

GLOSSAE

European Journal of Legal History



ISSN 2255-2707

Edited by

Institute for Social, Political and Legal Studies
(Valencia, Spain)

Honorary Chief Editor

Antonio Pérez Martín, University of Murcia

Chief Editor

Aniceto Masferrer, University of Valencia

Assistant Chief Editors

Wim Decock, University of Leuven

Juan A. Obarrio Moreno, University of Valencia

Editorial Board

Isabel Ramos Vázquez, University of Jaén (Secretary)

José Franco-Chasán, University of Augsburg

Fernando Hernández Fradejas, University of Valladolid

Anna Taitslin, Australian National University – University of Canberra

M.C. Mirow, Florida International University

José Miguel Piquer, University of Valencia

Andrew Simpson, University of Aberdeen

International Advisory Board

Javier Alvarado Planas, UNED; Juan Baró Pazos, University of Cantabria; Mary Sarah Bilder, Boston College; Orazio Condorelli, University of Catania; Emanuele Conte, University of Rome III; Daniel R. Coquillette, Boston College – Harvard University; Serge Dauchy, University of Lille; Salustiano de Dios, University of Salamanca; José Domingues, University of Lusíada; Seán Patrick Donlan, The University of the South Pacific; Matthew Dyson, University of Oxford; Antonio Fernández de Buján, University Autónoma de Madrid; Remedios Ferrero, University of Valencia; Manuel Gutan, Lucian Blaga University of Sibiu; Alejandro Guzmán Brito, Pontifical Catholic University of Valparaíso; Jan Hallebeek, VU University Amsterdam; Dirk Heirbaut, Ghent University; Richard Helmholz, University of Chicago; David Ibbetson, University of Cambridge; Emily Kadens, University of Northwestern; Mia Korpiola, University of Turku; Pia Letto-Vanamo, University of Helsinki; David Lieberman, University of California at Berkeley; Jose María Llanos Pitarch, University of Valencia; Marju Luts-Sootak, University of Tartu; Magdalena Martínez Almira, University of Alicante; Pascual Marzal Rodríguez, University of Valencia; Dag Michaelsen, University of Oslo; María Asunción Mollá Nebot, University of Valencia; Emma; Montanos Ferrín, University of La Coruña; Olivier Moréteau, Louisiana State University; John Finlay, University of Glasgow; Kjell Å Modéer, Lund University; Anthony Musson, University of Exeter; Vernon V. Palmer, Tulane University; Agustin Parise, Maastricht University; Heikki Pihlajamäki, University of Helsinki; Jacques du Plessis, Stellenbosch University; Merike Ristikivi, University of Tartu; Remco van Rhee, Maastricht University; Luis Rodríguez Ennes, University of Vigo; Jonathan Rose, Arizona State University; Carlos Sánchez-Moreno Ellar, University of Valencia; Mortimer N.S. Sellers, University of Baltimore; Jørn Øyrehagen Sunde, University of Bergen; Ditlev Tamm, University of Copenhagen; José María Vallejo García-Hevia, University of Castilla-La Mancha; Norbert Varga, University of Szeged; Tammo Wallinga, University of Rotterdam; José Luís Zamora Manzano, University of Las Palmas de Gran Canaria

Citation

Atria A. Larson, "From Protections for miserabiles personae to Legal Privileges for International Travellers: The Historical Development of the Medieval Canon Law regarding Pilgrims", *GLOSSAE. European Journal of Legal History* 16 (2019), pp. 166-186 (available at <http://www.glossae.eu>)

From Protections for *miserabiles personae* to Legal Privileges for International Travellers: The Historical Development of the Medieval Canon Law regarding Pilgrims

Atria A. Larson
Saint Louis University

Abstract

Religious pilgrims of the Middle Ages enjoyed certain protections. Protection of person and property, access to hospitality, and protections against fiscal abuse, such as extra tolls, remained constant and were well-established within cultural assumptions about the special status of pilgrims. Nevertheless, historical development did take place in canon law regulations regarding pilgrims. The Carolingian period emphasized the personal pastoral responsibility of priests to give hospitality; meanwhile pilgrims were most often grouped with *miserabiles personae* such as widows, orphans, and *pauperes*. It also stressed protection of person. In a changing socio-economic and institutional landscape, the high Middle Ages began to associate pilgrims with groups such as merchants. Protection of property at one's home was more clearly established, along with other legal privileges. Pilgrims also gained more specific spiritual privileges, such as being able to confess during an interdict. In general, the legal regulations regarding pilgrims and the canonistic jurisprudence about them became more specific and technically defined in the later period, especially in light of Roman law jurisprudence, more advanced legal procedures, and new institutions such as religious orders devoted to offering hospitality to pilgrims.

Resumen

Los peregrinos religiosos de la Edad Media disfrutaban de ciertas protecciones legales. La protección personal y de propiedad, el acceso a la hospitalidad y la protección contra abusos fiscales como peajes extra permanecieron constantes y se establecieron como parte de la percepción cultural del estatus privilegiado de los peregrinos. El Derecho Canónico de los peregrinos, sin embargo, sufrió cambios durante el desarrollo histórico de la época. Durante el periodo carolingio se hacía hincapié en la responsabilidad pastoral de los eclesiásticos de proporcionar hospitalidad, mientras que los peregrinos eran habitualmente agrupados con los *miserabiles personae* como las viudas, los huérfanos y los *pauperes*. También se enfatizaba la protección personal. Durante los cambios socioeconómicos e institucionales de la alta Edad Media, los peregrinos comenzaron a asociarse con otros grupos sociales como el de los mercaderes. La protección de la propiedad dentro del hogar y otros privilegios legales fueron más claramente establecidos. Además los peregrinos ganaron privilegios espirituales más específicos, como la confesión durante el interdicto. En general, las regulaciones legales y la jurisprudencia canónica de los peregrinos se hicieron más específicas y adquirieron mejor definición técnica durante el periodo posterior, especialmente la jurisprudencia de Derecho romano, el desarrollo de procedimientos legales más avanzados, y la fundación de nuevas instituciones religiosas dedicadas a ofrecer hospitalidad a los peregrinos.

Keywords

Peregrinación; Derecho Canónico; privilegios; *miserabiles personae*; capitulares

Keywords

Pilgrimage; canon law; privileges; *miserabiles personae*; capitularies

SUMMARY: 1. Introduction. 2. The Carolingian Period. 3. The Ivonian Collections and the *Decretum Gratiani*. 4. Papal Decretals and Decretalist Commentary. 5. Conclusion.

1. Introduction

For medieval Christians, pilgrimage had multivalent significance¹. The sojourner of the Old Testament was to be welcome among God's people since they too had been sojourners; meanwhile the Christian of the New Testament was to view himself as a sojourner in this world on the way to his true home in heaven. A monastic tradition grew up that valued *peregrinatio*, a voluntary exile for those serving God away from home, doing missionary work, and founding new monasteries along the way. Meanwhile, *peregrinatio* could also be imposed as a punishment; grievous offences such as murder required that a perpetrator spend many years away in order to allow communities to live in peace and avoid vengeance killings. Some early medieval communities thus incorporated pilgrimage into their penitential discipline, and later penances specified a particular destination for one's pilgrimage and verification that one had reached it². Pilgrimage also developed as a voluntary act of piety. Sometimes a person set out on pilgrimage to a certain shrine with saints' relics in order to seek healing or make some other request to God through the intercession of the saint, but sometimes she simply went as a spiritual exercise. All along the way, these pilgrims faced the trials and dangers associated with travel, and while they were gone, their property at home stood in a potentially vulnerable position.

Pilgrimage as a medieval religious phenomenon is well-researched, as are particular pilgrimage sites³. The three most famous were Jerusalem, Rome, and Santiago de Compostela,

¹ Sigal, P. A., "Les différents types de pèlerinage au Moyen Age," *Wallfahrt kennt keine Grenzen: Themen zu einer Ausstellung des Bayerischen Nationalmuseums und des Adalbert Stifter Vereins, München*, ed. L. Kriss-Rettenbeck and G. Möhler (Munich and Zurich: Schnell & Steiner, 1984), pp. 76-86.

This paper was first delivered at the conference "Migrants and Refugees in the Law: Historic Evolution, Current Situation, and Unsolved Questions," 4th International Conference organized by the Cátedra Inocencio III at the Universidad Católica de Murcia in Murcia, Spain, December 12, 2018.

In this essay, the following abbreviations are used: MGH = Monumenta Germaniae Historica; see <https://www.dmgh.de/de/fs1/search/static.html> for abbreviations of sub-series; COGD = *The General Councils of Latin Christendom: From Constantinople IV to Pavia-Siena (869-1424)*, ed. A. García y García et al., Corpus Christianorum, Conciliorum Oecumenicorum Generaliumque Decreta 2.1 (Turnhout, 2013); ID = Ivo of Chartres's *Decretum*; Pan. = *Panormia*; Trip. = *Collectio Tripartita*; JL = Jaffé numbers for papal letters (an. 882-1198), from Jaffé, *Regesta pontificum romanorum*, 2nd edition, ed. F. Kaltenbrunner; Po = Potthast numbers for papal letters (an. 1198-1304), from Potthast, A., *Regesta pontificum romanorum* (Berlin, 1874); X = *Liber Extra* or *Decretales Gregorii noni*; Cod. = *Codex Justiniani*; Dig. = *Digestum* of the *Corpus iuris civilis*; Auth. = *Authenticae*. Texts of the *Corpus iuris canonici* are taken from Friedberg, E., ed., *Corpus iuris canonici*, 2 volumes (Leipzig, 1879/1881; repr. Graz, 1956); Gratian's *Decretum* comprises all of volume 1; the *Liber Extra* is in volume 2.

² On penitential discipline as a form of dispute settlement and reconciliation in situations of social disruption in early medieval communities, see Meens, R. *Penance in Medieval Europe, 600-1200* (Cambridge: Cambridge University Press, 2014), pp. 11, 45, 50, 216-17; Abraham, E. V. *Anticipating Sin in Medieval Society: Childhood, Sexuality, and Violence in the Early Penitentials* (Amsterdam: University of Amsterdam Press, 2017), pp. 9, 145-69, 173, 176. On certificates of completion of pilgrimages, see Webb, D., *Pilgrims and Pilgrimage in the Medieval West*, International Library of Historical Studies 12 (New York: I.B. Tauris, 1999), p. 51, with thirteenth- and fourteenth-century documents specifying that a penitential pilgrim show "testimonial letters" of having completed the pilgrimages on pp. 57, 59; an early fifteenth-century example of such a testimonial letter appears on p. 62. For a specific example of imposed penances to a particular pilgrimage site in the late medieval period, see Humair, C. *Strafwallfahrt – Strafe oder Wallfahrt?: Eine Strafpraxis des ausgehenden Mittelalters mit dem Wallfahrtsziel Einsiedeln* (Saarbrücken: Akademikerverlag, 2018).

