

THE FOURTH LATERAN COUNCIL AND THE  
DEVELOPMENT OF CANON LAW AND THE *IUS COMMUNE*

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The Fourth Lateran Council and the  
Development of Canon Law and the  
*ius commune*

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## Armsbearing by the Clergy and the Fourth Lateran Council\*

When Pope Gregory IX issued the *Decretales* in 1234, it included this lapidary formulation: “Clerici arma portantes et usuarii excommunicentur”. Unfortunately, this crisp statement of high principle has not served the reputation of the Holy Roman Church at all well in modern history. Again and again, it has been cited to club the Church over the head for the flagrant behavior of warrior prelates like Bishop Henry Despenser of Norwich, Robert Cardinal of Geneva, and Pope Julius II, and, as far as the development of capitalism is concerned, for both obstructing its development by enforcing the ban on usury and for rank hypocrisy when it did not. However clear and noble this statement of abstract principle may have been, it was not in fact the actual law of the Church even at the time of its promulgation. In the case of usury, not only were the people of Christian Europe developing a variety of financial practices and instruments over the course of the twelfth and thirteenth centuries by which Christians could legally lend money to other Christians with moderate rates of return, but theologians and canon lawyers were also coming slowly but surely to provide the necessary theological and legal framework for these credit instruments (discretionary deposits, gages *mort et vif*, pawns, bills of exchange, the commenda and other partnerships, sales with the right of resale, the *census* or rent, and so on). It was most fortunate for the emergence of western capitalism that in the Parable of the Talents, recounted in both Matthew 25:14-30 and Luke 19:12-28, Jesus had implicitly approved the taking of interest. Western churchmen slowly came to accept interest as legitimate compensation under several different titles, particularly for the loss of the use of the money loaned. (This emphasis on compensation also dovetailed nicely with the earlier medieval practice of *wergeld* or monetary recompense for crimes and injuries). It then became a question of what a *just* rate of compensation or interest should be. Gregory IX’s successor, Innocent IV, when asked precisely this question about the *census* or rent, decided that since he had

\* I would like to thank John Hosler, Radoslaw Kotecki, and Atria Larson for helpful suggestions on this essay.

1 X 3.1.2 (‘Clergy bearing arms and usurers are to be excommunicated’).

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learned that a reasonable rate of return on agricultural investment was around 5%, that should be the rate of just return on the buying of rents, a judgment confirmed twice by fifteenth-century popes and included in later additions to canon law<sup>2</sup>. But modern historians, with their varying sources and degrees of animus against the medieval or Catholic Church (or the Christian Church more generally), do not wish to hear of such complexities and prefer to reprove the Church simultaneously for its benightedness and hypocrisy – and in support of their prejudice they can always point to that blunt statement in the first code of law promulgated officially by the papacy – “Clergy bearing arms and usurers are to be excommunicated”<sup>3</sup>.

If a simple prohibition was no longer the case with respect to moneylending by 1234, still less was it so with regard to the clergy and armsbearing. It is revealing that, in recovering this canon from earlier legislation, Gregory IX and Raymond of Peñafort went all the way back to the council of Poitiers in 1078, convened during the pontificate of Gregory VII and presided over by a papal legate. It has often been noted that the reformers of the eleventh century condemned armsbearing by the clergy, but the great frequency with which they did so has not always been appreciated. Indeed, in the whole history of Christianity there exists no parallel to the intensity and frequency with which councils and synods repeatedly did so in the second half of the eleventh century – and very often with the explicit support of the papacy. Leo IX launched this campaign at the council of Reims in 1049. Although this was evidently the only one of his nine councils which acted on this issue, it was an important precedent soon widely imitated. During the next thirty years, no fewer than eleven councils and synods followed the example set at Reims in 1049 in forbidding clerical armsbearing. Of these eleven, a pope presided over one (in Rome in 1059), and papal legates over another six (Narbonne in 1054, Tours in 1060, Normandy around 1067, Gerona in 1068 and 1078, as well as Poitiers in 1078). In short, in thirty years, twelve major councils, eight of them under direct papal supervision, condemned arms for the clergy. Furthermore, Pope Urban II at Clermont in 1095 renewed the prohibition. In sum, then, between 1049 and 1095, no fewer than thirteen councils and synods had damned clerical armsbearing. At nine of these thirteen assemblies, three different popes and six papal legates presided. The reforming papacy seemingly could not have been clearer on this issue<sup>4</sup>.

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- 2 L. G. Duggan, *Ecclesiastical Moneylending in Later Medieval Germany* (forthcoming), ch. 2, ‘Legitimate Forms of Moneylending’; J. T. Noonan Jr., *The Scholastic Analysis of Usury* (Cambridge, MA: Harvard University Press, 1957), pp. 100-70, especially pp. 116-17. Jesus’ words on interest are curiously not mentioned at all by Noonan (who seems to believe or imply that the argument for interest was drawn entirely from Roman law), but their significance is fully recognized by E. Kerridge, *Usury, Interest and the Reformation* (Aldershot, Hants-Burlington, VT: Ashgate, 2002), pp. 5-21.
  - 3 On the contradictory ways in which the medieval Church is doubly damned for both impeding and enabling the rise of capitalism in Europe, see L. G. Duggan, ‘Melchior von Meckau: a Missing Link in the Eck Zins-Disputes of 1514-1516?’, in *Archiv für Reformationsgeschichte* 74 (1983), pp. 25-37, especially pp. 25-26.
  - 4 U.-R. Blumenthal, ‘Ein neuer Text für das Reimser Konzil Leos IX. (1049)?’, in *DA* 32 (1976), pp. 23-48, p. 29; Mansi 19:787 (Coyanza, c.3), 830 (Narbonne, c.15), 856 (Compostella, c.2), 915 (Rome, c.10), 927 (Tours, c.7), 1071 (Gerona, c.5); H. E. J. Cowdrey, ‘Bishop Ermenfrid of Sion and the Penitential Ordinance following the Battle of Hastings’, in *JEH* 20 (1969), pp. 225-42;



