

# The Evolution of Latin Canon Law on the Clergy and Armsbearing to the Thirteenth Century<sup>1</sup>

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Contrary to what is widely assumed, the “Ten Commandments” issued by Almighty God to the Hebrew people forbade murder, not killing as such.<sup>2</sup> Interestingly, in renewing or stiffening the requirements of the Law on a number of issues such as divorce and hating one’s enemies, Jesus did not forbid killing, but instead addressed the anger that ordinarily animated killing.<sup>3</sup> Nor did he clearly enjoin his followers to be pacifists. While it is easy to hone in on the well-known passages about turning the other cheek, not resisting evil, and loving one’s enemies, one also needs to contextualize these words within the *whole* message he preached, which is unquestionably about love, repentance, forgiveness, love, and following and imitating him. Indeed, John’s Gospel records him as saying that “No one has greater love than this, to lay down one’s life for one’s friends” (15:13)—which a thousand years later became the most important biblical passage justifying crusading. Jesus also repeatedly said that loving him meant obeying his commandments (e.g., John 14:15). But what were his commandments? What did it mean to follow or imitate Christ? In struggling to figure out exactly what that meant, early Christians fastened on certain conditional words spoken by Jesus to the rich man (“If you wish to be perfect...,” Matt. 19:21) to articulate a crucial distinction between mandates, commands, or precepts binding on all, and counsels or suggestions offered to those who can and wish to do more than is required of all in their own imitation of Christ. A consensus developed that there were three evangelical counsels or forms of voluntary sacrifice in imitation of Christ’s sacrifice for the redemption of humankind—poverty, chastity, and obedience. Significantly, non-violence is not one of these counsels. Although from the outset there were Christians willing to die for their faith who came to be venerated as martyrs and listed at the top of the ranks of the saints, martyrdom has never been an obligation, but only an option for those blessed with the grace to go yet another extra mile for Christ. (By

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<sup>1</sup> This essay is both a condensed and modified version of the relevant material in Lawrence G. Duggan, *Armsbearing and the Clergy in the History and Canon Law of Western Christianity* (Woodbridge, UK and Rochester, NY, 2013).

<sup>2</sup> Exod. 20:1–21 and Deut. 5:6–21. The consensus of modern biblical scholars on this issue is reflected in the translations in English in the New Revised Standard Version (NRSV) of 1989.

<sup>3</sup> Matt. 5:21–26. On this point, see the discussion in Raymond E. Brown, et al., eds. *The New Jerome Biblical Commentary* (Englewood Cliffs, NJ, 1990), pp. 641–42.

comparison, when King Louis IX of France was canonized in 1297, he was accorded the title ‘confessor’ but denied the appellation ‘martyr,’ to the great disappointment of many Frenchmen, including his biographer, Jean de Joinville. Crusaders willing to fight and die for Christ might be canonized as saints, but were not martyrs in the eyes of the Roman Church.<sup>4</sup>)

Furthermore, Christ commanded his disciples not only to do and not do all sorts of hard things, but also to spread the gospel and “make disciples of all nations, baptizing them in the name of the Father and of the Son and of the Holy Spirit, and teaching them to obey everything that I have commanded you” (Matt. 28:19–20, the so-called Great Mandate). This in turn required crafting in specific words exactly what the message to be announced was (hence the preoccupation of his followers from the outset with articulating right belief and formulating creedal statements) as well as going on the road to preach the good news. Jesus helpfully gave his disciples some precise instructions about how to do this. After the Last Supper and predicting Peter’s betrayal, he went on to say: “When I sent you out without a purse, bag, or sandals, did you lack anything? They said, ‘No, not a thing.’ He said to them, ‘But now, the one who has a purse must take it, and likewise a bag. *And the one who has no sword must sell his cloak and buy one*” (Luke 22:36, emphasis added). Although these words of Jesus have rarely been noted (and quite possibly studiously ignored), they would seem to demolish at one stroke any residual notion that he meant his followers to practice pacifism.<sup>5</sup>

Despite his emphasis on obeying his commandments, Jesus’ attitude toward law was more complex than one might at first think. He announced that he came not to overthrow The Law, but to restore and fulfill it (Matt. 5:17); and when put to the test regarding The Law and the obligatory sabbath rest, he observed that the law was made for man, not man for the Sabbath (Mark 2:27; see also Matt. 12:3-8, 11-12; Luke 6:1-9, 13:14-6, 14:3-6). Furthermore, he gave first to Peter, then to the other apostles, not only the power to forgive sin, but to bind and to loose as well, to command and to forbid, without any evident restrictions (“*whatsoever you bind...*”: Matt. 16:18, 18:18). Although these eventually became some of the most important biblical passages in the evolution of medieval politics and political theory, more immediately they conferred enormous discretion on bishops in the forgiveness of sins and the adjudication of cases. This had several important consequences from the early history of the Church onward. First, in forgiving sins and administering the law, bishops and their advisers

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<sup>4</sup> Jean de Joinville and Geoffrey de Villehardouin, *Chronicles of the Crusades*, trans. Caroline Smith (London-New York, 2008), pp. 142, 334; William Chester Jordan, “Honouring Saint Louis in a Small Town,” *Journal of Medieval History* 30 (2004):263-77, at 266-68.

