



**THE IMPLEMENTATION OF CANON LAW IN MEDIEVAL EUROPE:**

**THE CASE OF LIVONIA, 1147- 1300**

Thesis submitted for the degree of Doctor of Philosophy

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September 2022

## **ABSTRACT**

This thesis examines how various prescriptions of church law were interpreted and implemented in the north-eastern Baltic region during the second half of the twelfth and thirteenth centuries. Contemporaneously known as Livonia, this region started to attract the attention of both missionaries and crusaders within the wider framework of the Baltic Crusades, and over the course of the thirteenth century, Livonia was consequently incorporated into Latin Christendom. At the same time, new and paradigm-changing canon law collections started to be compiled and widely disseminated in Latin Christendom. These law collections had a profound impact on everyday lives of Christians, including the Livonians who were converted. Despite growing scholarly interest in medieval Livonia, a comprehensive study of how canon law – possibly the most universal law of the Middle Ages – affected its conversion and subjugation, is still lacking.

Drawing on a wide range of legal and narrative sources, this thesis offers a detailed analysis of specific themes that intersected with various parts of Livonian society. Chapter One focuses on early missionary activity through three key topics: baptism, marriage, and preaching and teaching. Chapter Two looks at how warfare that accompanied missionary activities was justified through the concepts of waging and conducting war. Chapter Three turns attention to the organisation of Livonian society by examining jurisdictional questions, the ways in which new laws were implemented, how investigations into local matters were conducted, and the system of rewards and punishments adjusted in order to conform to canon law principles.

As a whole, this thesis demonstrates how canon law formed an integral part of the societal change that Livonia underwent when it was Christianised. At the same time, this study reveals that the implementation of canon law in Livonia affected the way canon law was formulated as well.

**DECLARATION OF ORIGINAL AUTHORSHIP**

Declaration: I confirm that this is my own work and the use of all material from other sources has been properly and fully acknowledged.

Mari-Liis Neubauer

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## ACKNOWLEDGEMENTS

My deepest gratitude goes to my supervisors, Prof. Rebecca Rist and Prof. Helen Nicholson, whose guidance and support was invaluable through all these long years while I was working on my thesis. Not only did you help me navigate the vast world of medieval canon law, but you taught me perseverance and diligence. My heartfelt thanks go also to Prof. Françoise Le Saux and Prof. Barbara Bombi for making my viva a most enjoyable experience – your feedback and suggestions were crucial for the betterment of my work.

I would also like to thank the South, West and Wales Doctoral Training Partnership who made this work possible by providing financial assistance and a comprehensive network of support and training. Both the Graduate Centre for Medieval Studies and the History Department at the University of Reading have been places full of encouragement and kindness – my thanks to you. I am also deeply grateful to all the scholars I met at conferences and other events, for providing me with many fruitful ideas that I have explored throughout this thesis.

A very special thanks to my parents who always encouraged me to be inquisitive and to pursue my passion – it is thanks to you that I sparked my interest in history. I am also profoundly indebted to John and Eileen who treated me like family and offered their unwavering support.

Finally, and most importantly, I owe my greatest thanks to my fiancé, James. You joined me during countless sleepless nights when I just could not get that paragraph right. You listened to my endless ramblings about the intricacies of medieval canon law. You were always there, no questions asked. You made this thesis possible – thank you.

## ABBREVIATIONS

- 1 Comp.** ‘Compilatio prima’, *Quinque compilationes antiquae, Corpus iuris canonici*, ed. Emil A. Friedberg (Leipzig, 1882), pp. 1-65.
- 2 Comp.** ‘Compilatio secunda’, *Quinque compilationes antiquae, Corpus iuris canonici*, ed. Emil A. Friedberg (Leipzig, 1882), pp. 66-104.
- 3 Comp.** ‘Compilatio tertia’, *Quinque compilationes antiquae, Corpus iuris canonici*, ed. Emil A. Friedberg (Leipzig, 1882), pp. 105-134.
- 4 Comp.** ‘Compilatio quarta’, *Quinque compilationes antiquae, Corpus iuris canonici*, ed. Emil A. Friedberg (Leipzig, 1882), pp. 135-150.
- 5. Comp.** ‘Compilatio quinta’, *Quinque compilationes antiquae, Corpus iuris canonici*, ed. Emil A. Friedberg (Leipzig, 1882), pp. 151-186.
- DD** *Diplomatarium Danicum*, Series 1, 7 vols, ed. Niels Skyum-Nielsen, *et al* (Copenhagen, 1938-1990).
- Die Register Innocenz** Innocent III, *Die Register Innocenz III.*, 15 vols, ed. Othmar Hageneder, *et al* (Graz, Cologne and Vienna, 1964-2022).
- Gratian** Gratian, ‘Concordia discordantium canonum’, in *Corpus iuris canonici*, Vol. 1, ed. Emil A. Friedberg (Leipzig, 1879).
- HCL** Henry of Livonia, *Heinrici Chronicon Livoniae*, ed. Leonid Arbusow and Albert Bauer (Hannover, 1955).



- Horoy** *Honorii III romani pontificis opera omnia quae extant*, 5 vols, ed. César A. Horoy (Paris, 1879-1882).
- Jaffé** *Regesta pontificum Romanorum*, 2 vols, ed. Philip Jaffé, (Leipzig, 1885-1888).
- LRC** *Livländische Reimchronik*, ed. Leo Meyer (Hildesheim, 1963).
- LUB** *Liv-, Esth- und Curländisches Urkundenbuch nebst Regesten*, 6 vols, ed. Friedrich G. von Bunge (Reval, 1853-1875).
- Mansi** *Sacrorum concilium nova et amplissima collectio*, 31 vols, ed. Giovanni D. Mansi (Florence, Venice, 1757-1793).
- PL** *Patrologia cursus completus, Series Latina*, 221 vols, ed. Jacques-Paul Migne (Paris, 1841-1865).
- Potthast** *Regesta pontificum Romanorum*, 2 vols, ed. August Potthast, (Berlin, 1874-1875).
- ST** St. Thomas Aquinas, 'Summa theologiae', in *Opera omnia, iussu impensaue Leonis XIII.*, Vol. 8 (Rome, 1882).
- Tancred** Tancred, 'Ordo iudiciarius', in *Pillii, Tancredi, Gratiae: Libri De iudiciorum ordine*, ed. Friedrich Bergmann (Göttingen 1842)
- Tanner** *Decrees of the Ecumenical Councils*, 2 vols, ed. Norman P. Tanner (London, 1990).
- X** 'Liber extra decretalium', *Corpus iuris canonici*, Vol. 2, ed. Emil A. Friedberg (Graz, 1959), pp. 5-928.

## INTRODUCTION

‘Rome dictates laws, but Riga irrigates the nations.’

Henry of Livonia<sup>1</sup>

When the chronicler Henry of Livonia wrote these lines in the late 1220s, he encapsulated the twofold nature of law.<sup>2</sup> First, an institution or a person had to formulate a legally binding statement, but it did not automatically translate into practice. Second, any law needed to be interpreted and consequently also implemented. Thus, the way legal practice was formulated was contingent not only on how the law was written but also on the way it was understood by those who had the power to impose it on others. Consequently, by examining the ways in which laws were implemented in a particular society, a more comprehensive picture of both the legal system and the society itself can be formed.

During the Christianisation of Livonia in the late twelfth and thirteenth centuries, canon law held a unique position in Latin Christendom.<sup>3</sup> Unlike any other type of law, it was supposed to be universally applied to every legally Christian – that is, baptised – individual, regardless of their location, social standing and gender.

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<sup>1</sup> *Roma dictat iura, Riga vero rigat gentes. HCL XIX*, 7, p. 132; translation from Henry of Livonia, Henry of Livonia, *The Chronicle of Henry of Livonia*, ed. and trans. James A. Brundage (New York, 2003), p. 152 (amended). Founded in 1201, Riga immediately became the centre of the converted regions in Livonia. Henry of Livonia used the textual similarity between *Riga* and ‘*rigare*’ (to irrigate) to imply a connection between Riga and the adoption of Christianity through baptism. All translations in this thesis are my own, unless stated otherwise.

<sup>2</sup> The image on the title page is a gravestone from the early thirteenth century, found during excavations in St. Martin’s church in Riga. Photo taken by the author at the Rīgas vēstures un kuģniecības muzejs (Museum of the History of Riga and Navigation).

<sup>3</sup> The use of the term ‘Christendom’ is not without its own problems, as pointed out by Nora Berend. For example, modern notions of Christendom tend to overemphasise its unity while neglecting the diverse range of medieval usages of the term; Nora Berend, ‘The Concept of Christendom: A Rhetoric of Integration or Disintegration?’, in *Hybride Kulturen im mittelalterlichen Europa. Vorträge und Workshops einer Frühlingsschule*, ed. Michael Borgolte and Bernd Schneidmüller (Berlin, 2009), pp. 51-62. See also p. 38 for the term ‘*societas Christiana*’.

Moreover, the twelfth and thirteenth centuries were central to the development of canon law through the compilation of ecclesiastical legal collections and their widespread dissemination, accompanied by the professionalisation of jurisprudence and court procedure.

Before Christianisation, Livonia lacked strong societal institutions, which in turn meant that the missionaries and crusaders spearheading its conversion had a greater chance of imposing new legal regulations on Livonia. In this context, the process of its Christianisation, which occurred concurrently with the rising prevalence of canon law, provides a unique insight into the implementation of the most universal law code of the European Middle Ages. As such, this thesis provides a case study of a multifaceted process of the conversion of a society, offering vital insight into the extent to which canon law was acknowledged in the furthest corners of Latin Christendom. Attention will be drawn to those who were the interpreters and implementers of such legal prescriptions, and to how the application of law took place. Additionally, this study emphasises how the development of canon law in the late twelfth and thirteenth centuries was an on-going process, and that as much as canon law was generally imposed in a top-down fashion, its creation and transformation was influenced by practical realities and needs on the ground.

## **MEDIEVAL CANON LAW AND THE LIVONIAN MISSION**

Medieval canon law, from the Greek word '*kanōn*', meaning 'rule', can be understood as ecclesiastical norms that existed during the period roughly coinciding with the Western Middle Ages from 500 to 1500 AD.<sup>4</sup> Geographically, it was confined

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<sup>4</sup> Wolfgang P. Müller, 'Medieval Church Law as a Field of Historical Inquiry', in *Medieval Church Law and the Origins of the Western Legal Tradition*, ed. Wolfgang P. Müller and Mary E. Sommar (Washington, D.C., 2006), pp. 1-14, at p. 1; James A. Brundage, *Medieval Canon Law* (London, 1995), p.

to the areas governed by the Latin Church.<sup>5</sup> As papal letters, conciliar legislation and other similar documents that formed the framework of canon law were usually responses to issues arising in the various regions of Latin Christendom, the development of medieval canon law was a two-way process, and in many ways displayed bottom-up characteristics, although the papacy had the last say in any particular matter. Kriston R. Rennie has aptly described medieval canon law as a ‘dynamic and fluid process that transformed with time, experience, and necessity’.<sup>6</sup>

Yet not every legal document of ecclesiastical origin came to be understood as a part of canon law tradition. Scholars such as Anne J. Duggan have increasingly shown that the formation of canon law was an inherently complex process.<sup>7</sup> For example, papal letters, often sent as responses to inquiries from bishops and other prelates, were to be obeyed as authoritative counsel, but they were not necessarily considered a part of general law.<sup>8</sup> It was the selection process of practicing and

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ix; John C. Wei and Anders Winroth, ‘Medieval Canon Law: Introduction’, in *The Cambridge History of Medieval Canon Law*, ed. Anders Winroth and John C. Wei (Cambridge, 2022), pp. 1-7, at p. 1.

<sup>5</sup> For Byzantine canon law, see Clarence Gallagher, *Church Law and Church Order in Rome and Byzantium* (Aldershot, 2002); Péter Erdő, ‘The Canon Law of the Eastern Church’, in *The Cambridge History of Medieval Canon Law*, ed. Anders Winroth and John C. Wei (Cambridge, 2022), pp. 142-169, at pp. 154-161. For a case study of canon law in medieval Rus’ – a lesser-known topic among anglophone scholars – see Rosanne Gretchen Mulcahy, *Canon Law in Medieval Russia: The Kormchaia kniga as a Source of Law*, unpublished PhD thesis (University College London, 2001). For a brief overview of canon law among the Rus’, see Erdő, ‘The Canon Law of the Eastern Church’, pp. 164-167.

<sup>6</sup> Kriston R. Rennie, *Medieval Canon Law* (Leeds, 2018), p. 1. For the flexibility of canon law as a system, see also Peter Landau, ‘The Spirit of Canon Law’, in *The Cambridge History of Medieval Canon Law*, ed. Anders Winroth and John C. Wei (Cambridge, 2022), pp. 573-583, at p. 575.

<sup>7</sup> Anne J. Duggan, ‘Making Law of Not? The Function of Papal Decretals in the twelfth Century’, in *Popes, Bishops, and the Progress of Canon Law, c.1120-1234*, ed. Travis R. Baker (Turnhout, 2020), pp. 258-287.

<sup>8</sup> Duggan, ‘Making Law of Not?’, pp. 279-284. Nevertheless, papal letters formed the substance of canon law in the post-Gratian period; Brundage, *Medieval Canon Law*, p. 53; Gisela Drossbach, ‘Decretals and Lawmaking’, in *The Cambridge History of Medieval Canon Law*, ed. Anders Winroth and John C. Wei (Cambridge, 2022), pp. 208-229, at p. 208.

academic canon lawyers that ultimately decided which papal letters, or indeed any other ecclesiastical documents, entered the most important canon law collections.<sup>9</sup>

Canon law co-existed with other types of law, such as merchant laws and municipal laws, but it was in some ways much more unique: in theory, canon law was supposed to be applied to every Christian regardless of their gender, social class, geographical location and so on, thus making it in the words of James A. Brundage ‘a working and often quite effective international law’.<sup>10</sup> Consequently, canon law was universally implemented throughout Christendom, including in Livonia after its conversion.

At the same time, while there has been an increased interest in the conversion of north-eastern regions of Europe, currently no study exists that systematically analyses the implementation of canon law in thirteenth-century Livonia. While it is certainly true that many works about medieval Livonia make passing references to canon law, it has not been the explicit focus of such studies.<sup>11</sup> The aim of this thesis is to remedy this specific shortcoming and to provide a comprehensive overview of how different aspects of canon law intersected with the society in post-conversion Livonia.

The promulgation of the Wendish Crusade in 1147 has often been seen as the starting point of the papally endorsed mission to the Baltic regions.<sup>12</sup> While some

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<sup>9</sup> Duggan, ‘Making Law or Not?’, p. 284; Kenneth Pennington, ‘Decretal Collections 1190-1234’, in *The History of Medieval Canon Law in the Classical Period, 1140-1234*, ed. Wilfred Hartmann and Kenneth Pennington (Washington, D.C., 2008), pp. 293-317, at p. 295-298.

<sup>10</sup> Brundage, *Medieval Canon Law*, p. 3. For a similar notion, see for example Richard H. Helmholz, *The Spirit of Classical Canon Law* (London, 1996), p. 5; Landau, ‘The Spirit of Canon Law’, pp. 575-576.

<sup>11</sup> For example, Fønnesberg-Schmidt has claimed that ‘[b]oth Eugenius III and Alexander III in effect allowed forceful conversion of the pagans, in clear contradiction of canon law, although Alexander also added a defensive purpose and emphasised that pagans were threatening the Christians here’ but did not investigate the matter further, see Fønnesberg-Schmidt, *The Popes and the Baltic Crusades*, p. 77. An exception to this trend has been the case study on levirate marriage in Livonia by James A. Brundage; James A. Brundage, ‘Christian Marriage in Thirteenth-Century Livonia’, *Journal of Baltic Studies*, 4 (1973), pp. 313-320.

<sup>12</sup> For example, Iben Fønnesberg-Schmidt has included the Wendish Crusade as the first enterprise in the crusading movement to the Baltics, see Iben Fønnesberg-Schmidt, *The Popes and the Baltic*

dubious evidence exists that attests to the possibility that some sort of mission was planned to Estonia during the pontificate of Pope Alexander III (1159-1181), the first evidence for the actual mission in the regions of Livonia dates to the 1180s.<sup>13</sup> With St. Meinhard (d.1196) building a fortification in a location named Üxküll, he became the first bishop of Livonia.<sup>14</sup> Meinhard's successor, Berthold (d.1198), died soon after arriving to Livonia at the hand of the local pagans.<sup>15</sup> The next bishop of Livonia, Albert of Buxhövdén (d.1229), transformed the whole enterprise in Livonia and more-or-less successfully incorporated these regions into Latin Christendom.<sup>16</sup>

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*Crusades* (Leiden, 2007), pp. 23-52. Similarly, Mihai Dragnea has seen the Wendish Crusade as the catalyst for the crusading movement connected to mission and conversion, and that eventually also reached Livonia; see Mihai Dragnea, *The Wendish Crusade, 1147: The Development of Crusading Ideology in the Twelfth Century* (London, 2021), pp. 39-63. For other examples of a similar view, see Sven Ekdahl, 'Crusades and Colonization in the Baltic', in *Palgrave Advances in the Crusades*, ed. Helen J. Nicholson (Basingstoke, 2005), pp. 172-203, at p. 174; John Aberth, *Contesting the Middle Ages: Debates that are Changing our Narrative of Medieval History* (London, 2019), p. 82; Florin Curta, *Eastern Europe in the Middle Ages (500-1300)* (Leiden, 2019), pp. 556-575; Marius Ščavinskas, 'On the Crusades and Coercive Missions in the Baltic Region in the Mid-12th Century and Early 13th Century. The Cases of the Wends and Livonians', *Zeitschrift für Ostmitteleuropa-Forschung*, Vol. 63 (2014), pp. 499-527; Christopher Tyerman, *The World of the Crusades* (London, 2019), pp. 307-333; Barbara Bombi, 'The Debate on the Baltic Crusades and the Making of Europe', *History Compass*, Vol. 11 (2013), pp. 751-764, at p. 751; Jonathan Riley-Smith, *What Were the Crusades?* (Basingstoke, 2009), p. 10. Manfred Hellmann has even suggested that Meinhard, the first bishop of Livonia, had personally met St. Vicelinus (c.1086-1154) and his pupil Thetmar (d.1152), who were at the forefront of the mission to the Wends; Manfred Hellmann, 'Bischof Meinhard und die Eigenart der kirchlichen Organisation in den baltischen Ländern', in *Gli inizi del cristianesimo in Livonia-Lettonia. Atti del Colloquio Internazionale di Storia Ecclesiastica in Occasione dell'VIII Centenario della Chiesa in Livonia*, ed. Michele Maccarrone (Rome, 1986), pp. 9-30, at pp. 18. If this was indeed the case, then the Wendish mission would have acquired a more personal connection with the mission to Livonia as well.

<sup>13</sup> See pp. 117-119, 256-258 for the earlier mission.

<sup>14</sup> *HCL* I, pp. 1-7 focuses entirely on Meinhard and his mission in Livonia. See also Barbara Bombi, 'Celestine III and the Conversion of the Heathen on the Baltic Frontier', in *Pope Celestine III (1191-1198). Diplomat and Pastor. Church, Faith and Culture in the Medieval West*, ed. John Doran and Damian J. Smith (London, 2016), pp. 145-158; Fonnesberg-Schmidt, *The Popes and the Baltic Crusades*, pp. 26, 65-68; Manfred Hellmann, 'Bischof Meinhard'.

<sup>15</sup> *HCL* II, pp. 8-11 describes the activities of Berthold in Livonia. See also Fonnesberg-Schmidt, *The Popes and the Baltic Crusades*, pp. 68-69.

<sup>16</sup> The best overview of Albert's life is Gisela Gnegel-Waitschies's *Bischof Albert von Riga* (Hamburg, 1958). See also Alan V. Murray, "Adding to the Multitude of Fish": Pope Innocent III, Bishop Albert of Riga and the Conversion of the Indigenous Peoples of Livonia', in *The Fourth Lateran Council and the Crusade Movement*, ed. Jessalynn L. Bird and Damian J. Smith (Turnhout, 2018), pp. 153-70; Marek Tamm, 'Mission and Mobility: The Travels and Networking of Bishop Albert of Riga (c. 1165-1229)', in *Making Livonia: Actors and Networks in the Medieval and Early Modern Baltic Sea Region*, ed. Anu Mänd and Marek Tamm (London, 2020), pp. 17-47.

The conversion of Livonia was of interest mainly to local historians and scholars until the late 1950s when the attention of German historians also started to shift towards the region.<sup>17</sup> This resulted in a number of monographs and edited collections dedicated to the Christianisation of Livonia.<sup>18</sup> Furthermore, the works of William Urban and Eric Christiansen introduced this topic to the wider anglophone public.<sup>19</sup> In recent decades, many significant and more focused works have been published about medieval Livonia, although one concentrating on the influence of canon law is still lacking.<sup>20</sup>

While late twelfth-century Livonia was a pre-literate pagan society lacking complex societal, political, religious and economic systems, it was incorporated into Latin Christendom and consequently subjected to canon law over the course of the late twelfth and thirteenth centuries. The whole situation was unique due to the circumstances that Livonia inhabited. First, the deficiency of complex societal structures made Livonia susceptible to major changes imposed by external authorities, which in turn created a demand for legal systems to address issues arising

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<sup>17</sup> For a comprehensive overview of the historiographical developments of the Baltic Crusades, see Bombi, 'The Debate on the Baltic Crusades and the Making of Europe'.

<sup>18</sup> For example, *Gli inizi del cristianesimo in Livonia-Lettonia. Atti del Colloquio Internazionale di Storia Ecclesiastica in Occasione dell'VIII Centenario della Chiesa in Livonia*, ed. Michele Maccarrone (Rome, 1986); *Studien über die Anfänge der Mission in Livland*, ed. Manfred Hellmann (Sigmaringen, 1989); Manfred Hellmann, *Livland und das Reich. Das Problem ihrer gegenseitigen Beziehungen* (München, 1989).

<sup>19</sup> William Urban, *The Baltic Crusade* (Dekalb, 1975); William Urban, *The Prussian Crusade* (London, 1981); William Urban, *The Livonian Crusade* (Washington, D.C., 1981); Eric Christiansen, *The Northern Crusades. The Baltic and the Catholic Frontier 1100-1525* (London, 1997).

<sup>20</sup> Examples of such monographs include Nils Blomkvist, *The Discovery of the Baltic: The Reception of a Catholic World-System in the European North (AD 1075-1225)* (Leiden, 2003); Fonnesberg-Schmidt, *The Popes and the Baltic Crusades*; Tyerman, *The World of the Crusades*, pp. 307-33; Barbara Bombi, *Novella plantatio fidei. Missione e crociata nel nord europa tra la fine del XII e i primi decenni del XIII secolo* (Rome, 2007). Examples of such edited collections include *Crusade and Conversion on the Baltic Frontier 1150-1500*, ed. Alan V. Murray (Aldershot, 2001); *The Clash of Cultures on the Medieval Baltic Frontier*, ed. Alan V. Murray (Farnham, 2009); *The North-Eastern Frontiers of Medieval Europe*, ed. Alan V. Murray (Farnham, 2014); *Die Kirche im mittelalterlichen Livland*, ed. Radoslaw Biskup, Johannes Götz and Andrzej Radziminski (Toruń, 2019); *Making Livonia: Actors and Networks in the Medieval and Early Modern Baltic Sea Region*, ed. Anu Mänd and Marek Tamm (London, 2020); *Baltic Crusades and Social Innovation in Medieval Livonia, 1200-1350*, ed. Anti Selart (Leiden, 2022).

from these changes. Secondly, although secular powers such as Denmark and the German Empire tried to assert their control over conquered areas, these regions largely submitted to the direct control of ecclesiastical powers, of whom the most important was the bishop of Riga. Thus in Livonia, canon law theoretically met near ideal conditions to be efficiently enforced, although the growing presence of the military orders – first the Brothers of the Militia of Christ of Livonia (*Fratres Milicie Christi de Livonia*, hereafter the Swordbrothers) and then the Livonian branch of the Teutonic Order (hereafter the Livonian Order) – certainly complicated the picture.

As canon law was not just a static set of prescriptions, issues arising in Livonia had the potential to affect medieval canon law in turn. These two aspects – the interpretation and implementation of canon law in Livonia on one hand, and the influence of issues arising during the conversion of Livonia on the development of canon law on the other – are the central subjects of inquiry of this thesis.

## **METHODOLOGY**

### **REGION**

The region which is considered in this thesis under the consolidated name Livonia roughly corresponds to the territories of modern-day Estonia and Latvia. While it is true that contemporary sources often referred to Estonia and Livonia separately, the distinction was not clear-cut, and the regions considered under each territory were not always consistent either.<sup>21</sup> Thus, when Pope Honorius III (1216-1227) commissioned William of Modena (c.1184-1251) as papal legate to Livonia on 31 December 1224, the legatine territories assigned to William among others were

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<sup>21</sup> See the map at pp. 423.



Livonia, Estonia, Prussia and Vironia (*Wirlandia*).<sup>22</sup> Similarly, Vironia was listed as a separate region to Estonia in the letter that commissioned William of Modena to his second legatine mission to Livonia in 1234.<sup>23</sup> From this it would appear that Vironia was seen as a separate territory in the same way that Livonia, Estonia and Prussia were perceived; yet, Vironia belonged geographically within the regions of Estonia, and was considered as such by the contemporaneous chronicler Henry of Livonia as well.<sup>24</sup> Gustav A. Donner, the author of the comprehensive biography of William of Modena, explored the possibility that Finland (*Finlandia*) was meant instead of *Wirlandia*, but concluded that this was not possible because William himself very explicitly referred to the regions of Vironia as *Wirlandia*.<sup>25</sup> This issue is further complicated by the fact that the chronicle of Henry of Livonia did not use the term *Wirlandia* but rather a version of *Vironia*, including, for example, *Wironia* and *Vyronia*.<sup>26</sup>

It is likely that rather than there being a conscious decision behind the use of one variation or another to designate a specific territory, contemporaries did not think it necessary to create a standardised name for small groups of peoples, especially in a lesser-known region such as Livonia. Additionally, as evidenced with the letter of 1224 that commissioned William of Modena on his first legatine mission to Livonia, it is also possible that the composers of such letters simply did not deem it important to investigate the names of faraway regions, as such inconsistencies clearly did not affect the overall validity and authority of the documents and missions

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<sup>22</sup> Honorius III, *Cum is qui* (31 December 1224) *DD* 1:6, no. 29, pp. 45-47.

<sup>23</sup> Gregory IX, *Quoniam ut ait apostolus* (21 February 1234), *LUB* I, 132.

<sup>24</sup> See the map at p. 423 for the location of Vironia. Henry of Livonia explicitly named *Vironia*, the province of Estonia – *Vironia, Estonie provincia*. *HCL* I, 13, p. 7. For the chronicle of Henry of Livonia, see pp. 33-34.

<sup>25</sup> Gustav A. Donner, *Kardinal Wilhelm von Sabina, Bischof von Modena 1222-1234. Päpstlicher Legat in den nordischen Ländern* (Helsingfors, 1929), pp. 415-416.

<sup>26</sup> For example: *HCL* I, 13, p. 7 used *Vironia*, *Rps BOZ* 25, fol. 3r; *HCL* X, 7, p. 37 used *Wironia*, *Rps BOZ* 25, fol. 16v; *HCL* XXIII, 7, p. 159 used *Vyronia*, *Rps BOZ* 25, fol. 89v.

they were endorsing. This is, of course, not to say that no writer meaningfully distinguished between groups of people in Livonia. While Henry of Livonia, or later scribes copying his original work, may not have been consistent with the spelling of names, the chronicler nevertheless paid close attention to the various groups of people and ethnicities he encountered in Livonia, and consequently devised a system of ethnonyms by utilising the Latin terms of *'gens'*, *'natio'* and *'populus'*.<sup>27</sup>

Yet, most medieval chroniclers who mentioned Livonia in any capacity paid little attention to the various peoples that resided there. For example, Arnold of Lübeck in his *Chronica* (c.1210) described the early endeavours of the missionaries in Livonia in more detail than many others – apart from Henry of Livonia and the author of the *Livländische Reimchronik* (*Livonian Rhymed Chronicle*, c.1290) – but did not mention any specific regions or peoples.<sup>28</sup> Roger Bacon (c.1219/1220-c.1292) in his *Opus maius* (1267), listed the Livonians and Estonians as separate peoples, but did not distinguish between them further.<sup>29</sup> Alberic of Trois-Fontaines (d.1251/1252) in his *Chronica* (1241) noted that ‘Theodoric, the bishop of Estonia, was martyred in Livonia for Christ’.<sup>30</sup> In this case it seems that Alberic was considering Estonia to be part of

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<sup>27</sup> Jüri Kivimäe, ‘Henricus the Ethnographer: Reflections on Ethnicity in the Chronicle of Livonia’, in *Crusading and Chronicle Writing on the Medieval Baltic Frontier: A Companion to the Chronicle of Henry of Livonia*, ed. Marek Tamm, Linda Kaljundi and Carsten Selch Jensen (London, 2016), pp. 77-106, esp. pp. 82-86.

<sup>28</sup> Arnold of Lübeck, *Arnoldi chronica slavorum*, ed. Georg Heinrich Pertz (Hannover, 1868), V, 30, pp. 212-217.

<sup>29</sup> Roger Bacon, ‘Ex Rogeri Bacon opere maiore’, in *Ex rerum anglicarum scriptoribus*, Vol. 13, ed. Felix Liebermann and Reinhold Pauli (Hannover, 1888), p. 573. For the role of geography in Roger Bacon’s work more generally, see David Woodward and Herbert M. Howe, ‘Roger Bacon on Geography and Cartography’, in *Roger Bacon and the Sciences*, ed. Jeremiah Hackett (Leiden, 1997), pp. 200-222; David Woodward, ‘Roger Bacon’s Terrestrial Coordinate System’, *Annals of the Association of American Geographers*, Vol. 80 (1990), pp. 109-122.

<sup>30</sup> *Theodericus Estonie episcopus martirizatur in Livonia pro Christo*. Alberic of Trois-Fontaines, *Chronica Albrici monachi Trium Fontium*, ed. Paul Scheffer-Boichorst in *Monumenta Germaniae Historica. Scriptores*, SS 23, ed. Georg Heinrich Pertz (Hannover, 1874), pp. 631-950, at p. 912 but see also p. 902 where a similar statement is made. For a short but concise overview of Alberic, see Régis Rech, ‘Alberich of Troisfontaines’, in *Encyclopedia of the Medieval Chronicle*, Vol. 1, ed. Graeme Dunphy (Leiden, 2010), p. 24. For Alberic’s description of Livonia more specifically, see Marek Tamm, ‘The Livonian Crusade in Cistercian Stories of the Early Thirteenth Century’, in *Crusading on the Edge: Ideas*

Livonia, especially as Theoderic was killed by the pagan Estonians at the Battle of Lyndanisse, generally considered to have been at or near Reval, a stronghold in northernmost Estonia.<sup>31</sup>

Furthermore, many medieval annalists and chroniclers mentioned only the conversion of Livonia, without having a separate entry for Estonia. For example, the most circulated chronicle in the Middle Ages, the *Chronicle of the Popes and Emperors* (*Chronicon pontificum et imperatorum*) by Martin of Opava (d.1278/9) included an entry under the pontificate years of Pope Innocent III (1198-1216), which stated that '[i]n his time, Livonia was partly converted to the Faith'.<sup>32</sup> While very brief, such a record could nevertheless have been influential in spreading the awareness of the region of north-eastern Baltic within Western Europe due to the high circulation of Martin of Opava's chronicle, especially compared to the significantly more comprehensive but certainly much less disseminated chronicle of Henry of Livonia.<sup>33</sup>

The historiographical tradition, both in the Baltics and elsewhere, has generally been to consider medieval Livonia as a relatively broad and ambivalent term, covering both Estonia and Livonia but nevertheless distinguishing between the two regions

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*and Practice of Crusading in Iberia and the Baltic Region, 1100-1500*, ed. Torben K. Nielsen and Iben Fonnesberg-Schmidt (Turnhout, 2016), pp. 365-389, at pp. 383-388.

<sup>31</sup> For the life and career of Bishop Theoderic, see Rebane, 'From Fulco to Theoderic', pp. 97-115.

<sup>32</sup> *Huius temporibus Livonia pro parte conversa est ad fidem*. Martin of Opava, 'Martini Oppaviensis chronicon pontificum et imperatorum', ed. Ludwig Weiland in *Monumenta Germaniae Historica. Scriptorum*, SS 22, ed. Georg Heinrich Pertz (Hannover, 1872), pp. 377-475, at p. 438. One of the earliest manuscripts of the last recension of the text, the C version, dating to c.1300, also included the line about Livonia, indicating that it was not a later addition by a different person; see Bob Jones University Library MS 1, fol. 72r. For Martin of Opava and his work more generally, see Anna-Dorothee von den Brincken, 'Martin of Opava [Martin of Poland]', in *The Encyclopedia of the Medieval Chronicle*, Vol. 2, ed. Graeme Dunphy (Leiden, 2010), pp. 1085-1088. For the strong influence of Martin of Opava's chronicle on other medieval chroniclers, see Rolf Sprandel, 'World Historiography in the Late Middle Ages', trans. Kristin E. Thomas in *Historiography in the Middle Ages*, ed. Deborah Mauskopf Deliyannis (Leiden, 2003), pp. 157-179; Wolfgang-Valentin Ikas, 'Martinus Polonus' Chronicle of the Popes and Emperors: A Medieval Best-Seller and Its Neglected Influence on Medieval English Chronicles', *The English Historical Review*, Vol. 116 (2001), pp. 327-341.

<sup>33</sup> For a brief description of the manuscript tradition of the chronicle, see p. 34.

when necessary.<sup>34</sup> For the purposes of this thesis, Livonia refers to the broad territory which also incorporates Estonia. However, more precise names for specific regions and peoples have been utilised not only when talking about Estonia as the most-northern part of ‘Livonia’, but also when investigating specific cases pertaining to particular groups of local peoples, such as the Ugannians or Oeselians in Estonia.

### **THEMATICAL APPROACH**

As canon law touched upon almost every aspect of life, from birth until death, offering an analysis of every aspect of Livonian society that it regulated would require work spanning multiple volumes. Consequently, this thesis takes a thematic approach in order to offer an analysis of a range of topics governed by canon law. While utilising such methodology cannot offer exhaustive coverage, it nevertheless aims to present a wide-ranging and representative selection of issues that medieval Livonia had to manage. Thus, the first chapter covers aspects pertaining to the initial stages of the conversion of Livonia: baptism, marriage, and preaching and teaching. The second chapter is dedicated to warfare, spanning from the earliest military clashes in the 1190s

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<sup>34</sup> See for example Ekdahl, ‘Crusades and Colonization in the Baltic’, p. 172; Anti Selart, ‘Political Rhetoric and the Edges of Christianity: Livonia and Its Evil Enemies in the Fifteenth Century’, in *The Edges of the Medieval World*, ed. Gerhard Jaritz and Juhan Kreem (Budapest, 2009), pp. 55-69, at p. 55; Alan V. Murray, ‘Music and Cultural Conflict in the Christianisation of Livonia, 1190-1290’, in *The Clash of Cultures on the Medieval Baltic Frontier*, ed. Alan V. Murray (London, 2016), pp. 293-305, at p. 293; Emilia Jamroziak, ‘Centres and peripheries’, in *The Cambridge Companion to the Cistercian Order*, ed. Mette Birkedal Bruun (Cambridge, MA, 2013), pp. 65-69, at p. 67; Kersti Markus, ‘The Church on the Borderland: The Impact of Crusading on the Architecture of Gotland and Livonia’, in *Crusading on the Edge: Ideas and Practice of Crusading in Iberia and the Baltic Region, 1100-1500*, ed. Torben K. Nielsen and Iben Fønnesberg-Schmidt (Turnhout, 2016), pp. 333-364, at p. 333. Marek Tamm has aptly observed that ‘Livonia became the general name applied in the first decades of the thirteenth century to the new Christian colony which covered broadly the territories of modern Estonia and Latvia and was inhabited by diverse ethnic groups. Yet the name Livonia did not remain static in the thirteenth century but was in constant flux according to the position of the writer, the expansion of the conquest, and the growth of knowledge, taking on a clearer outline only during the centuries to follow’, see Marek Tamm, ‘Inventing Livonia: The Name and Fame of a New Christian Colony on the Medieval Baltic Frontier’ *Zeitschrift für Ostmitteleuropa-Forschung*, Vol. 60 (2011), pp. 186-209, at p. 196.

up until the end of the 1220s. Finally, the last chapter examines the organisation of society throughout the time period under focus.

### **TIME PERIOD**

In 1147, Pope Eugenius III (1145-1153) issued the letter ‘Divini dispensatione’ with which he promulgated the so-called Wendish Crusade, with the letter forming a part of the wider framework of the Second Crusade.<sup>35</sup> While the Slavic lands to the east of the Elbe had experienced interactions with and campaigns by Christians long before the twelfth century, it was the letter of 1147 which for the first time gave official papal support to the missionary campaigns in Eastern Europe.<sup>36</sup> As such, the Wendish Crusade has usually been seen as the precursor for the Baltic Crusades that followed thereafter.<sup>37</sup> Consequently, this thesis will also consider the implications of the Wendish Crusade to the Baltic mission, and will begin with the year 1147.

It is much more difficult to determine an efficient point in time at which the consideration of implementation of canon law in Livonia could end. The year 1300 has nevertheless been chosen for a few good reasons. First, the themes considered in this work are mostly confined to the second half of the twelfth and to the first half of the thirteenth century, due to their inherent connection to mission and conversion. Thus, as Livonia was mostly converted by the second half of the thirteenth century, there is little to no information about issues with baptism, marriage, or warfare beyond that point. An exception to this is the third chapter which considers the organisation of

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<sup>35</sup> Eugenius III, ‘Divini dispensatione’ (11 or 13 April 1147), *PL* 180:1203-1204.

<sup>36</sup> For the pre-1147 relations between the Wends and Latin Christendom, see Gerd Althoff, ‘Saxony and the Elbe Slavs in the Tenth Century’, in *The New Cambridge Medieval History, c.900-c.1024*, Vol. 3, ed. Timothy Reuter (Cambridge, 2006), pp. 267-292, esp. pp. 278-288; Robert Bartlett, ‘The Conversion of a Pagan Society in the Middle Ages’, *History*, Vol. 70 (1985), pp. 185-201; Karl J. Leyser, ‘Henry I and the Beginnings of the Saxon Empire’, *The English Historical Review*, Vol. 83 (1968), pp. 1-32.

<sup>37</sup> See footnote no. 12 at pp. 13-14 for examples.

Livonian society. As time passed, an increasing number of sources that dealt with this particular theme were produced and have also survived. Therefore, the year 1300 in this case is rather arbitrary, but nevertheless necessary to cover material from the earlier period sufficiently.

The second reason why the year 1300 has been chosen is reliant on the distribution of collections of canon law. By the end of the thirteenth century, the two main canon law collections circulating were Gratian's *Concordia discordantium canonum* (*Concord of Discordant Canons*, hereafter the *Decretum*) and the *Decretales Gregorii IX* (*Decretals of [Pope] Gregory IX*, hereafter the *Liber extra*).<sup>38</sup> While the *Liber sextus decretalium* (*Sixth Book of Decretals*, hereafter the *Liber sextus*) was promulgated in 1298, it is likely that its contents took at least a few years to reach all its audiences.<sup>39</sup> This must have been the case for Livonia, too, as it was a considerably distant location from Rome and the centres of learning. Additionally, although the later collections of canon law – mainly the *Liber sextus* of 1298 and the *Constitutiones Clementinae* (*Clementine Constitutions*) of 1317 – became part of the *Corpus iuris canonici* (*Body of Canon Law*), they were much smaller in scope than Gratian's *Decretum* and the *Liber extra*.<sup>40</sup> Therefore, by drawing an end with the year 1300, sufficient time is afforded for the influence of Gratian's *Decretum* and the *Liber extra* to reach more distance audiences such as Livonia.

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<sup>38</sup> For their names and composition, see the longer discussion below at pp. 27-32.

<sup>39</sup> This was the case for all canon law collections, including Gratian's *Decretum*, see Atria A. Larson, 'Early Stages of Gratian's *Decretum* and the Second Lateran Council: A Reconsideration', *Bulletin of Medieval Canon Law*, Vol. 27 (2007), pp. 21-56, at p. 24.

<sup>40</sup> Brundage, *Medieval Canon Law*, pp. 55-56.

## TERMINOLOGY

To denote local Livonians who were not converted, the term ‘*pagani*’ has generally been employed, although the chronicler Henry of Livonia also used other terminology, such as ‘*infideles*’ and ‘*gentes*’.<sup>41</sup> Additionally, to signify a recently converted person, Henry of Livonia often used the term ‘*neophytus*’, i.e. neophyte. Consequently, the term ‘neophyte’ has been used in this thesis when appropriate, especially as it does not have negative connotations compared to words such as ‘heathen’, whose use has been avoided.<sup>42</sup>

A different problem poses itself when considering how to understand ‘*peregrini*’, directly translated as ‘pilgrims’. The sources pertaining to the conversion of Livonia are laden with the term, so a clarification must be made. Hans E. Mayer has argued that the distinction between a crusader and an unarmed pilgrim remained ambiguous during the twelfth century.<sup>43</sup> With the term ‘*crucesignatus*’, such vagueness disappeared, as it clearly designated a person – ‘signed with the Cross’ – who had vowed to go on a crusade.<sup>44</sup> However, until the end of the twelfth century when ‘*crucesignatus*’ became more common, the term ‘*peregrinus*’ was consistently used to

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<sup>41</sup> For example, Henry uses ‘*infideles*’ at *HCL* X, 9, p. 39; XIII, 5, p. 72; XV, 12, p. 86; XXIX, 7, p. 213. The term ‘*gentes*’ has been used at *HCL* IV, 6, p. 14; XII, 3, p. 60; XXIII, 8, p. 164; XXIX, p. 215, for example.

<sup>42</sup> For Henry’s use of the term ‘*neophytus*’, see for example: *HCL* I, 10, p. 4; VII, 6, p. 23; IX, 8, p. 30; X, 5, p. 35; XI, 5, p. 53; XVIII, 2, p. 115; XXV, 2, p. 181; XXIX, 3, p. 209.

<sup>43</sup> Hans E. Mayer, *The Crusades*, trans. John Gillingham (New York, 1972), p. 15. For a similar notion, see for example Léan Ní Chléirigh in ‘*Nova peregrinatio: The First Crusade as a Pilgrimage in Contemporary Latin Narratives*’, in *Writing the Early Crusades: Text, Transmission and Memory*, ed. Marcus Bull and Damien Kempf (Woodbridge, 2014), pp. 63-74, at pp. 63-64; James Muldoon, ‘*Crusading and Canon Law*’, in *Palgrave Advances in the Crusades*, ed. Helen J. Nicholson (Basingstoke, 2005), pp. 37-57, at pp. 45-46; Giles Constable, *Crusaders and Crusading in the Twelfth Century* (London, 2016), p. 18.

<sup>44</sup> Michael Markowski, ‘*Crucesignatus: Its Origins and Early Usage*’, *Journal of Medieval History*, Vol. 10 (1984), pp. 157-165, p. 157. Benjamin Walker has explained that with the widening of crusading fronts: ‘The appearance of the term “crusade” [*cruciata*] was first a linguistic consequence of this diversification: a new mental category was needed to understand these wars as a whole’, see Benjamin Walker, ‘When and Where did the Word “Crusade” Appear in the Middle Ages? And Why?’, in *The Crusades: History and Memory. Proceedings of the Ninth Conference of the Society for the Study of the Crusades and the Latin East, Odense, 27 June-1 July 2016*, Vol. 2, ed. Kurt Villads Jensen and Torben K. Nielsen (Turnhout, 2021), pp. 199-220, at p. 214.

describe crusaders, although the use of *'peregrinus'* did not stop either.<sup>45</sup> As the conversion of Livonia largely took place during the thirteenth century, the term *'crucesignatus'* should theoretically have been employed to refer to crusaders in these regions. Yet, it was not so, and *'peregrinus'* was a much more commonly used term.<sup>46</sup> Nevertheless, people referred to as such should not be seen as unarmed pilgrims but as crusaders.

First, it can be reasoned that the military activity surrounding the conversion of Livonia was a clear indicator that the *'peregrini'* did not designate unarmed pilgrims. Additionally, while Henry of Livonia generally used the term *'peregrinus'*, on a few occasions it can be precisely determined that crusaders were meant. Thus, when describing Bishop Albert of Riga's recruitment of crusaders, Henry relayed that '[i]t was answered, indeed, that they were included under the protection of the pope, who, in enjoining the Livonian *crusade/pilgrimage* for the plenary remission of sins, made it equal with that to Jerusalem'.<sup>47</sup> The chronicle also revealed that Henry was very much aware of the concept of taking the Cross, but used it very rarely.<sup>48</sup> Therefore it

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<sup>45</sup> James A. Brundage, *Medieval Canon Law and the Crusader* (London, 1969), p. 31; Riley-Smith, *What Were the Crusades?*, pp. 2, 34-5; M. Cecilia Gaposchkin, 'From Pilgrimage to Crusade: The Liturgy of Departure, 1095-1300', *Speculum*, Vol. 88 (2013), pp. 44-91; Norman Housley, *The Later Crusades, 1274-1580* (Oxford, 1992), pp. 342-343.

<sup>46</sup> Whether this could indicate that crusaders going to Livonia were not seen as on par with crusaders going to the Holy Land is up for a debate. Further literary analysis of Livonian sources and comparative works from other crusading theatres would certainly shed more light on this question, although it remains out of the scope of this thesis.

<sup>47</sup> *Responsum vero est ea sub protectione apostolici comprehendī, qui peregrinationem Lyvonie in plenariam peccaminum remissionem iniungens vie coequavit Ierosolimitane.* HCL III, 2, p. 12.

<sup>48</sup> In one example, Henry explained how remission of sins was granted to those who took the Cross to go to Livonia: *Igitur dominus papa cunctis signum crucis accipientibus et contra perfidos Lyvones io se armantibus remissionem indulget peccatorum, litteras super hiise 3 eitlem episcopo Bertoldof sicut et suo dirigens predecessor.* – 'The lord pope, therefore, grants the remission of sins to all who accept the sign of the Cross and arm themselves against the perfidious Livonians.' HCL II, 3, p. 9; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 32 (amended). When taking the Cross, the crusader was bound by a crusade vow. The taking of a crusade vow could be a public ceremony but it was not always the case, see Brundage, *Medieval Canon Law and the Crusader*, pp. 115-118. As Henry of Livonia did not mention such crusading vows, it is not know to what extent he would have been aware of their ceremonial aspect.



seems that Henry simply preferred the term ‘*peregrini*’ rather than ‘*crucesignati*’, without meaningfully distinguishing between the two.

Furthermore, by analysing how other contemporaries described the people undertaking the journey to Livonia, it can be likewise concluded that the term ‘*peregrini*’ was used to describe crusaders. Starting with the pontificate of Honorius III, crusaders going to Livonia were sometimes explicitly referred to as ‘*crucesignati*’.<sup>49</sup> That those going to Livonia were perceived as crusaders can be inferred from narrative sources as well. For example, Albert of Stade (c.1187-1260), in his extension to Alexander Minorita’s *Expositio in Apocalypsim* (*Commentary on the Apocalypse*, completed before 1240), specifically stated about the Livonian mission that ‘with the blood of the ‘pilgrims’, [that is] those signed with the Cross, they nobly widened the bounds of the Christian faith’.<sup>50</sup> Similarly, in the *Annales Stadenses* (*Annals of Stade*, completed between 1240-1257), Albert of Stade asserted that ‘[b]ut the new army of pilgrims exercised vengeance against them [the apostate Estonians]’.<sup>51</sup> It is therefore clear that when contemporary sources were talking about ‘*peregrini*’ in the context of Livonia, they did not mean unarmed pilgrims.<sup>52</sup> Consequently, the term ‘pilgrim’ – when referring to the Livonian campaign – has been translated as ‘crusader’ in this thesis.

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<sup>49</sup> See also Fannesberg-Schmidt, *The Popes and the Baltic Crusades*, pp. 143-144.

<sup>50</sup> ... *peregrinorum sanguine cruce signati Christianae fidei nobiliter dilatarent terminum*. Albert of Stade, *Alexander Minorita, Expositio in Apocalypsim*, ed. Alois Wachtel (Weimar, 1955), Chapter 20, p. 439.

<sup>51</sup> *Sed vindictam in eos exercuit novus exercitus peregrinorum*. Albert of Stade, ‘*Annales Stadenses*’, in *Annales aevi Suevici*, ed. Georg Heinrich Pertz (Hannover, 1858), p. 357.

<sup>52</sup> See also Fannesberg-Schmidt, *The Popes and the Baltic Crusades*, pp. 143-144.

## SOURCES

The sources used in this thesis can be broadly divided into legal and narrative sources. Narrative sources did not have legislative power, although they might have included allusions to legalistic frameworks. Yet, even without such explicit references, narrative sources can offer an insight into their contemporary world by making either a deliberate or subconscious choice of including and emphasising certain events over others. All sources are inherently tied to contemporary mentalities in the context in which they were written. Therefore, they indirectly embody attitudes and perceptions of their authors and of the societies in which and, to an extent, about which they were constructed. For this reason, narrative sources can be equally as useful as legal documents for the purposes of this thesis.

### SOURCES OF CANON LAW

Medieval law has been generally divided into two phases, with the early phase lasting up until the twelfth century and receiving relatively less scholarly attention.<sup>53</sup> Similarly, medieval canon law has often been divided into an earlier period and to the ‘classical period’ after around 1140.<sup>54</sup> Determining the ‘ending’ of the classical period has varied and consequently it has been placed anywhere between the thirteenth and

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<sup>53</sup> Susan Reynolds, for example, has claimed that not only has there been less scholarly interest, but that most historians ‘have rather a low opinion of law before about 1100, which has traditionally been seen as based on oaths, ordeals, and “Judgements of God” deriving from the primitive ideas and practices of barbarians, rather than on the rational arguments of classical Roman law’; see Susan Reynolds, ‘Medieval Law’, in *The Medieval World*, ed. Peter Linehan, Janet L. Nelson and Marios Costambeys (London, 2018), pp. 568-585, at p. 569.

<sup>54</sup> For the earlier period, see Lotte Kéry, *Canonical Collections of the Early Middle Ages (ca. 400-1140): A Bibliographical Guide to the Manuscripts and Literature* (Washington, D.C., 1999); *Great Christian Jurists and Legal Collections in the First Millennium*, ed. Philip L. Reynolds (Cambridge, 2019); Rosamond McKitterick, ‘The Church and the Law in the Early Middle Ages’, *Studies in Church History*, Vol. 56 (2020), pp. 7-35; Caroline Humfress, ‘Bishops and Law Courts in Late Antiquity: How (Not) to Make Sense of the Legal Evidence’, *Journal of Early Christian Studies*, Vol. 19 (2011), pp. 375-400; Brundage, *Medieval Canon Law*, pp. 5-43; Rennie, *Medieval Canon Law*, pp. 31-41.

fifteenth centuries.<sup>55</sup> Compared to the earlier period, works of canon law from the classical period have been perceived as more comprehensive and analytical, with a much wider geographical scope.<sup>56</sup> The classical period of medieval canon law is also the contextual background for this thesis, and the canonical sources used are from this timeframe.

The reason why most scholars consider c.1140 as the beginning of a new era in medieval canon law, has much to do with the compilation of Gratian's *Concordia discordantium canonum* around that time.<sup>57</sup> Soon it came to be known simply as the *Decretum*.<sup>58</sup> The significance of the *Decretum* is difficult to overestimate, as Robert Somerville has noted: 'When we come to Gratian, we have indeed reached a new horizon in the emergence of church law'.<sup>59</sup> Much scholarly attention has been afforded to the study of Gratian's *Decretum*.<sup>60</sup> Yet very little is known of the person

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<sup>55</sup> Some scholars have seen the classical period ending with the thirteenth century when the *Liber extra* (1234, discussed below) was promulgated and disseminated; see for example Kriston R. Rennie and Jason Taliadoros, 'Why Study Medieval Canon Law?', *History Compass*, Vol. 12 (2014), pp. 133-149, at p. 134; David d'Avray, *Papacy, Monarchy and Marriage, 860-1600* (Cambridge, 2015), p. 122. Some have seen the ending of the classical period as the fourteenth century, when the last official decretal collection of the Middle Ages – the *Constitutiones Clementinae* – was promulgated, and the corpus of medieval canon law essentially completed as well; see for example Helmholz, *The Spirit of Classical Canon Law*, pp. 6-15; Brundage, *Medieval Canon Law*, pp. 44-69; Müller, 'Medieval Church Law', p. 5. Others have conflated the end of the classical period with the final stages of the Middle Ages; see for example Karl Shoemaker, 'Medieval Canon Law', in *The Oxford Handbook of Legal History*, ed. Markus D. Dubber and Christopher Tomlins (Oxford, 2018), pp. 681-694, at p. 683. Note that Shoemaker makes the important point that although studies on medieval canon law usually conclude around the time of the Reformation, it is a somewhat arbitrary periodisation, as the framework of medieval canon law itself remained authoritative until the renewal and reissue of the *Corpus iuris canonici* in 1917; Shoemaker, 'Medieval Canon Law', p. 682. Martin Bertman has additionally pointed out that the use of the term 'classical' is problematic precisely because of how ambiguous its definition and implications can be; Martin Bertman, 'The Late Middle Ages: Four Remarks Regarding the Present State of Research', in *The Cambridge History of Medieval Canon Law*, ed. Anders Winroth and John C. Wei (Cambridge, 2022), pp. 108-121, at pp. 109-111.

<sup>56</sup> Helmholz, *The Spirit of Classical Canon Law*, pp. 4-5.

<sup>57</sup> Gratian, 'Concordia discordantium canonum', in *Corpus iuris canonici*, Vol. 1, ed. Emil A. Friedberg (Leipzig, 1879).

<sup>58</sup> Stephan Kuttner, *Harmony from Dissonance: An Interpretation of Medieval Canon Law* (Latrobe, 1960), p. 9.

<sup>59</sup> Robert Somerville, 'New Horizons in Church Law', in *Great Christian Jurists and Legal Collections in the First Millennium*, ed. Philip L. Reynolds (Cambridge, 2019), pp. 471-477, at p. 477.

<sup>60</sup> For a good concise overview of the recent historiographical trends relating to Gratian's *Decretum*, see Melodie H. Eichbauer, 'Gratian's *Decretum* and the Changing Historiographical Landscape', *History Compass*, Vol. 11/12 (2013), pp. 1111-1125.

behind Gratian's name, apart from the fact that he composed and commented on a substantial portion of the *Decretum*, was well-versed in theology and law, and worked in Bologna in the 1130s and 1140s.<sup>61</sup>

Anders Winroth, after making an important discovery of an earlier recension of the *Decretum* in the 1990s, concluded that there were two distinguishable recensions of the *Decretum*, and consequently two authors, Gratian I and Gratian II.<sup>62</sup> More recently, such conclusions have been challenged by Kenneth Pennington, who has argued that Gratian compiled and commented on the *Decretum* in stages, perhaps with some help from assistants, but there is no reason to believe that there was more than one Gratian who stood behind the '*magnum opus*'.<sup>63</sup> Rather, it is more constructive to distinguish between the pre-Vulgate and Vulgate versions of the *Decretum*, especially as the precise dating of any versions of the *Decretum* are far from settled.<sup>64</sup> By the time missionary activities in Livonia started to emerge, the Vulgate version of the *Decretum* was the one circulating in Latin Christendom, and so the

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<sup>61</sup> John T. Noonan, Jr., 'Gratian Slept Here: The Changing Identity of the Father of the Systematic Study of Canon Law', *Traditio*, Vol. 35 (1979), pp. 145-172; Peter Landau, 'Gratian and the *Decretum Gratiani*', in *The History of Medieval Canon Law in the Classical Period, 1140-1234*, ed. Wilfred Hartmann and Kenneth Pennington (Washington, D.C., 2008), pp. 22-54, at pp. 23-24. Anders Winroth has further proposed that Gratian became a bishop in Chiusi, see Anders Winroth, 'Where Gratian Slept: The Life and Death of the Father of Canon Law', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Kanonistische Abteilung*, Vol. 99 (2013), pp. 105-128. For the influence of theology on Gratian's work, see John C. Wei, *Gratian the Theologian* (Washington, D.C., 2016); Richard H. Helmholz, 'The Bible in the Service of the Canon Law', *Chicago-Kent Law Review*, Vol. 70 (1990), pp. 1557-1581, at p. 1561.

<sup>62</sup> Anders Winroth, *The Making of Gratian's Decretum* (Cambridge, 2004), pp. 175-192.

<sup>63</sup> Kenneth Pennington, 'The Biography of Gratian, The Father of Canon Law', *Villanova Law Review*, Vol. 59 (2014), pp. 679-706, esp. pp. 680-682. See also Larson, 'Early Stages of Gratian's *Decretum* and the Second Lateran Council', which argued that by analysing the conciliar decrees included in the *Decretum* from the pontificate of Innocent II, the first recension of the *Decretum* could be dated to 1133. However, Anne J. Duggan has refuted Larson's analysis of conciliar decrees, and therefore such an early dating of the *Decretum* should be abandoned, see Anne J. Duggan, '*Jura sua unicuique tribuat*: Innocent II and the Advance of the Learned Laws', in *Popes, Bishops, and the Progress of Canon Law, c. 1120-1234*, ed. Travis R. Baker (Turnhout, 2020), pp. 33-72, at pp. 71-72.

<sup>64</sup> Pennington, 'The Biography of Gratian', p. 680; Anne J. Duggan, 'Conciliar Law 1123-1215: The Legislation of the Four Lateran Councils', in *The History of Medieval Canon Law in the Classical Period, 1140-1234*, ed. Wilfred Hartmann and Kenneth Pennington (Washington, D.C., 2008), pp. 318-366, at p. 322, footnote no. 24.

early development of the collection and the question of authorship is not a central issue in the context of this thesis. Consequently, both Gratian and the *Decretum* are referred to as singular throughout this work.

Research has shown that Gratian's *Decretum* heavily relied on the earlier works of other canon lawyers, such as the canonical collection of Anselm of Lucca (1036-1086), Ivo of Chartres' (c.1040-1115) *Collectio tripartita* (*Tripartite Collection*) and *Panormia*, Gregory of St. Grisogono's (d.1113) *Polycarpus*, and the *Collectio canonum trium librorum* (*Collection in Three Books*).<sup>65</sup> Additionally, Gratian drew on a number of conciliar canons, papal decretal letters, patristic texts, theological sources, but also on Roman law.<sup>66</sup> In fact, the Vulgate version of the *Decretum* included over forty extracts of Roman law not found in earlier collections, attesting to Gratian's knowledge and familiarity with Roman law.<sup>67</sup> While Gratian's ability to use and consolidate a wide range of sources was certainly impressive, his work was set even more apart from the earlier collections due to the added '*dicta*', i.e. his own commentary.<sup>68</sup> Yet, it is doubtful whether his work would have been as successful as

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<sup>65</sup> Winroth, *The Making of Gratian's Decretum*, pp. 15-17; Landau, 'Gratian and the *Decretum Gratiani*', pp. 30-32; John H. Erickson, 'The *Collection in Three Books* and Gratian's *Decretum*', *Bulletin of Medieval Canon Law*, Vol. 2 (1972), pp. 67-75. There have been some doubts about the authorship of Ivo of Chartres and the collections usually attributed to him, as Christof Rolker has put it: 'They are all related to Ivo in different ways, yet none has been definitively identified as genuine so far; nor, equally, have any been decisively rejected as non-Ivonian'; Christof Rolker, *Canon Law and the Letters of Ivo of Chartres* (Cambridge, 2010), pp. 24-25. Therefore, all the sources usually attributed to him are treated as Ivonian in this thesis.

<sup>66</sup> Landau, 'Gratian and the *Decretum Gratiani*', pp. 25-36; Wei, *Gratian the Theologian*, pp. 20-24.

<sup>67</sup> Winroth, *The Making of Gratian's Decretum*, pp. 148-157.

<sup>68</sup> Landau, 'Gratian and the *Decretum Gratiani*', pp. 41-42; Helmholz, *The Spirit of Classical Canon Law*, pp. 8-9; James A. Brundage, *The Medieval Origins of the Legal Profession: Canonists, Civilians, and Courts* (London, 2010), pp. 97-98. For a thorough analysis of Gratian's own views that could be inferred from the *Decretum*, see Stanley A. Chodorow, *Christian Political Theory and Church Politics in the Mid-Twelfth Century. The Ecclesiology of Gratian's Decretum* (London, 1972). However, there might have been some rare cases of '*dicta*' being used in earlier, much lesser-known canon law collections, see William L. North, 'Bonizo of Sutri, the *Dicta Bonizonis* and the Development of the Jurisprudence of Canon Law before Gratian', in *The Use of Canon Law in Ecclesiastical Administration, 1000-1234*, ed. Melodie H. Eichbauer and Danica Summerlin (Leiden, 2019), pp. 159-184.

it was had it not integrated the use of authoritative texts, by emphasising them as the ‘*auctoritates*’ for any given issue.<sup>69</sup>

Gratian’s *Decretum* became immensely popular throughout Latin Christendom, and while it was not officially promulgated by the papacy at the time, it formed the first part of the *Corpus iuris canonici* – the whole corpus of Western canon law collected in six books, published together as one set from around the year 1500 onwards.<sup>70</sup> This *Corpus iuris canonici* was the formal canon law until 1917 when it was updated and reissued.<sup>71</sup> With Gratian’s *Decretum* quickly becoming the standard textbook in canon law, teachers and other canon lawyers soon started to comment on it.<sup>72</sup> The most important among these commentators, usually referred to as ‘decretists’, were Rufinus (d.1192) and Huguccio (c.1140-1210), both of whom will be referred to in this work, too.<sup>73</sup> However, the main focus will be on the Vulgate version of the *Decretum*, and not so much on its commentaries, as it is unlikely they would have reached or significantly influenced its intended audience in Livonia.

Following the success of Gratian’s *Decretum*, new compilations of canon law started to emerge, most often consisting of papal letters, usually known as

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<sup>69</sup> For the complex concept of ‘*auctoritas*’ in medieval canon law, but especially in Gratian’s *Decretum*, see Stephan Kuttner, ‘On “*auctoritas*” in the Writing of Medieval Canonists: The Vocabulary of Gratian’, in *La notion d'autorité au Moyen-Âge Islam, Byzance, Occident*, ed. George Makdisi, Dominique Sourdel and Janine Sourdel-Thomine, pp. 69-81, esp. pp. 72-73; Carolina Gual Silva, ‘The Construction of “*auctoritas*” in Gratian’s *Decretum*: The Role of Tradition and the *auctor* in a 12th Century Legal Text’, *Revista de História*, no. 181 (2022), pp. 1-19, esp. pp. 10-13. Throughout this thesis, all texts from Gratian’s *Decretum* are accompanied by their ‘*auctoritates*’.

<sup>70</sup> Brundage, *Medieval Canon Law*, p. 56; Andreas Meyer, ‘The Late Middle Ages: Sources’, in *The Cambridge History of Medieval Canon Law*, ed. Anders Winroth and John C. Wei (Cambridge, 2022), pp. 122-141, at p. 138.

<sup>71</sup> Landau, ‘Gratian and the *Decretum Gratiani*’, p. 23; Helmholz, *The Spirit of Classical Canon Law*, pp. 14-15; Anders Winroth, ‘Canon Law in a Time of Renewal, 1130-1234’, in *The Cambridge History of Medieval Canon Law*, ed. Anders Winroth and John C. Wei (Cambridge, 2022), pp. 96-107, at p. 97.

<sup>72</sup> For a concise overview of the commentaries on Gratian’s *Decretum*, see Brundage, *Medieval Canon Law*, pp. 49-51.

<sup>73</sup> For Huguccio, see Wolfgang P. Müller, *Huguccio. The Life, Works, and Thought of a Twelfth Century Jurist* (Washington, D.C., 1994). For Rufinus, see Brundage, *Medieval Canon Law*, p. 225.

'decretals'.<sup>74</sup> The *Breviarium extravagantium* or *Compilatio prima*, compiled by Bernard of Pavia (d.1213) between 1188 and 1192, has been seen as the first of such systematic collections.<sup>75</sup> The next *compilatio* – *Compilatio tertia* – was composed by Peter of Benevento (d.1219/1220) and promulgated by Innocent III in 1210.<sup>76</sup> *Compilatio secunda* was compiled by John of Wales between 1210 and 1215.<sup>77</sup> *Compilatio quarta* was authored by Johannes Teutonicus (1180-1245) in 1215, although, unlike *Compilatio tertia*, it was never officially authenticated by Innocent III.<sup>78</sup> The last in the sequence was the *Compilatio quinta*, composed in 1226 by Tancred of Bologna (c.1185-c.1235) at the request of Pope Honorius III.<sup>79</sup> These five compilations, consolidating canonical material between Gratian's *Decretum* and the *Liber extra*, came to be collectively known as *Quinque compilationes antiquae* (*Five Ancient Compilations*).<sup>80</sup>

As *Compilatio tertia* and *Compilatio quinta* both received papal recognition by Innocent III and Honorius III, respectively, the papacy became much more involved

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<sup>74</sup> Brundage, *Medieval Canon Law*, pp. 53-54; Charles Duggan, 'Decretal Collections from Gratian's *Decretum* to the *Compilationes antiquae*: The Making of the New Case Law', in *The History of Medieval Canon Law in the Classical Period, 1140-1234*, ed. Wilfred Hartmann and Kenneth Pennington (Washington, D.C., 2008), pp. 246-292.

<sup>75</sup> Pennington, 'Decretal Collections', pp. 295-300; Brundage, *Medieval Canon Law*, p. 194; Robert Somerville, 'A Fragment of *Compilatio prima* at Columbia University', in *Medieval Church Law and the Origins of the Western Legal Tradition*, ed. Wolfgang P. Müller, Mary E. Sommar (Washington, D.C., 2006), pp. 154-158, at pp. 154-155. The systematic nature of the *Compilatio prima* and the subsequent *compilationes* has been contrasted with 'primitive' or unsystematic collections that started to emerge soon after Gratian's *Decretum*, and in many cases preceded the *Compilatio prima*; see Charles Duggan, 'Decretal Collections from Gratian's *Decretum* to the *Compilationes antiquae*', in *The History of Medieval Canon Law in the Classical Period, 1140-1234*, ed. Wilfred Hartmann and Kenneth Pennington (Washington, D.C., 2008), pp. 246-292.

<sup>76</sup> Pennington, 'Decretal Collections', pp. 309-311; Brundage, *Medieval Canon Law*, p. 195; Kenneth Pennington, 'The Making of a Decretal Collection: The Genesis of *Compilatio tertia*', in *Proceedings of the Fifth International Congress of Medieval Canon Law*, ed. Stephan Kuttner and Kenneth Pennington (Vatican City, 1980), pp. 67-92.

<sup>77</sup> Pennington, 'Decretal Collections', p. 312; Brundage, *Medieval Canon Law*, pp. 194-195.

<sup>78</sup> Pennington, 'Decretal Collections', pp. 314-315; Brundage, *Medieval Canon Law*, p. 195; Stephan Kuttner, 'Johannes Teutonicus, das vierte Laterankonzil und die *Compilatio quarta*', in *Medieval Councils, Decretals, and Collections of Canon Law*, ed. Stephan Kuttner (1980), pp. 608-634.

<sup>79</sup> Pennington, 'Decretal Collections', pp. 316-317; Brundage, *Medieval Canon Law*, p. 195; Leonard E. Boyle, 'The *Compilatio quinta* and the Registers of Honorius III', *Bulletin of Medieval Canon Law*, Vol. 8 (1978), pp. 9-20.

<sup>80</sup> Dossbach, 'Decretals and Lawmaking', pp. 223-226; Helmholz, *The Spirit of Classical Canon Law*, p. 11.

in the compilation of canon law collections.<sup>81</sup> This development culminated with the pontificate of Pope Gregory IX (1227-1241), who commissioned Raymond of Penyafort (c.1175-1275) to compile an official decretal collection that would be a one-volume substitute to all the earlier compilations since Gratian's *Decretum*.<sup>82</sup> The collection, *Decretales Gregorii IX*, or more informally known as the *Liber extravagantium* (*Book of Extravagant [Decretals]*) or simply as the *Liber extra* – as it contained ‘extra’ decretals not included in Gratian's *Decretum* – was officially promulgated by Gregory IX in 1234, and a subsequent letter addressed to the Universities of Bologna and Paris commanded it to be taught as the official law of the Church.<sup>83</sup> Along with Gratian's *Decretum*, the *Liber extra* became the most important collection of papal decretals in the thirteenth century.<sup>84</sup> The *Liber extra* predominantly incorporated the contents of the *Quinque compilationes antiquae*, making the latter essentially redundant.<sup>85</sup>

Commentators on the *Liber extra* came to be known as ‘decretalists’, of whom the most important in the thirteenth century were Pope Innocent IV (1243-1254) whose work bore the title *Apparatus*, and Hostiensis (c.1200-1271) whose work came to be known as the *Summa aurea* (*Golden Summa*).<sup>86</sup> As with Gratian's *Decretum*, the emphasis in this thesis will be on the canon law collections and much less on the commentaries, as it is unlikely that such commentaries were widely known in Livonia. One exception to this is when considering the decretals that concerned Livonia and

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<sup>81</sup> Winroth, ‘Canon Law in a Time of Renewal’, p. 105.

<sup>82</sup> Stephan Kuttner, ‘Raymond of Peñafort as Editor: The “decretales” and “constitutiones” of Gregory IX’, *Bulletin of Medieval Canon Law*, Vol. 12 (1982), pp. 65-80.

<sup>83</sup> Brundage, *Medieval Canon Law*, pp. 54-55; Winroth, ‘Canon Law in a Time of Renewal’, pp. 104-105; Peter Landau, ‘The Development of Law’, in *The New Cambridge Medieval History, c.1024-c.1198*, Vol. 4:1, ed. David Luscombe and Jonathan Riley-Smith (Cambridge, 2006), pp. 113-147, at pp. 134-135.

<sup>84</sup> Pennington, ‘Decretal Collections’, p. 317.

<sup>85</sup> Robert Somerville and Bruce C. Brasington, *Prefaces to Canon Law Books in Latin Christianity* (Washington, D.C., 2020), pp. 189-192.

<sup>86</sup> For Pope Innocent IV as a canon lawyer, see Brundage, *Medieval Canon Law*, pp. 225-226. For Hostiensis, see Clarence Gallagher, *Canon Law and the Christian Community* (Rome, 1978).



which were incorporated into the *Quinque compilationes antiquae* and later also into the *Liber extra*. In such cases, commentaries of both Innocent IV and Hostiensis on these decretals will be analysed. The production of canon law collections did not end with the *Liber extra*, but as the next major compilation – the *Liber sextus* – was promulgated only in 1298, they will remain outside the scope of this study.<sup>87</sup>

### LIVONIAN SOURCES

The most important narrative source in the context of Livonia is the *Chronica* of Henry of Livonia (1187/1188-c.1159), completed in the late 1220s.<sup>88</sup> Born in Saxony near Magdeburg, Henry arrived in Livonia in 1205 with Bishop Albert of Riga and, after presumably studying and observing the process of conversion, was ordained a priest in 1208.<sup>89</sup> He mentioned that he was persuaded to write his chronicle ‘at the urging of his lords and companions’ and that ‘nothing has been put in this account except what we have seen almost entirely with our eyes’.<sup>90</sup> As its completion time roughly corresponded with the first papal legatine mission to Livonia in 1225-1226, it is likely that the creation of the chronicle was strongly influenced by that visit, although it is doubtful it was specifically commissioned by the papal legate.<sup>91</sup> Henry’s

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<sup>87</sup> For the later canon law collections, see Brundage, *Medieval Canon Law*, pp. 55-56.

<sup>88</sup> James A. Brundage, ‘Introduction to the 2003 Edition’, in Henry of Livonia, *The Chronicle of Henry of Livonia*, ed. and trans. James A. Brundage (New York, Columbia University Press, 2003), pp. xi-xxxiv; Murray, “Adding to the Multitude of Fish”, pp. 153-70; Paul Johansen, ‘Die Chronik als Biographie: Heinrich von Lettlands Lebensgang und Weltanschauung’, *Jahrbücher für Geschichte Osteuropas*, Vol. 1/4 (1953), pp. 1-24.

<sup>89</sup> Henry himself mentions his ordination in the chronicle as well: *At ille congaudens et semper ecclesie providere desiderans Henricum, scolarem suum, ad sacros ordines promotum cum eodem Alebrando ibidem remisit ...* – ‘But he [the bishop], rejoicing and always desiring to provide for the Church, sent his scholar Henry, promoted to the holy orders, back there with the same Alabrand ...’ *HCL XI*, 7, p. 55; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 75 (amended). See also Brundage, ‘Introduction: Henry of Livonia’, p. 5.

<sup>90</sup> ... *eam rogatu dominorum et sociorum ... Nichil ... hic aliud superadditum est, nisi ea, que vidimus oculis nostris fere cuncta. HCL XXIX*, 9, p. 215.

<sup>91</sup> Christopher Tyerman, ‘Henry of Livonia and the Ideology of Crusading’, in *Crusading and Chronicle Writing on the Medieval Frontier*, ed. Marek Tamm, Linda Kaljundi, Carsten Selch Jensen (Farnham, 2011), pp. 23-44, at pp. 23-24.

account provides a unique insight into the conversion of Livonia up until the late 1220s, as it is the only eyewitness account to testify to these events. Unfortunately, no similar texts were produced, or at least did not survive, for the majority of the thirteenth century.

The oldest surviving manuscript of the chronicle of Henry of Livonia, the *Codex Zamoscianus*, lacks about one-third of Henry's text; however, the surviving part is considered to be nearer to the lost original than any other manuscript and it is also the only parchment copy of the chronicle.<sup>92</sup> It dates from the early fourteenth century and although it must have been in Livonia at some point during the sixteenth century, it is currently kept in the National Library of Poland (Biblioteka Narodowa), Warsaw.<sup>93</sup> There are over thirty printed editions of the chronicle of Henry of Livonia, including parallel editions and later reprints of earlier editions, and while three editions have only Latin text, it has been translated into German, Estonian, Latvian, Russian, English, Finnish, Lithuanian and Italian, attesting to its perceived importance among modern readership.<sup>94</sup> For this dissertation, mainly two versions have been used – the Latin edition by Leonid Arbusow and the English translation by James A. Brundage.<sup>95</sup> Extracts from the chronicle that are presented in Latin in this thesis have been compared to the *Codex Zamoscianus* manuscript when applicable.

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<sup>92</sup> Rps BOZ 25; Tiina Kala, 'Henry's Chronicle in the Service of Historical Thoughts: Editors and Editions', in *Crusading and Chronicle Writing on the Medieval Frontier*, ed. Marek Tamm, Linda Kaljundi, Carsten Selch Jensen (London, 2011), pp. 385-407, at pp. 388-390.

<sup>93</sup> Anti Selart, 'The Use and Usefulness of the Chronicle of Henry of Livonia in the Middle Ages', in *Crusading and Chronicle Writing on the Medieval Frontier*, ed. Marek Tamm, Linda Kaljundi, Carsten Selch Jensen (London, 2011), pp. 345-361, at pp. 359-360.

<sup>94</sup> For a concise overview of the known manuscripts and discussion of the editions see Kala, 'Henry's Chronicle in the Service of Historical Thoughts', p. 386.

<sup>95</sup> Henry of Livonia, *Heinrici Chronicon Livoniae*, ed. Leonid Arbusow and Albert Bauer (Hannover, 1955); Henry of Livonia, Henry of Livonia, *The Chronicle of Henry of Livonia*, ed. and trans. James A. Brundage (New York, 2003).

Additional narrative sources that covered the Christianisation of Livonia have also been used. The most prominent of them are the *Chronica slavorum* (*Chronicle of the Slavs*) of Arnold of Lübeck (d.1211/1214), completed c.1210, and the anonymous *Livonian Rhymed Chronicle*, written in the 1290s. The chronicle of Arnold of Lübeck relied on oral tradition and eyewitness accounts, and only a relatively small section covered the events in Livonia.<sup>96</sup> Nevertheless, it offers an invaluable insight into the early period of the conversion of Livonia, especially as Henry of Livonia only arrived in the region in 1205. The *Livonian Rhymed Chronicle* was composed in Middle High German verse and covered the period between around 1180 and 1290.<sup>97</sup> Written by a member of the Teutonic Order, its purpose was to document the history of the order in Livonia, with its audience including both the Knight Brothers and potential crusaders going to the Baltic region.<sup>98</sup> As it concentrated mainly on the military affairs of the Order, it offers fewer details about the conversion of Livonia itself.<sup>99</sup>

Documentation produced in or for Livonia was exceedingly scarce for the time-period that Henry of Livonia described in his chronicle. It is also highly likely that many such documents, if indeed constructed, have not survived. The major collection that contains letters pertaining to thirteenth-century Livonia, is the *Liv-, Esth- und Curländisches Urkundenbuch nebst Regesten*, edited by Friedrich G. von Bunge and

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<sup>96</sup> The section covering Livonia is at Arnold of Lübeck, *Arnoldi chronica*, pp. 212-217. Leila Werthschulte, 'Arnold of Lübeck', in *The Encyclopedia of the Medieval Chronicle*, Vol. 1, ed. Graeme Dunphy (Leiden, 2010), pp. 110-111; *Die Chronik Arnolds von Lübeck. Neue Wege zu ihrem Verständnis*, ed. Stephan Freund and Bernd Schütte (Frankfurt, 2008).

<sup>97</sup> Alan V. Murray, 'The Structure, Genre and Intended Audience of the Livonian Rhymed Chronicle', in *Crusade and Conversion on the Baltic Frontier*, ed. Alan V. Murray (Ashgate, 2001), pp. 235-250; Jerry C. Smith and William Urban, 'Some Comments on the Livonian Rhymed Chronicle', in *The Livonian Rhymed Chronicle*, ed. Jerry C. Smith and William Urban, pp. xxi-xxiv, at pp. xxi-xxiii; Michael Neecke, 'Ältere Livländische Reimchronik', in *The Encyclopedia of the Medieval Chronicle*, Vol. 1, ed. Graeme Dunphy (Leiden, 2010), pp. 33-35.

<sup>98</sup> Murray, 'The Structure, Genre and Intended Audience', p. 250.

<sup>99</sup> Smith and Urban, 'Some Comments', p. xxi.

published in six volumes between 1853 and 1875.<sup>100</sup> Many of the letters that von Bunge included in the collection are now lost or destroyed. Additionally, newer editions at times provide only selective fragments from the letters included fully in von Bunge's work; in such cases, von Bunge's edition is used. When the contents of the letter are not the main focus, its registry entry is given. Conversely, sometimes the registry entry is the only thing that survives from the document.

## **STRUCTURE**

The first chapter of this thesis concentrates on the conversion of medieval Livonia. It begins by examining the extent to which baptismal practises in these regions adhered to canon law. Thereafter, focus will be on the Christianisation of marriage practices and customs. Lastly, the activities of preaching and teaching will be investigated, examining how much preachers and teachers in these regions might have had knowledge of ecclesiastical laws, and how they obtained and disseminated such expertise.

The second chapter of this work investigates warfare in medieval Livonia. It closely follows the development of the idea of 'just war' and thus the waging and conducting of war will be separately considered.

The last chapter focuses on the organisation of Livonian society. The first part looks at various jurisdictional questions that arose, and how they were interpreted through canon law. The second part of the chapter looks at the implementation of canon law through legal codes and court procedure. The third part examines enquiries into local matters through three distinct case studies that spanned the

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<sup>100</sup> *Liv-, Esth- und Curländisches Urkundenbuch nebst Regesten*, 6 Vols., ed. Friedrich G. von Bunge (Reval, 1853-1875). The series itself is still an ongoing project.

thirteenth century. Finally, attention is given to rewards and punishments that were implemented in Livonia within the framework of canon law.

### **NOTES ON NAMES, MAPS, AND LEGAL CITATIONS**

The names in this thesis are anglicised and modernised, unless a more commonly used one exists. However, many names that are still used in the context of medieval Livonia have changed in modern-day Estonia and Latvia due to the subsequent political history of these countries. A comparative table with placename equivalents can be found in Appendix B, Table no. 1, p. 422.

Frequently referenced locations – Riga, Üxküll, Dünamünde, Holm, Treiden, Kokenhusen, Jersika, Daugava River, Curonia, Semgallia, Selonia, Reval, Dorpat, Leal, Oesel, Harria, Vironia, Jerwia, Saccalia, Ugannia and Pskov – can be found on the map in Appendix A, Figure no. 1, p. 421.

The citation system used in this thesis for legal works is in Appendix C, p. 423.

## CHAPTER ONE: CONVERSION

### BAPTISM

It was through baptism that one became a member of Christian medieval society – the ‘*societas Christiana*’.<sup>101</sup> The term ‘*societas Christiana*’ itself has received much attention in scholarly work, although the way it has been defined has varied. Walter Ullmann, for example, has seen the ‘*societas Christiana*’ as a political and corporate body, ‘in which the authority of the Roman pontiff holds sway; in which the mandate of the pope creates binding effects ... [and which can be identified as] Western Europe, whose paternity can be tracked back to Charlemagne and to the first Gregory’s prophetic vision’.<sup>102</sup> Nora Berend, on the other hand, has pointed out that although the ‘*Christianitas*’ was occasionally equated with the official Church, ‘it came to mean the collectivity of the ‘*populus Christianus*’ as a social and temporal, as well as spiritual unity’.<sup>103</sup> Indeed, it seems that a broader definition of the ‘*societas Christiana*’ is more fitting in the case of Livonia as well, at least in its earliest stages of conversion when there was no firmly established ‘official’ network of ecclesiastical institutions yet.

As baptism was the first step in joining such a ‘*societas Christiana*’, it was naturally discussed at length in theological treatises and in works of canon law.<sup>104</sup> For

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<sup>101</sup> Malcolm Barber, *The Two Cities: Medieval Europe 1050-1320* (London, 1995), p. 26; Ramsay MacMullen, *Christianity & Paganism in the Fourth to Eighth Centuries* (London, 1997), p. 144; Torben K. Nielsen, ‘Mission and Submission: Societal Change in the Baltic in the Thirteenth Century’, in *Medieval History Writing And Crusading Ideology*, ed. Kurt Villads Jensen and Tuomas M. S. Lehtonen (Helsinki, 2005), pp. 216-231, at p. 220.

<sup>102</sup> Walter Ullmann: *The Growth of Papal Government in the Middle Ages* (London, 1965), p. 271.

<sup>103</sup> Nora Berend, *At the Gate of Christendom: Jews, Muslims and ‘Pagans’, in Medieval Hungary, c.1000-c.1300* (Cambridge, 2001), pp. 42-43. Similarly, Keith Sisson has equated the ‘*societas Christiana*’ quite literally with Christendom, i.e. with ‘the collective body of the faithful’, implying that the ‘*societas Christiana*’ comprised of every Christian, not just the institutional Church; Keith Sisson, ‘Popes over Princes: Hierocratic Theory’, in *A Companion to the Medieval Papacy: Growth of an Ideology and Institution*, ed. Keith Sisson and Atria A. Larson (Leiden, 2016), pp. 121-135, at p. 125.

<sup>104</sup> There has been an abundance of scholarship on the history of baptism in the Middle Ages. Peter Cramer has examined baptism specifically in the context of the Early Middle Ages; Peter Cramer,

example, the entirety of *Distinctio 4* of the *De consecratione* in Gratian's *Decretum* (c.1140) concerned the sacrament of baptism and included more than one hundred and fifty canons with accompanying '*dicta Gratiani*'.<sup>105</sup> Peter Landau has aptly noted

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*Baptism and Change in the Early Middle Ages, c.200-c.1150* (Cambridge, 2003). Early medieval baptism rites, their adaptations, and theological questions rising from them have also been analysed in Lizette Larson-Miller's 'Baptism in the Early Medieval West: Our Changing Perspective of the "Dark Ages"', *Studia liturgica*, Vol. 42 (2012), pp. 33-53. Early medieval baptismal rites have likewise been examined by comparing and contrasting the influence that St. Ambrose might have had on St. Augustine and his development on the baptismal rite, see Garry Wills, *Font of Life: Ambrose, Augustine, and the Mystery of Baptism* (Oxford, 2012). For a more specific focus on the central role of baptism in the formation of the ninth-century Frankish '*imperium Christianum*', see Owen M. Phelan, *The Formation of Christian Europe: The Carolingians, Baptism & The Imperium Christianum* (Oxford, 2014). J. D. C. Fisher has traced the baptismal rituals in the Early Middle Ages, examined the separation of communion from baptism, and the changes in intervals between birth, baptism and confirmation in the later Middle Ages; J. D. C. Fisher, *Christian Initiation: Baptism in the Medieval West* (London, 1965). An edited collection by Stanley E. Porter and Anthony R. Cross has provided a comprehensive overview on the theology of baptism, and on the initiation rituals from its earliest beginnings up until the modern day; *Baptism, the New Testament and the Church*, ed. Stanley E. Porter, Anthony R. Cross (Sheffield, 1999). Oscar Cullmann has studied the theological and philosophical aspects of baptism through the lens of the New Testament, and has shown that in Christian baptism the earlier versions of proselyte baptism and circumcision were unified; Oscar Cullmann, *Baptism in the New Testament* (London, 1964). Similarly, Lars Hartman has looked at baptism in the context of the New Testament and the Early Church, see Lars Hartman, '*Into the Name of the Lord Jesus*': *Baptism in the Early Church* (Edinburgh, 1997). Richard H. Helmholz has given a succinct but comprehensive overview of baptism in the context of canon law; Helmholz, *The Spirit of Classical Canon Law*, pp. 200-228. Marcia L. Colish has analysed the more unconventional cases of baptism by desire, fictive baptism (i.e. in plays or games) and forced baptism; Marcia L. Colish, *Faith, Fiction and Force in Medieval Baptismal Debates* (Washington, D.C., 2014). Similarly, the role of baptism among minority groups in the Middle Ages has been studied in Peter Cramer's 'Baptismal Practice in Germany', in *Medieval Christianity in Practice*, ed. Miri Rubin (Oxford, 2009), pp. 7-13 and Shulamith Shahar's 'Cathars and Baptism', in *Medieval Christianity in Practice*, ed. Miri Rubin (Oxford, 2009), pp. 14-18. Extraordinary cases of retrospective baptism of the remains of ancestors who died as pagans have been considered in Fjodor Uspenskij's, 'The Baptism of Bones and Prima Signatio in Medieval Scandinavia and Rus"', in *Between Paganism and Christianity in the North*, ed. Leszek P. Slupecki and Jakub Morawiec (Rzeszow, 2009), pp. 9-22. More recently, medieval baptism and its connection to material culture, specifically to liturgical vessels used in the rituals, has also been examined in a collection of essays: *The Visual Culture of Baptism in the Middle Ages*, ed. Harriet M. Sonne de Torrens and Miguel A Torrens (Farnham, 2013).

<sup>105</sup> Gratian, D.4 de cons., cols. 1361-1412. For an overview of the *De consecratione* and the role of baptism within it, see Thomas M. Izbicki, 'The Sacraments of Baptism, Confirmation, and the Eucharist', in *The Cambridge History of Medieval Canon Law*, ed. Anders Winroth and John C. Wei (Cambridge, 2022), pp. 404-420, at pp. 405-408. The topics covered in the *De consecratione* were not systematised thematically. For instance, the baptism of children was included in canons 7, 33, 74, 76, 130, 138, 139, 142 and 144, whereas the use and consecration of chrism was included in canons 87, 88, 90, and 119-126: Gratian, D.4 de cons., c.7, col. 1363, the '*auctoritas*' is St. Augustine; c.33, col. 1372, the '*auctoritas*' is St. Augustine; c.74, col. 1387, the '*auctoritas*' is St. Isidore of Seville (c.560-636); c.76, col. 1387, the '*auctoritas*' is St. Augustine; c.87, col. 1391, the '*auctoritas*' is St. Ambrose (c.339-397); c.88, col. 1391, the '*auctoritas*' is Rabanus Maurus (c.780-856); c.90, col. 1391, the '*auctoritas*' is St. Ambrose; cc.119-126, cols. 1398-1400, the '*auctoritates*' are Pope Innocent I (401-417), Pope Gregory I (590-604), the Council of Beauvais (845), the Council of Lyon (567), the Council of Valencia (374), Martin of Braga (c.520-580) incorrectly attributed to Pope Martin I (649-644), the Council of Orange (441), the *Capitularia Benedicti Levitae*, respectively; c.130, col. 1404, the '*auctoritas*' is St. Boniface (c.675-754); c.138, col. 1407, the '*auctoritas*' is St. Boniface; c.139, col. 1407, the '*auctoritas*' is St. Augustine; c.142, col. 1408, the

that Gratian's *Decretum* 'brought theology into law again and law into theology'.<sup>106</sup> As we shall see, several pronouncements regarding baptism were also inserted into the *Liber extra*, so the intertwining of canon law and theology in respect to baptism certainly continued after Gratian, too.

In the case of Livonia, the majority of information pertaining to baptism comes from the chronicle of Henry of Livonia. While it is not surprising that the chronicle repeatedly mentioned the sacrament, as the conversion of Livonia was characterised by intensive missionary activity, more can be said about the importance attached to the act of baptising in Livonia in the light of contemporary theological and canonical discussions.<sup>107</sup> Additionally, although scholarly attention afforded to the relationship between baptism and canon law in Livonia has been very limited, certain historiographical assertions that have been made will be reassessed here.

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'*auctoritas*' is St. Augustine; c.144, col. 1408, the '*auctoritas*' is St. Augustine. For the unsystematic nature of *De consecratione*, see also Wei, *Gratian the Theologian*, p. 288.

<sup>106</sup> Landau, 'Gratian and the *Decretum Gratiani*', p. 53. Of course, it was not just Gratian's *Decretum* where theology and canon law enmeshed. For example, Christof Rolker has noted that the eleventh-century debates surrounding the role of consent and consummation in the making of marriage were deeply involved with both canon law and theology; Christof Rolker, 'The Age of Reforms: Canon Law in the Century before Gratian', in *The Cambridge History of Medieval Canon Law*, ed. Anders Winroth and John C. Wei (Cambridge, 2022), pp. 62-78, at pp. 65-66.

<sup>107</sup> This question has gained some scholarly attention in the wider framework of providential history in Henry's chronicle. On the one hand, Jennifer A. Harris has underlined the abundance of comparisons between contemporary and Biblical events in the localised narratives of the Baltic Crusades but she has not seen these instances as references to an overarching idea of salvation; Jennifer A. Harris, 'The Bible and the Meaning of History', in *The Practice of the Bible in the Middle Ages*, ed. Susan Boyton and Diane J. Reilly (New York, 2011), pp. 84-104, at p. 97. By contrast, Torben K. Nielsen has contested such claims according to which the biblical citations and references used in the chronicle of Henry of Livonia were mostly unintentional and partly subconscious. Nielsen drew on the syntactico-semantic analysis of the chronicle conducted by Jaan Undusk and concluded that Henry's work undoubtedly falls into the larger framework of providential history; Torben K. Nielsen, 'Providential History in the Chronicles of the Baltic Crusades', in *The Uses of the Bible in Crusader Sources*, ed. Elizabeth Lapina and Nicholas Morton (Leiden, 2017), pp. 361-402, esp. at p. 373; Jaan Undusk, 'Sacred History, profane history: Uses of the Bible in the Chronicle of Henry of Livonia', in *Crusading and Chronicle Writing on the Medieval Baltic Frontier: A Companion to the Chronicle of Henry of Livonia*, ed. Marek Tamm, Linda Kaljundi and Carsten S. Jensen (Farnham, 2011), pp. 45-75. Thus, passages from the chronicle should not be seen as mere semi-coincidental appropriations, but rather tools to convey the significance of local events in the wider context of Christendom.



## THE CONCEPT AND VALIDITY OF BAPTISM

The change in spiritual status of the one who was baptised was firmly established already in the New Testament.<sup>108</sup> Consequently, both theologians and canon lawyers started to emphasise this central and irreversible nature of baptism.<sup>109</sup> The nature of baptism was considered in lengthy treatises written by the Early Church Fathers, such as Tertullian (c.155-c.220), St. Ambrose (c.340-397) and St. Augustine (354-430).<sup>110</sup> Likewise, Gratian's *Decretum* asserted that '[b]y the water of baptism, the man of earth becomes the man of heaven'.<sup>111</sup> In the same canon, the change in one's status was explained further:

Through the water of baptism, the transition is from earth to heaven. Thus, Easter is called Passover, this transition is from

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<sup>108</sup> For example, 1 Cor. 12:12-13: *sicut enim corpus unum est et membra habet multa omnia autem membra corporis cum sint multa unum corpus sunt ita et Christus etenim in uno Spiritu omnes nos in unum corpus baptizati sumus sive Iudaei sive gentiles sive servi sive liberi et omnes unum Spiritum potati sumus* – 'For just as the body is one and has many members, and all the members of the body, though many, are one body, so it is with Christ. For in the one Spirit we were all baptized into one body – Jews or Greeks, slaves or free – and we were all made to drink of one Spirit.' The Bible used in this thesis is the *Biblia Sacra Vulgata*, Fifth Edition, ed. Robert Weber and Roger Gryson (Stuttgart, 2017); translations are from *The New Oxford Annotated Bible: New Revised Standard Version*, Fourth Edition, ed. and trans. Michael David Coogan, et al (Oxford, 2010).

<sup>109</sup> The change in status of someone who became baptised also started to permeate other aspects of life. For example, contracting a marriage after being baptised made the marriage indissoluble even if the spouse was not baptised; see David d'Avray, *Medieval Religious Rationalities: A Weberian Analysis* (Cambridge, 2010), pp. 54-55.

<sup>110</sup> These are just but a few examples from a wide range of writings on baptism by the aforementioned Early Church Fathers: Tertullian started his treatise 'On Baptism' (*De baptismo*) by defining what baptism is: *Felix sacramentum aquae nostrae qua absoluti delictis pristinae caecitatis, in vitam aeternam liberamur*. – 'Blessed is the sacrament of our water, by which we are cleansed from the sins of our former blindness and are delivered into eternal life.' Tertullian, *De baptismo*, PL 1, cols. 1197-1224, at col. 1197. St. Ambrose, before explaining the mysteries to catechumens, asserted that 'renewed by baptism, you might keep the habit of life which befits those who are washed' – ... *renovati per baptismum, ejus vitae usum teneretis, quae ablutos deceret*. St. Ambrose, *De mysteriis*, PL 15, cols. 389-410, at col. 389. St. Augustine wrote at length about the irreversibility of baptism: ... *habere Baptismum etiam apostatas, quibus utique redeuntibus et per poenitentiam conversis, dum non redditur, amitti non potuisse judicatur*. – '[E]ven apostates have [the grace of] baptism, for whom it is judged that those who return and are converted [back] through penance, so long as it [i.e. baptism] is not repeated, it is judged that it [i.e. the grace of baptism] could not have been lost.' St. Augustine, *De baptismo contra donatistas*, PL 43, cols. 107-214, at col. 109. See also Jaroslav Pelikan, *The Emergence of the Catholic Tradition (100-600)* (London, 1971), pp. 163-166, which suggests that the main principles of the doctrine of baptism were fully developed as early as by the time of Tertullian's writings.

<sup>111</sup> *Per aquam baptismi transitus est de terrenis ad caelestia*. Gratian, D.4 de cons. c.9, col. 1367. The 'auctoritas' is St. Ambrose.

sin to life, from guilt to grace, from defilement to sanctification.  
He who passes through this water does not die but resurges.<sup>112</sup>

In a comparable manner, denoting the change of status of the local pagans who had accepted baptism, Henry of Livonia in his chronicle stated the following:

But the people of Waldia [from Oesel] speak peaceful words and earnestly beg that the sacrament of holy baptism be given to them. ... The Oeselians of Waldia, who were formerly sons of pride, become sons of obedience. He who was once a wolf, now becomes a lamb. He who was once a persecutor of the Christians, now becomes a brother ...<sup>113</sup>

While Henry of Livonia did not rely on Gratian's *Decretum* to explain the change in one's status after baptism, he undoubtedly wished to convey a similar idea in his chronicle. This case exemplifies that many principal concepts and ideas that were discussed and elaborated on in legal and theological treatises, were known by contemporary clerics even if they had not read these scholarly collections, as they were already integrated into basic ecclesiastical teaching, and relied on widely known sources such as Scripture.

Another fundamental aspect of the sacrament of baptism that was continuously emphasised was the possibility of only one baptism, firmly established in Scripture.<sup>114</sup> The prohibition was confirmed and re-confirmed at various councils and underscored

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<sup>112</sup> *Ideo Pasca, transitus dicitur, hic transitus est de peccato ad uitam, de culpa ad gratiam, de inquinamento ad sanctificationem. Qui per hanc aquam transit, non moritur, sed resurgit.* Gratian, D.4 de cons. c.9, col. 1367.

<sup>113</sup> *Waldienses vero ... humiles se reddunt, pacifica verba loquuntur, sacri baptismatis sacramentum sibi dari suppliciter exposcunt. ... Fiunt Osiliani Waldienses filii obedientie, qui quondam filii superbie. Qui quondam lupus, modo fit agnus. Qui quondam persecutor christianorum, modo fit confrater ...* HCL XXX, 5, p. 220; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 244 (amended).

<sup>114</sup> Eph. 4:4-6: *unum corpus et unus spiritus, sicut vocati estis in una spe vocationis vestrae unus Dominus una fides unum baptismum unus Deus et Pater omnium qui super omnes et per omnia et in omnibus nobis* – 'There is one body and one Spirit, just as you were called to the one hope of your calling, one Lord, one Faith, one baptism, one God and Father of all, who is above all, and through all things, and in all of us.' (Translation amended)

by theologians such as St. Augustine.<sup>115</sup> Pope Leo I (440-461) also firmly prohibited re-baptism in his various letters, including in a letter to Rusticus (d.461), bishop of Narbonne, who had inquired about those who had been baptised but were unsure about in what sect this baptism had taken place.<sup>116</sup>

Yet, it appears that the question of re-baptism arose sporadically time and time again, as the issue was considered in various canon law collections such as the *Decretum* of Burchard of Worms (c.950/965-1025), the *Decretum* and *Panormia* of Ivo of Chartres (1040-1115), and the *Collectio canonum* of Anselm of Lucca (1036-1086).<sup>117</sup> Twelfth- and thirteenth-century theologians and canon lawyers were equally adamant to affirm the prohibition of re-baptism. Gratian revisited this point throughout his *Decretum*.<sup>118</sup> For example, the *Decretum* stated that ‘baptism, whose form is fully conferred, ought not to be repeated’, relying on the abovementioned letter of Pope Leo I to Rusticus.<sup>119</sup> A prohibition of re-baptism was also inserted into Constitution 4 of the Fourth Lateran Council (1215).<sup>120</sup> This decree was subsequently

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<sup>115</sup> See footnote no. 110 at p. 41 for an example where St. Augustine explains that the grace of baptism is never lost, even in the case of apostasy. See also Susan Vessel, *Leo the Great and the Spiritual Rebuilding of a Universal Rome* (Leiden, 2008), p. 166; Wills, *Font of Life*, pp. 142-144.

<sup>116</sup> *De his qui ex Africa vel de Mauritania venerunt et nesciunt in qua secta sint baptizati, quid circa eos debeat observari? Non se isti baptizatos nesciunt, sed cujus fidei fuerint qui eos baptizaverunt se nescire profitentur; unde quoniam quolibet modo formam baptismatis acceperunt, baptizandi non sunt; sed per manus impositionem, invocata virtute Spiritus sancti, quam ab haereticis accipere non potuerunt, catholicis copulandi sunt.* – ‘Regarding those who came from Africa or Mauritania and do not know in which sect they were baptised, what should be observed about them? They know that they are baptised, but they confess that they do not know whose faith those who baptised them were from; therefore, since in every way they have received the form of baptism, they are not to be baptised; but by the laying of hands, [and] by invoking the Holy Spirit which they could not have received from the heretics, they are joined with the Catholics.’ Leo I, ‘Epistolae fraternitatis’ (458-459) *PL* 54, cols. 1199-1209, at col. 1209. For Pope Leo I and his letters sent to bishops more generally, see Detlev Jasper and Horst Fuhrmann, *Papal Letters in the Early Middle Ages* (Washington, D.C., 2001), pp. 42-43.

<sup>117</sup> Burchard of Worms, *Decretum*, 4.42, *PL* 140, cols. 734-735; Ivo of Chartres, *Decretum*, D.1, cap. 236, *PL* 161, col. 116; Ivo of Chartres, *Panormia* 1.91, *PL* 161, col. 1065; Anselm of Lucca, *Collectio canonum una cum collectione minore*, ed. Friedrich Thaner. (Innsbruck, 1965), IX, 6 (16), p. 464.

<sup>118</sup> For example: Gratian, C.1 q.1 c.51, col. 378, the ‘auctoritas’ is Pope Leo I; C.1 q.1 c.57, cols. 379-380, the ‘auctoritas’ is Pope Leo I; C.24 q.1 c.18, cols., 971-972, the ‘auctoritas’ is St. Cyprian (c.210-258).

<sup>119</sup> *Non reiteretur baptisma, cuius formam constat integre collatam.* Gratian, D.4 de cons. c.38, col. 1362.

<sup>120</sup> ... *ipsi Graeci rebaptizare ausu temerario praesumebant et adhuc, sicut accepimus, quidam agere hoc non verentur. Volentes ergo tantum ab ecclesia Dei scandalum amovere, sacro suadente concilio districte praecipimus, ut talia de caetero non praesumant, conformantes se tamquam obedientiae filii*

included in the *Compilatio quarta* and the *Liber extra*, thus affirming the possibility of only one baptism and also evidencing the conviction held by contemporaries that re-baptism must have been practised.<sup>121</sup>

The Latin Church – and occasionally chroniclers as well – seemed to have been very concerned with re-baptism occurring within the Orthodox Church. For instance, the chronicler Arnold of Lübeck listed a letter of Baldwin of Flanders (1172-c.1205), which claimed that ‘among the very wicked rites that it [Constantinople inhabited by Greeks] had devised for itself, in contempt for the authority of Scripture, it even quite often presumed to diminish salvation-giving baptism by repeating it’.<sup>122</sup> Such allegations of re-baptism indeed most often targeted the Greek Orthodox Church, although recent research by Tia Kolbaba has suggested that there is no evidence of such re-baptism occurring in practice.<sup>123</sup>

Similarly, contemporary Slavic Orthodox canon law collections did not, in fact, indicate that re-baptism was necessary.<sup>124</sup> Yet, Martin Carver has claimed that it was not only the Rus’ who re-baptised in Livonia, but also the Germans who followed the

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*sacrosanctae Romanae ecclesiae matri suae, ut sit unum miles et unus pastor* [John 10:16]. – ‘The Greeks even had the temerity to rebaptize those baptized by the Latins; and some, as we are told, still do not fear to do this. Wishing therefore to remove such a great scandal from God’s church, we strictly order, on the advice of this sacred council, that henceforth they do not presume to do such things but rather conform themselves like obedient sons to the Holy Roman Church, their mother, so that there may be “one flock and one shepherd” [John 10:16].’ Constitution 4 of the Fourth Lateran Council (1215) *Tanner* 1, pp. 235-236. *Tanner* includes both the original Latin text and an English translation.

<sup>121</sup> 4 *Comp.* 3.16=X 3.42.6.

<sup>122</sup> ... *inter ritus nefandos, quos sibi, sprete scripturarum auctoritate, confiscerat, etiam lavacri, salutaris plerumque facere presumebat iterando iacturam.* Arnold of Lübeck, *Arnoldi chronica*, VI, 20, pp. 252-253; translation from translation from Arnold of Lübeck, *The Chronicle of Arnold of Lübeck*, ed. and trans. Graham A. Loud (London, 2019), p. 259 (amended). The letter of Baldwin was sent to various recipients, including to Pope Innocent III who received the letter by the end of October 1204 (*Die Register Innocenz 7*, no. 152, pp. 253-262). For the letter and its circulation, see Alfred J. Andrea, *Contemporary Sources for the Fourth Crusade* (Leiden, 2008), pp. 98-99.

<sup>123</sup> Tia Kolbaba, ‘On the Closing of the Churches and the Re-baptism of Latins. Greek Perfidy or Latin Slander’, *Byzantine and Modern Greek Studies*, Vol. 29 (2006), pp. 39-51, at pp. 45-48.

<sup>124</sup> *Памятники древнерусского канонического права* [Monuments of Ancient Russian Canon Law], Book 1, ed. Alexei Stepanovich Pavlov (St. Petersburg, 1908), § 10, pp. 26-27. For a discussion on this issue see Anti Selart, *Livonia, Rus’ and the Baltic Crusades in the Thirteenth Century* (Leiden, 2015), pp. 26, 110, 175.

Latin rite.<sup>125</sup> Carver relied on Peter Z. Olins, who in his book *The Teutonic Knights in Latvia*, argued that:

It is of interest to mention how many times the inhabitants of the Baltics were baptized and rebaptized. At first the sacrament of baptism was administered to a great many of them by the Russians. Then came the Germans who baptized the rest of them and rebaptized, according to the rite of the Latin Church, those who were already baptized by the Russians. Then the Russians, angry of [sic!] apostates, tried to convert them again to the Byzantine creed. Then arrived the Danes and the Swedes and they rebaptized in the dominions all who were already baptised by the Germans. And as the latter did not like the Danish and Swedish baptism, they sent their priests to rebaptize the population again.<sup>126</sup>

According to Olins, re-baptism was the norm rather than an exception, and it was practised by every party involved in the conversion of Livonia. Olins implied that such re-baptisms were intrinsic due to the attempts of separate groups to assert their power over local people. Olins based such a sweeping statement on the chronicle of Henry of Livonia.<sup>127</sup> The sections that Olins was quoting focused on the baptism of the local peoples in Livonia.<sup>128</sup> Yet, none of them described re-baptism. One of the passages quoted by Olins explained that the Rus' of Pskov resented the Ugannians because they had accepted the baptism of the Latins and had despised theirs'.<sup>129</sup> There was no indication that previous baptism before 'the baptism of the Latins' had taken

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<sup>125</sup> Martin Carver, *The Cross Goes North: Process of Conversion in Northern Europe, AD 300-1300* (York, 2003), p. 49.

<sup>126</sup> Peter Z. Olins, *The Teutonic Knights in Latvia* (Riga, 1928), pp. 73-74.

<sup>127</sup> Olins, *The Teutonic Knights in Latvia* (Riga, 1928), p. 34, footnotes no. 6-8.

<sup>128</sup> HCL XIV, 1-2, pp. 72-74; XX, 3, p. 136.

<sup>129</sup> ... indignati Rutheni de Plecekowe contra Ugaunenses, eo quod baptismum Latinorum acceperunt et suum contempserunt ... HCL XX, 3, p. 136; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 156 (amended).

place; quite the opposite – it is evident that the locals had rejected the offer to be baptised by the Rus’.

To support the claim that the Danes and the Swedes were re-baptising the local people, Olins relied on a description in the chronicle which recounted how various regions of Estonia were baptised.<sup>130</sup> A closer reading of the passages does not reveal, however, that such events took place. On the contrary, Henry of Livonia explained:

[T]he Vironians [the local pagans] from the other provinces, not daring to receive the Rigan priests because of the threat of the Danes, summoned the Danes to themselves, as they were near, and they were baptised by them.<sup>131</sup>

Once again, there is no evidence that the locals who were baptised by the Danes were already baptised by somebody else. While Henry did mention that a certain Tabelin, an elder of the locals, was later hanged by the Danes because ‘he had received baptism from the Rigans and had placed his son as a hostage with the Swordbrothers’, there is no mention of Tabelin being re-baptised by the Danes.<sup>132</sup> Therefore, the claims by Olim and Carver that the Livonian pagans were often re-baptised – an act that would have been contrary to canon law – are unsubstantiated.

Thus, by the time the Christianisation of Livonia had begun, there was a firm stance against re-baptism in canon law. Within this context, it is notable that Henry of Livonia wished to make it clear to the reader of his chronicle that the locals were fully aware of the nature of one possible baptism:

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<sup>130</sup> HCL XXIV, 1-2, pp. 72-74.

<sup>131</sup> ... *Vironenses de provinciis aliis propter comminationem Danorum Rigensium sacerdotes recipere non audentes, Danos utpote sibi vicinos ad se vocaverunt, et baptizati sunt ab eis.* HCL XXIV, 1, p. 170; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 188 (amended).

<sup>132</sup> ... *eo quod baptismum Rigensium acceperat et filium suum fratribus milicie obsidem posuerat.* HCL XXIV, 1, p. 170; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 188 (amended).

The people of Vironia, therefore, believed there to be one God for the Christians, both for the Danes and for the Germans, and one Faith and one baptism.<sup>133</sup>

They [the German priests] at last arriving at a village called Reinewer, they sent to summon people from the other villages. A peasant, who was their elder, said: 'We are already all baptised. Since we have been baptised once, we will not receive you [i.e. your baptism] again.'<sup>134</sup>

Whether the local peoples truly understood the concept of baptism cannot be known, as the only source we have that attests to it is Henry of Livonia. Why, though, did Henry want to emphasise that the Livonians knew there was only one baptism? It seems that, besides theological and canonical considerations, he might have had a practical reason for doing so. Henry clearly acknowledged the strong correlation between accepting baptism and falling under the ecclesiastical – and, in the case of Livonia, also temporal – jurisdictional authority of those who were baptising. This connection was problematic in the context where multiple powers – especially the Danes and the Germans from Riga – were trying to assert control over Livonia. Thus, Henry shared his frustration by paraphrasing Deuteronomy 23:25 and claiming that 'the Danes, desiring to seize the neighbouring land for themselves, sent their priests, as it were, into a foreign harvest'.<sup>135</sup>

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<sup>133</sup> *Credebant itaque Vironenses unum Deum esse christianorum, tam Danorum quam Theutonicorum, et unam fidem unumque baptisma.* HCL XXIV, 1, p. 170; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 188 (amended).

<sup>134</sup> *Tandem villam, que Reineveri vocatur, attingentes ad convocandum populum de villis aliis miserunt. Et ait rusticus, qui fuit senior eorum: 'Iam omnes', inquit, 'baptizati sumus. ... Cum enim semel baptizati sumus, vos ultra non recipiemus.'* HCL XXIV, 5, p. 174; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 193 (amended).

<sup>135</sup> ... *Dani ipsam terram sibi vicinam preoccupare cupientes sacerdotes suos quasi in alienam messem miserunt.* HCL XXIV, 2, p. 170; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 189 (amended). For a further discussion on Henry's partiality when describing these events, see Eva Eihmane 'The Baltic Crusades: A Clash of Two Identities', in *The Clash of Cultures on the Medieval Baltic Frontier*, ed. Alan V. Murray (Farnham, 2009), pp. 37-52, esp. pp. 39-41.

Henry saw the whole of Livonia as rightfully belonging to the Church of Riga, and for this reason it made sense to assert firmly the legitimacy of the Rigan Church regardless of who was the administrator of the baptismal sacrament.<sup>136</sup> That this notion was proxied by converts gave it another layer of authority – the local people, according to Henry, were fully aware of the possibility of only *one* baptism. In other words, while mindful of the strong connection between baptism and jurisdictional rule, Henry likely wished to diminish that link by claiming the overall jurisdictional authority of the Church of Riga on the one hand but also emphasising that the locals knew perfectly well that there is only one baptism regardless of who performs the sacrament, consequently submitting the converts under the rule of the Church of Riga even if they had been baptised, for example, by the Danes.

While Henry of Livonia was generally critical of the Danes, Mihkel Mäesalu has more recently claimed that Henry wished to show that the Danes lacked the rights of baptism, performed false baptism, and also used false methods to administer baptism.<sup>137</sup> Mäesalu cites the following passages from the chronicle of Henry of Livonia to support his claim:

They [the Danes] baptised some villages and sent their men to the others to which they could not come so quickly, ordering great wooden crosses to be made in all the villages. They sent the [local] peasants with holy water and ordered them to

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<sup>136</sup> The entirety of Henry's chronicle depicts the Christianisation of Livonia, of which the majority was done under Bishop Albert of Riga. Henry had come to Livonia with Bishop Albert and was intensely involved in the conversion process of these regions as part of Bishop Albert's household, as evidenced throughout his chronicle. See the discussion on Henry and his chronicle at pp. 33-34.

<sup>137</sup> Mäesalu, 'A Crusader Conflict Mediated by a Papal Legate', pp. 240-241. Henry seems to have become more critical of the Danes over the course of his chronicle. By contrast, when recounting what was possibly his first encounter with the Danes in 1206-1207, shortly after he himself had arrived in Livonia, he seemed to have been generally supportive of Danish endeavours in Estonia and also depicted the visitation of Anders Sunesen, the archbishop of Lund, to Riga rather favourably; see Torben K. Nielsen, 'The Missionary Man: Archbishop Anders Sunesen and the Baltic Crusade, 1206-21', in *Crusade and Conversion on the Baltic Frontier*, ed. Alan V. Murray (Ashgate, 2001), pp. 95-130, at pp. 103-108.



baptise the women and children. They tried thereby to anticipate the Rigan priests and sought in this manner to put the land into the hands of the king of the Danes.<sup>138</sup>

And when they were asked by whose baptism they had been baptised, he [a local peasant] replied: ‘Since we were in the village of Ialgsama when a priest of the Danes performed the sacrament of baptism there, he baptised some of our men and gave us holy water, and we returned to our own villages and each of us sprinkled and baptised our families, wives and children, with that same water, and what more should we do?’<sup>139</sup>

It appears that the notions of false baptism and false methods of baptism both relate to the fact that the Danes allegedly allowed the locals themselves to baptise their families. But did canon law see such behaviour as a transgression? Gratian’s *Decretum* laid out a series of exceptions for situations where the usual requirements for baptism did not have to be followed due to necessity, for example because of an impending danger of death. Specifically related to the cases under discussion here were the acknowledgements that even women, laymen, heretics, schismatics and pagans could perform valid baptism.<sup>140</sup> Therefore, the baptising person did not

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<sup>138</sup> *Qui baptizantes villas quasdam et ad alias suos mittentes, ad quas ipsi venire tam subito non potuerunt, et cruces magnas ligneas in omnibus villis fieri precipientes et aquam benedictam per manus rusticorum mittentes et mulieres ac parvulos aspergere iubentes, sacerdotes Rigenses taliter prevenire conabantur et hoc modo totam terram ad manus regis Danorum preoccupare studebant.* HCL XXIV, 2, p. 170; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 189 (amended).

<sup>139</sup> *Et requirentibus illis, cuius baptisate baptizati essent, respondit ille: ‘Cum essemus in villa Ialgesim, quando sacerdos Danorum ibi baptismi sui tractavit sacramenta, baptizavit viros quosdam ex nostris et dedit nobis aquam sanctam, et reverse sumus ad proprias villas et cum eadem aqua aspersimus et baptizavimus unusquisque nostram familiam, uxores et parvulos, et vobis ultra quid faciemus?’* HCL XXIV, 5, pp. 174-175; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 193 (amended). In translation, the phrase ‘we baptised’ (*baptizavimus*) is omitted.

<sup>140</sup> Gratian, D.4 de cons.cc.20-24, cols. 1367-1368, the ‘*auctoritates*’ are the Fifth Council of Carthage (401), St. Augustine, Pope Martin III (942-946), Pope Nicholas I (858-867) and St. Isidore of Seville, respectively; c.44, col. 1380, the ‘*auctoritas*’ is Gregory I; c.51, cols. 1381-1382, the ‘*auctoritas*’ is the Venerable Bede (c.673-735). But see D.4 de cons. c.52, col. 1382 which stated that ‘those baptised by the pagans are to be baptised in the name of the Trinity’ – *Baptizati a paganis in nomine baptizentur*

necessarily have to be from among the clergy.<sup>141</sup> Gratian in his *Decretum* did not explicitly offer a succinct summary of the minimum requirements for baptism to be valid, although by listing exceptions to almost every rule in the large number of canons that were included in the compendium, it was implicitly clear that baptism in the name of the Trinity, and by using holy water, would suffice.

Soon after Gratian, the definition of minimum requirements for valid baptism were spelled out by Pope Innocent III.<sup>142</sup> In a letter of 1206 to the archbishop of Nidaros, the pope addressed a case in which some people had used saliva to baptise, because of the scarcity of water and the absence of priests.<sup>143</sup> Innocent III firmly asserted that ‘in baptism two things are always and unavoidably required, namely the word and the element [water]’, unequivocally refuting the use of saliva as a substitute

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*Trinitatis*. The ‘*auctoritas*’ is Pope Gregory III (731-741), incorrectly attributed to Pope Gregory III (731-741). At first there seems to be a contradiction with the previous canons. A solution can be found by looking at the ‘*auctoritas*’ of canon 52: it was a letter sent by Pope Gregory III to St. Boniface in c.732, and it concerned various matters of faith. In the letter, which was one of the first Gregory III dispatched during his pontificate, the pope instructed St. Boniface to re-baptise in the name of the Trinity those people who were baptised by the pagans; additionally, the pope elaborated that ‘we order those who doubt that they had been baptised or not, or [who were baptised] by a priest sacrificing to Jupiter and eating the flesh sacrifices, to be baptised’. – ... *eos, qui se dubitant fuisse baptizatos an non vel qui a presbitero Iovi mactanti et immolaticias carnes vescenti, ut baptizentur, precipimus*. Gregory III, ‘Magna nos habuit’ (c.732) *Die Briefe des Heiligen Bonifatius und Lullus*, ed. Michael Tangl (Berlin, 1916), no. 28, pp. 49-52. St. Boniface had been baptising the peoples of various regions from Frisia to Francia at that time, and it is evident that even if some local had reached the status of a priest, it did not necessarily mean that they had adopted Christian customs and the way of Christian life. Indeed, the same letter ‘Magna nos habuit’ dealt with a wide variety of issues stemming from pagan practices. For example, it prescribed that people should under no circumstances be allowed to eat horse meat, and yet the same issue re-emerged not even twenty years later; see Rob Meens, ‘Boniface: Preaching and Penance’, in *A Companion to Boniface*, ed. Michel Aaij and Shannon Godlove (Leiden, 2020), pp. 201-218, at pp. 216-217. It is in this context that canon 52 of Gratian’s *Decretum* should be seen: baptism was not valid if it was clearly administered according to pagan customs, e.g. not in the name of Trinity and if done by a priest who possibly did not have the Christian rite in mind when baptising. For St. Boniface more generally, see Rudolf Schieffer, ‘Boniface: His Life and Work’, in *A Companion to Boniface*, ed. Michel Aaij and Shannon Godlove (Leiden, 2020), pp. 9-45.

