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

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

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

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

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

1. Introduction

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

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

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


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

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


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


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


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


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

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

2. The Carolingian Period

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

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

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12 Van Rhijn, C., Shepherds of the Lord: Priests and Episcopal Statutes in the Carolingian Period (Turnhout: Brepols, 2007). Garrisson, “A propos”, pp. 1175-76 mentions some Carolingian councils and statutes that are relevant for pilgrimage.
Ghärwald von Lüttich commanded a three-fold division, and one-third of the tithes priests were to “dispense mercifully through their own hands with all humility for the use of the poor and pilgrims”\(^{13}\). Theodulf of Orléans encouraged his priests to view the tithes and offerings of the faithful as means of support (stipenda) for pilgrims, the poor, and other guests\(^{14}\). Radulf of Bourges spoke about tithes as that which enable priests “to offer solace for guests and pilgrims, orphans and widows, the weak and the sick”\(^{15}\). Herard of Tours instructed his priests to “esteem hospitality above all things,” which meant “caring for and taking responsibility for widows, pilgrims, orphans, and the sick”\(^{16}\). The \textit{Capitularia Frisingensia tertia} offered a four-fold division of tithes, stipulating that one-fourth should go to the priest’s own sustenance, one-fourth to the upkeep of the church, one-fourth to hosting the bishop, and one-fourth to “pilgrims and the poor, widows and orphans”\(^{17}\). Some texts enjoined hospitality to pilgrims and other guests on all Christians. A ninth-century provincial synod in Bavaria succinctly commanded: “That [all Christians] should welcome pilgrims and guests into their own homes”\(^{18}\). The famous \textit{Admonitio Generalis} (789) of Charlemagne likewise encouraged all Christians to exercise hospitality, envisioning stable places for “guests, pilgrims, and the poor” to stay in various locales. The decree recalled two New Testament passages, Matthew 25:35, where Jesus anticipated saying to the righteous on Judgment Day, “I was a guest, and you welcomed me,” and Hebrews 13:2, which mentioned welcoming angels in hospitality\(^{19}\). The general capitulary for Carolingian \textit{missi dominici} in 802 likewise cited Matthew 25:35, as well as Matthew 18:5, commanding that pilgrims of any economic or social status were to receive hospitality and not be denied anywhere “roof and hearth and water.” The decree had two types of pilgrims in mind, namely those “wandering the earth on account of God” and those “travelling on account of a love of God and the salvation of their souls”\(^{20}\). Likely the latter category was for those going to a specific pilgrimage destination, whereas the first group encompassed those who had

\(^{13}\) Ghärwald von Lüttich, \textit{Erstes Kapitular} c.5, MGH Capit. episc. 1, pp. 17.10-18.2: \textit{[sacerdotes] dividant et ad ornamentum ecclesiae primam elegant partem, secundam autem ad usum pauperum atque peregrinorum per eorum manus misericorditer cum omni humilitate dispensant, tertiam vero partem sibi metipsis solis sacerdotes reservant.} \\

\(^{14}\) Theodulf of Orléans, \textit{Zweites Kapitular} c.5, MGH Capit. epis. 1, p. 150.14-19: \textit{Instruendi sunt sacerdotes pariterque ammonendi, quatus quidem, decimas et oblationes, quas a fidelibus accepiant, peregrinorum et pauperum et hospitium esse stipenda et non quasi suis, sed quasi commendaticis uti.} \\

\(^{15}\) Radulf of Bourges, c.21, MGH Capit. epis. 1, p. 250.4-5: \textit{et ut hospitalibus et peregrinis, orphanis et viduis, debilibus et aegrotis solatium praebere valeant.} \\

\(^{16}\) Herard of Tours c.18, MGH Capit. epis. 2, p. 132.1-2: \textit{Ut hospitalitatem ante omnia diligant. Et ut viduarum, peregrinorum, orfanorum atque infirmorum curam et sollicitudinem habeant.} \\

