



*The Legal Status  
of Religious Minorities  
in the Euro-Mediterranean World  
(5th-15th centuries)*



*Le statut légal  
des minorités religieuses  
dans l'espace euro-méditerranéen  
(Ve-XVe siècles)*

# The infidel before the judge: Navigating justice systems in multiconfessional medieval Europe

John Tolan, Professor of History,  
Université de Nantes

<http://univ-nantes.academia.edu/JohnTolan>





## The infidel before the judge: Navigating justice systems in multiconfessional medieval Europe

### Forum shopping?

“Forum-shopping is a specific concept of private international law. A person who takes the initiative of bringing a court action may be tempted to choose his court on the basis of the law applied there. A person starting an action might be tempted to choose a forum not because it is the most appropriate forum but because the conflict of laws rules that it applies will prompt the application of the law that he or she prefers.”

European Commission's Directorate General for Justice

[http://ec.europa.eu/justice/glossary/forum-shopping\\_en.htm](http://ec.europa.eu/justice/glossary/forum-shopping_en.htm)

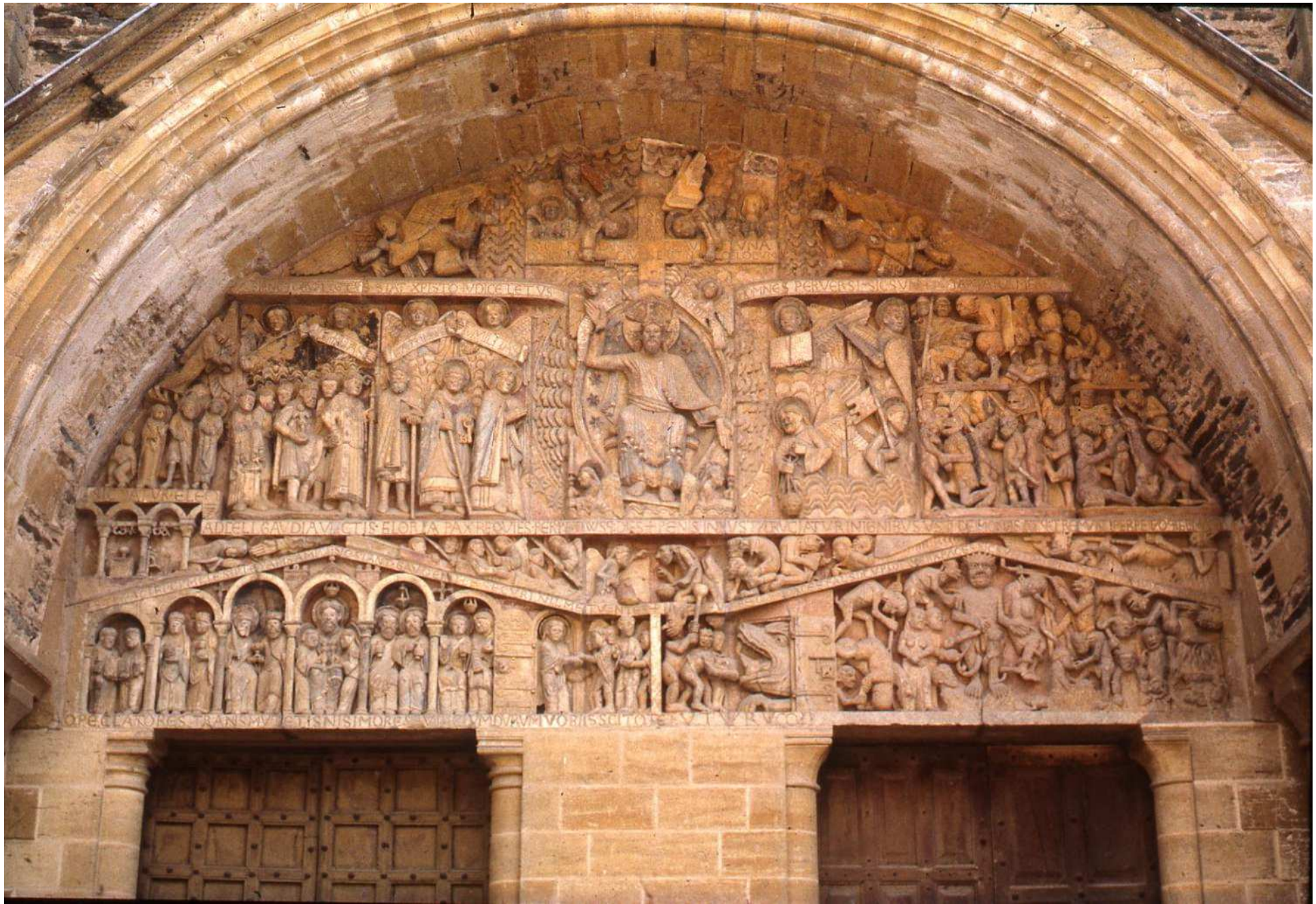


Representations of the  
four cardinal virtues:  
Prudence and  
Temperance (top); Force  
and Justice (bottom).

