

“Once the Jews have been Expelled”: Intent and Interpretation in Late Medieval Canon Law

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Sometime in early 1434, two northern Italian counts, Francesco Pico della Mirandola and his brother Giovanni, sent a letter to Pope Eugene IV (r. 1431–47). Out of concern for their subjects, who had long suffered from a shortage of credit, Francesco and Giovanni had allowed some Jews to settle in their lands and lend at interest. In addition, the brothers had rented a house to these Jews for the purpose of moneylending. At the time, the noblemen stressed, they had not believed their actions to be unlawful. They had since come to fear, however, that they had inadvertently brought automatic excommunication upon themselves by violating the provisions of *Usurarum voraginem*, a decree first issued at the Second Council of Lyon in 1274 that called on secular and religious authorities to refuse lodging to foreign usurers and, in addition, to expel such usurers

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from their lands.¹ The brothers' uncertainty, the petition noted, reflected the varied opinions of contemporary jurists (presumably those at Bologna, a mere 60 kilometers away), who disagreed on whether the decree was to be understood in reference to Jewish as well as Christian moneylenders. Deciding to err on the side of caution, the brothers petitioned the Holy Father to grant them absolution, if they had indeed incurred ecclesiastical censure through their actions. In addition, they asked to be granted a dispensation allowing the Jews to remain in their lands, so as to spare their subjects from even greater economic misfortune.²

In his response, issued on July 15 of that same year, the pope granted them the desired absolution, thereby implying that the brothers had indeed incurred excommunication, however unintentionally. The papal absolution, however, was a conditional one: it was to be granted only once the Jews had been expelled.³ No evidence survives concerning the aftermath of Eugene's reply, and the fate of the Jews of Mirandola is unknown.⁴ Nor have modern scholars treated the event as anything more than a footnote to the history of Jews in fifteenth-century Italy. But if the brothers were presumably both relieved and disappointed by the outcome of their petition, other contemporary observers—including the Jews of Mirandola themselves—were surely surprised. One of the few constants of medieval papal attitudes toward the Jews had been a strong resistance to their

1. Lyon II, c. 26: "[...] We order that neither a college, nor other community, nor an individual person, of whatever dignity, condition or status, may permit foreigners and others not native to their territories (*alienigenas et alios non oriundos de terris ipsorum*), who practise usury or wish to do so, to rent houses for that purpose or to occupy rented houses or to live elsewhere. Rather, they must expel all such manifest usurers from their territories within three months, never to admit any such in the future. Nobody is to let houses to them for usury, nor grant them houses under any other title." I have slightly adapted the English translation from that given in Norman P. Tanner, ed., *Decrees of the Ecumenical Councils* (hereafter *DEC*), (London: Sheed & Ward, 1990), 1.328-29. In 1298, the decree was copied verbatim into the the *Liber Sextus*, a new codification of canon law promulgated by Pope Boniface VIII; there it appears as VI 5.5.1.

2. Shlomo Simonsohn, ed., *The Apostolic See and the Jews* (hereafter *ASJ*), 8 vols. (Toronto: Pontifical Institute of Mediaeval Studies, 1988–90), 2:823 (doc. 703). I have confirmed the edition against Vatican City, Archivio segreto vaticano, Reg. suppl. 296, fol. 203rv.

3. *ASJ*, 2:823 (doc. 703): "Concessum de absolutione, expulsis primo Iudeis, in presencia domini nostri pape." As an ablative absolute, the phrase *expulsis. . . Iudeis* (lit. "the Jews having been expelled") could in theory refer to an expulsion that had already occurred; however, both the context and the use of "first (*primo*)" suggest instead that the phrase is to be taken as a condition of the absolution, rather than an acknowledgment of a *fait accompli*.

4. Half a century later, Giovanni's more famous grandson and namesake would also run into difficulty on account of his dealings with Jews, although these were of a rather different sort; see Chaim Wirszubski, *Pico della Mirandola's Encounter with Jewish Mysticism* (Cambridge, MA: Harvard University Press, 1989).

expulsion. For more than a millennium, Christian theology had generally insisted on the rights of Jews to live peaceably within Christian society. As the canon law of the church grew in scope and sophistication during the twelfth and thirteenth centuries, it followed suit, further strengthening the church's formal opposition toward the expulsion of Jews. Jews were to live under heavy restrictions, lest they pose a threat to Christian society, and they were to be actively encouraged to convert to Christianity. But they were not to be expelled.⁵

In the Mirandola case, however, for the first time in the history of the medieval church, a reigning pope declared that canon law required the expulsion of Jews who were lending at interest. The brevity of the surviving record of the papal response—only eleven words of summary—belies its importance as an unprecedented departure from earlier papal practice. It also offers no direct insights into the pope's reasoning. Having only just arrived in Florence after hastily fleeing an insurrection in Rome, Eugene might simply have been in a disagreeable mood. And it is also possible that the decision was made by a member of the papal staff, with the pope casting but a passing glance, if at all. But whatever its source, the decision's underpinning logic was unambiguous: *Usurarum voraginem's* provisions applied to Jews, including its penalty of expulsion.

This would have come as a great surprise to the decree's drafters, who had gathered at Lyon a century and a half before. As will be discussed below, *Usurarum voraginem* was promulgated in response to the increasing presence of Christian moneylenders from northern Italy in the cities and territories of northern Europe, and it was on these Christian moneylenders that its sanctions fell. Over the course of the following two centuries, however, and especially from the late fourteenth century onward, jurists, princes, and prelates began to reinterpret *Usurarum voraginem's* provisions as applying to Jewish usurers as well as Christian ones. The trend was not uniform; after all, it was juristic disagreement over the decree's reach that spurred the Mirandola brothers to consult the papacy in the first place. Yet the gradual shift toward a broadening of the decree's reach meant that canon law could be wielded not only to enforce the segregation and marginalization of Jews, as it had for more than millennium. It

5. For a general discussion of the medieval church's teachings on Jews, and the canonical injunctions in particular, see Kenneth Stow, *Alienated Minority: The Jews of Latin Christendom* (Cambridge, MA: Harvard University Press, 1992), 242–73; and more recently, his essay on "The Church and the Jews: St. Paul to Pius IX," in *Popes, Church and Jews in the Middle Ages: Confrontation and Response* (Farnham, UK: Ashgate, 2007), art. I, 1–76. Also valuable, in the present context, is Stow's article on "Papal and Royal Attitudes toward Jewish Lending in the Thirteenth Century," *AJS Review* 6 (1981): 161–84.

could even, as in the Mirandola case, supply legal grounds for their expulsion. Furthermore, over the course of the fifteenth century, even many of the thinkers and authorities who tiptoed awkwardly around the issue of expulsion (in deference to the weight of canonical tradition) nevertheless insisted that *Usurarum voraginem* barred Christians from renting houses to Jewish usurers, or even Jews *tout court*. The collective weight of their opinions gradually transformed what was initially a contentious rereading into an established practice, so much so that even modern scholars have failed to recognize its disputed origins.⁶

That so many late medieval jurists, preachers, civic authorities, and even popes proved willing—and in some cases, eager—to apply *Usurarum voraginem* to Jews is especially notable in light of the interpretative barriers that stood in the way. Chief among these was the established theological and canonical opposition to the expulsion of Jews, but also significant was the knowledge—widely circulated, at least in learned circles—that the legislative intent underpinning the decree centered on ecclesiastical fears about Christian moneylenders, not Jewish ones. As sociologist Susan Silbey has elegantly observed, however, “legal ambiguity, or at least the potential for ambiguity, is located not simply in language or abuse of law but in the domain of legitimate use. Every provision of law, once set loose, is a candidate for all manner of uses. Laws have histories within which their meaning and use change, often quite radically.”⁷ In the two centuries after *Usurarum voraginem* was “set loose,” its meaning and use did indeed change radically, as the decree migrated into new textual and rhetorical contexts, and as established norms of legal interpretation confronted shifting social realities.⁸

Recent work by David Freidenreich and Stefan Stantchev has explored the treatment of non-Christians in medieval canon law, focusing in particular on the ways in which laws originally aimed at a particular group could gradually be turned against others. Freidenreich, for example, has shown how laws originally regulating Christian–Jewish commensality gradually

6. The lone exception is Christoph Cluse, who recently drew attention to reworkings of *Usurarum voraginem*; see his *Darf ein Bischof Juden zulassen? Die Gutachten des Siffridus Piscator OP (gest. 1473) zur Auseinandersetzung um die Vertreibung der Juden aus Mainz* (Should a Bishop Tolerate Jews? The Opinions of Siffridus Piscator OP (d. 1473) on the Debate over the Expulsion of Jews from Mainz) (Trier: Kliomedica, 2013), especially 86–87.

7. Susan Silbey, “A Sociological Interpretation of the Relationship between Law and Society,” in *Law and the Ordering of Our Life Together*, ed. Richard John Neuhaus (Grand Rapids: Eerdmans, 1989), 1–27, at 19.

8. For a similar example from Renaissance Italy, see Thomas Kuehn, “Some Ambiguities of Female Inheritance Ideology in the Renaissance,” *Continuity and Change* 2 (1987): 11–36.

blurred such that they shaped Christian–Muslim interactions as well.⁹ Stantchev, in turn, has argued that canon law gradually came to treat Jews, Muslims, heretics, and schismatics as “interchangeable constituent parts of the broader category ‘infidelity,’” such that “each law against each target defined as outside the body of the faithful [became] available for application against any target.”¹⁰ This study builds on theirs, showing how the shifting and conflicting interpretations of *Usurarum voragine*’s reach hinged largely on the degree to which Christian and Jewish usurers could be conflated into a single conceptual category. But it emphasizes, as well, the obstacles to such blurring and the limits of interchangeability. As evidenced by the willingness of many canonists to sacrifice theoretical consistency at the altar of expedience, the hermeneutic environment of fourteenth- and fifteenth-century canon law was a far cry from the “closed scholastic system largely insulated from the realities of the outside world” that Freidenreich sees in the preceding centuries.¹¹ As this article demonstrates, the canonistic debates over *Usurarum voragine* bore the stamp of broader social and intellectual shifts, and bore consequences that carried far beyond the classroom.

