

RELIGION AND LAW IN MEDIEVAL CHRISTIAN AND MUSLIM SOCIETIES

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JEWS IN EARLY CHRISTIAN LAW

BYZANTIUM AND THE LATIN WEST, 6TH-11TH CENTURIES

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BREPOLS

JEW, PAGAN, AND HERETIC IN EARLY MEDIEVAL CANON LAW

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

—Augustine, Sermon 62.18¹

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

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

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

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

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

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

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

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

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

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

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

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

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

Non-Catholics Contrasted

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

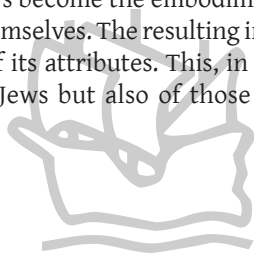
²⁰ C. 83, reproduced in the *Vetus Gallica*’s chapters on auguries and Jewish rites (44.4g and 55.2). In its original context, this canon immediately follows a series of canons about heretics (cc. 80–82).

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

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

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

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



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

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

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

Concerns about Conversion and Reversion

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Disembodied Paganism and Carnal Jews

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Distinct Place of the Jew in Early Medieval Canon Law

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

