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Pedro Barceló (Potsdam), Peter Riemer  
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## **Religion and Law in Classical and Christian Rome**

assisted by Sarah Blake  
and Mihaela Holban



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pagans had used to understand the relationship between law and religion survived to shape the Byzantine polity for centuries to come.

## Chapter 5

### «Papinian Commands One Thing, Our Paul Another»: Roman Christians and Jewish Law in the *Collatio Legum Mosaicarum et Romanarum*

by

Andrew S. Jacobs, University of California, Riverside

#### 1 Introduction: Religious Identity and the Law in Late Ancient Christianity

«So now then you should know that your own laws, which seem to rouse toward innocence, are borrowed from divine law, which is more ancient in form. For we have already spoken of the age of Moses.»<sup>1</sup> The invocation of Roman and Christian law here in Tertullian's *Apologeticum* («legal defense») gestures in two directions simultaneously. There are the overtones of hostility and superiority: Roman magistrates, who insist that «the laws are supreme in their own domain»,<sup>2</sup> should realize that the roots of their own legal mentality do not run as deep as the biblical foundation of Christianity (*divina lex*). At the same time, there is an undertone of conciliation: Roman justice is, after all, «borrowed» (*mutuatas*) from that divine law, and Christians daily prove their fidelity to the institutional apparatus of the Roman state: «We are always praying for all the emperors: long life for them, secure Empire, safe house, strong armies, faithful Senate, honest people, a world at peace – whatsoever are the wishes of human and Caesar.»<sup>3</sup> The pre-Constantinian Christians hovered in this shadowy margin between accommodation and condemnation, appealing to and critiquing the Roman law that might condemn them to death.

Although the fourth-century legalization of Christianity drastically altered the position of Christians «in the world», we still find Christians locating their sense of simultaneous identification with and alienation from the Empire (increasingly *their* Empire) in the decisive sphere of civil jurisprudence. The acid-tongued ascetic Jerome observes a critical moral gap between God's law and the Empire's:

The laws of the Caesars are one thing, those of Christ another; Papinian taught one thing, our Paul (*noster Paulus*) taught another. Among *them* the reins of shame are relaxed for men ... Among us, what is not permitted to women is equally not permitted to men and the same servitude is decreed by an equal condition.<sup>4</sup>

<sup>1</sup> I would like to thank Catherine M. Chin of the Catholic University of America and Clifford Ando of the University of Southern California for their perceptive readings of a draft of this essay. Tertullian, *Apologeticum* 45.4 (CCL 1:159). All translations from original sources are my own. See also *Apol.* 19.5\* (CCL 1:120). On the date of the *Apologeticum* (c. 197) see Barnes 1971: 32–4, 55.

<sup>2</sup> Tertullian, *Apol.* 1.3 (CCL 1:85).

<sup>3</sup> Tertullian, *Apol.* 30.4 (CCL 1:141). See also *Apol.* 32.2 (CCL 1:143): «We respect the judgment of God in the Emperors, who has set them (*praecepit*) over the nations».

<sup>4</sup> Jerome, *Ep.* 77.3 (CSEL 55:39). The emphatic *noster Paulus* explicitly distinguishes the Apostle

Commenting here on the permissiveness of Roman divorce law over against New Testament strictures,<sup>5</sup> Jerome finds the distinction between «us» and «them» especially manifest in the discontinuity of legal and moral codes. Other ecclesiastical voices in the first decades of a Christian Empire echo his disjunctive sentiments.<sup>6</sup>

Just as in the time of Tertullian, however, legal discourse opened up for post-Constantinian Christians an ambivalent space in which rejection of and rapprochement with the state's social institutions coexisted. Jerome, so quick to malign the laxity of Rome,<sup>7</sup> famously enacted his own cultural ambivalence through a juridical fantasy. In a widely circulated (and notorious) letter to his virgin companion Eustochium,<sup>8</sup> Jerome recalled a haunting vision from his youth in the monastic wilds of Syria: «I was dragged before the Judge's tribunal (*tribunal iudicis*) ... Asked my status (*condicio*) I replied that I was Christian. But he who presided (*ille qui praesidebat*) said: «You lie, you are a Ciceronian, not a Christian!»<sup>9</sup> As one scholar notes, «the dream also presents Jerome to himself as a battleground, and again his body is the locus ... a clash of cultures, one secular and the other religious».<sup>10</sup> The «clash of cultures» is only seemingly resolved in this nightmare court when Jerome renounces «the books of gentile literature»;<sup>11</sup> in reality, the tension remains inscribed throughout the rest of Jerome's highly cultured oeuvre.<sup>12</sup>

As the martyr's court of Tertullian and the heavenly tribunal of Jerome attest, the discourse of Roman law was a fertile imaginative ground for the articulation of ambivalent loyalties. Already from the time of the Republic, Roman law was a formative aspect of cultural identity, tied directly to the education of its upper classes; in the period of the Empire, law continued to play a crucial role in the rhetorical construction of individual and communal identity within the bounds of the Roman Empire.<sup>13</sup> The late ancient Empire was a complex and inherently fractious political entity, lacking the kind of «native» coherence that traditionally bounded an *ethnos* or *populus* in the ancient world. This is not to say that Romans lacked a sense of ethnic or cultural identity – *Romanitas* or *Latinitas* – only that it was not this «native» identity that held together their mighty Empire. *Latinitas* never

from another famous third-century jurist, Julius Paulus; it also implicitly draws a connection between the «laws of Caesar and Christ».

- 5 Matt 19:9: «And I say to you, whoever divorces his wife, except for unchastity, and marries another commits adultery». See Evans Grubbs, 1995: 225–60; and Clark 1998: 233–55, esp. 235–37 on Roman law and Christian ascetic exegesis.
- 6 Ambrose of Milan, governor-turned-bishop, likewise finds in the law a point of division between Church and Empire: see McLynn 1994: 298–303. Yet Ambrose, too, could also emphasize the univocity of Christian and Roman law: see *Ep.* 58.3.40–44 (*CSEL* 82.2:114), discussed in Evans Grubbs 1995: 154.
- 7 Jerome speaks with particular disgust about the wedding of a couple in Rome who had between them already accrued some forty-two spouses: *Ep.* 123.9.1–2 (*CSEL* 56: 82–83), discussed by Clark 1995: 356–57.
- 8 See now Adkin 2003.
- 9 Jerome, *Ep.* 22.30.4 (*CSEL* 54:190). As Adkin 2003: 292–93, points out, much of the language of Jerome's dream/vision alludes to the accounts of martyrs before Roman judges, particularly the confession *Christianus sum* that sealed the martyrs' fates.
- 10 Cox Miller 1993: 40.
- 11 Jerome, *Ep.* 22.30.5 (*CSEL* 54:191). Adkin 2003: 283–85, 295–97, argues that historians (following Rufinus's lead: see n. 12 below) have misunderstood the point of this anecdote by focusing on Jerome's (fantastic) «renunciation» of secular literature.
- 12 As tartly noted by Rufinus, Jerome's enemy in the Origenist controversy (early fifth century CE): *Apologia contra Hieronymum* 2.7 (*CCL* 20:88); discussed by Lardet 1993: 123–27.
- 13 On the production of imperial ideologies of autocracy and consensus embedded in late Roman legislation, see Harries 1999: 214–16; on «law» (in a strict literal sense and a broader moral sense) as a unifying force in the Roman Empire, see Ando 2000: 47–48.

became the Roman equivalent of Alexander's *hellenismos*, a tool of cultural unification that (ostensibly) unified an empire.<sup>14</sup> The logic of Roman imperial identity derived from its ability to hold together by institutional force its diverse constitutive elements, the provinces stretching from Spain to Armenia. Economic, military, and (increasingly throughout the third through sixth centuries)<sup>15</sup> jurisprudential institutions forged those boundaries apart from shared ethnic, linguistic, or cultural patrimony. Provincials (and, to a degree, non-elite Romans) under «Roman Law» were constituted in the same gesture as members of an imperial body politic and subordinates to that body. The result was a sense of identification with Rome that was partial and incomplete.

