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The Talmud in the *Summa Halensis*

Abstract: The Christian discovery of the Babylonian Talmud is a significant landmark in the long and complex history of anti-Jewish polemic. In 1239 the pope wrote to kings and bishops across Europe requesting them to confiscate and examine the manuscripts of the Talmud in their territories. He was particularly concerned with the Talmud's status as an *alia lex*, which challenged the traditional account of the Jews as witnesses of the old law. As a result, a trial against the Talmud was staged in Paris in 1240 and Jewish books were put in flames at the Place de la Grève in 1241/42. In this historical and doctrinal context, the *Summa Halensis* is particularly important, for it offers one of the very few, if not the only attempt at a systematic reappraisal of the Augustinian doctrine in the light of the Christian discovery of the Talmud and its purported status as another law.¹

Introduction

While the Talmudic corpus developed in the same period and context as early Christianity, the church fathers referred only occasionally to what they called the *deuterosis* of the Jews, that is, their second teaching.² It was not until the early medieval period that Christians started showing more interest in the Talmud, one of the first Christian figures to address it being the 9th-century Carolingian bishop Agobard of Lyon, who mentioned it in a letter he wrote to Emperor Louis the Pious.³ He was followed, in the 12th century, by Peter Alfonsi and Peter the Venerable, who both criticized various rabbinic teachings as anthropomorphic and irrational.⁴

Full awareness of the Talmud among Christian authors arose in the late 1230s when the Jewish convert Nicholas Donin submitted a Latin anthology of Talmudic fragments to Pope Gregory IX. Donin's translation, also known as the Thirty-Five Articles against the Talmud, was to have an enormous impact on the Christian attitude

1 The research leading to these results has received funding from the European Research Council under the European Union's Seventh Framework Programme (FP7/2007–2013) / ERC Grant agreement n° 613694 (Consolidator Grant: 'The Latin Talmud').

2 See Carlos del Valle Rodríguez, 'Los primeros contactos de la Iglesia con el Talmud: El significado de la deuterosis,' in *The Words of a Wise Man's Mouth are Gracious* (Qoh 10,12): *Festschrift for Günter Stemberger on the Occasion of his 65th Birthday*, ed. Mauro Perani (Berlin: Walter de Gruyter, 2005), pp. 299–308.

3 See, e.g. Agobard's *De iudaicis superstitionibus*, 10, with allusions to Berakhot, Avodah Zarah and others; *Opera omnia*, ed. Lieven van Acker, CCCM 52 (Turnhout: Brepols, 1981), pp. 205–6.

4 See the useful survey of Talmudic passages in Peter Alfonsi and Peter the Venerable's works by Manfred Kniewasser, 'Die antijüdische Polemik des Petrus Alfonsi (getauft 1106) und des Abtes Petrus Venerabilis von Cluny (d. 1156),' *Kairos* 22 (1980), pp. 34–76.

towards Judaism. In 1239 the pope wrote to kings and bishops across Europe urging them to seize and examine manuscripts of the Talmud in their dominions, as a result of which a process against the Talmud took place in Paris in 1240.⁵ Although the Talmud was condemned and went up in flames at the Place de la Grève in 1241/42, the controversy about the Talmud continued over the following years, since Gregory's successor, Pope Innocent IV, called for a revision of its condemnation. At the center of this revision are the *Extractiones de Talmud*, a Latin translation of 1922 passages from the Babylonian Talmud prepared in 1245 for Odo of Châteauroux, Papal Legate in France, that served as the basis for the final condemnation of the Talmud in May 1248.⁶

The texts surrounding this infamous controversy have survived in several manuscripts, the most complete of which – though not the original – is MS Paris, Bibliothèque nationale de France, lat. 16558. This manuscript offers a comprehensive 'dossier' on the Talmud affair, its first part containing the *Extractiones de Talmud*, and the second part including Nicholas Donin's Thirty-Five Articles against the Talmud along with further materials.⁷ Though scholars have been dealing with this dossier for more than 130 years, critical editions of the documents have been prepared only recently.⁸

5 Daniela Müller has claimed that Alexander of Hales took part in the trial; there is, however, no evidence for this in any of the documents. Daniela Müller, 'Die Pariser Verfahren gegen den Talmud von 1240 und 1248 im Kontext von Papsttum und französischem Königtum,' in *Interaction between Judaism and Christianity in History, Religion, Art and Literature*, ed. Marcel Poorthuis, Joshua Schwartz and Joseph Turner (Leiden: Brill, 2009), pp. 181–99, on p. 186.

6 It is worth noting that one of Alexander of Hales' disciples, namely William of Melitona, was among the signatories of this final condemnation. For the document and the list of signatories, see Heinrich Denifle and Émile Chatelain, *Chartularium universitatis parisiensis*, 4 vols (Paris: Delalain, 1889–97), 1:209–11. The theologians and masters of law in this list have been identified in Nathalie Gorochov, *Naissance de l'Université: Les écoles de Paris d'Innocent III à Thomas d'Aquin (v. 1200-v. 1245)* (Paris: Honoré Champion, 2012), pp. 535, 544–45.

7 For a detailed analysis of the contents of this manuscript and its textual layers, see Óscar de la Cruz, 'El estadio textual de las *Extractiones de Talmud* en el BnF ms. lat 16558,' in *Studies on the Latin Talmud*, ed. Ulisse Cecini and Eulàlia Vernet (Bellaterra: Universitat Autònoma de Barcelona, 2017), pp. 23–44.

