

# “Apply to Muslims What Was Said of the Jews:” Popes and Canonists Between a Taxonomy of Otherness and *Infidelitas*

---

STEFAN K. STANTCHEV

This article analyzes the targets of papal policies on Christians’ relations with non-(Roman)Christians contained in canon law’s *On Jews, Saracens, and Their Servants* in a historical period that has attracted comparatively little attention: the mid-thirteenth to the late fifteenth century.<sup>1</sup> It argues the inherent ambiguity of the normative discourse on “proper”

1. The title of this work comes from: “Quod dictum est de iudeis, per omnia intellige de sarracenis. . . .” Jean Pierre Renard, ed., *Trois sommes de pénitence de la première moitié du XIIIe siècle*, Vol. II (Louvain-la Neuve: Centre Cerfaux-Lefort, 1989), 87. On “Saracens,” see John V. Tolan, *Saracens. Islam in the Medieval European Imagination* (New York: Columbia University Press, 2002).

---

Stefan K. Stantchev is an Assistant Professor of History in the School of Humanities, Arts, and Cultural Studies at New College of Interdisciplinary Arts and Sciences, Arizona State University <[stefan.stantchev@asu.edu](mailto:stefan.stantchev@asu.edu)>. The author thanks James Muldoon for his encouragement, support, and comments on different aspects of the author’s work on this subject; Richard Helms, Jonathan Rose, David Freidenreich, Thomas A. Green, and the anonymous reviewers of *Law and History Review* for their comments and suggestions; Laurent Mayali for a Robbins Collection fellowship, which was essential in its preparation; and the staff at the Robbins Collection, UC Berkeley School of Law; the Newberry Library, Chicago; the Hispanic Society of America, New York; and Princeton Libraries for their cooperation. All errors and omissions remain the sole and full responsibility of the author. A note on transcriptions: except for extended standard abbreviations, the Latin, Italian, and Spanish texts herein appear exactly as they do in the manuscripts, incunables, and modern editions consulted; this includes undifferentiated words.

relations with “infidels.” On the one hand, popes and canonists faithfully preserved a taxonomy of otherness inherited from the church’s ancient past. On the other hand, they often reduced all difference to the pastoral distinction between flock and “infidels.” The conflation of non-Christians occurred in multiple ways: through the explicit extension of a specific policy’s targets, overt canonistic discussion, the tacit application of the law to analogous situations, or its simplification for use in the confessional. As a result, a number of policies aimed originally at a specific target were applied to all non-Christians. In the course of the later Middle Ages, a whole group of policies meant to define Christians’ proper relations with others became potentially applicable against all non-Christians. In the words of a widely, if regionally disseminated, penitential work, all that was said of the Jews applies to the Muslims and all that was said of heretics, applies to schismatics.<sup>2</sup>

There is, admittedly, no shortage of legal and social studies on interfaith relations in medieval Europe. Walter Pakter, notably, has analyzed in detail the formation and the history of a key facet of the canon law on the subject—that concerning Jews—whereas Guido Kisch and Vittore Colorni, among others, have addressed more broadly the formation and development of Jewry law.<sup>3</sup> The pagan Roman Empire was tolerant of

2. Renard, *Trois sommes de pénitence*, II:87, 90. In turn, much of the legislation aimed at the former group also applied to the latter and vice-versa, as will become clear.

3. Walter Pakter, *Medieval Canon Law and the Jews* (Ebelsbach: Gremer, 1988), Guido Kisch, *The Jews in Medieval Germany. A Study of Their Legal and Social Status* (Chicago: The University of Chicago Press, 1949); Vittore Colorni, *Gli ebrei nel sistema del diritto comune fino alla prima emancipazione* (Milan: Giuffrè, 1956); and also, Vittore Colorni, *Legge ebraica e leggi locali* (Milan: Giuffrè, 1945). A footnote cannot do justice to the vast literature on the subject of Christian–Jewish relations in the Middle Ages. In general, one can start from Robert Chazan’s overview, *The Jews of Medieval Western Christendom, 1000–1500* (Cambridge: Cambridge University Press, 2006); and Mark Cohen, *Under Crescent and Cross. The Jews in the Middle Ages* (Princeton: Princeton University Press, 1994), which explains the condition of Jews under Christian and Muslim rule, arguing their comparatively less stable position in the former case. Much has been done to make the sources of Jewish history widely accessible. Notable examples are Amnon Linder, ed., *The Jews in the Legal Sources of the Early Middle Ages* (Detroit: Wayne State University Press, 1997); Solomon Grayzel, *The Church and the Jews in the XIIIth Century*, Vols. I (New York: Hermon Press, 1966); and II (Detroit: Wayne State University Press, 1989); and the multi-volume Shlomo Simonsohn, ed., *The Jews in Sicily* (Leiden: Brill, 1997-). For the outset of the subsequent period, see Kenneth R. Stow, *Catholic Thought and Papal Jewry Policy, 1555–1593* (New York: The Jewish Theological Seminary of America, 1977). The relationship between ideas underpinning the canon law on the subject, broader economic, social, and political developments, and the analytical usefulness of the long period itself for assessing actual Christian–Jewish relations, has generated much debate. Jeremy Cohen, *The Friars and the Jews. The Evolution of Medieval Anti-Judaism* (Ithaca: Cornell University Press, 1982) has shown

Judaism, if not necessarily of Jewish proselytizing efforts throughout the Mediterranean. The situation changed with Christianity's assumption of a privileged position in the course of the fourth century. Early medieval ecclesiastical legislation, whether Western or Byzantine, clearly placed Jews in an inferior position to Christians. In the context of church centralization and canon law homogenization during the high Middle Ages, ecclesiastical jurisdiction over Jews was extended whereas the canonists became increasingly less tolerant of Jewish books and Judaism. The Jews, in sum, were to be "protected whilst living a life of desperation, subjugation and inferiority that reflected their reprobate status in God's sight."<sup>4</sup> This theologically derived condition achieved uniformity in the canon law during the first half of the thirteenth century, spearheading a similar if multicausal and far from uniform process that made Jews increasingly more distinct from and inferior to Christians in the *iura propria* of kings and cities as well.<sup>5</sup>

---

the emergence of a polemical discourse, which contrasted the stylized, ahistorical Jew of Christian theology with contemporary Jews, found the latter deviant, and hence undermined the ancient assumption that Christians ought to tolerate the existence of Jews in their midst. Robert I. Moore, *The Formation of a Persecuting Society* (Malden, MA: Blackwell Publishing, 2007) argues for the high medieval transformation of European society from one in which persecution occasionally occurred, into one that functioned through persecution. David Nirenberg, *Communities of Violence. Persecution of Minorities in the Middle Ages* (Princeton: Princeton University Press, 1996) finds the long period of little use, and argues that polemical discourses about Jews resulted in no forward thrust toward an ever more pronounced anti-Judaism. For multiple approaches to the subject of violence, see Anna Sapir Abulafia, ed., *Religious Violence between Christians and Jews* (New York: Palgrave, 2002). There can be little doubt that the content of the law could be made to bear upon social life—however slowly and with however varied outcomes—through the concerted efforts of preachers, see Diane Owen Hughes, "Distinguishing Signs: Ear-Rings, Jews and Franciscan Rhetoric in the Italian Renaissance City," *Past and Present* 112 (1986): 3–59.

4. Edward Kessler, *An Introduction to Jewish-Christian Relations* (Cambridge: Cambridge University Press, 2010), 107.

5. On the latter point, see also Gavin I. Langmuir, "Tanquam Servi: The Change in Jewish Status in French Law about 1200," in his *Toward a Definition of Antisemitism* (Berkeley: University of California Press, 1990), 167–94, which provides a broader overview of the problem than the title suggests; and Dwayne E. Carpenter, *Alfonso X and the Jews: an Edition of and Commentary on Siete Partidas 7.24 "De los judíos"* (Berkeley: University of California Press, 1986). Langmuir's work also briefly presents the debate of the emergence, spread, and meaning of the notion of Jewish servitude, which has been central to debates on the subject: did the concept of the Jews' "servitude" and their place under royal authority (chamber serfdom or not) undermine their legal status more than it enhanced their security (by placing them directly under royal protection)? The latter part of the question can in turn be addressed in terms of both royal protection and royal violence (arbitrary taxation, expulsion). For further implications of the Jews' dependence on royal power see Nirenberg, *Communities of Violence*, ch. 2–4.

A well-defined *Corpus Iuris Canonici* may have placed Christendom's Jews in a veritable legal ghetto, but it also awarded them a recognized, if inferior and, in practice, uncertain place within Christian society. By contrast, as discursive, undifferentiated "Saracens," Muslims occupied a comparatively unremarkable place in the law.<sup>6</sup> Actual, internally far from homogenous Muslim communities existed for different periods of time throughout much of Iberia, in Sicily, southern Italy, Hungary, the Crusader states, and in some Genoese-ruled settlements in the Black Sea.<sup>7</sup>

6. Some have argued that Western laws were largely inspired by Islamic law's treatment of *dhimmi*s populations, whereas others argued that the Islamic law on the subject had itself been influenced by Roman law, or that it had evolved from Mohammad's treatment of Jewish tribes in Arabia. See, respectively, Marcel A. Boisard, "On the Probable Influence of Islam on Western Public and International Law," *International Journal of Middle East Studies* 11(4) (1980): 429–50, Noel J. Coulson, *A History of Islamic Law* (Edinburgh: At the University Press, 1964), 27 and Bat Ye'or, *The Dhimmi. Jews and Christians under Islam* (London: Associated University Presses, 1985), 43–49; see also Jean Allain "Acculturation through the Middle Ages: the Islamic Law of Nations and Its Place in the History of International Law," in *Research Handbook on Theory and History of International Law*, ed. Alexander Orakhelashvili (Cheltenham, UK: Edward Elgar Publishing, 2011), 394–407. Clearly, some Christian legislation predated the emergence of Islam (intermarriage, slave ownership, sharing of meals), other was contemporaneous with it (exclusion from public office), and other, again, was pioneered in Islamic lands (distinguishing signs). For an overview of Muslims' place in the law, see David Freidenreich, "Muslims in Western Canon Law, 1000–1500," in *Christian–Muslim Relations: A Bibliographical History*, Vol. III, ed. David Thomas and Alex Mallett (Leiden: Brill, 2011), 41–68. The series itself aims at presenting work that is "written substantially about or against the other faith, or contains significant information or judgments that cast light on attitudes of one faith toward the other." Ibid, viii. Brief presentations of the authors are followed by more detailed ones of their works' content, significance, extant manuscripts, editions, translations, and studies.