\(^{17}\) \textit{Capitula Frisingensia tertia} c.29, MGH Capit. epis. 3, p. 229.3-6: \textit{… in quattuor partes dividant, hoc est sibi unam ad victurn, alteram ad tectum et luminaria componendam, tertiam peregrinis et pauperibus, viduis et orphanis eroget, quartam ad recipiendum episcopum observet.} See also the \textit{Capitula Parisiensis} c.14, MGH Capit. epis. 3, p. 34.12-14: \textit{Cetera vero dona ecclesiastica in reparatione basilice, in luminaribus, in ornamentis altaris, in libros officialibus, in susceptione pauperum et peregrinorum dispenserunt.} \\

\(^{18}\) \textit{Capitula Bavariae} c.15, MGH Capit. epis. 3, p. 198.4: \textit{Ut peregrinos et hospites in domus suas recipiant.} \\

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

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

Normative sources, especially from the Carolingian kings, also stipulated that they should be granted physical, judicial, and economic protection, and many of these decrees likewise grouped them with individuals such as widows, orphans, and the poor. The general capitulary for the missi dominici prohibited exercising fraud, plunder, or other injury upon churches, widows, orphans, and pilgrims since the emperor was, after the Lord and his saints, their protector and defender\(^2\). Another decree commanded bishops, abbots, abbesses, and counts to exercise just judgment with all love and concord of peace in accord with God’s will and noted in particular that “pauperes, widows, orphans, and pilgrims are to have consolation and defense from them.”\(^2\) Already in the 780s, likely at a council held in Pavia in 786, Pippin placed those travelling to and from Rome and other saints’ shrines under his protection, imposing a heavy fine on those who killed them\(^2\). Other capitulary and conciliar decrees exempted pilgrims from paying tolls and imposed heavy penalties on those who did so or otherwise detained, harassed, and defrauded pilgrims on their journeys\(^2\). Similar protections were given to merchants, but pilgrims were not usually expressly grouped together with them\(^2\). In sum, if one looks at the Carolingian Empire in the late eighth through ninth centuries, one sees a clear association of pilgrims with other groups who merited special protections by the authorities. Within the church, this meant that priests were to devote significant time and resources to supporting and showing hospitality to pilgrims, and all Christians were encouraged to view themselves as hosts to individuals travelling “on account of God.”

3. The Ivonian Collections and the Decretum Gratiani

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

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\(^2\) Capitulare missorum generale, 802 initio c.5, in Caroli Magni Capitularia, MGH Capit. 1, 93.1-3: 5. Ut sanctis ecclesiis Dei neque viduam neque orphanam neque peregrinam fraudem vel rapinam vel aliquit iniuriae quis facere presumat, quia ipse dominus imperator, post Domini et sanctis eius, eorum ad protectorem et defensor esse constituimus est. See also Garrisson, “A propos”, p. 1178.

\(^2\) Ibid., c.14, 94.1-6: 14. Ut episcopi, abbates adque abbatissae comiteque unanimi invicem sint, consentientes legem ad iudicium iustum terminandum cum omni caritate et concordia pacis, et ut fideliter vivant secundum voluntates Dei, ut semper ubique et proprie illos et inter illos iustum iudicium ibique perficiantur. Pauperes, viduas, orphani et peregrini consolationem adque defensionem ad eis habent; ut et nos per eorum bona voluntatem magis premium vitae eternae quam supplicium mereamus. See also Carlen, “Wallfahrt und Recht”, p. 90.

\(^2\) Pippini Italicae Regiae Capitulare, 782-786, c.10, in Capitularia Italica, MGH Capit. 1, 193.20-23: De advenas et peregrinum qui in Dei servitio Roma vel per aliam sanctorum festinans corpora, ut salvi vadant et revertant sub nostra defensione, et qui ex ipsis peregrinam aequos fuerit occidere, LX solidos componatur in palatio nostro. Insuper compositio illa de ipso homicidio componatur, cui legibus leudo ipso pertinuerit. See also Carlen, “Wallfahrt und Recht”, p. 90.