Laurent Frère, *La somme  
le Roi*

Paris, Bibl. Mazarine, ms.  
870 (1295), f. 83v

<http://liberfloridus.cines.fr/>



Conques (early 12<sup>th</sup> c.): The last judgment



כל ישראל יחד  
מקבלים עליהם



EMCI  
CCATO

# Der Sachsenspiegel

Bibliothek Herzog August,  
Wolfenbüttel, Ms Aug  
3.1 (early 14<sup>th</sup> c.), f. 10

<http://dbs.hab.de/mss/>





## The infidel before the judge: Navigating justice systems in multiconfessional medieval Europe

### Forum shopping in Medieval Societies

- Between royal, ducal, comital, seigniorial jurisdictions
- Between different ecclesiastical authorities (abbots, bishops, archbishops, pope)
- Between lay and ecclesiastical jurisdictions
- Between “minority” jurisdictions (rabbis, bishops, qadis) and “majority” jurisdictions



## Jewish courts assimilated to arbitration in the *Codex Theodosianus* (438)

The Jews, who live as Romans according to common law, should approach the tribunal solemnly for cases which pertain not to their superstition, but to the court, the laws, and justice, and they should all bring and pursue lawsuits using Roman laws; ultimately they should submit to our laws. If anyone believes litigation concerning civil business can be brought before the Jews or their patriarchs with the consent of both parties, by compromise and with the agreement of the judges, they are not forbidden to carry out their justice under public law; the judges of the provinces should also follow their sentences, just as if they had been passed by a judge. *Codex Theodosianus* 2.1.10

<http://www.cn-telma.fr/relmin/extrait70988/>





## The infidel before the judge: Navigating justice systems in multiconfessional medieval Europe

Uriel Simonsohn, *A Common Justice: The Legal Allegiances of Christians and Jews Under Early Islam* (Philadelphia: University of Pennsylvania Press, 2011).



## Jurist Māwardī ‘Alī b. Muḥammad on the judicial autonomy of *dhimmīs* (1<sup>st</sup> half of 11<sup>th</sup> c.)

When disputes arise among the *dhimmīs* about their religion and they disagree about their beliefs, there is no reason to intervene to put an end to this. When they are on trial concerning one of their laws, and they appeal to their leader for a decision, there is no impediment to this; but if they turn to our authorities, the latter will decide according to Muslim law. Our written penal law will be applied to them when they place themselves before it. He who violates the treaty to which he has agreed can regain his place of security, and thus he becomes an enemy again.

<http://www.cn-telma.fr/relmin/extrait136579/>



## Testimony of Christians takes precedence over that of Jews: Gratian, *Decretum* (c. 1140)

Pagans, or heretics, or Jews cannot accuse Christians, or speak a word of defamation against them.

*Decretum* [ C. 2, q 7, c. 25 ]

<http://www.cn-telma.fr/relmin/extrait30527/>



## Testimony of Christians takes precedence over that of Jews: Lateran III council (1179), canon 26

We also resolve that the testimony of Christians against Jews ought to be accepted in all cases, since they use their own witnesses against Christians. And, we decree that those who wish to prefer Jews to Christians in this way ought to be struck with anathema, since it is proper for them to be subject to Christians and cherished by them out of humanity alone.

<http://www.cn-telma.fr/relmin/extrait1097/>



## Pope Innocent III, Letter to King Philip II Augustus of France on the misdeeds of the Jews (1205)

Moreover, although the same Council decided to admit Christian evidence against Jews in law-suits that arise between the two [Lat III : 26], since they use Jewish witnesses against Christians, and although it decreed that whoever preferred the Jews to the Christians in this matter should be anathematized, yet [Jews] have to this day been given the preference in the French realm to such an extent that Christian witnesses are not believed against them, while they are admitted to testimony against Christians. Thus, if the Christians to whom they have loaned money on usury bring Christian witnesses about the facts in the case, (the Jews) are given more credence because of the document which the indiscreet debtor had left with them through negligence or carelessness, than are the Christians through the witnesses produced.

<http://www.cn-telma.fr/relmin/extrait30385/>



## Provençal and Catalan Jews navigate between jurisdictions (13<sup>th</sup>-14<sup>th</sup> centuries)

- Sibon, Juliette. *Les juifs de Marseille au XIVe siècle*. Paris: Les Editions du Cerf, 2011.
- Denjean, Claude. *La loi du lucre: l'usure en Catalogne dans la couronne d'Aragon à la fin du Moyen âge*. Madrid: Casa de Velázquez, 2011.



## Justice meted out by the royal prevost

Illumination by  
Robinet Testard  
(c. 1483)

Jean Masuer,  
*Pratique  
judiciaire à  
l'usage  
d'Auvergne*, BNF  
MS fr. 4367, f.1

Reproduction in Robert  
Jacob, *Images de la  
Justice* (Paris, 1994),  
PL XXVI