<sup>5</sup> The only mention and discussion of this passage that I recall encountering was on the 13 January 2013 online posting on “Fr. Z’s Blog” of Father John Zuhlsdorf, “Did Jesus tell the Apostles to buy weapons? Yes. To use them?” <http://wdtprs.com/blog/2013/01/did-jesus-tell-the-apostles-to-buy-weapons-yes-to-use-them/>

needed to determine how much and what kind of flexibility they could and should have in deciding particular cases. In the East this came to be known as “economy” (*oeconomia*), and in the West as “dispensation”.<sup>6</sup> The similarities and differences between the two approaches need not concern us here; one need only note that it is this kind of thinking that lies behind Augustine’s famous dictum, “Love and do what you will.”<sup>7</sup>

Second, it is a widespread notion that the legal principle that “necessity knows no law” was Roman in origin, but it has now been shown that it is in fact Christian. The Romans may have effectively thought that way (as witness the office of the *dictator*, and it was a theme in legal rhetoric), but nowhere did they articulate it as an explicit legal principle, not even in Justinian’s Code of the 530s. The emperors themselves may not have been bound by the law, but they were not at all likely to concede such flexibility to lower-level administrators of the law. The beginnings of the adage in Bede’s commentary from the 720s on Mark 2:27 were noticed by Stephan Kuttner in 1935 and then elaborated by Kenneth Pennington in 2000; but Franck Roumy in 2006 traced the dictum even farther back, significantly to letters of Popes Leo I in 451 and 456 and Gelasius in 493 (in other words, in the same century that Augustine wrote his famous words just quoted). It was also in 451 that the Council of Chalcedon employed this principle in forbidding monks to engage in secular business “unless they are perhaps assigned to do so by the local bishop *propter opus necessarium*.”<sup>8</sup> Pope Leo’s words of 451 then re-appeared in the influential seventh-century *Collectio Hispana* and then in Bede and in his pupil, Archbishop of Egbert of York (d. 766), and spread quickly from the 9th century onward, culminating in Gratian and Gregory IX’s *Rules of Law* (1234), establishing a new kind of suppleness in thinking about and administering law traced some time ago by Gaines Post for the Middle Ages.<sup>9</sup>

Even though these ideas and legal principles came to be fully elaborated only later, the thinking behind them goes farther back. Bishops in the early Church operated in a highly fluid

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<sup>6</sup> For a recent treatment, see Will Adam, *Legal Flexibility and the Mission of the Church. Dispensation and Economy in Ecclesiastical Law* (Farnham, UK and Burlington, VT, 2011), especially pp. 1–22.

<sup>7</sup> See Giles Constable, ‘Love and Do What You will’. *The Medieval History of an Augustinian Precept*, The Morton W. Bloomfield Lectures 4 (Kalamazoo, 1999).

<sup>8</sup> *Conciliorum Oecumenicorum Decreta*, c. 4, ed. Giovanni Alberigo et al., 3r ed. (Bologna, 1973), p. 89 (hereafter *COD*).

<sup>9</sup> Stephan Kuttner, *Kanonistische Schuldlehre von Gratian bis auf die Dekretalen Gregors IX.*, Studi e testi 64 (Vatican City, 1935, repr. 1961), p. 292; Kenneth Pennington, “Innocent III and the ‘Ius commune’,” in, *Grundlagen des Rechts. Festschrift für Peter Landau zum 65. Geburtstag*, ed. Richard Helmholz, Rechts- und staatswissenschaftliche Veröffentlichungen der Görres-Gesellschaft, n.F. 91 (Paderborn, 2000), pp. 349–66; Franck Roumy, “L’origine et la diffusion de l’adage canonique ‘Necessitas non habet legem’ (VIIIe-XIIIe s.),” in *Medieval Church Law and the Origins of the Western Legal Tradition. A Tribute to Kenneth Pennington*, ed. Wolfgang P. Müller and Mary E. Sommar (Washington, DC, 2006), pp. 301–19; Gaines Post, *Studies in Medieval Legal Thought. Public Law and the State, 1100-1323* (Princeton, 1964), pp. 8–9, 20–1, 241–309.