\(^2\) Pippini Regis Capitulare, 754-755 c.4, in Pippini Capitularia, MGH Capit. 1, 32.7-11: Et de peregrinum similitur constituitur qui propter Deum ad Romam vel allicubis vadat, ut ipsos per nullam occasionem ad pontes vel ad exclusas aut navigio deteneatis, nec propter scriptra sua ullo peregrinum calumniam faciatis, nec ullam theloneum eis tollatis. Et si alii quis hoc fecerit, qualscumque homo hoc comprobaverit, de LX solidi triginta illi concedimus, et illi aliis in sacello regis veniant. The capitulary is likely connected to a Council of Verneuil held in July 755, which included a decree forbidding the imposition of tolls on any pilgrims. See Concilium Vernense, 755 Jul. 11 c.22, in Pippini Capitularia, MGH Capit. 1, 37.3: De peregrinis qui propter Deum vadunt, ut eis tolloneos non tollant. See also Garrisson, “A propos”, p. 1179.

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

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

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


30 ID 3.167 (= Pan. 2.85); [Rubric] Ut ne quis contra necessitatem ecclesie rem alienet. [Inscription] Ex concilio Toledo terto. [Canon] Hec sancta sinodus nulli episcoporum licentiam tribuit res alienare ecclesie, quoniam et antiquioribus canonibus hoc prohibetur. Si quid vero quod utilitatem non gravet ecclesie, pro
of texts from Carolingian capitularies. One section includes a number of decrees prohibiting fraud and declaring protection for groups such as public penitents, widows, and orphans. Then there is a canon prohibiting assault, robbery, or murder of peregrini transmuneis, which seems to have in mind general travelers, since it refers to people travelling on their lord’s or their own business and since it references Old Testament passages protecting the foreigner and sojourner within Israel’s midst (cf. Ex. 22:21, Lev. 25:35). Fines are doubled for harm to these individuals. It seems reasonable to assume that religious pilgrims could also be understood as protected by this decree.

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

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

33 Gilles, “Lex peregrinorum”, p. 174 notes this privilege.

34 Magister Honorius, Summa ‘De iure canonico tractaturus’, vol. 3, ad C.11 q.3 c.103, ed. R. Weigand, P. Landau, and W. Kozur, MIC A:5 (Vatican City, 2010), p. 194.93-195.98: orator, quì ad proximas, peregrinus,
The necessity of travel abroad

Under the canonical norm of necessitas -- “necessity knows no law” or necessitas non habet legem36 – pilgrims achieved an express legal concept to ground special privileges they enjoyed, which later became explicitly tied to privileges in court proceedings.

The second recension of Gratian’s Decretum inserted three texts into C.24 q.3 that pertained to the protection of pilgrims. All of them derived from relatively recent papal material, namely a decree from a Roman Council (1059) under Pope Nicholas II and two decrees from the First Lateran Council (1123) under Pope Calixtus II. The specific question of C.24 q.3 was whether someone’s entire family is to be excommunicated for his sin. The R1 text remained close to the question at hand37. The R2 additions expanded the treatment beyond the original question, addressing some procedural matters of excommunication and identifying various other offenses that merit excommunication. These include mistreatment of pilgrims and merchants as well as harassment of the people and property associated with churches, including clerics, monks, conversi, and others going to a church to pray – the protected groups of the Peace and Truce of God movements. The first text, Si quis Romipetas, was issued at Lateran I and expressly protected “those going to Rome and pilgrims of the limina of the apostles and those visiting places of prayer for other saints.” It reiterated the Carolingian prohibition of exacting tolls from pilgrims, and forbade the issuance of new tolls and exactions against merchants too, under penalty of excommunication 38. The second, Paternarum, attributed to Pope Urban II but actually also a canon from Lateran I, determined, as the rubric put it, “He is to be excommunicated who presumes to trouble those who go to churches to pray and those keeping guard over churches and their goods and persons in the same place.”39

