

## Sharing Meals with Non-Christians in Canon Law Commentaries, Circa 1160-1260: A Case Study in Legal Development

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### Abstract

Canon law scholarship flourished in the twelfth and thirteenth centuries, and its practitioners left a remarkable paper trail. Surviving documents capture the intellectual evolution that occurred during this formative period and offer historians a rare opportunity to trace legal development in premodern times. This article examines the evolution of laws regulating the sharing of meals with non-Christians, with particular attention to the ways in which medieval canonists conceptualized foreigners. These canonists struggle to fit Islam into traditional legal categories, concluding that Muslims are “judaizing pagans” on account of their dietary practices. This outcome, and its implications for the way canonists understood not only commensality with Muslims but also with Jews and pagans, reflects the degree to which medieval scholars of canon law were both unfamiliar with other religious traditions and uninterested in acquiring such knowledge. The ideas of these scholars about non-Christians reflect their detachment from realia and their commitment, as participants in the canon law tradition, to the conservation of existing paradigms, laws, and interpretations. This case study thus sheds light both on medieval Christian conceptions of foreigners and on the ways in which great works of premodern law developed.

### Keywords

Canon law, Christian-Jewish relations, Christian-Muslim relations, Commensality, Decretum, Food, Gregorian Decretals, Huguccio, Legal commentaries, Premodern Law

*If you invite two guests to dinner, you will not serve the same fare to those who demand opposite things. With the one asking for what the other scorns, will you not vary the dishes, lest either you throw the dining room into confusion or offend the diners?... I invited two men to a banquet, a theologian and a lawyer, whose tastes diverge toward different desires, since this one is delighted by tart things, and that one longs for sweets. Which of these should we offer, which should we withhold? Do you refuse what either one requests?*<sup>1</sup>

—Stephen of Tournai, *Summa* on the *Decretum*

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<sup>1</sup> The opening words of Stephen of Tournai's *Summa* on the *Decretum*, trans. Robert

Some things never change: lawyers and theologians are often not the easiest people to seat at the same table. Many things, however, do change over time, among them law, theology, and the suitability of certain table pairings; on the last of these, one need only recall the common practice of racially segregated lunch counters in the pre-civil rights era. Until relatively recently, it was both law and common practice for Christians to refrain from eating with non-Christians, especially Jews.<sup>2</sup> Although laws prohibiting such commensality date from the fourth century and remained on the books until the twentieth, the period from the mid-twelfth to the mid-thirteenth centuries constitutes an especially intense time of development in this law, along with Latin canon law more generally. The story of that evolution offers valuable lessons not only regarding medieval Christian attitudes toward religious outsiders but also regarding the way in which law itself develops.

Like Stephen of Tournai's canon law commentary from the 1160s, which begins with the analogy cited above, this article is written for distinct audiences with dissimilar interests. On the one hand are those who study medieval Christianity, especially those interested in Christian attitudes toward Jews and other foreigners. On the other are readers interested in law and its development who may have no particular interest in medieval Latin Christendom. I especially have in mind colleagues who study Jewish and Islamic law; those who focus on other types of premodern law will hopefully find my argument regarding legal development relevant to their work as well. Like Stephen, I beg the indulgence of my readers, who at times may find the dishes placed before them foreign to their customary diet. My hope is that attention paid to the diverse interests and tastes gathered around this scholarly table will make the banquet that much more enlightening and enjoyable for all.

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Somerville and Bruce Brasington, *Prefaces to Canon Law Books in Latin Christianity: Selected Translations, 500-1245* (New Haven, Conn.: Yale University Press, 1998), 194. Unless otherwise indicated, as is the case here, all translations are my own.

<sup>2</sup> This practice was not nearly common enough for the tastes of Catholic officials, who inveighed against the sharing of food with Jews repeatedly into the mid-nineteenth century. The prohibitions discussed in this article remained officially binding upon Catholics until 1918, and I am unaware of any shared meals between Vatican officials and Jews before 1970. It is truly a sign of the extent to which things have changed that many contemporary Catholic officials responsible for interfaith dialogue are unaware that restrictions on eating with non-Christians ever existed.

## The Flowering of Canon Law Scholarship, circa 1140-1260

Stephen (1128-1203), a French monk who at the time of his death served as bishop of Tournai, was among the earliest students to receive formal training in canon law.<sup>3</sup> He studied in Bologna, the first and, for centuries, greatest European center for legal studies. The city's preeminence in the study of canon law stems in no small measure from the textbook Stephen used as a student, which his commentary explicates: the *Concordia discordantium canonum*, more commonly known as the *Decretum* of Gratian, whose first recension dates from about 1140.<sup>4</sup>

The *Decretum*, as its proper title indicates, is a manual for instructing students in "the harmonization of discordant canons." Unlike his predecessors, who organized the legal texts they collected chronologically or topically, Gratian (whose biography is unknown) structured the largest portion of his work around three dozen hypothetical cases. He breaks down each case into the key legal questions it raises, cites a number of texts (known as canons) that address each question, and demonstrates a dialectical method

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<sup>3</sup> The dates of canonists and their works may be found in a variety of sources, sometimes conflicting; I have relied on Wilfried Hartmann and Kenneth Pennington, *Bio-bibliographical Guide of Canonists, 1140-1500*, <http://faculty.cua.edu/Pennington/biobibl.htm> (accessed summer 2006).

<sup>4</sup> For a brief introduction to this work and its author, helpfully introducing the *Glossa ordinaria* as well, see Katherine Christensen, "Introduction", in *Gratian: The Treatise on Laws (Decretum DD. 1-20) with the Ordinary Gloss*, trans. Augustine Thompson and James Gordley (Washington, D.C.: Catholic University of America Press, 1993), ix-xxi. For considerably greater detail, see Anders Winroth, *The Making of Gratian's Decretum* (Cambridge: Cambridge University Press, 2000), which sets forth persuasively the argument that the *Decretum* is in fact the product of at least two recensions. Subsequent articles confirming the broad contours of Winroth's thesis while testing and modifying it in various ways include Mary E. Sommar, "Gratian's Causa VII and the Multiple Recension Theories", *Bulletin of Medieval Canon Law*, n.s., 14 (2000): 78-96; see also the works cited in that article's opening notes. On Gratian, see John T. Noonan, "Gratian Slept Here: The Changing Identity of the Father of the Systematic Study of Canon Law", *Traditio*, 65 (1979): 145-72.

All citations of the *Decretum* refer to the text of *Decretum magistri Gratiani*, ed. Emil Friedberg, reprint (1879; Leipzig: B. Tauchnitz, 1959). The first part of the *Decretum* is divided into distinctions; references to canons from that section of the work follow the format "D. 54 c. 10" (the tenth canon in the fifty-fourth distinction). The second portion of the *Decretum* is divided into cases, each of which is subdivided into questions; references to canons from that section follow the format "C. 28 q. 1 c. 14". Medieval authors render the first numbers in Roman numerals and refer to the specific canon by its opening word: "XXVIII. q. i. Omnes." (Capitalization, however, is inconsistent in medieval sources.)

that can be used to resolve the differences between them in order to reach an answer to the question at hand. The *Decretum* is singularly difficult to navigate if one is looking for canons on a specific subject, such as the law regarding shared meals with non-Christians, but Gratian's message is that knowledge of legal literature alone is insufficient. The *Decretum* emphasizes that one must be able to properly interpret canons in light of one another in order to discern the unified message of religious law and its applicability to concrete situations.

The *Decretum* quickly became the foundation for a new scholastic discipline: the study of canon law. Indeed, the rapid growth of canon law scholarship led to the considerable expansion of the *Decretum* itself, albeit at the cost of making the work even harder to use on its own. The centrality of this text to the study of canon law, coupled with the challenges it posed for student and scholar alike, resulted in the production of numerous and increasingly sophisticated commentaries. These works help readers navigate the *Decretum* and find related canons in disparate locations. More importantly, they attempt to harmonize discordances that the *Decretum*'s author(s) did not address, in the process determining what the law ought to be. Commentarial literature thus contributed to and reflects the dramatic developments in legal thought that occurred during the first century or so of formal canon law scholarship.<sup>5</sup>

Despite its structural unsuitability for the purpose, Gratian's *Decretum* quickly became virtually the sole collection of *ius antiquum*, pre-1140 legal sources, consulted by scholars and jurists of the Latin Church. This shift is due, in no small measure, to the fact that the twelfth and thirteenth centuries witnessed a tremendous increase in the promulgation of new canon law (*ius novum*) in the form of authoritative papal letters (called "decretales") and canons of papally sponsored councils. The culmination of this shift in the focus of canon law was the publication, in 1234, of the *Decretales* (or *Liber extravagantium decretalium*) of Gregory IX, a collection of legal texts mostly promulgated after the publication of Gratian's *Decretum*. Pope Gregory decreed that the *Decretales* would be the only collection

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<sup>5</sup> On the role of scholastic study as a catalyst for these developments, and the reciprocal influence of canon law scholarship on the rise of medieval universities, see James A. Brundage, "Teaching Canon Law," in *Learning Institutionalized: Teaching in the Medieval University*, ed. John van Engen (Notre Dame, IN: University of Notre Dame Press, 2000), 177-96.

bearing legal authority in ecclesiastical courts.<sup>6</sup> In practice, Gratian's *Decretum* remained an authoritative legal collection as well; these two works are the primary components of what came to be known as the *Corpus iuris canonici*, the "body of canon law."<sup>7</sup>

The commentaries that accompany the *Decretum* and *Decretales* arguably carried even greater, albeit unofficial, authority. These works, which in many cases originated in the lecture halls of the nascent law schools, became inseparable companions to the collections on which they commented. Not only do the commentaries explain the law as found in these sources, but they also contribute significantly to the development of canon law both at the level of jurisprudential theory and at the level of practical application. As a medieval maxim put it, "That which the gloss does not recognize, the court does not recognize."<sup>8</sup> The "gloss" to which this maxim refers is the *Glossa ordinaria*, the commentary that came to be the standard and most influential companion of a central text. The "ordinary" glosses, however, were only two among dozens of commentaries to the *Decretum* and *Decretales* composed during the twelfth and thirteenth centuries, many of which survive to this day.

At the visitor's center of Toronto's CN Tower, the tallest building in the world, a time-lapse film made from a series of pictures taken regularly during the construction process shows how the tower was built. Would that we had such a perspective on the construction of the pyramids! The same can be said for many of the great works of collective human intellect: would that we had surviving records of the various stages that preceded the current forms of Homeric poetry or works of Scripture! Such documentation is often lacking for the development of premodern law as well. The Talmuds, for example, reflect the culmination of several centuries of

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<sup>6</sup> See the bull of promulgation by Pope Gregory IX in *Decretalium collectiones*, ed. Emil Friedberg, reprint (1881; Leipzig: B. Tauchnitz, 1959), 2-3 (English translation in Somerville and Brasington, *Prefaces to Canon Law Books*, 235-36). All references to the *Decretales* are to the text found in Friedberg's edition. Because this work is also known as the *Liber extra*, it is customary to use the abbreviation *X* when citing its contents; thus, *X*. 5.6.10 is the tenth canon in the sixth title of the fifth (and final) book of the *Decretales*.

<sup>7</sup> This term, an intentional play on the Roman emperor Justinian's *Corpus iuris civilis*, was first applied to these works by the late fifteenth-century publishers who printed them together. Also included by those publishers were several later collections of papal decretals.

<sup>8</sup> "Quod non agnoscit glossa non agnoscit curia"; quoted in R. H. Helmholz, *The Spirit of Classical Canon Law* (Athens, GA: University of Georgia Press, 1996), 15.

considerable evolution in Rabbinic thought, but we lack documentation of that process; scholars can only reconstruct it by searching for clues embedded in the Talmuds themselves, all the while trying to filter out the effects of centuries of copyist alterations. Sources on the development of Islamic law prior to the maturation of its schools of legal thought are also frustratingly sparse.

