Religion and Law in Classical and Christian Rome

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Chapter 5

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

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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. 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, 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 (mutuatatis) 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—whatever are the wishes of human and Caesar. 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.

1 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. 19.3* (CCL 1:120). On the date of the Apologeticum (c. 197) see Barnes 1971: 32–4, 55.

2 Tertullian, Apol. 1.3 (CCL 1:85).

3 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 (praefecti) over the nations'.

4 Jerome, Ep. 77.3 (CSEL 55:39). The emphatic nostro Paulus explicitly distinguishes the Apostle
Commenting here on the permissiveness of Roman divorce law over against New Testament strictures, Jerome finds the distinction between *usur* 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. 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, famously enacted his own cultural ambivalence through a juridical fantasy. In a widely circulated (and notorious) letter to his virgin companion Faustochium, 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!’ 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. The clash of cultures is only seemingly resolved in this nightmare court when Jerome renounces *the* books of *gentile* literature; in reality, the tension remains inscribed throughout the rest of Jerome’s highly cultured oeuvre.

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. The late ancient Empire was a complex and inherently fractious political entity, lacking the kind of *nativ* 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 *nativ* identity that held together their mighty Empire. Latinitas never

became the Roman equivalent of Alexander’s *hellenismos*, a tool of cultural unification that (ostensibly) unified an empire.¹⁴ 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)¹⁵ 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 schizophrenic 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 *Roma* 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.

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 1573,¹⁷ the *Collatio Legum Mosaicarum et Romanarum* (likely titled in antiquity simply the *Lex Dei*).¹⁸ 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 assert the text to a Jewish *collator*¹⁹ 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 *Roma* 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

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


⁶ Ambrose of Milan, governor-turned-bishop, likewise finds in the law a point of division between Church and Empire: see Melinn 1994: 298–303. Yet Ambrose, too, could also emphasize the universality of Christian and Roman law: see Ep. 58.3:40–44 (CSEL 82.2:1144), discussed in Evans Grubbs 1995: 154.


⁸ See now Adkin 2003.

⁹ Jerome, Ep. 22.20.4 (CSEL 54:190). As Adkin 2003: 292–93, points out, much of the language of Jerome’s dreamvision alludes to the accounts of martyrs before Roman judges, particularly the confession *Christiatus* sum that sealed the martyrs’ fates.

⁰ 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 aptly noted by Rufinus, Jerome’s enemy in the Origenist controversy (early fifth century CE): *Apologia contra Hieronymum* 2.7 (CCL 20:88); discussed by Lardèt 1993: 123–27.

¹³ On the production of imperial ideologies of autocracy and consensus embedded in late Roman legislation, see Harris 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.

¹⁴ Of course the workings of *hellenism* from the classical period through late antiquity, functioned in a highly complex manner; see Bowersock 1980; Swain 1996; and Goldhill 2001.

¹⁵ That is, from the period of the great *privilegiums* through to the time of the compilation of the Codes of Theodosius I and Justian, an age arguably ushered in by the *constitutio Antoniniana*’s grant of universal citizenship in 212 CE: see Honoré 2004; and Garsse 2004.


¹⁷ Comment of Rutger 1995: 210; Volterra 1939: 39 labels it a *misterioso documento*; Liets 1987: 163 calls it a *merkwürdige Werke*.

¹⁸ Liets 1987: 163, suggests the original title was *Lex Dei, quam Deus praecepta ad Moysi, et Lex Romanorum, basata* on medieval attestation and manuscript evidence, and by analogy with *Cassiodorus’ Institutiones divinarum et secularium literarum*.

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.20 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 index and Roman jurisconsultus.

2. *Misterioso Documento*: scholarly framing of the Collatio

The Collatio, which likely survives in an incomplete state,21 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.22 Modern scholars often mine the Collatio as a source of pre-Justianic and pre-Theodosian Roman jurisprudence,23 or to fill in some of the bombastic moral rhetoric stripped away from the laws by the compilers of the later Codes.24 Basic questions of the Collatio’s provenance and purpose remain highly debated.25 The quality of the correlation between the biblical and Roman laws has been questioned, as well as the quality of the biblical text that lies at its foundation.26 The date of compilation also remains unsettled. Since the first external attestation does not come until the ninth century,27 dating is generally argued from internal points: laws promulgated under Constantine seem to set a terminus post quem of 315 CE,28 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,29 but several scholars have chosen to view this paragraph as a later interpolation or redaction.30 In recent years scholars have argued for a very early date in the fourth century,31 while others have pushed the composition of the Collatio well into the 390s.32

Discussion continues as to whether the author was Jewish or Christian (and, if Christian, whether a specific personality could be identified).33 The text has no prologue and precious few non-legal lines of text from which to extrapulate an author’s voice or context.34 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 antique 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.”35 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.36

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.”37 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.38 Next, Rutgers asks whether a Jew or