7. To the extent that any consensus concerning the actual condition of Christendom's Muslims as well as non-Christians at large has been achieved, it seems to award primacy to three factors: a given population's size (large Muslim communities in Iberia but small ones in Hungary, larger communities in Valencia than in the Ebro valley); that population's function within society (multifaceted as that of Iberian Jews or specialized as that of Jews in most of later medieval Europe); and its relationship to secular authorities (for example, Iberian Muslims were deemed indispensable in the thirteenth century, but were treated as disposable in contemporary Sicily). A nuanced view is not easily achieved, in part because one and the same body of evidence has been used to support contrasting positions. For nuanced views in the case of Iberia, see Nirenberg, *Communities of Violence* and Brian Catlos, *The Victors and the Vanquished. Christians and Muslims of Catalonia and Aragon, 1050–1300* (Cambridge: Cambridge University Press, 2004). For Sicily, see David Abulafia, *Mediterranean Encounters, Economic, Religious, Political, 1100–1550* (Aldershot: Ashgate, 2000), especially #XII and XIII; and David Abulafia, *Frederick II. A Medieval Emperor* (Oxford: Oxford University Press, 1988). Overall, the literature on Muslim communities under Latin rule is both vast and fragmented. In general, see James Powell, ed., *Muslims under Latin Rule, 1100–1300* (Princeton: Princeton University

The scholarly focus on Jews and/or Muslims as distinct communities does justice to those who self-identified as such. Distinctions between non-Christians, moreover, played an important role in the process of Christians' own self-definition, resulting in a tripartite *infidelitas*: that of Jews, pagans (and hence Saracens and Turks), and heretics (and hence schismatics).<sup>8</sup> The canonists never tired of explaining who was a "Jew" and who was a "Saracen." Much of the canons contained in the law of the church, finally, address explicitly one *or* another group of "infidels." However, in a pioneering study of the views that popes and canonists held of Christian relations with others, James Muldoon aptly remarks that "The canonists tended to lump together the various kinds of people who were not members of the Church, so that legal principles and practices developed for dealing with one class of people defined as *extra ecclesiam* were applied to another class."<sup>9</sup> Averil Cameron, in turn, shows that the conflation of others was far from a purely Western and/or later medieval phenomenon; it was prominent in early Christian and Byzantine works.<sup>10</sup>

---

Press, 1990), which covers Iberia, Italy, and the Holy Land. In addition, for Iberia, see also Robert Burns, *Muslims, Christians, and Jews in the Crusader Kingdom of Valencia* (Cambridge: Cambridge University Press, 1984). For Hungary, see Nora Berend, *At the Gate of Christendom. Jews, Muslims and 'Pagans' in Medieval Hungary, c.1000–c.1300* (Cambridge: Cambridge University Press, 2001). The richness of the literature on the Italian maritime cities can easily surprise the nonspecialist, but it hardly offers systematic treatments of the subject. See, for a discussion of the labels applied to non-Catholics, Michel Balard, "Infidèles ou Comans? A propos des 'Sarraceni' de Caffa," in *La Storia dei Genovesi* 8 (1988): 9–14. Highly original if not entirely convincing is the statistics-based approach to the subject of A. L. Ponomarev, "Territorija i naselenie genuezskoj Caffa po dannim buhgalterskoj knighi – massarii kaznachejstva za 1381–1382 gg [Territory and Population of Genoese Caffa According to Data from the Account Book – Massaria for the Treasury for 1381–1382]," in *Prichernomorie v Srednie veka*, Vol. 4 [The Black Sea Region in the Middle Ages], ed. Sergej Karpov (St. Petersburg: Aleteja, 2000), 317–443.

8. For the role of this triad in early medieval writings, see Tolan, *Saracens*, 3–20. For "Saracens" as "pagans," *ibid.*, 126–27. In literature, "The alternation between 'pagan' and 'Saracen' is typically a poetic rather than a semantic choice—a matter of syllable count and assonance or rhyme." Sharon Kinoshita and Siobhain Bly Calkin, "Saracens as idolaters in European vernacular literatures," in Thomas and Mallett, *Christian-Muslim Relations: A Bibliographical History*, IV:29–44 (quotation at 32).

9. "Thus, when the canonists came to consider the situation of non-Christians who lived beyond the bounds of Christendom, they began by extending previous discussions of non-Christians living within Europe to fit the new peoples whom they encountered." James Muldoon, *Popes, Lawyers, and Infidels* (Philadelphia: University of Pennsylvania Press, 1979), 3.

10. Averil Cameron, "Jews and Heretics—A Category Error?" in *The Ways That Never Parted: Jews and Christians in Late Antiquity and the Early Middle Ages*, ed. Adam H. Becker and Annette Yoshiko Reed (Minneapolis: Fortress Press 2007), 345–60. On the eastern canon law in general, see Wilfried Hartmann and Kenneth Pennington, *The History of*

Whereas Cameron has focused on the East and Muldoon's own interests have gravitated around Christians' relations with others outside Christendom (and the rights of "infidels"),<sup>11</sup> David Freidenreich has exposed one way in which the process of interest worked in the case of the Western canon law. As in many other cases, the law contained conflicting canons in that of Christians' sharing of meals with others. Writing at a time when Christians were a privileged minority, John Chrysostom and Augustine approved of commensality with others, perceiving it as an opportunity to spread the faith, but before long, a church council forbade Christians from sharing meals with Jews. In the context of a mostly Christianized Europe, however, high medieval canonists turned the words of the church fathers around and worried that Christians' commensality with Jews might lead to the former's apostasy rather than to the latter's conversion. Others were concerned less with a potential outflow of souls than with the symbolic implications of eating the food of those who refuse Christian meals. What no longer raised doubts by the early thirteenth century, in any case, was the main point: Christians ought not to share meals with Jews. But what about other non-Christians? Some banned the sharing of meals with anyone who distinguished between foods and allowed meals with anyone who did not. Others found all contemporary pagans to be Judaizing, and hence banned commensality with any non-Catholics. Some of the most influential commentators, finally, proclaimed that no Christian was allowed to share meals with non-Christians, except missionaries armed with a papal license. Thus, in the course of just over a century, explicit canonistic debate expanded the law from a less than unambiguous measure aimed at Jews alone to one that emphatically banned unauthorized commensality with any non-Christians.<sup>12</sup>

---

*Byzantine and Eastern Canon Law to 1500* (Washington, DC: The Catholic University of America Press, 2012). On the place of Muslims in eastern (but excluding Byzantine) canon law, see David M. Freidenreich, "Muslims in Eastern canon law, 1000–1500," in Thomas and Mallett, *Christian–Muslim Relations: A Bibliographical History*, IV:45–57. "The Eastern Christian communities did not witness anything like the explosion of new legal material within the Roman Catholic Church during the High Middle Ages. Rather, Eastern canon law of the 11th through 15th centuries was conservative in all senses of that term." "No Eastern Christian authority applies to Muslims laws that relate specifically to Jews. . . ." Ibid., 46, 47–48, respectively.

11. See, most recently, James Muldoon, "From Frontiers to Borders: The Medieval Papacy and the Conversion of Those Along the Frontiers of Christendom," *Quaestiones Medii Aevi Novae* 16 (2011): 101–21.

12. David M. Freidenreich, "Sharing Meals with Non-Christians in Canon Law Commentaries, Circa 1160–1260: A Case Study in Legal Development," *Medieval Encounters* 14 (2008): 41–77. As with Muldoon, the chief interest of Freidenreich lay

A focus on the distinctions between non-Christians, in other words, can obfuscate the ambivalence of the perspective of those who coined the canon law on the subject. It can also lead us to forget the fact that actual, living non-Christians (and hence historical contexts) were of incidental importance in a system of thought based on model, stylized identities.<sup>13</sup> However, important questions remain unaddressed. Was the expansion of the law on commensality an anomaly? Did legal change on the subject cease with the great decretalists of the thirteenth century? More generally, the introduction of newly produced council decisions and papal letters aside, was an explicit debate among legal commentators the only way in which the meaning of the law changed over time?<sup>14</sup>

The goal of this article, accordingly, is to bring to light the diversity and convergence of legal attitudes toward non-Catholics in the later Middle Ages.<sup>15</sup> In terms of interpretation, I show that a structural contradiction of the laws governing Christians' relations with others made contemporary interpretations fundamentally unstable. Popes and canonists never disposed of the taxonomy of otherness built around Jews, pagans, and heretics, which they inherited from the ancient church. However, perhaps under the weight of the simpler, pastoral distinction between faithful and infidels, popes and canonists made each canon, irrespective of its original target or historical context (with which, unlike modern historians, they had little concern) potentially applicable against each other group of "infidels." In terms of method, this article shows why papal decrees and council decisions cannot be analyzed in isolation from the body of legal

---

elsewhere, see his *Foreigners and Their Food. Constructing Otherness in Jewish, Christian, and Islamic Law* (Berkeley: University of California Press, 2011).

13. On the rift between law and people qua human beings in a modern context, see John T. Noonan, Jr., *Persons and Masks of the Law* (Berkeley: University of California Press, 2002), which is partly summarized in the following thought-provoking sentence: "At the points of a legal system where it is too much to recognize that a human being exists, a mask is employed," 26.

14. New interpretations could not derive from changes in policy, but had to be crafted out of the body of preexisting texts: see Richard H. Helmholz, "University Education and English Ecclesiastical Lawyers 1400–1650," *Ecclesiastical Law Journal* 13(2) (2011): 132–45.

15. It is not my goal to deal with the origins of the law, the condition of non-Christians in the laws of secular rulers, or the degree to which daily life was made to conform to the canons. Nor does this article aim at comprehensive treatment of all laws on the subject. It excludes, for example, those on intermarriage and sexual relations, which were not discussed alongside the canons contained in X. 5.6, which are the subject of interest here. On marriage and sexual relations, see James Brundage, "Intermarriage between Christians and Jews in Medieval Canon Law," *Jewish History* 3(1) (1988): 25–40, and David Nirenberg, "Conversion, Sex, and Segregation: Jews and Christians in Medieval Spain," *The American Historical Review* 107(4) (2002): 1065–93.



commentaries that was an integral part of their circulation; they gain meaning only in relation to the broader legal discourse of which they were a part.<sup>16</sup>

### I. The Ambiguity of a Legal Discourse: Canonists, Jews, and Saracens

Church councils and popes in late antiquity and the early Middle Ages addressed occasionally the relationships between sheep within the papal flock and those outside it. The resulting canons circulated in canonical collections but were of scarce relevance beyond the specific historical contexts in which they had been promulgated.<sup>17</sup> A legal discourse that would extract individual canons from their original temporal and spatial contexts and deploy them across Christendom as ahistorical and universally valid precepts for proper Christian behavior did not begin to emerge until the church reform movement turned the once loose agglomeration of virtually independent bishoprics into a somewhat centralized and hierarchical church.<sup>18</sup> A twelfth century compilation of canon law entitled “Concord of

16. Using individual papal letters and conciliar canons as found in modern, critical editions is adequate only when studying the specific cases and contexts of the original documents. In all other cases, one must consult the texts used by medieval lawyers, which were often heavily edited, and hence varied considerably from their original, full-length versions. “The canonists molded the papal letters which they put into their collections to their taste. They shortened them, added sentences, changed words, and summarized passages.” Kenneth Pennington, “The Making of a Decretal Collection: The Genesis of *Compilatio Tertia*,” in Kenneth Pennington, *Popes, Canonists, and Texts, 1150–1550* (Aldershot: Ashgate Variorum, 1993), #8, 83.

17. See, for example, Albert Bat-sheva, “Isidore of Seville: His Attitude towards Judaism and His Impact on Early Medieval Canon Law,” *The Jewish Quarterly Review* 80(3–4) (1990): 207–20. On early medieval collections, see Lotte Kéry, *Canonical Collections of the Early Middle Ages (ca. 400–1140). A Bibliographical Guide to the Manuscripts and Literature* (Washington, DC: The Catholic University of America Press, 1999).

