

# I

## THE LEGAL AND POLITICAL THEORY OF THE CRUSADE

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**T**he basic legal theory of the crusade is the moral theology of the just war. The crusade was the perfect example of the just war, *justissimum bellum*, and the idea of a just war was inevitably developed and refined in the course of the crusading period. Before the crusades the just war was best defined by its opposite, though a number of the fundamental concepts already existed in church decretals. At all times, the notion was closely bound up with that of martyrdom and of Christian asceticism. On many points the Christian system as a whole approximated to the Moslem teaching on *jihād*. The only explicit war aim was the "recovery" of the holy places and of Christian land.

The status of a man who is fighting against "the enemies of God" is the crux of crusading law. If, even when he is killed, he is not a martyr, he must be engaged simply in a good work, and the crusade became the highest and most efficacious of good works, and so of penances. Penance has always been important in canon law, and under the pressure of the crusade the related theology of indulgences developed even faster than the theory of the just war.

### *A. Origins of the Concept of "Holy War"*

The idea of holy war in the west takes shape early with the conversion of the Arian Franks, and Merovingian history, at least as Gregory of Tours relates it, reflects the idea that Catholic faith is rewarded by military and political victory. The definition of martyrdom, inherited from the age before Constantine, was much more precise. True martyrdom, like baptism, wipes out sin. The martyr knows no pains,

no purgatory, needs no penance, but his act must be nothing more than a refusal to deny the Christian faith. He must not seek death or incur it rashly. For much of the crusading period the situation of the individual crusader was more exactly defined than the crusade itself.<sup>1</sup>

When the Arabs began to colonize the Spanish and Italian mainlands and Sicily, they were not thought of as unique, and the war against them was not "signed with the cross" more than war against any other invader. In this situation, however, pope Leo IV (847–855) asserted that Christians who die for the truth of their faith, the safety of their country, and the defense of Christians are sure of a heavenly reward.<sup>2</sup> This, of course, means no more than is self-evident in Christian terms, that death incurred in the course of these good and praiseworthy acts is particularly meritorious. "The repose of eternal life shall embrace those who fall in the conflict of war, from duty to the Catholic religion and struggling vigorously against pagans and infidels," wrote pope John VIII in 879, at a time of continual wars against the Arab colonizers of Italy.<sup>3</sup> Death for the "Christian faith and commonwealth", then, was a penance, and in pronouncing absolution, John made it conditional on penitence, foreshadowing theological development in a later period. He did so also in his many diatribes and exhortations against alliances of Christians with Moslems, requiring, for example, that prince Waiferius of Salerno "withdraw everyone from the fellowship of the pagans". He exhorted bishops Ayo of Benevento and Landulph of Capua to secure the dissolution of these ungodly alliances (*foedera impia*) or unnatural alliance (*infandum*). The Neapolitan duke Sergius II, warned to withdraw from an alliance, was threatened with attack by the temporal defenders of the church, but was promised, if he obeyed, both papal favors and "great heavenly rewards".<sup>4</sup> Thus an influential man, merely for not helping the Moslems, was offered almost as much as those who might be killed. Archbishop Athanasius of Naples was finally excommunicated for his treaty arrangements with Moslems (881), in rather more sober language.<sup>5</sup> John's aim is clear — the elimination of Moslem invaders from Italy. The justification is stated in another of his letters, more emotional in tone: he denounced the Mos-

1. Bruno Krusch and Wilhelm Levison, eds., *Gregorii episcopi Turonensis libri historiarum X* (MGH, *Mer.*, I, i; Hanover, 1951), e.g., II, 37 (pp. 85–88), and III, preface (pp. 96–97).

2. *PL*, 115, col. 657 (ep. 1, *ad exercitum Francorum*).

3. *PL*, 126, col. 816 (ep. 186, *ad episcopos in regno Ludovici constitutos*).

4. *Ibid.*, cols. 708, 717–718, 723, 726 (ep. 55, *ad Guaiferium*; 63, *ad Landulphum*; 70, *ad Sergium*; 72, *ad Ajonem*).

5. *Ibid.*, cols. 930–931 (ep. 321, *ad diversos episcopos*).

lems as “the sons of fornication” (though this may represent one of the usual propaganda criticisms of Islamic sexual moral law), together with those who, “under the name of Christians”, kill “the sheep of the Lord”, some by the sword, some by famine, while carrying others off as booty into captivity.<sup>6</sup> John did little more than support a policy of expelling the invaders with the strongest religious reasons he could think of. The alternative fates that he referred to, death and captivity (devastation was a by-product), reflect some part of the Islamic law of *jihād*, as applied to conquered Christians. He did not mention that the Christians were also offered conversion to Islam, though this, of course, can be assumed to have happened. Whether only those who refused conversion were enslaved we do not know; the slave-labor market seems to have flourished.

This period was formative of later law but produced nothing clear or unambiguous. The same is true of the years immediately preceding Urban II's 1095 initiative, when the reconquest of Sicily was already complete and the war in Spain reasonably successful; a tradition had grown up which gave ecclesiastical encouragement to any effort to recover European territory. Churches in Spain and Sicily were already described as “recovered” or “restored”.<sup>7</sup> Europe was the last region to have come (in part) under Arab domination, and it was taken for granted that it should be recovered first, until the idea of the crusade supervened.<sup>8</sup> In Sicily and Spain the Christians fought campaigns blessed by the church, but not dominated by religious purpose. Harald Hardråde, count Roger of Hauteville, and Rodrigo Díaz of Vivar were probably all believing Christians in their different ways, but none was a crusader. Europe approached the proclamation of the First Crusade with some idea of holy war but also with a papal diplomatic tradition which would be suspended by, but would survive, the crusades. Even when the idea of a Levantine crusade was in the air, Gregory VII expected to have a working relationship with the Hammādid an-Nāṣir (1062–1088), to whom he wrote about the surviving local Latin hierarchy in North Africa, wishing him honor in this world and life in the next, in the bosom of Abraham. This was a wish which, though it may have been inspired by an acquaintance with Jewish belief, was equally appropriate for Moslems. He urged the Christian population to

6. *Ibid.*, col. 721 (ep. 67, *ad Wigbodum*); col. 716 (ep. 62, *ad episcopos in regno Caroli imp. constitutos*).

7. Erich Caspar, ed., *Das Register Gregors VII. (MGH, Epistolae selectae, II; Berlin, 1920–1923)*, IV, 28 (pp. 343–347); and see note 12 below.

8. Denys Hay, *Europe, the Emergence of an Idea*, 2nd ed. (Edinburgh, 1968).

accept trials with patience and to set a good example to non-Christians around them.<sup>9</sup>

Urban II introduced a clearer legal and political situation. Whatever the confusion about Urban's exact words, all writers (some of whom were themselves among the new "crucesignati") recognized that the crusade proper was a new initiative. The initiative in crusading always remained with the papacy. Whenever initiative appeared elsewhere (as later it would do in the case of Frederick II), the papacy fought to regain it. The political theory therefore began as, and remained, a characteristically clerical concept of Christendom, and the theory common to all accounts of Urban's preaching is that of a defensive war by the Christian commonwealth. This is part of the history of propaganda, but it has major political and legal implications. From this date forward, the crusade was justified by long accounts of Arab aggression against Asia, Africa, and Europe in turn; the European reaction was now literally oriented to the "recovery" of the Holy Land. This was clerical lore. The wars of the Old Testament were thought to give further legal justification, in addition to their propaganda value. Politically, all crusades would continue to be regarded as defensive; legally, they were justified first as undertaken in defense of Christendom. The papacy purported to act on behalf of the Christian commonwealth.

The political concept amounted roughly to what would now be called "cultural imperialism". It is not only that Urban was believed to have appealed to a national sense, and especially to the French.<sup>10</sup> As soon as the "pilgrims" left the Latin world, and long before they met a Moslem, they came into conflict with cultures different from their own, and an inflexible "Latin" cultural intolerance remained with most of them throughout the crusading period.<sup>11</sup> Rejection of all but the Latin culture—and in Spain even the Latin, though not Roman, Mozarab rite was largely replaced—ensured that the crusade would never look like more than an alien colonization to Arab Christians as well as to Moslems. From the beginning, it was implicit in Urban's decision to preach the crusade at all, in his choice of Clermont, and in the way he was understood in the west, that the crusade in the east should be an expansion of western European society.

The key to both legal and political theory was the idea of "recovery". Guibert of Nogent says that Urban expected God, through the

9. Caspar, *Das Register Gregors VII.*, III, 20 (pp. 286-287), 21 (pp. 287-288); cf. I, 22 (pp. 36-39), and IV, 28 (pp. 343-347).

10. Robert of Rheims, *Historia Hierosolymitana*, I, 1-2 (*RHC, Occ.*, III, 728-730).

11. See Henry L. Savage, "Pilgrimages and Pilgrim Shrines in Palestine and Syria after 1095," in volume IV of the present work, pp. 60-68.

crusades, to "restore *lost* Jerusalem". In Robert of Rheims' account Urban called on the Franks to "repel aggression". In the Latin liturgy for the *recovery* of the Holy Sepulcher, as reported by John of Würzburg, the *Secreta* refers to "the city of Jerusalem, plucked out of the hand of the pagans".<sup>12</sup> It is necessary to labor this point in order to understand that from the beginning the notion that the Holy Land belonged of right to Christians underlay the legal concept of holy war. Palestine, which had been Arab for centuries, was conceived of as being as much Christian as were Spain and Sicily. The political fact that Spain, even more than Sicily, had a strong Latinate population on which to build effective reconquest had no reflection in political theory. That cultural (and ethnographic) realities meant nothing is admirably illustrated in a Genoese account of the capture of Caesarea during the First Crusade. According to this, two Arabs came out of the besieged city and argued with the legate and the patriarch, asking why the Christians want to kill people who are made in the form of the Christian God, and take the Arabs' land, when this is contrary to the Christian religion (or "law" — *lex*). The patriarch answered that the city belonged to St. Peter, not to the Arabs who lived in it and whose ancestors ejected St. Peter; furthermore, whoever strives against the law of God ought to be killed; to kill him is not contrary to the law of God, who said "Vengeance is mine." Therefore, if the Arabs will give up the land of St. Peter, they may safely depart with their goods, but if they refuse, "the Lord will strike you with his sword and you will be justly slain."<sup>13</sup> This "right" of killing in the crusade was important, and in due course would be elaborated scholastically.

