

SILVIA SCATENA

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## Voluntary Martyrs and Canon Law. The Case of the First Crusaders

The ancient belief that a soldier who died while fighting in defence of his homeland should be venerated as a hero received a mixed reception at best among writers on the law of the medieval church.<sup>1</sup> A few early medieval authorities, to be sure, maintained that a Christian warrior slain while fighting in a just war against an enemy of the church could properly be reckoned a martyr, especially if the foe was a Muslim, a pagan, or a heretic, since his death under these circumstances made him a witness for the truth of Christian belief.<sup>2</sup> Scattered cults of martyrs thus defined did occasionally appear in a few places.<sup>3</sup> Still the belief that a soldier who died while defending the church's interests against non-Christians merited the veneration of the faithful surfaced only sporadically in the writings of mainstream ecclesiastical au-

<sup>1</sup> E.g., Justinian, *Inst.* 1.25 pr.: «Hi enim quia pro re publica ceciderunt, in perpetuum per gloriam vivere intelliguntur». See also E.H. Kantorowicz, *The King's Two Bodies: A Study in Mediaeval Political Theology*, Princeton 1957, 232-235; G. Post, *Studies in Medieval Legal Thought: Public Law and the State 1100-1322*, Princeton 1964, 436-437. For the Roman and canon law citations systems employed here see J.A. Brundage, *Medieval Canon Law*, London 1995, 190-205.

<sup>2</sup> E.g., PG 32:682; B.J. Verkamp, *Moral Treatment of Returning Warriors*, Scranton, (PA) 1993, 17. Cf. Isidore of Seville, *Etymologiarum sive originum libri XX* 7.11.1, ed. by W. M. Lindsay, 2 vols. (Oxford 1911): «Martyres Graeca lingua, Latine testes dicuntur, unde et testimonia Graece martyria nuncupantur. Testes autem ideo vocati sunt, quia propter testimonium Christi passiones sustinuerunt, et usque ad mortem pro veritate certaverunt».

<sup>3</sup> É. Delaruelle, *Les saints militaires*, in his *L'idée de croisade au moyen âge*, Turin 1980, 223-232.

thorities throughout the early Middle Ages. Two ninth-century popes, Leo IV (847-855) and John VIII (872-882), however, did lend the idea the prestige of their office.<sup>4</sup>

More widespread, however, was the belief that soldiers who shed blood in any war, even a just war or one explicitly sanctioned by ecclesiastical authority, were stained by the guilt of homicide and must do penance for their actions before they could be admitted to communion. Bishop Burchard of Worms (d. 1025), for example, directed confessors to question soldiers closely on this matter:

«Did you commit homicide in war on the order of a legitimate ruler who commanded this for the sake of peace? Did you kill a tyrant who sought to subvert peace? You must do penance for a period of three Lents<sup>5</sup> on regular weekdays. If however you did so otherwise, without the command of a legitimate ruler, you must do penance for wilful homicide, that is for forty days and the seven following years».<sup>6</sup>

This was by no means simply theoretical advice. William the Conqueror (1066-1087), for example, endowed Battle Abbey as part of his penance for the deaths suffered by his Anglo-Saxon foes at the Battle of Hastings in 1066<sup>7</sup> and the bishops of Normandy likewise imposed stiff penances on his soldiers as well.<sup>8</sup>

<sup>4</sup> Leo IV in 853, PL 115:655-57 (JE 2642); John VIII in 878, PL 126:816 (JE 3195).

<sup>5</sup> In other words, 120 days.

<sup>6</sup> Burchard of Worms, *Decretum* 19.5, PL 140:952: «Fecisti homicidium in bello, jussu legitimi principis, qui pro pace hoc fieri jusserat, et interfecisti tyrannum qui pacem pervertere studuit? Tres quadragesimas per legitimas ferias poeniteas. Si autem aliter fuerit, id est, sine iussu legitimi principis, ut homicidium sponte commissum poeniteas, id est carinam unam cum septem sequentibus annis». Similar injunctions appear in other early medieval penitentials; for examples see *Medieval Handbooks of Penance*, ed. by and transl. J. T. McNeill and H.M. Gamer, New York 1938 (repr. 1965), 187, 225.

<sup>7</sup> *The Chronicle of Battle Abbey*, ed. by and transl. E. Searle, Oxford Medieval Texts (Oxford 1980), 17-21, 36.

<sup>8</sup> *Councils and Synods with Other Documents Relating to the English Church I: A.D. 871-1204*, no. 88, e.c. by D. Whitelock, M. Brett, and C.N.L. Brooke, 2 vols., II Oxford 1981, 581-584; a translation of the document appears in Verkamp, *Moral Treatment of Returning Warriors*, 21-22.

This approach to the morality of warfare slowly commenced to change as members of the church reform party secured control of the papacy, beginning in the mid-eleventh century. Thus Pope Alexander II (1061-1073) instructed the archbishop of Narbonne in 1063 that soldiers who killed Muslims while fighting in defence of the church in Spain did not fall under the moral censure for homicide and hence need not do penance for those deeds.<sup>9</sup> Alexander went much further in another letter that same year, this one directed to the clergy of Volterra. In *Eos qui in Hispaniam*, his Volterra letter, the pope not only exempted soldiers from penance for slaying Muslims in battle, but rewarded them with a grant of exemption from the obligation to perform any other penances that their confessors may have assigned them to make satisfaction for sins they had confessed.<sup>10</sup>

The concept of soldiers as martyrs first became a much more prominent theme in papal documents during the pontificate of Pope Gregory VII (1073-1085). In Gregory's mind anyone who died while bearing witness to Christ was a martyr. Repeatedly he urged kings and knights to wage war in the service of Christ and St. Peter and assured them that any who died in such a holy cause could be certain of receiving a heavenly reward. Some of these letters enjoyed a wide audience throughout Western Christendom among clergy and laity alike.<sup>11</sup> Gregory VII, as is well known, also proposed in 1074 to raise an armed military expedition that he would dispatch to assist the Byzantine emperor Michael VII (1071-1078) in fighting off attacks by the Seljuk Turks, who were in the process of overrunning the Eastern Empire's Anatolian

<sup>9</sup> PL 146:1387; JL 4533. See also A. Noth, *Heiliger Krieg und heiliger Kampf in Islam und Christentum: Beiträge zur Vorgeschichte und Geschichte der Kreuzzüge* (Bonner historische Forschungen, 28), Bonn 1966, 109-20.