<sup>141</sup> Local law codes in Livonia explicitly started to acknowledge the permissibility of parents to baptise in cases of emergency by at least the first half of the fifteenth century; Vija Stikāne, ‘The Legal Status of Women in Livonia, 1200-1400’, in *Baltic Crusades and Societal Innovation in Medieval Livonia, 1200-1350*, ed. Anti Selart (Leiden, 2022), pp. 189-231, at p. 197.

<sup>142</sup> Innocent III, ‘Non ut apponeres’ (1 March 1206), *Die Register Innocenz* 9, no. 5, p. 15.

<sup>143</sup> Innocent III, ‘Non ut apponeres’.

for water.<sup>144</sup> The letter was subsequently included in the *Compilatio tertia* and in *Liber extra*, wherein it was inserted under the summarising title ‘Where there is no word or element of water, there is no sacrament of baptism’.<sup>145</sup> Thus, the clarification that only ‘the words and the element’ are necessary for a valid baptism, was clearly seen as important enough to be codified into canon law.<sup>146</sup> Such a minimal but irreplicable requirement for water and words was also reflected in many local law codes.<sup>147</sup>

In the case of Livonia, chronicler Henry clearly stated that the Danish priests gave local peoples blessed water so that they could baptise their families.<sup>148</sup> Thus, one requirement for valid baptism was certainly fulfilled – the use of water. What about the use of words? Henry made no mention of how the locals were instructed to baptise in the name of the Trinity. It can be assumed that because the priests had provided holy water to the Livonians, they likewise gave at least some guidance on how to say

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<sup>144</sup> ... *in baptismo duo semper, videlicet verbum et elementum, necessario requirantur ... Innocent III, ‘Non ut apponeret’, p. 15.*

<sup>145</sup> *Ubi deest verbum vel elementum aquae, non est baptismi sacramentum. 3 Comp. 3.34=X 3.42.5.*

<sup>146</sup> There remained the contentious issue of being baptised by desire, sometimes also called baptism by blood. It occurred in cases where an unbaptised person who were in the process of becoming a Christian, i.e. s/he had accepted the faith in his/her heart, died before receiving baptism. In Gratian’s *Decretum*, it was considered at D.4 de cons. c.34, cols. 1372-1374, where an Augustinian passage was cited with the title ‘The shedding of blood fills the place of baptism’ – *Effusio sanguinis inplet vicem baptismi*. Gratian did not offer any commentaries on this particular passage or statement, nor did he consider it elsewhere in his *Decretum*. Suffice to say that there seems to have been no cases of baptism by desire in Livonia, perhaps because when people wished to become Christians, they were baptised as fast as possible, as shown below at pp. 64-65. For a thorough overview of baptism by desire in the Middle Ages, see Colish, *Faith, Fiction and Force in Medieval Baptismal Debates*, pp. 11-90. In modern canon law, baptism by desire is explicitly stated to be valid alongside baptism by so-called actual reception where water and words are still necessary: ‘Baptism, the gateway to the sacraments and necessary for salvation by actual reception or at least by desire, is validly conferred only by a washing of true water with the proper form of words.’ Code of Canon Law (1984), Book IV, Title I, Canon 849 via *The Holy See* [website] <[https://www.vatican.va/archive/cod-iuris-canonici/cic\\_index\\_en.html](https://www.vatican.va/archive/cod-iuris-canonici/cic_index_en.html)>.

<sup>147</sup> For example, the older version of local law code of Iceland, the so-called *Kristinna laga þáttur* (compiled in the 1120s) postulated that if no water was available, baptism could be performed with snow. However, in the younger law code (compiled in the 1270s) it was explicitly emphasised that snow and ice must be melted before it could be used in baptism, and the use of saliva was not permissible. This change reflects how canon law had explicitly codified the need for water between the compilation of these two local law codes. See Anders Winroth, ‘The Canon Law of Emergency Baptism and of Marriage in Medieval Iceland and Europe’, *Gripla*, Vol. 29 (2018), pp. 203-229, at pp. 206-208. Such influence of canon law stipulations on baptism can be also traced in England; see Izbicki, ‘The Sacraments of Baptism, Confirmation, and the Eucharist’, p. 415.

<sup>148</sup> *HCL XXIV*, 5, pp. 174-175. See the full quotation above in footnote no. 139 at p. 49.

the correct words. At the same time, it left plenty of room for error as the locals naturally did not speak Latin, and some concepts – such as the Holy Spirit – could have been difficult to explain in the first place.<sup>149</sup>

The situation was, in fact, covered in Gratian's *Decretum* which explained that words spoken in error out of ignorance did not impede the validity of baptism.<sup>150</sup> The *auctoritas* for this occasion was Pope Zachary (741-752) who had responded to St. Boniface (675-754) in the following manner:

Your messengers reported that there was a priest in that province who was thoroughly ignorant of the Latin language, and that while he was baptising, not knowing Latin, contorting the language, said: 'I baptise you in the name of the Fatherland, and the Daughter, and the Holy She-spirit'. Because of this your revered holiness considered to re-baptise them. But, most holy brother, if the one who baptised did not introduce any error or heresy, but contorted the language only because of [his] ignorance of the Roman language ... we cannot consent that they should be baptised again.<sup>151</sup>

In this case, then, the priest managed to get all the words wrong in Latin, but the sacrament of baptism he administered was nevertheless valid because he had used

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<sup>149</sup> Tõnno Jonuks has suggested that the concept of the Trinity was perhaps at least initially understood by Livonian neophytes as three separate gods; Tõnno Jonuks, 'Domesticating Europe – Novel Cultural influences in the Late Iron Age Eastern Baltic' in *Baltic Crusades and Societal Innovation in Medieval Livonia, 1200-1350*, ed. Anti Selart (Leiden, 2022), pp. 29-54, at p. 48.

<sup>150</sup> Gratian, D.4 de cons. c.86, col. 1390. The '*auctoritas*' is Pope Zachary (741-752).

<sup>151</sup> *Retulerunt nuncii tui, quod fuerit in eadem prouincia sacerdos, qui linguam latinam penitus ignorabat, et, dum baptizaret, nesciens loqui latine, infringens linguam diceret: baptizo te in nomine Patria, et Filia, et Spiritus sancta. Et per hoc tua reuerenda sanctitas considerauit eos rebaptizare. Sed, sanctissime frater, si ille, qui baptizauit, non errorem introducens aut heresim, sed pro sola ignorantia Romanae locutionis infringendo linguam ... non possumus consentire, ut denuo baptizentur.* D.4 de cons. c.86, col. 1390. The same case was brought up by Peter Lombard in his *Libri IV sententiarum*, Vol. 2 (Florence, 1916) Sent.4, D.6 c.4 n.1, pp. 780-781. For the context in which this letter was written, and for the argument that, while obeying pope's instructions, St. Boniface himself might have not fully agreed with the notion that grammatical ignorance was unimportant, see Emily V. Thornbury, 'Boniface as Poet and Teacher', in *A Companion to Boniface*, ed. Michel Aaij and Shannon Godlove (Leiden, 2020), pp. 99-122, at pp. 119-121.

the incorrect speech out of ignorance and not deliberately, i.e. his intentions had been correct.

Therefore, even if the Livonians did not remember the correct words required during baptism, as long as their intention was to convert and be baptised according to the Catholic tradition that they were given instructions about, the baptism they administered to their families was seen as valid. While not being happy with the Danes baptising in regions that the Church of Riga had claimed as its own, Henry of Livonia did not doubt the validity of such baptism and on one occasion he explicitly mentioned how the Rigan priests left a village after hearing that the locals had already baptised themselves with the water given to them by the Danish priests.<sup>152</sup> This instance serves as an example in which it becomes clear that according to Henry of Livonia, no re-baptism should occur, confirming the contemporaneous canon law prescriptions regarding this matter.

It can be concluded that in the medieval context, a remarkably high bar was set for baptism to be invalid. It either needed to lack water, wrong words had to be deliberately used, or it had to be purposefully performed in an incorrect manner. In the context of Livonia, none of these conditions were present in the cases that Henry of Livonia described, and therefore claims of 'false baptism' performed and allegedly wrong baptismal methods being used are unsubstantiated according to the existing primary sources.

### **THE APPLICATION OF THE CONCEPT OF BAPTISM**

Little is known about the specific baptismal liturgy used in the conversion of Livonia, but it likely varied depending on whether or not it was necessary to complete

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<sup>152</sup> HCL XXIV, 5, pp. 174-175. See the full quotation above in footnote no. 139 at p. 49.

the sacrament of baptism as fast as possible. As the conversion of Livonia was often accompanied with warfare, potential ambushes, and possible retaliations by neighbouring tribes, the danger of death often hastened the baptismal rite and sometimes it was postponed altogether, as we shall see.

In comparison, Gratian's *Decretum* offered a wide range of detailed instructions for baptismal liturgy. For example, drawing on the Fourth Council of Carthage (398), it stated:

Before being baptised, all are to be examined. The name of the to-be-baptised ought to be given, and after a long abstinence of wine and flesh, and also [after] laying of hands [and] frequent examination, they should receive baptism.<sup>153</sup>

A similar act of submitting the names was mentioned in the *Ordo Romanus XI*, a liturgical script of Roman origin from between the end of the sixth and seventh centuries, and for which manuscripts survive from the ninth century and later:

... the names of the infants and of those who are to receive them should be written down by an acolyte ...<sup>154</sup>

In various sections of the chronicle of Henry of Livonia, the names of the converts were mentioned within the context of baptism, with the earliest recording of the names dating to 1196 when Henry had not yet arrived in Livonia.<sup>155</sup> As the names

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<sup>153</sup> *Ante, quam baptizentur, quilibet sunt examinandi. Baptizandi nomen suum dent, et diu sub abstinencia uini et carniū, ac manus inpositionis crebra examinatione baptismum percipiant.* Gratian, D.4 de cons., c.60, col. 1383. The 'auctoritas' is the Fourth Council of Carthage (398).

<sup>154</sup> ... *scribantur nomina infantium, vel eorum qui ipsos suscepturi sunt ab acolyto ... Ordo Romanus XI*, 2, BL Add. MS 15222, f. 43r; translation from *Documents of the Baptismal Liturgy*, ed. and trans. Maxwell E. Johnson and E. C. Whitaker (London, 2003), p. 244. For a concise overview of *Ordo Romanus XI* and its influence in early medieval societies, see John F. Romano, 'Baptizing the Romans', *Acta ad archaeologiam et artium historiam pertinentia*, Vol. 31 (2019), pp. 43-62.

<sup>155</sup> *Ex eadem villa primus Ylo, pater Kulewene, et Viezo, pater Alonis, primi baptizantur, aliis vicissim sequentibus.* – 'From the same village first Ylo, the father of Kulewene, and Viezo, the father of Alo, are the first to be baptised, with the others following in turn.' *HCL* I, 4, p. 6; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 26 (amended). *Sex primitus qualicumque intecione baptizati sunt, quorum nomina sunt Viliendi, Uldenago, Wade, Waldeko, Gerweder, Vietzo.* – 'Six were

given for the baptised pagans in the chronicle of Henry of Livonia were often of local origin and presented little resemblance to common Latin names – for example, Ylo, Viliendi, Waldeko – it is possible that the names given in the chronicle were recorded at the time when baptism was administered.

After offering the names, the *Decretum* explained ‘why the baptised ought to be exorcised and exsufflated’.<sup>156</sup> They were closely related acts, as they both formed part of the preparation stage of Christian initiation and were about renouncing the devil.<sup>157</sup> Exsufflation, depending on the source, could mean either the person being baptised breathing out so that s/he would blow away the devil, or sometimes, when conflated with insufflation, it could mean the administer of baptism breathing on the person being baptised so that the latter receives grace.<sup>158</sup>

There was no explicit mention of exorcism or exsufflation in the chronicle of Henry of Livonia.<sup>159</sup> While the *Decretum* stated that ‘without exorcism and exsufflation no one is baptised’, this must be considered in the context of the whole

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first baptised, with whichever intention, whose names are: Iliendi, Uldenago, Wade, Waldeko, Gerveder, and Vietzo.’ *HCL*, I, 7, p. 3; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 27 (amended). For a short overview of the life of Henry of Livonia, see James A. Brundage, ‘Introduction: Henry of Livonia, The Writer and His Chronicle’, in *Crusading and Chronicle Writing on the Medieval Baltic Frontier: A Companion to the Chronicle of Henry of Livonia*, ed. Marek Tamm, Linda Kaljundi and Carsten S. Jensen (London, 2016), pp. 1-9, esp. pp. 5-6.

<sup>156</sup> *Baptizandi quare exorcizentur et exsufflentur*. Gratian, D.4 de cons., c.61, col. 1383. The ‘auctoritas’ is Rabanus Maurus. Gratian then included the following explanation: *Sicut nostis, fratres karissimi, paruuli exsufflantur et exorcizantur, ut pellatur ab eis diaboli potestas inimica, que decepit hominem ...* – ‘As you know, dearest brothers, infants undergo exsufflation and exorcism, so that driven away from them is the devil’s hostile power, which deceived man ...’ Gratian, D.4 de cons., c.62, col. 1383. The ‘auctoritas’ is St. Augustine. For the development of the concept and the use of exorcism in the Middle Ages, see Francis Young, *A History of Exorcism in Catholic Christianity* (Cambridge, 2016), pp. 27-97.

<sup>157</sup> Phelan, *The Formation of Christian Europe*, pp. 122-125; David Hellholm, *Ablution, Initiation, and Baptism: Late Antiquity, Early Judaism, and Early Christianity = Waschungen, Initiation und Taufe: Spätantike, frühes Judentum und frühes Christentum* (Berlin, 2011), p. 1027.

<sup>158</sup> These technically two distinct acts – insufflation and exsufflation – were often not distinguished from each other in medieval texts, see Rudolf Suntrup, *Die Bedeutung der liturgischen Gebärden und Bewegungen in lateinischen und deutschen Auslegungen des 9. Bis 13. Jahrhunderts* (Munich, 1978), p. 307. For exsufflation, see also: Robin M. Jensen, *Living Water: Images, Symbols, and Settings of Early Christian Baptism* (Leiden, 2013), p. 113.

<sup>159</sup> For further instructions on exorcism in the *Decretum*, see Gratian, D.4 de cons., c.66, col. 1384, the ‘auctoritas’ is Rabanus Maurus; c.67, col. 1384, the ‘auctoritas’ is Pope Gregory I.

treatise.<sup>160</sup> The *Decretum* contained prescriptions for ideal conditions under which the sacrament of baptism should be administered. However, there were numerous examples of exceptions for dire situations ‘compelled by necessity’ (*necessitate cogente*) in which various liturgical aspects of baptism could be omitted.<sup>161</sup> From this it can be assumed that similar exceptions were also presumed for the practice of exorcism, and that in Livonia the rite of baptism had taken a simplified form in which exorcism could be omitted when baptism was administered in a hurry.

On at least three occasions, the chronicle of Henry of Livonia described fragments of baptismal liturgical practices in further detail. In one event, the sacrament of baptism was interrupted by an invasion of a hostile army and, ‘immediately putting down the holy chrism and other sacraments’, the priests hurried to defend themselves.<sup>162</sup> In two other cases, Henry offered the following details about administering the sacrament:

On the eleventh day, Godfried the priest was sent to them [the local pagans] in the castle. Blessing them, he says: ‘Will you renounce idolatry and believe in the one God of the Christians?’ And all responding: ‘We will,’ he said, pouring out water himself: ‘Be all baptised, then, in the name of the Father and of the Son and of the Holy Spirit’.<sup>163</sup>

<sup>160</sup> *Sine exorcismis et exsufflationibus nullus baptizetur.* Gratian, D.4 de cons., c.53, col. 1382. The ‘*auctoritas*’ is Pope Celestine I (422-432).

<sup>161</sup> For example: *Nisi necessitate cogente preter Pasca et Pentecostem nullus baptizare presumat.* – ‘Unless compelled by necessity, no one ought to presume to baptise outside of Easter and Pentecost.’ Gratian, D.4 de cons., c.17, col. 1367. The ‘*auctoritas*’ is Pope Gelasius I (492-496). *Etiam laici necessitate cogente baptizare possunt.* – ‘Even laymen can baptise by the compulsive necessity.’ Gratian, D.4 de cons., c.21, col. 1368. The ‘*auctoritas*’ is St. Augustine.

<sup>162</sup> ... *confestim proiecto sacrosancto crismate ceterisque sacramentis ...* HCL XXIII, 7, p. 161; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 179 (amended).

<sup>163</sup> ... *die iam undecimo missus est ad eos Godfridus sacerdos in castrum. Qui benedicens eis, ‘Si’, inquit, ‘abrenunciare volueritis ydolatrie et in unum Deum christianorum credere?’ Et respondentibus cunctis: ‘Volumus’, ipse aquam fundens ait: ‘Baptizamini ergo omnes in nomine Patris et Filii et Spiritus sancti.’* HCL XIX, 8, p. 133; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 153 (amended).



The sons of the nobles are given over; the venerable bishop of Riga with joy and great devotion catechised the first of them and watered him with the holy font of baptism; other priests watered the others. ... [C]onsecrating a fountain in the middle of the castle and filling a jar, they baptise first the catechised elders and the better ones [*meliore*s], and then the other men, women, and children.<sup>164</sup>

Both examples offer a confirmation that the two principal elements of the sacrament of baptism – liturgical words and water – were present in the baptismal liturgy in Livonia. Furthermore, in the first example, the locals are asked to renounce their previous gods. In Anglo-Saxon baptismal liturgies similar renunciations of idolatry and old gods took place.<sup>165</sup> While these cannot be equated with the acts of exorcism which had specific prescriptions, the denunciations of previous beliefs were prescribed in the *Decretum*:

At first the pagan should be questioned whether he renounces the Devil, and all his destructive works and all his lies, so that he could at first reject the error; and thus, he approaches the truth, denying impiety and secular desires, and, according to the Apostle, is able to lay aside the old man following the former way of life, who is corrupted in accordance to the desires of error.<sup>166</sup>

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<sup>164</sup> *Dantur pueri nobilium, quorum primum venerabilis Rigensis episcopus cum gaudio et devotione magna catechizatum sacro baptismatis fonte rigavit; alii presbyteri alios rigaverunt ... qui per medium castrum fontem consecrantes et dolium replentes primo seniors et meliores catechizatos, deinde viros alios et mulieres baptizant et pueros.* HCL XXX, 5, p. 220; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 244 (amended).

<sup>165</sup> The vow in Latin and its translation can be found in Rudolf Simek, *Dictionary of Northern Mythology*, trans. Angela Hall (Cambridge, 1993), p. 276. See also Richard A. Fletcher, *The Conversion of Europe: From Paganism to Christianity, 371-1386 AD* (London, 1997), p. 277.

<sup>166</sup> *Primum interrogetur paganus, si abrenunciet diabolo, et omnibus operibus eius dampnosis atque fallacibus cunctis ut primum respuat errorem, et sic appropinquet ad ueritatem, possitque iuxta Apostolum deponere ueterem hominem, secundum pristinam conuersionem, qui corrumpitur secundum desideria erroris, abnegans impietatem et secularia desideria.* Gratian, D.4 de cons., c.95, cols. 1392-1393. The 'auctoritas' is Rabanus Maurus.

Thus, the reason why Henry of Livonia specifically chose to include details of the renunciation of idolatry in baptismal liturgy can be seen as an attempt to emphasise how the pagans had acknowledged their errors and renounced their previous gods. It was perhaps more important to include this notion in his narrative, rather than to describe the whole baptismal liturgy which would have been very well known to the intended audience of his chronicle, of whom most were from among the clergy.<sup>167</sup>

Another aspect that Gratian included in the *Decretum* was the duties and prescriptions pertaining to godparenting. While some scholars have stated that usually there were three godparents present for each baptism<sup>168</sup>, Gratian prescribes that only one person should be the ‘sponsor’ of the baptised person: ‘Not more than one, whether a man or a woman, should come forward to receive the infant from baptism.’<sup>169</sup> It was also of vital importance that the godparent had been baptised themselves as the duty of the godparent was to guide the life of their godchild within the Christian faith and to steer them to be near God.<sup>170</sup>

In the Livonian context, only a few instances of godparenting are described and all of them involve men becoming the godparent. However, it is likely that it was more

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<sup>167</sup> See pp. 33-34 for the composition of the chronicle of Henry of Livonia.

<sup>168</sup> Joseph H. Lynch, *The Medieval Church: A Brief History* (London, 1992), p. 276. Martin Whittock, *A Brief History of Life in the Middle Ages* (London, 2017), p. 137. This view might come from the synodical decisions in the thirteenth to fifteenth centuries that expanded the number of godparents a person could have. While it was prescribed doctrinally, for example in Gratian’s *Decretum*, that the baptised should have only one godparent, it is clear that at some point in time people started to have more godparents which in turn led to the attempts to increase their numbers ‘officially’. For further discussion on godparenting and the change in their numbers over the Middle Ages, see Guido Alfani, *Fathers and Godfathers: Spiritual Kinship in Early-Modern Italy* (Farnham, 2009), pp. 23-24.

<sup>169</sup> *Non plures ad suscipiendum de baptismo infantem accedant, quam unus, siue uir siue mulier.* Gratian, D.4 de cons., c.101, col. 1394. The ‘auctoritas’ is Pope Leo I.

<sup>170</sup> *Qui non est baptizatus nec confirmatus, alium in crismate uel baptismate tenere non debet.* – ‘Who is not baptised nor confirmed should not hold another in anointing or baptism.’ Gratian, D.4 de cons., c.102, col. 1394. The ‘auctoritas’ is the Council of Mainz (813). *Qui in baptismo paruulos suscipiunt, pro eis apud Deum fideiussores existunt.* – ‘Those who receive children in baptism become sponsors for them in the presence of God.’ Gratian, D.4 de cons., c.105, cols. 1394-1395. The ‘auctoritas’ is St. Augustine.

widely practised and the reason for including only certain cases of spiritual sponsorship in the written narrative was to emphasise the newly created kinships between the most powerful neophytes and Christians. Henry of Livonia described the following instances where the Livonian natives received a godfather:

... [A]nd choosing him [Bishop Albert of Riga] as a father, he [King Vsevolod of Jersika] affirms that hereafter he will reveal to him all the evil plans of the Rus' and Lithuanians.<sup>171</sup>

... [A]nd going over to the bishop, he [King Vladimir of Polozk] is venerating him like a spiritual father when greeting; and similarly, he himself was received by him [the bishop] like a son.<sup>172</sup>

... [A]nd Rudolph, the master of the knights [of the Order of the Swordbrothers], stood as a father for him [Kyriawan, an Estonian, who had personally asked for baptism].<sup>173</sup>

Receiving the elders or kings of the baptised people as godchildren by the most prominent Christians present at the time of conversion was an old tradition – for example Bishop Paulinus of York (627-633) was godfather to King Edwin of Northumbria (c.586-633)<sup>174</sup> and King Alfred of Wessex (848-899) was godfather to Guthrum (c.835-c.899/890), the chieftain of a great viking army invading England.<sup>175</sup>

<sup>171</sup> ... *et eum in patrem eligens omnia Ruthenorum ac Lethonum consilia mala ei deinceps revelare affirmat.* HCL XIII, 4, p. 71; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 93 (amended).

<sup>172</sup> ... *et transiens ad episcopum et tamquam patrem spiritualem salutans veneratus est; similiter et ipse tamquam filius ab eo receptus est.* HCL XVI, 2, p. 104; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 123 (amended).

<sup>173</sup> ... *et astabat ei Rodolfus magister milicie patrinus.* HCL XXIII, 7, p. 161; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 179 (amended).

<sup>174</sup> *Huius namque Eduini pater in baptismo venerandus fuit Paulinus antistes unus illorum quos inter nos direxit, ut diximus, Gregorius.* – 'Now Edwin's godfather at his baptism was the reverend Bishop Paulinus, one of those whom, as we have said, Gregory sent us.' *The Earliest Life of Gregory I*, ed. and trans. Bertram Colgrave (Lawrence, 1968), pp. 96-97. See also Joseph H. Lynch, *Godparents and Kinship in Early Medieval Europe* (Princeton, 1986), pp. 167-168.

<sup>175</sup> ... *Ælfred rex in filium adoptionis sibi suscipiens de fonte sacro baptismatis elevavit.* – 'King Alfred raised him from the holy font of baptism, receiving him as his adoptive son.' Asser, *Annales rerum*

However, the spiritual kinship forged between Rudolf, a knight of the Order of the Swordbrothers, and a local convert named Kyriawan – described in the last example – calls for a closer examination. While the spiritual kinship between Bishop Albert and King Vladimir of Polozk, for example, had also strong political implications, this does not seem to have been the case for Kyriawan who was not a person of political nor societal importance. The activities of the Swordbrothers in the Baltic region have often been viewed harshly, especially in the context of local national historiographies.<sup>176</sup> For example, Marie-Luise Favreau-Lilie has evaluated the attitude of the military orders towards the Livonians as follows:

[T]he religious military orders had little interest in cursorily baptizing all Livonians and Prussians seeking conversion, because exploiting pagans as labourers was much easier than exploiting converts, for the Church did not concern itself with the predicament of infidels.<sup>177</sup>

According to Henry of Livonia, Kyriawan was an impoverished merchant who was seeking baptism to gain favours with the Christian God.<sup>178</sup> Henry of Livonia did not indicate that Kyriawan was a man of importance. Additionally, there were many

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gestarum Ælfredi Magni', in *Monumenta Historica Britannica*, Vol. 1, ed. Henry Petrie (London, 1848), pp. 467-498, at p. 482; translation from Asser, 'Life of King Alfred', in *Alfred the Great. Asser's Life of King Alfred and Other Contemporary Sources*, ed. and trans. Simon Keynes and Michael Lapidge (Middlesex, 1983), pp. 67-110, at p. 85. Anders Winroth, *The Conversion of Scandinavia: Vikings, Merchants, and Missionaries in the Remaking of Northern Europe* (London, 2012), pp. 39-40; Theodore M. Andersson, 'The Viking-Policy of Ethelred the Unready', *Scandinavian Studies*, Vol. 59 (1987), pp. 284-295, at pp. 291-292.

<sup>176</sup> For a comprehensive overview of the historiography of the military orders, more specifically focusing on the Teutonic Order, see Sven Ekdahl, 'Crusades and Colonization in the Baltic'.

<sup>177</sup> Marie-Luise Favreau-Lille, 'Mission to the Heathen in Prussia and Livonia: The Attitudes of the Religious Military Orders toward Christianization', in *Christianizing Peoples and Converting Individuals*, ed. G. Armstrong and I. N. Wood (Turnhout, 2000), pp. 147-154, at p. 149.

<sup>178</sup> *Erat autem inter eos ... Kyriawanus ..., qui petebat a nobis bonum deum sibi dari, dicens se malum deum hactenus habuisse. Fuerat enim homo idem infelicissimus usque ad illud tempus in omni negotio suo. – 'There was among them ... Kyriawan ..., who begged us to give him the good God, saying that he had hitherto had the bad god. For the same man had up to that time been most unfortunate in all his business.'* *HCL XXIII*, 7, p. 161; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 179 (amended).

other Christians present who could have acted as a godfather.<sup>179</sup> It is difficult to think of other reasons for Rudolf to become his godfather, outside of him having a genuine interest in guiding his spiritual son in the ways of Christian life, and essentially offering him patronage. Rudolf's actions discussed here serve as an example of a redeeming behaviour in a context where the members of the Order of the Swordbrothers have mostly been seen as self-serving and avaricious.<sup>180</sup>

### **THE TIMING OF BAPTISM**

The notion that conquest and conversion went hand in hand has been an immensely popular perception in the historiography of the Baltic crusades. Eric Christiansen, for example, has summarised the conversion as follows:

He [Henry of Livonia] saw nothing wrong with this approach to [forced] conversion, because for him voluntary adherence to the Faith and baptism under threat of death were both God's will; it did not matter by what means the number of the baptised increased.<sup>181</sup>

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<sup>179</sup> Henry here used the first-person plural construct to describe the events: *Et credidit nobis, et statim catechizavimus eum ...* – 'And he believed us and we immediately catechised him ...' *HCL* XXIII, 7, p. 161; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 179 (amended).

<sup>180</sup> For a similar case of patronage in Livonia, see the story of a certain Henry of Mecklenburg (c.1230-1302) who, when he was setting out 'on a pilgrimage towards Livonia, fighting under the banner of the Blessed Virgin' (*in peregrinationem versus Livoniam ... sub vexillo beatae virginis militantes*), saw a girl of around three-years old among the pagans whom he saved, 'and having obtained for her the sacrament of baptism, we adopted her as our daughter, taking her with us to our borders' (*et, obtento sibi baptismi sacramento, adoptavimus eam nobis in filiam, nobiscum ipsam in terminos nostros traducentes*). The surviving document narrating this story is a deed confirming a donation of the same Henry to the Rehna Convent to which he had given the saved girl. Additionally, Henry stated that from the incomes of the donation, 'six marks of denarii shall be paid every year for the clothing of the girl, and other necessities, as long as she lives' – *sex marcae denariorum in vestituram dictae puellae et cetera necessaria, quamdiu vixerit, per annos singulos convertentur*. The letter of 8 July 1270; *LUB* 1, no. 419, cols. 531-532.

<sup>181</sup> Christiansen, *The Northern Crusades*, p. 95.

Yet, forced conversion was generally perceived unfavourably in medieval canon law texts, where the issue centred the conversion of Jews.<sup>182</sup> The idea of persuasion being preferable to force was strongly put forth by Pope Gregory I (590-604) who expressed the fear that whoever was forcibly converted rather than led to the Faith by preaching, was likely to return to their former superstition.<sup>183</sup> While the letter specifically concerned the Jews in Marseille, the reasoning emphasised by Gregory I could be extrapolated to anyone forcibly converted, not just Jews.

A similar prohibition of conversion by force, deriving from the Fourth Council of Toledo (633), was included in Gratian's *Decretum*: 'Thus, so that they be converted not by force but by the free faculty of decision [i.e. free will], they are to be persuaded, not rather impelled.'<sup>184</sup> Innocent III discussed the question of forced baptism in his 'Maiores ecclesiae' which was included in both the *Compilatio tertia* and the *Liber extra*:

Truly, it is contrary to the Christian religion that anyone who is permanently unwilling and who thoroughly oppose it, is obliged to receive and maintain Christianity. For this reason, some do not absurdly distinguish between unwillingness and willingness, compulsion and compulsion, because he who is being vehemently brought [to baptism] with fears and threats, and lest he incurs harm, receives the sacrament of baptism.<sup>185</sup>

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<sup>182</sup> John Phillip Lomax, 'Frederick II, His Saracens, and the Papacy', in *Medieval Christian Perceptions of Islam*, ed. John Victor Tolan (London, 2000), pp. 175-198, at p. 192; Kedar, *The Franks in the Levant*, p. 192.

<sup>183</sup> *Dum enim quispiam ad baptismatis fontem non praedicationis suavitate, sed necessitate pervenerit, ad pristinam superstitionem remeans inde deterius moritur, unde renatus esse videbatur.* – For when someone arrives at the fountain of baptism not by the sweetness of preaching, but by necessity, he, returning to his former superstition, dies thence a worse [death], where he is though to have been reborn.' Gregory I, 'Scribendi ad fraternitatem' (June 591) *The Apostolic See and the Jews: Documents*, Vol. 1, ed. Shlomo Simonsohn (Toronto, 1988), no. 5, p. 4.

<sup>184</sup> *Ergo non ui, sed libera arbitrii facultate ut conuertantur suadendi sunt, non potius inpellendi.* Gratian, D.45, C.5, col. 162. The 'auctoritas' is the Fourth Council of Toledo (633).

<sup>185</sup> *Verum id est religioni Christiane contrarium, ut semper invitus et penitus contradicens ad recipiendam et servandam Christianitatem aliquis compellatur. Propter quod inter invitum et invitum, coactum et*

Innocent III had maintained that mere threats or being under fear were not sufficient to render baptism invalid. While raising the bar of a truly forced conversion to a point where only incurring harm would make baptism invalid, he nevertheless distinguished between forced and voluntary conversion, with the former being forbidden. Like the letter of Gregory I and the canon of the Fourth Council of Toledo included in the *Decretum*, the letter of Innocent III was written in response to the forced conversion of Jews. The prohibition of forced baptism assumed a more universal nature, however, and came to include non-Jews, too. For example, Thomas Aquinas (1225-1274) in his *Summa theologiae* grouped together Jews and pagans when discussing forced conversion:

[T]here are some unbelievers who have never received the Faith, such as pagans and Jews. And such men should by no means be compelled to the Faith.<sup>186</sup>

Henry of Livonia was certainly aware of the prohibitions on forced baptism, as he made an explicit reference to the legal maxim:

[A] messenger having been sent across the water, he asks if they [the Livonians] have decided to accept and to preserve the Faith. They proclaim that they do not wish to acknowledge the Faith nor want to observe it. ... The bishop answers [that], just as dogs return to vomit, they also have often returned from the Faith to paganism. The Livonians then say: 'We will do away with this reason. Only after having sent back the army, you may return with your own to your bishopric in peace; [and] you may

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*coactum, alii non absurde distinguunt, quod is qui terroribus atque suppliciis violenter attrahitur, et ne detrimentum incurrat, baptismi suscipit sacramentum...* Innocent III, 'Maiores ecclesiae' (September-October 1201) *The Church and the Jews in the Thirteenth Century: A Study of their Relations during the Years 1198-1254 (1314)*, based on the *Papal Letters and the Conciliar Decrees of the Period*, Vol. 1: 1198-1254, ed. Solomon Grayzel (New York, 1966), no. 15, pp. 100-102, at p. 102. 3 *Comp.* 3.34=X 3.42.3.

<sup>186</sup> ... *infidelium quidam sunt qui nunquam susceperunt fidem, sicut gentiles et Iudaei. Et tales nullo modo sunt ad fidem compellendi*, Thomas Aquinas, *ST II-II*, Q 10, A 8, co, p. 89.

compel those who have received the Faith to keep it, and entice others to accept it with words, not with blows.<sup>187</sup>

Henry placed emphasis on the pagans voluntarily coming to seek peace and baptism, rather than Christians forcefully converting them, thus presenting an ideal scenario of a conversion narrative.<sup>188</sup> It is noticeably clear that Henry of Livonia was fully aware of the distinction between illicit forced baptism where violence is used, and licit voluntary baptism where people are converted by preaching, and are subsequently allowed to be compelled to keep the Faith.

Usually, Henry of Livonia reported on how accepting baptism formed a part of peace-negotiations. In several cases he described the sacrament of baptism being administered immediately after peace-making:

Having seen this, the Livonians renew the peace in order to avoid greater damage, and called the clergy to them; on the first day about fifty are baptised at Holm, and on the following day about a hundred are converted at Üxküll.<sup>189</sup>

The most treacherous Lembitu is baptised with all the women, children and men who were in the castle.<sup>190</sup>

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<sup>187</sup> ... misso trans aquam nuncio querit, si fidem suscipere et susceptam servare decernant. Qui se fidem recognoscere nolle nec servare velle proclamant. ... Respondet episcopus ... quod tamquam canes ad vomitum, sic a fide sepius ad paganismum redierint. Item Lyvones: 'Causam hanc', inquit, 'a nobis removebimus. Tu tantum remisso exercitu cum tuis ad episcopium tuum cum pace revertaris, eos, qui fidem susceperunt, ad eam servandam compellas, alios ad suscipiendam eam verbis non verberibus allicias'. HCL II, 4-5, pp. 9-10; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 32 (amended).

<sup>188</sup> Henry also recognised that once baptised, one can be compelled to observe the Faith. This concept, and the justification it gave for military action, will be discussed below at pp. 192-198.

<sup>189</sup> Quo viso Lyvones, ut maioribus dampnis occurrant, pacem innovant et vocatis ad se clericis primo die in Holme circiter L baptizati sunt, sequenti die in Ykescola circiter centum convertuntur. HCL II, 7, pp. 10-11; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 33 (amended).

<sup>190</sup> Baptizatur Lembitu perfidissimus cum aliis omnibus tam mulieribus quam parvulis et viris, qui in castro erant ... HCL XVII, 7, p. 120; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 140 (amended).



Therefore, warfare that was immediately followed with baptismal rites was a relatively common occurrence. However, in other parts of the chronicle Henry refers to baptism as a crucial part of peace-negotiations, but in describing the materialisation of the conditions – e.g. the giving of hostages – immediate baptism was not mentioned:

And Master Volkwin [of the Order of the Swordbrothers (1209-1236)] asserted: ‘If you are willing,’ he said, ‘to worship with us the one God, and to be moistened by the font of holy baptism, and to give your sons as hostages, we will make a perpetual peace with you.’ And this proposal pleased the people of Warbola and they gave hostages.<sup>191</sup>

Having therefore accepted their boys, the army is pacified. Accordingly, the abbot and the provost with other priests, climbing up to them in the castle, guiding them to the beginning of the Faith, and, sprinkling the castle with blessed water, also fix the banner of Blessed Mary to the top [of the castle].<sup>192</sup>

Furthermore, at times, the postponement of baptism was explicitly mentioned:

Sprinkling with holy water all the houses, and the castle, and the men and women, and all the people, and performing a sort of initiation, they [the pagans] are catechised before baptism,

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<sup>191</sup> *Et ait magister Volquinus: ‘Si volueritis,’ inquit, ‘nobiscum unum Deum colere fonteque sacri baptismatis irrigari et filios v[e]stros obsides dare, pacem vobiscum perpetuam faciemus.’ Et placuit verbum hoc Warbolensibus et dederunt obsides. HCL XXII, 2, p. 167; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 186 (amended).*

<sup>192</sup> *Acceptis itaque pueris ipsorum mitigatur exercitus. Unde abbas et prepositus cum aliis sacerdotibus ascendentes ad ipsos in castrum, ad fidem iniciando eos instruunt et aspergentes castrum aqua benedicta et vexillum beate Marie in arce figunt ... HCL XI, 6, p. 54; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 74 (amended).*

[but] the sacrament of baptism is postponed for now because of the excessive shedding of blood previously.<sup>193</sup>

Upon returning, therefore, we finished the baptism [of Kyriawan], postponing baptising the others until their proper time.<sup>194</sup>

These and other similar passages raise the question of whether delaying the sacrament of baptism was a common occurrence, and if this was indeed the case then what might have been the reasons for doing so.

Several sections in Gratian's *Decretum* were dedicated to the idea of offering instructions in faith to those who are to be baptised in the future. Drawing on the authority of Rabanus Maurus (780-856), it stated that '[t]he office of catechism ought to prepare a man before baptism, so that he might accept the first rudiment of the Faith'.<sup>195</sup> While the *Decretum* also declares that 'however rightly a catechumen lives, yet still he cannot be saved without baptism', the importance of instruction in the Faith should not be underestimated.<sup>196</sup> Thus, it can be proposed that when the conditions allowed it, baptism was postponed for a short period of time in order to allow the pagans to be instructed in the Faith. The following passage from the chronicle of Henry of Livonia offers an example of this:

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<sup>193</sup> *Qui omnes domos et castrum et viros et mulieres cum omni populo aspergentes aqua benedicta et quammodo iniciantes, ante baptismum cathezizantur, pre nimia sanguinis effusione adhuc baptismi sacramentum differentes.* HCL XIV, 11, p. 85; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 107 (amended).

<sup>194</sup> *Unde redeuntibus consummavimus baptismum, differentes ceteros tempore suo baptizandos.* HCL XXIII, 7, p. 162; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 180 (amended).

<sup>195</sup> *Ante baptismum catecizandi debet hominem preuenire offitium, ut fidei primum catecuminus accipiat rudimentum.* Gratian, D.4 de cons., c.54, col. 1382. Indeed, Gratian reached the conclusion that 'a Catholic catechumen is preferred to a baptised heretic'. – *Catecuminus catholicus heretico baptizato preferitur.* Gratian, D.4 de cons., c.149, col. 1410. The 'auctoritas' is St. Augustine. Augustine here meant catechumens who were about to be baptised and were therefore utterly devout but were martyred before they received the sacrament of baptism.

<sup>196</sup> *Quamuis recte uiuat catecuminus, sine baptismo tamen non potest saluari.* Gratian, D.4 de cons., c.37, col. 1375. The 'auctoritas' is St. Augustine.

But after the return of the Germans from an expedition to Riga, the bishop of the Estonians [Theodoric] sent his priest Salomon to Saccalia, so that he would minister to them the Word of preaching, and would celebrate the sacrament of baptism, which they had long since sworn they would receive.<sup>197</sup>

In this description, Henry of Livonia indicated that the Saccalians had promised to receive baptism but that it had not been administered to them promptly after they had made the commitment to receive it. It is likely that this passage was connected to another one found in the chronicle before, in which ‘the Saccalians, ... having given their boys as hostages, received peace, and at the same time they promise that they will receive the sacrament of baptism’.<sup>198</sup> It is clear from the giving of hostages that the Christians were in a position of power over the Saccalians and that the latter could have been subjected to baptism by compulsion immediately after agreeing to peace. However, the Germans chose to send their priest separately to Saccalia, in order to instruct the pagans in faith and to baptise them after.

Henry did not present these passages as an act of kindness or grace towards the pagans – it was not an attempt to show the missionaries in a more positive light. It was simply a matter of practice, which coincided with canon law prescriptions set forth in Gratian’s *Decretum*. As we have seen, there were certainly instances where baptism was administered to pagans immediately after a military defeat, and even when they were not baptised immediately, the promise to convert nevertheless

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<sup>197</sup> *Post reditum vero Theuthonicorum ab expeditione in Rigam misit episcopus Estiensis sacerdotem suum Salomonem in Saccalam, ut eis predicationis verbum ministraret et baptismi sacramentum, quod iam dudum se voverant recepturos, celebraret.* HCL XV, 9, p. 99; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 119 (amended).

<sup>198</sup> ... *Saccalenses ... positis pueris suis obsidibus pacem receperunt, simul et baptismi sacramentum accepturos se promittunt.* HCL XV, 7, p. 96; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 117 (amended).

formed part of the peace-agreements and the locals simply received their baptism at some point later in time.

Thus, when it was possible, Christianity was imposed on the Livonians in a manner that conformed to the contemporary ideas of informed and unforced conversion; however, when the situation required, baptismal rites were administered immediately without previous catechetical instructions or elaborate rituals.

### APOSTASY

[1198] Now the wind filled the sails, and lo! The treacherous Livonians, emerging from their customary baths, pour the water of the Daugava River over themselves, saying: 'Here now with the riverwater we remove the water of baptism with Christianity itself, and, scrubbing off the received faith, we send it after the withdrawing Saxons.'<sup>199</sup>

With these words Henry of Livonia described one of the first documented occurrences of apostasy in Livonia, an act that became frequent over the next decades. While there were different categories of apostasy in canonical legal thought, the one that the Livonians fell under could be described as apostasy '*a perfidia*' or '*a fide*' – wholly falling away from Christian faith and converting to another religion, in this case back to their old one.<sup>200</sup> Apostasy was considered a sacrilegious crime alongside

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<sup>199</sup> *Iam vela ventus depulit, et ecce perfidi Lyvones de balneis consuetis egressi Dune fluminis aqua se perfundunt dicentes: 'Hic iam baptismatis aquam cum ipsa christianitate removemus aqua fluminis et fidem susceptam exfestucantes post Saxones recedentes transmittimus.'* HCL II, 8, p. 11; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 34 (amended).

<sup>200</sup> I have not found any evidence that canon lawyers and theologians distinguished between 'born-Christians' and 'born-pagans-but-converted' falling away from the Faith. For the development of the concepts of orthodoxy and apostasy during the first centuries A.D., see Caroline Humfress, 'Roman law, Forensic Argument and the Formation of Christian Orthodoxy (III-VI Centuries)', in *Orthodoxie, christianisme, histoire - Orthodoxy, Christianity, History: travaux du groupe de recherches "Definir, maintenir et remettre en cause l'orthodoxie dans l'histoire du christianisme"*, ed. Susanna Elm, Eric Rebillard and Antonella Romano (Rome, 2001), pp. 1-26. For the refinement of the idea of apostasy in the twelfth-century, see F. Donald Logan, *Runaway Religious in Medieval England, C. 1240-1540* (Cambridge, 2002), p. 9. For further evolvment and division between the categories of apostates in

schism and heresy, as they all disrupted the inner harmony of the Church.<sup>201</sup> Additionally, apostasy was detrimental on a spiritual level for the apostates as they were condemning their own soul.<sup>202</sup>

Was there any redemption for apostates? According to Gratian, if an apostate was repentant and willing to convert back, he was not to be deprived of penance and should be welcomed back to the community:

Therefore, most evidently it is the command by the teaching of the Lord to imbue the grace of the heavenly sacrament on those accused of a most grievous crime if they bear the penance wholeheartedly and with open confession of the sin.<sup>203</sup>

Even if someone attains the highest of evils, and then nevertheless wishes to return back to the way of virtue, He welcomes, [and] gladly embraces [him]; He does all things in order that he [i.e. the transgressor] may regain prior condition.<sup>204</sup>

Such statements, naturally, relied upon the apostate wishing to return to the Christian faith. If this was not the case, however, they were to be excommunicated

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the thirteenth-century legal thinking, see Michael Goodich, *Other Middle Ages: Witnesses at the Margins of Medieval Society*, (Pennsylvania, 1998), pp. 61-103. See also Carsten Selch Jensen, “*Verbis non verberibus*”: The Representation of Sermons in the Chronicle of Henry of Livonia’, in *Crusading and Chronicle Writing on the Medieval Baltic Frontier*, ed. Marek Tamm, Linda Kaljundi and Carsten S. Jensen (Farnham, 2011), pp. 179-206, at pp. 183-185, which argues that episodes of apostasy and the ways in which apostates were forced back to Christianity, were central themes in the composition of the chronicle of Henry of Livonia.

<sup>201</sup> Krzysztof Burczak, *Sacrilegium in Gratian’s Decretum* (Lublin, 2012), p. 43.

<sup>202</sup> Reva Berman Brown and Sean McCartney, ‘Living in Limbo: The Experience of Jewish Converts in Medieval England’, in *Christianizing Peoples and Converting Individuals*, ed. Guyda Armstrong and Ian N. Wood (Turnhout, 2000), pp. 169-191, at p. 188.

<sup>203</sup> *Ergo eidentissime Domini predicatione mandatum est etiam grauissimi criminis reis, si ex toto corde et manifesta confessione peccati penitentiam gerant, sacramenti celestis perfundendam gratiam.* Gratian, *De poen.* D.1, c.52, col. 1171. The ‘*auctoritas*’ is St. Ambrose.

<sup>204</sup> *Etiam si ad summum quis perueniat malorum, et inde tamen reuertitur uelit ad uirtutis uiam, suscipit, libenter amplectitur; facit omnia, quatinus ad priorem reuocet statum.* Gratian, *De poen.* D.3, c.28, col. 1218. The ‘*auctoritas*’ is John Chrysostom (c.347-407).

and would have faced the additional threat of possible capital punishment by secular powers.<sup>205</sup>

Beyond excommunication, apostates were allowed to be forced back to the Faith.<sup>206</sup> In 1218, Pope Honorius III had sent a reply to certain monks who had enquired about what they should do with apostate monks who could not be persuaded to resume their monastic lives.<sup>207</sup> Honorius III in his reply asserted that ‘if you wish, you can imprison such [monks] under heavy custody, so that only a miserable life is reserved for them until they recover from the wickedness of their stubbornness’.<sup>208</sup> Although Honorius only mentioned imprisonment for apostates, when the letter was inserted into the *Liber extra*, it acquired the title ‘Apostates are allowed to be imprisoned and beaten, so that they would resume the [Christian] way of life’.<sup>209</sup>

In the context of Livonia, the events usually transpired as follows: the converts apostatised, the Christians waged war on them, and finally, as part of the peace-

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<sup>205</sup> See for example Thomas Aquinas who explicitly equated heretics and apostates, and prescribed excommunication for both: ... *scilicet in poenam, interdicit Ecclesia fidelibus communionem illorum infidelium qui a fide suscepta deviant, vel corrumpendo fidem, sicut haeretici, vel etiam totaliter a fide recedendo, sicut apostatae. In utrosque enim horum excommunicationis sententiam profert Ecclesia.* – ‘... as a punishment, the Church forbids to the faithful the communion with those unbelievers who deviate from the accepted Faith, either by corrupting the Faith like heretics, or even by departing entirely from the Faith like apostates. For the Church pronounces the sentence of excommunication on both.’ Thomas Aquinas, *ST II-II*, Q 10, A 9, co, p. 90. See also Bernard Hamilton, *Religion in the Medieval West* (London, 1986), pp. 94, 149; Paola Tartakoff, ‘Conversion and return to Judaism in high and late medieval Europe: Christian perceptions and portrayals’, in *Contesting Inter-Religious Conversion in the Medieval World*, ed. Yaniv Fox, Yosi Yisraeli (London, 2017), pp. 177-194, at p. 182; B. J. Oropeza, *Paul and Apostasy: Eschatology, Perseverance, and Falling Away in the Corinthian Congregation* (Oregon, 2000), p. 11.

<sup>206</sup> See also the chapter on warfare and apostasy at pp. 192-199.

<sup>207</sup> Honorius III, ‘A nobis petiit’ (6 May 1218) *Svenskt diplomatarium*, Vol. 1, ed. Johan Gustav Liljegren (Stockholm, 1829), no. 173, p. 195. 5 *Comp.* 5.5.2=X 5.9.5.

<sup>208</sup> ... *tales, si volueris, poteris sub gravi custodia carcerare, ita, quod solummodo vita sibi misera reservetur, donec a suae praesumptionis nequitia resipiscant.* Honorius III, ‘A nobis petiit’, p. 195.

<sup>209</sup> *Apostatae incarcerationi et affligi possunt, ut habitum reassumant.* X 5.9.5. This notion seems to be employed in Livonia, too, when acts that could indicate apostasy were to be punished with flogging; see the discussion at p. 400.

agreements resulting from these wars, the apostates promised to return to Christianity. The following examples are illustrations of this development:

[1206] The rest [of the people of Holm], however, who were in the castle, are spared because of the sacrament of baptism which they had already received a while ago, and no evil is henceforth inflicted [on them].<sup>210</sup>

[1212] Whence finally surrendering themselves, they humbly beg that they would be spared, that they would immediately accept the neglected faith of Christ, that they would henceforth firmly observe all the sacraments, that they would never again recall to memory the rites of pagans. And the bishop, showing mercy to them, forbids the army to enter the castle, to kill the supplicants, [or] to deliver the souls of many to hell.<sup>211</sup>

[1217] And the Germans said to them: 'Because you have despised the sacrament of baptism which you received, and have contaminated the Faith of Christ with the counsels of the pagans and the Rus', therefore the Lord has struck you. Now, therefore, return faithfully to Christ, and we will still receive you into the fellowship of our brotherly love.'<sup>212</sup>

This should not be read as if the Christians ignored the fact that the locals had apostatised and continued to live as if nothing had happened. These passages are contextualised with constant warfare in which slaying and looting on both sides is

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<sup>210</sup> *Ceteris autem, qui in castro erant, propter sacramentum baptismi, quod iam dudum receperunt, parcitur et nichil mali deinceps infertur.* HCL X, 9, p. 39; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 60 (amended).

<sup>211</sup> *Unde tandem tradentes se ... ut parcatur eis suppliciter exorant, ut fidem Christi neglectam cicius recipiant, ut sacramentalia cuncta deinceps firmiter observent, ut ritus paganorum numquam amplius ad memoriam revocent. Misertus autem eorum episcopus exercitum prohibet, ne castrum subintrent, ne supplicantes interficiant, ne multorum animas gehenne tradant.* HCL XVI, 4, p. 109; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 128 (amended).

<sup>212</sup> *Et dixerunt eis Theuthonici: 'Quia sacri baptismi sacramenta suscepta contempsistis et paganorum ac Ruthenorum consiliis fidem Christi contaminastis, ideo percussit vos Dominus. Nunc ergo revertimini fideliter ad Christum, et adhuc recipiemus vos in fraterne dilectionis nostre consorcium.'* HCL XXI, 5, p. 144; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 163 (amended).

rampant, and warfare waged on apostates was seen as legitimate.<sup>213</sup> The crucial point, however, to bear in mind is that there was no excommunication of the apostates. This is due to the context these events are taking place in – excommunication of whole communities would have been counter-productive, as it would have been perceived as an advantage from the perspectives of the apostates in Livonia. To be excluded from the Church, i.e. being left alone, would have been a preferable situation for them, or they would not have apostatised in the first place.

Nevertheless, there was a clear change in power-relations over time and the increase in the acquisition of territory by the Christians was reflected in their treatment of the apostates. The generally lighter treatment of the relapsed pagans occurring over the first two decades of the twelfth century, saw a change towards harshness during a revolt of some apostates that started in 1222.<sup>214</sup> This was manifested at the siege of Dorpat during which the Christians discussed an appropriate punishment:

All the Christians gathered again, seeking counsel from God. Among them was Fredehelm, the guide and magistrate of the crusaders, noble and wealthy, who was speaking: 'It is necessary', he says, 'to take that castle impetuously by climbing up and a punishment to be delivered upon the evildoers to the terror of the others. For in all the castles hitherto taken by the Livonians, they have always preserved life and liberty, and the rest, therefore, have conceived no fear thereby. Now, therefore, whoever from among us shall first enter the castle by climbing up, we will exalt him with great honours, and we will give him horses and a better captive who is in the castle, except the king,

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<sup>213</sup> For example, see the context of *HCL XVI*, 4, pp. 108-111. See also the chapter on warfare and apostasy at pp. 192-198.

<sup>214</sup> The examples of treatments of the apostates cited above are from 1206, 1212 and 1217 respectively. For a brief overview of the revolt, see Christiansen, *The Northern Crusades*, p. 102.



whom we will raise above all by hanging him in the highest branch.' The advice pleased everyone.<sup>215</sup>

Relying upon counsel received from God, the Christians decided to punish the leader – but only the leader – of the apostates with death. There was also a notion of equating honour and the infliction of violence against apostates. While this passage clearly demonstrated the shifting attitudes towards locals who had relapsed, it still did not employ the use of excommunication. The Christians had certainly increased their grip over Livonia but were not yet in a position where excommunication was deemed as an effective punishment for locals.<sup>216</sup>

However, Henry mentioned a different type of social exclusion that was applied to the apostates even after they had returned to the Faith. In describing the aftermath of an upsurge in 1224, he called the Estonians treacherous (*perfidi*) and explicitly mentioned that they were not permitted to live in the castle with the Christians.<sup>217</sup> While this could be perceived as a kind of ostracisation from the physical Christian community, it is not comparable to excommunication and appears to be a practical precaution. The fact that the Christians were able to regulate and confine where locals could live, however, is a clear demonstration of the scale of power-relations shifting towards the Christians by the middle of the 1220s.

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<sup>215</sup> *Conveniunt iterum omnes christiani, consilia querentes a Deo. Inter quos erat Fredehelmus, dux et advocatus peregrinorum, nobilis ac dives, qui dicebat: 'Oportet', inquit, 'castrum istud violenter ascendendo comprehendi et vindictam de malefactoribus ad terrorem aliorum vindicari. In omnibus enim castris a Lyvonensibus hactenus expugnatis vitam et libertatem semper optinuerunt, et ideo ceteri nullos timores inde conceperunt. Nunc ergo, quicumque de nostris castrum scandendo primus intraverit, magnis eum honoribus exaltabimus et equos et captivum meliorem, qui fuerit in castro, illi dabimus, preter regem, quem in supremo ramo suspensum super omnes elevabimus.'* *Placet omnibus consilium ... HCL XXVIII, 5, pp. 203-204; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, pp. 224-225 (amended).*

<sup>216</sup> See the discussion on Material Punishments at pp. 397-411.

<sup>217</sup> *HCL XXVIII, 8.*

Conclusively, while accepting baptism was in principle supposed to be fully voluntary, apostates were permitted to be forced back to the Faith. This could manifest in either spiritual compulsion, such as excommunication, or physical enforcement, such as beating or imprisonment. In Livonia, excommunication of apostates did not occur as there were whole communities who rejected the Faith. While the relapsed were generally successfully forced back to Christianity by military activities, the consequences of such battles – if the apostates survived – were relatively mild, as prescribed by Gratian.

## MARRIAGE

Marriage has long been an integral part of Christian society in the West. Throughout the Middle Ages, the Church's understanding of marriage became the legal definitive framework that shaped – but did not always define – local laws used in courts.<sup>218</sup> The Church assumed jurisdictional authority over questions on marriage by incorporating marriage into the doctrine as one of the seven sacraments over the course of the twelfth and thirteenth centuries.<sup>219</sup> Yet it was not until the Council of Trent in 1563 when marriage was declared as one of the seven grace-conferring sacraments as a matter of dogma.<sup>220</sup>

An analysis of legislative sources on marriage divulges how it came to be understood and regulated in Christianised Europe; consequently, the abundance of scholarship on this aspect of medieval marriage testifies to the depth of inquiries

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<sup>218</sup> Georges Duby, *Medieval Marriage: Two Models from Twelfth Century France*, trans. Elborg Forster (London, 1991), pp. 17-18; Conor McCarthy, *Marriage in Medieval England: Law, Literature and Practice* (Woodbridge, 2004); James A. Brundage, *Law, Sex, and Christian Society in Medieval Europe: Collected Studies* (Toronto, 1996); Michael M. Sheenan, 'The European Family and Canon Law', in Michael M. Sheenan, *Marriage, Family, and Law in Medieval Europe: Collected Studies* (Cardiff, 1996), pp. 247-261, at p. 249; Sara McDougall, 'Women and Gender in Canon Law', in *The Oxford Handbook of Women and Gender*, ed. Judith Bennett and Ruth Mazo Karras (Oxford, 2013), pp. 163-178, at p. 165.

<sup>219</sup> The seminal works of James A. Brundage have considered the refinement of marriage laws by the Church from Late Antiquity up until the early modern times. Thus, one of the most comprehensive treatments of this topic that covers the whole Middle Ages is James A. Brundage, *Law, Sex, and Christian Society in Medieval Europe* (London, 1990); a more general work that briefly covers the topic of marriage is Brundage's *Medieval Canon Law* (Harlow, 1995), especially pp. 72-75. The connections between sexuality, marriage and canon law are considered in James A. Brundage, 'Sex and Canon Law', in *Handbook of Medieval Sexuality*, ed. Vern L. Bullough and James A. Brundage (Abingdon, 2010), pp. 33-50. Additionally, Brundage has shown how medieval canonists attempted to accommodate the arguments of theologians with realities in society in their treatment of prostitution; James A. Brundage, 'Prostitution in the Medieval Canon Law', *Signs*, Vol. 1, No. 4 (1976), pp. 825-845. The range of topics covered by Brundage in relation to medieval marriage is further illustrated by the fact that he has afforded attention to marriage legislation in Livonia, a topic that has been often overlooked in Anglophone scholarship; Brundage, 'Christian Marriage in Thirteenth-Century Livonia', pp. 313-320. The work of Brundage has demonstrated that medieval canon law was not an arcane discipline disconnected from reality, but an endeavour to make the principles of the Church applicable and functional in the world of real individual beings.

<sup>220</sup> Session 24 of the Council of Trent (1563) *Tanner 2*, pp. 764-766. See also Philip Lyndon Reynolds, *How Marriage Became One of the Sacraments: The Sacramental Theology of Marriage from Its Medieval Origins to the Council of Trent* (Cambridge, 2016), especially pp. 30-40, 556-557, 842-847; Peter Biller, *The Measure of Multitude: Population in Medieval Thought* (Oxford, 2000), pp. 21-33.

these legal sources allow us to undertake.<sup>221</sup> Additionally, an investigation into legislative regulations pertaining to marriage has helped us to gain a better understanding of social classes that tend to remain hidden in other sources.<sup>222</sup> Furthermore, by utilising textual criticism on matrimonial jurisprudence, aspects of known canonical collections, such as Gratian's *Decretum*, have been re-assessed.<sup>223</sup>

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<sup>221</sup> For example, the concept of Roman marriage has been comprehensively analysed in Susan Treggiari's *Roman Marriage: Iusti Coniuges from the Time of Cicero to the Time of Ulpian* (Oxford, 1995). For an overview of the Christianisation of marriage in the early medieval period, see Philip Lyndon Reynolds, *Marriage in the Western Church: The Christianization of Marriage during the Patristic and Early Medieval Periods* (Leiden, 1994), pp. xiii-xiv. Marjorie Ratcliffe has exemplified the well-defined role that women acquired in medieval Spanish jurisprudence; Marjorie Ratcliffe, "'Matris et munium' Marriage and Marriage Law in Medieval Spanish Legislation", *Revista Canadiense de Estudios Hispánicos*, Vol. 13 (1988), pp. 93-108. The work of Sylvia Schein has highlighted the relatively improved legalistic position of women in the Latin East compared to those in Western Europe; Sylvia Schein, 'Women in Medieval Colonial Society: The Latin Kingdom of Jerusalem in the Twelfth Century', in *Gendering the Crusades*, ed. Susan B. Edgington, Sarah Lambert (Cardiff, 2001), pp. 140-153. Gillian Kenny has shown the great influence that Anglo-Irish and Gaelic marriage laws had on each other and examined how the intermingling of two distinct legal worlds fundamentally changed the life of women in medieval Ireland; Gillian Kenny 'When Two Worlds Collide: Marriage and the Law in Medieval Ireland', in *Married Women and the Law in Premodern Northwest Europe*, ed. Cordelia Beattie, Matthew Frank Stevens (Woodbridge, 2013), pp. 53-70.

<sup>222</sup> For example, research done by Michael M. Sheenan has shown how the influence of canon law on inheritance rights affected the position of widowhood in medieval English society; see Michael M. Sheenan, 'The Influence of Canon Law on the Property Rights of Married Women in England', in Michael M. Sheenan, *Marriage, Family, and Law in Medieval Europe: Collected Studies* (Cardiff, 1996), pp. 16-300.

<sup>223</sup> Anders Winroth has demonstrated that the first recension of Gratian's *Decretum* omitted references to these canons which required an unfree person ('*servus*' or '*ancilla*') to seek for their master's permission if they wanted to marry; Anders Winroth, 'Neither Slave nor Free: Theology and Law in Gratian's Thoughts on the Definition of Marriage and Unfree Persons', in *Medieval Church Law and the Origins of the Western Legal Tradition*, ed. Wolfgang P. Müller, Mary E. Sommar (Washington, D.C., 2006), pp. 97-109, especially pp. 105-106. In Roman law, it was required that the couple obtained the consent of the *paterfamilias*, for example: *Sponsalia sicut nuptiae consensu contrahentium fiunt: et ideo sicut nuptiis, ita sponsalibus filiam familias consentire oportet*. - 'Betrothals, like marriages, take place with the consent of the parties: and therefore, as with marriages, so with betrothals the daughter's family must consent.' *Digesta Iustiniani augusti, Corpus iuris civilis*, Vol. 1, ed. Theodore Mommsen (Berlin, 1870), 23.1.11, p. 657. Likewise: *Nuptiae consistere non possunt nisi consentiant omnes, id est qui coeunt quorumque in potestate sunt*. - 'A marriage cannot take place unless all agree, that is, those who marry and those under whose authority they are.' *Digesta*, Vol. 1, 23.2.2, p. 657. For consent in Roman law more generally, see Judith Evans Grubbs, "'Pagan" and "Christian" Marriage', *Journal of Early Christian Studies*, Vol. 2 (1994), pp. 363-364; Susan Treggiari, 'Consent to Roman Marriage: Some Aspects of Law and Reality', *Echos du monde classique: Classical Views*, Vol. 16 (1982), pp. 34-44. Thus, while the later recension(s) of Gratian's *Decretum* that were widely circulated included canons that required the permission of a master to marry, Winroth's discovery of the omission furthers our understanding of the mentality and ideas of that particular Gratian who started work on the most definitive canon law collection of the Middle Ages, and also that of the society in which his collection was disseminated.

The person that is usually associated with the definitive refinement of medieval marriage law is Pope Alexander III (1159-1181).<sup>224</sup> More precisely, Charles Donahue Jr. has argued in favour of considerable consistency and structure that can be determined in Alexandrine marriage decretals.<sup>225</sup> This view has recently been challenged by Anne J. Duggan who has asserted that the search for patterns in these decretals should be abandoned because the vast majority of them were responses to individual cases with no relation to one another, and spanning more than twenty years.<sup>226</sup> Nevertheless, the importance of Alexander's influence on the development of marriage law is difficult to overestimate: more than one third of the material on marriage and family law in the *Liber extra* originated from Alexander III.<sup>227</sup>

Pope Innocent III, in contrast, has been seen not so much as an innovator but rather as the fierce implementer of previously developed Alexandrine principles, especially those pertaining to the indissolubility of marriage.<sup>228</sup> This assessment has been contested by inquiries into Innocent's decretals that rejected previous canonical tradition.<sup>229</sup> As we shall see, Innocent III challenged the conformity of matrimonial law in the context of Livonia as well.

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<sup>224</sup> James A. Brundage, 'Marriage and Sexuality in the Decretals of Pope Alexander III', in *Miscellanea Rolando Bandinelli Papa Alessandro III, Studi*, ed. Filippo Liotta (Siena, 1986), pp. 57-83, at p. 59; Kenneth Pennington, Wolfgang P. Müller, 'The Decretists: The Italian School', in *The History of Medieval Canon Law in the Classical Period, 1140-1234*, ed. Wilfried Hartmann, Kenneth Pennington (Washington, D.C., 2008), pp. 121-174, at pp. 133-134; Anne J. Duggan, 'Alexander ille meus: The Papacy of Alexander III', in *Popes, Bishops, and the Progress of Canon Law, c.1120-1234*, ed. Travis R. Baker (Turnhout, 2020), pp. 137-168; Anne J. Duggan, 'The Nature of Alexander III's Contribution to Marriage Law, with Special Reference to *Licet preter solitum* in *Popes, Bishops, and the Progress of Canon Law, c.1120-1234*, ed. Travis R. Baker (Turnhout, 2020), pp. 195-212; Anne J. Duggan, 'Master of the Decretals: A Reassessment of Alexander III's Contribution to Canon Law', in *Popes, Bishops, and the Progress of Canon Law, c.1120-1234*, ed. Travis R. Baker (Turnhout, 2020), pp. 213-258.

<sup>225</sup> Charles Donahue, Jr., 'The Dating of Alexander the Third's Marriage Decretals: Dauvillier Revisited after Fifty Years', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Kanonistische Abteilung*, lxxviii (1982), pp. 70-124.

<sup>226</sup> Anne J. Duggan, *Master of the Decretals*, pp. 387ff.

<sup>227</sup> Brundage, *Law, Sex, and Christian Society*, pp. 332, 605.

<sup>228</sup> John C. Moore, *Pope Innocent III (1160/61-1216): To Root Up and to Plant* (Leiden, 2003), p. 52.

<sup>229</sup> Constance M. Rousseau, 'The Spousal Relationship: Marital Society and Sexuality in the Letters of Pope Innocent III', *Mediaeval Studies*, 56 (1994), pp. 89-109. James A. Brundage has demonstrated that

### LEVIRATE MARRIAGE

Levirate marriage is a custom according to which the widow marries her brother-in-law.<sup>230</sup> For the Latin Church, this meant marrying within prohibited degrees, and thus considered an incestuous custom.<sup>231</sup> Levirate marriages had been strictly forbidden in the Old Testament as well, thus rendering them contrary to divine law.<sup>232</sup> Consequently, they were also forbidden within the computational framework of kinship. By the time Gratian's *Decretum* was composed in the middle of the twelfth century, one was not allowed to marry within seven degrees of kinship:

We do not permit anyone of either sex to marry their own relatives of blood or their wife's up to seven degrees of descent, or to be united with the stain of incest. Moreover, we have also added that, just as it is not permissible for any Christian to marry his own blood-relative, so it is also not permissible for

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Innocent III contradicted existing prescriptions by allowing a man to take the crusade vow without the consent of his wife; James A. Brundage, 'The Crusader's Wife. A Canonistic Quandary', *Studia Gratiana* 12 (1967), pp. 427-441, especially pp. 434-435.

<sup>230</sup> For the definition and a brief historical overview of the practice, see Elisheva Baumgarten, 'Gender and Daily life in Jewish Communities', in *Women and Gender in Medieval Europe*, ed. Judith M. Bennett and Ruth Mazo Karras (Oxford, 2016), pp. 213-228, at p. 218; the complex relations of the 'levirate marriage' law with the Tenth Commandment are discussed by Michael D. Matlock in 'Obeying the First Part of the Tenth Commandment: Applications from the Levirate Marriage Law', *Journal for the Study of the Old Testament*, 31 (2007), pp. 295-310.

<sup>231</sup> The regulations by the Church concerning prohibited degrees go back to the Early Middle Ages, and have been covered extensively in scholarly literature. Karl Ubl has examined the development of various incest prohibitions from the beginning of the sixth century, and concluded that while condemnations for incestuous degrees of kinship always existed in medieval Europe, they were relying on the Roman legal tradition in the earlier period and were considerably tightened only in the eleventh century, see Karl Ubl, *Inzestverbot und Gesetzgebung: Die Konstruktion eines Verbrechens (300-1100)* (Berlin, 2008), esp. chapter 7. Similarly, Michael M. Sheenan has traced the development of this prohibition, and likewise concluded that the Church's most stringent position on the matter finalised in the eleventh century; Michael M. Sheenan, *Marriage, Family, and Law in Medieval Europe. Collected Studies*, ed. James K. Farge (Toronto, 1997), pp. 253-254. Maddalena Betti has demonstrated that legislation against incestuous marriages became increasingly stringent already in the Carolingian world, and archbishops seized the opportunity to use charges against such marriages as political tools, see Maddalena Betti, 'Incestuous Marriages in Late Carolingian Ravenna: The *causa Deusdedit* (878-81)', *Early Medieval Europe*, Vol. 23 (2015), pp. 457-477.

<sup>232</sup> Lev. 18:16: *turpitudinem uxoris fratris tui non revelabis quia turpitude fratris tui est.* – 'You shall not uncover the nakedness of your brother's wife; it is your brother's nakedness.'

him to marry a blood-relative of his wife, because of the unity of the flesh.<sup>233</sup>

As levirate marriage meant marrying one's deceased brother's widow, and the marriage had established a relationship between the two spouses, levirate marriages were conducted within two degrees of relationship.<sup>234</sup> Although the Fourth Lateran Council in 1215 reduced the prohibited degrees to four, levirate marriages remained well within the limits of forbidden degrees.<sup>235</sup>

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<sup>233</sup> *Nullum in utroque sexu permittimus ex propinquitate sanguinis sui uel uxoris usque in septimum generis gradum uxorem ducere, uel incesti macula copulari. Preterea illud quoque adiecimus, quia, sicut non licet cuiquam Christiano de sua consanguinitate, sic etiam nec licet de consanguinitate uxoris suae coniugem ducere propter carnis unitatem.* Gratian, C.35 q.2 c.7, col. 1265. The 'auctoritas' is the Third Council of Orléans (538), wrongly attributed to Pope Julius I (337-352). For a concise overview of Gratian's treatment of incestuous relationships, see Anders Winroth, 'Gratian', in *Christianity and Family Law* (Cambridge, 2017), pp. 134-145, at pp. 143-144.

<sup>234</sup> Calculating degrees of relationship was a complex process, see for example the explanation given by Raymond of Penyafort on how to calculate degrees of consanguinity: *Gradus est habitudo distantium personarum, qua cognoscitur quota generationis distantia duae personae inter se differunt. Gradus ita computantur in linea ascendenti, pater mater sunt in primo gradu; auia in tertio; abauus abauia in quarto. in descendenti vero hoc modo computantur, filius filia sunt in primo gradu; nepos neptis in secundo; pronepor proneptis in tertio; abnepos abneptis in quarto, in transuersali linea ita computantur secundum canones, duo fratres sunt in primo gradu; filii duorum fratrum in secundo, nepotes eorum in tertio, pronepotes eorum in quarto: ultra quem gradum nulla est hodie consanguinitas, sicut nec olim ultra septimum gradum progrediebatur.* – 'A degree is the relationship between distant persons whereby it is known by how much generational distance they differ between themselves. Degree is computed in the following way. In the ascending line: father and mother are in the first degree; grandfather and grandmother in the second; great grandfather, great grandmother in the third; great great grandfather, great great grandmother in the fourth. In the descending line they are computed in this way: son, daughter in the first degree; grandson, granddaughter in the second degree; great grandson, great granddaughter in the third; great great grandson, great great granddaughter in the fourth. In the transverse line they are computed thus: according to the canons two brothers are in the first degree; sons of two brothers in the second; their grandchildren in the third; great grandchildren in the fourth. No consanguinity goes beyond this degree today, just as in the past it did not go beyond the seventh degree.' Raymond of Penyafort, 'Summa de matrimonio' in *Summa Sti. Raymundi de Peniafort Barcinonensis Ord. Praedicator. De poenitentia et matrimonio cum glossis Ioannis de Friburgo* (Roma, 1603), pp. 503-584, VI.4, at p. 534; English translation from Raymond of Penyafort, *Summa on Marriage*, ed. and trans. Pierre Payer (Toronto, 2005), pp. 40-41.

<sup>235</sup> *Prohibitio quoque copulae coniugalis quartum consanguinitatis et affinitatis gradum de caetero non excedat, quoniam in ulterioribus gradibus iam non potest absque gravi dispendio huiusmodi prohibitio generaliter observari.* – 'Moreover the prohibition against marriage shall not in future go beyond the fourth degree of consanguinity and of affinity, since the prohibition cannot now generally be observed to further degrees without grave harm.' Constitution 50 of the Fourth Lateran Council (1215) *Tanner 1*, p. 257. d'Avray has remarked that this Constitution was essentially taking 'the exalted idea of indissolubility out of the ivory tower and into the world of power politics'; David d'Avray, *Medieval Marriage: Symbolism and Society* (Oxford, 2005), p. 104.

The number of sources pertaining to levirate marriage in medieval Livonia is extremely limited: only one papal letter dealing with the matter survives. The letter ‘Deus qui ecclesiam’ was issued at the very beginning of the Livonian mission by Pope Innocent III and it was a reply to a series of petitions sent by Albert, the bishop of Riga.<sup>236</sup> While the petitions of Bishop Albert are lost, the response of Innocent survives.<sup>237</sup> The letter ‘Deus qui ecclesiam’, dating from 19 April 1201, was eventually inserted into the *Compilatio tertia* and the *Liber extra*, perhaps precisely because of how extraordinary and controversial it was.<sup>238</sup> The part of the letter discussing the custom of marriage reads as follows:

Indeed, since in contracting marriages the rite in the Livonian Church recently converted to the Catholic faith is different from ours, because they do not observe the canonical distinction in either consanguinity nor affinity, and they are accustomed to unite indistinctly the widows of [their deceased] brothers to themselves, lest on this account they are drawn back from the proposed good, since some of them will not be willing to believe unless you allow them to retain the widows of their brothers while you were not willing to accept them in baptism unless they dismissed such [wives]; on account of the novelty and infirmity of the same people, we grant that they may enjoy the contracted marriages with the widows of

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<sup>236</sup> The petitions are mentioned at *HCL* IV, 6, p. 14. These petitions do not survive.

<sup>237</sup> Innocent III, ‘Deus qui ecclesiam’ (19 April 1201) Michele Maccarrone, ‘I Papi e gli inizi della christianizzazione della Livonia’, in *Gli inizi del christianesimo in Livonia-Lettonia. Atti del Colloquio Internazionale di Storia Ecclesiastica in Occasione dell’VIII Centenario della Chiesa in Livonia* (Vatican City, 1989), pp. 31-80, at pp. 78-80. The letter is also available in *LUB* 1, no. 13, cols. 15-18, but it is wrongly dated to 1199. The letter was dissected into three parts and each assigned to a different portion of decretal collections: 3 *Comp.* 3.1.2=X 3.1.11; 3 *Comp.* 4.14.3=X 4.19.9 and 3 *Comp.* 5.20.1=X 5.38.8. See also Henry of Livonia, Henry of Livonia, *The Chronicle of Henry of Livonia*, ed. and trans. James A. Brundage (New York, 2003), p. 38 note 30; Brundage, ‘Christian Marriage in Thirteenth-Century Livonia’, p. 315. Michele Maccarrone has seen the letter so important and crucial for the ‘young Church’, that he called it the ‘*magna carta*’ of the conversion of Livonia; Maccarrone, ‘I Papi e gli inizi della christianizzazione della Livonia’, p. 77.

<sup>238</sup> The part of the letter relevant to marriage customs was inserted into 3 *Comp.* 4.14.3 and the *Liber extra* at X 4.19.9.



brothers only if they contracted with such [widows] to brothers deceased without an issue, so that they could raise the seed of the deceased according to the Mosaic law, provided that from now on they should not contract such forbidden unions after they have come to the Faith.<sup>239</sup>

Innocent was presented with a difficult situation in which the Livonian mission had just begun and was on very fragile ground. The time it took for the Christians to find a more secure foothold in the Northern Baltics is illustrated by the fact that the so-called ‘Estonian mission’, that is, the spreading of Christianity northward from Riga, began around 1208.<sup>240</sup> Yet, writing seven years later, in 1215, Henry explained that after the priests had gone to baptise several regions in Estonia; they returned because ‘they were not yet able to live with them because of the hostility of the other Estonians’.<sup>241</sup> Therefore it is not unlikely that, instead of invalidating the pagan marriages without further consultation, as levirate marriages clearly violated divine law, Bishop Albert realised that he would struggle to achieve success in converting Livonia if he decided to follow the prescriptions of the lawbooks at that time. Although he was not able to go to Rome himself, Bishop Albert sent Theodoric of

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<sup>239</sup> *Quia vero in matrimoniis contrahendis dispar est ritus in Livoniensium ecclesia de novo ad fidem catholicam conversorum a nostro, quum in consanguinitate vel affinitate distinctionem canonicam non attendant, et relictas fratrum indistincte sibi consueverint copulare: ne propter hoc a bono proposito retrahantur, quum nec quidam eorum voluerint credere, nisi relictas fratrum eos pateremini retinere, nec vos eos, nisi tales dimitterent, recipere volueritis ad baptismum, propter novitatem et infirmitatem gentis eiusdem concedimus, ut matrimoniis contractis cum relictis fratrum utantur; si tamen, fratribus decedentibus sine prole, ut semen defuncti iuxta legem Mosaicam suscitarent, cum talibus contraxerunt; ne tales sibi de cetero, postquam ad fidem venerint, copulent, prohibentes.* Innocent III, ‘Deus qui ecclesiam’, p. 79.

<sup>240</sup> In the manuscripts of *HCL*, the section carries the title *Incipit liber quartus de Estonia*. – ‘The Book IV about Estonia begins’, *HCL* XII, 6, p. 61; Rps BOZ 25, fol. 31r. It is omitted from the English translation by Brundage.

<sup>241</sup> ... *nondum valentes cohabitare cum eis propter aliorum Estonum ferocitatem.* *HCL*, XIX, 4, p. 127; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 147 (amended).

Treiden who must have been successful in conveying the seriousness of the situation to Innocent III.<sup>242</sup>

The fact that Bishop Albert even mentioned the custom of levirate marriage in his petition to Innocent sheds some light on the process of conversion. Bishop Albert must have been actively examining the customs of the locals and deemed this one worthy of the pope's attention. That he did not decide to overlook the issue at the time speaks volumes about the theological view Bishop Albert had about marriage. At the same time, he must have been convinced that if there was even a slight chance of a dispensation or at least of further advice from the pope, his mission in Livonia might assume better prospects. Indeed, a papal letter survives from 1211 which reminded Bishop Albert and its other recipients that if anyone wishes to remain married within prohibited degrees, a papal dispensation is required, and such dispensation should not be acquired through deception.

The letter 'Ad nostrum noveritis' of Innocent III from 1211, concerned a certain man from Lund, which was (and still is) a town in Sweden, the letter certainly reached Livonia as well, as one of the addressees was Bishop Albert of Riga.<sup>243</sup> In the letter, Innocent III explained that a man named Strango had obtained a dispensation for his marriage, contracted within four degrees, which at time was prohibited, as we have seen.<sup>244</sup> Strango had claimed that he had had no knowledge of the kinship before he contracted the marriage, and wished to remain married to his wife. Innocent III on his part said that it had become known to him that the dispensation was obtained 'by

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<sup>242</sup> For Theoderic of Treiden, see pp. 259, 266, 292-294, 374-375.

<sup>243</sup> Innocent III, 'Ad nostram noveritis' (7 November 1211) *Die Register Innocenz* 14, no. 121, pp. 182-183, at p. 182

<sup>244</sup> Innocent III, 'Ad nostram noveritis', pp. 182-183. At the Fourth Lateran Council, the prohibited degrees of kinship were expanded to seven, which means that the marriage of Strango would have become licit after 1215, see footnote no. 235 at p. 79.

suggestion of falsehood and the suppression of truth'.<sup>245</sup> The pope then asserted that 'if this bond is permitted, many will aspire to illicit contracts by the example of him, and will not be able to be held together by them'.<sup>246</sup> The letter bore a clear message to its addressees, one of whom was the bishop of Riga: remaining married within prohibited degrees was only possible if the parties obtained a dispensation from the pope, and that the bar set for such marriages to be valid, was high.

Bishop Albert clearly knew of the grave canonical violations in the custom of levirate marriage, or he would not have sought advice from the pope himself. He also must have understood the importance this custom had for local peoples and that he needed a working compromise. This he did receive and with the 'Deus qui ecclesiam', Innocent set a precedent that had a long legacy, as will be shown below.<sup>247</sup>

The custom of levirate marriages in Livonia probably faded away, as there are no traces of it in any of the other sources outside of the letter 'Deus qui ecclesiam' from 1201.<sup>248</sup> Since Innocent III's response allowed current marriages to continue but forbade any new ones within the prohibited degrees, the change in matrimonial customs poses another question. Clearly, the continuity of their customs was of

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<sup>245</sup> ... *per suggestionem falsitatis et veritatis suppressionem* ... Innocent III, 'Ad nostram noveritis', p. 183.

<sup>246</sup> ... *si huiusmodi copula permittatur, quamplures exemplo ipsius ad contractus illicitos aspirabunt nec ab eis poterunt cohiberi*. Innocent III, 'Ad nostram noveritis', p. 183.

<sup>247</sup> However, this was not the first time that Innocent III had pushed the boundaries of his pontifical authority. Already in 1198, he had sent a reply to the archbishop of Armagh, concerning the admittance of women into the church building after they have given birth. In this, relying on the Gospel of John, Innocent instructed that if the women desired to give thanks, they should be allowed into the church: ... *quia tamen lex per Moysen data est, gratia et veritas per Jesum Christum facta est*. – '[F]or the law was given through Moses, grace and truth came through Jesus Christ [John 1:17]'. Innocent III, 'Volens fraternitas tua' (September-December 1198) *Die Register Innocenz* 1, no. 63, pp. 93-94; *X 3.47.1=3 Comp.* 3.36.1. Instructions and dispensations such as these demonstrate that Innocent approached many issues presented to him from both a compassionate and practical point of view. See also Constance M. Rousseau, 'Gender Difference and Indifference in the Writings of Pope Innocent III', *Studies in Church History*, 34 (1998), pp. 105-117, at p. 108.

<sup>248</sup> Innocent III, 'Deus qui ecclesiam'. By contrast, Vija Stikāne has claimed that 'the influence of the Canon Law on the family traditions [in the Baltic Sea region] is seen later than in the western parts of the Latin Christian world'; Stikāne, 'The Legal Status of Women in Livonia', p. 194. Yet, the prohibition of conducting levirate marriages after baptism is clear evidence that canon law regulations were having an impact on local societies already at the beginning of the Christianisation process in Livonia.

utmost importance to the Livonians, or they would not have set it as a condition for conversion. Why were the Livonians so adaptive when they had clearly perceived the custom of levirate marriage so crucial to their society? It would be easy to dismiss this question by pointing to the increased authority of the Church in Livonia.<sup>249</sup> However, even in the case of changing power-relations, the resistance of the Livonians to the change of customs must have left a mark in the sources. One way to partially understand the reasons why the Livonians might have agreed to such adjustments is by examining the distinct roles exo- and endogamous marriages have had in societies.<sup>250</sup> One of the benefits of the ancient custom of levirate marriage is explained in the Bible:

When brothers reside together, and one of them dies and has no son, the wife of the deceased shall not be married outside the family to a stranger. Her husband's brother shall go in to her, taking her in marriage, and performing the duty of a husband's brother to her, and the firstborn whom she bears shall succeed to the name of the deceased brother, so that his name may not be blotted out of Israel.<sup>251</sup>

Thus, levirate marriage could be utilised to continue the bloodline of the deceased. It is also important to emphasise that in ancient societies, where this

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<sup>249</sup> For a brief overview of the gradual subjugation of Livonia, see Christiansen, *The Northern Crusades*, pp. 93-104, 109-113.

<sup>250</sup> For a comparison between endo- and exogamous matrimonial alliances in the context of Western vs Eastern cultures, and their perceived advantages, see Jack Goody, *The Development of the Family and Marriage in Europe* (Cambridge, 1983), pp. 31-33, but see pp. 187-188 for some rare examples from the European context where endogamous marriages were effectively banned as well. A few cases of incestuous marriages within the first degree because of affinity by marriage were brought to the courts in 15<sup>th</sup>-century Belgium, although impediments of consanguinity and of affinity by illicit intercourse were much more common, see Monique Vleeschouwers-Van Melkebeek, 'Incestuous Marriages: Formal Rules and Social Practice in the Southern Burgundian Netherlands', in *Love, Marriage, and Family Ties in the Later Middle Ages*, ed. Isabel Davis, Miriam Müller and Sarah Rees Jones (Turnhout, 2003), pp. 77-96, at pp. 89-92.

<sup>251</sup> *quando habitaverint fratres simul et unus ex eis absque liberis mortuus fuerit uxor defuncti non nubet alteri sed accipiet eam frater eius et suscitabit semen fratris sui et primogenitum ex ea filium nomine illius appellabit ut non deleatur nomen eius Israhel. Deut. 25:5-6.*

custom was practised, the bride was often seen as belonging to the whole family.<sup>252</sup> Additionally, levirate marriage eliminated the need to pay for another dowry in order to acquire a new bride.<sup>253</sup> James A. Brundage has also argued that the custom of levirate marriages was the reason why local pagans carried off each other's wives during conflicts, as attested by Henry of Livonia – it was this way in which the winning group of pagans ensured that the surviving kinsmen of the defeated group could not continue their bloodline according to their customs.<sup>254</sup>

We know that pre-Christian Livonia was inhabited by small linguistically and ethnically diverse tribes, who alternated between forging alliances and raiding each other's lands.<sup>255</sup> The chronicle of Henry of Livonia is filled with evidence to this effect; in fact, the Christian forces, on occasion, even allied themselves with the Semgallian pagan tribes to help them 'in revenge on their enemies'.<sup>256</sup> The subjugation of these regions meant that the warring of the local tribes was gradually lessened, which in turn may have improved the prospect of exogamous marriage. While it would be too simplistic to claim that the Church brought ultimate peace to Livonia, the incorporation of these regions under the authority of the Church must have made interactions and relations between different groups easier and safer compared to the immediate pre-Christian period.<sup>257</sup> Furthermore, as the local peoples were subjugated after one another, and as the activity of warfare in these regions decreased (but never

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<sup>252</sup> Marten Stol, *Women in the Ancient Near East* (Berlin, 2016), pp. 296-299.

<sup>253</sup> Dvora E. Weisberg, 'The Widow of Our Discontent: Levirate Marriage in the Bible and the Ancient Israel', *Journal for the Study of the Old Testament*, 28 (2004), pp. 403-429, at p. 409.

<sup>254</sup> Brundage, 'Christian Marriage in Thirteenth-Century Livonia', p. 318.

<sup>255</sup> Kala, 'The Incorporation of the Northern Baltic Lands', pp. 4-6; William Urban, 'The Frontier Thesis and the Baltic Crusade', in *Crusade and Conversion on the Baltic Frontier*, ed. Alan V. Murray (Aldershot, 2001), pp. 45-71, at p. 58.

<sup>256</sup> ... *in ultionem inimicorum*. *HCL X*, 10, p. 40.

<sup>257</sup> There were still natural obstacles that obstructed communication and travel; such natural borders are important reasons for heterogeneity among the local peoples that have persisted to the modern day: Heiki Valk, 'Sacred Natural Places of Estonia: Regional Aspects', in *Medieval Archaeology. Volume 2: The Medieval Landscape*, ed. Roberta Gilchrist, Gemma L. Watson (Abingdon, 2017), pp. 450-466.

disappeared), deaths due to warfare would have similarly decreased, encouraging brothers to find brides of their own rather than wait for the premature death of their siblings.

After compiling the *Liber extra*, Raymond of Penyafort composed his own treatise on marriage, entitled *Summa de matrimonio* (*Summa on Marriage*). While he dedicated a chapter to marriage between spouses of ‘dissimilar religion’, in which he heavily relied on the section of the *Liber extra* that dealt with divorce and in which the ‘Deus qui ecclesiam’ can also be found, he did not mention the controversial decretal at all. In a stark contrast, he instead stated the following:

What if Jews or pagans married blood relatives in accord with their own rites? Do they remain joined in that way after conversion? You should say yes because for unbelievers it is a true marriage; they are not constrained by canonical constitutions; marriages are not dissolved by the sacrament of baptism, but crimes are forgiven. But I understand this to be the case unless they shall have married within degrees prohibited by divine law. [See:] Leviticus 18.<sup>258</sup>

While Raymond clearly knew of the existence of ‘Deus qui ecclesiam’, he chose not to include it in his own treatment of marriage and indirectly refuted its validity by stating that marriage within the degrees prohibited by divine law, even in the case of non-Christians, is invalid. In fact, even the major commentators on the *Liber extra*

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<sup>258</sup> *Quid si Iudaei, vel Pagani contraxerunt cum consanguineis, secundum ritus suos, numquid post conversionem remanebunt taliter copulati? Dicas quod sic; quia apud infideles verum est matrimonium: non enim arctantur canonicis constitutionibus, et per sacramentum baptismi non soluuntur coniugia, sed crimina dimittuntur. Hoc tamen intelligo, nisi contraxissent in gradibus diuina lege prohibitis. leuit. cap. 18. q.* Raymond of Penyafort, ‘Summa de matrimonio’, X.2, p. 548; translation from Raymond of Penyafort, *Summa on Marriage*, p. 52. The ‘auctoritates’ here are Gratian, D.26. C.4, cols. 97-98 and the letter ‘Gaudemus in Domino’ of Innocent III from February-April 1201 (X 4.19.8=3 *Comp.* 4.14.2), *Pothast* 1325. The letter ‘Gaudemus in Domino’ was inserted into the *Liber extra* at X 4.19.8, just before the decretal ‘Deus qui ecclesiam’ at X 4.19.9, so Raymond of Penyafort who had compiled the *Liber extra*, certainly knew of its existence.

avoided discussing 'Deus qui ecclesiam'. For example, neither Pope Innocent IV nor Huguccio commented on the letter.<sup>259</sup> Nevertheless, the fact that the initial letter was inserted into the *Compilatio tertia* and the *Liber extra* in the first place, gave it the status of a decretal and thus a significant position in canon law.

The relevance of the decretal 'Deus qui ecclesiam' was resurrected through the divorce proceedings of Henry VIII (1491-1547) centuries later. As Henry was married to Catherine of Aragon, who had also been the wife of his deceased brother, Henry argued that his marriage should be annulled on the grounds that she was related to him within prohibited degrees via her previous marriage. However, the dispensation offered to the Livonians in 1201 posed an irresolvable obstacle to Henry and his lawyers in their attempt to obtain an annulment.<sup>260</sup>

Henry of Livonia, who lived among both converts and pagans as a priest, did not mention the practice of levirate marriages. The lack of evidence in his chronicle could be partly because of the following: Henry had arrived in Livonia in 1205.<sup>261</sup> Therefore, several years had passed between the issuing of 'Deus qui ecclesiam', in 1201 and the time when Henry started his clerical work in Livonia.

While Henry was aware of many of the most important letters and petitions sent from Livonia to Rome, and of the *responsa* these might have received, it is likely that, in most cases, Henry did not have access to the individual letters and their full

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<sup>259</sup> Innocent IV listed the letter but does not say anything about it, *Apparatus ad X* 4.19.8, p. 484. Similarly, Hostiensis covered the subsection of *De divortiis* under which 'Deus qui ecclesiam' was listed in the *Liber extra* (X 4.19), but did not comment on the specific letter; Hostiensis, *Summa aurea* (Cologne, 1612), cols. 1400-1408.

<sup>260</sup> On the relevance of 'Deus qui ecclesiam' in these proceedings, see J. J. Scarisbrick, *Henry VIII* (Berkeley and Los Angeles, 1968), especially pp. 179-180.

<sup>261</sup> *HCL* XI, 7, p. 55; see also Introduction at p. 33.

contents.<sup>262</sup> Nevertheless, the practice of levirate marriage mentioned in ‘Deus qui ecclesiam’ would have likely caught Henry’s attention due to its highly controversial nature.<sup>263</sup> Even in many pre-Christian societies, such marriages were often seen as incestuous and therefore forbidden.<sup>264</sup> Henry mentioned the peculiarities of local customs quite often, from the attempts to wash off the baptismal rite to making peace by effusing blood.<sup>265</sup> Instead of suspecting Henry in ignorance or selectiveness, it is more plausible that by the time he started his ministry in 1208, the custom of levirate marriage among the converted Livonians was disappearing, and without having access to the decretal ‘Deus qui ecclesiam’, Henry simply did not know of its precise contents. Additionally, while the Livonians had practised levirate marriage, it did not mean that other still-pagan peoples also followed the custom; rather, it is possible that, for example, the Estonians did not practise levirate marriage at all.

### *THE NATURE OF MARRIAGE*

The concept of marriage under Christian terms might not have been fully compatible with the perception that the Livonians had of marriage, even if they were not conducted within prohibited degrees. This can be illustrated by an event that Henry of Livonia mentions while describing the apostasy of the local peoples:

And they took back their wives who had been sent away during the time of Christianity; and they dug out of graves the bodies

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<sup>262</sup> Iben Fonnesberg-Schmidt, ‘Riga and Rome: Henry of Livonia and the Papal Curia’, in *Crusading and Chronicle Writing on the Medieval Baltic Frontier: A Companion to the Chronicle of Henry of Livonia*, ed. Marek Tamm, Linda Kaljundi, Carsten Selch Jensen (London, 2011), pp. 209-227, at p. 215.

<sup>263</sup> The contradictions with canonical prescriptions were clearly spelt out in the letter itself: ... *in consanguinitate vel affinitate distinctionem canonicam non attendant ...* – ‘[T]hey do not observe the canonical distinction in either consanguinity or affinity ...’ Innocent III, ‘Deus qui ecclesiam’, p. 79.

<sup>264</sup> Brundage, *Law, Sex, and Christian Society*, p. 130; Suzanne Fonay Wemple, *Women in Frankish Society: Marriage and the Cloister, 500 to 900* (Philadelphia, 1981), pp. 36-37.

<sup>265</sup> The attempts to wash off the baptismal rite are described several times, for example: *HCL* I, 9, p. 4; XXVI, 8, p. 191. The effusion of blood is mentioned at *HCL* V, 2, p. 16 (*HCL* V, 3, p. 39 in English translation by Brundage).



of their dead [who had been] buried in cemeteries, and cremated them according to their old pagan custom, and, washing themselves and their houses and castles with water and cleansing with brooms, they tried in such way to erase entirely the sacrament of baptism in their lands.<sup>266</sup>

The passage has been seen as an indication of the polygamous tendencies among the Livonians.<sup>267</sup> Indeed, this notion seems to be reinforced by another description in Henry's chronicle:

They [the pagan Oeselians] were accustomed to inflict many miseries and depravity upon their captives, both the young women and virgins, at all times, mocking them and taking others as their wives, each [taking] three or two or more, permitting themselves the illicit, because there is no suitable union of Christ with Belial [2 Cor. 6:15], nor a harmonious union between a pagan and a Christian<sup>268</sup>

One more possible hint about Livonian polygamous marriages comes from the letter 'Venerabilibus fratribus nostris' of Gregory IX, issued in 1236.<sup>269</sup> In this, the pope stated:

Furthermore, the abovementioned neophytes may freely keep their first wives, which they have obtained before the grace of

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<sup>266</sup> *Et receperunt uxores suas, tempore christianitatis dimissas, et corpora mortuorum suorum, in cemeteriis sepulta, de sepulchris effoderunt et more paganorum pristino cremaverunt et se et domos suas et castra lavantes aquis et scopis purgantes, taliter baptismi sacramenta de finibus suis omnino delere conabantur.* HCL XXVI, 8, p. 191; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 210 (amended). See also the discussion on apostasy at pp. 68-74.

<sup>267</sup> Colish, *Faith, Fiction and Force in Medieval Baptismal Debates*, pp. 273-274; Sven Ekdahl, 'Crusades and Colonisation in the Baltic: A Historiographic Analysis', in *The North-Eastern Frontiers of Medieval Europe*, ed. Alan V. Murray (Farnham, 2014), pp. 1-42, at p. 8; Benninghover, *Der Orden der Schwertbrüder*, p. 24.

<sup>268</sup> *Qui multas miserias et nequicias cum captivis et mulierculis et virginibus exercere solebant omni tempore, illudentes eas et copulantes alias sibi in uxores, tres unusquisque vel duas vel plures, licitantes sibi illicita, cum non sit coniunctio conveniens Christi cum Belial [2 Cor. 6:15] nec pagani copula congrua cum christiana ...* HCL XXX, 1, p. 216; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 238 (amended).

<sup>269</sup> Gregory IX, 'Venerabilibus fratribus nostris' (23 February 1236) *DD* 1:6, no. 215, pp. 279-281. For the context of the letter, see the discussion on Baldwin of Alna at pp. 339-347.

baptism, with the exception, however, of those whom divine law forbids them to have. After baptism, however, canonical sanctions will remain in the contracting of marriages.<sup>270</sup>

As we have seen, levirate marriages were prohibited by divine law.<sup>271</sup> Thus, if Gregory IX had been talking about levirate marriages in his letter, then he would not have allowed them to keep their wives.<sup>272</sup> Additionally, the letter mentions ‘first wives’, indicating that there were further women who were seen as something akin to wives.<sup>273</sup>

Therefore, it is indeed possible that alongside the practice of levirate marriage, the Livonians also practised matrimonial customs that to Christians resembled polygamous practices. It cannot be known to what extent Henry of Livonia and his contemporaries were aware of polygamy as a custom and concept outside of the Old Testament where many important figures, such as David, had multiple wives, but it is not impossible that they had heard of other communities elsewhere in Europe practicing such marriages.<sup>274</sup>

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<sup>270</sup> *Preterea supradicti neophiti libere primas uxores suas retineant quas ante baptismi gratiam acceperunt hiis dumtaxat exceptis quas habere prohibet lex diuina. Post baptismum autem in matrimoniis contrahendis seruent canonicas sanctiones. Ideoque mandamus quatinus quod a nobis super premissis ordinatum est faciens inuiolabiliter obseruari.* Gregory IX, ‘Venerabilibus fratribus nostris’, p. 281.

<sup>271</sup> See the discussion on levirate marriage at pp. 78-79.

<sup>272</sup> See the quotation of Raymond of Penyafort above in footnote no. 258 at p. 86 which explicitly acknowledges that some pagans might contract marriages within prohibited degrees but not contrary to divine law. Also note that the letter ‘Deus qui ecclesiam’ set conditions for a levirate marriage to be valid, see pp. 80-82. Thus, a blanket permission to continue levirate marriages would have been a step further from ‘Deus qui ecclesiam’.

<sup>273</sup> Gregory IX, ‘Venerabilibus fratribus nostris’, p. 281.

<sup>274</sup> For David and his wives, see for example 1 Sam. 25:39-44; 2 Sam. 3:2-5; 2 Sam. 5:13-16. For more examples of polygamy in the Old Testament, see Gilbert Bilezikian, *Beyond Sex Roles: What the Bible Says About a Woman's Place in Church and Family* (Michigan, 2004), pp. 61-62; Pamela S. Mann, ‘Toward a Biblical Understanding of Polygamy’, *Missiology: An International Review*, Vol. 17 (1989), pp. 11-26, at p. 16. For polygamy in the Bible more generally, see Geoffrey Parrinder, *The Bible and Polygamy: A Study of Hebrew and Christian Teaching* (London, 1950). Polygamy was also practised among the Jewish communities both in Castile and Aragon as late as in the fifteenth century; see Dora Zsom, *Conversos in the Responsa of Sephardic Halakhic Authorities in the 15<sup>th</sup> Century* (New Jersey, 2014), pp. 26-28; Avraham Grossman, *Pious and Rebellious: Jewish Women in Medieval Europe* (London, 2004), 84-87. As another example, levirate marriages – and polygamy – were common in the medieval

At the same time, polygamous marriages were strictly condemned in canon law.<sup>275</sup> Thus, Gratian's *Decretum* stated:

In the beginning, one rib was made into one woman. 'And they shall be,' he says, 'two in one flesh' (Gen. 2:24), not three, not four, or any other several besides two. First, the bloodthirsty and murderous Lamech divided one flesh into two wives; the one penalty of deluge destroyed fratricide and digamy: one was vindicated seven, the other seventy-seven times. As much as they are distant in number, so are they in crime as well.<sup>276</sup>

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Mongolian matrimonial custom, see Rodica Pop, 'Levirate and Polygamy as Features of the Mongolian Medieval Wedding Ritual', in *Mongolian Studies in Europe. Proceedings of the Conference held on November 24-25, 2008 in Budapest*, ed. Birtalan Agnes (Budapest, 2010), pp. 87-92, although it is doubtful that Henry of Livonia knew anything of the Mongols or their customs at the beginning of the thirteenth century. See also James P. Breckenridge, 'Old Testament Teaching on Polygamy', *Torch Trinity Journal*, Vol. 7 (2004), pp. 10-30, which, after examining the status of polygamy in the Old Testament, reflects on the importance of polygamy to many modern African cultures and poses the question that was already asked by Bishop Albert about levirate marriages more than seven hundred years ago – should potential converts to Christianity be allowed to remain married in ways that are not compatible with Christian understandings of marriage if they refuse to convert otherwise?

<sup>274</sup> *Una costa a principio in unam uxorem uersa est. 'Et erunt,' inquit, 'duo in carne una,' (Gen. 2:24) non tres, neque quatuor, alioquin non duo, sed plures. Primus Lamech sanguinarius atque homicida unam carnem in duas diuisit uxores; fratricidium et digamiam eadem cataclismi pena deleuit: de altero septies, de altero septuagies septies uindicatum est. Quantum distant in numero, tantum et in crimine.* Gratian, C.31 q.1 c.10, cols. 1111-1112. The 'auctoritas' is St. Jerome (c.342/347-420).

<sup>275</sup> As was concubinage which had received heightened attention in the context of the eleventh-century reform. The movement focused on married clergy and condemned both wives and concubines of the clergy. For a comprehensive overview of clerical marriage and concubinage in the Middle Ages, chiefly focusing on the period between the eleventh-century reform movement and the Reformation, see Ruth Mazo Karras, *Unmarriages: Women, Men, and Sexual Unions in the Middle Ages* (Philadelphia, 2012), pp. 115-164. Georges Duby has pointed out how the reformists were faced with the dichotomy where they wished to emphasise the importance of clerics remaining chaste for the sake of keeping the sacred and the profane separated, and also not condemning marriage as polluting, as many heretical groups had done. Georges Duby, *The Knight, the Lady and the Priest: The Making of Modern Marriage in Medieval France* (New York, 1983), pp. x, 118-120. See also Christopher N. L. Brooke, *The Medieval Idea of Marriage* (Oxford, 2002), pp. 131-134, which examines the two seemingly dichotomic strands of thought relating to marriage in the Middle Ages: on one hand, because the marriage of Joseph and Mary was perfect, staying virgin was the ideal scenario. On the other hand, according to Pauline teachings, rendering a conjugal debt onto each other in marriage was an obligation, and a refusal would have made the marriage incomplete. The analysis of medieval sermons by David d'Avray has clearly demonstrated that, at least partly due to the success of the Cathars, preachers started to increasingly emphasise the goodness of marriage via common topoi, such as Christ having been present at a marriage feast, thus implying God's approval of marriage; see d'Avray, *Medieval Marriage*, pp. 65-73.

<sup>276</sup> *Una costa a principio in unam uxorem uersa est. 'Et erunt,' inquit, 'duo in carne una,' (Gen. 2:24) non tres, neque quatuor, alioquin non duo, sed plures. Primus Lamech sanguinarius atque homicida unam carnem in duas diuisit uxores; fratricidium et digamiam eadem cataclismi pena deleuit: de altero septies, de altero septuagies septies uindicatum est. Quantum distant in numero, tantum et in crimine.* Gratian, C.31 q.1 c.10, cols. 1111-1112. The 'auctoritas' is St. Jerome (c.342/347-420).

While Gratian dealt with the problem of bigamy mainly from a theoretical point of view, and his considerations took the shape of theological argumentation, later popes shifted to seeking answers to practical problems associated with this question.<sup>277</sup> The letter ‘Gaudemus in Domino’ issued by Innocent III in 1201, and subsequently inserted into the *Compilatio tertia* and the *Liber extra*, required that non-Christian men who were polygamous but wished to convert must become monogamous, but were free to choose which wife they wished to retain.<sup>278</sup> Raymond of Penyafort in his *Summa de matrimonio* both repeated the points made in ‘Gaudemus in Domino’ and refined the requirements when changing a polygamous marriage into a monogamous one:

What if an unbeliever with many wives at the same time is converted? Will he keep them all or which of them will he keep? Say that only the first is the wife and so he can keep her alone. Since indeed from the beginning one rib was turned into one woman and divine Scripture testifies that for this reason a man leaves his father and mother and cleaves to his wife and they will be two in one flesh (Gen. 2:24); nor did it say three or many but two; nor did it say he will cleave to wives but wife. It is clear that it was never licit to have many wives at the same time.<sup>279</sup>

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<sup>277</sup> James Muldoon, ‘Tolerance and Intolerance in the Medieval Canon Lawyers’, in Michael Gervers, James M. Powell *Tolerance and Intolerance: Social Conflict in the Age of the Crusades* (Syracuse N.Y., 2003), pp. 117-123, at pp. 119-120.

<sup>278</sup> Innocent III, ‘Gaudemus in Domino’ (Februar-April 1201) *PL* 216, cols. 1269-1271. *X* 4.19.8=3 *Comp.* 4.14.2.

<sup>279</sup> *Quid si infidelis plures habens simul uxores conuertitur, numquid retinebit omnes, aut quam ex omnibus retinebit? Dic quod prima tantum est uxor, et ideo illam solam potest retinere: cum enim ab initio una costa in unam foeminam sit conuersa, et scriptura diuina testetur, quod propter hoc relinquet homo patrem, et matrem, et adhaerebit uxori suae, et erunt duo in carne una (Gen. 2:24), nec dixit tres, vel plures, sed duo; nec dixit, adhaerebit uxoribus, sed uxori. Et patet quod nulli unquam licuit plures simul habere uxores ...* Raymond of Penyafort, ‘Summa de matrimonio’, *X*.3, pp. 548-549; translation from Raymond of Penyafort, *Summa on Marriage*, p. 52. The ‘auctoritas’ is the letter ‘Gaudemus in Domino’ of Innocent III (February-April 1201) *X* 4.19.8=3 *Comp.* 4.14.2, *PL* 216, cols. 1269-1271.

Therefore, by the time of the widespread conversion of Livonia, in addition to the condemnation of polygamous marriages, clear instructions through papal letters and canon law were given to those polygamous men who wished to convert to Christianity. This is well demonstrated in the letter ‘Venerabilibus fratribus nostris’ of Gregory IX, quoted above, which was consistent with the suggestion by Raymond of Penyafort that converts should keep their *first* wives.

While Bishop Albert of Riga had asked for advice from the pope about the custom of levirate marriages, there seems to be no indication that he struggled with solving the issue of polygamous matrimonial relations. Did the Livonians not think of this custom as important as levirate marriage, as converting to monogamy clearly did not become an impediment to conversion? One of the potential answers is that the Christian and pagan perceptions of the concept of marriage were incompatible, or rather, incomparable.

Perhaps pagan Livonians practised something akin to hierarchical concubinage, so having to choose just one wife to remain married to – the one with the highest status – did not pose many challenges for them. Hierarchical concubinage was also widely practised in pre-Christian Scandinavia, meaning that generally only one wife had any legal standing.<sup>280</sup> The terms ‘concubine’ and ‘concubinage’ themselves were

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<sup>280</sup> In pre-Christian Scandinavia, concubinage and slavery were deeply interlinked, as most women who were in relationships without formal marriages lacked legal rights and formal status, and many of these women were actual slaves, see Ruth Mazo Karras, ‘Concubinage and Slavery in the Viking Age’, *Scandinavian Studies*, Vol. 62 (1990), pp. 141-162. Local law codes could even put married women into different legal categories. For example, in medieval Wales, there were complex legal distinctions between a woman who was properly betrothed and married but whose marriage had not yet lasted for seven years; a woman who was cohabiting with a man she was not originally betrothed or married to, and who was not legally recognised as his wife because they had not yet been together for seven years; and a woman who was in any matrimonial union that had lasted for at least seven years; Christopher McAll, ‘The Normal Paradigms of a Woman’s Life in the Irish and Welsh Texts’, in *The Welsh Law of Women: Studies Presented to Professor Daniel A. Binchy on His Eightieth Birthday*, ed. Dafydd Jenkins and Morfydd E. Owen (Cardiff, 1980), pp. 7-22, at pp. 16-17. Similarly, in thirteenth-century England, the common law treatise called ‘Bracton’ included a legal category of ‘*concubina legitima*’, which was

volatile and highly dependent on context: as Ruth Mazo Karras has noted, it ‘could be used for any woman who was not a wife who lives in domestic partnership with a man, or even who was “kept” by a man with whom she did not live.’<sup>281</sup> Karras has also highlighted the fact that while ‘concubinage’ was often employed in legal texts, it did not assume a clear definition even in that context.<sup>282</sup> Additionally, Carol Braun Pasternack has pointed out how centuries of Christian influence has permeated the English language so much that there is no meaningful way to designate the different statuses that the wives in polygamous cultures might have had – even the term ‘concubine’ carries a certain degree of licentiousness.<sup>283</sup> What complicates things further is that when Henry of Livonia was describing the customs of pagan and apostate Livonians, he used the term ‘*uxor*’ and not ‘*concubina*’. For contemporary Christians, then, Livonian marriages resembled true marriages – albeit polygamous – while they might have been closer to the practice of concubinage for the Livonians themselves. Yet, neither term is entirely applicable, as they both are permeated with Christian connotations.

In any case, the practice of marriage with polygamous nature might have been one reason why reports of levirate marriages reached Rome. With levirate marriages,

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an oxymoron in the context of canon law; Elizabeth van Houts, *Married Life in the Middle Ages, 900-1300* (Oxford, 2019), p. 223.

<sup>281</sup> Ruth Mazo Karras, ‘Marriage, Concubinage, and the Law’, in *Law and the Illicit in Medieval Europe*, ed. Ruth Mazo Karras, Joel Kaye, E. Ann Matter (Pennsylvania, 2008), pp. 117-129, at p. 119.

<sup>282</sup> Karras, ‘Marriage, Concubinage, and the Law’, p. 120. An example of concubinage being mentioned in a law code is the fourteenth-century Hålsinge Law from Sweden – that is, relatively close to Livonia –, in which fines for defamation depended on whether the target was someone’s wife or concubine, with the latter case having a fine which was a third less. The relevant section of the law code has been translated from Swedish by Christine Ekholst in *A Punishment for Each Criminal – Gender and Crime in Swedish Medieval Law* (Leiden, 2014), p. 144. For an overview of the development, nature and importance of the Hålsinge Law, especially in relation to local customs, see Stefan Brink, ‘The Hålsinge Law between South and West, King and Church, and Local Customs’, in *New Approaches to Early Law in Scandinavia*, ed. Stefan Brink and Lisa Collinson (Turnhout, 2014), pp. 37-56.

<sup>283</sup> Carol Braun Pasternack, ‘Negotiating Gender in Anglo-Saxon England’, in *Gender and Difference in the Middle Ages*, ed. Sharon Farmer and Carol Braun Pasternack (London, 2001), pp. 107-142, at p. 112.

there was the possibility that the pagan Livonians married the wives of their dead brothers when they already had their own wives. Due to the typical reasons for the practice of levirate marriage in different societies, it is plausible that the levirate marriage took precedence over other marriages that one had contracted.<sup>284</sup> In their minds, the pagan Livonians might have not had multiple wives of the same rank, but rather a wife from the levirate marriage and another wife or wives that either had lesser rights or no rights at all. That this was likely the case is testified by the fact that no quarrels over inheritance or other similar issues seemed to have risen – or at least sources attesting to them have not survived – after the conversion of these people and the subsequent Christianisation of their marriages which prohibited polygamy.

Although the Livonians might have had ‘hierarchy’ among their wives, their relationships certainly resembled proper marriages to contemporary Christians. As we have seen, the letter ‘Gaudemus in Domino’ of Innocent III from 1201 – contemporaneous with the report about levirate marriages in Livonia – allowed polygamous men to choose the wife they wished to remain married to.<sup>285</sup> The Livonians chose their levirate wives, which in turn created a difficult situation for Bishop Albert, resulting in him having to turn to the pope to ask for advice.

### **THE MAKING AND BREAKING OF MARRIAGE**

In 1222, Pope Honorius III sent the letter ‘Ex parte venerabilis’ to the ‘judges in Livonia’.<sup>286</sup> In this letter, Honorius stated that he had been informed of the following:

[C]ertain Rus’ have come to live in Livonia who, in part, pursuing the rites of the Greeks, loathing the baptism of the

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<sup>284</sup> See the discussion on the reasons why levirate marriage might have been practiced at pp. 84-85.

<sup>285</sup> Innocent III, ‘Gaudemus in Domino’.

<sup>286</sup> ... *iudicibus in Livonia* ... Honorius III, ‘Ex parte venerabilis’ (8 February 1222) *Horoy* 4, col. 90.

Latins as it were a detestable thing, do not observe the solemnities and established fasts, dissolving the marriages contracted among the neophytes.<sup>287</sup>

There is no mention of these events in the chronicle of Henry of Livonia, but they must have been serious enough for the reports to reach Rome. While this letter does not discuss the issue of marriage at great length, the context in which it is mentioned is nevertheless valuable. For Honorius III, the indissolubility of marriage was clearly as important as the observance of proper Latin rites and fasts.

Furthermore, the letter demonstrates how the newly converted Livonians understood marriage: for them, it seems, marriage was not yet an institution seen as a sacrament. This does not suggest that divorce was commonplace among them – after all, some of them had refused to convert unless allowed to continue their levirate marriages. As we shall see, it is more likely that for the Livonians, marriage was a contractual agreement that could be changed if deemed necessary from their own perspective. The increase in exogamous marriages could have been another factor in the weakening of kinship ties, and thus marriages outside of their own social group were perhaps not seen as unconditionally binding.<sup>288</sup>

By contrast, the ease with which one could get married according to canon law has been aptly described by Richard H. Helmholz as follows:

The most remarkable expression of the importance of freedom in marriage – and by far the most remarked upon by modern scholars – lay in the freedom allowed ordinary people to enter

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<sup>287</sup> ... *Rutheni quidam veniunt inhabitare Livoniam, qui Graecorum ritus pro parte sectantes, Latinorum baptismum, quasi rem detestabilem execrantes, solemnitates et statuta jejunia non observant, contracta inter neophytos matrimonia dissolventes*. Honorius III, 'Ex parte venerabilis', col. 90. See also Selart, *Livonia, Rus' and the Baltic Crusades*, pp. 185-186.

<sup>288</sup> See the discussion at pp. 85-86.



marriage. The canon law made contracting marriage simple, very simple.<sup>289</sup>

Indeed, by the middle of the twelfth century when Gratian's *Decretum* was composed, the idea of consent as one of the underlying elements for marriage was frequently utilised in the vocabulary of canon lawyers and theologians.<sup>290</sup> However, Gratian himself remained ambiguous in his treatment of consent; the *Decretum* stated that 'but after the betrothal, which is a promise of the future nuptials, the contracts are celebrated by the consent of both those who are contracting this, and those under whose authority they are'.<sup>291</sup> Elsewhere, Gratian specified:

When it is said: 'Women are joined with men by the paternal decision,' it is understood that the paternal consent is desired in nuptials, and a legitimate nuptial cannot be had without it, according to Pope Evaristus [c.99-c.107]: 'Otherwise there is no legitimate marriage, unless [the woman] is given by her parents'.<sup>292</sup>

On the other hand, Gratian also asserted that '[a] girl is not compelled to marry by the oath of [her] father, to which she never gave consent'.<sup>293</sup> Therefore, in the *Decretum*, the consent of those under whose authority the ones marrying belong to

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<sup>289</sup> Helmholz, *The Spirit of Classical Canon Law*, p. 238.

<sup>290</sup> John T. Noonan, Jr. traces the relevance of consent in marriage bonds throughout the Middle Ages in 'Marriage in the Middle Ages: 1. Power to Choose', *Viator*, 4 (1973), pp. 419-434. See also Brooke, *The Medieval Idea of Marriage*, pp. 128-133, 137-140; Rousseau, 'The Spousal Relationship', pp. 91-93; James A. Brundage, *Medieval Canon Law*, pp. 13-14, 73-74; Sally A. Livingston, *Marriage, Property, and Women's Narratives* (New York, 2012), pp. 22-23.

