux théologiques. » dans le présent ouvrage.

¹¹ Des esclaves chrétiens avaient fui leurs maîtres juifs et s'étaient plaints auprès de l'évêque de ce que les dispositions prévues en leur faveur par les conciles d'Orléans de 538 et de 541 ne leur aient pas été appliquées. Cf. C. NEMO-PEKELMAN, *Rome et ses citoyens juifs. IV^e-V^e siècles*, Paris, 2010, p. 244-246.

¹² Cf. B. BLUMENKRANZ, « Deux compilations canoniques de Florus de Lyon et l'action antijuive d'Agobard », in *Revue historique de droit français et étranger*, 4^e série, 33 (1955), p. 227-254 & 560-582 ; rééd. in *Juifs et Chrétiens. Patristique et Moyen Âge*, XXI, Londres, 1977.

¹³ Méthodologiquement, Emil Durkheim accordait « aux règles de droit une valeur sans pareille, qu'il considérait comme le révélateur très objectif de faits sociaux en général ». Cf. J. CARBONNIER, *Sociologie juridique*, Paris, 1994 (1978), p. 101-102.

antijuives serait le signe de leur non-application ; or ce phénomène pourrait au contraire prouver que les décrets n'étaient pas lettre-morte. En effet, lesdits textes ne sont souvent pas des répétitions pures, et peuvent comporter des modifications réelles qui emportent des effets substantiels. L'analyse, par exemple, de l'évolution des canons des conciles wisigothiques et les lois des rois wisigoths d'Espagne montre que ces modifications avaient pour but de venir à bout des stratégies de résistance que les destinataires des décrets, juifs et autres, ne manquaient pas de leur opposer, et auxquelles le législateur devait trouver la bonne réplique pour que l'appareil juridique continuât d'être efficace.

Enfin, le droit n'est pas seulement un ensemble de règles contraignantes mais aussi « un discours sur le monde environnant qu'il découpe et reconstruit selon ses propres notions et critères »¹⁴. Les collections de textes juridiques notamment – codes de lois et collections canoniques – comportent, sur le modèle du Code Théodosien (438-439), des rubriques spécialement consacrées aux juifs alors que rien, dans le droit romain des personnes ne justifiait la création d'une catégorie juridique à part pour les *Iudaei*. En outre, les collections concentrent sous une ou deux rubriques l'ensemble des textes concernant les juifs, en dépit de toute logique juridique. En effet, ces textes forment un ensemble hétérogène mêlant lois économiques et d'administration courante des populations juives à des lois pénales motivées par les besoins de la mission chrétienne. Ces deux procédés avaient en réalité pour but d'imposer, au-delà du contenu concret des règles, une vision de l'ordre social fondée sur le partage de la société en catégories religieuses distinctes et hiérarchisées : les « chrétiens » et les « juifs » (également les « hérétiques » et les « païens »), qu'elles transmuèrent en catégories juridiques. Ceci leur donnait une vérité supplémentaire par rapport à celle qu'elles avaient dans les traités d'hérésiologie sur lesquels elles prenaient modèle.

Le présent ouvrage envisage les sources sous ces différents aspects. Ses coordinateurs appartiennent à deux projets de recherche qui ont notamment pour objet la récolte et la mise en valeur de la documentation juridique latine et grecque concernant les juifs. Le projet « RELMIN : Le statut juridique des minorités religieuses dans l'espace euro-méditerranéen. V^e - XV^e siècles », initié par le Conseil européen de la recherche, ambitionne de contribuer à l'écriture de l'histoire médiévale de la condition juridique des juifs vivant sous domination chrétienne. Ce but s'insère à l'intérieur d'un programme plus vaste, RELMIN étudiant et comparant les statuts juridiques de toutes les mino-

¹⁴ Cf. D. LOCHAK, « La doctrine sous Vichy ou les mésaventures du positivisme », in *Les usages sociaux du droit*, Paris, 1989, p. 252 et suiv. Disponible sur <<http://www.anti-rev.org/textes/Lochak89a/>>

rités religieuses – juifs et Sarrasins en chrétienté et chrétiens et juifs en Islam pendant la période médiévale des V^e au XV^e siècle¹⁵. Le projet « Mapping the Jewish Communities in the Byzantine Empire », également porté par le Conseil européen de la recherche, cartographie la présence des populations juives sur l'ensemble des territoires ayant anciennement appartenu à l'Empire byzantin, de 650 à 1492¹⁶. Pour ce faire, il puise dans une documentation extrêmement vaste et variée – archéologie, épigraphie grecque et hébraïque, écrits issus des milieux juifs et chrétiens... – qui inclut le droit byzantin.

Les contributions de ce livre portent sur la période comprise entre le VI^e et le XI^e siècle. La période antérieure de l'Empire romain des IV^e et V^e siècles, qui a vu se former un ensemble consistant de textes normatifs sur les juifs, a récemment fait l'objet de monographies détaillées¹⁷. A partir du XII^e siècle, l'ensemble des textes portant le legs du premier millénaire disparaît pratiquement du patrimoine juridique de l'Occident. Les collections canoniques de l'époque – hormis le Décret de Gratien qui, précisément, fait le bilan de l'ancien droit – ne véhiculent plus que le *Ius novum* issu des décrétales des papes réformateurs – en particulier, à propos des juifs, celles d'Alexandre III

¹⁵ Le projet est dirigé par John Tolan et compte parmi ses membres deux autres coordinatrices du présent ouvrage, Laurence Foschia et Capucine Nemo-Pekelman. On peut suivre l'évolution de ce travail – qui a démarré en 2010 et s'achèvera en 2015 – et consulter, en particulier, la base de données des textes normatifs, leurs traductions en anglais et en français ainsi que leurs commentaires sur site de RELMIN : <http://www.relmin.eu/>

¹⁶ La carte est réalisée au moyen d'un SIG (système d'information géographique). Les détails du projet, qui est dirigé par Nicholas de Lange, figurent à l'adresse suivante : <http://www.mjcb.eu/> ; Alexandre Panayotov, qui contribue à ce volume, est chercheur au sein du projet.

¹⁷ Les constitutions impériales des IV^e et V^e siècles issues principalement du Code Théodosien et des constitutions de Sirmond auxquelles il faut ajouter les décrets des conciles de l'Antiquité nous livrent un corpus de textes fondamentaux qui serviront de références aux créations législatives ultérieures, tant dans les royaumes latin d'Occident que dans l'Empire byzantin. C'est la raison pour laquelle il a paru essentiel, dans le présent livre, de proposer un bilan de ces textes, bilan qu'a réalisé Ralph Mathisen dans : « The Citizenship and Legal Status of Jews in Roman Law during Late Antiquity (ca. 300-540 CE) ». Giovanni de Bonfils a consacré de nombreuses études à ce corpus dont, pour ne citer que les monographies, *Gli schiavi degli ebrei nella legislazione del IV secolo. Storia di un divieto*, Bari, 1992 ; *Omnes ... ad implenda munia teneantur. Ebrei curie e prefetture fra IV e V secolo*, Bari, 1998 ; *Roma e gli ebrei (secoli I-V)*, Bari, 2002 ; et *Saggi sulla legislazione ebraica*, Bari, 2011. Voir également les ouvrages de M. Rabello, *The Jews in Roman Empire in the Light of the Legislation*, Jérusalem, 1987 (en hébreu) ; id., *The Jews in the Roman Empire. Legal Problems: from Herod to Justinian*, Ashgate, Aldershot, 2000 ; A. LINDER, *The Jews in Roman Imperial Legislation*, Detroit-Jérusalem, 1987 ; F.J.E. BODDENS HOSANG, *Establishing Boundaries. Christian-Jewish Relations in Early Council Texts and the Writings of Church Fathers*, Leiden-Boston, 2010 ; et C. NEMO-PEKELMAN, *Rome et ses citoyens juifs...*, op. cit. L'ouvrage ancien de J. JUSTER, *Les juifs dans l'Empire romain. Leur condition juridique, économique et sociale*, 2 vols, Paris, 1914, demeure toujours une référence très importante.

et d'Innocent III¹⁸. L'étude porte donc sur l'intervalle de temps qui sépare ces deux moments charnière. L'époque est généralement délaissée par les historiens des juifs et du judaïsme. Depuis l'ouvrage fondamental de Bernhard Blumenkranz¹⁹, l'histoire, en particulier, de leur condition juridico-politique a attiré relativement peu de chercheurs²⁰. Il s'agissait donc de rouvrir ce dossier en mettant à contribution les spécialistes actuels de la question, historiens et archéologues des communautés juives haut-médiévales et byzantines ; historiens du haut Moyen Age latin et de Byzance ; historiens du droit et des institutions, et historiens des religions.

Les recherches ont porté sur un corpus de textes juridiques dont nous proposerons ici une présentation sommaire, qui peut s'organiser comme il suit. Les VI^e et VII^e siècle en Occident auquel il convient d'ajouter, concernant spécialement Byzance, le VIII^e siècle, sont des temps d'intense production normative (I). La législation, pour la période suivante des IX^e et XI^e siècles, est sporadique. Elle cède la place au travail des compilateurs de textes juridiques – codes de lois et collections canoniques – dont on peut considérer qu'ils réalisent, d'une certaine manière, des œuvres de doctrine juridique²¹ (II).

Les temps d'intense production normative (VI^e-VIII^e siècles)

En 418, la chancellerie occidentale de l'Empire romain avait confié à des Wisigoths « fédérés » la défense d'un vaste territoire en Aquitaine. L'autorité militaire de ces chefs de guerre y était censée coexister avec l'autorité civile

¹⁸ Cf. G. LE BRAS et al. (éd.), *Histoire du droit et des institutions de l'Eglise en Occident, t. VII : L'âge classique. 1140-1378. Sources et théorie du droit*, Paris, 1965, p. 1-15.

¹⁹ Ainsi Bernhard Blumenkranz a-t-il, dans les années soixante, consacré au statut juridique des juifs la dernière partie de sa thèse de doctorat d'Etat : *Juifs et chrétiens dans le monde occidental. 430-1096*, Paris-Louvain, 2007 (Paris, 1960).

²⁰ Il faut néanmoins citer des exceptions notables. Récemment, Christof Geisel a repris le dossier pour la période franque et Alexander Bronisch pour la période wisigothique d'Espagne. Cf. CHR. GEISEL, *Die Juden im Frankenreich. Von den Merowingern bis zum Tode Ludwigs des Frommen*, Berlin-Bern, 1998 et P. A. BRONISCH, *Die Judengesetzgebung im katholischen Westgotenreich von Toledo. Neue Thesen und Überlegungen*, Hannovre, 2005. A propos du statut juridique des juifs dans le droit byzantin, on peut se reporter à M. RABELLO, *Giustiniano, ebrei e samaritani...*, op. cit.; ainsi qu'à A. LINDER, « The Legal Status of Jews in the Byzantine Empire » in R. BONFILS et al., *Jews in Byzantium. Dialectics of Minority and Majority Cultures*, Leiden-Boston, 2012, p. 151-200.

²¹ Il n'existait certes pas en Occident, pendant l'époque considérée, de science du droit entendue comme une discipline spécialisée. Mais ceci ne signifie pas que la réflexion critique faisait défaut. Ainsi que le souligne Alain Wijffels, cette réflexion s'articulait par d'autres voies et prenait d'autres formes que la doctrine et les manuels. On la rencontrait ainsi dans les histoires et chroniques, les livres pénitentiels et, surtout, les collections de textes juridiques. Cf. A. WIJFFELS, *Introduction historique au droit. France, Allemagne, Angleterre*, Paris, 2010, p. 49-54.

des empereurs romains. Puis l'expérience avait été reproduite pendant le V^e siècle, le pouvoir proposant aux peuples goths, francs et autres « barbares » qui circulaient depuis longtemps sur le sol de l'Empire, de se sédentariser en formant des entités territoriales politiquement indépendantes. Ce processus de désagrégation politique de la partie occidentale de l'Empire s'était achevé en 476 avec la déposition du dernier empereur romain par le chef barbare Odoacre. Mais l'effacement de l'Empire ne signifiait pas la disparition de ses institutions et de son droit. Les nouveaux dirigeants de l'Occident revendiquaient l'héritage de Rome et puisèrent dans ses lois pour la réalisation de leurs propres législations. De son côté, l'Eglise catholique se réclamait aussi de l'héritage romain.

En Gaule

Les diverses entités politiques qui coexistaient sur le sol de la Gaule avaient chacune secrété leurs propres systèmes juridiques. Les lois des Francs saliens, rédigées sous l'autorité du roi Clovis I^{er} (481-511), ne faisaient pas mention des juifs²². Mais dans le royaume des Burgondes, la *Lex Burgundionum* réalisée sous les règnes de Gondebaud (480-516) et de son successeur Sigismond (516-523) comportait une novelle 102 fixant le montant de la composition et de l'amende dues par le juif convaincu d'avoir battu un chrétien. A défaut de paiement il serait amputé de la main et il encourrait la mort et la confiscation de ses biens si la victime était un prêtre²³. La « loi romaine des Burgondes », une compilation de lois romaines réalisée dans les mêmes années à destination des populations gallo-romaines du royaume, reprenait la teneur de la très sévère constitution théodosienne (*C. Th.*, III, 7, 2 = IX, 7, 5) punissant de mort les mariages entre juifs et chrétiens²⁴. Circulaient également sur le sol de la Gaule des lois romaines non codifiées ou figurant dans des collections privées. Parmi elles, la collection de Sirmond comportait trois constitutions impériales sur

²² On peut trouver une présentation synthétique des lois « barbares » des dynasties mérovingienne et carolingienne dans : S. L. GUTERMAN, *The principle of the personality of law in the Germanic kingdoms of western Europe from the fifth to the eleventh century*, 1990, cette monographie présentant l'intérêt particulier pour notre sujet de traiter la question de la place des juifs dans ces différents ordres juridiques.

²³ *Liber constitutionum sive Lex Gundobada* in : *Leges Burgundionum*, éd. Ludwig Rudolf von Salis, Hanovre, 1892 (MGH, *Leges*, 2/1), p. 114 (titre 102 : *De Iudaeis, qui in Christianum manum praesumpserint mittere*) = A. LINDER, *The Jews in the Legal Sources...*, op. cit., p. 208.

²⁴ *Lex Romana*, dans : *Leges Burgundionum*, éd. Ludwig Rudolf von Salis, Hanovre, 1892 (MGH, *Leges*, 2/1), p. 143 (titre 19 : *De corruptis mulieribus*, 4). = A. LINDER, op. cit., p. 206-207.

les juifs dont une qui n'avait pas été retenue par les rédacteurs de l'officiel Code Théodosien²⁵.

Les Wisigoths d'Aquitaine avaient promulgué autour des années 480 un premier code sous l'autorité de leur roi Euric, mais le peu qui nous en reste n'intéresse pas notre propos. L'œuvre de son fils Alaric a en revanche conservé l'ensemble de la réglementation sur les juifs. Le Bréviaire fut publié le 3 février de la 22^e année de son règne, soit en 506 ou, ainsi qu'il a récemment été proposé, en 507²⁶. Il a très sensiblement réduit le nombre de lois sur les juifs que comprenait le Code Théodosien auquel il emprunte la majorité de ses textes. Sur quarante-neuf constitutions il n'en a conservé que neuf auxquelles il faut ajouter la *Novelle III* et deux *Sententiae* de Paul, soit douze unités de textes au total²⁷. L'élaboration du recueil porte les traces d'une réflexion pratique des compilateurs sur les juifs, la sélection et la manipulation des textes s'étant opérée selon des logiques précises destinées à adapter le Bréviaire à la pratique judiciaire²⁸. D'après Olivier Guillot, le recueil eut valeur péremptoire

²⁵ Les Sirmondiennes 4 et 14 sont connues par des expéditions différentes figurant dans le Code Théodosien. En revanche, la Sirm. 6 ne nous est parvenue que par cette collection privée. Il s'agit d'une constitution de Valentinien III du 6 août 425 d'extrême importance puisqu'elle interdisait aux juifs l'accès aux milices impériales (mesure figurant certes aussi dans la Novelle 3 de Théodose II reprise dans le *Bréviaire* d'Alaric) et leur interdisait d'estimer en justice (*causam agere*, à moins que cette expression ne signifie l'exclusion du barreau). Pour une traduction française annotée des Sirmondiennes, cf. R. DELMAIRE et al. (éd.), *Les lois religieuses des empereurs romains de Constantin à Théodose II (312-438). T. II : Code théodosien I-XV, Code justinien, Constitutions sirmondiennes*, Paris, 2009.

²⁶ B. SAINT-SORNY, « La fin du roi Alaric II : la possibilité d'une nouvelle datation du Bréviaire », in *Studi di Storia del diritto* III, Milan, 2001, p. 27-90.

²⁷ Cette réduction très importante concerne d'ailleurs toutes les matières traitées dans le Code Théodosien, certaines matières de droit public ayant même complètement disparu. Les sources sélectionnées provenaient des *leges* et du *ius*, c'est-à-dire des lois romaines et des œuvres de la doctrine. Ainsi, on trouve, dans l'ordre : des constitutions impériales issues du Code Théodosien, des Nouvelles de Théodose II, Valentinien III, Marcien, Majorien et Sévère, le *Liber Gai*, des Sentences de Paul, des constitutions prises dans le Code Grégorien et dans le Code Hermogénien, et des *Responsa* de Papinien.

²⁸ La sélection s'est opérée selon les logiques suivantes : suppression des mesures redondantes, retrait des constitutions tombées en désuétude, omission des lois sans objet dans un contexte occidental et plus particulièrement aquitain. A surtout été supprimée la grande œuvre idéologico-religieuse des auteurs du Théodosien qu'était le livre XVI. Alors que ce livre réservait une rubrique spéciale pour les juifs dans laquelle étaient placées bout à bout quelque cinquante constitutions, les auteurs du Bréviaire ne retiennent plus que trois lois de nature strictement religieuse, relatives aux conversions au judaïsme. Cf. C. NEMO-PEKELMAN, « How did the *prudentes* of the *Breviarium Alaricanum* work ? The example of the laws on Jews », in *Early Medieval Law in Context, International workshop of Copenhagen September 5-6, 2011*, à paraître dans *Journal of Historical Research*, Institute of Historical Research, Londres, 2013. Voir aussi J. F. MATTHEWS, « Interpreting the interpretations of the *Breviarium* », in R. MATHISEN (éd.), *Law, Society and Authority in Late Antiquity*, Oxford, 2001, p. 11-32.

également en Gaule franque, le roi Clotaire I^{er} l'ayant revêtu de son *auctoritas*²⁹. En toutes hypothèses, à en croire le nombre de manuscrits conservés (cinquante-trois d'après le décompte de son éditeur Gustav Haenel, soixante-dix si l'on ajoute ses abrégés³⁰), il connut pendant plusieurs siècles après la chute du pouvoir qui en avait ordonné l'usage une grande fortune auprès des praticiens du droit en Gaule, en Espagne et en Italie³¹.

Parallèlement se développe, au sein des conciles gaulois, une législation élaborée sur les juifs, elle aussi inspirée du droit romain qu'elle adapte. On recense cinquante-six conciles sur le sol de la Gaule (Rhénanie comprise) entre 506 et 692/696. Seuls les textes de vingt-sept conciles ont pu être restitués à partir des collections canoniques, dont onze proposent des canons intéressants notre sujet. Ces assemblées sont Agde (506), Epaone (517), Orléans II (533), Clermont (535), Orléans III (538), Orléans IV (541), Mâcon (581-583), Paris (614), Clichy (626-627) et Chalon (647-653). Le caractère répété de l'entreprise suggère que ce droit était vivant et appliqué³².

Deux édits des rois mérovingiens légifèrent sur les juifs : le *Praeceptum* du roi d'Austrasie Childebert I^{er}, auquel fait écho le canon 33 du troisième concile d'Orléans (538) interdisant aux juifs de se montrer publiquement à partir du

²⁹ O. Guillot, « La justice dans le royaume franc à l'époque mérovingienne », in *La Giustizia nell'alto Medioevo (secoli V-VIII)*. Settimane di studio del CISAM, XLII, vol. 2, Spolète, 1995, p. 653-735. Voir aussi I. Wood, « The Code in Merovingian Gaul », in I. Wood (éd.), *The Theodosian Code. Studies in the Imperial Law of Late Antiquity*, Londres, 2010 (1993), p. 161-169.

³⁰ Cf. G. Haenel, *Lex Romana Visigothorum ad LXXXVI librorum*, Aalen, 1962 (Leipzig, 1849), XL-XCIX et I. Wood, « Roman Law in the Barbarian Kingdoms », in A. ELLEGÅRD et G. ÅKERSTRÖM-HOUGEN (éd.), *Rome and the North*, Jonséréd, 1996, p. 5-14.

³¹ Pour ce qui concerne en particulier le sujet qui nous occupe, des indices donnent à croire qu'il fut d'application effective dans la Gaule du VI^e siècle car le droit conciliaire gallo-franc s'y réfère – pour le confirmer ou y contredire –, dans les matières du mariage « mixte » et de la possession par des maîtres juifs d'esclaves chrétiens. Cf. C. NEMO-PEKELMAN, *Rome et ses citoyens...*, *op. cit.*, p. 231-254. Bien plus tard, dans la Gaule du IX^e siècle, une main appartenant probablement à un juge a, dans un manuscrit parisien 4404, tracé un *signum* en marge de la loi 3.1.5 et un *signum* en face de la loi 16.4.1, deux lois relatives au sort des esclaves chrétiens des juifs et à leur rachat par l'Église. Il s'agissait de montrer le lien qui unissait thématiquement ces textes dispersés, ce qui, selon Rosamond Mc Kitterick, pourrait attester de l'intérêt immédiat que ces textes avaient pour la pratique contentieuse de ce juge. Cf. R. Mc KITTERICK, « Some Carolingian Law-Books and their Function », in *Books, Scribes and Learning in the Frankish Kingdoms. 6th-9th Centuries*, Aldershot, 1994, VIII, p. 21-22.

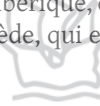
³² Ainsi la réglementation sur la possession des esclaves chrétiens par des maîtres juifs se trouve-t-elle sans cesse affinée dans les années 530. De même un jugement du tribunal royal de Childebert I^{er} condamne-t-il un homme accusé de fréquenter des juifs sur le fondement non pas d'une *lex romaine* mais d'un canon conciliaire. Cf. B. DUMÉZIL, *Les racines chrétiennes de l'Europe. Conversion et liberté dans les royaumes barbares. V^e-VIII^e siècles*, Paris, 2005, p. 129.

Jeudi Saint jusqu'au lendemain de Pâques, ne nous est pas parvenu³³. Le second est un édit de Clotaire II promulgué le 15 octobre 615 et constitue l'enregistrement civil du canon 17 (15) du concile de Paris, qui s'était tenu huit jours auparavant³⁴. Ailleurs dans la même loi, Clotaire modifie des règles qui, estimait-il, empiétaient sur ses prérogatives royales. Les lacunes que comporte son unique manuscrit empêchent de déterminer s'il a également modifié les dispositions contenues dans le canon 17. On constate simplement la confirmation par le pouvoir de l'interdiction d'introduire des actions en justice contre des chrétiens. Il faut ajouter à cette liste des décrets ordonnant le baptême forcé ou l'expulsion des juifs, dont nous n'avons pas conservé les textes³⁵.

A partir de la moitié du VII^e siècle en terres franques, la production normative sur les juifs est inexistante. Ceci relève d'un facteur extrinsèque à l'histoire juridique des juifs et qui tient à l'histoire des sources en général. L'arrêt de la production normative sur le sol de la Gaule à partir de la fin de la période mérovingienne s'explique en effet par le mauvais état de la discipline de l'Eglise romano-barbare et par la dégradation de la situation politique³⁶.

Dans la péninsule ibérique

Après la bataille de Vouillé (507) contre les Francs pendant laquelle le roi Alaric avait été tué, les Wisigoths, abandonnant leurs territoires aquitains, s'étaient retranchés dans la péninsule ibérique, créant ce que conventionnellement l'on appelle le royaume de Tolède, qui englobait aussi la province de



³³ Ou du moins ne nous en reste-t-il qu'un seul fragment qui ne fait pas mention de cette interdiction. Cependant il est probable, ainsi qu'en fait l'hypothèse Bruno Dumézil, que l'édit auquel se réfère le concile d'Orléans III (puis, plus explicitement, celui de Mâcon I) ne fasse qu'un avec le *Praeceptum*. Cf. B. DUMÉZIL, *Les racines chrétiennes...*, *op. cit.*, p. 226-227.

³⁴ *Capitularia regum Francorum*, I, éd. Boretius, p. 22 = A. LINDER, *op. cit.*, p. 343.

³⁵ On a connaissance, par les histoires et chroniques de l'époque, d'un ordre de l'évêque Ferréol (poussé par le roi Childebert I^{er} ?) demandant la conversion des juifs d'Uzès à la fin des années 550 (*Vita Beati Ferreoli*, 3), imité vingt ans plus tard par l'évêque Avit de Clermont (Grégoire de Tours, *Historia Francorum*, IV, 11, trad. fran. par R. LATOUCHE, Les Belles Lettres, 1995, p. 189); d'une ordonnance d'expulsion du territoire de Neustrie par le roi Chilpéric en 581 (Grégoire de Tours, *Historia Francorum*, VI, 5); et d'un édit d'expulsion promulgué par le roi Dagobert en 632-633 (Ps-Frédegaire,). Cf. B. DUMÉZIL, *Les racines chrétiennes...*, *op. cit.*, p. 230, 234-239 et C. NEMOPEKELMAN, *Rome et ses citoyens...*, *op. cit.*, p. 238-254.

³⁶ On ne peut, sauf erreur, citer, pour la partie occidentale, qu'un concile isolé, présidé en 743 par le pape Zacharie : il est le seul, au VIII^e siècle, qui remette à jour quelques interdits relatifs à la fréquentation des juifs comme l'interdictions faites aux fidèles de marier leurs enfants à des juifs et de leur vendre des esclaves. Cf. A. LINDER, *op. cit.*, p. 538.

Narbonnaise. Le Bréviaire d'Alaric y demeura en vigueur pendant le VI^e siècle et la première moitié du VII^e, amendé en certaines matières, dont plusieurs touchant les juifs, par l'œuvre législative des souverains de Tolède.

Vers 580, le roi Léovigild promulgua un nouveau code, le *Codex Revisus*, que nous ne connaissons qu'au travers des *leges antiquae* de la codification suivante, le *Liber Iudiciorum* promulgué par Recceswinth en 654³⁷. Pas plus que le Code d'Euric, celui de Léovigild ne contient de mesures concernant les juifs. Les premières qui nous soient parvenues après Alaric proviennent du troisième concile de Tolède (589) convoqué par Reccarède pour marquer sa conversion au catholicisme et condamner l'arianisme : son canon 14 reprend les mesures du Bréviaire en ajoutant une innovation, le baptême forcé des enfants nés d'unions entre juifs et chrétiens³⁸.

La rupture indiscutable se produit vers 615, lorsque le roi Sisebut décrète un baptême forcé pour les juifs du royaume³⁹. L'édit ne nous est pas parvenu, et les circonstances exactes qui l'ont motivé ne seront donc jamais totalement éclaircies. L'historien dispose en revanche des riches informations que fournissent les lois royales du *Liber Iudiciorum*⁴⁰ et les canons des conciles wisigothiques, presque exclusivement des conciles généraux tenus à Tolède, la capitale⁴¹. Durant tout le VII^e siècle, la production normative consacrée aux juifs, par le biais tant des canons que des lois civiles, est abondante et relativement constante, en contraste avec ce que l'on trouve dans le monde franc au même moment. Un important élément d'explication est le problème des

³⁷ Sur la formation du *Liber Iudiciorum*, cf. C. MARTIN, « Le *Liber Iudiciorum* et ses différentes versions », in *Mélanges de la Casa de Velázquez, Nouvelle série*, 41 (2), 2011, p. 17-34.

³⁸ Ceci a conduit beaucoup d'auteurs à considérer que les juifs hispaniques avaient fait l'objet d'une protection de la part des rois goths ariens, bien que l'argument *a silentio* soit discutable et qu'il soit très difficile de faire du règne de Reccarède une rupture en la matière. R. GONZÁLEZ SALINERO, « Judíos y arrianos: el mito de un acercamiento inexistente », in *Sefarad* 64, 2004, p. 27-74 a ainsi montré que la collusion entre ariens et juifs relevait du mythe historiographique.

³⁹ Ce roi avait déjà, dès la première année de son règne, en 612, promu deux lois visant à affaiblir les juifs économiquement et à favoriser leur conversion au christianisme (LV, XII, 2, 13 et 14). Sur la date du baptême forcé, voir B. DUMÉZIL, *Les racines chrétiennes...*, *op. cit.*, p. 285.

⁴⁰ Les mesures contre les juifs et les hérétiques sont rassemblées dans les chapitres 2 et 3 du livre XII : *De remouendi pressuris et omnium hereticorum sectis extinctis*.

⁴¹ Les autres conciles provinciaux sont ceux de Narbonne (589) et de Barcelone II (599). Cf. A. LINDER, *op. cit.*, p. 591. Il faut ajouter un concile de Séville non identifié, que l'on connaît par certains manuscrits de la recension *Iuliana* de l'*Hispana* chronologique (681), et dont le canon 10 approuve la conversion forcée des juifs pourtant critiquée par Tolède IV (également présidé par Isidore de Séville) en 633. Pour une traduction et une analyse détaillée de ce canon 10, cf. B. DUMÉZIL, « Une source méconnue sur la politique de conversion forcée du roi Sisebut : le canon 10 du concile de Séville », in F. SABATÉ & C. DENJEAN (éd.), *Juifs et chrétiens, Sources pour la recherche d'une relation permanente, Table ronde à Carcassonne, 22 octobre 2003*, Lérída, 2006, p. 21-35.

judaisants apparu après 615, problème créé par le choix de poursuivre comme apostats les juifs baptisés de force (Tolède IV, c. 57), à l'inverse de la pratique impériale en la matière (C. Th., XVI, 8, 23)⁴² : de nombreuses lois et canons ont pour objet d'instaurer un contrôle des nouveaux convertis, et le problème s'exacerbe après 681, date à laquelle le roi Ervige procède à de nouveaux baptêmes forcés, dont le décret a, lui, été conservé (LV, XII, 3, 3). Depuis 638, le roi wisigothique, en montant sur le trône, prêche serment d'empêcher les "juifs" (baptisés ?) de profaner la foi catholique (Tolède VI, c. 3), ce qui peut aussi expliquer l'abondance de la production législative correspondante.

En 711, les troupes musulmanes conquièrent presque la totalité de la péninsule, sauf des petits royaumes chrétiens indépendants du nord. Jusqu'au XIe siècle, l'activité normative y sera presque inexistante.

A Byzance

Sur la législation concernant les juifs à l'époque que nous avons définie (VI^e-XI^e siècle), les travaux d'Amnon Linder font autorité. Outre son monumental ouvrage paru en 1997⁴³, citons l'un de ses derniers articles, « The Legal Status of Jews in the Byzantine Empire »⁴⁴, sur lequel nous nous appuyerons largement pour ce qui suit.

Nous commencerons par traiter des lois et Nouvelles de Justinien sur les juifs non seulement pour respecter la chronologie mais aussi parce qu'elles auront une influence déterminante sur les entreprises ultérieures de compilation ou de législation.

Les lois de Justinien portant sur les juifs concernent : l'interdiction de la possession d'esclaves chrétiens (CJ 1.3.54, année 534⁴⁵ et 1.10.2, entre 527 et 534⁴⁶) ; l'interdiction faite aux juifs de déshériter leurs enfants si ces derniers sont chrétiens (CJ 1.5.13, année 527 ou 528)⁴⁷ ; est en outre ordonnée la destruction complète des synagogues samaritaines (CJ 1.5.17). CJ 1.9.2⁴⁸, adressée

⁴² Cf. B. SAITTA, *L'antisemitismo nella Spagna visigotica*, Rome, 1995, p. 52.

⁴³ A. LINDER, *The Jews in the Legal Sources of the Early Middle Ages*, Detroit-Jérusalem, 1997.

⁴⁴ A. LINDER, « The Legal Status of Jews in the Byzantine Empire », *Jews in Byzantium: dialectics of minority and majority cultures*, in R. BONFIL, O. IRSHAI, G.G. STROUMSA éd., Leiden-Boston, 2012, p. 151-220.

⁴⁵ LINDER, 1987, 61, p. 375 sq.

⁴⁶ LINDER, 1987, 59, p. 370 sq.

⁴⁷ LINDER, 1987, 58, p. 368.

⁴⁸ LINDER, 1987, 57, p. 367 sq.

aux juifs, recommande que la célébration du Sabbath ne soit pas perturbée et exempte les juifs des liturgies personnelles dont ils ont la charge les jours de fête. Enfin, *CJ* 1.5.21⁴⁹ adressée à Jean, préfet du prétoire, le 8 juillet 531, décide que les juifs ne peuvent pas témoigner contre les chrétiens mais qu'ils peuvent le faire contre leurs coreligionnaires et qu'ils peuvent être témoins instrumentaires. Pour ce qui est des *Novelles* émises par ce même Justinien, la *Novelle* 37, adressée à Salomon, gouverneur d'Afrique, le 1^{er} août 535 interdit aux juifs d'assister aux célébrations chrétiennes et de posséder des esclaves ; leurs synagogues doivent être transformées en églises⁵⁰. La *Novelle* 45 adressée à Jean de Cappadoce, préfet du prétoire, le 1^{er} septembre 537, décide que les juifs doivent assumer la charge de décurion sans toutefois bénéficier des honneurs qui lui sont attachés ; lors d'un procès impliquant des chrétiens, ils ne peuvent témoigner que pour eux-mêmes ou pour l'État. Dans la *Novelle* 131 adressée à Pierre Barsymes, préfet du prétoire, en 545, interdiction est faite aux juifs de louer une propriété chrétienne ; il leur est aussi interdit de construire de nouvelles synagogues.

La *Novelle* 146 mérite que l'on s'y attarde un peu plus longuement. De part son importance et les difficultés d'interprétation qu'elle soulève, elle a en effet suscité bien des commentaires. Cette *Novelle*⁵¹ est adressée au préfet du Prétoire Areobindus depuis Constantinople et est datée du 8 février 553. Dans le préambule, Justinien dit avoir reçu des pétitions de la part des juifs. Considérée comme un tournant dans les relations christiano-juives à l'époque proto-byzantine, elle est, à première vue, claire : les juifs ne peuvent en aucun cas lire leurs livres saints à la synagogue en hébreu, mais doivent le faire en grec ou en latin. S'ils le font en grec, ils utiliseront de préférence la traduction de la Septante. Les spécialistes ont interprété cette mesure de manières di-

⁴⁹ LINDER, 1987, 60, p. 371 sq.

⁵⁰ LINDER, 1987, 62, p. 381 sq.

⁵¹ Éléments bibliographiques : V. COLORNI, « L'uso del greco nella liturgia del giudaismo ellenistico e la novella 146 di Giustiniano », *Annali di Storia del Diritto* 8 (1964) (aussi publié séparément : Milan, A. Giuffrè, 1964) ; A. M. RABELLO, *Giustiniano, Ebrei, Samaritani. Alla luce delle fonti storico-letterarie, ecclesiastiche e giuridiche*, Milan, Giuffrè, vol. 2 (1988), II, p. 814-828 ; E. KLINGENBERG, « Justinians Novellen zur Judengesetzgebung », in *Festschrift für Hermann Langer zum 70 geburstag am 24. Januar 1992*, éd. D. Medicus et al., Stuttgart, W. Kohlhammer, 1992, p. 139-161, aussi publié en anglais : « Justinian's Novella Concerning the Jews », *Jewish Law Association Studies* 8 (1996), p. 79-99 ; P. LEGENDRE, « "Die Juden interpretieren verückt". Gutachten zu einem klassischen Text », *Psyche* 43 (1989), p. 20-39 ; N. DE LANGE, « The Hebrew Language in the European Diaspora », in *Studies on the Jewish Diaspora in the Hellenistic and Roman Period*, éd. B. Isaac et A. Oppenheimer, Tel Aviv, Ramot Publishing, 1996, p. 134 ; G. STEMBERGER, « Juden », *RAC* 19 (1998), p. 208 ; L.V. RUTGERS, « Justinian's Novella 146 between Jews and Christians », *Jewish Culture and Society under the Roman Christian Empire*, éd. R. Kalmin et S. Schwartz, Louvain, 2003, p. 385-408 ; W. Smelik, « Justinian's Novella 146 and Contemporary Judaism », in T. Law & A. Salvesen, eds., *Greek Scripture and the Rabbis* (Leuven, 2012). 141-63..

verses. Les uns, emmenés par Vittore Colorni⁵², considèrent que la Nouvelle 146 illustre l' « ironical attack of Hebrew-speaking Jews who wanted to carry out their «innovations» of the liturgy » en lançant l'anathème sur leurs coreligionnaires hellénophones⁵³. Pour cette école, ce texte de loi témoigne de la promotion de l'utilisation de l'hébreu dans une grande partie des communautés juives du début de la période byzantine. Plus récemment, un second courant a vu le jour, composé de chercheurs qui considèrent que loin de favoriser légalement les juifs qui préféraient le grec comme langue de la liturgie, cette Nouvelle était plutôt destinée à entraîner la conversion de la communauté juive dans son entier, hellénistes et hébraïsants inclus⁵⁴. Tout récemment, on a considéré que cette Nouvelle était en fait destinée à éradiquer l'usage de l'hébreu⁵⁵ et ainsi peut-être à mieux encadrer les pratiques culturelles juives.

Après l'époque justinienne, s'ouvrent deux phases dans la législation concernant les juifs. La première, de caractère privée, est initiée par des juristes et consiste en compilations, résumés et/ou traduction qu'accompagne parfois un travail de réédition et de modification. La seconde phase marque un retour de l'État impérial dans le processus législatif.

La première phase couvre la seconde moitié du VI^e siècle et correspond à deux grands projets développés par des juristes, à savoir la traduction complète du corpus justinien en grec et l'intégration systématique dans ce corpus des Nouvelles de Justinien dont les cinq relatives aux juifs qui furent promulguées entre 535 et 553, les Nouvelles 37, 45, 131, 139 et 146. Ces cinq Nouvelles ont été résumées entre 572 et 602 par Theodoros Scholasticos Hermaios dans son oeuvre intitulée *Épitomé des Nouvelles de Justinien*. Il ne s'agit pas d'une simple reprise du texte des Nouvelles puisque Theodoros a, en général, effectué un travail d'édition et parfois de réécriture. Les cinq Nouvelles réapparaîtront aussi dans l'*Épitomé des Nouvelles* d'Athanasios d'Émèse qui se veut une introduction aux Nouvelles de Justinien⁵⁶. La traduction complète en grec des lois justiniennes portant sur les juifs est connue sous le nom de *Collectio Tripartita*

⁵² V. COLORNI, *op. cit.*

⁵³ L.V. RUTGERS, *op. cit.*, p. 388.

⁵⁴ On rencontre cette interprétation notamment chez H. SCHRECKENBERG, *Die christlichen Adversus-Judaeos-Texte und ihr literarisches Umfeld* (1.-11. Jh), Europäische Hochschulschriften. Reihe XXIII, Bd. 172, Francfort/Main: Peter Lang, 1995, p. 413-414 ; P.T.R. GRAY, « Palestine and Justinian's Legislation on Non-Christian Religions », in *Law, Politics and Society in the Ancient Mediterranean World*, éd. B. Halpern et D.W. Hobson, Sheffield: Sheffield Academic Press, 1993, p. 241-270 ; G. VELTRI, « Die Novelle 146 περί Ἑβραίων. Das Verbot des Targumvortrages in Justinians Politik », in *Die Septuaginta zwischen Judentum und Christentum*, éd. M. Hengel et A.M. Schwemer, WUNT 72, Tübingen: Mohr Siebeck, 1994, p. 116-130.

⁵⁵ L.V. RUTGERS, *op. cit.*, p. 388.

⁵⁶ D. SIMON, S. TROIANOS, *Das Novellensyntagma des Athanasios von Emesa*, Francfort/Main, 1989.

laquelle, comme le souligne Amnon Linder, constitue « a remarkable conservation of Justinian's Jewry-law, and at the same time [...] its ongoing transformation, in both letter and spirit »⁵⁷. C'est en fait un supplément à la *Collection des Canons en 14 titres* comprenant les lois civiles. Il faut noter jusqu'à la fin du XI^e siècle, un intérêt tout particulier affiché pour les Novelles de Justinien de la part des juristes. Outre le *Synopsis des Novelles de Justinien* daté de la fin du IX^e siècle ou du début du X^e et *l'Examen des Novelles de Justinien* attribué à Michel Psellos, mentionnons les *Ropai*⁵⁸, manuel juridique pratique qui comprend deux textes légaux sur les juifs : l'un affirme que les juifs sont exemptés de toute charge personnelle les jours de leurs fêtes ainsi que le jour du Sabbath ; le second texte fixe à cinq ans la période durant laquelle une accusation d'apostasie post-mortem peut être portée contre un chrétien qui a renoncé à sa religion en faveur du judaïsme (ou du paganisme).

La seconde phase de la période post-justinienne, qui couvre les VIII^e et IX^e siècles, est marquée par le retour de l'initiative étatique. Les autorités impériales, en la personne de Léon III dit l'Isaurien, commencent par promulguer, en 726, l'*Eclogue*, une sélection de lois fondée sur le corpus justinien. L'absence de lois nouvelles émises par Léon III s'explique sans doute par le fait qu'à peu près concomitamment est décrétée par ce même empereur la conversion forcée des juifs (721/722). Comme le souligne Amnon Linder : « Suppressing Jewry-law simultaneously with forcibly converting the Jews made perfectly good sense, for the cassation of the legal existence of the Jews in the Empire implied, necessarily, the abrogation of the legal means by which it was traditionally sustained »⁵⁹. La campagne de conversion forcée sera abandonnée on ne sait comment ; s'ensuivra un retour au statu quo et l'ajout, dans deux appendices à l'*Eclogue*, de huit textes portant sur les juifs, les interdictions qui leur sont faites et leurs relations avec les chrétiens⁶⁰. Sous les références *Eclogue*, App. IV.6-7, 13, 16, 24 ; VI.26-28, 30, nous retrouvons notamment les principales interdictions traditionnellement faites aux juifs : ils ne peuvent accéder aux charges publiques, faire du prosélytisme, posséder ou circoncrire un esclave chrétien.

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⁵⁷ A. LINDER, « The Legal Status », p. 182.

⁵⁸ K.E. ZACHARIAE VON LINGENTHAL, *Ai Ropai, oder die Schrift über die Zeitabschnitte, welche insgemein einem Evstathios, Antecessor zu Konstantinopel, zugeschrieben wird*, Heidelberg, 1836, repr. Zepos, IGR, vol. 3, Athènes, 1931.

⁵⁹ LINDER, « The Legal Status », p. 185.

⁶⁰ L. BURGMANN, S. TROIANOS, « Appendix Eclogae », *Fontes minores*, vol. 3, Francfort/Main, 1979.

Dans la péninsule italique

De la péninsule italique, enfin, nous vient l'œuvre législative du roi Théodoric, qui nous est connue par les *Variae* de Cassiodore, questeur du Palais de 508 à 511 puis *magister officiorum* entre 523 et 526. L'empreinte romaine, et plus précisément théodosienne, des trois lettres relatives aux juifs apparaît nettement⁶¹. Un *Edit* attribué par certains à ce même roi nous livre un texte qui paraphrase *CTh.* II, 1, 2 leur accordant un privilège de juridiction dans les matières relatives à « leurs lois »⁶².

Le droit justinien a aussi influencé la pratique juridique de la péninsule italique. Un certain nombre de constitutions du Code Justinien ainsi que des Nouvelles pénètrent en Italie au moment de sa reconquête par Byzance, la *Pragmatica Sanction* (554) demandée par le pape Vigile ayant donné vigueur à la culture romaniste italienne. La *Summa Perusina*, un épitomé du Code Justinien composé en Italie au VII^e siècle ajoute ainsi au corpus occidental de textes sur les juifs trois nouvelles constitutions⁶³. Il est vrai que cette collection connut un faible succès, à en croire le seul manuscrit qui nous reste. En revanche, un abrégé des Nouvelles, dit *Epitome Iuliani* (555) a été copié en un nombre très important de manuscrits⁶⁴.

La papauté, fragilisée par les troubles politiques que connaît la péninsule italique ne produit pas de grands législateurs, hormis Symmaque, Pélage et Grégoire le Grand. Ce dernier, dont l'apport au droit canonique est considérable, produit un nombre important de décrétales sur les juifs⁶⁵. Le *Registrum* de ses lettres constitue même l'une des sources les plus importantes pour l'histoire des juifs entre la fin du VI^e siècle et le début du VII^e. Vingt-et-un lettres signalent leur implantation à Rome, en Italie centrale et méridionale, en Sicile et en Sardaigne ainsi que dans le sud de la Gaule et en Espagne, et

⁶¹ A. LINDER, *op. cit.*, p. 201-206.

⁶² A. LINDER, *op. cit.*, p. 200.

⁶³ A. LINDER, *op. cit.*, p. 208.

⁶⁴ A. LINDER, *op. cit.*, p. 215.

⁶⁵ Encore la nature des lettres décrétales de Grégoire I^{er} est-elle parfois difficile à déterminer, leur caractère coercitif, donc juridique, n'étant pas toujours établi. On peut ainsi distinguer deux types de textes à l'intérieur même de l'ensemble des lettres ayant trait aux juifs. Grégoire ne s'adresse pas en effet sur le même ton aux évêques des provinces suburbicaires et insulaires italiennes, qui lui sont directement subordonnés comme évêques de sa circonscription, et aux évêques d'Espagne et de Marseille, pour qui l'autorité universelle du pape n'est que théorique. A l'égard des premiers, il use d'un style et d'un vocabulaire proches de celui des constitutions des empereurs romains, tandis qu'il adopte, avec les seconds, le ton de l'avis d'un interlocuteur courtois qui s'autorise à donner un conseil.

nous renseignent sur certains aspects de leur condition légale dans ces différents royaumes⁶⁶.

À l'issue du VIII^e siècle, l'arsenal juridique sur les juifs est largement mis en place. Les législations séculières et ecclésiastiques ultérieures l'enrichissent, l'adaptent ou le corrigent sans en changer les aspects majeurs. Les législateurs cèdent à cette époque la place aux juristes compilateurs. Le travail de recherche, de sélection, de tri et de classement des textes a pour effet de modifier si considérablement l'esprit du *corpus* sur les juifs que l'on peut presque dire que ces compilateurs ont contribué à l'édification du droit anti-juif à la même échelle que les législateurs qui les avaient précédés.

Le temps des compilations juridiques (IX^e - XI^e siècles)

Au IX^e siècle en terres franques, la production normative sur les juifs ne redémarre pas réellement à une époque, celle de la renaissance carolingienne, où conciles, capitules épiscopaux et capitulaires se multiplient pourtant. Seuls trois conciles s'intéressent à eux⁶⁷. De la chancellerie impériale proviennent deux *capitularia missorum* de Charlemagne datés de 806 et de 809⁶⁸ ainsi que divers chapitres issus de capitulaires dispersés⁶⁹. Si rares sont les nouvelles règles édictées à l'époque, la pensée juridique sur les juifs ne stagne pas pour autant, le travail du législateur étant remplacé par celui des compilateurs, à Byzance comme dans l'Occident latin. L'œuvre doctrinale se révèle en effet au travers de collections de textes de droit romain et canonique.

Aux X^e et XI^e siècles en Occident, c'est l'histoire des collections canoniques qui, montrerons-nous, dessine, comme pour la période du IX^e siècle, les évo-

⁶⁶ Voir dans le présent ouvrage l'étude déjà mentionnée de B. JUDIC, « Grégoire le Grand et les Juifs, pratiques juridiques et enjeux théologiques. »

⁶⁷ Le concile de Meaux - Paris (845 - 846) en ses canons 73, 74, 75 et 76 s'y intéresse certes en bonne part. S'ajoutent les conciles de Pavie (850), c. 24 et de Metz (893), c. 7. Cf. A. LINDER, *op. cit.*, p. 539, 548 et 552.

⁶⁸ *Capitularia regum Francorum*, I, éd. Boretius, p. 131 et 152 = A. LINDER, *op. cit.*, p. 344-345.

⁶⁹ Sur ces *capitula* que l'édition de Boretius publie à tort dans un même ensemble sous le titre *Capitula De Judaeis* alors qu'ils sont composites (*Capitularia regum Francorum*, I, p. 258-259 = A. LINDER, *op. cit.*, p. 345-351), nous renvoyons à l'étude de PH. DEPREUX, « Les juifs dans le droit carolingien » dans le présent recueil. Ajoutons que trois modèles de privilèges nous viennent d'un formulaire carolingien mais qui ne concernent, par définition, que quelques individus – des juifs marchands de Lyon et un marchand « étranger » venu de Saragosse. Ils n'ont donc pas la portée générale et impersonnelle de textes normatifs. Cf. *Formulae Merowingici et Karolini aevi*, éd. Karl Zeumer, respectivement p. 309 (*Formulae imperiales*, n° 30), p. 310 (*Formulae imperiales*, n° 31) et p. 325 (*Formulae imperiales*, n° 52).

lutions les plus parlantes⁷⁰. Une proportion importante des collections composées le long du XI^e siècle a pour inspiration, pour ce qui concerne le statut juridique des juifs, le *Décret* de Burchard de Worms. A la même époque se développe le mouvement de la Réforme grégorienne qui sort de l'oubli les vieilles décrétales de Grégoire le Grand sur les juifs. Le *Décret* d'Yves de Chartres (c. 1094-1095) qui servira de base essentielle au *Décret* de Gratien (c. 1140), fait la synthèse de ces deux écoles.

Les compilations du IX^e siècle

Entre 700 et l'époque des *Faussees décrétales* (840) se mêlent sur le sol de la Gaule des groupes de collections ibériques et gallo-franques⁷¹. Or le succès du droit wisigothique et son importation par le biais de l'*Hispana* sont des phénomènes de grande importance pour l'histoire du droit sur les juifs. Quelques grandes collections canoniques ignorent certes ces influences et demeurent tributaires de la *Vetus Gallica*⁷². Elles ne véhiculent donc que les canons anti-juifs de conciles gallo-francs et de textes importés d'Orient⁷³. Ces collections traditionnelles dans leur contenu antijuif coexistent avec des collections enrichies de décrets wisigothiques sans qu'il soit possible de distinguer des zones d'influence spécifiques des premières par rapport aux secondes, les lieux exacts d'édition et de diffusion de ces collections n'étant pas fixés de manière certaine.

⁷⁰ Les privilèges octroyés par les souverains carolingiens et ottoniens entre le IX^e et le XI^e siècle sont, comme leurs modèles ci-dessus mentionnés, de portée limitée. Cf. A. LINDER, *op. cit.*, p. 365-388. On recense, pour le Xe siècle, un concile dans le sud de l'Italie (c. 900), un autre à Siponto (c. 900) et un troisième à Erfurt (932) = A. LINDER, *op. cit.*, p. 549, 551 et 55. Les conciles du XI^e siècle auxquels, souvent, assistent les légats pontificaux envoyés par les papes réformateurs sont ceux d'Oviedo, de Rouen, (1074) de Rome (1078), de Gérone (1078) et de Szabolcs (1092) = A. LINDER, *op. cit.*, p. 557-559.

⁷¹ On estime que l'*Hispana* a circulé dans sa forme pure en Aquitaine à partir de 665, puis qu'elle s'est propagée en *Francia* dans le courant du VIII^e siècle. Un témoin de cette forme existait dans un manuscrit à Strasbourg (ms 787) mais qui a brûlé. L'*Hispana* a aussi circulé dans une forme corrompue baptisée *Collectio Hispana-Gallica* dans la partie franque de la Gaule après 683. A partir du IX^e siècle apparaît également une forme interpolée dont témoigne la Collection du manuscrit d'Autun. Cf. J. GAUDEMET, *Les sources du droit de l'Eglise en Occident. Du II^e au VII^e siècle*, Paris, 1985, p. 160.

⁷² Ce sont la *Collectio Herovaliana* ou collection d'Angers (Gaule, VIII^e ½) ; la *Collectio Frisingensis Secunda* (Constance, VIII^e ½) et la *Collectio Bellovacensis* (Gaule, IX^e ½). Cf. J. GAUDEMET, *Les sources du droit canonique. VIII^e - XX^e siècle*, Paris, 1993, p. 27-28.

⁷³ Les décrets conciliaires orientaux sur les juifs ont été importés en Occident et traduits en latin depuis l'Antiqua, collection romaine composée entre 419 et 451. Ce sont ceux de la collection de Laodicée et du concile de Chalcédoine (451). Cf. J. GAUDEMET, *Les sources du droit de l'Eglise...*, *op. cit.*, p. 77-78.

Les compilateurs francs en viennent donc, comme il était prévisible, à utiliser la matière wisigothique pour la réalisation de leurs propres recueils. La collection du manuscrit de Saint Amand intègre ainsi les canons du concile de Tolède IV qui sont essentiels pour l'histoire du droit antijuif. Sous Charlemagne, les canonistes adjoignent au livre romain de la *Dionysio-Hadriana* une *Hispana* gallicane, réalisant la collection *Hadriana-Hispana*. C'est dans ce contexte d'engouement et d'officialisation du droit ibérique que vont travailler les juristes de la génération de Louis le Pieux. Une collection attribuée au diacre de l'évêque Agobard de Lyon Florus et qui porte le titre *Capitula sacrorum canonum de fugiendis contagiis iudeorum et disciplina erga eos exercenda* est formée de seize canons dont cinq proviennent des conciles tolédans, s'ajoutant à deux décrets du pseudo-concile de Laodicée et à huit canons gallo-francs (issus des conciles d'Agde, Epaone, Clermont, Orléans et Mâcon déjà mentionnés). Ainsi que l'a fait remarquer Bernhard Blumenkranz, Florus, en retirant les références au roi Sisebut des canons 57 et 59, a « naturalisé » le droit wisigothique, le donnant pour gaulois⁷⁴. Il importe des mesures très sévères comme l'ordre de séparer les enfants de parents juifs convertis et apostats, la validité du baptême forcé, et l'interdiction des relations entre juifs baptisés et juifs. Le successeur d'Agobard sur le siège épiscopal de Lyon, Amolon, utilisera cette collection dans son *Contra Iudaeos* pour convaincre Charles le Chauve de mener le combat contre les juifs à l'imitation des rois d'Espagne. Une autre collection entièrement dédiée aux juifs et d'inspiration wisigothique côtoie la collection de Florus dans un manuscrit parisien (BnF ms lat. 2249)⁷⁵. Elle puise cette fois dans un concile plus tardif, le concile de Tolède XII (681). Cette réception est d'autant plus frappante que les canons de ce concile sont des lois royales canonisées. Surtout, le canon 9 est un résumé de toute la législation antijuive antérieure. La collection du manuscrit latin 2249 reprend donc un véritable texte constitutionnel du statut des juifs. Paul Fournier estime que la considération du lieu d'origine du manuscrit qui la contient – Vienne, X^e siècle –, fait pencher pour une collection burgonde du IX^e siècle.

Les canonistes du milieu rhodanien ne sont pas les seuls à avoir renouvelé le corpus des lois relatives aux juifs. L'atelier du Pseudo-Isidore rassemble dans les Fausses-Décrétales (847-852) un nombre jamais égalé de textes tolédans antijuifs issus des conciles de Tolède III, IV, VIII et IX, et reprend le canon 9 de Tolède XII. La collection, qui connaît un succès très vif jusqu'à la réforme

⁷⁴ B. BLUMENKRANZ, « Deux compilations canoniques... », *op. cit.* ; Kl. ZECHIEL-ECKES, « Sur la tradition manuscrite des *Capitula ... de coertione Iudeorum* ou Florus de Lyon au travail », in *Revue bénédictine* 107, 1997, p. 77-87.

⁷⁵ Cf. P. FOURNIER, « Un groupe de recueils canoniques inédits du X^e siècle », in *Annales de l'Université de Grenoble XI*, 1899, p. 345-402.

grégorienne, imposera, mieux que les collections lyonnaises précitées demeurées presque confidentielles, le droit wisigothique antijuif. Ajoutons qu'à l'est de l'Empire, le diacre de l'archevêque Otgar de Mayence, Benoît le Lévitte, rassemble lui aussi des extraits du canon 9 de Tolède XII ainsi que *LV* 12, 3, 8⁷⁶.

La Gaule du VIII^e siècle voit aussi surgir un type de littérature qui témoigne d'une renaissance timide du droit romain et de la culture juridique. Sur la base du Bréviaire d'Alaric sont composés, sans doute par des moines, des épitomés qui procurent des résumés des *interpretationes*, dont il faut rappeler qu'elles étaient elles-mêmes déjà un résumé des constitutions romaines, et éliminent encore des textes par la sélection qu'elles opèrent dans leur source⁷⁷. Or l'épitomé *Aegidii* (sud de la Gaule, fin VIII^e), l'épitomé Scintilla (fin VIII^e- début IX^e), l'épitomé *Gulepjerbytana* (milieu VIII^e), l'épitomé *Lugdunensis* (Lyon, VIII^e), et l'épitomé *Monachi* recueillent tous des textes romains relatifs aux juifs⁷⁸. Également, l'épitomé de Saint-Gall ou *Lex Romana Raetica Curiensis* est une collection de droit impérial réalisée à Chur, dans l'ancienne province romaine de Rhétie et appliquée dans le nord de l'Italie⁷⁹. Des usages des textes sur les juifs de ces épitomés apparaissent dans les travaux préparatoires envoyés par Amolon au concile de Meaux – qui reprend aussi des textes issus des Sirmondiennes – et dans la collection canonique déjà citée du manuscrit parisien Bnflat. 2249. Florus que nous avons déjà rencontré compose une seconde collection canonique spéciale sur les juifs intitulée *De coertione iudaeorum et de auctoritate ac firmitate iudicii et testimonii episcoporum* comportant non plus cette fois des décrets canoniques mais des lois romaines.

Il convient également de mentionner la littérature issue des livres pénitentiels. Imaginée dans les monastères celtes puis anglo-saxons, cette littérature gagne le continent, importée par les moines missionnaires. Le système remporte très vite un large succès car il prend la place de la pénitence canonique ou antique, si bien que les réformateurs carolingiens hostiles à son développement doivent se résoudre à adopter un système de pénitence mixte. L'apogée se situe entre la seconde moitié du VII^e siècle et le IX^e siècles et se clôt par le *Corrector Buchardi*⁸⁰. Tous les décrets y mentionnant les juifs ne sont pas d'un égal intérêt. Un certain nombre – les pénitentiels irlandais et anglo-saxons – s'adressent de toute évidence à des juifs imaginaires et n'ont pas été pris dans le but pratique et actuel de sanctionner des pécheurs chrétiens pour

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⁷⁶ Cf. A. LINDER, *op. cit.*, p. 611.

⁷⁷ Cf. J. GAUDEMET, « Le Bréviaire d'Alaric et les épitomés », in *Ius Romanum Medii Aevi*, pars I. 2. b. aa. β., Milan, 1965.

⁷⁸ Cf. A. LINDER, *op. cit.*, p. 236-253.

⁷⁹ Cf. A. LINDER, *op. cit.*, p. 254.

⁸⁰ Cf. C. VOGEL, *Les Libri paenitentiales*, Turnhout, 1978.

leur fréquentation des juifs⁸¹. Si l'on ne devait retenir que les textes constituant un apport au droit sur les juifs, il faudrait citer les pénitentiels réalisés sur le continent et marqués par la réforme carolingienne. Certains punissent les relations sexuelles avec des juifs. Ainsi le pénitentiel du Pseudo-Théodore (830-847), le pénitentiel d'Arundel (X^e/XI^e), le pénitentiel Casinense, celui du Pseudo Grégoire, le *Vigila* (976), et le *Vallicellianum*. D'autres fixent un tarif compensatoire pour l'homicide d'un juif. Ainsi le Pénitentiel *Vallicellianum* et le *Corrector sive Medicus* de Burchard de Worms⁸².

L'État byzantin produit quant à lui une œuvre importante : le *Prochiron*⁸³. Premier tome de la grande œuvre prévue par l'empereur Basile, *La purification des lois*, promulgué entre 870 et 879, ce manuel destiné à aider les juges dans leur pratique quotidienne a transmis deux textes relatifs aux juifs qui ont, par la suite, été repris dans au moins trois compilations⁸⁴. Compris dans le titre XXXIX, ils sont sans surprise : l'un interdit aux juifs, sous peine de mort de faire du prosélytisme et l'autre de posséder et de circoncrire des esclaves chrétiens⁸⁵. Ces deux lois, déjà présentes dans le code justinien⁸⁶, seront reprises dans l' *Eisagogé* ou *Introduction à la loi*⁸⁷, compilation juridique de 40 titres élaborée à la fin du règne de Basile Ier, vers 886, à l'instigation du patriarche Photius, dans le tout dernier titre, le numéro 40⁸⁸. Mais l'*Eisagogé* ne se contente pas simplement de reprendre des lois déjà bien connues. Car la loi

⁸¹ J. GAUDEMET, *Les sources du droit canonique...*, op. cit., p. 39-40.

⁸² F.W.H. WASSERSCHLEBEN, *Die Bussordnungen der abendländischen Kirche*, Halle, 1851, p. 664 = A. LINDER, op. cit., p. 614-616, 617-618, 638, et 639-641.

⁸³ K.E. ZACHARIAE VON LINGENTHAL, *O Procheiros Nomos, Imperatorum Basilii, Constantini et Leonis Prochiron*, Heidelberg, 1837.

⁸⁴ L'Épitomé des lois, compilée durant le règne de Léon VI (K.E. ZACHARIAE VON LINGENTHAL, *IGR*, vol. 7, Leipzig, 1884), le *Prochiron des lois* compilé vers la fin du Xe siècle (F. BRANDILEONE ET V. PUNTONI, *Prochiron Legum publicato secondo il codice Vaticano Greco 845*, Rome, 1895) et l'*Eisagogé Aucta* (compilée dans la seconde moitié du Xe siècle (K.E. ZACHARIAE VON LINGENTHAL, *IGR*, vol. 4, Leipzig, 1865).

⁸⁵ *Procheiron* XXXIX. 31 : Ἐὰν ἰουδαῖος χριστιανὸν ἀνδράποδον κτήσῃται καὶ περιτέμῃ, κεφαλικῶς τιμωρεῖται (« Si un juif achète et circoncite un esclave chrétien, il sera puni de mort »). *Procheiron* XXXIX. 32 : Ἐὰν ἰουδαῖος τολμῆσῃ διαστρέψαι χριστιανικὸν λογιισμόν, ὑπόκειται κεφαλικῆ ἑπιτιμῶν (« Si un juif a l'audace de pervertir le message chrétien, il sera soumis à la peine de mort »).

⁸⁶ La première correspond à *CJ I.10.1* et la seconde à *CJ I.9.18(19) § 3*.

⁸⁷ K.E. ZACHARIAE VON LINGENTHAL, *Collectio librorum iuris Graeco-Romanis ineditorum. Ecloga Leonis et Constantini; Epanagoge Basilii; Leonis et Alexandri*, Leipzig [reimpr.] in ZEPOS, P. (1931), *Leges Imperatorum Isaurorum et Macedonum. Jus Graecoromanum*, vol. 2. Athènes, Fexis, p. 236-368] ; J. SCHARF, "Photius und die Epanagoge", *BZ* 49 (1956), p. 385-400.1956 ; J. SCHARF, "Quellenstudien zum Prooimion der Epanagoge", *BZ* 52 (1959), p. 68-81 ; D. STERNON ET R. MEJERING (éd.), "The Prooimion of the Eisagoge. Translation and Commentary", *Subseciva Groningana* 7 (2001), p. 91-155.

⁸⁸ *Eisagogé* XL. 33 (= *Procheiron* XXXIX.31, voir ci-dessus) ; *Eisagogé* XL. 34 = *Procheiron* XXXIX.32, voir ci-dessus).

13, titre IX déclare : « Ἕλληνες καὶ ἰουδαῖοι καὶ αἰρετικοὶ οὔτε στρατεύονται οὔτε πολιτεύονται, ἀλλ' ἐσχάτως ἀτιμοῦνται, « Païens, juifs et hérétiques n'assument pas d'office public mais sont complètement déshonorés »). Nous avons là une loi absolument originale qui ne figure que dans l'*Eisagogè*.

Enfin, est promulguée la *Basilica*, un nouveau code terminé peu avant la mort de Basile I^{er} en 886 et retravaillé sous Léon VI⁸⁹. Presque tous les textes portant sur les juifs y sont regroupés sous un seul titre dans le premier livre. La *Basilica* ne représente pas moins qu'un retour aux lois sur les juifs promulguées par Justinien. Sa diffusion et son influence seront considérables dans les décennies et même les siècles ultérieurs. C'est ce recueil qui servira de référence jusque bien au-delà du milieu du IX^e siècle, période à laquelle il fera l'objet d'une réédition. Il sera même retravaillé jusqu'en 1647.

De nombreuses compilations émanant de juristes anonymes la plupart du temps verront le jour par la suite qui combineront éléments issus du *Prochiron* et de l'*Eisagogè*. L'œuvre toute différente que constitue le Livre du Préfet (*Liber praelecti urbis* or Τὸ ἐπαρχικὸν βιβλίον) promulgué en 912 par Léon VI⁹⁰ et qui concerne les guildes de Constantinople contient une unique loi sur les juifs : interdiction leur est faite d'acheter de la soie⁹¹.

Les compilations juridiques des X^e et XI^e siècles

Entre la fin du IX^e siècle et tout le long du X^e, en Occident, l'Eglise féodale vit sur les acquis de l'apport pseudo-isidorien et n'est guère active que dans quelques régions dont la Rhénanie qui voit naître une collection intéressante pour notre sujet : les *Libri II de synodalibus causis* de Régino de Prüm (906)⁹². Cette collection présente les traditionnels interdits de contact avec les juifs, d'époque carolingienne, sous forme de *quaestiones*, ce qui tend à montrer que ce droit connaissait des applications pratiques dans la région. Régino avait de fait rédigé ce modèle d'interrogations à l'adresse des témoins syno-

⁸⁹ G.E. et C.G.E. HEIMBACH, *Basilicorum libri LX*, Leipzig, 1833-1870 ; C.A. FABROTUS, *Basilicorum libri LX*, Paris, 1647 ; H.J. SCHELTEMA et N. VAN DER WAL, *Basilicorum libri LX*, Ser. A, I-VIII, Gröningen, 1955-1988.

⁹⁰ J. KODER, *Das Eparchenbuch Leons des Weisen*, CFHB 33, Vienne, Österreichische Akademie der Wissenschaften, 1991 ; A. ILIEVA et T. THOMOV, "The Shape of the Market: Mapping the Book of the Eparch", *BMSG* 22 (1998), p. 105-11 ; M.M. MANGO, "The Commercial Map of Constantinople", *Dumbarton Oaks Papers* 54 (2000), p. 189-207.

⁹¹ *Lib. Praef.* 6. 16: Οἱ μεταξοπράται μὴ ἀπεμπολεῖτωσαν τὴν μέταξαν Ἑβραίοις ἢ ἐμποροῖς πρὸς τὸ διαπιπράσκειν αὐτὴν ἕξω τῆς πόλεως. οἱ δὲ τοῦτο ποιοῦντες τυπτέσθωσαν καὶ κουρευέσθωσαν.

⁹² Cf. Cf. A. LINDER, *op. cit.*, p. 618.

daux, chacune de ces questions portant sur une règle traditionnelle dont il s'agissait de constater la transgression⁹³. En outre, elle sera l'inspiration, un siècle plus tard, du *Décret* de Burchard de Worms (c. 1012) qui, nous y reviendrons, est une œuvre fondamentale pour l'histoire du droit sur les juifs. Toujours en Germanie, un prêtre du nom de Gerhard appartenant peut-être au chapitre de la ville de Cologne rassemble en 937, à la demande de l'archevêque de Mayence Frédéric, une collection textuelle spécialement consacrée aux juifs⁹⁴.

A partir du XI^e siècle, le mouvement de la Réforme grégorienne démarré sous le pontificat de Léon IX (1049-1054) et l'élargissement de la chrétienté latine au sud et à l'est de l'Europe sont à l'origine d'une reprise de la production conciliaire sur les juifs. L'activité législative presque éteinte dans la péninsule ibérique depuis la fin du VII^e siècle redémarre avec la Reconquista et s'accompagne de la mise à jour du droit sur les juifs par les conciles de Coyaca (1050), d'Oviedo (1050) et de Gérone (1078)⁹⁵. A l'est, dans le royaume de Hongrie, les conciles de Szaboles (1092) et d'Esztergom/Gran présidé par le roi Colomban (1095-1116) prohibent les mariages entre juifs et chrétiens ainsi que la possession d'esclaves chrétiens par des maîtres juifs⁹⁶. Le concile de Rouen de 1074 et le concile romain de 1078 présidé par Grégoire VII s'ajoutent à la liste⁹⁷.

Mais les collections canoniques demeurent, pour l'histoire du statut juridique des juifs au XI^e siècle, les sources les plus significatives. Il est possible de distinguer deux groupes de collections au sein desquels se repèrent des conceptions différentes de la place des juifs et du judaïsme⁹⁸. Une première proportion importante de collections canoniques puise son inspiration, en ce qui concerne le statut juridique des juifs ainsi qu'en maints autres domaines,

⁹³ Dans les pays germaniques en en particulier en pays rhénan existaient des cours de justice ambulantes que présidait l'évêque. Elles tenaient audience en divers endroits du diocèse à l'occasion des visites épiscopales. Pour assurer le bon fonctionnement de ces séances, on avait créée, sur le modèle de l'administration franque, des témoins synodaux, personnages ecclésiastiques, puis laïcs, chargés de dénoncer les désordres. Le guide de Régionon avait été réalisé à la demande de l'archevêque de Trèves Rathbod.

⁹⁴ Cf. Cf. A. LINDER, *op. cit.*, p. 618. Jessie Sherwood propose, dans le présent ouvrage, une analyse de cette collection dans : « Interpretation, negotiation, and adaptation: Converting the Jews in Gerhard of Mainz's collection. »

⁹⁵ Cf. A. LINDER, *op. cit.*, p. 557, 559.

⁹⁶ Cf. A. LINDER, *op. cit.*, p. 559.

⁹⁷ Cf. A. LINDER, *op. cit.*, p. 558.

⁹⁸ Cf. J. GILCHRIST, « The Perception of Jews in the Canon Law in the Period of the First Two Crusades », in *Jewish History*, 3-1, 1988, p. 9-24. Disponible sur [file://localhost/<http://www.jstor.org/discover:10.2307:20101055%3Fuid=3738016&uid=2129&uid=2&uid=70&uid=4&sid=21101009197973>](http://www.jstor.org/discover/10.2307/20101055%3Fuid=3738016&uid=2129&uid=2&uid=70&uid=4&sid=21101009197973)

dans le *Décret* de Burchard de Worms⁹⁹. Ce recueil, composé vers 1012, présente l'intérêt, par rapport aux collections canoniques qui l'ont précédé, de rassembler une masse bien plus considérable de textes¹⁰⁰. Il est fidèle, dans le choix de ses sources, au souvenir carolingien – une source directe de la collection est constituée par les *Libri II de synodalibus causis* de Réginon de Prüm – dont il rassemble les textes traditionnels que sont, sur les juifs, les décrets conciliaires mérovingiens, tolédans, et l'interprétation du *Bréviaire* d'Alaric, XVI, 9, 1 que l'on trouvait déjà dans les *Fausses Décrétales*. Il comporte aussi, ce qui est nouveau, deux extraits des *Statuta Ecclesiae Antiqua*, une décrétale et un extrait des *Moralia* de Grégoire le Grand, et des extraits de commentaires d'Augustin d'Hippone. Le succès de l'œuvre de Burchard est attesté par le nombre important de manuscrits qui nous sont parvenus. La collection circule tout le long du XI^e siècle ainsi que pendant la première moitié du XII^e. Elle influence la réalisation de collections filles en Gaule, en Germanie et en Italie¹⁰¹.

⁹⁹ Cf. A. LINDER, *op. cit.*, p. 633.

¹⁰⁰ Il faut signaler un désaccord entre Bernhard Blumenkranz et John Gilchrist, le second contestant la chronologie proposée par le premier, qui se fonde notamment sur les évolutions repérées dans les collections canoniques du XI^e siècle. Pour Bernhard Blumenkranz, l'avènement de la Première Croisade (1096) constitue un tournant dans l'histoire des juifs de l'Occident latin. Alors que le Haut Moyen Age, sauf en Espagne wisigothique, leur aurait été une époque relativement favorable, la Première Croisade aurait inauguré une violence sociale antijuive qui devait s'installer au Bas Moyen Age. Entre autres sources, l'auteur utilise les collections canoniques pour prouver cette évolution. Il considère ainsi que le *Décret* de Burchard de Worms du premier quart du XI^e siècle (1025) ne s'intéressait pas aux juifs, les textes étant dispersés et rares. En revanche, la collection réalisées par Yves de Chartres en 1094-1095 aurait subi une évolution essentielle : elle récolte, de fait, cinquante textes dont la plupart sont rassemblés au livre XIII, et se trouve donc être la plus importante collection jamais réalisées sur les juifs (en comparaison, le *Décret* de Gratien en retient trente-six). Cette évolution constatée dans le travail des compilateurs serait le miroir du changement social survenu après la Première Croisade. Mais John Gilchrist insiste au contraire sur l'importance de l'œuvre de Burchard en même temps qu'il minimise le rôle du *Décret* d'Yves de Chartres. L'œuvre de Burchard, rassemblant un nombre tout de même relativement important de décrets antijuifs a joui d'un immense succès même après que le mouvement réformateur romain avait répandu ses propres collections. La collection d'Yves de Chartres, qui servait de projet à la Panormia, demeura au contraire confidentielle. L'auteur ne remarque pas de césure nette autour de l'année 1096 mais une évolution lente démarrée au début du XI^e siècle. L'œuvre de Burchard aurait inauguré le mouvement dont on pourrait suivre la progression au fil des trente-cinq collections qui suivirent jusqu'au *Décret* de Gratien de 1140. D'après les sondages opérés par John Gilchrist, une centaine de textes différents y circulent répartis en presque autant de collections, quarante-neuf textes n'apparaissant qu'une seule fois. L'auteur explique ce phénomène par l'émiettement féodal qui entraîne l'autonomie de nombreuses collections canoniques. Néanmoins, dix décrets antijuifs traitant les principaux problèmes que soulevaient, aux yeux des autorités, les populations juives apparaissent de manière suffisamment récurrente – dans huit collection et plus – pour que l'on puisse, d'après lui, estimer qu'existait à l'époque une sorte de statut juridique unifié des juifs de l'Europe latine. Cf. B. BLUMENKRANZ, *Juifs et chrétiens...*, *op. cit.*, p. 305.

¹⁰¹ Ce sont la *Collectio Burdegalensis* (Bordeaux, 1085-1090), la *Collectio in XIII librorum* (Poitou), la *collection en neuf livres* (autour de Paris, c. 1100), la *Collection en douze parties* (en Allemagne,

Un second groupe est tributaire d'une collection composée entre 1073 et 1075, la *Collection en 74 titres*¹⁰². Cette collection est l'œuvre de la Réforme grégorienne. Ce mouvement conduit à restaurer la discipline d'un âge d'or du christianisme en recherchant des textes anciens. On voit ainsi, dans la *Collection en 74 titres*, réapparaître pour la première fois depuis quatre siècles le corpus des lettres de Grégoire le Grand sur les juifs. La collection est ensuite diffusée par les légats du pape entre la fin du XI^e siècle et la première moitié du XII^e et inspire, en Europe, la réalisation de plusieurs collections¹⁰³. Ces collections pontificales auxquelles s'ajoutent les conciles réformateurs déjà mentionnés peuvent être considérées comme les prémices de la prise en main, par les papes des XII^e et XIII^e siècles – Alexandre III et Innocent III notamment – de la législation canonique sur les juifs. L'apparition d'un droit pontifical nouveau fera dès lors passer au second plan les décrets traditionnels du *Ius Antiquum*.

Quelle fut la teneur et l'esprit de ce *Ius Antiquum* qui, durant ces cinq siècles, avait gouverné les juifs dans leurs relations avec le monde non-juif ? Quels furent, d'abord, ses effets, pratiques et symboliques, sur la vie des populations juives européennes des premiers siècles ? Que nous disent, ensuite, ces sources de l'image que se faisaient des juifs et d'eux-mêmes les cercles du pouvoir, séculier et ecclésiastique ? C'est à cette série de questions et à d'autres encore que les contributeurs du présent ouvrage ont souhaité proposer leurs éclairages informés.



qui ajoute deux extraits du *Registre de Grégoire le Grand*), et la collection de *Santa Maria Novella* (Italie, c. 1100).

¹⁰² Cf. A. LINDER, *op. cit.*, p. 645. THIS DOCUMENT MAY BE PRINTED FOR PRIVATE USE ONLY. NOTED WITHOUT PERMISSION OF THE PUBLISHER.

¹⁰³ On trouve, en Italie, un *Abrégé de la collection en 74 titres*, la collection d'Anselme de Lucques (1083), la *collectio 5 librorum* (1083/1085), la *collectio ms Vat. Lat. 1348*, la *collectio en 2 livres* (Rome, c. 1085) = A. LINDER, *op. cit.*, p. 644-645. De France viennent la *Collection en 4 livres* (c. 1080-1085), la *collectio Tarraconensis* (Aquitaine, 1085-1090) et la *Collectio Britannica* (nord, c. 1090). Une *collectio Ashburnhamensis* composée sous le pontificat de Grégoire VII mélange la *Collection en 74 titres* et la collection française en 4 livres ci-dessus mentionnée.

I Rank and status of Jews in civil and canonical law



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“THE CITIZENSHIP AND LEGAL STATUS OF JEWS IN ROMAN LAW DURING LATE ANTIQUITY (CA. 300-540 CE)”

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At the beginning of the Roman Empire, Roman citizenship was an elite legal status. Non-citizens, or *peregrini* (“foreigners”), generally remained subject to whatever legal system was in effect when they were annexed by Rome. Beginning with the emperor Augustus (27 BCE-14 CE), institutionalized practices permitted provincials to become citizens. Citizen rights were inherited, and the number of Roman citizens quickly increased.¹ In 212 CE, the Antonine Constitution granted citizenship to nearly all of the remaining free *peregrini* in the Roman Empire,² including the Jews.³

¹ For Roman citizenship, see A.N. Sherwin-White, *The Roman Citizenship* (2nd ed.) (Oxford: Oxford Univ. Press, 1979); C. Nicolet, *The World of the Citizen in Republican Rome*, P.S. Falla, tr. (Berkeley: Univ. of California Press, 1988) = C. Nicolet, *Le métier de citoyen dans la Rome républicaine* (2nd ed.) (Paris: Gallimard, 1989); Paulo Donati Giacomini, Gabrielle Poma, eds., *Cittadini e non cittadini nel Mondo Romano. Guida ai testi e ai documenti* (Bologna: CLUEB, 1996); Jane F. Gardner, *Being a Roman Citizen* (London: Routledge, 1993); David Noy, *Foreigners at Rome: Citizens and Strangers* (London: Duckworth, 2000); G.E.M. de Ste-Croix, *Class Struggle in the Ancient Greek World* (Ithaca: Cornell Univ. Press, 1981), 453-461; Max Kaser, *Das römische Privatrecht. Erster Abschnitt. Das altrömische, das vorklassische, und klassische Recht*, vol.1 (2nd ed.) (Munich: Beck, 1971), 279-282; Peter Garnsey, “Roman Citizenship and Roman Law in the Later Empire,” in Simon Swain, Mark Edwards, eds., *Approaching Late Antiquity. The Transformation from Early to Later Empire* (Oxford: Oxford Univ. Press, 2004), 133-155.

² See S. Riccobono, ed., *Fontes Iuris Romani anteiustiniani. I. leges* (Florence: Barbèra, 1968), no.88, 445-9; and F.M. Heichelheim, “The Text of the Constitutio Antoniniana,” *Journal of Egyptian Archaeology* 26 (1940), 10-22; also Christoph Sasse, *Die Constitutio Antoniniana. Eine Untersuchung über den Umfang der Bürgerrechtsverleihung auf Grund von Papyrus Gissensis 40 I* (Wiesbaden: Harrasowitz, 1958); Adam Lukaszewicz, “Zum Papyrus Gissensis 40 I 9 (‘Constitutio Antoniniana’),” *The Journal of Juristic Papyrology* 20 (1990), 93-101; and Garnsey, “Citizenship,” an expanded version of a section on “Citizens and Aliens,” in Peter Garnsey, Caroline Humfress, eds., *The Evolution of the Late Antique World* (Cambridge: Orchard, 2001), 88-91.

³ See, inter alios, Jean Juster, *Les juifs dans l'Empire romain. Leur condition juridique, économique et sociale*, 2 vols. (Paris: Geuthner, 1914); J. Neusner, *A History of the Jews in Babylonia II. The Early Sasanian Period* (Leiden: Brill, 1966); W. Meeks, R. Wilken, *Jews and Christians in Antioch in the First Four Centuries of the Common Era* (Atlanta: Scholars Press, 1978); R. L. Wilken, *John Chrysostom and the Jews: Rhetoric and Reality in the Late Fourth Century* (Berkeley: Univ. of California Press, 1983); M. Avi-Yonah, *The Jews under Roman and Byzantine Rule. A Political History of Palestine from the Bar Kokhba War to the Arab Conquest* (Jerusalem: Magnes, 1984); Bernard Bachrach, “The Jewish Community in the Later Roman Empire as Seen in the *Codex Theodosianus*,” in J. Neusner, E.S. Frerichs, eds., “To See Ourselves as Others See Us”: *Christians, Jews and “Others” Late Antiquity* (Chico, CA: Scholars, 1985), 399-421; A. Linder, *The Jews in Roman Imperial Legislation* (Detroit: Wayne State Univ. Press, 1987); Miriam Flaccus Ben Zeev, *Jewish Rights in the Roman World: The Greek and Roman Documents Quoted by Josephus Flavius*

Jews in Early Christian Law: Byzantium and the Latin West, 6th-11th centuries

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Subsequently, dual citizenship of various forms was commonly held.⁴ For example, every Roman citizen nominally also was a citizen of a city,⁵ and the law refers to “citizens” of a province.⁶ In late Roman popular usage even barbarians bore a form of ethnic citizenship; in the 420s, for example, a Roman of Florence described his deceased wife as a “*civis Alamanna*” (“citizen of the Alamanni”).⁷ Indeed, the opportunity to hold dual citizenship had been formally extended as early as the 160s, when citizenship was granted to the Zegrenses, North African *gentiles*, “*salvo iure gentis*,” that is, “with the law of their people preserved.”⁸ The Antonine Constitution thus encompassed various manifestations of citizenship that created multiple legal identities whereby persons who were Roman citizens also could be designated by their municipal, provincial, or ethnic status.

Jewish “Citizenship”

Jews were another category of “citizen” who had their own ethnic identity. For the Roman government, the Jews were a *gens*,⁹ *natio*,¹⁰ or

(Tübingen: Mohr Siebeck, 1998); Anke Zimmermann, *Die rechtliche Lage der Juden in der Spätantike* (Munich: Grin, 2010).

⁴ See G. C. J. van den Bergh, “Legal Pluralism in Roman law,” in C. Verga, ed., *Comparative Legal Cultures* (New York: New York Univ. Press, 1992), pp.338-350; Tony Honoré, *Ulpian, Pioneer of Human Rights*, 2nd ed. (Oxford: Oxford Univ. Press, 2002), p.24.

⁵ Garnsey, “Citizenship,” 137: “local citizenships were tolerated”; see also M. A. H. El-Abbadi, “The Alexandrian Citizenship,” *Journal of Egyptian Archaeology* 49 (1962), pp.106-123; and A.H.M. Jones “The Dediticii and the Constitutio Antoniniana,” in A. H. M. Jones, ed., *Studies in Roman Government and Law* (Oxford: Oxford Univ. Press, 1968), pp.129-140, at p.136, “all Roman citizens are *municipes* of some *municipium*.”

⁶ *CTh* 1.34.1 (400): “*cives ... provinciae*”; see Charlotte Roueché, “Asia Minor and Cyprus,” in Averil Cameron, Bryan Ward-Perkins, Michael Whitby, eds., *Cambridge Ancient History. Volume XIV, Late Antiquity: Empire and Successors, A.D. 425-600* (Cambridge: Cambridge Univ. Press, 2000), pp.570-87, at p.572, “many people chose to describe themselves as inhabitants of their province.”

⁷ *CIL* 11.1731 (423); in general, see R.W. Mathisen, “*Peregrini, Barbari, and Cives Romani*: Concepts of Citizenship and The Legal Identity of Barbarians in the Later Roman Empire,” *American Historical Review* 111 (2006), 1011-1040.

⁸ “Non cunctamur ... civitatem Romanam salvo iure gentis dare”: *Tabula Banasitana* (c.161/169), text in Nadine Labory, ed., *Inscriptions antiques du Maroc II: Inscriptions latines* (Paris: CNRS, 1982), 76-91; see A. N. Sherwin-White “The Tabula of Banasa and the Constitutio Antoniniana,” *JRS* 63 (1973), 86-98; William Seston, Maurice Euzennat, “La citoyenneté romaine au temps de Marc Aurèle et de Commode, d’après la Tabula Banasitana,” *Comptes-rendus des séances de l’Académie des Inscriptions et Belles-Lettres* 105 (1961), pp.317-24; William Seston, Maurice Euzennat, “Un dossier de la chancellerie romaine: La Tabula Banasitana. Etude de diplomatique,” *Comptes-rendus des séances de l’Académie des Inscriptions et Belles-Lettres* 115 (1971), pp.468-90.

⁹ *Gens*: *CTh* 16.8.24 (418), “*gentis huius perversitati devincti*.”

¹⁰ *Natio*: *Sulp. Sev. Chron.* 2.3, “*barbaras nationes et praecipue Iudaeos ... Iudaeorum contumax natio*”; *CTh* 16.9.2 (339): “*si aliquis Iudaeorum mancipium sectae alterius seu nationis crediderit comparandum*” = *CJ* 1.10.1. For barbarian *nationes*, see *CTh* 5.6.3 (409): “*Scyras barbaram nationem maximis Chunorum*”; *CTh* 7.16.3 (420): “*ad nationes barbaras*”; *CJ* 1.3.28.3 (468): “*barbarae sit nationis*”; *CJ* 4.41.2.1 (455/57): “*nationum barbaris*”.

secta,¹¹ in the same way that the Zegrenses were, and as such, they had a recognized right to preserve their own ethnic laws.¹² Like other *gentes*, the Jews also were seen as having their own form of “citizenship.” For example, late Roman ecclesiastical sources occasionally referred to Jews as “citizens” of their own homeland: Rufinus of Aquileia, in his Latin translation of Eusebius’ *Ecclesiastical History*, noted that Fl. Josephus was considered to be most noble not only among his own fellow citizens, the Jews, but also among the Romans.¹³ References to Jewish “citizens” also crop up in works of Biblical exegesis.¹⁴ The most widespread reference to Jews as “cives” came in glosses such as on Luke 19:14, where the Jews were identified as the “cives” (πολίται) who did not recognize Christ.¹⁵

Legal Jurisdictions

An important element of citizenship status related to the legal jurisdiction under which different kinds of citizens fell. Even though Roman *ius civile* was available in some form to all those living in the Roman Empire, other legal systems also continued to be valid, as acknowledged by the *Digest* as late as the sixth century: “those practices that have been approved by long practice and observed for many years are preserved as law ... no less than those laws that are written.”¹⁶ Thus, as of the fourth century, the Roman government

¹¹ *Secta: CTh* 16.8.9 (393), “Iudaeorum sectam nulla lege prohibitam satis constat”; 16.8.8 (392), “in sectam suam.”

¹² Judaism has been described as a “religio licita,” see Avi-Yonah, *Jews*, 45, “Judaism enjoyed the privileges of a ‘lawful religion’ (*religio licita*),” but see Philip Francis Esler, *Community and Gospel in Luke-Acts: The Social and Political Motivations of Lucan Theology* (Cambridge: Cambridge Univ. Press, 1989, 1996), 211, “There is no historical support for this whatsoever; ... there never was a juridical category of *religio licita*.” For the concept, see Tertullian, *Apologeticum* 21.1, “quasi sub umbraculo insignissimae religionis, certe licitae.”

¹³ Rufinus, *Hist. eccl.* 3.9.2: “Constat igitur hunc virum per idem tempus non solum apud Iudaeos proprios cives, verum etiam apud Romanos habitum esse nobilissimum.”

¹⁴ E.g., Peter Chrysologus, *Serm.* 151 (*PL* 52.602-3): “Iudaeos peregrinatos in gentibus... O quam durum est peregrinatio etiam inter cives fratresque!”

¹⁵ Luke 19:14: “οἱ δὲ πολῖται αὐτοῦ ἐμίσουν αὐτὸν [ἄνθρωπος τις εὐγενῆς] καὶ ἀπέστειλαν πρεσβείαν ὀπίσω αὐτοῦ λέγοντες οὐ θέλομεν τούτον βασιλεῦσαι ἐφ’ ἡμᾶς”; see, e.g., ps.-Jerome, *Expositio Evangeliorum, In evangelium secundum Lucam* (*PL* 30.575-6): “cives ejus, id est, Iudaei”; Isid. Hisp. *Allegoriae quaedam sanctae Scripturae* 228 (*PL* 83.127): “Cives qui noluerunt eum regnare Iudaei intelliguntur, qui Christum regem spreverunt”; Aug. *Quaestiones Evangeliorum* 46 (*PL* 35.1358-1360): “Cives ejus qui post eum miserunt legationem, dicentes se nolle ut regnet sibi, Iudaei sunt”; Bede, *Serm.* 82, “In die festo Sancti Nicolai” 5: “cives impios Iudaeos.”

¹⁶ *Digest* 1.3.35: “Hermogenianus libro primo epitomarum. Sed et ea, quae longa consuetudine comprobata sunt ac per annos plurimos observata, velut tacita civium conventio non minus quam ea quae scripta sunt iura servantur.” See E. Levy, “The Vulgarization of Roman Law in the Early Middle Ages,” *Mediaevalia et Humanistica* 1 (1943), pp.14-40, and *Weströmisches Vulgarrecht: Das Obligationenrecht* (Weimar: Böhlau, 1956); Gudrun Stühff, *Vulgarrecht im Kaiserrecht* (Weimar: Herman Böhlau, 1966); A. J. B. Sirks, “Shifting Frontiers in the Law: Romans, Provincials, and Barbarians,”

acknowledged the existence of “lex Christiana,” a growing body of canon law that sometimes competed with or contradicted Roman civil and criminal law.¹⁷

Toward the end of the fourth century, orthodox Christianity emerged totally victorious in its conflict with traditional religious practices and became the only fully legal religion in the Roman Empire. One result of this was a spate of legislation as the Roman government negotiated its role vis-à-vis other religious practices.¹⁸ Pagan and Christian heterodox beliefs were roundly condemned without a second thought. The treatment of Jews, however, was more nuanced, for not only had Judaism always had a special status in Roman law, but it also was the religion out of which Christianity had grown and the religion whose scriptures Christianity used.

The Jews had a legal system of long standing, referred to by Juvenal at the end of the first century as *ius Iudaicum*,¹⁹ that had an acknowledged status alongside Roman *ius civile*. In the fourth century and later, Jewish religious law was referred to by many terms: politely as *lex Iudaica*,²⁰ *Iudaica religio*,²¹ *Iudaica sacramenta*,²² *Iudaicus ritus*,²³ *Iudaeorum*,²⁴ *Iudaeorum consuetudo*,²⁵ *Iudaeorum observatio*,²⁶ or simply as *lex sua*,²⁷ and more disparagingly as the

in R. Mathisen, H. Sivan, eds., *Shifting Frontiers in Late Antiquity* (London: Ashgate, 1996), pp.146-57, at p.150 (“Roman and indigenous law still coexisted”); J.-M. Carrié, “Developments in Provincial and Local Administration,” in Alan Bowman, Averil Cameron, Cambridge Peter Garnsey, eds., *Cambridge Ancient History. Vol. 12: Crisis of Empire A.D. 193-337* (Cambridge: Cambridge Univ. Press, 2005), pp.269-312, at p.274 (“Roman power preserved for local laws the same place that they occupied ... within provincial law”). For a dissenting opinion, see Honoré, *Ulpian*, p.80, where after 212, “the contrast between the civil law and common custom was now of purely historical interest.”

¹⁷ *CTh* 16.8.18 (408) = *CJ* 1.9.11: “contemptum Christianae legis”; *CTh* 1.27.1: “ad legem Christianam”; *CTh* 2.8.20: “Christianae legis veneranda mysteria”; see Jean Gaudemet, *Les sources du droit de l'église en occident du IIe au VIe siècle* (Paris: CNRS, 1985).

¹⁸ After a small cluster of Jewish legislation under Constantine and shortly thereafter, e.g., *CTh* 16.8.1-6 (315-339), Jewish legislation virtually ceased until the early 380s, after the Council of Constantinople of 381 had definitively settled the Arian controversy, e.g., *CTh* 16.8.8-29 (392-429).

¹⁹ “Iudaicum ius”: *Juv.Sat.*14.101

²⁰ E.g., *CTh* 7.8.2 (368/373), and, preserved only in the Code of Justinian, *CJ*, 1.9.4 (368/373), 1.9.5 (383), 1.9.7 (393); also Avitus of Vienne, *MGH AA* 6.2.54.27; Pet.Chrys. *Serm.*34, “Iudaica lex”; Marius Victorinus, *In epistolam Pauli ad Galatas* 1.4 (*PL* 8.1160): “Hoc enim agit in hac omni narratione, peccare Galatas, addendo ad fidem in Christum, observationem legis Iudaicae et sabbati et circumcissionis”; Jerome, *Comm. in epist. ad Gal.* 2.5 (*PL* 26.393), “non revertentur ad legis Iudaicae servitutem”; Secundinus Manichaeus, *Epist. ad Aug.* 5 (*PL* 42.57): “Temporibus nostris renova Paulum, qui cum legis Iudaicae doctor esset.”

²¹ E.g., *CTh* 16.8.23 (416).

²² E.g., *CTh* 3.1.5 (384).

²³ E.g., *CTh* 16.7.3 (383): “ritus Iudaicos”; also Paulus, *Sent.* 5.22.3: “Cives Romani, qui se Iudaico ritu vel servos suos circumcidi patiuntur.”

²⁴ E.g., *CJ* 1.9.7 (393), *CTh* 16.8.2 (412), 16.8.20 (412).

²⁵ E.g., *CTh* 16.8.20 (412).

²⁶ E.g., *CTh* 16.8.20 (412).

²⁷ E.g., *CTh* 16.8.8 (392).

Iudaica superstitio,²⁸ *Iudaicum contagium*,²⁹ *Iudaica perversitas*,³⁰ *Iudaica pollutio*,³¹ *Iudaica incredulitas*,³² and *Iudaica nota*.³³ In a legal context, all of these designations were equivalent to “religio Iudaica.”

Thus, just as *ius civile* applied to Roman citizens and *lex Christiana* applied to Christians, *ius Iudaicum* applied to Jewish “citizens.” The connection between Jewish and Christian citizenship and law is seen circa 400, for example, in a gloss of Gaudentius of Brescia on Exodus 12:49, “Una lex erit indigenae, et advenaē” (“There shall be a single law for the native and for the newcomer”). Gaudentius reasoned that “the natives doubtless were the Jews, the citizens (*cives*) of the patriarchs and the prophets.”³⁴ His exegesis anticipated a single, Christian, law that would apply both to Jews and gentiles alike. The Jews, however, certainly had different ideas, and preferred to retain their own laws.

In late Roman law the Jews’ right to follow their own *lex*, *ius*, and *mos* was clearly acknowledged. At the same time, Jews, as *cives Romani*, actively participated in the Roman legal system, and much late Roman legislation on the Jews resulted from Jewish initiatives. Indeed, one can sense in the background the activity of influential Jews, and perhaps even Jewish lawyers, who had contacts at court and were familiar with Roman law. But there also were Roman concerns that Jews might exceed their legal authority and this affected the degree to which Jews could participate in the official life of the late Roman Empire..

Respect for Jewish Custom and Authority

Some late Roman legislation demonstrates the respect that the Roman government had for *lex Iudaica*. A law of 392, for example, confirmed the jurisdiction of the Jewish primates and patriarchs over the Jewish *secta*, noting,

Iudaeorum querellae quosdam auctoritate iudicum recipi in sectam suam reclamantibus legis suae primatibus adseverant... iubemus ... in ea superstitione sedulus coetus aut per vim iudicum aut rescripti subreptione invitis primatibus suis, quos virorum clarissimorum et illustrium patriarcharum arbitrio manifestum est habere sua de religione sententiam.

The complaints of the Jews affirm that some people are received into their sect on the authority of provincial governors against the opposition of the primates

²⁸ E.g., *CTh* 12.1.158 (398), 16.8.24 (418).

²⁹ E.g., *CTh* 16.7.3 (382)

³⁰ E.g., *CTh* 18.8.19 (409)

³¹ E.g., *CTh* 3.1.5 (384).

³² E.g., *CTh* 16.8.19 (409).

³³ *CTh* 16.8.22 (415).

³⁴ Gaudentius of Brescia, *Serm.*10 (PL 20.919): “Scriptum est enim: ‘Una lex erit indigenae, et advenaē’. Indigenae procul dubio Iudaei erant, patriarcharum cives et prophetarum... Una ergo nobis cum Iudaeis est lex.”

of their law... We order that ... a tenacious group within their superstition shall not earn aid ... through the authority of governors or of a surreptitious rescript against the will of their primates, who are manifestly authorized to pass judgment concerning their religion under the authority of the most renowned and illustrious men, the patriarchs.³⁵

Here, the Jews are a *secta* governed by “*suae legis*” (“their own law”). This law also shows Jewish familiarity with the workings of the Roman administration: it was issued in response to Jewish *querellae*, and Jews also had been obtaining illegal rescripts from the imperial court.

The behind-the-scenes working of Jewish lobbyists is suggested again in a group of laws issued ca. 400. A western law of 399 forbade contributions for the Jewish patriarch and confiscated them for the imperial fisc.³⁶ But in 404 the collections were restored “*ex consuetudine*” (“on the basis of past practice”) and “*secundum veterum principum statuta*” (“according to the statutes of previous emperors”).³⁷ It would seem that Jews with legal knowledge and influence at court had made an effective case for restoration. In addition, an eastern law of 396 permitted Jews to set their own prices for goods for sale. The statement that “*iustum est enim sua cuique committere*” (“it is just to entrust to each person their own affairs”) reconfirmed the basic principle of Roman law regarding a people’s right to administer itself.³⁸ And the fact that this law was addressed “*Ad Iudaeos*” (“To the Jews”) again suggests that a law resulted from a Jewish request for imperial intervention.

Soon thereafter, a western law of 412 reconfirmed the right of Jews to live by their own customs by granting Jews an exemption from being summoned to any public or private proceedings on the Sabbath.³⁹ The reference to both “*vetus mos et consuetudo*” (“ancient custom and practice”) and “*retro principum generalibus constitutis*” (“the general constitutions of previous emperors”) suggests that here, too, Jewish petitioners had made a good legal case for the reiteration of this exemption.

Conflicts of Authority

But the government also was very concerned that the Jews’ pursuit of their own customs in no way caused offense to Christians. Thus, an eastern law of 408, which saw the Jewish burning of a cross at the feast of Purim as a mockery of Christianity, stated another fundamental principle, “*ritus suos citra*

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³⁵ *CTh* 16.8.8 (392).

³⁶ *CTh* 16.8.14 (399).

³⁷ *CTh* 16.8.17 (404).

³⁸ *CTh* 16.8.10 (396).

³⁹ *CTh* 16.8.20 (412).

contemptum Christianae legis retineant” (“They shall maintain their own rites without contempt of Christian law”).⁴⁰ Nor did Roman respect for Jewish customs go so far as to allow Christians to participate in them, which was expressly forbidden.⁴¹

The Jews’ ability to continue their legal traditions after 212 also could cause problems when there were interactions between Jewish and Roman law. It always was clear, of course, that in cases of legal conflicts, Roman *ius civile* and *lex Christiana* took priority over *lex Iudaica*. This was especially the case regarding religious affiliation. Jews were freely permitted to convert to Christianity, but conversion to Judaism from Christianity was not only forbidden⁴² but also equated with the *crimen maiestatis* (treason) and thus subject to the death penalty.⁴³

Even perfectly legal and, from the Roman perspective, desirable conversions from Judaism to Christianity could create legal conflicts, as in the making of wills. In 426, for example, Jews were forbidden to reduce the amount of an inheritance by a family member who had converted to Christianity to less than what they would have received had the Jew died intestate.⁴⁴ Legal conflicts of this sort probably lie behind a Roman prohibition on marriages between Jews and Christians. A law issued by Theodosius in 388, for example, stated baldly,

Ne quis Christianam mulierem in matrimonium Iudaeus accipiat, neque Iudaeae Christianus coniugium sortiatur. nam si quis aliquid huiusmodi admiserit, adulterii vicem commissi huius crimen obtinebit,

No Jew shall take a Christian woman in marriage, neither shall a Christian marry a Jewess. Indeed, if anyone shall allow anything like this, he shall receive an accusation of adultery in place of this act.⁴⁵

But rather than representing some specifically anti-Jewish if not anti-Semitic policy, this law belongs to a long imperial tradition of regulating marriages between persons of different legal statuses, as expressed in a law of 428: Roman marriages were to be “between persons equal in status, with no law impeding them.”⁴⁶ The issue involved legal status, not religious persuasion.

⁴⁰ *CTh* 16.8.18 (408) = *CJ* 1.9.11.

⁴¹ *CTh* 16.7.3 (383).

⁴² *CTh* 16.8.5 (335).

⁴³ *CTh* 16.8.19 (409).

⁴⁴ *CTh* 16.8.28 (426).

⁴⁵ *CTh* 3.7.2 (388).

⁴⁶ *CTh* 3.7.3 (428): “Inter pares honestate personas, nulla lege impediende.” For other prohibitions of marriages between persons of unequal status, see, e.g., *Coll. leg. Moys. et Rom.* 6.4 (incest); *CTh* 3.7.2 = 9.7.5 (Jews), 3.12.1 (342) and 3.12.3 (422) (Jews), *CJ* 7.20.1 (290) (slaves); also Judith Evans Grubbs, *Law and Family in Late Antiquity: The Emperor Constantine’s Marriage Legislation* (Oxford: Oxford Univ. Press, 1995), *passim*.

Some opportunistic Jews used legal subterfuges to their advantage by pretending to convert to Christianity in order to escape prosecution for crimes. An eastern law of 397, for example, condemned Jews who feigned conversion to Christianity and then took asylum in churches to escape prosecution for crimes or debts.⁴⁷ A western ruling of 416, addressed to a certain “Annatus the *didascalus*” and group of Jewish “maiores” as if they were an officially recognized body, stated that Jews were to follow their *lex propria* and not to pretend to convert when it suited their legal advantage.⁴⁸ And a law of 415 permitting Jews to have Christian slaves so long as the latter could retain their religion had the same addressees, suggesting that this group of Jewish leaders was in regular contact with the imperial court.⁴⁹ This last law also demonstrates the Roman government’s concern that Jews not have legal authority over Christians.

Emperors were very careful to define the limits of Jewish legal authority, and an eastern law of 398 reveals the legal complications that could result from having two parallel legal systems:

Iudaei romano et communi iure viventes in his causis, quae non tam ad superstitionem eorum, quam ad forum et leges ac iura pertinent, adeant solenni more iudicia omnesque romanis legibus inferant et excipiant actiones: postremo sub legibus nostris sint. sane si qui per compromissum, ad similitudinem arbitrorum, apud Iudaeos vel patriarchas ex consensu partium, in civili dumtaxat negotio, putaverint litigandum, sortiri eorum iudicium iure publico non vetentur: eorum etiam sententias provinciarum iudices exsequantur, tanquam ex sententia cognitoris arbitri fuerint attributi.

Jews who are living under Roman common law shall attend the courts in the usual way in those cases that do not concern so much their superstition as court, laws, and rights, and all of them shall bring actions and defend themselves under Roman laws. In sum, they shall be under our laws. Certainly, if some shall deem it necessary to litigate before the Jews or the patriarchs through mutual agreement, in the manner of arbitration with the consent of both parties, at least in civil matters, they shall not be prohibited by public law from accepting their verdict, and the governors of the provinces shall even execute their sentences as if they were appointed arbiters through the award of a judge.⁵⁰

⁴⁷ *CTh* 9.45.2 (397): “Iudaei, qui reatu aliquo vel debitis fatigati simulant se Christianae legi velle coniungi ... arceantur”; see Linder, *Jews*, 199–201.

⁴⁸ *CTh* 16.8.23 (416): “Idem AA. Annati didascalo et maioribus Iudaeorum. ... hos, quos neque constantia religiosae confessionis in hoc eodem cultu inhaerere perspexerint neque venerabilis baptismatis fide et mysteriis inbutos esse, ad legem propriam ... liceat remeare.”

⁴⁹ *CTh* 16.9.3 (416): “Imp. Honorius et Theodosius AA. Annati didascalo et maioribus Iudaeorum. absque calumnia praecipimus Iudaeis dominis habere servos Christianos hac dumtaxat condicione permissa, ut propriam religionem eos servare permittant.”

⁵⁰ *CTh* 2.1.10 (398); see Linder, *Jews*, 204–211, whose heading for this law, “On the Judicial Power of the Jewish Authorities,” is rather misleading.

The repeated references to “leges Romanae” here establish a very explicit juxtaposition with Jewish law, indicating that the issue was how to navigate between two separate legal systems. And the qualified reference to Jews who were “living under Roman law” implicitly indicates that there were Jews who chose not to live under Roman law. Indeed, a law of 418 referred specifically to those “living in Jewish superstition” (“in Iudaica superstitione viventes”).⁵¹ One might suggest, then, that there were some Jews who interacted with non-Jews and made use of Roman *ius civilis*, to whom this law applied, but also other Jews who remained under *lex Iudaica*.

Jews who did live under Roman law were expected to consult Roman courts in matters not specifically related to Jewish “superstitio.” The law permitted legal cases to be heard before a Jewish court, like an arbitration, only if all parties agreed.⁵² Now, Jews always had been free to frequent their own courts, so the goal here would have been to ensure that Christians did not get called before Jewish courts against their will. This law also may have been intended to restrict Romanized Jews from “shopping around” for the best venue for their court cases.

But it would seem that the law of 398 was not observed to the government’s satisfaction, and that the Jewish patriarch, at least, was still passing judgment on Christians. In 415, the patriarch Gamaliel VI (400-425) was rebuked and punished for exceeding his authority:

ut inter Christianos nullam habeat copiam iudicandi; et si qua inter eos ac Iudaeos sit contentio, a rectoribus provinciae dirimatur.

He shall have no power to judge between Christians; and if a dispute should arise between them and the Jews, it shall be decided by the governors of the province.⁵³

Gamaliel was punished with the removal of his honorary prefecture, the granting of which demonstrates the degree to which, up to that point, the government had been attempting to reach an accommodation with the Jewish official hierarchy.⁵⁴ In 429, the Roman government further punished the patriarch by removing his right to collect taxes from Jews throughout the empire.⁵⁵ No justification is given for this, but one might suspect that there had been further conflicts between the administration of Roman and Jewish law.

⁵¹ CTh 16.8.24 (418).

⁵² On arbitration, see Jill Harries, “Resolving disputes: The Frontiers of Law in Late Antiquity”, in R. Mathisen, ed., *Law, Society, and Authority in Late Antiquity* (Oxford: Oxford Univ. Press, 2001), 68-82.

⁵³ CTh 16.8.22 (415) = CJ 1.9.15 (415).

⁵⁴ “Ut ab eo codicilli demantur honorariae praefecturae.”

⁵⁵ E.g., CTh 16.8.29 (429): “Iudaeorum primates, qui in utriusque Palaestinae synedriis nominantur vel in aliis provinciis degunt, quaecumque post excessum patriarcharum pensionis nomine susceperunt, cogantur exsolvere... et quod de occidentalibus partibus patriarchis conferri consueverat, nostris largitionibus inferatur.”

Jews in Public Service

Concerns over Jewish jurisdiction over Christians also surfaced in late imperial legislation relating to the holding of public positions by Jews. A good deal of legislation, summarized in Table 1, concerned the right, if one can call it that, of Jews, like Romans, to serve on municipal *curiae* as decurions, which carried with it the enforced performance of various kinds of *munera*, or municipal services. Service as a decurion therefore sometimes was more of a burden than an honor. Like Christian clergy, Jewish clergy were exempted from providing *munera*. Complication arose, however, when some Jews claimed that the exemption applied to all Jews, not just to clergy, and in such cases, as in 399, the imperial government had to reiterate that all Jews who were liable to service as decurions had to serve.

Table 1: Summary of Legislation Referring to Jews as Decurions

| Reference | Date | Loc | Addressee | Contents |
|---------------------|------|-----|----------------------------------|--|
| <i>CTh</i> 16.8.3 | 321 | W | Decurionibus Agrippiniensibus | “Jews can be summoned to the <i>curia</i> ” |
| <i>CTh</i> 16.8.2 | 330 | E | Ablavium praefectum praetorio | Clergy “in <i>memorata secta</i> ... shall continue to be exempt from all <i>munera</i> ” |
| <i>CTh</i> 16.8.4 | 331 | E | Hiereis et archisynagogis &c. | Jewish clergy “are free from all corporeal <i>munera</i> ” |
| <i>CTh</i> 12.1.99 | 383 | W | Ad Hypatium praefectum praetorio | “ <i>Iudaeae legis homines</i> ” are liable to <i>munera</i> . Even a Jewish cleric “should provide another man ... to perform the <i>munera</i> in his place” |
| <i>CTh</i> 16.8.13 | 397 | E | Caesario praefecto praetorio | “Let [Jewish clergy] therefore be exempt even from the curial <i>munera</i> ” |
| <i>CTh</i> 12.1.158 | 399 | W | Theodoro praefecto praetorio | “Those <i>Judaicae superstitionis</i> who are obliged in any way to serve legally in the <i>curia</i> shall perform the <i>munera</i> of their cities” |
| <i>CTh</i> 12.1.165 | 399 | E | Eutychiano praefecto praetorio | “Whoever among the Jews is demonstrated to be liable to the <i>curia</i> shall be handed over to the <i>curia</i> ” |
| <i>CTh</i> 16.8.24 | 418 | W | Palladio praefecto praetorio | “We permit [Jews] to make use of the honor of the curial <i>munera</i> ” |

Along with the liability to serve as decurions, Jews in the fourth and early fifth century also are attested as serving in various kinds of Roman offices, including *cohortalini*, *apparitores*, *advocati*, *defensor civitatis*, *agens in rebus*, and even *comes et praeses*.⁵⁶ But, as time went on, Jews were increasingly forbidden to hold public offices that might give them authority over Christians, and in particular the power to punish Christians. A western law of 404 deprived Jews and Samaritans who were *agentes in rebus* of their positions.⁵⁷ In 418, Jews were barred from future imperial service: current *agentes* and palatine officials were permitted to remain in office -- suggesting that the law of 404 had not been observed -- but Jewish soldiers were immediately expelled.

In Iudaica superstitione viventibus adtemptandae de cetero militiae aditus obstruatur. quicumque igitur vel inter agentes in rebus vel inter palatinos militiae sacramenta sortiti sunt, percurrendae eius ... remittimus facultatem ... illos autem, qui gentis huius perversitati devincti armatam probantur adpetisse militiam absolvi cingulo sine ambiguitate decernimus... sane Iudaeis liberalibus studiis institutis exercendae advocacionis non intercludimus libertatem et uti eos curialium munerum honore permittimus.

In addition, the opportunity of attempting imperial service is barred to those living in the Jewish superstition. Whoever have undertaken the oaths of office among the *agentes in rebus* or *palatini*, we grant them the right to complete their service... We decree, however, that those who are bound by the perversity of this people and are proved to have sought armed service shall unquestionably be released from their cincture of office. Indeed, we do not prohibit Jews instructed in liberal studies from the right of acting as advocates and we permit them the honor of the curial *munera*.⁵⁸

The exception allowing Jews to serve as lawyers may well have resulted from lobbying by Jewish lawyers. But be that as it may, even this privilege was soon removed, for a law of 425 not only reiterated the prohibition on Jews holding imperial office (suggesting that they had in fact continued to do so),

⁵⁶ Note, e.g., Caecilianus, *Defensor civitatis* on Minorca in 416 (*PLRE II*, 246); Theodorus, *Defensor civitatis* on Minorca prior to 416 (*PLRE II*, 1088); Litorius, *Comes et Praeses insularum Balearium* ("Count and governor of the Balearic Islands") c.420 (*PLRE II*, 661); all are known from Severus of Minorca, *Epist. de Iudaeis*, on which see. S. Bradbury, *Severus of Minorca. Letter on the Conversion of the Jews* (Oxford: Clarendon, 1996). 32-36, who identified this Litorius as the *comes* Litorius who was a general in Gaul ca. 435/437 and was said to have been a pagan, see Prosp. *Chron.* s.a. 439, "Iharuspicum responsis et daemonum significationibus fidet." *Agentes*: *CTh* 16.8.16 and passim.

⁵⁷ *CTh* 16.8.16 (404): "Iudaeos et Samaritanos, qui sibi agentum in rebus privilegio blandiuntur, omni militia privandos esse censemus." Linder, *Jews*, 178-82, suggested that this law referred only to those Jews who exploited their powers in an abusive way, but the word *privandos* suggests that something was being taken away from all Jewish *agentes*.

⁵⁸ *CTh* 16.8.24 (418).

on the grounds that it this would give Jews authority over Christians, but also forbade Jews from pleading cases.⁵⁹

Restrictions on the ability of Jews to serve in public office were reissued yet again in a novel of Theodosius II from 438, the year after the Theodosian Code was promulgated: apparently someone had decided that this issue had not been sufficiently stressed in the newly published code. Here, Jews were lumped together with other disadvantaged groups including Samaritans, pagans, and heretics. This law reiterated,

Neminem Iudaeum... ad honores et dignitates accedere, nulli administrationem patere civilis obsequii, nec defensoris fungi saltem officio. Nefas quippe credimus, ut ... Romanis legibus inimici cultores etiam nostrarum legum surreptivae iurisdictionis habeantur obtentu, et acquisitae dignitatis auctoritate muniti adversum Christianos et ipsos plerumque sacrae religionis antistites, velut insultantes fidei nostrae, iudicandi vel pronuntiandi quod velint habeant potestatem...

No Jew ... shall enter upon any honors or dignities, to none of them shall the administration of a civil duty be available, nor shall they perform even the duties of a defensor. Indeed, we believe that it is shameful that persons hostile ... to the Roman laws should be considered the upholders of our laws under the pretext of a surreptitious jurisdiction and, fortified by the authority of an acquired office, so to speak insulting our faith, have the power of judging and making pronouncements as they wish against Christians...⁶⁰

Jewish decurions and *cohortalini*, junior clerks on the office staffs of provincial governors, however, were required to continue to perform “the various obligations of their resources and the duties of their compulsory public services.⁶¹ And the law also introduced yet another exception: even though Jewish *apparitores*, junior members of imperial office staffs,⁶² were prohibited from involvement in criminal cases and from overseeing prisons because of a fear they might persecute Christians “as customarily happens,” they were permitted “to execute the sentences of judges at least for private lawsuits.”⁶³ The reason for the exclusion of Jews from imperial office fundamentally was the same as the restrictions on the authority of the Jewish pa-

⁵⁹ *Sirm.* 6 (425): “Iudaeis ... causas agendi vel militandi licentiam denegamus: quibus Christianae legis nolumus servire personas... omnes igitur personas erroris infausti iubemus excludi.” It may be that the usurper Johannes (423-425) had allowed Jews back into public service, for this law reestablishes policies “quae saeculo nostro tyrannus inviderat” (“which the tyrant of our age had begrudged”).

⁶⁰ *Nov.Theod.* 3.2 (438).

⁶¹ *Nov.Theod.* 3.6 (438): “curiales civitatum omnium, nec non cohortalinos, onerosis quin etiam militiae seu diversis officiis facultatum et personalium munerum obligatos suis ordinibus.”

⁶² Especially in the military; see, e.g., *Not.dig.occ.* 5-7, *Not.dig.or.* 31, and *passim*.

⁶³ *Nov.Theod.* 3.7 (438): “Hac exceptione servata, ut apparitores memoratarum sectarum, in privatis dumtaxat negotiis, nullius iudicis sententias exsequantur, nec carcerali praesint custodiae,

triarch: because of Christian concerns about Jews having legal authority over them. But where this was not the case, the government was delighted to have Jews continue to serve in low-ranking public offices that kept the government going.

Roman Policy Toward Jewish Legal Status ca. 380-440 CE

Except for a few scattered brief references -- such as a brief aside in 452 about Christians who served as bad examples to Jews and pagans⁶⁴ -- these are the last discussions of Jews in the Roman legal sources for nearly a hundred years. By ca. 440, therefore, it would seem that the imperial government had become relatively satisfied with the position that had been established for the Jews in Roman law over the previous sixty years, and a few general observations might be made. First of all, these laws suggest that *lex Iudaica* continued to be valid not so much because of Roman respect for Jewish religion, which Roman legislators regularly disparaged, but because of the long Roman tradition of respect for the laws of other peoples -- *gentes, nationes*, and so on -- who came under their rule. But there also was a firm policy of not allowing Jews to benefit from their special legal status. Thus, Jews were liable to *munera* in the same way that Christians were. But even here, special consideration was made, at least at first, for Jewish religious Sabbath restrictions relating to (1) travelling away from home, and (2) taking part in official business.

It also would appear that some Jews were very familiar with Roman law and attempted to turn *lex Romana* and *lex Christiana* to their own legal advantage. There apparently existed a community of Jewish legal experts with extensive legal knowledge, plus access to court, who used Roman legal procedures and precedents as a means of gaining imperial support for maintaining Jewish customs and legal jurisdiction. Indeed, it may have been in this environment that the curious collection known as the *Collatio legum Mosaicarum et Romanarum* was compiled, probably around 400.⁶⁵ The *Collatio* attempts to demonstrate the similarities between Roman law and Jewish law, called the "law of Moses," on sixteen different topics, such as *De incestis nuptiis* ("On

ne Christiani, ut fieri assolet, nonnumquam obstrusi custodum odiis alterum carcerem patiantur, incertum, an iure videantur inclusi."

⁶⁴ CJ 1.1.4 (452): "Nam in contemptores huius legis poena non deerit, quia... Iudaeis et paganis ... profanant veneranda mysteria."

⁶⁵ See M. Hyamson, *Mosaicarum et Romanarum legum collatio* (London: Oxford Univ. Press, 1913); Constantin Hohenlohe, *Ursprung und Zweck der Collatio legum Mosaicarum et Romanarum* (Vienna: Mayer, 1935); Detlef Liebs, *Die Jurisprudenz im spätantiken Italien (260-640 n.Chr.)* (Berlin: Duncker & Humblot, 1987), 162-174; Robert M. Frakes, *Compiling the Collatio legum mosaicarum et Romanarum in Late Antiquity* (Oxford: Oxford Univ. Press, 2011).

Incestuous Marriages”), *De adulteriis* (“On Adultery”), *De falso testimonio* (“On False Testimony”), and *De familiaris testimonio non admittendo* (“On Not Allowing the Testimony of a Family Member”), topics of great interest to Jews regarding their interactions with Roman law. Curiously, however, the collection never mentions Jews specifically, perhaps because of a desire to focus on Jewish law, something that could be treated quite objectively, rather than on Jewish religious beliefs, something bound to create ill-will in a Christian audience. Although it has been suggested that the *Collatio* was the work of a Christian lawyer,⁶⁶ the many favorable references to the law of Moses, and the description of the Jewish Bible as “scriptura divina,” also might indicate Jewish authorship.

At the same time that the Roman government attempted to acknowledge the validity of Jewish ethnic law, it also realized that the restrictions against Jews did limit their ability to exercise their rights as Roman citizens. The Roman government thus at times seemed to try to reassure Jews that they were not, in fact, being picked on. In the law of 418 prohibiting Jews from holding imperial office, for example, the government sympathetically, but unconvincingly, asserted that this prohibition should not be interpreted as an indication of an imposition of the *nota infamiae*:

quibus cum debeant ista sufficere, interdictam militiam pro nota non debent aestimare.

Because the aforesaid privileges ought to suffice for them, they must not consider the prohibition of imperial service as a mark of infamy.⁶⁷

In Roman law, *infamia*, also known as *ignominia* or *existimatio*, was a form of *diminutio capitis*, that is, a restriction on the rights of a Roman citizen. It embraced a variety of legal disabilities, such as the loss of social rank, the inability to act or appear for someone else at law (such as, to serve as a guarantor, a trustee, a tutor, or a witness), the inability to make or receive testamentary bequests, and the inability to initiate a civil case.⁶⁸ These were some of the very disabilities that were being inflicted on the Jews, meaning that, in spite of government protests, Jews were in fact being stigmatized by the *nota infamiae*. Other legislation was quite explicit that the government did, in fact, intend to penalize Jews in this way. A law of 415, for example, even refers to

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⁶⁶ E.g., Frakes, *Compiling the Collatio*. WITHOUT PERMISSION OF THE PUBLISHER.

⁶⁷ *CTh* 16.8.24 (418).

⁶⁸ See, e.g., *Digest* 3.2, “De his qui notantur infamia”; also A.H.J. Greenidge, *Infamia: Its Place in Roman Public and Private Law* (Oxford: Oxford Univ. Press, 1894); A.H.J. Greenidge, *Infamia, and The Legal Procedure of Cicero’s Time* (Oxford: Oxford Univ. Press, 1901); Richard J.A. Talbert, *The Senate of Imperial Rome* (Princeton: Princeton University Press, 1984), 26–27; P. Garnsey, *Social Status and Legal Privilege in the Roman Empire* (Oxford: Clarendon, 1970).

the “Iudaica nota”⁶⁹ -- and may, in fact, have been the genesis of the reassurance in the 418 law. And a novel of Theodosius II referred to the Roman intention to punish -- *damnare* -- the Jews.⁷⁰ One thus can detect, just before and after the year 400, two contrary tendencies in Roman law: on the one hand, the overt traditional Roman respect for the legal systems of other peoples, and on the other, an underlying desire to impose aspects of the *nota infamiae* on the Jewish people.

Justinian and the Jews

The beginning of the reign of Justinian (527-565) brought a flurry of laws relating to the status of Jews and other heretics. A lengthy law customarily dated to 527 reiterated yet again the ban on the holding of public office by heretics, including Jews, while at the same time revealing that they had been doing just that

Eos autem intolerabilis audacia invasit et se legum sanctione neglecta militiis intruserunt, quarum tales homines participes fieri ipsa imperialium formarum verba manifesto prohibent

An intolerable audacity has seized them, and having disregarded the sanction of the laws they have intruded themselves into the imperial service, which such men are clearly, by the very words of imperial orders, prohibited from doing.⁷¹

One of the reasons this had been happening is not hard to find, for the same law heavily fined officials who knew of Jews holding office but did not dismiss them:

Sane ne magistratus quidem impunitos dimittimus, si, quos inter prohibitos a nobis esse cognoverint, eos officiis suis adnumerari sinant (excepta videlicet cohortalium militia), sed et ab iis poenam L auri librarum exigimus.

We do not of course let magistrates go unpunished if they permit to be enrolled in their own offices those known to them to be among those who are prohibited, with the service of the *cohortalini* of course excepted, but we exact from them a fine of 50 pounds of gold.⁷²

⁶⁹ *CTh* 16.8.22 (415) = *CJ* 1.9.15: “si Christianum vel cuiuslibet sectae hominem ingenuum servumve Iudaica nota foedare temptaverit vel ipse vel quisquam Iudaeorum, legum severitati subdatur. mancipia quoque Christianae sanctitatis si qua apud se retinet, secundum Constantinianam legem ecclesiae mancipientur.” IT MAY NOT BE DISTRIBUTED WITHOUT PERMISSION OF THE PUBLISHER.

⁷⁰ *Nov.Theod.* 3.6: “hominibus ... quos volumus huius constitutionis auctoritate damnare.”

⁷¹ *CJ* 1.5.12 (ca. 527). By this time, the blanket term heretic included anyone who was not an orthodox Christian, e.g. “haereticum enim vocamus, quicumque non est addictus ... orthodoxae sanctaeque fidei nostrae” (ibid.4).

⁷² *CJ* 1.5.12 (ca. 527). The *cohortalini* probably were excepted so long as they were not involved in law enforcement; see discussion of *Nov.Theod.* 3.6 above.

Subsequent paragraphs of the same law ordered that non-Christian parents of Christian children were required to support them, and the next law in this section, also undated and lacking an addressee but probably written ca. 527/529, repeated the same injunction.⁷³

Only a few years later at the most, heretics and Jews again were forbidden to hold public office, and additionally prohibited from being professors.⁷⁴ Jews who had pretended to convert were expelled from office.⁷⁵ In an attempt to restrict this practice, the law allowed only orthodox Christians to be the heirs of state officials, thus invalidating any bequests to Jews made by Jewish officials who were passing as Christians.⁷⁶ But the law also revealed, once again, that government officials were not investigating such cases with due diligence:

Nisi et ipse per subiectam sibi sacratorum palatinorum scholam et schola ipsa ... talia investigarit sontesque convenerit, ipsum quidem quinquaginta auri librarum poenam soluturum, subiectam autem ipsi scholam praeterquam quod corporalis poena in scholam competit, multam impositam in suum periculum tracturam.

If [the official], through the staff of sacred officials subject to him, and the staff ... fail to investigate such matters and to summon the guilty, he himself shall pay a fine of 50 pounds of gold and, in addition to the corporeal punishment the staff is liable to, his office staff will incur a risk of a fine on themselves.⁷⁷

The same law also ordered that in the case of mixed cohabitation, the children were to be brought up as orthodox Christians, demonstrating that the ban on intermarriages had not been obeyed.⁷⁸ Nor did the government attempt again here to prohibit such liaisons, suggesting how widespread the

⁷³ CJ 1.5.12; CJ 1.5.13 (ca. 527/529).

⁷⁴ CJ 1.5.18.4 (prior to 529): "Ut tali morbo affecti neque militent neque dignitate ulla fruantur, neque etiam sub specie professoris utique alicuius disciplinae simpliciorum animas ad ipsorum errorem trahant et hoc modo ignaviores eos adversus veram puramque orthodoxorum fidem reddant: sed iis solis docere et publicam annonam accipere permisimus, qui orthodoxae fidei sunt"; the blanket definition of "heresy" was reiterated, "haereses autem vocamus, quae aliter sentiunt et venerantur atque catholica et apostolica ecclesia et orthodoxa fides."

⁷⁵ CJ 1.5.18.5: "Si quis, ut militiam vel advocacionem vel dignitatem vel publicam curam adipiscatur... eum prorsus advocacione vel militia vel cura publica removeri iubemus."

⁷⁶ CJ 1.5.18.6: "Omnino enim in dignitatibus militiis advocacionibus positis vel iis perfunctis et universis, qui utique cuiusvis publicae curae vel favoris participes fuerunt, solos orthodoxos Christianos heredes existere iubemus, sive liberi sive cognati sive extranei ab iis instituti sint."

⁷⁷ CJ 1.5.18.11.

⁷⁸ CJ 1.5.18.8: "Si vero vir haereticus orthodoxae mulieri cohabitavit e contrario mulier haeretica orthodoxum virum habet, liberos eorum omnimodo orthodoxos fieri iubemus"; the use of the word *cohabitare* suggests that the government did not view these as true marriages because of the lack of the *ius conubii*, see R.W. Mathisen, "Provinciales, Gentiles, and Marriages between Romans and Barbarians in the Late Roman Empire," *Journal of Roman Studies* 99 (2009), 140-155.

practice must have been. In 529, the regulation that non-orthodox parents must care for orthodox children was again repeated,⁷⁹ and an additional wrinkle was added: if non-Christian parents had any orthodox Christian children, only the Christians could inherit.⁸⁰ One wonders whether this legislation induced any Jewish children to convert to Christianity and thus deprive their siblings of their inheritance. In 531, the right to testify in court was considered. Jews were forbidden to testify in criminal cases, but permitted to testify in private cases involving wills and contracts, “lest the ability to prove cases be made more difficult.”⁸¹ Once again, as already seen in the case of menial office holders, the government sometimes allowed common sense to prevail over penalization.

Shortly thereafter, in a Novel of 537, Jewish liability to curial *munera* was reiterated, along with an inability to enjoy any curial privileges, such as freedom from torture.⁸² On the other hand, in another nod to government self-interest, the restriction on Jews giving testimony against Christians was lifted so as to allow the government more effectively to track down persons liable to curial service.⁸³

How are we to interpret this sudden spate of early Justinianic laws dealing with Jews? In the late 520s, one of Justinian’s great initiatives was to create a new compilation of all Roman law.⁸⁴ One might suggest that, in much the same way that the publication of the Theodosian Code had resulted in additional Jewish legislation, the same legal initiative that resulted in the *Codex Iustinianus* in particular and the *Corpus iuris civilis* in general brought renewed imperial attention to the treatment of Jews. There may have been a realization that

⁷⁹ As in *CJ* 1.5.12, 1.5.13, and 1.5.18.

⁸⁰ *CJ* 1.5.19 (529): “Cognovimus multos esse orthodoxos liberos, quibus nec pater nec mater orthodoxae sunt religionis. Et ideo sancimus ... ii tantummodo liberi ad eorum successionem ... possint, qui orthodoxorum venerabili nomine sunt decorati: ceteris liberis eorum, qui non dei omnipotentis amorem, sed paternam vel maternam impiam adfectionem secuti sunt, ab omni beneficio repellendis.”

⁸¹ *CJ* 1.5.21 (531): “Sancimus contra orthodoxos quidem litigantes nemini haeretico vel etiam his qui Iudaicam superstitionem colunt esse in testimonia communionem, sive utraque pars orthodoxa sit sive altera... 3. Ceterum testamentaria testimonia eorum et quae in ultimis elogiis vel in contractibus consistunt, propter utilitatem necessarii usus sine ulla distinctione permittimus, ne probationum facultas angustetur.”

⁸² *Nov.Just.* 45: “Verbo nobis tua retulit eminentia, quosdam inter curiales esse Iudaeos ... et quoniam haeticos odio habemus, putant ... liberi curialium esse functionum et quae competunt his declinare... Quapropter curiam exercent huiusmodi omnes etiam nimis ingemiscentes et curialibus subiaceant functionibus, sicut etiam officialibus, ut dudum sancitum est. Et quoniam leges plurima praebent curialibus privilegia, et ut non caedantur et non exhibeantur neque ad aliam deducantur provinciam et alia plurima, horum nullo fruantur.”

⁸³ *Nov.Just.* 45.1: “Quoniam lex suspendit super orthodoxis testimonia haeticorum, propterea iudices pigere haec admittre: cum utique vanum metuant timorem qui huiusmodi repudiant suscipere testimonium.”

⁸⁴ See Tony Honoré, *Tribonian* (London: Duckworth, 1978).

past laws regarding restrictions on the Jews had been largely unobserved, and that Jews had been holding office, serving as advocates, enjoying exemptions from *munera*, and even punishing family members who converted to Christianity. That is, they had been acting like ordinary Roman citizens for a very long time. Justinianic legislators became concerned with reiterating and enforcing restrictions that had been issued more than a hundred years earlier. As a consequence, a number of laws were drafted, without dates or recipients, but whose placement in the code indicates they were issued at about the same time as the first edition of the code in 529, and one might suspect that they were created not so much for separate distribution as for inclusion in the Code.⁸⁵ These laws permit a number of concluding observations to be made regarding imperial treatment of Jews in Late Antiquity.

A few references to the *lex Iudaica* and the acknowledgment of separate Jewish customs were retained in the purely historical sections of the Code,⁸⁶ but the last such reference is dated to 393. In the current section of the Code, there is but a single reference to *Iudaica superstitio*.⁸⁷ In general, there now was a clarified legal hierarchy. Jews and certain privileged categories of Christian heretics occupied a shared legal middle ground between Roman citizens with unimpaired legal rights on the one hand, and pagans, Samaritans, and less-privileged heretics (Manichees, Borboritae, Montanists, Tascodrogi, and Ophiti), on the other.⁸⁸ The primary concern that resulted in limitations on Jewish rights was that Jews not exercise legal authority over Christians, especially in criminal cases. As a result, Jews were forbidden to hold public offices or, in general, to give legal testimony that would permit them to harm Christians, “as customarily happens,” the imperial legislators claimed.⁸⁹ But Jews were perfectly free to conduct private business affairs, to serve as decurions, *apparitores*, and *cohortalini*, and even to give testimony relating to wills or eligibility for curial service, in the same way as other Roman citizens.⁹⁰ On the face of things, the Jews had been fully incorporated into the Roman legal structure, with little further acknowledgment of idiosyncratic Jewish legal

⁸⁵ Found in *CJ* 1.5, entitled “De haereticis et Manichaeis et Samaritis,” beginning with *CJ* 1.5.12, which is followed by seven laws, all without dates and recipients and dated to the late 520s, which in turn are followed by *CJ* 1.5.19, issued in 529 to the praetorian prefect Demosthenes, 1.5.20, issued in 530, and 1.5.21, the last entry in this section, issued in 531 to the praetorian prefect Iohannes. In addition, *CJ* 1.9, entitled “De Iudaeis et Caelicolis,” begins with four entries prior to ca. 370, and concludes with 14 laws dated to 383–439.

⁸⁶ *Lex Iudaica*: *CJ* 1.9.4 (368/373); 1.9.5 (383); 1.9.7 (393); *ritus Iudaica*: *CJ* 1.7.2 (383); *mos Iudaeorum*: *CJ* 1.9.7 (393).

⁸⁷ *CJ* 1.5.21 (531): “qui Iudaicam superstitionem colunt.”

⁸⁸ See A. Mordechai Rabello, “The Samaritans in Justinian’s *Corpus Iuris Civilis*,” *Israel Law Review* 31 (1997), 724–743.

⁸⁹ *Nov.Theod.* 3.7 (438).

⁹⁰ E.g., *CJ* 1.5.21 (531).

practices. But on the other hand, there was the introduction of a new adverb, “Iudaice,” that it, “(to behave) in a typically Jewish way,” reflecting a now current stereotype relating to supposed Jewish “perfidy.”⁹¹

And finally, the repetitious nature of the regulations restricting Jewish rights -- nearly all of which were reissued several times -- along with the explicit wording of the laws themselves, indicate that, like much late Roman legislation, the laws were generally ineffective and represented what the imperial government wanted to happen rather than what was actually happening. It would appear that Roman officials were generally disinclined to enforce anti-Jewish regulations, and that Jews were continuing not only to serve in imperial and other office but also to intermarry with Christians. Indeed, we do not know of a single case where a Jew was dismissed from office or otherwise disadvantaged by these laws. The lack of interest in enforcing the laws also can be seen in the penalties established for imperial office staffs that failed to enforce the regulations.⁹² In fact, it would appear that, after the spate of Jewish legislation in the early fifth century, Jews were largely left to themselves and the laws regulating their behavior were largely ignored. It was only the process of the compilation and publication of the Theodosian Code in 437 and the Code of Justinian a century later that seem to have resulted in a short-lived review and reissuance of legislation regarding Jews. And one might suppose that after the 530s, many of the laws regulating Jewish life again fell into abeyance. Thus, just as it now appears that antipathies between Nicene and Arian Christians have largely been exaggerated,⁹³ it also would appear that the same goes for Jews, and that -- with the exception of spates of persecution stage-managed by ambitious Christian bishops⁹⁴ -- Christians and Jews generally co-existed quite peacefully.



⁹¹ *CJ* 1.1.8.12 (534): “contradicere Iudaice ausi sunt”; 1.1.8.21 (534), “Iudaice secundum Nestorii perfidiam denegata sunt”; 1.1.8.22 “qui Iudaice ausi sunt recte denegare fidem”

⁹² E.g., *CJ* 1.5.15 (ca. 527): “Sane ne magistratus quidem impunitos dimittimus; si, quos inter prohibitos a nobis esse cognoverint, eos officiis suis adnumerari sinant (excepta videlicet cohortalium militia), sed et ab iis poenam L auri librarum exigimus.”

⁹³ See Ralph Mathisen, “Ricimer’s Church in Rome: How an Arian Barbarian Prospered in a Nicene World,” in N. Lenski, A. Cain, eds., *The Power of Religion in Late Antiquity* (London: Ashgate, 2009), 307-326.

⁹⁴ As on Minorca in 418, see Bradbury, *Severus*.



