

**‘Gratian and the Jews’  
Anna Sapir Abulafia**

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## GRATIAN AND THE JEWS

*Anna Sapir Abulafia*

In the process of writing my latest book on medieval Christian-Jewish relations I became increasingly aware of the fruitfulness of getting to grips with Roman law and canon law for gaining a fuller and more accurate overall picture of the place of Jews in Medieval Latin Christendom. The history of the Jews in Visigothic Spain illustrates this well. In tandem with so many scholars I had long thought of the Visigothic persecution of the Jews in the seventh century simply as a blip in the relatively peaceful period of Christian-Jewish relations from about 500 to 1096, the date of the attacks against the Jews of the Rhineland by the *milites* Christi of the so-called popular crusades. It was only when researching the canons concerning Jews of the councils of Toledo that I realised how incredibly important that ‘blip’ had been for Christian-Jewish relations throughout the medieval period.

As is well known, the Jews in Spain were forcibly converted to Catholicism by King Sisibut in 615/6. It seems that Sisibut had made up his own mind to deal with the Jews of his kingdom in this way, even though this would go against accepted ecclesiastical policies concerning the position of Jews in Christian society. One of the many tasks of the Fourth Council of Toledo in 633, which was convened under the aegis of Isidore of Seville, was to deal with the inevitable issues ensuing from the king’s actions. The Council produced nine canons to address the problem of the presence of unwilling Jewish converts. Eight of the nine ended up in Gratian’s *Decretum*, the magisterial collection of ecclesiastical rulings of the mid twelfth century. Four of the nine are among the ten ‘Jewish’ canons which John Gilchrist has identified as the most frequently cited in canon law collections of the tenth, eleventh and twelfth century up to and including the *Decretum*.<sup>1</sup> The most widely

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<sup>1</sup> John Gilchrist, ‘The Canonistic treatment of Jews in the Latin West in the eleventh and early twelfth centuries’, *Zeitschrift der Savigny-*

disseminated of the four was Canon 57 (*De Iudeis*).<sup>2</sup> It stated unequivocally that Jews should not be forced to convert. It was, however, equally unequivocal in stating that the Jews who had been converted by force (as had happened under Sisibut), had to remain Christians. Anything else would be blasphemous with regard to the sacraments of which they had partaken. This canon, protective in one sense, but cruelly repressive in another, was quoted over and over again when canonists discussed the nature of coercion and the nature of its counterpart: voluntary or involuntary acquiescence. In Pope Innocent III's definitive ruling on the matter, in a letter to the archbishop of Arles in 1201, *Majores ecclesie* acquiescence was so broadly defined that in effect, any Jew who had succumbed to baptism to escape death was not permitted to return to Judaism, however unwillingly the process of conversion had been.<sup>3</sup>

Another of the widely disseminated canons, *Iudeorum filios et filias*, canon 60, addressed the concern that forced converts would be unreliable when it came to bringing up their children as good Christians. Accordingly, it ruled that these girls and boys should be removed from their parents and put into the care of Catholic families or monasteries where they would receive a good Christian upbringing. This canon led to later discussions about the permissibility of depriving Jews, who had not converted, of their offspring in order to baptize them. The third ruling, *Plerique qui ex*

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*Stiftung für Rechtsgeschichte Kanonistische Abteilung* 106 (1989), 70-106 and 'The Perception of Jews in the Canon Law in the Period of the First Two Crusades', *Jewish History* 3 (1988), 9-24; D. 45 c. 5, C. 28 q. 1 c. 11, C. 28 q. 1 c. 12, D. 4 de cons. c. 94.

<sup>2</sup> Amnon Linder (ed. and trans.), *The Jews in the Legal Sources of the Early Middle Ages* (Detroit, 1997), 486-7 (henceforth *JLSEMA*).

<sup>3</sup> Solomon Grayzel, *The Church and the Jews in the XIIIth Century. A Study of their relations during the years 1198-1254, based on the papal letters and the conciliar decrees of the period*, revised edn (New York, 1966), no. 12, 100-103, 15; Shlomo Simonsohn (ed.), *The Apostolic See and the Jews. Documents: 492-1404* (Toronto 1988), no. 77, 80-81; see John A. Watt, 'Jews and Christians in the Gregorian Decretals', in *Christianity and Judaism*, ed. Diana Wood, Oxford 1992, 99-100.

*Iudeis*, canon 59, forbade Jewish converts from practising Judaism; the fourth, canon 62, *Saepe malorum consortia*, prohibited converted Jews from interacting with those who had remained Jews. Another canon which ended up in the *Decretum* was canon 65 (*Praecipiente domino* [also disseminated as *Constituit, Iudei aut hi qui ex Iudeis, Hi qui ex Iudeis*]) which legislated against Jews holding offices through which they would have authority over Christians.<sup>4</sup> Canon 14 of the Third Toledan Council of 589, *Suggerente concilio id* (also cited as *Nulla offitia*), had also done this, as well as stipulating that Jews should not have Christian wives or concubines or own Christian slaves. This canon echoed various Roman laws forbidding Jews to have Christian slaves or preside over members of the Christian faith in fear that they would misuse their position of authority to disadvantage Christians. A chunk of *Nulla offitia* also found its way into the *Decretum*.<sup>5</sup> Innocent III referred to it in canon 70 of the Fourth Lateran Council of 1215.<sup>6</sup>

Whatever really happened to Jews under Visigothic rule in the early seventh century - Michael Toch for one has doubted that there were, in fact, any Jews in Visigothic Iberia at the time and interpreted the Toledan 'Jewish' canons as products of over-active ecclesiastical imaginations - ,<sup>7</sup> Visigothic legislation played a significant role in defining the parameters of Jewish participation in Christian society. It did this because the disseminated canons touched on what I consider to be two fundamental aspects of Christian-Jewish relations: conversion and hierarchy. Throughout the Middle Ages ecclesiastical hopes for Jewish conversion were dampened by anxieties about Jewish recidivism and concerns for the undermining

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<sup>4</sup> *JLSEMA*, 485-91.

<sup>5</sup> *JLSEMA*, 484-5; D. 54 c. 14.

<sup>6</sup> Norman P. Tanner (ed.), *Decrees of the Ecumenical councils* (London: Sheed and Ward, 1990), 267.

<sup>7</sup> Michael Toch, 'The Jews in Europe, 500-1050', in Paul Fouracre (ed.), *The New Cambridge Medieval History*, vol. 1 (Cambridge, 2005), 550-1; see discussion in Anna Sapir Abulafia, *Christian-Jewish Relations, 1000-1300. Jews in the Service of Medieval Christendom* (Harlow, 2011), 26-30.

of Christian society by insincere converts.<sup>8</sup> These concerns magnified when conversion was forced on unwilling Jews and must have intensified when rulers such as Henry IV of Germany permitted forced Jewish converts to return to their Jewish faith in 1097. And as the process of inner spiritual Christian conversion was valued ever more highly from around 1050, the prospect of sincere Jewish conversion to Christianity seems to have been regarded less and less likely.<sup>9</sup> Hierarchy had to do with interlocking and overlapping principles which derived from the teachings of St Paul, the writings of Augustine, decretals of Gregory the Great and rulings of Roman law. Jews were tolerated as long as, *and only as long as*, they **served** Christian aims. Toleration was conditional on Jews being **useful** to Christian society. Jews were expected to recognise that their place in Christian society was contingent on their subservience to Christians. Judaism was deemed to have been superseded by Christianity; Jews were supposed to serve Christians and not Christians Jews. That was the prevailing theory in medieval Christian thinking.<sup>10</sup> The fact that so many canons repeatedly insisted on the importance of upholding these principles demonstrates that theory and practice seldom went together. In everyday social interactions between Christians and Jews, ecclesiastical rules governing Jewish service were constantly broken.

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<sup>8</sup> Kenneth Stow has been particularly interested in ideas concerning Jewish contamination; see for example his *Jewish Dogs. An Image and its Interpreters*, Stanford, CA, 2006.

<sup>9</sup> See for example my 'Guibert of Nogent and William of Flay and the problem of Jewish conversion at the time of the First Crusade', in *Studies in medieval intellectual and social history. Festschrift in honor of Robert Chazan* ed. David Engel, Lawrence H. Schiffman, Elliot R. Wolfson (Leiden etc., 2012), 9-27.

<sup>10</sup> See Sapir Abulafia, *Christian-Jewish Relations*.