<sup>291</sup> ... *sed post sponsalia, que futurarum sunt nuptiarum promissio, federa quoque consensu eorum, qui hec contrahunt, et eorum, in quorum potestate sunt, celebrantur*. Gratian, C.30 q.5 c.3, cols. 1105-1106. The 'auctoritas' is Pope Nicholas I.

<sup>292</sup> *Cum dicitur: 'paterno arbitrio feminae iunctae uiris,' datur intelligi, quod paternus consensus desideratur in nuptiis, nec sine eo legitimae nuptiae habeantur, iuxta illud Euaristi Papae: 'Aliter non fit legitimum coniugium, nisi a parentibus tradatur.'* Gratian, C.32 q.2 d.p.c.12, cols. 1123-1124.

<sup>293</sup> *Iuramento patris non cogitur puella nubere, cui numquam assensum prebuit*. Gratian, C.31 q.2 c.1, cols. 1113-1114. The 'auctoritas' is Pope Urban II (1088-1099).

was still deemed important, although we should note that Gratian declared that such consent was merely ‘desired’.<sup>294</sup>

The influential theologian Peter Lombard, writing around 1150s, dealt with the question of marriage at length in his widely disseminated *Sentences*.<sup>295</sup> While heavily relying on previous work, including Gratian’s *Decretum*, his elaborate explanation of what makes a marriage valid is noteworthy:

The efficient cause of marriage is consent, and not just any kind, but one expressed in words, and not of future, but of present effect. ... Also, if they consent in the mind, and do not express it in words or by other certain signs, such a consent does not make a marriage. But if they express in words what they do not will in their hearts, then, if there is no coercion or fraud, that obligation of words by which they consent, saying: ‘I take you as my husband, and I you as my wife,’ makes a marriage.<sup>296</sup>

Peter Lombard explicitly omitted any need for consent outside the consent of those who are contracting the marriage. There is some ambiguity left in his treatment of cases where only one party claimed the existence of marriage: consent in the mind

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<sup>294</sup> See also Anders Winroth, ‘Neither Slave nor Free’, which argues that the first recension of Gratian’s *Decretum* possibly omitted canons desiring the consent of the master.

<sup>295</sup> For the most recent and comprehensive overviews of Peter Lombard’s life and works, see Philipp W. Rosemann, *Peter Lombard* (Oxford, 2004), especially pp. 34-53, 172-178 and Marcia L. Colish, *Peter Lombard*, 2 Vols (New York, 1994).

<sup>296</sup> *Efficiens autem causa matrimonii est consensus, non quilibet, sed per verba expressus, nec de futuro sed de praesenti. ... Item, si consentiant mente et non exprimant verbis vel aliis certis signis, nec talis consensus efficit matrimonium. Si autem verbis explicatur quod tamen corde non volunt; si non sit ibi coactio vel dolus, obligatio illa verborum, quibus consentiunt dicentes: Accipio te in virum, et ego te in uxorem, matrimonium facit.* Peter Lombard, *Libri IV sententiarum*, Sent.4, D.27 c.3 n.1, p. 917; translation from Peter Lombard, *The Sentences. Book 4: On the Doctrine of Signs*, trans. Giulio Silano (Toronto, 2010), p. 161. For Peter Lombard and the theory of consent, see Juraj Kamas, *The Separation of the Spouses with the Bond Remaining* (Rome, 1997), p. 98; Thomas M. Finn, ‘The Sacramental World in the *Sentences* of Peter Lombard’, *Theological Studies*, Vol. 69 (2008), pp. 557-582, at pp. 576-582; Thomas M. Finn, ‘Sex and Marriage in the *Sentences* of Peter Lombard’, *Theological Studies*, Vol. 72 (2011), pp. 41-69, especially pp. 54-62. For a comprehensive treatment of Peter Lombard and marriage, see Marcia L. Colish, *Peter Lombard*, Vol. 2 (New York, 1994), pp. 628-698.

not outwardly expressed, and therefore not witnessed by others, does not constitute a valid marriage. On the other hand, if the couple had indeed agreed to marry, Lombard excluded any claims of invalidity based on regret or intent.

The pontificate of Alexander III also left a lasting mark on the treatment of contracting marriages.<sup>297</sup> Many studies have been conducted to investigate the development of the 'Alexandrine idea' of marriage and its legacy; therefore, in the context of this thesis, it is sufficient to conclude that, according to Alexander III, one could contract a marriage in two ways: by voluntarily exchanging matrimonial vows in the present tense, or by voluntarily agreeing to marry in the future, in which case the marriage bond was ratified at the time the couple decided to have sexual intercourse.<sup>298</sup>

Many historians have made a point that in practice, the concept of consent was side-lined among the elite who perceived it more important to marry according to a guardian's wishes.<sup>299</sup> Sue Sheridan Walker has shown that, at least in medieval

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<sup>297</sup> d'Avray, *Medieval Marriage*, pp. 126-127; Brundage, *Law, Sex, and Christian Society*, pp. 331-337; Duby, *The Knight, The Lady and the Priest*, p. 203; Michael M. Sheenan, 'Maritalis affectio revisited', in *Marriage, Family, and Law in Medieval Europe: Collected Studies*, ed. James K. Farge (Cardiff, 1996), pp. 262-277, at p. 269. But see also Anne J. Duggan, who has suggested that '[t]he emphasis on consent was not peculiar to Alexander and was not particularly "Alexandrine" in its formulation', as the idea of consent was already present by the time of his papacy, but '[m]utual consent was the one essential element that could be sought amid the confusion of variant customary practices and contradictory claims'; Anne J. Duggan, 'The Effect of Alexander III's "Rules on the Formation of Marriage" in Angevin England', in *Popes, Bishops, and the Progress of Canon Law, c.1120-1234*, ed. Travis R. Baker (Turnhout, 2020), pp. 169-183, at p. 175.

<sup>298</sup> Alexander III, 'Veniens ad nos' (1176-1181) *Mansi* 22, p. 409. The letter was inserted into 2 *Comp.* 4.1.2 and the *Liber extra* at X 4.1.15. For a discussion of the contents and importance of this decretal, see James A. Brundage, 'Implied Consent and Intercourse', in *Consent and Coercion to Sex and Marriage in Ancient and Medieval Societies*, ed. Angeliki E. Laiou (Washington, D.C., 1993), pp. 245-256, at pp. 247-248, and footnote no. 5 at p. 248 for the dating of the letter. For the influence of the letter on testing the validity of marriages, see also: Charles J. Reid Jr., 'The Canonistic Contribution to the Western Rights Tradition: An Historical Inquiry', *Boston College Law Review*, Vol. 33 (1991), pp. 37-92, at p. 76.

<sup>299</sup> See for example Irven M. Resnick, 'Marriage in Medieval Culture: Consent Theory and the Case of Joseph and Mary', *Church History*, Vol. 69 (2000), pp. 350-371, at pp. 352-353; van Houts, *Married Life in the Middle Ages*, p. 32. William Urban has also asserted that the German nobles settling in Livonia continued their custom of arranged marriages and which Urban saw as 'cold-blooded family alliances, useful to all parties'; William Urban, 'Victims of the Baltic Crusade', *Journal of Baltic Studies*, Vol. 29 (1998), pp. 195-212, at p. 204.

England, while there certainly were arranged marriages, the feudal class often married as they wished and that their right to choose their spouse was tied to a tax which affected equally both men and women.<sup>300</sup> On the other side of the spectrum were the poor who also seemed to have accepted the teaching of the Church regarding marriage.<sup>301</sup> The integration of consent into the concept of valid marriage by the Church, then, could and did affect people's lives regardless of their social status.

By the beginning of the conversion of Livonia at the turn of the twelfth century, marriages contracted purely by the consent of the parties were seen as valid. It is plausible that this was not the case in pre-Christian Livonian society and that marriage contracts were dependant on various conditions: the existence of levirate marriage is indirect evidence of this, as the expectation to marry the deceased brother's wife or brother-in-law, must have been restrictive on one's free will to marry whomever one wished. Furthermore, in Scandinavian provincial law codes, not too far away from Livonia distance-wise, conditional betrothals that were turned into marriages upon fulfilling the conditions, were commonplace.<sup>302</sup>

Conditional marriages were also considered in canon law collections, such as the *Liber extra* where the undated letter 'De illis autem' of Alexander III was quoted:

He who swears to accept someone as a wife if she grants him a hundred, is not bound to receive [her] with the hundred not

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<sup>300</sup> Sue Sheridan Walker, 'Free Consent and Marriage of Feudal Wards in Medieval England', *Journal of Medieval History*, Vol. 8 (1982), pp. 123-134. In fact, in 13<sup>th</sup>-century Hungary, the adopted the ideas of the Church regarding marriage more readily than other social classes, see Cameron Sutt, 'Uxores, ancillae and dominae – Women in Thirteenth-Century Hungary in the Register of Várad', *Journal of Medieval History*, Vol. 36 (2010), pp. 142-155, at pp. 148-149.

<sup>301</sup> Ruth Mazo Karras, "Because the Other Is a Poor Woman She Shall Be Called His Wench": Gender, Sexuality, and Social Status in Late Medieval England', in *Gender and Difference in the Middle Ages*, ed. Sharon Farmer and Carol Braun Pasternack (London, 2001), pp. 210-229, at pp. 222-223.

<sup>302</sup> Lars Ivar Hansen, 'Inheritance, Property and Marriage in Medieval Norway', in *Married Women and the Law in Premodern Northwest Europe*, ed. Cordelia Beattie, Matthew Frank Stevens (Woodbridge, 2013), pp. 11-30, at pp. 11-12.

having been given, unless he later clearly consents to do so or knows her carnally.<sup>303</sup>

This statement was further elaborated by Raymond of Penyafort in his *Summa de matrimonio*:

A licit and voluntary condition is one that can be introduced or not, such as ‘I shall contract marriage with you if my father is willing’ or ‘if you will give me a hundred marks’. This is so even if an oath should intervene unless in the meantime consent expressed in the present tense or carnal copulation should have followed. The reason for this is because then a true marriage is said to exist between them since they seem to have withdrawn from the proposed condition.<sup>304</sup>

While church law clearly recognised that some marriages were contracted conditionally, it also added the clause that the betrothed couple could not have sexual relations with each other or subsequently exchange matrimonial vows in present tense. If they did either, the previously set conditions would have been seen as revoked, resulting in a legitimate marriage in the eyes of the Church.

It is possible that Livonians had pre-matrimonial sexual relations with one another, or were married with the expectation that if conditions set forth in the betrothal agreement were not fulfilled soon after the marriage took place, the

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<sup>303</sup> *Qui iuravit aliquam id uxorem accipere, si centum sibi donaverit, centum non datis, recipere non tenetur, nisi postea pure consenserit, vel eam cognoverit.* X 4.5.3. The ‘auctoritas’ under the title quoted above is the letter ‘De illis autem’ of Alexander III (1159-1181) 1 *Comp.* 4.1.4=X 4.5.4, Jaffé, no. 9105.

<sup>304</sup> *Conditio honesta, et voluntaria est, quae honeste potest apponi, et non apponi; ut, contraham tecum, si pater meus voluerit, vel si dederis mihi centum marchas, hoc si apponatur, suspendit spontalia usque in euentum conditionis, etiam si interueniat iuramentum, nisi interim consensus de praesenti, vel carnalis copula fuerit subsequuta; quoniam tunc dicitur verum matrimonium esse inter eos, eo quod videntur ab conditione proposita recessisse.* Raymond of Penyafort, ‘Summa de matrimonio’, IV.3, p. 527; translation from Raymond of Penyafort, *Summa on Marriage*, p. 33. The ‘auctoritates’ are the letter ‘De illis autem’ of Alexander III from 1159-1181, 1 *Comp.* 4.1.4=X 4.5.3, Jaffé, no. 9105; the letter ‘Super eo vero, quod’ of Urban III from 1185-1187, 1 *Comp.* 4.5.4=X 4.5.5, Jaffé, no. 9870; and the letter ‘Significasti nobis per’ of Innocent III from 22 February 1198, 3 *Comp.* 4.4.2=X 4.5.6, Potthast 22.

disadvantaged spouse could legitimately divorce according to local customs. However, according to canon law, such unions – even if the originally proposed conditions were not met – were seen as legitimate and indissoluble marriages.<sup>305</sup> Yet, the Livonians themselves might not have seen them legitimate or indissoluble precisely because of unfulfilled conditions.

Similarly, the legitimacy of marriage in pre-Christian Livonia could have been dependent on the matrimonial festivities being publicly observed. For example, in neighbouring Slavic lands, entry into marriage was contingent on public celebrations.<sup>306</sup> While clandestine marriages clearly posed problems for the Latin Church, to the extent that they were greatly discouraged at the Fourth Lateran Council in 1215, marriages contracted in secret were nevertheless deemed valid.<sup>307</sup> The reason why they were generally seen as valid, although not encouraged, had to do with the idea of consent – if only spousal consent was necessary for a marriage, then in principle no other audience was needed; therefore, even if witnesses to the exchange of marriage vows were desired, clandestine marriage was legitimate because of the vows exchanged.<sup>308</sup>

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<sup>305</sup> Similarly, it was held that if the husband regarded his concubine as if she was his wife, then it was, in fact, a marriage and therefore indissoluble, see Duby, *The Knight, the Lady and the Priest*, pp. 163-164.

<sup>306</sup> Eve Levin, *Sex and Society*, p. 38. For a brief but succinct overview of the Christianisation process of medieval Rus', see Janet Martin, *Medieval Russia, 980-1584* (Cambridge, 2007), pp. 6-12.

<sup>307</sup> *Unde praedecessorum nostrorum inhaerendo vestigiis, clandestina coniugia penitus inhibemus, prohibentes etiam ne quis sacerdos talibus interesse praesumat.* – 'Following in the footsteps of our predecessors, we altogether forbid clandestine marriages and we forbid any priest to presume to be present at such a marriage.' Constitution 51 of the Fourth Lateran Council (1215) *Tanner* 1, p. 258. Couples contracting clandestine marriages were subject to ecclesiastical penalties, and their children possibly declared illegitimate, but they were nevertheless seen as married; see Brundage, *Law, Sex, and Christian Society*, p. 362; d'Avray, *Papacy, Monarchy and Marriage*, p. 136.

<sup>308</sup> Gratian in his '*dicta*' at C.30 q.5 d.p.c.8, col. 1107 (the '*auctoritas*' for the canon itself is St. Ambrose) stated that '[t]hus clandestine marriages are indeed made against the laws, yet the contracts cannot be dissolved, because they are strengthened by a subsequent legitimate vow.' – *Sic et clandestina coniugia contra leges quidem fiunt, tamen contracta dissolvi non possunt, quia ex legitimo uoto subsequente corroborantur.* See also Charles J. Reid Jr., *Power over the Body, Equality in the Family: Rights and Domestic Relations in Medieval Canon Law* (Michigan, 2004), pp. 50-55.

Conversely, clandestine marriages posed a problem for the Church precisely because they lacked solemnity, and also because they deprived the local community and the priest from the ability to investigate or make known any impediments to the marriage.<sup>309</sup> Additionally, when any legal issues arose that were dependant on the validity of marriage, the evidence given by the parties on consent often conflicted with each other.<sup>310</sup> Nevertheless, clandestine marriages remained common in many parts of Europe, despite their condemnation at the Fourth Lateran Council of 1215.<sup>311</sup> It was only at the Council of Trent in 1563 when such marriages were finally declared invalid.<sup>312</sup>

Thus, while according to the Church any verbal agreement to take one another as a wife and husband was sufficient for the validity of marriage, for the Livonians this might have constituted as merely the first step in contracting marriage. It is possible

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<sup>309</sup> Reynolds, *How Marriage Became One of the Sacraments*, pp. 601-602. But see also d'Avray, *Medieval Marriage*, p. 105, which suggests that public marriages were more about discovering possible impediments rather than about a requirement for a priestly presence or a church setting. By contrast, before clandestine marriages were declared as invalid at the Council of Trent (1563), their critics in the sixteenth century often cited children marrying clandestinely, disrespecting their parents' guidance and supervision, and subsequently being driven by passion and becoming prone to deception; see Reynolds, *How Marriage Became One of the Sacraments*, p. 780.

<sup>310</sup> Brundage, *Law, Sex, and Christian Society*, pp. 361-362.

<sup>311</sup> For example, a statistical analysis of sixteenth-century petitioners applying to the Holy Penitentiary for a dispensation from kinship prohibitions has shown that in Spain and Portugal, over two-thirds of the petitioners had married 'clandestinely' or 'perhaps clandestinely'; see Jutta Sperling, 'Marriage at the Time of the Council of Trent (1560-70): Clandestine Marriages, Kinship Prohibitions, and Dowry Exchange in European Comparison', *Journal of Early Modern History*, Vol. 8 (2004), pp. 67-108, at pp. 69-70. Michael M. Sheenan has also suggested that clandestine marriages enabled poorer members of the society to get married without the costly formalities. This could be one of the reasons why clandestine marriages remained popular despite their condemnation; see Michael M. Sheenan, 'Theory and Practice: Marriage of the Unfree and the Poor in Medieval Society' *Medieval Studies*, Vol. 50 (1988), pp. 457-487, at p. 483.

<sup>312</sup> *Qui aliter, quam praesente parochi vel alio sacerdote, de ipsius parochi seu ordinarii licentia, et duobus vel tribus testibus matrimonium contrahere attentabunt: eos sancta synodus ad sic contrahendum omnino inhabiles reddit, et huiusmodi contractus irritos et nullos esse decernit, prout eos praesenti decreto irritos facit et annullat.* – 'The holy synod now renders incapable of marriage any who may attempt to contract marriage otherwise than in the presence of the parish priest or another priest, with the permission of the parish priest or the ordinary, and two or three witnesses; and it decrees that such contracts are null and invalid and renders them so by this decree.' Chapter 1 (known as 'Tametsi') of the 'Decree on reform' of Session 24 of the Council of Trent (1563) *Tanner 2*, pp. 755-756. For the decree and its subsequent implementation, see Ladislav Örsy, *Marriage in Canon Law: Texts and Comments, Reflections and Questions* (Delaware, 1986), pp. 157-159; Reynolds, *How Marriage Became One of the Sacraments*, pp. 839-840, 896-982.

that ultimately, the validity of marriage was dependant on fulfilling the conditions attached to the contract. This would have created a situation where the Livonians were practicing matrimonial relations that were not truly marriages according to their own perceptions but were nevertheless valid in the eyes of the Church.

Additionally, if Livonians had contracted their conditional marriages before being baptised, this would have not rendered their marriages invalid after converting. Gratian's *Decretum* afforded considerable attention to 'infidel' and interfaith marriages, including his own '*dictus*' on the issue:

For a licit but not ratified marriage is one thing, ratified but not licit another, licit and ratified yet another. Licit marriage is such which is contracted by the legal institution or by the customs of the province. This [marriage] between infidels is not ratified because their marriage is not permanent and inviolable. ... For the petition of divorce having been granted, it is permitted for them to leave each other, and to be joined with others by the law of the forum, [and] not by the law of Heaven which they do not follow.<sup>313</sup>

According to the *Decretum*, marriages between 'infidels' were valid but not ratified by God. Gratian recognised the differences in matrimonial customs and that the indissolubility of marriage was not a universal attribute respected in all cultures and diverse religious communities. In considering whether one can leave his or her 'infidel' spouse upon their own conversion to Christianity, Gratian continued with the distinction that stated:

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<sup>313</sup> *Coniugium enim aliud est legitimum et non ratum, aliud ratum et non legitimum, aliud legitimum et ratum. Legitimum coniugium est, quod legali institutione uel prouinciae moribus contrahitur. Hoc inter infideles ratum non est, quia non est firmum et inuiolabile coniugium eorum. ... Dato enim libello repudii licet eis discedere ab inuicem, et aliis copulari lege fori, non lege poli, quam non secuntur.* Gratian, C.28 q.1. d.p.c.17, col. 1089. Gratian in his *dictum* relied on St. Augustine. See also Stanley A. Chodorow, 'Magister Gratian and the Problem of "Regnum" and "Sacerdotium"', *Traditio*, Vol. 26 (1970), pp. 365-381, at p. 370.



For it is indeed permitted [for the convert] to dismiss the one wishing [to continue cohabiting], but he may not marry another while she is alive; indeed, he should not follow the departing [spouse], and he may not marry another while she is alive.<sup>314</sup>

Therefore, a conversion did not automatically render previous marriage invalid. This position was greatly refined during the pontificate of Innocent III.<sup>315</sup> In the letter ‘Quanto te magis’ from 1199, Innocent maintained that the marriage between an ‘infidel’ and a Christian was dissoluble only if the ‘infidel’ party refused to cohabit or if (s)he was hostile towards the Christian faith.<sup>316</sup> Furthermore, in the same letter Innocent stated that:

If, however, one of the faithful spouses either falls into heresy, or goes over to the error of the heathen, we do not believe that in this case the one who is abandoned is permitted to conduct another marriage while the other [spouse who relapsed] is living. ... For though a true matrimony exists among infidels, nevertheless it is not yet ratified.<sup>317</sup>

In agreement with Gratian that there is a valid but not ratified marriage among the ‘infidels’, Innocent III further emphasised the indissolubility of marriage. The

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<sup>314</sup> *Volentem enim cohabitare licet quidem dimittere, sed non ea uiuente aliam superducere; discedentem uero sequi non oportet, et ea uiuente aliam ducere licet.* Gratian, C. 28 q.2 c.2, col. 1090. The ‘auctoritas’ is Gregory I.

<sup>315</sup> For a concise overview of the development of interfaith marriages in canon law, see Brundage, ‘Christian Marriage in Thirteenth-Century Livonia’, pp. 315-316.

<sup>316</sup> Innocent III, ‘Quanto te magis’ (1 May 1199) *Die Register Innocenz* 2, pp. 88-89. The letter was inserted into the 3 *Comp.* 4.14.1 and the *Liber extra* at X 4.19.7. Note that this letter was addressed to the canon lawyer Huguccio, which demonstrates that even the most learned in ecclesiastical law sought advice from the pope when circumstances necessitated it, and for that the pope also commended Huguccio; see also Wolfgang P. Müller, ‘Huguccio of Pisa: Canonist, Bishop, and Grammarian?’, *Viator*, Vol. 22 (1991), pp. 121-152, at p. 124.

<sup>317</sup> *Si vero alter fidelium coniugum vel labatur in haeresim, vel transeat ad gentilitatis errorem, non credimus, quod in hoc casu is, qui relinquitur, vivente altero possit ad secundas nuptias convolare ... Nam etsi matrimonium verum quidem inter infideles existat, non tamen est ratum.* Innocent III, ‘Quanto te magis’, p. 89.

situation here directly applied to Livonia: marriages among the Livonians were deemed valid even if they were contracted prior to baptism. Consequently, such marriages of neophytes clearly sustained their perpetual indissolubility from the Church's perspective. Perhaps it was in these circumstances that the Livonians sought to 'officially' divorce their spouses according to their newly adopted religion, and after being rejected by the Catholic prelates, for their marriages were indissoluble, they were forced to turn to the Rus' who were more likely to grant them divorces.<sup>318</sup>

In conclusion, while the source material directly describing the matrimonial customs and conventions of the Livonians is scarce, it is nevertheless possible to discern additional information by comparing these sources with the contemporary prescriptions on marriage in canon law. While the letter 'Ex parte venerabilis' of Honorius III in 1222 does not reveal the true nature of Livonian marriages, nor the reasons why they might have been dissolved by the Rus' priests, the sheer fact that the dissolving of marriages was included in a list of grave transgressions against the Latin Church shows that at least some of the converts had not yet come to terms with the Catholic understanding of the sacrament of marriage, and that the local Latin priests, compassionate towards converts as they might have been, were adhering to the regulations of indissolubility of marriage according to contemporary canon law regulations.

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<sup>318</sup> Slavic canon law, under which these clerics who dissolved the marriages of the Livonians most likely operated, allowed legal termination of a marriage on various grounds, and the innocent party to a divorce could remarry; Eve Levin, *Sex and Society in the World of the Orthodox Slavs, 900-1700* (Ithaca, N.Y., 1989), pp. 114-126.

## PREACHING AND TEACHING

Preaching and teaching were two interdependent and intricately connected concepts, especially in the context of conversion, where preaching was, at times, almost indistinguishable from teaching. By preaching the principles of the Catholic faith to those with little to no experience of the belief and its rituals, the preachers essentially assumed another role as teachers. Indeed, during the thirteenth century, the distinction between preaching (*predicatio*) and exhortation (*exhortatio*) was slowly abandoned.<sup>319</sup> Therefore, these words will be used interchangeably in this chapter. Furthermore, the concept of education discussed below is not confined to formal teaching in a classroom setting, although that certainly became more prevalent as the number of cathedral schools and universities increased in the High Middle Ages.<sup>320</sup> Rather, a broader sense of education is meant here, which Evelyn Birge Vitz has described as ‘upbringing’, i.e. ‘the manner in which persons are raised and their character formed’.<sup>321</sup>

### AUTHORITY

When Livonia gained the attention of missionaries and crusaders at the end of the twelfth and during the thirteenth centuries, the meaningful conversion of the communities there became the task of those who were authorised to preach. The question of who could and could not preach remained a principal issue in canon law

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<sup>319</sup> Augustine Thompson, ‘From Texts to Preaching: Retrieving the Medieval Sermon as an Event’, in *Preacher, Sermon and Audience in the Middle Ages*, ed. Carolyn A. Muessig (Leiden, 2002), pp. 13-37, at pp. 30-31.

<sup>320</sup> For example, see C. H. Lawrence, *Medieval Monasticism: Forms of Religious Life in Western Europe in the Middle Ages* (London, 2015), pp. 131-132.

<sup>321</sup> Evelyn Birge Vitz, ‘Liturgy as Education in the Middle Ages’, in *Medieval Education*, ed. Ronald B. Begley and Joseph W. Koterski, S.J. (New York, 2005), pp. 20-34, at p. 20.

and had practical consequences wherever teaching and preaching were involved, including in Livonia.

Contentions regarding who had the authority to preach arose as early as in the sixth century. A landmark decision was reached at the Third Council of Vaison in 529, presided by Caesarius of Arles (470-542), which decreed that not only priests but even deacons could preach.<sup>322</sup> Many bishops at that council abstained from signing the canons, indicating their opposition to the expansion of the authorisation of preaching to priests and deacons.<sup>323</sup> Despite this, Caesarius reportedly urged both bishops and priests to preach, even if they lacked eloquence or could not memorise their sermons in detail.<sup>324</sup> This controversial but successful change implemented at the Council of Vaison paved the way for the ministry of preaching to acquire a missionary nature

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<sup>322</sup> *Hoc etiam pro aedificatione omnium ecclesiarum et pro utilitate totius populi nobis placuit, ut non solum in civitatibus sed etiam in omnibus parochiis verbum faciendi daremus presbyteris potestatem, ita ut, si presbyter aliqua infirmitate prohibente per se ipsum non potuerit praedicare, sanctorum patrum homiliae a diaconibus recitentur; si enim digni sunt diaconi, quod Christus in evangelio locutus est, legere, quare indigni iudicentur sanctorum patrum expositiones publice recitare?* – ‘This we furthermore decree for the edification of all churches and for the benefit of all people: Not only in the cities, but also in all parishes, we give the priests the power to preach the word, and if a priest, hindered by some illness, cannot preach himself, homilies of the Holy Fathers should be recited by deacons; for if the deacons are worthy of reading what Christ said in the Gospel, why should they be considered unworthy to recite the expositions of the Holy Fathers in public?’ Canon 2 of the Third Council of Vaison. *Les Canons des conciles mérovingiens, VIe-VIIe siècles*, Vol. 1, ed. Jean Gaudemet and Brigitte Basdevant (Paris, 1989), p. 190.

<sup>323</sup> William E. Klingshirn, *Caesarius of Arles: The Making of a Christian Community in Late Antique Gaul* (Cambridge, 1994), pp. 144-145. The diminishing of the authority of bishops at this council should be seen in the context of the fifth and sixth centuries, where bishops had often enjoyed great importance and responsibility by assuming the administration of not only all spiritual but also secular affairs as a result of the decline of the late imperial government; see Richard Gerberding, ‘The late Roman Empire’, in *The New Cambridge Medieval History, c.500-c.700*, Vol. 1, ed. Paul Fouracre (Cambridge, 2006), pp. 13-34, at p. 31; Jamie Kreiner, ‘About the Bishop: The Episcopal Entourage and the Economy of Government in Post-Roman Gaul’, *Speculum*, Vol. 86 (2011), pp. 321-360, esp. pp. 333-340; Chris Wickham, *Framing the Early Middle Ages: Europe and the Mediterranean, 400-800* (Oxford, 2005), p. 159. For the central role of bishops in their communities in Late Antiquity more generally, see Ian N. Wood, ‘Early Merovingian Devotion in Town and Country’, *Studies in Church History*, Vol. 16 (1979), pp. 61-76; Jill Harries, ‘Christianity and the City in Late Roman Gaul’, in *The City in Late Antiquity*, ed. John Rich (London, 1992), pp. 77-98.

<sup>324</sup> Nicolas De Maeyer and Gert Partoens, ‘Preaching in Sixth-Century Arles. The Sermons of Bishop Caesarius’, in *Preaching in the Patristic Era: Sermons, Preachers, and Audiences in the Latin West*, ed. Anthony Dupont, Shari Boodts, Gert Partoens and Johan Leemans (Leiden, 2018), pp. 198-231, at pp. 201-202.

alongside its already existing catechetical role.<sup>325</sup> As will see below, the authority of not only bishops but also of priests to preach was paramount in the successful conversion of Livonia.

In Gratian's *Decretum*, emphasis was laid on determining who was *not* permitted to preach. Therefore, a canon in the *Decretum* bore the title: 'It is not permitted for a woman to teach to men in a gathering'.<sup>326</sup> While a literal reading of this canon could have left room for an interpretation that women could teach other women, and that a layman could, under certain circumstances, assume preaching, the

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<sup>325</sup> The extension of the circle of preachers reached its culmination in the twelfth century when heretical groups challenged the clerical monopoly on preaching; see Beverly Mayne Kienzle, *Cistercians, Heresy and Crusade in Occitania, 1145-1229: Preaching in the Lord's Vineyard* (York, 2001), pp. 27-28.

<sup>326</sup> *Mulier in conuentu uiros docere non permittitur. Mulier, quamuis docta et sancta, uiros in conuentu docere non presumat. Laicus autem presentibus clericis (nisi ipsis rogantibus) docere non audeat.* – 'It is not permitted for a woman to teach to men in a gathering. A woman, no matter how learned and holy, should not presume to teach to men in a gathering. Moreover, a layman should not dare to teach in the presence of clerics (unless at their request).' Gratian, D.23 c.29, col. 86. The 'auctoritates' are Canons 98 and 99 of the Fourth Council of Carthage (398): *Laicus praesentibus clericis, nisi ipsis iubentibus, docere non audeat.* – 'A layman may not teach in the presence of the clergy, except at their command.' and *Mulier, quamuis docta et sancta viros in convent docere non praesumat.* – 'A woman, however learned and holy, may not take upon herself to teach in an assembly of men.' *Mansi* 19, cols. 949-960, at col. 959; translation from *A History of the Christian Councils: From the Original Documents*, trans. Karl Joseph von Hefele (Edinburgh, 1872), p. 417. The canons were transmitted into Gratian's *Decretum* via Burchard of Worms (c.950/965-1025) and Ivo of Chartres (c.1040-1115) who both stated that 'a woman, however learned, may not to teach in the convent' – *Mulier quamuis docta, in conuentu docere non audeat.* Burchard of Worms, *Decretum*, 8.83, PL 140, col. 808; Ivo of Chartres, *Decretum*, D.7, cap. 101, PL 161, col. 567. Additionally, the condition 'in the assembly of men' or 'to men' ('viros'), that was already present in canon 99 of the Fourth Council of Carthage, was included in the *Collectio tripartite* of Ivo of Chartres; Ivo of Chartres, *Collectio tripartita*, 2.18.98, via *Ivo of Chartres: Work in Progress*, ed. Martin Brett and Przemysław Nowak, [website] <[https://ivo-of-chartres.github.io/tripartita/trip\\_a\\_2.pdf](https://ivo-of-chartres.github.io/tripartita/trip_a_2.pdf)> (accessed 25 March 2021). The same *Collectio tripartita* also included the prohibition for laymen to teach in the presence of clerics: *Laicus presentibus clericis nisi ipsis rogantibus docere non audeat.* – 'A layman may not teach in the presence of the clergy, except at their request.' Ivo of Chartres, *Collectio tripartita*, 2.18.97. To be sure, a similar prohibition was included in both Ivo of Chartres's *Decretum* (D.7 cap. 105, PL 161, col. 568) and Burchard of Worms's *Decretum* (8.87, PL 140, col. 809) in which both it reads: *Laicus non debet in ecclesia lectionem recitare, nec Alleluia dicere, nisi psalmos tantum et responsoria, sine Alleluia.* – 'A layman may not recite a reading in the church, nor say the Alleluia, except [he may recite] the psalms and the responses, without the Alleluia.' However, this specific prohibition did not come from the Fourth Council of Carthage but from the *Penitential of Theodore* instead, and in the most complete and significant version of the *Penitential of Theodore*, the so-called *Paenitentiale Umbrense*, the exact same canon can be found at 2.1.10; 'Penitential of Theodore (*Paenitentiale Umbrense*)', in *Councils and Ecclesiastical Documents relating to Great Britain and Ireland*, Vol. 3, ed. Arthur West Haddan and William Stubbs (Oxford, 1871), pp. 173-204, 2.1.10, p. 191. These two prohibitions of preaching – one for women and the other for laymen – were collated into one canon in Gratian's *Decretum*.

prohibition was nevertheless generally understood in a sense that all public preaching was forbidden for a lay person or a woman.<sup>327</sup> Gratian's *Decretum* also considered the question of monastic preaching, stating that '[n]o monk should presume to preach except the Lord's priests' and quoting a passage from Leo I thereafter:

[B]ecause of the unscrupulousness of certain monks ... no one, whether he be a monk or a layman, who boasts of some knowledge, should presume to preach except the priests of the Lord.<sup>328</sup>

While the *Decretum* did not spell out precisely the qualifications required for being allowed to preach, the question nevertheless gained traction in the late eleventh and early twelfth centuries, during a period which has been labelled as 'the crisis of Western monasticism'.<sup>329</sup> Namely, the emerging Cistercian Order diverged greatly in its practices from the Benedictine and Cluniac houses.<sup>330</sup> One of the issues of contention was preaching, with the Cistercians also wishing to access the office.<sup>331</sup>

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<sup>327</sup> Walter Simons, *Cities of Ladies: Beguine Communities in the Medieval Low Countries, 1200-1565* (Philadelphia, 2001), pp. 126-127.

<sup>328</sup> ... *propter inprobitatem quorumdam monachorum ... preter Domini sacerdotes nullus audeat predicare, siue monachus siue laicus ille sit, qui cuiuslibet scientiae nomine gloriatur.* Gratian, C.16 q.1 c.19, cols. 765-766.

<sup>329</sup> Norman F. Cantor, 'The Crisis of Western Monasticism, 1050-1130', *The American Historical Review*, Vol. 66 (1960), pp. 47-67; Jean Leclercq, 'The Monastic Crisis of the Eleventh and Twelfth Centuries', in *Cluniac Monasticism in the Central Middle Ages*, ed. Noreen Hunt (London and Basingstoke, 1971), pp. 217-237. For a different view, arguing that it was about the changing world that forced the Benedictines to adjust, rather than them having a 'crisis' within the order, see John Van Engen, 'The "Crisis of Cenobitism" Reconsidered: Benedictine Monasticism in the Years 1050-1150', *Speculum*, Vol. 61 (1986), pp. 269-304.

<sup>330</sup> For the emergence and development of the Cistercian Order, see Janet Burton and Julie Kerr, *The Cistercians in the Middle Ages* (Woodbridge, 2011); Constance Hoffmann Berman, *The Cistercian Evolution: The Invention of a Religious Order in Twelfth-Century Europe* (Oxford, 2010). Recent research has shown that not all Benedictine houses reacted to the Cistercians uniformly, and there were great regional differences, see Tjamke Snijders, 'The Black Cistercians: The Reactions of Black Monks to Bernard of Clairvaux and the Challenges of Increased Competition', *The Catholic Historical Review*, Vol. 105 (2019), pp. 429-456.

<sup>331</sup> Wanda Zemler-Cizewski, 'Guibert of Nogent's *How to Preach a Sermon*', *Theological Studies*, Vol. 58 (1998), pp. 406-419, at pp. 409-410.

Additionally, the authority of preaching received close attention due to the rise in religious-heretical movements that practised lay preaching.<sup>332</sup>

It was in this context the papacy sought to define and limit who could and could not preach. The First Lateran Council in 1123 had addressed the general *cura animarum* of the monks, ordering them to be ‘subject to their own bishops with all humility’, and to abstain ‘from public visitations of the sick, from anointings and even from hearing confessions, for these things in no way pertain to their calling’.<sup>333</sup> The canon did not mention preaching explicitly, but it did forbid the monks to celebrate Masses.<sup>334</sup> Likewise, Canon 4 of the Third Lateran Council in 1179 did not explicitly limit the office of preaching but did mention the preaching of ‘false apostles’ (*pseudoapostoli*) in the wake of heretical movements.<sup>335</sup>

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<sup>332</sup> Kienzle, *Cistercians, Heresy and Crusade*, pp. 205-207; Robert I. Moore, *The Formation of a Persecuting Society: Authority and Deviance in Western Europe, 950-1250* (Oxford, 2007), pp. 23-25. Of course, this was not a brand new development, as already the Early Church Fathers had argued that heretics had no right to be heard at all; see Herbert Grundmann, ‘*Oportet et Haereses Esse: The Problem of Heresy in the Mirror of Medieval Biblical Exegesis*’, in *Herbert Grundmann (1902-1970): Essays on Heresy, Inquisition, and Literacy*, ed. Jennifer Kolpacoff Deane (Woodbridge, 2019), pp. 180-215, at pp. 183-186. Though note that Grundmann has also pointed out that the anti-heretical statements of Tertullian, for example, were not applied nor cited in the High Middle Ages at all.

<sup>333</sup> ... *propriis episcopis cum omni humilitate subiecti existant. ... A publicis ... infirmorum visitationibus, inunctionibus seu etiam poenitentibus, quod ad illorum nullatenus officium pertinent ...* Canon 16 of the First Lateran Council (1123) *Tanner 1*, p. 193.

<sup>334</sup> *Publicas missarum sollemnitates nusquam celebrent.* – ‘They may not celebrate masses in public anywhere.’ Canon 16 of the First Lateran Council (1123) *Tanner 1*, p. 193. Before the First Lateran Council, there had been local synods, such as the Synod of Poitiers (1100), which had authorised monks to preach only with their bishop’s permissions, and others, such as the Council of Melfi (1089), which had forbidden them from doing so entirely, see John S. Ott, *Bishops, Authority and Community in Northwestern Europe, c.1050-1150* (Cambridge, 2015), pp. 76-77.

<sup>335</sup> *Cum apostolus se et suos propriis manibus decreverit exhibendos, ut locum praedicandi auferret pseudoapostolis et illis quibus praedicabat non existeret onerosus, grave nimis et emendatione fore dignum dignoscitur, quod quidam fratrum et coepiscoporum nostrorum ita graves in procurationibus suis subditis existunt, ut pro huiusmodi causa interdum ornamenta ecclesiastica subditi compellantur exponere et longi temporis victum brevis hora consumat.* – ‘Since the apostle decided that he ought to support himself and those accompanying him by [working with] his own hands, so that he might remove the opportunity of preaching from false apostles and might not be burdensome to those to whom he was preaching, it is recognized that it is a very serious matter and calls for correction that some of our brethren and fellow bishops are so burdensome to their subjects in the procurations demanded that sometimes, for this reason, subjects are forced to sell church ornaments and a short hour consumes the food of many days.’ Canon 4 of the Third Lateran Council (1179) *Tanner 1*, p. 213 (amended).

In 1184, Pope Lucius III (1181-1185) promulgated the letter ‘Ab abolendam’ that condemned heretical movements, mandated regular episcopal visitations, and requested for secular support in the suppression of heresy.<sup>336</sup> In 1201, Pope Innocent III granted the Humiliati, previously condemned as heretics in ‘Ab abolendam’, the permission to preach as long as the content of their sermons was limited to the encouragement of pious life and not that of fundamental theological issues.<sup>337</sup> This important decision by the pope was in juxtaposition with earlier decrees condemning such preaching.<sup>338</sup> In fact, just two years before, in 1199, Innocent III had sent a letter to the bishop of Metz, concerning lay preaching and translations of the Bible.<sup>339</sup> While the Humiliati were absolved of their condemnation in 1201, ‘Ab abolendam’ nevertheless left a lasting mark on canon law.<sup>340</sup> Thus, the letter was included as

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<sup>336</sup> Lucius III, ‘Ab abolendam’ (4 November 1184) *Mansi* 22, cols. 476-478. For ‘Ab abolendam’, see also Robert I. Moore, *The War on Heresy* (Cambridge, 2012), pp. 205-208; Peter D. Diehl, ‘“Ad abolendam” (X 5.7-9) and Imperial Legislation against Heresy’, *Bulletin of Medieval Canon Law*, Vol. 19 (1989), pp. 1-12. A few of the theologians, such as Peter the Chanter, did not see the 1184 bull by Lucius III as prohibiting lay preaching in general, see C. Colt Anderson, ‘St. Paul and reform Rhetoric in the High Middle Ages’, in *A Companion to St. Paul in the Middle Ages*, ed. Steven Cartwright (Leiden, 2013), pp. 325-348, at pp. 339-340.

<sup>337</sup> Lucius III, ‘Ab abolendam’ (4 November 1184) *Mansi* 22, cols. 476-478. Innocent’s official recognition of the Humiliati is available in *Vetera Humiliatorum Monumenta*, Vol. 2, ed. Girolamo Tiraboschi (Milan, 1767), pp. 135-138. See also Brenda Bolton, ‘Tradition and Temerity: Papal Attitudes to Deviants, 1159-1216’, *Studies in Church History*, Vol. 9 (Cambridge, 1972), pp. 79-91, at p. 87.

<sup>338</sup> C. H. Lawrence has attributed the decision of Innocent III to his pragmatism, see Lawrence, *Medieval Monasticism*, pp. 222-224. For the same decision, see also: Brenda Bolton, ‘Innocent III’s Treatment of the Humiliati’, *Studies in Church History*, Vol. 8 (1972), pp. 73-83; Moore, *Pope Innocent III*, pp. 151-152.

<sup>339</sup> ... *laicorum et mulierum multitudo non modica tracta quodammodo desiderio Scripturarum, Evangelia, epistolas Pauli, Psalterium, Moralia Iob et plures alios libros sibi fecit in Gallico sermone transferri ... et cum ipsis per eos verbum salutis proponitur, se melius habere in libellis suis et prudentius se posse id eloqui, summurmurant in occulto. ... Cum igitur doctorum ordo sit quasi precipuus in ecclesia, non debet sibi quisquam indifferenter predicationis officium usurpare.* – ‘[T]he multitude of laymen and women, drawn in no small way by desire, had the Scriptures, the Gospels, the Epistles of Paul, the Psalter, the Morals on the Book of Job, and many other books translated into the French language for themselves ... [A]nd when the Word of Salvation is presented [to them] by those [priests], they mutter in secret [that] they themselves have it better in their little books and that they can explain [the Word] more prudently ... Since, therefore, the order of doctors is sort of particular in the Church, no one should indifferently usurp the office of preaching for himself.’ Innocent III, ‘Cum ex injuncto’ (July 1199) *Die Register Innocenz* 2, no. 132 (141), pp. 271-275, at pp. 271-273. Remarkably, at the end of the 14<sup>th</sup> century, the Dutch lawyers of Cologne argued that the letter, in fact, implicitly permitted the translation of simpler parts of the Bible; see Margaret Deanesly, *The Lollard Bible: And Other Medieval Biblical Versions* (Oregon, 2002), pp. 9-10.

<sup>340</sup> For a brief overview of the influence that ‘Ab abolendam’ had on subsequent anti-heretical developments in canon law, see Edward Peters, ‘Ecclesiastical Discipline: Heresy, Magic, and



Constitution 4 at the Fourth Lateran Council in 1215.<sup>341</sup> Subsequently inserted into the *Compilatio prima* and the *Liber extra*, the constitution explicitly spelt out that preaching was forbidden unless given permission by the pope or by a bishop.<sup>342</sup>

Although the Fourth Lateran Council also forbade the founding of new religious orders, the Order of Preachers, i.e. the Dominicans, was approved by Pope Honorius in 1216.<sup>343</sup> While the Dominicans were soon also given the permission to preach freely,

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Superstition', in *The Cambridge History of Medieval Canon Law*, ed. Anders Winroth and John C. Wei (Cambridge, 2022), pp. 511-536, at pp. 528-529.

<sup>341</sup> *Quia vero nonnulli 'sub specie pietatis virtutem eius (iuxta quod ait Apostolus) abnegantes' (2 Tim. 3:5), auctoritatem sibi vendicant praedicandi, cum idem Apostolus dicat: 'Quomodo praedicabunt nisi mittantur?' (Rom. 10:15), omnes qui prohibiti vel non missi, praeter auctoritatem ab apostolica sede vel catholico episcopo loci susceptam, publice vel privatim praedicationis officium usurpare praesumpserint, excommunicationis vinculo innodentur, et nisi quantocius resipuerint, alia competenti poena plectantur.* – 'There are some who "holding to the form of religion but denying its power" (2 Tim. 3:5) (as the Apostle says), claim for themselves the authority to preach, whereas the same Apostle says, "How shall they preach unless they are sent?" (Rom. 10:15) Let therefore those who have been forbidden or not sent to preach, and yet dare publicly or privately to usurp the office of preaching without having received the authority of the apostolic see or of the Catholic bishop of the place, be bound with the bond of excommunication and, unless they repent very quickly, be punished by another suitable penalty.' Constitution 4 of the Fourth Lateran Council (1215) *Tanner 1*, pp. 234-235.

<sup>342</sup> *1 Comp. 5.6.11=X 5.7.9.* See footnote no. 341 above for the full condemnation.

<sup>343</sup> Constitution 13 of the Fourth Lateran Council (1215) forbade the founding of new orders, *Tanner 1*, p. 242. The Dominicans were recognised with the letter 'Religiosam vitam eligentibus' of Honorius III (22 December 1216) *Horoy 2*, cols. 141-144. 'Religiosam vitam eligentibus' was a standardised papal document that essentially confirmed the possessions and privileges of the Dominicans and had been issued in favour of a number of other religious houses as well; Gert Melville, 'The Dominican Constitutiones', in *A Companion to Medieval Rules and Customaries*, ed. Krijn Pansters (Leiden, 2020), pp. 253-282, at p. 257. For the likely composition process of the letter, see Patrick Zutshi, 'Letters of Pope Honorius III (1216-1227) Concerning the Order of Preachers', in *Pope, Church and City: Essays in Honour of Brenda M. Bolton*, ed. Frances Andrews, Christoph Egger and Constance M. Rosseau (Leiden, 2004), pp. 269-286, at pp. 270-273. In comparison, the letter 'Gratiarum omnium largitori' of January 1217, in which the whole Dominican community obtained the right to preach, was freely composed and not formulaic like the letter 'Religiosam vitam eligentibus' had been; Honorius III, 'Gratiarum omnium largitori' (21 January 1217) *Horoy 2*, cols. 203-204; see also Zutshi, 'Letters of Pope Honorius III', p. 273. The decision conveyed in 'Gratiarum omnium largitori' by Honorius III was unprecedented, especially in the context of the constitutions issued at the Fourth Lateran Council less than two years before; Colin Morris, *The Papal Monarchy: The Western Church from 1050 to 1250* (Oxford, 1989), pp. 455-456, esp. footnote no. 588. The Franciscans had obtained a permission from Innocent III to preach penance already in 1208, and their first rule, now lost, was approved at the same time. By 1223, the Franciscans had obtained the rule what became known as their rule proper (*Regula bullata*). In this rule, one of the prescriptions required the friars to obtain a permission from a bishop of the diocese they wished to preach in. Additionally, whoever wished to preach to the laity, had to obtain an approval from the minister general of the fraternity. See Michael Robson, *The Franciscans in the Middle Ages* (Woodbridge, 2006), pp. 16-17.

the general requirement to request permission from either the pope or a local bishop in order to preach remained in place throughout the thirteenth century.<sup>344</sup>

Additionally, unauthorised preaching received stern criticism in the wake of the crusading movement, a concern highlighted in many of Bernard of Clairvaux's (1090-1153) letters.<sup>345</sup> Similarly, the French theologian and poet Alain de Lille (d.1202/03) concerned himself with the problem of false preaching and encapsulated clerical resentment over the issue by stating that even learned men, including many Cistercians, were not automatically commissioned as preachers.<sup>346</sup>

One of the earliest papal letters concerning the authorisation of preaching in Livonia was entitled 'Auditis laudim preconiiis' and dated to 1193.<sup>347</sup> It addressed Bishop Meinhard (d.1196), 'the bishop of the people of Livonia', granting him 'the office of preaching'.<sup>348</sup> The last aspect implied that Meinhard was granted full authority in his missionary activities in Livonia, including preaching. That papal authority was sought and granted on several occasions was also a recurring theme in the chronicle of Henry of Livonia. For instance, the chronicle mentions Frederick of Selle, a Cistercian priest, whom Bishop Albert, 'by the authority of the lord pope, had

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<sup>344</sup> The bull 'Super cathedram' of Boniface VIII, issued on 18 February 1300, attempted to somewhat curb the unrestricted preaching of the mendicant orders. 'Super cathedram' thus stated that friars were allowed to preach to the public and within their own churches without restrictions, but were not allowed to preach at the same time as local secular clergy were delivering their own sermons, unless they had explicit permission from the clergy. The bull was promulgated in 1300 by Pope Boniface VIII (1294-1303), annulled by Pope Benedict XI (1303-1304) in 1304, reissued in 1312 at the Council of Vienne, and finally inserted into the *Constitutiones Clementinae* in 1317. The bull is available in full with the preamble 'Dudum' as issued at the Council of Vienne (1311-1312) in *Tanner* 1, pp. 365-369. For the conflict between friars and secular clergy regarding preaching, see Lawrence, *Medieval Monasticism*, pp. 244-247; Janet Burton, *Monastic and Religious Orders in Britain, 1000-1300* (Cambridge, 1994), p. 150; Benjamin Z. Kedar, 'Canon Law and Local Practice: The Case of Mendicant Preaching in Late Medieval England', *Bulletin of Medieval Canon Law*, Vol. 17 (1972), pp. 17-26, at pp. 17-19.

<sup>345</sup> Brian Patrick McGuire, 'Bernard's Life and Works: A Review', in *A Companion to Bernard of Clairvaux*, ed. Brian Patrick McGuire (Leiden, 2011), pp. 18-61, at pp. 52-53.

<sup>346</sup> Kienzle, *Cistercians, Heresy and Crusade*, pp. 96-97.

<sup>347</sup> Celestine III, 'Auditis laudim preconiiis' (27 April 1193) *LUB* 1, no. 11, cols. 11-13.

<sup>348</sup> *Livoniae gentis episcopus ... praedicationis officium*. Celestine III, 'Auditis laudim preconiiis', cols. 11, 13.

received for the work of the Gospel'.<sup>349</sup> While not impossible, it is unlikely that a simple priest managed to obtain a direct authorisation of preaching from the pope. Yet, the fact that Henry decided to include this remark denotes his understanding that it was necessary to receive authorisation from a superior for the purposes of preaching. Similarly, when Bishop Albert of Riga went to Rome in 1211, his privilege to preach for the remission of sins was renewed by Pope Innocent III, although this authorisation was more specifically concerned with preaching a crusade.<sup>350</sup> Unfortunately, if there was a papal decree supporting this renewal, it has not survived, and so a closer examination of what the pope said exactly is not possible.

On the other hand, papal letters that have survived shed light on cases from Livonia where unauthorised preaching was explicitly admonished. In 1232, Baldwin of Alna (d.1243), a Cistercian monk, was appointed bishop of Semgallia and invested with legatine powers in Livonia.<sup>351</sup> In April 1233, Pope Gregory IX sent a letter to preachers announcing that they should not exercise their authority within the jurisdiction of Baldwin.<sup>352</sup> Implied in this letter is the requirement to ask for permission to preach from Baldwin of Alna who was now also a bishop in Livonia, fundamentally confirming what was decreed at the Fourth Lateran Council in 1215.<sup>353</sup>

While not canonically required, there is evidence that preachers in Livonia often obtained permissions to preach from secular authorities, presumably according to social customs at the time. For instance, already Meinhard, the first bishop of Livonia, asked for permission to preach from 'King' Vladimir of Polozk to whom the Livonians

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<sup>349</sup> ... *auctoritate domni pape ad opus assumpserat ewangelii*, *HCL XVIII* 8, p. 121; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 140 (amended).

<sup>350</sup> *HCL XV* 2, p. 88.

<sup>351</sup> Gregory IX, 'Cum in minori' (28 January 1232) *DD* 1:6, no. 172, pp. 171-173.

<sup>352</sup> Gregory IX, 'Venerabili fratre nostro' (18 April 1233) *Auvray* 1, no. 1257, col. 710.

<sup>353</sup> See the discussion above at pp. 112-113.

were tributaries at the time.<sup>354</sup> As another example, when the papal legate William of Modena was visiting Livonia in 1225-1226, he invited Prince Vesthard of Semgallia into his audience. Vesthard, according to Henry of Livonia, ‘allowed a preacher of the lord legate [to go] with him into Semgallia’.<sup>355</sup> That secular authority was sought before preaching was not unique to Livonia – when William of Rubruck (d.1293) travelled to the court of the Mongols in 1253, he was likewise seeking secular permission to preach there.<sup>356</sup> Seeking such permissions should not be seen only in the context where doing otherwise would have been dangerous – it is equally likely that the preachers were interested in maintaining good relationships with the people in whose lands they were intending to preach.

It is evident that missionaries in medieval Livonia placed high importance on receiving explicit authority to preach. As members of the clergy, they were not only expected but also required to seek such permission from their superiors. That they

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<sup>354</sup> *Accepta itaque licencia prefatus sacerdos a rege Woldemaro de Ploceked, cui Lyvones adhuc pagani tributa solvebant, simul et ab eo muneribus receptis, audacter divinum opus aggreditur, Lyvonibus predicando et ecclesiam in villa Ykescola construendo.* – ‘Having therefore received a licence from King Vladimir of Polozk, to whom the Livonians paid a tribute while still pagan, and at the same time receiving gifts from him, the aforesaid priest [i.e. Meinhard] courageously set upon the divine work, preaching to the Livonians and building a church in the village of Üxküll.’ *HCL* I, 3, p.2; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 26. Manfred Hellmann has suggested that the pressure to seek for such permission from a secular prince could have also come from merchants who did not want to see their trade hindered because of the missionary work; Hellmann, ‘Bischof Meinhard’, p. 21.

<sup>355</sup> ... *predicatore domni legati secum in Semigalliam admisit.* *HCL* XXIX, 4, p. 211; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 233 (amended).

<sup>356</sup> *‘Nos de longe venimus: primo si placet vobis cantabimus laudes Deo, qui nos salvos de tam longinquo usque hue perduxit, et postea faciemus secundum quod placuerit ipsi domino vestro, hoc excepto, quod nichil precipiatur nobis quod sit contra cultum et honorem Dei.’* – “We have come a long way. First, with your permission, we shall sing praises to God, who has safely brought us this far from so great a distance; and after that we shall do as your master wishes, provided we are given no order which is contrary to the worship and honour of God.” William of Rubruck, *Itinerarium Willelmi de Rubruk* *Recueil de Voyages et de Mémoires*, Vol. 4, ed. Société de Géographie (Paris, 1839), pp. 205-396, at p. 304; translation from William of Rubruck, *The Mission of Friar Wiliam of Rubruck: His Journey to the Court of the Great Khan Möngke, 1253-1255*, ed. and trans. Peter Jackson and ed. and intro. David Morgan (London, 1990), p. 177.

also chose to request such permissions from local secular leaders testifies to their recognition of the importance of diplomacy.

### **PREACHERS**

Little is known about the first preachers in Livonia. There is some evidence that missionary activity was planned in the regions of Estonia already in the 1170s but the available information on this is limited and uncertain. In 1171 or 1172, Pope Alexander III sent out the so-called September Letters that were all issued to Scandinavia.<sup>357</sup> Three of these letters concerned planned missionary activity in Estonia, supposedly led by a monk named Fulco.<sup>358</sup> The letters associated with his planned expeditions shed light on aspects concerning planned preaching in these North-eastern regions.<sup>359</sup>

The first of the letters touching upon the mission of Fulco was ‘Lex divina’, issued on 9 September and asking the archbishop of Trondheim and the bishop of Stavanger to allow ‘monk Nicholas, a religious and devout man, who was born among these people [the pagan Estonians]’ to accompany Fulco, named as ‘a bishop of the Estonians, who, inspired by divine grace, proposes to assume the ministry and work of preaching to convert these people’.<sup>360</sup> This letter offers two distinct insights into the state of preaching in Livonia before it began properly in the 1180s.

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<sup>357</sup> John H. Lind, ‘Denmark and Early Christianity in Finland’, in *Pyhä Henrik ja Suomen Kristillistyminen/ Sankt Henrik och Finlands kristnande* [Saint Henrik and the Christianisation of Finland], ed. Helena Edgren, Tuukka Talvio and Eva Ahl (Helsinki, 2007), pp. 39-54, at pp. 42-43.

<sup>358</sup> References to the letters: Alexander III, ‘Lex divina’ (9 September 1171-1172) *DD* 1:3, no. 26, p. 36; Alexander III, ‘Non parum animus’ (11 September 1171-1172) *DD* 1:3, no. 27, pp. 37-38; Alexander III, ‘Omnes qui pie volunt’ (17 September 1171-1172) *DD* 1:3, no. 28, pp. 38-39.

<sup>359</sup> Fønnesberg-Schmidt, *The Popes and the Baltic Crusades*, p. 26.

<sup>360</sup> *Inde est, quod prudentiam vestram rogamus attentius et monemus, venerabili fratri nostro Fulconi, Estonum episcopo, qui, ad convertendam gentem illam divina gratia inspiratus, ministerium praedicationis et laborem proponit assumere, Nicolaum monachum, qui de gente illa, sicut accepimus, est oriundus, virum religiosum atque discretum, in socium concedatis.* Alexander III, ‘Lex divina’, p. 36. Bolded parts are given in translation.

First, the pope is asking for permission from the archbishop of Trondheim and the abbot of Stavanger on behalf of the monk Nicholas so that the latter could accompany Fulco to Estonia. By requesting permission from the bishops, Alexander III adheres to the legal standard set out in Gratian's *Decretum*, which asserted that monks cannot exercise priestly functions, including preaching to the laity, 'unless they have been elected by the people and ordained by the bishop with the abbot's consent.'<sup>361</sup> In the letter, the pope is explicitly asking for a permission from the archbishop and the abbot who are the direct superiors of Nicholas. Yet, it seems that there was no indication of being 'elected by the people', in the letter, as required by the canon in Gratian's *Decretum*. This can be explained by the status of Estonia at that time – the people there were not yet Christian and so could not, therefore, signify their consent to Nicholas exercising priestly duties among them.

The second aspect to note about the letter 'Lex divina' is that the aim of the mission was 'the ministry and work of preaching' to convert the pagan Estonians.<sup>362</sup> Therefore, considered as a standalone letter, there was no indication of taking the Cross or any other reference to an expedition that could be considered a crusade; Fulco's mission according to this particular letter is clearly meant to be a peaceful one.<sup>363</sup>

However, a letter issued only two days after the one concerning the monk Nicholas had a vastly different tone. The letter, addressed to the kings, princes, and all the faithful in Denmark, Norway, Sweden and Gotland, asked them 'to defend the

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<sup>361</sup> ... nisi a populo fuerint electi, et ab episcopo cum consensus abbatis ordinati ... Gratian, C.16 q.1 d.p.c.19, cols. 765-766; for a longer discussion about monks' ability to exercise their power, see Robert L. Benson, *The Bishop-Elect: A Study in Medieval Ecclesiastical Office* (Princeton, 1968), pp. 52-54.

<sup>362</sup> ... ministerium praedicationis et laborem ... Alexander III, 'Lex divina', p. 36.

<sup>363</sup> See the terminology pertaining to the notion of crusade and pilgrimage in the Introduction at pp. 23-25.

truth of the Christian faith with the spirit of fortitude ... [and] to expand the religion of Christian name with a strong arm ...'<sup>364</sup> The term '*in brachio forti*' – with a strong arm – has been interpreted as a justification for forceful conversion; however, depending on the context, the same phrase can also be translated figuratively to convey the idea of strengthening of or simply defending the Faith.<sup>365</sup> Indeed, it is more likely that at the point where systematic crusading on the Baltic frontier had not yet emerged, simply the defence of missionaries and Christian merchants was implied.

While the vast majority of preaching in Livonia was practiced by secular priests, monastic orders played an increasing role in preaching the Word of God there. Henry of Livonia described how, soon after the year 1200, Bishop Albert of Riga 'constructed a monastery for Cistercian monks at the mouth of the Daugava River, which he called Dünamünde Cloister or Mount Saint Nicholas'.<sup>366</sup> While very little is known about the beginnings of the Dünamünde Monastery, its second abbot, Bernard of Lippe (d.1224), had lived a bellicose life before he became a Cistercian monk.<sup>367</sup> Upon

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<sup>364</sup> ... *ad defendam christianae fidei ueritatem spiritu fortitudinis ... in brachio forti ad propagandam christiani nominis religionem ...* Alexander III, 'Non parum animus', p. 38.

<sup>365</sup> Karen Skovgaard-Petersen, *A Journey to the Promised Land: Crusading Theology in the Historia de profectone Danorum in Hierosolymam (c.1200)* (Copenhagen, 2001), p. 24; Fonnesberg-Schmidt, *The Popes and the Baltic Crusades*, p. 61. As a similar example, English common law used the phrase '*vi et armis*' – literally 'by force and arms' – but as pointed out by Brundage, it was generally not meant as a physical confrontation but rather denoted bringing the case under royal jurisdiction; Brundage, *Medieval Canon Law*, p. 2.

<sup>366</sup> HCL VI, 2, p. 17.

<sup>367</sup> The chronicle of Henry of Livonia described the life of Bernard of Lippe as follows: *Idem Bernardus comes, dum quondam in terra sua prelia multa et incendia et rapinas committeret, a Deo castigatus plagam debilitatis in pedibus incurrit, ut claudus utroque pede in sporta multis diebus portaretur. Unde compunctus religionem Cysterciensis ordinis assumpsit et aliquot annis religionem discens et litteras auctoritatem a domno papa verbum Dei predicandi et in Lyvoniam proficiscendi accepit et, ut ipse sepius retulit, accepta cruce ad terram beate Virginis statim consolidate sunt plante eius et recepit sanitatem pedum et in primo adventu eius in Lyvoniam in Dunemunde consecratus est in abbatem et postmodum Semigallorum episcopus effectus est.* – 'This same Count Bernard, while formerly in his own land, commenced in many battles, and burnings, and plunderings; punished by God, he incurred a debilitating injury of the feet so that, lame in both feet, he was carried in a basket for many days. Upon this, being remorseful, he accepted the religion of the Cistercian order and, learning religion and letters for some years, he received the authority from the lord pope to preach the Word of God, and to travel to Livonia, and, as he himself often recalled, after taking the Cross to go to the land of the Blessed Virgin, his soles were immediately made firm and his feet became healthy; and on his first arrival in

assuming the monastic life, he obtained a special permission from Innocent III to preach in Livonia.<sup>368</sup> Therefore, while the extent of his precise involvement in the Christianisation in Livonia is not known, he is a clear example of the Cistercians preaching to pagans and converts. Remarkably, as he was an abbot of Dünamünde from 1211 until 1218, his ecclesiastical career did not end there, and he was appointed bishop of the Semgalls thereafter.<sup>369</sup>

The Cistercians did not remain the only monastic order in Livonia, as the thirteenth century saw the rise of the mendicant orders more generally. While the Franciscans had a house in Riga in 1238 at latest, it was assigned to the custody or wardenship of Lübeck, and it remained the only convent for them in Livonia until the fifteenth century.<sup>370</sup> It is still debated when exactly the Dominicans established a convent in the vicinity of the Baltics. Johnny Grandjean Gøgsig Jakobsen has contested the prevalent view that a letter issued in 1230 by Pope Gregory IX indicated the existence of the Dominican convent in Visby.

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Livonia, he was consecrated as abbot at Dünamünde and afterwards was made bishop of the Semgalls.' *HCL XV* 4, p. 92; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 113 (amended).

<sup>368</sup> *HCL XV* 4, p. 92.

<sup>369</sup> *HCL XV* 4, p. 92.

<sup>370</sup> The letter of 21 April 1238; *LUB* 3, no. 159a, cols. 29-31. The letter offers circumstantial evidence for the presence of the Franciscans in Riga, as the list of witnesses includes names 'de ordine fratrum minorum'. See also John B. Freed, *The Friars and German Society in the Thirteenth Century* (Cambridge, MA, 1977), p. 69; Rafał Kubicki, 'Mendicant Orders in Medieval Prussia and Livonia: Pastoral Activities in Towns', *Acta Historica Universitatis Klaipedensis*, Vol. 33 (2017), pp. 123-146, at p. 130; Bernd Schmies, 'Missionarisches Wirken sächsischer Franziskaner im Mittelalter', in *Geschichte der Sächsischen Franziskaner-Provinz von der Gründung bis zum Anfang des 21. Jahrhunderts*, Vol. 4, *Missionen*, ed. Giancarlo Collet and Johannes Meier (Paderborn, 2013), pp. 47-84, at pp. 74-77; Leonhard Lemmens, *Urkundenbuch der alten sächsischen Franziskanerprovinzen. Vol. 1: Die Observantenkustodie Livland und Preussen* (Düsseldorf, 1913), pp. 8-9 and pp. 15ff for a list of documents pertaining to the Franciscan presence in Livonia. It has been pointed out that there were several reasons why the Franciscan Order did not become as widespread as the Dominicans in Livonia: first, the Franciscans supported the papacy which hindered their activities everywhere in the empire; second, the order was deeply preoccupied with its own internal matters; Ane L. Bysted, *et al Jerusalem in the North: Denmark and the Baltic Crusades, 1100-1522* (Turnhout, 2012), p. 263.



However, even if the beginnings of the order in the Baltic region are still uncertain, it can be said that their house must have been firmly in place by 1243 when another letter explicitly addressing the brothers in Visby was issued by Pope Innocent IV.<sup>371</sup> For the advancement of the Dominican Order in Livonia, the key figure came to be the papal legate William of Modena. Already on friendly terms with the Dominicans – and possibly with St. Dominic as well before his death – William helped to set up a Dominican convent in Riga in 1234, during his second legatine mission to Livonia.<sup>372</sup>

The foundation of the Dominican Order in the northern parts, in Estonia, has been a more contentious issue, with scholars generally agreeing with two separate founding dates – in 1229 and again in 1246.<sup>373</sup> The only document shedding light on the first founding in 1229 is the so-called *Historia Ordinis Praedicatorum in Dania*, written sometime in the 1260s, although the original manuscript is now lost.<sup>374</sup> The text claimed that a convent was founded in Reval in 1229 ‘with the counsel of the venerable father, lord William, the Bishop of Modena’, but that soon the Dominicans

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<sup>371</sup> Gregory IX, ‘Cum misericors’, (17 September 1230) *Pothast* 8603; Innocent IV, ‘Quia iustis causis’, (23 September 1243) *LUB* 1, no. 174, cols. 228-230. Johnny Grandjean Gøgsig Jakobsen, ‘On the Baltic Crusade and the First Friars Preachers in Visby’, *Center for Dominican Studies of Dacia* (2014), <<http://jggj.dk/VisbyOP1230.pdf>> (accessed 1 October 2019).

<sup>372</sup> Gerard de Fracheto (1205-1271) mentioned in his *Vitae fratrum ordinis praedicatorum* that William of Modena was ‘a friend of St. Dominic’ (*socius fuerat beati Dominici*) and that ‘he was most friendly with the Order and St. Dominic’ (*qui fuit amicissimus ordinis et beati Dominici*); Gerard de Fracheto, *Vitae fratrum ordinis praedicatorum*, ed. Benedikt Maria Reichert (Leuven, 1896), p. 334. For William’s role in founding the convent in Riga, see Gertrud von Walther-Wittenheim, *Die Dominikaner in Livland im Mittelalter* (Rome, 1938), p. 135, no. 1; Freed, *The Friars and German Society*, pp. 68-69.

<sup>373</sup> A classic example is the course of events offered by Christoph T. Maier: ‘The Dominican house at Tallinn (Reval) was founded in 1229 and destroyed by the Swordbrothers in 1233 before being re-established in 1246’; Christoph T. Maier, *Preaching the Crusades. Mendicant Friars and the Cross in the Thirteenth Century* (Cambridge, 1998), p. 47, footnote no. 84.

<sup>374</sup> ‘Historia Ordinis Praedicatorum in Dania’, in *Scriptores rerum danicarum medii aevi*, Vol. 5, ed. Peter F. Suhm (Copenhagen, 1783), pp. 500-502. For a concise overview of the source and its later editions, see Marek Tamm, ‘When did the Dominicans Arrive in Tallinn?’, *Tuna*, Vol. 4 (2009), pp. 35-45, at pp. 37-39.

were driven out of the region by the cruel Estonians.<sup>375</sup> The date of 1229 has been under much scholarly debate, with various alternative and 'better suited' dates, such as 1239, being offered instead.<sup>376</sup> More recently, Tiina Kala has suggested that it is possible that the author of the *Historia Ordinis Praedicatorum in Dania* misunderstood a few Dominicans accompanying the Danish king to Reval in 1219 as them establishing a convent there; consequently there was no 'first' establishment of the Dominican convent in Reval before 1246.<sup>377</sup>

Through papal letters, it is known that the Dominicans were preaching in Livonia and for the Livonian mission elsewhere already in the 1230s.<sup>378</sup> For example, in 1237, Pope Gregory IX asked the priors and friars of the Dominican Order, who preached against the pagan Livonians, to hand over the money they received from the redemption of vows to the Teutonic Order in Livonia, so that the knights could purchase arms and horses.<sup>379</sup> With a number of similar, papally endorsed letters, it is clear that throughout the thirteenth century, the Dominicans in Livonia and in the regions surrounding Livonia were expected to assist in preaching the crusades, first to Prussia, Curonia and Livonia, and then to the Holy Land.<sup>380</sup> In this sense, then, the

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<sup>375</sup> ... *de consilio uenerabilis patris domini Wilhelmi Mutinensis episcopi* ... 'Historia Ordinis Praedicatorum in Dania', p. 501.

<sup>376</sup> The year 1239 has been proposed by Simon Tugwell, the historian of the Dominican Order, see Simon Tugwell, 'Notes on the life of St. Dominic [Part 4]', *Archivum Fratrum Praedicatorum*, Vol. 68 (1998), pp. 5-116, at pp. 111-116. On the other hand, Jarl Gallén has argued that it is highly likely that the Dominicans arrived to Reval before 1227, that is, before the Order of the Swordbrothers claimed the town, see Jarl Gallén, *La province de Dacie de l'ordre des Freres Prêcheurs* (Helsingfors, 1946), pp. 46-47.

<sup>377</sup> Tiina Kala, *Jutlustajad ja Hingede Päästjad: Dominiiklaste Ordu ja Tallinna Püha Katariina Konvent* [Preachers and Soul Saviours: The Dominican Order and the Tallinn St. Catherine's Convent] (Tallinn, 2013), pp. 70-79. The monograph, published only in Estonian, is currently the most comprehensive study of the Dominicans in Estonia in the Middle Ages.

<sup>378</sup> Iben-Fonnesberg Schmidt, *The Popes and the Baltic Crusades*, p. 199.

<sup>379</sup> Gregory IX, 'Gravi considerate discrimine' (30 May 1237) *LUB* 1, no. 151, cols. 194-195.

<sup>380</sup> For example: Innocent IV, 'Qui iustis causis' (23 September 1243) *Preußisches Urkundenbuch*, Vol. 1:1, ed. Rudolf Philippi and Carl P. Wölky (Königsberg, 1882), no. 146, pp. 111-112, instructing the prior provincials of 'Dacia and Teutonia' and the Dominicans in Visby to preach the crusade to Livonia and Prussia on behalf of the Teutonic Order; Alexander IV, 'Sine cordis angustia' (7 August 1257) *LUB* 1, no. 311, cols. 398-399, issued to the Order of Preachers in general, admonishing them to preach the crusade

unique permission granted to the Dominicans in 1217 with the letter ‘Gratiarum omnium largitori’ of Pope Honorius III, and which did not require them to seek explicit permission to preach, was not just a privilege but also an obligation to assist the papacy in preaching at their full capacity.<sup>381</sup>

As much as canon law influenced preaching in Livonia – the priests and bishops gaining explicit permissions to preach from the popes, and later the papally endorsed Dominicans likewise contributing to preaching in these regions – the conduct of preachers in Livonia itself left two lasting marks on canon law. The first of them came from the letter ‘Quam sit laudabile’ by Clement III (1187-1191) in c.1190, subsequently added to the *Compilatio secunda* and the *Liber extra*.<sup>382</sup> The letter was addressed to

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against the pagans and ‘infidels’ in Livonia and Prussia on behalf of the Teutonic Order; Alexander IV, ‘Qui iustis causis’ (11 August 1257) *Preußisches Urkundenbuch*, Vol. 1:2, ed. August Seraphim (Königsberg, 1909), no. 30, pp. 25-27, issued to the Dominicans in ‘Alamania, Dacia and Polonia’, asking them to instruct their priors and friars of their order in Bohemia, Denmark, Sweden and other various regions to preach the crusade in Prussia and Livonia; Alexander IV, ‘Qui iustis causis’ (13 June 1260) *LUB* 1, no. 353, cols. 447-449, asking the Franciscans in the province of Magdeburg to preach the crusade to Livonia, Prussia and Curonia; Urban IV, ‘Gementibus olim dilectis’ (24 April 1262) *Preußisches Urkundenbuch*, Vol. 1:2, no. 158, pp. 131-134, instructing the Dominicans in Germany, Denmark, Bohemia and Poland to preach the crusade to Livonia, Curonia and Prussia, adding that the preaching should also take place in regions of Livonia, Curonia and Prussia that ‘have submitted to the Apostolic See’, i.e. are converted; Urban IV, ‘Gementibus olim dilectis’ (31 October 1262) *Preußisches Urkundenbuch*, Vol. 1:2, no. 169, p. 138, the letter being identical to the one issued on 24 April 1262; Clement IV, ‘Gementibus olim dilectis’ (17 April 1265) *LUB* 1, no. 384, cols. 488-489, instructing its recipients, including the Dominicans, Premonstratensians and Cistercians, to preach the crusade to Livonia, Curonia and Prussia on behalf of the Teutonic Order. All these letters were remarkably similar in their content, often only changing the details of their recipients, the regions that the crusades were preached to – e.g. to include Curonia, and sometimes adding a few details, such as that preaching was also to take place in already converted regions of Livonia (the letters of Urban IV cited above). See also Fannesberg-Schmidt, *The Popes and the Baltic Crusades*, p. 225.

<sup>381</sup> Honorius III, ‘Gratiarum omnium largitori’. Pope Gregory IX utilised the mendicant orders to their full extent by commissioning them to preach for the upcoming crusade to the Holy Land, in anticipation of the ending of the ten-year truce of 1229 between Emperor Frederick II and Sultan al-Kamil; see Maier, *Preaching the Crusades*, pp. 35-36. See also the related letter ‘Quantum nos urgeat’ of Gregory IX, in which the pope granted the Franciscans the authority to absolve those who were excommunicated for arson or violence against clerics, if they took the Cross; Gregory IX, ‘Quantum nos urgeat’ (15 May 1235) *Epistolae saeculi XIII e Regestis Pontificum Romanorum*, Vol. 1, ed. Georg Heinrich Pertz and Carl Rodenberg (Berlin, 1883), no. 640, pp. 532-533.

<sup>382</sup> Clement III, ‘Quam sit laudabile’ (c.1190) *LUB* 3, no. 11a, col. 3, 2 *Comp.* 5.4.4=X 5.6.10. Complete rescript of the letter survives only in the *Compilatio secunda* and the *Liber extra*; see Bombi, ‘Celestine III and the Conversion of the Heathen’, pp. 149-151.

Meinhard, the first bishop of Livonia, and gave him and other missionaries accompanying him the permission to eat whatever food they could find:

Heeding your petitions, brother bishop, we concede by apostolic authority to you and your fellows that, when you go out for the preaching of the Faith of Christ to the pagans, it is permissible for you to make use of these meals which are placed before you by those infidels, [as long as you eat them] with modesty and with an act of grace, while observing the condition of times [i.e. fast days] according to canonical ordinances.<sup>383</sup>

What is of interest is the afterlife of the decretal and the comments it attracted from canon lawyers. After its insertion into the *Liber extra*, Innocent IV in his *Apparatus* commented on the decretal as follows:

That was at that time, when pagans did not discern between foods; today, however, when they do discern between foods, it is not permitted without special indulgence [to eat their food], just as it is not permitted to communicate with Jews.<sup>384</sup>

The title under which this decretal was inserted, was entitled ‘On Jews and Saracens, and Their Servants’; yet, the Livonian pagans with whom the permission was given to share meals were neither.<sup>385</sup> The placement of this letter seems odd at first, as there were no Muslims nor Jews in the Baltics in the thirteenth century, and David M. Freidenreich has suggested that perhaps it could have fitted better under

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<sup>383</sup> *Tuis, frater episcopo, petitionibus annuentes, tibi tuisque sociis, quum ad praedicandam Christi fidem paganis exhibitis, apostolica auctoritate concedimus, ut vobis his cibis cum modestia et gratiarum actione, servata temporum qualitate iuxta canonicas sanctiones, uti liceat, qui vobis ab ipsis infidelibus apponuntur.* Clement III, ‘Quam sit laudabile’, col. 3; translation from David M. Freidenreich, ‘Sharing Meals with Non-Christians in Canon Law Commentaries, Circa 1160-1260: A Case Study in Legal Development’, *Medieval Encounters*, Vol. 14 (2008), pp. 41-77, at p. 50 (amended).

<sup>384</sup> *Illud olim quando pagani non discernebant cibos, hodie autem cum discernant cibos, non licet sine speciali indulgentia, sicut nec cum Iudaeis licet communicare.* Innocent, *Apparatus* ad X 5.6.11, p. 505; translation from Freidenreich, ‘Sharing Meals with Non-Christians in Canon Law Commentaries’, p. 69 (amended). Note that in the edition of *Apparatus* used here, the letter is incorrectly placed at 5.6.11 whereas in the *Liber extra* it was at 5.6.10.

<sup>385</sup> *De iudaeis, sarracenis, et eorum servis.* X 5.6.10.

the heading 'On the Conversion of Unbelievers'.<sup>386</sup> However, Freidenreich also concedes that it is a possibility that the authors of *Compilatio secunda* and the *Liber extra* were aware that the concession to the Livonian mission was understood by canon lawyers in the context of similar earlier prohibitions to share meals with Jews.<sup>387</sup> Indeed, this seems to be a more likely possibility, as the Livonian letter did not deal so much with conversion but rather with the missionaries who could potentially share meals with non-Christians.

Additionally, such a letter fitted better among other similar letters about Jews and Muslims, giving the decretal a wider context. Namely, Innocent IV specifically said that the concession to the Livonian mission was given 'at that time when the pagans did not discern between foods'.<sup>388</sup> Innocent IV here implied that at the time when the letter was issued, the pagans – i.e. the Livonians – ate all types of food and had no dietary restrictions; now, however, there are no such pagans left, and those non-Christians who remain are Jews and Saracens who have their own dietary practices incompatible with the Christian way of life.

This line of thought indicates that according to Innocent IV, no pagans without dietary restrictions existed anymore at the time of him writing the *Apparatus*, which of course was not the case as Prussia and Lithuania, for example, still remained to be converted. Yet, as we shall see throughout this thesis, Innocent IV was clearly aware of non-Muslim and non-Jewish pagans still existing in North-eastern Europe, as he was involved in several matters concerning these regions, such as creating an

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<sup>386</sup> Freidenreich, 'Sharing Meals with Non-Christians in Canon Law Commentaries', p. 51.

<sup>387</sup> Freidenreich, 'Sharing Meals with Non-Christians in Canon Law Commentaries', p. 51.

<sup>388</sup> ... *olim quando pagani non discernebant cibos*. Innocent, *Apparatus ad X* 5.6.11, p. 505.

archbishopric there and issuing letters about the conversion efforts in Livonia and Prussia.<sup>389</sup>

One possible way to explain this inconsistency is that Innocent IV simply adhered to the fact that the decretal under discussion – ‘*Quam sit laudabile*’ – was inserted into the *Liber extra* under the title ‘On Jews and Saracens, and Their Servants’, thus suggesting that the term ‘*pagani*’ should be understood as ‘*Sar(r)aceni*’, despite the fact that the letter was initially issued for Livonia. Additionally, as the term ‘*pagani*’ was generally used to denote Muslims, contemporaneous readers would likely have associated the term ‘*pagani*’ with Muslims rather than with the still unconverted people in North-eastern Europe, even if they were aware of the latter.<sup>390</sup> In this sense, then, Innocent IV’s treatment of ‘*Quam sit laudabile*’ marks his attempt to harmonise the matter at hand, and to make the content of the decretal more relevant to contemporary issues.

Hostiensis, commenting on the same letter, gave permission to eat food with Muslims (*Saraceni*) with whom the Christians are on friendly terms, but added a concession that ‘but we ought not to eat with other Saracens, namely our enemies, unless we are preachers, to whom this special privilege is granted; and any one, having the permission of a prelate, may preach to them. But yet they ought to abstain from meat during the prohibited days’.<sup>391</sup> Like Innocent IV had done before,

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<sup>389</sup> See footnote no. 380 at pp. 122-123 for an example of such a letter commissioning the preaching of crusades in these regions.

<sup>390</sup> For the significant overlap and interchangeability between the terms ‘*pagani*’ and ‘*Sar(r)aceni*’ in the minds of medieval canon lawyers, see Benjamin Z. Kedar, ‘*De Iudeis et Sarracenis*: On the Categorization of Muslims in Medieval Canon Law’, in Benjamin Z. Kedar, *The Franks in the Levant, 11<sup>th</sup> to 14<sup>th</sup> Centuries* (Aldershot, 1993), XIII, pp. 207-213, at pp. 209-210; David M. Freidenreich, ‘Muslims in Western Canon Law, 1000-1500’, in *Christian-Muslim Relations. A Bibliographical History*, Vol. 3, ed. David Thomas and Alexander Mallett (Leiden, 2011), pp. 41-68, at pp. 42-43.

<sup>391</sup> *Cum aliis autem Saracenis scilicet hostibus comedere non debemus, nisi praedicatores simus, quibus hoc indulgetur speciali privilegio et possunt quilibet, habita praelati licentia, eis praedicare. Sed tamen debent abstinere a carnibus diebus prohibitis.* Hostiensis, *Summa aurea ad X 5.6 §3*, col. 1354; translation from Freidenreich, ‘Sharing Meals with Non-Christians in Canon Law Commentaries’, p. 70 (amended).

Hostiensis clearly commented on the letter from a perspective in which one was much more likely to meet Muslims rather than Baltic pagans. However, unlike Innocent IV, he distinguished between those Muslims who were subjected to Christians and those who remained enemies.

The second letter concerning preaching in Livonia and which was inserted into subsequent canon law collections was 'Deus qui ecclesiam', issued by Innocent III in 1201.<sup>392</sup> One section of the letter dealt with the clothing of preachers, and was inserted into *Compilatio tertia* and the *Liber extra*, in both of which it was left under the title 'Of the life and honesty of the clergy'.<sup>393</sup> Addressed to Bishop Albert of Riga, the pope wrote that:

Hence, when you take on that inspiring mission of evangelisation, which makes each into one, you must walk in the spirit of unity and charity ... Lest, therefore, if there be an unequal observance among you and a dissimilar attitude, a scandal may arise among those to whom you preach one Gospel. ... In spite of the fact that among you there are monks and canons regulars, or some even professing a regular life under another rule, we order you all to conform equally to one canonical purpose and to an honourable attire, as far as this office is concerned; lest the new plantation of the Church of Livonia, in the memory of your pious predecessor, brother bishop, should be painted red by blood or suffer a slight scandal among you...<sup>394</sup>

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<sup>392</sup> Innocent III, 'Deus qui ecclesiam'.

<sup>393</sup> *De vita et honestate clericorum*. 3 *Comp.* 3.1.2= X 3.1.11.

<sup>394</sup> *Unde quum evangelizandi officium eo assumpseritis inspirante, qui facit utraque unum, oportet vos in unitatis et caritatis spiritu ambulare ... Ne igitur, si dispar in vobis observantia fuerit et dissimilis habitus, apud eos, quibus unum evangelium praedicatis, scandalum suscitetur. ... Mandamus, quatenus, eo non obstante, quod inter vos monachi sunt, et canonici regulares, vel alii etiam regularem vitam sub alia distinctione professi, omnes pariter in unum regulare propositum et honestum habitum, quantum ad hoc spectat officium, conformetis, ne nova ecclesiae Livoniensis plantatio pia memoriae praedecessoris*

From this letter it is evident that the first missionaries in Livonia came from a variety of religious orders, and so that their aims of conversion would not be hindered, the pope asked them to assume similar clothing as not to confuse the Livonians to whom they were preaching. Nils Blomkvist has noted that ‘If differences in preaching had caused splits among the converts during the period of peaceful mission, this was a meek foreboding of what was to come under the following military conquest’, referring to the subsequent conflicts between various bishops in Livonia, and the Swordbrothers, later the Teutonic Order.<sup>395</sup> Conversely, the letter of 1201 was not necessarily an affirmation that there were serious conflicts between the missionaries in Livonia. The letter was a response to inquiries presented by Bishop Albert of Riga to the pope, and therefore it could have equally been the intention of the bishop to make sure that no specific order or group of missionaries could proclaim their primacy in preaching in Livonia, and that they were all united under the bishop of Riga.

Pope Innocent IV, commenting in his *Apparatus* on the same section of the letter ‘Deus qui ecclesiam’, simply noted that ‘[t]hus you have that, concerning solemnities [and] other substantial things in the religion, the authority of the pope is understood to be excepted [from judgement]’.<sup>396</sup> It appears that Innocent IV did not comment on the content of the letter, but rather used it as evidence that whatever the pope authorises, even regarding substantial issues, is licit and not subjected to

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*tui, frater episcope, sanguine rubricata vel leve in vobis scandalum patiatur ...* Innocent III, ‘Deus qui ecclesiam’, pp. 78-79.

<sup>395</sup> Blomkvist, *The Discovery of the Baltic*, p. 538.

<sup>396</sup> *Sic habes quod in professione circa solennitates intelligitur excepta auctoritas Papae, secus in substantialibus.* Innocent IV, *Apparatus super quinque libros decretalium* (Frankfurt, 1570), ad X 3.1.11, p. 349.



judgement. Hostiensis on the other hand, commenting on the same letter, confirmed the following:

But even if religious people of a different profession are preaching the Word of God, because of the diversity of their habits some scandal may be stirred up among the believers, they must conform themselves into one regular habit as far as concerning the overgarment, as the same [is evidenced] below [in the letter of] ‘Deus qui’.<sup>397</sup>

Moreover, Hostiensis offered the suggestion to use one habit, directly referencing the same letter, while commenting on a completely different section of the *Liber extra*:

What about the peasants who create hospitals, change their habits, and receive a certain badge, and practise some hospitality, yet have wives and own property; surely such people are not truly considered religious?

We also advise the bishops to hand over to such persons a uniform habit and a fixed rule concerning one diocese; we hold [that] the evidence is [in the letter of] ‘De vita et honestate clericorum, Deus qui’ [i.e. ‘Deus qui ecclesiam’] and the same below. It is indeed absurd that one and the same church should be deformed by different habits and rules, from which religion and reason are one and the same.<sup>398</sup>

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<sup>397</sup> *Sed et si religiosi diversae professionis aliquibus pr[a]edicent, verbum Dei, propter diversitatem habitus in fidelibus scandalum aliquot suscitetur, debent se in unum habitum regularem, quantum ad indumentum superius conformare, ut infra eodem Deus qui.* Hostiensis, *Summa aurea* ad X 3.1 §2, col. 755.

<sup>398</sup> *Quid de rusticis, qui faciunt hospitalia, mutant habitu[m] et accipiunt signum certum et aliquam hospitalitate[m] exercent, habent tamen uxores, et proprium tenent, nu[n]quid tales censentur religiosi vere? ... Consulimus etiam episcopis, ut talib[us], quo ad omnes, de una di[o]ce[si] uniformem habitum et regulam certam tradant, arg[umentum] [est] de vita et hon[estate] cle[ricorum], Deus qui et infra eod[em] statuimus. Absurdum enim est quod una eademq[ue] ecclesia diversis habitib[us] et regulis, ex quo una et eadem est religio et ratio, deformatur.* Hostiensis, *Summa aurea* ad X 3.31 §3, cols. 981-982.

It seems that Hostiensis thought the letter of 1201 offered a good example for other practical situations, not necessarily to do with preaching or contact with the unbelievers at all. In this sense, both the letter ‘Quam sit laudabile’ of 1190 and the letter ‘Deus qui ecclesiam’ of 1201, while inserted into the most important canon law collections of the Middle Ages, and commented on by the influential thirteenth-century canon lawyers, such as Innocent IV and Hostiensis, did not cause much controversy nor inspire any commentary relating to the Baltic pagans. Rather they both were used as examples to illustrate issues not related to Livonia at all, but that had become much more relevant and pressing during the first half of the thirteenth century.

### **PREACHING CONTENT**

In medieval Europe, many extensive manuscripts and collections of sermons, *exempla*, and other similar documentation survive; for example, a sermon collection by a French Franciscan called Nicholas de Aquaevilla was widely disseminated to the point where his sermons were popular even in medieval Sweden.<sup>399</sup> Analysis of late medieval sermon content has indicated that the majority of patristic quotations and references in sermons came from Gratian’s *Decretum* and from the fourth book of Peter the Lombard’s *Sentences*.<sup>400</sup> Blake Beattie has further argued that the Avignonese curial preachers of the fourteenth century relied not on theological but on legal treatises that considered proper action and conduct; this was partly due to

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<sup>399</sup> Siegfried Wenzel, *Medieval Artes Praedicandi: A Synthesis of Scholastic Sermon Structure* (Toronto, 2015); Monica Hedlund, ‘The Use of Model Sermons at Vadstena: A Case Study’, in *Constructing the Medieval Sermon*, ed. Roger Andersson (Turnhout, 2007), pp. 117-164. For a late medieval example of details that can be extracted from a concrete sermon delivered in practice, see Elizabeth Makowski, ‘Canon Law and the Spirituality of Cloistered English Nuns’, in *Canon Law, Religion, and Politics*, ed. Uta-Renate Blumenthal, Peter Landau, Anders Winroth (Washington, D.C., 2012), pp. 284-295, at p. 290.

<sup>400</sup> Thompson, ‘From Texts to Preaching’, pp. 13-37.

the realities of the fourteenth century when lawyers and legal officials significantly outnumbered theologians.<sup>401</sup>

By contrast, the content of preaching in the context of Livonia is hard to determine, as no extensive descriptions with full details of missionary preaching have survived. The best source we have that allows us to draw at least some conclusions is the *Chronicle of Henry of Livonia*. The following passage is one of the most comprehensive examples that offers a description of preaching activities in Livonia in around 1206:

The provost of Riga, therefore, according to the word of the archbishop, after receiving the boys of the better people [*meliorum*] of all Livonia as hostages, sends the priests to preach. The first of these, Alabrand, setting out for Treiden, preaching the Word of God, administers the word of preaching and the sacrament of baptism, and after determining parishes [i.e. their borders], builds a church in Cubbesele. To Metsepole is sent the priest Alexander, who, after having baptised the whole of that province, begins to dwell there with them, and to sow the seed of the Gospel, and to build a church. The priest Daniel, who had been, in a way, tested during the siege of the castle of Holm, is sent to the people of Lennewarden. They receive him kindly, [and] they are baptised by him. And when he was going to the village called Sydegunde, he immediately summons the people to listen to the Word of God. ... In the morning ... they are all gathered together; the priest, denouncing their idolatry, ... preaches finally that there is one God, the Creator of all, one Faith, one baptism, and in these and other similar [ways] invites them to the worship of the one God. After hearing these things, they renounce the devil and his

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<sup>401</sup> Blake Beattie, 'Coram Papa Preaching and Rhetorical Community at Papal Avignon', in *Preacher, Sermon and Audience in the Middle Ages*, ed. Carolyn A. Muessig (Leiden, 2002), pp. 63-86.

works, and promise to believe in God, and those who were predestined by God are baptised. After baptising the people of Remi also, he [the priest Daniel] proceeds to the people of Ascheraden. After receiving the Word of God with joy, and the sacraments of baptism having been celebrated there, he returns to Treiden and, upon arriving at the castle of Dobrel, is kindly received by them. And having sowed the seed of the Word of God there, he converted and baptised them, and having left that province, he proceeded to the Wends.<sup>402</sup>

The priests were travelling between different regions, and it is implied that no specific parochial structure was yet in place. However, the beginnings of local Christian communities can be seen through the commission and building of churches. The passage reiterated some content of the sermons, such as that there is only one God and one baptism, suggesting that no matter who had performed the rite of baptism, it was seen equally valid and there should be no re-baptism.<sup>403</sup> Additionally, the renouncing of the Devil and the promise to believe in God were all interlinked with the ritual of baptism that was extensively performed everywhere the priests went.

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<sup>402</sup> *Prepositus itaque Rigensis iuxta verbum archiepiscopi acceptis obsidibus meliorum pueris de tota Lyvonia sacerdotes mittit ad predicationem. Quorum primus Alebrandus in Thoreidam proficiscens, verbum predicationis et baptismi sacramentum ministrat et parrochias distinguens in Cubbesele ecclesiam edificat. Alexander sacerdos in Metsepole dirigitur, qui baptizata provincia illa tota cum eis ibidem habitare et semen ewangelii seminare et ecclesiam incipit edificare. Daniel sacerdos, qui in castris Holmensis obsidione quodammodo examinatus fuerat, Lenewardensibus mittitur. Quem illi benigne suscipientes, baptizantur ab eo. Cumque in villam, que dicitur Sydegunde, procederet, statim populum ad audiendum verbum Dei convocat. ... Mane facto ... colliguntur omnes in unum, quibus sacerdos ydolatriam detestans ... tandem unum Deum, creatorem omnium, unam fidem, unum baptismum esse predicat et hiis et aliis similibus ad culturam unius Dei eos invitat. Hiis auditis diabolo et operibus eius abrenunciant et in Deum credere se promittunt et baptizantur, quotquot predestinati erant a Deo. Baptizatis etiam Reminensibus procedit ad Ascradenses. Quibus recipientibus verbum Dei cum gaudio et celebratis ibidem sacramentis baptismi reversus est Thoreidam et veniens ad castrum Dabrelis benigne receptus est ab eis. Et seminato ibidem verbi Dei semine convertit et baptizavit eos et relicta provincia illa processit ad Wendos. HCL X, 14, pp. 44-45; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, pp. 65-66 (amended).*

<sup>403</sup> See also the discussion on re-baptism at pp. 42-46.

Some preliminary conclusions regarding the sermon content in Livonia can be nevertheless indirectly drawn. According to Henry of Livonia, the papal legate William of Modena ‘admonished [the Livonians] henceforth not to return to paganism by neglecting their sacraments of baptism ... and he taught them to bear good fruit and he diligently explained the Christian faith’.<sup>404</sup> Similarly, priests had been preaching and teaching to local converts that there was only one baptism and one God.<sup>405</sup> With such passages, it seems that Henry’s intention was to show that the converts were sufficiently instructed in the very basics of the Catholic Faith, at least to a point that they should have understood that accepting Christianity meant forming a permanent connection through an agreement that should not be broken. This, in turn, legitimised any punitive action taken if the converts should decide to apostatise.<sup>406</sup>

Indeed, renouncing the faith appeared frequently in Livonia, and was often responded to with military action undertaken by the Christians under whose jurisdictional framework apostasy was occurring.<sup>407</sup> (Re)constructing the content of preaching after it had already occurred quite some time ago was not, of course, unique to Henry of Livonia. For example, there are various accounts recalling Urban II’s (1088-1099) preaching of the First Crusade at Clermont and they all include at least some details of the sermon given.<sup>408</sup> While not identical, narrative accounts recalling

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<sup>404</sup> ... *ne deinceps neglectis baptismi sui sacramentis ad paganismum redirent, ammonuit. ... fructumque bonum referre docebat fidemque christianam eis diligenter enodavit.* HCL XXIX, 3, pp. 209-210; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, pp. 230, 232 (amended).

<sup>405</sup> For example: HCL X, 14, p. 45; XII, 6, p. 64; XV, 7, p. 94; XIX, 8, p. 133.

<sup>406</sup> See the section on apostasy in the context of warfare at pp. 192-198.

<sup>407</sup> For example: HCL XXVI, 5, p. 189-190; XXVII, 4, p. 197.

<sup>408</sup> For example, see *Gesta Francorum et aliorum Hierosolimitanorum*, ed. and trans. Rosalind Hill (Oxford, 1962), pp. 1-2; Robert the Monk, *The Historia Iherosolimitana of Robert the Monk*, ed. Damien Kempf and Marcus Bull (Woodbridge, 2013), pp. 5-7; William of Malmesbury, *De Gestis Regum Anglorum*, Vol. 2, ed. William Stubbs (London, 1889), pp. 393-398. For a general analysis of the accounts, see Herbert E. J. Cowdrey, ‘Pope Urban II’s Preaching of the First Crusade’, *History*, Vol. 55 (1970), pp. 177-188; Giles Constable, ‘Charter Evidence for Pope Urban II’s Preaching of the First

Urban's preaching described it as having a very similar structure.<sup>409</sup> This can be explained partly by the strong consensus held among scholars that these narrative accounts were all written after the outcome of the First Crusade was known, which in turn influenced the writers.<sup>410</sup> Of course, it would have been quite reasonable to expect that any preaching done to pagans concerned first and foremost the basics of the Christian faith. However, in the context where very little information about the sermon content is given, by emphasising that the converts were made explicitly aware of their obligations pertaining to the acceptance of Christianity, Henry of Livonia showed the readers of his chronicle that the Christians who were about to wage war on the apostate Livonians had every right to do so.

The audience of sermons in Livonia were not only local converts. This becomes especially prevalent when Henry of Livonia narrated the travels of William of Modena who was preaching to everyone, both Germans and local natives:

And he always paid attention to warn the Swordbrothers and the other Germans in other provinces that, by teaching the Christian faith to the Livonians and Letts and other converts, and by imposing the delightful burden of Jesus Christ upon their shoulders, they should be sparing towards them, both in the matter of tithes and in other causes, lest if too heavily burdened they might return to infidelity.<sup>411</sup>

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Crusade', in *Canon Law, Religion, and Politics*, ed. Uta-Renate Blumenthal, Peter Landau, Anders Winroth (Washington, D.C., 2012), pp. 228-232.

<sup>409</sup> Dana C. Munro, 'The Speech Of Pope Urban II at Clermont, 1095', *The American Historical Review*, Vol. 11/2 (1906), pp. 231-242.

<sup>410</sup> Louise and Jonathan Riley-Smith, *The Crusades: Idea and Reality, 1095-1274* (London 1981), p. 40; Jonathan Riley-Smith, *The First Crusade and the Idea of Crusading* (London, 2003), pp. 135-152; Thomas Asbridge, *First Crusade* (London, 2005), p. 32; William J. Purkis, 'Rewriting the History Books: The First Crusade and the Past', in *Writing the Early Crusades: Text, Transmission and Memory*, ed. Marcus Bull and Damien Kempf (Woodbridge, 2014), pp. 140-154.

<sup>411</sup> *Et semper fratres milicie nec non et alios Theuthonicos in aliis provinciis commonitos habebat attentius, ut Lyvones et Lettos et alios neophytos, docentes fidem christianam onusque suave Iesu Christi humeris eorum imponentes, tam in decimis quam in aliis causis parcerent eis, ne gravati nimium ad*

Therefore, admonishing the Germans to keep amicable relations with the newly converted is likely to have been common sermon content. This notion is supported in the context of statements from the popes that attempted to look out for the newly converted, and which became much more prevalent during the pontificate of Honorius III.<sup>412</sup> For instance, in his letter 'Ecclesia romana', Honorius guaranteed that the new converts would remain free in their liberty, should be subjected to none other than Christ and be obedient to the Roman Church.<sup>413</sup> By preaching leniency and tolerance toward the converts in Livonia, it was clearly hoped that acts of apostasy would become less frequent and a peaceful co-existence would be achieved. Such exhortations made sense, as the local converts were concurrently hearing sermons about the main principles of the Faith, including matters pertaining to key concepts in theology and canon law.

### **CRUSADE PREACHING**

In March 1147, St. Bernard of Clairvaux attended a Diet at Frankfurt where an expedition to the pagan lands to the east of the Elbe was under discussion.<sup>414</sup> Bernard issued a letter straight after the meeting in which his support for the proposed expedition was made fully clear.<sup>415</sup> Namely, Bernard indicated that he had the

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*infidelitatem redirent.* HCL XXIX, 3, p. 211; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, pp. 232-233 (amended).

<sup>412</sup> Iben Fønnesberg-Schmidt, 'Pope Honorius III and Mission and Crusades in the Baltic', in *The Clash of Cultures on the Medieval Baltic Frontier*, ed. Alan V. Murray (Farnham, 2009), pp. 103-122, at p. 117. While not as frequently as Honorius III and other popes, Innocent III had also issued letters advising caution in the treatment of converts, see Fønnesberg-Schmidt, *The Popes and the Baltic Crusades*, pp. 177-178. This can be at least partly explained by the fact that by the end of the pontificate of Innocent III in 1216, only part of Livonia was converted, thus the need for protection was less pressing than during the pontificates of later popes.

<sup>413</sup> Gregory IX, 'Ecclesia Romana' (3 January 1225) *Horoy* 4, cols. 760-761.

<sup>414</sup> McGuire, 'Bernard's Life and Works: A Review', pp. 53-55.

<sup>415</sup> *Quia enim verbum hoc crucis parvitati nostrae Dominus evangelizandum commisit, consilio domini regis et episcoporum et principum, qui convenerant Frankonovort, denuntiamus armari Christianorum robur adversus illos, et ad delendas penitus, aut certe convertendas nationes illas siguum salutare suscipere, eamdem eis promittentes indulgentiam peccatorum, quam et his qui versus Hierosolymam*

authority to preach the crusade to the East and he offered privileges to those taking up the Cross to go against the pagans. He also added a detail that has caused much discussion among later historians: when he sets forth the ultimatum of either ‘wiping out’ or converting the pagans, it has sometimes been seen as an endorsement to forced conversion which itself, as we have seen, was against canon law stipulations.<sup>416</sup> Indeed, the letter by Bernard starkly stated that ‘[w]e utterly forbid that for any reason whatsoever a truce should be made with these peoples, either for the sake of money or for the sake of tribute, until such a time as, by God's help, they shall be either converted or wiped out’.<sup>417</sup>

It is doubtful whether Bernard truly meant to offer pagans the choice of baptism or death. Namely, as pointed out by Friedrich Lotter, Bernard used the verb ‘*delere*’ (i.e. ‘to destroy’) in connection to the collective term ‘*natio(nes)*’ and since pagan individuals form a ‘*natio*’ or ‘*nationes*’ and they are united by tribal bonds – they form a nation, a human community united in origin, customs, language, law, and other similar aspects, and destroying such a community can be accomplished by demolishing communal bonds and traditions by means of subjugation and

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*sunt profecti*. – ‘Because the Lord has committed to our insignificance the preaching of this crusade, we make known to you that at a council of the king, bishops, and princes who had come together at Frankfurt, the might of Christians was armed against them, and that for the complete wiping out or, at any rate, the conversion of these peoples, they have put on the Cross, the sign of our salvation. And we by virtue of our authority promised them the same spiritual privileges as those enjoy who set out toward Jerusalem.’ St. Bernard of Clairvaux, Epistola 457, *PL* 182, cols. 651-652; translation from St. Bernard of Clairvaux, *The Letters of St. Bernard of Clairvaux*, intro. Beverly Mayne Kienzle and trans. Bruno Scott James (Kalamazoo, 1998), Letter no. 394, p. 467.

<sup>416</sup> For the interpretation that Bernard called for forced conversion, see for example Christiansen, *The Northern Crusades*, pp. 53-54; Hans-Dietrich Kahl, ‘Crusade Eschatology as Seen by St. Bernard in the Years 1146 to 1148’, in *The Second Crusade and the Cistercians*, ed. Michael Gervers (New York, 1992), pp. 35-47, at p. 38.

<sup>417</sup> *Illud enim omnimodis interdicimus, ne qua ratione ineant foedus cum eis, neque pro pecunia, neque pro tributo, donec, auxiliante Deo, aut ritus ipse, aut natio deleatur*. St. Bernard of Clairvaux, Epistola 457, *PL* 182, col. 652; translation from St. Bernard of Clairvaux, *The Letters of St. Bernard of Clairvaux*, Letter no. 394, p. 467.



enslavement, or by expelling the individuals from their homeland.<sup>418</sup> Thus, it is the pagan communities, rather than individuals that ought to be destroyed. Additionally, as argued by Jay T. Lees, calling for such extreme measures might have been a desperate act by Bernard to convince the audience of his letter and to veil the otherwise relatively weak reasoning of the crusading call.<sup>419</sup>

The stance of Bernard of Clairvaux towards relationships between ‘infidels’ and Christians was also revealed in his other works and letters not specifically concerning the Wendish crusade. In around 1130, in his *In Praise of the New Knighthood*, Bernard stated:

I do not mean to say that the pagans are to be slaughtered when there is any other way to prevent them from harassing and persecuting the faithful, but only that it now seems better to destroy them than that the rod of sinners be lifted over the lot of the just, and the righteous perhaps put forth their hands unto iniquity.<sup>420</sup>

Benjamin Z. Kedar has interpreted this statement as testimony to Bernard’s realisation that Muslims are not likely to convert and therefore force should instead be used to secure the primacy of Christianity in the Latin East.<sup>421</sup> Similarly, in a letter

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<sup>418</sup> Friedrich Lotter, ‘Conquest of the Region East of Elbe’, in *Medieval Frontier Societies*, ed. Robert Bartlett and Angus Mackay (Oxford, 1989), pp. 267-306, at pp. 288-289.

<sup>419</sup> Jay T. Lees, ‘The Leaders of the Wendish Campaign of 1147’, in *The Second Crusade: Holy War on the Periphery of Latin Christendom*, ed. Jason T. Roche and Janus Møller Jensen (Turnhout, 2015), pp. 273-301, at pp. 286-298.

<sup>420</sup> *Non quidem vel Pagani necandi essent, si quo modo aliter possent a nimia infestatione seu oppressione fidelium cohiberi. Nunc autem melius est ut occidantur, quam certe relinquuntur virga peccatorum super sortem justorum: ne forte extendant justis ad iniquitatem manus suas.* St. Bernard of Clairvaux, *De laude novae militiae ad milites templi*, Caput III, PL 182, col. 924; translation from St. Bernard of Clairvaux, *In Praise of the New Knighthood*, intro. Malcolm Barber and trans. Conrad Greenia (Kalamazoo, 2010), Chapter Three, p. 40.

<sup>421</sup> Benjamin Z. Kedar, *Crusade and Mission: European Approaches Toward the Muslims* (Princeton, 1984), p. 60.

sent some time in 1146 and addressed to ‘the English people’, Bernard bluntly stated the following:

If the pagans were similarly subjugated to us then, in my opinion, we should wait for them rather than seek them out with swords. But as they have now begun to attack us, it is necessary for those of us who do not carry a sword in vain to repel them with force.<sup>422</sup>

What seems to be the case here, however, is the realisation that the use of force is required to repel pagan attacks, which in itself was not against canon law, as we shall see.<sup>423</sup> If that included converting the attacking pagans then that would have been an additional positive outcome. While compulsory baptism was forbidden according to canon law, defending the Church and fellow Christians was most certainly licit.<sup>424</sup> At the end of his life, Bernard started to emphasise the importance of preaching to ‘infidels’; yet, he never outright rejected the use of force alongside it.<sup>425</sup> Nevertheless, Bernard’s crusade preaching anticipated the nature of the

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<sup>422</sup> Translation from Bernard of Clairvaux, *The Letters of St. Bernard of Clairvaux*, Letter no. 391, p. 463. According to Bruno Scott James who translated the letter, it has not been published nor translated before, and is currently only available at the Bibliothèque Nationale, Paris MS. 14845, fol. 257. As the document has not been digitised, I was not able to access it and provide the original Latin version.

<sup>423</sup> See the discussion at pp. 197-202.

<sup>424</sup> ‘Thus, so that they be converted not by force but by the free faculty of decision [i.e. free will], they are to be persuaded, not rather impelled.’ – *Ergo non ui, sed libera arbitrii facultate ut conuertantur suadendi sunt, non potius inpellendi*. Gratian, D.45 c.5, col. 162. The ‘*auctoritas*’ is the Fourth Council of Toledo (633). See also Lomax, ‘Frederick II, His Saracens, and the Papacy’, p. 192; Benjamin Z. Kedar, *The Franks in the Levant, 11<sup>th</sup> to 14<sup>th</sup> centuries* (Aldershot, 1993), p. 192.

<sup>425</sup> Kedar, *Crusade and Mission*, p. 61. The relatively aggressive stance of St. Bernard in regards to the conversion of pagans can be contrasted with that of St. Francis who, according to Adam L. Hoose, holds a special position in the dominant Franciscan scholarship as ‘a pacific ecumenist who rejected the crusades, possessed a negative understanding of Islam, and pursued a self-seeking desire for martyrdom’, see Adam L. Hoose, ‘Francis of Assisi’s Way of Peace? His Conversion and Mission to Egypt’, *The Catholic Historical Review*, Vol. 96 (2010), pp. 449-469, at p. 450. For example, Kathleen Warren has stated that ‘[i]n a time when thousands were heeding the call to join the Fifth Crusade, Francis was compelled by a different world-view, one rooted in the vision of Christ. ... Living among the Saracens in the manner of Christ (humble, obedient, nonviolent, and peaceful), Francis saw the possibility of ending the enmity between Christians and Saracens and creating an atmosphere in which true peace could be established.’ Kathleen Warren, *Daring to Cross the Threshold: Francis of Assisi Encounters Sultan Malek al-Kamil* (Eugene, Oregon, 2003), pp. 18, 78. Such a view has been challenged by Hoose who has argued that it was Francis’s personal choice to renounce the use of arms and that it

expeditions that would be sent to the Eastern regions for the centuries to come: persistent and tenacious, accompanied by semi-constant warfare.<sup>426</sup>

Henry of Livonia remarkably utilised the preaching of Bernard of Clairvaux in his chronicle when narrating the aim of the Christians in Livonia by stating that '[f]or they thought to fight so long against them, until either those who are left would come to seek peace and baptism or they would be eradicated altogether from the land'.<sup>427</sup> Henry placed emphasis on the pagans voluntarily coming to seek peace and baptism, rather than Christians forcefully converting them, thus presenting an ideal scenario for missionaries. Yet, if the pagans were hostile, that justified fighting against them. The mention of Bernard's exhortation in Henry's chronicle shows that even eighty years after Bernard had penned his letter, it was still known in Livonia either directly or indirectly, perhaps through its use in crusade preaching by the local clergy.

Accounts that do not come from the papal curia and that describe possible sermon content that was delivered to promulgate a crusade to Livonia are rare. As we shall see, even the knowledge of earlier papal letters calling for a crusade in the Baltics relies on second-hand accounts, as many of the original documents have not survived. According to Henry of Livonia, a messenger of the bishop of Livonia went to Rome sometime around 1196 and secured a letter from Pope Celestine III (1191-1198) who purportedly 'granted, indeed, the remission of all sins to all who, after taking the

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did not mean he was objecting to the crusade to Egypt in general, see Hoose, 'Francis of Assisi's Way of Peace?', pp. 449-469. The Franciscans never gained a strong foothold in medieval Livonia, so it remains a question whether their presence would have influenced the way conversion and mission was conducted there.

<sup>426</sup> See Chapter 3 for the use of canon law in military expeditions in Livonia.

<sup>427</sup> *Cogitabant enim eos tam diu debellare, donec aut pro pace et baptismo venirent, qui residui errant, aut omnino eos extirpare de terra.* HCL XIX, 3, p. 126; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 146 (amended).

Cross, would go to restore that newly founded Church'.<sup>428</sup> The letter of Celestine III has not survived, but if Henry was correct then this papal bull meant that a peaceful mission in Livonia was converted into a crusading expedition.<sup>429</sup>

In 1199, Pope Innocent III issued 'Sicut ecclesiasticae religionis' to 'all the faithful of Christ in Saxony and Westphalia' calling them to defend the Livonian Church against the pagans; this letter has survived.<sup>430</sup> While emphasising that 'the judgement of ecclesiastical religion does not allow unwilling to be forced to believe', Innocent III offered those going on a crusade to Livonia the remission of sins, and those going on a pilgrimage to Rome the possibility to commute their vow and go to Livonia instead.<sup>431</sup> However, soon after, in 1204, the pope increased the legal standing of those going to Livonia in the letter known as 'Etsi verba evangelizantium pacem'.<sup>432</sup> In this letter, Innocent III stated that 'we permit those who, on account of lack of things or

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<sup>428</sup> *Remissionem quippe omnium peccatorum indulget omnibus, qui ad resuscitandam illam primitivam ecclesiam accepta cruce transeant.* HCL I, 12, p. 7; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 30 (amended).

<sup>429</sup> Bombi, 'Celestine III and the Conversion of the Heathen', pp. 153-154. Iben Fonnesberg-Schmidt has additionally asserted that it was during the pontificate of Celestine III when 'the curia followed the development of the Baltic mission with great interest', see Fonnesberg-Schmidt, *The Popes and the Baltic Crusades*, p. 67. This view has been contested by Carsten Selch Jensen, according to whom '[w]e find that both types of Christianisation [i.e. by preaching and by the sword] existed side by side throughout the period [of 1185-1200]'; Carsten Selch Jensen, 'The Early Stage of Christianisation in Livonia in Modern Historical Writings and Contemporary Chronicles', *Studia Fennica*, Vol. 9 (2005), pp. 207-215, at p. 212. Although Jensen correctly points out that *defending* the Church would have been an acceptable cause for just war (see pp. 197-202 in this thesis), there is no evidence that Bishop Meinhard at any point utilised military force.

<sup>430</sup> *Universis Christi fidelibus in Saxonia et Westphalia constitutis.* Innocent III, 'Sicut ecclesiasticae religionis' (5 October 1199) *DD* 1:3, no. 254, pp. 400-401, at p. 400. There is some confusion regarding the *incipit* of the letter; I have used 'Sicut ecclesiasticae religionis', as both Barbara Bombi and Iben Fonnesberg-Schmidt have done, but in *PL*, Potthast, and also in the Bunge's *Liv-, est- und kurländisches Urkundenbuch*, they all cite the opening as 'Sicut ecclesiasticae laesionis' which, in my opinion, does not make sense, and would explain why Bombi and Fonnesberg-Schmidt have altered the word *laesionis* to *religionis*. There is a remark in Bunge's edition that according to an earlier copy of the letter, the word *lectionis* is meant instead. That, indeed, would make sense.

<sup>431</sup> ... *ecclesiasticae religionis censura compelli non patitur ad credendum inuitos ...* Innocent III, 'Sicut ecclesiasticae religionis', p. 400. See also Barbara Bombi, 'Innocent III and the "Praedicatio" to Heathens in Livonia (1198-1204)' in *Medieval History Writing And Crusading Ideology*, ed. Kurt Villads Jensen and Tuomas M. S. Lehtonen (Helsinki, 2005), pp. 216-231, at pp. 233-234.

<sup>432</sup> Innocent III, 'Etsi verba evangelizantium' (12 October 1204) *Die Register Innocenz 7*, no. 139, pp. 225-227.

infirmity of bodies, cannot go to the Holy Land, to leave for Livonia against the barbarians', essentially giving those going to Livonia legal status equal to those going on a crusade to the East.<sup>433</sup>

The frequency of papal letters containing the plenary indulgence for those taking the Cross against the Baltic pagans increased over time, but it is not known how frequently such letters were used in the preaching of crusades to Livonia.<sup>434</sup> It is reasonable to suggest that Bishop Albert of Riga utilised the attractiveness of indulgences when he was preaching and recruiting in Germany.<sup>435</sup> A short glimpse from the *Livonian Rhymed Chronicle* supports this assessment:

The lord [Bishop Albert] returned home again. He promised his friends that if they would journey with him and save their souls in that land, they would also be able to win both fame and riches honourably. Plenty of them were of such mind and they undertook a journey which turned out well for them, for their holdings there were so extensive that their descendants are still today satisfied with them.<sup>436</sup>

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<sup>433</sup> ... *qui propter rerum defectum et corporum debilitatem terram Ier(oso)limitanam adire non possunt, permitteremus in Liuoniam contra barbaros profisci ...* Innocent III, 'Etsi verba evangelizantium', p. 227. The crusading indulgence granted was equated to those going to the Holy Land rather than any other regions, such as Spain; equally, the crusading indulgence for the Albigensian Crusade was the same as the one granted to those going to the Holy Land; see Rebecca Rist, *The Papacy and Crusading in Europe, 1198-1245* (London, 2009), p. 68.

<sup>434</sup> It is certainly possible that they were used. For example, there are extant copies of papal bulls – albeit not related to Livonia – from the middle of the thirteenth century addressed the Dominicans and Franciscans in Germany, with a Middle-High German translation written on the other side of the bull, see Maier, *Preaching the Crusades*, pp. 101-103. Occasionally, such bulls were also read out in Latin, as was the case with a variation of 'Quia maior', see Thomas W. Smith, 'How to Craft a Crusade Call: Pope Innocent III and *Quia maior* (1213)', *Historical Research*, Vol. 92 (2019), pp. 2-23, at p. 9.