³ General treatments in English include Jonathan Sumption, *The Age of Pilgrimage: The Medieval Journey to God* (Mahwah, NJ: Hidden Spring, 1975, 2003); Diana Webb, *Medieval European Pilgrimage, c.700-c.1500* (New York, 2002); and Webb, *Pilgrims and Pilgrimage in the Medieval West* (New York: I.B. Tauris, 1999), with extensive and carefully selected documents in English translation. Another reader of sources has since appeared: Brett Edward Whalen, *Pilgrimage in the Middle Ages: A Reader*, Readings in Medieval Civilizations

but other more local sites have also received considerable attention⁴. The laws concerning pilgrimage have been less the focus of attention in general histories of pilgrimage but nonetheless have received some attention.⁵ Additional work could be done on local episcopal and secular laws protecting pilgrims, managing pilgrimage sites, and preventing fraud⁶. A few general articles lay out, in broad strokes, the privileges that pilgrims enjoyed in accord with more general canon law, pointing out accurately that comparatively little canon law is devoted to the topic⁷. While citing regulations from various periods, these essays have not emphasized points of historical development. Meanwhile, in recent decades, there has been little attention to the canon law of pilgrims outside the context of crusading. James Brundage's important research on medieval canon law and the crusader emphasized the regulations and detailed canonistic jurisprudence regarding crusading privileges and oath-taking⁸. This research occurred in the same period as crusade historiography emphasized the religious dimensions of taking the cross and situated it within the context of pilgrimage and penitential discipline⁹. Thus the most recent treatment of canon law for pilgrims, a necessarily succinct dictionary article, presents the canon law for pilgrims and for crusaders as one and the same¹⁰. Such an equivalence should probably be tested with additional research into real cases in both ecclesiastical and secular courts.

None of the research on the canon law of pilgrimage has explained in what ways that law developed and changed over time. Little of the research has examined decretist and decretalist commentaries to shed light on how canonists of the late twelfth and thirteenth centuries interpreted the limited laws regarding pilgrimage. This essay will attempt to do both

and Cultures (Toronto: University of Toronto Press, 2011). In Italian, F. Cardini, *Il Pellegrinaggio: una dimensione della vita medievale* (Rome, 1996).

⁴ The literature is vast; this is a field of study where local history rules, and countless articles have been published about local pilgrimage sites and routes, usually published in the modern language of the location. Major, book-length studies are also available; they include: Adair, J., *The Pilgrims' Way: Shrines and Saints in Britain and Ireland* (London, 1978); Birch, D., *Pilgrimage to Rome in the Middle Ages* (Woodbridge, 1998); Gauthier, M., *Highways of Faith: Relics and Reliquaries from Jerusalem to Compostela*, trans. J. Underwood (London, 1983); Mullins, E., *The Pilgrimage to Santiago* (London, 1974); Quintavalle, A. C., *La strada Romea* (Milan, 1976); Quintavalle, A. C., *Vie dei Pellegini nell'Emilia Medievale* (Milan, 1977); Tate, R. B., *Pilgrimages to St James of Compostela from the British Isles during the Middle Ages* (Liverpool, 1990); Oldfield, P., *Sanctity and Pilgrimage in Medieval Southern Italy, 1000-1200* (Cambridge: Cambridge University Press, 2014).

⁵ Gilles, H., "Lex peregrinorum", *Le pèlerinage*, Cahiers de Fanjeaux 15 (Toulouse: Édouard Privat, 1980), pp. 161-89; Carlen, L., "Wallfahrt und Recht", *Wallfahrt kennt keine Grenzen: Themen zu einer Ausstellung des Bayerischen Nationalmuseums und des Adalbert Stifter Vereins, München*, ed. L. Kriss-Rettenbeck and G. Möhler (Munich and Zurich: Schnell & Steiner, 1984), pp. 87-100; F. Garrisson, "A propos des pèlerins et de leur condition juridique", *Études d'histoire du droit canonique, dédiées à Gabriel Le Bras*, vol. 2 (Paris: Sirey, 1965), pp. 1165-89. Garrisson's work emphasizes the liturgical aspect of pilgrimage such that an *ordo peregrinorum*, marked by certain insignia (satchel and staff), developed, which provided visual recognition of persons who then had acknowledged legal privileges.

⁶ Carlen, "Wallfahrt und Recht", p. 89 notes in rather general terms that many local synods established rules governing pilgrims, while monastic rules encouraged hospitality for pilgrims and pilgrimage sites utilized semi-official ritual ceremonies that regulated activity at the shrines.

⁷ Carlen, "Wallfahrt und Recht", p. 87; Gilles, "Lex peregrinorum", p. 162. Naz, R., "Pèlerinage", *Dictionnaire de droit canonique* 6 (1957), pp. 1314-1317 deals mostly with modern canon law pertaining to voluntary and imposed pilgrimage and mentions late antique and medieval practices only briefly.

⁸ His classic work is Brundage, J. A., *Canon Law and the Crusader* (Madison, WI: University of Wisconsin Press, 1969); see also idem, "Crusaders and Jurists: The Legal Consequences of Crusader Status", *Le Concile de Clermont de 1095 et l'Appel à la Croisade, Clermont-Ferrand* (Rome, 1997), pp. 141-54.

⁹ Riley-Smith, J., *The First Crusaders, 1095-1131* (Cambridge: Cambridge University Press, 1997), pp. 26-39, 52, 66-70, 74-78.

¹⁰ Bird, J. "Canon Law Regarding Pilgrimage", in *Encyclopedia of Medieval Pilgrimage*, ed. L. Juliet Taylor et al. (Leiden: Brill, 2009), pp. 78-81.

these things and show that here, as in so many other areas of canon law, the historical developments in the background played a crucial role in the law even while certain key principles remained constant. Only when those historical changes are more closely examined do those key principles come to light.

My focus will be on regulations protecting pilgrims in the ninth through the thirteenth centuries, especially within ecclesiastical law but also in laws in which bishops were closely involved in the legislation process. The Carolingian period witnessed several legal enactments pertaining to pilgrimage; these enactments grouped pilgrims with certain other types of people who enjoyed special protections, stressed the obligation of bishops and priests to care for pilgrims, and granted economic protections to pilgrims in the form of exempting them from tolls. In the first half of the twelfth century, in the collections associated with Ivo of Chartres and in the *Decretum Gratiani*, some new privileges arose while previous protections remained in place and were theoretically enforced by excommunication and denunciations of anathema for those who did not obey the canons. Beginning in the second half of the twelfth century, the new papal decretals and conciliar decrees began to group pilgrims with other types of individuals engaged in various activities, above all trade and other business, thus shifting the groups of people with whom pilgrims were most closely affiliated. In this period, pilgrims also acquired new, or newly formulated, privileges connected to legal action and the protection of their property at home; such protections found support in Roman law jurisprudence. Additionally, far less emphasis was put on priestly care of pilgrims in consideration of the numerous hospitals and even entire religious orders then in place to care for them on their travels; episcopal obligations shifted to ensuring such institutions did not take advantage of the pilgrims. In short, medieval canon law about pilgrims developed in such a way as to move from emphasizing physical protection and personal pastoral care and hospitality for pilgrims, categorizing them among *personae miserabiles* like widows and orphans, to emphasizing legal protections and privileges and institutional hospitality for pilgrims, associating them with merchants and crusaders as transnational travelers.

2. The Carolingian Period

In the late eighth through the ninth century, two types of legal sources provide information about protections for pilgrims on the continent. The first are royal capitularies, which attempted to establish universal (i.e., across the Carolingian Empire) rules. Many of these touched on ecclesiastical matters; the Carolingians consulted closely with bishops on these issues since bishops were understood, among other things, to be guardians of law for the Christian community¹¹. The second are episcopal statutes, also grouped together and issued as capitularies¹². These might have exercised influence outside a particular diocese but were implemented in order to govern the clergy within it.

In these sources, pilgrims appear in groupings with other protected types of people. This is consistent across the sources. They appear together with widows, orphans, the sick, the weak (*debiles*), the poor (*pauperes*), and other guests (*hospites*). Predominantly, these lists appear in episcopal statutes designating to what causes priests were to distribute tithes.

¹¹ Moore, M. E., *A Sacred Kingdom: Bishops and the Rise of Frankish Kingship, 300-850*, Studies in Medieval and Early Modern Canon Law 8 (Washington DC: Catholic University of America, 2011).

¹² Van Rhijn, C., *Shepherds of the Lord: Priests and Episcopal Statutes in the Carolingian Period* (Turnhout: Brepols, 2007). Garrisson, "A propos", pp. 1175-76 mentions some Carolingian councils and statutes that are relevant for pilgrimage.

Ghärbald von Lüttich commanded a three-fold division, and one-third of the tithes priests were to “dispense mercifully through their own hands with all humility for the use of the poor and pilgrims”¹³. Theodulf of Orléans encouraged his priests to view the tithes and offerings of the faithful as means of support (*stipendia*) for pilgrims, the poor, and other guests¹⁴. Radulf of Bourges spoke about tithes as that which enable priests “to offer solace for guests and pilgrims, orphans and widows, the weak and the sick”¹⁵. Herard of Tours instructed his priests to “esteem hospitality above all things,” which meant “caring for and taking responsibility for widows, pilgrims, orphans, and the sick”¹⁶. The *Capitularia Frisingensia tertia* offered a four-fold division of tithes, stipulating that one-fourth should go to the priest’s own sustenance, one-fourth to the upkeep of the church, one-fourth to hosting the bishop, and one-fourth to “pilgrims and the poor, widows and orphans”¹⁷. Some texts enjoined hospitality to pilgrims and other guests on all Christians. A ninth-century provincial synod in Bavaria succinctly commanded: “That [all Christians] should welcome pilgrims and guests into their own homes”¹⁸. The famous *Admonitio Generalis* (789) of Charlemagne likewise encouraged all Christians to exercise hospitality, envisioning stable places for “guests, pilgrims, and the poor” to stay in various locales. The decree recalled two New Testament passages, Matthew 25:35, where Jesus anticipated saying to the righteous on Judgment Day, “I was a guest, and you welcomed me,” and Hebrews 13:2, which mentioned welcoming angels in hospitality¹⁹. The general capitulary for Carolingian *missi dominici* in 802 likewise cited Matthew 25:35, as well as Matthew 18:5, commanding that pilgrims of any economic or social status were to receive hospitality and not be denied anywhere “roof and hearth and water.” The decree had two types of pilgrims in mind, namely those “wandering the earth on account of God” and those “travelling on account of a love of God and the salvation of their souls”²⁰. Likely the latter category was for those going to a specific pilgrimage destination, whereas the first group encompassed those who had

¹³ Ghärbald von Lüttich, *Erstes Kapitular* c.5, MGH Capit. episc. 1, pp. 17.10-18.2: [*sacerdotes*] *dividunt et ad ornamentum ecclesiae primam eligant partem, secundum autem ad usum pauperum atque peregrinorum per eorum manus misericorditer cum omni humilitate dispensant, tertiam vero partem sibimetipsis solis sacerdotes reservant.*

¹⁴ Theodulf of Orléans, *Zweites Kapitular* c.5, MGH Capit. episc. 1, p. 150.14-19: *Instruendi sunt sacerdotes pariterque ammonendi, quatinus noverint, decimas et oblationes, quas a fidelibus accipiunt, peregrinorum et pauperum et hospitem esse stipendia et non quasi suis, sed quasi commendaticii uti.*