<sup>10</sup> *Epistolae pontificum Romanorum ineditae*, hg. v. S. Löwenfeld, no. 82, Leipzig 1885, 43; JL 4530; J.A. Brundage, *Medieval Canon Law and the Crusader*, Madison 1969, 24; C. Erdmann, *The Origin of the Idea of Crusade*, transl. by M.W. Baldwin and W. Goffart, Princeton 1977, 138-139. The authenticity of this letter has occasionally been questioned: M. Villey, *La Croisade: Essai sur la formation d'une théorie juridique*, Paris 1942, 143-144; P. Rousset, *Les origines et les caractères de la première croisade*, Neuchâtel 1945, 49.

<sup>11</sup> H.E.J. Cowdrey, *Pope Gregory VII and Martyrdom*, in *Gesta Dei per Francos: Études sur les croisades dédiées à Jean Richard*, éd. par M. Balard, B.Z. Kedar et J.S.C. Riley-Smith, Aldershot 2001, 3-11 at 3, 9-10.

provinces.<sup>12</sup> Gregory proposed to lead the expedition himself and even approached the Western Emperor, Henry IV (1056-1106), to become the protector of the Western church during his absence on the expedition, a plan that in view of subsequent events now seems peculiarly ironic.<sup>13</sup> A body of volunteers assembled briefly, but soon wearied of the ensuing delays and disbanded. By January of 1075 Gregory wrote despondently to inform Abbot Hugh of Cluny (1049-1109) that the Byzantine church at the devil's bidding had begun to fall away from the Catholic faith and that he had concluded that he must give up the whole idea.<sup>14</sup>

When seeking to attract recruits for his abortive expedition to Constantinople — and possibly even to Jerusalem — Gregory referred repeatedly but vaguely to the heavenly rewards that participants could expect to receive from a grateful God, but stopped short of describing those who might perish in the enterprise as martyrs or explicitly promising that they would be spared the consequences of their sins.

Gregory's letters exhorting kings and knights to volunteer for the expedition nevertheless furnished a model for his successors, especially for Pope Urban II (1088-1099), when they began to embark upon raising crusading armies.<sup>15</sup> There is good reason to believe that when Urban II proclaimed the first crusade at Clermont in 1095 he kept Gregory VII's hopes for an armed expedition to the East very much in mind.<sup>16</sup>

Inspiring as his successors may have found his pontificate and much as legal sources contributed to the development of his ideology, Gregory VII's own writings made a surprisingly slight direct impact on canon law. Out of the nearly four thousand authorities included in Gratian's authoritative textbook of canon law that was starting to be taught

<sup>12</sup> *Das Register Gregors VII.* (MGH, Epistolae selectae in usum scholarum, 2), 1.46 and 49, 2.3, 2.31, and 2.37, hg. v. E. Caspar, Berlin 1920-1923, 70-71, 75-76, 128, 165-68, and 173. See also H.E.J. Cowdrey, *Pope Gregory VII's 'Crusading' Plans of 1074*, in *Outremer: Studies in the History of the Crusading Kingdom of Jerusalem Presented to Joshua Prawer*, ed. by B.Z. Kedar, H.E. Mayer, and R.C. Smail, Jerusalem 1982, 27-40, and *Pope Gregory VII 1073-1085*, Oxford 1998, 484-485.

<sup>13</sup> *Das Register Gregors VII.*, 2.31, 166.

<sup>14</sup> *Das Register Gregors VII.*, 2.49, 189.

<sup>15</sup> Cowdrey, *Pope Gregory VII and Martyrdom*..., 9-10; J.S.C. Riley-Smith, *The First Crusaders, 1095-1131*, Cambridge 1997, 50.

<sup>16</sup> Cowdrey, *Pope Gregory VII and Martyrdom*..., 10.

in the law schools everywhere by the 1160s, only four came from Gregory VII, while none of his pronouncements appear in the great official collection of papal decretals promulgated by Gregory IX (1227-1241) in 1234.<sup>17</sup>

Slight though Gregory VII's textual influence on canon law was, his views about martyrdom remained current among his followers.<sup>18</sup> In addition Gregory's unrealized plan for a military expedition to Constantinople (and possibly even Jerusalem), played a background role in shaping the first crusade.<sup>19</sup> Urban II, whose call for an expedition to the East on the 27th of November in 1095 initiated the crusading movement, had a long history in the service of Gregory VII. Indeed he emphatically described himself as a faithful follower in Gregory's footsteps on the very day following his consecration as pope.<sup>20</sup>

It is impossible now to determine just what words Pope Urban II used on that fateful day when he announced his plan for the first crusade at Clermont, but his message owed much to Gregory VII.<sup>21</sup> One of the council's canons declared that those who undertook the journey to liberate God's church at Jerusalem and did so with the proper intention would thereby satisfy all the penance that they owed for their past sins.<sup>22</sup>

<sup>17</sup> J. Gilchrist, *Gregory VII and the Juristic Sources of his Ideology*, in *Studia Gratiana* 12 (1967) 1-37, and *The Reception of Pope Gregory VII into the Canon Law (1073-1141)*, in *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* (Kanonistische Abteilung) 59 (1973) 35-82 and 66 (1980) 129-229.