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STATUT DES JUIFS, STATUT DE LIBRE DANS L'OCCIDENT DU HAUT MOYEN ÂGE : L'EXEMPLE IBÉRIQUE

Céline MARTIN

À la suite de Bernhard Blumenkranz, les historiens considèrent souvent que le traitement réservé aux juifs dans le royaume visigoth catholique (589-711) constitue une persécution sans équivalent dans l'Occident de l'époque, « la plus tragique aventure des Juifs pendant le Haut Moyen Âge¹ ». En effet, après avoir fait l'objet de différentes mesures de dégradation civique au cours du VII^e siècle, les juifs de statut libre y sont finalement réduits en esclavage en 694, sous le roi Égica. Ce retrait collectif de l'ingénuité est habituellement présenté comme un cas monstrueux et unique, au point que certains historiens ont parlé de « solution finale » à son sujet². L'aveuglement des autorités hispaniques et la collusion des pouvoirs civil et ecclésiastique auraient conduit au « drame espagnol³ », une sorte d'anticipation des ravages de l'Inquisition espagnole au XV^e siècle. Mettre ainsi à part la situation ibérique comme un cas d'espèce exceptionnel dont la monstruosité finit par tenir lieu d'explication obscurcit, sans aucun doute, le sens de ce processus de dégradation. Ce choix est d'autant moins justifiable aujourd'hui que les médiévistes contestent de plus en plus l'idée, enracinée dans l'historiographie du XX^e siècle, d'un particularisme hispanique au sein de l'histoire médiévale occidentale. Nous proposons donc ici de remettre en contexte le cas ibérique pour essayer d'en rendre compte sans tomber dans l'anachronisme. Il convient aussi d'avoir bien présent à l'esprit qu'au haut Moyen Âge l'opposition entre libres et non-libres est le reflet d'un ensemble de normes, mais pas toujours des conditions de vie réelles, ni des rapports sociaux qui caractérisent la société à laquelle elle s'applique. Cette distinction nette en apparence cache en fait un certain nombre de zones d'ombre où la frontière des statuts est incertaine, d'autant plus qu'existe une tendance plus ou moins rapide à l'effacement de l'opposition entre libres et non-libres. Cet effacement est observable dans une bonne partie de l'Occident du haut Moyen Âge, pas seulement en Hispanie ; mais, alors qu'il résulte souvent d'une évolution de fait, en Hispanie il est inscrit dans le droit. C'est donc après un long mais indispensable détour par le contexte juridique hispanique du VII^e siècle que nous essaierons de réinter-

¹ B. BLUMENKRANZ, *Juifs et chrétiens dans le monde occidental. 430-1096*, Paris - La Haye, 1960, p. 105.

² Notamment L. GARCÍA IGLESIAS, *Los judíos en la España antigua*, Madrid, 1978, p. 129 sq.

³ B. BLUMENKRANZ, *op.cit.*, p. 105.

préter les attaques contre le statut juridique des juifs libres qui s'y sont produites⁴.

Le contexte juridique du VII^e siècle hispanique

Le statut juridique des simples libres a tendance à se diluer dans l'Occident du VII^e siècle. Il s'agit d'une évolution générale qui se produit à des rythmes variables suivant les régions, mais qui est particulièrement visible en Hispanie en raison du volume exceptionnel qu'y atteint la production normative, tant législative que conciliaire. Dans la péninsule Ibérique on observe ainsi un rapprochement progressif des statuts libres et non-libres, en même temps que la multiplication des peines dégradantes portant atteinte à la liberté juridique, le *status libertatis*.

En premier lieu, la distinction entre libres et non-libres, qui était fondamentale en droit romain, voit ses contours s'éroder sensiblement au VII^e siècle, sans disparaître encore⁵. Les *serui* sont devenus moins incapables en droit visigothique qu'ils ne l'étaient à Rome. On peut prendre l'exemple des crimes commis par un esclave *domino iubente* : s'ils sont encore, le plus souvent, imputés au maître seul, dans le cas particulier d'un homicide commis sur ordre le maître encourt la mort, mais l'esclave est désormais lui aussi puni en tant qu'auteur matériel, et subit 200 coups de fouet et la *decaluatio*⁶. Autre innovation, dans les cas d'éloignement du maître, l'esclave peut agir en justice (pour lui-même et non en représentation du *dominus*) contre un libre qui lui a porté



⁴ Cette contribution prend la suite d'un article écrit en commun avec Capucine Nemo (C. NEMO-PEKELMAN et C. MARTIN, « Les juifs et la cité. Pour une clarification du statut personnel des juifs de l'Antiquité tardive à la fin du royaume de Tolède (IV^e-VII^e siècles) », *Antiquité tardive* 16 (2008), p. 223-246). Elle développe et prolonge certaines idées et en nuance d'autres plus ou moins fortement.

⁵ Cette évolution, déjà détectable au IV^e siècle (J. ANDREAU et R. DESCAT, *Esclave en Grèce et à Rome*, Paris, 2006, p. 257-258) parviendra à son terme avant l'an mil, quoiqu'il n'y ait toujours pas de consensus entre historiens sur le moment où « finit l'esclavage antique ».

⁶ LV, VI, 5^r, 12^a. Cf. C. PÉDIT, « Crimen y castigo en el reino visigodo de Toledo », in *La peine II. Recueils de la Société Jean Bodin*, 56, Bruxelles, 1991, p. 31-33. La *decaluatio* est une atteinte corporelle dégradante dont la teneur exacte est discutée (il s'agit d'enlever les cheveux, mais avec quelle proportion de cuir chevelu ?), et qui accompagne généralement une autre peine. Cf. la discussion lors de la conférence de Saint Marin de 1996 : M. DE JONG, « Adding insult to injury: Julian of Toledo and his *Historia Wambae* », in *The Visigoths from the Migration Period to the Seventh Century. An Ethnographic Perspective*, P. HEATHER (éd.), Woodbridge, 1999, p. 390 sq.

tort⁷. D'autres exemples encore⁸ montrent que le *seruus* visigothique possède certains éléments constitutifs de la personnalité juridique⁹.

Cette évolution conduit à rapprocher les esclaves de la catégorie inférieure des libres, celle des *minores* – le législateur hispanique du VII^e siècle parle plutôt d'*humiliores* ou d'*inferiores*. En effet, dans la lignée du droit romain tardif, les *ingenui* eux-mêmes ne sont pas tous égaux face au droit. Comme les non-libres, les *humiliores* encourent des peines physiques (généralement des coups de fouet) là où les *nobiliores* ne répondent de leur crime que sur leurs biens. En outre, la capacité des *minores* à intenter des procès criminels est limitée par le statut de leur adversaire : une loi de Chindaswinth interdit l'*inscriptio* (action pénale) d'un plus puissant par un *inferior*¹⁰, la torture judiciaire nécessaire pour établir la vérité ne pouvant être appliquée que si l'accusateur est de statut égal ou supérieur à l'accusé.

Dans le même ordre d'idées, il faut remarquer la transformation progressive, mais particulièrement éloquente, du statut intermédiaire des libres non ingénus, les affranchis : ceux-ci perdent certaines prérogatives des libres de naissance et sont peu à peu rapprochés des esclaves¹¹. Leur *wergeld* est ainsi, dans un cas au moins, ramené à la moitié de celui d'un libre¹². Le témoignage en justice, qui ne leur était fermé au départ que contre leur ancien maître, leur est totalement retiré par Recceswinth en 654¹³. Enfin leurs obligations envers lui, généralement connues sous le nom d'*obsequium*, tendent à se pérenniser. Une nouvelle d'Égica, au tournant du siècle, rend l'*obsequium* exigible par les descendants du *dominus* et prive automatiquement de liberté l'affranchi qui ne s'en acquitte pas, sans nécessité pour les patrons lésés d'intenter contre lui une *ingrati actio*¹⁴. Dans la législation conciliaire, le régime des affranchis

⁷ LV, II, 2, 9. Cf. C. PETIT, *Ivstitia gothica. Historia social y teología del proceso en la Lex Visigothorum*, Huelva, 2001, p. 119-120.

⁸ Cf. le passage en revue de P. D. KING, *Law and Society in the Visigothic Kingdom*, Cambridge, 1972, p. 172 sq. et celui de C. PETIT, *Ivstitia gothica, op. cit.*, p. 124-136.

⁹ Sa personnalité juridique est plus développée que celle de l'esclave romain, qui depuis le Principat n'en était pas totalement dépourvu : cf. P.-F. GIRARD, *Manuel élémentaire de droit romain*, Paris, 1929, p. 104-109.

¹⁰ LV, VI, 1, 2.

¹¹ D. CLAUDE, « Freedmen in the Visigothic Kingdom », in *Visigothic Spain: New Approaches*, E. JAMES (éd.), Oxford, 1980, p. 159-188, est une référence fondamentale. Cf. C. NEMO-PEKELMAN et C. MARTIN, *art. cit.*, p. 238.

¹² Suivant une correction d'Ervice (a. 681) à la loi LV VIII, 4, 16 sur l'accident mortel du fait d'un animal domestique.

¹³ LV, V, 7, 12.

¹⁴ LV, V, 7, 20. La loi est toujours interprétée comme s'appliquant à quatre générations de patrons : l'ancien *dominus*, ses enfants, petits-enfants et *qui ex nepotibus fuerint geniti* (« ceux qui naîtront de leurs petits-enfants »), c'est-à-dire les arrière-petits enfants. Néanmoins cette expression peut très bien désigner l'ensemble de la descendance ultérieure, ce qui revient à rendre perpétuel le lien de dépendance.



ecclésiastiques avait connu dès 633 le même durcissement¹⁵, qui se généralise donc à la fin du VII^e siècle. Il semble finalement assez vraisemblable qu'en Péninsule la convergence des statuts personnels dans la dépendance indifférenciée du haut Moyen Âge se soit réalisée autour de la figure de l'affranchi tardo-antique, comme l'a proposé Pablo C. Díaz¹⁶.

Quoi qu'il en soit, on assiste bien au VII^e siècle à un nivellement juridique des conditions inférieures (*serui, liberti* et ingénus *humiliores*) qui conduit à gommer la barrière autrefois nette séparant les libres des non-libres¹⁷ : c'est un premier coup porté au statut d'ingénuité. Dans le même temps, celui-ci se trouve aussi entamé dans sa stabilité, un homme de naissance libre pouvant se trouver exposé à diverses peines de dégradation civique.

De fait, les peines romaines portant atteinte à la personnalité juridique – non seulement la *capitis deminutio*, mais aussi les peines dégradantes qui ne vont pas jusqu'à entraîner la mort civile, comme l'*infamia* – survivent à l'époque visigothique¹⁸. La documentation, tant normative que narrative, suggère même qu'elles deviennent plus répandues. Certes, il peut s'agir d'un effet de sources, mais cette diffusion peut aussi bien s'expliquer par le recul au haut Moyen Âge de la peine de mort, fréquente en droit romain¹⁹, et qui est désormais généralement remplacée par une exclusion plus ou moins radicale du condamné.

L'exclusion la plus grave, la *capitis deminutio maxima*, revenait à la privation de liberté juridique. Un certain nombre de lois visigothiques prononce la réduction en esclavage, et ce pour des crimes très variables : pour le juge qui a torturé un accusé jusqu'à la mort et ne peut payer l'amende colossale de 500 sous²⁰, pour le libre qui a consulté un devin sur la mort d'un homme, et tout



¹⁵ *Conc. Tol. IV*, c. 70. L'affranchi ecclésiastique ne perd jamais son lien de dépendance envers l'Église, puisque celle-ci « ne meurt jamais ».

¹⁶ P. C. DÍAZ, « El testamento de Vicente: propietarios y dependientes en la Hispania del siglo VI », in 'Romanización' y 'Reconquista' en la Península Ibérica: nuevas perspectivas, M. J. HIDALGO DE LA VEGA, D. PÉREZ SÁNCHEZ et M. J. RODRÍGUEZ GERVÁS (éd.), Salamanque, 1998, p. 257-270.

¹⁷ Nous ne nous étendons pas sur un autre aspect pourtant significatif : l'imprécision croissante de la terminologie, qui conduit à appeler *ingenuus* un affranchi (une licence qui apparaît dans les formules visigothiques de manumission mais qui existait déjà en droit post-classique, cf. E. CÓRCOLES OLAITZ, « The manumission of slaves in the view of the *Formulae Visigothicae* », *Veleia* 23 (2006), p. 339-350) ou à désigner la condition du *seruus* et du *libertus* par le même mot de *seruitus* (*Conc. Tol. III*, c. 6 ; *LV*, V, 7, 17).

¹⁸ Cf. P.-F. GIRARD, *op. cit.*, p. 208 sq.

¹⁹ Le recul de la peine de mort peut être lié à l'influence de l'Église, à l'évolution des esprits ou à la rareté de l'homme. Sur le probable creux démographique provoqué par la peste au VII^e siècle, cf. L. K. LITTLE (éd.), *Plague and the End of Antiquity. The Pandemic of 541-750*, Cambridge, 2007.

²⁰ *LV*, VI, 1, 2 (version d'Erville).

particulièrement du prince²¹, pour la femme libre qui a procuré à une autre un breuvage abortif²², ou pour l'*humilior* qui altère une pièce de monnaie²³.

Une autre peine qui, suivant la tradition romaine, se substitue souvent à la peine de mort est l'exil : ainsi le parricide qui s'est réfugié dans une église voit sa peine commuée en exil perpétuel avec transmission automatique de ses biens à ses héritiers²⁴. La plus douce des formes d'exil, la relégation, n'emporte pas en général la suppression du *status ciuitatis*, contrairement à la déportation, qui, elle, entraîne automatiquement la perte des droits civiques et des biens²⁵, c'est-à-dire une *capitis deminutio media*²⁶. J'ai relevé, dans le *Liber Iudiciorum*, neuf incriminations qui font encourir l'exil (simple ou aggravé), à l'exclusion des lois relatives aux juifs, sur lesquelles je vais bien sûr revenir. L'exil n'est donc pas une peine très répandue : peine publique par excellence, il ne sanctionne en fait que les délits publics. Néanmoins son apparition dans les sources narratives²⁷, voire épistolaires²⁸ prouve qu'il est bien vivant.

Il ne sera pas question ici de la *capitis deminutio minima*, qui exclut le condamné de la *familia* romaine, et qui n'a donc plus vraiment de sens dans l'Occident du VII^e siècle. En revanche, un autre legs de la tradition romaine a survécu et même prospéré dans le royaume de Tolède : il s'agit de l'*infamia*²⁹, qui n'est plus attachée collectivement à certaines professions, mais survit en tant que peine infligée à un individu. Cette déchéance civique rend la parole de l'infâme irrecevable par le reste de la société : elle affecte donc en premier lieu sa capacité à être témoin, pour la rédaction d'un acte ou devant un tribunal. Elle frappe, d'après une loi de Chindaswinth (*De personis, quibus testificari non liceat* : « Des personnes qui n'ont pas le droit de témoigner »), les assassins, les sorciers, les devins, les voleurs, les auteurs de rapt, de faux témoignages



²¹ LV, VI, 2, 1.

²² LV, VI, 3, 1.

²³ LV, VII, 6.

²⁴ LV, VI, 5, 18.

²⁵ L'exil à l'époque wisigothique demanderait une étude systématique ; on trouve parfois une confusion chez les auteurs entre exil volontaire et peine d'exil, expulsion du territoire et assignation à résidence. Sur l'exil à la fin de l'Empire, cf. R. DELMAIRE, « Exil, relégation, déportation dans la législation du Bas-Empire », in *Exil et relégation : Les tribulations du sage et du saint durant l'Antiquité romaine et chrétienne (I^{er}-VI^e siècle après J.-C.)*, Ph. Blaudeau (éd.), Paris, 2008, p. 115-132.

²⁶ L'imprécision du vocabulaire rend certes parfois difficile de déterminer si l'on est en présence d'une relégation perpétuelle ou d'une déportation, et donc s'il y a dégradation civique.

²⁷ Notamment la *Chronique* de Jean de Biclarie et les *Vitas Sanctorum Patrum Emeritensium*, mais aussi les sources postérieures comme la *Chronique de 754* ou les *Chroniques asturiennes*.

²⁸ Les *Epistulae wisigothicae* (in *Miscellanea Wisigothica*, éd. J. Gil, Séville, 1972, p. 3-68).

²⁹ Cf. Th. MOMMSEN, *Droit pénal romain* III, Paris, 1907, p. 345-350 et P.-F. GIRARD, *op. cit.*, p. 214-215. L'étendue de l'*infamia* en droit romain ne fait pas l'unanimité, mais ce n'est pas important pour notre propos.

et de sortilèges³⁰. Une autre loi de Chindaswinth fixe expressément des effets bien plus étendus de la peine d'*infamia* : les religieux coupables de renoncer à l'habit ecclésiastique qui sont frappés d'*infamia* sont privés du témoignage, mais aussi de leur *ius accusandi* et de la représentation en justice³¹. Il est possible, mais aucunement certain, que l'*infamia* visigothique ait systématiquement produit toutes ces incapacités processuelles, voire l'impossibilité d'exercer des charges publiques³². Elle n'est en tout cas pas équivalente à la suppression totale des droits civiques : il ne s'agit que d'une déchéance partielle. On retiendra qu'elle s'est sensiblement répandue en droit visigothique par rapport au droit romain ou aux autres droits barbares³³, ce qui met en évidence le lien très fort y unissant statut personnel et « honorabilité » de l'individu.

Ces différentes peines remettant en cause de manière plus ou moins profonde le statut d'ingénuité ont en effet une dernière caractéristique remarquable : elles s'appliquent tout particulièrement (pas seulement, toutefois) aux coupables d'un crime de *maiestas*, c'est-à-dire de tout crime politique, tentative de coup d'État, trahison et alliance avec l'ennemi³⁴, non accomplissement des obligations militaires³⁵, dont la punition est normalement la mort. Or le *crimen maiestatis* paraît intégrer désormais le crime contre Dieu, *fides* politique et *fides* religieuse étant inextricablement unies³⁶ : c'est pourquoi l'hérésie est punie d'exil perpétuel et de confiscation des honneurs et des

³⁰ LV, II, 4, 1. L'*infamia* n'est pas nommée dans cette loi, mais elle y a été identifiée à juste titre par Carlos Petit (C. PETIT, « 'Iustitia' y 'Iudicium' en el reino de Toledo. Un estudio de teología jurídica visigoda », in *La Giustizia nell'alto medioevo, XLII Sett. di studio del CISAM*, Spolète, 1995, p. 843-932 (p. 905)).

³¹ LV, III, 5, 3.

³² C'est l'avis de C. PETIT, *Iustitia gothica*, op. cit., p. 94 sq. Toutefois, si l'*infamia* concernait toujours tant le témoignage que la capacité d'agir en justice, il est un peu étonnant que le législateur prenne la peine d'en énumérer les divers effets en LV, III, 5, 3 et ne mentionne au contraire que le témoignage en LV, II, 4, 1 (tout comme en LV, II, 4, 11).

³³ C'est Carlos Petit (notamment « 'Iustitia' y 'Iudicium' », art. cit.) qui a signalé ce phénomène. Il propose de l'expliquer par l'importance donnée à la *fides*, qui est indissociablement politique et religieuse : les sujets qui ne la respectent pas s'excluent eux-mêmes de la *iustitia*.

³⁴ LV, II, 1, 8 dans la version d'Ervice : la mort peut être commuée, soit en énucléation, soit en déportation.

³⁵ Ainsi la loi militaire de Wamba (LV, IX, 2, 8 : déportation pour les clercs supérieurs, servitude pour les laïcs et les clercs inférieurs) et celle d'Ervice (LV, IX, 2, 9 : relégation pour les laïcs *honestiores*, servitude pour les *humiliores*).

³⁶ Je reprends le raisonnement de Carlos Petit. Selon Yan Thomas (« L'institution de majesté », *Revue de synthèse*, IV, 3-4 (1991), p. 331-386, spécialement p. 342-343), le crime de majesté romain est purement politique, son volet religieux n'étant apparu qu'au Moyen Âge (central), à la faveur de la réélaboration doctrinale liée à la poursuite de l'hérésie. Il me semble néanmoins que cette évolution est déjà décelable dans le royaume de Tolède.

biens³⁷ ; c'est pourquoi aussi, comme nous allons le voir à présent, de telles peines dégradantes sont appliquées aux juifs.

Dans le royaume de Tolède du VII^e siècle, le statut de libre n'est donc ni uniforme, ni monolithique, il se distingue parfois mal de la servitude, et surtout il n'est pas permanent. Nombreux sont les « libres » qui sont moins libres que d'autres, en raison de leur naissance ou parce qu'ils sont sous le coup d'une sentence judiciaire. Le régime visigothique a en effet maintenu et enrichi la tradition romaine des peines dégradant la personnalité juridique, en les appliquant tout particulièrement aux coupables de crime politique et religieux, les deux étant d'ailleurs largement confondus.

La législation contre les juifs et l'asservissement de 694

Les mesures prises contre les juifs du royaume visigothique ont déjà été détaillées à de nombreuses reprises, je passerai donc ici très rapidement sur leur contenu, pour privilégier leur interprétation ; par ailleurs, je m'occuperai uniquement de celles qui remettent en cause la capacité juridique des juifs libres. Rappelons pour commencer que la législation impériale, à travers le *Bréviaire*, lègue au royaume visigothique une situation où la capacité juridique de ces derniers a déjà été écornée : ainsi ils ne peuvent exercer de charges publiques³⁸, ni épouser de femmes chrétiennes³⁹.

Une application de l'*infamia* aux juifs par Recceswinth ? L'atteinte suivante à la personnalité juridique des juifs, par le IV^e concile de Tolède en 633, prend la forme d'un retrait du droit de témoigner (*testificandi licentia*) aux juifs baptisés⁴⁰ (les juifs ont été soumis vers 615 à un baptême forcé à l'échelle du royaume, mais avec une efficacité inconnue). La cible exacte du canon n'est pas claire : il peut avoir visé les seuls apostats ou bien l'ensemble des juifs baptisés. Une vingtaine d'années plus tard (653-654), cette dégradation est en tout cas complétée par deux lois de Recceswinth⁴¹, dont l'une étend l'interdiction de témoignage aux juifs non baptisés, et l'autre l'applique en outre à l'action en justice contre des chrétiens (*actio civilis* et *inscriptio* pénale). Néanmoins les tribunaux publics demeurent accessibles aux juifs pour leurs affaires propres : ils conservent donc un reste de *ius agendi*.

On pourrait comprendre ces mesures de la première moitié du VII^e siècle affaiblissant la capacité juridique des juifs comme une sorte d'*infamia* (rappe-

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³⁷ LV, XII, 2, 2 de Recceswinth (une loi qui vise les hérétiques et non les juifs)^{SHER}.

³⁸ Nov. Theod. II, 3, § 2.

³⁹ LRV III, 7, 2 = C. Th. III, 7, 2 et LRV IX, 4, 4 = C. Th. IX, 7, 5.

⁴⁰ Conc. Tol. IV, c. 64. L'ordonnement juridique du royaume visigothique repose sur la législation civile et conciliaire à la fois. Un « édit de confirmation » du concile par le roi a parfois été conservé, mais pas pour Tolède IV.

⁴¹ LV, XII, 2, 10 et LV, XII, 2, 9 respectivement.

lons que, justement, sa portée exacte est incertaine, entre l'interdiction du seul témoignage et celle de l'action en justice) infligée en raison de l'apostasie qui leur est reprochée. Le terme *infamis* apparaît d'ailleurs dans la seconde loi :

Si coram hominibus repperum mendacium et infamem facit et damnis adfligit, quanto magis in diuina fallax fide peruentus non erit penitus ad testimonium admittendus. Merito ergo testificari proibiti sunt Iudei, seu baptizati, siue non extiterint baptizati. De stirpe autem illorum progeniti si morum prouitate et fidei plenitudine habeantur idonei, permittitur illis inter christianos ueredica quidem testificandi licentia, sed non aliter, nisi sacerdotem, regem uel iudicem mores illorum et fidem omnimodis comprobantes⁴².

Si on la lit attentivement, il apparaît pourtant qu'il ne s'agit pas exactement de sanctionner une apostasie, puisque tout le groupe des juifs (*seu baptizati, siue non extiterint baptizati*) est interdit de témoignage ; or les non-baptisés ne peuvent, par définition, être considérés comme des apostats. En réalité, l'infamie est appliquée à tous les juifs par un raisonnement analogique (*si... quanto magis*), et elle s'apparente plus à l'infamie telle qu'elle était pratiquée à Rome, où elle était infligée à des groupes entiers en raison de leur condition, qu'à l'infamie visigothique, qui, comme on l'a vu, n'était plus vivante que comme peine frappant un individu pour un comportement délictueux. D'ailleurs la loi de Recceswinth ajoutant à l'interdiction de témoigner celle de l'action en justice contre des chrétiens (LV, XII, 2, 9) fait plutôt fond de l'idée de différence de condition, sans recourir même à une analogie de sanction pénale : l'impossibilité d'accuser les chrétiens au tribunal assimile les juifs à des *humiliores* face à des chrétiens qui, par rapport à eux, auraient la position de *nobiliores*⁴³. Il faut donc interpréter ces deux lois avec précaution : certes, cette nouvelle dégradation civique des juifs est une conséquence du baptême forcé et de l'apostasie qui l'a suivi, et elle s'inscrit dans l'édifice juridique visigothique ; néanmoins les juristes de Recceswinth ont dû faire un petit effort intellectuel pour la mettre en place, car elle ne découle pas mécaniquement de l'application du droit en vigueur, en tout cas pas du droit pénal. On retrouvera cette créativité juridique à l'œuvre à la fin du siècle.

La *capitis deminutio media* des juifs décrétée par Ervige. Les vingt-huit nouvelles du *libellus* (LV, XII, 3) annexé par le roi Ervige en 681 au *Liber Iudiciorum*

⁴² « Si, lorsqu'un mensonge est découvert publiquement, il rend infâme et inflige des peines [à son auteur], à plus forte raison celui qui s'est avéré trompeur dans la foi divine ne devra absolument pas être admis à témoigner. C'est donc à bon escient que les juifs se sont vus interdire le témoignage, qu'ils soient baptisés ou non baptisés. Quant à leurs descendants, si on considère qu'ils remplissent les conditions de probité des mœurs et de plénitude de foi, il leur est accordé la licence de témoigner véridiquement parmi les chrétiens ; non sans toutefois qu'un prêtre [ou : un évêque], le roi ou un juge civil n'approuve de toutes manières leurs mœurs et leur foi. » (LV, XII, 2, 10).

⁴³ Cf. n. 10 LV, VI, 1, 2 de Chindaswinth.

visent essentiellement à encadrer un nouveau baptême forcé des juifs, en sanctionnant les écarts des « nouveaux convertis⁴⁴ ». Après la nouvelle liminaire ayant pour objet de confirmer la législation des rois antérieurs, les deux lois suivantes prononcent la déportation assortie de peines corporelles et humiliantes (*decaluatio* et coups de fouet), c'est-à-dire la mort civile des contrevenants, sans s'en prendre toutefois encore à leur *status libertatis*, c'est-à-dire sans les réduire à l'état d'esclaves. La première (XII, 3, 2, *De blasphematibus sanctae trinitatis*) punit le blasphème de la Trinité et la profanation des espèces eucharistiques. D'après Bernhard Blumenkranz, elle concerne exclusivement les juifs, ce que je crois faux. On remarque en effet que cette loi ne les nomme pas, contrairement à toutes les suivantes, et qu'elle porte sur la Trinité, un thème nettement plus « sensible » pour un hérétique que pour un juif, ainsi que sur le refus de communier (il ne s'agit pas de la profanation du baptême). En outre la nouvelle qui introduit le *libellus* (XII, 3, 1) consacre pas moins de quinze lignes à la seule loi de Recceswinth sur l'hérésie⁴⁵ avant de confirmer les lois anciennes sur les juifs. En toute cohérence et pour respecter cet ordre des matières, la loi suivante, XII, 3, 2, traite elle aussi de l'hérésie, et les vingt-six nouvelles suivantes, des juifs.

Si XII, 3, 2 ne nous concerne pas, nous nous arrêterons en revanche sur la nouvelle XII, 3, 3, qui n'est autre que le décret de baptême forcé d'Ervice. Tout juif qui ne s'y sera pas soumis dans un délai d'un an sera puni par la confiscation de son patrimoine et la déportation. Nous sommes ici en présence d'une atteinte à la personnalité juridique des juifs qui va bien au-delà des mesures restrictives du milieu du siècle. Il s'agit d'une *capitis deminutio media*, telle qu'on l'a rencontrée plus haut. Or, si ce retrait du *status ciuitatis* venait habituellement sanctionner un crime, notamment dans le cadre de la déportation, il ne punit pour les juifs visigothiques aucun délit caractérisé (il ne s'agit pas de profanation ou d'apostasie), mais la seule résistance au baptême. Il semblerait qu'un pas ait été franchi, si l'on oubliait le précédent sans doute plus extrême de 615 : le baptême forcé de Sisebut fut peut-être imposé sous peine de mort⁴⁶, celui de 681 ne l'est que sous peine de mort civique. L'adoucissement de la peine (conforme à une évolution générale du VII^e siècle) conduit, paradoxalement, à banaliser la remise en cause de la personnalité juridique des juifs. Il est très possible qu'il ait aussi entraîné une plus large application du

⁴⁴ LV, XII, 3.

⁴⁵ LV, XII, 2, 2 (cf. n. 37); MAY NOT BE DISTRIBUTED WITHOUT PERMISSION OF THE PUBLISHER.

⁴⁶ Conformément au très large usage de la peine capitale dans le droit romain tardif. Néanmoins, contrairement à celui d'Ervice, le décret de Sisebut n'a pas été conservé ; et il est très possible qu'il n'ait pas prévu de sanction, comme beaucoup de constitutions impériales. Cf. B. BLUMENKRANZ, *op. cit.*, p. 123 et R. GONZÁLEZ SALINERO, *Las conversiones forzosas de los judíos en el reino visigodo*, Rome, 2000, p. 29-30, pour une discussion de la sanction ou de l'absence de sanction du baptême forcé de Sisebut.

nouveau décret de baptême forcé que de celui de Sisebut, en rendant sa répression plus aisée et plus motivante pour les autorités⁴⁷.

Les lois suivantes du *libellus* d'Ervice, dirigées contre l'observance par les nouveaux convertis des fêtes juives ou des interdits alimentaires, contre les pratiques matrimoniales juives, la lecture des livres juifs, la circoncision, etc., sont sanctionnées exactement de la même façon, par la confiscation des biens et la déportation avec *decaluatio* et coups de fouet. En somme, tous les juifs, baptisés (XII, 3, 4 à 28) ou non (XII, 3, 3), encourent désormais la perte de leur *status ciuitatis* dans le cas où ils ne se soumettraient pas strictement aux prescriptions de la religion catholique⁴⁸.

L'asservissement de 694. Le dernier roi visigoth à avoir légiféré sur les juifs est Égica, en 693-94. Sa nouvelle de 693, *De perfidia iudaeorum*⁴⁹, s'en prend aux juifs du point de vue économique, à travers l'impôt spécial qu'ils doivent acquitter et leur accès au *cataplus*⁵⁰ pour commercer. Elle ne nous intéresse ici que de manière marginale, en raison de la sanction qu'elle prévoit pour les juifs coupables de pratiques commerciales illicites (le commerce est permis entre chrétiens et juifs sincèrement convertis et interdit avec les juifs apostats et profanateurs, qui n'ont le droit de commercer qu'entre eux) : leur personne et leurs biens sont agrégés au fisc⁵¹. Cette sanction ne menace pour l'instant que les marchands, mais elle anticipe la mesure généralisée qui, l'année suivante, réduira tous les juifs à l'état d'esclaves du fisc.

En 694, donc, et comme le requiert le roi Égica dans son discours d'ouverture⁵², le XVII^e concile de Tolède dépouille les juifs, non plus de leur droit de cité seul, mais encore de leur *status libertatis*. Son canon 8 décrète la confiscation de tous les biens des juifs et leur réduction en esclavage, ainsi que celle de leurs femmes et de leurs enfants. Ils seront dispersés dans toute l'Hispanie

⁴⁷ On peut peut-être rappeler le précédent de la relativement inefficace législation de Constance II contre les rites païens (*C.Th.* XVI, 10, 6), établissant la peine de mort, face à celle de Théodose et ses fils qui ne les sanctionnait que par la confiscation (*C.Th.* XVI, 10, 12).

⁴⁸ Ces conclusions égratignent sensiblement les affirmations de B. Blumenkranz, qui voyait dans le *libellus* d'Ervice un quasi-statut juif, sauf qu'il était adressé uniquement aux juifs baptisés (B. BLUMENKRANZ, *op. cit.*, p. 301). On voit en fait que ces nouvelles concernent tous les non-catholiques : hérétiques, juifs baptisés apostats et juifs non baptisés, même si les premiers préoccupent nettement moins le législateur que les suivants.

⁴⁹ *LV*, XII, 2, 18.

⁵⁰ Le lieu des ports hispaniques où se déroulent les opérations commerciales entre négociants.

⁵¹ ... *Nam et quicumque de eisdem iudeis in infidelitate perdurantibus ad cataplum ire presumpserit, aut cum quolibet christiano aliquod commercium egerit, cum omni ambitione rerum suarum obiurgatus perpetim fisco erit seruiturus.* (« Et tout juif persistant dans l'infidélité qui oserait se rendre au *cataplus* ou qui commercerait de quoi que ce soit avec un chrétien, qu'il soit puni et obligé de servir le fisc à perpétuité avec tous ses biens » : *LV* XII, 2, 18, éd. ZEUMER p. 427, l. 23-26).

⁵² *Conc. Tol. XVII, tomus regius*, éd. J. VIVES, *Concilios visigóticos e hispano-romanos*, Barcelone - Madrid, 1963, p. 524.

et le roi les livrera à qui lui plaira ; tout retour futur à l'*ingenuitatis status* est exclu⁵³. Le canon énonce d'autres dispositions relatives à leurs biens, leurs esclaves et leurs enfants, mais elles sont secondaires pour nous. Nous avons déjà proposé plusieurs explications à cette mesure exceptionnelle et sans précédent⁵⁴, et nous ne reviendrons ici que sur le motif immédiat de cette *sententia*⁵⁵ prononcée par les évêques. Les juifs du royaume se sont rendus coupables d'un nouveau crime : le roi affirme que, d'après des aveux qui viennent d'être recueillis (certainement sous la torture), ils se sont mis d'accord avec d'autres juifs d'outre-mer (dont on sait, dit-il, que certains se sont déjà révoltés contre leurs princes chrétiens) pour se dresser tous ensemble « contre le peuple (*genus*) chrétien »⁵⁶. Le concile n'entre plus dans les savants détails de la législation antérieure relatifs au baptême ou à la sincérité de la conversion : tous les juifs péninsulaires semblent concernés par la condamnation.

La *capitis deminutio maxima* qui leur est ainsi infligée peut être vue comme le résultat d'un processus, ou bien comme une rupture. D'un certain point de vue en effet, elle n'est qu'un degré de plus dans la dégradation civique progressive du VII^e siècle : les juifs ont d'abord perdu leur capacité de témoigner et d'agir en justice, puis leur *status ciuitatis* ; ils perdent enfin la propriété de leur corps, l'élément minimum de la personnalité juridique⁵⁷. Leur exclusion de la société peut difficilement être poussée plus avant : l'expulsion hors des frontières qui sera pratiquée dans plusieurs royaumes au Moyen Âge n'est pas encore d'actualité⁵⁸. Le processus qui a conduit à une expulsion non matérielle n'est pas exceptionnel, non seulement parce que d'autres dégradations ci-

⁵³ ... ut [...] suis omnibus rebus nudati, et ipse resculae fisci uiribus sociatae tam eorumdem perfidorum personae quam uxorum eorum ac filiorum uel reliquae posteritatis a locis propriis exulatae per cunctas Spaniae prouincias perpetuae seruituti subactae, his quibus eos iusserit seruituros largitae, maneant usquequaque dispersae: nec quoquo pacto eis in infidelitatis suae obstinatione durantiibus ad ingenuitatis statum detur quandoque occasio reuertendi, quos numerosa examussim facinorum suorum macula denotauit. (Conc. Tol. XVII, c. 8, éd. J. VIVES, p. 534-536).

⁵⁴ C. NEMO-PEKELMAN et C. MARTIN, art. cit., p. 242-245.

⁵⁵ ... quid de illis cunctisque rebus ipsorum agere conueniat canonica uestri coetus sententia patenti stylo constituat (« que la sentence canonique de votre assemblée décide d'un style patent ce qu'il convient de faire de ces gens et de tous leurs biens »), demande Égica aux évêques dans son discours d'ouverture au concile, après leur avoir détaillé les crimes des juifs.

⁵⁶ ... praesertim quia nuper manifestis confessionibus indubie inuenimus hos in transmarinis partibus haebros alios consuluisse, ut unanimiter contra genus christianum agerent praestolantes perditionis suae tempus, qualiter ipsius christianae fidei regulam deprauarent: quod et per easdem professiones quae uestris sunt auribus reserandae patebit. (Conc. Tol. XVII, tomus regius, éd. J. VIVES, p. 524).

⁵⁷ Cette formulation, choisie pour aller au plus simple, est certes fortement discutable. Cf. J.-P. Baud, *L'affaire de la main volée. Une histoire juridique du corps*, Paris, 1993.

⁵⁸ L'expulsion n'a été, au haut Moyen Âge, pratiquée qu'à l'échelle de la cité par certains évêques zélés. Certes, la plupart des historiens affirme que le roi Chintila a expulsé les juifs d'Hispanie en 638, mais à mon sens cette idée résulte d'une surinterprétation de Conc. Tol. VI. Bien au contraire, les rois visigothiques prennent parfois la peine d'interdire aux juifs de fuir (cf. LV, XII, 3, 9).

viques l'avaient précédé, mais aussi parce que la peine de réduction en esclavage n'est pas rare, comme on l'a vu, en droit visigothique. Ce qui est exceptionnel est le résultat, non, apparemment, les moyens d'y parvenir : c'est que, pour la première fois dans un État chrétien, l'ensemble des juifs hispaniques est déchu en 694 de son statut d'ingénuité.

La réduction en esclavage de 694 n'est pas pour autant le résultat d'un glissement juridique allant de soi. On peut certes admettre l'argumentation d'Égica, qui revient à affirmer que « les juifs » se sont rendus coupables d'un crime de sédition politique, d'abord quelque part en Méditerranée, puis dans le royaume de Tolède. La loi contre la sédition⁵⁹ avait justement été amendée par Ervige dans le sens d'une transformation de la peine de mort en réduction à l'état d'esclave du fisc, et elle a été appliquée dans sa nouvelle version pas plus tard que l'année précédente, dans le cadre de la conspiration de Sisbert⁶⁰. Contrairement, pourtant, aux événements de 693, où chaque conjuré a fait nominalement l'objet d'une condamnation judiciaire⁶¹, ici c'est, indistinctement, le groupe des *iudaei* qui est condamné. Ils ne font pas l'objet d'un procès en bonne et due forme, ne sont évidemment pas présents au concile pour apporter la preuve éventuelle de leur innocence, et ils sont finalement soumis à une mesure collective de répression, à cause de leur appartenance au groupe des juifs. Aucune autre exception n'est prévue que celle des juifs de Narbonnaise, pour des raisons qui ont certainement peu à voir avec leur non-participation au prétendu complot. On ne voit pas sur quoi se base l'idée, purement spéculative, que les juifs dont la fidélité était bien connue des autorités ne seraient pas touchés par la sentence⁶². C'est bien l'ensemble de la *gens iudaeorum*, à l'intérieur des frontières de l'Hispanie, qui est réduite en esclavage. Les juifs sont en effet perçus comme une *gens*⁶³, ce qui permet de les condamner collectivement, à la manière des peuples vaincus par Rome ou des cités rebelles à l'empereur dont les habitants étaient réduits en esclavage. C'est pourquoi la procédure suivie est inhabituelle : les « séditieux » (nous nous abstenons de nous prononcer sur la réalité du complot, qui a fait l'objet d'un intense débat) sont collectivement condamnés par un concile, dont la *sententia* sera ensuite confirmée par une loi⁶⁴ – qui ne nous est pas parvenue. Encore une fois, comme sous Recceswinth, les juristes visigothiques font du

⁵⁹ LV, II, 1, 8 : voir plus haut n. 34.

⁶⁰ Cf. C. NEMO-PEKELMAN et C. MARTIN, *op. cit.*, p. 242.

⁶¹ *Conc. Tol.* XVI, c. 9-10.

⁶² R. GONZÁLEZ SALINERO, *Las conversiones ...*, *op. cit.*, p. 78, qui suit L. A. GARCÍA MORENO, *Los judíos de la España antigua. Del primer encuentro al primer repudio*, Madrid, 1993, p. 132.

⁶³ Cf. C. MARTIN, « La notion de *gens* dans la péninsule Ibérique des VI^e-VII^e siècles : quelques interprétations », in *Identité et ethnicité. Concepts, débats historiographiques, exemples (III^e-XII^e s.)*, V. GAZEAU, P. BAUDUIN et Y. MODÉLAN (dir.), Caen, 2008, p. 83.

⁶⁴ *Conc. Tol. XVII, tomus regius*, éd. VIVES, p. 525.

neuf avec du vieux, et s'appliquent à manipuler le droit pénal pour le mettre en œuvre de manière collective et non individuelle.

Conclusion

Il semble clair qu'on ne peut se contenter, pour qualifier le statut des juifs au haut Moyen Âge, de dire, ainsi qu'il est souvent fait, que ce sont des « Romains »⁶⁵. En effet, il n'y avait déjà pas de statut unique de libre à Rome⁶⁶ ; or la société des VI-VII^e siècles demeure profondément inégalitaire, non seulement socialement, mais aussi juridiquement, et elle multiplie encore le nombre de statuts personnels. Les juifs hispaniques ont un statut déprimé, comme c'est le cas, pour des raisons diverses, de nombre de chrétiens ; car le statut de libre en général est menacé, et il est en train peu à peu de se vider de son sens⁶⁷. Les juifs sont attaqués, certes, en raison de leur religion, parce qu'ils sont juifs (l'imputation de sédition ne saurait masquer ce fait fondamental), mais ils ne sont pas les seuls libres à voir leur statut remis en cause. Nous avons distingué trois temps dans ces attaques : vers 653, la mise en place de restrictions processuelles frappant les droits litigieux de tous les juifs, baptisés ou non (à l'exclusion de leurs enfants sous certaines conditions) ; en 681, la perte de la *ciuitas* qui les concerne tous, à l'exclusion cette fois des convertis sincères (on peut, sans trop se risquer, estimer qu'ils étaient minorité) ; en 694, la perte de la *libertas*, dernier élément de personnalité juridique qui leur restait, à l'exclusion de ceux de Narbonnaise. Il n'est donc pas possible de soutenir, comme beaucoup d'auteurs, que la persécution des juifs dans le royaume visigothique ne visait que ceux qui avaient reçu le baptême⁶⁸.

Une question récurrente dans l'historiographie est celle de la part prise par l'Église dans cette dégradation des juifs. Pour Bernhard Blumenkranz, par exemple, il y eut une véritable « collusion » entre les évêques et la monarchie, ce qui fait toute la spécificité visigothique⁶⁹. Pour Raúl González Salinero éga-

⁶⁵ B. BLUMENKRANZ, *op. cit.*, p. 298, après d'autres auteurs.

⁶⁶ Cf. notamment Cl. NICOLET, *Le métier de citoyen dans la Rome républicaine*, Paris, 1976, p. 19 ; P. GARNSEY, *Social Status and Legal Privilege in the Roman Empire*, Oxford, 1970 ; F. MILLAR, « Empire and City, Augustus to Julian ; Obligations, Excuses and Status », *Journal of Roman Studies*, 73 (1983), p. 77-8.

⁶⁷ A. Barbero et M. Vigil ont eu naguère l'intuition d'un tel rapprochement, l'espace de quelques lignes, mais ils ne l'ont pas développée (A. BARBERO ET M. VIGIL, *La formación del feudalismo en la Península Ibérica*, Barcelone, 1978, p. 185).

⁶⁸ Ainsi B. BLUMENKRANZ, *op. cit.*, p. 119 ; J. GIL, « Judíos y cristianos en la Hispania del siglo VII », *Hispania Sacra* 30 (1977), p. 9-110 ; J. ORLANDIS, « Hacia una mejor comprensión del problema judío en el Reino visigodo-católico de España », in *Gli Ebrei nell'Alto Medioevo. XXVI Sett. di studio del CISAM*, Spolète, 1980, p. 149-196 ; A. P. BRONISCH, *Die Judengesetzgebung im katholischen Westgotenreich von Toledo*, Hanovre, 2005.

⁶⁹ B. BLUMENKRANZ, *op. cit.*, p. 105.

lement, la politique anti-juive était à la fois l'expression de l'unité entre *regnum* et *ecclesia*, puisqu'elle émanait d'idées inspirées par la hiérarchie ecclésiastique ensuite transformées en législation, et la condition permettant cette unité, puisqu'elle conduisait à éliminer les éléments perturbateurs⁷⁰. Au contraire, Alexander Bronisch pense que l'initiative de cette politique fut fondamentalement royale⁷¹ ; Bruno Dumézil distingue plusieurs phases dans le processus, et considère que l'épiscopat visigothique a temporairement passé le relais au pouvoir civil à l'époque de Sisebut et du premier baptême forcé, pour collaborer ensuite étroitement avec lui, provoquant « l'enkystement » du problème juif dans la seconde moitié du VII^e siècle⁷². Il me semble pour ma part, mais ce n'est qu'une impression, que globalement l'épiscopat n'est pas à l'origine des mesures qui nous ont occupés ici. Il est clair qu'il collabore à leur élaboration et surtout à leur mise en œuvre – le rôle des évêques dans la surveillance des juifs, que nous n'avons pas détaillé, n'est pas sans rappeler l'étroit contrôle qu'ils exercent sur les pénitents dans le cadre de la pénitence publique, et même leur contrôle sur les esclaves⁷³. Mais la remise en cause de la personnalité juridique des juifs est principalement l'affaire de juristes professionnels, qui s'appuient, dans la mesure du possible, sur la tradition juridique visigothique (c'est-à-dire, pour une bonne part, romaine), et la manipulent quand elle atteint ses limites. Preuve en est le caractère finalement très discuté, du point de vue théologique, de la mesure de 694. Les juifs se sont révélés, à l'issue de presque un siècle d'évangélisation forcenée, imperméables à la grâce du baptême, inaccessibles à la liberté du Christ : les réduire en esclavage revient à un constat d'échec⁷⁴. Un tel désespoir du salut des juifs rappelle le pessimisme de la novelle III de Théodose II – dont l'auteur, Martyrius, est un laïc dévot, mais certainement pas un père de l'Église –, dans sa comparaison de l'incroyance des non catholiques avec une maladie incurable⁷⁵. Le législateur agit donc à mon avis dans une certaine autonomie, il suit son propre agenda idéologique et, malgré la rhétorique des préambules, il n'appuie pas ses décisions sur des fondements théologiques.

Cette contribution ne porte que sur le royaume visigothique et ne résout pas la question du statut des juifs dans le reste de l'Occident. On peut cepen-

⁷⁰ R. GONZÁLEZ SALINERO, *op. cit.* et *Id.*, « Catholic Antijudaism in Visigothic Spain », in *The Visigoths. Studies in Culture and Societies*, A. FERREIRO (éd.), Leyde - Boston - Cologne, 1999, p. 123-150.

⁷¹ A. P. BRONISCH, *op. cit.*

⁷² B. DUMÉZIL, *Les racines chrétiennes de l'Europe. Conversion et liberté dans les royaumes barbares (V^e-VIII^e siècle)*, Paris, 2005.

⁷³ Cf. C. PETIT, « Crimen y castigo », *art. cit.* Je n'ai pas pu développer ici la thématique de la pénitence publique en usage dans la péninsule Ibérique au VII^e, bien qu'elle rejoigne celle des dégradations civiles.

⁷⁴ Cf. C. NEMO-PEKELMAN, C. MARTIN, *art. cit.*, p. 242.

⁷⁵ Théodose II, 31 janvier 438 (nov. III). Cf. C. NEMO-PEKELMAN, *Rome et ses citoyens juifs (IV^e-V^e siècles)*, Paris, 2010, p. 210.

dant signaler pour terminer que la spécificité hispanique semble résider dans l'importance conférée au droit, plutôt que dans le fanatisme religieux. Les changements juridiques en cours sont, par exemple, moins visibles et moins graves dans le monde franc, où le recours aux tribunaux est apparemment moins fréquent, du moins dans la mesure où les sources nous permettent de le connaître. Au contraire, la législation visigothique est abondante, et le droit en général occupe une grande place dans la vie quotidienne, ce dont le corpus des ardoises visigothiques constitue une éclatante illustration⁷⁶. À la différence des lois remontant à Euric, les lois du VII^e siècle traitent énormément des esclaves⁷⁷ et, dans une moindre mesure, des juifs. Ce n'est peut-être pas une coïncidence : il existe un parallèle consistant entre la fuite des esclaves et l'apostasie des juifs, ainsi que dans la manière dont les autorités visigothiques abordent les deux problèmes⁷⁸. La réinscription de la « question juive » dans le contexte plus vaste des conditions juridiques n'en a que plus de sens.

Quels effets concrets a pu entraîner, en dernière analyse, la mesure de 694 ? Du point de vue pratique, une dispersion des communautés, mais peut-être pas des familles juives⁷⁹. À la fin du VII^e siècle, les esclaves sont pour la plupart chasés et vivent dans le cadre de la cellule familiale ; en outre, le soin apporté par Égica et par les évêques à disposer du sort des enfants juifs, enlevés à leurs parents à partir de l'âge de sept ans, tend à indiquer que, pour le reste, les familles restent unies. C'est cette dispersion des communautés qui peut être à l'origine de l'oblitération de la mémoire juive⁸⁰. La réduction en esclavage a bien sûr occasionné une grave déperdition de droits. On peut par contre se demander si elle a entraîné dans tous les cas un abaissement social majeur. En effet le statut juridique n'a pas de portée nécessaire sur les conditions de vie : ainsi certains esclaves fiscaux peuvent être relativement puissants, posséder des esclaves, voire porter des témoignages menaçant certains aristocrates. Plus généralement, au niveau de l'Occident, la documentation indique que libres et non-libres sont de plus en plus proches, au moins en milieu rural. Du point de vue juridique le changement est radical, puisque c'est la première fois que les juifs sont expulsés du corps des libres ; mais la réalité est plus complexe, et le déclin des tribunaux après 711 a pu finalement rendre

⁷⁶ I. VELÁZQUEZ SORIANO, *Documentos de época visigoda escritos en pizarra (Siglos VI-VIII)*, Turnhout, 2000.

⁷⁷ 46% des lois de Léovigild à Égica, selon P. BONNASSE (« Survie et extinction du régime esclavagiste dans l'Occident du haut Moyen Âge », *Cahiers de Civilisation médiévale*, XXVIII (1985), p. 307-343).

⁷⁸ J'ai développé ce parallèle dans C. NEMO-PEKELMAN, C. MARTIN, *art. cit.*

⁷⁹ En sens inverse, R. GONZÁLEZ SALINERO, *op. cit.*, p. 77.

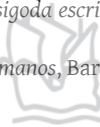
⁸⁰ H. SIVAN (« The Invisible Jews of Visigothic Spain », *Revue des Études Juives*, 159 (2000), p. 369-385) attribue l'« invisibilité » de la persécution du VII^e siècle dans les sources juives à sa réussite totale : cela aurait conduit à oblitérer l'identité juive hispanique et donc sa mémoire.

cette dimension juridique secondaire. Le paradoxe de l'absence de traces laissées dans l'histoire juive ultérieure par la réduction en esclavage d'Égica s'explique également par là.

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JEW, PAGAN, AND HERETIC IN EARLY MEDIEVAL CANON LAW

David M. FREIDENREICH

“Heretics, Jews, and pagans: they have formed a unity over against our Unity.”

—Augustine, Sermon 62.18¹

The non-Catholics of whom Augustine speaks would surely be surprised to discover themselves grouped together, much less described as united or uniform. There are, after all, vast differences between Christians of varying theologies, Jews who entirely reject Jesus’ significance, and pagans who reject even the biblical God. Many Catholics, moreover, would also be surprised by Augustine’s conflation of these groups of religious foreigners. Augustine is certainly not the only Christian to treat all non-Catholics as equivalent and thus as subject equally to laws that defend the interests of the Catholic Church and its adherents.² The dominant trend in medieval Catholic thought, however, is to classify Jews, pagans, and heretics within an implicit or explicit hierarchy. “More than paganism or any heresy,” J. M. Wallace-Hadrill observes, “the Jews worried the conscience of medieval Christians.”³ This is especially apparent in Latin canon law, which regularly portrays Jews as inferior to other non-Catholics, as especially stubborn in their resistance to Catholicism, and as uniquely threatening to Catholics. Early medieval Latin laws about Jews therefore differ in fundamental ways from those regarding either pagans or heretics.

Most Latin canonical legislation from the fourth through seventh centuries derives from church councils convened in Africa, Gaul, and Spain.⁴ These

¹ Translation by Peter Brown, *Religion and Society in the Age of Saint Augustine* (New York: Harper & Row, 1972), 303.

² Augustine, following the sentence quoted above, portrays recently enacted Roman laws against idolatry as comparable to Roman laws that discipline the Jews and those that target heretical Christians.

³ J. M. Wallace-Hadrill, *The Frankish Church* (Oxford: Clarendon, 1983), 390.

⁴ Charles Munier, *Concilia Africae* A. 345 – A. 525, CCL, Vol. 149 (Turnhout: Brepols, 1974); Charles Munier, *Concilia Galliae*, A. 314 – A. 506, CCL, Vol. 148 (Turnhout: Brepols, 1963); and Charles de Clercq, *Concilia Galliae*, A. 511 – A. 695, CCL, Vol. 148a (Turnhout: Brepols, 1963), offer critical editions of conciliar canons and early canon law collections from Africa and Gaul. For Spanish canons and collections, I employed Gonzalo Martínez Díez and Felix Rodríguez, eds., *La Colección Canónica Hispana* (Madrid: Consejo Superior de Investigaciones Científicas, 1966–2002), a critical edition of this collection, as well as José Vives, ed., *Concilios Visigóticos e Hispano-Romanos* (Barcelona: Consejo Superior de Investigaciones Científicas, 1963). Munier and de Clercq provide

councils addressed an eclectic set of subjects, and it is rare that a council devoted a significant percentage of its canons to non-Catholics.⁵ This article seeks to provide comprehensive citations of Latin canons related to Jews and to pagans as well as extensive citations of canons related to heretics.⁶ Unlike prior studies of this nature, however, this work is organized neither thematically nor chronologically.⁷ Its structure instead draws attention to the ways in which the sources of canon law conflate or contrast different types of non-Catholics. The first section analyzes canons that address multiple types of non-Catholics and thus represent Jews, pagans, and heretics as being equivalent or of differing legal status. We will consider, in order, canons that address all three types of non-Catholics, those that address Jews and heretics, and those that address Jews and pagans. We will then turn to canons that address conversion to and reversion from Catholicism; these subjects are addressed regarding each type of non-Catholic, but never within the same canon. Finally, we will consider other canons that address individual non-Catholic religions and their adherents.

brief historical introductions to each council (in Latin). Further background and contextual information can be found in José Orlandis and Domingo Ramos-Lissón, *Historia de los concilios de la España romana y visigoda* (Pamplona: Ediciones Universidad de Navarra, 1986); Odette Pontal, *Histoire des conciles mérovingiens* (Paris: Éditions du Cerf, 1989); Rachel L. Stocking, *Bishops, Councils, and Consensus in the Visigothic Kingdom, 589–633* (Ann Arbor: University of Michigan Press, 2000). Karl Joseph von Hefele and H. Leclercq, *Histoire des conciles d'après les documents originaux*, vols. 1–4 (Paris: Letouzey et Ané, 1907–11), remains a useful albeit dated resource on account of its comprehensiveness.

Because of ambiguities or inconsistencies in medieval dating methods, the year in which specific councils convened is often uncertain. Below, I employ a slash to indicate two possibilities (e.g., the fact that the Council of Clichy convened on September 27 in either 626 or 627 is indicated by 626/27) and a dash to indicate the date range within which a council of unknown date must have convened.

⁵ Notable exceptions include the collections associated with the Council of Elvira (ca. 306) and the First Council of Mâcon (581/83), about a quarter of whose canons relate to non-Catholics, and the Fourth Council of Toledo (633), cc. 57–66, a series of ten canons about Jews.

⁶ Texts, translations, and commentary on the canons that address Jews and pagans now appear in the database of RELMIN (“The legal status of religious minorities in the Euro-Mediterranean world, 5th–15th centuries”), <http://www.cn-telma.fr/relmin/index/>. Canons about Jews have been collected and translated by Amnon Linder, ed., *The Jews in the Legal Sources of the Early Middle Ages* (Detroit; Jerusalem: Wayne State University Press; Israel Academy of Sciences and Humanities, 1997). Translations in this essay were prepared in consultation with those of Linder where possible. This essay only addresses canons promulgated in the Latin West, to the exclusion of Eastern canons that appear in Western collections.

⁷ Studies that devote significant attention to the canons addressed in this article include Bernhard Blumenkranz, *Juifs et chrétiens dans le monde occidental, 430–1096* (Paris: Mouton, 1960); Paul Mikat, *Die Judengesetzgebung der merowingisch-fränkischen Konzilien* (Opladen: Westdeutscher, 1995); Walter Pakter, *Medieval Canon Law and the Jews* (Ebelsbach: Gremer, 1988); see also Linder, *Jews in the Legal Sources*.

Modern scholars refer to canons that relate to Jews as “Jewry law,” not to be confused with Jewish law. The fact that no comparable terms exist for canons related to other non-Catholics is telling, not only because it reflects modern scholarly interests but also because no comparable set of laws exists regarding either pagans or heretics. Whereas Jewry law primarily addresses Jews and only occasionally Judaism, canon law regarding pagans and heretics focuses almost exclusively on paganism and on heresy. Jewry law, moreover, represents Jews as the very antithesis of good Catholics; pagans and heretics are not portrayed in this manner.

Non-Catholics Contrasted

Latin church councils occasionally address Jews, pagans, and heretics within the same canon or set of canons. Indeed, the only specific references to Jews in African conciliar canons appear alongside heretics and pagans: “all those bespattered with the stain of disgrace (*infamia*), namely actors and indecent women, as well as heretics, pagans, and Jews” lack the right to denounce accused criminals before a court of canon law (Carthage [419], c. 129; Hippo [427], c. 6). This canon’s conflation of non-Catholics reflects the perspective expressed by Augustine, the reigning bishop of Hippo, in this essay’s epigraph. Unlike actors and whores, whose legal status relates to the ill-repute of their occupational pursuits, heretics, pagans, and Jews are declared *infames* on account of their beliefs.⁸ In other words, non-Catholics are disgraced simply because they are not members of the Catholic Church. This common denominator links pagans, heretics, and Jews in a fifth-century canon from Gaul as well: “A bishop may not prohibit anyone, whether a gentile, a heretic, or a Jew, from entering a church and hearing the word of God, until the point of the catechumen’s mass.”⁹ Everyone must have access to the gospel, even though only Catholics may witness or partake of the Eucharist. The reference in this

⁸ In contrast, Codex Theodosianus 16.8.24, from 418, states explicitly that the limited rights of the Jews were not to be interpreted as a mark of *infames*. The rhetorical ascription of *infamia* to Jews, however, already appears in Codex Theodosianus 16.8.22 (415), and Jews are included on a list of *infames* barred from lodging denunciations in Sirmundian Constitution 6 (425). See further Pakter, *Medieval Canon Law*, 156–58; Capucine Nemo-Pekelman, *Rome et ses citoyens juifs (Ive-Ve siècles)* (Paris: Honoré Champion, 2010), 195–99; and Ralph W. Mathisen’s essay in this volume.

⁹ *Statuta Ecclesiae antiqua* (ca. 475), c. 16. This canon is reproduced in *Vetus Gallica* 57.8, in the context of a chapter devoted to canons about heretics and gentiles; see Hubert Mordek, *Kirchenrecht und Reform in Frankenreich: die collectio vetus Gallica: die älteste systematische Kanonessammlung des fränkischen Gallien: Studien und Edition* (Berlin: W. de Gruyter, 1975), 581–85. It is striking that the *Vetus Gallica* groups canons regarding heretics and gentiles within a single chapter while devoting a separate chapter (55) to Jewry law.

canon to non-Jewish non-Christians as “gentiles” is commonplace in Latin canon law sources and reflects the conviction that Christians constitute the spiritual heirs of the People of Israel.

The First Council of Zaragoza (380) simply forbids faithful women from sexual intercourse with “alien” men (c. 1). In many cases, however, generic terms provide an insufficiently precise definition for pagans, heretics, and Jews. A particularly clear example appears in a set of canons promulgated at the Council of Elvira (ca. 306), the earliest council known to have published canonical legislation. Elviran canons forbidding marriage to non-Catholics demonstrate the hierarchical relationships in which Catholic clerics place those outside the church.¹⁰

15. No matter the large number of girls, Christian maidens are by no means to be given in matrimony to gentiles lest youth, bursting forth in bloom, end in adultery of the soul.

16. Catholic girls ought not to be given in marriage to heretics if they are unwilling to change over to the Catholic Church. They shall be given to neither Jews nor heretics for there can be no fellowship for the believer with the unbeliever (*nulla possit esse societas fidei cum infidele*). If parents act against this prohibition, they shall be excluded [from communion] for five years.

17. If any should perchance join their daughters in marriage to the priests of the idols, they shall not be given communion even at the end.

These canons prohibit marriage to non-Christian husbands in all cases. Parents are only punished, however, if they give their daughters in marriage to Jews, heretical Christians, or, worst of all, idolatrous priests. Marriage with gentiles who are not priests, although discouraged, goes unpunished. The distinction between gentiles and their priests reflects the notion that ordinary pagans can be separated from their idolatry and that only the latter poses a threat to Christianity.¹¹

¹⁰ For a detailed study, see Samuel Laeuchli, *Power and Sexuality: The Emergence of Canon Law at the Synod of Elvira* (Philadelphia: Temple University Press, 1972). Laeuchli devotes considerable attention to the significance of the graduated types of punishment employed in Elviran canons. Translations of these canons below were prepared in consultation with Laeuchli’s translations. Maurice Meigne, “Concile ou collection d’Elvire?,” *Revue d’histoire ecclésiastique* 70 (1975): 361–87, makes the case that only the first 21 canons associated with the Council of Elvira were in fact promulgated at the original council, while the other canons derive from various later fourth-century sources. See also Hamilton Hess, *The Early Development of Canon Law and the Council of Serdica* (Oxford: Oxford University Press, 2002), 40–42.

¹¹ This notion is implicit in 1 Corinthians 10.25–28, in which Paul distinguishes the food of unbelievers from food “offered to the gods,” and explicit in Tertullian, *Apology*, 42.1–5, to cite merely two examples. See further David M. Freidenreich, *Foreigners and Their Food: Constructing Otherness in Jewish, Christian, and Islamic Law* (Berkeley: University of California Press, 2011), 90–93, 103–7.

The clerics gathered at Elvira classify Jews and heretics as more objectionable than gentiles, albeit not so objectionable as idolatrous priests. Strikingly, these clerics use Pauline language condemning interaction between Christians and idolaters in their canon about marriage to Jews and heretics: “For what partnership is there between righteousness and lawlessness? Or what fellowship (*societas*) is there between light and darkness? What agreement does Christ have with Beliar? Or what does the believer share with the unbeliever (*fideli cum infidele*)? What agreement has the temple of God with idols?” (2 Cor. 6.14–16).¹² Elviran clerics apply traditional language about one set of rivals in response to different rivals, now perceived as posing a greater threat to believers in Christ. With the Christianization of the Roman Empire, Latin Christian discourse regarding foreigners comes to focus increasingly on heretics and Jews, the new “unbelievers.” Thus, only the earliest of the Gallic councils, the First Council of Arles (314), addresses marriage to pagans, while several later councils forbid marriage to Jews.¹³

¹² Latin citations are from the Vulgate translation, which postdates the Council of Elvira, but the key terms are attested in many Old Latin texts as well; see the online card catalog of the Vetus Latina Institut, accessible via www.brepolis.net.

¹³ 1 Arles (314), c. 12, which prohibits the marriage of Christian girls to gentiles. On marriage to Jews, male and female alike, see 2 Orleans (533), c. 19; Clermont (535), c. 6; and 3 Orleans (538), c. 14 (13). See also 4 Orleans (541), c. 31, the second of two canons on Christian slaves owned by Jews, which forbids a Jew from marrying his female Christian slave to a Jew. On these canons, see further Mikat, *Judengesetzgebung*, 10–20. The Visigothic Third and Fourth Councils of Toledo forbid marriages of Jewish men and Christian women and specify that the children of mixed marriages must be baptized regardless of the sex of their Christian parent: 3 Toledo (589), c. 14; 4 Toledo (633), c. 63 (the latter refers specifically to marriages in which one partner converted to Christianity). See also 10 Toledo (656), c. 7, which in passing forbids marriages between Christians and Jews.

The literary context of a canon sometimes reflects the mental associations being made by the bishops gathered in council. It may, therefore, be significant that the intermarriage prohibition of 2 Orleans follows a pair of canons that address deaconesses who seek to marry (c. 17) and that, on account of “their fragile condition,” forbid women from becoming deacons in the future (c. 18). The following canon addresses Catholics who revert to idolatrous practices contrary to the Apostolic Decree of Acts 15.28, including the consumption of food offered to idols (c. 20). This juxtaposition suggests that marriage to Jews, dangerous in part because of the weakness of women, leads inexorably toward participation in rites anathema to Christianity. If the authors of these canons had intended to convey such a message, however, they would likely have made this point more explicit, perhaps by including in their text an allusion to Num. 25.1–3.

No Visigothic councils address marriage to gentiles, and neither Gallic nor Visigothic councils address marriage between Catholics and heretics. Canonical sources from Africa, in contrast, make no reference to Jews when prohibiting marriages between the children of Catholic clergy on the one hand and gentiles, heretics, or schismatics on the other: see *Breviarium Hipponense*, c. 12 (397; restated in *Canones in causa Apiarii*, c. 21, and, with slight modification, Council of Carthage, 525, *temporibus sancti Aurelii concilio tertio*, G [Munier, 264]). The significance of these silences is unclear. Perhaps clerics believed that the omitted non-Catholics were simply

Canon 16 of the Council of Elvira treats Jews and heretics as equivalent. The only other Latin synod to juxtapose these groups of non-Catholics in a single canon is the Council of Epaone (517).

15. If a cleric of elevated rank should participate in the meal of any heretical cleric, he shall not have the peace of the Church for the duration of a year; if junior clerics do so, they shall be flogged. As for the meals of Jews, our law has prohibited even a layperson [from participating]. Whosoever has become defiled by the meals of Jews shall not break bread with any of our clerics.¹⁴

Here, unlike Elvira c. 16, interaction with Jews is deemed a more serious infraction than interaction with heretics. The prohibition against partaking of a meal with Jews applies to all Christians, not just clerics, and the punishment of excommunication is more severe than either temporary exclusion from the *pax ecclesiae* or corporal punishment. Similar prohibitions against commensality with Jews, moreover, appear in the canons of numerous councils.¹⁵ Only two canons from the Latin West, in contrast, condemn commensality with heretics.¹⁶

not present in their region, perhaps they regarded such marriages as inconceivable, or perhaps they were untroubled by the prospect of such marriages.

¹⁴ This canon, those adjacent to it, and indeed most of the canons promulgated at Epaone focus on clerics. (On heretical clerics and their church buildings: cc. 16, 29, 33.) The statement in c. 15 that even lay Catholics may not eat with Jews is tangential, and the stipulation that clerics may not eat with these sinful Catholics should not be read as implying anything about the permissibility of shared meals between such sinners and other members of the laity. The Third Council of Orleans (538, c. 14 [13]), makes clear that those who take part in Jewish banquets are subject to excommunication for a year. Similarly, Vannes (461–91), c. 12, only refers to clerics in its prohibition of commensality with Jews because the canons from Vannes focus exclusively on clerical discipline; the bishops gathered in Agde (506, c. 40) repeat this canon but supplement “clerics” with “or laymen” to make the general nature of this prohibition explicit. See Bernhard Blumenkranz, “‘Iudaeorum conuiuia,’ à propos du Concile de Vannes (465), c. 12,” in *Études d’histoire du droit canonique dédiées à Gabriel Le Bras* (Paris: Sirey, 1965), 2: 1055–8, reprinted in Blumenkranz, *Juifs et chrétiens: Patristique et Moyen Âge* (London: Variorum, 1977).

¹⁵ Prohibitions against commensality with Jews: Elvira (ca. 306), c. 50; Vannes (461–91), c. 12; Agde (506), c. 40; Epaone (517), c. 15; 3 Orleans (538), c. 14 (13); 1 Mâcon (581/83), c. 15, Clichy (626/27), c. 13. The canons from Agde and Mâcon are reproduced in the chapter of *Vetus Gallica* devoted to canons forbidding Christians from participating in Jewish rites or being subjected to Jewish authority (55.6, 55.4). It is telling that two of the six canons in this chapter of the *Vetus Gallica* relate to commensality. Indeed, this prohibition, the most frequently attested Jewry law in the Latin West, appears in the canons of half of the Gallic councils that address Jews. See further Freidenreich, *Foreigners and Their Food*, 113–18. See also the preceding note.

¹⁶ In addition to Epaone, c. 15, see *Statuta Ecclesiae antiqua*, c. 80, the first of three adjacent canons regarding heretics. This canon, like that of Epaone and many others in the *Statuta Ecclesiae antiqua*, addresses clerics alone; it is reproduced in *Vetus Gallica*, 40.15, at the conclusion of a chapter on inappropriate clerical behavior. On the difference in status between heretics and Jews within Visigothic law and society, already observed by King Reccesvind (*Leges Visigo-*

We observed above that the clerics gathered at Elvira apply to Jews and heretics scriptural rhetoric that originally relates solely to pagans. Elviran canons about food associated with Jews also, employ scriptural rhetoric that originally relates solely to heretics, even though these canons themselves make no reference to heretics.

49. Those who possess [agricultural produce], which they received from God with an act of thanksgiving (*quos a Deo percipiunt cum gratiarum actione*), are warned not to let Jews bless their produce, lest their blessing render ours ineffectual and weak. If anyone dares to do so despite this prohibition, he shall be cast out from the church completely.

50. Indeed, if any of the clergy or the faithful takes food with Jews (*cum Iudaeis cibum sumpserit*), it is decided that he shall be kept from communion in order that he be corrected as he should.¹⁷

The language of c. 50 is reminiscent of Paul's instruction not to share food with Christian sinners (1 Cor. 5.11: *cum eiusmodi nec cibum sumere*), yet Paul permits eating with those who do not belong to the Christian community. The application of Paul's commensality prohibition to Jews reflects the equation of Jews and heretical Christians expressed in c. 16 and also suggests that Jews are sinners who have an especially pernicious influence upon the Christians with whom they interact. Canon 49 expresses this fear through its allusion to 1 Timothy, which speaks of a time to come in which some will renounce the faith by paying attention to those who demand abstinence from food "which God created to be received by the faithful with an act of thanksgiving" (1 Tim. 4.3: *quos Deus creavit ad percipiendum cum gratiarum actione fidelibus*). The authors of these canons understand this prophecy to refer to Christians who accommodate Jewish food-related practices, and they thus imagine Jews as "those who hypocritically speak falsehood" and convey "the teachings of demons" (4.1–2).¹⁸ Neither at Elvira nor at subsequent Latin councils is rhetoric of this nature employed against contemporary heretics.

Jews are juxtaposed with pagans in several Gallic canons and also in a canon associated with the Council of Elvira. The Elviran canon (probably a later addition to the canons promulgated at the council itself; see n. 10) applies the same punishment for adultery with a Jewish or a gentile woman, implicitly contrasting this punishment with the unspecified penalty for adultery with a Christian woman (c. 78).¹⁹ The fifth-century Gallic *Statuta Ecclesiae antiqua*

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thorum 12.2.3), see P. D. King, *Law and Society in the Visigothic Kingdom* (Cambridge: Cambridge University Press, 1972), 129–46.

¹⁷ These canons, according to Meigne, were not promulgated at the original Council of Elvira but were added to the collection of its canons subsequently; see n. 10.

¹⁸ On citations of the Bible, see n. 12.

¹⁹ Neither this canon nor any other of which I am aware addresses female heretics. Perhaps women are presumed not to know enough theology to constitute heretics? In many cases, the

addresses the pagan practices of employing auguries and incantations alongside “Jewish superstitions and festivals”: Christians who observe either are barred from communion.²⁰ These canons portray Judaism as indistinct from paganism. Of possible relevance in this context is the declaration by the Council of Narbonne (589), “no one, whether freeborn or slave, Goth, Roman, Syrian, Greek, or Jew, shall do any work on the Lord’s Day” (c. 4); Jews are here treated as one among several ethnic groups in a canon that appears to address Christians and non-Christians alike. The same council also links these ethnic groups in its prohibition against harboring pagan soothsayers (c. 14).²¹

Early medieval sources also include a number of canons that express greater concern about Jews than pagans. Thus, while the Council of Clichy (626/27) forbids Christian slaveholders from selling their Christian slaves to pagans or Jews, it proceeds to focus exclusively on the illicit acts performed by Jewish slaveholders, namely their attempts to convert slaves to Judaism and their overly harsh treatment of Christian slaves (c. 13). The Council of Chalons (647–53) forbids the sale of Christian slaves beyond the borders of the local kingdom, within which they can be redeemed by Christians, “lest Christian slaves remain bound up in the chains of captivity or, even worse, in bondage to Jews” (c. 9). The Fourth Council of Toledo (633) forbids all Jewish possession of Christian slaves, explaining that “it is sacrilege for members of the body of Christ to serve the ministers of Antichrist” (c. 66). Clerics express far greater concern about Jewish ownership of Christian slaves than about ownership by pagans, and Jews alone are associated with Antichrist. Indeed, numerous canons from Gaul and France address Jewish slaveowners without reference to pagans, whereas no canon focuses exclusively on pagan masters.²²

term “heretic” clearly refers to a non-Catholic cleric; it is possible that the term is always used in early medieval Latin canon law in reference to clerics, which would account for the absence of female heretics.

²⁰ C. 83, reproduced in the *Vetus Gallica*’s chapters on auguries and Jewish rites (44.4g and 55.2). In its original context, this canon immediately follows a series of canons about heretics (cc. 80–82).

²¹ Stocking, *Bishops, Councils, and Consensus*, 97, 108–9, observes that this Visigothic council was unique not only in the ethnic breadth of its jurisdictional claims but also in its employment of secular penalties: those who violate the canons cited above, among others, must pay a fine to the civil authorities. Whether these canons refer to pagans, however, is unclear, as the Goths, Romans, Syrians, and Greeks (and Jews?) to whom it refers may be members of the church. On Syrians, who functioned as traders throughout the Mediterranean region, see James Parkes, *The Conflict of the Church and the Synagogue: A Study in the Origins of Antisemitism* (Cleveland: Meridian Books; Philadelphia: Jewish Publication Society, 1961), 313–16. Antisemitism (London: Soncino Press, 1934), 3132–316.

²² In addition to the canons cited above, see 3 Orleans (538), c. 14 (13); 4 Orleans (541), cc. 30–31; 1 Mâcon (581/83), cc. 16–17 (the last of five consecutive canons about Jews; c. 16 is reproduced in *Vetus Gallica* 55.5); 3 Toledo (589), c. 14; Rheims (627–630, if authentic), c. 11; 10 Toledo (656), c. 7. The rubric title appended by a later copyist to the last of these canons indicates that the canon forbids the sale of Christian slaves to Jews or gentiles; the text of the canon itself, how-

While not a canon, the address of King Egica to the Sixteenth Council of Toledo (693, *Tomus*) fits this pattern as well. After instructing the bishops to uproot ongoing idolatrous practices among the peasantry, he states that it is more important that these bishops eradicate the perfidy of the Jews. The bishops follow King Egica's lead, devoting their first canon to the Jewish perfidy and their second to idolatrous practices.

Canons that address Jews alongside pagans or heretics portray Jews as equivalent to or worse than each of these other types of non-Catholics. The effect of this combination is striking: as quasi-pagans, Jews are the ultimate outsiders and yet at the same time, as quasi-heretics, Jews are also especially dangerous insiders. Indeed, Jews are in some respects insiders to an even greater degree than heretics. *Statuta Ecclesiae antiqua* states that bishops may not read any gentile books but may read heretical books as needed. The lack of reference to Jewish books suggests that, as far as Latin clerics were aware, all Jewish books are already Christian books because they are part of the Christian Bible.²³ One consequence of associating Jews with both pagans and heretics is that Christian authorities are able to apply to Jews an especially wide range of scriptural proof texts, as witnessed in the canons associated with Elvira. Another is that Jews become the embodiment of everything that Christians do not want to be themselves. The resulting image of the Jew is thus more negative than the sum of its attributes. This, in turn, shapes the legal status not only of practicing Jews but also of those who seek to become Christians.



ver, makes no reference to gentiles. Many of the canons addressing Jewish ownership of Christian slaves also address the subject of marriage between Jews and Christians; cf. n. 13.

Parkes, *Conflict of Church and Synagogue*, 320–21, suggests that 1 Orange (441), c. 5 (6), implicitly refers primarily to Jews in its ruling that slaveholders incensed by the fact that their slave took refuge in a church may not claim the slaves of the clergy in compensation. Parkes argues that the slave in question must be converting to Christianity as a means of freeing himself from his Jewish master; such conversion would not change the status of a slave owned by a Christian master. If so, however, the clerics at Orange address the issue of Jewish-owned slaves a century before any of their counterparts follow suit. Parkes treats the subject of laws about Jewish slaveholders at greater length in pp. 325–30. On laws regarding Jewish slaveholders, see further Blumenkranz, *Juifs et chrétiens dans le monde occidental*, 326–41; Mikat, *Judengesetzgebung*, 43–98; Pakter, *Medieval canon law*, 88–95.

²³ *Statuta Ecclesiae antiqua*, c. 5, part of a series of canons governing episcopal behavior (reproduced in *Vetus Gallica*, 41.5, also in the context of canons about bishops). In 681, the Visigothic King Ervig forbade baptized Jews from reading books that argue against the Christian faith; it is unclear, however, whether he regarded these as Jewish books (*Leges Visigothorum* 12.3.11, confirmed in 12 Toledo (681), c. 9). On early Christian conceptions of Jews as the bearers of Christian books, see Jeremy Cohen, *Living Letters of the Law: Ideas of the Jew in Medieval Christianity* (Berkeley: University of California Press, 1999), 1–65.

Concerns about Conversion and Reversion

The differences between Jews, pagans, and heretics stated explicitly in some canons are also implicit in many of the canons that address only one type of non-Catholic. As conversion is an issue that applies to all non-Catholics, canons on this subject offer a ready means for constructing comparisons between Jews, pagans, and heretics that do not exist within early medieval sources.

Only at the Council of Elvira do clerics perceive a need to address the conversion of pagans. Such conversions, later clerics seem to feel, are the norm and thus require no special legislation. Elviran clerics require former pagan priests to undertake an exceptionally long three-year conversion process before baptism; during their period as catechumens, they must abstain from sacrifices (c. 4). This canon reflects a deep skepticism regarding the ability of former priests to fully renounce their idolatrous ways. As we have already seen, Elviran clerics are far less concerned about other gentiles: those who, on their deathbed, seek to become Christian may be received immediately (c. 39). Heretics, according to several Gallic councils, may also receive expedited deathbed conversions to Catholicism.²⁴ Other issues raised specifically by the conversion of heretics include rebaptism and the integration of former heretics and their churches within the Catholic ecclesiastical hierarchy, both of which inherently apply solely to converts who are already Christian.²⁵

Canons about the conversion of Jews parallel in some respects the Elviran canon about former idolatrous priests. Clerics gathered at the Council of Agde (506) require Jews, “whose faithlessness frequently leads them back to their vomit,” to spend at least eight months under examination as catechumens before receiving baptism, although an exception is made for Jewish catechumens on their deathbeds (c. 34). No fixed period of pre-baptismal preparation is specified by any Gallic or Visigothic Spanish council for other prospective

²⁴ Orange (441), c. 1, confirmed at 2 Arles (442–506), c. 26 (reproduced in *Vetus Gallica* 57.10); Epaone (517), c. 16. Standard practices for readmitting Catholics who fell into heresy are spelled out in Epaone, c. 29; 4 Orleans (541), c. 8.

²⁵ Rebaptism, a point of major theological contention, is addressed at 1 Arles (314), c. 9 (reproduced in *Vetus Gallica* 57.3), and in *Breviatio canonum*, c. 175, which applies to converting heretics anti-rebaptism canons promulgated in Carthage in 345–48 (sub Grato, c. 1) and 397 (*Registri ecclesiae Carthaginensis excerpta*, c. 48); *Breviatio canonum*, cc. 173–74, 178, also presents Eastern canons on this subject. Integration of former heretics along with their churches and relics, a touchy political issue, is addressed in Elvira (ca. 306), cc. 22, 51; *Breviarium Hipponense* (397), c. 37; *Registri ecclesiae Carthaginensis excerpta*, c. 68 (citing the Council of Carthage of September 401); 1 Orleans (511), c. 10; Epaone (517), c. 33; Lyons (567–70), c. 2 (= Paris [614], c. 12 [10]); 3 Toledo (589), c. 9. This is also the subject of all three canons promulgated at the Second Council of Zaragoza (592).

converts. Concern about the reversion of Jewish converts to their former religion occupies the attention of the Fourth Council of Toledo (633) as well, in part because of previous Visigothic attempts to forcibly convert the Jews of Spain (c. 57).²⁶ Converts who return to the practice of Jewish rites are subject to priestly punishment (c. 59) and barred from giving testimony (c. 64). The children of Jewish converts are to be raised in monasteries or by Christian foster parents to ensure their orthodoxy (cc. 59–60). Faithful children of reverted converts are entitled to the property that might otherwise be confiscated in punishment for the parents' transgressions (c. 61). Baptized Jews, moreover, are forbidden from associating with unbelieving Jews because Jews "are prone to sin" (c. 62). The Ninth Council of Toledo (655) adds that baptized Jews must spend the Biblical holidays in the presence of bishops so as to ensure that they celebrate the Christian feasts but not the Jewish ones (c. 17).²⁷ The Twelfth Council of Toledo (681, c. 9) confirms all of King Ervig's civil laws governing the Jews (*Leges Visigothorum* 12.3.1–28), which seek to ensure that these Jews remain faithful Christians and do not revert to Jewish practices with respect to festivals, food, circumcision, and marriage.

It is striking that Visigothic canons refer to converts from Judaism as Jews even after they have become Christian.²⁸ Thus, canon 61 of the Fourth Council of Toledo refers to "baptized Jews" while the following canon prohibits "association between Hebrews brought over to the Christian faith and those who still persist in their old rite." It seems likely that canon 60, which calls for "the sons and daughters of the Jews" to be raised by Christians, refers to the children of baptized Jews rather than the children of Jews who never converted.²⁹ The canon of the Twelfth Council of Toledo ratifying King Ervig's Jewry laws (681, c. 9) consistently refers to its target population as "Jews" even as it insists that they must be good Christians.

There are no grounds for reading into seventh-century canons the fifteenth-century Spanish notion of "blood purity," used to distinguish Old Christians from formerly Jewish New Christians on racial grounds. One does,

²⁶ On the anti-Jewish canons of 4 Toledo, see Stocking, *Bishops, Councils, and Consensus*, 153–56. On King Sisebut's law mandating the conversion of the Jews, see p. 125 and, especially, the literature cited there in n. 29.

²⁷ This requirement is repeated in 12 Toledo (681), c. 9, a confirmation of *Leges Visigothorum* 12.3.21. 17 Toledo (694), c. 8, also stipulates that Jews should not celebrate Jewish holidays and that their children should be raised by and married off to faithful Christians.

²⁸ According to King, *Law and Society*, 134–45, the term "Iudeus" in Visigothic civil law refers to Jews who only accepted baptism on account of compulsion (as well as unbaptized Jews), to the exclusion of Jews who genuinely professed Christianity.

²⁹ Both c. 59 and c. 61 clearly refer to the children of apostasizing baptized Jews. The proper interpretation of this canon has been the subject of considerable scholarly disagreement. On this debate, see Stocking, *Bishops, Councils, and Consensus*, 154 n. 47, who makes the case that c. 60 refers to all Jews, baptized or not.

however, find in these canons the precursors to such a distinction: Visigothic clerics presume that there is something intrinsic to Jews that makes them especially prone to reject the teachings of the church, even after their conversion.³⁰ In both the seventh and fifteenth centuries, doubts about the sincerity of Jewish conversions to Christianity were fueled by the fact that many Spanish Jews converted under compulsion. The rhetoric of the Council of Agde, however, demonstrates that clerics were concerned about Jewish converts even when they willingly sought baptism.

This degree of mistrust toward Jewish converts finds no parallel in canons regarding former pagans, despite the fact that numerous canons acknowledge the continued allure of pagan practices. Even though the Fourth Council of Orleans applies the scriptural proverb about returning to one's vomit to those who partake of pagan sacrifices after baptism, neither this nor any other council imposes upon gentile catechumens and converts the degree of supervision mandated for Jews.³¹ Latin canons, moreover, never refer to former "pagans" or "gentiles" returning to practices associated with idolatry. Rather, they speak of "a Christian"³² who engages in idolatrous practices or "one who, after accepting the saving faith of baptism,"³³ partakes of pagan sacrifices.³⁴ The prior status of these individuals vanishes with the act of conversion. The only exceptions appear in canons from Elvira which refer to former idolatrous priests by that title (cc. 2, 3, 55). We have seen, however, that Elviran canons consistently classify priests separately from ordinary gentiles.

Church authorities perceive reversion to be the general rule among Jews but unusual among gentiles. The former, moreover, is the result of an inherently Jewish characteristic while the latter reflects an individual's lapse of judgment. This difference may reflect the fact that by the early Middle Ages Catholic leadership, which hailed almost entirely from gentile stock, regarded all gentiles as prospective Christians. Gentiles would naturally be receptive to the gospel's inherently compelling message because they are untouched by "the blindness of obstinacy" (16 Toledo [693], c. 1) that accounts for the Jews' inability to accept it. The different nature of these canons about conversion and reversion, moreover, points toward a broader dynamic within canon law literature: Jews are portrayed in a fundamentally different way than pagans and heretics.

³⁰ See further Rachel Stocking's essay in the present volume.

³¹ 4 Orleans (541), c. 15. This canon is the first of a pair on Christians adopting pagan practices. Canons addressing heretics and Jews appear in separate contexts (c. 8 and cc. 30–31, respectively).

³² Elvira (ca. 306), c. 59; 4 Orleans (541), c. 16; 2 Tours (567), c. 23 (22); cf. 2 Orleans (533), c. 20, "Catholics."

³³ Elvira (ca. 306), c. 1; cf. Valence (374), c. 3; 4 Orleans (541), c. 15.

³⁴ On condemnations of paganism in Visigothic canons, see E. A. Thompson, *The Goths in Spain* (Oxford: Clarendon, 1969), 308–10.

Disembodied Paganism and Carnal Jews

Latin authorities are concerned about paganism as a disembodied phenomenon. Although these authorities ascribe to the church the responsibility of eradicating paganism, even among non-Christians, they devote their attention to pagan practices rather than to pagans themselves. Thus, for example, the Second Council of Arles instructs bishops to root out practices such as the veneration of trees, springs, and rocks if unbelievers in their territory engage in them; the focus of this canon is on the practices, not the unbelievers.³⁵ Similarly, various canons forbid participation in pagan rites, the invocation of pagan deities, and receipt or consumption of sacrificial food;³⁶ celebration of Kalends or other pagan festivals;³⁷ the use of pagan songs at funerals and festivals (3 Toledo [589] cc. 22–23); and magical practices such as sorcery, soothsaying, divination, and augury.³⁸ Other canons enjoin the destruction of idolatrous relics and temples.³⁹ None of these canons makes any reference to non-Christians. Pagans are evidently separable from their paganism, to the point that in most cases they are referred to as “gentiles,” a term with neutral or even positive valence.

Just as canons about pagan practices express no concern about pagans themselves, canons about heresy devote only minimal attention to heretics.

³⁵ 2 Arles (442–506), c. 23, reproduced as *Vetus Gallica* 44.2. Two Visigothic canons, 12 Toledo (681), c. 11, and 16 Toledo (693), c. 2, excommunicate Christians who engage in these and related practices. The Second Council of Braga (572) instructs bishops to educate against idolatry and other major crimes on an annual basis (c. 1); see also 3 Toledo (589), c. 16.

³⁶ Elvira (ca. 306), cc. 1–3, 40, 55, 56, 59; Valence (374), c. 3; *Registri ecclesiae Carthaginensis excerpta*, c. 60 (citing the Council of Carthage convened in June 401); 2 Arles (442–506), c. 11; 2 Orleans (533), c. 20; 4 Orleans (541), c. 15; 2 Tours (567), c. 23 (22); Auxerre (561–605), c. 3; Clichy (626/27), c. 16; see also *Vetus Gallica* 57.7, which reproduces an Eastern canon forbidding participation in pagan festivals. On 2 Orleans, c. 20, and its literary context, see n. 12.

³⁷ 3 Toledo (589), c. 23; Tours (567), cc. 18, 23; Auxerre (561–605), c. 1. Tours, c. 18, addresses Kalends in the context of prescribing the proper calendar of monastic activities, a subject that continues in c. 19.

³⁸ Elvira, c. 6; *Statuta Ecclesiae antiqua* (ca. 475), c. 83; Agde (506), c. 42; 1 Orleans (511), c. 30; 4 Orleans (541), c. 16; Eauze (551), c. 3; Auxerre (561–605), c. 4; 2 Braga (572), *Canones Martini* c. 71; Narbonne (589), c. 14; Clichy (626/27), c. 16; 4 Toledo (633), c. 29; 5 Toledo (636), c. 4 (part of a series of canons regarding activities performed on behalf of or with the intent of harming rulers, cc. 2–6); 6 Toledo (638), c. 17. The canons from Agde and 1 Orleans are reproduced as *Vetus Gallica* 44.3–4. See also 1 Braga (561), the ninth of whose anathemas addresses those who engage in the pagan and Priscillian practice of astrology.

³⁹ *Registri ecclesiae Carthaginensis excerpta*, cc. 58, 84 (June and September 401). Elviran canons are exceptional with regard to the destruction of idols because they date from a period in which Roman Spain was still predominantly pagan. Clerics warn Christians to forbid idols within their homes, but an exception is granted to those who fear violence from their non-Christian slaves (c. 41). Christians put to death for destroying idols, the clerics declare, are not to be regarded as martyrs (c. 60).

Latin church councils define and anathematize various types of heresy, stipulate that heretical gatherings are not to be called “churches,” and dictate credal language in response to heretical beliefs.⁴⁰ To the extent that heretics do appear in these canons, they are to be ignored: clerics may not engage in debate or even chant psalms with heretics, may neither offer communion to heretics nor accept eulogies from heretics, and may not designate heretics as heirs.⁴¹ Bishops gathered at the first council convened in Spain after the Visigothic conversion to Catholicism blamed past neglect of canon law on “the pressure of heresy or paganism” and even on “the patronage of heresy,” as if these phenomena existed without human actors.⁴²

Heresy and paganism are both portrayed as disembodied threats to the spiritual well-being of the church and its members, even in places where heretics and pagans were apparently numerous. Even if one accepts the argument of Yitzhak Hen that Gaul itself was thoroughly Christianized at an early date, Gallic Catholics were well aware of pagans just beyond the borders of the Merovingian kingdom.⁴³ The rhetoric of African and Visigothic canons, moreover, testifies to the perception among Catholic clerics of significant pagan and heretical populations. African canons address marriage and bequests to pagans and heretics as practical concerns and complain that pagan worship sites and worship practices remain widespread.⁴⁴ Similarly, the clerics gathered at the Third Council of Toledo declare that “the sacrilege of idolatry has sprouted throughout almost the whole of Spain.”⁴⁵ Idolaters themselves, however, are strikingly absent from the canons of this and other Visigothic councils.



⁴⁰ Definition and anathematization (among others): 1 Toledo (400), following the canons; 1 Braga (561), introduction; see also 2 Troyes (567), c. 28 (27). Name for heretical gatherings: *Statuta Ecclesiae antiqua* (ca. 475), c. 81. Credal language: 2 Vaison (529), c. 5. On Catholic responses to the heresy of Priscillianism in Spain, see Joyce E. Salisbury, *Iberian Popular Religion, 600 B.C. to 700 A.D.: Celts, Romans and Visigoths* (New York: Edwin Mellen, 1985), 191-226.

⁴¹ Debates: 14 Toledo (684), c. 10; Psalms: *Statuta Ecclesiae antiqua*, c. 82 (reproduced in *Vetus Gallica* 57.9); communion: 2 Braga (572), *Canones Martini* c. 36; eulogies: *Canones Martini* c. 70; bequests: see n. 44.

⁴² 3 Toledo (589), c. 1; see further Stocking, *Bishops, Councils, and Consensus*, 73-74.

⁴³ Yitzhak Hen, *Culture and Religion in Merovingian Gaul, A.D. 481-751* (Leiden: Brill, 1995); for Hen's treatment of canon law sources, see pp. 176-78.

⁴⁴ Marriage to pagans or heretics: *Breviarium Hipponense* (based on Council of Hippo, 393) c. 12 (repromulgated in revised form at the Council of Carthage of 525); *Canones in causa Apianii* (419) c. 21. Bequests to pagans or heretics: *Registri Ecclesiae Carthaginensis excerpta* c. 81 (originally promulgated in 401; repromulgated at the Council of Carthage of 525). On pagan worship sites and practices, see n. 39.

⁴⁵ 3 Toledo (589), c. 16. See also 2 Braga (572), c. 1, and King Egica's reference to the continued presence of idolatrous shrines at the Sixteenth Council of Toledo (693, *Tomus*).

A handful of canons forbid Christian adoption of Jewish holiday practices along lines similar to those that address pagan practices.⁴⁶ The vast majority of Jewry law, however, emphasizes the embodied, carnal nature of the Jew. We have already seen that various canons portray Jewish slaveowners as abusing their power to cause physical and spiritual harm to Christians. Visigothic canons, moreover, express specific concern about the forced circumcision of Christian slaves, a deeply carnal accusation.⁴⁷ Concern about the malice Jews bear toward Christians also underlies the oft-repeated prohibitions against Jews exercising public offices that hold authority over Christians: “Christians would appear, God forbid, to be subjected” to Jews, who would take advantage of their posts “by causing harm to Christians.”⁴⁸ Concern of this nature is never expressed with respect to pagans or, for that matter, heretics. Canon law portrays Jews as unique among non-Catholics in their desire to harm Christians, whether physically, financially, or spiritually.

Clerics gathered at the First Council of Mâcon (581/83), after prohibiting Christian clerics and laymen from dwelling in convents or engaging in private conversation with nuns, declare that “Jews in particular” may not engage in such conversations or develop close relationships with the maidens (c. 2). Apparently, Jews are especially prone toward illicit acts of sexual intercourse. These clerics also express concern about the physical and spiritual dangers posed by the Jewish body in a canon that prohibits Jews from strolling about during the days surrounding Easter, “as if for the purpose of mockery,” and forbids Jews to sit down in the presence of priests without permission (c. 14).⁴⁹ The Council of Narbonne prohibits Jews from chanting psalms while bringing the bodies of their deceased to the cemetery, perhaps because clerics regarded this practice as distinctively Christian, suitable only in the funeral processions of those who have experienced salvation.⁵⁰

⁴⁶ *Statuta Ecclesiae antiqua*, c. 83 (discussed at n. 20 above); see also 3 Orleans (538), c. 31 (28).

⁴⁷ 3 Toledo (589), c. 14; 4 Toledo (633), c. 66.

⁴⁸ First quotation: 1 Mâcon (581/83), c. 13 (reproduced in *Vetus Gallica* 55.3); second quotation: 4 Toledo (633), c. 65. Similar canons: Clermont (535), c. 9; 3 Toledo (589), c. 14; Paris (614), c. 17 (15) and Clothar’s edict, #10; Clichy (626/27), c. 13. On these canons, see further Mikat, *Judengesetzgebung*, 25–36. Rather than forbidding Jews to hold office, the canon from Paris insists on forcibly converting Jews (and their families) who seek to do so in contravention of canon law, a solution Parkes, *Conflict of Church and Synagogue*, 328, describes as “almost worthy of a Gilbertian opera.” According to Blumenkranz, *Juifs et chrétiens dans le monde occidental*, 342, Clothar did not endorse the punishment of forced baptism; the text of his edict is unclear on this point. Clothar did, however, endorse the principle of barring Jews from government posts and affirmed that violators should be punished in accordance with canon law.

⁴⁹ 3 Orleans (538), c. 33 (30), also prohibits Jews from mingling with Christians during the Easter period. See further Mikat, *Judengesetzgebung*, 37–42.

⁵⁰ Narbonne (589), c. 9. On the place of psalms in Christian funerals and in Christian polemics against traditional pagan funeral practices, see Frederick S. Paxton, *Christianizing Death: The Creation of a Ritual Process in Early Medieval Europe* (Ithaca, N.Y.: Cornell University Press, 1990), 43;

The Fourth Council of Toledo anathematizes Christians who, in exchange for gifts, offer protection to Jews and thereby “encourage the treachery of those who for good reason are known to be members of the body of Antichrist, for they act against Christ. ... It is proper that whoever becomes a defender of the enemies of Christ should be separated from the body of Christ.”⁵¹ The first canon of the Sixteenth Council of Toledo (693) employs numerous metaphors of physicality—“they have become harder than stone,” “walls of their unbelief,” “a diseased person afflicted with diverse ills”—to justify intensifying efforts to persuade Jews to convert. The final Visigothic canon regarding Jews, promulgated in response to an alleged international Jewish conspiracy to overthrow Spain’s Christian monarchy, decrees that Jews be stripped of their properties, exiled from their homes, and bound in perpetual slavery (17 Toledo [694], c. 8). The physicality of the Jew calls for physical punishments quite out of character within canon law literature, whose punishments are usually forms of penance or periods of excommunication.

Jews, as depicted in early medieval canon law, are violent, immoral, deceitful, and disdainful of that which Christians respect. Their carnal nature stands in stark contrast to the spirituality cultivated by the church and exemplified in the virgin monastics to whom the First Council of Mâcon refers. Jews are not merely non-Catholics but rather anti-Catholics, a point emphasized in the Fourth Council of Toledo’s Antichrist rhetoric. For this reason, canon law treats Jews in a very different manner than heretics or pagans.

The Distinct Place of the Jew in Early Medieval Canon Law

In *Foreigners and Their Food: Constructing Otherness in Jewish, Christian, and Islamic Law*, I make the case that Christian authorities imagine gentiles as “non-Christians” and Jews as “anti-Christians”: if Christians are assigned the numerical value “1,” then gentiles are “0” and Jews are “-1.” The analysis offered in the present essay offers further support for this thesis on the basis of a data set that encompasses all early medieval Latin canon law about non-Catholics, not just laws regarding food. These sources reflect the ways in which Jews and Christians are ascribed inverse attributes. Jews do not merely

see further Alfred C. Rush, “Death and Burial in Christian Antiquity,” Ph.D. diss. (Washington, D.C.: Catholic University of America, 1941), 231–35. Blumenkranz, *Juifs et chrétiens dans le monde occidental*, 308, suggests that this prohibition relates not to the content of the processional liturgy but rather to its volume: Jewish worship should not be noticed by Christians, a principle that is especially problematic in the context of funeral processions along public thoroughfares. This canon, however, uses “psallendo” rather than a generic term for prayer and lacks any form of the adverb “loudly.”

⁵¹ 4 Toledo (633), c. 58; see also Ervig’s laws, ratified as 12 Toledo (681), c. 9.

fail to act in accord with Christian charity, they actively seek to harm Christians; Jews do not merely engage in sex, they engage in illicit sex; Jews do not merely lack knowledge of Christ, they stubbornly spurn such knowledge even following their nominal conversion to Christianity. This essay also demonstrates the degree to which Jews and gentiles are imagined differently within canon law literature. The metaphor of zero applies well to gentiles who are, to a considerable extent, non-entities of minimal significance, blank slates ready to receive the gospel. Canons from the Council of Elvira, moreover, show that Christian attitudes regarding the status of Jews, pagans, and heretics evolved and crystallized during the early Middle Ages. At the turn of the fourth century, the demerits of Jews and heretics were roughly equivalent, and practitioners of idolatry still ranked at the bottom of the Christian classificatory system.

Elviran canons demonstrate that the placement of Jews at the nadir of Christian society is not a foregone conclusion. Nor can one say that this placement stems from the fact that Jews were the only religious minority in the Latin Christian world: during the early Middle Ages, there were plenty of pagans in Western Europe and North Africa.⁵² Christian authorities could readily have chosen to treat all non-Catholics alike, as Augustine does in the quote with which this essay begins and as Rabbinic authorities do with respect to non-Jews. Christians could also have chosen to classify Jews above pagans on account of the similarities between Judaism and Christianity, much as Islamic authorities grant a relatively elevated status among non-Muslims to People of the Book. The fact that canon law assigns Jews a status inferior even to heretics is especially surprising when viewed from the perspective of Jewish or Islamic law, which reserve for heretics the status of “-1” on their respective spectrums of humanity.⁵³

In light of these observations, the reason for defining Jews as anti-Christian must be theological rather than social, and it must relate to one or more aspects of Christian theology absent from Judaism and Islam. This conclusion is far from original, and the specific aspects of Christian theology in question are often identified as Jewish responsibility for the crucifixion and Jewish

⁵² Mark R. Cohen, “Anti-Jewish Violence and the Place of the Jews in Christendom and Islam: A Paradigm,” in *Religious Violence Between Christians and Jews: Medieval Roots, Modern Perspectives*, ed. Anna Sapir Abulafia (Houndmills, Hampshire: Palgrave, 2002), 114, attributes anti-Jewish violence in the High Middle Ages in part to the fact that Jews “were the only infidels living within northern Christian society” (emphasis original). The conceptual basis for this violence, however, emerged in an era when this was not the case.

⁵³ See William Scott Green, “Otherness Within: Towards a Theory of Difference in Rabbinic Judaism,” in “*To See Ourselves as Others See Us*: Christians, Jews, “Others” in Late Antiquity, ed. Jacob Neusner and Ernest S. Frerichs (Chico, Calif.: Scholars Press, 1985), 49–69; Etan Kohlberg, “Non-Imāmī Muslims in Imāmī Fiqh,” *Jerusalem Studies in Arabic and Islam* 6 (1985): 99–105.

claims to the Old Testament.⁵⁴ I would frame this argument in a slightly different manner: the definition of Jews as anti-Christians constitutes one element of a broader Christian effort to lay claim to the mantle of Israel's holiness. This effort is also manifest through the appropriation of "gentiles" as the term of choice for non-Jewish non-Christians. Christian authorities perceive Israel's holiness in zero-sum terms: only one religious community can stand in a unique covenantal relationship with the divine and possess the authoritative understanding of divine revelation. The Jews, with their own claims regarding God, the Bible, and the covenant with Israel, thus constitute the most threatening of heretics even as they remain outside the bounds of Christianity.⁵⁵ Unlike gentiles, moreover, Jews cannot merely be dismissed as "not-Israel." Although the theological basis for Christian conceptions of Jews was already established in the second and third centuries, evidence from Elvira suggests that these conceptions did not become normative until some time after the Christianization of the Roman Empire.

Jewry law, as formulated during the fourth through seventh centuries, contributes to the definition of Jews and Jews alone as anti-Christian. As such, it serves a different function from *dhimmi* law, Islamic law regarding subject non-Muslims.⁵⁶ *Dhimmi* law applies to non-Muslims without distinction, whereas significant portions of early medieval Jewry law do not apply to gentiles. While both sets of laws, for example, prohibit their subjects from occupying public office, these laws communicate different messages. The Islamic version exemplifies the dictum, "Islam is exalted and nothing is exalted above it."⁵⁷ The Christian version, in contrast, focuses primarily on the narrower and more defensive goal of preventing Christians from being subject to Jews and

⁵⁴ See, for one example among many, Mark R. Cohen, "Anti-Jewish Violence," 111–13, who also points to the (supposed) persecution of Christians by Jews during the following centuries. Christian rhetoric about these historical circumstances, I believe, is intended to support the representation of Jews as antithetical to Christianity and should not be understood as the root cause of this representation. I agree with Cohen regarding the significance of the fact that Jews reject the Christian interpretation of the Bible but understand its significance somewhat differently.

⁵⁵ Similarly, P. D. King, *Law and Society*, 132, argues that it was "the hatred of the Christian for the people who had betrayed God's trust which inspired persecution" in Visigothic Spain. "So much is amply clear from the constant employment in the laws and canons of condemnatory allusions to Jewish disobedience to divine commandments, perversity in the face of the Messiah and obdurate denial of the Christian interpretation of the Old Testament in spiritual terms."

⁵⁶ On the functions of *dhimmi* law, see David M. Freidenreich, "Christians in Early and Classical Sunni Law," in *Christian-Muslim Relations: A Bibliographical History*, vol. 1, ed. David Thomas, et al (Leiden: Brill, 2009), 83–98; "Christians in Early and Classical Shi'i Law," in *Christian-Muslim Relations: A Bibliographical History*, Vol. 3, ed. David Thomas, et al (Leiden: Brill, 2011), 27–40.

⁵⁷ *Ṣaḥīḥ al-Bukhārī*, 23.80, cited and translated in Yohanan Friedmann, *Tolerance and Coercion in Islam: Interfaith Relations in the Muslim Tradition* (Cambridge: Cambridge University Press, 2003), 35.

the harm Jews would inflict. Similarly, the onerous tax burden imposed on Jews by the Sixteenth Council of Toledo (693, c. 1) is designed to encourage conversion rather than to humiliate adherents of an inferior religious tradition, as is the case with the Qur'anic *jizya*. Christian authorities, at least during the early Middle Ages, evidently felt no need to establish the universal superiority of Christianity through laws relegating all non-Christians to second-class status but, unlike Muslims, found it important to establish laws directed exclusively at Jews. Comparisons that focus on the parallel contents of Jewry law and *dhimmi* law miss this crucial distinction.



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**II Lawyers at work :
from the adaptation of Roman Law
to the creation of canonical
collections and false canons**



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Grégoire le Grand et les Juifs, pratiques juridiques et enjeux théologiques.

Bruno JUDIC

Grégoire le Grand a une excellente réputation dans le domaine des études juives. Il est en effet à la source d'une immense documentation à la fois par ses écrits proprement "patristiques", commentaires scripturaires, homélies, traité de pastorale et hagiographie, et par sa correspondance, une abondante carrière de plus de huit cents lettres, absolument exceptionnelle pour cette période, 590-604, la période durant laquelle il est évêque de Rome. Il faudra revenir en particulier sur ces lettres pour en préciser la nature, mais il y a encore un autre sujet de célébrité de Grégoire dans ce domaine, qui est son attitude favorable envers les juifs, attitude qui tranche avec le caractère sévère ou même injurieux de la polémique anti-judaïque dans l'Eglise. La masse de la documentation comme l'aspect original de l'attitude de Grégoire ont entraîné une importante bibliographie et il est difficile de prétendre apporter du nouveau. Néanmoins il est certainement utile, dans le cadre d'une étude sur la relation entre les institutions juridiques et les minorités, ici la minorité juive, de rappeler ce dossier exceptionnel. Je partirai en effet des lettres de Grégoire, qui sont en réalité des documents d'administration. Il s'agit de la conservation exceptionnelle de la production de la chancellerie de l'Eglise romaine pour la période du pontificat de Grégoire ; cette conservation est attestée aussi avant et après lui mais seulement par quelques rares lettres. Ces lettres ont été rédigées par des notaires de l'Eglise romaine, selon des formulaires et en fonction de cadres réglementaires stricts. Pendant longtemps leur conservation a relevé de l'Eglise romaine et non pas de l'oeuvre propre de Grégoire. Pourtant la part personnelle du pontife s'y retrouve de deux manières : d'une part certaines lettres présentent des aspects vraiment originaux qui laissent entendre la dictée du saint pape et la reprise de phrases ou de thèmes qui se trouvent dans ses oeuvres propres, d'autre part chaque lettre est nécessairement le résultat d'une décision qui, en dernier ressort, venait de Grégoire, même si différents intermédiaires sont vraisemblables¹. Il y a

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¹ Editions du *Registre des lettres de Grégoire le Grand*: P. Ewald et L. M. Hartmann dans *MGH, Epistolae* 1 et 2, Berlin 1887-1899 et D. Norberg, CC140 et 140A, Turnhout 1982. Dans les références ci-dessous, l'indication CC signale que la numérotation est différente entre l'édition MGH et l'édition CC. Sur les 14 livres du *Registre*, les quatre premiers sont désormais disponibles en traduction française dans *Sources Chrétiennes*, Grégoire le Grand, *Registre des lettres*, tome I* et tome I** (livres I et II) par Pierre Minard, SC 370, Paris 1991; tome II (livres III et IV), *Introd. et notes* par Marc Reydellet, trad. par Pierre Minard et Marc Reydellet. Traduction

environ 28 lettres qui évoquent des juifs, ce qui va me permettre de soulever deux premiers points fondamentaux : la question de l'esclavage et la question plus large de la législation romaine². J'évoquerai ensuite un troisième point, avec les œuvres propres de Grégoire, sur la conversion et l'eschatologie.

La question de l'esclavage me paraît particulièrement frappante. La mécanique juridique déployée dans les lettres ne doit pas nous détourner d'un étonnement radical devant cette pratique. On sait bien que les sociétés antiques sont des sociétés esclavagistes mais le fonctionnement concret du système est facilement renvoyé au temps de Spartacus et des latifundia. Or nous voyons Grégoire détailler tranquillement un système esclavagiste très précis et même pointilleux, rigoureusement fondé sur le droit romain. On doit rappeler ici l'importance du travail de Pierre Bonnassie qui avait montré comment l'esclavagisme antique atteignait, selon lui, son apogée non pas dans l'Antiquité "classique" mais dans le haut Moyen Age³.

Le point central, c'est l'interdiction pour les juifs de posséder des esclaves chrétiens, interdiction qui figurait déjà dans le Code Théodosien mais qui est renforcée dans le Code Justinien que Grégoire applique. Une conséquence de cette interdiction est qu'un esclave appartenant à un juif et qui déciderait de devenir chrétien, par exemple en se réfugiant dans une église, doit être immé-

anglaise complète: *The Letters of Gregory the Great* by John R.C. Martyn, 3 vol., Pontifical Institute of Medieval Studies, Toronto 2004. Cf. aussi B. Judic, Le registre des lettres de Grégoire le Grand, une création carolingienne?, dans J. Desmulliez, C. Hoët-van Cauwenberghe et J.-C. Jolivet, *L'étude des correspondances dans le monde romain de l'Antiquité classique à l'Antiquité tardive: permanences et mutations*, Université Charles-de-Gaulle Lille 3, Villeneuve d'Ascq 2010, p. 507-528.

² Travaux fondamentaux sur Grégoire le Grand et les juifs: Solomon Katz, Pope Gregory the Great and the Jews, dans *The Jewish Quarterly Review* 24, 1933, p. 113-136 (qui donne aussi la bibliographie antérieure). Bernhard Blumenkranz, *Juifs et chrétiens dans le monde occidental 430-1096*, Paris 1960. ID., *Les auteurs chrétiens latins du Moyen Age sur les Juifs et le judaïsme*, Paris La Haye 1963, p. 73-86 sur Grégoire le Grand. Sofia Boesch-Gajano, Per una storia degli Ebrei in Occidente tra Antichità e Medioevo. La testimonianza di Gregorio Magno, dans *Quaderni Medievali* 8, 1979, p. 12-43 (pose bien le cadre historiographique de l'histoire du judaïsme au temps de Grégoire le Grand et dans le Haut Moyen Age). Ernst Baltrusch, Gregor der Grosse und sein Verhältnis zum Römischen Recht am Beispiel seiner Politik gegenüber den Juden, dans *Historische Zeitschrift* 259, 1994, p. 39-58 (article essentiel qui replace les lettres concernant les juifs dans l'ensemble de la correspondance de Grégoire et aussi dans la postérité de Grégoire). Ernst Bammel, Gregor der Grosse und die Juden, dans *Judaica et Paulina* (volume 91), Tübingen 1997, p. 87-95. Robert Markus, *Gregory the Great and his World*, Cambridge University Press 1997, p. 76-80.

³ Cf. Pierre Bonnassie, Survie et extinction du régime esclavagiste dans l'Occident du haut Moyen Age IV^e - IX^e siècles, dans *Cahiers de Civilisation Médiévale* 28, 1985, p. 307-343, repris dans *Les sociétés de l'an mil. Un monde entre deux âges*, Bruxelles 2001, p. 85-142. Jean-Pierre Devroey, *Puissants et misérables, système social et monde paysan dans l'Europe des Francs VI^e - IX^e siècles*, Bruxelles, Académie royale de Belgique, 2006.

diatement affranchi et retiré à son propriétaire juif. C'est ce que suggère une lettre de sept. 593 adressée à l'évêque de Cagliari en Sardaigne. Mais les propriétaires ainsi lésés s'arrangent pour payer à qui de droit (à l'évêque?) afin que les esclaves leur soient rendus. Grégoire réclame donc l'application stricte de la loi et de sa conséquence, l'affranchissement d'un esclave devenu chrétien.

« Grégoire à Janvier évêque de Cagliari ... Il est aussi parvenu à notre connaissance que des esclaves et servantes de juifs ayant demandé refuge à l'Eglise en raison de leur foi, ou bien sont rendus à leurs maîtres infidèles, ou bien on en paye le prix pour qu'ils ne soient pas rendus. Nous t'exhortons donc à ne permettre aucunement que subsiste une coutume si mauvaise. Mais tout esclave de juifs qui se réfugiera pour motif de foi dans les lieux vénérables, ne souffrez pas qu'il subisse préjudice. Mais, qu'il soit chrétien de longue date ou qu'il ait été baptisé à ce moment, que, sans porter aucun dommage aux pauvres, il soit soutenu par tous les moyens pour obtenir la liberté par l'appui religieux de la charité ecclésiastique⁴. »

Cependant, une lettre de mai 594 montre une application plus subtile de la loi. L'évêque Venantius de Luni, qui est un correspondant plus apprécié de Grégoire que Janvier de Cagliari, est accusé de tolérer la présence d'esclaves chrétiens chez des maîtres juifs. Grégoire lui rappelle la loi, les très pieuses lois (*piissimae leges*). Mais il ajoute aussitôt une distinction entre des esclaves domestiques au service immédiat d'un maître juif et des esclaves ruraux, simplement attachés à la glèbe. Pour ces derniers Grégoire demande seulement un changement de statut, de *mancipium* à *colorius* ou *originarius*, sans changement d'obligation. Les propriétaires juifs peuvent donc continuer à mettre en valeur leurs terres avec des paysans dépendants, chrétiens. Il faut sans doute supposer que, dans cette région du nord de la Toscane, ces propriétaires juifs sont ou bien des citadins de cette petite cité de Luni, ou bien eux-mêmes des agriculteurs disposant d'une main-d'oeuvre dépendante. La prise en compte de leurs intérêts par Grégoire peut être liée à la situation géopolitique de cette région, sous l'autorité impériale (byzantine), mais isolée au contact de territoires dominés par les Lombards. Grégoire ne veut donc pas fragiliser l'économie rurale et les moyens de défense⁵.

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⁴ Lettre 4, 9, sept. 593, Sources Chrétiennes (abrégé dorénavant SC) 520, Paris 2008, p. 276-277.

⁵ Lettre 4, 21, mai 594, SC 520, p. 306-309 : « Grégoire à Venance évêque de Luni. Par le rapport d'un grand nombre, il est parvenu à notre connaissance que des esclaves chrétiens étaient retenus au service de juifs habitant la cité de Luni. Le fait nous a paru d'autant plus pénible que la tolérance (*patientia*) de Ta Fraternité y prêtait la main. Car il aurait fallu qu'en considération de ton rang et par égard pour la religion chrétienne, tu ne laisses pas l'occasion à des

Dans le cas de Naples, deux lettres adressées à Fortunat, l'évêque de la ville, en avril 596 puis en février 599, présentent l'esclavage sous l'angle du commerce et de la traite elle-même. Le principe de départ est bien sûr le même : des esclaves chrétiens ne peuvent être possédés par un maître juif et un esclave païen qui veut devenir chrétien doit être affranchi si son maître est juif. Grégoire commence par insister sur cette liberté automatiquement obtenue par le fait de devenir chrétien et insiste pour que les maîtres juifs ne puissent en aucune manière contourner cette règle. Pourtant, Grégoire admet ensuite une autre situation. Les esclaves peuvent avoir été achetés pour être revendus. Le maître juif n'est en réalité qu'un commerçant, un négociant qui sait où trouver les esclaves et qui dispose d'acheteurs pour sa marchandise. Dans un tel cas, les esclaves ne sont pas destinés à devenir la propriété effective d'un maître juif. Au contraire le vrai propriétaire final est chrétien. Alors Grégoire prévoit une procédure spéciale. Si les esclaves achetés par les marchands juifs

âmes simples de s'asservir à la superstition juive non tant par la persuasion que par le droit de la puissance. C'est pourquoi nous exhortons Ta Fraternité à interdire à tout juif, selon la voie des très pieuses lois (*secundum piissimarum legum tramitem*), de détenir en propriété un chrétien comme esclave (*christianum mancipium in suo retinere dominio*). Mais s'il s'en trouve chez eux, que la liberté leur soit garantie avec l'aide de ta protection selon la sanction des lois. Quant à ceux qui sont sur leurs possessions, bien qu'ils soient eux aussi libres en vertu de la rigueur des lois, cependant, parce qu'ils ont été attachés assez longtemps à la culture de leurs terres, en tant qu'assujettis à la condition du lieu (*utpote condicionem loci debentes*), qu'ils demeurent sur les terres qu'ils avaient coutume de travailler, qu'ils paient les redevances aux susdits maîtres, qu'ils remplissent toutes les obligations que le droit prescrit au sujet des colons et des attachés à la glèbe (*cuncta quae de colonis uel originariis iura praecipunt peragant*). Qu'aucune charge supplémentaire, en dehors de cela, ne leur soit imposée. Si donc quelqu'un veut faire passer l'un de ceux-ci dans un autre lieu ou le retenir à son service personnel, qu'il ne s'en prenne qu'à lui, de s'être fermé le droit des colons par sa témérité, et le droit de propriété par la sévérité du droit. A tout cela, nous voulons que tu te consacres avec tant de soin que tu ne deviennes pas un pasteur coupable de livrer le troupeau au pillage et que ton manque de zèle ne rende Ta Fraternité répréhensible à nos yeux ». Il faut souligner l'importance des notes de Marc Reydellet sur cette lettre: La législation impériale sur les juifs est dans Cod. Theod. XVI, 9 qui donne cinq lois de 336 à 423, cf. commentaire de Roland Delmaire dans *Lois religieuses des empereurs romains Code théodosien livre XVI*, vol. I, SC 497, Paris 2005 Introduction p. 97-98. Cod. Iust. I, 9, 10 reprend le rescrit de Constantin de XVI, 9, 2 en le modifiant légèrement: là où Constantin parle seulement d'un "esclave d'une autre secte ou nation (que les juifs)", Justinien ajoute expressément *mancipium christianum*. Justinien n'a pas retenu la loi XVI, 9, 3 d'Honorius et Theodose II qui autorisait les juifs à posséder des esclaves chrétiens sous réserve de les laisser pratiquer leur religion. Le statut des *originarii* est défini par Cod. Iust. XI, 48, 7 et XI 48, 23 ou ils sont appelés *adscriptionii* (*adscriptionis condicione*) et où il est précisé qu'ils restent attachés à la terre (*remaneat et inhaereat terrae*), cf. Vincenzo Recchia, *Gregorio Magno e la società agricola*, p. 68 et Sofia Boesch-Gajano, *Teoria e pratica pastorale*, dans *Colloque de Chantilly*, p. 183 souligne que le pape essaie de concilier la lettre de la loi avec la sauvegarde des intérêts des propriétaires juifs. Reydellet rappelle que ce texte de Justinien reprend aussi des textes antérieurs qui vise à éviter la désertification des campagnes et à garantir la subsistance des ouvriers agricoles. Cod. Iust. XI, 48, 2, reprend un rescrit de Constance II et interdit de déplacer un colon d'un domaine à un autre.

sont revendus dans un délai de trois mois, toute l'opération restera légale. L'affranchissement ne concernera donc, le cas échéant, que des esclaves qui seraient restés aux mains du maître juif au-delà de ce délai de trois mois⁶. La lettre de 599 développe d'autres détails. Ainsi en 599, le délai de revente est réduit à quarante jours au lieu de trois mois, mais Grégoire prévoit que des esclaves puissent être malades et donc invendables. On devra alors attendre qu'ils retrouvent la santé pour les revendre. Par ailleurs il autorise aussi la vente des esclaves restant de l'année précédente puisque les vendeurs juifs ignoraient la réglementation. Enfin l'un de ces marchands juifs, Basile, souligne auprès de Grégoire un élément très important : les marchands juifs agissent le plus souvent pour le compte de hauts fonctionnaires et de notables de l'empire. Ces notables sont bien sûr chrétiens et on ne saurait les empêcher de faire leur travail sous peine de les soumettre à la colère des autorités publiques. Dans tous ces détails, il semble clair que Grégoire ne cherche nullement à mettre un terme au commerce des esclaves et n'a pas non plus l'intention de faire du tort aux marchands juifs. Il est probablement sensible au fait que la responsabilité essentielle du trafic se trouve bien au sommet du pouvoir dans l'empire. Les juifs n'ont donc pas ici un rôle spécifique ; ils doivent être soumis à la loi de l'empire mais il n'y a pas de raison de les brimer plus que d'autres catégories. La lettre de 599 présente en outre une "ruse" d'un maître juif qui annonce sa conversion au christianisme pour pouvoir

⁶ Lettre 6, 29, avril 596 : « Grégoire à Fortunat évêque de Naples. Nous avons écrit auparavant à Votre Fraternité ceci : à propos de ceux qui désirent quitter la superstition judaïque pour venir à la foi chrétienne en aspirant à Dieu, aucune autorisation de les vendre ne doit être accordée à leurs maîtres, mais ils doivent manifester leur propre désir et leur propre volonté et ils doivent en toutes choses être défendus dans l'accès à la liberté. Mais parce que, comme nous l'avons appris, ceux qui ne savent pas peser par une discrétion subtile ni notre volonté ni les règlements des lois à propos des esclaves païens ne se considèrent pas contraints par cette condition, il convient que Votre Fraternité soit attentive; et si, dans l'état de servitude, non seulement un juif, mais aussi quiconque parmi les païens aura voulu devenir chrétien, après que sa volonté aura été manifestée, et qu'il n'y ait aucune faculté pour quiconque parmi les juifs de le vendre sous quelque ruse ou prétexte que ce soit, mais celui qui désire être converti à la foi chrétienne devra être secouru par votre défense dans l'accès à la liberté de toutes les manières. De crainte que ceux qui laissent libérer leurs esclaves de cette manière, estiment peut-être être gênés de manière déraisonnable dans leurs utilités, vous devez leur accorder une considération attentive de sorte qu'ils perçoivent, de la part de l'acheteur chrétien, le prix des païens qu'ils ont acheté à l'extérieur des frontières pour des raisons de commerce, dans un délai de trois mois, quand on trouve l'acheteur auquel ils devaient être vendus, et que ces païens se sont peut-être réfugiés dans une église et disent qu'ils veulent devenir chrétiens ou même qu'ils ont manifesté cette même volonté à l'extérieur d'une église. Si, après la fin des trois mois, l'un des esclaves de cette sorte aura proclamé sa volonté et aura voulu devenir chrétien, que personne n'ose l'acheter ensuite et que le maître sous l'apparence d'une occasion n'ose pas le vendre, mais qu'il soit conduit sans aucun doute vers les récompenses de la liberté. Donc que Votre Fraternité observe tout cela avec vigilance de sorte que ni la supplication de certains, ni la considération d'une personne ne puisse s'opposer à cela ».

garder ses esclaves devenus chrétiens. Grégoire ne semble pas dupe de la manœuvre mais il ne s'en offusque pas non plus. En réalité il s'agit d'un fils de Basile. Le fils converti peut garder les anciens esclaves devenus chrétiens et qui avaient appartenu à son père. Mais puisque ces esclaves sont toujours dans la même maison, ils peuvent toujours être au service du père juif. Grégoire demande seulement que les esclaves soient bien devenus chrétiens et qu'on ne leur demande pas plus de service que ce que le fils lui-même doit à son père. L'impression générale est celle d'un grand pragmatisme fondé sur une évidente bienveillance vis-à-vis des cas concrets, des personnes réellement connues par Grégoire ou dont la demande a été bien introduite⁷.

A côté de ce pragmatisme bienveillant, il faut aussi noter le rappel de la loi dans le cas d'esclaves païens que des maîtres juifs veulent circoncrire. Les esclaves doivent être affranchis et les maîtres juifs devront être sanctionnés

⁷ Lettre 9, 104 (9, 105CC), fév. 599 : « Grégoire à Fortunat évêque de Naples. Sachant quel zèle a enflammé Votre Fraternité à propos des esclaves chrétiens que des juifs achètent et font venir des Gaules, nous signalons que votre sollicitude nous a plu et que nous avons jugé et délibéré d'interdire aux juifs ce genre de commerce. Mais l'hébreu Basilius avec d'autres juifs est venu nous voir et nous avons découvert que ce type d'achat leur était imposé par divers juges de la *res publica* / de l'empire et il arrive que des chrétiens soient achetés également parmi les païens. C'est pourquoi il a été nécessaire de mettre en ordre cette affaire avec prudence de sorte que ni ceux qui ont donné l'ordre ne soient frustrés ni ceux qui disent qu'ils ont obéi contre leur volonté ne soient injustement poursuivis. Aussi Votre Fraternité veillera, avec une sollicitude vigilante, à observer et garder ceci: lorsque les juifs reviendront de la province susdite, les esclaves chrétiens qu'ils auront ramené avec eux seront ou bien donnés en retour à ceux qui donnés les ordres, ou bien vendus à des acheteurs chrétiens dans un délai de quarante jours. Passé ce nombre de jours il ne devra rester aucun esclave auprès d'eux. S'il arrive que certains de ces esclaves tombent malades d'une maladie telle qu'ils ne peuvent pas les vendre dans le délai imparti, il faut absolument veiller à ce que, lorsqu'ils auront retrouvé la santé, ils soient de toutes les manières vendus, parce qu'il ne convient pas qu'une affaire qui se déroule sans faute conduise à un dommage. A chaque fois qu'on décide quelque chose de nouveau, une forme est imposée aux évènements futurs, de sorte qu'elle ne condamne pas les nombreux faits passés; si, chez les juifs, il reste des esclaves provenant de l'achat de l'année précédente ou bien que des esclaves ont été récemment emportés par vous-même quand ils étaient placés chez vous, qu'ils aient la licence de les vendre de sorte qu'ils ne subissent pas un préjudice alors qu'ils ignoraient la prohibition auparavant et qu'il est digne de leur interdire cela ensuite. On nous a annoncé ensuite que le susdit Basile a voulu concéder certains esclaves au titre de donation à ses fils chrétiens avec l'aide de Dieu, de sorte que, sous ce prétexte, le nom du maître seulement ayant été changé, les esclaves continuent à servir, et, après cela, s'ils ont cru pouvoir fuir vers une église pour devenir chrétiens, ils seront réclamés non pas pour être libres, mais par leurs maîtres auxquels ils ont été donnés auparavant. Dans cette affaire il convient que Votre Fraternité soit vigilante: s'il a voulu donner des esclaves à ses fils, pour enlever toute occasion de fraude, que les esclaves deviennent de toutes manières chrétiens et qu'ils ne demeurent pas dans sa maison; mais lorsque le besoin l'exige, pour qu'il puisse utiliser leurs services, qu'on leur ordonne d'accomplir ce qui doit lui être montré même par ses fils et à cause de Dieu ».

même si, là encore, Grégoire ne va pas jusqu'à la rigueur complète de la loi qui pourrait aller jusqu'à la peine capitale. Ces Samaritains possèdent éventuellement des esclaves chrétiens et Grégoire demande une protection spéciale pour l'un de ces chrétiens réclamé par un maître pourtant converti au christianisme. Il faut supposer que ces Samaritains n'avaient pas le même accès à Grégoire ou que leur cause ne lui semblait pas aussi favorable⁸.

Grégoire est embarrassé par la situation en Gaule. La loi romaine ne s'y applique pas en ce qui concerne les esclaves des juifs. Aussi des chrétiens sont-ils devenus esclaves de maîtres juifs sans pouvoir faire appel à l'autorité civile. Il demande au prêtre Candidus, qui gère le patrimoine de l'Eglise romaine en Gaule, de faire le nécessaire pour racheter quatre frères devenus esclaves de maîtres juifs à Narbonne. Il écrit aussi à Brunehaut et aux rois mérovingiens pour leur demander d'interdire la possession d'esclaves chrétiens par des maîtres juifs⁹. Cependant, Narbonne ne dépendait pas du royaume mérovingien mais du royaume wisigothique. Deux ans après la lettre à Candidus, Grégoire écrit à Reccared roi des Wisigoths et le félicite pour une mesure qu'il vient de prendre à propos des juifs. La lettre ne précise pas de quelle mesure il s'agit mais on considère qu'il s'agit de l'interdiction pour les juifs de posséder des esclaves chrétiens. Cette loi figure en effet dans la loi des

⁸ Lettre 6, 30, avril 596: « Grégoire à Léon évêque de Catane. Des Samaritains, demeurant à Catane, achètent des esclaves païens et osent les circonciure. L'évêque de Catane doit sans délai les faire libérer et leur assurer la protection ecclésiastique, qu'il ne souffre pas que les maîtres reçoivent de l'argent de quelque manière: non seulement ils doivent être sanctionnés pour ce tort, mais encore ils devaient être frappés d'une autre peine selon les lois ». Note de Hartmann: selon la loi de Constantin, Cod. Just. I, 10, 1, ils devaient être punis de la peine capitale. Lettre 8, 21, mai 598: Grégoire à Jean évêque de Syracuse. Le porteur de cette lettre, Félix, bien que né de parents chrétiens, avait été donné comme esclave à un Samaritain, malgré la défense légale, et était resté à son service pendant dix-huit ans, jusqu'à ce qu'il ait été libéré par l'évêque Maximien, prédécesseur de Jean. Le fils de ce Samaritain s'est fait chrétien et réclame maintenant Félix comme esclave. L'évêque Jean doit protéger Félix, car si les lois protègent les esclaves qui deviennent chrétiens, combien plus doit être protégé celui qui est né chrétien de parents chrétiens, cf. B. Blumenkranz, *Les auteurs chrétiens latins...* p. 80.

⁹ Lettre 7, 21, mai 597: « Grégoire à Candidus notre prêtre dans les Gaules. Dominique, le porteur des présentes, nous a fait savoir en pleurant que quatre de ses frères ont été rachetés de captivité par des juifs et qu'ils sont maintenant détenus en servitude à Narbonne chez ces mêmes juifs. Et parce qu'il est très grave et exécrable que des chrétiens soient dans la servitude des juifs, nous exhortons Ta Dilection par le présent écrit qu'elle étudie cette affaire avec le plus grand soin et la plus grande sollicitude. S'il en est bien ainsi et que tu établis manifestement la vérité, parce que les quatre frères n'ont pas les moyens de se racheter et que le porteur susdit ne les a pas non plus, il t'appartient de les racheter, en sachant que tout ce que tu auras donné pour eux, sera sans aucun doute imputé à tes comptes ». Lettre 9, 213, juil. 599: Grégoire à Brunehaut reine des Francs. Il s'étonne que dans le royaume de Brunehaut les juifs soient autorisés à posséder des esclaves chrétiens. Lettre 9, 215, juil. 599: même formule adressée à Theoderic et Theodebert rois des Francs.

Wisigoths et peut remonter à Reccared. Non seulement le roi a étendu ainsi à l'Espagne la loi romaine, mais il a courageusement refusé de céder à la corruption ; il a refusé l'argent que certains juifs voulaient lui verser pour conserver leurs esclaves. Cette lettre doit nous arrêter un peu plus longtemps. Il y a en effet un écart énorme entre le destin des juifs dans l'Espagne wisigothique et l'attitude de Grégoire le Grand à Rome. Comment comprendre ces félicitations de Grégoire à Reccared ? Il se peut qu'il ait été mal informé de ce qui se passait réellement dans le royaume wisigothique, mais les conversions forcées n'avaient pas encore eu lieu en 599. En outre, on voit qu'à Narbonne il a les moyens d'être bien informé et c'était aussi le cas à Séville. Une lettre de Braulio de Saragosse au pape Honorius en 638 donne peut-être un élément supplémentaire. Cette lettre se présente comme une réponse à une lettre précédente envoyée par Honorius lui-même. Cette lettre d'Honorius n'a pas été conservée et nous ne pouvons que supposer vaguement son contenu à partir de la réponse de Braulio. On remarquera, par exemple, que Honorius aurait reproché aux évêques espagnols de ne pas en faire assez pour la conversion des juifs, ce qui soulevait l'indignation de Braulio accusant au contraire le pape romain de permettre à Rome que des juifs convertis au christianisme reviennent au judaïsme. Rappelons que Honorius était un fidèle disciple de Grégoire le Grand. Je supposerais volontiers au contraire que Grégoire d'abord, puis quelques années plus tard Honorius, connaissaient bien la situation des juifs en Espagne. Grégoire pourrait bien être ironique à l'égard de Reccared. Après tout, cette lettre est la seule que l'on conserve entre Grégoire et le roi wisigoth qui était pourtant converti de l'arianisme au catholicisme depuis 587. Depuis le début du pontificat de Grégoire on n'a rien d'autre. Certes Grégoire est en relation avec Léandre de Séville et on pourrait supposer l'existence de lettres qui ne seraient pas parvenues jusqu'à nous. Néanmoins la lettre de 599 ressemble à une première prise de contact. Grégoire est certes prudent, habile à flatter le souverain, comme peut-être Léandre lui en avait donné le conseil. Mais il est sans doute aussi perplexe sur la politique anti-juive et inquiet des conséquences négatives sur la conversion véritable. De la même manière, une quarantaine d'années plus tard, quand ces mêmes mesures anti-juives ont désormais produit toutes leurs conséquences, Honorius devait être inquiet devant une politique aussi contraire à celle de son mentor. La lettre aux évêques espagnols tentait probablement de rappeler l'objectif de la conversion véritable visiblement sans succès¹⁰.

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¹⁰ Lettre 9, 228, août 599: Grégoire à Reccared roi des Wisigoths. Il le félicite pour avoir promulgué une constitution contre la perfidie des juifs et encore plus de n'avoir pas été fléchi par les tentatives de certains juifs de le corrompre avec de l'argent. Sur la postérité de Grégoire le Grand chez le pape Honorius, cf. B. Judic, Pouvoir de l'esprit et esprit de service dans la *Regula pastoralis* de Grégoire le Grand, dans *Potere e spiritualità in Gregorio Magno*, colloque de Brescia 1-2 oct. 2004, à paraître SISMELE Firenze. Sur le contexte général des relations entre l'Espagne

Le deuxième point essentiel dans le Registre de Grégoire concerne la pratique de la législation romaine. C'était bien sûr déjà le cas à propos de l'esclavage. Il s'agit maintenant d'en relever d'autres aspects. J'en indique globalement trois : la protection des synagogues et du culte juif, la protection des biens et des personnes et enfin la question de la conversion.