But this item did not have staying power on the papal agenda after the intense burst of prohibitions between 1049 and 1078 and the 1095 renewal at Clermont. Orderic Vitalis says that Calixtus II renewed the latter prohibition at his council at Reims (1119), but the evidence does not sustain his assertion<sup>5</sup>. Nor does it appear among the decrees of Innocent II's councils at Clermont (1130), Reims (1131), or Pisa (1135); Eugenius III's at Reims (1148); or Alexander III's at Tours (1163)<sup>6</sup>. Finally, there is almost nothing in the decrees of the seven so-called ecumenical or general councils held between 1123 and 1312 – the first four conspicuously in Rome at the pope's own Lateran cathedral, then the next two at Lyon and the last at Vienne<sup>7</sup>. (The legatine councils of the twelfth and thirteenth centuries are a much more complex but no less important related matter which would require separate investigation<sup>8</sup>). Of the seven general councils, only Vienne in 1311-12 has anything explicit. Its eighth constitution denounced at great length “clericos carnificum seu macellariorum aut tabernariorum officium publice et personaliter exercentes”, and then adds: “Adversus vero alios

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C & S 1.1:581; Mansi 20:399 (Rouen, c.12), 518-19 (Gerona, c.6), 499 (Poitiers, c.10); R. Somerville, *The Councils of Urban II. I. Decreta Claromontensia* (Amsterdam: Adolf M. Hakkert, 1972, AHC Supplementum 1), pp. 74, 81, 115, 143. It may be worth noting, however, that only four of the fourteen manuscripts recording the decrees of Clermont include this condemnation.

- 5 *The Ecclesiastical History of Orderic Vitalis*, ed. and trans. by M. Chibnall (Oxford: The Clarendon Press, 1969-80), 6:262-63, 274-77; Mansi 21:233-56.
- 6 Mansi 21:437-40, 453-62, 487-92, 711-36; *Boso's Life of Alexander III*, trans. by G. M. Ellis (Totowa, NJ: Rowman and Littlefield, 1973), pp. 59-62; R. Somerville, *Pope Alexander III and the Council of Tours (1163): A Study of Ecclesiastical Politics and Institutions in the Twelfth Century* (Berkeley & Los Angeles & London: University of California Press, 1977).
- 7 Duggan, *Armsbearing and the Clergy*, cit., p. 134. On the evolution of the traditional Roman Lenten synod into the Lateran 'general councils' (and their later numbering as such), see A. J. Duggan, 'Conciliar Law, 1123-1215: The Legislation of the Four Lateran Councils', in *The History of Medieval Canon Law in the Classical Period, 1140-1234. From Gratian to the Decretals of Pope Gregory IX*, ed. by W. Hartmann and K. Pennington (Washington, DC: The Catholic University of America Press, 2008, History of Medieval Canon Law), pp. 318-66, pp. 318-24; and on the emerging clarification of ideas regarding a 'general' council under the presidency of a pope or a legate between c.1088 and c.1175, see R. Somerville, in collaboration with S. Kuttner, *Pope Urban II, the 'Collectio Britannica', and the Council of Melfi (1089)* (Oxford: Clarendon, 1996), pp. 181-85.
- 8 As for legatine councils, although the one held at Westminster in 1138 condemned clerical armsbearing (probably in response to the rebellion of Robert of Gloucester), an earlier one at Troyes in 1129 approved the Templars, which as we shall see created a potentially large loophole in the ancient prohibition (Duggan, *Armsbearing and the Clergy*, cit., pp. 105, 182). On the significance for English ecclesiastical law and history of the legatine council of 1268 in England, over which a future pope presided, see Duggan, *Armsbearing and the Clergy*, cit., pp. 182-91, especially p. 187 ff. More generally, legatine councils are a very complex issue, since legates were sometimes local prelates deputed to act on behalf of Rome (*legati nati*), while those sent from Rome (*legati missi* or *latere*) would sometimes act on their own. Whether they reflected papal policy should therefore not always be simply taken for granted. The complexity of the task of studying legatine councils is illustrated further by the sheer numbers involved. Hugh of Die, for instance, convened thirteen legatine councils under Gregory VII, who in turn deployed no fewer than thirty 'legates' of one sort or another during his pontificate; see K. Rennie, *Law and Practice in the Age of Reform: The Legatine Work of Hugh of Die (1073-1106)* (Turnhout: Brepols, 2010), pp. 209, 219-22. More generally on early medieval papal legates, see Idem, *The Foundations of Medieval Papal Legation* (Basingstoke: Palgrave Macmillan, 2013).

clericos, negotiationibus vel commerciis saecularibus vel officiis non convenientibus proposito clericali publice insistentes, vel arma portantes, sic canonica servare student instituta, quod et illi ab excessibus compescantur huiusmodi et ipsi de dampnabili circa haec negligentia nequeant reprehendi”<sup>9</sup>. This curious statement is rendered even more odd by c.14, a very long decree promulgated by the council for the reform of the Benedictine monks, five printed pages in length. One paragraph ends with this sentence: “Praefatae quoque sententiae [excommunicationis] monachos infra septa monasteriorum sine licentia abbatum suorum arma tenentes decernimus subiacere”<sup>10</sup>. The clear implication is that monks may have arms as long as they have permission from their abbots. This is no flat prohibition at all. In fact, never again in the subsequent history of the Roman Catholic Church was a simple ban on clerical armsbearing ever repeated or enacted at such a high level. The new Codex of Canon Law, issued in 1917 and taking effect in 1918, in c.138 forbade all manner of clerical misconduct, including armsbearing, “nisi quando iusta timendi causa subsit”; and the new Code of 1983, now in force throughout the world, quite deliberately says nothing at all<sup>11</sup>. What on earth is going on here? What had happened between Clermont in 1095 and Vienne in 1311?