¹⁵ Radulf of Bourges, c.21, MGH Capit. episc. 1, p. 250.4-5: *et ut hospitibus et peregrinis, orphanis et viduis, debilibus et aegrotis solatium praebere valeant.*

¹⁶ Herard of Tours c.18, MGH Capit. episc. 2, p. 132.1-2: *Ut hospitalitatem ante omnia diligant. Et ut viduarum, peregrinorum, orfanorum atque infirmorum curam et sollicitudinem habeant.*

¹⁷ *Capitula Frisingensia tertia* c.29, MGH Capit. episc. 3, p. 229.3-6: *... in quattuor partes dividant, hoc est sibi unam ad victum, alteram ad tectum et luminaria concinnanda deputet, tertiam peregrinis et pauperibus, viduis et orphanis eroget, quartam ad recipiendum episcopum observet.* See also the *Capitula Parisiensis* c.14, MGH Capit. episc. 3, p. 34.12-14: *Cetera vero dona ecclesiastica in reparatione basilice, in luminaribus, in ornamentis altaris, in libris officialibus, in susceptione pauperum et peregrinorum dispensentur.*

¹⁸ *Capitula Bavarica* c.15, MGH Capit. episc. 3, p. 198.4: *Ut peregrinos et hospites in domos suas recipiant.*

¹⁹ *Admonitio Generalis*, 789 c.75, in *Karoli Magni Capitularia*, MGH Capit. 1, p. 60.22-26: *Omnibus. Et hoc nobis competens et venerabile videtur, ut hospites, peregrini et pauperes susceptiones regulares et canonicas per loca diversa habeant: quia ipse Dominus dicturus erit in remuneratione magni diei: hospes eram, et suscepistis me (Matt. 25:35); et apostolus hospitalitatem laudans, dixit: per hanc quidam placuerunt Deo, angelis hospitio susceptis (Heb. 13:2).*

²⁰ *Capitulare missorum generale*, 802 initio, c.27, in *Caroli Magni Capitularia*, MGH Capit. 1, 96.21-27: *27. Precipimusque ut in omni regno nostro neque divitibus neque pauperibus neque peregrinis nemo hospitium denegare audeat, id est sive peregrinis propter Deum perambulantibus terram sive cuilibet iteranti propter amorem Dei et propter salutem animae suae tectum et focum et aquam illi nemo deneget. Si autem amplius eis aliquid boni facere voluerit, a Deo sibi sciatur retributionem optimam, ut ipse dixit: Qui autem susceperit unum parvulum propter me, me suscepti (Matt. 18:5), et alibi, Hospes fui et susceptis me (Matt. 25:35).* See also Garrisson, “A propos”, p. 1185; Carlen, “Wallfahrt und Recht”, p. 90.

adopted a life of peregrination. Both groups were to receive hospitality. In short, in the Carolingian period, pilgrims were viewed as those who should be received warmly in hospitality and supported through tithes of the church.

Normative sources, especially from the Carolingian kings, also stipulated that they should be granted physical, judicial, and economic protection, and many of these decrees likewise grouped them with individuals such as widows, orphans, and the poor. The general capitulary for the *missi dominici* prohibited exercising fraud, plunder, or other injury upon churches, widows, orphans, and pilgrims since the emperor was, after the Lord and his saints, their protector and defender²¹. Another decree commanded bishops, abbots, abbesses, and counts to exercise just judgment with all love and concord of peace in accord with God's will and noted in particular that "*pauperes, widows, orphans, and pilgrims are to have consolation and defense from them*"²². Already in the 780s, likely at a council held in Pavia in 786, Pippin placed those travelling to and from Rome and other saints' shrines under his protection, imposing a heavy fine on those who killed them²³. Other capitulary and conciliar decrees exempted pilgrims from paying tolls and imposed heavy penalties on those who did so or otherwise detained, harassed, and defrauded pilgrims on their journeys²⁴. Similar protections were given to merchants, but pilgrims were not usually expressly grouped together with them²⁵. In sum, if one looks at the Carolingian Empire in the late eighth through ninth centuries, one sees a clear association of pilgrims with other groups who merited special protections by the authorities. Within the church, this meant that priests were to devote significant time and resources to supporting and showing hospitality to pilgrims, and all Christians were encouraged to view themselves as hosts to individuals travelling "on account of God."

3. The Ivonian Collections and the *Decretum Gratiani*

By the time of Ivo of Chartres (d. 1115) and Gratian (fl. 1130s), the practice of pilgrimage took place in a shifting ecclesiastical and legal landscape. The assumptions about the protections to be afforded pilgrims remained the same, but pilgrims began to be situated in

²¹ *Capitulare missorum generale, 802 initio c.5*, in *Caroli Magni Capitularia*, MGH Capit. 1, 93.1-3: 5. *Ut sanctis ecclesiis Dei neque viduis neque orphanis neque peregrinis fraudem vel rapinam vel aliquit iniuria quis facere presumat; quia ipse dominus imperator, post Domini et sanctis eius, eorum et protector et defensor esse constitutus est.* See also Garrisson, "A propos", p. 1178.

²² *Ibid.*, c.14, 94.1-6: 14. *Ut episcopi, abbates adque abbatissae comiteque unanimi invicem sint, consentientes legem ad iudicium iustum terminandum cum omni caritate et concordia pacis, et ut fideliter vivant secundum voluntate Dei, ut semper ubique et propter illos et inter illos iustum iudicium ibique perficiantur. Pauperes, viduae, orphani et peregrini consolationem adque defensionem ab eis habent; ut et nos per eorum bona voluntatem magis premium vitae aeternae quam supplicium mereamur.*

²³ *Pippini Italiae Regis Capitulare, 782-786, c.10*, in *Capitularia Italica*, MGH Capit. 1, 193.20-23: *De advenas et peregrinos qui in Dei servitio Roma vel per alia sanctorum festinant corpora, ut salvi vadant et revertant sub nostra defensione; et qui ex ipsis peregrinis ausus fuerit occidere, LX solidos componat in palatio nostro. Insuper compositio illa de ipso homicidio componatur, cui legibus leudo ipso pertinuerit.* See also Carlen, "Wallfahrt und Recht", p. 90.

²⁴ *Pippini Regis Capitulare, 754-755 c.4*, in *Pippini Capitularia*, MGH Capit. 1, p. 32.7-11: *Et de peregrinos similiter constituimus qui propter Deum ad Romam vel alicubi vadunt, ut ipsos per nullam occasionem ad pontes vel ad exclusas aut navigio deteneatis, nec propter scrippa sua ullo peregrino calumpniam faciatis, nec ullum theloneum eis tollatis. Et si aliquis hoc fecerit, qualiscumque homo hoc comprobaverit, de LX solidi triginta illi concedimus, et illi alii in sacello regis veniant.* The capitulary is likely connected to a Council of Verneuil held in July 755, which included a decree forbidding the imposition of tolls on any pilgrims. See *Concilium Vernense, 755 Jul. 11 c.22*, in *Pippini Capitularia*, MGH Capit. 1, p. 37.3: *De peregrinis qui propter Deum vadunt, ut eis tolloneos non tollant.* See also Garrisson, "A propos", p. 1179.

²⁵ Garrisson, "A propos", p. 1177.

different groups, and their harassment carried stronger ecclesiastical censure. One sees a disciplinary shift in the church from merely encouraging priests to support pilgrims with tithes to also forbidding Christians from harassing pilgrims, under threat of excommunication and anathema. The monetary penalties of the Carolingian royal capitularies turned into ecclesiastical censures in late eleventh and early twelfth century papal documents. Strong forces to bring this shift about consisted of the Peace of God and Truce of God movements of the eleventh century, where local churchmen and lords worked together to maintain peace and ensure protection for ecclesiastical property and persons (and people like pilgrims), and the rise of a more robust and broadly active reform papacy, who sought to exercise stronger ecclesiastical discipline over laymen for certain offenses²⁶. Overall, however, the number of canons pertaining to pilgrims generally is low. Many canonical regulations, stemming from earlier periods, pertained to ecclesiastical oversight over wandering clerics and monks, who received heavy criticism; any pilgrimage by clerics was to be undertaken only under episcopal supervision and with episcopal approval²⁷. These canons will not be dealt with here since their purpose was to restrict travel for a particular group of persons.

The Ivonian collections are organized systematically, but there is no specific section devoted to pilgrims *per se*. Canons that mention pilgrims continue the Carolingian stress on care for pilgrims, along with the poor and other guests, out of the tithes of the church. This is natural since they derive from Carolingian sources but often with incorrect attribution. Some later canonical collections attributed material from Carolingian episcopal to councils of Nantes, Reims, Melk, or Rouen²⁸. This happened with several statutes by Bishop Hincmar of Reims. Ivo's *Decretum* included a decree attributed to a Council of Nantes but derived from the statute of Theodulf of Orléans that had encouraged priests to view tithes as stipends for the poor, pilgrims, and other guests. The canon continued with a four-fold division of how tithes should be used, mentioning one-quarter going to the poor, but in context, pilgrims were clearly included in this category²⁹. Ivo also included an earlier canon from a Council of Toledo that, in a similar spirit, permitted usage of church property by clerics, pilgrims, and the sick even while it forbade alienation of church property³⁰. Book 16 of Ivo's *Decretum* includes a series

²⁶ On the Peace of God movement, see Koziol, G., *The Peace of God, Past Imperfect* (Leeds, 2018); the collected essays in Head, T. H. and R. Landes eds., *The Peace of God: Social Violence and Religious Response in France around the Year 1000* (Ithaca, NY: Cornell University Press, 1992); also Cowdrey, H. E. J., "The Peace and Truce of God in the Eleventh Century", *Past and Present* 46 (1970), pp. 42-67; Landes, R., "Peace and Truce of God", *Encyclopedia of the Middle Ages* (2000), 2.1103-1104; Goetz, H.-W., "Pacem et iustitiam facere: Zum Rechtsverständnis in den Gottes- und Landfrieden", *Das Recht und seine historischen Grundlagen: Festschrift für Elmar Wadle zum 70. Geburtstag*, ed. T. J. Chiusi et al. (Berlin, 2008), pp. 283-96. On the development of the papacy, see recently Sisson, K. and A. A. Larson, eds., *A Companion to the Medieval Papacy: Growth of an Ideology and Institution*, Brill's Companions to the Christian Tradition 70 (Leiden: Brill, 2016), with extensive bibliography on older literature.

²⁷ Carlen, "Wallfahrt und Recht", p. 89.

²⁸ See the editor's note in MGH Capit. episc. 2, p. 20.

²⁹ ID 3.24 (also Burchard 3.138): [Rubric] *Item quod de decimis quatuor fieri debeant portiones.* [Inscription] *Ex concilio Nannetensi, cap. 6.* [Canon] *Instruendi sunt presbiteri pariterque admonendi, quatenus noverint decimas et oblationes, quas a fidelibus accipiunt, pauperum et hospitem et peregrinorum stipendia, et non quasi suis, sed quasi commendatis uti, de quibus omnibus sciant se rationem posituros in conspectu Dei, et nisi eas fideliter pauperibus, et his quibus iussi sunt administraverint, dampna passuros. Qualiter vero dispensari debeant, canones sancti instituunt, scilicet ut quatuor partes inde fiant, una ad fabricam ecclesie relevandam, altera pauperibus distribuenda, tertia presbiteris sive clericis exhibenda, quarta episcopo reservanda, ut quicquid exinde iusserit, prudenti consilio fiat.* Text taken from the working edition of Martin Brett and Bruce Brasington at <https://ivo-of-chartres.github.io/decretum.html>, accessed 6 October 2018.