Gratian's collection of canons, the *Decretum*, overtook all previous canonical collections.<sup>11</sup> It systematized many thousands of ecclesiastical and theological texts spanning more than 1000 years of Christianity. It rapidly became the medieval textbook of canon law. It was studied, taught and consulted all over Europe. Glosses on the text proliferated and numerous *summae* or overviews of the *Decretum* were produced soon after its appearance. Anders Winroth's research has given us the tools to think more clearly about the evolution of the *Decretum*. Winroth identified a group of manuscripts which contain an early form of the *Decretum*. He called this version the first recension and dubbed it Gratian 1. Winroth reckoned Gratian would have completed the first recension at the earliest in 1139.<sup>12</sup> Within a short period of time an extended version of the *Decretum* had evolved. The exact process by which this fuller version came into existence is still much debated. It is not clear what involvement, if any, Gratian himself had in it. Nor is it clear whether it was the work of one or more canonists. Gratian 2 is the term Winroth used for the extended version, which he called the second recension. He placed its completion by 1158.<sup>13</sup> In what follows I shall use the term Gratian 1 to refer to the first recension as presented by Winroth and Gratian 2 to the extended much more familiar version of the *Decretum* which is now generally thought to have begun to circulate by about 1150.<sup>14</sup>

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<sup>11</sup> *Corpus Iuris Canonici*. Vol. 1, *Decretum magistri Gratiani*, ed. by Emil Friedberg, Leipzig 1879: <http://geschichte.digital-sammlungen.de/decretum-gratiani/online/angebot>.

<sup>12</sup> Anders Winroth, *The Making of Gratian's Decretum*, Cambridge 2011, 136-140.

<sup>13</sup> Winroth, 140-44, especially 142.

<sup>14</sup> The appendix to *The Making of Gratian's Decretum* which outlines Gratian I is on pp. 197-227; for Winroth's working edition of Gratian 1 see <http://gratian.org>, accessed on 28 September 2017; for Gratian 1 and 2 see in particular, Winroth, pp. 194-6 and his 'Recent Work on the Making of Gratian's *Decretum*', *Bulletin of Medieval Canon Law* 26 (2004-6), 1-30, especially pp. 4-5; Peter Landau, 'Gratian and the *Decretum Gratiani*', in: Wilfried Hartmann and Kenneth Pennington

The *Decretum* evolved in a period of exciting intellectual advances in theology and philosophy. This period also witnessed important developments in Christian thinking about Jews. I have spent many years in analysing the evolution of the Christian-Jewish debate within the context of twelfth-century scholasticism. Research on the twelfth-century Christian-Jewish debate has shed more light on twelfth-century scholasticism, just as studies on the evolution of twelfth-century thought have done much to deepen our understanding of changes occurring in the Christian-Jewish debate. It makes sense to adopt the same approach to canon law. The *Decretum* contains some 36 canons specifically dealing with some kind of interaction between Christians and Jews.<sup>15</sup> Why were **those texts** included in the *Decretum* and others not? Why were 'Jewish canons' placed **where** they were? What was the **reason** for including them and in **what context** were they included? Only six of the 36 'Jewish' canons listed by Gilchrist were present in Gratian 1. **Why** was the majority added by the compiler(s) of Gratian 2?<sup>16</sup> Does that mean that Gratian 2 was more anti-Jewish than Gratian

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(eds), *The History of Medieval Canon Law in the Classical period, 1140-1234: From Gratian to the Decretals of Pope Gregory IX* (Washington D.C. 2008), 39 note 33 for references to a discussion about the ur-Gratian text [henceforth *HMCLCP*]. For an extensive bibliography on the development on the *Decretum* see <http://legalhistorysources.com/1140a-z.htm> as well as <http://gratian.org>. See also Martin Brett, 'Editing the Canon-Law Collections between Burchard and Gratian', in *Proceedings of the Twelfth International Congress of Medieval Canon Law*, ed. Uta-Renate Blumenthal, Kenneth Pennington, and Atria A. Larson. Monumenta Iuris Canonici, series C: Subsidia, vol. XIII, Vatican 2008, 98; I am very grateful to Dr Martin Brett for his kind assistance with this complex material.

<sup>15</sup> Gilchrist, 'The Canonistic treatment of Jews', 97-100.

<sup>16</sup> Kenneth Pennington asks this question in 'The Law's Violence against Medieval and Early Modern Jews', *Rivista Internazionale di Diritto Comune* 23 (2012), 25.

1?<sup>17</sup> And crucially, **how** were these canons read, how were they commented on in the glosses, the commentaries which proliferated in the margins of the MSS? One only needs to think of the vast numbers of Gratian manuscripts spread over the whole of Europe to appreciate the importance of gaining greater insights into what I have simply phrased ‘Gratian and the Jews’ in the title of my article.

Examining all of the MSS of the *Decretum* in search of answers to these questions would obviously be impossible. That is why I have decided to concentrate on an unique manuscript in the library of Gonville and Caius College, Cambridge, MS 283/676.<sup>18</sup> This manuscript contains a late twelfth-century *Decretum* together with two layers of glosses. The oldest layer of glosses is the most extensive one; as Charles Duggan has shown, it reflects the teaching of Gratian by Anglo-Norman canonists in Oxford in the 1190s. The most interesting part of the Anglo-Norman Gloss (A-NG) is the signed glosses by John of Tynemouth and Simon of Southwell, both of whom were masters in Oxford at the time. The later layer of glosses, which is much less extensive, is from around 1300.<sup>19</sup> The dates of composition of both layers of glosses

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<sup>17</sup> <http://canonlaw.wikispot.org/History> (accessed 2 March 2017) implied that the inclusion of the anti-Jewish canons in Gratian 2 attested to Gratian’s 2 being ‘more traditional and harsh’.

<sup>18</sup> I am very grateful to the Fellow Librarian, the Librarian and the library staff of Gonville and Caius for their assistance in consulting this manuscript and others.

<sup>19</sup> Stephan Kuttner and Eleanor Rathbone, ‘Anglo-Norman Canonists of the Twelfth Century. An Introductory Study’, *Traditio* (7) 1949–51, 317–21; see also the extensive analysis by Charles Duggan, ‘The Reception of Canon Law in England’, in *Canon Law in Medieval England. The Becket Dispute and Decretal Collections*, ed. Charles Duggan, London 1982, 371–7 and more recently Anna Sapir Abulafia, ‘Jews in the Glosses of a late twelfth-century Anglo-Norman Gratian manuscript (Cambridge, Gonville and Caius College, MS 283/676)’, in: *Anglo-Norman Studies: Proceedings of the Battle Conference 2015*, ed. Elisabeth van Houts (Woodbridge, 2016), 19–33; Rodney Thomson dated the hand of the second layer of glosses to around 1300 in a private communication. I am very grateful for his help with this MS.



coincided with important moments in the history of the Jews of medieval England. The 1190s marked the period following the succession of Richard I in September 1189. The king's coronation and his immediate departure on Crusade sparked widespread attacks on Jews which lasted into the first few months of 1190. In 1194 Jewish moneylending was meticulously organised by royal ordinance. Henry II's reorganisation of the mints in the late 1150s had given a large number of Jews the opportunity to become involved in moneylending. The Jewish communities of England soon ranked among the most prosperous in the whole of Latin Christendom. At the same time Henry's confiscation of the estate of Aaron of Lincoln in 1186 was an ominous sign of Jewish exposure to the whims of the crown. Last, but not least, by the 1190s a thriving Jewish community was developing in Oxford within easy reach of the royal castle around what is now known as Carfax and St Aldate's in the centre of what was medieval Oxford.<sup>20</sup> As for the later layer of glosses, it would have been added to the MS around the time Edward I expelled the Jews from England in 1290.

To make my research project on MS 283/676 manageable I have decided first of all to tackle the twelfth-century layer of glosses. Once I have worked my way through that, I shall compare it to the later gloss. As for the earlier layer of glosses I have decided to tackle one section of the *Decretum* at a time in order to build as full a picture as possible of the role of Jews in the A-NG. Built into my analysis is the comparison between what the A-NG had to say about Jews with what had been said in the sources its compiler(s) seem(s) to have consulted. These sources included, the *Summa* on the *Decretum* by John Faventinus (fl. 1170s/1180s), the so-called

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<sup>20</sup> For the Jews of medieval England see for example Patricia Skinner (ed.), *Jews in Medieval Britain*, Woodbridge, 2003 and the chapter on England in Sapir Abulafia, *Christian-Jewish Relations*, 88-108; for Oxford in particular see Pam Manix, 'Oxford: mapping the medieval Jewry', in: Christopher Cluse (ed.), *The Jews of Europe in the Middle Ages (tenth to fifteenth). Proceedings of the International Symposium held at Speyer; 20-25 October 2002* (Turnhout, 2004), 405-20.