The Christian imagination was likewise split between rejection of and accommodation to the Roman Empire, a split identity made more acute as the Empire became increasingly Christian. These oscillating discourses of rejection and appropriation of «Rome», incipient in Tertullian's writings and more insistent by the time of Jerome, are often read as a sort of necessary schizophrenia attendant upon Constantine's conversion: despite an authentic distaste for «the world» and its secular institutions, Christians «had to» come to terms with their new position in that world. Yet we can also explain this double-edged attitude toward Rome as part and parcel of the institutional formation of subjects under the Roman Empire: a split identification with Rome (benevolent dispenser of laws) and alienation from Rome (ruthless imposer of laws). Christians, already having internalized various contradictory attitudes toward «Caesar» from their sacred Scriptures and communal histories, engaged the institutions of Empire with similar ambivalence: drawing connections to and distinctions from the institutional face of Roman Empire.<sup>16</sup>

In order to explore more thoroughly this doubled logic of Roman Christian identity in the imaginative terrain of legal imperial discourse, I examine here an idiosyncratic late ancient legal text that «has baffled scholars since its first publication ... in 1573»,<sup>17</sup> the *Collatio Legum Mosaicarum et Romanarum* (likely titled in antiquity simply the *Lex Dei*).<sup>18</sup> The text presents series of Roman laws organized under headings of legal prescriptions from the Pentateuch, providing a comparison (*collatio*) of the two legal realms. Recent studies ascribe the text to a Jewish *collator*,<sup>19</sup> forcing the *Collatio*'s significance into the margins of the late ancient Christian Roman Empire. Here, however, I would like to approach this idiosyncratic work from the vantage point of the ambivalent and legalistic articulation of Christian cultural identity in late ancient Rome: a religious selfhood that seeks identification with and triumph over «Rome» through gestures that are, perhaps ironically, best described as imperial.

In fact, I would suggest that this document's seeming Jewishness, so compelling to modern scholars, illuminates more clearly those shadowy attempts of Christians to come to

- 14 Of course the workings of «hellenism» from the classical period through late antiquity, functioned in a highly complex manner: see Bowersock 1990; Swain 1996; and Goldhill 2001.
- 15 That is, from the period of the great *iusconsulti* through to the time of the compilation of the Codes of Theodosius II and Justinian, an age arguably ushered in by the *constitutio Antoniniana*'s grant of universal citizenship in 212 CE: see Honoré 2004; and Garnsey 2004.
- 16 See Clark 1991.
- 17 Comment of Rutgers 1995: 210; Volterra 1930: 39 labels it a «misterioso documento»; Liebs 1987: 163 calls it a «merkwürdige Werke».
- 18 Liebs 1987: 163, suggests the original title was «*Lex Dei, quam Deus praecepit ad Moysen, et Lex Romana*», based on medieval attestation and manuscript evidence, and by analogy with Cassiodorus' *Institutiones divinarum et saecularium litterarum*.
- 19 As one recent general study notes without much comment: «der Verfasser war wohl Jude». Noethlichs 2001: 200. Noethlichs relies mainly on Rutgers and Cracco Ruggini 1983 for this statement.

terms with their new imperial roles. I have argued elsewhere that one strategy by which Christians devised a new imperial ideology for themselves was through doubled gestures of rejection and appropriation of Jews and Judaism in the holy land.<sup>20</sup> These strategies for constructing and colonizing Jewishness often resulted in contradictory attitudes of fear and desire familiar to modern theorists of ideology and empire. The same convoluted strategies at play in the imperial context of the holy land may also be at work in the juridical alignment of Roman and Christian cultural values. In an examination of the cultural tangle of the *Collatio*, we can perhaps witness how Christians could manipulate the authority and antiquity of a biblical «Law» (ambiguously coded, as we shall see, as «Jewish Law») in a double gesture of triumph over Rome («We have already spoken of the age of Moses», Tertullian boasted) and triumph as Rome («We are always praying for the emperors», he adds). Through the curious compilation of Mosaic and Roman legal systems, the appropriation, or even colonization, of Jewish Law becomes the intertwined authority of Christian *iudex* and Roman *jurisconsultus*.

## 2 «Misterioso Documento»: scholarly framing of the *Collatio*

The *Collatio*, which likely survives in an incomplete state,<sup>21</sup> presents sixteen *tituli* of Mosaic prescriptions from four books of the Pentateuch (Exodus, Leviticus, Numbers, and Deuteronomy) followed by one or more citations from Roman jurists or legal codes.<sup>22</sup> Modern scholars often mine the *Collatio* as a source of pre-Justinianic and pre-Theodosian Roman jurisprudence,<sup>23</sup> or to fill in some of the bombastic moral rhetoric stripped away from the laws by the compilers of the later Codes.<sup>24</sup> Basic questions of the *Collatio*'s provenance and purpose remain highly debated.<sup>25</sup> The quality of the correlation between the biblical and Roman laws has been questioned, as well as the source of the biblical text that lies at its foundation.<sup>26</sup> The date of compilation also remains unsettled. Since the first external attestation does not come until the ninth century,<sup>27</sup> dating is generally argued from internal points: laws promulgated under Constantine seem to set a *terminus post quem* of

20 Jacobs 2004.

21 I cite text of the *Collatio* from Riccobono 1968: 543–89. English translation with photoplates of the oldest (Berlin) codex and Latin transcription in Hyamson 1913.

22 On the incomplete state of the text see Volterra 1930: 122 and Rutgers 1995: 218; for a breakdown of the Biblical and Roman legal sources, see idem, 214, 234–5. The legal sources are the *Codex Hermogenianus*, *Codex Gregorianus*, and five jurists: Ulpian, Papinian, Paulus, Gaius, and Modestinus (see Tellegen-Couperus 1993: 150–56 for dates). As Rutgers 1995: 214, points out, these are the five jurists whose opinions were granted automatic authority in the «Law of Citations» of 426 CE (*Codex Theodosianus* 1.4.3; text in Mommsen 1954: 1.2:34–35).

23 As by Evans Grubbs 1995: 100, on an imperial edict by Diocletian against close-kin marriage preserved in *Collatio* 6.4 (*FIRA* 2:558–60). See also similar recent use by Bradbury 1994: 135 n. 60.