It brings us back directly to the problem of the just war, at this date only a compendious phrase to cover a group of associated concepts: "defensive" war, war "for God" or against the "enemies of God", a "good" war as distinct from ordinary bad wars, war as penance, and war as a form of Christian ascetic life and a means of salvation particularly suited to anyone capable of fighting. The Latin for the crusade is, after all, "bellum sacrum". At this early stage the idea of the crusade as directing bad instincts to good ends was important. Fulcher's classic account describes the public crimes which the bishops and other authorities had failed to repress, such as the capturing and

12. Guibert of Nogent, *Gesta dei per Francos*, II, 4 (*RHC, Occ.*, IV, 137-140); Robert of Rheims, *Historia*, I, 1 (*RHC, Occ.*, III, 728); John of Würzburg, *Descriptio Terrae Sanctae*, cap. 13 (*PL*, 155, col. 1089). Emphasis added.

13. Caffaro di Caschifellone, *Cafari Genuensis de liberatione civitatum orientis*, XV (*RHC, Occ.*, V, 62-63); Romans 12:19; Deut. 32:35. The legate Adhémar was already dead, and no patriarch had yet been elected.

plundering of monks and clerics and nuns and their servants, and of pilgrims and merchants; his account condemns kidnappers, burners of houses, and all who consent to their crimes, but claims that private wars and lawlessness will be brought to an end by unity in fighting the Turkish and Arab invaders of the east: "May those who used to fight against their brothers and their families now justly (*rite*) war against the barbarians." In practice this would not end savagery, but as well turn it against the external enemy. "Let hatreds cease among you" meant "hate the enemy"; the theme was prominent in what came to be accepted as Urban's argument, as tendered, for example, by William of Malmesbury and, in due course, by William of Tyre, and the best clerical tradition in the crusading state.<sup>14</sup> In Monte Cassino the monks held that Urban enabled the lords to do penance by crusading, without having to admit publicly that they were doing so. The idea of the crusade as a penance naturally follows from its being a good work, literally a pilgrimage. We can illustrate the originality of this complex of attitudes by the fact that, once the idea of the crusade was enunciated, it was extended to older areas of conflict. The privileges (and often the opportunities for legal penance) were extended to the war in Spain, though not uninterruptedly or as fully as in the war in the east. As of 1100, we can define the just war as a defense, a restoration of rights, a resistance to aggression and cruelty, a substitute for wicked internecine warfare, a penance for rapine and lawlessness, and finally, a Christian way of life.

Urban brought existing ideas together; they were not yet precisely defined, but all the ideas of the crusade that developed later were present in some form or other.

## B. *Indulgences and the Holy War*

The systematization of canon law relating to the different aspects of holy war, including indulgences, is best studied in its final form in the decretal collections. We may glance in passing at Bernard of Clair-

14. *Fulcheri Carnotensis historia Hierosolymitana*, ed. Heinrich Hagenmeyer (Heidelberg, 1913), I, 1 (pp. 119-123); William of Malmesbury, *De gestis regum*, ed. William Stubbs (Rolls Series, 90), II, 393 ff.; William of Tyre, *Historia rerum in partibus transmarinis gestarum*, I, 15 (*RHC, Occ.*, I, 39-42); cf. *ibid.*, I, 7 (pp. 21-25).

vaux, whose surviving crusade sermons, and whose treatise on the knights of the Temple, naturally emphasize the "way of Christian life" but, as concerns the law, stress two points. He is careful to define the conditions of the papal offer of indulgence exactly, at a lower rhetorical level than usual — taking the cross and making contrite confession. He contributed, as did many who never went to the east, to the conception of irreconcilability and the attempt to separate two civilizations by a barrier of canon law. Christ is considered glorified in the death of the Moslem; the Christian in death is led into his reward. Again, "the profit of the death which (the soldier of Christ) inflicts is Christ, the profit of that which he receives is his own." Even Bernard thought that this needed a bit of explaining. "Not that even the Moslems (*paganis*) ought to be destroyed, if by any other means they could be held back from excessive aggression and violence against the faithful." Elsewhere, however, when he absolutely forbids any understanding with Moslems (no allegiance, no money payments, no tribute), Bernard sounds no less uncompromising than Cato, and writes, "either the religion or the people must be destroyed."<sup>15</sup>

A survey of the canons and papal bulls throughout the main period of the crusades reveals no specific justification of war, although this should have been the basic legal problem for church lawyers. The official documents that proclaim or support or enforce the crusade take for granted that such justification as Urban, and particularly the idea of "recovery", had lent the war was fully sufficient. The Moslems who are the targets of the warfare continue to be referred to as "attackers". Early in this period the crusade became a normal penance; for example, the Second Lateran Council (1139) decreed a year's service in Jerusalem or Spain for arson. The legal concept of holy war developed most quickly in terms not only of penance, but of the indulgences which the papal documents concede, and which became so popular at this time.<sup>16</sup>

Indulgences evolved from the old system of penitentiaries, with their tariffed penance, which, together with a process of redemptions, lasted into the eleventh century. Indulgences in consideration of some good or pious work first developed clearly in the course of this century, and did so more definitely in the twelfth. The ordinary indulgence substi-

15. *De laude novae militiae*, III (PL, 182, cols. 924-925); *ibid.*, I (col. 922), and *Epistolae*, col. 652 (ep. 457, *ad universos fideles*) and col. 653 (ep. 458, *ad Wladislaum*).

16. Karl J. von Hefele, tr. Henri M. Leclercq, *Histoire des conciles* (12 vols., Paris, 1907-1952), V-1, p. 731.

tuted a stated good work for so many "day" units of purgatorial pains which would previously have been remitted by penance.<sup>17</sup> Throughout the crusading period, the plenary indulgence was confined to the crusade proper, and the first known unambiguous plenary indulgence (for all the pains of all sins committed, if confessed and repented) appears to have been that offered by Urban II himself at Clermont in 1095. Canon 2, as reported, conceded remission of all penance to whoever made the pilgrimage, not from pride and avarice but out of piety and in order to liberate the tomb of Christ.<sup>18</sup> Indulgences were inextricably associated with social motivation, especially the purpose of fighting. Their use should not be seen as the act of private devotion that it subsequently became. They were essential to the law of the crusade, and constitute a useful legal and political criterion.

Examples illustrate the development of this practice and its underlying theory. The Second Lateran decree was by later standards as imprecise as Urban had been at Clermont (it actually uses as a definition the phrase "as decreed by our lord pope Urban"): "To those who set out for Jerusalem, to defend the Christian nation and war against the tyranny of the unbelievers, we concede remission of their sins."<sup>19</sup> Much later, in 1181, it is interesting to see Alexander III associating the notions of defense and attack with the remission of sin. Thus in a bull to the master of the Temple, Arnold of Toroge, he writes of the duty of Templars to lay down their lives for their friends (John 15:13), adding "and you do not at all fear to protect them from the attacks of the pagans". He charges them "for the remission of sins, by the authority of God and the blessed Peter, prince of the apostles," to defend the church by attacking its enemies, and to rescue it where it is "under the tyranny of the pagans".<sup>20</sup> 1181 was the year of Reginald of Châtillon's brutal breach of the truce; Arab power was growing, but crusading aggression against Egypt was still fresh in the memories of men. In a few years' time Jerusalem would fall, and Gregory VIII would call all Christians to penance, good works, and the (armed) pilgrimage to the Holy Land, the "labor" of its recovery, "to look not for profit or worldly glory, but for the will of God". He granted the indulgence, which is of course "plenary", to those who undertake the "journey" with a contrite heart and humble spirit, "and to those who depart in repentance for sins and in a true faith, we promise full in-

17. *Dictionnaire de théologie catholique* (16 vols., Paris, 1923-1950), s.v. "indulgences".

18. Hefele, tr. Leclercq, *Histoire des conciles*, V-1, p. 401.

19. *Ibid.*, p. 634.

20. Aloysius Tomassetti, ed., *Bullarium diplomatum et privilegiorum . . . editio* (Turin, 1857-1872), Alexander III, II, 830 (no. 111).



indulgence of their offenses (*criminum*) and eternal life. They shall know that whether they survive or die, they shall have relaxation of the penance imposed, for all their sins of which they shall have made true confession. . . .”<sup>21</sup>

After the comparative failure of the Third Crusade, Celestine III wrote in stronger terms. We shall see how, stage by stage, failure made the papacy increasingly intransigent. Celestine preferred the threat of excommunication to the inducement of the indulgence. He reverted to Urban’s old themes, while bringing them up to date and using the more legalistic phraseology of his own day. In condemning sin, he singled out private enmities and tournaments. By implication, the crusade offered meritorious enmity and a profitable tournament. Celestine did not claim that Jerusalem was Christian because Christians had been ruling it for nearly a century, but spoke of “the filthiness of the pagans in the taking of the Holy Land, *which is the inheritance of the Lord*”; he also said that they came “ruinously” and “violently”. Later he referred to “that tiny piece of the portion of the land of the Lord which is still held under the power of the Christians”. When, as so often in recruiting propaganda, the church is identified with the people of ancient Israel, it has in fact both a political and a legal implication. Politically, the church, (Latin) Christian society under papal guidance, has claimed the right to the “inheritance of the Lord” in the same way as the chosen people had a right to the promised land; and when Celestine approvingly quoted how one man overthrew a thousand, and “slaughtered something like an infinite multitude”, he was coming close to a justification of the slaughter of infinite multitudes in any situation, because any situation may be seen as reproducing events of the Old Testament.<sup>22</sup> This gave the war its legality.

It was at the end of Innocent III’s pontificate and during that of Honorius III that the definition of the “Holy Land” was extended to include Egypt; thus the legal concept of holy war and indulgence was stretched to cover what was originally no more than a strategic concept recommended by Richard I of England and actually attempted by the Fifth Crusade.<sup>23</sup> At the same time we reach the fullest expression of indulgence, but no more precise definition of holy war. For Innocent III it was still otiose to define closely the justification of the war. For example, he spoke of the “ungrateful slaves” and “disloyal

21. *Ibid.*, Gregory VIII, III, 52 (no. 2: 1187).

22. *Ibid.*, Celestine III, p. 88 (no. 12: 1193).