Actually, it was between Clermont in 1095 and Lateran IV in 1215 that the prohibition on armsbearing by the clergy had come to be effectively demolished by decisions made by prelates and popes, as will be explained shortly. It is necessary to note, however, that the prohibition had in the first place never been quite as complete as is usually thought<sup>12</sup>. When the ban was enacted (and it had never been so repeatedly reiterated before 1049), it usually took two prohibitory forms, on military service and on *bearing* arms. Sometimes, most noticeably under some of the Carolingians (as Friedrich Prinz pointed out), bishops appear to have been exempted from the ban by simple preterition<sup>13</sup>. But even before then, bishops in the disintegrating late Roman Empire often took up the defense of their cities, if only reluctantly and by default. Gregory the Great is famous not only for having directed troops in the defense of Rome and the lands of St Peter, but also for exhorting other bishops to defend their

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- 9 COGD, p. 412: ‘clerics who publicly and personally engage in the butcher’s trade or conduct taverns’, and ‘As for other clerics who apply themselves publicly to secular commerce and trade or any occupation inconsistent with the clerical state, or who carry arms, the ordinaries are to be diligent in observing the canons, so that these clerics may be restrained from such misconduct and they themselves may not be guilty of reprehensible negligence’; COD, pp. 364-65; Duggan, *Armsbearing and the Clergy*, cit., pp. 134-35.
- 10 COGD, pp. 422-26, p. 425: ‘We decree that monks who keep arms inside their monastery, without leave of their abbot, incur the same sentence’; COD, p. 372.
- 11 ‘Except when there exists just cause for fear.’ The full text of c.138 of the Codex of 1918 is as follows: “Clerici ab iis omnibus quae statum suum dedecent, prorsus abstineant: indecoras artes ne exercent; aleatoriis ludis, pecunia exposita, ne vacent; arma ne gestent, nisi quando iusta timendi causa subsit; venationi ne indulgeant, clamorosam autem nunquam exercent; tabernas aliaque similia loca sine necessitate aut alia iusta causa ab Ordinario loci probate ne ingediantur” (*Codex iuris canonici Pii X Pontificis Maximi iussu digestus...* [Città del Vaticano: Typis polyglottis Vaticanis, 1974], p. 38). For a full discussion of this Codex and the complexities behind that of 1983, see Duggan, *Armsbearing and the Clergy*, cit., pp. 173-80.
- 12 This is a point that I have come to understand much better since my book appeared several years ago.
- 13 Duggan, *Armsbearing and the Clergy*, pp. 96-97.

cities as well; and he had no evident compunction about it as long as he did not “involve myself in the death of any human at all”<sup>14</sup>, echoing a point made earlier by Leo the Great. That seems to explain why the great eleventh-century Pope Leo IX could both censure armsbearing clerics at Reims in 1049 *and* direct troops against the Normans at Civitate in 1053, or why Gregory VII could announce in a letter of 1074 his preparedness to lead a relief expedition of 50,000 soldiers to the East *and*, only five years later, have his legate preside at the council of 1078 condemning clerical armsbearers and usurers<sup>15</sup>. (Nearly four-hundred years later, Pius II went yet a step farther and died at the papal naval base of Ancona in August 1464, proudly prepared to lead a military expedition for the relief of the East<sup>16</sup>). As much scholarship since Carl Erdmann has revealed, Gregory VII of course changed much if not everything, specifically how much he promoted the militarization of the Church and the sacralization of *milites Christi*, thereby shifting the Roman Church permanently on the theme of warfare to the left or to the right (depending upon one’s viewpoint)<sup>17</sup>.

What changed between 1095 and 1215 began in the Holy Land and ended in Rome. If one cuts through the endless thickets of discussion initiated above all by Gratian and continued by canonists and theologians all over Europe (the fellow scholars whom modern historians naturally prefer to read and ponder) and instead looks to what the bishops were doing, above all the bishop of Rome, one achieves a greater degree of clarity about what was an admittedly increasingly complex area of lawmaking. On the issue of clerical armsbearing, we can pinpoint the turning point. Two intertwined breakthroughs occurred in the crusader Kingdom of Jerusalem in 1120, and behind them both was the Patriarch of Jerusalem, Warmund or Gormund of Picquigny (1118-28). On January 16 of that year, King Baldwin II and the patriarch convened at Nablus a council of the great men of the realm, ecclesiastical and secular, to enact legislation touching a variety of issues in twenty-five chapters. Number 20 decreed that “Si clericus causa defensionis [*sic*] arma detulerit, culpa non teneatur”. In addition, a cleric who abandoned tonsure to become a soldier, but then repented and confessed before the first day of Lent, would be allowed to resume his clerical status according to the judgment of the patriarch (and also of the king after that

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- 14 Letter to Sabinian, deacon in Constantinople, September 594, in *The Letters of Gregory the Great*, trans. by J. R. C. Martyn (Toronto: Pontifical Institute of Mediaeval Studies, 2004), 5.6, pp. 326-27; Duggan, *Armsbearing and the Clergy*, cit., p. 20; R. A. Markus, *Gregory the Great and His World* (Cambridge: Cambridge University Press, 1997), pp. 100 ff.
- 15 Duggan, *Armsbearing and the Clergy*, cit., pp. 22, 24. The traditional belief that Leo actually led troops at Civitate has recently been challenged by Charles D. Stanton, whose marshaling of the evidence indicates that he watched the battle from the city walls: ‘The Battle of Civitate: A Plausible Account’, in *Journal of Medieval Military History* 11 (2013), pp. 25-55, pp. 46-47.
- 16 N. Housley, ‘Pope Pius II and Crusading’, *Crusades* 11 (2012), pp. 209-47; L. Duggan, ‘Were Nicholas V and Pius II Really Renaissance Popes?’, in *Where Heaven and Earth Meet: Essays on Medieval Europe in Honor of Daniel F. Callahan*, ed. by M. Frassetto and others (Leiden & Boston: Brill, 2014), pp. 63-78, especially pp. 77-78.
- 17 I. S. Robinson would include Leo IX in effecting this momentous shift: *The Papal Reform of the Eleventh Century: Lives of Pope Leo IX and Pope Gregory VII*, ed. and trans. by I. S. Robinson (Manchester & New York: Manchester University Press, 2004, Medieval Sources).