The Late Thirteenth Century: Canonistic Precedent and Legislative Intent

According to the canonist Francesco d’Albano (Franciscus Verzellensis), who wrote a commentary on the decrees of the Second Council of Lyon within a year or two of their promulgation, *Usurarum voragine* was prompted by ecclesiastical concerns about the increasing presence of northern Italian moneylenders in transalpine lands.¹² Over the course of the thirteenth century, these foreign (Christian) moneylenders, generally referred

9. David M. Freidenreich, “Sharing Meals with Non-Christians in Canon Law Commentaries, circa 1160–1260: A Case Study in Legal Development,” *Medieval Encounters* 14 (2008): 41–77.

10. Stefan K. Stantchev, “‘Apply to Muslims what was said of the Jews:’ Popes and Canonists between a Taxonomy of Otherness and *Infidelitas*,” *Law and History Review* 32 (2014): 65–96, at 96.

11. Freidenreich, “Sharing Meals,” 72.

12. Burkhard Roberg, “Die *lectura* des Franciscus de Albano aus dem Jahr 1276 über die *constitutiones novissimae* Papst Gregors X (The *lectura* of Franciscus de Albano from 1276 on Pope Gregory X’s *Constitutiones novissimae*),” *Annuario historiae conciliorum* 31 (1999): 297–366; and 33 (2001): 26–79, at 60; see also Roberg, “Der Kanonist Franciscus de Albano als Zeitzeuge: eine Nachlese seiner *lectura* der Konstitutionen Gregors X (The Canonist Franciscus de Albano as Eyewitness: A Selection of his *Lectura* on Gregory X’s *Constitutions*),” *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*, Kan. Abt. 81 (1995): 340–51.

to as “Lombards” or “Cahorsins,” had established themselves first in northern France and then in England, the Low Countries, the Rhineland, and Burgundy, generally with the collusion of both secular and ecclesiastical authorities eager to tax the moneylenders’ profits.¹³ The decree, therefore, not only insisted that foreign usurers (*alienigenas et alios non oriundos de terris ipsorum publice pecuniam fenebrem exercentes*) be denied lodging and expelled within 3 months, but also threatened obdurate authorities with suspension, interdict, and excommunication.¹⁴

Notably, the decree’s drafters did not specify that its penalties were to apply exclusively to Christian usurers, as opposed to Jewish ones. The need for such a clarification likely did not occur to them. Although earlier councils had certainly criticized the “grave and immoderate usury (*graves et immoderatas usuras*)” that Jews were supposedly extorting from Christians, and although many theologians firmly denounced Jewish usury, earlier canonical bans on usury had clearly—if implicitly—concerned only Christians.¹⁵ The Third Lateran Council’s decree *Quia in omnibus*, for example, had ordered that all “manifest usurers (*usurarii manifesti*)” be refused communion and Christian burial; the specified penalties point unambiguously to Christian rather than Jewish wrongdoers.¹⁶ These same penalties were then reiterated in *Usurarum voraginem* itself, which insisted in its opening lines that the earlier Lateran decree be strictly observed.¹⁷ Late medieval canonists eagerly seized on terms or provisions bearing even a hint of ambiguity; yet for nearly a century after the decree’s promulgation, no canonists even raised the possibility that it might apply not just to Christian usurers, but to Jewish usurers as well. For late

13. See the overview in Renato Bordone, “I lombardi in Europa: uno sguardo d’insieme (The Lombards in Europe: An Overview),” in *Lombardi in Europa nel Medioevo* (The Lombards in Europe in the Middle Ages), eds. Renato Bordone and Franco Spinelli (Milan: Francoangeli, 2005), 9–39. As the example of the Lombards reveals, Jews never enjoyed anything close to a monopoly on medieval moneylending, tenacious popular assumptions notwithstanding.

14. For the decree’s canonical precedents and later commentaries, see Rowan W. Dorin, “Canon law and the problem of expulsion: The origins and interpretation of *Usurarum voraginem* (VI 5.5.1),” *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* 130, Kan. Abt. 99 (2013): 129–61.

15. The condemnation of Jewish usury appears in Lateran IV, c. 67 (*Quanto amplius*), in *DEC*, 265–66. For the treatment of Jewish usury in canon law, see Stefan Schima, “Die Entwicklung des kanonischen Zinsverbots. Eine Darstellung unter besonderer Berücksichtigung der Bezugnahmen zum Judentum (The Development of the Canonical Prohibition on Interest: A Synopsis with Particular Attention to References to Jews),” *Aschkenas* 20 (2010): 239–79, with further references.

16. Lateran III, c. 25: in *DEC*, 223.

17. Lyon II, c. 26: “[...] we order under threat of the divine malediction that the constitution of the Lateran council against usurers be inviolably observed.”

thirteenth-century observers, and many later ones as well, canonistic precedent led naturally to the presumption that *Usurarum voraginem* applied only to Christian usurers.

Over the course of the later Middle Ages, however, the absence of explicit reference to Christian (as opposed to Jewish) usurers in the decree’s text left the door open for a broader reading of its provisions. If the notion that Jews were encompassed in the language of *Usurarum voraginem* was unthinkable in the late thirteenth century, such an interpretation became routine by the early fifteenth. This shift resulted from the convergence of three distinct developments. First, the expulsion of Jews from kingdoms and territories in Western Europe accelerated in scope and number toward the end of the thirteenth century. This not only reshaped the landscape of Jewish settlement in Europe; it also prompted jurists and others to begin considering the circumstances in which authorities might licitly expel Jews from their territories. Practical realities, in other words, produced theoretical quandaries. Second, through its dissemination into a variety of textual contexts, from legal *responsa* to handbooks for preachers, the decree underwent processes of elision and decontextualization that facilitated new interpretations of its language. Finally, starting in 1320 or thereabouts, scattered but influential voices throughout the church hierarchy began to insist that the stringent anti-usury decree *Ex gravi* (Clem. 5.5.1), drafted at the Council of Vienne in 1311–12, applied equally to Jewish usurers. This paved the way for bishops and canonists to reconsider the reach of earlier canonical restrictions on usury, along with their associated penalties. The following sections will discuss each of these developments in closer detail, beginning with debates surrounding the expulsion of Jews.

The Early Fourteenth Century: Expulsion, Elision, and Extension

In the century preceding the Second Council of Lyon, secular authorities (starting with Philip Augustus in 1182) had sporadically expelled Jews from their jurisdictions. In general, these expulsions concerned fairly circumscribed areas and targeted relatively small numbers of Jews. In 1290, however, Edward I of England ordered the expulsion of Jews from his kingdom. Sixteen years later, Philip IV of France followed suit. Although markedly different in scale, the two expulsions were dramatic, thorough, and widely noted by contemporaries.¹⁸ Moreover, they also

18. For detailed studies of the expulsions, along with further references, see Robin R. Mundill, *England’s Jewish Solution: Experiment and Expulsion, 1262–1290* (Cambridge: Cambridge University Press, 1998); and Céline Balasse, *1306: L’expulsion*

prompted canonists and theologians to grapple with the licitness of expelling Jews.

Immediately following the expulsion of Jews from France in the summer of 1306, for example, the Cistercian theologian Jacques de Thérines (d. 1318) responded to a quodlibetal question on “whether Jews expelled from one region ought to be expelled from another.”¹⁹ In presenting the affirmative case, Jacques argued that Jews expelled from one region on account of usury could be expelled from another on the presumption that they were likely to resume their usurious ways, even if no new transgressions had yet been proven. Ultimately, however, Jacques opposed further expulsions: the fact that the Jews had previously broken the laws of another jurisdiction did not in itself establish a legitimate presumption against them such that they could be expelled from their new homes without proof of renewed wrongdoing. In one sense, Jacques’s conclusion was in keeping with church tradition; namely, that authorities should not arbitrarily expel Jews from their lands. Yet the framing of the quodlibet implicitly raised the possibility that Jewish usury—if proven—might be sufficient reason for expulsion.²⁰ Two leading canonists of the early fourteenth century, Oldrado da Ponte and Pierre Bertrand, also tackled the topic of Jewish expulsion. Although neither one singled out usury as acceptable grounds for expulsion, they acknowledged that Jews who rebelled against the prince’s authority or abused the “privilege” of alien status could be justly expelled.²¹ The presumption remained firmly against expulsion, but it was not categorically forbidden.

Jacques de Thérines’s quodlibet points to an additional shift in contemporary attitudes toward Jews: an increased propensity among canonists to forbid Jews from lending at interest. Already in the mid-thirteenth century, the papacy had claimed jurisdictional privileges over Jews (even in matters not directly pertaining to their relations with Christians).²² As church

des Juifs du royaume de France (1306: The Expulsion of the Jews from the Kingdom of France) (Brussels: de Boeck, 2008).

19. For a discussion of the quodlibet and its historical context, see William Chester Jordan, *Unceasing Strife, Unending Fear: Jacques de Thérines and the Freedom of the Church in the Age of the Last Capetians* (Princeton: Princeton University Press, 2005), 12–17.