8 A critical edition of the *Extractiones* has been published by Ulisse Cecini and Óscar de la Cruz in the CCCM series: *Extractiones de Talmud per ordinem sequentialem* (Turnhout: Brepols, 2018). A critical edition of Nicholas Donin's Thirty-Five Articles has been published by Piero Capelli, 'De articulis litterarum Papae: A Critical Edition,' in *The Talmud in Dispute During the High Middle Ages*, eds. Alexander Fidora and Görgo K. Hasselhoff (Bellaterra: Universitat Autònoma de Barcelona, 2019), pp. 29–57; it replaces the 19th-century edition by Isidore Loeb, which was based on a single manuscript: 'La controverse de 1240 sur le Talmud,' *Revue des études juives* 1 (1880), pp. 247–61; 2 (1881), pp. 248–70; 3 (1881), pp. 39–57, edition in no. 2, pp. 253–70, and no. 3, pp. 39–54.

The Talmud as a New Law

The discovery of the Talmud, which considerably broadened Christian knowledge about Judaism, had a direct influence on perceptions of the Jews. It changed the assessment of their legal status and ultimately led to their becoming qualified as heretics. Already in the 12th century, shifts and changes in canon law can be noticed which degraded the legal position of the Jews, as for instance the reinterpretation in social and legal terms of the theological notion of perpetual serfdom of Jews *vis-à-vis* the Christians (the *servitus Iudaeorum*). Yet, it was not until the 13th century that the Jews were subjected to papal jurisdiction.⁹

From a theological point of view, the reason for this development may be summarized as follows: from the times of Augustine, the Jews were considered to be witnesses of Christian truth as contained in the Old Testament, which Jews and Christians likewise venerate as True Word of God. Although the Jews did not embrace the new Law, they were to be tolerated as long as they would not depart from the old one. In a famous passage from book 18 of *De civitate Dei*, Augustine summarizes his views on the toleration of the Jews as follows:

But the Jews who slew him, and would not believe in him (...), were yet more miserably wasted by the Romans, and utterly rooted out from their kingdom, where aliens had already ruled over them, and were dispersed through the lands (so that indeed there is no place where they are not), and are thus by their own Scriptures a testimony to us that we have not forged the prophecies about Christ. (...) For us, indeed, those suffice which are quoted from the books of our enemies, to whom we make our acknowledgement, on account of this testimony which, in spite of themselves, they contribute by their possession of these books, while they themselves are dispersed among all nations, wherever the Church of Christ is spread abroad. For a prophecy about this thing was sent before in the Psalms, which they also read, where it is written: 'My God, his mercy shall prevent me. My God hath shown me concerning mine enemies, that Thou shalt not slay them, lest they should at last forget Thy law: disperse them in Thy might' (Ps. 58:11–12). (...) Therefore God has shown the Church in her enemies the Jews the grace of His compassion (...); he has not slain them, that is, he has not let the knowledge that they are Jews be lost in them, although they have been conquered by the Romans, lest they should forget the law of God, and their testimony should be of no avail in this matter of which we treat. But it was not enough that he should say: 'Slay them not, lest they should at last forget Thy law,' unless he had also added: 'Disperse them;' because if they had only been in their own land with that testimony of the Scriptures, and not everywhere, certainly the Church which is everywhere could not have had them as witnesses among all nations to the prophecies which were sent before concerning Christ.¹⁰

⁹ See, among others, Christine Magin, *Wie es umb der juden recht stet': Der Status der Juden in spätmittelalterlichen Rechtsbüchern* (Göttingen: Wallstein, 1999), pp. 21–26.

¹⁰ Augustine, *The City of God*, trans. Marcus Dods, George Wilson and J. J. Smith, 2 vols (Edinburgh: T. & T. Clark, 1872), 2:277–79. Latin text in Augustine, *De civitate Dei, libri XI–XXII*, ed. Bernhard Dombart and Alfons Kalb, CCSL 48 (Turnhout: Brepols, 1955), pp. 644–45: 'Iudaei autem, qui eum occiderunt et in eum credere noluerunt (...) vastati infeliciter a Romanis funditusque a suo regno, ubi iam eis alienigenae dominabantur, eradicati dispersique per terras (quando quidem ubique

The Augustinian account, which granted Jews the protection of the Church in their capacity as custodians of the Old Law and witnesses to the new one, was radically called into question when Nicholas Donin approached Pope Gregory in 1238/9 with his Thirty-Five Articles against the Talmud. The tremendous challenge that the Talmud posed to the Christian world is put in a nutshell by Pope Gregory's immediate reaction to these accusations, namely the letter he addressed on 9 June 1239 to the Archbishops of France:

If the things that are asserted about the Jews residing in the Kingdom of France and other provinces are true, there would be no adequate or fitting punishment for them. For not content, as we have heard [from Nicholas Donin], with the Old Law, which the Lord gave in writing through Moses, indeed completely neglecting the same, they maintain that the Lord also proclaimed another law, which is called Talmud, i.e. teaching; and they falsely claim that it was passed on orally to Moses.¹¹