24 Both Evans Grubbs and Bradbury use the *Collatio* as a legal source that preserves the «moralizing tendency» (Bradbury 1994: 135) and «self-righteous wrath» (Evans Grubbs 1995: 101) of Diocletian's legislation.

25 Despite the assurances, originally expressed in 1944, of Daube 1991: 1: 107–22, that the «great mystery of the *Collatio legum Mosaicarum et Romanarum* can be regarded as solved» (107).

26 See for example Ostersetzer 1934: «Beaucoup de prescriptions romaines ne correspondraient nullement aux passages cités de l'Écriture si nous n'interprétons pas ces derniers dans un sens tout à fait spécial» (78); the «special sense» for Ostersetzer is rabbinic literature. Volterra 1930: 54–80, on the other hand, notes lexical changes in the Latin made precisely to conform the biblical law to Roman statutes.

27 See Hyamson 1913: xiii–xv.

315 CE,<sup>28</sup> while lack of mention of the *Codex Theodosianus* seems to establish a *terminus ante quem* of 438. The inclusion of a law promulgated under Theodosius between 390 and 392 would seem to set a further plausible *terminus post quem*,<sup>29</sup> but several scholars have chosen to view this paragraph as a later interpolation or redaction.<sup>30</sup> In recent years scholars have argued for a very early date in the fourth century,<sup>31</sup> while others have pushed the composition of the *Collatio* well into the 390s.<sup>32</sup>

Discussion continues as to whether the author was Jewish or Christian (and, if Christian, whether a specific personality could be identified).<sup>33</sup> The text has no prologue and precious few non-legal lines of text from which to extrapolate an author's voice or context.<sup>34</sup> Most of the debate over religious milieu therefore centers on the purpose of the text. Particularly useful on these questions in recent years, is the analysis of the historian of Judaism Leonard V. Rutgers. Most of Rutgers' important work on Jews in late ancient Rome focuses on the abundant, yet understudied, material record (archaeological and epigraphical). In arguing the Jewish provenance of the *Collatio*, Rutgers seeks to supplement the much sparser literary remains of Roman Jews. By determining that the author (or compiler) was Jewish, Rutgers can claim that «the *Collatio* was the last major Jewish apologetic work to be written in antiquity».<sup>35</sup> Rutgers' treatment of the *Collatio* is not only recent and comprehensive, but also brings into play several of the issues I too wish to address through this text: the nature of religious identification with and alienation from «Rome», the cultural contexts of textual production and consumption, and the role of «the Law» in Jewish and Christian self-definition.<sup>36</sup>

Rutgers asserts that «once the *Collatio* is placed within the larger framework of Jewish and early Christian attitudes towards the Torah, there can be little doubt that the author of the *Collatio* was Jewish».<sup>37</sup> First Rutgers briefly rehearses the *argumenta e silentio*: there is no reference to any text of the New Testament in the *Collatio*, nor any «trace of an allegiance to or even a knowledge of Christianity».<sup>38</sup> Next, Rutgers asks whether a Jew or

28 *Collatio* 14.3.6: «ex novellis constitutionibus» (*FIRA* 2:578).

29 *Collatio* 5.3.1–2 (*FIRA* 2:557).

30 Volterra 1930: 52; Barone-Adesi 1992: 185–93, who sees several layers of redaction spanning the fourth century.

31 For the various arguments see Barone-Adesi 1992: 9–18. See also Cervencia 1963: 253–276; Masi 1965: 415–32; and finally Rabello 1984, who asserts «the *Collatio* was compiled by a Roman Jew between 294 and 313, with the purpose of broadening the Jews' knowledge of Roman law during Diocletian's reign» (158).

32 Rutgers 1995: 249–50, provides the most detailed argument for a date in the 390s.

33 For a summary of the arguments, see Rutgers 1995: 210–11, 218–19. Most scholars have been convinced by the close textual reading of Volterra 1930, that the compiler was likely Jewish, although see Liebs 1987: 162–74. Christian nominations include Rufinus, Ambrose, Jerome, and the author known as Ambrosiaster: see Cracco Ruggini 1983: 39–41 n. 4.

34 Note, however, that Barone-Adesi's conclusions also rest on his analysis of the few «annotazioni» (*Collatio* 5.3, 6.7, 7.1, 14.6 [*FIRA* 2:557, 561, 562, 578]) that pepper the text: Barone-Adesi 1992: 178–84. His conclusions (concerning Jewish authorship) are similar to Rutgers', although it seems the two worked independently.

35 Rutgers 1995: 252.

36 It goes without saying that I find Rutgers' work immensely important for the history of ancient Judaism: the fact that I have chosen him as my interlocutor for this particular text should be taken as a sign of respect for his work, while highlighting productive discussions ongoing in the field of ancient Jewish-Christian relations.

37 Rutgers 1995: 211.

38 Rutgers 1995: 236. Other studies push this argument from silence much further, such as Rabello 1984: 157, who states baselessly, «there is no known Christian document that does not mention the Gospels». Even granting that Rabello means to say «the New Testament», this assertion is

Christian would have more interest in «the Law» (the Pentateuch) in fourth-century Rome. He notes that, perhaps influenced by heightened interest in Paul's letters (especially his letter to the Romans in the Latin West),<sup>39</sup> Christians evinced little active interest in the Mosaic Law apart from the moralized Ten Commandments: the rest of the Law was hopelessly «Jewish», part of that stereotypical package comprising Sabbath, circumcision, and *kashrut*.<sup>40</sup> Rutgers extrapolates from this disinterest that «no early Christian author ... would ever have taken a selection of regulations belonging in the second law to determine the structure of the specific argument he has in mind».<sup>41</sup> To cite such laws positively, even productively in the service of religious self-definition, Rutgers argues, would have seemed like distasteful «Judaizing».<sup>42</sup> By contrast, Jewish authors of earlier periods (here Rutgers must of necessity rely on the first-century CE writings of Flavius Josephus and Philo of Alexandria, and to a lesser extent the rabbis) show an intense interest in the practical application of Mosaic legal materials that would have been unusual among Christians.<sup>43</sup>

Finally, Rutgers inquires after the most plausible social context from which the *Collatio* might have emerged in the fourth century.<sup>44</sup> Rutgers believes that the concerns of a culturally marginalized, yet socially embedded, Roman Diaspora Jewish community provide the «most convincing» explanation for the purpose of the document:

The *Collatio* was composed to stress the primacy of Mosaic law and to show that the injunctions of Mosaic law were not at variance with the ordinances of Roman law ... The *Collatio* was written by a Jew (or Jews) and the decision to include or exclude Roman legal materials from it rested on apologetic considerations alone.<sup>45</sup>

This is the double-edged *apologia* familiar from Tertullian, perhaps, and written in similar circumstances: a marginalized and even threatened religious group invokes its own legal superiority even as it emphasizes juridical rapprochement with its imperial masters.<sup>46</sup> Here in the fourth century, however, Jews struggling under a Christian Empire have taken the

either impossible (no Christian author ever wrote without mentioning the Christian Bible?) or unhelpfully tautological (no document is categorized as «Christian» unless mention is made of the Christian Bible?).

39 On the rise of «Pauline studies» in late antiquity (particularly of the letter to Romans in the West, and that to the I Corinthians in the East), see Martin 2000: 238–42 and notes; Wiles 1967: 3–13; Grazia Mara 1992; Dassman 1992: 657–9; and Mitchell 2000: 66–7.