20. Jacques de Thérines, *Quodlibets I et II*, ed. Palémon Glorieux (Paris: J. Vrin, 1958), 157 (no. 1.14).

21. For Oldrado da Ponte (d. 1343), see Norman Zacour, ed., *Jews and Saracens in the Consilia of Oldradus de Ponte* (Toronto: Pontifical Institute of Mediaeval Studies, 1990), 54–58 (no. 87) and 62–67 (no. 264). Pierre Bertrand (d. 1348) follows Oldrado’s consilia almost verbatim in the second recension of his *Apparatus*. I relied on Paris, BnF lat 4085, fol. 158ra-vb (Clem. 5.2.1).

22. On the extension of canonical jurisdiction over Jews, see Walter Pakter, *Medieval Canon Law and the Jews* (Ebelsbach: Rolf Gremer, 1988), 40–83.

thinkers moved further and further in this direction, so too did the traditional canonical toleration of moderate Jewish usury give way to increasingly stringent condemnations thereof, with fewer and fewer distinctions drawn between Jewish and Christian usury. Exemplary in this regard is a *responsum* on usury from late 1314 by the Dominican Pierre de la Palud (d. 1342), who was not only an accomplished theologian and canonist, but also a papal diplomat, a French courtier, and, eventually, patriarch of Jerusalem.²³ In Article IX, the longest section of the *responsum*, Pierre covered a range of topics, from the extortion of money from usurers (which he firmly opposed) to competing ecclesiastical and secular claims for jurisdiction over usury (on which he adopted a moderate position).²⁴ What is most important here is that Pierre's conclusions all dealt jointly with Jewish and Christian usurers, and that in reaching those conclusions, he turned repeatedly to *Usurarum voraginem*, alongside a handful of other texts. Although he nowhere argued that the decree itself was to be applied to Jews, he nevertheless used it to construct general arguments concerning usury, even where these concerned the proper treatment of Jewish and Christian usurers alike. The decree thereby bolstered the author's anti-usury arsenal, but at the cost of concealing its specific targets and eliding its particularities.

The elision appears even more pronounced in the *Summa praedican-tium*, an immensely popular handbook for preachers composed by the English Dominican John Bromyard in the second quarter of the fourteenth century. In section 27 of the entry on usury, Bromyard laid out penalties for those who welcomed public usurers (*publicos usurarios*) into their lands or rented houses to them.²⁵ To begin with, he quoted verbatim the entirety of *Usurarum voraginem*, followed immediately by a citation of Thomas Aquinas's *De regimine judaeorum*, which, as Bromyard noted, concerned "the dangers of harboring such persons in their lands (*de periculo tenentium tales in terris*)." Turning to the issue of renting houses, Bromyard then declared that it was "not permitted to rent houses to such persons (*non licet eis domum talibus locare*)." Grammatically speaking, "such persons (*tales/talibus*)" presumably referred to the "public usurers

23. For his life and works, see Jean Dunbabin, *A Hound of God: Pierre de la Palud and the Fourteenth-Century Church* (Oxford: Oxford University Press, 1991). For the dating of the *responsum*, see Pier Giorgio Marcuzzi, "L'usura, un caso di giurisdizione controversa in un 'Responsum' inedito di Pietro di La Palu (1280–1342) (Usury, a Case of Contested Jurisdiction in an Unpublished *Responsum* of Pierre de la Palud (1280–1342))," *Salesianum* 40 (1978): 245–92, at 272, together with the critical remarks in Dunbabin, *Hound of God*, 273.

24. Marcuzzi, "Giurisdizione controversa," 261–65.

25. *Summa praedican-tium* (Basel, not after 1484), s.v. *usura* (U.xii.27).

(*publicos usurarios*)” of the opening rubric. But given that he glided from a citation of *Usurarum voragine*, with its clear reference to foreign usurers, to Aquinas’s *De regimine*, which focuses almost entirely on Jewish usurers, it is hard to know exactly who was encompassed in Bromyard’s understanding of these “public usurers.” Insofar as his immediate audience was concerned, the question was moot; England’s Jewish community had been expelled more than half century earlier. To later Continental readers of his work, however, Bromyard’s summary could easily have been taken as an invitation to drive Jewish moneylenders from their houses and lands.

Concrete efforts to treat Jewish usurers under the same canonical framework as Christian ones were particularly spurred by the widespread dissemination of the decree *Ex gravi* (Clem. 5.5.1) starting in 1317.²⁶ Among other provisions, the decree called for the immediate abrogation of all statutes that permitted the taking of usury, and threatened excommunication for anyone who enforced a usurious contract. Moreover, it declared that those who pertinaciously affirmed that usury was not a sinful practice would be considered heretics and were to be prosecuted accordingly. As in *Quia in omnibus* and *Usurarum voragine*, the text of *Ex gravi* did not spell out a distinction between Jewish and Christian usurers. But as noted earlier, *Quia in omnibus* had unmistakably indicated its Christian focus by spelling out penalties for usurers that could only have applied to the faithful (refusal of Christian burial and so forth), penalties that *Usurarum voragine* in turn reiterated. In contrast, most of *Ex gravi*’s threats focused not on the usurers themselves, but on those who regulated, enforced, or defended usurious loans. It was usury, rather than usurers, that lay in *Ex gravi*’s crosshairs.

What if these usurious loans were being extended by Jewish moneylenders? Were Jews also encompassed within *Ex gravi*’s general condemnation of usury? As mentioned earlier, the weight of the church’s legal tradition had consistently recognized the right of Jews to lend at interest (as long as it remained moderate). To insist that their moneylending was canonically forbidden, and to denounce the opposing view as heretical, would have marked a sharp break with established precedent.²⁷ On precisely such grounds, Giovanni d’Andrea (Johannes Andreae; d. 1348) and other

26. Vienne, c. 29 (*Ex gravi*): in *DEC*, 384–85. Although first decreed at the Council of Vienne in 1311–12, *Ex gravi* (like the rest of the Council’s decrees) did not circulate widely until 1317, when it was included among the Clementine constitutions. See Joseph Lecler, *Vienne* (Paris: Éditions de l’Orante, 1964), 145–48.

27. For canonistic discussion of *Ex gravi*’s applicability to Jews, see also Benjamin N. Nelson, *The Idea of Usury: From Tribal Brotherhood to Universal Otherhood* (Princeton: Princeton University Press, 1949), 23.

leading canonists opposed including Jews within *Ex gravi*'s reach.²⁸ Other canonists proved less willing to defer to tradition. Giovanni d'Andrea's own student Paolo Liazari (Paulus de Liazariis; d. 1356), for example, concluded that the decree did in fact apply to Jewish usurers, as did the canonist (and briefly bishop of Bologna) Étienne Agonet, writing ca. 1325.²⁹ An episode in Spain is particularly revealing. In 1313, the bishops gathered at a provincial council in Zamora, on the eastern frontier of León, issued a raft of stridently anti-Jewish canons. One of these declared that Pope Clement V had issued legislation at the recent council in Vienne forbidding Jews from lending at interest to Christians.³⁰ A few months later, however, the Cortes of the kingdom of Castile refused to countenance such a reading of the decree, instead citing *Ex gravi*'s provisions against Christian usury while explicitly allowing Jews to continue charging moderate interest.³¹ Although the Castilian bishops were willing to break with canonical tradition, the Castilian nobility apparently was not.

Most of the fourteenth-century popes seem to have kept to the narrower reading of *Ex gravi*, rarely insisting on its enforcement in cases involving Jewish usurers. The exception, however, was John XXII, an eminent canonist who oversaw the promulgation of *Ex gravi* as part of the Clementine constitutions. In December 1320, for example, John XXII wrote to the rector of the March of Ancona, then part of the Papal States, in response to concerns about the indebtedness of the townsfolk of Macerata. The local Jews claimed that they were not bound by the provisions of *Ex gravi* or the other anti-usury decrees, but the pope dismissed the Jews' objections and ordered that they be compelled to observe the canons.³² On other occasions, John XXII sought to impose this expansive reading even outside

28. Giovanni d'Andrea's *Apparatus* is found in many editions of the Clementine constitutions, including the 1582 *editio romana*. Here I have relied on the 1471 Strasbourg (Eggstein) edition, *ad Clem.* 5.5.1 § *Hereticum*. See also the arguments of Albéric of Metz (d. 1354) in his *Apparatus* on the Clementines, in Bologna, Collegio di Spagna, MS 222, fol. 40r; and Giovanni da Imola (d. 1436), *In Clementinas opus* (Venice, 1492/93), fol. 164rb.

29. Paolo's position is cited approvingly by Pietro d'Ancharano in his *Super Clementinis facundissima commentaria* (Bologna, 1580), 248–49. For Agonet, see University of Pennsylvania, MS Lat. 95, fol. 60rb; on this author, see Norman Zacour, “Stephanus Hugoneti and his ‘Apparatus’ on the Clementines,” *Traditio* 17 (1961): 527–30.

30. For the text of the Zamora canons, see Solomon Grayzel, with Kenneth R. Stow, eds., *The Church and the Jews in the XIIIth Century. Vol. 2: 1254–1314* (New York: Jewish Theological Seminary in America, 1989), 267–69. The reference to *Ex gravi* appears in c. 12.

31. Manuel Colmeiro, ed., *Cortes de los antiguos reinos de León y de Castilla* (The Cortes of the Kingdoms of León and Castile), 2 vols. (Madrid: Est. tip. de los sucesores de Rivadeneira, 1883–84), 1:227–30, 240.