environment in leading Christian communities, shriving and judging cases, and at all times seeking to convert the whole world, including members of the ruling classes and the military. That there were Christian Roman soldiers by the third century is clearly documented, even if we have no idea how many there were and even though the old story of the Christian “Thundering Legion” in Dacia in the late second century has been discredited.<sup>10</sup> Some authorities like Origen and the “Apostolic Tradition” of Hippolytus of Rome expressed the rigid view that soldiering and Christianity were incompatible; but, as recent scholarship has increasingly stressed, there were many competing forms of early Christianities, some of which got lost in the course of time.<sup>11</sup> What scholars need to remember is that it was bishops, not scholars, who got to decide who was admitted to the ranks of Christians through catechesis and then baptism. Some of these bishops obviously accepted soldiers, presumably knowing that the Ten Commandments forbade murder, not killing as such, and that on this point Jesus had not only *not* strengthened that particular prohibition, but in fact had publicly praised the faith of the Roman centurion who had asked Jesus to cure his slave (Matt. 8). In addition, in seeking the conversion of rulers of Ethiopia, Syrian Osrhoene, and Armenia as well as the emperors of Rome,<sup>12</sup> bishops knew that in the exercise of rule all these men unavoidably shed blood, directly and indirectly by commanding the death of many others. For Christians, the far greater problem for soldiers, magistrates, and rulers than ineluctable killing was the worship of false gods and the sacrifices offered to them. All those “pagan” practices would have to be abandoned in their conversion to Christ, but not necessarily the violence they would have to employ in punishing malefactors and defending the good and innocent. There was no way around this, and Augustine, Thomas Aquinas, and Machiavelli (among many others) acknowledged as much when they coolly accepted that the job of a prince was to kill people. Thus Aquinas: “... the killing of malefactors is legitimate in so far as it is ordered to the well-being of the whole community. And so this right belongs only to those who are charged with the care of the whole community, just as it is the doctor who has been entrusted with the health of the whole body who may amputate a gangrenous limb. But the

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<sup>10</sup> For a recent summary, see Roger Tomlin, “Christianity and the Late Roman Army,” in *Constantine: History, Historiography and Legend*, ed. Samuel N. C. Lieu and Dominic Montserrat (London and New York, 2008), pp. 21–51; John F. Shean, *Soldiering for God: Christianity and the Roman Army* (Leiden, 2010).

<sup>11</sup> For this new way of talking about early Christianity, see Bart Ehrman, *Lost Christianities: The Battles for Scripture and the Faiths We Never Knew* (Oxford and New York, 2003).

<sup>12</sup> Diarmaid MacCulloch, *Christianity: The First Three Thousand Years* (London, 2009), pp. 176–89, who rightly stresses that Christianity was spreading eastward as well as westward.

care of the whole community has been entrusted to the rulers who exercise public authority, and so it is only they, and not private persons, who may execute malefactors.”<sup>13</sup>

In working to convert the world, the bishops got what they wanted with a vengeance with the gradual conversion of the Roman Empire over the space of a century, beginning with Constantine’s cessation of persecution and grant of toleration to all religions in 312, his active promotion of Christianity and creation of a Christian capital in Constantinople, the suppression of “paganism” in the decades after 380, the stipulation by 416 that only Christians could serve in the Roman army, and the retreat of adult baptism before the rising tide of infant baptism. This was, more than any other, the central moment in the gradual adoption of pressure or force in the spread of Christianity. Until the fourth century, those who contemplated conversion to Christianity were adults exercising free choice, who had to prove through learning and life their worthiness of admission and retention; but after the fourth century, Christianity was no longer a matter of choice for most people, for by imperial decrees it had come to be established in stages as the *sole* official religion of the Roman Empire.<sup>14</sup> Those who became Christians also brought their own cultural heritage with them, including Greco-Roman or Germanic ideas about the conduct of war. Finally, the fate of Christianity and Rome were now inextricably bound up with each other in parlous times in which the Empire was being overrun by Persians, Germanic peoples, and, later, Muslims.

Among the many architects of the massive transformation of Christianity required in these vastly altered circumstances were two bishops, Ambrose of Milan (ca. 339–397) and Augustine of Hippo (354–430). Augustine habitually gets the greater attention and credit, especially in laying the foundations for what later became known as the theory of the just war in which he stressed that it had to be declared by properly constituted public authority and conducted for the right reasons (not only self-defense, but also the righting of a wrong) and with the right intention (love and the restoration of peace, not the infliction of harm); but his mentor Ambrose deserves no less credit, especially on the subject of the clergy and armsbearing. Using Christian and Roman principles, Ambrose went so far as to deny the right in Roman and natural law of the private individual to defend himself against attack *and* to assert the moral obligation of the individual to come to the defense of others and of the Christian Roman Empire. It was an elegant reconciliation of Roman public duty and the

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<sup>13</sup> *Summa Theologiae*, 2a.2ae.64.3.resp.1, trans., with Latin text, introductions, notes, appendices, and glossaries, by the English Dominican Fathers. 61 vols (New York and London, 1964–81), 38:27.