En mars 591, Grégoire adresse la lettre suivante à Pierre, évêque de Terracine : « Grégoire à Pierre, évêque de Terracine. Le juif Joseph, porteur des présentes, nous a fait savoir ceci : les juifs qui habitent au castrum de Terracine avaient coutume de se réunir dans un certain local pour célébrer leurs fêtes. Ta Fraternité les en ayant chassés, ils avaient, à ta connaissance et avec ton consentement, émigré ailleurs pour fêter semblablement leurs solennités. Et maintenant ils se plaignent vivement d'avoir été de nouveau chassés de cet endroit. S'il en est vraiment ainsi, nous voulons que Ta Fraternité s'abstienne de ce genre de querelle, et qu'au lieu où, nous venons de le dire, ils avaient obtenu avec ton agrément de se réunir, il leur soit permis de le faire comme ils en avaient coutume. Eux, en effet, qui sont en désaccord (*hos qui a christiana religione discordant*), c'est par la douceur et la bonté, par les avertissements et la persuasion, qu'il faut les amener à s'agrèger à l'unité de la foi, de peur que menaces et craintes n'écartent ceux que la douceur de la prédication et la venue imprévue du juge futur auraient pu inviter à croire. Il faut donc qu'ils en arrivent à venir volontiers vous écouter leur donner la parole de Dieu, au lieu d'être épouvantés par cette sévérité qui dépasse la mesure¹¹. » Une autre lettre, en août 592, montre que la question est loin d'être réglée : « Grégoire à Bacauda et Agnellus, évêques (de Formies et de Fundi), au sujet des juifs. Les Hébreux qui habitent Terracine nous ont supplié de leur donner l'autorisation, en vertu de notre autorité, de posséder le lieu qu'ils ont eu jusqu'à présent comme synagogue. Mais comme il est parvenu à notre connaissance que ce local est tellement proche de l'église que la voix de ceux qui y chantent les psaumes s'y fait même entendre, nous avons écrit à Pierre, notre frère et collègue dans l'épiscopat, que s'il était vrai que le son des voix venant de ce lieu s'entend à l'entrée de l'église, les célébrations des juifs ne s'y fassent plus. Votre Fraternité, avec notre dit frère et collègue dans l'épiscopat Pierre, inspectera donc ce lieu avec soin; et s'il en est ainsi, ou si vous voyez que l'église en souffre quelque inconvénient, prévoyez à l'intérieur de ce castrum un autre lieu de réunion pour ces Hébreux, où ils puissent sans difficulté célébrer leurs cérémonies. S'ils sont privés de ce lieu, que Ta Fraternité en prévoie un qui

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wisigothique et Rome, voir maintenant Thomas Deswarte, *Une Chrétienté romaine sans pape: l'Espagne et Rome (586-1085)*, Paris 2010. Voir aussi, Grégoire de Tours, *Hist. Franc.* VIII, 1, le roi Gontran, acclamé par les juifs à Orléans, pense qu'ils veulent obtenir la reconstruction de la synagogue mais il ne cédera pas à leurs flatteries, cf. B. Blumenkranz, *Les auteurs chrétiens latins...* n° 62, p. 72.

¹¹ Lettre 1, 34, mars 591, trad. P. Minard, SC 370, Paris 1991, p. 180-183.

soit tel qu'aucune querelle n'en surgisse à l'avenir. Nous interdisons que ces Hébreux soient molestés ou tourmentés de façon déraisonnable (*contra rationis ordinem*). Mais, de même qu'on leur permet de vivre sous les lois romaines, qu'ils agissent aussi selon la justice, en connaissance de cause, sans que personne vienne les troubler. Qu'il ne leur soit cependant pas permis d'avoir des esclaves chrétiens¹². »

La lettre de juin 598 adressée à l'évêque de Palerme commence par une formule apparemment claire, *Sicut Iudaeis*, qui a beaucoup servi ultérieurement, à partir du XII^e siècle, dans la correspondance pontificale au sujet des juifs. En outre cette lettre prévoit une formule qui ne semble pas attestée ailleurs ni à une autre époque, la constitution d'un arbitrage mixte avec des juges chrétiens et des juges juifs pour examiner les cas les plus complexes. Si la solution ne peut pas être obtenue de cette manière, Grégoire demande que l'affaire vienne jusqu'à lui. « Grégoire à Victor évêque de Palerme. En ce qui concerne les juifs, de même qu'il n'y a aucune autorisation de faire quelque chose dans leurs synagogues au-delà de ce qui est permis selon la loi, de même en ce qui concerne ce qui leur est accordé ils ne doivent subir aucun préjudice (*Sicut Iudaeis non debet esse licentia quicquam in synagogis suis ultra quam permissum est lege praesumere, ita in his quae eis concessa sunt nullum debent praeiudicium sustinere*). Des juifs habitant dans cette cité de Rome se sont plaints auprès de nous au nom des juifs qui habitent à Palerme et une pétition écrite par eux et disposée en appendice vous en informe. Si donc leur plainte repose sur des faits vrais, il faut que Votre Fraternité examine avec diligence les termes de la loi de sorte que, pour eux, elle doive garder et conserver tout ce qui a été décidé à ce sujet, pour que d'une part elle ne fasse rien d'injuste et d'autre part qu'ils ne souffrent d'aucun préjudice. S'il y a quelque obstacle à ce que ce qui a été demandé puisse être raisonnablement restitué, qu'on choisisse des juges dans les deux parties et qu'ils puissent définir ce qui convient selon l'équité. Mais s'il apparaît que le contentieux ne peut pas être réglé là-bas, il faut que l'affaire soit portée devant nous pour que les décisions soient prises selon la justice à l'écart de votre envie. Jusqu'à ce que l'affaire elle-même reçoive un règlement, Votre Fraternité doit suspendre toute consécration des lieux qui ont été saisis¹³. »

Un peu plus tard, en octobre 598, la même affaire revient devant Grégoire. Visiblement les juifs sont devant le fait accompli : leurs synagogues ont été transformées en églises donc consacrées, et Grégoire ne peut revenir sur cet acte « sacramental ». Il est intéressant de relever ici cette étape dans la définition du lieu sacré ou de l'espace sacré du point de vue de l'Eglise. Mais Grégoire demande alors une indemnisation à la hauteur de la valeur réelle des

¹² Lettre 2, 45, août 592, SC 371, Paris 1991. Les lois romaines que mentionne la lettre sont : Cod. Theod. XVI, 9 et Cod. Just. I, 10.

¹³ Lettre 8, 25, juin 598. Cf. Ernst Baltrusch, art. cité, p. 43.

biens saisis. Cette indemnisation pouvait naturellement prêter à toutes les tromperies et duperies possibles. On souligne cependant que les deux « experts » désignés par Grégoire, le patrice Venantius et l'abbé Urbicus, sont des proches du pape et qu'ils étaient donc à même de réaliser l'évaluation des biens dans des conditions équitables¹⁴.

Le même cas se présente aussi à Cagliari en Sardaigne, mais cette fois il semble que l'intervention de Grégoire a été suffisamment précoce pour empêcher la « conversion » de la synagogue et donc la restitution du bâtiment, exigée par Grégoire, semble possible : « Grégoire à Janvier évêque de Cagliari. Des juifs de votre cité sont venus se plaindre chez nous : Pierre, qui, par la volonté de Dieu, avait été conduit de leur superstition au culte de la foi chrétienne, s'est associé à certains indisciplinés le jour suivant son baptême, c'est-à-dire le dimanche de la festività pascale et, d'une manière gravement scandaleuse, il a occupé leur synagogue qui se trouve à Cagliari sans votre volonté et il y a placé une image de la mère de Dieu, la croix vénérable de notre Seigneur et un linge blanc qu'il avait revêtu en sortant de la fontaine baptismale. A ce sujet des rapports nous sont parvenus, venant de nos fils, le glorieux *magister militum* Eupaterius et le magnifique gouverneur Spesindeus et d'autres nobles de votre cité. Ils ont ajouté aussi que vous avez vous-même

¹⁴ Lettre 9, 38, oct. 598 : « Grégoire à Fantinus defensor. Il y a peu de temps nous avons écrit à notre frère et coévêque Victor: certains juifs, par une pétition qu'ils nous avaient donné, s'étaient plaints que des synagogues dans la ville de Palerme avec leurs hospices avaient été occupées par l'évêque d'une manière irrationnelle; jusqu'à ce qu'on puisse établir si cela avait été fait d'une manière juste ou non, il devait s'abstenir de consacrer ces synagogues, de crainte de provoquer un préjudice contre leur seule volonté. Et certes le respect dû au sacerdoce ne nous permet pas de croire facilement que notre frère prédit ait fait quelque chose d'incongru. Mais parce que, selon le rapport de notre notaire Salerius qui a enquêté sur place, nous avons découvert qu'il n'existe aucune cause par laquelle ces synagogues puissent être occupées raisonnablement et qu'elles ont été consacrées de manière téméraire et inconsidérée, nous ordonnons à Ton Expérience ceci: parce que ce qui a été une fois consacré ne peut être ultérieurement restitué aux juifs, les synagogues elles-mêmes avec leurs hospices qui sont établis sous les synagogues ou attachés à leurs murs et avec les jardins qui sont joints doivent être estimées par nos fils le glorieux patrice Venantius et l'abbé Urbicus, et il t'appartient que notre frère et coévêque doive en payer le prix, de sorte que ce qu'il a fait occuper demeure dans le droit de l'Eglise elle-même et que les juifs ne soient en aucune manière opprimés ou ne souffrent d'une quelconque injustice. Ils réclament également des manuscrits et des ornements; s'ils ont été manifestement volés, nous voulons qu'ils soient restitués sans aucune ambiguïté, parce que, comme nous l'avons écrit auparavant, de même que dans leurs synagogues il ne doit pas y avoir d'autorisation de faire au-delà de ce qui est décrété selon la loi, de même aucun préjudice ni aucune dépense ne doit leur être infligé contre la justice et contre l'ordre de l'équité ». Sur la « consécration » d'un bâtiment qui devient « église » cf. Dominique Iogna-Prat, *La Maison Dieu. Une histoire monumentale de l'Eglise au Moyen Age*, Paris 2006, en part. p. 39, 45-46, 175 : Grégoire le Grand se situe encore dans une période de mise en place d'un rituel de consécration et on ne sait pas, dans le cas de Palerme, s'il y a eu un rite spécifique ou si la célébration de l'eucharistie a suffi pour « consacrer » le lieu.

interdit au prédit Pierre d'oser faire cela. En apprenant cela, nous sommes pleins d'éloges parce que, comme il convient à un bon prêtre, vous n'avez en rien voulu faire quelque chose qui entraînerait une juste condamnation. Parce que vous ne vous êtes pas mêlé à des actes conduits de manière anormale, vous avez démontré que vous n'aimez pas ce qui a été fait ; considérant dans cette affaire l'intention de votre volonté et davantage le jugement, nous vous exhortons par ces paroles à ce que l'image et la croix soient enlevées de cet endroit avec toute la vénération dont elles sont dignes et que vous vous engagiez à rétablir ce qui a été violemment renversé, car, de même que la définition légale ne permet pas que les juifs construisent des synagogues neuves, de même elle permet qu'ils conservent sans aucune inquiétude les anciennes synagogues. Donc de crainte que le suscrit Pierre ou d'autres qui lui ont offert la consolation ou le consentement dans cette erreur de l'indiscipline ne répondent qu'ils ont fait cela par le zèle de la foi, comme s'il y avait nécessité de convertir les juifs par de tels actes, ils doivent être avertis et ils doivent savoir que, envers les juifs il faut davantage user de la tempérance pour qu'ils soient attirés par leur volonté et non pas conduits contre leur gré, parce qu'il est écrit: "Je ferai un sacrifice volontaire pour toi" (Ps 53, 8), de même "C'est par ma volonté que je me confierai à lui"(Ps 27, 7). Donc, parmi les habitants de votre cité, votre Sainteté devra s'attacher à faire comprendre à ses propres fils qui lui sont attribués, tout ce qui vous a déplu, par une exhortation sacerdotale, comme il convient, parce que, principalement en ce temps, quand on redoute l'arrivée des ennemis, vous ne devez pas avoir un peuple divisé¹⁵. »

Enfin on notera la fermeté de Grégoire à propos des fêtes juives, en novembre 602, dans une lettre à l'évêque de Naples. Il ne s'agit plus ici de bâtiment mais de l'expression publique du culte. Grégoire insiste sur la protection totale des cérémonies habituelles du culte juif : « Grégoire à Pascasius évêque de Naples. Ceux qui désirent, avec une intention sincère, amener à la foi droite des étrangers à la religion chrétienne, doivent s'appliquer par des douceurs et non par des aspérités à ce que l'adversité ne repousse pas au loin l'esprit de ceux que la raison et le simple bon sens pouvaient appeler; tous ceux qui agissent autrement et veulent les retenir sous ce voile hors de la pratique habituelle de leur rite manifestent qu'ils sont au service de leurs propres causes plutôt que des causes de Dieu. Des juifs habitant à Naples se sont plaints à nous en assurant que certaines personnes s'efforcent de manière déraisonnable de les détacher de leurs fêtes solennelles, de sorte qu'il devient illicite pour eux de pratiquer les solennités de leurs fêtes, alors que jusqu'à maintenant pour eux et depuis très longtemps pour leurs parents il était permis d'observer et pratiquer ces fêtes. S'il en est bien ainsi, ce sont des choses totalement inutiles.

¹⁵ Lettre 9, 195 (9, 196CC), juil. 599.

Car quelle en est l'utilité, et si ces fêtes ont été interdites après un long usage, quand cela servira-t-il à quelque chose pour leur foi et leur conversion? Ou encore, pourquoi posons-nous des règles sur la manière dont les juifs doivent pratiquer leurs cérémonies, si, par cela, nous ne pouvons pas servir à leur profit? Il faut donc faire en sorte qu'ils veuillent nous suivre en étant appelés plutôt par la raison et la mansuétude, et non pas qu'ils nous fuient, et que, en leur montrant ce que nous disons à partir de leurs livres nous puissions, avec l'aide de Dieu, les tourner vers le sein de la mère Eglise. C'est pourquoi ta Fraternité doit certes être active pour les convertir, autant qu'elle pourra, avec l'aide de Dieu, par des conseils, mais elle ne doit en aucun cas permettre qu'ils soient troublés dans leurs solennités, et qu'ils aient libre autorisation d'observer et de célébrer toutes leurs fêtes et leurs fêtes comme eux-mêmes jusqu'à présent et leurs parents depuis les temps les plus anciens ont eu l'autorisation de le faire¹⁶. »

La protection des biens et des personnes apparaît clairement dans plusieurs lettres. En même temps, il est souvent difficile d'y trouver un fil conducteur. Chaque lettre semble évoquer un cas particulier pour lequel nous manquons de contexte. Par exemple, le juif Salpingus, en mai 591, réclame cinquante et un sous, et Grégoire demande à Pierre, sous-diacre en Sicile, d'examiner attentivement cette affaire. On en déduira au moins que cette réclamation pouvait être fondée et pouvait aboutir. On peut associer à ce cas celui de Tamnus (Palerme, octobre 598), un propriétaire de navire dont les biens et le navire avaient été saisis à cause d'une dette. Or Candidus, recteur du patrimoine de l'Eglise romaine, refusait de lui remettre le reçu après paiement de la dette. Grégoire exige un règlement rapide et définitif de cette affaire. Tamnus faisait sans doute partie des transporteurs de blé entre la Sicile et Rome. A Venafro, en août 591, des clercs ont vendu des vases sacrés à un juif. Celui-ci doit les restituer, mais les clercs doivent être soumis à la pénitence. La vente des vases sacrés était cependant exceptionnellement possible pour racheter des prisonniers réduits à l'esclavage¹⁷.

¹⁶ Lettre 13, 15, nov. 602.

¹⁷ Lettre 1, 42, mai 591: Grégoire à Pierre sous-diacre de Sicile. Dans une longue lettre traitant de toutes sortes de questions administratives, un passage évoque le juif Salpingius qui réclame cinquante et un *solidi*. Grégoire demande à Pierre d'examiner cette affaire en toute justice. Lettre 9, 40, oct. 598: Grégoire à Fantinus defensor à Palerme. Le juif Nostamnus / Tamnus porteur de la présente lettre nous a indiqué que son navire et d'autres biens ont été saisis par notre defensor Candidus avec d'autres crédateurs et qu'ils ont été vendus pour récupérer l'argent qu'ils lui avaient donné en crédit. Tous lui ont restitué les lettres de caution de la dette et seulement le prédit défendeur a gardé par devers lui le chirographe d'obligation et a méprisé de le rendre au juif malgré ses fréquentes supplications. Et parce que, comme il le dit, le règlement de la dette a été satisfait, nous ordonnons à Ton Expérience de mener avec soin une enquête avec toute la subtilité nécessaire et s'il en est ainsi, qu'elle applique une pression sévère

Grégoire veille spécialement à la protection des chrétiens fraîchement convertis à partir du judaïsme. Il est attentif au cas d'une femme qui avait été promise à un futur époux quand elle était juive mais qui a finalement épousé un autre homme, chrétien, après sa conversion au christianisme. Il s'inquiète également de la situation économique de nouveaux convertis, les trois enfants de Justa (Campanie, juillet 594), qui semblent avoir de grandes difficultés. Cela montre que l'environnement général, juridique et économique, n'était pas nécessairement favorable à la conversion individuelle. Grégoire semble obligé de prévoir des secours matériels spécifiques.¹⁸

Grégoire a clairement en vue la conversion des juifs. Cela découle directement de sa foi fondée en particulier sur la lecture des lettres de saint Paul et sur son eschatologie : à la fin des temps, le retour du Christ se produira quand le monde entier l'attendra et que tous les juifs seront eux aussi dans la foi au Christ. Les lettres montrent comment Grégoire conçoit concrètement cette conversion. Il refuse nettement toute forme de conversion forcée : « Grégoire à Virgile et à Theodore, évêque de Marseille en Gaule. Bien qu'il ne se trouve aucune circonstance particulière de temps ou de personnes qui me donne l'occasion d'écrire à Votre Fraternité et de les saluer comme il se doit, je le fais pour deux raisons à la fois : pour m'acquitter de ce que demandait la dilection d'une fraternelle proximité, et pour ne pas garder le silence sur la plainte de certains, portée à ma connaissance, sur le moyen de sauver les âmes de ceux qui sont dans l'erreur. Plusieurs juifs qui résident en cette province et voyagent de temps en temps pour leurs affaires (*pro diversis negotiis ambulantes*) dans la

et urgente de manière à ce que Candidus restitue sans délai la caution au porteur prèdit. Ta sollicitude doit donc s'exercer de telle sorte que la plainte concernant cette affaire ne revienne pas à nouveau jusqu'à nous. Lettre 1, 66, août 591: Grégoire s'adresse au sous-diacre Anthime, recteur du patrimoine de Campanie, pour déplorer que des clercs de l'église de Venafro ont vendu des vases sacrés et des ornements d'église à un juif. Ce juif doit les restituer et les clercs doivent être soumis à la pénitence. On remarquera cependant qu'en novembre 596, dans une lettre à l'évêque de Naples Fortunatus (ep. 7, 13), Grégoire l'autorise à vendre des vases sacrés pour rembourser de très grosses sommes engagées pour racheter des captifs.

¹⁸ Lettre 1, 69, août 591: Grégoire à Pierre sous-diacre de Sicile. Grégoire lui recommande l'affaire de Jeanne, fraîchement convertie à partir du judaïsme. Jeanne avait été promise à un juif mais elle s'est convertie et a finalement épousé un chrétien. Jeanne prétend que la question des cadeaux de l'ancien promis juif est réglée. Grégoire demande que Jeanne ne subisse aucun préjudice. Lettre 4, 31, juillet 594: « Grégoire au sous-diacre Anthime. A ceux que notre Rédempteur daigne convertir à lui venant de la perdition judaïque (*de Iudaica perditione*), il faut que nous venions en aide par des dispositions raisonnables de peur qu'ils ne souffrent du manque de nourriture - ce qu'à Dieu ne plaise. C'est pourquoi en vertu de l'autorité de cette ordonnance (*huius praecepti auctoritate*), nous te mandons de donner sans retard aux enfants de Justa, d'anciens juifs (*ex Hebraeis*), Julienne, Redemptus et Fortuna, chaque année à partir de la treizième indiction prochaine, des sous que tu imputeras de toute façon, prends-en note, sur tes comptes ».

région de Marseille nous ont fait savoir qu'un grand nombre de juifs qui vivent là-bas ont été amenés à la fontaine baptismale par la force plus que par la prédication (*vi magis quam praedicatione*). Certes, j'estime que l'intention dans un cas semblable était digne d'éloge, et je suis sûr qu'elle provient de l'amour de notre Seigneur. Mais je crains que, si cette même intention n'est pas accompagnée de la vertu propre de l'Écriture, il n'en vienne aucune récompense, ou même, dans une certaine mesure, que des dommages ne s'ensuivent - ce qu'à Dieu ne plaise - pour les âmes que nous voulons sauver. Quand en effet quelqu'un est venu à la fontaine baptismale non par la douceur de la prédication mais sous la contrainte, s'il retourne ensuite à sa superstition première, il meurt alors dans un état plus funeste du fait qu'il avait semblé recevoir une nouvelle naissance. Que Votre Fraternité exhorte donc ces hommes-là par des prédications répétées, de sorte que ce soit plutôt par la douceur de celui qui les enseigne qu'ils désirent changer leur ancienne manière de vivre. De cette façon, nous accomplissons parfaitement ce que nous avons l'intention de faire, et l'âme du converti ne revient pas de nouveau à son vomissement antérieur (cf. Prov 26, 11 et II Pierre 2, 22). Il faut donc leur apporter la parole qui puisse brûler en eux les épines des erreurs, et, par la prédication, illuminer ce qui, en eux, est ténèbres. Qu'ainsi Votre Fraternité reçoive sa récompense pour de fréquentes exhortations, et les conduise, aussi nombreux que le voudra le don de Dieu, à la régénération d'une vie nouvelle¹⁹. »

Deux lettres sont particulièrement explicites sur la réduction des fermages pour les paysans convertis. C'était sans doute une mesure efficace puisque, dans les environs d'Agrigente, une troisième lettre nous informe que des paysans, en grand nombre, veulent se convertir, sans doute pour obtenir, eux aussi, des allègements de charge. À défaut d'une contrainte violente, cette méthode de conversion peut sembler malgré tout coercitive. D'ailleurs, Grégoire précise qu'il faudra veiller à ne pas grever le budget du patrimoine de l'Église romaine. Blumenkranz supposait ainsi que les paysans qui restent juifs se verraient surtaxer. Il s'appuie pour cela sur une lettre envoyée en Sardaigne où Grégoire suggère de surtaxer des paysans qui seraient vraiment récalcitrants. Cette lettre vers la Sardaigne ne concerne peut-être pas des paysans juifs mais plutôt des paysans païens. Et je ne pense pas que la surtaxation soit la compensation que Grégoire recherche dans l'équilibre des comptes de son Église. Au contraire, les avantages qu'il veut accorder aux paysans en général, comme le montre la grande lettre administrative à Pierre, devraient permettre d'obtenir une meilleure productivité et c'est par là que Grégoire imagine un retour à l'équilibre des comptes ou même des bénéfices bien plus importants : « Grégoire à Cyprien, diacre et recteur du patrimoine de Sicile ...

¹⁹ Lettre 1, 45, juin 591, SC 370, p. 228-229.

Il m'est parvenu qu'il y a sur nos possessions des Hébreux qui ne veulent absolument pas être convertis à Dieu. Mais il me semble que, dans toutes les possessions dans lesquels on sait que vivent ces Hébreux, tu dois leur envoyer une lettre de ma part en promettant spécialement que quiconque, parmi eux, sera converti au vrai Dieu et à notre Seigneur Jésus Christ, verra la charge de sa possession diminuée d'une certaine part. Et je veux aussi qu'on fasse cela de telle sorte que si l'un d'eux aura été converti, s'il a une imposition d'un sou, on devra lui faire un abattement d'un tremissis (*si solidum pensionem habet, tremissis ei relaxari debeat*), si c'est trois ou quatre sous, il aura un abattement d'un sou (*si tres vel quattuor, unus solidus relaxetur*). S'il paie plus, l'abattement devra être fait selon cette même mesure ou bien selon ce que ta Dilection prévoira de sorte que, pour celui qui est converti, la charge sera diminuée sans que les besoins de l'Eglise ne soient grevés d'une lourde dépense (*ut et ei qui convertitur onus relevetur et ecclesiastica utilitas non gravi dispendio prematur*). Et nous ne faisons pas cela d'une manière inutile, si, en abaissant les charges de l'imposition, nous les conduisons à la grâce du Christ, car, même si eux-mêmes viennent avec peu de fidélité, cependant leurs descendants seront baptisés dans une plus grande fidélité (*etsi minus fideliter veniunt, hi tamen qui de eis nati fuerint iam fidelius baptizantur*). Par conséquent, nous gagnons ou bien eux-mêmes, ou bien leurs enfants. Cela ne pèse pas lourd tout ce que nous enlevons sur leur imposition au profit du Christ²⁰. »

Une lettre d'octobre 598 semblerait indiquer une certaine réussite de Grégoire dans la conversion des paysans juifs de Sicile. Il est en tout cas curieux de constater que ce succès se produirait dans le contexte d'un domaine monastique, d'un monastère féminin. Hartmann fait le rapprochement entre les mesures de réduction des redevances mentionnées ci-dessus et ces « nombreux juifs » qui veulent se convertir dans les environs d'Agrigente. Je me demande si ce n'est pas plus largement l'effet des mesures de gestion domaniale prises par Grégoire depuis le début de son pontificat. Il n'est pas sûr que les directives et les ordres qu'il a donnés aient été toujours suivis d'effet mais il n'est pas impossible que dans le contexte d'un domaine monastique les

²⁰ Lettre 5, 7, oct. 594. Dans la lettre 2, 38, juillet 592, à Pierre sous-diacre de Sicile, Grégoire lui conseille de pratiquer une réduction des redevances pour les paysans juifs qui se sont convertis au christianisme. Hartmann note sur la lettre d'octobre 594 qu'il y aurait de nombreux juifs convertis en Sicile selon la lettre 8, 23. Il mentionne à ce sujet une formule du *Liber Diurnus* f. 51: le pape mande au recteur du patrimoine: *disponas ut, cui previderis aliquid relaxandum pensionis, levigationem inveniat, et cui addendum esse reddideris, quod iustum est cogatur exsolvere*. Il s'agit des colons ou de ceux qui, à la manière des colons, sont engagés pour 29 ans, et non pas des *conductores*, car cela n'est possible que sur des petites impositions. Dans la lettre 4, 26, à Janvier de Cagliari, Grégoire va jusqu'à demander de surtaxer des paysans qui refuseraient la conversion. Mais cette lettre ne mentionne pas de juifs, les paysans en question sont païens et l'exaspération dont témoigne la lettre, cf. la note dans l'édition SC 520, Paris 2008, p. 322-323, concerne sans doute plus l'évêque de Cagliari que les paysans eux-mêmes.

mesures qu'il avait pu inspirer aient été plus efficaces à la fois dans l'amélioration de la condition paysanne et dans l'augmentation des revenus du monastère : « Grégoire à Fantinus defensor. Sur l'indication de la dame abbesse du monastère de Saint-Etienne qui est établi sur le territoire d'Agrigente, nous avons découvert que de nombreux juifs, sur l'inspiration de la grâce divine, veulent être convertis à la foi chrétienne mais il est nécessaire que quelqu'un, muni de notre ordre, se rende sur place. C'est pourquoi nous t'avons ordonné sur la teneur de cette autorité que, en écartant toute excuse, tu te rendes en toute hâte au lieu prédit et que tu viennes en aide à leur désir par tes exhortations avec le secours de Dieu. Cependant si tu apprends que c'est long et triste pour eux d'attendre la solennité pascale et qu'ils ont hâte de recevoir maintenant le baptême, de crainte, ce qu'à Dieu ne plaise, qu'un long délai ne puisse les faire revenir en arrière, parle avec notre frère l'évêque de ce lieu pour qu'il les baptise, avec la protection de la miséricorde de Dieu tout puissant, après une pénitence ou une abstinence de quarante jours, soit un dimanche, soit un jour d'une fête plus célèbre si l'occasion se présente, parce que les circonstances elles-mêmes, à cause de ce fléau qui sévit, poussent à ce que leurs désirs ne soient différés sans aucun délai. Si tu apprends que certains d'entre eux sont pauvres et ne peuvent pas eux-mêmes acheter un vêtement, nous voulons que tu achètes et que tu leur fournisses ce vêtement qu'ils porteront au baptême ; le prix que tu auras payé sera imputé sur tes comptes. S'ils décident d'attendre le saint jour de Pâques, parle à nouveau avec l'évêque pour qu'ils deviennent catéchumènes, qu'il les visite fréquemment, qu'il manifeste sa sollicitude et qu'il enflamme leurs âmes par les conseils et les exhortations, de sorte que, plus l'attente de la fête sera longue, plus fervent sera leur désir de se préparer. Ensuite, examine avec le plus grand soin et la plus grande rapidité si le monastère susdit, que dirige la dame abbesse, se suffit à lui-même ou s'il souffre de certains manques : tout ce que tu auras appris à propos de ce qui a été fait pour ceux qui désirent être baptisés, hâte-toi de nous l'indiquer avec précision²¹. »

La conversion pourrait aussi se faire en sens inverse, du christianisme vers le judaïsme. Le judaïsme de cette époque a pu connaître un certain prosélytisme, comme le suggèrent deux lettres. L'une, en septembre 603, concernerait des pratiques "judaïsantes" parmi la population de Rome²². L'autre, plus cu-

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²¹ Lettre 8, 23, mai 598.

²² Lettre 13, 3 (13, ICC), sept. 603 : « Grégoire par la grâce de Dieu évêque à ses très chers fils les citoyens de Rome. Il m'est parvenu que certains hommes d'esprit pervers ont semé parmi vous certaines pratiques contre la sainte foi, de sorte qu'ils interdisent de faire quelque chose le jour du sabbat. Comment les appellerais-je autrement que des prédicateurs de l'Antéchrist? Quand il viendra il fera en sorte que le sabbat et le dimanche soient gardés en dehors de tout

rieuse, en mai 593, semble évoquer une forme de culte juif en Sicile largement ouvert à des chrétiens : « Grégoire à Libertinus préteur de Sicile. Dès le début de votre administration, Dieu a voulu que vous progressiez dans la défense de sa cause et c'est la grâce que dans sa bienveillance il vous a réservée avec la gloire. Or on rapporte que Nasas, qui est bien le plus scélérat des juifs, par une témérité punissable, a édifié un autel sous le vocable du bienheureux Elie, et par une séduction sacrilège a trompé beaucoup de chrétiens pour qu'ils y fassent l'adoration. Il a aussi, dit-on, acheté des esclaves chrétiens et les a assignés à son service et à son usage. Le glorieux Justin, alors donc qu'il aurait dû sévir très rigoureusement contre lui pour de si grands crimes, gagné par la drogue de la cupidité, comme on nous l'a écrit, a différé de châtier l'injure faite à Dieu. Que Votre Gloire s'informe donc sur tout cela par une enquête rigoureuse, et si elle trouve qu'il en est manifestement ainsi, qu'elle se hâte d'infliger un châtiment corporel très rigoureux à ce juif scélérat, de sorte que, de ce fait, elle se concilie la grâce de notre Dieu et que, pour sa récompense, elle se montre à la postérité, par ces exemples, comme un modèle. Quant aux esclaves chrétiens, à tous ceux pour lesquels il sera évident qu'il les a achetés, faites donner la liberté, comme l'ordonnent les prescriptions légales, sans contestation, de peur que - ce qu'à Dieu ne plaise - la religion chrétienne ne soit souillée par la soumission à des juifs. Ainsi donc corrigez tout cela très rigoureusement et en toute hâte, pour que non seulement nous vous rendions grâce pour cette application du droit (*pro hac vobis disciplina gratias referamus*), mais aussi pour que nous rendions témoignage de vos qualités, lorsque ce sera nécessaire²³. » Cet autel à Elie, élevé par Nasas, a suscité de nombreux commentaires. S'agit-il d'une forme de prosélytisme juif ? ou même d'une forme de syncrétisme ? Elie est-il le prophète bien connu ou un obscur "saint" local ? Dans le cas d'un prosélytisme juif, il est même possible d'y voir une forme d'eschatologie juive, l'attente d'un retour du prophète Elie considéré comme le Messie. Naturellement une telle eschatologie serait totalement contraire à l'eschatologie chrétienne mais pourrait se développer sur le même terreau que l'eschatologie chrétienne si fortement exprimée par Grégoire lui-même.

travail. Parce qu'il prétend mourir et ressusciter, il veut qu'on vénère le jour du dimanche, parce qu'il pousse le peuple à imiter les juifs (à judaïser) de sorte qu'il rappelle le rite extérieur de la loi et se soumette à la perfidie des juifs, il veut honorer le sabbat ».

²³ Lettre 3; 37, mai 593, SG 520, p. 158-161. Selon la note de Marc Reydellet l'autel à Elie serait l'expression d'un culte d'un faux martyr, comme le faux martyr démasqué par Martin dans la *Vita Martini*, plutôt que le prophète du livre des Rois 1 R 2, 12 - 4, 22. Le rejet de la soumission aux juifs exprime la crainte du prosélytisme juif auprès des esclaves chrétiens qui inspire d'ailleurs la législation: Cod Theod III, 1, 5 et XVI, 9, 2 repris dans Cod Just I, 10. Ernst Bammel, *Gregor der Grosse und die Juden*, p. 90-93, expose en revanche toutes les hypothèses sur une forme de prosélytisme et d'eschatologie juives autour de la figure du prophète Elie.

La question de la conversion est donc bien sensible dans certaines lettres à propos des juifs. C'est sur ce point spécialement qu'on examinera la doctrine de Grégoire. La doctrine de la conversion repose bien sûr sur la distinction, classique, entre *Judaea* et *gentilitas*. Mais ces deux termes sont utilisés avec beaucoup de variations aussi positives que négatives²⁴. On peut même supposer que Grégoire, fin connaisseur de l'Écriture, raisonnait selon un modèle très originel du christianisme. Le christianisme est certes issu de la conversion des païens en lieu et place des juifs, mais le judaïsme est aussi quelque part un intermédiaire obligé entre paganisme et judaïsme. L'histoire de l'évêque André de Fondi peut se comprendre de cette manière. Un juif, en voyage, arrive à proximité de la cité de Fondi mais trop tard pour y entrer. Il trouve refuge pour la nuit dans les ruines d'un temple d'Apollon. Par malheur, une assemblée de démons s'y tient et le juif, bien caché, entend leurs discussions. Les démons ont décidé de faire tomber l'évêque André de Fondi. Il héberge chez lui une religieuse et ils veulent susciter chez l'évêque un désir sexuel qui entraînera sa chute morale. Au matin, le juif entre dans la cité de Fondi et se rend aussitôt chez l'évêque. Avec toutes les précautions nécessaires, il avertit l'évêque de ce qu'il a entendu. Aussitôt l'évêque décide d'éloigner la religieuse et remercie chaleureusement le juif de l'avoir prévenu. Par la suite le juif se convertit au christianisme²⁵. Dans cette histoire il est remarquable que la conversion du juif ne relève en rien d'une initiative "chrétienne" ou épiscopale. C'est bien le juif qui, de lui-même, a décidé de prévenir l'évêque du piège diabolique dans lequel on voulait le faire tomber. Plus encore c'est le juif qui instruit l'évêque. Il y a clairement une sorte d'antériorité du juif par rapport à l'évêque, antériorité dans le discernement du bien et du mal. Il est parfaitement possible de considérer ce récit comme une manière imagée, amusante, de rappeler l'antériorité de l'Ancien Testament sur le Nouveau et, en quelque sorte, la préséance des juifs par rapport aux chrétiens. Grégoire d'ailleurs rappelle souvent cette « préséance », à la fois pour la souligner concrètement par le commentaire des livres de l'Ancien Testament et pour souligner le paradoxe de l'Eglise issue des païens.

Les conversions concrètes sont encadrées par le droit romain mais ce droit lui-même d'où vient-il ? On peut trouver chez Grégoire une réflexion sur le pouvoir royal d'une grande subtilité. On s'arrêtera ici sur un passage où Grégoire croise la notion de pouvoir royal chez les Romains et chez les Juifs: « Le temps où le précurseur du Rédempteur a reçu la charge de proclamer la parole est indiqué par la mention du prince de la république romaine et des rois de Judée (*memorato romanae republicae principe et iudaeae regibus*): L'an

²⁴ Le cadre de la polémique antique entre chrétiens et juifs est posé dans l'ouvrage classique de Marcel Simon, *Verus Israel. Etude sur les relations entre chrétiens et juifs dans l'empire romain (135-425)*, BEFAR 166, Paris 1947.

²⁵ Cf. Dialogues III, 7, SC 260, Paris 1979, p. 278-285.

quinze du principat de Tibère César, Ponce Pilate étant gouverneur de la Judée, Hérode tétrarque de la Galilée, Philippe son frère tétrarque du pays d'Iturée et de Trachonitide, Lysanias tétrarque d'Abilène, sous le pontificat d'Anne et de Caïphe, la parole du Seigneur fut adressée à Jean, fils de Zacharie, dans le désert' (Lc 3, 1). Comme il venait annoncer celui qui allait racheter un certain nombre d'hommes dans la Judée, et un grand nombre parmi les nations (*ex Iudaea... ex gentibus*), les temps de son annonce sont désignés par le roi des Gentils et les princes des Juifs (*per regem gentium et principes Iudaeorum*)²⁶. » On remarquera ici la présentation de la citation de Luc dans cette homélie de Grégoire. Il retient le principe d'une liste de noms de dirigeants romains et juifs. Avant la citation il décrit cette liste comme la « mention du prince de la république romaine et des rois de Judée ». Après la citation il rappelle la liste en évoquant « le roi des Gentils et les princes des Juifs ». Il y a ici un chiasme assez élaboré où la notion de « prince » passe des Romains aux Juifs mais aussi du singulier au pluriel, inversement la notion de « roi » passe des Juifs aux Romains mais aussi du pluriel au singulier. Ce chiasme n'est pas purement « décoratif », il s'agit de souligner le caractère interchangeable du pouvoir et la responsabilité partagée de tous les pouvoirs.

C'est encore le pouvoir qui est à l'oeuvre dans la Passion et la mort du Christ. Grégoire développe sur ce point une vision très juridique mais aussi très exégétique de la Passion. Sa perception de la mort du Christ repose sur une lecture attentive des évangiles. Dans *Moralia* 27, 27, 51, il commente Job 37, 9: « à partir des chambres intérieures la tempête sortira et à partir d'Arcturus le froid.... Lorsque l'Écriture sainte rappelle les chambres intérieures contre Arcturus, elle désigne la région de l'Auster / du Midi différente des régions de l'Aquilon. C'est pourquoi dans ce même livre, on écrit: "Celui qui fait Arcturus, les Orions et les chambres intérieures de l'Auster" (Job 9, 9). Parce que donc le soleil réchauffe d'une ferveur plus grande les chambres intérieures de l'Auster mais qu'il n'a en aucune manière la même place dans Arcturus, on exprime sous le nom des chambres intérieures le peuple juif et sous le terme d'Arcturus à cet endroit le peuple païen. Ceux qui avaient reconnu le Dieu un et invisible et qui avaient observé sa loi au moins de manière charnelle, c'est comme s'ils se tenaient sous le soleil de midi très fervents dans la chaleur de la foi. Mais parce que les païens n'avaient aucun contact avec la science et la connaissance d'En-Haut, c'est comme s'ils étaient froids sans soleil et étaient restés sous l'Aquilon. Et parce que la tempête met en mouvement et que le froid écrase sous la torpeur, on dit maintenant à bon droit: "à partir des chambres intérieures la tempête sortira, et le froid à partir d'Arcturus." C'est comme si on disait : A partir des juifs surgit la méchanceté qui

²⁶ HomEvang 20, 1, SC 485, p. 447 sur l'évangile de Luc. Cf. Marc Reydellet, *La royauté dans la littérature latine de Sidoine Apollinaire à Isidore de Séville*, Rome 1981, p. 461.

poursuit et à partir des païens le pouvoir qui écrase (*a Judaeis surgit malitia persequens, et a gentilibus potestas premens*). Les préceptes de la loi n'avaient pas interdit qu'il y ait des miracles, et cependant à cause de ces mêmes miracles les juifs cherchaient à tuer le Rédempteur du genre humain (cf. Jn 11, 48). C'est pourquoi ne pouvant pas achever ce qu'ils avaient commencé, ils accoururent au prétoire de Pilate, pour que Pilate lui-même fasse exécuter celui qu'aucune loi n'empêchait qu'il soit mis à mort injustement (Jn 18, 28). Donc la tempête est produite à partir des chambres intérieures et le froid à partir d'Arcturus, quand ce que la Judée a demandé par envie le juge païen l'a accompli à partir de l'autorité romaine (*quod Judaea ex invidia petit, hoc gentilis iudex ex Romana auctoritate perpetravit*)²⁷. » On voit ici une conception de la *romana auctoritas* extrêmement précise : c'est cette *auctoritas* qui est la responsable de la mort du Christ en croix. La crucifixion dépendait de cette autorité romaine. Grégoire lui-même pontife romain est particulièrement bien placé pour souligner l'importance de cette autorité romaine. La source du droit romain est bien là, dans cette autorité qui est allé jusqu'à faire mourir le sauveur du monde. Cette conception de la crucifixion déplace complètement la question juive si présente chez d'autres Pères de l'Eglise. Certes Grégoire sait bien lire les évangiles et note bien que des juifs demandaient la mort de Jésus. Mais il lit dans les évangiles et il le sait par sa propre formation juridique que la mise à mort ne relevait que de l'autorité légale de Rome, en la personne du procureur Ponce Pilate. Rome coupable de la mort du Christ. Culpabilité qui situe Rome au moins au même rang que la Judée. Cette lecture de la Passion rejoint aussi



²⁷ Mor 27, 26, 50, PL 76, 430. Ce développement est précédé d'une première formulation de cette double responsabilité / culpabilité : « ...combien de fois pour satisfaire leur cruauté se sont-ils servis de mains étrangères, parce que celui qu'ils ne pouvaient pas eux-mêmes tuer légalement (*legaliter interimere*) ils l'ont livré aux païens pour qu'il soit frappé, de sorte que par son seul pouvoir (*ex sola potestate*) le gouverneur romain (*romanus praeses*) fasse ce que, par leur seule méchanceté (*ex sola malitia*), ils aspiraient eux-mêmes à faire (cf. Jn 18, 28) ». Blumenkranz signale d'autres passages des *Moralia* offrant les mêmes réflexions : ainsi Mor 6, 20, 35, PL 75, 748, Sur Job 5, 15 : il sauvera l'indigent du glaive de leur bouche et le pauvre de la main de l'homme violent. ... parce que les juifs ont livré le Seigneur en l'accusant, lui que, une fois livré, les païens ont tué, par le glaive de la bouche on peut désigner la langue des juifs qui accusent... Par la main de l'homme violent, c'est la gentilité elle-même qui peut être exprimée, qui, en crucifiant, a mis en oeuvre, dans la mort du Rédempteur, les paroles des Hébreux. ... Notre Rédempteur a souffert à la fois des violences des païens et des langues des juifs en mourant à cause de son humanité, mais à cause de la puissance de sa divinité, il les a surpassées en ressuscitant. cf. B. Judic, Le corbeau et la sauterelle, dans L. Mary et M. Sot eds., *Impies et païens entre Antiquité et Moyen Age*, Paris 2002, p. 97-126, où est étudié Mor 30, 9, 28-32 sur Job 38, 41 : les petits des corbeaux sont interprétés d'abord comme figurant les païens et ensuite comme figurant le judaïsme. La citation de Rom 11, 25 permet de justifier le passage d'une allégorie à une autre.

l'eschatologie grégorienne fondée sur Rom 11, 25 et sur la conception paulinienne de la conversion des juifs à la fin des temps²⁸.

Quelques remarques conclusives : les matériaux abondants et concrets fournis par le registre des lettres de Grégoire le Grand donnent un aperçu sur la pratique réelle de la législation concernant les juifs dans l'empire romain de la fin du VI^e siècle et sur l'attitude de l'évêque de Rome. Le point le plus surprenant doit être la question de l'esclavage. Les juifs n'ont pas le droit d'avoir des esclaves chrétiens et cette interdiction s'inscrit dans un contexte où l'esclavage est un élément essentiel du système économique. De ce point de vue, l'interdiction de posséder des esclaves chrétiens est très certainement un moyen d'affaiblir à long terme la situation économique des juifs. Grégoire le Grand applique soigneusement la loi mais comprend aussi probablement sa portée. Il est par conséquent capable d'une sorte de contournement de la loi en suggérant une distinction entre l'esclavage domestique qui reste interdit et un esclavage rural qu'il suffit de transformer en une forme de dépendance obligée pour maintenir les ressources des propriétaires juifs. Cette souplesse dans l'interprétation de la loi rejoint les mesures de protection des synagogues et des cérémonies juives ainsi que les mesures de protection des biens et des personnes. On doit cependant supposer aussi une nécessité immédiate : assurer la cohésion de la population « romaine » face aux envahisseurs lombards. Grégoire devait sans doute penser que les juifs préféreraient l'empire à la domination lombarde même si le royaume lombard, après Grégoire, ne semble pas avoir connu de mesures anti-juives, sauf peut-être dans la seconde moitié du VII^e siècle selon le *Carmen de synodo Ticinensi*. En tout cas il jugeait politiquement utile de ménager les juifs plutôt que de les encourager à fuir vers les ennemis de l'empire. Par ailleurs Grégoire montre une réaction vigoureuse contre un éventuel prosélytisme juif. Il est vrai qu'une seule lettre pourrait évoquer ce possible prosélytisme. Le ton employé est sévère et montre clairement que la conversion ne peut se faire que vers le christianisme. La conversion est le souci profond de Grégoire mais il recherche une conversion du cœur, de l'esprit, de l'âme qui ne peut passer que par une démarche libre²⁹.

²⁸ Sur l'*auctoritas*, cf. G. Makdisi, D. Sourdél, J. Sourdél-Thomine eds., *La notion d'autorité au Moyen Age: Islam, Byzance, Occident*, Paris PUF 1982, Giles Constable, Michel Rouche eds., *Auctoritas. Mélanges offerts à Olivier Guillot*, Presses de l'université Paris Sorbonne 2006. Sur la conversion chez Grégoire: cf. Claude Dagens, *Grégoire le Grand. Culture et expérience chrétiennes*, Paris 1977, p. 352-353.

²⁹ Cf. Bruno Dumézil, *Les racines chrétiennes de l'Europe. Conversion et liberté dans les royaumes barbares V^e-VIII^e siècle*, Paris 2005, en part. p. 113-114. On relèvera que Markus, op. cit., p. 79, souligne chez Grégoire la volonté d'observer le droit romain à propos des juifs, ce qui le place dans un monde en train de disparaître, et que la condition des juifs s'est aggravée partout en Europe à partir du VII^e siècle.

C'est dans les œuvres proprement spirituelles de Grégoire que l'on peut trouver des enseignements sur les sources mêmes du droit, c'est-à-dire le pouvoir royal et la notion d'autorité. Cette réflexion sur le pouvoir et sur le droit romain aboutit à reconnaître l'empire romain comme coupable de la mort du Christ tout autant, sinon plus, que les juifs. C'est la notion d'*auctoritas romana* qui est mise en avant par Grégoire dans cette réflexion fondamentale pour saisir sa conception des relations entre juifs et chrétiens, une conception qui certes prolonge celle d'Augustin mais avec à la fois un sens plus aigu des nécessités pratiques et une vision plus juridique des coupables de la mort du Christ.



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INTERPRETATION, NEGOTIATION, AND ADAPTATION: CONVERTING THE JEWS IN GERHARD OF MAINZ'S *COLLECTIO*

Jessie SHERWOOD

In 937, Pope Leo VII sent a letter to Friedrich, the archbishop of Mainz, evidently in answer to questions that Friedrich had asked shortly after assuming the archbishopric the same year. According to Leo, Friedrich asked about Episcopal primacy in Germany, and “whether it would be better to subjugate [the Jews] to the holy religion, or expel them from your communities.”¹ During his episcopacy and presumably in the same year, Friedrich also received a collection from a priest named Gerhard.² Among other topics, Gerhard presented a series of extracts from three letters written by Gregory I concerning converting Jews, and specifically compelling Jews to convert. Read together, Gerhard and Leo suggest that Friedrich contemplated forcing the Jews within his diocese into the baptismal font. Read together, their texts also illustrate the ways in which tenth-century ecclesiastics adapted earlier sources to their own ends through interpretation, interpolation, and excision.

Although his motives and, indeed, his results are unknown, Friedrich may have been inspired to embark upon his conversionary campaign by an ecclesiastical council held only five years before. Perhaps in response to Friedrich's new campaign, Gerhard selected and compiled the texts in his *collectio* from a small coterie of sources, not necessarily because they were legal sources, but because they were authoritative ones. He did so, I shall suggest, in part to instruct his new superior, and to make a series of arguments about the proper duties and behaviours of bishops, which included but were not limited to how they ought to treat Jews. Concerning the Jews, Gerhard's *collectio* established, contrary to Friedrich's apparent desire, that the Jews should not be compelled to convert, but as a corollary that they should not exercise authority over Christians. This was and remained the reigning ecclesiastical position on the

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¹ Leo VII to Frederick of Mainz (937-939), Doc. 34, in *The Apostolic See and the Jews, Documents, 492-1404*, S. Simonsohn, ed. (Toronto, 1988), 32-33: “De Iudaeis autem, unde vestra fraternitas nostram conquaesivit, utrum melius sit eos sacrae subiugare religioni an de civitatibus vestris expellere, hoc vobis praeceptum mandamus, ut fidem sanctae trinitatis et mysterium dominicae incarnationis cum omni sagacitate et prudenti consilio dei cum reverentia illis praedicare non desistatis.”

² *Der Brief des Priesters Gerhard an den Erzbischof Friedrich von Mainz*, F. Lotter, ed. (Sigmaringen, 1975).

status of the Jews within Christendom for centuries. Curiously, it is entirely at odds with the position taken by Leo, who ruled that Jews should not be compelled to convert, but could be exiled if they refused to be baptized. Leo, like Gerhard, appealed to authorities, he simply appealed to different authorities, and interpreted them differently than Gerhard had.

It is not entirely clear why Friedrich decided to undertake the conversion of his diocese's Jews. However, it may not be wholly coincidental that five years earlier Friedrich's predecessor and then king Henry I received a letter from Venice describing the miraculous conversion of the Jews of Jerusalem, and thereafter of Byzantium's Jews. The Jews and Christians living in Jerusalem shut up their holy places for three days.³ When the buildings were re-opened, the synagogue was empty, but an image of Christ crucified was visible in the Church of the Holy Sepulchre. When the Jews saw this, according to the Venetian letter, they converted. The emperor considered compelling Byzantium's Jews to follow suit, but when they learnt of this miracle they converted of their own accord. The letter concluded by advising its recipients to preach this miracle and order the Hebrews living in Germany to convert, but "if [the Hebrew] does not want to be a Christian, let him depart, scattered and scorned, from your kingdom."⁴ This letter was read at the Council of Erfurt, convened in 932. While of dubious historicity,⁵ it made an obvious impression upon the assembled bishops. It was incorporated into the Council's *gesta*, and a summary of its contents appear in the *breviarium canonum*. This summation offers a succinct, slightly altered account of the letter's contents, one which offers insight into how the assembled bishops interpreted its narrative.⁶ If the *breviarium* is any indication, the bishops read the narrative as both more wondrous and more insistent on compelling conversion than the original letter. According to the *breviarium*, an image of Christ appeared in the Holy Sepulchre after the three days when Jewish and Christian sacred spaces were closed. When the Jews tried to view this image, they were driven back, "and terrified by this sign, all the Jews, who were across the sea, were

³ Council of Erfurt c. 1, MGH *Concilia* 6.1, 110-111; cf. D. Malkiel, "Jewish-Christian relations in Europe, 840-1096," *Journal of Medieval History* 29 (2003): 64-65.

⁴ Council of Erfurt, 114. "Si quis vero Hebreus baptizari noluerit, precipite, ut signum crucis in nullo metallo nec in ullo drappo aut aliqua spetie in vestro regno suis pollutis manibus contingat, et ipse Hebreus, si noluerit esse christianus, confusus et repudiatus de vestro regno abscedat."

⁵ There is little indication that the Jews of Jerusalem converted *en masse* or that a policy of coercive conversion was pursued in Byzantium in this period. See, Malkiel, "Jewish-Christian Relations," 64; J. Starr, *The Jews in the Byzantine Empire, 641-1204* (Athens, 1939; repr. Westmead, England, 1969), 7, 151-152.

⁶ Council of Erfurt, 110-111.

baptized.”⁷ The *breviarum canonum* also concluded that, “it is advised in this very letter that all Jews dwelling among Christians are either to be baptized, or exiled from all Christianity.”⁸ Whether Friedrich attended the Council and took this advice to heart cannot be ascertained. Only the bishops in attendance were named in the *gesta*. His predecessor, Hildebert, was there, and he had been one of the letter’s original recipients in any case. Thus, it seems probable that Friedrich, at the very least, knew about this letter and its tale of wonder-fueled conversions.

Friedrich was, moreover, in Henry Mayr-Harting’s words, “a saintly troublemaker.”⁹ He is perhaps best known for standing up Otto I, when the latter had come to Mainz to celebrate Easter, but found the archbishop absent, praying and fasting with hermits and solitaries.¹⁰ Friedrich seems to have had, at least in so far as he is described by contemporary chroniclers, as a later prelate said of a subordinate similarly bent on converting Jews, “the zeal of God, but not according to knowledge (cf. Rom. 10.2).”¹¹ His zeal may have harboured ulterior motives in this case, since Friedrich’s first question to Leo, and presumably his first interest, was not baptizing Jews, but asserting apostolic primacy.

Whatever the reasons for Friedrich’s foray into compulsory conversion, he did apparently write to pope Leo asking whether it were preferable to baptize or exile the Jews, and his subordinate Gerhard did send him a collection that included canons dealing with Jews and conversion. Gerhard’s compilation has been read as a complement to Leo’s decretal, a text designed to help Friedrich compose his queries about coerced conversion and apostolic primacy.¹² If Friedrich instructed to Gerhard to compile texts concerning Jews, however, he seems not to have read, heeded, or mentioned those texts in his query to Leo. All references to “apostolic authority according to canons and decrees of the holy fathers” mentioned in Leo’s letter concern Mainz’s apos-

⁷ Council of Erfurt, 111. “Tum in tertia die ultro domini apertum est templum manifesteque a christianis, ut pridem fuit crucifixus, ita est visus. Iudei vero hoc videre cupientes quantum appropinquare studuerunt, in tantum retrorsum abierunt, et ex eodem signo perterriti omnes Iudei, qui citra mare erant, baptizati sunt.”

⁸ Council of Erfurt, 113. “Et ob id precipiebatur in eadem epistola, ut omnes Iudei inter christianos commorantes aut baptizarentur aut a tota christianitate excluderentur.”

⁹ H. Mayr-Harting, *Church and Cosmos in Early Ottonian Germany: The View from Cologne* (Oxford, 2007), 28.

¹⁰ Widikund of Corbie, *Rerum Gestarum Saxoniarum* 3.13, eds. H.-E. Lohmann and P. Hirsch, *MGH, Scriptores rerum Germanicarum in usum scholarum* (Hannover, 1935), 111. Widikund, writing for the empress Mathilda, was not especially kind on this score, but elsewhere speaks more approvingly of Friedrich.

¹¹ Herman-Judah, *Opusculum de conversione sua* 5, G. Niemeyer, ed. (Weimar, 1963), 85; cf. K. Morrison, *Conversion and Text: The Cases of Augustine of Hippo, Herman-Judah and Constantine Tsatsos* (Charlottesville and London, 1992), 86.

¹² See Lotter, *Der Brief*, 46–48, 92–98.

tolic primacy. Moreover, Friedrich could hardly have sent the claims that he seems to have made regarding Mainz's primacy based upon Gerhard's compilation alone. Leo refers to letters, which Friedrich purportedly cited, that do not appear in Gerhard's collection.¹³ According to Leo, Friedrich referred to papal privileges from two Gregories, Zacharias, and Stephan sent to his predecessor Boniface.¹⁴ Only one of these letters was to be found in the papal archives¹⁵ or in Gerhard's compilation:¹⁶ the decretal reputedly sent to Boniface by Zacharias. Gerhard did not include the other three letters to which Friedrich seemingly alluded. Nor was Gerhard's interest as narrowly focused on episcopal primacy in Germany as Friedrich's seems to have been. Gerhard's collection ranges widely over episcopal duties and sacerdotal dignities.

Indeed, Gerhard gives the impression that he was schooling, rather than simply serving, his new superior. Shorn of their topoi of self-abasement and episcopal panegyric, the preface and colophon sound notes of exasperation with their recipient. In his preface, Gerhard declares that he has sent "these little things plucked from many things to be presented to your gaze and very clearly disemboweled."¹⁷ He implies that his intention was not merely to explicate his compilation but "to disembowel" it, to take it apart so clearly and so completely that there could be no occasion for confusion or misapprehension. Finally, Gerhard concludes with the rather tart reminder, in verse no less, "I keep asking you, excellent father, to send me some small parchments, because they are rather expensive."¹⁸

Arguably, Gerhard was not simply lumping legal texts together, or even thought of himself as compiling legal texts. He was carefully ordering a series of authorities to make a few specific arguments about what bishops should and should not do. While the focus here is on those texts which concern Jews, a survey of how they fit within the larger compilation illustrates the scope of Gerhard's concerns. Gerhard began his collection with extracts from a letter, attributed to Dionysius of Athens (Pseudo-Dionysius the Areopagite), which counsels episcopal clemency, and more specifically episcopal clemency when

¹³ Leo VII to Frederick of Mainz (937-939), Doc. 34, 32-33, "apostolica auctoritate iuxta canones et instituta sanctorum patrum." On this phrase, see also H.-D. Hehl, "Iuxta canones et instituta sanctorum patrum: Zum Mainzer Einfluß auf Synoden des 10. Jahrhunderts," in *Papsttum Kirche und Recht im Mittelalter: Festschrift für Horst Fuhrmann zum 65. Geburtstag*, H. Mordek, ed. (Tübingen, 1991), 117-33.

¹⁴ Leo VII to Frederick of Mainz (937-939), Doc. 34, 32-33.

¹⁵ Leo VII mentions searching the papal archives for these letters, and reports that only the one was found therein, letter to Frederick of Mainz (937-939), Doc. 34, 32-33.

¹⁶ Gerhard, c. 10, 122.

¹⁷ Gerhard, prologue, 109. "Vestra iniungente clementia haec paucula ex pluribus deflorata vestris obtutibus praesentanda et enucleatius exinternanda transmittimus."

¹⁸ Gerhard, colophon, 128. "Ut mihi membranulas quasdam, pater optime, mittas, Omnimodis rogitō, quia sunt pro munere magno."

engaged in converting the infidel.¹⁹ Only then did he turn to the Jews, setting forth a series of letters written by Gregory I which forbade violently converting Jews, and allowing Jews to exercise authority over Christians. He then cites “the chapters against the Jews of the great, undefeated Charles, our emperor, and certain kings with the consent of the bishops,” a collection of conciliar canons and Roman laws that bishops at the Council of Paris-Meaux tried to re-issue in 845/846.²⁰ After declaring “this is enough about the Jews,” Gerhard moves on to the consecration of the chrism as discussed in the “little book of the Roman order.”²¹ Thence, he cites some of the Pseudo-Isidorian decretals on the imposition of hands versus baptism, and the dedication of churches. Gerhard incorporates a letter from Pope Zacharias to a former archbishop of Mainz, the decretal upon which Friedrich evidently founded his claims to primacy. Zacharias is followed by Pseudo-Dionysius, unattributed this time, on sacerdotal dignities.

Although the texts dealing with Jews are undoubtedly what we would term “legal sources,” I suspect that this is not whence or why Gerhard included them. Gerhard, like Gratian after him,²² did not cull the all the existing canons, nor did he confine himself to legal texts strictly speaking. He compiled a series of authorities that he deemed relevant to his undertaking from a small corpus of sources. He extracted most of his copies of Gregory I’s letters from Johannes Diaconus’ *Vita S. Gregorii*, composed in the late ninth century. He borrowed this source’s explanatory, exegetical commentary as well. There is, moreover, one “letter” that is an amalgamation of three Gregorian decretals and one sixth-century conciliar canon, which he seems to have pulled from a canon issued at the council of Paris-Meaux in 845/846. Gerhard’s sixth chapter, the series of canons attributed to Charlemagne, derives from the same source. In all likelihood, he copied these texts from one of the *Collectio canonum, decreta-lium, epistolarum*, which similarly identified the Paris-Meaux canon as Charlemagne’s, the oldest extant copy of which dates to the 9th/10th century.²³

Read in their entirety, Gerhard’s arguments, borrowed and indirect as they are, posit that the Jews must not be compelled to convert, but neither may they exceed the limits assigned to them by the Church, nor wield authority over Christians. Gerhard begins with a passage borrowed directly from Johannes Diaconus’ *Vita*: “Gregory strove to banish the perfidy of the Jews by

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¹⁹ Gerhard, c. 1, 109-12. *Epistola ad Demophilium; Vita Dionysii*.

²⁰ Gerhard, c. 6, 117.

²¹ Gerhard, c. 6, 118.

²² As Anders Winroth has demonstrated, see *The Making of Gratian’s Decretum* (Cambridge, 2000).

²³ Munich, Bayerische Staatsbibliothek, clm 6245.

arguments rather than violence.”²⁴ Gregory’s letter to Virgil and Theodore, bishops of Arles and Marseille, follows. This decretal is among the Middle Ages’ strongest, most unequivocal papal reproofs against compulsory conversion. In it, Gregory chides “whoever comes to the baptismal font not by the sweetness of preaching but by necessity, returning to the original superstition dies worse than before” and tries to persuade the bishops to adopt preaching and discourse instead.²⁵ Following Johannes, Gerhard’s compilation continues with the decretal sent to the bishop of Parma, which specifies that the Jews should not endure any disadvantage in those things allowed them, since they could do nothing in their synagogues beyond that which was permitted.²⁶ At this point, Johannes neatly turned his compilation from what may not be done to the Jews to what they may not do, and Gerhard followed suit: “As Gregory forbade that the Jews be violently baptized, accordingly he did not allow that Christians be subjugated to them in any way whatsoever.”²⁷ This declaration is followed by extracts from two letters sent by Gregory in which he instructs his correspondents to investigate circumstances where Jews were said to hold Christian slaves, and to free those slaves should those reports prove true.²⁸

Like Johannes before him, Gerhard continues on the theme of Jewish slave ownership. He began chapter four with yet another extract from the *Vita S. Gregorii*: “if Gregory could not free those Christians from the servitude of the Hebrews through legal violence, due to the length of the journey through the provinces, he agreed that they be redeemed by his prices.”²⁹ Gerhard continues with Johannes’ assertion that “he never returned the slaves of Jews once they had fled to the church, whatever the blandishments,”³⁰ which is followed by a letter instructing the bishop of Cagliari to protect Jewish slaves seeking refuge in churches. Gerhard repeats Johannes’ further assertion that, “Gregory not only legally recalled Christian slaves to their original freedom, but he also in no way allowed pagans coming to the faith to be sold by

²⁴ Gerhard, c. 3, 112.

²⁵ Gerhard, c. 3, 112. “Sed hanc eandem intentionem, nisi competens scripturæ sacræ comitetur effectus, timeo ne aut mercedis opus exinde non proveniat aut iuxta aliquid animarum, quas eripi volumus, quod absit, dispendia subsequantur. Dum enim quispiam ad baptismatis fontem non praedicationis suavitate, sed necessitate pervenerit, ad pristinam superstitionem remeans inde deterius moritur, unde renatus esse videbatur.”

²⁶ Gerhard, c. 3, 112-13.

²⁷ Gerhard, c. 3, 113. “Quemadmodum Iudeos violenter baptizari Gregorius denegabat, ita christianos eis quoquo modo subici nullatenus permittebat.”

²⁸ Gerhard, c. 3, 113-14.

²⁹ Gerhard, c. 4, 114. “Si quos christianorum pro longitudine itineris per provintias ab Ebreorum servitio per legalem violentiam Gregorius liberare non poterat, suis precii redimendos esse censebat.”

³⁰ Gerhard, c. 4, 114. “Iudeorum mancipia semel confugientia ad aecclesiam numquam quislibet suasionibus reddebat.”

violence.”³¹ These introductory comments are somewhat at odds with the tenor of Gregory’s letter, which permitted Jewish slave-traders to sell, rather than emancipate, pagan slaves who expressed a desire to convert to Christianity, so long as they did so within three months. The last extract in this chapter is prefaced with the declaration that Gregory did not allow pagan slaves who converted to be recalled into slavery if their masters converted after them.³² Gregory’s letter, which follows, concerns the Christian slave of a Samaritan, who was freed under his late master but faced being reclaimed by the son who had converted.

In the fifth chapter, again following Johannes, Gerhard moved onto the circumcision of pagans, and specifically of pagan slaves: “Gregory permitted none of the pagans to be circumcised.”³³ Gerhard, however, elided the Jews into a letter that originally concerned only Samaritans. In his collection, this letter reads: “Jews or Samaritans living in Catania buy pagan slaves, and presume to circumcise them with daring audacity.”³⁴ Gerhard thereby recast Gregory’s decision, adapting it by virtue of interpolation, so that it more directly concerned the question he (as opposed to Johannes) was considering. Likewise, since his interests and concerns differed from those of Johannes, who was primarily concerned with illustrating Gregory’s sanctity, Gerhard did not bother to include the *Vita*’s subsequent letter concerning gifts from Jews. Instead, Gerhard cobbled together an epistle which he purports was sent from Gregory to Theodoric, Theodebert, and Brunhild, but which was originally four separate texts. The first portion of this letter originated as two nearly identical letters; one sent to Theodoric and Theodebert, and one, to Brunhild in 599. The second part began as a letter from Gregory to Fortunatus, while the third was taken from a canon issued at the Council of Epaone (517). The resulting decretal reads:

We are amazed that Jews in your kingdom are allowed to possess Christian slaves. For what are all Christians but limbs of Christ? And a little after: In this we ask that you show yourselves worshippers of God more fully, that you may set free his faithful from his enemies. Christian slaves, he said, which are acquired and held by Jews, are either to be delivered or at least sold to Christian buyers within forty days. Also, do not let them remain in any way after the appointed number of days among them. If however any of these slaves should by chance fall ill, so that they cannot be sold within the appointed days, soli-

³¹ Gerhard, c. 4, 115. “Non solum christiana mancipia Gregorius in libertatem pristinam legaliter revocabat, verum etiam pagana ad fidem venire volentia vendi nullo modo permittebat.”

³² Gerhard, c. 4, 115.

³³ Gerhard, c. 5, 116. “Circumcidi saltim paganorum neminem Gregorius permittebat.”

³⁴ Gerhard, c. 5, 116. “Quae, si vera est, fraternitatem tuam vehementer accusat, quia eam de minori sollicitudine probat esse culpabilem; comperimus autem, quod Iudei et Samarei degentes Catine pagana mancipia emerint atque ea circumcidere ausu temerario praesumpserint.”

citude should be consulted, so that their former health might be restored. Our decree forbids the laity from the banquets of the Jews. Also if one has been defiled by the banquet of Jews, let him not eat bread with any of our clerics.³⁵

It seems probable that Gerhard culled his texts from the Council of Paris-Meaux, since it also lumped together the two letters sent to the French monarchs.³⁶ However, this particular amalgamation of texts and prohibitions seems to have been Gerhard's own. It neatly illustrates the scope of Gerhard's specific concerns: the fates of Jews' Christian slaves, and the exercise of influence or authority by Jews over Christians.

These concerns come to the fore again in Gerhard's sixth chapter, which was not precisely what he thought it was. Presumably following his available source — likely a *collectio canonum* akin to those that survive at the Bayerische Staatsbibliothek in clm 6245 or 6341³⁷ — he identified it as a capitulary of Charlemagne and other kings, approved by bishops. It is, in fact, a compilation of Roman legislation and conciliar canons issued at the Council of Paris-Meaux. Although not ratified by Charles the Bald at the Diet of Épernay,^{this} canon still found its way into subsequent collections, including the *Additamenta ad capitula regis franciae occidentalis*.³⁸ After copying the prohibitions against Jews buying and circumcising Christian slaves, holding certain offices, building new synagogues, converting slaves to Judaism, and going out in the streets or the forum during Holy Week, Gerhard announces “This suffices concerning the Jews.”³⁹ As with the Gregorian decretals borrowed from the

³⁵ Gerhard, c. 5, 116-17. Item Gregorius papa Theoderico et Theodeberto regibus Francorum et Brunehildae reginae: Mirati sumus, quod in regno vestro Iudeos christiana mancipia possidere permittitis. Quid enim sunt omnes christiani nisi membra Christi? Et post pauca: In hoc petimus, ut vos amplius Dei cultores demonstratis, quod fideles illius ab inimicis eius absolvatis. (Gregory I, *Postquam excellentiae vestrae*, Reg. 9.214 & Reg. 9.214, and *Cum regni vestri* Reg. 9.216) Christiana, inquit, mancipia, quae a Iudeis adducuntur vel possidentur, aut mandatoribus contradantur aut certe christianis emptoribus infra diem quadragesimum vendantur. Et transacto dierum numero aput eos quolibet modo non remaneant. Si autem quaedam ex eisdem mancipiis talem aegritudinem fortassis incurrerint, ut infra statutos dies vendi non valeant, adhibenda est sollicitudo, ut saluti sint pristinae restituta. (Gregory I, *Cognoscentes qualis fraternitatem*, Reg. 9.104) A Iudeorum vero convivii etiam laicos constitutio nostra prohibuit, nec cum ullo clerico nostro panem comedit, si quis Iudeorum convivio fuerit inquinatus (c. 15, Council of Epaone).”

³⁶ Council of Paris-Meaux, c. 73, in MGH, *Die Konzilien der karolingischen Teilreiche, 843-859* (Hanover, 1984), 119-23. THIS DOCUMENT MAY BE PRINTED FOR PRIVATE USE ONLY. IT BE DISTRIBUTED WITHOUT PERMISSION OF THE PUBLISHER.

³⁷ cf. Lotter, *Das Brief*, 38.

³⁸ *Notitia de Conciliorum Canonibus in Villa Sparnaco a Karolo Rege Confirmatis*, MGH *Capitula* 2.2, no. 257, 260-262. See also B. Blumenkranz, “Deux compilations canoniques de Florus de Lyon et l'action antijuive d'Agobard,” *Revue historique de droit français et étranger* Ser. 4, 33 (1955): 569; W. Pakter, *Medieval Canon Law and the Jews* (Elbanh, 1988), 99.

³⁹ Gerhard, c. 6, 118. “Haec de Iudeis sufficiant.”

Vita, not everything contained in the original text was of interest, or relevant to his concerns. Gerhard did not incorporate additional texts from the pseudo-Carolingian capitulary on consorting with Jews or accepting gifts from them. The pieces of the canon that Gerhard incorporates into his collection were chiefly drawn from the Roman codes: the *Codex Theodosius* (16.9.1, *Interpretatio*), the *Constitutiones Sirmondinae* (c. 6), the *Novella Theodosius* (3), and then one canon from the council of Macôn (581/583) identified here as the work of Childebert, king of the Franks.

Although the council named the ostensible authors of each of the laws, Gerhard seems to have been unaware of who they were, or what their names might signify. Their authority derived not from their Roman origins, but their pseudo-Carolingian ones. Roman law, as such, seems to have carried little weight with Gerhard. The inclusion of the pseudo-capitulary along with his use of Gregory's *Vita* and the nature of Gerhard's collection as a whole suggest that he was not, or not primarily, appealing to these canons and decretals as laws, but rather as authorities. A similar propensity can be seen in the later, more influential *Decreta* of Burchard of Worms, Ivo of Chartres, and Gratian, who were as inclined to cite a sermon attributed to Augustine alongside conciliar canons and papal decretals.⁴⁰

In contrast, Leo VII's contemporaneous decretal did not stop to consult earlier legislation. In rendering his decision, Leo did not refer to any of the existing decretals or canons on baptizing Jews. Instead, he appealed to passages from the Bible, namely from Second Corinthians and Matthew as his foundation. He exhorted Friedrich to preach the faith of the Trinity and the mystery of the Incarnation, and to rejoice if the Jews then believed and wished to convert. He continued: "However, if they do not wish to believe, expel them from your communities with our authority; we who ought not keep company with the enemies of God, as the apostle says: For what has light in common with darkness, or what has the faithful to do with the infidel? (cf. 2 Cor. 6.15) But, do not baptize them through force and without their will or request, which is written: Do not give a holy thing to dogs and do not set pearls before swine, lest perchance they trample them under their feet. (cf. Matt. 7.6)."⁴¹ Leo's decision ran counter to earlier canons and papal decrees, including those

⁴⁰ Gratian, *Decretum*, vol. 1, *Corpus iuris canonici*, E. Friedberg & A.L. Richter, eds. (Graz, 1955; 1995); Ivo of Chartres, *Decreti de Fide*, vol 161, *Patrologia Latina*, cols. 59-134.

⁴¹ Leo VII to Frederick of Mainz (937-939), Doc. 34, 32-33. *Que enim communicatio lucis ad tenebras, aut que pars fideli cum infidele? Per virtutem autem et sine illorum voluntate atque petitione nolite eos baptizare, qui scriptum est: Nollite sanctum dare canibus et nollite mittere margaritas vestras ante porcos, ne forte conculcent eas pedibus suis. Caeterum fidem sanctae trinitatis, quam Judaeis et gentibus praedicatis, quam et ad sanctam Romanam aecclesiam, matrem videlicet vestram, approbandam misistis, ita integram inlibatamque creditis et tenetis, sicut apostoli eorumque successores nobis tradiderunt et sancta Romana aecclesia omnibus ubique gentibus praedicat.*

which Gerhard had cited, and all of which had forbidden compelling the Jews to convert.⁴² While Leo qualified his advice by maintaining that Jews should not be baptized unwillingly, this does not obscure the unprecedented, indeed nearly revolutionary, nature of his pronouncement.⁴³

Particularly if read with the Council of Erfurt and Gerhard, Leo's decretal and Friedrich's query reveal the beginnings of a shift in Christian attitudes toward compulsory conversions. With the sole exception of Visigothic Spain, previous narratives of compulsory baptisms had dressed bald coercion in the trappings of miracles, episcopal sanctity, and/or consent.⁴⁴ Leo, on the other hand, only softened the flat threat of exile with exhortations to preach. Authors after him, like Raoul Glaber and Ademar of Chabannes, who described Christians bent on compelling Jews to convert generally did not shy away from detailing open coercion.⁴⁵ In other words, Leo augurs coercive conversion's transformation into something more acceptable, more thinkable to Christian authors of the eleventh and twelfth centuries. Leo did not, however, overturn centuries of canon law. While his letter signals a major shift in Christian thought, it made barely a ripple in the traditions of canon law. In contrast, Gerhard's formula, the dual prohibition against both forced conversion and undue influence, was to be the staple of canon law and papal policy concerning Jews. It was the central premise of the *Sicut Judaeis* bulls that were repeatedly issued by the popes of the high Middle Ages.⁴⁶

Gerhard, Leo, and Friedrich used different authorities to quite different ends. Whether their ends determined their authorities or their authorities decided their conclusions is as unknown and unknowable as the ultimate outcome of Friedrich's missionary impulse. Friedrich may well have had both the Council of Erfurt's *gesta* and Gerhard's *collectio*, and if he had both, he

⁴² E.g. Gregory I, *Plurimi iudaicae*; Toledo IV, c. 57; Nicea II, c. 8.

⁴³ Leo VII to Frederick, archbishop of Mainz (937-939), Doc. 34, 32-33.

⁴⁴ See Gregory of Tours, *Historiam Francorum* 5.11, in *Zehn Bücher Geschichten*, B. Krusch & R. Buchner, eds. (Darmstadt: Wissenschaftliche Buchgesellschaft, 1970), 294-298; Venantius Fortunatus, *Carmina* 5.5, MGH A.A. v. 4, 108; Severus of Minorca, *Letter on the Conversion of the Jews*, S. Bradbury, ed. (Oxford, 1996); *Vita Sulpicii Episcopi Biturgi*, c. 4, MGH *Scr. Mer. Rer. v. 4*, 374-5; *Gesta Dagoberti I, Regis Francorum* c. 24, MGH *Scr. Rer. Mer. v. 2*, 409; Pseudo-Fredegard, *Chronicarum* 5.65, MGH *Scr. Rer. Mer. v. 2*, 153.

⁴⁵ Ademar of Chabannes, *Chronicon* 3.47, R. Landes, ed. CC CM 129 (Turnholt, 1999), 166-67; Raoul Glaber, *Historiarum Libri Quinque* 3.24, J. France & N. Bulst, eds. (Oxford, 1989), 132-34; See also, J. Sherwood, *Jewish Conversion from the Sixth through the Twelfth Centuries*, Ph.D. diss. (Toronto, 2005), 105-17. MAY NOT BE DISTRIBUTED WITHOUT PERMISSION OF THE PUBLISHER.

⁴⁶ See, *inter alia*, S. Grayzel, "Popes, Jews, and Inquisition from 'Sicut' to 'Turbato,'" in *Essays on the Occasion of the Seventieth Anniversary of The Dropsie University*, (Philadelphia, PA, 1979), 151-88; W. Pakter, *Medieval Canon Law and the Jews*, Ebelbach, 1988; J. Gilchrist, "The Perception of the Jews in the Canon Law in the Period of the First Two Crusades," *Jewish History* 3.1 (1988), 9-24; and K. Stow, "Hatred of the Jews or Love of the Church: Papal Policy Toward the Jews in the Middle Ages," in *Antisemitism through the Ages* (Toronto and Oxford: 1985), 71-86.

seems to have concurred with the Council. Gerhard's *collectio* built on earlier compilations, drawing together Gregorian decretals, conciliar canons, and Roman law. Unlike his archbishop, Gerhard concluded that Jews ought not to be baptized against their will, but he also suggested that they should not enjoy too much power and influence over Christians. Leo, who had access to the papal archives and suggests that he made use of them in composing his letter,⁴⁷ ignored his predecessors. He turned instead to biblical authorities in rendering a decision that was quite at odds with earlier papal decisions. Such wildly divergent conclusions should make us chary of anachronistically assuming that canon law was a coherent, consistent body of thought in this period, or that there was a single ecclesiastical policy or stance of canon law on the Jews or their baptism.



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⁴⁷ See n. 14 above.



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LES JUIFS DANS LE DROIT CAROLINGIEN

Philippe DEPREUX

La question du statut des juifs au haut Moyen Âge a été défrichée depuis bien longtemps et elle fait l'objet de controverses épistémologiques¹ d'autant plus délicates à trancher que le corpus ne s'est pas substantiellement enrichi depuis la parution, en 1902, des *Régestes* d'Aronius², si ce n'est que certaines éditions nouvelles nous permettent d'étudier les textes dans de meilleures conditions – qu'on pense, par exemple, aux écrits polémiques d'Agobard de Lyon³. Ce n'est en revanche pas le cas pour les capitulaires, dont l'édition de Boretius et Krause⁴, sur laquelle on se base encore, ne correspond plus aux critères actuels de la recherche (une nouvelle édition est d'ailleurs en préparation⁵). Or l'essentiel du peu que l'on sache du statut des juifs aux temps carolingiens vient des rares extraits de capitulaires les mentionnant, que complètent quelques rares actes

¹ Cf. la controverse entre Michael Toch et Friedrich Lotter, exposée par ce dernier dans : « Sind christliche Quellen zur Erforschung der Geschichte der Juden im Frühmittelalter weitgehend unbrauchbar? », *Historische Zeitschrift* 278 (2004), p. 311-327 (les publications antérieures à ce propos sont mentionnées *ibid.*, p. 311 n. 1). Pour une appréciation de la place des juifs dans la société carolingienne et post-carolingienne, cf. David Malkiel, « Jewish-Christian relations in Europe, 840-1096 », *Journal of Medieval History* 29 (2003), p. 55-83 ; Johannes Heil, « 'Goldenes Zeitalter' – Juden und Judentum in der Karolingerzeit », dans : Rainer Kampling (dir.), « *Wie schön sind Deine Zelte, Jakob, deine Wohnungen, Israel?* » ; *Beiträge zur Geschichte europäisch-jüdischer Kultur*, Francfort/Main 2009 (Apelotes. Studien zur Kulturgeschichte und Theologie, 5), p. 99-114 ; Bat-Sheva Albert, « Christians and Jews », dans : *The Cambridge History of Christianity*, t. 3 : Thomas F. X. Noble & Julia M. H. Smith (dir.), *Early Medieval Christianities, c. 600-c. 1100*, Cambridge 2008, p. 159-177. En diernier lieu, cf. Michael Toch, *The economic history of European Jews. Late Antiquity and Early Middle Ages*, Leyde/Boston 2013 (Études sur le Judaïsme Médiéval, 56)

² Julius Aronius, *Regesten der Geschichte der Juden im fränkischen und deutschen Reiche bis zum Jahre 1273*, Berlin 1902.

³ *Agobardi Lugdunensis Opera omnia*, éd. Leonardo van Acker, Turnhout 1981 (*Corpus Christianorum. Continuatio mediaevalis*, 52). Sur Agobard, cf. Egon Boshof, *Erzbischof Agobard von Lyon. Leben und Werk*, Cologne / Vienne 1969 (*Kölner Historische Abhandlungen*, 17). Sur les écrits anti-juifs, cf. Bat-Sheva Albert, « *Adversus Iudaeos* in the Carolingian Empire », dans : Ora Limor & Guy G. Stroumsa (dir.), *Contra Iudaeos. Ancient and Medieval Polemics between Christians and Jews*, Tübingen 1996 (*Texts and studies in medieval and early modern Judaism*, 10), p. 119-142. Il a récemment été formulé l'hypothèse que, par ses attaques contre les juifs, Agobard visait essentiellement le *magister Iudaeorum* Évrard, qui avait réquisitionné certains biens de l'Église de Lyon, cf. Johannes Heil, « Agobard, Amolo, das Kirchengut und die Juden von Lyon », *Francia. Forschungen zur westeuropäischen Geschichte*, 25/1 (1998), 39-76.

⁴ *Capitularia regum Francorum*, tome 1, éd. Alfred Boretius, Hanovre 1883 (*MGH, Capitularia regum Francorum*, 1) ; *Capitularia regum Francorum*, tome 2, éd. Alfred Boretius et Viktor Krause, Hanovre 1897 (*MGH, Capitularia regum Francorum*, 2).

⁵ *Deutsches Archiv für Erforschung des Mittelalters* 35 (1979), p. III-IV ; 61 (2005), p. VII ; 62 (2006), p. VIII ; 67 (2011), p. V-VI.

de la pratique. À cet égard, le règne de Louis le Pieux est tout-à-fait exceptionnel, puisqu'on lui doit les privilèges pour les juifs. Au sein de ce corpus, on distingue un *appennis* – ou acte de confirmation à la suite de la destruction des titres originaux – conservé dans le fonds de l'abbaye de Lagrasse⁶, et trois privilèges par lesquels l'empereur prend des juifs sous sa protection. Ces trois privilèges ne nous sont connus que par un manuscrit ayant appartenu à un membre de la chancellerie impériale, où ils furent copiés, en notes tironiennes – c'est-à-dire de manière sténographique, dont la lecture n'est réservée qu'à un petit cercle d'initiés –, sous la forme de modèles (passés à la postérité sous le nom de *Formulae imperiales*⁷). Ce détail a son importance, car – outre qu'il illustre l'ampleur des pertes documentaires – il prouve qu'il était utile à un membre de la chancellerie d'avoir par devers lui plusieurs modèles d'actes de ce type. Il faut par ailleurs souligner qu'il est erroné, comme on le fait trop souvent, de considérer ces privilèges comme définissant la norme⁸, une norme que nous ne parvenons qu'à peine à entrevoir : il s'agit d'actes de la pratique qui sont l'expression de la norme et la traduisent dans les faits. Or c'est, précisément, aux sources normatives que cet article est consacré.

Dans une thèse récente, l'ampleur de cette carence documentaire fut mise en rapport avec une éventuelle censure opérée à la suite de cet âge d'or de la vie juive dans le monde franc que semblent avoir représenté les premières générations carolingiennes, de Pépin le Bref à Louis le Pieux⁹. De fait, le milieu du IX^e siècle (en l'occurrence, le concile tenu à Meaux et à Paris en 845 et 846) représente une véritable césure¹⁰, alors que la période antérieure semble avoir été assez favorable aux juifs¹¹. S'agit-il pour autant d'une période caractérisée par une « pro-Jewish economic policy » comme l'affirme Bernard Bachrach à propos



⁶ *Recueil des chartes de l'abbaye de Lagrasse*, tome 1, éd. Élisabeth Magnou-Nortier et Anne-Marie Magnou, Paris 1996 (*Collection de documents inédits sur l'histoire de France. Section d'histoire médiévale et de philologie, série in-8°, 24*), p. 22-23 (n° 14).

⁷ *Formulae Merowingici et Karolini aevi*, éd. Karl Zeumer, Hanovre, 1882 (*MGH, Formulae*), respectivement p. 309 (*Formulae imperiales*, n° 30), p. 310 (*Formulae imperiales*, n° 31) et p. 325 (*Formulae imperiales*, n° 52). Sur le manuscrit BnF, lat. 2718, cf. David Ganz, « On the History of Tironian Notes », dans : Peter Ganz, *Tironische Noten*, Wiesbaden 1990 (*Wolfenbütteler Mittelalter Studien*, 1), p. 35-51, à la p. 45 ; *id.*, « Paris BN Latin 2718 : Theological Texts in the Chapel and the Chancery of Louis the Pious », dans : Oliver Münsch & Thomas Zotz (dir.), *Scientia veritatis. Festschrift für Hubert Mordek zum 65. Geburtstag*, Ostfildern 2004, p. 137-152.

⁸ Christof Geisel, *Die Juden im Frankenreich. Von den Merowingern bis zum Tode Ludwigs des Frommen*, Francfort/Main 1998 (*Freiburger Beiträge zur mittelalterlichen Geschichte*, 10), p. 497.

⁹ *Ibid.*, p. 491-492.

¹⁰ Christof Geisel, « Das Konzil von Meaux-Paris (845/846) als Zäsur in der Geschichte des europäischen Judentums », dans : Thomas Martin Buck (dir.), *Quellen, Kritik, Interpretation. Festgabe zum 60. Geburtstag von Hubert Mordek*, Francfort/Main 1999, p. 89-115.

¹¹ Sur le caractère tout-à-fait relatif de cette conjoncture favorable, cf. Heil, « 'Goldenes Zeitalter' ».

de Charlemagne¹² ? Je n'en suis pas si sûr, et voudrais montrer que les juifs sont, plus simplement, des sujets comme les autres – et que la législation les concernant se fonde dans l'ensemble du paysage normatif. Une telle conception remet en question la manière qu'ont certains historiens de présenter les juifs comme des « étrangers » – un jugement qui a, d'ailleurs, été justement dénoncé par Bernhard Blumenkranz¹³. Il semble en tout cas que les juifs étaient quantitativement négligeable dans ce qui constitue le cœur du monde carolingien, au IX^e siècle¹⁴. Leur discrétion démographique, bien qu'ils aient joué un rôle économique indéniable¹⁵, est à l'image de leur caractère diaphane dans les sources juridiques. En comparaison avec l'époque mérovingienne, où la législation – notamment synodale – est relativement abondante¹⁶, il faut bien constater une certaine atonie aux temps carolingiens. De même, dans les lois barbares, les juifs sont – en tant que membres de la société identifiés comme des « juifs » – quasiment absents.

Un contraste s'impose en effet entre la mention, assez récurrente (et discriminatoire) des juifs dans les textes wisigothiques et l'absence de toute référence aux juifs dans les lois rédigées au nord des Pyrénées et des Alpes (qu'on pense, par exemple, à la loi des Francs saliens, à celle des Ripuaires, des Alamans ou des Bavarois). La grande exception est offerte par la *Lex Burgundionum*, qui mentionne les juifs à deux occasions. L'on pourrait, a priori, écarter ce texte du corpus carolingien au motif qu'il remonte à la fin du V^e siècle, sous le règne de Gondebaud (480-516), mais ce serait faire fi d'une donnée importante de la tradition manuscrite : les plus anciens témoignages ne remontent pas plus haut que le IX^e siècle, époque à laquelle, par conséquent, la copie de ce texte revêtait un intérêt¹⁷. C'est en ce sens qu'il convient d'y

¹² Bernard S. Bachrach, *Early Medieval Jewish Policy in Western Europe*, Minneapolis 1977, p. 72.

¹³ Bernhard Blumenkranz, *Juifs et chrétiens dans le monde occidental*, Paris 1960 (*Études juives*, 2), rééd. Louvain 2006, p. 295-300. Cf. l'exposé classique, et nuancé, de François-Louis Ganshof, « Het statuut van de vreemdeling in het frankische rijk », Bruxelles 1956 (*Medelingen van de Koninklijke Vlaamse Academie voor Wetenschappen, Letteren en Schone Kunsten van België, Klasse der Letteren*, 18, n° 3); id., « L'étranger dans la monarchie franque », dans : *L'étranger*, Bruxelles, 1958 (*Recueils de la Société Jean Bodin*, 10/2), p. 5-36, notamment p. 7.

¹⁴ Johannes Heil, *Kompilation oder Konstruktion ? Die Juden in den Pauluskomentaren des 9. Jahrhunderts*, Hanovre, 1998 (*Forschungen zur Geschichte der Juden*, 6), p. 18 ; Michael Toch, *Die Juden im mittelalterlichen Reich*, 2^e éd., München 2003 (*Enzyklopädie deutscher Geschichte*, 44), p. 5-6 ; Michael Borgolte, *Christen, Juden, Muselmanen. Die Erben der Antike und der Aufstieg des Abendlandes 300 bis 1400 n. Chr.*, Munich, 2006, p. 68.

¹⁵ Non seulement en matière de commerce – cf. par exemple Harald Siems, *Handel und Wucher im Spiegel frühmittelalterlicher Rechtsquellen*, Hanovre, 1992 (*Monumenta Germaniae Historica. Schriften*, 35) –, mais aussi en raison de leurs liens avec le système fiscal (nous aurons l'occasion d'y revenir).

¹⁶ Paul Mikat, *Die Judengesetzgebung der merowingisch-fränkischen Konzilien*, Opladen 1995 (*Nordrhein-Westfälische Akademie der Wissenschaften. Geisteswissenschaften. Vorträge*, G 335).

¹⁷ Présentation synthétique de la tradition manuscrite dans : Henri Leclercq, « Loi des Burgondes ou loi Gombette », dans : *Dictionnaire d'Archéologie chrétienne et de Liturgie*, tome 9/2, Paris 1930, col. 1988-2027, aux col. 2022-2024.

prêter attention. Il faut toutefois rappeler que cette loi fut dénoncée par Agobard comme l'œuvre d'un hérétique et un texte que ses contemporains n'étaient plus que très peu nombreux à observer – d'où la demande que l'archevêque fit à Louis le Pieux d'en interdire l'application¹⁸. (Au XI^e siècle, Wipon confirme que ce texte était tombé en désuétude¹⁹.) La nouvelle concernant les juifs (n° 102) se trouve dans la collection en 105 titres, qui semble dater du règne de Sigismond (516-523) – à la différence de la collection en 88 titres, qu'on date du règne de son prédécesseur²⁰. Force est toutefois de reconnaître que ce texte ne nous en dit pas long sur le statut des juifs, puisqu'il affirme simplement qu'aucun juif ne doit avoir l'audace de lever la main contre un chrétien. Les sanctions sont lourdes : l'amputation, voire la mort (avec confiscation des biens) si la victime est un prêtre²¹. Par ailleurs, la *Lex Romana Burgundionum* interdit les mariages mixtes entre juifs et chrétiens²². Les mariages mixtes – de même que la vente d'esclaves à un juif non baptisé – seront également interdits lors du concile romain de 743, sous la présidence du pape Zacharie²³. Les mesures qu'on trouve dans la loi burgonde sont en phase avec d'autres dispositions légales prises à l'époque mérovingienne, qui interdisent aux juifs de participer pleinement à la vie sociale. Ainsi, les Pères du concile d'Épaone (15 septembre 517) interdisent aux chrétiens tout rapport avec les juifs ; à la suite de l'interdiction, pour tout clerc, de partager le repas d'un clerc hérétique, il est dit : « Quant aux repas des juifs, notre constitution les interdit même aux laïques ; et que celui qui se sera souillé à un repas des juifs ne mange plus le pain avec un de nos clercs »²⁴, c'est-à-dire soit exclu de la communion. Dans l'Édit de Paris de Clotaire II (18 octobre 614), on trouve mention – dans un texte corrompu – de l'interdiction, pour tout juif, d'avoir autorité sur un chrétien ; tout contrevenant (dont il n'est pas possible d'établir

¹⁸ Agobardi Lugdunensis Opera omnia, p. 17-28 (*Adversus legem Gundobaldi*).

¹⁹ *Die Werke Wipos*, éd. Harry Bresslau, 3^e éd. Hanovre / Leipzig, 1915 (MGH SS rer. Germ., 61), p. 58 (*Gesta Chuonradi imperatoris*, c. 38).

²⁰ Cf. Hermann Nehlsen, « Lex Burgundionum », dans : *Handwörterbuch zur deutschen Rechtsgeschichte*, tome 2, Berlin 1978, col. 1901-1915.

²¹ *Liber constitutionum sive Lex Gundobada*, dans : *Leges Burgundionum*, éd. Ludwig Rudolf von Salis, Hanovre, 1892 (MGH, *Leges*, 2/1), p. 114 (titre 102 : *De Iudaeis, qui in Christianum manum praesumpserint mittere*).

²² *Lex Romana*, *ibid.*, p. 143 (titre 19 : *De corruptis mulieribus*, 4).

²³ *Concilia aevi Karolini*, tome 1, vol. 1, éd. Albert Werminghoff, Hannover / Leipzig 1906 (MGH, *Concilia*, 2/1), p. 16 (n° 3, *Actorum concilii forma uberior*, c. 10) ; *ibid.*, p. 32 (n° 3, *Decretorum synodaliū forma minor*, c. 10) : *Si quis Iudaeo non baptizato filiam suam uxorem dederit vel servum aut ancillam ei vendiderit, anathema sit*.

²⁴ *Les canons des conciles mérovingiens (VI^e - VII^e siècles)*, tome 1, éd. Jean Gaudemet et Brigitte Basdevant, Paris 1989 (*Sources chrétiennes*, 353), p. 108-109 (c. 15) : *A iudeorum uero conuiuuiis etiam laicus constitutio nostra prohibuit, nec cum ullo clerico nostro panem comedat, quisquis iudeorum conuiuio fuerit inquinatus*.

la qualité) s'expose à une lourde sanction fondée sur le droit canon²⁵. Cette mesure fait écho à celle prise une semaine plus tôt (10 octobre 614) par les Pères du concile de Paris : « Qu'aucun juif n'ait l'audace de solliciter du prince ou n'exerce un office ou une charge publique qui lui donne autorité sur les chrétiens. S'il y a risque, qu'il reçoive avec toute sa famille, de la main de l'évêque de la cité où il a exercé sa charge à l'encontre des statuts canoniques, la grâce du baptême »²⁶. Cela s'inscrit dans un contexte de conversions forcées bien attestées depuis le VI^e siècle²⁷. Les Pères du Concile de Meaux et de Paris renoueront avec cette tradition, qui semble avoir été éclipsée sous Charlemagne et Louis le Pieux, sous lequel – prétendument en raison d'une politique philosémite – l'exaspération de certains clercs se serait manifestée, non seulement en protestant de diverses manières²⁸, mais aussi en fourbissant leurs armes canoniques²⁹. Le seul trait indéniable par lequel le fils de Charlemagne se distingue en matière de politique à l'égard des juifs est que sous son seul règne est attesté un *magister Iudeorum*³⁰, un membre du palais chargé de surveiller les rentrées fiscales liées aux activités des juifs³¹.

Il n'y a pas lieu de se livrer ici en détail à une nouvelle analyse de chaque chapitre – ou extrait de capitulaire – relatif aux juifs. En revanche, après en avoir rappelé et mis en perspective la teneur, je voudrais focaliser mon attention sur un petit ensemble de textes, que l'on désigne sous le nom – totalement

²⁵ *Capitularia regum Francorum*, tome 1, p. 22 (n° 9, c. 10) : *Iudaei super christianus actionis publicas agere non debeant. Quicumque se ... tuos ... dine sociare praesumpserit, severissimam legem ex canonica incurrat sententia.*

²⁶ *Les canons des conciles mérovingiens (VI^e - VII^e siècles)*, tome 2, éd. Jean Gaudemet et Brigitte Basdevant, Paris 1989 (*Sources chrétiennes*, 354), p. 518-519 (c. 17 [15]) : *Ut nullus iudaeorum qualemcumque militiam aut actionem publicam super christianos aut adpetere a principe aut agere presumat. Quod si temptauerit, ab episcopo ciuitatis illius, ubi actionem contra canonum statuta competiit, cum omni familia sua baptismi gratiam consequatur.*

²⁷ Michel Rouche, ed. V. Nikiprowetzky « Les baptêmes forcés de juifs en Gaule mérovingienne et dans l'Empire d'Orient », dans : *De l'antijudaïsme antique à l'antisémitisme contemporain*, Lille 1979, p. 105-124 ; E. M. Rose, « Gregory of Tours and the conversion of the Jews of Clermont », dans : Kathleen Mitchell et Ian Wood (dir.), *The World of Gregory of Tours*, Leyde 2002 (*Cultures, Beliefs and Traditions*, 8), p. 307-320.

²⁸ Geisel, *Die Juden*, p. 553-722.

²⁹ Bernhard Blumenkranz, « Deux compilations canoniques de Florus de Lyon et l'action anti-juive d'Agobard », *Revue historique de droit français et étranger*, 4^e série, 33 (1955), p. 227-254 & 560-582 ; rééd. dans : *Id., Juifs et Chrétiens. Patristique et Moyen Âge*, Londres 1977, n° XXI ; Klaus Zechiel-Eckes, « Sur la tradition manuscrite des *Capitula de coercionibus Iudeorum* ou Florus de Lyon au travail », *Revue bénédictine* 107 (1997), p. 77-87.

³⁰ Blumenkranz, *Juifs et chrétiens*, p. 40 ; Bachrach, *Early Medieval Jewish Policy*, p. 84-85 ; Philippe Depreux, *Prosopographie de l'entourage de Louis le Pieux (781-840)*, Sigmaringen 1997 (*Instrumenta*, 1), p. 192.

³¹ Je reprends ici l'analyse de François-Louis Ganshof, « Note sur le *praeceptum negotiatorum* de Louis le Pieux », dans : *Studi in onore di Armando Sapori*, tome 1, Milan 1957, p. 101-112.

factice – de *Capitula de Iudaeis*. Ce groupe de chapitres n'a pas été pris en considération par François-Louis Ganshof dans ses recherches sur les capitulaires³² (même si ailleurs, occasionnellement, il s'y réfère comme à un texte « émanant peut-être » de Charlemagne³³) ; quant à Hubert Mordek, il se demande explicitement s'il ne s'agit pas d'un faux³⁴. Déjà dans son édition, Alfred Boretius, l'avait dénoncé comme un faux en le déclarant contraire à ce que l'on sait par ailleurs du statut des juifs sous Charlemagne et Louis le Pieux³⁵. La question de l'authenticité des *Capitula de Iudaeis*, que certains – tel Bernard Bachrach³⁶ – tiennent pourtant pour authentiques alors que d'autres – tel Bernhard Blumenkranz – les réfutent comme « un faux qui provient probablement de la fin du IX^e siècle et qui a été fabriqué dans un milieu clérical »³⁷, a suscité des jugements fondés sur des pétitions de principes n'ayant pas grand-chose à voir avec une démarche scientifique – par exemple chez l'auteur d'une thèse sur le serment des juifs qui argumente en opposant la « starke Persönlichkeit » de Charlemagne à la faiblesse de son successeur, pour dater ce texte de son règne³⁸. Christof Geisel a, me semble-t-il, plaidé de manière convaincante – en dépit de certaines critiques formulées à l'égard de son travail³⁹ – en faveur de l'authenticité de ces textes en les rapprochant d'autres capitulaires : j'en rappellerai brièvement la teneur en approfondissant la réflexion sur la manière dont ils nous ont été transmis et sur leur valeur pour la compréhension du statut des juifs à l'époque carolingienne. Mais il convient encore de préciser un point : ce que l'on entend par « statut des juifs ». On sait qu'il ne faut pas confondre « droit juif » et « droit des juifs »⁴⁰. Il n'existe pas

³² François-Louis Ganshof, *Recherches sur les capitulaires*, Paris 1958, p. 115 (tableau récapitulatif).

³³ François-Louis Ganshof, « La preuve dans le droit franc », dans : *La preuve*, 2^e partie, Bruxelles 1965 (*Recueil de la Société Jean Bodin pour l'Histoire comparative des institutions*, 17), p. 71-98, à la p. 79. L'auteur se réfère là au chapitre 6 du capitulaire n° 131, dont Blumenkranz, *Juifs et chrétiens*, p. 358, pense au contraire qu'il fut « fabriqué probablement dans la seconde moitié du IX^e siècle ».

³⁴ Hubert Mordek, *Bibliotheca capitularium regum Francorum manuscripta. Überlieferung und Traditionszusammenhang der fränkischen Herrscherklasse*, Munich, 1995 (*Monumenta Germaniae Historica. Hilfsmittel*, 15), p. 1093 (Spurium ?).

³⁵ *Capitularia regum Francorum*, tome 1, p. 258.

³⁶ Bachrach, *Early Medieval Jewish Policy*, p. 77.

³⁷ Blumenkranz, *Juifs et chrétiens*, p. 345.

³⁸ Volker Zimmermann, *Die Entwicklung des Judentums. Untersuchungen und Texte zur rechtlichen und sozialen Stellung der Juden im Mittelalter*, Frankfurt/Main 1973 (*Europäische Hochschulschriften. Deutsche Literatur und Germanistik*, 56), p. 27.

³⁹ Cette thèse a été assez mal reçue dans le monde des études juives, comme en témoigne le compte-rendu de Michael Toch dans la *Historische Zeitschrift* 272 (2001), p. 728-730. Cf. également Friedrich Lotter, « Zur Stellung der Juden im Frankenreich der Merowinger und Karolinger », *Aschkenas* 10 (2000), p. 525-533, en particulier p. 526.

⁴⁰ Cf. Guido Kisch, « Jüdisches Recht und Judenrecht. Ein Beitrag zur wissenschaftlichen Grundlegung für eine Rechtsgeschichte der Juden », dans : *Id.*, *Ausgewählte Schriften*, t. 3 : For-

de droit personnel des juifs au sens où on l'entend lorsqu'on se réfère à la personnalité des lois et rien ne permet d'affirmer que le droit romain ne s'appliquait plus à eux au haut Moyen Âge⁴¹. Qui plus est, il n'existe pas de statut générique des juifs – ou des marchands juifs – comme on le trouve souvent dans la littérature secondaire⁴². En effet, pour affirmer cela, on se fonde sur le « précepte des marchands » et un autre modèle de diplôme de Louis le Pieux dont on ne conserve que la transcription sous forme de notes tironiennes⁴³, dans un seul et unique manuscrit⁴⁴. Dans ces privilèges, le statut des marchands est prétendument défini par référence à celui des juifs (*sicut Iudeis, sicut ipsi Iudei*). Or la lecture de ces notes est particulièrement ardue, et suppose une part de flair. Ce qui donne l'illusion, dans l'édition de Rozière ou celle de Zeumer, d'être un texte bien établi est en réalité le fruit d'une lecture fragile... dont l'excellent paléographe qu'était Michael Tangl mit en question la pertinence dès 1908 en proposant de lire à la place de ces mots qui constituent un véritable hapax, et sur lesquels on a beaucoup fantasmé, la banale formule *sicut diximus*⁴⁵. Que reste-t-il, donc, du droit des juifs aux temps carolingiens ?

Certaines des mesures prises à l'encontre des juifs sont associées à leurs fonctions d'agents du fisc ou de percepteurs de tonlieux. Ainsi, les Pères du concile de Pavie, réuni en 850 sous la présidence d'Angilbert II de Milan, dénoncent la possibilité qu'ont certains juifs d'exercer un pouvoir fiscal ou judiciaire sur les chrétiens⁴⁶. (Amolon de Lyon fait de même lorsqu'il dénonce l'exercice de telles fonctions par des juifs convertis qui ont ainsi l'occasion de se trouver en situation de pouvoir par rapport aux autres chrétiens, notam-



schungen zur Rechts- und Sozialgeschichte der Juden in Deutschland während des Mittelalters, Sigmaringen 1978, p. 187-198.

⁴¹ Blumenkranz, *Juifs et chrétiens*, p. 297-300. Cf. également Capucine Nemo-Pekelman, *Rome et ses citoyens juifs (IV^e - V^e siècles)*, Paris 2010.

⁴² Theodor Sickel, « Beiträge zur Diplomantik. III. Die Mundbriefe, Immunitäten und Privilegien der ersten Karolinger bis zum Jahre 840 », *Sitzungsberichte der kaiserlichen Akademie der Wissenschaften*, Vienne 1864 (*Phil.-hist. Classe*, 47), p. 175-277, aux p. 254-255 ; Lea Dasberg, *Untersuchungen über die Entwertung des Judenstatus im 11. Jahrhundert*, Paris 1965 (*Études juives*, 11), p. 45 ; Fr.-L. Ganshof, « Note sur le *praeceptum negotiatorum* », p. 104. B. Blumenkranz, *Juifs et chrétiens*, p. 18 n. 100 est au courant de la difficulté que pose l'expression *sicut Iudeis*, mais il maintient son interprétation.

⁴³ *Formulae*, éd. Zeumer, respectivement p. 315 (*Formulae imperiales*, n° 37) et p. 311 (*Formulae imperiales*, n° 32).

⁴⁴ Cf. *supra* n. 7.

⁴⁵ Michael Tangl, « Zum Judenschutzrecht unter den Karolingern », *Neues Archiv* 33 (1908), p. 197-200.

⁴⁶ *Die Konzilien der karolingischen Teilreiche, 843-859*, éd. Wilfried Hartmann, Hanovre, 1984 (*MGH, Concilia*, 3), p. 229 (n° 23, c. 24).

ment les pauvres⁴⁷.) C'est également à propos de l'argent, en l'occurrence du faux-monnaillage, que Charles le Chauve évoque les juifs dans son édit de Pîtres (25 juin 864), par lequel il réforme la frappe monétaire : à propos des sanctions encourues par celui qui trafique l'aloï des métaux précieux, et qui varient en fonction du statut des personnes (il est fait allusion à la loi romaine⁴⁸ et aux capitulaires⁴⁹), le roi précise que le juif encourra la confiscation du métal précieux et devra s'acquitter du ban royal « comme c'était la coutume sous [ses] prédécesseurs » – en fait, à l'exception de la confiscation de la matière première, qui n'est pas évoquée dans les autres cas, le sort du juif est semblable à celui de tout homme libre⁵⁰. Il s'agit d'un trait que l'on rencontre en d'autres occasions : ainsi, au début du IX^e siècle, la cour semble avoir été un endroit où juifs et chrétiens étaient traités à pied d'égalité. C'est ce que suggère le capitulaire réglant la vie au palais d'Aix-la-Chapelle, où il est question des enquêtes menées par Ernardus chez les marchands, tant juifs que chrétiens, et sur les lieux où ils font négoce⁵¹. Ces marchands sont traités exactement de la même manière que les agents du fisc ou que les évêques, abbés, comtes et autres grands personnages qui ont un pied-à-terre à Aix. Si l'on remonte encore un peu dans le temps, on peut citer le capitulaire rédigé à l'attention des *missi* en 806, à Nimègue, par lequel Charlemagne donne des consignes pour que les dignitaires ecclésiastiques veillent à ce que les pièces des trésors d'églises ne soient pas aliénées, car il a appris que des marchands juifs et

⁴⁷ PL 116, col. 170D-171A (*Liber contra Iudaeos*, c. 42).

⁴⁸ Le Code théodosien prévoit la peine capitale, cf. *Theodosiani libri XVI cum constitutionibus Sirmondianis*, éd. Theodor Mommsen, vol. 1/2, Berlin 1905, p. 471-474 (IX, 21). Le Bréviaire d'Alaric prévoit la crémation, cf. *Lex Romana Visigothorum*, éd. Gustav Hänel, Leipzig 1849, p. 190-191 (IX, 17).

⁴⁹ *Capitularia regum Francorum*, tome 1, éd. Boretius, p. 285 (n° 139 [*Capitula legibus addenda*, 818/819], c. 19), repris dans *Die Kapitulariensammlung des Ansegis*, éd. Gerhard Schmitz, Hanovre, 1996 (MGH, *Capitularia regum Francorum, Nova series*, 1), p. 641-642 (IV, c. 31) : le coupable doit être amputé de la main et il doit payer 60 sous s'il est libre ou recevoir 60 coups de fouet s'il est de condition servile.

⁵⁰ *Capitularia regum Francorum*, tome 2, éd. Boretius et Krause, p. 320 (n° 273, c. 23 *in fine*) : *Faber vero, qui post praefatas Kalendas comprobatus fuerit aurum vel argentum ad vendendum vel emendum adulterasse vel misculasse, in illis regionibus, in quibus iudicia secundum legem Romanam terminantur, iuxta illam legem puniatur : in aliis autem regionibus regni nostri secundum capitulare regum sicut falsam monetam percutiens manum perdat. Et liber homo, qui hoc consenserit, sicut in praefato continetur capitulo, bannum nostrum, id est solidos sexaginta, componat ; colonus vel servus nudus cum virgis flagellatur. Si vero Iudaeus fuerit, ipsum, quod mixtum proferet, perdat, et bannum nostrum, sicut tempore praedecessorum nostrorum consuetudo fuit, componat.*

⁵¹ *Capitularia regum Francorum*, tome 1, éd. Boretius, p. 298 (n° 146, c. 2) : *... et Ernardus per mansiones omnium negotiatorum, sive in mercato sive aliubi negotientur, tam christianorum quam et Iudaeorum.*

d'autres encore se glorifient de pouvoir acheter tout ce qui leur plaît⁵². Là encore, juifs et chrétiens sont logés à même enseigne !

Certes, il existe des mesures discriminantes, mais elles sont rares. Le chapitre le plus exhaustif sur le statut des juifs se trouve dans un capitulaire de Charlemagne à l'attention de ses *missi*, qu'on date de 809 : tout d'abord, à propos des affaires entre un juif et un chrétien portées en justice, il est prévu que le chrétien pourra ne présenter que trois témoins alors que le juif, selon ce qui est en jeu, devra en fournir entre quatre et neuf. Si c'est le chrétien qui accuse le juif, il se contentera de trois témoins, chrétiens ou juifs. Aucun juif ne peut forcer un chrétien à travailler le dimanche (on retrouve cette interdiction dans le « précepte pour les juifs », dans le privilège pour les juifs David et consorts et dans celui pour le juif Abraham de Saragosse⁵³). Si cela est découvert, le juif perdra le prix qu'il a donné et le chrétien sera arrêté, pour servir d'exemple⁵⁴. On observe, somme toute, une plus grande sévérité pour le chrétien que pour le juif dans les mesures prises en faveur du respect du dimanche (une obsession carolingienne), alors qu'au tribunal, le juif doit apporter plus de garanties – mais son témoignage n'est pas pour autant de moindre valeur, dès lors qu'il est fourni à l'appui de la plainte d'un chrétien ! Outre que ces textes prouvent – tout simplement ! – que les juifs ont la possibilité de témoigner dans des affaires judiciaires⁵⁵, il faut noter qu'à la différence du droit capitulaire, dans les privilèges pour les juifs, il est prévu que le chrétien qui voudra engager une action en justice contre le bénéficiaire de la protection impériale devra citer trois témoins chrétiens et trois témoins juifs⁵⁶. Ce petit détail est d'importance pour illustrer en quoi le statut des bénéficiaires de la protection impériale était bien un « privilège », distinct du statut du juif lambda.



⁵² *Capitularia regum Francorum*, tome 1, éd. Boretius, p. 131 (n° 46, c. 4) : *Ut singuli episcopi, abbates, abbatissae diligenter considerent thesauros ecclesiasticos, ne propter perfidiam aut negligentiam custodum aliquid de gemmis aut de vasis, reliquo quoque thesauro perditum sit, quia dictum est nobis, quod negotiatores Iudaei necnon et alii gloriantur, quod quicquid eis placeat possint ab eis emere.*

⁵³ *Formulae*, éd. Zeumer, respectivement p. 309 (*Formulae imperiales*, n° 30), p. 310 (*Formulae imperiales*, n° 31) et p. 325 (*Formulae imperiales*, n° 52).

⁵⁴ *Capitularia regum Francorum*, tome 1, éd. Boretius, p. 152 (n° 63, c. 13) : *De iudeis constitutum est, ut si aliquis iudeus super christiano propter suam querellam aliquid interpellaverit et cum testibus fuerit ei iudicatum adprobare, III. testes idonei cristiani illi sufficiant, et habeat iudeus secundum estimationem rei IIII. aut VIII. aut VII. Si vero christianus iudeum interpellare voluerit et de qualibet re, similiter cum tribus testibus idoneis christianis vel tribus iudeis illi sufficiat. Statutum est, ut nullus de iudeis in die dominica christianum hominem in suo opere collocare presumat; et si repertum fuerit et conlocaverit, perdat ipse iudeus quod proinde dederit, et ipse christianus fiat correptus, ita ut alii in die dominica opus servili agere non audeant.*

⁵⁵ Geisel, *Die Juden*, p. 410-412 ; Walter Pakter, *Medieval Canon Law and the Jews*, Ebelsbach 1988, p. 165-169.

⁵⁶ *Formulae*, éd. Zeumer, respectivement p. 309 (*Formulae imperiales*, n° 30), p. 310 (*Formulae imperiales*, n° 31) et p. 325 (*Formulae imperiales*, n° 52).

Parmi les mesures prises par Charles le Chauve le 14 juin 877 à Quierzy, il est fait état, à la suite de l'évocation des *honores* de certains grands qui s'opposaient alors à la politique de l'empereur⁵⁷, des taxes que doivent payer les marchands (ce mélange des genres est troublant, puisque ces deux questions sont regroupées en un seul chapitre⁵⁸) : « Au sujet des 'eunuques' (*cappi*, c'est-à-dire, en l'occurrence, les circoncis⁵⁹) et des autres marchands (*negotiatores*) : que les juifs acquittent le dixième et les marchands chrétiens, le onzième »⁶⁰ soit une différence de traitement qui impose les juifs au taux de 10% et les marchands chrétiens à celui de 9%. On remarquera ici l'assimilation qui est faite entre juif et marchand : il n'est en effet pas question de « marchands juifs », mais des *cappi* = *iudaei* et des « autres » marchands, chrétiens ; l'enquête de Raffelstetten, en Bavière au début du X^e siècle, emploie la même expression : *Mercatores, id est Iudei et ceteri mercatores* (juifs et chrétiens ont les mêmes obligations en matière d'acquittement du tonlieu⁶¹). En revanche, en 806, Charlemagne parlait bien des *negotiatores Iudaei necnon et alii* – par conséquent, on ne peut aucunement proposer une interprétation à valeur générale⁶² : il est évident que les juifs ont joué un rôle d'importance dans le grand commerce, mais rien ne permet de dire qu'il était prépondérant, et encore moins exclusif.

On trouve en outre une mesure de bannissement dans un manuscrit italien du troisième quart du IX^e siècle⁶³ ayant appartenu au chapitre cathédral d'Augsbourg. Ce texte, qui est un hapax, fait immédiatement suite (sans rupture de numérotation des chapitres⁶⁴) au capitulaire de Louis II promulgué à

⁵⁷ Émile Bourgeois, *Le capitulaire de Kierzy-sur-Oise (877). Étude sur l'état et le régime politique de la société carolingienne à la fin du IX^e siècle d'après la législation de Charles le Chauve*, Paris 1885, p. 89-108.

⁵⁸ On ne pourra vraisemblablement jamais faire la lumière là-dessus puisque l'unique manuscrit nous ayant transmis ce capitulaire est perdu, cf. Bourgeois, *Le capitulaire de Kierzy-sur-Oise*, p. 11-26 ; Mordek, *Bibliotheca*, p. 540-545 (Paris, BnF, lat. 4761/1 & 4761/2).

⁵⁹ *Glossarium mediae et infimae Latinitatis conditum a Carolo Du Fresne Domino Du Cange*, nouvelle édition, tome 2, Niort 1883, p. 151 (s. v. *capus*, 2).

⁶⁰ *Capitularia regum Francorum*, tome 2, éd. Boretius et Krause, p. 361 (n° 281, c. 31) : *De honoribus Bosonis, Bernardi et Widonis et aliorum illarum partium. Et de cappis et aliis negotiatoribus, videlicet ut Iudaei dent decimam et negotiatores christiani undecimam.*

⁶¹ *Capitularia regum Francorum*, tome 2, éd. Boretius et Krause, p. 252 (n° 253, c. 9) : *Mercatores, id est Iudei et ceteri mercatores, undecunque venerint de ista patria vel de aliis patriis, istum theloneum solvant tam de mancipiis, quam de aliis rebus, sicut semper in prioribus temporis regum fuit.* À ce propos, cf. François-Louis Ganshof, « Note sur l'inquisitio de theloneis Raffestettensis », *Le Moyen Âge* 72 (1966), p. 197-223 ; Peter Johánek, « Die Raffelstettener Zollordnung und das Urkundenwesen der Karolingerzeit », dans : Helmut Maurer & Hans Patze (dir.), *Festschrift für Berent Schwineköper*, Sigmaringen 1982, p. 87-103 ; rééd. dans : Willibald Katzinger & Gerhart Marckhgott (dir.), *Baiern, Ungarn und Slawen im Donauraum*, Linz 1991 (*Forschungen zur Geschichte der Städte und Märkte Österreichs*, 4), p. 211-229.

⁶² Geisel, *Die Juden*, p. 408-409.

⁶³ Wolfenbüttel, Herzog August Bibliothek, Blankenburg 130, fol. 131^v.

⁶⁴ Mordek, *Bibliotheca*, p. 939.

Pavie le 20 juillet 855⁶⁵, un capitulaire connu uniquement par ce manuscrit et un autre manuscrit italien du X^e siècle⁶⁶ où il est suivi d'un autre complément, lui aussi unique, et sans rapport avec le texte relatif au bannissement des juifs⁶⁷. Ce dernier prévoit que tous les juifs devront avoir été chassés du royaume d'Italie avant le 1^{er} octobre et que s'il en reste, ils devront être arrêtés et déferés au palais royal⁶⁸. Comme le note A. Linder, « this chapter is appended to the chapters promulgated in Pavia in 855, but it certainly does not belong there. Both its date and its circumstances are still problematical⁶⁹ ».

Nous avons ainsi fait le tour de la législation capitulaire – à l'exception des *Capitula de Iudaeis*, dont il convient à présent de préciser la teneur et d'apprécier la place dans le corpus des textes normatifs.

Les *Capitula de Iudaeis* ne figurant pas dans l'édition de Baluze, c'est avec celle de Pertz (en 1835) que commence l'histoire de leur tradition imprimée⁷⁰. La différence entre l'édition de Pertz et celle de Boretius est flagrante⁷¹ ; elle illustre la propension du second à reconstituer des capitulaires n'ayant jamais existé, à couler des textes transmis par divers biais en un seul modèle de ce qu'il imagine devoir être un capitulaire. Pertz édite ces chapitres d'après le manuscrit de Munich, Bayerische Staatsbibliothek, Lat. 3853, fol. 261^v-262^r. En conséquence, il ne publie que les quatre premiers chapitres que l'on retrouvera dans l'édition de Boretius, qui, quant à elle, en compte six. En complément⁷², Pertz reproduit le *sacramentum Iudeorum* qui figure dans un manuscrit de Wolfenbüttel (Blankenburg 130, fol. 207^r), dont Boretius fait le n° 5 de son capitulaire factice. Le n° 6 de l'édition de 1883 est un ajout de l'éditeur, qui l'imprime d'après deux autres manuscrits⁷³. Par ailleurs, Pertz termine son introduction en mentionnant la présence d'autres chapitres placés sous le

⁶⁵ *Capitularia regum Francorum*, tome 2, éd. Boretius et Krause, p. 88-89 (n° 214).

⁶⁶ Paris, BnF, lat. 4613.

⁶⁷ *Capitularia regum Francorum*, tome 2, éd. Boretius et Krause, p. 97 (n° 219, c. 3-4).

⁶⁸ *Ibid.*, p. 97 (n° 219, c. 2) : *Providimus de Iudeis, ut nullus infra regnum Italicum ultra Kalendas Octobris maneat, et modo eis denuntietur, ut omnes usque ad placitum illud exeant, ubi voluerint, sine ullius contradictione. Quodsi post Kalendas Octobris aliquis inventus fuerit, a quibuscumque comprehendi potest, cum omni substantia sua ad nostram deducatur praesentiam.*

⁶⁹ Amnon Linder, *The Jews in the legal sources of the Early Middle Ages*, Detroit / Jérusalem, 1997, p. 348 n. 325.

⁷⁰ *Legum tomus I*, éd. Georg Heinrich Pertz, Hanovre, 1835 (*MGH, Leges*, 1), p. 194.

⁷¹ *Capitularia regum Francorum*, tome 1, éd. Boretius, p. 258-259 (n° 131).

⁷² *Legum tomus I*, éd. Georg Heinrich Pertz, Hanovre, 1835 (*MGH, Leges*, 1), p. 194 : *Addimus alteram formulam iuramenti Iudaeorum in codice bibl. Guelferbytanæ Blankenburgensi repertam, manue saeculi decimi exaratam.*

⁷³ Cité du Vatican, Biblioteca Apostolica Vaticana, Reg. Lat. 520, fol. 110^v ; Montpellier Bibliothèque interuniversitaire, Section Médecine, H 360, fol. 187^v – correction apportée par Matthias Tischler, *Einharts Vita Karoli. Studien zur Entstehung, Überlieferung und Rezeption*, t. 1, Hanovre,

patronage de Charlemagne dans des manuscrits de Freising, Vienne et Wolfenbüttel tout en supposant qu'il s'agit de Charles le Chauve étant donné qu'ils se rapportent au concile de 845 tenu à Meaux⁷⁴. Signalons enfin que la tradition manuscrite est un peu plus large, puisqu'il existe un autre manuscrit⁷⁵ contenant les chapitres 1 à 4, à savoir le manuscrit de Heiligenkreuz, Stiftsbibliothek, 217, fol. 281^v-282^r. Cela ne change toutefois pas grand-chose à l'affaire, puisqu'on considère que le manuscrit de Heiligenkreuz dérive d'une copie de celui de Munich⁷⁶.

La tradition manuscrite des chapitres 5 et 6 du capitulaire forgé par Boretius est indépendante. Le manuscrit de Wolfenbüttel (qui contient le serment publié par Boretius en tant que chapitre n° 5) est un important recueil de capitulaires copié en Italie du Nord durant le troisième quart du IX^e siècle⁷⁷. Ce serment est toutefois copié de manière indépendante des capitulaires, en fin de volume, après la loi des Bavarois (et d'une main différente) qui clôt la troisième et dernière partie de ce *codex*, dont la structure se décompose ainsi : loi des Lombards, capitulaires, autres lois barbares. Le serment accompagné de mesures vexatoires et particulièrement sévères, qui forme le chapitre n° 6 de l'édition de Boretius, se trouve dans deux manuscrits, dont l'un (Biblioteca Apostolica Vaticana, Reg. Lat. 520) fut copié en France vers le milieu du IX^e siècle⁷⁸ (mais le texte du serment est d'une main ultérieure, du IX^e ou X^e siècle⁷⁹) et l'autre (Montpellier, Bibliothèque interuniversitaire, Section Médecine, H 360) est un manuscrit bourguignon également du X^e siècle⁸⁰ (le serment fut copié sur un feuillet demeuré libre, sans rapport avec les capitulaires). Dans ce dernier manuscrit, le serment est introduit par la rubrique : *EX DECRETIS KAROLI IMPERATORIS*. On peut se demander, avec Hubert Mordek, si l'empereur en question ne serait pas Charles le Chauve⁸¹. Toujours est-il que la rigueur dont ce texte témoigne n'a d'égale que celle des chapitres du concile de Meaux-Paris (17 juin 845 et 14 février 846), qui connurent une tradition manuscrite indépendante de celle des actes conciliaires dans leur ensemble. Ces

2001 (*Monumenta Germaniae Historica. Schriften*, 48), p. 250 n. 44, par rapport à Mordek, *Bibliotheca*, p. 829 qui indique : fol. 189^v.

⁷⁴ *Legum tomus I*, éd. Georg Heinrich Pertz, Hanovre, 1835 (*MGH, Leges*, 1), p. 194 : *Alia vero capitula, quae in codicibus Frisingensi, Vindobonensi et Guelferbytano sub nomine Karoli magni feruntur, Karolo Calvo deberi, ex concilio Meldensi anni 845 constat.*

⁷⁵ Mordek, *Bibliotheca*, p. 167.

⁷⁶ *Ibid.*, p. 159. © BREPOLS PUBLISHERS
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⁷⁷ *Ibid.*, p. 920. Sur ce manuscrit, cf. Hans Butzmann, *Die Blankenburger Handschriften*, Francfort/Main, 1966 (*Kataloge der Herzog-August-Bibliothek*, 11), p. 138-144.

⁷⁸ Mordek, *Bibliotheca*, p. 827.

⁷⁹ *Ibid.*, p. 829.

⁸⁰ En dernier lieu, cf. la description de ce manuscrit par Tischler, *Einharts Vita Karoli*, t. 1, p. 245-257.

⁸¹ Mordek, *Bibliotheca*, p. 829.

chapitres sont transmis par quatre manuscrits dont le plus ancien, Munich, Bayerische Staatsbibliothek, Lat 6245, fut copié à Freising au IX^e et au X^e siècle⁸² ; les extraits relatifs aux juifs se trouvent dans la partie la plus ancienne du manuscrit. Ils sont introduits par la rubrique : *CAPITULA CONTRA IUDEOS MAGNI KAROLI INVICTISSIMI IMPERATORIS CAETERORUMQUE REGUM CUM CONSENSU EPISCOPORUM*⁸³. L'explicit prétend également que ce texte rassemble la législation de plusieurs souverains et fut composé avec l'accord des évêques : *FINIUNT CAPITULA CONTRA IUDAEOS MAGNI KAROLI CAETERORUM REGUM CUM CONSENSU EPISCOPORUM*⁸⁴. La copie, d'abord à Freising probablement au IX^e siècle, puis en plusieurs endroits d'Allemagne du Sud aux temps ottoniens, montre l'intérêt qu'on y éprouvait pour une attitude sévère à l'égard des juifs. Ces extraits des actes du concile de Meaux-Paris sont authentiques, bien que leur attribution soit erronée. Est-ce à dire que le scribe qui a transcrit les *Capitula de Iudaeis*, quant à lui, inventé ? À l'instar de Christof Geisel, je ne le pense pas. On s'est surtout basé sur des jugements de valeur pour récuser ces textes. À vrai dire, la méprise du scribe de Freising, semble-t-il, jeté l'opprobre sur l'ensemble des *Capitula de Iudaeis*, alors même que leur tradition manuscrite est différente : pourquoi un capitulaire qui n'est (apparemment) pas favorable aux juifs devrait être authentique, alors qu'on a la preuve manifeste qu'un autre ensemble de textes, attribué à Charlemagne, n'est pas de lui ? C'est, en quelque sorte, l'argument de Boretius, dont on peine, sinon, à comprendre l'allusion aux actes de Meaux-Paris dans son introduction aux chapitres sur les juifs⁸⁵. En me fondant sur la dernière analyse défendant l'authenticité de ces textes⁸⁶, je proposerai ici d'approfondir la réflexion quant à leur tradition manuscrite.

Le manuscrit de Munich, Bayerische Staatsbibliothek, Lat. 3853 a été copié, probablement à Augsbourg, durant la seconde moitié du X^e siècle⁸⁷ ; il a servi

⁸² Sur ce manuscrit, cf. Natalia Daniel, *Handschriften des zehnten Jahrhunderts aus der Freisinger Dombibliothek. Studien über Schriftcharakter und Herkunft der nachkarolingischen und ottonischen Handschriften einer bayerischen Bibliothek*, München 1973 (*Münchener Beiträge zur Mediävistik und Renaissance-Forschung*, 11), p. 110-111 ; *Collectio canonum Remedii Curiensi episcopo perperam ascripta*, éd. Herwig John, Cité du Vatican, 1976 (*Monumenta Juris Canonici, Series B*, 2), p. 30-33. Sur la tradition manuscrite de ces chapitres, cf. *Die Konzilien der karolingischen Teilreiche, 843-859*, éd. Hartmann, p. 68 (outre le manuscrit susmentionné : Munich, Bayerische Staatsbibliothek, Lat 6241 ; Vienne, Österreichische Nationalbibliothek, 2198 ; Bamberg, Staatliche Bibliothek, Msc. Can. 9).

⁸³ *Die Konzilien der karolingischen Teilreiche, 843-859*, éd. Hartmann, p. 119 ; cf. également Victor Krause, « Die Acten der Triburen Synode 895 », *Neues Archiv* 17 (1892), p. 281-326, à la p. 290.

⁸⁴ *Die Konzilien der karolingischen Teilreiche, 843-859*, éd. Hartmann, p. 123 ; cf. également Krause, « Die Acten », p. 290.

⁸⁵ *Capitularia regum Francorum*, tome 1, éd. Boretius, p. 258. Cf. Geisel, *Die Juden*, p. 418-422.

⁸⁶ Je me range donc ici à l'avis de Geisel, *Die Juden*, p. 428, sauf pour la datation exclusive du règne de Charlemagne, qui ne me semble pas en tout point convaincante.

⁸⁷ Mordek, *Bibliotheca*, p. 287.

de modèle pour la copie du manuscrit de Heiligenkreuz, Stiftsbibliothek, 217, réalisée vers la fin du X^e siècle en Allemagne du Sud⁸⁸. Ces deux manuscrits comptent plusieurs collections de capitulaires. Les *Capitula de Iudaeis* s'insèrent dans l'une d'entre elles, qui compte 46 chapitres empruntés aux capitulaires de Pépin le Bref, Charlemagne et Louis le Pieux : on en trouvera la liste en annexe⁸⁹. Le scribe fait preuve de bon sens ; les regroupements de chapitres qu'il opère sont généralement pertinents⁹⁰ (sous les n^{os} 1, 15, 19). La capitulation commence simplement par : *INCIPIUNT CAPITULA*⁹¹, sans autre indication. Les *Capitula de Iudaeis* sont résumés de la sorte⁹² :

XXXVIII. *De capitulis domni Karoli inperatoris et Ludouuici. Ut iudeus nihil recipere presumat de ecclesia in uadium.*

XXXVIII. *Ut nullus iudeus christianum in uadium mittere presumat.*

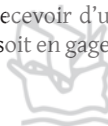
XL. *Ut nullus iudeus monetam in sua domo habeat.*

XLI. *De sacramento iuderum contra christianos.*

Dans le corps de la collection, les *Capitula de Iudaeis* sont distingués par la rubrique : *DE CAPITULIS DOMNI KAROLI IMPERATORIS ET HLUDOUUICI*⁹³. Ce ne sont pas les seuls chapitres que le scribe met en évidence par une rubrique⁹⁴. Les mesures prises dans les deux premiers chapitres visent essentiellement à protéger les biens d'Église et le statut honorable des chrétiens :

(c. 38 = c. 1 de l'édition de Boretius et Krause) *Nemo Iudeus praesumat de ecclesia Dei aliquid recipere neque in wadio nec pro ullo debito ab ullo christiano, in auro sive in argento neque in ceteris rebus. Quod si facere praesumpserit, quod absit, omnis substantia sua auferatur ab eo et dextera manus illi amputetur*⁹⁵.

« Qu'aucun juif n'ose recevoir d'un chrétien quoi que ce soit appartenant à l'Église de Dieu, que ce soit en gage ou pour toute sorte de dette, que ce soit en



⁸⁸ *Ibid.*, p. 158.

⁸⁹ Cf. *infra* p. 150-152.

⁹⁰ On notera toutefois, outre une divergence de numérotation des chapitres 26 à 29 d'un manuscrit à l'autre (cf. l'annexe ci-dessous), que la distinction entre les chapitres 29 et 30 n'a pas lieu d'être : ces deux items, qui proviennent d'un seul et même chapitre, sont annoncés ensemble dans la *capitulatio* qui précède. Munich, Bayerische Staatsbibliothek, Lat. 3853, fol. 257^r & Heiligenkreuz, Stiftsbibliothek, 217, fol. 277^r : *De latronibus ut melius distringantur & ut nullus hominem pendere presumat.*

⁹¹ Munich, Bayerische Staatsbibliothek, Lat. 3853, fol. 256^r ; Heiligenkreuz, Stiftsbibliothek, 217, fol. 276^r.

⁹² Munich, Bayerische Staatsbibliothek, Lat. 3853, fol. 257^r ; Heiligenkreuz, Stiftsbibliothek, 217, fol. 277^r. © BRÉPOLS PUBLISHERS
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⁹³ Munich, Bayerische Staatsbibliothek, Lat. 3853, fol. 261^v ; Heiligenkreuz, Stiftsbibliothek, 217, fol. 281^v.

⁹⁴ Peut-être faut-il mettre au compte de la copie de la collection d'Ansegise, dont le manuscrit de Munich est un des principaux témoins (*Die Kapitulariensammlung des Ansegis*, éd. Schmitz, p. 102-104), l'évocation conjointe de Charlemagne et de Louis le Pieux ?

⁹⁵ *Capitularia regum Francorum*, tome 1, éd. Boretius, p. 258 (n^o 131, c. 1).

or, en argent ou sous toute autre forme. S'il osait le faire – que cela ne se produise ! –, qu'on lui retire tous ses biens et qu'on l'ampute de la main droite. »

Cette sanction assimile le juif au sacrilège⁹⁶.

(c. 39 = c. 2 de l'édition de Boretius et Krause) *Ut nullus Iudeus neminem christianum in wadium ab ullo Iudeo aut ab alio christiano mittere praesumat, ne deterior fiat; quod si facere praesumat, secundum suam legem restituat et debitum et wadium simul perdat*⁹⁷.

« Qu'aucun juif n'ose recevoir⁹⁸ quelque chrétien en gage d'un juif ou d'un chrétien, de peur que son statut ne se détériore ; s'il venait à le faire, qu'il le restitue conformément à sa loi et qu'il perde et la dette, et le gage. »

Le chapitre suivant est de nature fiscale :

(c. 40 = c. 3 de l'édition de Boretius et Krause) *Ut nemo Iudeus monetam in domo sua habeat et neque vinum nec annonam vel aliam rem vendere praesumat. Quod si inventum fuerit, omnis substantia sua ab illo auferatur, et in carcerem recludatur, usque ad praesentiam nostram veniat*⁹⁹.

« Qu'aucun juif ne recèle chez lui de la monnaie et qu'il n'ose y vendre ni vin, ni grain, ni aucune autre chose. Si on l'y surprend, qu'on le prive de tous ses biens et qu'il soit mis en prison jusqu'à ce qu'il vienne en notre présence. »

Cette mesure est a priori surprenante, mais elle ne prend la couleur anti-juive qu'on lui prête traditionnellement que par une méprise : il ne s'agit pas, pour le juif, de l'interdiction de détenir de l'argent ou de commercer. Comme le montre Christof Geisel de manière très convaincante, c'est sur le « chez lui » (*in domo sua*) que porte l'interdiction¹⁰⁰, une interdiction que l'on comprend parfaitement si l'on considère que des juifs exercent des fonctions de monétaires et des responsabilités fiscales¹⁰¹ et que, dans un autre capitulaire, Louis le Pieux régleme la frappe de la monnaie pour qu'elle ne puisse plus être détournée à des fins privées, en en réservant l'exercice à certains lieux publics : *Ut monetarii ipsi publica, nec infra nec extra illam civitatem nisi constituto ... eis loco monetam facere praesumant*¹⁰². Ces deux mesures semblent se faire écho. C'est donc simplement le détournement des revenus du fisc et le travail au

⁹⁶ Cf. Michael Glatthaar, *Bonifatius und das Sakrileg. Zur politischen Dimension eines Rechtsbegriffs*, Francfort/Main 2004 (*Freiburger Beiträge zur mittelalterlichen Geschichte*, 17).

⁹⁷ *Capitularia regum Francorum*, tome 1, éd. Boretius, p. 258 (n° 131, c. 2).

⁹⁸ Je me range à l'analyse de Geisel. *Die Juden*, p. 431, contre l'analyse de A. Helfferich, « Zum Capitulare Karoli M. de Judaeis », *Zeitschrift für Rechtsgeschichte* 2 (1863), p. 417-420; reprise par Linder, *The Jews in the Legal Sources*, p. 345.

⁹⁹ *Capitularia regum Francorum*, tome 1, éd. Boretius, p. 258 (n° 131, c. 3).

¹⁰⁰ Geisel, *Die Juden*, p. 434-435.

¹⁰¹ *Ibid.*, p. 441.

¹⁰² *Capitularia regum Francorum*, tome 1, éd. Boretius, p. 299 (n° 147, c. 2) ; Geisel, *Die Juden*, p. 436-437.

noir qui sont condamnés dans ces *Capitula de Iudaeis*¹⁰³. J'ajouterai que la comparaison devant le souverain est systématique dans les cas où l'agent public, notamment le *missus*, ne peut trancher lui-même l'affaire, en particulier lorsqu'il s'agit de hauts personnages. Cette mesure doit donc être comprise comme l'expression d'un statut privilégié des juifs concernés par elle.