*Summa Lipsiensis* which scholars now regard as an Anglo-Norman work compiled in Paris *circa* 1186, which used John Faventinus, and the widely disseminated *Summa decretorum* by Huguccio (d. 1210), which in turn used the *Summa Lipsiensis*.<sup>21</sup> My analysis will also comprise a comparison between the views expressed about Jews in the A-NG and the Ordinary gloss on the *Decretum*. The *Glossa ordinaria* became the standard running commentary on the *Decretum* after it was compiled by Johannes Teutonicus around 1214-1216/17 and revised by Bartholomew of Brescia (d. 1258) after the appearance of the Gregorian *Decretals* in 1234.<sup>22</sup> So far I have examined *causa* 23 of the second part of the *Decretum* and I have conducted a full analysis of Distinction 45 of Part I. The focus of the first part of the *Decretum* is on different aspects of ecclesiastical posts and on the requirements for and the duties of those who occupy them. Part II comprises 36 fictitious *causae* or cases. *Causa* 23 is built around the case of bishops waging war against heretics. It contains *Dispar nimirum* (C. 23 q. 8 c. 11), one of the few 'Jewish' canons contained in Gratian 1. *Dispar nimirum* is a fragment of the letter Pope Alexander II wrote in 1063 to the bishops of Spain praising them for preventing French crusaders perpetrating violence against Jews. The fragment incorporated in the *Decretum* says 'The case of Jews and Muslims is without a doubt different. For against the latter, who persecute Christians and drive them out of their own cities and settlements, one fights justly;

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<sup>21</sup> Kuttner and Rathbone, 'Anglo-Norman Canonists of the Twelfth Century', 317-21; Charles Duggan, 'The Reception of Canon Law in England', in: Charles Duggan, *Canon Law in Medieval England. The Becket Dispute and Decretal Collections*, London 1982, no. XI, 371-7; *Summa 'Omnis qui iuste iudicat' sive Lipsiensis*, ed. Rudolf Weigand, Peter Landau, Waltraud Kozur, vol. 1, *Monumenta Iuris Canonici* series A: Corpus Glossatorum, vol. 7 (Rome 2007), ix-xi; Rudolf Weigand, 'Transmontane Decretists', *HMCLCP*, 195-6; Kenneth Pennington, *Medieval and early modern jurists: a bio-bibliographical listing* at <http://legalhistorysources.com/1140a-z.htm>; Sapir Abulafia, 'Jews in the Glosses', 19-20.

<sup>22</sup> R. Weigand, 'The Development of the *Glossa Ordinaria* to Gratian's *Decretum*', *HMCLCP*, 82-91.

the former are prepared to serve everywhere'. A short summary of my findings on canon 23 will illustrate well how instructive it is to read 'Jewish' canons such as this one in the full context of its appearance in the *Decretum*.

*Dispar nimirum* is a canon which on the face of it protects Jews against Christian attack. I cannot have been the only one to have wondered why the *Decretum* incorporated this protective canon rather than the better known '*Sicut Iudeis*' which had found its way into a sizeable number of canonical collections. '*Sicut Iudeis*' is the letter Gregory the Great wrote in 598 to the bishop of Palermo admonishing him that 'Just as the Jews [*Sicut Iudeis*] should not have the freedom to presume anything in their synagogues beyond what is permitted by law, in the same way, they should not suffer any prejudice in those things granted them'.<sup>23</sup> The opening phrase of this Gregorian letter had formed the opening of the standard and oft repeated papal bull of protection of Jews from the 1120s. This bull too was known as *Sicut Iudeis*. One understands much better why Gratian chose *Dispar nimirum* rather than *Sicut Iudeis* if one takes the overall context of the *causa* 23 into account. The *causa* is about waging war and the parameters by which war might be waged justly. By the final stage of his discussion Gratian I was considering whether bishops or clerics were permitted to take up arms and he was looking for a ruling which legitimated violence. He needed a ruling which made the legal distinction between Muslims and Jews clear; he was not just looking for a protective canon for Jews. *Dispar nimirum* suited his purpose to a tee. The glosses on *Dispar nimirum* in the Anglo-Norman gloss and the *Glossa ordinaria* bear this out. They did not discuss protection of Jews. They entered into discussions about the legal differences between the contact Christians might have with Muslims and Jews. The A-NG took pains to refer the reader to *De Iudeis*, the Toledan canon we have discussed which became part of Distinction 45 in the *Decretum* so that it was clear that Jews who were Christian converts had to be forced to remain Christian. These Jews were certainly not protected against Christian violence. The *Glossa Ordinaria* explained that if

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<sup>23</sup> Quotation from *JLSEMA*, 434.

Muslims did not attack Christians they should not be attacked either.<sup>24</sup> What we learn from all of this is the importance of remembering that the *Decretum* is not about Jews. We need to puzzle out why it included the ‘Jewish’ canons it did and in what manner and why to understand better the role it played in developing Christian-Jewish relations.

Distinction 45 is about bishops and the patience they need to show their flock and the clerics serving under them. As we have just seen it includes *De Iudeis* (D. 45 c. 5). This is in the extended version of Gratian 2. It also contains *Qui sincera* (D. 45 c. 3), a letter by Gregory the Great instructing bishops that they should coax Jews to the font, not repress their services. It too did not feature in the first recension of Gratian 1. Why were these canons added to the extended version of the *Decretum*? It seems to me that the compiler(s) of Gratian 2 felt that Distinction 45 lacked many relevant canons which had important things to say about episcopal conduct. After all, Gratian 2 listed 12 more canons than Gratian 1 for this Distinction. *De Iudeis* and *Qui sincera* were only 2 of these.<sup>25</sup>

Let us now turn to Distinction 54, the distinction which contains a section of canon 14 of the Third Toledan Council forbidding Jews

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<sup>24</sup> Important too is to take into account the material Gratian would have had to hand. Looking at the sources for the canons surrounding *Dispar nimirum* one discovers that Gratian was relying heavily on the *Panormia*, a widely disseminated late eleventh or early twelfth-century collection of canons usually ascribed to Ivo of Chartres. The *Panormia* includes *Dispar nimirum*, not *Sicut Iudeis*. Does this mean Gratian did not know *Sicut Iudeis*? Not necessarily, *Sicut Iudeis* was included in another collection he used for this section, the *Polycarpus* of the early twelfth century. See for full analysis, Anna Sapir Abulafia, ‘Engagement with Judaism and Islam in Gratian’s *Causa* 23’, in Philippe Buc, Martha Keil and John Tolan (eds), *Jews and Christians in Medieval Europe: The historiographical legacy of Bernhard Blumenkranz* (Turnhout, 2015), 12-15.

<sup>25</sup> For a full analysis see Sapir Abulafia, ‘Jews in the Glosses’.

to hold office over Christians and to own Jewish slaves.<sup>26</sup> Let us see what we can gauge from an investigation of what the ‘Jewish’ canons are in this Distinction and how and why they were placed there. Let us also try to learn something about how the ‘Jewish’ canons were commented on in the *Glossa ordinaria* and in the AN-G.<sup>27</sup>

Distinction 54 is concerned with rules governing the ordination of *servi/famuli*, persons of unfree status, slaves or serfs. In what follows I shall refer to *servi/famuli* as applicable to preserve the multivalence of the original terms.<sup>28</sup> The basic rule was that only *servi* who had been freed by their master were eligible for clerical orders. The Distinction gathered together canons on the reasons why *servi* had to be freed, on the type of freedom deemed necessary to become a cleric, the nature of a master’s permission, and the onus on bishops to be informed of the personal status of those who presented themselves for holy orders. In Winroth’s working edition of the first recension of the *Decretum*, i.e. Gratian 1, there are 11 canons and seven comments,<sup>29</sup> or *dicta* as they are called, in which Gratian set out a position and offered solutions to the contradictions presented by the canonical material he had gathered together on a particular issue. Gratian 2 – remember, we do not know how many canonists are hiding behind this nomenclature – added seven canons, two *dicta* and a sentence to Gratian 1’s closing *dictum* of

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<sup>26</sup> Friedberg, 206-12.

<sup>27</sup> I have found Leena Löfstedt (ed.), Gratiani Decretum: *La traduction en ancien français du Décret de Gratien*. Vol. 1: *Distinctiones*. Commentationes Humanarum Litterarum 95, Helsinki, 1992 very helpful in analysing Distinction 54.