<sup>14</sup> This point I underscore in “‘For Force is Not of God’? Compulsion and Conversion from Yahweh to Charlemagne,” in *The Varieties of Religious Conversion in the Middle Ages*, ed. James Muldoon (Gainesville, FL, 1997), pp. 49–62.

prohibition on private armsbearing, on the one hand, and, on the other, of Christ's great counsel to be prepared to lay down one's life for another. The tenets of Christianity now dovetailed nicely with the requirements of both internal peacekeeping and of patriotism.<sup>15</sup>

All this applied only to the laity, however, and more than any other thinker Ambrose insisted that the arms of a cleric were to be "tears and prayers." He only reflected, however, what had already become the law of the universal church. The Christian clergy from the outset abstained from violence. What had been previously been an important *moral option* for all Christians was now becoming a *legal requirement* for the clergy and monks, who from now on were to be among the "real Christians" in the sense that in shunning violence they had made a conscious choice to seek ordination and follow this particular higher, harder way in the imitation of Christ. The legislation of the Church began to clarify this new position. The Council of Nicaea in 325 equivocally condemned those who, having put off the *militiae cingulum* and entered the church (not the clergy), returned to their own vomit and the military.<sup>16</sup> The so-called "Apostolic Canons," imputed to the Apostles but in fact of later fourth-century Syrian origin, authoritatively summed up the new law. Of the eighty-five canons, two dealt with different aspects of the problem. Number 28 addressed clerical resort to violence: "We command that a bishop, or presbyter, or deacon who strikes the faithful that offend, or the unbelievers who do wickedly, and thinks to terrify them by such means, be deprived, for our Lord has nowhere taught us such things." The second (83) condemned military service: "Let a bishop, or presbyter, or deacon, who goes to the army, and desires to retain both the Roman government and the sacerdotal administration, be deprived. For 'the things of Caesar belong to Caesar, and the things of God to God' (Matt. 22:21)." Pope Innocent I (402–417) insisted on even greater stringency in a letter to a bishop of Rouen: "Similarly, if anyone after the forgiveness of his sins has worn the belt of secular military service, he should not ever be admitted to the clergy." In 451 the ecumenical council of Chalcedon forbade clergy or monks to take up military service or any secular office on pain of anathematization.<sup>17</sup> The council of Mâcon in 583 lumped together armsbearing with the wearing of military and indecorous clothing and specified thirty days on bread and water for all offenders. The fourth council of Toledo, attended by sixty-two bishops in 633, decreed that in accordance with the ancient canons no one could be ordained priest who had been found guilty of heresy, various grave crimes, or voluntary military service even while a layman. At

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<sup>15</sup> Duggan, *Armsbearing*, pp. 93–94, relying in particular on the material conveniently assembled in Louis J. Swift, ed., *The Early Fathers on War and Military Service* (Wilmington, DE, 1983).

<sup>16</sup> C. 12 in *COD*, pp. 11–12.

<sup>17</sup> C. 7 in *COD*, p. 90.

Bordeaux in 663/675, a council threatened canonical punishment for clergy found guilty of bearing arms or lances or wearing secular clothing. Around the same time (673/675) a council meeting at Losne simply forbade bishops and clerics to bear arms “in the secular manner.” At Lerida in 833 eight bishops treated clerics caught up in sieges and decided that they were to avoid shedding any blood, even the enemy’s, on pain of two years’ loss of office, exclusion from communion, and appropriate expiatory rites.<sup>18</sup>

There is a distinctive pattern to this legislation: interdiction to the clergy of military service and dress, and of the *bearing* of arms (usually *arma portare*). Significantly, neither provision would seem to exclude the possibility of bishops in particular seeing to the defense of their cities and directing military operations, especially at a distance from the battlefield. This is precisely what was happening from the fifth century onward in the disintegrating Christian Roman empire, where the collapse of Roman administration, especially in the West, often left bishops little choice about assuming the duties of the new office of *civitatis defensor*. Those bishops with doubts could assuage them by looking to no less stellar an example than Pope Gregory the Great (590–604), who vigorously saw to the defense of Rome and exhorted other bishops to tend similarly to their own. At the same time, he noted that he was careful to shed no blood himself.<sup>19</sup> If *he* had no problem with openly directing military activities and exhorting others, while at the same time abstaining from direct personal participation, then why should other bishops have had any? Given Gregory’s historical significance in so many different aspects of the history of the Church, this set a decisive precedent whose significance cannot be overestimated (no matter what Erasmus thought nearly a thousand years later about Julius II and other “warrior prelates”). In the late Roman context, one need always bear in mind that bishops bore responsibility for their Christian communities (which now comprised the entire population) and had been granted seemingly unrestricted jurisdiction by Christ himself, who had ruled that the law was made for man, not man for the law. Out of this situation, as we have seen, the principle began to emerge that “necessity knew no law,” beginning with prominent bishops of Rome in the fifth century, spelled out by Bede in the eighth, and spreading in the West from the ninth century onwards.<sup>20</sup>

As Aristotle would have remarked, however, all things tend toward corruption and degeneration, and so it was with the episcopate. Given the authority of bishops, by the seventh

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<sup>18</sup>Duggan, *Armsbearing*, pp. 94–96.