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


39 C.24 q.3 c.24 (= Lateran I c.20 [cf. COGD 2.1, p. 94]): [Rubric] Excommunicetur qui oratores et ecclesias, eamque bona et personas ibidem servientes infestare presumed. [Instruction] Item Urbanus: [Canon] Paternarum traditionum exemplis commonti, pastoralis officii debitum persoluentes, ecclesias cum bonis suis, tam personis quam possessionibus, clericos uidelicet ac monachos, eorumque conversos, oratores quoque cum suis nichilominus rebus, quas ferunt, tuto et sine molestia esse statuimus. Si quis autem contra hoc facere
third derived from a council under Nicholas II and linked the protection of pilgrims to the Truce of God movement. The editorial history of the canons from this council is muddled; it seems likely that there were two canons in succession that were copied in some manuscripts and that the R2 Decretum’s version of the text combined these two canons. Other manuscript copies recording the council’s decree only carry the first part of the Decretum’s text. The types of people protected here are “pilgrims, or those going to pray in any place, or clerics, or monks, or women, or unarmed poor persons.” Both their goods and persons were protected. The next sentence (not attested to in all manuscripts recording the council’s canons) asserted that the peace, which is called the treuga Dei, should be maintained, just as established by the archbishops of each province. The joint canon listed “the bond of anathema” and excommunication as punishment for violation. Thus, the expanded version of the Decretum Gratiani affirmed Nicholas II’s own affirmation of the Truce of God movement, which grouped pilgrims with clerics and the poor and defenseless. Decretist commentary on these three texts were sparse, and nothing of real import for a jurisprudence of pilgrimage emerged in it.

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

4. Papal Decretals and Decretalist Commentary

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

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

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

42 Garrisson, “A propos”, pp. 1171-72 notes twelfth-century sources (statutes, treatises, pontificals) that indicate that bishops from Ireland to the continent took the blessing of pilgrims and pilgrim insignia (such as the satchel and staff) as specific elements of their and local priests’ duties. Ibid., p. 1177 asserts that there was an assumption that the protections of pilgrims belonged primarily to custom and secular powers. Carlen, “Wallfahrt und Recht”, p. 89 notes that kings of Spanish kingdoms in the thirteenth century, like the Carolingian kings of the ninth, had laws protecting pilgrims.
commented on with more or less attention given to the status and privileges of pilgrims. The earlier hints at grouping pilgrims with merchants rather than personae miserables became more pronounced and consistent. Pilgrims also appeared with crusaders, who were a type of pilgrim, and yet the jurisprudence about crusaders seemed to evolve as a jurisprudence of crusaders, not of pilgrims generally speaking. Little to no attention is given in this period in the general canon law to the pastoral care due pilgrims – which is clear from the decreetal commentary on a revived Carolingian canon from Hincmar of Reims – but significantly more attention is given to their legal protections in court in their absence from home and in the event of their death while on pilgrimage.

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

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

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

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

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

46 Hostiensa, Summa aurea ad 1.34 (ed. Venice 1574, cols. 356, 361): Treuga. Securitas personis et rebus ad tempus prestita, discordia nondum finita, quod in lege dicitur foedus vel inducias... Perpetuam [treugam canonica] habenti clerici, monachi, conventi, peregrini, et rustici cum animalibus et ministris omnibus rusticannis, dum sunt in agricultura, et redeunt, et vadunt; infra, eodem, ‘Innovamus’ [X 1.34.2], 24. q.3 ‘Si quis Romipetas’ [C.24 q.3 c.23], infra De peregrinantibus, c.un. [X 2.29. un.]
this decretal only slightly, and it did not focus on pilgrims. Consequently, it would seem, modern scholars have not noted this as a decretal that pertains to the *lex peregrinorum*. Clement’s text explicitly mentions pilgrims, however, together with those taken captive. Apparently the custom had been to allow wives to re-marry after seven years if their husbands had not returned from a journey or war, even if they could not verify the man’s death. The decretal prohibits such re-marriages, asserting that the woman remains the man’s wife so long as he lives and thus that she cannot re-marry so long as it is unconfirmed that the man is dead47. The *casus* or summarizing statement for the decretal in the *Glossa ordinaria* remarks that this decretal abrogates earlier (Roman) laws allowing spouses to re-marry after five years without word from an absentee husband or wife48. Again, major decretalists of the thirteenth century such as Hostiensis and Innocent IV (Sinibaldo Fieschi; pope 1243-54) paid little attention to this decretal; all the same, it was enshrined in canon law and could have been used to protect a pilgrim who returned home after a long journey only to find his wife living with another man. Based on this canon (and others), his marriage would have been upheld in an ecclesiastical court.