32. *ASJ*, 1:324 (no. 310).

his temporal domains, especially where the Jewish communities of the Rhineland were concerned.³³ In 1325 and 1326, for example, he wrote three letters to the archbishops of Cologne and Trier.³⁴ The pope began by citing reports of local Jews who were exacting “heavy and immoderate usury (*graves et immoderatas usuras*),” drawing his language directly from the Lateran IV decree *Quanto amplius*.³⁵ Citing “the constitutions of the sacred councils and the Apostolic See promulgated against usurers,” the pope encouraged the archbishops to enforce these laws against Jews living within their jurisdictions.

It bears noting that in his letters to the archbishops, John XXII did not specify which anti-usury canons were to be applied; that choice was apparently left to the recipients’ discretion. No doubt the recently promulgated and widely discussed *Ex gravi* would readily have come to mind. But what about *Usurarum voraginem*? No evidence survives to suggest that either archbishop ever contemplated enforcing the Lyonese decree against Jews under his jurisdiction. Furthermore, if any of John XXII’s fourteenth-century successors believed that the decree’s provisions applied equally to Jewish usurers, they made no attempt to enforce them accordingly. In general, even as popes, bishops, and canonists raised the possibility that *Ex gravi* and other anti-usury canons might apply to Jews and Christians alike, the prevailing interpretation of *Usurarum voraginem* seems to have held firm throughout the first half of the fourteenth century among both authorities and jurists.

The Late Fourteenth Century: Sidestepping Expulsion

The noted Bolognese canonist John of Legnano (d. 1383) appears to have been the first jurist to declare explicitly that the provisions of *Usurarum voraginem* were to apply to Jews, in a consilium composed some time

33. The pope repeatedly ordered local Jewish lenders to make restitution for their usury; three such letters survive for the year 1321 alone; see *ASJ*, 1:330–33 (nos. 315–17). More generally, see Adolf Kober, “Die rechtliche Lage der Juden in Rheinland während des 14. Jahrhunderts im Hinblick auf das kirchliche Zinsverbot (The Legal Position of the Jews in the Rhineland during the 14th Century in Light of the Church’s Prohibition on Interest),” *Westdeutsche Zeitschrift für Geschichte und Kunst* 28 (1909): 243–69, especially 252–54. An additional papal letter concerning Jewish usury in Trier (Koblenz, Landeshauptarchiv, Best. 33, Nr. 53; dated April 23, 1330) has not yet been edited in full; for a summary, see Ernst Vogt, ed., *Regesten der Erzbischöfe von Mainz von 1289–1396* (Registers of the Archbishops of Mainz from 1289–1396), 2 vols. (Leipzig: Veit, 1913–58), 1.ii.43 (no. 3079). I thank Christoph Cluse for bringing this text to my attention.

34. *ASJ*, 1:342–43 (no. 326; March 5, 1325); 1:347–49 (nos. 331, 332; August 1, 1326).

35. Lateran IV, c. 67 (*Quanto amplius*), in *DEC*, 265–66.

in the third quarter of the fourteenth century.³⁶ The consilium, which survives in dozens of manuscript copies across Western Europe, consists in large part of a methodical discussion of the proper treatment of Jews according to canon law.³⁷ Turning his attention to the topic of usury, the canonist first asks in what ways the church was to proceed against usurers, and then, whether any of these pertained to Jews. Obviously, he noted, the penalties of *Quia in omnibus* that were to fall on manifest usurers—namely barring them from communion at the altar, denying them ecclesiastical burial, and refusing their oblations—did not apply to Jews. Nor, John argued, did the threat of excommunication apply to them, as those who had never been within the body of the church could not be driven out from it. Similarly irrelevant was *Quamquam*’s threat of withheld absolution for usurers who failed to make appropriate restitution on their deathbeds. What about *Usurarum voraginem*? According to the canonist, the decree ordered that dwelling places should be neither rented nor leased to foreigners for the purposes of usury, and that manifest usurers should be driven out (*excluduntur usurarii manifesti*). These penalties, he argued, could indeed apply to Jews (*huius poenae sunt capaces iudaei*).³⁸

For the first time, then, there is evidence of a canonist—and a highly regarded one, at that—declaring that Jewish usurers were subject to *Usurarum voraginem*’s provisions. Nowhere in his consilium does John of Legnano explicitly indicate that he considered his interpretation of the decree to be especially novel or controversial. Admittedly, consilia were generally written to support a particular side of a case and could by necessity depart from established legal opinion on a given issue. It is also possible that he was simply among the first to publish an opinion that was already circulating among the jurists at Bologna. On the other hand, there is some evidence that John of Legnano may have been working in haste, as part of his consilium rests on a careless reading of the decree. Perhaps he himself was unaware of the novelty of his interpretation.³⁹

36. The consilium (inc. *Iudaei degentes in terris Catholicorum*) is printed in Giovanni Battista Ziletti, ed., *Criminalium consiliorum atque responsorum tam ex veteribus quam iunioribus celeberrimis iurisconsultis collectorum*, 2 vols. (Venice, 1560), 1:32–33 (no.19).

37. A partial list of manuscripts is given in John P. McCall, “The Writings of John of Legnano with a List of Manuscripts,” *Traditio* 23 (1967): 415–37, at 434; this particular consilium is also found in Dillingen, Studienbibliothek XV 47, fol. 74rv; Eichstätt, Universitätsbibliothek, cod. st 186, fol. 64rv; and Munich, Universitätsbibliothek, 8° cod. ms. 152, 118v–121r.

38. Ziletti, *Consiliorum*, 1:33.

39. The consilium claims that the housing ban applied only to foreign usurers, whereas the expulsion order applied to all manifest usurers. Because it is only a single word (*huiusmodi*) that establishes that the restriction to foreigners in the context of the housing ban does indeed

In summarizing the decree's provisions, however, the canonist tellingly does not repeat their use of the word *expellere*, which conveyed quite directly the meaning of a physical and spatial expulsion, and which was accordingly laden with legal and historical weight when used in conjunction with Jews. Rather, he uses the term *excludere*, a term that could certainly denote outright expulsion but that also carried a much broader range of possible meanings in a canonistic context, including social exclusion. John of Legnano's choice of words might well reflect a certain awareness that his interpretation of *Usurarum voraginem* was skirting the edges of canonistic precedent. At the very least, it meant that readers could construe his consilium as arguing not that Jewish usurers should be expelled (for expulsion was nowhere discussed outright), but rather that they should be shunned from Christian homes and social contexts, an argument much more in keeping with canonistic tradition.

If John of Legnano was wary of asserting that *Usurarum voraginem* did in fact require the expulsion of Jewish usurers, it was a wariness that he seems to have shared with many later commentators on the decree. As a rule, this wariness expressed itself through a focus on *Usurarum voraginem*'s prohibition on the renting of houses to usurers, rather than its call for expulsion. Toward the end of the fourteenth century, for example, a jurist (possibly Baldo degli Ubaldi) published a consilium on "whether someone who rented a house to a Jew was to be excommunicated (*An locans domum Iudeo sit excommunicatus*)."⁴⁰ The author first observes that Roman law allows for Christians and Jews to have commercial relations with one another, but then observes that any Christian who

carry over to the expulsion provision, an inattentive scribe or reader might easily have missed it.

40. On the basis of its questionable attribution to Baldo, the consilium has been dated to the late fourteenth century, but it may be a product of the fifteenth century instead. For a thorough discussion of the consilium and its attribution, see Diego Quaglioni, "'Inter Iudeos et Christianos commertia sunt permissa.' 'Questione ebraica' e usura in Baldo degli Ubaldi (c. 1327–1400) ('Commerce is permitted between Jews and Christians.' The 'Jewish Question' and Usury in the Writings of Baldo degli Ubaldi (c. 1327–1400))," in *Aspetti e problemi della presenza ebraica nell'Italia centro-settentrionale (secoli XIV e XV)* (Aspects and Questions concerning the Jewish Presence in North-Central Italy (14th and 15th Centuries)) (Rome: Università di Roma, 1983), 273–305, with an edition of the consilium at 303–5. Given that Baldo's other discussions of *Usurarum voraginem* make no mention of Jews, I continue to harbor doubts over the attribution of the consilium. For these other references, see Baldo's *Consiliorum, sive Responsorum volumen Tertium* (Venice [ca. 1602]), fol. 131vb (no. 449, nn. 7–8); and his *Apostillae ad Novellam in Sextum*, ed. Patrick J. Lally (unpublished PhD diss., University of Chicago, 1992), 240 (ad 5.5.1). Lally's edition is based principally on Vatican City, Biblioteca Apostolica Vaticana, Barb. lat 1398, fols. 389r–487r (here at fol. 435va).

rents a house to a Jew for the purposes of lending at interest would seem to be automatically excommunicated according to *Usurarum voraginem*. After sorting out various questions of proof and culpability, the author finally concludes (based on the decree’s distinction between clerical and lay transgressors) that a cleric who rents a house to Jewish usurers is automatically excommunicated, whereas a layman who does the same does not automatically incur the penalty, although he could be excommunicated following due process. The crucial point, for our purposes, is that the author of the consilium considered *Usurarum voraginem*’s housing ban applicable to Jews, but avoided any mention of its expulsion provision.