18. For law in the period: Manlio Bellomo, *The Common Legal Past of Europe, 1000–1800* (Washington, DC: The Catholic University of America Press, 1995); James A. Brundage, *The Medieval Origins of the Legal Profession. Canonists, Civilians, and Courts* (Chicago: University of Chicago Press, 2008); Wilfried Hartmann and Kenneth Pennington, *Medieval Canon Law in the Classical Period. From Gratian to the Decretals of Pope Gregory IX* (Washington, DC: The Catholic University of America Press, 2008); and Richard H. Helmholz, *The Spirit of Classical Canon Law* (Athens, GA: The University of Georgia Press, 2010). For a guide to sources and studies, Jean Gaudemet, *Les sources du droit canonique, VIII<sup>e</sup>–XX<sup>e</sup> siècle* (Paris: Éditions du Cerf, 1993), 59–173. The indispensable guide to the life and works of individual canonists is Kenneth Pennington’s web site at <http://faculty.cua.edu/Pennington/biobibl.htm> (August 15, 2013). All biographical notes to canonists in this article are based on Pennington’s web site, unless indicated otherwise. For a brief introduction to the reform see Robert Bartlett, *The Making of*



Discordant Canons,” known simply as the *Decretum*, both stemmed from the reform effort and, in turn, played a critical part in the process of transforming the popes from “Vicars of Peter” into “Vicars of Christ,” armed with universal powers within the church.<sup>19</sup> The composition of the *Decretum*, however, marked not the end, but rather the beginning, of a period of unparalleled legal creativity in the area of canon law, which was to last until 1234 when the Dominican Raymond of Peñafort (d. 1275) completed the *Liber extra*, officially known as *Decretals of Gregory IX*.<sup>20</sup> Ordered and promulgated by Pope Gregory IX, the *Liber extra* integrated and superseded the compilations made after the *Decretum* and became the heart of the law in the matters of interest here: Christians’ relations with non-Christians. Copied much more often than even the *Decretum* (800 preserved copies vs. approximately 510),<sup>21</sup> the *Liber extra* would serve, alongside Gratian’s always popular and abundantly cited work, as the law for the Roman Church. It would have a direct and long-lasting relevance on the ways in which the papacy and the missionary orders alike would approach everything from Christians’ relations

---

*Europe. Conquest, Colonization and Cultural Change, 950–1350* (Princeton: Princeton University Press, 1993), 5–23, 243–55. For a detailed account, see Colin Morris, *The Papal Monarchy. The Western Church from 1050–1250* (Oxford: Clarendon Press, 1989). This is not the place to address the dynamics of the reform movement or the papal monarchy debate. It shall suffice to point out that determining the pope’s position within the church meant, to a significant degree, specifying the pope’s relations to all other bishops. As Pennington points out, a turning point was Innocent III’s pontificate. See Kenneth Pennington, *Pope and Bishops. The Papal Monarchy in the Twelfth and Thirteenth Centuries* (Philadelphia: University of Pennsylvania Press, 1984), ch. 1, revised in Pennington, *Popes, Canonists, and Texts*, #3. For the internal workings of the church, see Robert Brentano, *Two Churches. England and Italy in the Thirteenth Century* (Berkeley: University of California Press, 1988).

19. On the *Decretum*, see Anders Winroth, *The Making of Gratian’s Decretum* (Cambridge: Cambridge University Press, 2000); Peter Landau, “Gratian and the *Decretum Gratiani*,” in Hartmann and Pennington, *Medieval Canon Law in the Classical Period*, 22–54; and the literature cited therein. On the history of the papal title, including the positions of canonists and theologians, the chief sections in Michele Maccarrone, *Vicarius Christi. Storia del titolo papale* (Rome: Facultas Theologica Pontificii Athenaei Lateranensis, 1952) remain useful.

20. See, on the subject, Stephan Kuttner, “Raymond of Peñafort as Editor: The ‘Decretales’ and ‘Constitutiones’ of Gregory IX,” *Bulletin of Medieval Canon Law* 12 (1982): 65–80. Raymond, who was later canonized, was Gregory’s personal chaplain and penitentiary. In 1238 he became General of the Order of Preachers. The work was even translated; Jaime M. Mans Puigamau, ed., *Decretales de Gregorio IX versión medieval española* (Barcelona: Universidad de Barcelona, 1943).

21. Alberto Melloni, *Innocenzo IV. La concezione e l’esperienza della cristianità come regimen unius personae* (Genoa: Marietti, 1990), 247–48.

with Jews in late medieval Europe to the “infidels” in Africa, the Indian Ocean, and the Americas in the early modern period.

We will briefly describe the content of *Liber extra*’s Book V, Title 6 (see Table 1), which will serve as the starting point of this article’s discussion. Entitled *On Jews, Saracens, and their Servants*, but dealing in fact with Jews, Muslims, pagans, and their slaves and servants, this section arranges chronologically all canons on Christians’ relations with non-Christians that Raymond of Peñafort deemed relevant, excluding those that had already achieved wide currency through the *Decretum*.<sup>22</sup> Of the nineteen canons, only three predate the reform period.<sup>23</sup>

Six of the nineteen canons place restrictions on Jews (Table 1) (#2, 4, 8, 13, 19),<sup>24</sup> three provide Jews with basic rights (#3, 7, 9),<sup>25</sup> and one deals with the rather hypothetical possibility that Jews might raise a hand against clergymen (#14). Four canons mention Jews alongside other non-Christians. Christians who cohabit with Jews and Saracens are excommunicated by the force of the deed itself; Muslims and Jews must wear distinguishing signs (#5 and 15).<sup>26</sup> One canon bans Jews and pagans from public office, another, although addressing the same subject, speaks first of Jews and pagans and then of Jews and Saracens (#16 and 18).<sup>27</sup> Four

22. On the formation and title of this section, see Benjamin Kedar, “*De Iudeis et Sarracenis*. On the categorization of Muslims in medieval canon law,” in *Studia in honorem eminentissimi cardinalis Aphonis M. Stickler*, ed. Rosalio Joseph Castillo Lara (Rome: Pontificia studiorum universitas salesiana, 1992), 207–13.

23. Table 1 is based on Aemilius Friedberg, *Corpus Iuris Canonici* (Graz: Akademische Druck- U. Verlagsanstalt, 1955 [1879]), II, cols. 771–78. Henceforth Friedberg.

24. On the development of the law concerning Jews’ slaves and servants, see Pakter, *Medieval Canon Law and the Jews*, 84–142, for the thirteenth-century canonists see 125–32 (slaves) and 132–39 (servants); and Colorni, *Gli ebrei nel sistema del diritto comune*, 36–39.

25. See Solomon Grayzel, “The Papal Bull *Sicut Iudeis*,” in *Studies and Essays in Honor of Abraham A. Neuman*, ed. Meir Ben-Horin, Bernard D. Weinryb, and Solomon Zeitlin (Leiden: Brill, 1962), 243–80.

26. On the law see Pakter, *Medieval Canon Law and the Jews*, 292–301, on its translation into *iura propria* and social realities, see Colorni, *Gli ebrei nel sistema del diritto comune*, 48–54 and Hughes, “Distinguishing Signs.” This type of discriminatory legislation first appeared in Islamic lands, in a treaty granted to Hira (Iraq) in 633, Ye’or, *The Dhimmi*, 47.

27. On the development of law concerning Jews in public office see Colorni, *Gli ebrei nel sistema del diritto comune*, 20–34 and Pakter, *Medieval Canon Law and the Jews*, 221–47. Pakter, *idem*, 240, n. 85 reproduces X. 5.6.18 and finds it to require the king to put Saracens and Jews who collect taxes “under Christian supervision,” *ibidem*, 241. I understand the canon differently, however, as the relevant section reads: “and if by chance he [the king] sells his revenues to Jews or to pagans, he ought then appoint a Christian not suspected of inflicting burdens upon clergymen and churches, through whom the Jews or Saracens may pursue the royal dues without injury to Christians” (“...et si forte reditus suos Iudaeis vendiderit vel paganis, Christianum tunc deputet de gravaminibus inferendis

Table 1. Brief Summary of X. 5.6, On Jews, Saracens, and their Slaves/Servants

#	Main Point of the Individual Canon	Targets in the (Later) Headings
1	No Christian slave should be obliged to serve a <b>Jew</b> .	No difference.
2	No <b>Jew</b> can have a Christian slave.	No difference.
3	<b>Jews</b> cannot erect new synagogues, but can retain the old ones.	No difference.
4	It is not licit for <b>Jews</b> to keep doors and windows open on Holy Friday.	No difference.
5	(1) Christians who serve in the houses of <b>Jews or Saracens</b> are excommunicated. (2) Those who convert to Christianity are not to be despoiled.	(1) <b>Jews, Saracens, pagans.</b> (2) <b>baptized Jews.</b>
6	Christians carrying arms, iron, and timber to <b>Saracens</b> are excommunicated, as are those who serve on <b>Saracen</b> galleys and (round) ships.	No difference.
7	<b>Jews</b> cannot construct new synagogues but can maintain the old ones.	No difference.
8	Christians must not be in the domestic service of <b>Jews</b> (midwives, wet-nurses specifically mentioned).	No difference.
9	<b>Jews</b> cannot be baptized against their will, punished or despoiled without a trial, nor molested in their festivities; Jewish cemeteries are not to be violated and the corpses are not to be exhumed.	No difference.
10	Clergymen proselytizing in pagan lands can eat food prepared by unbelievers.	No difference.
11	It is licit to travel to Alexandria for the redemption of Christian captives.	No difference.
12	Those who deliver any merchandize to <b>Saracens</b> in time of war are excommunicated.	No difference.
13	<b>Jews</b> must not have Christian wet-nurses or servants.	No difference.
14	A <b>Jew</b> who strikes a clergyman must be punished.	No difference.
15	<b>Jews and Saracens</b> must wear distinguishing clothing.	No difference.
16	<b>Jews and Pagans</b> cannot hold public office.	No difference.
17	Elaborates on #6, trade with <b>Saracens</b> .	No difference.
18	If taxes are sold to <b>Jews or Saracens</b> by the King of Portugal, they are to pursue the royal rights through a Christian above reproach.	<b>Jews or pagans.</b>
19	No <b>Jew</b> can purchase or retain in his service a baptized person.	No difference.

canons aim specifically at trade with Saracens (#6, 11, 12, 17).<sup>28</sup> The single canon to deal exclusively with pagans allowed qualified clergymen to consume food prepared by infidels while proselytizing in pagan lands (#10).<sup>29</sup> Subsequent collections, which were much shorter and which functioned as appendices to the *Liber extra*, feature only a single relevant decision, a canon by the Council of Vienne (1311–12), which bans the call of the muezzin in Christian lands—called the invocation of Muhammad—and on pilgrimage to, evidently Mecca, defined by a renowned canonist as “the place where a certain Saracen was buried whom they venerate as a saint.”<sup>30</sup> Another well-known jurist rephrased the law, the *facto* expanding it: Catholic princes must not allow Saracens to say any words in honor of Muhammad in a loud voice, “nor to venerate any Saracen as a saint.”<sup>31</sup>

Upon promulgation of the *Liber extra*, and the corresponding bull proclaiming it as the law of the church, legal heavyweights took it upon themselves to provide an understanding of the law suitable for classrooms, courts, and the confessional. Bernard of Parma composed what became known as the standard gloss to the *Decretales*.<sup>32</sup> The canonists produced two different types of works of interest to us, *lecturae* and *summae*. The *lecturae* are extended, detailed comments on each individual canon, whereas the *summae* merge several or even all the canons on a given subject into a single, general treatment, thus turning the sum of ad hoc

---

clericis et ecclesiis non suspectum, per quem Iudaei sive Sarraceni sine Christianorum iniuria iura regalia consequantur”). Pakter’s reading of the canon leads him to see the papacy as relaxing this particular part of its Jewry legislation. I agree with Pakter that Jewish collectors must have been under Christian supervision at some level, but the point of the canon seems to be an altogether different one: cutting the physical/visible connection between the actual tax farmer (the non-Christian) and the taxpayers and hence removing the appearance of non-Christians as standing higher than Christians. Thus I find the policy not so much altered as adapted through a compromise that theoretically suited all three parties involved.

