

## Alonso de Madrigal on Torah-Oaths: Who is a Judaizer in the Early Fifteenth Century?

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This article presents a short treatise on inter-faith oaths, hitherto unnoticed, by the theologian and canonist Alonso de Madrigal, “El Tostado” (c.1438). It shows that Madrigal approved Jewish oaths on the Torah based on an extraordinarily favorable attitude towards the Hebrew Bible – claiming it was a Christian book no less than a Jewish one. Furthermore, Madrigal discussed the practice of Christians who swear on the Torah–, examining whether it constitutes a sin of Judaization. Thus, his treatise offers us an early testimony on the problem of *converso* Judaization and their habit of swearing “like Jews”. As we shall see, Madrigal’s positions on this issue were very different from the inquisitorial norms that would dominate the Peninsula by the end of the century. He was willing to approve *converso* behaviors that would be deemed as scandalous within only a few years. In that sense, his work illustrates how dynamic was the accusation of Judaization. Moreover, it will be suggested that Madrigal’s unique position concerning oaths on the Torah was a part of a larger intellectual approach toward the Bible and the Jewish origins of the Church, that was popular among Iberian scholars of the early 15<sup>th</sup> century.

KEYWORDS: Judaization; oaths; Conversos; Hebraism; Biblical studies; medieval Canon Law.

ALONSO DE MADRIGAL SOBRE LOS JURAMENTOS DE LA TORÁ: ¿QUIÉN ES UN JUDAIZANTE A COMIENZOS DEL SIGLO XV?– Este artículo presenta un breve tratado, hasta ahora inadvertido, sobre los juramentos interreligiosos del teólogo y canonista Alonso de Madrigal, “El Tostado” (c.1438). En este tratado, Madrigal aprobó los juramentos judíos sobre la Torá basándose en una actitud extraordinariamente favorable hacia la Biblia Hebrea, afirmando que era un libro no menos cristiano que judío. Asimismo, Madrigal abordó la práctica de los cristianos que juran sobre la Torá, examinando si constituye un pecado de judaización – ofreciéndonos así un testimonio temprano sobre el problema de la judaización de los conversos y su costumbre de jurar “como judíos”. Como veremos, las opiniones de Madrigal sobre esta cuestión eran muy diferentes de las normas inquisitoriales. Estaba dispuesto a aprobar prácticas que se considerarían escandalosas en unos pocos años. En ese marco, su obra ilustra cuán dinámica fue la acusación de judaización.

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Además, como argumento, las posiciones de Madrigal con respecto a los juramentos sobre la Torá formaban parte de un enfoque intelectual más amplio hacia la Biblia y los orígenes judíos de la Iglesia, que fue popular entre los eruditos ibéricos de principios del siglo XV.

PALABRAS CLAVE: judaización; juramentos; conversos; hebraísmo; estudios bíblicos; derecho canónico medieval.

In recent years we have come to acknowledge that the inquisitorial regime that governed Early Modern Iberia did not merely enforce the traditional boundaries between Judaism and Christianity, but also manufactured them. In its effort to police *converso* liminality, it labeled a wide range of views and behaviors that were previously unclassified within Christian heresiology as forms of Judaization. Thus, it did not only uncover Judaizers among *conversos*, but it also redefined what Judaizing is by incriminating all signs of Jewishness as evidence of anti-Christian defiance and heresy. Cultural traits like foods, clothes, and gestures – not to mention language – became indications of heterodoxical Jewishness.<sup>1</sup> Yet, this Inquisitorial regime, we should remember, did not triumph immediately. For long parts of the fifteenth century this extreme model of Jewish-Christian binary was not the only option on the table. In the first half of the fifteenth century, some of the most accomplished Christian scholars of the Peninsula were engaged in a radically different project. Instead of waging war on all Jewish traits that converts possessed, they sought to incorporate some of them into Christianity – in a sense, Christianizing them. They did so mostly by recovering and reclaiming forgot-

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<sup>1</sup> The Inquisition, in some respects, re-literalized Judaization, turning it back from a metaphorical label of bad ideals or moral behaviors that can inflict all Christians into a crime associated specifically with *converso* backsliding or inherent Jewishness. The Inquisition made Judaization about real Jews again. See David NIRENBERG, «Mass Conversion and Genealogical Mentalities: Jews and Christians in Fifteenth-Century Spain», *Past and Present* 174 (2002) pp. 3-41: 33-41; and compare to his, «The Birth of the Pariah: Jews, Christian Dualism, and Social Science», *Social Research* 70 (2003) pp. 201-236. Moreover, if we take our cue from John Edwards, then perhaps we may even say that the Inquisition occasionally “Judaized” (in the literal sense of the word) skeptical and dissident beliefs that were common throughout Europe. See his «Religious Faith and Doubt in Late-Medieval Spain: Soria, circa 1450-1500», *Past and Present* 120 (1988) pp. 3-25.

ten facets of Christianity's Jewish heritage and history. Thus, showing that some of the Jewish components embodied or professed by *conversos* were not anti-Christian at all, but preserved authentic elements of the ancient Church. In the following pages I wish to present one testimony (hitherto unnoticed) of this socio-religious dynamic, that concerned the status of Jewish oaths – a practice commonly attributed to “Judaizers”.

The use of Jewish oaths became a well-known marker of *converso* liminal position between Judaism and Christianity.<sup>2</sup> Jewish sources and Inquisitorial records provide plenty of evidence that *conversos* were swearing “like Jews” on the Law of Moses in various circumstances. Sometimes when interacting with Jews, for what we may consider as practical reasons, but often also when dealing among themselves.<sup>3</sup> For the Inquisitors this practice seemed like a clear sign of Judaization. In fact, the use of Jewish oaths was among the earliest evidence that Christian adversaries of *conversos* detected and publicized in order to condemn them as Judaizers. Apparently, the accusation was brought-up al-

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<sup>2</sup> See the place of oaths within the “religious customs of the Crypto-Jews” in David Martin GITLITZ, *Secrecy and Deceit: The Religion of the Crypto-Jews* (Albuquerque, NM: University of New Mexico Press, 2002) pp. 501-505.

<sup>3</sup> For Jewish sources, see for example the responsa by Isaac bar Sheshet (Ribash) and Simeon ben Zemaḥ Duran (Rashbaz), that discuss the halakhic validity of oaths taken by converts for the purposes of *Kashrut* or matrimonial law. Regardless to the specific ruling of these rabbis, it is clear from both the questions and the answers that this was a rather common practice. See in the responsa by Ribash, sig. 12 and Rashbaz, part 1, sig. 60. For evidence from Christian sources, see for example Eleazar GUTWIRTH, «Elementos étnicos e históricos en las relaciones judeo-conversas en Segovia», in *Jews and Conversos: Studies in Society and the Inquisition*, Yosef KAPLAN (ed.) (Jerusalem: Magnes Press, 1985) pp. 83-102: 96; Encarnación MARÍN PADILLA, *Relación Judeoconversa durante la segunda mitad del siglo XV en Aragón: La ley* (Madrid: s.p., 1986) pp. 107-118; José María CHAMORRO, «El léxico de los judeoconversos según los procesos inquisitoriales», *Miscelánea de Estudios Árabes y Hebreos* (sección Hebreo) 55 (2006) pp. 119-140: 126. Haim BEINART, «The Judaizing Movement in the Order of San Jerónimo in Castile», in *Studies in History, Scripta Hiersolymitana 7*, Alexander FUKS and Israel HALPERN (eds.) (Jerusalem: Magnes Press, 1961) pp. 167-192; reprinted in Haim BEINART, *Chapters in Judeo-Spanish History*, vol.1 (Jerusalem: Magnes Press, 1998) pp. 416-434: 423; Norman ROTH, *Conversos, Inquisition, and the Expulsion of the Jews from Spain* (Madison WI: University of Wisconsin Press, 1995) p. 234.

ready during the 1449 rebellion of Toledo, and later listed in the catalog of *converso* heresies drafted by Alonso de Espina (c.1460).<sup>4</sup>

Presumably, the furious reaction to this practice should not come as much of a surprise. Although oaths were mostly used to regulate secular interactions, they were a sacred-religious rite that fell under the jurisdiction of the Church.<sup>5</sup> Thus, from an ecclesiastical perspective it would seem reasonable, if not elemental, to classify Jewish oaths as sinful. Nevertheless, a short “treatise” on oaths that was written around 1438 by Alonso Fernández de Madrigal, indicates that there were other possibilities. In the unique intellectual climate that existed during the first half of the fifteenth century, even Christian oaths on the Torah posed an open question. In what follows I present this unusual Christian assessment of Torah oaths and argue it reflects a broader intellectual attitude towards the Jewish origins of Christianity. We shall begin by examining Madrigal’s stand on Jewish oaths and how it differed from the common medieval discourse on the topic. Then, we will see how this

<sup>4</sup> ALONSO DE ESPINA, *Fortalitium fidei* (Nuremberg: Anton Koberger, 1494), f. 54.r: “Fifth, that they take oaths like Jews while making legal contracts, saying: ‘in the name of living true creator who made the sea and the sand, the heavens and the stars, and gave Moses the Tablets of the Law, who Himself liberated [the people of Israel] etc.’” (*Quinto quod faciunt iuramenta sicut iudei co[n]tractibus suis dicentes quod per nomen creatoris vivi veri qui fecit mare et arenas et caelum et stellis et dederit tabulas legis Moysi quod ipse daret et solueret etc.*). We should mention here also the subsequent testimony that Espina recounts, of a certain physician by the name Álvarez Fernández. After recounting all sorts of stories on the practices of “the Judaizers”, the physician says that given what he knows about them, he has more faith in a Muslim that swears by his law, than in a *converso* who takes an oath on the Gospels. I would suggest that rather than a sweeping accusation against *converso* dishonesty, this seems to be a direct allusion to their disregard of Christian oaths (and see further below, n. 52). ALONSO DE ESPINA, *Fortalitium fidei*, f. 55v: *Dixit etiam praedictus testis quod tantum cognoscebat de praedicta gente quos plus crederet uni saraceno qui iuraret sibi in lege sua quam uni converso qui iuraret sibi super sancta dei evangelia*. Quoted also by ROSA VIDAL DOVAL, *Misera Hispania: Jews and Conversos in Alonso de Espina’s Fortalitium Fidei*, *Medium Aevum Monographs* 31 (Oxford: The Society for the Study of Medieval Language and Literature, 2013) p.131.