date)<sup>18</sup>. What lay behind this unprecedented legislation? Very likely the vulnerability of the crusader states in the Holy Land exposed in 1119, the year before. Around Easter (6 April) a large group of about 700 pilgrims was attacked in the barren region between Jerusalem and the River Jordan; 300 were killed and 60 captured. And on 27 June, Prince Roger of Antioch and his army perished on the “Field of Blood” (*ager sanguinis*) in his vain effort to attack Aleppo. Antioch now stood defenseless. Its patriarch, Bernard, driven by necessity, ordered that clergy, monks, and laymen guard the walls of the city, and it was he, “nocte et die cum armato suo clero et militibus”, who protected the city until the arrival of King Baldwin of Jerusalem<sup>19</sup>. Was the legislation at Nablus six months later meant to justify *ex post facto* the earlier behavior of the patriarch of Antioch and his clergy? Perhaps, although the patriarch of Jerusalem had no jurisdiction over Antioch. It seems more likely that Warmund and the entire episcopate of the Kingdom (who were all present at Nablus) meant this provision to apply to their own clergy should similar dangers arise – and both the prologue to the canons of Nablus and a nearly contemporaneous letter Warmund sent to Archbishop Diego of Compostella reveal how frightened Warmund was of a Saracen world closing in on all sides<sup>20</sup>.

Warmund was evidently also the principal ecclesiastical sponsor of the other, possibly related development that may also have occurred at Nablus, but (according to Rudolf Hiestand) certainly did take place sometime between 14 January and 13 September 1120<sup>21</sup>. At the hands of Patriarch Warmund, Hugh of Payns, Godfrey of Saint-Omer, and certain other French knights pledged to live “more canonicorum regularium” (as regular canons, not monks, as is so commonly thought) and accordingly took vows of poverty, chastity, and obedience; and, in return, Warmund and his fellow bishops enjoined upon these consecrated knights, for the remission of their sins, the principal task of keeping roads and highways safe for pilgrims against thieves and highwaymen. Now if this solemn dedication did take place at the council of Nablus in January, is it possible that one reason for the passage of canon 20 was to cover this unprecedented situation? For although the so-called Hospitallers had been developing in the Holy Land since the later eleventh century to care for the sick and needy, these new armed,

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- 18 B. Kedar, ‘On the Origins of the Earliest Laws of Frankish Jerusalem: The Canons of the Council of Nablus, 1120’, in *Speculum* 74 (1999), pp. 310-36, especially p. 334, c.20 (‘If a cleric bears arms for the sake of defense, he is not to be held at fault’); Duggan, *Armsbearing and the Clergy*, cit., pp. 102-07. For a recent thorough discussion of this council, see M. Barber, *The Crusader States* (New Haven, CT & London: Yale University Press, 2012), pp. 129-32, who however does not remark on the connection of Warmund with these two new, interrelated developments (pp. 133-35).
- 19 *Galterii Cancellarii bella Antiochena*, ed. by H. Hagenmeyer (Innsbruck: Wagner’sche Universitäts-Buchhandlung, 1896), 2.8.6-8, pp. 95-96: ‘night and day with his armed clergy and soldiers.’
- 20 Duggan, *Armsbearing and the Clergy*, cit., pp. 102-03; Barber, *Crusader States*, cit., pp. 132-34. Warmund’s letter is in *Letters from the East: Crusaders, Pilgrims and Settlers in the 12th-13th Centuries*, trans. by M. Barber and K. Bate (Farnham, Surrey-Burlington, VT: Ashgate, 2010, Crusade Texts in Translation 18), pp. 42-44.
- 21 R. Hiestand, ‘Kardinalbischof Matthäus von Albano, das Konzil von Troyes und die Entstehung des Templarordens’, in ZKG 99 (1988), pp. 295-325, pp. 317-19. For the disappointingly little that we know about Warmund, see Duggan, *Armsbearing and the Clergy*, cit., pp. 106-07, especially nn. 22 and 26.

consecrated knights, soon to be known as ‘Templars’, were revolutionary indeed and required nearly another twenty years before they were approved completely by Rome<sup>22</sup>. This company received formal recognition and initial statutes in January 1129 at the council of Troyes, presided over by a papal legate, Matthew Cardinal of Albano; was vigorously defended in a treatise *De laude novae militiae* (*On the New Knighthood*) by Bernard of Clairvaux, arguably the most influential figure in all Europe in the second quarter of the twelfth century<sup>23</sup>; and finally fully accepted as an ‘order’ (*religio et ueneranda institutio*) in the privilege *Omne datum optimum* in 1139, promulgated by Pope Innocent II, who cited John 15:13 in underscoring the task of these *milites Templi* to protect their fellows Christians against pagan incursions, defend the Church, and attack the enemies of Christ. Two additional bulls, *Milites Templi* (1144) and *Militia Dei* (1145), completed the establishment of this new way of religious life<sup>24</sup>. Between the approbation of Troyes, the juggernaut of Bernard of Clairvaux’s rhetoric in his *De laude novae militiae*, and the blessing of Pope Innocent II, the opposition to this very great novelty was largely bowled over (but not entirely, as we have been recently reminded<sup>25</sup>), and the way was now paved for Pope Alexander III (1159–81).