<sup>435</sup> For the granting of indulgences, see pp. 353-367.

<sup>436</sup> *zu hûs der herre wider vûr. vil tûre er sine vrûnt beswûr, daz sie mit im wolden varn und ir sêle wol bewarn in deme selben lande: sie mochten âne schande irwerben êre und gût. ir genûge wurden sô gemût, daz sies ich machten ûf die vart, daz in vil wol zû liebe wart; wan ir gût wart dô vil breit, des noch erben sint gemeit.* *LRC*, 607-618, p. 15; translation from *The Livonian Rhymed Chronicle*, ed. and trans. Jerry C. Smith and William L. Urban (Chicago, 2001), p. 8.

While the material gain received the spotlight, saving one's soul was also emphasised. That the ability to offer remission of sins formed an important part of crusade preaching, is implicitly supported by Henry of Livonia who mentioned that when Bishop Albert went to Rome with the master of the Swordbrothers in 1211, he ended up 'receiving privileges concerning the division of Livonia and Lettia, and a renewed authority over preaching for the remission of sins'.<sup>437</sup> Albert was in Rome again during the Fourth Lateran Council in 1215, when Pope Innocent III 'renewed [Albert's] authority to preach and to sign crusaders for the remission of sins'.<sup>438</sup> That he renewed his authority to preach for the remission of sins, presumably as frequently as possible, does indicate that he actively used these privileges granted to him in his crusade preaching. Albert died in 1229 when Livonia was more or less converted, and the focus of crusading started to shift towards Prussia and other Baltic regions.

### **EDUCATING LOCAL TEACHERS**

The Fourth Lateran Council in 1215 issued a series of constitutions that all concerned the preaching and teaching carried out by the local clergy:

Constitution 10: We therefore decree by this general constitution that bishops are to appoint suitable men to carry out with profit this duty of sacred preaching, men who are powerful in word and deed and who will visit with care the

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<sup>437</sup> ... *super divisione Lyvonie ac Lettie privilegia recipiens et super predicatione in remissionem peccatorum auctoritatem renovatam ... HCL XIV, 13, p. 87 (XV, 2 in Brundage); translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, pp. 108-109 (amended).*

<sup>438</sup> ... *renovata auctoritate predicandi et peregrinos in remissionem peccatorum signandi ... HCL XIX, 7, p. 132; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 152 (amended). On the journey of Bishop Albert to the Fourth Lateran Council in 1215, see also: Tamm, 'Mission and Mobility', pp. 30-31; Barbara Bombi, 'Innocent III and the Baltic Crusade', in *Crusading on the Edge: Ideas and Practice of Crusading in Iberia and the Baltic Region, 1100-1500*, ed. Torben K. Nielsen and Iben Fonnesberg-Schmidt (Turnhout, 2016), pp. 117-133, at pp. 132-133; Carsten Selch Jensen, 'How to Convert a Landscape: Henry of Livonia and the *Chronicon Livoniae*', in *The Clash of Cultures on the Medieval Baltic frontier*, ed. Alan V. Murray (Ashgate, 2009), pp. 151-168, at pp. 164-166.*

peoples entrusted to them in place of the bishops, since these by themselves are unable to do it, and will build them up by word and example.<sup>439</sup>

Constitution 11: Zeal for learning and the opportunity to make progress is denied to some through lack of means. The Lateran Council therefore dutifully decreed that ‘in each cathedral church there should be provided a suitable benefice for a master who shall instruct without charge the clerics of the cathedral church and other poor scholars, thus at once satisfying the teacher’s needs and opening up the way of knowledge to learners’. This decree, however, is very little observed in many churches. We therefore confirm it and add that not only in every cathedral church but also in other churches with sufficient resources, a suitable master elected by the chapter or by the greater and sounder part of it, shall be appointed by the prelate to teach grammar and other branches of study, as far as is possible, to the clerics of those and other churches.<sup>440</sup>

It is not known to what extent these guidelines were followed in the bishopric of Riga and other bishoprics that were elected after the Fourth Lateran Council, but they were certainly known by Bishop Albert of Riga who attended the council.<sup>441</sup>

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<sup>439</sup> ... *generali constitutione sancimus, ut episcopi viros idoneos ad sanctae praedicationis officium salubriter exequendum assumant, potentes in opere et sermone, qui plebes sibi commissas vice ipsorum, cum per se idem nequiverint, sollicite visitantes, eas verbo aedificent et exemplo ...* Constitution 10 of the Fourth Lateran Council (1215) *Tanner 1*, pp. 239-240.

<sup>440</sup> *Quia nonnullis propter inopiam et legendi studium et opportunitas proficiendi subtrahitur, in Lateranensi concilio pia fuit constitutione provisum, ut ‘per unamquamque cathedralem ecclesiam magistro, qui eiusdem ecclesiae clericos aliosque scholares pauperes gratis instrueret, aliquod competens beneficium praeberetur, quo et docentis relevaretur necessitas, et via pateret discentibus ad doctrinam’. Verum, quoniam in multis ecclesiis id minime observatur, nos, praedictum roborantes statutum, adiicimus, ut non solum in qualibet cathedrali ecclesia, sed etiam in aliis, quarum sufficere poterunt facultates, constituatur magister idoneus, a praelato cum capitulo, seu maiori et saniori parte capituli eligendus, qui clericos ecclesiarum ipsarum et aliarum gratis in grammatica facultate ac aliis instruat iuxta posse.* Constitution 11 of the Fourth Lateran Council (1215) *Tanner 1*, p. 240. This Constitution refers to Canon 18 issued at the Third Lateran Council (1179) *Tanner 1*, p. 220.

<sup>441</sup> See the previous page, p. 142.

However, by examining documents issued from Livonia, and by looking at identities of testifiers, some preliminary conclusions can be drawn. Often the word ‘*magister*’ was used to denote a teacher in the twelfth century.<sup>442</sup> By around the year 1200, the term ‘*praepositus*’ was also utilised to indicate both the prior or chief executive officer of a cathedral chapter, and a master’s chief teaching assistant.<sup>443</sup> In the Livonian documents, the term ‘*praepositus*’ was employed several times. In a legal document from 1225, issued by William of Modena, Bishop Albert of Riga, the syndicate of the city of Riga and others, a certain ‘*Iohannes, praepositus*’ is listed among others.<sup>444</sup> The same John is mentioned as a ‘*praepositus*’ again several times over the years.<sup>445</sup>

Schooling local converts became an option once Livonia was almost wholly converted, and the first Catholic schools were established. In 1211, Bishop Albert consecrated the Cathedral Church of Riga.<sup>446</sup> While the document detailing the foundation and consecration of the cathedral did not explicitly mention that a school was founded alongside it, it can be assumed that it was likely the case because schools attached to cathedrals were commonplace at that point.<sup>447</sup> While elsewhere in

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<sup>442</sup> Johannes Fried has concluded, however, that by the 1230s, the term *magister* denoted someone learned in either ‘arts’, theology or medicine, ‘if the title could still be associated with higher learning at all’, see Johannes Fried, *Die Entstehung des Juristenstandes im 12. Jahrhundert* (Köln-Wien, 1974), p. 105. What the title meant exactly has been a debate among scholars studying Gratian, too, and it has been suggested that it could have meant someone taught in canon law, simply ‘the master of the *Decretum*’, but also a judge, or even an abbot, see Winroth, *The Making of Gratian’s Decretum*, p. 7.

<sup>443</sup> Marcia L. Colish, ‘Scholastic Theory at Paris around 1200’, in *Crossing Boundaries at Medieval Universities*, ed. Spencer E. Young (Leiden, 2011), pp. 29-50, at p. 33, n. 8.

<sup>444</sup> The letter of December 1225; *LUB* 1, no. 75, cols. 81-82.

<sup>445</sup> The letter of 17 March 1226; *LUB* 1, no. 80, cols. 94-96. The letter of 21 March 1226; *LUB* 1, no. 81, cols. 96-97. The letter of 16 February 1232, *LUB* 1, no. 125, cols. 160-163.

<sup>446</sup> The letter of 25 July 1211; *LUB* 1, no. 21, col. 29.

<sup>447</sup> See J. Hanrahan, ‘Cathedral Schools: The Institutional Development of Twelfth-Century Education’, *Report of the Annual Meeting of the Canadian Historical Association*, Vol. 34 (1964), pp. 61-70, at p. 64 and C. Stephen Jaeger, *The Envy of Angels: Cathedral Schools and Social Ideals in Medieval Europe, 950-1200* (Philadelphia, 1994), pp. 1-2 for the argument that even the greatest cathedral schools of the time had less documentation about their institutional life, and even about their existence, compared to other educational institutions such as monastic schools and later universities. Thus, it is not surprising that extraordinarily little information about the cathedral school of Riga exists until the late fourteenth century when the school became central in a court-case, see Friedrich G. von Bunge, *Die Stadt Riga im 13. und 14. Jahrhundert* (Leipzig, 1878), pp. 170-171.



Europe, such as in England, the rise of universities contributed to the decline of cathedral schools, there was no university in Livonia in the Middle Ages, and cathedral schools, therefore, remained the most prominent academic institutions in that region.<sup>448</sup>

The Livonian people possibly received the option to be taught locally, described in a charter given by the papal legate, William of Modena.<sup>449</sup> According to the agreement, the Church of St. George was permitted to establish a school in Riga.<sup>450</sup> The editor of the document has noted that one word in the document could be a reference to pupils from local 'tribes' (*tribus*).<sup>451</sup> Unfortunately, no documents survive that could shed more light on those who attended the school, and the amount of people who were of local origin, but it nevertheless highlights the possibility that a number of locals started to receive an official education in the Catholic faith.

At the same time, Christopher M. Bellitto has argued that in medieval Europe, most rural parish priests were not educated in urban environments, such as universities and cathedral schools, due to high associated costs and often distant locations from learning centres.<sup>452</sup> Therefore, it is not surprising that when William of Modena arrived at Livonia as a papal legate, he also took time to teach:

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<sup>448</sup> In England, the rise of Oxford as an educational centre and eventual university, contributed to the gradual decline of cathedral schools in Lincoln, Hereford, Exeter and elsewhere, see Richard C. Dales, *The Intellectual Life of Western Europe in the Middle Ages* (Washington, D.C., 1980), pp. 216-217. For the decline of cathedral schools in the context of the ascension of universities more generally, see Lynch, *The Medieval Church*, pp. 248-252 and David L. Sheffler, *Schools and Schooling in Late Medieval Germany: Regensburg, 1250-1500* (Leiden, 2008), p. 113. Other academic institutions also played a role in the decline of cathedral schools. In Italy, for example, cathedral schools all but disappeared by 1300 due to the rise in city schools, see Michael H. Shank, 'Schools and Universities in Medieval Latin Science', in *The Cambridge History of Science*, Vol. 2: Medieval Science, ed. David C. Lindberg and Michael H. Shank (Cambridge, 2013), pp. 207-239, at p. 238.

<sup>449</sup> The letter of 5 April 1226; *LUB* 1, no. 82, cols. 97-99.

<sup>450</sup> The letter of 5 April 1226; *LUB* 1, no. 82, cols. 97-99.

<sup>451</sup> The letter of 5 April 1226, *LUB* 1, no. 82, col. 98. Von Bunge has transcribed the phrase as '*de alienis ... tibi*' which is probably a scribal error, as it should be 'tribibus' or 'tribubus', unless an entirely different word was meant.

<sup>452</sup> Christopher M. Bellitto, 'Revisiting Ancient Practices: Priestly Training before Trent', in *Medieval Education*, ed. Ronald B. Begley and Joseph W. Koterski, S.J. (New York, 2005), pp. 35-49, at p. 40.

In Kokenhusen, at last, he likewise faithfully reminded the lessons of holy teachings both to the Germans and to the Rus' and Letts and Selonians who lived together, always admonishing the Germans [that] they were not to hurt their subjects overly with undue burdens or exactions, but by diligently teaching the Christian faith, they were to bring in Christian customs and abolish pagan rites, and they were to instruct them both by their good examples and words.<sup>453</sup>

The passage indicates that instructions possibly relying on Constitution 10 of the Fourth Lateran Council were offered to people: emphasis was placed on the teaching of the Catholic faith by words and good examples. Another passage pertaining to the visitation of William of Modena indicates that he was also instructing the local clergy in doctrinal questions:

The legate of the Apostolic See having returned to Riga again, the bishops, priests and clerics, the Swordbrothers with vassals of the Church, and the citizens of Riga assembled at his presence. And in the presence of all them, he celebrated a solemn council during Lent of the Lord, because of the decrees of Innocent [III], to recall their memories and to institute certain new things which seemed necessary for the newly planted church.<sup>454</sup>

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<sup>453</sup> *Tandem in Konkoyse similiter documentorum sanctorum monita tam Theuthonicis quam Ruthenis et Lettis et Selonibus cohabitantibus fideliter impendit, commonendo semper Theuthonicos, ne subditos suos gravaminibus aut exactionibus indebitis nimium lederent, sed fidem Christi sedulo docendo consuetudines christianas inducerent et ritus paganorum abolerent et tam exemplis eorum bonis quam verbis eos instruerent. HCL XXIX, 5, p. 212; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 234 (amended).*

<sup>454</sup> *Reverso sedis apostolice legato rursus in Rigam, convenerunt ad eum episcopi, sacerdotes et clerici, fratres milicie cum vasallis ecclesie civesque Rigenses. Et presentibus his omnibus in ecclesia beate Marie celebravit solempne concilium in quadragesima Domini, propter Innocentii instituta, ad memoriam revocando et nova quedam adiciendo, que novelle plantacionis ecclesie necessaria videbantur. HCL XXIX, 8, p. 214; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 236 (amended).*

In fact, a similar visitation to the local clergy was already undertaken in 1206 by Anders Sunesen (d.1228), the archbishop of Lund, who stayed at Riga over the winter:

After this, the archbishop, calling together all the clergy, gave instruction in theology, and after having read the psalter, they spent the whole winter in divine contemplation.<sup>455</sup>

Anders Sunesen had studied in Bologna, Paris and Oxford, making him perhaps one of the best educated men not only in Denmark but the whole of Scandinavia.<sup>456</sup> Sunesen wrote many works of theological and legal nature, such as the didactic and moralising *Hexaëmon*, written in hexameter, and the *Paraphrase of the Law of Skåne*.<sup>457</sup> Therefore, it is not unexpected to see Henry of Livonia mentioning him

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<sup>455</sup> *Post hec archiepiscopus convocando omnem clerum doctrinam proponit theologiam et legendo in psalterio totam hyemem in divina contemplatione deducunt. HCL X, 13, p. 43; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, pp. 64-65 (amended).*

<sup>456</sup> Sawyer and Sawyer, *Medieval Scandinavia*, p. 123; Nielsen, 'The Missionary Man', pp. 99-100; Anthony Perron, *Rome and Lund, 1178-1274: A Study in the Church History of a Medieval Fringe*, unpublished doctoral thesis (University of Chicago, 2002), pp. 187-190. For the visitation, see also Torben K. Nielsen, 'The Missionary Man: Archbishop Anders Sunesen and the Baltic Crusade, 1206-21', in *Crusade and Conversion on the Baltic Frontier*, ed. Alan V. Murray (Ashgate, 2001), pp. 95-130, at p. 106.

<sup>457</sup> Perron, *Rome and Lund*, pp. 190-191; Ane L. Bysted, 'Crusading Ideology and *Imitatio Christi* in Anders Sunesen, Bernard of Clairvaux and Innocent III', in *Les élites nordiques de l'Europe occidentale (xiii-xve siècle)*, ed. Tuomas M. S. Lehtonen and Élisabeth Mornet (Paris, 2007), pp. 127-138. The archbishopric see of Lund was considered as a literary centre already by contemporaries and probably held highly influential canonical works, such as Gratian's *Decretum*; see Lars Boje Mortensen, 'The Nordic Archbishoprics as Literary Centres around 1200', in *Archbishop Absalon of Lund and His World*, ed. Karsten Friis-Jensen and Inge Skovgaard-Petersen (Roskilde, 2000), pp. 133-157, at pp. 145-146. Sunesen demonstrated his knowledge of canon law in many cases, such as when petitioning papal dispensations for bishops who possessed a *defectus natalium*, i.e. they were born out of wedlock; see Torben Kjesrsgaard Nielsen, 'Archbishop Anders Sunesen and Pope Innocent III: Papal Privileges and Episcopal Virtues', in *Archbishop Absalon of Lund and His World*, ed. Karsten Friis-Jensen and Inge Skovgaard-Petersen (Roskilde, 2000), pp. 113-132, at pp. 127-131. But see also: Anthony Perron, 'Metropolitan Might and Papal Power on the Latin-Christian Frontier: Transforming the Danish Church around the Time of the Fourth Lateran Council', *The Catholic Historical Review*, Vol. 89 (2003), pp. 182-211, at pp. 192-200, which offers an overview of the relations between the papal curia and the archbishopric of Lund under Anders Sunesen. Perron has demonstrated that while the power and prestige of the archbishopric was waning, it had less to do with Anders Sunesen and his capabilities, but rather with external factors influencing this change: for example, the increasing education levels of other local prelates, the possibility to bypass the archbishop and turn straight to Rome, and the increasing decentralisation of archiepiscopal authority in favour of collective decision-making in dioceses.

teaching the local clergy in theological and possibly canonical matters when he visited Riga.

It can be concluded that the majority of clergy in Livonia probably did not receive extensive training at cathedral schools nor at universities abroad, even if they came from regions where these were common; rather, their education was reliant on local '*magistri*' and '*praepositi*', and the brightest of young boys would have been sent to one of the few local schools that existed at that time, such as to the Church of St. George at Riga.<sup>458</sup> While ecclesiastical instructions could have been received directly from the curia in the form of papal letters, it is also possible that occasional visitations by highly educated officials from elsewhere provided insight into the developments and changes in theological and legal issues.

### *LANGUAGE(S) OF PREACHING*

Having already established vocabulary and grammar from the Roman past, the Latin language was mostly used by the elite, including the clerical class, and it remained the dominant writing language in Europe throughout the Middle Ages, although the importance of vernacular literature began to grow during the twelfth century.<sup>459</sup> The proliferation of Latin became especially widespread during the so-called Carolingian renaissance in the late eight and ninth centuries when extensive Latin literature was produced, which in turn contributed to the formation of a more or less homogenous elite that communicated in Latin.<sup>460</sup> Consequently, the liturgy

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<sup>458</sup> The letter of 5 April 1226; *LUB* 1, no. 82, cols. 97-99 evidences that such a school was founded in Riga; see also the discussion above at pp. 144-145.

<sup>459</sup> Barber, *The Two Cities*, pp. 456-457; Michael T. Clanchy, *From Memory to Written Record: England 1066-1307* (Oxford, 1993), p. 215. See also Tore Janson, *A Natural History of Latin*, ed. and trans. Merethe Damsgård Sørensen and Nigel Vincent (Oxford, 2004), pp. 100-107, for the role of Latin in education from the Early Middle Ages onwards.

<sup>460</sup> Sverre Bagge has referred to this period as the formation of 'Imperial Christianity', see Sverre Bagge, 'Christianising Kingdoms', in *The Oxford Handbook of Medieval Christianity*, ed. John H. Arnold

was also held in Latin, and the Mass, supposedly the most exalted ceremony of the Church, was generally ‘poorly understood and passively witnessed by the laity’, as Joseph H. Lynch has put it.<sup>461</sup> Although it is not implausible that the laity had some knowledge of Latin, especially in the context of witnessing liturgy in this language, and having to be able to recite the Lord’s Prayer and the Creed in Latin, they mostly conversed in their local vernacular languages.<sup>462</sup> For example, in the thirteenth-century crusader city Acre, the dominant language was French, but other languages spoken in the city also included Provençal, Greek, Arabic, English, and various German and Italian dialects.<sup>463</sup>

The reality of the medieval multilingual world was not ignored by the papacy, and in 1215, Constitution 9 was approved at the Fourth Lateran Council which addressed the issue of potential language barriers between laity and clergy:

Since in many places within the same city and diocese there are people of different languages having one Faith but various rites and customs, we strictly command that the bishops of these cities and dioceses provide suitable men who will, according to the different rites and languages, celebrate the divine offices for

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(Oxford, 2017), pp. 114-131, at p. 117. For the role of Latin in the Carolingian renaissance, see John J. Contreni, ‘The Carolingian Renaissance: Education and Literary Culture’, in *The New Cambridge Medieval History, c.700-c.900*, Vol. 2, ed. Rosamond McKitterick (Cambridge, 2006), pp. 709-757, at pp. 730-732. But see also Garry W. Trompf who has argued that the Carolingian renaissance was not so much about emerging from ‘a background of virtually unbroken continuity with Rome’, but rather about its ability to incorporate ‘into itself revived models from Israel, from Greece, and from the mediterranean world of the early Church fathers’; Garry W. Trompf, ‘The Carolingian Renaissance’, *Journal of the History of Ideas*, Vol. 34 (1973), pp. 3-26, at pp. 23-25.

<sup>461</sup> Lynch, *The Medieval Church*, pp. 281-282.

<sup>462</sup> Clanchy, *From Memory to Written Record*, pp. 237-238; C. H. Lawrence, ‘The English Parish and its Clergy’, in *The Medieval World*, ed. Peter Linehan and Janet T. Nelson (London, 2003), pp. 648-670, at pp. 662-663. Richard W. Southern has claimed that in fact, even most secular rulers were illiterate in Latin, see Richard W. Southern, *Western Society and the Church in the Middle Ages* (Harmondsworth, 1970), p. 38. As will be discussed below, sermons did not have to be in Latin. In fact, many of the *exempla* collections from the Middle Ages were in vernacular languages, see Phyllis Roberts, ‘The “Ars Praedicandi” and the Medieval Sermon’, in *Preacher, Sermon and Audience in the Middle Ages*, ed. Carolyn A. Muessig (Leiden, 2002), pp. 39-62, at pp. 54-55, footnote no. 51.

<sup>463</sup> Jonathan Rubin, *Learning in a Crusader City: Intellectual Activity and Intercultural Exchanges in Acre, 1191-1291* (Cambridge, 2018), p. 62.

them, administer the sacraments of the Church and instruct them by word and example.<sup>464</sup>

However, already before the council, in 1211, there is evidence of not only the bishop, but even the priests in Livonia using interpreters when the necessity required:

Salomon the priest, when he heard of their [the pagan Estonians'] gathering, went out of the castle with his people and planned to return to Livonia. But Lembitu of Saccalia, taking a crowd of Estonians, followed the priest and, having been found by night, he killed [Salomon] and Theodoric and Philip, his interpreters, with some others.<sup>465</sup>

The priest Salomon did not have one but two interpreters, and they all lived and perished among the local pagans.<sup>466</sup> While legislation, such as Constitution 9 issued at the Fourth Lateran Council attempted to make the teaching and preaching performed by the clerics more accessible, it did not have much effect on Livonia simply because conversion without interpreters had not been envisaged by those who

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<sup>464</sup> *Quoniam in plerisque partibus intra eandem civitatem atque dioecesim permixti sunt populi diversarum linguarum, habentes sub una fide varios ritus et mores, districte praecipimus ut pontifices huiusmodi civitatum sive dioecesum, provideant viros idoneos, qui secundum diversitates ntuum et linguarum divina officia illis celebrent et ecclesiastica sacramenta ministrent, instruendo eos verbo pariter et exemplo.* Constitution 9 of the Fourth Lateran Council (1215) *Tanner* 1, p. 239. This was the first time that such a canon was included in an ecumenical council. However, it seemed to have set a precedent, as later councils started to re-iterate and expand on it. For example, Decree 24 of the Council of Vienne in 1311-1312 stated: *Sed nec ignoramus, quin et haec promi noscantur inaniter vacuaque redire, si auribus linguam loquentis ignorantium proferantur. ... [V]iris catholicis notitiam linguarum habentibus, quibus utuntur infideles praecipue, abundare sanctum affectamus ecclesiam, qui infideles ipsos sciant et valeant sacris institutis instruere, Christicolarumque collegio per doctrinam Christianae fidei ac susceptionem sacri baptismus aggregare.* – ‘Nor are we unaware that the Word of God is learned in vain and returns empty to the speaker if it is directed to the ears of those ignorant of the speaker’s language. ... We desire earnestly that the Holy Church should be well supplied with Catholic scholars acquainted with the languages most in use by unbelievers. These scholars should know how to train unbelievers in the Christian way of life, and to make them members of the Christian body through instruction in the faith and reception of sacred baptism.’ Decree 24, Council of Vienne (1311-1312) *Tanner* 1, p. 379.

<sup>465</sup> *Salomon ergo sacerdos, ut audivit congregationem ipsorum, divertit a castro cum suis et cogitavit redire in Lyvoniam. Lembito vero de Saccala assumpta turba Estonum persequutus est sacerdotem et inventum nocte interfecit et Theodericum et Philippum interpretes suom cum quibusdam aliis ...* *HCL* XV, 9, p. 99; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 119 (amended).

<sup>466</sup> *HCL* XV, 9, p. 99.

were converting there in the first place, and translators had already been employed for many years before the Fourth Lateran Council in 1215.

There is no scholarly consensus currently about the use of translations in medieval preaching more generally.<sup>467</sup> Yet, there is ample evidence that translators were actively involved in medieval preaching in Livonia.<sup>468</sup> When it comes to the Christianisation of pagans and the use of translators during preaching, it has been argued that in the early stages of the conversion of the neighbouring Slavs, learning local languages did not concern the missionaries very much.<sup>469</sup> Local elites were willing to learn the language(s) of the Christian settlers of whom the majority were of German origin; understanding vernaculars only became more important as the situation stabilised and missionaries started to target local non-elite peoples.<sup>470</sup> Giles Constable has aptly remarked that ‘the most significant linguistic divisions in the twelfth century were not between clerics and laymen or men and women but between people living in different regions, and especially between the Germanic and Romance language’.<sup>471</sup> In the case of Scandinavia, horizontal (vernacular + vernacular) language mixtures that included Swedish and Danish were possible due to their mutual

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<sup>467</sup> Giles Constable, ‘The Language of Preaching in the Twelfth Century’, *Medieval and Renaissance Studies*, Vol. 25 (1994), pp. 131-152, at pp. 131-132.

<sup>468</sup> This was unique to Livonia. For example, Gerald of Wales mentioned how Archbishop Baldwin delivered crusading sermons, ‘having been explained to the Welsh by an interpreter’. – ... *per interpretem Walensibus exposito*. Gerald of Wales, *Itinerarium Kambriae*, ed. James F. Dimock (London, 1868), Lib. 1, Cap. 1, p. 14. At another time Gerard also indicated that an interpreter was the archdeacon of Bangor; Gerald of Wales, Lib. 1, Cap. 1, p. 55; Lib. 2, Cap. 7, p. 119. In linguistically diverse societies, translators could also hold official positions: in Valencia, for example, they bore the official title ‘*torcimana*’; Robert Bartlett, *The Making of Europe: Conquest, Colonization and Cultural Change 950 – 1350* (London, 1994), p. 198.

<sup>469</sup> Sébastien Rossignol, ‘Bilingualism in Medieval Europe: Germans and Slavs in Helmold of Bosau’s Chronicle’, *Central European History*, Vol. 47, No. 3 (2014), pp. 523-543, at p. 540.

<sup>470</sup> Rossignol, ‘Bilingualism in Medieval Europe’, *Central European History*, p. 540.

<sup>471</sup> Constable, ‘The Language of Preaching’, p. 141.

intelligibility and great linguistic similarities, and preaching did not require translations between the two languages.<sup>472</sup>

Conversely, the Estonian and Livonian languages spoken in the Northern parts of Livonia belonged to Finno-Ugric language groups, while the Lettish language from the central and southern parts came from the Indo-European family tree.<sup>473</sup> The only contemporary account that includes references to local languages is the chronicle of Henry of Livonia. Alan V. Murray has denoted that Henry showed his knowledge of the Finno-Ugric languages by using a variety of words from Estonian and Livonian; yet, for some reason, Henry seemed to have less knowledge of Lettish.<sup>474</sup> This is surprising because Henry was ordained a priest in 1208 and became a parish priest in regions where Lettish was spoken.<sup>475</sup> The preliminary but questionable conclusion would be that for some reason, preachers seemed to learn Finno-Ugric languages more easily.

In addition to such interpretation being too dependent on scarce source material, there seems to be a better explanation for why Henry did not use much Lettish in his chronicle. When he arrived at Livonia in 1207, the conversion of Livonia-proper was almost finished, and thus, in 1208, the conversion of Estonia began; consequently, two-thirds of Henry's chronicle was dedicated to the conversion of

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<sup>472</sup> Jonathan Adams, 'Language Difficulties in Some Medieval Vernacular Scandinavian Sermons', in *Constructing the Medieval Sermon*, ed. Roger Andersson (Turnhout, 2007), pp. 189-206, at pp. 197-202.

<sup>473</sup> *Concise Encyclopedia of Languages of the World*, ed. Keith Brown and Sarah Ogilvie (London, 2009), p. 64. See also the map at 423.

<sup>474</sup> For example, Henry uses the term '*malewa*' at XIX, 9, p. 134 and XX, 2, p. 136; and the phrase '*Laula! Laula! Pappi!*' at XVIII, 8, p. 121. Alan V. Murray, 'Henry the Interpreter: Language, Orality and Communication in the Thirteenth-century Livonian Mission', in *Crusading and Chronicle Writing on the Medieval Frontier*, ed. Marek Tamm, Linda Kaljundi, Carsten Selch Jensen (London, 2016), pp. 107-134, at pp. 120-121.

<sup>475</sup> Brundage, 'Introduction: Henry of Livonia', pp. 5-6.



Estonia.<sup>476</sup> When Henry was writing his chronicle in the late 1220s, he had had first-hand experiences mainly with local peoples speaking Finno-Ugric languages, and therefore it makes sense that he became accustomed to these dialects. It can only be presumed that once the whole of Livonia was subjugated, and Henry returned to his parish in Lettia, he became more acquainted with Lettish as well.

The importance associated with knowing local languages while preaching to pagans was not unique to Livonia. Archbishop Adalbert of Hamburg (d.1072), personally wishing to embark on a missionary journey among the Scandinavian pagans, had the following response from the king of Denmark at the time: '[T]he barbarian peoples could more easily be converted by men of similar language and customs than by strange customs abhorring the character of the nation [that is being converted]'.<sup>477</sup> Similarly, a well-educated and good orator could not achieve much without the ability for his sermons to be understood by local peoples, as testified by the case of John the Fleming.<sup>478</sup> It was not therefore just the question of being able to

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<sup>476</sup> The conversion of the Livs: *HCL* I, 1 – XII, 5, pp. 1-61; the conversion of Estonia: *HCL* XII, 6 – XXX, 6, pp. 61-222. In the English translation, the pages covering the conversion of the Livs are pp. 25-82, and the conversion of Estonia is covered at pp. 83-243. See also Kivimäe, 'Henricus the Ethnographer', p. 94.

<sup>477</sup> ... *barbaras gentes facilius posse converti per homines suae linguae morumque similium quam per ignotas ritumque nationis abhorrentes personas* ... Adam of Bremen, 'Gesta Hammaburgensis ecclesiae pontificum', in *Hamburgische Kirchengeschichte*, ed. Bernhard Schmeidler (Hannover and Leipzig, 1917), pp. 1-283, at Lib. III, p. 220; translation from Adam of Bremen, *History of the Archbishops of Hamburg-Bremen*, trans. and ed. Francis J. Tschan and intro. Timothy Reuter (New York, 2002), Bk. III, 72, p. 180. See also Adams, 'Language Difficulties in Some Medieval Vernacular Scandinavian Sermon', pp. 191-193.

<sup>478</sup> Educated in Paris and Orleans, and an expert in canon law, the archbishop of Trondheim in Norway found John to be most useful when he was there: *Nú er þar til at taka, at Laurentius var með Jörundi erkibiskupi í Niðarósi, ok studeraði jafnan í kirkjunnar lögum er meistari Jóhannes flæmingi las honum; vóru þeir ok miklir vinir sín í millum. Laurentio þótti mikil skemtan, at hann brauzt við at tala norrænu en komst þó litt at.* – 'Now we must go on to tell how Laurence [bishop of Hólar, Iceland] was with Archbishop Jörund in Nidarós [Norway] and studied continually in the Canon Law which Master John the Fleming taught him. Also, they were great friends one to another. It seemed great sport to Laurence when John made struggles to talk Norse, but got a very little way with it.' Einarr Hafliðason, *Laurentius saga*, p. 801; translation from Einarr Hafliðason, *The Life of Laurence*, p. 19. During his stay, John the Fleming expressed his desire to preach in Norway but Laurence, the bishop of Hólar, doubted John's abilities to speak the local language; however, John insisted that he knew the language well enough: 'Skipum nú þá', sagði Laurentius, 'sem kominn sé föstuinugangr; þá verðr at tala fyrir sóknarfólki yðru hversu þat skal halda langaföstuna.' – 'Á þenna máta', sagði Jón flæmingi: 'nú er komin lentin, hvern

speaking the language somewhat, but also being able to convey the meaning of concepts, such as Lent. It is also perhaps the reason why there is no indication in the chronicle of Henry of Livonia that the locals were preached to about the Trinity or even Lent, but that they were rather told about concepts such as ‘one baptism’ and ‘one God’.<sup>479</sup>

That interpreters were required in Livonia can be presumed from passages that depict preaching to varied audiences. When William of Modena was a legate in Livonia from 1225 onwards, he travelled around extensively and delivered sermons wherever possible.<sup>480</sup> Henry of Livonia depicted sermons preached to diverse audiences:

And instructing the Estonians in the Faith of Jesus Christ, he [William of Modena] admonished the Germans by faithfully exhorting them, to the extent that they were to live together in a friendly way, they were not to stir up evils among themselves, nor were the Germans to impose any unbearable yoke upon the shoulders of the neophytes, but rather the light and sweet yoke of the Lord, and they were always to teach the sacraments of the Faith.<sup>481</sup>

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*mann kristin komi til kirkju, gjöri sína skrip[t]in, kasti burt konu sinni, maki engi sukk – nonne sufficit, domine?. Þá hló Laurentius ok mælti: ‘ekki skilr fólkit hvat lentin er.’ Sagði hann erkibiskupi, ok gjörðu þeir at mikit gaman, en fengu Jóni nokkurn afdeiling sinnar beiðslu, þvíat hann var mjök bráðlyndr, ef ei var svo gjört sem hann vildi. – “Now, ” said Laurence, “let us then suppose that the beginning of the long fast is come. ” It is then your business to declare before your parish folk how they are to keep the long fast. “In this wise,” said John the Fleming, “Now Lent is come: every Christian man come to church, get him shriven [skripen] put away his wife, make no brawling. Nonne sufficit domine?” Then Laurence laughed and said, “The people understand not what Lent is.” Einarr Hafliðason, *Laurentius saga*, p. 80; translation from Einarr Hafliðason, *The Life of Laurence*, pp. 19-20. It seems that John the Fleming made up the word *skripen*, rendered as ‘shriven’, in translation, possibly resembling either Old Norse *skript* (‘penance’) or being a derivation from a Low-German loan-word, see Alaric Hall, ‘Jón the Fleming: Low German in Thirteenth-Century Norway and Fourteenth-Century Iceland’, *Leeds Working Papers in Linguistics and Phonetics*, Vol. 18 (2013), pp. 1-33, at p. 11.*

<sup>479</sup> See the discussion on the content of sermons at pp. 130-135.

<sup>480</sup> *HCL XXIX*, 2-7, pp. 208-214.

<sup>481</sup> *Et Estones instruendo in fide Iesu Christi Theuthonicosque fideliter exhortando commonitos habebat, quatenus benigne commorantes mala non suscitant ad invicem, nec Theuthonici gravaminis alicuius iugum importabile neophytorum humeris imponerent, sed iugum Domini leve ac suave fideique semper docerent sacramenta.* *HCL XXIX*, 3, p. 209; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 231 (amended).

As the legate had two audiences, one which spoke in a German dialect and the other in Estonian, there must have been an interpreter or possibly interpreters who were translating his sermons to the listeners. Sometimes the fact that the converts and the Germans were being preached to separately, was made explicitly clear:

And he [William of Modena] summoned the Estonians, [both] men and women, into their churches and went to them, and, faithfully ministering the word of exhortation, he admonished them [that] hereafter they should not dare to violate the sacraments of the Faith by committing such evils. And similarly, the devout [man], sharing the admonishments of sacred doctrine to the Swordbrothers there, he taught them that they should not be too burdensome to their subjects, those foolish Estonians, either in taking the tithes or in whatever other causes, lest through such conditions they should be compelled to return to paganism again.<sup>482</sup>

It would seem strange, almost counterproductive, to preach that the Estonians are ‘stupid’ (*stulti*) while they themselves were listening and understood what was being said because of an interpreter. Therefore, it is more likely that in this instance, the Estonians and the Swordbrothers heard the sermons delivered by William of Modena separately. What it also means is that the German and Estonian audiences, albeit living in close vicinity, probably did not communicate efficiently with each other yet, even if they had people amongst themselves who understood the languages of each other, as the contents of the sermons given by the legate appear very different.

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<sup>482</sup> *Et convocavit Estonos, viros et mulieres, ad ecclesias eorum et abiit ad eos et verbum exhortationis fideliter ministrando commonuit eos, ne deinceps tanta mala committentes fidei sacramenta violare presumerent. Similiter et fratribus milicie doctrine sancte monita devotus ibidem impendens, docebat eos, ne subditis suis, stultis Estonibus illis, aut in decimis accipiendis aut in aliis quibuscunque causis nimium graves existerent, ne per talem occasionem iterum ad paganismum redire cogantur.* HCL XXIX, 3, pp. 209-210; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 231 (amended).

Conclusively, it is evident that translators and interpreters played a key role in the conversion of Livonia.

### **PREACHING AND TEACHING FOR A LAY AUDIENCE**

While the audience of preaching in the Early Middle Ages largely consisted of clerics, this changed rapidly over the course of the late twelfth and thirteenth centuries when lay audiences become commonplace.<sup>483</sup> In the early twelfth century, Christian worship began to include elements of liturgical drama allowing a closer connection between the clerical class and laypeople.<sup>484</sup> Preaching/teaching and ritual performance were strongly interwoven in medieval communities: ecclesiastical readings from the Bible and other sources, for example, from the Epistles, hymns, and the lives of saints, were often accompanied by Christian rites, such as the sacraments and blessings given to the laity, creating a multidimensional learning experience for both the audience and performers of the rituals.<sup>485</sup> Evelyn Birge Vitz has argued that the Catholic liturgy was, in fact, the major source of education for the laity, and the device of communication between pagans/neophytes and established Christians.<sup>486</sup> Uniquely, there is an account of a mystery play performed to pagans and neophytes in Livonia:

That same winter, a most well-produced play of the prophets was performed in the middle of Riga, so that the pagans might

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<sup>483</sup> Roberts, "The "Ars Praedicandi"", pp. 44-45.

<sup>484</sup> Donnalee Dox, *The Idea of the Theater in Latin Christian Thought: Augustine to the Fourteenth Century* (Michigan, 2004), pp. 72-74.

<sup>485</sup> Neslihan Şenocak, 'Horizontal Learning in Medieval Italian Canonries', in *Horizontal Learning in the High Middle Ages: Peer-to-Peer Knowledge Transfer in Religious Communities*, ed. Micol Long, Tjamke Snijders, and Steven Vanderputten (Amsterdam, 2019), pp. 217-235, at pp. 223-228.

<sup>486</sup> Vitz, 'Liturgy as Education in the Middle Ages', pp. 20-34; Martine de Reu, 'A Statistical Treatment of Sin and Holiness in Sermons from the Early Middle Ages (500-1100)', in *Speculum Sermons: Interdisciplinary Reflections on the Medieval Sermon*, ed. Georgiana Donavin, Cary J. Nederman and Richard Utz (Turnhout, 2004), pp. 335-362, at p. 342.

learn the rudiments of the Christian faith through their own eyes. The subject of this play was most diligently explained through an interpreter to both neophytes and pagans who were present. But when the armed [men] of Gideon fought the Philistines, the pagans, out of fear of being slain, began to flee but they were quietly called back. Thus, therefore, for a short time the Church remained silent while resting in peace. This play was like a prelude and prophecy of the future. For in the same play there were wars, namely those of David, Gideon, and Herod; and [there] was the doctrine of the Old and New Testaments, because the pagans had to be converted through the many wars that follow, and to be instructed through the teaching of the Old and New Testaments in which way they may arrive at the True Peacemaker and eternal life.<sup>487</sup>

This is an example where liturgical elements were interwoven with storytelling and teaching. Crucially, the play was not meant as simple entertainment, because an interpreter was entrusted with the crucial task of explaining the meaning of the play to the audience.<sup>488</sup> This is an illuminating example of how some of the principles of theology and canon law – such as the concept of just war or baptism – could have been communicated to local audiences.

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<sup>487</sup> *Eadem hyeme factus est ludus prophetarum ordinatissimus in media Riga, ut fidei christiane rudimenta gentilitas fide disceret oculata. Cuius ludi materia tam neophitis quam paganis, qui aderant per interpretem diligentissime exponebatur. Ubi autem armati Gedeonis cum Phylisteis pugnabant, pagani timentes occidi fugere ceperunt, sed caute sunt revocati. Sic ergo ad modicum tempus siluit ecclesia in pace quiescendo. Iste autem ludus quasi prelude et presagium erat futurorum. Nam in eodem ludo erant bella, utpote David, Gedeonis, Herodis; erat et doctrina Veteris et Novi Testamenti, quia nimirum per bella plurima que sequuntur convertenda erat gentilitas et per doctrinam Veteris ac Novi Testamenti erat instruenda, qualiter ad verum pacificum et ad vitam perveniat eternam.* HCL IX, 14, p. 32; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, 53 (amended).

<sup>488</sup> For a comprehensive analysis of the play and its textual transmission, see Regula Meyer Evitt, 'Undoing the Dramatic History of the Riga "Ludus Prophetarum"', *Comparative Drama*, Vol. 25 (1991), pp. 242-256.

The preacher himself also played an important role in delivering his sermons; being a good actor and an orator were qualities to look out for.<sup>489</sup> Two abilities in medieval teachers held to the highest regard were aptitude (*'ingenium'*) and memory (*'memoria'*); their interdependence and complimentary nature has been succinctly explained by Alexander Andrée: “*ingenium*”, the natural talent quickly to understand and use knowledge, required “*memoria*”; and “*memoria*”, the ability not only to store useful information but to employ it creatively, required “*ingenium*”.<sup>490</sup> Medieval preachers employed a wide range of rhetorical devices to make it easier for the audience to understand and remember the content of their sermons.<sup>491</sup> Consequently, preachers often made use of techniques that relied on comparisons between current events and those depicted in the Bible.<sup>492</sup> Additionally, medieval preachers tended to adjust and modify the content of their sermons, as has been pointed out by Caroline A. Muessig.<sup>493</sup> An extant sample of pre-crusade Cistercian preaching in Occitania, recorded by Alan of Lille in around 1200, shows that ecclesiastical arguments and rhetorical devices were simplified for the audience who was listening to it being delivered in the vernacular.<sup>494</sup> That sermons should be preached in a simple manner,

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<sup>489</sup> Lynn T. Ramey, ‘Unauthorized Preaching: The Sermon in Jean Bodel’s *Jeu de Saint Nicolas*’, in *Speculum Sermons: Interdisciplinary Reflections on the Medieval Sermon*, ed. Georgiana Donavin, Cary J. Nederman and Richard Utz (Turnhout, 2004), pp. 219-232, at pp. 225-226. For preaching as performance, see also: Roberts, ‘The “Ars Praedicandi”’, pp. 39-62; Beverly Mayne Kienzle, ‘Medieval Sermons and their Performance: Theory and Record’, in *Preacher, Sermon and Audience in the Middle Ages*, ed. Carolyn A. Muessig (Leiden, 2002), pp. 87-124; Riley-Smith, *What Were the Crusades?*, pp. 41-43.

<sup>490</sup> Alexander Andrée, ‘The Virtues of a Medieval Teacher: *ingenium* and *memoria* in the Twelfth Century’, in *Teaching and Learning in Medieval Europe: Essays in Honour of Gernot R. Wieland*, ed. Greti Dinkova-Bruun and Tristan Major (Turnhout, 2017), pp. 163-171, at pp. 170-171.

<sup>491</sup> David d’Avray, *The Preaching of the Friars: Sermons Diffused from Paris before 1300* (Oxford, 1985), pp. 229-236.

<sup>492</sup> Christoph T. Maier, *Crusade Propaganda and Ideology: Model Sermons for the Preaching of the Cross* (Cambridge, 2003), pp. 41-43.

<sup>493</sup> Carolyn A. Muessig, ‘Audience and Preacher: *Ad Status* Sermons and Social Classification’, in *Preacher, Sermon and Audience in the Middle Ages*, ed. Carolyn A. Muessig (Leiden, 2002), pp. 255-278.

<sup>494</sup> Kienzle, *Cistercians, Heresy and Crusade*, pp. 140-141; Beverly Mayne Kienzle, ‘Preaching the Cross: Liturgy and Crusade Propaganda’, *Medieval Sermon Studies*, Vol. 53 (2009), pp. 11-32, at pp. 21-23.

and employ various rhetorical devices, such as repeating difficult concepts, has also been shown by Sophia Menache and Jeannine Horowitz in their work on the practice of medieval rhetoric.<sup>495</sup> Indeed, repetition and cross-referencing played a crucial role in medieval learning by forging connections between words and accompanying comments.<sup>496</sup>

Certain examples depicting preaching in Livonia support the claim that repetition and reliance on communal memory were deployed as rhetorical devices. Henry of Livonia narrated that '[w]hen the morning came, all the Letts having gathered together, he [William of Modena] preached to them the joyous doctrine of the Lord Jesus Christ, and, frequently recalling the Passion of that same Lord Jesus, he gladdened them greatly'.<sup>497</sup> By repeating the principal concepts of the Catholic faith, the preacher made it easier for the audience to remember, and consequently to recognise familiar elements in future sermons. Yet another example from the preaching of William of Modena demonstrates communal memory – it describes how 'he went on to Üxküll, where, commemorating the memory of the first holy bishops, he also strengthened those Livonians in the service of God'.<sup>498</sup> Üxküll had been the location from where the conversion of Livonia began in the 1180s. The inhabitants of Üxküll, while perhaps not intimately familiar with the stories of the Bible due to their

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<sup>495</sup> Sophia Menache and Jeannine Horowitz, 'Rhetoric and Its Practice in Medieval Sermons', *Historical Reflections*, Vol. 22, (1996), pp. 321-350.

<sup>496</sup> Sinéad O'Sullivan, 'Text, Gloss, and Tradition in the Early Medieval West: Expanding into a World of Learning', in *Teaching and Learning in Medieval Europe: Essays in Honour of Gernot R. Wieland*, ed. Greti Dinkova-Bruun and Tristan Major (Turnhout, 2017), pp. 3-24, at p. 9.

<sup>497</sup> *Unde mane facto, congregatis Lettis universis, cum leticia letam eis domini Iesu Christi doctrinam predicavit et, sepius passionem eiusdem domini Iesu commemorans, letos eosdem quam plurimum letificavit ... HCL XXIX, 3, p. 210; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 232 (amended).*

<sup>498</sup> ... *in Ykescolam processit, ubi primorum sanctorum episcoporum memoriam commemorans eciam illos Lyvones in Dei servicio confortavit. HCL XXIX, 5, p. 212; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 234 (amended).*

relatively recent conversion, must have known the beginnings of their own parish, possibly transmitted via oral tradition. By evoking the memory of the beginning of a community, William of Modena's sermon emphasised to the audience that they all shared a collective past crafted and united through the Christian faith.



## CHAPTER TWO: WARFARE

The conversion of Livonia has often been treated as perpetual missionary warfare.<sup>499</sup> This was already attested by Dietrich of Nieheim (c.1340-1418) who in his *Cronica* covered the Christianisation of the Baltics, including Livonia, as follows:

And with this he [Emperor Frederick II (1194-1250)] gave them [the Teutonic Order] Livonia, Prussia, and Estonia, as well as Curonia, and several other provinces to the north and near the Ocean Sea, in which at that time the pagans had their dwellings, and which, after a long period of time, the Master and the Brothers [of the Teutonic Order] themselves had obtained by *frequent wars* [emphasis mine], and converted [them] to the Catholic faith.<sup>500</sup>

The earliest extant document that pleads for military aid in these regions East of Elbe is a so-called Magdeburg charter from c.1107-1110, written by an unknown author who most likely belonged to the court of the archbishop of Magdeburg.<sup>501</sup> The appeal conveyed some of the atrocities that the pagan Wends had committed against Christians and asked recipients to ‘sanctify the war, awake the strong ... take up

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<sup>499</sup> For this sentiment in secondary literature, see for example: John H. Lind, ‘The “First Swedish Crusade” Against the Wends: A Part of the Second Crusade?’, in *The Second Crusade: Holy War on the Periphery of Latin Christendom*, ed. Jason T. Roche and Janus Møller Jensen (Turnhout, 2015), pp. 303-322, at p. 312; Torben K. Nielsen, ‘Sterile Monsters? Russians and Orthodox Church in the Chronicle of Henry of Livonia’, in *The Clash of Cultures on the Medieval Baltic Frontier*, ed. Alan V. Murray (Farnham, 2009), pp. 227-252. See also Helmut Roscher, *Papst Innocenz III. und die Kreuzzüge* (Göttingen, 1969), pp. 192-213, which specifically calls the military activity in the Baltic region as ‘missionary crusade’ (*‘Missionskreuzzug’*).

<sup>500</sup> *Et cum hoc dedit eis Livoniam, Prussiam et Estoniam necnon Curoniam et plures alias provincias quoad partes aquilonares et prope mare Oceanum, in quibus tunc pagani incolatum habebant et quas extunc ipsi magister et fratres longo temporis tractu cum crebris bellis obtinuerunt et ad fidem catholicam converterunt.* Dietrich of Nieheim, *Cronica*, ed. Katharina Colberg and Joachim Leuschner (Stuttgart, 1980), p. 279.

<sup>501</sup> The document can be found in Wilhelm Wattenbach’s ‘Handschriftliches’, *Neues Archiv der Gesellschaft für ältere deutsche Geschichtskunde*, Vol. 7 (1882), pp. 620-629, at pp. 624-626. See also Constable, *Crusaders and Crusading in the Twelfth Century*, pp. 197-214 for an indepth overview of the charter and the context in which it was issued.

shields against the enemies of Christ'.<sup>502</sup> While in practice nothing came of that appeal, it nevertheless began a pattern that later requests for aid aimed at this region would continue: the causes and purposes of any military action were articulated with seeming clarity by suggesting a range of reasons from defending the Church to expanding Christendom, but such sweeping proclamations also rendered the purported duration of any of these expeditions ambiguous.

Similarly, when Innocent III appealed to King Valdemar II (1170-1241) of Denmark in 1209 to embark on a mission to the Baltics, he saw that the purpose of this proposed mission was 'to root out the error of paganism and spread the bounds of the Christian faith'.<sup>503</sup> Such an approach implies that the expedition ended once paganism was eliminated and replaced with the Christian faith. With this in mind, it is not surprising that the whole period of Christianisation of the Baltics was often considered to have been in a state of perpetual armed conflict.<sup>504</sup>

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<sup>502</sup> *Sanctificate bellum, suscite robustos ... contra inimicos Christi arripite clypeos.* 'Handschriftliches', pp. 624-626.

<sup>503</sup> ... *ad extirpandum paganitatis errorem et terminos Christianae fidei dilatandos* ... Innocent III, 'Suggestor scelerum serpens' (31 October 1209) *Die Register Innocenz 12*, no. 103, pp. 196-197, at p. 196; translation from Riley-Smith and Riley-Smith, *Crusades: Idea and Reality*, pp. 77-78.

<sup>504</sup> Jonathan Riley-Smith has also argued that the military endeavours in the Baltics were essentially as 'perpetual crusades' with local institutions, such as the bishopric of Riga and the Teutonic Order, receiving privileges that allowed them to continuously recruit for their campaigns in these regions. See Jonathan Riley-Smith, *The Crusades: A Short History* (Yale, 1990), pp. 131-132; Axel Ehlers, 'The Crusade of the Teutonic Knights against Lithuania Reconsidered', in *Crusade and Conversion on the Baltic Frontier*, ed. Alan V. Murray (Ashgate, 2001), pp. 21-44, at pp. 24-25. Permanent warfare has often been interlinked with the concept of frontiers and frontier societies in the Middle Ages in crusading historiography, but this view has also been challenged due to it diminishing the cultural exchanges and peaceful interactions that also took place, see Nora Berend, 'Frontiers', in *Palgrave Advances in the Crusades*, ed. Helen J. Nicholson (Basingstoke, 2005), pp. 148-171, at pp. 158-159. Instability of such frontier regions was likewise present in the near East, with the Second Kingdom (1191-1291) usually characterised as more fragile and disintegrated than the First Kingdom (1099-1191). Benjamin Z. Kedar has succinctly characterised the widespread strifes of the Second Kingdom resulting from 'the lack of dynastic stability, absentee kings, the struggle of the Frankish nobility against Emperor Frederick II, the rising power of the Italian communes and the struggles and bouts of warfare among them, the ascendancy of the military orders and the rivalry among them', see Benjamin Z. Kedar, 'On some characteristics of the Second Kingdom of Jerusalem, 1191-1291', in *Settlement and Crusade in the Thirteenth Century: Multidisciplinary Studies of the Latin East*, ed. Gil Fishof, Judith Bronstein and Vardit R. Shotten-Hallel (London, 2021), pp. 3-16, at p. 6.

The military endeavours in the Baltics, including the first campaign in 1147 to the Wends, have often been seen as opportunistic undertakings that attracted those who were interested in acquiring new land, as suggested by Christopher Tyerman.<sup>505</sup> This view has been somewhat challenged and Jay T. Lees has pointed out that in fact, ‘the men who crossed the Elbe in 1147 had conflicting claims to land and no plan to either to destroy or convert the people they were attacking’.<sup>506</sup> The aim of this chapter is to investigate how military campaigns in Livonia were justified, perceived, and conducted, and therefore to bring some clarity and diversity to the concept of ‘perpetual warfare’.

The main sources for examining the state of warfare in Livonia are papal letters and narrative chronicles. When Pope Innocent III wrote to ‘all Christians in Saxony and Westphalia’, in 1199, he called on them to take up arms ‘to defend the Christians’, in Livonia.<sup>507</sup> Jonathan Riley-Smith has described such justification given to the

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<sup>505</sup> Christopher Tyerman, *God's War: A New History of the Crusades* (London, 2006), pp. 305-306; such an evaluation of the Wendish Crusade leans on the treatment the Crusades have received more widely. For example, Georges Duby has argued that the crusaders were a group of socially disadvantaged and landless sons that ‘created and sustained the crusades’, see Georges Duby, *The Chivalrous Society* (Berkeley and Los Angeles, 1980), p. 120. H. E. J. Cowdrey likewise has alluded to the rise in the population of Western Europe in the eleventh century, that in turn led to increased pressure put on younger brothers who could not be accommodated on their family lands anymore. Cowdrey saw this as one of the four factors that not only prepared but shaped the crusading movement itself. See H. E. J. Cowdrey, ‘The Genesis of the Crusades’, in *The Holy War* (Columbus, 1976), pp. 9-32, at pp. 13, 24. The theory of ‘younger brothers’, however, has been strongly criticised, for example, by Jonathan Riley-Smith who has pointed out that ‘[a] commitment to crusade ... involved heavy expenses and real financial sacrifices, and the burdens on families were even heavier if several members chose to go’, see Riley-Smith, *The First Crusade*, pp. 43-47. Andrew Jotischky has aptly explained the prevalence of theories, such as the theory of ‘younger sons/brothers’, which largely lean on economic motivations: ‘The assumption that the knighthood was attracted by the prospect of wealth and lands is resilient, perhaps in part because human nature suggests that it is also plausible. It is certainly difficult absolutely to disprove ...’, see Andrew Jotischky, *Crusading and the Crusader States* (London, 2017), pp. 12-13. For a good analysis of the difficulties of examining the motivations of medieval people to go on crusades – a sentiment that could be extrapolated to the Baltic Crusades, too, see Marcus Bull, ‘Views of Muslims and of Jerusalem in Miracle Stories, c.1000 – c.1200: Reflections on the Study of First Crusaders’ Motivations’, in *The Experience of Crusading, Vol. 1: Western Approaches*, ed. Marcus Bull and Norman Housley (Cambridge, 2003), pp. 13-38, esp. pp. 17-20.

<sup>506</sup> Lees, ‘The Leaders of the Wendish Campaign’, pp. 275-276, 299.

<sup>507</sup> *Universis Christi fidelibus in Saxonia et Guestfalia ... ad defensionem Christianorum ...* Innocent III, ‘Sicut ecclesiasticae religionis’, pp. 400-401.

crusades as misinterpreting the situation in Livonia, while acknowledging that the importance of having a just cause for war is demonstrated by the fact that any justification ('to defend the Christians') was offered in this case to begin with.<sup>508</sup> It is through the narrative sources compiled in these regions that a more complete picture of the military situation in Livonia can be obtained. While the literary materials available clearly have an agenda – Henry of Livonia for the bishopric of Riga, the Livonian Rhymed Chronicle for the Order of the Swordbrothers/Teutonic Order – they nevertheless diversify the picture we might be otherwise left with if we relied only on papal documentation that is already lacking in detailed information pertaining to the circumstances in Livonia.

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<sup>508</sup> ... *ad defensionem Christianorum* ... Innocent III, 'Sicut ecclesiasticae religionis', p. 401. Jonathan Riley-Smith, 'Christian Violence and the Crusades', in *Crusaders and Settlers in the Latin East* (Ashgate, 2008), VII, pp. 3-20, at p. 6.

## WAGING WAR

### CAUSES

All wars start with a reason, whether just or unjust. In his *City of God* St. Augustine stated that ‘for when a just war is waged, it is fought against the sinning of the opposing side: and every victory, even when won by the wicked, humbles the vanquished by divine judgement, either by making amends for sins or by punishing them’.<sup>509</sup> The implication here was that a just war is not proactive but rather reactive – the party on which the war is waged upon must have provided the cause. More specifically, Augustine determined two causes for a just war:

But just wars tend to be defined as those which avenge injuries, if any nation or state upon which the war is desired, has either neglected to punish what has been wrongfully done by its own people, or to return what has been taken unjustly. But even this kind of war is just, without a doubt, which God commands, [for] in his presence there is no injustice, and he knows what ought to be done to every man.<sup>510</sup>

The centrality of the argument revolved around obtaining justice that was present before the offending party caused injuries. This is very much in line with the general philosophy of Augustine that since ultimate peace is impossible due to the sinful nature of a man, achieving order and justice is nevertheless a goal to strive

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<sup>509</sup> *Nam et cum justum geritur bellum, pro peccato et a contrario dimicatur: et omnis victoria, cum etiam malis provenit, divino judicio victos humiliat, vel emendans peccata, vel puniens.* St. Augustine, *De Civitate Dei*, Vol. 2, ed. Joseph Strange (Cologne, 1850), Liber XIX, 15, p. 343; translation from St. Augustine, *The City of God, Books XVII-XXII*, trans. Demetrius B. Zema and Gerald G. Walsh (Washington, D.C., 2008), 19.15, p. 223.

<sup>510</sup> *Justa autem bella definiri solent, quae ulciscuntur injurias, si qua gens vel civitas, quae bello petenda est, vel vindicare neglexerit quod a suis improbe factum est vel reddere quod per injurias ablatum est. Sed etiam hoc genus belli sine dubitatione justum est, quod Deus imperat, apud quem non est iniquitas, et novit quid cuique fieri debeat.* St. Augustine, *Quaestiones in Heptateuchum libri VII*, PL 34, cols. 547-824, at col. 781.

towards, and a just war is a necessity in this process.<sup>511</sup> Additionally, Augustine established that divinely commanded war is always just, a stance that some scholars have seen as the opposite to the pacifistic position of early medieval Christianity, with the latter interpretation having come under serious criticism in recent decades.<sup>512</sup> In any case, it would be problematic to claim that Augustine devised the ‘just war theory’, as he devoted a miniscule amount of space in his writings to the concept of just war, especially compared to issues of doctrine, such as the Trinity, Original Sin and Free Will, that he considered at length.<sup>513</sup> Furthermore, as David D. Corey and J. Daryl Charles have aptly pointed out, ‘the ethical questions of war can be approached

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<sup>511</sup> R. A. Markus, ‘Saint Augustine’s Views on the “Just War”’, *Studies in Church History*, 20 (1983), pp. 1-13, at p. 10; James Turner Johnson, ‘St. Augustine (354-430 ce)’, in *Just War Thinkers from Cicero to the 21<sup>st</sup> Century*, ed. Daniel R. Brunstetter and Cian O’Driscoll (London, 2018), pp. 21-33, at pp. 24-25; Gabriel Palmer-Fernandez, ‘Religion and Violence: War, Tyrannicide, Terrorism’, in *The Just War and Jihad*, ed. R. Joseph Hoffmann (New York, 2006), pp. 231-254, at pp. 233-234.

<sup>512</sup> Jean-Michel Hornus, writing in the 1960s, became one of the strongest proponents of the concept of an inherently pacifistic Church in the Early Middle Ages, stating that the aim of his research was to ‘prove that, from the very beginning and throughout the first three centuries of the primitive Church, its teaching - not just the fancy of a few individuals - was constantly and rigorously opposed to Christian participation in military service’, see Jean-Michael Hornus, *It Is Not Lawful for Me to Fight: Early Christian Attitudes toward War, Violence, and the State*, trans. Alan Kreider and Oliver Coburn (Kitchener, 1980), p. 16. Likewise, Roland H. Bainton remarked that ‘[w]ar ... was repudiated until the time of Constantine, for until then no extant Christian writing countenanced Christian participation in warfare’, see Roland H. Bainton, *Christian Attitudes Toward War and Peace: A Historical Survey and Critical* (New York and Nashville, 1960), p. 53. For later scholars holding a similar stance, see for example: Frederick Russell, *The Just War in the Middle Ages* (Cambridge, 1975), pp. 20-21; Keith Haines, ‘Attitudes and Impediments to Pacifism in Medieval Europe’, *Journal of Medieval History*, Vol. 7 (1981), pp. 369-388, p. 369, which also traces sporadic pacifistic sentiments in the High Middle Ages. John Mark Mattox, admitting that ‘it is not clear whether the majority of grassroots Christians living in the first three centuries AD were themselves pacifists’, nevertheless saw St. Augustine’s stance on war as a response to the Church fathers who held the pacifist position, see John Mark Mattox, *Saint Augustine and the Theory of Just War* (London, 2006), esp. pp. 146-148. For the critics of the theory that the early Church was largely pacifistic, see John Helgeland, ‘Christians in the Roman Army A.D. 173-337’, *Church History*, Vol. 43 (1974), pp. 149-164. Jonathan Koscheski has gone as far as to proclaim that ‘[t]he Christian community today need not look outside of its tradition to find the identities of “fanatical religious terrorists” closely reflected in some of the earliest Christian forefathers’, making a point that in the act of martyrdom ‘[e]arly Christians even celebrated violence within certain contexts and at times even sought it out’, see Jonathan Koscheski, ‘The Earliest Christian War: Second- and Third-Century Martyrdom and the Creation of Cosmic Warriors’, *Journal of Religious Ethics*, Vol. 39 (2011), pp. 100-124, at pp. 105, 121. David D. Corey and J. Daryl Charles have taken a more moderate and balanced approach by asserting that ‘the first three centuries and the New Testament ... indicates the presence of both pacifist and nonpacifist thinking in the early church’, David D. Corey and J. Daryl Charles, *The Just War Tradition: An Introduction* (Wilmington, 2012), p. 50.

<sup>513</sup> David A. Lenihan, ‘The Just War Theory in the Work of Saint Augustine’, *Augustinian Studies*, Vol. 19 (1988), pp. 37-70, at p. 55.

from markedly different operating assumptions, [and therefore] we find not a single theory but rather a host of theories within the tradition, each emerging from its own set of theological and metaphysical starting points'.<sup>514</sup> What can be said with certainty, however, is that the writings of Augustine had a profound impact on later thinkers who incorporated his ideas into their own conceptions of just war.<sup>515</sup>

In the twelfth century, Gratian in his *Decretum* formulated his own understanding of the just war by relying on St. Augustine and Isidore of Seville (c.560-636).<sup>516</sup> Thus, the *Decretum* affirmed that 'let it be just war which is carried out by edict [i.e. authorised], or by which the wrongs are avenged'.<sup>517</sup> With this statement, Gratian reiterated the argument set forth by Augustine that a just war may be waged when either a civil entity fails to render justice upon its own wrongdoers or when unjustly seized goods need to be returned.<sup>518</sup> Additionally, Gratian borrowed from Isidore of Seville, who in his *Etymologies* declared that '[i]t is a just war, which is waged with a declaration for the purpose of recovering property seized or of repelling the enemy'.<sup>519</sup>

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<sup>514</sup> Corey and Charles, *The Just War Tradition*, p. 8. For a similar stance on the ambiguity of the one 'just war theory', see James Turner Johnson, *Ideology, Reason, and the Limitation of War: Religious and Secular Concepts, 1200-1740* (Princeton, 1975), pp. 7-8.

<sup>515</sup> Philip Wynn, *Augustine on War and Military Service* (Minneapolis, 2013), pp. 28-31. St. Augustine's influence on the idea of just war can be seen even in the modern day, see Peter Lee, 'Selective Memory: Augustine and Contemporary Just War Discourse', *Scottish Journal of Theology*, Vol. 65 (2012), pp. 309-322.

<sup>516</sup> Gratian, C.23 q.2 d.p.c.2, cols. 894-895. The 'auctoritas' for the canon itself is St. Augustine. See also Ernst-Dieter Hehl, 'War, Peace and the Christian Order', in *The New Cambridge Medieval History, c.1024-c.1198*, Vol. 4:1, ed. David Luscombe and Jonathan Riley-Smith (Cambridge, 2006), pp. 185-228, at p. 220.

<sup>517</sup> .. *iustum bellum sit, quod ex edicto geritur, uel quo iniuriae ulciscuntur* ... Gratian, C.23 q.2 d.p.c.2, col. 895.

<sup>518</sup> Gratian, C.23 q.2 d.p.c.2, col. 895.

<sup>519</sup> *Iustum bellum est, quod ex praedicto geritur de rebus repetitis, aut propulsandorum hostium causa*. St. Isidore of Seville, *Etymologiarum libri XX*, PL 82, cols. 9-728, 18.1.2, col. 639; translation from St. Isidore of Seville, *The Etymologies*, trans. Stephen A. Barney, et al (Cambridge, 2006), 8.1.2, p. 359 (amended). Isidore's insistence for a just war to be waged by a formal declaration was not something that St. Augustine had considered, see Corey and Charles, *The Just War Tradition*, p. 69, especially footnote no. 8; Paulo Emilio Vauthier Borges de Macedo, *Catholic and Reformed Traditions in*

When analysing Gratian's treatment of just war, James A. Brundage has separated the defence of the Church and Christian religion as the 'holy war' branch of just war, and the defence of the realm, family, friends and one's rightful property as the other sub-section of just war.<sup>520</sup> Brundage proposed that according to Gratian war was rendered sacred for two reasons: first, it offered spiritual benefits for the military service; second, that the war was waged to defend the Church.<sup>521</sup> Indeed, another canon in the *Decretum* which relied on Pope Leo IV (847-855), stated that 'if any one of you will die, because he died for the truth of Faith, and for the salvation of our country, and for the defence of the Christians, therefore he will obtain a heavenly reward from Him'.<sup>522</sup> Consequently, many scholars of medieval history have begun to use the terms holy war and crusade interchangeably.<sup>523</sup> For example, Christopher Tyerman has characterised holy war as follows: 'holy war depended on God's will, constituted a religious act, was directed by clergy or divinely sanctioned rulers, and

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*International Law: A Comparison Between the Suarezian and the Grotian Concept of Ius Gentium* (Cham, 2017), pp. 25-26.

<sup>520</sup> James A. Brundage, 'The Hierarchy of Violence in Twelfth- and Thirteenth-Century Canonists', *The International History Review* 14/4 (1995), pp. 670-692, at pp. 677, 680, see also the flowchart at p. 682.

<sup>521</sup> Gratian, C.23 q.8 c.9, col. 955. The 'auctoritas' is Pope Leo IV (847-855). See also Brundage, 'The Hierarchy of Violence in Twelfth- and Thirteenth-Century Canonists', pp. 677.

<sup>522</sup> ... *si quilibet uestrorum morietur, quod pro ueritate fidei, et saluatione patriae, ac defensione Christianorum mortuus est, ideo ab eo celeste premium consequetur.* Gratian, C.23 q.8 c.9, col. 955.

<sup>523</sup> For example: Christopher Tyerman, *Fighting for Christendom: Holy War and the Crusades* (Oxford, 2004), pp. 27-32, 95-103; Katherine A. Smith, 'Glossing the Holy War: Exegetical Constructions of the First Crusade, c.1099-c.1146', *Studies in Medieval and Renaissance History*, Vol. 10 (2013), pp. 1-39; Alan J. Forey, 'The Military Orders and Holy War against Christians in the Thirteenth Century', *The English Historical Review*, Vol. 104 (1989), pp. 1-24; Mark Gregory Pegg, *A Most Holy War: The Albigensian Crusade and the Battle for Christendom* (Oxford, 2008), p. 5; Mikołaj Gładysz, *The Forgotten Crusaders: Poland and the Crusader Movement in the Twelfth and Thirteenth Centuries* (Leiden, 2012), p. 254. For examples from the scholarly literature examining the conversion of the Baltics, see for example: Kurt Villads Jensen, 'Holy War – Holy Wrath! Baltic Wars Between Regulated Warfare and Total Annihilation Around 1200', in *Church and Belief in the Middle Ages. Popes, Saints, and Crusaders*, ed. Kirsi Salonen and Sari Katajala-Peltomaa (Amsterdam, 2016), pp. 227-250; Darius von Güttnersporzyński, 'Northern Crusades: Between Holy War and Mission', in Adrian J. Boas *The Crusader World* (Abington, 2016), pp. 144-162. For a broad definition of a holy war that includes, but is not limited to, the crusades, see Carl Erdmann, *The Origin of the Idea of Crusade*, trans. Marshall W. Baldwin and Walter Goffart (Princeton, 1977), p. 3.



offered spiritual rewards'.<sup>524</sup> Indeed, when framed in such a way then the crusades neatly fit into the holy war category.

Yet, in the context of Livonia, and as will be shown below, not every military action would have conveniently fitted into the category of a holy war, as defined by scholars.<sup>525</sup> For example, taking back unjustly seized goods did not always offer obvious spiritual benefits, nor was it undertaken for defence purposes, nor was it an explicitly religious act, rendering the military undertaking just but not holy. Additionally, while the concept of holy war could most certainly be inferred from Gratian's *Decretum*, it was not the only type of just war considered there, and consequently just war did not necessarily have to be holy.<sup>526</sup> For this reason, the causes for war during the conversion of Livonia will be considered in five just war categories, broadly defined.

These five categories pertaining to just war are not definitively distinct and at times might converge and coincide with each other; they are: restitution, vengeance, defence, prevention, and finally apostasy. Possibly the most problematic category out of the five is 'prevention', as it presumes that one party 'knows' it is about to be attacked. Additionally, the actions that the aggressor party is limited to, before being allowed to wage war against it, can be ambiguous. Nevertheless, preventive

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<sup>524</sup> Christopher Tyerman, *Fighting for Christendom*, p. 103.

<sup>525</sup> By contrast, Kurt Villads Jensen has noted that 'God's presence in this war [i.e. the Livonian Crusade] is expressed on every page of Henry's narrative, simply by the references he constantly makes – by his choice of words and phrases – to the wars of the Old Testament and to the passages in the New Testament that were common places in the legitimisation of crusades.' Kurt Villads Jensen, 'Bigger and Better: Arms Race and Change in War Technology in the Baltic in the Early Thirteenth Century', in *Crusading and Chronicle Writing on the Medieval Baltic Frontier: A Companion to the Chronicle of Henry of Livonia*, ed. Marek Tamm, Linda Kaljundi and Carsten Selch Jensen (London, 2016), pp. 245–264, at p. 263. While Henry's narrative can be certainly seen in the context of providential history more generally, not every military activity depicted in his chronicle was accompanied by explicit divine justification.

<sup>526</sup> ... *iustum bellum sit, quod ex edicto geritur, uel quo iniuriae ulciscuntur*. – '[L]et it be just war which is carried out by edict [i.e. authorised], or by which the wrongs are avenged.' Gratian, C.23 q.2 d.p.c.2, col. 895. The 'auctoritas' is St. Augustine.

measures in a legislative context started to gain approval over tolerance of unproved offences after 1050, and it is this precise category of causes that has become comparatively more common in modern times.<sup>527</sup>

### Restitution

The category of restitution most often concerned the recovery of lost goods but could also include recapturing captives. On a larger scale, this cause coincided with the intention of restoring justice, and was often employed in crusading rhetoric. Huguccio, commenting on the *Decretum*, considered the Crusades to the Latin East as the restoration of the land that rightfully belonged to Christians, and therefore firmly placed them within the framework of a just war.<sup>528</sup> This development of thought was strongly reflected in the proclamation of the Fifth Crusade in April 1213 by Innocent III:

For if some temporal king was deprived of his kingdom by his enemies, if his vassals did not only sacrifice their property but also their persons, would he not when he recovered his lost kingdom condemn them as unfaithful and devise unthinkable tortures against them, by which he might evilly ruin the evil men? Thus the King of kings, our Lord Jesus Christ, who brought body and soul and other goods to you, will condemn

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<sup>527</sup> Richard M. Fraher, 'Preventing Crime in the High Middle Ages: The Medieval Lawyer's Search for Deterrence', in *Popes, Teachers, and Canon Law in the Middle Ages*, ed. James Ross Sweeney and Stanley A. Chodorow (London, 1989), pp. 212-233, at p. 218; Judith Lichtenberg, 'Some Central Problems in Just War Theory', in *The Just War and Jihad*, ed. R. Joseph Hoffmann (New York, 2006), pp. 15-32, at pp. 15-18.

<sup>528</sup> *Ergo int[er]ueniente auctoritate maioris iuste pug[na]tur c[on]tra hostes siue imp[er]ii siue eccl[es]ie, s[cilicet] c[on]tra h[er]eticos, et tunc n[on] solum d[e] iure d[iu]ino d[e] sedib[us] que c[on]trar[ius] usurpantur, u[e]l ad iniuriam d[e]i d[e]tine[n]tur, pius expellit impium, et iustus iniustum.* – 'Therefore, by the intervention of the authority of the majority, the fight is justly fought against the enemies of the Empire or of the Church, namely, against heretics, and then not only by divine right, for the settlements which are used contrary to [God], or which are detained for the injury of God; the pious expels the impious, and the just [expels] the unjust.' Huguccio, *Summa ad D.1 c.9*, BN Lat. 15396, fol. 4r.

you for the vice of ingratitude and the crime of infidelity if you should fail to aid him with the result that he lost his kingdom that he bought with the price of his blood.<sup>529</sup>

This rhetoric defined the Holy Land as the Lord's inheritance, and so placed an obligation on Christians to come to the aid of the Lord and to free His kingdom.<sup>530</sup> A similar association was made in the context of Spain where warfare against Muslims was thought to be righteous because by expelling 'infidels' from the area, the Christians would be able to repossess lands rightfully belonging to them.<sup>531</sup> Contemporaries were also able to tie crusades to the Holy Land with the *Reconquista* of Spain by suggesting that a fast and less difficult route to the Holy Sepulchre through the regions of Spain should be made available.<sup>532</sup>

The reasoning tied to the repossession of lands that previously belonged to Christians was not applicable in the context of Livonia where Christians had never held land nor jurisdictional rights.<sup>533</sup> Therefore, historians and chroniclers in the

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<sup>529</sup> *Si enim rex aliquis temporalis a suis hostibus eiceretur de regno, nisi vassalli ejus pro eo non solum res exponerent sed personas, nonne, cum regnum recuperaret amissum, eos velut infideles dampnaret et excogitaret in eos inexcogitata tormenta, quibus perderet male malos? Sic rex regum, dominus Iesus Christus, qui corpus et animam et cetera vobis contulit bona, de ingritudinis vitio et infidelitatis crimine vos dampnabit, si ei quasi eiecto de regno, quod precio sui sanguinis comparavit, neglexeritis subvenire.* Innocent III, 'Quia maior' (19-29 April 1213) *Studien zum Register Innocenz. III.*, ed. Georgine Tangl (Weimar, 1929), pp. 88-97, at pp. 89-90; translation from *Crusade and Christendom: Annotated Documents in Translation from Innocent III to the Fall of Acre, 1187-1291*, ed. Jessalynn Bird, Edward Peters and James M. Powell (Philadelphia, 2013), p. 108.

<sup>530</sup> Jonathan Riley-Smith, 'Crusading as an Act of Love', *History*, 65/214 (1980), pp. 177-192, at pp. 180-181; Penny J. Cole, 'Christians, Muslims, and the "Liberation" of the Holy Land', *The Catholic Historical Review*, 84/1 (1998), pp. 1-10.

<sup>531</sup> Joseph F. O'Callaghan, *Reconquest and Crusade in Medieval Spain* (Philadelphia, 2004), pp. 3, 18-19; Richard A. Fletcher, 'Reconquest and Crusade in Spain c.1050-1150', *Transactions of the Royal Historical Society*, Vol. 37 (1987), pp. 31-47, at pp. 33-34.

<sup>532</sup> This was an argument set forth by Archbishop Diego of Santiago de Compostela in 1125, see Simon Barton, 'Traitors to the Faith? Christian Mercenaries in al-Andalus and the Maghreb, c.1100-1300', in *Medieval Spain: Culture, Conflict, and Coexistence*, ed. Roger Collins and Anthony Goodman (New York, 2002), pp. 23-45, at p. 24.

<sup>533</sup> Burnam W. Reynolds, *The Prehistory of the Crusades: Missionary War and the Baltic Crusades* (London, 2016), pp. 20-21; Bartlett, *The Making of Europe*, p. 267. The period before the conversion of Livonia in the thirteenth century is generally regarded as the 'pre-history' of these regions, see Marika Mägi, *In Austrvegr: The Role of the Eastern Baltic in Viking Age Communication Across the Baltic Sea* (Leiden, 2018), p. 29.

Middle Ages not once tried to assert that Livonia had been anything other than pagan before the thirteenth century, and sometimes even after that. For example, Albert of Stade (c.1187-1260), in his extension to Alexander Minorita's *Expositio in Apocalypsim* (before 1240), stated that 'many of the pagans, drawn by the sword, both material and spiritual, came faithfully to baptism, so that Bishop Albert succeeded Bishop Berthold, who was slain by the pagans, and [also succeeded] his ancestor Meinhard'.<sup>534</sup> In this excerpt, Albert was listing the first bishops of Üxküll, implying that these three men were at the forefront of confronting and converting the pagans in Livonia. Likewise, Roger Bacon (c.1219/20-c.1292) in his *Opus majus* (1267) wrote that 'the Prussians, Curonians, Livonians, Estonians and the Lithuanians are still pagans'.<sup>535</sup> Roger Bacon was writing in the second half of the 13th century when, in fact, Livonia (and Estonia) were already converted. Whether he was relying on out-of-date reports, did not regard these parts of Christendom as significant enough to inquire into their present situation, or a combination of both, cannot be known for sure, but it certainly can be inferred that he perceived these faraway regions as the lands that were inhabited by pagans, not by Christians. Therefore, it is evident that the Baltic peoples were perceived as pagans with little to no connections to Christianity before their conversion.

While warfare in Livonia could not have been justified with the need to repossess the lands that once belonged to Christians, the recovery of goods or captives was invoked in multiple cases across several decades as a just cause for war. One of

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<sup>534</sup> ... *plurimi paganorum, tam materiali tracti quam spirituali tracti gladio, convolarent fideliter ad baptismum, ita ut Albertus episcopus, qui Bertoldo a paganis occiso, sicut et antecessore ipsius Meinardo, successit.* Albert of Stade, *Alexander Minorita, Expositio in Apocalypsim*, Chapter 20, p. 439.

<sup>535</sup> *Pruceni, Curlandi, Livonii, Estonii, Semigalli, Leuconii sunt pagani.* Roger Bacon, 'Ex Rogeri Bacon opere maiore', p. 573.

the prolific examples of the rights of repossession comes from the year 1204 and is described in the chronicle of Henry of Livonia:

[The pagan] Lithuanians descend and attempt to lead away its [Riga's] cattle, having been seized from the fields already [before], for a second time. Therefore, a few of the men still living in Riga, on account of fearing the ambushes everywhere in the neighbouring woods, do not dare to go out from the city all at once; but about twenty men of courage from the city, pursuing the enemy, search for the flocks, and, having called upon the aid of Almighty God, [and] the soldiers having arrived from the city, they engage in battle with the pagans next to the Old Mountain ... Thus, these [deeds] having been done, the Lithuanians together with the [pagan] Livonians depart, having obtained only three of the horses of the citizens.<sup>536</sup>

The excerpt depicted a small-scale expedition to recover specific goods taken from the Christians. After asking help from God, the Christians engaged in a combat and managed to recover some, if not most, of their flocks. The chronicler, Henry of Livonia, specifically mentioned that only a few men went to reclaim the goods – it can be presumed that the number of people whose possession rights were violated was larger, and therefore the small army used the just cause of repossessing unjustly seized good to attack on behalf of all the citizens. Additionally, by invoking God, the cause gained a sacred dimension.<sup>537</sup>

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<sup>536</sup> *Lethones ... descendunt et pecora eius in pascuis comprehensa iam secundo deducere temptant. Paucis itaque viris adhuc in Riga existentibus et ubique propter vicinas silvas insidias metuentibus de civitate simul omnes exire non audent, sed viri virtutis circa viginti de civitate hostes insecuti pecora requirunt et invocato super se Dei omnipotentis auxilio militibus advenientibus de civitate iuxta Montem Antiquum cum paganis pugnam ineunt ... Hiis itaque gestis Lethones cum Lyvonibus tribus tantum equis civium optentis discedunt ... HCL VIII, 1, pp. 23-24; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 45 (amended).*

<sup>537</sup> This, of course, could also be Henry's attempt to legitimise the military undertaking even more by adding to it the ultimate, sacred layer. For a comprehensive analysis of providential history in the chronicle of Henry of Livonia more generally, see Nielsen, 'Providential History', pp. 368-379.

In some cases, the just cause was quantified, and the lost goods were precisely valued. Such an appraisal on behalf of the suffering party, allowed to present a compelling case for an injury incurred, and consequently to claim a just cause for repossession via military action. It did not matter whether the possessions were lost by settlers or by merchants who must have known the risks of trading in a region where Christianity was not yet firmly established:

[A]s they [the Christian merchants] were journeying from the Daugava River toward Pskov in their carts, the Ugannians, upon the advice of the Livonians, had despoiled them on the road; there were many [despoiled goods], namely to the value of nine hundred marks and more. The Ugannians, however, did not restore the property, nor gave any definite answer about returning [it] in the future.<sup>538</sup>

The Christian merchants were accustomed to using the Daugava River that ran through Livonia into the lands of Rus'.<sup>539</sup> The pagan Ugannians intercepted the journey and seized goods belonging to the Christians without any promise to return them at some point. Additionally, the chronicler implied that while the journey of the merchants went through hostile regions, a safe passage was expected and perhaps even customary. The question of safe passage was also present in Gratian's *Decretum* which stated that 'a harmless passage was denied to the sons of Israel, and therefore

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<sup>538</sup> ... euntibus a Duna versus Pliceowe in vehiculis suis, que Ugaunenses consilio Lyvonum in via rapuerant, que multa erant, nongentis videlicet marcis et amplius comparata. Ugaunenses vero nec bona restituerunt, nec de reddendis in posterum certum responsum reddiderunt. HCL XI, 7, p. 54; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, pp. 74-75 (amended).

<sup>539</sup> Some scholars, such as Anti Selart, have asserted that at the time of the first missionary activities in Livonia (1180s), the relationships between the regions of Livonia and Rus' were such that when a papal letter from 1188 contained a reference to Üxküll (near Riga) as situated in *Ruthenia* (territories of Rus'), it 'correctly reflects contemporary realities'. See Anti Selart, 'Confessional Conflict and Political Cooperation', in *Crusade and Conversion on the Baltic Frontier*, ed. Alan V. Murray (Ashgate, 2001), pp. 151-176, at p. 154.

just wars were waged'.<sup>540</sup> The justification for a safe passage here came from the Old Testament where the Amorites rejected a safe passage to the Israelites who then waged a just war against the Amorites.<sup>541</sup> Gratian added to this that safe passage 'ought to be accessible by the law of most equitable human society'.<sup>542</sup> However, in the case quoted above, it was not only the injustice of a passage being denied, but also goods amounting to a very high value being taken from the merchants.<sup>543</sup>

By contrast, there was an example from Livonia in which the pagans lost their right to safe passage. When in 1203 Bishop Albert and his recruited crusaders were on their way from Germany to Livonia, they saw a raid of the pagan Estonians returning from an expedition that included burning of churches, carrying away items from the aforesaid church and killing Christians.<sup>544</sup> As the bishop reached the port of Visby, he and the crusaders saw that the pagan Estonians were permitted to use the port peacefully.<sup>545</sup> The bishop and his men the accused the people of Visby that they allowed the pagans to use their harbour.<sup>546</sup> The pagans were not seen as undeserving

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<sup>540</sup> *Innoxius transitus filiis Israel negabatur, atque ideo iusta bella gerebantur.* Gratian, C.23 q.2 c.3, col. 895. The 'auctoritas' is St. Augustine.

<sup>541</sup> Num. 21:21-23; *misit autem Israhel nuntios ad Seon regem Amorreorum dicens obsecro ut transire mihi liceat per terram tuam non declinabimus in agros et vineas non bibemus aquas ex puteis via regia gradiemur donec transeamus terminos tuos qui concedere noluit ut transiret Israhel per fines suos quin potius exercitu congregato egressus est obviam in desertum et venit in Iasa pugnavitque contra eum –* 'Then Israel sent messengers to King Sihon of the Amorites, saying, "Let me pass through your land; we will not turn aside into field or vineyard; we will not drink the water of any well; we will go by the King's Highway until we have passed through your territory." But Sihon would not allow Israel to pass through his territory. Sihon gathered all his people together, and went out against Israel to the wilderness; he came to Jahaz, and fought against Israel.'

<sup>542</sup> ... *iure humanae societatis equissimo patere debeat.* Gratian, C.23 q.2 c.3, col. 895.

<sup>543</sup> While marks were of a standard weight, the mark weight itself varied from place to place, see Peter Spufford, *Money and Its Use in Medieval Europe* (Cambridge, 1989), p. 209. For the scale of the injury caused as depicted by Henry of Livonia, it would have to be determined what kind of mark he was talking about. In one passage (XVI, 4), Henry of Livonia mentioned that the apostates were demanded to pay one hundred *oseringi*, equal to fifty silver marks. Additionally, *The Livonian Rhymed Chronicle* stated that in 1245, the Lithuanians paid 500 *oseringi* (250 silver marks) for the ransom of their duke; *LRC*, 3069-3072, p. 71. From this it can be deduced that nine hundred marks was indeed a great sum in the context of Livonia. See also Ivar Leimus, 'Monetary History of Medieval Courland: Some Speculations', *Latvijas Vēstures Institūta Žurnāls*, Vol. 89 (2013), pp. 37-59.

<sup>544</sup> *HCL* VII, 1, pp. 18-19.

<sup>545</sup> *HCL* VII, 1, p. 19.

<sup>546</sup> *HCL* VII, 2, p. 19.

of free passage simply because they were pagans but because they had transferred to the category of the enemies of the Cross – they were actively inflicting injuries upon the Church, and so should be treated with contempt, even if it meant a loss of profits.

Therefore, waging war to repossess goods taken unjustly was a frequent occurrence in the context of Livonia.<sup>547</sup> Additionally, peace agreements between Christians and pagans were often contingent on the restoration of property unjustly seized:

Then the [pagan] Estonians proposed a renewal of the peace. But the [Christian] Letts say: ‘You have not yet restored the goods stolen from the Germans and also the things often stolen from us. But neither can there be one heart and soul nor a firm form of peace between Christians and pagans, unless, having received with us the same yoke of Christianity and permanent peace, you worship the one God.’<sup>548</sup>

According to Henry of Livonia, the ultimate goal of the previously converted Letts was to make the pagan Estonians accept Christianity, but an equally pressing issue in the case of reaching this particular peace agreement was the restoration of goods. This specific cause of gaining restitution for lost goods was also emphasised at the start of the expedition that led to the peace negotiations quoted above, and in which the phrase ‘unjustly seized’ is specifically evoked:

The Rigans, therefore, recalling to mind their own injuries and the innumerable goods which had formerly been taken away

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<sup>547</sup> For example: *HCL* VII, 5, p. 22 (VI, 8 in English translation); XII, 1, p. 58; XXVIII, 3, p. 201.

<sup>548</sup> *Tunc Estonos de renovanda pace proposuerunt. Sed Letthi: ‘Nondum’, inquit, ‘mercationes Theuthonicis ablatas neque eciam bona nobis sepius ablata restituistis. Sed neque inter christianos et paganos unum cor et una anima neque forma pacis firma esse poterit, nisi recepto nobiscum eodem iugo christianitatis et pacis perpetue unum Deum colatis.’* *HCL* XII, 6, pp. 63-64; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 85 (amended).



from their merchants by the [pagan] Ugannians, assent to the desires of the requesters, [and] promise an army; [they did this] especially because their messengers have often returned from the Ugannians, despised and ridiculed on account of [demanding the return of] the same goods of the merchants, as they did not wish to restore the unjustly seized property.<sup>549</sup>

However, on some occasions, further circumstances surrounding the unjustly seized goods prompted the relaxation of peace terms:

The survivors who still remained in Ugannia, therefore, seeing that they could never escape from the fury of the Germans and Letts, sent messengers to Riga, asking for terms of peace. And it was told to them that they must restore goods which had once been stolen from the merchants. But, saying that the thieves of these goods had been slain by the Letts, and asserting that [the goods] could not at all be restored to them, they ask, settling all causes, to be baptised, so that they may obtain true peace and perpetual brotherly friendship of the Germans and Letts. And the Germans were overjoyed, and confirming the peace with them, promise to send priests to Ugannia for baptising.<sup>550</sup>

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<sup>549</sup> *Rigenses igitur ad memoriam revocantes eciam suas iniurias et bona innumerabilia quondam suis mercatoribus ab Ungaunensibus ablata postulancium votis annuunt, exercitum promittunt; presertim cum et ipsorum nuncii pro eisdem bonis mercatorum sepius ab Ugaunensibus contempti et irrisi redierint, nolentibus iniuste ablata restituere. HCL XII, 6, p. 62; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 84 (amended).*

<sup>550</sup> *Videntes itaque, qui superstites adhuc remanserant in Ugaunia, quod a furore Theuthonicorum et Lettorum nusquam evadere possent, miserunt nuncios in Rigam, rogantes ea que pacis sunt. Et dictum est eis, ut bona quondam mercatoribus ablata restituerent. At illi raptores ipsorum bonorum a Lettis interfectos dicentes et nequaquam se restituere posse affirmantes causis omnibus sopitis baptizare se petunt, ut veram pacem et perpetuam Theuthonicorum atque Lettorum fraternam dilectionem consequantur. Et gavisus sunt Theuthonici et confirmantes cum eis pacem sacerdotes ad baptizandam Ugauniam mittere pollicentur. HCL XIX, 4, pp. 126-127; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 147 (amended).*

No further insight is given as to how ‘all these matters were settled’ but it is significant that the chronicler explicitly showed that the repossession of goods was not a possibility in every case. Therefore, while reclaiming goods could have constituted a just cause to start a war, it was not a necessity to continue warfare if other means to settle were found acceptable. In the case cited above, the acceptance of faith ultimately overrode the inability to reclaim goods, especially as those who had committed the injustice had been killed and thus presumably had been punished in this way.

As shown above, a just war could be waged, and was waged in Livonia, to repossess wrongfully seized goods. Yet, it was not just the Christians who could rightfully hold property. For example, Innocent IV in his *Apparatus* to the *Liber extra* stated that ‘possessions and jurisdictions can be held lawfully without sin among unbelievers; for these were made not only for the faithful, but for every reasonable creature’.<sup>551</sup> At the same time, such a right was not afforded to every person unconditionally. Gratian had established that the right to possess things was not universal because the right to own something had to come from either divine or human law.<sup>552</sup> Gratian continued with a statement that since ‘[h]e, who is separated from the body of Christ, cannot hold the spirit of justice’, heretics essentially did not have the right to possess things.<sup>553</sup> Therefore, if the Church had taken something from

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<sup>551</sup> ... *possessiones et iurisdictiones licite sine peccato possunt esse apud infideles, haec enim non tantum pro fidei, sed pro omni rationabili creatura facta sunt* ... Innocent IV, *Apparatus* ad X 3,38.8, p. 430.

<sup>552</sup> *Res terrena non nisi diuino uel humano iure tenentur*. – ‘Earthly things are not bound without divine or human right.’ Gratian, C.23 q.7 c.1, col. 950. The ‘*auctoritas*’ is St. Augustine.

<sup>553</sup> *Qui a corpore Christi precipitur spiritum iustitiae tenere non potest*. Gratian, C.23 q.7 c.4, cols 952-953. The ‘*auctoritas*’ is St. Augustine. Likewise: *Res ecclesiasticae ab hereticis iniuste possidentur*. – ‘Ecclesiastical things are unjustly possessed by heretics.’ Gratian, C.23 q.7 c.3, col. 951. The ‘*auctoritas*’ is St. Augustine. See also David M. Freidenreich, ‘Muslims in Western Canon Law’, in *Christian-Muslim Relations. A Bibliographical History*, Vol. 3, ed. David Thomas and Alex Mallett (1050-1200) (Leiden, 2011), pp. 41-69, at p. 50; James Muldoon, *Popes, Lawyers, and Infidels: The Church and the Non-Christian World, 1250-1550* (Pennsylvania, 1979), pp. 8-9.

the heretics, it was not done unjustly because the latter did not have the right to possess these things in the first place by the virtue of being heretics.<sup>554</sup>

Gratian's *Decretum* did not explicitly offer a similar consideration for apostates. Yet, it can nevertheless be assumed that apostates were to receive similar treatment not least because apostates were generally seen erring at least as seriously as heretics, a consideration which itself was mostly a subject matter for theologians rather than canon lawyers.<sup>555</sup> Thus, it is not surprising that canon lawyers considered heretics and apostates in a similar manner, often grouping them together. For example, Book 5 of the *Liber extra* had consecutive sections treating heretics, schismatics and apostates.<sup>556</sup> More explicitly, the *Liber sextus* of Boniface VIII emphasised that apostates should be treated as heretics, especially when considering the penalties they incur.<sup>557</sup>

As Gratian had argued that heretics do not have the right to possess things, and that Christians can remove them rightfully, it can be deduced that similar treatment was reserved for apostates.<sup>558</sup> Yet, in the case of Livonia, at least on one occasion, apostates were granted the right to possess things taken away from them by the Christians:

And the bishop promised restitution of all things unjustly taken. But as for the things which they [the Swordbrothers] had

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<sup>554</sup> *Catholici non ideo aliena possident, quia ab hereticis ablata tenent.* 'Therefore, Catholics do not possess another's property because they hold things taken away from heretics.' Gratian, C.23 q.7 c.2, col. 951. The 'auctoritas' is St. Augustine.

<sup>555</sup> For a comparison between apostasy, heresy, and schism from a canonical point of view, see Burczak, *Sacrilegium in Gratian's 'Decretum'*, pp. 103-107.

<sup>556</sup> X 5.7 on heretics, X 5.8 on schismatics, and X 5.9 on apostates.

<sup>557</sup> *Christiani, ad Iudaismum transeuntes et redeuntes, haeretici reputantur.* – 'Christians going over and returning to Judaism are considered heretics.' 'Liber sextus', *Corpus iuris canonici*, ed. Emil A. Friedberg, Vol. 2 (Graz, 1959), cols. 937-1124, 5.2.13.

<sup>558</sup> Gratian, C.23 q.7 c.1, col. 950; C.23 q.7 c.3, cols 951-952; C.23 q.7 c.4, cols 952-953. The 'auctoritas' for all of these is St. Augustine.

received for their excesses, as they deserved them, they were thus not promised to be restored.<sup>559</sup>

In this case, a quarrel had arisen between the Swordbrothers and the Livonians who had accepted baptism years before.<sup>560</sup> The acts of apostasy are implied by the descriptions that were given of the Livonians' activities, involving killing members of the Swordbrothers and encouraging gentiles from other regions to conspire against the Rigan bishop.<sup>561</sup> Despite this, Bishop Albert of Riga recognised that there are things that could be rightfully owned by the apostates and could not be seized by the Christians. In balancing this statement, the bishop also acknowledged that certain things came to the Livonians' possession unjustly and were therefore acquired by the Christians justly – these were not to be restored.<sup>562</sup> This passage signifies that the idea of just and unjust possession was evident in disputes concerning the Christians and the local peoples in Livonia, even though in a canonical sense, as we have seen, the act of taking away things from apostates by Christians was seen as just. Furthermore, there were no other references to similar concessions, making it likely that giving the apostates back their possessions was a rare occurrence.

Rightful possessions could also include human beings. Freeing those Christians who had been captured by pagans or apostates was in many cases depicted as one of

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<sup>559</sup> *Et promisit episcopus restitutionem omnium iniuste ablatorum. De hiis vero, que pro excessibus eorum acceperant, sicut ea iuste demeruerunt, ita nec restitui promittebantur.* HCL XVI, 3, p. 106; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 125 (amended).

<sup>560</sup> The military order of the Swordbrothers (Latin: *Fratres militae Christi*; German: *Schwertbrüder*) was founded in 1202, and was incorporated into the Teutonic Order soon after the defeat at the Battle of Saule (1236). See Juhan Kreem, 'The Teutonic Order as a Secular Ruler in Livonia: The Privileges and Oath of Reval', in *Crusade and Conversion on the Baltic Frontier*, ed. Alan V. Murray (Ashgate, 2001), pp. 215-232. Benninghoven has suggested that the reason why Bishop Albert first founded an independent military order separately from the ones already existing (e.g. the Templars), stemmed from the bishop's fear that the support of a larger military order might contest his own primacy over Livonia, see Benninghoven, *Der Orden der Schwertbrüder*, pp. 51-52.

<sup>561</sup> HCL XVI, 3, p. 105.

<sup>562</sup> HCL XVI, 3, p. 106.

the results of a successful war campaign in Livonia.<sup>563</sup> The Livonian Rhymed Chronicle even emphasised that the Christians, specifically the Swordbrothers, were so eager to save Christian captives that they deemed it better to die trying rather than leave the captives to suffer.<sup>564</sup> Usually, obtaining the freedom of captives was not used as a sole cause to justify warfare, and was rather listed as one of the many reasons that collectively gave a reason to wage war. On the other hand, the last large-scale military expedition that was undertaken by the Christians prior to subduing the whole of Livonia, was invoked mainly because William of Modena, the papal legate in Livonia at that time, came to learn that the last pagans of these regions were continuing to capture Christians, and to treat them with cruelty:

The legate of the Apostolic See [William of Modena], leaving Livonia, sat for a long time by his ships near the sea, waiting for the grace of the winds. And suddenly he saw that the [pagan] Oeselians were returning from Sweden with spoils and a great many captives. ... The lord legate, therefore, learning of all the evils which they had done in Sweden, namely, of the churches being burnt and the priests slain, and of the sacraments that were administered and violated, and of similar misfortunes, he condoled with the captives, praying to the Lord that vengeance might be taken upon the evildoers.<sup>565</sup>

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<sup>563</sup> For example: *HCL* XI, 4, p. 50; *LRC*, 1519-1529, pp. 35-36.

<sup>564</sup> *e3 ist bezzer hie gelegen tôt, wir enhelfen in von dirre nôt.* – ‘It were better that we all die here than fail to save them from this suffering.’ *LRC*, 1525-1526, p. 35; translation from *The Livonian Rhymed Chronicle*, p. 19.

<sup>565</sup> *Sedis apostolice legatus Lyvoniam derelinquens ad naves circa mare diu resedit, ventorum gratiam expectans. Et vidit subito redeuntes Osilianos a Suecia cum spoliis et captivis quam plurimis. ... Intelligens ergo dominus legatus omnia mala, que fecerant in Suecia, ecclesiis videlicet incensis et sacerdotibus interfectis et sacramentis delatis et violatis et similibus miseriis, condoluit captivis, orans ad Dominum, ut fiat vindicta de malefactoribus.* *HCL* XXX, 1, pp. 215-216; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 238 (amended).

The taking of Christian captives was listed here among other offenses such as burning churches and killing priests, but the treatment of these Christians received more focused attention. An explanation for this could possibly be that when William of Modena arrived at Livonia in 1225, most of the land was already subjugated by Christians apart from the island Oesel, and therefore he did not personally witness the transgressions of the pagans until by chance he encountered the Oeselians.<sup>566</sup> The chronicle depicting these events emphasised that unlawful actions, such as selling Christian women into slavery, prompted William of Modena to exhort others to take up arms. That the restoration of freedom for the Christians was one of the crucial elements in waging wars against the Oeselians was testified again by the peace negotiations that occurred as a result of the warfare: 'They [the Oeselians] were told to return the captive Swedes to freedom. They obeyed, [and] promised to return [them].'<sup>567</sup> Furthermore, the legate did not wage war on behalf of the Livonians or other Christians in Livonia, but on behalf of the Swedes, a motif interlinked with the concept of authority and the right to call to arms.<sup>568</sup>

The captivity of Christians was used as a just cause to wage war even on occasions that entailed warfare between two Christian parties. In 1221, northern parts of Estonia were being subjugated by the Danish king and the jurisdictional rights of that area were contested between the king and Albert, the bishop of Riga (and Livonia):

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<sup>566</sup> The original form of the chronicle of Henry of Livonia ended with the events of 1226, and he added the last chapter depicting the subjugation of Oesel in 1227-1228, that is, after William of Modena had left Livonia; see Brundage, 'Introduction to the 2003 Edition', p. xxvii.

<sup>567</sup> *Dicitur, ut Suecos captivos restituant liberos. Obediunt, restituere promittunt ... HCL XXX, 5, p. 221; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 245 (amended).*

<sup>568</sup> This will be discussed below in the section on authority at pp. 215-228.

The Rigan merchants also went into Rotalia [Estonia] with their wares, and the Danes came and seized them, saying that this was the land of their king, and they bound them and brought them with them to Reval [northern Estonia]. And the bishop of Riga and the master of the Swordbrothers sent [word], requesting that they should send them back, but they refused. After this it was announced to the Danes that the Rigans were coming with an army; and immediately they sent them [the merchants] back.<sup>569</sup>

While the actual war did not break out, capturing Christian merchants was a cause deemed just by the bishop of Riga, even if it meant threatening other Christians with war. Had the war occurred, the Danes, despite being Christians, would have engaged in this war as an unjust party according to the perception of the Rigans and their bishop. This passage illustrates that while most of the warfare in Livonia was waged between pagans and Christians, it did not necessarily mean that injustices done by other Christians were marginalised, even less ignored. This understanding emphasises the complexity of circumstances in Livonia, even when there was a ‘common enemy’.

### Vengeance

Aside from repossessing unjustly seized goods, another cause for a war was vengeance. Key Latin terms that were associated with ‘vengeance’ were ‘*ultio*’ and ‘*vindicta*’.<sup>570</sup> Another Latin term that was linked to vengeance was ‘*retributio*’, but as

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<sup>569</sup> *Mercatores quoque Rigenses ibant cum mercationibus suis in Rotaliam, et venerunt Dani et ceperunt eos, dicentes terram regis esse, et ligaverunt eos et deduxerunt eos secum in Revelis. Et misit episcopus Rigensis et magister milicie rogantes, ut remitterent eos; et noluerunt. Post hoc nunciatum est Danis, quod venirent Rigenses cum exercitu; et statim remiserunt eos. HCL XXV, 5, p. 184; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 203 (amended).*

<sup>570</sup> This is based on Susanna A. Throop’s close reading of twelfth-century crusading sources and on her conclusion that while ‘[v]engeance is a modern English word with its own accompanying baggage of meaning, emotional significance, and moral value’, there is nevertheless a reason to use vengeance as

it was used in both positive and negative contexts, it should be seen as semantically distinct from *'ultio'* and *'vindicta'*.<sup>571</sup> In the context of Livonia, the only contemporary text in Latin, the Chronicle of Henry of Livonia, tended to use the term *'vindicta'*. The only time a derivate of *'retributio'* is used is when Henry stated that 'for they had despoiled the land of the blessed Virgin, Whose son returned vengeance'.<sup>572</sup> While the context in this example conveys positive connotations, Henry nevertheless chose to substitute *'retributio'* with *'vindicta'* or *'ultio'*, in all the other cases. The term *'ultio'* was used in less than ten instances; in contrast the term *'vindicta'*, or its derivatives, were used on around thirty occasions.

Gratian in the *Decretum* did not see vengeance as a just cause on its own, but rather tied it to further qualifying conditions. In a *dictum* Gratian cited numerous examples from both the Old and New Testament, and finally concluded that 'to ward off injury, the auxiliaries of arms should not be sought ... For the good man did not rightly seek revenge for his injury, because he would render evil for evil'.<sup>573</sup> From this can be inferred that Gratian might have not seen vengeance as a just cause at all, as suffering injuries and not seeking revenge was a moral stance firmly grounded in the Bible. However, this passage quoted above should be contextualised with others from the *Decretum*. Thus, in the same *Causa* 23, Gratian divided retribution into six categories:

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the equivalent of *ultio* and *vindicta* not only because of the linguistic similarity, but also because 'Hebrew words such as *nâqam* were translated into both ... in the Latin Vulgate', see Susanna A Throop, *Crusading as an Act of Vengeance, 1095-1216* (Farnham, 2011), pp. 5-6; Susanna A. Throop, 'Acts of Vengeance, Acts of Love: Crusading Violence in the Twelfth Century', in *War and Literature*, ed. Laura Ashe and Ian Patterson (Cambridge, 2014), pp. 3-21, at pp. 7-8.

<sup>571</sup> Susanna A. Throop, 'Vengeance and Crusades', *Crusades*, 5 (2006), pp. 21-38, at p. 22.

<sup>572</sup> ... *eo quod terram beate Virginis despoliaverant, cuius filius vindictam retribuit*. HCL XXV, 4, p. 183; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 203 (amended).

<sup>573</sup> ... *ad propulsandam iniuriam non sunt petenda armorum auxilia ... Bonus enim non rite iniuriae uindictam peteret quia malum pro malo redderet ...* Gratian, C.23 q.3 d.a.c.1, cols. 895-896. The 'auctoritas' for the canon itself is St. Augustine.



There are six differences: to render good for evil, not to render evil for evil; these are good, and the sooner [they are rendered] the better. Not to render good for good, to render evil for good; these are evil, and the latter worse. To render good for good, and evil for evil; these two are indifferent; first is closer to good ... the latter closer to evil, and yet it is fit for good.<sup>574</sup>

Gratian then went on and asserted that ‘the lust for revenge is vicious’, cautiously adding that it would be better for anyone to arbitrate rather than to strike back.<sup>575</sup> The composer of the *Decretum* thus tried to strike a balance between condemning careless vengeance on one hand and permitting violence to repay for evil on the other.

The use of vengeance was common in the chronicle of Henry of Livonia. One of the very typical examples that utilises the concept of vengeance in the context of Livonia stated the following:

Then the [Christianised] Letts of Beverin, sad at the death of their men, whom the Estonians had slaughtered and cremated with fire, sent [word] to all the Letts round about to be prepared for the journey, so that, by God’s grace, they might avenge against their enemies.<sup>576</sup>

Out of context, such passages depicted a picture where vengeance was a relatively random act, and not tied to specific injuries inflicted. However, the texts

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<sup>574</sup> *Sex differentiae sunt: reddere pro malis bona, non reddere mala pro malis; hec bonorum sunt, et prius melius. Non reddere bona pro bonis, reddere mala pro bonis; hec duo malorum sunt, et posterius deterius. Reddere pro bonis bona, et pro malis mala; hec duo mediocrium sunt: prius propinquum bonis ... posterius propinquum malis, tamen convenit et bonis.* Gratian, C.23 q.2 d.p.c.1, col. 895. The ‘auctoritas’ for the canon itself is St. Augustine.

<sup>575</sup> ... *uiciosa est libido ulciscendi, magisque ad iudicem hoc pertinet inter homines decernere, quam bonum hominem sibi expetere.* – ‘[T]he lust for revenge is vicious, and it belongs more to the judge to decide between men, rather than to a man himself to demand good.’ Gratian, C:23 q.2 d.p.c.1, col. 895.

<sup>576</sup> *Tunc Leththi de Beverin tristes de morte suorum, quos Estonos trucidaverant et igne cremaverant, miserunt ad omnes Leththos in circuitu, ut essent ad iter parati, ut si quando donante Deo se de suis possent vindicare inimicis.* HCL XII, 6, p. 64; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 86 (amended).

preceding the final statement in which revenge was achieved, often sheds further light on the perceived injuries that prompted vengeance. Therefore, when presented with the assertion that ‘despoiling the villages and slaying the pagan peoples, they [the Christians] avenged their injuries with fire and sword’, at face value such a description of the cause – vengeance – might seem ambiguous.<sup>577</sup> However, the context surrounding the quotation above explains that the converted Letts and the master of the Swordbrothers had sent their messengers to Estonia ‘to seek what is just for all the injuries they [the Estonians] had inflicted on them [the Christians]’.<sup>578</sup> The chronicler narrates how ‘the Estonian ambassadors scornfully reject the peace of the Letts and refuse to restore unjustly taken [things] to them’.<sup>579</sup> The peace was broken, and the Christian side waged war upon Estonians, thus avenging their injuries. It was not specified what was meant with ‘all the injuries’ but they were certainly understood as sufficient for vengeance.

Sometimes, injuries could have been avenged even on behalf of other groups of Christians, as was the case in 1219, the year during which the Danes achieved a victory over the pagan Estonian army:

But when the Rus’ were leaving, it seemed to the [converted] Letts that they were gaining little from the persecution of the Rus’. And turning their army toward [converted] Saccalia and, taking the Saccalians with them, they crossed the Pala [River] and, entering into [unconverted] Jerwia, they struck that land with a great blow, killing the men, capturing the women, [and]

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<sup>577</sup> ... *despoliantes villas et homines paganos occidentes, igne et gladio suas iniurias vindicantes ...* HCL XII, 6, p. 152; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 84 (amended).

<sup>578</sup> ... *requirere que iusta sunt de omnibus iniuriis sibi illatis ab eis.* HCL XII, 6, p. 61; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 83 (amended).

<sup>579</sup> ... *Estonum legati contempnentes et pacem Lethorum et iniuste sibi ablata restituere dedignantentes ...* HCL XII, 6, p. 62; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 84 (amended).

taking the horses and flocks and many spoils, saying that they [the people of Jerwia] had come against the Danes to help the [pagan] people of Reval.<sup>580</sup>

The culpability of the people of Jerwia was justified indirectly by allegations that while they were not directly waging war on Christians themselves, they nevertheless sided with other pagan peoples – those of Reval – when they were engaging in warfare. It is clear that such a justification greatly expanded the limits of what could be considered as a just cause, and opened the possibility of waging war on behalf of another party where the latter was unwilling or incapable of doing so themselves.

The concept of helping other Christians was widely used in crusading rhetoric as an act of brotherly (Christian) love.<sup>581</sup> Papal letters often contained such proclamations appealing to love. In 1187, Pope Gregory VIII (1187) proclaimed the Third Crusade with a bull ‘Audita tremendi’, in which a strong emphasis was laid on the willingness to sacrifice oneself in the name of fellow Christians:

Heed how the Maccabees, afire with the zeal of the Lord’s law, experienced every extreme danger for the freedom of their brothers; and they taught that not only possessions but also their persons should be sacrificed for the salvation of their brothers ...<sup>582</sup>

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<sup>580</sup> *Sed abeuntibus Ruthenis visum est Lettis, de persecutione Ruthenorum modicum se lucrum reportare. Et converterunt exercitum suum in Sackalam et accipientes secum Sackalanenses transiverunt Palam et intrantes Gerwam percusserunt terram illam plaga magna, viros interficientes, mulieres capientes, equos et pecora et spolia multa tollentes, dicentes eos contra Danos in auxilium venisse Revelensibus.* HCL XXIII, 5-6, p. 159; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 177 (amended).

<sup>581</sup> Riley-Smith, ‘Crusading as an Act of Love’, pp. 177-192, at pp. 182, 191.

<sup>582</sup> *Attendite qualiter Machabaei zelo Divinae legis accensi, pro fratribus liberandis extrema quaeque pericula sint experti, et non solum substantias sed et personas pro fratrum docuerint salute ponendas ...* Gregory VIII, ‘Audita tremendi’ (29 October 1187) *The Chronicle of the Reigns of Henry II and Richard I*, Vol. 2, ed. William Stubbs (London, 1867), pp. 15-19, at p. 18; translation from *Crusade and Christendom*, ed. Jessalynn Bird, Edward Peters and James M. Powell, p. 8 (amended).

In Livonia, the concept of fidelity among Christians belonging to different social, jurisdictional or otherwise separated groups was clearly known, as shown above. While avenging injuries on behalf of other Christians was not common in the Livonian sources, the fact that this reasoning was nevertheless employed in some specific cases, emphasises that ultimately there was an acknowledgement of a common enemy, the pagans.<sup>583</sup>

On the other hand, injuries could be avenged in any kind of just war, whether it was waged on pagans or other Christians. This was especially prevalent in the context of Livonia where the Rus', while being fellow Christians albeit schismatics, often aided the pagans and engaged in warfare with the Latin Christians. It has been pointed out that Henry of Livonia's views on Rus', and the way they were represented in his chronicle, may have been more critical than that of his superior, Bishop Albert, because as the leader of Livonia, the bishop had to navigate in difficult political situations that involved very different parties, including the Rus'.<sup>584</sup> Nevertheless, there is little reason to doubt that the Orthodox Rus' had occasional violent clashes with the Catholics in Livonia, as depicted by Henry:

But the [converted] Ugannians, indeed, wishing to avenge themselves on the Rus', rose up with the bishop's men and with the Swordbrothers, and went into Rus' toward Novgorod; on the feast of the Epiphany [6 January 1217], when they [the Rus'] are more accustomed to be occupied with their feasts and drinking, they divided their army among all the villages and roads, and they killed many people, and took captive great

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<sup>583</sup> Another example of this is when William of Modena, the papal legate, witnessed the injuries inflicted upon Christian Swedes by the raids of still-pagan Oeselians in Livonia, and wished to avenge on behalf of the Swedes: *HCL* XXX, 1.

<sup>584</sup> Torben K. Nielsen, 'Saints, Sinners & Civilisers – or Converts, Cowards & Conquerors. Cultural Encounters in the Medieval Baltic', in *Cultural Encounters during the Crusades*, ed. Kurt Villads Jensen, Kirsti Salonen and Helle Vogt (Odense, 2013), pp. 55-74, at p. 67.

many women, and, having driven away many horses and flocks, they took many spoils, and, having avenged their injuries with fire and sword, they returned rejoicing to Odenpäh with all the loot.<sup>585</sup>

While the converts were shown as the instigators of the raid that was organised against the Rus', they were joined with the Swordbrothers and bishop's men, thus making clear that the reasons for the military action were deemed as just on the side of the Latin Christians as a whole, and that the Orthodox Rus' deserved vengeance. Indeed, the same notion is echoed in the *Annales Stadenses* (1240-1257), in which Albert of Stade stated that '[in the year 1224] the Estonians abandoned the Catholic faith, entering into a treaty with the barbarians and the Rus'. But the new army of crusaders exercised vengeance against them.<sup>586</sup>

The vast majority of just causes stemming from the idea of revenge were nevertheless targeted against pagans. The fourteenth-century chronicle by Peter von Dusburg offers an insight into the customs of the pagan Prussians, situated southwest of Livonia, who had long cultural traditions pertaining to retribution and blood feud.<sup>587</sup> While no local sources from early thirteenth-century Livonia survive (and perhaps never existed), it would not be hard to imagine the Livonians having similar traditions pertaining to vengeance; this, in turn, would have meant that the

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<sup>585</sup> *Ugaunenses vero, volentes se de Ruthenis vindicare, surrexerunt cum viris episcopi simul et cum fratribus milicie et abierunt in Rusciam versus Nogardiam, et, inuenientes terram nullis rumoribus premunitam, in festo epyphanie, cum conviviis et potationibus suis magis solent occupari, diviserunt exercitum suum per omnes villas et vias et interfecerunt populum multum et mulieres quam plurimas captivas duxerunt et equos et pecora multa depellentes spolia multa tulerunt et igne et gladio suas iniurias vindicantes cum omni preda reversi sunt in Odempe gaudentes.* HCL XX, 5, p. 138; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, pp. 157-158 (amended).

<sup>586</sup> *Estones fidem catholicam reliquerunt, foedus ineuntes cum barbaris et Ruthenis. Sed vindictam in eos exercuit novus exercitus peregrinorum.* Albert of Stade, 'Annales Stadenses', p. 357.

<sup>587</sup> Vera I. Matuzova, 'Mental Frontiers: Prussians as Seen by Peter von Dusburg', in *Crusade and Conversion on the Baltic Frontier*, ed. Alan V. Murray (Ashgate, 2001), pp. 253-259.

‘perpetuity’ of warfare was prolonged due to both the Christians and locals expressing a ‘right’ to avenge injuries.

In one of the very typical examples, the *Livonian Rhymed Chronicle* stated that ‘Master Volkwin [of the Swordbrothers] made war on the Semeallians. It occurred to him that he might avenge the harm he had suffered from them.’<sup>588</sup> In a similar vein, after being attacked by the Lithuanians, the Christians in turn ‘rode into their country and burned and looted and repaid them to the last penny’.<sup>589</sup> These passages furthermore demonstrate that the grounds for vengeance went much further in the minds of the people in Livonia than it had been envisaged by Gratian in the *Decretum*. While Gratian had held that *some* vengeance was justified and tied it very closely to the notion of self-defence, the *Decretum* clearly rejected limitless violence, even if it was to avenge injuries.<sup>590</sup> Yet, as we have seen, the Livonian sources mentioned events where vengeance turned into a full revenge, with no limits or boundaries. Such a disparity between theory and reality suggests that canonical prescriptions were less likely to be followed in extreme situations, such as warfare.