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

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47 X 4.1.19 (JL 10130; 2Comp. 4.1.3): [Rubric] *Uxor, non certificata de morte viri, contrahere non potest, quamvis ignotet, quid sit de marito, qui longo tempore abhaut.* [Inscription] *Clemens III. Caesaraugustensi Episcopo. [Decretal]* *In praesentia nostra positus a nobis quaesististi, quid agendum tibi sit de quibusdam mulieribus in tua dioecesi constitutis, quae, questis viros suos causa captivitatis vel peregrinationis absentes iam ultra septennium praesolatiae fuerint, nec certificari possunt de vita vel de morte ipsorum, licet super hoc se dominum adhibuerint diligentem, et pro iuvenili aetate seu fragilitate carnis nequeant continere, petentes aliis matrimonio copulandi.* *Quam autem dicat Apostolus: “Mulier tam diu alligata est viro, quam diu vir eius vivit;” consultationi ergo tuae taliter respondemus.* *Audimus audire, quod, quanticunque annorum numero ita remaneant, viventibus viris suis non possunt ad aliorum consortium canonice convolare, nec tu eas auctoritate ecclesiae permittas contrahere, donec certum nuncium recipient de morte vironum.*

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

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

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

51 X 2.21.un: “*Conquerente I. presbytero interleximus*, quod, postquam ad nos veniendi iter arripuit, quidam res eius diripere praesumperunt. *Licet autem presbyter idem res suas et ecclesiae suae in protectione*
application to all pilgrims, this text became the basis for the most sustained reflection on protections owed pilgrims among thirteenth-century canonists.

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

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

52 Cod. 8.5.1 and Dig. 26.5.29.
53 Gl. Ord. ad X 2.21 un s.v. faciatis (ed. Roma 1582), col. 981: in hoc casu quando possessio absentis taliter turbantur, sesea, amicus, proximus, colonus, petere possunt ut possessio resituantur, ut in l. praedict. C. ‘Si per vim vel alio modo’ l. 1 [Cod. 8.5.1].
54 Commentaria super decretales ad 2.21.un (ed. Frankfurt 1570), fol. 345vb. For Innocent, all pilgrims get protection, but especially those going to the Roman see: Nam cum omnes peregrini sint sub proteccione domini papa, specialius tamen venientes ad sedem apostolicam. 24. quaequet. 3. ‘Si quis Ro.’ [C.24 q.3 c.23]. See Hostiensis, Lectura ad X 2.21 s.v. Accessit (ed. Strasbourg 1512), vol. 1, fol. 440va: supple: maxime causa peregrinandi, ut factat ad titulum, nam et omnes peregrini, maxime apostolorum cum venientes, sub protezione pape sunt, C.23 q.3 ‘Si quis rompetas’ [C.24 q.3 c.23], et c. ‘Paternarum’ [C.24 q.3 c.24] et c. ‘Illi qui’ [C.24 q.3 c.25], secundum Goffredus, et legitur et nota supra De treuga et pace, ‘Innuamis’ [X 1.34.2].
55 Innocent IV, Apparatus super libros quinque decretalium ad X 1.29.38 (ed. Frankfurt 1570, fol. 142b).
ius commune, protecting travelers from the despoliation of goods and postponing court proceedings against them until their return, in some ways seemed to render Celestine’s decretal superfluous. All the same, its inclusion in the Liber Extra allowed the decretalists to be explicit about the fact that religious pilgrims received these very same legal protections for their property at home and gave them an opportunity to specify that pilgrims could designate representatives at home to protect that property and seek restitution in court should someone unlawfully seize it.