Twelfth- and thirteenth-century canon law commentaries, in contrast, constitute the textual equivalent of time-lapse photography, capturing the evolution of canon law during this formative period of its scholasticization. They offer historians the rare opportunity to trace legal development in the premodern period. Consequently, the conclusions reached from such analysis not only further our understanding of medieval Latin Christianity and its law but also offer a potentially valuable model with which to interpret development in other legal systems, where comparable data are lacking.<sup>9</sup>

The flowering of canon law commentaries was as brief as it was prolific. The first commentaries on the *Decretum* date from the late 1140s; the commentary that became its regular accompaniment, the *Glossa ordinaria* in the recension of Bartholomew of Brescia, had been published by 1245. Commentaries on decretal collections began to appear shortly after the publication of the first major collection of this nature, in the 1190s. The

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<sup>9</sup> Despite their importance for understanding the development of classical canon law, only a small number of commentaries on the *Decretum* or the *Decretales* have been published in modern editions. A few others were published during the early modern period, but many more remain solely in manuscript form. This work, which has no pretensions to comprehensive coverage of unedited sources, has been facilitated by Francis Richard Czerwinski, "The Teachings of the Twelfth and Thirteenth Century Canonists about the Jews" (Ph.D. diss., Cornell University, 1972), which contains transcriptions and limited analysis of many of the texts discussed below. In most cases, I have been able to check Czerwinski's transcriptions against a medieval source and have on occasion made modifications to his transcriptions.

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*Glossa ordinaria* to the *Decretales*, by Bernard of Parma, achieved its final form shortly before the author's death in 1266. Commentators active during this period were, for the most part, intimately familiar with one another's work and in some cases knew each other personally. The intensity and interconnectedness of their scholastic activity, we shall see, resulted in the development of carefully nuanced positions regarding non-Christians and their food.

### **Commensality with Non-Christians in the *Corpus Iuris Canonici***

The New Testament and the writings of the early Church Fathers prohibit believers in Christ from knowingly consuming food offered to idols but otherwise permit—and, in fact, encourage—shared meals with Jews and non-Jews alike. Beginning in the fourth century, however, authorities from across the Christian world articulated prohibitions against Jewish food or commensality with Jews.<sup>10</sup> Two of these canons found their way into Gratian's *Decretum*; subsequent discussion of these canons will refer to them by their opening Latin word or phrase.

Among the earliest and most frequently repeated prohibitions against commensality with Jews in the Latin West was a canon promulgated by the Council of Agde (in the region of Narbonne) in 506.

[*Omnes*] All clerics and laity should henceforth avoid the meals of Jews, nor should anyone receive them at a meal. For, since they do not accept the common food served by Christians, it would be unbecoming and sacrilegious for Christians to consume their food. For that which we eat with the permission of the Apostle would be judged impure by them; moreover, Catholics will begin to be inferior to the Jews, as it were, if we consume what is served by them while they disdain what is offered by us.<sup>11</sup>

<sup>10</sup> The development of these prohibitions is discussed in detail in David M. Freidenreich, "Foreign Food: A Comparatively-Enriched Analysis of Jewish, Christian, and Islamic Law" (Ph.D. diss., Columbia University, 2006) (forthcoming as *Thou Shalt Not Eat with Them: Foreigners and their Food in Jewish, Christian, and Islamic Law* [Berkeley: University of California Press]); this article is based on material found in the dissertation version. It is my pleasure to acknowledge once more the support of the Memorial Foundation for Jewish Culture, the National Foundation for Jewish Culture, and the Whiting Foundation, as well as Columbia University itself, during the years in which the dissertation was written.

<sup>11</sup> "Omnes deinceps clerici siue laici Iudeorum conuiuia uitent, nec eos quisquam ad conuiuium excipiat, quia, cum apud Christianos communibus cibus non utantur, indignum atque sacrilegum est eorum cibos a Christianis sumi, cum ea, que Apostolo permittente nos

Latin sources from the early Middle Ages tend to prohibit the act of sharing food with Jews rather than the act of eating food prepared by Jews. Greek authorities of the same period, in contrast, focused their attention on Jewish food, specifically food associated with Jewish rituals; they branded such food as tantamount to food offered to idols. This attitude toward Jewish food is manifest in a canon promulgated at the Council in Trullo, convened in 692 by the emperor Justinian II.

[*Nullus*] No one of sacerdotal rank nor any layperson may eat the unleavened bread of the Jews, live with them, summon any of them when ill, receive medicine from them, or bathe with them at the baths. Whosoever does this, if he is a cleric, he shall be deposed, if a layperson, excommunicated.<sup>12</sup>

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sumimus, ab illis iudicentur inmundi, ac sic inferiores Christiani incipient esse, quam Iudei, si nos que ab illis apponuntur utamur, illi uero a nobis oblata contempnant.” C. 28 q. 1 c. 14, quoting Agde, c. 40. For a critical text of the original (which does not differ substantially from the version printed in Friedberg’s edition of the *Decretum*), see Charles Munier, *Concilia Galliae A. 314-A. 506*, Corpus Christianorum Latinorum, no. 148 (Turnhout: Brepols, 1963), 210. The immediate (“formal”) source used by Gratian is likely to have been the *Collectio Tripartita*, attributed to Ivo of Chartres (ca. 1095; 2.31.39). On the collections used by Gratian and the method of his work, see Peter Landau, “Neue Forschungen zu vorgratianischen Kanonensammlungen und den Quellen des gratianischen Dekrets,” *Ius commune*, 11 (1984): 1-29; Landau, “Gratians Arbeitsplan,” in *Iuri canonico promovendo: Festschrift für Heribert Schmitz zum 65. Geburtstag*, ed. Winfried Aymans and Karl-Theodor Geringer (Regensburg: Pustet, 1994), 691-707; and Winroth, *The Making of Gratian’s Decretum*.

The canon from Agde is a slightly edited version of canon 12 of the late fifth-century Council of Vannes (in Brittany), expanded to refer to laity as well as clerics. Neither appears to have been directly inspired by the earliest Latin prohibition against commensality with Jews, articulated at the Council of Elvira in the early fourth century (c. 50).

<sup>12</sup> “Nullus eorum, qui in sacro sunt ordine, aut laicus azima eorum [ed. Romana: Iudaeorum] manducet, aut cum eis habitet aut aliquem eorum in infirmitatibus suis uocet, aut medicinam ab eis percipiat, aut cum eis in balneo lauet. Si uero quisquam hoc fecerit, si clericus est, deponatur, laicus uero, excommunicetur.” C. 28 q. 1 c. 13, quoting in Trullo, c. 11. The text cited by Gratian differs slightly from the Greek original; for that text, see “The Canons of the Council in Trullo in Greek, Latin and English,” in *The Council in Trullo Revisited*, ed. George Nedungatt and Michael Featherstone (Rome: Pontificio Istituto Orientale, 1995), 81-2. Once again, the formal source for Gratian’s citation is likely the *Collectio Tripartita* (2.13.6); on the transmission of this canon, see Landau, “Überlieferung und Bedeutung der Kanones des Trullanischen Konzils im westlichen kanonischen Recht,” 215-27 of the same volume.



In addition to these canons, the *Decretum* preserves two texts that speak positively about the act of sharing meals with non-Christians. The first is an extract from a sermon of the Greek Church Father John Chrysostom (d. 407).

[*Ad mensam*] If indeed you wish to attend a meal of pagans, we permit this without any prohibition. [Paul] says, “For if anyone who is called a brother among you...” [1 Cor. 5:11]—understand “brother” in this place to refer simply to every one of the faithful, not just a monk. For what is it that he terms “brotherhood” if not the font of rebirth, which makes it possible for God to be called father? He says, “If anyone who has been called a brother is a fornicator or avaricious or a drunkard, with that person do not eat food.” This does not extend to those among the pagans, however, but rather “If one from among the unbelievers (meaning pagans) calls you and you wish to go, eat everything which is placed before you” [1 Cor. 10:27]. “But if one *who is called a brother* is drunk...” O, what integrity! Not only do we fail to flee from [Christian] drunkards, we even go toward them, sharing with them!<sup>13</sup>

Chrysostom here distinguishes between unbelievers and sinners, permitting commensality with the former but not the latter; his sarcastic conclusion castigates Christians for eating with their sinful brethren. The great Latin Church Father Augustine (d. 430) makes a similar distinction between unbelievers and excommunicates, also inspired by the teachings of Paul. Gratian cites an epitome of Augustine’s teaching that emphasizes his permission of commensality with non-Christians.

[*Infideles*] We are not able to win over unbelievers to Christ if we avoid conversation and shared meals with them. For that reason the Lord ate and drank with tax collectors

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<sup>13</sup> “Ad mensam quippe paganorum si uolueris ire, sine ulla prohibitione permittimus. ‘Si enim quis frater,’ inquit, ‘nominatur inter uos.’ Fratrem in hoc loco omnem fidelem simpliciter intellige, non monachum tantum. Quid autem est quod fraternitatem uocat, nisi lauacrum regenerationis, quod facit posse uocari Deum patrem? ‘Si quis,’ inquit, ‘nominatus fuerit frater fornicator, aut avarus, aut ebriosus, cum huiusmodi neque cibum sumere.’ Cum autem de paganis ageret, non ita, sed: ‘Si quis uos uocauerit ex infidelibus’ (paganos significans), ‘et uultis ire, omne, quod adponitur uobis, comedite. Si quis frater nominatur ebriosus, etc.’ O quanta integritas! Nos non solum non fugimus ebriosos, sed etiam imus ad eos, participantes cum eis.” C. 11 q. 3 c. 24, citing John Chrysostom’s *Homilies on Hebrews*, 25.3-4 (PG 63:177). Gratian’s formal source for this text is the *Collectio III librorum*, 2.25.26; see Winroth, *The Making of Gratian’s Decretum*, 85.

and sinners. In this manner, rottenness is cut off from those who are [brought] inside, that is, unbelievers.<sup>14</sup>

The *Decretum* itself takes no notice of this combination of canons or the potential contradiction between them. In fact, only the teaching of Augustine appears in the first recension of Gratian's work; the remaining canons were added to the *Decretum* at a later stage and are not integrated into its dialectical framework.<sup>15</sup> These canons did not, however, escape the attention of those who commented on the *Decretum* (known as "decretists") or, for that matter, commentators who focused on later collections of papal decretals (known as "decretalists").

Before turning to the work of the commentators, however, one decretal deserves our attention. The *Decretales* preserves an extract from a letter sent by Pope Clement III (r. 1187-91) to the bishop of Livonia, a region on the Baltic frontier (present-day Latvia). The letter addresses the missionary activity of clerics sent to convert the local pagan population in the context of the Baltic crusade; what follows is only a portion of the material found in the *Decretales*.

[*Quam sit laudabile...*] Heeding your petitions, brother bishop, we concede by apostolic authority to you and your fellows that, when you go out for the preaching of the faith of Christ to the pagans, it is permissible for you to make use of the food which is placed before you by those unbelievers [so long as you eat it] with modesty and an act of grace, having observed the condition of times [i.e., fast days] according to canonical ordinances.<sup>16</sup>

<sup>14</sup> "Infideles non possumus Christo lucrari, si colloquium eorum uitamus et conuiuium. Unde et Dominus cum publicanis, et peccatoribus manducauit et bibit. In his uero, qui intus sunt, id est infidelibus, putredo ressecanda est." C. 23 q. 4 c. 17, citing the *Glossa ordinaria* to 1 Cor. 5.10, 12. This text is based on Augustine's *Sermon* 351.10 (PL 39:1546); a direct citation of that passage appears in the *Decretum* as C. 2 q. 1 c. 18.

<sup>15</sup> See Winroth, *The Making of Gratian's Decretum*, whose appendix lists the contents of the first recension as reflected in surviving manuscripts.