28. See Stefan K. Stantchev *Spiritual Rationality. Papal Embargo as Cultural Practice* (Oxford: Oxford University Press, 2014, forthcoming), ch. 2.1.

29. On this canon, see Freidenreich, “Sharing Meals with Non-Christians,” 50–51.

30. Clem. 5.2. cap.un., Ioannis Andreae, *In quintum Decretalium librum Novella Commentaria* (Turin: Bottega d’Erasmus, 1963), V:43. On Johannes Andreae’s *Novella*, see Stephan Kuttner, “Johannes Andreae and his ‘Novella’ on the Decretals of Gregory IX,” *The Jurist* 24 (1964): 393–408.

31. “Item principes catholici non debent in terris suis permittere sarracenos alta voce aliqua verba dicere in honorem Machometi nec aliquem sarracenum ut sanctum venerari.” Astesanus da Asti, *Summa de casibus conscientiae* (Nuremberg: Anton Koberger, 1482), Lib. II, Title 57.

32. On Bernard’s glosses to the *Decretals of Gregory IX*, which were composed in four redactions, the first 1234–41, the final, 1263–66, see Stephen Kuttner and Beryl Smalley, “The ‘Glossa Ordinaria’ to the Gregorian decretals,” *English Historical Review* 60(1) (1945): 97–105.

decisions that the *Liber extra* represented into an abstract law of the church. In turn, the *summae* can be subdivided into legal treatises and penitential manuals.<sup>33</sup>

Juxtaposing the influential penitential *summa* of Raymond (ca. 1222–25/34) with the equally famous *summa* on the law of Hostiensis (ca. 1253) will allow us to point out the subtle differences in the ways in which influential authors approached the subject.<sup>34</sup> Generally, Raymond and Hostiensis simply arranged in a coherent narrative the individual laws that make *Liber extra*'s section *On Jews and Saracens*. Sometimes, however, their accounts are at dissonance both with the letter of the law and with one another. Unlike the law and Raymond's interpretation of it, for example, Hostiensis separates Jews and Saracens, dealing with the former first and not necessarily repeating a canon when discussing the latter. Therefore, if we read Hostiensis' *summa* in a proscriptive key, we may be tempted to infer that pagans or Muslims could hold public office, because he omits pagans from the canon that requires Christians to be removed from contact with "Jews and pagans" wherever the latter transgress the stipulations against holding public office.<sup>35</sup> Both Raymond and Hostiensis differ from the law itself in appearing unconcerned with the double target of Lateran IV's requirement that Jews and Saracens wear distinctive clothing, speaking instead of Jews alone.<sup>36</sup> Both authors, at the same time, spend some time on the question of whether Christians, who are clearly prohibited from sharing a meal with a Jew, could do so with a Muslim, something the law itself does not discuss.<sup>37</sup>

33. For the internal forum of penance and for confession, see Sarah Hamilton, *The Practice of Penance, 900–1050* (Suffolk: The Boydell Press, 2001); Joseph Goering, "The Internal Forum and the Literature of Penance and Confession," in Hartmann and Pennington, *Medieval Canon Law in the Classical Period*, 379–428; and Kirsi Salonen, *The Penitentiary as a Well of Grace in the Late Middle Ages. The Example of the Province of Uppsala 1448–1527* (Saarijärvi: Academia Scientiarum Fennica, 2001).

34. Raymond of Peñafort, *Summa de Paenitentia* (Rome: Commentarium pro religiosus, 1976) is preserved in 275 copies. This was the single most copied work of legal commentary throughout the high and late Middle Ages, Melloni, *Innocenzo IV*, 247–48. For an introduction to Hostiensis' work on the subject from the point of view of ecclesiastical jurisdiction over Jews, see Pakter, *Medieval Canon Law and the Jews*, 78–83.

35. One thing we can be certain about is that what Hostiensis wrote of "Saracens" would apply to pagans, and vice-versa, because he defines "Saracens" as "Those who worship and revere innumerable gods, goddesses, and demons, who acknowledge neither the new, nor the old Testament." Hostiensis, *Summa* (Aalen: Scientia Verlag, 1962), f236v.

36. Hostiensis, *Summa*, f236r (#7); and Raymond of Peñafort, *Summa de Paenitentia*, col. 311.

37. Hostiensis, whose account is more to the point, concluded that as in the present the Saracens distinguished between foods [like Jews] "it is not licit [for Christians] to eat with them, be [those Saracens] subjects or enemies unless one is provided with a special

The more works we add to our discussion, the more blurred the answer to the question “How ought Christians relate to others?” becomes. The leading late medieval authorities, Johannes Andreae (d. 1348) and Nicolò de Tudeschi (Panormitanus, d. 1445) open their commentaries on Lateran IV’s requirement that Jews and Muslims wear distinguishing signs by speaking of, indeed, Jews and Saracens.<sup>38</sup> On the other hand, neither Johannes von Erfurt, nor Astesanus da Asti, authors of influential penitential works (completed in 1302 and 1317, respectively) explicitly link this requirement to a specific group of people. Johannes inserts it after a sentence in which he speaks of Jews, pagans, and Saracens.<sup>39</sup> Astesanus’ line on the subject, by contrast, is situated within sentences that clearly speak of Jews alone.<sup>40</sup> Similarly, unlike Hostiensis, Johannes Andreae and Johannes von Erfurt clearly state that neither Jews nor pagans can hold public office in Christian lands.<sup>41</sup> In Panormitanus, this ruling appears no less prominently, although, tellingly, it is said to be aimed at Jews and pagans in the actual discussion, and at Jews and “infidels” in its summary.<sup>42</sup>

This mildly discordant chorus of the great authorities turns into a veritable cacophony once we give an ear to those whose voices those such as Hostiensis usually silence. The mid-thirteenth century Franciscan Henry of Merseburg who seems to have taught at Magdeburg and Erfurt wrote a short *summa* for classroom use.<sup>43</sup> The section *On Jews and Saracens* is well summarized. Christians, for example, cannot eat, drink, cohabit, or bathe with Jews or receive medicines from them; Jews must wear distinguishing clothes or signs, and must not be allowed to hold

---

license” or in case of utmost necessity. Hostiensis, *Summa*, f236v. On this subject, see Freidenreich, “Sharing Meals with Non-Christians.”

38. “In the lands of Christians, Jews and Saracens of either sex must wear clothes by way of which they be distinguished from the Christians.” Ioannis Andreae, *Novella*, V, p. 43, Panormitanus, *Lectura super Tertio Quarto et Quinto Decretalium* (Lyon: Jehan Petit, 1521–2), V, f38r. On Panormitanus see Orazio Condorelli, et., *Niccolò Tedeschi (Abbas Panormitanus) e i suoi Commentaria in Decretales* (Rome: Il Cigno Galilei, 2000).

39. Norbert Brieskorn, ed., *Die Summa Confessorum des Johannes von Erfurt* (Frankfurt: Peter Lang, 1980–81), 991.

40. Astesanus da Asti, *Summa de casibus conscientiae*, Lib. II, Title 57.

41. Ioannis Andreae, *Novella*, 43, and *Die Summa Confessorum des Johannes von Erfurt*, 988.

42. Panormitanus, *Lectura*, V, f38r.

43. On Henry, including bibliography on him and his work, see Maarten van der Heijden and Bert Roest, *Franciscan Authors, 13th–18th Century: a Catalogue in Progress*, [http://users.bart.nl/~roestb/franciscan/franauth.htm#\\_Toc427570984](http://users.bart.nl/~roestb/franciscan/franauth.htm#_Toc427570984) (April 8, 2013).

office among Christians.<sup>44</sup> At the same time, Henry does not discuss “Saracens.” Aiming at a concise and clear exposition, Henry may have simply left out a non-Christian group of little concern in his own area (his work circulated in northern Germany).<sup>45</sup>

However, it is hard to always link a commentator’s choice to the area of his activities. It is precisely a contemporary work of regional relevance, the so-called *Summula Conradi* (1226/29), which remained popular in central Europe throughout the Middle Ages, that swings the pendulum of interpretation to the opposite extreme. At a glance, the *Summula Conradi*, or at least the eight manuscripts on which the critical edition of the work rests, focuses on Jews alone: Christians cannot share a table with Jews, nor eat their food, Jews cannot be the doctors of Christians, nor are Christians to bathe with Jews.<sup>46</sup> Jews must be dressed differently from Christians, and they are not allowed to hold public office. However, the whole section concludes with the words “That which is said of the Jews, you should also understand of the Saracens, except that, perhaps, Christians are allowed to sit at the table of Saracens [C.11. q.3.c.24] and this, perhaps, for the reason that, unlike the Jews, they do not have law by which they can deceive the faithful.”<sup>47</sup>

*Summula Conradi*’s line was turned into this article’s title for a reason: it provides what, at least to modern eyes, appears to be a whole new dimension of the law. Christians are not to call upon Muslim doctors, bathe with Muslims, or appoint them to public office, points not made by the law itself (and, of course, Saracens are to wear distinctive clothing). Given the well-known ambiguity in the distinction between a “Saracen” and a “pagan,” so well illustrated by *Summula Conradi*’s own manuscript tradition—six of the manuscripts that make the text’s critical edition use “Saracens” whereas two use “pagans”—the work may well have been understood as banning a

44. “Item non debent christiani cum iudeis comedere bibere habitare balneari nec medicinas eorum recipere nec recipere eos ad convivia.” “Item non debent permitti habere inter christianos seculares dignitates vel officia publica ne habeant occasionem saviendi in christianos.” “Compelandi etiam sunt talem habitum vel signum deferre ut ab aliis distinguantur.” Henricus de Merseburg, *Summa iuris canonici in compendium redacta*, Robbins Collection, ms. 75, f63r.

45. Kisch, *The Jews in Medieval Germany*, 31, remarks on the connection between content and target audience.

46. On the employment of Jewish doctors, see Joseph Shatzmiller, *Jews, Medicine, and Medieval Society* (Berkeley: University of California Press, 1994). On bathing, see James F. Powers, “Frontier Municipal Baths and Social Interaction in Thirteenth-Century Spain,” *The American Historical Review* 84(3) (1979): 649–67; and Jill Caskey, “Steam and ‘Sanitas’ in the Domestic Realm: Baths and Bathing in Southern Italy in the Middle Ages,” *Journal of the Society of Architectural Historians* 58(2) (1999): 170–95.

47. Renard, *Trois sommes de pénitence*, II: 85–87, at 87.



broad range of contact between Christians on the one hand, and Jews, Muslims, and pagans, on the other. Thus, lesser known works provide a glimpse underneath the glamor of the time's most renowned authors, exposing the full range of possibilities in the understanding of the law of the church, from restrictions aimed at Jews alone to such aimed at Jews, Muslims, and pagans.