<sup>19</sup> *The Letters of Gregory the Great*, trans. John R. C. Martyn, *Medieval Sources in Translation* 40 (Toronto, 2004), 5.6, pp. 326–27.

<sup>20</sup> Duggan, *Armsbearing*, pp. 19–21.

century the aristocracy, who, whether by background Roman or Germanic, were accustomed to rule, naturally if gradually took over the episcopate and further militarized it. In Visigothic Iberia, King Wamba (672–680) issued in 673 his “great army law,” requiring all the clergy to come to the defense of the realm when summoned; and when his successor Erwig renewed the law in 681, he rejected their request for exemption.<sup>21</sup> In Frankish lands, on the other hand, under the increasingly weak Merovingian dynasty, bishops became so independent and powerful that in the eighth century the ascendant mayors of the palace, the Arnulfinger or Carolingians, resolved to bring the bishops under royal control by cooptation and making military obligation the general rule for the bishops and abbots of their lands. Even if these prelates did not themselves use weapons, they were expected to supply and ordinarily to lead large contingents of troops in the service of the king. Friedrich Prinz has, through careful study of the Frankish legislation of the eighth and ninth centuries, reconstructed how this happened.<sup>22</sup> Even before they seized the Frankish throne from the long-lived Merovingians in 751, Charles Martel’s two sons brought bishops and abbots within the ranks of the royal armies and accommodated ecclesiastical law accordingly. In April 742 Carloman convened a *Concilium Germanicum* over which St Boniface presided. While it interdicted the use of weapons to the clergy, it specifically permitted chaplains to accompany the troops and one or two bishops to accompany the leaders of campaigns. Now this innovation occurred at an opportune moment when the old practice of once-in-a-lifetime confession, customarily made toward the end of life, was giving way to the novelty of repeatable confession, which now created the possibility and in fact the need for priests to shrive soldiers about to go into battle. This legislation of 742 has been called the foundation charter of the military chaplaincy.<sup>23</sup> Priests, and bishops, were now *needed* close to the battlefield to minister to those ready to die. The comparable council in Pepin’s part of the Frankish kingdom met at Soissons in 744. It decreed only that *abbates legitimi* (i.e. ordained abbots, not lay abbots) were not to go to war. The suspicion that bishops were deliberately passed over in silence and that ordained abbots themselves could still go along on campaigns as non-combatants is confirmed by the legislation of Pepin’s son Charlemagne (768-814). The *Admonitio generalis* of 789, the

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<sup>21</sup> *Ibid.*, p. 21.

<sup>22</sup> Friedrich Prinz, “King, Clergy and War at the Time of the Carolingians,” in *Saints, Scholars and Heroes: Studies in Medieval Culture in Honour of Charles W. Jones*, ed. Margot King and Wesley Stevens (Collegeville, MN, 1979), 2:301–29, and more comprehensively *idem*, *Klerus und Krieg im frühen Mittelalter: Untersuchungen zur Rolle der Kirche beim Aufbau der Königsherrschaft*, Monographien zur Geschichte des Mittelalters 2 (Stuttgart, 1971).

<sup>23</sup> David S. Bachrach, *Religion and the Conduct of War c. 300-1215* (Woodbridge, 2003), pp. 39–46; *idem*, “The Medieval Military Chaplain and His Duties,” in *The Sword of the Lord: Military Chaplains from the First to the Twenty-First Century*, ed. Doris L. Bergen (Notre Dame, IN, 2004), pp. 69–88, at 75–76.

special capitulary for the *missi dominici* in 802, and some of the later legislation of his successors all forbade priests and deacons to bear arms; they say nothing about bishops or abbots. That this was calculated preterition, Prinz believes, is made quite clear by comparison with parallel legislation on hunting, in which bishops and abbots continued to be explicitly forbidden to engage. The ecclesiastical laws of the Carolingian empire thus *ex silentio* exempted prelates from the traditional canonical ban on armsbearing. Whether the initiative came from the crown or the clergy cannot be determined, although it is reasonable to suspect the complicity of both. In any event, the implied modification in law here was not purely ecclesiastical in origin or form.<sup>24</sup> (There was a curious contemporary parallel from Anglo-Saxon England, where the first archbishop of York and student of Bede, Egbert [735–766], compiled “Excerpts from the Sayings and Canons of the Holy Fathers,” one of which was of Roman provenance and stipulated that since clergy were forbidden to use arms or go to war, priests and deacons who died in war or fighting were to be denied prayers and offerings, but not Christian burial. Was the omission of bishops here inadvertent?<sup>25</sup>).