<sup>18</sup> Notably expressed in Bonizo of Sutri's *Liber ad amicum*, hg. v. E. Dümmler in MGH, Libelli de lite, 1:571-620; H.E.J. Cowdrey, *Martyrdom and the First Crusade*, in *Crusade and Settlement*, ed. by P.W. Edbury, Cardiff 1985, 46-56 at 46.

<sup>19</sup> H.E.J. Cowdrey, *The Reform Papacy and the Origin of the Crusades*, in *Le concile de Clermont de 1095 et l'appel à la croisade* (Collection de l'École française de Rome, 236), Rome 1997, 65-83.

<sup>20</sup> Urban I, *Epist.* 1 in PL 151:284; JL 5348: «De me porro ita in omnibus confidite, et credite sicut de beatissimo Patre nostro papa Gregorio, cuius ex toto sequi vestigia cupiens, omnia quae respuat respicio, quae damnavit damno, quae dilexit prorsus amplector, quae vero rata et catholica duxerit confirmo et approbo, et ad postremum in utramque partem qualiter ipse sensit in omnibus omnino sentio atque consentio».

<sup>21</sup> D.C. Munro, *The Speech of Pope Urban II at Clermont, 1095*, in *American Historical Review* 11 (1906) 231-42, surveys the sources and attempts to reconstruct the themes that Urban touched upon; but see J.S.C. Riley-Smith, *The First Crusade and the Idea of Crusading*, Philadelphia 1986, 16-30.

<sup>22</sup> R. Somerville, *The Councils of Urban II*, vol. 1 *Decreta Claromontensia*, *Annua-*



Pope Urban's hearers certainly appear to have carried away the impression that he had promised them that all the sins of participants who died during the expedition would be forgiven them. They clearly believed that those who died on the crusade would immediately enter into eternal bliss with the saints in heaven. This was obviously what the chroniclers who recorded the events of the first crusade believed. They frequently described crusaders who were killed in battle as martyrs and the theme of martyrdom pervaded the early accounts about the enterprise.<sup>23</sup> Slain crusaders, it was felt, died for the love of God, the faith, and their fellow-Christians.<sup>24</sup> While virtually all contemporary reports of the first crusade display sentiments such as these, it is striking that they occurred less prominently in the testimony of chroniclers such as Fulcher of Chartres, Raymond d'Aguilers, or the anonymous author of the *Gesta Francorum et aliorum Hierosolimitanorum*, who had been eyewitnesses to the events they described than they did in the accounts of others, such as Guibert of Nogent, Baldric of Dol, Robert the Monk, and Albert of Aachen, who had not personally participated in the expedition.<sup>25</sup> These latter authors were engaged, as Jonathan Riley-Smith put it, in «theologizing» the crusade in order to make this blood-stained enterprise more appealing to conventional opinion among churchmen who still considered participation in warfare at best deplorable and at worst gravely sinful for Christians.<sup>26</sup>

*rium historiae conciliorum*, Supplement 1, Amsterdam 1972, 74, 124: «Quicumque pro sola devotione, non pro honoris vel pecunie adeptione ad liberandam ecclesiam Dei Hierusalem profectus fuerit, iter illud pro omni penitentia ei reputetur».

<sup>23</sup> Thus, e.g., Fulcher of Chartres, *Historia Hierosolimitana* prol., §4 and 1.16.4, ed. by H. Hagenmeyer, 117, 226-227, Heidelberg 1913; *Le "Liber" de Raymond d'Aguilers* (Documents relatifs à l'histoire des croisades, 9), ed. by J.H. Hill and L.L. Hill, Paris 1969, 108-109, 113-114; *Gesta Francorum et aliorum Hierosolimitanorum* (Documents relatifs à l'histoire des croisades, 12), ed. by R. Hill, London 1962, 40, 58, 64-65; P. Tudebode, *Historia de Hierosolymitano itinere*, ed. by J.H. Hill and L.L. Hill, Paris 1977, 107; Count Stephen of Blois, letter to his wife, Adèle, in H. Hagenmeyer, *Die Kreuzzugsbriefe aus den Jahren 1088-1100*, Innsbruck 1901, 153; Cowdrey, *Martyrdom and the First Crusade...*, 50-53; Rousset, *Les origines et les caractères de la première croisade...*, 81-83.

<sup>24</sup> Riley-Smith, *The First Crusade and the Idea of Crusading...*, 151.

<sup>25</sup> Cowdrey, *Martyrdom and the First Crusade...*, 50.

<sup>26</sup> Riley-Smith, *The First Crusade and the Idea of Crusading...*, 152; Cowdrey, *Martyrdom and the First Crusade...*, 53.

While efforts to play up the spiritual benefits of crusading enjoyed a measure of success among theologians, popes, and prelates and also appealed strongly to twelfth-century laymen, specialists in canon law remained notably indifferent to crusades and crusaders. This I believe reflects in part changes that began to occur among teachers, students, and practitioners of canon law during the second half of the twelfth century, a matter to which I shall return shortly.

Prior to the middle of the twelfth century the Latin church had no generally accepted textbook of canon law. Numerous collections of canons had circulated in various regions of the West for centuries and although some secured a broad readership, none of them was by any means universally acknowledged as authoritative.<sup>27</sup> This situation changed rapidly between about 1140 and 1150, with the appearance of the vulgate recension of the *Concordia discordantium canonum*, more commonly known as the *Decretum Gratiani*. The work has from the beginning been attributed to someone named Gratian, although no one knows just who he (or possibly they) may have been.<sup>28</sup> The process whereby Gratian's work took shape was long and complex and scholars are still in the process of trying to piece together the evidence concerning its details.<sup>29</sup>

<sup>27</sup> On these collections see now L. Kéry, *Canonical Collections of the Early Middle Ages (ca. 400-1140): A Bibliographical Guide to the Manuscripts and Literature*, History of Medieval Canon Law, vol. 1 (Washington, DC 1999). The contents of many of these collections are analysed in L. Fowler-Magerl, *Kanones* (Piesenkofen in der Oberpfalz 2003 (CD-ROM)).