From this letter it is evident that the pope's concern did not refer so much to the specific content of the Talmud, but rather to its alleged status as another law, a law which not only complemented but probably also superseded the old one. This law

non desunt) per scripturas suas testimonio nobis sunt prophetias nos non finxisse de Christo. (...) Nobis quidem illae sufficiunt quae de nostrorum inimicorum codicibus proferuntur, quos agnoscimus propter hoc testimonium, quod nobis inviti perhibent eosdem codices habendo atque servando, per omnes gentes etiam ipsos esse dispersos, quaque verum Christi ecclesia dilatatur. Nam prophetia in psalmis, quos legunt etiam, de cordia eius praeveniet me: "Deus meus demonstravit mihi in inimicis meis, ne occideris eos, ne quando obliviscantur legem tuam; disperge eos in virtute tua." (...) Et ideo non eos occidit, id est non in eis perdidit quod sunt Iudaei, quamvis a Romanis fuerint devicti et oppressi, ne obliti legem Dei ad hoc, de quo agimus, testimonium nihil valerent. Ideo parum fuit, ut diceret: "Ne occideris eos, ne quando obliviscantur legem tuam," nisi adderet etiam: "Disperge eos;" quoniam si cum isto testimonio scripturarum in sua tantummodo terra, non ubique essent, profecto ecclesia, quae ubique est, eos prophetiarum, quae de Christo premissae sunt, testes in omnibus gentibus habere non posset.' For an analysis of Augustine's posture, see Jeremy Cohen, 'Slay Them Not: Augustine and the Jews in Modern Scholarship,' *Medieval Encounters* 4:1 (1998), pp. 78–92, and more detailed Paula Fredriksen, *Augustine and the Jews: A Christian Defense of Jews and Judaism* (New Haven: Yale University Press, 2010), esp. pp. 290–352.

11 Translation in *The Trial of the Talmud: Paris, 1240*, eds. John Friedman, Jean Connell Hoff and Robert Chazan (Toronto: Pontifical Institute of Mediaeval Studies, 2012), pp. 93–94. Latin text in Solomon Grayzel, *The Church and the Jews in the XIIIth Century: Vol. I: A Study of Their Relations During the Years 1198–1254, Based on the Papal Letters and the Conciliar Decrees of the Period* (New York: Hermon Press, 1966), p. 240: 'Si vera sunt, quae de Iudaeis in regno Franciae, et aliis provinciis commorantibus asseruntur, nulla de ipsis esset poena sufficiens, sive digna; ipsi enim sicut accepimus, lege veteri, quam Dominus per Moysen in scriptis edidit, non contenti, immo penitus praetermittentes eadem, affirmant legem aliam, quae Talmud, id est Doctrina, dicitur, Dominum edidisse ac verbo Moysi traditam.' The suspicion which the pope raises in his letter is based on the first accusation that Nicholas Donin levelled in his anthology against the Talmud, i.e. that 'the Jews claim that the Lord gave the Law which is called the Talmud' (Friedman, Connell Hoff and Chazan, *The Trial of the Talmud*, p. 102).

was neither *lex vetus* nor *lex nova*, but, as the text has it, a *lex alia*, revealed by God to Moses.

Gregory's approach represents a completely new take on the Talmud. When the church fathers considered the 'second teachings' of the Jews among which they included the Talmud, they qualified this unwritten extra-biblical tradition as a collection of fables and tales.¹² Later, in the 12th century, Peter Alfonsi and Peter the Venerable did use the term '*lex*' in their polemical discussions of other religions, but they consistently avoided applying this term to the Talmud. While Peter Alfonsi speaks of a '*lex Moysi*', which refers to the Hebrew Bible, a '*lex Christianorum*', namely the New Law of the Gospels, and even a '*lex Sarracenorum*', that is the Quran, the Talmud is never referred to as a law, but always as a doctrine (*doctrina* or *liber doctrinarum*). The same is true for Peter the Venerable, who is the first to mention the Talmud by name in Latin literature, which he describes likewise as a doctrine, which, following Jerome and Augustine, he considers to be full of irrational fables.¹³

Addressing the Talmud as a new law, which undermines the old one and thus severely compromises the Jews' function as witnesses of the Christian truth, was a hard blow for the Augustinian paradigm. For, if the Jews were to forget their law, to use Augustine's words, the Psalms' imperative 'Slay them not, lest my people forget' became pointless and the Jews lost their *raison d'être*. Based on Donin's accusations against the Talmud, Pope Gregory thus made a new and momentous claim when qualifying the Talmud as an *alia lex*, one which was to have far-reaching consequences. To start with, it was this claim, much more than the purported blasphemies of the Talmud, which prompted the pope to order the investigation of the Talmud that led to its condemnation first in 1240 and again in 1248, after the translation of large portions of the Talmud in the monumental *Extractiones de Talmud*.

¹² See the passages from St Jerome and St Augustine analyzed in del Valle Rodríguez, 'Los primeros contactos de la Iglesia con el Talmud,' esp. pp. 300–4.

¹³ This has been discussed in more detail by Matthias M. Tischler, '*Lex Mahometi*: The Authority of a Pattern of Religious Polemics,' *Journal of Transcultural Medieval Studies* 2:1 (2015), pp. 3–62, on pp. 13–19. See also the relevant passages in Peter Alfonsi, *Dialogus*, eds. Carmen Cardelle de Hartmann, Darko Senekovic, and Thomas Ziegler, German trans. Peter Stotz (Florence: SISMEL-Edizioni del Galluzzo, 2018), pp. 16 and 20, and Peter the Venerable, *Adversus Iudaeorum inveteratam duritiam*, ed. Yvonne Friedman, CCCM 58 (Turnhout: Brepols, 1985), pp. 125–26. Causing a certain confusion, Amos Funkenstein has credited Peter the Venerable with qualifying the Talmud as a Jewish equivalent to the New Testament, and hence as a different *nova lex*: Amos Funkenstein, 'Ha-temurot be-vikkuah ha-dat she-beyn yehudim le-notzrim ba-me'ah ha-12 (Changes in the Patterns of Christian Anti-Jewish Polemic in the Twelfth Century),' *Zion: Quarterly for Research in Jewish History* 33:3–4 (1968), pp. 124–44, on p. 140. See, however, the objection by Jeremy Cohen, 'Scholarship and Intolerance in the Medieval Academy: The Study and Evaluation of Judaism in European Christendom,' *The American Historical Review* 91:3 (1986), pp. 592–613, on p. 603, n. 30. Along similar lines, see Yvonne Friedman, 'Anti-Talmudic Invective from Peter the Venerable to Nicholas Donin (1144–1244),' in *Le brûlement du Talmud à Paris 1242–1244*, eds. Gilbert Dahan and Élie Nicolas (Paris: Cerf, 1999), pp. 171–89, on p. 174.