Le serment qui suit (c. 41 = c. 4 de l'édition de Boretius et Krause) est un serment purgatoire à caractère nettement ordalique puisque le juif qui veut se disculper appelle sur lui la lèpre de Naaman le Syrien et la condamnation de Dathan et Abiron (ce qui deviendra un peu plus tard un classique des formules comminatoires¹⁰⁴ !) s'il n'est pas innocent¹⁰⁵. On sait l'importance du serment – chrétien – à l'époque carolingienne¹⁰⁶ ; par rapport aux païens, qui s'engagent sur leurs armes¹⁰⁷, on notera ici la reconnaissance implicite du même principe d'engagement devant Dieu que dans le serment chrétien. Il est d'ailleurs à noter que les juifs qui bénéficient de la protection du souverain sont réputés lui être fidèles¹⁰⁸. Dans une lettre close de Charles le Chauve qui vante la fidélité des Barcelonais à son égard, il est même question de « notre fidèle, le juif Judas », leur messager¹⁰⁹. L'empereur se réfère donc au même système de valeurs que pour n'importe quel autre de ses fidèles lorsqu'il vante les qualités de ce juif.

¹⁰³ Geisel, *Die Juden*, p. 438.

¹⁰⁴ Bachrach, *Early Medieval Jewish Policy*, p. 170 (n. 52).

¹⁰⁵ *Capitularia regum Francorum*, tome 1, éd. Boretius, p. 258-259 (n° 131, c. 4) : *De sacramento Iudeorum contra christianos. Mitte runcice bis a capite in circuitu pedum eius ; ibi debet stare quando iurat sacramentum, et habere debet in dextro brachio quinque libros Moysi secundum suam legem, et si habere non potest secundum hebreum, tamen habeat latinitatem.* « Si me Deus adiuvet, ille Deus qui dedit legem Moysi in monte Synai, et si lepra Neaman Siri super me non veniat sicut super illum venit, et sic terra me non deglutiat sicut deglutivit Dathan et Abiron, de ista causa contra te malum non merui ». Cf. Geisel, *Die Juden*, p. 422-425.

¹⁰⁶ Je me permets de renvoyer à mon étude sur la question, où l'on trouvera la bibliographie sur le sujet : Philippe Depreux, « Les Carolingiens et le serment », dans : Marie-France Auzépy et Guillaume Saint-Guillain (dir.), *Oralité et lien social au Moyen Âge (Occident, Byzance, Islam) : parole donnée, foi jurée, serment*, Paris (ACHCByz) 2008 [février 2009] (Collège de France - CNRS : Centre de Recherche d'Histoire et Civilisation de Byzance. Monographies, 29), p. 63-80.

¹⁰⁷ Jean-Luc Chassel, « Le Serment par les armes (Fin de l'Antiquité - Haut Moyen Âge) », *Droit et Cultures* 17 (1989), p. 91-121, rééd. dans : Raymond Verdier (dir.), *Le Serment. Recueil d'études anthropologiques, historiques et juridiques*, Paris 1989, p. 79-109.

¹⁰⁸ *Formulae*, éd. Zeumer, p. 310 (*Formulae imperiales*, n° 30 et n° 31).

¹⁰⁹ *Recueil des actes de Charles II le Chauve, roi de France*, éd. Georges Tessier, tome 2 : 861-877, Paris 1952 (*Chartes et diplômes relatifs à l'histoire de France publiés par les soins de l'Académie des Inscriptions et Belles-Lettres*), p. 432 (n° 417). Sur ce document, cf. Joseph Calmette, « Une lettre close originale de Charles le Chauve », *Mélanges d'Archéologie et d'Histoire* 22 (1902), p. 135-139 ; Philippe Lauer, « Lettre close de Charles le Chauve pour les 'Barcelonais' », *Bibliothèque de l'École des chartes* 63 (1902), p. 696-699 ; Joseph Calmette, « Sur la lettre close de Charles le Chauve aux Barcelonais », *Bibliothèque de l'École des chartes* 64 (1903), p. 328-334.

Hubert Mordek considère que la collection en 46 chapitres du manuscrit de Munich, Bayerische Staatsbibliothek, Lat. 3853 a été forgée à partir du modèle constitué par le corpus copié dans le manuscrit du Vatican, Bibliotheca Apostolica Vaticana, Pal. Lat. 582, et son jumeau, le manuscrit de la Bibliothèque nationale de France, lat. 9654¹¹⁰. Le manuscrit du Vatican a été réalisé en France du Nord (peut-être à Reims), dans la première moitié du X^e siècle, voire au IX^e siècle¹¹¹ ; le manuscrit parisien est d'origine lotharingienne et a été copié, probablement à Metz, au X^e ou au XI^e siècle¹¹². Ces manuscrits comportent, dans l'ordre de la collection en 46 chapitres, l'ensemble des capitulaires parmi lesquels l'auteur de la collection a effectué son choix – sauf les chapitres relatifs aux juifs. Du point de vue de la tradition manuscrite, on peut se demander si les *Capitula de Iudaeis* n'étaient pas intégrés dans la collection sennonnaise, perdue, que H. Mordek suppose avoir été réalisée dans les années 60 à 80 du IX^e siècle et qui aurait servi de modèle au copiste du manuscrit du Vatican¹¹³. Une autre hypothèse est possible : si, toujours du point de vue de la tradition manuscrite, on suppose que le modèle est constitué exclusivement par le manuscrit du Vatican, les *Capitula de Iudaeis* devraient n'être qu'une interpolation qui devrait se situer entre le début du X^e siècle et la seconde moitié de ce même siècle, époque de rédaction du manuscrit de Munich, Bayerische Staatsbibliothek, Lat. 3853, qui nous en a transmis le texte. Certes, ce manuscrit fut copié dans une région et à un moment où l'on s'intéressait plus particulièrement au sort des juifs (comme l'illustre la copie de certains chapitres du concile de Meaux-Paris dans le manuscrit de Munich, Bayerische Staatsbibliothek, Lat. 6245 et d'autres encore, ainsi qu'on l'a vu précédemment), mais rien ne permet d'affirmer pour autant qu'il s'agit d'une forgerie (au contraire, une analyse fine montre la cohérence de ces chapitres par rapport à l'ensemble de la législation capitulaire du temps de Charlemagne et de Louis le Pieux). Les *Capitula de Iudaeis* doivent donc, essentiellement, être considérés à double titre comme la partie d'un tout : d'une part – assurément – comme une partie de la collection en 46 chapitres dont la réalisation semble avoir eu quelque pertinence au IX^e siècle (dans l'hypothèse d'une collection authentique) ou au X^e siècle (dans l'hypothèse où un faussaire aurait pu être à l'œuvre) ; d'autre part – de manière plus incertaine – comme les épaves

¹¹⁰ Mordek, *Bibliotheca*, p. 289 : « Die zweite, dritte und der erste Teil der vierten Sammlung (foll. 254-290) sind fast durchgängig aus der großen Collectio der Hss. Vatikan Pal. Lat. 582 und Paris Lat. 9654 geschöpft. »

¹¹¹ *Ibid.*, p. 780. THIS DOCUMENT MAY BE PRINTED FOR PRIVATE USE ONLY.
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¹¹² *Ibid.*, p. 562.

¹¹³ *Ibid.*, p. 781 : « Da sowohl Teil I wie Teil III Indizien aufweisen, die für eine Entstehung in Sens sprechen, liegt es nahe, dort nach 864 bzw. 884 auch die Heimat des großen neuen Gesamtkorpus zu vermuten. » Quant à Christof Geisel, il suppose – assez gratuitement – l'existence d'un « missing link » – une source intermédiaire, perdue – pour les chapitres relatifs aux juifs : Geisel, *Die Juden*, p. 427.

possibles d'un capitulaire hypothétique. Si l'on se base sur la seule chronologie des textes, il faut observer que la collection en 46 chapitres ne compte aucun document postérieur au règne de Louis le Pieux, alors même que le manuscrit du Vatican, qui recèle la matière à partir de laquelle cette collection semble avoir été élaborée, comprend de nombreux capitulaires de Charles le Chauve ainsi que les actes du concile de Meaux-Paris¹¹⁴ (qui figurent également, mais pas intégralement, dans le manuscrit de Munich, Bayerische Staatsbibliothek, Lat. 3853¹¹⁵). Cette observation pourrait accréditer l'idée qu'on a affaire à une collection réalisée vers le milieu du IX^e siècle, à partir de documents aujourd'hui en partie perdus. Bref, tout est envisageable ! Si, enfin, l'on cherche à comprendre les motivations de l'abrégiateur, on peut à tout le moins noter son intérêt pour les affaires ecclésiastiques ; la copie *in extenso* du capitulaire de Compiègne, lui-même exceptionnellement cohérent, met l'accent sur les questions afférentes au mariage, mais l'ensemble révèle aussi un intérêt pour les questions judiciaires en général, si bien qu'on peut se demander si cette collection n'était pas destinée à l'usage d'un juge ecclésiastique ou de l'avoué d'un établissement ecclésiastique. Si l'on se range à l'avis de Martin Lintzel, qui considère que le chapitre 44 fait partie d'un capitulaire accordant une protection spéciale aux otages saxons hors de Saxe¹¹⁶ (on sait qu'il y en eut, par exemple, dans la région du lac de Constance au début du IX^e siècle¹¹⁷), il faut que la sélection de ce texte soit encore d'actualité au moment où la collection a été réalisée. Même si l'argument n'est pas entièrement probant, cela pourrait aussi plaider pour le IX^e siècle¹¹⁸. On notera que les chapitres 38, 39 et 41 (c'est-à-dire les chapitres 1, 2 et 4 des *Capitula de Iudaeis*) s'insèrent pleinement dans ce cadre, puisqu'il y est question de la production de gages et du serment des juifs opposés judiciairement à des chrétiens, qui est une sorte d'ordalie (l'intérêt de l'abrégiateur pour cette question est confirmé par le chapitre 45). Le chapitre 40 (ou 3) traite, quant à lui, de l'incompétence du juge, puisque le juif coupable doit être déféré au palais. Par ailleurs, ainsi qu'on

¹¹⁴ Mordek, *Bibliotheca*, p. 793-795.

¹¹⁵ *Ibid.*, p. 300-301.

¹¹⁶ À ce propos, cf. Martin Lintzel, « Die Kapitularienfragmente Ansegis App. II 34, 35, Ansegis III 64 bis 66 und das sächsische Recht », *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Germanische Abteilung* 52 (1932), p. 308-313.

¹¹⁷ *Capitularia regum Francorum*, tome 1, éd. Boretius, p. 233-234 (n° 115 : *Indiculus obsidum Saxonum Moguntiam deducendorum*). Sur ce texte, cf. Heinrich Tiefenbach, « Sprachliches zum Namenverzeichnis in der Handschrift St. Paul 6/1 », dans : Uwe Ludwig & Thomas Schilp (dir.), *Nomen et Fraternitas. Festschrift für Dieter Geuenich zum 65. Geburtstag*, Berlin / New York 2008 (*Ergänzungsbände zum Reallexikon der Germanischen Altertumskunde*, 62), p. 115-129.

¹¹⁸ Il est, par exemple, explicitement fait référence aux otages résidant dans un autre royaume que leur région d'origine dans le partage de 831, cf. *Capitularia regum Francorum*, tome 2, éd. Boretius et Krause, p. 22-23 (n° 194, c. 9). Sur les otages à l'époque carolingienne, cf. Adam Kosto, « Hostages in the Carolingian world (714-840) », *Early Medieval Europe* 11 (2002), p. 123-147. En dernier lieu, cf. *id.*, *Hostages in the Middle Ages*, Oxford 2012.

l'a déjà observé, les quatre chapitres relatifs aux juifs doivent éventuellement être considérés non pas comme un texte complet, mais comme l'extrait d'un corpus plus vaste, « extrait des chapitres de l'empereur Charles et de Louis » – ainsi que l'indique la rubrique. La question de l'(in)authenticité de ces textes ne peut donc pas être tranchée du point de vue de la tradition manuscrite : l'absence des *Capitula de Iudaeis* des manuscrits à partir desquels la collection semble avoir été réalisée semble plaider en faveur de leur caractère factice, mais leur analyse et l'étude de leur place dans le corpus semble plaider en faveur de leur authenticité et de l'utilité qu'un juge pouvait en tirer vers le milieu du IX^e siècle.

Nous savons grâce au texte d'un privilège de Louis le Pieux, qui permet de prêter quelque crédit à une affirmation d'Agobard, que l'empereur fit un capitulaire à propos des juifs, mais son texte est perdu (et rien ne permet de dire avec certitude que les chapitres connus sous le nom de *Capitula de Iudeis* en faisaient partie). Louis le Pieux mentionne en effet dans le privilège pour les juifs David et consorts les *capitula quae a nobis eis* (c'est-à-dire les juifs) *observanda promulgata sunt*¹¹⁹. Ce capitulaire devait à ce point être favorable aux juifs que l'archevêque de Lyon ne pouvait croire que les *capitularia sanctionum* (les capitulaires contenant les décisions de l'empereur) produits par les *missi* impériaux fussent authentiques¹²⁰. Nous ne connaissons pas ces textes dont les actes de la pratique (les « privilèges pour les juifs ») constituent peut-être, en quelque sorte, la marque en creux. Mais ces mentions accréditent l'idée que ce qu'on appelle les *Capitula de Iudaeis* ont éventuellement pu faire partie d'un corpus plus ample datant du règne de Charlemagne et de Louis le Pieux. Quoi qu'il en soit, ces chapitres, comme les autres, s'insèrent dans le corpus normatif carolingien dont ils sont solidaires. Reste une question : est-on fondé à publier, comme s'il s'agissait d'un capitulaire, un ensemble de petits textes fondus dans une collection ayant un tout autre objet que la définition du statut des juifs ? À l'image de l'importance démographique de ceux dont ils traitent, ces chapitres se perdent dans la masse, dont ils sont partie.

¹¹⁹ *Formulae*, éd. Zeumer, respectivement p. 310-311 (*Formulae imperiales*, n° 31).

¹²⁰ *Agobardi Lugdunensis Opera omnia*, p. 192 (*De insolentia Iudaeorum*) : *Venientes itaque primum Iudei dederunt mihi indiculum ex nomine uestro, et alterum ei, qui pagum Lugdunensem uice comitis regit, praecipientem illi, ut auxilium ferret Iudeis aduersum me. Quos indiculos, licet ex sacro nomine uestro recitarentur, et uestro anulo essent signati, nullatenus tamen credidimus ex iudicio uestro tales prodisse. Coeperunt autem efferi quadam odibili insolentia Iudei, comminantes omnibus iniuriis nos afficiendos per missos, quos adepti fuerant ad exsoluendam uindictam de christianis. Post eos uenit Eurardus eadem iterans, et dicens maiestatem uestram commotam esse ualde aduersum me propter Iudeos. Deinde uenerunt et praedicti missi, habentes in manibus tractoriam stipendialem et capitularia sanctionum, que non putamus uestra iussione existere talia.*

ANNEXE :

Structure d'une collection en 46 chapitres copiée dans le manuscrit de Munich, Bayerische Staatsbibliothek, Lat. 3853, fol. 256^r-262^v et le manuscrit de Heiligenkreuz, Stiftsbibliothek, 217, fol. 276^r-282^v (collection annoncée par le titre *INCIPIUNT CAPITULA* et numérotée de manière continue)

| | | | | |
|----|--------------------------------|--------------------------|------------|--|
| 1 | MGH, Capit. 1, n° 15, c. 1-3 | Decretum Compendiense | a. 757 | Mariage (degrés de parenté) |
| 2 | MGH, Capit. 1, n° 15, c. 4 | Decretum Compendiense | a. 757 | Mariage |
| 3 | MGH, Capit. 1, n° 15, c. 5 | Decretum Compendiense | a. 757 | Mariage (femme voilée) |
| 4 | MGH, Capit. 1, n° 15, c. 6 | Decretum Compendiense | a. 757 | Mariage (statut des époux) |
| 5 | MGH, Capit. 1, n° 15, c. 7 | Decretum Compendiense | a. 757 | Mariage (statut des époux) |
| 6 | MGH, Capit. 1, n° 15, c. 8 | Decretum Compendiense | a. 757 | Mariage (statut des époux) |
| 7 | MGH, Capit. 1, n° 15, c. 9 | Decretum Compendiense | a. 757 | Mariage (vassalité) |
| 8 | MGH, Capit. 1, n° 15, c. 10 | Decretum Compendiense | a. 757 | Mariage (répudiation) |
| 9 | MGH, Capit. 1, n° 15, c. 11 | Decretum Compendiense | a. 757 | Mariage (adultère) |
| 10 | MGH, Capit. 1, n° 15, c. 12 | Decretum Compendiense | a. 757 | Validité du baptême |
| 11 | MGH, Capit. 1, n° 15, c. 13 | Decretum Compendiense | a. 757 | Mariage (inceste) |
| 12 | MGH, Capit. 1, n° 15, c. 14 | Decretum Compendiense | a. 757 | Irrévocabilité de la prise de voile |
| 13 | MGH, Capit. 1, n° 15, c. 15 | Decretum Compendiense | a. 757 | Parenté par alliance |
| 14 | MGH, Capit. 1, n° 15, c. 16 | Decretum Compendiense | a. 757 | Entrée en religion des femmes mariées |
| 15 | MGH, Capit. 1, n° 15, c. 17-18 | Decretum Compendiense | a. 757 | Adultère |
| 16 | MGH, Capit. 1, n° 15, c. 19 | Decretum Compendiense | a. 757 | Séparation d'un lépreux d'avec sa femme |
| 17 | MGH, Capit. 1, n° 15, c. 20 | Decretum Compendiense | a. 757 | Consommation du mariage |
| 18 | MGH, Capit. 1, n° 15, c. 21 | Decretum Compendiense | a. 757 | Abandon d'un conjoint lors d'une fuite (faide) |
| 19 | MGH, Capit. 1, n° 13, c. 1-3 | Pippini regis capitulare | a. 754-755 | Inceste, notamment chez les clercs |

| | | | | |
|----------------------|--|---|------------|---|
| 20 | MGH, Capit. episc. 1, Gerbald, n° 1, c. 7-8 | Gerbald de Liège, 1 ^{er} capitulaire | a. 801-802 | Prières pour l'empereur et pour l'évêque du lieu |
| 21 | MGH, Capit. episc. 1, Gerbald, n° 1, c. 4 | Gerbald de Liège, 1 ^{er} capitulaire | a. 801-802 | Perception de la dîme |
| 22 | MGH, Capit. episc. 1, Gerbald, n° 1, c. (17) | Gerbald de Liège, 1 ^{er} capitulaire | a. 801-802 | Prescription trentenaire pour la possession de biens d'Église |
| 23 | MGH, Capit. 1, n° 55, c. 1 | Capitula post a. 805 addita | a. 806-813 | Mauvaise administration du chrisme |
| 24 | MGH, Capit. 1, n° 56, c. 3 | Capitula Karoli Magni | a. 803-813 | Sanction de l'homicide |
| 25 | MGH, Capit. 1, n° 42, c. 2 | Capitula ecclesiastica ad Salz data | a. 803-804 | Perception des dîmes |
| 26 ¹²² | MGH, Capit. 1, n° 42, c. 3 | Capitula ecclesiastica ad Salz data | a. 803-804 | Construction d'une église sur un bien privé |
| 26/27 ¹²³ | MGH, Capit. 1, n° 42, c. 7 | Capitula ecclesiastica ad Salz data | a. 803-804 | Interdiction de placer un enfant mâle dans un monastère de femmes |
| 27/28 ¹²³ | MGH, Capit. 1, n° 42, c. 8 | Capitula ecclesiastica ad Salz data | a. 803-804 | Interdiction d'entreposer des armes dans un monastère de femmes |
| 28/29 ¹²⁴ | MGH, Capit. 1, n° 52, c. 1 | Capitula cum primis constituta | a. 808 | Mobilisation |
| 29 ¹²⁵ | MGH, Capit. 1, n° 52, c. 2 jusqu'à <i>in fisco non cadant</i> | Capitula cum primis constituta | a. 808 | Punition des voleurs |
| 30 | MGH, Capit. 1, n° 52, c. 2 à partir de <i>Si quis alterius</i> (avec omission de : <i>De servis vero</i>) | Capitula cum primis constituta | a. 808 | Punition de la pendaison d'un serf d'autrui sans jugement |
| 31 | MGH, Capit. 1, n° 52, c. 5 | Capitula cum primis constituta | a. 808 | Règlementation du prix des tuniques et peaux (martre et loutre) |
| 32 | MGH, Capit. 1, n° 66, c. 3 | Capitula de missorum officis | a. 810 | Comment les <i>missi</i> doivent rendre la justice pour les pauvres |

¹²¹ Munich, Bayerische Staatsbibliothek, Lat. 3853, fol. 260^v : xxvi; Heiligenkreuz, Stiftsbibliothek, 217, fol. 280^r : xxvi.

¹²² Munich, Bayerische Staatsbibliothek, Lat. 3853, fol. 260^v : xxvi; Heiligenkreuz, Stiftsbibliothek, 217, fol. 280^v : xxvii.
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¹²³ Munich, Bayerische Staatsbibliothek, Lat. 3853, fol. 260^v : xxvii; Heiligenkreuz, Stiftsbibliothek, 217, fol. 280^v : xxviii.

¹²⁴ Munich, Bayerische Staatsbibliothek, Lat. 3853, fol. 260^v : xxviii; Heiligenkreuz, Stiftsbibliothek, 217, fol. 280^v : xxviii.

¹²⁵ Munich, Bayerische Staatsbibliothek, Lat. 3853, fol. 260^v : xxviii; Heiligenkreuz, Stiftsbibliothek, 217, fol. 280^v : xxviii.

| | | | | |
|----|--|---|--------------|--|
| 33 | MGH, Capit. 1, n° 20, c. 11 | Capitulare Haristallense (forma communis) | a. 779 | Justice et droit de vengeance |
| 34 | MGH, Capit. 1, n° 20, c. 23 | Capitulare Haristallense (forma communis) | a. 779 | Sanction des voleurs |
| 35 | MGH, Capit. 1, n° 78, c. 3 | Capitula e canonibus excerpta | a. 813 | Interdiction pour les laïcs de taxer les clercs |
| 36 | MGH, Capit. 1, n° 78, c. 15 | Capitula e canonibus excerpta | a. 813 | Interdiction de commercer le dimanche |
| 37 | MGH, Capit. 2, n° 191, c. 8 | Capitulare Wormatiense | a. 829 | Prescription trentenaire pour les biens d'Église |
| 38 | MGH, Capit. 1, n° 131, c. 1 | Capitula de Iudaeis | | Interdiction de recevoir quelque chose en gage |
| 39 | MGH, Capit. 1, n° 131, c. 2 | Capitula de Iudaeis | | Interdiction de donner quelque chose en gage |
| 40 | MGH, Capit. 1, n° 131, c. 3 | Capitula de Iudaeis | | Interdiction de détenir ou vendre certaines denrées |
| 41 | MGH, Capit. 1, n° 131, c. 4 | Capitula de Iudaeis | | Serment des juifs à l'encontre des chrétiens |
| 42 | MGH, Capit. 1, n° 44, c. 17 = Kapitulariensammlung des Ansegis, app. 1, 10 | Capitulare missorum in Theodonis villa datum secundum, generale | a. 805 | Au sujet des nouvelles églises |
| 43 | MGH, Capit. 1, n° 22, c. 79 = Kapitulariensammlung des Ansegis, app. 1, 34 | Admonitio generalis | a. 789 | Au sujet des vagabonds |
| 44 | MGH, Capit. 1, n° 70, c. 6 = Kapitulariensammlung des Ansegis, app. 2, 35 | Capitula Karoli apud Ansegisum servata | a. 810/811 ? | Protection des Saxons à l'occasion de dégradations faite par des chevaux |
| 45 | MGH, Capit. 2, n° 192, c. 12 | Capitulare missorum Wormatiense | a. 829 | Interdiction de l'ordalie de l'eau froide |
| 46 | MGH, Capit. 2, n° 195, c. 1 jusque <i>pervasa</i> | Capitula de praescriptione temporis | a. 828-840 | Prescription de possession |

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¹²⁶ À ce propos, cf. Martin Lintzel, « Die Kapitularienfragmente Ansegis App. II 34, 35, Ansegis III 64 bis 66 und das sächsische Recht », *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Germanische Abteilung* 52 (1932), p. 308-313.

Signum mortis : une nouvelle explication du signe de la rouelle ?

Capucine NEMO-PEKELMAN

Le manuscrit latin 4281 de la Bibliothèque nationale de France comporte un petit texte d'origine non identifiée qui proscrit le commerce intime entre les juifs et les femmes chrétiennes:

Si quis iudaeus hereticus violaverit adulterando christianam feminam, centum siclos auri damnetur. Illa autem disciplinata separetur a consortio christiano annorum. Iudaeus vero facultate damnatus, littera theta notetur in fronte eius ita Θ idest signum mortis, ut sciant omnes quia hic iudeus malum perpetravit sanctam Dei aecclesiam violando quam redemit Christus precioso sanguine suo.

Si un juif hérétique a déshonoré une femme chrétienne en la débauchant, il sera condamné à cent sicles d'or. La femme, une fois sanctionnée, sera exclue de la communauté chrétienne pendant plusieurs années. Quant au juif condamné sur sa fortune, la lettre thêta – c'est-à-dire Θ – sera inscrite sur son front, ce qui est signe de mort, pour que tous sachent que ce juif a perpétré le mal en outrageant la sainte Eglise de Dieu que le Christ a rachetée de son sang précieux.

Il s'agit très probablement d'un faux car il ne nous est parvenu par aucun acte conciliaire ni par aucune collection canonique¹.

Le texte figure aux folios 48v-49r, en marge du titre *De iudaeis* de la collection d'Hérouval, une collection canonique composée au VIII^e siècle, et cherche donc vraisemblablement à imiter un canon de concile². La collection d'Hérouval est largement tributaire de la *Vetus Gallica* – cette collection réalisée en Gaule vers 600 dont se sont inspirés bon nombre de compilateurs des VIII^e et IX^e siècles, avant qu'elle ne fut éclipsée par les faux isidorien. La *Vetus Gallica*, qui est la plus ancienne collection systématique gallo-franque, avait, la première, créé une rubrique *De iudaeis*. L'auteur de la collection d'Hérouval s'est

¹ Notons que Jacqueline Rambaud qui, dans les années 1960, a réalisé un incipitaire de droit canonique paru dans la base *In principio* des éditions Brepols, n'en recense aucun autre témoin que celui que porte le manuscrit latin 4281. Cf. *In principio. Incipitaire des textes latins* [DVD], Turnhout, 2010.

² Ainsi nommée d'après Antoine d'Hérouval (†1689) qui fut le propriétaire du manuscrit devenu BnF lat. 13657. La collection, dans sa forme originale (forme A), est documentée par cinq manuscrits, quatre d'entre eux se trouvant dans le fonds latin de la Bibliothèque nationale de France. Cf. L. KÉRY, *Canonical Collections of the Early Middle Ages (ca. 400-1140), A bibliographical Guide to the Manuscripts and Literature*, Washington, 1999, p. 54-56.

contenté d'absorber le titre entier sans faire aucun ajout. Il y a ainsi des canons issus de la *collection de Laodicée* et des conciles de Carthage (419), d'Agde (506) et de Mâcon I (581), qui enjoignent les chrétiens à ne pas judaïser ni chômer les jours de shabbat et de fêtes juives, à ne pas participer aux repas des juifs, à racheter les esclaves chrétiens ou païens des juifs, et interdisent que des juifs ne soient nommés juifs ou percepteurs³.

On constate que parmi les nombreuses situations envisagées, dont le but est d'interdire la fréquentation des juifs et les rapports de subordination avec eux, les unions sexuelles n'apparaissent pas. Le faussaire paraît avoir souhaité réparer cette lacune. Son texte constitue une réelle curiosité en ce qu'il se démarque très nettement des canons authentiques prohibant les unions inter-confessionnelles du point de vue, notamment, des sanctions qu'il prescrit, mais nous y reviendrons⁴.

Bernhard Bischoff date la réalisation du manuscrit du premier quart du IX^e siècle et situe son origine dans un scriptorium de l'est de la France ou bourguignon⁵. Le faux canon est d'une main contemporaine ou plus tardive mais qui, en toute hypothèse, n'est pas postérieure au début du X^e siècle et paraît exactement contemporaine de celle du rubricateur⁶. Le livre comporte, après la collection d'Hérouval qui se trouve entre les folios 1 et 55, des extraits d'oeuvres variées⁷. Il paraît donc appartenir au genre des collections textuelles à usage ecclésiastique ou monastique, et la circonstance qu'il est dé-

³ Pour une édition de cette collection, voir J. PETIT, 1677, dans PL 99, 989-1086 (utilise la forme B). Amnon Linder reproduit le titre consacré aux juifs dans A. LINDER, *The Jews in the Legal Sources of the Early Middle Ages*, Détroit-Jérusalem, 1997, p. 595-598.

⁴ Les textes authentiques sont, en Gaule, ceux des conciles d'Orléans II (533), de Clermont (535) et d'Orléans III (538) et la *Lex Romana Burgundionum*, XIX, 4 ; en Espagne, on trouve ceux du « concile » d'Elvire et, à l'époque wisigothique, des conciles de Tolède III (589) et Tolède IV (633). Au IX^e siècle, ces prohibitions sont fixées lors du concile romain de 743 (c. 10) présidé par le pape Zacharie, au concile de Meaux-Paris de 845-846 (c. 73), et à Pavie (850 ?), c. 24.

⁵ B. BISCHOFF, « Panorama der Handschriftenüberlieferung aus der Zeit Karls des Grossen », in H. BEUMANN (éd.), *Karl der Grosse, Lebenswerk und Nachleben 2*, Düsseldorf, 1965, p. 233-254.

⁶ Je remercie Mesdames Marie-Thérèse Gousset et Marianne Besseyre de la Conservation du fonds des manuscrits latins de la Bibliothèque nationale, qui ont très aimablement accepté d'expertiser cette écriture.

⁷ On y trouve : 1.° *Collectio canonum, Decretalium summorum Pontificum, et sententiarum orthodoxorum Patrum, juxta rerum ordinem digesta et in septuaginta sex capitula distributa* : auctore anonymo. — 2.° *Ordo quomodo agatur Concilium ab Episcopis*. — 3.° *Canon Evangeliorum*. — 4.° *Anonymi tractatus de Deo uno et trino, de Angelis, de Prophetis et de Apostolis*. — 5.° *Fragmentum de gradibus affinitatis, sive potius consanguinitatis*. — 6.° *Anonymi tractatus de astronomia*. — 7.° *Explicatio locorum Novi Testamenti, ubi de Jesu Christo*. — 8.° *Gennadii, Massiliensis, definitiones dogmatum ecclesiasticorum*. — 9.° *Expositio missae* : auctore anonymo. — 10.° *Isidori, Hispalensis, de officiis ecclesiasticis fragmentum*. Voir la notice descriptive disponible sur <<http://archivesetmanuscrits.bnf.fr/>>

pourvu de décoration et qu'il est de petit format (26×15 cm) semble indiquer qu'il a été conçu pour l'étude.

Si l'on feuillette le *codex* jusqu'à la fin de la collection d'Hérouval, on y découvre le même faux, copié rigoureusement à l'identique, au bas du verso du feuillet 64, un feuillet par ailleurs vierge de toute écriture. Or ce second écrit présente les caractéristiques paléographiques d'une écriture du XI^e siècle⁸. Le feuillet 64 fait d'ailleurs partie d'un bifeuillet étranger au reste du *codex* et inséré entre deux cahiers à une date inconnue. Cette copie du canon apocryphe pourrait être l'œuvre d'un moine de Saint-Martial de Limoges car le *codex* se trouvait alors dans cette abbaye. En effet, une main de cette époque a inscrit, au folio 1r, la formule comminatoire : *Hic est liber sancti Martialis. Si quis eum furaverit, sit cum Datan et Abiran in infernum. Responderunt omnes : Amen*⁹.

Quelle est l'origine de ces deux textes ? Quels esprits, au IX^e siècle, ont pu imaginer le faux ? Qui, deux siècles plus tard, a décidé de le copier à la fin de la collection canonique et dans quel but ? Ces questions doivent être posées même si, les éléments de datation et de localisation que nous venons d'indiquer étant imprécis et incertains, les hypothèses que nous proposerons seront nécessairement fragiles. Nous examinerons ensuite le contenu du texte, qui mérite un commentaire détaillé.

I. Le faux canon figurant aux folios 48v-49r (IX^e ¼ / début X^e)

On ne peut, en présence d'un faux du IX^e siècle, ne pas songer en première hypothèse à une origine pseudo-isidorienne. Parmi les faussaires de cet atelier figurait Paschase Radbert (en qui de récents spécialistes des études pseudo-isidoriennes ont identifié le mystérieux Isidore Mercator¹⁰), qui se trouve avoir polémique avec les juifs¹¹. Mais si cette hypothèse était exacte, on s'explique-

⁸ Datation proposée par Jean Vezin. Cf. H. SCHNEIDER, *Die Konzilordines des Früh- und Hochmittelalters. Monumenta Germaniae Historica*, Hannovre, 1996, p. 187.

⁹ Il fut vendu à la Bibliothèque royale en 1730 avec ce qui restait des manuscrits de la bibliothèque. Sur l'histoire des manuscrits de la bibliothèque de Saint-Martial, Cf. L. DELISLE, *Le Cabinet des manuscrits de la Bibliothèque impériale*, Paris, t. I, 1868, p. 387-397.

¹⁰ Kl. Zechiel-Eckes dans *Fortschritt durch Fälschungen ? Ursprung, Gestalt und Wirkungen der pseudo-isidorischen Fälschungen. Beiträge zum gleichnamigen Symposium an der Universität Tübingen vom 27. und 28. Juli 2001*, MHG Studien und Texte, 31, Hanovre, 2001. Compte-rendu par P. Toubert dans la revue *Le Moyen Age*, 110/2, 2004. Disponible sur <<http://www.cairn.info/revue-le-moyen-age-2004-2-page-383.htm>>.

¹¹ B. BLUMENKRANZ, *Les auteurs chrétiens latins du Moyen Age sur les juifs et le judaïsme*, Paris, 1963, p. 192-194. Paschase Radbert fut abbé de Corbie, siège probable de l'atelier des Pseudo-Isidoriens, entre 844 et 851.

rait mal pourquoi le faux canon ne figure dans aucune des nombreuses collections falsifiées – *Fausses Décrétales*, *Faux Capitulaires* de Benoît le Levite...etc – issues de ce scriptorium, et n'a pas bénéficié de leur même formidable diffusion. Le fait qu'il apparaisse dans un seul témoin manuscrit et, qui plus est, dans ses marges paraît l'exclure de la dynamique de falsification en oeuvre dans le milieu pseudo-isidorien. En outre, l'expertise paléographique de Bernhard Bischoff ne situe pas la rédaction du manuscrit 4281 dans l'abbaye de Corbie, probable lieu d'origine des faussaires, mais bien dans l'est de la France ou en Bourgogne.

La seconde hypothèse, qui trouve un peu plus de renfort, est que le faux canon serait d'origine lyonnaise. Outre la preuve paléographique, le texte trahit sur le fond un état d'esprit qui rappelle celui de l'épiscopat lyonnais de l'école cathédrale duquel sont sortis un nombre important d'écrits anti-juifs pendant le IXe siècle¹². La similitude des préoccupations entre les faussaires et les Lyonnais ne s'arrête pas à la seule animosité contre les juifs, ce qui serait certes insuffisant. L'un des enjeux du combat contre les juifs et leurs alliés du Palais impérial était, pour l'épiscopat lyonnais, que le pouvoir séculier reconnût la législation canonique comme un droit s'imposant à tous. Premièrement l'empereur devait accepter d'assurer directement l'application des canons conciliaires sans qu'il soit nécessaire de les faire entériner par une loi séculière ; secondement, tous les sujets de l'Empire devaient considérer ces règles comme coercitives, même s'ils n'étaient pas chrétiens¹³. Or le faussaire, qui ambitionne de pouvoir frapper les sujets juifs, partage évidemment cette conception. A cet égard, le canon apocryphe tranche très nettement avec les canons authentiques interdisant les unions inter-confessionnelles, qui réservaient leurs sanctions à la seule partie chrétienne¹⁴. Relève du même

¹² On pense, pour la première moitié du IXe siècle, au travail réalisé par le diacre Florus pour les évêques de Lyon Agobard puis Amolon. Florus composa deux collections canoniques spécialement consacrées aux juifs. L'une d'inspiration wisigothique nommée *Capitula sacrorum canonum de fugiendis contagiis iudaeorum et disciplina erga eos exercenda* ; l'autre, le *De coercionem iudaeorum et de auctoritate ac firmitate iudicii et testimonii episcoporum*, utilisant des *leges* romaines sur les juifs jusqu'alors oubliées. S'ajoutent à ces travaux juridiques antijuifs les œuvres littéraires bien connues d'Agobard de Lyon, traités antijuifs et correspondance avec Louis le Pieux, et celles d'Amolon qui, également, réalisa, en prévision du concile de Meaux Paris de 845-846, un projet de statut juif. Cf. B. BLUMENKRANZ, « Deux collections canoniques de Florus de Lyon et l'action antijuive d'Agobard » in *Revue historique de droit français et étranger*, 33, 1955, p. 227-254 et 560-582. IT MAY NOT BE DISTRIBUTED WITHOUT PERMISSION OF THE PUBLISHER.

¹³ Cf. P. GANIVET, *Recherches sur l'évolution des pouvoirs dans les pays lyonnais. Annexe I : La renaissance du droit canonique. Discipline pénitentielle et législation conciliaire*, Thèse pour le doctorat en Histoire du droit, des Institutions et des Faits sociaux (inéédite), dir. CHR. LAURANSON-ROSAZ, Université de Clermont I, 2000, p. 4-22.

¹⁴ Les canons authentiques ne manquaient en effet pas et étaient connus car ils circulaient en Gaule, depuis le VIIIe siècle, dans la collection *Hispana* notamment. Il y avait le canon 19

état d'esprit le fait d'édicter contre le juif une sanction de nature pénale, qui plus est une peine infamante, alors que cette compétence était un monopole du pouvoir séculier.

Le conflit entre Louis le Pieux et l'épiscopat lyonnais se résolut, dans des circonstances bien connues, par la déposition de l'évêque Agobard de Lyon en 834. Au milieu du IXe siècle, Charles le Chauve refusera d'entériner le projet de plusieurs *capitula* antijuifs proposé par l'évêque Amolon de Lyon à l'issue du concile de Meaux-Paris (845-846)¹⁵. Le canon apocryphe, à cause de l'extrémisme qui le caractérise et du fait qu'il a été ajouté comme subrepticement en marge d'une collection et ne fut jamais repris, pourrait s'analyser comme le trait rageur et impuissant d'un Lyonnais écrivant sans l'aval de sa hiérarchie et non pas pendant, mais après que le conflit avait déjà été perdu, c'est-à-dire entre le milieu du IXe siècle et le début du Xe. Il s'ajouterait à la liste des collections canoniques anitjuives ayant circulé pendant la seconde moitié du IXe siècle¹⁶. Mais les indices sont malheureusement trop minces pour qu'il soit possible de dépasser le stade de l'hypothèse.

II. La copie figurant au folio 64v (XI^e siècle)

Selon toute vraisemblance, pour la raison indiquée en introduction, la copie figurant à la fin de la collection canonique d'Hérouval fut, au XI^e siècle, l'œuvre d'un moine de l'abbaye de Saint-Martial de Limoges¹⁷.



d'Orléans II (533), le canon 6 de Clermont (535), cf. notice n° 238304, projet RELMIN <<http://www.cn-telma.fr/relmin/extrait238304/>> et le canon 14 d'Orléans II (538), cf. notice n° 238305, projet RELMIN, <<http://www.cn-telma.fr/relmin/extrait238305/>>; le canon 78 de l'antique collection ibérique d'Elvire (c. 300), et les canons wisigothiques 14 de Tolède III (589) et 41 de Tolède IV (633) <<http://www.cn-telma.fr/relmin/extrait1067/>>.

¹⁵ Cf. B. BLUMENKRANZ, *Juifs et chrétiens...*, op. cit., p. 302-303.

¹⁶ Ainsi la collection canonique antijuive du ms BnF lat. 2449, fol. 46v et suiv. Cf P. FOURNIER, « Un groupe de recueils canoniques inédits du Xe siècle », in *Annales de l'Université de Grenoble*, XI, 1899, p. 345-402.

¹⁷ Il convient de noter que Bernard Itier n'est pas l'auteur de ces lignes. Cette hypothèse peut légitimement venir à l'esprit des connaisseurs du fonds des manuscrits de la bibliothèque de l'abbaye car ce personnage, qui occupa la charge de bibliothécaire de Saint-Martial, est connu pour avoir annoté un nombre considérable des manuscrits dont il avait la garde. Son écriture apparaît bien aux folios 1r et 137v du manuscrit, mais Bernard Itier a occupé sa charge entre 1195 et 1225 et, en tout état de cause, son écriture, très caractéristique, n'est pas celle du canon apocryphe. Sur l'activité de Bernard Itier à la bibliothèque de l'abbaye de Saint-Martial, cf. J.-L. LEMAÎTRE, « Un bibliothécaire modèle ? Bernard Itier, bibliothécaire de Saint-Martial de Limoges », dans *Histoire des bibliothécaires*, Lyon, 2003.

La période comprise entre la fin du Xe siècle et le milieu du XIe constitue un moment de fortes tensions antijuives¹⁸. Particulièrement à Limoges, de Saint-Martial même, le moine Adémar de Chabannes (989-1034) assimile très explicitement les juifs à l'Antéchrist¹⁹. Il ne s'agit pas de dire que la copie du canon apocryphe serait son œuvre car nous ne disposons d'aucun élément pour lui attribuer cette paternité. La confrontation des lignes du canon avec l'un des manuscrits autographes du moine (BnF lat. 2496 ff 1-76, c. 1030) permet seulement de constater que les deux écritures sont contemporaines²⁰. Nous pouvons aussi souligner que la découverte du texte antijuif en marge de la collection d'Hérouval tombait à point nommé dans cette période de crise et particulièrement en un lieu d'où, si l'on en croit ce qu'écrit Adémar de Chabannes dans sa *Chronique*, les juifs venaient d'être expulsés²¹.

Un élément pourrait permettre de comprendre plus précisément dans quel esprit fut recopié le faux canon antijuif. En effet, ainsi que nous l'avons déjà dit, l'examen codicologique du manuscrit révèle que la copie du XIe siècle fait partie d'un bifeuillet indépendant inséré tardivement au codex. Or, sur ce bifeuillet, on trouve, en sus du canon apocryphe, deux textes qui trahissent une préoccupation du rédacteur se rapportant aux privilèges des clercs en matière judiciaire et à la hiérarchie entre l'Eglise et le pouvoir séculier²². Le premier texte est un extrait d'une fausse décrétale du pape Sylvestre forgée par les faussaires de l'atelier du Pseudo-Isidore comportant deux titres : l'un défendant l'immunité dont jouit le clergé à l'égard du for séculier en matière de procédure criminelle, l'autre organisant la procédure d'accusation contre le métropolitain, qui ne saurait se faire sans la production de 80 témoins

¹⁸ R. LANDES et T. HEAD (dir.), *The Peace of God : Social Violence and Religious Responses in France around the Year 1000*, Ithaca, 1992 et D. F. CALLAHAN, « Ademar of Chabannes, millennial fears and the Development of Western anti-judaism », in *Journal of ecclesiastical History*, 46-1, 1995, p. 19-35.

¹⁹ Cf. B. BLUMENKRANZ, *Les auteurs chrétiens latins...*, op. cit., p. 250-253.

²⁰ Sur le manuscrit autographe d'Adémar de Chabannes, voir R. RICHTER, *Edition de vingt-trois sermons du manuscrit autographe d'Adémar de Chabannes*, BnF lat. 2469, ff. 1-76 (ca. 1030), thèse de l'École des chartes (inédite), 2003.

²¹ Concernant ce passage de la chronique d'Adémar de Chabannes, voir la note de Michel Toulet, qui s'interroge sur l'existence, à l'époque d'Adémar, d'une communauté juive à Limoges et sur la réalité de son expulsion : Cf. M. TOULET, « La fin d'une communauté juive à Limoges ? » in *Travaux d'archéologie limousine*, 25 oct. 2005, p. 41-42.

²² Cette préoccupation s'insère dans l'esprit de la réforme grégorienne qui, de Cluny, avait, depuis 930, gagné Saint-Martial; ainsi que dans un contexte où le fonctionnement de l'abbaye était perturbé par des ingérences laïques. Cf. B. BARRIÈRE, « la ville épiscopale (Ve-Xe siècle) » et, de la même auteure, « Une agglomération double (XIe- XIIIe siècle) », in B. BARRIÈRE (éd.), *Histoire de Limoges*, 1989, Toulouse. Voir aussi D. DELHOUME, « Les vicomtes de Limoges et l'abbaye : difficultés et enjeux d'un pouvoir urbain (Xe-XIVe) » in C. ANDRAULT-SCHMITT (éd.), *Saint-Martial de Limoges ; Ambition politique et production culturelle, Xe-XIIIe, Actes du colloque tenu à Poitiers et Limoges du 26 au 28 mai 2005*, Limoges, 2006, p. 71-86.

(chiffre encore grossi par rapport à la fausse-décrétale qui en exigeait déjà 72), et contre le moine, qui en nécessite 54. Le second est une version de l'*ordo* du concile wisigothique de Tolède IV (633)²³.

Ces textes pourraient bien avoir été sélectionnés pour ajouter de la matière à la thèse défendue dans la collection canonique *Herovalliana*. En effet, la *Herovalliana*, comme l'a remarqué Gabriel le Bras, fait partie de ces œuvres qui, bien avant celle du Pseudo-Isidore, paraissaient avoir été interpolées dans le but de soustraire les clercs aux tribunaux séculiers²⁴. L'*ordo* du concile de Tolède IV aurait été retenu, où la supériorité des clercs par rapport aux laïcs se trouvait nettement figurée par l'ordre de préséance et d'entrée des membres du concile. Le cahier du XIe siècle serait, dans cette première hypothèse, un manuscrit de travail du texte de la *Herovalliana*²⁵. Dans cet esprit, l'auteur aurait tout naturellement relevé comme un élément remarquable de la collection le faux qu'il découvrait pour la première fois.

Mais Herbert Schneider avance une autre explication. Le bifeuillet aurait constitué un petit dossier défensif réalisé par les moines de Saint-Martial au soutien de la cause du métropolitain de Bourges lorsque, en 1024, il se trouva en conflit avec l'évêque de Limoges Jordan et le duc d'Aquitaine Guillaume le Grand. Ceci expliquerait la production de la fausse-décrétale rappelant l'immunité des clercs devant le for séculier et compliquant à l'extrême la possibilité d'obtenir la condamnation d'un métropolitain (et, par la même occasion, d'un moine) devant un tribunal ecclésiastique, l'*ordo* organisant la procédure d'accusation en synode.

On peut inférer de l'hypothèse d'Herbert Schneider – même si ce dernier n'établit pas de lien thématique entre le faux canon antijuif et les autres textes du bifeuillet – que ce contentieux aurait impliqué des juifs rangés dans le camp du pouvoir séculier de Limoges et de son évêque contre le métropolitain et les moines, mais sans que ce soit établi.

²³ Edition de cet *ordo* par H. SCHNEIDER, *Die Konzilordines...*, op. cit., p. 187.

²⁴ Comme l'écrit Gabriel le Bras : « On pourrait se demander si certaines altérations faites par l'auteur de l'*Herovalliana* n'ont pas un caractère tendancieux : l'excommunication prononcée par le canon 3 du concile d'Agde contre le laïc persécuteur est appliquée quelle que soit l'issue du procès qu'il intente par la suppression de la condition : *si victus fuerit*. D'autre part, comme le mot *in consulto* a été retranché dans le canon 35 du concile d'Orléans, l'interdiction faite au laïc de traduire un clerc devant le tribunal séculier devient absolue ». Cf. G. LE BRAS, « Le tribunal du clerc dans l'Empire romain et la Gaule franque », in *Le Moyen Age*, 24, 1922, p. 126-132.

²⁵ Nous possédons – dans BnF ms lat 13908 – au moins un autre exemple de démarche consistant à insérer *ad hoc* de nouveaux cahiers comportant des notes de travail. Je remercie Laurent Morelle de cette indication.

Le canon apocryphe du IXe-Xe siècle n'a apparemment pas eu d'autre fortune que de retenir l'attention de ce moine du XIe siècle. Pourtant, il est troublant de constater que des décrets antijuifs ultérieurs lui ressemblent sous certains aspects. C'est ce que nous allons voir maintenant.

III. Analyse de la prohibition

Les éléments constitutifs du délit sont le fait, pour un juif « hérétique »²⁶, de « déshonorer une femme chrétienne en la débauchant » (*iudaeus hereticus violaverit adulterando christianam feminam*). La relation incriminée paraît ne paraître pas devoir être entendue au sens strict comme désignant des relations sexuelles extraconjugales, bien que des canons authentiques envisagent spécifiquement le cas de la femme chrétienne mariée ayant une relation adultère avec un juif²⁷. Le texte vise très probablement les situations les plus diverses : mariage, concubinage, relations sexuelles occasionnelles, et adultère au sens strict. La sexualité n'est légitime que dans le cadre du mariage chrétien, et c'est bien dans cet esprit que, pour les faussaires, la relation sexuelle avec un juif s'analyse comme un viol, une violence ou – on a choisi cette dernière traduction pour éviter le mot « viol » trop univoque – un « déshonneur » et une « débauche » pour la femme chrétienne.

On lit : *illa autem disciplinata separetur a consortio christiano annorum*. La femme sera excommuniée, une sanction classique que l'on retrouve dans les canons authentiques. La durée de l'excommunication n'est pas indiquée, les faussaires songeant peut-être à conditionner la réintégration dans la société chrétienne à la séparation du couple. Mais l'auteur, dont on a plus haut fait

²⁶ Qualifier le juif d'hérétique ne constituait pas une originalité. Depuis l'Antiquité, les traités de polémique confondaient volontiers en un seul groupe hérétique ceux qu'ils considéraient comme les ennemis de l'orthodoxie. Ainsi l'*Adversus quinque haereses* et l'*Adversus iudaeos, paganos et arianos* du Pseudo-Augustin, qui connurent une grande diffusion au Moyen Âge et, pour citer des auteurs à peu près contemporains de notre faussaire, Raban Maur, Aimon d'Auxerre, Rémi d'Auxerre, Atton de Verceil et Brunon de Wurzburg. Cf. B. BLUMENKRANZ, *Juifs et chrétiens...*, op. cit., p. X-XI.

²⁷ Ainsi l'antique concile ibérique d'Elvire (c. 300), en son canon 78, prévoit le cas d'un chrétien (*fidelis conjugatis*) commettant l'adultère avec une juive ou une païenne. De même un concile tenu en Italie méridionale dans les années 900 conseille d'empêcher, par peur de l'adultère, tout contact des femmes mariées chrétiennes avec des juifs. A la même époque en Allemagne, Régino de Prüm (842-915) prévoit dans le *De synodalibus causis* – un guide interrogatoire destiné aux évêques en visites d'inspection dans leurs diocèses – qu'il soit demandé si un fidèle marié (*quis fidelis habens uxorem*) s'est « souillé avec une juive ou une gentille » (*cum iudaea vel gentili fuerit moechatus*).

l'hypothèse qu'il partageait l'extrémisme des Lyonnais, paraît s'être plutôt intéressé au sort de la partie juive.

Il envisage pour le juif des peines qui n'ont certes pas vocation à être appliquées mais dont l'intérêt réside dans leur forte puissance évocatrice, par la mobilisation de références bibliques et d'archaïsmes.

C'est ainsi que, concernant l'amende, le faussaire ne choisit pas le denier d'argent alors en circulation dans l'Empire carolingien mais la monnaie biblique du sicle (*shekel*) qu'il imagine faite d'or (*siclos auri*)²⁸. Dans la partie pénale du *Deutéronome*, une loi fixe que l'homme qui, pour justifier la répudiation de son épouse, prétendra de manière dolosive qu'il ne l'a pas trouvée vierge sera condamné à la peine du fouet et à une amende de cent sicles d'argent à payer au père de la fille « parce qu'il a déshonoré une vierge d'Israël » (Dt 22, 19). Le faussaire songeait-il à ce verset ? C'est en tout cas la seule occurrence biblique associant une amende de cent sicles à un crime de nature sexuelle.

Le marquage au milieu du front veut assurément figurer le rabaissement du condamné juif à un statut personnel inférieur, les peines corporelles infamantes de ce type étant, au Moyen Age, plutôt réservées aux catégories inférieures de la population²⁹.

Enfin le choix de la lettre thêta montre que notre faussaire avait reçu l'enseignement du trivium dispensé dans les écoles monastiques carolingiennes, et connaissait le *De grammatica* d'Isidore de Séville³⁰. On lit en effet au livre I des *Etymologies* :

Il existe cinq lettres mystiques chez les Grecs : la première, Y, qui signifie la vie humaine dont nous venons de parler. La seconde, Θ, qui signifie la mort. Car les juges apposaient la lettre Θ au nom de ceux qu'ils livraient au supplice. Et on dit thêta *apo tou thanathou*, c'est-à-dire pour la mort. C'est pour cela

²⁸ La monnaie en circulation dans l'Empire carolingien était le denier d'argent, qui avait remplacé le *tremissis* d'or, l'émission de monnaie d'or ayant été stoppée en Occident depuis Charlemagne. Lire la « genèse de la monnaie médiévale » dans Ph. CONTAMINE, *L'économie médiévale*, Paris, 1993, p. 106-130.

²⁹ Un précédent consigné dans le *Code Théodosien* est constitué en droit romain par un tatouage au fer rouge qui était une peine accessoire à celle des travaux forcés. Celle-ci entraînait la perte de la liberté avec toutes les conséquences patrimoniales, les travailleurs étant traités comme des *servi poenae* appartenant à l'Etat. Cf. Suétone, *Gai*, 27 ; Pontius, *Vita Cypriani*, 7 ; C. Th., IX, 40, 2 = C. J., 9, 47, 17. Cités par Th. MOMMSEN, *Le droit pénal romain* (trad. J. Duquesne), III, Paris, 1907, p. 293-294.

³⁰ Je remercie Céline Martin de m'avoir indiqué ce rapprochement.

qu'elle a en son milieu un trait [au sens d'une arme de jet], c'est-à-dire un signe de mort. A propos de cette lettre un quidam a dit : « ô que la lettre thêta est plus infortunée que les autres ! »³¹.

L'auteur a donc évidemment imaginé d'utiliser le thêta comme un expédient pour signifier que le juif coupable d'adultère aurait dû se voir appliquer une condamnation à mort.

Il faut à cet égard remarquer que son texte paraît avoir anticipé sur les siècles à venir. Nous trouvons de fait un intérêt particulier à la ressemblance entre le thêta – un cercle barré d'un trait horizontal – et la roue/rouelle que les juifs et les Sarassins furent contraints de coudre sur leurs vêtements à partir du XIIIe siècle. C'est lors du quatrième concile œcuménique du Latran de 1215 présidé par le pape Innocent III que le port d'un signe vestimentaire distinctif est imposé pour la première fois aux non-chrétiens, juifs et sarrasins³². La mesure s'étend alors progressivement tout au long du XIIIe siècle jusqu'à ce qu'elle devienne applicable dans une grande partie de la chrétienté occidentale au XV^e siècle³³. Le concile de Latran IV n'indiquait pas en quoi devait, matériellement, consister la distinction vestimentaire. Elle a donc varié selon les régions. En Angleterre, les juifs doivent coudre à leur vêtement

³¹ Isidore de Séville, *Etymologiae*, I, 3, 8 (R. BEER, Leyde, 1909) : *Quinque autem esse apud Graecos mysticas litteras. Prima Y quae humanam uitam significat, de qua nunc diximus. Secunda Θ quae mortem [significat]. Nam iudices eandem litteram Θ adponebant ad eorum nomina, quos supplicio afficiebant. Et dicitur Theta apo tou thanatou, id est a morte. Unde et habet per medium telum, id est mortis signum. De qua quidam: O multum ante alias infelix littera theta.*

³² Sur les signes distinctifs des juifs en usage dans l'Occident médiéval, on peut citer les études suivantes : U. ROBERT, « Etude historique et archéologique sur la roue des juifs depuis le XIIIe siècle », in *Revue des études juives*, 7, 1883, p. 81-95 ; 8, 1884, p. 94-102 ; *id.*, *Les signes d'infamie au Moyen Age : juifs, sarrasins, hérétique, lépreux, cagots et filles publiques*, Paris, 1891 ; G. KISH, « The Yellow Badge in History », in *Historia Judaica*, XIX, 1957, p. 89-146 ; D. SANSY, « Marquer la différence : L'imposition de la rouelle aux XIIIe et XIVe siècles », in *Médiévales*, 41, automne 2001, p. 15-36 ; C. ENLART, « Le costume », in *Manuel d'archéologie française*, Paris, 1916 (t. 3), pp. 434-438 ; J.-F. FAÛ, *L'image des Juifs dans l'art chrétien médiéval*, Paris, 2005 ; M. PASTOUREAU, *Une histoire symbolique du Moyen Âge occidental*, Paris, 2004

³³ L'injonction est, à partir de la première moitié du XIIIe siècle, relayée par des conciles provinciaux en Angleterre, en Espagne, en France, en Italie et en Allemagne ainsi que par des lettres pontificales, qui se multiplient entre le XIIIe et le XIVe siècle. Elle est également transcrite dans le droit séculier. Le roi Henri III d'Angleterre décide le premier d'imposer ce signe par une ordonnance de 1217. Dans la péninsule ibérique, il devient obligatoire en Aragon en 1228, dans la Navarre en 1234, et au Portugal en 1325. Saint Louis l'impose à tous les juifs de France en 1269. En Italie, l'empereur Frédéric II de Sicile l'ordonne en 1221 et il s'impose dans le reste de l'Italie au XVe siècle. De même, en Allemagne, Autriche et Bohême, le signe devient obligatoire au XVe siècle.

l'insigne des Tables de la Loi³⁴. En Autriche, Allemagne et Bohême, ils doivent porter un bonnet cornu (*cornutum pileum*)³⁵.

Mais le signe circulaire domine en France, en Espagne et en Italie. Il est ainsi ordonné, au concile de Narbonne de 1227, que les juifs portent « au milieu de la poitrine un signe de roue, dont la circonférence soit d'une largeur d'un doigt et la hauteur d'une demi-paume de canne³⁶ », et l'ordonnance de Saint Louis de 1269 impose « une roue de feutre ou de drap de couleur jaune, cousue sur le haut du vêtement, au niveau de la poitrine et dans le dos, afin de constituer un signe de reconnaissance, dont la circonférence sera de quatre doigts et la surface assez grande pour contenir la paume d'une main³⁷. »

Il faut noter que cette ordonnance, ainsi que celles de Philippe III le Hardi parlent, sur le modèle des conciles du Midi de la France qui les ont précédées, de « roue » (*rota*), c'est-à-dire, vraisemblablement, de cercle. Ce n'est qu'à partir du règne de Philippe le Bel qu'apparaît dans les textes la fameuse « rouelle » (*roella*), le changement d'appellation signifiant sans doute que l'on parle à présent de disque³⁸.

Plusieurs hypothèses ont été proposées pour expliquer le choix de cette forme circulaire, mais qui ne reposent que sur des explications issues de textes ultérieurs à l'apparition du signe, si bien qu'aucune d'elles n'emporte la conviction de manière définitive³⁹. Il n'est donc pas téméraire d'ajouter une

³⁴ Honorius III, *Cum in generali consilio* (1221) Notice n° 251655, projet RELMIN <<http://www.cn-telma.fr/remlin/extrait251655/>> ; Concile d'Oxford (1222), c. 40 Notice n° 246619, projet RELMIN : <<http://www.cn-telma.fr/remlin/extrait246619/>> ; Grégoire IX, Ex parte venerabilis fratris (1229) Notice n° 251656, projet RELMIN, <<http://www.cn-telma.fr/remlin/extrait251656/>>

³⁵ Cf. R. MELLINKOFF, « The Round-Topped Tablets of the Law : Sacred Symbol and Emblem of Evil », in *Journal of Jewish Art*, 1, 1974, p. 28-43.

³⁶ Cf. S. GRAYZEL, *The Church and the Jews...*, op. cit., p. 316.

³⁷ *Ordonnances des rois de France de la troisième race*, Paris, t. I, 1723, p. 294. Traduction par G. NAHON, « Les ordonnances de Saint Louis sur les juifs », dans *Les nouveaux cahiers*, 23, 1970, p. 23-42.

³⁸ Observation faite par Danièle Sansy, « Marquer la différence... », op. cit., p. 28.

³⁹ Partant du constat qu'au Moyen Âge, certains signes vestimentaires avaient pour fonction de symboliser la faute de ceux qui étaient obligés de les porter (ainsi les individus convaincus d'avoir profané l'hostie devaient, en guise de peine, porter deux morceaux de feutre jaune en forme d'hostie sur le devant et le dos de leur vêtement et les cathares repentis une croix jaune), on a conjecturé que la roue figurait l'espèce eucharistique rejetée par les juifs. Le même raisonnement a conduit à rapprocher la roue d'une pièce de monnaie, souvenir des trente deniers reçus par Judas Iscariote pour salaire de sa trahison ou allusion à l'activité usuraire des juifs. Également, on a fait l'analogie entre la rouelle et la représentation figurée d'une étoile. Signalons enfin que Danièle Sansy propose de s'intéresser plus à la couleur du signe – qui est, très souvent, le jaune – qu'à sa forme, selon elle moins porteuse de sens. Cf. D. SANSY, « Marquer la différence... », op. cit., p. 30.

nouvelle proposition, à savoir que la roue – ce rond évidé qui, comme on l’a vu, a précédé la rouelle – figurait la lettre thêta.

Cette hypothèse ne repose pas sur le seul indice de la ressemblance figurative entre les deux signes. S’ajoute la circonstance que c’est la même anxiété – les relations sexuelles « mixtes » – qui est à l’origine de l’institution des deux signes. En effet, dans le canon apocryphe, le thêta était censé marquer le juif convaincu d’avoir eu des rapports intimes avec une chrétienne. Or la raison de l’imposition du signe distinctif selon le canon 68 du troisième concile du Latran de 1215 est d’empêcher les relations sexuelles entre les chrétiens et les juifs ou les Sarrasins⁴⁰.

Conclusion

Au bilan, le canon apocryphe découvert dans le manuscrit BnF lat. 4281 nous a livré plusieurs informations, certaines étant plus sûres que d’autres. Ainsi, nous considérons comme établi que l’auteur du canon avait des vues extrêmes, et marginales pour son époque, concernant les juifs et la place du droit canonique dans la société. Mais ceci ne constitue pas un indice suffisant, tant s’en faut, en faveur de l’origine lyonnaise du faussaire. On a également relevé que le texte avait été recopié depuis le monastère de Saint-Martial au XI^e siècle. Mais nous n’avons pas découvert d’exploitation du canon ayant dépassé le cadre privé du scriptorium de Saint-Martial. Il demeure que nous sommes frappée par la ressemblance entre le thêta du canon apocryphe et la roue que les juifs du royaume de France furent contraints de coudre à leurs vêtements à partir du XIII^e siècle. Si cette ressemblance n’était pas pure coïncidence – si, par exemple, l’auteur du IX^e-X^e siècle et ceux du XIII^e siècle avaient puisé dans la référence commune du *De Grammatica* d’Isidore de Séville – ce texte fournirait une nouvelle explication au choix du signe de la roue, qui aurait symbolisé la mort.

⁴⁰ Latran III, c. 68 : « Dans certaines provinces, un habit différent distingue les juifs et les sarrasins des chrétiens, mais en d’autres endroits, il se crée une certaine confusion du fait qu’aucune différence ne permet de les identifier. C’est ainsi qu’il arrive que, par erreur, des chrétiens se mêlent à des femmes de juifs ou de Sarrasins ou que des juifs ou Sarrasins se mêlent à des femmes chrétiennes. C’est pourquoi, pour qu’ils ne puissent plus, désormais, prétextant une erreur, excuser l’excès de si condamnables mélanges, nous statuons que ces individus, des deux sexes, dans toutes les provinces chrétiennes et en tout temps, se distinguent du reste de la population par un habit, comme on peut lire dans les écrits de Moïse que cette loi leur a été imposée [Nb 15, 37-41] ». Ce souci de prévenir des mélanges condamnables est, après l’assemblée de Latran IV, couramment invoqué dans les conciles provinciaux des XIII^e et XIV^e siècles ainsi que dans la correspondance des papes (Honorius III, Grégoire IX et Innocent IV) et l’ordonnance de Philippe V de 1317. Cf. S. GRAYZEL, *The Church and the Jews...*, op. cit., p. 62, n. 99.

III Juridical sources as indications of Jewish life and institutions?



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JEWISH COMMUNAL OFFICES IN LATE ROMAN AND BYZANTINE LAW AND JEWISH INSCRIPTIONS FROM THE BALKANS*

Alexander PANAYOTOV

The structure of the Jewish communities in the Late Roman and Byzantine Empire remains shrouded in ambiguity and confusion. This, however, is not due to the lack of evidence for the offices held by Jews and others within the community – the evidence from inscriptions is plentiful and suggestive about their meaning and function. The problem here as with all the evidence concerning Jews in Late Roman and Byzantine Empire is that its interpretation is subject to our religious, political and other personal predilections and tends to be influenced by previous historiography. A good example is the epigraphical evidence concerning the position of women within the Jewish community. Terms like *archisynagogissa* or *presbytera* found on funerary inscriptions from the Balkans, Crete and elsewhere have been interpreted either as honorific titles or actual offices held by women.¹ The sources, however, do not allow us to come to any definitive conclusions about the role of women within the Jewish community and the above-mentioned interpretations remain suggestions influenced by education, religious affiliation or political trends.

The aim of this article is to review the evidence from inscriptions regarding the communal offices held by Jews, and others, within the Jewish communities in the Balkans up to the end of the seventh century CE. This evidence will be compared to information from Late Roman and Byzantine laws that allow us to make some cautious, if not definitive, suggestions regarding the function of these offices. The offices reviewed include *presbyter*, *archegos* and their female forms *presbytera* and *archegissa*, and the office of *prostates*, each

* I would like to thank Dr Margaret Williams of the Open University and Professor Nicholas de Lange of the University of Cambridge for their helpful comments on this paper.

¹ See, J. Juster, *Les juifs dans l'Empire romain. Leur condition juridique, économique et sociale*, 2 t. (Paris: P. Geuthner, 1914), I, pp. 440-1. Cf. B. Brooten, *Women Leaders in the Ancient Synagogue. Inscriptional Evidence and Background Issues*, *Brown Judaic Studies* 36 (Chico: Scholars Press, 1982), pp.11-2, 35-9, 41, 55; Brooten, B. 'Female Leadership in the Ancient Synagogue', in *From Dura to Sepphoris: studies in Jewish art and society in Late Antiquity*, *Journal of Roman Archaeology Supplement Series* 40, ed. by L. Levine and Z. Weiss (Portsmouth, RI: Journal of Roman Archaeology, 2000), pp. 215-7; R. Kraemer, 'A New Inscription from Malta and the Question of Women Elders in the Diaspora Jewish Communities', *The Harvard Theological Review* 78 (1985), pp. 431-8.

of which is evidenced in Jewish inscriptions from the Balkans datable from the fourth to the seventh century CE.

A number of epigraphically attested offices and titles, like *archisynagogos*, *archon*², *pater synagoges*³, *ethnarch*⁴, *sophos*⁵ and *phrontistes*⁶, will not receive a full attention here as they have been discussed extensively in recent years. In this group *archisynagogos* is the only community position that occurs in Jewish inscriptions from the Balkans and the Aegean and is mentioned in Roman and Byzantine law. The office is attested, together with *phrontistes*, on an inscription from the mosaic floor of the synagogue of Aegina dated to the fourth century CE⁷, on an epitaph from Oescus in Moesia, together with the title *principalis*, dated to the fourth century CE⁸, and in an unpublished honorary inscription from Argos, which commemorates the donation of Aurelia

² This office is attested in an honorific inscription from Taenarum in the Peloponnesus, dated to the third century CE, thus falling outside the scope of this article. See *Inscriptiones Judaicae Orientis. Band I: Eastern Europe*, Texts and Studies in Ancient Judaism 99, ed. by D. Noy, A. Panayotov and H. Bloedhorn (Tübingen: Mohr-Siebeck, 2004), Ach56. It is generally translated as 'ruler' or 'leader' (LSJ, s.v.) and is part of the common Greek civic terminology adapted for Jewish use. The *archon* could be an honorary title or a communal officer elected annually or a member of the governing body of the Jewish community. No single function can be attached to this position. Cf. M. Williams, 'The Structure of Roman Jewry Re-Considered: Were the Synagogues of Ancient Rome Entirely Homogeneous?', *Zeitschrift für Papyrologie und Epigraphik*, 104 (1994), pp. 132-6; P. van der Horst, *Ancient Jewish Epitaphs. An Introductory Survey of a Millennium of Jewish Funerary Epigraphy (300 BCE-700 CE)*, Contributions to Biblical Exegesis and Theology 5, (Kampen: Kok Pharos, 1991), pp. 89-90; L. Levine, *The Ancient Synagogue. The First Thousand Years* (New Haven and London: Yale University Press, 2000), pp. 427-8.

³ Donation of Claudius Tiberius Polycharminus to the Jewish community of Stobi, Macedonia, dated to the second or third century CE. See *Inscriptiones*, I, Mac1.

⁴ The title is recorded in a funerary inscription from Argos dated from the third to the fourth century CE. See *Inscriptiones*, I, Ach51. There are various possibilities for its interpretation: the *ethnarch* could be the Palestinian Patriarch, local Jewish leader or a ruler in general. Nicholas de Lange suggests that the term *ethnarch* was replaced by 'patriarch' as a designation of the Palestinian Jewish leader in the time of Origen. Cf. N.R.M. de Lange, *Origen and the Jews*, University of Cambridge Oriental Publications 25 (Cambridge: Cambridge University Press, 1978), p. 34.

⁵ This title occurs in line 6 of the inscription mentioned in n. 3 above. It also is attested in an unpublished honorary inscription from Argos, and on a sarcophagus from Trastevere, Rome: see D. Noy, *Jewish inscriptions of Western Europe. Vol.2: The City of Rome* (Cambridge: Cambridge University Press, 1995), no. 544. In this context the term means 'wise' or 'sage' and, probably, refers to Jewish scholars or is used in connection to the office of the rabbi. Cf. de Lange, *Origen*, 34-5.

⁶ This office occurs on mosaic inscriptions from the synagogue of Aegina and the recently discovered synagogue in Chios. *Phrontistes* was not exclusively a Jewish office and quite possibly designated a person who was chosen to oversee or supervise a reconstruction or building project. See *Inscriptiones*, I, Ach58. Cf. Williams 1994, p. 134.

⁷ *Inscriptiones*, I, Ach58.

⁸ *Inscriptiones*, I, Moes1.

Dioclea, daughter of Diocleus, *archisynagogos* of Argos.⁹ The female form *archisynagogissa* occurs on an epitaph from Kissamos in Crete dated to the fourth or fifth century CE.¹⁰ There is no need to repeat all the arguments about whether *archisynagogos* was an honorary title or designated a figure of the highest rank within the Jewish community. However, it is interesting to note that according to David Noy and Tessa Rajak the title of *archisynagogissa* was offered to Jewish, and other, women in a similar manner to the pagan practice of offering honours and titles to wealthy and politically influential women benefactors. A similar honorary role is implied also for the male holders of this title.¹¹ The last statement, of course, remains open to interpretation and it seems the role of *archisynagogos* within the Jewish community included a wide range of communal and religious duties and the person holding the office was the leader of the community.¹² This is confirmed by the position and function applied to the *archisynagogos* by Roman and Byzantine legislators.¹³

The office of the *presbyter*, and the female form *presbytera*, is recorded on three Jewish funerary inscriptions from the Balkans and one from Crete. Two of the epitaphs were discovered in Macedonia, in Thessalonica and Beroea (modern Veria). The inscription from Thessalonica is dated from the second to the fourth century CE and records one Apollonios, who held the office of a *presbyter*. It was discovered in the nineteenth century CE near the eastern necropolis of the city, which was the principal Jewish burial place from Late Antiquity until it was destroyed by the German occupation forces in 1942. The text is inscribed on a small marble plaque used to seal off the entrance to a subterranean tomb. It has been suggested that the inscription was Jewish because of its provenance and the image of a palm bough inscribed on the stone.¹⁴ However, it could also be Christian, as the eastern necropolis of Thessalonica was used by Christians in the period between the third and the seventh century CE.

The epitaph from Beroea (Veria) was discovered in 1995 during a rescue excavation in the south-eastern part of the modern town. The inscription

⁹ Discovered in 1969 and then lost, this inscription is currently being prepared for publication from recently acquired photographs by Alexander Panayotov and Anastasia Loudarou.

¹⁰ *Inscriptiones*, I, Cre3.

¹¹ T. Rajak, and D. Noy, 'Archisynagogoi: Office, Title and Social Status in the Greco-Jewish Synagogue', *Journal of Roman Studies*, 83 (1993), p. 87. Followed recently by R. González Salinero, 'La figura del "pater patrum" como "archisynagogus" en las comunidades judías del Imperio romano' in *Visiones mítico-religiosas del padre en la antigüedad clásica*, ed. by M. R. Sánchez (Madrid: Signifer Libros 2004), pp. 62-6.

¹² Williams, 'Roman Jewry', p. 135. Cf. van der Horst, *Ancient Jewish Epitaphs*, pp. 92-3. Levine, *Ancient Synagogue*, pp. 415-27.

¹³ A. Linder, *The Jews in Roman Imperial Legislation* (Detroit and Jerusalem: Wayne State University Press, 1987), pp. 134-5, 202-3, nos. 9, 27

¹⁴ *Inscriptiones*, I, Mac20.

is inscribed on a white marble stele and executed very carefully. It bears the image of a *menorah* and has been dated to the fourth century CE, although a fifth or sixth century CE date is also plausible. The inscription reads:¹⁵


(*menorah*) Τάφος
 Θεοδοσί-
 ου Ἑβρέου
 μελοπρεσ-
 βυτέρου τρι-- 5
 [έ]του ΝΙΑΣ
 [..]ΣΤΟΥ.

4-5. I. μελλοπρεσβυτέρου

5-6. τρι[ς] τοῦ also possible

Translation: Tomb of Theodosius the Hebrew, mellopresbyteros, three years old (?) ...

Two funerary inscriptions record female Jewish holders of the office of the *presbyter*. The first was discovered in 1881 in Ottoman Vize (ancient Byzie), and was referred to for the last time in 1906 by the British classicist Richard Dawkins during his field trip in the region. The text is inscribed on a grey marble stele that bears the images of a *menorah* and *ethrog*. The inscription has been dated to the fourth or fifth century CE, although a later date is also possible. The text reads:¹⁶

(*ethrog*)
 μνη(menorah) <μ--> 
 α Ῥεβέκα[ς]
 τῆς πρεσ--
 βυτέρας τ-
 ης κεκυμῆμ-
 ἔνης. 5

5-6. I. κεκοιμημένης

Translation: Tomb of Rebecca the *presbytera*, who has fallen asleep.

The epitaph of Sophia of Gortyn, was found in 1959 at Kastelli Kissamou on Crete. It has been dated to the fourth or fifth century CE, but, again, a later date is also possible. The inscription reads:¹⁷

Σοφία Γορτυνί
 α πρεσβυτέρα
 κὲ ρχισυναγω-

¹⁵ *Inscriptiones*, I, Mac10.

¹⁶ *Inscriptiones*, I, Thr3.

¹⁷ *Inscriptiones*, I, Cre3.

γίσσα Κισάμου ἔν-
θα. μνήμη δικέας 5
ις ἔῶνα. μὴν.

3. I. καὶ
5. I. δικαίας
6. I. εἰς αἰῶνα

Translation: Sophia of Gortyn, *presbytera* and *archisynagogissa* of Kissamos, (lies) here. The memory of the righteous woman (be) forever. Amen.

The female office of *presbytera* held by Rebecca and Sophia is also attested in three epitaphs from Venosa dated to the fifth century CE and on Jewish inscriptions from Rome, Malta, Tripolitania and Nocera dated to the fourth or fifth century CE.¹⁸ The array of sometimes contradicting scholarly interpretations of the function the female holders of the office had in the Jewish community has made this subject difficult to follow. Jean Juster regarded *presbytera* as an honorary title given to pious and respected women in the community.¹⁹ However, Samuel Krauss disagreed and suggested that the title indicated the deceased woman was the wife of a *presbyter*.²⁰ The pioneer of Jewish epigraphy Jean-Baptiste Frey went further and proposed that in the case of the inscription from Byzie it was used to distinguish Rebecca from a ‘younger’ person of the same name suggesting, perhaps, that the term referred to an elderly woman.²¹ In his recent commentary on the same inscription, Walter Ameling has rightly observed that the title held by Rebecca could refer to her ancestors or, again, her husband.²² A somewhat different interpretation was put forward by Pieter van der Horst and Bernadette Brooten. They both see *presbytera* as a title which a woman could hold in her own right within the Jewish community.²³ Indeed, in Christian contexts we have evidence from inscriptions for women holding ecclesiastical offices, including that of *presbytera*. Thus, the office held by a woman is attested in a Montanist inscription from Uşak on the Aegean

¹⁸ D. Noy, *Jewish inscriptions of Western Europe. Vol.1: Italy (excluding the City of Rome), Spain and Gaul* (Cambridge: Cambridge University Press, 1993), nos. 59, 62, 71, 163; Kraemer, ‘Women Elders’, 431-2; Noy, *Jewish inscriptions*, II, no. 24. Cf. *Supplementum Epigraphicum Graecum* xxvii, no. 1201 and *L'Année épigraphique* 1994, no. 401.

¹⁹ Juster, *Les juifs*, I, p. 441, n. 8.

²⁰ S. Krauss, *Synagogale Altertümer* (Berlin and Vienna: Benjamin Harz, 1922), p. 144.

²¹ J.-B. Frey, *Corpus Inscriptionum Judaicarum. Recueil des Inscriptions Juives qui vont du III^e avant Jesus-Christ au VII^e siècle de Notre Ere*, 2 t. (Rome: Pontificio Istituto di Archeologia Cristiana; Paris: Geuthner, 1936, 1952), I, no. 692.

²² *Inscriptiones Judaicae Orientis. Band II: Kleinasien* (Texts and Studies in Ancient Judaism 99), ed. by W. Ameling (Tübingen: Mohr-Siebeck, 2004), no. 12.

²³ Brooten, *Women Leaders*, p. 55; van der Horst, *Ancient Jewish Epitaphs*, pp. 106-7. Cf. Kraemer, ‘Women Elders’, pp. 435-8.

coast of Turkey dated to the third century CE²⁴ and also in southern Italy in the fifth and sixth century CE.²⁵ However, in the inscription from Kissamos the deceased woman holds two titles, *presbytera* and *archisynagogissa*, which makes their explanation even more complex. The problem here is that the exact function of the office of the *presbyter* within the Jewish community is difficult to determine, and it seems that its meaning varied from place to place.

The importance of the office within the Jewish community is suggested by inscriptions from Spain, Asia Minor, Cyprus and Syria and by evidence from Roman and Byzantine law.²⁶ The presbyters are listed, together with the patriarchs and the *archisynagogoi*, as the Jewish community officers exempt from compulsory public liturgies in the laws of Constantine of 29 November 330 CE and Arcadius and Honorius of 1 July 397 CE preserved in the Codex Theodosianus.²⁷ They are also mentioned among the Jewish leaders in the law of Arcadius and Honorius of 11 April 399 CE that prohibits the collection of the annual Jewish tax by the Patriarch in Palestine.²⁸ Here, again, the exact function of the office remains unclear, although it seems that legislators in the fourth century CE understood it as both an administrative and a religious one. However, for Byzantine legislators of the sixth century and later the Jewish presbyter was a communal officer with mainly religious duties related to the synagogue service. This is supported by evidence

²⁴ W. Tabbernee, *Montanist Inscriptions and Testimonia: Epigraphic Sources*, Patristic Monograph Series of the North American Patristic Society 16 (Macon GA: Mercer University Press, 2000), pp. 66-72, no. 4.

²⁵ Noy, *Jewish Inscriptions*, I, no. 59; G. R. H. Horsley, 'Women Office-Holders in the Church', *New Documents Illustrating Early Christianity* 1 (1976), p. 121, no.79; K. Mentzu--Meimaris, 'Η παρουσία της γυναίκας στις ελληνικές επιγραφές απο τον 8' μέχρι τον 1' μ.Χ. αιώνα', *Jahrbuch der Österreichischen Byzantinistik* 32.2 (1982), pp. 435--8, 450, nos. 48--57, 91.

²⁶ Spain: Inscription from the mosaic floor of the synagogue of Elche, dated to the fourth century CE. See Noy, *Jewish inscriptions*, I, no. 181. Asia Minor: Donation of mosaic floor and benches to synagogue in Smyrna, dated from the fourth to the fifth century CE. See *Inscriptiones*, II, no. 41. Inscription mentioning construction of a well for the synagogue in Side, dated to the late fourth century CE. See *Inscriptiones*, II, no. 220. Epitaph and donation to synagogue from Tarsos, dated from the third to the fourth century CE and to the sixth century CE. See *Inscriptiones*, II, nos. 248-9. Syria: Inscription from the mosaic floor of the synagogue of Apamea dated to 7 January 392 CE. See *Inscriptiones Judaicae Orientis. Band III: Syria and Cyprus* (Texts and Studies in Ancient Judaism 102), ed. D. Noy and H. Bloedhorn (Tübingen: Mohr-Siebeck, 2004), Syr53. Cyprus: Building inscription from Golgoi dated to the fourth century or later. See *Inscriptiones III*, Cyp3. The title also occurs on an epitaph from Rome, but is heavily restored. Cf. Noy, *Jewish inscriptions*, II, no. 176.

²⁷ Linder, *Roman*, pp. 134-5, 202-3, nos. 9, 27. Linder suggest the presbyters mentioned in these laws were members of the Palestinian Sanhedrin. Cf. Linder, *Roman*, p. 135, n. 4.

²⁸ Linder, *Roman*, p. 216, no. 30. Cf. A. Linder, 'The Legal Status of Jews in the Roman Empire' in *The Cambridge History of Judaism. Volume 4: The Late Roman-Rabbinic Period*, ed. by Steven T. Katz (Cambridge: Cambridge University Press, 2006), pp. 157-8.

from the law given by Justinian at Constantinople on 8 February 553, which confirms the freedom to use Greek and languages other than Hebrew in synagogue scriptural readings and prohibits the use of the *Mishna*.²⁹ Here, the presbyters are singled out, together with the *archipherekitae*³⁰ and *didascaloi*, as the Jewish officials who would, potentially, force their congregations not to use the Greek versions of the Bible approved by the legislator. To discourage the Jewish communal officers from taking these actions the law included a number of corporal and pecuniary punishments.³¹ A similar reference to the supposed role of the presbyters in preventing members of the Jewish community from reading the scriptures in Greek is preserved in the sixth-century *Epitome* to the Novels of Justinian by Athanasios of Emesa.³² The same reference can also be found in the Byzantine collection of laws known as *Collectio Tripartita*³³ completed at the end of the sixth century CE and in the *Basilica*, the codification of Roman law completed under Basil I (867-886) and his son Leo VI (886-912).³⁴ These laws suggest a continuous tension within Jewish communities in Byzantium, most probably in Constantinople, related to the language of the synagogue readings, but do not provide us with information about the exact function of the office of the *presbyter*.³⁵ It seems that in the sixth century the religious role of the Jewish office was suggested by the legislators on the basis of the function of the Christian office of the *presbyter*.

Despite such a variable and uncertain base for interpretation, I think it would be reasonable to assume that the holders of the office of *presbyter* were members of the governing body of the Jewish community.³⁶ The inscriptional evidence also suggests the title was bestowed upon young, some-



²⁹ Linder, *Roman*, pp. 408-10, no. 66.

³⁰ The term *archipherekites* corresponds to the *Resh Pirka*, the head of the Sanhedrin in Tiberias (520 CE). See Linder, *Roman*, p. 411.

³¹ The law was addressed to Areobindus, Praefectus Praetorio of the East, and was probably never promulgated in the West. See Linder, *Roman*, pp. 403, 407.

³² A. Linder, *The Jews in the Legal Sources of the Early Middle Ages* (Detroit and Jerusalem: Wayne State University Press, 1997), pp. 32-8, no. 3.

³³ Linder, *Early Middle Ages*, pp. 57-8, no. 5.

³⁴ Linder, *Early Middle Ages*, pp. 109-10, no. 8.

³⁵ N. R. M. de Lange, 'The Hebrew Language in the European Diaspora' in *Studies on the Jewish Diaspora in the Hellenistic and Roman Periods*, Te'uda 12, ed. by B. Isaac and A. Oppenheimer (Tel-Aviv: Ramot Publishing, 1996), pp. 132-3. See N. R. M. de Lange, 'The Greek Bible Translations of the Byzantine Jews' in *The Old Testament in Byzantium*, ed. by P. Magdalino and R. Nelson (Cambridge, Mass.: Harvard University Press, 2009), pp. 43-4. Cf. N. R. M. de Lange, 'The Greek Bible in the Medieval Synagogue' in *Jews in Byzantium. Dialectics of Minority and Majority Cultures*, ed. by R. Bonfil, O. Irshai, G. G. Stroumsa and R. Talgam (Leiden, London and Boston: Brill, 2012), pp. 371-2.

³⁶ For a summary and description, although perhaps too elaborate, of the structure of Jewish communities outside Palestine and the place of presbyters see Levine, *Ancient Synagogue*, pp. 432-4. Cf. Horbury, 'Women in the Synagogue', pp. 395-6.

times very young, children and that its holders were, in certain places, elected for a period of time. Thus, in the epitaph from Beroea the deceased three-year-old child is described as μελλοπρεσβύτερος (a presbyter-to-be). The title designates a person who is going to hold the office and is similar to the titles μελλάρχων (and the Latin equivalent *mellarcon*) and μελλογραμματεὺς held by children and adults in Rome in the third and fourth century CE.³⁷ In the case of women holding the office of *presbytera*, their position is less clear; it was perhaps similar to that of the male elders. However, whether they were actual members of the governing body of the community remains an open question due to the dearth of epigraphical and literary evidence.³⁸

The title *archegissa*, the female form of *archegos*, is attested in a funerary inscription from the site of ancient Phthiotic Thebes, modern Nea Anchialos in Thessaly. The text is inscribed on a marble *kioniskos* (*columella*) but, it seems, the letters were just scratched on the surface. The inscription has been dated from the third to the sixth century CE, but the later date is more plausible. The inscription reads:³⁹

μνήμα
Περιστερίας
ἀρχ[η]-
γίσς.
(menorah)

3-4. I. ἀρχηγίσς

Translation: Memorial of Peristeria, *archegissa*.

Understanding *archegissa* as a title in its own right is the most plausible explanation for the presence of the word in this inscription. The term *archegissa* is formed, in the same way as the Jewish *pateressa* at Venosa and *archisynagogissa* at Kissamos, from a masculine noun.⁴⁰ The great French epigrapher Louis Robert understood the male form *archegos* as a synonym of the Latin term

³⁷ Noy, *Jewish Inscriptions*, II, nos. 100–1, 179–80, 231, 259, 404. Cf. Williams, ‘Roman Jewry’, pp. 131–2.

³⁸ M. Williams, *The Jews among the Greeks and Romans. A Diasporan sourcebook* (London: Duckworth 1998), p. 43. William Horbury suggests that female office-holders within the Jewish community only had authority among women: see W. Horbury, ‘Women in the Synagogue’ in *The Cambridge History of Judaism. Volume 3: The Early Roman Period*, ed. by W. Horbury, W. D. Davies and J. Sturdy (Cambridge: Cambridge University Press, 1999), p. 389. However, his interpretation is based on epigraphical evidence of the role of women in Christian communities and therefore is inconclusive when applied to Jewish communal offices.

³⁹ *Inscriptiones*, I, Ach18.

⁴⁰ Noy, *Jewish Inscriptions*, I, no. 63; *Inscriptiones*, I, Cre3. Latin female titles were usually based on a third declension masculine noun.

principalis.⁴¹ However, this idea requires some clarification, because in the inscription he referred to the term *principalis* designates a non-commissioned army officer rather than a Jewish title.⁴² The problem here is that *archegos* was rarely used to designate an official administrative post or title and has so far been attested only once in a Jewish context. This is on a gold votive plaque, or perhaps a pendant, in the Jewish Museum in London.⁴³ In a recent re-publication of the inscription Nicholas de Lange suggested that the term here is actually an abbreviated form of *archisynagogos*.⁴⁴ This new reading is open to interpretation as it seems to me that since the object and the inscription represent a votive offering the title *archegos* could have been applied to the God of Israel.⁴⁵ This, of course, is a preliminary observation and a further study of the object is required. What is important to say here is that it is almost impossible to determine what type of position within the Jewish community *archegos* designates. The term has the general meaning of a ‘founder’ or ‘chief’⁴⁶, and it is possible that in this case Peristeria was honoured with the title after the contribution of funds for the building of a synagogue or donation of a property to the local Jewish community.⁴⁷ Another possibility is to view *archegos* as a local designation for the head of the community of Larissa to whom Peristeria was related to. This idea would also explain the case of the *archisynagogissa* from Kissamos.

The office of the *prostates* is found in an epitaph discovered during rescue archaeological excavations conducted in 1973-4 in modern Larissa, Thessaly. The epitaph is inscribed on a *kioniskos* under the image of a *menorah* and has been dated from the fourth to the sixth century CE. The inscription reads:⁴⁸

(*menorah*)

ἸΑλεξάν<δ>ρου
σχολαστικοῦ
καὶ προστάτου..



Translation: Of Alexander, *scholasticus* and *prostates*.

⁴¹ L. Robert, ‘Un corpus des inscriptions juives’, *Hellenica* 3 1946, pp. 25-7. The title *principalis* was also used by the leading members of the city council, which led Horbury to exclude *archegos* from the list of Jewish offices: see Horbury, ‘Women in the Synagogue’, p. 394.

⁴² *Inscriptiones*, I, Moes1.

⁴³ Inv. no. H134.

⁴⁴ N. R. M. de Lange, ‘A gold votive medallion in the Jewish Museum, London’, *Zutot* 1 (2001), p. 51-2.

⁴⁵ *Archegos* should be taken as a title here, not an abbreviation. Another possible reading is to understand the genitive form of the title as indicative of possession.

⁴⁶ LSJ, s.v.; E. A. Sophocles, *Greek Lexicon of the Roman and Byzantine periods (from B.C. 146 to A.D. 1100)* (Cambridge, Mass.: Harvard University Press, 1914), p. 257.

⁴⁷ Horbury, ‘Women in the Synagogue’, p. 390, also argues that women office holders in Jewish community were usually benefactors.

⁴⁸ *Inscriptiones*, I, Ach5.

The Greek term *prostates* was common enough in Antiquity, with a range of meanings including 'patron' or 'head' of a professional organisation or community, army officer or 'defender' and prefect of a city.⁴⁹ Likewise, among Christians the title was held by deacons and bishops who were considered 'leaders' or 'protectors' of the people. It was sometimes even conferred upon minor Church officials.⁵⁰ The title is epigraphically attested in Jewish inscriptions from Egypt as early as the second century BCE.⁵¹ It is also found in inscriptions from Rome, Aphrodisias and Naples that have been dated from the third to the sixth century CE.⁵² The modern interpretation of the function of the office of *prostates* within the Jewish community does not differ from views on its non-Jewish usage. According to Jean Juster and Samuel Krauss, followed recently by Greg Horsley, it was either similar to the Roman *patronus*⁵³ or used to designate the 'presiding officer' of a local Jewish council of elders.⁵⁴ In a similar way, it has been suggested that the *prostates* was the appointed legal representative of a Jewish community to the city government.⁵⁵ However, there was no need of such representatives as the task of promoting and advocating Jewish interests to the city authorities and imperial government was usually taken on by influential members of the community or powerful friends and protectors.⁵⁶ Margaret Williams, in her comments on the structure of the Jewish communities in Rome, is convincing in proposing that the *prostates* was the leader of the community and, at least in Rome, the title was used as an alternative to *archisynagogos*.⁵⁷ This could also be the case with this inscription, although we should keep in mind that the office of *prostates* had a variety of meanings and functions, depending on the time and the place it was used by Jews. Alexander was clearly a leading figure in, if not the leader of, the Jewish



⁴⁹ LSJ, s.v; Sophocles, *Greek Lexicon*, p. 949. For the meaning and function of *prostates* in Greek and Roman Antiquity see O. Montevecchi, 'Una donna 'prostatis' del figlio minore in un papiro del II^a, *Aegyptus* 61.1 (1981), pp. 104-6. Cf. G. R. H. Horsley, 'Sophia 'the Second Phoebe', *New Documents Illustrating Early Christianity* 4 (1979), pp. 241-4, no. 122.

⁵⁰ St Basil the Great, *Epistolae*, 214.2 (PG 32, 789C); Photinus *ap.* St Epiphanius of Cyprus, *Panarion*, 72.11 (PG 42, 397A).

⁵¹ Xenephyris, 140-116 BCE and Alexandria in the third century CE. See W. Horbury and D. Noy, *Jewish inscriptions of Graeco-Roman Egypt* (Cambridge: Cambridge University Press, 1992), nos. 18, 24.

⁵² Noy, *Jewish Inscriptions*, I, no. 30; II, nos. 170, 330. *Inscriptiones*, III, no. 14.

⁵³ For example, Plutarch, *Rom.*, 13, Mar. 5. Cf. Philo's usage of the term in *Mutat.* 89; *Praem.* 77.

⁵⁴ Juster, *Juifs*, I, p. 443; Krauss, *Synagogale*, p. 145.

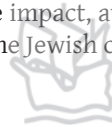
⁵⁵ Frey, *Corpus*, I, p. xciv; H. J. Leon, *The Jews of Ancient Rome*, Second ed. by C. Osiek (Peabody, Mass.: Hendrickson Publishers, 1995), p. 193; van der Horst, *Ancient Jewish Epitaphs*, p. 95.

⁵⁶ E. M. Smallwood, *The Jews under Roman Rule from Pompey to Diocletian* (Brill: Leiden, 1976), pp. 140-1, 242-6. Cf. Williams, 'Roman Jewry', p. 136.

⁵⁷ Williams, 'Roman Jewry', pp. 138-9.

community and a lawyer or *rhetor* in Larissa, as evidenced by his other title, *scholasticus*.⁵⁸

To conclude. The epigraphical evidence and the laws considered above suggest a continuous use of the offices of *presbyter*, *archegos* and their female forms *presbytera* and *archegissa*, and the office of *prostates* within the Jewish communities in the Balkans until the seventh century CE. These titles, like all the other ones mentioned at beginning of this article, were borrowed from Graeco-Roman civic terminology and adapted to Jewish usage with no uniform meaning and function. I think that the use of this terminology actually helped the Roman and Byzantine legislators to regulate the Jewish communities easily. It was the structure of the Jewish community, with its presiding officers and their duties, that was important. Perhaps it would not be too much to suggest that this structure was seen as similar, apart from the Patriarch and the *archipherekites*, to that of late Roman and Byzantine public or religious institutions. In turn, the legislation could have actually influenced the use of Graeco-Roman civic terminology within the Jewish communities in the Balkans, thus helping to preserve their communal structure. For example, in the case of *presbyters* (elders) the Byzantine legislators established them as a privileged group of office holders, whether male or female, who continued to play an important role in the Jewish community until the ninth century CE.⁵⁹ This is despite the frequent legislation that intended to limit the civic and political rights of the Jewish population in the eastern parts of the Empire, including the Balkans.⁶⁰ In view of the evidence presented here, I think it is safe to suggest that the limitation of Jewish civic and political rights in Byzantium did not have a negative impact, at least until the seventh century, on the communal structure of the Jewish communities in the Balkans.



⁵⁸ The term is mainly a self-designation, used by lawyers until the eighth century CE. See A. Claus, *Ho Scholastikos* (Cologne: G. Wasmund, 1965), pp. 20-42. It is attested in a Jewish context also in an inscription from Sepphoris, dated to the fourth or fifth century CE, and from the synagogue of Apamea in an inscription dated to the fourth century CE. See *Inscriptiones*, III, Syr5, Syr60.

⁵⁹ Linder, *Roman*, pp. 408-10. Linder, *Early Middle Ages*, pp. 57-8, 109-10. Cf. A. Linder, 'The Legal Status of Jews in the Byzantine Empire' in *Jews in Byzantium. Dialectics of Minority and Majority Cultures*, ed. by R. Bonfil, O. Irshai, G. G. Stroumsa and R. Talgam (Leiden, London and Boston: Brill, 2012), pp. 162-5.

⁶⁰ The laws of Theodosius II and Honorius from 423 and 428 CE, although confirming the protection of synagogues, prohibited the construction of new ones in populated places and allowed the Church to confiscate newly built synagogues. See Linder *Roman*, pp. 287-9, 323-7, nos. 47, 54. This probably led to the forcible conversion of the synagogues in Philippopolis, Stobi, Constantinople and Apamea in the fifth and sixth century CE. Cf. A. Panayotov, 'The synagogue in the Copper Market of Constantinople: A Note on the Christian attitudes toward Jews in the Fifth Century', *Orientalia Christiana Periodica* 65.2 (2002), pp. 332-4.



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LES COMMUNAUTÉS JUIVES VUES À TRAVERS LA LÉGISLATION ROYALE ET ECCLÉSIASTIQUE VISIGOTHIQUE ET FRANQUE

Bat-SHEVA ALBERT

L'historien qui enquête sur l'histoire des juifs d'Occident au Haut Moyen Âge n'est pas sans évoquer le professeur d'archéologie Anouk Ooma, inventé par Umberto Eco¹, qui, dans sa communication présentée au IV^e Congrès Galactique sur l'histoire de la Terre tenu après l'explosion atomique de 1980, entreprend de restituer le contenu des bibliothèques italiennes détruites à partir de fragments de poèmes de Cesare Pavese, une anthologie de chansons du festival de San Remo de 1952, l'hymne fasciste, une chanson jazz de 1939 qu'il attribue à Pirandello et compare avec un poème de T.S. Eliot, et j'en passe : Eco s'en donne à cœur-joie aux dépens des archéologues et aux nôtres.

Heureusement, nos sources ne sont ni aussi fragmentaires ni aussi comiques.

Je devine toutefois que le terme « communauté » appliqué aux juiveries de l'Espagne visigothique et du monde franc peut faire froncer les sourcils.

On admettra à juste titre que lorsque les sources mentionnent l'existence de synagogues² et d'enseignants³ (ce qui est le cas pour l'Espagne du VIII^e siècle) et que ces conditions indispensables à toute communauté juive sont accompagnées par des témoignages épigraphiques recueillis sur des pierres tombales — de là l'existence de cimetières juifs — on peut parler de communautés. On constate toutefois que la législation franque ne mentionne ni les synagogues ni les enseignants ; après Grégoire de Tours, ce seront les évêques de Lyon, Agobard et Amolon, qui, entre 820 et 851, nous fourniront des informations sur l'existence de synagogues et la présence de rabbins dans leur province⁴.

¹ U. Eco, *Diario minimo*, Milan, 1992.

² En 693, le XVII^e concile de Tolède affirme que des synagogues avaient été détruites : [859], p. 523, in *The Jews in the Legal Sources of the Early Middle Ages*. A. LINDER (éd. et trad.), Detroit-Jérusalem, 1997. Toutes les citations de la législation anti-juive visigothique sont tirées de cet ouvrage, *Infra*: LINDER, *The Jews in the Legal Sources*. En France : GRÉGOIRE DE TOURS, *Decem libri Historiarum*, MGH, *Scriptores Rerum Merovingicarum*, I, I, I, B. KRUSCH et W. LEVISON (éd.), Hanovre, 1951, réimp. 1965 : les synagogues de Clermont (a.576) : *ibid.*, V, 11, p. 205 ; Paris (a.582) : VI, 17, p. 286 ; Orléans (a.585) : VIII, 1, p. 370.

³ *Infra*, p. 9.

⁴ AMOLON DE LYON, *Epistola seu Liber contra Judaeos*, XL, *Patrologia Latina* 116, c.169 D : les chrétiens de Lyon affirmaient que les rabbins juifs prêchaient mieux que les prêtres. Cela implique que ces rabbins prêchaient dans la langue vernaculaire.

La législation visigothique utilise le mot *conventus* ou *conventus Iudaeorum* à plusieurs reprises dans un contexte qui indique clairement qu'il s'agit bien de communautés⁵. Amnon Linder, auquel je me fie toujours, a traduit par "community" et l'on note que *conventus* pourrait être la traduction latine de l'hébreu *kahal* qui désigne la communauté, ou encore ses dirigeants.

Ceci dit, j'aimerais souligner trois différences significatives entre la législation visigothique et la législation franque. En premier lieu, contrairement à ce qu'en pensaient l'Église et la Royauté visigothiques⁶, la présence d'une religion divergente, en l'occurrence le judaïsme, ne représentait pas aux yeux des Francs en général, aussi bien laïcs qu'ecclésiastiques, un danger qui menaçait l'existence même du royaume. Cette première comparaison entraîne deux observations supplémentaires. D'abord, les sources franques littéraires en tous genres, pour ne nommer que Grégoire de Tours, cet admirable concierge, les lettres et ouvrages de « l'école lyonnaise » du milieu du IX^e siècle, les évêques Agobard et Amolon et le diacre Florus de Lyon, ou des hagiographies (on pense par exemple à celle de Césaire d'Arles⁷) nous apprennent davantage sur les juifs que la législation franque.

Ensuite, la législation visigothique l'emporte sur celle des Francs par le volume de la documentation qu'elle met à la disposition de la recherche ; cela d'autant plus que pour les conciles francs, on déplore l'absence de préambules qui en Espagne exposent longuement les motifs et les fins qui animaient les mesures anti-juives prises de concert par la Royauté et l'Église⁸.

⁵ LINDER, *The Jews in the Legal Sources: Lex Visigothorum*, [568] 12;3:26, p. 318 : « Presbyteri, diacones seu cetera religiositas universitas vel iudices universi per diversa loca vel territoria constituti, prout unusquisque conventum Iudaeorum ad se pertinere cognoverit ».

⁶ Pour la royauté visigothique, voir p. ex. le Tomus du XII^e concile de Tolède (681) : LINDER, *The Jews in the Legal Sources*, 857, p. 514-515 : « in nomine Domini Flavii Erwigius rex sanctissimus patribus in hoc sancto synodo residentibusEt ideo quia Dominus in evangelio praecepit dicens; Amen dico vobis: si duo ex vobis consenserint super terram, de omni se quaecumque petierint fiat illis a patre meo qui in caelis est; ob hoc venerabilem paternitatis vestrae coetum cum lacrimarum effusione convenio, ut zelo vestri regiminis purgetur terra a contagio pravitatis ...l.35 : et, quod plus his omnibus est, Iudaeorum pestem quae in novam semper recrudescit insaniam radicitus extirpates; leges quoque quae in eorundem Iudaeorum perfidiam a nostra gloria noviter promulgatae sunt omni examinatio probitate percurrite, et tam eisdem legibus terrorem incon vulsum adicite, quam pro eorundem perfidorum excessibus complevas in unum sententias promulgate. Etenim valde nobiscum cavendum est ne tot antiquorum canonum regulae qua pro eorundem erroribus sunt etiam cum anathemate promulgatae nos illorum culpae obnoxios reddant, si nostri regni temporibus eorundem canonum restrictio dissoluta pertranseat ».

⁷ Pour Césaire d'Arles, voir G. DAHAN, « Saints, démons et juifs », in *Santi e demoni nell'alto medioevo occidentale (Secoli V-IX)*, 7-13 aprile 1988, t. II, *Settimane di studio del Centro italiano di studi sull'alto medioevo* XXXVI, Spolète, 1989, p. 616.

⁸ P. ex. le VI^e concile de Tolède (638) : LINDER, *The Jews in the Legal Sources*, [851], l.14, p. 492 : « Quocirca consonam cum eo corde et ore promulgamus Deo placituram sententiam, simul etiam cum suorum obtinatum inlustrumque virorum consensu ex deliberatione sancimus; ut quisquis succedentium temporum regni sortient apicem non ante ascendat regiam sedem, quam inter reliqua conditionum sacramenta pollicitus fuerit hanc se catholicam non permissurum eos violare fidem; et nullatenus quorum

Finalement, on constate que la législation visigothique est plus « originale » que celle des Francs dans le sens où elle ne se contente pas de répéter des décisions anciennes, comme c'est le cas pour la majorité des canons conciliaires francs parmi lesquels je n'ai relevé que deux décisions originales promulguées par le concile de Mâcon (581-583) : le premier décide de défendre aux marchands juifs de « tenir des conversations secrètes » avec des moniales⁹, tandis que le second reprend un édit perdu du roi Childebert qui interdisait aux juifs de sortir de chez eux du Vendredi Saint jusqu'au premier jour de Pâques¹⁰.

En s'efforçant d'éliminer le judaïsme, religion licite dans le droit romain, les Visigoths catholiques inaugurerent des décisions légales inconnues auparavant.

Le volume et les caractéristiques de la législation visigothique éclairent donc l'attention particulière qu'elle mérite ici.

Il importe encore de soulever le problème fondamental des rapports entre ces deux législations et la réalité vécue. Phénomène fréquent, la réitération de certaines lois ou canons serait-elle une indication que les autorités étaient incapables de les entériner ? Autrement dit, s'agissait-il de mesures qui venaient remédier à un problème d'actualité ou bien l'objectif de ces répétitions de lois et de canons anciens — on pense à toutes les décisions qui concernent les juifs et leurs esclaves chrétiens présents et futurs — était-il de faire preuve d'une attitude de « bon ton chrétien » ? À partir de cette optique, cette législation venait confirmer la fidélité des législateurs à des principes de bon gouvernement chrétien, inspiré par celui des empereurs romains chrétiens autant que par le devoir ecclésiastique qui dictait l'éducation chrétienne des princes et de leurs sujets. On pense également à un effort systématique pour relier des conciles qui revêtaient tout au plus une importance locale aux conciles anciens plus prestigieux des III^e et IV^e siècles dont les décisions étaient rassemblées dans des collections canoniques¹¹.

Ainsi les conciles francs, cependant peu bavards sur les juifs, réitérent-ils six fois ces décisions regardant les juifs et les esclaves chrétiens¹² : on se de-

perfidiae favens vel quolibet neglectu aut cupiditati inlectus tendentibus ad praecipitia infidelitatis, aditum praebeat prevaricationis, sed quod magnopere nostro est tempore conquistum, debeat inlibatum perseverare in futurum ».

⁹ Concile de Mâcon, 2 : LINDER, *The Jews in the Legal Sources*, p. 473.

¹⁰ Concile de Mâcon, 14 : *ibid.*, [823], p. 474. Ce canon reprend probablement le canon 33 (30) du concile d'Orléans III : *ibid.*, [818], p. 471.

¹¹ P. ex. *Breviatio Canonum* de Fulgentius Ferrandus, diacre de Carthage, qui contient 232 canons grecs et africains : LINDER, *The Jews in the Legal Sources*, 105, p. 563-564.

¹² Concile d'Orléans III, 14 (538) : LINDER, *The Jews in the Legal Sources*, [817], p. 470 ; concile d'Orléans IV (541), 30, *ibid.*, [819], p. 472 ; concile de Mâcon (581-583), 16, *ibid.*, p. 475 ; concile de Clichy (626-627), 13, *ibid.*, [825], p.479-480 ; concile de Reims (627-630), 11, *ibid.*, [833], p. 480 ; concile de Chalons (647-653), 9, *ibid.*, [834], p.481.

mande si les juifs de Francie possédaient effectivement un nombre considérable d'esclaves¹³. L'état de la documentation ne permet pas de fournir une réponse satisfaisante à cette question ; toujours est-il que le pape Grégoire le Grand essaya d'interdire la possession d'esclaves chrétiens par les juifs du royaume franc¹⁴. Quant à l'Espagne visigothique, il y régnait un système esclavagiste étendu et sévère¹⁵, et de ce fait les juifs, surtout ceux qui étaient de grands propriétaires terriens¹⁶, possédaient certainement des esclaves¹⁷. Par ailleurs, nous le verrons¹⁸, les juifs exerçaient différents métiers qui, de toute évidence, ne leur permettaient pas l'achat, onéreux d'esclaves ; il n'est pas impossible que les interdictions et châtements auxquels les juifs qui possédaient des esclaves chrétiens étaient soumis reflètent le zèle chrétien des législateurs autant, sinon plus, que la conjoncture.

Ajoutons qu'en Espagne la législation anti-juive fournit elle-même des indices suffisamment clairs pour envisager son efficacité toutefois relative.

Peu après le IIIe concile de Tolède tenu en 589, les juifs avaient vainement essayé de soudoyer le roi Reccared, récemment converti au catholicisme et tenu responsable des décisions conciliaires anti-juives du concile ; en 599, le pape Grégoire le Grand le félicita d'avoir refusé ce pot-de-vin¹⁹. Les juifs poursuivirent leurs efforts, et, en 681, Erwig interdit aux chrétiens laïcs et aux « *religiosi* » (les moines ou tous les ecclésiastiques) d'accepter tout « bienfait » (*beneficium*) offert par les juifs²⁰ « *contra regulas fidei christiane* ». Sans se décourager pour autant, les juifs paraissent avoir recherché des patrons chrétiens²¹ qui, suivant les règles qui régissaient le *patrocinium*, devaient protéger leurs clients. Poursuivis par les lois qui interdisaient l'observance sabbatique et celle des fêtes juives, les juifs s'efforcèrent d'y échapper en se rendant dans



¹³ P. BONNASSIÉ, « Survie et extinction du système esclavagiste dans l'occident du haut Moyen Âge (IVe-XIe siècles) », *Cahiers de Civilisation Médiévale* 28 (1985), p. 307-343 ; il affirme qu'« il n'y a sans doute jamais eu autant d'esclaves en occident qu'au lendemain des invasions germaniques » : *id.*, « Liberté et servitude » in *Dictionnaire raisonné de l'occident médiéval*, J. LE GOFF et J.-C. SCHMITT (éd.), Paris, 1999, p. 598.

¹⁴ Grégoire le Grand, lettre à Candide, recteur du patrimoine de Gaule (597) : LINDER, *The Jews in the Legal Sources*, [714], 7:21, p. 131 ; à la reine Brunehilde, (599), [720] 9:214, p.440 : « [...] omnino prater ammirati sumus, ut in regno vestro Iudaeos christiana mancipia possidere permeatis ».

¹⁵ P.D. KING, *Law and Society in the Visigothic Kingdom*, Cambridge, 1972, p.160-181.

¹⁶ *Infra*, p.13-14.

¹⁷ R. GONZÁLEZ SALINERO, « Los judíos y la gran propiedad en la Hispania tardiantigua: el reflejo de una realidad en la Passio Mantii », *Gerión* 16 (1998), p. 437-450.

¹⁸ *Infra*, p.14.

¹⁹ Lettre de Grégoire le Grand à Reccared : LINDER, *The Jews in the Legal Sources*, [722] 9:220, p. 441.

²⁰ *Lex Vis.*, *ibid.*, [552] 12:3, 10, p. 299-300.

²¹ *Ibid.*, [539] 12:2:15, p. 275-276.

d'autres communautés²². Finalement, ils essayèrent de s'enfuir²³, probablement en Septimanie ou même en Afrique du Nord.

Si les craintes que suscitait le contrôle permanent exercé de concert par les autorités royales et ecclésiastiques ne vinrent pas à bout de la résistance des juifs, elles furent du moins assez efficaces pour convertir une partie de la communauté et pour inciter le reste à comploter en vue de la destruction du royaume, cela s'il faut en croire le roi Egica en 694²⁴.

On sait que les communautés des V^e et VI^e siècles, aussi bien en Espagne que dans la Gaule franque, étaient d'origine romaine. Les juifs y étaient soumis au droit commun mais sujets aux restrictions imposées par l'Empire chrétien à cause de leur religion.

Or, ce sera uniquement en Espagne que la législation restrictive parviendra à l'abolition du droit romain pour réaliser l'exclusion finale du judaïsme.

De quelles communautés s'agit-il ? Pour l'Espagne, la législation fournit seulement deux noms : Tolède²⁵ et Narbonne²⁶.

L'épigraphie vient compléter ces minimes données topographiques. On note toutefois qu'une partie des pierres tombales juives pourrait être antérieure à l'époque visigothique catholique. C'est notamment le cas pour celles de Tarragone (VI^e siècle), Tortosa (IV^e-V^e siècles), Pallaresos (VI^e siècle), Elche (V^e siècle) et Adra (III^e siècles)²⁷. Si cette datation n'assure pas une présence juive plus tardive dans ces lieux, elle indique toutefois son éventuelle existence à l'époque visigothique. Par ailleurs, les stèles funéraires de Narbonne (communauté déjà connue par le concile de Narbonne tenu en 589) et Mérida dateraient de l'époque visigothique plus tardive²⁸. Les juifs de Mérida apparaissent également dans les *Vitae Sanctorum Patrum Emeretensium*²⁹ (VII^e siècle), un ouvrage de style hagiographique qui raconte l'histoire des évêques catholiques de la ville et leurs conflits avec le roi arien Leovigild. La *Vita Mantii*³⁰

²² *Ibid.*, [562] 12:3:20, p. 321-322; [563] 12:3:21, p. 323-324.

²³ *Ibid.*, [528] 12:2:4, p. 262 : « Nullus fugere ad hanc christianam fidem evadendam contendat ».

²⁴ XII^e concile de Tolède (694) : LINDER, *The Jews in the Legal Sources*, [861], p. 530.

²⁵ VI^e concile de Tolède (638) : LINDER, *The Jews in the Legal Sources*, [851], p. 494 : « *confessio vel professio Judaeorum Civitatis Toletanae* » ; *Lex Vis.*, *ibid.*, [541]12:2:7, p. 278.

²⁶ Concile de Narbonne (589), 4, *ibid.*, [827], p. 476 ; 9 [829], p. 477 ; 14 [829], *ibid.*

²⁷ Voir A.M. RABELLO, *The Jews in Visigothic Spain in the Light of the Legislation* (hébr.), Jérusalem, 1983, p. 109-124. En 1936, C.J. Frey, datant ces pierres tombales, place l'une des deux stèles de Tarragone, celles de Tortosa et d'Adra avant l'époque visigothique, mais hésite entre le VI^e siècle et l'époque romaine pour la seconde stèle de Tarragone et celles, respectivement, de Pallaresos et d'Elche ; il attribue par contre deux stèles de Mérida à l'époque visigothique. F. Cantera-Burgos-Millas attribue toutes les pierres tombales à l'époque visigothique : *ibid.*, p. 128.

²⁸ *Ibid.*, p.128.

²⁹ *Vitae Sanctorum Patrum Emeretensium*, J.N. GARVIN (éd. et trad.), Washington D.C., 1946.

³⁰ *Passio Sancti Martiris Mantii* in J.M. FERNÁNDEZ CATON, *Culto, Legenda y Reliquias. Ensayo de critica hagiographica*, Leon, 1983. Sur cette *Passio*, voir l'article de GONZALEZ SALINERO, *supra*, n.17 ; égale-

(VII^e siècle) qui relate le martyre de l'esclave chrétien Mancius par ses maîtres juifs, situe le récit dans la région d'Evora (Lusitanie), d'où la présence juive dans cette province.

On connaît encore la communauté de Minorque par la lettre de l'évêque Severus qui date du V^e siècle³¹.

Il est déplorable que la législation franque ne contienne aucune information topographique. On sait toutefois que Paris excepté, les juifs se regroupent sur et au sud de la Loire (à Orléans, Bourges et dans la vallée du Rhône et ses alentours : Clermont, Chalon, Vienne, Lyon, Marseille, Arles et, plus à l'ouest, Narbonne (franque depuis 759) et Uzès.

Si les sources visigothiques et franques racontent surtout une histoire de relations fréquemment tendues, voire hostiles, entre juifs et chrétiens, elles ne s'intéressent guère à l'organisation des communautés.

La législation visigothique livre uniquement le titre de *doctor iniquitatis*, qui désigne le rabbin ou celui qui enseigne aux enfants la Michna interdite. Cette expression serait une altération péjorative remplaçant le titre de *legis doctor* qui est le titre du rabbin de Minorque au Ve siècle³². Une fois encore, l'épigraphie vient combler les lacunes de la législation ; ainsi des archontes et des *presbyteroi*³³ figurent dans l'inscription de la synagogue d'Elche (IV^e-V^e siècle) tandis qu'une pierre tombale de Tarragone (IV^e siècle) mentionne un rabbin et un *archisynagogus*³⁴. En vérité, ces témoignages anciens ne constituent pas une preuve décisive de l'existence de ces fonctions communautaires aux sixième et septième siècles. Toujours est-il qu'une inscription tardive (VIII^e siècle) découverte à Mérida nous apprend que la pierre tombale fut érigée par « Simeon, fils de Rebbi Jacob, en l'honneur de Rebbi Samuel, le chanteur principal (*super orans*) »³⁵, ce qui permet d'assumer que la synagogue du lieu continuait à fonctionner. Dans ce cas, on devine que des archontes et des *presbyteroi*, jadis signalés à Elche, dirigeaient également les services à Mérida comme dans d'autres synagogues espagnoles, même secrètes³⁶. Par contre, les autres titres honorifiques et fonctions documentés dans le monde hellénistique et romain (p. ex. *pater synagogae*, *hiereus* (la prêtrise héréditaire),

ment B.-S. ALBERT, « Le judaïsme et les juifs dans l'hagiographie et la liturgie visigothiques » in *De Sion exhibit les et verbum domini de Hierusalem. Essays in medieval Law, Liturgy and Literature in Honour of Amnon Linder*, Y. HEN (éd.), Turnhout, 2001, p. 11-41.

³¹ SÉVÈRE DE MINORQUE, *Letter on the Condition of the Jews*, S. BRADBURY (éd. et trad.), Oxford, 1996, p. 30-32. IT MAY NOT BE DISTRIBUTED WITHOUT PERMISSION OF THE PUBLISHER.

³² *Ibid.*, p.30-32.

³³ RABELLO, *The Jews in Visigothic Spain*, p. 117.

³⁴ *Ibid.*, p. 111.

³⁵ RABELLO, *The Jews in Visigothic Spain*, p. 120.

³⁶ Pour les synagogues à l'époque visigothique, voir *supra*, p. 1, n. 2. Après la destruction des synagogues, le culte juif pouvait être célébré sans problème dans des endroits secrets.

ou *mater synagogae*) font complètement défaut en Espagne comme dans l'espace franc.

L'organisation des juifs qui habitaient les domaines pontificaux sous le pape Grégoire le Grand (590-601) est mieux documentée, et, faute de mieux, pourrait éclairer celle des communautés espagnoles et franques. Ainsi les juifs de Terracine et de Naples envoyèrent-ils des délégations au pape pour le prier de redresser les torts qu'ils avaient subis³⁷ ; une délégation de juifs napolitains est menée par « le Juif Basile » entouré par « d'autres juifs »³⁸. Se dessine également une coopération inter-communautaire car les juifs de Rome avaient présenté au pape une pétition de la part de leurs co-religionnaires palermitains³⁹.

De même en Francie, on connaît la communauté des juifs orléanais qui avaient demandé au roi Gontran de défrayer la reconstruction de leur synagogue en 585⁴⁰.

Comme en Italie, on entrevoit l'existence d'une coopération entre les communautés du monde franc ; en 840, l'archidiacre Florus de Lyon, l'assistant d'Agobard, écrit à Louis le Pieux que les juifs de Lyon, craignant le succès des conversions, avaient secrètement conduit leurs enfants à Arles, et ceux de Vienne et de Chalon avaient fait de même⁴¹.

Apparemment, ces rapports entre les communautés existaient également en Espagne.

Harcelés par les interdictions de pratiquer leurs préceptes, les juifs s'efforcèrent de persévérer dans l'observation du Chabbat et des fêtes juives en se rendant dans d'autres communautés ; ces réfugiés étaient sans doute accueillis par les communautés locales⁴². Pour endiguer ces migrations temporaires ou définitives, Erwig somma les juifs réfugiés de se présenter aux autorités ecclésiastiques de leur nouveau lieu de séjour, d'y passer le Chabbat et les fêtes juives en compagnie de chrétiens, de prendre leurs repas avec eux et de se rendre à l'église pour y être instruits⁴³.

³⁷ Lettre de Grégoire le Grand (591) : LINDER, *The Jews in the Legal Sources*, [702], 1:34, p. 417 ; [706] 2:6, p. 412-422.

³⁸ Lettre de Grégoire le Grand (599), *ibid.*, [718] 9:105, p. 436.

³⁹ Lettre de Grégoire le Grand (598), *ibid.*, [716] 8:25, p. 433.

⁴⁰ *Infra*, p. 20.

⁴¹ FLORUS DE LYON, *Epistola 19*, MGH, *Epistolae Karolini Aevi*, III, 1898-1899, réimp. Munich, 1978, p. 230.

⁴² Cet accueil permet également de deviner qu'une partie au moins des autorités fermait les yeux aussi bien sur la présence insolite de ces réfugiés que sur les observances interdites pratiquées par les juifs du lieu. En 654 qui plus est, Recceswinth promulgua une loi, reprise par Erwig en 681, qui défendit aux juifs de se cacher ou de cacher leurs coreligionnaires : LINDER, *The Jews in the Legal Sources: Lex Vis.*, [528] 12:3:4, p. 262 : « Nullus inventum latentem publicare retardet [...] Nullus ut hanc (sc. Christianam fidem) quibuscumque latibulis sese occultandum iniciat ».

⁴³ *Ibid.*, [562] 12:3:20, p. 321-322 : « Si quis Iudeorum de alia civitate vel provincia [...] quolibet loco successent, episcopo vel sacerdoti sive iudici loci ipsius se ilico presentare debebit; nec a sacerdote illo

Si leur déplacement s'avérait urgent, les juifs se présenteraient devant les évêques des lieux de passage pour leur faire signer des formulaires attestant leur séjour. Méfiant ou incapable d'exercer un contrôle efficace, Erwig finit par leur interdire de quitter leur lieu de résidence premier ; ils y seront soumis aux règles précédentes pour le Chabbat et les jours de fête ⁴⁴.

Les lois visigothiques font état de la présence d'enseignants juifs⁴⁵ ; avec la prudence qui s'impose, elles font entrevoir une organisation communautaire.

Dans le domaine judiciaire, les juifs de l'époque arienne jouissaient de l'autonomie que la *Lex Romana Visigothorum* (autrement dit le *Breviarum* d'Alaric, datant de 506) avait fixée dans les limites définies par le Code Théodosien⁴⁶ ; du fait que la juridiction pénale ne pouvait s'exercer qu'en matière religieuse, (l'exception étant que les juifs ne pouvaient pas appliquer la peine de mort), on imagine que les communautés avaient dû établir des tribunaux rabbiniques.

Or la législation de Recceswinth (654) et celle d'Erwig, la *Lex Visigothorum* (680), viendra renverser ces dispositions, parce que la conversion forcée des juifs abolissait d'office la juridiction religieuse autonome.

Le paradoxe fut le suivant : le célèbre *Placitum* de Tolède (637), réitéré en 681, par lequel les rois Recceswinth et Erwig imposèrent aux convertis de s'engager par serment à abjurer le judaïsme et ses observances, leur ordonna de mettre à mort par la peine du bûcher ou par lapidation les convertis qui auraient enfreint ces serments⁴⁷. Du point de vue strictement théologique et juridique, les convertis assermentés par le *Placitum* étaient des chrétiens, et comme tels, étaient soumis à la juridiction royale. Le *Placitum* inaugura donc une « communauté de convertis », obligée d'infliger la peine de mort aux apostats, alors qu'auparavant ce châtement avait été exclu de l'autonomie judiciaire juive. Il est impossible de savoir si la cruauté instaura cette mesure, ou si le pouvoir reconnut son impuissance à sévir face à la résistance des convertis. De toute manière, cette loi indique que l'intégration des convertis dans la

tamdiu est recessurus, quamdiu sabbata ritusque ceteros atque festivitates que illis e vicino possunt occurrere, incontaminati videantur sacerdotali testimonio transgressisse nec, dum variis huc illucque per loca cursibus promoventur, erroris sui repperiant in quocumque latibulum. In ipsis tamen diebus, in quibus eos quolibet loco remorari contigerit, conversationem cum christianis probatissimis habituri sunt, qualiter cum illis et cibos sumere et participationem communionis christiane videantur habere. Concursum tamen in ipsis diebus, quos ritus sui more uti soliti sunt, ad ecclesiam ad episcopos vel sacerdotes habebunt, qualiter instruantur». La loi suivante complète ces mesures en les étendant à toutes les communautés juives et spécifie que femmes et filles juives y seront également soumises :

LINDER, *The Jews in the Legal Sources: Lex Vis.*, [563] 12:3:21, p. 323-324.

⁴⁴ *Ibid.*, [563] 12:3:21, p. 323-324.

⁴⁵ *Supra*, p. 9 et *infra*, p.18.

⁴⁶ J. JUSTER, *La condition légale des juifs sous les rois visigoths. Extrait des Études juridiques offertes à Paul Girard*, Paris, 1912, p. 54, n. 4.

⁴⁷ LINDER, *The Jews in the Legal Sources: Lex Vis.*, [570] 12:3:28, p. 330-331.

communauté chrétienne était considérée soit comme irréalisable, soit comme indésirable, ou les deux à la fois.

Le bûcher était une peine rare que la *Lex Visigothorum* réservait à deux crimes : il punissait l'esclave qui avait violé une femme libre ainsi que l'incendiaire⁴⁸. Par contre, la lapidation, d'origine biblique, est un châtement que la *Lex Visigothorum* inflige uniquement au converti apostat. On note que dans l'empire byzantin, les juifs furent accusés de lapider ceux des leurs qui s'étaient convertis⁴⁹. Comme le Code Justinien était inconnu en Espagne, on peut douter que le précédent byzantin ait été à l'origine de la loi visigothique.

Le *Placitum* ne précise pas comment les convertis étaient censés exécuter cette sentence. La réitération de ce serment en 681 laisse toutefois supposer que cette punition ne fut pas appliquée ; il s'agissait peut-être d'une menace destinée à effrayer les réfractaires.

Reste que le législateur visigothique escomptait que les juifs disposent d'une organisation capable d'exécuter les coupables car la lapidation requérait la participation publique et exigeait que l'on rassemblât des pierres ; il en était de même pour la peine du bûcher — mais nous n'entrons pas dans les détails.

Le statut social des Juifs

La législation présente des juifs propriétaires fonciers de tout accabit, grands et petits⁵⁰. On rencontre encore des marchands qui pratiquaient le commerce international ; Erwig leur interdit l'accès à l'embarcadère (*cataplus*)⁵¹, sans doute pour les empêcher d'entrer en contact avec des étrangers ou de s'enfuir⁵².

La communauté comptait des agriculteurs et des tisserands auxquels il était défendu de travailler le dimanche⁵³, et des domestiques juifs, les *famuli*, (à distinguer des esclaves désignés par *servus*, *mancipium* et *ancilla*) que leurs

⁴⁸ KING, *Law and Society*, p. 90, n.7.

⁴⁹ *Collectio tripartita*, la première collection de la loi civile concernant les affaires ecclésiastiques terminée peu après la mort de Justinien (565) : LINDER, *The Jews in the Legal Sources*, 40 [5], p. 46.

⁵⁰ Voir GONZÁLEZ SALINERO, n.17 : le XVII^e concile de Tolède (694) 8, confisqua les petites fermes (*resculae*) appartenant aux juifs au profit du fisc : LINDER, *The Jews in the Legal Sources*, *Lex Vis.*, [862], p. 536.

⁵¹ *Ibid.*, *Lex Vis.*, [542] 12:2:18, p. 281.

⁵² *Ibid.*, *Lex Vis.*, [551] 12:3: 9, l.5, p. 299 : « *Nec non quisquis (sc.ludeus) disciplinam fidei christiane refugiens aut in terram nostri regiminis se occultandum iniecerit, aut in aliis partibus ses latitandum transduxerit [...]* ».

⁵³ *Ibid.*, *Lex Vis.*, [548] 12:3:6, p. 294.

maîtres juifs s'efforçaient de soustraire au baptême, comme ils le faisaient pour leurs propres enfants⁵⁴.

Je ne m'attarderai pas ici sur le problème déjà longuement débattu des esclaves juifs, chrétiens convertis ou juifs de naissance ; il importe néanmoins de noter que les interdictions concernant la possession d'esclaves chrétiens ou leur conversion au judaïsme, ancrées dans une législation séculaire et souvent renouvelée, signalent qu'une partie des juifs ibériques étaient fortunés⁵⁵. En effet, malgré le nombre élevé des esclaves dans l'Espagne visigothique (*coloni* déchus, esclaves de naissance, prisonniers de guerre, enfants trouvés, condamnés pour dettes et pour d'autres méfaits⁵⁶), leur acquisition était onéreuse : les prix allaient de vingt *solidi* en moyenne jusqu'à cent *solidi* pour un esclave éduqué, un *servus idoneus*⁵⁷.

Rappelons que les juifs recherchaient le *patrocinium* octroyé par des chrétiens puissants, ou du moins s'efforçaient de faire partie de leurs fidèles (*obsequientes*) pour pouvoir se soustraire à la juridiction ecclésiastique. Vu les circonstances, la loi qui interdit aux juifs d'octroyer leur *patrocinium* aux chrétiens⁵⁸ a de quoi étonner car le *patrocinium* était concédé par les puissants, les *potentiores*, qui partageaient des terres et des armes avec leurs clients. Ceux-ci, des hommes libres, *buccellarii* et *saiones* (ces derniers ne pouvaient jamais conserver leurs armes quand ils quittaient leur patron) alimentaient des bandes armées au service des « puissants » en retour de la protection qu'ils en recevaient ; on ignore si les patrons juifs qui appartenaient à cette classe riche et privilégiée disposaient eux aussi d'armées privées ou jouissaient d'autres services fournis par leur clientèle.

Aussi tard qu'en 680, la fonction interdite aux juifs de régisseurs administrant des propriétés laïques et ecclésiastiques, épiscopales, pastorales et mêmes monastiques⁵⁹, — alors qu'une loi d'Erwig interdisait formellement aux laïcs d'employer des juifs dans des fonctions qui leur permettaient d'exercer une quelconque autorité sur les chrétiens⁶⁰ — n'est pas moins surprenante. Près de cent ans plus tôt, le IIIe concile de Tolède de 589 avait défendu aux

⁵⁴ *Ibid.*, *Lex Vis.*, [546] 12:3:3, p. 292-293: « *Ne Iudei aut se aut filios vel famulos a baptismi gratia subtrahant* ».

⁵⁵ GONZÁLEZ SALINERO remarque judicieusement que l'interdiction de posséder des esclaves chrétiens causait des difficultés très sérieuses aux grands propriétaires terriens juifs car les grands domaines étaient exploités à l'aide d'esclaves : « *Los judios et la gran propiedad* », p. 443.

⁵⁶ KING, *Law and Society* p. 160-175.

⁵⁷ KING, *ibid.*, p.175 ; il en était de même en France où le *Pactus Salicae* fixe le même tarif de composition pour le *servus* ou l'*ancilla* que pour le cheval, soit trente-cinq sous ; mais le tarif pour un esclave éduqué est de soixante-dix sous dans le *Pactus Salicae* et de soixante sous dans la *Lex Salicae* : P. BONNASSIÉ, « *Survie et extinction du régime esclavagiste* », p. 317 et *ibid.*, n. 63.

⁵⁸ LINDER, *The Jews in the Legal Sources: Lex Vis.*, [538] 12:2:14, p. 271-272.

⁵⁹ *Ibid.*, [561], 12:3:19, p. 320.

⁶⁰ LINDER, *The Jews in the Legal Sources: Lex Vis.*, [559] 12:3:17, p. 318-319.

juifs d'accéder à toutes les fonctions publiques qui leur offraient l'opportunité de punir des chrétiens⁶¹; le IVe concile, tenu en 633 sous la présidence d'Isidore de Séville, avait même étendu cette interdiction aux descendants baptisés des juifs⁶².

Les punitions infligées aux employeurs chrétiens étaient pénibles ; ils étaient passibles d'une amende de cinq livres d'or payées par les *viliores persone* ou de dix livres d'or défrayées par les nobles ; quant aux patrons des régisseurs juifs, ils risquaient la confiscation de la propriété administrée par leur régisseur juif. Rien n'y fit, il s'avère que ces lois n'étaient pas observées. Du reste, la présence de ces employés et régisseurs juifs constitue un témoignage qui, comme celle des patrons juifs, désignerait le statut privilégié d'une certaine classe de juifs, riches et probablement cultivés et leurs rapports soutenus avec l'élite aristocratique et ecclésiastique en dépit des interdictions. Mieux encore, Erwig lui-même n'hésita pas à engager des juifs à son service « pour l'utilité publique »⁶³. Cette dérogation si flagrante aux canons conciliaires et aux lois inspirées par le Code Théodosien, que les rois et l'église visigothiques avaient rendu plus sévères par l'exclusion des convertis à cause de leur origine juive, soulève plusieurs questions. Quelles étaient les charges et fonctions publiques qui appelaient ces nominations d'exception ? On pense d'office à des fonctionnaires chargés d'entériner la législation anti-juive, ou encore à ceux de descendance juive, qui, à l'exemple de l'évêque Julien de Tolède (642-696)⁶⁴, métropolitain du royaume, rendaient d'importants services à la royauté ; on envisage encore que le roi introduisit cette loi pour renforcer la position de Julien, son fidèle allié, dont l'ascendance juive risquait de faire marcher les langues ou de soulever des objections.

La culture juive des communautés espagnoles est peu documentée par la législation, mais on dispose néanmoins de quelques pistes dont on déplore l'absence dans la législation franque, bien que Grégoire de Tours et plus tard Agobard de Lyon et son successeur Amolon suppléent quelques informations

⁶¹ *Ibid.*, IIIe concile de Tolède, 14 [839], p. 484.

⁶² *Ibid.*, IVe concile de Tolède, 65 [848], p. 490-491 : « *Ut iudaei aut hi qui ex iudaeis sunt officia publica nullatenus adpetant, qui sub hac occasione christianis iniuriam faciunt* ».

⁶³ LINDER, *The Jews in the Legal Sources: Lex Vis.*, [559] 12:3:17, p. 318 : « *Nullus Iudaeus a primo anno regni, [...] ullam administrandi, imperandi, distringendi, coercendi vel plectendi curam vel potestatem super christianos exerceat, excepto si princeps aliqua utilitatis publice id fieri permiserit causa [...]* ».

⁶⁴ Pour Julien de Tolède, voir A.P. BRONISCH, *Die Judengesetzgebung im katholischen Westgotenreich von Toledo, Hannover*, 2005, p. 102-104 et bibliographie *ibid.* ; W. DREWS, *Juden und Judentum bei Isidor von Sevilla. Studien zum Traktat De fide catholica contra Iudaeos*, Berlin, 2001, p. 220.

à ce sujet⁶⁵. On signale une loi d'Erwig⁶⁶ qui défend aux juifs d'insulter la religion chrétienne et « de prendre la défense de leur secte ». Les juifs s'enhardissaient-ils à tenir des discussions avec les chrétiens ? Deux lois supplémentaires pourraient fournir quelques éclaircissements. La première interdit aux juifs de lire des livres ou de recevoir des doctrines « qui médisent de la foi du Christ » et de cacher ces ouvrages au foyer, de les conserver et de les étudier, *studiis meditando*, sous peine de décalvation publique et d'administration de cent coups de fouet. Le juif qui se sera rendu coupable de ces infractions après la publication du *Placitum*, un converti, donc, subira de surcroît la confiscation de ses biens et l'exil perpétuel. Interdiction fut faite au *doctor iniquitatis*, c'est-à-dire le rabbin ou l'enseignant, d'enseigner cet ouvrage aux enfants âgés de plus de dix ans. Le *Placitum* de 637 qualifie ces ouvrages de « Deutéras » et les savants (à l'exception de Jean Juster qui traduit ce terme par « Talmud »⁶⁷) considèrent qu'il s'agit de la Michna⁶⁸. L'âge de dix ans est en effet celui que le chapitre *PIRKÉ AVOT* de la Michna avait fixé pour cet enseignement, d'où l'on déduit que non seulement les juifs espagnols observaient les instructions michnaïques, mais encore que le pouvoir était parfaitement informé des coutumes juives.