<sup>28</sup> J.T. Noonan, Jr., *Gratian Slept Here: The Changing Identity of the Father of the Systematic Study of Canon Law*, in *Traditio* 35 (1979) 145-72, convincingly demonstrated that the previously accepted accounts of Gratian's life and times rested upon inadequate evidence.

<sup>29</sup> A. Winroth, *The Making of Gratian's Decretum*, Cambridge Studies in Medieval Life and Thought, 4<sup>th</sup> ser., vol. 49 (Cambridge 2000) identified an earlier and shorter version of the *Decretum* than the vulgate version taught in the canon law faculties of medieval universities. A vigorous controversy has erupted among historians of canon law concerning evidence of still earlier recensions. See especially C. Larrainzar, *El borrador de la 'Concordia' de Graciano*: Sankt Gallen Stiftsbibliothek MS 673 (=Sg), in *Ius ecclesiae* 11 (1999) 593-666; T. Lenherr, *Ist die Handschrift 673 der St. Galler Stiftsbibliothek (Sg) der Entwurf zu Gratians Dekret? Versuch einer Antwort aus Beobachtungen an D. 31 und D. 32*, <[http://home.vr-wed.de/titus\\_lenherr/Sg.Entw.pdf](http://home.vr-wed.de/titus_lenherr/Sg.Entw.pdf)>; F.C. Paxton, *Gratian's Thirteenth Case and the Composition of the Decretum*, in *Revue de*

What is undisputed, however, is that by around 1150 the vulgate recension of Gratian's *Decretum* was becoming not only the standard textbook for teaching canon law, but also the standard reference work to which courts and judges at the papal curia referred when seeking authorities to guide their decisions. Just how this came about is not entirely clear, since the *Decretum*, whatever else it may have been, was evidently an entirely private enterprise. There is no evidence that it was officially commissioned and no pope seems ever to have explicitly mandated that the book should be treated as authoritative.<sup>30</sup>

The vulgate recension of the *Decretum*, as noted earlier, was completed sometime after 1140 and was certainly being taught by about 1150. It was finished, in other words, just about the time of the second crusade. By the middle decades of the twelfth century crusades and crusading had been an important fact of life in the Latin church for more than half a century.<sup>31</sup> Popes since the time of Urban II had repeatedly encouraged soldiers to fight in defence of the Holy Land and exhorted the faithful to support the Latin States that had come into existence as a consequence of the first crusade.<sup>32</sup> Military religious orders, beginning with the Knights Templars and the Knights Hospitallers, had come into existence to promote papal crusading policies, not only in the Holy Land, but in Europe itself, where they quickly accumulated extensive properties thanks to generous support from the faithful.<sup>33</sup> Successive popes had granted lavish privileges to these orders and St. Bernard wrote his fiery defence of the Templars' way of life sometime

*droit canonique* 51 (2001) 233-49; and M. Sommar, *Gratian's Causa VII and the Multiple Recension Theories*, in *Bulletin of Medieval Canon Law* 24 (2000) 78-96, among many others. For the current state of the problem and further bibliography see A. Winroth, *Recent Work on the Making of Gratian's Decretum*, <<http://pantheon.yale.edu/~haw6/Recent%20work.pdf>>.

<sup>30</sup> J.T. Noonan, Jr., *Was Gratian Approved at Ferentino?*, in *Bulletin of Medieval Canon Law* 6 (1976) 15-27; P. Classen, *Das Decretum Gratiani wurde nicht in Ferentino approbiert*, in *Bulletin of Medieval Canon Law* 8 (1978) 38-40.

<sup>31</sup> But cf. C. Tyerman, *The Invention of the Crusades* (Toronto 1998), although his views have not commanded general agreement among crusade historians.

<sup>32</sup> U. Schwerin, *Die Aufrufe der Päpste zur Befreiung des Heiligen Landes von den Anfängen bis zum Ausgang Innozenz IV.* (Historische Studien, 301), Berlin 1937.

<sup>33</sup> A. Forey, *The Military Orders from the Twelfth to the Early Fourteenth Centuries* (London 1992), 6-43, presents a useful overview.

between 1128 and 1136, while the early recensions of the *Decretum* were beginning to take shape.<sup>34</sup>

What then did Gratian's book have to say about the crusades? The answer is simple but perplexing: Nothing. Gratian included none of the canons of the council of Clermont in the *Decretum*, including the one concerning the indulgence for crusaders. Although he incorporated numerous other letters of Urban II in his collection, none of the pope's letters concerning the crusade appear in his work, although some of them carried obvious legal consequences. You will search Gratian's *Decretum* in vain for a single reference to the privileges that early twelfth-century popes, beginning with Urban II's immediate successor, Paschal II (1099-1118), had granted to the Templars and Hospitallers in 1113.<sup>35</sup> Nor did the constitution *Eis qui Hierosolymam* by which the first Lateran Council extended ecclesiastical protection to crusaders and their families find its way into the *Concordia discordantium canonum*.<sup>36</sup>

Gratian, whoever he may have been, clearly found the crusades irrelevant for his purposes and accordingly chose to ignore them. Later twelfth-century canonists largely followed his lead. The reasons for this have been the subject of speculation, but thus far at least this has cast little light on the matter.<sup>37</sup> One plausible explanation may well be that twelfth-century canonists viewed crusading expeditions as merely transitory phenomena in the life of the church. Only in the thirteenth century, when it became increasingly obvious that the crusades were turning into a permanent institution of European society, did canonistic

<sup>34</sup> Bernard of Clairvaux, *De laude novae militiae* in his *Opera*, ed. by J. Leclercq, C.H. Talbot, H.M. Rochais et alii, 8 vols., III Rome 1957-1977, 205-39.