The *Summa Halensis*: Revisiting the Augustinian Model

In the historical and doctrinal context which I have presented until now, the *Summa Halensis* is particularly important, for it offers one of the very few, if not the only attempt at a systematic reappraisal of the Augustinian doctrine in the light of the Christian discovery of the Talmud and its purported status as an *alia lex*.

The *Summa Halensis* mentions the Talmud in its very first chapter of the Titulus dedicated to Jews and Pagans, ‘*De Iudaeis et Paganis*,’ which is usually dated around the year 1240, that is, after Donin’s Thirty-Five Articles against the Talmud from 1238/9, but before the Talmud’s burning in 1241 or 1242.¹⁴ The chapter, which asks whether the Jews should be tolerated, starts with three arguments to the negative:¹⁵

1. They blaspheme against Christ and against the Blessed Virgin; they take revenge on the Catholic faith; they do injury to the sacraments of the Church, as is indicated in the *Liber Extra, De Iudaeis, Etsi Iudaeos*. According to the Old Testament, blasphemers are to be punished to death (Lev. 24:16). Therefore Jews are not to be tolerated, but should be consigned to death, especially those who behave in this fashion.
2. Moreover, in their book which is called the Talmud, many statements are contained which relate to blasphemy of Christ and the Blessed Virgin. Since they observe this book as a law, they must be destroyed along with such books.

14 This dating is based on the fact that the *Summa* knows Donin’s Thirty-Five Articles, but refers to the burning of the Talmud as in the future. See Willibrord Lampen, ‘Alexander von Hales und der Antisemitismus,’ *Franziskanische Studien* 16 (1929), pp. 1–14, on p. 5, and idem, ‘Opinio Joannis de Rupella, O.F.M., quoad Iudaeos,’ *Studi Francescani* 28 (1931), pp. 208–11, on p. 208. It has been confirmed through internal evidence in the *Summa* by the Patres Editores; see their Prolegomena to vol. III, p. LIII, n. 16. For the dating of Nicholas Donin’s Thirty-Five Articles, see Alexander Fidora and Ulisse Cecini, ‘Nicholas Donin’s Thirty-Five Articles Against the Talmud: A Case of Collaborative Translation in Jewish-Christian Polemic,’ in ‘*Ex Oriente Lux*’: *Translating Words, Scripts and Styles in Medieval Mediterranean Society: Selected Papers*, eds. Charles Burnett and Pedro Mantas-España (Córdoba; London: Córdoba University Press, 2016), pp. 187–99, esp. pp. 190–91. For the chronology of the burning (or burnings?) of the Talmud, see Paul Lawrence Rose, ‘When Was the Talmud Burnt in Paris? A Critical Examination of the Christian and Jewish Sources and a New Dating. June 1241,’ *Journal of Jewish Studies* 62 (2011), pp. 324–39.

15 The chapter has been translated by Robert Chazan, whose translation I follow here and in what follows. Yet, I include several corrections, some of which change the tenor of the text significantly: Robert Chazan, *Church, State and Jew in the Middle Ages* (New York: Behrman House, 1980), pp. 44–46. See also his very insightful analysis of the chapter, which reconstructs the historical development of its anti-Jewish arguments, in Robert Chazan, *The Jews of Medieval Western Christendom: 1000–1500* (Cambridge: Cambridge University Press, 2007), pp. 44–51. In addition, see the classical chapter on Alexander of Hales in Jacob Guttman, *Die Scholastik des dreizehnten Jahrhunderts in ihren Beziehungen zum Judentum und zur jüdischen Literatur* (Breslau: M. & H. Marcus, 1902), pp. 32–46. Less illuminating are the notes on Alexander and the Jews in Luca Parisoli, *La ‘Summa fratris Alexandri’ e la nascita della filosofia politica francescana: Riflessioni dall’ontologia delle norme alla vita sociale* (Palermo: Officina di Studi Medievali, 2008), pp. 65–80.

3. Also, Christians persecute to the death those pagans who hold the Holy Land. However, contempt of the redeemer is a greater injury. Therefore Christians ought to persecute to the death those who perpetrate such contempt. That they exhibit such contempt is revealed through that which is said in *Liber Extra, De Iudaeis, In Nonnullis*.¹⁶

Arguments 1 and 3, which have been discussed in more detail by Robert Chazan,¹⁷ explicitly refer to the *Liber Extra*, that is, Gregory IX's *Decretales*, the authoritative compilation of canon law by Ramon of Penyafort, which the pope had sent to the Masters of the University of Paris only a few years before the Talmud trial, namely in 1234.¹⁸ This is certainly no coincidence, but reflects the increasing concern with the legal status of the Jews that also contributed to the juridification of the Talmud affair during the 1240s.

Argument 2 targets the Talmud. It not only accuses the Talmud of blasphemies against Christ and the Virgin, both of which play a prominent role in Nicholas Domin's Thirty-Five Articles against the Talmud,¹⁹ but interestingly enough it echoes Pope Gregory IX's words when applying the term *lex* to the Talmud. To determine the exact meaning of this reference, it is important to briefly consider the Latin text: *Cum ergo doctrinam illius libri quasi legem observent, simul cum libris huiusmodi sunt disperdendi*.