40 Rutgers 1995: 233: «[F]ulfillment of the Law in the sense used by Jesus [see Matthew 5:17] was taken to mean observance of the Decalogue only ... Except for occasional stereotypical references to Jewish religious holidays, circumcision, or the laws regarding food, legal materials other than the Decalogue did not really interest early Christian writers». On these standard stereotypical signs of Judaism, see discussion in Cohen 1999: 39–49.

41 Rutgers 1995: 235.

42 Rutgers 1995: 234–36. Rutgers employs the *Biblia Patristica* and the index of the critical edition of Ambrosiaster's *Liber questionum* (CSEL 50) to construct an analytic table demonstrating the sparseness of Christian citations of the Pentateuch verses employed by the *collator*.

43 Rutgers 1995: 240. While no comparable table is provided for Jewish citations of the specific biblical passages found in the *Collatio*, such a table would no doubt prove unnecessary: it is certain that Josephus, Philo, and the *tannaim* referred with much greater frequency to the particular legal commandments of the Torah than did the Church Fathers.

44 Much of this argument is now supplemented by Lucrezi 2001: 34–38. Like Rutgers, Lucrezi relies heavily on the 1930 work of Edoardo Volterra («grande Maestro italiano» [22]).

45 Rutgers 1995: 247–48, 250.

46 Lucrezi 2001: 40–45 and 131–32, adopts Volterra's argument (Volterra 1930: 119) that the text emerges «di fronte alla polemica cristiana» and «di difesa da parte degli Ebrei contro le accuse dei Cristiani», and suggests Rutgers supports this argument. Rutgers, however, suggests a more complicated context in which Christian *influence* on Roman law was beginning to disadvantage Roman Jews.

earlier place of Christians under threat of pagan proscription.<sup>47</sup> Rutgers points to one of the few authorial comments of the *Collatio*: «you should realize, jurists, that Moses established [this law] first».<sup>48</sup> Although Tertullian may have boasted at the end of the second century «We have already spoken of the age of Moses», such a contention (Rutgers insists) now makes more sense in the mouths of Diaspora Jews than in those of Christians who have already triumphed over Rome. The legalistic purpose and apologetic context signal, for Rutgers, an authorship securely located in Roman (or western Diaspora) Judaism.<sup>49</sup>

### 3 «Consona Voce Damnavit»: reconsidering the *Collatio* and Christianity

Few recent scholars have mounted a more confident argument for the Jewish context of the *Collatio* than Rutgers.<sup>50</sup> But some of his points (as even he recognizes) are more convincing than others. Arguments from silence, for example, are relatively unreliable: while the *collator* makes no effort to acknowledge the existence of Christianity, making it difficult to positively infer Christian involvement in the production of the text,<sup>51</sup> the document was preserved and transmitted by medieval Christians. It was clearly not impossible for later Christian readers to find the text useful despite the absence of Christ's name.<sup>52</sup> In addition, Rutgers' numerical study of the Old Testament texts used in the *Collatio* provides some grounds for his conclusion that, as a group, these biblical passages were less likely to appeal to a Christian than to a Jew.<sup>53</sup> I might even concede the likelihood that a Jew (or Jews) originally compiled the legal materials in the *Collatio* were I only asking, «Who might be more likely to come up with this specific list of biblical legal texts?»

Of course, Rutgers' overarching argument also deals with the cultural environment in which the *Collatio* makes the most sense. For Rutgers, seeking to illuminate the shadowy world of late ancient Diaspora Judaism, the *Collatio* speaks to precarious social status and Jewish *apologia*. Yet I would suggest that the *Collatio* makes as much sense in the context of Christians puzzling over their cultural and social affiliation with the Empire and «the world». Furthermore, I would suggest that the absence of specific Christian markers, and the seemingly Jewish (or even Judaizing) emphasis on «the Law», might actually signal a

47 The question of Jewish legal disadvantage under the Christian Empire continues to be debated, although it seems clear that Jews empire-wide came under increasing legal notice from Christian emperors (for both good and ill) than from their non-Christian predecessors: see Schwartz 2001: 186–92.

48 *Collatio* 7.1 (FIRA 2:562): «sciote, turis consulti, quia Moyses prius hoc statuit.» The legal comparison made here is to the Twelve Tables, making this a particularly pointed assertion of Mosaic primacy over Roman law.

49 Lucrezi 2001: 128–29, disputes the argument of some interpreters (such as Barone-Adesi) that the text had a «practical» application in Jewish or even Roman courts, and proposes instead an «internal» apologetic purpose (131).

50 His arguments are also among the most solid. Lucrezi 2001: 123–25, for instance, mounts clever, but somewhat chimerical, arguments based on the Latin of the *Collatio* (he believes it is an original translation [an expansion of a suggestion by Volterra 1930: 86] thus more likely done by a «learned Jew» [ebreo colto]) and the lack of chapter and verse numbers for biblical citations (which he claims also bespeaks a Jewish origin).

51 Barone-Adesi 1992: 178, 184, also argues from silence that «il compilatore» avoids mentioning the «imperatore catholico» (Theodosius I) and the «primo imperatore cristiano» (Constantine) in the laws of *Collatio* 5.3.1 and 14.6 (FIRA 2: 557, 578).

52 A point made by Liebs 1987: 165, 170, 174 and dismissed by Rutgers 1995: 239 and Rabello 1984: 157–58.

53 Rutgers 1995: 234–35.

very particular Christian mode of cultural production designed to further the complex interpenetration of Roman *saeculum* and Christian *sanctum*.

I believe that Rutgers has, on the one hand, underestimated the <decalogical> nature of the biblical citations in the *Collatio* and, on the other, underestimated the deployment of the (even problematically <Jewish>) Law in the service of Christian ideology. Rutgers asserts that the *Collatio* cites biblical laws well beyond the <safe> Christian boundaries of the Decalogue, including passages that elsewhere drew the attention of Jewish writers. A closer look at the *Collatio*'s structure allows us to nuance this assertion. The sixteen surviving *tituli* of the text cover: 1. manslaughter (*de sicariis*); 2. assault (*de atroci iniuria*); 3. cruelty of masters (*de iure et saevitia dominorum*); 4. adultery (*de adulteriis*); 5. illicit sex (*de stupratoribus*); 6. incest (*de incestis nuptiis*); 7. theft (*de furibus et de poena eorum*); 8. false witness (*de false testimonio*); 9. witness of relatives (*de familiaris testimonio non admittendo*); 10. theft of deposit (*de deposito*); 11. cattle-raiders (*de abactoribus*); 12. arson (*de incendiariis*); 13. moving boundary stones (*de termino amoto*); 14. kidnapping (*de plagiariis*); 15. astrology, sorcery, Manicheism (*de mathematicis, maleficis et manichaeis*); 16. inheritance (*de legitima successione*). As Edoardo Volterra pointed out, the legal connotation of the cited Mosaic regulations is often determined by the Roman laws placed in <parallel> to them.<sup>54</sup> Mosaic Law provides the structure for the *Collatio*, but in a juridical dialectic with the Roman laws it is compared with.<sup>55</sup>

Other scholars have also pointed out that, by reading the Mosaic legislation more explicitly through its Roman parallels, it is possible to categorize the first fourteen *tituli* with little difficulty by means of the second half of the Decalogue (Exodus 20:13–17): homicide, adultery, theft, false witness, and desire for neighbors' possessions.<sup>56</sup> Titles 1–3 concern manslaughter and ancillary crimes (*homicidium*);<sup>57</sup> titles 4–6 treat adultery (understood in the Roman legal sense as the sexual disruption of marriage, thus including crimes like incest and *stuprum*);<sup>58</sup> title 7 treats theft;<sup>59</sup> titles 8–9 treat inappropriate testimony;<sup>60</sup> and titles 10–14 treat the appropriation of the property of <neighbors> (as

54 Volterra 1930: 83–86.

55 As Lucrezi 2001: 118, points out: <Ma scopo dell'autore ... non era solo quello di *illustrare* una somiglianza [between Roman and Jewish Law], ma anche, in qualche modo, di *crearla*> (emphasis Lucrezi's).