<sup>5</sup> Oaths have become a particular site of interest in study of political theology precisely because they necessarily bridge between the sacred and the profane. An issue which is well beyond the scope of our study here. See, most notably, GIORGIO AGAMBEN, *The Sacrament of Language: An Archeology of the Oath*, tr. Adam KOTSKO (Stanford CA: Stanford University Press, 2011).

approach affected his legal-theological assessment of Judaization, allowing him to prescribe certain circumstances in which Christians – i.e., *conversos* – could swear on the Torah without committing a sin. But first, let us introduce very briefly the author of this treatise and his unexplored literary corpus.

### ALONSO FERNÁNDEZ DE MADRIGAL: THE UNATTENDED LEGACY OF IBERIAN BIBLICISM

Alonso Fernández de Madrigal, known as “El Tostado” (c.1401-1455), held many positions during his academic and ecclesiastical career, eventually earning the titles of *maestrescuela* at the University of Salamanca, and the bishop of Ávila. A Magister in both Arts and Theology, a Bachelor of Law, and an accomplished Hebraist, Madrigal was one of the most renowned scholars of his generation, sometimes dubbed – if to believe his younger contemporary, the chronicler Fernando de Pulgar – as the “wisest man of his time”.<sup>6</sup> In recent scholarship, his interests in Classic literature and theory of translation became another exemplar of the Iberian fusion between Humanist themes and scholastic traditions. Yet, before anything else, Madrigal was a writer. We may even dare to say, a compulsive writer. During his short lifespan, he composed dozens of theological and philosophical tractates,

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<sup>6</sup> For biographical details, see Emiliano FERNÁNDEZ VALLINA, «Introducción al Tostado: De su vida y de su obra», *Cuadernos Salmantinos de Filosofía* 15 (1988) pp. 153-177; idem, «La importancia de Alfonso de Madrigal, “El Tostado”, maestrescuela de la Universidad de Salamanca» in *Salamanca y su universidad en el primer Renacimiento*, Luis E. RODRÍGUEZ-SAN PEDRO BEZARES and Juan Luis POLO RODRÍGUEZ (eds.) (Salamanca: Ediciones Universidad de Salamanca, 2011) pp. 161-178; Cándido María AJO, «Estudio biográfico de Alfonso de Madrigal, “el Tostado”», *Abula* 2 (2002) pp. 5-43; and on his illustrious image in the fifteenth and sixteenth century, Antonio LÓPEZ FONSECA, «Alfonso Fernández de Madrigal, El Tostado: La construcción de una biografía», *Recensión* 3 (2020) [Número monográfico *Las Escuelas de Salamanca y Universalista*, ed. P. AULLÓN DE HARO], s.p., <https://revistarecension.com/2020/02/02/alfonso-fernandez-de-madrigal-el-tostado-la-construccion-de-una-biografia/> For Pulgar’s account, see Fernando DEL PULGAR, *Claros varones de Castilla. Letras*, edición, estudio y notas de María Isabel de PAÍZ HERNÁNDEZ y Pedro MARTÍN BAÑOS, con Gonzalo PONTÓN GIJÓN (Madrid: Real Academia Española, 2022) pp. 99-101: 101: “y murió de edad de cincuenta y cinco, conociendo a Dios y con fama del más sabio hombre que en sus tiempos hobo en la Iglesia de Dios”.

produced extensive translations, and wrote a mammoth collection of biblical commentaries counting tens of thousands of pages. Not for nothing he inspired a catchphrase for excessive writing: “escribir más que el Tostado” – arguably, not so flattering. Yet, for various reasons, the overwhelming quantity of texts that Madrigal produced was met with only little interest in modern scholarship.<sup>7</sup> In fact, to this point, large parts of his oeuvre are still uncharted.<sup>8</sup> This is a significant drawback given that an enormous part of his work resides under the label of biblical exegesis.<sup>9</sup> Yet, as one begins to read these enormous volumes of commentaries to the Bible (24 volumes in the 1729 edition), it immediately appears that next to the running glosses, Madrigal’s “exegesis” includes an abundance of distinct discussions concerning all sorts of specific matters. These are issues that stem from Madrigal’s reading in Scriptures but are then developed almost autonomously, addressing legal, theological, or scientific questions that we are used to find in other disciplinary venues (e.g., questions about marriage, demons, hell, love, sexual vices, cosmological issues, magic, historical episodes, etc.). Some of these thematic clusters of *quaestiones* count several pages, while others can reach more than a hundred pages. For almost all intents and purposes, these textual units can be considered as independent “treatises”.

To be sure, there was a very good Biblicist logic and purpose behind Madrigal’s unusual literary method. It aimed to show that all aspects and traditions of knowledge were rooted in the Scriptures, and that the literal study of the Bible should be in the fore of all Christian considerations.<sup>10</sup>

<sup>7</sup> With the exception of his work on translation that generated interest already in the twentieth century. It seems that the tides begin to change also with respect to other aspects of his work. See a recent survey of the scholarship on Madrigal, in Antonio LÓPEZ FONSECA, «Alfonso Fernández de Madrigal, “El Tostado”: Un ensayo bibliográfico», *Tempus* 41 (2017) pp. 7-40.

<sup>8</sup> For a survey of his works in manuscripts and print, see Cándido María AJO, «La producción literaria de Alfonso de Madrigal, “El Tostado”: obras manuscritas», *Abula* 3 (2003) pp. 5-27; idem. «La producción literaria de Alfonso de Madrigal, “El Tostado”: obras impresas», *Abula*, 3 (2003) pp. 113-145.

<sup>9</sup> A corpus barely studied. See Inmaculada DELGADO JARA, «El Tostado y la exégesis bíblica», in *La primera escuela de Salamanca (1406-1516)*, Cirilo FLÓREZ MIGUEL *et al.* (eds.) (Salamanca: Ediciones Universidad de Salamanca, 2012) pp. 55-74.

<sup>10</sup> This biblical orientation is evident in all of Madrigal’s work. For example, Juan Miguel VALERO MORENO captured this sentiment with regard to Madrigal’s *Book of Four Questions*, in the title of the critical edition he published (of the third question):

Yet, in terms of accessibility and readership, this all-encompassing ambition had a high price. The project, we may say in hindsight, collapsed under its own weight – burying within its massive volumes of biblical commentaries dozens upon dozens of such smaller treatises that are still waiting to be mapped and rescued from oblivion.

A thorough study of these materials, I believe, could change much of what is known on Madrigal. It would show that despite his didactic, at times even tedious, scholastic methods of learning, he was far from the traditionalist he is often portrayed to be. In terms of biblical scholarship, he was a close follower of the convert bishop of Burgos, Pablo de Santa María (d. 1435) – expanding his systematic critique of the Parisian scholarly tradition. Building on the Hebrew Bible and Sephardic exegetical traditions–, Madrigal and Pablo presented the Christian world with a new Iberian model of biblical literalism that consciously aimed to undercut and replace the dominant literalist school that evolved in northern Europe since the 12<sup>th</sup> century.<sup>11</sup> Madrigal’s Biblicist project manifested, step by step, this fundamental criticism – applying new hermeneutical theories and linguistic proficiencies in order to bring out the repressed theological, legal and scientific meanings of the Bible (and often the Hebrew Bible) in their literal sense.

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«El Tostado sobre la vida activa y la contemplativa en *el Libro de las cuatro cuestiones*: el marco bíblico de la esfera aristotélico-tomista», *Journal of Iberian Studies* 50 (2022) pp. 384-415.

<sup>11</sup> On some of the unique features of Pablo’s biblical enterprise and his systemic criticism of Nicholas de Lyra (and other French literalists) see Yosi YISRAELI, «A Christianized Sephardic Critique of Rashi’s *Peshat* in Pablo de Santa María’s *Additiones ad Postillam Nicolai de Lyra*», in *Medieval Exegesis and Religious Difference: Essays on Conflict, Commentary, and Community in the Premodern Mediterranean*, Ryan SZPIECH (ed.) (New York: Fordham University Press, 2015) pp. 128-42; idem. «When Christian Science and Jewish Providence Collide: Conversion and Biblical Discoveries in the 1390s», *Hispania Judaica Bulletin* 14 (2019) pp. 123-60. On the major issue of biblical literalism, Madrigal was clearly following the new path delineated by Pablo. This is not the place to lay out the numerous evidence, but we should note that even Madrigal’s revolutionary position on the dating of the Passion – that ended with his denunciation by a committee of Cardinals – was unmistakably based on Pablo’s biblical “discoveries”. On this affair, see Philipp E. NOTHAFT, *Dating the Passion: The Life of Jesus and the Emergence of Scientific Chronology 200-1600* (Leiden: Brill, 2012) pp. 203-211; on Pablo’s position, *ibid.*, pp. 212-22.