After Charlemagne’s death, a reaction set in against such tendencies. Synods at Meaux and Paris in June 845 and February 846, respectively, forbade *arma militaria* to “whoever are seen to be of the clergy” on pain of degradation. A council at Ticino in 876 forbade all in holy orders to carry arms on military expeditions, and another at Metz in 888 interdicted all armsbearing to all clerics. Pope Nicholas I (858–867), the most decisive pope of the century, actually forbade bishops to mount watch against pirates lest they become too involved in secular matters. Although a later pope, John VIII (872–882), appealed to Charles the Bald and his bishops for aid against the Saracens (implying thereby that bishops could legitimately provide military aid), it was Nicholas’ letter and attitudes, rather than Pope John’s, that would later be remembered in the twelfth century.<sup>26</sup>

Curiously, this reaction occurred precisely at the moment when Europe was experiencing a second wave of invasions from all directions at the hands of Norsemen, Magyars, and Saracens from the late eighth century until well into the eleventh. Everywhere, more prelates and clerics than ever before seem to have appeared on the battlefield and participated in fighting. Nevertheless, the Church seems to have remained implacably hostile to the shedding of blood, even by laymen, even in battle. In 923 the obligation to perform penance was imposed on all the troops of King Charles the Simple and Count Robert of Paris

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<sup>24</sup> Duggan, *Armsbearing*, pp. 96–97.

<sup>25</sup> *Ibid.*, p. 95.

<sup>26</sup> *Ibid.*, p. 97.

who had participated in the battle of Soissons in June. And sometime after the battle of Hastings (probably 1067), all who had killed, wounded, or even participated in that battle were obliged to atone according to a tariff of penances evidently prescribed by the Norman bishops and approved by the papal legate, Bishop Ermenfrid of Sion. This is the last known such incident embodying such obligatory penitential rigor in the Middle Ages.<sup>27</sup>

As for the clergy, the leaders of the great reform movement of the eleventh century—often misleadingly called the Gregorian reform movement or Investiture Controversy—set out to purify the clergy and set it apart from secular society and its entanglements. To that end, they condemned armsbearing by the clergy on a level and a scale never seen before or since. Beginning with Pope Leo IX (1049–1054, who ironically as pope led troops in vain against the Normans at Civitavecchia in 1053), in twelve major councils between 1049 and 1079 the reformers flatly condemned clerical armsbearing. Popes presided over two of them (Rheims in 1049, Rome in 1059), papal legates over no fewer than another six (Narbonne in 1054, Tours in 1060, Normandy around 1067, Gerona in 1068 and 1078, and Poitiers in 1079). (The other four councils convened at Coyanza in 1050, Compostella in 1056, Windsor in 1070, and Rouen in 1074.) In addition, in 1095 at the council of Clermont, where he preached what came to be called the “first crusade,” Pope Urban II also renewed the prohibition, which Calixtus II in turn evidently repeated at Rheims in 1119. And a hundred years later, when Gregory IX issued the first official papal collection of canon law in 1234, the *Decretales*, he and his redactor, Raymond of Peñafort, chose to repeat the simple decree of the council of Poitiers of 1079: “Clerics bearing arms and usurers are excommunicated.” This straightforward text is the foremost reason why almost everyone down to the present has thought that this was and still is *the* law of the Roman Catholic Church on the matter.<sup>28</sup>

Yet behind this simple declaration of a principle or ideal, developments had been taking place for over a century which undercut or significantly modified it.<sup>29</sup> If one cuts through the endless thickets of discussion initiated above all by Gratian and continued by scholars all over Europe (which is what modern scholars naturally prefer to read and ponder) and instead looks to what the bishops were doing, especially 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

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<sup>27</sup> Ibid., p. 98. Cf. Bernard J. Verkamp, *The Moral Treatment of Returning Warriors in Early Medieval and Modern Times* (London, 1993).

<sup>28</sup> Ibid., pp. 99–100.