Yet if one tries to find explicit examples of sources stating that due to *this* or *that* action taken by the pagans, the Christians had the right to wage war to avenge injuries, the resulting numbers might at first seem scarce. It is not due to lack of injuries that would have been perceived as deserving of vengeance, but rather because of how the sources tended to describe pagan transgressions separately from the military actions that were undertaken for vengeance. An example of this is the revolt

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<sup>588</sup> *der meister Volkwin gerne nam uf die Semegallen. ez was im wol gevallen, er mochte rechen da sin leit. LRC, 1694-1697, p. 39; translation from The Livonian Rhymed Chronicle, p. 21.*

<sup>589</sup> *sie riten wider in ir lant, sie stiften roub unde brant und gulden ir scherf vil wol. LRC, 2697-2699, p. 62; translation from The Livonian Rhymed Chronicle, p. 33.*

<sup>590</sup> Gratian, C.23 C.23 q.1 d.p.c.1, col. 890, the ‘*auctoritas*’ for the canon itself is Pope Gregory I; C. 23 q.1 d.p.c.7, col. 894, the ‘*auctoritas*’ for the canon itself is Pope Gregory I; C.23 q.3 d.a.c.1, cols. 895-896, the ‘*auctoritas*’ for the canon itself is St. Augustine.

of the Estonians in 1222-1224, which culminated in continued counterattacks undertaken by the Christians until the whole region was secured under Christian control. The chronicler Henry of Livonia described the injuries inflicted by the apostates on several pages, recounting how priests and merchants were killed, churches and villages burned, Swordbrothers captured, goods seized and how greatly the Christians suffered.<sup>591</sup> Soon after these descriptions, the following justification for the actions of the Christians was given:

Therefore, in order for the Livonian Church to free her daughter, the Estonian Church, which she had conceived by Jesus Christ, from present evils, the venerable bishop of Riga sent and summoned the Swordbrothers, and also the men of the Church with the crusaders and the merchants, and the citizens of Riga, and all the Livonians and Letts, proclaiming an expedition to all those belonging to the Livonian church. And, faithfully obedient, they all assembled together with their army at the lake of Rastigerwe, calling with them the venerable bishop of Riga with his brother, no less venerable Bishop Hermann, with all their men, priests, and knights.<sup>592</sup>

When considered separately, this passage could be seen as Christians taking the liberty to wage war on ambiguous terms, such as ‘to free ... the Estonian Church ... from present evils’.<sup>593</sup> Yet, by considering the wider context of the revolt that was ongoing, the lengthy description of injuries before the assemblage of arms could be

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<sup>591</sup> For example: *HCL* XXVI, 5, pp. 189-190; XXVII, 4, p. 197.

<sup>592</sup> *Ut ergo Lyvonensis ecclesia filiam suam Estiensem ecclesiam, quam genuerat Iesu Christo, liberaret de presentibus malis, misit episcopus venerabilis Rigensis et convocavit fratres milicie nec non et viros ecclesie cum peregrinis et mercatoribus et civibus Rigensibus et universis Lyvonibus et Lettis, indicens expeditionem cunctis ad Lyvonensem ecclesiam pertinentibus. Et fideliter obedientes omnes convenerunt cum exercitu suo apud stagnum Rastigerwe convocantes secum episcopum venerabilem predictum Rigensem cum fratre suo, non minus venerabili Hermanno episcopo, et cum universis viris sacerdotibus ac militibus suis.* *HCL* XXVIII, 5, p. 202; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, pp. 222-223 (amended).

<sup>593</sup> *HCL* XXVIII, 5, p. 206.

seen precisely as just causes to inflict vengeance upon the insurgent apostates and pagans. Therefore, to understand the complexity of reasons given for warfare in the context of Livonia, one cannot look at the military campaigns in isolation from the events they followed, and from which they often resulted.

### Apostasy

A category closely tied to the concept of avenging injuries was using apostasy as a just cause for war.<sup>594</sup> No one was to be forced to convert to Christianity – an idea prevalent already in Gratian's *Decretum* in which it was stated that '[t]hus, so that they be converted not by force but by the free faculty of decision [i.e. free will], they are to be persuaded, not rather impelled.'<sup>595</sup> Humbert of Romans (1190/1200-1277), minister-general of the Dominican Order, distinguished between different unbelievers and their willingness to convert peacefully: the Prussians were likely to be voluntarily converted while the Muslims needed to be forced.<sup>596</sup> However, no one could freely decide to stop observing the Faith without repercussions. As soon as someone was baptised, they entered a new legal category that also changed the way a war could be justly waged on them.<sup>597</sup> This idea is neatly encapsulated by Thomas Aquinas in the second half of the thirteenth century:

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<sup>594</sup> For apostasy in the context of baptism, see pp. 68-74; for acts resembling apostasy in the context of punishments, see p. 400.

<sup>595</sup> *Ergo non ui, sed libera arbitrii facultate ut conuertantur suadendi sunt, non potius inpellendi.* Gratian, D.45 c.5, col. 162. The 'auctoritas' is the Fourth Council of Toledo (633). This and other canons concerning the legal treatment of the Jews were not present in pre-vulgate manuscripts of the *Decretum*, despite them being included in many pre-Gratian legal collections, see Kenneth Pennington, 'Gratian and the Jews', *Bulletin of Medieval Canon Law*, Vol. 31 (2014), pp. 111-123, at pp. 113-114. Also note that it is important not to confuse objection to forcible conversion with objection to warfare on pacifistic grounds; see Elizabeth Siberry, *Criticism of Crusading, 1095-1274* (Oxford, 1985), at p. 211.

<sup>596</sup> Elizabeth Siberry, 'Missionaries and Crusaders, 1095-1274: Opponents or Allies?', *Studies in Church History*, 20 (1983), pp. 103-110, at pp. 106-107.

<sup>597</sup> Walter Ullmann, 'The Medieval Papacy, St Thomas and Beyond', in *Law and Jurisdiction in the Middle Ages*, ed. George Garnett (Michigan, 1988), VI, pp. 1-31x, at p. 8; Nielsen, 'Mission and Submission', p. 220.



[T]here are some unbelievers who have never received the Faith, such as pagans and Jews. And such men should by no means be compelled to the Faith ... Others are unbelievers who at some point accepted the Faith, and professed it, such as heretics or all apostates. And such are to be physically compelled to fulfil what they have promised, and to hold on to what they once received.<sup>598</sup>

Thus, whoever accepts Christianity accepts it indefinitely, without the choice to later reverse their position. It is a key idea that was also emphasised in the chronicle of Henry of Livonia:

The Supreme Pontiff [Celestine III], therefore, upon hearing the number of those [who had been] baptised, thought that they should not be deserted and decreed that they should be compelled to observe the Faith which they had voluntarily promised.<sup>599</sup>

When Berthold, the second bishop of Livonia, returned to his see in 1198 with an army, the chronicler explicitly demonstrated that the distinction between apostates and pagans, between free and forced conversions, was known.<sup>600</sup> According to Henry, the still-pagan Livonians offered a messenger of Berthold the following option: 'You may compel those who have received the Faith to keep it, and entice others to accept it with words, not with blows'.<sup>601</sup> Following this exchange, Bishop

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<sup>598</sup> ... *infidelium quidam sunt qui nunquam susceperunt fidem, sicut gentiles et Iudaei. Et tales nullo modo sunt ad fidem compellendi ... Alii vero sunt infideles qui quandoque fidem susceperunt et eam profitentur, sicut haeretici vel quicumque apostatae. Et tales sunt etiam corporaliter compellendi ut impleant quod promiserunt et teneant quod semel susceperunt.* Thomas Aquinas, *ST II-II*, Q 10, Art 8, co, p. 89.

<sup>599</sup> *Summus itaque pontifex audito numero baptizatorum non eos deserendos censuit, sed ad observationem fidei, quam sponte promiserant, cogendos decrevit.* HCL I, 12, p. 7; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 30 (amended).

<sup>600</sup> See the quote at p. 56.

<sup>601</sup> ... *misso trans aquam nuncio querit, si fidem suscipere et susceptam servare decernant. Qui se fidem recognoscere nolle nec servare velle proclamant. ... Respondet episcopus ... quod tamquam canes ad vomitum, sic a fide sepius ad paganismum redierint. Item Lyvones: 'Causam hanc', inquit, 'a nobis removebimus. Tu tantum remisso exercitu cum tuis ad episcopium tuum cum pace revertaris, eos, qui*

Berthold negotiated a peace agreement with the Livonians which the latter then violated by killing allegedly peaceful Germans who were looking for food for their horses.<sup>602</sup> Yet the passage quoted above can reveal the extent to which the ideas of a correct conversion were spread among those who were Christianising Livonia.

It is highly unlikely that the pagan Livonians themselves recognised that those who apostatised were to be compelled back to faith, and therefore the quotation in the chronicle was put into the mouths of the Livonians by Henry or by someone else he might have heard that story from.<sup>603</sup> Additionally, Henry was not present in Livonia at the time of these events.<sup>604</sup> Therefore, it is much more likely that the statement regarding the compulsion of apostates on the one hand and the prospect of strictly peaceful conversion on the other, was a viewpoint that Henry wanted to emphasise. The fact that Henry chose to put these ideas in the mouths of the Livonians might indicate his wish to focus on the concept of peaceful conversion as a common occurrence in Livonia, as, according to him, even the pagans and converts understood the difference between pagans and apostates.<sup>605</sup>

Apostasy as a direct reason to wage war became a frequent point in the chronicle of Henry of Livonia. The following is an example from the year 1205 which encapsulated the circumstances:

Therefore, when the crusaders see the newly converted Livonians turn away in this manner and, like dogs, return to their vomit, because they had forgotten the Faith which they

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*fidem susceperunt, ad eam servandam compellas, alios ad suscipiendam eam verbis non verberibus allicias*. HCL II, 4-5, pp. 9-10; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 32 (amended).

<sup>602</sup> HCL II, 5, p. 10.

<sup>603</sup> For the chronicle of Henry of Livonia, see Introduction at pp. 33-34.

<sup>604</sup> Brundage, 'Introduction: Henry of Livonia', p. 5.

<sup>605</sup> HCL II, 4-5, pp. 9-10.

had formerly received, and, burning with the zeal of God, they [the Christians] pursue the fugitives.<sup>606</sup>

The literary trope of depicting apostates as dogs who turn back to their vomit, was common, as it was derived from Scripture, and it is not surprising that Henry resorted to this phrase as well.<sup>607</sup> Instances of apostasy in Livonia are also depicted in the Livonian Rhymed Chronicle:

The master spoke up quickly: 'We are surrounded by many nations, all of whom wage war upon us. One nation is the Estonians, who are blind to the true Faith. They had accepted baptism, but now, unfortunately, it has come to pass that they again pray to their false idols in satanic defiance. Of the few Christians who were once in that land, none are now alive.'<sup>608</sup>

It was not long until the ideas of apostasy and being pagan as an offence to the Church started to merge, not least because by the middle of the twelfth century, the presence of unbelievers on the borders of Christendom induced a deeply rooted fear often employed in crusading rhetoric.<sup>609</sup> Contemporary sources provided many

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<sup>606</sup> *Peregrini itaque dum vident neophitos Lyvones in tantum exhorbitare et tamquam canes ad vomitum redire, eo quod fidei olim suscepte obliviscantur, zelo Dei accensi insequuntur fugientes.* HCL IX, 8, p. 30; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 51 (amended).

<sup>607</sup> Proverbs 26:11; partially also cited in 2 Peter 2:22. See also Irven M. Resnick, 'Good Dog/Bad Dog: Dogs in Medieval Religious Polemics', *Enarratio*, Vol. 18 (2013), pp. 70-97, at p. 77. Same imagery was used in HCL II, 5. For apostate Jews being depicted in a similar manner, see David M. Freidenreich, 'Jews, Pagans, and Heretics in Early Medieval Canon Law', in *Jews in Early Christian Law: Byzantium and the Latin West, 6<sup>th</sup>-11<sup>th</sup> centuries*, ed. John Tolan, Nicholas de Lange, Laurence Foschia and Capucine Nemo-Pekelman (Turnhout, 2014), pp. 73-91, at pp. 82-84. The reference was not always used in the context of apostasy; for example, Pope Paschal II (1099-1118) utilised this imagery to urge Odo Arpin to shun the secular temptations, see Orderic Vitalis, *The Ecclesiastical History of Orderic Vitalis*, Vol. 5, ed. and trans. Majorie Chibnall (Oxford, 1985), pp. 352-353; for a longer discussion contextualising the letter, see William J. Purkis, *Crusading Spirituality: In the Holy Land and Iberia, c.1095-c.1187* (Woodbridge, 2008), p. 179.

<sup>608</sup> *sân der meister sprach: 'wir sint mit manchen landen belegen, die alle strîtes ûf uns pflegen. ein heidenschaft die Eisten sint. des rechten gelouben sint sie blint: sie hetten den toufan sich genomen, nû ist iz leider dar zû komen, daz sie die valschen apgot an beten durch des tûvels spot. waz cristen in irme lande was, der wênic ie dekein genas.'* LRC, 1356-1366, p. 32; translation from *The Livonian Rhymed Chronicle*, p. 17.

<sup>609</sup> Muldoon, *Popes, Lawyers, and Infidels*, pp. 34-36.

descriptions of actions undertaken by marginal groups that were perceived as an offence towards Christianity. Some of such descriptions from Livonia explicitly stated that the offence was not so much towards individuals who were humiliated, injured or killed, but rather against the Christian faith and the Church as a whole:

[T]hey [the pagan Livonians] kill animals, sacrificing dogs and goats and, to mock Christianity, they throw them from the castle in the face of the bishop and the whole army.<sup>610</sup>

That in this case the mocking of Christianity is considered one of the main injuries inflicted by the pagans and apostates is reiterated during the peace negotiations that followed:

The bishop [Albert of Riga] replied to them [the Livonians], saying: 'Because you have rejected the sacraments of the Faith, and you have disturbed the Swordbrothers, your lords, with war, and you have desired to drag all of Livonia back into idolatry, and especially [because], out of contempt of the Most High God and in order to mock us and all Christians, you have thrown goats and other animals, sacrificing to the pagan gods, in our face and [in the face] of the whole army, [and] we therefore demand from your entire province a moderate sum of silver, namely one hundred *oseringi*, or fifty marks of silver; moreover, you are obliged to restore to the Swordbrothers their horses and equipment, and everything else that has been taken away from them'.<sup>611</sup>

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<sup>610</sup> ... *animalia mactant, canes et hircos immolantes ad illusionem christianorum in faciem episcopi et tocius exercitus de castro proiciunt. HCL XVI, 4, p. 108; translation from Henry of Livonia, The Chronicle of Henry of Livonia, p. 127 (amended).*

<sup>611</sup> *Episcopus ... respondit eis, dicens: 'Pro eo, quod fidei sacramenta reiecastis et fratres milicie, dominos vestros, bello inquietastis et totam Lyvoniam ad ydolatriam retrahere voluistis et maxime in contemptum Dei altissimi et ad nostram et omnium christianorum illusionem hircos et cetera animalia diis paganorum immolantes in faciem nostram et tocius exercitus proiecastis, ideo modicam summam argenti, centum videlicet oseringos vel quinquaginta marcas argenti, ab omni provincia vestra requirimus; insuper fratribus milicie equos et armaturas suas et cetera eis ablata restituere tenemini'.*

For Bishop Albert of Riga, the mocking of Christianity was an especially grave injury, albeit not the sole reason for war.<sup>612</sup> Nevertheless, it is yet another example of how widely Christians in Livonia considered offences that they saw as worthy, or even requiring of a bellicose response.

### Defence

One of the causes frequently used to justify any act of war was the concept of defence. Did Gratian allow for defence? Relying on St. Augustine, Gratian summarised that ‘Catholics can demand defence against heretics from appointed authorities’.<sup>613</sup> From this excerpt it can be concluded that Gratian permitted to request for defence. Gratian additionally included a canon from the Fifth Council of Carthage (401), which stated that ‘[e]mperors, with the provision of the bishops, must undertake the defence of the Church against the power of the rich’, with Gratian adding in his own *dictum* which noted that ‘[b]ehold, that sometimes it is necessary to resist the corrupted, and [to resist] injury to the associates by arms’.<sup>614</sup> In a similar manner, Gratian also explained:

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*HCL* XVI, 4, pp. 109-110; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 129 (amended).

<sup>612</sup> The offence of mocking Christianity was not unique to Livonian apostates and pagans. Rebecca Rist has considered the offence and its use against Jews extensively in *Popes and Jews, 1095-1291* (Oxford, 2016), pp. 165-170. See also Ivan G. Marcus, ‘Jews and Christians Imagining the Other in Medieval Europe’, *Prooftexts*, Vol. 15 (1995), pp. 209-226, at pp. 217-221; Daniel Jütte, “‘They Shall Not Keep Their Doors or Windows Open’: Urban Space and the Dynamics of Conflict and Contact in Premodern Jewish-Christian Relations”, *European History Quarterly*, Vol. 46 (2016), pp. 209-237, at p. 213.

<sup>613</sup> *Catholici aduersus hereticos defensionem postulare possunt a potestatibus ordinatis*. Gratian, C.23 q.2 c.3, col. 897. The ‘*auctoritas*’ is St. Augustine.

<sup>614</sup> *Inperatores cum episcoporum prouisione ecclesiae defensionem debent suscipere aduersus diuitum potenciam*. Gratian, C.23 q.3 c.10, col. 898. The ‘*auctoritas*’ is the Fifth Council of Carthage (401). *Ecce, quod nonnumquam est obuandum peruersis, et iniuria sociorum armis est propulsanda ...* Gratian, C.23 q.3 d.p.c.10, col. 898. In fact, one of the earliest manuscripts of the *Decretum*, Sankt Gallen 673, stated that resisting the perverted and repelling injuries to the associates is ‘always’ (*semper*) done by arms, as opposed to just ‘sometimes’ (*nonnumquam*); St. Gallen, Stiftsbibliothek, Cod. Sang. 673, p. 160. The following recensions of the *Decretum*, including the pre-vulgate ones, substituted ‘always’ with ‘sometimes’, as demonstrated by Melodie H. Eichbauer, see Melodie H. Eichbauer, *From Gratian’s Concordia discordantium canonum to Gratian’s Decretum: The Evolution from Teaching Text to*

It is condemnable to ask for or to provide aid in tribulation, so that a man may live in crime with pleasure. It is proper and honourable to seek and to provide solace, so that the possibility of committing crimes may be taken away from the evil [people], [or] that the Church may obtain peace, [or] that someone may serve to be of use to many.<sup>615</sup>

It can be thus surmised that according to Gratian the defence of the Church, including the defence of its members, was seen as a virtuous act. But how did Gratian perceive self-defence? The answer appears to be at the very beginning of the *Decretum*, where Gratian explained the concept of natural law.<sup>616</sup> He began with the statement that '[n]atural law is common to all nations because it exists everywhere through natural instinct, not because of any enactment' and went on to list examples of natural law, including 'the repelling of violence by force' (*uiolentiae per uim repulsio*).<sup>617</sup> Yet he did not seem explicitly to touch on this subject again in the section on just war (C.23), apart from a statement that self-defence was explicitly forbidden

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*Comprehensive Code of Canon Law*, unpublished doctoral thesis (The Catholic University of America, 2010), pp. 87-88.

<sup>615</sup> *Petere ergo uel prestare in tribulatione subsidium, ut uoluptuose quis in crimine uiuat, dampnabile est. Petere autem uel prestare solacium, ut malis facultas delinquendi adimatur, ut ecclesia pacem adipiscatur, ut aliquis multorum utilitati seruetur, utile est et honestum.* Gratian, C.23 q.3 d.p.c.1, col. 896. The 'auctoritas' for the canon itself is St. Augustine. See also C.23 q.4 d.p.c.32, col. 914, for the acknowledgement that inaction can be worse than acting with violence: ... *inquam, penitentibus ... misericordes esse iubemur, sic inpenitentibus et obstinatis in malo inpendere prohibemur misericordiam.* – 'I say, we are commanded to be compassionate towards the penitent, just as we are forbidden to show mercy towards the unrepentant and obstinate in evil ...' The 'auctoritas' for the canon itself is St. Augustine.

<sup>616</sup> Gratian, D.1 c.7, col. 2. The 'auctoritas' is St. Isidore of Seville.

<sup>617</sup> *Ius naturale est commune omnium nationum, eo quod ubique instinctu naturae, non constitutione aliqua habetur ....* Gratian, D.1 c.7, col. 2; translation from Gratian, *The Treatise on Laws (Decretum DD. 1-20) with the Ordinary Gloss*, trans. James Gordley and intro. Katherine Christensen (Washington, D.C., 1993), p. 6. The maxim stating that it was allowed to repel violence by violence, relied on Roman law: *Uim ui repellere licere Cassius scribit idque ius natura comparatur: apparet autem, inquit, ex eo arma armis repellere licet.* – 'Cassius writes that it is lawful to repel a man, and this right is conferred by nature [i.e. natural law]: and it appears, he says, that it is lawful to repel arms with arms.' *Digesta Iustiniani augusti, Corpus iuris civilis*, Vol. 2, ed. Theodore Mommsen (Berlin, 1870), 43.16.1.27, p. 584. For the legacy of Gratian's treatment of natural law and the concept of self-defence within it, see David B. Kopel, 'The Natural Right of Self-Defense: Heller's Lesson for the World', *Syracuse Law Review*, Vol. 59 (2008), pp. 999-1016, esp. pp. 1004-1005.

for clerics: ‘But concerning bishops or any other clerics, it is easily proven that they may draw arms neither by their own authority nor by the authority of the Roman Pontiff.’<sup>618</sup> It can be argued that when contemplating violence enacted by groups, Gratian did not approach the topic from an explicitly self-defence point of view. Rather he was considering the issue from the general defence perspective, where individuals in groups could legitimately use violence for the defence of others, i.e. of the group as a whole, and of the Church.<sup>619</sup>

In the context of Livonia, the arguments of defence often took the shape of general proclamations, such as the following example:

In the meanwhile, the bishop [Albert of Riga], detained in Dünamünde by a contrary wind, [and] having been informed of the slaying of his men and having realised the betrayal of his Church, summons all the crusaders together; in tears he announces the damages to the Church, and, so that they may become defenders and strong auxiliaries of the Church, invites them to resume the sign of the Cross.<sup>620</sup>

While the bishop acknowledged a series of injuries inflicted upon the Church and its members, in this particular case he did not call for revenge explicitly, although he could have done so, but rather for the defence of the Church. A similar idea of an ‘active’ defence was put forth in the year 1218, when an envoy consisting of various important ecclesiastics from Livonia, including Bishop Albert of Riga, came to the

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<sup>618</sup> *De episcopis uero uel quibuslibet clericis, quod nec sua auctoritate, nec auctoritate Romani Pontificis arma arripere ualeant, facile probatur.* Gratian, C.23 q.8 d.a.c.1, col. 953. The canon itself is *palea* – i.e. inserted later.

<sup>619</sup> See, for example: Gratian, C.23 q.3 d.p.c.1, col. 896, the ‘*auctoritas*’ for the canon itself is St. Augustine; C.23 q.3 c.5, col. 897, the ‘*auctoritas*’ is St. Ambrose; C.23 q.3 d.p.c.10, col. 898, the ‘*auctoritas*’ for the canon itself is the Fifth Council of Carthage (401).

<sup>620</sup> *Episcopus interim in Dunemunde a vento contrario detentus, cognita suorum interfectione et ecclesie sue intellecta traditione, peregrinos omnes in unum convocat, ecclesie dampna lacrimando indicat et, ut fiant ecclesie defensores et fortes auxiliarii, ipsos invitat et crucis signum resumere ...* HCL XI, 9, p. 57; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, pp. 77-78.

Danish king to ask him that 'he might send his naval forces to Estonia in the following year, so that the Estonians, more humbled, would cease to attack the Livonian Church with the Rus'.<sup>621</sup> Thus, the Danish king was asked to defend the Livonian Church because the bishop of Riga was clearly unable to repel the attacks with the forces at his disposal. The passage additionally suggests that such a defence was expected to be active in a way that would deter the attackers in future.

Similarly, the *Livonian Rhymed Chronicle* offers a glimpse of how Bishop Albert of Riga was trying to recruit crusaders in Germany:

He [bishop Albert] told them about the difficulties and troubles in Livonia: of how the heathens were seeking to conquer the Christians with force. He said: 'You should not stand idle, good heroes, but rather think how Jesus Christ spilled His blood for us. Now be worthy of that and undertake the journey for His sake.'<sup>622</sup>

While again not explicitly evoking the concept of defence, it is nevertheless implied through the allegations that the pagans are attempting to conquer the Christians and their territories. The only way to respond to that was to defend the Christians against such attacks, and this is what was expected of the recruits. Being a mere bystander was not sufficient and not worthy of the blood that Christ spilled – an active response, in the form of defence, was required. Therefore, it is not surprising

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<sup>621</sup> ... *quatenus exercitum suum navalem anno sequenti converteret in Estoniam, ut magis humiliati Estonos Lyvonensem ecclesiam cum Ruthenis impugnare cessarent.* HCL, XXII, 1, p. 147; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 166 (amended).

<sup>622</sup> ... *und clagete in die swêre, wie kummerliche iz wêre zû Nieflande gestalt, da3 dâ die heiden mit gewalt den cristen wolden an gesigen. er sprach: 'dar zû sult ir nicht ligen, und gedenket, helde gût, da3 Jhêsus Crist sîn selbes blût vor uns wolde giezen. da3 lâ in nû geniezen und vart durch sînen willen dar: dâ werdet ir aller sunden bar, des habet ir immer mêre vor gote lob unde êre.'* LRC, 851-864, p. 20; translation from *The Livonian Rhymed Chronicle*, p. 12.



that defending the Church did not necessarily mean merely being prepared to fight when attacked but could also include activities that had an offensive nature:

When they [the Christians] came back to Riga and when the townspeople had heard how things had gone well for them, they all immediately praised God in heaven for having mercifully defended Christendom with this expedition.<sup>623</sup>

In this specific case, the Christians went as far as Lithuania to deter the pagan forces and returned with loot and captives. Yet, the crux of the reason that this happened in the first place was perceived to be of defensive nature, and not explicitly returning lost goods or avenging injuries.

That the defence of the Livonian Church was central in crusade preaching throughout the whole period of Christianisation, is evident from a description concerning preaching in 1218, more than thirty years after the first bishopric was created – if only nominally – in Livonia.<sup>624</sup>

And the venerable [bishop] Albert of the Livonian church departed again [to Germany], collecting the crusaders and preaching to them the remission of sins and sending them to Livonia, so that they might stand up for the house of the Lord on the day of battle [Ezek. 13:5] and might defend the new church from the attack of the pagans.<sup>625</sup>

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<sup>623</sup> *dô sie zû Rîge quâmen und die burger vernâmen, da3 iz in wol was irgân, sie lobeten algemeine sân got von himelrîche, da3 er genêdeclîche in der selben herevert die cristenheit hatte bewart. LRC, 3391-3398, p. 78; translation from *The Livonian Rhymed Chronicle*, p. 40.*

<sup>624</sup> As we have seen, there is some evidence that a certain monk Fulco was ordained as bishop of the Estonians by Archbishop Eskil of Lund as early as in the 1170s, but it is still a much debated topic; see Lind, 'The "First Swedish Crusade" Against the Finns', pp. 314-315; Kala, 'The Incorporation of the Northern Baltic Lands', p. 7; Nielsen, 'The Missionary Man', p. 97. For the mission, see also pp. 117-119, 256-258.

<sup>625</sup> *Et abiit iterum venerabilis Lyvonensis ecclesie [episcopus] Albertus, colligens peregrinos et predicans eis remissionem peccatorum et mittens eos in Lyvoniam, ut starent pro domo Domini in die prelii et defenderent ecclesiam novella ab impetus paganorum. HCL XXII, 1, p. 147; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 166 (amended).*

Similar calls to the defence of the Church were common in crusading rhetoric from its beginnings. Already Pope Urban II's call for a crusade, as described by contemporaries who were thought to be present at the council of Clermont in 1095, echoed the concept of defence as a reason for war: 'If on the other hand you want to look after your souls, then either lay aside the sword-belt of that military service, the sooner the better, or march out boldly as soldiers of Christ, and hurry with all haste for the defence of the eastern Church.'<sup>626</sup> Similar ideas continued to be expressed in proclamations of the crusades to the Latin East and elsewhere.<sup>627</sup> In this sense, then, by commonly using 'the defence of Christendom' as a just cause, the crusading rhetoric in Livonia was very similar to other theatres of crusading warfare.

### Prevention

Another category of a just cause that overlapped and intersected with others, particularly with the idea of active defence, was prevention. Such cases were not particularly numerous and most military activities were linked to other reasons in Livonia. Nonetheless, one of the most prominent examples of this kind of justification comes from the earlier period of the Christianisation of these regions. In 1197, a

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<sup>626</sup> *Porro si vultis animabus vestris consuli, aut istiusmodi militiae congulum quantocius deponite, aut Christi milites audacter procedite, et ad defendendam Orientalem Ecclesiam velocius concurrere.* Baldric of Bourgueil, 'Historia Ierosolimitana', in *Recueil des historiens des croisades: Historiens occidentaux* (Paris, 1879), Vol. 4, pp. 9-111, at p. 14; translation from Baldric of Bourgueil, *History of the Jerusalemites*, trans. Susan B. Edginton and intro. Steven J. Biddlecombe (Woodbridge, 2020), p. 48. Similarly, Robert the Monk evoked the imagery of barbaric peoples to describe the injuries done to Christians in the Levant, who now were in a dire need of defending and avenging their injuries, see Robert the Monk, *The Historia Iherosolimitana of Robert the Monk*, pp. 5-6.

<sup>627</sup> For example, Pope Eugenius in his proclamation of the Second Crusade in 1146 also asked 'to defend ... the eastern Church' - ... *ecclesiam orientalem ... defendere ...* Eugenius III, 'Quantum praedecessores' (1 December 1145) *Ottonis et Rahewini gesta Friderici I. imperatoris*, ed. Georg Waitz and Bernhard von Simson (Hannover and Leipzig, 1912), pp. 55-57, at p. 56. For the rhetoric of defence on behalf of Christendom employed in the context of Spain and *reconquista*, see O'Callaghan, *Reconquest and Crusade in Medieval Spain*, pp. 39, 54, 182. The concept of 'for the defence of the Christian faith' was frequently used by both Innocent III and Honorius III in their authorisation of crusades against heretics as well, see Rist, *The Papacy and Crusading in Europe*, p. 88.

Cistercian abbot Berthold was consecrated bishop of Livonia, following the death of its first bishop, Meinhard:

[After Berthold had taken over the patrimony of the Church], he gathers in his presence all of the more important [Livonians], both pagans and Christians. He strives to appease them by giving them food and drinks and gifts, saying that he has come at their invitation, and he has succeeded his predecessor as a sole heir [*in solidum*]. At first they kindly accept him, but at the consecration of the cemetery at Holm, some were conspiring to burn him in the church, others to kill [him], and others to drown [him]; they were reproaching [that] poverty was the reason of his arrival. Having considered such a beginning, he [Berthold] secretly went to the ships and returned to Gotland, and proceeding to Saxony, he complains both to the lord pope as well as to the metropolitan, and to all the faithful of Christ about the ruin of the Church of Livonia. The lord pope, therefore, grants the remission of sins to all who accept the sign of the Cross and arm themselves against the perfidious Livonians, sending letters about these matters to the same bishop Berthold, just as [he had sent] to his predecessor.<sup>628</sup>

There is a strong suggestion that Berthold was scared for his life as '[h]aving been made bishop, he goes to Livonia at first without an army, committing himself to

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<sup>628</sup> ... quosque meliores tam paganos quam christianos coram se colligit. Quos potibus et escis et muneribus datis placare laborat, dicens se eorum vocatione venisse et predecessori suo in solium successisse. Quem quidem primo blande suscipiunt, sed ipsum in Holmensis cymiterii consecratione alii in ecclesia concremare, alii occidere, alii submergere concertabant, egestatem adventus sui causam esse improperabant. Talibus iniiciis consideratis clam naves adiit et Gothlandiam revertitur et in Saxoniam procedens Lyvoniensis ecclesie ruinam tam domno pape quam metropolitano et Christi fidelibus conqueritur universis. Igitur dominus papa cunctis signum crucis accipientibus et contra perfidos Lyvones se armantibus remissionem indulget peccatorum, litteras super eidem hiis episcopo Bertoldo sicut et suo dirigens predecessori. HCL II, 2-3, pp. 8-9; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, pp. 31-32 (amended).

the Lord, [and] testing [his] fortune'.<sup>629</sup> Bishop Berthold did not stay to wait for his death that would have been almost certain, as he did not have any means to defend himself. Knowing this, he went to higher authorities – to the pope and to the archbishop of Hamburg-Bremen who had consecrated him – which resulted in the raising of an army.<sup>630</sup> But no actual offense had yet occurred, as the Livonians might not have carried out their intended conspiracies and might have not attacked after all. Nevertheless, Bishop Berthold did not take a chance with the prospect of being killed, and not only him but the pope – Celestine III at that time – found the preventive cause sufficient to justify crusading action.

Warfare justified by a preventive cause was not common in the Middle Ages.<sup>631</sup> Whether it was never seen as really a sufficient cause is hard to tell, but it is more likely that there was no need to evoke this reason because other causes, such as defence and restitution, were much more prevalent, and we saw this to be the case in Livonia as well.

### **INTENTIONALITY AND LIMITATIONS**

Intentions of a just war could often overlap with just causes. Rightful intentions for a just war were considered already by St. Augustine, who reached the following conclusion:

Wars, therefore, are waged with the intention of peace, even by those who endeavour to exercise military prowess by commanding and fighting. Hence it is clear that peace is the desirable end of war. For every man wants peace even while

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<sup>629</sup> *Factus episcopus, primo sine exercitu Domino se committens fortunam exploratus Lyvoniam pergīt...* HCL II, 2, p. 8; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 31 (amended).

<sup>630</sup> HCL II, 2-3, pp. 8-9; see also the circumstances of the consecration of Bishop Berthold, pp. 262-264.

<sup>631</sup> Fraher, 'Preventing Crime in the High Middle Ages', p. 218; Lichtenberg, 'Some Central Problems in Just War Theory', pp. 15-18.

waging war: but no man wants war while he is making peace. For even those who wish to disturb the peace in which they are, do not hate peace, but desire it to be changed at their own discretion.<sup>632</sup>

Of course, Augustine's attempt to show peace as the ultimate goal was not a novel idea, as similar statements, such as 'blessed are the peacemakers, for they will be called children of God', can be found in the New Testament, and Augustine was very much aware of this.<sup>633</sup> Augustine, however, acknowledged that peace could be the ultimate intention for every party that engages in warfare – it is merely the ideas of peace that are dependent on subjective interpretations at each party's discretion.<sup>634</sup> Yet, Augustine introduced another aspect into the discussion of intention: love. The idea of acting out of love stemmed from the Sermon on the Mount (Matthew 5-7) and was thus inherently tied to the Christian concept of war.<sup>635</sup> Commenting on the Sermon, Augustine stated that:

But no one is fit for the task of inflicting such punishment unless – by the greatness of his love – he has overcome the hate by which those who seek to avenge themselves are usually enraged. For instance, there is no reason to fear that parents will seem to hate their little child when they chastise him as an offender, so that he may not continue to offend.<sup>636</sup>

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<sup>632</sup> *Pacis igitur intentione geruntur et bella, ab his etiam qui virtutem bellicam student exercere imperando atque pugnando. Unde pacem constat belli esse optabilem finem. Omnis enim homo etiam belligerando pacem requirit: nemi autem bellum pacificando. Nam et illi qui pacem, in qua sunt, perturbari volunt, non pacem oderunt, sed eam pro arbitrio suo cupiunt commutari.* St. Augustine, *De Civitate Dei*, Liber XIX, 12, p. 335; translation from St. Augustine, *The City of God*, trans. Demetrius B. Zema and Gerald G. Walsh, 19.12, pp. 212-213 (amended).

<sup>633</sup> *beati pacifici quoniam filii Dei vocabuntur* Matthew 5:9.

<sup>634</sup> St. Augustine, *De Civitate Dei*, Liber XIX, 12, p. 335.

<sup>635</sup> For the idea of crusading as manifestation of Christian love, see Riley-Smith, 'Crusading as an Act of Love', pp. 177-192.

<sup>636</sup> *Sed huic vindictae referendae non est idoneus nisi qui odium quo solent flagrare qui se vindicare desiderant, dilectionis magnitudine superaverit. Non enim metuendum est ne odisse parvulum filium parentes videantur, cum ab eis vapulat peccans, ne peccet ulterius.* St. Augustine, *De Sermone Domini*

While not explicitly mentioning warfare in his commentary, Augustine nevertheless showed that intentions, which ultimately derive from love rather than from a desire to punish or inflict pain, should be the underlying condition for any act involving violence, including war. Relying on Augustine, Gratian's *Decretum* considered the intentions of any war in the context of the sinfulness of war. Stating that 'in arms of war many [i.e. soldiers] can please God', warfare was permissible in principle.<sup>637</sup> Added in the same canon was a clarification, relying on Augustine:

Peace is not sought so that war can be waged, but war is waged so that peace may be obtained. Therefore, be peaceful in fighting, so that you may lead those whom you fight to the benefit of peace.<sup>638</sup>

The intention of obtaining peace was therefore central in conceptualising a just war in Gratian's *Decretum*. Going further, the *Decretum* listed a number of attributes that were reprehensible in warfare:

Desire of harming, cruelty of avenging, insatiate and implacable mind, savagery of revolting, the lust for dominating, and [other characteristics] which are similar, are those which are rightfully blamed in wars.<sup>639</sup>

While these negative aspects were not explicitly listed as wrongful intentions, they were nevertheless contrasted with the amicable desire to obtain peace. Moreover, the list was not intended to be comprehensive, and the reader was assumed

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*In Monte Secundum Matthaeum*, PL 34, cols. 1229-1308, Liber I, 20.63, at cols. 1261-1262; translation from St. Augustine, *Commentary On the Lord's Sermon on the Mount*, trans. Denis J. Kavanagh (Washington, D.C., 1951), p. 89.

<sup>637</sup> *In bellicis armis multi Deo placere possunt*. Gratian, C.23 q.1 c.3, col. 892.

<sup>638</sup> *Non enim pax queritur, ut bellum exercentur, sed bellum geritur ut pax acquiratur. Esto ergo bellando pacificus, ut eos, quos expugnas, ad pacis utilitatem uincendo perducas*. Gratian, C.23 q.1 c.3, col. 892.

<sup>639</sup> *Nocendi cupiditas, ulciscendi crudelitas, inplacatus atque inplacabilis animus, feritas rebellandi, libido dominandi, et si qua similia, hec sunt, que in bellis iure culpantur*. Gratian, C.23 q.1 c.4, cols 892-893, at col. 893. The 'auctoritas' is St. Augustine.

to know other intentions that would not be considered part of a just war. Yet, Gratian acknowledged that sometimes action that could involve violence was required to preserve the good:

But the evangelical command about loving one's enemies and sharing mercy to those nearest, and the exhortations of the Apostle concerning feeding and giving a drink to enemies, are not to be understood so far, that the impunity of sinning may be relaxed, but that correction and support of character are administered to the transgressor, until by the sentence of a judge, when the hope of correction is taken away, the practice of evil is removed.<sup>640</sup>

This understanding reiterated the ultimate intention for peace and to get rid of evil, and supported using means such as warfare, as the necessary evil, to reach the desired outcome. When Sicard of Cremona (1155–1215) commented on Gratian's *Decretum*, he stated that an unjust war is waged with cruelty, greediness or ambition in mind, and defined these categories specifically as unjust causes.<sup>641</sup> Nevertheless, just intentions were not yet explicitly considered separately as a requisite for just war in the twelfth century, and were usually conflated with just causes.

During the thirteenth century, however, rightful intentions and causes started to be listed as separate requirements for a war to be just. For example, Johannes Teutonicus in his *Glossa ordinaria* to the *Decretum* stated that a war is unjust if 'he

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<sup>640</sup> *Precepta uero euangelica de dilectione inimicorum, et misericordia inpendenda proximis, exhortationes quoque Apostoli de cibandis uel potandis inimicis, non eatenus intelligenda sunt, ut peccandi relaxetur inpunitas, sed ut delinquenti correctio et naturae ministretur subsidium, donec per sententiam iudicis, adempta spe correctionis, malorum tollatur exercitium.* Gratian, C.23 q.4 d.p.c.32, col. 914. The 'auctoritas' for the canon itself is St. Augustine.

<sup>641</sup> *Causa: Iniusta: pro crudelitate, pro cupiditate, pro ambitione.* Sicard of Cremona, *Summa super Decretum*, BN Lat. 14996, fol. 102v.

fights for the sake of will and not for necessity'.<sup>642</sup> Similarly, Thomas Aquinas in his *Summa theologica* listed the requirement of good intentions alongside rightful causes, and the requirement for an authority:

[I]t is necessary that the intention of the belligerents be right, by which it is intended that either the good may be promoted, or that the evil may be avoided. ... But it may also happen that even if there is a legitimate authority to declare war, and a just cause, nevertheless, on account of the wrong intention, war would be rendered unlawful.<sup>643</sup>

What set the intention apart from the other two requirements was its inward nature. This, however, posed a problem – compared to the authority and causes, intentions were much harder to be objectively verified by a bystander. This was especially the case when a war had not yet started or was still ongoing, as intentions often manifested themselves at the end of the conflict.

Consequently, discerning the intentions of those who waged war in Livonia is difficult. Intentions were often not specifically given, as opposed to causes that were in many cases explicitly stated, possibly because causes tended to be less ambiguous and much easier to determine, especially in the framework of canon law. Furthermore, intentions in the context of Livonia tended to be expressed more generally and were not always specifically linked to particular campaigns or military activities, as we shall see below. Nevertheless, it can be said that the most prominent

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<sup>642</sup> ... *ut si propter voluntatem et non propter necessitatem pugnat*. Johannes Teutonicus, *Glossa ordinaria* (Basel, 1493), ad C.23 q.2.

<sup>643</sup> ... *requiritur ut sit intentio bellantium recta, qua scilicet intenditur vel ut bonum promoveatur, vel ut malum vitetur*. ... *Potest autem contingere quod etiam si sit legitima 'auctoritas' indicentis bellum et causa iusta, nihilominus propter pravam intentionem bellum reddatur illicitum*. Thomas Aquinas, *ST II-II*, Q 40, A 1, co, p. 312.



intention that featured in Livonian sources was peace, in alignment with Augustinian ideals. The following case from the year 1206 illustrates this point:

When they [the Christian envoys] confess that they have come for the sake of peace and friendship, the [both still pagan and apostate] Livonians, on the other hand, proclaim that they neither wish for peace nor to maintain it. Their speech is full of cursing and bitterness, they excite the heart and mind of the king to wage war rather than to make peace.<sup>644</sup>

Here the deceitful and warlike pagans and apostates were contrasted with peaceful and honest Christians. The attempts to make peace by the Christians were halted by the pagans who were trying to instigate war instead. The underlying perception here was that Christianity was ultimately peaceful, while those who did not have the true Faith were violent and deceptive. The central idea that Christianity brought peace and prosperity was continuously represented throughout the sources, and was still emphasised as late as in 1225:

And the Rigans received them [the pagans from various parts of Livonia], giving peace to all whosoever of them desired [it], and the land stayed quiet in their sight. And the Estonians went out of their castles, rebuilding their burned-down villages and their churches, and likewise the Livonians and the Letts came out of the hiding places in the forests in which they had hidden themselves for many years in time of war, each one returned to his village and his fields; and they ploughed and sowed in great security, which they had not had for the previous forty years, because the Lithuanians and other nations, both before the

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<sup>644</sup> *Qui dum se pacis et amicitie causa venisse profitentur, Lyvones e contrario neo eos pacem velle neo servare proclamant. Quorum os maledictione et amaritudine plenum est, magis ad bella struenda, quam ad pacem faciendam cor et animum regis incitant.* HCL X, 1, p. 33; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 54 (amended).

preaching of the Word of God in Livonia, and after their baptism, never gave them rest and security. Now, therefore, they were resting, rejoicing in their fields and labours, and there was no one who frightened them.<sup>645</sup>

In this passage, pagans by default were presented as bellicose and vicious, not caring about peace nor the safety of anyone but themselves. It was also implied that pagans were not only violent and hostile towards Christians but engaged in excessive military activity with each other as well. Therefore, a culture embracing Christianity was placed above any other, as for no other group of people, was peace of such importance. In fact, even when the pagans were talking about peace, they did so deceptively and for self-gain from the Christian perspective:

Russin [an apostate Livonian] calls Berthold, the master of Wenden, his '*draugs*', that is 'friend'; taking the helmet from his head, and leaning down from the fortification, he utters words about peace and former friendship.<sup>646</sup>

Furthermore, the chronicle explicitly described that the intentions of the Christians was the ultimate peace, and that they were not dissuaded from this goal even by money:

Therefore, those who were in the castle, seeing the palisade in fire, and fearing that by this means the castle would be taken, promise money so that they may leave the castle. The Germans,

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<sup>645</sup> *Et receperunt eos Rigenses, dantes pacem omnibus, quicunque petebant ab eis, et siluit terra in conspectu eorum. Et exiverunt Estonos de castris suis, reedificantes villas suas et exustas et ecclesias suas, similiter et Lyvones nec non et Letti de latibulis silvarum egredientes, in quibus annis iam plurimis tempore bellorum latitarunt, et rediit unusquisque in villam suam et ad agros suos, et arabant et seminabant in securitate magna, quam ad quadraginta annos ante non habuerant, eo quod Letones et alie gentes tam ante predicationem verbi Dei in Lyvonia quam post baptismum eorum nunquam dederunt eis requiem et securitatem. Nunc ergo quiescebant gaudentes in agris et laboribus suis, et non erat, qui exterreret eos ... HCL XXIX, 1, pp. 207-208; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 229 (amended).*

<sup>646</sup> *Russinus ... Bertoldum magistrum de Wenden, draugum suum, id est consocium, alloquitur, tollens galeam de capite et inclinans de munitione, pacis ac familiaritatis pristinae verba proponens. HCL XVI, 4, p. 108; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 128 (amended).*

however, ask nothing else from them, except that they affirm that they be baptised, and, reconciling with the true Peacemaker, become their brothers both in this world and in the future.<sup>647</sup>

This is an example in which unjust intentions – such as greed and other material gains – were contrasted with much more valorous immaterial intentions. The ultimate goal was to have peace between Christians, which naturally assumed that pagans would eventually convert or at least become subservient to Christians in a way that would not hinder the spread of the Catholic faith. Consequently, the chronicle of Henry of Livonia explicitly stated that the intention of the Christians in Livonia was ‘to fight so long against them, until either those who are left would come to seek peace and baptism or they would be eradicated altogether from the land’.<sup>648</sup> The statement presented by Henry of Livonia echoed the sentiment of Bernard of Clairvaux, made during the proclamation of the Second Crusade in the mid-twelfth century.<sup>649</sup> In a similar vein, Albert of Stade in his extension to Alexander Minorita’s *Expositio in Apocalypsim* (before 1240), stated that the Christians in these times were going ‘against the pagans in Livonia, to convert or destroy an unbelieving nation and to amplify the Catholic faith’.<sup>650</sup>

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<sup>647</sup> *Videntes itaque, qui erant in castro, vallum igne consume et timentes castrum per hoc capi, pecuniam promittunt, ut a castro recedant. Theuthonici vero nichil aliud ab eis se requirere, nisi ut baptizentur affirmant et vero pacifico reconciliati fiant eorum fratres tam in hoc seculo, quam in futuro.* HCL XVIII, 7, p. 120; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, pp. 139-140 (amended).

<sup>648</sup> ... *tam diu debellare, donec aut pro pace et baptism venirent, qui residui errant, aut omnino eos extirpare de terra.* HCL XIX, 3, p. 126; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 146 (amended).

<sup>649</sup> For the full letter of Bernard of Clairvaux, see Bernard of Clairvaux, Epistola 457, PL 182, cols. 651-652; translated in Bernard of Clairvaux, *The Letters of St. Bernard of Clairvaux*, Letter no. 394, pp. 465-466. For the context of the letter, see McGuire, ‘Bernard’s Life and Works’, pp. 54-55; Curta, *Eastern Europe in the Middle Ages*, pp. 556-557; Dragnea, *The Wendish Crusade*, pp. 5-10.

<sup>650</sup> ... *contra paganos in Livoniam ad convertendam vel conterendam nationem incredulam et fidem catholicam ampliandam.* Albert of Stade, extension to Alexander Minorita’s *Expositio in Apocalypsim*, Chapter 20, p. 439.

The apparent contradiction between ultimate peace and constant warfare did not seem to concern contemporaries; indeed, the Augustinian statement that to have peace one may have to wage war, was echoed instead. The intention of ultimate peace could be seen even through material culture when Bishop Philip of Ratzeburg built ‘a castle, which he called Vredeland, that is, “pacifying the land”, hoping that through the same castle the land would be made peaceful, and that there would be a refuge for the priests and all their men.’<sup>651</sup>

The concept of a just war according to canon lawyers, including the intentions accompanying it, could be applied to both Christians and pagans. Likewise, it could happen that even Christians were waging unjust wars. In 1197, when the Christianisation of Livonia was in its earliest stages, the following events were reported in the chronicle of Henry of Livonia:

At that time, the same bishop, with the duke of Sweden, the Germans, and the Gotlanders, had gone to war against the [pagan] Curonians, but, thrown back by a storm, they land in Vironia, a province of Estonia, and lay waste to the land for three days. But while the [pagan] Vironians were negotiating about receiving the Faith, the [Swedish] duke, having rather accepted a tribute from them, [and] lifting the sails, turned away to the annoyance of the Germans.’<sup>652</sup>

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<sup>651</sup> ... *castellum ... , quod et Vredelande appellavit, quasi terram pacificans, sperans per idem castrum terram pacificari et sacerdotum et omnium virorum suorum ibi esse refugium. HCL XVIII, 3, pp. 115-116; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, pp. 135-136 (amended).*

<sup>652</sup> *Iam tunc idem episcopus cum duce Suecie, Theuthonicis et Gothis Curones bello adierant, sed tempestate depulsi Vironiam, Estonia provinciam, applicant et triduo terram vastant. Sed dum Virones de fide recipienda tractarent, dux, accepto potius tributo ab eis vela sustollens divertit in molestiam Theutonicorum. HCL I, 13, p. 7; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 30 (amended).*

Distinct groups of Christians from Denmark, Sweden, Rus' and elsewhere undertaking journeys to the Northern Baltic regions had not been uncommon, but the quotation above shows that the Germans saw themselves as bringing a change to the intentions of these kinds of activities. The Swedish duke mentioned in the passage was a Christian and it surprised the Germans that while having the authority and power to negotiate terms in favour of the pagans receiving baptism, he did not do so and preferred instead the less contentious and more easily achievable goals of receiving tributes.<sup>653</sup> Here, the greedy and materialistic intentions of *other* Christians were contrasted with the goals of having an ultimate peace and securing the victory for the Faith by the German side whose agenda was represented by Henry of Livonia.<sup>654</sup> Thus the story shows that the ideas of right and wrong intentions were clearly present among the Christians converting Livonia, too.

In a close conjunction with the idea of perpetual peace as the ultimate intention, gaining justice also featured as the long-term gain, albeit not as prominently as peace. It is also difficult to discern causes and intentions pertaining to justice from each other, as they might have been overlapping and often employed similar rhetoric intricately connected to the idea of vengeance. One of the cases that exhibits having justice as an ultimate goal showed it as belonging not to the Germans but rather to the Danish crusaders:

At the same time, the Danish king came to Oesel with a great army that he had been collecting now for three years, and also [with him came] Anders, the archbishop of Lund, who, for the remission of sins, had bestowed the sign of the Cross upon a

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<sup>653</sup> For the Swedish expedition to Estonia, see Thomas Lindkvist, 'Crusades and Crusading Ideology in Sweden', in *Crusade and Conversion on the Baltic Frontier 1150-1500*, ed. Alan V. Murray (Aldershot, 2001), pp. 119-130, at p. 121.

<sup>654</sup> For the creation of the chronicle of Henry of Livonia, see pp. 33-34.

great multitude who were to take vengeance on the nations and to subjugate the people to the Christian faith.<sup>655</sup>

The idea of obtaining ultimate vengeance on the pagans and therefore gaining overall justice was clearly prevalent. At the same time, the aim of subjecting everyone to the Christian faith carried the notion of a potential peace that could be achieved. Therefore, while intending to obtain concluding justice through warfare, the notions of perpetual peace as another purpose did not contest but rather commended this goal – once justice is achieved, peace commenced.

Having righteous intentions was good, but it was not enough if these intentions did not materialise, because the people holding these goals were not absolutely determined to achieve them:

[T]ired from excessive fatigue, all of the infantry and a great many of the others returned to Riga. But those who were steadfast in heart to act vengeance upon the nations, and to set themselves up as a wall for the house of the Lord, did not go back.<sup>656</sup>

Henry of Livonia here did not explicitly condemn those who did not continue the war campaign and had decided to return to the safety of Riga – quite the contrary, he acknowledges that the military action they had already undertaken had been excessive and exhausting. Nevertheless, Henry specifically praised those who were determined to achieve their ultimate goal and to gain justice for Christianity through

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<sup>655</sup> *Eodem tempore rex Danorum cum exercitu magno, quem iam tribus annis collegerat, resedit in Osilia, simul et archiepiscopus Lundensis Andreas, qui in remissionem peccatorum infinitam multitudinem signo crucis signaverat ad faciendam vindictam in nationibus et ad subiugandas gentes fidei christiane.* HCL X, 13, p. 43; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 64 (amended).

<sup>656</sup> *... labore nimio fessi, pedites omnes et alii quam plures reversi sunt in Rigam. Sed qui erant constantes corde ad faciendam vindictam contra nationes et ad ponendum se murum pro domo Domini, non abierunt retrosum.* HCL XXVII, 1, p. 194; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 213 (amended).

vengeance, which in turn implied the lack of need for further warfare and suggests the possibility of finally achieving perpetual peace.

### AUTHORITY

Much of what was included in Gratian's *Decretum* was derived from St. Augustine, St. Ambrose and other Early Church Fathers writing in Late Antiquity when military service was a widespread and well-established institution.<sup>657</sup> St. Ambrose, writing to Emperor Valentine II, started his letter with a proclamation:

Since all who are under the dominion of Rome are enlisted to serve you, the emperors and princes of the lands, so you yourselves are fighting for the Almighty God and for the Sacred Faith. For safety cannot be secured otherwise, unless each one truly worships the true God, that is, the God of the Christians, by whom all things are governed.<sup>658</sup>

St. Ambrose fully acknowledged the reality of Christians participating in military service, as military service was required to keep peace until everyone was converted to the Faith and ultimate peace achieved.<sup>659</sup> In the thought of Augustine, different aspects of warfare were intrinsically related, and thus, as he saw the ultimate goal of any war was to bring peace, he also acknowledged that there must be authority to declare such necessary wars.<sup>660</sup> By considering the act of killing that has been done

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<sup>657</sup> It has been established that estimates of armies consisting of 20-30 000 men were 'not implausible', see Michael Whitby, 'Army and Society in the Late Roman World: A Context for Decline?', in *A Companion to the Roman Army*, ed. Paul Erdkamp (Oxford, 2007), pp. 515-531, at p. 517. The extent of pacifistic stance of the Early Church Fathers does not have consensus amongst scholars, especially in the context of heroic martyrdom, total war, and other similar themes; Koscheski, 'The Earliest Christian War', pp. 102-103

<sup>658</sup> *Cum omnes homines, qui sub ditione Romana sunt, vobis militent imperatoribus, terrarum atque principibus, tum ipsi vos omnipotenti Deo et sacrae fidei militatis. Aliter enim salus tuta esse non poterit, nisi unusquisque Deum verum, hoc est, Deum christianorum, a quo cuncta reguntur, veraciter colat.* St. Ambrose, *PL* 16, Epistola 17, cols. 961-966, at col. 961; translation from St. Ambrose, *The Letters*, trans. James Parker (Oxford, 1881), p. 88 (amended).

<sup>659</sup> Mattox, *Saint Augustine and the Theory of Just War*, p. 77.

<sup>660</sup> Corey and Charles, *The Just War Tradition*, pp. 59-61.

in the context where the causes are just and intentions peaceful, he categorically separated slaughter done on an authoritative command and which was lawful, from a murder which was forbidden in all cases:

But the same divine authority has made certain exceptions [to the law which says] that it is not lawful for a man to be slain. Only excepting those whom God orders to be killed whether by a general law, or by explicitly commissioning an individual [with the authority to kill] for a limited time. But he does not slay himself, who owes the service to the commanding [authority], as he is using the sword as an auxiliary; and therefore they did not in any way act contrary to the precept by which it was said: 'You shall not kill' who waged wars by Gods authority, or who punished the wicked persons with death by wielding public authority in accordance with His laws, that is, by the command of the most just reason.<sup>661</sup>

In fact, if a soldier ignored the command to kill, he was seen as 'guilty of desertion and disobedience of the state'.<sup>662</sup> Augustine here explicitly prohibited acting on one's own authority: when a soldier was commanded to kill, he was to obey the order to kill given by a higher authority than himself. When someone killed on their own volition, they lacked any authority to do so, and they personally decided to disobey the divine command not to kill.<sup>663</sup> The necessity to obtain a command from

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<sup>661</sup> *Quasdam vero exceptiones eadem ipsa divina fecit 'auctoritas', ut non liceat hominem occidi. Sed his exceptis, quos Deus occidi jubet sive data lege sive ad personam pro tempore expressa jussione: Non autem ipse occidit, qui ministerium debet iubenti, sicut adminiculum gladius utenti; et ideo nequaquam contra hoc praeceptum fecerunt, quo dictum est: 'Non occides', qui Deo auctore bella gesserunt aut personam gerentes publicae potestatis secundum ejus leges, hoc est, justissimae rationis imperium, sceleratos morte punierunt.* St. Augustine, *De Civitate Dei*, Vol. 1, ed. Joseph Strange (Cologne, 1850), Liber I, 21, pp. 31-32; translation from St. Augustine, *The City of God, Books I-VII*, trans. Demetrius B. Zema and Gerald G. Walsh (Washington, D.C., 1962), p. 53 (amended). See also Brundage, *Medieval Canon Law and the Crusader*, pp. 20-21.

<sup>662</sup> ... *reus est imperii deserti atque contempti.* St. Augustine, *De Civitate Dei*, Liber I, 26, p. 37.

<sup>663</sup> St. Augustine, *De Civitate Dei*, Liber I, 26, p. 37. This is, of course, in line with the teachings of the New Testament. For example, see Rom. 13:1-7 in which St. Paul in very clear terms instructs the readers of his epistle to follow the governing authorities. For the Pauline passage and its emphasis on



authority in waging war remained as a decisive aspect in judging the rightfulness of any war.<sup>664</sup>

Consequently, for Gratian, central in the concept of a just war was making the legitimacy of allegations dependent upon an authority that could sufficiently determine whether the proposed causes for war were indeed just:

... errors which are committed against God or [our] neighbours are to be punished by us, whereas those by which we are offended must be patiently tolerated, or rather ignored ...<sup>665</sup>

Implicit here was the notion that no matter how unjust certain circumstances or actions may seem, the perceived victim cannot determine whether any action taken against them constituted as a just cause to wage war and instead they ought to appeal to higher authorities for judgement.<sup>666</sup> Gratian additionally stated that ‘it is not lawful for a bishop to excommunicate anyone for his own injury’, conveying the meaning that no one can become the authority on their own accord.<sup>667</sup> Therefore, even – and, indeed, especially – in the case of clerics, one was supposed to tolerate any injustices done against them while appealing to a separate authoritative power, whether secular or ecclesiastical.<sup>668</sup>

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preserving the moral-social order, see Corey and Charles, *The Just War Tradition*, pp. 41, 44. See also Russell, *The Just War*, pp. 10-11, for a concise overview of Scriptural examples which encourage submission to authorities on one hand, but admonish violence on its own and also prohibit self-defence on the other.

<sup>664</sup> The requirement to have explicit permission from the highest institutional authority to engage in warfare still forms an integral part in modern state diplomacy. For example, the Parliament of Estonia can declare a state of war and order mobilisation, but only after a proposal by the President; Constitution of Estonia, § 65, subsection 15 via *Riigi Teataja* [website – the official online publication of the Ministry of Justice] <<https://www.riigiteataja.ee/akt/115052015002>> (accessed 1 June 2022).

<sup>665</sup> ... *peccata, que in Deum vel in proximum committuntur, a nobis punienda sunt, ea vero, quibus in nos delinquitur, patienter tolleranda, vel potius dissimulanda sunt* ... Gratian, C.23 q.4 c.27, col. 912. The ‘auctoritas’ is Pope Gregory I.

<sup>666</sup> Russell, *The Just War*, pp. 73-74; Chodorow, *Christian Political Theory*, pp. 233-234.

<sup>667</sup> *Pro iniuria propria episcopo aliquem excommunicare non licet*. Gratian, C.23 q.4 c.27, col. 912. The ‘auctoritas’ is Pope Gregory I.

<sup>668</sup> See also *De episcopis uero uel quibuslibet clericis, quod nec sua auctoritate, nec auctoritate Romani Pontificis arma arripere ualeant, facile probatur*. – ‘But concerning bishops or any clerics, it is easily

The discussion on authority was closely tied to just causes and rightful intentions: could a pope proclaim a war to avenge injuries inflicted on his own person? Relying on Gregory I as the *auctoritas*, Gratian asserted that no bishop could punish for an injury that was inflicted upon himself personally.<sup>669</sup> He continued that line of thought by offering an example of Pope Silverius (536-538) who was exiled from Rome by its patrician – the leader of the patriciate, one of the wealthy families that had assumed control over Rome in the Early Middle Ages.<sup>670</sup> Silverius, instead of going into exile, put the patrician under anathema after assembling local bishops.<sup>671</sup> Gratian explained the reasoning of Silverius as follows: ‘But this is not avenged for him [the pope], but for the injury of the Church’.<sup>672</sup> Therefore, the pope had not anathemised the patrician for the injuries against his own person, but rather against his office and the Church. Similarly, an attack against a legate of the apostolic see constituted an attack against not only the pope but also the Church.<sup>673</sup> While it became clear that no one person could become the authority to decide on a response for the injuries done to his or her person, Gratian’s explanation that an injury to the pope was in fact an injury done to the Church opened a wide range of possibilities of interpreting the concept of injuring the Church.

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proven that they may be able to take up arms neither by their own authority nor by the authority of the Roman Pontiff.’ Gratian, C.23 q.8 d.a.c.1, col. 953.

<sup>669</sup> Gratian, C.23 q.4 c.27, col. 912. The ‘*auctoritas*’ is Pope Gregory I.

<sup>670</sup> Gratian, C.23 q.4 c.30, col. 913. The ‘*auctoritas*’ is Pope Silvester I (314-335). For the aristocracy of patricians that developed from the early years of the republic onwards, see John Rich, ‘Warfare and the Army in Early Rome’, in *A Companion to the Roman Army*, ed. Paul Erdkamp (Oxford, 2007), pp. 7-24, at pp. 18-19. Often such patrician families offered patronage for the Church in return for public recognition, see Charles W. Connell, *Popular Opinion in the Middle Ages* (Berlin, 2016), p. 224.

<sup>671</sup> Gratian, C.23 q.4 c.30, col. 913. See also Chodorow, *Christian Political Theory*, pp. 233-234.

<sup>672</sup> *Sed et hic non suam, sed ecclesiae iniuriam ultus est.* Gratian, C.23 q.4 c.30, col. 913.

<sup>673</sup> *Excommunicetur, qui legatum sedis apostolicae impedire temptaverit.* – ‘Whoever attempts to hinder the legate of the apostolic see is to be excommunicated’ Gratian, D.94 c.2, col. 330. The ‘*auctoritas*’ is Pope Alexander I (c.107-c.115)

Already some of the decretists commenting on the *Decretum* started to loosen the requirement for an authority to proclaim a just war. For example, one of the earliest *Summae* on the *Decretum*, composed by Rolandus in the 1150-60s, stated that war could be just under the following circumstances:

[A war is just even] when a war is proposed by him who does not preside over his jurisdiction, so that force is repelled by force, and which is not doubted to be permissible by natural law.<sup>674</sup>

Thus, by relying on natural law and its notion to repel a violent attack immediately, Rolandus extended the authority of waging war to those who did not normally have such judicial power. Another example comes from Pope Innocent IV and his commentary on the *Liber extra*:

Moreover, any prelate, if he has temporal jurisdiction, could licitly call to arms against unruly subjects ... provided they have the right to declare war, or in the aforementioned cases, even if they do not have the right to declare war, because in these cases it cannot properly be said to be war, but rather the execution of jurisdiction or justice.<sup>675</sup>

In this case, it is clear that Innocent IV differentiated between prelates with and without the jurisdiction to declare war, but in cases of necessity – when justice needed to be served – any prelate assumed such a right to call to arms as part of their jurisdictional duty.<sup>676</sup> This in turn can be interpreted as the ecclesiastical office itself

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<sup>674</sup> ... *quando ab eo qui iurisdictioni non praeest, bellum irrogatur, ut vis vi repellatur, quod et lege naturae licitum esse non dubitatur.* Rolandus, *Die Summa Magistri Rolandi nachmals Papstes Alexander III.*, ed. Friedrich Thaner (Innsbruck, 1874), ad C.23 q.2, p. 88. For a brief overview of the elusive life of Rolandus, see Brundage, *Medieval Canon Law*, p. 224.

<sup>675</sup> *Item quilibet praelatus, si habet iurisdictionem temporalem contra subditos inobedientes licite moveret arma ... dummodo iurisdictionem indicendi bellum habeat, vel in casibus supradictis, et etiam si non habent ius indicendi, quia in his casibus non proprie dicitur fieri bellum, sed melius executio iurisdictionis, vel iustitia ...* Innocent IV, *Apparatus ad X 2.13.12*, pp. 230-232, at p. 232.

<sup>676</sup> Innocent IV, *Apparatus ad X 2.13.12*, p. 232.

not having any authority to wage war, but rather have its power to call to arms tied to the jurisdictional authority it possessed. Indeed, when Pope Alexander III had condemned the Cathars, Sicard of Cremona in his commentary on Gratian's *Decretum* specifically explained:

[I]t is permissible for the Apostolic See and for other prelates by his [pope's] authority to demand and to exhort anyone to defend and to take arms against the enemies of the Holy Faith, of the peace of the Church, and of the homeland.<sup>677</sup>

In the context of Livonia, the authorities who were waging war could be identified in numerous cases. At the same time, while several accounts depicted the start of military activity by implying that there was an authority that commanded the call to arms, it was not always disclosed who exactly that authority had been. In other cases the authorities who waged war seemed to be doing it collectively.

The unquestionable authorities who could have waged war on the Livonian pagans and apostates were popes and kings. According to Henry of Livonia, in 1197 Pope Celestine III granted the remission of sins to everyone who accepted the sign of the Cross to go to Livonia.<sup>678</sup> The exhortations to help to establish the Livonian Church and to assist against the persecutors of the Church were common and followed much of the crusading rhetoric at the time. Thus, it was not unusual to find that Pope Innocent III, in a letter to the king of Denmark in 1209, asked the latter 'to

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<sup>677</sup> ... lic[er]e ap[osto]lico et aliis ei[us] auc[toritate] p[re]latis p[ri]ncipes postulare et q[uo]slib[et] exhortari ad d[e]fensione[m] et i[m]pugnationem c[on]t[ra] adu[er]sarios s[anc]te fid[e]i, pacis e[c]clesie et pat[ri]e. Sicard of Cremona, *Summa super Decretum*, BN Lat. 14996, fol. 105r. See also Russell, *The Just War*, pp. 116-117.

<sup>678</sup> HCL II, 3, p. 9. The papal letter itself does not survive but several contemporary narrative sources collaborate on behalf of the existence of not only this but also other letters issued by Celestine III, see Fonnesberg-Schmidt, *The Popes and the Baltic Crusades*, pp. 68-69; Bombi, 'Celestine III and the Conversion of the Heathen', p. 155 .

eradicate the error of paganism and to extend the boundaries of the Christian faith'.<sup>679</sup> The popes did not call to kill the pagans but to defend the Church – presented with such a just reason for war by the highest ecclesiastical authority, it is no surprise to see that Henry of Livonia referred to several papal letters throughout his chronicle in order to strengthen the legitimacy of the missionary campaigns.

The most common authorities who waged war in Livonia, however, were bishops. According to contemporary medieval thinkers, they shared the responsibility but not the fullness of power of the pope.<sup>680</sup> As expected, it was the bishop of Riga who most frequently evoked this privilege:

Upon hearing these things, the bishop, having called together the crusaders, and the Swordbrothers, and the merchants, and all his own [men], admonishes them all for the remission of their sins, that by making themselves a wall for the house of the Lord, they may save the Church from its enemies. But, they all obeying, and preparing for the battle, send to all the Livonians and Letts, threatening and saying: 'Whosoever will not come out and follow the army of the Christians, shall be punished with the penalty of three marks.'<sup>681</sup>

This was a rather typical example that encapsulated the extent and nature of the authority that Bishop Albert possessed. He targeted his call to arms to the crusaders, presumably all those men who had come to Livonia with Albert for a set period of

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<sup>679</sup> ... *ad extirpandum paganitatis errorem et terminos Christianae fidei dilatandos* ... Innocent III, 'Suggestor scelerum serpens', p. 196.

<sup>680</sup> For a discussion pertaining to the relationship between the pope and the bishop, see Kenneth Pennington, *Pope and Bishops: The Papal Monarchy in the Twelfth and Thirteenth Centuries* (Pennsylvania, 1984), pp. 59-60.

<sup>681</sup> *Hiis auditis episcopus convocatis peregrinis et fratribus milicie et mercatoribus et omnibus suis ammonet omnes in remissionem peccatorum, quatinus se murum pro domo Domini ponentes ecclesiam liberent ab inimicis. At illi omnes obtemperantes et ad pugnam se preparantes mittunt ad omnes Lyvones et Leththos comminantes et dicentes: 'Quicumque non exierit secuutusque exercitum christianorum non fuerit, trium marcarum pena multabitur.'* HCL XI, 5, p. 52; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 72 (amended).

time, to the members of the military order of the Swordbrothers, and also to the merchants and to 'all his own men'.<sup>682</sup> This call to arms was extended to the Livonians and Letts who had been converted and therefore had been subjugated to the bishopric of Riga. While those who did not obey were not explicitly called traitors, they were nevertheless to receive punitive treatment if they chose not to attend. This notion does not indicate whether the converts were unable to distinguish between just and unjust wars; rather, they were obliged to follow the authority of Bishop Albert regardless of what they thought of the military action itself.

The clash between obedience and disobedience was not only restricted to the newly converted. In 1203, when Bishop Albert was travelling back to Livonia from Germany with the crusaders he had recruited, they all stopped at the port of Visby in the middle of the Baltic Sea. They saw the pagan Estonians also using the port and consequently some of the crusaders wished to attack the pagans:

For when the crusaders, under the guidance of God, arrive at Visby healthy and unarmed, they are happily welcomed by the citizens and visitors [i.e. foreign merchants] living there. Some days later, the Estonians arrive with all their plunder, [and] the crusaders, seeing them set sail, accuse the citizens and merchants because they permit the enemies of the Christian name to move through their harbour in peace. While they [the citizens and merchants] are dissembling and, wishing to enjoy the security of peace with them [the Estonians] more, the crusaders approach their bishop, and ask for a permission to fight with them [the Estonians]. The bishop, therefore, understanding their wish, endeavours to restrain them from their proposition; both because it was possible that they would

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<sup>682</sup> The last category probably refers to those men who were essentially Bishop Albert's vassals, as he enfeoffed many of his fortifications and lands to his allies.

be put in danger by the enemy and because the Church, located among the gentiles, and which was waiting for their arrival, would not be able to recover from their failure. But they [the crusaders], in season and out of season, insisting, and not distrusting God's mercy, refuse to turn their mind away from the proposal; affirming that there is no difference between the pagan Estonians and Livonians, they request that he [the bishop], accepting their petition, would deign to impose this [battle] on them for their sins. The bishop, seeing their obstinacy, thinks that it is better to go into battle obediently, since obedience is better than sacrifice; satisfying their wishes, he enjoins them, so that they might courageously go into battle with the pagans for the remission of their sins, just as they had requested.<sup>683</sup>

The crusaders knew that they had to acquire an authoritative command ('*licencia*') from a superior, in this case Bishop Albert. There is no indication that they did not have a canonically just cause to wage war – in fact, Henry of Livonia specifically mentioned that they were inclined to wage war, 'wishing to avenge the damages of the Christians', but were dissuaded from attacking them because the pagans claimed to have made peace with the people of Riga.<sup>684</sup> Therefore, Bishop

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<sup>683</sup> *Nam peregrini Deo eos ducente sani et incolumes Wysbu pervenientes a civibus et hospitibus ibidem existentibus lete suscipiuntur. Post dies aliquot Estonos cum universa rapina sua adveniunt, quos peregrini velificare videntes cives et mercatores incusant, eo quod christiani nominis inimicos cum pace portum suum transire permittant. Quibus dissimulantibus et magis pacis securitate cum eis gaudere volentibus peregrini episcopum suum adeunt et cum eis pugnandi licenciam postulant. Episcopus itaque voluntatem illorum intelligens eos a proposito nititur revocare, tum quia possibile erat eos ab hostibus in pugna periclitari, tum quia ecclesia in gentibus posita, que adventum ipsorum prestolabatur, defectum illorum non poterat recuperare. Ipsi autem oportune inportune instantes et de Dei misericordia non diffidentes animum suum a proposito nolunt reflectere, nullam inter Estonos paganos et Livones differenciam affirmantes rogant, ut petitiones eorum admittens hoc pro peccatis eorum ipsis dignetur iniungere. Videns Episcopus ipsorum constanciam arbitratur magis expedire cum obedientia pugnam inire, cum melior sit obedientia quam victima, voluntati eorum satisfaciens, ut cum paganis viriliter in prelio congregiantur, in remissionem eis peccatorum, sicut pecierant, iniungit. HCL VII, 2, pp. 19-20; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, pp. 41-42 (amended).*

<sup>684</sup> *... dampna christianorum volentes ulcisci ... HCL VII, 1, p. 19; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 41 (amended).*

Albert, although in a position of authority, had decided not to proclaim war in order to sustain the peace agreement and also out of fear of losing his crusaders before arriving to Livonia, as the Church of Livonia ‘would not be able to recover [from the potential loss]’.<sup>685</sup> The narrative implied that the desire of the crusaders to go to battle against pagans was so great that the bishop ultimately decided to grant them the permission to do so. The fact that the authorisation for a battle was given in the end, indicates that there was a just cause and a just intention all along; it was simply the authority that the crusaders were lacking.

The reasons for hesitation on behalf of the bishop indicate one of the roles that the authority possessed in waging war – one should avoid engaging in warfare that is ultimately futile, especially in a case where the participants were destined for another cause. Nevertheless, Bishop Albert finally gave the crusaders the permission to wage war on the pagan Estonians by alluding to 1 Samuel 15:22-23 which stated that ‘obedience is better than sacrifice’.<sup>686</sup> Even though the causes and intentions of the

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<sup>685</sup> ... *non poterat recuperare*. HCL VII, 2, p. 19.

<sup>686</sup> ... *melior sit obedientia quam victima* ... HCL VIII, 2, p. 20. It has been noted that Henry was referencing 1 Kings 15:22 both, in the Latin edition by Arbusow and Bauer (p. 20), and in the translation by Brundage (footnote no. 38 at p. 42) of the chronicle of Henry of Livonia. However, this does not make much sense as the text in the Old Testament reads: *rex autem Asa nuntium misit in omnem Iudam nemo sit excusatus et tulerunt lapides Rama et ligna eius quibus aedificaverat Baasa et extruxit de eis rex Asa Gaba Benjamin et Maspha* – ‘Then King Asa made a proclamation to all Judah, none was exempt: they carried away the stones of Ramah and its timber, with which Baasha had been building; with them King Asa built Geba of Benjamin and Mizpah.’ It is more likely that Henry of Livonia was alluding to 1 Samuel 15:22-23 instead: *et ait Samuhel numquid vult Dominus holocausta aut victimas et non potius ut oboediatur voci Domini melior est enim oboedientia quam victimae et auscultare magis quam offerre adipem arietum quoniam quasi peccatum ariolandi est repugnare et quasi scelus idolatriae nolle acquiescere pro eo ergo quod abiecisti sermonem Domini abiecit te ne sis rex* – ‘And Samuel said, “Has the Lord as great delight in burnt offerings and sacrifices, as in obedience to the voice of the Lord? Surely, to obey is better than sacrifice, and to heed than the fat of rams. For rebellion is no less a sin than divination, and stubbornness is like iniquity and idolatry. Because you have rejected the word of the Lord, he has also rejected you from being king.”’ The quote ‘*melior sit obedientia quam victima*’ was almost verbatim taken from 1 Samuel 15:22 where it reads ‘*melior est enim oboedientia quam victimae*’. As the numbers in both cases are the same (15:22), it is likely that it was an editorial error which was subsequently adopted by Brundage, especially as a re-print of the translation was published in 2003 (it was first published before the 1955 edition by Bauer came out), and Brundage stated that for the corrections in the re-print, he had used Bauer’s edition as well (p. xxxi).



crusaders might have been noble, by lacking authority they would have been acting contrary to the guidance of Scripture, and to canon law, and it is for this reason that Bishop Albert decided to grant their wish.

The authority by which expeditions were launched was not always clearly indicated. For example, when in 1223 the Estonians apostatised and rose up, the following description of the events was given:

And the report was made known in Riga about all the evils [which had been] brought upon the Livonians and Letts, and they all wept and mourned for their slain brothers. And with no delay, but immediately throwing down their bread, bags and cloth, both the knights and infantry, [and] the Swordbrothers with the crusaders and with the merchants, and the Livonians, departed to Treiden. And sending scouts, they discovered that the enemy had already left Loddiger, and they followed them night and day.<sup>687</sup>

The passage indicated that there was a certain collective authority consisting of the Swordbrothers, crusaders, merchants and converts, who all decided to undertake this punitive expedition. As it turned out, the Christians were victorious, and another military campaign was planned straight after:

Bishop Bernard [of Lippe, bishop of Selonia at the time] sent throughout Livonia and Lettia, summoning everyone, both the men of the Church and the Swordbrothers with the Livonians and Letts, so that they would all come to fight against the

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<sup>687</sup> *Et innotuit sermo in Riga de omnibus malis, Lyvonibus et Lettis illatis, et fleverunt et doluerunt omnes de confratribus suis occisis. Et nullam moram facientes, sed statim panes et sacculos et pannas suas proicientes, tam equites quam pedites, fratres milicie cum peregrinis et cum mercatoribus et Lyvonibus abierunt in Thoreidam. Et mittentes exploratores invenerunt hostes a Ledegore iam divertisse et secuti sunt eos nocte ac die. HCL XXVII, 1, pp. 193-194; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 213.*

Estonians. But they all faithfully obey, [and] assemble together as one.<sup>688</sup>

Neither of the campaigns indicates that Bishop Albert was playing any role in the authorisation of these military activities. The likely reason for this is that he was not in Livonia at that time; a fact that is not disclosed by Henry of Livonia or any of the other narrative sources but can be nevertheless tracked via documents mentioning Bishop Albert, and according to which he was in Dannenberg (Elbe) in May and Liege in June 1223 – far away from Livonia.<sup>689</sup> It is probable that he did not return to Riga until the next year when his presence in Riga is documented in April.<sup>690</sup> In this light it is not surprising that other people in a position of authority, who were present in Livonia at that time, might have decided to act in Albert's stead.

The concept of engaging in warfare disobediently, too, was familiar to Henry of Livonia. According to Henry, the converted Livonians 'who were transgressing the command of the elders, also plundered the province of Reval which had already received the word of the Danes'.<sup>691</sup> What is of significance, then, is that Henry of Livonia who described military action undertaken in the absence of Bishop Albert, at no point questioned the authority of other bishops, clerics, Swordbrothers, and even the citizens of Riga to wage war while noting that the Livonians, albeit fellow Christians, had engaged in unauthorised activities.

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<sup>688</sup> ... *misit episcopus Bernardus per universam Lyvoniam et Lettiam, convocans omnes, tam viros ecclesie quam fratres milicie cum Lyvonibus et Lettis, ut veniant omnes pugnaturi cum Estonibus. At [sic!] illi fideliter omnes obediunt, simul in unum conveniunt. HCL XXVII, 2, p. 195; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 214 (amended).*

<sup>689</sup> Gnegel-Waitschies, *Bischof Albert von Riga*, p. 172.

<sup>690</sup> Gnegel-Waitschies, *Bischof Albert von Riga*, p. 172.

<sup>691</sup> ... *qui mandatum seniorum transgredientes eciam Revelensem provinciam spoliaverunt, que Danorum verbum iam receperat. HCL XXIII, 9, p. 167; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, pp. 185-186.*

It must have been a common understanding that depending on the circumstances, other authorities besides Bishop Albert could also wage war and authorise action in Livonia. One of the most illustrative instances of this is when a certain priest Godfrey learned of the pagans coming to attack his village. According to Henry of Livonia, ‘mounting his horse, he [Godfrey] fled from them, and rode around his parish, calling together all the men to fight with the pagans; and throughout the whole night he sent [word] to the neighbouring parishes, so that they might come to the battle the following day’.<sup>692</sup> In this case, the authority who waged war and exhorted others, was a simple priest. The narrative also indicates that some of Bishop Albert’s men came to aid from a nearby fort, thus acknowledging the authority of the priest to wage war in this specific instance.<sup>693</sup> It is once again known that Bishop Albert himself was not present in Livonia at that time, and that he was in Lübeck and other regions of Germany instead; again, a fact only traceable through other sources and not mentioned by Henry of Livonia nor other narrative sources.<sup>694</sup>

The circumstances in which the priest Godfrey decided to act were certainly serious and demonstrate that while the need for an authoritative call to wage war was most definitely known and obeyed in Livonia, the circle of people who were perceived to have this kind of authority was much wider than Gratian had permitted in his *Decretum*.

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<sup>692</sup> ... *conscendens equum suum fugit ab eis et circuivit parrochiam suam, convocans viros omnes ad pugnandum cum paganis, et misit ad vicinas parrochias per totam noctem, ut sequenti die venirent ad bellum. HCL XXI, 7, p. 146; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 165 (amended).*

<sup>693</sup> *HCL XXI, 7, p. 146.*

<sup>694</sup> Gnegel-Waitschies, *Bishop Albert von Riga*, p. 171.

## CONDUCTING WAR

### PARTICIPANTS

Some Early Church Fathers subscribed to the view that war was either neutral at best or evil at worst, thus also taking an unfavourable view on military service. For example, the canons of St. Hippolytus (c.170-c.235) categorically refuted the idea that a Christian could become a member of a military force.<sup>695</sup> On the other hand, as we have seen, when St. Augustine contemplated the concept of just war, he acknowledged that warfare is not inherently sinful and is at times necessary.<sup>696</sup> Of these two inherently different viewpoints, Augustine's prevailed. Consequently, in Gratian's *Decretum*, where the treatment of warfare was strongly reliant on Augustinian thought, arms bearing was seen as permissible, and Gratian plainly stated that 'soldiers in warlike arms are able to please God'.<sup>697</sup>

The range of people who participated in warfare in Livonia varied greatly: crusaders, Swordbrothers, merchants and bishop's own men but also converts.<sup>698</sup> Albert of Buxhövdén was consecrated bishop of Üxküll (later Riga) in 1198, and we hear that the next year 'he goes to Gotland and signs there around five hundred men

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<sup>695</sup> 'If a catechumen or a baptised Christian wishes to become a soldier, let him be cast out. For he has despised God.' Hippolytus, *The Treatise on the Apostolic Tradition of St Hippolytus of Rome, Bishop and Martyr*, ed. and trans. Gregory Dix and ed. Henry Chadwick (London, 1968), Part II, 7.19, pp. 25-26. Similarly, it stated that 'that 'a military man in authority must not execute men. If he is ordered, he must not carry it out. Nor must he take a military oath.' Hippolytus, *The Apostolic Tradition*, Part II, 7.17, p. 26. The canons were part of so-called *Apostolic Tradition*, for which recent research has shown that rather than being authored by a single person, it was likely a 'living literature' which evolved over time at the hands of different contributors; see John F. Baldovin, S.J. 'Hippolytus and the *Apostolic Tradition*: Recent Research and Commentary', *Theological Studies*, 64 (2003), pp. 520-542. The original text in Greek does no longer exist, and any editions are based on later adaptations and versions; see Dix, *The Apostolic Tradition of St. Hippolytus*, pp. lii-liii.

<sup>696</sup> See the discussion above at pp. 165-167.

<sup>697</sup> *In bellicis armis milites Deo placere possunt*. Gratian, C.23 q.1 c.3, col. 892. The 'auctoritas' is St. Augustine.

<sup>698</sup> For the discussion of the term 'peregrini', see Introduction at pp. 23-25.

with the sign of the Cross to go to Livonia'.<sup>699</sup> Similar descriptions of his journeys are mentioned throughout the chronicle of Henry of Livonia.<sup>700</sup> Bishop Albert undertook journeys to Germany almost on a yearly basis, and the crusaders he recruited went to Livonia usually for a period of one year.<sup>701</sup> That bishop Albert was reliant on the co-operation and willingness of the men who heard his exhortations is evidenced by a report given in the Livonian Rhymed Chronicle:

The duke [of Saxony] himself was of like mind after he heard the sermon and when Bishop Albert came to him and spoke with him in private, he easily convinced him to send out a summons, calling together all his subjects.<sup>702</sup>

Missionaries were not the first Latin Christians to visit the regions of Livonia, as merchants were accustomed to travelling there before the first missionary expeditions reached the shores of the Northern Baltics.<sup>703</sup> As the Christianisation of Livonia progressed, merchants often suffered as a result of being Christians. When in

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<sup>699</sup> ... *Gothlandiam vadit et ibidem circa quingentos viros signo crucis ad eundum in Lyvoniam signat.* HCL III, 2, p. 12; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 35 (amended).

<sup>700</sup> For example: HCL V, 1, pp. 15-16; VII, 1, pp. 18-19; XVIII, 1, p. 115; XXIII, 1, p. 154.

<sup>701</sup> *Ipse vero distulit iter suum in Lyvoniam hoc anno, ut in futurum annum forcior et cum pluribus veniret. Et statuit in vice sua decanum Halverstadensem, qui cum Henrico Borewino, nobili viro de Wentlande, et quibusdam aliis peregrinis abiit in Lyvoniam, annum peregrinationis sue completurus ibidem.* – 'But he himself postponed his journey to Livonia this year, so that he could come the next year, stronger and with more [men]. And he appointed in his place the dean of Halberstadt, who went to Livonia with Henry Borewin, a nobleman from Wentland, and with some other crusaders, to complete his year of pilgrimage [i.e. crusade] there.' HCL XXII, 1, pp. 147-148; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 166 (amended).

<sup>702</sup> *der herzoge ûf den selben râte viel, dô er die rede vernam. bischof Albrecht zû im quam; mit deme gienc er zû râte. er wegete in vil drâte, daʒ der hêrre sân zû hant gebôt zû samne al sîn lant.* LRC, 868-874, p. 21; translation from *The Livonian Rhymed Chronicle*, p. 12.

<sup>703</sup> Kala, 'The Incorporation of the Northern Baltic Lands', pp. 4-5, 7-8; Manfred Hellmann, 'Die Anfänge christlicher Mission in den baltischen Ländern', in *Studien über die Anfänge der Mission in Livland*, ed. Manfred Hellmann (Sigmaringen, 1989), pp. 7-36, at pp. 9-13. See also Jonuks, 'Domesticating Europe', which argues that certain cultural characteristics of Latin Christianity – and not just religious symbols, such as cross-shaped jewelry – were imported to the Northern Baltics already before the thirteenth century, and that at least some sections of the local society might have adopted these aspects.

1199 Berthold, the second bishop of Livonia had died, the part of the region that had been converted, apostatised:

During the following Lent, the whole assembly of Livonians decided that whichever cleric remains in the territory [of the Livonians] after Easter is to be punished by death. Hence the clergymen go to Saxony, both for the fear of death and because of the search for a shepherd. The Livonians also decided to kill the merchants that remained. But the merchants, giving gifts to the elders, took thought for their lives.<sup>704</sup>

Thus, the Christian merchants were generally permitted to stay in these regions because they paid tributes to the local pagans and apostates. However, not long after the beginning of the thirteenth century, merchants started to be included among those who were expected to answer the call to arms in Livonia:

[1207] When he heard these things, the bishop, having called together the crusaders, and the Swordbrothers, and *the merchants*, and all his own [men], admonishes them all ...<sup>705</sup>

[1214] And the bishop sent to all the forts of the Letts and Livonians, and from every region of the Daugava and the Aa [Rivers], and he gathered a large and strong army. And there were in Riga many crusaders and *merchants*, who all went out joyfully with the master of the militia [i.e. the Order of the Swordbrothers] and his brothers [i.e. the Swordbrothers].<sup>706</sup>

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<sup>704</sup> *Proxima Quadragesima collecta Lyvonum universitas decernit, ut quicumque clericus in terra permaneat post pascha, capite puniatur. Unde tam timore mortis quam querendi pastoris causa clerici Saxoniam pergunt. Decreverunt eciam Lyvones mercatores, qui remanserant, occidere. Sed mercatores dantes munera senioribus vite sue consuluerunt. HCL II, 10, p. 11; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 34 (amended).*

<sup>705</sup> *Hiis auditis episcopus convocatis peregrinis et fratribus milicie et mercatoribus et omnibus suis ammonet omnes ... HCL XI, 5, p. 52; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 72 (amended).*

<sup>706</sup> *Et misit episcopus per omnia castra Lettorum atque Lyvonum et de omni confinio Dune et Coiwe et congregavit exercitum magnum et fortem. Et erant in Riga peregrini et mercatores multi, qui omnes*

[1221] And they were all very much dismayed, and at the same time all spoke with one voice, both the prelates of the convents and the men of the Church, and the citizens, and *the merchants*, and the Livonians and Letts, saying that hitherto they had been fighting the Lord's battles against the pagans for the honour of our Lord Jesus Christ and His beloved Mother, and not for the honour of the king of Denmark ...<sup>707</sup>

These are but a few examples of when merchants also went together with the army, and it is implied that they may have taken part in fighting. The reasons why merchants moved from being indifferent and even tolerant of the pagans to the state of taking part in warfare against them probably varied. With the coming of Christianity and the subjugation of at least some of the Livonian regions to the bishop of Riga, the merchants were not operating on pagan territories anymore, and with this in mind they did not have to conform to pagan customs but rather to the Christian ones. Additionally, as the regions of Livonia became Christianised, they were incorporated into the '*societas Christiana*' by bishop Albert, and therefore merchants were technically operating on a land belonging to a Christian overlord. Although, Huguccio, commenting on Gratian's *Decretum* declared that 'Christians can lawfully serve under a pagan prince ... if the war is just and they are under his jurisdiction, or [they are] either taken captive or in his captivity, and so [it is done] out of necessity', no war against the Latin Christians was seen as justified in Livonia

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*exiverunt cum leticia cum magistro milicie et fratribus suis ... HCL XVIII, 5, p. 117; translation from Henry of Livonia, The Chronicle of Henry of Livonia, p. 137 (amended).*

<sup>707</sup> *Et conturbati sunt omnes valde simulque omnes uno ore contradixerunt, tam prelate conventuum quam viri ecclesie et cives et mercatores et Lyvones et Letti, dicentes se ad honorem domini nostri Iesu Christi sueque dilecte genetricis hactenus prelia Domini preliari contra paganos et non in honorem regis Dacie ... HCL XXV, 1, pp. 177-178; translation from Henry of Livonia, The Chronicle of Henry of Livonia, p. 197 (amended).*

if waged by the pagans.<sup>708</sup> Furthermore, with the Church gaining much more power in Livonia, it is likely that the merchants were pressurised to act according to Christian values and to ‘pick a side’.

The Livonian sources depicting warfare have raised some contentious issues pertaining to the nature of participants, such as to what extent women took part in military action.<sup>709</sup> While this is a question that, at least to my knowledge, was not discussed by medieval canon lawyers, clerical participation on the other hand was an issue that was discussed in legal sources at length.

Gratian in his *Decretum* specifically considered whether bishops and other ecclesiastical officials could bear arms. As we have already noted, Gratian asserted that clerics are not allowed to take up arms even by the authority of the pope.<sup>710</sup> Thereafter, Gratian showed that clerics who nevertheless decided to carry arms could be deprived of their rank.<sup>711</sup> At the same time, clerics were permitted to ‘exhort others to arms for the protection of the oppressed and for the attack against the enemies of

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<sup>708</sup> ... *c[histi]ani licite possu[n]t militare sub p[ri]ncipe pagano ... si bellu[m] est iustum et ip[s]i sunt de iurisdictio[n]e eius, uel captiuati, u[e]l captiuati ab eo, et ita ex nec[ess]itate.* Huguccio, *Summa ad C.11 q.3 c.94*, BN Lat. 15396, fol. 172r.

<sup>709</sup> For example, see Rasa Mazeika, ‘“Nowhere was the Fragility of their Sex Apparent”: Women Warriors in the Baltic Crusade Chronicles’, in *From Clermont to Jerusalem: The Crusades and Crusader Societies, 1095-1500*, ed. Alan V. Murray (Turnhout, 1998), pp. 229-248; Blomkvist, *The Discovery of the Baltic*, pp. 546-547. The military involvement of women in the crusades to the Latin East has also been the subject of much scholarly debate; see for example Michael R. Evans, ‘“Unfit to Bear Arms”: The Gendering of Arms and Armour in Accounts of Women on Crusade’, in *Gendering the Crusades*, ed. Susan B. Edington (Cardiff, 2001), pp. 45-58, which has argued that women fought only under exceptional circumstances and such acts were generally seen as ‘unnatural’ by both Christians and Muslims. Keren Caspi-Reisfeld, on the other hand, has proposed that the direct involvement of women in military activities was underrepresented in literary sources; Keren Caspi-Reisfeld, ‘Women Warriors during the Crusades, 1095-1254’, in *Gendering the Crusades*, ed. Susan B. Edington (Cardiff, 2001), pp. 94-107, esp. pp. 101-102.

<sup>710</sup> *De episcopis uero uel quibuslibet clericis, quod nec sua auctoritate, nec auctoritate Romani Pontificis arma arripere ualeant, facile probatur.* – ‘But concerning bishops or any clerics, it is easily proven that they may be able to take up arms neither by their own authority nor by the authority of the Roman Pontiff.’ Gratian, C.23 q.8 d.a.c.1, col. 953.

<sup>711</sup> *Proprii gradus amissione mulctentur militaria arma clerici ferentes.* – ‘Clergymen carrying warlike weapons may be punished by the deprivation of their own rank.’ Gratian, C.23 q.8 c.6, col. 954. The ‘auctoritas’ is the Council of Meaux-Paris (845-846).



God.<sup>712</sup> Therefore, while prelates were not allowed to carry arms, not even for self-defence, it did not mean they were entirely defenceless for they possessed the authority to call others to arms when they saw the need for it. However, in one of the concluding canons, Gratian added a limitation to the prelate's authority to call to arms: 'But none of the bishops is allowed to command the shedding of blood either on his own [authority] or by the authority of the rulers.'<sup>713</sup> This restriction meant that bishops could be involved in warfare but the involvement had to be spiritual and indirect: even in exhortations, they could not ask others to do what was forbidden for them, i.e. to ask to kill someone.<sup>714</sup>

Not every canon lawyer after Gratian subscribed to the restrictive prescriptions on the clerical ability to bear arms that were conclusively put forth in the *Decretum*. Rolandus, for example, distinguished between ordained and unordained clerics, allowing the latter to bear arms:

It will always be unlawful for those ordained in sacred orders to bear arms; for others, although they are not allowed to bear [the

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<sup>712</sup> ... *alios ad arripiendum, ad oppressorum defensionem, atque ad inimicorum Dei oppugnationem eis licet hortari*. Gratian, C.23 q.8 c.6, col. 954. The 'auctoritas' is the Council of Meaux-Paris (845-846).

<sup>713</sup> *Effusionem uero sanguinis nulli episcoporum sua uel inperatorum auctoritate inperare licet*. Gratian, C.23 q.8 c.28, col. 963. The 'auctoritas' is the Council of Sardinia (342), although Friedberg remarks that almost an identical statement can be found in the collection of St. Isidore of Seville. See also Gratian, C.23 q.8 c.30, col. 964 where a reference is made to the Eleventh Council of Toledo (675) that more generally prohibited priests from any kind of activity that resulted in bloodshed.

<sup>714</sup> Famous examples of popes leading armies begs the question: what weight did prohibitions to not shed blood carry when even popes ignored it? The answer lies in close examination of the *actual* military activities in which popes were involved. Pope Leo IX (1048-1054), for example, was deeply involved in the strategical organisation of military activities against the Normans, such as coordinating the watch or appointing a standard-bearer, but stopped short of carrying arms himself. Additionally, he presided over the Council of Rheims in 1049 at which clerics bearing arms were explicitly condemned; see Erdmann, *The Origin of the Idea of Crusade*, pp. 118-123; Craig M. Nakashian, *Warrior Churchmen of Medieval England, 1000-1250: Theory and Reality* (Woodbridge, 2016), p. 66. Even then, such involvement in military activities by the pope received mixed reactions, including strong criticism; see Lawrence G. Duggan, *Armsbearing and the Clergy in the History and Canon Law of Western Christianity* (Woodbridge, 2013), p. 62. Although relating to a bishop rather than a pope, Kurt Villads Jensen has similarly pointed out how Bishop Odo on the Bayeux Tapestry is depicted in full armour and wielding a club instead of a sword so that 'he may defend himself, he may if necessary knock out an enemy, but he will draw no blood, and ... his main function was to encourage the fighting men'; Kurt Villads Jensen, 'Bishops on a Crusade', in *Dominus Episcopus. Medieval Bishops between Diocese and Court*, ed. Anthony John Lappin and Elena Balzamo (Stockholm, 2018), pp. 83-99, at p. 87.

arms] on their own authority, there is no doubt that it is allowed for them to do so on the order of a commanding prince or of an ordinary judge.<sup>715</sup>

This view did not acquire widespread support, and most canon lawyers remained reserved about allowing any clerics to bear arms regardless of their ordination status.<sup>716</sup> However, by the twelfth and thirteenth centuries, crusading activity was both commonplace and well known to canon lawyers. With this in mind, Huguccio did not completely prohibit clerics from bearing arms, for he stated that clerics can bear arms and wear armour ‘not for fighting but for frightening, and lest they should be killed by those flying arrows’, adding that ‘but we do not believe that those who carry arms to fight should be excused, not even by the authority of the Roman Pontiff.’<sup>717</sup> Rufinus before Huguccio had gone further and allowed clerics to bear weapons in either dire circumstances or against pagans if commanded by an authority:

Since, therefore, in the canons it is prohibited for clerics to bear arms, and no order of clerics is found excepted, it appears that clerics are not allowed to bear arms, unless perchance for their own defence by the most vehement compulsive necessity, which has no law, or against pagans by the command of a superior.<sup>718</sup>

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<sup>715</sup> *Constitutis in sacris ordinibus arma movere sempter erit illicitum, aliis vero etsi sua auctoritate movere non liceat, mandante principe vel ordinario iudice eis licere non dubitatur.* Rolandus, *Summa ad C.23 q.8*, p. 98.

<sup>716</sup> Duggan, *Armsbearing and the Clergy*, p. 132.

<sup>717</sup> ... *non faciant ad pugna[n]du[m] s[ed] ad t[er]rendu[m] et ne ledant[ur] a sagittis volantib[us] eos, a[utem] q[ui] arma portant ut pugne[n]t n[on] credim[us] excusari, n[ec] auc[torita]te Romani pontificis.* Huguccio, *Summa ad C.23 q.8*; BN Lat. 15397, fol. 51v.

<sup>718</sup> *Cum itaque in canonibus prohibeatur, ne clerici arma ferant, nullusque clericorum ordo inveniatur exceptus, patet quod nullis clericis licet arma movere, nisi forte pro sui defensione vehementissima cogente necessitate, que non habet legem, et nisi contra paganos iussu maioris.* Rufinus, *Summa Decretorum*, e.d. Heinrich Singer (Paderborn, 1902), ad C.23 q.8 c.6, p. 412. See also Duggan, *Armsbearing and the Clergy*, pp. 132-133. It is possible that for Rufinus the term ‘pagani’ signified Muslims. See also p. 126 for a brief discussion on the term ‘pagani’.

In contrast to the decretists who allowed clerics to bear arms under certain circumstances, Thomas Aquinas followed the more common line of thought and forbade clerics to bear arms regardless of circumstances, stating that '[f]or it is not forbidden for them [the clerics] to go to war because it is a sin, but because such exercise is not befitting their person'.<sup>719</sup> Aquinas compared the prohibition of carrying arms with taking part in commercial enterprises, which, while not sinful in itself, was nevertheless not suitable for clerics.<sup>720</sup> Therefore it can be concluded that both canon lawyers and theologians generally did not permit clerics to bear arms, and those that did allowed it only under the most serious circumstances. At the same time, clerics could participate in warfare by exhorting others to take up arms, essentially providing the army with a 'spiritual arm' that would not shed any blood.

Some scholars have noted that in Livonia, clerical participation in military service was not uncommon: for example, James A. Brundage has suggested that the priest Henry of Livonia personally participated in warfare.<sup>721</sup> More recently, these notions have been contested on the grounds that closer textual analysis often does not provide evidence that clerics participated in combat activities.<sup>722</sup> As will be shown below, direct clerical participation in warfare was exceedingly rare, but clerics did indeed participate in military activity indirectly.

For the purposes of this thesis, clerics involved in warfare in any capacity, will be divided into three groups: those who did not accompany armies, those who might have accompanied armies but did not take part in the fighting, and those who might

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<sup>719</sup> *Non enim interdicitur eis bellare quia peccatum sit, sed quia tale exercitium eorum personae non congruit.* Thomas Aquinas, *ST II-II*, Q 40, A 2, ad. 3, p. 313.

<sup>720</sup> Thomas Aquinas, *ST II-II*, Q 40, A 2, ad. 3, p. 313.

<sup>721</sup> Brundage, 'Introduction to the 2003 Edition', pp. 14-15. For similar notions about Bishop Berthold, see below at pp. 238-239.

<sup>722</sup> For example, see Jensen, 'Holy War – Holy Wrath!', pp. 240-241. See also the discussion at p. 241.

have engaged in fighting.<sup>723</sup> The first group of clerics – those who did not accompany any armies – is often neglected in secondary literature depicting the militarisation of a clerical class in Livonia. However, in medieval sources, descriptions of clerics being killed by pagans were numerous.<sup>724</sup> There were examples of those who did not even attempt to defend themselves and submitted to the attacking enemy:

Among them [the Rigans who were being assaulted] was Segehard, a priest of the Cistercian order, having been sent to the castle from Dünamünde to serve Bishop Bernard, to whose bishopric that place was to be annexed. Sitting on the riverbank and, seeing the pagans coming, he put the sleeve of his hood over his head, waiting for the brutality of the pagans. And commending his spirit into the hands of the Lord, he himself was struck down with the others, whose souls undoubtedly will rejoice with Christ in the company of the martyrs, whose business was holy, for when called, they came to baptise the pagans and to plant the Lord's vineyard, which they planted with their blood; therefore, their souls are coequal with [the souls of] the saints in heaven.<sup>725</sup>

It is hard to discern how this report of the last moments came to the chronicler Henry. If everyone was killed, this information must have been obtained during or

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<sup>723</sup> A good overview of the bishops who accompanied armies in Medieval Europe, and could have taken part in combat, is given in Jensen's 'Bishops on a Crusade', pp. 83-99.

<sup>724</sup> For example: 'The people of Holm, whose feet are quick to shed blood, having captured their priest John, cut off his head [and] and cut up the rest of the body, limb by limb.' – *Holmenses, quorum pedes veloces ad effendendum sanguinem, capto Iohanne sacerdote suo, caput eis abscidunt, corpus reliquum membratim dividunt*. HCL X, 7; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 58 (amended).

<sup>725</sup> *Inter quos erat Segehardus, sacerdos Cysterciensis ordinis, missus ad castrum ipsum a Dunemunde in obsequium episcopi Bernardi, ad cuius episcopatum preoccupatus erat locus idem. Qui sedens in littore, videns paganos venientes ponebat manicam cuculle super caput suum, feritatem paganorum exspectans. Et in manus Domini spiritum commendans percussus est ipse cum aliis, quorum anime in martyrum societate sine dubio cum Christo gaudebunt, quorum negocium sanctum erat, eo quod vocati venerunt ad baptizandum paganos vineamque Domini plantandam, quam sanguine suo plantaverunt; ideoque sunt eorum anime sanctorum in celis coequalis*. HCL XXIII, 4, pp. 157-158; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, pp. 175-176 (amended).

after the recovery of the bodies. Yet, even if the depiction of this death was fictitious, which is a possibility, Henry deliberately and consciously chose the way he reported the end of Priest Segehard, and his companions. Even if factually untruthful, it was the way that priests were *expected* to behave – the way which made them ‘coequal to the saints in Heaven’.<sup>726</sup> In line with canon law prescriptions and prohibitions, clerics were not expected to fight, and this was the case also in Livonia.

Another example of a cleric physically not going with the army but calling to take up arms beforehand relates to Bishop Albert of Riga. In 1206, the pagan and apostate people of Holm ‘forgetting [their] baptism, abandoning the Faith, not keeping the peace, renewing war’, killed their priest, who seemed to not have attempted to defend himself, and inflicted other injuries upon the Livonian Church.<sup>727</sup> Bishop Albert, in turn, ‘hearing of the departure of some, [and] having called together the Swordbrothers and the citizens [of Riga] and the crusaders, asked what might be necessary to be done against the machinations of the Livonians’ and ‘[i]t seemed expedient to all that, after invoking the help of God Almighty upon themselves and committing the new Church to Him, they should go to war with those in Holm’.<sup>728</sup> Therefore, while Bishop Albert had essentially waged war, he did not accompany the army himself. Holm was in the near vicinity of Riga (roughly twelve miles further up the Daugava River), and it would have been certainly possible for the bishop to go with the army should he have wished to do so. Instead, the chronicler reported that ‘[h]aving celebrated the Mass, the bishop was with his clerics, waiting

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<sup>726</sup> ... *sanctorum in celise coequals*. HCL XXIII, 4, p. 158.

<sup>727</sup> ... *obliti baptismi, fide abiecta, pacem non curantes, bellum innovantes* ... HCL X, 6, p. 36.

<sup>728</sup> *Audiens ... quorundam recessum convocatis fratribus milicie et civibus et peregrinis requirit, quo facto opus sit contra Lyvonum machinacionem. Visum est omnibus expedire, ut invocato super se Dei omnipotentis auxilio novellam ecclesiam ipsi committentes cum illis in Holme bellum ineant ..* HCL X, 8, p. 37; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 58 (amended).

in the fear of God and with prayers to see if, by chance, anyone should appear, reporting to him what had been done'.<sup>729</sup> This is an exemplary narrative of what was expected from the clerics who, as we have noted, according to canon law did have the authority to wage war but were not expected to take part in the actual campaign itself – they were to pray to God for a desirable outcome.<sup>730</sup>

At the same time, occasionally Bishop Albert did go with the army he had assembled. In 1209 he led an expedition against the duke of Jersika who was accused of helping the Livonian pagans and apostates.<sup>731</sup> When the town of Jersika was conquered, 'the queen [of Jersika] was captured and presented with her girls, women, and all [her] possessions to the bishop'.<sup>732</sup> This is evidence that Bishop Albert was in close proximity to the besieged town, but it does not indicate that he personally took part in fighting. There were no further references to the bishop's role in this expedition aside from an introductory note that they celebrated the Epiphany of the Lord at the assembly point. This confirms that the bishop's duty during this campaign was to serve the army spiritually.

Therefore, while clerics were not expected to fight, and they were often depicted as being defenceless victims, it can be discerned that at times they nevertheless accompanied their armies while not actively taking part in fighting. By contrast, Berthold, the second bishop of Livonia, died during a battle and this has often been

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<sup>729</sup> *Erat ... episcopus cum clericis suis celebrata missa in Dei timore et orationibus exspectans, si forte quispiam appareret referens ei quid ageretur. HCL X, 8, p. 38; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 59 (amended).*

<sup>730</sup> For a similar example of Bishop Albert assembling an army and giving a blessing but not accompanying it, see *HCL XVIII, 5, p. 117.*

<sup>731</sup> *HCL XIII, 4, pp. 70-71.*

<sup>732</sup> *... regina capta est et episcopo presentata cum puellis et mulieribus et omni substancia sua. HCL XIII, 4, p. 70; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 91 (amended).*

seen as a proof that he was actively taking part in combat.<sup>733</sup> The following excerpt from the chronicle of Henry of Livonia gives the most detailed account of his death:

On the opposing side, the army of the Saxons is being armed to fight, launching an attack on the pagans. The Livonians flee. The bishop is carried into the fugitives by the speed of his badly restrained horse. Two of them [the pagans] seize him, a third, Ymaut by name, pierces him from the back with a lance, and the others tear him to pieces, limb by limb.<sup>734</sup>

The death of Bishop Berthold in a combat environment is corroborated by a report offered by Arnold of Lübeck:

But when the blessed prelate [Berthold] led his army against the unbelievers laying in ambush for the worshippers of Christ, he fell into the hands of the ungodly with very few others, as few as two, [and] was killed; and, so we hope, he was crowned with glory and honour, for he was burning with desire for death.<sup>735</sup>

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<sup>733</sup> HCL II, 6, p. 10. For example, Carsten Selch Jensen has stated that ‘Berthold not only summoned the crusaders to come fight in Livonia, he also took part in the battle himself’; Carsten Selch Jensen, ‘Bishops and Abbots at War: Some Aspects of Clerical Involvement in Warfare in Twelfth- and Early Thirteenth-Century Livonia and Estonia’, in *Between Sword and Prayer: Warfare and Medieval Clergy in Cultural Perspective*, ed. Radosław Kotecki, Jacek Maciejewski and John Ott (Leiden, 2017), pp. 404-434, at p. 408. Similarly, Friedrich Benninghoven has also implied that Bishop Berthold took part in fighting; see Benninghoven, *Der Orden der Schwertbrüder*, p. 35. Kristjan Kaljusaar has even asserted that ‘the prelate [i.e. Berthold] was not passive during the battle: he was likely already in pursuit of the foe when he lost control of his mount ...’; Kristjan Kaljusaar, ‘Martyrdom on the Field of Battle in Livonia during Thirteenth-Century Holy Wars and Christianization: Popular Belief and the Image of a Catholic Frontier’, in *Christianity and War in Medieval East Central Europe and Scandinavia*, ed. Radosław Kotecki, Carsten Selch Jensen and Stephen Bennett (Leeds, 2021), pp. 245-262, at p. 257.

<sup>734</sup> *Armantur ex adverso Saxonum acies ad pugnandum, in paganos precipitantes insultum. Fugiunt Lyvones. Episcopus equi ab eo male detenti velocitate inmiscetur fugientibus. Quem duobus complectentibus tercius, Ymaut nomine, a tergo lancea perfodit, quem et alii membratim dilacerant.* HCL II, 6, p. 10; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 33 (amended).

<sup>735</sup> *Cumque presul beatus exercitum produceret contra infideles Christi cultoribus insidiantes, in manus impiorum cum paucis, duobus tantum, devolvitur occiditur et, ut speramus, gloria et honore coronatur; erat enim flagrans mortis desiderio.* Arnold of Lübeck, *Arnoldi chronica slavorum*, V, 30, p. 215; translation from Arnold of Lübeck, *The Chronicle of Arnold of Lübeck*, p. 224 (amended).

This happened in 1198, at the time when the Christianisation of Livonia had just begun. Berthold's predecessor, bishop Meinhard, had not brought armed forces with him, so Berthold was likely the first one to do so. It could simply have been safer for him to stay with his army, since the Christians lacked a secure establishment in these regions at the time.<sup>736</sup>

It is also clear from the source that Bishop Berthold had the authority to wage war and to break peace, as 'the lord bishop ... sending back their [the Livonians'] lance, called off the peace'.<sup>737</sup> Berthold, as the head of the Livonian Church, might have wished to be in a close vicinity to the group of Christians who at that time quite literally constituted almost the whole Church of Livonia. Additionally, it can be discerned that Berthold attempted to restrain his horse, implying that he was not meant to go with those who were 'launching an attack on the pagans'.<sup>738</sup>

However, there is a third account depicting the death of Berthold implying that Berthold might have fallen while taking part in the battle himself. It came from the *Livonian Rhymed Chronicle* composed more than ninety years after the death of Berthold, in c.1290, and stating that the bishop went in front of his men like a knight or a gentleman, and that both sides sought death.<sup>739</sup> This section depicted the bishop as a valorous knight but did not state specifically that he fought himself – he could have ridden in front of his men as an authoritative figure. The right of the bishops to exhort and to call to arms was, after all, firmly grounded in canon law.<sup>740</sup>

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<sup>736</sup> Riga was not established until 1201, see p. 269.

<sup>737</sup> ... *domnus episcopus ipsorum lancea remissa paci contradixit*. HCL II, 5, p. 10; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 33 (amended).

<sup>738</sup> ... *in paganos precipitantes insultum*. HCL II, 5, p. 10.

<sup>739</sup> ... *der bishof vor den sînen dar; quam vil ritterliche; wol einem herren glîche. sie sûchten beider sît den tût*. LRC, 566-569, p. 14; translation from *The Livonian Rhymed Chronicle* p. 7.

<sup>740</sup> See the discussion on this at pp. 219-220.



There are some further problems with the way Bishop Berthold was depicted in the *Livonian Rhymed Chronicle*. Namely, the appointment of Berthold as a bishop of Livonia is described as follows in the English translation: ‘That was a blessed gift for he was a hero in battle and later died among his flock’.<sup>741</sup> In the Meyer edition of the Middle-High German text, the same passage reads as follows: ‘*daʒ was ein sêlic gifte, wan er was ein helt zûr nôt: er bleib bie sînen schâfen tôʒ*’.<sup>742</sup> The key word to consider here is ‘*nôt*’, in later German editions rendered as ‘*Noth*’, and in the English version translated as ‘battle’; however, the word does not have to mean ‘battle’ but rather ‘distress’, ‘need’ or ‘danger’.<sup>743</sup> Therefore, Bishop Berthold was a hero in times of distress, which did not necessarily mean battle.

Furthermore, the *Livonian Rhymed Chronicle* did not depict the earlier events happening in Livonia most accurately – for example, it stated that Berthold had been a bishop for eleven years before he died while in reality, he was a bishop for only two years. Therefore, much of what was said about Berthold in the *Livonian Rhymed Chronicle* may be either incorrect or not verifiable.<sup>744</sup> Even with this in mind, the chronicle does not explicitly state that the bishop took up arms personally, only that he was at least in close vicinity of the battlefield. The way he was depicted suggests that the anonymous writer of the chronicle wished to describe the actions of Berthold as heroic and commendable.<sup>745</sup>

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<sup>741</sup> *The Livonian Rhymed Chronicle*, p. 6.

<sup>742</sup> *LRC*, 500-503, p. 12; Meyer’s edition used the oldest surviving manuscript dating back to the mid-14<sup>th</sup> century, now presumed lost, see Murray, ‘The Structure, Genre and Intended Audience’, p. 236.

<sup>743</sup> See ‘*nôt*’, in *Althochdeutsches Wörterbuch*, ed. Rudolf Schützeichel (Berlin, 2012), p. 240.

<sup>744</sup> See p. 34 for the audience of the chronicle.

<sup>745</sup> This is suggested by the omission of Berthold’s inability to restrain his horse which would have humiliated him in the eyes of the audience of the *Livonian Rhymed Chronicle*; see Sini Kangas, ‘The Image of “Warrior-Bishops” in the Northern Tradition of the Crusades’, in *Christianity and War in Medieval East Central Europe and Scandinavia*, ed. Radosław Kotecki, Carsten Selch Jensen and Stephen Bennett (Leeds, 2021), pp. 57-74, at p. 69. Indeed, the *Livonian Rhymed Chronicle* repeatedly stressed the possibility to acquire honour on a crusade; see Murray, ‘The Structure, Genre and Intended Audience’, p. 248.