Yet, the information treasured in Madrigal's biblical commentaries does not regard only matters of scholarship or intellectual history. Holding to public positions in the Church, the University, and the royal court Madrigal was deeply involved in the matters of the hour.<sup>12</sup> Accordingly, some of his treatises bear testimony to tangible and contested issues that affected Castilian politics and society under Juan II' reign. Including, of course, the *converso* situation that was evolving into a full-blown crisis during Madrigal's final years. This is the case, I believe, with what we may call the "short treatise on oaths" that we find embedded in Madrigal's commentary to Exodus.<sup>13</sup> While it addressed abstract and theoretical questions, it clearly corresponds with the special realities of the day and the unique religious-judicial challenges they posed.

In what follows, we shall glean from it a few allusions to the issues that interest us here. First, concerning Madrigal's approach to Jewish oaths on the Torah. And second, concerning his treatment of Christians (i.e., *conversos*) who took such oaths. In the process we shall see that Madrigal's unusual theological and judicial directives were closely dependent on his Biblicist presuppositions and the central role he allocated to the Hebrew Bible.

#### RECLAIMING THE TORAH AS A CHRISTIAN BOOK: THE LEGITIMACY OF JEWISH OATHS

Madrigal's short treatise on oaths emerges out of his running commentary to Exodus 23, a chapter that provides a long list of rules and normative instructions on how to conduct a fair and just legal proce-

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<sup>12</sup> For example, Madrigal was asked to write a judicial opinion on a case that caused much public stir, involving the conversion of a Muslim girl to Judaism in Talavera de la Reina. On the case and Madrigal's role in it, see David NIRENBERG, «Love Between Muslim and Jew in Medieval Spain: A Triangular Affair», in *Jews, Muslims, and Christians in and around the Crown of Aragon: Essays in Honour of Professor Elena Lourie*, Harvey J. HAMES (ed.) (Leiden: Brill, 2004) pp. 127-155; Ana ECHEVARRIA, «Better Muslim or Jew? The Controversy around Conversion across Minorities in Fifteenth-Century Castile», *Medieval Encounters* 24 (2018) pp. 62-78.

<sup>13</sup> Madrigal composed a second and much longer treatise on oaths, which he embedded in his commentary to Matthew. See below, note 54.



ture.<sup>14</sup> In the footsteps of the biblical text Madrigal discusses a variety of judicial topics. The specific issue of oaths arises when he reaches verse 13, that reads (in the Latin translation): “You shall not swear in the name of other Gods, nor will it be heard out of your mouth”.<sup>15</sup> With this command, Madrigal explains, Jews have been strictly forbidden not just from swearing in the name of idols, but also from administering oaths with idol worshippers. Yet, being a moral law, this directive applied to the Church as well – creating all sorts of complications that needed to be solved. Already in the fourth century, Madrigal notes, Augustine authorized the acceptance of pagan oaths for practical reasons.<sup>16</sup> A dispensation that would become the canon *Movet te* in Gratian’s *Decretum* (C.22 q.1 c.16), setting a Christian legal principle that it is better to swear truly by a false God than to swear falsely by the true God.<sup>17</sup> Yet another problem that emerged from this biblical taboo concerned the Jews who still rigorously adhere to it. Since they associ-

<sup>14</sup> Alfonso FERNÁNDEZ DE MADRIGAL, *Eccam vobis qui sacris litteris incumbitis studiosi, tantopere exoptatam super Exodum diui Alphonsi episcopi Abulensis interpretatione fidiſsimam* [...] (Venice: Petrus Liechtenstein, 1528), fs. 160.r ff. All capitalizations and punctuations in the Latin are mine.

<sup>15</sup> *Per nomen externorum deorum non iurabitis neque audietur ex ore vestro*; or in the Hebrew: לא תשבע על פיך בשם אלוהים אחרים לא תזכיר, לא ישמע על פיך. MADRIGAL, *Super Exodum*, fs. 166.v ff.

<sup>16</sup> In Augustine’s letter to Publicola, dated to 398. Madrigal makes the point that Augustine’s dispensation allowed Christians to accept pagan oaths but not to initiate or extract them. He thus claims that Augustine was working within the biblical limits set in Exodus 23:13. Importantly, Augustine himself (and many of his commentators) never made any reference to this biblical passage. Madrigal’s Biblicist agenda was precisely to “recover” the Scriptural context within which the Church fathers were thinking. For a general review of Augustine’s (and Aquinas’) position on pagan oaths, see Marco CAVARZERE, «Regulating the Credibility of Non-Christians: Oaths on False Gods and Seventeenth-Century Casuistry», in *Making Truth in Early Modern Catholicism*, A. Badea et al. (eds.) (Amsterdam: Amsterdam University Press, 2021) pp. 63-84: 66-69.

<sup>17</sup> In his appended dictum Gratian provides biblical examples supporting the Augustinian rule (some of them mentioned already by Publicola). Both Abimelech and Laban, he notes, swore by their own gods. And likewise, when the Romans signed a peace treaty with the Jews (as told in the book of Maccabees), the Romans must have “swore by their false Gods, while the Jews swore by the true God” (*Sic etiam cum in libro Machabeorum Romani legantur pacem firmasse cum Iudeis, intelligendi sunt iurasse per falsos Deos, sicut et Iudei iurauerunt per Deum uerum*).

ate Christianity with “other Gods”, they abhor oaths taken in the name of Christ or on the books of the Gospels.<sup>18</sup>

To address these and other issues Madrigal launched his “short treatise on oaths”, i.e., a discussion containing 10 *quaestiones* on how Christians should administer oaths with Jews and Muslims.<sup>19</sup> The first question being: “How should a Jew swear if a Christian obliges him to take an oath – that is, [should he swear] on the Torah or on the Gospels – and whether a Christian who makes an infidel swear by his own Gods commits a sin?”<sup>20</sup> The main problem that this question set to solve emerged from the Jewish reading of Exodus 23:13, as Madrigal presented it. Since, “a real Jew” (*verus hebraeus*), Madrigal explains, would rather die than take an oath in Christ’s name or on the Gospel. If Christians nevertheless find a Jew that agrees to take such an oath, they can be sure that in his heart he will curse Jesus and the Church. That is beside the fact that he is likely not to honor such an oath. Thus, from a Christian theological (and practical) perspective, to swear a Jew on the Gospel or in Christ’s name should be completely out of the question, for it would surely lead to blasphemy.

By opposing Jewish oaths on the Gospel Madrigal was not breaking any new grounds. Canonists objected this practice at least since the thirteenth century and probably earlier.<sup>21</sup> The question that remained open, however, was what sort of an oath a Christian should extract from

<sup>18</sup> MADRIGAL, *Super Exodum*, f. 166.v. Exodus 23:13 is indeed an important proof-text for the Halakhic regulation of Jewish transactions with gentiles. See for example TB, Sanhedrin 63b. On the rabbinic view of this question in the Middle Ages and the many complications surrounding it, see Ephraim SHOHAM-STEINER, «“And in most of Their Business Transactions They Rely on This”: Some Reflections on Jews and Oaths in the Commercial Arena in Medieval Europe», in *On the Word of a Jew: Religion Reliability and the Dynamics of Trust*, Nina CAPUTO and Mitchell HART (eds.) (Bloomington: Indiana University Press, 2019) pp. 36-61.

<sup>19</sup> MADRIGAL, *Super Exodum*, questions 14-23, fs. 166.v-170.v.

<sup>20</sup> MADRIGAL, *Super Exodum*, f. 166.v col. a: *quomodo iudeus debeat iurare si Christianus cogat eum iurare, s[cilicet] an per Thorath vel per Evangelia, et an peccet Christianus cogendo infideles iurare per deos suos.*

<sup>21</sup> See in Walter Jay PAKTER, «Did the Canonists Prescribe a Jewry-Oath?», *Bulletin of Medieval Canon Law* 6 (1976) pp. 81-87: 84-85; idem, *Medieval Canon Law and the Jews* (Ebelsbach: Rolf Gremer, 1988) p. 211; and in the context of civil jurists, Ferdinando TREGGIARI, «Bartolo e gli ebrei» in *Bartolo da Sassoferrato in the VII centenario*

a Jew according to the *jus commune*.<sup>22</sup> Largely speaking, we find in the medieval traditions two kinds of possible answers. One option was to design specific oaths suited for Jews who swear before Christians. These are the so-called “Jewry-oaths”, also known as *Judeneid* or *more judaico*.<sup>23</sup> In their more sinister and notorious forms they included humiliating rituals, like standing on a skin of a sow. But often these oaths merely added or integrated some Christian motifs unto a generic biblical formula. On many occasions this addendum included a list of biblical curses (*maledictiones*) that the Jewish oath-taker would be subjected to in case of perjury.<sup>24</sup> The second option, was simply to let Jews swear before Christians “in their own way”.