23. *Ibid.*, Honorius III, p. 332 (no. 16: 1217); *Chronique d’Ernoul et de Bernard le Trésorier*, cap. 31, ed. Louis de Mas Latrie (Paris, 1871), p. 338, if this is not hindsight. Cf. volume II of the present work, chapter XI.

servants" who refuse, "when the Lord of heaven and earth implores their help in recovering his own patrimony, which has been lost, not by his fault, but by theirs." Like his predecessors, he preferred to hover over the intermediate ground between political and legal theology. He argued from a familiar feudal situation: "Certainly, if some king in this world was thrown out of his kingdom by his enemies, and if his vassals did not venture their persons as well as their property for him, would he not, when he recovered his lost kingdom, condemn them as disloyal, and conceive unthought-of torments for them . . . ?" This unattractive picture of a worldly king became less attractive still when the pope drove home the comparison with the King of kings "as if ejected from the kingdom which he provided at the price of his blood". This is merely another variation on the theme of defense, but the picture of the enemy as a criminal or rebel was becoming clearer and acquiring a more obviously legal force. In the same bull, dated 1214, Innocent argued that the divine command to love one's neighbor requires men to fight to free their fellow-Christians "held among the unfaithful Moslems in the slave-yard of a fearful prison"; there are many thousands detained in "slavery or prison", he said.<sup>24</sup> This is a variation on the theme of persecution, and it is still as much an exhortation as an attempt at legal justification. Even in this great age of canon law, the legal basis remained uncertain. The key ideas were still the "recovery" of land rightfully possessed, and the "defense" against the "attack" (possession of the Holy Land); and these were determined on theological grounds.

The classic form of the plenary crusading indulgence is to be found in Innocent's decree calling for a new crusade, promulgated during the Fourth Lateran Council. The indulgence is based on the power of binding and loosing which was conferred on the pope by God's mercy and by the authority of the blessed apostles Peter and Paul. What was granted was "full pardon (*plena venia*) of their sins", if "truly confessed with a contrite heart and mouth". It was granted to those who undertook this labor (the crusade) in their own persons and at their own expense; but the same "full pardon" was conceded to those who paid someone else's expenses, or who went at the expense of someone else. As had long now become the custom, the property of crusaders was to be under the protection of the church during their absence.<sup>25</sup> In the same bull, he revoked the "remissions and indulgences" granted

24. Tomassetti, *op. cit.*, Innocent III, III, 223-224 (no. 62: 1208), and 274-278 (no. 92: 1214).

25. *Ibid.*, III, 300-304 (no. 107); Hefele, tr. Leclercq, *Histoire des conciles*, V-1, pp. 1390 ff.

for fighting against the Moors in Spain or against Albigensians in Languedoc, as only temporary. Subsequently it was enough that the indulgences should be announced "according to the statute of the [Fourth Lateran] general council".<sup>26</sup>

These problems of public war and private forgiveness are really quite simple, even in terms contemporary with the crusade. They were reduced to a few clear phrases by Thomas Aquinas, who had to deal with the objection that "he therefore who takes the cross according to the form of the papal letter, suffers no pain for his sins, and thus soars immediately aloft, having achieved the full remission of sins." Thomas had reservations: "Although indulgences are very valuable for the remission of pains, yet other works of satisfaction are more meritorious with regard to the essential reward, which is infinitely better than the discharging of temporal pains."<sup>27</sup> Crusading presupposes death in the course of a good work, in Aquinas's thought here as much as in the preaching of Urban. The good confession, the contrite heart, the "good work" of a just war, these were the reasons to hope for the forgiveness of sin, and the indulgence was a pious reward for those who feared the penalties of sin rather than sin itself. The indulgence is here seen to depend wholly on the identification of the war as just. For this, Aquinas required proper authority, the just cause, and the right intention. It does not surprise us that these conditions were believed without difficulty to be satisfied in the crusade; it was precisely these points that were supposed to characterize the crusade.

The evidence is insufficient, but it seems that the teaching was widely yet only superficially understood. The *Chanson de Roland*, even though there is a large clerical element in its composition, was certainly not written by a theologian, and it is essentially a work for a lay and courtly, but war-minded, public. In the *Chanson*, the warriors do not actually make a good confession before battle, but they are absolved by Turpin on their knees, and are given fighting itself as a penance.<sup>28</sup> It is true that this passage promises that they will be holy martyrs if they die, but the absolution and penance, however lightly or uncertainly conceived, make it clear that "martyr" here has only a popular sense. True martyrdom was not claimed. Long before, an eighth-century pilgrim to the Holy Land from Wessex had spoken of being "martyred" for smuggling. This may have been a joke; but it was no joke in the cru-

26. Gregory IX, in Tomassetti, *op. cit.*, III, 492-493 (no. 48: 1236).

27. *Quaestiones quodlibetales*, II, viii, 2; *Summa theologica*, III, *Supp.*, 25:2.

28. *La Chanson de Roland*, ed. Joseph Bédier (Paris, 1937; often reprinted), lines 1132-1141.

sading period. The *Gesta Francorum* ordinarily speaks of anyone who died on the crusade, for example of hunger, as martyred, but Albert of Aachen had heard that the clergy prayed for the souls of those who died at Dorylaeum.<sup>29</sup> There is not enough evidence for us to be sure how far the complex theology of martyrdom and indulgence penetrated to the soldiers and camp-followers, or even, later, to the residents of the Latin states, or how far, indeed, they were really interested. The suggestion underlies many chronicles that death in a holy war had the popular sense of "martyrdom" that we find in *Roland*. Later chansons provide even less evidence. The farther we recede from the theologians and canonists, the less we find any clear theological concept at all.

For two centuries from the first preaching of the crusade to the growing realization that it was no longer practical politics, the system determined a part of public life, and to the extent that law affects the ordinary public crusading did so; indeed, its influence continued till very much later. The old, disused system of tariffed penance would not have been enough for effective recruitment; indulgences reached far more people, and provided a legal basis for propaganda; persuasion was based on a theology that must reach everyone. There was some scope for legal compulsion. Once a man had taken the cross, he must be forced to put his vows into effect. The First Lateran Council (1123) imposed an interdict on the lands of all those who did not put their vows into effect between the next Easter and the Easter following, and forbade them to attend church; later, excommunication was the normal form of sanction.<sup>30</sup> William Marshal spent three years in the Holy Land in order to make good the crusade vow the young prince Henry — son of Henry II — had sworn before his death in 1183.<sup>31</sup> From knights or sergeants to monarchs, laymen benefitted in their different degrees from a tax levied to pay for soldiers. It was logical to extend the indulgence to those who financed other men's personal service, but such subventions soon opened the door to abuses which ultimately extended to the whole system of indulgences. The councils from Fourth Lateran in the early thirteenth century to Vienne a century later recognized the need for control, but established no effective method.<sup>32</sup>

A good canonist or an experienced preacher could see the problem

29. *Vita Willibardi, or Hodoeporicon*, in Titus Tobler, ed., *Descriptiones Terrae Sanctae* (Leipzig, 1874), pp. 56–76; *Gesta Francorum*, ed. and tr. Louis Bréhier under the title *Histoire anonyme de la première croisade* (Paris, 1924), pp. 42, 10, 92; Albert of Aachen, *Historia Hierosolymitana*, II, 43 (*RHC, Occ.*, IV, 332–333).

30. Hefele, tr. Leclercq, *Histoire des conciles*, V-1, p. 635; V-2, pp. 1390 ff.

31. *Histoire de Guillaume le Maréchal*, ed. Paul Meyer (Paris, 1901), lines 7277–7279.

32. Hefele, tr. Leclercq, *Histoire des conciles*, V-2, pp. 1390 ff.; VI-2, pp. 643 ff.

clearly, but could suggest no remedy beyond conscience, always the weakness of canon law. Gilbert of Tournai was only reviving condemnations of an earlier century when he attacked the financing of the crusade by exploiting the poor, but it was the whole public that was exploited; he also discussed the real legal abuse, which was the severity of sentences in the condemnation of those who, often for a good reason, failed to fulfil the crusading vow, when severity was used only to extort higher redemption money.<sup>33</sup> These abuses, by common consent, made the whole business unpopular. In fact it was a business, an often capricious system of tax collection which gave increasing prominence to redemption. Cash payments necessitated a return to the custom of partial indulgences ("proportionate" plenary indulgence), and there was no adequate means of assessment. In a study of legal theory one can do little more than emphasize the feebleness of the law which wholly failed to regulate the trade in indulgences or the scale of redemption.

Innocent's declaration at the Fourth Lateran Council of a new crusade illustrates the law at its height. After giving instructions for the "passage" (*passagium* = "crossing" or "crusade"), it announces miscellaneous provisions almost haphazardly. Clerks may retain the profit of their benefices while they are away. Those people who have taken the cross will be excommunicated if they do not go. All prelates and others responsible for the cure of souls must preach the crusade. Those who cannot go should pay a soldier to go for three years. Those who supply ships or contribute to their construction receive an indulgence. All clerks are to give a twentieth of their ecclesiastical revenues for three years, the pope and the cardinals a tenth. While crusaders are away they will be exempt from taxation and from payments of interest. Pirates who pillage pilgrims are excommunicated. The usual prohibition of contraband (arms, iron, and so forth) is repeated in slightly strengthened form. No ship is to go to the east for four years, lest the enemy benefit; on the contrary, it should remain in the Christian reserve. Tournaments are prohibited for three years, wars for four. Then comes the plenary indulgence, in the form already quoted above, but those who, short of paying for a substitute, contribute to the costs, receive remission "according to the quality of the subvention and their devotional disposition".<sup>34</sup> Here appears a scale of exact payment for an incalculable return, and such could lead to nothing but abuse. The

33. "Collectio de scandalis ecclesiae," ed. Autbert Stroick, *Archivum franciscanum historicum*, XXIV (1931), 40.

34. See above, note 25.

contrast between the careful provision for practical steps leading to military action, and the loose terms of the indulgence, illustrates at least the greater worldly than spiritual wisdom of the church.