Some penitential works, finally, appear confusing for an altogether different reason. Bartolomeo da Pisa arranged his *Summa* (ca. 1338) alphabetically, thus separating Jews from Saracens by approximately 100 folios. Cohabitation, food, medicines, public office, and fashion are all subjects with which Bartolomeo deals in his entry on *Iudeus/i*,<sup>48</sup> stuck in between *Istrio* and *Iudicare potest/Iudex*. Illicit trade dominates the much shorter one on “Saracens,” to be found in between *Saints' bodies* and *Satisfaction*.<sup>49</sup> Thus Bartolomeo excised, for reasons that seem to have more to do with style than with policy, the reference to Muslims from canons that explicitly featured them.

It is hardly news that the canonists disagreed on the meaning of individual canons. What is noteworthy is that the commentarial literature does not offer an unequivocal perspective on the very targets of the various ecclesiastical policies aimed at non-Christians. These discrepancies cannot be explained away by arguing that individual commentaries were to be consulted alongside the law itself. Works aimed at the classroom may have been consulted alongside the law, but even so, they complicate it as much as they clarify it. The premise of penitential works, moreover, was certainly different: to make the content of the law accessible for practical use. The link between the commentators' choices and the religious landscape of the territories they inhabited cannot explain all discrepancies. Historical context could and did serve as an “irritant,” in Freidenreich's words on commensality, but it was quickly pushed to the background by the text-based approach of the canonists into what Pakter, speaking of the canons on Christian slaves and servants, calls a “closet debate.”<sup>50</sup>

The rest of this article is hence dedicated to proposing that what is misleading may well be the impression of confusion itself. Perhaps we do not

48. Bartholomaeus Pisanus (Bartholomaeus de Sancto Concordio), *Summa de casibus conscientiae [Summa Pisana]* (Venice: Nicolaus Girardengus de Novis, 1481), 170v–173v at 170v–171r.

49. Bartolomeo does link Jews and Saracens in the case of Christian slaves, while distinguishing between Jews and gentiles when dealing with rites/ceremonies. *Summa Pisana*, ff. 286v–287r.

50. Freidenreich, “Sharing Meals with Non-Christians,” 72; and Pakter, *Medieval Canon Law and the Jews*, 140.

face commonplace, explicit canonistic disagreement, as in the case of the sharing of meals with non-Christians. No matter how individual popes and canonists may have thought of their own actions, legal commentaries, penitential manuals, and papal letters treat the labels Jew, pagan, heretic, Saracen, and schismatic in a twofold fashion. On the one hand, they are treated as presumably distinct groups of people. On the other, the labels are often interchangeable placeholders for the broader category “infidelity.” The inherent ambiguity of the legal discourse on Christians’ relations with others was one way in which each policy became potentially applicable against each group of “infidels.” But did “apply to Muslims what was said of the Jews” become the norm over time?

## II. Toward a Clearly Articulated Conflation of Others?

The different threads of papal discriminatory legislation fuse in the works of two extremely influential fifteenth century authors. One is Antoninus, the Dominican Archbishop of Florence (1389–1459), a saint, as well as the twenty-fourth most printed author between 1455 and 1500.<sup>51</sup> The other is Roberto Caracciolo, who is in forty-fifth place among the most printed authors in the fifteenth century, an observant Franciscan who “was chosen in 1450 to deliver the official eulogy during the ceremonies for the canonization of Bernardino da Siena.”<sup>52</sup> Before we turn to their advice on how a Christian ought to relate to others, however, we need to revisit Hostiensis’ work.

In his mid-thirteenth century *summa*, Hostiensis makes a short statement, which is striking on account of its brevity, generality, unremarkable place in the text, where it is placed simply as point number three, and its content: Christians ought to refrain from continual contact with Jews “so that the simpleminded are not corrupted by them.”<sup>53</sup> Technically, this statement is a typical representation of the canonists’ method of forging new legal interpretations by uprooting whatever phrases would suit their purposes from their original contexts. This propensity to generalize

51. Michael Milway, “Forgotten Best-Sellers from the Time of the Reformation,” in *Continuity and Change: the Harvest of Late Medieval and Reformation History. Essays Presented to Heiko A. Oberman*, ed. Robert Bast and Andrew Gow (Leiden: Brill, 2000), 142.

52. Peter G. Bietenholz and Thomas B. Deutscher, eds., *Contemporaries of Erasmus. A Biographical Register of the Renaissance and Reformation*, Vols. 1–3 (Toronto: University of Toronto Press, 1995), 265.

53. “Tertio, ut ipsi a comunione christianorum assidua absteineant ne simplices ab eis corruptantur.” Hostiensis, *Summa*, f236r.

on questionable basis was normatively neutral, but it yielded in this case a morally charged result. Hostiensis' ban against Christians' contacts with Jews was based on the canon dealing with new converts from Judaism to Christianity. According to the *Decretum*, it was that specific group of people, and not Christians in general, who were expected to refrain from communication with Jews qua their former fellow co-religionists.<sup>54</sup>

Two centuries later, Caracciolo took his audience on an exhaustive tour of the *Liber extra*. His last target is the Jews, to whom he dedicates a lengthy discussion. Once he reaches the bans against eating, drinking, and cohabiting with Jews, Caracciolo tackles the subject of communication. He first repeats the old adage that Christians may talk with Jews and "infidels," but not eat with them, because one is more easily deceived during meals. Caracciolo immediately clarifies, however, that it is the strong in the faith who can converse with (note the choice of words) "infidels." Even the strong in the faith, furthermore, should do so with caution, so that others are not scandalized.<sup>55</sup> Antoninus' take on the matter was no different, but he also adds explicitly that the weak are to have contact with others only in case of necessity.<sup>56</sup> This approach is typical: on the one hand, Caracciolo and Antoninus came close to banning any communication, on the other, their writings de facto popularized maxims found already in Thomas Aquinas and clung to long-circulating legal commentary that their training would not allow them to discard.<sup>57</sup> In the case of Caracciolo, his somewhat traditional discussion appears to match the one he offers on Muslims, the whole section on whom is a well-informed and lengthy exposition on papal trade restrictions. However, whereas this would make it seem that issues other than trade are not of equal concern, Caracciolo prefaces the whole section with a clear-cut and rather original recommendation of broader nature: "Christians must avoid their dangerous association and also must be careful not to carry arms or other goods to them."<sup>58</sup>

54. C. 28 q.1. c.12 (Friedberg, I, 1087).

55. "Thomas [see below] autem dicit quod illi qui sunt firmi in fide de quibus non timetur quod subvertantur sed potius quod convertant infideles possunt licite cum illis conversari et communicare sed hoc caute facere debeant ne scandalizentur alii." Roberto Caracciolo, *Sermones quadragesimales de peccatis* (Venice: Andreas Torresanus de Asula, 1488), ff. 49v–50r.

56. Antoninus of Florence, *Summa Theologica* (Graz: Akademische Druck–U. Verlagsanstalt, 1959), II:1149.

57. Thomas Gilby, ed., *Thomas Aquinas. Summa Theologiae* (Cambridge: Cambridge University Press, 2006 [1975]), 32:64–7 (2a2ae, 10, 9).

58. "Tertio consideramus saracenorum et mahumethanorum evitacionem. Debent christiani evitare periculosa illorum consortia etiam advertant diligenter ne arma aut alia mercimonia

This desire to both report the law of the church and summarize it along lines that obliterate any distinction between policies, thus erecting a general ban on association, is sharper in the works of Antoninus of Florence. Antoninus's *summa* features a lengthy exposition on *Liber extra*'s section *On Jews and Saracens*. It differs from the law of the church and from all earlier authorities considered in this work in one crucial way, however: it both attempts to summarize the section on Jews and Saracens and explicitly links it to the one that follows it in the law, *On Heretics*. "[One is not allowed to speak with heretics on account of their excommunication] but to talk with other infidels such as Jews and Saracens is not prohibited; what is banned is excessive familiarity and association."<sup>59</sup> Depending upon the version consulted, Antoninus' penitential work, a much shortened and enormously popular derivative of his *summa*, which was meant to serve both confessors and the laity, displays some interesting variations. An Italian edition, for example, states: "The infidelity of pagans, Jews, and heretics is a gravest sin that damns those who follow such errors. There is no need to mention that only the heretics are excommunicated [and hence one is not allowed to be in contact with them], but one—and especially the stupid and the ignorant—must not have intimate familiarity with Jews too."<sup>60</sup> Whoever would consult only this edition, therefore, may well understand the ban on "intimate familiarity" as applicable to Jews alone. Several other Italian and Spanish editions, furthermore, do not even feature the paragraph of interest, and hence never mention the subject of communication with non-Christians. This, in turn, raises difficult questions about the intentionality of editorial intervention.

However, unlike the vernacular editions, the Latin ones I have been able to consult—published in Venice, Rome, Strasbourg, Cologne, Speier, and Memmingen—are very consistent with one another. They feature the sentence of interest here differently from the Florentine vernacular edition

---

eis deferant." Caracciolo, *Sermones quadragesimales de peccatis*, f48v. Caracciolo cites X 5.6.6 and 17, as well as Nicholas IV's *Olim* (1291), all of which speak of trade.

59. "Nota primo, quod cum haereticis prohibita est etiam locutio fidelibus et hoc quia excommunicati sunt. . . Sed cum aliis infidelibus, ut Judaeis et Saracenis non est prohibita locutio, sed nimia familiaritas et conversatio." Antoninus of Florence, *Summa Theologica*, II, col. 1149.

60. "La infidelita de pagani e de giudei e delli heretici e gravissimo peccato el quale mena adammatione coloro che seguono tali errori. Non e bisogno dire che solo liheretici sieno excommunicati: ma etiam cogiudei non sidebbe havere domestica conversatione e maxime gli-grossi et gliignoranti." *Tractato volgare del frate Antonino Arcivescovo di Firenze intitolato Defecerunt che insegna ai confessori diche chasi et in che modo debbe domandare colui che egli confessa* (Florence: impressa per ser Lorenzo Margrani & Giovanni di Maganza, 1496), Cap. 135.

cited previously, suggesting that the warning of excessive familiarity did not apply only to Jews: “Only the heretics are excommunicated but there should not be intimate contact with others, too, and especially with Jews, and especially by *idiote*.”<sup>61</sup> *Idiote* here most likely refers to laymen in general; Antoninus lived and worked in a period of a concerted papal and mendicant effort to re-establish ecclesiastical authority on a variety of fronts, from lay religiosity to contact with the “infidel.”<sup>62</sup> A Spanish version corroborates a reading of Antoninus’s work as a rather general and comprehensive restriction of contacts between Jews and Christian laymen: “. . .one must not have intimate contact, especially with Jews and that much less should laymen [los idiotas] and those who are not literate hold such communication.”<sup>63</sup>

It would be misleading, however, to see the work of Antoninus as an example of a linear development toward a well-articulated anxiety with the size of the papal flock resulting in a complete ban on all forms of relations between Christians and non-Christians. Antoninus is not quite as categorical, limiting himself to “intimate contact.” His own hand gets lost among those of his editors. Rather than seeing the change toward generalization as resulting from a careful and intentional redefinition of the meaning of the canon law, we may attribute it to the search for brevity entailed in the reworking of the clumsy *Summa* into a practical guide to daily life. The printing press, moreover, gave a new lease on life to high medieval works, now more widely available for consultation than ever before, thus hypothetically preserving the relevance of earlier views.