Par le *Placitum* de 637 les convertis s'engageaient également à remettre les *apocryphae* aux autorités ecclésiastiques. De toute évidence, il ne s'agit pas des apocryphes intégrés dans la Vulgate, les Livres des Maccabés, la Sagesse de Salomon, Tobit, Judith et Baruch ainsi que l'histoire de Suzanne retenue par le treizième chapitre de Daniel dans la Vulgate tandis que l'original juif ne compte que douze chapitres ; ces livres qui ne figuraient pas dans le canon biblique juif ne pouvaient pas soulever les objections des chrétiens. Cela dit, on regrette que le texte ne permette pas de discerner entre les apocryphes proprement dits et les *pseudo-epigrapha*, soit environ une vingtaine d'ouvrages exclus à la fois par le canon rabbinique juif et par la Septante, à savoir *Les*

⁶⁵ GRÉGOIRE DE TOURS, *Decem libri historiarum*, VI, 5a, p. 268-272 : voir la discussion théologique appuyée par des citations bibliques entre le juif Priscus et le roi Chilpéric assisté par Grégoire de Tours. Pour Agobard et Amolon, B-S. ALBERT, « Adversus Judaeos in the Carolingian Empire » in O. LIMOR et G.G. STROUMSA (éd.), *Ancient and medieval Polemics between Christians and Jews*, Tübingen, 1996, p. 119-142 ; J. HEIL, « Agobard, das Kirchengut und die Juden von Lyon », *Francia* 25, 1 (1998), p. 39-71.

⁶⁶ LINDER, *The Jews in the Legal Sources: Lex Vis.*, [551] 12:3:9, p. 299 : « *si quis Iudeorum etiam christianam fidem verbis subvertere aut secte suae nisus fuerit vanitatem* » ; également [528] 12:2:4, l.10, p. 262 : « *Nullus prorsus perfidia et christiane religioni obviam sectam corde teneat verbis promat [...]* ».

⁶⁷ JUSTER, *La condition légale*, p. 32.

⁶⁸ Remarquons que l'enseignement de la Michna exigeait la connaissance approfondie de l'hébreu ; pour une discussion sur l'emploi de l'hébreu, le grec et le latin dans les inscriptions juives de l'Espagne visigothique : B-S. ALBERT, « The Research on the Jewish Communities of the Early Medieval World », in J.R. Hacker et Y. Harel (éd.), *The Scepter shall nor depart from Judah: Leadership, Rabbinate and Community in Jewish History. Studies Presented to Professor Simon Schwarzfuchs*, Jérusalem, 2011, p. 27-28.

Testaments des Fils de Jacob, Les Antiquités de la Bible attribué à Philon d'Alexandrie, *Enoch* ou encore *Le Livre d'Adam et Ève*.

Malgré l'exclusion des apocryphes par le canon biblique, les juifs continuaient à lire ces ouvrages mal vus qu'ils appelaient « Les Livres Extérieurs » et d'autres apocryphes tels que *le Livre des Jubilés*. L'auteur du *Le Livre de Josippon*, résumé juif d'une partie de l'œuvre de Flavius Josèphe rédigé en Italie au dixième siècle, emprunta des passages à la Sagesse de Salomon, les Livres des Maccabés et Esdras II, et son livre n'en jouit pas moins d'une grande popularité⁶⁹ ; aussi tard qu'au XIII^e siècle, Nachmanide (Moïse ben Nachman), le célèbre rabbin de Gérone et exégète biblique, lisait la Sagesse de Salomon et Suzanne. Cela revient à dire qu'il est plausible que les juifs de l'Espagne visigothique étudiaient ces apocryphes et d'autres, voire encore des *pseudo-epigrapha* récusés par les canons bibliques juifs et chrétiens⁷⁰.

Une hypothèse différente veut que cette législation fasse allusion à des ouvrages de caractère apocalyptique. Dans le *De Comprobatione Sextae Aetatis* que Julien de Tolède écrit en 686⁷¹, soit six ans après la loi d'Erwig promulguée dans la *Lex Visigothorum* en 680, l'auteur se réfère à des discussions tenues entre juifs et chrétiens concernant la date de l'arrivée du Messie. Si les juifs attendaient la venue du Messie six mille ans après la Création, pour les chrétiens, qui interprétaient les mêmes versets 24-27 du chapitre 9 de Daniel, le Christ est le Messie attendu après cinq mille ans et est venu au sixième millénaire. Le *De Comprobatione* fut rédigé en hâte pour répondre aux espérances messianiques juives réveillées par les défaites byzantines face aux Perses suivies par l'avancée irrésistible des musulmans. Cette attente messianique reposait sans doute sur des exégèses bibliques midrachiques intégrées dans le Talmud. Or, au VII^e siècle, le Talmud n'était pas encore parvenu en Europe ; la recherche admet tout au plus l'hypothèse selon laquelle des extraits atteignirent l'Occident petit à petit. Dès lors, ce seraient des collections — aujourd'hui disparues — qui auraient regroupé ces *midrachim* messianiques datant des deuxième et troisième siècles, qui alimentèrent, semble-il, l'argumentation des juifs espagnols concernant la date de la venue du Messie⁷².

Ces collections sont-elles « les livres qui disent du mal de la foi chrétienne » ? Ce n'est pas exclu, mais d'autres ouvrages répondent à cette définition, notamment le *Sefer toledot Yechou* (*L'Histoire de Jésus*), une biographie

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⁶⁹ *The Josippon [Josephus Gorionides]*, (héb.) vol. I, éd. D. FLUSSER, Jérusalem, 1981, pp. 132-133.

⁷⁰ Étant donné que le judaïsme ne disposait pas d'une organisation hiérarchique comme les églises catholique et orthodoxe, la défense de lire des livres extra-canoniques n'y était pas strictement observée.

⁷¹ JULIEN DE TOLÈDE, *De Comprobatione Sextae Aetatis*, CCSL 115, éd. J.N. HILLGARTH, Turnhout, 1976.

⁷² Voir B-S. ALBERT, « *De Comprobatione sextae Aetatis* of Julian of Toledo (642-690). An original Use of Biblical Exegesis in Late Visigothic Spain ». À paraître.

satirique ancienne et offensante du Christ, présente à Lyon au IX^e siècle et connue d'Agobard⁷³.

Il faut encore considérer l'influence des recueils de prières et des poèmes liturgiques, les *piyutim*, qui véhiculaient des expressions hostiles contre la religion chrétienne et des messages de délivrance messianique. Amnon Linder a montré comment les juifs d'Orléans citèrent la prière anti-chrétienne *Alénou* pour se moquer du roi Gontran en psalmodiant des louanges lors de la visite de ce dernier à la ville en 585⁷⁴.

On envisage aisément que cette prière célèbre et promise à un difficile avenir puisqu'elle sera interdite par l'Inquisition, était également connue dans l'Espagne du septième siècle. Signalons encore le poète liturgique *yeni* (ou *yanai*), qui dans la Palestine du cinquième siècle, énonça son hostilité manifeste à l'égard de la personne de Jésus⁷⁵. D'autres poèmes liturgiques retrouvés dans la célèbre *Gueniza* du Caire et récités chaque Chabbat avant la répétition de la *Kedoucha* (La Sanctification du Nom Divin) traduisaient la ténacité des espoirs messianiques juifs. Dans son poème eschatologique « *otot hayom* » (« *Les Signes de ce Jour* »⁷⁶, antérieur ou datant du VII^e siècle) pour *yom kippour*, (Le Jour du Grand Pardon), le poète Elazar Hakalir, ne cache pas sa malveillance envers le christianisme et ses croyants qu'il qualifie de « ceux qui adhèrent au [Dieu] mort plutôt qu'au [Dieu] vivant ».

L'absence quasi-totale de témoignages empêche toute certitude concernant la présence de ces oeuvres liturgiques en Espagne ou en Francie au septième siècle. Il est toutefois permis de suggérer avec précaution que des sentiments anti-chrétiens et des espoirs messianiques régnaient au sein du judaïsme en Espagne, et peut-être dans l'espace franc. Cela, parce qu'Isidore de Séville (ca. 560-636) et après lui Julien de Tolède rapportent le refus de la conversion et la persistance des espérances messianiques chez la communauté

⁷³ H. SCHRECKENBERG, *Die christlichen Adversus Judaeos-Texte und ihr literarisches und historisches Umfeld (11-11.Jh.)*, Francfort/Main, 1982, 3e éd. 1995, p. 483-484. Ajoutons qu'un certain nombre de satires semblables qui jouissaient d'une grande diffusion circulaient parmi les juifs, mais étaient critiquées par des rabbins. Voir également B-S. ALBERT, « *Adversus Judaeos in the Carolingian Empire* », p. 137-138.

⁷⁴ A. LINDER, « The Jews too were not Absent...Carrying Moses' Law on their Shoulders: The Ritual Encounter of Pope and Jews from the Middle Ages to Modern Times », *The Jewish Quarterly Review* 99, 3 (2009), p. 323-395 ; GRÉGOIRE DE TOURS, *Decem Historiarum*, 1, VIII, 1, p. 370-373.

⁷⁵ YÉNI (YANAÏ), « HaOMERIM LeKILAI CHO'A » et « HaTOMEHIM MaMZÉR LeLIL ("ceux qui tiennent (les mains) d'un bâtard et le prennent pour une idole") in *Jesus through Jewish Eyes*, (héb.), A. SHINEAN (éd.), 1999, p. 47-50.

⁷⁶ J.C. REEVES, *Trajectories in Near Eastern Apocalyptic. A Post Rabbinic Jewish Reader*, Atlanta, 2005, p. 49. Pour le poète liturgique YOSI BE'N YOSI (Ve siècle), voir W. HARBURY, « Suffering and Messianism in Yose ben Yosi » in *idem, Messianism among Jews and Christians. Twelve Historical Studies*, Londres-New York, 2003, p. 283-329.

juive⁷⁷, espoirs qui furent aiguisés par les persécutions et ravivés par les conquêtes musulmanes.

En conclusion, si l'examen des sources juridiques de l'histoire sociale et culturelle des juifs de l'Espagne visigothique et des territoires francs au Haut Moyen Âge n'a permis d'esquisser ici qu'une image incertaine de ces communautés, j'ose cependant espérer avoir fait un peu mieux que le professeur Ooma issu de l'imagination débordante d'Umberto Eco.



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⁷⁷ ISIDORE DE SÉVILLE, *De Fide Catholica contra Judaeos ad Forentinam sororem suam*, I, 18,4, PL 83, 477 : « *Cuius populus duritia sic non mutatur quomodo nec Aethiopsis aut pardi varietas (Jer. 43:22)* » ; *ibid.*, II, 11, 505 : « *Quod si de Antichrito hanc prophetiam infidelis intelligat, mendacium est procul dibio. Illum enim non gentes desiderant, sed soli Iudaei expectant.* »



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THE LEGAL ERADICATION OF THE JEWISH LITERARY LEGACY IN VISIGOTHIC SPAIN*

Raúl GONZÁLEZ SALINERO

Abstract

During the Visigothic Kingdom, there is indirect but reliable evidence for the existence of Jewish scriptural books (*codices*) and of a Spanish-Jewish extra-Biblical literature. We do not know whether these books were written and read in Latin or Hebrew. The limited Jewish epigraphy preserved from this period allows us to suppose that the regular language used by the Spanish Jews was Latin, but the private and clandestine liturgy might have preserved some Hebrew ritualized words. The Christian authorities set out to eradicate this written cultural legacy by means of anti-Jewish regulations and legal documents (*professiones fidei* or *placita*) which forbade Jews and converted Jews to use and transmit this kind of godless literature 'in which it is argued wickedly against the Christian faith'.

No texts written by Jews in the Visigothic Kingdom, other than a few epigraphical inscriptions,¹ have survived to this day.² It is, however, possible to deduce the existence of Jewish literature which circulated freely among Spanish Jewish communities until its prohibition, thanks to indirect references found in some Christian sources. The first reference to Jewish literature, both canonical and apocryphal, appears in the *placitum* which was written by Christians and which the representatives of the Toledan Jewish (or

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¹ See A. Ferrua, 'Inscripciones griegas y judías', in *Inscripciones cristianas de la España romana y visigoda*, ed. J. Vives (Barcelona: CSIC, 1969²), 141-45; D. Noy, *Jewish Inscriptions of Western Europe, I. Italy (excluding the City of Rome), Spain and Gaul* (Cambridge: Cambridge University Press, 1993), esp. pp. 247-62 and 278-81; J. L. Ramírez Sádaba and P. Mateos Cruz, *Catálogo de las inscripciones cristianas de Mérida*, Col: *Cuadernos Emeritenses*, 16 (Mérida: Museo Nacional de Arte Romano, 2000), pp. 243-48.

² Cf. S. W. Baron, *A Social and Religious History of the Jews, III. High Middle Ages, 500-1200: Heirs of Rome and Persia* (New York: Columbia University Press, 1957²), p. 246, n. 45 (= Spanish translation by E. Goligorsky, Buenos Aires: Paidós 1968, p. 247, n. 45): 'Jewry under the Visigoths apparently produced no literature of its own, although its general level of culture must have been sufficiently high to account for its apparent attraction to Christian converts'.

Jews in Early Christian Law: Byzantium and the Latin West, 6th-11th centuries

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converted Jewish) community were forced to sign by order of king Chintila on December first, 637.³ Here is the passage which interests us:

[...] We undertake to present to your inspection all the Scriptures that are customarily held by our nation in the synagogues for the sake of the doctrine, those which are authoritative as well as those they call *Deuterai*; and those they name *Apocrypha*, in order that not even a vestige of malodorous suspicion shall remain with us [...].⁴

The text clearly mentions all (*omnes*) Jewish texts, both those which were canonical as well as those which were called *deuterai*, as well as all those which were called apocryphal. The term *deuterosis* referring to Judaism is used very loosely in patristic literature. Jerome, the author who was closest to the Jewish intellectual world without coming from Judaism, often uses it when referring to rabbinic doctrine and exegesis.⁵ Justinian's *Novella* 146 (553 CE) offers the closest precedent to our text. With this law, the Byzantine emperor attempted to regulate readings of the Bible in synagogues, forbidding rabbinic teachings and exegesis (*deuterosis*).⁶ According to some authors, this term contains a hidden, implicit reference to the Mishnah.⁷ Even though we lack sufficient

³ On this *placitum*, see R. González Salinero, *Las conversiones forzadas de los judíos en el reino visigodo* (Roma: CSIC, 2000), pp. 59-63.

⁴ *Confessio vel professio Iudaeorum ciuitatis Toletanae: [...] Sed et Scripturas omnes, quascumque usus gentis nostrae in Synagogis, causa doctrinae, habuit, tam auctoritatem habentes, quam etiam eas quas δευτέρας appellat, sive quas apocryphas nominant, omnes conspectui vestro praesentare pollicemur ut nullum apud nos suspicionis sinistrae vestigium relinquatur [...]*, ed. by F. Fita y Colomé, *Suplementos al Concilio Nacional Toledano VI* (Madrid: Pérez Dubrull, 1881), p. 47 (repr. in R. de Ureña y Smejaud, *La legislación gótico-hispana. Estudio crítico* (Madrid: Idamor Moreno, 1905), pp. 573-4). English translation by A. Linder, *The Jews in the Legal Sources of the Early Middle Ages* (Detroit/Jerusalem: Wayne State University Press/The Israel Academy of Sciences and Humanities, 1997), p. 499.

⁵ See R. González Salinero, *Biblia y polémica antijudía en Jerónimo* (Madrid: CSIC, 2003), pp. 95ff.

⁶ On this subject, see V. Colorni, 'L'uso del greco nella liturgia del giudaismo ellenistico e la *Novella* 146 di Giustiniano', *Annali di Storia del Diritto*, 18 (1964), 19-80; K. Treu, 'Die Bedeutung des Griechischen für die Juden im römischen Reich', *Kairoi*, 15 (1973), 123-44; A. Linder, *The Jews in the Roman Imperial Legislation* (Michigan/Jerusalem: Wayne State University Press/The Israel Academy of Sciences and Humanities, 1987), pp. 402-411 (with Greek text and translation); A. M. Rabello, *Giustiniano, ebrei e samaritani alla luce delle fonti storico-letterarie, ecclesiastiche e giuridiche*, (Milan: Giuffrè, 1987-1988), II, pp. 814-828; G. Veltri, 'Die Novelle 146 *peri Hebraiōn*. Das Verbot des Targumvortrags in Justinian Politik', in *Die Septuaginta zwischen Judentum und Christentum*, ed. by M. Hengel and A. M.^a Schwemer (J. C. B. Mohr, Tübingen, 1994), pp. 92-115; N. de Lange, 'The Hebrew Language in the European Diaspora', in *Studies on the Jewish Diaspora in the Hellenistic and Roman Periods*, ed. by B. Isaac and A. Oppenheimer (Tel-Aviv: Ramot Publishing/Tel-Aviv University, 1996), 111-37, pp. 132-4; E. Klingenberg, 'Justinians Novellen zur Judengesetzgebung', *Aschkenas*, 8 (1998), 7-27; L. V. Rutgers, 'Justinian's *Novella* 146 between Jews and Christians', in *Jewish Culture and Society under the Christian Roman Empire*, ed. Without red. R. Kalmin and S. Schwartz (Leuven: Peeters, 2003), 385-407.

⁷ See J. Juster, *Les Juifs dans l'Empire romain. Leur condition juridique, économique et sociale* (Paris: Paul Geuthner, 1914), I, pp. 372-373, n. 6; S. Katz, *The Jews in the Visigothic and Frankish Kingdoms*

information to be so precise, it is obvious that the *deuterai scripturae* were considered, in our text, as works which were separate from the *scripturae auctoritatem habentes*. The author of the *placitum* could be using the term *deuterai* to refer to targumim (paraphrased biblical translations) or to other writings of the rabbinic *corpus*, which, from a Jewish (and, of course, Christian) point of view, ranked below the Hebrew or Greek Bible. Furthermore, as has been pointed out by W. Drews, it is not possible to identify authoritative, canonical writings (*auctoritatem habentes*) with the Talmud,⁸ as it is unlikely that this complete *corpus* could have reached *Hispania* in the Visigothic era,⁹ although isolated rabbinic traditions may have reached the West before that time.¹⁰ According to this author, if we take into account the fact that Justinian's *novella* referred especially to those scriptures that were used in services in the synagogue, it is preferable to consider that the term *deuterai* referred to *mi-drashim* (biblical commentaries) and *aggadot* (moralizing interpretations of the Holy Scripture).¹¹ A Latin inscription from Merida, whose date has recently been revised and which is currently believed to have been written in the eighth century, after the Moorish invasion, confirms the survival of rabbis who continued to direct the religious life of Jews or former converted Jews who had been able to maintain their ancestral beliefs in secret: in this inscription, there is a mention of one *rebbi* Jacob, who was the son of the *rebbi* named Senior.¹² It is possible that they were 'masters of the Law' who, because of the

of Spain and Gaul (Cambridge, Mass.: The Mediaeval Academy of America, 1937), pp. 62 y 71; M. Simon, *Verus Israel. Étude sur les relations entre Chrétiens et Juifs dans l'Empire romain (135-425)* (Paris: E. de Boccard, 1964²), p. 350, n. 2 (= English translation by H. McKeating (Oxford: Oxford University Press, 1986), p. 489, n. 152); A. M. Rabello, *Giustiniani, ebrei e samaritani*, II, p. 821: 'Stando al significato letterale del termine, *deuterosis* significa *secunda editio*, 'ripetizione' ed essa dovrebbe quindi riferirsi alla *Mishnà*, o 'ripetizione', che contiene una prima codificazione della *Legge orale*'. However, according to N. Roth, 'the only possibility, therefore, is that it refers to written translations of the Bible' (*Jews, Visigoths and Muslims in Medieval Spain* (Leiden: E. J. Brill, 1994), p. 25).

⁸ This was proposed by L. A. García Moreno, *Los judíos de la España antigua. Del primer encuentro al primer repudio* (Madrid: Rialp, 1993), pp. 96-97.

⁹ It is currently believed that the Talmud (both the Babylonian and the Jerusalem Talmud) did not reach Europe before the end of the eighth century. See A. Grabois, 'École et structures sociales des communautés juives dans l'Occident aux IX^e-XII^e siècles', in *Settimane di Studio del Centro Italiano di Studi sull'Alto Medioevo, XXVI. Gli Ebrei nell'Alto Medioevo* (Spoleto: Presso La Sede del Centro, 1980), 937-62, p. 943. K. Schubert, *Jüdische Geschichte* (Munich: C. H. Beck, 1999³), p. 32, even dates the arrival of Talmudic literature in the West as late as the tenth century. See also Talya Fishman, *Becoming the People of the Talmud: Oral Torah as Written Tradition in Medieval Jewish Cultures* (Philadelphia: University of Pennsylvania Press, 2011).

¹⁰ W. Drews, *The Unknown Neighbour. The Jew in the Thought of Isidore of Seville* (Leiden/Boston: E. J. Brill, 2006), pp. 120-2.

¹¹ Drews, p. 121.

¹² Noy, I, pp. 278-81; J. L. Ramírez Sádaba and P. Mateos Cruz, pp. 245-248. Cf. Drews, p. 123. On the recognized authority of these 'epigraphical rabbis' in the teaching of the Torah and Jewish

ban on the production and reading of all Jewish written works, preferred to carry out their teachings orally.

About fifty years later, we also find some general references of the possession of some codices of Jewish literature by Spanish Jews in *De comprobatione sextae aetatis*, a polemic anti-Jewish treatise which was written in 686 and dedicated to king Erwig (680-687) by bishop Julian of Toledo (d. 690).¹³ The work was intended as a Christian response to false Jewish expectations on the arrival of the sixth, Messianic Era, based upon certain texts of an apocalyptic nature¹⁴ which circulated among the Jews of the time.¹⁵ It was not the first

exegesis, see S. J. D. Cohen, 'Epigraphical Rabbis', *Jewish Quarterly Review*, 72 (1981), 1-17. Cf. M. D. Swart, 'Sage, Priest, and Poet. Typologies of Religious Leadership in the Ancient Synagogue', in *Jews, Christians, and Polytheists in the Ancient Synagogue. Cultural Interaction during the Greco-Roman Period*, ed. by S. Fine (London/New York: Routledge, 1999), 101-17; F. Millar, 'Inscriptions, Synagogues and Rabbis in Late Antique Palestine', *Journal for the Study of Judaism*, 42 (2011), 253-77, pp. 259-62.

¹³ See J. C. Martín, 'Julián de Toledo', in *La Hispania visigótica y mozárabe. Dos épocas en su literatura*, ed. by C. Codoñer (Salamanca: Universidad de Extremadura/Universidad de Salamanca, 2010), 155-72, p. 159.

¹⁴ On the basis of the arguments against them used by Julian of Toledo in his anti-Jewish polemic, A. Lukyn Williams considered that it was very possible that Spanish Jews knew the treatise *Sanhedrin* of the Babylonian Talmud (esp. *Sanh.*, 97a-b) in which there was speculation, albeit in different terms, on the duration of the world divided in ages. See A. Lukyn Williams, 'The Jews: Christian Apologists in Early Spain', *Church Quarterly Review*, 100 (1925), 267-87, p. 283 (= A. Lukyn Williams, *Adversus Iudaeos. A Bird's View of Christian Apologiae until the Renaissance* (Cambridge: Cambridge University Press, 1935), p. 220). Cf. S. Krauss, *The Jewish-Christian Controversy from the Earliest Times to 1789, I. History*, edited and revised by W. Horbury (Tübingen: J. C. B. Mohr, 1995), p. 59; A. Moreno García and R. A. Pozas Garza, 'Una controversia judeo-cristiana del siglo VII: Julián de Toledo', *Helmantica*, 53 (2002), 249-69, p. 257.

¹⁵ On this polemic work, see A. Lukyn Williams, 'The Jews: Christian Apologists in Early Spain', pp. 282-85 (= Lukyn Williams, *Adversus Iudaeos*, pp. 219-22); B. Blumenkranz, *Les auteurs chrétiens latins du Moyen Âge sur les juifs et le judaïsme* (Paris/La Hague: Mouton & Co, 1963), pp. 118-27; J. Campos, 'El *De comprobatione sextae aetatis libri tres* de San Julián de Toledo', *Helmantica*, 18 (1967), 297-340; J. Gil, 'Judíos y cristianos en la Hispania del siglo VII', *Hispania Sacra*, 30 (1977), 9-110, pp. 88ff.; N. Roth, '«Seis edades durará el mundo», Temas de la polémica judía española', *La Ciudad de Dios*, 199/1 (1986), 45-65, pp. 46-47; R. Landes, 'Lest the Millennium Be Fulfilled: Apocalyptic Expectations and the Pattern of Western Chronology 100-800', in *The Use and Abuse of Eschatology in the Middle Ages*, ed. by W. Verbeke, D. Verhelst, and A. Welkenhuysen (Leuven: Leuven University Press, 1988), pp. 171-74; H. Schreckenberg, *Die christlichen Adversus-Iudaeos-Texte und ihr literarisches und historisches Umfeld (1.-11. Jh.)* (Frankfurt am Mai: Peter Lang, 1995³) (= 1982), pp. 459-60 and 639; R. Pozas Garza, *Estudio crítico de los tratados 'Adversus Iudaeos' en la Alta Edad Media* (Roma: Pontificum Athenaeum Sanctae Crucis, 1996), pp. 101-16; C. del Valle, 'San Julián de Toledo', in *La controversia judeocristiana en España (Desde los orígenes hasta el siglo XIII). Homenaje a Domingo Muñoz León*, ed. by C. del Valle Rodríguez (Madrid: CSIC, 1998), 119-30; A. Moreno García and R. A. Pozas Garza, pp. 249-69; A. Barcala Muñoz, *Biblioteca antijudaica de los escritores eclesidásticos hispanos, 2.2. Siglos VI-VII. El reino visigodo de Toledo* (Madrid: Aben Ezra, 2005), pp. 602-16; J. C. Martín, 'Iulianus Toletanus ep.', in *La trasmissione dei testi latini del Medioevo*, ed. by P. Chiesa and L. Castaldi (Firenze: Sismel/Edizioni del Galluzzo, 2008), 373-431, pp. 404-7.

time, however, that a Christian author devoted his efforts to refuting millenarian and eschatological currents which tended to spring up in Jewish Diaspora communities during particularly difficult times.¹⁶ In the context of the Visigothic kingdom itself, more than a century earlier, Apringius of Beja had attempted to refute some eschatological ideas which were widespread among the Jews of his time¹⁷ in his *Commentaria minora in Apocalypsin Johannis*.

Julian of Toledo mentions, on several occasions, that the Jews of Spain based themselves on their own books in arguing that they were still living in the fifth age of the world, that is, in the fifth millennium since its creation.¹⁸ Indeed, he explicitly states that the Jews calculated the date of the coming of Christ by basing themselves on their own codices (*ex codicibus hebraeorum*), which they trusted utterly:

Therefore, on the basis of this most false opinion, they dare to determine the presence of the coming of Christ by calculating the years since the beginning of the world according to their codices, to which they submit all things with blind trust.¹⁹

Basing ourselves partially on the opinion of C. del Valle,²⁰ we may suppose that some of these 'codices of the Hebrews' were certainly biblical, as Julian opposes the calculation of the age of the world according to the version accepted by the Jews (which could be a response to the biblical text in Hebrew or translated to Latin) and that based on the Septuagint:

[...] Here, we discover a lesser number of years in the codices of the Hebrews than in those of the Septuagint translators [...].²¹



¹⁶ See Gil, pp. 57ff.; García Moreno, *Los judíos de la España antigua*, pp. 97-9; L. A. García Moreno, 'Expectativas milenaristas y escatológicas en la España tardoantigua (ss. V-VIII)', in *Spania. Estudis d'Antiguitat Tardana oferts en homenatge al professor Pere de Palol i Salellas* (Barcelona: Publicacions de l'Abadia de Montserrat, 1996), 103-09.

¹⁷ See R. González Salinero, 'Apringio de Beja y los inimici ecclesiae: preocupación exegetica y realidad social', *Euphrosyne*, 27 (1999), 409-15, pp. 413-5; J. van Banning, 'Bemerkungen zur Apringius von Beja- Forschung', *Zeitschrift für Antikes Christentum*, 3 (1999), 113-9.

¹⁸ *De comprobatione sextae aetatis, praef.*, 26-28 (CCL 115, p. 145): [...] *quod sumpta annorum supputatio ab initio mundi secundum codices Hebraeos quintam adhuc saeculi aetatem insinuent* [...].

¹⁹ *De comprobatione sextae aetatis*, I, 1 (CCL 115, p. 149); [...] *Ex hac igitur opinione uanissima audent, ab initio mundi secundum suos codices annorum supputatione collecta, aduentum Christi explorare praesentiam, quibus sublata fide caeca sunt omnia. Cf. De comprobatione sextae aetatis, I, 23 (CCL 115, p. 170): [...] Ergo anni illi, quos a principio mundi pro hac natiuitate Christi ex codicibus Hebraeorum libandos esse putatis* [...].

²⁰ C. del Valle, 'Sobre las lenguas de los judíos en la España visigoda y Al-Andalus', *Sefarad*, 63/1 (2003), 183-93, p. 186.

²¹ *De comprobatione sextae aetatis*, III, 8 (CCL 115, p. 201): [...] *Ecce minor numerus reperitur annorum in codicibus hebraeorum quam in codicibus septuaginta interpretum* [...].

However, there are some passages in the work of Julian of Toledo from which we may infer that Spanish Jews also had non-biblical texts.²² Whereas in the foreword to his treatise he points out that the Jews believed that, according to their codices, the Messiah would come in the sixth age of the world (*quem in sexta credunt aetatem saeculi advenire*), he later refutes this opinion, stating that the Holy Scriptures offer no calculation of the exact date at which this event will take place²³ and, at the same time, warning that he is not willing to participate in any debates not based on biblical texts:

[...] Indeed, it is truly a foolish discussion as, strangely, it does not come from the Law. Therefore, [such debates] must be deemed improper and inert [Isn't it: [such people] must be deemed unwarlike and harmless, as they take their arms not from the Scriptures...? Or have I misunderstood? No, your version is O.K., thank you], as they are not based on arguments from the Scriptures, but, rather, on those which they propose from the depths of their malice [...].²⁴

We can therefore deduce that the codices in which these questions were discussed were extra-biblical. According to C. del Valle, a considerable part of this literature was Spanish in origin, as the hypothesis of the coming of the Messiah in the sixth millennium was essentially different from the view which was predominant among Palestinian and Babylonian rabbis at the time, according to whom the world would last seven thousand years: the first two thousand years would be dominated by chaos, the next two thousand would correspond to the Torah, and the next two thousand would be the era of the Messiah, the last one thousand years being the absolute and definitive establishment of the Messianic Kingdom.²⁵ According to del Valle, 'it is reasonable to admit, based upon these facts, that the Babylonian Talmud had still not arrived in Spain around the eighth decade of the seventh century, and had not yet acquired the authoritative status which it would later enjoy, probably because, at that time, the Babylonian Talmud was still *in fieri* and the process of its formation was not quite complete. On the other hand, the concepts of the Spanish Jews seem to be autochthonous, different from those of their Palestinian and Babylonian brethren. It is therefore also reasonable and jus-

²² Furthermore, as we shall see later on, in the Twelfth Council of Toledo forbade Jews to read books which went against the Christian faith, which, obviously, excluded the Holy Scriptures (c. 9).

²³ *De comprobatione sextae aetatis*, I, 6 (CCL 115, p. 152): [...] *quia nihil tale aut in lege aut in prophetis praedictum est, ut supputatis a mundi principio annis aduentus dinoscatur dominicae incarnationis [...]*.

²⁴ *De comprobatione sextae aetatis*, I, 2 (CCL 115, p. 149): *Vere multum stulta est quaestio, quae de legis non procedit arcano. Imbelles ergo et inermes huiusmodi iudicandi sunt, quia non de scripturis arma arripiunt, sed de antro malitiae suae ista proponunt.* See del Valle, 'Sobre las lenguas de los judíos en la España visigoda y Al-Andalus', pp. 186-7.

²⁵ These concepts are expressed, at least, in three treatises of the Babylonian Talmud: *Sanhedrin*, 97a; *Avodah Zarah*, 9a and *Rosh Hashanah*, 31a.

tified to state that the Spanish Jews developed an autochthonous Hebrew culture and literature'.²⁶

This last assertion does not seem to be sufficiently supported by our sources. It is true that, for some authors, there is no doubt that these Jewish codices, which included both biblical and extra-biblical and even apocryphal texts, were written in Hebrew;²⁷ however, in the Jewish epigraphy of the Western Diaspora (including the Spanish Diaspora) Greek and Latin inscriptions are predominant,²⁸ and, in Late Antiquity and the Visigothic era, the few remaining examples reveal an even greater prominence of Latin.²⁹ We only find a few stereotyped Hebrew words and expressions in the Jewish epigraphy of the time, as in the inscription of the sons of Paragorius of Narbonne (in Septimania, a province of the Visigothic Kingdom), dated 668-689.³⁰ In fact, ever since Greco-Roman times, the Jews of the Diaspora had adapted themselves perfectly to the customs of the society they were living in,³¹ and they adopted the language of their gentile neighbours,³² maintaining only a few words and expression relative to their religious beliefs.³³ In the West, they

²⁶ del Valle, 'Sobre las lenguas de los judíos en la España visigoda y Al-Andalus', p. 187.

²⁷ del Valle, 'Sobre las lenguas de los judíos en la España visigoda y Al-Andalus', p. 187.

²⁸ See P. W. van der Horst, *Ancient Jewish Epitaphs. An Introductory Survey of a Millennium of Jewish Funerary Epigraphy (300 BCE-700 CE)* (Kampen: Pharos, 1996²) (= 1991), pp. 37 and 130. Cf. de Lange, pp. 124-32 and on the particular case of Sicily in the same period as the Visigothic Kingdom in the Iberian Peninsula, C. Colafemmina, 'Le lingue degli ebrei di Sicilia', *Miscellanea di Studi Storici* (Calabria), 13 (2005-2006), 145-59.

²⁹ J. J. Price, 'The Jews and the Latin Language in the Roman Empire', in *Jews and Gentiles in the Holy Land in the Days of the Second Temple, the Mishna and the Talmud*, ed. by M. Mor, A. Oppenheimer, J. Pastor, and D. R. Schwartz (Jerusalem: Yad Ben-Zvi Press, 2003), 165-80, pp. 168 and 172-3.

³⁰ Noy, vol. 1, n° 189, pp. 263-66.

³¹ See in general L. V. Rutgers, *The Hidden Heritage of Diaspora Judaism* (Leuven: Peeters, 1998).

³² Focusing on Late Ancient Hispania, there is a scene that took place on Minorca, described by the bishop Severus in the early 5th century, in which Jews and Christians alike were chanting a Biblical passage corresponding to *Psalm 9, 7-8*, in what undoubtedly must have been Latin. (*Epist.*, 13, 2: *Psalmus autem, quem mira iucunditate etiam Iudaeorum populus decantabat, hic fuit, 'Periit memoria eorum cum strepitu et Dominus in aeternum permanet'*). See S. Bradbury, *Severus of Minorca. Letter on the Conversion of the Jews* (Oxford: Clarendon Press, 1996), pp. 92-3.

³³ de Lange, p. 116: 'Jews everywhere, in the period that interest us, spoke the same languages as their Christian neighbours. This is not to say, of course, that Jews may not have had certain expressions which only they used (as indeed the Christians did)'. In fact, this author reminds us that Justinian's *novella 146* constitutes an 'unsuccessful attempt to introduce Hebrew into the synagogues as the language of Bible reading (there is no mention of Hebrew worship) around the middle of the sixth century' (p. 135). Cf. Colorni, pp. 61-2, n. 253; S. Schwartz, 'Language, Power and Identity in ancient Palestine', *Past & Present*, 108 (1995), 3-47; Rutgers, *The Hidden Heritage of Diaspora Judaism*, p. 39; G. Lacerenza, 'Ebraiche liturgie e peregrini apostuli nell'Italia bizantina', in *Una Manna buona per Mantova. Man Tov le-Man Tovah. Studi in onore di Vittorio Colorni per il suo 92° compleanno*, ed. by M. Perani (Firenze: Leo S. Olschki, 2004) 61-72 (in Venosa, in the South of Italy, the use of Hebrew did not surpass Greek and Latin until the late eighth

never even used Hebrew as a spoken language.³⁴ Furthermore, it is possible to affirm, as does D. Wasserstein, that, during the Visigothic era, there is no evidence of the use of Hebrew by Spanish Jews, who spoke Latin and only knew a few Hebrew words such as *shalom*, *Israel* or *'Alenu*, which could be used ritually in Jewish liturgy.³⁵

Therefore, the expressions *codices Hebraici* or, more frequently, *codices Hebraeorum* used by Julian of Toledo to refer to Jewish literature do not necessarily imply that it was written in Hebrew. In fact, we should consider that he used these expressions to refer generically to the 'codices of the Hebrews'. If the Jews used Latin as their mother tongue, it would not be logical to assume that the ban on reading 'Hebraic books' referred exclusively to literature supposedly written in Hebrew. In fact, it would be against the spirit of the rule to allow Jews to read any works on their religion written in Greek or Latin. We should therefore assume that the reference to 'books of the Hebrews' refers to all texts belonging to Judaism. Were it not so, the prohibition itself could have been used as a subterfuge to use Latin translations of their own writings, a very common procedure among Jewish Diaspora communities. In fact, the Jews of Visigothic Spain were accused, on other occasions, of employing all kinds of tricks in order to avoid, for instance, their children being baptized against their will.³⁶ Furthermore, if the Church authorities, which had no knowledge of Hebrew, Aramaic or Greek, had to inspect the Jewish codices, as is explicitly stated in the *Confessio vel professio Iudaeorum civitates Toletanae (omnes conspectui vestro praesentare pollicemur)*, it follows that such books must necessarily have been written in Latin. As N. Roth points out, 'Jews had been fluent in Greek in the pre-Visigothic era in Spain, and there is some evidence that many still were, but again, the Christians were not. Therefore, the only possibility is Latin, which indicates that the Visigothic Jews, probably by then

century); M. Goodman, *Rome and Jerusalem. The Clash of Ancient Civilizations* (London: Allen Lane (Penguin Books), 2007), pp. 153ff. On the prevalence of spoken Latin among Jews in the Late Roman Empire, see Price, pp. 164-80.

³⁴ B. Blumenkranz, *Juifs et chrétiens dans le monde occidental, 430-1096* (Paris/La Hague, Mouton & Co., 1960), p. 4; de Lange, p. 112. According to the latter, 'Jewish writing in Hebrew is a phenomenon that is not attested in Europe before the ninth century' (p. 115).

³⁵ D. Wasserstein, 'Langues et frontières entre Juifs et Musulmans en al-Andalus', in *Judíos y musulmanes en al-Andalus y el Magreb. Contactos intelectuales*, ed. by M. Fierro (Madrid: Casa de Velázquez, 2002), p. 4. L. Montecchio's hypothesis, according to which, in a situation of persecution, the Jews might have abandoned the use of Hebrew in order to 'mimetizzarsi tra i cristiani' (L. Montecchio, *I visigoti e la rinascita culturale del secolo VII* (Perugia: Graphe.it, 2006), p. 83), is unconvincing, as they never had truly spoken that language. According to a comment by professor B.-S. Albert, the Mishnah was always read in Hebrew in the context of the synagogue; there is, however, no evidence that the extra-biblical texts of the Visigothic Jews belonged to the Mishnah.

³⁶ On this subject, see González Salinero, *Las conversiones forzosas de los judíos en el reino visigodo*, pp. 35-7; see also Rachel Stocking's article *infra*.

entirely ignorant of Hebrew themselves (Hebrew inscriptions, for example, are rare and very poorly done), were using Latin translations of the Bible in their synagogues'.³⁷

Drawing heavily upon the *Epistola* 44 of Braulio of Zaragoza to Fructuosus (dated 651), R. de Ureña y Smenjaud states that 'Visigothic prelates frequently used the Hebrew version of the Holy Scriptures, mainly because of and for their controversies with the Jews'.³⁸ It is true that, in that letter, bishop Braulio affirms that 'when we examine the text of the Holy Scriptures, in the Hebrew text we do not find that Ishmael was carried on his mother's neck [...]',³⁹ but this does not demonstrate that he knew Hebrew, and even less that he had access to the Hebrew text of the Bible. It is very likely that he is referring to the Vulgate version, which was translated to Latin directly from Hebrew by Jerome. In fact, a few lines previous to this, Braulio suggests to his correspondent that, to be safe, he should consult that translation in order to remove all doubt.⁴⁰ It is very likely that, as N. Roth points out, due to their lack of knowledge of Hebrew, not even the Jews used the Hebrew version, but, rather, a Latin translation of the Scriptures. Along the same lines, we have the valuable precedent of the *Collatio legum Mosaicarum et Romanarum*, which was written between the fourth and fifth centuries in the Roman Jewish community and which incorporated the Latin translation of numerous biblical passages.⁴¹

³⁷ Roth, *Jews, Visigoths and Muslims in Medieval Spain*, p. 25. According to J. J. Price, in Late Antiquity 'we may suppose that as Latin replaced Greek as the Jews' main language, the first thing they would have required would have been a Latin Bible' (Price, p. 178). Cf. D. S. Blondheim, *Les parlers judéo-romains et la Vetus Latina* (Paris: Champion, 1925); B. Kedar, 'The Latin Translations', in *Mikra. Text, Translation, Reading and Interpretation of the Hebrew Bible in Ancient Judaism and Early Christianity*, ed. by J. Mulder (Assen/Maastricht/Philadelphia: Van Gorcum/Fortress Press, 1988), 299-338.

³⁸ de Ureña y Smenjaud, *La legislación gótico-hispana. Estudio crítico*, p. 162 (he also quotes Julian, *De comprobatione sextae aetatis*, III, 8 = III, 15, according to PL 95).

³⁹ Braulio of Zaragoza, *Epist.*, 44, 228-9, ed. by L. Riesco Terrero, *Epistolario de San Braulio* (Seville: Universidad de Sevilla, 1975), p. 178: *Set, cum reditur ad diuine scripture seriem, non inuenitur in ebraica ueritate ut Smael collo gestatus sit matris sue [...]*.

⁴⁰ Braulio of Zaragoza, *Epist.*, 44, 117-118 (ed. by Riesco Terrero, p. 172): *Cuius rei ueritatem ut certius credas, ad ipsius sanctissimi uirorum recurrere translationem et nullam habebis dubitationem [...]*. We cannot deduce that Braulio had knowledge of Greek and Hebrew from the exegetic answers he suggested, as he relies on quotes from Augustine and Jerome, on this subject, see C. H. Lynch y P. Galindo, *San Braulio, obispo de Zaragoza (631-651). Su vida y sus obras* (Madrid: CSIC, 1950), pp. 143-4.

⁴¹ See M. Hyamson, *Mosaicarum et Romanarum Legum Collatio* (London: Henry Frowde/Oxford University Press, 1913; repr. New York: William S. Hein, 1997); M.ª E. Montemayor Aceves, *Mosaicarum et Romanarum legum collatio (Comparación de leyes mosaicas y romanas)* (México: Universidad Nacional Autónoma de México, 1994); Fr. Lucrezi, *Studi sulla "Collatio"*, I-V, 5 vols. (Torino: G. Giappichelli, 2001-2010); R. González Salinero, 'Influencias e interferencias del Derecho romano

In any case, whichever the language in which the books available to the Spanish Jews of the Visigothic Kingdom were written, it is certain that, from the forced renunciation of their literature which is stipulated in the aforementioned *placitum* of the year 637, the Visigothic authorities, motivated by the need to implant a single religious identity according to their ideals and the social circumstances of the time,⁴² passed several legislative measures in order to put an end to the Jewish literary legacy and its transmissions to new generations, preventing them from obtaining a normal education in the principles of the Jewish faith.⁴³ In the year 681, king Erwig enacted the following law:

The Jews shall not dare to read those books that the Christian faith repudiates

To give attention to those readings with which one is forbidden to agree is a proof of impiety rather than of piety. For this reason, if any of the Jews should read those books in which it is argued wickedly against the faith of Christ, or consider their doctrines, or keep them concealed in his house, he shall suffer *decalvatio* and be flogged with a hundred lashes. He shall bind himself by an obligation never to dare to have such books or doctrines with him nor be so bold as to consider them or take them up for study. If he should later, after he has given his oath, attempt to revert and commit something of the kind, he shall both suffer *decalvatio* and be flogged with a hundred lashes as well as lose his property and be crushed by the adversity of a perpetual exile, and, because he is seen to have returned on the traces of his deviation for the second time, his properties shall perpetually serve those persons to whom they were given by the prince. This and the like shall those receive who dare to teach such things to any child; that is, the teacher of iniquity himself, if caught transgressing for the first time, shall suffer *decalvatio* and be flogged and obliged to undertake under oath not to teach such things to anyone. But if it should happen that he should violate the faith of this his first pledge and revert to the matters which he abjured, all his property shall be transferred under the prince's authority and he himself shall suffer *decalvatio* and be flogged with a hundred lashes and banished in perpetual exile. Infants and children shall be exempt from the above-mentioned sanctions and floggings only if they are seen to have studied this doctrine of perfidy while still under the age of ten

en la *Collatio legum Mosaicarum et Romanarum*, in *Fuentes clásicas en el judaísmo: de Sofía a Hokmah*, ed. by R. González Salinero and M.^a T. Ortega Monasterio (Madrid: Signifer, 2009, pp. 87-105).

⁴² On this subject, see the interesting thoughts of R. L. Stocking, 'Early Medieval Christian Identity and Anti-Judaism: the Case of the Visigothic Kingdom', *Religion Compass*, 2/4 (2008), 642-58, pp. 651-2.

⁴³ According to J. Juster, it is obvious that those kings who forbade Jewish rites or who forced Jews to convert to the Christian faith would not tolerate Jewish books. See J. Juster, *La condition légale des Juifs sous les rois visigoths* (Paris: Paul Geuthner, 1912), p. 32 (p. 306) [English translation and brought up-to-date by A. M. Rabello, 'The Legal Condition of the Jews under the Visigothic Kings', *The Israel Law Review*, 11 (1976), 216-87, 391-414, and 563-90, p. 402]. Cf. Katz, pp. 71-2.

years. However, if any of them shall dare to consider or study the like after the age of exemption, he shall suffer the sanctions and the floggings as instituted above in the manner explained above.⁴⁴

This law forbade Jews (and converted Jews) to read, teach and own their own books under pain of *decalvatio*⁴⁵ and a hundred lashes. They were, furthermore, forced to sign a *placitum* (a written compromise with legal authority) in which they agreed neither to read them again nor to hide them in their houses, in which case repeat offenders would be punished with *decalvatio*, a

⁴⁴ *Leg. Visig.*, XII, 3, 11 (ed. by K. Zeumer, in *Monumenta Germanie Historica. Leges Nationum Germanicarum, I. Legum Lectio, I. Leges Visigothorum* (Hannover/Berlin, Impensis Bibliopolii Hahniani, 1902), p. 438: *Ne Iudei libros illos legere audeant, quos christiana fides repudiat. Illis commodare lectionibus sensum, quibus fas non est prebere adsensum, impietatis est potius, quam pietatis indicium. Et ideo, si quis Iudeorum libros illos legerit vel doctrinas adtenderit sive habitos in domo sua celaverit, in quibus male contra fidem Christi sentitur, et publice decalvabitur et centenorum flagellorum verberatione plectetur. Qui tamen cautionis vinculo alligabitur, ne umquam talium libros vel doctrinas apud se aut habere presumat aut adtendere audeat seu studiis meditandi assumat. Iam de cetero si post emissum placitum quodcumque tale repedere temptaverit, et decalvatus centenis flagellis subiaceat et amissis rebus sub perpetua exilii conteretur erumna, ut, quia iam secundo visus est erroris sui iterasse vestigium, perenniter illis res eorum deserviat, quibus principali fuerit conlatione concessa. Hec et similia illi percipient, qui quemlibet infantium talia presumpserint docere; id est, ut doctor ipse iniquitatis in prima transgressionis fronte deprehensus et centenis subiciatur decalvandus verberibus et placiti sui polliceatur cautione, se talia ulterius neminem debere docere. Quod si primeve huius sponisionis maculans fidem contingat illi ea, que abiecerat, repedere, omni eius facultate in principis potestate redacta ipse decalvatus centenisque verberibus abdicatus perpetuo erit exilio religandus. Infantes tamen ipsi vel pueri tunc a supradictis erunt damnis atque verberibus alieni, si hanc perfidie doctrinam intra X etatis sue annos positi meditasse fuerint visi. Ceterum post exemptos decem annos quisquis illorum talia adtendere vel meditari presumpserit, superioris institutionis damna vel verbera ordine superius adnotato sustineat.* English translation (revised) by Linder, *The Jews in the Legal Sources of the Early Middle Ages*, p. 302. Cf. the English translation by S. P. Scott, *The Visigothic Code (Forum Judicum)* (Boston: The Boston Company, 1910; repr. Littleton, Colorado: Fred B. Rothman & Co., 1982), pp. 391-2.

⁴⁵ We do not know exactly what the punishment called *decalvatio* (*turpiter decalvare*) was. F. S. Fear, 'The Public Law of the Visigothic Code', *Speculum*, 26, 1951, Appendix C, pp. 15-6, and P. D. King, *Law and Society in the Visigothic Kingdom* (Cambridge: Cambridge University Press, 1972), p. 90, n. 5 (Spanish transl. by M. Rodríguez Alonso, Madrid: Alianza, 1981, p. 111, n. 33) believed that it meant to scalp the victim either partially or completely, an action which carries a very high risk of killing the subject, which is not reflected in our sources. Other historians believe that it was a form of public infamy by shaving off the victim's hair. Indeed, long hair was a symbol of Germanic dignity for Visigoth noblemen and monarchs, as can be seen in the portraits on the coins minted by them (see F. López Sánchez, '*Reges Criniti Visigothorum*', *Revue Numismatique*, 158 (2002), pp. 241-69). It is very possible, however, that, as J. Arce maintains, there were different types or degrees of *decalvatio* in the Visigothic Kingdom: 'the tonsure or shaving of the hair as a denigrating form or punishment, or the action of tonsuring, which disqualified the victim from holding office, and the savage *decalvatio* inflicted on individuals such as Paulus and Archemund' (*Esperando a los árabes. Los visigodos en Hispania, 507-711* (Madrid: Marcial Pons, 2011), p. 156). Cf. B. Dumézil, 'La peine de décalvation dans l'Espagne wisigothique', in *Anthropologie, mythologies et histoire de la chevelure et de la pilosité. Le Sens du Poil*, ed. by B. Lançon and M.-H. Delavaud-Roux (Paris: L'Harmattan, 2011), 135-47.

hundred lashes, confiscation of their goods and perpetual exile. These two sentences, with the same two degrees of application for first offenders and repeat offenders, were equally applicable to masters who dared to teach the doctrine contained in those unholy books to Jewish children; the children would not be punished if they were less than ten years old, but the same sentence would be applied to them if they were older and guilty of the same crime.⁴⁶ A few months later, at the monarch's own request, this law, along with the remainder of his anti-Jewish legislation, was ratified by the Twelfth Council of Toledo (681):

[...] Item, that the Jews shall not dare to read those books that the Christian faith repudiates [...].⁴⁷

It is obvious that, with these measures, the Visigothic authorities attempted to dilute the religious identity of Jews and converted Jews in the Visigothic Kingdom.⁴⁸ Along with the ban on the rites of their religion,⁴⁹ it was essential to eradicate their literary legacy and, more important still, to prevent their children from receiving this legacy through traditional rabbinic education.⁵⁰ In fact, the Fourth Council of Toledo (633) had already decreed that the children of those converted Jews who had fallen back into Jewish practices had to

⁴⁶ On this legal regulation, see Juster, *La condition légale des Juifs sous les rois visigoths*, p. 32 (306) [A. M. Rabello, *The Legal Condition of the Jews under the Visigothic Kings*, p. 402]; S. Katz, *The Jews in the Visigothic and Frankish Kingdoms of Spain and Gaul*, p. 72; J. Parkes, *The Conflict of the Church and the Synagogue. A Study in the Origins of Antisemitism* (London: Soncino, 1934), p. 364; Blumenkranz, *Juifs et chrétiens dans le monde occidental, 430-1096*, pp. 125-26 and 165; P. D. King, *Law and Society in the Visigothic Kingdom*, (Cambridge: Cambridge University Press, 1972), p. 139 (Spanish transl., p. 159); L. García Iglesias, *Los judíos en la España antigua* (Madrid: Cristiandad, 1978), pp. 124-125; M.º De Menaca, *Histoire politique des Juifs d'Espagne au Moyen-Âge, vol. I. L'Espagne gothe ou la religion (VI^{ème}-VIII^{ème} siècle)* (Nantes: Université de Nantes, 1993), p. 202; García Moreno, *Los judíos de la España antigua*, p. 100; B. Saitta, *L'antisemitismo nella Spagna visigotica* (Roma: 'L'Erma' di Bretschneider, 1995), pp. 76-7; R. González Salinero, 'Catholic Anti-Judaism in Visigothic Spain', in *The Visigoths. Studies in Culture and Society*, ed. by A. Ferreiro (Leiden: E. J. Brill, 1999), 123-50, p. 148; del Valle, 'Sobre las lenguas de los judíos en la España visigoda y Al-Andalus', p. 188.

⁴⁷ Conc. XII Toledo, c. 9, ed. by F. Rodríguez, in G. Martínez Díez and F. Rodríguez, *La colección canónica Hispana, VI. Concilios hispánicos: tercera parte* (Madrid, CSIC, 2002), p. 177: [...] *Item ne Iudaei libros legere audeant quos Christiana fides repudiat [...]*. English translation by Linder, *The Jews in the Legal Sources of the Early Middle Ages*, p. 520.

⁴⁸ H. Sivan, 'The Invisible Jews of Visigothic Spain', *Revue des Études Juives*, 159/3-4 (2000), 369-85, p. 385.

⁴⁹ C. Martin and C. Nemo-Pekelman, 'Les juifs et la cité: Pour une clarification du statut personnel des juifs de l'Antiquité tardive à la fin du royaume de Tolède (IV^e-VII^e siècles)', *Antiquité Tardive*, 16 (2008), 223-46, p. 240.

⁵⁰ See L. García Iglesias, 'Oscuro origen y avatares más antiguos de las comunidades judías', in *Memoria de Sefarad* (Madrid: Sociedad Estatal para la Acción Cultural Exterior, 2002), 31-41, p. 38; A. P. Bronisch, *Die Judengesetzgebung im katholischen Westgotenreich von Toledo* (Hannover, Hahnsche Buchhandlung, 2005), p. 115.

be separated from their parents in order to avoid being contaminated by their parents' errors, and that they should be cared for and educated by monasteries or pious persons so that they might receive a correct education in the Christian faith.⁵¹ Erwig's law also intended to free Jewish children from the harmful influence of their adults and, at the same time, was a direct attack against rabbinic schools and teachers still surviving clandestinely, in order to eradicate the teaching of the Law and the oral tradition written down in codes to the new Jewish generations.⁵² Furthermore, in the event of possible infractions, even though the minimum legal age of inheritance in the Visigothic Kingdom was seven,⁵³ the legislator felt it was appropriate to increase the minimum age for prosecution in order to be able to pass an identical sentence to that reserved for adult Jews, owing to the gravity of the crime.⁵⁴

B. Blumenkranz wondered whether, in the year 694, in which king Egica drastically ordered, through the Seventeenth Council of Toledo, the enslavement of all Jews and converted Jews, the dispersal of their families and the confiscation of all their goods,⁵⁵ any libraries which had survived earlier measures against the possession and reading of Jewish books in the times of Chintila and Erwig might have been confiscated as well.⁵⁶ Following the same line of thought, it is possible that the silence of the lawmakers⁵⁷ meant that such libraries no longer existed at the end of the seventh century and that,

⁵¹ Conc. IV Toledo, c. 60. On this subject, see L. García Iglesias, 'Los menores de edad, hijos de judíos, en los cánones y leyes de la época visigoda', *El Olivo* (Madrid), 5-6 (1978), 28-33, p. 29; González Salinero, *Las conversiones forzosas de los judíos en el reino visigodo*, pp. 105-6. King Egica (687-702) would once again decree, via the eighth canon of the Seventeenth Council of Toledo (694) the separation of Jewish children above the age of seven from the company of their parents for them to be educated in the "true faith" until the moment in which they entered into a Christian marriage.

⁵² L. García Iglesias, 'Los menores de edad, hijos de judíos, en los cánones y leyes de la época visigoda', pp. 31-2. Cf. I. Pochoshajew, 'Intention und Wirkung der antijüdischen Gesetze de Westgoten', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Kanonistische Abteilung*, 123 (2006), 111-46, p. 138.

⁵³ *Leg. Visig.*, XII, 3, 8.

⁵⁴ P. Petit, *Iustitia gothica. Historia social y teológica del proceso en la Lex Visigothorum* (Huelva: Universidad de Huelva, 2001), p. 90: '[...] one of Erwig's laws exempts children under ten years of age of responsibility, and therefore, he establishes a limit of age under which, as there would be no prosecution, there would be no trial'.

⁵⁵ Conc. XVII Toledo, c. 8. See García Iglesias, *Los judíos en la España antigua*, pp. 131ff.; J. Orlandis y D. Ramos Lissón, *Historia de los concilios de la España romana y visigoda* (Pamplona: EUNSA, 1986), pp. 502-3; Saitta, *L'antisemitismo nella Spagna visigotica*, pp. 103-4; González Salinero, *Las conversiones forzosas de los judíos en el reino visigodo*, pp. 77ff.; Bronisch, pp. 116ff.

⁵⁶ Blumenkranz, *Juifs et chrétiens dans le monde occidental, 430-1096*, p. 165.

⁵⁷ Barely one year earlier, the very same king Egica had decreed (*Leg. Visig.*, XII, 2, 18) the confiscation of all the goods of those converted Jews who had prevaricated (*si quispiam de eisdem sancte fidei conversis prevaricator exstiterit*), particularly their slaves, buildings, land, vineyards,

therefore, the earlier measures to put an end to the Jewish literary legacy had had the desired effect. In spite of the fact that we can still observe during the eighth century a Jewish presence around some important Spanish cities such as Zaragoza,⁵⁸ we have no evidence of the conservation of the Spanish-Jewish literary legacy from the Visigothic era in these communities. Not until the tenth century will we see, in al-Andalus, a true literary renaissance of Hebrew culture.⁵⁹ Until then, Spanish Jews, many of them immigrants from the first phases of Muslim domination,⁶⁰ depended on the great centers of knowledge in the East. Eventually, though not before the middle of the ninth century, the Jews of the Iberian Peninsula gradually created a local tradition of the study of the Bible and the Talmud⁶¹ in which there is no trace of the suffering of

olive groves and other real property (*tam mancipia quam edificia, terras, vineas atque etiam oliveta vel alias quascumque res immobiles*).

⁵⁸ In fact, several Christian works *Adversus Iudaeos* from the eighth century have survived, some of them being meant to fight certain Judaizing influences. In the first place, we should mention the anonymous work entitled *Liber de variis quaestionibus adversus Iudaeos* (from the first half of the eighth century) and the *Epistula de scripturis diuinis edita contra eos qui putant immundum esse sanguine* by Evantius of Toledo, written before 737, the year of the author's death. There is one more work which should be mentioned alongside these, the anonymous *Tractatus contra Iudaeos*, whose first draft can be dated between 760 and 766, though its final version is, as has been convincingly proven by J. C. Martín, from the thirteenth century. Furthermore, from a letter by Elipandus of Toledo dated around the year 785, we know that Migetius, who was in Baetica, had allowed himself to become seduced by certain Judaizing influences. See A. C. Vega, 'Una herejía judaizante del siglo VIII en España', *La Ciudad de Dios*, 153 (1941), 57-100; Blumenkranz, *Les auteurs chrétiens latins du Moyen Âge sur les juifs et le judaïsme*, pp. 95-9 (nº 96); M.ª D. Vermejo Sánchez, 'Elipando de Toledo y Migecio', *Cuadernos de Filología Clásica*, 14 (1978), 389-402; J. R. Díez Antoñanzas, *Las polémicas antijudías en la época de transición (siglos VIII-XI). Evancio de Toledo. Álvaro de Córdoba. Samuel el Marroquí* (Pamplona: Universidad de Navarra, 1990), esp. pp. 116-131 (unpublished PhD; extract: *Excerpta e Dissertationibus in Sacra Theologia*, 18 (1990), pp. 137-219); J. C. Martín, 'Problemas planteados por la tradición indirecta del *Tractatus contra Iudaeos* (Díaz 1214). Estudio y edición crítica del texto', *Revue des Études Juives*, 167/1-2 (2008), 23-98; *La Hispania visigótica y mozárabe. Dos épocas en su literatura*, ed. by C. Codoñer, pp. 252-8.

⁵⁹ Á. Navarro Peiro, 'Literatura hispanohebraica', in *Memoria de Sefarad* (Madrid: Sociedad Estatal para la Acción Cultural Exterior, 2002), 293-307, p. 293.

⁶⁰ N. Roth, *Dictionary of Iberian Jewish and Converso Authors* (Madrid/Salamanca: Iben Ezra/Universidad Pontificia de Salamanca, 2007), p. 21: 'Large scale immigration of Jews during the early part of the Muslim reign increased the population and also brought significant cultural contributions [...].'

⁶¹ See Á. Sáenz-Badillos, *Literatura hebrea en la España medieval* (Madrid: Fundación Amigos de Sefarad/UNED, 1991), pp. 17-9. On the so-called 'Golden Age' of the Jewish civilization under the Muslim aegis, see Roth, *Dictionary of Iberian Jewish and Converso Authors*, pp. 11 and 21. On the Jewish intellectual context in Muslim Spain during said 'Golden Age', especially at its peak (eleventh century), see the still-interesting observations of R. Barkai, 'Reflexiones sobre el concepto 'El siglo de oro' de los judíos en la España musulmana y su significación contemporánea', *El Olivo* (Madrid), 14 (1981), 19-28.

their 'ancestors' during the Visigothic era, which proves that there was a complete cultural break from the earlier Jewish tradition.⁶²

According to N. de Lange, around the year 800 we can observe the first real signs of familiarity with the Hebrew language and literature in Western Europe.⁶³ The first Christian author who attacked Talmudic literature was Agobard, bishop of Lyons (779-840), a sign that the Talmud had begun to circulate, in those times, among Western Jews, at least in Carolingian Gaul.⁶⁴ A tradition based on one of Sherira Gaon's epistles commemorates the arrival of R. Natronai (b. Havivai) in the Iberian Peninsula from Babylonia; this character could have brought with him a copy of the Talmud, or perhaps he could have memorized some of its most significant parts.⁶⁵ On this subject, H. Sivan affirms that 'in spite of apparent confusion regarding the precise date and personalities of the Babylonian leaders and their Spanish links and interludes, there seems to be no valid reason to doubt the eagerness of the Spanish Jews to receive the Babylonian Talmud and to maintain contacts with other communities'.⁶⁶

Thus, considering that the Muslim conquest of the Iberian Peninsula did not prevent the development of Jewish intellectual life and that, even so, we do not have any written literary evidence until the tenth century, it seems obvious that the intellectual tradition and cultural legacy of the Jews of the Visigothic era did not survive the seventh century. It follows, therefore, that the Visigothic authorities apparently managed to eradicate all traces of this Jewish literary legacy.



⁶² In the words of H. Sivan, 'simply stated, in the collective annals of the glorious Jewish community of medieval Spain (9th-12th centuries) no trace of the sufferings of their Jewish 'ancestors' or of the relentless persecutions launched by Gothic state and church is evident [...]' (Sivan, p. 380). And, later: 'the persecuted Jews, then, remained invisible in the very history of their own «descendants»' (Sivan, p. 383).

⁶³ de Lange, p. 134.

⁶⁴ See M. Orfali, *Talmud y cristianismo. Historia y causas de un conflicto* (Barcelona: Riopiedras, 1998), p. 62. Cf. Blumenkranz, *Les auteurs chrétiens latins du Moyen Âge sur les juifs et le judaïsme*, n° 62; de Lange, p. 117; B.-S. Albert, 'Adversus Iudaeos in the Carolingian Empire', in *Contra Iudaeos. Ancient and Medieval Polemics between Christians and Jews*, ed. by O. Limor and G. G. Stroumsa (Tübingen: J. C. B. Mohr, 1996), pp. 122-3 and 135-8; R. Savigni, 'L'immagine dell'ebreo e dell'ebraismo in Agobardo di Lione e nella cultura carolingia', *Annali di Storia dell'Esegesi*, 17/2 (2000), 417-61. It is possible that there was an uninterrupted survival of Jewish communities in Gaul since the seventh century. According to Julian of Toledo, those lands were a real 'brothel which protected Jews' (*Historia rebellionis Pauli adversus Wambam*, 5 and *Insultatio vilis provinciae Galliae*, 1-2).

⁶⁵ J. Mann, 'The Responsa of the Babylonian Geonim As a Source of Jewish History', *Jewish Quarterly Review*, 7 (1916-17), 457-90, p. 486; Grabois, p. 946; Sivan, p. 382.

⁶⁶ Sivan, pp. 382-3.



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GETTING THEM IN OR KEEPING THEM OUT? - THEOLOGY, LAW, AND THE BEGINNINGS OF JEWISH LIFE IN THE RHINE VALLEY IN THE 10TH AND 11TH CENTURIES

Johannes HEIL

At some point around the year 825 a certain Donatus (Nathan) and his nephew Samuel, together with their families and followers, received a letter of protection from the Court of Emperor Louis the Pious, which granted them far-reaching rights, including the freedom to live according to their laws, to employ Christian servants except on Sundays and holidays, a secured status at court, and full exemption from fees and taxes.¹ The court did likewise with similar charters for another Joseph and David together with their followers at Lyon and Abraham from Saragossa.² These charters are well-known and have often been discussed or quoted, so that a further examination may seem to be superfluous. However, their importance goes far beyond their textual surface. In fact, after centuries of juridical and social decline due to the oppressive religious politics in Byzantium and the other successor states of the Roman empire the Carolingian charters of protection are the first known evidence of a revised attitude by Christian rulers toward non-Christians in their midst. No comparable charter is known from the pre-Carolingian Frankish tradition, not to speak of the almost eliminatory anti-Jewish politics in Visigothic Spain or the oppressive Byzantine legislation under the reign of Justinian. And as the charters by Louis the Pious seemed important enough to be included in the sample-collection of the imperial chancellery, we may assume that no previous charters existed, and also that they were thought to serve as examples for further letters.³

Furthermore, the basic motifs of these charters which in summary provided tools for a secured status for Jews in a Christian empire appear again at the end of the 11th century in episcopal and imperial charters for Speyer and

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1 MGH *Formulae imperiales*, ed. Zeumer, No 30f., p. 309f.

2 *ibid.* No. 52, p. 325. IT MAY NOT BE DISTRIBUTED WITHOUT PERMISSION OF THE PUBLISHER.

3 See Michael Toch, *Die Juden im mittelalterlichen Reich* (Enzyklopädie deutscher Geschichte, vol. 44), München 1998 (2003); Ivan G. Marcus, "A Jewish-Christian Symbiosis. The Culture of Early Ashkenaz", in: David Biale (ed.), *Cultures of the Jews. A New History*, New York 2002, pp. 449-516; Jonathan Elukin *Living Together, Living Apart: Rethinking Jewish-Christian Relations in the Middle Ages*, Princeton 2007; Johannes Heil, "Juden", in: Peter Dinzelbacher (ed.), *Handbuch der Religionsgeschichte im deutschsprachigen Raum*, vol. 1, Paderborn 2011, pp. 285-304.

Worms, during the formative period of the “ShUM”-communities in the central Rhine valley in what became the heartland of Ashkenaz.

Even though it seems that the Carolingian letters to Jewish individuals may have been known during the 11th century, the obvious relation (with regard to content) between the earlier and the later texts was, at the time, not uncontested. Between these two complexes of charters which granted basic rights to Jews, lies a long and complex story of theologically-motivated, but in most cases, legally-termed rejection.

This is what this chapter deals with: the recurring debate, especially in towns where Jews came to settle from the 10th/11th century onwards, about whether or not Jews should have a position within Christian society, or at least: to what extent and under which conditions such a position should be provided. Since Jessie Sherwood addresses in this book the case of Mainz and the dossier compiled by the priest Gerhard in the 2nd quarter of the 10th century, this chapter will mainly focus on Worms and the *Decretum Burchardi* as an example for a theologically driven restrictive definition of the Jews’ status which was apparently distinguished from the favourable status which secular powers were ready to grant to Jews. Burchard compiled his *Decretum* around 1010, and therefore close in date to the formative years of the second most important developing town of emerging Ashkenaz, Worms.

Burchard is just a prominent example for the church’s concern about the place of the Jews in the midst of the Christian society. The majority of sources from the time which we have, regarding the question of whether or not to provide Jews with a status in Christian society are ecclesiastic sources which clearly indicate that it would be better if Jews did not have any status in Christian society or, if they did, only if strictly regulated/restricted. As we will see, some of these sources belong in the very sense to the theological discourse, but the majority belong to the realm of canon law, inspired by the same theology, but with the aim of establishing binding social and political norms.⁴ We have to ask therefore, for what reasons Jews were rejected, which arguments were introduced, what the aims and who the actors were, and why the situation finally turned to the contrary.

The polarity of inclusion and exclusion was already present in the charters of the 820s even though we have no clear evidence for a considerable Jewish presence in the Carolingian empire beyond the realm of traditional Judeo-

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⁴ Walter Pakter, *Medieval Canon Law and the Jews* (Abhandlungen zur rechtswissenschaftlichen Grundlagenforschung, vol. 68.) Ebelsbach 1988, p. 34, passim; Friedrich Lotter, „Zur Ausbildung eines kirchlichen Judenrechts bei Burchard von Worms und Ivo von Chartres“, in: Rainer Erb et al. (ed.), *Antisemitismus und jüdische Geschichte. Studien zu Ehren von Herbert A. Strauss*, Berlin 1987, pp. 69-96; see also idem., „Die Voraussetzungen christlich-jüdischer Koexistenz und deren Infragestellung durch Zwangsbekehrung und Vertreibung in Spätantike und Frühmittelalter“, in: *Aschkenas* 16 (2008), pp. 291-365.

Roman settlements in Italy and in France from the Mediterranean shore up to Lyon. Arguments pro and contra were available, especially as the “hermeneutical Jew” as a much quoted negative reference for Christian self-determination played a major role in Carolingian theology and created a theologically based image of the Jew.⁵ The imperial letters of protection for individual Jews, granted by Louis the Pious’ court around 825, were an explicit reaction to attempts to challenge the Jews’ economic situation by baptizing and thereby removing their servants from their households. This was by no means only a penitential formula, but a reaction to discussions current at the time.

It was Archbishop Agobard of Lyon who, during the years 821-828, addressed letters to court officials and to the Emperor himself, in which – amongst other complaints – he criticised the keeping of servants by Jews.⁶ I argued in a paper some years ago, that Agobard’s anti-Jewish agitating was merely instrumental and was thought to promote other political interests of the archiepiscopal see of Lyon.⁷ These interests actually had nothing to do with the Jews but were related to the issue of confiscated property belonging to the Church of Lyon, once alienated by Charlemagne’s predecessors, as Agobard had argued before the Diet of Attigny in 821, but failed to gain support for his claim for re-compensation. Only then, and only as long as the political circumstances during the reign of Louis the Pious (i.e. until 828) suggested such an aggressive strategy, did Agobard openly pursue a scandalizing, anti-Jewish track in his writings. Even so, the fact that Agobard, at some point during his disagreement with the court decided to play the anti-Jewish card shows that Jews were a sensitive issue, guaranteeing a strong reaction.⁸ Agobard and, even more so, his follower Amulo in the years 845/6 together with their industrious “assistant”, the deacon Florus of Lyon, are clear outposts for the canonically-informed restrictive position.⁹ Agobard’s complaints

⁵ Bernhard Blumenkranz, *Juifs et Chrétiens dans le monde occidental 430-1096* (Études Juives, vol. 2), Paris 1960; Johannes Heil, *Kompilation oder Konstruktion? Die Juden in den Pauluskommentaren des 9. Jahrhunderts*, Hannover 1998 (Forschungen zur Geschichte der Juden; vol. A6); Jeremy Cohen, *Living Letters of the Law. Ideas of the Jew in Medieval Christianity*, Berkeley. 1999.

⁶ Lieven Van Acker (ed.), *Agobardi Lugdunensis Opera Omnia* (Corpus Christianorum. Continuatio Mediaevalis, vol. 52), Turnhout 1981.

⁷ Johannes Heil, „Agobard, Amulo, das Kirchengut und die Juden von Lyon“, in: *Francia – Forschungen zur westeuropäischen Geschichte*, vol. 25, 1998, pp. 39–76.

⁸ See Pakter, *Medieval Canon Law*, pp. 96–99; Kenneth R. Stow, “Agobard of Lyons and the Medieval concept of the Jew” in: *Conservative Judaism* 29,1 (1974) 58–65; Gavin Langmuir, “From Ambrose of Milan to Emicho of Leiningen: The Transformation of Hostility against Jews in Northern Christendom”, in: *Gli Ebrei nell’alto medioevo* (SSAM 26, 1978), Spoleto 1980, pp. 313–368; Cohen, *Living Letters*, pp. 144–5; Raffaele Savigni, “L’immagine dell’ebreo e dell’ebraismo in Agobardo di Lione e nella cultura carolingia”, in: *Annali di Storia dell’Esegesi* 17,2 (2000), pp. 417–461.

⁹ Pakter, *Medieval Canon Law*, p. 34; Amnon Linder, *The Jews in the Legal Sources of the Early Middle Ages*, Detroit 1997, pp. 604–7.

therefore deserve further examination: He criticized the Jews' superstition, their audacity, their privileges, their influence on the belief of ordinary Christians, and so on. However, he did not explicitly question the right of the Jews to live among Christians whereas Amulo some years later introduced a program of systematic alienation of Jewish children from their parents and thereby the subsequent eradication of Jews from Christian society.¹⁰

However, even given that the position of the Archbishops of Lyon clearly followed a canonical tradition broadly supported by the canons of Visigothic synods, this position was not generally shared in ecclesiastical circles of the time. Agobard's was neither the decisive nor the only ecclesiastical position. On the contrary, from the letters we have, it becomes clear that Agobard remained isolated in his days even inside the Church, and one generation later Amulo and his sympathizers in the West-Frankish Church suffered a defeat as a result of Charles the Bald's refusal to accept the canons of the assembly of Meaux/Paris in 845/6, among them a number of anti-Jewish canons. Most interesting is the case of Archbishop Nibradius of Narbonne, the town which was home to probably the most important Jewish community in the Western Mediterranean at the time, and whom, in 827/28, Agobard had addressed as a potential partisan in his struggle about the Jews. As far as we know, Nibradius and his suffragans kept their distance from Agobard's agitating and did not sponsor the anti-Jewish campaign of the Archbishop of Lyon. No reply by Nibradius to Agobard's initiative has been preserved, and an exchange of letters to date 827-830 between Narbonne and Lyon on the initiative of Nibradius' follower Bartholomeus did not mention the Jews at all.¹¹

To summarise: the basic positions pro and contra the acceptance of Jews in Christian society had been formulated as early as the beginning of the 9th century. To grant security and freedom of religion in a strictly limited space, or to minimize the rights of the Jews on the basis of canonical statements and basically exclude them from social life by bans on Christian intercourse with

¹⁰ Amulo of Lyon, *Epistola, seu liber contra Judaeos ad Carolum regem*, in: Migne, *Patrologia Latina* [künftig MPL], Bd. 116, cols. 141- 184; on Amulo and Florus see Bernhard Blumenkranz, *Les auteurs chrétiens latins du moyen âge sur les Juifs et le judaïsme* Paris - La Haye 1963, pp. 170-1; Heinz Schreckenberg, *Die christlichen Adversus-Judaeos-Texte und ihr literarisches und historisches Umfeld 1.-11. Jahrhundert* (Europäische Hochschulschriften, ser. 23, vol. 172.) 3rd ed., Frankfurt a. M. 1995, pp. 502-506 Bat-Sheva Albert, "Adversos Iudaeos in the Carolingian Empire", in: Ora Limor and Guy G. Stroumsa (eds), *Contra Iudaeos: Ancient and Medieval Polemics between Christians and Jews*, Tübingen 1996, pp. 138-142; Heil, Agobard, Amulo, pp. 65-78; Klaus Zechiel-Eckes, *Florus von Lyon als Kirchenpolitiker und Publizist. Studien zur Persönlichkeit eines karolingischen „Intellektuellen“ am Beispiel der Auseinandersetzung mit Amalarius (835-838) und des Prädestinationsstreits (851-855)* (Quellen und Forschungen zum Recht im Mittelalter, vol. 8), Stuttgart 1999; Louis Holtz, „Le ms. Lyon, B.M. 484 (414) et la méthode de travail de Florus » in: *Revue bénédictine* 119 (2009), pp. 270-315.

¹¹ Agobard, letters nos. 14, 15, in: van Acker, pp. 229-243; we should mention that in other cases Agobard preserved also the replies he received; see Heil, Agobard, pp. 57-9.

Jews and the development of Jewish life, are contradicting poles of a lengthy debate. In his dossier to the synod of Meaux/Paris, Amulo had even gone so far as to propose a radicalized version of the canon 60 of Toledo IV with the request that the children of Jews (not of baptised Jews, as the Toledanus had claimed) were to be taken from them. This was nothing less than a programme to successively annihilate Judaism in the Carolingian Realm.¹²

With regards to content, it may therefore be argued, that there was nothing new in debates about Jews during the 10th or 11th centuries. However, the socio-political circumstances were completely different, and the debates also referred to a geographically different area. Agobard and Amulo at Lyon dealt with Jews who were heirs to the late Roman society of Southern France and who had survived the sporadic imitation of Visigothic anti-Jewish policy by Merovingian rulers and synods. The situation in the middle Rhine valley and beyond in the east, in Regensburg or Magdeburg, during the 10th and 11th centuries was completely different, however. Here, the Jews were newcomers, immigrants and the actors on the Christian side seem to have faced something new to them when looking at Jews in episcopal towns along the Rhine and elsewhere. The emerging eastern, Ottonian and Salian realm was a veritable *tabula rasa* with regards to Jews and Judaism.¹³

Certainly, according to the *Capitulum* regarding the market regulations at the Palace of Aix, some Jews had operated as far afield as Aix in the time of Charlemagne and a certain Isaac had been in contact with Charlemagne's Court even before 800 and delivered his elephant there on his return from his mission to Baghdad in 802. And in the east of the empire some Jewish merchants passed the Raffelstetten toll station on the Danube River according to the local provision of 906. Furthermore, a brief set of provisions regarding Jews, some of them restrictive if not markedly hostile, but inconsistent with regards to content, has been transmitted as "Capitula domni Karoli imperatoris et Hludowici de Iudaeis." Given that the modern editors have assembled

¹² Lotter, *Ausbildung*, p. 76; Bat Sheva Albert, "Isidore of Seville. His Attitude Towards Judaism and His Impact on Early Medieval Canon Law", in: *Jewish Quarterly Review* 80 (1990), pp. 207-220; van Acker, Agobard, p. XX; Heil, Agobard, Amolo, pp. 68-9; Wolfgang Drews, *Juden und Judentum bei Isidor von Sevilla. Studien zum Traktat 'De fide catholica contra Iudaeos'*, Berlin 2001, pp. 450-7 with note 357.

¹³ See Shlomo Eidelberg, "The Origins of Germanic Jewry: Reality and Legend", in: Gertrude Hirschler (ed.), *Ashkenaz. The German-Jewish Heritage*, New York 1988, pp. 3-10; Michael Toch, "The Formation of a Diaspora: The Settlement of Jews in the Medieval German Reich", in: *Aschkenas* 7 (1997), pp. 11-34; Johannes Heil, "Deep Enmity" and/or "Close Ties"? Jews and Christians before 1096. Sources, Hermeneutics, and Writing History in 1096, in: *Jewish Studies Quarterly* 9 (2002), pp. 259-306; idem, "Ashekenazic Piyut: Hebrew Poetic Prayer in a Latin Environment (The Tenth to the Twelfth Centuries)", in: Roy Hammerling (ed.), *A History of Prayer: The First to the Fifteenth Century*, Leiden 2008, pp. 337-366; idem, "Aschkenas", in: Dan Diner (ed.), *Enzyklopädie jüdischer Geschichte und Kultur*, vol. 1, Stuttgart etc. 2011, pp. 159-168.

here scattered juridical traditions of various origin all what one may conclude from them is that there were conflicting positions toward Jews at stake throughout the 9th century.¹⁴

Anyway, beyond these few instances, in the east of the Carolingian Empire, Jews existed merely figuratively in theological debates. The “hermeneutical Jew”, a term coined by Jeremy Cohen, was an indispensable figure in Carolingian theology, but not a part of social reality throughout the Carolingian Empire.¹⁵ Hrabanus Maurus, who went beyond the “hermeneutical Jew” when quoting a text by a Jewish author for his commentaries on Kings and Chronicles, introduced his source as an anonymous author whom he had, most probably, never met – neither, as some scholars have argued, in Fulda nor in Mainz; knowledge of this text may have been the result of his training with Alcuin in Tours in the years up to 801.¹⁶

To date, and despite all the efforts of Norman Golb for Rouen or those of archaeologists in Cologne and Regensburg to prove the contrary, there is no substantial/reliable evidence for a Jewish presence north of the Alps in towns along the Rhine and Danube prior to the 10th or 11th centuries.¹⁷ Jews and Jewish life among Christians was, for both sides, definitively a new experience in culture and politics north of the Alps, with mutual religious and legal impact and conflicting positions for both sides. To be sure, the debates in question – public ones for which we have written evidence and private ones which

¹⁴ Capitula regum Francorum, MGH leges, Bd. 1, S. 194f.; already the editor, Georg Heinrich Pertz noted, that further manuscripts transmitted statutes about the Jews and under the name of Charlemagne which however are taken from the list of the synod of Meaux 845; see Blumenkranz, Juifs et Chrétiens (note 5), p. 365; Hubert Mordek, *Bibliotheca capitularum regum Francorum manuscripta. Überlieferung und Traditionszusammenhang der fränkischen Herrscherklasse* (MGH Hilfsmittel, vol. 15), Munich 1995, pp. 167, 299, passim; Johannes Heil, „Goldenes Zeitalter“ - Juden und Judentum in der Karolingerzeit, in: Rainer Kampling (Hgg.), *Wie schön sind Deine Zelte, Jakob, deine Wohnungen, Israel!; Beiträge zur Geschichte europäisch-jüdischer Kultur* (Apeliotos. Studien zur Kulturgeschichte und Theologie, vol 5), Frankfurt am Main etc. 2009, pp. 99-114. On this text, see the article by Philippe Depreux in this volume.

¹⁵ Jeremy Cohen, *Living Letters*, pp. 391-5.

¹⁶ Avrom Saltman, “Rabanus Maurus and the Pseudo-Hieronymian *Quaestiones Hebraicae in Libros Regum et Paralipomenon*,” in: *Harvard Theological Review* 66 (1973), pp. 43-75; idem, *Pseudo-Jerome, Quaestiones on the Book Samuel* (Studia Post-Biblica, vol. 26), Leiden, 1975, pp.6-9, passim; Jean-Louis Verstrepen, “Raban Maur et le judaïsme dans son Commentaire sur les quatre Livres des Rois”, in: *Revue Mabillon* 7 (1996), pp. 23-55.

¹⁷ Toch, Juden (note 3), p. 5-6; Christoph Cluse, „Juden am Niederrhein während des Mittelalters - eine Bilanz“, in: Monika Grübel et al. (ed.), *Jüdisches Leben im Rheinland. Vom Mittelalter bis zur Gegenwart*, Cologne etc. 2005, pp. 4-6 Heil, Juden (note 2), pp. 289-90; cf. Norman Golb, *The Jews in Medieval Normandy. A Social and Intellectual History*, Cambridge, Mass. 1998, S. XVI, 109-10 passim; Sven Schütte, „Die Juden in Köln von der Antike bis zum Hochmittelalter. Beiträge zur Diskussion zum frühen Judentum nördlich der Alpen“, in: Fritz Backhaus et al. (Hg.), *Synagogen, Mikwen, Siedlungen. Jüdisches Alltagsleben im Lichte neuer archäologischer Funde*, Frankfurt am Main 2004, pp. 73-116.

we can't have access to – were by no means discussions in which specific “ecclesiastical” and “imperial” or “secular” interests could be clearly distinguished between. It would, therefore, be too simple a conclusion to understand the conflicting positions on Jews and Judaism during the 10th and 11th centuries as forerunners of the investiture controversy of the later 11th and early 12th centuries. Ecclesiastical actors and theologically-grounded arguments were at stake on both sides of an ongoing debate about Jews and Christian identity and society.¹⁸

The debates about Jews and Judaism during the formative period of medieval society and statehood were about theology, the major instrument was legislation, but the aims were determined by the political and social aspirations of the various actors involved. Religion was an inevitable factor in legal provisions, but apart from this we shall, as I have shown in the case of 9th century Lyon, also consider the interplay of the use and abuse of theology and religion in legislation.

The canonical positions towards Jews taken during the 11th and 12th centuries are not easy to determine. Even today, centuries after these texts were written and following decades of research, it is still not clear, if a Gratian really is a text written by Gratian or a Burchard manuscript really is by Burchard (not to mention the formats and quantity or state of completeness in which older collections like the *Hibernensis*, *Vetus Gallica* or *Dacheriana* are available¹⁹ or the layers of inter-textual relatedness to similar collections like the *Collectio duodecim partium* and the speculations about a common X-source or other forms of communication²⁰).

However, the otherwise necessary debate about original forms of the respective text corpus²¹ is less relevant when it comes to articles related to Jews.²²

¹⁸ For Jewish reactions to the new environment see Toch, *Juden* (note 3), pp. 33-44, 57-8; Johannes Heil, “‘Deep Enmity’ and/or ‘Close Ties’? Jews and Christians before 1096, Sources, Hermeneutics, and Writing History in 1096”, in: *Jewish Studies Quarterly* 9 (2002), pp. 259-306; Israel Yuval, *Two Nations in Your Womb: Perceptions of Jews And Christians in Late Antiquity and the Middle Ages*, Berkeley 2006.

¹⁹ Cristof Rolker, *Canon Law and the Letters of Ivo of Chartres*, Cambridge 2010, pp. 50 ff.

²⁰ Greta Austin, “Secular Law in the *Collectio Duodecim Partium* and Burchard’s *Decretum*”, in: Bruce Clark Brasington et al. (eds.), *Bishops, texts and the use of canon law around 1100. Essays in honour of Martin Brett*, Aldershot 2008, S. 29-44, 31.

²¹ See Martin Brett, “Editing the Canon Law Collections between Burchard and Gratian”, in: *Proceedings of the XII*, ed. Uta-Renate Blumenthal, Kenneth Pennington and Atria Larson. *Congress of Medieval Canon Law*, Vatican City 2008, pp. 89-107; Hartmut Hoffmann et al., *Das Dekret des Bischofs Burchard von Worms* (MGH Hilfsmittel, vol. 12) Munich 1991; for more studies about Burchard and his *Decretum* see below, notes 22, 28.

²² Nevertheless it appears most depolarale that no modern edition of Burchard’s *Decretum* is available: *Decretorum libri XX ex consiliis et orthodoxorum patrum decretis tum etiam diversarum nationum synodis*, Köln 1548 (repr. Aalen 1992); Paris 1549 = Migne, PL 140, cols. 537-1058; on manuscripts see Gérard Fransen, “Burchard de Worms. *Quête des manuscrits*”, in: *Traditio*

In Burchard, Gratian and Ivo of Chartres, these articles seem to belong to the un-debated core of the corpus. Prominent early canonists seem to have been occupied by the Jews far more than only in the margins. The focus here is on Burchard and canonistic activity during the years around 1000 in the central Rhine valley. The start was made by a less known figure, a certain priest Gerhard, who compiled a collection of earlier ecclesiastical provisions on Jews, as ordered to by Archbishop Friedrich of Mainz (in office 937-954). Gerhard collection is centered on the question of whether or not Jews should be forcibly converted – providing vast material widely based on paraphrasing reading of Gregory the Great and augmented by some provisions from Roman imperial legislation and Merovingian councils, but anyway avoiding to suggest a definitive answer.²³ As Archbishop Friedrich was an unreliable and much suspected fellow of King Otto I during the time of dynastical struggles within the Saxon family,²⁴ it is not clear to what extent Friedrich's activities with regards to Jews may be interpreted as representative for policy of the Saxon kings in general. And there is reason to doubt such an equation. The synod of Erfurt of 932 which was summoned by king Henry I. and presided by archbishop Hildibert of Mainz had dealt among others issues with a letter sent by the Doge, the patriarch of Venice and the bishops of the province of Venice in which they reported about conflicts and in consequence about mass conversion of Jews in Jerusalem and throughout Byzantium culminating in the request to the Erfurt assembly to follow the example and to convert or to expel all Jews from the Frankish kingdom. The letter became part of the synod protocol, yet no explicit decision or action taken by the 932 synod into that direction is reported²⁵, sincerely for the simple reason that by the time there were no Jews known to live in the eastern kingdom, but probably also as a

26 (1970), pp. 446-447; Hubert Mordek, „Handschriftenforschungen in Italien, I: Zur Überlieferung des Dekrets Bischof Burchards von Worms“, in: *Quellen und Forschungen aus italienischen Archiven und Bibliotheken* 51 (1971), pp. 626-651; Gérard Franssen, „Le Décret de Burchard de Worms. Valeur du texte de l'édition. Essai de classement des manuscrits“, in: *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Kanonistische Abteilung* 63 (1977), pp. 1-19.

²³ For the text (lat./engl.) see Linder, *Jews in Legal Sources*, pp. 622-33; Friedrich Lotter, *Der Brief des Priesters Gerhard an den Erzbischof Friedrich von Mainz; ein kanonistisches Gutachten aus der frühottonischen Zeit*, Sigmaringen 1975.

²⁴ Gerd Althoff: *Die Ottonen. Königsherrschaft ohne Staat*. 2., erw. Auflage. Kohlhammer, Stuttgart etc. 2005; Alois Gerlich, „Friedrich von Mainz“, in: *Lexikon des Mittelalters*, vol. 4, 1989, cols. 964f.; Peter Herde, „Friedrich, Erzbischof von Mainz“, in: *Neue Deutsche Biographie (NDB)*, vol. 5, Berlin 1961, pp. 516 f.

²⁵ The Doge's letter is edited MGH *Constitutiones*, vol. 1, ed. Ludwig Weiland, Hannover 1903, pp. 6-7; for the synod of Erfurt see MGH *Concilia*, vol. 6/1: *Die Konzilien Deutschlands und Reichsitaliens 916-1001*, ed. Ernst Dieter Hehl and Horst Fuhrmann, Hannover 1987, pp. 97-114; see Bernhard Blumenkranz, *Les Auteurs chrétiens-latins du moyen-âge sur les juifs et le judaïsme*, Paris 1963, pp. 218-9 (repr.. Louvain 2007); Friedrich Lotter, „Zu den Anfängen deutsch-jüdischer Symbiose in frühottonischer Zeit“, in: *Archiv für Kulturgeschichte* 55 (1973), pp. 6-13; Gerd Althoff, *Amicitiae*

clear sign for disagreement with the Doge's initiative. To the contrary, it should be mentioned, that shortly after, in the years 965 and 973 royal charters for Magdeburg and Merseburg eventually mentioned the presence of Jews there, with no negative undertone at all.²⁶

Burchard of Worms (~ 965 – 1025) marks a turning point – for the history of canon law, but also for the legal definition of Christian attitudes toward Jews. And as the following pages will demonstrate he did so in the context of a most particular religious atmosphere with specific consequences for both, theology and canon law. Burchard had been trained by Archbishop Willigis of Mainz and became Bishop of Worms in the year 1000. Though administering a minor see he was one of the most central figures in politics during the first quarter of the 11th century. Burchard was not simply a bishop engaged in canonical legislation, but on the contrary, he was an influential canonist who fulfilled the duties of a bishop; his *Decretum*²⁷ became the most important collection prior to Gratian²⁸ and was widely received almost immediately throughout Europe, at least until the middle of the 11th century when the *Decretum* became increasingly criticised by the reform party - so far an older

und Pacta. Bündnis, Einung und Gebetsgedenken im beginnenden 10. Jahrhundert (MGH Schriften, vol. 37), Munich 1992, pp. 75-81; Linder, pp. 553-7.

²⁶ MGH Diplomata, vol. 1, ed. Theodor Sickel, No. 300, pp. 415-6 (Magdeburg 965); Thietmar, Cronicon III.1, in: MGH Scriptorum, vol 3, S. 758 (about Merseburg 973), engl. trans. by David A. Warner, *Ottonian Germany*, Manchester 2001; see Israel Moses Ta-Shma, „Ashkenazi Jewry in the eleventh century. Life and literature“, in: Gertrude Hirshler (ed.), *Ashkenaz. The German Jewish Heritage*, New York 1988, pp. 23-56. Toch, *Juden*, p. 5.

²⁷ Burchardi Decretorum Libri XX, ed. Gérard Fransen, Theo Kölzer, rev. repr. of the editio princeps, Cologne 1548 (1992); Max Kerner, *Studien zum Dekret des Bischofs Burchard von Worms, Aachen 1971*; Gérard Fransen, „Les Collections canoniques“, in: *Typologie des sources du Moyen Âge occidental*, Fasc. 10, Turnhout 1985; Pakter, *Medieval Canon Law*, pp. 99ff.; Gerhard Dilcher, „Der Kanonist als Gesetzgeber“, in: Richard H. Helmholz (ed.), *Grundlagen des Rechts. Festschrift für Peter Landau zum 65. Geburtstag*, Paderborn etc. 2000, pp. 105-129; Wilfried Hartmann, *Burchards Dekret: Stand der Forschung und offene Fragen*, in: ders.: *Bischof Burchard von Worms 1000-1025*, Mainz 2000, pp. 161-6; Rudolf Schieffer, „Burchard von Worms. Ein Reichsbischof und das Königtum“, in: *ibid.*, pp. 29-49; Ernst Dieter Hehl, „Willigis von Mainz. Päpstlicher Vikar, Metropolit und Reichspolitiker“, in: *ibid.*, pp. 51-77; Patrick Corbet, *Autour de Burchard de Worms*, Frankfurt am Main 2001; Thomas T. Müller, *Bischof Burchard I. in seiner Zeit, Heiligenstadt 2001*; Greta Austin, *Shaping Church Law Around the Year 1000. The Decretum of Burchard of Worms*, Ashgate, Farnham/ Surrey 2009; Rolker, *Canon Law*, pp. 60-1.

²⁸ Peter Landau, « Neue Forschungen zu vorgratianischen Kanonensammlungen und den Quellen des gratianischen Dekrets », in: *Ius Commune* 11 (1984), pp. 1-29; idem, « Burchard de Worms et Gratien: à propos des sources immédiates de Gratien », in: *Revue de droit canonique* 48 (1998), pp. 233-245; see also Pakter, *Medieval Canon Law*, pp. 108-10.

position particularly supported by Paul Fournier²⁹, but increasingly challenged in recent studies.³⁰

Basically, Burchard hesitated with regards to secular law, thereby obviously emphasising the superiority of ecclesiastical law in comparison to secular law.³¹ His *Decretum* was far more than a simple collection of canonistic traditions which would leave the reader to choose between various options and, sometimes conflicting, earlier decisions. Rather, he undertook to re-interpret canonical tradition comprehensively and homogeneously so, with 45% of the texts being brought by him to altered versions and also by eliminating those which seemed not to correspond to authorized sources - Bible, decrees of popes and councils, the scriptures of the fathers and three penitentials only. As Greta Austin recently put it: "The canons, after all, served a grander purpose, that of salvation - which was also the ultimate goal of theology."³²

This far-reaching goal and the interpretative decisiveness of Burchard's canonistic activity have to be taken into account when looking at those articles of the *Decretum* which refer to Jews: in addition, (and particularly so) here, no word is simply quoted, but all words and sentences are deeply reflected upon.

Let us start our survey of the provisions concerning Jews³³ with an extreme case: the canon against the killing of Jews and pagans. Regino of Prüm, when establishing the need for penance for the killing and murdering of Jews and pagans in his *Liber synodalis* referred to the text of the Hebrew Bible, declaring that in the past either the "old people [Jews] were not supposed to wage war against other nations" (*bellum est populo antiquo penitus inferre praeceptum*)³⁴.

²⁹ Paul Fournier, « Le Decret de Burchard de Worms. Ses caracteres, son influence », in *RHE* 12 (1911), pp. 451-473, 670-701, here pp. 689-91; see also Kerner, *Studien*, pp. 36-8; Rolker, *Canon Law*, pp. 63-8.

³⁰ See Detlev Jasper, „Burchards Dekret in der Sicht der Gregorianer“, in: Winfried Hartmann (ed.), *Bischof urchard von Worms 1000-1025*, pp. S. 167-198; Hartmann, *Burchards Dekret*, pp. 161-166; Linda Fowler Magerl, „Fine Distinctions and the Transmission of Texts“, in: *Savigny-Stiftung für Rechtsgeschichte. Kanonistische Abteilung* 83 (1997), pp. 146-86; see also Austin, *Shaping Church Law*, p. 236.

³¹ Kerner, S. 103.

³² Austin, *Shaping Church Law*, p. 234; see also Idem, "Freising and Worms in the Early Eleventh Century: Revisiting the Relationship between the *Collectio duodecim partium* and Burchard's *Decretum*", in: *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Kanonistische Abteilung* 93 (2007), pp. 45-108; Idem, "Authority and the Canons in Burchard's *Decretum* and Ivo's *Decretum* Readers", in: Martin Brett et al. (ed.) *Texts and Compilers in the Earlier Middle Ages. Studies in Medieval Canon Law in Honour of Linda Fowler-Magerl*, Burlington 2009, pp. 35-58.

³³ See Lotter, *Ausbildung; Pakter, Medieval Canon Law*, pp. 100-1, has 18 articles about Jews; John Gilchrist, "The Canonistic Treatment of Jews in the Latin West in the Eleventh and Early Twelfth Centuries", in: *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Kanonistische Abteilung*, 75 (1989) 94, pp. 70-106, 78-9, counts 21 relevant canons.

³⁴ Regino of Prüm, *De synodalibus causis*, II 94; see Linder, *Jews in Legal Sources*, p. 620; Austin, *Shaping Church Law*, p. 157.

Burchard, in book VI, *De homicidiis*, changed Regino's version³⁵ in VI.34 by introducing a significantly different argument: One should do penance, since the act of killing a Jew or a pagan "had extinguished the image of God, and the hope of a future conversion" (*quia imaginem dei et spem futurae conversionis extinguerat*).³⁶ Now, Burchard replaced Regino's historical interpretation with an ontological one, based on Gen. 1: 26-7 and 1 Cor. 11:7, and yet, with the expectation of the future conversion of non-Christians as the focus. As we will see in the examples which follow, for Burchard, when it came to Jews, conversion was the *leitmotiv*.

At first glance, Burchard did not address the issue of Jews in a systematic way. The comparably small number of sixteen statutes about Jews which he compiled and adapted are dispersed throughout several books of his *Decretum* (hereafter abbreviated BD)³⁷, with the highest concentration (10 out of 16) at the end of book IV, a section which deals with the issue of baptism. The articles referring to Jews here are mostly taken from the statutes of the Visigothic councils. BD IV.83 quotes Toledo IV, c. 60, a decision which recommends that baptized children be separated from their parents in order to remove them from their errors, and to deliver these children to monasteries or god-fearing women.³⁸ Further articles referring to Jews deal with provisions against their influence on converts (BD IV.84 = IV Tol., c. 62), ways to prove the integrity of converts (BD IV.81) or measures to be taken to ensure the liberation of their servants when baptised (IV.86-88). All these various issues are secondary topics which refer, from various angles, to the central issue of conversion. Other articles referring explicitly or implicitly to Jews deal with the limitation of social intercourse between Jews and Christians and are, with regards to content, less significant for Burchard's attitude toward Jews and can be easily related back to the afore mentioned basic issue: conversion.

Responding to more negative assessments of Burchard's attitude toward Jews, Friedrich Lotter has argued that Burchard's canons do not aim to weaken the status of Jews, but clearly show an intention to frame norms for their protection on theologically-inspired grounds. Lotter finds proof of this in BD IV.91, in a quotation from Pope Gregory I's letter which banned violence

³⁵ Regino had attributed it to a otherwise unknown synod at Mainz, yet without the reference to Jews it corresponds also to a decision taken by the synod of Worms 868 the text of which may have been available to both, Regino and Burchard; Lotter, *Ausbildung*, p. 75. However, it seems also possible that another local synod at Mainz, which has left no further traces, had taken a decision which referred also to Jews.

³⁶ Burchard, *Decretum* VI.34; Linder, p. 637.

³⁷ For a survey on Burchard's statements about Jews see Linder, pp. 633-38. The number of Burchard's statutes about Jews are also few compared for example to the number of such statutes introduced by Ivo of Chartres some decades later, see Pakter, *Medieval Canon Law*, pp. 105-7.

³⁸ Burchard, *Decretum* IV.83; on Toledo IV and its canon 60 see above note 12.

against Jews and their property and granted them freedom of religion.³⁹ However, even if we do not follow Gilchrist's scandalizing and simplifying interpretation which makes Burchard the intellectual father of the 1096 pogroms⁴⁰, what Lotter provides is an narrowly conceptualized interpretation which widely neglects the mental and theological context of the time: as baptism is clearly the focus of book IV, the meta-topic here is sincerely not freedom of cult, but once more the conversion of Jews. Reservation so far is expressed against violent measures to force Jews to conversion; the right to unhindered practice of Judaism should be guaranteed until the Jews finally would voluntarily convert. The ultimate goal according to Burchard and his *Decretum* would, anyway be conversion.

There is good reason to focus the argument and to look on Burchard from an angle contrary to the one of Lotter: In book XX (*De contemplatione*), in one of the very last articles of his collection (XX.97), following four articles on the Antichrist (XX.93-6) and preceding a series of articles about resurrection and the final judgement which would lead to a "saeculum novum et terra nova" (XX.98-110), Burchard rewrites Romans XI. 25-6 and states that, "in the end all Israelites will flock to the faith in recognition of the preaching of Elijah". Antichrist, resurrection, judgement are topics important to consider when the Jews appear in between. Introduced by the shift from legislation to theology and pastoral care in book XIX *De paenitentia*, which was thought to establish conditions and rules for penitence and perfection for all ranks of society⁴¹ and where, in c.132, Burchard quoted the prohibiting of clerics and laymen taking meals with Jews, a statute taken from the so-called Council of Elvira⁴² indeed, with its last book, the *Decretum* turned out to be less a law collection

³⁹ Burchard, *Decretum* IV.91; Lotter, *Ausbildung*, p. 75-6; cf. Blumenkranz, *Juifs et chrétiens*, pp. 368-9;

⁴⁰ Gilchrist, *Canonistic Treatment*, pp. 70-77; in this less than sketchy presentation which examines centuries-old canons to illustrate canonistic radicalisation prior to 1096, Gilchrist has blown the chance to profoundly revise earlier scholarship as result of his knowledge of 34 (!) canonical collections from Regino to Gratian.

⁴¹ On the content of book XIX see Pierre J. Payer, *Sex and the Penitentials. The Development of a Sexual Code 550-1150*, Toronto 1984, pp. 181-183, 98-104; Ludger Körntgen "Canon law and the practice of penance: Burchard of Worms's penitential", in: *Early medieval Europe* 14 (2006), pp. 103-117; Körntgen stresses the meaning of BD Book XIX as an "exemplary penitential and a summary of the preceding eighteen books" (*ibid.*, 103, 113ff.), yet being interested on the issue of penitence only he misses to provide any considerations about its meaning in view of the content of book XX.

⁴² Burchard, *Decretum* XIX.132; on Elvira see Linder, pp. 482-4; Manuel Sotomayor Muro et al. (eds.), *El Concilio de Elvira y su tiempo*, Granada 2005; Sabine Panzram, „Bischöfe und Sexualität. Die ‚canones‘ von Elvira als Instrument der Sozialisziplinierung“, in: idem (ed.), *Städte im Wandel. Bauliche Inszenierung und literarische Stilisierung lokaler Eliten auf der iberischen Halbinsel*, Münster 2007 pp. 213-236; Teresa Berdugo Villena, „Los cánones del Concilio de Elvira“ - una réplica, in: *Augustinianum* 48 (2008) pp. 369-434.

than a theological *summa* about the end to come based on a comprehensive legal configuration of the given world.

Lotter's interpretation of the *Decretum* as a step to establish a sustainable ecclesiastical Jewry law would be valuable for a situation in which the final fulfilment of history was thought to be far away. A long period of time would thus be left for Jews according to the *Decretum*, during which they would enjoy freedom and security. But what if, from the perspective of Burchard, not much time was left until the end? And what does it mean then, that the only topic which is common to almost all of Burchard's articles about Jews is conversion (the other, minor and at the same time corresponding issue would be separation from Christians).

Conversion, I argue here, is the key to understanding Burchard's attitudes towards Jews. And though Burchard did not raise the issue of whether or not the Antichrist had already been born or when he thought the end to come would be, we should consider the telling placement of his statutes about Jews: between Antichrist and judgement. Burchard was working only a few years after the numerical millennium, but still within the timeframe of the biographical millennium – given that the Lord was supposed to return a thousand years or so after His ascension to heaven. Johannes Fried, Richard Landes and others have argued that the year 1000 was not a fixed date, but a period in which fulfilment seemed possible.⁴³

Perhaps the title "Getting them in or Keeping them out?" may properly refer to the situation of the 10th century and to the situation at Mainz in the days of the compiler Gerhard, but seems inappropriate when it comes to Burchard. A better title here would be "Keeping them as Jews or making them Christians?" To be sure, the leading canonist of the early 11th century was by no means an ordinary law maker who tried to establish rules for a Christian society. On the contrary, as the eschatological turn in book XX, hitherto ne-

⁴³ On the meaning of the millennium and misperceptions in modern scholarship see Richard Landes, "Lest the Millenium be Fulfilled. Apocalyptic Expectations and the Pattern of Western Chronography, 100-800 CE.", in: Werner Verbeke et al. (eds.), *The Use and Abuse of Eschatology in the Middle Ages* (= *Mediaevalia Lovaniensia* I.15), Louvain 1988, pp. 137-211; Johannes Fried, "Endzeiterwartung um die Jahrtausendwende," in: *Deutsches Archiv für die Erforschung des Mittelalters* 45 (1989), S. 381-473; Richard Landes, "'Millenarismus absconditus'. L'historiographie augustinienne et le millenarisme du haut moyen-âge jusqu'en l'an mil", in: *Le Moyen-Age* 98 (1992), S. 355-377; Johannes Fried, "Die Endzeit fest im Griff des Positivismus? Zur Auseinandersetzung mit Sylvain Gouguenheim", in: *Historische Zeitschrift* 275 (2002), pp. 281-321; Bianca Kühnel, *The End of Time in the Order of Things. Science and Eschatology in Early Medieval Art*, Regensburg 2003, pp. 18-9, 255-7; see also Andrew Gow et al. (eds.), *The Apocalyptic Year 1000 Religious Expectation and Social Change, 950-1050*, Oxford 2003. In difference to these approaches, Grete Austin, despite the promising title of her otherwise seminal study on Burchard (*Shaping Church Law around the Year Thousand*, pp. 235-9), has completely ignored the millennial dimension of Burchard's work.; see also Sylvain Gouguenheim, *Les fausses terreurs de l'an mil. Attente de la fin des temps ou approfondissement de la foi?*, Paris 1999, pp. 93-4.

glected in research on Burchard and his *Decretum*, makes clear, this work was thought to contribute to the ultimate perfection of society and preparing it for its dramatic last turn resulting in definitive fulfilment. The relation between secular and ecclesiastical powers, ecclesiastical discipline or penitence of laymen and clergy are key issues of the *Decretum* and filled most of its books, but – here the Jews are only one topic to illustrate this basic character of Burchard’s work – all these issues were secondary with regard to the decisive apocalyptic turn in book XX.

Thus the Jews, who were becoming part of the social reality of Worms during these exact years and whom we know from the dedicatory inscription for the town’s synagogue in 1034⁴⁴, were nothing but a target group for conversion for Burchard in order to prepare for the coming of the end and the fulfilment of time. It may be that he even understood the appearance of the Jews, the “Living letters of the law” (to use Jeremy Cohen’s telling title) and addressees of the eschatological message of chapter 11 of Paul’s letter to the Romans, out there in the streets of Worms as a clear hint of the immediacy of the end.

We do not know much more about the Jews of Worms in the 1st quarter of the 11th century⁴⁵ but we only need to look a bit further to realize that conditions for Jews deteriorated dramatically shortly after the year 1000, and all events to be mentioned here clearly belong also to the horizon of Burchard’s writing. The so-called Hebrew Anonymous reports in a his brief chronicle about a persecution taking place on the order of the King in 1007⁴⁶, and Radulf

⁴⁴ Text and German translation in Otto Böttcher, „Die alte Synagoge zu Worms“, in: Ernst Róth (ed.), *Festschrift zur Wiedereinweihung der Synagoge zu Worms*, Frankfurt am Main 1961, pp. 97-8; English translation: Praised be forever he who «hears the supplications» (1. Kings 8:30) / who fills the heart of “his servant” with confidence, (1. Kings 8:30) / Mr. Jacob bar David, a man of wisdom / “to build a house for his great name” (1. Kings 8:17) / and his wife Mrs. Rachel, esteemed among the tranquil / they spent their wealth to honour the Lord / and they embellished the synagogue with outfits / and it was accomplished in the month of Elul 794 of the era / It pleases their creator better than offering sacrifices / They earned an everlasting name and gained / “a place and a name” of reputation and ovations of grace / “better than sons and daughters” (Isaiah 56:5) / They deserve to be mentioned and remembered in good memory / and the reader should not miss to answer “Amen” (http://reissner-guben.org/w2005/ruben_syn_inscript.html, Dec. 30, 2012)

⁴⁵ See Fritz Reuter, *Warmaisa – 1000 Jahre Juden in Worms*, 3rd ed., Worms (privat) 2009, pp. 17-20.

⁴⁶ For the so-called 1007-Anonymous see: Avraham Habermann, *Sefer gezerot aschkenaz we zarfat* (hebr.), Jerusalem 1945, pp. 19-21 (edition); Golb, *Jews in Medieval Normandy* (note 17), pp. 547-50 (translation); see Kenneth R. Stow, *The “1007 Anonymus” and Papal Sovereignty. Jewish Perception of the Papacy and Papal Policy in the High Middle Ages* (Hebrew Union College Annual Suppl.; 4), Cincinnati 1984, pp. 26-7, 67-71; Richard Landes, „The Massacres of 1010. On the Origins of Popular anti-Jewish Violence in Western Europe“, in: Jeremy Cohen (ed.), *From Witness to Witchcraft. Jews and Judaism in Medieval Christian Thought*, Wiesbaden 1996, pp. 79-112; Gerd Mentgen, „Die Judenvertreibungen im mittelalterlichen Reich“, in: *Aschkenas* 16 (2006), here

Glaber (~ 985 – 1047), the loquacious chronicler from Burgundy who started his work in the second quarter of the 11th century probably changed the same events into an account on a Jewish-Muslim conspiracy with the focus on Orléans, leading to the destruction of the Holy Sepulchre in Jerusalem in 1009.⁴⁷ The *Annales Quedlinburgenses* report the expulsion of Jews from Mainz in 1012⁴⁸, and Albert of Metz, in his *De Diversitate temporum*, has the odd story about a deacon in the service of a certain Duke Conrad named Wezelin, who, as we are told by the instigation of the Devil, converted to Judaism during these years and published polemical letters attacking the Christian faith, which Albert quoted together with the replies by a certain priest Henry written on the orders of King Henry II.⁴⁹

If we look at the circumstances of these years from the Jewish perspective, we find that during these years the first mentionable Jewish sages – Moses ben Kalonymos who had come from Rome and Gershom ben Jehuda, the *meor ha gola*, worked in Mainz and made the middle Rhine area the first centre of Torah learning in what became Ashkenaz; yet we have also to realize, that two generations or so after the first Jews had settled in the cities along the Rhine, this young community already faced its first serious crisis and Burchard's un-compromising attitude toward these newcomers would then be nothing

pp. 370-373; Johannes Heil, "Die Juden um das Jahr 1000 und die antijüdischen Reaktionen auf die Jerusalemer Krise", in: Thomas Pratsch (ed.), *Konflikt und Bewältigung vor 1000 Jahren: Die Zerstörung der Grabeskirche zu Jerusalem im Jahre 1009* (Millennium Studies; 32), Berlin 2011, pp. 195-220.

⁴⁷ Rodulf Glaber, *Historiarum liber III.24-25*, in: *Historiarum Libri Quinque; Rodulfus Glaber, The Five Books of the Histories*, ed. John France, Oxford 1989 pp. 132-3. A close examination which confronts Rodulf with the 1007-Anonymous makes clear that it was only Rodulf who related the pogroms in France of 1007 to the destruction of the Church of the Holy Sepulchre in Jerusalem in 1009; see Heil, *Die Juden um das Jahr 1000*, pp. 215-6; see furthermore John France, "Rodulfus Glaber and French Politics in the Early Eleventh Century", in: *Francia* 16 (1989), pp. 101-112; Richard Landes, "Rodolfus Glaber and the Dawn of the New Millennium. Eschatology, Historiography, and the Year 1000", in: *Revue Mabillon* N.S. 7 (1996), pp. 57-77; idem, *Relics, Apocalypse, and the Deceits of History. Ademar of Chabannes, 989-1034*, Cambridge, Ma 1995, pp. 175-177; Daniel F. Callahan, "Ademar of Chabannes, Millennial Fears and the Development of Western Anti-Judaism", in: *Journal of Ecclesiastical History* 46 (1995), pp. 19-35; idem, "The Cross, the Jews, and the Destruction of the Church of the Holy Sepulchre in the Writings of Ademar of Chabannes", in: Michael Frasseto (ed.), *Christian Attitudes Toward the Jews in the Middle Ages. A Casebook*, New York 2007, pp. 15-23.

⁴⁸ The events of 1012 are reported by a single source written far away from Mainz: *Annales Quedlinburgensis*, in: MGH *Scriptores* vol. 3, pp. 81; *expulsio Iudeorum facta est a rege in moguntia, sed et quorundam haereticorum refutata est insania*"; see Friedrich Lotter, "Die Vertreibung der Juden aus Mainz um 1012 und der antijüdische Traktat des Hofgeistlichen Heinrich", in: Friedhelm Burgard et al. (eds.), *Judenvertreibungen in Mittelalter und früher Neuzeit*, Hannover 1999, pp. 37-74; David Malkiel, *Reconstructing Ashkenaz. The Human Face of Franco-German Jewry, 1000-1250*, Stanford 2009, pp. 69-70; Heil, *Die Juden um das Jahr 1000*, pp. 200-01.

⁴⁹ Albert, *De diversitate temporum* I.7, II.22, in: MGH *Scriptores* 4, pp. 704, 720-23; see Blumenkranz, *Auteurs latin chretiens*, pp. 247-50; Lotter, *Vertreibung 1012*, pp. 37-74.

but a further indication of the seriousness of the situation in the early years of the 11th century.⁵⁰

Here is also the point which makes the difference between Burchard and later canonists. Whilst for Burchard law was a tool to argue theologically in a time of prospective fulfilment, his followers understood law as a tool to establish ecclesiastical order in the world as it was. In Gratian, who worked roughly a hundred and thirty years later and finished his *Decretum* in about 1140 the whole arrangement of books and single contents is different to Burchard's *Decretum* and so is the placement of Gratian's provisions about Jews. As Gratian deals in the final part III *Decretum* ("De consecratione") with penitence, but not with Antichrist and redemption, it reveals no hint for any eschatological culmination.⁵¹ The same observation is true for Ivo of Chartres (~ 1040 - ~ 1115) and his most comprehensive work, the *Collectio tripartita*. Ivo collects in part A (I-II), finished probably 1094, a considerable amount of anti-Jewish constitutions and, among others, quoted the provisions taken by Toledo IV about the separation of Jewish children from their parents in its harshest version (not speaking about the children of baptized former Jews, but about the children of Jews in general). But in these parts his collection offers no significant argumentative line and lacks also any eschatological strategy. So far, the *Tripartita* seems just to be a more or less chronological inventory of available conciliar traditions, papal letters, decrees, and others being considered to be authoritative and edited for further processing (Tripartite A for the *Decretum*) or being for his part an extract from another work (Tripartite B from the *Decretum*).⁵² The same is true for the other of Ivo's major works, his *Decretum*, which in the course of its seventeen books has again a considerable amount

⁵⁰ Avraham Grossman, *The Early Sages of Ashkenaz: Their Lives, Leadership and Works (900-1096)* [hebr.], Jerusalem 1988, pp. 1-26; Toch, *Juden*, pp. 5-6, 80-1; Ram Ben-Shalom, „Medieval Jewry in Christendom“, in: Martin Goodman et al. (eds.), *The Oxford Handbook of Jewish Studies*, Oxford 2002, pp. 155-6; Marcus, *Jewish-Christian Symbiosis*, 449-516; Heil, *Juden* (note 2), pp. 289-90; idem, *Juden um das Jahr 1000*, pp. 195-6.

⁵¹ The still relevant edition of 1879, *Decretum magistri Gratiani*, by Emil Friedberg is accessible on <http://geschichte.digitale-sammlungen.de/decretum-gratiani/online/angebot>; see Timothy Reuter, Gabriel Silagi (eds.) *Wortkonkordanz zum Decretum Gratiani*, 5 vols. (= MGH Hilfsmittel; 10), Munich 1990; Pakter, *Medieval Canon Law*, pp. 32-4, passim; Peter Landau, *Gratian and the "Decretum Gratiani"*, in: Wilfried Hartmann et al. (eds.), *The history of medieval canon law in the classical period (1140-1234). From Gratian to the Decretals of Pope Gregory IX.*, Washington 2008, pp. 22-54.

⁵² Ivo of Chartres, *Collectio tripartita A II*, 37, 18-24 (Toledo IV); see also *ibid.*, A.II. 11.5 (Synodus sextus), A.II.28.33 u.39 (Agde), A.II.36.7 (Toledo III), A.II.40.4 (Orléans); see http://project.knowledgeforge.net/ivo/tripartita/trip_a_2_1p4.pdf (2012, Dec. 18). On Ivo of Chartres and his canons about Jews see, Paul Fournier, « Les collections canoniques attribués à Yves de Chartres Decret de Burchard de Worms. Ses caracteres, son influence », in: *Bibliothèque de l'Ecole des chartes* 58 (1897), here pp. 65-77; Lotter, *Ausbildung*, pp. 69-96; Pakter, *Medieval Canon Law*, pp. 105-7, passim; Linder, *Jews in Legal Sources*, pp. 649-680; Rolker, *Canon law*, pp. 100-4.

of provisions about Jews, but is once more concerned about their place in a world which shows no sign of coming to an end. The majority of canons dealing with Jews appears in book I which deals with faith, sacraments, baptism, and in book XIII which – remarkably enough – puts the Jews in society with all kinds of evildoers such as robbers, thieves, usurers, and others, and provides measures for their correction. Especially in the *Decretum Ivo* seems to collect as many provisions about Jews as possible, but the single paragraphs appear to be chance discoveries and the result far from systematic.⁵³

What can be said about ecclesiastical legislation is also echoed in secular legislation. In sharp contrast to Burchard's eschatologically-driven position stands the privilege which not far from Worms Bishop Rüdiger granted to the Jews of Speyer only a few decades later, in 1084. In this privilege which brought the Jewish community of Speyer into existence it is even said that in order to turn the *villa* Speyer into a veritable town the issuer had decided "to increase the honour of the town a thousand fold by settling Jews there" and to whom he granted, not only far-reaching trading rights and tax exemptions, but also a secure place for burials and "as the highest expression of his favour, granted them any right conceded to them in any other town of the Kingdom."⁵⁴ Given that Burchard of Worms was a milleniarist, Rudiger Huozmann of Speyer was a post-apocalyptic pragmatic who drew his own conclusions from the presence of Jews in his area and in his days and who simply wanted to profit from their abilities (to the extent that they were merchants engaged in international trade), in order to further his future-orientated holy work: the cathedral of Speyer.



To summarize: Contrary to what the textual surface may suggest there are no immediate ties between Carolingian letters of protection for Jews (~825) and the Salian privileges for Jews (1084-90) in the cities along the river Rhine from where Ashkenaz emerged. The pragmatism which was at work here and there was only one among a broad set of potential approaches to cope with the fact, that the "hermeneutical Jew" of Carolingian theology had started to emerge into the social and cultural reality of the High Middle Ages. Burchard apocalyptically actualized the Augustine and Gregorian concept of Jewish serfdom. Ivo of Chartres and Gratian later provided much of what Gregory the Great once had disposed in order to prohibit violent conversion of Jews and to secure cultic freedom to the non-Christians in their midst. Yet they had

⁵³ Ivo of Chartres, *Decretum*, esp. I. 275-285; XIII,94-119 in: Migne, PL 161, cols. 123-125, 820-824; Linder, *Jews in Legal Sources*, pp. 653-8; Rolker, *Canon law*, pp. 107-21.

⁵⁴ Printed in Alfred Hilgard, *Urkunden zur Geschichte der Stadt Speyer*, Straßburg 1885, No. 11, pp. 11-2; the imperial charters for Worms and Speyer 1090 MGH *Diplomata Heinrici IV*, Nos. 411, 412, pp. 543-49; No. 509, pp. 679-80.

also contradicting traditions at their disposal which they could not or did not want to ignore. Already the response to the emerging north European Jewish culture from Lyon in the first half of the ninth century had been hostile and restrictive, even echoing the eliminatory legislation of the Visigothic church. Though rejected by the courts of Louis the Pious and Charles the Bald, the seed of these traditions sprang and became an accepted part of canon legislation from Burchard onwards.

Walter Pakter in his seminal work on “Medieval Canon Law and the Jews” has extensively expounded how Gratian and later canonists up to the fourteenth century formulated rules for the jurisdiction over Jews and the Jews’ state at Christian and secular courts, the servants of Jews and compensation for the withdrawal of such servants, for the detention of Jews from public offices and about Christian attitudes toward Jewish family laws. So far one could assume that canon law defined, in clearly restrictive terms, a passably secured status for Jews and Judaism. However, Pakter only marginally refers to the equation of Jews with heretics⁵⁵ and ignores that this heavy burden was built already into the fundament of western canon law. Particular notice deserves an excerpt from a dogmatic text by Fulgentius of Ruspe (462/7-532) in Ivo’s *Decretum*: “Maintain strongly and have not the slightest doubt that not only all pagans but also all Jews, heretics and schismatics who terminate their lives outside the Catholic church are destined for everlasting fire, prepared for the Devil and his angels” – a source which – as far I can see – never had been used in canonistic discourse before.⁵⁶ Admitting Jews to Christian society but simultaneously emphasizing their forsakenness remained a deeply contradictory approach which also made sure that canon law would not become a clear code of conduct to prevent anti-Jewish violence. The perpetrators of the crusades and later anti-Jewish activists drew their own conclusions from the Jews’ forsakenness.

⁵⁵ Pakter, *Medieval Canon Law*, pp. 47, 155, 179, 186, 204.

⁵⁶ Fulgentius of Ruspe, *De fide ad Petrum* 81, in: CCSL 91A, p. 757 = Ivo, *Decretum*, I:38: „Firmissime tene, et nullatenus dubites, non solum omnes paganos, sed et omnes Judaeos, et omnes haereticos atque schismaticos, qui extra Ecclesiam Catholicam finiunt vitam, in ignem aeternum ituros, qui paratus est diabolo et angelis ejus“; see Gilchrist, *Canonistic Treatment*, p. 84; Linder, *Jews in Legal Sources*, p. 650; for the context of Fulgentius’ argument see Christoph Körner, (K)ein Heil ausserhalb der Kirche? Überlegungen zur theologischen Bedeutung religiöser Pluralität, Münster 2006, pp. 15-6; Wolfram Drews, „Jews as Pagans“? Polemical definitions of identity in Visigothic Spain“, in: *Early Medieval Europe* 11 (2002), pp. 189-207, 193 note 12.

IV From the Law to Violence, from Violence to Law



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'ALL ISRAEL WILL BE SAVED'? THE FORCED BAPTISM OF THE JEWS AND IMPERIAL ESCHATOLOGY

Paul MAGDALINO

The position of the Jews within the Christian Roman Empire was highly ambiguous, and it became more ambiguous with time.¹ The more we learn about it, the more ambiguous it appears. The Jewish scripture was acknowledged to be the word of God, and yet the Jews were reviled for following its precepts to the letter. Jewish communities were marginalized, but they flourished. Jews had the civic duties, but were denied the privileges, of Roman citizens. The practice of Judaism was tolerated and its places of worship even protected by law, but its practitioners were severely disadvantaged, not to say disenfranchised, by legislation that prohibited them from building new synagogues, marrying Christians, owning Christian slaves, and holding public office. Jewish converts to Christianity in the eighth century were termed 'new citizens', the implication being that they had not been citizens before.² The legislators gratuitously rubbished Jewish practices and beliefs, thus echoing a mass of other Christian polemical literature, and bracketed the Jews with other kinds of religious deviants, including the Manichees. The Church paired Judaism with Hellenism as one of the twin poles of error that lured heretics away from the straight and narrow.³ And yet Jews, unlike heretics and pagans, were not exiled or executed for being Jews, except on a few exceptional occasions.

The ambiguity of Jewish status in the present extended to the future, in that Orthodox Christian opinion was fundamentally divided over the question whether the synagogue of the Jews would be saved at the end of time or would

¹ See in general Amnon Linder, *The Jews in Roman Imperial Legislation* (Detroit: Wayne State University Press, 1987); idem, *The Jews in the Legal Sources of the Early Middle Ages* (Detroit: Wayne State University Press, 1997); Joshua Starr, *The Jews in the Byzantine Empire 641-1204* (Athens 1939); most recently Vincent Déroche, 'Regards croisés des hérésiologues, des canonistes et des hagiographes sur les Juifs à Byzance', in *Orthodoxy and Heresy in Byzantium*, edited by Antonio Rigo and Pavel Ermilov, *Quaderni di Nuova Paganà* 4 (Rome: Università degli Studi di Roma 'Tor Vergata', 2011), 61-78.

² Michael the Syrian, ed. and tr. J.-B. Chabot, *Chronique de Michel le Syrien, patriarche Jacobite d'Antioche (1166-1169)*, III/2 (Paris: E. Leroux, 1904), 489-490.

³ Gilbert Dagron in G. Dagron and V. Déroche, *Juifs et chrétiens en Orient byzantine*, *Bilans de Recherche* 5 (Paris: Association des amis du Centre d'histoire et civilisation de Byzance, 2010), 359-360.

stand condemned by Christ at the Second Coming for its criminal unbelief. This disagreement is not at first sight obvious in Byzantine apocalyptic literature. The four texts that deal extensively with the Last Things (the reign of Antichrist and/or the Last Judgement) are unanimous in portraying the Jews as obdurate and unrepentant; they are seduced by the Antichrist, with whom they collaborate, and they acknowledge Christ only when they confront him on the judgement seat. Yet we cannot conclude that this apocalyptic vision represents the Orthodox consensus on the matter. The dramatic insistence with which the Jews are demonised suggests that the scenario was not uncontroversial. The Jewish collaboration with Antichrist is a central theme, if not the main plot, of the *Diegesis Danielis* edited by Klaus Berger.⁴ The discomfiture of the Jews at the Last Judgement is the dramatic high-point of the *Word of Daniel on the End of the World*, edited by Riccardo Maisano. Daniel prophesies that Christ's adventus at the Second Coming will be preceded by 'the precious and life-giving Cross in accusation of the Jews'. As this and the other instruments of the Passion are set out, the Jews bewail their fate. When their turn comes to appear before the tribunal, those guilty of torturing and killing Christ – all named individually – are confronted with the incriminating evidence. Pontius Pilate, who appears with them, denounces them in a long speech, effectively saying 'I told you so'. Seeing that the Christians are truly the elect nation, Annas and Caiaphas and all the chief priests and scribes beat their breasts and lament in vain.⁵

The polemic that is implicit in these texts becomes explicit in the two eschatologically didactic saints' lives of the tenth century, the *Life of Basil the Younger* and the *Life of Andrew the Fool*, whose fictitious heroes are the mouthpieces for teachings of correct belief, especially concerning the afterlife and the Last Things. Both texts specifically challenge the belief in the ultimate salvation of the Jews. In the *Life of Basil the Younger*, the saint arranges for the narrator, Gregory, to see an extended preview of the Last Judgement in order to correct the dangerously positive ideas he has begun to have about the Jews after reading the Old Testament.⁶ 'How can their faith be bad and ours be good?', he reflects. The crucifiers of Christ deserve punishment, but why should their descendants not be saved for remaining true to the laws of their ancestors whom Christians also revere? He has his answer in the dramatic judgement scenes where the Jews plead vainly with Moses to save them from the eternal punishment to which they have condemned themselves by cru-

⁴ K. Berger, *Die griechische Daniel-Diegesis. Eine altkirchliche Apokalypse* (Leiden: Brill, 1976), 15-17.

⁵ R. Maisano, *L'apocalisse apocriфа di Leone di Costantinopoli* (Naples: Morano, 1975), 103, 106-109.

⁶ BHG 263: ed. A.N. Veselovskij, in *Sbornik Otdela russkogo jazyka i slovestnosti Imperatorskoj akademii nauk* 53 (St Petersburg, 1891), 6 suppl. 3-174, at 3-7, 126-143.

cifying the Son of God. In the *Life of Andrew the Fool*, the saint, during a question and answer session with the narrator, takes issue with ‘certain people’ who ‘say that after the fulfilment of the reign of the Gentiles, God will see to it that the divine tribes (literally the “divine sceptres”) of Israel will arise to reign until the completion of the seventh age’; they cite Isaiah (11.12, 16) and St Paul (Romans 11.26): ‘When the full number of the Gentiles has come in, then all Israel will be saved’.⁷ According to ‘Andrew’ this refers to the reign of Antichrist, who will gather the Jews together in Jerusalem, thus depriving them of the excuse that they cannot not believe in Christ as long as they are scattered in the Diaspora. St Paul did not mean that the Jews would be saved from eternal punishment in the afterlife, but that they would be saved from their wandering and humiliation on this earth, so that they could not complain that they had been unfairly treated in comparison with the Gentiles.

The ‘certain people’ against whom the author directs this interpretation are not named, but they are not a rhetorical fiction. This is clear from another set of questions and answers, dating from the twelfth century, in one of which the much consulted theological expert Michael Glykas gives a resoundingly affirmative reply to the question ‘whether the race of the Hebrews will return to the Lord in the Last Days’. ‘That the synagogue of the Jews will come to Christ at the time of the consummation and be united with the people of Christ’s name, this teaching is revealed in many places of the Scripture, so of this you need have no doubt’.⁸ Glykas cites St Cyril and many passages from the Old and New Testament, ending with Romans 11.25, the prophecy that ‘all Israel shall be saved’. Although Glykas was writing in the twelfth century, he surely repeats arguments that had been formulated much earlier.

This debate at the heart of Byzantine Orthodoxy over the ultimate fate of the Jews needs much research. In particular, it would be interesting to know whether it reflects the antagonism of factions within the Byzantine church; there are indications that the pro-Jewish lobby included the influential but resented monastery of Stoudios.⁹ However, the question that concerns us here is more limited: why was the anti-Jewish lobby so determined to deny the Jews salvation, to refuse them the possibility of turning to Christ, which surely should have been the wish of every pious Christian? Why were they not

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⁷ Ed. and tr. Lennart Rydén, *The Life of St Andrew the Fool*, Acta Universitatis Upsaliensis, Studia Byzantina Upsaliensia (Uppsala, 1996), II, 274-277.

⁸ Ed. S. Eustratiadès, *Εἰς τὰς ἀπορίας τῆς θείας γραφῆς κεφάλαια*, I (Athens: Sakellariou, 1906), 218-221.

⁹ See B. Crostini, ‘Christianity and Judaism in Eleventh-Century Constantinople’, in V. Ruggieri and L. Pieralli, eds, *EUKOSMIA. Miscellanea per il 75° di Padre Vincenzo Poggi S.J.* (Soveria Mannelli: Rubbetino, 2003), 167-187.

content to read the key New Testament text, Romans 11.25, in its obvious, literal and spiritual sense, which was surely the sense intended by the author?

Without getting into the thorny exegesis of this problematic passage, I can think of two possible reasons, apart from sheer vindictive and visceral anti-Semitism, why Byzantine churchmen were reluctant to go with the optimistic flow of a literal but spiritual reading. One reason is suggested by the passage in the *Life of Andrew the Fool*, from which it is clear that not only the ‘damnationists’ but also at least a section of the ‘salvationist’ lobby did not read the Pauline text in a spiritual sense, but took St Paul to be referring to a physical gathering of the Jews in Jerusalem. The ‘damnationist’ reading was simply an inversion of the ‘salvationist’ scenario, following a standard apocalyptic procedure, which turned the Jewish Messiah into the Christian Antichrist.¹⁰ Either way, this particular debate over Romans 11.25-6 clearly turned on its exact significance as a Christianised version of a Jewish Messianic prophecy, which in its original form envisaged some kind of millennial reign of the elect in Jerusalem. This sounds like a relic, or a caricature, of an early Christian judaizing belief that had no place in mainstream Christianity after the fourth century. Yet Christian expectations of a Jewish restoration in Jerusalem did not exist just in fantasy. They are clearly attested in the *erotapokriseis* of Pseudo-Caesarius, dating from the late sixth century. In one request, the anonymous author is asked to provide an arsenal of scriptural authorities to refute the Jews who claim, with the support of ‘the majority of Christians’ and ‘the majority of our church’, that Jerusalem and the Temple should be restored to them, because they continue faithfully to observe the Law.¹¹ As Yannis Papadoyannakis notes in his analysis of this text, it confirms the extent to which Christian triumphalism in Late Antiquity masked a deep fear of a Jewish comeback.¹² Above all, the problem was the degree of Christian sympathy for the Jewish cause. This is why the anti-Judaizers were so keen to downgrade the intention of Romans 11.25-6: otherwise, it could be and was used to endorse a Jewish takeover of the kingdom of Christ from the inside, under the guise of conversion.

This brings us to the other likely reason why the ‘damnationist’ lobby resisted the idea of Jewish salvation as promised by the epistle to the Romans. It played into the hands of, and ostensibly provided sanction for, those who

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¹⁰ C.E. Hill, ‘Antichrist from the Tribe of Dan’, *Journal of Theological Studies* 46 (1995), 99-117.

¹¹ Pseudo-Kaisarios, *Die Erotapokriseis*, ed. R. Riedinger, GCH (Berlin 1989), no. 218, pp. 201ff; see also question no. 217, p. 200, on the salvation of the Jews.

¹² Y. Papadoyannakis, ‘A Debate about the Rebuilding of the Temple in Sixth-Century Byzantium’, in *Antiquity in Antiquity. Jewish and Christian Pasts in the Greco-Roman World*, edited by G. Gardner and K.L. Osterloh (Tübingen: Mohr and Siebeck, 2008), 373-382.

sought to baptise the Jews by force, as three Byzantine emperors attempted to do from the seventh to the ninth century:¹³ Heraclius in 632, Leo III in 721,¹⁴ Basil I in 874.¹⁵ We have no direct proof that they or their advisers cited Romans 11.25-6, but it is hard to imagine that they neglected to make use of this text, which justified their policy as the fulfilment of Divine Providence, especially since each one of them could plausibly claim that the time of fulfilment was at hand. Equally, it is hard to imagine that those churchmen who criticised the policy of forced conversion did not develop arguments against the literal reading of Romans 11.25-6, and it is likely that the interpretation we find in the *Life of Andrew the Fool* was formulated in the context of one of the imperial attempts.

The ecclesiastical critics of forced conversion were clearly in agreement with, if not identical with, the authors of the apocalyptic scenario that described the Jews' collaboration with Antichrist and their dramatic damnation at the Last Judgement. What is not clear is the extent to which the 'damnationist' apocalyptic scenario preceded and influenced, or was itself shaped by, the criticism of imperial policy. The evidence for the forced conversions, though reliable, is not extensive, the critique was not the same on each occasion, and apocalyptic texts, whether Christian or Jewish, are notoriously difficult to date with precision, especially since they invariably recycle motifs and contain several layers of composition.