However, certain rare but persuasive passages might indicate that under serious circumstances, clerics might have indeed personally taken part in fighting. In 1210, when the town of Riga was under siege by the pagans, it is reported that ‘the citizens, the Swordbrothers, and the ballistarii, though they were few, all flee to arms together with the clergy and the women; with the sound of the bell which was rung only in time of war, they assembled the people’.<sup>746</sup> Similarly, the account of Priest Godfrey, who wished to defend his church, explicitly stated that he was bearing arms:

And there were only seven of the servants of the German bishop and the eighth was the priest Godfrey. He belted on himself his weapons of war and put on himself his breastplate like a giant [1 Macc. 3:3], desiring to save his sheep from the jaws of the wolves [Matt. 10:16; John 10:12]. And they rushed upon them [the pagan Oeselians] from behind, killing some of them most bravely.<sup>747</sup>

A more ambiguous implication that clerics took part in warfare was given in the context where the Christian forces had organised an expedition into the regions of Estonia, and that had resulted in one of the forts being successfully besieged:

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<sup>746</sup> *Cives autem et fratres milicie et balistarii, essent licet pauci, cum clericis et mulieribus omnes ad arma confugiunt, sonitu campane, que tantummodo tempore belli pulsabatur, populum convocant ... HCL XIV, 5, p. 76; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 97 (amended). Henry of Livonia often spoke of the ‘ballistarii’ taking part in military campaigns in Livonia. The term could denote the operators of a tension engine with the appearance of a very large crossbow – the ballista – ‘which drew their power from the potential energy stored in the bow of the weapon, [and] fired long “sharps” that looked like spears’; see Bernard S. Bachrach and David S. Bachrach, *Warfare in Medieval Europe, c.400-c.1453* (London, 2017), p. 236. The same term could also mean crossbowmen; see Alan J. Forey, ‘Paid Troops in the Service of Military Orders During the Twelfth and Thirteenth Centuries’, in *The Crusader World*, ed. Adrian J. Boas (London, 2016), pp. 84-97, at p. 85. It is not always clear which of the two was alluded to in medieval chronicles; see Helen J. Nicholson, *Medieval Warfare: Theory and Practice of War in Europe, 300-1500* (Basingstoke, 2004), p. 94. In the case of the passage quoted from the chronicle of Henry of Livonia here, it seems that he was talking about crossbowmen, as they were inside the town of Riga in which operating a ballista would have been exceedingly difficult, and crossbowmen were better suited for urban militias; see Bachrach and Bachrach, *Warfare in Medieval Europe*, pp. 233-234.*

<sup>747</sup> *Et erant septem tantum ex servis episcopi Theuthonici, et octavus erat sacerdos Godefridus. Qui succinxit se armis bellicis suis et induit se lorica sua tamquam gygas, oves suas luporum faucibus eripere cupiens. Et irruerunt post tergum super eos, occidentes ex eis fortissime. HCL XXI, 7, p. 146; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 165 (amended).*

While we were on the point of anointing him [a pagan] with the holy oil, a great clamour arose, and our army rushed through all the streets, and they all ran to arms, shouting [that] a great army (*malewa*) of pagans was coming against us. Hence, we immediately put down the holy chrism and the other holy articles, and ran to the ministry of shields and swords, and we made haste onto the field, ordering our lines against our adversaries, and the elders of the Vironians [the just-conquered pagans] stood with us.<sup>748</sup>

These examples that depicted clerics bearing arms were exceedingly rare, especially in contrast to the number of passages where clerics were depicted as accompanying armies or dying without putting up a fight. Furthermore, the three examples we have seen of clerics bearing arms are all given in the context of dire necessity. It is thus probable that when faced with a choice between death or defence, people, including clerics but also women and other conventionally non-military social groups, did indeed take up arms.

It can be concluded that in the vast majority of instances where clerics were associated with warfare in Livonia, they were involved in exhortations and spiritual support, or succumbed to the attacks of their adversaries without active defence. Only on rare occasions some clerics allegedly took up arms. Although Henry of Livonia did not seem to have seen such instances going against canonical prohibitions, most

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<sup>748</sup> *Dumque iam eum in sacro linire deberemus oleo, factus est clamor magnus et concursus exercitus nostri per omnes plateas, et currebant omnes ad arma, clamantes magnam paganorum malewam contra nos venientem. Unde nos confestim proiecto sacrosancto crismate ceterisque sacramentis ad clypeorum gladiatorumque ministeria cucurrimus et festinavimus in campum, ordinantes acies nostras contra adversarios nostros, et stabant nobiscum seniores Vironensium.* HCL XXIII, 7, pp. 161-162; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, pp. 179-180 (amended). Henry here used the indigenous term 'malewa' to denote a group of armed men, and originating either from the Livonian or Estonian language.

canon lawyers would have certainly considered these instances exceedingly problematic.

## MEANS

### Weapons

The first significant canonical attempt to limit weaponry came from Canon 29 of the Second Lateran Council of 1139, known as ‘Artem illam’:

We prohibit under anathema that murderous art of crossbowmen (*ballistarii*) and archers, which is hateful to God, to be employed against Christians and Catholics from now on.<sup>749</sup>

This canon was not included even in the latest recension of the *Decretum* while other canons from the same council were incorporated into the compendium.<sup>750</sup> This means that while possibly aware of the canon, Gratian did not at any point decide to consider this prohibition in the *Decretum*.<sup>751</sup> However, while it was inserted into the *Compilatio prima* and the *Liber extra*, many important decretalists, such as Innocent IV in his *Apparatus*, did not expand on it and merely listed it.<sup>752</sup> An exception to this was Hostiensis who in his *Summa aurea* explicitly permitted the use of these weapons

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<sup>749</sup> *Artem autem illam mortiferam et Deo odibilem ballistariorum et sagittariorum, adversus christianos et catholicos exerceri de cetero sub anathemate prohibemus.* Canon 29 of the Second Lateran Council (1139), *Tanner* 1, p. 203.

<sup>750</sup> Winroth, *The Making of Gratian's Decretum*, p. 136. For the development of the *Decretum* in stages, see p. 28.

<sup>751</sup> Modern scholars have usually concluded that fifteen out of thirty canons promulgated at the Second Lateran Council were included in the *Decretum*. However, Kenneth Pennington has doubted such assertions by claiming that, although many of the texts in the *Decretum* were very close to the canons from the Second Lateran Council, they often simply had the inscription of ‘Innocentius II’. Furthermore, even in cases where a text was taken from ‘a universal council under Innocent II’, it cannot be conclusively inferred that the Second Lateran Council was meant; see Kenneth Penninton, ‘The Biography of Gratian, the Father of Canon Law’, *Villanova Law Review*, Vol. 59 (2014), pp. 679-706, at pp. 687-688.

<sup>752</sup> *1 Comp.* 5.19.1=X 5.15.1; Innocent IV, *Apparatus ad X* 5.15.1, p. 514.

against the ‘Saracens’ and in just war while commenting on the prohibition.<sup>753</sup> Although the original prohibition did not allow the use of such weaponry against fellow Christians, ranged weapons – including crossbows – became increasingly widespread over the thirteenth century.<sup>754</sup> This was also the case in Livonia.

Archaeological finds from Livonia have indicated that certain crossbow bolts could be identified belonging to the settlement from between 1210-1220, perhaps even up to the 1240s.<sup>755</sup> The use of weapons in Livonia was described in detail by contemporary chronicles, specifically in the chronicle of Henry of Livonia.<sup>756</sup> Ballistas, crossbows, and other ranged weapons were commonplace, and their destructiveness was not questioned at any point:

[1203] Then, certain Germans, having meanwhile been sent by the bishop with ballistas and arms, take over the castle of Holm.<sup>757</sup>

[1206] [A]rmed, the stronger Germans with their Livonian Rigans went up [the river] by ship, taking with them *ballistarii* and archers ...<sup>758</sup>

<sup>753</sup> ... *contra Saracenos non prohibentur ... nam ubi justum est praelium, non refert qualiter pugnetur*, – ‘[These weapons] against the Saracens are not forbidden ... for where the battle is just, it does not matter how it is fought.’ Hostiensis, *Summa aurea* ad X 5.15 §1, col. 1396.

<sup>754</sup> James A. Brundage, ‘Holy War and the Medieval Lawyers’, in *The Crusades, Holy War and Canon Law*, ed. James A. Brundage (Aldershot, 1991), X, pp. 99-140, at p. 115.

<sup>755</sup> These archaeological finds come from modern Estonia that was Christianised between 1208-1227, see Aleksander Pluskowski and Heiki Valk, ‘Conquest and Europeanisation: The Archaeology of the Crusades in Livonia, Prussia and Lithuania’, in *The Crusader World*, ed. Adrian Boas (London, 2015), pp. 568-592, at pp. 571-572. Further archaeological finds from thirteenth-fourteenth century Prussia, that was Christianised slightly later than Livonia, suggest that crossbows continued to be used extensively by Christian armies, see Aleksander Pluskowski, *The Archaeology of the Prussian Crusade: Holy War and Colonisation* (London, 2013), p. 167.

<sup>756</sup> That Henry of Livonia had elevated interest in weaponry is highlighted in Brundage, ‘Introduction to the 2003 Edition’, p. 14.

<sup>757</sup> *Porro Theuthonici interim quidam missi ab episcopo cum balistis et armis castrum Holme preoccupant ... HCL VII, 4, p. 21 (VII, 7 in English translation); translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 44 (amended).*

<sup>758</sup> ... *qui validiores errant Theuthonici cum suis Lyvonibus Rigensibus armati, balistariis et aliis sagittariis assumptis navigio ascendentes ... HCL X, 8, p. 38; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, pp. 58-59 (amended).*

[1209] [Bishop Albert] built a very strong castle there [at Kokenhusen] and left both knights and *ballistarii* with his household there to defend the castle.<sup>759</sup>

[1218] The archers of the Swordbrothers, too, were descending from their castle, went to the Wends, and with their ballistas killed many of the Rus' and wounded as many as possible.<sup>760</sup>

These are but a few examples where the use of ballistas, crossbows, and other similar ranged weapons were described. While destructive ranged weapons were forbidden in canon law to be used against Christians, it was implied, and eventually explicitly stated by Hostiensis, that they were not forbidden to be used in combat against non-Christians, as we have seen.<sup>761</sup>

At the same time, in the last passage quoted above (from 1218), it appears that in Livonia ballistas were used even against the Rus' who were Orthodox and therefore Christians. Namely, when the Rus' had come to despoil the regions of Idumea that were situated north of Riga, they went on to besiege the Wenden castle that was defended by the Latin Christians.<sup>762</sup> It was presumed that the Rus', intended to take loot and captives, and thus, defending oneself was a just cause to inflict violence from the point of view of the Latin Christians. It is also possible that since Canon 29 from

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<sup>759</sup> ... *castrum firmissimum edificavit et milites ac balistarios cum familia sua ibidem [ad] castrum conservandum reliquit ... HCL XIII, 1, p. 66; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 88 (amended).*

<sup>760</sup> *Descendebant quoque sagittarii fratrum milicie de castro suo, intrabant ad Wendos et balistis suis multos Ruthenorum interficiebant et quam plurimos vulnerabant. HCL XXII, 5, p. 151; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 170 (amended).*

<sup>761</sup> As such, they were employed in Spain as well, as testified by King James I of Aragon who used crossbowmen in his attacks against the Muslims. For example, in 1244, James I of Aragon employed sixty crossbowmen to gain victory over Muça Almoravid: James I of Aragon, *The Book of Deeds of James I of Aragon*, ed. and trans. Damian J. Smith (Farnham, 2010), chs. 358-359, p. 270. See also Nicholson, *Medieval Warfare*, pp. 39-40.

<sup>762</sup> '[C]rossing the Aa [River], [the Rus'] besieged the castle of the Wends and fought with the Wends for the entire day' - ... *transeuntes Coywam Wendorum castrum obsederunt et per totum diem cum Wendis pugnabant. HCL XXII, 4, p. 151; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 170 (amended).*

the Second Lateran Council in 1139 did not enter canon law collections until after Gratian's *Decretum* was completed, it was not commonly known among clerics and regular Christians in Livonia before the middle of the thirteenth century when the *Liber extra*, in which the prohibition was included, became more widespread.<sup>763</sup> However, even if it was the case, warfare against the Rus' was considered justified for defensive reasons and this notion would have made the use of ranged weaponry licit in the eyes of at least some canon lawyers, such as Hostiensis.

### Strategies

It appears that while Gratian did not include the ban on crossbows and archers as expressed in 'Artem illam' from the Second Lateran Council of 1139 in the *Decretum*, he did touch upon the question of strategical means and their validity in just war. Relying on St. Augustine who understood the Lord's commandment on Joshua to lay ambushes on the city of Ai as an indication that in a just war insidious activity is permitted, Gratian asserted that '[i]t makes no difference to justice whether someone attacks openly or by ambush'.<sup>764</sup> Later commentators on the *Decretum* did not challenge this notion: Rolandus and Rufinus, for example, did not explicitly mention this particular passage from the *Decretum* at all, and therefore they probably agreed with it or at least did not see it as problematic.<sup>765</sup> One of the reasons why the statement went uncontested could have been that ambushes were in a clear manner divinely permitted in the Scripture, and therefore left little room for different

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<sup>763</sup> See the discussion regarding the dissemination of canon law collections at p. 22.

<sup>764</sup> *Nichil interest ad iusticiam, siue aperte siue ex insidiis aliquis pugnet*. Gratian, C.23 q.2 c.2, col. 894. The 'auctoritas' is St. Augustine.

<sup>765</sup> Rolandus, *Summa ad C.23 q.2*, p. 88; Rufinus, *Summa ad C.23 q.2*, p. 405.

interpretations. Additionally, it could have been seen simply as an unimportant or uncontentious matter that did not require further deliberation nor commentary.

The Augustinian passage utilised in the *Decretum* was also used by Thomas Aquinas who distinguished between two types of deception:

[A]mbushes are designed to deceive the enemy. Now one may be deceived by the deed or word of another in two ways: through the fact that something false is told, or a promise is not kept. And this is always unlawful. ... In another way a person may be deceived by our word or deed, because we do not disclose our purpose or meaning.<sup>766</sup>

Aquinas argued that deception is not really a deception but rather a concealment unless it is breaking a promise, because it is unrealistic for someone to expect that nothing could be hidden from them.

In the context of Livonia, there was ample evidence that the validity of laying ambushes was not questioned. Reports such as ‘they [the Swordbrothers] laid waste their villages and territories, and killing some, taking some captives, and frequently ambushing on the road, they inflicted many evils upon them’<sup>767</sup>, ‘[o]n the fourth day, laying an ambush near the village, nine of them [the pagans] were captured and some killed’<sup>768</sup>, ‘laying ambushes for them together with the family [i.e. household] of the bishop from Kokenhusen, they waited for them [the pagans] for three weeks’<sup>769</sup> were

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<sup>766</sup> ... *insidiae ordinantur ad fallendum hostes. Dupliciter autem aliquis potest falli ex facto vel dicto alterius uno modo, ex eo quod ei dicitur falsum, vel non servatur promissum. Et istud semper est illicitum. ... Alio modo potest aliquis falli ex dicto vel facto nostro, quia ei propositum aut intellectum non aperimus.* Thomas Aquinas, *ST II-II*, Q 40, A 3, co, p. 316.

<sup>767</sup> ... *villas et confinia eorum vastaverunt, et alios interficientes, alios captivos ducentes et in via frequenter insidiantes, multa eis mala intulerunt.* *HCL XVII*, 5, p. 114; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 134 (amended).

<sup>768</sup> *Quarto die ponentes insidias prope villam capti sunt novem ex eis et quidam interfecti.* *HCL XX*, 2, p. 136; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 156 (amended).

<sup>769</sup> ... *ponentes eis insidias, cum familia episcopi de Kukenois expectaverunt eos tribus ebdomadis ...* *HCL XXV*, 4, p. 183; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 202 (amended).



numerous. It can be presumed that these types of ambushes entailed laying low, i.e. concealment, and waiting for an opportunity to strike to gain an advantage.

This type of ambush was also described in the *Livonian Rhymed Chronicle*: “The brothers conferred: “Let us not rush out from our hiding place in the woods too soon. It is to our advantage to let them all come so near to the castle that they will take notice of nothing else.”<sup>770</sup> In the chronicle of Henry of Livonia, a more detailed description of the nature of a possible ambush was given:

And as they [the knights] approached the castle of Jersika, they captured one from among the Rus’ whom they carried with them in bindings to the castle by night. He, climbing first from the ditch, as he had been ordered [to do], spoke to the watchman, the others following one by one. And the watchman thought that his [fellow] citizens, who had been away, were returning. And they went up one by one, until at last they all held the strong point of the fortification.<sup>771</sup>

The German knights used a captive to deceive the guards and to gain access to the fort. While it was purposefully engineered as a deception, it would have been permitted for several reasons in canon law. First, the attack was considered just on behalf of the Christians, as King Vsevolod of Jersika against whom the ambush was targeted, had not come to bishop Albert for years, even after receiving his lands as fiefs, and was conspiring with the pagan Lithuanians against the Church.<sup>772</sup> From this

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<sup>770</sup> ... die brüdere sprächen: ‘nicht zû vrû ensprenge wir, da3 ist unser vrome, bi3 ie der man sô nâhe kome dem hûs, da3 sie icht wider sehen.’ LRC, 2520-2523, p. 58; translation from *The Livonian Rhymed Chronicle*, p. 31.

<sup>771</sup> *Et appropinquantes castro Gercike quendam ex Ruthenis comprehenderunt, quem ligantes traxerunt secum nocte ad castrum. Qui conscendens primus fossatum, sicut iussus fuerat, cum vigile loquebatur, sequentibus aliis singillatim. Et putabat vigil suos cives, qui absentes fuerant, advenire. Et ascenderunt singuli, donec tandem omnes arcem munitionis tenerent.* HCL XVIII, 4, p. 117; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 136 (amended).

<sup>772</sup> HCL XIII, 4, pp. 70-71; XVIII, 4, pp. 116-117.

point of view, any strategical device was permitted, as the battle was just. Additionally, the Germans did not have an active peace agreement with the king; rather the latter had violated any kind of peace by preferring the company of pagans.<sup>773</sup> Therefore, the ambush and deception would not have been considered as breaking fidelity but rather treated as a concealment, for the knights did not disclose what they were doing.

Preliminarily, it could be concluded that in Livonia the means of combat were not considered against canon law prohibitions, and the lawfulness of ambushes was at no point questioned. However, would such canon law prohibitions have been followed in the first place if they had been more stringent? In the context of warfare, it is possible that in Livonia, or indeed elsewhere too, the participants of war did not consciously think of canon law prohibitions but were rather acting pragmatically. That canon law was relatively lax or at least loosely interpreted regarding some aspects of war ensured that most bellicose activities undertaken by the Christians were not explicitly illicit.<sup>774</sup>

### Timing of War

One of the regulations on warfare that was proposed in the High Middle Ages aimed to limit the time-periods during which combat was permitted. The ‘*Treuga Dei*’ (Truce of God), evoked at the Council of Elne in 1027, aimed to cease attacks between Saturday evening and Monday morning ‘to enable every man to show proper respect for the Lord’s day’.<sup>775</sup> While it became the dominant form of the general peace

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<sup>773</sup> HCL XIII, 4, pp. 70-71; XVIII, 4, pp. 116-117.

<sup>774</sup> Further research into the knowledge of canon law prescriptions by the participants of warfare would help to shed more light on this question.

<sup>775</sup> ... *ut omnis homo persolvat debitum honorem die Dominico ... Mansi* 19, cols. 483-484, at col. 483. For the Truce of God, see Udo Heyn, ‘Arms Limitation and the Search for Peace in Medieval Europe’, *War & Society* 2 (1984), pp. 1-18, at pp. 4-5; Nils Eiskovits, *A Theory of Truces* (Basingstoke, 2015), pp. 54-55;

movement after the 1040s, it never achieved significant success, especially as it was considered impractical by the nobility.<sup>776</sup> The timing of war was considered in Gratian's *Decretum* with an acknowledgement that 'in cases of urgency, it is also allowed to go to war during Lent'.<sup>777</sup> Gratian here quoted Pope Nicholas I (858-867), who in 866 had sent a letter to the Bulgars to answer some questions pertaining to the principles of Christianity:

If there is no urgent need, not only during the Lent but at all times it is to be abstained from combat. But if the opportunity is inevitable, no doubt, not even the Lent is to be spared for the preparation of wars for the defence both of oneself and one's homeland, and of the laws of his fathers, lest it should seem that man is putting God to the test, if he holds what he should do, and does not manage to provide for their safety and his own safety, and does not guard against the harm of the Holy Religion.<sup>778</sup>

The central argument for Pope Nicholas I, and indeed for Gratian, in permitting combat during holy days stemmed from the desire to avoid tempting God. They concluded that while it is preferable to abstain from combat at all times, and especially during Lent, one should nevertheless not tempt God and exercise due diligence when the situation demands it.

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Loren C. MacKinney, 'The People and Public Opinion in the Eleventh-Century Peace Movement', *Speculum*, Vol. 5 (1930), pp. 181-206, esp. pp. 194ff.

<sup>776</sup> Tomaz Mastnak, *Crusading Peace: Christendom, the Muslim World, and Western Political Order* (London, 2002), pp. 5-6; Haines, 'Attitudes and Impediments to Pacifism in Medieval Europe', pp. 376-377.

<sup>777</sup> *Necessitate instante etiam a quadragesimalibus diebus bellum inire licet.* Gratian, C.23 q.8 c.15, col. 956. The 'auctoritas' is Pope Nicholas I.

<sup>778</sup> *Si nulla urget necessitas, non solum quadragesimali tempore sed etiam omni tempore est a preliis abstinendum. Si autem inevitabilis urget oportunitas, nec quadragesimali tempore pro defensione tam sua quam patriae, seu legum paternarum, est bellorum proculdubio preparationi parcendum, ne uideat Deum uideatur homo temptare, si habet quod faciat, et suae ac illorum saluti consulere non procurat, et sanctae religionis detrimenta non precauet.* Gratian, C.23 q.8 c.15, col. 956.

The appropriate time to wage war and to inflict violence was revisited at the Third Lateran Council in 1179, where the canon ‘*Treugas autem*’ limited not only the periods of the year (Lent, Advent) when war could be waged, but also restricted combatants from carrying arms from Thursday through Sunday each week.<sup>779</sup> ‘*Treugas autem*’ was subsequently included in the *Compilatio prima* and the *Liber extra*.<sup>780</sup> Despite the fact that the canon ‘*Treugas autem*’ was included in these canonical collections, canon lawyers and theologians understood the practical consequences these kinds of restrictions introduced, and commented on the applicability of it. For example, Thomas Aquinas concluded that it was permitted to fight during holy days under certain circumstances:

And therefore, for the protection of the state, it is lawful for the faithful to engage in just wars on feast days if necessity demands this, for it would be tempting God for anyone to wish to abstain from war in such an imminent necessity.<sup>781</sup>

Aquinas reiterated the two key points pertaining to the permission to engage in combat during holy days: first, it must be in severe necessity, such as to defend oneself; and second, if one was not to act when necessity demanded it, s/he would be guilty of tempting God. Pope Innocent IV, commenting on ‘*Treugas autem*’, echoed the sentiment of Thomas Aquinas:

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<sup>779</sup> ‘We decree that truces are to be inviolably observed by all from after sunset on Wednesday until sunrise on Monday, and from Advent until the octave of the Epiphany, and from Septuagesima until the octave of Easter.’ – *Treugas a quarta feria post occasum solis usque ad secundam feriam in ortum solis et ab adventu Domini usque ad octavas epiphaniae et a septuagesima usque ad octavas paschae, ab omnibus inviolabiliter observari praecipimus*. Canon 21 of the Third Lateran Council (1179) *Tanner* 1, p. 222.

<sup>780</sup> 1 *Comp.* 1.24.1=X 1.34.1; see also James A. Brundage, ‘The Limits of the War-Making Power: The Contribution of the Medieval Canonists’, in *The Crusades, Holy War and Canon Law* (Aldershot, 1991), XI, pp. 69-85, at pp. 76-77.

<sup>781</sup> *Et ideo pro tuitione reipublicae fidelium licitum est iusta bella exercere in diebus festis, si tamen hoc necessitas exposcat, hoc enim esset tentare Deum, si quis, imminente tali necessitate, a bello vellet abstinere*. Thomas Aquinas, *ST II-II*, Q 40, A 4, co, p. 317.

I understand this [decree to be] about a just war, which, although it [i.e. the war itself] may be lawful at any time, it is not to be done in these [forbidden] times, unless necessity urges it. Or it speaks of an unjust war, from which one must always abstain ... However, in these days the prelates will insist more strongly for the truce, but the prelates today do not sin who do not observe this constitution because it [i.e. the truce] is not approved by the morals of the users [i.e. the participants in war].<sup>782</sup>

Innocent IV stated that fighting on prohibited days is sometimes justified in just war. He then conceded that the decree could also have spoken of unjust war, but everyone must abstain from unjust war in the first place. Finally, Innocent IV explained that while some prelates insist on keeping the truce, those who do not are not sinning because the people engaged in warfare do not adhere to this truce anyway. Such a significant concession that the ideal situation prescribed in canon law did not correspond to the realities and practicalities of war was soon after repeated more explicitly by Bernard of Parma in his *Glossa ordinaria*, commenting on the same decree.<sup>783</sup>

In Livonia, the battles were fought, and wars waged throughout the year, depending on necessity. A testimony to this is an example from 1217, when the Rus'

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<sup>782</sup> *Intelligo hoc de iusto bello, quod licet omni tempore, licite possit fieri, non tamen his temporibus est sellandum, nisi urgeat necessity. Vel loquitur de bello iniusto, a quo licet sit semper abstinendum ... Tamen his diebus fortius instabunt praelati pro treugis, nec peccant hodie praelati, qui non seruant istam constitutionem quia non fuit moribus utentium approbata.* Innocent IV, *Apparatus ad X* 1.34.1, p. 161.

<sup>783</sup> *Sed quod dicit hic, hodie non tenet; et episcopi qui non seruant hanc constitutionem, non dicuntur transgressores: quia non fuit moribus vtentium approbata huiusmodi treuga.* – 'But what he [Pope Alexander III] says here does not hold today; and bishops who do not observe this constitution are not called transgressors, because the truce of this kind is not approved by the morals of the users [i.e. by the participants in war].' Bernard of Parma, 'Glossa ordinaria ad X', in *Corpus iuris canonici emendatum et notis illustratum*, Vol. 2 (Rome, 1582), ad X 1.34.1, col. 438. See also Brundage, 'Holy War and the Medieval Lawyers', p. 115. Bernard of Parma composed the *Glossa ordinaria* in at least four stages, with the final and most complete version being completed in 1263-1266, around a decade after the death of Innocent IV; see Stephan Kuttner and Beryl Smalley, 'The "Glossa Ordinaria" to the Gregorian Decretals', *The English Historical Review*, Vol. 60 (1945), pp. 97-105, at pp. 99-100.

army assembled during Lent and besieged a castle that was guarded by the Christians. The reader is told that the Rus' 'fought against the Germans and those who were with them for seventeen days and they could not harm them, since the castle was very strong'.<sup>784</sup> The Germans in the castle were forced to fight a defensive war, and one could argue that it was a dire necessity that forced the Christians into combat during Lent.

Yet, there are examples of waging war during Lent when the cause of war was not defence but rather vengeance or prevention:

In Lent [March 3, 1218], therefore, the Rigans, departing together with the Livonians and Letts, decided to go out against the other Estonians; and coming to Salis and permitting their scouts to explore, they encountered the [pagan] Oeselians. And immediately after the Oeselians recognised the army of the Rigans, they turned in flight. And the Rigans with all their army followed them that whole day, and on the following day they entered the maritime province situated around Oesel; and having divided up their army among all the roads and despoiling the land, they killed all the men taken captive, and took the women and children as captives, drove many flocks off with them, took much loot, and set fire to the villages and houses.<sup>785</sup>

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<sup>784</sup> ... *pugnauerunt cum Theuthonicis, et qui cum eis errant, decem et septem diebus, et non poterant eis nocere, cum castrum fuerit firmissimum. HCL XX, 7, p. 139; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 159 (amended).*

<sup>785</sup> *Unde tandem in Quadragesima Rigenses exeuntes cum Lyvonibus et Lettis ad Estonos alios ire disposerant, et venientes ad Saletsam suosque exploratores permittentes Osilienses obvios habuerunt. Et statim postquam Osilienses cognoverunt exercitum Rigensium, conversi sunt in fugam. Et sequebantur eos Rigenses cum omni exercitu suo per totum diem illum, et sequenti die provincias intrantes Maritimas circa Osiliam sitas et diviso exercitu suo per omnes vias terramque despoliantes viros omnes comprehensos interfecerunt, mulieres et parvulos captivos duxerunt, iumenta multa secum comminantes spolia multa tulerunt, flammis villas ac domos tradiderunt. HCL XXI, 5, p. 145; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 164 (amended).*

There was no immediate necessity for the Rigans to fight, as they were not under attack. They chose to pursue the pagan Oeselians and continued to do so even after the latter attempted to flee. After all this, the Christians raided the land, killing all men and looting the spoils of war.<sup>786</sup>

The fact that engaging in combat during Lent was commonplace could indicate two aspects characteristic to Livonia. First, the situation, even if not immediately dangerous, could have been deemed serious enough to prompt a punitive war even during holy days. Secondly, and more obviously, the local pagans and apostates did not care about Christian celebrations, and waged war when it was more convenient to them, which in turn was highly dependent on the weather and seasons.<sup>787</sup> Much of Livonia and its adjacent regions were covered by swamps and marshes that made travelling difficult in summer, and the frozen ground in winter could have been used to travel across otherwise almost inaccessible marshland.<sup>788</sup> In support of this, the chronicler Henry reports that ‘in the seventh year [1205], around Lent, when these tribes are more accustomed to engage in [military] expeditions, the Lithuanians, with nearly two thousand horsemen, march against the Estonians in a [military] expedition’.<sup>789</sup> Therefore, the time of war in Livonia was not so much dependant on when the Christians wished to wage it; rather, waging war was reliant on natural conditions and practical realities, in addition to being contingent on pagan attacks which obviously did not adhere to keeping holy days.

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<sup>786</sup> HCL XXI, 5, p. 145.

<sup>787</sup> Birgit Sawyer and Peter Sawyer, *Medieval Scandinavia: From Conversion to Reformation, circa 800-1500* (London, 1993), p. 37; Nicholson, *Medieval Warfare*, p. 124.

<sup>788</sup> Nicholson, *Medieval Warfare*, p. 124.

<sup>789</sup> *Anno septimo circa quadragesimam, quando magis ille gentes suas exercere solent expeditiones, Lethones pene duo milia equitum virorum contra Estones moventur in expeditionem ...* HCL IX, 1, p. 25; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 47 (amended).

## CHAPTER THREE: THE ORGANISATION OF LIVONIAN SOCIETY

### JURISDICTION

#### EPISCOPAL SEES

The beginnings of the Livonian mission are hazy and not much is known of the earliest Christian activity that might stretch back to the middle of the twelfth century.<sup>790</sup> From the 1160s and 1170s we get a series of letters that shed light on the plans to Christianise Livonia, and which, for the first time, were papally endorsed. In around 1167, Archbishop Eskil of Lund (1137-1177) consecrated Fulco as the bishop of the Estonians.<sup>791</sup> At this point, Fulco had most likely not been to Estonia and was staying in France. As there are no extant documents surrounding the consecration of Fulco, it would be difficult to ascertain the exact reasons why Archbishop Eskil chose him, or why he thought the creation of a bishopric in Estonia was needed before any kind of successful mission had taken place there.

Ecclesiastical elections were the central concern in the entirety of three *Distinctiones* of Gratian's *Decretum*, and additional isolated but related texts can be found elsewhere in the collection.<sup>792</sup> In the case of Fulco, the circumstances of his election are vague – was it solely decided by Archbishop Eskil of Lund or was his cathedral chapter involved? Gratian had reached the conclusion that secular authorities, while having been involved in ecclesiastical elections in previous times,

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<sup>790</sup> Rebane, 'From Fulco to Theoderic', p. 87; Kala, 'The Incorporation of the Northern Baltic Lands', pp. 6-7.

<sup>791</sup> The exact date of the ordination is unknown. It is generally regarded, however, that Archbishop Eskil of Lund consecrated Fulco before he returned to Denmark from France in 1167. See Iben Fonnseberg-Schmidt, 'Alexander III and the Crusades', in *Pope Alexander III (1159-81)*, ed. Peter D. Clarke and Anne J. Duggan (Ashgate, 2012), pp. 341-363, at pp. 355-356; Peep Peter Rebane, 'From Fulco to Theoderic', p. 91.

<sup>792</sup> Gratian, D.61-63, cols. 227-247; see Benson, *The Bishop-Elect*, p. 23.



cannot do so anymore.<sup>793</sup> This point was emphasised by the following canons in which it was discussed *which* clerics should be involved in elections. Eventually, Gratian stated that ‘the election of bishops [ought to be performed] not only by canons but also by other religious clerics’.<sup>794</sup> The central question was the extent of clerical authorities involved in the election, and involving even a wider circle than that of canons was seen as the preferred method. It can be thus concluded that Archbishop Eskil of Lund most likely decided to consecrate Fulco as bishop of Estonia in agreement with his cathedral chapter. That his appointment was likely not contentious is further demonstrated by the endorsements that the potential mission of Fulco received from the papal curia.

Soon after being appointed as the Estonian bishop, Fulco travelled to Rome in order to seek papal support for his mission to Estonia.<sup>795</sup> This resulted in a series of letters issued by Pope Alexander III in around 1171, and which endorsed Fulco’s mission to Estonia. The central letter, dated 11 September 1171, called on all kings, lords and Christians in Scandinavia to combat the Estonians and all other pagans who desecrated the name of God and rose against the faithful.<sup>796</sup> Those who decided to offer their aid were granted an indulgence equal to one year, just as it was granted for those who visited the Holy Sepulchre; furthermore, those who perished while fighting against the pagans were granted a plenary indulgence.<sup>797</sup> The papal letters indicated

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<sup>793</sup> Gratian, D.63 d.p.c.28, col. 244. The ‘*auctoritas*’ for the canon itself is Pope Stephen V (885-891). See also Chodorow, *Christian Political Theory*, pp. 198-205; Robert Joseph Belletzkie, ‘Pope Nicholas I and John of Ravenna: The Struggle for Ecclesiastical Rights in the Ninth Century’, *Church History*, Vol. 49 (1980), pp. 262-272, at p. 267.

<sup>794</sup> ... *episcoporum election non a canonicis tantum, sed etiam ab aliis religionis clericis*. Gratian, D.63 d. post c.34, col. 247. The ‘*auctoritas*’ for the canon itself is the *Capitula Karoli et Ludowici imperatoris* (c.873).

<sup>795</sup> Rebane, ‘From Fulco to Theoderic’, pp. 91-92.

<sup>796</sup> Alexander III, ‘Non parum animus’.

<sup>797</sup> Alexander III, ‘Non parum animus’. See also Ane L. Bysted, *The Crusade Indulgence: Spiritual Rewards and the Theology of the Crusades, c.1095-1216* (Leiden, 2015), p. 158.

that Fulco was being ‘pressed by need and poverty’ but was nevertheless working diligently and with care to achieve his goals in converting the pagans.<sup>798</sup> It is debated whether Fulco actually ever reached Estonia, as nothing of his practical accomplishments has survived.<sup>799</sup> As we shall see below, it is more likely that Fulco’s mission never took off. The last we hear about Fulco is from January 1180 when he was mentioned in a letter to Archbishop Absalon of Lund (1178-1201).<sup>800</sup>

The next individual to take up the missionary activity in Livonia was the Augustinian monk Meinhard.<sup>801</sup> Sometime in the 1180s he built a church in Üxküll on the Daugava River and was subsequently consecrated bishop of Üxküll by Archbishop Hartwig II of Bremen (1185-1207).<sup>802</sup> Similarly to the appointment of Fulco, presumably Archbishop Hartwig II had the consent of his cathedral chapter when he decided to instate Meinhard to a bishopric see in Livonia. Additionally, this put the newly founded bishopric under the spiritual rule of Bremen. Indeed, this was confirmed with a papal letter from 1188 by Pope Clement III (1187-1191) in which the bishoprics of Lübeck, Schwerin, Rützeburg and Üxküll were said to be under the spiritual control of Bremen.<sup>803</sup> This subordination poses a question to what extent did Meinhard’s bishopric overlap with that which was perceived as Fulco’s. The latter

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<sup>798</sup> ... *inopia et paupertate premature* ... Alexander III, ‘Omnes, qui pie’, p. 39.

<sup>799</sup> For example, Peep Peter Rebane and Edgar Anderson suggest that Fulco eventually reached Estonia, see Rebane, ‘From Fulco to Theoderic’, pp. 93-95; Edgar Anderson, ‘Early Danish Missionaries in the Baltic Countries’, in *Gli inizi del cristianesimo in Livonia-Lettonia. Atti del Colloquio Internazionale di Storia Ecclesiastica in Occasione dell’VIII Centenario della Chiesa in Livonia*, ed. M. Maccarrone (Vatican City, 1989), pp. 245-275, at p. 269. Opinions on this differ, however, as the source-material is scarce and suggestions therefore highly hypothetical, see Tore Nyberg, ‘The Danish Church and Mission in Estonia’, *Nordeuropaforum*, Vol. 1 (1998), pp. 49-72, at pp. 60-61.

<sup>800</sup> The letter of c.1180; *DD* 1:3, no. 81, pp. 123-124.

<sup>801</sup> *HCL* I, 2, p. 2.

<sup>802</sup> *HCL* I, 2-3, 8, pp. 2, 4. No diplomatic sources for the consecration survive; however, the first extant papal letter that mentions the episcopate of Üxküll dates to 25 September 1188 which indicates that the consecration must have been carried out before that year. See also Bombi, ‘Celestine III and the Conversion of the Heathen’, pp. 148-149.

<sup>803</sup> Clement III, ‘Ex iniuncto nobis’ (25 September 1188), *LUB* 1, no. 9, col. 10; Clement III, ‘Fratres et coepiscopos’ (1 October 1188), *LUB* 1, no. 10, col. 11.

received his bishopric from the archbishop of Lund, and therefore it must be concluded that when Alexander III and Clement III confirmed the consecration of Fulco and Meinhard, respectively, they did not define Estonia and Livonia as the same territory.

Yet, if this was indeed the case, it would have posed an entirely different problem. The next bishop of Estonia who was appointed after Fulco, and whose ordination is well attested and verifiable, was Theodoric of Treiden (1211-1219).<sup>804</sup> He was appointed a bishop in 1211, meaning that there was a very long gap between him and the 'first' bishop of Estonia, Fulco, who had been appointed in around 1167, that is, more than 40 years before Theodoric.<sup>805</sup> Such a course of events indicates that the bishopric see of Estonia must have been vacant for a considerable amount of time.

However, already at the Second Lateran Council in 1139, it was decreed that no church should be left vacant for more than three months.<sup>806</sup> The same canon was inserted into Gratian's *Decretum*.<sup>807</sup> This was not the only place in the *Decretum* where the limit of three months for a vacant see was mentioned: for example, it was also cited in *Distinctio* 50 where the ordination of a new bishop instead of an old, fallen one (*lapsus*), was under discussion.<sup>808</sup> A closely related canon included in the *Decretum* considered cases where a bishop failed to be consecrated, i.e. recognised by

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<sup>804</sup> For Theodoric's appointment see *HCL* XV, 4, p. 92 and the discussion below at pp. 292-294.

<sup>805</sup> *HCL* XV, 4, p. 92.

<sup>806</sup> '*Obeuntibus sane episcopis, quoniam ultra tres menses vacare ecclesias prohibent patrum sanctiones, sub anathemate interdicimus, ne canonici de sede episcopali ab electione episcoporum excludant religiosos viros, sed eorum consilio honesta et idonea persona in episcopum eligatur.* – 'Since the decrees of the fathers prohibit churches to be left vacant for more than three months, we forbid under anathema the canons of the episcopal see to exclude religious men from the election following on the death of the bishop; but let a virtuous and suitable person be elected as bishop with their advice.' Canon 28 of the Second Lateran Council (1139) *Tanner* 1, p. 203.

<sup>807</sup> Gratian, D.83 c.35, col. 247. The '*auctoritas*' is 'generalis sinodis Innocentii [II]' but see footnote no. 751 at p. 244 about doubts by Kenneth Pennington whether the canons in the *Decretum* were sourced from the Second Lateran Council or from some other councils from around the same time.

<sup>808</sup> Gratian, D.50 c.11, col. 181. The '*auctoritas*' is Pope Gregory I.

his superior, 'so that the church remains deprived for more than three months'.<sup>809</sup> In such instances, the bishop was to be denied communion 'until he either cedes from his see, or offers himself to be consecrated'.<sup>810</sup> And if the inaction by the bishop caused the church to be deprived ('*uiduata*') for more than five months, he was to be subjected to the judgement of the metropolitan.<sup>811</sup> Last but not least, in *Distinctio* 75 it was categorically stated that '[t]he ordination of the bishops is not to be deferred for more than three months'.<sup>812</sup> The *auctoritas* for this section in the *Decretum* was Canon 25 from the Council of Chalcedon in 451 which had laid out some exceptions:

Because certain metropolitans, as far as we have found, neglect the flocks entrusted to them and postpone the ordination of bishops: it was decided by the holy synod that the ordination of bishops should be celebrated within three months, unless perhaps an unavoidable necessity demands for the extension of the time. For if he does not do this at all, he will be subject to ecclesiastical penalties. But yet still, the income of the widowed church shall be kept safe by the financial administrator [*oeconomus*] of the said church.<sup>813</sup>

Therefore, it is clear that by the end of the twelfth century, it was firmly established in canon law that no church should be left vacant for more than three months, with the exception of extreme cases. Indeed, the period of three months was accepted without any additional observations from the commentators of the

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<sup>809</sup> ... *ut ultra tres menses ecclesia uiduata consistat* ... Gratian, D.100 c.1, col. 352. The '*auctoritas*' is the Council of Ravenna (855), incorrectly attributed to Pope Pelagius I (556-561).

<sup>810</sup> ... *quousque aut loco cedat, aut se consecrandum offerre*. Gratian, D.100 c.1, col. 352.

<sup>811</sup> Gratian, D.10 c.1, col. 352.

<sup>812</sup> *Ultra tres menses non differatur episcoporum ordinatio*. Gratian, D.75, c.2, col. 265. The '*auctoritas*' is the Council of Chalcedon (451).

<sup>813</sup> *Quoniam quidam metropolitatorum, quantum conperimus, neglegunt commissos sibi greges et ordinationes episcoporum facere differunt: placuit sanctae synodo, intra tres menses ordinationes episcoporum celebrari, nisi forte necessitas inexcusabilis praeparet tempus dilationis extendi: quod si hoc minime fecerit, correctioni ecclesiasticae subiacebit. Verum tamen reditus ecclesiae viduatae penes oeconomum eiusdem ecclesiae reserventur*. Gratian, D.75, c.2, cols. 265-266.

*Decretum*, such as Rolandus and Rufinus.<sup>814</sup> Furthermore, Constitution 23 of the Fourth Lateran Council in 1215 explicitly set the timeline for episcopal elections that were to occur within three months, and if that did not happen, the decision should have gone to the immediate superior, usually the archbishop under whose auspices the church was placed in.<sup>815</sup>

In the case of the bishopric of Estonia, we know from a letter of Pope Alexander III from 1171 or 1172 that he mentioned Fulco, named as a bishop ‘of the Estonians’ (*Estonum*) at that time.<sup>816</sup> There is no evidence that Fulco ever had anything resembling a chapter. Therefore, the responsibility of choosing his successor would have been delegated to the archbishop of Lund who had appointed Fulco in around 1167.<sup>817</sup> Yet, there is no evidence that the archbishop of Lund at any point appointed a successor to Fulco. What seems to be the case here, then, is that the bishopric of

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<sup>814</sup> Rolandus, *Summa ad D.75*, p. 10; Rufinus, *Summa ad D.75*, pp. 164-165.

<sup>815</sup> *Ne pro defectu pastoris gregem dominicum lupus rapax invadat, aut in facultatibus suis ecclesia viduata grave dispendium patiatur, volentes in hoc etiam occurrere periculis animarum, et ecclesiarum indemnitatibus providere, statuimus, ut ultra tres menses cathedralis vel regularis ecclesia praelato non vacet. Infra quos, iusto impedimento cessante si electio celebrata non fuerit, qui eligere debuerant, eligendi potestate careant ea vice, ac ipsa eligendi potestas ad eum, qui proximo, praeesse dignoscitur, devolvatur. Is vero, ad quem fuerit devoluta potestas, Deum prae oculis habens, non differat ultra tres menses cum consilio capituli sui et aliorum virorum prudentium viduatam ecclesiam de persona idonea ipsius quidem ecclesiae, vel alterius, si digna non reperiatur in illa, canonice ordinare, si canonicam voluerit effugere ultionem.* – ‘Lest a rapacious wolf attack the Lord’s flock for want of a shepherd, or lest a widowed church suffer grave injury to its good, we decree, desiring to counteract the danger to souls in this matter and to provide protection for the churches, that a cathedral church or a church of the regular clergy is not to remain without a prelate for more than three months. If the election has not been held within this time, provided there is no just impediment, then those who ought to have made the election are to lose the power to elect for that time and it is to devolve upon the person who is recognised as the immediate superior. The person upon whom the power has devolved, mindful of the Lord, shall not delay beyond three months in canonically providing the widowed church, with the advice of his chapter and of other prudent men, with a suitable person from the same church, or from another if a worthy candidate cannot be found in the former, if he wishes to avoid canonical penalty.’ Constitution 23 of the Fourth Lateran Council (1215) *Tanner* 1, p. 246. This canon was subsequently included in 4 *Comp.* 1.3.8 and the *Liber extra* at X 1.6.41.

<sup>816</sup> Alexander III, ‘Lex divina’, p. 36.

<sup>817</sup> Fonnseberg-Schmidt, ‘Alexander III and the Crusades’, pp. 355-356; Peep Peter Rebane, ‘From Fulco to Theoderic’, p. 91.

Estonia ceased to exist in the eyes of the Church until Theoderic was appointed its bishop after a successful conversion of parts of Estonia in 1211.<sup>818</sup>

Let us now return to the bishopric of Livonia. Meinhard's mission in the Northern Baltic region proved to be more successful than that of Fulco, and in 1193 Pope Celestine III, 'with the advice of our brothers [i.e. the cardinals]', issued a letter that granted Meinhard a special permission to recruit help (*ministeriis*) according to need and as he saw fit, and additionally permitted the new recruits to preach.<sup>819</sup> As we have seen, the requirement to obtain authority to preach became commonplace over the course of the twelfth and thirteenth centuries.<sup>820</sup> That Celestine III explicitly invested Bishop Meinhard with the office of preaching (*praedicationis officium*), offers exemplary evidence for such a development.

In 1196, Bishop Meinhard died in Livonia.<sup>821</sup> According to the chronicler Henry of Livonia, 'a successor [to Meinhard] is considered, and [a messenger] is sent to the metropolitan see of Bremen for a suitable person'.<sup>822</sup> Berthold, the abbot of Loccum, was chosen as the new bishop.<sup>823</sup> Arnold of Lübeck in his chronicle mentioned that

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<sup>818</sup> For Theoderic's appointment see *HCL* XV, 4, p. 92 and the discussion below at pp. 292-294. There is no evidence of there having been any titular bishops either for Estonia between Fulco and Theoderic, which was quite different to how many dioceses in twelfth- and thirteenth-century Palestine and Syria had many highly-respected and well-recorded bishops *in partibus infidelum*, see Jonathan Riley-Smith, 'Latin Titular Bishops in Palestine and Syria, 1137-1291', *The Catholic Historical Review*, Vol. 64 (1978), pp. 1-15.

<sup>819</sup> Celestine III, 'Auditis laudum praeconiis'. See also Bombi, 'Celestine III and the Conversion of the Heathen', p. 151; Maccarrone, 'I Papi e gli inizi della christianizzazione della Livonia', pp. 43-46.

<sup>820</sup> Kienzle, *Cistercians, Heresy and Crusade in Occitania*, pp. 205-207. See also the discussion at pp. 107-117.

<sup>821</sup> *HCL* I, 14, p. 7.

<sup>822</sup> ... *de successore tractator et ad Bremensem metropolim pro persona ydonea mittitur*. *HCL* II, 1, p. 8; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, 31 (amended).

<sup>823</sup> On Berthold's life and career, see Bernd Ulrich Hucker, 'Der Zisterzienserabt Bertold, Bischof von Livland, und der erste Livlandkreuzzug', *Studien über die Anfänge der Mission in Livland*, ed. Manfred Hellmann (Sigmaringen, 1989), pp. 39-64, esp. pp. 45-46. That choosing Berthold as the next bishop was not accidental, is also argued by Barbara Bombi in 'Celestine III and the Conversion of the Heathen', p. 153.

Berthold had been to Livonia on a preaching mission already before being chosen as a bishop there, and described his election as follows:

Thus, after the death of the lord Meinhard, who as has been said before, fought a good fight and finished his prosperous course, since the way of life of lord Berthold had become known to everyone, both clergy and people, with unanimous consent they wished for him to fill the place of the deceased. Going to Bremen, he was consecrated as bishop. Furthermore, to supplement [his] work, annual rents of twenty marks are assigned to him in that same church.<sup>824</sup>

Remarkable here is the indication that the local people, both clergy and people, essentially consented for Berthold to become their bishop. The role of the people in the election of a bishop was emphasised in Gratian's *Decretum*.<sup>825</sup> It stated that 'in the Church of God, a bishop is justly put in charge when the people will equally approve him, whom the clergy elects by a common vote'.<sup>826</sup> Similarly, Gratian began the *Distinctio* 62 with his own consideration that 'election belongs to the clerics, consent to the people'.<sup>827</sup> Robert L. Benson has seen this as Gratian's attempt to find a middle ground in which the laity is neither completely included nor excluded from the election process.<sup>828</sup> While the will of the people was not a necessary requirement in

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<sup>824</sup> *Unde post decessum domni Meinnardi, qui, ut premissum est, bonum certamen certavit, cursum quoque felicem consummavit, quia omnibus tam clero quam populo consummavit, quia omnibus tam clero quam populo conversatio domni Bertoldi innotuerat, ipsum unanimi consensu locum defuncti sortiri exoptabant. Qui veniens Bremam, episcopus consecratur. Cui etiam ad supplementum laboris redditus annuales in eadem ecclesia ad viginti marcas deputantur.* Arnold of Lübeck, *Arnoldi chronica slavorum*, V, 30, p. 214; translation from Arnold of Lübeck, *The Chronicle of Arnold of Lübeck*, p. 224 (amended).

<sup>825</sup> Chodorow, *Christian Political Theory*, pp. 200-201.

<sup>826</sup> ... *in ecclesia Dei rite preficietur antistes, cum populus partier in eum acclamaverit, quem clerus communi voto elegerit.* Gratian, D.63 d. post c.25, col. 243. The 'auctoritas' for the canon itself is the Twelfth Council of Toledo (681).

<sup>827</sup> *Electio clericorum est, consensu plebis.* Gratian, D.62 *dictum ante*, col. 234.

<sup>828</sup> Benson, *The Bishop-Elect*, pp. 32-33. Richard Helmholz has also pointed out that according to Gratian, while the role of the laity in the election process was at least theoretically supposed to be relatively small, it was nevertheless seen as essential because it increased the publicity of the election process and provided additional scrutiny; Helmholz, *The Spirit of Classical Canon Law*, pp. 42-43.

appointing a bishop, its presence reinforced the idea that the election of Berthold was entirely lawful, and in addition endorsed by the inhabitants of his prospective bishopric. Berthold's life as a bishop was short and he died in Livonia in July 1198.<sup>829</sup>

According to Henry of Livonia, 'the Livonians, therefore, having lost their shepherd [Berthold], send messengers to Germany for a new successor by the advice of their clergy and brothers'.<sup>830</sup> In March 1199 Albert of Buxhövdén, a canon of the Bremen cathedral chapter and a nephew of Archbishop Hartwig II of Bremen, was consecrated as the third bishop of Üxküll.<sup>831</sup> The details of this consecration remain inconclusive as there is no surviving documentary evidence from the consecration, but it can be assumed that Hartwig II had returned from the Holy Land early, and consecrated his nephew Albert at the Bremen cathedral.<sup>832</sup> Similarly to the election of Berthold, the contemporary narrative source depicting it emphasises that the people of the vacant bishopric sought out a successor, even if they personally did not pick Albert von Buxhövdén.<sup>833</sup>

Between the death of Bishop Berthold and the consecration of Albert, the bishopric of Üxküll had been vacant for more than half a year. As discussed above, canon law required for a vacant see to be fulfilled within three months.<sup>834</sup> However, we should also note that already in Gratian's *Decretum* and later in the *Liber extra*, it was established that the requirement to fulfil a see within three months was not

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<sup>829</sup> HCL II, 6, p. 10. For the death of Berthold, see also pp. 238-241.

<sup>830</sup> *Lyvones igitur amisso pastore suo consilio clericorum et fratrum nuncios pro successore novo in Theutoniam mittunt*. HCL II, 8, p. 11; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, pp. 33-34 (amended).

<sup>831</sup> HCL III, 1, p. 12; LRC, 590, p. 14. Albert had served in the chapter of the archbishop since 1189, see Gnegel-Waitschies, *Bischof Albert von Riga*, esp. pp. 34-44.

<sup>832</sup> Gnegel-Waitschies, *Bischof Albert von Riga*, pp. 43-44.

<sup>833</sup> HCL II, 8, p. 11.

<sup>834</sup> Gratian, D.50 c.11, col. 181, the 'auctoritas' is Pope Gregory I; D.75 c.2, cols. 265-266, the 'auctoritas' is the Council of Chalcedon (451); D.100 c.1, col. 352, the 'auctoritas' is the Council of Ravenna (877), see also pp. 259-261.



binding in exceptional cases, without further qualifying what these situations could be.<sup>835</sup> Berthold had been killed by the Livonian pagans.<sup>836</sup> Could it be that this constituted a dire enough circumstance to warrant a longer vacancy period, as it clearly showed the fragility of the Livonian Church when its highest prelate could simply be slaughtered? It is also possible that this might have deterred potential candidates for the vacancy further, and therefore the see did not get filled for a longer period than was canonically prescribed. Additionally, as pointed out by Michele Maccarrone, Bishop Albert could have been actually elected and consecrated within a timely manner.<sup>837</sup> However, Pope Innocent III could have delayed his confirmation to ensure that Hartwig II, the archbishop of Bremen and the uncle of Bishop Albert, would support papal favourite Otto IV (1175-1218) against Philip of Swabia (1177-1208) after the death of Emperor Henry VI (1165-1197).<sup>838</sup> In any case, Bishop Albert had likely not been to Livonia before he was elected as there are no sources that testify otherwise. He served as a bishop of Livonia for around thirty years and oversaw the most fundamental changes that accompanied the Christianisation of Livonian society as we have seen throughout this thesis.

Already in 1199, Bishop Albert secured a papal letter from Pope Innocent III endorsing his endeavours in Livonia by offering various benefits, such as granting those who had promised to go on a pilgrimage to Rome the option to commute their

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<sup>835</sup> Gratian, D.75 c.2, cols. 265-266. The '*auctoritas*' is the Council of Chalcedon (451). 4 *Comp.* 1.3.8=X 1.6.41. The '*auctoritas*' is Constitution 29 of the Fourth Lateran Council (1215) *Tanner* 1, pp. 248-249; in turn, this Constitution relied on Canon 13 of the Third Lateran Council (1179) *Tanner* 1, p. 218.

<sup>836</sup> *HCL* II, 6, p. 10.

<sup>837</sup> Maccarrone, 'I Papi e gli inizi della christianizzazione della Livonia', pp. 51-52.

<sup>838</sup> Maccarrone, 'I Papi e gli inizi della christianizzazione della Livonia', pp. 51-52. Innocent III's support for Otto IV did not last, and the latter was eventually excommunicated; see Morris, *The Papal Monarchy*, pp. 423-426.

vows and go to Livonia instead.<sup>839</sup> One of the men belonging to the close circle of Bishop Albert was Theoderic of Treiden, a Cistercian monk who had been involved with the mission in Livonia already from Bishop Meinhard's times.<sup>840</sup> Theoderic either instigated or at least participated in the founding of the military order in Livonia that became known as the Swordbrothers – *Fratres Milicie Christi de Livonia*.<sup>841</sup> Bishop Albert must have been closely involved in this process and consented to the proposition of founding such an order.<sup>842</sup> This is evident from a letter issued by Innocent III in 1204 in which he commended Bishop Albert on having three religious orders in helping him to Christianise Livonia.<sup>843</sup> These 'tres

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<sup>839</sup> Innocent III, 'Sicut ecclesiasticae religionis'. See also Barbara Bombi, 'Innocent III and the "Praedicatio"', pp. 233-234.

<sup>840</sup> For a concise overview of Theoderic's life and influence on the Livonian mission, see Rebane, 'From Fulco to Theoderic', pp. 85-116. In fact, according to Rebane, '[m]uch, if not most of the credit, both good and bad, for the founding and survival of both the German colony on the Daugava and the Danish settlement at Tallinn [Reval] should go to Theoderic', see Rebane, 'From Fulco to Theoderic', p. 115. Other scholars have presented reservations, with Ēvalds Mugurēvičs noting that while Theoderic could have played an important role in the founding of the Order of the Swordbrothers, it must have occurred with the knowledge and approval of Bishop Albert of Riga, see Ēvalds Mugurēvičs, 'The Military Activity of the Order of the Sword Brethren (1202-1236)', in *The North-Eastern Frontiers of Medieval Europe*, ed. Alan V. Murray (Farnham, 2014), pp. 117-122, at p. 117. Nevertheless, it is certain that Theoderic played an important role during the early conversion of Livonia, attested by the fact that he accompanied Albert, the bishop of Riga, to the Fourth Lateran Council in 1215 as the bishop of Estonia, see Torben K. Nielsen, 'The Virgin at the Lateran – The Baltic Crusades, Rome and the Mother of God', in *The Fourth Lateran Council and the Crusade Movement: The Impact of the Council of 1215 on Latin Christendom and the East*, ed. Jessalynn L. Bird and Damian J. Smith (Turnhout, 2018), pp. 171-192.

<sup>841</sup> Mugurēvičs, 'The Military Activity of the Order of the Sword Brethren', p. 117. The most comprehensive work on the Swordbrothers to this date is by Benninghoven, who discusses the founding of the order in *Der Orden der Schwertbrüder*, at pp. 44-45. For the early years of the Swordbrothers more generally, see also Barbara Bombi, 'Innocent III and the Origins of the Order of Sword Brothers', in *The Military Orders: History and heritage*, Vol. 3, ed. Victor Mallia-Milanes (Aldershot, 2008), pp. 147-154; Alan J. Forey, *The Military Orders from the Twelfth to the Early Fourteenth Centuries* (Basingstoke, 1992), pp. 32-33, 37; Morton, *The Medieval Military Orders*, pp. 73-74; Ekdahl, 'Die Rolle der Ritterorden', pp. 203-43.

<sup>842</sup> Kristjan Toomaspoeg, 'The Military Orders and the Diocesan Bishops - A Pragmatic Relationship', *Yearbook for the Study of the Military Orders*, 23 (2018), pp. 93-125, at p. 96.

<sup>843</sup> ... tres religiosorum ordines, Cisterciensium videlicet monachorum et canonicorum regularium, qui discipline insistentes pariter et doctrine spiritualibus armis contra bestias terre pugnent, et fidelium laicorum, qui sub Templariorum habitu barbaris infestantibus ibi novellam plantationem fideo Christiane resistant viriliter et potenter ... - '[T]hree religious orders: namely, of Cistercian monks and of canon regulars, who, devoting equally to discipline and doctrine, fight against the beasts of the earth with spiritual arms, and [the order] of faithful laymen, who, under the dress of Templars, vigorously and strongly stand against the barbarians attacking the new plantation of the Christian faith ...' Innocent III, 'Etsi verba evangelizantium', p. 226.

*religiosorum ordines*' included the Cistercians, the monks and canons regular, and finally the knights who fought the pagans under the habit of the Templars, i.e. the Swordbrothers.<sup>844</sup>

While the founding of such military orders was not discussed in canon law, it was through the granting of privileges that they started to garner the attention of canon lawyers. For example, in the *Compilatio quarta* and the *Liber extra*, the Cistercians, Templars and Hospitallers were exempted from paying tithes from the land which they cultivated at their own expense, and they were always to observe the limits of privileges granted to them.<sup>845</sup> However, such inclusions were not universal to all military orders, as it was clear from the content of texts included in canon law collections. Privileges were granted to individual orders which testifies that there was no 'blueprint' for a military order to be considered in medieval canon law. This also explains why it would be futile to consider the foundation of the Order of the Swordbrothers in Livonia in the context of canon law prescriptions. Rather, their

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<sup>844</sup> Innocent III, 'Etsi verba evangelizantium', p. 226. Iben Fonnesberg-Schmidt and Michele Maccarrone have suggested that when referring to these three orders, Innocent III meant Cistercians, Benedictines, and regular canons, whereas the Order of the Swordbrothers was seen as a separate category in addition to the three aforementioned ones; Iben Fonnesberg-Schmidt, *The Popes and The Baltic Crusades*, p. 115; Maccarrone, 'I Papi e gli inizi della christianizzazione della Livonia', p. 65. Yet, there is no reference to the Benedictines in the letter, and up until the end of the thirteenth century, there was only one known Benedictine in Livonia – Hermann, the bishop of Leal/Dorpat and the brother of Bishop Albert, see Kristjan-Jaak Rätsep, *Vaimulikud Liivimaa Ristisõjas 13. Sajandil* [Clerics in the Livonian Crusade during the 13th Century], unpublished MA thesis (University of Tartu, 2018), pp. 35, 78-79. Therefore, I am inclined to agree with scholars who suggest that as the three orders, Innocent III referred to the monks of the Cistercian order, canons regular, and to the Order of the Swordbrothers; see for example Bombi, 'Innocent III and the Origins of the Order of Sword Brothers', pp. 150-151; Friedrich G. von Bunge, *Baltische Geschichtsstudien. Zweite Lieferung: Der Orden der Schwertbrüder* (Leipzig, 1875), p. 7.

<sup>845</sup> 4 *Comp.* 3.9.7=X 3.30.34. The 'auctoritas' is Constitution 55 of the Fourth Lateran Council (1215) *Tanner* 1, p. 260. Note that the Constitution of the Fourth Lateran Council only addressed the Cistercians, but the privilege was extended to the Templars and Hospitalers in the *Liber extra*, exemplifying how canon lawyers could widen the applicability of regulations. See also the whole section under X 5.33, entitled 'Of the privileges and excesses of the privileged' – *De privilegiis et excessibus privilegiorum*.

existence should be considered in the context of privileges that were granted or denied to them.

In 1210, Pope Innocent III issued two letters concerning the Swordbrothers in which they were subjected to Albert, the bishop of Riga.<sup>846</sup> There were other, smaller military orders who did not manage to secure episcopal exemptions either, such as the order of St. Lazarus.<sup>847</sup> At the same time, the Hospitallers, for example, were exempted from episcopal jurisdiction and were allowed to have their own priests.<sup>848</sup> Similar privileges were also acquired by the Templars.<sup>849</sup> Therefore it is clear that while having assumed 'the habit of the Templars', the Swordbrothers were legally not comparable to the major military orders, such as the Templars or Hospitallers, and rather resembled those of smaller orders without episcopal exemptions.<sup>850</sup> Even when

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<sup>846</sup> Innocent III, 'Cum inter te' (20 October 1210) *Die Register Innocenz* 13, no. 139 (141), pp. 224-226; this letter was addressed to Bishop Albert of Riga. Innocent III, 'Cum super sorte' (c.20 October 1210) *Die Register Innocenz* 13, no. 140 (142), pp. 226-227; this letter was addressed to Volkwin, the master of the Swordbrothers, and to other members of the Order of the Swordbrothers. See also Benninghoven, *Der Orden der Schwertbrüder*, pp. 113-114.

<sup>847</sup> Mayer, *The Crusades*, p. 80.

<sup>848</sup> For example, the letter 'Pie postulatio voluntatis' of Paschal II put the possessions of the Hospitallers directly under the pope's authority, see Paschal II, 'Pie postulation voluntatis' (13 February 1113) *Cartulaire général de l'Ordre des Hospitaliers de Saint-Jean de Jérusalem (1100-1310)*, Vol. 1, ed. J. Delaville Le Roulx (Paris, 1894), no. 30, pp. 29-30. Additionally, the letter 'Ad hoc nos disponente' of Innocent II specified that the Hospitallers were exempt from interdict and excommunication pronounced by bishops, see Innocent II, 'Ad hoc nos disponente Domino' (16 June 1135) *Cartularie*, no. 113, pp. 95-96. See also the permission given to the Hospitallers by Pope Anastasius IV (1153-1154) to have brother-priests: Anastasius IV, 'Christiane fidei religio' (21 October 1154) *Cartularie*, no. 226, pp. 173-175. When looking at all the exemptions given to the Hospitallers, it is clear that they had freedom from episcopal jurisdiction, see Jonathan Riley-Smith, *The Knights of St. John in Jerusalem and Cyprus* (London 1967), pp. 375-389. For the exemptions of military orders more generally, see Mariarosaria Salerno, 'The Military Orders and the Local Population in Italy: Connections and Conflicts', in *The Military Orders: Culture and Conflict in Western Europe*, Vol. 6.2, ed. Jochen Schenk and Mike Carr (London, 2017), pp. 172-182, at p. 172.

<sup>849</sup> Innocent II, 'Omne datum optimum' (29 March 1139) *Papsturkunden für Templer und Johanniter*, Vol. 1, ed. Rudolf Hiestand (Göttingen, 1972), no. 3, pp. 204-210. See also Malcolm Barber, *The New Knighthood: A History of the Order of the Temple* (Cambridge, 1995), pp. 58-59; Jochen Schenk, 'Aspects and Problems of the Templars' Religious Presence in Medieval Europe from the Twelfth to the Early Fourteenth Century', *Traditio*, Vol. 71 (2016), pp. 273-302, at pp. 280-281. Also see the critical evaluation of the exemptions afforded to the Templars by the Arabic geographer Yāqūt al-Rūmī (1179-1229): Kevin James Lewis, 'Friend or Foe: Islamic Views of the Military Orders in the Latin East as Drawn from Arabic Sources', in *The Military Orders: Culture and Conflict in the Mediterranean World*, Vol. 6.1, ed. Jochen Schenk and Mike Carr (London, 2017), pp. 20-29, at p. 23.

<sup>850</sup> ... *sub Templariorum habitu* ... Innocent III, 'Etsi verba evangelizantium', p. 226.

the Swordbrothers were incorporated into the Teutonic Order after their destruction in the Battle of Saule in 1236, the brothers in Livonia remained under the jurisdiction of their diocesan bishops.<sup>851</sup>

Concurrently with the founding of the Order of the Swordbrothers, the chronicler Henry of Livonia indicated that in 1201 Bishop Albert moved the see of his bishopric from Üxküll to Riga.<sup>852</sup> No papal confirmation of this decision survives but the legality of the move warrants further discussion. The question of episcopal translations was treated very briefly in Gratian's *Decretum*.<sup>853</sup> The central text in the collection stated that episcopal changes and translations were forbidden 'without the permission and authority of the Holy Roman See'.<sup>854</sup> No further consideration was given to what exactly was considered as episcopal translation. This problem was soon remedied by Rufinus, who in his commentary on Gratian's *Decretum* distinguished between three types of translations: a person moving to a place, a place moving to a person, or a place moving to a place.<sup>855</sup> In all these cases, according to Rufinus, the

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<sup>851</sup> For the Battle of Saule, see *LRC*, 1906-1958. See also the letter 'Grato dilecti filii' of Pope Gregory IX, confirming the union of the Swordbrothers and the Teutonic Order, and stating that 'they and the other brothers of the aforesaid Teutonic Order who will be in Livonia for the time being, as hitherto, remain under the jurisdiction of their diocesan and other prelates ...' – ... *ipsi et ceteri fratres praedicti hospitalis sanctae Mariae Theutonicorum, qui pro tempore fuerint in Livonia, sicut hactenus, sub dioecesanorum et aliorum praelatorum suorum iurisdictione consistant* ... Gregory IX, 'Grato dilecti filii' (12 May 1237) *LUB* 1, cols. 191-193, at col. 192. Virtually the same letter was separately sent to the bishops of Riga, Odenpä, and Oesel-Wiek; to William of Modena; to the remaining Swordbrothers in Livonia; and to the master of the Teutonic Order; see *Auvray* 2, letters nos. 3649-3652. See also Benninghoven, *Der Orden der Schwertbrüder*, pp. 327-347; Richard Spence, 'Pope Gregory IX and the Crusade on the Baltic', *The Catholic Historical Review*, Vol. 69 (1983), pp. 1-19, at pp. 15-16. See also Selart, *Livonia, Rus and the Baltic Crusades*, pp. 138-141, which considers the Battle of Saule in the context of contemporary geopolitical realities. The union of the Swordbrothers and the Teutonic Order after the defeat at Saule was not a surprise, as the latter had taken interest in crusading activities in Eastern Europe already in the 1220s (and in Hungary already in the 1210s), see Forey, *The Military Orders*, pp. 34-36; Fønnesberg-Schmidt, *The Popes and the Baltic Crusades*, pp. 188-190; Curta, *Eastern Europe in the Middle Ages*, pp. 564-566.

<sup>852</sup> *HCL* VI, 4; on the pre-history of Riga, see Kevin C. O'Connor, *The House of Hemp and Butter: A History of Old Riga* (London, 2019), pp. 12-38.

<sup>853</sup> The relevant texts are mostly gathered in the last half of C.7 q.1; see Pennington, *Pope and Bishops*, pp. 85-86.

<sup>854</sup> ... *sine sacrosanctae Romanae sedis auctoritate et licentia*. Gratian, C.7 q.1 c.34, col. 579. The 'auctoritas' is Pope Anserus (235-236).

<sup>855</sup> Rufinus, *Summa* ad C.7 q.1, p. 290.

authority of the pope was paramount.<sup>856</sup> Innocent III further clarified the need for papal permission in episcopal translations:

Therefore, those whom God, not a man, has bound by a spiritual union, the vicar of man does not separate, but the vicar of God; the vicar of God separates a bishop from his church, since we sometimes remove bishops from their sees through resignation, deposition, and translation.<sup>857</sup>

When Bishop Albert moved his see from Üxküll to Riga in 1201, he committed a translation between episcopal places. This took place during the early years of the pontificate of Innocent III, who assumed a firm stance on episcopal translations, although twelfth-century canon lawyers had already been essentially unanimous that papal authority in such cases should be sought. Thus, it is likely that while no extant documents survive, Bishop Albert at least informed the pope of his intentions to move his see and obtained a papal consent. For this, circumstantial proof comes from another translation that occurred in the regions of Livonia in 1226. In that year, William of Modena, who was on his first legatine mission to Livonia at that time, told the bishop of Leal to abandon his title and to assume a new one – that of Dorpat, as it corresponded with his jurisdictional territory more accurately due to the expansion of Christianity in Livonia.<sup>858</sup> In the letter announcing this decision, William

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<sup>856</sup> Rufinus, *Summa ad C.7 q.1*, p. 291.

<sup>857</sup> *Unde quos Deus spirituali coniunctione ligavit, non homo, quia non vicarius hominis, sed Deus, quia Dei vicarius separat, cum episcopus a suis sedibus per eorum cessionem, depositionem et translationem aliquando removemus.* Innocent III, 'Sacra docente Scriptura' (8 August 1198) *Die Register Innocenz'* 1, no. 326, pp. 473-474. See also Pennington, *Pope and Bishops*, pp. 15-17, 89.

<sup>858</sup> The letter of 8 January 1226, *LUB* 6, no. 2716, cols. 3-4. It is dated 8 January 1225 in *LUB*, but it is impossible that William had gone to Livonia (the document was signed in Riga) so fast after his appointment on 31 December 1224, and therefore it is more likely that he actually issued this letter in 1226.

specifically added that in this translation of the episcopal see, he followed the writings of the Pope Honorius III 'from word to word'.<sup>859</sup>

However, jurisdictional changes were not always amicable. By 1207, the Order of the Swordbrothers had ascertained its control over Livonia to an extent which gave them a reason to request a portion of all territories conquered in Livonia. The chronicler Henry of Livonia reported on these events as follows:

The bishop, indeed, like a father, desired to favour these men who day and night set themselves up as a wall for the house of the Lord and to multiply their number. He wished likewise to repay their labours and expenses and, accordingly, conceded to them a third part of Livonia. Since he had received Livonia from the emperor [Albert received Livonia as a fief by Philip of Swabia, the King of Germany] with every right of lordship and law, he relinquished his third part to them with every right of lordship and law. Since he could not give what he did not have, he quite reasonably denied them the lands not yet acquired or converted. When they continued to press him with their entreaties in and out of season, the matter finally reached the ears of the Supreme Pontiff [Innocent III]. He committed the lands not yet acquired to God and assigned them a third part of what had been already acquired, leaving the bishop a quarter of the tithes in their areas, in recognition of their obedience to him.<sup>860</sup>

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<sup>859</sup> ... *de verbo ad verbum* ... The letter of 8 January 1226, LUB 6, no. 2716, col. 4.

<sup>860</sup> *Episcopus autem tales viros, qui se murum pro domo Domini die ac nocte ponerent, more patris fovere et Episcopus autem tales viros, qui se murum pro domo Domini die ac nocte ponerent, more patris fovere et eorum numerum multiplicare desiderans, laboribus et expensis eorum respondere volens terciam partem Lyvonie solius eis concessit. Et quia ipse Lyvoniam cum omni dominio et iure ab imperatore receperat, eis suam teciam partem cum omni iure et dominio reliquit. De terries vero nondum acquisitis vel conversis, sicut nec dare potuit quod non habuit, sic rationabiliter contradixit. Illis autem instantibus precibus oportunis et inoportunis, tandem perlatum est postea ad aures summi pontificis. Qui terras nondum acquisitas Deo committens de acquisitis terciam eis partem asscriptit, relicta episcopo quarta parte decimarum in partibus ipsorum ad obedientie recognitionem. HCL XI, 3, p. 49; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, pp. 69-70 (amended).*

There are no extant documents relating to Livonia from the year 1207, when according to Henry of Livonia the initial division of lands between the Swordbrothers and the Bishop took place. As it was indicated, Bishop Albert divided the lands that he had received 'from the emperor with every right of lordship and law', essentially acting as a secular lord and not in a spiritual capacity.<sup>861</sup> The division of spiritual jurisdiction was settled by Pope Innocent III who acted as the final judge to whom both sides appealed.<sup>862</sup> It appears that Bishop Albert personally went to Rome and received the papal letters that resulted from this arbitration.<sup>863</sup>

According to the judgement, the Order was to receive a third of the conquered lands; however, the Order had to present a suitable person for any vacant churches to Bishop Albert 'who himself will not delay to invest [the presented person] for the care of souls'.<sup>864</sup> At the same time, the pope ruled the following:

But concerning the lands which, with the help of God, the said brothers will acquire hereafter outside Livonia and Letgallia, they will not at all answer to the bishop of Riga ... but they [the Swordbrothers] will be organising matters in a rational manner with the bishops to-be-created there, or they will comply with what the Apostolic See shall decree to be established in this regard.<sup>865</sup>

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<sup>861</sup> *HCL XI*, 3.

<sup>862</sup> See the letters of Pope Innocent III, where he decided the spiritual division of Livonia: Innocent III, 'Cum inter te', pp. 224-226; Innocent III, 'Cum super sorte', pp. 226-227. See also the letter of c.1211 in which Bishop Albert announced the division of the regions in Livonia with 'the debate having been solved by the Lord Pope' (*sopita per dominum Papam controversia*). *LUB* 1, no. 18, col. 24. See also Fannesberg-Schmidt, *The Popes and the Baltic Crusades*, pp. 80-81; Rebane, 'From Fulco to Theoderic', p. 110.

<sup>863</sup> *HCL XV*, 2, p. 88.

<sup>864</sup> ... *quas ipse de cura investire non differet animarum*. Innocent III, 'Cum inter te', p. 225; Innocent III, 'Cum super sorte', p. 227.

<sup>865</sup> *De terries vero, quas a modo extra Liunioniam seu Lettiam, cum auxilio Dei dicti fratres acquirent, Rigensi episcopo minime respondebunt ... sed cum episcopis creandis ibidem quoquo rationabili modo component vel observabunt, quod apostolica sedes super hoc providerit statuendum*. Innocent III, 'Cum inter te', pp. 225-226.



The pope, therefore, explicitly reserved the right to decide in matters that might arise from the creation of bishoprics in lands not yet conquered. Furthermore, according to Henry of Livonia, Bishop Albert had secured additional privileges during his visitation to Rome in 1210:

The bishop of Livonia, therefore, having received from the Supreme Pontiff the authority to create and consecrate bishops in place of an archbishop in the overseas territories which God has subjected to Christianity through the Livonian Church, took Theodoric, the abbot of the Cistercian order in Dünamünde, as his co-worker in his continuous labour, and he consecrated him [Theodoric] as a bishop, promising him a bishopric in Estonia [this happened in 1211].<sup>866</sup>

In the context of Livonia, this is the first time where the creation of a new bishopric and appointing a bishop to it was recorded as having received explicit papal permission. As discussed above, the appointment of Fulco by Archbishop Eskil of Lund as the bishop of the Estonians, and of Meinhard by Archbishop Hartwig II of Bremen as the bishop of Livonia, while recorded in sources, did not leave any traces within papal documentation that would have detailed the authorisation of these deeds. Gratian's *Decretum* had stated that the knowledge and approval of a primate was necessary before a new bishop could be ordained.<sup>867</sup> By gaining a direct approval

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<sup>866</sup> *Episcopus igitur Lyvonensis, accepta a summo pontifice auctoritate in transmarinis terries, quas Deus per Lyvonensem ecclesiam fidei subiceret Christiane, vice archiepiscopi episcopos creandi et consecrandi, Theodericum abbatem Cysterciensis ordinis in Dunemunde sibi cooperatorem continui laboris assumpsit et, in Estonia promittens episcopatum, eum in episcopum consecravit. HCL XV, 4, p. 92; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 113 (amended).*

<sup>867</sup> *Episcopum non ordinandum sine consilio et presentia metropolitani episcopi ...* – 'A bishop is not to be ordained without the advice and presence of the metropolitan bishop ...' Gratian, D.65 c.3, col. 250. The 'auctoritas' is the Council of Antioch (341). See also Benson, *The Bishop-Elect*, pp. 36-38. The election system was further refined at the Fourth Lateran Council in 1215: *Quia propter electionum formas diversas, quas quidam invenire conantur, et multa impedimenta proveniunt et magna pericula imminet ecclesiis viduatibus, statuimus ut cum electio fuerit celebranda, praesentibus omnibus qui debent et volunt et possunt commode interesse assumantur tres de collegio fide digni, qui secreto et singulatim voces cunctorum diligenter exquirant, et in scriptis redacta mox publicent in communi, nullo prorsus*

to consecrate bishops 'in place of an archbishop', Innocent III had effectively given Bishop Albert of Riga a special authority; a deed that foreshadowed the Rigan bishopric soon becoming entirely independent from any archbishoprics.<sup>868</sup>

Indeed, Bishop Albert of Riga was anxious to gain independence from other archbishoprics and he soon succeeded in this endeavour – the letter 'Cum in memoria' of Innocent III in 1214 set out that the Rigan bishopric was not subordinate to any archbishoprics.<sup>869</sup> Nevertheless, Pope Honorius III had to remind the chapter of Bremen several times that the bishopric of Riga was in no way subjected to them.<sup>870</sup>

It seems, however, that Bishop Albert eventually saw the need to appeal for the elevation of his own episcopal see to that of an archbishopric. A papal response to his request survives from 1219, in which Honorius III indicated that he did not see such elevation as feasible at the time.<sup>871</sup> Yet, the bishop of Riga continued to enjoy other special privileges bestowed by the pope. On 23 December 1223, Honorius III gave

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*appellationis obstaculo interiecto, ut is collatione adhibita eligatur, in quem omnes vel maior vel sanior pars capituli consentit; vel saltem eligendi potestas aliquibus viris idoneis committatur, qui vice omnium ecclesiae viduatae provideant de pastore; aliter electio facta non valeat, nisi forte communiter esset ab omnibus quasi per inspirationem divinam absque vitio celebrata.* – 'On account of the various forms of elections which some try to invent, there arise many difficulties and great dangers for the bereaved churches. We therefore decree that at the holding of an election, when all are present who ought to, want to and conveniently can take part, three trustworthy persons shall be chosen from the college who will diligently find out, in confidence and individually, the opinions of everybody. After they have committed the result to writing, they shall together quickly announce it. There shall be no further appeal, so that after a scrutiny that person shall be elected upon whom all or the greater or sounder part of the chapter agree. Or else the power of electing shall be committed to some suitable persons who, acting on behalf of everybody, shall provide the bereaved church with a pastor. Otherwise the election made shall not be valid, unless perchance it was made by all together as if by divine inspiration and without flaw.' Constitution 24 of the Fourth Lateran Council (1215) *Tanner* 1, p. 246. This Constitution was subsequently inserted into the *Compilatio quarta* at 4 *Comp.* 1.3.9 and the *Liber extra* at X 1.6.42.

<sup>868</sup> Although relatively rare, it was not just Livonia that acquired such a privilege. For example, the bishopric of Ferrara, founded in the seventh century, was jurisdictionally subjected directly to the Holy See in 967; John XIII (965-972), 'Sanctitati ac dilectioni' (967) *PL* 135, cols. 956-959.

<sup>869</sup> ... *nulli, tamquam metropolitano, interim respondere cogaris.* – '... to no one, like to a metropolitan, you shall be compelled to answer in the meanwhile.' Innocent III, 'Cum in memoria' (20 February 1214) *LUB* 1, no. 26, col. 34. The editor von Bunge wrongly dated this letter to 1213, see *Potthast*, no. 4899.

<sup>870</sup> Honorius III, 'Grave gerimus et indignum' (26 October 1219) *Horoy* 3, cols. 319-320; Honorius III, 'Grave gerimus et indignum' (21 December 1223) *Horoy* 4, cols. 493-494.

<sup>871</sup> ... *preces tuas ad praesens nequivimus exaudire* ... – '... we are not able to heed to your requests at this time ...', Honorius III, 'Quum personam tuam' (7 November 1219) *Horoy* 3, cols. 332-333, at col. 333.

Bishop Albert authority which once again exceeded the ordinary rights of an archbishop, by granting him the right to decide all questions of disputes 'which ought to be referred to the apostolic see'.<sup>872</sup>

It was already apparent in Pope Gregory VII's 'Dictatus papae' (1075) – although not included in the corpus of 'official' canon law and not widely copied either – that anyone has the right to appeal to the bishop of Rome, stating '[t]hat no one shall dare to condemn anyone appealing to the Apostolic See; [t]hat the major cases of every church should be referred to it [i.e. the Apostolic See]; [t]hat his sentence may be retracted by no one and he (the pope) alone may retract it'.<sup>873</sup> Certainly by the time of Innocent II (1130-1143), the possibility to turn directly to the pope was no longer handled as a special privilege but was instead available to anyone.<sup>874</sup>

Indeed, Gratian argued in the *Decretum* that the court of the pope was the highest court of appeal to which every Christian has the right to take his case if they thought that the lower court had treated them unjustly.<sup>875</sup> Essentially, the central

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<sup>872</sup> *que ad sedem essent apostolicam referende ...* 23 December 1223, *Livonica vornämlich aus dem 13. Jahrhundert im Vaticanischen Archiv*, ed. Hermann Hildebrand (Riga, 1887), no. 11, p. 33.

<sup>873</sup> *XX Quod nullus audeat condemnare apostolicam sedem apellantem. XXI Quod maiores cause cuiuscunque ecclesie ad eam referri debeant. XVIII Quod sententia illius a nullo debeat retractari et ipse omnium solus retractare possit.* Gregory VII, 'Dictatus papae' (1075) *Das Register Gregors VII.*, ed. Erich L. E. Caspar (Berlin, 1955), pp. 202-208, at pp. 206-207; translation from *Select Historical Documents of the Middle Ages*, ed. and trans. Ernest F. Henderson (London, 1903), pp. 366-367. For the *Dictatus papae*, see Jehangir Yezdi Malegam, 'Pro-Papacy Polemic and the Purity of the Church: The Gregorian Reform', in *A Companion to the Medieval Papacy: Growth of an Ideology and Institution*, ed. Keith Sisson and Atria A. Larson (Leiden, 2016), pp. 37-65, at pp. 52-53.

<sup>874</sup> Müller, 'The Omnipresent Pope', pp. 216-217; Atria A. Larson and Keith Sisson, 'Papal Decretals', in *A Companion to the Medieval Papacy: Growth of an Ideology and Institution*, ed. Keith Sisson and Atria A. Larson (Leiden, 2016), pp. 158-173, at p. 164; David d'Avray, 'Stages of Papal Law', *Journal of the British Academy*, Vol. 5 (2017), pp. 37-59, at pp. 42-43. Although it must be noted that it was already during the pontificate of Pope Alexander III when an increasing number of litigants started to appeal to the pope, see Anne J. Duggan, 'Master of the Decretals', pp. 213-214.

<sup>875</sup> *Si quis uestrum pulsatus fuerit in aliqua aduersitate, licenter hanc sanctam et apostolicam sedem appellet ...* – 'If any one of you has been struck down by any adversity, let him freely appeal to this holy and Apostolic See ...' Gratian, C.2 q.6 c.4, col. 467. The 'auctoritas' is Pope Sixtus I (c.115-c.125). See also the previous canon in which the hierarchy of appeals was given: *Omnis obpressus libere sacerdotum (si uoluerit) appellet iudicium ... Si autem difficiles causae aut maiora negotia orta fuerint, ad maiorem sedem referantur.* – 'Everyone who is oppressed may freely appeal to the judgement of the priests (if he wishes) ... But if difficult cases or greater matters have arisen, they are referred to a greater seat.' Gratian, C.2 q.6 c.4, col. 467.

claim was that the pope is the supreme judge, but not the only judge. The understanding that, at least in theory, every Christian had the right to appeal to Rome, made the special authority given to Bishop Albert more ambiguous. The wording suggests that Bishop Albert was supposed to be the *final* court of appeal but this would have been technically contrary to canon law.<sup>876</sup> Additionally, it is unlikely that the pope would have given Bishop Albert such absolute authority, even if the wording seemed to imply that. Possibly litigants in Livonia received the opportunity to seek a judgement locally and also retained the right to appeal to Rome. In essence, Bishop Albert had temporarily received some of the authority that the pope had, but it was not exclusive in its nature. That Bishop Albert could not solve all the issues even with such authority is evident from the fact that a year after obtaining these privileges, a papal legate was sent to Livonia for the very first time.

Bishop Albert, while arguably one of the most important people in medieval Livonia, never lived to see his bishopric raised into the status of an archbishopric.<sup>877</sup> He died in 1229 and the election of the next bishop of Riga proved to be problematic.<sup>878</sup> Pope Gregory IX commissioned his legate Otto of St. Nicholas on 4 April 1230 to settle the dispute who in turn delegated the case to Baldwin of Alna.<sup>879</sup>

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<sup>876</sup> In addition to the statements found in Gratian's *Decretum*, Constitution 35 of the Fourth Lateran Council in 1215 decreed that all major cases should be referred to the apostolic see ... *salvis constitutionibus de maioribus causis ad sedem apostolicam perferendis*. – '... saving however the canons about major cases being referred to the apostolic see.' Tanner 1, p. 251.

<sup>877</sup> Many scholars equate the success of the Baltic Crusade with Bishop Albert's charismatic activity. Thus, for example, Christopher Tyerman has written that '[t]he whole project [of Christianising Livonia] relied on Bishop Albert's almost annual crusades providing physical force and ideological respectability'; Tyerman, *The World of the Crusades*, p. 320. Similarly, Marek Tamm has explained that 'Albert's extensive social network constituted the main precondition for the success of the Livonian mission and the emergence of the new colony. Bishop Albert is a brilliant example of an energetic and flexible actor, a founder of new institutions, as well as, of a very efficient builder of networks.' See also Tamm, 'Mission and Mobility', p. 18.

<sup>878</sup> Fønnesberg-Schmidt, *The Popes and the Baltic Crusades*, pp. 187-188.

<sup>879</sup> Gregory IX, 'Cum felicis recordationis' (4 April 1230) *Auvray* 1, no. 437, cols. 272-274. Baldwin referred to himself as a penitentiary priest (*poenitentiarius*) and nuncius (*nuntius*) in the letters of 28 December 1229, *LUB* 1, no. 103, cols. 134-136, at col. 134, and of 17 January 1230, *LUB* 1, no. 104, cols. 136-137, at col. 136.

Namely, the cathedral chapter of Riga elected as its new bishop a certain Nicholas (d.1253), whereas Archbishop Gerhard II of Bremen (1219-1258) appointed Albert Suerbeer (d.1273) as the new bishop of Riga, as Bremen likely perceived the bishopric of Riga to be under its spiritual control.<sup>880</sup>

In the letter commissioning Otto of St. Nicholas to undertake this investigation, Gregory IX instructed his legate to first try to get both candidates to resign voluntarily; if the legate did not succeed in doing this, he was to examine the choice of the archbishop of Bremen and, if he found it lawful (*'iustam'*), confirm it, but at the same time forbid the archbishop from assuming this right in future; but if his choice was not legitimate (*'legitima'*), he were to examine the preference of the chapter, and confirm it if he found that it was canonical, or if not, give the Church of Riga a suitable bishop himself.<sup>881</sup>

Peter Otto von Goetze, the author of the most comprehensive biography of Albert Suerbeer, has claimed that the Rigan chapter appealed to Rome regarding the double-election, but provides no evidence for this.<sup>882</sup> It is equally likely that the investigation was ordered by Gregory IX not because of litigation but because news of such a double election would have reached Rome either way. The Church of Riga was in a unique situation because according to Gratian's *Decretum*, a similar double-election elsewhere would have prompted the issue being referred to the metropolitan who had jurisdiction over the bishopric and who would have determined which of

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<sup>880</sup> Gregory IX, 'Cum felicis recordationis', col. 273. For the double-election, see Fønnesberg-Schmidt, *The Popes and the Baltic Crusades*, pp. 187-188. For Albert Suerbeer's life see Peter Otto von Goetze, *Albert Suerbeer: Erzbischof von Preussen, Livland und Ehstland* (St. Petersburg, 1854); Patrick Conlan, 'Albrecht Suerbeer, Archbishop of Armagh: "Albrecht the German"', *Seanchas Ardmhacha: Journal of the Armagh Diocesan Historical Society*, Vol. 20 (2004), pp. 19-23.

<sup>881</sup> Gregory IX, 'Cum felicis recordationis', cols. 273-274.

<sup>882</sup> See the footnote no. 914 at p. 285.

the bishop-elects was the rightful successor to the episcopal see.<sup>883</sup> As Livonia was technically not under the jurisdiction of a metropolitan, the only authority who could resolve the case was the Apostolic See.<sup>884</sup> More precisely, Constitution 26 of the Fourth Lateran Council of 1215 had decreed the following:

Those who are immediately subject to the Roman pontiff [e.g. the bishop of Riga] shall, to obtain confirmation of their office, present themselves personally to him, if this can conveniently be done, or send suitable persons through whom a careful inquiry can be made about the process of the election and the persons elected. In this way, on the strength of the pontiff's informed judgment, they may finally enter into the fullness of their office, when there is no impediment in canon law.<sup>885</sup>

The decree was subsequently inserted into the *Compilatio quarta* and the *Liber extra*.<sup>886</sup> It is thus highly likely that when Albert Suerbeer and Nicholas were both

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<sup>883</sup> *Si forte ... uota eligentium in duas se diuiserint partes, is metropolitani iudicio alteri preferatur, qui maioribus iuuatur studiis et meritis ...* – ‘If by chance ... the votes of the electors should be split between two parties, then the one is to be preferred who, by the judgement of the metropolitan, is more highly educated and of greater merit ...’ Gratian, D. 63 c.36, col. 247. The ‘*auctoritas*’ is Leo I.

<sup>884</sup> Similarly, double-elections to vacant archbishoprics also required an intervention by the papacy. For example, the double-election of the archbishop of Armagh in 1201 prompted an investigation by Innocent III; Benson, *The Bishop-Elect*, pp. 189-193. Double-elections of popes have understandably gained much more attention, as in their case there was no possibility to appeal to a higher authority, and were thus not easily resolved. Although rules for an orderly papal election were specified as early as in the fifth century, double-elections to the dignity of the bishop of Rome continued to take place and further attempts were made to define how popes should be elected. See for example Clemens Gantner and Stefan Schima, ‘The Papacy’, in *Great Christian Jurists and Legal Collections in the First Millennium*, ed. Philip L. Reynolds (Cambridge, 2019), pp. 128-154, at p. 142; Mary Stroll, *Popes and Antipopes: The Politics of Eleventh Century Church Reform* (Leiden, 2012), pp. 95-107; Benson, *The Bishop-Elect*, pp. 150-156.

<sup>885</sup> *Caeterum qui ad Romanum pertinent immediate pontificem, ad percipiendam sui confirmationem officii, eius se conspectui, si commode potest fieri, personaliter repraesentent vel personas transmittant idoneas, per quas diligens inquisitio super electionis processu et electis possit haberi, ut sic demum per ipsius circumspectionem consilii, sui plenitudinem assequantur officii, cum eis nihil obstiterit de canonicis institutis ...* Constitution 26 of the Fourth Lateran Council (1215) Tanner 1, p. 247. To be sure, the same Constitution also noted that ‘if they [i.e. the bishops] are elected peaceably’ (*si electi fuerint in concordia*), they receive the customary consecration by dispensation; Tanner 1, pp. 247-248. However, as the election of the bishop of Riga had caused a dispute, this dispensation did not apply to it.

<sup>886</sup> 4 *Comp.* 1.3.11=X 1.6.44.

elected, they went to Rome themselves or sent their representatives, as per canon law, resulting in the subsequent investigation.

The bishopric of Riga had been made exempt from any archiepiscopal jurisdiction, as we have seen, and therefore Gregory IX confirmed Nicholas as its new bishop in 1231.<sup>887</sup> The papal confirmation letter warrants further discussion as it highlights some jurisdictional questions regarding Livonia. It stated that the pope forbade the archbishop of Bremen to usurp the process of the election and consecration of the Livonian bishops in perpetuity, ‘granting to the chapter of Riga the authority to freely elect [their new bishop], just as other cathedrals of the Church have [the authority to do so]’.<sup>888</sup> Episcopal elections were already considered in Gratian’s *Decretum* which had stated that ‘the election and consecration ... make the bishop’.<sup>889</sup> This was further scrutinised and developed in Constitution 24 of the Fourth Lateran Council in 1215 which decreed that ‘there shall be no further appeal, so that after a scrutiny that person shall be elected upon whom all or the greater or sounder part of the chapter agree’.<sup>890</sup> In conjunction with the papal letter ‘Cum in memoria’ from 1214 in which Innocent III declared the bishopric of Livonia independent from any metropolitan see, the nature of the letter issued by Gregory IX, and the admonition of the archbishop of Bremen, fits well into contemporary understanding of canonical election of bishops. Therefore, the papal confirmation of Nicholas instead of Albert Suerbeer should not come as a surprise. Nevertheless, the

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<sup>887</sup> Gregory IX, ‘Cum ecclesia vestra’ (8 April 1231) *LUB* 1, no. 108, cols. 143-144.

<sup>888</sup> ... *concessa Rigensi capitulo libere eligendi licentia, sicut habent caeterae ecclesiae cathedrales ...* Gregory IX, ‘Cum ecclesia vestra’, col. 143.

<sup>889</sup> ... *electio et consecratio ... faciunt episcopum*. Gratian, D.40 c.8, col. 147. The ‘auctoritas’ is St. Isidore of Seville.

<sup>890</sup> ... *Nulla prorsus appellationis obstaculo interiecto, ut is collatione adhibita eligatur, in quem omnes vel maior vel sanior pars capituli consentit ...* Constitution 24 of the Fourth Lateran Council (1215) *Tanner* 1, p. 246.

complicated legal process of such a double-election was also reported on in the *Annales Stadenses*:

But the Rigan canons chose another, namely Nicholas. For a long time there was a litigation on both sides in the presence of the judges appointed by the Apostolic See. At last, he [the pope] silenced the Bremanians [i.e. the chapter of Bremen], according to his own will, as it is said.<sup>891</sup>

In 1245, Christian of Oliva (c.1180-1245), the bishop of Prussia died.<sup>892</sup> In January 1246, Innocent IV created a new archbishopric under whose jurisdiction Prussia, Livonia and Estonia (except the bishopric of Reval) would belong.<sup>893</sup> With the same letter, Pope Innocent IV appointed Albert Suerbeer as the archbishop of that newly founded metropolitan see.<sup>894</sup> Due to conflicts with the Teutonic Order, Albert Suerbeer was unable to move to Prussia, and in 1249 promised to the Order that he would not establish an archiepiscopal see in Prussia.<sup>895</sup> In 1251, the pope authorised 'the correction and reformation of regulations', which included the proposal to move the archiepiscopal see to Riga.<sup>896</sup> The commission to finalise these changes formally

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<sup>891</sup> *Sed Rigenses canonici alium, scilicet Nicolaum, elegerunt. Dique fuit altrinsecus coram iudicibus litigatum impetratis a sede apostolica. Tandem Bremensibus silentium inposuit pro sua, ut dicitur, voluntate.* Albert of Stade, 'Annales Stadenses', p. 360.

<sup>892</sup> It is uncertain when exactly Bishop Christian died, see Kurt Forstreuter, 'Die Gründung des Erzbistums Preussen 1245/1246', *Jahrbuch der Albertus-Universität zu Königsberg*, Vol. 10 (1960), pp. 9-31, footnote no. 5, pp. 11-12.

<sup>893</sup> Innocent IV, 'Illius patrisfamilias provocati' (10 January 1246) *LUB* 1, no. 188, cols. 246-247. The letter is dated 9 January in *LUB* but corrected to 10 January in *Auvray* 1, no. 1726, p. 259.

<sup>894</sup> Innocent IV, 'Illius patrisfamilias provocati', cols. 246-247.

<sup>895</sup> *Adiicimus etiam, quod sedem nusquam constituamus in Prucia, nisi hoc de bona fratrum processerit voluntate.* – 'We also add that we shall never set up a seat in Prussia unless this will proceed with the will of the brothers [i.e. the Teutonic Order]'. The letter of 10 January 1249, *LUB* 1, no. 202, col. 261. See also Forstreuter, 'Die Gründung des Erzbistums Preussen', pp. 12-15.

<sup>896</sup> *Vestra noverit universitas evidenter, quod, cum dominus papa, diligenter attendens, quod quaedam ordinationes, quae Rigensem, Semigalliensem et Curoniensem tangebant ecclesias, reformationem et correctionem in quibusdam non immerito requirebant, correctionem et reformationem ordinationum huiusmodi nobis viva voce duxerit committendam.* – 'Let all of you clearly know that, when the Lord Pope, paying careful attention to the fact that certain ordinances affecting the churches of Riga, Semigallia, and Curonia, in some cases not undeservedly required reformation and correction, he led us to commission the correction and reformation of such ordinances by *viva voce* [i.e. by an



fell on three cardinals: Peter of Collemedio, the cardinal-bishop of Albano; John of Toledo, the titular cardinal-priest of St. Lorenzo in Lucina; and William of Modena, now the cardinal-bishop of Sabina.<sup>897</sup> The compromise they reached, albeit evidently with papal knowledge and authorisation according to canon law, was as follows:

And lest the metropolitan see, which is newly created in those parts by the same Lord Pope, should lack due foundation, we decide to order, from the title of his dignity, that the archbishop who has been assumed to that metropolis [i.e. Albert Suerbeer], should establish an archbishopric seat in the aforesaid city of Riga, which seems to be nobler for many reasons and more capable than the other churches in those parts, according to what is indulged to him by the apostolic letters. But if the same bishop of Riga [i.e. Bishop Nicholas of Riga] wishes to give up the episcopate of Riga or to transfer himself to another episcopate, we will grant him this by the authority of those present, and thus the aforementioned archbishop may freely acquire the named church of Riga for the metropolis. Otherwise, the said [bishop of] Riga, as long as he lives, may remain peacefully in his present state, both in the city and in the diocese of Riga, with the same archbishop exercising metropolitan jurisdiction both in the city of Riga and throughout his province.<sup>898</sup>

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examination conducted orally rather than in writing].’ The letter of 3 March 1251, *LUB* 1, no. 219, col. 277.

<sup>897</sup> The letter of 3 March 1251, *LUB* 1, no. 219, col. 277. This was one of the last undertakings of William of Modena, as he died soon after on 31 March 1251.

<sup>898</sup> *Et ne sedes metropolitana, quae ab eodem domino papa de novo in illis partibus est creata, debito careat fundamento, ex suae titulo dignitatis decernimus ordinandum, ut archiepiscopus, qui ad eam metropolin est assumptus, in civitate Rigensi praedicta, quae nobilior ex multis causis et habilior aliis ecclesiis illarum partium esse videtur, sedem archiepiscopalem constituat, secundum quod ei per litteras apostolicas est indultum. Si autem idem Rigensis episcopus cedere episcopatu Rigensi vel ad alium episcopatum se transferre voluerit, id ei auctoritate praesentium indulgemus, et sic memoratus archiepiscopus nominatam Rigensem ecclesiam pro metropoli libere valeat adipisci. Alioquin dictus Rigensis, quoad vixerit, pacifice in statu praesenti, tam in civitate, quam dioecesi Rigensi permaneat, eodem archiepiscopo tam in civitate Rigensi, quam per totam suam provinciam iurisdictionem metropolitanam exercente.* The letter of 3 March 1251, *LUB* 1, no. 219, cols. 278-279.

The pope confirmed the agreement almost immediately, illustrating the point that although he knew of the proceedings already, and had clearly given his cardinals the authority to decide on matters and even granted them the permission to transfer a bishop, the final confirmation by the pope was still needed to finalise the matter.<sup>899</sup> In any case, Bishop Nicholas refused to give up his bishopric and exercised his right to remain in his diocese, according to the guarantees given to him in the letter. Once he died in 1253, Albert Suerbeer was finally able to start the motion to move his archiepiscopal see to Riga.<sup>900</sup>

In 1255, Pope Alexander IV (1254-1261) issued at least two letters that confirmed changes to the nature of Albert Suerbeer's bishopric: on 20 January, the pope affirmed that the cathedral at Riga would be the new metropolitan see for the archbishop of Riga.<sup>901</sup> Such a confirmation of a translation of the bishopric see was expected, since as we have seen, the notion that the right to move bishops and/or bishoprics rested solely with the pope, had become commonplace among canon lawyers by the mid-thirteenth century.<sup>902</sup> Indeed, there was even a mnemonic verse commonly used by thirteenth-century canon lawyers, such as Raymond of Penyafort and later Hostiensis, according to which among other reserved powers, the pope had the sole right to transfer and alter bishoprics.<sup>903</sup>

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<sup>899</sup> Innocent IV, 'Quae de speciali' (14 March 1251) *LUB* 1, no. 222, cols. 281-282.

<sup>900</sup> In June 1253, Albert Suerbeer referred to himself still as the 'minister of the Church of Lübeck' (*minister ecclesiae Lubicensis*), indicating that he had not yet gone to Riga; the letter of June 1253, *LUB* 1, no. 251, cols. 330-332, at cols. 330-331.

<sup>901</sup> Alexander III, 'Primatum cathedras et' (20 January 1255), *LUB* 1, no. 279, cols. 361-362.

<sup>902</sup> For example: 3 *Comp.* 1.19.1=X 1.30.3; 3 *Comp.* 1.19.2=X 1.30.4. See also the discussion above at pp. 269-271.

<sup>903</sup> *Restituit Papa, solus deponit, et ipse, / Diuidit ac unit, eximit, atque probat. / Articulos soluit, synodum facit generalem, / Transfert, et mutat, appellat nullus ab ipso. ... Si sit catholicus Papa, non iudicat ullus.* - 'The pope restores, he alone deposes, and he himself / Divides and joins, excepts and approves. / He loosens restrictions, makes a general synod, / Transfers, alters, no one may appeal from him. ... / If the pope is Catholic, no one may judge him.' Hostiensis, *Summa aurea ad X* 1.32 §3, col. 280; translation from Robert C. Figueira, 'Papal Reserved Powers and the Limitations on Legatine Authority', in *Popes, Teachers, and Canon Law in the Middle Ages*, ed. James Ross Sweeney and Stanley

In the other letter, dated 31 March 1255, Pope Alexander IV confirmed the rights and privileges of the archbishop of Riga.<sup>904</sup> This letter had a very formulaic structure that shared great similarities with other papal letters that were used in order to confirm new archbishoprics; for instance, it greatly overlapped with a letter from Celestine III in which the pope confirmed the rights and properties of the newly named archbishop of Nicosia.<sup>905</sup> In 1267, Pope Clement IV (1265-1268) confirmed the contents of the letter from 31 March 1255 – the letter was brief, noting the verbatim (*de verbo ad verbum*) confirmation of privileges, and ending with a statement that ‘moreover, by this [letter] we do not want a new law to be acquired by anyone, but merely the old one to be preserved’.<sup>906</sup>

In 1267, Albert Suerbeer allied himself with Gunzelin (1228-1274), a son of Count Gunzelin III of Schwerin, who had come to Livonia as a crusader.<sup>907</sup> As we have seen, the Dominicans in Livonia and in its surrounding areas had repeatedly received requests from popes to preach crusades on behalf of the Teutonic Order against the pagans in Livonia, Prussia, and later also Curonia.<sup>908</sup> However, Gunzelin did not come as a recruit or even an ally of the Livonian Order, which testifies to the diversity of people who were taking the Cross to go to Livonia. ‘[W]ith the counsel and consensus of our chapter’, he was elected as the patron of the archbishopric of Riga.<sup>909</sup> By this

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A. Chodorow (London, 1989), pp. 191-211, at p. 199. For the poem more generally, see also: Gallagher, *Canon Law and the Christian Community*, p. 110; Figueira, ‘Papal Reserved Powers’, pp. 198-201.

<sup>904</sup> Alexander III, ‘Cum universis ecclesie’.

<sup>905</sup> Celestine III, ‘In eminenti Apostolice’ (13 December 1196) *PL* 206, cols. 1189-1192; Kenneth Meyer Setton, *The Papacy and the Levant, 1204-1571*, Vol. 1 (Philadelphia, 1991), p. 756.

<sup>906</sup> *Nolumus autem per hoc ius novum acquiri alicui, sed antiquum tantummodo conservari.* Clement IV, ‘Tenorem cuiusdam privilegii’ (14 March 1267) *LUB* 1, no. 402, cols. 505-506, at col. 506.

<sup>907</sup> William Urban, *The Teutonic Knights* (Barnsley, 2011), pp. 102-103.

<sup>908</sup> See the discussion above at pp. 120-123.

<sup>909</sup> ... *de consilio nostri capituli et consensus* ... The letter of 21 December 1267, *LUB* 1, no. 406, cols. 510-511, at col. 510. This agreement has been seen as exceptional; for example, according to Paul Johansen, ‘[t]he powers conferred on the count are truly unprecedented’ (*Es sind wahrhaft unerhörte Vollmachten, die dem Grafen übertragen warden*); Paul Johansen, ‘Eine Riga-Wisby-Urkunde des 13. Jahrhunderts’, *Zeitschrift des Vereins für Lübeckische Geschichte und Altertumskunde*, Vol. 38 (1958),

time, the canon lawyer Hostiensis had tried to clarify the difference between counsel and consensus.<sup>910</sup> Thus, Hostiensis established that while consent of the chapter might not be always necessary, the bishop should nevertheless listen to the advice he was given by the same chapter.<sup>911</sup> With this in mind, Albert Suerbeer made sure that when he established Gunzelin as the patron of his archbishopric, the full concordance of the chapter in this decision was emphasised; the implication was that the decision was not something that Albert Suerbeer personally wanted, but rather a choice made collectively by the Church of Riga.

However, selecting a patron for the archbishopric soon started to pose problems. Sometime after the agreement between the Church of Riga and Gunzelin, the latter was expelled from Livonia by the Livonian Order.<sup>912</sup> Additionally,

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pp. 93-108, at p. 103. While further investigation of the letter remains out of the scope of this thesis, suffice to say that although Gunzelin obtained immense authority, he did not become the owner of any of the possessions given under his protection. He was to act on behalf of the Church of Riga, and only while Albert Suerbeer remained an archbishop. Thus, for example, he was named as *'syndicus'* and *'actor'*, both of which are judicial terms. According to Tancred, for example, *'syndicus'* had the authority to deal with future affairs, whereas *'actor'* was only used for current disputes; *Tancred*, 7.1.1, pp. 123-124. For the legal context of this terminology, see also: Christian Vogel, 'Die Prokuratoren der Templer: Diplomatische und rechtliche Aspekte ihrer Einsetzung und ihrer Aufgaben', in *The Templars and Their Sources*, ed. Karl Borchardt, et al (London, 2017), pp. 133-155, at pp. 135-136.

<sup>910</sup> In the chapter 'On things that are done by the bishop without the consensus of the chapter' (*De his quae fiunt ab episcopo sine consensu capitula*), Hostiensis divided the discussion into three distinct sections: *In quibus requiratur consensus; In quibus consilium; Et in quibus consensus necessarius non est.* – '[Things] in which consensus is required; in which counsel [is required]; and in which consensus is not necessary.' Hostiensis, *Summa aurea ad X 3.10*, col. 799.

<sup>911</sup> *Si opponas quaerendo, et dicas, ad quid ergo petet aliquis consilium: nam ex quo ipsum sequi non tenetur, hoc videtur frustratorium et derisorium? Respond[eo]: licet non teneatur sequi, tamen posset quod consilium capituli traheret praelatum ad se.* – If you oppose by questioning, and say, why then does anyone ask for advice when he is not bound to follow what he learnt of the things, as this seems frustrating and derisive? I answer that, although he is not bound to follow, yet he might consider the advice of the chapter presented to him.' Hostiensis, *Summa aurea ad X 3.10 §2*, col. 801. See also Gallagher, *Canon Law and the Christian Community*, pp. 146-147.

<sup>912</sup> A letter survives that was sent to Visby by Otto, the master of the Livonian Order, together with the citizens and merchants of Riga: ... *quod quidam invidentes lupi rapaces sperantes de copiosa mercatura Livonorum transeunte suam quamque inopiam relevare et ob hoc, se sub spem unanimis illius tamquam intentioni in mansionem Livonorum sociarunt, quorum unus est comes Tunsbergensis cuius familia ibidem derelicta adeo terram et neophytos grandi oppressit malo, quare idem neophyti eorum crudelitate coguntur de necessitate in pristinam relabi perfidiam ... Qvorum miserti et nostra libertate solliciti unanimiter decernimus praedictum comitem de Livonia propulsare.* – '[T]hat certain envious, ravenous wolves ... have joined the branch of Livonia, one of whom is Count Gunzelin of Schwerin, whose household having been left there, oppressed the land and the neophytes with such great evil that the same neophytes, because of their cruelty, are compelled by necessity to return into their former

Archbishop Albert Suerbeer was allegedly captured and imprisoned by the Livonian Order – a serious transgression which was utilised in an appeal against the Order decades later, in 1312.<sup>913</sup> It appears that Albert Suerbeer did not bring any charges against the Order; it has been assumed this was due to the agreement reached between the Order and the archbishop according to which the latter probably promised not to seek any further justice in the matter in return for freedom.<sup>914</sup>

However, there is some doubt that these events occurred as described above. First, Albert Suerbeer had an extensive career behind him as an (arch)bishop not only in Livonia but also elsewhere.<sup>915</sup> He must have had at least some influential connections, not least in the papal curia. Therefore, it is unlikely that he would have just submitted to the demands of the Livonian Order without a trace of evidence that he sought justice for himself. Second, even if an agreement between Albert Suerbeer and the Livonian Order was conducted, and Albert promised not to complain to Rome, it could not have been binding according to canon law. Gratian's *Decretum* emphasised that even if there is a criminal case concerning a cleric – the Livonian Order certainly must have thought the archbishop had committed offenses of some sort to imprison him – he could not be punished before he is deprived of his office,

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treachery [*i.e.* paganism] ... Out of pity on them and anxious about our freedom, we unanimously decided to expel the aforesaid count from Livonia.' The letter of 4 June 1268; Johansen, 'Eine Riga-Wisby-Urkunde', pp. 97-98.

<sup>913</sup> To my knowledge, there are no contemporary documents that record the imprisonment at the time. It was the inquisition undertaken by Francis Moliano in 1312 which produced a few testimonies affirming the imprisonment, see for example: August Seraphim, *Das Zeugenverhör des Franciscus de Moliano* (1312) (Königsberg, 1913), pp. 45, 62. Further research into the investigation carried out by Moliano would be able to shed more light on the trustworthiness of the witness-testimonies, and on the claims about the imprisonment of Albert Suerbeer.

<sup>914</sup> Such a course of events was considered plausible by von Goetze, the author of Albert Suerbeer's biography; von Goetze, *Albert Suerbeer*, pp. 107-108. The imprisonment has been reiterated uncontested by later scholars, such as Johansen, 'Eine Riga-Wisby-Urkunde', p. 104; Anti Selart, *Livonia, Rus' and the Baltic Crusades*, p. 239; O'Connor, *A History of Old Riga*, p. 105; Mihkel Mäesalu, 'Missed Patronage? Princely Support for Church Institutions and Military Religious Orders in Livonia', in *Baltic Crusades and Societal Innovation in Medieval Livonia, 1200-1350*, ed. Anti Selart (Leiden, 2022), pp. 130-163, at pp. 154-155.

<sup>915</sup> Conlan, 'Albrecht Suerbeer, Archbishop of Armagh', pp. 21-22.

and this is something only a pope could do.<sup>916</sup> Furthermore, the Second Lateran Council (1139) had already decreed that violence against clerics resulted in automatic excommunication that could be absolved only by the pope.<sup>917</sup> Even if Albert Suerbeer had personally forgiven the Livonian Order, the fact that he was an archbishop who was attacked and imprisoned, was a transgression that he did not have the authority to forgive in canonical capacity.

Possibly when the imprisonment of Albert is mentioned in 1312 – more than forty years after the events – it was conflated with the later imprisonment of John of Schwerin, the son of Gunzelin and another archbishop of Riga. The imprisonment of Archbishop John was well documented, as complaints about it reached Rome almost immediately, and the pope threatened not only the Livonian Order but also the Grandmaster of the Teutonic Order with excommunication – an appropriate canonical punishment for inflicting violence on clerics – if they failed to appear in Rome.<sup>918</sup>

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<sup>916</sup> Gratian, C.II. q.1 c.45, col. 640. The *'auctoritas'* is the *Epitome Juliani* (556). This canon was particularly interesting, as it implied that even clerical immunity had its limits: a cleric committing a crime before being deposed – although immune at the time of the offence – was potentially liable for secular punishment; see Richard M. Fraher, 'The Becket Dispute and Two Decretist Traditions: The Bolognese Masters Revisited and Some New Anglo-Norman Texts', *Journal of Medieval History*, Vol. 4 (1978), pp. 347-368, at pp. 350-351. In practice, secular courts sometimes exercised their jurisdiction over clergy even when not permitted to do so. For instance, in England, canon law prescriptions forbidding secular jurisdiction over clergy had little effect, see Jonathan Rose, 'Clergy and the Abuse of Legal Procedure in Medieval England', in *Studies in Canon Law and Common Law in Honor of R. H. Helmholz*, ed. Troy L. Harris (Berkeley, 2015), pp. 83-113, at p. 86.

<sup>917</sup> *Item placuit ut si quis, suadente diabolo, huius sacrilegii reatum incurrerit, quod in clericum vel monachum violentas manus iniecerit, anathematis vinculo subiaceat et nullus episcoporum illum praesumat absolvere, nisi mortis urgente periculo, donec apostolico conspectui praesentetur et eius mandatum suscipiat.* – 'In the same way we have decided to legislate that if anyone, at the instigation of the devil, incurs the guilt of the following sacrilege, that is, to lay violent hands on a cleric or a monk, he is to be subject to the bond of anathema; and let no bishop presume to absolve such a person unless he is in immediate danger of death, until he has been presented before the Apostolic See and submits to its decision.' Canon 15 of the Second Lateran Council (1139) *Tanner* 1, p. 200. The pronouncement, relying on the same canon, can be found in Gratian's *Decretum* as well, C.17 q.4 c.29, cols. 822-823. The issue of clerical exemption from secular judgement is discussed at length by Anne J. Duggan, 'Clerical Exemption in Canon Law from Gratian to the Decretals', *Medieval Worlds*, Vol. 7 (2017), pp. 78-100.

<sup>918</sup> The pope sent two letters concerning the matter. One was addressed to the grandmaster of the Teutonic Order: Boniface VIII, 'Fidedignis relatibus intellecto' (7 January 1299) *LUB* 1, no. 577, cols.

In 1268, Archbishop Albert Suerbeer and the master of the Livonian Order, Otto von Lauterberg (d.1270), signed an agreement according to which they agreed not to elect ‘a prince or lord’ (*principem vel dominum*) as the patron to the detriment of the Church, the Livonian Order, the magistrate, and the city, ‘except by the law of election’ (*salvo iure electionis*) according to which a person was selected canonically (*canonice*).<sup>919</sup> It was not explained what was meant by ‘canonically’ here but it can be presumed that the Livonian Order did not consider the consent of the chapter to be enough, but rather the consent of every party who could be affected by the decision – the Church, the Order, the magistrate, and the city – to be necessary.

The idea that everyone’s consent was necessary was not new, and derived from the Roman law maxim: ‘Whatever touches all in the same way, should be approved by all’.<sup>920</sup> It is therefore probable that, as the Livonian Order saw it, the question of having a patron of the archbishopric of Riga was not solely an ecclesiastical but also a secular matter; equally, the term ‘canonically’, in this context does not refer strictly to canon law but rather to the general legality surrounding such appointments affecting not only the Church but also other institutions. It is also possible that the Livonian Order wished to maintain some relative independence compared to its predecessors, the Swordbrothers, who had not been successful in attaining the level of autonomy that the Livonian Order came to possess.<sup>921</sup>

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724-728. The second letter was addressed to the archbishop of Riga and to the bishop of Oesel: Boniface VIII, ‘De statu et’ (7 January 1299) *LUB* 1, no. 578, cols. 728-729.

<sup>919</sup> The letter of December 1268, *LUB* 1, no. 412, col. 516.

<sup>920</sup> ... *quod omnes similiter tangit, ab omnibus comprobetur*. *Codex Iustinianus, Corpus iuris civilis*, Vol. 2, ed. Paul Krueger (Berlin, 1888), C.5.59.5, p. 231; see also Chodorow, *Christian Political Theory*, pp. 206-210.

<sup>921</sup> See the discussion above at p. 268.