<sup>28</sup> In what follows I shall indicate if other terms are used to designate persons of unfree status. The complex issue of what exactly each of these terms meant in any time and place goes beyond the remit of this article.

<sup>29</sup> <http://gratian.org>, accessed on 28 September 2017; in Friedberg’s edition canons 1-2, 4, 5, 9, 10-11, 19, 21-23; d.a.c. 1, d.p.c. 4, d.p.c. 8, d.p.c. 21, d.p.c. 22; d.p.c. 23.

the distinction.<sup>30</sup> Friedberg's edition of the *Decretum* has an additional six *paleae*.<sup>31</sup> *Paleae* were added to Gratian 2 after it was completed till 1180.<sup>32</sup> Both of the new *dicta* which were added by Gratian 2 to Distinction 54 concern Jews; three of the seven additional canons are 'Jewish' canons; three of the *paleae* deal with Jews. None of Gratian 1's canons or *dicta* mentioned Jews. Why?

Gratian 1's discussion seems straightforward enough. He presented four canons to cover the position with which he had opened, namely that persons of unfree status could not be ordained unless they had obtained legal freedom from their own masters. No bishop might ordain someone else's *servus* unless his master had agreed. 'A man who will have joined divine military service must be completely free so that he cannot be dragged from the Lord's army in which he is enrolled by the bonds of any necessity' (D. 54 c.1). The liberty granted to a *servus* in these circumstances had to be granted before promotion to holy orders by means of a freedom charter publicly displayed on the pulpit (D. 54 c. 2). If *famuli* belonging to the Church were summoned by their bishops to serve in clerical orders, they too must have gained their freedom. If they proved their virtue they could go on to higher offices. And if they misbehaved they were bound into perpetual slavery (D. 54 c. 4). Gratian continued to emphasise the necessity of *servi* who had been freed and had been ordained not to be obligated in any way to their former masters (D.54. d.p.c. 4, c.5). Gratian 1 went on to consider those who had somehow entered clerical orders without obtaining their freedom. Priests would lose the money or property they possessed. Deacons in this position could hand over a substitute in their stead if they had one, if not, they would have to return to their masters (D.54 d.p.c. 8, c. 9). If a bishop had ordained a *servus* a priest knowing that he was unfree, then he had to indemnify the master in question for the double amount. If the bishop had acted on good faith then those who had misled him had to indemnify the lord. It is worth pointing out that a master's right to his property and the sanctity of

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<sup>30</sup> D. 54 cc 7, 12, 13, 14, 15, 20, 24, d.p.c. 12, d.p.c. 14, d.p.c. 23.

<sup>31</sup> D. 54, cc 3, 6, 8, 16, 17, 18

<sup>32</sup> Landau, 'Gratian and the *Decretum Gratiani*', 47.

clerical orders were the legal issues at stake, not the wishes of *servi*. Gratian finally wondered whether *servi* belonging to monasteries could be given their freedom so that they could be ordained. He started by saying this was not possible because abbots and monks had nothing of their own so they could not give anyone something, in this case a *servus* his freedom. And a possession could only be alienated by its owner in temporal law (D. 54 c. 22). But Gratian seemed dissatisfied by this line of thought and went on to state that, actually, monastic *servi* could, after all continue to serve the monastery after they had gained holy orders (D. 54 d.p.c. 22). And he ended with a decretal of Gregory the Great which said that monks who had been ecclesiastical *famuli* could go on to be ordained if they had proven themselves as monks (D. 54 c. 23).

That Gratian 2 might wish to add more proof texts to Gratian 1's exposé is easy enough to imagine. In Gratian 2's first additional canon (D. 54 c. 7) the importance of the unfree person seeking ordination to have led a good life is specified. But what possible bearing could Jews have on the discussion? Why was such a large proportion of the additional material in Gratian 2 about Jews? The answer lies in the first additional *dictum* in Gratian 2 (D. 54 d.a.c. 13) which was inserted after all of Gratian 1's canons about the need for *servi* to be given their liberty if they were to enter holy orders or, as the case may be, remain in clerical orders if some irregularity had occurred along the way. Gratian 2's *dictum* is preceded by an additional canon (D. 54 c. 12) admonishing bishops, priests, deacons and abbots not to retain unfree persons (*servos et originarios*) who have sought to gain entrance to a monastery or ecclesiastical service without written proof of their masters' consent or unless the necessary legal transaction had been enacted. It is at this point that Gratian 2's additional dictum *Hoc tunc* was introduced, saying: 'This should then be observed when a master and a *servus* are of the same faith. But if a Jew will have bought a

Christian slave (*mancipium*), he must be freed by the authority of a judge or a bishop even if the Jew is unwilling.<sup>33</sup>

Gratian 2 introduced Jews into the Distinction 54 because he felt it necessary to make plain that the rule that *servi* could not enter holy orders unless their masters had agreed to free them did not apply if the masters in question were Jew.<sup>34</sup> One might well wonder whether the compiler(s) of Gratian 2 was/were interested in this question from a purely theoretical point of view or out of practical considerations as well.<sup>35</sup> To be sure, there existed a plethora of canons concerning Jewish slaveholding. Amongst these were widely disseminated extracts from letters by Gregory the Great who had responded to actual cases brought to him for resolution.<sup>36</sup> On the other hand, it would seem that Jewish possession of house slaves continued to exist in different measure in different parts of Medieval Latin Christendom.<sup>37</sup> Apart from that, I would argue that

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<sup>33</sup> D. 54 d.a.c. 13, Friedberg, 211: *Hoc tunc observandum est, cum dominus et servus eiusdem professionis inveniuntur. Ceterum si Iudeus Christianum mancipium emerit, iudicis vel episcopi auctoritate, etiam eo invito, ad libertatem debet perduc.*

<sup>34</sup> The *Summa Lipsiensis* commented on the *dictum* which we now know was added by Gratian 2: '*Ne autem de servis Iudeorum aliquis intelligat, determinat tunc observari debere, cum uterque et dominus et servus Christiani fuerint; nam de servis Iudeorum secus est dicendum*', *Summa Lipsiensis*, ed. Weigand et al., 255.

<sup>35</sup> On the issues of Jewish slaveholding in canon law see Francis R. Czerwinski, 'The Teachings of the Twelfth and Thirteenth Century Canonists about the Jews' (PhD, Cornell University 1973), 90-140; see also Walter Pakter, *Medieval Canon Law and the Jews* (Ebelsback, 1988), 84-142.

<sup>36</sup> Gilchrist, 'The Canonistic treatment of Jews', 72, 74; Watt, 'Jews and Christians in the Gregorian Decretals, 95-6; Sapir Abulafia, *Christian-Jewish Relations*, 20-2).

<sup>37</sup> See Michael Toch, 'Wirtschaft und Verfolgung: Die bedeutung der Ökonomie für die Kreuzzugspogromedes 11. Und 12. Jahrhunderts. Mit einem Anhang zum Sklavenhandel der Juden', in A. Haverkamp (ed.), *Juden und Christen zur Zeit der Kreuzzüge* (Sigmaringen, 1999), 272- 85, in which he argues that medieval Jews were not heavily



the reason these canons continued to resonate so strongly was that the issue of Jewish slaveholding morphed into the issue of Jewish employment of Christian domestic servants and was interconnected with the issue of Jews holding offices and having jurisdiction over Christians. The fundamental issue at stake was the one we have already touched on. It was the issue of Jewish standing, of the correct hierarchy between Christians and Jews, in other words, of the perceived correct relationship between Jews and Christians. Jews were supposed to be lorded over by Christians; the reverse was seen as a dangerous inversion of what was considered to be the proper hierarchy between Christians and Jews.

By mentioning a Jewish master the compiler(s) of Gratian 2 opened a number of legal questions. (This is presumably why at an even later stage another three canons, the three *paleae* mentioned above, were added.) The first additional canon Gratian 2 introduced was *Mancipia Christiana* (D. 54 c. 13). This is a short extract from the final part of the letter Gregory the Great sent to Praetor Libertinus of Sicily in 593.<sup>38</sup> The letter instructed Libertinus to take up the case of a Jew called Nasas who had allegedly bribed Libertinus' predecessor Justinus to allow him among others things to buy Christian slaves and retain them for himself. If the case was proven against Nasas, he should be made an example of by inflicting severe corporal punishment on him. As for the Christian slaves (*mancipia Christiana*) he had bought, 'free them according to the unambiguous precepts of the laws to prevent that, heaven forbid, the Christian religion be polluted by being subjected to Jews' (... *ne, quod absit, religio Christiana Iudeis subiecta polluatur*).<sup>39</sup> *Mancipia Christiana* was included in the Pseudo-Ivonian Tripartita

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engaged in the slave trade; according to him the slaves mentioned in connection with Jews in medieval sources usually referred to their house slaves.