For it was he, more than any other supreme pontiff, who appears to have connected the two separate but possibly related developments going back to Patriarch Warmund and the Holy Land in 1120. It was during his long pontificate that not just the three major Spanish military orders (which is usually what is emphasized), but in fact the five Iberian military orders came into being with full papal recognition (Calatrava in 1164, Mountjoy or Montegaudio in 1173, Santiago in 1175, and Evora and Alcantara by 1176)<sup>26</sup>, including the additional significant innovation of allowing the consecrated knights of the Order of Santiago de Compostella to be married as long as they practiced ‘conjugal chastity’, thereby further eroding the already porous traditional boundaries

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- 22 On the original *and* continuing differences between the Hospitallers and the Templars, see the salutary reminder of J. Riley-Smith, *Templars and Hospitallers as Professed Religious in the Holy Land* (Notre Dame, IN: University of Notre Dame Press, 2010), especially pp. 61–65. On the other hand, for similarities between the military and monastic orders, see T. Licence, ‘The Military Orders as Monastic Orders’, in *Crusades* 5 (2006), pp. 39–53.
- 23 On the dating of this significant treatise, S. Z. Conedera, S.J., *Ecclesiastical Knights: The Military Orders in Castile, 1150–1330* (New York: Fordham University Press, 2015), p. 24, says that Bernard composed it sometime between 1130 and 1136, but also reports Dominic Selwood’s argument that Bernard wrote it before the council of Troyes of 1129 (p. 159, n. 39).
- 24 See *The Templars: Selected Sources*, ed. and trans. by M. Barber and K. Bate (Manchester & New York: Manchester University Press, 2002), pp. 1–66.
- 25 See Conedera, *Ecclesiastical Knights*, cit., pp. 28–29 and 163–64 nn. 83–86, especially on John of Salisbury, Walter Map, and Isaac of Stella; and, more generally, M. Aurell, *Des Chrétiens contre les croisades. XII<sup>e</sup>–XIII<sup>e</sup> siècle* (Paris: Fayard, 2013).
- 26 A. Forey, *The Military Orders from the Twelfth to the Early Fourteenth Centuries* (Toronto: University of Toronto Press, 1992), pp. 23–32, especially pp. 23–24; D. Smith, ‘Alexander III and Spain’, in *Pope Alexander III (1159–81): The Art of Survival*, ed. by P. Clarke and A. Duggan (Farnham, Surrey–Burlington, VT: Ashgate, 2012, Faith and Culture in the Medieval West), pp. 212–19; A. Duggan, ‘Alexander ille meus: The Papacy of Alexander III’, in *Pope Alexander III*, cit., pp. 13–49, p. 42; Conedera, *Ecclesiastical Knights*, cit., passim. Only two additional military orders came into being thereafter in Iberia (c. 1200 and in the 1270s).

between clergy and laity<sup>27</sup>. It was also Alexander, responding to questions that flowed into the curia and working with what Anne Duggan has accurately called his ‘legal eagles’<sup>28</sup>, who ruled in a series of letters that, like everyone else, the clergy enjoyed the right in natural and in Roman law of self-defense, specifically of the right to repel force with force (*vim vi repellere*). These decisions came to be incorporated into the various compilations of canon law, and in turn fully justified the military-religious orders by extending the right of self-defense to all clergy. The pope, the supreme legislator and judge in the (western) Church, had ruled definitively on the matter, and Alexander had therefore implicitly rejected St Ambrose’s position on the clergy and self-defense (‘The arms of the clergy are tears and prayers’) – but then the bishop of Rome always trumps the archbishop of Milan (as the latter had already been firmly reminded in the eleventh century over the use of the term *papa*).

The full significance of this monumental decision of Alexander on the clergy and self-defense was first recognized by Stephan Kuttner, who in his masterful *Kanonistische Schuldlehre* of 1935 traced these decisions of Alexander III<sup>29</sup>. A major impediment to acknowledging clearly the role of this pope here has evidently been the traditional but erroneous identification of Pope Alexander with the canonist Master Roland of Bologna, who in his commentary on Gratian had taken the unusual position of flatly denying legitimate armsbearing to clergy in major orders, but allowing it to those in minor orders<sup>30</sup>. One sees this assumption that it was Master Roland of Bologna who became Pope Alexander III as recently as 1980 in Ernst-Dieter Hehl’s book on the Church and war in the twelfth century<sup>31</sup>. It was, in fact, only in 1977 and 1980 that John T. Noonan Jr., and Rudolf Weigand, respectively, showed independently that the future pope was not Master Roland of Bologna, but rather Roland of Siena, cardinal priest of S. Marco and Chancellor of the Roman Church<sup>32</sup>. It is telling, nevertheless,

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- 27 *The Rule of the Spanish Military Order of St James 1170-1493*, ed. and trans. by E. Gallego Blanco (Leiden: Brill, 1971), cc.12-15, 25, pp. 99-103, 109; Forey, *Military Orders*, cit., p. 189; Conedera, *Ecclesiastical Knights*, cit., pp. 43-44, 67-68.
- 28 A. Duggan, ‘Master of the Decretals: A Reassessment of Alexander III’s Contribution to Canon Law’, in *Pope Alexander III*, cit., pp. 365-417, especially pp. 384, 386-87.
- 29 Duggan, *Armsbearing and the Clergy*, cit., pp. 128-40, especially p. 137 ff., who acknowledges his debt on this point (p. 129 n. 103, and p. 137 n. 140) to the great S. Kuttner, *Kanonistische Schuldlehre von Gratian bis auf die Dekretalen Gregors IX. Systematisch auf Grund der handschriftlichen Quellen dargestellt* (Città del Vaticano: BAV, 1935; repr., 1961, *Studi e testi* 64), pp. 334-79, especially pp. 344-46, 349-54, who consistently identifies Alexander as *the* pope initiating these new developments, and who confirmed this finding in a conversation with the author in Princeton in 1987.
- 30 *Die Summa Magistri Rolandi, nachmals Papstes Alexander III., nebst einem Anhang: Incerti auctoris quaestiones*, ed. by F. Thaner (Innsbruck: Wagner, 1874; repr., Aalen: Scientia Verlag, 1962), on C.23 q.8, p. 98.
- 31 E-D. Hehl, *Kirche und Krieg im 12. Jahrhundert. Studien zum kanonischen Recht und politischer Wirklichkeit* (Stuttgart: A. Hiersemann, 1980, *Monographien zur Geschichte des Mittelalters* 19), pp. 188 ff., a misidentification which helps explain what appears to be a rather confusing discussion of the positions of later canonists on pp. 236-38.
- 32 See A. Duggan, ‘Alexander ille meus’, cit., pp. 14-16, especially p. 14 n. 4 for the historiography, who also notes that it was only in the fourteenth century that the Bandinelli of Siena began to claim Alexander as a relative (p. 15, n. 9).