56 Observed by Hyamson 1913: xxx–xxxii; Liebs 1987: 170–71, esp. 171 n. 56 on <andere frühe christliche Rechtsaufzeichnungen ... nach dem Dekalog geordnet>; Barone-Adesi 1992: 177.

57 Compare *Collatio* 1.4.1 (*FIRA* 2:545): <Homicida est, qui aliquo genere teli hominem occidit mortisue causam praestitit>; 2.7.1 (*FIRA* 2:550): <Causa mortis idonea non videtur, cum caesus homo post aliquot dies officium diurnae vitae retinens decessit nisi forte fuerit ad necem caesus aut letaliter vulneratus>; 3.2.1 (*FIRA* 2:551): <Servus si plagis defecerit, nisi id dolo fiat, dominus homicidii reus non potest postulari> (emphasis added).

58 See Evans Grubbs 1995: 205–25. Compare *Collatio* 4.2.1 (*FIRA* 2:553): <Brevem interpretationem legis Iuliae de adulteris coercendis facturus per ipsa capita ire malui ordinemque legis servare>; 5.2.1 (*FIRA* 2:557): <Paulus libro sententiarum II sub titulo de adulteris ...>; 6.3.3 (*FIRA* 2:558): <Sed qui vel cognatam contra interdictam duxerit, remisso mulieri iuris errore ipse poenam adulterii lege Iulia patitur> (emphasis added). Reading *titulus* 5 as part of a range of proscriptions on adultery and unlawful marriage seems more reasonable than understanding it in terms of <pederasty> (as Ostersetzer 1934: 77).

59 Perhaps the most self-evident: compare *Collatio* 7.5.1–2 (*FIRA* 2:563): <Furti quocumque genere damnatus famosus efficitur. Fur est qui rem alienam contrectat> (emphasis added).

60 Compare *Collatio* 8.3.1 (*FIRA* 2:564): <Hi, qui falso vel varie testimonia dixerunt vel utrique parti prodiderunt, aut in exilium arguuntur aut in insulam relegantur aut curia submoventur>; 9.3.1 (*FIRA* 2:566): <Suspectos testes et eos vel maxime, quos accusator de domo eduxit vel vitae humilitas infamaverit, interrogari non placuit> (emphasis added). Title 9 actually cites the ninth commandment (*Exod* 20:16) (*FIRA* 2:565).

distinct from the commandment against <theft>).<sup>61</sup> Titles 15 and 16, on magic and intestacy, are more difficult to fit into this Decalogue framework, and might be better understood if the *Collatio* were complete.<sup>62</sup> Nevertheless, the correspondence between the first fourteen *tituli* and the second half of the Decalogue is striking, especially in light of Rutgers' observation that <the only legal material from the Hebrew Bible that really attracted their [i. e., Christians'] attention were the Ten Commandments>.<sup>63</sup> We can plausibly read (most of) the *Collatio* as a rewriting of the Decalogue using material from elsewhere in the Pentateuch, reshaped through collation with Roman law. It might be the case that seemingly extraneous (<Jewish>) legal material from elsewhere in the Torah is being drawn away from a practicable Jewish sphere (*halakah*) into the safer orbit of the (Christianized, moralized) Decalogue, through the intervention of Roman statutes. We could therefore read the *Collatio* as a Christian attempt to seize exegetical control of the mass of legal materials even at that moment being reinterpreted and put into practice by some Jewish religious authorities.<sup>64</sup> The additional force of Roman law, in this scenario, serves to naturalize the colonizing operation of a crafty Christian *collator*.

Of course, such a crafty textual operation would be subtle at best, and still risk the widespread fear of <Judaizing> that hovered around cultural and theological debates between Christians in this period.<sup>65</sup> What of Rutgers' broader claim that positive attention to the practical application of the <Law> ran against the grain of Christian thought in late antiquity, and that <legal materials other than the Decalogue did not really interest early Christian writers>?<sup>66</sup> Such an evaluation of Christian attitudes towards <the Law> relies on a broad range of writers ranging from the second through sixth centuries,<sup>67</sup> and risks homologizing very diverse formations of Christianity. We can return to the multifaceted authors with whom I began this essay, Tertullian and Jerome, each of whom left a significant corpus (not all of which is extant). When Rutgers cites Tertullian and Jerome, he focuses primarily on their readily available anti-Jewish interpretations of <the Law>.<sup>68</sup> We

61 In title 10 the <neighbor> (*proximus*) is introduced in the Mosaic regulation (from *Exod* 22:7, 8, 11; *FIRA* 2:567), fixing the nature of the stolen <depositus> in the subsequent Roman laws. Title 11 distinguishes degrees of neighborly covetousness: *Collatio* 11.5.1 (*FIRA* 2:571): <Qui bovem vel equum errantem quodue aliud pecus abduxerit, furem magis eum quam abactorem constitui placuit>. Arson is further marked as <covetousness> in title 12: *Collatio* 12.4.1 (*FIRA* 2:573): <Incendiarii, qui quid in oppido praedandi causa faciunt, facile capite puniuntur>. Compare also *Collatio* 13.3.2 (*FIRA* 2:577): <Quod si per ignorantiam aut fortuito lapides usus causa furati sunt ...>; 14.3.5 (*FIRA* 2:578): <Eiusdem legis capite secundo tenetur, qui alieno servo persuaserit, ut dominum fugiat quive alienum servum invito domino celaverit vendiderit emerit dolo malo, quive in ea re socius fuerit ...>

62 One possible solution would be to correlate them to the second commandment, which treats idolatry in the context of <inheritance>: <You shall not make for yourself an idol, whether in the form of anything that is in heaven above, or that is on the earth beneath ... for I the Lord your God am a jealous God, punishing the children for the iniquity of the parents, to the third and fourth generation of those who reject me.>

63 Rutgers 1995: 235–36.

64 Lucrezi 2001: 131 and n. 43, emphasizes the educational zeal of Roman Jewish communities and even refers to <famous rabbinic schools> in Rome in the <early centuries of the common era>, citing Rutgers for support. See, however, Rutgers 1995: 203–9, for a more nuanced assessment of the Talmud testimonies.