### *C. The Full Theory of Holy War*

We can best evaluate the theory by considering the case as it was argued by the distinguished Dominican scholar Humbert of Romans. He genuinely disliked war but understood the need to make a case to justify it. The case he made, while wholly circumscribed by the ordinary terms of his thinking and the contemporary commitment to the crusade, betrays from time to time an awareness of some of the real difficulties. He had the same clear picture of the unjust war that Urban stimulated in those who reported him. Instead of starting from a conception of the just war, he began by considering what makes war unjust. He said that there are three things: attacking the innocent — killing poor men and nameless farmers, ransacking hospitals and even leprosaria; fighting without reason; and fighting without authority. The war against Islam, on the contrary, was “just”. The Moslems were not innocent; they were “culpable in the highest degree against the whole of Christendom”; he elaborated this no further, and to Moslem “guilt” — no nameless farmers, no hospitals — we must come back. The war was reasonable because undertaken not out of pride, avarice, or vain-glory, but in defense of the faith; and defense of mere property or persons would have been justification enough. Finally, it was undertaken on the authority of the church. It was therefore *justissimum bellum*, undertaken against the most culpable of enemies, for the highest reason, and on the highest authority.

Yet Humbert knew that crusaders were by no means all penitent; there were those who carried their cross like the bad thief, as well as those who did so like the penitent thief. Moreover, Humbert was well aware that Christian practice was once very different, and that the change needed to be justified. Jesus told Peter to put up his sword, and the teaching of all the apostles and the fathers is against the use of force; he recalled the example of Maurice and his legion, who were beheaded rather than obey an unjust command, and of the innumerable martyrs. He developed a remarkable historical theory of the development of Christian practice to explain the change: “For the vine planted by the head of the household is brought to its proper growth by favor

of the dew and the rains and the warmth of heaven; but it is preserved by the sword, if by chance enemies want to root it out." The powerless and the powerful, he went on, must act in different ways, the former with humility, the latter with severity; every craftsman uses the tool he has, and not that which he has not. The early Christians used miracles, the sufferings of the saints, and holy doctrine, that it might be seen that faith grew by God's agency, not man's; but when it had grown, it became necessary to defend it by the sword. The church, which lacked the early gifts of miracles and tongues and the Holy Ghost, but had power, must use it. Humbert did not deprecate this historical development. Those who object to the shedding of blood by Christians "do not themselves want to be poor, as men were in the early church, but rich; they do not want to be, as (Christians) then were, lowly, but to be held in honor; they do not want to be destitute of sustenance, as Christians then were, but to live amid pleasures." This is consciously a theory of history: "according to the series of periods and the diversity of circumstances, the church has varying situations, as the growing boy passes through varying situations before he reaches old age. Thus the church was poor, but is now rich, and many things similar; in the same way, it makes use of arms now, but did not do so then." This is an interesting, a logical, and a frank argument; does it amount to a legal theory? Almost certainly, Humbert saw this as having legal force, though we might incline rather to allot it to political theory.

Humbert in any case saw a legal defect, and cautioned that the use of the sword was confined to lay people, as the hand is the only member that can wield a sword. Using the argument of the two swords, he elsewhere stressed the necessity of rational justification of a war. Force is justified against those who rebel against the authority of the church, he wrote, because the fear of God recalls them from evil; and the infection of heretical error must be cut out like a putrid member; but the Moslems, who will not even listen to the word of the church (beheading those who tell them about their errors), are worse than rebels, who at least listen, even if they do not obey; and worse than the heretics, because they destroy body as well as soul. Jews, he added, are in a different category; their conversion is foretold by Scripture, they strengthen faith in being seen to fulfill the Scripture, when it is properly interpreted; they do not attack in arms. The Moslems' conversion no Scripture has foretold; to see them does not encourage faith, but rather gives scandal to weaker minds; more than any other unbelievers, they come strongly in arms against us. He applied the parable of the marriage feast. The Jews are those who "would not come". The

idolators are those who "made light of it". The Moslems are those who treated the king's servants "shamefully and killed them". "The king was angry, and he sent his troops and destroyed those murderers and burned their city."<sup>35</sup> Humbert said that "from this derives the authority to advance the army against them"; this, he believed, gives his exegesis legal force.

He added that the church not only provides the justifying authority, but also grants indulgences from "all sins"; by these the crusaders would be washed as clean as martyrs are by the shedding of their blood (a large claim which, however, clearly distinguishes martyrdom from indulgence, while claiming equal effectiveness for the latter). It will be noted that there is no suggestion that the indulgence is confined to remission of pains for which penance should otherwise have been done, as Catholic apologists have maintained, even when talking about remission *a culpa et a pena*. Those who are "completely absolved", said Humbert, are "not only the dying, but the living who are good pilgrims, from all sins, great as well as small, hidden as well as open, carnal as well as spiritual, by day as well as by night, known as well as unknown." This did, of course, presuppose penitence.<sup>36</sup>

This is perhaps the fullest reasonable defense surviving of a canonical position which was difficult to reconcile with much Christian history and doctrine. It was a good deal closer, as we shall see in more detail, to the Moslem position. Humbert, within the limits of the method, allowed his imagination some play; he put the scholastic points for and against a proposition in a more literary form than usual, and his work gains from even this slight freedom from the classroom method. All justification of war in Christian terms is derived from the right of self-defense, and even in more sophisticated form the arguments used can still be reduced to that single issue; thus the "recovery" of the Holy Land is considered the defense of Christian land, the ill will of the enemies of God presupposes self-defense, and so on. If we come to the point of what confers the right to kill, the authority of the church, on which scholastics insist, is only part of the answer, and should rather be considered a condition. The "right" is conferred essentially by self-defense; by "reason" and by "custom" a man has the right to defend himself and his property, and still more his faith, which is his most important possession, and more important than his life on earth. Humbert often seems uneasy about these arguments, and per-

35. Matthew 22:1-7.

36. *De predicatione sancte crucis* (Nuremberg?, 1490), caps. 2, 8; *Opus tripartitum*, in *Appendix ad fasciculum rerum expendarum et fugiendarum*, ed. Edward Brown (London, 1690), cap. 11.



haps stresses the wickedness of the enemy as much to evade the emotional consequences of the crusaders' cruelty and inhumanity as to establish his legal justification. In the last resort, in spite of the array of scriptural authorities, canon law was based on common sense and not on revelation, in this unlike the Moslem *jihād*. However, although the right to defend the faith by force was seen as self-evident, this argument was at least implicitly reinforced by the right of the Christian faith, as revelation, to exercise God's dominion over the world. We shall consider this "war aim" later.

Some of these arguments are found more fully, but less reasonably and certainly less attractively, expressed a few generations later, in the period of total crusading failure. When Humbert wrote there seemed to be at least some chance of saving the Latin remnant of Syria. Humbert added something to the case for killing infidels which had been put so summarily by Bernard of Clairvaux in the twelfth century and taken for granted in many bulls and canons. It was argued in still fuller detail by the English Dominican Robert Holcot, who, when he died in 1349, had lived through a period of futile attempts by the papacy to revive the crusade seriously. Though there was talk of attacking the Arab countries, there was at this date no danger of attack by any Islamic power, but the question "whether it is lawful and praiseworthy for some Christian, when in order to attack he uses force, to kill some unbeliever such as a pagan" was not altogether unreal. Alexandria was sacked after Holcot wrote.

The arguments he cites against killing unbelievers, summarized, are: God desires not the death of the sinner, but that he should be converted; the church prays for unbelievers, so they should not be killed; God is merciful and Jesus forbade Peter to use his sword; Aristotle told Alexander that he refused to shed blood because, whenever a creature kills another, the heavenly powers are moved to divine vengeance; God said, "Vengeance is mine";<sup>37</sup> it is forbidden to kill a bad Christian, although he is worse than a pagan who does not enjoy the restraint of Christian law; unbelief is not the unbelievers' fault, because God has not lifted the veil from their hearts; their error is invincible, because, even if they want to believe, the power of their rulers prevents them; an effect is good only if it is directed to a good end, but the

37. (Pseudo) Aristotle, *Secretum secretorum*, in *Opera hactenus inedita Rogeri Baconi*, fasc. V, ed. Robert Steele (Oxford, 1920), cap. 18, pp. 55-56; *The Governance of Lordships*, cap. 25, in *Three Prose Versions of the Secreta secretorum*, ed. Steele (EETS, ES; 1898, repr. New York, 1973), p. 61. See also *Secretum secretorum: Nine English Versions*, ed. M. A. Manzalaoui (EETS, 276; Oxford, 1977), pp. 42, 139, 324-325.

principal end is conversion, and conversion cannot be forced, because no one comes to God except by faith, but can only believe freely. The replies to these objections are: it is only the eternal death of the soul that God does not desire; the church prays for the sinner to become just, and, if he refuses, may cut him off; the sword is forbidden only without due authority, and Peter chose the wrong moment ("that was not the time"); Aristotle meant that he would not take pleasure in shedding blood, and true Christians, when they do so, take pleasure only in the end for which they do it; God's vengeance is sometimes effected through his servants; bad Christians are killed "every day" — thieves, traitors, heretics — and it is necessary only that there be just authority, rather than private decision; God will remove the veil from anyone who wants it removed; invincible error excuses only those who deserve no blame in incurring it; finally, the principal end is conversion, and extirpation only secondary. No one who believes will be killed. We can sum up all these arguments: it is a Moslem's fault that he is Moslem, and that fault is a capital offense. In that case, there would be no necessity to allow a Moslem prisoner to live if he refused to apostatize. This harsh attitude is only very slightly mitigated by the main body of the argument.

Although later Holcot distinguishes different types of *pagani*, he begins his main discussion on the assumption that he is speaking about those who rule the Holy Land — that is, the Moslems. The land was promised to Abraham and his seed, and Christians are the spiritual seed of Abraham; it is lawful to take up material arms against those who occupy our spiritual country unjustly, and thus to repel force by force. If they are killed in the course of being expelled, they are the cause of their own deaths; in the same way, a husband may kill an adulterer who does not run away from his house. Again, the outcome of what is vowed is always lawful if the thing vowed is lawful, and in this case the thing vowed is lawful according to the church militant. Again, any outcome indulged by the pope is lawful, and fighting against pagans is indulged from fault and pains (*a culpa et a pena*); and so such fighting is lawful and meritorious. A similar argument: the English church is taxed to subsidize the fighting, with the approval of the pope; therefore the end is approved by the rulers of the churches, to whom obedience is due.