<sup>35</sup> For the whole series of these papal privileges see *Papsturkunden für Templer und Johanniter: Vorarbeiten zum Oriens Pontificius* (Abhandlungen der Akademie der Wissenschaften in Göttingen, Abhandlungen, Phil.-Hist. Kl., ser. 3, vols. 77), vols. 1-2, ed. by R. Hiestand, Göttingen 1972-1984, 135.

<sup>36</sup> 1 Lat. (1123) c. 10, in *Decrees of the Ecumenical Councils*, ed. by G. Alberigo et al., transl. by N.P. Tanner et al., 2 vols., I London and Washington (DC) 1990, 191-196.

<sup>37</sup> J.T. Gilchrist, *The Erdmann Thesis and the Canon Law, 1083-1141*, in *Crusade and Settlement*, 37-45 at 41; Brundage, *Medieval Canon Law and the Crusader*, 117-18, 122, 136-38, and *Immortalizing the Crusades: Laws and Institutions*, in *Montjoie: Studies in Crusade History in Honour of Hans Eberhard Mayer*, ed. by B.Z. Kedar, J.S.C. Riley-Smith, and R. Hiestand, Aldershot 1997, 251-60.

writers feel it necessary to begin come to terms with the topic in any detail.

Gratian did, however, incorporate into the *Decretum* the letter of Pope Leo IV that I referred to in passing earlier.<sup>38</sup> In fact he chose to analyse the contents of the pope's letter and selected one passage that he inserted into Case 23 question 5, while he included a different passage from the same letter in Case 23 question 8. These two passages were as close as Gratian came to dealing with the notion that crusaders might be considered martyrs.<sup>39</sup>

In order to make the context clear I must say something about the structure of the *Decretum*. Its vulgate text is divided into three major sections. Part One is divided into 101 units that Gratian called *distinctiones*, because in them he used and improved upon an ancient technique of logical analysis called the distinction, whereby one distinguished between various meanings of a term.<sup>40</sup> By making distinctions Gratian sought to analyse terms that appeared in the canons in order to «harmonize» them, that is to remove apparent contradictions and show that they were consistent with one another. The formal title of his book, *A Harmony of Discordant Canons*, shows that this was his goal throughout the work.<sup>41</sup> Part Three, in which Gratian deals mainly with sacramental law, is also organized into distinctions, although this section of the book includes only five of them. Part Two, the one that concerns us here, is organized into units that Gratian labelled as Cases, of which there are 36. Each Case begins with a brief statement of a fact situation, some probably hypothetical, some not. Gratian then posed a series of Questions that he used to explore the legal issues that the situation presented.

<sup>38</sup> See above, n. 4.

<sup>39</sup> E.-D. Hehl, *Kirche und Krieg im 12. Jahrhundert: Studien zu kanonischem Recht und politischer Wirklichkeit* (Monographie zur Geschichte des Mittelalters, 19), Stuttgart 1980, 83-85.

<sup>40</sup> On this device see C.H.F. Meyer, *Die Distinktionstechnik in der Kanonistik des 12. Jahrhunderts: Ein Beitrag zur wissenschaftsgeschichte des Hochmittelalters* (Medievalia Lovaniensia, 29), Leuven 2001.

<sup>41</sup> On Gratian's use of this musical metaphor see especially S.G. Kuttner, *Harmony from Dissonance: An Interpretation of Medieval Canon Law* (Latrobe, PA 1960), now reprinted in his *History of Ideas and Doctrines of Canon Law in the Middle Ages*, Aldershot 1992, no. I.

Case 23 deals with the broad problem of the place of violence in a Christian society. Gratian began it by positing this fact situation:

«Certain bishops together with the people under their care fell into heresy. The heretics commenced to attack neighbouring Catholics with threats and torments. When the pope learned of this he directed the Catholic bishops in nearby regions who had received civil jurisdiction from the emperor to defend Catholics from the heretics and to compel them by whatever means they could to return to the true faith. When the bishops received this apostolic mandate they assembled soldiers and began to fight against the heretics both openly and covertly. At length after some heretics had been slain, others despoiled of their own property or that of the church, and still others cast into jails or dungeons, the heretics were forced to return to the Catholic faith».<sup>42</sup>

Gratian then framed eight questions concerning this situation. The ones that are relevant here are Question five, «Whether it is a sin for a judge or official to kill guilty persons?», and Question eight, «Whether it is proper for a bishop or any cleric on his own authority or on command of the pope or emperor to take up arms?».

Gratian opened Question five with a series of seven statements from patristic authorities that forbade Christians to shed human blood. He then interjected a dictum, or comment of his own, in which he qualified that position. Christians, he said, are allowed to kill others provided that a prince or other legitimate authority, such as a judge, commands them to do so in order to fight a war or execute a criminal. He then proceeded to cite eighteen further passages drawn from St. Augustine, St. Jerome, and other patristic authorities to support this argument. In a further dictum Gratian added that public authorities are also obliged to defend the church and have the right to use deadly force for that pur-

<sup>42</sup> C. 23 pr.: «Quidam episcopi cum plebe sibi commissa in heresim lapsi sunt; circumadiacentes catholicos minis et cruciatibus ad heresim compellere ceperunt, quo conperto Apostolicus catholicis episcopis circumadiacentium regionum, qui ab imperatore civilem iurisdictionem acceperant, imperavit, ut catholicos ab hereticis defenderent, et quibus modis possent eos ad fidei veritatem redire compellerent. Episcopi, hec mandata Apostolica accipientes, conuocatis militibus aperte et per insidias contra hereticos pugnare ceperunt. Tandem nonnullis eorum neci traditis, aliis rebus suis uel ecclesiasticis expoliatis, aliis carcere et ergastulo reclusis, ad unitatem catholicæ fidei coacti redierunt».



pose. In support of this he advanced no less than twenty-three further statements from popes and church fathers. He concluded Question five with a lengthy final dictum in which he examined the issue of which authorities have the right to authorize killing and under what circumstances they may do so.