<sup>38</sup> *JLSEMA*, 424-5.

<sup>39</sup> Latin as in D. 54 c. 13, Friedberg, 211.

collection which scholars have identified as an important source for the *Decretum* which supplied Gratian 2 with a lot of his material.<sup>40</sup>

The next additional canon in Gratian 2 is the one we have mentioned before. It is *Nulla offitia* (D. 54 c. 14) which was the second part of canon 14, *Suggerente concilio*, of the Third Toledan Council of 589. The first part of the canon had legislated against Jews marrying Christians or having Christian concubines or having Christian slaves for their own use. Any children born out of such marriages were to be baptised. The part that was included in Gratian 2 legislated against Jewish office holding. It went on to say that ‘If Christians have been defiled by them by the Jewish rite (*Iudaismo ritu sunt maculati*) or even circumcised, they should return to liberty without a compensatory price being paid, and to the Christian religion’. *Nulla offitia* had also been included in the *Tripartita*.<sup>41</sup>

The third additional canon comes after Gratian 2’s second *dictum* which introduced the issues of non-Christian slaves owned by Jews wanting to convert to Christianity. The canon is *Fraternitatem vestram oportet*, which was the main chunk of another decretal, *Fraternitati vestrae ante*, by Gregory the Great, sent in 596 to Bishop Fortunatus of Naples. *Fraternitatem vestram oportet* is one of the canons Gilchrist identified as being particularly widely disseminated.<sup>42</sup> It too had been incorporated in the *Tripartita*,<sup>43</sup> and

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<sup>40</sup> Friedberg, 211; *Tripartita* I.55.65, at [http://ivo-of-chartres.github.io/tripartita/trip\\_a\\_1.pdf](http://ivo-of-chartres.github.io/tripartita/trip_a_1.pdf) 2015-09-23 / 898fb accessed on 19 September 2017. On the *Tripartita* and the *Decretum* see Landau, ‘Gratian and the *Decretum Gratiani*’, 31-2; Winroth, 16.

<sup>41</sup> *JLSEMA*, 484-5; Friedberg, 211; *Tripartita* II.36.7, at [http://ivo-of-chartres.github.io/tripartita/trip\\_a\\_2.pdf](http://ivo-of-chartres.github.io/tripartita/trip_a_2.pdf) 2015-09-23 / 898fb accessed on 19 September 2017.

<sup>42</sup> Gilchrist, ‘The Canonistic treatment of Jews’, 74.

<sup>43</sup> Friedberg, 211-2; *Tripartita* III.26.9, at [http://ivo-of-chartres.github.io/tripartita/trip\\_b\\_c.pdf](http://ivo-of-chartres.github.io/tripartita/trip_b_c.pdf) 2015-09-23 / 898fb accessed on 19 September 2017.

it would seem that Gratian 2 would have found all three of his ‘Jewish’ canons for Distinction 54 in this collection.<sup>44</sup>

*Fraternitatem vestram oportet* dealt with the thorny issue of Jewish possession of slaves who were pagans or Jews and who wished to convert to Christianity. That they must be freed was not in doubt, the issue was whether their Jewish owners had the right to monetary compensation or not. Gregory’s decision took Jewish interests into account by making a distinction between pagan slaves whom Jews had bought for their own use and pagan slaves bought as a commodity to sell on. Pagans or Jews bought for their own use must be freed and not sold. But if one of the pagan slaves bought for resale wished to convert to Christianity within the first three months of being bought by the Jew, then the Jew might seek payment from a Christian buyer. If conversion to Christianity was sought by such a slave after the first three months were up, then the slave must be freed forthwith because if a slave had not been sold in three months it must be assumed that the slave was actually bought for his/her Jewish master’s own use and not, in fact, for resale.

The three *paleae* which follow in Friedberg’s edition of the *Decretum* supplemented issues raised in the previous canons. The first is canon 16, *Si quilibet Iudeorum*, a fragment from a letter from 593 by Pope Gregory I to Januarius, bishop of Cagliari, which shed more light on the issue of *servi* of Jews wishing to convert to Christianity.<sup>45</sup> Gregory’s decretal stated that if such a slave had

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<sup>44</sup> Research into the sources of Gratian is ongoing, see for example Landau, ‘Gratian and the *Decretum Gratiani*’, 25-35; Winroth, 15-18; as far as the ‘Jewish’ canons are concerned, as far as I can tell on the basis of my research to date, the *Tripartita* seems to be important. From my analysis of the ‘Jewish’ canons added to Distinction 45 by Gratian 2 it would seem that *Qui sincera* (D. 45 c. 3) and *De Iudeis* (D. 45 c. 5) were taken from the *Tripartita* as well, see Sapir Abulafia, ‘Jews in the glosses’. Martin Brett’s preface to his working edition at [http://ivo-of-chartres.github.io/tripartita/trip\\_a\\_pref.pdf](http://ivo-of-chartres.github.io/tripartita/trip_a_pref.pdf) 2015-09-23 / 898fb accessioned on 19 September 2017.

<sup>45</sup> *JLSEMA*, 426.

taken refuge in a holy place for the sake of faith he should be supported in all ways in obtaining his liberty without any compensatory payment, whether he had already been a Christian or whether he had been baptized at this stage.<sup>46</sup> This fragment often appeared in canonical collections in the slightly longer version, *Pervenit ad nos*, and, as such, was very widely disseminated, more widely than Gilchrist had supposed.<sup>47</sup> The next canon, *Et si Iudeorum*, derived from the Twelfth Toledan Council of 681 and simply stated that *servi*, who were owned by Jews and had not been converted, who had taken refuge in the grace of Christ must be freed.<sup>48</sup> The final *palea*, *Presenti concilio*, is canon 18; it hailed from the Council of Macon (581/583).<sup>49</sup> It reiterated that no Christian slave (*mancipium*) should serve a Jew. Any Christian might redeem him - the price for a good slave (*mancipium*) would be twelve solidi - and either give him his freedom or keep him as his slave (*mancipium*). The same should happen if a slave wanted to become a Christian and his Jewish master did not allow it. 'For it is a violation of divine law for a blasphemer against the Christian religion to hold in chains someone whom Christ, the Lord had redeemed through the shedding of his blood.' If the Jew was unwilling to cooperate then the slave (*mancipium*) was allowed to live with Christians wherever he wanted to as long as the Jew delayed to agree to the arranged price. Again, it is worth noting that these rulings were more concerned with redressing the inversion of

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<sup>46</sup> Literally 'without any damage to the Christian poor'. This must mean that no funds should be deflected from the poor by providing compensatory payment. For in the preceding sentence, not included in this extract, the letter decreed that these runaway slaves were either being restored to their Jewish masters or bought from them.

<sup>47</sup> Gilchrist, 'The Canonistic treatment of Jews', 104 and 106. If one adds the times *Pervenit ad nos* in pre-Gratian collections of canons to the times *Si quilibet Iudeorum* appears, the text appears as least as popular as the canons named by Gilchrist as the most popular anti-Jewish canons in circulation in the tenth, eleventh and first half of the twelfth centuries.

<sup>48</sup> *JLSEMA*, 518, 520.