The argument is prefixed by a number of definitions and distinctions. Thus, some unbelievers are subject to the church, and are associated with believers, as servants to their lords, and are ruled by them. Others are "rebels against the church, persecutors of the Christians, and insulters of Christian doctrine". This is really merely a distinction

between those under Christian and those under non-Christian governments. Then there are different ways of attacking the pagans; for example, if someone presumes to act without the authority of the church (an allusion to Frederick II?) he cannot kill justly. Thirdly, there are different kinds of pagans, those who have no religion "unless by chance the law of nature"; there are also Jews, Moslems, idolators, and heretics, and these have different relations to the Christian religion. Heretics must be compelled to recant. Moslems kill anyone who preaches against Islam, but the life of Christ cannot be taught without disproving the religion of Mohammed (a characteristic self-deception); however, those Moslems who are bound to, and tolerated by, Christians cannot lawfully be attacked by arms, but must be granted peace according to the example set by Joshua, who enslaved the Gibeonites as hewers of wood and drawers of water. *A fortiori* "pagans" may lawfully be offered protection, provided they live "sine contumelia creatoris", especially in the hope of their conversion; they cannot then lawfully be killed, though this applies only *per accidens*. As for those other unbelievers, insurgents against the church and persecutors of the faith, Christians may "attack them by force and arms, despoil them, kill them, and devote their goods to the believers".

Jews are in a different class; Holcot does not think it lawful to kill them, because the apostle announced their conversion at the last days, so all, at least, may not be destroyed. The Moslems and the Jews are not in the same case; the former persecute the Christians and turn them out of their own towns and places, the latter are ready everywhere to serve the Christians.<sup>38</sup> The war against the Moslems is just, under the authority of the church, for many reasons: they occupy the land and other possessions that belong to the Christians (the justification "appears proved by reason and custom"); again, it is divine law that by right all good things of this world belong to the just (*omnia bona temporalia sunt justorum*); again, as a corrupt member may be cut off from the body, so may the rebels and unbelievers be cut off from the mystical body of the redeemed human race; again, it is lawful to induce charity through terror; finally, such people — Moslems, but which? — act worse than beasts, but beasts may be killed for the public good, so also may evil sinners. (It is not clear whether Holcot would hold a good act by an unbeliever to be evil.) Some of Holcot's arguments

38. The idea is an old one. Pope Alexander II (1061-1073), in writing about Jews who were not to be injured, forbade a Spanish bishop to destroy a synagogue; "Dispar nimirum est Judaeorum et Sarracenorum causa. In illos enim, qui Christianos persequuntur et ex uribus et propriis sedibus pellunt, juste pugnatur; hi vero ubique parati sunt servire" (ep. 101, in *PL*, 146, col. 1387).

sound silly to us, and probably sounded severe to some of his contemporaries; he often betrays ignorance of the realities of the crusade; all that he says is nasty.<sup>39</sup> In an uninspired way, he elaborates Bernard of Clairvaux, but he does not innovate; he draws out what is already there. He is inferior to Humbert in intellectual power and in judgment. He takes up more thoroughly than Humbert the question of what right a Moslem has to live, and the conditions under which it is permissible to tolerate him. On these conditions there is a large canonical literature, which is the fullest expression of the legal apparatus of a "just war", and a revelation of its political purposes. Unlike many political purposes, these were in fact ultimately achieved; in the areas that the Europeans conquered permanently, Islam died out.

### *D. Toleration and Trade*

In the Islamic law of *jihād* the end of the process, or war aim, was understood to be the death, conversion, or submission of the "infidel".<sup>40</sup> Crusade law to some extent resembled this, but usually, as in the scheme defended by Holcot, the submission of Moslems was barely accepted. Aquinas justified imposing force on unbelievers (where practicable) to prevent "blasphemies and evil influences", and he defined blasphemy as, in effect, any theological error publicly expressed. Toleration had no absolute status in medieval Christendom as it had (within limits strictly defined) in medieval Islam, and that is why the Moslem communities in Europe were eventually extirpated; submission was only an interim war aim. The history of James I "the Conqueror" of Aragon-Catalonia is full of Moslem surrenders to the king, representing the civil power, on his guarantee of freedom of worship.<sup>41</sup> This was no protection from the gradual operation of discrimination over the centuries, and canon law is our best guide to the pressures gradually exerted. The case of Moslems was generally assimilated to that of the Jews in the great collections of decretals, although a number of canons

39. In *Librum sapientie* (Basle, 1560), lectio LXV, cap. 5; Joshua 9:23; Romans 11:25. For further references see Benjamin Z. Kedar, *Crusade and Mission* (Princeton, 1984), pp. 98–99, 183–189.

40. In general see Emmanuel Sivan, *L'Islam et la croisade* (Paris, 1968).

41. Aquinas, *Summa theologiae*, 2a–2ae, qu. 10, art. 8; qu. 13, art. 1; cf. qu. 10, art. 10, and *de rationibus fidei* in *Opera omnia*, vol. 27 (Paris, 1872–1888). Cf. also *The Chronicle of James I*, tr. John Forster (London, 1883), *passim*.

specified Jews only. The main difference between the Islamic rules for Christians and Jews under Moslem rule and the Christian rules for Moslems and Jews under Christian rule lay in the original intention. The Islamic law, by introducing a special tax for *dhimmīs* and excluding them from the army, created a barrier between the majority and its dependent minorities, but the Christian rules set out deliberately to isolate "unbelieving" communities from Christian society.

Before we leave the subject of the divisions enforced between Moslems and Christians, we should consider two canons of special interest of late date. One is from the Council of Vienne (1312), incorporated into the Clementines promulgated by John XXII in 1317, which makes a number of rash incidental assertions about matters of fact; for example, that the call to prayer "invokes and extols" the Prophet's name (which might be considered accurate), and, absurdly, that Moslems "adore" Mohammed in their mosques; legal conservatism combines with propaganda to the point of self-delusion. The call to prayer is in any case understood to be "an affront to the divine name and a reproach to the Christian faith", at least when it occurs in lands subject to Christian rulers where *permixtim cum Christianis habitant Sarra-ceni*, glossed by the canonist John of Andrew as "said to be in Aragon and various territories in Spain". The affront lay in the Christians' hearing this fragment of Moslem worship. The decree goes on to object to the public congregation of a multitude of Moslems, which generates "scandal seriously in the hearts of the faithful"; this happens when they go to "the place where a certain Moslem was formerly buried", to "venerate and worship him". This is so vague a description of the *hajj* that we might think it referred to the local cult of a holy man; but John understands it as the pilgrimage to Mecca, and expresses surprise that there should be doubt as to the identity of the "certain Moslem" as Mohammed. The offense is again the appearance of the multitude of Moslem worshippers before the Christian public. John assumes that Christian rulers tolerate non-Christian religious practice "on account of their avarice, that they may take tribute". They "tolerate and suffer them (Moslems) to be and remain in their areas; sometimes the rulers suffer them to be apart, that is, separated from the Christians; sometimes they suffer and tolerate them in the same city and the same quarter." It is the latter case, of course, which gives offense, and the offense is that non-Christian worship should be seen to happen at all.<sup>42</sup>

42. *Clementis papae V constitutiones*, II, I, in *Corpus iuris canonici*, ed. Emil L. Richter, rev. ed. by Emil A. Friedberg (Leipzig, 1879; repr. Graz, 1955), II, cols. 1180-1181.

The other decretal was issued only a few years later, by John XXII in 1317. It completes a process only half achieved by the other. It is about "the business of attacking the faithless Agarenes, by whom the kingdom of Granada is held in insult to God"; apparently God, insulted (as we have just seen) by the public profession of Islam in a mixed quarter in a Christian city, was insulted again by Moslems who worked industriously to pay tribute from a small, subordinate, but separate kingdom. The decretal begins appropriately "The Lord [is] overflowing in mercy", *copiosus in misericordia Dominus*. In response to a particular request by Peter, the infante of Castile, this decretal about the poor remnant of independent Islam in Granada has a general implication for the theology of the just war: "indeed," says Jesselin of Cassagnes in his gloss, "the defense of the church is expected to be a responsibility of the rulers of the world, and the church should be protected by their power; for it is the will of God to stimulate temporal power against heretics and other unbelievers." The "insult to God" here is defined as an injury to divine religion, a "faculty of doing harm", which God permits on account of the sins of Christians; but the "insult" and the "injury" from which the church demanded protection was just the theological "error" of those who continued to be Moslems.<sup>43</sup>

This offense of Granada's brings us to the last theme in the legislation for holy war, the relation of Christians to places under Moslem rule. There are two separate questions: one is the trade relationship as governed by the canonical declarations of war contraband and regulated by formal agreements between European trading powers and the Moslem states; the other is the personal situation of those Christians who lived and worked in Islamic territory, but still within reach of canon law so long as they wished to remain in the Latin church.

The prohibition of carrying arms or war materials to Islamic countries was well established, repeated in a regular formula with little variation over centuries of warfare and projected warfare; it appears first in full form in the canons of Lateran III, and was later incorporated in Gregory IX's *Decretals*. Those who carry arms, iron, or lumber for making galleys to the Moslems are as bad as the enemy or worse; so are those who serve in command of Moslem galleys and private ships. They are all excommunicated, and Christian rulers and the consuls of trading cities are warned that the goods of such people should be

43. *Extravagantes . . . Ioannis papae XXII . . .*, viii, i, *ibid.*, cols. 1214-1215.

confiscated, and that they should themselves, if taken, be enslaved.<sup>44</sup> A similar but fuller canon of Lateran IV, also incorporated in the *Decretals*, added anathemas against these "false and impious" Christians who do the things forbidden by the earlier canon, and also those who give advice and help in the use of "engines", or in any other way; what this forbids is what we now call acting as foreign experts. It also required that sentences against offenders should be published in the maritime cities on Sundays and holy days; finally, the condition of pardon would be to transfer the gains made *in dispendium* to the service of the Holy Land. The *glossa ordinaria* condemns the same motivation that the original decrees attributed to such offenders; "led by blind cupidity," it says, echoing Alexander III's "harsh cupidity occupied their souls"; it argues that, because it is worse to help the enemy than to be the enemy, slavery is appropriate as punishment.<sup>45</sup>

Elsewhere the glossator discusses the significance of repeated excommunications. It might seem that once a man is outside the church, he is outside, and repetition adds nothing; his answer is that the effect of the first excommunication is to put the offender outside, of later excommunications to keep him there, since each sentence requires its own proper satisfaction. He draws a parallel with the penalties for usury, where the restitution must be commensurate with the offense; here more so, because the offender, guilty of "attacking" the Christian faith, sees his confiscated gain spent entirely in its defense.<sup>46</sup> To the modern observer, there is an implication that the merchant or "foreign expert" seeks to serve the Moslem world not only from cupidity but by preference; ordinary Mediterranean trade attacked the Christian faith in the sense that it was incompatible with the intentions of the crusade, and with the theory underlying papal policy.