³⁰ ID 3.167 (= Pan. 2.85): [Rubric] *Ut ne quis contra necessitatem ecclesie rem alienet.* [Inscription] *Ex concilio Toletano tertio.* [Canon] *Hec sancta synodus nulli episcoporum licentiam tribuit res alienare ecclesie, quoniam et antiquioribus canonibus hoc prohibetur. Si quid vero quod utilitatem non gravet ecclesie, pro*

of texts from Carolingian capitularies. One section includes a number of decrees prohibiting fraud and declaring protection for groups such as public penitents, widows, and orphans. Then there is a canon prohibiting assault, robbery, or murder of *peregrini transeuntes*, which seems to have in mind general travelers, since it refers to people travelling on their lord's or their own business and since it references Old Testament passages protecting the foreigner and sojourner within Israel's midst (cf. Ex. 22:21, Lev. 25:35). Fines are doubled for harm to these individuals³¹. It seems reasonable to assume that religious pilgrims could also be understood as protected by this decree.

These texts from Ivo's *Decretum* did not find their way into Gratian's *Decretum*, a work that did not give any more focused or systematic attention to pilgrims and the protections due them than the Ivonian collections had. The texts that are included begin to group pilgrims with merchants, general travelers, and clerics and others connected to churches and monasteries rather than with the *personae miserabiles* of the Carolingian period; express strong ecclesiastical censures for those who treat them ill; and grant additional privileges to pilgrims that had not previously been delineated. Only one of them is contained in the earlier recension of Gratian's text. It is a famous letter by Gregory VII, *Quoniam multos*, which forbade contact with those barred from Christian fellowship by excommunication but granted certain exceptions, including for the *orator* and *peregrinus*, along with the more general traveler (*viator*), who had permission to accept provisions from excommunicates when they could not or did not have the opportunity to purchase them³². Decretist commentary applied the canonical concept of necessity to explain this privilege or exception. Magister Honorius, in his *Summa 'De iure canonico tractaturus'* (c.1188), first distinguished an *orator* from a *peregrinus* based on distance travelled (the *orator* goes to a relatively nearby place for the purpose of prayer; the *peregrinus* travels "to remote regions"), and then observed that "the necessity of pilgrimage excuses these individuals." He referred to *Decretum* D.44 c.4, which permitted clerics on pilgrimage to enter taverns, a location which was otherwise forbidden to them³³. He observed that some things are permitted "by reason of pilgrimage" which otherwise are not permitted. Sometimes what is permitted pertains to a place (e.g., a tavern), as in D.44 c.4, and sometimes to a person (e.g., an excommunicate), as in *Quoniam multos*³⁴. The *Summa 'Omnis qui iuste*

suffragio monachorum vel ecclesiis ad parochiam suam pertinentium dederint, firmum maneat. Peregrinorum vel clericorum et egenorum necessitati, salvo iure ecclesie, prestare permittuntur pro tempore que potuerint.

³¹ ID 16.287 (also BenL [Benedicta Levita] 1.364(L) and Trip. 3.29.211): [Rubric and Inscription] Ut peregrinos transeuntes nemo inquietet. *Cap. 364. [Canon] Placuit ne peregrinos transeuntes quis inquietare presumat, eisque nocere audeat, quia alii propter dominum, alii propter suas discurrunt necessitates. Quod si aliquis presumptuosus fuerit, qui peregrino nocuerit vel eum assilierit, aut dispoliaverit, leserit, plagaverit, ligaverit, vendiderit, vel occiderit, ipsi peregrino sigillatim dupliciter, sicut de alio homine solet componi, aut suo seniori vel socio cum sua lege componat. Quod si mortuus fuerit, et seniore ibi vel socium non habuerit, tunc episcopus aut sacerdotes eiusdem pagi ipsam compositionem in duplo, sicut de indigena distringente iudice accipiant, et in suam elemosinam illa tribuant, et insuper 60 sol. fisco cogatur persolvere. Et si peregrinum viventem reliquerit, omnem iniuriam ei factam, et quicquid illi intulit, dupliciter ut predictum est et per singula illi componat, sicut solet de infra provinciam aliquem componere. Si autem eum occiderit, ut liberum hominem de ipsa provincia, in duplo componat, et ipsa pecunia a memoratis sacerdotibus in sua detur elemosina. Quoniam Dominus ait, Peregrinum et advenam non contristabis* (Ex. 22:21; cf. Lev. 25:35).

³² *Decretum* C.11 q.3 c.103 [R1] (= Pan. 5.125; ID 14.43): *Quicumque autem aut orator, siue peregrinus aut viator in terram excommunicatorum deenerit, ubi non possit emere uel non habeat unde emat, ab excommunicatis accipiendi damus licentiam.* Gilles, "Lex peregrinorum", pp. 174-75 asserts that this was the main privilege for pilgrims, whether lay or cleric, but I am not sure the pilgrims would have considered it as such, especially since most of them likely never faced the situation. On this decretal, see Vodola, E., *Excommunication in the Middle Ages* (Berkeley CA, 1986), pp. 24, 60-61.

³³ Gilles, "Lex peregrinorum", p. 174 notes this privilege.

³⁴ Magister Honorius, *Summa 'De iure canonico tractaturus'*, vol. 3, ad C.11 q.3 c.103, ed. R. Weigand, P. Landau, and W. Kozur, MIC A:5 (Vatican City, 2010), p. 194.93-195.98: *orator, qui ad proximas, peregrinus,*

iudicat' (1186) did not explicitly mention pilgrims but did give in its commentary on *Quoniam multos* six reasons for excusing contact with excommunicates. The fourth reason is that of *aduenticia necessitas*, which might best be translated as “the necessity of travel abroad”³⁵. Under the canonical norm of *necessitas* -- “necessity knows no law” or *necessitas non habet legem*³⁶ – pilgrims achieved an express legal concept to ground special privileges they enjoyed, which later became explicitly tied to privileges in court proceedings.

The second recension of Gratian's *Decretum* inserted three texts into C.24 q.3 that pertained to the protection of pilgrims. All of them derived from relatively recent papal material, namely a decree from a Roman Council (1059) under Pope Nicholas II and two decrees from the First Lateran Council (1123) under Pope Calixtus II. The specific question of C.24 q.3 was whether someone's entire family is to be excommunicated for his sin. The R1 text remained close to the question at hand³⁷. The R2 additions expanded the treatment beyond the original question, addressing some procedural matters of excommunication and identifying various other offenses that merit excommunication. These include mistreatment of pilgrims and merchants as well as harassment of the people and property associated with churches, including clerics, monks, *conversi*, and others going to a church to pray – the protected groups of the Peace and Truce of God movements. The first text, *Si quis Romipetas*, was issued at Lateran I and expressly protected “those going to Rome and pilgrims of the limina of the apostles and those visiting places of prayer for other saints.” It reiterated the Carolingian prohibition of exacting tolls from pilgrims, and forbade the issuance of new tolls and exactions against merchants too, under penalty of excommunication³⁸. The second, *Paternarum*, attributed to Pope Urban II but actually also a canon from Lateran I, determined, as the rubric put it, “He is to be excommunicated who presumes to trouble those who go to churches to pray and those keeping guard over churches and their goods and persons in the same place”³⁹. The

qui ad remotas partes causa orandi transit. Vel orator dicitur quicumque rethor uel aduocatus. Hos excusat peregrina necessitas. Hinc arg. ratione peregrinationis licere quod alias non liceret, tum ratione loci, ut di. xliiii Clerici [D.44 c.4], tum ratione persone, ut hic.

³⁵ *Summa Lipsiensis* ('*Omnis qui iuste iudicat*'), vol. 3, ad C.11 q.3 c.103, ed. P. Landau, W. Kozur, and K. Miethaner-Vent, MIC A:7 (Vatican City, 2014), p. 62: *Quique enumerantur que excusant communicantes, ne sententia inuoluantur: Domestica necessitas, iusta ignorantia, excessus numeri, aduenticia necessitas, humanitatis intuitus; sextum est correctio.*

³⁶ F. Roumy, “L'origine et la diffusion de l'adage canonique *Necessitas non habet legem* (VIII^e-XIII^e)”, *Medieval Church Law and the Origins of the Western Legal Tradition: A Tribute to Kenneth Pennington*, ed. W. P. Müller and M. E. Sommar (Washington DC, 2006), pp. 301-319.

³⁷ The R1 texts are: d.a.c.1, c.1, d.p.c.1, c.2, cc.5-7, d.p.c.9, d.p.c.11, c.12, d.p.c.25, cc.26-27, d.p.c.27, cc.28-29, d.p.c.38, c.39 (see Anders Winroth, *The Making of Gratian's Decretum* [Cambridge, 2000], Appendix, p. 220). “R1” is my term for what is often referred to as the ‘first recension’. It received numerous additions of text as well as emendations. Together, these additions and emendations eventually formed a finalized R2, or ‘second recension’. The abbreviated labels allow for the identification of sub-stages of development prior to the full-fledged vulgate edition. In my opinion, a stage R2a, consisting of the first major set of additions to R1 text, is clearly discernible in manuscripts, and some examples of R2b additions are also discernible. Certain changes to R1 text can likely be attributed to a recension R2c. On this terminology, see my “Gratian's *De penitentia* in Twelfth-Century Manuscripts”, *Bulletin of Medieval Canon Law* 31 (2014), pp. 57-110.

³⁸ C.24 q.3 c.23 (= Lateran I c.14 [cf. COGD 2.1, p. 92]): [Rubric] *Communione priuetur qui Romipetas, et peregrinos, uel mercatores molestare presumpserit.* [Inscription] *Item Calixtus Papa:* [Canon] *Si quis Romipetas et peregrinos Apostolorum limina, et aliorum sanctorum oratoria uisitare capere, seu rebus, quas ferunt, spoliare, et mercatores nouis teloneorum et pedaticorum exactionibus molestare temptauerit, donec satisfecerit, communione careat Christiana.* See also Gilles, “*Lex peregrinorum*”, p. 173.

³⁹ C.24 q.3 c.24 (= Lateran I c.20 [cf. COGD 2.1, p. 94]): [Rubric] *Excommunicetur qui oratores et ecclesias, earumque bona et personas ibidem seruientes infestare presumit.* [Inscription] *Item Urbanus:* [Canon] *Paternarum traditionum exemplis conmoniti, pastoralis offitii debitum persoluentes, ecclesias cum bonis suis, tam personis quam possessionibus, clericos uidelicet ac monachos, eorumque conuersos, oratores quoque cum suis nihilominus rebus, quas ferunt, tutos et sine molestia esse statuimus. Si quis autem contra hoc facere*

third derived from a council under Nicholas II and linked the protection of pilgrims to the Truce of God movement. The editorial history of the canons from this council is muddled; it seems likely that there were two canons in succession that were copied in some manuscripts and that the R2 *Decretum*'s version of the text combined these two canons. Other manuscript copies recording the council's decree only carry the first part of the *Decretum*'s text⁴⁰. The types of people protected here are "pilgrims, or those going to pray in any place, or clerics, or monks, or women, or unarmed poor persons." Both their goods and persons were protected. The next sentence (not attested to in all manuscripts recording the council's canons) asserted that the peace, which is called the *treuga Dei*, should be maintained, just as established by the archbishops of each province. The joint canon listed "the bond of anathema" and excommunication as punishment for violation⁴¹. Thus, the expanded version of the *Decretum Gratiani* affirmed Nicholas II's own affirmation of the Truce of God movement, which grouped pilgrims with clerics and the poor and defenseless. Decretist commentary on these three texts were sparse, and nothing of real import for a jurisprudence of pilgrimage emerged in it.