Robert Chazan translated the sentence this way: 'Since they [i.e. the Jews] must observe the doctrine of this book [i.e. the Talmud] as law, they along with these books should be dispersed.'²⁰ Although Chazan was followed in his rendering by other scholars, such as Jeremy Cohen,²¹ I believe that their reading is misleading, not only because the text has '*disperdendi*' and not '*dispergendi*', that is to say,

16 Alexander of Hales, *Doctoris irrefragabilis Alexandri de Hales Ordinis minorum Summa theologica (SH)*, 4 vols (Quaracchi: Collegium S. Bonaventurae, 1924–48), III, In3, Tr8, S1, Q1, T2, M1, C1 (n. 740), p. 729: '1. Blasphemant enim et contra Christum et contra B. Virginem, persequuntur etiam fidem catholicam, sacramentis etiam ecclesiasticis faciunt iniuriam, sicut habetur *Extra, De Iudaeis, Etsi Iudaeos*. Blasphemi autem secundum Legem etiam Veterem erant morti tradendi; ergo et Iudaei non sunt tolerandi, sed morti exponendi, maxime qui sic se habent. – 2. Praeterea, in libro eorum, qui dicitur Talmud, plura continebantur, quae ad blasphemiam Christi et B. Virginis pertinebant; cum ergo doctrinam illius libri quasi legem observent, simul cum libris huiusmodi sunt disperdendi. – 3. Item, Christiani persequuntur paganos usque ad mortem, qui sunt detentores Terrae Sanctae; sed amplior iniuria est contumelia Redemptoris; ergo perpetrantes huiusmodi contumeliam persequi debent Christiani usque ad mortem; non ergo sunt tolerandi. – Quod autem contumeliam ingerant, patet per hoc quod dicitur *Extra, De Iudaeis, In nonnullis*.'

17 See Chazan, *The Jews of Medieval Western Christendom: 1000–1500*, pp. 44–51.

18 For the texts quoted, i.e. Pope Innocent III's bull *Etsi Iudaeos* (1205) and the Fourth Lateran Council's *In nonnullis* (1215), see *Corpus Iuris Canonici*, eds. Emil Friedberg, 2 vols (Leipzig: Tauchnitz, 1879–81), 2:775–77.

19 On the particular role of blasphemies concerning the Virgin, see William Chester Jordan, 'Marian Devotion and the Talmud Trial of 1240,' in *Religionsgespräche im Mittelalter*, eds. Bernard Lewis and Friedrich Niewöhner (Wiesbaden: Harrassowitz, 1992), pp. 61–76.

20 Chazan, *Church, State and Jew in the Middle Ages*, p. 44.

21 See Cohen, 'Scholarship and Intolerance in the Medieval Academy,' p. 608, n. 43.

they should be destroyed, not dispersed along with the Talmud; but more importantly, because the sentence does not express the idea of the Talmud as a constitutive part of Judaism. The subjunctive in the first clause (*'observent'*) is due to the *cum causale*, it does not express any kind of necessity. Instead, what the text comes to say is: 'Since they [i. e. the Jews] observe the doctrine of this book [i. e. the Talmud] as a law, they must be destroyed along with such books.' The difference may seem minor, but is important: according to Chazan and Cohen's reading, the Talmud is presented as an indispensable part of Judaism, which it certainly is, that *must* be followed. However, the *Summa* makes no such essentialist claim, but limits itself to report facts, namely that the Jews do observe the Talmud as a law. Depending on how much weight one is willing to put on the particle 'quasi' (*quasi legem observent*), one may even translate: that the Jews 'observe the Talmud as if it were a law.'

Such a more descriptive account receives further support from the logic of the *Summa*'s argument, which is not about what the Talmud is but about how it is observed. Pope Gregory IX's main concern with the Talmud was that, as a new law, it threatened the Old Law. It is important to note that the *Summa* passes over Gregory's concern that the Talmud as an *alia lex* would eclipse the Old Law. In effect, the *Summa*'s argument is much less concerned with the Talmud as such than with blasphemy, wherever it occurs, including the Talmud. In this context, the idea of the Talmud as a *lex* is less of a theological problem regarding the essence of the Talmud than a practical concern: the problem for the *Summa* is that the Talmud is full of blasphemy and must therefore be destroyed. That the Jews follow it as if it was a law is not a different problem, as it was for Gregory, but a simple extension of the former; for in following the Talmud so strictly, as if it was a law, the Jews sustain its blasphemies and hence must be punished, like the Talmud.

That the *Summa* does not target the Talmud as an alternative to the Old Law, which jeopardizes the latter's observance, becomes manifest when considering the *Summa*'s three arguments in favor of tolerating the Jews, which come next:

a. [It seems to the contrary] through that which is said in Psalms 'Slay them not' (Ps. 58:12). In regard to this the Gloss says: 'This may be applied particularly to the Jews. The Psalmist beseeches, lest the Jews utterly disappear. Rather they were dispersed so that they might be invited to conversion. This Psalmist also prays on their behalf, saying 'Slay them not,' those who killed me. Rather let the Jewish people remain with the sign of circumcision.' Therefore they are to be tolerated.

b. Also testimony taken from the adversaries is the very best. The Catholic Church takes testimony from the Old Testament, which the Jews observe. To the end that the Catholic Church may have testimony from its enemies, the Jews are to be tolerated. For from the Old Testament, namely from the Law of Moses and the Prophets, testimony is taken concerning Christ which the Jews are unable to negate.