Albert Suerbeer died in 1273 and a certain John of Lune (John I, 1273-1284) was elected as the next archbishop of Riga.<sup>922</sup> His election must have caused some confusion, as in May 1273, Pope Gregory X (1271-1276) wrote to the abbot of the Cistercian monastery at Dünamünde in Livonia and asked him to inquire into the newly elected archbishop.<sup>923</sup> Gregory X explained that ‘the clergy and the chapter of the same Church [of Riga] had elected John as their archbishop by way of compromise’.<sup>924</sup> However, there was some doubt regarding the erudition (*litteratura*) of John I.<sup>925</sup> Indeed, already Canon 3 of the Third Lateran Council (1179) had decreed that ‘no one should be chosen bishop unless he has already reached the age of thirty, been born in lawful wedlock and also is shown to be worthy by his life and learning’.<sup>926</sup> The same canon was subsequently inserted into the *Compilatio prima* and the *Liber extra*, where its editor Raymond of Penyafort had prefaced the canon with a statement that ‘[t]he election to the episcopate must be made on the basis of worthy knowledge, character, and age, and that he must be thirty-four years old, and be born of a legitimate marriage’.<sup>927</sup>

In the case of John I, his election to the archbishopric see of Riga was seen as valid, but the character of the elected himself was put in doubt. It is dubious that the cathedral chapter of the Church of Riga deliberately picked an unqualified candidate;

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<sup>922</sup> No documents from this election survive but the following papal letters made it clear that there had been an election.

<sup>923</sup> Gregory X, ‘Sicut accepimus Rigensi’ (21 May 1273), *Bullarium Franciscanum Romanorum Pontificum*, Vol. 3, ed. Giovanni G. Sbaraglia (Rome, 1765), pp. 201-203.

<sup>924</sup> ... *clerus et capitulum ipsius ecclesiae ... Johannem ...per viam compromissi elegerunt in suum Archiepiscopum ...* Gregory X, ‘Sicut accepimus Rigensi’ (21 May 1273), *Bullarium*, pp. 201-202.

<sup>925</sup> *Verum, quia de ipsius Johannis quoad litteraturam praecipue sufficientia dubitatur ...* – ‘But, since there is doubt about the sufficiency of John himself, mainly with respect to erudition ...’ Gregory X, ‘Sicut accepimus Rigensi’ (21 May 1273), *Bullarium*, p. 202.

<sup>926</sup> ... *nullus in episcopum eligatur, nisi qui iam trigesimum aetatis annum egerit et de legitimo sit matrimonio natus, qui etiam vita et scientia is commendabilis demonstratur.* Canon 3 of the Third Lateran Council (1179) *Tanner* 1, p. 212.

<sup>927</sup> *Electio ad episcopatum fieri debet de digno scientia, moribus et aetate, et quod habeat trigesimum annum completum, et sit de legitimo matrimonio natus.* *X* 1.6.7=1 *Comp.* 1.4.16.



rather, someone must have not been content about the election and decided to report it to Rome. The letter did not say who was or were responsible for this report. However, as Gregory X confirmed the election of John I on 5 November 1274, it is clear that doubts about his erudition were unwarranted or at least not serious enough to question his suitability as a bishop.<sup>928</sup> When John I died in 1284, the cathedral chapter of Riga unanimously elected a certain John of Vechta (John II, 1284-1294) as its archbishop, and the decision was confirmed on 10 January 1286 by Pope Honorius IV (1285-1287).<sup>929</sup>

The next grand event that concerned the archbishopric of Riga was related to the civil war waged between the Teutonic Order, the city of Riga, and the archbishop. The struggle began during the time when John of Schwerin (John III, 1294-1300) was archbishop of Riga, having assumed the position after the death of Archbishop John II in 1294. In 1297, John III decided to temporarily leave Livonia for health reasons and left his bishopric to be governed by the Livonian Order.<sup>930</sup> Almost immediately the latter fell into a conflict with the city of Riga, as there were floods in Riga due to the order having built bridges and other structures that obstructed the natural flow of the Daugava River that went through Riga.<sup>931</sup> When Archbishop John III returned, he attempted to secure peace; however, his efforts were fruitless and the grievances were reported to Rome.<sup>932</sup> This resulted in a letter dated 7 January 1299 in which Pope Boniface VIII (1294-1303) requested the grandmaster of the Teutonic Order and the

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<sup>928</sup> Gregory X, 'Rationis oculis intuentes' (5 November 1274) *Les registres de Gregoire X*, ed. Jean Guiraud (Paris, 1892), no. 438, pp. 175-176.

<sup>929</sup> Honorius IV, 'In supreme dignitatis' (10 January 1286) *Les registres d'Honorius IV*, ed. Maurice Prou (Paris, 1886), no. 233, col. 183.

<sup>930</sup> O'Connor, *A History of Old Riga*, pp. 107-108.

<sup>931</sup> O'Connor, *A History of Old Riga*, pp. 107-108; the events are based on a partial report that survives, see the following note.

<sup>932</sup> The letter of 16 September 1297, *LUB* 1, no. 568, cols. 712-714; the transcript has a large number of omissions and obscurities which makes determining the exact circumstances difficult.

master of the Livonian Order to appear in Rome within six months, or to face excommunication.<sup>933</sup>

The papal letter described how the brothers of the Livonian Order violently arrested the archbishop of Riga, then dared to imprison him, and afterwards occupied his castle (*castrum*), took all his goods and possessions, and generally inflicted harm by ‘occupying the Church of Riga by violence’.<sup>934</sup> This imprisonment of Archbishop John III is in stark contrast with the silence that the alleged imprisonment of Archbishop Albert Suerbeer received.

Before the strife was resolved, Archbishop John III died, and Pope Boniface VIII, ‘wishing to provide her [to the Church of Riga] a suitable person according to our heart’, decided to nominate Isarnus Tacconi (d.1310) as the new archbishop of Livonia.<sup>935</sup> This decision is a good example of papal plenitude of power and his authority over that of any other bishop’s. The term *plenitudo potestatis* was used already in Gratian’s *Decretum* in order to contrast the authority of the pope with that of other bishops.<sup>936</sup> The concept of *plenitudo potestatis* was developed further throughout the thirteenth century, and while it allowed the pope essentially to

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<sup>933</sup> Boniface VIII, ‘Fidedignis relatibus intellecto’; Boniface VIII, ‘De statu et’. See also Muldoon, *Popes, Lawyers, and Infidels*, pp. 58-59.

<sup>934</sup> ... *Rigensis ecclesiae per violentiam occupando* ... Boniface VIII, ‘Fidedignis relatibus intellecto’, col. 726.

<sup>935</sup> ... *volentes eidem de persona iuxta cor nostrum idonea providere*. Boniface VIII, ‘In excelso sedis’ (19 December 1300) *LUB* 1, no. 592, cols. 760-762, at col. 761. See also the very formulaic and shorter letter accompanying the pallium bestowed on Isarnus: Boniface VIII, ‘Cum pallium plenitudinem’ (19 December 1300) *LUB* 6, no. 2765, cols. 53-54.

<sup>936</sup> For example: ‘The Apostolic See is subject to the judgement of no one’ – *Prima sedes nullius iudicio subiaceat*. Gratian, C.9 q.3 c.13, col. 610. The ‘*auctoritas*’ is the apocryphal account of the Roman Council (c.501-c.508), allegedly convened under Pope Silvester I, the canon is incorrectly attributed to Pope Innocent I. See also Gallagher, *Canon Law and the Christian Community*, pp. 95-96. Discussions among the twelfth- and thirteenth-century writers considered whether bishops belonged to a special *ordo* in contrast to those who were merely priests, see Ott, *Bishops, Authority and Community*, p. 310. Furthermore, Gratian’s *Decretum*, relying on the instructions by Gregory I, stated that ranking among the bishops could be determined by date of consecration (D.17 c.7, col. 53), see Nicholas Vincent, ‘Shall the First be Last? Order and Disorder amongst Henry II’s Bishops’, in *Authority and Power in the Medieval Church, c.1000–c.1500*, ed. Thomas W. Smith (Turnhout, 2020), pp. 287-316, at pp. 289-290

transcend the ecclesiastical law, even canon lawyers who contributed to the ideas of conciliarism, such as Hostiensis, held that this fullness of power should only be used in exceptional circumstances.<sup>937</sup>

Therefore, even though the cathedral chapter of Riga existed and could have exercised its authority to elect a new bishop, when Boniface VIII decided to choose a new bishop instead, he did not act contrary to canon law. Indeed, instances of popes choosing a bishop had a long history, one example being the first legate to Livonia, William of Modena, who was invested with the bishopric of Modena by Pope Honorius III without the consent of the archbishop of Ravenna under whose jurisdiction Modena fell.<sup>938</sup>

Archbishop Isarnus was tasked with mediating peace agreements and in 1302 he managed to secure the restitution of lands from the Order that belonged to the bishoprics of Riga and Oesel-Wiek.<sup>939</sup> The same year, Isarnus was offered the archbishopric of Lund which he accepted, leaving the archbishopric of Riga vacant for almost two years.<sup>940</sup> While in 1304, Pope Benedict IX chose yet another archbishop of Riga, the latter was forced into exile by the Livonian Order, finally resulting in a papal inquisitor being sent to Livonia in 1312.<sup>941</sup>

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<sup>937</sup> Gallagher, *Canon Law and the Christian Community*, pp. 96-98.

<sup>938</sup> The archbishop of Ravenna specifically pointed this out - *consecratus Episcopus sine conscientia nostra ...* - 'consecrated bishop without our consent'. See further discussion in Donner, *Kardinal Wilhelm von Sabina*, pp. 19-20. The primary document is partially quoted in Donner's *Kardinal Wilhelm*, and he also refers to a printed version in *Catalogus Omnium Episcoporum Mutinensium*, ed. Gaspar Sillingardus (Modena, 1606), p. 88. - see p. 20, footnote no. 2 in Donner's *Kardinal Wilhelm*; however, the letter that is referred to does not mention the election and instead concerns a completely different dispute (therefore, it is a referencing error). Since Donner has cited the source extensively, it is clear he had seen the original document and his citation is also used here.

<sup>939</sup> The letter of 16 June 1302, *LUB* 2, no. 606, cols. 3-6.

<sup>940</sup> Boniface VIII, 'Romani pontifices quem' (11 April 1302) Peter A. Munch, 'Diplomatisk Bidrag til Erkebiskop Jens Grands Levnetshistorie', *Annaler for Nordisk Oldkyndighed Og Historie* (1860), pp. 62-190, at pp. 159-161. See also O'Connor, pp. 109-110.

<sup>941</sup> The best overview of the inquisition process in Livonia has been given in Seraphim, *Das Zeugenverhöri*, pp. vii-xxx.

The bishopric of Estonia requires separate consideration as the status and jurisdictional rights of the bishops of Estonia and Livonia differed substantially – the latter also possessed temporal power whereas in Estonia, temporal power belonged to the representatives of the Danish king.<sup>942</sup> According to the chronicler Henry of Livonia, the Christianisation of Estonia began in around the year 1208.<sup>943</sup> This meant that Bishop Albert of Riga had the opportunity to widen its jurisdictional rights as the process of Christianisation progressed. The Order of the Swordbrothers equally tried to claim some of the provinces of Estonia in their name, and disputes regarding the division of lands reached Rome by at least 1211 when, as we have seen, Bishop Albert personally attended the papal curia and retrieved papal bulls confirming the division.<sup>944</sup> However, the matters were not fully resolved and several papal bulls from the following years specified how the division was to take place, as we shall see below.

In 1213, the Swordbrothers succeeded in getting a papal confirmation for their claims on the provinces of Saccalia and Ugannia which formed part of Estonia.<sup>945</sup> Remarkably, Pope Innocent III did not name Bishop Albert as the spiritual leader of these lands; instead he put them under Anders Sunesen, archbishop of Lund.<sup>946</sup> The new situation posed a problem: when Bishop Albert had obtained a series of special permissions from the pope in 1211, he had also, as we have seen, received ‘the authority in place of an archbishop to create and consecrate bishops’, and subsequently

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<sup>942</sup> Skyum-Nielsen, ‘Estonia under Danish Rule’, p 117.

<sup>943</sup> The majority of the chronicle depicts the Christianisation of Estonia; see *HCL* XII, 6, pp. 6iff. Although, see the discussion at pp. 117-119, 256-258 regarding Fulco, the allegedly first bishop sent to Estonia, who might have gone to Estonia already in the 1170s.

<sup>944</sup> *HCL* XV, 2, p. 88; Innocent III, ‘Cum inter te’, pp. 224-226; Innocent III, ‘Cum super sorte’, pp. 226-227.

<sup>945</sup> Innocent III, ‘Cum a nobis’ (11 October 1213) *LUB* 1, no. 30, col. 37.

<sup>946</sup> Innocent III, ‘Cum a nobis’ (11 October 1213) *LUB* 1, no. 30, col. 37. For Anders Sunesen, see also pp. 147-148, 399-400.

consecrated Theodoric of Treiden as the bishop of Estonia, who probably saw Saccalia and Ugannia as part of Estonia.<sup>947</sup>

Indeed, Theodoric immediately decided to go to Rome which resulted in a series of letters where he was referred to as the bishop of Estonia, implying that the Order had falsely presented the regions of Saccalia and Ugannia as not part of Estonia.<sup>948</sup> Furthermore, Innocent III told Theodoric that ‘you answer to no one, not even to a metropolitan, without a special mandate of the Apostolic See’.<sup>949</sup> According to the pope, this was justified because the Estonian province had never been subjected to a metropolitan.<sup>950</sup> This would confirm the theory that Fulco, who was ordained as the bishop of the Estonians in around 1167 by Archbishop Eskil of Lund, never made it to Estonia, or at least left no documentation about this that would have let Innocent III perceive any continuity between the first episcopal see of Fulco and that of Theodoric some decades later.<sup>951</sup>

It has been suggested that with such developments, Innocent III hoped that his support of Theodoric would lead to a closer papal supervision of the Christian community in Livonia and Estonia.<sup>952</sup> In any case, the confusion rising from the claims set forth by the Swordbrothers on the one hand, and Bishop Theodoric on the other, illustrate that corrections in terms of jurisdiction were at times necessary because the

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<sup>947</sup> *HCL* XV, 4, p. 92. That Saccalia and Ugannia were part of Estonia according to Theodoric, has been suggested by Rebane in ‘From Fulco to Theodoric’, p. 111. Socio-linguistically, Saccalia and Ugannia being part of Estonia would make sense indeed. Additionally, the part of the chronicle of Henry of Livonia which depicts the conversion of Estonia, starts with a military expedition to Ugannia: *HCL* XII, 6.

<sup>948</sup> This is suggested by Rebane in ‘From Fulco to Theodoric’, p. 111.

<sup>949</sup> ... *ne cuiquam, tamquam metropolitano, respondeas, absque mandato sedis apostolicae speciali*. Innocent III, ‘Cum in memoria’ (2 November 1213) *LUB* 1, no. 37, col. 43.

<sup>950</sup> Innocent III, ‘Cum in memoria’ (2 November 1213) *LUB* 1, no. 37, col. 43.

<sup>951</sup> Fonnseberg-Schmidt, ‘Alexander III and the Crusades’, pp. 355-356; Peep Peter Rebane, ‘From Fulco to Theodoric’, p. 91.

<sup>952</sup> Rebane, ‘From Fulco to Theodoric’, p. 111.

papal curia was reliant on information presented to it, and the accuracy of such details was in turn reliant on the knowledge and intentions of the informants.<sup>953</sup>

Despite such independence from a subordination to a metropolitan, the regions of Estonia fell under the influence of the Danish kings. In 1218, Pope Honorius III granted Valdemar II the right to subordinate 'lands that you will be able to snatch from the hands of the pagans' to his rule and to his churches.<sup>954</sup> The letter was brief and did not specify details which in turn led to prolonged issues regarding the division of lands over the next two decades.<sup>955</sup> Nevertheless, it is another example of papal endorsement of subsequent events, as perceived by the Danish king. The pope had not only authorised the secular rule of the Danish King but also the spiritual lordship of the Danish Church in the regions to-be-conquered. In 1219, Estonia was consequently conquered by the Danish King Valdemar II, who in turn appointed his illegitimate son, Cnut (d.1260), to be the duke of Estonia.<sup>956</sup>

Due to the imprisonment of Valdemar II in 1223-1227, other powers in Livonia attempted to assert more control over the territories – these were mainly Bishop Albert of Riga and the Order of the Swordbrothers.<sup>957</sup> The quarrels between these powers culminated during the second legatine mission of William of Modena in 1225-1226 when he had to oversee the distribution of territories in a way that would ensure

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<sup>953</sup> Such reliance on reports has also been pointed out by Ernst Pitz, *Papstreskript und Kaiserreskript im Mittelalter* (Tübingen, 1971), p. 15 and Selart, 'Confessional Conflict', p. 154.

<sup>954</sup> ... *terram quam de paganorum manibus eripere poteris* ... Honorius III, 'Magnitudinis tuae litteras' (9 October 1218) *Horoy* 3, cols. 33-34, at col. 33.

<sup>955</sup> Rebane, 'From Fulco to Theoderic', p. 113

<sup>956</sup> Bysted, *et al*, *Jerusalem in the North*, pp. 203-204; Helle Vogt, 'Legal Encounters in Estonia under Danish Rule, 1219-1347', in *Cultural Encounters during the Crusades*, ed. Kurt Villads Jensen, Kirsi Salonen and Helle Vogt (Odense, 2013), pp. 237-243, at p. 238. Vogt also discusses the probability of the titular title *Dux Estoniae* being used very soon after the conquest.

<sup>957</sup> Chirstiansen, *The Northern Crusades*, p. 112; Benninghoven, *Der Orden der Schwertbrüder*, pp. 219-222.

‘everlasting peace and a friendly agreement’.<sup>958</sup> Eventually, in 1238, with the treaty of Stensby, once again overseen by William of Modena, it was expressly stated that the territories of Reval, Jerwia, Harria, and Vironia had been granted by the pope to Valdemar II.<sup>959</sup>

On 15 September 1240, Valdemar II created the bishopric of Reval in Estonia.<sup>960</sup> In the same letter, the Danish king appointed a certain Torkill (d.1260) as its bishop and presented him to the archbishop of Lund. The king also assigned an endowment to the episcopal see to be held from the Danish king freely in perpetuity.<sup>961</sup> Furthermore, the king reserved the right for himself and his successors, in perpetuity, to appoint and present the future bishops of the diocese and in the case of any opposition to such arrangements from any future chapters, the king announced that the endowment promised before should return directly to the king.<sup>962</sup>

Such a selection of a bishop by a secular ruler was unanimously seen as uncanonical by canon lawyers of the twelfth and thirteenth centuries.<sup>963</sup> It has been suggested that while such arrangements were clearly contrary to canon law, the popes generally did not take much issue with them, as the papacy was hopeful that the Danish crown would advance the progress of Christianity further in the North and would help in the fight against the schismatic Rus’.<sup>964</sup> Even if that was the case, it is

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<sup>958</sup> ... *firma pax et amicabile compositio* ... Gregory IX ‘Ex parte carissimi’ (10 April 1236) *LUB* 1, no. 147, cols. 188-190, at col. 189.

<sup>959</sup> ... *munitio et ciuitas Reualiensis et ipsa Reualia, Gerwia, et Wironia et Haria que omnia sunt in Estonia*. – ‘... the fortification and the castle of people of Reval, and Revalia itself and Jerwia and Wironia and Harria, which all are in Estonia.’ The letter of 7 June 1238; *DD* 1:7, no. 9, pp. 8-11, at p. 9.

<sup>960</sup> The letter of 15 September 1240, *DD* 1:7, no. 56, pp. 50-51.

<sup>961</sup> The letter of 15 September 1240.

<sup>962</sup> The letter of 15 September 1240.

<sup>963</sup> Thus, for example: Gratian D.40 c.8, col. 147, the ‘*auctoritas*’ is St. Isidore of Seville; D.63 d. post c.28, col. 244, the ‘*auctoritas*’ for the canon itself is Pope Stephen V; D.63 d. post c.34, cols. 246-247, the ‘*auctoritas*’ for the canon itself is the *Capitula Karoli et Ludowici imperatoris* (c.873). See also Constitution 24 of the Fourth Lateran Council (1215) *Tanner* 1, pp. 246-257; 3 *Comp.* 1.6.17=X 1.6.32; 4 *Comp.* 1.3.8=X 1.6.42.

<sup>964</sup> Niels Skyum-Nielsen, ‘Estonia under Danish Rule’, pp. 115-116,

noteworthy that this transgression of canon law stemmed from a secular ruler – from the Danish king and his successors – and not from the local clerics who most likely would not have had much choice in the matter.<sup>965</sup> It was not until 1277 that Margaret Sambiria (c.1230-1282), the Queen of Denmark, gave the right to elect a new bishop to the cathedral chapter of Reval.<sup>966</sup> It was only a short-lived decision, as Eric VI Menved had the decision annulled as soon as he reached maturity in 1295.<sup>967</sup>

In contrast, as was shown above, until Livonia was essentially having a civil war in the late 1290s, it was explicitly clear that the chapter was the electing body in the bishopric of Riga, and thereafter the episcopal selections personally made by the popes were canonically accepted. Compared to Livonia, the king of Denmark and by proxy, the bishopric of Estonia were violating canon law throughout the thirteenth century, except the relatively brief period of 1277-1295, during which the cathedral chapter of Reval gained the authority to elect their own bishop.<sup>968</sup>

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<sup>965</sup> It was not unique to Livonia/Estonia that at times the papacy decided not to punish clear transgressions of canon law. For example, in 1204, Cardinal-Priest Leo Branchaleoni was imprisoned by Emeric, the king of Hungary but ‘retaining Emeric's good will was more important for the pope's diplomatic goals in the region than applying the appropriate punishment’, see Gábor Barabás, ‘Papal Legates in Thirteenth-Century Hungary: Authority, Power, Reality’, in *Authority and Power in the Medieval Church, c.1000–c.1500*, ed. Thomas W. Smith (Turnhout, 2020), pp. 145-158, at pp. 146-147.

<sup>966</sup> The letter of 21 August 1277, *LUB* 1, no. 455, cols. 572-574.

<sup>967</sup> The letter of 25 June 1295, *LUB* 1, no. 553, cols. 693-694.

<sup>968</sup> While the foundation and functioning of cathedral chapters remains out of the scope of this thesis, a concise overview of the chapters in Livonia has been recently given by Madis Maasing in ‘The Formation, Establishment, and Personal Networks of Livonian Cathedral Chapters, 1190-1350’, in *Baltic Crusades and Societal Innovation in Medieval Livonia, 1200-1350*, ed. Anti Selart (Leiden, 2022), pp. 318-366, esp. pp. 321-325.



### LEGATINE MISSIONS

One of the ways in which the papacy exercised its jurisdiction was through legatine missions. Such missions were grounded in the idea that the pope and legate were unified in 'love and authority'.<sup>969</sup> Consequently, canon lawyers emphasised that legates were identical to the Apostolic See when they had to highlight the authority of a legate but they refrained from drawing such parallels when discussing exclusive papal privileges.<sup>970</sup> Popes had been utilising legatine missions already in the Early Middle Ages but it was during the pontificate of Pope Gregory VII (1073-1085) that which the distinctions between different types of legates started to appear more strongly.<sup>971</sup>

When Gratian's *Decretum* considered papal legatine missions, it asserted that an attack on a legate is not only an attack on the pope, but on all of the Church.<sup>972</sup> Although the *Decretum* did not categorise different types of legates, thirteenth-century popes and canon lawyers started to develop a complicated classification system for dividing legatine missions. For example, the *Liber extra* separated legatine missions into three categories, depending on the capability of the legate to absolve people who had been excommunicated for violent crimes against clerics: first there

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<sup>969</sup> Franz Wasner, "'Legatus a Latere": Addenda Varia', *Traditio*, 16 (1960), pp. 405-416.

<sup>970</sup> Robert C. Figueira, *The Canon Law of Medieval Papal Legation*, unpublished doctoral thesis (Cornell University, 1980), p. 480.

<sup>971</sup> Kriston R. Rennie, *The Foundations of Medieval Papal Legation* (Basingstoke, 2013), p. 118. For Pope Gregory and the way he transformed legatine missions more generally, see Theodor Schieffer, 'Die päpstlichen Legaten in Frankreich, vom Verträge von Meerssen (870) bis zum Schisma von 1130', *Historische Studien*, Vol. 263 (1935), pp. 88-139. However, there has been some debate among modern scholars as to how to divide medieval papal legates. For example, Heinrich Zimmermann, whose work includes a list of papal legatine missions from the first half of the thirteenth century, has divided papal legates into cardinals, non-cardinals, and resident-bishops; Heinrich Zimmermann, *Die päpstliche Legation in der ersten Hälfte des 13. Jahrhunderts. Vom Regierungsantritt Innocenz' III. bis zum Tode Gregors IX. (1198-1241)* (Paderborn, 1913), see the Contents.

<sup>972</sup> 'Whoever attempts to hinder the legate of the apostolic see is to be excommunicated' – *Excommunicetur, qui legatum sedis apostolicae impedire temptaverit*. Gratian, D.94. c.2, cols. 330-331. The 'auctoritas' is Pope Alexander I (c.107-c.115).

were those sent ‘*de latere*’ who could absolve such excommunicates anywhere; then there were those not sent ‘*de latere*’ and who could absolve only within the province(s) assigned to them as a legate; finally, there were those ‘who, under the pretext of their churches, claim for themselves the dignity of legates’ and who could not absolve such excommunicates without a special privilege from the Apostolic See.<sup>973</sup> Hostiensis in his *Summa aurea* named the last category as ‘*quasi nascuntur*’, from which the name ‘*legatus natus*’ was born.<sup>974</sup> Papal letters assigning legatine offices often did not explicitly refer to the types of legates they concerned, and even when examining specific cases of legates, it was at times hard to distinguish the category into which the legate best fitted, as we shall see.

Additionally, the requirement of being a cardinal to become a legate *de latere* – the legate with the fullest authority – was one of the questions touched upon by Pope Innocent IV who stated that ‘[t]his is understood to be true that a legate who is sent “*de latere*” is a cardinal’.<sup>975</sup> William of Modena, who had been a papal legate to Livonia in 1225-1226 and 1234-1238, was named cardinal and bishop of Sabina in the first cardinal creation of Innocent IV.<sup>976</sup> Almost immediately after this, in July 1244, William was assigned to a legatine position in Livonia and Prussia one last time.<sup>977</sup> This is very possibly an example of how Innocent IV, having perceived being a

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<sup>973</sup> ... *qui ecclesiarum suarum praetextu legationibus sibi vendicant dignitatem*... X 1.30.9. The ‘*auctoritas*’ is the undated letter ‘*Excommunicatis pro iniectioe*’ of Gregory IX (1227-1234) *Potthast*, Vol. 1, no. 9560.

<sup>974</sup> Hostiensis, *Summa aurea* ad 1.32 §2, col. 279.

<sup>975</sup> *Et hoc intellige verum in legato qui a latere pape mittitur scilicet cardinali*. Innocent IV, *Apparatus* ad X 1.30.3, p. 147.

<sup>976</sup> Ordination took place on May 28, 1244. For the full list of cardinals nominated on that day with their most important titles, see Conrad Eubel, *Hierarchia catholica medii aevi*, Vol. 1 (Regensburg 1913), p. 7. For a discussion regarding this ordination of cardinals, see Morris, *The Papal Monarchy*, p. 570.

<sup>977</sup> Innocent IV, ‘*Ineffabilis dispositio Creatoris*’ (15 July 1244) *DD* 1:7, no. 153, pp. 136-137.

cardinal as an important characteristic of any *'legatus de latere'*, decided to put the theory of canon law that he had refined about legatine missions into practice.

As we have seen, the central legatine figure in the context of Livonia was William of Modena, who was assigned as a papal legate to Livonia on three occasions – in 1224, in 1234, and in 1244.<sup>978</sup> The letter *'Cum is qui'* from 31 December 1224 which granted William his first legatine office, Pope Honorius III stated that *'I commission him [William of Modena] with the office of full legation'*.<sup>979</sup> The same phrase can be found in the letters appointing him to his second legatine mission in 1234, and to his third legatine mission in 1244.<sup>980</sup> This seems to indicate that William was invested with the fullest powers that a legate could possibly hold.

Often additional letters were issued that specified the finer details pertaining to the legatine missions of William of Modena. For example, for his first mission, he was given the opportunity to raise an archbishopric in Livonia if he felt that to be necessary.<sup>981</sup> Such supplementary letters tended to include special mandates – such

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<sup>978</sup> The letter assigning William to his first legatine mission in 1224: Honorius III, *'Cum is qui'*; the letter assigning him to his second legatine mission in 1234: Gregory IX, *'Quoniam ut ait'* (21 February 1234) *DD* 1:6, no. 176, pp. 223-226; the letter assigning him to his third legatine mission in 1244: Innocent IV, *'Ineffabilis dispositio Creatoris'*. Occasionally, the second legatine mission of Anders Sunesen, the archbishop of Lund, has been seen as an earlier legatine mission to the Baltic areas than that of William of Modena. However, the letter *'Illan de probitate'* of Innocent III which assigned the office of a legate to Anders Sunesen in 1212, designated his legatine territory as the archbishopric of Lund (essentially the whole of Denmark) and the archbishopric of Uppsala (essentially the whole of Sweden). No reference was made to Livonia in the letter; Innocent III, *'Illan de probitate'* (4 April 1212) *Die Register Innocenz* 15, no. 14, pp. 25-26, at p. 26. For a short but concise overview of the legatine missions of Anders Sunesen, see Wojtek Jezierski, *'Angels in Scandinavia: Papal Legates and Networks of Nordic Elites, Twelfth-Thirteenth Centuries'*, in *Nordic Elites in Transformation, c.1050-1250*, Vol. 2, ed. Kim Esmark, Lars Hermanson and Hans Jacob Orning (London, 2020), pp. 169-191, at pp. 176-178.

<sup>979</sup> ... *quare commisso sibi plenae legationis officio*. Honorius III, *'Cum is qui'*, p. 47.

<sup>980</sup> Gregory IX, *'Quoniam ut ait'*; Innocent IV, *'Ineffabilis dispositio Creatoris'*.

<sup>981</sup> ... *fraternitati tue presentium auctoritate mandamus, quatinus pensatis negotii circumstantiis universis constituas in oportuno loco metropolim, si videris, quod expediat processui fidei Christiane, et fieri poterit absque scandalo et juris prejudicio alieni*. – *'[W]e command your fraternity by the authority of those present, that after you consider the unique circumstances of the matter, you will place a metropolitan see in a convenient place, if you see that it would hasten the advancing of Christian faith, and it may be done without scandal or prejudice against someone else's right.'* Honorius III, *'Litteris quas nobis'* (19 November 1225) *Livonica*, no. 12, pp. 33-34, at p. 34.

as the authority to create an archbishopric – that many canon lawyers would have seen as powers reserved exclusively to the pope.<sup>982</sup> As another example, for his second legatine mission to Livonia in 1234, William was invested with the authority ‘to unite and divide bishoprics, and to transfer [bishoprics] from one place to another, to appoint and consecrate new bishops, and to limit bishoprics’.<sup>983</sup> Such permissions to raise an archbishopric, to unite and divide bishoprics, to consecrate new bishops and to limit existing ones, elevated William of Modena above all the other bishops, including archbishops, as only the pope and now also William could act in this capacity through the papal authority delegated to him.

William of Modena was not the only one to be sent to Livonia on a legatine mission. Baldwin of Alna was given the bishopric of Semgallia and was invested with legatine powers by Gregory IX in 1232.<sup>984</sup> The letter that appointed Baldwin as a legate states that he is commissioned with a legatine office (*‘legationis officium’*) without the notion of it being plenary, thus indicating that Baldwin’s office was more limited than that of a *‘legatus de latere’* which held plenary authority.<sup>985</sup> Furthermore, the letter had precise instructions about what Baldwin was allowed to do, such as giving him permission to set up and banish church officials and to confirm the elected bishops.<sup>986</sup>

Consequently, when comparing the appointment letters of Baldwin of Alna and William of Modena, it is questionable whether these two legatine missions had equal authority. As indicated above, the concept of legatine missions and their perceived

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<sup>982</sup> For a discussion on papal reserved powers and their development in the thirteenth century, see Figueira, ‘Papal Reserved Powers’, esp. pp. 194-204.

<sup>983</sup> ... *ut episcopatus unire ac diuidere ... et transferre de uno loco ad alium, instituere de nouo episcopos et consecrare et limitare episcopatus ...* ‘Gregory IX, Licet episcoporum translatio’ (28 February 1234) *DD* 1:6, no. 177, pp. 226-227, at p. 227.

<sup>984</sup> Gregory IX, ‘Cum in minori’.

<sup>985</sup> Gregory IX, ‘Cum in minori’, p. 173.

<sup>986</sup> ... *instituas quoque in eis et inde amoueat ... and electiones episcoporum confirmans ...* Gregory IX, ‘Cum in minori’, p. 173.

authority among canon lawyers varied and was often ambiguous, which led to a lack of systematisation through which the precise nature of different legates could have been defined. The similar, yet different appointment letters that William and Baldwin received for their legatine offices, are a perfect illustration of such obscurity.

William of Modena used the delegated authority he had received from the pope extensively throughout his legatine missions in Livonia. Only a few cases will be considered here. In April 1226, William mediated an agreement of jurisdictional nature between the Order of the Swordbrothers and Bishop Albert of Riga according to which the bishop of Riga alone should exercise the patronage of the Church of St. Jacob, while the Swordbrothers had the same jurisdictional right in the Church of St. George.<sup>987</sup> This was a dispute that arose from the Order's right to a share in the income of the St. Jacob Church in Riga. The legate ended it by rejecting the Order's request and at the same time denying the Rigan bishop any claim to the Order Church of St. George in Riga.<sup>988</sup>

Another settlement that illustrates the jurisdictional authority that William was invested with concerned the crusaders and merchants who were only temporarily in Riga: as they did not have their own church there, they 'are bound by parochial right in hearing services, receiving penances, taking part in the Eucharist, and making oblations, as if they were perpetual citizens'.<sup>989</sup> The Rigan provost asserted that these people belonged to the '*ius parochialis*', essentially under the jurisdiction of Riga,

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<sup>987</sup> The letter of 5 April 1226; *LUB* 1, no. 82, cols. 97-99.

<sup>988</sup> See also the discussion about the jurisdictional status of the Swordbrothers as a military order at pp. 266-269.

<sup>989</sup> ... *teneantur iure parochiali in audiendis officiis, poenitentiis accipiendis, communicatione eucharistiae et oblationibus faciendis, tanquam perpetui cives*. The letter of 10 April 1226; *LUB* 3, no. 82a, cols. 11-12, at col. 11.

while Master Volkwin of the Swordbrothers declared that they should enjoy the sacraments in the church of the Swordbrothers.<sup>990</sup>

Remarkably, William solved the contentious case while referring to the scholars in Bologna: if the crusaders and merchants were healthy, they were subjected to the jurisdiction of the Order, but if they fell ill, they should belong under the jurisdiction of the parish where they lived temporarily.<sup>991</sup> William added that ‘they [i.e. the crusaders and merchants] should receive the anointing oil and the Eucharist from the parish church, and be buried there, unless they choose to be buried elsewhere, which may be done, always preserving the justice of the parish church’.<sup>992</sup> The legate clearly recognised the need to carefully balance the power-scales. That William included a justification based on the correct practice of canon law must have offered his solution greater credibility which was certainly needed in attempting to solve such a difficult situation.

Finally, legatine missions in Livonia at times oversaw changes that stemmed not so much from the authority that the legate was invested with, but from the existence of canon law in itself. According to Gratian, all secular jurisdiction was supposed to be non-contradictory with ecclesiastical law: ‘

We do not say that imperial ordinances (which the Church often invokes against heretics and tyrants, and which defend it against evildoers) should be completely rejected, but we do affirm that they may not be applied to the prejudice of

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<sup>990</sup> The letter of 10 April 1226; *LUB* 3, no. 82a, cols. 11-12.

<sup>991</sup> *Considerata praeterea consuetudine clericorum in Romana curia, nec non scolarium, Bononiae commorantium ...* – ‘Furthermore, having considered the custom of clerics in the Roman Curia, and also of the scholars abiding in Bologna ...’ The letter of 10 April 1226, *LUB* 3, no. 82a, cols. 11-12.

<sup>992</sup> ... *oleum unctionis et eucharistiam recipiant a parochiali ecclesia, et sepeliantur apud eam, nisi alibi elegerint sepeliri, quod fieri liceat, parochialis ecclesiae iustitia semper salva.* The letter of 10 April 1226, *LUB* 3, no. 82a, col. 12.

evangelical, apostolic, or canonical decrees (to which they should be subordinate).<sup>993</sup>

Similarly, Gratian also stated that '[e]nactments contrary to the canons and decrees of the Roman bishops, or against good morals, are of no account'.<sup>994</sup> If a law was contrary to canonical rules, it was not valid. Thus, in 1237, William explained that until recently Germans and neophytes – that is, those recently converted to Christianity – in Livonia and Estonia were forbidden to give to the churches the land which they had inherited, be it during their lifetime or in their testaments, but since these statutes were contrary to the freedom of the Church, he ordered their abolition and stated that all statutes and habits which were contrary to ecclesiastical liberty were to be abolished under threat of excommunication.<sup>995</sup>

A similar situation arose with Baldwin before his legatine missions, at the time when he was a penitentiary priest (*poenitentiarius*) and a nuncio (*nuntius*). Nuncio, categorised as *legatus ad causam*, generally had a specific pre-determined task at hand, and his authority and jurisdictional limits were precisely defined.<sup>996</sup> In 1230 and 1231, he reached agreements with the Curonians in south-western Livonia, who

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<sup>993</sup> *Non quod imperatorum leges (quibus sepe ecclesia utitur contra hereticos, sepe contra tyrannos atque contra prauos quosque defenditur) dicamus penitus rennuendas, sed quod eas euangelicis, apostolicis atque canonicis decretis (quibus postponendae sunt) non posse inferre preiudicium asseramus.* Gratian, D.10 c.1, col. 19; translation from Gratian, *The Treatise on Laws*, p. 33. The 'auctoritas' is Pope Nicholas I.

<sup>994</sup> *Constitutiones contra canones et decreta Presulum Romanorum, uel bonos mores, nullius sunt momenti.* Gratian, D.10 c.4, col. 20; translation from Gratian, *The Treatise on Laws*, p. 34. The 'auctoritas' is the Capitula Angilramni (second quarter of the ninth century). Likewise: *Non licet imperatori, uel cuiquam pietatem custodienti aliquid contra diuina mandata presumere, nec quicquam, quod euangelicis, propheticis aut apostolicis regulis obuiet, agere.* – 'Neither the emperor, nor any protector of piety, may in any way encroach on divine commandments or do anything opposed to evangelical, prophetic, or apostolic norms.' Gratian, D.10 c.2, cols. 19-20; translation from Gratian, *The Treatise on Laws*, p. 34; the 'auctoritas' is Pope Symmachus (498-514). But see the whole *Distinctio 10*, which deals with the assertion that '[e]nactments of princes do not stand above ecclesiastical enactments, but rather are subordinate to them.' – *Constitutiones uero principum ecclesiasticis constitutionibus non preminent, sed obsecuntur.* Gratian, D.10, cc.1-13, cols. 19-22.

<sup>995</sup> The letter of 1237, *LUB* 1, no. 148, col. 190.

<sup>996</sup> Rennie, *The Foundations of Medieval Papal Legation*, pp. 67-72.

offered to accept Christianity; additionally, Baldwin promised to maintain the previous rights and freedom of the Curonians if they were not contradictory to the Christian life.<sup>997</sup> The rights of the Curonians were only threatened if they transgressed canon law – it could be argued that this clause did not stem from the authority that Baldwin of Alna was invested with but rather from the general existence of canon law and its appeal to absolute authority over-Christians.

Although only a small section of activities stemming from papal legatine missions in Livonia could be considered here, it is evident that while such missions could substantially differ within the context of jurisdictional authority conferred on their office, they strongly relied on fundamental canon law prescriptions when interfering with various affairs.

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<sup>997</sup> The letter of 28 December 1229, *LUB* 1, no. 103, cols. 134-136; the letter of 17 January 1230, *LUB* 1, no. 104, cols. 136-137. Muntis Auns, 'Acquisition of the Acquired: The Establishing of A Real Administration in Livonia', in *The North-Eastern Frontiers of Medieval Europe*, ed. Alan V. Murray (Farnham, 2014), pp. 179-188, at p. 182.



## IMPLEMENTATION

It has been claimed that canon law collections offer little insight into the world of the laity:

The nature of the Canon Law itself is such as to preclude from its framework an extensive, positive treatment of the layman's everyday Catholic life ... As it happened, Gratian's only treatise on the layman consisted of a justified attack upon lay control of churches and ecclesiastical appointments.<sup>998</sup>

Such statements are usually based on the idea that canon law was inherently authoritative in its conception – it relied on authoritative figures, and therefore it claimed to be authoritative itself.<sup>999</sup> On the other hand, canon law was not created in vacuum, and it was not an arcane abstraction of theoretical concepts far removed from reality; the importance of sacraments in everyday life, for instance, made canon law prescriptions tangible for every Christian, whether they were a layman or a cleric.<sup>1000</sup> One way to examine the relationship between civil and canon law is to follow the development of both, but due to constraints of space, it will be done here only very briefly.<sup>1001</sup>

At the turn of the thirteenth century, practitioners of canonical jurisprudence seem to have developed a conscious professional identity.<sup>1002</sup> This period was also the time of the 'revival' of Romano-canonical jurisprudence, not in the least because

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<sup>998</sup> Ronald R. J. Cox, *A Study of the Juridic Status of Laymen in the Writing of the Medieval Canonists* (Washington, D.C., 1958), pp. 60-63.

<sup>999</sup> Cox, *A Study of the Juridic Status of Laymen*, p. 62; Shoemaker, 'Medieval Canon Law', pp. 684-685

<sup>1000</sup> Rennie, *Medieval Canon Law*, pp. 59-60.

<sup>1001</sup> A brief summary of recent scholarship on Roman law inclusions in Gratian's *Decretum* has been given in Melodie H. Eichbauer's 'Gratian's *Decretum* and the Changing Historiographical Landscape', *History Compass*, Vol. 11/12 (2013), pp. 1111-1125.

<sup>1002</sup> James A. Brundage, 'The Practice of Canon Law', in *The History of Courts and Procedure in Medieval Canon Law*, ed. Wilfried Hartmann and Kenneth Pennington (Washington, D.C., 2016), pp. 51-73, at pp. 53-54.

much of its classical form was incorporated into canon law.<sup>1003</sup> Inquests of medieval legal collections have shown that civil and canon law relied on each other, often borrowing and replicating processes and conceptions present in one or another; the rules of courtroom were primarily developed in canonical jurisprudence, with secular courts adopting and adapting these regulations soon afterwards.<sup>1004</sup> Some aspects of ecclesiastical court proceedings were also borrowed from the civil process. For example, the oath that advocates and proctors in ecclesiastical courts were commonly swearing by the second half of the thirteenth century was modelled upon the calumny oath in Roman civil procedure.<sup>1005</sup>

As Livonia was Christianised throughout the thirteenth century, this time-period overlapped with the professionalisation of both civil and canon law. Therefore, by examining how legal systems were set up in Livonia, more can be said about the mentalities of those who were spearheading the Christianisation of Livonian society. Were civil and canon law separate in Livonia, or were they a testimony to a more comprehensive approach in which legal systems supplemented each other? In other words – were civil and canon law in Livonia competing with or supporting each other?

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<sup>1003</sup> Michael H. Hoeflich and Jasonne M. Grabher, 'The Establishment of Normative Legal Texts: The Beginnings of the *Ius Commune*', in *The History of Medieval Canon Law in the Classical Period, 1140-1234: From Gratian to the Decretals of Pope Gregory IX*, ed. Wilfried Hartmann and Kenneth Pennington (Washington, D.C., 2008), pp. 1-21, at pp. 4-5; Charles Sumner Lobingier, 'The Revival of Roman Law', *The Cornell Law Quarterly*, 5/4 (1919-1920), pp. 430-349; Charles Donahue Jr., 'Procedure in the Courts', in *The History of Courts and Procedure in Medieval Canon Law*, ed. Wilfried Hartmann and Kenneth Pennington (Washington, D.C., 2016), pp. 74-124, at pp. 82-83.

<sup>1004</sup> Kenneth Pennington, 'Introduction to the Courts', in *The History of Courts and Procedure in Medieval Canon Law*, ed. Wilfried Hartmann and Kenneth Pennington (Washington, D.C., 2016), pp. 3-29, at p. 6.

<sup>1005</sup> Brundage, 'The Practice of Canon Law', p. 64. For the development of oath-taking in canonical procedure, see also Henry Ansgar Kelly, 'Oath-Taking in Inquisitions', *Bulletin of Medieval Canon Law*, Vol. 35 (2018), pp. 215-241.

### TREATIES AS LEGAL TEXTS

One way to get an understanding of how legal texts in Livonia functioned, is to look at surviving legislation that was created locally. From the thirteenth century, there are two extant manuscripts that concern provincial legislature and were created in collaboration with local peoples.<sup>1006</sup> The nature of these legislative texts was that of a treaty. Treaties have often been overlooked by medieval legal scholars in favour of legal codes that survive more abundantly. Yet, Jenny Benham has shown that not only were there great textual similarities between legal codes and treaties, but that the latter often left a lasting impact on local legislation.<sup>1007</sup> While no comparative legal codes survive, the treaties that were signed with the locals nevertheless reveal aspects of the implementation of canon law in Livonia.

The first Livonian document dates from 1241, when the apostate Oeselians sent messengers to the Christians in order to facilitate peace.<sup>1008</sup> The finalised document was signed between the Oeselians on one hand and the master of the Livonian Order and the bishopric of Oesel-Wiek on the other.<sup>1009</sup> After specifying how taxes were to be carried out, the document moved on to determine that an advocate (*advocatus*) would be received by the Oeselians once a year.<sup>1010</sup> The advocate would judge cases

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<sup>1006</sup> The treaty of 1241, *LUB* 3, no. 169, cols. 31-33; the treaty of 27 August 1255, *LUB* 1, no. 285, cols. 369-371. The Christianisation of Oesel is also described in the last chapter of the chronicle of Henry of Livonia, see *HCL* XXX.

<sup>1007</sup> Jenny Benham, 'Law or treaty? Defining the Edge of Legal Studies in the Early and High Medieval Periods', *Historical Research*, Vol. 86 (2013), pp. 487-497.

<sup>1008</sup> The treaty of 1241, *LUB* 3, no. 169, cols. 31-33. See also Mihkel Mäesalu, 'Agreements on the Acceptance of Christianity between Crusaders and Pagans in Thirteenth-Century Livonia', in *Legacies of the Crusades*, ed. Torben K. Nielsen and Kurt Villads Jensen (Turnhout, 2021), pp. 214-237, at pp. 220-222, which gives a good overview of the potential course of events surrounding the signing of the treaty.

<sup>1009</sup> A reference to a map to show the location of Oesel-Wiek would be helpful here.

<sup>1010</sup> *Advocatum ad secularia iudicia semel in anno, eo scilicet tempore, quo census colligitur, recipient, qui de seniorum terrae consilio iudicabit ...* – 'They will receive an advocate for secular courts once a year, namely, at the time during which the tax is collected; he shall judge with the counsel of the elders of the land ...' The treaty of 1241, *LUB* 3, no. 169, col. 32.

pertaining to secular law (*ad secularia iudicia*) with the advice received from the local elders.<sup>1011</sup> There was no explicit mention of judges for ecclesiastical law. Yet, the same document dealt with aspects that clearly pertained to canon law, such as the prohibition of sacrifices to pagan gods, and punishments for not following fasting days.<sup>1012</sup>

Therefore, this treaty appears to be an amalgamation of both civil and canon law prescriptions. As the master of the Livonian Order proclaimed their acceptance of the treaty, he also explicitly stated that he had accepted the treaty with all its contents, although ‘without prejudice to the right of the diocesan bishop pertaining to all things’.<sup>1013</sup> It is therefore implied that the bishop still retained his jurisdictional rights over *all* legislation.

The second extant manuscript that showed signs of locally created legislature dates from 1255 and was essentially an addition to the 1241 treaty, noting that ‘we added to their [previous] law certain law noted below’.<sup>1014</sup> The majority of the document dealt with questions of inheritance – a sphere that was increasingly influenced by the developments of canon law. For instance, moving from fixed and automatic inheritance practices to flexible and voluntary ones was in great part due to such influences.<sup>1015</sup> However, in the context of the treaty with the Oeselians, the inheritance rules were clarified, rather than relaxed. For example, the settlement stated that ‘no inheritance among them can be free for the use of the landowner, as long as someone is found who in his [i.e. the murderer’s] kinship is known to have

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<sup>1011</sup> The treaty of 1241, *LUB* 3, no. 169, col. 32.

<sup>1012</sup> The treaty of 1241, *LUB* 3, no. 169, col. 32. See also the discussion on punishments at pp. 397-408.

<sup>1013</sup> ... *salvo iure dioecesani episcopi in omnibus* ... The treaty of 1241, *LUB* 3, no. 169, col. 32.

<sup>1014</sup> ... *quedam iura inferius notata addidimus ad iura eis* ... The treaty of 27 August 1255, *LUB* 1, no. 285, col. 369.

<sup>1015</sup> Brundage, *Medieval Canon Law*, pp. 88-90.

paid something for the compensation of the homicide'.<sup>1016</sup> However, if someone killed someone else to claim their inheritance, then the right for the inheritance transferred over to the landlord and 'he [i.e. the murderer] shall pay compensation to the lord that is customarily given for murder in that land'.<sup>1017</sup> Such stipulations were clearly meant to define and refine inheritance laws in the context of criminal deeds, as the treaty of 1255 did not regulate inheritance in ordinary circumstances which were presumably solved without regularly arising issues.

One stipulation also concerned those who commit suicide: '[S]o that if it should happen that someone, persuaded by the devil, slays himself to death, such an excess is punished by no one, unless this had occurred through someone else'.<sup>1018</sup> Suicides were not a regular concern for medieval bishops, and thus they were recorded only sporadically in ecclesiastical documentation, usually to do with the (lack of) right to Christian burial.<sup>1019</sup> However, the treatment of suicide in the Oeselian treaty of 1255 reveals two curious aspects of Livonian society. First, as it was clearly stipulated that a suicide was not to be punished, it can be assumed that it could have been customary to impose a penalty on the family of the person who had committed suicide. It could have been a fine payable by the family of the person who committed suicide or depriving the heirs of the transgressor from their inheritance.<sup>1020</sup>

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<sup>1016</sup> ... *nulla inter eos vacare possit haereditas ad usum domini terrae, quam diu aliquis reperitur, qui in sua parentela quidpiam ad emendam homicidii noscitur persolvisse*. The treaty of 27 August 1255, *LUB* 1, no. 285, col. 369.

<sup>1017</sup> ... *dabit domino emendam integram, quae de homicidio dari consuevit in illa terra*. The treaty of 27 August 1255, *LUB* 1, no. 285, col. 370.

<sup>1018</sup> ... *ut si aliquem suadente diabolo contingat, se ipsum iugulare ad mortem, a nullo puniatur excessus talis, nisi per aliquem hoc fuerit procuratum*. The treaty of 27 August 1255, *LUB* 1, no. 285, col. 370.

<sup>1019</sup> Alexander Murray, *Suicide in the Middle Ages*, Vol. 1 (Oxford, 1998), pp. 147, 285.

<sup>1020</sup> The Lübeck law code that was implemented in Reval stipulated that the inheritance of those who committed suicide was nevertheless to pass on to his/her heirs, see the discussion below at p. 318.

In canon law, suicide was harshly condemned. Gratian's *Decretum*, relying on the Council of Braga (561), stated:

It was agreed that those who voluntarily inflict death upon themselves either by iron, or by poison, or by throwing themselves, or by hanging, or by any other means, no remembrance should be made for them in the oblation, nor should they be brought down to bury their corpses with psalms. For many usurp this to themselves through ignorance. In like manner it was decided that this should be done for those who die for their crimes [i.e. those who are executed for crimes].<sup>1021</sup>

There was no indication that the Oeselians who committed suicide were deprived of a Christian burial. This may be an indication that the custom of a Christian burial was simply not widespread as of yet, and that local communities held funeral rites according to their own customs. In the chronicle of Henry of Livonia, there is some evidence that leniency was sometimes shown towards such burial rite customs:

Caupo, indeed, pierced through both sides by a spear, faithfully commemorating the Lord's passion, and receiving the sacrament of the Lord's body, gave up the spirit in a sincere confession of the Christian religion, after first dividing his property among the churches established in Livonia. ... And his body was burned and the bones were brought to Livonia and buried at Cubbesele.<sup>1022</sup>

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<sup>1021</sup> *Placuit, ut hii qui sibi ipsis uoluntarie aut per ferrum, aut per uenenum, aut per precipitium aut per suspendium, uel quolibet modo inferunt mortem, nulla pro illis in oblatione commemoratio fiat, neque cum psalmis ad sepulturam eorum cadauera deducantur. Multi enim sibi hoc per ignorantiam usurpant. Similiter et de his placuit fieri, qui pro suis sceleribus moriuntur.* Gratian, C.23 q.5 c.12, col. 935. The 'auctoritas' is the Council of Braga (563). Note that this canon was inserted into *Causa* 23 where the lawfulness of killing was considered more widely but especially in the context of (just) war. See also the chapter on warfare at pp. 161-267.

<sup>1022</sup> *Caupo uero lancea perforatus per latus utrumque, fideliter passionem Domini commemorans sumptisque Dominici corporis sacramentis in sincera confessione christiane religionis emisit spiritum,*

Caupo was a converted pagan who had been the leader of a group of Livonians.<sup>1023</sup> He became a close ally to the Christians converting Livonia. He also stayed on good terms with his followers and friends from the pagan past, meaning that at times he was a mediator between the Christians and pagans, trying to win the latter over to Christianity.<sup>1024</sup> Portrayed as a genuine Christian in the chronicle of Henry of Livonia, his body was nevertheless burned upon his death, although after he had clearly made a last confession. It could be argued that it was easier to transport his bones as such, especially as he had fallen in a battle away from fortifications and cemeteries, but the chronicle of Henry of Livonia made it explicitly clear that the Livonians cremated their dead as a custom.<sup>1025</sup> Therefore, the treaty of 1255 with the Oeselians could be an indicator that some aspects of canon law might have been overlooked in favour of enforcing punishments for more serious transgressions, such as murder, sacrificing to pagan gods, or not following fast days.

Another element in the clause regarding suicide that was represented in the treaty with the Oeselians in 1255 related to *assisting* a suicide.<sup>1026</sup> The treaty prescribed punishment for helping someone to kill themselves but did not elaborate on what was meant by the punishment. However, considering the contents of other clauses in the same treaty, it is likely that the punishment was of a monetary nature, such as the immediate family of the person who killed themselves having to pay a fine. In any

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*divisis primo bonis suis omnibus ecclesiis per Lyvoniā constitutis. ... Et combustum est corpus eius, et ossa delata in Lyvoniā et sepulta in Cubbesele. HCL XXI, 4, pp. 143-144; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 163.*

<sup>1023</sup> Torben K. Nielsen has suggested that Caupo might have been baptised around 1200; Nielsen, 'Mission and Submission', p. 218.

<sup>1024</sup> *HCL XVI, 3, p. 107.*

<sup>1025</sup> *HCL XII, 6, p. 65; XIV, 5, p. 77; XXVI, 8, p. 191.* Caupo died in September (1217), thus burning his body and taking his bones was not done due to potentially frozen ground which would have made burying him difficult.

<sup>1026</sup> The treaty of 27 August 1255, *LUB 1, no. 285, cols. 369-371.* See also Mäesalu, 'Agreements on the Acceptance of Christianity', p. 226.

case, this clause is an example where Christian and pagan understandings of the same concept probably differed from each other, as while from the Christian point of view, directly assisting suicide could be considered manslaughter/murder, it might have not been seen as such in pre-Christian Oesel.

In Gratian's *Decretum*, it was emphasised that it was not sinful to do things for lawful reasons and for the sake of good, emphatically explaining that otherwise no one would have domestic tools, lest someone kills themselves with them, or plant a tree, lest someone hangs themselves from it.<sup>1027</sup> Gratian added his own comment at the end of the passage: 'But no one is permitted to kill themselves by the authority of law'.<sup>1028</sup> It is evident that it is the intention that played a crucial role in Gratian's understanding of suicide – if anyone had inadvertently helped someone else to take their life, he or she was not responsible. Strongly implied here is that direct assistance in suicide was not permitted. From this it can be inferred that assisted suicide in Oesel probably required the direct involvement of the assistant, removing any doubts about the intention of his or her actions.

One possible interpretation for including this clause in the treaty is that in pre-Christian Livonian society – or at least in Oesel – assisting someone in their suicide was not considered a transgression, perhaps because such a request, if made openly or even in front of 'official' witnesses, would have removed the legal and moral responsibility for such a decision from whoever was the assistant. This is further supported by the fact that the 1255 treaty did not prescribe a specific punishment for assisting suicide but rather a general notion that the assistant needs to be punished; thus it was not the case of simply increasing the severity of penalty due to conversion.

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<sup>1027</sup> Gratian, C.23 q. 5, c.8, cols. 932-933. The '*auctoritas*' is St. Augustine.

<sup>1028</sup> *Se ipsum autem perimere nulla legis auctoritate alicui permittitur.* Gratian, C.23 q.5, d.p.c.8, col. 933.



In any case, it is likely that assisted suicides were frequent enough in pre-Christian Oeselian society in order for such a prohibition to be included in the relatively short treaty.

Lastly, in the treaty of 1255 with the Oeselians, an explicit specification to the treaty of 1241 was included, indicating the exact time-period during which the *advocatus* – the secular judge – was supposed to be sent to the Oeselians.<sup>1029</sup> Considering the content of the treaties of 1241 and 1255, their aim was clearly to deal with pressing issues that involved both canon and civil law. At the same time, these treaties are from the middle of the thirteenth century when the conversion of Livonia had been underway for more than half a century. By addressing the most pressing transgressions and being silent on others – such as Christian burial customs discussed above – could also imply that canon law was not yet implemented in its full extent. Nevertheless, the treaties show how at least some parts of the Livonian society used legislation containing both civil and canon law prescriptions. The relationship between these two bodies of legislature was not characterised by competition for primacy but rather by carefully balanced collaboration.

### **MUNICIPAL LAWS**

Another sphere in medieval society where both civil and canon law were represented, was legislation pertaining to towns. One way to distinguish legal spheres within a territorial unit, such as a town, was to divide it between authorities who then governed according to their own legislature. Such was the case in eleventh-century York, where the archbishop controlled one of the wards in the town.<sup>1030</sup> Municipal

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<sup>1029</sup> The treaty of 27 August 1255, *LUB* 1, no. 285, col. 370.

<sup>1030</sup> Julia Barrow, 'Churches, Education and Literacy in Towns 600-1300', in *The Cambridge Urban History of Britain, Vol. 1* (Cambridge, 2000), pp. 127-152, at p. 133

law in the Middle Ages tended to develop in broad families: the most important ones in Germany being the laws of Magdeburg, Bremen and Lübeck.<sup>1031</sup> The Lübeck law, for example, was formulated on the privileges granted to Lübeck upon its formulation in 1159 by Henry the Lion.<sup>1032</sup> Eventually, it became one of the dominant municipal laws along the south and eastern coast of the Baltic Sea, leaving a lasting mark on Livonia as well.<sup>1033</sup> Tiina Kala has pointed out that the surviving normative sources from Livonia from the entire Middle Ages, and not just from the thirteenth century, generally dealt with transgressions committed by the native peoples rather than by the Germanic upper-class, although town laws in principle did address the moral transgressions of the latter.<sup>1034</sup> Indeed, town law such as Lübeck law, were a ‘passive’ type of law where statutes were standardised and copied between towns, whereas local law codes, or treaties that included legal principles, were much more reactive in nature, and created to address specific transgressions.

In 1248, the Danish king Erik IV (1216-1250) gave Reval (modern Tallinn) in Northern Estonia Lübeck law.<sup>1035</sup> While the original legal code given to Reval has not survived, the act of giving it has.<sup>1036</sup> In 1257, a codex consisting of Lübeck law was

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<sup>1031</sup> David Nicholas, *The Growth of the Medieval City: From Late Antiquity to the Early Fourteenth Century* (London, 1997), pp. 154-155.

<sup>1032</sup> Carsten Jahnke, ‘Lübeck: Early Economic Development and the Urban Hinterland’, in *A Companion to Medieval Lübeck*, ed. Carsten Jahnke (Leiden, 2019), pp. 226-252, at pp. 237-238.

<sup>1033</sup> Ulf Christian Ewert and Stephan Selzer, ‘Social Networks’, in *A Companion to the Hanseatic League*, ed. Donald J. Harreld (Leiden, 2014), pp. 162-193, at pp. 166-167.

<sup>1034</sup> Tiina Kala, ‘Rural Society and Religious Innovation’, in *The Clash of Cultures on the Medieval Baltic Frontier*, ed. Alan V. Murray (Farnham, 2009), pp. 169-190, at p. 189.

<sup>1035</sup> Kreem, ‘The Teutonic Order’, at p. 222; Tapio Salminen, ‘City Scribes and the Management of Information: The Professionalisation of a Transgenerational Agency and Its Agents in Tallinn (c.1250-1558)’, in *Making Livonia: Actors and Networks in the Medieval and Early Modern Baltic Sea Region*, ed. Anu Mänd and Marek Tamm (London, 2020), pp. 189-211, at p. 190. This was not the first time Reval had received privileges, as some later records indicate that some kind of privileges were given to the town already by King Valdemar II, although virtually nothing is known of their contents; Kersti Markus, *Visual Culture and Politics in the Baltic Sea Region, 1100-1250* (Leiden, 2020), p. 329; Erki Russow, ‘Origines Revaliae: Die ersten hundert Jahre’, in *Lübecker Kolloquium zur Stadtarchäologie im Hanseraum*, Vol. 10, ed. Manfred Gläser and Manfred Schneider (Lübeck, 2016), pp. 327-558, at p. 540.

<sup>1036</sup> The letter of 15 May 1248, *DD* 1:7, no. 276, pp. 238-239. While this letter can also be found in *LUB* 1, no. 199, cols. 258-259, it is incorrectly dated to 12 May there.

commissioned to be made and sent to Reval, and this is the earliest surviving manuscript for this code.<sup>1037</sup> There is also a surviving confirmation by the Danish king from 1255 in which the king stated that he was giving the citizens of Reval the law ‘that the citizens of Lübeck have, both in temporal and spiritual [matters], with the consent of your venerable father bishop, Lord Thorkill’.<sup>1038</sup> Such a usage of the phrase could be formulaic, without questioning the autonomy of the town of Reval.<sup>1039</sup>

Gratian’s *Decretum* had dealt with the potential conflict between secular and ecclesiastical authorities in *Distinctio* 10. For example, it stated that ‘[i]t is certain that, in your affairs, salvation demands that, when dealing with the affairs of God, you take care to make the royal will subordinate, not superior, to the priests of Christ and to learn sacred affairs from the bishops rather than teach these to them.’<sup>1040</sup> Similarly, it asserted that ‘[y]our imperial rule ought to be content with the daily administration of public affairs and not usurp what pertains to God’s priests alone.’<sup>1041</sup> Huguccio, commenting on the *Decretum*, likewise categorically denied all secular interference in canonical legislation: ‘In no way, then, does a secular constitution prejudice or can prejudice, unless this [i.e. secular constitution] is established by the Church’.<sup>1042</sup> Pope

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<sup>1037</sup> This codex is in Latin and survives at the Tallinn City Archives in Estonia. What makes the 1257 Lübeck law MS given to Reval quite extraordinary is that it is one of the oldest surviving manuscripts containing Lübeck law, see Edda Frankot, ‘Of Laws of Ships and Shipmen’: *Medieval Maritime Law and its Practice in Urban Northern Europe Medieval Maritime Law* (Edinburgh, 2012), pp. 17-18.

<sup>1038</sup> ... *quas habent cives Lubecenses, tam in temporalibus quam in spiritualibus, cum consensu domini Thorkilli, venerabilis patris episcopi vestri* ... The letter of 16 September 1257, *LUB* 1, no. 315, col. 403.

<sup>1039</sup> The town’s favoured status by the king of Denmark has also been emphasised in Ane L. Bysted, *et al Jerusalem in the North*, p. 296.

<sup>1040</sup> *Certum est, hoc rebus uestris esse salutare, ut cum de causis agitur Dei, iuxta ipsius constitutum regiam uoluntatem sacerdotibus Christi studeatis subdere, non preferre, et sacrosancta per eorum presules potius discere quam docere* ... Gratian, D.10 c.3, col. 20; translation from Gratian, *The Treatise on Laws*, p. 34. The ‘auctoritas’ is Pope Felix III (483-492).

<sup>1041</sup> *Imperium uestrum suis publicae rei cotidianis amministrationibus debet esse contentum, non usurpare que sacerdotibus Domini solum conueniant*. Gratian, D.10 c.5, col. 20; translation from Gratian, *The Treatise on Laws*, p. 34. The ‘auctoritas’ is Pope Nicholas I.

<sup>1042</sup> *I[n] nullo ergo s[e]c[ularis] c[on]stit[uti]o p[re]iudicat u[e]l pot[est] p[re]iudicare nisi ab ecc[lesi]a hoc statuatur*. Huguccio, *Summa* to D.10 c.1, Vatican Lat. 2280, fol. 9r. See also Müller, *Huguccio*, pp. 123-127.

Innocent III further admonished a bishop who had consulted the community in his ecclesiastical proceedings.<sup>1043</sup> This, of course, was not a new development, as the Investiture Contest that commenced in the eleventh century had already attempted to redefine the relationship between ecclesiastical and secular spheres.<sup>1044</sup>

It is therefore clear that even with the permission of the king, the citizens of Reval could not in theory obtain legislative authority over canon law. The law codex was consolidating law codes pertaining to civil and canonical matters, not asserting absolute legislative authority over all affairs. The emphasis that the legal code was implemented with the consent of the bishop does not necessarily mean that the bishop was a passive participant; rather, it is likely that the bishop at least made sure there were no stark contradictions between Lübeck law given to Reval on the one hand, and canon law on the other.

The Lübeck law code was reissued in Middle-Low German in 1282 and consisted of 168 legal so-called paragraphs.<sup>1045</sup> They touched upon a large variety of issues from heritage and marriage to getting bitten by a dog and adhering to proper court procedures. A lot of the stipulations concerning marriage were tied to fiscal considerations, including inheritance.<sup>1046</sup>

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<sup>1043</sup> Innocent III, 'Ad nostrum noveris' (1199) *PL* 214:571, col. 526. The letter was included in 3 *Comp.* 2.1.3 and the *Liber extra* at X 1.4.5. The case is also briefly discussed in Kenneth Pennington, 'The Jurisprudence of Procedure', in *The History of Courts and Procedure in Medieval Canon Law*, ed. Wilfried Hartmann and Kenneth Pennington (Washington, D.C., 2016), pp. 125-159, at pp. 136-137.

<sup>1044</sup> For the investiture contest, see for example Gerd Tellenbach, *Church, State, and Christian Society at the time of the Investiture Contest*, ed. R. F. Bennett (London, 1991). Tellenbach also raises the important point that the Investiture Contest was as much influenced by canon law as canon law was influenced by the 'spirit of the age' (p. 102).

<sup>1045</sup> The 1282 code is virtually identical to the Latin codex issued in 1257. The only modern edition of the law code is Tiina Kala, *Lübecki Õiguse Tallinna Koodeks 1282: Der Revaler Kodex des Lübisches Rechts* (Tallinn, 1998) which includes both, the transcription and translation of the Middle-Low German version of the codex from 1282. This is also the version that has been used here.

<sup>1046</sup> James A. Brundage, 'Marriage Law in the Latin Kingdom of Jerusalem', in *Outremer: Studies in the History of the Crusading Kingdom of Jerusalem, Presented to Joshua Prawer*, ed. Benjamin Z. Kedar, Hans E. Mayer, and Raymond C. Smail (Jerusalem, 1982), pp. 258-271.

Paragraph 8, for example, dealt with widowers and unmarried women who wanted to marry without the consent of their relatives.<sup>1047</sup> The code stipulated that in such cases the woman lost all her property except her clothing. Additionally, the town had to be paid ten marks of silver and the rest of her property would be distributed to her closest heirs. As we have seen, the legitimacy of any legal marriage relied heavily on the consenting parties.<sup>1048</sup> Gratian had included a text in the *Decretum* in which it was stated that a father could not force his daughter to marry but his consent was nevertheless desired.<sup>1049</sup> Similarly, Paragraph 8 of the law code implied that the consent of the relatives to marry was strongly desired but it nevertheless did not entirely forbid such marriages. It can be presumed that the consent of the relatives was customary. Therefore, Paragraph 8 is a good example of a legal law code from medieval Reval in which civil law stops short of infringing on canon law, resulting in a delicate balance between them.<sup>1050</sup>

The law code of Reval also included examples of transgressions for which secular punishments were prescribed in addition to possible ecclesiastical penalties.<sup>1051</sup> One example of this was Paragraph 40 that concerned a man who had been caught with a married woman. In such cases, it was required that the man be trailed through the

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<sup>1047</sup> 8. *WELic we/dewe oder / iuncfruwe / svnder erer vrunde / rat wil man nemen / de ne schal al eres / gydes nicht mer be/holden. Mer ere scha/pene kledere. van e/remre gyde schal heb/ben de stat. tein ma/rk suluers. Dat an/dere scholen hebben / ere negesten eruen/.* Kala, *Lübecki Öiguse Tallinna Koodeks*, p. 37.

<sup>1048</sup> See the discussion on consent in the chapter on Marriage at pp. 97-100.

<sup>1049</sup> Gratian, C.31 q.2 c.1, cols. 1113-1114. The 'auctoritas' is Pope Urban II.

<sup>1050</sup> This was not unique to Livonia, as medieval marriage was often regulated by both secular and ecclesiastical law; see Brundage, 'Marriage Law in the Latin Kingdom of Jerusalem', pp. 258-271. To my knowledge, there are no extant court proceedings for Reval from the thirteenth century that would allow us to examine to what extent ecclesiastical and secular courts investigated cases pertaining to marital law.

<sup>1051</sup> The sinfulness of adultery is considered in Gratian's *Decretum* at several places, for example: C.32 q.7 cc.7, 8, 16, 22, cols. 1134, 1137-1138. See also Winroth, 'Gratian', p. 142. More generally on adultery in medieval canon law, see Vern L. Bullough, 'Medieval Concepts of Adultery', *Arthuriana*, Vol. 7 (1997), pp. 5-15; Brooke, *The Medieval Idea of Marriage*, pp. 45-46; Caroline Dunn, *Stolen Women in Medieval England. Rape, Abduction and Adultery, 1100-1500* (Cambridge, 2013); James A. Brundage, 'Adultery and Fornication: A Study in Legal Theology', in *Sexual Practices and the Medieval Church*, ed. Vern L. Bullough and James A. Brundage (Buffalo, 1982), pp. 129-134.

streets with the woman holding onto his phallus.<sup>1052</sup> Paramount here was clearly the notion that the punishment was public and extremely shameful.<sup>1053</sup>

In another paragraph, it was implied that those who killed themselves and those who were executed were legally equal. A passage included in Gratian's *Decretum*, also discussed above, already had equated those who killed themselves and those who had been executed.<sup>1054</sup> In both cases, the dead were to be deprived of a proper burial. Although the law code of Reval did not deal with Christian burials, Paragraph 92 stated that whoever committed suicide or his/her head was cut off or s/he was hanged, his/her heirs would receive the inheritance of the person entirely.<sup>1055</sup> Similarly, the 1255 treaty with the Oeselians, considered above, had stipulated that suicide was not to be punished – possibly by allowing for the heirs of the transgressor to inherit his/her property. However, the treaty of 1255 made no reference to people who were executed. Conversely, the legal code of Reval did not mention *assisted* suicide which was deemed punishable by the treaty of 1255.

Although only a small fraction of the paragraphs included in the law code of Reval can be considered here, it is clear that many of the legal prescriptions included in it intersected with issues that were also in the jurisdiction of ecclesiastical courts.

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<sup>1052</sup> 40. *SO wor / ienech man bi / enes echten / mannes wiue begre/pen wert. de schal ge/toget warden van / deme wiue per Priapum dor de stat in / den straten vp vnde / neder.* Kala, *Lübecki Öiguse Tallinna Koodeks*, p. 44.

<sup>1053</sup> This punishment has been recently incorrectly interpreted by Vija Stikāne to be the death penalty; Stikāne, 'The Legal Status of Women in Livonia', p. 195. She has referenced a particular section in Eugen von Nottbeck's book, which in turn called this 'a shameful punishment for adultery' (*anstössige Strafe für Ehebruch*); Eugen von Nottbeck, *Die alte Criminalchronik Revals*, p. 23. However, at p. 16 in the same work, von Nottbeck has described the punishment as follows: ... *die Ehebrecherin den Ehebrecher "per priapum" durch die Strassen hinund herzuführen hatte.* – '[T]he adulteress had to lead the adulterer back and forth through the streets "per priapum".' There was no mention of a death penalty.

<sup>1054</sup> Gratian, C.23 q.5 c.12, col. 935. The 'auctoritas' is the Council of Braga (563). For longer discussion on this, see above at p. 310.

<sup>1055</sup> *IS dat / iemen sic suluen do/det. oder vnthoue/det wert mit ordelen / oder vorhangen. sine / eruen beholdet sin / gvt. al ganzlike.* Kala, *Lübecki Öiguse Tallinna Koodeks*, p. 54.

Unfortunately, the lack of sources in the context of thirteenth-century Livonia does not allow us to compare the exact jurisdictional boundaries of civil and ecclesiastical courts in these regions: for example, to which court matrimonial disputes were referred to in practice.

### **JUDGES AND COURTS**

The earliest indicators of a judicial system in Livonia pertain to the existence of judges about which we learn from the chronicle of Henry of Livonia:

The people of Treiden, indeed, having received the mysteries of holy baptism with all spiritual rights, asked their priest, Alabrand, just as he administered spiritual law, likewise to administer civil cases according to the law of the Christians, which by us is called secular law. For the people of Livonia were once most perfidious and everyone stole from his neighbour; but now such violence, rapine, theft and similar things are prohibited because of baptism. But those who had been deprived before their baptism, grieving over the loss of their property because they dared not to take back their property by violence after baptism, had requested for a secular judge to settle such cases. Hence it was first enjoined upon the priest Alabrand to hear both spiritual and civil cases.<sup>1056</sup>

In this excerpt, Henry talked about the fundamental transformation of the Livonians which was aided by their acceptance of the new – Christian – law. While

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<sup>1056</sup> *Thoredenses vero receptis sacri baptismatis misteriis cum omni iure spirituali rogant sacerdotem suum Alabrandum, ut sicut in iure spirituali, sic et eos expediat in civilibus causis, quod nos dicimus in iure seculari, secundum iura christianorum. Gens enim Lyvonum quondam erat perfidissima et unusquisque proximo suo quod habebat auferebat, et ideo in baptismo huiusmodi prohibita sunt violentia, rapina, furta et hiis similia; qui autem ante baptismum spoliati fuerunt, dolentes de rerum suarum amissione, eo quod sua recipere per violenciam post baptismum non auderent, iudicem secularem pro causis huiusmodi terminandis petebant. Unde Alebrandod sacerdoti tam de spiritualibus causis quam de civilibus audiendis primitus iniunctum est. HCL X, 15, p. 46; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 67 (amended).*

Henry clearly distinguished between civil and ecclesiastical jurisdiction, he nevertheless saw them both as part of one world order.<sup>1057</sup> In this sense, then, priest Alabrand was the judge of a system where canon and civil law, while inherently dealing with different cases, nevertheless could be administered through the same, or at least similar enough, judicial system adhering to Christian principles.<sup>1058</sup> Henry, however, noted that as the time went on, the office governing civil law became more separated from that which was controlling canon law:

Afterwards, this office was very much degraded throughout all Livonia, Lettgallia, and Estonia at the hands of several secular lay-judges, who used the office of this kind rather for the fulfilment of their own purses than to for the justice of God.<sup>1059</sup>

As Henry talked about secular lay-judges here, it can be assumed that they were not concerned with ecclesiastical matters anymore. The distinction between civil and canon law from the perspective of the papacy had become more predominant already during the twelfth century.<sup>1060</sup> Canon 9 of the Second Lateran Council in 1139 decreed

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<sup>1057</sup> Morris, *The Papal Monarchy*, p. 34; Dominique Barthélemy, 'Modern Mythologies of Medieval Chivalry', in *The Medieval World*, ed. Peter Linehan and Janet T. Nelson (London, 2003), pp. 249-263, esp. pp. 258-259.

<sup>1058</sup> Referring to the same passage of Henry of Livonia, Mihkel Mäesalu has posited that 'the "Christian law" may have contained, in addition to ecclesiastical norms, also certain legal norms of secular character'; Mäesalu, 'Agreements on the Acceptance of Christianity', p. 217. However, as we have seen at pp. 304-305, all (Christian) secular jurisdiction was subjected to ecclesiastical norms, so 'Christian law' consisted in principle of both spiritual and secular legislation and Henry's passage should thus not come as a surprise.

<sup>1059</sup>... *postea per manus diversorum iudicum secularium laycorum per universam Lyvoniam et Letthigalliam et so Estoniam nimis est depravatum, qui magis pro burse sue implecione quam iusticie Dei intuitu huiusmodi advocacie officium exercuerunt.* HCL X, 15, pp. 46-47; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 67 (amended).

<sup>1060</sup> Brundage, 'The Practice of Canon Law', pp. 51-52; Robert Somerville, *Papacy, Councils and Canon Law in the 11th – 12th Centuries* (Aldershot, 1990), pp. 105-114. For example, Pope Alexander III and his influence on the canon law of marriage can be seen in a context where it significantly differed from what was prescribed for marriage in Roman law, see Charles Donahue Jr., 'Popes Alexander III and Innocent III', in *Christianity and Family Law*, ed. John Witte Jr. and Gary S. Hauk (Cambridge, 2017), pp. 161-171. However, civil and canon law were not strictly separate categories with no overlap, and Roman law certainly influenced canonical jurisprudence, see Kenneth Pennington, 'Roman Law at the Papal Curia in the Early Twelfth Century', in *Canon Law, Religion, and Politics: Liber Amicorum Robert Somerville*, ed. Uta-Renate Blumenthal, Anders Winroth and Peter Landau (Washington, D.C., 2012), pp. 233-252.



that monks and canons regular were not to study jurisprudence and medicine for the sake of temporal gain.<sup>1061</sup> Similar statements were made at other councils and synods, eventually finding their way into various canon law collections. For example, the Council of Tours (1163), presided by Pope Alexander III, stated that monks who went to study law or medicine, unless they returned to their monastery, would be excommunicated.<sup>1062</sup> With a similar constitution issued by Pope Honorius III in 1219, this prohibition was extended from just monks and canons-regular to all secular clerics and priests.<sup>1063</sup> The central argument of the constitution was twofold: lay people in France and other provinces did not abide by laws of the Roman emperors

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<sup>1061</sup> Canon 9 of the Second Lateran Council (1139) *Tanner* 1, pp. 198-199. Anne J. Duggan has argued that although Canon 9 of the Second Lateran Council (1139) had forbidden monks and canons regular to study civil law, it did not mean that Pope Innocent II, who was presiding the council, perceived the study of Roman law negatively. Rather, Duggan emphasises, '[t]he ban was limited to learning for the sake of temporal gain ('*causa lucre temporalis*'), and the aim was to prevent monks and canons regular from acquiring forensic skills for use in secular service'; see Duggan, '*Jura sua unicuique tribuat*', pp. 69-70.

<sup>1062</sup> *Unde, ne sub occasione scientie spiritalis viri mundanis rursus actionibus involvantur et interioribus ex eo ipso deficient ex quo se aliis putant in exterioribus providere, de presentis concilii assensu statuimus ut nullus omnino post votum religionis, post factam in aliquo religioso loco professionem, ad physicam legesve mundanas legendas permittatur exire. Si vero exierit et ad claustum suum infra duorum mensium spatium non redierit, sicut excommunicatus ab omnibus evitetur, et in nulla causa, si patrocinium prestare temptaverit, audiatur.* – 'Wherefore, lest by the pursuit of knowledge, spiritual men are again involved in the affairs of the world, and lack in interior [matters] in that very concern, which they think themselves to provide for others in external [matters], with the consent of the present council we decree that no one at all after [having taken] the vow of religion [or] after having made a profession in any religious place, is allowed to depart to study medicine or secular law. If he, however, does depart and does not return to his cloister within the space of two months, he is to be shunned by all as excommunicate, and, in no case if he attempts to present a defence should he be heard.' Boso, 'Vita Papae Alexandri III', in *Le Liber pontificalis*, Vol. 2, ed. Louis M. O. Duchesne (Paris, 1892), pp. 397-446, at p. 410; translation from Boso, *Boso's Life of Alexander III*, trans. G. M. Ellis and intro. Peter Munz (Totowa, New Jersey, 1973), p. 62 (amended). This canon was included in *1 Comp.* 3.37.2 and the *Liber extra* at *X* 3.50.3. See also Darrel W. Amundsen, 'Medieval Canon Law on Medical and Surgical Practice by the Clergy', *Bulletin of the History of Medicine*, Vol. 52 (1978), pp. 22-44, at pp. 31-33; Robert Somerville, *Pope Alexander III and the Council of Tours (1163): A Study of Ecclesiastical Politics and Institutions in the Twelfth Century* (London, 1977), p. 53. Circumstantial evidence suggests that a similar decree was already promulgated at the council of Montpellier in 1162, see Somerville, *Pope Alexander III*, p. 54.

<sup>1063</sup> Honorius III, 'Super speculam Domini' (22 November 1219) *Horoy* 2, cols. 347-350. The decretal was inserted in three parts into the *Compilatio quinta* at *5 Comp.* 5.12.3, *5 Comp.* 3.27.1 and *5 Comp.* 5.2.1 and the *Liber extra* at *X* 5.33.28, *X* 3.1.10 and *X* 5.5.5. For the decretal generally, see Walter Ullmann, 'Honorius III and the Prohibition of Legal Studies', *Juridical Review*, Vol. 60 (1948), pp. 177-186, at pp. 178-179; Pitz, *Papstreskript*, pp. 171-191; Pennington, 'Decretal Collections', p. 316; Brundage, *The Medieval Origins of the Legal Profession*, pp. 231-234.

anyway, rendering civil law obsolete, and there were very few cases which could not be decided on the basis of canon law.<sup>1064</sup> In this context it is not surprising that in the world of priest-chronicler Henry, clerics rather than laymen were seen as the preferred administrators of all law, although this was at odds with the most stringent postulations of canon law in Gratian's *Decretum*, according to which 'spiritual activity is kept free from fleshly incursions' and 'likewise, one enmeshed in secular matters is not seen to preside over divine matters'.<sup>1065</sup>

When William of Modena was in Livonia as a papal legate in 1225-1226, plenty of people used the opportunity to settle both civil and ecclesiastical cases:

And the Germans, Livonians, and Letts came to him there, seeking judgement over various matters. And he replied to each one according to his case and complaint and settled the cases and lawsuits of many [people].<sup>1066</sup>

As William of Modena was the representative of the pope, he became the highest authority in Livonia during his legatine mission, and it is thus not surprising that those aware of this fact decided to turn to him to help settle lawsuits. This was also expected in a context where it was not uncommon for people to utilise the

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<sup>1064</sup> Ullmann, 'Honorius III and the Prohibition of Legal Studies', pp. 180-184. See also Stephan Kuttner's 'Papst Honorius III. und das Studium des Zivilrechts', in *Gratian and the School of Law, 1140-1234*, ed. Peter Landau (London, 2018), pp. 273-290, esp. pp. 277-279 which convincingly presents the case that 'Super speculam Domini' was not issued because of Honorius III's blanket opposition to civil law or medicine, but rather the decretal stemmed from the pope's desire to promote theological studies among the clerical class. However, the decretal only had limited success, see James A. Brundage, 'Canon Law in the Law Schools', in *The History of Medieval Canon Law in the Classical Period, 1140-1234*, ed. Wilfried Hartmann and Kenneth Pennington (Washington, D.C., 2008), pp. 98-120, at pp. 101-102.

<sup>1065</sup> ... *spiritualis actio a carnalibus distaret incurisibus ... ac uicissim non ille rebus diuinis presidere uideretur, qui esset negotiis secularibus implicatus*. Gratian, D.10 c.8, col. 21; translation from Gratian, *The Treatise on Laws*, p. 36. The 'auctoritas' is Pope Nicholas I.

<sup>1066</sup> *Et ibidem uenerunt ad eum Theuthonici, Lyuones et Letti, querentes iudicia super causis diuersis. Et respondit unicuique secundum causam et querimoniam ipsius et causas multorum et lites determinauit*. HCL XXIX, 4, p. 211; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 233 (amended).

presence of a papal legate in order to save the costs of presenting cases to the papal court personally.<sup>1067</sup>

William of Modena did not only settle cases himself, but evidently was involved in establishing some sort of local judicial system as well:

And after the same legate went to the province of Tabellinus, where all the elders of Vironia came to him, hearing the Christian doctrine and faith from him; and he received them all into the hands of the Supreme Pontiff, and appointed from among them elders and judges in all their provinces.<sup>1068</sup>

Interestingly, a gloss in an early fourteenth-century chronicle by Dietrich of Nieheim described a similar system in pre-Christian Semgallia (southern Livonia):

[A]nd before their conversion to the newly formed Orthodox faith, they did not have any master over them or among them, but by choosing the most prudent and seniors among them, the rest lived according to their counsel for five years and beyond.<sup>1069</sup>

Henry of Livonia repeatedly referred to the ‘*seniores*’ of Livonia in his chronicle, implying that some kind of a conciliar system was already in place in pre-Christian Livonian society.<sup>1070</sup> It seems then that William of Modena was not setting up a completely new system but rather adjusting an old one. Instead of letting the people

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<sup>1067</sup> Harald Müller, ‘The Omnipresent Pope: Legates and Judges Delegate’, in *A Companion to the Medieval Papacy: Growth of an Ideology and Institution*, ed. Atria Larson and Keith Sisson (Leiden, 2016), pp. 197-219, at p. 207.

<sup>1068</sup> *Et post hoc profectus est legatus idem in provinciam Tabellini, ubi seniores omnes Vironie convenerunt ad eum, audientes ab eo doctrinam et fidem christianam, et recepit eos omnes ad manum summi pontificis et statuit ex eis seniores et iudices in omnibus provinciis suis ... HCL XXIX, 7, p. 213; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 235 (amended).*

<sup>1069</sup> ... *ante eorum conversionem ad orthodoxam fidem noviter factam aliquem super se aut inter se non habuerunt dominantem, sed per prudentiores et seniores inter se electos et iuxta eorum consilia vicerunt ceteri per V annos et ultra ...* Dietrich of Nieheim, *Cronica*, p. 283.

<sup>1070</sup> For example: *HCL* I, 14; IV, 4; VII, 3; IX, 3 which all refer to the class of ‘*seniores*’ from the year 1206 or before.

choose elders themselves, William selected them himself with seemingly no objections. Additionally, it is implied that these judges were to oversee secular cases, as the bishops in Livonia would have had the ecclesiastical authority according to canon law.<sup>1071</sup> This action by William was a clear manifestation of ultimate papal authority in Livonia – the papacy did not only decide spiritual matters, it likewise invoked its authority to build a system to address secular cases, essentially implying that all legal regulations in Livonia, either direct or delegated, ultimately came from the Church.

### **COURT PROCEDURE AND THE ORDEAL**

There was no system of ‘ecclesiastical courts’ as such before the middle of the thirteenth century; however, there were plenty of ecclesiastical proceedings conducted by bishops, delegates, or by the pope himself.<sup>1072</sup> Therefore, it would be very difficult if not impossible to distinguish between the ecclesiastical and civil court system in Livonia during the first half of the thirteenth century. On the other hand, by tracing the general change in the way proceedings were conducted, more can be said about the extent to which canon law regulations in courts generally were followed in Livonia.

Almost nothing is known of the court procedure in Livonia from the early thirteenth century, except that a system of courts existed.<sup>1073</sup> For example, when Bishop Albert granted ‘to anyone in Revalia and nearby regions’ the old law of Riga,

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<sup>1071</sup> ... *et Deo militans minime se negociis secularibus implicaret, ac uicissim non ille rebus diuinis presidere uideretur, qui esset negociis secularibus implicatus.* – ‘And therefore, [someone] serving God should be minimally involved in secular affairs, and on the other hand, he who had been involved in secular affairs should not seem to preside over divine affairs.’ Gratian, D. 96, c.6, col. 457. The ‘*auctoritas*’ is Pope Nicholas I. The same sentiment is conveyed elsewhere in the *Decretum* as well, for example D.10 c.8, col. 21, using the same letter of Pope Nicholas I as the ‘*auctoritas*’.

<sup>1072</sup> Donahue, ‘Procedure in the Courts’, pp. 99-103.

<sup>1073</sup> Vogt, ‘Legal Encounters in Estonia’, pp. 237-238.

the first point addressed the establishment of a judicial system.<sup>1074</sup> It stated that ‘no one should judge himself; but if someone harms another, he [the injured] should ask for satisfaction before the judge, according to the established law’.<sup>1075</sup> This rule echoed what Henry of Livonia had implied above – that having to seek justice through an established judicial system might have not been commonplace before the Christianisation of Livonian society.<sup>1076</sup> That anyone had a right for a due process was also reiterated in canon law: ‘but it is proven by many authorities that no one deserves to be condemned without a court order [i.e. due process]’.<sup>1077</sup> The idea of ‘due process’ rested not so much on following the exact rules of procedure in the courtroom, but rather respecting the full rights of the defendant.<sup>1078</sup> Thus, ‘innocent until proven guilty’ was a legal maxim held in high esteem among medieval canon lawyers – the prosecution needed to prove the guilt, albeit the defendant being able to disprove accusations offered him or her an additional level of protection.<sup>1079</sup>

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<sup>1074</sup> ... *quoque in Revalia et circumpositis regionibus* ... The letter of 1225, *LUB*, no. 77, cols. 84-90, at col. 84.

<sup>1075</sup> ... *ut nemo ipse iudicet; sed si quis nocet alicui adversus proximum suum, coram iudice satisfactionem exigat secundum ius ordinatum*. The letter of 1225, *LUB*, no. 77, col. 84.

<sup>1076</sup> *HCL X*, 15.

<sup>1077</sup> *Quod autem nullus sine iudicario ordine dampnare ualeat, multis auctoritatibus probatur*. Gratian, *C.2 q.1 dictum ante*, col. 438.

<sup>1078</sup> Pennington, ‘Introduction to the Courts’, p. 4.

<sup>1079</sup> Walter Ullmann, ‘The Defence of the Accused in the Medieval Inquisition’, *The Irish Ecclesiastical record LXXIII* (Dublin, 1950), pp. 481-489, at pp. 485-486. Malcolm Lambert has argued that when Pope Innocent IV permitted the use of torture in inquisitorial procedure, the requirements of canon lawyers for due process ‘were all set aside’; Malcolm Lambert, *Medieval Heresy: Popular Movements from the Gregorian Reform to the Reformation* (Oxford, 2002), p. 110. Similarly, but more broadly, Robert I Moore has seen the inquisition – even before it obtained the permission to utilise torture – as a tool in ‘a machinery of persecution for Western Christendom’; Moore, *The Formation of a Persecuting Society*, p. 10. However, Mirjan Damaška has shown that in the context where torture was allowed or even permitted, there were still important safeguarding practices in place; Mirjan Damaška, ‘The Quest for Due Process in the Age of Inquisition’, *The American Journal of Comparative Law*, Vol. 60 (2012), pp. 919-954. For a similar argument, see Edward Peters, *Inquisition* (New York, 1988), p. 92. Nevertheless, in some cases – such as at the trial of the Templars – torture was certainly utilised, and thus the concept of ‘due process’ remained a contentious issue; Thomas Krämer, ‘Terror, Torture and the Truth: The Testimonies of the Templars Revisited’, in *The Debate on the Trial of the Templars (1307-1314)*, ed. Jochen Burgdorf, Paul F. Crawford and Helen J. Nicholson (Farnham, 2010), pp. 71-85. Templar Andrea da Siena, who had been examined as part of the inquisitorial process, admitted that it was precisely the use of torture that had been the key element in admissions of guilt, see Elena Bellomo, ‘Rinaldo da Concorezzo, Archbishop of Ravenna, and the Trial of the Templars in Northern Italy’, in *The Debate*

One of the peculiar customs that seemed to have survived in Livonia to some extent, was the ordeal. During the twelfth century, European courts saw a fundamental shift in the practice of court proceedings. Evidence based on the appeal to God – the ordeal – was replaced with other forms of proof, such as witness-statements and written deeds.<sup>1080</sup> The use of the ordeal presented plenty of problems for canon lawyers. For instance, an appeal from the ordeal did not conform to ‘rational’ court procedure, as the decision was rendered by God.<sup>1081</sup> Furthermore, there is only one occasion where the ordeal is mentioned in the Bible, and therefore it did not seem to have a strong Scriptural basis.<sup>1082</sup>

In the Early Middle Ages, the ordeal was sometimes defended by clerics, such as Archbishop Hincmar of Reims (884-882).<sup>1083</sup> However, during the twelfth century, theologians and canon lawyers alike began to criticise the ordeal. Peter the Chanter (c.1150-1197) in his *Verbum abbreviatum* declared that the fact that the ordeal was present in Scripture, was due to a special approval from God.<sup>1084</sup> He then argued that in contemporary times the ordeal was unacceptable to the Church.<sup>1085</sup> Finally, he proposed that the prelates of the Church should employ human reason and

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on the *Trial of the Templars (1307-1314)*, ed. Jochen Burgdorf, Paul F. Crawford and Helen J. Nicholson (Farnham, 2010), pp. 259-272, at p. 268. See also Malcolm Barber, *The Trial of the Templars* (Cambridge, 1978), esp. pp. 139-140 for an interesting example of how some Templars argued that the use of torture rendered their testimonies invalid.

<sup>1080</sup> Barbara Deimling, ‘The Courtroom: From Church Portal to Town Hall’, in *The History of Courts and Procedure in Medieval Canon Law*, ed. Wilfried Hartmann and Kenneth Pennington (Washington, D.C., 2016), pp. 30-50, at p. 36; Donahue, ‘Procedure in the Courts’, pp. 86-87; Pennington, ‘The Jurisprudence of Procedure’, pp. 134-135.

<sup>1081</sup> Pennington, ‘The Jurisprudence of Procedure’, p. 126.

<sup>1082</sup> Num. 5:11-31.

<sup>1083</sup> ... *oculis fidei pervidetur, quod corporis oculis non conspicitur* ... – ‘... the eyes of the faith examine [that] which is not noticed with the eyes of the body...’, Hincmar of Reims, *PL* 125, col. 660.

<sup>1084</sup> *Quaedam approbata quondam a Domino* ... – ‘Certain things are sometimes approved by God ...’, Peter the Chanter, *Verbum abbreviatum*, *PL* 205, cols. 21-554, at col. 227.

<sup>1085</sup> ... *hodie non recipit Ecclesia* ... – ‘... nowadays not received by the Church ...’, Peter the Chanter, *Verbum abbreviatum*, *PL* 205, col. 227.

discretion.<sup>1086</sup> For the support of his arguments, he compiled a list of incidents where the ordeal had resulted in an erroneous verdict – for instance, when two pilgrims were on their way home and one diverted from his way, the other was promptly put on trial for the murder of his companion, which he failed to pass and was therefore hanged; his companion returned home soon after the incident.<sup>1087</sup>

Gratian's *Decretum* likewise addressed the problem of the ordeal on several occasions. It stated that the ordeal of water and hot iron lacked canonical foundation, it was not sanctioned by the Holy Fathers, and that the ordeal was a superstitious invention.<sup>1088</sup> In this context, it is not unexpected that at the Fourth Lateran Council (1215), clerical participation in the ordeal was universally condemned, which in turn removed all doubts of its canonical status:

No cleric may decree or pronounce a sentence involving the shedding of blood, or carry out a punishment involving the same, or be present when such punishment is carried out. ... Moreover no cleric may ... confer a rite of blessing or

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<sup>1086</sup> *Maluit ergo Ecclesia electionem praelati committi humanae rationi et discretioni quam sortium incertitudini.* – ‘Therefore it was preferred that the Church prelates by choice to be committed to the human reason and discretion than to the uncertainty of the lots.’ Peter the Chanter, *Verbum abbreviatum*, PL 205, col. 227.

<sup>1087</sup> *Et illud de peregrino Anglico, cui sine comite suo redeunti de partibus Jerosolymitanis, socio ejus divertente ad S. Jacobum, impositum est (a parentibus socii ejus per calumniam), quod eum in via occidisset. Unde et judicium aquae subiens, periit; revertente socio ejus in Angliam in brevi post suspensionem ejus.* – ‘And the same thing was imposed on an English pilgrim (by the kinsmen of his companion by calumny) who returned from the regions of Jerusalem without his companion, the companion having gone to St. James, because [the kinsmen of his companion thought] he had slain him on the way. And so, going under the ordeal of water, he perished, with his companion returning to England soon after his hanging.’ Peter the Chanter, *Verbum abbreviatum*, PL 205, cols. 230-231. John W. Baldwin, ‘The Intellectual Preparation for the Canon of 1215 Against Ordeals’, *Speculum*, 36/4 (2961), pp. 613-636, at pp. 629-630.

<sup>1088</sup> *Nam ferri candentis vel aquae feruentis examinatione confessionem extorqueri a quolibet sacri non censent canones, et quod sanctorum patrum documento sancitum non est superstitiosa adinventione non est presumendum.* – ‘For the canons do not decree that confession should be extorted by the examination of hot iron or of boiling water, and that such superstitious invention is not sanctioned nor presumed in the letters of the Holy Fathers.’ Gratian, C.2 q.5 c.20, cols. 462-463. The ‘auctoritas’ is Pope Stephen V.

consecration on a purgation by ordeal of boiling or cold water or of the red-hot iron.<sup>1089</sup>

Such developments also ensured the superiority of inquisitorial procedure which assumed a principal role in dealing with different offences over the course of the thirteenth century.<sup>1090</sup> As the Fourth Lateran Council was convened in 1215, it corresponded to the time-period when the Christianisation of Livonia was still underway. The number of sources that mention the use of ordeal in Livonia is miniscule, yet they cannot be dismissed because they are presented in vastly different contexts.

Friedrich G. von Bunge has suggested that as the young city of Riga was growing, its founder, Bishop Albert of Riga, likely felt that the best way to attract new settlers was to grant them official privileges.<sup>1091</sup> Indeed, in 1211, the bishop granted Riga various privileges which were divided into eight categories.<sup>1092</sup> The list was relatively short and among other privileges, the citizens were freed from the ordeal by combat or by carrying hot iron.<sup>1093</sup> In 1225, with the arbitration of William of Modena, the rights of the citizens of Riga were confirmed and expanded.<sup>1094</sup> Among other liberties, the citizens' freedom from duels and the carrying of hot iron was reaffirmed.<sup>1095</sup>

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<sup>1089</sup> *Sententiam sanguinis nullus clericus dictet aut proferat, sed nec sanguinis vindictam exerceat, aut ubi exerceatur intersit. ... Nullus quoque clericus ... purgationi aquae ferventis vel frigidae seu ferri candentis ritum cuiuslibet benedictionis aut consecrationis impendat.* Constitution 18 of the Fourth Lateran Council (1215) Tanner 1, p. 244.

<sup>1090</sup> Peters, *Inquisition*, p. 52; Bernard Hamilton, *The Medieval Inquisition* (London, 1981); Henry Ansgar Kelly, 'The Fourth Lateran *Ordo* of Inquisition Adapted to the Prosecution of Heresy', in *A Companion to Heresy Inquisitions*, ed. Donald S. Prudlo (Leiden, 2019), pp. 75-107; Jennifer K. Deane, *A History of Medieval heresy and Inquisition* (Landhan, 2011), pp. 87-122; Christine C. Ames, *Righteous Persecution: Inquisition, Dominicans, and Christianity in the Middle Ages* (Philadelphia, 2009).

<sup>1091</sup> von Bunge, *Die Stadt Riga*, p. 9.

<sup>1092</sup> The letter of April-August 1211, *LUB* 1, no. 20, cols. 25-28.

<sup>1093</sup> The letter of April-August 1211, *LUB* 1, no. 20, col. 27.

<sup>1094</sup> Mari-Liis Neubauer, 'The First Papal Legatine Mission in Livonia: William of Modena and the City of Riga, 1225-6', *Reading Medieval Studies*, Vol. 47 (2021), pp. 77-100, at pp. 82-83.

<sup>1095</sup> The letter of December 1225, *LUB* 1, no. 75, col. 82.



Additionally, its seventh point stated that whoever challenged another to a duel was fined with 12 marks; indeed, duels could be seen as the ordeal by combat.<sup>1096</sup>

However, even though the largest settlement in Livonia – Riga – had explicitly prohibited the use of the ordeal already in 1211, the papacy had to intervene as well to reaffirm the prohibition of the ordeal. In 1222, Pope Honorius III sent the following letter to Livonia:

Our beloved sons recently baptised in Livonia have addressed a serious complaint to us that the brothers professing the Order of the Templars in Livonia [i.e. the Order of the Swordbrothers], and certain other advocates and judges who exercise temporal power over them, if ever they [the recently baptised] are accused of any sort of crime, they compel them to undergo the trial of glowing iron; and if any burning results from this, they inflict civil penalties [on them], from which they incite scandal and terror among the converts and of those about to be converted. Since, therefore, this sort of judgment is utterly forbidden according to legitimate and canonical sanctions, inasmuch as God appears thereby to be tempted, we order that the said brothers and others to desist altogether from the grievance of this kind of the converts, [and] you should compel

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<sup>1096</sup> *Si quis alium in campum ad duellum vocaverit, si convictus fuerit, XII marcis satisfaciet.* The letter of December 1225, *LUB* 1, no. 75, col. 82. Henry C. Lea has pointed out that ‘it is important to keep in view the wide distinction between the wager of battle as a judicial institution, and the custom of duelling which has obtained with more or less regularity among all races and at all ages.’ Henry C. Lea, *Superstition and Force* (Philadelphia, 1878), p. 95. While Lea recounts a wide range of customs from all over the world that resemble a duel but might not be considered as the ordeal in its technical judicial sense, in this thesis the ordeal by combat and duel are used interchangeably and are understood as judicial instruments. The duel was condemned with the ordeal of water and iron at the Fourth Lateran Council (Constitution 18). Yet, the duel seemed to have remained in use in medieval Europe, especially in England, while the practice of the ordeal of water and iron saw a steep decline, see Paul R. Hyams, ‘Trial by Ordeal: The Key to Proof in the Early Common Law’, in *On the Laws and Customs of England*, ed. Morris S. Arnold (Chapel Hill, NC, 1981), pp. 90-126, at p. 101. One explanation to the survival of the duel is that the efficacy of the ordeal by water and iron depended on invoking God as part of the rite whereas the judicial combat tended to have minimal priestly involvement, if any; see Peter T. Leeson, *The Journal of Law & Economics*, Vol. 55 (2012), pp. 691-714, at pp. 710-711; Robert Bartlett, *Trial by Fire and Water: The Medieval Judicial Ordeal* (Oxford, 1986), pp. 120-121.

[them] through ecclesiastical censure, with a forewarning,  
[and] the appeal having been withdrawn.<sup>1097</sup>

As we have seen, the Fourth Lateran Council in 1215 had removed the divine element from the ordeal by prohibiting the participation of clerics in it – if there is no element of God in the process, then it loses its legitimacy. In a sense, then, it had not been a total ban on the ordeal, as the secular authorities could still technically permit these judicial instruments. Honorius III, however, specifically targeted ‘advocates and judges who exercise temporal power’ and forbade them from continuing to use the method.<sup>1098</sup>

The reasoning for such proscription was spelt out clearly: it is a way of tempting God, and thus completely forbidden by canon law. Honorius III, therefore, did not simply ban the participation of priests in the ordeal, as had been the case in a constitution issued at the Fourth Lateran Council, but condemned the custom completely. In his *Apparatus* to the *Liber extra*, Pope Innocent IV listed the letter sent to Livonia but he did not comment on it.<sup>1099</sup> Hostiensis, in his *Summa aurea* did not specifically comment on the letter but left an overall comment concerning ‘duels, trial

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<sup>1097</sup> *Dilecti filii noviter in Livonia baptizati gravem ad nos querimoniam destinarunt, quod fratres Templariorum ordinem in Livonia profitentes, et alii quidam advocati et iudices, qui temporalem in eis potestatem exercent, si quando de aliquo alio crimine infamantur, eos ferri candentis iudicium subire compellunt, quibus, si qua exinde sequatur adustio, civilem poenam infligunt, qua re conversis et convertendis scandalum incutiunt et terrorem. Quum igitur huiusmodi iudicium secundum legitimas et canonicas sanctiones sit penitus interdictum, utpote, in quo Deus tentari videtur: mandamus, quatenus dictos fratres et alios, ut ab huiusmodi conversorum gravamine omnino desistant, monitione praemissa per censuram ecclesiasticam appellatione remota compellas.* Honorius III, ‘Dilecti filii noviter’ (1222) *LUB* 1, no. 54, col. 58; translation from Henry Charles Lea, *The Ordeal* (Philadelphia, 1973), pp. 196-198 (amended). The letter was inserted into 5 *Comp.* 5.14 and the *Liber extra* at X 5.35.3.

<sup>1098</sup> ... *quidam advocati et iudices, qui temporalem ... potestatem exercent ...* Honorius III, ‘Dilecti filii noviter’, col. 58.

<sup>1099</sup> Innocent IV, *Apparatus ad X* 5.35.3, p. 541.

by cold water, carrying hot iron, trial by blessed cheese and other similar things'.<sup>1100</sup>

He then gave a list of reasons why such things are condemned:

There are multiple reasons, [First] because it was invented by the devil. Second, because God is being tempted by it. But if a man can avoid doing so, he ought not to tempt the Lord. The third, because he who is in no fault is often punished by it, which is quite perverted.<sup>1101</sup>

What is of special interest is how Hostiensis recognised that the ordeal, while tempting God, which is clearly the key issue for canonists, was nevertheless random in a sense that even the innocent could be deemed guilty by it.

It is of interest why the ordeal might have survived in Livonia, despite clear prohibitions. Helle Vogt, building on Robert Bartlett, has suggested that the ordeal was introduced with Christian missionaries and crusaders, and concluded that it was unlikely that it was a survival rooted in old Estonian pagan practice.<sup>1102</sup> She then suggested that the reason why the Christians introduced the ordeal in Livonia was because it could have been considered to be a good pedagogic tool to show the newly converted the supremacy of the Christian God.<sup>1103</sup> Yet, the Livonians seemed to have used various methods of predicting the future and asking advice from their gods by

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<sup>1100</sup> ... *duellum, purgatio aquae frigidae, ferri candentis, casei benedicti et similia*. Hostiensis, *Summa aurea* ad X 5.35 §1, col. 1524.

<sup>1101</sup> *Multiplex est ratio, quia inventa fuit diabolo fabricante. Secundo, quia Deus per eam tentare videtur. Sed quando habet homo aliud quod faciat, Dominu[m] tentare non debet. Tertia, quia per eam is, qui in nulla culpa est, saepe punitur, quod est satis perversum*. Hostiensis, *Summa aurea* ad X 5.35 §2, col. 1524.

<sup>1102</sup> Vogt, 'Legal Encounters in Estonia', pp. 240-244. Robert Bartlett has specifically blamed the 'crusading orders' for introducing the ordeal in Livonia, see Bartlett, *Trial by Fire and Water*, p. 47.

<sup>1103</sup> Vogt, 'Legal Encounters in Estonia', pp. 240-244.

customs that bore resemblance to the ordeal.<sup>1104</sup> The casting of lots, for example, was equally popular in the surrounding Slavic territories.<sup>1105</sup>

In fact, the casting of lots seems to have been used among the Germans in Livonia, too: in March 1226, the workings of the jury-system of Riga were specified by William of Modena, and if all three judges disagreed, ‘then [the casting of] a lot should determine whose decision of the three should be held’.<sup>1106</sup> Could it not have been that the concept of the ordeal was not totally unfamiliar to the Livonians? In any case, there is no reason to believe that the ordeal was widespread in Livonia. Yet that it was not completely obsolete shows how not all canonical prohibitions were immediately received unequivocally and implemented in peripheral areas.

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<sup>1104</sup> Henry of Livonia repeatedly depicts such customs in his chronicle, see *HCL* XI, 7; XII, 2-3; XX, 2; XXIII, 9 for the casting of lots. For pagan customs in Livonia as described in thirteenth-century chronicles, see Shami Ghosh, ‘Conquest, Conversion, and Heathen Customs in Henry of Livonia’s *Chronicon Livoniae* and the *Livländische Reimchronik*’, *Crusades*, 11 (2012), pp. 87-108.

<sup>1105</sup> Leszek P. Słupecki, ‘Prognostication in Pagan Beliefs among Slavs in the Middle Ages’, in *Prognostication in the Medieval World* ed. Matthias Heiduk, Klaus Herbers and Hans-Christian Lehner, Vol. 1 (Berlin, De Gruyter, 2021), pp. 85-107, pp. 98-99.

<sup>1106</sup> ... *tunc sors diffiniat, cuius de tribus arbitrio stetur* ... The letter of 15 March 1226, *LUB* 1, no. 78, col. 92. Not everyone in Riga was of German origin, as there is evidence of an inflow of local people that settled in various Livonian towns, including Riga; Arvi Haak, ‘“Local” Characteristics of the Medieval Livonian Towns’, in *Baltic Crusades and Societal Innovation in Medieval Livonia, 1200-1350*, ed. Anti Selart (Leiden, 2022), pp. 232-260, at pp. 249-252. If the local peoples did not practice the casting of lots themselves, then moving to a town could have certainly exposed them to this custom.

## INVESTIGATION

The aim of this section is to show how the investigation of local issues in Livonia developed over time through three case studies. Legal practice started to professionalise more generally over the thirteenth century, with occupations such as advocates and proctors acquiring a ‘full-fledged professional status’.<sup>1107</sup> This was also reflected in canon law. For example, Canon 19 of the Second Council of Lyon in 1274 stated that ‘[t]hose who come before the Apostolic See or to the court of some ecclesiastical judge, in which they have not yet taken such an oath, in order to act as advocate or proctor in some individual case, are to take an oath, in each case, at the beginning of the litigation.’<sup>1108</sup> Therefore, by examining the development of court proceedings in Livonia through three specific cases, more can be said about the extent to which they reflected the professionalisation of court systems in Western Europe.

### *CASE 1: BISHOP ALBERT OF RIGA AND WILLIAM OF MODENA (1224-1226)*

Bishop Albert of Riga attempted several times to have his episcopal see elevated to the status of a metropolitan see. In a letter from 1219, Honorius III ambiguously explained that, ‘having prudently surveyed the circumstances pertaining to this matter’, he could not elevate Riga to the metropolitan see at this time.<sup>1109</sup> Nevertheless, in 1223, Honorius gave Albert the special privilege to decide all

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<sup>1107</sup> Brundage, *The Medieval Origins*, pp. 283-343.

<sup>1108</sup> *Qui vero ad eamdem sedem veniunt vel ad curiam cuiuslibet ecclesiastici iudicis, in qua nondum tale praestiterant iuramentum, accedunt, in aliquibus singularibus causis patrocinium vel procurationis ministerium praestituri, praestent in singulis causis eisdem, mota controversia, simile iuramentum.* Canon 19 of the Second Council of Lyon (1274) *Tanner* 1, p. 324. This canon was omitted from the *Liber sextus* as the same canon also regulated and capped the fees that the legal practitioners could charge, and Brundage has suggested that advocates at the curia did not want their fees to be placed under judicial control; Brundage, ‘The Practice of Canon Law’, pp. 54-55.

<sup>1109</sup> ... *hujus rei circumstantiis provide circumspectis* ... Honorius III, ‘Quum personam tuam’, col. 333.

questions and disputes which were supposed to be referred to the Apostolic See.<sup>1110</sup> Thus, while Albert did not live to see his wish to become an archbishop fulfilled, the decision of Honorius of 1223 to give him the position of the ultimate judge in Livonia gave him the archiepiscopal judicial power in all but name.<sup>1111</sup>

At the same time, as we have already noted, there were no ‘ecclesiastical courts’, as we understand the term ‘court’, until the mid-thirteenth century.<sup>1112</sup> From the mid-twelfth century onwards, however, there were plenty of ecclesiastical proceedings, sometimes conducted by a bishop or a lesser ecclesiastical official, sometimes by the delegates of these persons, and at other times by delegates of the pope.<sup>1113</sup> Usually by the thirteenth century, the pope commissioned these judges delegate with the investigation and decision of the conflict, and handed them a mandate, containing details of the litigants and the object of the dispute as well as instructions on how to carry out the process.<sup>1114</sup> The person filling the role of judge delegate could be somebody who was not ordinarily a judge and, because the person applying for a judge delegate could influence the choice of person filling this task to some extent, judge delegate was held to a standard of impartiality.<sup>1115</sup> Judges delegate were a well-established institution by the thirteenth century and therefore it is not surprising to

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<sup>1110</sup> ... *que ad sedem essent apostolicam referende*. Honorius III, ‘Cum circa novella’ (23 December 1223) *Livonica*, nos. 10 and 11, pp. 32-33. There were two letters, both with the incipit ‘Cum circa novella’ and dated 23 December 1223, with remarkably similar contents. The first letter (*Livonica*, no. 10, pp. 32-33), addressed to Bishop Albert, notified him of the pope’s decision not to elevate the Church of Livonia to a metropolitan status, yet giving Albert the power to decide in cases that would be otherwise referred to the Apostolic See. The second letter (*Livonica*, no. 11, p. 33), addressed to the suffragan bishops of Selonia and Leal, notified them of the pope’s decision to bestow Bishop Albert with the authority to be a judge in cases otherwise referred to the Apostolic See.

<sup>1111</sup> Fønnesberg-Schmidt, *The Popes and the Baltic Crusades*, p. 171; Tamm, ‘Mission and Mobility’, pp. 31-32. As we have seen, the bishopric of Riga officially received its archiepiscopal status in 1255 during pontificate of Alexander IV and all the other bishoprics of Livonia and Prussia were placed under it; Alexander III, ‘Primatum cathedras et’. See also the discussion on jurisdiction at pp. 280-283.

<sup>1112</sup> Donahue, ‘Procedure in the Courts’, p. 100.

<sup>1113</sup> Donahue, ‘Procedure in the Courts’, p. 100.

<sup>1114</sup> Müller, ‘The Omnipresent Pope’, p. 213.

<sup>1115</sup> Richard H. Helmholz, ‘Canonists and Standards of Impartiality for Papal Judges Delegate’, *Traditio*, Vol. 25 (1969), pp. 386-404, at p. 388.

find a whole section of the *Liber extra* dedicated to it.<sup>1116</sup> However, it seems that they were not deployed to Livonia, possibly because of other venues of mediating – papal legatine missions or arbitration by local bishops – were effective enough, and they did not see the need to further appoint judges delegate for their cases.<sup>1117</sup>

In this context, Bishop Albert of Riga had the right to decide serious cases otherwise referred to Rome, but even this kind of privilege did not strip the litigants from their right to appeal to Rome, as Bishop Albert was not equal to the pope. It simply gave people the chance to settle costly and time-consuming matters locally in their bishop's court – the cost of litigation to Rome would have not only involved fees of the advocate(s) and proctor(s), but also expenses to cover the travel to Rome and lodging for both the litigants and their witnesses, court registrar's fees, and even 'unofficial' costs such as gifts to the judges and clerks.<sup>1118</sup>

Furthermore, the maxim that the defeated party in litigation should pay the costs of the victor was likewise present in canonical collections.<sup>1119</sup> While the canons

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<sup>1116</sup> X 1.29 was entitled 'De officio et potestate iudicis delegati' – 'Of the office and power of judge delegate'. Among other things it is clear that the power of judges delegate was limited in difficult cases, and that he did not have the ultimate authority like '*legatus de latere*'. For example, '[w]hen different letters are obtained under the same date and contrary form, and are presented by different persons to the same judges [delegate], [the execution of] both [letters] shall be suspended until the Pope is consulted.' – 'Quum diversae literae sub eadem data et forma contraria impetrantur, et praesentantur a diversis ad eosdem iudices, supersedetur utrisque, donec consulatur Papa.' 1. Comp. 1.21.3=X 1.29.2; the '*auctoritas*' is the undated letter 'Sane si a nobis' of Alexander III (1159-1181) Jaffé, no. 8943. Likewise, when considering cases in which a judge appointed by the pope might want to delegate it because of some hindrance, the *Liber extra* stated that 'if the matter is of such importance, they must consult you [i.e. the initially appointed judge], unless by chance the cases are so serious that they cannot be concluded conveniently without your presence' – ... *si res tanti est, te consulere debeant, nisi forte causae ita graves sint, quod sine praesentia tua non possint commode terminari.* 1. Comp. 1.21.3=X 1.29.3; the '*auctoritas*' is the undated letter 'Si pro debilitate' of Alexander III; Jaffé, no. 9054.

<sup>1117</sup> Similarly, William A. Pantin has pointed out that while the office of judges delegate was very popular in England during the twelfth century, its use started to decline during the thirteenth century, possibly because its alternatives were much less expensive and quicker, and also due to the increased effectiveness of local courts; William A. Pantin, 'The Fourteenth Century', in *The English Church and the Papacy in the Middle Ages*, ed. Clifford H. Lawrence (Sutton, 1999), pp.157-194, at pp. 177-178.

<sup>1118</sup> Brundage, 'The Practice of Canon Law', p. 69.

<sup>1119</sup> For example, a provision by Pope Alexander III stated that 'in financial cases, the loser is indebted to the victor in expenses, unless perchance provided [that] the sentence is issued for the absent'. - ... *in causis pecuniariis victus victori in expensis condemnetur, nisi forte, sicut cautum est, sententia pro absente feratur.* The '*auctoritas*' is Canon 9 (according to *Mansi*) of the Council of Tours (1163), presided

taught that clerics should not charge fees in situations where a litigant would find it difficult to pay, already Gratian's *Decretum* conceded that generally it has been accepted that clerics 'in the way of advocates ... require gifts for the expenses'.<sup>1120</sup> Therefore it can be concluded that the distance of Livonia from Rome would have greatly increased the required expenditure of any litigant, and investing Bishop Albert with judicial authority to solve cases locally was likely welcomed by a number of Livonians.