<sup>49</sup> *JLSEMA*, 475-6; the council text begins with the words *Et licet quid*.

what was deemed to be the proper hierarchy between Christians and Jews than with the slaves in question. None of these *paleae* were included in the *Tripartita*; all three could have been found in Ivo's *Decretum*; canons 17 and 18 were also in Burchard's *Decretum*.<sup>50</sup>

So how did the A-NG read the 'Jewish' canons? What did it think was worthy of comment? First of all, it needs to be said that neither the *Glossa ordinaria* nor the A-NG commented on the three 'Jewish' *paleae*. MS 283/676, in fact, excluded the *paleae* from its text of the *Decretum*. As for the other 'Jewish canons' and Gratian 2's opening *Dictum* (Ad hunc), the A-NG delved into the many different legal permutations of Jewish slaveholding in line with the *Summa Lipsiensis* and Huguccio. The permutations were clearly presented in a diagrammatic format, a format frequently deployed in MS 283/676. Slaves belonging to Jews could either be Christians or not; bought Christian slaves would have to be freed forthwith without compensatory payment. Non-Christian slaves could have been bought by Jews or born in Jewish households. These non-Christian slaves could wish to become Christian or not. If not, there were no legal impediments to Jewish ownership as long as slaves had not been circumcised. Circumcision would free the slave and his Jewish master would face capital punishment as in Roman law (C. J. 1.10.1). Non-Christian slaves who had been born in Jewish households who wished to become Christian were to be freed without compensatory payment (cf. C. J. 1. 3.54.8). The same applied to non-Christian slaves who had been bought to serve Jews. But Jews would receive compensatory payment for non-Christian slaves they had bought for resale who wished to convert to Christianity within three months of being purchased, when they were freed from Jewish ownership. But if the slave in question had not been sold within three months, no compensatory payment was due to the Jewish owner because it was assumed that the slave had, in fact, been bought for his/her Jewish owner's own use and not for

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<sup>50</sup> Friedberg, 212; Ivo, *Decretum* 13.102, I.280, 282 at [http://ivo-of-chartres.github.io/decretum/ivodec\\_13.pdf](http://ivo-of-chartres.github.io/decretum/ivodec_13.pdf) and [http://ivo-of-chartres.github.io/decretum/ivodec\\_1.pdf](http://ivo-of-chartres.github.io/decretum/ivodec_1.pdf) 2015-09-23 / 898fb accessed on 19 September 2017; Burchard 4.86, 4.88, *JLSEMA*, 636.

resale. Compensatory payment for slaves was put at 12 *solidi* as in *Presenti*, which was explicitly referenced to Burchard's *Decretum* (4. [88]), the canon which ended up as one of the 'Jewish' *paleae* in Gratian's *Decretum* (D. 54 c. 18). The comments in the A-NG on *Hoc tunc* closed by saying that the rules concerning Jewish slave owning also applied to the slaves bought by Gentiles (*Gentiles*) and cited the canon *Iudei* of the Third Lateran Council (1179). But it added the proviso that slaves belonging to Gentiles who had become Christians could not be removed from Gentile ownership without some form of compensation.<sup>51</sup>

Very interesting is how the A-NG and, indeed, the *Summa Lipsiensis* introduced the *Iudei*, canon 26, of the Third Lateran Council of 1179. This canon emphatically forbade Jews and Saracens from having Christian domestics in their homes. It also said clearly that 'Jews should be subject to Christians'.<sup>52</sup> To my mind this shows that age-old canons concerning Jews were read in light of contemporary legislation, in this particular case, against Jews keeping domestic servants. This also indicates that 'Gentiles' must signify 'Muslims' in this instance. We can clearly follow the narrowing down of the term *Gentiles* from denoting unbelievers in general to Muslims in particular in the line of argument pursued in the *Summa Lipsiensis* and by Huguccio concerning the fate of slaves belonging to Gentiles who had become Christians. The *Summa Lipsiensis* and Huguccio started by quoting Paul's words to Timothy: 'Whosoever are servants under the yoke, let them count their masters worthy of all honour; lest the name of the Lord and

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<sup>51</sup> Caius MS 283/676, fol. 36r: [*Hoc tunc*] ... *Idem de emptis gentilium* [superscript above *emptis gentilium*: *In Consilio Laterano Iudei*]. *Sed empti gentilium vernaculi etiam Christiani facti non eximuntur a dominorum potestate nisi dato pretio vel [quodam] [MS gives quosdam.]*

<sup>52</sup> *Iudaei sive Saraceni nec sub alendorum puerorum obtentu nec pro servitio nec alia qualibet causa, christiana mancipia in domibus suis permittantur habere [...] cum eos [Iudaeos] subiacere Christianis oporteat [...]*; Norman P. Tanner, *Decrees of the Ecumenical councils*, 223-4 (my translation).

his doctrine be blasphemed' (1 Tim. 6:1).<sup>53</sup> They then proceeded to declare that although Paul's statement made it plain that Christians might **be** slaves of unbelievers (*infideles*), they must not **become** slaves of infidels. The *Summa Lipsiensis* then immediately went on to say that some people today argued that this only applied to earlier times when there were vast numbers of infidels and only a handful of Christians and that it no longer applied. It clinched the argument by citing Lateran III, *Iudei* which specifically referred to Jewish and Muslim masters.<sup>54</sup> Huguccio went on to explain that the Church dealt more severely with Jewish masters of Christian slaves than Pagan masters because Jews assailed the Church more treacherously and that it was much more dangerous for Christians to cohabit with Jews than Pagans because Jews were so very skilful in seducing Christians to Judaism. But he then went on to explain that in present times this distinction no longer held because *Pagani* had adopted circumcision and discernment of foods. By *Pagani* Huguccio was clearly signifying Muslims. And as far as he was concerned, neither Jews nor Pagans should therefore be offered compensator payment for a slave who was freed because he had become a Christian.<sup>55</sup> An important part of my project will, in fact,

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<sup>53</sup> Translation taken from the Douay Rheims version.

<sup>54</sup> *Summa Lipsiensis*, ed. Weigand et al, 256: '*Hoc tamen hodie quidam intelligunt locum non habere, set eo tempore tantum, scilicet primitivo, quando pauci erant fideles, multi infideles. Arg. ad idem in conc. Lat. Iudei.*'

<sup>55</sup> Cambridge, Pembroke College, MS 72, fol. 158vb: *Hoc tunc* [...] *Sed quare in hoc casu aliquid ex servis Iudeorum et alium in servis Paganorum propter perfidiam Iudeorum contra quos sepe severius constituit ecclesia quia ipsi perfidius eam impugnant et plus timetur cohabitatio Iudeorum quam Paganorum quia Iudei peritiores sunt et facilius seducunt Christianos. Hodie tamen non videtur aliud esse dicendum in servis Paganorum quia fere omnes Pagani hodie iudizant circumciduntur discernunt cibos et alios ritus Iudeorum imitantur. Lex enim non facit differentiam inter eos. Lex dicit quod nullo casu est reddendum pretium Iudeo vel Pagano ut C. de episcopis, Deo § his ita [C. J. 1.3.54.8]. Sed in hoc potius standum est canonibus; Pakter, 119-120, n. 109; <http://droitromain.upmf-grenoble.fr/>, sv. I am grateful to the*

be to investigate when Gratian's glossators interpreted the terms *Pagani* or *Gentiles* specifically to refer to Muslims.

It is striking that neither the A-NG nor the Ordinary Gloss, which both had used Huguccio, followed him in including such a negative appraisal of Jews in their treatment of Gratian 2's first *dictum*, *Hoc tunc*. The *Glossa ordinaria* simply concluded its gloss by stating that Pagans could be a master of a Christian slave but not become one.<sup>56</sup> But in commenting on canon 13, *Mancipia* the Ordinary gloss wondered whether a Christian could have a Jewish slave and concluded that he could as long as Christian master and Jewish slave did not live in close proximity of each other, citing two canons from *causa* 28 (q. 1 cc. 12-13), *Sepe malorum* and *Nullus* which respectively forbade Jewish converts from consorting with their former co-religionists and Christians from partaking of Jewish unleavened bread, living with Jews, or consulting Jewish physicians. As we have already noted, *Sepe malorum* hailed from the Fourth Council of Toledo; *Nullus* derived from the Council 'In Trullo' of 691.<sup>57</sup> Huguccio had explained more fully that a Christian could buy a Jewish slave to have him guard over his garden, fields, vineyards or cattle if he had him living apart from his Christian household. What was forbidden was close proximity

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staff in the Manuscript Room of the University Library in Cambridge for their assistance in consulting this manuscript.

<sup>56</sup> Gonville and Caius College MS 6/6, fol. 45va; the Roman edition of the *Decretum* which includes later additions to the Ordinary gloss does give this negative material: *Corpus juris canonici emendatum et notis illustratum*, Gregorii XIII. Pont. Max. iussu editum, Romae: In aedibus Populi Romani, 1582, Part I, in 2 volumes: *Decretum Gratiani electronic edition*: University of California Los Angeles (UCLA) Digital Library Program. *Corpus juris canonici* (1582), fol. 374, available at <http://digital.library.ucla.edu/canonlaw/>.