Other contemporaries adopted similar approaches, among them the anonymous late fourteenth-century author of the *Thesaurus novus*, a widely disseminated sermon cycle. In a sermon “On the Jews,” the author insisted that Christians were not to rent houses to Jewish usurers, even though in a separate sermon “On usurers” found in the same collection, a list of the penalties falling on usurers made no reference to *Usurarum voraginem* or its sanctions.⁴¹ The anonymous author therefore drew on the decree’s provisions in regard to Jewish usurers, but ignored them where both Jewish and Christian usurers were concerned.⁴²

The reach of these debates extended well beyond university classrooms and church pulpits. In 1396, for example, members of the Florentine commune proposed that Jewish moneylenders be invited to settle in the city, and it is likely that this was the context for a consilium solicited by the city’s government on whether *Usurarum voraginem* was to apply to Jews. The author of the consilium apparently concluded that they were not subject to the decree’s provisions, but the commune ultimately seems to have shown little enthusiasm for welcoming these moneylenders to the city.⁴³ Ten years later, the city seems to have rejected the consilium’s

41. *Sermones thesauri novi de tempore* (Strasbourg, 1491), fols. 240rv and 267r–269r. The collection was long attributed (erroneously) to Pierre de la Palud. Concerning the sermon “On the Jews,” see the remarks by Cluse, *Darf ein Bischof Juden zulassen*, 41–46.

42. Both sermons would be re-copied wholesale in the *Sermones discipuli* composed by the German Dominican Johannes Herolt (d. 1468) ca. 1418. The extraordinary popularity of this text—which survives in more than 170 manuscripts and numerous early modern printed editions—ensured that this reading would be disseminated yet further. See Herolt’s *Sermones discipuli de tempore* (Reutlingen, ca. 1479/82), fols. 144v (no. 105) and 154r–55r (no. 114); along with the observations of Cluse, *Darf ein Bischof Juden zulassen*, 46–52.

43. For the proposal, see Umberto Cassuto, *Gli Ebrei a Firenze nell’età del Rinascimento* (The Jews of Florence in the Age of the Renaissance) (Florence: Galletti e Cocci, 1918 [repr. Florence: Olschki, 1965]), along with Michele Luzzati’s recent reinterpretation of the episode in “Florence against the Jews, or the Jews against Florence?” in *The Most Ancient of Minorities: The Jews of Italy*, ed. Stanislao G. Pugliese (Westport, CT: Greenwood

conclusions outright, decreeing that “no Hebrew or Jew, regardless of whence he came, could . . . lend at interest” anywhere within Florentine dominions.⁴⁴ Although the ordinance did not cite *Usurarum voraginem* directly, the reference to the Jews’ places of origin—echoing the decree’s distinction between local and foreign usurers—suggests that the Florentine commune did in fact consider Jews to be subject to its provisions.

The Early Fifteenth Century: Sidestepping Intent

Early in the fifteenth century, Domenico da San Gimignano (d. 1424) would become the first jurist to discuss at length the application of *Usurarum voraginem*’s provisions to Jews, as part of his systematic commentary on the *Liber Sextus*.⁴⁵ He lists first several arguments against such an interpretation, observing, for example, that the decree arises from a desire to protect souls that are being devoured by usury, but that the pope need not compel Jews to be mindful of the health of their souls. Ultimately, Domenico concludes that the housing ban does apply to Jewish usurers, but only to foreign-born ones. The most persuasive of his arguments notes that the decree “speaks generally of those born elsewhere (*loquitur de genitis alibi simpliciter*),” which could be understood as much in reference to Jews as to anyone else. Furthermore, he contends, whenever dispositions are phrased in such general terms elsewhere in the canons, Jews are implicitly included insofar as the material itself concerns them. It is striking, however, that Domenico limits his discussion of whether Jews are to be included within the conception of “*alienigenas*. . .” to the clause concerning the rental of houses. At no point does he openly push his analysis toward its logical conclusion: that if foreign-born Jews were subject to the housing ban, similarly to their Christian counterparts, then so, too, were they to be expelled.

There is another striking absence in Domenico’s treatment of *Usurarum voraginem*. As mentioned earlier, the late thirteenth-century canonist Francesco d’Albano had noted that the decree’s drafters had promulgated

Press, 2002), 59–66, at 61–62. Although the consilium itself does not survive, its tenor was briefly summarized by Lorenzo Ridolfi, writing between 1402 and 1404. See Ridolfi’s “Tractatus de Usuris,” in *Tractatus universi iuris*, 22 vols. (Venice, 1584–86), vol. 7, fols. 15ra–50rb, at fol. 36vb (q. 146).

44. Cassuto, *Gli Ebrei a Firenze*, 362–63 (Appendix, doc. 2): “. . .ordinaverunt quod nullus ebreus sive iudeus, etiam undecunque originem duceret, possit aut ei liceat per se vel alium, directe vel per obliquum, tacite vel expresse, aut aliquot colore quesito, mutare et seu mutari facere ad usuram et seu in fraudem usurarum.”

45. *Super sexto decretalium* (Speyer, bef. 1480), fols. 96r–97v.

it in response to the growing Lombard presence across the Alps. Around 1340, Giovanni d’Andrea then incorporated d’Albano’s explanation into his second systematic commentary on the *Liber Sextus*, the so-called *Novella*, which enjoyed widespread circulation throughout the late fourteenth and fifteenth centuries.⁴⁶ Given that the *Novella*’s discussion of *Usurarum voraginem* opens with this account of the drafters’ aims, it was all but impossible to miss. Despite frequently citing the *Novella* in his commentary on *Usurarum voraginem*, however, Domenico nowhere mentions the context for the decree’s promulgation. To have done so would have severely undercut his argument for extending the decree to Jews, because although late medieval jurists did not consider *intentio* to be strictly binding, they accorded it considerable weight.⁴⁷ It was a staple of medieval jurisprudence that the intention or purpose of a text took interpretative precedence over the strict meaning of its words, insofar as these did not align. Gratian had held (quoting Gregory the Great) that intention was to illuminate the words of a text, rather than the other way around. Variations on this theme are scattered across the landscape of late medieval legal writings.⁴⁸

It might well have been possible for Domenico to reach the same conclusion even after squarely considering the drafters’ aims, for example by distinguishing between the specific motive (i.e., concerns about northern Italian moneylenders) and the general motive (e.g., the decree’s stated desire to

46. *Novella super sexto decretalium* (Pavia, 1484), ad 5.5.1.

47. There is little systematic scholarship on the methods of interpretation among late medieval canonists, but these clearly overlapped heavily with those of the civilians. On the latter, see Woldemar Engelmann, *Die Wiedergeburt der Rechtskultur in Italien durch die wissenschaftliche Lehre* (The Rebirth of Legal Culture in Italy) (Leipzig: Koehlers, 1938), 128–71; Walter Ullmann, *The Medieval Idea of Law as Represented by Luca de Penna. A Study in Fourteenth-Century Legal Scholarship* (London: Methuen & Co., 1946), 112–31; Mario Sbriccoli, *L’interpretazione dello statuto: contributo allo studio della funzione dei giuristi nell’età comunale* (Statutory Interpretation: A Contribution to the Study of the Role of Jurists in the Age of the Communes) (Milan: Giuffrè, 1969); and Philippe Godding, “L’interprétation de la ‘loi’ dans le droit savant médiéval et dans le droit des Pays-Bas méridionaux (The Interpretation of the ‘Law’ in the Learned Law of the Middle Ages and in the Law of the Southern Low Countries),” in *L’interprétation en droit: Approche pluridisciplinaire* (Legal Interpretation: A Multidisciplinary Approach), ed. Michel van de Kerchove (Brussels: Facultés universitaires Saint-Louis, 1978), 443–83, with a specific discussion of canon law at 452–53. For the weight of “intent” in early modern English law, see Samuel E. Thorne, ed., *A Discourse upon the Exposition and Understandinge of Statutes. With Sir Thomas Egerton’s Additions* (San Marino, CA: Huntington Library, 1942), 42–68.

48. C. 22 q. 5 c.11: “Certe noverit ille, qui intentionem et voluntatem alterius explicat verbis, quia non debet aliquis verba considerare, sed voluntatem et intentionem, quia non debet intentio verbis deservire, sed verba intentioni.”

suppress usury). Yet he made no effort to do so. It is difficult to see Domenico's silence as anything other than a deliberate effort to ignore—and thereby suppress—a devastating counter-argument. Moreover, all of the fifteenth-century canonists who followed Domenico's lead in extending *Usurarum voraginem* to Jews likewise avoided any mention of the decree's aims, even while they otherwise cited Giovanni d'Andrea's *Novella*.⁴⁹ All of this suggests a widespread and wilful desire among many canonists to extend *Usurarum voraginem*'s provisions to Jews, even if this meant disregarding (or rather, conveniently overlooking) a basic tenet of late medieval legal interpretation.

At the same time, those canonists who embraced Domenico's position on the decree's reach also maintained his focus on the housing ban rather than on the question of expulsion. The continuing weight of the church's traditional opposition to expulsion is particularly evident in two consilia concerning Jewish usurers written in the latter half of the 1440s by the Dominican Siegfried Piscator (d. 1473), who had been trained in canon law at Bologna and briefly served as auxiliary bishop of Mainz. Where the housing ban was concerned, Piscator confidently asserted that the legal sanctions of *Usurarum voraginem* could be applied to those renting houses to Jewish usurers. Where the Jews' expulsion was at stake, however, he concluded that the decree established only a moral presumption rather than a legal requirement.⁵⁰

Canonists differed on other points as well, with some maintaining that the decree applied only to foreign-born Jews, some treating all Jews as inherently "foreign," and others ignoring the restriction to foreigners altogether.⁵¹ Furthermore, not all fifteenth-century canonists followed

49. See, for example, the gloss of the Perugian jurist Benedetto Capra (d. 1470) on *Usurarum voraginem* in Bologna, Collegio di Spagna, MS 115, fols. 216va–218rb; and that of Benedetto's contemporary and fellow Perugian, Filippo Franchi (d. 1471) in *Prima lectura super sexto libro decretalium* (Venice, 1499), fols. 115va–116rb. The Bolognese jurist Giovanni d'Anagni's (d. 1457) commentary on the canon *Praeterea* (X 5.19.17), written sometime before 1443, also quotes Domenico's position approvingly; see his *Lectura super prima et secunda parte libri quinti Decretalium cum Repertorio* (Milan, 1497), ad 5.19.7.