One can wonder why Ivo and Gratian did not include treatment of pilgrims more thoroughly into their collections. It might have been that the general norms for protecting pilgrims were widely accepted from the Carolingian period on; it could be that they thought little about it because bishops and priests already assumed the regulation of pilgrims to their churches and because local secular lords enforced physical protection⁴². With the incorporation of *Quoniam multos* into the R1 *Decretum* and the inclusion of these three texts in the R2 *Decretum*, which then rapidly spread throughout Christendom, the consistent but jurisprudentially inchoate protections for pilgrims nevertheless found fertile ground for future development in a more systematic legal system, even if it never became the focus of intensive canonistic reflection and systematization.

4. Papal Decretals and Decretalist Commentary

In the decades after Gratian, papal decretals and conciliar canons occasionally mentioned pilgrims and protections for them. Alexander III (1159-81), Clement III (1187-91), Celestine III (1191-98), and Innocent III (1198-1216) composed decretals that became part of official, papally authorized canon law in the *Liber Extra* of 1234 and that decretalists

presumpserit, et post, quam facinus suum recognouerit, infra spacium dierum triginta competenter non emendauerit, a liminibus ecclesiae arceatur, et anathematis gladio feriatur.

⁴⁰ Note the differences in the edition of Mansi, J. D., *Sacrorum Conciliorum Nova et Amplissima Collectio*, vol. 19 (Venice, 1774), p. 916 (where the overlapping text consists of cc.15-16) and that of MGH *Const.* 1.549 (where the overlapping text consists of c.5).

⁴¹ C.24 q.3 c.25 (= Council of Rome (1059) c.5, or cc.15-16?; JL 4404; Pan. 5.114): [Rubric] *Qui oratoribus, pauperibus non arma ferentibus in malum obuauerint, excommunicentur.* [Inscription] *Item Nykolaus Papa omnibus Episcopis: [Canon] Illi, qui peregrinos, uel oratores cuiuscumque sancti, siue clericos, siue monachos, uel feminas, aut inermes pauperes depredati fuerint, uel bona eorum rapuerint, uel in malum eis obuauerint, anathematis uinculo feriantur, nisi digne emendauerint. Pax uero illa, quam treugam Dei dicimus, sic obseruetur, sicut ab archiepiscopis uniuscuiusque prouinciae constituta est. Qui autem eam infregerit excommunicationi subdatur.*

⁴² Garrisson, "A propos", pp. 1171-72 notes twelfth-century sources (statutes, treatises, pontificals) that indicate that bishops from Ireland to the continent took the blessing of pilgrims and pilgrim insignia (such as the satchel and staff) as specific elements of their and local priests' duties. *Ibid.*, p. 1177 asserts that there was an assumption that the protections of pilgrims belonged primarily to custom and secular powers. Carlen, "Wallfahrt und Recht", p. 89 notes that kings of Spanish kingdoms in the thirteenth century, like the Carolingian kings of the ninth, had laws protecting pilgrims.

commented on with more or less attention given to the status and privileges of pilgrims. The earlier hints at grouping pilgrims with merchants rather than *personae miserabiles* became more pronounced and consistent. Pilgrims also appeared with crusaders, who were a type of pilgrim, and yet the jurisprudence about crusaders seemed to evolve as a jurisprudence of *crusaders*, not of pilgrims generally speaking. Little to no attention is given in this period in the general canon law to the pastoral care due pilgrims – which is clear from the decretalist commentary on a revived Carolingian canon from Hincmar of Reims – but significantly more attention is given to their legal protections in court in their absence from home and in the event of their death while on pilgrimage.

Alexander III expanded the regulations of the First Lateran Council that appeared in the R2 *Decretum*. While Lateran I had issued protections for pilgrims to Rome and other shrines and forbidden new tolls for pilgrims and merchants, at the Third Lateran Council in 1179, Alexander III extended the protections to “priests, clerics, monks, conversi, pilgrims, merchants, farmers coming and going, and those engaging in agriculture, and the animals with which they plough and which carry seeds to the field.” These were to be ensured “appropriate security”⁴³. The second half of the Lateran canon, which was separated out in a different title in the *Liber Extra*, forbade the exaction of new tolls without proper authorization by kings or princes⁴⁴. Raymundus de Pennaforte placed the first section, demanding security for this rather extensive list of persons, into the title of the *Liber Extra* on “The Truce and Peace.” Decretalists specified that the protection, which the *Glossa ordinaria* named a *privilegium*, was in place so long as the person was engaged in the activity named. Thus pilgrims would have a special protection of person only while they were on pilgrimage. Johannes Andreae (c.1270-1348) later noted that this was equivalent to papal legates, who have a special privilege, the *privilegium legati*, only when on assignment as legates⁴⁵. Hostiensis (c.1200-1271) placed the kind of truce that applied to pilgrims into the category of “canonical” (as opposed to “conventual”) and into the subcategory “perpetual” (as opposed to “temporal”). As a perpetual canonical truce, it was a “security for person and property” that was in effect for as long as the pilgrim was a pilgrim, even as it was in effect for a monk so long as he was a monk or, somewhat differently, for a *rusticus* so long as he was travelling to and from his fields⁴⁶. This would mean that someone who pledged to go on a pilgrimage but had not yet departed did not yet merit special protection but that a pilgrim on his return journey enjoyed just as much protection as when he was on his way to his destination.

Pope Clement III issued a decretal in 1188 to the bishop of Zaragoza, protecting the marriages of pilgrims so long as they were living. The later decretalist tradition commented on

⁴³ X 1.34.2 (1st half of Lat. III c.22 [COGD 2.1, p. 143]; 1Comp.1.24.2): *Innovamus autem, ut presbyteri, [clerici], monachi, conversi, peregrini, mercatores, rustici, euntes et redeuntes, et in agricultura existentes, et animalia, quibus arant et quae semina portant ad agrum, congrua securitate laetentur.*

⁴⁴ X 3.39.10 (2nd half of Lat. III c.22 [COGD 2.1, p. 143]; 2nd half of 1Comp. 1.24.2): *nec quisquam alicubi novas pedaticorum exactiones sine auctoritate et consensu regum et principum statuere aut statutas de novo tenere aut veteres augmentare aliquo modo praesumat. Si quis autem contra hoc fecerit et commonitus non destiterit, donec satisfaciat, communionem careat Christiana.*

⁴⁵ *Glossa ordinaria* ad X 1.34.2 (ed. Roma 1582), col. 439: *Idem in peregrinis, scilicet quandiu peregrinantur secundum Hosti., sicut et legati privilegium habent quandiu in legatione sunt... Ioa. And.* Johannes Andreae’s commentary dates to well after the composition of the ordinary gloss, but some of his comments were included in select early printed editions. The Basel edition of 1494 does not contain the latter gloss by Johannes.

⁴⁶ Hostiensis, *Summa aurea* ad 1.34 (ed. Venice 1574, cols. 356, 361): *Treuga. Securitas personis et rebus ad tempus prestita, discordia nondum finita, quod in lege dicitur foedus vel inducia... Perpetuam [treugam canonicam] habent clerici, monachi, conuersi, peregrini, et rustici cum animalibus et ministris omnibus rusticanis, dum sunt in agricultura, et redeunt, et vadunt; infra, eodem, ‘Innovamus’ [X 1.34.2], 24. q.3 ‘Si quis Romipetas’ [C.24 q.3 c.23], infra De peregrinantibus, c.un. [X 2.29.un.]*

this decretal only slightly, and it did not focus on pilgrims. Consequently, it would seem, modern scholars have not noted this as a decretal that pertains to the *lex peregrinorum*. Clement's text explicitly mentions pilgrims, however, together with those taken captive. Apparently the custom had been to allow wives to re-marry after seven years if their husbands had not returned from a journey or war, even if they could not verify the man's death. The decretal prohibits such re-marriages, asserting that the woman remains the man's wife so long as he lives and thus that she cannot re-marry so long as it is unconfirmed that the man is dead⁴⁷. The *casus* or summarizing statement for the decretal in the *Glossa ordinaria* remarks that this decretal abrogates earlier (Roman) laws allowing spouses to re-marry after five years without word from an absentee husband or wife⁴⁸. Again, major decretalists of the thirteenth century such as Hostiensis and Innocent IV (Sinibaldo Fieschi; pope 1243-54) paid little attention to this decretal; all the same, it was enshrined in canon law and could have been used to protect a pilgrim who returned home after a long journey only to find his wife living with another man. Based on this canon (and others), his marriage would have been upheld in an ecclesiastical court.

The greatest amount of canonistic jurisprudence regarding pilgrimage arose in reflection upon the sole decretal preserved in the title *De clericis peregrinantibus* (X 2.21), a decretal of the 1190s under Celestine III. The original decretal dealt, as the *Liber Extra* title indicates, with clerics, but the decretalists understood the applications as extending to all pilgrims. The rubric later applied to the decretal in fact read, "Nothing is to be done against someone pilgrimaging or approaching the apostolic see"⁴⁹. The case itself dealt with a priest from the diocese of Amiens who had travelled to Rome. It is not clear from the text preserved that the priest was officially designated a pilgrim on this journey; in order to fit the title, however, the *Glossa ordinaria* specified that one should understand that this journey was *causa peregrinationis*⁵⁰. While he was away, "certain individuals presumed to seize his things." Although he had not specifically placed his property under apostolic protection, Celestine III affirmed that the property of anyone travelling to the papal see automatically received such protection, and any property unlawfully taken was to be restored⁵¹. Despite its lack of clear

⁴⁷ X 4.1.19 (JL 10130; 2Comp. 4.1.3): [Rubric] *Uxor, non certificata de morte viri, contrahere non potest, quamvis ignoret, quid sit de marito, qui longo tempore abfuit.* [Inscription] *Clemens III. Caesaraugustensi Episcopo.* [Decretal] *In praesentia nostra positus a nobis quaesivisti, quid agendum tibi sit de quibusdam mulieribus in tua dioecesi constitutis, quae, quum viros suos causa captivitatis vel peregrinationis absentes iam ultra septennium praestolatae fuerint, nec certificari possunt de vita vel de morte ipsorum, licet super hoc sollicitudinem adhibuerint diligentem, et pro iuvenili aetate seu fragilitate carnis nequeunt continere, petentes aliis matrimonio copulari. Quum autem dicat Apostolus: "Mulier tam diu alligata est viro, quam diu vir eius vivit", consultationi ergo tuae taliter respondemus, quod, quantocunque annorum numero ita remaneant, viventibus viris suis non possunt ad aliorum consortium canonicè convolare, nec tu eas auctoritate ecclesiae permittas contrahere, donec certum nuncium recipiant de morte virorum.*

⁴⁸ *Glossa ordinaria* ad X 4.1.19 (ed. Roma 1582), col. 1433: *Item, per hanc decretalem abrogantur leges quae dicunt, mulierem per quinquennium tantum debere expectare virum.* Mentioned as among those laws is Dig. 24.2.6, in the title *De diuortii et repudiis*. This text, from the jurist Julian, states that, if a husband is taken hostage, a wife cannot enter into another marriage if she knows that the husband is still alive; but if it is uncertain whether he is still alive or not, then she may enter into a new marriage after five years.