Two other decretals date back to the period of the Third Crusade. The first of these deals with cases of conscience arising out of trading with the enemy: it is legitimate to go to Alexandria to redeem fellow citizens from captivity, but not to take more goods from which the Moslems could benefit than are needed for ransom. A second point is that the existence of a truce between Moslems and Christians does not justify the revival of prohibited trade with Alexandria, and merchants who swore that they would not go to Moslem countries with goods until there was peace are not excused excommunication if they

44. Lateran III, canon 24 (Hefele, tr. Leclercq, *Histoire des conciles*, V-2, pp. 1104-1105).

45. *Decretalium D. Gregorii papae compilatio*, V, vi, vi (in Richter and Friedberg, *op. cit.*, col. 773).

46. *Ibid.*, xvii (cols. 777-778).

do so during the truce. The gloss adds that they are not absolved from their perjury either, adding that the excommunication is *ipso iure*, and applies "in time of peace or truce". It carefully distinguishes truce from peace, the former being defined as "security of persons and property, conceded for a time". It also picks up the major ambiguity in the decretal; what if the articles to be used to ransom Christians are arms or iron? Some think that they are still exempt, but the glossator believes that this should first be referred to papal authority, not in principle, but in any particular case.<sup>47</sup>

The second of these decretals forbids any trade at all with the Moslems in time of war, "either in person or through agents (*per alios*), in ships or by any other means, or any material help or advice". The gloss considers that it imposes a double excommunication. The decretal concludes, and the gloss repeats, that offenders will not only be excommunicated, but also be exposed to the anger of the living God.<sup>48</sup> This seems to diminish a little the terrors of excommunication alone.

A later decretal of Clement V issued during the period immediately following the expulsion in 1291 of European Christians from Syria-Palestine listed more goods: "iron, horses, arms, and other forbidden goods, and also foodstuffs and wares (*mercimonia*), to Alexandria and other places of the Moslems, in the land of Egypt." It increased the abuse of both the Moslems ("dreadful and faithless nation") and the offenders ("deviating into a crooked path . . . unmindful of their own reputation and forgetful of salvation"); it piled up the list of penalties — excommunication, enslavement, perpetual infamy, testamentary incapacity, and inability to hold public office, something of a *diminuendo*, although the rhetoric maintains a steady frenetic level.<sup>49</sup> Church law naturally imputes motivation, and so tends always to read more emotionally than other kinds of law, but this law is stated emotionally by any standard. One point of making the prohibition "more absolute than absolute" was, of course, to make it inescapable to obtain a papal license to trade with Egypt, although sometimes this was withheld. We are not here concerned with the practice of the law, but the sale of expensive exemptions, amounting to a system of taxation, does affect our judgment of the theory.

In papal theory, perhaps only missionaries should have been allowed to live in Islamic territory, but some trade was allowed, even in theory,

47. *Ibid.*, xi (col. 775).

48. *Ibid.*, xii (col. 775); cf. *ibid.*, x (cols. 774–775).

49. *Extravagantes communes*, V, II, i, (cols. 1289–1290).



and exemptions were given, so that it was admitted that there were and might legitimately be Christian communities living in Moslem countries, primarily for trade, not necessarily excommunicate, needing spiritual services; at certain periods, of course, there were considerable numbers of enslaved prisoners. The only profit that the popes ostensibly accepted as desirable is missionary, but trade itself has advantages both ways; the popes simply tried to insist on reserving to themselves the decision in each individual case, and gave licenses for trade limited by the number of ships and to a fixed period, for example, a year. Granted the seasonal problem of Mediterranean navigation, a year was not long in the export and import business. The sale of licenses was a taxed permission to commit an offense, which obviously reduced the whole crusading theory to absurdity.

There were, of course, many problems of conscience, for which we have some solutions by the Dominican Raymond of Peñaforte, consulted by the minister of the Friars Minor in Tunis in 1234. These are the cases. Those who claim license on the ground that their own immediate ecclesiastical superiors have not forbidden them to carry arms, iron, et cetera to the Moslems are to be excommunicated, because the decrees of the councils cover their case; the same applies to those who fight Christians. Should Spaniards who sell footwear and harness be counted as selling arms? Or those who sell rams and sheep? What about Pisans and Genoese who sell grain and legumes? These are excommunicated in times of war. Those who transport food produced by Moslems to other Moslems are excommunicated. People who bring arms for self-defense, but then sell them when they are in need, are excommunicated.

Those who sell Christians as slaves, especially if these are forced to become Moslems, are not excommunicated, but do commit mortal sin; this is also so when they steal Jews or Moslems (children presumably) and sell them as Christians. The reason why there was no excommunication for what many might think the worse offense is that this particular trade was not included specifically in the canons, and, as it was not war contraband, was not *in dispendium*. Later, in the fourteenth century, when Europeans had come to appreciate the Mamluk system, the trade in slaves came to be seen more as a kind of war contraband; the Egyptians then were said to be peaceful people, who would not carry on war if the Mamluks did not receive constant foreign recruitment. Asked about the baptism of Moslem children in the hope that they will die before they come to years of discretion, Peñaforte makes an ambiguous and unsatisfactory reply.

A more practical question was whether Christians may live with con-

verts from Christianity, especially if they are related, some being minors, some adults, and others their own children? Happily, the reply is yes, because of either "correction", the hope of putting them right, or "necessity", presumably material necessity. Cohabitation with a heretic (Moslem?) spouse is also permitted, if there is no *contumelia creatoris*; perhaps this means here, provided the Christian spouse does not take part (or perhaps is just not seen to take part) in Moslem (or Coptic?) worship.

What about those who have been given a period of crusading for a penance, but are infirm, or poor, or afraid? Give them another penance. What of those who are held back from keeping their vow by serious business? They should not involve themselves closely with others, and, when disengaged, should fulfill the vow. Are those who steal from Moslems bound to make restitution? They are so bound. Are those who bring grain, small pieces of wood, or the like excommunicated? Only if they do so *in dispendium Terrae Sanctae*, or to attack Christians. What about clergy who give scandal by acting as merchants? They are subject to the appropriate canonical penalties. Is ignorance about what trade is forbidden an excuse? No, because the prohibitions are public, but if the offenders are ignorant, and stop when they are informed, then they are not excommunicated. If a sailor has no other means of earning his living, and takes service on a ship that is carrying contraband, is he excommunicated? Yes, but he can be absolved at discretion if he makes proper satisfaction.<sup>50</sup> Many of these decisions bear witness to a sensible and occasionally humane application of a harsh law which was intended to erect a powerful barrier between Moslems and Christians, and appears to a considerable extent to have succeeded.

It is beyond the scope of this chapter to examine the extent to which the canons were modified by official license, or by being ignored, but the actual correspondence of the popes fills out an otherwise incomplete picture. There is not much evidence about the life of Latin communities in North Africa, but, as we should expect, the intentions of the later canons contrast with the pre-crusading situation of the eleventh century. At the earlier date, as we saw, when an indigenous hierarchy in the Roman province of Africa just survived, Gregory VII's diplomacy shows him concerned to reach an agreement with the Hammādid ruler. Something of this spirit remained alive at the papal court; when, later, the local Christian church had died out, the popes, in-

50. "Raymundiana," in *Monumenta ordinis Fratrum Praedicatorum historica* (Rome and Stuttgart, 1898), VI, fasc. 1. doc. VIII, pp. 29 ff.

cluding those, like Gregory IX or Nicholas IV, who were most anxious for the renewal of the crusade, were concerned to ensure that the Moslem rulers at least in North Africa and the west should accept Latin clergy sent to act as chaplains to the local Christian communities. These seem to have been, from an early date, friars, especially Franciscans. Even in Egypt they served Christian prisoners, among others, but it is not clear that this service was maintained consistently.

The trading communities were relatively stable. The treaties between the commercial states and Islamic rulers, of which many, from the twelfth century onward, are extant, are strictly businesslike; they do not infringe the canons, although as Peñaforte's case-decisions illustrate, individual members of the communities must often have done so. The treaties freely use Moslem terminology, adopting the style of the country ("in the name of God the Compassionate and Merciful"); they establish a firm consular basis for trading rights, often reciprocal, and some secure the right to maintain chapels. In this situation the popes intervened amicably enough. In writing to Moslem rulers, they used phrases like "your nobility" and "your magnificence"; Gregory IX wrote to 'Abd-al-Wāḥid II, the Muwaḥḥid ruler of Morocco, "to the noble man Amiromolinus" (*amīr al-mu'minīn*, the commander of the faithful); we must assume that (as was often the case) this was thought to be a proper name. Several of these letters refer in more or less friendly fashion to Christians who are serving under Moslem rulers, even as soldiers.<sup>51</sup> It is clear that in North Africa (as distinct from Egypt) this was not always taken to be *in dispendium Terrae Sanctae*, and was then legal so long as it was not done to fight against Christians.

In any case, not even the shadow of toleration extended to Egypt; Egypt was an enemy country and constantly singled out as such, on strategic principles which remained dominant till the Ottoman invasion. The earlier canons that forbade trade *in dispendium* did not specify the Moslems against whom they were directed, but one bull of Innocent III, of the same date as Lateran IV, singled out "the lands of the Moslems who inhabit the eastern regions". A gloss of Jesselin of Casagnes explains the phrase "the lands of Egypt" (where it occurs in the 1317 canon about Granada): "in which Christ was born, namely

51. See note 9 above; L. de Mas Latrie, *Traité de paix et de commerce et documents divers* (Paris, 1866-1872), II, 1-21, 367-374; Paul Riant, "Traité des Vénitiens avec l'émir d'Acre en 1304," *AOL*, I (1881), 406-408. Cf. Salimbene de Adam, *Cronica*, ed. Giuseppe Scalia (Scrittori d'Italia, 233), I (Bari, 1966), 457-458; Angelo di Spoleto, *De fratribus minoribus visitantibus captivos in Babilonia (1303-4)*, in *BOF*, III, 68 ff. See also Eliyahu Ashtor, *Levant Trade in the Later Middle Ages* (Princeton, 1983).

in Bethlehem, brought up, in Nazareth, suffered and was buried, in Jerusalem . . . which because of the fetters of our sins is in the hands of the unbelievers.”<sup>52</sup> What looks like a geographical error may rather be a recognition of Mamluk rule over Palestine from Cairo. Pilgrimage, because it added to the revenue of the Mamluks, was also *in dispendium*, and so required dispensation, and Egypt was a normal route to Palestine. The North African states, though the object of several startling Christian attacks, never provoked the same vituperation as Mamluk Egypt. Even though we cannot confidently assert, we can reasonably suppose, that the popes would have been ready to reach some accommodation with Islamic powers, whenever expedient, as a matter of course, were it not for the question of Palestine. This, if true, implies that the conviction that Palestine rightfully belonged to the Christians had priority in Christian theory over the argument that the Moslem religion was in itself evil. The latter originated in propaganda, although the machinery of tolerated coexistence was legal, but the former was sincerely, however perversely in a modern view, believed itself to have the force of a right at law.