61. “Soli enim heretici sunt excommunicati, sed et cum aliis praecipue iudeis non debet haberi domestica conversatio et praecipue idiote.” Antoninus of Florence, *Confessionale* (Venice: Bartholomaeus Cremonensis, 1473), Cap. 58 (the book is difficult to search despite the presence of a list of *capitulae* at the end). The same wording appears, among other editions, in Antoninus of Florence, *Confessionale* (Rome: In domo Francisci de Cinquinis, ca. 1477), f50v; (Speier: Johann and Conrad Hist, ~1487), f60r; (Venice: Antonius de Strata, 1483), f49r; and (Strasbourg: Per Martin um Flach, 1492, 1496), f67v (the first of two folios numbered 67). Other editions vary slightly the wording, altering somewhat the meaning; therefore, “intimate contact” becomes “too much intimate contact:” “. . .non debet haberi nimis domestica conversatio et praecipue ydiote,” Antoninus of Florence, *Confessionale* (Cologne: Printer of the ‘Historia S. Albani’ [Johann Guldenschaff or Conrad Winters, de Homborch?], 1472), Cap. 23; and (Memmingen: Albrecht Kunne, 1483), f40r.

62. On the former, see Nancy Caciola, *Discerning Spirits. Devine and Demonic Possession in the Middle Ages* (Cornell: Cornell University Press, 2003), on the latter, see Hughes, “Distinguishing Signs.”

63. “La infidelidad delos paganos et hereticos o judios es muy grave pegado et lieva al infierno et solos los hereticos entre estos son descomulgados et no deve el hombre tener conversacion domestica con judios mayormente et mucho menos deve tener la tal conversacion los idiotas et los que no son letrados.” Antoninus of Florence, *Summa de confession* (Burgos: Fadrique de Basilea, 1499), f99v.

Finally, not all editions of Antoninus's work feature the passage on "infidelity."

However, Antoninus' confessional was printed more than 100 times in different versions and formats in Latin, Italian, and Spanish between 1468 and 1500, and many of these editions feature one or another version of his words on infidels. The editions of his *Confessionale* far surpass the sum total of those of influential earlier work.<sup>64</sup> Therefore, the abovementioned qualifications notwithstanding, Antoninus's writings—and the manner of their circulation—put into focus this article's argument. Although "Concord of discordant canons" was the declared purpose of canonical jurisprudence, and although the canonists continuously reused the same material, there was little harmony in the ways in which they wrote about the church's precepts on how Christians ought to relate to non-Christians, let alone in the ways in which such opinions circulated at the dawn of printing. The canonists upheld a taxonomy of otherness too central to Christian cosmology to be discarded; however, canonistic interpretation of the law consistently came close to reducing all difference to one between own and alien sheep, spreading by implication suspicion of any form of contact between faithful and others.

### III. Generalizing from a Specific Canon: Can a Christian Bequeath to Non-Christians?

The inherent ambiguity in the church's stance on the subject of Christians' relations with others may have prevented the friars from clearly articulating a general ban on any form of unlicensed communication with non-Catholics. There were no obstacles, however, in expanding the validity of individual policies. Commenting on the law of bequests, the famous lawyer Panormitanus states that a specific legislative act is necessary for a rule that speaks of bishops to apply to all clergy members.<sup>65</sup> This logical conclusion was drawn through the juxtaposition of the two earliest canons on the subject. However, it is precisely the canonists' treatment of the law on this subject that suggests otherwise. The canonists themselves could turn a specific law into a general one by rephrasing it in general terms.

64. Hostiensis, *Summa*, seven editions; Gottfredo da Trani, *Summa*, three editions; Innocent IV, *Apparatus*, four editions; Johannes Andreae, *Novella*, including Book V, one edition; Astesanus da Asti, *Summa*, eight editions; Bartholomaeus Pisanus, *Summa*, eight editions; and Panormitanus, *Lectura*, twenty-one editions that include Book V. Information from British Library, Incunabula Short Title Catalogue, <http://www.bl.uk/catalogues/istc/index.html> (August 15, 2013).

65. "Et ex hoc nota quod dispositio loquens de episcopis non vindicat sibi locum in presbyteris et aliis clericis nisi fiat extensio per legislatorem." Panormitanus, *Lectura*, V, f40r.

In 418–19, African bishops met at Carthage and approved the decisions taken at earlier African councils. Two of these canons found their way into *Liber extra*'s section "On Heretics." Canon *si quis* proclaims the anathema of bishops, even if post mortem, who would bequeath to people not related to them by blood, to heretics, even if their relatives, or to pagans. Canon *in eos* proclaims, in turn, that neither bishops, nor any clerics can bequeath to non-Catholics.<sup>66</sup> Accordingly, the standard gloss merged the two canons, adding "and the same about all those who are not Catholics."<sup>67</sup> Therefore, whereas these canons were placed in the section dealing with "heretics," they also concern Christians' relations with anyone else outside the papal flock. No clergyman can bequeath anything to non-Christians.

But is a layperson allowed to do so? Hostiensis appears to allow the laity to bequeath to individual Jews, if not to Jewish communities.<sup>68</sup> He fails, however, to mention non-Catholics other than Jews or to reiterate the matter in his subsequent section on "Saracens." Given that the *Liber extra* explicitly forbids any clergy members to bequeath anything to any non-Catholics, a literal reading of Hostiensis' *summa*, which would implicitly allow even clergymen to bequeath to "Saracens" or "pagans," could not be viable, but Hostiensis did not preclude the possibility that ordinary Catholics could legally bequeath to non-Catholics. If Hostiensis' *summa* can be somewhat confusing, lesser known works can feature outright misunderstandings of the law. Whereas canon *si quis* disallowed a bishop to bequeath to a non-relative or to a "heretic," *even if* a relative, a little-known penitential work states that "A clergy member cannot bequeath anything to a Jew, a Saracen, *or* a relative."<sup>69</sup> Working at a higher level of abstraction, some jurists provided categorical statements.

66. X. 5.7.5–6 (Friedberg, II), col. 779.

67. "*Paganos. Et ita idem iuris est in Paganis quod de haereticis. Et idem est de omnibus qui catholici non sunt.*" *Decretales. . . una cum glossis restituae*, col. 1671.

68. Hostiensis begins by stating that Jews who refuse to accept the faith are subject to multiple burdens and starts from the issue of bequests. He does not allow bequests to the community of Jews, citing Cod. 1.9.1., but raises the question if one might be allowed to bequeath to individuals, referring to Azo and citing Dig. 34.5.20. Without elaborating any further, Hostiensis then cautions that this is not allowed to clergymen, even if the Jew is the clergyman's brother. Hostiensis, *Summa*, f236r.

69. "Item clericus iudeo, sarraceno, vel consanguineo suo aliquid in testamento non potest relinquere." Renard, *Trois sommes de pénitence*, II:241. This treatment may have stemmed from an error, possibly authorial, for it seems to be found in all three extant manuscripts. As Panormitanus clearly states: "Also, note that this prohibition is only [valid] with regard to non-Catholics (*non Catholicorum*), not with regard to those that do not belong to one's family (*extraneorum*). Therefore, a clergyman can bequeath to a Catholic. . . However, if he dies intestate, not existing blood relatives, the church receives by succession." Panormitanus, *Lectura*, V, f40r.



The resulting clarity was achieved at the expense of all non-Catholics. Gottofredo da Trani, writing of the ways in which Christians are to relate to Jews and Saracens, implicitly conflates clergy and the Ecclesia as a whole by broadly anathematizing Christians who would bequeath anything to pagans.<sup>70</sup> Whereas we may have expected Gottofredo to simply merge *si quis* and *in eos* and thus substitute non-Catholics for “heretics” and pagans, as the standard gloss would do, he apparently simply erases “heretics” from the original sentence in *si quis*, now out of place in a section entitled “On Jews and Saracens.” Given the sentence’s context, there can be little doubt that his statement should be understood as also applicable to Jews and “Saracens.” Others were more explicit. Raymond of Peñafort’s penitential *summa* proclaims simply that no one can bequeath to a Jew or to a pagan.<sup>71</sup>

Late medieval authors appear to have followed Raymond’s hard line. Writing in the 1330s, Bartolomeo Pisano allowed no one to bequeath anything to the community of the Jews or to any Jew or pagan.<sup>72</sup> Antoninus of Florence’s *Summa* uses almost identical language.<sup>73</sup> Roberto Caracciolo follows suit: “no Christian may bequeath anything to any Jew or to a congregation of Jews or of other infidels” under the threat of anathema.<sup>74</sup> There was, therefore, a noticeable change over time toward broader readings of the law. An ancient law concerning bishops’ relations with non-Christians was quickly applied to clergymen at large, and, in the later Middle Ages, to all Christians. Therefore, although they may have been too cautious to erect a sharp and undifferentiated boundary between faithful and others, the jurists could and did provide judges, confessors, and administrators with clear-cut readings of a specific law that were as practical as if they were their own invention. Was canonistic opinion divorced from papal practice?

#### IV. Papal Practice and Its Implications

There are three types of “infidelity,” Antoninus of Florence wrote in the fifteenth century echoing a long established practice: “paganism,”

70. Gottofredo da Trani, *Summa super titulis Decretalium* (Aalen: Scientia Verlag, 1968), 412.

71. Raymond of Peñafort, *Summa de paenitentia*, col. 311.

72. “Item nullus potest iudeorum congregationi seu alicui iudeo vel pagano aliquid relinquere in testamento et si fecerit etiam post mortem iudicabitur anathema.” Bartholomaeus Pisanus de Sancto Concordio, *Summa Pisana*, f171r.

73. “Item nullus fidelis potest aliquid congregacioni Judaeorum vel Judaeo vel Pagano in testamento relinquere et si fecerit etiam post mortem iudicatur anathema.” Antoninus of Florence, *Summa Theologica*, II, cols. 1151–52, making an exception for “great necessity.”

74. “Octava regula quod nullus christianus potest alicui iudeo vel congregationi eorum et aliorum infidelium aliquid in testamento relinquere.” Caracciolo, *Sermones quadragesimales de peccatis*, f50r.

“Judaism,” and “heresy.”<sup>75</sup> This article concludes by briefly shifting our attention from Jews and Muslims to “heretics” and “schismatics” and from legal and penitential works to papal letters that never made their way into decretal collections, in order to make two points. First, that the voices of popes and canonists rang in one tone throughout the later Middle Ages. Second, that by applying the mind of the law to analogous situations, ad-hoc papal letters expanded over time the validity of a specific policy, even if the canonists themselves ignored the development.

“Papal letters” is a generic term for a variety of documents produced by the church’s central administration that can be classified in more ways than one.<sup>76</sup> The thirteenth century letters mentioned in the previous section were *decretales*, papal answers to the queries of clergymen or laics.<sup>77</sup> What is of interest here, however, is the enormous body of letters as a whole, whether these legislated, advanced papal diplomacy, exhorted the faithful to crusade, provided consultation, made decisions on specific cases, bestowed privileges, or granted dispensations. The one problem we need to clarify at the outset is that of the voices they contain. This is best done through an example.