The statement from Pope Leo IV's letter<sup>43</sup> in Question 5 that deals with the problem of soldiers as martyrs is chapter 46. In this chapter the pope declared:

«We wish all of you to know that any who shall die (which God forbid) while fighting faithfully in this war will certainly not be denied entry into the celestial kingdom».<sup>44</sup>

Gratian placed further excerpts from Pope Leo's letter in Question eight, as part of his discussion of the issue of whether bishops and other clerics are allowed to fight in war. Once more he began his treatment of the matter by citing six authorities who flatly maintained that they could not do so. Gratian then added a dictum that distinguished the question by saying:

«It may be replied [to the preceding authorities] that priests should not take up arms with their own hands. But it is permitted for them to induce others to take them up in defence of the oppressed and in order to ward off the enemies of God».<sup>45</sup>

He then cited twelve passages in support of this statement, beginning with three from Pope Leo IV. In Chapter 9, the one that concerns us here, Pope Leo stated:

<sup>43</sup> Gratian in fact mistakenly attributed the letter to Pope Nicholas rather than its true author, Pope Leo IV.

<sup>44</sup> «Omnium uestrum nosse uolumus karitatem, quoniam quisquis (quod non optantes dicimus) in hoc belli certamine fideliter mortuus fuerit, regna illi celestia minime negabuntur».

<sup>45</sup> C. 23 q. 8 d.p.c. 6: «His ita respondetur: Sacerdotes propria manu arma arripere non debent; sed alios ad arripiendum, ad oppressorum defensionem, atque ad inimicorum Dei oppugnationem eis licet hortari».

Putting aside all fear and dread, strive to struggle manfully against the foes of the holy faith and the opponents of all religions. Know indeed that if any of your people is killed, he died for the truth of the faith, the safety of the homeland, and the defence of Christians. The Almighty will accordingly bestow a heavenly reward upon him.<sup>46</sup>

Although they do not explicitly describe soldiers who fell in battle while defending the faith as martyrs, these passages skirt that identification by a very narrow margin indeed. Indeed they fit neatly into the well-known early medieval definition of a martyr by St. Isidore of Seville that martyrs were witnesses to Christ.<sup>47</sup> The response of twelfth-century canonists to this, however, was a deafening silence. None of the early decretist commentators — Paucapalea, Master Rolandus, Stephen of Tournai, Master Rufinus, or the anonymous authors of the *Summa Parisiensis*, the *Distinctiones* «Si mulier eadem hora», and the *Summa* «Elegantius in iure diuino». — found it necessary to comment on them at all. Neither did the ordinary gloss, the standard exposition of the *Decretum*, that Johannes Teutonicus pulled together from the writings of his predecessors and that was taught everywhere in the schools from the time of its completion in 1216.

Toward the close of the century, however, decretist writers occasionally began to refer to crusades and crusaders. Huguccio, writing in the late 1180s, for one, mentioned «clericis transmarinis et yspanis qui cotidie pugnant contra saracenos» in his discussion of clergymen who engaged in combat, but had nothing to say about the status of those who died on crusade.<sup>48</sup> A decade or so later the *Questiones Londenenses*, an anonymous *reportatio* of legal questions debated in the Oxford schools by canonists in the circle of John of Tynemouth, included

<sup>46</sup> C. 23. q. 8 c. 9: «Omni timore ac terrore deposito, contra inimicos fidei sanctae et aduersarios omnium religionum uiriliter agere studete. Nouit enim omnipotens, si quilibet uestrorum morietur, quod pro ueritate fidei, et saluatione patriae, ac defensione Christianorum mortuus est, ideo ab eo celeste premium consequetur».

<sup>47</sup> For Isidore's definition see above, n. 2.

<sup>48</sup> Huguccio, *Summa* to D. 50 c. 5 v. *necesse sit*, quoted by A.M. Stickler, *Der Schwertbegriff bei Huguccio*, in *Ephemerides iuris canonici* 3 (1947) 201-42 at 226 n. 1. On Huguccio's life see W.P. Müller, *The Life, Works, and Thought of a Twelfth-Century Jurist* (Studies in Medieval and Early Modern Canon Law), Washington D.C. 1994, 5-6, 23-34, 64-66.

no less than three disputed questions related to the crusades.<sup>49</sup> The first of these dealt with issues that arose from the privileges accorded by twelfth-century popes to the Knights Hospitallers.<sup>50</sup> The second and third both dealt with legal problems that grew out of real-life episodes in connection with Richard Lionheart's participation in the third crusade.<sup>51</sup> In all of these disputations the underlying issues revolve around matters concerned with crusader privileges and property, not the posthumous status of crusaders slain in battle.

These examples are symptomatic of basic changes in the teaching and practice of canon law that began during the latter part of the twelfth century and gradually led canonists to differentiate themselves from theologians. In Gratian's day, around the middle of the century, canon law and theology largely overlapped one another. Canon law in that period could essentially be described as applied theology. Students and teachers of the two disciplines studied many of the same texts and applied much the same analytical tools to their interpretation, as a comparison of Gratian's *Decretum* with the *Sententiae* of Peter Lombard readily makes plain.<sup>52</sup> Yet early signs of divergence began to become apparent as Gratian's book took shape. Its early recensions included relatively few texts taken from Roman law, but as the work evolved more and more of them were added to the primitive version.<sup>53</sup> By the time that the vulgate recension had assumed its final form, Roman law had already begun to reshape this fundamental textbook that every student of canon law studied in the schools.