<sup>57</sup> Caius MS 6/6, fol. 45va: *mancipia*] *Sed nunquid Christianus potest emere Iudeum mancipium? Sic non tamen cum illo moretur ut xxviii. q. 1. Sepe et c. nullus* [C. 28 q. 1 cc. 12-3]; *JLSEMA*, 459-60.



with Jews.<sup>58</sup> This mirrored the observation made in the Ordinary gloss that Jews could be masters over so-called *coloni*, that is to say Christians tied in some way to the land but not living in proximity with their Jewish landlords.<sup>59</sup> Gregory the Great had made this concession in his letter of 594 known as *Multorum ad nos relatione* or *Hortamur*. It was widely disseminated and ended up in the Gregorian Decretals.<sup>60</sup>

The A-NG was much less expansive in its treatment of *Mancipia* than Huguccio had been or the Ordinary gloss would be. The first thing it did was to expand the ruling to apply to Pagans as well through citing the Justinian code (C. J. 1.3.54.9). It then highlighted that the freedom granted to the Christian slave was in respect of his Jewish owner; he could, however, either be given to a Christian or he could be given his freedom. As for leading these Christian slaves into freedom, the A-NG again cited *Iudei* in Lateran III. It ended by referring to its comments on the canon *Iudas* in C. 17 q. 4 c. 34 to find the solution to the seeming contradiction between that canon and *Mancipia*.<sup>61</sup>

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<sup>58</sup> Pembroke MS 72, fol. 158vb: *Mancipia*] [...] *Sed numquid econtra licet Christiano Iudeum mancipium emere? Non ut remaneat Iudeus et cohabitaret Christiano arg. 28 q. 1 Nullus, Sepe, Omnes. Aliter licet immo si remaneat Iudeus dummodo non cohabitaret Christiano potest Christianus eum emere. Puta faciet eum custodire ortum vel agros vel vineas vel peccora vel faciat eum habitare vel conversari seorsum ab aliis. Sola enim familiaris conversation prohibita est cum Iudeo [...];* Pakter, 133, 133 n. 174.

<sup>59</sup> Caius MS 6/6, 45va: *Producit [sic] id est perductos ostendite quia statim liber est Extra de Iudeis c. ii [X. 5.6.2] tamen coloni possunt esse Iudeorum ut ibi dicitur*; Czerwinski, 124 n. 65.

<sup>60</sup> *JLSEMA*, 426-7; Gilchrist, 'The Canonistic treatment of Jews', 74, 102; X.5.6.2; Watt, 'Jews and Christians in the Gregorian Decretals, 95-6.

<sup>61</sup> Caius 283/676, fol. 36va: *Iudeum] vel etiam paganum C. De Episcopis et clericis l. ultima [C. J. 1.3.54.9 (in Krueger edition at <http://droitromain.upmf-grenoble.fr/>)]*; *libertatem] quantum ad Iudeum quia ab eo liberatur sive Christiano tamen datur sive liber*

*Judas qui Judaice* (C. 17 q. 4 c. 34), was a letter by Pope Gelasius of the early 490s about a legal case concerning a Jewish slave owner and a slave who had taken refuge in a church claiming that he was a Christian and had been circumcised. The Pope asked the local bishop to find out the truth of the matter and then decide if the slave should be freed or returned to his owner 'so that the sanctity of religion should not seem *defiled*, nor a slave try to free himself from his lord's legal ownership by way of a lie'.<sup>62</sup> The canon was added by Gratian 2 to *Causa* 17. The A-NG argued that it did not clash with *Mancipia* because if the slave would have lied in either one of his assertions, he would be qualified for freedom because either he would have proved that he had been bought as a Christian by a Jew or that he had been circumcised against his will and thus would be freed. The possibility that the slave might have lied on both counts appears not to have been considered by the A-NG.<sup>63</sup> The Ordinary gloss, following in the footsteps of Huguccio solved the seeming contradiction between *Mancipia* and *Judas* by explaining that in *Mancipia* it was clear that the slave was a Christian. In *Judas* the issue concerned a slave lying about his Christianity in order to escape the yoke of slavery.<sup>64</sup>

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*efficiatur; perducite] In consilio Laterano Iudei; infra 17 q. iiiii Judas contra solution ibi.*

<sup>62</sup> *JLSEMA*, 416.

<sup>63</sup> Caius 283/676, fol. 141vb: *competentis] Supra 54 Mancipia contra. Solutio: Si mentitus fuerit servus in utroque, sufficeret enim ad libertatem, Quod vel probaret se Christianum emptum a Iudeo vel invitum ab eo circumcissum, quoniam tunc ad libertatem perduceretur, vide ibi.*

<sup>64</sup> Caius 6/6, fol. 45va: *Ad libertatem] infra xxviii [sic] q. iiiii Judas qui [C. 17 q. 4 c. 34] contra sed hic de eo agitur quem constat esse Christianum, ibi de eo [Caius MS 34/67, fol. 20vb] qui mentitur se Christianum ut evadat iugum servitututis; Czerwinski, 124, 124 n. 65; Huguccio, Pembroke MS 72, 158vb: [...] et xvii q. iiiii Judas contra. Ibi dicitur de quodam Christiano servo Iudei qui non debet evadere iura domini nisi eum volentem [?] dominus circumciderit sed hic de eo agitur quem constat esse Christianum, ibi de illo qui afferebat se esse Christianum sed hic revocabitur in dubium.*

We have seen that *Mancipia* ended with the injunction that the Christian religion should not be polluted; *Nulla* legislated that Christian slave who had been defiled by Judaism or circumcised had to be set free with compensatory payment to their Jewish masters. The *Summa Lipsiensis* had interpreted *maculati* (defiled) in *Nulla* to refer to Christian slaves being compelled to eat meat during the days of abstinence. Huguccio said the same in his comments on *Mancipia* and *Nulla* adding to the latter that Christians would have been compelled to discern between foods.<sup>65</sup> Neither the A-NG nor the Ordinaria gloss carried these comments. What they did do in common with Huguccio and the *Summa Lipsiensis* was to cross refer *Nulla* to *Constituit* (C. 17 q. 4 c. 31), which, as we have seen, derived from the Fourth Toledan Council. It forbade Jews from holding public office and declared it a *sacrilege* for Christians to allow Jews to have this kind of power over Christians.<sup>66</sup> In passing it is worth noting that the reason Gratian 2 would have chosen to add *Constituit* and *Iudas* to *Causa* 17 and not Distinction 54 was probably because they referred to defilement and sacrilege and that was precisely the topic at stake in this section of *Causa* 17.

The A-NG had a lot more to say about *Constituit* in *Causa* 17 than it did about *Nulla* in Distinction 54. First of all, it commented very fully on the phrase in *Constituit* which stated that neither Jews nor *hii qui ex Iudeis* were allowed to hold public office lest they misuse their authority to harm Christians. The phrase *aut hii qui ex Iudeis sunt* had been omitted from the text of *Constituit* and was added to the margin where the A-NG explained that this referred, for example, to the family of those who had been Jews, who were still Jews or to proselytes and even to Christians who had formerly been

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<sup>65</sup> *Summa Lipsiensis*, ed. Weigand et al., 256-7: *Vel 'maculati' quia diebus abstinentie comederunt carnes compulsi*; Huguccio, Pembroke MS 72, fol. 158vb: *Polluatur] vel suscipiendo circumcisionem et comedendo carnes in xl, diebus Veneris coacte vel voluntarie; In iudaismo maculati] alio ritu Iudeorum foede compulsi ut comederent carnes quando non deberent vel ut discernere cibos vel huiusmodi.*

<sup>66</sup> *JLSEMA*, 490-91.

Jews with a reference to *Plerique* (D. 4 de cons. c. 94), the Toledan IV canon which had legislated against the backsliding it expected Jewish converts to be guilty of.<sup>67</sup> *Proselytus* would normally mean a convert to Judaism or a non-Jew living with Jews, but I wonder whether in this context it might mean a Jew who had just converted to Christianity or was in the process of doing so.<sup>68</sup> The Ordinary gloss mentioned the family members of Jews and 'Jews who had recently converted to Christianity'.<sup>69</sup> The A-NG, and not the Ordinary gloss, linked the prohibition of Jews holding office to the prohibition of Jews having Christian *mancipia* as legislated in Lateran III. Fascinating is how it then linked this with the statement that Christians must not do homage (*homagia*) to Jews, referring to a bull from Alexander III to Archbishop Richard of Canterbury dated between 1174-9 (*Non sine*) in which the Pope had ordered that the faithful must not 'pay homage or fealty to Jews' (*ne quis Judeis hominia vel fidelitates*).<sup>70</sup> The kind of homage envisaged in

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<sup>67</sup> Caius MS 283/676, fol. 141va: *aut hii qui ex Iudeis sunt] Puta de familia eorum dum tamen Iudei sunt vel et proseliti vel etiam Christiani olim Iudei de con. 4 Plerique [D. 4 de cons. c. 94].*

<sup>68</sup> See *Dictionary of Medieval Latin from British Sources* at <http://clt.brepolis.net/dmlbs/pages/QuickSearch.aspx> s.v., where one of the possible fourteenth-century meanings given is 'postulant'.