<sup>16</sup> "Tuis, frater episcopo, petitionibus annuentes, tibi tuisque sociis, quum ad praedicandam Christi fidem paganis exhibitis, apostolica auctoritate concedimus, ut vobis his cibis cum modestia et gratiarum actione, servata temporum qualitate iuxta canonicas sanctiones, uti liceat, qui vobis ab ipsis infidelibus apponuntur." X. 5.6.10. The formal source consulted by Raymond of Peñafort, editor of the *Decretales*, is the *Compilatio secunda* (2 Comp. 5.4.4), compiled by John of Wales, ca. 1210-12. The original letter, numbered 16578 in Philip Jaffé, *Regesta pontificum Romanorum*, 2 vols., reprint (1888; Graz: Akademische Druck- und Verlagsanstalt, 1956), 2:568, survives in its complete form in the *Collectio*

Both Raymond of Peñafort, editor of the *Decretales*, and John of Wales, responsible for the collection of decretals from which Raymond copied this decretal, file the text under the topical heading “On Jews, Saracens [i.e., Muslims], and Their Servants.” This location is odd, as the canon bears no direct relationship to Jews or Muslims; no Muslims lived in the Baltics, and the Jewish community of Latvia dates to the sixteenth century. No other canon listed under this heading in either of their works relates exclusively to pagans, and in theory the canon could have been placed under the heading “On the Conversion of Unbelievers.” Perhaps these editors were aware that Clement’s concession to the Livonian mission was already being understood by canon law scholars in light of the earlier prohibitions against commensality with Jews.<sup>17</sup>

### What Is Prohibited and Why? The Conversation on Commensality Begins

The canons found in the *Decretum*—and, to a lesser extent, the decretal of Clement III—constitute the building blocks of what would become an elaborate edifice of canon law regarding commensality. The foundation of that edifice was laid by Rufinus, Stephen of Tournai’s professor in Bologna. (Stephen, despite his interest in commensality as a metaphor, does not address the topic of shared meals with non-Christians in his own commentary.) Rufinus’s *Summa decretorum* (1164) was the first to address the texts on this subject in a substantive manner. Commenting on Chrysostom’s permission of eating with gentiles (*Ad mensam*), Rufinus says the following:

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*Claravallensis secunda* (c. 74), MS Troyes 944, fols. 100r b-100v a; see C. R. Cheney and Mary G. Cheney, eds., *Studies in the Collections of Twelfth-Century Decretals from the Papers of the Late Walther Holtzmann*, Monumeta iuris canonici, series B: Corpus collectionum, no. 3 (Vatican City: Biblioteca Apostolica Vaticana, 1979).

<sup>17</sup> On the heading “On Jews, Saracens, and Their Servants,” see the discussion at n. 48 below; see also Benjamin Z. Kedar, “*De iudeis et sarracenis*: On the Categorization of Muslims in Medieval Canon Law,” in *Studia in honorem eminentissimi cardinalis Alphonsi M. Stickler*, ed. R. I. Castillo Lara (Rome: Libreria Ateneo Salesiano, 1992), 207-13; reprinted in *Franks in the Levant, 11th to 14th centuries* (Brookfield, VT: Variorum, 1993). Kedar, on p. 210, in contrast, regards the inclusion of *Quam sit laudabile* in this section of the *Decretales* as evidence that the title’s heading actually refers to Jews and pagans. The title “On the Conversion of Unbelievers” is 2 Comp. 3.20, X. 3.33.

*Omnes* below indicates something contrary to this, but that prohibition is made specifically regarding Jews, because through the abuse of Scripture they subvert faith in Christ in several ways and condemn the food of Christians. Gentiles, however, are not like this, and therefore we are not prohibited from going to their table. Likewise, *Catechumini* [Burchard, *Decretum*, 4.95] assigns a contrary law, for there it is said on the authority of the Council of Mainz that “catechumens ought not eat with those who have been baptized nor give them a kiss [of peace], all the more so a gentile,” that is, a gentile ought not eat with those who have been baptized. But there the matter in question involves neophytes who, because they have recently received baptism into faith in Christ, are prohibited from eating regularly with gentiles, so that they may not easily be drawn back from faith through conversation or association with them.<sup>18</sup>

Rufinus, recognizing that Chrysostom’s encouragement of eating with non-Christians contrasts sharply with the prohibition of commensality articulated at the Council of Agde, distinguishes the former from the latter by asserting that the prohibition only applies to Jews. (Rufinus, in keeping with the convention of medieval Latin authors, employs the term “gentile” as a reference specifically to non-Christian non-Jews.) The reason for such a prohibition, he explains, is that Jews reject Christian food and undermine Christian faith through their false interpretations of the Bible, reflected in their continued literal adherence to its dietary laws. Church

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<sup>18</sup> “Ad mensam quippe paganorum. Huic signatur contrarium infra XXVIII. Cs. q. I. cap. Omnes (14.): sed specialiter de Iudeis facta est illa prohibitio, ideo quia ipsi per abusionem scripture in nonnullis fidem Christi subvertunt et christianorum cibos contempnunt; gentiles autem non sic, et propterea ad eorum mensam non prohibemur accedere. Item assignant aliud contrarium in Burc. lib. IV. cap. Catechumini; ibi namque dicitur ex concilio Magotiensi quod catechumini non debent cum baptizatis comedere nec eis osculum dare: quanto magis gentilis, scil. non debet cum baptizatis manducare. Sed ibi agitur de neophitis, qui, cum noviter baptizati fidem Christi suscepissent, prohibebantur convivari statim cum gentilibus, ne eorum colloquio vel conversatione facile retraherentur a fide.” Rufinus, *Summa decretorum*, ed. Heinrich Singer, reprint (1902; Aalen: Scientia; Paderborn: Ferdinand Schöningh, 1963), 317 (on C. 11 q. 3 c. 24). The first portion of this comment is also found in Rufinus’s gloss to *Omnes*, absent from Singer’s edition but printed in Rudolf Weigand, *Die Glossen zum Dekret Gratians: Studien zu den frühen Glossen und Glossenkompositionen*, 2 vols., *Studia Gratiana*, nos. 25–26 (Rome: n.p., 1991), 25:439.

Rufinus, like other medieval authorities and the first printed edition of Burchard of Worms’s *Decretorum Libri XX*, reprint (1548; Aalen: Scientia, 1992), 90v, attributes *Catechumini* to a council that met in Mainz. Hartmut Hoffman and Rudolf Pokorny, *Das Dekret des Bischofs Burchard von Worms: Textstufen, frühe Verbreitung, Vorlagen*, *Monumenta Germaniae historica*, Hilfsmittel, no. 12 (Munich: Monumenta Germaniae Historica, 1991), 202, however, identify the source of this canon as the *Paenitentiale Theodori*.

Fathers, after all, had long since established that biblical dietary laws are purely of allegorical value and that observance of such laws was rendered obsolete with the coming of Christ.<sup>19</sup> As the food practices of other non-Christians are not similarly threatening to or contemptuous of Christian beliefs and behaviors, there is nothing wrong with sharing meals with gentiles. Rufinus also distinguishes between Chrysostom's permission of commensality and a canon found in the early eleventh-century *Decretum* by Burchard of Worms that prohibits shared meals between Christians and catechumens, those who have expressed interest in converting but are not yet baptized. The latter canon, Rufinus explains, applies solely to newly baptized Christians. Established Christians have nothing to fear from shared meals with gentiles.

Elements of Rufinus's remarks on this canon, such as his distinction between *Ad mensam* and *Catechumini*, became commonplaces in subsequent commentaries.<sup>20</sup> Others sparked a diversity of opinions. Chief among these is Rufinus's answer to the question, Why are shared meals with Jews prohibited even though commensality with pagans is permitted? Several commentators echo Rufinus's explanation, while others offer their own suggestions.<sup>21</sup>

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<sup>19</sup> So, for example, Augustine: "Certain things were forbidden to the Jews and termed unclean, but this had figurative significance. After the era of figures the light itself came to us and the shadows were dispelled. We are no longer held back by the letter but brought to life in the spirit. The yoke of legal observance that was laid upon the Jews is not imposed on Christians, for the Lord said, 'My yoke is kindly and my burden light' (Matthew 11:30)." *Expositions of the Psalms 121-150*, trans. Maria Boulding, Works of Saint Augustine, vol. 3, no. 20 (Hyde Park, NY: New City Press, 2004), 125.6 (on Ps. 126 in the Massoretic text), p. 74.

<sup>20</sup> Citation of *Catechumini* appears in the *Summa Lipsiensis*, Huguccio's *Summa*, the gloss of Laurentius Hispanus, the *Glossa Palatina*, and *Ecce vicit leo*, all on C. 11 q. 3 c. 24, as well as in the *Summa Coloniensis*, 7.66. It seems likely that citation of this canon in this context indicates reliance on Rufinus's work and therefore can be used to identify chains of influence within the canon law commentarial literature regarding foreign food. It is more likely, however, that later canonists became familiar with Rufinus's work through the *Summa* of John of Faenza, or from subsequent works based on that *Summa*, than from direct access to Rufinus's original; see Hartmann and Pennington, *Bio-bibliographical Guide*, s.v. "Johannes Faventinus."

<sup>21</sup> The author of the pre-Johannine gloss on C. 28 q. 1 c. 14 (preserved in MS Innsbruck UB 90, fol. 205v a; and MS Reims BM 676, fol. 177r b) cites Rufinus's explanation nearly verbatim. Bernard of Pavia, cited below, modifies Rufinus's rationale slightly; Bernard's version is accepted by many subsequent commentators.

Simon of Bisignano explains in his *Summa* (ca. 1177-79) that the prohibition of Jewish food stems from “curses and hatred for Jewish superstitions” felt by Christians, in this case specifically Christian hatred for superstitions associated with dietary impurity. Although Simon understands the prohibition against unleavened bread found in *Nullus* to refer to all Jewish food, he explicitly rejects the notion that Jewish, or any other, food is actually impure.<sup>22</sup> The *Tractatus magister* (ca. 1181-85) does not stress hatred toward Jews, but rather hatred felt by Jews: “The only difference between Jews and pagans is the particular hatred for the faith and hard-heartedness [of the Jews].”<sup>23</sup> These traits, after all, account for the Jews’ distinctive practice of stubbornly adhering to the biblical norms of dietary impurity, emphasized in *Omnes*. In a separate comment, the *Tractatus magister* identifies two further differences between Jews and pagans that justify Christian refusal to eat with the former: the Jews possess the Law and, therefore, suffer under it while pagans are free from the obligations of the Law, and the Jews are uniquely responsible for the crucifixion.<sup>24</sup> The *Summa Lipsiensis* (1186) asserts that shared meals with gentiles are more likely to result in converts to Christianity than commensality with Jews for two reasons: Jewish abuse of Scripture and refusal of Christian food makes Christians seem inferior when eating with them, and Jews are more enticing to Christians than are pagans.<sup>25</sup>

<sup>22</sup> “nullus usque azima cuius nomine quilibet cibus intellegitur. fit autem hec prohibitio non propter cibi immundiciam sed in detestationem et odium iudaice superstitionis.” Simon of Bisignano, *Summa*, C. 28 q. 1 c. 13, MS Bamberg Stadtsb. Can. 38, p. 86 a; the continuation of this comment appears below, n. 26.

<sup>23</sup> “omnes [usque] ab illis iudicentur immunda [?], non est differentia inter iudeos et paganos sed in speciale odio fidei et obstinatione cordis inde et speciali modo erat pro eis ecclesie.” *Tractatus magister*, C. 28 q. 1 c. 14, MS Paris BN lat. 15994, fol. 77v b. The commentator proceeds to note that the canon’s concern regarding inappropriate feelings of inferiority is similar to that expressed elsewhere in the *Decretum*, where C. 2 q. 7 c. 6 prohibits clerics and laity from lodging formal accusations against one another. This comment is echoed and expanded by several subsequent commentators, including Huguccio and Alanus Anglicanus.