### *E. Political Theory*

These legal systems have their political implications. No imaginable papal accommodation with the Moslems of North Africa would have survived any real chance of conquering them. Just as Christians were believed to have a prescriptive right to the Holy Land, they were considered to have a lesser but still valid right to all lands that they set out to “recover”. They did recover all of Spain and Sicily, and service in Spain was often (though not always) counted for purposes of penance or indulgence as equivalent to service in the east. This was law, and was simply a matter for papal decision *ad hoc*. They would have recovered any other territory of the Roman empire if they could. Behind the historical descriptions of Arab aggression in and after the seventh century lay the legal theory of “recovery”; after however long an interval, all ancient Rome was considered in some legal sense inalienably Christian. There was no territory within the reach of Christians which had not once been under Christian rule. If Iran had been

52. Tomasseti, *op. cit.*, Innocent III, III, 303 (no. 107, par. 14); *Extrav. Ioannis XXII*, viii, i, s.v. “terras Aegypti”.

accessible, and conquered, what would have been the status of its Moslem inhabitants in Christian legal theory?

Beginning with Innocent IV there developed a theory of papal jurisdiction over non-Christians, and even over non-Christian states, which was soon elaborated into a theory of world monarchy by canonists busy with the task of extending papal authority. There was a steady growth in self-serving legal arguments that non-Christian states had to allow the entry of missionaries, that their Christian subjects came under direct papal authority — although it was never clear whether this was a political or only spiritual authority — and that this applied not only to those territories that had once been held by Christian rulers, but to any lands whatsoever.<sup>53</sup> Such discussions said nothing about subject Moslems in such states, or what might happen if such states fell into Christian hands, but there can be little doubt of the consequences. If the toleration of Moslems was only tactical, the “ultimate war aim” must inevitably have been the same as the commission to the apostles, the conversion of all unbelievers. The Jews, thanks to Romans 11:25–26, could count on being left till last, but Moslems would certainly have been reduced to submission, on the ground that non-Christians have no right to lordship and that they “persecuted” or “attacked” Christianity by existing at all (and no doubt would in any case have attacked Christendom often enough); once in submission they would have been subject to conversion, that is, compelled to listen to preaching, and to discrimination, until, as happened in Spain in the sixteenth and seventeenth centuries, and had happened in Italy in the thirteenth and fourteenth centuries, they had ceased to exist as Moslems. If we concede that “recovery” was the primary concept, then “conversion” (by war initially) was soon so firmly rooted as to become itself essential to the idea of the crusade. The political theory of the crusade was quite simply the infinite extension of Latin Christendom.

This is speculation, based on implication, but the close link between legal and political thought makes it reasonably certain. Can we speculate further? Uthred of Boldon, a monk of Durham and scholastic of the fourteenth century, was censured for discussing the possibility that Moslems, Jews, and pagans might be saved *de communi lege*; this was classed as error.<sup>54</sup> William Langland maintained that a “true man”

53. For further references to Innocent IV see Kedar, *op. cit.*, pp. 159–161, and on toleration generally pp. 76 ff., 146 ff., and *passim*; see also Walter Ullmann, *Medieval Papalism: the Political Theories of the Medieval Canonists* (London, 1949), pp. 114–137. For an interesting discussion of the whole concept of a “just war” see Frederick H. Russell, *The Just War in the Middle Ages* (Cambridge, Eng., and New York, 1975).

54. M.D. [i.e., David] Knowles, “The Censured Opinions of Uthred of Boldon,” *Proceed-*

who follows the best law he knows, acts justly, and "lyuede as his lawe tauhte and leyueh ther be no bettere", may be saved. This specifically relates to Saracens and Jews, in spite of Langland's acceptance of traditional libels against the Prophet.<sup>55</sup> Aziz Atiya has drawn attention to further examples, John Gower and Honoré Bonet.<sup>56</sup> These opinions stand out because they were contrary to the usual opinions expressed by the lawyers. Granted the intimate connection among theology, law, and political intention, should we suppose that, if Moslems could be saved in their own "law", the compulsion to save them by conversion would disappear? Would the crusade have been confined to "recovery", perhaps only of the Holy Land? Wyclif went further, and opposed the crusade itself,<sup>57</sup> but he did so because the crusade, both in practice and in theory, was an instrument of papal political expansion. This idea of his was not influential, although, as Southern has shown, the originality of John Wyclif's treatment of Islam cannot be questioned.<sup>58</sup> Even according to the ideas aired by Uthred and Langland, however, non-believers would be protected only by their ignorance of the true religion; thus the armed crusade must still have followed the missionaries. We must conclude that "recovery" came first, both legally and politically, but that "conversion" too was an unlimited political objective that would have compelled crusaders (in law) to continue in arms to the limits of the inhabited world; and, of course, Wyclif was right; this objective for Latin Christendom was a concept inseparable from papal ambition.

The history of Frederick II, in particular, sheds light upon the theory of the papal party. Frederick preserved the Sicilian Arabs in an existence separate from the rest of his subjects for his own purposes, exploiting rather than protecting them. In Sicily itself, Innocent III had been prepared to deal with them as legitimate subjects whose loyalty, when they were loyal, should be praised; they could be dealt with through the qadis almost like a tributary people or *millet* in Islamic

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*ings of the British Academy*, XXXVII (1951), 305-342, repr. in *The Historian and Character* (Cambridge, Eng., 1963), text pp. 163-165.

55. *Piers the Plowman*, ed. Walter W. Skeat (EETS; 4 vols. in 5, London, 1867-1877), B Text, Passus XII, 284-289, and XV, 389 ff., but cf. 383; C Text, XV, 209-212, and XVIII, 151 ff., 165 ff.

56. Aziz S. Atiya, *The Crusade in the Later Middle Ages* (London, 1938), pp. 187-188. Cf. Wolfram von Eschenbach, *Parzival*, ed. Albert Leitzmann in *Werke* (Tübingen, 1961-1963), VIII, 416, 25-29, and IX, 453, 11-14.

57. References in Richard W. Southern, *Western Views of Islam in the Middle Ages* (Cambridge, Mass., 1962), p. 78, and Atiya, *loc. cit.*

58. Southern, *Western Views*, pp. 79 ff.

law. Frederick, after destroying their independence, transferred them to Lucera on the mainland; he rated the life of a Moslem or a Jew at half the price of that of a Christian; he seems to have thought of them as in some sense having the same status as that of Christians in Islam, using the word *gesia* to denote a capitation tax which he imposed and which represented the *jizyah* or poll tax which Christians and Jews paid in Islam. This must have been deliberate, but Frederick did not really assimilate his Lucera Arabs to the status of *dhimmīs* in Islam, who are not required to fight; the people of Lucera, on the contrary, were required above all to provide troops who would be wholly dependent on the emperor's good will. From a Moslem or a modern point of view, pope Gregory IX was persecuting the Arabs when he insisted on their having to listen to the preaching of Dominicans, but his intention toward them was more charitable and disinterested than Frederick's; as Christians they would at least have been safer.<sup>59</sup>

The objections raised by the papal party to Frederick's arrangements in Palestine are also instructive. His great offenses were permitting Moslem worship in the Dome of the Rock (Qubbat aṣ-Ṣakrah) and the Aqṣā mosque, forbidding Christians free access to those places, and allowing the public call to prayer, as well as allowing Moslems access to Bethlehem. All these horrors were simply the admission of Moslems to the use of holy places then conceived quite wrongly to be exclusively Christian, and to public worship of their own. One other episode, out of so many told of Frederick, deserves mention here. Matthew Paris says that in Acre he had Christian girls dance before Moslems who, "it is said," had sexual relations with them; nearer the source, the Latin patriarch Gerald said that the sultan al-Kāmil, knowing that Frederick lived in Moslem style, sent him singing girls, dancing girls, and jesters, whose reputation was infamous and unmentionable among Christians, and that Frederick behaved in Arab style, in drinking (*sic*) and dressing. With Matthew Paris the (imaginary) scandal is the prostitution of Christian girls, which would indeed be contrary to the canons; with the patriarch, it was the "Arab" way of living to which he objected; he would no doubt have argued that the offense was mixed attendance at a *convivium*. All these episodes in their different ways illustrate the principles underlying the clerical concept of the crusade.<sup>60</sup>

59. J. L. A. Huillard-Bréholles, *Historia diplomatia Friderici secundi* (12 vols., Paris, 1852-1861), I, i, p. ccclxxxvii; IV, i, p. 31; I, i, p. ccclxxxviii; V, i, p. 628; IV, i, p. 452.

60. *Ibid.*, III, 88, 101-102, 104, 109, 136, 140; V, 329, *et alibi*. Matthew Paris, *Chronica majora*, ed. Henry R. Luard (Rolls Series, 57), III, 185.