65 See, for some trenchant examples and references, Newman 2001.

66 Rutgers 1995: 233.

67 At one point he demonstrates a <general tendency in Christian thought> by citing Aphrahat (a Persian writing in Syriac in the 360s), Gregory of Nyssa (a Cappadocian writing in Greek in the 370–90s), and Gregory the Great (the Bishop of Rome writing in Latin in the 590s): Rutgers 1995: 223.

68 Rutgers 1995: 220, 231.

have already seen both Jerome and Tertullian betray a notable ambivalence in their rhetorical strategies for reconciling (or detaching) Christian identity from «Rome»; should we be surprised to find a similar double-edged discourse at work in their writings on «Jews» and the «Law»?

Tertullian, for example, is indeed dismissive of Jewish adherence to the Law in some writings (Rutgers cites heavily from Tertullian's treatise *Adversus Iudaeos*).<sup>69</sup> Yet he can also, in other contexts, become the Law's ardent defender. In his lengthy treatise against Marcion, the second-century Christian who distinguished the Creator God of the Old Testament from the Savior of the New Testament, Tertullian argues vociferously against Marcion's sloppy and inaccurate segregation of «Law» and «gospel». Tertullian does not merely recuperate the Jewish Law through «spiritualizing» exegesis, a common enough tactic among ancient Christians and one that Rutgers suggests contributes to their disregard for the systematic application of the Law. Against Marcion, Tertullian insists on the real (and, suggestively, continuous) benefits of adherence to the Jewish Law.<sup>70</sup> After citing some of the moral precepts of the Law (primarily from the Decalogue), Tertullian praises the humanitarian practice of freeing slaves and fallowing of fields;<sup>71</sup> the restraint of violence engendered by the *lex talionis*; the frugality and austerity found in adhering to dietary laws of *kashrut*;<sup>72</sup> even the sacrifices and ceremonies that served (serve?) to keep Jews from falling into idolatry.<sup>73</sup> Jerome's attitudes towards Jews, their Law, and their customs are even more complex and convoluted than Tertullian's, as I and others have detailed elsewhere.<sup>74</sup> It is unlikely that any figure from late antiquity wrote as many negative statements about Jews and the Law while simultaneously defending himself against charges of theological and cultural «Judaizing» leveled due to his transmission of Jewish language and culture.<sup>75</sup> Positive evaluation of the «Jewish» Law in late antiquity was not restricted to its practitioners. Often Christians appropriated the validity of the Jewish Law in order to craft Christian identities that walked a careful line between Christian self and Jewish other.

69 Rutgers 1995: 220–21.

70 This section of Tertullian's *Adversus Marcionem* bears comparison with Origen. *Contra Celsum* 5.25–50 (SC 147:74–144), a lengthy excursus on the uniqueness and praiseworthiness of Jewish Law in comparison with the particular laws of various nations.

71 An example of clemency also adduced by Origen, *Contra Celsum* 5.43 (SC 147:126), upon which Origen exclaims that, had the Jews not conspired against their own prophets and Jesus, the value of their Law was such that «we would have in them a model of the heavenly city (*poleōs ouranias*), which Plato himself strove to describe».

72 Pace Rutgers 1995: 224 n. 64, this argument should be distinguished from more strictly allegorical or typological Christian reading of dietary laws. Tertullian is not saying that abstention from certain foods *symbolizes* moral restraint, but that the actual practice of dietary restriction *engenders* moral restraint, an argument not appreciably different from a philosophical (and «observant») Jew such as Philo.

73 Tertullian, *Adversus Marcionem* 2.17.4–19.4. Text in Evans 1972: 1:134–40.

74 See Jacobs 2004: 56–100 and the references there.

75 As Jerome famously exclaimed, when defending himself against charges of «Judaizing», the Scriptures, «If it is expedient to hate any people and to detest any nation, I have a notable hatred for the circumcised ... Yet can anyone object to me for having had a Jew as a teacher?» (Ep. 84.3.3 [CSEL 55:125]).

#### 4 Two Tablets, Twelve Tables: Ambrosiaster on the law

We can see this doubled attempt at distancing and appropriation of Jewish Law in the writings of another figure close to the cultural environment of the *collator*. «Ambrosiaster» (as scholars have dubbed the unknown author) wrote in Latin in Rome near the end of the fourth century, and is notable for his attention to the *minutiae* of (pagan) Roman life as well as Jewish beliefs and customs.<sup>76</sup> His detailed responses to the *pagani* and *Iudaei* (which extend far beyond his explicit chapters *adversus paganos* and *adversus Iudaeos*) have even led modern scholars to posit that he is either a converted pagan or a converted Jew, operating on the theory that no zeal matches the zeal of a convert.<sup>77</sup> For Rutgers, Ambrosiaster emerges as a star witness for «Why is the *Collatio* not a Christian Work?» I suggest that we can see in Ambrosiaster's conflation of «law» – Christian, Roman, and Jewish – a triangulation of Christian identity actually comparable to that of the *Collatio*: pushing the boundaries of the «Christian» decalogue, creating an ambivalent relationship between «divine Law» and Roman law, and (perhaps) appropriating the Jewish valorization of the Law in its broadest sense.

Ambrosiaster's *Liber quaestionum* arranges issues from Christian history and theology according to references from the Old and New Testaments,<sup>78</sup> a biblicizing procedure for outlining religious selfhood already suggestive of the *Collatio*.<sup>79</sup> The figure of Moses and «his Law» appears not infrequently in questions from both testaments, and «the Law» in all of its manifestations (Roman, Jewish, Christian) appears with great frequency.<sup>80</sup> At times, as Rutgers points out, Ambrosiaster is at pains to distinguish the contemporary practice of «the Law» by the Jews from the grace and moral Law (equated with the ten commandments) given to all. In *quaestio* 44, traditionally known as «*adversus Iudaeos*»,<sup>81</sup> Ambrosiaster dismisses the validity of Old Testament Law, which has been supplanted by the New, «since it is not from the Law that one is made righteous.»<sup>82</sup> The Law of which the Jews boast, for Ambrosiaster, was merely a punitive stopgap to keep the children of Israel in line until God could transfer grace to the gentiles.<sup>83</sup>

When the «Law» is validated by Ambrosiaster, it is frequently (again, as Rutgers points out) in reference to the moral precepts of the Decalogue, which «may not be transgressed and are a guide to good life.»<sup>84</sup> He declares, «Thus says the law», and then quotes the entire

76 Souter 1905; see discussion of Ambrosiaster's religious identity in Rutgers 1995: 212.

77 On the Jewish Ambrosiaster, see the summary of arguments in Speller 1982. On the pagan Ambrosiaster, see Souter 1905: 166–74.

78 For instance somewhat systematic theological questions like «*Quid est Deus?*» are placed according to a sense of «fit» with the biblical narrative (this question is placed at the head of the *quaestiones veteri testamenti* as a scriptural prelude to Genesis-oriented «*Cur Deus mundum fecerit?*»).