c. Also in Isaiah 10:22, it is indicated that a ‘remnant’ of Israel ‘shall turn again.’ Similarly the Apostle, in Romans 11:5. Now remnants cannot be saved, unless the seed of the Jews remains. Therefore the seed of the Jews must be preserved. Therefore the Jews must be tolerated.²²

Argument b) unambiguously contends that the Jews still observe the Old Law, in spite of the Talmud: *Ecclesia catholica sumit testimonium a Veteri Lege, quam observant Iudaei* [‘The Catholic Church takes testimony from the Old Testament, which the Jews observe’]. On the *Summa*’s view, the Jews have by no means abandoned the Old Law and embraced, instead, a new one, namely the Talmud, as Pope Gregory IX reckoned. Rather, the Jews continue observing the Old Law and therefore continue to qualify as witnesses of the Christian truth. The Talmud indeed poses a problem because of its content, which is said to be blasphemous, and because of its strict observance by the Jews, who consequently appropriate and reproduce its blasphemous content. But the Talmud as such is not conceived of as a serious theological complement or even alternative that could enter into conflict with the Old Testament and therefore represent an obstacle to the Jews’ observance of the Hebrew Bible. This is why the *Summa* can eventually reaffirm the Augustinian position on the toleration of the Jews, which it does basing itself on Peter Lombard’s commentary on the Psalms as the source for the arguments provided under paragraphs a) and b). Through Peter Lombard’s influential commentary, Augustine’s interpretation of Psalm 58:12: ‘Slay them not’ is recovered, in order that the Jews and their foundational texts can once more be martialed in evidence as the living witness of the ultimate Christian truths.²³

The *Summa*’s attempt to reconcile the new charges against the Jews and the Talmud with the traditional Augustinian approach required some refinement and concessions. This becomes manifest in the replies to the initial arguments against the toleration of the Jews:

²² *SH* III, In3, Tr8, S1, Q1, T2, M1, C1 (n. 740), p. 729: ‘a. Per hoc quod dicitur in Psalmo, super illud: “Ne occidas eos,” Glossa: “Hoc de Iudaeis specialiter potest accipi; precatur, ne Iudaei funditus pereant: dispersi quidem sunt, ut ad conversionem provocentur; orat etiam pro eis, dicens: ‘Ne occidas eos,’ qui me occiderunt, sed maneat gens Iudaeorum cum signo circumcisionis.” Ergo tolerandi sunt. – b. Item, fortius est testimonium quod ab adversariis accipitur; sed Ecclesia catholica sumit testimonium a Veteri Lege, quam observant Iudaei; ad hoc ergo quod Ecclesia catholica ab inimicis habeat testimonium, tolerandi sunt Iudaei: a Lege enim Veteri, scilicet a Lege Moysi et Prophetis, accipitur testimonium de Christo, quod negare non possunt. – c. Item, Is. 10:22 habetur quod “reliquiae” Israel “salvae fient;” et similiter dicit Apostolus, Rom. 11:5; reliquiae autem salvari non possent nisi semen Iudaeorum maneret; salvandum est ergo semen Iudaeorum; tolerandi ergo sunt Iudaei.’

²³ See Augustine and Peter Lombard on Psalm 58: Augustine, *Enarrationes in Psalmos LI-C*, eds. Eligius Dekkers and Jean Fraipont, CCSL 39 (Turnhout: Brepols, 1956), pp. 743–44, and Peter Lombard, *Commentarium in Psalmos*, PL 191 (Paris: J. P. Migne, 1854), cols 545–46. On Peter Lombard’s Augustinian account on the toleration of the Jews and its influence on Alexander of Hales, see also Jack Watt, ‘Parisian Theologians and the Jews: Peter Lombard and Peter Cantor,’ in *The Medieval Church: Universities, Heresy, and the Religious Life: Essays in Honour of Gordon Leff*, eds. Peter Biller and Barrie Dobson (Woodbridge: Boydell Press, 1999), pp. 55–76.

1. To the objection it must be said in rebuttal that, although they perpetrate blasphemy, they believe that they do not sin thereby, since they believe that the messiah has not yet come. In this they err and are consigned to future damnation, unless they recover their senses. As is said in Psalms: 'I shall pay them out' (Ps. 40:11). In regard to this the Gloss says: 'In the present, they shall be dispersed; in the future, they shall be damned.' If, however, they persist in open blasphemy, they must be coerced by the secular rulers, as is indicated in *Liber Extra, De Iudaeis, In Nonnullis Provinciis*, where it is said: 'We most especially forbid anyone to dare to break forth into insults against the Redeemer. Since we cannot shut our eyes to insults heaped upon Him Who washed away our sins, we decree that such presumptuous persons shall be duly restrained by fitting punishment meted out by the secular rulers, so that none dare blaspheme against him who was crucified for our sake.'

2. To the second objection, it must be said that their books, in which blasphemies are contained, are to be burned. If they tenaciously persist in blasphemy and are convicted before a tribunal, they are to be punished with a fitting penalty. It is different, if they blaspheme secretly.