It is time to look more closely at the inevitable comparison with the law of *jihād*, itself part of the basic structure of medieval Islamic policy. In outline the two laws are closely similar. A Moslem army offers unbelievers the opportunity to accept Islam, or, failing that, to accept the status of *dhimmīs*; if they refuse both, they must fight, and, being defeated, may be enslaved or even killed. A slave who later becomes a Moslem is not necessarily freed, though it would be pious to free him. Comparing the crusade, we remember that it, too, was aimed at conversion, and that Moslems who surrendered on terms of submission were given an inferior status. Moslems captured in war (not on capitulation) would be enslaved, if not killed. The slave converted to Christianity would not automatically be freed, but it would be a pious act to free him. Obviously there is much common ground in the treatment of "infidels". So is there in the rewards of holy war. The death of the Moslem in *jihād* ensures the status of martyr (*shahīd*). The death of the crusader did not result automatically in martyrdom, because confession and absolution, absent in Islam, were necessary, but it was common to speak and think of anyone who died in the course of a crusade as a martyr. *Jihād* is more than war; it is also the struggle for one's religion. The crusade qualified as a good work, a penance, and a pilgrimage, and it was rewarded by indulgences which certainly remitted "pains and guilt". Some of them seem to imply more than later Catholic theology would allow.

The Christian or Jewish *dhimmī* was in a better situation than a conquered Moslem, in that his position was strictly regulated by a law known in advance and not dependent on the details of a capitulation; it was guaranteed by the Koran itself. It was a status of dependence, however, strictly not even second-class citizenship, but something altogether less than citizenship. The *dhimmī*'s life and property were guaranteed by the Moslem army, but he had to pay special taxes, and had to distinguish himself from Moslems by dress, and by not riding a horse or carrying weapons. As a witness he was inferior in status; his law of personal status and doctrine was determined by his bishop. The conquered Moslem had similarly to be distinguished by dress, and was inferior as a witness. Because he was unbaptized, he was not subject to canon law, and so was free to follow his own law of personal status. Some details, though similar, are not precisely the same in the two cases; Christian monarchs assumed the duty of protecting conquered Moslems on their capitulation, but these had to pay the ordinary or extraordinary taxes attached to the land they held, and those who surrendered, or negotiated a truce on terms allowing subordinate Moslem rule (of which the longest-lasting example was Granada), had to



pay an exorbitant tribute. The two laws resembled each other in limiting strictly any public celebration of the religion of the other, and the erection of places of worship. On the other hand, Christians under Islamic rule were not subjected to compulsory preaching of the dominant religion, as happened in the reverse case. *Jihād* might be declared against Moslem heretics and rebels, so that if, as the popes claimed, Moslems "judaized" in declaring pork unclean, the popes themselves "islamicized" in declaring a crusade against heretics (such as the Albigensians) or against those who rebelled against their authority (the most distinguished of whom was the emperor Frederick II). Differences of detail are fewer than points of resemblance, and in any case do not obscure the close similarity of general outline.<sup>61</sup>

Besides the uncanny resemblances in many details, there is an overall consonance between Moslem and Christian ideas of holy war. The idea of *jihād* as spiritual struggle is much to the fore of the minds of modern Moslem theologians, and in the modern world Christians speak loosely of any good endeavor of any magnitude as a "crusade". The concept of *jihād* has not loosened quite to the same extent in Islam, but it is certainly used to define what Christians still call a "just war". It is as a theology of just war that the two ideas come closest. Even the requirement of using right means (*modus debitus*) which developed rather later in Christendom, and the idea of double effect which permits the incidental death of the innocent, are parallel to Islamic rules. We have seen that the crusade from its inception was considered the just war *par excellence*, the war which would end all other kinds of war, though in fact in time it led on to an infinite number of "just wars" and crusades for this and that alleged good end. Here we return to the starting point. Both *jihād* and crusade were designed to lead to that state of perfect peace where the world is under the rule of true religion, and the conversion of a barely tolerated remnant is imminent.

It is extremely unlikely that there was an actual Islamic influence on the Christian canons. There is no vestige or echo of specific knowledge of the Islamic law of *jihād* in any medieval writing; still less are there specific references to it, translations, questions, or discussions. In writing theology and even history there is no reticence about the use of Moslem sources, and this silence makes it certain that there was no explicit influence of Moslem jurisprudence. References do occur

61. Cf. *Encyclopedia of Islām*, vol. I (Leyden, 1908), rev. ed., vol. II (Leyden, 1965), s.v. "djjihād"; Majid Khadduri, *War and Peace in the Law of Islam* (Baltimore, 1955).

often, of course, to the "religion of violence"; generalizations are based on traditional distortions of early Islamic history, and tendentious reading of Robert of Ketton's paraphrase of the Koran, undertaken for Peter the Venerable, stressed the commands to fight unbelievers. This crude idea of *jihād* was quite unrelated to the crusade. We might say that an unacknowledged influence of Moslem jurisprudence, not even perceived by those who received it, is not impossible, but it is an unnecessarily complex assumption. The natural explanation is that those who start from the same position and go in the same direction are apt to follow much the same path. Granted the duty of converting the world, and granted that there is no objection to the use of force, at least within legally determined limits, the detailed rules seem to develop inevitably in parallel. There was of course no fundamental difference between the Christian and Moslem positions on the use of force. Christians began by not using force at all, and Humbert's theory that different stages of development require and justify different means, whether or not it is a sound theory in theology or law, is certainly good history. The real difference was that the Christian position did not require toleration, in the way that Islam is predetermined by the Koran to accept the "Peoples of the Book". Although there is something similar in the status of Jews, under Romans 11, the fact that nothing guarantees the status of Moslems — tolerated, as Holcot said, only as Gibeonite hewers of wood and drawers of water — made a political objective of total conformity possible. The proof is that Christians and Jews have survived under Islam, but not Moslems under Christian rule before the modern colonialist period; in Christendom, Jews have survived, and Moslems have not. The position of the latter was always insecure despite the reasonable terms on which so many of their cities surrendered.

In minor ways uniformity might be broken by license, by the purchase of privilege. It is ironic that in the days of effective crusading people paid the church in order not to go on "pilgrimage"; when a crusade was no longer a practical possibility, they paid for license to break the boycott, to go on pilgrimage, or to travel to Alexandria to trade. As excommunication followed excommunication and was ignored until it suited better to give way, it might seem that the weapon was cheapened beyond usefulness, but, though this may be true of the conflict between the papacy and the secular state, excommunication as the typical ecclesiastical sanction was not diminished; on the contrary, the suppression of heresy became more widespread. The fact is that excommunication was the natural mode of thought of Europeans, unquestioned till relatively late, and surviving into the seventeenth cen-

tury (and vestigially much later). In the Middle Ages, those who would not keep the rules, either of recovery of the Holy Land, or of frigid relations with unbelievers, were excommunicated; above all, the unbelievers themselves began by being excommunicate. This was the justification for taking "spiritual" action against persons outside the church: to preserve Christians from contact with them. There was no secret or mystery about this. The crusade is the characteristic, even quintessential, expression of a conformist society.

The very idea of the crusade was clerical, but in that, perhaps, it differed less from *jihād*, which was the act and thought of the whole community, than might at first appear. Laymen's crusading was a series of practical wars, with little beyond a "them and us" ideology, modified by recurrent common sense, and occasionally by a little good fellowship across the barrier. The crusading ideal was quite different, a clerical intention for laymen to practise, but, though it was sometimes more, sometimes less remote from what was actually happening, laymen acquiesced, at least in the theory. Seen from the point of view of the Christian and European body politic, the crusade becomes only one aspect of the characteristic tendency of the Middle Ages, the concerted determination of the articulate classes — effectively the clerics — to establish a society so fully united as to express itself naturally in total orthodoxy. Nor is there any evidence that the bulk of the population objected to this aim; objectors seem untypical, and most of them were clerical in any case. Some degree of orthodoxy is the expression of any normal society; the peculiarity of the Middle Ages was the preponderance of clerical and theological articulate leadership.

A crusade was different from war against Moslems, as such a war was understood before Clermont, precisely in being more clerical and more theological. It was different in emphasis, and in the stronger papal initiative, expressed partly by a simple philosophy of history, but more by papal decrees elaborated in a growing collection of canons, commentaries, and theological questions. Thus the crusade must be understood as existing by virtue of its own definition; it only added a complex interpretation — at once legal and sentimental — to an already existing activity. In its turn, the papal leadership had an actual effect on events, the crusades were successfully recruited, and this recruitment, though often at a very low level, continued without break. A complex though ramshackle financial system was created.<sup>62</sup> Thus the existence of such a theory had helped to give a nominal body politic, "Christendom", some effective reality. The crusade was a function of

62. See chapter IV on finances by Fred A. Cazal, Jr., below.

“Christendom” and an important element in every approach to a papal theocracy. Strictly speaking, the crusade has no political theory of its own, but only plays an important part in the political theory of the papalists.

Moreover, the theory helped greatly to form persistent and influential European attitudes. The overall effect of the law of the crusade, including the law governing the treatment of conquered Moslems, was the political one of sealing Europe off. The relations between the Moslem world and Europe (with, in due course, America) have been uneasy up to the present day. There has been mutual respect, occasional contempt, frequent hatred, and almost constant incomprehension. We can trace this back on the European side as far as the Arab invasions of Europe through an unbroken series of misunderstandings, but, in that story, the effect of the crusading period must be considered decisive. Unmodified crusading opinions can still occasionally be heard from a few Christians, but many Moslems believe that crusade still informs the whole western attitude, and, inverted, it has certainly come to influence extremist interpretation of Islamic law.

W. M. Watt, basing his view very fairly on the evidence of contemporary Moslem historians, and especially on Ibn-Khaldūn (d. 1406), holds that the crusades were no more important to the Arabs of their time than the wars of India’s Northwest Frontier to Englishmen of the imperialist age.<sup>63</sup> Yet, if so, the Arabs were fatally wrong; there is a clear continuous line from the crusades to the aggressive imperialism of the western European powers in the Levant and North Africa in the nineteenth century. The paternalism of the church within Europe grew into the paternalism of Europe throughout the world. Even at the height of its intolerance Europe sent experts, excommunicate but active wanderers, into the Islamic world; these are lost to history because of the effective cultural barrier which a clerical society closed behind them. The political achievement of the age was an integrated society supported by laws of exclusion; law carries no guarantee that its provisions will be put into effect, but it is likely at least over a long period to express the wishes and beliefs of a people. Crusading Europe, which retained a capacity to develop within itself, was one of the most efficiently closed societies to have flourished under civilized conditions.

63. Modern opinions: personal experience of the writer, but on extremist interpretation see also Gilles Kepel, *Le Prophète et Pharaon* (Paris, 1984), pp. 115–117, 150–158, 198–201. W. Montgomery Watt, *The Influence of Islam on Mediaeval Europe* (Edinburgh, 1970), p. 81.