In face of these two alternatives, Madrigal’s position was decisive. To avoid sinful abomination, he ruled, a Jew ought to swear solely in the name of God, without mentioning Christ, the Trinity or “anything else [beyond]”. If a Jew is to be committed to his word, the oath he takes must be in the form that his “priests and rabbis” approve – that is, he

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*della nascita: diritto, politica, società*, Atti del L Convegno storico internazionale, Todi - Perugia, 13 - 16 October 2013 (Spoleto: CISAM, 2014) pp. 403-462: 425-426.

<sup>22</sup> MADRIGAL, *Super Exodum*, f. 166.v: *cum sit aliquod pactum Judaeo cum Christiano, ita quod christicola petat negante Judaeo et debeat deferri iuramentum reo secundum legem communem, quomodo iurabit Hebreus?*

<sup>23</sup> On Jewry-oaths, see Guido KISCH, «A Fourteenth-Century Jewry Oath of South Germany», *Speculum* 14 (1940) pp. 331-37; idem, *The Jews in Medieval Germany: A Study of their Legal and Social Status* (2<sup>nd</sup> ed. Ktav: New York, 1970) pp. 275-287. Alexander SCHEIBER, «A Medieval Form of Jewish Oath», *Journal of Jewish Studies* 25 (1974) pp. 181-182; PAKTER, *Medieval Canon Law*, pp. 208-215; Joseph ZIEGLER, «Reflections on the Jewry Oath in the Middle Ages», *Studies in Church History* 29 (1992) pp. 209-229; Amnon LINDER, «The Jewry Oath in Christian Europe», in *Jews in Early Christian Law: Byzantium and the Latin West, 6<sup>th</sup>-11<sup>th</sup> centuries*, John TOLAN et al. (eds.) (Turnhout: Brepols, 2014) pp. 311-358; Andreas LEHNERTZ, «The Erfurt Judeneid between Pragmatism and Ritual: Some Aspects of Christian and Jewish Oath-Taking in Medieval Germany», in *Ritual Objects in Ritual Contexts*, Erfurter Schriften zur jüdischen Geschichte 6, M. STÜRZEBECKER and C. D. BERGMANN (eds.) (Erfurt: Verlag Bussert & Stadelor 2020) pp. 12-31; Birgit WIEDL, «Anti-Jewish Legislation in the Middle Ages», in *Imagination and Fantasy in the Middle Ages and Early Modern Time: Projections, Dreams, Monsters, and Illusions*, A. CLASSEN (ed.) (Berlin-Boston: De Gruyter, 2020) pp. 183-215: 202-205.

<sup>24</sup> For an insightful analysis of these curses in the Jewry-Oaths, see ZIEGLER, «Reflections on the Jewry Oath», pp. 215-217.

should swear on the Torah while holding it in his hands.<sup>25</sup> The exact content of this oath is never specified by Madrigal. In his vocabulary, the Jewish oath of the “priests and the rabbis” simply means to swear on the Torah (*jurare per Torah*) – or if we prefer, a Torah-oath.

Madrigal’s firm objection to any practice that we would associate with Jewry-oath relates to the historical reality of his time. As historians have long noted, legal and administrative documents from the Iberian kingdoms and Provence reveal that since the thirteenth-century Torah-oaths were gradually replacing Jewry-oaths in Christian courts and in inter-religious transactions.<sup>26</sup> Nevertheless, this general trend did not mean that all the supplementary elements of Jewry-oaths disappeared. The long oath-formula elaborated in the *Siete partidas* (1252), as well as other legal codes, include several elements of Jewry-oaths that would also reappear in inquisitorial manuals well into the fifteenth century.<sup>27</sup> In

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<sup>25</sup> MADRIGAL, *Super Exodum*, f. 166.v col. a: *dato quod cogatur iurare in nomine Dei non exprimendo Christum, nec Trinitatem, quicquam aliud, sed simpliciter Deum dicendo, non putat Hebraeus iuramentum esse aliquid validum secundum formam in qua exigimus nos, sed secundum quod eorum sacerdotes et rabbini accipiunt ab eis iuramenta et potissimum iuramentum est, quod iuret Hebraeus per Thora, accipiendo eam in manibus, quia lex sacra est.*

<sup>26</sup> On these historical developments see, Yitzhak (Fritz) BAER, *Die Juden im Christlichen Spanien, vol. 1, Aragonien und Navarra* (Berlin: Akademie Verlag, 1929) pp. 1024-1043 (*appendix 1, «Die auf Juden bezüglichen Gesetze in den älteren Rechtskompilationen von Aragonien und Navarra»*); Antonio GARCÍA GARCÍA, «Los juramentos e imprecaciones de los Usatges de Barcelona», *Glossae* 7 (1995) pp. 51-79; Yom Tov ASSIS, *The Golden Age of Aragonese Jewry: Community and Society in the Crown of Aragon 1213-1327* (London: Littman Library of Jewish Civilization, 1997) pp. 31-32; Haim BEINART, «Privileges of the Jews of Castile and their Manifestation in Everyday Life» [in Hebrew], in *Kehal Yisrael: Jewish Self-Rule Through the Ages*, a Series in Memory of Israel Halpern, Avraham GROSSMAN and Yosef KAPLAN (eds.), vol. 2: *The Middle Ages and Early Modern Period* (Jerusalem: Zalman Shazar Center, 2004) pp. 115-134: 130-133; Ram BEN SHALOM, *The Jews of Provence and Languedoc: Renaissance in the Shadow of the Church* [in Hebrew], (Raanana: The Open University Press, 2017) pp. 75-79; and on situation in England, see Joshua CURK, «The Oath of a Jew in the Thirteenth-Century English Legal Context», in *On the Word of a Jew: Religion Reliability and the Dynamics of Trust*, Nina CAPUTO & Mitchell HART (eds.) (Bloomington: Indiana University Press, 2019) pp. 62-81.

<sup>27</sup> *Las Siete Partidas*, partida tercera, título 11, ley 20; and see further such oath formulas in José AMADOR DE LOS RÍOS, *Historia social, política y religiosa de los judíos de España y Portugal: Desde el siglo XIII hasta principios del siglo XV*, vol. 1 (Madrid:

fact, given this overlap, it is not always clear whether the statutory privileges that allowed Jews to “swear on the Torah” speak of a completely autonomous Torah-oaths, or of some mild version of Jewry-oath that was based strictly on biblical materials.<sup>28</sup> On this background, Madrigal’s explicit assertion that Jews should swear in Christian procedures “according to their own ceremony”<sup>29</sup> and that no further element should be appended to this oath, may seem like a direct disapproval of Jewry-oath costumes that still existed around him, even if they were (mostly) based on biblical texts.

Yet, Madrigal’s opinion is valuable not only because it provides further evidence concerning the changing practices of Jewish oaths, but also because it preserves a rather rare theoretical reflection on the issue. For, generally speaking, theologians and canonists of the Middle Ages were not eager to expand on the matter of inter-faith oaths – leaving us somewhat in the dark about the legal-theological theory behind Jewish-Christian vows. This relative “silence” led some scholars to suspect that the main driving forces behind the developments of Jewish oaths were not theological or conceptual but rather practical, and that the theologians and the canonists simply had to accept the evolving reality.<sup>30</sup>

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T. Fortanet, 1875) pp. 558-586; Gunnar TILANDER, *Los Fueros de Aragón. Según el manuscrito 458 de la Biblioteca Nacional de Madrid*, *Leges Hispanicae Medii Aevii* 3 (Lund: C. W. K. Gleerup, 1937) pp. 204-208; and compare with the oath instruction provided in *Repertorium de pravitate haereticorum* (Valencia: s.p. 1494), under “*Iuramentum*”. See also ZIEGLER, «Reflections on the Jewry Oath», pp. 213-214.

<sup>28</sup> For a vivid illustration of how central the Torah could be within the context of a Jewry-oath, see Iona STEIMANN, «“Das es dasselb puch sey”: The Book as Protagonist in the Ceremony of the Jewry-oath», *European Journal of Jewish Studies* 13 (2019) pp. 77-102.

<sup>29</sup> As quoted above and below in notes 25, 38,

<sup>30</sup> This is in contrast to the extensive theological and legal discussions on every aspect of oath between Christians. For a general introduction of oaths in the canon Law, see Richard H. HELMHOLZ, *The Spirit of Classical Canon Law* (Athens GA: The University of Georgia Press, 1996) pp. 145-173. On the “silence” of the canonists concerning Jewish oaths, see PAKTER, «Did the Canonists Prescribe a Jewry-Oath?»; idem. *Medieval Canon Law*, pp. 210-215. Diego QUAGLIONI criticizes Pakter’s thesis about the limited role that Canonists played in shaping and approving the Jewish oaths. See «Gli ebrei e il giuramento nell’età del diritto comune», *Rivista di storia e letteratura religiosa* 40 (2004) pp. 113-128. Quaglioni makes important arguments about the close reciprocal

In contrast to this general indifference, Madrigal addressed head-on the theological difficulties and dangers that arise from accepting Jewish or Muslim oaths. Concerning our matter, he presented a set of objections according to which any Christian who defers, extracts, or accepts a Torah-oath from a Jew is committing a grave sin – for he is validating a Jewish rite.<sup>31</sup> Only after a serious consideration that includes several conditions and qualifications, Madrigal affirms that theologically speaking Christians are allowed to extract Torah-oaths from Jews without committing a sin. We cannot follow here in detail all the objections and counterarguments that Madrigal’s scholastic examination includes. Yet, it is crucial to point out that time and again Madrigal advocates the legitimacy of the Torah-oaths based on the specific quality of the Torah as a Jewish-Christian book (as we shall see in a moment). To the best of my knowledge, this was hardly a trivial position.