<sup>49</sup> See S. G. Kuttner and E. Rathbone, *Anglo-Norman Canonists of the Twelfth Century*, in *Traditio* 7 (1949/1951) 279-358, at 317-327; repr. in Kuttner's *Gratian and the Schools of Law*, London 1983, no. VIII.

<sup>50</sup> London, British Library MS Royal 9.E.VII, fol. 191ra. For the text see J. A. Brundage, *A Twelfth-Century Oxford Disputation Concerning the Privileges of the Knights Hospitallers*, in *Mediaeval Studies* 24 (1962) 153-160, repr. in his *Crusades, Holy War and Canon Law*, Aldershot 1991, no. XII.

<sup>51</sup> London, British Library MS Royal 9.E.VII, fol. 195rb-vb, published by J.A. Brundage, in *Speculum* 38 (1963) 443-452 and repr. in *The Crusades, Holy War and Canon Law*, no. III.

<sup>52</sup> J. de Ghellinck, *Le Mouvement théologique du XII<sup>e</sup> siècle*, Bruges 1948, 203-213, 426-510.

<sup>53</sup> Winroth, *The Making of Gratian's Decretum...*, 146-157, furnishes examples.

The juridification of canon law become more pronounced in the 1160s and grew increasingly evident in the decades that followed.<sup>54</sup> By the early decades of the thirteenth century canon law had become fundamentally a legal discipline. Although its theological foundation remained obvious, the divergence between canonists and theologians continued to grow more prominent over the course of time.<sup>55</sup>

Thus for example, when university statutes that spelled out requirements for degrees commenced to appear in the mid-thirteenth century,<sup>56</sup> they obliged degree candidates in canon law to spend at a minimum a year, and more often two years, studying Roman law, which was seen as indispensable for a proper understanding of the canonistic texts they would have to master. Theology was a part of the degree requirements in canon law only at Oxford and Cambridge, which unlike their peers on the Continent, demanded that canonists devote two years to the study of the Bible as part of their preparation for canonistic studies.

These developments hardly went unnoticed by contemporary observers. Theologians and teachers of the liberal arts grew increasingly envious, even bitter, about the popularity of canon law (and to a lesser degree of medicine) among students. They blamed these lucrative sciences, as they called them, for draining talented young men away from their lecture rooms, which incidentally no doubt also drained away lecture fees from their own purses. Critics observed that the church's choicest benefices increasingly went to canonists, not theologians, and

<sup>54</sup> Y. Congar, *Un témoignage des désaccords entre canonists et théologiens*, in *Études d'histoire du droit canonique dédiées à Gabriel Le Bras*, II Paris 1965, 861-84; H. Kalb, *Bemerkungen zum Verhältnis von Theologie und Kanonistik am Beispiel Rufins und Stephanus von Tournai*, in *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* (Kanonistische Abteilung) 72 (1986) 338-48.

<sup>55</sup> R. Weigand, *Ein Zeugnis für die Lehrunterscheide zwischen Kanonisten und Theologen aus dem 13. Jahrhundert*, in *Revue de droit canonique* 24 (1974) 63-71; H. Kalb, *Überlegungen zur Entstehung der Kanonistik als Rechtswissenschaft: Einige Aspekte*, in *Österreichisches Archiv für Kirchenrecht*, 41 (1992) 1-28.

<sup>56</sup> Although some university statutes had undoubtedly existed earlier, no substantial collections of them survive from the period before about 1250; M. B. Hackett, *The Original Statutes of Cambridge University: The Text and Its History* (Cambridge 1970), 23-40; D. Maffei, *Un trattato di Bonaccorso degli Elisei e i più antichi statuti dello Studio di Bologna nel manoscritto 22 della Robbins Collection*, in *Bulletin of Medieval Canon Law* 5 (1975) 73-101.



at times debated whether a canonist or a theologian was better fitted to fill St. Peter's chair.<sup>57</sup>

Thirteenth-century canonists, unlike their twelfth-century predecessors, did talk and write about the crusades. But their discussions focused less on the spiritual benefits of crusading than on its temporal consequences.<sup>58</sup> Nowhere did they inquire into the implications of the crusade indulgence for the status of crusaders in the afterlife. Similarly when they dealt explicitly with saints at all, they concentrated their attention on jurisdictional issues. They concerned themselves with questions concerning the public cult of saints, especially the criteria for establishing those cults, and the procedures for canonizing them.<sup>59</sup>

It is curious, given the chroniclers' repeated references to men slain in battle on crusade as martyrs, that participants in crusades were scarcely ever elevated to the altars of the church. The fact that relics of slain crusaders were not likely to be readily available in Western Europe does much to explain this. Long-standing teaching dictated that no church or altar could be consecrated unless it contained the relics of a saint or martyr.<sup>60</sup> Crusaders however were usually buried where they died and hence their graves were almost always in Levant and not readily accessible to relic hunters, if indeed they could be identified at all. In order for a person to qualify for canonization it was essential to show that miracles had occurred in association with his or her mortal remains. It was almost impossible for a cult to develop when the putative martyr's body was hundreds of miles away, difficult of access, and, more often than not, surrounded by a hostile non-Christian population.<sup>61</sup>

<sup>57</sup> R.J. Long, *Utrum jurista vel theologus plus proficiat ad regimen ecclesie: A Quaestio Disputata of Francis Caraccioli*, in *Mediaeval Studies* 30 (1968) 134-162.

<sup>58</sup> Brundage, *Medieval Canon Law and the Crusader*, 139-190.

<sup>59</sup> S.G. Kuttner, *La réserve papale du droit de canonization*, in *Revue historique de droit français et étranger*, 4<sup>th</sup> ser., 17 (1938) 172-228, repr. in his *History of Ideas and Doctrines of Canon Law in the Middle Ages*, Aldershot 1992, no. VI.