A letter addressed in 1354 to the Archbishop of Crete, the largest Venetian overseas territory, dispensed the nobleman Nicoletto Bono and the noblewoman Agneta, daughter of Francesco Mudazzo from the provisions of the ban on marriage within the fourth degrees.<sup>78</sup> As typical, the exposition contains much of the language of the original petition. Crete was surrounded by “Barbarian Saracens and Schismatic Greeks.” The island itself was filled with Greeks with whom the Latins were hence compelled to talk and to live. The prospective spouses abhorred the thought of marrying such people, but so few were the nobles of suitable

75. “Est autem triplex infidelitas, scilicet Paganorum, Judaeorum, et Haereticorum.” Antoninus of Florence, *Summa Theologica*, II, col. 1147. Also found in Aquinas, *Summa Theologiae*, 2a2ae, 10, 5 (32:52–53).

76. R. Naz, *Dictionnaire de droit canonique*, contenant tous les termes du droit canonique, avec un sommaire de l’histoire et des institutions et de l’état actuel de la discipline (Paris: letouzey et Ane, 1935–1965) Vol. 6, 409.

77. See Gérard Fransen, “Les décrétales et les collections de décrétales,” in *Typologie des sources du moyen âge occidental*, ed. Léopold Genicot (Turnhout: Brepols, 1972), 12–44. For more on the subject and for a bibliography of published letters—in toto or by way of *regesta*—see also *Dictionnaire de droit canonique* 6, cols. 411–13.

78. On the subject of marital impediments, see James Brundage, *Law, Sex, and Christian Society in Medieval Europe* (Chicago: University of Chicago Press, 1987), particularly 191–96; Charles Donahue, Jr, *Law, Marriage, and Society in the Later Middle Ages* (Cambridge: Cambridge University Press, 2007), 27–31; and Salonen, *The Penitentiary as a Well of Grace*, 103–19. On dispensations, see W. J. Sparrow Simpson, *Dispensations* (London: Society for Promoting Christian Knowledge, 1935).

rank unrelated to them, in part because of the Black Death, that these were hard to identify.<sup>79</sup> It may be tempting to use letters of this sort as evidence that at least the nobility had internalized the canon law distinctions between Christians and schismatics (and Venetian laws' clearly demarcated line between Venetians and Greeks). However, it was difficult in practice to tell a "Latin" from a "Greek."<sup>80</sup> The supplicants may have been able to, but did not have to have any input in the actual phrasing of their petition. This may well have been the work of a clergyman on Crete or even of professionals at the papal court, "scriveners," "who would draw up papal petitions on request and couch them in a proper form."<sup>81</sup> The letter, therefore, tells us nothing certain about how Nicoletto and Agneta themselves viewed the Greek-speaking Orthodox Christians among whom they lived. Whoever stood behind the argument through which the dispensation was to be obtained, however, clearly employed language that was deemed likely "to work" at the curia. Therefore, whatever its source, the language of a papal letter reflected the curia's own characterizations of the outside world.

Nicoletto and Agneta's petition was far from harsh in labeling Orthodox, Greek-speaking people as "schismatics." They could well have called them "heretics." Schism separates one from the church, proclaims the *Decretum*, setting the tone for centuries, whereas heretics keep perverse dogma, which they obdurately defend.<sup>82</sup> Papal letters, accordingly, often consider Eastern Europeans, such as Greeks, Ruthenians, and Bulgarians as neither "infidels," nor "heretics," but rather "schismatics" who follow the "Greek rite." An important caveat applies, however. Persisting in a schism over

79. Aloysius Tautu, ed., *Acta Innocentii VI (1352–1362)* (Vatican City, Typis Pontificiae Universitatis Gregorianae, 1961), #34 (1354).

80. See Sally McKee, *Uncommon Dominion: Venetian Crete and the Myth of Ethnic Purity* (Philadelphia: University of Pennsylvania Press, 2000). On the formation of the Venetian maritime empire, see Freddy Thiriet, *La Romanie vénitienne au Moyen Age. Le développement et l'exploitation du domaine colonial vénitien (XII<sup>e</sup>–XV<sup>e</sup> siècles)*, *Ecoles Française d'Athènes et de Rome* 193 (Paris: E. de Boccard, 1959). For the fifteenth century, see Monique O'Connell, *Men of Empire. Power and Negotiation in Venice's Maritime State* (Baltimore: Johns Hopkins University Press, 2009).

81. Leonard E. Boyle, *A Survey of the Vatican Archives and of Its Medieval Holdings* (Toronto: Pontifical Institute of Medieval Studies, 2001), 149.

82. C24 .q3.c26, 28, 31 (Friedberg, I, 997–98). A useful introduction can be provided by considering the rich translated primary sources; see Walter L. Wakefield and Austin P. Evans, *Heresies of the High Middle Ages* (New York: Columbia University Press, 1991 [1969]) alongside Malcom Lambert, *Medieval Heresy. Popular Movements from the Gregorian Reform to the Reformation* (Malden, MA: Blackwell, 2002); and Mark Pegg, *The Corruption of Angels, The Great Inquisition of 1245–1246* (Princeton: Princeton University Press, 2001).

a prolonged period of time is impossible without lapsing into heresy.<sup>83</sup> Accordingly, the author of *Summula Raymundi*, having first applied all laws regarding Jews to “Saracens,” unsurprisingly concludes his section on “heretics” with “What was said of the heretics, you should also understand of the schismatics.”<sup>84</sup>

Context often explains the word choice adopted in papal letters. Although the First Crusade (1096–99) had once been launched, in part, under the premise that Eastern Christians need help against Muslims (called Saracens, Persians, Turks, or pagans), the Fourth Crusade (1201–04) led to the establishment of Latin polities on Byzantine soil. The Roman see developed a hard line against Eastern Christian polities seeking to dislodge the Latins.<sup>85</sup> In this context, papal letters often efface any difference between “infidels,” “heretics,” and “schismatics.” When answering a letter from Guido della Rocca, Lord of Athens, who had accused Greek monks of revealing secrets to Greek “infidels” and hence asked that said monks be replaced with Latin ones, the papal chancery was content to uphold Guido’s obviously self-interested construction of the Greeks’ identity.<sup>86</sup> The choice of words might have come “from below,” but it is unreasonable to suppose that Innocent, one of the most highly regarded canonists as well as the pontiff who took to heart to define the extent of papal power over non-Christians, was not aware of the implications of the vocabulary that his chancery was using. What really mattered, it seems, was a given group’s failure to belong to the papal flock.

Another pope well-versed in the law of the church, John XXII, writing to the Genoese, Venetian, and Pisan officials, as well as to all other Catholics in Caffa, a Genoese colony in the Crimea and the Black Sea’s premier emporium in the late Middle Ages, took issue with the Latins’ practice of contracting marriages “with schismatic and heretical women.”<sup>87</sup> These

83. Othmar Hageneder, *Il sole e la luna. Papato, impero e regni nella teoria e nella prassi dei secoli XII e XIII* (Milan: Vita e Pensiero, 2000), 79–80.

84. “Quod dictum est de hereticis, intellige de scismaticis.” Renard, *Trois sommes de pénitence*, II:90.

85. The literature is vast. On the Fourth Crusade, see Donald Queller and Thomas Madden, *The Fourth Crusade. The Conquest of Constantinople* (Philadelphia: The University of Pennsylvania Press, 1997). For a detailed analysis of the church’s involvement in the east see Kenneth Setton, *The Papacy and the Levant, 1204–1571*, 4 vols (Philadelphia: The American Philosophical Society, 1976–84); for the period in which the Latins controlled Constantinople, see also Robert Lee Wolff, *Studies in the Latin empire of Constantinople* (London: Variorum, 1976).

86. Theodosius T. Haluščynskij, ed., *Acta Innocentii PP. IV (1243–1254)* (Rome: s.n., 1962), #11.

87. The literature on Caffa is considerable. As a starting point, use Michel Balard, *La Romanie Genoise (XII<sup>e</sup> – début du XV<sup>e</sup> siècle)*, in *Bibliothèque des Écoles françaises*

women, John claims, promise at first to “rejoin” the Roman Church, but after a period of observance of the orthodox faith, are seduced by the cunning of Satan away from the truth of the faith and into heresy, dragging their husbands with them into perdition.<sup>88</sup> John’s letter thus laments the Devil’s employment of “schismatic and heretical” women to corrupt what his rhetoric, informed by the monastic image of Eve as the tool through which the Devil wreaks havoc in an otherwise orderly world, diacritically constructed as innocent Catholic men. Overall, however, the issue was not gendered. Catholic women were, in turn, painted as the victims of their male relatives. In 1309 a papal legate held two synods, one in Buda for clergymen from Hungary and another in Bratislava for their Polish brethren. The latter banned all Catholics from marrying their daughters or other female relatives to any heretics, Patarens, Gazars, schismatics or others who oppose the Christian faith, chiefly Ruthenians, Bulgarians, Serbs, and Lithuanians “who remain in error;” provisions that applied to Hungary, too.<sup>89</sup> The decision had a specific trigger, the apparent attempt of Ladislaus Kán, voyvode of Transylvania, to marry his Catholic daughter to “Stephan, King of Serbia,” perhaps Stephan Milutin (d. 1321) who fought his brother Stephan Dragutin over the Serbian throne.<sup>90</sup> The specific context of its origins notwithstanding, the decision assumed a broad validity in the eastern areas of Latin Christendom. Suggesting that the supposedly theologically sound “schismatics” “oppose the faith,” and by lumping them with the partly pagan, partly Christianized Lithuanians, renders meaningless any distinction between the categories “schismatic,” “heretic,” and “pagan” even as it nominally upholds them.

---

*d’Athènes et de Rome* 235 (1978) and *Atti della società ligure di storia patria* n. s. 18 (42) (1978), I:199–215. For the relations between Latin Christians and others, see Michel Balard, “Les Orientaux à Caffa au XV<sup>e</sup> siècle,” *Byzantinische Forschungen* 11 (1987), 223–38; and Michel Balard, “The Greeks of Crimea under Genoese Rule in the XIV<sup>th</sup> and XV<sup>th</sup> Centuries,” *Dumbarton Oaks Papers* 49 (1995), 23–32.

88. The pope then asked the lay authorities to assist the bishop in the correction and punishment of said women, so that these could regain their spiritual health and so that others would be prevented from falling into ruin; see, Aloysius Tautu, ed., *Acta Johannis XXII (1316–1334)* (Vatican City: Typis Polyglottis Vaticanis, 1952), #9 (1318).

89. Ferdinand M. Delorme and Aloysius L. Tautu, eds., *Acta Clementis V (1303–1314)* (Vatican City: Typis Polyglottis Vaticanis, 1955), #39a, #39 (1309); and Aloysius Tautu, ed., *Acta Clementis VI (1342–1352)* (Vatican City: Typis Polyglottis Vaticanis, 1960), #106 (1346).

90. The editor of the document speaks of Dragutin instead, *Acta Clementis V*, 70 n. 3. However, Dragutin was the one with Catholic support, whereas in 1308, Milutin had sought to marry his daughter to Charles of Valois’ son in order to break that support; see John V.A. Fine, Jr., *The Late Medieval Balkans* (Ann Arbor: The University of Michigan Press, 1994 [1987]), 257–58.