3. To the third objection, it must be said that the issue concerning those pagans holding the Holy Land is different from that concerning the Jews. Christians persecute those pagans as unjust holders of the Holy Land and as violators of a sacred place, to the injury of Christ. Jews, however, are allowed for many reasons to live and dwell among Christians. This is so, since we have received the Old Testament from the Jews, since Christ came from their seed, since the promise of their salvation when 'the Gentiles have been admitted in full strength' (Rom. 11:25) has been made. Therefore, if they transgress openly against Christ, they are to be coerced by the proper punishment. It does not seem that they should be spared punishment in cases of open sins any more than evil Christians.²⁴

The second paragraph replies to the argument concerning the blasphemous content of the Talmud and the need to destroy it as well as to punish those men and women who subscribe to its purportedly blasphemous doctrines. Here, the *Summa* introduces an important distinction which is present throughout the above three para-

24 *SH* III, In3, Tr8, S1, Q1, T2, M1, C1 (n. 740), pp. 729–30: '1. Ad obiectum autem in contrarium dicendum est quod, licet blasphemiam perpetrent, credunt tamen se non in hoc delinquere, eo quod nondum credunt Messiam venisse, et in hoc errant et reservantur ad futuram damnationem nisi resipiscant, sicut dicitur super illud Psalmi: "Retribuam eis," Glossa: "In praesenti, ut dispergantur; in futuro, ut damnentur." Si tamen persistent in blasphemia manifesta, coercendi essent per principes saeculares, sicut habetur in *Extra, De Iudaeis, In nonnullis provinciis*, ubi dicitur: "Districtissime prohibemus ne in contumeliam Creatoris prosilire praesumant; et quoniam illius non debemus dissimulare opprobrium, qui probra nostra delevit, praecipimus praesumptores huiusmodi per principes saeculares dignae animadversionis adiectione compesci, ne Crucifixum pro nobis aliquatenus blasphemare praesumant." – 2. Ad secundum dicendum quod libri eorum, in quibus huiusmodi blasphemiae continentur, comburendi sunt; ipsi vero, si pertinaciter in huiusmodi blasphemia persistent, coram iudice convicti, digna poena sunt puniendi. Secus autem est, si occulte blasphemant. – 3. Ad tertium vero dicendum quod alia est ratio de ipsis paganis detentoribus Terrae Sanctae et de ipsis Iudaeis. Persequuntur enim Christiani ipsos paganos tamquam iniustos detentores et sacri loci violatores in iniuriam Christi; Iudaei vero multiplici ratione permittuntur vivere et inter Christianos commorari, tum propter hoc quod a Iudaeis Legem Veterem accepimus, tum quia de semine illo venit Christus, tum quia facta est promissio salutis eorum, cum "plenitudo gentium intraverit." Unde, si delinquant manifeste in Christum, debita animadversione sunt coercendi; nec videtur eis magis parcendum in delictis manifestis quam Christianis malis.'

graphs, though it has not received sufficient attention: namely that of open or public (*manifeste*) blasphemy on the one hand and secret or private (*occulte*) blasphemy on the other. Thus, the *Summa* concludes that the Talmud must indeed be burned and also shall those persons be condemned and punished who stick to its blasphemies. Yet, the *Summa* adds an important proviso: *Secus autem est, si occulte blasphemant*, which Chazan very unfortunately translated as: ‘The same is the case if they blaspheme secretly,’²⁵ though it means in fact the exact the opposite: ‘It is different, if they blaspheme secretly.’

The same idea is also present in the first of the three replies. Drawing again on Augustinian motives from Peter Lombard’s commentary on the Psalms and Pope Gregory’s *Liber Extra*,²⁶ the *Summa* restricts punishment for anti-Christian blasphemies among the Jews to cases which occur openly, i.e. in the public sphere, not in private. In the same vein, the refutation of the third argument contends that *manifest* transgressions against Christ must be punished likewise among Jews and Christians. With regard to the ensuing penal action, it is worth noting that both the first and the third argument imply that law enforcement belongs to the secular powers.²⁷

On the whole, the *Summa Halensis* arrives at a fragile equilibrium between the Augustinian approach and Pope Gregory’s much more aggressive posture. Key for this equilibrium is the *Summa*’s very conscious choice of its proof texts, namely Peter Lombard’s commentary on Psalms, which must be considered an up-to-date version of the Augustinian model, and Pope Gregory’s *Liber Extra*. Balancing these sources, the *Summa Halensis* clearly tries to avoid or at least to mitigate the serious consequences that the accusation of the Talmud as an *alia lex* would have only a few years later.

Consequences: The Talmud, Heresy and Papal Jurisdiction

While it may sound paradoxical, it was the Christian discovery of an exclusively Jewish law, that is, the Talmud, which eventually legitimized the Jews’ subjection under Christian law and papal jurisdiction, for the reason that their departure from the Old Testament due to their *alia lex* made them heretics. While Pope Gregory IX did not say so expressly, his focus on the Talmud as an *alia lex* was part of a strategy that aimed

²⁵ Chazan, *Church, State and Jew in the Middle Ages*, p. 46.

²⁶ See Peter Lombard, *Commentarium in Psalmos*, col. 413 and *In nonnullis* in *Corpus Iuris Canonici*, 2:776–77.

²⁷ Cf. the first argument’s ‘praecipimus praesumptores huiusmodi per principes saeculares dignae animadversionis adiectione compesci’ which is echoed by ‘si delinquant manifeste in Christum, debita animadversione sunt coercendi.’ As indicated, this principle goes back to *In nonnullis*.

at further extending his jurisdiction over heretics with the goal of including the Jews in these measures.²⁸

An explicit corroboration of this connection between the discovery of the Talmud and the claim for universal papal jurisdiction over Jews as heretics can be found in Pope Innocent IV's commentary on Gregory's *Liber Extra*. In this text from the 1240s, we read (X.3.34.8) that the pope

can judge the Jews if they act against the law in moral issues, and are not punished by their leaders; and also if they are found guilty of heresy with regard to their own law. And this was the reason why Pope Gregory and Pope Innocent were moved to order the burning of the Talmud in which there are many heresies and to punish those who followed or taught these heresies.²⁹

Innocent not only argues that the Talmud makes the Jews depart from their law, namely the Old Testament, but – based on this claim – he establishes a direct relation between the Talmud and heresy: Jews who follow the doctrines of the Talmud or teach them are to be considered heretics, and it is eventually as such that they can be judged by the Church.