50. An edition of the two consilia is given in Cluse, *Darf ein Bischof Juden zulassen*, 104–32.

51. Aside from the works cited in the previous note, see also Giovanni da Prato, a Franciscan theologian and author of a mid-fifteenth-century treatise on usury, who likewise ignored the question of expulsion but declared that the decree's housing ban was to apply to Jewish usurers and seems to have considered all Jews to be "foreigners (*non oriundos*)" for the purposes of the decree; see his *Summula Contractuum/De Usuris*, in Florence, Biblioteca Laurenziana, Ashburnham 145, fols. 155ra–178rb, at fol. 162v. A comparable approach is found in the *Conclusiones* on the *Liber Sextus* by the German canonist Peter von Andlau (d. 1480), writing in the third quarter of the fifteenth century; see Basel,

Domenico in extending *Usurarum voraginem*'s reach to Jews. Floriano Sampieri (d. 1441), who, like Domenico, was a professor of law at Bologna, argued that the decree did not apply to Jewish usurers, although his reasoning does not survive.⁵² Other canonists ignored the debate altogether. For the most part, however, those who took up the question of the decree's reach held that *Usurarum voraginem* forbade Christians from renting houses to (in some cases, foreign) Jewish usurers, while avoiding the question of the drafters' intent and sidestepping entirely the decree's expulsion provision.

Such repeated and collective reluctance to grapple with expulsion bears out Kenneth Stow's observation that “for all that jurists were moving toward justifying expulsion, they were also hesitant.”⁵³ It was one thing to call for Christians to cease renting houses to Jewish usurers; after all, canon law laid out numerous other restrictions on appropriate relations between Christians and Jews. But to explicitly call for their expulsion would have been a much bolder—and boldness is not a characteristic generally associated with fifteenth-century canonists.

Boldness was, however, a marked characteristic of contemporary preachers, especially among the mendicant orders. In Germany, for example, the middle decades of the fifteenth century saw traveling preachers repeatedly urge civic authorities to expel Jewish residents, warning them that canon law forbade them from harboring Jewish usurers. Their words often bore fruit, even over the protests of bishops and other voices.⁵⁴ In Italy, such anti-Jewish preaching campaigns are especially associated with the Observant Franciscans, as exemplified by the indefatigable and indomitable Bernardino da Siena. One can only wonder whether *Usurarum voraginem* was among the canons that Bernardino supposedly read aloud in Vicenza in 1443, when—according to a later report—he carried some volumes of canon law up to the pulpit and used their contents to insist upon

Universitätsbibliothek C II 28, fols. 58v–188r, at fols. 172v–173v. To judge from the references cited in Marquardo Susanna's *Tractatus de iudaeis et aliis infidelibus* (Venice, 1558), fol. 35r (*ad* 1.11.4), many sixteenth-century canonists followed suit as well.

52. Sampieri's opposition to Domenico's position is mentioned by Alessandro Tartagni (1424–77) in one of the latter's consilia on usury; see his *Consiliorum*, 7 vols. (Venice, 1578), vol. 6, fol. 5v (*cons.* 6.6).

53. Kenneth R. Stow, “Expulsion Italian Style: The Case of Lucio Ferraris,” *Jewish History* 3 (1988): 51–63, at 57.

54. See the examples cited in Christoph Cluse, “Jewish Moneylending in Dominican Preaching,” in *Dominikaner und Juden: Personen, Konflikte und Perspektiven vom 13. bis zum 20. Jahrhundert/ Dominicans and Jews: Personalities, Conflicts, and Perspectives from the 13th to the 20th Century*, eds. Elias H. Füllenbach and Gianfranco Miletto (Berlin: De Gruyter, 2015), 195–230, at 196–97.

the expulsion of the local Jews.⁵⁵ At the very least, he repeatedly asserted that the decree's housing ban was to be understood with reference to Christian and Jewish usurers alike. In his first Padua sermon of 1423, for example, Bernardino posed the question of whether it was a sin to rent houses to Jews, then declared that it was indeed a mortal sin to rent houses to either Jews or Christians for the purposes of usury.⁵⁶ He reiterated this point in a subsequent sermon, then proceeded to spell out *Usurarum voraginem's* articulated hierarchy of sanctions as they pertained to prelates, religious communities, and other classes of offenders. In each case, the specified sanction—whether suspension, excommunication, or interdict—was framed as the consequence of renting houses to Jewish or Christian usurers. Furthermore, in each case he omitted any reference to foreignness, whether in regard to Christians or Jews.⁵⁷ Speaking from the church pulpit, rather than from the academic lectern, Bernardino perhaps felt freer to play fast and loose with the niceties of canon law, in which he was well versed. But the result for Bernardino's Paduan audience, and for many others as well, was for *Usurarum voraginem's* reach to become broad indeed.

The Mid-Fifteenth Century: Popes, Princes, and Interpretative Instability

As for the papacy, it is not until 1429, during the reign of Martin V (r. 1417–31), that one finds a pope offering an opinion on the question of *Usurarum voraginem's* reach. Troubled by the rabble-rousing antics of Bernardino da Siena and his fellow Observant preachers, Martin promulgated a bull ordering them to stop stirring up the masses against Jews.⁵⁸ Contrary to some of the sweeping claims made by the preachers, the pope insisted that Christians and Jews were permitted to interact with one another, “except in those cases prohibited by law (*preterquam in casibus a iure prohibitis*).” Christians and Jews were also allowed to engage in trade with one another, so long as it was done “in a licit and honest fashion (*licite tamen et honeste*).” Furthermore, declared the pope, Jews were allowed to buy, sell, and rent any homes and landholdings from

55. See Alessandro Nievo, *Consilium de iuris/Contra iudeos fenerantes* (Venice, 1482), fol. 12r.

56. Jean de la Haye, ed. *Opera omnia*, (Venice: Poletti, 1745), 3.334b; a partial edition is given in Franco Mormando, *The Preacher's Demons: Bernardino of Siena and the Social Underworld of Early Renaissance Italy* (Chicago: University of Chicago Press, 1999), 238–40 (Appendix 2).

57. de la Haye, *Opera omnia*, 3.361a–b.

58. *ASJ*, 2:771–74 (doc. 658).

Christians. Although the bull does not cite *Usurarum voraginem* (or any other canons), the decree’s disputed interpretation was likely the basis for the pope’s decision to address the topic of housing head on. To judge from his response, neither the canonistic arguments of Domenico da San Gimignano nor the increasing weight of homiletics and other writings were sufficient to shift the pope away from the traditional, narrow reading of the decree.

Five years later, with a new pope on the throne of St. Peter, the tide had apparently turned. When the Mirandola brothers brought their petition to Pope Eugene IV, asking whether *Usurarum voraginem*’s provisions applied to Jews, the pope concluded that they did. Moreover, Eugene insisted on the Jews’ expulsion, thereby going well beyond the arguments of Domenico and others, which had focused exclusively on the decree’s housing provision. Nor was this an isolated instance. Three years later, in 1437, a similar case came to Eugene’s attention. The provost of a church in Parma had apparently permitted some Jews to use his house for the purposes of moneylending, and as a result of this and other sins, he had been struck with a sentence of excommunication. The fate of the Jewish moneylenders is not mentioned in the papal response; perhaps the provost had already evicted them from his house. The pope simply ordered that the provost be absolved, provided that he did proper penance.⁵⁹ Here again, however, it is clear that Eugene—or those acting in his name—considered *Usurarum voraginem* to apply to Jews.

Soon thereafter Eugene changed his mind. In the winter of 1439–40, a group of prominent Franciscans asked Eugene to clarify whether or not *Usurarum voraginem* applied to Jews. In his response, dated January 10, the pope replied that it did not. The grounds for his decision were straightforward: citing Giovanni d’Andrea’s *Novella*, the pope observed that the decree had been promulgated as a response to the Florentines and Pistoians and others who were traveling around and lending at interest. He accordingly ruled that neither the penalty of excommunication for those renting houses to foreign usurers, nor the penalties for rulers who failed to expel them from their lands, were to be understood in reference to Jews (*non intelligatur si permittunt habitare iudeos*).⁶⁰ If Eugene was

59. *ASJ*, 2:844–45 (doc. 720). Whether or not the Jews were natives of Parma goes unmentioned.