In spite of this uncertainty, it seems evident that the first of the imperial conversions, that ordered by Heraclius in 632, marked a turning point, setting a precedent for both imperial policy and ecclesiastical reaction. In the second part of this paper, I would like to focus on this episode and suggest an explanation. What moved and motivated Heraclius to make such a radical break with the legal toleration of the Jewish religion that had been practised by all his Christian predecessors, including the most fanatical? Equally, why did the church not unanimously welcome this final solution to the problem of the most hated enemies of Christ, against whom bishops and holy men had constantly urged pious emperors to take sterner action in the past? I believe that the answers to both questions are basically eschatological, and are closely related to each other.

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¹³ See in general Dagron and Déroche, *Juifs et chrétiens*, 17-46, 357-367.

¹⁴ See also P. Magdalino, 'The Other Image at the Palace Gate and the Visual Propaganda of Leo III', in *Byzantine Religious Culture. Studies in Honor of Alice-Mary Talbot*, edited by Denis Sullivan, Elizabeth Fisher, and Stratis Papaioannou (Leiden: Brill, 2011), 139-153.

¹⁵ See the contribution of Oscar Prieto Domínguez to this volume.

We have two main sources for Heraclius' measure: a letter of Maximos the Confessor,¹⁶ and the so-called *Doctrina Iacobi nuper baptizati*, the purported record of a series of conversations held in Carthage in 634 between a group of unwilling recent converts, one of whom has become a true believer and endeavours to convince the others of the truth of Christianity.¹⁷ The letter gives the date of the conversion order, 632, while the *Doctrina* indicates that it was a shotgun baptism, with no catechetical preparation, and with the penalty of death by burning for refusal or apostasy.¹⁸ Both sources show that the imperial decree was enforced with particular zeal in North Africa. But neither of them gives any indication of the form in which it was issued, the way it was formulated, or the reasons that it gave, let alone the real reasons that lay behind it. Those reasons have to be deduced from the political and ideological circumstances of the Roman Empire in the early 630s.¹⁹

In 632, Heraclius was still shining in the glow of his total victory in the long, great war with Sassanian Persia, a victory that gave the Roman emperor unprecedented scope for setting the global agenda.²⁰ He had the moral authority to heal the rift in the church between Chalcedonians and non-Chalcedonians, Dyophysites and Monophysites, that his predecessors had failed to heal for the past one hundred and eighty years; he also had a winning compromise formula in the doctrine of Monenergism, the doctrine of a single activity uniting Christ's human and divine natures, that he developed in collaboration with Sergius, patriarch of Constantinople.²¹ The eventual rejection of this doctrine and the similar compromise formula with which Heraclius soon replaced it, that of Monothelism, or one human and divine will, should not be allowed to obscure its potential for success in the early 630s, just before the storm clouds of Islam appeared on the horizon, and before the election of Sophronius as Patriarch of Jerusalem. Before that, Monenergism was supported by a strong consensus of senior clergy, including the patriarch of Constantinople and, exceptionally for a new doctrinal formula, the Roman pope Honorius I,

¹⁶ C. Laga 'Jews and Judaism in Maximus Confessor's Works. Theoretical Controversy and Practical Attitudes', *Byzantinoslavica* 51 (1990), 177-188; Dagron and Déroche, *Juifs et chrétiens*. 30-31, 39-40.

¹⁷ Ed. Déroche, in Dagron and Déroche, *Juifs et chrétiens*, 47-273.

¹⁸ Dagron and Déroche, *Juifs et chrétiens*, 72-73, 102-103, 134-135, 156-157, 231.

¹⁹ On these, see now Y. Stoyanov, *Defenders and Enemies of the True Cross. The Sassanian Conquest of Jerusalem in 614 and Byzantine Ideology of Anti-Persian Warfare*, Österreichische Akademie der Wissenschaften, philosophisch-historische Klasse. Sitzungsberichte, 819 (Vienna, 2011).

²⁰ W.E. Kaegi, *Heraclius, Emperor of Byzantium* (Cambridge: Cambridge University Press, 2003), 193-228.

²¹ C. Hovorun, *Will, Action and Freedom. Christological Controversies in the Seventh Century* (Leiden: Brill, 2008), 53-67.

who himself came up with the further refinement of Monothelism.²² Now Honorius was also remembered for his zeal in converting the Jews.²³ Whether or not he approved or inspired the conversion policy of Heraclius, it is clear that this policy must be seen in the context of a broad and pressing concern to impose religious unity on the Christian *oikoumene* following the defeat of its most dangerous enemy.

Heraclius’ religious policy at this point was specifically affected by the clean-up operation that he had to conduct in the aftermath of the Persian occupation of Syria and Palestine, which had both exploited and aggravated the religious divisions in the occupied areas. The Persian occupation of Jerusalem had been particularly traumatic for the local Christian church, not least because it had been facilitated, and Persian atrocities and desecrations had been perpetrated, with the active collaboration of the Jewish community. The restoration of the True Cross to Jerusalem from Persian captivity, which Heraclius performed with great ceremony in 630, was accompanied by a massacre of local Jews,²⁴ and the forced conversion of the Jews two years later was an act of reprisal for their political apostasy. The political and punitive character of the measure is apparent in the fact, which we have noted, that it was enforced without any spiritual preparation of the baptizands. At issue was not simply the Jews’ disloyalty to the Roman regime, but also their desire to replace it with their own Messianic kingdom based on Jerusalem and a restoration of the Temple cult. These aspirations would certainly have been known and of concern to Heraclius. Numerous studies of seventh-century Judaism have noted that the Persian and Arab invasions of the Roman Empire were accompanied by an outpouring of literature – apocalyptic, midrashic, and *piyyutim* – reflecting contemporary hopes of an imminent defeat of the Roman Empire and the enthronement of the Messiah in the Temple.²⁵ In these texts, the Roman Emperor, recognisable as Heraclius, has the generic name Ermolaos/Armilus and functions as the generic equivalent of the Christian Antichrist, while the Messiah figures have certain attributes of Christ, and

²² Hovorun, *Will*, 72.

²³ Dagon and Déroche, *Juifs et chrétiens*, 36; J. Durliat, ‘L’építaphe du pape Honorius’, in *Aetos: Studies in Honour of Cyril Mango*, edited by Ihor Ševčenko and Irmgard Hutter (Stuttgart-Leipzig: Teubner, 1998), 72.

²⁴ Kaegi, *Heraclius*, 205–7.

²⁵ See, among others, R. Wilken, *The Land Called Holy* (New Haven/London: Yale University Press, 1992), chapter 10; W. J. van Bekkum, ‘Jewish Messianic Expectations in the Age of Heraclius’, in *The Reign of Heraclius (610–641): Crisis and Confrontation*, edited by G.J. Reinink and B.H. Stolte (Leuven: Peeters, 2002), 95–112; N. de Lange, ‘Jewish and Christian Messianic Hopes in Pre-Islamic Byzantium’, in *Redemption and Resistance. The Messianic Hopes of Jews and Christians in Antiquity*, edited by Markus Bockmuehl and James Carleton Paget (London – New York: Continuum, 2007), 275–284.

many accoutrements of Byzantine imperial power. In the most recent study of them, Alexei Sivertsev has concluded that the Jewish eschatological vision of Late Antiquity presents a mirror image of Byzantine imperial ideology, and envisages a Messianic kingdom that is effectively a Jewish successor to the Christian Roman Empire.²⁶ The events of the Persian war therefore gave Heraclius reason to believe that the Jewish religion was not only a dangerous and seductive rival to the Christian faith, but also fundamentally subversive of Byzantine imperial authority. Enforced baptism, imposing formal recognition of Jesus as the Messiah, but also conferring full Roman citizenship, was a solution to the political problem of Judaism.

Neither the Jewish reaction to the Persian invasion, nor Heraclius' reaction to the Jewish apostasy, makes sense except in a climate of high eschatological expectation.²⁷ Both Christians and Jews had good reasons, based on their scriptures, to believe that they were living at the end of an era, perhaps the last era of world history, when the Roman Empire as they knew it was entering a terminal phase. For the unconverted Jews, Heraclius' victory over Persia marked the brief supremacy of the evil empire before its destruction by the Messiah. For Christians, it marked a decisive moment in the accomplishment of the empire's divine mission on earth. Either way, Heraclius was in a unique position to influence the outcome. He was not only living through events that heralded the end of time, but could also play a decisive role in making them happen, especially in the early 630s when the world was his oyster. It is in this context, I believe, that his enforced baptism of the Jews should be seen. In 626, a senior cleric of the church of Constantinople had argued forcefully that the failed siege of Constantinople by the Avars was a fulfilment of the prophecy of Gog and Magog.²⁸ Following the defeat of the Persian Empire, it could be claimed with more conviction than ever before that the Gospel had been preached in all the world, which Christ had announced as a sure sign of the end (Matt. 24.14).²⁹ By the same token, it could equally be claimed that the 'full number of the Gentiles' had come in. All that remained to complete St Paul's prophecy in Romans 11.25-6 was for all Israel to be saved, and this, I would argue, is precisely what Heraclius was trying to do in 632.

²⁶ A.M. Sivertsev, *Judaism and Imperial Ideology in Late Antiquity* (Cambridge: Cambridge University Press, 2011). © BREPOLS PUBLISHERS
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²⁷ See in general Stoyanov, *Defenders and Enemies*, esp. 45-69. PUBLISHER.

²⁸ Theodore Synkellos, ed. L. Sternbach, 'Analecta Avarica,' *Rozprawy Akademii Umiejetnosci, Wydzial filologiczny*, 2nd series, 14 (Krakow, 1900), 298-320, at 316-317; cf. *The Old Testament in Byzantium*, edited by Paul Magdalino and Robert Nelson (Washington DC : Dumbarton Oaks, 2010), 16-17.

²⁹ C. Mango, 'Deux études sur Byzance et la Perse sassanide,' *Travaux et mémoires*, 9 (1985), 91-118.

But why was he trying to do it, if he was thinking of the eschatological consequences? Why was he rushing an eschatological process, which if it followed the normal schema, as expressed for example in the *Doctrina Jacobi*,³⁰ would have precipitated the dissolution of the empire and the reign of Antichrist? My answer to this question is the same as it was over twenty years ago, when I first wrote on Byzantine eschatology:³¹ Heraclius was working to a different, less fully articulated apocalyptic vision, which blurred the distinction between the Christian Roman Empire and the Kingdom of Christ, and which envisaged a smooth transition from the one to the other, without the violent regime change of the reign of Antichrist. This conclusion is based on three main pieces of evidence. First, there is the alternative interpretation of the Four Kingdoms prophecy in the Book of Daniel, which had been in circulation since at least the reign of Justinian: according to this, the Christian Roman Empire was not, as in standard Christian and Jewish exegesis, Daniel's fourth kingdom, but the eternal 'fifth monarchy', the kingdom of the saints.³² Secondly, there is the prophecy that the historian and imperial bureaucrat Theophylact Simocatta, writing for Heraclius in the early 630s, puts into the mouth of the Persian king Khusrau: the prophecy stated that after the Roman victory over Persia, the day without evening would dawn, and the present corrupt state of affairs would give way to a more perfect order.³³ Thirdly, there is the fragment of a lost panegyric, or official history, in which the poet George of Pisidia compared Heraclius' six years of campaigning against Persia to the six days of Creation, with the clear implication that the seventh day of rest

³⁰ Dagron and Déroche, *Juifs et chrétiens*, 170-173, 182-185, 188-195.

³¹ P. Magdalino, 'The history of the future and its uses: prophecy, policy and propaganda', in *The Making of Byzantine History. Studies Dedicated to Donald M. Nicol on his Seventieth Birthday*, edited by Roderick Beaton and Charlotte Roueché (Aldershot: Ashgate, 1993), 3-34 (pp. 18-19); reprinted with postscript in *The Expansion of Orthodox Europe*, edited by Jonathan Shepard (Aldershot: Ashgate, 2007), 29-60

³² First attested in the *Christian Topography* of 'Cosmas Indicopleustes', II 73-75; ed. W Wolska-Conus, SC 141 (Paris: Cerf, 1968) 378-391; cf. G. Podskalsky, *Byzantinische Reicheschatologie* (M 1972), 15-16, 38-39; Magdalino and Nelson, *Old Testament in Byzantium*, 14, 28; Sivertsev, *Judaism*, 10-11.

³³ Ed. C. de Boor, *Theophylacti Simocattae Historiae* (Leipzig 1887) 216-217. This passage is discussed in the context of other contemporary prophecies by G.J. Reinink, 'Heraclius, the New Alexander: Apocalyptic Prophecies during the Reign of Heraclius', in Reinink and Stolte, eds, *The Reign of Heraclius*, 81-94 (pp. 87-89). Reinink rightly sees a transition from an optimistic eschatology in the 620s to a pessimistic eschatology by the mid 630s. However, he wrongly, in my view, classes the prophecy of Khusrau with the *Doctrina Jacobi* on the pessimistic side. This is because he does not take account of the novel interpretation of Daniel that equated the Christian Roman Empire with the Kingdom of God (see previous note) and therefore implied a smooth transition from the one to the other, as reportedly foreseen by Khusrau. It is also of relevance that Khusrau's prophecy was expressed in terms of hebdomads (seven-year blocs) of years, and that Heraclius' campaigns against Persia were likened to the cosmic week of Creation (see next note).

began an age of fulfilment – a ‘day without evening’.³⁴ We may now supplement this evidence by pointing to the existence of two other apocalyptic traditions, which crystallised about the same time and also envisaged a last world monarchy that would seamlessly mutate into the Kingdom of God. One was the Syriac Alexander legend.³⁵ The other apocalyptic tradition of high relevance to imperial eschatology c. 630 was of course that of Judaism, as expressed in texts like *Sefer Zerubbabel* and the contemporary *piyyutim*.³⁶ From the emperor’s point of view, the Jewish apocalyptic model had a distinct advantage over the standard Christian schema, in that it truly valorised the achievement of the last, righteous and rightful regime. By identifying the Messiah with the last world ruler, it safeguarded the latter’s hard work in restoring the elect to their inheritance, and gathering the nations before God, from being undone by the destructive reign of Antichrist; instead, it arranged for the Messiah’s victory over Antichrist to be the foundation of his earthly rule. Jewish Messianic irredentism was the targeted enemy of Christian imperialism, but it was at the same time an analogue of the contending ideology. We have seen that the Messiah was being imagined more and more in the guise of a Byzantine emperor; so, I would argue, Byzantine imperial eschatology in the sixth and seventh centuries was tending towards a Christianized version of contemporary Zionism, and appropriating for the Christian emperor the supersessionist Jewish idea of an earthly Messianic ruler. In other words, it was adopting exactly the political, judaizing interpretation of Romans 11. 25-6 that is ascribed to ‘some Christians’ in the *Life of Andrew the Fool*. This was why Heraclius compelled all Israel to be saved. It is also, arguably, why his work of salvation was so coolly received, if not actively sabotaged, by the majority of the Church.

For ecclesiastical opposition to Heraclius’ policy, we have the unique but authoritative testimony of Maximos the Confessor, in the letter to Sophronios of Jerusalem that is also the key witness to the forced baptism of the Jews at Pentecost in 632. Maximos voiced three objections. First, the sacrament of baptism was being profaned by being given to people whose consciences had not been examined in catechism. Secondly, their unwilling acceptance of baptism put their souls at risk. Thirdly, the resulting mixture of superficially converted Jews with pious Christians was a recipe for the general apostasy foretold by St Paul (2 Thessalonians 2.3), because the ex-Jews would pervert

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³⁴ Preserved in Theophanes, *Chronographia*, ed. C. de Boor (Leipzig 1883; repr. Hildesheim: Olms, 1980), I, 327-328; cf. James Howard-Johnston, *Witnesses to a World Crisis. Histories and Historians of the Middle East in the Seventh Century* (Oxford 2010), 288-294.

³⁵ Ed. and tr. E.A.W. Budge, *The History of Alexander the Great* (Cambridge: Cambridge University Press, 1889; repr. Amsterdam 1976), 268-275; Reinink, ‘Heraclius’, 84-6.

³⁶ See Sivertsev, *Judaism*, passim.

the faith of simple-minded Christians. I take this to mean that they would cause Christians to judaize, by adopting Jewish customs, like sabbath observance, and Jewish interpretation of biblical prophecies, including the idea of a political, earthly salvation of Israel. In any case, it is clear that Maximos did not see the forced conversion as a victory for the Church; the winners were neither the normal pious Christians, nor even the Jews themselves, but, by implication, Judaizing Christians, and, of course, the emperor who had given the order. Maximos is not directly critical of Heraclius, or imperial eschatology, but is it coincidence that he and Sophronius also led the opposition to the emperor's other religious policy, the attempt to unify the Church with the doctrines of Monenergism and Monotheletism?

Some further insight into the ecclesiastical opposition to the imperial policy of forced baptism can be gained from the treatise that Gregory Asbestos, bishop of Nicaea, wrote c. 879 in reaction to the conversion ordered by Basil I two hundred and forty years after Heraclius.³⁷ The circumstances on this occasion were different, in that the Jews were induced to convert with promises of material gain, which does not seem to have been the case under Heraclius, who according to the *Doctrina Jacobi* imposed baptism on pain of death. But other aspects of Gregory's criticism are relevant to the seventh-century precedent, above all his disapproval of the emperor's high profile role in dominating the proceedings. And one comment he makes is particularly significant for understanding the situation under Heraclius. Quoting Romans 11.25-6, he adds, 'Therefore, since the fullness of the nations has not yet come in, those who attempt to save the hardened remnant are wasting their time and acting prematurely'.³⁸

Heraclius' programme of religious unity, and the optimistic imperial eschatology within which it was framed, were based on a fragile and fleeting moment of opportunity when the Christian Roman Empire seemed to stand as the only remaining world power, warranting the assumption that the fullness of the nations had effectively come in and Israel could be saved under the emperor's Messianic leadership. The Arab invasions shattered the edifice of illusion so completely and comprehensively that its fragments are very diffi-

³⁷ Edited and discussed by Gilbert Dagron in Dagron and Déroche, *Juifs et chrétiens*, 313-357. As Dagron notes (pp. 340-347) Gregory was a lifelong supporter and protégé of Photius, so it is logical to conclude that he wrote with the patriarch's blessing and as the spokesman of the whole Byzantine church. However, as Oscar Prieto Domínguez argues in his contribution to this volume, there are good reasons for thinking that Photius was behind Basil's conversion initiative. We may therefore have to envisage a rift between the two churchmen, in which Photius encouraged Basil in his policy, flattering the emperor's Davidic (and therefore Messianic) self-image, and Gregory voiced his disapproval by taking a strict canonical line.

³⁸ Dagron and Déroche, *Juifs et chrétiens*, 322-323.

cult to trace and to identify, let alone to piece together. The later historians who wrote the history of Heraclius' reign and the theologians who trounced his religious initiatives ignored it completely. But the edifice is important to reconstruct, more fully than I could do here, because the gap where it stood marks a big blank in our picture of the Byzantine world-view. It is the missing link between Byzantine imperial ideology and the Byzantine apocalyptic tradition, which is needed to explain how the optimistic consecration of the Roman Empire that begins with Eusebius related to the pessimistic scenario that we find in all apocalyptic texts. I believe that the key to an important part of the middle ground between the two traditions lies in an investigation of the empire's ambiguous relationship with its Jewish communities. Equally, and importantly for the present forum, I suggest that the study of Byzantine imperial eschatology can benefit our understanding of the ambivalent status of Judaism in the Christian Roman Empire. Eschatology was a vital ingredient in the fatal attraction that Judaism still held for many Christians, and we have to appreciate this fatal attraction in order to understand the bitterness of anti-Jewish rhetoric and the occasional severity of anti-Jewish reprisals.



FORCED CONVERTS, “CRYPTO-JUDAISM,” AND CHILDREN: RELIGIOUS IDENTIFICATION IN VISIGOTHIC SPAIN

By Rachel L. STOCKING

After the Visigothic king Sisebut forced baptism on his Jewish subjects in the 610s, Iberian anti-Jewish laws focused particularly on baptized Jews. Forced converts were repeatedly accused of apostasy and depicted as fraudulent deceivers hiding their secret Jewish practices. Kings and bishops enacted measures to supervise forced converts' Christian observances, to control their relations with Christians, and to eliminate their contact with unbaptized Jews. Over the course of the seventh century, measures against apostates became increasingly abusive: legislators asserted that apostatizing forced converts were more abominable than unbaptized Jews¹ and imposed the death penalty for practicing or even considering Jewish rites.² After another call for forced baptisms in 681, other measures required baptized Jews to prove their faith with special oaths and ceremonies in order to exercise Christian rights.³ Eventually, law-makers appear to have come to consider baptized Jews as legally indistinguishable from unbaptized Jews, issuing complicated restrictions that applied to all “Jews” whether they were baptized or not. In 694 the Seventeenth Council of Toledo issued an order to enslave the entire “*plebs iudaeorum*,” clearly indicating baptized Jews, on the accusation that not only had they apostatized continually, but also had joined in an international anti-Christian Jewish conspiracy.⁴

¹ Eighth Council of Toledo (Toledo VIII) (654), *tomus regius* of Recceswinth, *La Colección Canónica Hispana V*, eds. G. Martínez Díez and R. Rodríguez (Madrid, 1992) pp. 381-382. Secular and ecclesiastical Visigothic anti-Jewish laws are translated into English in A. Linder, *The Jews in the Legal Sources of the Early Middle Ages* (Detroit, 1997), pp. 257-332 and 484-538.

² See, e.g., *Leges Visigothorum (LV)* 12:2:11; 12:2:16, ed. K. Zeumer, *Monumenta Germaniae Historica, Legum Sectio I*, t. 1 (Hannover, 1902), pp. 417 and 424

³ See, e.g., *LV* 12:3:13, Zeumer, pp. 440-441; Toledo XVI, *tomus regius* of Egica and c. 1, Linder, *Legal Sources*, pp. 524-528. In 681 the king ordered the baptism of all Jews within one year; *LV* 12:3:3, Zeumer, p. 432. This law, and 27 other anti-Jewish measures were confirmed by Toledo XII, c. 9, *La Colección VI*, pp. 175-179. See below at note 87.

⁴ Toledo XVII, canon 8; Linder, *Legal Sources*, p. 537. On the conflation of Jews and baptized Jews in this period, see J. Juster, “The Legal Condition of the Jews under the Visigothic Kings,” in Rabello, A (trans.), “A Tribute to Jean Juster,” *Israel Law Review*, 11 (1976) pp. 273-280; R. González Salinero, *Las conversiones forzadas de los judíos en el reino visigodo* (Rome, 2000), pp. 55-80. B. Blumenkranz, *Juifs et chrétiens dans le monde occidental, 430-1096* (Paris, 1960), pp. 105-134, argues

Overall, the trajectory of Visigothic anti-Jewish legislation indicates an increasing identification of forced converts as inauthentic Christians due to an inherited Jewish “*perfidia*,” and an increasing insistence on maintaining rigid legal and social boundaries around them.⁵ The trajectory was not unbroken, however. Some lawmakers were far more aggressive than others, experimenting with new formulations of suspicion, identification, and control. Legislators seem to have had particularly changeable attitudes towards the children of forced converts. As the generations passed, some lawmakers included them in their restrictions and connotations of inherited perfidy; others acknowledged their Jewish ancestry but allowed for the possibility that they might be faithful Christians.⁶ This combination of rigid boundaries, innovation, and changeability in anti-Jewish policy both accommodated and resulted from processes of debate and redefinition among social and religious authorities in the Visigothic kingdom. In this article, I argue that for Christian policy-makers, indeterminate images of baptized Jews and their children provided an adaptable staging ground for configuring and asserting governmental control over individual and collective religious identification.⁷

that references to “Jews” in the Visigothic evidence indicate baptized Jews beginning in the period immediately following Sisebut’s forced baptisms.

⁵ For summaries of the laws, see Juster, “The Legal Condition”; for a chronological account of their issuance, see González Salinero, *Las conversiones*, pp. 15–80. On the concept of Jewish *perfidia*, see W. Drews, *The Unknown Neighbor: The Jew in the Thought of Isidore of Seville*, (Leiden, 2006), pp. 86–88; B. Blumenkranz, “Perfidia,” *Archivum Latinitatis Medii Aevi (Bulletin du Cange)* 22 (1952), 157–170; and E. Peterson, “Perfidia Judaica,” *Ephemerides Liturgicae*, 50 (1936), 296–311.

⁶ See L. García Iglesias, “Los menores de edad, hijos de judíos, en los canones y leyes de la época visigoda,” *El Olivo*, 5–6 (1978), 28–33.

⁷ The concept of identity—primarily but not exclusively ethnic identity—has been under discussion among some early medieval and late antique specialists for many years, centering on individual and group identities as historically contingent constructs. The literature on the question(s) is extensive. Some entry points may be found in G. Halsall, “Review article: Movers and Shakers: the barbarians and the Fall of Rome,” *Early Medieval Europe*, 8.1 (1998), 131–145, along with the articles collected in W. Pohl and H. Reinitz, *Strategies of Distinction. The Construction of Ethnic Communities 300–800* (Lieden, 1998) and in A. Gillett, ed., *On barbarian identity: critical approaches to ethnicity in the early middle ages* (Turnhout, 2002). The intersection between ethnic and religious identity in Visigothic anti-Judaism has been explored usefully by Drews, *Unknown Neighbor*. See also R. Stocking, review of Drews, *Unknown Neighbor*, in *The Medieval Review*, 6.1.35, at <http://name.umdl.umich.edu/baj9928.0610.035>. While the fluidity and constructed nature of identity can be useful in understanding early medieval communities, as a category of analysis it is itself rather fluid. For various considerations by social scientists, see R. Jenkins, “Rethinking ethnicity: identity, categorization and power,” *Ethnic and Racial Studies* 17.2 (1994), 197–223; R. Brubaker and F. Cooper, “Beyond ‘Identity,’” *Theory and Society* 29 (2000), pp. 1–47; and R. Handler, “Is Identity a Useful Cross-Cultural Concept?,” in J. Gillis, ed., *Commemorations. The Politics of National Identity* (Princeton, 1996), 27–40. In this article, I focus on religious identification—by which I mean external constructions of group religious identity, as opposed to internalized individual or group self-perceptions—as a contested area of social authority. While the early medieval context is clearly different, my thinking on this has been influenced

Iberian anti-Jewish legislators conceived of Jews and their children as appropriate vehicles for their efforts at religious identification even before Sisebut's forced baptisms. In 589, the Third Council of Toledo ordered the forced baptism of children born to unions of Jewish men and Christian women.⁸ Sisebut repeated and elaborated that provision in a law issued prior to his general order for forced conversion.⁹ It was that latter order, however, that appears to have stimulated Christian legal imaginations about the dangers posed by Jewish converts, and about the identities of their children.¹⁰ This article examines anti-Jewish measures from two church councils held in the two decades after Sisebut's forced baptisms to illustrate the emergence of those themes and the debates and claims about governmental powers of identification that they represented.

Both councils were held under the leadership of Isidore of Seville, a leading figure not only in the kingdom's elite cultural florescence of the first half of the seventh-century, but also in the development of Visigothic anti-Jewish thinking and policy-making.¹¹ The first of the two councils, known as the

by, among others, M. Foucault, "Governmentality," in Graham Burchell, et al., eds, *The Foucault Effect: Studies in Governmentality* (Chicago, 1991), 87-104; and R.I. Moore, *The Formation of a Persecuting Society*, 2nd edition (Oxford, 2007), 94-116.

⁸ Toledo III, c. 14, *La Colección V*, pp. 120-121. On this canon as an instance of forced baptism, see González Salinero, *Las conversiones*, pp. 23-25, with bibliography. See also H. Sivan, "The Invisible Jews of Visigothic Spain," *Revue des études juives*, 159 (3-4) (2000), 369-385, pp. 374-376, and B.-S. Albert, "Un nouvel examen de la politique anti-juive wisigothique a propos d'un article récent," *Revue des études juives*, 135, (1976), 3-29, pp. 16-17.

⁹ LV, 12.2.14, Zeumer, pp. 422-423. See González Salinero, *Las conversiones*, pp. 25-26, with bibliography; and Sivan, "Invisible Jews," p. 379. More generally on Sisebut's surviving anti-Jewish legislation, see B. Bachrach, "A Reassessment of Visigothic Jewish Policy, 589-711," *AHR* 78 (1973), 11-34, pp. 19-20; Juster, "The Legal Condition," pp. 262-262; Albert, "Un nouvel examen," pp. 25-27; L. García Iglesias, *Los Judios en la España Antigua*, (Madrid, 1978), pp. 106-108; L. García Moreno, *Los Judios de la España Antigua. Del primer encuentro al primer repudio*, (Madrid, 1993), pp. 145-146.

¹⁰ On Sisebut's forced baptisms, see González Salinero, *Las Conversiones*, pp. 27-38, with bibliography, and Drews, *Unknown Neighbor*, pp. 16-27, with bibliography. The date and content of this action are debated: see González Salinero, pp. 29-33, and Drews, p. 16, n. 48, with bibliography.

¹¹ On Isidore's anti-Jewish thought, see Drews, *Unknown Neighbor*, *passim*; B. Albert, "De Fide Catholica Contra Judaeos d'Isidore de Séville," *Revue des études juives*, 142 (1982), 289-316; Albert, "Isidore of Seville: His Attitude towards Judaism and His Impact on Early Medieval Canon Law," *Jewish Quarterly Review*, 80 (1990), 207-22; J. Cohen, *Living Letters of the Law: Ideas of the Jew in Medieval Christianity* (Berkeley, 1999), pp. 95-122; P. Cazier, "De la coercion à la persuasion. L'attitude d'Isidore de Séville face à la politique anti-juive des souverains visigothique," in V. Nikiprowetzky, ed., *De l'antijudaïsme antique à l'antisémitisme contemporain* (Lille, 1979), 125-146; and L. Díez Merino, "San Isidoro de Sevilla y la polemica judeocristiana," in C. del Valle Rodríguez, ed., *La controversia judeocristiana en Espana (desde los orígenes hasta el siglo XIII), Homenaje a Domingo Muñoz León* (Madrid, 1998), 77-110. On the "Isidorian Renaissance" of the seventh century, see J. Fontaine, *Isidore de Séville et la culture classique dans l'Espagne wisigothique*,

Third Council of Seville, was held sometime around 624. One canon apparently issued by at the council, canon ten, endorsed Sisebut's forced baptisms, patching together an array of traditional authorities and negative religious images to assert the necessity of restraining and monitoring the actions and identities of baptized Jews and their children.¹² In 633, the Fourth Council of Toledo reversed that position, opening a series of ten elaborate anti-Jewish canons with one that criticized Sisebut's forced baptisms, asserting that those who convert under coercion will not truly believe, and so "henceforth no one should come to believing by force."¹³

The apparent paradox posed by the differing approaches of Seville III and Toledo IV is characteristic of many aspects of Visigothic anti-Judaism. In attempting to resolve the contradictions and explain anomalies in the sources, modern commentators have put forward a multitude of interpretations of this

(Paris, 1959); Fontaine, *Isidore de Séville. Gènes et originalité de la culture hispanique au temps des Wisigoths* (Turnhout, 2000); and P. Cazier, *Isidore de Séville et la naissance de l'Espagne catholique* (Paris, 1994).

¹² Questions over the authenticity of Seville III and canon ten, and oddities in its preservation (see below, note 17) kept it from modern publication until 1992, in *La Colección V*, pp. 482-485. Most experts now accept (with some qualifications) the arguments for the authenticity of Seville III and canon ten presented by G. Martínez Díez, *La colección canónica Hispana*, I, *Estudio*, (Madrid, 1966) 318-322. On Seville III, see also J. Orlandis, "Tras la huella de un concilio isidoriano de Sevilla," *Anuario de historia de la Iglesia*, 4, 1995, pp. 237-246; and R. Stocking, "Martianus, Aventinus and Isidore: Provincial Church Councils in Seventh-Century Spain," *Early Medieval Europe*, 6 (1997) pp. 169-88. Although the authenticity of canon ten was supported as early as 1936 by P. Séjourné, *Le dernier père de l'Église. Saint Isidore de Séville* (Paris, 1936), p. 31, its significance has not been explored extensively until recently. González Salinero, *Las conversiones*, pp. 35-37, discusses the canon briefly; in 2002, Wolfram Drews, "Jews as pagans? Polemical definitions of identity in Visigothic Spain," *Early Medieval Europe*, 11 (3) 189-207, presented a thoughtful and thought-provoking analysis that places the canon within the context of late antique anti-Jewish theology and Isidorian efforts at Christian education and identity formation. Drews' recognition of the canon's significance and his analysis have inspired my own, although my approach differs significantly. Two further articles, which I have not yet been able to consult, have appeared since Drews': R. González Salinero, "Isidoro y los judíos en el único canon conservado del desaparecido Concilio III de Seville," *Guerra y rebellion en la Antigüedad Tardía. El siglo VII en España y su contexto mediterráneo. Actas del IV y V Encuentro Internacional* (2005), 201-211; B. Dumezil, "Une source méconnue sur les conversions forcées du roi Sisebut: la canon 10 du concile de Séville," *Cretiens et juifs au Moyen Âge: Sources pour la recherche d'une relation permanente*, Tables rondes à Carcassonne (2006) 21-26.

¹³ Toledo IV, c. 57, *La Colección V*, p. 235: "nemini deinceps ad credendum uim inferre"; Linder, *Legal Sources*, p. 486. On the political context for this council, see, e.g., R. Stocking, *Bishops, Councils, and Consensus in the Visigothic Kingdom*, 589-633 (Ann Arbor, 2000), pp. 145-149; P. Cazier, "Les Sentences d'Isidore de Séville et le IV^e Concile de Tolède," *Los Visigodos. Historia y Civilización. Antigüedad y Cristianismo III* (Murcia, 1986), 373-386; Cazier, *Isidore de Séville*, pp. 61-68; L. García Moreno, *Historia de España Visigoda* (Madrid, 1989), pp. 153-158, and C. Martin, *La géographie du pouvoir dans l'Espagne visigothique* (Lille, 2003), p. 27; for a broader view, see M.R. Valverde Castro, *Ideología, simbolismo y ejercicio de poder real en la monarquía visigoda: un proceso de cambio* (Salamanca, 2000), pp. 127-275.

facet of Visigothic government that differ on both specific details and broad generalizations.¹⁴ Despite this variety, however, most have shared the assumption that Visigothic measures restricting baptized Jews were at least in part inspired by the continuing secret Jewish practices of forced converts—what some authors label “crypto-Judaism.”¹⁵ Assigning causative force to Jewish apostasy, however, can short-circuit sensitivity to changes in the way law-makers imagined the dangers posed by forced converts and their children, and to the ideological and social implications of the language and policies they used to express them. A final argument of this article is that while the differences between these two councils are indicative of the discussions and attitudes of litigants and law-makers, they shed little light on the actual behavior of baptized Jews and their children.¹⁶ Seville III’s anti-Jewish legislation suggests that the bishops at that council were attempting to contain a local accusation of religious fraud by reconfiguring traditional religious boundaries, using the support of Sisebut’s authority to assert their power to do so. Subsequently, Toledo IV sought to end debates by rejecting Sisebut’s policy and asserting particular ecclesiastical authority over religious identification.

* * *

Although the other acts of the Third Council of Seville have not survived, the council’s tenth canon was apparently preserved in a thematic canonical collection, part of which was then appended to the records of the Eighth Council of Toledo, which was held in 654.¹⁷ Canon ten’s language and imagery

¹⁴ See R. Stocking, “Early Medieval Christian Identity and Anti-Judaism: The Case of the Visigothic Kingdom,” *Religion Compass* 2/4 (2008), 642–58, with bibliography.

¹⁵ See, for examples, Stocking, *Bishops*, pp. 136–38; Drews, *Unknown Neighbor*, pp. 302–304; Drews, “Jews as Pagans,” p. 194; González Salinero, *Las conversiones*, pp. 81–85, with bibliography; González Salinero, “Catholic Anti-Judaism in Visigothic Spain,” in A. Ferreiro, ed., *The Visigoths. Studies in Culture and Society* (Leiden, 1999), 123–150; Bachrach, “A Reassessment”; Bachrach, *Early Medieval Jewish Policy* (Minneapolis, 1977), pp. 3–26; G. Dahan, “Quelques reflexions sur l’antijudaïsme chrétien au Moyen Age,” *Histoire, Économie, Société*, 2, 1983 (355–366), p. 358. For further bibliography, see Stocking, “Early Medieval Christian Identity,” pp. 648–49.

¹⁶ Stocking, “Early Medieval Christian Identity,” 649–53.

¹⁷ Canon ten seems to have survived as one of the twenty canons in this “appendix,” all of which were apparently excerpted from a (now lost) thematically-organized canonical compilation and inserted into the “Juliana” rescension of the collection known as the *Hispana* sometime in the later seventh century. For the full text of the canon and the entire appendix, see *La Colección V*, pp. 464–485. For F. Rodríguez’ commentary on the appendix, see *ibid.*, pp. 41–48. An incipit and brief summary of the canon also appeared in a thematic index of the *Hispana* known as the *Collectio Hispana Excerpta*, which was compiled in Toledo some time between 656 and 666. In this collection, canon ten was mislabeled as originating from Seville II. For the text, see G. Martínez Díez, ed., *La Colección II*, p. 203, and Linder, *Legal Sources*, p. 582. Eventually, canon ten found its way into the ninth-century collection known as the “Pseudo-Isidorian Decretals,” also appended to the records of Toledo VIII. Much of the text of this collection is

are vivid. Its introductory section seethes with accusations of baptized Jews' fraudulence, cunning, perfidy, "nefarious deception," and natural tendency toward perjury.¹⁸ The specific crime the canon describes is rather ingenious, if not nefarious: some recently baptized Jews, according to the canon, had presented the children of other Christian parents to be baptized in place of their own. For the legislators, this caused two problems: the rebaptism of the replacement child, and the retention of the unbaptized child as a "pagan."¹⁹

After laying out the accusation, the canon explained the council's responsibility for correcting this state of affairs, while also rationalizing Sisebut's forced conversion with argumentation that included, as Wolfram Drews has pointed out, Augustinian, Isidorian, and canonical allusions.²⁰ This section culminated in a rousing celebration of the king's achievement: "He furnished a great joy of expectation to all the faithful by the renewal of these [souls], because by divine grace, with the exertion of royal favor, they came through to the form of true religion and the belief of faith." The canon then called for local clerics to maintain "vigilant responsibility" lest any "impious and very tenacious souls . . . lie hidden in their former error without receiving baptism." Henceforth, baptized Jews were to have their children baptized publicly with neighbors testifying that the correct children were being presented. The canon went on to outline a program of priestly supervision to make sure that forced converts did not observe the Jewish Sabbath or eat Jewish food and instead shared Christian food, dress, and "cultus." They were to attend church regularly, where they would come to recognize the "grace of faith" through instruction. After this program of priestly supervision and indoctrination, anyone still going against Christian faith or *mores* would be corrected by "secular terror and discipline."²¹

Although the outpouring of anti-Jewish images of "perfidy" evokes longstanding Christian traditions, the content of this canon is perplexing. As Drews has pointed out, its "terminological extremism" has more in common with conciliar language from later in the seventh century than with Isidore of Seville's "usual style."²² Moreover, while the argumentation drawing from

available at an on-line critical edition project currently underway. For canon ten, go to <http://www.pseudoisidor.mgh.de/html/113.htm>. On the *Hispana* and the Pseudo-Isidorian Decretals, see Martínez Díez, *Estudio*, pp. 355-369.

¹⁸ *La Colección V*, p. 482: "nefaria simulatione."

¹⁹ *Ibid.*: "paganos." See Drews, "Jews as Pagans,"

²⁰ Drews, "Jews as Pagan," pp. 202-206.

²¹ *La Colección V*, pp. 482-485: "Quorum innouatione magnum gaudium exspectationis cunctis fidelibus ministravit, quod duina gratia, regali admittente fauore, ad uerae religionis formam fideique cedulitatem peruenerint"; "peruigilem pro eis sollicitudinem gerant, ne qui ex his sine perceptione lauacri in errorem pristinum lateant"; "fidei gratia"; "terror ac disciplina saecularis."

²² Drews, "Jews as Pagans," p. 206.

a variety of authorities is typical of Isidore’s conciliar approach,²³ and the program of indoctrination parallels the educational orientation of the “Isidorian Renaissance,”²⁴ the canon’s endorsement of Sisebut’s baptisms goes against the teachings of Augustine and Gregory the Great²⁵ and clearly contradicts contemporary Isidorian commentary on the issue.²⁶ Isidore’s attitude towards Sisebut, Jews, and forced conversions has been and continues to be debated, without resolution and for the most part without reference to canon ten.²⁷ Taking this seemingly anomalous canon into account further muddies these historiographical waters, while at the same time the modern debates have not clarified the apparent paradoxes embodied in the canon.²⁸

Examining canon ten within a provincial conciliar context provides some new clues for understanding the canon’s vivid rhetoric and support for forced baptism. The acts of the Second Council of Seville of 619, also held under Isidore, contain detailed case-by-case descriptions, and provide a relatively

²³ Stocking, *Bishops*, pp. 128-132.

²⁴ Drews, “Jews as Pagans,” p. 201-02. In most of Western Europe during the early medieval period, the prevailing framework for Christian anti-Jewish thinking remained the “Augustinian” doctrine, which taught that Jews should not be forced to convert but should be permitted to remain in Christian society in a debased and restricted position, to serve as witnesses to the truth of Christian history and scripture. On Augustine’s doctrine and its reception by various early medieval thinkers, see, e.g., J. Cohen, *Living Letters of the Law: Ideas of the Jews in the Middle Ages* (Berkeley, 1999), pp. 19-145. See also Drews, *Unknown Neighbor*, pp. 234-41. On Gregory the Great, see, e.g., Cohen, *Living Letters*, pp. 73-94.

²⁵ Not only did the Fourth Council of Toledo—also with Isidore presiding—reject forced baptism as inherently ineffective in 633, but Isidore criticized Sisebut’s action in his *Historia Gothorum* in 624, around the same time as Seville III. *Historia Gothorum*, 60, ed. C. Rodríguez Alonso, *Las historias de los Godos, Vandalos, y Suevos de Isidoro de Sevilla* (León, 1975), pp. 270-272. The *HG* was written in two versions, both after Sisebut died; the first sometime around 621, the second in 624/25. On the dates and differing versions, see Rodríguez Alonso, pp. 22-76. For the Toledo IV provisions, see <http://www.cn-telma.fr/relmin/extrait1058/>. For varying interpretations of this passage, as well as Isidore’s assessment of Sisebut and his religious policies, see, e.g., Drews, *Unknown Neighbor*, pp. 202-219; Cazier, “Les Sentences,” p. 378; Cohen, *Living Letters*, 104-115; González Salinero, *Las conversiones*, pp. 27-38 and 121-31.

²⁶ Toledo IV’s position on the matter also echoed the stance taken in Isidore’s *Sententiae*, 2, 2, 4, ed. P. Cazier, *Isidorus Hispalensis Sententiae*, Corpus Christianorum Series Latina 111 (Turnhout, Brepols, 1998); available online at: <http://www.thelatinlibrary.com/isidore.html>. On the relationship between this work and Toledo IV, see Cazier, “Les Sentences,” and “De la coercion.” On Isidore’s earlier anti-Jewish treatise, *De Fide Catholica contra Judaeos*, written around the same time as Sisebut’s forced baptisms, see Drews, *Unknown Neighbor*, *passim*; Cohen, *Living Letters*, pp. 95-122; B.-S. Albert, “*De Fide Catholica contra Judaeos* d’Isidore de Séville: la polémique anti-judaïque dans l’Espagne du VII^e siècle,” *Revue des études juives*, 142 (1982), 289-316.

²⁷ See Drews, “Jews as Pagans,” pp. 205-206; Drews, *Unknown Neighbor*, pp. 200-305, with bibliography; González Salinero, *Las conversiones*, pp. 121-131, with bibliography.

²⁸ Drews, “Jews as pagans,” p. 206, suggests that the canon’s anomalous extremism arose out of the immediate political context: the bishops acted under political pressure arising out of “indignation or exasperation with the apparent obstinacy of the baptized Jews.”

clear vision of the procedures and people involved.²⁹ Canon ten's conciliar context is further filled out by evidence of another case apparently heard at Seville III, in which a bishop named Martianus was convicted of treason and other crimes and deposed, based on a complex conspiracy involving false witnesses and a split decision among the bishops in attendance.³⁰ These records reveal Baetican bishops hearing accusations and reports from investigations, interrogating witnesses, consulting precedents, reaching decisions, and meting out punishments. Moreover, the case of Martianus indicates that these proceedings could be tainted by corruption, perjury, networks of obligation, and disagreement among the episcopal judges. In other words, like other early medieval fora for dispute resolution, Seville III was a lively and contentious tribunal where local people navigated complex relations of power.

Since canon ten follows the same general format as the canons from Seville II, it is likely that it too reflects a specific case brought before the council.³¹ Yet this does not necessarily mean that it describes an actual faked baptism, much less a widespread practice in the province. Rather, it indicates that someone made the accusation, and the council heard the case, upheld the charge, and then generalized the accusation to implicate unnamed "Jews recently called to the faith of Christ."³² Charges of inauthentic Christianity or spiritual deviance can have immediate meanings that have as much to do with community relations as they do with the religious identities involved or the activities alleged. The role of such accusations in relationships of power is a much discussed aspect of life in late antique, medieval, and other "traditional" societies.³³ Viewed from this perspective, canon ten suggests that Sisebut's forced baptisms opened up new avenues for people to use accusations about religious identification to pursue local tensions and animosities. The canon's provisions can be understood as reflecting the bishops' immediate efforts to contain this local appropriation of the power of identification. In other words, a person, or group of people in Baetica in the 620s accused a baptized Jewish

²⁹ J. Orlandis and D. Ramos-Lissón, *Historia de los consilios de la España romana y visigoda* (Pamplona, 1986), pp. 252-60; Stocking, *Bishops*, pp. 129-32.

³⁰ Stocking, "Martianus, Aventius."

³¹ Unlike the canons of Seville II, however, canon ten does not name the litigants.

³² *La Colección V*, p. 482: "Iudaeos nuper ad fidem vocatos."

³³ For an analysis of fifth-century heresy accusations as expressions of community dynamics in Iberia, see R. Van Dam, "'Sheep in Wolves' Clothing": the Letters of Consentius to Augustine," *Journal of Ecclesiastical History* 37 (1986), 515-535. On later medieval heresy accusations, see R.I. Moore, "The Birth of Popular Heresy: A Millennial Phenomenon?," *Journal of Religious History*, 24.1 (February, 2000), 8-25, p. 17. For a discussion of sorcery accusations as evidence of social conflicts and change in Late Antiquity, see P. Brown, "Sorcery, Demons, and the Rise of Christianity from Late Antiquity into the Middle Ages," in Brown, *Religion and Society in the Age of Saint Augustine* (1969), 119-146, reprinted in M. Douglas, ed., *Witchcraft confessions and accusations* (London, 1970), 17-45. On accusations of witchcraft in a multitude of other contexts, see the other articles collected in Douglas, *Witchcraft Confessions*.

family of perpetrating sacrilegious fraud, calling into question not only the forced converts' religious identity, but also that of their child or children, as well as the Christian loyalty of their neighbors. When the case came before them the bishops addressed the accusation by asserting their own authority to determine and control authentic Christian identity.

Viewing the canon within this context, while laying aside any assumptions about the accuracy of the accusation against baptized Jews, helps bring the details of the canon into focus. For instance, one of the canon's most striking features is its identification of the allegedly unbaptized children as "pagans."³⁴ The use of the term can be understood as reflecting the dynamic relationship between legislated, ideological religious identification and practical conciliar dispute resolution: faced with an accusation that pointed out an unprecedented gap in traditional religious categorizations, the bishops at Seville III concluded that the unbaptized children could be neither Christians nor Jews, and decked out an old derogatory identification, "pagan," in the traditional trappings of anti-Judaism.

Such an ad hoc response to the disruption of religious categories is evident elsewhere in the canon. The accusation against baptized Jews and their children also implicated the children allegedly used as secret substitutes, along with their parents. It could be that this aspect of the accusation is evidence of neighborly relations between baptized Jews and the Christian neighbors who aided and abetted them.³⁵ It certainly indicates that such relations were considered a dangerous possibility. Yet the accusation against these Christian accomplices was even more serious than that. By allowing their children to stand in for the baptized Jews' children, Christian parents would have been allowing their children to be baptized twice. Rebaptism had long been forbidden by the Catholic Church, and apparently was still being discussed in the Visigothic kingdom in the period leading up to Seville III.

The prohibition was well known to Iberian Church leaders, and it is likely that it was also known to leading laypeople. In 384, Pope Siricius had written a decretal, specifically intended for and distributed to Iberian bishops, which prohibited the rebaptisms of Arians converting to the Catholic Church.³⁶ Conversely, in the sixth century Arians were associated with imposing rebaptism on Catholics converting to their faith. In 580, the Arian king Leovigild tried to make such conversions more attractive by dropping the "repugnant"

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³⁴ Drews, "Jews as Pagans," p. 202, argues that the authors of canon ten used this term as "a very clear, deliberate rhetorical strategy" intended to associate Judaism with backwardness, superstition, secrecy and obsolescence.

³⁵ *Ibid.*, p. 194.

³⁶ Pope Siricius to Bishop Himerius of Tarragona, ed. Pierre Coustant, *Epistolae Romanorum pontificum* (Paris, 1721; reprint Farnborough, 1967), 623-638. The decretal cited precedents going back to Paul's exhortation in Ephesians 4.5: "One Lord, one faith, one baptism."

rebaptism requirement.³⁷ This tactic, like the king's other doctrinal adjustments to Arianism, didn't work. By the end of the decade the new king, Reccared, along with the Visigothic nobility and most of the Arian clergy, formalized their conversion to Catholicism at Toledo III. There they signed 25 statements of anathema against various Arian teachings, including rebaptism: "Whoever believes or will believe that the sacrilege of rebaptism is good work, and does it or will do it, let him be anathema."³⁸ Although most historians argue that Arianism died a rapid death after that council, there is evidence that former Arians came under suspicion during the following decade, and that debate over ritually ensuring their orthodoxy continued.³⁹ The issue of rebaptism was still important to Isidore in the years prior to Seville III; he discussed the prohibition in his *De ecclesiasticis officiis*, written between 598 and 615,⁴⁰ and included Siricius and his letter in his *De viris illustribus*, written between 615 and 618.⁴¹ While we cannot know whether the accuser in the case that generated canon ten was aware of the connotations of his charge, it seems that the bishops at the council were: the canon specifically points out that the substitute children would be baptized a second time.⁴² Thus, the bishops implicitly tied a traditional negative identification, the Arian heretic, to stereotypical anti-Jewish images—the "hidden and nefarious deceit" of the baptized Jews—in response to the accusation's disruption of religious categories.⁴³

A final striking aspect of the canon is that while it contains an outpouring of stereotypical anti-Jewish language, along with the prohibition of certain Jewish practices—eating lamb and unleavened bread at Passover, and observ-

³⁷ J. Orlandis, "Los problemas canónicos de la conversión de los Visigodos al catolicismo," *Anuario de Historia del Derecho Española*, 33 (1962), 301-321, reprinted as Chapter Two in *La Iglesia en la España visigótica y medieval* (Pamplona, 1976), 35-58, pp. 40-41.

³⁸ Toledo III, Anathema 16: "Quicumque rebaptizandi sacrilegum opus bonum esse credit aut crediderit, agit aut egerit, anathema sit," *La Colección V*, p. 82.

³⁹ Stocking, *Bishops*, pp. 100-107. See R. Collins, "¿Dónde estaban los arrianos en el año 589?" in *Concilio III de Toledo XIV Centenario, 589-1989*, Toledo, 1991, 211-222.

⁴⁰ Isidore of Seville, *De ecclesiasticis officiis* II, 24-25, ed. Christopher Lawson, CCL 113, Turnhout, 1989, p. 100; English translation by T. Knoebel, New York, 2008, p. 107. For the dates of Isidore's works, see Jacques Fontaine, *Isidore de Séville, Genèse et originalité de la culture hispanique au temps des Wisigoths* (Turnhout, 2000), Appendix II, pp. 436-437.

⁴¹ *De viris illustribus*, III, in C. Codoñer Merino, *El 'de viris illustribus' de Isidoro de Sevilla. Estudio y edición crítica* (Salamanca, 1964), pp. 135-136. For discussion of the significance of the Siricius entry to anti-Arian attitudes after Toledo III, see J. Orlandis, "Zaragoza, ciudad conciliar," *Hispania y Zaragoza en la antigüedad tardía, Estudios varios*, (Zaragoza, 1984), 64-75, p. 67. Even after Seville III, around 633, the first editor of the *Hispania*, probably Isidore, included in that compilation Siricius' decretal and the records of a synod in Carthage (c. 348) where rebaptism had been prohibited. See *La Colección*, III, pp. 288-290. On Isidore's role in the "Isidoriana" recension of the *Hispania*, see G. Martínez Díez, *La Colección I, Estudio*, Madrid, 1966, pp. 304-318.

⁴² *La Colección V*, p. 482: "filiorum quosdam iterato baptisate tingant."

⁴³ *Ibid.*: "occulta ac nefaria simulatione."

ing “differences in food and the Sabbath”—it doesn’t mention circumcision.⁴⁴ Circumcision was a standard concern of Christian anti-Jewish authors and legislators from Paul onward.⁴⁵ By 624, it had figured in every Visigothic anti-Jewish provision since Toledo III in 589.⁴⁶ Circumcision was also a prominent topic in Isidore’s *De fide catholica contra iudaeos*, written around 615.⁴⁷ In a canon that deals directly with rituals of religious identification and Jewish customs, the absence of what one could call an early Christian obsession is remarkable. The omission is particularly noticeable in comparison to Toledo IV, held around 10 years later. The bishops there, despite their rejection of forced baptism, clearly considered secret circumcisions by baptized Jews a central danger.⁴⁸

Traditionally, anti-Jewish legislators’ concerns about circumcision were tied to Jewish ownership of non-Jewish slaves.⁴⁹ Anti-Jewish legislation in the Visigothic kingdom prior to Seville III had followed this basic framework, adding some startling innovations but maintaining that central focus.⁵⁰ It is impossible to know for certain why the bishops at Seville III excluded this well-established and much explored Christian concern from their vision of the secret Jewish practices of forced converts.⁵¹ Once again, however, the

⁴⁴ Ibid.: “sabbati obseruationes differentiasque ciborum.”

⁴⁵ On Christian attitudes toward circumcision from Paul to Augustine, see N. Livesey, *Circumcision as a Malleable Symbol* (Tübingen, 2010), pp. 77-134.

⁴⁶ Toledo III, c. 14; Linder, *Legal Sources*, 484-485; LV XII, 2, 12-14; Zeumer, p. 417-423; Linder, *Legal Sources*, pp. 267-271.

⁴⁷ See, e.g., Isidore, *De fide ex veteri et nova contra iudeos*, II.16, ed. J.P. Migne, *Patrologia Latina* 83, 449-538, at 524-526. On the date of the *De fide*, see Drews, *Unknown Neighbor*, 37-38, with bibliography. Specialists continue to debate the relationship between Sisebut’s action and Isidore’s anti-Jewish tract. For divergent viewpoints, see Drews, *Unknown Neighbor*, pp. 231-232, and Cohen, *Living Letters*, pp. 120-121. See also González Salinero, *Las conversiones*, pp. 121-123.

⁴⁸ See below at note 78.

⁴⁹ See, among many others, *Codex Theodosianus* 16:9:1; and *Codex Justinianus*, 1:10:1, in A. Linder, *The Jews in Roman Imperial Legislation* (Detroit, 1987), pp. 141, 279; and Council of Orleans III, c. 14; Council of Orleans IV, c. 31; and Council of Mâcon, c. 16, in Linder, *Legal Sources*, pp. 470-476.

⁵⁰ For instance, Toledo III, c. 14; Linder, *Legal Sources*, 484-485, ties the circumcision of Christian slaves to an array of situations where Jews might wield power over Christians. The canon was innovative in linking all these social relations together, and in interfering with the authority of Jewish fathers, but its concerns about circumcision were framed in traditional terms—any possible illicit subjects of the rite are imagined as enslaved. The final provision of the canon reads: “Si qui vero christiani ab eis iudaismo ritu sunt maculati vel etiam circumcisi, no reddito pretio, ad libertatem et religionem redeant christianam. On the implications of this canon for intermarriage, parental authority, and forced baptism, see Sivan, “Invisible Jews,” pp 374-376; and González Salinero, *Las conversiones*, pp. 23-24, with bibliography.

⁵¹ Drews, “Jews as Pagans,” p. 205, n. 60, asserts that canon ten’s prohibited Jewish practices are “identical” to the ones forbidden by Sisebut in his two laws against Jewish ownership of slaves, but this is not the case. Sisebut’s laws specifically mention only circumcision. In *De fide*, II, 28; PL 83, 536-538, Isidore lists the Jewish “sacraments” (sacramenti) that he claims have been “fulfilled” (implevit) by Jesus. The list includes all of the observances mentioned in canon ten,

canon gives the impression that the bishops were scrambling to control the meaning of an accusation that defied traditional categories, modes of religious identification, and ecclesiastical jurisdictions.

Combined with the use of the term “paganos,” the absence of circumcision, amidst all the rhetoric of cunning and fraud, suggests that the accusers did not entertain the idea that these perfidious deceivers, in addition to withholding their children from baptism, could have secretly circumcised them as well, keeping them Jews, not “pagans.” On the other hand, given the currency of circumcision as a topic of Christian commentary and policy, it is unlikely that the bishops at Seville III did not consider the implications of identifying unbaptized male children as “pagans” and excluding circumcision from their list of prohibitions. Leaving any discussion of the ritual out of the canon, however, allowed them to assert conciliar authority over baptized Jews without calling on clerics to perform the forced baptism of circumcised Jewish children, or even raising the issue for discussion. Instead, the bishops were able to limit the canon’s prescription for the children’s future to a new procedure whereby they would only be baptized after an investigation into their true parentage.

The delicacies involved in these children’s identification, however, did not prevent the council from aggressively claiming the authority of church councils to identify the baptized parents as suspect, and to control their behavior accordingly. Canon ten brought together an array of concepts gleaned from both ancient and contemporary discussions of religious identification in support of that claim. For instance, according to canon ten, the ultimate source of the present problem was the baptized Jews’ “natural perfidy,” which had kept them from being truly faithful “from the beginning.” This apparently inherent defect made it “fitting” for the council to pose its “diligent and skillful knowledge against their fraudulent and cunning arts.”⁵² Jewish “perfidy” was a long-standing theme in anti-Jewish legislation, and it figured prominently in Sisebut’s anti-Jewish laws.⁵³ By making this perfidy “natural” to baptized Jews, canon ten extended traditional ecclesiastical authority over

as well as circumcision “of the flesh” (carnis). The list includes: observing the Sabbath, circumcision, sacrifices, eating unleavened bread, lamb at Passover, food prohibitions, observance of new moons, and the Feast of Tabernacles. On Visigothic legislation against Jewish practices throughout the seventh century, see González Salinero, “Catholic anti-Judaism,” pp. 131-135. On Isidore’s handling of the issue in the *De fide*, see Drews, *Unknown Neighbor*, pp. 139-145.

⁵² *La Colección V*, p. 482: “ab initio naturali et perfidia”; “Contra quorum fraudulentitas artes ac subdolas diligentem nos oportet habere sollertiam.”

⁵³ On “perfidy,” see above, note 5. On Isidore’s use of the term in the *de fide*, see Drews, *Unknown Neighbor*, pp. 87-88. On the use of the term in seventh-century Iberian polemics, see González Salinero, “Catholic anti-Judaism,” pp. 136-37.

Christian behaviors to apply also to this newly created but still perfidious category of Christian subjects.⁵⁴

The idea that baptized Jews shared in Jewish perfidy also would have been strongly supported by the insistent theme of Jewish “*incredulitas*” in Isidore’s *De fide*. Over and over, that work asserts that God intentionally had made Jews blind, crippled on the road to faith, incapable of true belief.⁵⁵ The centrality of this idea in the work makes clear its currency—in Isidore’s thought at least—during the years leading up to Seville III.⁵⁶ One can imagine that in that thought-world, God’s imposition of an inherent “*incredulitas*” in Jews surely would result in the residual “natural perfidy” of Jews who had been baptized by force.⁵⁷

The canon furthered its claim to conciliar authority based on natural Jewish perfidy by tying that concept to royal religious policy and coercive power. Pointing to a previous canon that instituted an extended catechuminate for voluntary Jewish converts,⁵⁸ canon ten asserted that if Jews who converted by their own free will required extra “solicitude” in order to assure their true belief, even more care should be taken with Jews converted “by royal authority alone.”⁵⁹ Rather than criticizing Sisebut for creating this dangerous situation, however, the council went on to affirm the king’s responsibility over the religious identification of his subjects. The canon repeatedly invoked the “Isidorian” doctrine of royal religious responsibility, tied it to the idea of the good to be gained by the coercion of “the unwilling,” and concluded that it would have been “reprehensible” for Sisebut to “release his subject souls into the error of perfidy.”⁶⁰ In rationalizing the forced baptisms, the

⁵⁴ Cazier, “Les Sentences,” argues that the ecclesiastical claim to jurisdiction specifically over baptized Jews was first put forth at Toledo IV, and rationalized in *Sententiae*, 3.48-51.

⁵⁵ See e.g., *De fide* II 6, 7.1, 19.2, 21; PL 83, 510-512, 528-529.

⁵⁶ On Isidore’s overall attitude towards Jews and Judaism, see Drews, *Unknown Neighbor*, pp. 137-200. See González Salinero, *Las conversiones*, pp. 111-116, for a broader discussion of seventh-century Iberian writers’ assumption of the impossibility of genuine Jewish conversions before the end of days.

⁵⁷ This assumption was made explicit at Toledo IV. See below at note 78.

⁵⁸ Probably from the Council of Agde (506), c. 34; *La Colección IV*, p. 135. See Drews, “Jews as Pagans,” p. 202.

⁵⁹ *La Colección V*, p. 482: “sola regalis auctoritas.”

⁶⁰ *La Colección V*, p. 483: “inuitis,” “reprehensibile,” “subiectas animas in errorem perfidiae relaxaret.” See Drews, “Jews as Pagans,” pp. 204-205. For Isidore’s discussion on the religious duties of kings, see the *Sententiae*, 3.48-51, ed. P. Cazier, *Isidorus Hispalensis Sententiae*, Corpus Christianorum Series Latina 111, Turnhout, 1998) available on-line at <http://www.thelatinlibrary.com/isidore.html>. See also Cazier, “Les Sentences,” pp. 373-375. On Sisebut’s understanding of these duties, see Stocking, *Bishops*, 124-128. Sisebut’s ideas are perhaps best illustrated in his letter to the Lombard king Adalwald, urging him to convert from Arianism to Catholicism. See *Epistolae Wisigothicae*, 8, ed. J. Gil, *Miscellanea Wisigothica* (Seville, 1972), pp. 19-27. Canon ten seems to mention this letter in its recitation of Sisebut’s religious achievements: “princeps praeclarus . . . qui longe existentes gentes doctrina sua perdoceret . . .” *La Colección V*, p. 483.

author of the canon implicitly linked the council's claim to authority over baptized Jews to royal power. The practical aspects of that power were made explicit in the canon's invocation of the "terror" of secular "discipline" for violators who would not heed the admonitions of clerics.⁶¹

Thus, while this approach to secular "terror" might seem inconsistent with traditional Catholic attitudes about forced conversion and Jewish witness, it is consistent with contemporary discussions of royal religious responsibility and Jewish "perfidy." At the same time, however, the invocation of royal power in support of conciliar authority contrasts with the records of Seville II, held in 619. These records present a carefully constructed exemplar apparently intended to illustrate the correct procedures and precedents for the exercise of provincial conciliar power. While that exemplar repeatedly invoked the precedents of Roman secular laws, Isidore and his fellow bishops in 619 apparently conceived of provincial conciliar authority as strictly ecclesiastical; outside of references to the two royal agents present, the records contain no mention of royal power or contemporary secular dispute settlement.⁶² Evidently, the accusation before the bishops at Seville III inspired Baetican religious leaders to reconsider the distribution of governmental authority imagined in 619, and to appeal to royal power in support of conciliar power, while at the same time asserting their authority over the religious identification of forced converts. They did not, however, extend that authority to calling for the forced baptism of Jewish children; instead they identified them as "pagans," and admonished their baptized parents to bring them forward for baptism and prove their identity.

By instituting new procedures for these "pagan" children, the bishops at Seville III extended conciliar authority over religious identification in yet more innovative ways. For instance, the original accusation had brought relations between baptized Jews and their neighbors under scrutiny. The provisions of canon ten intervened in those community relationships: baptized Jews' children would henceforth be baptized "in the presence of many," and only after their parents had sworn a public oath and neighbors had given testimony as to their genuine identity. Not only did the canon assert the authority to institute new intrusive requirements for this fundamental ritual of identification, but it also called for the vigilant ecclesiastical monitoring of baptized Jews. Rural and urban clerics were ordered to constantly admonish them against Jewish practices, and to make sure that they lived "in common with us in the name of the Christian religion in *cultus*, in *victuals*, and in *dress*, and come to church often." Thus the authors of this canon, in imagining the

⁶¹ Drews, "Jews as Pagans," p. 205, points out the parallel between this use of the concept of secular "discipline of terror," and Isidore's discussion in the *Sententiae*, 3. 51. 4. On that passage, see also Cazier, "Les Sentences," p. 376.

⁶² Stocking, *Bishops*, pp. 128-136.

possible crimes of baptized Jews, also imagined a broad expanse of day-to-day activities as the jurisdictional territory covered by their authority to control religious identities. Moreover, by calling upon all clerics in all communities, the canon potentially extended that power to a wide variety of people with authority in a wide variety of communities.⁶³

The bishops at the Third Council of Seville, confronted with an accusation of sacrilegious fraud and inauthentic Christian identity, responded with an ad hoc admixture of tradition, expedience, and innovation in making wide-ranging claims for authority. How these claims were received at the time is unknowable. The facts that the first editor of the canonical collection known as the *Hispana* (probably Isidore of Seville) excluded the records of Seville III from his compilation, and that canon ten seems to have survived only in spite of his efforts, may indicate controversy or contention, if not an outright retreat from Seville III's audacious claims.⁶⁴ Yet canon ten's survival and redeployment in later compilations seems to indicate that at least some thinkers and legislators in the kingdom saw this apparently anomalous legislative concoction as a useful precedent worthy of preservation.⁶⁵ Moreover, although events between the two councils are poorly documented, when the kingdom's bishops met in 633 at the Fourth Council of Toledo, under Isidore of Seville's leadership once again, they revisited the issue of forced converts and their children in ways that indicate ongoing debates about governmental authority over religious identification, and a continuing currency for some of the positions taken at Seville III. Now, the bishops explicitly rejected Sisebut's policy of forced conversion, but in doing so institutionalized the identification of baptized Jews and their parental authority as inherently dangerous. Building on some of the tactics and concepts evident in canon ten, the anti-Jewish canons from Toledo IV further extended ecclesiastical and conciliar claims to ongoing power over the religious identities and Christian *mores* of the kingdom's communities.

* * *

Unlike canon ten, the immediate conciliar context for Toledo IV is relatively accessible. The council's acts were not only preserved, but enshrined as ostensibly incontrovertible precedents for the rest of the century. The bishops at Toledo IV clearly had the upper hand over the current king, a usurper who seems to have desperately needed episcopal legitimation in order to solidify his grasp on the throne. They issued seventy-five canons covering an array of

⁶³ *La Colección V*, pp. 483-484: “sub multorum praesentia,” “in parrociis seu in urbibus,” “in nomine Christianae religionis cultu, uictu, habitu nobiscum communes existant, ad ecclesiam quoque saepe concurrant.”

⁶⁴ See above, note 41.

⁶⁵ See below at note 84.

subjects, including the future election and confirmation of kings. The bishops claimed conciliar jurisdiction over virtually all ecclesiastical affairs, and attempted to institute a strictly regularized regime of provincial conciliar governance, with broad jurisdiction in local dispute settlement. The council's legislation as a whole reflects a thoroughgoing program for religious and political unification and conciliar authority as the bases for the kingdom's survival.⁶⁶ The claims for control over religious identification in Toledo IV's anti-Jewish canons clearly constituted a key element in this program.

As a general council, Toledo IV was not likely to serve as a forum for initiating local accusations and disputes. On the other hand, it does appear that the bishops heard at least one appeal there—that of Martianus—and issued canons that addressed the broader issues raised by that tainted case.⁶⁷ Canon ten also may have negatively inspired the bishops in 633. Not only did the anti-Jewish canons open with a criticism of the forced baptisms that canon ten had praised, but they differed in many ways from that canon in their approach to the religious identification of baptized Jews and their children. First of all, apparently no longer concerned with faked baptisms, the bishops accused baptized Jews of blaspheming against Christ “not only by being known to be practicing Jewish rites but even by daring to operate abominable circumcisions” on their sons and their slaves.⁶⁸ Circumcised slaves were to be freed, and circumcised sons were to be removed from their parents. By redefining the danger at stake as a blasphemous attack on Jesus through this central rite of Jewish identification, Toledo IV refocused canon ten's blurred images of Arians, pagans, and perfidious Jews to evoke traditional Christian fears of Jewish authority and explicitly extend them to parental power.⁶⁹ In this way, the allegedly circumcised sons were identified not as pagans or Jews, but as the Christian subordinates of their parents' Jewish power, like the allegedly circumcised Christian slaves.

The danger of baptized Jews' parental power, and the Christian identity of their children was invoked even more strenuously in the next canon, which decreed that all sons and daughters “of the Jews” should be separated from their parents “in order that they should not become further entangled in their

⁶⁶ Stocking, *Bishops*, 149–173.

⁶⁷ Stocking, “Martianus Aventinus,” pp. 182–183.

⁶⁸ Toledo IV, c. 59, *La Colección V*, p. 237: “non solum iudaicos ritus perpetrasse noscuntur, sed etiam et abominandas circumcisiones exercere praesumerunt.” Linder, *Legal Sources*, p. 488; online at <http://www.cn-telma.fr/relmin/extrait1058/>.

⁶⁹ Such an extension had begun in Toledo III's canon 14, with the children of mixed unions. See above, note 8. On the treatment of Jewish parental rights in the various sources of canon law from Roman laws forward, see W. Pakter, *Medieval Canon Law and the Jews* (Ebelsbach, 1988), pp. 314–322, and Blumenkranz, *Juifs et chrétiens*, pp. 324–326.

deviation.”⁷⁰ The canon directed that the children be deposited with “god-fearing men and women,” or in monasteries, “in order that they should learn from [the Christians’] way of life to venerate the faith and, educated on better things, progress in their morals as well as their faith.”⁷¹ At Seville III, canon ten had called for the indoctrination (and supervision) of baptized Jews through participating in Christian ways of life and church attendance. Toledo IV applied this religious education to the children rather than the parents, seeking to absorb those children into Christian society as they built boundaries around their dangerous parents. The rhetorical Christianization of the children of baptized Jews is also evident in canon sixty-one, which declares that the “faithful sons” of apostatizing baptized Jews should not lose their inheritance rights, since “a son shall not bear the iniquity of the father.”⁷² It seems that by 633, the Iberian episcopate had discarded the notion that baptized Jews might keep their children “pagan” and subject Christian children to rebaptism. Instead, they sought to impose a rigid boundary between blaspheming baptized Jews and their incipiently Christian offspring.

Meanwhile, other canons at Toledo IV reiterated and revised traditional concerns about barriers between Christians and Jewish power. Canon sixty-three repeated previous prohibitions against unions between Jews and Christians, with new phrasing that would apply to existing marriages between baptized and non-baptized Jews:

Jews who have Christian wives in marriage should be warned by the bishop of their city that if they wish to remain with them, they should become Christians. If they were warned and have refused, they shall be separated, because an infi-

⁷⁰ Toledo IV, c. 60, *La Colección V*, p. 238: “Iudaeorum filios vel filias, neparentum ultra inuolantur erroribus.” Linder, *Legal Sources*, p. 488; online at <http://www.cn-telma.fr/relmin/extrait1060/>.

⁷¹ *Ibid.*: “aut monasteriis aut Christianis uiris ac mulieribus Deum timentibus, ut sub eorum conuersatione cultum fidei discant atque in melius instituti tam in moribus quam in fide proficient.” Linder, *Legal Sources*, p. 488. The language does not make clear whether the envisioned Jewish parents are baptized or not; but it would appear that the children are, as they are expected to progress in “their faith,” without any mention of the need to baptize them. Historians have disagreed on whether this canon was meant to apply only to the children of baptized Jews, only to the children of non-baptized Jews, or to the children of both. See, e.g., Blumenkranz, *Juifs et chrétiens*, p. 111; Cazier, “De la coercition,” p. 132-133; Juster, “La condition legal,” trans. Rabello, p. 410; B.S. Albert, “Isidore of Seville: His attitude towards Judaism and his impact on Early Medieval Canon Law,” *The Jewish Quarterly Review*, LXXX, 3-4 (1990), 207-220, p. 216; García Iglesias, “Los menores.” According to González Salinero, “Catholic Anti-Judaism,” p. 148, this measure had lasting influence as the canonical justification for removing children from Jewish parents in later centuries, although Pakter, p. 316, notes that the later canonists Burchard of Worms and Ivo of Chartres “expressly limited Toledo IV can. 60 to baptized children of Jews.” The twelfth-century canonist, Gratian, reverted to the inexact language of Toledo IV.

⁷² *Ibid.*: “fideles filios”; “Filius non portabit iniquitatem patris,” quoting Ezekial 18, 20. Linder, *Legal Sources*, p. 489.

del cannot remain united to one who has already been transferred to the Christian faith. . .⁷³

Canon sixty-six once again prohibited Jewish ownership of slaves, with a vivid rationalization: “it is monstrous that members of Christ should serve ministers of Antichrist.”⁷⁴ This canon doesn’t explicitly mention baptized Jews, but within the context of the other canons, the opposition between Christians and the ministers of Antichrist speaks volumes about the stakes involved. Canon sixty-two spelled out the dangers in more detail:

[If] even the good are frequently corrupted from associating with the evil, how much more so people who are prone to sin? There should be, therefore, no more association between Hebrews brought over to the Christian faith and those who still persist in their ancient rite, lest they be corrupted by their company. If any of the baptized, therefore, should not henceforth avoid the company of the infidels, these [the baptized Jews] shall be given to the Christians, and those [the unbaptized Jews] shall be condemned to public flogging.⁷⁵

If, on the one hand, the salvific influence of Christian *mores*, combined with the principle that the sins of the father are not inheritable, could make it possible for the children of baptized Jews to cross into the territory of Christian identification, on the other hand, the evil influence of the “ministers of Antichrist” made it almost certain that those children’s parents, already “prone to sin,” would “be corrupted by [the non-baptized Jews]’ company.”

⁷³ Ibid, p. 239: “Iudaei qui Christianas mulieres in coniugio habent, admoneantur ab episcopo ciuitatis ipsius ut, si cum eis permanere cupiunt, Christiani efficiantur. Quod si admoniti noluerint, separantur, quia non potest infidelis in eius permanere coniunctionem quae iam in Christianam translata est fidem.” Linder, *Legal Sources*, p. 490; <http://www.cn-telma.fr/re/min/extrait1067/>. Sivan, “Invisible Jews,” p. 376, offers a very different translation of the final phrase in this passage: “they will be separated since an infidel cannot maintain a marital tie unless it is done according to the Christian faith,” arguing that the translation above (which is based on Linder, p. 490) “does not make sense since the law stipulates a situation in which the woman is already Christian.” If, however, one imagines an existing marriage between a non-baptized Jew and a baptized Jew (i.e., “one who has already been transferred to the Christian faith”), I believe the translation does make sense. The problem with this passage is compounded by the fact that the word “iam”—translated above as “already”—does not appear in Linder’s edition or his translation. It does, however, appear in *La Colección*. See also González Salinero, *Las conversiones*, p. 42.

⁷⁴ Ibid., p. 241: “Nefas est enim ut membra Christi seruiant Antichristi ministris.” Linder, *Legal Sources*, p. 491; <http://www.cn-telma.fr/re/min/extrait1061/>.

⁷⁵ Ibid., p. 239: “Saepe malorum consortia etiam bonos corrumpunt, quanto magis eos qui ad uitia proni sunt. Nulla igitur ultra communio sit hebraeis ad fidem Christianam translatis cum his qui adhuc in ueteri ritu consistunt, ne forte eorum participio subuertantur. Quicumque igitur amodo ex his qui baptizati sunt, infidelium consortia non uitauerint, et hi Christianis donentur et illi publicis caedibus deputentur.” Linder *Legal Sources*, p. 489; <http://www.cn-telma.fr/re/min/extrait1062/>.

Where the scenario envisioned in canon ten had left the unbaptized children of baptized Jews in a religious no-man’s-land until their ceremonially verified baptisms, Toledo IV’s careful reconfiguration of boundaries drew a line in the sand not only between those children and “the iniquity of the father,” but also between their “prone to sin” parents and the “ministers of the Antichrist.”

Ultimately, however, those rigid boundaries left baptized Jews in an indeterminate zone—baptized, but prone to sin, sharers in the same inherited perfidy asserted by the author of canon ten.⁷⁶ The indeterminacy of this shadowy identity was ensured by Toledo IV’s most famous anti-Jewish canon, canon fifty-seven. This canon began with a rejection of future forced conversion and a strong affirmation of the necessity of free will in conversion to ensure true belief as well as the “appearance of justice”: in other words, forced converts would not truly believe.⁷⁷ At the same time, however, the canon insisted that because the baptized Jews were now “associated in the divine sacraments” and “partook of the body and blood of the Lord,” the baptisms were to be enforced, “lest the name of the Lord be blasphemed and the faith they had undertaken be treated as vile and contemptible.”⁷⁸ Thus, in its affirmation of free will, canon fifty-seven built on the concepts of Jewish *incredulitas* and natural perfidy that were already current at Seville III, codifying the inauthenticity of baptized Jews’ Christianity and the active threat they posed

⁷⁶ This indeterminate position is reflected in some of Toledo IV’s language, including canon 60’s provision for removing children from their parents. See above, at note 70. Additionally, Albert, “Isidore of Seville,” points out that the language of Toledo IV’s canon 65, which extended a prohibition on Jews holding public office to apply to “those who are from the Jews,” (*hi qui ex iudaeis sunt*) could be understood as applying not only to baptized Jews, but also to their children. If the canon was meant to apply to the children of baptized Jews, then this provision included those children in the inherited “iniquity of the fathers,” from which they had been excluded in their inheritances. According to Albert, this reading later “became the ideological basis for the theory of ‘limpieze de sangre’ (‘purity of blood’) which excluded all Jewish converts or descendants of conversos from office in sixteenth-century Spain.” See also Albert, “The 65th Canon of the IVth Council of Toledo (633) in Christian Legislation and its Interpretation in the ‘Converso’ Polemics in XVth Century Spain,” in *Proceedings of the VIIIth World Conference of Jewish Studies* (Jerusalem, 1982), pp. 44–48. Isidore, *De fide*, I.28, PL 83, 481, clearly sees the “iniquity” of killing Jesus as inherited by all Jews.

⁷⁷ *La Colección V*, p. 235: “forma iustitiae”; <http://www.cn-telma.fr/relmin/extrait1051/>. Isidore states this principle emphatically in the *Sententiae*, 2, 2, 4: “Fides nequaquam ui extorquetur, sed ratione atque exemplis suadetur. Quibus autem exigitur uiolenter, perseuerare in eis non potest: exemplo, ut ait quidam, nouellae arboris cuius si quisque cacumen uiolenter inpresserit, denuo, dum laxatur, in id quod fuerat, confestim reuertitur.” See Cazier, “De la coercion,” p. 138. For a general discussion of Isidore’s thinking on free will and forced conversion see Drews, *Unknown Neighbor*, pp. 233–252.

⁷⁸ *La Colección V*, pp. 235–236: “quia iam constat eos sacramentis diuinis associatos et baptismi gratiam suscepisse et chrismate unctos esse et corporis Domini et sanguinis exstitisse participes,” “ut integra sit forma iustitiae”; “ne nomen Domini blasphemetur et fidem quam susceperunt uilis ac contemptibilis habeatur.” Linder, *Legal Sources*, pp. 486–487.

to the faith. These basic premises provided the foundation for the further delineations and demarcations in the following canons. At the same time, the canon can be read as an assertion of the primacy of conciliar authority in the realm of religious identification. Where Seville III had endorsed the king's baptisms in order to strengthen its own claims, Toledo IV sought to limit royal responsibility by declaring the baptisms ineffective, while at the same time asserting its own authority in defending the faith and its sacraments against the immediately suspect forced converts.⁷⁹

Other canons also sought to elevate ecclesiastical control of these religious categories above the possible claims of royal authority. The canon accusing baptized Jews of performing circumcisions acknowledged the "advice" of the current king, Sisenand, but explicitly stated that the blaspheming parents should be "corrected" by the "episcopal authority" so that "the priestly chastisement should coerce those whom their own will does not amend."⁸⁰ Canon sixty-two assigned the discipline of baptized Jews to "the Christians," as opposed to the "public" flogging of non-baptized Jews.⁸¹ The council only recognized the king's agency, and by extension his primary jurisdiction, in two anti-Jewish canons: canon sixty-five, extending previous prohibitions on Jewish office-holding to baptized Jews, and canon sixty-six, reaffirming Sisebut's absolute prohibition on Jewish ownership of Christians. Both of these canons involved civil law and invoked secular penalties.⁸² In 633, Isidore and the Iberian bishops no longer felt it necessary to support broad royal initiatives like Sisebut's baptisms in claiming their own authority over religious identification in the face of local accusations and conflicts. Despite canon fifty-seven's affirmation of free will, the balance of the bishops' concern at the council was weighted towards confirming the baptisms, and claiming the right to identify and restrict the baptized and their children. Indeed, in this context, canon fifty-seven's discussion of the necessity of free will in conversion reads like the opening argument in the episcopal case.

Toledo IV's reshuffling of the religious categories outlined at Seville III makes it difficult to understand the links between the two councils. Yet it is clear that the bishops at both councils were dealing with the same issues, and were using some of the same images and concepts to do so. It appears that

⁷⁹ Canon 57's seemingly contradictory stance on religious coercion has been discussed extensively. See, e.g., J. Orlandis, "Hacia una mejor comprensión del problema judío en el reino visigodo católico de España," *Gli ebrei nell'alto medioevo. Settimane di studio* 26 (1980), 149-178, pp. 162-163; Cazier, "De la coercion," p. 135; González Salinero, "Catholic Anti-Judaism," pp. 133-134.

⁸⁰ *La Colección V*, p. 237: "consultu"; "ut quos uoluntas propria non emendat, animaduersio sacerdotalis coerceat." Linder, *Legal Sources*, p. 488.

⁸¹ See above, note 75.

⁸² *La Colección V*, pp. 240-241.

the provisions made at Seville III did not halt the disruption in religious identification made possible by Sisebut's baptisms. In fact, it could be that canon ten's pagan and heretical images further complicated matters. Canon fifty-seven's language indicates that bishops at Toledo IV were concerned about the “appearance of justice” and the public vilification of the Christian faith. Its provisions seek to make a definitive statement on Sisebut's baptisms and the identity of his victims. While this could be interpreted as a response to the actual apostasy of forced converts, it could also be read as an effort to contain public debate about religious identities and identification.

* * *

Subsequent laws and canons make it clear that the debates continued. Despite all the boundaries Toledo IV laid down, one of its primary anti-Jewish legacies for the next few generations was the undefined but inherently suspicious image of baptized Jews, which Christian legislators used in making claims and counterclaims about authority over religious identification until the end of the century.⁸³ Canon ten also seems to have played a continuing role in these debates and redefinitions. While it was excluded from the “Isidoriana” recension of the *Hispana*, its later resurrection—probably in 681, in an appendix to the records of the Eighth Council of Toledo—may illuminate some of the parameters of these debates. At that council, held in 653, the reigning king Recceswinth came before the bishops and asked them to confirm a series of fifteen vicious anti-Jewish laws included in his massive codification of secular law known as the *Leges Visigothorum*. In its twelfth canon, the council responded, in equally vicious language, by politely acknowledging the king's good intentions, but explaining that “our resolution in these matters establishes nothing else but that the decrees of [the Fourth Council of Toledo] should be reinforced by our utmost zeal, as well as that of our successors.” They went on to condemn anyone who might disagree with Toledo IV as “truly sacrilegious.”⁸⁴ While the bishops made a gesture toward the responsibility of kings to protect the faith from “the menace of the perfidy of the Jews” in their tenth canon, they used the precedents of Toledo IV to make clear their

⁸³ The list of secular and ecclesiastical laws concerning baptized Jews issued between 633 and 694 is extensive. For the laws of Chindaswinth (c. 646), Recceswinth (654), Erwig (681), and Egica (693), see Linder, *Legal Sources*, pp. 257-332; For the anti-Jewish canons of Toledo VI (638), Toledo VIII (654), Toledo IX (655), Toledo XII (681), Toledo XVI (693), and Toledo XVII (694), see Linder, *Legal Sources*, pp. 491-538.

⁸⁴ *La Colección V*, p. 434: “nihil aliud pro his ex nostra sentential definitiur quam ut decreta concilii Toletani quod diuae memoriae Sisenandi regis aggregatum est tempore, a nobis ac posteris omnimoda suppleantur intentione,” “uere sacrilegum.” Linder, *Legal Sources*, p. 504.

decision not to support publically Recceswinth's anti-Jewish legal program, which outlawed all Jewish practices on pain of death.⁸⁵

Around 681, however, the editor of the "Juliana" recension of the *Hispana* added the appendix containing canon ten, with its forthright endorsement of forced baptism and royal religious initiatives, to the records of Toledo VIII.⁸⁶ This new recension apparently was compiled around the same time that the enthusiastically anti-Jewish king Erwig issued 28 laws that ordered the forced baptism of any unbaptized Jews left in the kingdom, and delineated elaborate new restrictions on baptized Jews.⁸⁷ Unlike Recceswinth at Toledo VIII, Erwig gained the enthusiastic confirmation of these laws from the bishops gathered at the Twelfth Council of Toledo. Was canon ten was appended to Toledo VIII in order to counter the weight of that council's stance upholding the authority of Toledo IV and to support instead the position taken at Toledo XII endorsing royal forced baptism? There is no way to know, but the editor of the "Juliana" recension is known for at least one other instance of rhetorical interpolation.⁸⁸

What is clear is that other aspects of canon ten's approach to religious identification survived along with the canon itself. Erwig's laws are particularly good examples of this. Not only are they framed in the language and imagery of Jewish nefarious perfidy; but like canon ten they use that "terminological extremism"⁸⁹ and vivid detail to assert the right to intrude on day-to-day life and social relations in local communities. Like canon ten, Erwig's laws called upon clerics in all communities to monitor baptized Jews; they interfered in relations between baptized Jews and other Christians; they instituted new public rituals and oaths designed to ensure authentic Christian identity; they sought to eliminate Jewish practices and enforce the Christian "mores" of baptized Jews in their daily lives, and they were concerned with children being withheld from baptism. Yet despite the joint royal and conciliar call for forced baptisms, the lasting influence of Toledo IV is also evident in

⁸⁵ *La Coleccion V*, p. 429: "hac quae inminet iudaeorum perfidia"; Linder, *Legal Sources*, p. 503. Recceswinth's anti-Jewish laws are *LV 12.2*, 3-17, Zeumer, pp. 412-426.

⁸⁶ On the date and probable Toledan provenance of the "Juliana" recension, see Martínez Díez, *Estudio*, pp. 323-325.

⁸⁷ *LV 12.3*, 1-28, Zeumer, pp. 429-456.

⁸⁸ The "Juliana" recension contains the records of a council purportedly held in Toledo during the reign of Gundemar, who ruled from 610 to 612. These records were inserted into the *Hispana* as an appendix to the records of Toledo XII, along with the "Edict of Gundemar," purportedly issued at the same time as the council. Both documents were signed by 26 bishops, including Isidore of Seville. These documents, neither of which appear in the "Isidoriana" recension and whose authenticity has been debated by modern scholars, were clearly meant to support Toledo XII's canon six, which claimed primacy for the Toledan see in episcopal elections throughout the kingdom. See Martínez Díez, *Estudio*, pp. 209-220; and Stocking, *Bishops*, p. 121, with bibliography.

⁸⁹ See above, at note 87.

these laws. For instance, one law specifically prohibited blaspheming Christ or rejecting his body and blood; another instituted extreme penalties for circumcision.⁹⁰ One of the most interesting of these laws repeated Toledo IV’s concerns for rearing the children of baptized Jews, but turned the principles of “Isidorian” education on their heads. Rather than Christian instruction for the children of baptized Jews, the law called for the punishment of anyone reading books “against the faith of Christ,” or teaching those doctrines to children. The penalties of this law, which included 100 lashes of public flogging, were explicitly extended to children over the age of ten.⁹¹ Thus, legislators and canonical scholars in 681 once again drew on long-standing traditions, recent innovations, and ongoing debates about baptized Jews and their children to assert an agreement between kings and councils on the language, procedures, and distribution of authority over religious identification in their kingdom.

Succeeding kings and councils continued these readjustments in secular and ecclesiastical law until 694. In that year, at the behest of the current king, Egica, the Seventeenth Council of Toledo ordered the enslavement of all “Jews,” along with their children. Although the council identified the targeted group as the “plebs iudaeorum,” it is clear that the order addressed baptized Jews, who, according to the bishops, not only had “defiled” their baptisms, but also had joined an international conspiracy to usurp the throne. In ordering enslavement, the Council assigned to the slaves’ new masters the responsibility for policing the religious identity of baptized Jews. Yet while the bishops and the king now officially delegated the control of these religious boundaries to private powers, they apparently clung to the image of children as the site of a future Christian victory over Jewish perfidy. For the second time in the century, they ordered that the baptized Jews’ sons and daughters be removed from their parents and raised, apparently as slaves, by “very faithful Christians.”⁹²

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⁹⁰ LV 12.3, 2 and 4.

⁹¹ LV 12.3, 11, Zeumer, p. 438: “contra fidem Christi”; Linder *Legal Sources*, p. 302.

⁹² Linder, *The Jews*, p. 536: “maculaverint”; “fidelissimos christianos.”



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JEWISH WOMEN AND VISIGOTH LAW

María Jesús FUENTE

The best way to destroy a people's culture and identity is to undermine its religion and its language.

Mark Tully, *No full stops in India*, London, Penguin Books, 1992, p. 4

Les Juifs devaient rester sur place, mais ils devaient se dépouiller de ce qui les distinguait encore de leurs concitoyens chrétiens: leur religion ancestrale.

Bernhard Blumenkranz, *Juifs et Chrétiens dans le monde occidentale*, Paris, Louvain, Peeters, 2006, p.108

Between the fifth and the seventh centuries the Visigoth rulers attempted to destroy the religious and cultural identity of the Jewish people. The legislation, which followed the Roman tradition, became harsher than before from the end of the sixth century, after King Recared (586-601) converted to Catholicism (589), and ever harsher with King Sisebut (612-621), who imposed very restrictive laws probably influenced by the Byzantine Emperor Heraclius. Driving the effort to destroy Judaism was the religious unification of the kingdom.

Why were the Visigoths kings unable to destroy Jewish religion? Historians have tried to explain how the Jews resisted these laws and retained their religion¹, but they have not considered the role that women could play in the resistance to the laws. In other places and times, when Jews suffered from persecution, women played a very important role in the defense of community

¹ From the first decades of the twentieth century has been much interest in the topic, and as result there is a large bibliography. Jean Juster, *La condition légale des juifs sous les rois visigoths* (Paris: Librairie Paul Geuthner, 1912); Aloysius Z. Ziegler, *Church and State in Visigothic Spain* (Washington: The Catholic University of America, 1930); Solomon Katz, *The Jews in the Visigothic and Frankish Kingdoms of Spain and Gaul* (Cambridge, MA: The Mediaeval Academy of America, 1937); Juan Gil, "Judíos y cristianos en la Hispania del siglo VII", *Hispania Sacra*, 9-110 – 30, 1977; Luis García Iglesias, *Los judíos en la España antigua* (Madrid: Ediciones Cristiandad, 1978); David Romano, "Los judíos en España entre los siglos IV a IX", in *De la Antigüedad al Medioevo. Siglos IV-VIII. III Congreso de Estudios medievales* (León: Fundación Sánchez Albornoz, 1993), pp. 251-266; Luis A. García Moreno, *Los judíos de la España antigua: del primer encuentro al primer repudio* (Madrid: Rialp, 1993); Amnon Linder (ed.), *The Jews in the Legal Sources of the Early Middle Ages* (Detroit: Wayne State University Press, 1997); Raúl González Salinero, *Las conversiones forzadas de los judíos en el reino visigodo* (Roma: Escuela Española de Historia y Arqueología, 2000); Catherine Cordero Navarro, "El problema judío como visión del 'otro' en el reino visigodo de Toledo", *En la España Medieval*, 23, 2000, 9-40. Henriette-Rika Benveniste, "On the Language of Conversion: Visigothic Spain Revisited", *Historiein*, 6, (2006), 72-87. Other works will appear in the notes below.

values, as they did, for example, in the Hispanic kingdoms of the fifteenth century². Did women play a similar role in the Visigoth kingdom? What did they do to defend their religion? How did they resist such harsh legislation?

To answer these questions I will begin by discussing the place of women in the Jewish community, their cultural image, their social functions, and their legal status. I will then analyze the Visigothic legislation, in particular the laws and rules that affected women. And finally I will look at the way women tried to evade these laws.

In all likelihood, Jewish women played a significant role in Visigothic society, much like they did before as benefactors of the ancient synagogues, guardians of purity in the formative age of the *Mishnah*, interpreters of Scripture in formative Judaism, and apostles in the Greco-Roman world. They probably “exercised much more authority within Jewish society than scholarship so far has been willing to acknowledge”³, even more than the authority granted them by the *Mishnah* and the men of the community⁴.

Some scholars hold that women should not be studied as “a separate people”⁵, but in the case of Jewish women in the Visigoth kingdom, there are two reasons for focusing on them in particular. One is that they were the “gatekeepers” of the Jewish identity⁶, the other is that up to now Jewish studies have neglected gender⁷.

² María Jesús Fuente, *Identidad y convivencia. Musulmanas y judías en la España medieval* (Madrid: Polifemo, 2010).

³ Peter J. Haas (ed.), *Recovering the role of women. Power and authority in Rabbinic Jewish Society* (Atlanta: Scholars Press, 1992), p. 1.

⁴ The *Mishnah* as an important source of tracing Jewish women lives has been used by several authors: Rachel Biale, *Women and Jewish Law: An Exploration of Women's Issues in Halakhic Sources* (New York: Schocken Books, 1984), Leonie Archer, *Her Price is Beyond Rubies: The Jewish Woman in Graeco Roman Palestine* (Sheffield: Sheffield Academy Press, 1990), Judith Romney Wegner, *Chattel or Person? The Status of Women in the Mishnah* (Oxford-New York: Oxford University Press, 1988), Jacob Neusner, *A history of the Mishnaic Law of Women: Part Five: The Mishnaic System of Women* (Leiden: Brill, 1980).

⁵ Elisheva Baumgarten, “A separate people? Some directions for comparative research on medieval women”, *Journal of Medieval History*, 34 (2008), 212-228.

⁶ Ruth Magder Abusch, “Kashrut: “Women as Gatekeepers of Jewish Identity”. Klutznick-Harris Symposium. <http://www.creighton.edu/ccas/klutznick/archives/symposium2002/abstracts02/index.php#c64946>

⁷ Monica Green, “Conversing with the minority. Relations among Christian, Jewish, and Muslim women in the high middle ages”, *Journal of Medieval History*, 34 (2008), 105-118 (p. 107). She refers to two recent collections of essays: *Jews and Christians in twelfth-century Europe*, ed. by Michael A. Signer and John Van Engen (Notre Dame: University of Notre Dame Press, 2001), and *The Jews of Europe in the middle ages (tenth to fifteenth centuries). Proceedings of the international symposium held at Speyer, 20-25 October 2002*, ed. by Christoph Cluse (Turnhout: Brepols, 2004). Monica Green points out that “combined, the two volumes present over 50 essays, but only one of them is devoted specifically to women... Neither ‘women’ nor ‘gender’ appear in either volume’s index” (footnote 7, p. 107).

The paucity of these studies, noted by Monica Green, is especially acute for women in the Germanic kingdoms and in particular in the Visigothic kingdom. The role of women in Visigothic Hispania has barely been studied, in part because of the scarcity of the sources about women in particular⁸. However, to analyze the role of women at that time and place is especially important to be able to understand the resistance of the Jewish community from the attacks of lay and religious authorities of the Kingdom, which some authors have compared with the pogroms at the end of the Middle Ages⁹.

It is hard to uncover the effect of laws on Jewish women, and their response because women's activities were in large part confined to the house, almost secretly in normal times, and completely hidden in turbulent times.

To understand the impact of this restrictive legislation on the lives of Jewish women, we have to look not only at the laws of the kings and the canons of the Church councils, but also at papal letters and writings of Spanish and European authors. Inscriptions are an important source, but only two grave inscriptions of women have been found¹⁰: one of Meliosa, and another of Isidore, both from the end of the sixth century, before the laws dealing with Jews became much harsher after the Third Council of Toledo (589), which forced Jews to convert or go into hiding. How Jewish women dealt with these painful choices is at the heart of this essay.

The role of Jewish women in Hispania. From the fifth to the seventh centuries

The *Sefer Hasedim* says the story of a dead gentile mistress who stood in the grave and said she had seen Jews in the Garden of Eden and a Jewish woman with her arm covered with wax, because: "once I lit a candle on the *Sabbath* and my hand was covered in wax. That is why I am like this today".

Elisheva Baumgarten, "A separate people? Some directions for comparative research on medieval women", *Journal of Medieval History*, 34, 2008, p. 224

⁸ Rosa Sanz Serrano, "La mujer a través de los concilios hispanorromanos y visigodos", in *Roles sexuales: la mujer en la historia y la cultura*, ed. by Esther Hidalgo Blanco, Gert Wagner, María José Rodríguez Manpaso (Madrid: Ediciones Clásicas, 1994), pp. 85-110.

⁹ García Iglesias, *Los judíos en la España antigua*; José Oriandis, "Hacia una mejor comprensión del problema judío en el reino visigodo", in *XXVI Settimane di studio del Centro Italiano di Studi sull'Alto Medioevo, Gli Ebrei nell'Alto Medioevo* (Spoleto: Centro Italiano di Studi sull'alto Medioevo, 1980), pp. 149-178; García Moreno, *Los judíos de la España antigua*.

¹⁰ Francisco Cantera Burgos y José M^a Millás Vallicrosa, *Las inscripciones hebraicas de España* (Madrid: Consejo Superior de Investigaciones Científicas, 1956), pp. 267-273. Ángel del Arco, "Lápida hebraico-cristiana de Tarragona", *Boletín de la Real Academia de la Historia*, 72 (1918), 495-500.

Among the many tasks of Jewish women few were more important than celebrating the *Sabbath*. They were in charge of blessing the candles and baking the bread. Under Jewish custom and religion women also had to cook the meals in a special way and practice ritual bathing. In addition to daily tasks they had to celebrate annual festivities as Yom Kippur, Rosh Hashanah, or Sukkot, and the occasional life changing events: birth, marriage and death. These domestic tasks were an integral part of cultural and religious experience: they were rules that came from the religious authorities, and identified households as Jewish. To get to know how anti-Jewish legislation could affect these women, I am going to briefly mention their most important activities.

Even if these tasks were very important no one was more important than motherhood. For Jewish women was essential to follow the precept “Be fertile and increase. Fill the earth and master it”. Without children a woman’s life lost much of its meaning, and her husband, who married to have heirs, would think less of her. By giving birth she increased the Jewish community, because to be a Jew it is necessary to be born from a Jewish mother (or to convert).

The role of mother drives her to other essential tasks: to raise and educate the children in the Jewish faith and culture, and to keep the household under Judaic rules. A mother, educated by her mother, would teach her children, in particular her daughters, all the rituals and customs of Judaism, daily practices proper in the community, perceived as religious beliefs.

Among daily practices one of the most important was the preparation of food. In place of the long demolished Temple altar, every Jewish table became a replacement “little Temple”¹¹. Women not only knew which food was allowed by the religion, but also which type of bread had to be baked for which festivity, especially for the *Seder* and other dinners of *Passover*.

They also played an important role in the rituals of birth, marriage and death. Although women did not attend their son’s circumcision, they knew a good deal about the ceremony, which they practiced if necessary. At the end of the Middle Ages, Sephardic women had a ceremony called the *fadas*, a ritual to celebrate the birth of a girl; in the mother’s bedroom gathered young women and other family members, who sang and danced, celebrating joyfully. We are not certain when the ceremony begins or from where it originates. As with other Jewish customs, the *fadas* could have its roots very long ago, but is not documented in the Visigoth period, which does not mean that it did not exist. They also knew what they had to do when a member of the family or a neighbor died. Preparing the body, crying, and setting up the funeral meal (*cogüerzo*) were part of the cultural functions of Jewish women. Marriage deserves special attention. It was much more than a ceremony; it was an es-

¹¹ Jonathan Brumberg-Kraus, “Meals as Midrash: A Survey of Meals in Jewish Studies Scholarship”, <http://acunix.wheatonma.edu/jkraus/articles/mealsasmidrash.htm>, p. 2.

sential institution in the life of Jewish women, one that reflects the cultural image, social function and legal status of Jewish women. Women were familiar with the cultural part of the ceremony, the bridal preparations as appear in the lament of Seila, the biblical story of Jephthah's daughter¹². They were aware of the social function of having children and raising them, as they knew the rights and duties towards their husbands. The wedding did not need a rabbi, only two witnesses to join the bride and groom. Nothing prevented a woman from serving as *mesaderet kidushin*, coordinator of the wedding. Under Judaism a married woman had to abide by *halakhic* rules that obliged her not to have intercourse with her husband the day she started to menstruate and seven days after. The eighth day, she would cleanse herself by immersing (*tevilah*) in the ritual bath (*mikveh*)¹³, and afterwards she not only could have intercourse with the husband but even insist upon it. Jewish women were familiar with Jewish laws on divorce, and with the institution of levirate that obliged a woman to marry her brother in law if the husband died childless.

Marriage, motherhood, and housekeeping all revealed much about the cultural, social, and legal place of Jewish women in medieval society and in Visigoth times in particular. They all took a place in the domestic space in which the family lived (and sometimes worked). As rabbinic teaching said, "the honor of Israeli women lies inside the house"¹⁴. Marriage, motherhood, and housekeeping all revealed much about the cultural, social, and legal place of Jewish women in medieval society and in Visigoth times in particular. They all took a place in the domestic space in which the family lived (and sometimes worked). As rabbinic teaching said, "the honor of Israeli women lies inside the house"¹⁵, nevertheless they encouraged and facilitated the education of their husbands and children¹⁶.



¹² Ross S. Kraemer, "Jewish Mothers and Daughters in the Greco-Roman World, *The Jewish family in antiquity*, ed. Shaye Cohen, 1993, pp. 89-112, p. 93. Lynn H. Cohick, *Women in the world of the earliest Christians: illuminating ancient ways of life* (Grand Rapids: Baker Academic, 2009), pp. 57-59.

¹³ The scarce documentation of Visigoth times does not offer any reference to the use of mikvot for the *tevilah* of women, however, since it appears in the Jewish Bible, it is probable that the custom was followed at that time.

¹⁴ Moisés Orfali, "Influencia de las sociedades cristiana y musulmana en la condición de la mujer judía", in *Árabes, judías y cristianas: mujeres en la Europa medieval*, ed. by Celia del Moral (Granada: Universidad de Granada, 1993), pp. 77-89 (p. 88).

¹⁵ The role of women as *archisinagogoi* is controversial. Bernardette J. Broton, "Female leadership in the ancient synagogue", in *From Dura to Sepphoris*, ed. by Ze'ev Weiss and Lee Levine, *Journal of Roman Archaeology Supplementary series*, 40 (2000), 215-223.

¹⁶ Ross S. Kraemer, "Jewish Women in the Diaspora World of Late Antiquity", in *Jewish Women in Historical Perspective*, ed. by Judith R. Baskin (Detroit: Wayne State University Press, 1999), pp. 46-72 (p. 54).

The legislation

The unfaithful cannot keep married to a woman who has been already converted to the Christian faith, and the children born from those marriages will follow the faith and the condition of the mother. In the same way also those who were born from unfaithful women and Christian men, will follow the Christian religion, not the Jewish superstition.

Fourth Council of Toledo, canon 63¹⁷

This canon of the Fourth Council of Toledo (633) affected Jewish women a great deal, in particular in two of their most important roles: marriage and motherhood. There were other laws that also affected Jewish women, eliminating their functions, diminishing their influence, and hurting them emotionally. How did women react to the laws that not only changed their legal status, but also voided their social functions and erased their cultural role? How could women defend themselves? A good way to begin answering these questions is by looking at the legislation, in particular to the rules that influenced women visibly or invisibly.

The prohibition of mixed marriages in the canon of the Fourth Council of Toledo (633), which is mentioned above, had antecedents in the distant past. Both Christianity and Judaism banned matrimonial or sexual relations among people of the different communities. The first Christian Council in Iberia that prohibited them was held in Elvira (c. 306). Afterwards Roman legislation related to Iberian Jews, in particular the *Codex Theodosianus*, imposed similar rules, as also some emperors before Theodosius did. The prohibitions of mixed marriages at the fourth century in the Roman Empire were influenced by the Church. This institution forbade in particular the marriage of Christians with Jews, due to the fear of Jewish proselytism and Jewish influence on Christianity¹⁸. The book XVI of the *Codex Theodosianus*, which dealt with Jews, included the prohibition of mixed marriages, stressing the banning of marriage between a Christian woman and a Jewish man, which was based on the idea that women were subject to the authority of their husbands¹⁹. There is evidence that mixed marriages were not uncommon.

The anti-Jewish regulations of the *Codex Theodosianus* were partially copied by the *Lex Romana Visigothorum* or *Breviary of Alaric*, which, while it excluded

¹⁷ Online text, Notice n° 1067, RELMIN project, «The legal status of religious minorities in the Euro-Mediterranean world (5th-15th centuries)», Telma Web edition, IRHT, Institut de Recherche et d'Histoire des Textes - Orléans <http://www.cn-telma.fr/relmin/extrait1067/>.

¹⁸ Alfredo M. Rabello, "Il problema del matrimoni tras ebrei e cristiani nella legislazione imperiale e in quella della chiesa (IV-VI secolo)", *Atti dell'Accademia Romanistica Costantiniana. VII convegno internazionale* (Nápoles: Edizioni Scientifiche Italiane, 1988), pp. 213-224 (footnote 16, p. 220).

¹⁹ Rabello, "Il problema del matrimoni tras ebrei e cristiani", p. 216.

many rules, kept the prohibition of mixed marriages, following the ecclesiastical councils of the first half of the sixth century. The *Breviary*, following the *Codex*, considered mixed marriages as adultery.

The First and Second Councils of Toledo did not deal with Jewish issues, but this changed dramatically when the Arian King Recared converted to Catholicism and made it the official religion at the Third Council of Toledo. Canon 14 of this council reflected the position of the Church on mixed marriages: “Jews should not be allowed to have Christian spouses or concubines, neither should they buy Christian slaves, and if from those unions children were born, they must baptize them”. The prohibition of mixed relations, once limited to marriage, now extended to concubinage.

After this council the Visigoth kingdom began to tighten the rules against Jews. The above mentioned canon 63 of the Fourth Council of Toledo that kept the policy of prohibiting mixed marriages and of separating children from their families has been considered a softening of the harsh policy of King Sisebut (612-621). However, this policy against mixed marriages did not change. If anything it became stronger in the Twelfth and Sixteenth Councils of Toledo, which proves that the laws were not enforced as strictly as the authorities wanted.

The Twelfth Council of Toledo (681) confirmed “the laws recently given by the glorious prince on the execrable infidelity of the Jews”, using the term *Iudaeus* (Jew) to refer to those who converted to Christianity and still practiced Judaism. The most important of them was the *Lex Visigothorum*, promulgated by King Recceswinth, who confirmed the legislation of the Visigoth monarchs before him. The *Lex Visigothorum* forbade marrying a family member, or committing adultery or incest with a relative within the sixth degree of consanguinity; it also ordered that everybody should get married according to Christian customs²⁰. These rules were repeated in canon nine of the Twelfth Council of Toledo²¹. A few years later King Erwig (680-687) obliged Jews who had already converted to be married by a Christian priest:

If any Jew, of either sex, after being converted, should desire to marry, he or she shall not be allowed to do so, unless a dowry is given, and a marriage contract entered into, as has been prescribed in the case of Christians; nor shall ceremony be permitted, where it is not accompanied with the sacerdotal benediction within the bosom of the Church... [otherwise he or she] shall be compelled to pay a hundred *solidi* to the king, or shall receive fifty lashes in public”²².

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²⁰ *Lex Visigothorum*, Book XII, Title 2, Law 6.

²¹ *Concilios visigóticos e hispano-romanos*, ed. by José Vives Gatell (Barcelona-Madrid: Consejo Superior de Investigaciones Científicas, 1963), p. 396.

²² *Lex Visigothorum*, XII, 3, 8. *The Visigoth code (Forum Iudicum)*, trans. by Samuel P. Scott (Littleton, CO: Fred B. Rothman and Co., 1982), p. 389. Juster, *La condition légale des juifs sous les*

The legislation also subverted the other essential role of women, motherhood. Canon 14 of the Third Council of Toledo required the baptism of children born from mixed unions. So did a council held in Seville (c. 620)²³ and the Fourth Council of Toledo (canon 63 above mentioned). The canon 60 of this Fourth Council added that children of Jewish families would be separated from their parents and “given to monasteries and to Christian men and women... to make them progress in customs and faith”²⁴.

Other laws, lay and religious, confirmed this legislation, becoming even harsher in the Seventeenth Council of Toledo (694), when in order to eradicate Jewish religion it was decreed:

Related to the children of one or another gender, we decree that, from seven years of age on, they do not have the same roof or relation to their parents, and that the same *domini* of those who had them they will give them to be educated by faithful Christians in such a way that they will be united by marriage the males with Christian women and the females will be united in the same way in conjugal society with Christian men²⁵.

If these laws affected the most important cultural and social roles of Jewish women, others attempted to get rid of the identifying signs of Judaism: the celebration of festivities, in particular *Passover* and *Sabbath*, and the culinary customs, all part of the feminine dominion. These prohibitions were issued mostly in the second half of the seventh century.

The *Lex Visigothorum* banned Jews from celebrating festivities, the *Sabbath* in particular, and obliged men and women alike not to work on Sunday; if they worked in agriculture or in the wool manufacturing they would be given one hundred lashes²⁶. The *Lex* also decreed that the Jewish people eat their meals according to Christian customs²⁷. Law 17 of the *Lex Visigothorum*, entitled “Punishment to the Christian who become Jew”, specified that “any man, or woman, who is found circumcised, or who has the custom of the Jews...will be punished very cruelly”²⁸. Men could be identified, and discovered, because they were circumcised, and women because they “had the custom of the Jews”. One of the addenda of King Erwig to the *Lex Visigothorum* ordered that

rois visigoths, p. 44. Lucie Bolens, *La Bible et l'Histoire au féminin* (Geneve: Editions Métropolis, 1992), p. 167.

²³ José Orlandis, “Tras la huella de un concilio isidoriano de Sevilla”, *Anuario de Historia de la Iglesia*, 4 (1995), 237-246. On this topic, and on the date, Bernhard Blumenkranz, *Les auteurs chrétiens latins du moyen âge sur les juifs et le judaïsme* (Paris-Louvain: Peeters, 2007), footnote 6, p. 89.

²⁴ *Concilios visigóticos e hispano-romanos*, p. 212

²⁵ *Concilios visigóticos e hispano-romanos*, p. 536.

²⁶ *Lex Visigothorum*, XII, 3, 6.

²⁷ *Lex Visigothorum*, XII, 2, laws 5 and 8.

²⁸ *Lex Visigothorum*, XII 2, laws 5 and 8.

anyone who circumcised an infant or young boy should be punished, if a man his penis will be cut off and his property confiscated. If a woman “presume to practice the operation of circumcision, or should present anyone to another person to be circumcised, she shall have her nose cut off, and all her property shall be given to the king”²⁹. The Twelfth Council of Toledo insisted in the same issue: “not to allow them in any way to celebrate or practice the ceremonies of their rites”³⁰.

As time passed, the Visigoth rulers, lay and religious, became aware that in spite of all the rules, the Jews were continuing to observe their rites and customs, the marks of Judaism practiced by women, taken as religious more than cultural habits. The legislators of the *Lex Visigothorum* seem to have understood that rites and customs were more than simple expressions of a culture.

Although both men and women participated in Jewish practices, which were largely carried out in the homes, the feminine space, the house, especially since a law, not preserved, ordered the closing of the synagogues, and the Jews looked for secret places to be able to continue their religious practices³¹. This promoted the house as Temple, something that started when the Second Temple of Jerusalem was destroyed, because it was in the house where the most important Jewish ceremony, the *Sabbath*, took place³². The closing of synagogues probably reinforced the role of the house as a clandestine synagogue.

By the end of the seventh century, the legislation showed a great concern about the persistence of Jewish customs by those among the converted who practiced rites and customs of the religion that they pretended to abandon. As the Councils of Toledo revealed, the bishops were also concerned with the problem, because they confused cultural rites and customs with religious signs, as the mentioned Seventeenth Council of Toledo showed. By then, too, the authorities started to realize that ritual customs were part of the domestic space, of the feminine sphere. Did Christian rulers not know that the certain emblematic Jewish activities were in the hands of women? Were they aware of the aggravation they were going to cause to the “gatekeepers” of the Jewish identity? Probably not. They would have needed a better knowledge of Judaism. Even a figure as Isidore of Seville seems to have got his information

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²⁹ *Lex Visigothorum*, XII, 3, 4. *The Visigoth code (Forum Iudicum)*, trans. S. P. Scott, p. 386.

³⁰ *Concilios visigóticos e hispano-romanos*, p. 53.

³¹ Bernhard Blumenkranz, *Juifs et chrétiens dans le monde occidental, 430-1096* (Paris-Louvain-Dudley MA : Peeters, 2006), p. 313.

³² Debra R. Kaufman, *Rachel's Daughters* (New Brunswick and London: Rogers University Press, 1991), p. 41.

about Jews from the Fathers of the Church³³. From them he could not possibly have had a good knowledge of women roles. In any case, although the authorities imposed the laws in Jews in general, women in particular suffered a good deal from them.

The laws' impact on women and their resistance to them

Learned that her husband had converted without her agreement...[she would] remain firm in her faithlessness, as usually happens. Further, she might become confused in her judgment and, at the instigation of her mother in particular, who was still alive, abandon both the marriage and the religion.

Severus of Minorca, *Epistola Severi*, 21, 2, *Letter on the Conversion of the Jews*, Scott Bradbury (ed.), Oxford, Clarendon Press, 1996, p. 115

Among the few references to Jewish women in Hispania at the end of the Roman Empire and at the beginning of the Visigoth kingdom, is the epistle of Severus of Minorca. In the epistle bishop Severus tells the story of Theodorus, who, at the beginning of the fifth century, converted to Christianity without telling his wife. He knew she would grow angry with him and would refuse to follow his lead.

Severus's epistle, which has been interpreted in different ways, provoked many controversies³⁴, and raised several questions. Did other women whose husbands converted follow them to Christianity, or did they retain their religion? Were women autonomous or did they do what their husbands told them to do? Severus gives examples of women who finally converted, but was this the pattern? The bishop pointed out that Theodorus' wife was expected to "remain firm in her faithlessness, as usually happens"³⁵.

If Severus is right, if Jewish women acted with a high degree of autonomy, this is more than a little puzzling, for women were barred from studying and learning. Although they played an important role in religious practices, they had no voice in formulating religious ideas.

³³ Bat-Sheva Albert, "De fide catholica contra judaeos d'Isidore de Séville: la polémique anti-judaïque dan l'Espagne du VII^e siècle", *Revue des Études juives*, CXLI (1982), 283-316 (p. 294). Bernhard Blumenkranz thought that Isidore of Seville had a good knowledge of the Jewish world, *Les auteurs chrétiens latins du moyen âge*, p. 90.

³⁴ Raúl González Salinero, "Relaciones sociales y dependencia religiosa en la comunidad judía de Mahón (Menorca) a principios del siglo V D.C.", *ARYS*, 3 (2000), 267-277. Ross S. Kraemer, "Jewish Women's Resistance to Christianity in the Early Fifth Century: The Account of Severus, Bishop of Minorca", *Journal of Early Christian Studies*, 17-4 (2009), 635-665.

³⁵ "Sicut solet", *Epistula Severi*, 21, 2. Scott Bradbury, *Severus of Minorca. Letter on the Conversion of the Jews*, (Oxford: Clarendon Press, 1996), pp. 114-115.

When a similar problem appeared in later centuries, a problem that was exacerbated by the harsh Visigoth legislation, how did these women react? Before answering this question, I am going to look at the way women roles were affected by the laws, in particular concerning marriage, motherhood and the mastering of Jewish rites and customs.

Marriage was a principal theme of the legislation. As I said before, the rules on marriage affected women by banning mixed marriages, by prohibiting marrying a family member within the sixth degree of consanguinity, and by making it easier for a converted Jew to divorce his wife.

Mixed marriages had been forbidden long before the Visigoth kingdom; one finds such prohibitions in the fifth-century *Theodosian Code*.³⁶ It was adopted by the Christian councils and by the Visigoth legislation that follow the Roman laws. Given the feminine tendency to preserve Jewish faith, it does not seem probable that Jewish parents would look for a Christian husband for their daughters. However, if a husband converted to Christianity, the wife became married to a Christian man. Nevertheless, she could still educate their children in the Jewish religion.

Women were affected greatly by the prohibition of marrying someone of the family within the sixth degree of consanguinity, because this meant an end to the levirate. Although a widow might not always wish to marry her deceased husband's brother, the institution of the levirate could give her security, if need be.

The third rule that greatly affected women had to do with divorce. Before the anti-Jewish legislation, a husband could repudiate his wife for only a few reasons³⁷, but religious differences were not grounds for divorce. After the laws a husband who converted to Christianity could divorce his wife simply because she remained Jewish. He could even take custody of the children on the grounds that the law required that they be raised as Christians, although Jewish law also allowed a divorced father to take the children with him³⁸.

Visigothic laws undermined the role of Jewish women as mothers. Before the legislation women educated their children, boys and girls, in Judaism. By the time girls married, probably very young, they should know all about a Jewish household, something that mothers or grandmothers had to teach them. But the above-mentioned legislation of the Fourth Council of Toledo that ordered to remove Jewish children from their households greatly hurt Jewish women, because children were supposed to be put in monasteries or

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³⁶ Notice n° 136982 , RELMIN project, «The legal status of religious minorities in the Euro-Mediterranean world (5th -15th centuries)» , Telma Web edition, IRHT, Institut de Recherche et d'Histoire des Textes - Orléans <http://www.cn-telma.fr/remlin/extrait136982/> .

³⁷ Judith Romney Wegner, "The Image and Status of Women in Classical Rabbinic Judaism", in *Jewish Women in Historical Perspective*, ed. by Judith R. Baskin, pp. 73-100, (p. 78).

³⁸ Kraemer, "Jewish Mothers and Daughters in the Greco-Roman World", p. 103.

in houses of Christian men or women, where they would be educated as Christians. Isidore of Seville encouraged and supported the efforts of his sister Florentina to educate those children, and probably for this purpose he wrote *De Fide Catholica ex Veteri et Novo Testamento contra Iudaeos ad Florentinam sororem suam*, dedicated to her³⁹.

Jewish mothers probably found ways to disobey the laws, so the authorities had to insist. The Seventeenth Council of Toledo ordered that Jewish mothers be separated from their children at the age of seven years, which no doubt caused considerable distress for these mothers. Losing the role of educating children, women were being deprived of their most important familial, religious and social function.

Finally, the cultural feminine role of keeping rites and customs affected women greatly, especially after the middle of the seventh century, when signs of Judaism remained hidden at home. Laws did not specify that the legislation was directed against women when they forbade keeping Jewish festivities, the *Sabbath*, rites, customs, dietary laws or culinary rituals, but all these things were feminine functions. If these had been usual practices in peaceful times, the role of women became essential in times of persecution, because the house was the safest place to continue Jewish practice in secret. The suspicion of the authorities that Jewish practices were kept⁴⁰ often forced Jews to look for concealed places, and probably there was no better place than the home. It was very hard for women to be persecuted for doing what they were accustomed to do and had seen in their houses since they were little; for them it was probably very difficult to change and erase the Jewish way of keeping the household. Their Christians neighbors had had the same problem when they had to abandon some of the pagan rites that they were accustomed, and they adapted some pagan festivities to Christianity⁴¹.

What could women do to deal with prohibitions? Were they expected to convert, to renounce to educate their sons and daughters in the rites and customs of Judaism and let them to be raised as Christians, and not to celebrate the ceremonies and festivities of their religion? The reiterated prohibition of keeping rites and customs, a clear sign that the laws were being disobeyed, raises other questions: How did women obey the laws? Did they obey them, or they resist them or ignore them? It is hard to say, but a review

³⁹ James W. Parkes, *The conflict of the Church and the Synagogue, a Study on the Origins of Antisemitism* (London: Soncino Press, 1934), p. 357. Bat-Sheva Albert does not agree with Parkes, "*De fide catholica contra judaeos*", p. 306.

⁴⁰ *Lex Visigothorum*, XII, 2, 4: "nenguno non detarde de descobrir a aquel que las encobre: e el lugar o se encobre".

⁴¹ Jacopo da Voragine in *The Golden Legend* pointed out how the roman feast of the candles was converted to the Christian festivity of the candles or the purification. Elisheva Baumgarten, *Mothers and Children. Jewish Family Life on Medieval Europe* (Princeton and Oxford: Princeton University Press, 2004), p. 106.

of some aspects of their cultural and social roles shows some disobedience and resistance to the laws. The feminine attitude was silent. This was the only way that it could be, on the one hand they were trying to evade the laws, and on the other hand women did not have voice, even inside their own community.

To get to understand their position on the laws, we have to keep in mind their traditional disposition to keep Judaism. No doubt many Jewish women resisted the conversion to Christianity. This resistance was common in other spaces and in other times. Venantius Fortunatus told the story of a Jewish man from Bourges that in 570 was converted to Christianity by Saint Germain, the bishop of Paris between 555 and 576, but his wife, Mammona, resisted in spite of the efforts to convert her. She finally converted when Saint Germain put his hands on her forehead and could throw out of her body the devil that she had inside her⁴².

It is not unreasonable to suppose that this attitude was the same of many other Jewish women of that time, from the sixth century on in the Visigoth kingdom. Anti-Jewish laws obliged them to convert, but, as the rest of the community, they looked for ways to keep Judaism. The men of the community, under their name and their wives and children, renounced in the *placita* to observe *Passover* and *Sabbath* and other Jewish festivities and ceremonies, and also to abandon Jewish meals, though they were allowed to avoid pork. The repetition of this compromise, together with the reiteration of some laws, proves the evidence that they were not obeyed. Challenging the laws was necessary to women in their attempt to keep some of their most important roles: motherhood and mastering of religious practices.

First of all, Jewish women avoided by all means the baptism of their children. In times of persecution, when it was difficult to evade it, they looked for stratagems, with masculine support obviously. Isidore of Seville in his *History of the Goths* explained one of the methods the converted Jews used: to bribe Christian families and ask them to borrow their baptized children whom they took to baptize instead of their sons and daughters⁴³. The effort of Jewish women to keep their children in the Jewish religion was quite remarkable. Jewish women in Visigothic Iberia may have been familiar with the biblical story of the mother of the Maccabees, who preferred to die and let their seven children die before than eating pork⁴⁴.

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⁴² Blumenkranz, *Juifs et chrétiens dans le monde occidental*, pp. 88-89.

⁴³ Orlandis, "Tras la huella de un concilio isidoriano de Sevilla", p. 243.

⁴⁴ Ross S. Kraemer, "Monastic Jewish Women in Greco-Roman Egypt: Philo Judaeus on the Therapeutrides", *Signs*, 14-2 (1989), 342-370. Susan Haber, "Living and Dying for the Law: The Mother-martyrs of 2 Maccabees", *Women in Judaism: A Multidisciplinary Journal*, 4-1, 2006, <http://wjudaism.library.utoronto.ca/index.php/wjudaism/article/view/247>.

Another of the cultural prohibitions, circumcision, masculine mark of Judaism, was mostly practiced by men, but also women did it at the end of the seventh century, otherwise it would not be understandable that the legislators included the punishment of women who did not obey the laws about circumcision. At these difficult times of the second half of the seventh century, mothers defied the laws and took the risk of being severely penalized, but they probably wanted to see their sons circumcised. They also had the model of the two mothers in Maccabees 2, who were punished because they had circumcised their children.

The negative response to accept Christian rules and the interest to keep Judaism meant for Jewish or convert women to break the laws that were obliging them to abandon their roles in the Jewish community. This was the reason that they continued doing secretly what they were accustomed to do, and with their behavior they helped to keep the light of Judaism kindled that otherwise would have extinguished.

The house was, as said before, one of the places where the Jewish community could celebrate the *Sabbath*, and where women could cook Jewish meals. Meals were used in different ways. As Nancy Jay pointed out, the role of gender is relevant in Jewish meals⁴⁵, so some biblical women, as Esther and Judith, used meals as a weapon to punish men. If meals helped women face the enemies even inside their own community, it is not unreasonable to suppose that they could do the same, and they used them as a weapon to defy Christian authorities.

Epilogue: the control of the gates of Judaism

Marriage, motherhood and mastering the rites and customs of the Jewish identity, the three most important aspects in the lives of Jewish women, were greatly affected by the anti-Jewish legislation of the Visigothic kingdom.

At the end of the Roman Empire and the beginning of the Middle Ages, Jewish communities in the Diaspora assimilated in many ways to Christian society, but still kept their religion, festivities, rites and customs. But though they accepted many rules of the Visigothic kingdom, the monarchs did not settle for anything less than terminating the Jewish religion.

Visigothic kings stripped women of many of their essential roles. The laws undermined their functions in the society. Still as the gatekeepers of the house they kept the marks of Judaism in secret. The closing of synagogues and

⁴⁵ Nancy Jay, *Throughout Your Generations Forever: sacrifice, religion, and paternity* (Chicago: University of Chicago Press, 1992).

Talmudic schools allowed them to enlarge the number of things they could preserve in the domestic space.

The laws punished those who were bribed by the Jews who practiced their religion in secret⁴⁶, they did not mention women in particular though they probably were the ones who helped most to keep Judaism alive in their houses. Women had behaved that way in earlier and later periods, by the second century BC, at the times of the Seleucid government, we have the examples of the mother-martyrs in the second book of the Maccabees, by the fifteenth century, when the Inquisition started to persecute false converts, women had the essential role of defending Judaism, for which they were severely punished.

In the Visigothic period, as in other hard times, Jewish women defended the religious and cultural life of their communities. By so doing they played an essential role that helped to empower them. They apparently preferred to risk their lives than to lose their role as gatekeepers to the Jewish world.



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⁴⁶ *Concilios visigóticos e hispano-romanos*, p. 211. Fourth Council of Toledo, canon 58. *Lex Visigothorum*, XII, 3, 10.



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THE MASS CONVERSION OF JEWS DECREED BY EMPEROR BASIL I IN 873–4: ITS REFLECTION IN CONTEMPORARY LEGAL CODES AND ITS UNDERLYING REASONS¹

Oscar PRIETO DOMÍNGUEZ

In the year 873–4 Emperor Basil I (867–86) decreed the persecution and mass conversion of all the Jews within the Byzantine Empire, thus breaking with Constantinople’s long-lasting tolerance. It is surprising that Basil had to spend six years on the imperial throne before he decided to adopt this measure. To date, no convincing reason has been proposed for such a delay, even though several extant historiographical testimonies, both Greek and Hebrew, report the implications of this persecution². According to the historian Symeon Logothetes, this operation proved highly successful thanks to the personal intercession of the Emperor, who treated all Jews who agreed to convert and be baptized with great affection and plied them with gifts³.

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² Chapters 11-18 of the chronicle of Ahimaaz ben Paltiel, cf. BONFIL 2009: 260-273. *Theophanes Continuatus* 341,8-342,6: Εἰδὼς δὲ ὅτι ἐπ’ οὐδενὶ τοσοῦτον ὅσον ἐπὶ σωτηρίᾳ ψυχῶν ὁ θεὸς ἐπευφραίνεται, καὶ ὅτι ὁ ἐξάγων ἄξιον ἐξ ἀναξίου ὡς στόμα χρηματίζει Χριστοῦ, οὐδὲ περὶ τὸ ἀποστολικὸν τοῦτο ἔργον ἀμελής ἐφάνη καὶ ῥάθυμος, ἀλλὰ πρῶτον μὲν τὸ τῶν Ἰουδαίων ἔθνος ἀπερίτμητόν τε καὶ σκληροκάριον, τὸ ὅσον ἐπ’ αὐτῷ, εἰς τὴν ὑποταγὴν σαγηνεύει Χριστοῦ. κελεύσας γὰρ αὐτοὺς τῆς οἰκείας θρησκείας τὰς ἀποδείξεις κομίζοντας εἰς διαλέξεις χωρεῖν καὶ ἢ δεικνύναι τὰ κατ’ αὐτοὺς ἰσχυρά τε καὶ ἀναντίρρητα, ἢ πειθομένους ὅτι κεφάλαιον τοῦ νόμου καὶ τῶν προφητῶν ὁ Χριστὸς ἦν καὶ ὅτι σικιὰς τύπον εἶχεν ὁ νόμος, ἢ τῆ ἐπιλάμψει τοῦ ἡλιακοῦ φωτὸς διασκεδάζεται, προσέρχεσθαι τῇ τοῦ κυρίου διδασκαλίᾳ καὶ βαπτίζεσθαι, προσθεῖς δὲ καὶ ἀξιωμάτων τοῖς προσερχομένοις διανομάς καὶ τοῦ βάρους τῶν προτέρων ἀπαλλάξας φόρων καὶ ἐπιτίμου ἐξ ἀτίμων ποιεῖν κατεπαγγελιάμενος, πολλοὺς τοῦ ἐπικειμένου καλύμματος τῆς παρώσεως ἠλευθέρωσε καὶ πρὸς πίστιν εἰλκυσε τοῦ Χριστοῦ, εἰ καὶ πάλιν οἱ πλείους μετὰ τὴν ἐκ τοῦ βίου τοῦ βασιλέως ἐπαναχώρησιν πρὸς τὸν οἰκεῖον ὡς κίνες ὑπέστρεψαν ἑμετόν. ἀλλὰ κὰν ἐκεῖνοι, μᾶλλον δὲ τινες ἐκεῖνων, ὡς Αἰθίοπες ἔμειναν ἀμετάβλητοι, ἀλλ’ ὅ γε φιλόθεος βασιλεὺς ἐντελεῖς τοῦ ἔργου τοὺς μισθοὺς ἕνεκα τῆς σπουδῆς παρὰ θεοῦ ἀπολήψεσθαι ἔμελλεν.

³ *Symeon Logothetes* 256, 10-13: Ὁ δὲ αὐτὸς βασιλεὺς ἐβάπτισεν τοὺς Ἑβραίους πάντας, ὅσοι τῷ τότε χρόνῳ ὑπὸ τὴν χεῖρα αὐτοῦ ὑπῆρχον, ἀναδεξαμένων αὐτοὺς πάντων τῶν ἐν ἀξίαις, φιλοφρονησάμενος καὶ δῶρα παρασχόντος αὐτοῦ, “The same emperor baptized all Jews, as many as there were at that time, by his own hand, after they had been received by all the dignitaries,

THE CONVERSION

According to the Byzantine historian *Theophanes Continuatus*, a series of disputations were held in which Jews were required to defend the veracity of their faith and to convince Christians of the reasons they should not be baptized⁴. *Novel 55* by Emperor Leo VI and the *Treatise on the Baptism of the Jews* by Gregory of Oscar Nicea insist that this was the procedure followed⁵. Ahimaaz of Oria corroborates the historical accuracy of this information in his Hebrew chronicle. In his work *Sefer Yuhasin*⁶ he narrates the events sparked by this measure: following the imperial mandate, the governor of Oria first became embroiled in an argument with the local rabbi, Hananel, as to the accuracy of the astronomical calculations made by Jews and Christians to determine Easter. Finally rabbi Shefatiyâ was sent before Basil I, with whom he personally debated several theological and ecclesiastical issues, including a comparison between the Temple of Solomon and Justinian's church of Saint Sophia⁷.

There are also records of encounters such as these in two poems dating from the late 9th century which are preserved in the 10th-century manuscript *Vaticanus Barberinianus gr. 310*. These are two *Exhortations to the Jews* (εἰς τοὺς αὐτοὺς Ἰσραηλίτας παραίνεσις) in alphabetic quatrains of accented heptasyllabic verses attributed to one Christopher, the protoasecretis at the Court of Basil⁸. The first poem represents one of these theological dialogues between the Emperor and a Jew, for the purpose of enlightening him of his blasphemy and impiety⁹. Basil quotes numerous biblical passages from the Old Testament

treating them with affection and bestowing gifts on them". The conversion is narrated in the same terms by *Georgius Monachus Continuatus* 842, 12-16 and *Skylitzes* 165, 10-11 (THURN BasI, 42, 1-2).

⁴ KÜLZER 1999: 232-247. This system of dialogue was initiated by Leo III and was very successful in the second half of the 9th century, both inside and outside the Byzantine Empire: in 851, Photius's disciple Constantine took part in these *pour-parlers* – as they are termed by Dvornik –, before the Abbasid court of the Caliph Mutawakkil (847-861), where he defended the superiority of Christianity, even going so far as to support his argument with quotes from the Koran, cf. DVORNIK 1967. This type of dialectic argument also appears in the hagiography of the time, cf. the *Vita* of Theodoros of Edessa (*BHG* 1744) and the *Vita* of Constantine the Jew (*BHG* 370).

⁵ On *Novel 55*, see NOAILLES & DAIN 1944: 209-211. On the treatise by Gregory of Nicea, see DAGRON 1991: 350.

⁶ For this family chronicle written around the year 1054 in southern Italy, see BONFIL 2009. Regarding the responses provoked by the order to convert to Christianity among the Jewish community in southern Italy, see KAUFMANN 1897; and BOWMAN 2010, who also discusses other responses to Byzantine power in the 9th–11th centuries. Cf. also ROTMAN 2012.

⁷ DAGRON 1984: 307-309.

⁸ Edited and translated by CICCOLELLA 2000.

⁹ See lines 1-4:

| | |
|--------------------|---------------------------------|
| Ἄποθου βλασφημίαν, | <i>Renounce your blasphemy,</i> |
| ἀπόθου ἀπιστίαν, | <i>renounce your misbelief,</i> |
| τὸ κάλυμμα ἀπόθου | <i>take the veil away from</i> |

announcing the advent of Christ as the Messiah (lines 17-80), the Jew agrees to be baptized (lines 81-88), and Basil prays to commend the new Christian to God (lines 89-100).

The eulogistic nature of both poems indicates that they were most likely read out as part of the imperial pomp and ceremony that accompanied the tradition of acclamations, as described in the *Book of Ceremonies* (*De ceremoniis*)¹⁰. They would thus have been recited in the context of some liturgy conducted in the imperial churches (Saint Sophia or the Nea), in the presence of the Emperor Basil and the patriarch Photius, who also appears as the object of homage, probably due to the baptism of several Jews.

It is worth noting that when, in the course of these discussions, it proved impossible to convince the Emperor and the ecclesiastical representatives of the veracity of the Jewish faith, the Jews were obliged to convert. To assist them in this decision and to assuage their reluctance, Basil offered them gifts, silver, access to ranks and to official posts¹¹ (which was forbidden to Jews by law), exemption from taxes and special tariffs¹², etc. However it is also well known that when they failed to consent of their own free will, he appears to have had no hesitation in persecuting them, as stated by the Frank Auxilius¹³ and Ahimaaz of Oria¹⁴.

ψυχῆς, Ἰσραηλίτα. your soul, o Israelite.

¹⁰ LAUXTERMANN 1999: 50; CICCOLELLA 2000: 91.

¹¹ *Pseudo-Symeon* 691, 8-10: Τῶ ζ' καὶ τῶ η' αὐτοῦ ἔτει βαπτίζει ὁ βασιλεῖος πάντας τοὺς ὑπὸ χεῖρα αὐτοῦ Ἑβραίους, διδοὺς αὐτοῖς ἀξίας καὶ δῶρα πολλά; *Theophanes Continuatus* 341-342; *Georgius Monachus Continuatus*, 842, 12-16. Cf. BACHRACH 1977: 126-129.