This position is very different to the *Summa*'s. To the question whether the Church can judge the Jews, one of the ensuing chapters of '*De Iudaeis et Paganis*' replies by quoting Paul's words in 1 Corinthians 5:12, according to which the Church cannot judge those who are not part of its community:

The Church is not entitled to 'judge those who stand outside of it' by imposing spiritual chastisement or religious rules on them; it can, however, impose temporal and spiritual chastisement on them in an indirect manner, namely by removing Christians from their company.³⁰

The *Summa* dismisses any form of direct jurisdiction over the Jews. What it concedes is an indirect jurisdiction over the Jews, known as the *iudicium Iudaeorum*. This form of Church jurisdiction consists in forbidding Christians any dealings with Jews, thus marginalizing the latter and aggravating their social and economic condition. While this form of jurisdiction, which was introduced at the end of the 12th century, had

²⁸ For a similar view, see Joel E. Rembaum, 'The Talmud and the Popes: Reflections on the Talmud Trials of the 1240s,' *Viator* 13 (1982), pp. 203–23, on pp. 211–12.

²⁹ Quoted from Benjamin Z. Kedar, 'Canon Law and the Burning of the Talmud,' *Bulletin of Medieval Canon Law* n.s. 79 (1979), pp. 79–82, who shows that the printed editions are not reliable for this passage. The Latin text from the manuscripts reads as follows (p. 80): 'Item Iudaeos potest iudicare papa si contra legem faciant in moralibus, si eorum praelati eos non puniant et eodem modo si haereses contra suam legem inveniant, et hac ratione motus papa Gregorius et Innocentius mandaverunt comburi libros talmuth in quibus multae continebantur haereses et mandavit puniri illos qui praedictas haereses sequerentur vel docerent.'

³⁰ *SH* III, In3, Tr8, S1, Q1, T2, M2, C1 (n. 745), p. 733: 'Non est Ecclesiae "iudicare" eos "qui foris sunt," ut poenam spiritualem eis infligat vel regulas religionis imponat; potest autem poenas temporales eos infligere vel spiritualem indirecte, removendo Christianos ab eorum communione.'

severe consequences for the Jews, it must be clearly distinguished from the pretension of direct jurisdiction over Jews pursued by Gregory IX and Innocent IV.³¹ Whereas Gregory IX and Innocent IV present the Talmud as another law which makes the Jews become heretics and hence subject to direct Church jurisdiction, for the *Summa* there are no legitimate reasons for extending the legal competences of the Church beyond the limits of the traditional *iudicium Iudaeorum*.

Conclusion

From what has been said, the *Summa's* insistence on the Talmud's blasphemy appears to be anything but accidental. It seems as if the *Summa* tried to concentrate all the charges against the Talmud in particular and the Jews in general on blasphemy precisely in order to attenuate the theological and probably also the legal consequences of the Talmud affair. To phrase the charges against the Talmud and further accusations against the Jews in terms of the rather traditional vocabulary of blasphemous practices and to limit their prosecution to the public sphere was a way to deal with the conflict within the established theoretical and institutional framework. From this more conservative perspective, it was neither required nor desirable to alter the status of the Jews as witnesses of the Christian truth and to stigmatize them as heretics instead – a shift of paradigm which would cause much harm to Christian-Jewish relations.

Notwithstanding the *Summa's* attempt to uphold and refine the Augustinian model of toleration, in the second half of the 13th century Jews were definitely represented as heretics,³² giving way to such radical anti-Jewish attitudes as that of Berthold of Regensburg (d.c.1272), who wrote in one of his very popular German sermons:

They have become heretics (...) making a book which is called Talmud. This is altogether heretical, and it contains so condemnable heresies that it is evil that they exist.³³

³¹ See Magin, 'Wie es umb der juden recht stet': *Der Status der Juden in spätmittelalterlichen Rechtsbüchern*, pp. 23–24.

³² The legitimation of papal jurisdiction over Jews by means of their representation as heretics would play a central role also in the 14th century. See Claudia Heimann, 'Nicolaus Eymerich OP: Der Inquisitor und die Juden im Aragon des 14. Jahrhunderts,' in *Dominikaner und Juden/Dominicans and Jews: Personen, Konflikte und Perspektiven vom 13. bis ins 20. Jahrhundert/Personalities, Conflicts, and Perspectives from the 13th to the 20th Century*, eds. Elias H. Füllenbach OP and Gianfranco Miletto (Berlin: De Gruyter, 2015), pp. 135–54.

³³ Berthold of Regensburg, *Vollständige Ausgabe seiner deutschen Predigten*, eds. Franz Pfeiffer and Josef Strobl, 2 vols (Vienna: Wilhelm Braumüller, 1862–86), 1:401: 'Sie sint ze ketzern worden (...) unde habent ein buoch gemachet, daz heizet dalmut. Daz ist allez sament ketzerie, unde dâ stêt sô verfluochtiu ketzerie an, daz daz übel ist daz sie lebent.'

At the end of the 13th century, the Psalms' appeal 'Slay them not,' which is the cornerstone of both Augustine's and the *Summa's* account on toleration of the Jews, had expired: the Talmudic Jew had eventually become a heretic who was to be eradicated.³⁴

³⁴ See also Alexander Patschovsky, 'Der 'Talmudjude': Vom mittelalterlichen Ursprung eines neuzeitlichen Themas,' *Zeitschrift für historische Forschung*, Beiheft 13 (1992), pp. 14–27.