60. Milan, Biblioteca Ambrosiana, cod. D 10 sup., fol. 84ra. For a brief discussion and list of manuscripts, see Raymond Creytens, “Les cas de conscience soumis à S. Antonin de Florence par Dominique de Catalogne O.P. (The Matters of Conscience Submitted to Saint Antoninus of Florence by Dominic of Catalonia, OP),” *Archivum fratrum praedicatorum* 28 (1958): 149–220, at 195.

willing to defer so easily to legislative *intentio* in 1440, however, why had he concluded otherwise on the two earlier occasions? Had he made his previous decisions solely on the text of the decree itself, without consulting its leading commentaries? Had he consulted only the commentaries of Domenico da San Gimignano or his followers? Had he come to fear that his earlier, perhaps overhasty, decision might have unintentionally signaled a change in established papal policy vis-à-vis the expulsion of Jews? Or had he delegated the earlier decisions to curial officials, and was only now devoting sustained attention to the issue? Regardless of his motivations, the legal force of this revised papal ruling is unclear.⁶¹ Moreover, although the text survives in several manuscripts, it seems to have gone unnoticed by contemporary canonists, garnering renewed attention only in the early sixteenth century.⁶² Even Antoninus of Florence, whom the pope may have consulted on the matter, does not mention it in any of his writings on *Usurarum voraginem*.⁶³

In other words, by the time Eugene's successor Nicholas V ascended the papal throne in 1447, a variety of opinions were swirling around. Some canonists and authorities held that *Usurarum voraginem* applied to Jews; others disagreed. Some maintained the decree's distinction between locals and foreigners; others omitted it entirely. Some focused exclusively on the housing ban; a handful drew attention to the penalty of expulsion. And some—like Pope Eugene—went back and forth. In general, Nicholas V seems to have considered that the renting of houses to Jewish usurers was indeed forbidden (or at least required papal dispensation), but none of the extant evidence suggests that he had especially strong views on the matter. After an initial burst of intransigence inspired by the Observant Franciscan preacher Giovanni da Capestrano (1386–1456), he seems to have been relatively accommodating insofar as Jewish money-lending was concerned.⁶⁴ In dispensations granted to Leonello d'Este of Ferrara in 1448, and then to Leonello's half-brother Borso in 1451,

61. For the uncertain legal force of such *responsa*, see Thomas Izbicki, "The Origins of the *De ornatu mulierum* of Antoninus of Florence," *Modern Language Notes* 119 (2004): S142–S161, at S146.

62. The Dominican scholar Giovanni Cagnazzo (d. 1521) included it in his *Summa Tabiena*; from there it spread into other early modern works on canon law and moral theology. See his *Summa summarum quae Tabiena dicitur* (Bologna: 1517), fol. 479r.

63. See, in particular, his *Summa Theologica* (Verona, 1740 [repr. Graz: Akademische Druck- und Verlagsanstalt, 1959]), 2.154–58 (2.1.10) and 3:1359–60 (3.24.49). For relations between Antoninus and Eugene IV during the winter of 1439–40, see Izbicki, "De ornatu mulierum," 143.

64. *ASJ*, 2:915–17 (doc. 765), issuing for Italy the bull *Super gregem dominicum*, which had been issued for Spain in 1442; compare *ASJ*, 2:866–70 (doc. 740). For a general discussion of Nicholas V's dispensations concerning Jews, see Léon Poliakov, *Les banchieri*

Nicholas V specifically allowed the rulers to continue renting houses to the Jewish usurers whom they had welcomed into their lands.⁶⁵ The same is true of the dispensation he granted to Frederick III of Germany, likewise issued in 1451, although in this case the Jews do not seem to have been recent arrivals.⁶⁶

Nicholas V also proved willing to override the efforts of zealous bishops to apply *Usurarum voraginem*'s penalties to communities harboring Jewish moneylenders. In Mantua in 1449, for example, the local bishop laid a sentence of excommunication and interdict on Ludovico Gonzaga and his subjects for having rented houses to Jewish moneylenders (in addition to various other misdeeds), and Ludovico had to send a high-profile embassy to Rome to secure a papal dispensation allowing the Jews to remain.⁶⁷ Two years later, Soave, a town in the diocese of Verona, apparently found itself in similar circumstances; here again the pope allowed the people of Soave to continue renting houses to Jewish moneylenders, although he required them to make suitable penance.⁶⁸ Also in 1451, the bishop of Lucca promulgated an episcopal statute automatically excommunicating anyone who rented a house to a usurer, with no distinction drawn between Christian and Jewish lenders (and apparently no distinction between local and foreign usurers, either).⁶⁹ The municipal leaders of Lucca turned to Nicholas V for advice, and in August 1452, the pope absolved the city from any ecclesiastical sanctions that they had thereby incurred and allowed the Jews to continue lending at interest and renting houses for that purpose. Furthermore, Nicholas explicitly abrogated the bishop's statute and granted a dispensation from *Ex gravi*, with its ban on civic tolerance of moneylending.⁷⁰

Juifs et le Saint-Siège du XIII^e au XVII^e siècle (Jewish Bankers and the Holy See from the Thirteenth to the Seventeenth Century) (Paris: SEVPEN, 1965), 116–18.

65. For the 1448 dispensation, see *ASJ*, 2:927–29 (doc. 772). For the 1451 dispensation, see *Ibid.*, 2:955–57 (doc. 789).

66. *Ibid.*, 2:966–68 (doc. 794).

67. *Ibid.*, 2:932–34 (doc. 774). See also Poliakov, *Banchieri*, 356–57 (p.j. 4); and *ASJ*, 3:1393–96 (doc. 1111).

68. *ASJ*, 7:216 (doc. 790).

69. Only the titles of the bishop's anti-usury statutes survive; see Paolino Dinelli, *Dei sinodi della diocesi di Lucca* (On the Synods of the Diocese of Lucca) (Lucca: Bertini, 1834), 61–114, at 114 (cc. 82–86).

70. For the background to the absolution request, see Michael E. Bratchel, “Usury in the Fifteenth-Century Lucchesia: Images of the Petty Moneylender,” *Journal of European Economic History* 32 (2003): 249–76, at 251. For Nicholas V's response, see Giuseppe Coniglio, “L'usura a Lucca ed una bolla di Niccolò V del 1452 (Usury in Lucca and a 1452 Bull of Nicholas V),” *Rivista di storia della chiesa in Italia* 6 (1952): 259–64, at 261–62.

At the same time, however, officials within the Apostolic Penitentiary—many of them experts in canon law—were apparently quite willing to interpret *Usurarum voraginem*'s provisions as applicable to Jewish moneylenders. Sometime before January 1452, for example, Arnold von Brende, a canon (and later archdeacon) of Würzburg, with the consent of his chapter, had welcomed “perfidious Jews, who are rightly deemed foreign and manifest usurers (*perfidi Judei qui bene alienigene ac manifesti usurarii censentur*)” into the city of Würzburg for the purposes of lending publicly at interest. Although he had not realized it at the time (*tunc ignarus*), he had since learned that this was forbidden by law (*iure prohibitum sit*). His realization was likely a consequence of the aggressive campaign that the papal legate Nicholas of Cusa had led against Jewish usury in Würzburg and elsewhere earlier that year.⁷¹ Arnold duly petitioned the Apostolic Penitentiary for absolution from the sentence of excommunication and the irregularity he had incurred thereby, a request that was duly granted.⁷² Although Arnold's request was handled within the Apostolic Penitentiary and did not escalate to Nicholas V himself, it is nevertheless indicative of the interpretative instability surrounding the decree's provisions that papal officials could implicitly confirm a reading of the decree that Eugene IV had explicitly condemned a decade earlier.

There is evidence, then, for a handful of petitioners (such as the Mirandola brothers, the Franciscan friars, and the Anziani of Lucca) writing to the pope in search of clarification on the proper interpretation of *Usurarum voraginem*'s provisions. In the other cases, the decree's applicability to Jews was

71. See Karl-Heinz Zaunmüller, “Nikolaus von Cues und die Juden. Zur Stellung der Juden in der christlichen Gesellschaft um die Mitte des 15. Jahrhunderts in den deutschen Landen (Nicholas of Cusa and the Jews. On the Position of the Jews in Christian Society in Mid-Fifteenth-Century Germany),” (unpublished PhD diss., Universität Trier, 2001), esp. 69–70 and 336–44.

72. Ludwig Schmugge, ed., *Repertorium poenitentiariae Germanicum. Verzeichnis der in den Supplikenregistern der Pönitentiaria vorkommenden Personen, Kirchen, und Orte des Deutschen Reiches* (Index of Persons, Churches and Places of the German Empire Figuring in the Supplication Registers of the Apostolic Penitentiary), 9 vols. (Tübingen: Niemeyer, 1998–2014), 2:87 (no. 902 [January 13, 1452]). On two later occasions, Arnold again sought absolution and dispensations for this same transgression as well as other instances of support for the Jews of Würzburg; see *Repertorium poenitentiariae Germanicum*, 3:12–13 (no. 78 [July 9, 1455]) and 3:49 (no. 348 [September 7, 1456]). With one exception (discussed in the following note), these are the only petitions from the published records of the Apostolic Penitentiary that touch directly on *Usurarum voraginem*. Ongoing research may turn up further instances. For a general introduction to the workings of the Apostolic Penitentiary, see Kirsi Salonen and Ludwig Schmugge, eds., *A Sip From The “Well Of Grace”: Medieval Texts from the Apostolic Penitentiary* (Washington, D.C.: Catholic University of America Press, 2009), part 1. I am grateful to Dr. Salonen and to Paolo Ostinelli for their advice on these materials.

taken as self-evident, and the pope was merely asked to offer absolution from ecclesiastical sanctions and, in some cases, permission to continue harboring Jewish moneylenders.⁷³ Strikingly, however, these other cases generally make no specific reference to *Usurarum voraginem* or its expulsion provision. The presumed unlawfulness of renting houses to Jewish usurers had become so accepted among fifteenth-century German and Italian authorities that it had taken on a force of its own, quite distinct from the decree itself. The illegality was taken as self-evident, hardly requiring an explicit legal footing, and certainly betraying no trace of its contentious interpretative history.