<sup>24</sup> “ad mensam permittamus. XXVIII. q. i. omnes contra. sed aliud est de iudeis qui legem habent unde sunt afflicti, aliud de paganis qui lege carent et sunt simplices. illi etiam maiori peccato tenentur quam isti unde nec pro eis flectimus ienua in die parasceve.” *Tractatus magister*, C. 11 q. 3 c. 24, MS Paris BN lat. 15994, fol. 52v a.

<sup>25</sup> “ad mensam usque permittamus. signatur contra infra XXVIII. q. i. omnes et nullus. sed isti de paganis isti de iudeis. conceditur autem ire ad mensam paganorum et non

Simon of Bisignano adds a new question to the growing conversation about commensality with Jews: "Why is it that association with Jews through conversation is not forbidden to us just as [association] through shared meals is prohibited?" He proceeds to offer two complementary answers. Commensality results in more intimate relationships than conversation and is therefore more dangerous, yet conversation with Jews remains necessary as a means of winning them over to Christ; on the importance of the latter, Simon cites *Infideles*.<sup>26</sup> Simon's distinction between commensality and conversation becomes quite popular in the commentarial literature. His concern about the danger of commensality receives its classic articulation in the words of Laurentius Hispanus, who taught law in Bologna in the early thirteenth century. "The reason for the law is that there is greater intimacy in eating than in talking, and it is easier for someone to be deceived in the presence of a sumptuous meal"; Laurentius, interestingly, supports this assertion by citing the poetry of Horace.<sup>27</sup>

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iudeorum quia citius per predicationem possumus illos quam istos reuocare. uel quia uidit per abusionem scripture fidem christi subuertunt et a cibis nostris abstinet uideremur aut inferiores si nos eorum cibos sumeremus. uel quia delectabiliores sunt iudei quam pagani." *Summa Lipsiensis*, C. 11 q. 3 c. 24, MS Rouen 743, fol. 73v a. This comment continues, addressing the relationship among *Ad mensam*, *Catechumini*, and various texts of Roman law. Similar comments appear in conjunction with *Infideles* and *Nullus*.

<sup>26</sup> "sed quare cum in colloquio non sit nobis interdicta iudeorum communio cum in conuiuio prohibetur. sed forte huius consideratio causam dedit eadem quia in conuiuio maior quam in colloquio solet familiaritas contrahi. uel ideo ab infidelium colloquio fidelis prohiberi non debuit quia aliter non possumus eum lucrifacere, ut supra XXIII. q. iiiii. infideles." Simon of Bisignano, *Summa*, C. 28 q. 1 c. 13, MS Bamberg Stadtsb. Can. 38, p. 86 a; this is a continuation of the comment whose beginning appears above, n. 22.

<sup>27</sup> "sed quare loquimur cum eis cum non commedamus hic redditur ratio uel quia maior familiaritas est inter cibo summendo quam in colloquio et facilius quis decipitur inter epulas, unde oratius quid non ebrietas designat operta [recludit] spes iubet contra ratas [Horace, *Epistles* 1.5.16-17]." *Glossa Palatina*, C. 28 q. 1 c. 14, MS Vatican BAV Reg. lat. 977, fol. 227r a; the beginning of the gloss's comment on *Omnes* appears below, n. 43. This comment, in a slightly different and partially illegible form, is attributed to Laurentius Hispanus in MS Paris BN lat. 15393, fol. 224r b (on *Nullus*). Scholars debate whether the *Glossa Palatina* is a commentary by Laurentius or merely one that relies heavily on Laurentius' work; see Stephan Kuttner, *Repertorium der Kanonistik (1140-1234)* (Vatican City: Biblioteca Apostolica Vaticana, 1937): 83-88; Alfons M. Stickler, "Il decretista Laurentius Hispanus," *Studia Gratiana*, 9 (1966): 461-549; Kenneth Pennington, "Laurentius Hispanus," in *Dictionary of the Middle Ages*, 13 vols. (New York, NY: Charles Scribner's Sons, 1982-89), 7: 385-86.

Huguccio, another canon law professor at Bologna and one of the most influential decretists, builds on the work of Simon of Bisignano.<sup>28</sup> In his *Summa decretorum* (ca. 1188-90), Huguccio seconds Simon's argument that the prohibition of unleavened bread found in *Nullus* is not limited to this specific foodstuff and is not based on any notion that such food is impure. Rather, the rationale for this prohibition is hatred for Jewish superstition and concern lest Christians seem to venerate Jewish rites even as Jews spurn Christian food. Huguccio, therefore, distinguishes between the act of eating with Jews and the act of purchasing food from Jews. He permits the latter, both because commercial interaction poses less risk of undue familiarity than commensality and because Scripture teaches that "for the pure, all things are pure" (Titus 1:15). Huguccio also permits commensality with Jews in cases of extreme necessity. He regards such meals as legally equivalent to eating food offered to idols, as both imply respect for abhorrent beliefs, and acknowledges Augustine's assertion that it is preferable to die of hunger than to eat sacrificial food. Nevertheless, Huguccio circumvents this teaching by means of a maxim found in an unrelated canon in the *Decretum*: "necessity has no law." As a general rule, however, commensality with Jews is prohibited; Huguccio, like Simon, explains that conversation with Jews remains permitted in order to win them over to Christianity.<sup>29</sup>

<sup>28</sup> On Huguccio, see Wolfgang P. Müller, *Huguccio: The Life, Works and Thought of a Twelfth-Century Jurist* (Washington, DC: Catholic University of America Press, 1994).

<sup>29</sup> "aut laicus etc. azima. quidem dicunt quod tamen azima prohibentur quia in eis est superstitio et causa certis temporibus comedunt. ego autem credo quod hoc nomine quilibet cibus eorum intelligitur, argumentum infra proximum capitulum. et fuit hoc prohibitum non propter cibi immunditiam sed in detestatione et odium iudaice superstitionis scilicet ne uideamus eorum sacrum uenerari uel potius ea est ratio que in sequenti capitulo assignatur: ipsi enim nostros cibos discernunt et uitant. ideo et nos ab eorum cibis abstinere debemus. quid si quis fame pereat, nonne licet ei comedere azima. et uidetur quod nec quia satius est fame mori etc. ut XXXII. q. iiii. sicut satius [c. 8]. item hoc prohibitum est nec aliquis inuenitur casus exceptus ergo non licet tibi excipe sed cum necessitas legem non habet ut de consecratione distinctio i. sicut [c. 11]. credo quod instante necessitate ut aliter euadendi aditus non pateat licite possumus uti cibus eorum. nam et ab excommunicatis in necessitate licite possumus accipere cibaria ut XI. q. iii. quoniam multos [c. 103]. similiter intelligo sequentia esse obseruanda nisi cum necessitas inueuetabilis inget. sed nunquid non possumus emere azima uel alios cibos iudeorum et comedere? dico quod sic sine peccato enim possumus uinum uel azima uel alia cibaria eorum emere uel dono uel alio contractu accipere et eis uti et comedere. omnia enim munda mundis ut distinctio lxxxii. proposuisti [c. 2, citing Titus 1:15]. et quod deus fecit tunc dixeris commune non ergo commercium



Huguccio's allowance for cases of necessity was widely accepted by subsequent commentators, but his blanket permission of purchasing food from Jews was controversial. The *Ius naturale* (first recension 1192) by Alanus Anglicus limits this permission to cases of necessity; the second recension of that work (1205) further clarifies that after the crisis has passed, such purchases are no longer permitted.<sup>30</sup> The *Glossa Palatina*, however, allows Christians to purchase food from Jews so long as they prepare it themselves.<sup>31</sup> The *Glossa ordinaria's* comment on *Nullus*, apparently composed by Bartholomew of Brescia, quotes the language of the *Glossa Palatina* and supports its conclusion by citing a passage in the

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talium inhibitum est uel commestio sed familiaritas et communio in his prohibetur scilicet comedere de cibis eorum cum eis et coram eis nisi necessitas instet. ergo licite quis emit talia ab illis et commedit illis, non uiderentibus. idem dico de aliis rebus si enim habent panes uel alias res uenales licite quis emit ea ab illis et utitur eis. sed quare prohibemur a coniugio iudeorum et non gentilium ut XI. q. iii. ad mensam. quia ut dictum est illi discernunt cibos nostros et uitantur sed non gentiles. sed nonne multi gentiles similiter discernunt. dico quod ab illis similiter est abstinendum sicut et a iudeis." Huguccio, *Summa decretorum*, C. 28 q. 1 c. 13, MS Munich Staatsb. 10247, fol. 238v a; cf. the transcription by Czerwinski, "Teachings of the Canonists", 268-9 n. 56, based on a different manuscript with slightly different language. On the final words of this comment, see below at n. 37.

The passage of Augustine to which Huguccio refers (incorporated into the *Decretum* as C. 32 q. 4 c. 8) is taken from Augustine's *De bono coniugali* 16.18; see also Augustine, *Letter* 47 and *Sermon* 149.3. Huguccio himself equates the consumption of Jewish unleavened bread with the consumption of meat offered to idols in his comment on D. 30 c. 13, a canon prohibiting the latter: "licet causa huius constitutionis fuit ne si comederemus idolotita uideremur comprobare idolatriam non tamen diu tenemur querere si nescimus et si scimus comedere non debemus ut infra XXVI. q. ii. si de area [c. 10]. licet eadem de causa prohibetur ab azimis iudeorum scilicet ne uideamur approbare ritum iudeorum, ut. XXVIII. q. i. nullus, omnes." This transcription, of MS Munich Staatsb. 10247, fol. 33r b, is by Czerwinski, "Teachings of the Canonists", 267 n. 54.

<sup>30</sup> The first recension of *Ius naturale*, as preserved in MS Paris BN lat. 3909, offers the following comment on *Nullus*: "idem est de aliis eorum cibis. argumentum infra capitulum proximum. in necessitate potest quis ab eis cibum accipere, ut infra XI. q. iii. quoniam multos [c. 103]." C. 28 q. 1 c. 13, fol. 43v a. The second recension, as preserved in MS Paris BN lat. 15393, fol. 224r b, appends to that statement, "et etiam propter necessitatem potest ab eis panem et unum et alia, cum eis non commedat." Cf. the transcriptions in Czerwinski, "Teachings of the Canonists," 272 n. 63; Czerwinski's discussion of these texts, however, misrepresents the second recension, apparently because he fails to decipher the clause "cum eis non commedat."

<sup>31</sup> "nullus percipiat. emere tamen ab eis potest alius et post preparat sibi." *Glossa Palatina*, C. 28 q. 1 c. 13. This transcription is by Czerwinski, "Teachings of the Canonists", 272 n. 64, checked against MS Vatican BAV Reg. lat. 977, fol. 227r a.

Justinianic *Code* that allows Jews to set their own prices for the merchandise they sell; Bartholomew understands this as proof that Christians may purchase such goods.<sup>32</sup>

### What about Muslims? The Influence of Huguccio

All of the earliest canon law commentators permit long-time Christians to share meals with all non-Jewish non-Christians on the authority of *Ad mensam* and *Infideles*, as they understand the canons prohibiting commensality (*Omnes* and *Nullus*) to apply solely to Jews.<sup>33</sup> There is every reason to suspect that these commentators include Muslims (referred to as “Saracens” or simply “unbelievers”) within this permission of pagan food. Canonists, working within a paradigm that divided humanity into orthodox Christians, heretical Christians, Jews, and pagans, consistently placed Muslims in the last of these categories.<sup>34</sup> Thus, it is unsurprising that the title of the discussion of *Ad mensam* in the *Summa Coloniensis* (1169), whose content addresses the ways in which relations with excommunicates ought to differ from those with “pagans”, reads: “The way in which the

<sup>32</sup> “emere tamen potest ab eis aliquis et post praeparet, argumentum C. de iudaeis. nemo [Code 1.9.9].” Bartholomew of Brescia, *Glossa ordinaria*, C. 28 q. 1 c. 13, s.v. *percipiat*, as printed in *Decretum Gratiani emendatum ... una cum glossis...* (Venice: n.p., 1604). Manuscripts of the first recension of the *Glossa ordinaria*, by Johannes Teutonicus, lack a comment on this canon. It is noteworthy, however, that MS Pommersfelden GSB 142, fol. 185r b, which Kuttner, *Repertorium*, 19-20, 105, identifies as containing a copy of Bartholomew’s *Glossa*, also offers no comment on *Nullus*. For a text and translation of the civil text cited here, see Amnon Linder, ed., *The Jews in Roman Imperial Legislation* (Detroit: Wayne State University Press; Jerusalem: Israel Academy of Sciences and Humanities, 1987), 194-5.

