Muslims in Western canon law, 1000-1500

David M. Freidenreich

Collections of Latin canon law published from the late 12th through late 15th centuries regularly include a section titled 'On Jews and Saracens and their [Christian] servants' (De Iudaeis et Sarracenis et eorum servis). This title is revealing in several respects. First, it reflects the fact that Roman Catholic canonists active during this period perceived this subject matter as a discrete topic and possessed a significant number of normative statements about it. We should not take this fact for granted: Gratian's Decretum, the foundational text of classical canon law compiled c. 1140, contains a sub-section devoted to Jews but devotes no systematic attention to Muslims; indeed, references to 'Saracens' in this sizeable collection are few and far between. Later collections also incorporate canons related to Muslims under a variety of headings, but the presence of a section devoted to Jews and Saracens serves as an important focal point for medieval analysis of the status of these non-Christians within canon law. Second, this title reflects the fact that canonists are principally interested in Jews and

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1 On the use of this title in 12th- and 13th-century collections, see P. Herde, 'Christians and Saracens at the time of the crusades. Some comments of contemporary canonists', in Studien zur Papst- und Reichsgeschichte, zur Geschichte des Mittelmeerraumes und zum kanonischen Recht im Mittelalter, Stuttgart, 2002, pp. 56-57; this essay is a revised version of a work initially published in Studia Gratiana 12 (1967) 359-76. The Constitutiones Clementinae, published by Pope John XXII in 1317, employs the same title, even though the only canon found in this section relates exclusively to Saracens (Clem. 5.2.un). The 15th-century collection Extravagantes communes employs the title De Iudaeis, even though this section contains a canon that specifically addresses Saracens (Extrav. commun. 5.2.1). On medieval collections of canon law and the forms of citation used in this essay to refer to their contents, see J.A. Brundage, Medieval canon law, London, 1995, pp. 190-202.

2 Only four canons in the Decretum, all cited below, refer explicitly to Saracens; four additional canons that refer to 'pagans' may well have Saracens in mind. These eight canons (out of a total of nearly 4,000) appear in five different sections of the Decretum. All but one date from the 8th and 9th centuries; these canons receive more sustained treatment in D. Freidenreich, 'Muslims in canon law, 650-1000', CMR, 83-98. Canons regarding Jews appear in C. 28 q. 1, which addresses the subject of marriage involving infidels; the absence of canons regarding Saracens in this section of the Decretum is striking.
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Saracens as they stand in relationship to Christians. A major objective of canons addressing Jews and Saracens is to ensure that Christians do not find themselves in any way subservient to non-Christians, although we shall see that Western canon law regarding Muslims advances a variety of other objectives as well. Third, this title reflects the common practice among Western canonists of placing Jews and Saracens in the same category. Given the unique place of the Jews within Christian theology and early medieval canon law, this development is arguably the most surprising feature in the history of medieval canon law regarding Muslims. Tension between the equation of Saracens with Jews and the insistence upon a distinction between these communities of non-Christians animates much of the legal discourse about Muslims in medieval Western Europe.3

Bernard of Pavia, originator of the title De Iudaeis et Sarracenis,4 also authored the explanation of the term ‘Saracens’ that became commonplace among canonists: Saracens, who accept neither the Old nor the New Testament, named themselves after Abraham’s wife, Sarah, even though they are in fact descended from his maidservant, Hagar, and should therefore properly be called ‘Hagarenes’ (Agarenos). Despite the awareness of some earlier authorities that Saracens are monotheists – Pope Gregory VII (r. 1073-85), writing to a Muslim ruler, emphasizes that both parties ‘believe in and acknowledge the one God, albeit in different ways’5 – Bernard uses the terms Saraceni and pagani interchangeably, apparently because he accepts the classic Christian notion that non-Christians must be either Jewish or pagan.6 Thus, even as Bernard links Jews and Saracens – and, as we

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3 The history of canon law in the Eastern Churches is unrelated to that of the Western tradition; an essay on ‘Muslims in Eastern canon law, 1000-1500’, is scheduled to appear in the CMR volume covering the period 1200-1500.

4 Title 5.5 of Bernard’s Breviarium extravagantium, also known as the Compilatio prima, published between 1188 and 1192; see E. Friedberg (ed.), Quinque compilationes antiquae, 1882 (repr. Graz, 1956), p. 55.

5 E. Caspar (ed.), Das Register Gregors VII., MGH Epistolae, 2 vols, 1920 (repr. Munich, 1978), i, p. 288 (JL 4996, written in June 1076). The recipient of this letter was al-Nāṣir ibnʿAlennās (d. 1088/89), a Berber ruler in North Africa. Gregory’s statement did not enter the canon law tradition; had it done so, the development of Western canon law regarding Muslims would have been quite different.

6 Bernard of Pavia, Summa decretalium (published c. 1191-98), ed. E.A.T. Laspeyres, 1860 (repr. Graz, 1956), 5.5.2. p. 210; Bernard uses the term pagani instead of Sarracenis in 5.5.4-5 and 5.6.1, pp. 211-13. Immediately following his definition of Saracens, Bernard classifies Samaritans, who accept the Five Books of Moses but reject the prophets, as a subset of the Saracens because John 4:9 makes clear that Samaritans are not Jews; they must, therefore, be Saracens/pagans. On Bernard’s title, his equation