that Kuttner's findings about the clergy and the right of self-defense have still not yet been fully incorporated into the literature, including a contribution by Charles Reid in the 2011 *Festschrift* for James Brundage on the rights of self-defense and justified warfare in the writings of the canonists of the twelfth and thirteenth century, an essay which says nothing about the clergy and self-defense<sup>33</sup>. In a very recent article on the right of self-defense in the same period, Peter Clarke does observe that the clergy did come to be included under the right *vim vi repellere* in the discussions of the canonists, but he does not underscore the point that it was Alexander III who decided the matter definitively<sup>34</sup>. These changes were, in any event, understood by churchmen by the thirteenth century. If one looks to the legislation of councils and synods all over Europe from then onward, flat prohibitions of clerical armsbearing occasionally appear, but increasingly one finds allowable exceptions (especially for travel and self-defense, and sometimes for the defense of the faith or of the Church) and only qualified condemnations (usually only of *arma aggressionis*, but not *defensionis*)<sup>35</sup>.

Alexander III's own general council, Lateran III of 1179, interestingly neither records nor alludes to any of these developments regarding the 'clergy' and armsbearing, but in its very last canon (c.27) *seems* to declare what can only be called a 'crusade' against the Cathars and other heretics infesting Europe, *and* also against mercenaries ravaging it, granting an indulgence of two years or more to those who participated in it<sup>36</sup>. This crusade was hardly an isolated phenomenon. On the contrary, Jonathan Riley-Smith has noted a number of crusades declared by popes between 1157 and 1184, but they all produced few if any results, which probably largely explains why they are largely forgotten, even in histories of the crusades<sup>37</sup>. Most of these abortive crusades fell during Alexander's long reign. Here again Alexander has arguably been effectively denied credit that is usually accorded later popes, especially Innocent III. That Alexander was an extraordinary lawgiver who arguably did more than any other pope to shape the canon law on canonization, the conferral of benefices, the system of vicars, marriage, papal electoral procedure, majority decision-making (including *maior et sanior pars*),

33 Reid's essay is otherwise excellent: C. Reid Jr., 'The Rights of Self-Defence and Justified Warfare in the Writings of the Twelfth- and Thirteenth-Century Canonists', in *Law as Profession and Practice in Medieval Europe. Essays in Honor of James A. Brundage*, ed. by K. Pennington and M. Harris Eichbauer (Farnham-Burlington: Ashgate, 2011), pp. 73-91; also, A. Duggan, 'Master of the Decretals', cit., discusses the eleven-point inquiry from Archbishop Romuald of Salerno in which the subject of clerical violence does come up (pp. 381-82), but otherwise does not take up this topic in her splendid coverage of Alexander's achievement.

34 P. Clarke, 'Legitimate Self-Defence in Medieval Theory and Practice: the European *Ius commune* and English Common Law Compared', in *RIDC* 25 (2014), pp. 123-54, especially p. 125.

35 Duggan, *Armsbearing and the Clergy*, cit., pp. 145-61, 182-200.

36 COGD, pp. 145-47; COD, pp. 224-25. On this possible crusade of 1179 and its larger context, see the excellent essay by N. Housley, 'Crusades against Christians: their Origins and Early Development, c. 1000-1216', in *Crusade and Settlement. Papers Read at the First Conference of the Society for the Study of the Crusades and the Latin East and Presented to R. C. Smail*, ed. by P. Edbury (Cardiff: University College Cardiff Press, 1985), pp. 17-36, especially pp. 25-26, who also remarks that Alexander interestingly did not follow earlier papal precedents and declare a crusade against his arch-foe, Frederick Barbarossa (p. 24).

37 J. Riley-Smith, *The Crusades. A History* (New Haven: Yale University Press, 2005<sup>2</sup>), pp. 131 ff.

judges delegate, and papal appellate jurisdiction has come to be recognized<sup>38</sup>. Now his contributions to the militarization of the clergy and of the Church deserve to be added to this long list of distinctive and influential features of his papacy.

This brings us to Innocent III and his Lateran council of 1215, which, like Alexander III's, was convened toward the end of his pontificate and efficiently conducted within the space of a month. Given all the legal and institutional developments of the previous hundred years, it comes as no surprise that there appears no interdiction on clerical armsbearing as such. The sixteenth constitution is devoted principally to the dress of clerics, but of the things that might be deemed warlike it forbids only "pectoralibus et calcaribus deauratis". It also goes on to say that "tabernas prorsus evitent, nisi forte causa necessitatis in itinere constituti"<sup>39</sup>. On this point of allowing exceptions for necessity, Lateran IV went well beyond its three predecessors. Thanks to the research of Kenneth Pennington and Franck Roumy we now know that the principle "necessity knows no law" was not of classical Roman origin, but rather a creation of the Christian Church. Although it goes back to Popes Leo I (440-61) and Gelasius (492-96), it began to be cited frequently only from Bede onward. By the twelfth and thirteenth centuries it appears in the writings of Bernard of Clairvaux, St Albert (founder of the Carmelites), and Francis of Assisi, as well as in Gratian and in the "Rules of Law" (*Regulae iuris*) of Boniface VIII's *Liber Sextus* (1298)<sup>40</sup>. In the decrees of the four Lateran councils, however, it only bursts forth in Lateran IV, and there no fewer than seven times. From now on, necessity and travel would both routinely provide clergy with valid reasons to bear defensive arms<sup>41</sup>.