<sup>60</sup> This goes back to the beginning of the fifth century canon 48, *Placuit ut altaria*, of the Fifth Council of Carthage (401), c. 83; *Concilia Africae*, ed. by C. Munier, (Corpus Christianorum, series Latina, 149), Turnhout 1974, 204-205. The canon appears in Gratian's *Decretum* at D. 1 de cons. c. 26.

<sup>61</sup> Riley-Smith, *The First Crusaders...*, 73.

Finally, let me suggest one further possible explanation both for the scarcity of crusader saints and also for the canonists' reticence in dealing with the idea that soldiers who died in crusading battles were martyrs. It is at least conceivable that these two unexplained silences reflected in part uncertainties about the intention of soldiers who died in battle while on crusade. Crusades were, after all, voluntary expeditions whose participants (and their families) were keenly aware that they were placing themselves in deadly peril and were doing so of their own free will. Crusaders — at least as the chronicles describe them — often fought battles against enemy forces that vastly outnumbered their own. Was it possible that soldiers who willingly placed themselves in mortal danger when their chances of survival were vanishingly small might in fact have committed the deadly sin of suicide? This was not an idle question, and jurists and theologians long debated it. The crucial issue was intent, a matter that was of course exceedingly difficult to determine precisely under any circumstances and particularly after death. For a jurist the key question was the presence or absence of *mens rea*, literally the guilty mind, or in other words the mental state essential for the commission of a crime.<sup>62</sup> Reckless behaviour in battle, actions in blatant disregard of one's own survival, might be construed as an indication that the person so acting actually yearned to die.<sup>63</sup>

Case 16 Question 5 Chapter 12 of Gratian's *Decretum* presents the reigning canonical authority on this issue. It is taken from canon 16 of the First Council of Braga (561).<sup>64</sup> In Gratian's version (which differs slightly but significantly from the original),<sup>65</sup> the canon reads:

«It was agreed that no commemoration should be made at Mass for those who voluntarily put themselves to death, whether by an iron [weapon] or by poison, or by leaping from a height, or by hanging, or by any means, nor

<sup>62</sup> S.G. Kuttner, *Kanonistische Schuldlehre von Gratian bis auf die Dekretalen Gregors IX.* (Studi e testi, 64), Vatican City 1935, 60-62; A. Murray, *Suicide in the Middle Ages*, II: *The Curse on Self-Murder*, Oxford 2000, 245-286.

<sup>63</sup> A. Murray, *Suicide in the Middle Ages*, I: *The Violent against Themselves*, Oxford 1998, 62-69, discusses some medieval debates about such cases.

<sup>64</sup> J.A. Martins Gigante, *Ambiente e significado da legislação particular do Concílio de Braga*, in *El Concilio de Braga y la función de la legislación particular en la Iglesia*, Salamanca 1975, 13-31.

<sup>65</sup> Murray, *The Curse on Self-Murder...*, 273-75.

should their bodies be taken to burial with psalms. Many people indeed wrongfully do these things out of ignorance. It was likewise agreed that this applies to those executed on account of their crimes».<sup>66</sup>

To this Gratian added a brief dictum: «Let “impenitent” be understood here».<sup>67</sup>

Taken together I submit that the considerations explored here may help to explain the anomalous gulf between crusade chroniclers' repeated acclamation of slain crusaders as martyrs and the strong disinclination of canon lawyers to extend formal recognition of that status to them.

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**Summary:** *The notion that soldiers who died in battle while defending the church's interests against non-Christians could legitimately be considered martyrs began to creep into the mainstream of theological and canonistic speculation during the eleventh-century church reform movement. Contemporary descriptions of fallen crusaders as martyrs that became common during the twelfth century doubtless reflected popular beliefs about the matter. Canonists, however, found such beliefs uncongenial and steadfastly refused to give them legal sanction. Their reluctance presumably helps to account for the extreme scarcity of approved cults of crusading martyrs in the calendar of the saints.*

<sup>66</sup> C. 23 q. 5 c. 12: «Placuit, ut hii qui sibi ipsis uoluntarie aut per ferrum, aut per uenenum, aut per precipitium, aut per suspendium, uel quolibet modo inferrunt mortem, nulla pro illis in oblatione commemoratio fiat, neque cum psalmis ad sepulchrum eorum cadauera deducantur. Multi enim sibi hoc per ignorantiam usurpant. Similiter et de his placuit fieri, qui pro suis sceleribus moriuntur».

<sup>67</sup> Gratian, d.p.c. 12: «Inpenitentes subaudiatur».

## Martirio volontario ed ideologia della Crociata. Formazione e irradiazione dei modelli francescani a partire dalle matrici altomedievali.

### 1. Premessa

«Al martirio è dovuto un premio non in quanto esso è inflitto dall'esterno, ma in quanto viene subito volontariamente: poiché non possiamo meritare se non che con gli atti che sono in noi, e più la cosa subito volontariamente è difficile, e quindi più ripugnante alla volontà, tanto maggiormente la volontà che la subisce per amore di Cristo si mostra ferma nell'adesione a Cristo; quindi le è dovuto un premio più grande».<sup>1</sup>

In questa sezione di discorso martiriale, distillata dalla sapienza dell'Aquinate e derivante da un'imponente stratificazione patristica, è condensato un precipitato dell'etica del martirio e delle sue implicazioni (medievali) antropologiche, teologiche e politiche.

Due prime questioni ad essere sollevate in quel testo duecentesco sono l'etica del sacrificio e la sublimità dell'atto, concordemente definito supererogatorio ed il più alto tra quelli concepibili e praticabili dal cristianesimo dell'Occidente, ormai solidificatosi in termini di identità romana, «gregoriana», graziana, dunque anche canonisticamente precisata.

La riflessione di Tommaso richiama altri aspetti fondamentali: la forte tensione esistente tra volontà e disponibilità a subire la morte,

<sup>1</sup> Tommaso d'Aquino, *In Quartum Sententiarum*, dist. 49, q. 5. a. 3.