<sup>29</sup> For this changing context and the reasons for it, which limitations of space preclude from treatment here, see *ibid.*, pp. 107–27.

intertwined great breakthroughs occurred in the crusader Kingdom of Jerusalem in 1120, and behind them both was the Patriarch of Jerusalem, Warmund or Gormund of Picquigny (1118–1128). On 16 January 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 “If a cleric bears arms for the sake of defense, he is not to be held at fault.” In addition, a cleric who abandoned tonsure to become a knight, 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 date).<sup>30</sup> What lay behind this unprecedented legislation? Very likely the vulnerability of the crusader states in the Holy Land made pellucidly clear in 1119, the year before. Around Easter 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, “with his armed clergy and knights,” who protected the city until the arrival of King Baldwin of Jerusalem. Was the legislation at Nablus several 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 he sent to Archbishop Diego of Compostella reveal how frightened Warmund was of a Saracen world closing in on all sides.<sup>31</sup>

Warmund was evidently also the principal ecclesiastical sponsor of the other, possibly related development which may also have occurred at Nablus, but (according to Rudolf Hiestand) certainly did sometime between 14 January and 13 September 1120.<sup>32</sup> At the hands of Warmund, Hugh of Payns, Godfrey of Saint-Omer, and certain other French knights pledged to live “in the manner of regular canons” and accordingly took vows of poverty, chastity, and obedience; and in return Warmund and his fellow bishops enjoined upon these

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<sup>30</sup> Ibid., pp. 102–7. For a recent thorough discussion of this council, see Malcolm Barber, *The Crusader States* (New Haven, CT, , 2012), pp. 129–32), who however does not remark on the connection of Warmund with these two new, interrelated developments (pp. 133–35).

<sup>31</sup> Duggan, *Armsbearing*, pp. 102–3; Barber, *Crusader States*, pp. 132–34.

<sup>32</sup> Rudolf Hiestand, “Kardinalbischof Matthäus von Albano, das Konzil von Troyes und die Entstehung des Templarordens,” *Zeitschrift für Kirchengeschichte* 99 (1988), 317–19.

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 late eleventh century to care for the sick and needy, these new armed, consecrated knights, soon to be known as “Templars,” were revolutionary indeed and required nearly another twenty years before they were accepted fully by Rome. This company received formal recognition and initial statutes at the council of Troyes in January 1129, presided over by a papal legate, Matthew Cardinal of Albano; was vigorously defended in a treatise “On the New Knighthood” by Bernard of Clairvaux, arguably the most influential figure in all Europe in the second quarter of the twelfth century; 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>33</sup>

It was Pope Alexander III (1159–1181), more than any other supreme pontiff, who appears to have connected these two separate but possibly related developments going back to Patriarch Warmund and the Holy Land in 1120. It was during Alexander’s pontificate that the five great Iberian military orders came into being with full papal recognition (Calatrava in 1164, Mountjoy in 1173, Santiago in 1175, and Evora and Alcantara by 1176),<sup>34</sup> including the novelty of allowing the consecrated knights of the Order of Santiago di Compostella to be married as long as they practiced “conjugal chastity,” further eliding traditional boundaries between clergy and laity.<sup>35</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>36</sup> who

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<sup>33</sup> See Malcolm Barber and Keith Bate, trans. and eds., *The Templars. Selected Sources* (Manchester and New York, 2002), pp. 1–66.

<sup>34</sup> Alan Forey, *The Military Orders from the Twelfth to the Early Fourteenth Centuries* (Toronto and Buffalo, 1992), pp. 23–32, especially 23–24; Damian J. Smith, “Alexander III and Spain,” in *Pope Alexander III (1159–81): The Art of Survival*, ed. Peter D. Clarke and Anne J. Duggan, Church, Faith and Culture in the Medieval West (Farnham, UK and Burlington, VT, 2012), pp. 212–19; Anne Duggan, “‘Alexander ille meus’: The Papacy of Alexander III,” in *ibid.*, p. 42. Only two additional military orders came into being thereafter in Iberia (c. 1200 and in the 1270s). Cf. Sam Zeno Conedera, SJ, *Ecclesiastical Knights: The Military Orders in Castile, 1150–1330* (New York, 2015).

<sup>35</sup> Forey, *Military Orders*, p. 189.

<sup>36</sup> Anne J. Duggan, “Master of the Decretals: A Reassessment of Alexander III’s Contribution to Canon Law,” in *Pope Alexander III*, ed. Clarke and Duggan, pp. 365–417, especially 384, 386–87.

ruled in a series of letters that clergy enjoyed the right in natural and Roman law of self-defense, specifically of the right to repel force with force—decisions which came to be incorporated in the various collections of canon law, and now fully justified the military-religious orders by extending that 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 Ambrose’s position on the clergy and self-defense—but then the bishop of Rome always trumps the archbishop of Milan.<sup>37</sup>

The full significance of these related twelfth-century changes has not until now been fully recognized by modern scholars (with the exception of Stefan Kuttner),<sup>38</sup> but they were 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 only qualified condemnations (especially of *arma aggressionis*). This pattern continued for the next six-hundred years through the revised Code of Canon Law of 1917-18, canon 138 of which says that “the clergy are not to bear arms unless there exists just cause for fear.” As for the military religious orders, the status of their members in relation to the “clergy” was considered and resolved in the early thirteenth century by the great compiler of the *Glossa ordinaria* (1214–1216), Johannes Teutonicus, who decided to classify them as “ecclesiastical persons.”<sup>39</sup> What sounds here like muzzy thinking was further addressed by no less a figure than Thomas Aquinas, who in one of the less well-known questions of his *Summa Theologiae* addressed the question, “Whether a religious institute can be founded for military service?” Apparently choosing to ignore the prohibition on the creation of new religious orders enacted by the Fourth Lateran Council in 1215,<sup>40</sup> Aquinas, citing Augustine, answered affirmatively that

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<sup>37</sup> Duggan, *Armsbearing*, pp. 128–40, especially 137ff., who acknowledges his debt on this point (*ibid.*, p. 129 n. 103, and p. 137 n. 140) to the great Stephan Kuttner, *Kanonistische Schuldlehre*, 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 me in Princeton in 1988.