Two other canons of Lateran IV seem more directly relevant to clerical armsbearing. Constitution 18 concerns "de iudicio sanguinis et duelli clericis interdicto"<sup>42</sup>. Its strictures need to be read closely. Canon 27 of Lateran III had opened with these words: "Sicut ait beatus Leo, licet ecclesiastica disciplina, sacerdotali contenta iudicio, cruentas effugiat ultiones..."<sup>43</sup>. The principle of clerical abstention from the shedding of blood would therefore seem to go back to at least Pope Leo the Great in his letter to

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- 38 Besides A. Duggan, 'Master of the Decretals', cit., passim, see also K. Pennington, 'Pope Alexander III', in *The Great Popes through History: An Encyclopedia*, ed. by F. Coppa (Westport, CT: Greenwood Press, 2002), 1, pp. 113-22.
- 39 COGD, p. 176; COD, p. 243: 'breast-plates and spurs that are gilded', and 'let [clerics] avoid taverns altogether, unless by chance they are obliged by necessity on a journey'.
- 40 K. Pennington, 'Innocent III and the *Ius commune*', in *Grundlagen des Rechts: Festschrift für Peter Landau zum 65. Geburtstag*, ed. by R. Helmholz and others (Paderborn: F. Schöningh, 2000), pp. 349-66; F. Roumy, 'L'origine et la diffusion de l'adage canonique *Necessitas non habet legem* (VIII<sup>e</sup>-XIII<sup>e</sup> s.)', in *Medieval Church Law and the Origins of the Western Legal Tradition. A Tribute to Kenneth Pennington*, ed. by W. Müller and M. Sommar (Washington, DC: Catholic University of America Press, 2006), pp. 301-19. On the possible significance of Bede in formulating and spreading this principle, see G. H. Brown, *A Companion to Bede* (Woodbridge, Suffolk-Rochester, NY: The Boydell Press, 2009, Anglo-Saxon Studies 12), pp. 117-34.
- 41 Duggan, *Armsbearing and the Clergy*, cit., pp. 124-26.
- 42 COGD, p. 177 ('On sentences involving either the shedding of blood or a duel being forbidden to clerics'); COD, p. 244.
- 43 'As St Leo says, though the discipline of the Church should be satisfied with the judgment of the priest and should not cause the shedding of blood...': COGD, p. 145; COD, p. 224.



Bishop Turribus of Astorga<sup>44</sup>, but there does not seem to be much if any literature on this significant subject. The best treatment I have discovered is by Darryl Amundsen, who finds no pertinent legislation before the twelfth century and very confusing and contradictory legislation in the twelfth and thirteenth<sup>45</sup>. Here, in c.18 of Lateran IV, clerics are forbidden to pronounce judgments or execute actions involving the shedding of blood in a number of ways, including secular justice, surgery, and ordeals. A little different is the curious stipulation that “Nullus quoque clericus ruptariis vel balistariis aut huiusmodi viris sanguinum praeponatur”<sup>46</sup>, which can be read as a prohibition on compelling clerics to do such things (rather than forbidding them to take command on their own initiative), or as a condemnation of vile mercenaries and lowborn crossbowmen (already condemned earlier in Lateran II, c.29<sup>47</sup>), but not necessarily of true knights acting rightly. However one construes this canon cobbled together out of related yet still disparate elements, it is not a prohibition on clerical armsbearing in any form. In fact, in view of the changes that had been enacted in the twelfth century, one would venture to speculate that the specifications here concerning the clergy and the shedding of blood now limited what previously might have been a sweeping prohibition and thus, *ex silentio*, allowed clergy to shed blood in defense of the faith and themselves.

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- 44 PL 54:680A. A slightly different translation appears in B. Neil, *Leo the Great* (Oxford & New York: Routledge, 2009, *The Early Church Fathers*), p. 84: ‘Although [the Church] is content with the judgments of priests and avoids bloody vengeance, it is helped nevertheless by the strict regulations of Christian emperors, since those who fear corporal punishment sometimes have recourse to spiritual cures’. In any event, Leo is here evidently not alluding to a law, but only a principle or an ideal; and it is revealing that c.27 of Lateran III cites no other text earlier or later than this one.
- 45 D. Amundsen, ‘Medieval Canon Law on Medical and Surgical Practice by the Clergy’, in *Bulletin of the History of Medicine* 52 (1978), pp. 22-44, repr. in his *Medicine, Society, and Faith in the Ancient and Medieval Worlds* (Baltimore & London: The Johns Hopkins University Press, 1996), pp. 222-47. As for the supposed principle ‘ecclesia abhorret a sanguine’, Amundsen concurs with the earlier judgment of Charles H. Talbot that this is “a literary ghost” created in 1774 by François Quesnay, the famous physician and Physiocrat. On p. 41 (p. 237 of reprint), he cites with clear approbation the conclusion of C. H. Talbot, *Medicine in Medieval England* (London: Oldbourne, 1967), p. 55: “The famous phrase *Ecclesia abhorret a sanguine*, which has been quoted by every writer on medicine for the past two hundred years as the reason for the separation of surgery from medicine, is not to be found either in the text of the Council of Tours, 1163 A.D. (to which they all attribute it) or in any other Church Council. It cannot be found in the Decretals of the Popes nor in any of the medieval commentaries on canon law. It is a literary ghost. It owes its existence to [François] Quesnay, the uncritical historian of the Faculty of Surgeons at Paris, who in 1774, citing a passage from Pasquier’s *Recherches de la France* (‘et comme l’église n’abhorre rien tant que le sang’) translated it into Latin and put it into italics. No earlier source for this sentence can be found. Quesnay himself quoted a register from the archives of the Surgeons of Paris, in which it was stated that ‘at the time of Boniface VIII (1294-1303) and Clement V (1305-14) a decree was put forth at Avignon and confirmed by the council of Philip le Bel that surgery was separated from medicine’. No such decree can be found in the register of Boniface VIII, whilst among the ten thousand documents contained in the register of Clement V only one refers to medicine, and that concerns itself with studies at Montpellier”.
- 46 COGD, p. 175 (‘Moreover no cleric may be put in command of mercenaries or crossbowmen or suchlike men of blood’); COD, p. 244.
- 47 COGD, p. 113; COD, p. 203.