¹² According to Theodosius II (*Codex Theodosianus* 16. 8. 29), Justinian had placed a special tax on the Jews (*Codex Iustinianus* I. 9. 17). It is not clear to what extent this tax continued in force in the 9th century, see DÖLGER 1933 supporting the existence of a special tax, see also ANDREADES 1930, opposing it. Cf. STARR 1939: 133; SHARF 1995: 106.

¹³ Auxilius, also known as Auxilius of Naples, was an ecclesiastical writer of the 9th-10th centuries who actively supported Pope Formosus (891-6). In chapter 39 of his work *In defensionem sacrae ordinationis papae Formosi* "In defense of the sacred ordination of Pope Formosus", Auxilius mentions the Byzantine use of force against the Jews: *Basilius siquidem imperator, pater imperatorum Leonis et Alexandri multos Iudaeorum per uim baptizari fecit, ex quibus ammodum pauci paruo post tempore spontanei praebuerunt assensum credendi in Christum et euangelica mandata pariterque apostolica documenta, ut moris est, custodire libenter professi sunt, attamen nemo eorum iterum baptizatus est*, "The emperor Basil, father of the emperors Leo and Alexander, caused many Jews to be baptized by force, and shortly afterwards at least a few of them manifested a spontaneous assent to Christ, and, in the customary fashion, willingly professed themselves adherents of the evange-
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¹⁴ SHARF 1971: 82-94 distinguishes two phases in Basil's politics: a first predominantly diplomatic phase and a second more severe one. This point is confirmed by Ahimaaz ben Paltiel, chapter 17 *הַרְשָׁע נָתַן מְרִיצוֹת . בְּכָל אֲרָצוֹת . וְשָׁלַח מְעֻשִׁים . לַעֲשׂוֹת . אֲנָסִים . בְּכוֹחַ לְעַסָּם . מִן הָאֲמִינוּהָ אֲנָסִים . לְהַשְׁיִבָם* "Then the evil man sent couriers to all his provinces and agents to do violence and coerce them to abandon their faith, to convert them to his vain god and to join in his futile error", cf. BONFIL 2009: 270-1). Abraham ben Azriel also states that torture was used as

The question remains: why did Basil take six years to decree and initiate the compulsory baptism of Jews?

ITS REFLECTION IN CONTEMPORARY LEGAL CODES

It is interesting that this forced conversion of 873–4 was recorded in the legal codes. It is well known that Roman-Byzantine legislation established penalties to be applied to Jews¹⁵, but the novel aspect of this development is that the codes enacted during the government of Basil I broke with the tradition of earlier centuries, in which, although Jews were persecuted, no anti-Jewish measures were either reinstated or introduced. Emperor Heraclius, after the reconquest of Jerusalem in 630, ordered Jews to be baptized in order to unite the Empire and to favour the integration of the new provinces of Syria, Palestine and Mesopotamia after their liberation from the Persians¹⁶. Similarly, the first iconoclastic emperor, Leo III (717–741), reintroduced the same policy to unify Asia Minor and to put an end to all deviations from orthodoxy in 721¹⁷.

However neither Heraclius in his *Novels*¹⁸ nor Leo in his *Ecloga*¹⁹ include any new references to the legal status of the Jews. The consuetudinary law and the tradition deriving from Justinian's *Corpus Iuris Civilis* must have continued in force²⁰. Justinian I had forbidden Jews to proselytize among the Christians (*Codex Iustinianus* I. 7. 1), to own Christian slaves (*Codex Iustinianus* I. 10, *Novel* 37), to serve in the army (*Codex Iustinianus* I. 5. 12), and to hold official positions, except the expensive one of the *decurionate*²¹. Justinian's anti-Jewish legislation was revived in the legal codes of the late

persuasive element, cf. STARR 1939: 131, source 67. The harsh criticism this measure aroused in some sectors of the Church found its expression in the Treatise of Gregory of Nicea (also known as Gregory Asbestos) on the baptism of Jews, see MERCATI 1915. As in the earlier case of Maximus the Confessor, his opposition to these forced conversions was unswerving, considering that they only achieved a false adherence to Christianity which ultimately encouraged all kinds of heresies. Cf. LAGA 1990; DAGRON 1991.

¹⁵ SHARF 1971; SCHRECKENBERG 1982; AVI-YONAH 1984; JACOBY 1993; LINDER 1997.

¹⁶ CAMERON 2002 explains this anti-Jewish belligerence as a cumulative process, starting with the writings of the Fathers of the Church, to which was added the legislative tradition against heresy initiated by Justinian in the mid-6th century, plus the fact that the Jews were believed to have conspired in the struggle for the throne in the late 6th century and to have sympathised with the Persian enemy.

¹⁷ MAGDALINO 2012: 145–147.

¹⁸ See KONIDARIS 1982; STOLTE 2002; KAEGI 2003.

¹⁹ ZACHARIÄ VON LINGENTHAL 1852. There is a German translation by BURGMANN 1983.

²⁰ SHARF 1995: 105–6; BREWER 2005.

²¹ KOHEN 2007: 49. See *Novels* 45, 109, 132.

9th century. Chronologically, the first of these is the *Procheiros Nomos* (870-879), better known as *Prochiron* (*P*), which comprises forty titles²². Here we find only two laws referring to Jews in title XXXIX, prohibiting them on pain of death from proselytizing and from owning and circumcising Christian slaves²³.

The *Eisagogé* or *Introduction to Law* (*E*)²⁴, a legal compilation of XL titles drafted towards the end of the reign of Basil I on the instigation of the patriarch Photius, c. 886, reiterates these two rules (which were already present in the Justinian code²⁵) in the last title, number XL²⁶. However the *Eisagogé* marked a further intensification of the legislation against Jews, given that law 13 in title IX (regarding the ecclesiastical obligations of bishops and monks) states: “Ἕλληνες καὶ ἰουδαῖοι καὶ αἰρετικοὶ οὐτε στρατεύονται οὐτε πολιτεύονται, ἀλλ’ ἐσχάτως ἀτιμοῦνται, “Pagans, Jews, and heretics do not serve in state offices or in city offices but are utterly dishonored”.

Finally, the *Basiliká* (*B*)²⁷ were enacted towards the end of 888, shortly after the start of the reign of Leo VI, and consisted of a set of sixty titles in which the Justinian Code (529-534) was revived, updated and officially translated into Greek. This compilation was significantly more exhaustive and voluminous, and contained all the regulations referring to Jews which were present in the three parts of the *Corpus Iuris Civilis*:



²² FRESHFIELD 1928; ZACHARIÄ VON LINGENTHAL 1837.

²³ P XXXIX. 31: Ἐὰν ἰουδαῖος χριστιανὸν ἀνδράποδον κτήσῃται καὶ περιτέμῃ, κεφαλικῶς τιμωρεῖται. “If a Jew should acquire and circumcise a Christian slave, he shall be punished by death”.

^P XXXIX. 32: Ἐὰν ἰουδαῖος τολμήσῃ διαστρέψαι χριστιανικὸν λογισμόν, ὑπόκειται κεφαλικῆ τιμωρίᾳ. “If a Jew shall dare to pervert the Christian reasoning, he shall be subjected to the death penalty”.

²⁴ ZACHARIÄ VON LINGENTHAL 1852b; SCHARF 1956; SCHARF 1959; STIERNON & MEIJERING 2001; SIGNES CODOÑER & ANDRÉS SANTOS 2007.

²⁵ The first corresponds to the *Codex Iustinianus* I.10.1 and the second to the *Codex Iustinianus* I.9.18(19) § 3.

²⁶ E XL. 33: Ἐὰν ἰουδαῖος χριστιανὸν ἀνδράποδον κτήσῃται καὶ περιτέμῃ, κεφαλικῶς τιμωρεῖται.

^E XL. 34: Ἐὰν ἰουδαῖος τολμήσῃ διαστρέψαι χριστιανικὸν λογισμόν, ὑπόκειται κεφαλικῆ τιμωρίᾳ.

²⁷ Specifically they were enacted on 25 December 888, cf. SCHMINCK 1989; VAN BOCHOVE 1999; SCHELTEMA-VAN DER WAL 1955-1988. On the diffusion of this compilation, see TROIANOS 1999: 188-189.

| | <i>Corpus Iuris Civilis</i> | | | |
|----------------|-----------------------------|--------------------------|-----------------|-----------------|
| | <i>Basiliká</i> | <i>Codex Iustinianus</i> | <i>Digestum</i> | <i>Novellae</i> |
| I. 1. 11 | | I. 11. 6 | | |
| I. 1. 30 | | I. 5. 21 | | |
| I. 1. 33 | | I. 9. 4 | | |
| I. 1. 34-37 | | I. 9. 6-9 | | |
| I. 1. 39-42 | | I. 9. 13-16 | | |
| I. 1. 43 | | I. 9. 18 | | |
| I. 1. 44 | | I. 12. 1 | | |
| I. 1. 47 | | | | 37 § 7 |
| I. 1. 51 | | | | 109 |
| V. 3. 16 | | | | 131 § 14 |
| XXI. 1. 45 | | I. 5. 21 | | |
| XXXVIII. 1. 15 | | | XXVII. 1. 15 | |
| LX. 39. 7 | | | XLVIII. 8. 11 | |
| LX. 54. 20-21 | | I. 7. 1-2 | | |
| LX. 54. 26 | | I. 9. 3 | | |
| LX. 54. 27 | | I. 9. 16 | | |
| LX. 54. 28 | | I. 9. 18 § 3 | | |
| LX. 54. 29 | | I. 10. 1 | | |

The two measures which were contained both in the *Prochiron* (P XXXIX. 31 and 32) and the *Eisagogé* (E XL. 33 and 34) also appear in the *Basiliká* (B LX.54.28 and 29). However the order is altered and the sequence shared by the *Prochiron* and the *Eisagogé* is exchanged here; thus the punishment for circumcising a Christian slave appears in second place (B LX.54.29). There is no doubt that the *Basiliká* were based directly on the *Corpus Iuris Civilis* without attending to the innovations in legislation during the period of Basil I. There is no reference to E IX. 13, a completely original regulation which is only found in the *Eisagogé*.

These three great legislative projects of the period of Basil I were subsequently revised by legal professionals who expanded certain laws or titles

according to their own interests. This gave rise to several independent versions which were in fact private manuals by various jurists. This is the case of the *Epitome legum (Epit)*, a legal compilation of fifty titles which was enacted towards 913-4, under the reign of Constantine VII Porphyrogenitus, and which, as its name indicates, summarises the earlier legislation²⁸. This work combines the regulations of the *Prochiron* with those of the Justinian Code. With regard to the laws it contains concerning the Jews, on the one hand it repeats the two well-known regulations from the *Prochiron* which prohibited them from owning and circumcising Christian slaves and from proselytizing (*Epit* XLV. 77 = *P* XXXIX. 31; *Epit* XLV. 78 = *P* XXXIX. 32). On the other, it reintroduces three measures from the Justinian Code (*Epit* XLV. 43 = *Codex Iustinianus* I. 10. 1; *Epit* XLV. 44 = *Codex Iustinianus* I. 10. 2; *Epit* XLV. 62 = *Codex Iustinianus* I. 9. 18, 3) also present in the *Basiliká* (see above).

Similarly, the *Prochiron Legum vel Prochiron Calabriae (PL)* was compiled at some point in the late 10th century and revised in the mid-12th century in southern Italy. Another thirty-two books were added to the original forty, making a total of seventy-two. With regard to regulations on Jews, it contains two more sections corresponding to the measures contained in the *Prochiron*²⁹.

The *Prochiron Auctum (PA)*, which was revised at a later date (possibly towards 1300)³⁰, maintains the provisions of the *Prochiron* with regard to the Jewish population³¹ and adds some regulations that were not in the original work. These additions concern specifically matrimonial law³² and the types of oaths that could be sworn by Jews³³, and also include one of the models of

²⁸ ZACHARIÄ VON LINGENTHAL 1856. For its dating, cf. SCHMINCK 1986: 121-128.

²⁹ BRANDILEONE & PUNTONI 1895: 3-336. It contains the following regulations:

^{PL} XXXIV. 30: Ἐάν ἰουδαῖος χριστιανὸν δοῦλον ὑποκτήσῃται καὶ περιτεμεῖ αὐτόν, κεφαλικῆ ὑπόκειται τιμωρία.

^{PL} XXXX. 27: Μηδεὶς τῶν Ἰουδαίων ἢ τῶν ἐλλήνων ἢ τῶν αἰρετικῶν ἐχέτω ἀνδράποδον· εἰ δὲ ἔχει καὶ περιτέμνει αὐτόν, τὸ μὲν ἀνδράποδον ἐλευθεροῦται, αὐτὸς δὲ κεφαλικῶς τιμωρεῖται.

^{PL} XXXX. 28: Ἕλληνας καὶ Ἰουδαίους καὶ Σαμαρείτας καὶ πᾶς μὴ ὦν ὀρθόδοξος οὐ δύναται ἔχειν ἀνδράποδον χριστιανόν, ἐπεὶ καὶ αὐτὸ ἐλευθεροῦται καὶ ὁ κτησάμενος αὐτὸ δίδωσι τοῖς πριβάτοις ἅλιτρας χρυσοῦ.

^{PL} XXXX. 32: Ὁ σαμαρείτης ἢ Ἰουδαῖος ἀποχωρῆσαι σπουδάσας τινὰ ἀπὸ τῆς πίστεως τῶν Χριστιανῶν, καὶ δημεύεται τὸ πρᾶγμα αὐτοῦ καὶ ζῖφει τιμωρεῖται.

³⁰ The reference edition is the ZEPOS 1931. See also BURGMANN 1998.

³¹ Cf. *PA* XXXIX. 110 = *P* XXXIX. 31; *PA* XXXIX. 111 = *P* XXXIX. 32. Cf. also *PA* XXXIV. 8.

³² *PA* XXVIII. 59: Μηδαμῶς τοῖς αἰρετικοῖς τῶν μυστηρίων τῶς ἀνεψῆχω. μὴ λαμβανέτω ἰουδαῖος χριστιανὴν, καὶ ἀπλῶς εἰπεῖν αἰρετικοὶ καὶ ἀπίστοι μὴ κατὰ τινὰ τρόπον πρὸς γάμον χριστιανοῖς συναπέσθωσαν. NOT BE DISTRIBUTED WITHOUT PERMISSION OF THE PUBLISHER.

^{PA} XXXIX. 122: Χριστιανὸς λαβὼν ἰουδαίαν γυναῖκα ἢ χριστιανὴν ἰουδαῖος ἐπὶ μοιχείᾳ κατηγορεῖται.

³³ This is *PA* XXVII. 227: Τῶν αἰρετικῶν οἱ μὲν μανιχαῖοι καὶ οἱ βορβορίται ἢ Ἕλληνες ἢ σαμαρεῖται ἢ μουντανισταὶ ἢ τοσκοδρουγῖται ἢ ὄφιται ἢ ἰουδαῖοι ἐν μηδενὶ (δικαστηρίῳ ἢ συναλλάγματι ἢ ἀμαρτήματι ἢ ἐγκλήματι, μήτε κατὰ χριστιανῶν μήτε κατὰ ὁμοδόξων) μαρτυρεῖσθωσαν.

oath specific to the Jews whose formulation is attributed to the *Book of the Prefect*³⁴. The origin of the material is clear: it is generally derived from the *Basiliká*, although at times the wording changes, as occurs in PA XXVII. 231 when it establishes that twice the value of all property stolen will be returned to Jews who have not agitated³⁵.

The *Eisagogé* also underwent several specific expansions shortly after its composition, always, as might be expected, without the preface. The *Eisagogé cum Prochiro composita* (*EPc*) has two more titles (forty-two in total) and combines the regulations in the *Eisagogé*, the *Prochiron* and the *Basiliká* with regulations taken from the commentaries (*scholia*) on the *Eisagogé*³⁶. This work remains unpublished, and therefore for the moment it is impossible to access its content. However, a heading in a manuscript attributed the compilation to “Emperor Leo the Philosopher”, that is to say, Leo VI, and it must therefore date from the early 10th century³⁷.

In contrast, the *Eisagogé Aucta* (*EA*), an anonymous legal compendium in fifty-four titles, is available in print³⁸. The first sixteen titles correspond to the *Eisagogé*, while titles XVII and after are based on the *Prochiron*. It also incorporates material from the *Basiliká* and the *Novels* of Leo VI, and therefore dates from after 912. Whatever the case, it is thought to belong to the first quarter of the 10th century³⁹. Title LII contains the regulations referring to Jews appearing in the *Eisagogé* (*EA* LII. 24 = *E* IX. 13; *EA* LII. 27 = *E* XL. 33; *EA* LII. 28 = *E* XL. 34). Title LII includes another four regulations referring to Jews (*EA*

³⁴ PA XXVII. 228: Θεσπίζομεν, κατὰ ὀρθοδόξων δικαζομένων μηδένα τῶν αἰρετικῶν ἢ τῶν ἰουδαίων εἰς μαρτυρίαν κοινωνίας ἔρχεσθαι, ἄντε ἐκάτερον μέρος ὀρθόδοξον ἢ ἄντε τὸ ἔν. ἐν ἑαυτοῖς δὲ οἱ αἰρετικοὶ καὶ οἱ ἰουδαῖοι ἐὰν δικάζωνται, συγχωροῦμεν τὸ αἰχχος ἐπιμικτον καὶ ἀξίας κατὰ τῶν δικαζομένων μαρτυρίας εἰσάγεσθαι, ἐκτὸς δηλαδὴ τῶν μανιχαίων, ὧν καὶ οἱ βορβορίται μέρος τυγχάνουσι.

³⁴ PA XXVII. 282: Ὁρκος ὃν ὀμνύουσιν οἱ ἰουδαῖοι. — Ἐν πρώτοις, ἵνα ζώσῃται τὴν βάτον, καὶ κρατήσῃ ἐν ταῖς χερσὶν αὐτοῦ τὸ μεγαλεῖον, καὶ εἴπῃ οὕτως εὐλόγητος κύριος ὁ θεὸς τῶν πατέρων ἡμῶν, ὁ ποιήσας τὸν οὐρανὸν καὶ τὴν γῆν, καὶ διαγαγὼν ἡμᾶς διὰ ξηρᾶς τὴν ἐρυθρὰν θάλασσαν, ὅτι οὐ ψεύδομαι. εἰ δὲ καὶ ψευδόμενος εὐρεθῶ, δῶμ μοι κύριος ὁ θεὸς τὴν λέπραν τοῦ γιεζῆ καὶ τοῦ ἀμμά, ἠλεῖ τοῦ ἱερέως τὴν καταδίκην, καὶ ἀνοιξάτω ἡ γῆ τὸ στόμα αὐτῆς, καὶ καταπιέτω με ζῶντα, ὡς δαθὰν καὶ ἀβειρών. Cf. PATLAGEAN 1965.

³⁵ PA XXVII. 231: Ὁ ἀρπάσας ἰουδαίου πράγματα μὴ θορυβούντος ἢ ἑλληνοῦ ἢ ἀβαπτίστου, εἰς τὸ διπλάσιον ἀντιστρεψάτω ταῦτα. Cf. B I. 1. 11 = C I. 11. 6: Ἐσυχάζοντας τοὺς Ἰουδαίους ἐὰν οἱ Χριστιανοὶ θορυβήσωσι καὶ διαρπάσωσιν εἰς τὸ διπλάσιον καταδικαζέσθωσαν παραπλησίως τῶν ἀρχόντων καὶ ταξευῶν καὶ πρωτευνόντων μὴ ἐκδικούντων ἢ ἐπιτρεπόντων τιμωρουμένων.

³⁶ WALDSTEIN 1974; WALDSTEIN & SIMON 1974. See KAZHDAN & al. 1991, s.v. “Epanagoge cum Prochiro composita”.

³⁷ BURGMANN; FÖGEN; SCHMINCK; SIMON 1995: 413, enumerating the five surviving manuscripts containing the *EPc*.

³⁸ Edited by ZEPOS 1931b. See KAZHDAN & al. 1991, s.v. “Epanagoge aucta”.

³⁹ For the 15 manuscripts that transmit this text, cf. BURGMANN; FÖGEN; SCHMINCK; SIMON 1995: 413.

LIII. 7, 13, 32 and 33) and a final one which occurs in EA X. 41⁴⁰. All these appear to be inspired by the *Basiliká* and develop regulations which were already in force. Thus, for example regulation EA LIII. 32, which punishes with exile the Jew who circumcises a Christian, is a development of the idea expressed earlier in EA LII. 28 (= E XL. 34), where a Jew circumcising a Christian slave was punished by death. Although the different legal status of the victim (now a citizen, not a slave), the penalty is softer than the capital punishment decreed by the *Eisagogé*.

Alongside these compilations by anonymous jurists which extend the pre-existing basic manuals by combining elements from the *Prochiron* and the *Eisagogé*, a completely different legal work was published in the early 10th century. This was the *Book of the Prefect* (*Liber praefecti urbis* or Τὸ ἐπαρχικὸν βιβλίον), which contained all the legal provisions relating to the private guilds in Constantinople under the supervision of the prefect, and which was enacted in 912 by Leo VI⁴¹. The writer was clearly familiar with Photius's *Eisagogé*, in which the whole of title IV is dedicated to describing the competences and obligations of the prefect⁴², but does not include any of its measures regarding the Jews. The only reference it contains is the prohibition against the purchase of silk by Jews⁴³.

It is clear that Greek legislation in the late 9th and early 10th century revives the earlier regulations on Jews promulgated by Justinian. Doubtless within the encyclopaedist movement of the new dynasty founded by Basil I, the interest in acquiring knowledge also included cultivation of the study of law⁴⁴. As we advance chronologically we find a greater presence of laws on Jews: *P* only contains two, *E* contains three, *Epit* contains five, *PL* contains four,

⁴⁰ EA X. 41: Δύναται ἰουδαῖος καὶ σαμαρεῖτης καὶ πᾶς αἰρετικὸς ὑπὲρ ὀρθοδόξων καλεῖσθαι εἰς μαρτυρίαν, ἐπὶ χρηματικῆς δηλονότι δίκης.

^EA LIII. 7: Ἰουδαῖος οὐ τυγχάνει ἀξιώματος οὔτε ἄρχειν δύναται, τῇ τύχῃ δὲ τῶν κοορταλίνων ὑπόκειται καὶ τοῖς ἐντεῦθεν βάρεσιν.

^EA LIII. 13: Ὁ ἀπὸ χριστιανῶν γενόμενος ἰουδαῖος δημεύεται.

^EA LIII. 32: Ἰουδαῖος χριστιανὸν περιτεμών διηνεκῶς ἐξορίζεται.

^EA LIII. 33: Μηδεὶς τῶν αἰρετικῶν ἢ ἰουδαίων ἢ ἐλλήνων ἔχει χριστιανὸν ἀνδράποδον, [ἐπεὶ] ἐλευθεροῦται, αὐτὸς [δὲ] κεφαλικῶς τιμωρεῖται.

⁴¹ KODER 1991. See ILIEVA & THOMOV 1998; MANGO 2000.

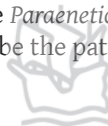
⁴² Title E IV has no parallel in the *Prochiron*. By this, Photius wished to give greater importance to the post of prefect of the city, cf. KODER 1991: 22, n. 12. The wording of this section was perhaps what produced this regulation regarding the competences of the Eparch, cf. SIGNES CODOÑER & ANDRÉS SANTOS 2007: 294, n. 56.

⁴³ *Lib. Praef.* 6. 16: Οἱ μεταξοπράται μὴ ἀπεμπολεῖτωσαν τὴν μέταξαν Ἑβραίοις ἢ ἐμποροῖς πρὸς τὸ διαπιπράσκειν αὐτὴν ἐξω τῆς πόλεως, οἱ δὲ τοῦτο ποιοῦντες τυπτέσθωσαν καὶ κουρευέσθωσαν. "The raw silk merchants shall not sell raw silk to the Hebrews or to traveling merchants in order to sell it off outside the city. The perpetrators of this shall be flogged and shorn of their hair".

⁴⁴ DE STOOP 1913; LOKIN 1994; FÖGEN 1998.

EA contains eight. The only exceptions are the *Book of the Prefect*, which only contains one, and the *Basiliká*, which, as it was conceived to be an exhaustive project, contains the whole of the legislation issued to date.

Evidently there is a reflection of the forced conversion initiated by Basil in 873–4: the *Eisagogé*, which began to be drafted shortly after, contains law E IX. 13, which is clearly anti-Jewish, and whose wording has no parallel in any other legislative work. The *Prochiron*, which is slightly earlier than the decree ordering the baptism of the Jews, does not contain this regulation. The subsequent legislative compilations which depend on the *Prochiron* (*Epit*, *PL*, *PA*) are far less aggressive with the Jewish population, as they contain fewer prohibitions. In contrast, the *Eisagogé Aucta* presents several new laws which expand on E IX. 13, and it can therefore be asserted that the legislative tradition which takes the *Eisagogé* as its reference is far more forceful, more aggressive. This is no doubt because the *Eisagogé* itself was forceful. Compared with the regulations concerning Jews included in other compilations (prohibition against circumcising Christian slaves, prohibition against proselytizing, characteristics of their oaths and their marriages), the *Eisagogé* applies a far more stringent legislation against the Jews. E IX. 13 states: “Ἕλληνες καὶ ἰουδαῖοι καὶ αἰρετικοὶ οὔτε στρατεύονται οὔτε πολιτεύονται, ἀλλ’ ἐσχάτως ἀτιμοῦνται, that is, they are deprived of the right of citizenship (and thus of the capacity to access public posts or to hold ranks or dignities). This law has no clear reference in earlier legislative tradition, and its originality was due to the intellectual author of the *Eisagogé*. The first titles, which claimed similar powers for the patriarch to those of the emperor, and the parallels with some of his other works (such as the *Paraenetic Chapters*) show the material author of at least part of this work to be the patriarch Photius (858–867 and 877–886).



UNDERLYING REASONS

It is no coincidence that the legal endorsement of the forced conversion of the Jews appears in a text sponsored by Photius. Nor is it chance that the decree which prescribed this baptism was signed by Basil in the year 873–4, six years after his accession to the throne. This was evidently a measure promoted by the patriarch after his return to court. Basil had become emperor after assassinating his predecessor and mentor Michael III. The patriarch Photius, related by blood to the Amorian dynasty, learned of the assassination and publicly challenged the new sovereign, which caused Basil to banish him⁴⁵. After enduring a harsh exile at the monastery of Skepe, Photius managed to regain the

⁴⁵ *Pseudo-Symeon* 688, 22–689, 1: Φώτιος δὲ ὁ πατριάρχης, ἐλθόντος τοῦ βασιλέως ἐν τῇ ἐκκλησίᾳ καὶ μέλλοντος αὐτοῦ κοινωνεῖν, ληστήν καὶ φονέα ἔλεγεν καὶ ἀνάξιον τῆς θείας κοινωνίας.

Emperor's favour and was recalled to court as a tutor to his heirs⁴⁶. This was in the year 873.

The reasons that Basil changed his attitude with regard to Photius are complex: among the factors commonly mentioned is the failure of the dialogue with Rome (to pacify the papacy, Photius had been anathemised and replaced by Ignatius, the legitimate patriarch until the consecration of Photius in 858)⁴⁷. Furthermore, Photius's advanced age and poor state of health⁴⁸ must have influenced Basil's view of him as a weakened opponent. In any case, it is clear that the new emperor, fully aware of his complete lack of education, saw in the old patriarch a counsellor capable of legitimising his position on the throne, strengthening his new dynasty and endowing his government with its own imperial ideology⁴⁹. Thus despite Basil's humble Thracian origin, Photius created a fictitious genealogy which linked him with the royal families of Macedonia and Armenia⁵⁰. He regaled him by commissioning the codex *Parisinus gr. 510*, a luxury edition of the homilies of Gregory of Nazianzus in whose illuminations the Emperor was compared to the patriarch Joseph⁵¹. Furthermore Photius also composed several eulogistic poems in Basil's honour⁵², in which the emperor was likened to Constantine the Great and the Old Testament kings David and Solomon. It is precisely in the two poems by the protoascretis Christopher, which mention the conversion of Jews after being convinced by the Emperor⁵³, that Basil is depicted as a wise man capable of arguing the superiority of Christianity thanks to his profound knowledge of the Scriptures.

On the familiar network of patriarch Photius, his origins and allies, cf. PRIETO DOMINGUEZ & VARONA CODESO 2013.

⁴⁶ *Theophanes Continuatus* 276, 18-277, 4.

⁴⁷ DVORNIK 1948: 162; BLYSIDOU 1991: 113-121.

⁴⁸ PHOT. *Epist.* 249, 23-25 and 78-79. In *Epist.* 235, 17-24 and *Epist.* 236, 23-24 he describes his illness as "at death's door", θανάτου πρόθυρα.

⁴⁹ MORAVCSIK 1961. This is the origin of works such as the *Eisagogé* and the *Paraenetic Chapters*, that encapsulates the prevailing political thought of the Macedonian dynasty, cf. KAZHDAN 1984; MARKOPOULOS 1998. WITH THIS DECISION BASIL WAS PLAYING SAFE, AS PHOTIUS HAD ALREADY CARRIED OUT THIS WORK UNDER Michael III, as can be seen by the titles with which he addresses him. The title of αὔγουτος was replaced in the 7th century by βασιλεύς, and the former *imperator* by its Greek version: αὐτοκράτωρ. The use of this last term is common in 10th-century documents (cf. *De ceremoniis* 587. 6), but one century earlier Photius was already using it to address Michael III, whom he would praise using the typical epithets of imperial propaganda, normally formed by a first element θεός, see *epist.* 118: θεόσταυτος, lit. "crowned by God". On Photius's use of old Roman titles, cf. MASON 1974: 98 sq.

⁵⁰ SCHMINCK 2000.

⁵¹ BRUBAKER 1985; BRUBAKER 1999. The iconographic features of the *Parisinus gr. 510* also reflect the anti-Jewish controversy of the time, see BRUBAKER 1999: 262-271.

⁵² MARKOPOULOS 1992 edited one, CICCOLELLA 1998 three anacreontic hymns.

⁵³ See above.

Against this backdrop of the creation of an imperial ideology, the persecution of the Jews should be understood not primarily as an anti-Jewish measure, but rather as a fundamental element in the characterisation of an emperor who, until the return of Photius, lacked any identifiable public image. The sovereign thus distanced himself from his predecessors who, according to the sources, favoured Iconoclasm and Judaism, and particularly the founder of the preceding dynasty Michael II (820-829)⁵⁴. Indeed, it was alleged that Photius himself, whose first patriarchate was conducted under Michael III, the last Amorian emperor, had been instructed by a Jewish sorcerer during his youth⁵⁵.

Compared to the legends which circulated about Michael III (a drunkard, a libertine, incapable of governing, etc.), Basil is presented as a ruler concerned with the well-being of his people and the salvation of their souls. According to historians close to his grandson, Constantine VII Porphyrogenitus, Basil's intention with this measure was to submit the race of circumcised and stone-hearted Jews to Christ⁵⁶. The real causes are unclear, but we cannot overlook the suggestion of G. Dagron, that the true purpose was to convert the Jews in the capital and in the large cities (artisans and tradesmen) so that they would contribute to the economic and demographic recovery of the Empire after the iconoclastic crisis⁵⁷. At the same time the aim was to suppress the anomaly represented by a non-Christian community within an empire which defined itself as orthodox⁵⁸. Indeed this decision was not intended to integrate a marginal and minority element – defined either ethnically or racially⁵⁹ – into the Christian Roman Empire inherited from Constantine the Great, but rather an urban population perfectly integrated and assimilated within the system. Unlike the attempts to annex Bulgaria⁶⁰, the Jews did not constitute a delimit-

⁵⁴ See *Theophanes Continuatus* 42, who details his Jewish ascendancy and describes his childhood, when he was raised by the Jewish sect of Athingani. According to this historian, Michael II exempted Jews from the payment of taxes.

⁵⁵ *Pseudo-Symeon* 670, 7-21: Εἰς μαθήματα δὲ τοῦτον ἐκδούς, μᾶλλον ἐκεῖνος πρὸς τὰ Ἑλληνικά φιλοτιμότερον διέκειτο ἢ τὰ ἐκκλησιαστικά. Διὸ καὶ Ἑβραίων τινὶ μάγῳ συντετυχώς, “τί μοι” ἔφη “δῶς, νεανία, καὶ ποιήσω σε πᾶσαν γραφὴν Ἑλληνικὴν ἐπὶ στόματος ἄγειν καὶ πάντας τοὺς ἐπὶ σοφίᾳ παρευδοκιμεῖν”. Along the same lines, even before birth he had been identified with the Antichrist in 669, 18-20: Σέργιος δὲ ὁ πατὴρ αὐτοῦ ὁρῶν τινὰ σημεῖα ἐν αὐτῷ ἔλεγεν “μὴ ἄρα ἡ παρ’ Ἑβραίοις ἐλπίζομένη μονάστρια, ἢ τὸν Ἀντίχριστον μέλλουσα τίττειν, ἢ γυνὴ μου ἐστίν;”. Cf. GOUILLARD 1971.

⁵⁶ *Theophanes Continuatus* 341-342.

⁵⁷ DAGRON 1991: 347. See also CUMONT 1903: 10. For the demographic distribution of the Jewish population in Constantinople, cf. JACOBY 1967. PERMISSION OF THE PUBLISHER.

⁵⁸ DAGRON 1993: 232-234.

⁵⁹ In contrast, the sources provide us with a very different image. In fact for Skylitzes the conversion of the Jews and the missionary work among the Rhos and Bulgars is one and the same (*Skylitzes* 165, 10-15). See SIMEONOVA 2001.

⁶⁰ Which as a result of the actions of the disciples of Methodius began to embrace faith in Christ in the late 9th century. This is evidenced by anthroponymical studies (Vlastimir's grand-

ited and external state, but were established and participated in the system itself, although they did not identify with it. The conversion of the Khazars who settled on the Crimean Peninsula was seen as a missionary labour, as evidenced by the letter sent by the patriarch Photius to Anthony, Archbishop of Bosphorus⁶¹. However, there is another facet and other reasons underlying the evangelisation of the Byzantine Jews, and it must therefore be understood as an attempt to reaffirm the official faith (whose visible head was now the Emperor Basil) in the search for greater cohesion between all the members integrating the Byzantine Empire.

After the triumph of orthodoxy and the restoration of the cult of icons in 843, the iconoclasts, the last heretics, had been vanquished. The Emperor now lacked enemies of Christianity against whom to fight and by whose defeat he could demonstrate his religious zeal before God and his subjects⁶². A recurrent enemy was the Paulicians. In fact, their defeat by Basil is exaggerated in the extant sources with the aim of magnifying the image of the Emperor⁶³. But in the year 872 their leader Chrysocheir was defeated by the Domestic of the Schools Christopher, Basil's son-in-law, and many people saw in his decapitation – as probably Photius did – the end of this heresy⁶⁴. The only alien element that persisted within the frontiers of the Empire was the Jewish one, and therefore Jews were declared the new objective of imperial policy. To the economic and political reasons mentioned earlier was added a theological reason: the assimilation of Judaism with Iconoclasm allowed Jews to be seen

sons were called Stefan and Petar), cf. HANNICK 1993. For the consequences of the Photian undertaking, cf. AVENARIUS 2000.

⁶¹ This is *epist.* 97, dating from Photius's first patriarchate (858-867). In it he declares that thanks to the piety of Anthony, the Bosphorus – which from *Inhospitable* came to be known as *Hospitable (Euxino)* by the Milesians – could now be known as *Pious*. The Khazars who had settled on the Crimean Peninsula had wholeheartedly embraced Judaism since the 8th century, and even made Hebrew the language of the court (SHEPARD 1998). In fact, Saint Cyril learnt Hebrew there, cf. *Vita Constantini-Cyrili* 8; MINNS 1925. On the Khazars, cf. BROOKS 1999; GOLDEN, BEN-SHAMMAL, RÓNA-TAS 2007.

⁶² BECK 1967; CHRISTOU 1971.

⁶³ The history of this Christian sect, which flourished between 650 and 872, was narrated by Petrus Siculus, a legate sent in 870 from Basil to the Paulician leader Chrysocheir to negotiate an exchange of prisoners. He stayed in the Paulician city of Tephrike, on the upper Euphrates, and wrote his *Historia utilis et refutatio Manichaeorum vel Paulicianorum*, see PAPACHRYSSANTHOU 1970. Soon after this, he composed a précis, the *Paulicianorum historia brevis*, see ASTRUC 1970. From these two works, in 871-872 Photius composed his *Diagnosis* against the Paulicians (LEMERLE 1973: 99-ss) and a brief apologetic treatise that he sent to the monk Arsenius (cf. *PmbZ* # 629): Κατὰ τῆς τῶν Μανιχαίων ἀρτιφροῦς πλάνης Ἀρσενίῳ τῷ ὀσιωτάτῳ μοναχῷ, πρεσβυτέρῳ καὶ ἡγουμένῳ τῶν Ἱερῶν, see SCHARF 1951; CONUS-WOLSKA 1970: 181-183.

⁶⁴ The Byzantine victory over Chrysocheir and the Paulicians took place at Bathys Ryax (in east-central Turkey). Most scholars date it in 872 (LEMERLE 1973; WHITTOV 1996: 314; TREADGOLD 1997: 457-458; VENNING 2006: 273), but GARSÓIAN 1967: 39 and HALDON 2001: 85 place the battle next to the subjugation of Tephrike, in 878.

as the last remaining vestiges of the heresy⁶⁵. Thus part of the urban population, well established within the imperial frontiers, was tried when in 873–4 Basil enacted a decree designed to turn Jews away from adherence to their religion throughout the whole of the Empire⁶⁶.

The active role of the patriarch Photius during the conversion is perfectly documented. On the one hand he revived anti-Jewish legislation with the drafting of the *Eisagogé* and with his example he encouraged the Metropolitans with whom he had links to compose anti-Jewish works: this is the case of Gregory of Oscar Nicea, who in 878–879 composed his “Treatise on the Baptism of the Jews”, and Arethas of Cesarea, who in the early 10th century wrote a *dialexis* against the Jews⁶⁷. Moreover, the formulae of abjuration, i.e., the formulae for the conversion of Jews to orthodoxy which were typified at that time (c. 870–880), were probably the work of Photius or of someone in his circle⁶⁸. The treatise of Gregory has been misunderstood by some scholars, who have seen in it the ecclesiastical rejection of the imperial decree of forced baptism. In fact, this text was born of the patriarchal belligerence against the figure of the Emperor⁶⁹. However it does not attack the conversion itself, but the method used to achieve it. The metropolitan of Nicaea not only defends the dogmas and canons, but also preaches rebellion and even threatens the Emperor with anathema, since he has neglected the teaching of the catechism, has despised Christian baptism by accepting a mere renunciation of Judaism and, consequently, has favoured apostasies. The eighth canon of the Second

⁶⁵ For Photius, the Jews had clearly been one of the causes of Iconoclasm. He declares as much both in his *Homilies* VIII and XI (cf. MANGO 1958: 153–160 and 195–199), and in his *Epistles*, cf. *Epist.* 1, 405–408 and *Epist.* 37, 38 and 39, where he attacks the pagans for not permitting icons and accuses the Jews of being worse than pagans because they do not consent to representations of Christ nor to be spoken to of him (*epist.* 37, 2–4). These two epistles were included in his collection of erotapokriseis, called *Amphilochia*, as *quaestio* 196 and *quaestio* 197 entitled Τῷ αὐτῷ περὶ εἰκόνων. The date of this inclusion is uncertain, but most probably corresponds to Photius’s second patriarchate, cf. PRIETO DOMÍNGUEZ 2008: 263–264. The link between Iconoclasts and Jews is clear even in his *Lexicon*, cf. SALVEMINI 2000. See also DVORNIK 1953; VASILIEV 1956; BARNARD 1977.

⁶⁶ DÖLGER 2003²: n^o 478.

⁶⁷ For the treatise of Gregory Asbestas, see DAGRON 1991 and MERCATI 1915; that of Arethas is entitled Τοῖς ἀπειθέσιν ἐκ παρακοπῆς Ἰουδαίους ἐν διαλέξει τύπῳ and is published by WESTERINK 1968–1972: vol. 1, pp. 271–278. To these anti-Jewish works from the time of Photius must be added another which was erroneously attributed to Anastasius Sinaita (MIGNE PG 89, cols. 1203–1282) and a treatise of Basil of Neopatrae that remains unpublished. The anonymous *Dissertatio contra Iudaeos* published by HOSTENS in 1986 is possibly also inspired by Photius.

⁶⁸ ELEUTERI-RIGO 1993: 41–50 and 90.

⁶⁹ This is clear from the very beginning: χρῆ ταῦτη μᾶλλον ἡμᾶς πειθομένους τὰ μαρτυρία τοῦ Θεοῦ λαλεῖν ἐναντίον βασιλέων ἀνεπαισχύντως, “It is necessary that we, persuaded by the truth, proclaim the testimonies of God in the presence of Emperors having no cause for shame” (chapter 1). In addition, in chapter 7 the Emperor is even compared to Judas (who sold Christ to the Jews), because he paid the Jews for being baptized.

Council of Nicaea (787) stated that Jews wanting to be converted had to accept the Christian faith and make fun of their ancient coreligionists. This rule materialized in long formulae of abjuration that meticulously displayed all canonical prescriptions. But now Basil's decision led to the introduction of new abridged formulae of abjuration that simplified the liturgy and were used outside ecclesiastical contexts. Moreover, the Jews who made use of them were not ready for conversion or even capable of being converted, what reinforces Gregory's criticism and his challenge of the emperor's intervention. In spite of everything, a part of the clergy had accepted this situation in order to adulate the Emperor, who –in Gregory's opinion– clearly had exceeded his authority by interfering in the spiritual sphere, reserved for the patriarch⁷⁰.

On the other hand, Photius also participated in disputations at court. This is indicated by the letters he sent to Basil providing him with the necessary knowledge to argue about links between the Old Testament and the New Testament. Only thanks to Photius's help was a man such as Basil – without any education whatsoever – able to resemble the wise King Solomon and argue with a rabbi about the biblical text. Two letters survive in which Photius supplies him with this knowledge: *Epist.* 249, which dates from this precise time (873), instructs the monarch on the unknowability of God⁷¹. Photius does this by offering an anthology of examples (Moses, Elias, Saint Paul, Dionysius the Areopagite, Athanasius, Basil the Great, Gregory of Nazianzus, John Chrysostom) which no doubt helped him to argue in his dialectic disputes with heretics and Jews. *Epist.* 241 can probably be placed in the same context. In this letter he explains to Basil who were the wise men Ethan and Heman whom Solomon surpassed in wisdom (*epist.* 241, 24-60), the process of enthronement of King David, who was anointed once, acclaimed twice and crowned with the diadem of King Amon (*epist.* 241, 61-74); and why Samuel

⁷⁰ As we shall see, the baptism of infidels does not devolve on the Emperor but on the patriarch and, in his name, on the metropolitans (*E III.* 2), cf. DAGRON 1991: 352-355. Since it was Ignatius and the Ignatian clergy that officially had to promote the measure adopted by Basil in 873-4, it is easy to see in the words of Gregory, a convinced Photian, a severe attack against the Ignatians. These priests are called opportunists in chap. 11 (τινος τῶν τῷ καιρῷ δουλευόντων, "one of these opportunists") and flatterers of the Emperor in chap. 9: Ἄλλ' ἐπιτριβεῖεν οἱ κόλακες ἀρκετὸν εἶναι παραληροῦντες εἰ μόνον ἐπὶ βασιλέως ἀποτάξαιτο τις Ἑβραῖος τοῖς παλαιοῖς νομίμοις, "But let the sycophants, acting foolishly, strive to make it enough that a Jew renounces the ancient precepts before the Emperor" Finally, these priests lacked the express authorization of the patriarch, whereupon they were acting on the fringes of canon law (chap. 16). On Gregory Asbestos, the former archbishop of Sicily, see *PmbZ* # 2480. On his enmity with Ignatius, see *Vita Ignatii*, 512B-D; GRUMEL 1939; GRUMEL 1940-42. On his political positions, see DVORNIK 1948: 17-38; KARLIN-HAYTER 1977.

⁷¹ With this epistle he was responding to a petition made by Basil, as indicated in the *intitulatio*: Τῷ φιλοχρίστῳ καὶ μεγάλῳ βασιλεῖ Βασιλείῳ ἀρξαμένῳ καὶ ἀποριῶν τινῶν ἐπιζητήσαντι λύσει, "To Basil, great emperor and lover of Christ, who requests me to write to him and who seeks answers to some doubts".

placed the jawbone of an ass on Saul when appointing him king (*epist.* 241, 75-97)⁷².

In spite of all the evidence which links Photius to the forced baptism of the Jews, Mango was reluctant to accept that he was fully responsible, alleging that his second patriarchate had not yet begun⁷³. However, Photius had a completely unlimited capacity for action from the very moment he returned to court. Although Ignatius was still seated on the patriarchal throne, Photius began from the start to ordain priests loyal to him and to behave as though he were the patriarch⁷⁴. Indeed many encouraged him to oust Ignatius in order to occupy the patriarchate once again *de iure*⁷⁵. This widespread popular support had been endorsed by the Emperor himself, who had broken the law in order to obtain Photius's return to court. The ruling of canon 7 of the Council of 869-870 explicitly prohibited those who had been anathematised, like Photius, from teaching. Nonetheless in 873 Basil directly contravened this measure when he appointed Photius as tutor to his children⁷⁶. As indicated by Tougher, the Emperor not only depended on Photius for the creation of an imperial ideology, but was in fact dominated by him⁷⁷. This domination doubt-

⁷² All these questions arise from the reading of the book of *Kings*, cf. 1R 5, 11; 1R 16, 13 and 2R 12, 26-30, and 1R 9, 24. According to the *intitulatio*, in this case Basil did not contact Photius directly but used the protonotary Theophanes as an intermediary: Θεοφάνει διακόνω καὶ πρωτονοταρίω αἰτησαμένω ὡς δῆθεν ἐξ ἑαυτοῦ λύσιν ἀποριῶν, ἐκ βασιλικοῦ δὲ τῇ ἀληθείᾳ προστάγματος τὴν ἀξίωσιν πεποιηκότι, "To Theophanes, deacon and protonotary, who requests, apparently on his own initiative, the solution to his doubts, although in fact he is fulfilling the request of a royal mandate".

⁷³ MANGO 1958: 153. The possibility that Photius was the inspiration for the measure had already been suggested by CUMONT 1903. It is difficult to reconstruct Photius's personal vision of the Jewish minority. Evidently, as a patriarch he had to spread orthodoxy as much as possible, but he also seems to have been a fair person. For example, in the *Amphilochium* 50, when in the course of an exegesis of Mark 3.21, having considered the argument that Christ was blamed by the Jews and by his own brothers due to their envy (lines 47-71), Photius utterly rejects it (lines 71-78).

⁷⁴ MANSI XVI, cols. 452-453. This information is extremely convincing as it was a complaint expressed by his opponents, the followers of Ignatius, cf. also MANSI XVI, cols. 429, 432 and 433. In *epist.* 112, perhaps written at this moment, Photius encourages Gregorius Asbestos to ordain priests and to dedicate churches on his behalf, especially in a time in which temples are destroyed and the clergy is attacked.

⁷⁵ MANSI XVII, 424 BC.

⁷⁶ MANSI XVII, 479-505. Only assuming the explicit support of the Emperor can it be understood why in 873 Photius dispatched his *Epistle 170* to Anastasius Bibliothecarius, the Pope's right-hand man and the person responsible for the translation into Latin of the Acts of the anti-Photian council of 869-870 (with his own preface in which he declares himself to be an enemy of Photius), cf. LEONARDI 1987.

⁷⁷ "Basil no longer simply depended on the restored patriarch, but was in fact dominated by him", TOUGHER 1997: 71, who actually follows the idea expressed in the middle of the last century by EVERY 1947: 125. A good example of Basil's subordination to Photius in ecclesiastical matters is the colossal architectural project he financed for the benefit of the Church, see *Skyllitzes, Vita*

less reached its climax after the death of Prince Constantine, Basil's firstborn heir, in 879, when Photius endorsed the boy's sanctification⁷⁸. For this very reason the Council of 879-880 was not presided over by the Emperor, who went into mourning for six months⁷⁹. In his absence Photius had to assume his functions.

Similarly, when Photius drafted the *Eisagogé*, he did so assuming the role of the imperial family, as can be read in the heading to the preface⁸⁰. The *Eisagogé* is an example of the highest degree of power attained by Photius during his second patriarchate (877-886), both within the church and the state. Title III ("on the patriarch") confers similar prerogatives on the patriarch within the spiritual sphere to those of the Emperor in the civil sphere. However whereas the Emperor is required to comply with the dogmas of the Church, the patriarch alone steers the Church and interprets its teachings. Indeed the obligation to fight against heresies and convert infidels does not devolve on the Emperor, but to the patriarch⁸¹. This is indicated in E III. 2: "The function of the patriarch is [...] to make non-believers followers of our faith, moving them by means of his brilliant, extraordinary and admirable actions"⁸². E III. 11 also declares that the patriarch "is the only one who judges and knows matters of repentance and conversion from errors and heresies"⁸³. These sec-

Basilii, 1.41: Βασίλειος δὲ ὁ βασιλεὺς καὶ τῶν θεῶν ναῶν πολλοὺς ὑπὸ τῶν προηγησαμένων κλόνων διαρραγέντας τε καὶ κατασεισθέντας, τινὰς δὲ καὶ τελέως καταβληθέντας, ἐπιμελείας ἤξιωσε, τοὺς μὲν ἐκ καινῆς ἀναστήσας, τοῖς δὲ τὴν ἀσθένειαν ἐπιρρώσας, τοῖς δὲ κάλλος καὶ ὠραιότητα χαρισάμενος, "The Emperor Basil, in view of the numerous divine churches damaged and destroyed by earlier disturbances, some of which were razed to the ground, expressed his concern by rebuilding some, restoring their fragility and endowing them with beauty and grace".

⁷⁸ HALKIN 1954; GRUMEL 1966; KARLIN-HAYTER 1966; GRUMEL 1967; PATLAGEAN 1989: 356-357.

⁷⁹ Basil only attended the closing session held on 10 March 880, cf. HALKIN 1954: 16.

⁸⁰ Προοίμιον τῆς ἐπαναγωγῆς τοῦ νομοῦ τοῦ σὺν θεῷ ἐμφανεστέρου ὑπὸ βασιλείου καὶ λέοντος καὶ ἀλεξάνδρου τῶν παναγάθων καὶ εἰρηνοποιῶν βασιλέων, "Preface to the introduction to the law that with the help of God has been revealed by Basil, Leo and Alexander, bountiful and peacemaking emperors". See SCHMINCK 1985; SCHMINCK 2000; SCHMINCK 2005. For Photius's political thought, cf. BOMPAIRE 1982.

⁸¹ The Emperor is only required to be noted for his orthodoxy, piety and divine fervour, E II. 5.

⁸² E III. 2: Σκοπὸς τῷ πατριάρχῃ [...] τοὺς ἀπίστους διὰ τῆς λαμπρᾶς καὶ περιφανεστάτης καὶ θαυμασίας αὐτοῦ πράξεως ἐκπλήττων μιμητὰς ποιῆσαι τῆς πίστεως.

⁸³ E III. 11: ὡσαύτως δὲ καὶ μετανοίας καὶ ἐπιστροφῆς ἀπὸ τε ἀμαρτημάτων καὶ αἰρέσεων αὐτὸς καὶ μόνος καθίσταται δαιτητῆς τε καὶ γνώμων. Precisely while exercising this function, Photius published a new version of the most widespread compilation of canon law, the *Nomocanon XIV titulorum* (KALLISTOS 1905-1906; RHALLÉS 1852). Like Gregory Asbestos' treatise, this work of the patriarch contains some measures concerning the correct manner in which to conduct the mass baptism of Jews in order to avoid false conversions. Thus sections IV. 78 and VII. 8 specify that Samaritans should not be baptized hastily according to the prescriptions of Councils VI (680-681) and VII (787). Cf. also section XII on heretics, Jews and Pagans and on their reception into the bosom of the Church. The *Eisagogé* imposes the death penalty on those who after conversion return to their former faith, cf. E XL. 35 and 36.

tions bring into law a missionary practice that Photius had initiated during his first patriarchate, but had to leave unfinished when he was condemned to exile⁸⁴. With them, the patriarch gave the legislative seal to an earlier project: the conversion of the Jews. This measure not only sought the salvation of their souls, but also the elimination of a rival who, as with the legates of the Latin Church (whom Photius also considered heretics), were attempting to gain believers from among the peoples settled in Bulgaria, the main objective of Photius's missions⁸⁵.

The importance to the patriarch of dictating laws which sanctioned his view of the patriarchate and his pastoral work with regard to the Jews is evidenced by the letter which he sent to his brother Sergios (*epist.* 51). In it he corrects all Jews, pagans and Marcionites (the first heretics in Christianity), who believed that grace revoked the law, and defends the use of legislation. Just as the sun does not cancel out the stars, grace is perfection, but the law is the path which leads to it. Legal codes are essential because the truth is that "Christ completed the law, he did not revoke it"⁸⁶.

Indeed, to guarantee the securing of the patriarchal obligation to safeguard the social and religious cohesion of the whole empire, few measures could have been as effective as the enactment of a legal code based on the principle that orthodoxy predominates over the right of citizenship (E IX. 13). This conviction is what led Photius both to encourage the conversion of the Jews, and to endorse a legislation which would intensify the existing measures against that community. His project was also shared by Basil, whose initiative and activity are recorded in the Latin, Greek and Hebrew sources. The Emperor's protagonism shows not only that Photius had persuaded Basil that the conversion of Jews was positive for his imperial image and power, but also that the Emperor judged this measure to be adequate⁸⁷.

⁸⁴ There is an abundant bibliography on Photius's missionary policy, see SULLIVAN 1966; BECK 1967; DVORNIK 1970; CHRISTOU 1971; HANNICK 1978; STRATOUDAKI WHITE-BERRIGAN 1982; TSIRPANLIS 1984; CHRISTOU 1992; DAGRON 1993; HURBANIC 2005; GREENWOOD 2006.

⁸⁵ The existence of Jewish missionaries proselytizing in Bulgaria can be deduced from chapter 104 of Pope Nicholas I's response to the queries of the Bulgars, cf. Perels 1912: 568-600. Furthermore, chapters 43 and 90 show the existence of a Judaizing trend which wished to forbid the consumption of pork and of animals which were not completely bled (stated also by Photius, cf. Mango 1958: 288-289). Similar missions must have preceded the Khazars' conversion to Judaism, see Heiser 1978: 227; Sansterre 1982: 386.

⁸⁶ *Epist.* 51; 62-63: ἐτελείωσεν γὰρ τὸν νόμον ὁ Χριστός, ἀλλ' οὐ κατέλυσεν.

⁸⁷ Probably Basil thought that the time for the Jews' conversion had arrived and saw himself in a Messianic role, perhaps in a mood of eschatological expectation. According to P. Magdalino, there are hints of this Messianic aspiration in the foundation of the Nea Ekklesia, built during Photius' second patriarchate and consecrated by him in 880, see MAGDALINO 1987. Two key features set this church apart from the rest: its echoes of the Nea church in Jerusalem and its collection of Old Testament relics.

Finally, the very duration of the conversion indicates who was ultimately responsible for the measure. Only three historians specify the year in which it was initiated: *Pseudo-Symeon*, the author of a short chronicle in Greek, and Ahimaaz ben Paltiel. *Pseudo-Symeon* clearly states that it began in the sixth and seventh years of the reign of Basil, that is in 873-4 and 874-5⁸⁸. The author of the Byzantine short chronicle focused on Sicily (*chronicon cantabrigense*) also offers the year 873-4⁸⁹. Both testimonies are corroborated by the chronicle of *Georgius Monachus Continuatus*, who follows an annalistic, year-by-year scheme and locates the persecution between perfectly datable events in the years 872 and 877⁹⁰. For Ahimaaz ben Paltiel the only deed worthy of note of Basil's reign was the persecution of his community, and for this reason he describes the emperor as "a man of evil, a treacherous murderer", portraying him as the enemy and persecutor of the Jews, and considers the persecution to have coincided with the start of his reign⁹¹.

As we saw earlier, Photius's return to court was accompanied by the conversion of the Jews. His disappearance from public life in 886 marked the cessation of these forced baptisms. All the sources are unanimous in affirming that the accession to the throne of Leo VI the Wise in September 886 entailed the end of the measure⁹². Leo's action must be understood as part of his project for purging Photius's regime, whom he accused of conspiring against the emperor, and immediately replaced with his brother Stephen⁹³. Without a doubt the new emperor blamed the old patriarch for his fall from grace, which had led to his imprisonment in 883, and was aware of the manner in which Photius

⁸⁸ *Pseudo-Symeon* 691, 8-10 (see n. 11).

⁸⁹ Concretely, this author offers the year 6382, in the seventh indiction, see *Chron. Cantabrigense* 45,21: ἔτους ςτπβ' ἐβαπτίσθησαν οἱ Ἑβραῖοι, ἰνδίκτιω'νος ζ', cf. SCHREINER 1975: vol. I, p. 333.

⁹⁰ *Georgius Monachus Continuatus* 842, 12-16, cf. JENKINS 1965: 100.

⁹¹ Chapter 11: לשנת שמונה מאות שנים. לעיר הקודש למלאות הרבנים. "In the 800th year after the destruction of the holy city", cf. BONFIL 2009: 260-1. Ahimaaz's dating is not reliable, as in chapter 17 he declares that the persecution lasted 25 years: עד יום מותו. שנים עשרים ותמש. "And the moon and the sun darkened for twenty five years, until the day of his death". Basil died on 29 August 886. If what Ahimaaz says is true, the conversion would have begun in 861, which is completely impossible. Regarding the problems of chronology of this event and Ahimaaz's interests in linking it to 868, a year which was associated with messianic expectations, cf. BONFIL 2009: 80.

⁹² *Theophanes Continuatus* 342: "Then the majority, after the emperor's departure from this life, like unto dogs, returned to their own vomit", εἰ καὶ πολλοὶ πλειστοὺς μετὰ τὴν ἐκ τοῦ βίου τοῦ βασιλέως ἐπαναχώρησιν πρὸς τὸν οὐκ εἶστον ὡς κύνας ὑπέστρεψαν ἐμეტόν. Ahimaaz, chapter 18: והשיב היהודים לאמונתם. ביטל הגזירה. אשר בימי אביו היתה גזירה. "He [King Leo] annulled the decree which was ordained in the days of his father, restored the Jews to their faith". *The Vision of Daniel*, an apocalyptic text of the 10th century, agrees: cf. SHARF 1971: 201-204; BONFIL 2003.

⁹³ *Theophanes Continuatus* 353,18-354,8; *Georgius Monachus Continuatus* 850; *Pseudo-Symeon* 700-701. In 887 Leo brought Photius to trial for treason, but there were any results due to the absence of any major testimony against the patriarch and therefore the Emperor exiled him.

had manipulated his father⁹⁴. Leo did not wish to repeat his father's mistakes, so he tried to reaffirm his power over the Church by issuing several novels in which he, as Emperor, legislated on ecclesiastical discipline and administration⁹⁵. Given that the conversion of the Jews was a Photian policy, Leo ceased this practice. His desire to continue the example of his father Basil to legitimate his power and strengthen the new dynasty of which he himself was the representative⁹⁶ led him to enact *Novel 55*, in which he extols the piety of his father and, in very vague terms, entreats the Jews to live like Christians⁹⁷. As we know, this novel was not worth the paper it was written on, and Leo did not continue the forced baptism of Jews. If the decree for the persecution of the Jews had genuinely been issued by Basil, Leo would have maintained a similar line, keeping the anti-Jewish policy⁹⁸. However, his decision to abandon the measure as soon as he came to power indicates once again that it was not the work of his father but rather of the patriarch he hated so much: Photius.

⁹⁴ See TOUGHER 1997: 72-88. Among other things, Photius used Theodore Santabarenos to exorcise the spirit of the deceased firstborn son of Basil I, Constantine, whose death had plunged his father into a deep depression which entailed serious consequences for Leo, cf. *Georgius Monachus Continuatus* 845-846; *Vita Ignatii* 105: 573.

⁹⁵ MITARD 1930; FLEDELIUS 1987.

⁹⁶ As he himself declares in the funeral eulogy for his father, cf. VOGT & HAUSHERR 1932. On dynastic thought, starting with the Macedonians, see AGAPITOS 1989; TOUGHER 1997: 23-41.

⁹⁷ Ed. NOAILLES & DAIN 1944: 209-211. The most significant feature in the novel is the way in which Leo underlines the continuity between his father's policy and his own: 'Ἡμεῖς οὖν ὅπερ ὁ ἡμέτερος πατήρ εὐλόγον κρίναντες ἀναπληρῶσαι παντὶ νόμῳ ἀρχαιοτέρῳ τῷ περὶ Ἑβραίων νομοθετοῦντι σιγᾶν ἐπιτρέπομεν, καὶ μὴ ἄλλως αὐτοὺς τολμᾶν πολιτεύεσθαι ἢ ὡς ἡ καθαρὰ καὶ σωτήριος τῶν χριστιανῶν πίστις βούλεται, "Therefore We, desiring to accomplish what Our Father failed to effect, do hereby annul all the old laws enacted with reference to the Hebrews, and We order that they shall not dare to live in any other manner than in accordance with the rules established by the pure and salutary Christian Faith".

⁹⁸ As he did regarding Basil's main legislative project, the *Basiliká*. His father initiated its compilation, but died before he could finish it. Leo's intention of consolidating his power from the reign of his father led him to conclude the corpus and to enact it. See *Skylitzes, Vita Basilii*, 1.16: ἀλλὰ καὶ τοὺς πολιτικοὺς νόμους πολλὴν ἀσάφειαν καὶ σύγχυσιν ἔχοντας ἰδὼν καὶ τούτους κατὰ τὸ προσηκόν προσφύρωσ ἐπανορθώσασθαι ἐσπευσε, καὶ τῶν μὲν ἀνηρημένων τὴν ἀχρηστίαν περιελεῖν, τῶν δὲ κυρίων ἀνακαθάραι τὸ πλῆθος, οὐκ ἔσχε δὲ καιρὸν προκαταληφθεὶς θανάτῳ. ἐξεπλήρωσε δὲ τὸ ἔργον Λέων ὁ υἱὸς αὐτοῦ μετὰ ταῦτα, "Seeing, moreover, that the civil law was far from clear and in a state of confusion, he made haste to reform it in an appropriate manner. He deleted some laws because they were obsolete and reduced the number of the laws still in force. Death intervened too soon, so this undertaking was completed by Leo, his son and successor". Cf. SCHMINCK 1989: 90-93; VAN BOCHOVE 1996: 175-176.

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THE JEWRY-OATH IN CHRISTIAN EUROPE

Amnon LINDER

The Jewry-Oath¹, the particular oath performed by Jews in various types of interaction with Christians in Medieval and Early Modern Europe, functioned simultaneously as both means of action specific to and formal indicator of the status of the Jews that regulated their existence as private individuals and as authorized communities under Christian rule. Its particularity consisted of its special form as well as the special circumstances in which it was administered, while its significance for the very survival of the Jewish diaspora, a minority located at the outer edges of the Christian society, permanently alienated from it through its own isolationist stance and by exclusionist policies applied by the host society – yet utterly dependant on it for its subsistence – can be appreciated in light of the J.O.'s chronological duration and spatial diffusion. Jewry-Oaths were practiced, in effect, from the Seventh Century at the latest to the Nineteenth, from Erviga's *Law of the Visigoths* (promulgated in 681)² to the French *Cour de cassation's* verdict in 1844 which quashed an 1842 legal ruling that imposed the J.O. on Jewish litigants.³ In Germany the J.O. was abolished in a gradual process that reached its final stage in 1877,⁴ and Romania applied it until the first decades of the Twentieth Century.⁵ The J.O.'s spatial diffusion was practically coterminous with the Jewish diaspora under Christian rule in its various denominations – Greek-Orthodox as well as Catholic and Protestant. It encompassed the Byzantine



¹ Henceforth rendered as J.O.

² Amnon Linder, *The Jews in the Legal Sources of the Early Middle Ages*. (Detroit-Jerusalem: Wayne State University Press, 1997), pp. 311-17 [subsequent reference: Linder, *The Jews*].

³ Edouard Martin (ed.), *Serment more Judaico, extraits des Archives Israelites de France, Numeros de Janvier, Février, Mars, Juillet, Août, Septembre 1844*, (Paris: Imprimerie de Wittersheim, s.d.).

⁴ Volker Zimmermann, *Die Entwicklung des Judeneids; Untersuchungen und Texte zur rechtlichen und sozialen Stellung der Juden im Mittelalter*, (Frankfurt a. M.: H. Lang, 1973), pp. 255-56 [subsequent reference: Zimmermann, *Die Entwicklung*].

⁵ עקבי גלר, 'המאבק לביטול השבועה "מורה יודאיקו" ברומניה', סיני, צ"א (תשמ"ב) עמ' רמה-רנג.

Empire,⁶ Italy,⁷ the Iberian Peninsula,⁸ France,⁹ England,¹⁰ and the entire German zone¹¹ with its extensions into Slavonic regions such as Poland¹² Bohemia¹³ and Slovakia;¹⁴ the *Germania Judaica*¹⁵ identifies some one hundred and ten localities in which the J.O. is specifically documented, from Amberg to Zurich, over and above the seventeen territorial and 'ethnic' law codes such as the Law of the Herzogtum of Bayern-Landshut, the *Sachsenspiegel* and the *Schwabenspiegel*. The extent to which the J.O. was actually practiced is indicated by the fact that during less than nine years Pedro III of Aragon issued ten royal ordinances regulating its correct application,¹⁶ and as these dealt mostly with abuses – with exceptional cases, in principle – one can reasonably conclude that it was routinely applied in the territories ruled by the Aragonese

⁶ Linder, *The Jews*, passim; Evelyn Patlagean, 'Contribution juridique à l'histoire des juifs dans la Méditerranée médiévale: Les formules grecques de serment', *REJ* 124 (1965), 137-56.

⁷ Mainly Bartolomeo e Giuseppe Lagumina, *Codice diplomatico dei Giudei di Sicilia*, 3 vols. (Palermo: Tip. di M. Amenta, 1884, 1890, 1895) [subsequent reference: Lagumina, *Codice*], passim; Shlomo Simonsohn, *The Jews in the Duchy of Milan*, vol. I, (Jerusalem: The Israel Academy of Sciences and Humanities, 1982) [subsequent reference: Simonsohn, *Milan*] and *The Jews in Sicily*, 18 vols., (Leiden: Brill, 1997-2010), [subsequent reference: Simonsohn, *Sicily*], passim.

⁸ Mainly Jose Amador de los Rios, *Historia social, politica y religiosa de los Judios de Espana y Portugal*, vol. I, (Madrid: Ediciones Turner, 1984) [subsequent reference: Jose Amador de los Rios, *Historia*], Fritz Baer, *Die Juden im christlichen Spanien*, vols. 2 vols., (Berlin: Schocken Verlag, 1929) [subsequent reference: Baer, *Die Juden*], and Jean Régné, *History of the Jews in Aragon; Regesta and Documents 1213-1327*, (Jerusalem: Magnes Press, 1978), [subsequent reference: Régné, *History*].

⁹ Our documentation covers mainly Provence; see the preceding references to the Kingdom of Aragon and Richard W. Emery, *The Jews of Perpignan in the Thirteenth Century*, (N.Y.: Columbia University Press, 1959) [subsequent reference: Emery, *Perpignan*]. For the Angevin French domains consult . 186 עמ' גולב, תולדות היהודים בעיר רואן בימי הביניים, תל אביב: דביר, תשל"ו, and the following footnote.

¹⁰ The practice of J.O. in Angevin England is sufficiently attested by the official royal documentation. See, for example, H. G. Richardson, *The English Jewry under Angevin Kings*, (London: Methuen, 1960), [subsequent reference: Richardson, *The English*] pp. 288, 289, and 291; Thomas Rymer, *Foedera, conventiones, litterae...*, vol. I, (London: 1816) [subsequent reference: Rymer, *Foedera*] pp. 51, 152; vol. II, (London: 1816) p. 543; William Stubbs, *Select Charters and other Illustrations of English Constitutional History*, (Oxford: Clarendon Press, 1874) [subsequent reference: Stubbs, *Select Charters*.] pp. 262-63 (reproducing the *Capitula de Judaeis* from Roger of Hoveden).

¹¹ Guido Kisch, "Studien zur Geschichte des Judeneides im Mittelalter", in: Guido Kisch, *Forschungen zur Recht- und Sozialgeschichte der Juden in Deutschland während des Mittelalters*, (Sigmaringen: J. Thorbecke, 1973), pp. 137-184; Zimmermann, *Die Entwicklung*.

¹² Jacob Goldberg, *Jewish Privileges in the Polish Commonwealth*, 2 vols. (Jerusalem: Israel Academy of Sciences and Humanities, 1985, 2001), passim.

¹³ Bertold Bretholz, *Quellen zur Geschichte der Juden in Mähren*, (Prag: Taussig u. Taussig, 1935), passim.

¹⁴ 237-238 (תשל"ב) ל"ז ציון, 'שבועת היהודים בפרסבורג', ציון, ל"ז (תשל"ב)

¹⁵ Henceforth cited as *GJ*.

¹⁶ From 30 December 1276 to 8 July 1285. See Régné, *History*, Nos. 671, 729, 882, 1100, 1102, 1169, 1185, 1232, 1352, 1405.

crown. The evidence from across the communal divide – in *Sefer Hasidim*,¹⁷ for example, is no less compelling in regard to the actual application of the J.O. and its diverse contexts. We are clearly dealing here with a *longue durée* phenomenon, one that involves some of the most fundamental issues in the history of the Jews during these twelve centuries, in the first place their very survival as a distinct religious and social entity and the various modes of action (economic, social, cultural etc.) that were evolved in this essentially ‘survivalist’ context.

The J.O.’s chronological and spatial dimensions have attracted considerable scholarly attention and resulted in an impressive body of edited primary sources and secondary literature.¹⁸ It reflects the seemingly paradoxical quality of ‘permanent variability’ that characterized this institution throughout the ages and across vast spaces: while its inner, ideological core remained relatively constant, in tune with the relatively constant Christian essence of the host society, its external means of application evolved and varied from one particular historical context to another. This variability can be seen, *inter alia*, in controversies that divided contemporary observers, when what seemed perfectly legal and suitable to one appeared as “sheer phantasy” to another, (mis)leading some modern historians to doubt the very existence of the criticized J.O. forms.¹⁹ Part of the problem stems from the fact that numerous

¹⁷ ספר חסידים. ערך ראובן מרגליות, (ירושלים: מוסד הרב קוק, תשי"ז), (להלן: ספר חסידים) סי' תי"ז (והפירוש שם), תי"ח, תי"ט, תכ"א, תכ"ג, תכ"ז.

¹⁸ Some recent, useful discussions: Gundula Grebner, “der alte Raby hat eyne gemeyne buche in syner hant gehabt... Jüdische Eideleistungen in und um Frankfurt am Main (14.-16. Jahrhundert). Eine Phänomenologie”, in: Fritz Backhaus (et alii, eds.), *Die Frankfurter Judengasse: Jüdisches Leben in der Frühen Neuzeit*, (Frankfurt: Societäts-Verlag, 2006), pp. 145-160, 319-330; Walter Pakter, “Did the Canonists prescribe a Jewry-Oath?” *Bulletin of Medieval Canon Law*, n.s. 6 (1976) pp. 81-87; Diego Quaglioni, “Gli Ebrei e il giuramento nell’età del diritto comune”, *Rivista di storia e letteratura religiosa*, XL (2004) pp. 113-128; Walter Röhl, “Zu den Judeneiden an der Schwelle zur Neuzeit”, in: Alfred Haverkamp (ed.), *Zur Geschichte der Juden im Deutschland des späten Mittelalters und der frühen Neuzeit*, (Stuttgart: Hiersmann 1981), pp. 163-204; Annette Schmidt, “so dir got helfe; Die Judeneide”, in: *Juden in der deutschen Literatur des Mittelalters; Religiöse Konzepte – Feindbilder – Rechtfertigungen*, ed. Ursula Schulze, (Tübingen: M. Niemeyer Verlag, 2002), [subsequent reference: Schmidt, “so dir got helfe ”], pp. 87-105; Michael Toch, “Mit der Hand auf der Thora: Disziplinierung als internes und externes Problem in den jüdischen Gemeinden des Spätmittelalters”, in: *Disziplinierung im Alltag des Mittelalters und der Frühen Neuzeit*, ed. Gerhard Jaritz, (Wien: Verlag der Österreichischen Akademie der Wissenschaften, 1999), pp. 157-171; Joseph Ziegler, *Shevuat Hayehudim Biyamei Habeynaim, Jerusalem 1987*. Id. “Reflections on the Jewry Oath in the Middle Ages”, *Studies in Church History*, 29 (1992), pp. 209-220.

¹⁹ As in an appendix to the Saxon *Weichbildrecht Glosse*: “Ir solt wissen, das die Jüden eyd schwehren sollen nach irer weis ... Doch so haben etliche leut viel seltzamer weis hierinnen, und sprechen: Der Jüd sol diesen eyd thun, vor der synagogen, an dem thoringk, do man der sinagogen thür mit zuzehuet, und das sie sollen barfus stehen, auff einer schweinshaut. Denn dis ist ein fantasy. Wenn es ist genug, das sie den eyd thun, in vor geschriebener weis. ...” (Zimmermann, *Die Entwicklung*, p. 148). The author refers, obviously, to the degrading J.O. imposed by “etliche

studies are strictly confined to particular geographical and/or political entities, in utter disregard of the permanent overarching structures involved. In perusing this literature one notices, furthermore, polemical and apologetic undertones that still echo the Emancipatory concerns of nineteenth-century European Jewry as well as other biased, anachronistic judgements of past events and norms which tend to obscure the historical reality under examination. Yet this considerable body of research is practically indispensable for any new approach to the J.O., and it is further supplemented by Baer's, Simonsohn's and Régné's rich and useful digests of the archival materials which bear on a considerable part of the Jewish diaspora – in the Iberian peninsula, France, Italy and Sicily. In this essay I shall suggest the broad outlines of a J.O. typology, dealing with three distinct topics: a) identifying the J.O.'s social and cultural context, a brief survey of the principal factors in the enveloping Christian environment that contributed to – even determined – the J.O.'s creation and subsequent evolution; b) mapping the main arenas in which the J.O. was practically applied in order to gain better knowledge of its actual practice as distinct from its conceptual representation, and c) description and analysis of the main components of that normative representation of the J.O. as a ritual. Such a typology should provide us with a preliminary – and, to my mind, necessary – step towards a better understanding of this institution.

The status of the Jews – in its constantly changing forms – evolved under the influence of two major ideological currents that largely determined the policies applied by the governing authorities (ecclesiastical and secular) as well as the positions evolved within the general public in regard to the Jews, and their imprints are usually traceable in the various types of the J.O. practiced during the period under discussion.

The more sophisticated of the two, mainly elitist and characteristic of the ecclesiastical and secular establishments, consisted in an Augustinian-type recognition²⁰ of the different roles that the Jewish people had been predestined to perform within the framework of the Divine Scheme of Salvation, or, put differently, within the Christian historical vocation, in each of its three constitutive stages: firstly, the Old Testament phase up to its termination in the Jewish crucifixion of Christ and the replacement of the Old with the New Covenant; secondly, the present, characterized by a progressively victorious and dominating *Ecclesia militans* as opposed to the servile, persecuted and exiled *Synagoga*; and, thirdly, the End of Time with the final conversion and

leut": the "fantasey" consists, in his view, not in regard to the very existence of such J.O. but to its specific, "seltzamer" form.

²⁰ See, recently, Paula Fredriksen, *Augustine and the Jews: A Christian Defense of Jews and Judaism* (New-York: Doubleday, 2008), and Jeremy Cohen, *Living Letters of the Law: Ideas of the Jews in Medieval Christianity* (Berkeley: University of California Press, 1999).

salvation of the last remnants of Judaism within the fold of the *Ecclesia triumphans*. The past and future phases of this scheme determined the incorporation of the Jew *qua* Jew in the Christian world-view and historical enterprise; Jews and Christians shared a common past, believed and worshipped (differently, of course) the same God, revered the Old Testament. Every Jew was considered a potential Christian from the eschatological perspective. Jews were thus seen as essentially integral to Christianity in terms which could not be applied to other non-Christians, be they pagans or Muslims, and this sense of inherence was most strikingly displayed in the widespread evolution of attitudes towards Jews among Christians who have never seen a living Jew, but were thoroughly familiar with the concept 'Jew'. The past and future phases of that scheme determined the simple recognition that the Jews should be allowed to exist in the midst of a Christendom theoretically defined as a homogeneous entity, *as una, sancta, catholica, Apostolica et Romana ecclesia*, but they also inspired different viewpoints about how that existence should be practically managed. Among the more popular conceptions one notes the idea that the Jews should indeed be allowed to exist but under such severe conditions as would ensure, in the first place, their due punishment for their past and ongoing rebellious, deicide and criminal deportment, and guarantee, furthermore, their usefulness to the Christians – by their utter servitude, by their safe-keeping of the *Old Testament* and thus functioning as *capsarii*, demonstrating the truth of Christianity and their own perfidy, and by exhibiting in public the spectacle of their justly deserved abasement and disgrace. It would also ensure, finally, the future conversion and salvation of certain predestined Jews at the End of Time, and Ramon Marti was quite formal about it: the Jews will see and comprehend the truth only “in fine dierum, i.e. circa finem mundi”.²¹ Petrus Alfonsi, with a foot in both camps, emphasized the exemplary, didactic aspect of that penal abasement, and quoted in this connection from both *Deut.* 28, one of the main sources for the J.O.'s maledictions section,²² and *1Reg.* 9 prophecy on the exile of Israel and the destruction of the Temple:²³ “ut universis gentibus serviatis, et in omnium oculis improprium et fabula et maledictio sitis... et ut sitis toti populo in parabolam, et proverbium quaerentibus omnibus ad invicem.”²⁴ William of Newburgh, watching the besieged Jews in York Castle on the eve of their massacre, sharpened considerably the penal and didactic aspects of those deicide Jews' public servitude and their persecu-

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²¹ Ramon Marti, *Pugio fidei contra Mauros et Judaeos* cap. XXIII:iii, (Leipzig: Typis Viduae Johannis Wittigav 1587), p. 955. [subsequent reference: Ramon Marti, *Pugio fidei*]

²² For example in the maledictions section of the 13th century J.O. of Aragon; cf. Jose Amador de los Rios, *Historia*, pp. 561-567.

²³ Petrus Alfonsi, *Dialogi*, PL 157, cols. 574-75; translation by Irven Resnick, *Dialogue against the Jews* (Washington: Catholic University Press, 2006), p.109.

²⁴ *Ibid.*

tion, by linking it to the role of the public display of the Cross of Crucifixion on churches' walls: abominating the Jews' deicide corresponds, in this perspective, to venerating the divine dignity of the Cross. The York massacre was, therefore, justified to a certain extent, for under Henry II the Jews exceeded the restraints imposed on them by their status and strove to be "felices et incliti", way above the Christians and to the Christians' detriment; under the new king, however, "their life, which they have obtained thanks to the clemency of Christ, was put in danger through His just judgment, though those who inflicted on them destruction in an irregular disturbance shall never be excused in His perfect judgment."²⁵

The second current was rooted in popular sentiments and passions rather than intellectual speculation, in the general public rather than the educated elites, though both currents frequently coincided – even combined – when emotions and ideas were translated into acts, and William of Newburgh was not unique in this respect. This current presupposed a blind, aggressive religious enmity as the principal moving force in the Jewish stance towards Christians, an elemental and irrational hatred explicable in religious and racial terms as the defining attribute of a diabolical – hence inherently deicide and perfidious – people/ religion.²⁶ Peter Abelard – in the footsteps of St Paul – already contrasted the irrationality of the "animal and sensuous" Jews with the philosophy-oriented rational Greeks,²⁷ and Ramon Marti further correlated this irrationality with the Jews' diabolical persecution of Christ and the Apostles – duly defined as "odium gratis" (clearly derived from the concept

²⁵ "Quippe eadem Christianae utilitatis ratione perfidus Judaeus, Domini Christi crucifixor, inter Christianos vivere sinitur, qua et forma crucis Dominicae in Christi ecclesia pingitur, ad continuandam scilicet cunctis fidelibus saluberrimam Dominicae passionis memoriam, cum tamen in Judaeo impiam execremur actionem, in sacra vero forma illa divinam devotione debita veneremur dignitatem; ita Judaei inter Christianos debent quidem pro utilitate nostra vivere, sed pro sua iniquitate servire. Porro Judaei in Anglia sub rege Henrico Secundo consistentes, ordine praepostero super Christianos felices et incliti fuerant, et ex multa felicitate impudentius tumendo contra Christum plurima Christianis gravamina irrogarent; propterea diebus novi principis vitae, quam de Christi habebant clementia, justo ejus judicio periculum pertulerunt, cujus tamen judicii ordine pulcherrimo nequaquam excusantur qui motu incondito cladem illis intulerunt.." (William of Newburgh, *Historia rerum Anglicarum*, Liber IV, cap. IX, ed. Richard Howlett, vol. I, London 1884, pp. 316-17).

²⁶ Florian Rommel, "ob mann im vrenht thutt, so wollenn wir jedoch habenn sein blutt"; Judenfeindliche Vorstellungen im Passionsspiel des Mittelalters", in: Ursula Schulze (ed.), *Juden in der deutschen Literatur des Mittelalters; Religiöse Konzepte - Feindbilder - Rechtfertigungen*, (Tübingen: Niemeyer Verlag, 2002), pp. 183-207.

²⁷ "...sicut ille vir doctor meminit. Nam et Judaei, inquit, signa petunt, et Graeci sapientiam quaerunt (I Cor. I, 22). Judaei quippe tantum, quod animales sunt et sensuales, nulla imbuti philosophia, qua rationes discutere queant, solis exteriorum operum miraculis moventur ad fidem..." (Petrus Abaelardus, *Dialogus inter philosophum, Judaeum et Christianum*, PL 178, col. 1637).

“שנאת-הינם”)²⁸ – and their diabolical restoration of the obsolete Law after the destruction of Jerusalem.²⁹ While the Augustinian concept foretold the Jews’ eventual conversion, this concept implied their complete elimination with only negligible bearing on their potential conversion. They were thus assimilated to all other non-Christian religious groups, though on a decidedly inferior level: for Jewish converts – unlike other non-Christian converts – were generally distrusted and impulsively rejected by the faithful. This current was initially overshadowed by the Augustinian concept and affected the policies on the Jews only marginally, mainly during exceptional crises (in the massacres that accompanied the First Crusade, for example), but by the Late Middle Ages and Early Modern period it exerted a much stronger influence on both policy-makers and the general public, provoking virulent hate-campaigns exemplified in numerous Eucharist-profanation allegations, blood-libels such as the Simon of Trent affair, the popular anti-Jewish plays and poetry created by Hans Folz³⁰ and the equally popular and ubiquitous obscene presentations of diabolical Jews in the public visual arts as epitomized in the notorious fresco on the bridge-tower in Frankfurt.³¹ It led up, finally, to the actual elimination – in some cases temporarily, in others permanently – of the greater part of the Christian-dominated Jewish diaspora through massacres and expulsions, in the Byzantine Empire, England, France, Spain, Italy and Germany. Both currents were practically combined – though unevenly and variably – during the period under discussion, and true appreciation of the J.O. implies, consequently, correct cognizance of both.

²⁸ “Dicendum, quod prima malitia operum Judaicorum istius ultimae expulsionis causa fuit reprobatio, exprobratio, atque repulsio Messiae nostri, nec non et persecutio ipsius, odium gratis, quo eum usque nunc odiunt et oderunt. Quod autem odium gratis, quo Judaei perfidi Dominum Jesum Christum odiunt, et oderunt ...” (Ramon Marti, *Pugio fidei*, Pars III, Dist. III, cap. XXI, p. 895), also “...Judaei Salvatorem nostrum, et discipulos ejus gratis et sine causa rationabili odiunt, et oderunt...” (*op.cit.*, p. 902).

²⁹ “Porro spiritus fornicationum, qui in medio i.e. in corde eorum est, quis melius dici debet quam Bentamalyon diabolus, qui restituit eis circumcisionem, et sabbatum, aliasque ceremonias, quas Deus abstulerat per Romanos; iste utique diabolus permittente Deo infatuavit eos, et abstulit eis sensum quoad veritatis intellectum, ita ut minoris intelligentiae sint in divinis scripturis quam asini ...” (*op.cit.*, p. 918).

³⁰ Winfried Frey, “The intimate other: Hans Folz’s Dialogue between ‘Christian and Jew’”, in: Albrecht Classen, (ed.), *Meeting the Foreign in the Middle Ages* (N.Y.: Routledge, 2002), pp. 249–67; August L. Mayer, *Die Meisterlieder des Hans Folz aus der Münchener Originalhandschrift und der Weimarer Handschrift Q.566*, (Berlin, 1908); Matthias Schönleber, “‘Der juden schant wart offenbar’: Antijüdische Motive in Schwänken und Fastnachtspielen von Hans Folz”, in: *Juden in der deutschen Literatur des Mittelalters; Religiöse Konzepte – Feindbilder – Rechtfertigungen*, ed. Ursula Schulze, Tübingen: Niemeyer Verlag, 2002), pp. 164–82

³¹ Numerous reproductions and useful commentaries in Georg Liebe, *Das Judentum in der deutschen Vergangenheit*, Leipzig 1903; Isaiah Shachar, *The Judensau; A Medieval Anti-Jewish Motif and its History*, (London: The Warburg Institute, 1974); Heinz Schreckenber, *Die Juden in der Kunst Europas; Ein historischer Bildatlas*, (Göttingen: Vandenhoeck & Ruprecht, 1996).

The increasingly vital role of the J.O. in any interaction between Jews and Christians should be evaluated in its true context, i.e. the progressive Christianization of European society, the steadily spreading processes of infusing the world with the divine, that culminated in the Lutheran and Calvinistic perception of the Christian vocation as the ‘calling into the kingdom of God in the kingdom of the world’ and fulfilling this vocation in any worldly station the faithful find themselves in. This process resulted, inevitably, in an obligatory recourse to the institution of the oath as a routine guarantee of the religious sanction and legitimacy of any given action. It is against this background that one begins to appreciate the true character and functions of the J.O.

The Christianization of society consisted, in the first place, of the universal adoption of the sacramental liturgy – the seven Major Sacraments and the numerous devotional “Minor Sacraments”, in Hugh of St.-Victor’s classification³² – as the essential and exclusive framework of Christian religious and social life in an ecclesial, ‘sacramental community’, founded upon and infused by the divine. These sacraments clearly determined the life-course of all Christians, individually and as members of corporate “Christian” social entities. Medieval society was thus uniformly defined as Christian, and the Christian vocation was seen as its most determinant and characteristic feature on all levels – starting with the family, moving into larger comprehensive solidarity groups such as the parish, the self-governing communes, professional unions of all sorts, the feudal/chivalrous networks, the universities, the state with its complex structures of governance and, finally, temporary sworn associations that targeted particular objectives (of the *Eidgenossenschaft* type) like the *Peace of God* movements – they all insisted on their Christian vocation, visibly expressed in both initiatory and recurrent oaths, other religious ceremonies and frequent public manifestations of that religious essence.

An ‘indifferent’ stance characterized those secular activities that were originally perceived as indifferent to the dominant Christian values. Many economic activities were largely seen as indifferent to either religion or ethics: the three-field system, practices of afforestation and particular methods of production employed in agriculture or the wool industry were neither hindered nor advanced by any Christian religious norm. But once these ‘indifferent’ matters were brought under religious – i.e. sacramental – regulation

³² “*De minoribus sacramentis et sacris... Sunt quaedam sacramenta in Ecclesia in quibus etsi principaliter salus non constat, tamen salus ex eis augetur, in quantum devotio exercetur...*” (Hugo de S. Victore, *De sacramentis*, Liber II, pars IX, and cap. I; PL 176, col. 471). Most of these Minor Sacraments were practiced “in ecclesia” in the restricted sense of the term – in church; but some of the “sacramenta in rebus vel factis expressa” (cap. VIII, col. 475), like the “... signaculum crucis... tunsio pectoris... inclinatio capitis, genuum curvatio, sive prostratio... expansio manuum...” (col. 475) are of obvious relevance to the oath-taking practices. See the complete list of the Minor sacraments on cols. 471-76.

through oath-taking, they became practically assimilated to the first, ‘active’ category; and Jews – theoretically unimpeded by any restriction consequent upon the particular nature of the secular activity involved – had to undergo, again, the J.O. typical to the ‘active’ stance.

The last category in this context comprises the variable response of the Christian society to formal contradictions between explicit religious guidelines and the inner logic of some secular activities. Specific prohibitions relating to working on Sundays, for example, or to fixing the “fair” price for merchandise and charging interest in the course of credit transactions were perceived as antithetical to the economic-type motivation to maximize profits and efficiency and – under certain conditions – to safeguard livestock, property and employment. Christian oath-takers were clearly restricted whenever they attempted to impose that conjunction of the human with the divine on conflictual situations of this type, but the Jews were relatively unimpeded, certainly in comparison with Christian creditors and pawn-brokers, and were practically allowed to fill the gap created by the Christians’ formal incapacity to override these stringent interdictions, undergoing – nonetheless – the moral opprobrium that inhered in such actions. Christians were explicitly prohibited from usury, for example, by a rigorous conciliar legislation, and the Fourth Lateran Council adopted the traditional rhetoric in this respect, yet practically allowed the Jews to keep on charging interest provided it did not fall into its definition of “*graves et immoderatas usuras*”, in order that “*ne [Christiani] a Judaeis immaniter aggraventur*”,³³ introducing the striking oxymoron – from a Christian perspective – of a ‘non-oppressive, moderate usury’. This inherently paradoxical situation is amply reflected in the special forms of the J.O. devised for this particular purpose.

Oath-taking fulfilled an increasingly important role in most formal socio-political structures, due, in the first place, to the progressive transformation of the traditional patterns of collective activity by and within traditional solidarity-groups into patterns of a more individualistic character. This process is evident in such disparate fields as politics, the legal system, the religious perceptions of the individual’s singular destiny and fate as exemplified in the growing emphasis on individual penitence and atonement after death, and, finally, in the evolving economy in its different branches, from production to consumption via commerce and supporting services such as finances and credit transactions. A typical example of that process bearing on both the legal and the economic spheres can be observed in the emerging role of the law of contract: it was quite small in any traditional set-up where obligations were rooted in custom and status rather than free choice, but became increas-

³³ Concilium Lateranense IV, canon LXVII: *De usuris Judaeorum*, in: Giovanni Domenico Mansi, *Sacrorum Conciliorum... Collectio*, vol. 22, (Paris: Hubert Welter, 1903), cols. 1054-55.

ingly significant in the new mental environment which emphasized the moral principle that a person should fulfill his self-imposed obligations, and underscored the mutual trust that should link together the parties cooperating in any pre-arranged exchange.³⁴

Christian oath-takings on the Gospel, the Cross, a relic or through other religious means secured the individual's compliance with the Christian norms believed to be essential for the correct functioning of a Christian society in all these fields, and they were practically synonymous with perceiving the 'social' as 'sacramental', with actively 'objectifying' the divine in actual life. Any oath-taking consisted, therefore, of two essential components. Firstly, a ritual in the strictly religious meaning of the term – an act of worship by means of which the oath-taker communicates directly with the deity, invokes its divine judgment in an ordeal-type appeal, and engages in expressive and suggestive acts (whose social dimension needs no demonstration)³⁵ consequent upon that communication with the divine. The second component is the practical, end-directed application of these rituals within the secular and earthly sphere of life-preserving and life-enhancing activities. This approach underlies Thomas Aquinas' analysis of oath-taking: "... in oath-taking one must consider two [components], namely the invoked testimony, and this is *divine*, and the thing [*id*] on which the testimony is invoked, or that necessitates the invocation of testimony, and it is *human*. Oath-taking belongs to religion on account of the first, not on that of the second."³⁶ And he explicates, further on: "oath-taking is not to be considered among the matters which are to be pursued for their own sake, but among those which are necessary for maintaining this life."³⁷ "for example in medicine, which is required in order to cure sickness".³⁸ By 1520 Erasmus concluded that "Oath-taking has become at present so common among Christians, that nothing is practically considered legally valid unless an oath-taking was administered";³⁹ this was clearly the outcome of the oath-taking's superior efficacy and adaptability to the whole range of social needs and *desiderata* in comparison with the regular sacrament, for oath-taking was relatively free and open to all Christians, did not require recourse to either ordained clergy or prescribed ritual and sacred

³⁴ P.S. Atiyah, *An Introduction to the Law of Contract*, 4th ed. (Oxford: Clarendon Press 1989), pp. 1-8.

³⁵ Frank Herbert Brabant, 'Worship in General', in *Liturgy and Worship: A Companion to the Prayer Books of the Anglican Communion*, ed. by William Kemp Lowther Clarke and Charles Harris (London: S.P.C.K. 1932), pp. 12-37.

³⁶ Thomas Aquinas, *Summa Theologica*, editio altera Romana, 2-2, q. 89, 4, (Romae: ex Typographia Forzani et s., 1894), p. 643 [subsequent reference: Thomas Aquinas, *Summa Theologica*]

³⁷ Thomas Aquinas, *Summa Theologica*, 2-2, q. 89, 5, p. 644.

³⁸ Thomas Aquinas, *Summa Theologica*, 2-2, q. 89, 5, p. 644.

³⁹ Desiderius Erasmus Roterodamus, *Responsio ad Annotationes Eduard Lei*, ed. Erika Rummel, (*Opera omnia*, IX/4), Amsterdam: Elsevier, 2003, p. 88.

location, targeted specific practical objectives and achieved, finally, immediate tangible results.

Jews were clearly excluded, in principle, from this ‘semi-sacramental’ Christian oath-taking, and, consequently, from any social activity in which such oath-taking was considered an integral component. Yet this idealistic, perfectionist vision of the “true Christian society” was clearly unrealizable in a religiously heterogeneous set-up, one in which Jews (or Muslims) were officially authorized to maintain their separate religious identity. Here, again, the historian is confronted by the familiar gap between the apparent seamless ideological integrity of the officially declared norms and the reality of life as it was actually lived.

The most striking expression of that contradiction is apparent in the practice of admitting Jews to participate in Christian oath-taking procedures bearing on joint ventures between Jews and Christians, in the two complementary functions – on the receiving as well as the pledging ends.

Lay Christians taking a Christian oath in their transactions with Jews seem to have posed, in general, no problem for their co-religionists; Simonsohn’s digest of the Sicilian notarial registers refers to numerous joint ventures of that type and quite a few specify that parallel oath-taking took place before the notary, with the Christian party swearing on the Gospels.⁴⁰ Ordained clergy, on the other hand, were explicitly prohibited from sanctioning – through Christian religious measures – “usurious” (i.e. credit-based) transactions between Jews and Christians, as in the thirteenth-century French synodal legislation which prohibited clergymen from acting as *fidejussores* to these transactions or drafting, registering and endorsing such contracts with their official seals.⁴¹ “A typical transaction of this kind from 1291 – notwithstanding the canonical interdiction! – is documented in a recently published manuscript from Vienne. It was registered before the *Archipresbyter* of Chatellerault, with the two Christian borrowers committing themselves under

⁴⁰ Simonsohn, *Sicily*, vol. 1 (1997), No. 304, pp. 536-380 (1299); vol. 2 (2000), No. 500, p. 734 (1337); No. 514, p. 734 (1338); No. 542, pp. 768-769 (1340); No. 602, p. 821 (1348); No. 722, p. 892 (1359); No. 740, p. 902 (1359); vol. 6 (2004), No. 3522, p. 3258 (1460); vol. 9 (2006) p. 5801 (1416); p. 5803 (1416); p. 5942 (1423). See also Baer, *Die Juden*, vol. I, No. 101 p. 110 (1270).

⁴¹ Angers 1265, C. 6.1 *De contractibus judeorum* (*Les statuts synodaux français du xiii^e siècle*, tome III, ed. Joseph Avril (*Collection de documents inédits sur l’histoire de France*, tome 19), Paris 1988), p. 88; Paris and the Synodal of the West, C. 67 (*Les statuts synodaux français du xiii^e siècle*, tome 1, *Les statuts de Paris et le Synodal de l’Ouest (XIII^e siècle)*, ed. Odette Pontal (*Collection de documents inédits sur l’histoire de France*, tome 9), Paris 1971), p. 76 and the additions in C. 70, p. 94; Cambrai, begin. 13th century, C. 130 (*Les statuts synodaux français du xiii^e siècle*, tome IV, *Les statuts synodaux de l’ancienne province de Reims*, ed. Joseph Avril (*Collection de documents inédits sur l’histoire de France*, tome. 23), Paris 1995), p. 60; Saintes, circa 1260, C. 81 (*Les statuts synodaux français du xiii^e siècle*, tome 5, *Les statuts synodaux des anciennes provinces de Bordeaux, Auch, Sens et Rouen (fin XIII^e siècle)*, ed. Joseph Avril (*Collection de documents inédits sur l’histoire de France*, tome 28), Paris 2001), p. 51.

oath to repay their Jewish lender on a certain date, and the *Archipresbyter* subjecting them to the penalty of practically instantaneous excommunication if they default on that commitment – the document is drawn-up, in fact, as a (conditional) proclamation of excommunication addressed to the *capellanus* of Ingrandes “and all others”.^{41a}

The Angers synodal legislation accounts for this interdiction by the “frequency of deceitfulness in the contracts of Jews, for very often in their contracts some things are done and other, simulated things are written down”, and as “simulated equity is not equity at all but a twofold iniquity”, this interdiction is manifestly intended to safeguard the probity of the clerical order.⁴² A much more fundamental motivation inspired an addition to the Paris synodal decrees: “for those who differ in their worship should have no common bond between them”, hence the extension of that interdiction to laymen as well.⁴³ The limited success of such prohibitions can best be appreciated against the background of a popular hagiographic legend: when a Christian debtor to a Jew gave him St Nicholas and his altar as sureties (*fidejussores*), and swore falsely on both that he had already paid his debt – after he had handed the Jew his hollowed stick stuffed with the required sum of money to hold for him while he took the oath – he was duly punished by the saint for that perjury.⁴⁴ A fifteenth-century German *responsum*, indeed, refers several times to an IOU received by a Jewish creditor from his Christian debtor as “a clergy-deed” – as distinct from a “Jewish deed”.⁴⁵ From the Jewish perspective,

^{41a} Stephane PERRAULT, “Cinq notes Hebraïques de comptabilité du XIIIe siècle (dettes d'Henri de Targe a Chatellerauld)”, *Revue des études Juives*, 172 (2013) 101-124, esp. doc. 5, pp. 117-121.

⁴² “Quia scriptum est quod simulata equitas non est equitas, sed duplex iniquitas, et in contractibus judeorum multociens simulaciones interveniant, cum sepiissime in illorum contractibus quedam agantur et alia simulate conscribantur.” (p. 88).

⁴³ “Prohibeant sacerdotes publice laicis sub anathemate cum Judeis commercia facere, mutuo ab eis pecuniam ad usuram vel aliquid accipere, eis vendere vel mutuo dare, vel ab ipsis emere; quorum enim dispar est cultus, nullus debet esse animorum consensus.” (p. 94).

⁴⁴ The strictly legal aspects of that procedure are repeatedly emphasised by both Jacobus a Voragine – “Vir quidam ... jurans super altare sancti Nicholai, cum alium fidejussorem habere nequiret... Trahit ergo [Judaeus] eum ad iudicium et juramentum indicitur debitori. ... Juravit illo, quod plus igitur reddiderit etiam, quam deberet. ...” (Jacobus a Voragine, *Legenda aurea*, cap. III, ed. Thomas Graesse, Reproductio phototypica editionis tertiae 1890, Osnabrück: Otto Zeller Verlag, 1969, p.27) – and by Gerald of Wales: “... de quodam qui pecuniam mutuam a quodam Judaeo accepit, qui beatum Nicholaum fidejussorem dedit et ejus altare. ... debitor ... cum ad altare Sancti Nicholai astaret, juraturus super altare hoc verum esse ... Et sic vindicta perjurii declarata et fraude detecta...” (Giraldus Cambrensis, *Gemma ecclesiastica*, Dist. I, cap. LII, in: *Opera*, vol. II, ed. J.S. Brewer, London, Longman 1862, pp. 156-57). Sancho Pansa was fortunate enough to have heard this story from his village-priest and to put it to good effect during his tenure as governor of his “island”.

⁴⁵ “מה שטען ראובן על שמעון, איך ששמעון מכר לו חובו שיש לו על הגוי קירשטין” שטני”ר כתב גלחות העומד ל’ ליטרין ... וראובן נתן לשמעון שטר חוב של יהדות עבור אותו נ’ ליטרין דמי המקח... (שאלות ומשובות רבינו יעקב ווייל, חלק הראשון, עריכה יונתן שרגא דומב, (ירושלים: מכון ירושלים, תשס”א [להלן: *שאלות ווייל*]), ס’ קסב, עמ’ רה).

though, such a demand amounted to a clear breach of a definite halachic interdiction, rooted in the Talmud and restated by later authorities such as R. Hananel of Kairouan⁴⁶ and Maimonides who listed it among the 'prohibitive precepts' (מצוות לא תעשה) as "Not to swear by idolatry to its worshippers nor to swear them on it",⁴⁷ "It is forbidden to swear a gentile on his divinity",⁴⁸ and again: "It is forbidden to make others take a vow and accomplish [it] in the name of idolatry".⁴⁹ *Sefer Hasidim* reiterates this interdiction in regard to both receiving and imposing – "and [a Jew] shall not say to a gentile 'by the faith of your God'. And he shall not say 'I swear you on your faith'",⁵⁰ and reports a *responsum* given to a Jew who attempted to circumvent this interdiction by an apt phrasing, and it concluded that the swearing of a gentile should be avoided altogether: "if you shall say to him 'by the God of Abraham' he shall be mindful of his error, and if you shall say to him: 'swear by him who was never born and was never killed' he will not respect that oath and you shall be responsible for what is defined [Ps. 144:8] as 'their mouths speak lies', therefore let it go".⁵¹ The actual relevance of this issue in the economic sphere can be measured by the behaviour of *Rashi*: when a gentile was obligated to swear to him, *Rashi* led him to a church "pretending to force him to swear, but he really did not mean to swear him" because of the halachic interdiction, and that was merely a ruse to make him confess. The gentile did swear, however, on the relics and contributed money to the church – and *Rashi* believed him and allowed him more time. "And since that day the Master took a decision never to trust a gentile with anything of importance, lest the gentile deny and be summoned to take an oath, and thus he would contribute money to Merkulus [Mercury] and idolatry be promoted. Furthermore, he [i.e. *Rashi*] would be seen to acknowledge that idolatry as though it were real by leading



⁴⁶ "וכתיב נמי (יהושע כ"ג ז) לבלתי בוא בגוים האלה הנשארים האלה אתכם ובשם אלהיהם לא תזכירו ולא תשביעו גו' מיכן שאסור לישראל להשביע לגוי, ויעוין בס' הלכה אדם מישאל שפינ[רש] מה שאמר אברהם אבינו עליו השלום אנכי אשבע אחר כרתו ברית עם אבימלך דהיינו שהתנה עמו שאם יהיה בניניהם דין ודברים השבועה שייכת לאברהם ולא לאבימלך דלא ישמע על פיך", (איש התורה, ירושלים תש"י, מצוטט בספר *חסידים*, ס' תיז, עמ' רצז).

⁴⁷ "שלא לשבע בעבודה זרה לעובדיה ולא משביעין אותן בה, שנאמר: "ושם אלהים אחרים לא תזכירו" (שמות כג' יג') (משה בן מימון, ספר *משנה תורה*, מהדיר יוחאי מקבילי, חיפה: דפוס "חמד" תשס"ט [להלן: משה בן מימון, ספר *משנה תורה*], מצוות לא תעשה, יד' עמ' 13).

⁴⁸ "ואסור להשביע לגוי ביראתו, ואפילו תזכיר שם עבודה זרה שלא זרך שבועה אסור, שנאמר: "לא תזכירו".
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⁴⁹ "ואסור לגרום לאחרים שידרו ויקימו בשם עבודה זרה" (שם, יא').

⁵⁰ "ולא יאמר לנכרי באמונה שיש לאלהיו. ולא יאמר אני משביעך על אמונתך" (ספר *חסידים*, ס' תכז, עמ' שא-שב).

⁵¹ יהודי אחד היה צריך שישבע לו הגוי שאל לחכם אם אוכל להשביע כך שיאמר הנכרי באלהי אברהם יצחק ויעקב אמר החכם ... אם תאמר לו אלהי אברהם דעתו על טעותו ואם תאמר לו תשבע באותו שלא נולד ולא נהרג הרי אותה שבועה לא יהא חושש בה וישקר ואתה תגרום וכתיב (תהלים קמ"ד ח) "אשר פיהם דיבר שוא", לכן חדל לך. (ספר *חסידים*, ס' תיז, עמ' רצז-רצח).

people to swear on it.”⁵² The *Maharam*⁵³ followed *Rashi's* vigorous position, although a much more nuanced opinion is attributed to him posthumously in a *responsum* which permits to receive oath from Christians if it does not specifically name Christ and if it safeguards Jewish property, evoking the principle that that prohibition derives from the Sages rather than from the Torah itself, and is, therefore, of a lesser binding force.⁵⁴ Here again we notice the blatant contrast between abstract, value-charged norms on the one hand and the practical needs of day-to-day economic activity which clearly required diversified Jewish-Christian interaction, on the other. The halachic interdictions were, indeed, not infrequently ignored and even relaxed and put in abeyance as early as the twelfth century: R. Tam allowed such swearing of gentiles on the grounds that it safeguards Jewish property, while R. Yitzhak b. Shmuel tolerated it on a much more significant grounds: “There is another reason for allowing it, for they swear on what is sacred to them which they call Gospels and do not consider them a divinity, and although they call on a deity and allude to Jesus Christ they do not specifically name idolatry and refer, furthermore, to the Creator of heaven and earth”.⁵⁵ The halachic consequences of this new perception of the Christians as legally distinct and different from the ‘idolatrous’ gentiles were, obviously, diverse and far-reaching. Another common way of practically silencing the halachic interdiction by the halachic establishment itself was summed up in the legal maxim “They shall better [sin] erroneously than intentionally”.⁵⁶ These diverse halachic approaches to

⁵² “פעם אחת נתחייב גוי שבועה לרבי, והוליקו רבי עד פתחה של עבודה זרה, כאילו הוא רוצה להשביעו. אבל לא היה בלבו להשביעו, שהרי אמרו חכמים אסור לו לאדם שיעשה שותפות עם הגוי, שמא יתחייב לו שבועה [ונשבע בעבודה זרה שלון] והתורה אמרה לא ישמע על פיך [שמות כ"ג י"ג] אבל מראה היה כדי שיודה, והביאו רבב העצמות הקדשים והניח הגוי עליהן פרוטה, כדי לקלון עבודה זרה ויאמן רבי ונתן לו זמן לשובעתו. ומאותו היום קבל עליו רבי שלא יתן עם הגוי באמונה דבר שגדול בעיניו שמא יכפור הגוי ולא ימנינו לשובעה, כדי שלא יניח גוי מעות למרקולוס ונמצא עבודה זרה נהנית על ידו. ועוד שמראה כאלו יש ממש בה שהוא מביא לעבודה זרה לישבע בה.” (שלמה בר' יצחק, ספר האורה, ערך שלמה באבער, למברג 1905 (בני-ברק תשנ"ט/1999), דין שבועות עבודה זרה, ס' קנג, עמ' 228-229).

⁵³ “ועל מה שכתבת על הנשבעים באשמת שומרון, ועיקר משאם ומתנם סומכים על זה וחיים, ואף לידי קשה לי, וכמה פעמים צווחתי כ[כרוכיא] על ככה, ואין שומע לי ... ואין בידי למחות, לפי שתולין באילן גדול – ר"ת, שמתירים משום דגוים דחוצה לארץ לא עובדי ע"ז הן. ועוד כי בזמן הזה כולם נשבעים בקדישים שלהן ואין תופסין בהן אלהות. אע"פ שמזכירים עמהם שם שמיים וכוונתם [עצמם] לישו הנוצרי, אין מזכירין שמו בפירוש. ואם בלבם מחשבים עליו, דברים שבלב אינם דברים, ועוד, [כ]ן דעתם לעושה שמיים [וארץ]... והמגיד שאני הוריתי להתיר כיהש לך, כי בכל דבר שהגדולים חלוקים, אני מורה להחמיר...” (ר' מאיר בר' ברוך [מהר"ם] מרוטנבורג, תשובות פסקים ומנהגים, עריכה יצחק זאב כהנא, חלק ב', ירושלים: הוצאת מוסד הרב קוק, תש"ך [להלן: שלת מהר"ם] ס' נו, עמ' נב-נג).

⁵⁴ “ואמר הר"מ ז"ל, אם חייב גוי לעשות לישראל שבועה מותר לקבלה ממנו כדפירש ר"ת, ובלבד שלא ישבע בפירוש. לפי שמה שאסור ליקח שבועה מן הגוי זה אינו כי אם מדרבנן. לישראל הוא אסור מדאורייתא להזכיר שם ע"ז על פי, אבל לגרום, שהגוי יחזיקו ויתר מדרבנן. [והואיל והוא מדרבנן אין] מותר; מפני שהוא כמצול מידם...” (שלת מהר"ם, ס' ככה, עמ' רכט).

⁵⁵ “כי יש היתר אחר כי נשבעים בקדשים שלהם הנקרא עוון גליון ואין תופסים בהם אלהות, ואף על פי שמזכירים שם שמיים וכוונתם לישו הנוצרי, אין מזכירים שם עבודה זרה, וגם דעתם לעושה שמים וארץ.” (רבינו ירוחם, ספר תולדות אדם וחווה, נתיב יז, ה', מצוטט ע"י יעקב כץ, בין יהודים לגויים: יחס היהודים לשכניהם בימי הביניים ובתחילת הזמן החדש, ירושלים: דפוס גולדברג, 1960, עמ' 44).

⁵⁶ “מוטב שיהיו שוגגין ולא מזידין”

the problem⁵⁷ testify clearly to its very actuality and, on the whole, allowed Jews – explicitly or otherwise – to make Christians take a Christian oath, and they certainly did so when the circumstances required such action.

The reciprocal element in this process of participation consisted of Jews taking a Christian oath, or some of its components, and we possess enough documentary material to suggest that this practice was not entirely exceptional. Pedro III, for example, confirmed in 1283/4 a decision taken by the Cortes of Barcelona that in a lawsuit between a Christian and a Jew, when the oath determines the affair, the Jew must take an oath on the ‘Plagues of Egypt’ in the Church of Saint-Just,⁵⁸ and notarial registers from Sicily transmit several references to Jews taking oath on the Gospels: this practice was followed in a business transaction between three Jews in 1351⁵⁹, a partnership between a Jew and a Christian in 1359,⁶⁰ another ‘mixed’ partnership between a Jew and two Christians in 1418,⁶¹ and, finally, when a Jew was granted a royal license to practice medicine in 1452.⁶² One tends to explain away these references as “scribal errors” committed by overworked notarial clerks, but the 1418 notice is quite explicit: three ship-owners, one of them a Jew, entered a partnership to operate the good ship *Santa Maria* and registered the contract with the notary, “Et ad maiorem cautelam omnium promissorum... *omnes tres* [emphasis mine, A.L.] *ad Sancta Dei Evangelia corpore tactis scripturis iuraverunt.*”⁶³ The reality of such practices can also be deduced from the critical voices raised against them from within the Jewish community. Halachic prohibitions, in the first place, and Maimonides – as we have already seen in reference to the other expression of this equation, making a gentile swear an “idolatrous” oath – condemned in no uncertain terms “taking oath on idolatry to idolaters”,⁶⁴ and again – “he who vows or takes an oath in the name of idolatry is to be punished ... whether he takes it for his own sake or for the sake of a gentile”,⁶⁵ “and he is to be punished who vows in the name [of idola-

⁵⁷ יעקב כץ, “שלושה משפטים אפולוגטיים בגלגוליהם”, ציון כ"ג-כ"ד (תשי"ח-תשי"ט 1958-1959) עמ' 174-193: בין יהודים לגויים: יחס היהודים לשכניהם בימי הביניים ובתחילת הזמן החדש. ירושלים: דפוס גולדברג, 1960, בעיקר עמ' 42-45: חיים סולובייצ'יק, יינם: סחר ביינם של גויים – על גלגולה של הלכה בעולם המעשה, תל-אביב: עמ-עובד, 2003.

⁵⁸ Régné, *History*, No. 1100, p. 199.

⁵⁹ Simonsohn, *Sicily*, vol. 2, (2000), No. 647, pp. 849-50.

⁶⁰ Simonsohn, *Sicily*, vol. 2, (2000), No. 746, pp. 907-08.

⁶¹ Simonsohn, *Sicily*, vol. 10, (2007), pp. 6263-65.

⁶² Simonsohn, *Sicily*, vol. 5, (2003), No. 2994, p. 2812.

⁶³ “And for a better guarantee of all the promises... all three took an oath on God’s Sacred Evangels, a corporal [oath] by touching the Scriptures”.

⁶⁴ See footnote 48.

⁶⁵ “הנודר בשם עבודה זרה, והנשבע בה – לוקה, שנאמר “ושם אלהים אחרים לא תזכירו (שמות כג' יג). אחד הנשבע בה לעצמו ואחד הנשבע בה לגוי.” (משה בן מימון, ספר משנה תורה, ספר ראשון: הלכות עבודה זרה וחקות הגויים, פרק המיש, י' עמ' 68).



Fig 1: Trust **but** Look Out! The Three Arch-Swindlers

This seventeenth-century copperplate engraving presents us with the three arch-swindlers: the J.O.-taker Jew in the center, marked by the distinctive Jewish wheel-formed *rota*, clasping ritually his 'sacral' dress-fringes (*tzitzit*) with his right hand⁶⁶ and raising his left hand in the traditional swearing posture, with an armed soldier on his right and a growling wolf on his left. The inscription spells out the message, already summed up in the motto above, in Latin – "Predator lupus et Iudaeus apella,⁶⁷ sequitor/ Militiae Libycis conspurcant ructibus Orbem." ["The predator wolf, Apella the Jew and the Lybian military man defile the world with their eructations"], and, more decisively, in German – "Wer einem Wulf fravt auff der heyd,/ einem Iuden auff seinem eyd./ Und einem Kriegsman bey sein gewissen/ der wirdt von allen dreyen beschissen." ["He who trust a wolf on his skin,/ a Jew on his oath,/ and a military man on his conscience,/ will be beshitted on by all three"].

Source: Schreckenberg, p. 358, no. 2.

⁶⁶ This was one of the more popular modes of taking J.O., as in Simonsohn, *Sicily*, "tacta lacinia vestimenti", vol. 1 (1997), No. 298, p. 490; "tacto lacinio," vol. 1 (1997), No. 301, p. 533; "tacta fibra vestimenti per modum iuramenti" vol. 2 (2000), No. 364, p. 646; "tactus fimbris", vol. 2 (2000), No. 722, p. 892 and No. 740, p. 902; "dicte Iudae mulieres iuraverunt et probaverunt tactis fimbris secundum legem earum mosaycam", vol. 2 (2000), No. 836, p. 953; "tactis vestimentis ut mors est secundum legem mosaycam... iuravit", vol. 9 (2006), p. 5814; "omnes Iudei iuraverunt, tactis fimbreis, Iudeorum more", vol. 12, (2008), p. 7669..

⁶⁷ A manifestly unfortunate appeal to Horace, *Sat. I, 5, 100-101*: "credat Iudaeus Apella, Non ego" – the poet treated the Jew as credulous, but the citation marks him as the one not to be trusted, impressed, obviously, by Horace's "Non ego [credo]".

⁶⁸ Reference to the wolf's ability to change the colour of its skin in different environments.

try] ... and takes an oath in its name".⁶⁹ The contemporary bearing of these prohibitions is made clear from his definition of the term 'idolatry': "the Christians are worshippers of idolatry".⁷⁰ The reality of such practices can be observed, once again, through the admonitions of *Maharam* in the above-mentioned *responsum* – where he alludes to Jews "who swear by the sin of Samaria",⁷¹ and in *Sefer Hasidim*, which warns the impious that "... a man intending to take an oath to a gentile shall not say 'I shall take a false oath on his god'; this too he shall not do. And a man shall not think 'I shall defile the idolatry and urinate on it or defecate on it', for this is what they were doing [i.e. worshipping, A.L.] to Peor."⁷² The ideological position they illustrated could not have been kept a guarded secret for long – the converts hastened to expose it once they settled into their new environment, and the Pfefferkorn episode (1510) is a typical example of this process.

This seventeenth-century copperplate engraving presents us with the three arch-swindlers: the J.O.-taker Jew in the center, marked by the distinctive Jewish wheel-formed *rota*, clasping ritually his 'sacral' dress-fringes (*tzitzit*) with his right hand⁷³ and raising his left hand in the traditional swearing posture, with an armed soldier on his right and a growling wolf on his left. The inscription spells out the message, already summed up in the motto above, in Latin – "Predator lupus et Iudaeus apella,⁷⁴ sequutor/ Militiae Lybicus conspurcant ructibus Orbem." ["The predator wolf, Apella the Jew and the Lybian military man defile the world with their eructations"], and, more decisively, in German – "Wer einem Wulf trawt auff der heyd,/ einem Iuden auff seinem eyd./ Und einem Kriegsman bey sein gewissen/ der wirdt von allen



⁶⁹ "ואינו לוקה אלא הנודר בשמה והמקים בשמה, והוא הנשבע בשמה" (משה בן מימון, ספר משנה תורה, ספר ראשון: הלכות עבודה זרה וחקות הגויים, פרק תמישי, יא' עמ' 68).

⁷⁰ "הנוצרים עובדי עבודה זרה הם" (משה בן מימון, ספר משנה תורה, הלכות עבודה זרה וחקות הגויים, פרק תשיעי, ד' עמ' 73)

⁷¹ "הנשבעים באשמת שמרון ואמרו חי אלהיך דן וחי דרך באר-שבע" (עמוס ח' יד')

⁷² "ולא יאמר אדם כשהוא רוצה לישבע לגוי אשבע לו באלהותו לשקר גם זה לא יעשה. ואל יחשוב אדם אעשה בווי לעבודה זרה ואשתין עליו או אעשה צואה עליו כיון שהיו עושין לפעור כך" (ספר חסידים, ס' תכו עמ' שב).

⁷³ This was one of the more popular modes of taking J.O., as in Simonsohn, *Sicily*, "tacta lacinia vestimenti", vol. 1 (1997), No. 298, p. 490; "tacto lacinio," vol. 1 (1997), No. 301, p. 533; "tacta fibra vestimenti per modum iuramenti" vol. 2 (2000), No. 364, p. 646; "tactus fimbriis", vol. 2 (2000), No. 722, p. 892 and No. 740, p. 902; "dicte iudee mulieres iuraverunt et probaverunt tactis fimbriis secundum legem earum mosaycam", vol. 2 (2000), No. 836, p. 953; "tactis vestimentis ut mors est secundum legem mosaycam... iuravit", vol. 9 (2006), p. 5814; "omnes Iudei iuraverunt, tactis fimbreis, Iudeorum more", vol. 12, (2008), p. 7669..

⁷⁴ A manifestly unfortunate appeal to Horace, *Sat. I, 5, 100-101*: "credat Iudaeus Apella, Non ego" – the poet treated the Jew as credulous, but the citation marks him as the one not to be trusted, impressed, obviously, by Horace's "Non ego [credo]".

dreyen beschissen.” [“He who trust a wolf on his skin,⁷⁵ a Jew on his oath,/ and a military man on his conscience,/ will be beshitted on by all three”].

Source: Schreckenber, p. 358, no. 2.

Jewish participation in the Christian oath-taking processes resulted, obviously, in a very low public esteem of the oath-takers' morality as well as their trustworthiness, the two central pillars of any efficacious contractual activity. Professional jurists generally agreed that such false oaths were legally valid, usually by distinguishing between the oath-taker's (fraudulent) intention and the truthfulness and validity of the matter dealt with, or between the different intentions of the oath-taker and its recipient. Magister Peter Lombard, for example, argued that when a Jew declares deceitfully that Christ is God he lies, indeed, but what he says is by no means a lie, and therefore perfectly valid.⁷⁶ Others ascribed the oath's validity to the *intentio* of the recipient rather than that of the oath-taker, citing the precedent of the blessing Jacob fraudulently obtained from Isaac. This argument was advanced by Peter of Blois, who stated (in reference to the J.O.) “an oath should be accepted according to the intention of the person for whom it is taken”,⁷⁷ and emphasized that an oath differs in this respect from all other human acts,⁷⁸ which are defined by either the doer's intention⁷⁹ or by their proper, objective essence. An identical approach was adopted by Ives of Chartres,⁸⁰ Simon of Tournai,⁸¹ and by Henry Bracton, who included in his survey of the various types of perjury the conscious perjury which turns out to be an authentic oath unbeknown to the oath-taker, and illustrated this type with the apparently hypothetical case of

⁷⁵ Reference to the wolf's ability to change the colour of its skin in different environments.

⁷⁶ “*Quaestio de Iudaeo qui dicit Christum esse Deum. – Hic quaeri solet, si Iudaeus dicat Christum esse Deum, cum non ita sentiat animo, utrum loquatur mendacium. – Non est mendacium quod dicit, quia licet aliter teneat animo, verum est tamen quod dicit, et ideo non est mendacium; mentitur tamen illud quod verum est dicens.*” (Magister Petrus Lombardus, *Sententiae in IV libris distinctae*, Liber III, Dist. XXXVIII, cap. 4 (*Spicilegium Bonaventurianum*, V), Grottaferrata, Collegii S. Bonaventurae ad Claras Aquas, 1981), p. 216.

⁷⁷ *The Later Letters of Peter of Blois*, ed. Elizabeth Revell, No. 58.8 (*Auctores Britannici Medii Aevi*, tom. XIII) Oxford, Oxford University Press, 1993), p. 267.

⁷⁸ “Sed aliud est in iuramento, aliud in simplici verbo” [“an oath differs from simple utterance”], *ibid.*

⁷⁹ “Scimus quod intentio hominis operi suo nomen imponit” [“We know that a person's intention defines his act”], *op. cit.*, p. 266.

⁸⁰ “Quod Deus sic iuramentum accipit, sicut ille cui iuratur intelligit” [“That God accepts an oath according to the meaning perceived by the person for whom it is taken”] (Ivo Carnotensis, *Decretum*, PL 16, Pars XII, Cap. 36) col. 789.

⁸¹ “Iusiurandum accipitur ex intellectu illius non qui iurat, sed cui iuratur.” [“An oath should be accepted not according to the meaning of the oath-taker, but of the person for whom it is taken”] (Simon de Tournai, *Disputationes*, ed. Joseph Warichez (*Spicilegium sacrum Lovaniense*, 12), Louvain 1932 *Disputatio XXI*) p. 71.

a Jew affirming, even swearing, that Christ was born of a virgin, concluding that that Jew would be guilty of lying as well as perjury, though the statement itself was objectively true. Such cases, as we have seen, were not entirely hypothetical.

If jurists could agree on a working formula that condemned the Jew's perjury yet preserved his oath's validity, the public image of the Jew as perfidious, fraudulent and deceitful by nature was further reinforced through such practices, especially when oaths were popularly assimilated to and associated with other Christian sacramental acts and objects. 'Jewish perfidy' was most visibly and routinely 'exposed' in the economic sphere, from the banal, daily commercial transactions to high-finance ventures. We have already encountered the outspoken Angers synodal interdiction on this matter, and when Petrus Alfonsi enumerated the sins for which the Jews were condemned to suffer the Second Exile, he started, typically enough, with their fraudulent economic activities – "usury and receiving iniquitous profit, swearing false oaths, paying with false money in their buying and selling, bearing false testimony, defaming one another"⁸² – and then moved on to their other sins against man and God. Ramon Marti adduced Talmudic references for his statement that "the Jews deduce from these and similar passages that they can – even must – deceive Christians and other non-Jews",⁸³ and Hans Folz articulated this attitude in his popular plays, for example in his Shrove Tuesday play *die alt und neu ee*.⁸⁴

With this sort of oath-taking by Jews highly suspect (hence self-defeating) and regularly condemned, the only formal and generally-accepted way by which Jews could access "Christian" institutions – social, political or juridical – passed, therefore, through a specially designed J.O., a sort of 'marginal', 'extraordinary' and *ad hoc* – sometimes *ad hominem* – sacramental oath that recognized the Jewish particular role and status within the context of the general Christian ecclesial vocation, and could be reasonably trusted by the Christian side because it was sustained, this time, by objects and measures held sacred and binding by the Jews themselves.

Such special oaths were instituted, as we have seen, since the Early Middle Ages, but new initiatives in this direction owed much to the new Canon-Law approach to the problem of the legal validity of non-Christian oaths sworn to

⁸² "...usuram, vel munus pro iniquitate accipere, juramentum falsum jurare, in vendendo et emendo pecuniam falsam dare, falsa testimonia dicere, alterutrum detrahere..." (Petrus Alfonsi, *Dialogi*, Tit. II., PL 157, col. 568; Resnick trans, p. 98.

⁸³ "Ex his, et similibus assumunt Judaei rationem, quod possunt, et debent Christianos, aliosque qui non sunt Judaei, decipere." (Ramon Marti, *Pugio fidei contra Mauros et Judaeos*, Tertia Pars Dist. III Cap. XXII, Leipzig Typis Viduae Johannis Wittigav 1587), p. 935.

⁸⁴ *Ein Vasnachtspiel, die alt und neu ee, die Sinagog, von uberwindung der juden in Talmut etc.* in: *Fastnachtspiele aus dem Fünfzehnten Jahrhundert*, Bibliothek des Literarischen Vereins in Stuttgart, XXVIII (Stuttgart 1853), see esp. pp. 16, 17.

Christians by non-Christian litigants and business partners.⁸⁵ The canonists did not invent the J.O., but they contributed perceptibly to its accelerated evolution since the twelfth century. Yves of Chartres was probably the first canonist to resurrect Augustine's recognition of the validity of pagan oaths sworn in good faith and in good cause: "In truth, there is no doubt at all that it is less reprehensible to swear truthfully by false gods than falsely by the true God".⁸⁶ In the original passage quoted *in extenso* by Yves a distinction is made between the oath's two functions: the ritual appeal to the divinity on the one hand and safeguarding the interpersonal faith (*fides* in the sense of 'trustworthiness') – in order to maintain "good and legal" social bonds – on the other. His rubric-summaries leave no doubt as to his own position, for the rubric to the *Decretum* text repeats Augustine's maxim quoted above,⁸⁷ and the parallel *Panormia* text is headed: "Licet uti fide ejus qui ut eam servet, per daemona jurat".⁸⁸ Peter Lombard quoted Augustine's text verbatim, though without giving his own view on the matter.⁸⁹ The decisive step in investing the Augustinian position with a clear legal authority was made by Gratian in his *Decretum*: he quotes the Augustinian text in its entirety and supplements it with a substantial commentary which deals with various pertinent issues and, more importantly from our particular point of view, reinforces Augustine's legal/philosophical discussion with the precedent received from the Bible of the alliance between the Romans and the Jews; it was duly sworn by both parties – the Romans on their false gods and the Jews on the true God.⁹⁰ Later canonists such as Magister Rufinus⁹¹ and the *Summa Parisiensis*⁹² followed closely in his footsteps, adopted his combined text – the Augustinian

⁸⁵ See Walter Pakter, "Did the Canonists prescribe a Jewry-Oath?" *Bulletin of Medieval Canon Law*, n.s. 6 (1976) 81-87, and Diego Quaglioni, "Gli Ebrei e il giuramento nell'età del diritto comune", *Rivista di storia e letteratura religiosa*, XL (2004) 113-128, for references to additional sources and different perspectives on this problem.

⁸⁶ Ivo Carnotensis, *Decretum*, Pars XII, Cap. 34, PL 161, col. 789; *Panormia*, Lib. VIII, Cap. 117, PL 161, col. 1333.

⁸⁷ Col. 789.

⁸⁸ "It is licit to accept the faith of him who swears on the demons to keep it" (Col. 1333).

⁸⁹ Magister Petrus Lombardus, *Sententiae in IV libris distinctae*, Liber III, Dist. XXXIX, cap. 8, *De illis qui iurant per falsos deos (Spicilegium Bonaventurianum, V)*, (Grottaferrata, Collegii S. Bonaventurae ad Claras Aquas, 1981) p. 224.

⁹⁰ Causa XXII, Quaestio I, c. XVI. *Licet uti fide ejus, qui ut eam servet, per demonia iurat (Decretum Magistri Gratiani, ed. Aemilius Friedberg (Corpus iuris canonici, editio Lipsiensis secunda, pars prior), (Leipzig, officina Bernhardi Tauchnitz, 1879), cols. 865+66.*

⁹¹ Magister Rufinus, *Summa Decretorum*, ed. Heinrich Singer, (Paderborn, Verlag Ferdinand Schönningh, 1902), pp. 392-93. Rufinus tried to make sense of Augustine's reference to Laban swearing "per deum Sochet", assuming (wrongly) that Augustine received this reading from the LXX translation.

⁹² *The Summa Parisiensis on the Decretum Gratiani*, ed. Terence P. McLaughlin, (Toronto: Pontifical Institute of Mediaeval Studies, 1952), pp. 201-2.

original *Movet te* with his appendix *Romani* – and emphasized the centrality of the *fides* concept in its ‘trustworthiness’ sense, while others maintained Gratian’s general arguments but added some original colourings: Peter of Blois betrays some hesitation about Augustine’s explicit acceptance of the oath-taker’s idolatry,⁹³ while Thomas of Chobham (explicitly)⁹⁴ and Alexander of Hales (rather more obscurely)⁹⁵ focus on the practical, circumstantial character of such oaths as means to ensure mutual trust between Christians and non-Christians, as a sort of lesser, necessary evil. A categorical denial of the Augustinian approach was quite rare, but not entirely unknown: it was affirmed in the *Apparatus ‘Anima est substantia’* from 1206/10, while some skeptics – like Guillelmus Durantis⁹⁶ – preferred to leave the decision in each case to the presiding judge, adopting, in effect, the practical, circumstantial approach, and testifying, *en passant*, to the judicial actuality of the J.O. An earlier and more direct testimony was given already by Peter of Blois, when he stated that the Church effectively compelled “Jews to swear on the Torah Scroll and the

⁹³ He formulates some hard questions in this regard, but leaves them unresolved: “Numquid minus malum est, sicut auctoritas dicit, per falsos deos iurare veraciter quam per ipsum deum iurare fallaciter? Nonne iurare per falsos deos est idolatria, que maius peccatum est quam falso iurare per deum? Estne semper mortale peccatum recipere iuramentum illius quem scimus iurare falsum?” [“Is it less reprehensible – as the authority claims – to swear truly on false gods than to swear falsely on God himself? Is it not the case that swearing on false gods is idolatry, which is a greater sin than swearing falsely on God? Is it not an absolute mortal sin to receive an oath from a person who we know swears always falsely?”] (*The Later Letters of Peter of Blois*, No. 53, ed. Elizabeth Revell, (*Auctores Britannici Medii Aevi*, tom. XIII) Oxford, Oxford University Press, 1993), p. 243.

⁹⁴ “Videtur autem quod christiani mortaliter peccant qui recipiunt iuramenta a iudeis et paganis per falsam fidem et per idola sua, quia aliter non crederetur eis. Et necesse est christianis quod aliquo modo faciant eis fidem iudei vel pagani, nec ipsi aliter volunt nec forsitan possunt eis facere fidem. Istud autem forsitan sustinet ecclesia propter maius periculum vitandum” [“It seems that those Christians commit a mortal sin who receive from Jews and pagans oaths taken on a false Faith and on their false idols, for otherwise they shall not be believed. And it is necessary for Christians that the Jews and the pagans should have faith in them in some way, and they themselves do not want and, perhaps, cannot have faith in them in any other way. The Church tolerates this, probably, in order to avoid a much greater danger”] Thomas de Chobham, *Summa Confessorum*, Art. VII, Dist. 11, Quaestio VIII, cap. IIII: *De iuramentis iudeorum et paganorum*, ed. F. Broomfield, Louvain/Paris, Ed. Nauwelaerts, 1968 (*Analecta Mediaevalia Namurcensia*, 25), p. 551.

⁹⁵ Answering the objection to Augustine’s formula – “Contra: hic est idolatria, ibi non.” [“In contrast: in this case there is idolatry, there none.”] The author maintains that “Dicendum quod Augustinus considerat genus peccati et non circumstantiam; sed quoad circumstantia, reliquum est maius peccatum.” [“It should be said that Augustine considers the type of sin rather than the circumstances; and as for the circumstances, the alternative is a greater sin”] (Alexander de Hales, *Glossa in Quatuor Libros Sententiarum Petri Lombardi* III, *Sententiarum Lib. III*, Dist. XXXIX (AE), 19 (*Bibliotheca Franciscana Scholastica Medii Aevi*, tom. XIV) Quaracchi Florentiae, ex Typographia Collegii S. Bonaventurae, 1954), p. 528.

⁹⁶ Pakter, *op. cit.*, pp. 83–84.

pagans on their idol or on Mahomet's Book",⁹⁷ and the fourteenth-century J.O. of the Saxon *Weichbildrecht* formally declared that its procedure was based on the principle laid down in the canon *Movet te*, namely that "the Jews should take their oath according to their proper legal procedures", and the same statement was repeated in an appendix to that text which contested the attempt to reform the J.O. in a new, degrading manner.⁹⁸

Peter of Blois' statement that the J.O. was imposed on the Jews by the Church accurately indicates the nature of the J.O. as a Christian rather than a Jewish institution, even though various types of oath-taking were routinely and concurrently practiced by both Jews and Christians, and some of their oath-taking procedures exhibited common traits due to parallel evolution, to a commonly shared veneration of and recourse to the Old Testament and, occasionally, to direct transference between the two communities operated by cooperative Jewish communal functionaries and knowledgeable converts. The striking similarities between the Jewish and the Christian self-maledictions employed in oath-takings and in other rituals⁹⁹ could have resulted from such a common/analogous evolution, but the self-maledictions – some of them in Hebrew – that the convert Pfefferkorn inserted in the J.O. he formulated in 1510 were clearly borrowed from contemporary Jewish oath-taking practices.¹⁰⁰ Yet the J.O. was, first and foremost, a Christian institution, devised and administered by Christian authorities in complete consistency with Christian beliefs and religious practices, and even when performed by individuals in the course of strictly private dealings and outside any public jurisdiction it followed, on the whole, the main lines of the public, official model. The J.O. evolved, consequently, in close dependence on the Christian oath-taking, which reflected the main features of the Christian worship; its practical use and efficiency in any given instance were determined, in principle, by the degree of conformity between these three distinct yet organically linked levels of action. The close affinity between the J.O. and the Christian oath-taking can be observed, *inter alia*, in their numerous parallelisms and identical performances: parallelisms such as the swearing on the Gospel mirrored by

⁹⁷ "... infidelium iuramenta, ut iudeorum super rotulm vel gentilium super idolum vel super Machometi librum, et ecclesia quidem sic solet eos compellere ad iurandum." (*op. cit.*), p. 243.

⁹⁸ "Ir sollet wissen: das dy juden iren eyd thun sullen noch iren sachen. C. XXII, q. I, c. 16, *Movet te*." (Zimmermann, *Die Entwicklung*), pp. 146, 148.

⁹⁹ Ample primary material in Lester K. Little, *Benedictine Maledictions: Liturgical Cursing in Romanesque France*, (Ithaca: Cornell University Press, 1993).

¹⁰⁰ Johannes Pfefferkorn, *Zu lob und Ere des aller durchleichtigsten und grossmechtigsten Fürsten und herren herr Maximilian...* (Augsburg 1510). See, for example, the largely 'Germanized' and occasionally distorted Hebrew items such as "Onache Adonay Ellohecho" [אנכי אדוני אליהו], "Schmeham foras" [שם המפורש], "Jodhevauhe" [יוד הוא וו הא], "Schoffar moschia" [שופר מושיע], "leviathan" [לוייתן], "Jagyn capprisyn" [יין קפריסין], "moso kytvasch" [מתוק כדבש], "holeff" [חלב], "schemen touff" [שמין טוב] (p. 15r).

the swearing on the Torah (*super rodale*), the solemn citation of the first verse of St. John's Gospel ("In principio erat verbum") and the first verse of *Genesis* ("בראשית ברא אלוהים"), holding the ritual inside a church and inside a synagogue, swearing while holding the church's door handle and doing the same with a synagogue's door handle, and the identical performances in regard to the oath-taker's posture – kneeling or standing – and his raising of hands and exhibiting the appropriate 'swearing fingers' or holding an open book over his head – these all indicate a common, shared practice.¹⁰¹

Although the J.O. was intended, originally, to create trust between Jews and Christians, the 'mental cancelation' phenomenon – which plagued interactions relying on swearing on the Gospels – was, in fact, extended to the J.O. procedure, and the ideological dimension as well as the practical actuality of this 'mental cancelation' factor – and, more generally, of swearing falsely – in the actual performance of the J.O. can be gauged from its extensive treatment in the *responsa* literature, for by its very nature this casuistical legal genre brought to bear general principles upon concrete, particular cases. One can deduce, furthermore, from the treatment of this specific subject the general attitude of the 'responding' Sages to the J.O. institution as a whole. A few examples might clarify this proposition.