As stated above, our theological and legal sources do not tend to expand on inter-faith oaths and we still lack an in-depth study of the issue. However, it does appear that when canonists and theologians sought to approve the deference of Jewish oaths by Christians, they usually did so based on the practical and universal principle enacted in the canon *Movet te* – based on the Augustinian dispensation. Which means that out of necessity and for the greater good, Christians may accept oaths by infidels who swear in their own way because “it is better to

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relations between Canon and Roman legal systems under a *ius commune*, showing that one cannot exclude the canonists from the process. He also rightly stresses that oaths inherently belonged to the sacramental sphere, and thus their theological implications could never be neutralized or overlooked. Accepting the oath of a Jew implied some degree of participation in a shared spiritual community. Yet, these valid points only heighten the fact that canonists (and theologians) did not elaborate on Jewish oaths and the spiritual complications they surely entailed. And see also Amnon Linder, who claims that the “canonists contributed perceptibly” to the Jewry-oath’s “accelerated evolution since the 12<sup>th</sup> century”. LINDER, «The Jewry Oath in Christian Europe», pp. 329-330.

<sup>31</sup> MADRIGAL, *Super Exodum*, f. 167.r col. a: *Videndum ergo est, utrum Judaeus iurando in Thora illo Christiano patente, sicut inter Hebraeos ad petitionem alterius Hebraei, si peccet mortaliter. Si autem dicamus quod semper iurando peccat mortaliter, dicetur etiam quod quandocumque Christianus ab eo exigit iuramentum in Thora, peccabit, quia inducit aliquem ad iurandum et peccandum mortaliter. Si autem ipse iurando in Thora inter Hebraeos non peccat, nec iudex Christianus, vel aliquis alius peccabit compellendo eum ad iurandum.*

swear truly by a false God than to swear falsely by the true God”. Indeed, when setting this rule Augustine did not speak of Jews at all, but of idol worshippers who swore on “false Gods”. And the biblical examples that Gratian appended in his subsequent dictum suggest that the Jews of the Bible did swear by the true God – as opposed to idol worshippers.<sup>32</sup> Yet, these important distinctions do not seem to resonate much with medieval readers. Regardless of what we may think that Augustine (and Gratian) meant, it appears that in the high Middle Ages oaths “by false Gods” came to represent the oaths of infidels in general – including Jewish oaths.<sup>33</sup> Take for example Raymond de Penyafort (d.1275) – surely a sound legal mind with sufficient theological sensitivity. When he discussed in his *Summa de casibus* the issue of inter-faith oaths, he applied the Augustinian rule to all those who swear contrary to the Christian faith, like “the Muslims, Jews and other heretics”.<sup>34</sup> For Penyafort, as

<sup>32</sup> See above, note 17.

<sup>33</sup> Guido Kisch pointed out that two fourteenth-century critics of Jewry-oaths (as found in the Schwabenspiegel), invoked the *Movet te* canon as the basis for their reservations. However, it is important to note that Kisch’s statement that “both these medieval authors reflect the influence of the canon Law which recognize that the Jew in taking an oath appeals to the true God” reflects his own interpretation of the canon – not theirs. The medieval critics he cites do not mention the Gratian maxim which implies that the ancient Jews were swearing by a true God. They simply state that Jews are allowed to swear in their own way, as established in the canon *Movet te*. Hence, it appears they understood the canon as setting a universal principle that apply to all infidels, and not as a positive statement about Jewish oaths in particular. See KISCH, *Jews in Medieval Germany*, p. 282; and compare to the sources, which he published in *Jewry-Law in Medieval Germany: Laws and Court Decisions concerning Jews*, Texts and Studies 3 (New York: American Academy for Jewish Research, 1949) pp. 50, 70.

<sup>34</sup> Raymond de PENYAFORT, *Summa Sancti Raymundi de Peniafort Barcinonensis, Ordinis praedicator, De poenitentia et matrimonio, cum glossis Ioannis de Friburgo* (Rome, 1603), liber primus, de iuramento, pp. 86-87: *Quaeritur si aliquis iurat per falsos Deos, vel per creaturas non concessas, vel alio modo, qui videatur esse contra religionem fidei Christianae, sicut faciunt Saracani, Iudaei, vel aliqui haeretici...* And in a similar spirit also in HONORIUS, *Summa ‘De iure canonico tractaturus’*, C.2 q.7 c.25, quoted in PAKTER, *Medieval Canon Law*, p. 179, n. 119 and p. 211. See also the examples that Linder presents to support his claim about the contribution of the canonists to the development of Jewry-oaths (note 30 above), but which indicates the canonists saw no categorical difference between Jewish and other infidel oaths. LINDER, «The Jewry Oath in Christian Europe», pp. 330-332. Bartolus de Saxoferrato, who wrote under the framework of Roman Law, suggested that Jewish oaths derived their legitimacy from the

well as for others canonists, the Jewish oath was simply another case of a non-Christian oath.<sup>35</sup> The theological concessions and reasons that allowed Christians to accept or defer it, stemmed from civic or practical considerations that applied to all infidels and heretics – and not from a particular standing that Jews had in the Christian world. If canonists and theologians nevertheless knew of theological arguments that granted Jewish oaths a singular position, they preferred, for some reason, not to make them a standard part of their reflections on the matter.<sup>36</sup>

It is on this medieval background that Madrigal's legal-theological opinion stands out. In fact, it seems that one of his main objectives was to refute this medieval tradition by reclaiming its forgotten biblical sources. According to Madrigal the Christian position concerning inter-faith oaths, was underpinned by the moral precept of Exodus 23:13.<sup>37</sup> But if that was the case, then any attempt to regulate Jewish oaths through the Augustinian rule would seem senseless. How could a concession towards pagan oaths be applied to the Jews who were still observ-

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status of Judaism as an “admitted sect” (*supertitio non improbata*). On his position and its relevancy to the larger theological question, see QUAGLIONI, «Gli ebrei e il giuramento», p. 124. For further legal opinions concerning Jewish oaths, see the popular sixteenth-century compendium of Jewry laws by Marquardus DE SUSANNIS, *De Iudaeis et aliis infidelibus* (Venice: Comin da Trino di Monferrato, 1558), 2.5.9-10, f. 63; 2.8, fs. 79.r-82.r; on this work and its sources see, Kenneth R. STOW, *Catholic Thought and Papal Jewry Policy 1555-1593* (New York: The Jewish Theological Seminary of America, 1977).

<sup>35</sup> In many ways this is but one more example of the larger tendency of the thirteenth century to reclassify the Jews for certain legal and theological purposes “within the same genus as other nonconformists”, namely Muslims and heretics. See Jeremy COHEN, *Living Letters of the Law: Ideas of Jews in Medieval Christianity* (Berkeley: University of California Press, 1999) pp. 147-166: 162-166.

<sup>36</sup> When Bonaventura, for example, addresses the issue of oaths in his commentary on the *Sentences*, he adjoins only Muslim oaths to the category of “false Gods”, thus implying that he thought of Jewish oaths in different terms. Yet, he does not specify what these terms are. Bonaventura DE BALNEOREGIO, *Opera*, vol. 5 (Mainz: Anton Hierat, 1609) pp. 447-449. On the question of why did the canonist remained silent on this issue, see the conflicting opinions of Packter and Quaglioi in note 30 above.

<sup>37</sup> For example, MADRIGAL, *Super Exodum*, f. 168.r col.b: *Istud praeceptum non est caeremoniale sed morale ... ergo istud praeceptum de non iurando per nomina externorum deorum est morale et necessario tenebuntur Christiani ad istud praeceptum, sicut tenentur ad omnia moralia.*



ing rigorously the original restrictions against these very same oaths? And indeed, as Madrigal stresses over and over, the validity of the Jewish oath did not emanate from a general legal principle but from the special merits of the Torah as both a Jewish and a Christian book. The Torah, he states, is nothing but the Hebrew version of the Pentateuch. By any Christian standard it contains the true word of God. In the words of the psalmist, the Torah is “*inmaculata*” (Ps. 19:8). Accordingly, Madrigal concludes that swearing on the Torah resembles much more an oath taken on the Gospels than on a pagan artifact. A statement that categorically divorces the Jewish Torah-oaths from the *Movet te* canon, turning it to a *sui generis*.<sup>38</sup> The Jewish oath still posed, as Madrigal admits, several dangers and difficulties, but these did not stem from the Torah or the oath itself, but rather from what the Jewish oath-taker may attribute to it. The Jews, after all, swear on the Torah because they adhere to all sorts of sinful views, for example, believing that the ceremonial commandments of the Old Law are still valid.<sup>39</sup> Hence the Jews often do sin when they swear on the Torah – a fact that could potentially implicate Christians and with which Madrigal grapples. But none of this has to do with the Torah or with idol worshipping. In and of itself, Madrigal declares, taking an oath on the Torah is an indifferent act (*jurare in Thora secundum se actus indifferens est*).