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, 247–5.
23 The legal sources are the *Codex Hermogenianus*, *Codex Gregorianus*, and five jurists: Ulpian, Papinian, Paulus, Gaius, and Modestinus (see Tellengen-Couperus 1993: 150–56 for dates). As Rutgers 1995: 214, points out, these are the five jurists whose opinions were granted authoritative status in the Law of Citations of 426 CE (Codex Theodosianus 1.4.3; text in Monnmon 1954: 1.234–35).
24 As by Evans Grubbs 1995: 100, on an imperial edict by Diocletian against close-knit marriage preserved in *Collatio* 6.4 (FIRA 2.558–60). See also similar recent use by Bradbury 1994: 135 n. 60.
25 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.
26 Despite the assurances, originally expressed in 1944, of Daube 1991: 1: 107–22, that the great mystery of the *Collatio legum Mosaicarum et Romanae ...* can be regarded as solved (107).
27 See for example Oesterreicher 1934: *Beaucoup de prescriptions romaines ne correspondent pas aux citations de l’Ecriture si nous n’interprétons pas ces derniers dans un sens tout à fait spécial* (78); *the special sense* for Oesterreicher 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.
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), 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.41 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.42 To cite such laws positively, even productively in the service of religious self-definition, Rutgers argues, would have seemed like distasteful ‘Judaizing’.43 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 rabbi) show an intense interest in the practical application of Mosaic legal materials that would have been unusual among Christians.44

Finally, Rutgers inquires after the most plausible social context from which the Collatio might have emerged in the fourth century.45 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.46

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.47 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?).


Rutgers 1995: 233. [Fulfills 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.


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 have doubtless been unnecessary: it is certain that Josephus, Philo, and the tanna‘im referred with much greater frequency to the particular legal commandments of the Torah than did the Church Fathers.

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].


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.

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.48 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, 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.49 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.50 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 apologetics. 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): ‘sicote, turis consulti, quia Moses prius hoc statutit’. 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 the compiler avoids mentioning the imperatore cristiano (Theodosius I) and the primo imperatore cristiano (Constantine) in the laws of Collatio 5.3.1 and 14.6 (FIRA 2: 557, 578).


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 saevitiae dominorum*); 4. adultery (*de adulteris*); 5. illicit sex (*de stuproribus*); 6. incest (*de incestis nuptiis*); 7. theft (*de furibus et de poena eorum*); 8. false witness (*de false testimonio*); 9. witness of relatives (*de familiaribus testimonio non admitendo*); 10. theft of deposit (*de deposito*); 11. cattle-raiders (*de abactoribus*); 12. arson (*de incendiaribus*); 13. moving boundary stones (*de termino amoto*); 14. kidnapping (*de plagiaribus*); 15. astrology, sorcery, *Manichaeism* (*de mathematicis, maleficiis et manichaeis*); 16. inheritance (*de legitima successione*). As Edoardo Voletta pointed out, the legal connotation of the cited Mosaic regulations is often determined by the Roman laws placed in *parallel* to them. Mosaic Law provides the structure for the *Collatio*, but in a juridical dialectic with the Roman laws it is compared with.

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 (*Exod 20:13–17*): homicide, adultery, theft, false witness, and desire for neighbors’ possessions. Titles 1–3 concern manslaughter and ancillary crimes (*homicidium*), titles 4–6 treat adultery understood as a violation of the Roman legal sense as the sexual disruption of marriage, thus including crimes like incest and *stuprum*; title 7 treats theft; titles 8–9 treat inappropriate testimony; and titles 10–14 treat the appropriation of the property of neighbors (as distinct from the commandment against *theft*). Titles 15 and 10, on magic and insanity, are more difficult to fit into this Decalogue framework, and might be better understood if the *Collatio* were complete. 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. We can plausibly read (most of) the *Collatio* as a rewriting of the Decalogue using material from elsewhere in the Pentateuch, reshaped through collaboration 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. The additional force of Roman law, in this scenario, serves to naturalize the colonizing operation of a crafty Christian collaborator.

Of course, such a crafty textual operation would be subtle at best, and still risk the widespread fear of *Judaising* that hovered around cultural and theological debates between Christians in this period. 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? Such an evaluation of Christian attitudes towards the *Law* relies on a broad range of writers ranging from the second through sixth centuries, 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*.

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54 Volterra 1920: 83–86.
55 As Luczi 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 crearlo" (emphasis Luczi’s).
58 See Evans Grubbs 1995: 205–25. Compare *Collatio* 4.2.1 (*FILA* 2:553): *Breve interpretatio legis lidae de adulteris coercedus facturus per ispita capit in aliud ordinae legem servatur;* 5.2.1 (*FILA* 2:557): *Paulus libro sententiarum II sub titulo de adulteris...*; 6.3.3 (*FILA* 2:558): *Sed qui vel cognatum contra interdictum duciint, remissi mulieri turs errore ipse postem adulteri lege lida naturae (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 *pëdëstraci* (as Osterseer 1934: 77).
59 Perhaps the most self-evident: compare *Collatio* 7.5.1–2 (*FILA* 2:563): *Furtur quocumque genere domonatus famosus officitor. Fort erat qui rem alienam contractet (emphasis added).*
have already seen both Jerome and Tertullian betray a notable ambivalence in their rhetorical strategies for reconciling (or detaching) Christian identity from the Law: should we be surprised to find a similar double-edged discourse at work in their writings on the 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 Judaeos*). 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. After citing some of the moral precepts of the Law (primarily from the Decalogue), Tertullian praises the humanitarian practice of freeing slaves and following of fields; the restraint of violence engendered by the lex talionis; the frugality and austerity found in adhering to dietary laws of kashrut; even the sacrifices and ceremonies that served (serve?) to keep Jews from falling into idolatry. 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. 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. 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.