⁴⁹ X 2.21.un (2Comp. 2.20.un; JL 10672) rubric: *Contra peregrinantem seu proficiscentem ad sedem apostolicam non est aliquid innovandum.*

⁵⁰ *Gl. Ord.* ad X 2.21.un (ed. Roma 1582), col. 981: *Causa peregrinationis supple, ut faciat ad hunc titulum: quia interim sub Apostolica protectione consistunt, <C.>24 q.3 <c.23-c.24> 'Si quis Romipetas', 'Paternarum' – Illi canones qui ad hunc titulum pertinent. <Cod.> Si per vim, vel alio modo absentis perturbata est. l<ege> 1 [Cod. 8.5.1], et Cod. de emanc<ipationibus> liber<orum>, l<ege> Iubemus [Cod. 8.48(49).5]; Dig. De tutori<bus> et cura<toribus> da<tis> ab his, l<ege> ultima [Dig. 26.5.29].*

⁵¹ X 2.21.un: *"Conquerente I. presbytero intelleximus, quod, postquam ad nos veniendi iter arripuit, quidam res eius diripere praesumpserunt. Licet autem presbyter idem res suas et ecclesiae suae in protectione*

application to all pilgrims, this text became the basis for the most sustained reflection on protections owed pilgrims among thirteenth-century canonists.

Decretalists such as Bernardus Parmensis (c.1200-1266), Innocent IV, and Hostiensis affirmed that all pilgrims and their property stood under apostolic protection and also utilized Roman law, which stipulated both that any traveler was to have protection of their property at home during their travels and that any traveler could have a representative at home, such as a family member, neighbor, or servant, who would ensure the protection of their property while they were away. The Roman law texts cited in the *Glossa ordinaria* by Bernardus applied to anyone who was “absent” or who was “going abroad” (*peregre agant*) and stipulated individuals who could serve as *tutores vel curatores* of one’s property⁵². Those individuals could even seek in court the restoration of property unjustly taken⁵³. Innocent IV, as also Hostiensis, stressed that anyone going on pilgrimage should seek the permission of one’s bishop (which would then place one’s property under protection), but if necessity compelled a journey (for a cleric or any other pilgrim) without getting that permission, then pilgrims regardless fell under apostolic protection.⁵⁴ Elsewhere, in his commentary on X 1.29.38, Innocent IV grouped pilgrims with merchants, along with penitents, recently manumitted *servi*, lepers, the blind and deaf, orphans, and exposed children under the category of *miserabiles personae*, thus granting them certain legal privileges⁵⁵. The category of *miserabiles personae* has here been expanded considerably from the earlier, Carolingian sources, and it is again noteworthy that pilgrims are most closely aligned with merchants.

Roman law jurisprudence made Hostiensis question what the point or use of this decretal even was, since Roman law was clear that the property of *any traveler* was to be protected legally. Unlawful seizing of goods occurs either by force or by presumption; Roman law allows neither. He surmised that the point of the decretal could be to clarify that the special protection is only in place when the owner of the property himself goes on a journey, not when some messenger or representative of the individual does, which is equivalent to the situation of an appellant to Rome. Or perhaps the decretal simply made all the clearer that, in cases involving pilgrimage, nothing could proceed against someone in court during his absence. Also, the legal protections applied only during the journey, not before, if in that preceding time he was summoned by the local ordinary or judge delegate⁵⁶. In sum, the jurisprudence of the

nostra non posuerit, quando ad nos accessit, quia tamen propter hoc non debuit rebus suis spoliari, quum hi, qui accedunt ad praesentiam nostram, cum rebus eorum debeant esse sub apostolica protectione securi, fraternitati tuae mandamus, quatenus, quicquid eidem presbytero post iter arreptum ad nos veniendi subtractum est vel ablatum, sibi omni appellacione remota restitui faciatis incunctanter.” See also Garrisson, “A propos”, p. 1183; Gilles, “*Lex peregrinorum*”, p. 173.

⁵² Cod. 8.5.1 and Dig. 26.5.29.

⁵³ *Gl. Ord. ad X 2.21.un s.v. faciatis* (ed. Roma 1582), col. 981: *in hoc casu quando possessio absentis taliter turbantur, seruus, amicus, proximus, colonus, petere possunt ut possessio restituatur, ut in l. praedict. C. ‘Si per vim vel alio modo’ l. 1 [Cod. 8.5.1].*

⁵⁴ *Commentaria super decretales ad 2.21.un* (ed. Frankfurt 1570), fol. 345vb. For Innocent, all pilgrims get protection, but especially those going to the Roman see: *Nam cum omnes peregrini sint sub protectione domini papae, specialius tamen venientes ad sedem apostolicam. 24. quaestio. 3. ‘Si quis Ro.’ [C.24 q.3 c.23].* See Hostiensis, *Lectura ad X 2.21 s.v. Accessit* (ed. Strasbourg 1512), vol. 1, fol. 440va: *supple: maxime causa peregrinandi, ut faciat ad titulum, nam et omnes peregrini, maxime apostolorum limina visitantes, sub protectione pape sunt, C.23 q.3 ‘Si quis romipetas’ [C.24 q.3 c.23], et c. ‘Paternarum’ [C.24 q.3 c.24] et c. ‘Illi qui’ [C.24 q.3 c.25], secundum Goffredus, et legitur et nota supra De treuga et pace, ‘Innouamus’ [X 1.34.2].*

⁵⁵ Innocent IV, *Apparatus super libros quinque decretalium ad X 1.29.38* (ed. Frankfurt 1570, fol. 142b). See R. H. Helmholz, *The Spirit of Classical Canon Law* (Athens GA & London, 1996), pp. 129-30.

⁵⁶ *Lectura ad X 2.21 s.v. Mandamus* (ed. Strasbourg 1512), vol. 1, fol. 440vb: “*Que est ergo utilitas huius iuris? Nam idem debet fieri si etiam alius cuiusque probabiliter saltem absentis possessio perturbetur, ut Cod. ‘Si per vim vel alio modo’, l. 1 [Cod. 8.5.1], et nota et super habenda est consideratio absentium et*

ius commune, protecting travelers from the despoliation of goods and postponing court proceedings against them until their return, in some ways seemed to render Celestine's decretal superfluous⁵⁷. All the same, its inclusion in the *Liber Extra* allowed the decretalists to be explicit about the fact that religious pilgrims received these very same legal protections for their property at home and gave them an opportunity to specify that pilgrims could designate representatives at home to protect that property and seek restitution in court should someone unlawfully seize it.

In commenting on Celestine's decretal, Hostiensis also considered what persons received similar privileges or protections to those granted pilgrims, and he elaborated on what other privileges pilgrims had. He expanded the comments he had made in his commentary on *Innovamus*, Alexander III's conciliar canon from Lateran III (X 1.34.2) that had stipulated general protection of person and property for clerics, pilgrims, merchants, and farmers. He defines the term *peregrinans* generally and more specifically, citing Goffredus Tranensis (d. 1245), but he seems to disagree with Goffredus in assimilating all types of *peregrinantes* to one another as though all kinds, defined more generally or more specifically, enjoy the same privileges. Most generally, a *peregrinans* is anyone travelling, and they remain such until they return home; more specifically, a *peregrinans* is someone who approaches the presence of the lord pope. Hostiensis is clear, however, that the privileges enjoyed differ, such that "what is the same is not entirely identical"⁵⁸. In a succeeding section, Hostiensis then stipulates, beyond what he had discussed in his commentary on *Innovamus*, what specific privileges religious pilgrims enjoy. There he had identified what privileges pilgrims enjoy together with clerics, merchants, and farmers. Here he adds for religious pilgrims that they can lodge free of charge wherever they wish; that they can produce a will; that, if they die intestate, nothing of their goods goes to the hospital or boarding house where they are lodging but is handed over to their heirs by the bishop, if possible, or otherwise given to pious causes; that any hospital that takes goods from a dead pilgrim is to pay three times the amount to the bishop, regardless of other statutes, customs, or privileges⁵⁹. These are protections long recognized as belonging to pilgrims, but they did not arise in papal decretals that were preserved in the *Corpus iuris*

peregrinantium qualitercumque, ut patet supra, ti. I, 'Cum parati' [sic] [X 2.1.16 'Cum deputati'?), Dig. De tuto et cura. da., l. 'Si' [Dig. 26.5.29]; Dig. [sic] De emancipat., 'Iubemus' [Cod. 8.48(49).5], et nota supra De offi. dele. 'Consultationibus' [X 1.29.10]. Potest responderi quod cum talis appellanti equiparetur, nullus etiam ordinarius contra talem procedet, etiam alius iuste; ex quo in propria persona accessit, licet missio nuncii non excusaret... Vel forsitan in isto casu leuius et planius et ex leuioribus probationibus procedetur, immo etsi aliter absens sit quis nihilominus proceditur contra ipsum in iudicio. Sed et quod dicitur in hoc c. intelligas nisi ante iter arreptum peruentus fuisset, id est citatus ab ordinario vel delegato ad instantiam partem aduerse,...

On these legal protections in court proceedings, see also Garrisson, "A propos", pp. 1183-85; Carlen, "Wallfahrt und Recht", p. 90.

⁵⁷ The R2 *Decretum* had also included reference to Cod. 3.11.1 in C.3 q.3 d.p.c.4, which stipulated specifically how many months of legal proceedings could be delayed for individuals based on the distance they were travelling from home. As Gilles, "*Lex peregrinorum*", pp. 173-74 points out, this would also have applied to pilgrims.