R. Isaiah of Trani the Elder (Italy, twelfth/thirteenth-century) was asked whether communal representatives should take a false oath to the authorities in order to avoid court fines, on the grounds that false oath is permitted in situations of violent coercion. He opened his detailed response with a preliminary observation that that principle could be evoked only when such coercion is applied through unauthorized governmental action – as distinct from a legitimate governmental action, and that it should be avoided, above all, when it leads to *Hilul Hashem* – a composite concept implying sacrilege as well as public denigration of God's name.¹⁰² He then proceeded to distinguish between legitimate and illegitimate governmental action, between false oath and permissible legal trickery, between coercion on financial matters and in life-endangering situations (but determined that false oath was not permitted even under conditions of life-endangering enforced apostasy – *Shmad*), and emphasized, finally, the overriding danger of a public, notorious *Hilul Hashem*. He concludes with a categorical condemnation of any such false oath.

¹⁰¹ For the various Christian oath-performances see Philipp Hofmeister, *Die christlichen Eidesformen; Eine liturgie- und rechtsgeschichtliche Untersuchung* (München: Karl Zink Verlag, 1957), passim.

¹⁰² "ומאי דכתב מר על הרשות שבא על קהל בעילא ובתואנה על דבר שעשו ואינם יכולים לכחש כי אבן מקיר תצעק, ומפני פחד העונש שיריאים על ממונם כופרים ומכחישים, ודנו שופטי העיר שישבעו עשרה אנשים מבני הקהל על נפש הקהל, אם הם רשאים ואם לאו. ואיני יודע מה אדון בן, כי מה שאומרים נודרין להרגין ולהרמים מעמידו בהלכה במוכס שאין לו קצבה או עומד מאיליו דהוי ליה אונסא, אבל בדינא דמלכותא דינא כ"ש שמתחיל שם שמים לפני ההדיוטות ולפני הגוים שאסור להטעותם..." (תשובות הרי"ד לרבנו ישעיה דטראני הוקן, עריכה אברהם יוסף וורטיימר, ירושלים: יד הרב הרצוג, תשכ"ז, ס' נג עמודה רמא).

While the previous *responsum* dealt with the role of the J.O. in regulating relations between the communal officials and the governmental authorities, R. Yom-Tov b. Avraham Alaswilli (*Ritba*) (Spain, thirteenth/fourteenth century) examined the case of a Jew who attempted to take a false oath to a Christian by secretly replacing the *Torah* book with a Book of *Haphtaroth*; he was denounced by another Jew – who had interest in the transaction concerned – and was forced to bring back the *Torah* and take his oath on it, and was accused, consequently, of taking a false oath and profiting by it. The *Ritba* determined that although an oath taken on the *Haphtaroth* would have been perfectly valid, the oath-taker might have taken the risk of swearing falsely because he considered it invalid, and that by his action he caused *Hilul Hashem* in the eyes of the Christians – all of which are prohibited.¹⁰³

The *Maharam* (Germany, thirteenth-century) adopted a similar attitude. When a Jewish horse-thief took a false J.O. in court and the community was ordered to take part in the proceedings – probably as oath-helpers – he determined that the community must not be an accomplice to this procedure but force the thief to come to a financial settlement with the Christian plaintiff; the principle invoked – “in order that he will not cause *Hilul Hashem*.”¹⁰⁴ He issued a particularly severe condemnation of Jewish coin-clippers who took a false J.O. and persevered in that malpractice, apparently justifying their false swearing by claiming that their ‘mental cancelation’ was called for under conditions of violent, illegitimate coercion; the *Maharam* contested this claim, affirming that such conditions did not apply in that particular case, stressed the most dangerous effect of their false swearing – the public *Hilul Hashem*, added that such acts are bound to undermine trust in Jewish oath-taking – “they [the Christians] shall not trust any oath taken by a Jew”, and declared, finally, that “indeed ... it is forbidden to rob the gentile” – and such false-swearing coin-clippers rob not only Christians but Jews as well.¹⁰⁵

A substantially different position on false swearing was taken by other Sages. The *Maharik* (Italy, fifteenth-century), for example, presented with a case in which a Jew accused another Jew before a Christian court and obliged

¹⁰³ "...וכשבראובן לישבע על זה, הוציא ס"ת מן הארון שלו ושם במקומו הפטרות לישבע בהם כדי להערים את הגוי בשבועתו. והיה במעמד הוא שמעון והודיע לגוי הדבר וצוה להחליפו ולתת לו ס"ת כראוי ... אע"פ שלא נתכון שמעון בזה לשם שמים מ"מ יפה עשה שהפרישו משבועת שקר וגם מחלול השם, כי השבועה שהיה נשבע בניטלת ההפטרות שבועה גמורה היא, ואולי היה רוצה לקפוץ ולישבע לשקר כסבור שאינה שבועה, ואפי' לא היתה שבועה יהיה בדבר חלול השם כשיודע שנשבע שלא כראוי לפי דעתו של זה. לכן כיוצא בזה אסור" (ה"א יום טוב בן אברהם אלאשבילי (הריטב"א), שאלות ותשובות, ערוכה יוסף קפאח, והושלם: הוצאת מוסד הרב קוק, תש"ו, ס' קפ"ג, עמ' רכג-רכד).

¹⁰⁴ שו"ת מהר"ם, ס' קכה עמ' קיז-קיח.

¹⁰⁵ "ויפה כתבת, דלא התירו לסמוך על דברים שבלב אלא גבי נודרין להורגין ולחרמין ולמוכסים במוכס שאין לו קצבה, דגזילא דמלכותא לא דינא הוא. אבל אם יצוה המלך שלא לגזול את המטבע דין גמור הוא. ובלא ציוי המלך דין הוא ואין זה אנוס. ... ועוד אפי' אם יגלה להם שביטל בלבן, כל שכן דאיכא חשדה וחילול השם אם לא יאמינו עוד לשבועת שום יהודי כי נראה להם שאי אפשר [ל]אדם לבטל בלבן. ... ועוד איכא איסור גניבה וגזל, דגזול הגוי אסור, וגונב הוא וגזול אפילו את ישראל ..." (ש"ת מהר"ם, ס' קכו, עמ' קיז-קיח).

Jewish witnesses to give evidence on oath against the accused, was asked how shall those witnesses deal with the issue of taking false oath, especially when the wronged party is Jewish too. His solution as to general principles involved was to emphasize the principle that the predominant duty of both parties is to go before a Jewish court and be judged according to the Jewish law. The party that reneges on that obligation is to be stigmatized, therefore, as *Masor* (informer), with all the *halachic* consequences involved. The witnesses called by him are not to give evidence before a Christian court, and when forced to do it under oath can – and should – swear falsely by applying ‘mental cancelation’, in financial matters as well as under life-endangering conditions.¹⁰⁶

The same commitment to Jewish solidarity in the face of the Christian judicial administration dominates the thinking on this matter by R. Yisrael of Bruna (Brünn) (Germany, fifteenth-century). In one short *responsum* he determines that a Jew is allowed to “save another Jew from a gentile court” through ‘mental cancelation’ on the double condition that the accused “did not commit any crime and [is charged] on financial matters” and that doing so will not result in *Hilul Hashem*.¹⁰⁷ A more detailed *responsum* specifies that such false oath is an obligatory act of saving the accused, but it depends on three conditions: firstly, that the Christian is not aware of that false move (hence the risk of public *Hilul Hashem* is practically eliminated), secondly – that the accused is indeed innocent, and thirdly – that even if he is guilty the corporal punishments he risks are severe and life-endangering; “one is duty-bound to save his colleague, for even if he sinned he is [still] an Israelite.”¹⁰⁸

The full significance of the J.O. as an essential operational factor in the different types of Jewish-Christian interaction could be better appreciated once those types are carefully mapped and differentiated on grounds of their

¹⁰⁶ "על אודת ראובן שהביא שמעון בערכאות של גוים... והנה ראובן מכריח העדים להעיד עדותם בעש"ג על פי קנס גדול ששמו עליהם ושאלת מה יעשו העדים מפני שבועת שוא ובפרט שהנגזל הוא יהודי. האמת כי נבהלתו על הדבר הזה דממה נפשך, אם עדות העדים מספיק לחייב שמעון בדין תורתנו למה הולך ראובן בעש"ג, למה לא יביא עדיו לפני דיני ישראל ויעידו לו... פשיטא שזה נקרא מסור גמור... ואי משום עונש השבועה... ומתוך כך פסקו התו'... שהיהודים שמשביעים אותם השר' כו' יכולי' לישבע סתם ולהשוב בלבם היום... דאלמא להצלת ממון יכול לבטל בלב ע"י הערמה או תנאי שחושב בלב וכ"ש במקום סכנה, ועוד אפילו בלי שום הערמה אפשר שהוא מותר באונס גדול כהאר... וזה פשוט." (ר' יוסף קולון, *שלת נפסקי מהל"ק*, ערכיב ארצות הברית, מהד' שנייה, מכוון אור המורה, תשמ"ד, ס' כו, עמ' 129-30).

¹⁰⁷ "נשאלתי אם ראובן ושמעון להציל שמעון מדויגו גוים וישבע בפה ויבטל בלבבו ויהשבתו ויש חילוק בדבר אם לא פשע כלום ונוגע בממון וליכא חילול ה' אז יכול ראובן לישבע בפה ולבטל בלבבו בשביל שמעון" (שאלות ותשובות... ישראל מברונא... ירושלים: הוצאת תפארת התורה, תש"ך [להלן: *שלת ישראל מברונא*], ס' פג עמ' סד).

¹⁰⁸ "אבל אם הגוי אינו מכיר בשקריו כלל... אז חייב להציל את חברו... אבל היכא דפשע שמעון לא יישבע ראובן דאין אומרין לאדם לך וחטוא... אבל אם אינו נוגע בממון אלא בא' מאבריו... אז כה"ג חייב להצילו אפילו אי ליכא סכנת נפשות כגון להכותו מכות מרדות כמנהג הגוים לרדותו במכבדות של ענפי אילן... או להתוך ידו ע"י חרב, דמכת חרב בכל מקום סכנה... חייב להציל חברו, אע"ג דחטא ישראל הוא..." (שלת ישראל מברונא, ס' פג עמ' פה).

distinctive socio-cultural functions. A correct contextualization of any given J.O. in its proper type of interaction should provide us with the necessary tools for a better understanding of both – of any interaction as well as the J.O. employed in its course.

The courtroom, the judicial process emerges as the first, indeed the more important arena for the performance of J.O. in most medieval legislative documents, and the working hypothesis that the J.O. was a predominantly – if not purely – judicial institution was adopted by a considerable number of modern scholars. Many legal codes are quite explicit about the distinctly judicial context of their procedural directives; at least four German legal codes – from Dortmund,¹⁰⁹ Köln,¹¹⁰ Hameln¹¹¹ and Helmstedt¹¹² – indicate the involvement of a judge (*judex*) and the accusing party (*actor*) in this process, and refer in this connection to its establishment “by the divine/glorious Roman emperors” and its ongoing “observance since ancient times in the entire Land of the Teutons.” The J.O. sworn according to the Magdeburg,¹¹³ Augsburg¹¹⁴ and the *Laienspiegel*¹¹⁵ codes took place in “court” (*Gericht*) and in front of a ‘judge’ (*Richter*). Other texts allude to their judicial context by using typical legal terminology such as “accusation”, “guilt”, “innocence”, “witnesses”, “testimony” and the like. We possess, furthermore, quite a few contemporary pictorial depictions of the actual performance of judicial J.O., and their evidence tallies strikingly with that of the legal codes, indicating, firstly, how the J.O. was actually performed, and – secondly – how contemporaries viewed and perceived it “in real time”.¹¹⁶ The evidence found in our sources about the actual application of the J.O. is even more persuasive as to its vital role in the judicial arena and its impressive spread throughout Christendom. A few characteristic examples should amply clarify this point.

In the Byzantine Empire, in the first place. Sometime toward the mid-twelfth century a convert Jew in Attaleia initiated a lawsuit against the local Jewish community; the *Praktor* decided that it should be settled by means of oaths, but as the Jews refused to take the particularly degrading J.O. their adversary imposed on them he appealed to the emperor Manuel Comnenus, who determined that the Jews should take the official J.O. as prescribed in the *Book of the Prefect* or forfeit the property in question.¹¹⁷ Moving west to Sicily,

¹⁰⁹ Zimmermann, *Die Entwicklung*, p. 104.

¹¹⁰ Zimmermann, *Die Entwicklung*, p. 111.

¹¹¹ Zimmermann, *Die Entwicklung*, p. 113.

¹¹² Zimmermann, *Die Entwicklung*, p. 116.

¹¹³ Zimmermann, *Die Entwicklung*, p. 139.

¹¹⁴ Zimmermann, *Die Entwicklung*, pp. 190–91.

¹¹⁵ Zimmermann, *Die Entwicklung*, p. 196.

¹¹⁶ See, for example, Heinz Schreckenber, *Die Juden in der Kunst Europas; Ein historischer Bildatlas*, (Göttingen: Vandenhoeck Ruprecht, 1996), pp. 258, 358, 359, 361.

¹¹⁷ Linder, *The Jews*, pp. 167–171.

one notices a lawsuit between two Jews in 1329, where the accused refused to take a J.O. to prove his case and was consequently found guilty as charged as well as of perjury and was condemned to prison.¹¹⁸ In Ungarish-Hradisch (1390) we follow a lawsuit between a Jewish lender and a Christian borrower concerning the amount of money the borrower had to pay on reclaiming his pawn, and the local court, uncertain about the procedure to follow, consulted the High Court in Brünn and was instructed that the Jew rather than the Christian should take the oath which would resolve the matter.¹¹⁹ At about the same time (1391) a judge in Saragossa was severely reprimanded for forcing Jews who appeared in his court to take the J.O. on the Torah scroll rather than the Pentateuch, as they were entitled to.¹²⁰ The Aragonese crown, finally, invested some effort in 1283/85 to simplify the cumbersome and time-consuming procedures of the judicial J.O.: the population of Valencia was notified in 1283/4 that because previous regulations demanded that in all lawsuits between Jews and Christians the Jews take an oath on the *Maledictions*, and as a result of this those J.O.s were taken on every session and the court found itself unable to attend to all cases, those regulations were replaced by new ones, which obliged Jews to take oath on the *Maledictions* only once, at the beginning of the proceedings.¹²¹ Every Jew in Lerida (1284), similarly, was obliged to take an oath on the *Maledictions* once only, not in every lawsuit,¹²² and according to a decree issued in 1285 the Jews of Huesca were not to be forced to read the J.O. aloud in its entirety on the Torah scroll, for the judicial authorities of Huesca were instructed to prepare a Roll with the text of the *Maledictions*, and when a Jew had to take the oath all he had to do was to place his hands on this *Roll of Maledictions* and swear by the *Book of Moses*.¹²³

The 'judicial J.O.' formed, consequently, one of the main types of this oath, certainly the most visible and imposing among them – but by no means the only one. The J.O. phenomenon clearly transcended the legal arena, and it should be studied in its entirety, with the legal type representing but one aspect of a much more complex social reality.

A second arena of Jewish-Christian interaction with its proper J.O. comprised non-judicial contacts between the Christian public authorities and their Jewish subjects, indirectly through the Jewish communal organizations and directly with the individual subjects themselves. The communal organizations were usually entrusted by the state with various administrative func-

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¹¹⁸ Simonsohn, *Sicily*, vol. 2 (2000); No. 378, pp. 659-60. See the judicial sequels to this affair in No. 382, pp. 661-62.

¹¹⁹ Bertold Bretholz, *Quellen zur Geschichte der Juden in Mähren*, Prag 1935, No. 387, pp. 224-227.

¹²⁰ Baer, *Die Juden*, vol. I, Berlin 1929, No. 405, pp. 650-653.

¹²¹ Jean Régné, *History*, No. 1102, p. 199.

¹²² Régné, *History*, No. 1169, p. 211.

¹²³ Régné, *History*, No. 1185, p. 215.

tions and were held responsible for carrying out those delegated duties legally and efficiently. Although the communal magistrates were commonly elected by the community and subsequently appointed by the Christian government, the last, constitutive stage in the appointment procedure consisted of a J.O. of fidelity to the ruler, an oath which functioned also as warranty for their “efficient, faithful and legal exercise” of the office they were assuming. In Valencia we observe the J.O. taken by the newly appointed *adenanti* in 1327 on the Torah scroll in the presence of the *baiulus regni generalis* and the *aljama* in the synagogue before they entered office: “they shall promise, that they shall act in that office efficiently and legally without any fraud.”¹²⁴ The *Jativa adenanti* were ordered in 1382 by Pedro IV to take the appointment-J.O.¹²⁵ A similar J.O. is reported in connection with the appointment of a Jew to several offices, among them that of presbyter of the Jews in Palermo in 1270,¹²⁶ but when King Martin appointed another Jew *proto maior* of the Jewish community of Syracuse in August 1399, the reference to the J.O. in the official appointment document was more comprehensive: “... after you have taken the corporeal and obligatory oath of fidelity as well as to exercise this office faithfully, efficiently and legally, on the Law of Moses according to the custom of the Jews”.¹²⁷ A similar oath was taken by the Jewish *proto maior* of Catania, in 1403,¹²⁸ and it was further reinforced when the incoming *proto* in Catania took it in 1490, for it declared the dual promise he made, to be beneficial to the king as well as the Jewish community.¹²⁹ J.O. was performed in the appointment processes of other offices as well, among them that of chief judge of the Jews in Sicily in 1420,¹³⁰ 1446,¹³¹ lieutenant of the chief justice in 1446,¹³² supreme

¹²⁴ Baer, *Die Juden*, No. 188, p. 250.

¹²⁵ Baer, *Die Juden*, No. 348, pp. 525-29.

¹²⁶ “... recepto prius ab eo fidelitatis et de officiis ipsis fideliter exercendis secundum usum vestrum corporaliter iuramento...” (Bartolomeo and Giuseppe Lagumina, *Codice diplomatico del Giudei di Sicilia*, vol. I (Palermo 1884)), No. XXVI, pp. 23-24.

¹²⁷ Simonsohn, *Sicily*, vol. 3 (2001), No. 1582, pp. 1514-45. His ‘serviens’ Donato took a practically similar J.O. one day later – see No. 1583, p. 1515.

¹²⁸ Simonsohn, *Sicily*, vol. 3 (2001), No. 1677, pp. 1610-11.

¹²⁹ “... recepto prius a te, ut moris est, iuramento more ebraico, in dicto officio bene et legaliter te habendo ad servicium sacre regie maiestatis et dicte Iudaice beneficium.” [“... after you have taken, according to custom, the oath according to the Hebrew custom, to act in the said office efficiently and legally in the service of the sacred royal majesty and to the benefit of the said Jewry”] (Simonsohn, *Sicily*, vol. 8 (2006), No. 5326, pp. 4604-05. The appointment was opposed, however, by the Catania community, and the process of election was almost immediately reopened – see No. 5329, pp. 4606-07.

¹³⁰ “...recepto a vobis prius fidelitatis et de subscripto iudicatus officio bene, fideliter et legaliter exercendo, corporali et debito ad legem Moysi iuramento...” (Simonsohn, *Sicily*, vol. 4 (2002), No. 2052, pp. 1938-39).

¹³¹ Simonsohn, *Sicily*, vol. 5 (2003), No. 2815, pp. 2663-65 (only a reference to the J.O.).

¹³² Simonsohn, *Sicily*, vol. 5 (2003), No. 2823, pp. 2671-72 (only a reference to the J.O.).

judge of the Jews under the rule of Queen Isabel (1486),¹³³ and notaries of the Jews – as in Palermo (1434),¹³⁴ Trapani (1458),¹³⁵ and Gozo/ Malta (1485),¹³⁶ The same procedure was adopted in appointments to the mainly economic functions with only semi-official dimensions, such as the master carpenter of all the Jewish carpenters in Naples in 1451, considered important enough to have the vice-regent himself receive the J.O. “of fidelity and faithful exercise of the said office”,¹³⁷ as well as the appointments of brokers in Sciacca (1400)¹³⁸ and Syracuse (1403),¹³⁹ and of an auctioneer in Naples (1452).¹⁴⁰ Acquisition of citizenship – theoretically and practically equivalent to entering and joining the Christian urban corporate society – involved, nevertheless, J.O.-taking as well as a state-authorization for those happy few to preserve their double status as Jews and citizens at the same time. This was the gist of the official confirmations granted by royal officials in 1479 and 1489 to Jews who received the Messina citizenship from those officials after they have taken the J.O.¹⁴¹ Taking the J.O. is specified as the essential element in the granting of the Messina citizenship to another Jew, in 1486.¹⁴²

The communal magistrates were obliged to take the J.O. almost routinely when they dealt with the public authorities, in fiscal matters, mainly, for one of the main services rendered by the self-governing communities to the state was the collection and delivery of the taxes and revenues imposed on the Jews. A J.O. was regularly taken in the course of the periodical assessments of the community’s taxable resources when the exact amount of the tax to be paid by each community was determined. Any negligence in this matter on the part of the communal officers was severely punished, and those administering the communities of Saragossa, Huesca and Barbastro in 1284/5 were, therefore, fortunate in having convinced Pedro III that they had been prevented

¹³³ Simonsohn, *Sicily*, vol. 7 (2005), No. 4920a, pp. 4277-78 (an abbreviated version).

¹³⁴ “... recepto prius a te id officium ad id officium ad beneficium Iudayce iamdicte exercendi fideliter atque bene, corporali et debito Ebreorum, more solito, iuramento...” (Simonsohn, *Sicily*, vol. 4 (2002), No. 2409, pp. 2276-77). One misses here the reference to the *fidelitas* sworn to the king.

¹³⁵ Simonsohn, *Sicily*, vol. 6 (2004), No. 3400, pp. 3174-75 (only a reference to the J.O. taken in the Chancellery).

¹³⁶ Simonsohn, *Sicily*, vol. 7 (2005), No. 4813, p. 4206 (only a reference to the J.O.)

¹³⁷ “... recepto prius a te per dictum viceregem nostrum fidelitatis et de dicto officio exercendo fideliter solito ad legem tuam iuramento, ut est moris...” (Simonsohn, *Sicily*, vol. 5 (2003), No. 2966, pp. 2794-95).

¹³⁸ Simonsohn, *Sicily*, vol. 3 (2001), No. 1594, pp. 1527-27. PERMISSION OF THE PUBLISHER.

¹³⁹ Simonsohn, *Sicily*, vol. 3 (2001), No. 1661, pp. 1592-93.

¹⁴⁰ Simonsohn, *Sicily*, vol. 5 (2003), No. 3082, p. 2901.

¹⁴¹ Simonsohn, *Sicily*, vol. 7 (2005), No. 4466, pp. 3963-64; Lagumina, *Codice*, vol. 2 (1890), No. DCCCIV, pp. 501-03.

¹⁴² Simonsohn, *Sicily*, vol. 7 (2005), No. 4976, pp. 4317-18. See also Zimmermann, *Die Entwicklung*, pp. 258-259.

from doing their duty (probably in the collective J.O.-taking performed in the assembly of Alagon)¹⁴³ and were pardoned on condition that they would render this service shortly.¹⁴⁴ Another sequel to the collective taxation of the Jews of Catalonia on that year can be seen in the 1285 decree that the community of Barcelona must “take oath and declare its assets according to the form observed by the community of Lerida”.¹⁴⁵ It was not rare for the communal officers to get involved in complicated financial deals in order to raise the sums of money imposed on their communities, as happened to the communities of Perpignan, Rousillon, Cerdagne and Conflent, and when their creditors sued them, claiming that the loan was not taken in order to cover their share of the tax, Jaime I resolved, in 1274, that the secretaries of these communities were not to be fined, “if they declare under oath” that the debts were indeed contracted for that specific purpose.¹⁴⁶ Once collected, however, all the tax money was delivered – again, under oath – to the royal *arca*, the special chest assigned for the Jewish contributions.¹⁴⁷

Communal officers dealt with other matters than finance, of course, and these too frequently involved taking oath, as during the ceremonious swearing of fidelity and homage to the king of Aragon in 1369 by the ambassadors (*procuradores*) of the cities; while the Christians swore on the cross and the four Gospels, Samuel, the Jewish ambassador of his community, took a typical J.O.¹⁴⁸ Much less ceremonious but undoubtedly a more telling example of the actual practice of taking the J.O. is the episode which took place in Gerona towards 1281: the city’s communal officers were summoned by a judge to appear before him and take a J.O. on the *Ten Commandments*, but the book which they have used for that purpose did not contain the *Ten Commandments* at all, and this text was finally produced only on the judge’s specific instruction – “their design was apparently to hide the truth”. The king imposed on them a heavy fine.¹⁴⁹ In 1263 and 1264, finally, the communal notables throughout Aragon were ordered by Jaime I to take an oath to “expurgate” their “blasphemous” books,¹⁵⁰ an early foretaste of the introduction of the

¹⁴³ Régné, *History*, No. 1267, pp. 229–30.

¹⁴⁴ Régné, *History*, No. 1254, p. 227.

¹⁴⁵ Régné, *History*, No. 1426, p. 258.

¹⁴⁶ Régné, *History*, No. 595, p. 101.

¹⁴⁷ Régné, *History*, No. 942, p. 170; No. 1052, pp. 188–89.

¹⁴⁸ Baer, *Die Juden*, No. 292, pp. 420–426.

¹⁴⁹ Régné, *History*, No. 671, p. 121. Another communal officer was cleared in 1318 of this charge – “Item quod in fraudem christianorum, quando te oportebat jurare super X precepta, jurabas super alios [libros]” [“Item, that in order to defraud Christians, when you had to take oath on the *Ten Commandments*, you swore on other [books]”] (Baer, *Die Juden*, No. 171, pp. 202–212).

¹⁵⁰ Régné, *History*, Nos. 216 and 249, pp. 41, 47.

new J.O. by Johannes Pfefferkorn in 1510 which forced the Jews to surrender their “blasphemous books” for inspection and “expurgation”.¹⁵¹

Direct J.O.-supported contacts between the Christian governing authorities and their Jewish subjects were initiated by both sides. A strong, centralized government (as in England) tended to skip all middle, mediating instances and deal directly with all its subjects, but – almost paradoxically – even competing governmental bodies (such as the secular and the ecclesiastical authorities and within the secular sphere itself, as in the extremely complicated political and administrative map of medieval and early modern Germany) encouraged both subjects and rulers to establish direct contacts between them. From the Jewish side of the equation one notices the fact that not all Jews lived in organized communities – individual Jews subsisting outside any community or *in transit* between different locations were not an unknown phenomenon – and when such communities did function, their hold over their members was relatively weak, always dependent on the explicit or implicit sanction and support of the tutelary Christian authority.

Such direct action took place in many areas of activity, and it can be best observed in two areas regarded, *a priori*, as antithetical to Christian values and morals – the practice of medicine by Jews, explicitly prohibited in Canon Law¹⁵² and highly suspect in the popular sentiment,¹⁵³ and the usurious credit transactions by the proverbial Shylocks. Yet both professions proved to be necessary – even beneficial – to the Christian host society, and routine regulation procedures were consequently evolved to limit and mitigate their ‘negative’ aspects. The J.O. played a central role in this context, for it reflected the individual/personal aspect and the deeply moral nature of the issue and it was seen, furthermore, as a sufficient guarantee of the professional quality and the moral and legal integrity of Jewish physicians treating Christian patients on the one hand, and the obligatory legal comportment required from

¹⁵¹ Johannes Pfefferkorn, *Zu lob und Ere des aller durchlechtigsten und grossmechtigsten Fürsten und herren herr Maximilian...* (Augsburg 1510), p. 14v.

¹⁵² For example, in the thirteenth-century French synodal legislation: Nîmes, C. 216 (*Les statuts synodaux français du xiii^e siècle*, tome 2, ed. Odette Pontal (Collection de documents inédits sur l'histoire de France, tome 15), Paris 1983), p. 430; Clermont, C. 176 (*Les statuts synodaux français du xiii^e siècle*, tome 6, *Les statuts synodaux des anciennes provinces de Bourges et de Narbonne*, ed. Joseph Avril (Collection de documents inédits sur l'histoire de France, tome 52), Paris 2011), p. 60; Rodez, C. 17 (*Les statuts synodaux français du xiii^e siècle*, tome 6, *Les statuts synodaux des anciennes provinces de Bourges et de Narbonne*, ed. Joseph Avril (Collection de documents inédits sur l'histoire de France, tome 52), Paris 2011), p. 205; Mende, C. XVII, 4 (*Les statuts synodaux français du xiii^e siècle*, tome 6, *Les statuts synodaux des anciennes provinces de Bourges et de Narbonne*, ed. Joseph Avril (Collection de documents inédits sur l'histoire de France, tome 52), Paris 2011), p. 310.

¹⁵³ As in the anti-Jewish work of Hans Folz, a sort of barber *cum medic* himself; see Matthias Schönleber, “‘der juden schant wart offenbar’: Antijüdische Motive in Schwänken und Fastnachtspielen von Hans Folz”, in: *Juden in der deutschen Literatur des Mittelalters; Religiöse Konzepte – Feindbilder – Rechtfertigungen*, ed. Ursula Schulze, (Tübingen: Niemeyer Verlag, 2002), p. 177.

officially recognized and regulated Jewish money-lenders on the other. The text of the J.O. taken by a Jewish physician in Palermo in 1337 emphasized the professional aspect of his practice by insisting that “in confecting medicaments he should faithfully apply all sorts of diligence and study of the qualities of men according to the art of medicine”.¹⁵⁴ By 1363, however, the J.O. text was expanded to cover additional types of responsibility through the use of the formula common in the communal appointments to be granted “not before was received from him [the J.O.] of fidelity and of the exercise of that practice efficiently, legally and faithfully...”.¹⁵⁵ The new formula became quite common,¹⁵⁶ but when a Jew was appointed physician to the king himself in 1419 he had to satisfy higher expectations and to take a considerably more demanding J.O.¹⁵⁷ Once Jewish physicians were accepted they opened the way to Jewish surgeons as well, whose appointment-J.O. was practically identical to that of the fully qualified physicians.¹⁵⁸ Jewish physicians were thus routinely licensed in Sicily from 1363 at the latest, and their number (between that date and the 1492 expulsion) amounts to some 161 licensed physicians, according to the documentation collected by the Lagumina brothers and by Simonsohn.¹⁵⁹

The state’s policy on the Jewish money-lender was much more problematic, for although ‘Jewish fraudulent and oppressive usury’ was condemned on much more solid grounds than the merely suspect Jewish physician, the authorities were too conscious of the economic and social – not infrequently also political – benefits accrued from such financial transactions, practically their sheer indispensability, for them to attempt their complete elimination. Even the Fourth Lateran Council did not actually proscribe ‘Jewish usury’ *per se*, but only the Jews’ “graves et immoderatas usuras.”¹⁶⁰ ‘Legal’ and ‘reaso-

¹⁵⁴ Simonsohn, *Sicily*, vol. 2 (2000), No. 492, p. 728).

¹⁵⁵ Simonsohn, *Sicily*, vol. 2 (2000), No. 852, p. 964).

¹⁵⁶ For example in 1367 (Simonsohn, *Sicily*, vol. 2 (2000), No. 888, p. 992), 1374 ((Simonsohn, *Sicily*, vol. 2 (2000), No. 1004, pp. 1079-80), 1377 (Simonsohn, *Sicily*, vol. 2 (2000), No. 1045, p. 1116).

¹⁵⁷ “... De tuis fide, sufficiencia et sapiencia confidentes, recepto prius a te fidelitatis ad legem Moisi debito et corporali iuramento, de subscriptoque medicatus bene, fideliter et ad regium honorem legaliter exercendo, te, in regium medicum ... duximus assumendum...” [“certain about your fidelity, suitability and knowledge, and having first received from you the required and corporeal oath on the Law of Moses that you would exercise the said medical practice efficiently, faithfully and legally to the honour of [his] royalty, ... we have determined to take you as the royal physician”] (Simonsohn, *Sicily*, vol. 4 (2002), No. 2044, pp. 1930-31)

¹⁵⁸ For example in 1374 (Simonsohn, *Sicily*, vol. 2 (2000), No. 1004, pp. 1079-80); 1420 (Simonsohn, *Sicily*, vol. 4 (2002), No. 2055, pp. 1941-42); 1421 (Simonsohn, *Sicily*, vol. 2 (2002), No. 2074, p. 1970).

¹⁵⁹ Lagumina, *Codice*, vol. I (1884), No. LI, pp. 69-77, and Simonsohn, *Sicily*, passim. See also שלמה סימונסון, בין הפטיש והסדן: היהודים בסיציליה, (ירושלים: הוצאת ספרים ע"ש י"ל מאגנס, תשע"א), עמ' 349

¹⁶⁰ “... synodali decreto statuimus, ut si de cetero quocumque praetextu Judaei a Christianis graves et immoderatas usura extorserint...” [“we determined in a synodal decree, that if in the future Jews should extort from Christian oppressive and immoderate usury under any pretext

nable' became the key-concepts of a new regulatory policy which aimed to preserve this economic activity within the boundaries of such legal and 'reasonable' restrictions, recognizing – by implication – its fundamental acceptability. The J.O. was adopted as an appropriate means for that purpose, and it was integrated into the two modes of regulation imposed on Jewish lenders under the Aragonese crown. The first one – according to a document dated 1287 – consisted of a single J.O., taken by the Jews at the hands of their local *viguier*, in which they undertook to observe the royal legislation on the maximum permissible interest. This measure is attributed there – correctly – to King Jaime I (see below).¹⁶¹ Another document, dated 1298/9, testifies to the actual application of this process: a Jew from Cardona takes a typical J.O. (on God, on the *Ten Commandments* given to Moses on Mt Sinai, the hands laid on the *Ten Commandments*) before the local *sous-viguier* and in the presence of three Christian witnesses, promising that he would observe the law on lending-interest issued by Jaime I, that he would not charge lending-interest higher than what is legal, that he would not charge compound interest, and that he would not commit any fraud or trickery in order to gain more than 4 *denarii* for 1 *libra* per one month.¹⁶² By 1326, however, this single oath-taking was replaced by an annual swearing of a J.O. on the matter, renewed each year on the 1st of October¹⁶³ – a measure that implied, through its very regularity, the official recognition of the Jewish money-lenders' profession.

The second mode of J.O.-related regulation consisted in the inclusion – in each transaction – of a preliminary J.O. bearing on the legal principles authorizing such financial activities, in addition to any oath-taking concerned with the specific terms of each particular transaction. It was enacted for the first time by Jaime I in Montpellier in 1259, “on the advice” – probably initiative – of that city's *consuls*,¹⁶⁴ and became consecutively mandatory in the framework of the *Fuero de Aragon*. Its actual enforcement can be observed, for example, in the proceedings initiated in Tarazona in 1278 against Jewish money-lenders who omitted this preliminary J.O.,¹⁶⁵ in the directions issued in 1279 to the Jews of Egea to take that specific J.O. according to the customs observed by the Jews of Saragossa “in conformity with the law enacted by Jaime I”,¹⁶⁶ and in the attempts made by debtors to Jews in Calatayud and in Saragossa in 1286 to contest the legality of their debts on grounds that the

whatsoever...”] (*Concilium Lateranense IV. C. LXVII. De usuris Judaeorum*, (Mansi, *Sacrorum Conciliorum ... Collectio*, vol. 22 (Paris: Hubert Welter, 1903), cols. 1054-55.

¹⁶¹ Régné, *History*, No. 1842, p. 330.

¹⁶² Régné, *History*, No. 2717, p. 505.

¹⁶³ Régné, *History*, No. 3370, p. 616.

¹⁶⁴ Régné, *History*, No. 115, p. 22.

¹⁶⁵ Régné, *History*, No. 693, p. 125.

¹⁶⁶ Régné, *History*, No. 729, p. 132.

preliminary oath was not taken when the deals were concluded, but such claims were already rejected, in principle, under Pedro III (1276-1285).¹⁶⁷ Jaime II reiterated in 1325/6 the Jewish lender's legal duty to take this preliminary oath on each transaction.¹⁶⁸

The J.O. was also – and more easily – applied in the course of direct contacts between Christian public authorities and individual Jews in matters that did not raise, on the whole, serious moral or religious concerns. Many of them were initiated by the Christian governing authorities and dealt, mostly, with topics of public order and governance. *Sefer Hasidim* narrates how Jews were obliged to take the J.O. in pledging themselves to barons under whose rule they lived not to escape from their territories,¹⁶⁹ and the same oath appears in two halachic rules laid down by the twelfth-century *Tosaphists* R. Yitzhak of Dampierre¹⁷⁰ and R. Yehuda son of R. Yitzhak Sirleon from Paris,¹⁷¹ attesting to its topicality and diffusion. The *Maharam*, furthermore, deals in one of his *responsa* with the special J.O. Jews were obliged to swear in which they undertook not to clip coins – though they persisted with this malpractice.¹⁷² The English administration, on its part, insisted in a writ dated 1219 that all its Jewish subjects take the J.O. “super rotulum” in the course of an inquest carried out by the Jewish bailiffs of Lincoln, Stamford and Nottingham,¹⁷³ and the extant returns to that writ confirm, indeed, that the Jews did take the J.O. as directed.¹⁷⁴ At about the same time (1218) the port authorities throughout England were instructed to allow Jewish immigrants to enter the country freely, on condition, however, that they take a J.O. to present themselves as soon as possible before the justices of the Jews and register with them.¹⁷⁵ Concern for the public health and safety induced the Milanese authorities in 1465 to force a Jew to declare under a J.O. that he was not present after a certain date in Venice or any other place where plague was suspected – he was to regain his freedom of movement only after he had made that declaration.¹⁷⁶ Direct J.O.-supported contacts between Jews and the fiscal authorities – on

¹⁶⁷ Régné, *History*, No. 1540, p. 280; No. 1541, p. 280; No. 1570, p. 285.

¹⁶⁸ Régné, *History*, No. 3370, p. 616.

¹⁶⁹ ספר חסידים ס' תכג, עמ' רצט.

¹⁷⁰ אפרים א' אורבך, בעלי התוספות: תולדותיהם, חיבוריהם, שיטתם, (ירושלים: מוסד ביאליק, תשמ"ג), עמ' 242

¹⁷¹ *Op. cit.* pp. 323-324.

¹⁷² שו"ת מה"ם, ס' קכו עמ' קיז.

¹⁷³ “Precipimus vobis quod ... per sacramentum omnium Iudeorum super rotulum diligenter inquiratis qui Iudei aut Iudee ... habent veteres cartas vel tallias [etc.] ...” (Richardson, *The English*) p. 288.

¹⁷⁴ “Hi sunt Iudei qui primo fecerunt sacramentum tenorem litterarum domini regis...” in the return from Lincoln, (Richardson, *The English*) p. 289, and “Hec est veredictum Iudeorum de Hereford et de Worcesteria per sacramentum quod fecerunt super rotulum, scilicet...” in the return from Hereford and Worcester (Richardson, *The English*), p. 291.

¹⁷⁵ Rymer, *Foedera*, (Pat. 3 Hen. III m. 6 in Turr. Lond.), p. 152.

¹⁷⁶ Simonsohn, *Milan*, vol. 1 (1982), No. 945, p. 410.

fiscal matters – have taken place in various contexts. Such are the records from Valencia in 1282, relating to a couple which recognized their debt to a royal agent and took, accordingly, a J.O.,¹⁷⁷ and to Jewish merchants who got involved in a rather complicated dispute over certain imported merchandise.¹⁷⁸ As late as 1564 a Jew launches a claim against the ducal treasury in Milan by taking a J.O.¹⁷⁹ Another form of oath-supported declaration made directly to the state authorities was applied in Catania, in 1460: following the decision by the *jurati* of the city, all the inhabitants declared individually and on oath the amounts of wheat and barley in their possession, the Jews took a J.O. and the Christians swore on the Gospels.¹⁸⁰ As a result of an appeal launched by the Jews of Gerona, finally, a detailed procedure of individual oath-takings was devised in 1285 to help them restore their financial documents which were lost or destroyed during the war.¹⁸¹ Routine, day-by-day contacts between Jews and administration officials called for improvised, unforeseeable J.O. takings which were agreed on and conducted by mutual consent. A rather salacious incident of this kind is reported in a seventeenth-century *responsum*: two Jews travelling from Frankfurt to Worms declared falsely at the custom-control that the two women travelling with them were, respectively, the wife of the one and the daughter of the other, in order to exempt them from the required custom-fees. The custom officer – “a joker and knowledgeable about Jewish law” – suspected a ruse and demanded that they either take oath on that or kiss the two women “a full kiss on their mouths”. They declined to do so, claiming that the two women are menstruating and practically untouchable, and though the two women assured them that they can take a perfectly valid oath on this matter they declined, again, to swear on this, and suggested to the custom-officer that the two women should swear on it. That officer suddenly realized that the oath to be taken should not concern the women’s hygienic condition but their marital status, and insisted that the two men should prove it by oath. They did not take that false oath but settled with him, finally, “on a small sum”. A J.O. demanded and declined at least four times – in the course of a routine border control, with a mutually agreed solution at the end...¹⁸²

The third arena for the performance of the J.O. consisted of the totality of person-to-person economic interactions of Jews and Christians, activities which were conducted outside most of the legal boundaries erected by the

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¹⁷⁷ Régné, *History*, No. 913, p. 165.

¹⁷⁸ Régné, *History*, Doc. XIII, pp. 426-27.

¹⁷⁹ Simonsohn, *Milan*, vol. 2 (1982), pp. 2368-69.

¹⁸⁰ Simonsohn, *Sicily*, vol. 6 (2004), No. 3522, p. 3258.

¹⁸¹ Régné, *History*, Doc. XIX, pp. 436-38.

¹⁸² יאיר חיים בכרך, ספר שאלות ותשובות חות יאיר... עריכה שמעון בן-ציון הכהן קוטס, (רמת-גן: מכון עקד ספרים, תשנ"ז), חלק ב', ס' קב, עמ' תקט-תקי.

ruling establishments, the legal/political as well as the ecclesiastical. To use the terminology introduced in the first part of this study – this arena was situated in the no-man’s land of the ‘indifferent activities’, where Jews and Christians could interact relatively unimpeded by the Christian values-system. The general attitude towards usurious credit-based transactions seems to contradict this description, and it cannot, certainly, be characterized as ‘indifferent’, but this attitude was largely confined to the ideological and sentimental levels, while – as we have seen – in practice the relevant establishments not only tolerated (‘within reason’) but also licensed and regulated this type of activity.

This arena was, undoubtedly, the most crowded of the three, but, unfortunately, it was also the least documented, for all the transactions concluded between individuals outside the formal frameworks with their obligatory processes of registration – hence with an obligatory documentary appanage – rested on mutual inter-personal trust alone, and left no documentary trace. The nearest one can get to this type of activity is, therefore, through its formalized version in the notarial registers, and that version conformed – by definition – to the formal legal system in place. When the parties to an exchange met in the notary’s office they were quite conscious of the distance that separated their possible mode of action inside that office from what they could permit themselves in the market-place, and the historian too should bear this distinction in mind when he evaluates this documentary material. He would be right, nevertheless, to use this documentation as a valid premise for deducing the actual volume and composition of the economic activity involved, on the assumption that the notarial registers represent a smaller part – and one that was strictly dressed-up so as to conform to the obligatory formal regulations – of the total activity that was carried on in this arena.

Credit transactions between individual Jews and Christians generated a considerable amount of oath-taking, mainly by the Christian borrower, but the Jewish financier too obligated himself under variable oaths: he had to take the preliminary official J.O., in the first place, as creditor he sometimes took the J.O. to certify that a given debt was completely paid back,¹⁸³ sold a Christian’s debt to another Christian and obliged himself by a J.O. on this matter,¹⁸⁴ or guaranteed under oath that the encashment of the deposited pawn was properly carried out (one outspoken Christian borrower proclaimed his faith in his Jewish creditor by explicitly stating that he takes his “plain word” on that matter and forgoes “any witnesses or oath!”),¹⁸⁵ and as a buyer on credit of agricultural produce he swore on the J.O. (“on the Law of Moses”)

¹⁸³ Emery, *Perpignan*, Appendix 4., No. 39, p.145

¹⁸⁴ Emery, *Perpignan*, No. 45, pp. 147-148.

¹⁸⁵ Emery, *Perpignan*, No. 121, p. 182 (“et de precio quod de predictis pignoribus habueris volo tibi credi plano tuo verbo absque testibus ac juramento...”).

to repay the seller according to the terms agreed.¹⁸⁶ In a typical sample we watch a Jewish financier in Perpignan taking the J.O. twice in 1275, in his name and in that of the *aljama* (together with other prominent figures of the community), to guarantee the payment of two loans, one of them to a Christian¹⁸⁷ and another to a (probably) Jewish lender,¹⁸⁸ and the following year he certified under oath to a Christian debtor that his debt was entirely repaid and that he held no further claim against him.¹⁸⁹

One can obtain a clear picture of the sheer volume and variety of the economic exchanges that were carried out between Jews and Christians under the guarantee of a J.O. taken by the Jewish side, from the rich notarial material collected by Simonsohn. To take but a short, random sample from beginning of the first volume of his digest, the J.O. was taken in the following cases: a Jew confirms his debt to a Christian and promises to pay him within five weeks (1299);¹⁹⁰ two Jewish butchers sell a Christian tanner hides and wool of the rams slaughtered in the abattoir of Palermo (1299);¹⁹¹ a Jew and a Christian form a partnership to develop and exploit an agricultural land (1299);¹⁹² a business contract between a Jew and a Friar (1326);¹⁹³ a Jew rents a house from a Christian (1327);¹⁹⁴ a Jewish mason borrows money from a Christian (1329);¹⁹⁵ a Jew sub-leases a tax-collecting enterprise from a Christian (1331);¹⁹⁶ a Jew buys cow-hides from a Christian (1334);¹⁹⁷ a Christian butcher sells 73 cow-hides to a Jew (1336);¹⁹⁸ a Jew undertakes to sell the wine of a Christian in that Christian's tavern (1336);¹⁹⁹ a Jew enters into a partnership with two Christians to trade in skins and hides,²⁰⁰ and it goes on and on... this was indeed the busiest arena for J.O. taking in the course of the cooperative Jewish-Christian interaction.



¹⁸⁶ Emery, *Perpignan*, No. 86, p. 162 (“et juramus super legem Moysse.”).

¹⁸⁷ Emery, *Perpignan*, No. 36, p. 144.

¹⁸⁸ Emery, *Perpignan*, No. 37, pp. 144-145.

¹⁸⁹ Emery, *Perpignan*, No. 39, p. 145.

¹⁹⁰ Simonsohn, *Sicily*, vol. 1 (1997), No. 298, pp. 530-531.

¹⁹¹ Simonsohn, *Sicily*, vol. 1 (1997), No. 301, p. 533.

¹⁹² Simonsohn, *Sicily*, vol. 1 (1997), No. 304, pp. 536-38.

¹⁹³ Simonsohn, *Sicily*, vol. 1 (1997), No. 360, pp. 644-45.

¹⁹⁴ Simonsohn, *Sicily*, vol. 1 (1997), No. 3364, pp. 646-47.

¹⁹⁵ Simonsohn, *Sicily*, vol. 1 (1997), No. 384, p. 663.

¹⁹⁶ Simonsohn, *Sicily*, vol. 1 (1997), No. 401, p. 674.

¹⁹⁷ Simonsohn, *Sicily*, vol. 1 (1997), No. 444, p. 700.

¹⁹⁸ Simonsohn, *Sicily*, vol. 1 (1997), No. 467, p. 713-14.

¹⁹⁹ Simonsohn, *Sicily*, vol. 1 (1997), No. 469, p. 715.

²⁰⁰ Simonsohn, *Sicily*, vol. 1 (1997), No. 478, p. 721-22..

Having recognized the J.O. as a ritual, i.e. “the performance of more or less invariant sequences of formal acts and utterances not entirely encoded by the performers” (R. Rappaport),²⁰¹ we can attempt a closer analysis of its components in order to gain a better understanding of its significance. Let us consider briefly its two principal modes of action, the verbal and the performed act (in the sense of a deed done).

The verbal component should be considered as the sum-total of speech acts in the Austinian perspective, as “doing things with words”, when the very act of pronouncing utterances is perceived as virtually performing the acts they speak about. The Austinian distinction between the two dimensions of the utterance, the “performative” – subsequently defined as an “illocutionary act” – and the “constative”, is of obvious use for our present discussion. Put simply, it distinguishes between a speech-act that changes reality and a speech-act that is a constatation of reality. The verbal part of the J.O. consists of two sections and two types of utterance: invocations of God and (self)-maledictions, and they frequently exhibit both dimensions, the performative and the constative.

The invocations are constative in that they attest the Jewish quality of the oath-taker, and illocutionary to the extent that they construct that Jewishness as an absolute dedication to the God revealed in the Old Testament, i.e. the God of Israel. This conception was perfectly consistent with the ideological foundations of the status of the Jews in Christian Europe (see above), and it reinforced the J.O.’s legal and theological dimensions: while the lawyer took pains to avoid any Christian invocation in order to leave the Jewish oath-taker no loophole, no escape-hatch from the obligations he undertook in his oath, the theologian presented “Jewishness” as the foreshortened Jewish vision of the complete history of salvation, in which only the prefiguring revelation counted, with the consequent Jewish rejection of – or at least disregard for – the Christian postulate that this very same history was finally fulfilled in Christ and his saving work.

This Christian perspective inspired the special J.O. that was imposed on all Jewish converts by Erviga in 681 and incorporated into the *Lex Visigothorum*,²⁰² a sort of an “ideal J.O.”. It consists of 53 invocations: the first 10 call on God the Creator and Pantocrator, the next 32 invocations, the bulk of the series, survey the Old Covenant between God and the Jewish people, beginning with the Patriarchs and terminating with Daniel and the three children in the furnace, and the whole series culminates in 12 Christian invocations – first and foremost of Jesus Christ, but also of the Holy Spirit, the Resurrection, and, finally, the four Gospels.

²⁰¹ Roy A. Rappaport, *Ritual and Religion in the Making of Humanity*, (Cambridge: Cambridge University Press, 1999), p. 24.

²⁰² 12:3:15. See Linder, *The Jews*, No. 557, pp. 311-317.

The common J.O.s were quite different, of course, presenting a sort of abridged ‘Jewish’ version of this ideal form, for they were strictly limited to the Biblical *Old Alliance*. The Aragonese J.O. of 1241, for example, opens with a series of 37 invocations arranged in 15 swearing formulae (*Iuras per...? Iuro*),²⁰³ only three of which can be qualified as universal, of the Pantocrator type, and all the rest focus upon the Biblical history of the Jewish people, highlighting the Exodus from Egypt and six of the Ten Commandments, the Patriarchs, the miracles performed in the Desert and in the Promised Land, with particular references to Jerusalem, God’s Covenant with Abraham, the Twelve Tribes and God’s full Hebrew name. Two of the six Decalogue Commandments here retained are specifically Jewish and, unlike the others, non-applicable to Christians: these are the ban on all visual art (especially as object of adoration) and the veneration of the Sabbath.

The *Invocations* section of the Navarese J.O. is essentially similar:²⁰⁴ some thirty invocations are assembled in 6 swearing-formulae, two invoking God the Creator/Pantocrator, and the remaining 4 dedicated to Jewish Biblical history. Formula 4, for example, invokes Solomon’s temple in Jerusalem, the sacrifices made there by kings and priests, the restoration of the Law operated by “Jeremiah” (=Josiah), the fire that came down from heaven on the Temple’s dedication by Solomon, the song raised by the children of Israel [שִׁירַת הַיָּם], the Law given on Mt. Sinai, and “the Double Cave where Moses and the Patriarchs were buried at the foot of Mt. Oreb” (sic!). Formula 6, which closes the section, links together historical Judaism with its contemporary present, for it opens with the three Patriarchs, surveys several prominent Biblical personalities and terminates with the synagogue in which the oath-taker adores God and the (jeopardized) head of his Rabbi.

Our oath-taker, having established and confirmed his Jewishness, proceeds now to perform the principal speech-acts of the entire proceedings – by binding himself on the numerous maledictions detailed in the Bible and in the J.O.’s section of maledictions, a compendium of select Biblical texts. The oath-taking usually comprised physical contact with either the Bible (the Torah scroll or a Pentateuch book) or a special collection of maledictions – probably the J.O. maledictions-section but a separate, original list is not to be excluded – and called, usually, *Carta maledictionum*. One group of German law-codes claiming a “Roman Imperial origin” indicates swearing on the Book of *Leviticus* in synagogue, but their explicit reference to a “book” in which the oath-taker encloses his hand (“*claudatur liber*”) leaves no doubt that the J.O. was taken on a Pentateuch exemplar rather than on the Torah scroll.²⁰⁵ The Aragonese

²⁰³ Amador de los Rios, *Historia*, pp. 558-561.

²⁰⁴ Amador de los Rios, *Historia*, pp. 581-583.

²⁰⁵ Dortmund (Zimmermann, *Die Entwicklung*) p. 104; Köln (Zimmermann, *Die Entwicklung*) p. 111; Hameln (Zimmermann, *Die Entwicklung*) p. 113; Helmstedt (Zimmermann, *Die Entwick-*

documentation, on the other hand, provides enough information about the alternative *carta*; it seems that its use in the courtroom was quite common and for obvious practical reasons, though the conscious decision to humiliate Jewish oath-takers certainly played a part in motivating officials to adopt this particular instrument in preference to the others. The Jews of Lerida, for instance, were freed in 1273 from the obligation to take their J.O on the “Book of Maledictions” – they were to take it on the Ten Commandments and in synagogue, presumably, therefore, on the Pentateuch or the Torah scroll,²⁰⁶ but already in 1284 we find them taking the oath again “on the Book of Maledictions”, though only once and not in every lawsuit.²⁰⁷ A similar decree was addressed at about the same time to Huesca, specifying that the previous custom of bringing a Torah scroll to the courtroom was cause “for scandal”; the judicial authorities in Huesca were instructed, therefore, to prepare a Roll with the text of Maledictions, and when a Jew was instructed take the oath all he had to do was to place his hands on the *Roll of Maledictions* and swear by the *Book of Moses*, “according to usage”,²⁰⁸ though abuse in the courtroom obliged Alfonso III to intervene again on this matter in 1290.²⁰⁹ Similar preoccupations and arrangements are reported in relation to Alagon (1276)²¹⁰ and Valencia (1283/4).²¹¹ Some idea about the acts of humiliation involved may be gained from the information about Valencia – where the local authorities intended to oblige oath-taking Jews to do it with the *Roll of Maledictions* on their necks but Pedro III intervened (in 1284) and ordered those authorities “not to molest their Jews”,²¹² and from Barcelona, where the *Maledictions* were read over the heads of the oath-taking Jews “according to ordinance of Pedro III”.²¹³ The general reference to the “oppression” the Jewish oath-takers suffered in Calatayud (1285)²¹⁴ might apply, of course, to any of the three documents employed for that purpose. The relative weight – or, better, the nuisance-potential of each of the three options – could best be appreciated in light of the custom to free ‘privileged’ Jews from the burden of taking an oath on the *carta*. This privilege was specifically mentioned in charters of ‘enfranchisement’ from all duties and limitations incumbent on the Jews given to Benvenist

lung), p. 116.

²⁰⁶ Régné, *History*, No. 570, p. 97.

²⁰⁷ Régné, *History*, No. 1169, p. 211.

²⁰⁸ Régné, *History*, No. 1185, p. 215.

²⁰⁹ Régné, *History*, No. 2213, p. 390.

²¹⁰ Régné, *History*, No. 671, p. 121.

²¹¹ Régné, *History*, No. 1102, p. 199.

²¹² Régné, *History*, No. 1232, p. 223.

²¹³ Régné, *History*, No. 1845, p. 330.

²¹⁴ Régné, *History*, No. 1352, p. 245. See also Nos. 1402, p. 254; 1671, p. 301; 1672, p. 301.

in 1180²¹⁵ and to Salamon, the personal physician of Sancho VII.²¹⁶ Other ‘privileged’ Jews were specifically absolved from taking oath on the *carta* – when obliged to take oath they were to do it “only on the law of the most sacred Moses”.²¹⁷ The same considerations inspired the Aragonese ‘oath-taking tariff’, which differentiated between ‘inter-faith’ oaths taken by Christians and Jews according to the value of the matter in dispute: “And a Jew must take an oath to a Christian or to a Saracen on the Law of Moses up to a value of 12 *denarii*, and above 12 *denarii* on the *carta*”.²¹⁸

This self-maledictions section consists of numerous maledictions arranged in separate formulae, each formula presenting a cluster of maledictions received, mostly, from *Leviticus* and *Deuteronomy*, though many are traced to other books of the Bible. They represent two types defined by their composition, and, to a lesser degree, by their content. The Aragonese section exhibits both types: it consists of 31 formulae, the bulk of which (24) repeat almost verbatim and in the correct order the maledictions found in *Deut.* 28, while the remaining seven formulae offer a miscellany received from *Leviticus*, *Psalms*, *Job*, *Ecclesiastes*, and refer also to the Plagues of Egypt and the maledictions “imposed by Joshua on Jericho” (sic!).²¹⁹ The maledictions section in the Navarese J.O. consists entirely of such a miscellany.²²⁰

These two types transmit, in fact, two different messages, corresponding to the two-leveled nature of the J.O. as simultaneously a legal institution managing litigation between individuals and a ritual proclaiming the fundamental status of the Jews. The miscellany-type serves well the legal action by imposing its blood-curdling maledictions on any Jew liable to commit perjury, smiting him, in advance, with “pestilence and famine... fever, inflammation, burning, vomiting... scab and the itch ... blindness, madness and fury”, (Aragon) etc. But when one swears on the maledictions detailed in *Lev.* 26 or *Deut.* 28, either in their original forms or in close though partial paraphrases, one adopts, necessarily, their original messages as well, and both focus on the Jewish people as a collective entity: they threaten it with terrible punishments for disobeying and betraying God, and while most of these punishments are individual to the extent that they are experienced by the community through each of its members, punishments such as the loss of statehood in the Prom-

²¹⁵ “Nec vos iuretis christianis in carta, sicut alii iudei iurant, nisi tantum per illum orientem.” [“... neither shall you swear on the carta, as all other Jews do, but only on that east.”] (Régéné, *History*), No. 47, p. 38.

²¹⁶ “Si forte evenerit, quod si per aliqua causa compulsus ad faciendum sacramentum super cartam numquam jurabis...” [“If it will arrive, that for some reason you shall be compelled to take an oath on the carta, you shall never swear it”] (Baer, *Juden*), No. 580, p. 938.

²¹⁷ Baer, *Juden*, No. 79, p. 78.

²¹⁸ Baer, *Juden*, p. 1029.

²¹⁹ Jose Amador de los Rios, *Historia*, pp. 561-567.

²²⁰ Jose Amador de los Rios, *Historia*, pp. 583-586.

ised Land, the dispersal and exile among the nations are primarily communal, targeting the Jewish people in its collective identity. Here, however, the two original *corpora* of maledictions differ: while *Leviticus* predicts that the Jewish people would be finally pardoned, received again into God's Grace and Covenant, furthermore – that it would never be entirely forsaken even in exile, *Deuteronomy*, on the contrary, threatens an unending exile and a complete annihilation. The compilers of the J.O. were surely aware of this fundamental difference when they made their choice of either one or the other as their preferred source of maledictions.

The dominance of the collective over against the private/individual dimension of the maledictions conduced to the virtual transformation of the self-malediction from a conditional illocution into a constative statement, declaring, in effect, that all the preconditions laid down in the Bible were already fulfilled, and, furthermore, that the present status of the Jews provides the best proof of this situation – the threatened maledictions have long since been effectively in force. The Jew, consequently, cannot claim a presumption of innocence: he is manifestly guilty, in the eyes of God and man.

This position underlies much of the Navarese maledictions section. Illustrating the malediction of dispersal and exile, it cites the perdition of “the Twelve Tribes”, brought about by “the two Moorish kings, Titus and Vespasian” (sic!); warning against perjury it recalls how the Jews' forefathers committed treason against the innocent Jesus and caused his death, declaring “his blood shall be on us and on our children”, and the Jew exhibits ever since, indeed, the menses, with blood dripping down his feet;²²¹ and the section terminates with the characteristic address “Et tú, judío, de palabra pórvida, & endureda, que estás sin Rey, é senes Obispos untados é senes cassen Capeillano, segund tu mala creyença, & en tierra poluta...” The overall picture is quite clear: *Leviticus'* warning – “But if ye will not hearken unto me, and will not do all these commandments ... I will also do this unto you...” (26: 14-16) – that warning has been entirely fulfilled with the coming into effect of the numerous maledictions detailed in this section.

The J.O. was not merely a speech-act, of course: it was equally – and in certain arenas of J.O.-taking, primarily – a public performance, in which text, plot, actors, staging, scenery, stage-props and audience combined to form an effective *happening*, a coherent series of living-pictures (*tableaux vivants*), which literally animated the texts and provided the audience with a powerful – because visual, action-oriented and simplistic – commentary on the message/s these texts transmitted. This aspect of the J.O. was by no means an isolated, autonomous phenomenon; it probably originated, and certainly fully shared in the late-medieval general trend towards more publicly enacted and

²²¹ See Willis Johnson, “The Myth of the Jewish Male Menses”, *JMH*, 24 (1998) pp. 273-95.

visually portrayed ‘truths’ – religious, political and socio-cultural (a broad category comprising such ‘truths’ as historical and anthropological). Chiffolleau concluded, in his study of the Parisian processions, that certain rituals underwent the process of ‘esthetisation’ in which “... la vue joue un rôle de plus en plus important. Des rituels qui cherchent surtout à obtenir le consensus par l’image, par la représentation figurée, spectaculaire”.²²² Essentially similar conclusions were reached by F. Joubert in her study of the role of the *tableaux vivants* in the political processions as a visual and theatrical public representations of both religious and political themes,²²³ and by H. Martin, who pointed to the growing utilization of the theatrical medium (spoken *mystères* and silent *tableaux vivants*) by the mendicant friars in their routine preaching activity.²²⁴

This general trend can be most clearly observed in the judicial arena, where the inherently, even essential, theatrical quality of the judiciary, persuasively described and analyzed by A. Garapon²²⁵ as a system operating ‘spectacles’, public manifestations of precise rituals carried out by chosen actors in front of an audience, was strikingly reinforced in the late Middle Ages. A typical example of this process can be seen in the seemingly weird combination of the courtroom and the comic theatre in the activities of the Parisian Basoche.²²⁶ These developments had a particularly strong impact on the evolution of the J.O. due to the nature of the judicial system as an important forum for the formation of the public discourse on the nature of society and for the elaboration of society’s self-image in the first place, and, secondly – as Garapon has persuasively demonstrated – because the judicial ritual tends to intensify and become more emphasized the more society’s moral foundations are seen to be directly threatened.²²⁷ One of the more obvious forms of judicial ritual activated in such situations was the systematic public degradation of those persons considered hostile and subversive towards society’s ideological and moral integrity.²²⁸ The very taking of the J.O. in court by the Jewish litigant was enough to trigger this mechanism of ritual rejection and degradation, for the J.O. insisted, firstly, on

²²² Jacques Chiffolleau, “Les processions parisiennes de 1412: Analyse d’un rituel flamboyant”, *RH* 284 (1990) 37-76. The text quoted comes from p. 73.

²²³ Fabienne Joubert, “Les tableaux vivants et l’Église”, in: *Le théâtre de l’Église (XIII-XVIe siècles)*, (Paris: Lamop 2011) pp. 3-24.

²²⁴ Hervé Martin, *Le Métier de predicateur en France septentrionale à la fin du Moyen Age (1350--1520)*, (Paris: Éditions du Cerf, 1988), pp. 582-83.

²²⁵ Antoine Garapon, *Bien juger; Essai sur le rituel judiciaire*, (Paris: O. Jacob, 2001).

²²⁶ Marie Bouhaïk-Gironès, *Les clercs de la Basoche et le théâtre comique (Paris, 1420-1550)*, (Paris: Honoré Champion Éditeur, 2007). See, in particular, pp. 252-53.

²²⁷ Antoine Garapon, *Bien juger; Essai sur le rituel judiciaire*, (Paris 2001), p. 249.

²²⁸ The fundamental study of this problem is Harold Garfinkel, “Conditions of Successful Degradation Ceremonies”, *American Journal of Sociology*, 61 (1956), 420-424. Garapon – a practicing judge – more than confirmed the validity of his thesis.



Fig. 2: Judicial J.O.-Taking in Augsburg

Wood-engraving by Hans Furtenbach in Ulrich Tenngler's *Laienspiegel* (Augsburg, 1509). The principal Jewish oath-taker, accompanied by two Jewish oath-helpers – all three identified by their Jewish-*rota* – appears before a Christian judge sitting on his throne and three court-functionaries around him. The Jew kneels on his knees, points with his left hand to a passage in an open *Pentateuch* while facing a court-official on the left who addresses him, probably swears him. The two oath-helpers raise their right hands in the customary oath-taking posture – and the principal oath-taker does certainly the same, though his right hand is not depicted. On the judge's right one observes a very agitated lady who points at the Jew, probably the plaintiff; she seems to be sworn in her turn by a court official standing close to her.

Source: Georg Liebe, *Das Judentum in der deutschen Vergangenheit*, Leipzig 1903, Abb. 9, p. 14.



Fig. 3: Judicial J.O.-Taking in Breslau

A seventeenth-century copperplate engraving, illustrating the obligatory J.O.-taking in the Breslau Christian court. The Jew stands bareheaded, bare-breasted and barefoot on a sow-skin, his right hand is laid on the open Pentateuch – Ex. 20: 1-7 – with the injunction “Thou shalt not take the name of the Lord thy God in vain” (v. 7) clearly visible, and holding the Jewish-hat in his left hand.

Source: Heinz Schreckenber, *Die Juden in der Kunst Europas: Ein historischer Bildatlas*, Göttingen 1996, p. 361.

the ‘Jewishness’ of the oath-taker as distinct from the Christian character of the other party to the conflict, hence on that Jew’s fundamental alienation from the society which that court represented, and that reaction resulted, furthermore, from the necessarily adversarial nature of the conflict to be resolved by the court. The adversarial relationship between a Jew and a Christian approaching together a Christian court was thus easily and commonly assimilated to the fundamental adversarial relationship between their two collectivities, between *Ecclesia* and *Synagoga* as depicted in numberless images and verbal expositions, and practically present in everyone’s mind. The echoes of such facile transformation of the individual into his collectivity still resound in the appellations of the special court that tried mixed cases between Jews and Christians

and administered the J.O. in Rothenburg ob der Tauber²²⁹: *Gastgericht*, *Judengericht*, (fair enough), but also – and here the Jewish litigant begins to stutter – *Cayphas gericht*, *Pilatus gericht*, and, worst of all: *Judas gericht*...

Not every judicial response to such mixed cases followed, necessarily, this ideological path. Many judges and legislators handled them in a straightforward way, guided by considerations of efficiency and economy of resources (though the parties to the dispute might be motivated otherwise). Hence the propensity to adopt routine oath-taking procedures from the Christian court and apply them, *mutatis mutandis*, to Jews (and to Muslims). The Jewish oath-taker frequently swore, therefore, before a Jewish official (*magister/episcopus Judaeorum*, as in Heidelberg and Frankfurt), inside the synagogue or by its door, holding or touching Holy Books or specific Biblical texts. It was a simple performance, designed for quick and businesslike results, though it sometimes deviated under the influence of the ritual components of the J.O. But this practical attitude was more than counterbalanced, in the long run, by the steadily growing tendency to reform the J.O. according to the progressively prevailing forces in the judicial arena, and the moving force that activated the J.O. towards the late Middle Ages as a ritual was quite different from that strictly utilitarian approach to the problem of mixed legal cases, as we have seen in our analysis of its verbal mode.

The living-pictures inspired by the J.O. as a ritual highlighted, in effect, the punishment imposed on the Jewish people for betraying God and disobeying his commands – perpetual pain, misery and humiliation. The *Ecloga ad Prochiron mutata* specifies: “Loosen his belt and gird him with a bramble, throw him in the sea up to his neck; he should strike the sea with his hand and say...”;²³⁰ in twelfth-century Attaleia: “... he shall gird himself with a bramble, lie down on a leather hide, go down into the sea, spit three times on his circumcised member and say...”;²³¹ and a twelfth-century German source elaborates: “he should stand under the open sky with his right hand raised up, dig himself down knee-deep, stand on a goat-hide and be girdled with bramble from above.”²³² The bramble symbolized the burning bush as well as the crown of thorns, a simultaneous reference to God’s initial revelation to Moses and to the Jewish mockery of Jesus, the scene at the sea-shore contrasted the staged frantic behaviour of the Jew with the safe passage granted to his forefathers across the Red Sea, and in the apparently sinking-down oath-taker the audience could envision Dathan and Abairon, the rebels swallowed alive by the earth.

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²²⁹ *Germania Judaica*, Vol. III, 2, p. 1258.

²³⁰ Linder, *The Jews*, No. 305, pp. 143-144.

²³¹ Linder, *The Jews*, No. 344, pp. 168, 170. See also Evelyne Patlagean, “Contribution juridique à l’histoire des Juifs dans la Méditerranée médiévale: les formules grecques de serment”, *REJ*, 124 (1965), pp. 137-156.

²³² Zimmermann, *Die Entwicklung*, p. 38.



Fig. 4: *The Diabolical Jewry-Oath*

An eighteenth-century German copperplate engraving, depicting the hanging of a Jewish criminal on a special gallows in the manner reserved to Jews²³³ – upside down over a burning fire, in close proximity to a hanged dog (placed in the conventional manner and able, therefore, to claw at the Jew beside him) and separated from the two Christian criminals hanged by their necks on their particular gallows. Underneath one observes a typical scene of JO-taking in Hell's burning-pit, which might be placed right under the tomb of that executed Jew²³⁴: a Jew rides on a pig, clutches the beast's head with his right hand and raises his left hand in the conventional oath-taking position, and another Jew sits on a second pig and swears the Jew opposite him while pointing to a particular passage in the open book he holds. The three active black demons in the background leave no doubt as to the infernal nature of this scene. The satirical rhyming inscription, with its heavy reliance on Jewish comic dialectical peculiarities, further establishes the main traits of the narrative depicted in this engraving: a Jewish criminal executed and doomed to suffer a diabolical J.O.-taking in Hell on an eternally resurrected pig[skin], probably an inverted representation of the sacrilegious J.O. he took in the course of the judicial process that brought him, finally, to the gallows. It reads as follows: "Wir Mauschel müssen jetzt in Chalers Locher sitzen:/ Au weymer! noch darzu auff Schweinen Leder schwitzen/ Warum? wir haben einst zu vielen Schmach gemacht,/ Und biss an Galgen hin der Goyim Gott veracht." [We Moyshels must now sit in the burning pit;/ Oy weymer! on top of that we sweat seating on the skin of a pig/ Why? We have once made too many non-kosher profits/ and scorned the Goyim's God all the way to the gallows.]"

Source: Liebe, Abb. 63, p. 78. THIS DOCUMENT MAY BE PRINTED FOR PRIVATE USE ONLY. IT MAY NOT BE DISTRIBUTED WITHOUT PERMISSION OF THE PUBLISHER.

²³³ See Rudolf Glanz, "The 'Jewish Execution' in Medieval Germany" *Jewish Social Studies*, 5 (1943) pp. 3-26, and Guido Kisch, "The 'Jewish Execution' in Medieval Germany", *Historia Judaica*, 5 (1943) pp. 103-32.

²³⁴ Mandatory burying of an executed Jewish criminal right under the gallows is expressly indicated in 1236, when the Jews of Winchester were permitted to bury Abraham Pinch, "ita tamen quod alibi non sepeliatur quam subtus furcas in quibus suspensus fuit." (*Close Rolls of the Reign of Henry III (PRO)*, vol. III, London 1908), p. 341.

Since the late thirteenth-century the J.O. ritual reflected the growing anti-Jewish stance of the Christian population²³⁵ by introducing new living-pictures that far outstripped the traditional scenes in their enactment of pain, misery and humiliation. The *Schwabenspiegel*, for example, replaced the traditional goat-hide placed under the Jew's feet with a sow-hide,²³⁶ and the Berlin *Stadtbuch* from 1397 specified: the hide must be that of a sow that gave birth recently and with tits still stiff and erect, it should be spread with its belly up and the Jew must stand on it bare-footed, practically on and pressing its tits.²³⁷ This innovation became quite common, and it should be appreciated against the background of the very wide-spread depiction of the Jew as obscenely associated with a sow giving suck to piglets and Jews, not to mention even more obscene forms of contact between Jew and sow, motifs documented in churches, public places and various media since the early thirteenth-century.²³⁸ Martin Luther's description of and hilarious comment on the sculpted group of that type in Wittenberg are characteristic in this regard.²³⁹ A further variation on this theme is recorded in the *Weichbildvulgata*:²⁴⁰ the Jew should stand practically half-naked, with the distinctive Jewish hat on his head and another hat, soaked with the blood of a lamb, in his hand – "His blood shall be on us, and on our children" (*Mt. 27:25*).

A fourteenth-century addition to the Gloss on the Saxon *Weichbildrecht* sharply criticized such staging of the J.O.,²⁴¹ exclaiming: "Denn dis ist ein fantasy" – for this is [pure] phantasy! Indeed – when one takes the J.O. as a pure judicial utilitarian instrument; but it was much more than just that, it was also – and probably primarily – a ritual, and both modes of judicial procedure, as well as the employment of the J.O. in the two other arenas of action, characterized by cooperation rather than adversarial relationships, should be investigated by any historian trying to make sense of the J.O.



²³⁵ See, recently, Florian Rommel, "ob mann jm vnrehtt thutt, so wollenn wir jedoch habenn sein blutt"; Judenfeindliche Vorstellungen im Passionsspiel des Mittelalters", in: Ursula Schulze (ed.), *Juden in der deutschen Literatur des Mittelalters; Religiöse Konzepte - Feindbilder - Rechtfertigungen*, (Tübingen: Niemeyer Verlag, 2002), 183-207; Matthias Schönleber, "der juden schant wart offenbar: Anti-jüdische Motive in Schwänken und Fastnachtspielen von Hans Folz", in: *Op. cit.*, pp. 164-182.

²³⁶ Zimmermann, *Die Entwicklung*, p. 81. OUT PERMISSION OF THE PUBLISHER.

²³⁷ Zimmermann, *Die Entwicklung*, pp. 120-122.

²³⁸ Exhaustive survey in Isaiah Schachar, *The Judensau; A Medieval Anti-Jewish Motif and its History*, (London 1974).

²³⁹ Zimmermann, *Die Entwicklung*, p. 122.

²⁴⁰ Zimmermann, *Die Entwicklung*, p. 142.

²⁴¹ Zimmermann, *Die Entwicklung*, p. 148.

CONCLUSION

John TOLAN and Nicolas DE LANGE

What is the place of Jews in medieval Christian societies? In the nineteenth and early twentieth centuries, this question was largely confined to Jewish scholars, and the academic debates were inseparable from the upheavals of the lives of contemporary European Jews. The movement of “emancipation” of Jews throughout Europe, launched by the parliament of the new French republic in 1791 (where Stanislas de Clermont-Tonnerre famously proclaimed “we must grant everything to the Jews as individuals and nothing to them as a nation”), spread through much of Europe in the nineteenth centuries.¹ Legal restrictions on Jews were abolished, and the power of Jewish communal institutions was hence weakened. This caused a vigorous debate within European Jewish communities, between liberals who favored emancipation and integration into European society and traditionalists who feared the consequences of a weakened rabbinate and the dangers of assimilation.² This was the background to the *Wissenschaft des Judentums* movement, which promoted a new critical study of Jewish history and texts, largely freed from the constraints of traditional scholarship.

Yet in the context of continuing anti-Semitism, violence towards European Jews, and the rise of Zionism, historical writing on European Jews often took a polemical tone. Heinrich Graetz, in his monumental *Geschichte der Juden von den ältesten Zeiten bis auf die Gegenwart* (11 vols., 1853-75), presents Christianity as a fanatically anti-Jewish religion, and many medieval Christians as bent on the destruction of Judaism; that the problem was the power of the Church is all the clearer when one looks at Muslim Spain, which Graetz idealizes as a land of tolerance and brotherhood. For many Zionists, history proved that Jews could not live in peace in Christian Europe, that they needed their own homeland. Salo Baron criticized what he called the “lachrymose” view of Jewish history of Graetz and others: his 18-volume *Social and Religious History of the Jews* (1952-83) emphasizes the deeply entwined social, cultural and economic ties between Jews and Christians in medieval Europe, whose relations cannot be reduced to a litany of hatred and violence.

In the second half of the twentieth century, many scholars (both Jewish and non-Jewish) attempting to understand the causes of Nazi genocide came to see the Middle ages as a time of growing anti-Jewish sentiment that laid

¹ R. Hermon-Belot, *L'Emancipation des juifs en France* (Paris, 1999), 59.

² P. Birnbaum & I. Katznelson, eds., *Paths of Emancipation: Jews, States and Citizenship* (Princeton, 1995).

the groundwork for modern European anti-Semitism. For Bernhard Blumenkranz, the early Middle Ages were a time of relative tolerance which was brutally brought to an end in the late eleventh century, when bands of crusaders attacked Jewish communities in the Rhineland, initiating an era in which Jews, seen as deicides, became frequent objects of violence. For others, the turning point came later. For R.I. Moore, it was due largely to the emergence of a new clerical elite in the twelfth century that saw the Jews as potential rivals, which created a “persecuting society”. For Jeremy Cohen, it is the missions of Mendicant friars in the thirteenth century. For others, it was the emergence of the blood libel and host desecration accusations. Hence the history of the Jewish communities of early medieval Europe is something of a minefield, as historians have often sought to confirm their theories about the history of Jewish-Christian relations, to find traces of a teleology they were sure existed: either to confirm the lachrymose view that Jewish history is always a vale of tears, or on the contrary to identify a golden age of inter-religious peace before the rise of Christian animosity to Judaism.

The sixth to eleventh centuries are a crucial formative period for Jewish communities in Byzantium and Latin Europe: this is also a period for which sources are scarce and about which historians have often had to speculate on the basis of scant evidence. The legal sources studied in this volume provide a relative wealth of textual material concerning Jews, and for certain areas and periods are the principal sources. While this makes them particularly valuable, it also makes their interpretation difficult, given the lack of corroborative sources. When the council of Vannes in 465 prohibits Christian clerics from sharing meals with Jews, does this mean that there were Jews in Brittany and that clerics had been eating with them? Or does this prohibition reflect debates among the bishops present, motivated by theological concerns rather than practical issues?³ The lack of context (and notably of any evidence of Jewish presence in Brittany before 1209), makes the latter answer more probable, but still uncertain.

Indeed, some historians have doubted the very existence of Jewish communities north of the Alps and the Pyrenees before the eleventh century.⁴ Could the Jew of some of the legal texts be a straw man, a “hermeneutical Jew” like that of many Christian anti-Jewish polemical works? While the Jew with

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³ Capucine Nemo-Pekelman, *Concilium Venetense* [c. 12]. <http://www.cn-telma.fr/relmin/extrait40867/>

⁴ This was the view put forward by Michael Toch in his unpublished oral contribution to the Fontevraud conference, based on arguments developed in the final chapter of Michael Toch, *The Economic History of European Jews: Late Antiquity and Early Middle Ages* (Leyden: Brill, 2012). See also Michael Toch, ‘The Jews in Europe, 500-1050’, in *New Cambridge Medieval History, volume I c.500-c.700*, ed. by Paul Fouracre (Cambridge: Cambridge University Press, 2005), pp. 547-570, 871-877.

whom one should not eat (according to Church councils such as that of Vannes) may well correspond to theological concerns (and hence to “hermeneutical” Jews), some stipulations in the Carolingian legislation discussed by Philippe Depreux clearly do not: when various ninth- and tenth-century legal texts use formulas such as “Iudei et ceteri mercatores” (“Jews and other merchants”), they clearly mean not Old Testament Jews, but real individuals present in Carolingian towns—indeed, the formulation shows that the Jew is seen as the merchant *par excellence*. Yet Jewish settlement in the Empire was uneven: principally in Italy and southern Gaul (including Lyon), with only occasional evidence of the presence of Jews, principally travelling merchants, in the northern and eastern parts of the Empire. It is only in the eleventh century that Jews begin to settle north of the Alps in any significant numbers, in particular in the towns of the Rhine valley, with the encouragement of local authorities, lay and ecclesiastical.

It is also impossible to know, in the great majority of cases, to what extent these laws were enforced and obeyed. What are we to make of the fact that certain measures are repeated frequently? For Ralph Mathisen, the prohibitions of intermarriage and of Jewish office-holding, in fifth and sixth-century imperial legislation, were ineffectual: the repetition of these measures is a sign of the impotence of the emperors to enforce the laws, rather than an indication of real Jewish social and legal inferiority. The severe anti-Jewish laws proclaimed by Visigothic councils and kings were sporadically enforced at best. Yet for Bat-Sheva Albert, the repetition of certain measures (including those concerning Jews) could have more to do with a King’s (or a council’s) need to reaffirm certain legal principles, and does not necessarily indicate whether or not the laws were respected. Thus repeated laws against Jews owning Christian slaves may say more about the zeal of the Christian legislators than about social realities. As Rachel Stocking shows, when the third council of Seville (c. 624) reacts to accusations that forced converts are presenting their Christian neighbors’ children for baptism to avoid baptizing their own children, we cannot know the truth behind these allegations—but it is clear that the bishops take advantage of the accusation to affirm their authority.

Yet in other cases we have clear evidence that many laws were not observed—even by the kings who proclaimed them. In Visigothic Spain, councils and kings regularly ruled that Jews could not be placed in positions of authority over Christians; yet King Erwig (680–87), in reiterating these prohibitions, allows an exception if such employment is in the public interest—a rather large loophole. In other cases we have exemptions or privileges granted to specific Jews, individuals or communities: The imperial letters of protection

for individual Jews, granted by Louis the Pious' court around 825, which for Johannes Heil were a reaction to attempts to challenge the Jews' economic situation by baptizing and thereby removing their servants from their households. Indeed, if these Jews took the trouble to seek out these privileges and the emperors to grant them, they must have responded to real needs. We know that in the Middle Ages the power of justice was a source of income, both through fines and through granting (or selling) of exemptions or privileges: that certainly seems to be the case here.

It has often been posited that legal restrictions on Jews are driven by theological considerations. This is the classic thesis of Jean Juster, who saw in the anti-Jewish legislation of the *Theodosian code* the fruits of Church pressure on the Christian Roman Emperors. A so-called "Augustinian doctrine" of Judaism relegated Jews to a protected but subordinated social and legal status. For Augustine, Jews were the guardians of the Hebrew Scriptures and embodied the obsolescence of the Old Law which had been replaced by the new. Guilty of having refused to recognize in Christ their Messiah, destined to convert at the end of time, Jews should be accepted in Christian society but as inferiors who should feel the yoke of servitude. For Juster, the fourth- and fifth-century emperors translated this theological vision into a legal program, creating a protected and inferior legal and social status for Jews in a now Christian Roman Empire. Yet in fact, as Capucine Nemo-Pekelman has shown, these Christian emperors are in no way establishing a coherent, theologically-centered Jewry law: rather their laws are more often than not reacting to specific situations at the request of various individuals—sometimes bishops or imperial officials, sometimes Jews⁵. When the jurists working for Theodosius II codify these laws, they do indeed group most of them together in a chapter devoted primarily to Jews, showing an attempt to lay the groundwork for specific restrictions concerning Jews. But if anything, it is the theologians who are responding to social and legal realities and not the other way around: confronted with Emperors who issued legal guarantees to Jews, they found theological justifications for a social *status quo* that they had not chosen, that explained why Christians allowed Jews to live in their midst.

Medieval popes could not separate the domains of law and theology, since they were deeply implicated in both. Bruno Judic shows how Pope Gregory I reconciled what could be classified as an Augustinian view of Judaism with the practical concerns he faced as primate of the Roman church and as de facto political leader of Rome (since the emperors of Constantinople exercised little real power in central Italy) faced by the expansion of the Lombard kingdom to the North. Gregory vigorously affirmed the principles that had

⁵ C. Nemo-Pekelman, *Rome et ses citoyens juifs, IV^e-V^e siècles* (Paris, 2010).

been established by the Roman Emperors: Jews were to be left in peace and not pressured to convert through violence; they were to have unencumbered use of their synagogues; but they were not to convert Christians to Judaism. Elsewhere the pope showed diplomatic creativity, notably concerning Jewish ownership of Christian slaves: he tried to have the prohibition enforced in Gaul, though in Italy he drew a distinction between Jewish ownership of Christian domestic slaves (which was prohibited) and Jewish lordship over Christian peasants (which was allowed). This distinction was indispensable if Jews were to continue to own and exploit agricultural land—and if they were to remain Romans faithful to the pope (rather than turning to his Lombard adversaries).

Not all popes showed the same will to protect traditional Jewish rights. Leo VII (936-939), as Jessie Sherwood demonstrates, authorized bishops to preach conversion to Jews and to give them the choice between baptism and exile. Yet Leo's bull did not influence canon law on the subject, and subsequent popes affirmed Jews' rights to live in peace within Christendom, in the traditional bulls *Sicut Iudeis*, issued repeatedly beginning with pope Callixtus II (1119-24).

The danger, when one isolates Jewish law from the legal traditions and historical context in which it is found, is that the real nature and object of much of this legislation is obscured. Céline Martin shows how the degradation of the legal status of free Jews in Visigothic Spain is part of a larger picture of a loss of legal autonomy among subjects of the Visigothic kings. David Freidenreich shows how church councils of the same period issued similar restrictions (concerning intermarriage, conversion, etc.) against pagans, Jews and heretics, yet how often Jews were portrayed as the most dangerous (because the most intractably alien) among the groups of non-Christians.

Many of the articles in this collection have concentrated on Visigothic Spain, since we find there well-established and numerous Jewish communities, and abundant legislation by kings and church councils. We also find some of the harshest anti-Jewish legislation of the period: prohibitions on Jews holding positions of authority over Christians, attacks on Jewish texts thought to be anti-Christian, and ultimately forced conversion. This is matched by harsh rhetoric: Visigothic legislation often refers to rabbis as “doctors of iniquity” (*doctores iniquitatis*), as Bat-Sheva Albert notes. Rachel Stocking traces the history of seventh-century anti-Jewish legislation: King Sisebut (612-21) orders the baptism of all Jews in the kingdom; subsequent church councils pronounced harsh punishments on converts who practiced rites of their former religion; in 681, King Egica again ordered the forced baptism of remaining Jews in his kingdom. Indeed, royal legislation, in an attempt to eradicate Judaism and enforce a unified Catholic culture, ordered the separation of children from their Jewish or convert parents and strict punishment for those

who continue to use “Jewish books” (as we saw in Raul González Salinero’s article). Less and less distinction was made between “baptized Jews” (converts) and unbaptized Jews. Finally, in 694, the Seventeenth Council of Toledo ordered the enslavement of all Jews and converted Jews, the dispersal of their families and the confiscation of all their goods. Was this simply another act of desperation on the part of bishops and king who had been unable to enforce earlier anti-Jewish laws? At any case, the enfeebled Visigothic monarchy would, 17 years later, fall to the forces of the Berber general Tariq, making the legislation a dead letter and breathing new life into Iberia’s Jewish community.

We have also paid attention to the Byzantine empire, which is too often ignored in books about early medieval Jewry. Here too there were well-established Jewish communities, with a long-recognised status in Roman law. The official attitude to the Jews has its roots in the early days of the Byzantine state in Late Antiquity, but it continued to be shaped by the theological hatred of Judaism that was characteristic of the Byzantine church. The language of Christian worship and preaching, in Christian literature and even of the law-court represented them as strangers, aliens, benighted adherents of superstitious and primitive beliefs, and enemies of Christ and his church. Particularly striking is the wording of the oath to be taken by Jews involved in legal proceedings (discussed in the article by Amnon Linder). Yet the Jewish communities were generally well integrated into wider Byzantine society: Alexander Panayotov’s study of Jewish communal institutions illustrates one aspect of this. As for the leading figures in church and state, their attitude to the Jewish minority, although shaped to some extent by theological commonplaces, is far from uniform. On a few occasions the wholesale conversion of Jews to Christianity was decreed, by emperors Heraclius (632), Leo III (721/2), Basil I (873/4), Leo VI (c. 892), Romanos I (shortly before 932) and outside our period by John Vatatzes (1254). Paul Magdalino and Oscar Prieto Domínguez examine two of these decrees, those of Heraclius and Basil respectively, and they both show what a complicated task it is to uncover the motives for such actions, and how policy has to be studied in the light of personal and institutional tensions, as well as theological cross-currents.

The importance of this volume to those who are interested in the history of Jewish-Christian relations should be, we hope, larger than the sum of its parts. In an age when documentation is sparse and when the legal sources tap into common roots of Roman and ecclesiastical law, it is worth studying together the early medieval societies of Byzantium, Italy, Visigothic Spain, and the Carolingian Empire. While many questions remain unanswered and (given the paucity of sources) many answers are necessarily tentative, the essays show how law often has a life of its own and highlight the complexity

of the relations between the legal status of Jews in Christian polities and their social and economic place in Christian societies. This volume is part of a wider reflection, as the second volume of the Series “Religion and law in Medieval Christian and Muslim Societies”, on the social and legal status of religious minorities in the Medieval world. The first volume, *The Legal Status of *Ḍimmī*-s in the Islamic West*, published in 2013, examined the laws regarding Christian and Jews living in Islamic societies of Europe and the Maghreb. How and to what extent did such legal theory translate into concrete measures regulating interreligious relations? Volume 3 in the collection, which will be published in 2014, will study this issue: the theme will be *Religious cohabitation in European towns (10th-15th centuries)*.



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Index

- Abelard *see* Peter Abelard
Abraham of Zaragoza (Saragossa): 139
Adalwald, Lombard king: 255 n. 60
Additamenta ad capitula regis franciae occi-
dentalis: 126
Ademar of Chabannes: 128, 158
Adra: 183
adultery: 79–80, 150, 160, 273
Aegina: 168
Agde, Council of (506): 16, 26, 154, 159 n.
24, 255 n. 58
Agnellus, bishop of Fundi: 103
Agobard, archbishop of Lyon: 26, 131, 136,
149, 156 n. 12, 179–80, 185, 189, 213–15
deposition of: 157
and *Sefer toledot Yechou*: 192
and Talmudic literature: 209
Agrigente: 109–11
Ahimaaz ben Paltiel: 285 n. 14, 301
Ahimaaz of Oria, *Sefer Yehasin*: 284–85
Aix-la-Chapelle: 138, 215
al-Andalus: 208
Alagon: 339, 349
Alaric II, Visigothic king: 15, 17, 18
see also Breviarium Alaricianum
Albert, Bat-Sheva: 363, 365
Albert of Metz, *De Diversitate temporum*:
225
Alcuin of York: 216
Alexander, *scholasticus* and *prostates*:
175–77
Alexander III, pope: 12, 32
Alexander of Hales: 330
Alexander the Great: 240
Alfonso III, king of Aragon: 349
Ameling, Walter: 171
Amolon (Amulo), archbishop of Lyon: 27,
137, 156 n. 12, 157, 179–80, 189, 213–15
Contra Iudaeos: 26
Amon, biblical king: 297
Amulo *see* Amolon
Andreas, bishop of Fondi: 113
Angers synod: 321, 328
Angilbert II, archbishop of Milan: 137
Annales Quedlinburgenses: 225
Anthony, archbishop of Bosphorus: 295
Antichrist, Jews associated with: 158,
232–35, 237, 239–40, 260–61
Antonine Constitution: 35–36
Aphrodisias: 176
Apollonios, *presbyter*: 169
apostasy
of Christians: 22, 41
of Jews, baptised: 61–63, 69, 74, 83–84,
102, 186–87, 206, 238, 240, 243, 247–51,
259, 263
Apringius of Beja, *Commentaria minora in*
Apocalypsin Johannis: 199
Aquinas *see* Thomas Aquinas
Aquitaine: 13
Arcadius, Roman emperor: 172
archegissa: 167, 174–75, 177
archegos: 167, 174–75, 177
archipherekitae: 173, 177
archisynagogissa: 167, 169, 172, 174–75
archisynagogos: 168–69, 172, 175–76, 184
archon: 168
Areobindus, praetorian prefect: 20
Arethas of Cesarea: 296
Argos: 168–69
Arianism: 18, 38 n. 18, 53, 102, 251–52, 255
n. 60, 258, 273
Arles: 184–85
First Council of (314): 77
Second Council of (353): 85
Armenia: 293
Aronius, Julius: 131
Arundel, penitential of: 28
Ashkenaz: 212, 225, 227
Athanasias of Emesa: 21, 173, 297

- Attaleia: 353
 Attigny, Diet of: 213
 Augsburg: 140, 335, 354
 Augustine, saint, bishop of Hippo: 31
 and non-Catholics, conflation of: 73, 75,
 89, 117, 127, 227, 248–49, 317, 364
 on oath-taking: 314, 329–30, 347
 Augustus, Roman emperor: 35
 Aurelia Dioclea: 168–69
 Austin, Greta: 220
 Auxilius, Frank (of Naples): 285
 Avars: 238
 Avit, bishop of Clermont: 17 n. 35
- Babylonia: 197 n. 9, 198 n. 14, 200, 209
 Bacauda, bishop of Formies: 103
 Bachrach, Bernard: 132, 136
 Baer, F.: 314
 Baetica: 250, 256
 Baghdad: 215
 Baluze, Étienne: 141
 Barbastro: 338
 Barcelona: 339, 349
 Second Council of (599): 18 n. 41
 Baron, Salo: 351
 Bartholomeus, follower of Nibradius of
 Narbonne: 214
 Basil I, Byzantine emperor: 28–9, 173, 241
 and mass conversion: 235, 283–302, 366
 Basil the Great, saint: 297
 Basile, Jewish merchant: 99–100
Basilica (Basiliká): 29, 173, 287–92
 Benedict (Benoît) the Levite: 27, 156
 Bernard Itier: 157 n. 17
 Beroea (Veria): 169–70
 Bischoff, Bernhard: 154, 156
 blasphemy: 63, 258–59, 261–62, 265, 284,
 339–40
 Blumenkranz, Bernhard: 13, 26, 55, 63, 67,
 109, 133, 207, 362
 Boniface, saint, archbishop of Mainz: 122
 Bonnassie, Pierre: 96
Book of Ceremonies (De ceremoniis): 285
Book of the Prefect see Liber praefecti urbis
 Borboritae: 52
 Boretius, Alfred: 131, 136, 141–43
 Bourges: 159, 184
 Bracton *see* Henry Bracton
 Braulio of Zaragoza (Saragossa): 102, 203
 Breslau: 355–56
- Breviarium Alaricianum (Lex Romana Visigo-*
thorum): 15–16, 18, 27, 31, 61, 186,
 272–73
 Bronisch, Alexander: 68
 Brooten, Bernadette: 171
 Brunehaut (Brunhild) of Austrasia: 101,
 125
 Brünn: 336
 Bulgaria: 294, 300
 Burchard of Worms: 217–18
 on conversion of Jews: 221–24, 228, 259
 n. 71
 Corrector sive Medicus: 28
 Decretum: 25, 30–31, 127, 212, 219
 and eschatology: 223–24, 226–27
 on murder of Jews: 28, 220–21
 Byzie *see* Vize
- Caesarius of Arles, saint: 180
 Cagliari: 97, 105
 Cairo Genizah: 8 n. 4, 192
 Calatayud: 342, 349
 Callixtus II, pope: 365
 Calvinism: 317
 Candidus, priest: 101
 canon law, early medieval
 on carnal nature of Jews: 87–89
 and church councils: 73–74
 on conversion to Catholicism: 74,
 82–84
 and ‘Jewry law’: 75, 83, 87, 90–91
 on Jews as threat to Catholicism: 73,
 79–81, 89–91
 and non-Catholics, contrast of: 73–81,
 84, 89–91
 on reversion: 74, 82–84
capitis deminutio: 58–59, 62–65
Capitula de Iudaeis: 136, 141–49
 structure of: 150–52
 Cardona: 342
 Carmen de synodo Ticinensi: 116
 Carolingian law
 on Christian/Jewish marriage, interdiction of: 134
 on Jews as ordinary subjects: 133, 138–
 40, 149
 on Jews’ authority over Christians, interdiction of: 134, 137–38
 on judicial affairs, Jews in: 139, 146, 148
 and *magister Iudeorum*: 135
 on merchants, Jewish: 137–40, 145

- see also Capitula de Iudaeis*
 Carthage: 236, 252 n. 41
 Council of (419): 154
 Casinense, penitential: 28
 Cassiodorus, *Variae*: 23
 Catalonia: 339
 Catania: 337, 344
 Cerdagne: 339
 Chalcedon, Council of (451): 25 n. 73
 Chalcedonians: 236
 Chalon, 184–85
 Council of (647–53): 16, 80
 Charlemagne, Holy Roman Emperor: 24, 26, 132, 135–36, 138–40, 142–44, 147, 149, 213, 215
 coinage of: 161 n. 29
 and Gerhard of Mainz: 123, 126
 Charles the Bald, Holy Roman Emperor: 26, 146, 149, 228
 and Edict of Pîtres (864): 135
 and Paris-Meaux Council: 126, 142, 148, 157, 214
 Childebert I, king of the Franks: 16, 17 n. 35, 127, 181
 Chilperic, king of Neustria: 17 n. 35
 Chindaswinth, Visigothic king: 57, 59–60, 263 n. 83
 Chintala, Visigothic king: 64 n. 58, 196, 207
 Christopher, Domestic of the Schools: 295
 Christopher, protoascretis of Basil I: 284, 293
 Chrysocheir, Paulician leader: 295
 Chur: 27
 Church Councils, *see under* Agde; Arle; Barcelona; Carthage; Chalcedon; Chalon; Clermont; Clichy; Constantinople; Coyaca; Elvira; Epaone; Erfurt; Esztergom/Gran; Girona; Laodicea; Mâcon; Narbonne; Nicaea; Paris-Meaux; Orléans; Oviedo; Pavia; Rome; Rouen; Seville; Siponto; Szaboles; Toledo; Vannes; Zaragoza
 circumcision: 64, 253–54, 258, 262, 270, 274–75, 280, 294
 of Christian slaves: 87, 100, 126, 258, 287–89, 291–92
 citizenship, Roman: 35–37, 39, 48, 52
 Clermont: 184
 Council of (535): 16, 26, 154 n. 4
 Clermont-Tonnerre, Stanislas de: 361
 Clichy, Council of (626/27): 16, 80, 154 n. 4
 Clotaire I, king of the Franks: 16
 Clotaire II, king of the Franks: 17
 and Edict of Paris (614): 134
 clothing, of Jews: 162–63, 326, 359
 Clovis I, king of the Franks: 14
Codex Hermogenianus: 15 n. 27
Codex Revisus: 18
Codex Theodosianus see Theodosian Code
 Cohen, Jeremy: 216, 224, 362
Collatio legum Mosaicarum et Romanarum: 47–48, 203
Collectio duodecim partium: 217
Collectio Tripartita: 173
Collection in 74 Titles: 32
 Cologne (Köln): 216, 335
 Coloman (Colomban), king of Hungary: 30
 Colorni, Vittore: 21
 community (*conventus*), Jewish
 and religious books: 190–91
 and social status: 187–90
 and Visigothic and Frankish legislation: 180–93
Confessio vel professio Iudaeorum civitates Toletanae: 202
 Conflent: 339
 Conrad, duke: 225
 Constantine, son of Basil I: 299, 301 n. 94
 Constantine the Great, Roman emperor: 38 n. 18, 172, 293–94
 Constantine VIII Porphyrogenitus, Byzantine emperor: 289, 294
 Constantinople: 173, 177 n. 60, 238, 283
 Council of (381): 38 n. 18
 guilds of: 29, 291
Constitutiones Sirmondinae see Sirmondian Constitutions
 conversion of Jews: 21–22, 42, 51, 65, 74, 91, 189, 365–66
 and Basil I: 235, 283–302, 366
 in Burchard of Worms: 221–24, 228, 259 n. 71
 in Byzantium, forced baptism: 234–42, 283–302
 and children, forced baptism of: 26, 202, 221, 226, 244–46, 248, 251, 256, 258–62, 264–65, 274, 277, 363
 and circumcision: 253–54, 258, 262
 and free will: 255, 261–62, 285
 in Gaul, forced baptism: 17, 26, 135, 185
 in Gerhard of Mainz: 119–29

- and Gregory the Great: 96, 108–16
and Honorius I: 102, 237
in Iberia, forced baptism: 18–19, 61–64, 67–68, 82–84, 88, 101–02, 128, 183, 243–66, 275–80, 363, 366
mass conversion: 120, 218, 283–302, 365–66
and perfidy, Jewish: 244, 248, 254–56, 258, 261, 263
and Photius, Patriarch: 285, 287, 291–302
and Sisebut: 18, 26, 63–64, 68, 243–45, 247–50, 254–55, 257, 366
and substitution of Christian children in baptism: 248, 251–52, 258–59, 363
and surtaxes: 109–10
in theology: 314–18
and women: 275–80
- Corbie, abbey: 156
Corrector Buchardi (Corrector sive Medicus): 27–28
- Coyaca, Council of (1050): 30
- Crete: 169
- crimen maiestas*: 60
- crusade, First (1096): 31 n. 100, 317
- Cyprien, deacon of Sicily: 110
- Cyprus: 172
- Cyril, saint: 233, 295 n. 61
- Dacheriana*: 217
- Dagobert, king of the Franks: 17 n. 35
- Dagron, G.: 294
- David, biblical king: 293, 297
- Dawkins, Richard: 170
- De ceremoniis* see *Book of Ceremonies*
- De iudaeis*: 153–64
- De perfidia iudaeorum*: 64
- decalvatio*: 190, 204–05
- decurions, Jews as: 20, 44–46, 52, 286
- Depreux, Philippe: 363
- dhimmī* law: 90–91
- Diaspora, Jewish: 199, 201–02, 233, 280, 311, 314, 317
- Díaz, Pablo C.: 58
- didascalos*: 173
- Diegesis Danielis*: 232
- Diocleus, *archisynagogos* of Argos: 169
- Dionysio-Hadriana*: 26
- Dionysius of Athens (Pseudo-Dionysius the Areopagite): 122–23, 297
- Doctrina Iacobi nuper baptizati*: 236, 239, 241
- Donatus (Nathan): 211
- Dortmund: 335
- Dreus, Wolfram: 197, 248
- Dumézil, Bruno: 68
- Dyophysites: 236
- Ecloga*: 22
- Ecloga ad Prochiron mutata*: 353
- Eco, Umberto: 179, 193
- Egea: 342
- Egica, Visigothic king: 57, 69, 81, 183, 243 n. 3, 263 n. 83, 365
and enslavement of Jews: 55, 64, 66, 70, 207, 265
- Eisagoge (Eisagoge; Introduction to Law)*: 28–29, 287–88, 290–92, 296, 299
- Eisagogé Aucta*: 290, 292
- Eisagogé cum Prochiro composita*: 290
- Elazar Hakalir: 192
- Elche: 183–84
- Elias, biblical prophet: 297
- Elvira, Council of (ca. 306): 74 n. 5, 76–9, 81–82, 84, 89–90, 154 n. 4, 160 n. 27, 222, 272
- Epaone, Council of (517): 16, 26, 78, 125, 134
- Épernay, Diet of: 126
- epigraphy see inscriptions
- Epitome Aegidii*: 27
- Epitome Gulepjerbytana*: 27
- Epitome legum*: 289
- Epitome Lugdunensis*: 27
- Epitome Monachi*: 27
- Epitome S. Galli*: 27
- Epitome Scintilla*: 27
- Erasmus, Desiderius: 320
- Erfurt, Council of (932): 25 n. 70, 120, 128, 218
- Ervige (Ervig, Erviga, Erwig), Visigothic king: 182, 187–88, 191, 198, 204, 263 n. 83
and forced baptism of Jews: 19, 62–63, 207, 264
and Jewry-Oaths: 311, 347
and prevention of apostasy of baptised Jews: 81 n. 23, 83, 185–86, 206, 273
and social status of Jews: 189–90, 363
- eschatology: 315
and Burchard of Worms: 223–24, 226–27



- and Byzantine apocalyptic literature: 231–42
 and Elazar Hakalir: 192
 and Gregory I the Great: 96, 108, 112–17
 and Jewish apocalyptic literature: 237–38, 240
 and Julian of Toledo: 198–200
see also Antichrist
- Esther, biblical figure: 280
- Esztergom/Gran, Council of (1095–1116): 30
- ethnarch*: 168
- eucharist, desecration of: 63, 317
- Eupaterius, magister militum: 105
- Euric, Visigothic king: 15, 18, 69
- European Research Council (Conseil Européen de la Recherche): 11–12
- Eusebius: 242
Ecclesiastical History: 37
- Evora: 184
- Exhortations to the Jews*: 284
- expulsion of Jews: 17, 59 n. 25, 65, 119–21, 128, 141, 183, 225, 317
- fadās*: 270
- False Decretals (*Fausses décrétales*; Pseudo-Isidorean Decretals): 25–26, 31, 123
- Fantinus, defensor: 111
- Ferréol, bishop: 17 n. 35
- fidejussores*: 321–22
- Florentina, sister of Isidore of Seville: 278
- Florus of Lyon: 10, 26–27, 180, 185, 213
- Folz, Hans: 317, 328
- Fondi: 113
- food: 88
 prohibition against sharing with Jews: 78–79, 126, 222, 248, 362–63
 sacrificial: 77 n. 13, 85
 and women's role in: 270, 274, 278–80
- Formosus, pope: 285 n. 13
- Fortunatus, bishop of Naples: 98, 125
- Fournier, Paul: 26, 220
- Frankfurt: 317, 344, 353
- Frederick II, king of Sicily: 162 n. 33
- Freidenreich, David: 365
- Frey, Jean-Baptiste: 171
- Fried, Johannes: 223
- Friedrich, archbishop of Mainz: 30, 119–22, 127–28, 218
- Fructuosus: 203
- Fulda: 216
- Fulgentius of Ruspe: 228
- Furtenbach, Hans: 356
- Gamaliel VI, patriarch of Jewish Sanhedrin: 43
- Ganshof, François-Louis: 136
- Garapon, A.: 352
- Gaudentius of Brescia: 39
- Geisel, Christof: 136, 143, 145
- George of Pisidia: 239
- Georgius Monachus Continuatus*: 301
- Gerhard of Mainz, *Collectio*: 212, 223
 on apostolic primacy of Mainz: 122
 on Jewish authority over Christians: 119, 123, 129
 on non-compulsion of conversion of Jews: 119–29, 218
 sources for: 123–29
- Germain, saint: 279
- Germania Judaica*: 312
- Gerona *see* Girona
- Gershom ben Jehuda: 225
- Gilchrist, John: 222
- Girona (Gerona): 191, 339, 344
 Council of (1078): 25 n. 70, 30
- Gog and Magog: 238
- Golb, Norman: 216
- Gondebaud, king of Burgundy: 14, 133
- Gontran, king of Burgundy: 185, 192
- González Salinero, Raúl: 67, 366
- Gozo/Malta: 338
- Graetz, Heinrich: 361
- Gratian, *Decretum*: 12, 31 n. 100, 217–18, 227–28
 importance of: 219
 on oath-taking: 329–30
 sources for: 25, 123, 127
 structure of: 226
- Green, Monica: 269
- Gregorian reform: 25, 30–31
- Gregory I the Great, pope: 23 n. 65, 25, 32, 182, 227, 364
 on conversion and eschatology: 96, 108–17, 119, 249
 corpus of: 95–96
Moralia: 31
 on protection Jews: 10, 102–06, 116, 123–24, 221–22
Registrum: 23, 103
 on Roman legislation: 96, 103–07, 117

- on slavery and Jews: 10, 96–104, 112, 116, 124–25, 365
 Gregory VII, pope: 30
 see also Gregorian reforms
 Gregory IX, pope: 164 n. 40
 Gregory Asbestos, bishop of Nicea: 241, 294 n. 78
 Treatise on the Baptism of Jews: 284, 296–97
 Gregory of Nazianzus: 293, 297
 Gregory of Tours, saint: 179–80, 189
 Guillelmus Durantis: 330
 Guillot, Olivier: 15
 Gundemar, Visigothic king: 264 n. 88

Hadriana-Hispana: 26
 Haenel, Gustav: 16
 halachic interdictions: 322–25, 334, 343
 Hameln: 335
 Hananel, R., of Kairouan: 322
 Hananel, rabbi of Oria: 284
Haphtaroth, Book of: 333
 Hartmann, W.: 110
 Hebrew
 inscriptions: 201–02
 literature/scriptures: 173, 195, 197, 199, 201–02
 spoken: 21, 201–02
 Hebrew Anonymous: 224
 Heidelberg: 353
 Heil, Johannes: 364
 Hellenism: 21, 231
 Helmstedt: 335
 Hen, Yitzhak: 86
 Henry II, king of England: 315
 Henry III, king of England: 162 n. 33
 Henry I, king of Germany: 120, 218
 Henry II, king of Germany: 225
 Henry Bracton: 327
 Heraclius, Byzantine emperor: 235–42, 267, 286, 366
 heresy/heretics: 11, 46, 49–50, 52, 231, 300
 and Augustine, saint: 73
 contrasted to other non-Catholics: 73–81, 82, 84, 89–90, 228, 365
 conversion of: 82
 as disembodied threat: 85–86
 punishment for: 60
 in Visigothic Iberia: 60, 63, 365
 see also Arians; Manichees
 “hermeneutical Jew”: 213, 216, 227, 362

 Hérrouval, Antoine d': 153, 155, 157–58
Herovalliana: 159
Hibernensis: 217
 Hildebert (Hildibert), archbishop of Mainz: 121, 218
Hilul Hashem: 332–34
Hispana: 25–26, 257, 263–64
 Honorius, Roman emperor: 172, 177 n. 60
 Honorius I, pope: 102, 236–37
 Honorius III, pope: 164 n. 40
 Horsley, Greg: 176
 Horst, Pieter van der: 171
 Hrabanus Maurus: 216
 Huesca: 336, 338, 349
 Hugh of St.-Victor: 318
humiliores: 57–59, 62

 Iacob, *rebbe*, son of *rebbe* Senior: 197
 Iconoclasm: 286, 294–96
 Ignatius, patriarch of Constantinople: 293, 297 n. 70, 298
infamia: 48–49, 58–62, 75
inferiores: 57
 inheritance: 19, 41, 51
 Innocent III, pope: 13, 32, 162
 Innocent III, pope: 164 n. 40
 Inquisition: 281
 inscriptions: 8 n. 4, 12
 and Jewish communal offices: 167–77
 in Visigothic Spain: 183–84, 195, 197, 201–02
 and women: 167, 169–72, 174–75, 177
 Isabel, queen of Castile: 337
 Isaiah of Trani the Elder, R.: 331
 Isidore, Jewish woman: 269
 Isidore Mercator: 155
 Isidore of Seville: 192, 248–49, 263, 265, 275–76
 and councils of Toledo: 189, 244, 257
 De ecclesiasticis officiis: 252
 De fide catholica contra iudaeos: 253, 255, 278
 De grammatica: 161, 164
 De viris illustribus: 252
 History of the Goths: 279
Ius Antiquum: 32
ius civile: 39, 43
ius Iudaicum see lex Iudaica
 Ivo of Chartres (Ives; Yves de Chartes): 25, 31 n. 100, 218, 227, 259 n. 71
 Collectio tripartita: 226



- Decretum*: 127, 226–28, 329
on oath-taking: 327, 329
- Jaime I, king of Aragon: 339, 342
Jaime II, king of Aragon: 343
Janvier, bishop of Cagliari: 97, 105
Jativa: 337
Jay, Nancy: 280
Jerome, saint: 196, 203
Jerusalem: 225, 233–34, 317, 348
 conversion of Jews in: 120, 218, 286
 Persian occupation of: 237
Jewry-Oath
 extent of: 311–13
 forms of: 319, 330–38, 341, 346–53, 366
 historiography of: 313–14
 and images: 326, 354–59
 and perjury: 327–28, 333–34
 and physicians: 340–41
 role of: 317–27, 329, 332, 336–46
 and usury: 319, 321–22, 336, 339–42, 346
jizya: 91
Johannes Diaconus, *Vita S. Gregorii*: 123–25, 127
John Chrysostom: 297
John of Cappadocia, praetorian prefect: 20
John Vatatzes, Byzantine emperor: 366
Jordan, bishop of Limoges: 159
Joseph, biblical patriarch: 293
Josephus, Flavius: 37, 191
Joubert, F.: 352
Judic, Bruno: 364
Judith, biblical figure: 280
Julian, bishop of Toledo: 189, 192
 De Comprobatione Sextae Aetatis: 191, 198–200, 202
Julius Paulus, *Sententiae Receptae*: 15
Juster, Jean: 171, 176, 190, 364
Justinian, Byzantine emperor: 29, 112, 239, 291
 and church of Saint Sophia: 284
 Codex Justinianus: 19–20, 23, 28, 37, 51–53, 187, 286–89
 Corpus iuris civilis: 51–52, 286–88
 Digest: 37, 288
 Novellae Constitutiones: 19–21, 23, 196–97, 288
 on slavery: 96
 and status of Jews: 49–53
 on synagogues: 173
 on texts, Jewish: 196–97
 translation of laws into Greek: 21–22
Juvenal: 38
- Khazars: 295
Khusrau, Persian king: 239
Kissamos: 169–70, 172, 174
Köln *see* Cologne
Kraus, Viktor: 131
Krauss, Samuel: 171, 176
- Lagrasse, abbey: 132
Lagumina, G.: 341
Landes, Richard: 223
Lange, Nicholas de: 175, 209
Laodicea, Council of (363–64): 25 n. 73, 26
Larissa: 175, 177
Lateran Council, Fourth (1215): 162, 164, 319, 341
Law of the Herzogtum of Bayern-Landshut: 312
Law of the Visigoths *see* *Lex Visigothorum*
law, Roman
 and Jewish custom, conflict with: 40–43
 and Jewish custom, respect for: 39–41, 47–49
 and jurisdiction over Jews in late Antiquity: 37–39
 and public service, Jews in: 44–53
lawyers, Jews as: 39, 45–47
le Bras, Gabriel: 159
Leander of Seville, saint: 102
Leo III the Isaurian, Byzantine emperor: 22, 235, 284 n. 4, 286, 366
Leo VI, Byzantine emperor: 29, 173, 284, 287, 290–91, 301–02, 366
Leo VII, pope: 119–22, 127–28, 365
Leo IX, pope: 30
Leovigild, Visigothic king: 18, 183, 251–52
Lerida: 336, 339, 349
Lex Burgundionum: 14
lex Christiana: 38–39, 41, 47
lex Iudaica (ius Iudaicum): 38–39, 41, 43, 47, 552
Lex Romana Burgundiorum: 134
Lex Romana Raetica Curiensis: 27
Lex Romana Visigothorum see *Breviarium Alaricianum*
Lex Visigothorum (Law of the Visigoths): 186–87, 191, 263, 273–75, 311, 347

- Liber Iudiciorum*: 18, 59, 62
Liber praefecti urbis (Book of the Prefect): 29, 290–92, 335
liberti: 58
 Libertinus, moneylender: 112
Life of Andrew the Fool: 232–35, 240
Life of Basil the Younger: 232
 Lincoln: 343
 Linder, Amnon: 19, 22, 141, 180, 192, 366
 Lintzel, Martin: 148
 Lombard *see* Peter Lombard
 Lotter, Friedrich: 221–22
 Louis II, Holy Roman Emperor: 141
 Louis the Pious, king of the Franks: 26, 134–37, 145, 147–49, 185
 conflict with bishopric of Lyon: 10, 157
 and rights of Jews: 131–32, 211, 213, 228, 364
 Louis IX, saint, king of France: 162 n. 33, 163
 Luni: 97
 Luther, Martin: 359
 Lutheranism: 317
 Lyon: 10, 184–85, 192, 213–15, 217, 228, 363
- Maccabees: 279–81
 Macedonia: 169, 293
 Mâcon, First Council of (581–83): 10, 16, 26, 74 n. 5, 87–88, 127, 154, 181
 Magdalino, Paul: 366
 Magdeburg: 215, 219, 335
Maharam: 323, 325, 333, 343
Maharik: 333–34
 Maimonides: 322, 325
 Mainz: 121–22, 212, 216, 223
 expulsion of Jews from: 225
 Majorian, Roman emperor: 15 n. 27
Maledictions: 336, 349
 Malta: 171, 338
 Mancius, saint: 183–84
 Mango, M.M.: 298
 Manichees: 52, 231
 Manuel Comnenus, Byzantine emperor: 335
 Mapping the Jewish Communities in the Byzantine Empire project: 12
 Marcian, Byzantine emperor: 15 n. 27
 Marcionites: 300
 marriage: 150, 289
 between Jews and Christians: 14, 30, 41, 50, 53, 61, 76–78, 134, 231, 259–60, 272–74, 276–77, 363, 365
 between non-Catholics and Christians: 76–78
 and Jewish practices: 64, 83, 270–72, 280, 292
 Marseille: 108–09, 184
 Martianus, bishop: 250, 258
 Martin I, king of Sicily: 337
 Martin, Céline: 365
 Martin, H.: 352
 Martyrius: 68
 Mathisen, Ralph: 363
 Maximos the Confessor: 236, 240–41, 286 n. 14
 Mayr-Harting, Henry: 121
 Meaux, Council of *see* Paris-Meaux, Council of
 Meliosa, Jewish woman: 269
 Mérida: 183–84, 197
 Merseburg: 219
 Mesopotamia: 286
 Messina: 338
 Michael II, Byzantine emperor: 294
 Michael III, Byzantine emperor: 293 n. 49, 294
 Michael Glykas: 233
 Michael Psellos: 22
Michna see Mishna
mikveh: 7
 Milan: 343
 Minorca: 184
minores: 57
Mishna (Michna): 173, 184, 190, 196, 202 n. 34, 268
 Moïse ben Nachman *see* Nachmanides
 Monenergism: 236, 241
 moneylending *see* usury
 Monophysites: 236
 Monothelism: 236–37, 241
 Montanists: 52, 171
 Montpellier: 342
 Moore, R.I.: 362
 Mordek, Hubert: 136, 142, 147
 Moses: 232, 297, 348, 350, 356
 Moses ben Kalonymos: 225
munera: 44–45, 52
 murder, of Jews: 28, 220–21
 Mutawakkil, Abbasid caliph: 284 n. 4



- Naaman the Syrian: 146
 Nachmanides (Moïse ben Nachman): 191
 Naples: 98, 106, 176, 185, 338
 Narbonne: 101, 184, 214
 Council of (589): 18 n. 41, 80, 87, 183
 Council of (1227): 163
 Narbonnaise: 18, 67
 Natronai (b. Havivai), R.: 209
 Nazi genocide: 361
 Nea Anchialos *see* Phthiotic Thebes
 Nemo-Pekelman, Capucine: 364
 Nibridius, archbishop of Narbonne: 214
 Nicaea, Second Council of (787): 297
 Nicholas, saint: 322
 Nimègue: 138
nobiliiores: 57, 62
 Nocera: 171
 Nottingham: 343
Novella Theodosius see Theodosius II
 Noy, David: 169
- oath-taking
 Christian: 318–21, 323–24, 327, 330–33
 Jewish *see* Jewry Oath
 Odoacer, king of Italy: 14
 Oescus: 168
 Ophiti: 52
 Oria: 284
 Orléans: 184, 192, 225
 Second Council of (533): 16, 26, 154 n. 4
 Third Council of (538): 10 n. 11, 16, 17 n. 33, 154 n. 4
 Fourth Council of (541): 10 n. 11, 16, 84
 Otger, archbishop of Mainz (Mayence): 27
 Otto I, king of Germany: 121, 218
 Oviedo, Council of (1050): 25 n. 70, 30
- pagans/paganism: 38, 47
 Christian converts to: 22
 conflation with Jews and heretics: 46, 52, 73–75, 79–82
 contrast with Jews: 75–77, 82, 84, 89–91, 315, 365
 conversion of: 82, 84, 113
 as disembodied threat: 85–86
 festivals of: 85
 Pakter, Walter: 228
 Palermo: 337–38, 341, 346
 Palestine: 172, 192, 200, 237, 286
 Pallaresos: 83
 Panayotov, Alexander: 366
- Papadoyannakis, Yannis: 234
 Paragorius of Narbonne: 201
Paraenetic Chapters: 292
 Paris: 184, 321, 352
 Council of (614): 16–17, 135
 Paris-Meaux, Council of (845): 27, 123, 126, 132, 135, 142–43, 148, 154 n. 4, 157, 214–15
 Pascasius, bishop of Naples: 106
 Paschase Radbert: 155
 Passover: 252, 254 n. 51, 270, 274, 279
pater synagoges: 168
pateressa: 174
patronus: 176
 Paul, saint: 78, 108, 233–34, 238, 240, 253, 297, 316
 Paulicians: 295
 Pavia: 141
 Council of (850): 137, 154 n. 4
 Pedro III, king of Aragon: 312, 324, 338, 343, 349
 Pedro IV, king of Aragon: 337
 Pelagius II, pope: 23
 Pepin the Short, king of the Franks: 132, 144–45
peregrini, status of: 35
Peristeria, archegissa: 174–75
 Perpignan: 339, 346
 Pertz, Georg Heinrich: 141
 Peter Abelard: 316
 Peter Lombard: 327, 329
 Peter of Blois: 327, 330–31
 Petrus, bishop of Terracina: 103
 Petrus, subdeacon of Sicily: 107, 109
 Petrus Alfonsi: 315, 328
 Petrus Barsymes, praetorian prefect: 20
 Pfefferkorn, Johannes: 325, 331, 340
 Philip III the Bold (le Hardi), king of France: 163
 Philo of Alexandria: 191
 Photius I, patriarch of Constantinople: 241 n. 37, 285, 293–95, 297–98, 300–02 and *Eisagogé*: 28, 287, 291–92, 296, 299
phrontistes: 168
 Phthiotic Thebes (Nea Anchialos): 174
piyyutim: 237, 240
Placitum of Toledo (637): 186, 190, 195, 197, 203
 Pontius Pilate: 114–15, 232
presbyter: 167, 169–74, 177, 184
presbyteria: 167, 169–72, 174, 177

- Prieto Domínguez, Oscar: 366
principalis: 168, 175
Prochiron (Procheiros Nomos): 28–29, 287–92
Prochiron Auctum: 289
Prochiron Legum vel Prochiron Calabriae: 289
prostates: 167, 175–77
 Pseudo-Caesarius: 234
 Pseudo-Dionysius the Areopagite *see* Dionysius of Athens
pseudo-epigrapha: 190–91
 Pseudo-Gregory: 28
 Pseudo-Isidore: 159
 Pseudo-Isidorean Decretals *see* False Decretals
Pseudo-Symeon: 301
 Pseudo-Theodore: 28
- Quierzy: 140
- Raffelstetten: 140, 215
 Rajak, Tessa: 169
 Ramon, Marti: 315–16, 328
 Raoul (Radulf) Glaber: 128, 224–25
 Rashi: 323
 Rebecca, *presbytera*: 170–71
 Reccared (Reccared) I, Visigothic king: 18, 101–02, 182, 252, 267, 273
 Recceswinth, Visigothic king: 18, 57, 61–62, 186, 263–64
 and heresy: 66
 Reconquista: 30
 Regensburg: 215–16
 Regino of Prum, *Libri II de synodalibus causis*: 29, 31, 160 n. 27, 220–21
 Régné, Jean: 314
 RELMIN project: 11–12, 367
 Rhine Valley, status of Jews in
 and Ashkenaz: 212
 and Burchard of Worms: 212, 217–24, 226–27
 exclusion from Christian society: 212–15, 228
 and “hermeneutical Jew”: 213, 216, 227
 inclusion in Christian society: 211–12, 214, 221–24, 228
 and Louis the Pious: 211, 213
 sources, nature of: 11–12, 217–18
 Robert, Louis: 174
 Roman of Florence: 36
 Romanos I, Byzantine emperor: 366
- Rome: 23, 66–67, 104, 185, 225, 292
 Council of (1078): 25 n. 70
 Jewish inscriptions in: 171, 176
Ropai: 22
 Rosh Hashanah: 270
 Roth, N.: 202–03
 Rothenburg ob der Tauber: 353
 Rouen: 216
 Council of (1074): 25 n. 70, 30
 Rousillon: 339
 Rüdiger, Huozmann of Speyer: 227
 Rufinus, Magister: 329
 Rufinus of Aquileia: 37
- Sabbath, Jewish: 19, 47, 154, 182, 185–86, 192, 241, 248, 253, 348
 women’s role in: 269–70, 274–75, 278–80
Sachsenspiegel: 312
 Saint Amand: 26
 Saint-Martial de Limoges: 155, 157–59, 164
 Salomon, governor of Africa: 20
 Salpingus: 107
 Samaritans: 45–46, 52, 101, 125, 299 n. 83
 Samuel, biblical prophet: 297–98
 Samuel, nephew of Donatus: 211
 Sancho VII, king of Navarre: 350
 Saragossa *see* Zaragoza
 Sardinia: 23, 97, 105, 109
 Sassanian Persia: 236–38, 286
 Saul, biblical king: 298
Saxon Weichbildrecht: 331
 Schneider, Herbert: 159
 Schwabenspiegel: 312, 358
 Sciacca: 338
 scriptural and extra-Biblical books,
 Jewish
 aggadot: 197
 apocrypha: 190–91, 198, 202
 banning of: 195, 203–09
 deuterai/deuterosis: 190, 196–97
 and Hebrew language: 195, 197, 199, 201–03, 209
 and Latin: 195, 199, 202
 and libraries: 207
 midrashim: 197, 237
 targumim: 197
 see also Mishna; Talmud; Torah
Seder: 270
 sedition, Jews and: 66–67

- Sefer Hasedim (Hasidim)*: 269, 313, 322, 325, 343
- Sefer toledat Yechou*: 191–92
- Sefer Zerubbabel*: 240
- Seila, biblical figure: 271
- Septimania: 183, 201
- Septuagint Bible: 20, 190, 199
- Sergios, brother of Patriarch Photius: 300
- Sergius, patriarch of Constantinople: 236
servi: 57–58
- Severus, bishop of Minorca: 184, 276
- Severus (Libius), Roman emperor: 15 n. 27
- Seville: 102
 - Second Council of (619): 249, 256, 274
 - Third Council of (624): 245–47, 250–52, 254–57, 259, 261–63, 363
 - Fourth Council of (633): 257
- sexual relations between Jews and Christians: 153, 160–61, 164, 272–73
see also under marriage
- Shefatiyā, rabbi: 284
- Sherira Gaon: 209
- Sherwood, Jessie: 212, 365
- “ShUM”-communities: 212
- Sicily: 23, 109–12, 301, 314, 335, 337
 - notarial registers in: 321, 324
- Sicut Judaeis*: 128
- Sigismond, king of Burgundy: 14, 134
- signum mortis (theta)*: 153, 161–64
- Simeon, son of Rebbi Iacob: 184
- Simon of Tournai: 327
- Simon of Trent: 317
- Simonsohn, S.: 314, 321, 341, 346
- Siponto, Council of (ca. 900): 25 n. 70
- Siricius, pope: 251–52
- Sirmondian Constitutions (*Constitutiones Sirmondinae*): 12 n. 17, 14–15, 27, 127
- Sisbert, archbishop of Toledo: 66
- Sisebut, Visigothic king: 262–63, 267, 273, 365
 - and forced conversion of Jews: 18, 26, 63–64, 68, 243–45, 247–50, 254–55, 257, 366
- Sisenand, Visigothic king: 262
- Sivan, H.: 209
- Sivertsev, Alexei: 238
- Skepe, monastery: 293
- slavery/slaves: 10, 68–69
 - and circumcision: 87, 100, 126, 258, 287–89, 291–92
 - in Gregory the Great: 96–104, 112, 116, 124–25
 - enslavement of Jews in Iberia: 55, 64, 66, 70, 207, 243, 265, 366
 - Jews owning Christians, permission for: 42, 124–25, 181–82
 - Jews owning Christians, prohibition of: 19, 22, 28, 30, 80, 87, 96–102, 104, 112, 116, 125–26, 154, 182, 188–89, 231, 260, 262, 273, 287–89, 363, 365
 - Visigothic Iberia, juridical status of: 56–59, 63–64, 66
- Solomon, biblical king: 293, 297
- soothsayers: 80, 85
- Sophia of Gortyn, *presbyteria* and *archisynagogissa* of Kissamos: 170–71
- sophos*: 168
- Sophronius, patriarch of Jerusalem: 236, 240–41
- sources, overview of
 - Adversus Iudaeos*: 8
 - archaeological: 7, 12–13
 - in Byzantium: 12, 19–22, 28–29
 - Carolingian sources: 131–36
 - cartography: 12
 - epigraphy: 8 n. 4, 12
 - in Gaul: 14–17, 25–31
 - historiography of: 12–13
 - in Iberia: 17–19, 25–27, 30
 - juridical compilations: 24–32
 - methodological problems with: 8–11
 - treatment of: 11–13
- Spartacus: 96
- Spesindeus, governor of Sardinia: 105
- Speyer: 211, 227
- Stadtbuch* (Berlin): 358
- Stamford: 343
- Statuta Ecclesiae Antiqua*: 31, 80–81
- Stephan II, pope: 122
- Stephen, patriarch of Constantinople: 301
- Stocking, Rachel: 363, 365
- Stoudios, monastery: 233
- Sukkot: 270
- Summa Parisiensis*: 329
- Summa Perusina*: 23
- Sylvester, pope: 158
- Symeon Logothetes: 283
- Symmachus, pope: 23
- synagogues: 7, 179, 184
 - construction of, interdict against: 20, 106, 231

- conversion into churches of: 20, 104–05, 177 n. 60
 destruction/closure of: 10, 19, 184 n. 36, 275, 280
 Hebrew books in, interdict against: 20, 196
 inscriptions in: 168, 172 n. 26, 177 n. 58, 224
 Jewish scriptural books in: 196–97, 202
 languages in: 173
 and oath-taking: 332, 337, 349
 protection of: 103–04, 106, 116, 177 n. 60, 365
 women as benefactors of: 268
 syncretism, Judeo-Christian: 10
 Syracuse: 337–38
 Syria: 172, 237, 286
 Szabolcs, Council of (1092): 25 n. 70, 30
- Talmud: 190–91, 197, 208–09, 322, 328
 Babylonian: 197 n. 9, 198 n. 14, 200, 209
 Tam, R.: 324
 Tamnus: 107
 Tangl, Michael: 137
 Tarazona: 342
 Tariq, Berber general: 366
 Tarragona: 183
 Tascodrogi: 52
 taxation, Roman: 43
 Tenngler, Ulrich, *Laienspiegel*: 335, 356
 Terracina: 185
 testimony, of Jews
 in Carolingian law: 139, 146, 148
 in Justinian law: 20, 51–52, 289, 292
 in Roman law: 48
 in Visigothic law: 61–62, 65, 69
 Theodore, bishop of Marseille: 108, 124
 Theodoric the Great, king of Italy: 23
 Theodorus Scholasticos Hermaios: 21
 Theodosian Code (Codex Theodosianus):
 11, 15, 51, 53, 172, 186, 189, 364
 on Jews as decurions: 44–46
 on marriage of Jews and Christians: 14, 41, 272–73, 277
 on slavery: 96, 127
 see also Theodosius II
 Theodosius II, Roman emperor: 177 n. 60, 364
 Novella Theodosius: 46, 49, 68, 127
 see also Theodosian Code
 Theophanes Continuatus: 284
- Theophylact Simocatta: 239
 Thessalonica: 169
theta see *signum mortis*
 Thomas Aquinas: 320
 Thomas of Chobham: 330
 Toledo: 17–18, 59, 61, 66
 First Council of (400): 273
 Second Council of (527): 273
 Third Council of (589): 18, 26, 86, 154 n. 4, 182, 188, 244–45, 252–53, 269, 273–74
 Fourth Council of (633): 17 n. 41, 26, 61, 74 n. 5, 80, 83, 88, 154 n. 4, 159, 189, 206, 215, 221, 226, 246–47, 253, 257–65, 272–74, 277
 Sixth Council of (589): 183
 Eighth Council of (653): 26, 247, 263–64
 Ninth Council of (655): 83
 Twelfth Council of (681): 26–27, 83, 200 n. 22, 206, 264, 273, 275
 Sixteenth Council of (693): 81, 88, 91, 273
 Seventeenth Council of (694): 64, 207, 243, 265, 274–75, 278, 366
 Torah: 200, 225
 and oath-taking: 323, 330, 333, 336–37, 348–49
 Tortosa: 183
 Tougher, S.F.: 298
 Trapani: 338
 Tripolitania: 171
- Ungarisch-Hradisch: 335
 Urbicus, abbot: 105
 Ureña y Smenjaud, R. de: 203
 Uşak: 171
 usury/moneylending: 319, 321–22, 336, 339–43, 346
 Uzès: 184
- Valencia: 336–37, 344, 349
 Valentinian III, Roman emperor: 15 n. 25
 Valle, C. del: 199–200
 Vallicellanum, penitential: 28
 Vannes, Council of (465): 362–63
 Venafro: 107
 Venantius, bishop of Luni: 97, 105
 Venantius Fortunatus: 279
 Venice: 218, 343
 Venosa: 171

- Veria *see* Beroea
Vetus Gallica: 25, 153, 217
 Victor, bishop of Palermo: 104
 Vienne: 184–85
 Vigila, penitential of: 28
 Vigilius, pope: 23
 Virgile, bishop of Arles: 108, 124
 Visigoths
 in Aquitaine: 13, 15, 17
 banning of Jewish scriptural books by:
 195, 203–09
 and battle of Vouillé: 17
 and *conventus Iudaeorum*: 180–93
 and conversion of Jews: 83–84, 102, 128,
 186–87, 190, 243–66, 275–80
 and enslavement of Jews: 207, 243, 265,
 366
 and juridical punishments: 58–67
 and persecution of Jews: 55, 61–70, 83,
 101–02, 180, 185–87, 190, 195, 203–09,
 211, 215, 228, 267, 363, 365–66
 and status of unfree: 56–59
 and synagogues: 179, 184, 96
 and women, Jewish: 267–81
 see also under Toledo, Councils of; *and*
 individual rulers
Vita Mantii: 183
Vitae Sanctorum Patrum Emeretensium: 183
 Vize (Byzie): 170–71
 Vouillé, Battle of (507): 17
 Vulgate Bible: 190, 203
- Wallace-Hadrill, J.M.: 73
 Wasserstein, D.: 202
Weichbildrecht: 359
Weichbildvulgata: 359
 Wezelin, deacon: 225
 William V the Great (Guillaume le Grand),
 duke of Aquitaine: 159
 William of Newburgh: 315–16
 Williams, Margaret: 176
 Willigis, archbishop of Mainz: 219
 Wipon (Wipo) of Burgundy: 134
Wissenschaft der Judentums movement: 361
 Wittenberg: 359
- women
 and conversion: 275–80
 and culinary rituals: 270, 274, 278–80
 and divorce: 277
 and funerals: 270
 in inscriptions: 167, 169–72, 174–75, 177
 and marriage rituals: 270–73, 276, 280
 and motherhood: 270–79
 and Sabbath: 270, 274–75, 278–80
Word of Daniel on the End of the World: 232
 Worms: 212, 221 n. 35, 224, 344
- Yehuda, son of R. Yitzhak Sirleon: 343
 Yitzhak b. Shmuel, R.: 324
 Yisrael of Bruna (Brünn), R.: 334
 Yitzhak of Dampierre, R.: 343
 Yom Kippur: 270
 Yom-tov b. Avraham Alaswilli, R.: 333
 York: 315
 Yves de Chartes *see* Ivo of Chartres
- Zachary (Zacharias), pope: 17 n. 36, 122–
 23, 134, 154 n. 4
 Zaragoza (Saragossa): 208, 211, 336, 338,
 342
 First Council of (380): 76
 Zegrenses: 36–37
 Zeumer, Karl: 137
 Zionism: 240, 361





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