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<sup>38</sup> For example, MADRIGAL, *Super Exodum*, f. 166.v cols. a-b: *exigere iuramentum ab Hebraeo in sua Thorah, secundum suas ceremonias, non est hic eadem causa quae in idolis, quia idolum aliquid abominabile est et non licet attribuere honorem aliquem ei. Thorah non est aliquid abominabile sed valde sanctum, scilicet, lex domini immaculata [Ps. 19:8]. Nam nihil aliud continentur in Thorah Hebraeorum, nisi quinque libri Moysi, quos ipsi humas, idest, quinaros vocant, nos autem Graeco nomine Pentateuchum appellamus. Manifestum est ergo quod Thora aliquid sacrum est, et sicut nominare illam non est peccatum, ita nec quod ipsi Judaei jurent per illam erit aliquid malum. Ibid.: Sic autem videtur esse iurando in Thorah, quia illa lex significat veritatem Dei tribuentis legem, et creantis orbem, et non iurat in Thorah tamquam in idolo [...] qui iurat in Evangeliiis vel Hebraeus qui iurat in Thorah non attribuit Thora aliquid numinis putans esse Deum, sed solum dicit esse verba Dei Sacra.* And see further examples below.

<sup>39</sup> In this context, Madrigal discusses the significance of intentions, asking whether the merits and faults of an action emanate from the action itself or do they depend on the habitus and intentions of the acting person. He concludes that the sinfulness of an action depends on the direct habitus that motivated it (as opposed to a passive habitus). Hence, the question is not what do Jews believe-in when they swear on the Torah, but whether the Jew swears on the Torah because of what they believe-in.

The singular status that Madrigal granted the Torah-oath becomes all the more evident given his views regarding other inter-faith oaths. In contrast to his approval of the Torah-oath, he vehemently rejected the legitimacy of Jewish oaths on the Talmud, and of Muslim oaths on the Koran or on “Muhamad’s heel” (*crus Mahometi*) – Madrigal’s literal translation of “Muhamad’s Kaaba” into Latin.<sup>40</sup> These objects, he claimed, embodied lies, sins and superstitions. They were the equivalent of necromancy books and pagan artifacts, not of the Torah. This distinction eventually brings Madrigal to prescribe separate oath policies to Jews and Muslims, based on their different relations with Christianity. Each of these religions shared a different common ground with Christianity, upon which the inter-faith oath should rely. Jews and Christians agreed that the Torah is an authentic divine revelation, and thus there was no prevention that Christians would accept Jewish oaths on the Torah. With Islam, however, the common ground was the Gospel and Jesus. Since Muslims admitted the truth of the Gospels and saw Jesus as an authentic prophet, they (unlike Jews) could simply swear on the Gospels or in Christ’s name.<sup>41</sup>

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<sup>40</sup> In the fourteenth and fifteenth centuries we find oath formulas in Valencia and Castile depicting Muslims as swearing by the *qibla* / *elquible* of Muhamad. See Belén VICENS, «Swearing by God: Muslim Oath-Taking in Late Medieval and Early Modern Christian Iberia», *Medieval Encounters* 20 (2014) pp. 117-151: 143-151. *Qibla* / *elquible* was the Romance transliteration of the Arabic Kaaba, which is derived from *kaeb* – a heel. Hence, literally - *crus Mahometi* (my thanks are given to Prof. Daniel Lav for his kind and learned assistance on this matter). Madrigal, we should note, believed these oaths were indeed alluding to Muhamad’s corporal organ. Yet the fact that he gave a serious thought to the Kaaba oath (question 21: is it allowed for a Muslim to take oath on Muhamad’s heel; question 23: who sins more gravely by taking an oath on Muhamad’s heel, Christians, Jews or Muslims), separately from Muslim oaths on the Koran (question 20: is it allowed for a Christian to take an oath on the Koran; question 22: do Muslim sin when they take oath on the Koran), is another indication that he addressed actual issues, and that his treatise can provide historical information also concerning the Christian attitudes towards Muslim oaths.

<sup>41</sup> MADRIGAL, *Super Exodum*, f. 168.r col. a: *licet in pluribus conveniamus cum Hebraeis quia in toto Canone vet. testa. tamen quantum ad Christum fuisse bonum et vera fuisse locutum concordant nobis aequaliter Saraceni, Hebraei autem totaliter dissonant, ideo Saraceni agunt hoc sine crimine, quia non agunt contra conscientiam, et Judaei non agunt sine crimine*. Madrigal argues that the Muslims admit the truth of the Gospels based on their common belief that John 14 alludes to Muhamad. See *ibid*.

Madrigal's assessment of inter-faith oaths was underlined by his orientation towards the Jewish origins of Christianity. Notwithstanding his scholastic style and methods, the answers he sought were not to be found in abstract or universal Aristotelian principles, but rather in the concrete history and grammar of Christian sources – and first among them, the Hebrew Bible. This approach had, as we just saw, tangible and legal implications concerning the status of certain Jewish beliefs and practices that were grounded in the Torah. But its effects did not stop with the Jews. Madrigal's reorientation towards the Torah could have serious ramifications for Christian beliefs and practices as well. For, if the only problem with Torah-oaths stemmed from the erroneous beliefs of the Jewish oath-taker, then what prevented Christians from taking them?

#### IF *CONVERSOS* CAN CHANT PSALMS IN HEBREW, WHY CAN THEY NOT TAKE OATHS ON THE TORAH?

After settling the issue of Jewish Torah-oaths, Madrigal pivots to explore “Whether a Christian who swears on the Torah of the Jews, commits a mortal sin”.<sup>42</sup> The issue comes up after he characterizes the Torah as a Christian book. As his argument goes, if Christians indeed believe that the Torah “contains the most complete truth, brought forth and spoken by the Holy Spirit through the mouth of Moses”, they should be able to swear on the Torah just as they swear on the Gospels, without any sense of guilt and without giving any offense.<sup>43</sup> Since Madrigal's language along the treatise is theoretical, he does not specify who exactly

<sup>42</sup> Madrigal addresses this question twice along his treatise. First at question 16, ff. 167.r col. b – 167.v col. b: *utrum Christianus jurans super Thorah Judaeorum peccet mortaliter*, and later at question 18, f. 168.r cols. a-b: *An iurare in Thorah sit judaizare et quod proprie est judaizare*. Since these two questions overlap, I am reading them here together as a single unit.

<sup>43</sup> MADRIGAL, *Super Exodum*, f. 168.r col. a: *Credunt etiam Christiani Thora veritates solidissimas continere, utpote eodem Spiritu Sancto per os Moysi prodente, atque dictante et nihil omnino in tota illa lege, sive Thora, ut ipsi dicunt falsitatis continere. Sine conscientia ergo in utroque juramus, cum utrumque tamquam verissimum judicamus, nec in aliquo eorum aliquatenus offendimus.*

are those Christians that may swear on the Torah. Yet it quickly becomes clear that he mostly had Jewish converts on his mind when he reviewed this very unusual topic. This is, of course, not surprising given that *converso* oaths on the Torah were becoming a real issue in his days. Yet the nuanced and open-ended (to some extent) answer that he gives, may very well come as some surprise.

The fundamental objection against which Madrigal develops the discussion concerned the hazard of Judaizing. At one point he presents it in the form of a syllogism: (a) To Judaize is a serious mortal sin. (b) To swear on the Torah is an act of great Judaization, just like performing circumcision or observing the sabbath. Hence the conclusion: a Christian who swears on the Torah commits a mortal sin of Judaizing.<sup>44</sup> This is the kind of decisive and consensual stand that we find at the end of the fifteenth century. Yet, manifestly, this was not yet the case. As Madrigal declares straightforwardly, the minor premise of the syllogism – i.e., that “to swear on the Torah is an act of great Judaization” – should simply be rejected. To examine this premise properly and impartially, he states, one must establish first a precise definition of Judaization (*quid proprie est Judaizare*). To Judaize, Madrigal then explains, is to act or believe like a Jew. Yet, crucially, not everything that a Christian does or believes in common with Jews constitutes a sin of Judaizing. Only actions and beliefs that are exclusively Jewish provide a cause for Judaizing. This is evident by the fact that Christians and Jews share a great deal of beliefs and conducts. The Jews believe in many things that the Church approves – like the stories and prophecies of the Old Testament. Likewise, they follow all sorts of pious conduct to avoid vices like Christians do, even if in a lesser degree. Therefore, in order to Judaize a Christian must adapt a distinctly Jewish feature, like believing in the potency of the ceremonial precepts, or performing a ritual like circumcision.