⁵⁸ *Summa Aurea* (ed. Venice, 1574), col. 842: ... *largo modo intelligitur peregrinans, quicumque aliquo exiens proficiscitur; talis enim quousque ad locum suum redierit, peregrinari intelligitur... Hic tamen specialiter peregrinans dicitur, qui ad presentiam domini papae accedit... secundum Goffredus, sed hoc non puto, ut patet infra eodem, § Et quo priuilegio; Hi enim in priuilegio differunt, ut ibi dicam, et ideo idem non est omnino identissimum.*

⁵⁹ *Ibid.*, col. 843: "*De priuilegio autem clericorum et aliorum peregrinorum et rusticorum et mercatorum, dic ut notatum, supra, de treug. § quot sint species, ver. ita canonica, et seq. Hic tamen adde, quod peregrini etiam aduenire possunt, ubi voluerint, hospitari libere, et de rebus suis testari; quod si intestati decedant, ad hospitem nihil perueniet, sed per manum episcopi heredibus, si fieri potest, alias in pias causas bona sunt eroganda. Si vero hospes aliquid retinuerit, in triplum episcopo reddat, ubi iustum fuerit assignandum, non obstante contraria consuetudine, priuilegio, vel statuto.*" See also Garrisson, "A propos", p. 1187.

canonici. Rather they arose in other decretals and in secular constitutions, the most pertinent one issued by Frederick II in 1220 and added as an *authentica* into the Codex. These were recognized in later canonistic commentary⁶⁰. All of this took place in an era when more pilgrims were on the road for longer distances, so much so that brotherhoods and official religious orders were founded to host and care for pilgrims, especially in Spain and along routes to Rome and the Holy Land⁶¹. Popes such as Innocent III approved numerous hospitals in the period, and Innocent himself founded the *zenodochium* or Hospital of Santo Spirito in Rome for poor strangers and pilgrims⁶². While churches still supported pilgrims, care for them was not reserved to parish priests alone or to individual Christians hosting the occasional traveler. New orders especially organized to care for the poor, sick, and pilgrims were far better suited for the work. Hostiensis's commentary recognizes the contemporary reality of pilgrimage in his day, in which systematic abuse of pilgrims was possible, which Jacques de Vitry (d. 1240) also noted even amidst his great praise in his *Historia Occidentalis* for the hospital religious who were doing great works of charity⁶³.

The legacy of Pope Innocent III in the realm of privileges to pilgrims pertained to giving them special exceptions in situations of ecclesiastical discipline. One decretal specified that they and also crusaders would have the privilege to be administered confession even during an interdict⁶⁴. According to Peter Clarke, the canonists did not readily accept this decretal; it was not included in *Compilatio tertia*, and some may have been surprised by its inclusion in the *Liber Extra*. Some decretalists took the perspective of Johannes Teutonicus, who had included it in his *Compilatio quarta* and commented on it, that penance was only allowed to these groups

⁶⁰ See a letter from Alexander III, dating to 1169, which also references a decree by his predecessor Eugenius III; PL 200:595-97; English translation in Webb, *Pilgrims and Pilgrimage*, 96. The decretal is especially concerned about the practice, purportedly established by long usage in Benevento, of not letting sick pilgrims leave the house where they are staying, make a will, or choose their place of burial and of hosts not caring for them in the meantime, seemingly hastening their demise so that they could seize the pilgrims' unbequeathed goods for themselves. This letter was *not* included in major decretal collections but evidently was known to canonists. The constitution by Emperor Frederick II is *Omnes peregrini*, which is Auth. 6.59.10. It may be found in that location in the Codex (post Cod. 6.59.10) in Emil Herrmann's edition of the *Corpus iuris civilis* (vol. 2, [Leipzig, 1856], p. 440). These constitutions were also sometimes published or copied in combination with the *Authenticum* (the medieval version of Justinian's *Novellae*) and the *Consuetudines*, or *Libri, Feudorum* (e.g., in the edition *Authenticae vel Novellae Constitutiones* [Geneva, 1604], with *Consuetudines Feudorum* beginning on col. 457; Frederick II's *Omnes peregrini* appears on cols. 525-26). Frederick's constitution was issued in the Basilica of St. Peter on November 22, 1220; the constitutions issued on that date are edited collectively as Constitutions no.85 by L. Weiler (MGH Const. 2 [Hannover: Hahn, 1896]), pp. 106-109. The relevant section (no.9) decrees that pilgrims are to lodge free of charge where they wish and have the opportunity to make their will. If they die intestate, none of their goods are to go to the hospital where they are staying but rather are to be transferred to the bishop, who is, if possible, to deliver them over to their heirs or, if that is not possible, donate them to another pious cause. Hospitals who retain goods of dead pilgrims are to pay three-fold to the bishop, and no other contradictory privileges or customs are to hold over and against this decree. Hostiensis thus took much in his commentary from this constitution.

⁶¹ On charitable hospital foundations as well as maintenance of bridges by new religious orders to benefit pilgrims and other travelers, see Brodman, J. W., *Charity and Religion in Medieval Europe* (Washington DC: CUA Press, 2009), pp. 89-104, 115-25. See also Webb, *Pilgrims and Pilgrimage*, pp. 88-91.

⁶² Bolton, B., "Hearts Not Purses? Pope Innocent III's Attitude to Social Welfare", *Through the Eye of a Needle: Judaeo-Christian Roots of Social Welfare*, ed. E. Albu Hanawalt and C. Lindberg (Columbia, Missouri, 1994), pp. 123-45; repr. in eadem, *Innocent III: Studies on Papal Authority and Pastoral Care*, Collected Studies 490 (Aldershot: Ashgate, 1995), no. XVIII.

⁶³ *Ibid.*, p. 135.

⁶⁴ X 5.38.11 (4Comp. 5.14.3, Po --), final sentence: *Recipientibus autem signum crucis non negamus, quo minus eis ob reverentiam crucifixi poenitentia, quum postulaverint, iniungatur, quod et aliis peregrinis potest misericorditer indulgeri.*

in situations of imminent danger⁶⁵. Thus, Bernardus de Montmirat, or Abbas Antiquus (c.1225-1296), said it only applied to pilgrims travelling a long distance from home⁶⁶. Innocent IV took a softer stance, seemingly applying the allowance for any pilgrimage, even those closer to home; at the very least it applied to more than just the pilgrim who went “across the sea”⁶⁷. Hostiensis thought it applied to crusaders as soon as they took the cross but only to pilgrims when they were on their journey; or it could apply to pilgrims from a location under interdict who were then travelling to Compostella, Rome, or other shrines at a long distance and were permitted the sacrament of penance abroad on account of their piety and in consideration of the danger such journeys posed⁶⁸. Regardless of the precise stipulations of distance, canonists agreed that pilgrims on major pilgrimages had a special privilege of confessing and receiving penance even during times of interdict.

A second decretal by Innocent III did not mention pilgrims but confirmed for crusaders that they could have contact with excommunicates when such could not be avoided⁶⁹. Canonistic jurisprudence would link pilgrims to this decretal in a roundabout way, simply affirming the earlier commentary on Gregory VII’s *Quoniam multos*, which had established that, in situations of necessity, pilgrims could have contact with excommunicates. In the wake of the excommunication of the Venetians and the crusaders who attacked Christians in Zaragoza after embarking on the Fourth Crusade and after crusaders were absolved, Innocent III affirmed that contracts with excommunicates (here, the Venetians) remained intact. Innocent III referred to *Quoniam multos*, arguing by analogy that the Venetians were like the *paterfamilias*, with whom contact by family members could not be avoided⁷⁰. Innocent III thus did not mention pilgrims generally and, when referring to *Quoniam multos*, did not mention the section permitting pilgrims contact with excommunicates when it was necessary for acquiring provisions. The *Glossa ordinaria* on the decretal referred to times of necessity but not to pilgrims⁷¹. Only the revised, post-1234 *Glossa ordinaria* on Gratian’s *Decretum* in its comments on *Quoniam multos* at C.11 q.3 c.103 linked pilgrims to this decretal⁷².

⁶⁵ Clarke, P. D., *The Interdict in the Thirteenth Century: A Question of Collective Guilt* (Oxford: Oxford University Press, 2007), pp. 141, 157.

⁶⁶ *Ibid.*, p. 158, with text in p. 158n145.

⁶⁷ Innocent IV, *Commentaria super Decretales ad X 5.38.11 s.v. peregrinis* (ed. Frankfurt 1570), fol. 544vb: *etiam alia peregrinatione quam ultra marina*.

⁶⁸ Hostiensis, *Lectura ad X 5.38 s.v. signum crucis* (ed. Strassbourg, 1512) vol. 2, fol. 340rb: *Hoc est unum de priuilegiis cruce signatorum terre sancte ... ut sine necessitatis periculo ad penitentiam admittantur. Sunt tamen quasi in via periculi quia hoc eis non conceditur nisi proficiscantur secundum quosdam. Contradicit tamen hec littera sequens, ‘Cum postulauerint’, nam secundum quod alii intelligunt hoc priuilegium nullum aut modicum redderetur, contra id quod legitur non... Unde sufficit quod signum crucis receperint, dummodo in mora non sint. De peregrinis autem potest intelligi quod dixerunt, de quibus sequitur infra, ut scilicet transeuntibus penitentia non negetur: sicut nec negatur his qui sunt in articulo necessitatis constituti,... Vel dic hoc esse intelligendum de parochianis loci interdicti, qui beati Iacobi aut sanctorum apostolorum Petri et Pauli aut aliorum a quibus multum distant habent limina visitare, nam et istis periculum imminet, et eorum deuotioni debet misericorditer condescendi quod magis placet.*

⁶⁹ X 5.39.34 (3Comp. 5.21.7; Po 1947).

⁷⁰ X 5.39.34: *Est autem cautum in iure, quod, si quisquam per terram haereticorum aut quorumlibet excommunicatorum transierit, necessaria emere ac recipere poterit ab eisdem. Praeterea, si paterfamilias domus excommunicationis sententia fuerit innodatus, a participatione illius familia excusatur. Licet ergo dux Venetorum dominus navium tanquam paterfamilias domus in excommunicatione persistat, vos tamen, tanquam ipsius familiam, dum in navibus eius fueritis, ipsius excommunicatio non continget, et excusabiles eritis apud Deum, si in excommunicatorum navibus existentes cum dolore cordis sub spe poenitentiae communicaveritis ipsis, in quibus eorum communionem non potueritis evitare.*

⁷¹ *Glossa ordinaria* on X 5.39.34 (ed. Rome 1582), col. 1906, *casus: Nota quod ... tempore necessitatis possunt necessaria emi ab excommunicatis et haereticis.*

⁷² All that is present is an *allegatio*. See *Glossa ordinaria* s.v. *siue peregrinos* (ed. Mainz 1472, fol. 193vb): *Extra, De sent. ex. ‘Si uere’ [X 5.39.34].*

Priests would have been responsible for understanding these regulations concerning pilgrims, and yet the canon law pertaining to pilgrims in the thirteenth century seems far removed from the very concrete terms stipulating what portion of tithes were to go to the support of the *pauperes* and pilgrims found in the Carolingian era. While it is clear that home churches supported their parishioners going on pilgrimage⁷³, the devotion of priests to the physical care of pilgrims find little to no mention. In the *Corpus iuris canonici*, the change from the Carolingian emphasis can be seen in the placement and commentary on a resurrected Carolingian episcopal statute, one from Hincmar of Reims but attributed to a Council of Nantes⁷⁴. The text permits a modification of the usual and regular recitation of the divine office, accounting for the necessity at times of caring for the needs of pilgrims, other guests, diverse travelers, the sick, and also the dead⁷⁵. Raymundus de Pennaforte placed the text within a title of the *Liber Extra* called *De celebratione missarum, et sacramento eucharistiae et divinis officiis*. The placement thus emphasized the liturgical setting. Decretalist commentary said nothing about pilgrims, although the commentary on the relevant section discussing help for pilgrims, visitors, travelers, the sick and the dead, mentions performing Mass, indicating that the primary way the *Glossa* conceived of the individual priest's obligation to pilgrims was in liturgical terms⁷⁶.