The other potentially germane legislation is the famous c.13 forbidding the creation of new religious orders. Was this meant to extend to the so-called military-religious orders? Thus far I have found no evidence to corroborate that hypothesis. Helen Nicholson observed that Innocent III evinced no objection to the militarization of the Teutonic Knights around 1199<sup>48</sup>, and Damien Carraz in an important recent article on precursors and imitators of the military orders from the eleventh to the thirteenth centuries uncovered no obstacles to the founding and approval of religious societies for defending the faith in the decades after Lateran IV (e.g., the Order of the Militia of the Faith of Jesus Christ in Toulouse in 1221, the Order of the Military Brothers of St James in Auch around 1225, or the Militia of Jesus Christ in Parma in 1233)<sup>49</sup>. When Thomas Aquinas, in one of the less familiar sections of his *Summa Theologica*, asked “whether a religious institute can be founded for military service?” he answered affirmatively and made no mention of c.13 of Fourth Lateran whatsoever:

Religio institui potest non solum ad opera contemplativae vitae, sed etiam ad opera vitae activae, in quantum pertinent ad subventionem proximorum et obsequium Dei, non autem in quantum pertinent ad aliquid mundanum tenendum. Potest autem officium militare ordinari ad subventionem proximorum, non solum quantum ad privatas personas, sed etiam quantum ad totius reipublicae defensionem ... Unde convenienter institui potest aliqua religio ad militandum, non quidem propter aliquid mundanum, sed propter defensionem divini cultus et publicae salutis; vel etiam pauperum et oppressorum, secundum illud Psalmi, eripite pauperem, et egenum de manu peccatoris liberate<sup>50</sup>.

In 1274, at the second council of Lyon, the bishops set out in c.23 the reform of the religious orders, and specifically of the many mendicant groups. In essentially forcing them into the four major orders of friars, the fathers of the council noted that the rules of Carmelites and the Augustinians predated Lateran IV and thus escaped c.13<sup>51</sup>. No question seems to have been raised at Lyon II at all about the military orders, so it would seem *ex post facto* that they were not intended to be covered by c.13 of Lateran IV. Besides, any new military orders after 1216, like the evolving mendicants, had a number of choices among already existing rules to adopt and adapt to define

48 H. Nicholson, *Templars, Hospitallers and Teutonic Knights. Images of the Military Orders, 1128-1291* (Leicester: Leicester University Press, 1993), p. 25.

49 D. Carraz, ‘Precursors and Imitators of the Military Orders: Religious Societies for Defending the Faith in the Medieval West (11th-13th c.)’, in *Viator* 41 (2010), pp. 91-111.

50 *Summa Theologica* 2a. 2ae.q. 188, art. 3 ad (trans. by the English Dominican Fathers [New York & London: McGraw-Hill and Eyre and Spottiswoode, 1964-73]), 47:191: ‘A religious institute can be founded not only for the works of the contemplative life but also for those of the active life, if they have to do with help to one’s neighbor and the service of God, and not for obtaining some worldly good. But military service can be directed to the assistance of one’s neighbors, not only as private persons, but also for the defense of the entire nation... Consequently, a religious institute can be fittingly founded for soldiering, not for worldly goods, but for the defense of divine worship and the public good, or of the poor and oppressed, as stated in Psalms [82:4]: “Rescue the poor, and deliver the needy out of the hand of the sinner”’.

51 COGD, pp. 343-46; COD, pp. 326-27.

their life and work – Cistercian, Augustinian, Templar, Santiago de Compostella, and others. None of the new ‘orders’ would have had to devise anything new or novel to define their existence. The essential novelties had already become law before 1216.

When one reviews all this evidence regarding armsbearing and the clergy, it is striking that the thirteen condemnations issued by the reformers between 1049 and 1095 came forth from councils, most of them presided over by popes or papal legates, but that what one might call the two-fold militarization of the clergy from 1120 onward (in the form of the acceptance of the military-religious orders and of the correlative right of clergy to repel violence with violence) largely bypassed high-level councils save for what happened at Nablus in 1120 and Troyes in 1129. The making of canon law had clearly passed to the popes, as Peter the Chanter intimated in his observations about Alexander III and the objections of ‘John of Chartres’ (presumably John of Salisbury, bishop of Chartres [1176-80]) to some of the decrees of Lateran III:

Item, patet decreta esse mobilia ex eo quod in corde domini pape sint, ut scilicet ea interpretetur ad libitum suum. Quod si secundum ea iudicaverit, iuste iudicavit; si contra ea similiter iuste iudicasse dicitur. In eius enim potestate est condendi, interpretandi, abrogandi canones<sup>52</sup>.

In short, on the matter of armsbearing and the clergy (however understood and defined), the ecumenical councils, including Lateran IV, had almost nothing to say about these fateful developments save for the curious pronouncements in passing of Vienne – which itself also had the monumental task of dealing with the matter of the Templars, the only major suppression of a religious order before the Reformations from the 1520s onwards, and over which the pope and his bishops and their council had very little control.

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52 ‘It is clear that the decrees can be changed, since they are in the heart of the lord pope and he may interpret them as he pleases. If he judges according to [the decrees], he judges justly; if he judges contrary to them, he is likewise said to have judged justly. For the making, interpreting [and] abrogating of the canons is in his power.’ *Petri Cantoris Parisiensis Verbum adbreuiatum. Textus prior*, ed. by M. Boutry, CCCM 196A (Turnhout: Brepols, 2012), c.46, p. 304. Quoted by I. S. Robinson, *The Papacy 1073-1198: Continuity and Innovation* (Cambridge: Cambridge University Press, 1990), p. 143, who cites the older text in PL 205:164BC, c.53. The last sentence alludes to C.25 q.1 d.p. c.16 § 2.