<sup>38</sup> Thus, for example, notwithstanding the excellence of the treatment they do provide, Charles L. 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. Kenneth Pennington and Melodie Harris Eichbauer (Farnham, UK and Burlington, VT, 2011), pp. 73–91; and Anne Duggan, “Master of the Decretals,” who 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.

<sup>39</sup> James A. Brundage. “Crusades, Clerics and Violence: Reflections on a Canonical Theme,” in *The Experience of Crusading*, ed. Marcus Bull and Peter W. Edbury, 2 vols (Cambridge-New York, 2003), 1:147–56, at 155.

<sup>40</sup> C. 13 in *COD*, p. 242.

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: 'Rescue the poor, and deliver the needy out of the hand of the sinner'.<sup>41</sup>

This further blurring of the boundaries had its effects on the existing religious orders, many of which came eventually to allow armsbearing to their members. This development reached its highpoint with the First Order of the Franciscans in the so-called Alexandrine Constitutions of 1500, which condemned "those who have taken up arms and made other signs of unsuitable defense, except for the safety of the faith, their order, and their country in a way which is fitting for religious when and where it is necessary."<sup>42</sup>

In summary, one can say that Jesus did not command all his followers to practice nonviolence, but rather left it as an option for those with special mettle. In the first three-hundred years, when ecclesiastical organization and law-making were just developing, the locus of authority was the bishop, and some bishops (perhaps many) were clearly admitting soldiers to the ranks of Christians. As Christianity by steps became the sole official religion of the Roman empire in the fourth and early fifth centuries, the former option, open to all followers of Christ, to abstain from violence soon became a legal prohibition on military service and armsbearing obligatory for all clergy and those in consecrated "religious" life. Legislation to this effect was enacted again and again at every level up to the twelfth century. But the ban was never complete. It evidently did not exclude the possibility of bishops filling the vacuum left by the disappearance of the Roman army and the disintegration of Roman administration, coming to the defense of their sees, and directing military operations when necessary. Pope Gregory the Great set the premier example in this regard. As the episcopate militarized, it came to be brought under royal control by the Visigothic kings, the Frankish Carolingians, and other rulers. The near-collapse caused by the second wave of invasions by Northmen, Saracens, and Magyars resulted in ever-greater participation in warfare by the clergy in the tenth century. The initial, official response of the reformers of the eleventh was to reiterate the ban on armsbearing on an unprecedented level and scale in the second half of the century, but within a few decades a revolutionary new development occurred in the

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<sup>41</sup> *Summa theologiae*, 2a.2ae. q. 188, art. 3, ed. and trans. English Dominican Fathers, 47:191; Duggan, *Armsbearing*, pp. 142–44.

<sup>42</sup> *Chronologia historico-legalis seraphici Ordinis fratrum minorum*, 4 vols (Naples, 1650–1795), 1:158. The legislation of the medieval and early modern religious orders on armsbearing will be treated in a separate forthcoming volume.

context of the Crusades. In 1120, in the Kingdom of Jerusalem, the Patriarch Warmund presided over the enactment of novel legislation at Nablus rescinding punishment of clergy acting in self-defense, *and* he also accepted a small group of French knights as consecrated religious dedicated to the pious work of protecting pilgrims. This was the inception of the Order of the Temple, which received initial papal approval at Troyes in 1129 and full acceptance in 1139. During these decades the Hospitallers *pari passu* came to be militarized, but an explosion in the foundation and papal approbation of new military religious orders occurred only during the pontificate of Alexander III (1159–1181), and it was also under him and his successors that the law of the Church accepted that clergy could bear arms for defensive and legitimate purposes. This remained the law of the Roman Catholic Church for over seven-hundred years until the two revisions of the *Code of Canon Law* in the twentieth century. That of 1918 specifies that “the clergy are not to bear arms until there exists just cause for fear,” and that of 1983 deliberately sidesteps or downplays the issues.<sup>43</sup> There has been, therefore, no flat prohibition in canon law on clerical armsbearing since the twelfth century.

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<sup>43</sup> Duggan, *Armsbearing*, pp. 173–80, especially 177–78.