Over the next half-century, the question of *Usurarum voraginem*'s applicability to Jews would continue to arise from time to time. In the winter of 1471–72, the Piedmontese town of Chivasso endured the repeated harangues of a Franciscan preacher, who urged landlords to evict Jewish moneylenders from their homes on pain of excommunication, and also pushed for the general expulsion of Jews from the town.⁷⁴ Two decades later, the civic leaders of Frankfurt petitioned the pope for a dispensation allowing them to rent houses to Jewish moneylenders, free from the threat of ecclesiastical sanctions.⁷⁵ The issue also continued to exercise the minds of canonists, at least on occasion. In a consilium on usury written circa 1469, Angelo di Castro (d. 1485) argued that just as the church did not concern itself with the sins of infidels, it ought not to concern itself with the sins of Jews either. The threat of excommunication against Christians renting houses to Jewish usurers ought therefore to be considered invalid.⁷⁶ His contemporary Alessandro Nievo (1417–84) then vigorously condemned this position in his four *Consilia de usuris*.⁷⁷ In general, however, the

73. A noteworthy variation on the latter theme arose in 1455, when the civic authorities of Padua sent a petition to Calixtus III (r. 1455–58) immediately following his election. Like many other petitioners before them, they sought absolution from the pope for having previously rented houses to Jewish usurers. Unlike previous petitioners, however, the city had already expelled these Jews and was not seeking their return. See Antonio Ciscato, *Gli Ebrei in Padova (1300–1800)* (The Jews in Padua (1300–1800)) (Padua: Società Cooperativa Tipografica, 1901), 243–45 (Appendix, doc. 6). For further remarks on Padua and its Jews in the fifteenth century, especially in relation to mendicant preaching, see Michael Hohlstein, *Soziale Ausgrenzung im Medium der Predigt. Der franziskanische Antijudaismus im spätmittelalterlichen Italien* (Social Exclusion through Preaching: Franciscan Antijudaism in Late Medieval Italy) (Cologne: Böhlau Verlag, 2012), 221–40.

74. Renata Segre, *The Jews in Piedmont*, 3 vols. (Jerusalem: Israel Academy of Sciences and Humanities, 1986–90), 1:330–36 (docs. 740, 741, 745, 747).

75. *ASJ*, 3:1410–11 (doc. 1126).

76. Leiden, Universiteitsbibliotheek, D'Ablaing 33, fols. 5v–7r.

77. *Consilium de usuris/Contra iudeos fenerantes* (Venice, 1482). The consilia appear here as an appendix to the *Summa Pisanella*. A detailed breakdown of Nievo's argument is given in Poliakov, *Banchieri*, 59–65; but compare the additional remarks of Hélène Angiolini, “Polemica antiusuraria e propaganda antiebraica nel Quattrocento (Anti-Usury

question of renting houses to Jewish usurers—and of the interpretation of *Usurarum voraginem*'s provisions more generally—gradually faded into the background, casualties, perhaps, of newly emerging arguments concerning the exclusion and expulsion of Jews.⁷⁸

Conclusion

The interpretation of *Usurarum voraginem* developed markedly in the two centuries following its promulgation, as fifteenth-century observers saw Jews where their forebears had seen only Christians. To be sure, *Usurarum voraginem* was hardly the only canon whose rereading led to the imposition of new penalties on Jews during the late Middle Ages. In the thirteenth century, for example, a number of bishops had (perhaps willfully) misunderstood the grammar of a particular line in the canon *Post miserabilem* (X 5.19.12), interpreting the canon accordingly as an invitation to excommunicate Jews. In this instance, the reading was roundly condemned by all of the major canonists, as well as by Pope Gregory X, and these rebuttals seem to have more or less brought a halt to the practice.⁷⁹ An even closer analogy is offered by *Ex gravi*, whose interpretative trajectory was sketched above.⁸⁰

In the case of *Usurarum voraginem*, these interpretative shifts did not result from any inexorable logic embedded within the language of the decree itself. Although it is true that the drafters' failure to specify that the decree's provisions applied only to Christian usurers left open the possibility that they might also apply to Jewish ones, it took decades before anyone even thought to move in that direction. Moreover, the longstanding theological and canonical presumption against the expulsion of Jews (whether or not they were lending at interest) weighed heavily against such an interpretation. So too did Francesco d'Albano's contemporary report of the drafters' aims, which circulated widely from the mid-fourteenth century onward. Many of those who treated *Usurarum voraginem* as applicable to Jews surely did so out of sloppiness or haste; Pierre de la Palud and John Bromyard probably fall into this camp, as their handling of

Polemic and Anti-Jewish Propaganda in the Fifteenth Century),” *Il pensiero politico* 19 (1986): 311–18, especially concerning the dating of the consilia.

78. See Stow, “Expulsion Italian Style,” esp. 55–59.

79. See William Chester Jordan, “Christian Excommunication of the Jews in the Middle Ages: A Restatement of the Issues,” *Jewish History* 1 (1986): 31–38.

80. Such interpretative instability was obviously not limited to canon law; for a related example concerning a French royal ordinance, see William Chester Jordan, “Jew and Serf in Medieval France Revisited,” in *Jews, Christians, and Muslims in Medieval and Early Modern Times. A Festschrift in Honor of Mark R. Cohen*, eds. Arnold E. Franklin et al. (Leiden: Brill, 2014), 248–56, at 251–53.

Usurarum voraginem shows little evidence of systematic thought, and one might even add Pope Eugene IV to their number. Such cases must be seen—and perhaps explained—in light of the fourteenth-century trend toward subjecting Jewish usurers to the same canonical strictures as Christian ones, which was itself part of a larger movement effacing earlier distinctions between Jewish and Christian usurers.

In many other cases, however, it is clear that *Usurarum voraginem* is yet another example of a text whose ambiguities were deliberately exploited by those seeking arguments for the further marginalization of European Jews. A host of late medieval jurists (and those who listened to them) proved willing to ignore the heuristic weight of the drafters’ aims, in order to justify extending the decree’s provisions to Jews. Similarly, rather than grapple with the interpretative hurdle posed by the decree’s expulsion provision, they simply sidestepped it. Over time, and through repetition, their selective reading of the decree took on a life of its own, such that it was widely assumed by jurists and authorities alike that canon law forbade the renting of houses to Jewish moneylenders. Theory and practice thus reinforced one another.

In some cases there was unexpected resistance. The fifteenth-century Franciscan Giovanni da Capestrano, for example, was renowned for his strident condemnations of Jews, and calls for their exclusion and expulsion formed a central theme of the preaching campaigns that he conducted across Italy, Germany, and Eastern Europe.⁸¹ As such, it is striking that in the lengthy discussion of *Usurarum voraginem* in his treatise on avarice, he nowhere mentioned the question of its applicability to Jews.⁸² Moreover, in refuting a consilium by Angelo di Castro on Jewish butchering, he compiled a list of all the canons that concerned relations between Christians and Jews. Tellingly, neither *Usurarum voraginem* nor *Ex gravi* appears in the list.⁸³ Given Giovanni da Capestrano’s reputation as

81. See Filippo Sedda, “The Anti-Jewish Sermons of John of Capistrano: Matters and Context,” in *The Jewish-Christian Encounter in Medieval Preaching*, eds. Jonathan Adams & Jussi Hanska (New York: Routledge, 2015), 139–69, at 140–42.

82. Eugen Jacob, ed., *Tractatus de Cupiditate*, in *Johannes von Capistrano*, vol. 2, part 2 (Breslau: Woywood, 1911), 27–460, at 105–7.

83. An edition is given in Hélène Angiolini, “‘Cibus iudei’: un ‘consilium’ quasi inedito di Angelo di Castro sulla macellazione con rito ebraico e una ‘reprobatio’ di San Giovanni da Capestrano (‘The Food of a Jew’: A mostly-unpublished *consilium* of Angelo di Castro on Jewish Ritual Slaughter and a Reply from Saint Giovanni da Capestrano),” in *La storia degli Ebrei nell’Italia medievale: tra filologia e metodologia* (The History of the Jews in Medieval Italy: Philology and Methodology), eds. Maria Giuseppina Muzzarelli and Giacomo Todeschini (Bologna: Istituto per i beni artistici, culturali e naturali della Regione Emilia-Romagna, 1989), 102–15, at 111–14. Kenneth R. Stow also discusses the consilium in his *Jewish Dogs: An Image and its Interpreters* (Stanford, CA: Stanford University Press, 2006), 153–57.

a learned canonist, together with his obsessive concern with Jews and usury, this repeated silence suggests a reluctance to support the expansive reading of either canon.⁸⁴ However expedient such a reading might have been, it clearly went further than his legal scruples would allow him to go.

Similarly revealing is the widespread and conspicuous reluctance, whether in classrooms or council chambers, to turn *Usurarum voraginem* into a legal vehicle for the expulsion of Jews. Clearly this reluctance was not absolute. Pope Eugene IV ultimately favored a narrow reading of the decree, but only after breaking with nearly a thousand years of papal tradition in his decision concerning the Jews of Mirandola. On the whole, however, nearly all of the canonists, preachers, and authorities who sought to include Jews among *Usurarum voraginem*'s targets proved willing to embrace a degree of inconsistency, trumpeting the decree's housing ban while sweeping the question of expulsion under the rug. Where the renting of houses was concerned, Christian and Jewish usurers might have been interchangeable, both belonging to a broader category of "usurer" that ignored religious distinctions. But the limits of such interchangeability where expulsion was at stake reveal the continuing—although diminishing—force of Jews' presumptive right to live peaceably within Christian society. In short, then, even in those instances in which *Usurarum voraginem* was indeed used against Jews, it was used in a way that reflected and reinforced canon law's traditional position: Jews were to be excluded, but not expelled.

84. For his legal training and reputation, see Diego Quaglioni, "Un giurista sul pulpito. Giovanni da Capestrano († 1456), predicatore e canonista (A Jurist on the Pulpit. Giovanni da Capestrano (d. 1456), Preacher and Canonist)," in "*Civilis sapientia*": *dottrina giuridiche e dottrine politiche fra medioevo ed età moderna* (Legal Doctrines and Political Doctrines from the Middle Ages to the Early Modern Period) (Rimini: Maggioli Editore, 1989), 193–206.