79 Ambrosiaster has also left a commentary on the thirteen Pauline epistles (there is no commentary on Hebrews, assumed to be Pauline in the fourth century), much of which overlaps substantively and verbatim with the *Liber quaestionum*. On the genre of «question and answer» used by Ambrosiaster, see Bardy 1933, Volgers and Zamagni 2004. It is impossible to know to what extent all of these questions were «really» asked in Ambrosiaster's day (especially since we know so little about the author himself), but this uncertainty is, in some ways, even more productive: we are gaining a window into a kind of interior Christian monologue on issues of identity.

80 See Souter 1905: 27–31 and 178–79, which overlaps with Cumont 1903: containing an appendix (437–40) on «L' Ambrosiaster et le droit romain».

81 Ambrosiaster, *LQ* 44.1 (CSEL 50:71). A prefatory citation of Isaiah 56:7 provides the scriptural «hook» that places this chapter among the *veteris testamenti quaestiones*.

82 Ambrosiaster, *LQ* 44.5 (CSEL 50:73–74).

83 Ambrosiaster, *LQ* 44.4 (CSEL 50:73).

84 Ambrosiaster, *LQ* (appendix novi testamenti) 75.5 (CSEL 50:470); see also *LQ* 7.1, (appendix novi testamenti) 19 (CSEL 50:31, 436), and Rutgers 1995: 229.

Decalogue, concluding, 'Can these matters be said to have ceased? Far from it! Indeed, without them how could anyone be able to be judged as proper even in this life?'.<sup>85</sup> The Ten Commandments for Ambrosiaster are the *lex divina* and the *lex naturalis*, precepts given by God through Moses to guide humankind not only to the next life, but in this one, as well. This is an expansive reading of the function of the Decalogue in Ambrosiaster, perhaps comparable to the expansion of the Decalogue found in the *Collatio* itself.<sup>86</sup>

This expansive reading of the Decalogue also allows Ambrosiaster – again, in an ambivalent fashion similar to the *Collatio*<sup>87</sup> – to bring Roman and 'divine' law into congruence.<sup>88</sup> For Ambrosiaster, the 'lex naturalis', the Decalogue, was of such fundamental ethical importance that some of its precepts are found in the laws 'among the Romans'. He plays with the multiple meanings of 'Law' in his reading of two passages from Paul's Letter to the Romans, in which 'the apostle calls the law given by Moses 'holy' and 'just' and 'spiritual' (Romans 7:12, 14), while at the same claiming that 'the law brings wrath; but where there is no law there is no violation' (Romans 4:15).<sup>89</sup> Ambrosiaster assures the reader that

when I say 'the law' [in the negative sense in the second passage], this is not that same law which is natural – for certainly the Romans were within that law, which certainly was fetched back from Athens by ten men having been sent (and two after them), as it is written in the two tablets [sic] which are hidden in the Capitol.<sup>90</sup>

The implication is that the Romans, as a civilized nation, already practiced to some extent the ethical precepts of the Decalogue (the 'natural law') when Paul wrote to them. In fact, the 'natural law' is inscribed in their most ancient institutional jurisprudence (the Twelve Tables, referred to here), dating from the days of the early Republic.

At times, Ambrosiaster's 'Law' also escapes its decalogical bounds as he strives to wrest biblical Law in its entirety away from the Jews. While Ambrosiaster notes that Christ specifically came to free 'sinners' from that noxious burden of the ritual Law,<sup>91</sup> elsewhere he appropriates all of the 'Law' for the work of Christian salvation apart from the Jews. In discussing the giving of the tablets of 'the Law' on Mount Sinai, Ambrosiaster manages to remove the Jews from the chain of legal reception entirely. Moses did not bring the Law down from the mountain for the Hebrews at all, since 'the Law was given against sinners

85 Ambrosiaster, *LQ* 69.4 (CSEL 50:120).

86 It is also worth noting that Ambrosiaster includes 'maleficium' under the 'mala contra eundem spiritum, qui est lex dei', providing a context in which the mysterious *titulus* 15 of the *Collatio* (*de mathematicis, maleficis, et manichaeis*) might make sense with the other, more clearly 'decalogical' precepts: *LQ* (*appendix novi testamenti*) 52.1 (CSEL 50:446). See n. 62 above. On Ambrosiaster's antipathy toward astrology and sorcery, see Souter 1905: 31–33.

87 Such ambivalence between religion and law likewise lies at the heart of Lucrezi's study of the *Collatio's titulus* 3 (*de iure et saevitia dominorum*), 'dai quali emerge divergenza assai più che convergenza' (Lucrezi 2001: 118).

88 Despite the negative comparison of 'pagan' and Christian law found in *LQ* 114.9–11 34 (CSEL 50:307–8), in a chapter traditionally titled 'Adversus paganos.' Indeed, the negative and positive juxtaposition of Roman and Christian 'law' recalls similar ambivalence from Tertullian and Jerome, noted above.

89 Ambrosiaster, *LQ* (*appendix novi testamenti*) 75 (CSEL 50:468).

90 Ambrosiaster, *LQ* (*appendix novi testamenti*) 75.2 (CSEL 50:468). This is a slightly garbled account of the mission to Athens transmitted by Livy 3.31.8–33.7 (LCL 2:104–8). Ambrosiaster may be drawn to Livy's mention here of the codification of 'sacred law' ('sacrae leges': 3.32.7 [LCL 2:108]). A similar reference is made, with an additional explicit connection to the Law 'of the Hebrews' (*ex Hebraeis*) in Ambrosiaster's *Commentarius in epistolam ad Romanes* 7:1 (PL 17:105C–D).

91 Ambrosiaster, *LQ* 69.3–4 (CSEL 50:119–20).

(*contra peccatores*) and Moses found the children of Israel sinning in idolatry (cf. Exodus 32).<sup>92</sup> When he smashed the two tablets, this signified the rejection of the Hebrews and foreshadowed 'another people in the future, to whom the Law given on the mountain would be of use'.<sup>93</sup> These 'future people' are the nations of the gentiles, the true recipients of both the Law of Moses and the grace of Christ.

The 'Law' is also greater than the sum of its commandments, moral and ritual: it also includes the sacred history of God's people, from which the 'veil' has been lifted by the advent of Christ.<sup>94</sup> In a more schematic mood, Ambrosiaster affirms the 'tripartite' nature of the Law: rules pertaining to God, rules pertaining to man (these first two comprise the Decalogue), and the 'empty' and moot superseded commemorations (Sabbaths, new moons, circumcisions) of the Jews.<sup>95</sup> Yet elsewhere, with more subtlety, he can speak of the entire Law as 'two-fold' (*duplex*): without Christ (and for the Jews), it is harsh and full of punishments and burdens (*sententiae et onera*); with Christ, it is but the first stage in a sacred history leading the saved to become 'more just' (*iustiores*).<sup>96</sup> Adherence to the literal law (not just its spiritual significance) cannot therefore only be a sign of ignominy, as it is for the Jews. After all, as Ambrosiaster discusses in some detail, even Christ submitted to the Law when he consented to be circumcised and offered sacrifices in the Jewish Temple, proving he was not an 'enemy of the Law' (*inimicus legis*).<sup>97</sup> Ambrosiaster thus finds the legalistic boasting of the Jews particularly grating: 'Why therefore do they [the Jews] say, "The Law is ours," when it is clear that it is a gift of God for all believers? Therefore let this rash usurpation cease, for the grace of God is common to all!'.<sup>98</sup> Here 'the Law' becomes more than a discontinuous system of moral imperatives and defunct rituals; it is a link in the grace of salvation. To arrive at this point, Ambrosiaster must not only emphasize the 'natural' state of God's Law by aligning *lex divina* and *ius romana* (the two tablets of Moses and the Twelve Tables of the Republic), he must seize from the Jews their claim to the entire *lex data per Moysen*. The result is a complex fashioning of the Christian self that can triumphantly speak with the Jewish Law *adversus paganos*,<sup>99</sup> and yet claim solidarity with Rome in speaking *adversus Iudaeos*.