<sup>33</sup> This consensus is summed up by Johannes Teutonicus: “similiter 11. quaestio. 3. ad mensam. argumentur contraria 28. quaestio. 1. omnes et capitula nullus. solutio: his loquitur de paganis, ibi specialiter de Iudaeis.” *Glossa ordinaria*, C. 23 q. 4 c. 17, s.v. *et conuiuium*. Johannes himself, as we shall see below, appears to have rejected this consensus.

<sup>34</sup> See Kedar, “De iudeis et sarracenis.” Bernard of Pavia asserted that Saracens, “who do not accept either the Old or New Testament,” ought to be called Hagarenes because of their descent from Abraham’s maidservant but are in fact named after Abraham’s wife, Sarah: “Sarraceni vero dicuntur, qui nec vetus nec novum recipiunt testamentum, qui non se ab Agar, Abrahae ancilla, de qua eorum fuit origo, Agarenos vocari voluerunt, sed potius a Sarra, eiusdem uxore et libera, se Sarracenos appellaverunt.” Bernard of Pavia, *Summa decretalium*, ed. Ernst Adolph Theodor Laspeyres, reprint (1860; Graz: Akademische Druck- und Verlagsanstalt, 1956), 210. This definition of Saracens is repeated by Raymond of Peñafort, Geoffrey of Trani, and Hostiensis (all cited below), among other canonists.

condition of excommunicates ought to be worse than that of Saracens.”<sup>35</sup> Similarly, Bernard of Pavia’s *Summa decretalium* (ca. 1191-98) uses the terms “pagan” and “Saracen” interchangeably and presents *Ad mensam*’s permission of commensality with pagans as applying to Saracens.<sup>36</sup>

Canonical attitudes toward commensality with Muslims changed near the close of the 1180s with the *Summa decretorum* of Huguccio, though Bernard, writing in the 1190s, displays no familiarity with Huguccio’s statements on this subject. Huguccio’s commentary on *Ad mensam* begins with information that had already become standard in the canonical repertoire: John Chrysostom permits both conversation and commensality with unbelievers, in contrast with excommunicates and to the exclusion of Jews, for a variety of reasons Huguccio does not bother to enumerate. After reprising the familiar issue of neophytes, Huguccio adds a new layer to the canon law discourse by introducing a crucial piece of data.

With respect to which pagans does [Chrysostom] speak? Nearly all Saracens at the present judaize because they are circumcised and distinguish among foods in accordance with Jewish practices. I say, accordingly, that one ought to abstain from the food of such pagans—that is, those who distinguish among foods—just as from the food of Jews because the same reason for the prohibition, according to *Omnes*, applies to both these and these. This canon, however, speaks of those pagans who do not distinguish among foods, whether they are circumcised or not.<sup>37</sup>

<sup>35</sup> “In quo excommunicatorum quam Saracenorum deterior condicio sit. Excommunicatio, ut diximus, grauiter metuenda est quia ab ecclesia prorsus extorrem facit, eritque in die illo excommunicatorum quam paganorum deterior condicio...” *Summa Coloniensis* 7.66, in Gerard Fransen and Stephan Kuttner, eds., *Summa “Elegantius in iure diuino” seu Coloniensis*, 4 vols, Monumenta iuris canonici, series A: Corpus glossatorum, no. 1 (New York: Fordham University Press; Vatican City: Biblioteca Apostolica Vaticana, 1969-90), 2:189.

<sup>36</sup> See below, n. 49; see also Kedar, “De iudeis et sarracenis,” 209. Bernard’s definition of Saracens is cited in n. 34 above.

<sup>37</sup> “ad mensam. auctoritate apostoli ostendat iohannes quod cum paganis licite comedimus et loquimur, sed non cum excommunicatis. paganorum. infra XXVIII. q. i. nullus contra omnes contra. sed hic permittuntur comedere cum paganis, ibi inhiemur comedere cum iudeis diuersitatis rationem ibi diligenter inuenies assignatam. item B. liber IIII. cathecumini [Burchard, *Decretum* 4.95] contra. ibi enim dicitur quod baptizati non debent comedere cum cathecumini. multo ergo minus cum aliis gentilibus. sed ibi agitur de neoffitis cum noviter essent baptizati prohibebantur statim comedere cum gentilibus nec eorum colloquio et conuersatione facile retraherentur a fide. sed de quibus paganis dicit? fere omnes sarraceni nunc iudaizant, quia circumciduntur et more iudaico cibos discernunt. dico ergo quod a talibus paganis scilicet qui discernunt cibos, ita est abstinendum

Huguccio is aware of the fact that Muslims are circumcised and observe “Jewish” dietary practices. He concludes from this that nowadays the “pagan” Saracens “judaize.” The charge of “judaizing” rose to prominence as Church Fathers set about establishing a firm distinction between Christianity and Judaism, and it was regularly hurled against heretics and others whose behavior allegedly blurred the line separating these traditions.<sup>38</sup> The use of this term with reference to non-Christians is anomalous, but Huguccio’s message is clear: the food-related behavior of Saracens places them in the category “Jew” rather than “pagan”, and Saracens are therefore subject to the laws that apply to the former category of non-Christians.

Huguccio, however, cannot distinguish “Saracens” from “pagans”; for him, the terms are synonymous or at least overlapping. This leads him to collapse the practical distinction between Jews and pagans entirely. Thus, after reviewing earlier arguments explaining why it is worse for a Christian to be enslaved to a Jew than to a pagan, he states: “Today, however, one can find nothing teaching that servitude to pagans is different from servitude to Jews, for nearly all contemporary pagans judaize: they are circumcised, they distinguish among foods, and they imitate other Jewish rituals. There ought not be any legal difference between them.”<sup>39</sup>

Without a distinction between Jews and pagans, Huguccio needs to offer a different explanation for why Chrysostom and Augustine permit shared meals with foreigners even though such meals are apparently prohibited by the Council of Agde in *Omnes*. Huguccio asserts that Christians are free to share food with those who do not observe food restrictions, but not with someone—Jew or “judaizing pagan”—who distinguishes among

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quo ad cibos, sicut a iudeis quia eadem est ratio prohibitionis ibi et ibi, ut XXVIII. q. i. omnes. sed hic dicit de illis paganis qui non discernunt cibos siue circumciduntur siue non.” Huguccio, *Summa decretorum*, on C. 11 q. 3 c. 24, MS Munich Staatsb. 10247, fol. 156r b; I also consulted MS Lons le Saunier Arch. 16, fols. 216r a-b.

<sup>38</sup> On this term, see Shaye J. D. Cohen, *The Beginnings of Jewishness: Boundaries, Varieties, Uncertainties* (Berkeley and Los Angeles: University of California Press, 1999), 175-97; Róbert Dán, “‘Judaizare’—The Career of a Term,” in *Antitrinitarianism in the Second Half of the 16th Century*, ed. Róbert Dán and Antal Pirnát (Budapest: Akadémiai Kiadó; Leiden: Brill, 1982), 25-34.

<sup>39</sup> “Hodie tamen non uidetur aliud esse dicendum in seruis paganorum quam iudeorum, quia fere omnes pagani hodie iudaizant, circumciduntur, discerunt cibos et alios ritus iudeorum imitantur. Lex enim non facit differentiam inter eos.” Huguccio, *Summa*, D. 54 c. 13; this transcription is by Walter Pakter, *Medieval Canon Law and the Jews* (Ebelsbach: Rolf Gremer, 1988), 120 n. 109.

food. This revision of the classification of permitted and prohibited foreign food leads Huguccio to conclude that a Christian may eat with anyone, including a Jew, who is willing to eat all Christian food without restriction. Thus, in his explanation of *Omnes*, Huguccio remarks, "I believe this applies when they desire to distinguish among foodstuffs when eating with us. If anyone does not desire to distinguish and would eat our food without distinction, I believe that in such a case it would be possible for us to invite him to have food with us. Moreover, I believe that if the Jews were to eat our food without distinction we would be able to eat their food. With the cessation of the cause, that which was established on account of the cause ought to cease."<sup>40</sup> The prohibition of foreign food is purely retaliatory in nature: if foreigners will not eat all of our food, we will not eat any of their food.

Huguccio's remarks about the dietary practices of Saracens had a substantial impact on subsequent discussions regarding commensality with foreigners, but not all commentators agreed with the way he interprets the

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<sup>40</sup> Huguccio proceeds to compare the lack of reciprocity inherent in Christian commensality with Jews who distinguish among foodstuffs to other forms of interaction prohibited in the *Decretum* because of their intrinsically imbalanced nature: plaintiff-defendant interaction when one party is a cleric and the other a layperson, testimony of Christians against Jews or Jews against Christians, and Christian observance of holy days with heretics or gentiles, "omnes usque nec eos ad conuiuia accipiat. hoc intelligo si uolunt discernere cibos comedendo nobiscum. quid si nolunt discernere sed indifferenter uolunt uti cibus nostris, credo quod tunc licite possumus eos inuitare et habere nobiscum in commestione. immo plus credo quod si iudei nostris indifferenter cibus uterentur nos eorum cibus uti possemus, cessante enim causa, cessare debet id quod propter causam statutum est. quia cum apud hic subditur ratio quare non debemus comedere cibos iudeorum simile de accusatione laicorum contra clericos non recipienda cum accusatione clericorum laici contra se non recipiant, ut iii. q. v. accusationes [c. 7] et ii. q. vii. sicut [c. 6]. simile statutum est de testibus christianis recipiendis contra iudeos, cum ipsi iudei testes iudeos producant contra christianos, ne in hec christiani uiuantur esse inferiores eis, ut infra de consecratione iv. iudei [c. 93]. similiter statutum est ne catholici ieiunient die domenico, uel quinta feria, ut inter eorum et hereticorum siue gentilium ieiunia discretio habitur ut de consecratione distinctio iii. ieiunium [c. 14]." Huguccio, *Summa*, on C. 28 q. 1 c. 14, MS Munich Staatsb. 10247, fol. 238v b; I prepared this transcription with the aid of Czerwinski's transcription of MS Vat. lat. 2280, fol. 268r a (p. 269 n. 57), and MS Lons-le-Saunier Arch. 16, fol. 344r a.

On the basis of statements like these, Pakter, *Medieval Canon Law and the Jews*, 116, describes Huguccio as "one of the most sympathetic of all medieval authors on the Jews." Elsewhere (p. 135): "While Huguccio implied that Jews were inferior before God, he did not advocate inferiority as a social program. He never claimed Jews were personally inferior, or that it was demeaning or inappropriate to work for them."

implications of this new information. The author of *Ecce vicit leo* (second recension 1210), for example, offers a different interpretation of its significance. "It is said that the main point of the prohibition is that Jews distinguish among foods. But according to this we ought not eat with pagans! Rather, it is better to say that the reason for this prohibition is that Jews have the Law and by means of it they are able to more easily lead back the hearts of the simple to their dread [rites] if they share meals with them."<sup>41</sup> Rather than redefining the line distinguishing permitted and prohibited table partners, *Ecce vicit leo* identifies a different rationale for the prohibition of commensality with Jews alone. The author of this commentary reaffirms the traditional notion that Jews are a greater threat to uneducated Christians than other non-Christians, Muslims included, because of the fact that they revere the Pentateuch and observe its laws. He also rejects Huguccio's suggestion that commensality with Jews would be permitted if Jews consented to eat all Christian food. "We believe that association with them is more distasteful than with gentiles. Since the cause has not ceased, the law ought not cease."<sup>42</sup> Whereas Huguccio was willing to let changing reality alter the terrain of Christian categories of religious outsiders, *Ecce vicit leo* endeavors to preserve the established order.