<sup>69</sup> Caius MS 6/6, fol. 151r: *Qui ex Iudeis] id est de familia ipsorum vel loquitur de Iudeis de novo ad fidem conversis.*

<sup>70</sup> As highlighted by Czerwinski, 108-9, 108 n. 37; Caius MS 283/676, fol. 141va [in margin]: *nec debent Iudeis Christiana mancipia servire, in Consilio Laterano, Iudei* [top margin additional comment] *Sed nec debent Christiani homagia Iudeis facere In Extra de Iudeis, Non sine - inferatis*; Duggan has shown that the A-NG did not yet have access to the *Compilatio prima* and that it used instead a collection very similar to the so-called Tanner Collection, a Anglo-Norman decretal collection compiled around 1187-91 (see Duggan, 'The Reception of Canon Law in England', 372, 376-7 and also my references to Tanner in Sapir Abulafia, 'Jews in the Glosses', 21, 25-7, 30). *Non sine - inferatis* is found in Tanner VI.5.3 (*proferatis* instead of *inferatis*), ed. Walther Holtzmann, 'Die Dekretalensammlungen des 12. Jahrhunderts: 1. Die Sammlung Tanner', in *Festschrift zur Feier des Zweihundertjährigen Bestehens der Akademie der Wissenschaften in Göttingen*, II:

this bull is that of Christians to Jews who had acquired *parochias ecclesiarum* through ‘purchase or contract or even in pledge’. Charles Duggan translated *parochias ecclesiarum* as ‘parish churches’ and argued that the bull was the result of matters brought to the Pope’s attention by Richard who sought to address a number of problems in his province. The bull also urged Richard to request King Henry to compel the Jews to give up any such properties they held. And if they continued to hold them, they must pay any tithes owing to the Church.<sup>71</sup> Paul Brand has suggested that the stipulations of the bull make more sense if *parochia* is understood to mean ‘the (tithe-paying) lands within the boundaries of individual (parish) churches’. Christians living on these tithable lands might then well have been put into a position of owing fealty to Jews who had acquired the property.<sup>72</sup> Whatever the case may be, this is yet another indication how old canonical material was connected to fresh legal material and how questions of Jewish slave holding continued to intersect with the issue of Jewish authority in any shape or form over Christians.

As for the third canon added by Gratian 2 to Distinction 54, *Fraternitatem*, it threw up all kinds of legal concerns for the commentators. These included the exact specification of the time frame in which a slave had to be sold to count as a slave genuinely bought by Jews for resale rather than for their own use, the grounds

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Philologisch-Historische Klasse, (Berlin etc. 1951), 135; Simonsohn, no. 54, p. 57.

<sup>71</sup> Charles Duggan, ‘St Thomas of Canterbury and Aspects of the Becket Dispute in the Decretal Collections’, in: C.E. Viola (ed.), *Mediaevalia Christiana XIe-XIIIe siècles. Hommage à Raymonde Foreville* (Paris, 1989) no. 44, 129-30 (quotations from 130); Charles Duggan, ‘Richard [Richard of Dover]’ in *Dictionary of National Biography s.v.* at

<http://www.oxforddnb.com/view/article/23514?docPos=25> (accessed 7/2/2017).

<sup>72</sup> Quotation from email correspondence with Prof. Paul Brand on the decretal in May to June 2017. I am very grateful for Prof. Brand’s help with the decretal and for his feedback on my paper.

for presuming that a slave had not been bought for resale and the legal definitions of presumption. The legal signification of presumption was presented in the A-NG in the same kind of diagrammatic form as the discussion on the different kinds of Jewish slave holding had been. For our purposes the most interesting comment in the A-NG is the one on the end of the canon which said that if a slave belonging to a Jew had not been sold on within three months and if he wished to become a Christian he could no longer be sold and had to be freed. The A-NG explained that the Jew was being disadvantaged in favour of the freedom of another on account of the hatred for his condition. The *Summa Lipsiensis* had said much the same.<sup>73</sup>

Let us return to the questions we asked at the start of our investigation about the reasons for the presence of the ‘Jewish’ canons in the *Decretum*. It seems to me that our investigation has shown that the ‘Jewish’ canons were not necessarily included for their own sake in the *Decretum*. To me their inclusion does not seem to be particularly indicative of sentiments towards Jews on the part of those responsible, be it Gratian 1 or the compiler(s) of Gratian 2. As far as I can tell at this stage of my research, the ‘Jewish’ canons were introduced for the most part by the compiler(s) of Gratian 2 in service of a more comprehensive treatment of the legal issues Gratian 1 had set out to cover. The canons themselves touched on the broad issues of conversion and the correct legal status vis-à-vis Christians. As such they

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<sup>73</sup> Caius MS 283/676, fol. 141va: *perducatur] hic privatur Iudeus favor libertatis alterius odio sue conditionis et maxime quia in eum casum devenit servus qui vendi non debet; Summa Lipsiensis*, ed. Weigand et al., 258: *Hinc habetur quod absque delicto suo priuatur quis iure suo. Hoc autem contigit ob fauorem libertatis et religionis et odium alterius ut Iudei, ut hic, quandoque ob fauorem alterius tantum alter priuatur iure suo ....* See Czerwinski, 91-103 for a discussion about *Fraternitatem* among different canonists in which he points out how Huguccio made provision for the possibility that the Jew might not have been able to find a buyer within the stipulated three months for a slave he had genuinely bought for resale.

underpinned and, indeed, reinforced the overall understanding that Jews were to be tolerated in Christian society on account of their usefulness, their service. The process governing the inclusion of the 'Jewish' canons by Gratian 1 and especially by the compiler(s) of Gratian 2 was in itself an aspect of Jewish service. Having said that, the fact is that many of these canons cast Jewish service in pejorative terms. Whatever the reason might have been to include them, their very inclusion turned them into an important conduit for the dissemination of negative views concerning Jews. We must remember how much Gratian's *Decretum* was read, how frequently it was glossed and to what extent it was taught throughout medieval Europe and beyond. We have also seen how glossators discussing a 'Jewish' canon in Distinction 54 cross-referred to a whole array of other 'Jewish' canons scattered about in the *Decretum*. And because 'Jewish' canons appeared in the *Decretum* in contexts which had nothing to do with Jews, users of the *Decretum* would have come across canons concerning Christian-Jewish relations whether or not they had been specifically looking for rulings concerning Jews. The importance of Gratian's *Decretum* for the dissemination of anti-Jewish texts has, I believe, been underestimated. It is essential to grasp both the process by which 'Jewish' canons entered the *Decretum* and the effect of their inclusion to understand the complex developments of the intricate and paradoxical relationship between Christians and Jews in the twelfth and thirteenth centuries.<sup>74</sup>

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<sup>74</sup> I am very grateful to Prof. Anders Winroth for reading this paper and for his very helpful comments. Any errors are my sole responsibility.

## SUMMARY

Gratian's collection of canons and its development into what became known as the *Decretum* contained some thirty-six canons which specifically dealt with some kind of interaction between Christians and Jews. This article wonders why those particular canons concerning Jews were included in the *Decretum* and not others, and why they were placed where they were in the collection. It attempts to ascertain what the reason might have been to include them and in what context that might have occurred. These questions are particularly pertinent because the vast majority of the so-called 'Jewish' canons were added to what Anders Winroth has established as the first recension of the *Decretum*. This article makes a start to answering these question through an in-depth analysis of Distinction 54, a section of the *Decretum* which explores rules governing the ordination of persons of unfree status to which a number of canons were added concerning Jewish slaveholding and Jewish office holding. The article investigates the position of the 'Jewish' canons in Distinction 54 and attempts to ascertain why they were added. It tries to find out how they were read by examining the comments on the canons in the *Glossa ordinaria* to the *Decretum* as well as glosses in a unique late twelfth-century manuscript (Gonville and Caius College, Cambridge, MS 283/676) which reflect how the *Decretum* was taught in Oxford in the 1190s. The article hopes to show that an investigation into the process by which 'Jewish' canons entered the *Decretum* and the effect of their inclusion can add a great deal to our understanding of the intricate and paradoxical relationships between Christians and Jews in the twelfth and thirteenth centuries.