By the fifteenth century, the Ottomans had conquered a good portion of the Balkans, obliterated Bulgaria, and turned the once proud Byzantine emperors to purple-clothed beggars for Western help.<sup>91</sup> The Roman Church adopted a much more compassionate stance to Orthodox Christians; the novel attitude was most obvious in the church's categorical opposition to the enslavement of eastern Christians.<sup>92</sup> In this context Pope Martin V (1417–31) addressed in two bulls a particularly heinous crime in the eyes of the church, the long-standing trade in Eastern Christian slaves conducted between the Crimea and Egypt, whose sultan used the slaves as military recruits.<sup>93</sup> The bulls resulted from the supplication of an Augustinian monk who, returning from overseas, complained of Christians who aided Turks against the city of Constantinople, of the sale of Christians of the “Greek rite” to infidels, and of Jews not wearing distinguishing signs, hence committing many crimes, including the sale of Christians to infidels. Martin dealt with Jews in one bull and with Christians in the other. Both bulls focus on the issue of the alleged Jewish and Christian trade in Christian slaves, seen as resulting in the latter's apostasy and their subjection to sodomy. In this context, Martin's chancery referred to the Eastern Christians neither as “heretics,” nor as “infidels,” or even “schismatics,” but simply as “Christians baptized in the Greek rite” or as peoples “baptized in the name of Christ.”<sup>94</sup>

“Schismatics” appeared in more favorable terms not only in the context of the later crusades, but also in that of mission.<sup>95</sup> One of the important papal documents on the subject is the bull *Cum hora undecima* (*Because it is the eleventh hour*, that is, the second coming is imminent). First issued by Gregory IX in 1235, it was reissued throughout the later Middle Ages in

91. For an outline of the conquests, see Colin Imber, *The Ottoman Empire, 1300–1650. The Structure of Power* (Palgrave Macmillan, 2002), 1–86. For the Byzantine perspective valuable remains George Ostrogorsky, *History of the Byzantine State* (New Brunswick, 1969), 533–72.

92. See Charles Verlinden, *L'Esclavage dans l'Europe Médiévale*, 2 vols (Brugge: De Tempel, 1955; Gent: University of Ghent, 1977).

93. On Mamluk slaves, see, in brief Georg Christ, *Trading Conflicts. Venetian Merchants and Mamluk Officials in Late Medieval Alexandria* (Leiden: Brill, 2012), 121–24.

94. Aloysius L. Tautu, ed., *Acta Martini P.P. V (1417–1431)* (Vatican City, Pontificia Commissio Cpici Iuris Canonici Orientacis Recognoscendo, 1980), #310, 310a, 310b (1425).

95. On crusades after 1291, see Norman Housley, *The Avignon Papacy and the Crusades, 1305–1378* (Oxford: Oxford University Press, 1986); Norman Housley, *The Later Crusades, 1274–1580: From Lyons to Alcazar* (Oxford: Oxford University Press, 1992); and Norman Housley, *Crusading and the Ottoman Threat, 1453–1505* (Oxford: Oxford University Press, 2012).

accordance with a model established by Innocent IV in 1245.<sup>96</sup> An example from John XXII (1316–34) allows the Dominican and then the Franciscan preachers setting out for lands of the “Saracens, pagans, Greeks, Bulgarians, Cumans, Iberians, Alans, Khazars, Goths, Ruthenians, Jacobites, Nubians, Nestorians, Georgians, Armenians, Indians, *Mocolitarum* and of any other unbelievers,” to let schismatics who have rejoined the church to cohabit and be in contact with their apparently still schismatic relatives.<sup>97</sup> This bull followed the logic of the canon that allowed missionaries to enter in contact with those outside the flock (Table 1, #10) echoing Chrystostom’s and Augustine’s proselytizing mandate now firmly denied to the laity. Although it conflated “schismatics,” “heretics,” “pagans,” and Muslims into the category of unbelievers, the bull did, nonetheless, allow for a hierarchy of otherness in which Eastern Christians stood higher than others.

Therefore, the language of papal letters is a good example of the ecclesiastical practice of reading texts and the world on two main planes: that of specific historical circumstances and that of unchangeable truths. Papal letters, as canon law commentaries, oscillated between a monolithic *infidelitas*, tied to the ahistorical distinction between the flock of the faithful and everyone else, and a taxonomy of otherness, derived from the history of the early church and tied to ever-changing current contexts. Only a statistical analysis of hard-to-manage scope can tell us if a clearly defined linear development shifted the place of “schismatics” on the liminal space between those firmly within the flock and those certainly outside it.

I mentioned previously that the canonists could turn a specific law into a general one by rephrasing it in general terms. The exact same outcome could be achieved, moreover, in an entirely different way, as the sum total of ad hoc applications of a given policy in the absence of a general rule. Between 1179 and 1230, councils and popes banned some or all trade and business between the faithful and two groups of targets, each with rather fuzzy internal subdivisions. One was made of excommunicates, disobedient Christian communities, “heretics,” and “schismatics,” all subject to the sentence of excommunication, and, therefore, to the penalties accompanying it. The other group of targets was comprised of Muslims, pagans, and in compliant Jews, all of whom lay outside the flock by

96. Muldoon, *Popes, Lawyers, and Infidels*, 36. On this bull, see also Felicitas Schmieder, “*Cum hora undecima*: The Incorporation of Asia into the *orbis Christianus*,” in *Christianizing Peoples and Converting Individuals*, ed. Guyda Armstrong and Ian N. Wood (Turnhout: Brepols, 2000), 259–65. On missionary efforts, see also Benjamin Z. Kedar, *Crusade and Mission. European Approaches toward the Muslims* (Princeton: Princeton University Press, 1984); and Muldoon, “From Frontiers to Borders.”

97. Tautu, *Acta Johannis XXII*, #14 (1318) and #48 (1321).



Table 2. Expansion of the Targets of Papal Trade Restrictions.

Larger Group	Target	Who/Which Council?	Since?	First Target
Excommunicates/ “temporary infidels”			Since Antiquity	
	Heretics	Permanently from Lateran III	1179	Cathars/S. France X. 5.7.8.
	Schismatics	Honorius III	1223	Theodore Comnenus/Epirus <sup>a</sup>
	Interdicted lands	Unclear. Practice expanded under Innocent III	1198–1216	Parma, Piacenza, Milan, Alessandria, Treviso, any Lombard <i>comune</i> that would tax its clergy <sup>b</sup>
Outsiders/“infidels”	Saracens	Lateran III	1179	Saracens (in general, not just Egypt and Syria) X. 5.6.6
	Disobedient Jews	Innocent III	1205	Jews who would employ Christian servants X. 5.6.13
		Innocent III	1212	Jews who would strike a clergy member and remain unpunished X. 5.6.14
		Innocent III	1213	Jews who would charge interest on loans to crusaders <sup>c</sup>
	Pagans	Gregory IX	1230	Baltic area (Karelia, Lapland, Ingria, Vod) <sup>d</sup>
	Turks	? Venice Nicholas V	1332 1455	Turks/Anatolia <sup>e</sup> Africa (“Saracens, infidels, or pagans”) <sup>f</sup>

<sup>a</sup>Aloysius Tautu, ed., *Acta Honorii III (1216–1227) et Gregorii IX (1227–1241)* (Vatican City, Typis Polyglottis Vaticanis, 1950), #112.

<sup>b</sup>Peter D. Clarke, *The Interdict in the Thirteenth Century: A Question of Collective Guilt* (Oxford: Oxford University Press, 2007), 83.

<sup>c</sup>For the specific passage see Solomon Grayzel, *The Church and the Jews in the XIIIth Century*, Vol. I (New York: Hermon Press, 1966), 137.

<sup>d</sup>Johan Gustaf Liljegren, *Svenkst Diplomatarium* (Stockholm: Tryckt hos Norstedt, 1829), I, #254, 256. For the Baltic Crusades see Eric Christiansen, *The Northern Crusades* (London: Penguin, 1997 [1980]) and Iben Fonnesberg-Schmidt, *The Popes and the Baltic Crusades 1147–1254* (Leiden: Brill, 2007).

<sup>e</sup>Georges I. Bratianu, *Les Venitiens dans la mez Noire au XIVe siecle. La politique du senat en 1332–33 et la notion de latinite* (Buscarest: Academie roumaine, 1939), #14, 46–47.

<sup>f</sup>Frances G. Davenport, *European Treaties Bearing on the History of the United States and its Dependencies to 1648*, 1 (Washington DC: Carnegie Institution of Washington, 1917), 13–26.

definition. Nonetheless, when Raymond of Peñafort composed the *Liber extra*, he included no decretals that deal with disobedient Christian communities, pagans, or “schismatics.” When the canonists commented on the *Liber extra*, in turn, they too omitted any discussion of these three targets of embargoes. However, papal practice spoke clearly even as the lawyers remained mute: anyone out of bounds was to be cut from some or all business contact with Christians. This development was squarely grounded in a web of historical contexts,<sup>98</sup> but for the purposes of this article, it is best presented schematically (see Table 2).

By the mid-fifteenth century, the chief maritime cities procured for their citizens long-term licenses (i.e., dispensations from the provisions of church-made law) that allowed them to sail (with items other than war materiel) to “[lands] held by the Sultan of Babylon [Mamluk Egypt] and to other cities, lands, ports, and places beyond-the-sea of whatever other infidels and Saracens. . . .”<sup>99</sup> The provenience of the language employed in these licenses and the individual views of popes and lawyers thus become a moot point. By the fifteenth century, to avoid ambiguity meant to understand the sum of ad hoc policies as a general rule that demarcated space in simple terms: Christians and infidels.

### Conclusion

In conclusion to her work on ecclesiastical writings from the Eastern Empire in the early Middle Ages, Averil Cameron writes “It is a mistake to think that we are in the presence of three distinct strands, let alone genres, of Christian writing, concerned respectively with pagans, Jews, and heretics. Rather, I have been describing a mode of thinking, a kind of mindset and a way of describing, that informed Christian self-identity.”<sup>100</sup> This article describes, in turn, how a similar process occurred in later medieval Western canon law. The variety of categories into which the jurists sorted the non-Catholics remained conceptually distinct: Jews, pagans, heretics. Over time, however, they appear to have become increasingly more conflated in terms of the policies of segregation that applied to them. This happened in a variety of ways. The canonists banned all faithful from bequeathing to any non-Catholics by implicitly equating Christian clergy with all Christians. Popes applied trade restrictions against everyone

98. On this subject and what follows, see Stantchev, *Spiritual Rationality*.

99. See, for example, Nicolae Iorga, *Notices et Extraits pour servir à l'histoire des croisades au XVe siècle* (Bucarest, Edition de L'Academie Roumaine, 1915), IV, #19, 38–40.

100. Cameron, “Jews and Heretics—A Category Error?” 360.

perceived as disobedient or threatening to the papacy without ever formulating a general principle. Elsewhere, the language used by the canonists is too confusing, too atypical of their approach to the law to allow us to treat it as a matter of interpretation. Rather than a confusion regarding the targets of papal policies, it appears that what we face is the inherent interchangeability of such targets: Jews; pagans, and by extension Muslims; heretics, and by extension schismatics. “Jew,” “pagan,” and “heretic” were at one and the same time highly stylized markers of presumably clear-cut religious difference and nothing more than the interchangeable constituent parts of the broader category “infidelity.”

Individual laws, papal letters, and single legal commentaries yield meaning only in relation to the broader legal discourse of which they were a part. Whatever the views and intentions of individual popes and lawyers, the law of the church, legal commentaries, penitential manuals, and sermons constructed a legal discourse that transcended individual laws and commentaries, making each law against each target defined as outside the body of the faithful available for application against any other target: what was said of the Jews was applicable to Muslims, what was said of heretics was applicable to Schismatics. This article shows that this discourse insisted on clearly defined identities based on religious law while toying with the formulation of a general rule not contained in the law of the church: that ordinary Catholics must avoid any contact with non-Christians.