Ultimately, however, Huguccio's position regarding the food of "pagans" won out among commentators. In the words of the *Glossa Palatina*, the prohibition against commensality with Jews expressed in *Omnes* now applies to "gentiles" because "today, both these and those distinguish among foods. Even though [gentiles] are not included in the words of this decree, they are nevertheless encompassed in its intent"; the proof for this

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<sup>41</sup> "ad mensam paganorum permittimus. XXVIII. q. i. omnes et nullus contra. uidetur quod azimos iudeorum non debemus comedere. B. liber iiiii. cathecumini [Burchard, *Decretum* 4.95] contra. uidetur quod cathecumenis non debemus comedere. ratio prohibitionis est, ut dicunt, quod discernent inter cibos, sed secundum hoc non paganis debemus comedere, immo melius est, ut dicatur, hanc esse causam prohibitionis quia iudei habent legem et ex ea possunt de facili corda simplicium ad horrorem suum reducere si cum eis conuiuaretur." *Ecce vicit leo*, C. 11 q. 3 c. 24, MS Paris BN NAL 1576, fol. 190v a; cf. Czerwinski, "Teachings of the Canonists," 274 n. 70, who transcribes the same manuscript.

<sup>42</sup> "hic uidetur quod si uellent comedere nostros cibos quod nos similiter cibos eorum ar. I. q. i. quod per necessitatem [c. 41, quod pro necessitatem in Friedberg's ed.] et hoc concedit quidam. nos credimus quia in agere est odiosa eorum societas quam gentilium non cessante causa non cessat constitutio." *Ecce vicit leo*, C. 28 q. 1 c. 14, s.v. *inferiores esse inciperiat*, MS Paris BN NAL 1576, fol. 269v a; transcription by Czerwinski, "Teachings of the Canonists," 275 n. 71, checked against the original.

assertion is a citation from the *Digest*, a centerpiece of Roman civil law.<sup>43</sup> Johannes Teutonicus, who wrote the first recension of the *Glossa ordinaria*, repeats the words of the *Glossa Palatina* while adding both a second citation from the *Digest* and another drawn from within the *Decretum*.<sup>44</sup> Both texts in the *Digest* demonstrate that one may extend the application of a law originally promulgated with regard to a specific group to others who bear the salient characteristics of that group.<sup>45</sup> The canon law source Johannes cites in this context sheds further light on the newfound prohibition against commensality with pagans. Johannes draws attention to the *Decretum*'s extract from Augustine's *Sermon* 351, the basis of *Infideles*, according

<sup>43</sup> "omnes iudeorum. similiter et gentilium et cetera, cum et ipsi hodie iam cibos discernant. licet enim non contineantur uerbis edicti contineantur tamen sententia, ff. de petitione hereditatis. item ueniunt. § senatus [*Digest* 5.3.20.17-21]." *Glossa Palatina*, C. 28 q. 1 c. 14, MS Vatican BAV Reg. lat. 977, fol. 227r a; this comment continues with Laurentius's remark about the dangers of commensality relative to conversation, cited at n. 27 above. Later commentators ascribe the entire gloss to Laurentius.

<sup>44</sup> "similiter et gentilium, cum et ipsi hodie etiam cibos discernant. licet enim non contineantur verbis edicti, ut 11. q. 3. ad mensam, continentur tamen sententia, ut ff. de petitione haereditates, item ueniunt. § ait senatus [*Digest* 5.3.20.17-21], et 2. q. 1. multi [c. 18], et ff. si quadrupes pauperiem fecisse dicatur, lex Paulus [*Digest* 9.1.4]. sed quare loquimur cum eis, cum nec comedamus cum eis? sed de hoc redditur ratio, quia maior familiaritas est in cibo sumendo, quam in colloquio, et facilius quis decipitur inter epulas, ut 22. q. 4. unusquisque [c. 8]." Johannes Teutonicus, *Glossa ordinaria*, C. 28 q. 1 c. 14, s.v. *iudaeorum*. The conclusion of this gloss reprises the words of Laurentius Hispanus regarding the relative dangers of commensality and conversation, including a proof-text omitted from the manuscript of the *Glossa Palatina* which I consulted but found in MS Paris BN lat 15393, fol. 224r b; Johannes neglects to repeat Laurentius's citation of Horace (see n. 27 above).

All citations of Johannes Teutonicus's comments are transcribed and translated from *Decretum Gratiani emendatum*, a printed edition of the *Glossa ordinaria* in the rescension of Bartholomew of Brescia. These texts are identical to those found in a manuscript of Johannes's original version (MS Beaune BM 5, fols. 139v a, 199r a, 241r a-b).

<sup>45</sup> In *Digest* 5.3.20.17-21, cited in the *Glossa Palatina*, the law regarding a possessor in good faith is extended to the case of a possessor in bad faith. *Digest* 9.1.4, cited only in the *Glossa ordinaria*, applies a rule regarding quadrupeds that have caused damage without violating the law to other types of animals that have acted similarly. See Theodor Mommsen and Paul Krueger, eds., *The Digest of Justinian*, trans. Alan Watson, 4 vols. (Philadelphia: University of Pennsylvania Press, 1985), 1:188-9, 275-6. The appeal of these glossators to sources from Roman law to support arguments regarding canon law reflects the tremendous increase in the sophistication of canon law scholarship over the seventy-five or so years since Gratian first published his work; see below, n. 54.

to which those who have been convicted of a charge or who have confessed it freely are subject to exclusion from the meals of Christians. Evidently, the “crime” of contemporary gentiles is that they judaize by distinguishing among foods.

Huguccio’s understanding of the canonical restrictions on foreign food shaped the course of subsequent interpretation of these texts, but it was Johannes Teutonicus who composed the words that most frequently accompanied the text of Gratian’s *Decretum* in the classical and postclassical periods of canon law. Johannes wrote his *Glossa ordinaria* shortly after the Fourth Lateran Council of 1215; this work was later revised by Bartholomew of Brescia, but for the canons under discussion here, Bartholomew retained Johannes’s original comments.<sup>46</sup> The remarkable transition in canon law regarding commensality effected by Huguccio can be seen most clearly in Johannes Teutonicus’ gloss to *Ad mensam*: “We permit [eating with them]: This is in order to win them over [for Christ]; see *Infideles*. With Jews, however, we are not able to eat, according to *Omnes*. But today it is not permitted to eat with pagans because they distinguish among foodstuffs like the Jews.”<sup>47</sup> The purpose of commensality with foreigners is to convert them, a point implied in the *Summa Lipsiensis* and in Clement III’s letter to the bishop of Livonia. Sharing a meal with a Jew, however, would be counterproductive according to *Omnes*, as the missionary would come to feel inferior to those whom he is trying to convert. This sense of inferiority results from the Christian’s need to accommodate Jewish dietary restrictions, and for that reason it applies equally in the case of “distinguishing pagans.” Johannes has moved from one extreme to another: whereas Rufinus presumed that no pagans distinguish among foodstuffs, Johannes implies that all pagans now do so and effectively prohibits commensality with all non-Christians.

<sup>46</sup> See n. 44 above. On the work of Bartholomew of Brescia, see Somerville and Brasington, *Prefaces to Canon Law Books*, 228-9.

<sup>47</sup> “Permittimus. ad hoc, ut eos lucremur, 23. q. 4. c. infideles. cum Iudaeis tamen non possumus comedere, ut 28. q. 1. omnes. sed nec hodie cum paganis licitum est comedere, cum et ipsi discernant cibos sicut Iudaei.” Johannes Teutonicus, *Glossa ordinaria*, C. 11 q. 3 c. 24, s.v. *permittimus*. Johannes goes on to explain why one may eat with pagans but not excommunicates: the latter will be ashamed if they are shunned by Christians, while the former will not care and cannot be converted otherwise. Contrast the apparent permission of eating with gentiles found in Johannes’s gloss to *Infideles*, n. 33 above. Subsequent canonists uniformly understand Johannes himself to hold the more restrictive position regarding the food of contemporary pagans.



## Is All Commensality with Non-Christians Prohibited? Decretalist Syntheses

So far, we have focused our attention on the work of decretists, commentators who explicated Gratian's *Decretum*. The first decretalist commentator—also one of the first to compile a collection of decretals on which to comment, the *Breviarium extravagantium* (1189-92)—was Bernard of Pavia, who established the structure by which all major subsequent collections were organized. That structure includes a section entitled “On Jews, Saracens, and Their Servants” (5.5), but Bernard himself, as we have seen, did not place Saracens in the same category as Jews when it came to commensality.<sup>48</sup> Bernard not only compiled the *Breviarium extravagantium* but also a commentary on that work, known as the *Summa decretalium*. Even though the *Breviarium* contains no canons addressing commensality, Bernard addresses the subject in the introduction to section 5.5, at the start of a list of ways in which Christians ought relate to foreigners: “Christians ought to behave toward [Jews and Saracens] as follows: First, they ought not eat with Jews, in accordance with *Nullus* and *Omnes*. With Saracens, however, we are able to eat, according to *Ad mensam*. The reason for the difference is that Jews, through the abuse of Scripture and contempt of our food, attack our faith more.”<sup>49</sup> Bernard's reliance on the teachings of Rufinus is evident, though, in a slight shift, he considers Jewish dietary practices to constitute in and of themselves an attack on Christian faith alongside Jewish abuse of Scripture. Similarly, it is clear that Bernard is either unaware of Huguccio's statements regarding commensality with Muslims or studiously ignores them, as Bernard permits such commensality without reservation.<sup>50</sup>

<sup>48</sup> On the origins of the heading for this title and Bernard's attitude toward Saracens, see n. 34 above and the reference there.

<sup>49</sup> “Sic autem erga eos debent se christiani habere. Primo cum Iudaeis manducare non debent, ut C. XXVIII qu. 1 *Nullus* (c. 13), *Omnes* (c. 14); cum Sarracenis tamen possumus manducare, ut C. XI. qu. 3 *Ad mensam* (c. 24); ratio diversitatis est, quia Iudaei per abusionem scripturarum et contemptum ciborum nostrorum magis fidem nostram impugnant.” Bernard of Pavia, *Summa decretalium*, 211. Contrast the concluding explanation with the language of Rufinus (n. 18 above): “ipsi per abusionem scripture in nonnullis fidem Christi subvertunt et christianorum cibos contempnunt” (through the abuse of Scripture they subvert faith in Christ in several ways and condemn the food of Christians).

<sup>50</sup> Laspeyres, in his edition of the *Summa decretalium* (p. 211), notes a manuscript variant in which Bernard's permission of the food of *sarracenis* is replaced by *samaritanis*. This variant may result from a copyist's effort to reconcile Bernard's permission of Muslim food with what became the mainstream commentarial opinion.

Bernard not only established the model for subsequent collections of decretals, his *Summa decretalium* became the basis for later decretalist commentaries. One such commentary is the *Summa de paenitentia* by Raymond of Peñafort, composed prior to his completion of the *Decretales* (ca. 1222-25). His introduction to the section “On Jews, Saracens, and Their Servants” also begins by defining Jews and Saracens and listing proper Christian behavior in relation to non-Christians; indeed, Raymond copies liberally from Bernard’s work. Raymond, however, offers a very different conclusion.