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<sup>44</sup> MADRIGAL, *Super Exodum*, f. 168.r col. a: *Ad secundum argumentum, quando dicis peccatum mortale est in Christianis Judaizare ut si circumcidat, aut observet sabbatum, sed iurare super Thora Judaeorum est maxime Juaizare, ergo peccatum mortale erit in Christianis. Ad hoc concedetur major sed negatur minor.* And again below: *peccatum mortale est in Christianis Judaizare ut si aliquis se circumcidat, vel observet sabbatum, sed iurare super Thora Hebraeorum est maxime Judaizare, ergo est peccatum mortale.*

Based on this definition of Judaization, and given the Jewish-Christian quality of the Torah, Madrigal concludes that to swear on the Torah is not an act of Judaizing. There are, of course, qualifications. Madrigal was well aware that for Jews the Torah often stood for something more than just the text. Being their main sacred object, it was regularly bound with other ritual elements:

The Torah according to the Jews, as we ordinarily see, is a certain book made of large parchment rolled on the sides; fasten by rods [i.e., handles] made of copper, silver, or other material, and covered by silk cloth or of some other kind. [...] It is stored by them in their synagogues in a great sanctuary, and their Rabbis read from it in the synagogue when they ascend to the cathedra.<sup>45</sup>

These accessories and adornments that Jews append to the Torah, Madrigal explains, belong to the world of Jewish “superstitions” and have nothing to do with the material text of the Torah itself. Under no circumstances may a Christian take an oath on a Torah scroll while it is encased by such objects, for that will be as sinful as taking an oath on the Talmud. Yet, if all the rabbinic Judaica is removed, and the Torah remains a bare text, as it should be, then the scroll is no more Jewish than the Christian Pentateuch. For the “content of the book includes nothing except the text of the volume which they call *Humash* – that is, fivefold – which we call the Pentateuch, namely the five books of Genesis, Exodus, Leviticus, Numbers, and Deuteronomy”.<sup>46</sup> Therefore, it is no cause for Judaization:

The Torah is our Pentateuch. Indeed, not only the Jews hold to the Pentateuch, but so do we. Not only they admit the truthfulness of this

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<sup>45</sup> MADRIGAL, *Super Exodum*, f. 167.r col. b: *Quod Thora apud Hebraeos, ut communiter videmus est quidam liber de magnis membranis involutus pa[e]nnis, ligatusque in virgis eneis, aut argenteis, vel alias, et supertectus panno serico alterius generis [...] Et hic tenetur apud eos in synagogis suis multum reconditus, et Rabbini ipsorum in ipso legunt cum in synagogis ascendunt in Cathedram.*

<sup>46</sup> MADRIGAL, *Super Exodum*, f. 167.r col. b: *Iste tamen liber nihil ultra continet quam contineat liber qui apud eos vocatur humas, idest quinarius et vocamus nos Pentateuchum, scilicet, isti quinque libri Genesis, Exodus, Leviticus, Numerorum liber, et Deutero.*

law, but we admit it as well. We do not Judaize, therefore, if we take an oath on the Sacred Old Law.<sup>47</sup>

The only thing that separated the Torah from the Pentateuch that Christians read in the Church was the language in which it was written. Which brings Madrigal to one of his favorite topics – the Hebrew language and its importance for Christianity. In this case, however, he is only on the defense, arguing it is absolutely baseless to presume that the Hebrew language somehow hindered or diminished the authority of the text. To illustrate the point, Madrigal compares the Torah to Matthew's Hebrew version of the Gospels:

Is it possible that our Gospels, if written in Hebrew, are of lesser authority and it is not allowed to swear upon them? Certainly, that would be most absurd, for in that case the Gospel written by the Blessed Matthew would be of a less authority since it was written in Hebrew, as Jerome testifies in his prologue to [the Gospel of] Matthew. It is even more absurd, since the other books of the Gospel draw their authority and faith from that Hebrew [source – i.e., the Gospel of Matthew]. Hence, just as taking an oath on a Gospel written in Hebrew is no more Judaizing than taking an oath on a Gospel written in Latin, so does taking an oath on Genesis, Exodus, Leviticus, Numbers and Deuteronomy that are written in Hebrew is no more Judaizing than doing so on the same books written in Latin. And since he who swears on these five books, when written in Latin, does not Judaize in any respect whatsoever, neither does he Judaizes when swearing upon such five books written in Hebrew. And since the Torah of the Jews does not include anything but these five books – to take an oath on the Torah is not Judaizing.<sup>48</sup>

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<sup>47</sup> MADRIGAL, *Super Exodum*, f. 168.r, col. b: *nam Thora Pentateuchus noster est non solum ergo Judaei Pentateuchum tenent sed et nos tenemus. Non soli ipsi assentiunt veritati illius legis sed nos assentimus. Nihil ergo est, in quo Judaizemus, si super Sacram Legem veterem iuremus.*

<sup>48</sup> MADRIGAL, *Super Exodum*, f. 168.r, col. b: *Numquid Evangelia nostra si in Hebraeo scribantur minoris auctoritatis sunt, aut non licet super ea iurare? Hoc quidem absurdissimum esset, nam tunc Evangelium quod scripsit beatus Matthaheus, cum in Hebraeo scripserit, ut patet per Jeronymum in prologo super Matthaenum, minoris auctoritatis esset, sed nihil absurdius nam caeteri Evangeliorum libri ex illo Hebraeo auctoritatem fidemque sumpserunt. Sicut ergo non est Judaizare iurare super Evangelia scripta in Hebraeo magis quam super Evangelia scripta in Latino, ita non est magis Judaizare jurare super Genesim et Exodum, Leviticum Numerum, Deuteronomium scripto in Hebraeom quam super eosdem scriptos in Latino. Sed si quis juret super istos*

Hebrew, as Madrigal constantly strived to show in his work, was no foreign language to Christianity. According to Jerome, it was the language of the first Gospel. Hence the Hebrew language of the Torah did not damage its judicial or theological status for the purpose of oaths, and it most certainly did not make it an exclusively Jewish book. Notably, the possibility that the Hebrew Bible the Jews were reading was somehow distorted or unauthentic, was not even considered. To push this point further Madrigal gives a rather remarkable analogy between Christian oaths on the Torah and Christian prayers in Hebrew. Due to its historical importance, it is worth citing in full:

... and this is evident also in the case of prayers [*orationibus*], for God does not heed more or less if someone prays in Latin or in Hebrew. Otherwise, those who converted from Judaism to Christianity and, not knowing Latin, recite the psalms in Hebrew while keeping the same meaning which the Church recite in Latin – not only they do not merit but they also commit a mortal sin. [However] both of these [opinions – that they do not merit, or that they commit a sin] are false. In truth, those who chant in Hebrew and those chanting in Latin merit equally – as long as they do the rest equally, that is, in their devotion, way of life, the continuation of their prayers [...] <sup>49</sup>

The analogy illustrates again Madrigal's enthused position towards the Hebrew Bible. Yet, it also provides a striking historical testimony as to the reality around him. Madrigal's point was rather simple. If to swear on the Torah is to Judaize – just because the Torah is written in Hebrew – then so do Jewish converts who do not know Latin and therefore chant psalms in Hebrew (in conformance with the Church) are guilty of mortal sin. Evidently, this accusation seemed so absurd to Madrigal that he

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*quinque libros scriptos in latino, non judaizat ullatenus ergo nec Judaizabit iurando super eosdem quinque in Hebraeo scriptos. Sed Thora Hebraeorum nihil praeter illos quinque libros continet; ergo jurare Thora non est Judaizare.*

<sup>49</sup> MADRIGAL, *Super Exodum*, f. 167.v col. a: *Et patet hoc in orationibus, nam sive aliquis oret lingua Hebraea sive Latina nihil magis aut minus Deus exaudit, alias illi qui de Hebraismo sive [sic] ad Christianam religionem conversi sunt, et quia Latinam nesciunt, recitant Psalmos in Hebraeo, idem dicentes in sententia, quod Ecclesia recitat in Latino, non solum non mereretur sed etiam peccarent mortaliter; quorum utrumque falsum est, sed aequaliter mereretur recitans in Hebraeo et recitans in Latino, dum tamen aequalia sint cetera, scilicet devotio et vita et continuatio orationis et sic de ceteris...*

used it as a proof that there is nothing wrong in swearing on a Hebrew Pentateuch (the Torah). But from our perspective, it is precisely the triviality with which Madrigal makes this statement and how it functions as a normative exemplum, which makes it so valuable. For it reveals behavioral and religious norms that would soon be extinct – at least in the open. According to the picture which Madrigal casually paints, in his days it seemed perfectly natural and legitimate that *conversos* would continue to chant Hebrew psalms while worshiping as Christians.<sup>50</sup> A practice that within a few decades would be, just like swearing on the Torah, undisputed evidence of Judaization.

The Hebrew Torah, Madrigal argued methodically and consistently, was a Christian book – in many ways, as he would demonstrate throughout his work, far superior to its Latin translation. Therefore, in and of itself, there was nothing improper for Christians to swear on the Torah, and it certainly did not spell out any kind of Judaization. Yet, there were, as Madrigal acknowledged, other significant factors that had to be considered when evaluating the legitimacy of these oaths. One, was the motivation or *conscientia* of the oath-taker. If he was driven by disbelief in elements of the common Christian oath, then swearing on the Torah was a sinful act. The example that Madrigal gives is of a Christian who prefers to take an oath on the Torah because he thinks that the Latin version of the Bible is corrupted. A second factor concerned the broader and public implications that such an oath might have. If it risked bolstering the infidelity of the Jews it was entirely prohibited, since encouraging the Jewish transgression was also a mortal sin (*dare favorem errori Judaeorum est peccatum mortale*). Likewise, if the Torah-oath might cause a “scandal” – i.e., an obstacle of faith – among Christians who think it undermines the Christian truth, then it was outlawed and sinful. Thus, there were many good reasons to avoid it, but in terms of culpability, the specific circumstances of each and every Torah-oath had to be inspected in order to pass judgment. The most important question in that

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<sup>50</sup> In the early years of the fifteenth century, the Jewish convert Profayt Duran/Honoratus de Bona Fide, instructed his Hebrew reading audience, which included converts like himself, on the special spiritual importance of reading the Bible and chanting Psalms in Hebrew (in his introduction to *Ma'aseh Efod*). Madrigal's testimony may very well indicate as to the implementation of this advice among converts. This possibility will have to be addressed in length elsewhere.