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

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

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

59 Ibid., col. 843: “De priuilegio autem clericorum et aliorum peregrinorum et rasticorum et mercatorum, dic ut notatum, supra, de treuq. § quo sint species, ver. ita canonica, et seq. Hic tamen adde, quod peregrini aduentire possunt, uti voluerint, hospitari libere, et de rebus suis testari; quod si intestati decedant, ad hospitem nihil perueniet, sed per manum episcopi heredibus, si fieri potest, alias in pias causas bona sunt eroganda. Si vero hospes aliquid retinuerit, in triplum episcopo reddat, uti iustum fuerit assignandum, non obstante contraria consuetudine, priuilegio, vel statuto.” See also Garrisson, “A propos”, p. 1187.
canonici. Rather they arose in other decretals and in secular constitutions, the most pertinent one issued by Frederick II in 1220 and added as an authentica into the Codex. These were recognized in later canonistic commentary\(^60\). All of this took place in an era when more pilgrims were on the road for longer distances, so much so that brotherhoods and official religious orders were founded to host and care for pilgrims, especially in Spain and along routes to Rome and the Holy Land\(^61\). Popes such as Innocent III approved numerous hospitals in the period, and Innocent himself founded the zenodochium or Hospital of Santo Spirito in Rome for poor strangers and pilgrims\(^62\). While churches still supported pilgrims, care for them was not reserved to parish priests alone or to individual Christians hosting the occasional traveler. New orders especially organized to care for the poor, sick, and pilgrims were far better suited for the work. Hostiensis’s commentary recognizes the contemporary reality of pilgrimage in his day, in which systematic abuse of pilgrims was possible, which Jacques de Vitry (d. 1240) also noted even amidst his great praise in his Historia Occidentalis for the hospital religious who were doing great works of charity\(^63\).

The legacy of Pope Innocent III in the realm of privileges to pilgrims pertained to giving them special exceptions in situations of ecclesiastical discipline. One decretal specified that they and also crusaders would have the privilege to be administered confession even during an interdict\(^64\). According to Peter Clarke, the canonists did not readily accept this decretal; it was not included in Compilatio quarta, and some may have been surprised by its inclusion in the Liber Extra. Some decretalists took the perspective of Johannes Teutonicus, who had included it in his Compilatio quarta and commented on it, that penance was only allowed to these groups

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

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


\(^{63}\) Ibid., p. 135.

\(^{64}\) X 5.38.11 (4Comp. 5.14.3, Po --), final sentence: Recipientibus autem signum crucis non negamus, quo minus eis ob reverentiam crucifixi poenentia, quam postulaverint, iniangatur, quod et alis peregrinis potest misericorditer indulgeri.
in situations of imminent danger. Thus, Bernardus de Montmirat, or Abbas Antiquus (c.1225-1296), said it only applied to pilgrims travelling a long distance from home. Innocent IV took a softer stance, seemingly applying the allowance for any pilgrimage, even those closer to home; at the very least it applied to more than just the pilgrim who went "across the sea." Hostiensis thought it applied to crusaders as soon as they took the cross but only to pilgrims when they were on their journey; or it could apply to pilgrims from a location under interdict who were then travelling to Compostella, Rome, or other shrines at a long distance and were permitted the sacrament of penance abroad on account of their piety and in consideration of the danger such journeys posed. Regardless of the precise stipulations of distance, canonists agreed that pilgrims on major pilgrimages had a special privilege of confessing and receiving penance even during times of interdict.