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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 praiseworthy purposes 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 explains 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 (polemos 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.
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 *Collatio*. 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. His detailed responses to the *pagani* and *Iudaei* (which extend far beyond his explicit chapters *adversus paganos* and *adversus Iudaos*) 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. For Rutgers, Ambrosiaster emerges as a star witness for why 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* dialogue, 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, a biblicizing procedure for outlining religious selfhood already suggestive of the *Collatio*. The figure of Moses and this Law appears not infrequently in questions from both testaments, and the Law in all of its manifestations (Roman, Jewish, Christian) appears with great frequency. At times, as Rutgers points out, Ambrosiaster is at pains to distinguish the contemporary practice of 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 Iudaos*, 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. 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.

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. He declares, *Thus says the law*, and then quotes the entire

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76 Souter 1965; 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 1965: 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 questions veteris testamenti as a scriptural prelude to Genesis-oriented *Cur Deus mundum fecit*).
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 Bandy 1933, Volkers 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.
81 Ambrosiaster, *LQ* 44.4 (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?’ 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.

This expansive reading of the Decalogue also allows Ambrosiaster—again, in an ambivalent fashion similar to the Collatio—to bring Roman and ‘divine’ law into congruence. 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).

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. 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, 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 (contra peccatores); and Moses found the children of Israel sinning in idolatry (cf. Exodus 32). 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. These ‘future peoples’ 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. 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 most superseded commemorations (Sabbaths, new moons, circumcisions) of the Jews. 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). 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 that he was not an ‘enemy of the Law’ (inimicus legis). 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.’ 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), but he must seize from the Jews their claim to the entire lex data per Mosynen. The result is a complex fashioning of the Christian self that can triumphantly speak with the Jewish Law adversus paganos, and yet claim solidarity with Rome in speaking adversus Iudaem.

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 (consona voce). 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 dissident 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 apologia, but rather as the deliberate compilation of an authoritative, even imperial, religious self.

85 Ambrosiaster, LQ 69.4 (CSEL 50:120).
86 It is also worth noting that Ambrosiaster includes malice-under the malam contra eundum spiritum, qui est lex dei—providing a context in which the mysterious titulus 15 of the Collatio (in mathematicis, maleficis, et manichaeis) might make sense with the other, more clearly decalogical precepts (LQ annexi 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 Lucretius’ study of the Collatio’s titulus 3 (de iure et sacrificiis dominorum, ‘the gods emerge divergence assai piu che convergera’—Lucretius 2001: 118).
88 Despite the negative comparison of ‘pagan’ and Christian law found in LQ 114.9–11 34 (CSEL 50:307–38), 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 (CCL 2.104–8). Ambrosiaster may be drawn to Livy’s mention here of the codification of ‘casted law’ (codification legis) 3.32.7 (CCL 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).
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.\(^\text{101}\) 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 tovin de force of imperial Christianity. This text, the Vergilian *Ceno* of the Roman matron Proba, is a literary curiosity as little read and understood as the *Collatio*. It is usually ascribed to Baltonia Bestia Proba, Roman *clarissima*, sadly the only female writer of early orthodox Christianity who has an entire work still extant.\(^\text{102}\) 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 loveliest products of ancient culture.\(^\text{103}\) 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.\(^\text{104}\) Moses, author of *The Law*, acts as one medium through which classical epic is transmuted into salvation history, naturalizing the Christian story recited in high Vergilian verse.

Like the *Collatio*, Proba's *Ceno* 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.\(^\text{105}\) 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 *rhetores*—was to claim a particular kind of affinity with and authority over the powerful roots of cultural identity.\(^\text{106}\)

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.\(^\text{107}\) Proba's Vergilian 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,\(^\text{108}\) 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 *Ceno*, 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.

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\(^\text{101}\) *Collatio* 1.1 (FRA 2:544).

\(^\text{102}\) Clark and Hatch 1981:98. On Proba's aristocratic lineage, see Jones et al. 1971:732; and Sivan 1993. For arguments that the *Cено* 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.

\(^\text{103}\) Clark and Hatch 1981:105.


\(^\text{105}\) Honore 1978: 186. See also Ando 2001.


\(^\text{107}\) 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.

\(^\text{108}\) 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.