Christians ought to relate to [Jews and Saracens] in this manner, according to various sources: They ought not eat with Jews, nor live with them, nor invite them to their meals (*Nullus* and *Omnes*); with Saracens, however, we are allowed to eat (*Ad mensam*). The reason for the difference is that Jews, through the abuse of Scripture and contempt of our food, attack our faith more. Others—that is Laurentius, Johannes, and many following them—assert in unison and more convincingly that just as a Christian ought not do the aforementioned with a Jew, so too neither with Saracens because Saracens today judaize, so the same cause of prohibition and the same danger applies to both, as is the case in X. 5.6.5.<sup>51</sup>

Raymond rejects Bernard’s permission of commensality with Saracens in favor of the argument that because Saracens “judaize,” their food is also prohibited; although Raymond attributes this position to Laurentius Hispanus and Johannes Teutonicus, it originates with Huguccio. The source Raymond cites in support of extending to Muslims rules originally intended for Jews is a canon from the Third Lateran Council (1179) that applies to both Jews and Saracens a long-standing law prohibiting Jews from employing Christians as domestic servants (c. 26). Raymond thus

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<sup>51</sup> “Circa eos debent se habere christiani hoc modo, secundum quosdam: non debent comedere cum iudeis, neque habitare, neque recipere eos ad convivia sua [C. 28 q. 1 c. 13 (*Nullus*) et c. 14 (*Omnes*)]; cum sarracenis, tamen, possumus manducare [C. 11 q. 3 c. 24 (*Ad mensam*)]. Ratio diversitatis est, quia iudaei, per abusionem Scripturarum et contemptum ciborum nostrorum, magis fidem nostram impugnant. Alii, scilicet Laurentius, Ioannes et multi sequaces, dicunt indistincte, et melius, quod, sicut christianus non debet cum iudaeo facere supradicta, ita nec cum sarracenis, quia et sarraceni hodie iudaizant; unde eadem causa prohibitionis et idem periculum utrobique [facit ad hoc: X 5.6.3 (*Iudaei*)].” Raymond of Peñafort, *Summa de paenitentia*, ed. Javier Ochoa and Luis Diez, *Universa biblioteca iuris*, vol. 1, bk. B (Rome: Commentaria pro Religionis, 1976), 1.4, p. 310. This edition, of poor quality, relocates Raymond’s citations to footnotes and incorrectly labels the final reference (it is c. 5, not 3).

echoes Johannes's prohibition of all commensality with non-Christians without exception.

Geoffrey of Trani (d. 1245), who composed the first major commentary on the *Decretales*, also supplies an introduction to his discussion of the section on Jews and Saracens. The portion of this introduction addressing foreign food restrictions begins by repeating the passage from Raymond's *Summa* cited above, which indicates that Christians may not share food with either Jews or Saracens. Geoffrey, however, departs from the unqualified prohibition of commensality with non-Christians articulated by Johannes and Raymond.

Excepted from this, however, is the case in which it is possible to make use of the food which is placed before you by pagans with modesty and an act of grace, having observed the condition of times according to canonical ordinances, in order that Christians may approach them to preach the faith of Christ, in accordance with *Quam sit laudabile*. In this matter is *Ad mensum* to be understood. [This exception applies] so long as what is placed before you has not been sacrificed to idols, because it is more saintly to die of hunger than to eat idol food, in accordance with *Sicut satius* [C. 32 q. 4 c. 8].<sup>52</sup>

Geoffrey of Trani, paraphrasing Clement's letter to the bishop of Livonia, excepts missionaries from the general prohibition of commensality with

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<sup>52</sup> "sic circa iudeos christiani se debent habere: non comedent cum eis, neque habitabunt, neque recipient eos ad conuiuia sua, ut xxviii. q. i. nullus et capitulum omnes. cum saracenis autem possumus manducare, ut xi. q. iii. ad mensam. huiusmodi diuersitatis illa est ratio, quia iudei per abusionem scripturarum et contemptum ciborum nostrorum magis fidem nostram impugnant. alii tamen ut laurentius et johannes dicuntur melius quia sicut christianus cum iudeo non debet facere supradicta, ita nec cum saraceno quia et saraceni hodie iudaizant, unde eadem causa prohibitionis et idem periculum est in utroque. excipitur tamen casus in quo possumus uti cibis apposis a paganis cum modestia et gratiarum actione seruata temporum qualitate iuxta canonicas sanctiones cum ad predicandum christi fidem ad eos christiani accedant, ut infra eodem titulis quam sit laudabiles [X. 5.6.10], et sic intelligendum est xi. q. iii. ad mensam. dummodo quod apponitur non sit ydolis immolatum, quia tunc sanctius est mori fame quam ydolatico vesci, ut xxxii. q. ii. sicut sanctius [c. 8, sicut satius in Friedberg's ed.]. quod quidam intellexerunt cum quis ad venerationem ydoli vescitur, alias in summa necessitate famis cum horrore et execratione posset aliquis ydolis vesci ad vite tantummodo sustentationem necessitas enim non habet legem, ut de consecratione distinctio i. sicut [c. 11], infra de regulis iuris quod non est licitum [X. 5.41.4]. nam necessitas est contraria voluntati, ut ff. quod metus causa, lex i. [Digest 4.2.1]. et nullum peccatum nisi voluntarium, ut. xv. q. i. ff. i. [sic; C. 15 q. 1 c. 1] et capitulum illa [c. 6]." Geoffrey of Trani, *Summa super titulis Decretalium*, reprint (1519; Aalen: Scientia, 1968), 5.6, fols. 205v a-b.

foreigners. Geoffrey then makes an exception to his exception, prohibiting even missionaries from eating food offered to idols on the authority of Augustine.<sup>53</sup> In the lines that follow, he proceeds to offer yet another qualification: although one may not eat food offered to idols voluntarily, one may do so in the case of necessity. Geoffrey echoes Huguccio both in his citation of Augustine and in his exemption of emergency situations, but Geoffrey bolsters Huguccio's assertion with citations of civil as well as canon law indicating that acts of necessity are not voluntary and therefore not subject to penalty. Thanks to the tremendous developments in canon law scholarship, commentators such as Geoffrey and Johannes Teutonicus before him were far better versed in legal literature than their twelfth-century predecessors and were therefore able to mount more sophisticated arguments to support their nuanced interpretations of the law.<sup>54</sup>

Bernard of Parma, author of the *Glossa ordinaria* to the *Decretales* (final recension 1263), did not share Geoffrey's interpretation of *Quam sit laudabile* as an exception to the general prohibition against commensality with contemporary pagans. His gloss on that canon consists almost exclusively of material drawn from *Infideles*, *Omnes*, and Johannes Teutonicus's glosses to these canons. Bernard's only original contribution, perhaps inspired by the work of Geoffrey of Trani, is a qualification that Christians may only eat the food of (nondistinguishing) pagans if they are not defiled by such food, which is to say, so long as the food has not been offered to idols. This qualification, however, is rendered moot as Bernard continues: "Today, however, both [Jews] and [pagans] distinguish. Therefore, we ought not eat in their homes, nor may they eat in our homes, even though this [conclusion] is not supported by the words of the decree, as is clear here and in

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<sup>53</sup> This qualification to *Quam sit laudabile* is taken from the commentary on that canon by Tancred: Geoffrey's language is essentially the same as Tancred's *Apparatus* to the *Compilatio secunda*, 5.4.4, attested in MS Karlsruhe Bad LB Aug. perg. 40, fol. 115r a.

<sup>54</sup> See Pierre Legendre, "La pénétration du Droit romain dans le Droit canonique classique de Gratien à Innocent IV (1140-1254)" (Ph.D. diss., Université de Paris, 1964), who documents the increasing use of civil law in canon law scholarship: from nearly total reliance on canonical sources among the first generation of canonists (including Rufinus) through a transitional period (including Huguccio) marked by increasing references to or citations of Roman law to the ultimate "triumph" of civil law as an authoritative source in canon law scholarship in the works of figures like Bernard of Pavia and Johannes Teutonicus. See also Müller, *Huguccio*, 109-35. The increased classical literacy of thirteenth-century canonists evidently extends not only to legal texts but also to poetry, as witnessed by Laurentius Hispanus's citation of Horace; see above, n. 27.

*Ad mensam.*<sup>55</sup> Bernard of Parma regards Clement's late twelfth-century permission of commensality between missionaries and pagans as being obsolete because, as Johannes taught in the early thirteenth century, pagans now distinguish among foodstuffs just like Jews.

Most commentators on *Quam sit laudabile*, however, prefer Geoffrey of Trani's interpretation over that of Bernard. Bartholomew of Brescia, final redactor of the *Glossa ordinaria* to the *Decretum*, explains that the prohibition against eating the food of non-Christians "does not apply to those who have been sent to preach to them, in accordance with *Quam sit laudabile*."<sup>56</sup> A similar opinion is articulated by Pope Innocent IV (Sinibaldo dei Fieschi) in his *Apparatus* to the *Decretales* (ca. 1245). Commenting on *Quam sit laudabile*, Innocent writes,

To the contrary: *Ad mensam*, where it is said that it is permitted to make use of the food of pagans without any indulgence. The response: That was at that time, when pagans did not distinguish among foods. Today, however, when they do distinguish among foods, it is not permitted without special indulgence, just as it is not permitted to communicate with Jews [in accordance with] *Omnes* and *Nullus*. That canon refers specifically to [commensality] without license, as is proven here.<sup>57</sup>

According to Innocent IV, Clement articulates a new canonical policy with regard to shared meals with foreigners: now that all non-Christians practice food restrictions, commensality is permitted only to those who have received prior authorization to missionize. This new policy, Innocent maintains, also applies with regard to the Jews; no earlier commentator had offered such an interpretation. Innocent, following in the footsteps of Huguccio albeit with a different rationale for doing so, asserts that Christian commensality restrictions apply equally to Jews and pagans.

<sup>55</sup> Bernard of Parma, *Glossa ordinaria*, X. 5.6.10, s.v. *uti liceat*, in *Decretales D. Gregorii Papae IX... una cum glossis...* (Venice: n.p., 1604); for the text of this gloss, see the appendix below.

<sup>56</sup> "Nullus eorum. nisi sit missus ad praedicandum eis, extra de iudaeis c. quam sit laudabile [X. 5.6.10]." *Glossa ordinaria*, C. 28 q. 1 c. 13, s.v. *nullus*.

<sup>57</sup> "Contra 11. quaestio. 3 ad mensam ubi dicitur, quod sine aliqua indulgentia licet uti cibariis paganorum. Responsum: illud olim quando pagani non discernabant cibos, hodie autem cum discernant cibos, non licet sine speciali indulgentia, sicut nec cum Iudaeis licet communicare. 28. q. 1 omnes, supra eodem ad hoc. nisi de licentia, ut argumentum hic." Innocent IV (Sinibaldo dei Fieschi), *Apparatus in V libros Decretalium*, reprint (1570; Frankfurt: Minerva, 1968), 505b; in this edition, *Quam sit laudabile* is labeled as X. 5.6.11.

Hostiensis (Henry of Susa), among the last of the great thirteenth-century decretalist commentators, offers the most complicated categorization of non-Muslims. In his *Summa aurea* (1253), Hostiensis suggests that *Ad mensam* permits commensality only with Saracens “who are subject to us. . . . With other Saracens, that is, enemies, we ought not to eat, unless we are evangelists who have been given a special privilege” by the pope, in accordance with *Quam sit laudabile*. A classic canon law text, excerpting an eleventh-century decretal of Pope Alexander II, distinguishes Jews from Saracens on the grounds that the latter persecute Christians and must therefore be attacked, whereas Jews are subservient to their Christian overlords (C. 23 q. 8 c. 11). Hostiensis, it seems, employs the logic underlying this canon to distinguish among Saracens themselves. Interestingly, subject Muslims are like Jews in certain respects, while in others they are in fact preferable to Jews, who, “through the abuse of our Scripture and contempt of our food, appear to attack our faith more.” Hostiensis qualifies his permission of commensality with subservient Saracens by strenuously warning against the food which they have offered to idols (Hostiensis truly regards Muslims as being pagans!), coupled with the familiar exceptions in cases of necessity, expanding on the discussion of this topic found in Geoffrey of Trani’s work. In the end, however, Hostiensis follows Laurentius, Johannes, and the rest of those who prohibit commensality with all Muslims on the grounds that they too pass judgment on Christian food. In keeping with the teachings of Geoffrey and Innocent IV, Hostiensis only allows such meals for authorized missionaries.<sup>58</sup>

### Pearls of Wisdom from Twelfth- and Thirteenth-Century Canonists

Hostiensis’s sophisticated approach to commensality with Muslims, which reflects not only his own original insights but also those of numerous earlier canonists, is all the more impressive for the fact that the legal question at hand was such a new one. Although the building blocks of canonical restrictions on commensality with non-Christians had existed for centuries, the complex legal edifice portrayed in the work of Hostiensis and his contemporaries was built over a relatively short time span. And we should bear in mind that the question we have been examining is but one of the

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<sup>58</sup> Hostiensis (Henry of Susa), *Summa aurea*, reprint (1624; Turin: Bottega d’Erasmus, 1963), 5.6, 1524-25; for the text of this passage, see the appendix below.

hundreds that occupied the intensely productive twelfth- and thirteenth-century canonists.