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

66 Ibid., p. 158, with text in p. 158n145.
67 Innocent IV, Commentaria super Decretales ad X 5.38.11 s.v. peregrinis (ed. Frankfurt 1570), fol. 544vb: etiam alia peregrinatione quam ultra marina.
69 X 5.39.34 (3Comp. 5.21.7; Po 1947).
70 X 5.39.34: Est autem cautum in iure, quod, si quisquam per terram haereticorum aut quorumlibet excommunicatorum transierit, necessaria emere ac recipere poterit ab eisdem. Praeterea, si paterfamilias domus excommunicationis sententia fuerit in eisdem familiae custodiam, licet erga dux Venetorum dominus naviem tantum paterfamilias domus in excommunicatione persistat, vos tamen, tanquam ipsius familiam, dum in navibus eius fueritis, ipsius excommunicatio non continget, et excusabiles eritis apud Deum, si in excommunicatorum navibus existentes cum dolore cordis sub spes poteuentiae communicaveritis ipsis, in quibus eorum commuoniam non potueritis evitare.
71 Glossa ordinaria on X 5.39.34 (ed. Rome 1582), col. 1906, casus: Nota quod ... tempore necessitatis possunt necessaria eni ab excommunicatis et haereticis.
72 All that is present is an allegatio. See Glossa ordinaria s.v. siue peregrinos (ed. Mainz 1472, fol. 193vb): Extra, De sent, ex. ‘Si uere’ [X 5.39.34].
Priests would have been responsible for understanding these regulations concerning pilgrims, and yet the canon law pertaining to pilgrims in the thirteenth century seems far removed from the very concrete terms stipulating what portion of tithes were to go to the support of the *pauperes* and pilgrims found in the Carolingian era. While it is clear that home churches supported their parishioners going on pilgrimage, the devotion of priests to the physical care of pilgrims find little to no mention. In the *Corpus iuris canonici*, the change from the Carolingian emphasis can be seen in the placement and commentary on a resurrected Carolingian episcopal statute, one from Hincmar of Reims but attributed to a Council of Nantes. The text permits a modification of the usual and regular recitation of the divine office, accounting for the necessity at times of caring for the needs of pilgrims, other guests, diverse travelers, the sick, and also the dead. Raymundus de Pennaforte placed the text within a title of the *Liber Extra* called *De celebratione missarum, et sacramento eucharistiae et divinis officiis*. The placement thus emphasized the liturgical setting. Decretalist commentary said nothing about pilgrims, although the commentary on the relevant section discussing help for pilgrims, visitors, travelers, the sick and the dead, mentions performing Mass, indicating that the primary way the *Glossa* conceived of the individual priest’s obligation to pilgrims was in liturgical terms.

5. Conclusion

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

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73 See a list from the fourteenth century Pistoia, which funded numerous pilgrims to Santiago and more regionally, in Webb, *Pilgrims and Pilgrimage*, pp. 153-57.
74 X 3.41.1. The text is c.9 of Hincmar of Reims’s *Capitula presbyteris data anno 852* (MGH Cap. ep. 2, p.38; PL 125: 775A-B). The text appeared in twelve pre-Gratian canonical collections, always attributed to a Council of Nantes, including Regino, 1.208, Burchard 2.104, and Ivo’s *Decretum* 6.181.
75 X 3.41.1: *Deinde peractis horis et infirmis visitatis, si voluerit, exeat ad opus rurale ieiunus, ut iterum necessitatiibus peregrinorum et hospitum, sive diversorum concommantium, infirmorum quoque atque defunctorum succurrere possit usque ad statutam horam, pro temporis qualitate, et opportunitatis.*
76 Gl. Ord. ad 3 41.1, s.v. *succurrere* (ed. Roma 1582), col. 1364: *Missam celebrando usque ad statutam horam, ut hic dicit, id est, nonam.*
77 Garrisson, “A propos”, p. 1166 notes how laws about pilgrims ignored social categories.
If the question arises of what protections for pilgrims in the medieval period mean in relationship to contemporary questions surrounding the treatment of migrants and refugees, the historian has to assert first that medieval pilgrims cannot be equated to modern migrants and refugees. One obvious difference, of course, is that a pilgrim is expected to return home; her journey is two-way, or roundtrip. Migrants may have no intention of returning home; refugees might hope to, but the realities on the ground often prevent them from doing so. Additionally, pilgrims set out with a goal to reach some place away from home, a home that usually remains intact and safe and is such upon departure; migrants and refugees are, by contrast, trying to escape their home, a home that faces threats and/or real dangers and destruction upon departure. Nevertheless, what is perhaps helpful in the modern context from the historical laws regarding pilgrims is the fact that pilgrims were set side-by-side with other disadvantaged groups and also with anyone who was away from home.

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

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

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