In these ambivalent and overlapping registers of condemnation and reconciliation between the Law of Moses and the laws of Rome, we glimpse a Christian context in which the collection of biblical 'legal materials' can make sense, in which (in the words of the *Collatio*) 'divine and human [i. e., Roman] judgment' can condemn 'with the same voice' (*consone voce*).<sup>100</sup> Scholars assume that the prime motive for such a juxtaposition of biblical and Roman values is cultural apologetic ('See, we aren't so different!'). But the deliberate juxtaposition of seemingly dissonant cultural elements might serve a more complex purpose than simple *apologia*: a religious identity that shows its superiority by both internalizing and transcending 'the other.' The twofold gesture of rejection and accommodation – of both Jewish Law and Roman *ius* – can be read, therefore, not as the confused jumble of a failed apologetic, but rather as the deliberate compilation of an authoritative, even imperial, religious self.

92 Ambrosiaster, *LQ* 8.1 (CSEL 50:32).

93 Ambrosiaster, *LQ* 8.2 (CSEL 50:33).

94 Ambrosiaster, *LQ* 72 (CSEL 50:124).

95 Ambrosiaster, *LQ* (*appendix novi testamenti*) 19 (CSEL 50:435–36).

96 Ambrosiaster, *LQ* 69.2 (CSEL 50:119).

97 Ambrosiaster, *LQ* 50, 60 (CSEL 50: 96–97, 108).

98 Ambrosiaster, *LQ* 44.13 (CSEL 50:79).

99 Ambrosiaster, *LQ* 114 (CSEL 50:303–18).

100 *Collatio* 6.7.1 (FIRA 2:561).



## 5 Conclusions: context, comparisons, and collation

My goal in this essay has been to ask whether we can reconstruct a plausible Christian context for the sympathetic reading of document text that begins, 'Moses the priest of God says these things ...', followed by detailed pages of authoritative Roman jurisprudence.<sup>101</sup> I would like to conclude by introducing another Christian witness to provide a context for my suggestion that the *Collatio* can be read as a cultural tour de force of imperial Christianity. This text, the Vergilian *Cento* of the Roman matron Proba, is a literary curiosity as little read and understood as the *Collatio*. It is usually ascribed to Faltonia Betitia Proba, Roman *clarissima*, sadly 'the only female writer of early orthodox Christianity who has an entire work still extant'.<sup>102</sup> This equally 'misterioso documento' synthesizes Christian faith and 'secular' Roman culture by retelling the biblical narrative (with some events given more attention than others, of course) in reconstructed half-verses from the works of Vergil. A painstaking process, this Christianization of Vergil seeks 'to express [the] new religion in the phrases of the loftiest products of ancient culture'.<sup>103</sup> The entire bible is the meat of Christian poetry for Proba, including the shadowy figure of Moses, whom she places early in her poem at the dawn of the history of classical and Christian literature as the legendary Musaeus.<sup>104</sup> Moses, author of 'the Law,' acts as one medium through which classical epic is transformed into salvation history, naturalizing the Christian story recited in high Vergilian verse.

Like the *Collatio*, Proba's *Cento* for all its lofty versification is in some ways a resistant text: we possess none of Proba's original words to tell us what it is she thought she was doing, only reconfigured bits of her literary culture. As is the case with the *Collatio*, we have essentially only the *fact* of the creative work, how the bits are reconfigured, from which to draw conclusions about the cultural forces that inspired its production. In a broader scheme of Christian cultural configuration in late ancient Rome, the *uses* to which either text might be put are strikingly similar. As one scholar of Roman law has noted, late antiquity 'was an age of anthologists and epitomisers'.<sup>105</sup> The past could be construed as a series of texts, phrases laden with cultural significance whose reorganization and recapitulation could serve to define with greater depth the shape and texture of present identity. To pick up and rework these texts in a new framework – whether it be in the hands of late Roman *grammatici* or early Christian *rhetoires* – was to claim a particular kind of affinity with and authority over the powerful roots of cultural identity.<sup>106</sup>

Yet the work of the anthologist is always clearly marked and visible; it leaves seams and traces of ambivalence in the project of cultural appropriation.<sup>107</sup> Proba's Vergilian

<sup>101</sup> *Collatio* 1.1 (*FIRA* 2:544).

<sup>102</sup> Clark and Hatch 1981: 98. On Proba's aristocratic lineage, see Jones *et al.* 1971: 732; and Sivan 1993. For arguments that the *Cento* should be ascribed to this Proba's granddaughter (Anicia Juliana Proba), a contemporary of Jerome and refugee from the sack of Rome, see Shanzer 1986 and Shanzer 1994.

<sup>103</sup> Clark and Hatch 1981: 105.

<sup>104</sup> Proba, *Cento* 11. 35–37 (Clark and Hatch 1981: 18): 'nam memini veterum voluens monumenta virorum/Musaeum ante omnes vestrum cecinisse per orbem/quae sint, quae fuerint, quae mox ventura trahantur'. On the conflation of 'Musaeus' the legendary prehistoric Greek poet and Moses, see Gager 1971: 139.

<sup>105</sup> Honoré 1978: xvii. See also Ando 2001.

<sup>106</sup> See Chin 2004.

<sup>107</sup> An apt comparison from the second sophistic might be the parallel *Lives* of Plutarch which, on the one hand, create meaningful connections between the cultural heroes of Greece and Rome and yet also cannot help but highlight the gaps between them.

versification of Christian sacred history will always evoke difference and distance even as it attempts to construe sameness: a reader may delight in (or disapprove of) Christ-as-Aeneas,<sup>108</sup> but the same delight of recognition ('That's from book six!') will always reinforce the strangeness of the comparison ('But now it's different'). Like Proba's *Cento*, the *Collatio* engages in a cultural performance of recapitulation that very obviously and schematically absorbs 'the Other' into the defining matrix of the self. Aligning Mosaic law with the great jurists of classical Rome and recasting 'divina loquentia' in Vergilian *centos* can be viewed as equally ambivalent methods of bridging – and yet, reinforcing – that the dizzying space between 'self' and 'other', between sacred and secular. Both also introduce that third note – the Scriptures, the patrimony of Moses, the Lawgiver of the Jews – into that dizzying space between *Christianitas* and *Romanitas* to create a complex, even imperial, monument of Christian selfhood constructed out of the *spolia* of Jews and pagans.

<sup>108</sup> Jerome, in a particularly mean-spirited dig, mocked the 'childish' and potentially blasphemous composition of Christian Vergilian *centos*, presumably that of Proba: *Ep.* 52.7.2–3 (*CSEL* 54:453–54), on which see Clark and Hatch 1981: 104–5.