Scholars of canon law and its development are fortunate to possess not only the culmination of these deliberations but also records of its earlier stages. If one were to attempt a reconstruction of the history we have examined based solely on late sources like the *Glossa ordinaria* or Hostiensis's *Summa aurea*, one would quickly come to appreciate the challenges that face those who study legal development in many other premodern systems. (An incomplete answer key appears in the Appendix to this article.) The insights derived from this case, however, offer hypotheses that prove valuable when tackling those challenges.

What are the most salient characteristics of the development we have observed in canon law regarding commensality with non-Christians? One is a pronounced conservatism in the relationship between canonists and the teachings of their predecessors. Commentators regularly parrot or paraphrase the words of earlier authorities, preferring to add their own insights to an existing edifice rather than build their own parallel structures. Even as they write discrete works, these commentators understand themselves to be participants in a collective enterprise more closely analogous to the construction of a medieval cathedral than the authorship of modern literature. As a result, certain early opinions and formulations echo through the later commentaries; given the lack of attribution, however, the reader of any single work frequently cannot distinguish between established positions and new arguments.

The conservatism of the canonists also manifests itself in their efforts to shoehorn Muslims into a predetermined system of categorizing humanity. The Church had long since divided the world into Christians (subdivided as orthodox and heretical), Jews, and pagans; all the canonists whose works we have examined insist that Saracens fall into the last of these categories. They create the rather unwieldy concept of "judaizing pagans" and devote considerable attention to working out its ramifications rather than entertaining the possibility that Muslims do not in fact fit any of the established boxes. Yet, as Benjamin Z. Kedar has observed, by the thirteenth century many Christian scholars understood that Muslims are not, in fact, pagans. "Evidently the categorization, in religious law, of a group of non-believers can take place within a closed, conservative system, uninfluenced by the intellectual achievements of the day."<sup>59</sup>

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<sup>59</sup> Kedar, "De iudeis et sarracenis," 213.

Twelfth- and thirteenth-century commentaries regarding commensality with non-Christians are, thus, characterized by their conservatism with respect to existing legal categories and the contributions of earlier canonists, as well as by their detachment from external developments and, for that matter, *realia*. These characteristics prompt a different metaphor than the construction analogy I have been using thus far. The development of canon law within the commentarial literature resembles the formation of a pearl. In response to an irritant to the legal system, canonists produce layers of explanatory material one on top of the next. The richness and beauty of their explanations stems from increased appreciation and application of material found within the legal literature itself. This process takes place within a closed scholastic system largely insulated from the realities of the outside world. The relative insularity of scholars engrossed in the study of legal literature, I suggest, is fundamental to the production of work that attains the status of a “classic”; just as an oyster open to external currents could never produce a pearl, authorities concerned primarily with practical law do not produce incisive analysis that stands the test of time.<sup>60</sup>

The irritant that prompts the formation of legal pearls can be internal or external in its origins; as we have seen, the canonical discussion of commensality with non-Christians is set in motion by irritants of both varieties. That discussion begins with the recognition that sources within the legal literature appear to be in conflict with one another and the desire to harmonize this discordance. It is further stimulated by the challenge Islamic dietary law poses to the traditional distinction between Jewish and pagan food practices emphasized by the earliest commentators. The commentarial activity prompted by this pair of irritants results in new understandings not only of the law as it applies to commensality with Muslims but also, according to some authorities, the law applied to shared meals with Jews. The pearls of wisdom these commentators create are the product of intense hermeneutical activity whose detachment from reality can

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<sup>60</sup> Contrast the incisiveness of the classical commentaries (on the texts of both canon and civil law) and that of contemporaneous civil codes from Christian polities with substantial Muslim populations. As Kedar, “*De iudeis et sarracenis*”, 213, observes, the latter display more accurate understandings of Islam; these sources, however, had only limited impact on subsequent generations of law students and scholars.



be seen most clearly in the assumption of several canonists that Clement III's letter to Livonia refers to Muslims.

The characteristics we have observed in this case study, I suggest, apply to the development of classical canon law more broadly and also to development in other premodern legal systems. I have certainly found it helpful to hypothesize such a similarity in my own studies of Jewish and Islamic texts.<sup>61</sup> Because of the potential for cross-fertilization of this nature, scholars of these various legal systems and the communities that produced them would do well to sit around the same table more frequently. They can leave discussion about the theological implications of the commonalities they find among their fields to the theologians sitting at some other table.

### **Appendix: Deconstructing Commentarial Edifices**

This study has traced the process through which medieval canonists built the pearl-like edifice of classical canon law commentary regarding commensality with non-Christians. Reconstruction of this process in any detail would have been impossible if all that remained were texts representing its final stage. The degree to which canonists utilized material from their predecessors is represented visually in the following charts, which identify the sources that lie behind two of the texts we have examined: Bernard of Parma's gloss to *Quam sit laudabile* and the relevant passage from Hostiensis's *Summa aurea*. Their words appear in the right-hand column. The second-rightmost column indicates the authority whose words these canonists cite (verbatim or conceptually equivalent, signified as =) or whose ideas they adopt in modified but recognizable form (≈), and so on for the columns further to the left. Read from left to right, then, the charts trace a genealogy of ideas from their earliest attested expression forward into the mid-thirteenth century, demonstrating both the degree to which later canonists rely on the work of their predecessors and the extent of their originality. These charts are based solely on texts addressed in this article; familiarity with additional sources from the period would undoubtedly yield more detailed results.

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<sup>61</sup> See Freidenreich, "Foreign Food."

Bernard of Parma, *Glossa ordinaria*, X. 5.6.10, s.v. *uti liceat* (see n. 55)

			Infideles =	aliter enim non possent illos lucrari,
			Infideles ≈	et sic licet eis loqui et comedere cum eis exemplo Domini,
		Laurentius =	Johannes =	23. q. 4. infideles, et 11. q. 3. ad mensam.
				dummodo, et aliis non coinquentur.
Lipsiensis ≈ Magister ≈ Rufinus ≈	Huguccio =	Laurentius =	Johannes =	argumentum contraria 28. q. 1. nullus et capitulum omnes.
	Huguccio ≈	Laurentius =	Johannes ≈	solutio: contraria intelliguntur de Iudaeis, qui discernunt cibos. hoc, et capitulum ad mensam et capitulum infideles de Paganis intelligitur.
				sed quare potius vitamus conuiuium Iudaeorum, quam Paganorum?
			Omnes ≈	ratio illa est: quia illi, scilicet Iudaei, discernunt cibos nostros, unde non debemus cibis eorum uti, ne uideamur inferiores illis, ut dicit praedictum capitulum omnes.
	Huguccio ≈	Laurentius =	Johannes ≈	Pagani vero non discernunt cibos. sed hodie et isti et illi discernunt, unde non debemus comedere apud eos, nec ipsi apud nos.
		Laurentius ≈	Johannes =	licet hoc non contineatur in verbis edicti, ut patet hic, et capitulum ad mensam,
		Laurentius ≈	Johannes ≈ Laurentius =	sed quantum ad sententiam, eos uitare debemus, argumentum ff. de petitione haereditates, item veniunt. § ait senatus [ <i>Digest</i> 5.3.20.17-21].

Simon ≈	Huguccio ≈	Laurentius =	Johannes ≈	sed quare potius vitam conuiuium, quam colloquium?
			Infideles ≈	ideo loquimur eis ut eos possimus lucrari, quod alias facere non possumus, ut in capitulum infideles.

Hostiensis, *Summa aurea* 5.6 (see n. 58)

	B. Pavia =	Raymond =	Geoffrey ≈	licet autem Christiani
	B. Pavia ≈	Raymond =	Geoffrey ≈	non debeant manducare cum Iudaeis,
				subaudi sub nodis de gentibus,
	B. Pavia =	Raymond =	Geoffrey =	ut 28. q. 1 nullus et capitulum omnes.
	B. Pavia =	Raymond =	Geoffrey =	cum Saracenis tamen,
				scilicet nobis subditis,
	B. Pavia =	Raymond =	Geoffrey =	possumus comedere, ut 11. q. 3. ad mensam.
Rufinus ≈	B. Pavia =	Raymond =	Geoffrey ≈	ratio diuersitatis haec est, quia Iudaei propter abusionem scripturarum et contemptum ciborum nostrorum magis uidentur fidem nostram impugnare;
				ad hoc 23. q. 4. c. infideles.
				cum aliis autem Saracenis, scilicet hostibus, comedere non debemus,
			Geoffrey ≈	nisi praedicatores simus, quibus hoc indulgetur speciali privilegio et possunt quilibet habita praelati licentia eis praedicare, sed tamen debent abstinere a carnibus diebus prohibitis, ut infra eodem quam sit.
				argumentum infra de sententia excommunicationis, cum voluntate, § i [X. 5.39.54],

			Geoffrey =	et sic intellige 11. q. 3. ad mensam.
	Huguccio ≈	Tancred =	Geoffrey =	dum tamen id quod apponitur non idolis immolatum sit, quia tunc sanctius esset mori fame, quam tali cibo vesci; 32. q. 4. sicut sanctius [c. 8, sicut satius in Friedberg's ed.].
		Huguccio ≈	Geoffrey =	quod quidam intelligunt, quando fieret ad venerationem idoli. alias in summa necessitate famis cum horrore et execratione posset inde quis ad sustentationem naturae sumere: qua necessitas non habet legem, de consecratione distinctio 1 sicut [c. 11], infra de regulis iuris quod non est [X. 5.41.4].
			Geoffrey =	et necessitas contraria est voluntati, ff. quod metus causa, lex i. [ <i>Digest</i> 4.2.1]. et nullum peccatum nisi uoluntarium, 15 q. 1. c. 1. et c. illa [c. 6].
				excusat ergo necessitas ab esu idolothiti sicut et a rapina, de consecratio, distinctio 5. discipulos [c. 26], et a furto, infra de furtis. si quis ab homi [X. 5.18.3, si quis propter necessitatem in Friedberg's ed.], infra de homicidio. interfecisti [X. 5.12.2], et a uiolatione quadragesimalis obseruationae, supra de obseruatione ieiunii. consilium, § finalis [X. 3.46.2], secundum Ioannes.
Huguccio ≈	Johannes ≈ Laurentius ≈	Raymond =	Geoffrey ≈	uel dicitur quod cum Sarraceni hodie discernant cibaria nostra, non licet cum his comedere,

				siue subditis siue hostibus,
			Geoffrey ≈ Innocent ≈	nisi alicui concedatur speciali privilegio, ut infra eodem quam sit,
				uel nisi in summa necessitate, ut dictum est. et sic corriguntur superiora capitula, quae hoc concedebant, uel intelliguntur de praedicatoribus uel privilegiatis, ut notatur supra.
				et si intellexerunt Laurentius et Ioannes quia quamuis uerba aliorum, quae de Iudaeis tamen loquuntur, deficiant, mens tamen et ratio durant; ad hoc ut supra de constitutionibus, translatio [X. 1.2.3], ff. de petitionibus haereditatis, item ueniunt, § ait senatus [ <i>Digest</i> 5.3.20.17ff].