5. Conclusion

This Carolingian relic preserved in the *Liber Extra* placed pilgrims in a group with the infirm and the poor and other travelers as standing under the special care of local priests; the rest of the decretals in the *Liber Extra*, however, grouped pilgrims with clerics, merchants, and farmers, placed them under the special protection of the apostolic see, and granted them legal privileges confirmed in Roman law to all travelers. The world of papal monarchy, commercialization and trade, increased travel and pilgrimage, crusade, and the *ius commune* had changed the particulars of protections awarded to pilgrims and the way in which pilgrims were presented in legal sources. In some ways, pilgrims of the thirteenth century might be viewed as having had no greater protections than any traveler or merchant; Hostiensis was clear, though, that special privileges remained. As in the Carolingian era, so also several centuries later, religious pilgrims did have a special status, and it was a status that crossed all regular social and economic boundaries. The clerical pilgrim, the peasant pilgrim, the noble pilgrim, the poor pilgrim, the rich pilgrim, the country pilgrim, the town pilgrim, the male pilgrim, and the female pilgrim all possessed the same privilege by virtue of their status gained in a liturgical ceremony, recognized by their bishop⁷⁷. There is, then, precedent in the west for individuals of any rank or socio-economic status to be recognized under special circumstances, with proper authorization, as belonging to a group that warrants special privileges.

⁷³ See a list from the fourteenth century Pistoia, which funded numerous pilgrims to Santiago and more regionally, in Webb, *Pilgrims and Pilgrimage*, pp. 153-57.

⁷⁴ X 3.41.1. The text is c.9 of Hincmar of Reims's *Capitula presbyteris data anno 852* (MGH Cap. ep. 2, p.38; PL 125: 775A-B). The text appeared in twelve pre-Gratian canonical collections, always attributed to a Council of Nantes, including Regino, 1.208, Burchard 2.104, and Ivo's *Decretum* 6.181.

⁷⁵ X 3.41.1: *Deinde peractis horis et infirmis visitatis, si voluerit, exeat ad opus rurale ieiunus, ut iterum necessitatibus peregrinorum et hospitum, sive diversorum comitantium, infirmorum quoque atque defunctorum succurrere possit usque ad statutam horam, pro temporis qualitate, et opportunitatis.*

⁷⁶ *Gl. Ord.* ad 3 41.1, s.v. *succurrere* (ed. Roma 1582), col. 1364: *Missam celebrando usque ad statutam horam, ut hic dicit, id est, nonam.*

⁷⁷ Garrisson, "A propos", p. 1166 notes how laws about pilgrims ignored social categories.

If the question arises of what protections for pilgrims in the medieval period mean in relationship to contemporary questions surrounding the treatment of migrants and refugees, the historian has to assert first that medieval pilgrims cannot be equated to modern migrants and refugees. One obvious difference, of course, is that a pilgrim is expected to return home; her journey is two-way, or roundtrip. Migrants may have no intention of returning home; refugees might hope to, but the realities on the ground often prevent them from doing so. Additionally, pilgrims set out with a goal to reach some place away from home, a home that usually remains intact and safe and is such upon departure; migrants and refugees are, by contrast, trying to escape their home, a home that faces threats and/or real dangers and destruction upon departure. Nevertheless, what is perhaps helpful in the modern context from the historical laws regarding pilgrims is the fact that pilgrims were set side-by-side with other disadvantaged groups and also with anyone who was away from home.

Above all, what is clear from the medieval context is that those exiled from home – whether voluntarily or not (remember some pilgrims had their pilgrimages imposed on them) – deserved absolute protection of person and property. Their property at home was to be protected; their marriages were to remain intact; their personal rights over their property, even in death, were not to be infringed; and those who abused them or their property were to face strict punishment. Travel, exile, pilgrimage – these things did not negate contractual, familial, or natural obligations and rights.

Moreover, as pilgrims, they belonged under a universal or international law of sorts, that of the church's canon law and the *ius commune*, that operated across kingdoms and autonomous communes⁷⁸. The legal history of protecting pilgrims helps explain why certain migrating people today can achieve a certain status, such as “refugee,” by an internationally recognized authority (viz., the United Nations) and why today's international law includes measures to ensure certain protections for those crossing borders of individual nation states.

Bibliographical References

- Abraham, E. V., *Anticipating Sin in Medieval Society: Childhood, Sexuality, and Violence in the Early Penitentials*, Amsterdam, 2017.
- Adair, J., *The Pilgrims' Way: Shrines and Saints in Britain and Ireland*, London, 1978.
- Bernardus Parmensis, *Glossa ordinaria ad decretales Gregorii noni*, in *Liber Extra*, ed. Roma 1582.
- Birch, D., *Pilgrimage to Rome in the Middle Ages*, Woodbridge, 1998.
- Bird, J., “Canon Law Regarding Pilgrimage”, *Encyclopedia of Medieval Pilgrimage* (L. J. Taylor et al., eds.), Leiden, 2009, pp. 78-81.
- Bolton, B., “Hearts Not Purses? Pope Innocent III's Attitude to Social Welfare”, *Through the Eye of a Needle: Judaeo-Christian Roots of Social Welfare* (E. A. Hanawalt and C. Lindberg, eds.), Columbia, Missouri, 1994, pp. 123-45; repr. in eadem, *Innocent III: Studies on Papal Authority and Pastoral Care*, Collected Studies 490 (Aldershot: Ashgate, 1995), no. XVIII.
- Brodman, J. W., *Charity and Religion in Medieval Europe*, Washington DC, 2009.

⁷⁸ Garrisson, “A propos”, p. 1189 also draws the connection between the law of pilgrims and international law.

Brundage, J. A.:

- “Crusaders and Jurists: The Legal Consequences of Crusader Status”, *Le Concile de Clermont de 1095 et l’Appel à la Croisade, Clermont-Ferrand*, Rome, 1997, pp. 141-54.
- *Canon Law and the Crusader*, Madison, WI, 1969.

Cardini, F., *Il Pellegrinaggio: una dimensione della vita medievale*, Rome, 1996.

Carlen, L., “Wallfahrt und Recht”, *Wallfahrt kennt keine Grenzen: Themen zu einer Ausstellung des Bayerischen Nationalmuseums und des Adalbert Stifter Vereins, München*, (L. Kriss-Rettenbeck and G. Möhler, eds.), Munich and Zurich, 1984.

Clarke, P. D., *The Interdict in the Thirteenth Century: A Question of Collective Guilt*, Oxford, 2007.

Cowdrey, H. E. J., “The Peace and Truce of God in the Eleventh Century”, *Past and Present* 46 (1970), pp. 42-67.

Friedberg, E., ed. *Corpus iuris canonici*, 2 volumes, Leipzig, 1879/1881; repr. Graz, 1956.

Garrisson, F., “A propos des pèlerins et de leur condition juridique”, *Études d’histoire du droit canonique, dédiées à Gabriel Le Bras*, vol. 2, Paris, 1965, 2.1165-89.

Gauthier, M., *Highways of Faith: Relics and Reliquaries from Jerusalem to Compostela*, trans. Underwood, J., London 1983.

Gilles, H. “*Lex peregrinorum*”, *Le pèlerinage*, Cahiers de Fanjeaux 15, Toulouse 1980, pp. 161-89.

Goetz, H. W., “*Pacem et iustitiam facere: Zum Rechtsverständnis in den Gottes- und Landfrieden*”, *Das Recht und seine historischen Grundlagen: Festschrift für Elmar Wadle zum 70. Geburtstag* (T. J. Chiusi, et al., eds.), Berlin, 2008, pp. 283-96.

Head, T. F., and R. Landes, eds. *The Peace of God: Social Violence and Religious Response in France around the Year 1000*, Ithaca, NY 1992.

Helmholz, R. H., *The Spirit of Classical Canon Law*, Athens GA & London 1996.

Henricus de Segusio (Hostiensis):

- *Lectura super decretales*, Strassbourg, 1512.
- *Summa Aurea*. Venice, 1574.

Humair, C., *Strafwallfahrt – Strafe oder Wallfahrt?: Eine Strafpraxis des ausgehenden Mittelalters mit dem Wallfahrtsziel Einsiedeln*, Saarbrücken 2018.

Innocentius IV, *Apparatus super libros quinque decretalium*, Frankfurt-am-Main, 1570.

Koziol, G., *The Peace of God*, Past Imperfect, Leeds, 2018.

Landes, R., “Peace and Truce of God”, *Encyclopedia of the Middle Ages* (A. Vauchez and A. Walford, eds.), Chicago, 2000, 2.1103–1104.

Larson, A. A. “Gratian’s *De penitentia* in Twelfth-Century Manuscripts”, *Bulletin of Medieval Canon Law* 31 (2014), pp. 57-110.

Means, R., *Penance in Medieval Europe, 600-1200*, Cambridge, 2014.

Moore, M. E., *A Sacred Kingdom: Bishops and the Rise of Frankish Kingship, 300-850*, Studies in Medieval and Early Modern Canon Law 8, Washington DC, 2011.

Mullins, E., *The Pilgrimage to Santiago*, London, 1974.

Naz, R., “Pèlerinage”, *Dictionnaire de droit canonique* 6 (1957), pp. 1314-1317.

Oldfield, P., *Sanctity and Pilgrimage in Medieval Southern Italy, 1000-1200*, Cambridge, 2014.

Quintavalle, A. C.:

- *La strada Romea*, Milan, 1976.
- *Vie dei Pellegini nell’Emilia Medievale*, Milan, 1977.

Riley-Smith, J., *The First Crusaders, 1095-1131*, Cambridge, 1997.

Roumy, F., “L’origine et la diffusion de l’adage canonique *Necessitas non habet legem* (VIII^e-XIII^e)”, *Medieval Church Law and the Origins of the Western Legal Tradition: A Tribute to Kenneth Pennington* (W. P. Müller and M. E. Sommar, eds.), Washington DC 2006, pp. 301-319.

Sigal, P. A., “Les différents types de pèlerinage au Moyen Age”, *Wallfahrt kennt keine Grenzen: Themen zu einer Ausstellung des Bayerischen Nationalmuseums und des Adalbert Stifter Vereins, München* (L. Kriss-Rettenbeck and G. Möhler, eds.), Munich and Zurich, 1984, pp. 76-86.

Sisson, K. and A. A. Larson, eds., *A Companion to the Medieval Papacy: Growth of an Ideology and Institution*, Brill’s Companions to the Christian Tradition 70, Leiden, 2016.

Sumption, J., *The Age of Pilgrimage: The Medieval Journey to God*, Mahwah, NJ, 1975, 2003.

- Tate, R. B., *Pilgrimages to St James of Compostela from the British Isles during the Middle Ages*, Liverpool, 1990.
- Van Rhijn, C., *Shepherds of the Lord: Priests and Episcopal Statutes in the Carolingian Period*, Turnhout, 2007.
- Vodola, E., *Excommunication in the Middle Ages*, Berkeley, 1986.
- Webb, D.:
- *Medieval European Pilgrimage, c.700-c.1500*, New York, 2002.
 - *Pilgrims and Pilgrimage in the Medieval West*, International Library of Historical Studies 12, New York, 1999.