regard was who solicited the oath. Madrigal lists three options, that surely relate to the realities he knew. The first is when a Jew asks a Christian to swear on the Torah because he disregards the alternatives (i.e., oaths on the Gospels or the Latin Bible). As other sources tell us, this was a rather common dynamic between Jews and *conversos*.<sup>51</sup> In these cases, Madrigal holds, it is a mortal sin for the Christian to comply. It is better for a Christian “to die a thousand deaths” than to do so, for by this he would favor the errors of the Jews subduing Christianity to the madness of infidelity. The second scenario that Madrigal brings up, is when a Christian asks another Christian to swear on the Torah. In these types of interactions, we may presume that at least the oath-taker was a *converso* – whose oath on the Torah seemed more reliable to the solicitors, whether they were converts or born Christians.<sup>52</sup> In such cases, Madrigal instructs, the motivations of the Christian who solicits the oath must be examined. If he did so because he denies the truth of the Gospel, it is entirely prohibited, just as when a Jew asks a Christian to swear on the Torah. Notably, however, Madrigal allows the possibility that such a request would be motivated by reasons other than disbelief. Unfortunately he does not specify what they might be, but simply acknowledge the existence of “some other circumstances” (*ex quacumque alia occasione*). In these “other circumstances” taking an oath on the Torah is not a mortal sin, but it is still to be avoided for the sake of appearances – lest someone think that a Christian prefers the Torah over the Gospels. The third possibility is when a Christian swears on the Torah out of his own initiative and free will. In such instances, the oath is not always prohibited – depending on the motivation. Evidently, a Christian who chooses to swear on the Torah because he doubts the Gospels is guilty of a mortal sin. Yet, if a Christian wants to take an oath but there is no Gospel within reach, only a Torah, then it is not forbidden

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<sup>51</sup> See above at note 3. Indeed, it is not entirely impossible to presume circumstances in which a Jew would ask an “Old Christian” to swear on the Torah. But it is hard to imagine this was a significant phenomenon outside the Jewish-*converso* context.

<sup>52</sup> As we saw above, Alonso de Espina brings the words of a man who says he has greater confidence in a Muslim who swears by his own law, than in a *converso* who swears on the Gospels – suggesting that in (some) Christian eyes, a *converso* oath on the Torah would be more trustworthy than a regular oath on the Gospels. See above, note 4.

at all to swear upon it. A scenario, we may cautiously speculate, that could relate for quite a few social interactions among *conversos* – surely during these early years when they were often still living among Jews.

## TOWARDS A REVALUATION OF IBERIAN SCHOLARSHIP IN THE EARLY FIFTEENTH CENTURY

Madrigal's short treatise on oaths, enclosed in his commentary to Exodus, presents a valuable source to both the realities and theories of inter-faith vows between Christians, Jews and Muslims in Castile of the late 1430s.<sup>53</sup> Here, we have focused only on Torah-oaths and their interface with Christian norms and ideals, suggesting that Madrigal's treatment of this issue should be understood as a response to the socio-religious challenges of the *converso* society. Even though Madrigal did not address it directly, the presence of the *converso* phenomenon can be detected throughout his treatise. If we are correct then this is one of the earlier theological and legal considerations of 'Jewish' *converso* customs that we have.

Madrigal surely does not represent all the opinions and perspectives of his contemporaries, and a second treatise on oaths that he wrote at the late 1440s suggests that his own opinions on this matter were evolving, perhaps in correlation to rising tensions and growing accusations against *conversos*.<sup>54</sup> Nevertheless, given the limited sources we have from this

<sup>53</sup> For a parallel contemporary discussion from the Muslim perspective – that can set a good ground for a comparative study, see Camila ADANG, «Swearing by *the Mujjala*: A fatwā on dhimmī oaths in the Islamic West», in *Law and Religious Minorities in Medieval Societies: Between Theory and Praxis*, Ana ECHEVARRÍA, Juan Pedro MONFERRER-SALA and John TOLAN (eds.) (Turnhout: Brepols 2016) pp. 159-172.

<sup>54</sup> Madrigal second treatise on oaths evolves from his commentary to Matthew 5:34: "But I tell you, do not swear an oath at all". Madrigal began to write his commentary on Matthew in 1446, a task he will not complete until his death in 1455. Unlike the short Exodus treatise that focused on inter-faith oaths, the Matthew treatise presents an exhaustive, panoramic, and methodical discussion of oaths, counting more than 120 pages. Alfonso Fernández DE MADRIGAL, *Divinarum Scripturarum intentissimi ac diligentissimi perscrutatoris beati Alphonsi Thostati Episcopi Abulensis in evangelium Sancti Matthei ad litteram expositio* [...], vol.1 pt. 2 (Venice: Petrus Liechtenstein, 1528), fs. 229.v col. b - 351.v col. b. Only a small fraction of this treatise, about three pages (341.r col. a-

early period, and in light of Madrigal's central position within the establishment, we may draw from his treatises several broad conclusions.

First, it affords a proof that already in the 1430s it was known to Christian authorities that *conversos* were swearing on the Torah in a variety of circumstances. Second, we learn that while Christians who swore on the Torah could be suspected as Judaizers, there were powerful voices that aimed to mitigate and condition this offense. Madrigal determined unequivocally that the Torah-oath itself was not an act of Judaizing, and that there were actual cases and circumstances in which Christians were allowed to take them. He obviously preferred that Christians would always swear on the Gospels, but he left an opening to render (on certain circumstances) the Torah-oath as a lawfully Christian practice. A judgment that would be unthinkable by the end of the century. Similarly, the example he gives of converts who chant Psalms in Hebrew as part of their Christian worship, also illustrates the radical transformation that Iberian society was about to undergo within a few decades. This changing attitude towards Torah-oaths and Hebrew chants provides a stark example as to the dynamical nature of "Judaization" and its general course in fifteenth-century Spain.

And lastly, Madrigal's arguments demonstrate the close interdependence between historical and linguistic approaches to socio-religious realities and policies. As we saw, Madrigal's position on *converso* practices reflected his scholarly orientation towards biblicism and his reappraisal of the Hebraic origins of Christianity. It was only by recognizing the Jewish heritage of the Church that he was able to interpret some *converso* behaviors and beliefs as legitimate Christian components. His

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342.r col. a), deal with Jewish and Muslim oaths. Within it a mere passage is dedicated to Christians who take Torah-oath (341.r col. b). Thus, it lacks the elaborated explanations on the Christian nature of the Torah that we saw in the first treatise. But Madrigal does introduce here a new distinction between a solemn oath on the Torah, which always constitutes a mortal sin for a Christian, and a simple oath, that does not necessarily imply a mortal sin. It is possible that Madrigal abbreviated his discussion simply because of the scope of the new treatise, and since he already addressed inter-faith oaths in length in the first treatise. Yet it is also possible that Madrigal trimmed out arguments he now felt unconfirmable with. Given that the major anti-*converso* outbreak of 1449 already involved accusations against *conversos* who swore like Jews (see above, note 4), such a change of heart would not be deprived of socio-political context.

extraordinary position on Torah-oaths (by Jews or Christians) mirrored a broader scholarly approach that was equally inventive. In that sense, Madrigal is very far from the traditionalist replicator of scholastic formulas that he is sometimes thought to be. While he was indeed working within a scholastic framework, he did not hesitate to criticize medieval traditions by applying new comparative, historical and linguistic perspectives. His fundamental position on the authority of the Hebrew Bible and his critical approach to its Latin and Greek translations, brazenly subverted axioms that guided the Parisian literalist school for centuries. And although these elements are usually classified, almost automatically, as signs of humanist influence, this was not the case. While Madrigal was surely aware of new Italian trends, it seems that his critical perspectives emerged from a very different intellectual dynamic that was distinctly Iberian. It was his Biblicist framework, with its daring set of linguistic and historical presuppositions, which allowed him to reexamine medieval traditions – legal, philosophical, theological – outside of their disciplinary habitats, and hence in new directions. This fundamental shift in perspective was not driven by the “secularization” of knowledge or history through the *Studia humanitatis* – but by the colossal endeavor to integrate Hebraic-Sephardic traditions of knowledge (with all their linguistic, biblical and religious baggage) into Christian history, *scientia* and worldview.

With this insight in mind, we may also suggest that the relative indifference to the “dangers” posed by *converso* Judaization in the first decades following the mass conversions, did not reflect only unawareness, ignorance or naiveté concerning the converts’ practices. Rather, this tolerance, was undergirded by a certain intellectual climate, unique in its curiosity and openness, which allowed creative Christian interpretations of Jewish elements. This is the climate that allowed the pioneering works of Pablo de Santa María, or the Arragel Bible. Later generations in Spain, haunted by fear and accusations of Judaization, would do much to obscure, misrepresent and suppress the fruits of this epoch. But the remains of this intellectual substructure can still be safely identified in a series of works written in the late fourteenth century and the first half of the fifteenth century by Christians, converts, and Jews who excavated the ancient common layers of the two religions, while exploring new

ways in which Jewish and Christian components could be reconciled. Madrigal's enormous corpus, that still awaits a thorough study, may very well be one of the greater memorials from this short-lived episode.

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