Despite the Livonian bishop having received the authority to decide even major cases, two years later, as we have noted, in 1225 William of Modena was sent as a papal legate to Livonia to settle any issues that had arisen there.<sup>1121</sup> If Bishop Albert could have decided the cases pertaining to Livonia himself, why was such a legatine mission dispatched? According to the chronicle of Henry of Livonia, Bishop Albert of Riga sent his priest Maurice to Rome to ask for a legate – '[t]he Supreme Pontiff assented to his request, and sent the venerable bishop of Modena, the chancellor of his palace, with the same priest to Livonia'.<sup>1122</sup> The letter by Pope Honorius III that commissioned William of Modena as his legate did not specify the reasons why he was sent on this mission.<sup>1123</sup> Therefore it is unlikely to have been due to just one issue that was difficult to be resolved locally. A large number of documents that were issued in Livonia with the direct involvement of William relate to the division of lands and questions of

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by Pope Alexander III, *Mansi* 21, col. 1183, 1 *Comp.* 5.32.5=X 5.37.4. There have been some doubts about the attribution of these canons in *Mansi*, see Somerville, *Pope Alexander III*, pp. 39-40.

<sup>1120</sup> ... *clerici more aduocatorum ... pro inpendendis munera exigent ...* Gratian, C.15 q.2 d.p.c.1, col. 750. The 'auctoritas' is the Council of Tarragona (516). See also Brundage, *The Medieval Origins of the Legal Profession*, pp. 193-198.

<sup>1121</sup> Honorius III, 'Cum is qui'; As we have noted, William of Modena went to Livonia in 1225.

<sup>1122</sup> *Et annuit summus pontifex petitioni ipsius et misit venerabilem Mutinensem episcopum, palatii sui cancellarium, cum eodem sacerdote in Lyvoniam ...* HCL XXIX, 2, p. 208; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, pp. 229-230 (amended).

<sup>1123</sup> Honorius III, 'Cum is qui'. See also Fønnesberg-Schmidt, *The Popes and the Baltic Crusades*, pp. 171-172.



territorial disputes. For instance, very soon after arriving in Riga, William determined the boundaries of the urban-fringe (*'stadtmark'*) of Riga.<sup>1124</sup>

It has been pointed out that many of the decisions that William of Modena made were not, in fact, particularly favourable towards Albert, the bishop of Riga.<sup>1125</sup> Had Bishop Albert anticipated this when he allegedly asked for the papal legate? It is more likely that while the bishop sent an envoy to Rome, the legatine mission was embarked to generally settle disputes and issues that pertained to Livonia and its adjacent regions, and William was prepared to undertake this mission at the request of Honorius III.<sup>1126</sup> By going to Livonia, he could settle cases that otherwise could have been appealed to Rome, even with Bishop Albert having the authority to decide cases that otherwise would be referred to the Apostolic See.<sup>1127</sup> William of Modena, as a papal legate, simply possessed greater authority than Bishop Albert.<sup>1128</sup>

Furthermore, it seems that Honorius III did not have full confidence in Bishop Albert – for instance, the decision regarding the division of lands belonging to the bishopric of Leal that took place in 1224 under the watchful eye of Bishop Albert, was confirmed by the pope only after William of Modena had been to Livonia and presumably had investigated these events personally.<sup>1129</sup> It is also unlikely that when Bishop Albert asked for a papal legate, he brought forward any one specific issue to be addressed. In the case of such litigation in the thirteenth century, as we have noted,

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<sup>1124</sup> The letter of 15 March 1226, *LUB* 1, no. 78, cols. 90-93. The urban fringe included the area immediately adjacent to the town's fortifications, extramural land belonging to the town and an area of influence extending 1-3km beyond the town walls, see Howard B. Clarke, *Lords and Towns in Medieval Europe – Maps and Texts* (Ashgate, 2015), p. 56.

<sup>1125</sup> Gnegel-Waitschies, *Bischof Albert von Riga*, pp. 154-156.

<sup>1126</sup> Iben Fonnesberg-Schmidt, *Popes and Baltic Crusades*, p. 175; Ernst Pitz, *Papstreskript und Kaiserreskript*, pp. 131-132.

<sup>1127</sup> Honorius III, 'Cum circa novella'. See also pp. 333-334.

<sup>1128</sup> See the discussion on legatine missions at pp. 297-304.

<sup>1129</sup> The decision of 24 July 1224, *LUB* 1, no. 62, cols. 67-69, was confirmed with the letter 'Ea quae iudicio' of Honorius III (11 December 1226) *Horoy* 5, cols. 153-155.

a judge delegate would have been sent out to question witnesses, investigate customary aspects relating to the case and build a portfolio of relevant facts, to finally refer the case back to the curia for final judgement.<sup>1130</sup> There is no evidence of such distinct steps happening for any of the issues addressed by William of Modena in Livonia.

Yet, from William's time as a bishop of Modena, it can be discerned that he was not intimately accustomed to the judicial processes of the time. Namely, Pope Honorius III had revoked a procedure in which William participated, because 'he proceeded the hearing of the witnesses without the dispute having been attested', i.e. William had heard the testimonies of witnesses without the formal beginning of the trial and thus without the defendant(s) being present.<sup>1131</sup> In this light, it is remarkable that William explained the rationale of his decisions in one of the documents he issued in Livonia. He stated that he made decisions 'wishing rather for concordance than judgement' and that 'we also more preferably follow equity than the rigour of law'.<sup>1132</sup> Perhaps his sentiment is a testimony to the whole situation that only very recently Christianised Livonia found itself in – the society had not yet developed rigid judicial systems, and William of Modena set up systems and solved cases brought to

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<sup>1130</sup> Müller, 'The Omnipresent Pope', p. 213.

<sup>1131</sup> ... *ad receptionem testium lite non contestata processerat*. Honorius III, 'Olim scribentibus nobis' (11 December 1224) *Regesta Honorii Papae III*, Vol. 2, ed. Pietro Pressutti (Rome, 1895), no. 5213. This letter was included in 5 *Comp.* 5.15 and the *Liber extra* at X 5.36.7. Note that the letter 'Olim scribentibus nobis' of Honorius III from 11 December 1224 is remarkably similar to the letter 'Scribentibus nobis olim' of Honorius III from 8 June 1224, *Horoy* 4, cols. 671-672, addressed to the bishop of Faenza, to several abbots in Modena, and to the *magistrum* Tancred of Bologna. Despite – or perhaps because of – great similarities, the letter 'Scribentibus nobis olim' of 8 June 1224 was not inserted into later canon law collections. For the courtcase in which William was involved, see Donner, *Kardinal Wilhelm von Sabina*, pp. 23-24. For the procedure of *litis contestatio* and what should follow to it, see James A. Brundgae, *Medieval Canon Law*, pp. 131-134; Richard H. Helmholz, *The Education of Ecclesiastical Lawyers: A Historical Introduction* (Cambridge, 2019), pp. 51-52.

<sup>1132</sup> ... *volentes ... concordiam magis quam sententiam ... and Nos autem aequitatem potius quam iustitiae rigorem sequentes*. The letter of 23 May 1226, *LUB* 1, no. 88, cols. 104-106, at col. 105.

him as best as he could, and according to the most common legal procedures, but acknowledged that custom and equity take precedence over legal rigidity.

### CASE 2: BALDWIN OF ALNA (1234-1236)

In 1232, Gregory IX appointed Baldwin of Alna as the bishop of Semgallia.<sup>1133</sup> Additionally, the pope invested Baldwin with legatine authority, with the aim to oversee the expansion of the Faith in Livonia and in its surrounding lands. Baldwin was involved in a wide range of internal affairs in Livonia, perhaps the most notable example being a list of charges he brought against the Swordbrothers and the citizens of Riga in 1234.<sup>1134</sup> This was not the first time that Baldwin had to deal with court procedure – that is, one’s conduct in court – as there is an extant document already from 1230 in which it is revealed that he had knowledge of legal proceedings.<sup>1135</sup> While the letter itself is fragmentary, it began with a proclamation that the document contained ‘evidence of the Rigan citizens against the accusations of Brother [Baldwin]’, testifying to the fact that Baldwin was involved in judicial proceedings.<sup>1136</sup>

The extent of Baldwin’s activity in Livonia was such that he was forced to flee Livonia, and in 1234 Gregory IX revoked his legatine powers and William of Modena was invested as a legate in his stead.<sup>1137</sup> Baldwin then filed a series of complaints against the bishop of Riga, the Swordbrothers and their allies, culminating in the pope

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<sup>1133</sup> Gregory IX, ‘Cum in minori’.

<sup>1134</sup> Gregory IX, ‘Citamus personaliter Nicolaum’ (20 November 1234) *DD* 1:6, no. 199, pp. 252-263. For an overview of Baldwin’s activities prior to his appointment to the episcopal see of Semgallia, see Spence, ‘Pope Gregory IX and the Crusade on the Baltic’, pp. 6-9; Mäesalu, ‘Agreements on the Acceptance of Christianity’, pp. 218-219.

<sup>1135</sup> The letter of 1230, *LUB* 1, no. 106, cols. 138-142.

<sup>1136</sup> *Probationes civitatis Rigensis contra articulos fratris Balduini*. The letter of 1230, *LUB* 1, no. 106, col. 138.

<sup>1137</sup> Gregory IX, ‘Cum venerabilem fratrem’ (9 February 1234) *DD* 1:6, no. 172, pp. 218-219. See also the letter which announced this decision to everyone in Livonia, Prussia, Gotland, Finland, Estonia, Semgallia, Curonia and in other provinces: Gregory IX, ‘Ineffabilis disposition creatoris’ *DD* 1:6, no. 176, pp. 223-226. See also the discussion on papal legatine missions at pp. 297-304.

summoning the accused to Rome. There were two letters concerning the summons: first one was addressed to Bishop Nicholas of Riga, and the second to the bishop of Leal and Dorpat, and to the provosts of the dioceses of Leal and Riga.<sup>1138</sup> The second letter to the bishops and provosts had accusations attached to the letter.<sup>1139</sup>

The second letter, not directly addressed to the accused but rather to other authorities in Livonia, warrants further discussion. The pope first explained that it had come to his attention that Nicholas, Bishop of Riga, the Swordbrothers and their Master, and the citizens of Riga have done 'great harm and much injustice' not only to Baldwin, Bishop of Semgallia, but also to the newly converted and other faithful people in these regions.<sup>1140</sup> The pope then mentioned that the accused had been seizing lands, possessions, and other goods that 'exist in the right of blessed Peter'.<sup>1141</sup> Therefore, it was emphasised that these accusations, while mostly concerning physical acquisitions and material gains, were not a question of civil jurisdiction,

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<sup>1138</sup> Gregory IX, 'Citamus personaliter Nicolaum', p. 253; Gregory IX, 'Ad nostram noveritis' (20 November 1234) *DD* 1:6, no. 200, pp. 263-264, at p. 263.

<sup>1139</sup> ... *super hiis que continentur in cedula quam uobis sub bulla nostra mittimus ...* – '[The accused will have to answer] over these [things] which are included in the attached letter which we send to you with our bull.' Gregory IX, 'Ad nostram noveriti', p. 264.

<sup>1140</sup> *Ad nostram noveritis audientiam peruenisse, quod uenerabilis frater noster N. episcopus Rigensis ... magister et fratres militie Christi in Liuonia et cives Rigenses calcata reuerentia sedis apostolice cui quilibet catholicus tenetur tamquam matri deferre uenerabili fratri nostro B. Semigalliensi episcopo, dum in partibus illis legalionis officio fungeretur in persona eius et sociorum suorum ac neophitis et aliis ecclesie Romane fidelibus non sine nostro contemptu, dampna grauia et iniurias quam plurimas non sunt ueriti irrogare ...* – 'You will have known that it has come to our attention that our venerable brother Bishop Nicholas of Riga, ... the master and the brothers of the knighthood of Christ in Livonia [i.e. the Swordbrothers] and the citizens of Riga have mocked the reverence of the Apostolic See, to which every Catholic is bound to defer as a mother, [and] have not feared to inflict heavy losses and innumerable injustices on our venerable brother Bishop Baldwin of Semgallia, while he exercised the legatine office in those regions, on his person and his allies and the neophytes and others faithful of the Roman Church, not without our contempt ...' Gregory IX, 'Ad nostram noveritis', p. 263.

<sup>1141</sup> ... *terras possessiones et alia bona que beati Petri iuris existunt occupare per uiolentiam presumentes et alia committentes enormia per que fidei negotium in predictis partibus plurimum impeditur.* – '... daring to seize by violence the lands, possessions, and other goods which exist in the right of blessed Peter, and committing other irregularities, by which the business of the Faith in the aforesaid parts is greatly hindered.' Gregory IX, 'Ad nostram noveritis', p. 263.

because the offences were made against the papacy, the offices of the Church, and fellow Christians rather than against individual persons and their private possessions.

Indeed, in Gratian's *Decretum*, it was stated that laymen were forbidden to bring judicial accusations against bishops; a notion that was repeated later on, notably in the bull 'Clericis laicos' of Pope Boniface VIII (1294-1303) in 1296.<sup>142</sup> When Baldwin of Alna decided to bring accusations against the Rigan Bishop and the Swordbrothers, he did not do so as a private individual, but as a Church official, on behalf of not only his formerly legatine and now episcopal office, but on behalf of all the faithful people who had suffered because of the alleged transgressions but who could have not accused the bishop of Riga themselves.<sup>143</sup>

Gregory IX then further explained in his letter that the addressees were supposed to oversee that the accused will appear in Rome: Nicholas, the bishop of Riga, was to appear personally (*personaliter*), whereas the Swordbrothers, their Master, and the citizens of Riga were to send 'suitable proctors' (*procuratores idoneos*).<sup>144</sup> Such legal representation was generally organised through a formal

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<sup>142</sup> 'The laity are not to be received in the prosecution of the bishops.' – *Laici in accusatione episcoporum recipiendi non sunt*. Gratian, C.2 q.7 c.1, col. 483. The '*auctoritas*' is Pope Evaristus (c.99-c.107). 'A layman does not accuse a cleric.' – *Laicus clericum non accuset*. Gratian, C.2 q.7 c.2, col. 483. The '*auctoritas*' is Pope Silvester I. The opening of the letter 'Clericis laicos' of Boniface VIII explicitly made clear that laymen are jurisdictionally beneath the clergy: 'Nor are they [i.e. the laymen] prudent enough to pay attention that the authority is forbidden to them [i.e. they have no authority] over clerics, and ecclesiastical persons and goods ...' – ... *nec prudentur attendunt, quod sit eis in clericos ecclesiasticasve personas et bona interdicta potestas ....* Boniface VIII, 'Clericis laicos infestos' (24 February 1296) *Les registres de Boniface VIII*, Vol. 1, ed. Georges A. L. Digard (Paris, 1907), no. 1567, cols. 584-585, at col. 584. The letter was subsequently inserted into the *Liber sextus* at 3.23.3. See also Cox, *A Study of the Juridic Status*, p. 60; Mastnak, *Crusading Peace*, pp. 235-236; Thomas M. Izbicki, 'Clericis Laicos and the Canonists', in *Popes, Teachers, and Canon Law in the Middle Ages*, ed. James Ross Sweeney and Stanley A. Chodorow (London, 1989), pp. 179-190.

<sup>143</sup> Gregory IX, 'Ad nostram noveritis'.

<sup>144</sup> *Super hiis igitur que sub dissimulatione transire nequiuimus certificari uolentes, discretioni uestre per apostolica scripta districte precipiendo mandamus, quatinus eundem Rigensem episcopum ut personaliter, et magistrum et fratres ac ciues predictos ut per procuratores idoneos usque ad festum natiuitatis beate Marie primo uenturum quod eis pro peremptorio termino assignamus compareant coram nobis.* – 'Therefore, wishing to verify these [things] which we have been unable to pass under concealment, we strictly enjoin upon your discretion through the apostolic letters that the same Bishop of Riga shall appear before us personally, and the aforesaid master and brothers and citizens through

contract – a mandate; this, in turn, authorised proctors to appear in courts not only on behalf but instead of the litigant they were representing.<sup>1145</sup> It is not known who were the proctors chosen in the case pertaining to Baldwin of Alna. The accused were also not the only ones who were supposed to appear in Rome directly; the addressees – the bishop of Leal and Dorpat, and the provosts of the dioceses of Leal and Riga – were to appear in Rome personally.<sup>1146</sup> Additionally, they had to make sure that those whose names appeared in the attached letter would also appear before the Apostolic See in order to verify their testimonies.<sup>1147</sup>

While it might seem surprising that the accused – The Swordbrothers, their Master, and the citizens of Riga – were allowed to use proctors to participate in the court case whereas the witnesses – the bishop of Leal and Dorpat, and to provosts of the dioceses of Leal and Riga – were to appear personally, this can be explained by the different nature of the participants. Namely, the witnesses were fundamental in establishing the truthfulness of the accusations and were to be thoroughly

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suitable proctors, before the first feast of the Nativity of the blessed Mary which we assign to them as a peremptory term.’ Gregory IX, ‘Ad nostram noveritis’, p. 264.

<sup>1145</sup> Brundage, ‘The Practice of Canon Law’, pp. 56-57; James A. Brundage, ‘The Advocate’s Dilemma: What Can You Tell the Client? A Problem in Legal Ethics’, in *Medieval Church Law and the Origins of the Western Legal Tradition*, ed. Wolfgang P. Müller, Mary E. Sommar (Washington, D.C., 2006), pp. 201-210, at pp. 201-202; Peter Herde, ‘Der Zeugenzwang in Den Päpstlichen Delegationsreskripten Des Mittelalters’, *Traditio*, Vol. 18 (1962), pp. 255-288, at p. 260. Technically, there were three kinds of proctors in the thirteenth century: first, the ones sent by the petitioner to the papal curia; second, the resident proctors with deep knowledge of the procedures of the chancery and who were permanently residing at the curia; third, general proctors who were also residing at the curia but who were working for a religious order and usually belonged to that order themselves; Patrick N. R. Zutschi, ‘Letters of Honorius III (1216–1227) concerning the Order of Preachers’, in *Pope, Church and City: Essays in Honour of Brenda M. Bolton*, ed. Frances Andrews, Christoph Egger and Constance M. Rousseau (Leiden, 2004), pp. 269-286, at pp. 275-277; Brigide Schwarz, ‘The Roman Curia (until about 1300)’, in *The History of Courts and Procedure in Medieval Canon Law*, ed. Wilfried Hartmann and Kenneth Pennington (Washington, D.C., 2016), pp. 160-228, at p. 219. Patrick Zutschi has suggested that resident proctors were at the papal curia as early as during the pontificate of Innocent III, despite the serious efforts of the latter to limit their activities; Patrick N. R. Zutschi, ‘Petitioners, Popes, Proctors: The Development of Curial Institutions, c.1150–1250’, in *Pensiero e sperimentazioni istituzionali nella societas Christiana (1046–1250): Atti della sedicesima Settimana internazionale di studio*, ed. Giancarlo Andenna (Milan, 2007), pp. 265-293, at pp. 280-283.

<sup>1146</sup> Gregory IX, ‘Ad nostram noveritis’, p. 264.

<sup>1147</sup> Gregory IX, ‘Ad nostram noveritis’, p. 264.

questioned, as prescribed in contemporary canon law. For example, Tancred of Bologna in his highly influential *Ordo iudiciarius* (1216) gave examples of what a judge should be mindful about when he questions witnesses: the persons, place and time, visual and auditory cues, knowledge and credulity, reputation and certitude, and so on.<sup>148</sup> A witness testimony as a procedure would be therefore impossible to conduct through intermediaries.

It was also generally expected in contemporary canon law discussing legal proceedings that for any case there should be at least two witnesses.<sup>149</sup> The list of potential witnesses listed in Baldwin's accusation was extensive, and therefore greatly surpassed the minimum requirements for the number of witnesses in canon law. One of the names in the witness list was Henricus de Papendorpe – it is possible that this was the same Henry of Livonia, author of the 'famous' chronicle that depicted the Christianisation of Livonia.<sup>150</sup> Unfortunately, Henry left almost no traces outside of his chronicle, with this witness list being one of the exceptions. Therefore it cannot be ascertained as to why he might have been included in the witness list in what was essentially a case against, among others, the current bishop of Riga. Henry had been

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<sup>148</sup> *Interrogare debet iudex testem diligenter de omnibus, quae faciunt ad causam, per quae melius possit elicere veritatem, et de singulis circumstantiis prudenter inquirere, scilicet de personis, loco et tempore, visu, auditu, scientia vel credulitate, fama et certitudine, et omnia in scriptis redigi faciat.* – 'The judge must ask the witness carefully about all the things that are connected to the case, through which he can better elicit the truth, and inquire wisely about the individual circumstances, namely: about persons, place and time, seeing [cues], hearing [cues], knowledge or credulity, reputation and certainty, and let him record everything in writing.' *Tancred*, 3.9.2, p. 238. Tancred's list is based on the letter 'Quum causam quae' of Innocent III (22 June 1206) *Pothast* 2824. The letter was inserted into 3 *Comp.* 2.12.10 which is likely the source for Tancred for the letter, as he glossed the *Compilatio tertia*. The letter 'Quum causam quae' was later included in the *Liber extra* at X 2.20.37.

<sup>149</sup> *Regulare est, quod in qualibet causa duo testes sufficient.* – 'The rule is that in each case two witnesses are sufficient.' *Tancred*, 3.7, pp. 228-229. Tancred cited Gratian, C.2 q.4 d.a.c.4, col. 465 and C.2 q.4 c.1, col. 465 in which both the testimony of two or three was required. However, Tancred also cited Gratian, C.4 q.3 c.3 §26, col. 540 which explicitly stated that '[w]here the number of witnesses is not specified, even two will be sufficient.' – *Ubi numerus testium non adicitur, etiam duo sufficient.* Lastly, *Digesta* (Vol. 1, 22.5.12, p. 652) was cited in which an identical statement to Gratian, C.4 q.3 c.3 §26 (two witnesses are sufficient) could be found.

<sup>150</sup> Gregory IX, 'Citamus personaliter Nicolaum', p. 262.

in the household of Albert, the previous bishop of Riga, as evidenced in his chronicle as well.<sup>1151</sup>

Not everyone could be a witness. According to Tancred, witnesses should have generally not been unfree (*servi*), women, minors under fourteen years of age, insane (*mente captus*), poor, those who were defamed, repellent, suspicious or injurious, but also ‘infidels’ whose testimony against the faithful should not be heard.<sup>1152</sup> The witnesses in Baldwin’s case were all men, of whom the majority had a clerical background: they included abbots, priors, magisters from among the clergy and the Swordbrothers, and even priests from local dioceses.<sup>1153</sup> As expected, the witnesses were listed in accordance with their relative status in the social order: the abbots come first, the parish priests last.<sup>1154</sup> Thus, it is clear that people on this witness list would have passed the scrutiny of qualities required for their testimonies to be heard.

Unfortunately, none of the witness testimonies have survived. Baldwin’s accusations were officially heard at a council at Viterbo in the Spring of 1236. The letter ‘Venerabilibus fratribus nostris’ of Gregory IX, addressed to William of Modena, now papal legate to Livonia, has survived.<sup>1155</sup> It contained a number of instructions that he had to oversee, mainly concerning the division of lands.<sup>1156</sup> The Teutonic order

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<sup>1151</sup> See pp. 33-34.

<sup>1152</sup> *Tancred*, 3.6, pp. 223-228. To support the list of people excluded from witnessing, Tancred drew on various sources, such as Gratian’s *Decretum*, *Compilationes*, *Digesta* and more. For example, to support the statement that ‘infidels’ should not be witnesses, Tancred cited 2 *Comp.* 2.2.1 which in turn relied on the letter ‘Licet universis’ of Alexander III (1159-1181) *Jaffé*, no. 9039, and which was subsequently inserted into the *Liber extra* at X 2.20.17. Additionally, for the same prohibition, Tancred cited Gratian, C.2 q.7 c.26 col. 489, which stated that a heretic could be a sufficient witness in a case where a heretic litigates another heretic; in a case between a heretic and a believer, a heretic could be a witness for the believer; however, the testimony of a believer would always prevail against the testimony of a heretic. See also Donahue, ‘Procedure in the Courts’, pp. 85-86.

<sup>1153</sup> Gregory IX, ‘Citamus personaliter Nicolaum’, p. 262.

<sup>1154</sup> Such a hierarchical nature of listing names was very common across all medieval Europe, see Anders Leegard Knudsen, ‘Latin and the Vernacular in Medieval Legal Documents: The Case of Denmark’, in *Law and Language in the Middle Ages*, ed. Matthew W. McHaffie, Jenny Benham and Helle Vogt (Leiden, 2018), pp. 107-127, esp. pp. 120-121.

<sup>1155</sup> Gregory IX, ‘Venerabilibus fratribus nostris’.

<sup>1156</sup> Gregory IX, ‘Venerabilibus fratribus nostris’.



was ordered to give these lands back to the Danish King; this was realised with the treaty of Stensby in 1238, formally arbitrated by William of Modena.<sup>1157</sup> While the origins of this dispute pre-dated the legatine mission of Baldwin of Alna, many issues directly pertaining to this matter were included in the long list of accusations brought against the Swordbrothers in 1234.

Iben Fonnesberg-Schmidt has concluded that ‘most of Baldwin’s allegations appeared to have been dismissed by the papal auditor and the pope’.<sup>1158</sup> Yet, in many cases, the accusations in 1234 did not concern Baldwin himself directly, but other people and offices who had been wronged. For example, in the list of accusations was an allegation that the Swordbrothers were imprisoning neophytes who were going to the court.<sup>1159</sup> When considering the right to appeal, Gratian’s *Decretum* explicitly stated that ‘[t]he appellant must not suffer any affliction or be injured by detention’.<sup>1160</sup> Therefore, unlawful imprisonment of the court-goers was not just obstruction of justice but also an infringement of canon law, as it deprived people of the ability to appeal their cases.

The instructions given to William of Modena in 1236 by Gregory IX included a statement that all neophytes were to be held according to the parish law (*‘ad iura parochialia’*) and in spiritual cases were to be judged by the local bishop.<sup>1161</sup> In secular cases where the presence of ecclesiastics was not required, they were subjected to

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<sup>1157</sup> The letter of 7 June 1238 The letter of 7 June 1238; *DD* 1:7, no. 9, pp. 8-11.

<sup>1158</sup> Fonnesberg-Schmidt, *The Popes and the Baltic Crusades*, p. 188.

<sup>1159</sup> ... *non permiserunt quod comparerent die ad hoc assignato sed et pleros que qui erant in ueniendo carceri manciparunt et pleros que qui erant in ueniendo carceri manciparunt.* – ‘... they did not allow them to appear on the day assigned for this [i.e. court days] but have even transferred most of whom who were on their way to prisons.’ Gregory IX, ‘Citamus personaliter Nicolaum’, p. 260.

<sup>1160</sup> Appellatem non debet afflictio ulla, aut detentionis iniuriare custodia. Gratian, C.2 q.6 c.2, col. 467. The *‘auctoritas’* is Pope Fabian (236-250).

<sup>1161</sup> *Neophiti teneantur ad iura parochialia et in causis spiritualibus et ecclesiasticis non nisi per locorum episcopos iudicentur.* – ‘Neophytes should be held to parochial law and should be judged in spiritual and ecclesiastical cases only by local bishops.’ Gregory IX, ‘Venerabilibus fratribus nostris’, p. 281.

secular judges but were nevertheless able to appeal to the bishop.<sup>1162</sup> It was clear that not everything in the list of instructions stemmed directly from the accusations raised by Baldwin about himself.

It is possible that when the witnesses gave their testimonies, they added additional details surrounding the circumstances in Livonia that prompted the pope to consider them in his response.<sup>1163</sup> In conclusion, it seems that while the statements resulting from the council of Viterbo were not personally beneficial to Baldwin of Alna, the case had never really been about him as an individual. The charges brought to Rome by him concerned a variety of parties, such as the clergy and local converts. In that regard, judging from the stern instructions given to William of Modena, the case brought to Rome by Baldwin of Alna seems to have been relatively successful.

### **CASE 3: COMPLAINTS AGAINST THE TEUTONIC ORDER (1298-1300)**

As we have seen, John III of Schwerin (1294-1300), the archbishop of Riga was temporarily absent from Livonia in 1297.<sup>1164</sup> The Order immediately tried to assert control over Riga, and upon his return, John III was forced to report his grievances to Rome at the end of 1297.<sup>1165</sup> As a result, early in 1299, Pope Boniface VIII ordered the

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<sup>1162</sup> *In causis uero secularibus que forum ecclesiasticum non requirunt; stent iuri coram iudice seculari, in quo si eos grauari contingat poterunt ad suos episcopos appellare.* – ‘In truly secular cases which do not require an ecclesiastical forum; they are to stand before a secular judge, in which, if they are wronged, they can appeal to their bishops.’ Gregory IX, ‘Venerabilibus fratribus nostris’, p. 281.

<sup>1163</sup> It was clear that many if not most of the parties affected attended the papal curia personally, as instructed, so there was certainly a possibility for further interrogation. Also note that it was an auditor who heard the case, who then presented the testimonies to the pope. *Tandem uenerabilem fratrem nostrum Sabinensem episcopum concessimus auditorem. Idem uero auditor intellectis que fuere proposita coram ipso ... per episcopos, abbates, et plebanos de illis partibus apud sedem apostolicam existentes ...* – ‘At last, we granted [them] an audience with our venerable brother the bishop of Sabina. Indeed, the same auditor, having discerned what was presented [to him] in person ... through the bishops, abbots, and parish priests from these parts [i.e. Livonia] present at the Apostolic See ...’ Gregory IX, ‘Venerabilibus fratribus nostris’, p. 280.

<sup>1164</sup> A brief overview of the events in English has been given in O’Connor, *The House of Hemp and Butter*, pp. 107-108.

<sup>1165</sup> The letter of 16 September 1297, *LUB* 1, no. 568, cols. 712-713; this letter has survived only fragmentally.

grandmaster of the Teutonic Order and the master of the Livonian Order to appear in Rome within six months.<sup>1166</sup> This was a change from the 1234 case in which some of the accused were permitted to send procurators to Rome instead of going there personally.<sup>1167</sup> However, in July 1299, after hearing about the settlement between archbishop Johann III and the Order, Boniface VIII rescinded the summons.<sup>1168</sup>

The peace in Riga was only temporary – in 1300, three separate appeals were raised again to the pope. These appeals have survived in the form of article compilations formally administered at the curia by the procurators of the litigants.<sup>1169</sup> In all three cases, the litigants used procurators to compile a list of accusations against the Teutonic Order. The first of the complaints was again lodged by Bishop John III.<sup>1170</sup> It was compiled by procurators chosen by the litigants and consisted of fifty-three articles in total.<sup>1171</sup> No further information about these procurators was given. A large number of the articles concerned the oppression of neophytes and had the general notion that the Teutonic Order was suppressing the advances of the Catholic faith in various ways; for example, Article 5 simply stated that the Teutonic Order had completely ceased to propagate the Faith in these regions.<sup>1172</sup> The last article on the list reflected the importance of *'fama'*, in medieval legal proceedings as it stated that the aforementioned complaints had been commonly held and had been public knowledge for a long time.<sup>1173</sup>

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<sup>1166</sup> Boniface VIII, 'Fidedignis relatibus intellecto'; Boniface VIII, 'De statu et' (7 January 1299). See also Muldoon, *Popes, Lawyers, and Infidels*, pp. 58-59.

<sup>1167</sup> See the discussion at p. 341.

<sup>1168</sup> Boniface VIII, 'Nuper ex parte' (July 1299) *LUB* 1, no. 582, cols. 733-736.

<sup>1169</sup> Transcripts are printed in Seraphim, *Das Zeugenverhör*, Supplements I-III, pp. 147-161.

<sup>1170</sup> Seraphim, *Das Zeugenverhör*, Supplement I, pp. 147-152.

<sup>1171</sup> Seraphim, *Das Zeugenverhör*, Supplement I, pp. 147-152.

<sup>1172</sup> Seraphim, *Das Zeugenverhör*, Supplement I, Article 5, p. 147.

<sup>1173</sup> *Item quod est de predictis et diu fuit communis vox et fama publica.* – 'Again, that which is about the aforesaid [accusations] has for a long time been communal voice and public fame.' Seraphim, *Das Zeugenverhör*, Supplement I, Article 53, p. 152.

The concept of '*fama*' – 'fame' or 'reputation' – became one of the central ideas in medieval jurisprudence and the inquisitorial process.<sup>1174</sup> '*Fama*', perceived as reliable, was intrinsically connected to the idea of informed and collective rumour, and often contrasted to eyewitness knowledge, which was seen as even more reliable, or to hearsay, which was not considered reliable.<sup>1175</sup> The difference between hearsay and '*fama*' was spelt out in Constitution 8 of the Fourth Lateran Council (1215), based on an earlier letter of Innocent III from 1206.<sup>1176</sup> It stated that the report about '*fama*' must come from 'prudent and honest persons' and there must be multiple reports.<sup>1177</sup> It is therefore unsurprising that the compilation of accusations presented at the papal court ended with a statement that the substance of the accusations are '*fama publica*'.

The second complaint lodged against the Teutonic Order in 1300 came from the citizens of Riga who had appointed a certain Liberius, '*scholasticus*' of Dorpat as their procurator.<sup>1178</sup> It is slightly surprising that the citizens of Riga chose someone from

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<sup>1174</sup> Joanna Carraway Vitiello, 'Fama, Notoriety, and the Due Process of Law', in *Public Justice and the Criminal Trial in Late Medieval Italy*, ed. Reggio Emilia and Visconti Age (Leiden, 2016), pp. 88-113, at pp. 89-90.

<sup>1175</sup> Chris Wickham, '*Fama* and the Law in Twelfth-Century Tuscany', in *Fama: The Politics of Talk and Reputation in Medieval Europe*, ed. Thelma Fenster and Daniel Lord Smail (London, 2003), pp. 15-26, at pp. 16-17; Chris Wickham, 'Gossip and Resistance among the Medieval Peasantry', *Past and Present*, Vol. 160 (1998), pp. 3-24, at pp. 4-5. As an example of the influence and use of '*fama*', up until the middle of the thirteenth century, people who were allegedly excommunicated were to be avoided if there was at least proof of '*publica fama*'; Elizabeth Vodola, *Excommunication in the Middle Ages* (London, 1986), p. 99.

<sup>1176</sup> Innocent III, 'Qualiter et quando' (29 January 1206) *Register Innocenz 8*, no. 201, pp. 343-347; 3. *Comp.* 5.1.4=X 5.1.17.

<sup>1177</sup> *Ex quibus auctoritatibus manifeste comprobatur, quod non solum cum subditus verum etiam cum praelatus excedit, si per clamorem et famam ad aures superioris pervenerit, non quidem a malevolis et maledicis sed a providis et honestis, nec semel tantum, sed saepe (quod clamor innuit et diffamatio manifestat), debet coram ecclesiae senioribus veritatem diligentius perscrutari ...* – 'From these authorities it is clearly shown that not only when a subject has committed some excess but also when a prelate has done so, and the matter reaches the ears of the superior through an outcry or rumour which has come not from the malevolent and slanderous but from prudent and honest persons, and has come not only once but frequently (as the outcry suggests and the rumour proves), then the superior diligently must seek out the truth before senior persons of the Church ...' Constitution 8 of the Fourth Lateran Council (1215) *Tanner 1*, p. 238 (4 *Comp.* 5.1.4=X 5.1.24. Tancred, relying on the same decree in his *Ordo*, clarified that '[h]e who is said to be defamed must be summoned, so that his objection may be heard, if he has any.' – *Citari debet is, qui dicitur infamatus, ut audiatur eius exceptio, si quam habet ...* *Tancred 7.3*, p. 154.

<sup>1178</sup> Seraphim, *Das Zeugenverhör*, Supplement II, pp. 153-157.

Dorpat rather than from Riga and suggests that the skills of Liberius must have been in high regard. The complaints of the citizens consisted of forty-eight articles, and started with the proclamation that the law and the property of Livonia belonged to St. Peter, and that the archbishop of Riga with his provinces was directly subject to the Roman Church.<sup>1179</sup> That the accusations against the Order were ‘common knowledge and publicly known’ was repeated throughout the articles.<sup>1180</sup> While a large number of complaints were about the injuries that the Rigan citizens had suffered at the hands of the knights of the Order, there were several serious accusations made essentially on behalf of others who would not have had the means to do so themselves. Thus, in article thirty-nine, the Order was accused of cruelly murdering ‘poor crusaders’ and many other people as well.<sup>1181</sup> Similarly to the complaints lodged by the archbishop of Riga, the general impression of the whole list of the articles is that the Order had been acting in a very non-Christian manner by committing various crimes and by conspiring with the enemies of the citizens of Riga, that is, with people who were either still pagans or nominal-Christians not acting according to Christian values.<sup>1182</sup>

The last surviving collection of articles lodged against the Order came from Conrad, Bishop of Oesel (ca 1297 – ca 1307), the chapter of his diocese, and the people of Oesel.<sup>1183</sup> No information was given about the procurators who were presenting the

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<sup>1179</sup> Seraphim, *Das Zeugenverhör*, Supplement II, Article 1, p. 153.

<sup>1180</sup> ... *publica vox et fama* ... Seraphim, *Das Zeugenverhör*, Supplement II, Articles 11, 17, 24, 27, 40, pp. 154-156.

<sup>1181</sup> *Item quod post hoc novem pauperes peregrinos in vigilia nativitatis domini et multos alios homines de civitate predicta crudeliter occiderunt.* – ‘Also that after this, at the eve of our Lord’s birth, they brutally slew nine poor crusaders and many other men from the aforesaid city.’ Seraphim, *Das Zeugenverhör*, Supplement II, Article 12, p. 154.

<sup>1182</sup> For example, Article 20 stated that the Order conducted affairs with the enemies of the city and its citizens. *Item quod pro capitalibus inimicis et hostibus civitatis et civium predictorum se gesserunt et gerunt.* Seraphim, *Das Zeugenverhör*, Supplement II, Article 20, p. 154.

<sup>1183</sup> Seraphim, *Das Zeugenverhör*, Supplement III, pp. 158-161.

articles at the curia. There were thirty-six articles in total, of which six, including the very last one on the list, stated that everything that has been said was common knowledge and publicly known.<sup>1184</sup> There was a slight difference in the way this phrase was used in the articles listed by the citizens of Riga and by the bishop of Oesel. The procurator of Riga tended to use the term '*publica vox et fama*', whereas the procurators of the bishop of Oesel used '*vox et fama publica*' and '*vox et publica fama*' (the word '*publica*' is never first).<sup>1185</sup> This could testify that the procurators employed by the citizens of Riga and the bishop of Oesel were likely different individuals, which in turn shows that there were multiple people in Livonia at that time who were professionally capable of presenting a case at the papal court.

The complaints of the bishop of Oesel were in their nature similar to the ones lodged by the archbishop of Riga and the citizens of Riga, with emphasis put on the crimes against the faithful committed by the Order. Some articles had more precise allegations, such as the accusation that the Order plundered the castle of Leal and its surrounding lands, all of which belonged under the jurisdiction of the bishop of Oesel.<sup>1186</sup> In other sections, just a general statement that the Order 'had committed many immense evils' was presented.<sup>1187</sup>

Despite the complaints issued at the curia in 1300, the pope did not act immediately. To further complicate things, Archbishop John III of Riga died shortly

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<sup>1184</sup> ... *vox et publica fama* ... Seraphim, *Das Zeugenverhör*, Supplement III, Articles 8, 13, 18, 21, 28, 36, pp. 159-161.

<sup>1185</sup> Seraphim, *Das Zeugenverhör*, Supplement III, Articles 8, 13, 18, 21, 28, 36, pp. 159-161.

<sup>1186</sup> ... *castrum Lealense et aliam terram eiusdem episcopi extirpationibus arborum, predis animalium, rapinis aliorum mobilium et etiam ignis incendio quasi totaliter devastarunt et eundem episcopum bonis mobilibus denudarunt*. – '[T]hey laid waste entirely, as it were, to the castle of Leal and other lands of the same bishop by uprooting the trees, preying on animals, plundering other movables, and even igniting fires, and they looted movable goods from the same bishop.' Seraphim, *Das Zeugenverhör*, Supplement III, Article 15, p. 159.

<sup>1187</sup> ... *multa mala immania commiserunt* ... Seraphim, *Das Zeugenverhör*, Supplement III, Article 29, p. 161.

after compiling his list of allegations, and Pope Boniface VIII decided to nominate Isarnus Tacconi (1300-1302) as the new archbishop of Livonia.<sup>1188</sup> The complaints lodged in 1300 did not gain attention until around 1310 when Pope Clement V (1305-1314) started an official inquiry, resulting in a papal inquisitor being sent to Livonia.<sup>1189</sup>

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<sup>1188</sup> ... *volentes eidem de persona iuxta cor nostrum idonea providere*. Boniface VIII, 'In excelso sedis', col. 761.

<sup>1189</sup> This inquisitorial process, albeit exceptionally interesting in terms of surviving witness testimonies, remains out of the scope of this thesis.

## REWARDS AND PUNISHMENTS

The Christianisation of Livonia involved both benefits and a new system of punishments for the inhabitants of Livonia. Possibly the most important reward for those who undertook a crusade to convert the Livonians was the granting of indulgences.<sup>1190</sup> The first part of this section will focus on the development of indulgence proclamations that were granted in the context of the Livonian Crusade, and on the implications that such privileges offered. As the conversion of Livonia was accompanied by more-or-less constant warfare, there would have been grave concern for the fate of the souls of those who had died. While many of them would have been crusaders bound by a crusading vow, and therefore benefitting from the spiritual privileges offered to them in papal proclamations on the crusades, there were also those who perished without being crusaders. Consequently, by comparing different types of sources, the idea and legitimacy of martyrdom will be analysed and compared to the concept of sanctity.

A crucial part of any well-functioning society was sustaining peace and control through the framework of potential punishments prescribed for transgressions.<sup>1191</sup> With the coming of Christianity, the punitive system in Livonia changed, and the implementation of ecclesiastical punishments formed an important part of that shift. Attention will be given to particular aspects that were prevalent in the source-material that survives from Livonia, rather than on all the possible treatments that punishments received in canon law.

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<sup>1190</sup> Maureen Purcell, *Papal Crusading Policy, 1244-1291* (Leiden, 1975), p. 36; Brundage, *Medieval Canon Law and the Crusader*, p. 144.

<sup>1191</sup> For a short overview of a variety of punishments at the disposal of the medieval Church, see Brundage, *Medieval Canon Law*, pp. 152-153.



## SPIRITUAL REWARDS

### Indulgences

Indulgences formed part of a list of rewards granted for those going on a crusade, in addition to such privileges as granting the liberty to deal with excommunicates without incurring censure, the ability to take part in ecclesiastical ministrations during interdict, the absolving of vows other than the one taking the Cross, and many others.<sup>1192</sup> As we have seen, the missionaries going to Livonia in the late twelfth and early thirteenth centuries were also granted some quite exceptional specific privileges, such as the permission to eat anything available.<sup>1193</sup> Yet, the granting of indulgences has been seen as the most important privilege compared to the others, not least because they could potentially offer an eternal salvation. Indulgences are therefore examined separately in this section. Moreover, considering indulgences in the context of Livonia offers the opportunity to trace and compare their use with the general developments of the idea of indulgences within the medieval Church.

The proclamation of the First Crusade by Pope Urban II (1088-1099) at the Council of Clermont (1095) did not leave any direct papal sources from the council itself, which makes it very difficult to determine what the pope had in mind when he granted the crusaders their spiritual privileges.<sup>1194</sup> In general, scholars have maintained that by merging the concepts of pilgrimage and just war, the pope granted

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<sup>1192</sup> Brundage, *Medieval Canon Law and the Crusader*, pp. 142-143.

<sup>1193</sup> The letter that permitted to eat whichever food the missionaries could find: Clement III, 'Quam sit laudabile'. See also the longer discussion of the letter at pp. 123-127.

<sup>1194</sup> Brundage, *Medieval Canon Law and the Crusader*, pp. 142-143 See also Riley-Smith, *The First Crusade*, pp. 13-30; Penny J. Cole, *The Preaching of the Crusades to the Holy Land, 1095-1270* (Cambridge, MA, 1991), pp. 1-36; Purkis, *Crusading Spirituality*, pp. 12-17; Robert Somerville, 'The Council of Clermont and the First Crusade', *Studia Gratiana*, Vol. 20 (1976), pp. 325-337; Munro, 'The Speech of Pope Urban II', pp. 231-242.

to those taking the Cross remission of the penance imposed by the Church but not remission of the temporal punishment, which would only later be granted through an indulgence.<sup>1195</sup> While often conflated, there is an important distinction between the two concepts – penance is imposed on a sinner after the latter confesses, and is measured as an appropriate punishment by a church representative, whereas temporal punishment is merited by a sin which can be expiated by an indulgence.<sup>1196</sup> Focus was also drawn on the source of merit that made such penitential remissions possible. Consequently the idea of ‘treasury of merit’ was utilised for this purpose – it was inexhaustible, as it included the merits of Christ, Virgin Mary, saints, and martyrs, and the Church could draw on it in order to credit its surplus to penitents.<sup>1197</sup> Twelfth century popes, such as Eugenius III, Alexander III and Gregory VIII, who all issued letters concerning crusading activities on various fronts, were still relatively vague with their terminology but they nevertheless started to extend and clarify the concept of indulgences in their letters.<sup>1198</sup>

The papacy officially began to endorse crusading activity in Eastern Europe when the idea of the indulgence and its place among spiritual rewards was not yet fully formulated. When Pope Eugenius III promulgated a Crusade against the pagan Wends in Eastern Europe, it was done within the context and framework of the

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<sup>1195</sup> Bysted, *The Crusade Indulgence*, pp. 72-73; Riley-Smith, *The First Crusade*, pp. 28-29; Mayer, *The Crusades*, pp. 30-31. See also the discussion on holy war at pp. 168-169.

<sup>1196</sup> Brundage, *Medieval Canon Law and the Crusader*, p. 144; Jonathan Riley-Smith, *What Were the Crusades?*, pp. 60-61.

<sup>1197</sup> Abigail Firey, *A New History of Penance* (Leiden, 2008), pp. 166-168; Robert W. Shaffern, ‘The Medieval Theology of Indulgences’, in *Promissory Notes on the Treasury of Merits*, ed. Robert N. Swanson (Leiden, 2006), pp. 11-36, at pp. 19-28; Robert W. Shaffern, *The Penitent’s Treasury: Indulgences in Latin Christendom, 1175-1375* (London, 2007), pp. 81-88; Ethan Leong Yee, ‘Lest the Keys Be Scorned: The Implications of Indulgences for the Church Hierarchy and Thirteenth-Century Canonists’ Resistance to the Treasury of Merit’, *Traditio*, Vol. 76 (2001), pp.247-287, at pp. 252-253; Bysted, *The Crusade Indulgence*, pp. 135-139.

<sup>1198</sup> Brundage, *Medieval Canon Law and the Crusader*, pp. 143-144.

Second Crusade.<sup>1199</sup> The latter was endorsed by Eugenius III at the end of 1145 with ‘Quantum praedecessores’, in which the pope offered ‘the remission of sins which our aforesaid predecessor pope Urban established, by the authority conceded to us by God’.<sup>1200</sup> Building on a tradition that was established at the Council of Clermont almost fifty years before, it ambiguously spoke of the remission of sins without explaining what was meant by ‘remission of sins’. The pope continued this line with the letter ‘Divini dispensatione’ of 1147, promulgated for the endorsement of the Wendish Crusade.<sup>1201</sup> In this, Eugenius III granted the crusaders going to Eastern Europe to fight against the pagans the same remission of sin and similar, but not the same, temporal privileges as to the crusaders going to Jerusalem.<sup>1202</sup> Thus, the crusading letters of 1145 and 1147 not only displayed similar ambiguities by not explaining what was meant by ‘remission of sin’, but also situated the activities of militant conversion in the pagan Eastern Europe within the wider crusading network.<sup>1203</sup>

The efforts of those who undertook the Wendish Crusade did not reach the shores of the North-eastern Baltic and Livonia, but were mostly of a precursory nature. The first papal endorsements specifically meant for those undertaking journeys to Livonia were issued during the pontificate of Alexander III.<sup>1204</sup> In 1171 or 1172, the pope promised ‘one year of remission of the sins for which they have made

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<sup>1199</sup> For the Wendish Crusade in the context of crusading movement, see Dragnea, *The Wendish Crusade*, esp. pp. 39-64.

<sup>1200</sup> ... *peccatorum remissionem, quam prefatus predecessor noster papa Urbanus instituit, auctoritate nobis a Deo concessa* ... Eugenius III, ‘Quantum praedecessores’, p. 57.

<sup>1201</sup> Eugenius III, ‘Divini dispensatione’. For the letter, see also: Giles Constable, ‘The Second Crusade as seen by Contemporaries’, *Traditio*, Vol. 9 (1953), pp. 213-279, at p. 255; Fönnesberg-Schmidt, *The Popes and the Baltic Crusades*, pp. 31-34.

<sup>1202</sup> See pp. 382-383.

<sup>1203</sup> See the brief overview in the Introduction at pp. 13-14.

<sup>1204</sup> Dragnea, *The Wendish Crusade*, pp. 40-45; Fönnesberg-Schmidt, pp. 52-65.

confession and received a penance' just as granted to those 'who go to the Lord's Sepulchre'.<sup>1205</sup> Additionally, those who perished in the fight were promised 'remission of all their sins, if they have received a penance'.<sup>1206</sup> With this letter, the papacy stepped back from the granting of spiritual rewards equal to those granted to crusaders going to the Holy Land that had been offered during the proclamation of the Wendish Crusade in 1147.<sup>1207</sup> At the same time, many of the influential twelfth-century canon law and theological collections, such as Gratian's *Decretum* and the works by Peter Lombard, did not examine the concept of indulgences at all, possibly because they were such new concepts and still very much in development.<sup>1208</sup>

Even in the thirteenth century, when 'Ad liberandam' of the Fourth Lateran Council (1215) and 'Afflicti corde' of the First Council of Lyon (1245) included a more-or-less formative treatment of indulgences as 'full pardon for their sins about which they heartily contrite and have spoken in confession', it did not signify the crystallisation of the concept of indulgence.<sup>1209</sup> 'Ad liberandam' was almost entirely excluded from the *Liber extra* – the only section of it that was included pertained to

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<sup>1205</sup> ... *de peccatis suis, de quibus confessi fuerint et poenitentiam acceperint, remissionem unius anni ...* and ... *sepulcrum dominicum visitant ...* Alexander III, 'Non parum animus', p. 38. See also Fonnesberg-Schmidt, *The Popes and the Baltic Crusades*, pp. 60-62; Bysted, *The Crusade Indulgence*, p. 158; Carsten Selch Jensen, 'The Early Church of Livonia, 1186-c.1255', in *Die Kirche im mittelalterlichen Livland*, ed. Radoslaw Biskup, Johannes Götz and Andrzej Radzimirski (Toruń, 2019), pp. 75-103, at p. 81.

<sup>1206</sup> ... *omnium suorum, si poenitentiam acceperint, remissionem indulgemus peccatorum.* Alexander III, 'Non parum animus', p. 38.

<sup>1207</sup> Eugenius III, 'Divini dispensatione' (11 April 1147) *PL* 180, cols. 1203-1204. See also Fonnesberg-Schmidt, *The Popes and the Baltic Crusades*, pp. 59-60, which points out that the letter 'Non parum animus' was unusual compared to contemporary crusading letters.

<sup>1208</sup> Brundage, *Medieval Canon Law and the Crusader*, pp. 148-149; Bysted, *The Crusade Indulgence*, p. 109.

<sup>1209</sup> ... *plenam suorum peccaminum, de quibus liberaliter fuerint corde contriti et ore confessi, veniam ...* 'Ad liberandam', Constitution 71 of the Fourth Lateran Council (1215) *Tanner* 1, pp. 270-271; Constitution 5 of the First Council of Lyon (1245) *Tanner* 1, p. 301; also repeated verbatim in Constitution 1c of the Second Council of Lyon (1274) *Tanner* 1, p. 312. See also Brundage, *Medieval Canon Law and the Crusader*, pp. 147-148; Purcell, *Papal Crusading Policy*, pp. 36-38; Uta-Renate Blumenthal, 'A Gloss of Hostiensis to X 5.6.17 (Ad liberandam)', *Bulletin of Medieval Canon Law*, Vol. 30 (2013), pp. 89-122, at pp. 89-90.

the prohibition to sell arms, iron, wood or ships to the Saracens.<sup>1210</sup> Consequently, 'Ad liberandam' attracted little attention from the commentators on canon law.<sup>1211</sup> It was only in the middle and second part of the thirteenth century when theologians and canon lawyers first attempted to refine and define clearly the granting of indulgences: Thomas Aquinas outlined the requirements to merit an indulgence, whereas Hostiensis gave a clear-cut definition for an indulgence – 'it is a remission of all sins', without any further qualifications or conditions.<sup>1212</sup>

There is no information on how contemporaries perceived the granting of spiritual rewards for those who undertook the journey to Livonia under the influence of the exhortations of Alexander III. It is not even known how many took on the journey.<sup>1213</sup> The number could not have been substantial or otherwise their legacy would have likely been mentioned in the chronicles that depicted the conversion of Livonia from the beginning, such as the chronicle of Henry of Livonia (finished c.1229) and the chronicle of Arnold of Lübeck (c.1210).<sup>1214</sup> The first mentions of crusading privileges granted for those going to Livonia in narrative sources came from the same chronicles, as according to these spiritual rewards were offered by Pope Celestine III at some point in the 1190s to those going to Livonia. The chronicle of Arnold of Lübeck indicated that the crusade to Livonia was seen as a co-equal alternative to the crusade to the Holy Land:

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<sup>1210</sup> This section was inserted at X 5.9.7.

<sup>1211</sup> Blumenthal, 'A Gloss of Hostiensis to X 5.6.17 (Ad liberandam)', pp. 89-90.

<sup>1212</sup> ... *quae est remissio omnium peccatorum* ... Hostiensis, *Lectura ad X* 5.7.13; transcription from Brundage, 'Holy War and the Medieval Lawyers', footnote no. 146 at p. 137. See also Brundage, 'Holy War and the Medieval Lawyers', p. 120. Thomas Aquinas, *Summa theologiae* (New York, 1947), *Quodlibetum* 2.16; see also Brundage, *Medieval Canon Law and the Crusader*, pp. 148-149.

<sup>1213</sup> Peep Peter Rebane, 'From Fulco to Theoderic: The Changing Face of the Livonian Mission', in *The North-Eastern Frontiers of Medieval Europe*, ed. Alan V. Murray (Farnham, 2014), pp. 85-116; Kala, 'The Incorporation of the Northern Baltic Lands', p. 7.

<sup>1214</sup> For these chronicles, see pp. 33-35.

And since the departure or crusade to Jerusalem seemed at that time to be lacking, the lord Pope Celestine had decreed in support of this work that whoever had vowed themselves to go on the said crusade could join that journey [to Livonia], if this indeed pleased them, [and] would receive no less remission of sins by God.<sup>1215</sup>

The granting of such great privileges was corroborated by Henry of Livonia:

The Supreme Pontiff [Celestine III], therefore, upon hearing the number of those [who had been] baptised, thought that they should not be deserted and decreed that they should be compelled to observe the Faith which they had voluntarily promised. Indeed, he granted the remission of all sins to all those who, having accepted the Cross, go over to restore that primitive church.<sup>1216</sup>

It seems probable that since the two sources agreed, the pope might have indeed granted the crusaders going to Livonia the full remission of sins, equal to those going on a crusade to the Holy Land.<sup>1217</sup> This has been often seen as the turning point during which the Livonian mission was essentially converted into a full crusading movement.<sup>1218</sup> James A. Brundage has described the pontificate of Innocent III as a period during which the crusading movement to Livonia changed fundamentally: for the first time, the option to commute vows and the right to enjoy papal protections,

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<sup>1215</sup> *Et quia profectio sive peregrinatio Iherosolimitana tunc vacare videbatur, ad supplementum huius laboris dominus papa Celestinus indulserat, ut quicumque peregrinationi memorate se vovissent, huic itineri, si tamen ipsis complacuisset, se sociarent, nec minorem peccatorum remissionem a Deo perciperent.* Arnold of Lübeck, *Arnoldi chronica slavorum*, V, 30, pp. 214-215; translation from Arnold of Lübeck, *The Chronicle of Arnold of Lübeck*, p. 224 (amended). For the terminology on pilgrimage, see Introduction at pp. 23-25

<sup>1216</sup> *Summus itaque pontifex audito numero baptizatorum non eos deserendos censuit, sed ad observationem fidei, quam sponte promiserant, cogendos decrevit. Remissionem quippe omnium peccatorum indulsit omnibus, qui ad resuscitandam illam primitivam ecclesiam accepta cruce transeant.* *HCL* I, 12, p. 7; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 30 (amended).

<sup>1217</sup> Fonnesberg-Schmidt, *The Popes and the Baltic Crusades*, pp. 72-73.

<sup>1218</sup> Bombi, 'Celestine III and the Conversion of the Heathen', p. 154.

was extended to the Livonian frontier.<sup>1219</sup> However, this argument presumes that Celestine III had not granted any of these options in the letters that are now lost. On the other hand, narrative sources at the time tended to anachronistically ascribe privileges to earlier crusading movements.<sup>1220</sup> Even if this was not the case here, chronicles depicting crusades were generally in agreement that the spiritual benefits offered to the crusaders by the popes meant the complete cleansing of past sins.<sup>1221</sup> For example, the anonymous *Gesta francorum* reported that Urban II had announced at the Council of Clermont that ‘if anyone wishes to save his soul, he should not hesitate to begin humbly the way of the Lord’.<sup>1222</sup> Similarly, Fulcher of Chartres wrote that Urban II had proclaimed that ‘now the eternal reward is obtained by those who were previously hired for a few shillings [i.e. mercenaries]’.<sup>1223</sup> Therefore, Henry of Livonia and Arnold of Lübeck could have just been following the general tradition of the chronicles which were depicting crusade movements at the time.

In 1199, Pope Innocent III issued a letter to the Christians of Saxony and Westphalia, asking them, ‘for the remission of your sins’, to come to the defence of the Livonian Church.<sup>1224</sup> The use of this phrase did not automatically mean the granting of indulgences.<sup>1225</sup> With the same letter, the Livonian mission was downgraded to be co-equal with the pilgrimage to Rome, as one could commute the

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<sup>1219</sup> James A. Brundage, ‘The Thirteenth-Century Livonian Crusade: Henricus de Lettis and the First Legatine Mission of Bishop William of Modena’, in *The Crusades, Holy War and Canon Law*, ed. James A. Brundage (Aldershot, 1991), XIV, pp. 1-9, at p. 3.

<sup>1220</sup> Brundage, *Medieval Canon Law and the Crusader*, pp. 142-143.

<sup>1221</sup> Brundage, *Medieval Canon Law and the Crusader*, pp. 149-151.

<sup>1222</sup> ... *si quis animam suam saluam facere uellet, non dubitaret humiliter uiam incipere Domini ... Gesta Francorum*, ed. and trans. Rosalind M. T. Hill, p. 1.

<sup>1223</sup> ... *nunc aeterna praemia nanciscantur, qui dudum pro solidis paucis mercenarii fuerunt*. Fulcher of Chartres, *Historia Hierosolymitana (1095-1127)*, ed. Heinrich Hagenmeyer (Heidelberg, 1913), 1.3.7, p. 136.

<sup>1224</sup> *in remissionem uobis peccaminum ...* Innocent III, ‘Sicut ecclesiasticae religionis’, p. 401.

<sup>1225</sup> Rist, *The Papacy and Crusading in Europe*, pp. 66-67.

latter into a 'pilgrimage', i.e. crusade to Livonia instead.<sup>1226</sup> Henry of Livonia reports from the same year that Albert, bishop of Livonia at that time, went to Germany where he was assured in the presence of the king that the Livonian crusade was equal with that to Jerusalem, and those who joined would be rewarded with 'the plenary remission of sins' (*plenariam peccaminum*).<sup>1227</sup> As it is possible that the letter of Innocent III is meant here, and as the letter survives, it indicates that Henry of Livonia did not consult the papal letter personally when writing his chronicle, and perhaps conflated later papal letters that granted full indulgences with the earlier ones where the terminology of remission of sin was used. It has also been suggested by Iben Fonnesberg-Schmidt that Henry might have had the lost letters of Celestine III in mind instead, as those also referred to 'full remission of sins'.<sup>1228</sup>

Another letter from 1204 by Innocent III reflects a novel approach concerning the mission in Livonia. In the letter 'Etsi verba evangelizantium', the pope allowed the commutation of vows for those who could not go to the Holy Land, and instead permitted them 'to set out against the barbarians in Livonia'.<sup>1229</sup> There is no reference to indulgences in this letter, although it has been argued that presumably the promise of full indulgences was implied.<sup>1230</sup> Additionally, while clearly elevating the profile of the Livonian mission compared to its status in the letter of 1199 in which it was seen comparable to a pilgrimage to Rome, it did not automatically mean that the crusade to the Holy Land was seen as equal to Livonia; rather, Innocent III was willing to consider commuting the vows of those who had already committed to going to the

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<sup>1226</sup> Barbara Bombi, 'Innocent III and the "Praedicatio"', pp. 233-234.

<sup>1227</sup> *HCL* III, 5.

<sup>1228</sup> Fonnesberg-Schmidt, *The Popes and the Baltic Crusades*, p. 69.

<sup>1229</sup> ... *in Liuoniam contra barbaros proficisci* ... Innocent III, 'Etsi verba evangelizantium', p. 227.

<sup>1230</sup> Fonnesberg-Schmidt, *The Popes and the Baltic Crusades*, pp. 94-95.



Holy Land, not to grant completely new vows with their privileges for those who only wanted to go to Livonia.<sup>1231</sup>

In the letter ‘Alto divine dispositionis’ of 1215, addressed to all the faithful in Denmark, Innocent III asked for help against the pagans in Livonia.<sup>1232</sup> In this letter, the pope granted the remission of sins to all those ‘who, both through weakness of strength and lack of means, do not dare to put on their shoulders the sign of the Cross to go to the aid of the Holy Land’.<sup>1233</sup> Additionally, it was explicitly stated that ‘the remission of sins is granted to those who come to help in person or in things’.<sup>1234</sup> As pointed out by Iben Fonnesberg-Schmidt, it is very likely that the letter was issued at the request of Bishop Albert of Riga, who had been at the Fourth Lateran Council in the same year.<sup>1235</sup> It was the first time indulgences were granted to those who financially helped the crusading movement in Livonia, signifying a further elaboration of the campaign and a widening of the concept of indulgences.

While all indulgences were in theory reserved to the pope, the ordinary delegation of jurisdiction to bishops was sufficient for them to grant partial indulgences.<sup>1236</sup> The Fourth Lateran Council (1215) had admonished abbots who, amongst other transgressions, were granting indulgences without the permission of

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<sup>1231</sup> Fonnesberg-Schmidt, *The Popes and the Baltic Crusades*, pp. 95-96. For commuting the vows in the works of canon lawyers, see Brundage, *Medieval Canon Law and the Crusader*, pp. 68-69, 78-79, 90-92. For commuting of crusading vows more generally, see Alan J. Forey, ‘The Papacy and the Commutation of Crusading Vows from One Area of Conflict to Another (1095-c.1300)’, *Traditio*, Vol. 73 (2018), pp. 43-82; Mayer, *The Crusades*, pp. 208-209, Riley-Smith, *What Were the Crusades?*, pp. 45-46; Maier, *Preaching the Crusades*, pp. 135-160.

<sup>1232</sup> Innocent III, ‘Alto divine dispositionis’ (29 December 1215) *DD* 1:5, no. 61, pp. 95-98.

<sup>1233</sup> ... *qui tum debilitate uirium tum rerum defectu non audent suis humeris affigere signum crucis in terre sancte subsidium profecturi* ... Innocent III, ‘Alto divine dispositionis’, p. 97.

<sup>1234</sup> ... *concessa eis, qui subuenerint in personis aut rebus indulgentia peccatorum*. Innocent III, ‘Alto divine dispositionis’, p. 98.

<sup>1235</sup> Fonnesberg-Schmidt, *The Popes and the Baltic Crusades*, p. 91.

<sup>1236</sup> Purcell, *Papal Crusading Policy*, pp. 50-51.

their episcopal authorities.<sup>1237</sup> At the same council, it was also ruled that ‘when a basilica is dedicated, the indulgence shall not be for more than one year, whether it is dedicated by one bishop or by more than one, and for the anniversary of the dedication the remission of penances imposed is not to exceed forty days’.<sup>1238</sup> Thus, the authority of bishops to give indulgences was restricted, and the exact length of indulgences was clearly tied to the type of event for which they were granted.

While it seems that the initiative to grant crusading indulgences to those going to Livonia came from the papacy, there is some evidence that restrictions imposed on bishops to grant such spiritual rewards were not always known or deemed significant. Henry of Livonia in his chronicle claims that Albert, bishop of Riga, took the liberty to increase the scope of indulgence granted to the crusaders:

[H]e [Bishop Albert] encourages them by admonishing them to resume the sign of the Cross for the full remission of their neglected sins, and, on the account of the greater labours on their long crusade, he promises a greater indulgence and eternal life.<sup>1239</sup>

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<sup>1237</sup> ‘From the complaints which have reached us from bishops in various parts of the world, we have come to know of serious and great excesses of certain abbots who, not content with the boundaries of their own authority, stretch out their hands to things belonging to the episcopal dignity: hearing matrimonial cases, enjoining public penances, even granting letters of indulgences and like presumptions.’ – *Accidentibus ad nos de diversis mundi partibus episcoporum querelis, intelleximus graves et grandes quorundam abbatum excessus, qui suis finibus non contenti, manus ad ea quae sunt episcopalis dignitatis extendunt, de causis matrimonialibus cognoscendo, iniungendo publicas poenitentias, concedendo etiam indulgentiarum literas et similia praesumendo ...* Constitution 60 of the Fourth Lateran Council (1215) Tanner 1, p. 262.

<sup>1238</sup> ... *cum dedicatur basilica, non extendatur indulgentia ultra annum, sive ab uno solo sive a pluribus episcopis dedicetur, ac deinde in anniversario dedicationis tempore quadraginta dies de iniunctis poenitentiis indulta remissio non excedat ...* Constitution 62 of the Fourth Lateran Council (1215) Tanner 1, p. 264.

<sup>1239</sup> ... *invitat et crucis signum resumere in plenariam ante neglectorum delictorum remissionem ammonendo confortat et ob maioris laboris sui longam peregrinationem maiorem indulgentiam et vitam promittit eternam.* HCL XI, 9, p. 57; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 78 (amended).

While this visitation took place in 1207, years before the Fourth Lateran Council in 1215, the chronicle was written in the late 1220s and thus it is less likely that it depicts the exact content of the speech by Albert. Rather, instead of transgressing the authority granted to him as bishop, by Albert offering *even greater* indulgences on his own volition, it is more likely that Henry misremembered the exact course of events and he used the dramatisation of the events for a literary effect, especially as it makes little sense in the context of canon law and theology to have even greater indulgence than that of the plenary remission of sins.

One more curious case pertaining to indulgences offered by a mere bishop deserves our attention. In 1221, Bishop Albert of Riga ordered the crusaders in Livonia to build a bridge ‘for the remission of all their sins, and similar to an expedition [i.e. crusade]’.<sup>1240</sup> However, this example does not need to be understood as Bishop Albert taking the liberty of granting indulgences that the crusaders did not have. It is more likely that because Albert knew of plenary indulgences already granted to crusaders going to Livonia, he saw the building of a bridge as a crucial part of the crusading efforts there. That he chose to emphasise to the crusaders that they receive plenary indulgences for building a bridge, might have been due to how costly such an enterprise would have been, and also perhaps because the crusaders might not have seen this initiative pertinent to the ongoing crusade in Livonia.

During the pontificate of Honorius III, letters issued by the papacy in defence of Livonia included a plenary indulgence, in addition to allowing the commutation of crusading vows.<sup>1241</sup> The phraseology in letters granted by Honorius III for Livonia

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<sup>1240</sup> ... *in remissionem omnium peccatorum suorum, et ad instar expeditionis ...* The letter of 1221, *LUB* 1, col. 57.

<sup>1241</sup> For plenary indulgence, see for example: Honorius, III, ‘Litteras tam episcoporum’ (14 February 1217) *Horoy* 2, cols. 272-274, although note that while Livonia is not specifically mentioned, it is implied that Livonia and its adjacent lands are meant, as the letter grants indulgence to those ‘who are closer to

greatly resembled 'Ad liberandam' of the Fourth Lateran Council (1215), suggesting that in Honorius III's view the crusades to the Holy Land and to Livonia were similar enterprises, although still not equal.<sup>1242</sup> In Honorius III's own words: 'And moreover, the greater good should not be preferred to the lesser good, just as it is necessary for us to help the Holy Land, so we should in no way leave out the tiny flock of the nation of Livonia to whom the Lord was pleased to give the kingdom.'<sup>1243</sup> Perhaps this is also the reason why crusaders going to Livonia consistently started to get plenary indulgences during the pontificate of Honorius III.

There seems to be only two surviving letters from the pontificate of Pope Gregory IX that called for a crusade in Livonia.<sup>1244</sup> The first letter, 'Ne terra vaste', was issued on 15 February 1236, and endorsed the preaching of a crusade to Livonia, Semgallia, Curonia and Estonia.<sup>1245</sup> The pope also promised the following as a reward:

[W]e ... grant to those signed with the Cross, as well as to those signing for this purpose in the above-mentioned province and

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pagans' ('*qui sunt magis vicini paganis*') rather than to the Holy Land. Honorius III, 'Ne terra vaste' (18 January 1222) *Epistolae saeculi XIII*, ed. Georg Heinrich Pertz and Carl Rodenberg, no. 189, p. 133. For commutation of vows, see for example: Honorius III, 'Ab aquiline revelata' (25 January 1217) *Horoy* 2, cols. 210-211. For Honorius III and the Baltic Crusades more generally, see Fannesberg-Schmidt, *The Popes and the Baltic Crusades*, pp. 133-186. I have not been able to identify any letters of Honorius III granting indulgences to those who sent others to Livonia in their stead or who contributed financially to the crusade specifically in Livonia. However, there are several letters which granted such privileges to those who contributed to the crusade in nearby Prussia, for example: Honorius III, 'Compatientes angustiis et pressuris' (3 March 1217) *Preußisches Urkundenbuch*, Vol. 1:1, no. 15, p. 11. See also Fannesberg-Schmidt, *The Popes and the Baltic Crusades*, p. 143.

<sup>1242</sup> Fannesberg-Schmidt, *The Popes and the Baltic Crusades*, pp. 139-140; Rist, *The Papacy and Crusading in Europe*, p. 105.

<sup>1243</sup> *Licet autem majori bono opponi non debeat minus bonum, quia tamen sicut oportet nos succurrere Terrae Sanctae, ut pusillum gregem gentis Livonicae, cui complacuit Dominus dare regnum nullatenus omittamus.* Honorius III, 'Ab aquiline revelata', col. 210. See also the letter 'Exercitus christianus rem' of 1219 in which the pope asks Bishop Albert of Riga to collect twentieth part of his ecclesiastical proceedings for the crusade to the Holy Land while Livonia itself was still not fully converted; Honorius III, 'Exercitus christianus rem' (2 January 1219) *LUB* 1, cols. 47-49. The same letter was also sent to the archbishop of Bremen at the same time; Honorius III, 'Exercitus christianus rem' (2 January 1219) *Horoy* 3, cols. 86-87.

<sup>1244</sup> Gregory IX, 'Ne terra vaste' (15 February 1236) *DD* 1:6, no. 214, pp. 277-279; Gregory IX, 'Ad similitudinem dei' (14 December 1240) *DD* 1:7, no. 62, pp. 59-61. See also Fannesberg-Schmidt, pp. 206-209. Also note that the letter bears the same title as the last crusading letter issued to Livonia by Honorius III due to the preamble being copied from the latter.

<sup>1245</sup> Gregory IX, 'Ne terra vaste', p. 278.

dioceses, who enter into this work in their own person and at their own expense, and to those who go there at the expense of others to serve the Lord there for at least a year, or to those who will give from their own means to support aforesaid believers, the remission of sins which is granted to those who support the Holy Land in the aforesaid ways.<sup>1246</sup>

Gregory IX, therefore, granted indulgences not only to those going to Livonia at their own expense, but also to those who went with the financial help of others. Those contributing financially to the campaign also received indulgences. Additionally, in the same letter, the pope dispensed those too poor to go to the Holy Land from their vows and permitted commuting their crusading vows to Livonia instead.<sup>1247</sup> Thus, this letter clearly signified the increase in the groups of people who were to receive spiritual rewards for going on a crusade to Livonia.

The second letter of Gregory IX from 1240 was more specifically issued for crusading in Estonia.<sup>1248</sup> Addressed to Uffe, the archbishop of Lund (1228-1252), it instructed him and his suffragan bishops to preach a crusade to Estonia to help 'those who in the regions of Estonia, by the grace of God, have been converted to the Christian faith, are oppressed in various ways by the surrounding barbarians and, as a result of this, ask to be assisted by the faithful Christians'.<sup>1249</sup> The pope permitted the commutation of vows 'to all truly repentant and confessed' with no further

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<sup>1246</sup> ... nos ... tam cruce signatis quam signandis ad hoc in prouincia et diocesibus supradictis qui laborem istum in propriis personis subierint et expensis et eis qui in alienis expensis illuc accesserint ibidem ad minus per unius anni spatium domino seruituri, seu illis qui ad subuentionem predictorum fidelium de propriis facultatibus ministrabunt illam remissionem peccaminum indulgemus que conceditur predictis modis subuenientibus terre sancte. Gregory IX, 'Ne terra vaste', p. 279.

<sup>1247</sup> ... duximus dispensandum uota peregrinationis conuertens in succursum fidelium predictorum ... – '[W]e decided to dispense the vows of crusade [going to the Holy Land], converting [them] to the help of the aforesaid faithful [Livonians].' Gregory IX, 'Ne terra vaste', p. 278.

<sup>1248</sup> Gregory IX, 'Ad similitudinem dei'.

<sup>1249</sup> ... hii qui de Estonie partibus per dei gratiam ad fidem christiani nominis sunt conuersi a barbaris circumstantibus multipliciter molestentur; ac per hoc petant sibi a Christi fidelibus subueniri ... Gregory IX, 'Ad similitudinem dei', p. 60.

qualifiers, implying that such commutation was available for everyone, not just to those who were too poor to go to the Holy Land, as had been the case in the letter 'Ne terra vaste' of 1236.<sup>1250</sup> However, no indulgences in this instance were granted specifically to those who contributed financially for the crusade. It is difficult to conclude from just two surviving letters how Gregory IX deemed the crusade in Livonia, but his widening of the circle of people who could go to Livonia and receive indulgences, indicating that he certainly saw the enterprise as worthy of continuous attention. Moreover, the lack of letters endorsing crusading in Livonia during the pontificate of Gregory IX can be at least partly explained by the exceedingly complicated circumstances of Livonia in the early 1230s that garnered papal attention, so it is possible that he wished to first solve the internal matters before focusing on crusading in these parts.<sup>1251</sup>

Even more specific grants of indulgences were issued during the early years of the pontificate of Innocent IV. In 1243, the pope exhorted the mendicant orders in Visby, Gotland, to preach in order to attract crusaders for Livonia and Prussia.<sup>1252</sup> The letter 'Qui iustis causis' offered a plenary indulgence for those who served a year in the Baltic, just as was granted for those who went to the Holy Land.<sup>1253</sup> Additionally,

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<sup>1250</sup> ... *omnibus uere penitentibus et confessis* ... Gregory IX, 'Ad similitudinem dei', p. 60.

<sup>1251</sup> See pp. 276-280 for the double-election to the episcopal see of Riga and pp. 339-346 for the court-case involving Baldin of Alna, the papal legate to Livonia.

<sup>1252</sup> Innocent IV, 'Qui iustis causis' (23 September 1243) *LUB* 1, no. 174, cols. 228-230. Similar letters were addressed to a number of other recipients in Bremen, Hamburg, Prague and elsewhere, see the full list under *Pothast* 2, no. 1137. See also Fonnesberg-Schmidt, *The Popes and the Baltic Crusades*, pp. 225-226.

<sup>1253</sup> ... *illam indulgentiam idemque privilegium elargimur, quae transeuntibus et subvenientibus in terrae sanctae subsidium conceduntur*. Innocent IV, 'Qui iustis causis', col. 229. This was in contrast to the Albigensian Crusade during which serving for just forty days was commonplace. Longer indulgences for the Livonian Crusade made sense in a context where travelling to Livonia was seasonal, as it was not possible to leave that region during winter. It also signifies that crusaders went to Livonia on a much more permanent basis, testifying to the distance involved and to the longevity of the crusading movement there. For the so-called 'forty-day crusaders', in the Albigensian Crusade, see Dan Power, 'Who Went on the Albigensian Crusade?', *The English Historical Review*, Vol. 128 (2013), pp. 1047-1085, p. 1048.

specific prescriptions for the protection of the crusaders and the exact terms of possible commutations were determined.<sup>1254</sup> Furthermore, those who came to listen to the sermons were ‘relaxed from twenty days of enjoined penance’.<sup>1255</sup> The letter provided a ‘blueprint’ for the majority of other crusading bulls addressed to Livonia and Prussia for the rest of the thirteenth century.<sup>1256</sup>

It is evident that as the concept of indulgences was not fully developed until well into the thirteenth century, ambiguities pertaining to its exact nature were also reflected in practice. The early Livonian mission received indulgences sporadically and it often remained unclear as to what kind of indulgence was meant. With the progression of canon law and crusading movements, participants in the Livonian Crusade also started to receive more explicit indulgences while the circle of people who could receive them widened significantly.

### Martyrdom

Very closely tied to the idea of remission of sins was the ability to obtain eternal life. Yet, this in itself did not imply martyrdom, as one could perish from old age and still be fully saved, like saints.<sup>1257</sup> Possibly the first record of a pope linking death on the battlefield and eternal salvation in paradise came from the ninth century pope, Leo IV. In 853, he appealed to the Frankish army for aid against the Saracens who had sacked Rome in 846, and who were still in the region.<sup>1258</sup> While this was not yet a

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<sup>1254</sup> Innocent IV, ‘Qui iustis causis’, col. 229.

<sup>1255</sup> ... *XX dies de iniuncta poenitentia relaxare* ... Innocent IV, ‘Qui iustis causis’, col. 229. Similarly, Gregory IX had promised an indulgence of twenty days for those who listened to the sermons against heresy in relation to the Stedinger campaign; see Rist, *The Papacy and Crusading in Europe*, p. 153.

<sup>1256</sup> See footnote no. 380 at pp. 122-123 for a list of similar papal letters based on ‘Qui iustis causis’. See also Fonnesberg-Schmidt, *The Popes and the Baltic Crusades*, pp. 225-227.

<sup>1257</sup> For example, the Venerable Bede compiled a martyrology, but died of illness himself in 735, Michelle P. Brown, ‘Bede’s Life in Context’, in *The Cambridge Companion to Bede*, ed. Scott DeGregorio (Cambridge, 2010), pp. 3-24.

<sup>1258</sup> ... *quisquis ... in hoc belli certamine fideliter mortuus fuerit, regna illi coelestia minime negabuntur.* – ‘[W]hoever dies in this struggle of war, to him the Heavenly Kingdom by no means will be denied.’ Leo

proclamation of doctrine nor the remission of either sins or of penalties for sin, as these concepts started to develop later, it depicted the fight against enemies of the Church as a meritorious act, rewarded in heaven.<sup>1259</sup> Significantly, the letter of Leo IV was also included in many of the most important theological and canonical collections of the High Middle Ages, such as Ivo's *Decretum* and Gratian's *Decretum*.<sup>1260</sup> In the latter, Leo IV's sermon had been included twice, and both insertions were prefaced with similar sweeping statements: whoever died for the defence of Christians attained the heavenly kingdom from God, and that whoever died in a battle waged against the 'infidels', inherited the heavenly kingdom.<sup>1261</sup> It can be concluded that the concept of heavenly reward for perishing in a fight against the enemies of the Church was convincing in the minds of canon lawyers and theologians of the High Middle Ages.

However, there is a distinction between gaining eternal salvation and becoming an 'official' martyr with its attached status of sanctity.<sup>1262</sup> The canonisation process in the Middle Ages developed in phases: before the canonisation of Ulric, bishop of Augsburg, in 993 by Pope John XV (985-996), there were no known accounts of canonisations by the papacy; then, until the end of the twelfth century, popes were canonising saints but did not explicitly depict themselves as the only authority able to do this; from the second half of the twelfth century, starting with Pope Alexander

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IV, 'Omni timore' (December 853) *PL* 115, cols. 655-567. See also Brundage, *Medieval Canon Law and the Crusader*, pp. 22-23; John Gilchrist, 'The Papacy and War against the "Saracens", 795-1216', *The International History Review*, Vol. 10 (1988), pp. 174-197, at pp. 181-183.

<sup>1259</sup> Brundage, *Medieval Canon Law and the Crusader*, pp. 22-23.

<sup>1260</sup> Ivo, *Decretum* 10.87 (*PL* 161, cols. 719-720); Gratian, C.23 q.5 c.46, col. 944, incorrectly attributed to Pope Nicholas I; Gratian, C.23 q.8 c.9, col. 955.

<sup>1261</sup> C.23 q.5 c.46, col. 944; Gratian, C.23 q.8 c.9, col. 955. For Gratian's *Decretum* and the notion that just wars can be meritorious, see Rist, *The Papacy and Crusading in Europe*, pp. 30-31.

<sup>1262</sup> Haki Antonsson, 'Some Observations on Martyrdom in Post-Conversion Scandinavia', *Saga Book - Viking Society for Northern Research*, Vol. 28 (2004), pp. 70-94, at pp. 81-82.



III, there was a clear tendency by the papacy to establish the exclusive authority to canonise.<sup>1263</sup>

The shift between the last two phases was not clear, as was exemplified with the letter ‘Audivimus’ of 1171 or 1172 by Alexander III, and its subsequent inclusion in canon law collections and commentaries.<sup>1264</sup> In this letter, the pope reprimanded the Swedish King because the Swedes ‘venerate as a saint a certain man who was killed by drinking and drunkenness, in the manner of unbelievers’ and declared that ‘it is not permitted to you to venerate him publicly [i.e. officially] as a saint without the authority of the Roman Church’.<sup>1265</sup> It is not clear whether Alexander III meant it as an implicit general statement that no one has the authority to venerate somebody without the consent of the pope, or whether the pope was addressing this particular case and establishing that a man who had died in such a disgraceful way could not and should not receive the status of sainthood.<sup>1266</sup> Nevertheless, not only was ‘Audivimus’, included in the *Liber extra*, but Pope Innocent IV, observing the same letter, authoritatively and plainly stated in his *Apparatus* that ‘only the pope is able to canonise saints’.<sup>1267</sup>

In addition to obtaining an official canonisation of a saint, popular veneration of people who were often – but not always – regarded as martyrs, played an important

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<sup>1263</sup> Robert Bartlett, *Why Can the Dead Do Such Great things? Saints and Worshippers from the Martyrs to the Reformation* (Oxford, 2013), pp. 57-60; Thomas Wetzstein, ‘Saints and Relics’, in *The Cambridge History of Medieval Canon Law*, ed. Anders Winroth and John C. Wei (Cambridge, 2022), pp. 437-450, at pp. 437-441.

<sup>1264</sup> Alexander III, ‘Audivimus, quod quidam’ (1171-1172) *PL* 200, cols. 1259-1261; 2 *Comp.* 5.21=X 3.45.1. See also Drossbach, ‘Decretals and Lawmaking’, at pp. 223.

<sup>1265</sup> ... *hominem quemdam in potatione et ebrietate occisum quasi sanctum, more infidelium, venerantur ... and ... non liceret vobis pro sancto absque auctoritate Romanae Ecclesiae eum publice venerari.* Alexander III, ‘Audivimus, quod quidam’, col. 1261. See also Bartlett, *Why Can the Dead Do Such Great things?*, p. 58.

<sup>1266</sup> Bartlett, *Why Can the Dead Do Such Great things?*, pp. 58-59.

<sup>1267</sup> *Solus autem Papa potest sanctos canonizare.* Innocent IV, *Apparatus ad X* 3.45.1, pp. 457-458; Donald S. Prudlo, *Certain Sainthood: Canonization and the Origins of Papal Infallibility in the Medieval Church* (London, 2015), pp. 74-75; Bartlett, *Why Can the Dead Do Such Great things?*, p. 59.

part of medieval society.<sup>1268</sup> Yet, as discussed above, it was not until the second half of the twelfth century that the papacy started to develop and monopolise the canonisation process.<sup>1269</sup> This also means that it is not possible to consider Livonia, which was Christianised in the early decades of the thirteenth century, exclusively in the context of ‘official’ and ‘non-official’ martyrs, as the distinction had not yet fully developed in canon law, and such ideas would have taken time to reach Livonia.

Even when it comes to local popular veneration in Livonia that did not have explicit papal approval, the lack of revealing documentation – such as calendars and dedication charters – makes it difficult to determine what kind of saint cults were of significance there.<sup>1270</sup> It is certain that some saints were imported with the Christians who came to convert – such as the Virgin Mary as the patron saint of Livonia.<sup>1271</sup> Military orders that were operating in Livonia likewise brought with them the veneration of saints already known elsewhere; for instance, the saint venerated by the Order of the Swordbrothers was Saint George, and their chapel in Riga dedicated to him as well.<sup>1272</sup> Therefore, it can be said that cults of veneration were certainly brought

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<sup>1268</sup> James D. Ryan, ‘Missionary Saints of the High Middle Ages: Martyrdom, Popular Veneration, and Canonization’, *The Catholic Historical Review*, Vol. 90 (2004), pp. 1-28, at pp. 2-3.

<sup>1269</sup> Bartlett, *Why Can the Dead Do Such Great things?*, pp. 57-60.

<sup>1270</sup> Anu Mänd, ‘Saints’ Cults in Medieval Livonia’, in *The Clash of Cultures on the Medieval Baltic Frontier*, ed. Alan V. Murray (Ashgate, 2009), pp. 191-223, at pp. 191-192.

<sup>1271</sup> Mänd, ‘Saints’ Cults in Medieval Livonia’, pp. 194-199. For the veneration of the Virgin Mary more generally, see Miri Rubin, *Mother of God. A History of the Virgin Mary* (London, 2009); Gary F. Waller, *The Virgin Mary in Late Medieval and Early Modern English Literature and Popular Culture* (Cambridge, 2011). For a comparative overview from a gendered perspective, see Mary F. Thurlkill, *Chosen Among Women: Mary and Fatima in Medieval Christianity and Shiite Islam* (Notre Dame, 2007). See also Kaljusaar, ‘Martyrdom on the Field of Battle in Livonia’, p. 251, which has suggested that ‘simply fighting for the Virgin’ offered an attractive alternative to crusaders who came to Livonia and did not find ‘the complex political struggles between the Rigan and Danish factions’ or ‘the technicalities of baptizing and subjugating local pagans’ good enough reasons to fight.

<sup>1272</sup> The letter of 5 April 1226; *LUB* 1, no. 82, cols. 97-99. See also Benninghoven, *Der Orden der Schwertbrüder*, p. 64. For a comprehensive overview of saints venerated by the three main orders – the Templars, the Hospitallers, and the Teutonic Order –, and also for an insightful consideration of how to determine which saints were indeed venerated, see Helen J. Nicholson, ‘Saints Venerated in the Military Orders’, in *Selbstbild und Selbstverständnis der geistlichen Ritterorden*, ed. Jürgen Sarnowsky and Roman Czaja (Torun, 2005), pp. 91-113, esp. p. 101 for a list of the most ‘popular’ saints that recurred

to Livonia from elsewhere already during its very early years of conversion, and these were, at least in cases that are known, all dedicated to saints that had been officially recognised by the medieval Latin Church.

To my knowledge, there were no mentions of martyrs, or indeed, saints, in the official papal letters concerning thirteenth-century Livonia, outside of dating the letters. That leaves narrative sources in which there were plenty of references to martyrdom and eternal salvation. The most prominent of such sources in the context of Livonia was the chronicle of Henry of Livonia.<sup>1273</sup> In this, martyrdom was a relatively often-recurring theme. Already during the first years of Christianisation, there were those who were martyred according to Henry:

[S]eventeen of them [the crusaders] were killed, some of whom were slain with a cruel martyrdom, immolating [them] to their pagan gods. However, neither by this nor by similar deeds could the enemy keep the Christian voices from preaching the Word of God; indeed, they see that through the growth of faith, both in preaching and fighting, they become stronger and stronger every day.<sup>1274</sup>

Henry of Livonia employed the idea of martyrdom very loosely. Yet, according to the same chronicle, the likelihood of death was not hindering the progress of

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in sources. And indeed, Saint George was one of them, which is why it is perhaps not so surprising that the Swordbrothers also chose to venerate this particular saint.

<sup>1273</sup> Marek Tamm, 'Martyrs and Miracles: Depicting Death in the Chronicle of Henry of Livonia', in *Crusading and Chronicle Writing on the Medieval Baltic Frontier: A Companion to the Chronicle of Henry of Livonia*, ed. Marek Tamm, Linda Kaljundi and Carsten Selch Jensen (London, 2016), pp. 135-156; Nielsen, 'Saints, Sinners & Civilisers', pp. 57-63; Henry often prefaced accounts of violent deaths and martyrdom with quotes from the Books of Maccabees, placing them within the framework of providential history, see Nielsen, 'Providential History', pp. 372-373.

<sup>1274</sup> ... *occisi sunt decem et septem ex eis, quorum quosdam diis suis immolantes crudeli martirio interfecerunt. Nec tamen hec et hiis similia facientes inimici a predicatione verbi Dei christianorum obstruunt voces, verum etiam per incrementa fidei conspiciunt eos cottidie tam preliando quam predicando magis ac magis invalescere. HCL IX, 12, p. 31; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 52 (amended).*

conversion; rather, it strengthened the Faith of those who had not perished.<sup>1275</sup> According to the chronicler, gaining eternal salvation was possible for anyone who was a true Christian; it did not matter whether they were missionaries or only recently converted:

Upon entering the meeting, they [the recently converted Livonians] are immediately captured by the elders [of the still pagan Livonians] and are forced to put off the Christian faith and to renounce the Germans. Those who, steadfast in the love of God, profess that they embrace the Faith they had received with all affection of charity, affirm that no kind of torture could separate them from the love and society of the Christians. Because of this, undoubtedly, the hatred even of their kinsmen grew so much against them that henceforth their hatred was greater than the love which they had previously felt. Hence it is that by a common conspiracy of the Livonians they were torn through the middle by the ropes tied around their feet. Afflicting them with most severe pain, they tore out viscera, cutting off legs and arms. Concerning them, there is no doubt that they received eternal life with the holy martyrs for such a martyrdom.<sup>1276</sup>

A description such as this – brutal and most gruesome – was almost certainly included for a reason. First of all, the torture was inflicted by pagan Livonians on their own recently converted kinsmen.<sup>1277</sup> This serves the objective of demonstrating the

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<sup>1275</sup> HCL IX, 12.

<sup>1276</sup> *Ingressi placitum statim capiuntur a senioribus, fidem Christi postponere et Theuthonicis renunciare coguntur. Qui constantes in dilectione Dei fidem susceptam se omni caritatis affectu aplectere profitentur, ab amore et societate christianorum testantur nulla eos posse genera tormentorum separare. Unde nimirum etiam cognatorum tantum in eos excrevit odium, ut exinde maius esset odium amore, quo ante dilexerant. Hinc est quod communi Lyvonum conspiratione ligatis circa pedes funibus per medium sunt dilacerati. Quos acerrimis penis afficientes, viscera extrahentes crura et brachia dilaceraverunt. De quibus non est dubium quin cum sanctis martiribus pro tanto martyrio vitam receperint eternam.* HCL X, 5, p. 36; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 57 (amended).

<sup>1277</sup> HCL X, 5, p. 36.

cruelness of the pagans who did not have mercy for anyone that they saw as an enemy.<sup>1278</sup> Additionally, the story demonstrates to the reader how strong was the Christian faith even among the recently converted.<sup>1279</sup> Last but not least, the inclusion of explicit descriptions very likely served the purpose of creating a connection with the early medieval martyrs who often suffered similarly cruel martyrdoms, and thus strengthening the Christian community in Livonia.<sup>1280</sup>

A similar event involved a priest named John who, according to the chronicle, was captured from the pagans as a boy, and put into the monastery of Segeberg, where he ‘made great progress’.<sup>1281</sup> Afterwards he went to Livonia to convert the pagans there:

And the people of Holm, whose feet are quick to shed blood, having captured their priest John, cut off his head, and divide the rest of the body into pieces, ... Finally, after his work was

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<sup>1278</sup> HCL X, 5, p. 36.

<sup>1279</sup> HCL X, 5, p. 36.

<sup>1280</sup> For example, St. Lawrence (225-258) was a deacon of Rome. When he was ordered to turn over the wealth of the Church, he gathered all the poor and presented them as the riches of the Church. For this, he was promptly roasted to death. Many sources mentioned his martyrdom, for example St. Ambrose: *Auarus inlusus dolet / flammis et ultrices parat. / Fugit perustus carnifex / suisque cedit ignibus; / “Versate me, martyr uocat, / uorate, si coetum est, iubet.”* – ‘The greedy man, deceived, was pained / and prepares avenging flames. / The torturer, when burned, fled off / and departed from his fires; / “Turn me over,” called the martyr, / “and eat me, if I’m cooked,” he bids.’ St. Ambrose, ‘Hymns’, in *Enchantment and Creed in the Hymns of Ambrose of Milan*, ed. and trans. Brian P. Dunkle, SJ (Oxford, 2016), pp. 221-232, lines 27-32, p. 230. In comparison, see the later but more elaborate description of the suffering of St. Lawrence in a sermon of Pope Leo I: *Laceros artus et multa verberum sectione conscissos subjecto praecipit igne torreri: ut per eratem ferream, quae jam de fervore continuo vim in se haberet urendi, conversorum alterna mutatione membrorum, fleret cruciatus vehementior et poena productier.* – ‘With limbs mangled and torn up by many cuts of blows, he ordered the subject [St. Lawrence] to be scorched by fire: so that by the iron grill which already had the power to burn him continuously from the heat, [and] by the alternate change of turned limbs, the torture might become more intense and the punishment more prolonging.’ Leo I, Sermon no. 85, *PL* 54, col. 436. For the concept of martyrdom in Early Medieval Christendom, see Jane D. McLarty, ‘Early Christian Theologies of Martyrdom’, in *The Wiley Blackwell Companion to Christian Martyrdom*, ed. Paul Middleton (Chichester, 2020), pp. 120-134, which emphasises the importance of *physical* resistance of the martyrs, and traces how such acts led to a greater solidarity and the strengthening of Christian identity among the community of believers. The histories of martyrdom not only served the early Christians, but they cultivated the creation of collective memories that have been integral to Christian communities throughout the Middle Ages up until to modern day; see Elizabeth A. Castelli, *Martyrdom and Memory: Early Christian Culture Making* (New York, 2004).

<sup>1281</sup> ... *cum plurimum profecisset.* HCL X, 7, p. 37.

done, he together with two others, Gerhard and Herman, as confessors of the Faith, as we have said before, attained eternal life through the palm of martyrdom.<sup>1282</sup>

Additionally, the chronicle of Henry of Livonia presented a more general statement about the holiness of missionaries going to Livonia, namely that 'their business was holy, for when called, they came to baptise the pagans and to plant the Lord's vineyard, which they planted with their blood; therefore, their souls are coequal with [the souls of] the saints in heaven'.<sup>1283</sup> It can be inferred from the text that while those who had died as martyrs gained eternal salvation, and were considered co-equal with saints, they were nevertheless *not* the saints and belonged to a distinctly different category from them. The 'official' sainthood, and somebody venerated because they died for the Faith, are separated here.

Another passage revealed how Henry himself might have felt about attaching the status of martyr to somebody: '[Theodoric, the bishop of Estonia,] who, having had his throat slit in Reval by the swords of the impious, passed into the company of the martyrs, as we hope'.<sup>1284</sup> The chronicler here emphasised that the fate of martyrdom and the reward of eternal salvation was what he believed to be the case here. He could not know with absolute certainty, but it was likely that Theodoric went 'into the company of the martyrs'.<sup>1285</sup> It is also clear that Henry employed the concept

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<sup>1282</sup> *Porro Holmenses, quorum pedes veloces ad effundendum sanguinem, capto Iohanne sacerdote suo, caput eius abscidunt, corpus reliquum membratim dividunt. ... Qui tandem post laboris sui cursum cum duobus aliis, Gerharo et Hermanno, pro fidei confessione, sicut prediximus, per martyrii palmam ad vitam pervenit eternam. HCL X, 7, p. 37; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 58 (amended).*

<sup>1283</sup> *... quorum negocium sanctum erat, eo quod vocati venerunt ad baptizandum paganos vineamque Domini plantandam, quam sanguine suo plantaverunt. Ideoque sunt eorum anime sanctorum in celis coequales. HCL XXIII, 4, p. 158; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 176 (amended).*

<sup>1284</sup> *... qui gladiis impiorum in Revele iugulatus in martyrum, ut speramus, consorcium transivit ... HCL XXIII, 11, p. 169; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 187 (amended).*

<sup>1285</sup> *HCL XXIII, 11, p. 168.*

of martyrdom as a rhetorical device – as Suzanne M. Yeager has put it, ‘the borrowed rhetoric of pilgrimage [in crusade sources] as a penitential process offered participation in the campaign in spiritual terms which was believed to offer forgiveness of sins, proximity to the places of the Passion, possible material gain, and, in case of death, a martyr’s reward in paradise’.<sup>1286</sup> By depicting instances of martyrdom and praising the holiness of such martyrs, Henry of Livonia might have wanted to place the events occurring in Livonia in the context of providential history, thus wishing to confirm that the deaths of the people killed in Livonia were not for nothing.

This notion can also be applied to a text found in the chronicle of Arnold of Lübeck. It recounts the death of Berthold (d.1198), who, as we have seen, was the second bishop of Livonia:

But when the blessed prelate [Berthold] led his army against the unbelievers laying in ambush for the worshippers of Christ, he falls into the hands of the ungodly with a few others, [perhaps] with just two, [and] is killed; and, so we hope, he is crowned with glory and honour, for he was burning with desire of death.<sup>1287</sup>

Thereafter the chronicler described how the body of Berthold was found ‘intact and uncorrupted’ (*intactum et incorruptum*), unlike the rest of the bodies which were already ‘filled with flies and worms’ (*muscis et vermibus repletis*), as the events happened in July.<sup>1288</sup>

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<sup>1286</sup> Suzanne M. Yeager, ‘The Earthly and Heavenly Jerusalem’, in *The Cambridge Companion to the Literature of the Crusades*, ed. Anthony Bale (Cambridge, 2019), pp. 121-135, at p. 130.

<sup>1287</sup> *Cumque presul beatus exercitum produceret contra infideles Christi cultoribus insidiantes, in manus impiorum cum paucis, duobus tantum, devolvitur, occiditur et, ut speramus, gloria et honore coronatur; erat enim flagrans mortis desiderio.* Arnold of Lübeck, *Arnoldi chronica slavorum*, V, 30, p. 215; translation from Arnold of Lübeck, *The Chronicle of Arnold of Lübeck*, p. 224 (amended).

<sup>1288</sup> *Arnoldi chronica* V, 30, p. 215.

This miraculous incident most certainly served to enhance the venerability of Bishop Berthold. The Catholic period in Livonia lasted for only slightly more than three hundred years. Subsequently imposed Lutheran traditions, in addition to the relatively recent restrictions of the Soviet period, have made researching the cult of saints in medieval Livonia difficult.<sup>1289</sup> However, it is possible that the bishops Meinhard and Berthold were both venerated locally in medieval Livonia.<sup>1290</sup> Evidence for this comes mainly from the chronicle of Henry of Livonia which tells us that the church of Üxküll held the bodies of both Meinhard and Berthold ‘of whom the first was a confessor and the second a martyr’.<sup>1291</sup> The chronicle also describes how William of Modena, the papal legate, ‘went on to Üxküll, where, commemorating the memory of the first holy bishops, he also strengthened those Livonians in the service of God’.<sup>1292</sup>

While the first bishops of Livonia might have been venerated locally, the earliest calendars and liturgical sources from the fifteenth century that survive in Riga do not mention them at all, and thus it is equally likely that the early bishops of Livonia did not obtain any official recognition; they were certainly not canonised.<sup>1293</sup> It was only in 1993 that Pope John Paul II (1978-2005), during his visit to Riga, officially recognised the ‘worship of St. Meinhard’:

We, therefore, fulfilling the wishes of our brothers in the episcopate and of many of the Christian faithful, have decided by our Apostolic Authority to restore the worship of St.

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<sup>1289</sup> Mänd, ‘Saints’ Cults in Medieval Livonia’, pp. 192-193.

<sup>1290</sup> Mänd, ‘Saints’ Cults in Medieval Livonia’, p. 220.

<sup>1291</sup> ... *quorum primus confessor, secundus martyr*. HCL X, 6, p. 36.

<sup>1292</sup> ... *in Ykescolam processit, ubi primorum sanctorum episcoporum memoriam commemorans eciam illos Lyvones in Dei servicio confortavit*. HCL XXIX, 5, p. 212; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 234 (amended).

<sup>1293</sup> Anu Mänd and Anti Selart, ‘Livonia – a Region without Local Saints?’, in *Symbolic Identity and the Cultural Memory of Saints*, ed. Nils Holger Petersen, Anu Mänd, Sebastián Salvadó, Tracey R. Sands (Cambridge, 2018), pp. 91-122, at pp. 104-105.



Meinardt, the bishop of Üxküll, especially in this particular Church, which had him as an Apostle and Founder. Moreover, we permit that his feast can be celebrated on the fourteenth of August each year, in established places and according to law.<sup>1294</sup>

While Latvia obtained its first saint with this proclamation by Pope John Paul II in 1993, Estonia still does not have a local saint to this day.<sup>1295</sup>

It is not surprising to find abundant descriptions of martyrdom in the chronicle of Henry of Livonia, as medieval chronicles that describe crusading and missionary activities elsewhere often included stories of martyrdom.<sup>1296</sup> Already during the

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<sup>1294</sup> *Nos itaque, vota Fratrum nostrorum in episcopatu multorumque christifidelium explentes, Auctoritate Nostra Apostolica statuimus cultum Sancto Meinardo, episcopo Ykescolensi, restituere, praesertim in hac ecclesia particulari, quae Apostolum et Fundatorem eum habuit. Insuper facultatem facimus ut eius festum die decimaquarta mensis augusti, in locis et modis iure statutis, quotannis celebrari possit. Acta Apostolicae Sedis - Commentarium Officiale, Vol. 86 (Vatican, 1994), Allocutiones, III, p. 484.*

<sup>1295</sup> By contrast, see the legend of St. Henry of Uppsala, the bishop of Finland (c.1100-1156) whose veneration can be traced back to the thirteenth century. The cult of St. Henry, clearly influenced by other Catholic hagiographical models, has played a crucial role not only by moulding and unifying early Christian communities in Finland, but the legend also retained its importance through the Reformation, and was utilised in nation-building efforts from the nineteenth century onwards; see Sini Kangas, 'The Murder of Saint Henry, Crusader Bishop of Finland', in *Les élites nordiques de l'Europe occidentale (xiii-xve siècle)*, ed. Tuomas M. S. Lehtonen and Élisabeth Mornet (Paris, 2007), pp. 189-196; Tuomas Heikkilä, 'An Imaginary Saint for an Imagined Community: St. Henry and the Creation of Christian Identity in Finland, Thirteenth – Fifteenth Centuries', in *Imagined Communities on the Baltic Rim, from the Eleventh to Fifteenth Centuries*, ed. Wojtek Jezierski and Lars Hermanson (Amsterdam, 2016), pp. 223-252. Although St. Henry and his relics are venerated in Finland to this day, it is noteworthy that his alleged murderer – the native Lalli – has likewise garnered attention and become a national symbol; see Tuomas Heikkilä, 'Tracing the Heavenly *Pater patriae* of Medieval Finland: The Relics of St Henry of Uppsala', in *Relics, Identity, and Memory in Medieval Europe*, ed. Marika Räsänen, Gritje Hartmann and Earl Jeffrey Richards (Turnhout, 2016), pp. 225-254, esp. pp. 248-250.

<sup>1296</sup> For example, Oliver of Paderborn (c.1170-1227) in his *Historia Damiatina*, narrating the Fifth Crusade, described how the crusaders were trying to capture a tower held by the Saracens: *Hospitalariorum scala confracta cum malo cecidit, bellatores suos precipitans, scala ducis simili modo confracta eadem fere hora, milites strennuos et armatos, corpore decidos secundum animas, levavit ad celum glorioso martirio coronato.* – 'The broken ladder of the Hospitallers fell with the mast, their knights tumbling down; the ladder of the duke having been broken in a similar manner at about the same time, He raised to Heaven the fallen brave, armed soldiers according to their souls, crowned with a glorious martyrdom.' Oliver of Paderborn, 'Historia Damiatina', in *Die Schriften des Kölner Domscholasters*, ed. Hermann Hoogeweg (Tübingen, 1894), pp. 159-280, Cap. 11, p. 180. Yet another example is Matthew Paris who was not an eyewitness of the crusades himself, but who nevertheless regarded fallen crusaders as martyrs in his *Chronica majora: Migraverunt autem ad Christum hoc anno nimis letali, pro Christo decertantes fideliter, relictis natali patria, uxoribus et liberis, consanguineis et amicis, nobiles infiniti; quos constat esse martyres, et eorum nomina, quae propter sui multitudinem hoc volumine scribi nequeunt, in libro vitae titulo indelebili, suis profecto meritis coronantur.* – 'And in this very lethal year [1250], an infinite number of nobles went to Christ, fighting loyally for Christ, leaving their native country, their wives and children, their relatives and friends. They are established as

pontificate of Gregory VII (1073-1085), the faithful were called to imitate Christ, and give up their lives for their brothers if need be; this feature quickly became common in crusading propaganda.<sup>1297</sup> For example, the papal letter 'Quia maior' of Innocent III that proclaimed the Fifth Crusade in 1213 indicated that eternal salvation was possible through martyrdom while crusading:

O how great a benefit will result from this cause; how many, converted to penitence, have handed themselves over by service of the Crucified for the liberation of the Holy Land, as if by suffering martyrdom they have obtained the crown of the glory, who would perhaps have perished in their iniquities entangled in carnal desires and earthly seductions.<sup>1298</sup>

It can be deduced from the letter that one did not need to have a pious nature to obtain salvation, because even those who might have otherwise lived unworthy lives could redeem themselves by going on a crusade. In 'Quia maior', the highest authority in the Latin Church, the pope himself, gave assurances that those who died in this cause 'won the crown of glory'.<sup>1299</sup> Chroniclers depicting the activities of the crusaders and missionaries naturally followed suit.<sup>1300</sup> At the same time, despite the

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martyrs and their names, which cannot be written in this volume because of their multitude, are certainly inscribed with indelible characters in the book of life, with the crown [of martyrdom] for their merits.' Matthew Paris, *Chronica majora*, Vol. 5, ed. Henry Richards Luard (London, 1880), p. 196; translation from Matthew Paris, 'The Chronica majora, 1247-1250', in *Chronicles of Matthew Paris*, ed. and trans. Richard Vaughan (Gloucester, 1984), pp. 81-278, at p. 277 (amended).

<sup>1297</sup> Herbert E. J. Cowdrey, 'Bella Sacra: Pope Gregory VII and Martyrdom', in *Dei gesta per Francos. Etudes sur les croisades dediees a Jean Richard*, ed. Michel Balard, Benjamin Z. Kedar and Jonathan Riley-Smith (London, 2001), pp. 3-11.

<sup>1298</sup> *O quanta iam provenit utilitas ex hac causa: quam multi, conversi ad penitentiam, pro liberatione terre sancte mancipaverunt se obsequio crucifixi et quasi per agonem martyrii coronam glorie sunt adepti, qui forte in suis iniquitatibus periissent, carnalibus voluptatibus et mundanis illecebris irretiti!* Innocent III, 'Quia maior', p. 89; translation from *Crusade and Christendom*, ed. Jessalynn Bird, Edward Peters and James M. Powell, p. 108.

<sup>1299</sup> ... *coronam glorie sunt adepti* ... Innocent III, 'Quia maior', p. 89.

<sup>1300</sup> Caroline Smith, 'Martyrdom and Crusading in the Thirteenth Century: Remembering the Dead of Louis IX's Crusades', *Al-Masaq*, Vol. 15 (2003), pp. 189-196; Yeager, 'The Earthly and Heavenly Jerusalem', pp. 130-131; Tamm, 'Martyrs and Miracles', pp. 153-154.

abundance of references to martyrs in narrative sources, they were rarely elevated to official sainthood.<sup>1301</sup>

In conclusion, the concept of martyrs played a significant role in the conversion narrative of Livonia. This follows the general tendency of crusading narratives that frequently depicted this subject. The Livonian chronicles sometimes implied the sanctity of martyrs, and at other times clearly co-equated them with the saints. Such a conflation of ideas is at least partly explained by the lack of official canonisation process that had not yet crystallised by the time these chronicles were written in the thirteenth century.<sup>1302</sup> Conversely, official letters concerning Livonia did not mention martyrdom, which also explains why it is not certain whether any veneration of local saints existed. The crusaders and missionaries who came to convert Livonia brought with them established cults of saints, such as that of the Virgin Mary and St. George. However, even in these cases it is difficult to establish the extent to which the local converts were involved in their lay veneration, as the locals did not leave much evidence themselves.

### **MATERIAL PRIVILEGES**

Among the wide variety of privileges that were included in crusading calls was the offer of protection by the papacy. This may have included protection for the persons, families and belongings of those who went on a crusade already at the Council of Clermont in 1095; however, this protection was likely presented in the context of the Truce of God, and was thus more similar to protections that had been

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<sup>1301</sup> James A. Brundage, 'Voluntary Martyrs and Canon Law. The Case of the First Crusaders', *Cristianesimo nella storia*, Vol. 27 (2006), pp. 143-160, esp. pp. 158-159.

<sup>1302</sup> The chronicle of Henry of Livonia was finished in c.1229 and the chronicle of Arnold of Lübeck was written in c.1210. For the canonisation process, see Bartlett, *Why Can the Dead Do Such Great things?*, pp. 57-60.

given for pilgrims previously.<sup>1303</sup> Fulcher of Chartres, for example, reported that one of the decrees given at the Council of Clermont announced that ‘whoever has captured or plundered monks or clerics, nuns and their servants or pilgrims or merchants, let him be anathemised’.<sup>1304</sup> Additionally, another decree called for a renewal of the Truce of God, and threatened to anathemise anyone who would break it.<sup>1305</sup> These were not yet protections exclusively meant for those going on a crusade, but they most certainly paved the way for such developments.<sup>1306</sup>

In the canonical collections of the mid-twelfth century, the protection of pilgrims was expressed in the context of general protection offered for such travellers, although no specific protections for crusaders were yet developed.<sup>1307</sup> For example, Gratian’s *Decretum* included a decree from the First Lateran Council (1123) which stated that ‘if anyone tries to attack pilgrims to Rome and foreigners visiting the shrines of the apostles and the oratories of other saints, or to rob them of the things

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<sup>1303</sup> Brundage, *Medieval Canon Law and the Crusader*, p. 161.

<sup>1304</sup> *Qui monachos vel clericos aut sanctimoniales et eorum famulos ceperit aut exspoliaverit, vel peregrinos vel mercatores, anathema sit.* Fulcher of Chartres, *Historia Hierosolymitana*, 1.2.11, p. 128. Marcus Bull has seen such an encompassing proclamation as ‘the first attempt by the papacy to extend the Peace [of God] throughout Latin Christendom’; Marcus Bull, *Knightly Piety and the Lay Response to the First Crusade: The Limousin and Gascony, c.970-c.1130* (Oxford, 1998), p. 57.

<sup>1305</sup> Fulcher of Chartres, *Historia Hierosolymitana*, 1.2.14, pp. 129-130.

<sup>1306</sup> See the seminal study by Brundage, *Medieval Canon Law and the Crusader*, pp. 160-161, which sees the protection of crusaders as ‘an obvious outgrowth of the privilege of personal protection which the Church had sought to guarantee for pilgrims and travellers of all kinds for generations before the first crusade’. Additionally, Danielle E. A. Park has shown how at least some amount of papal protection was given to those participating in the so-called ‘proto-crusades’; Danielle E. A. Park, *Papal Protection and the Crusader: Flanders, Champagne, and the Kingdom of France, 1095-1222* (Woodbridge, 2018), p. 27. Marcus Bull has pointed out that the decrees announced at the Council of Clermont must have been subsequently enforced by local councils, such as one held at Tours (1096). Bull additionally asserts that although the decrees proclaimed at the Council of Tours did not explicitly mention crusaders, they must have been understood to fall into the category of pilgrims, who were indeed granted protection at the council; Marcus Bull, *Knightly Piety*, p. 63.

See also H. E. J. Cowdrey, ‘The Peace and the Truce of God in the Eleventh Century’, *Past & Present*, Vol. 46 (1970), pp. 42-67. For the concept of peace in the Middle Ages more generally, see Thomas Renna, ‘The Idea of Peace in the West, 500-1150’, *Journal of Medieval History*, Vol. 6 (1980), pp. 143-167.

<sup>1307</sup> Brundage, *Medieval Canon Law and the Crusader*, p. 162. Danielle E. A. Park has suggested that the omission of protections specifically offered to crusaders from twelfth-century canon law collections, was due to their compilers, such as Ivo of Chartres, perceiving crusades as something fundamentally new and ambiguous; Danielle E. A. Park, *Papal Protection and the Crusader*, p. 15.

they bring, or to trouble merchants with new exactions of tolls and fees, let him be deprived of Christian communion until he makes reparation'.<sup>1308</sup>

An additional canon from the same council, also included in Gratian's *Decretum*, granted protection for those 'who go to churches to pray and those keeping guard over churches'.<sup>1309</sup> Lastly included in the *Decretum* was a canon from the Council of Rome (1059), linking these protections to the Truce of God by forbidding to harm the protected persons, namely 'pilgrims, or those going to pray in any place, or clerics, or monks, or women, or unarmed poor persons'.<sup>1310</sup> Yet, a canon from the First Lateran Council that was not included in the *Decretum* offered protections explicitly for those who went on a crusade: '[t]o those who set out for Jerusalem and offer effective help towards the defence of the Christian people and overcoming the tyranny of the infidel ... we place their houses and families and all their goods under the protection of blessed Peter and the Roman church ...'.<sup>1311</sup> While the canon could have been excluded from the *Decretum* simply because the council was so recent, it is also possible that Gratian did not want to include a legal prescription for such specific circumstances as set out in the canon, and did not see its wider relevance at the time of composing the *Decretum*.

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<sup>1308</sup> *Si quis Romipetas et peregrinos, apostolorum limina et aliorum sanctorum oratoria visitantes, capere seu rebus quas ferunt spoliare vel mercatores novis teloneorum seu pedaticorum exactionibus molestare tentaverit, donec satisfecerit, communionem careat christiana.* Canon 14 of the First Lateran Council (1123) Tanner 1, p. 193. Gratian, C.24 q.3 c.23, cols. 996-997.

<sup>1309</sup> ... *qui oratores et ecclesias, earumque bona et personas ibidem seruiantes infestare presumit.* Gratian, C.24 q.3 c.24, col. 997. The 'auctoritas' is Canon 20 of the First Lateran Council (1123), incorrectly attributed to Pope Urban II (1088-1099).

<sup>1310</sup> ... *peregrinos, uel oratores cuiuscumque sancti, siue clericos, siue monachos, uel feminas, aut inermes pauperes ...* Gratian, C.24 q.3 c.25, col. 997. See also Atria A. Larson, 'From Protections for miserabiles personae to Legal Privileges for International Travellers: The Historical Development of the Medieval Canon Law regarding Pilgrims', *European Journal of Legal History*, Vol. 16 (2019), pp. 167-186, at pp. 175-176.

<sup>1311</sup> *Eis qui Hierosolymam proficiscuntur et ad christianam gentem defendendam et tyrannidem infidelium debellandam efficaciter auxilium praebuerint ... concedimus et domos et familias atque omnia bona eorum in beati Petri et Romanae ecclesiae protectione ...* Canon 10 of the First Lateran Council (1123), Tanner 1, p. 191.

Unlike mid-twelfth century canonical and theological works, papal bulls that proclaimed the crusades did offer specific protections for those who took up the Cross, but they did not enter canon law collections.<sup>1312</sup> The papal bull ‘Quantum praedecessores’ calling for the Second Crusade in 1145 clarified many of the aspects, including the protections, that the crusaders were given.<sup>1313</sup> It decreed that ‘their wives and children, also [their] goods and possessions shall remain under the protection of the Holy Church, also of ourselves and of the archbishops, bishops and other prelates of the Church of God’, after which the letter divulged into granting additional protections from lawsuits and the like.<sup>1314</sup> ‘Quantum praedecessores’ had established a precedent of offering protection for crusaders that the successors of Pope Eugenius III utilised throughout the rest of the twelfth century.<sup>1315</sup>

‘Divini dispensatione’, issued by Eugenius III in 1147, calling for a crusade against the pagan Wends likewise decreed that ‘those who take the Cross for such a holy journey, and their possessions, shall be under the protection of us and of St. Peter’.<sup>1316</sup>

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<sup>1312</sup> Although technically ‘Ad liberandam’, proclaiming the Fifth Crusade, was included in the *Liber extra* at X 5.6.17, large parts of it were omitted, including those concerning the protection of the crusaders. One possible reason is that such letters were too specific to be included in canon law collections. Indeed, when Hostiensis commented on the letter, or rather on the omitted parts of the letter, he stated that ‘[p]rotection: special not general’ – *Protectione: speciali non generali*, Hostiensis *Lectura ad X 5.6.17*; Blumenthal, ‘A Gloss of Hostiensis to X 5.6.17’, Appendix, pp. 101-122, at p. 111.

<sup>1313</sup> Eugenius III, ‘Quantum praedecessores’. See also James A. Brundage, ‘Crusaders and Jurists: the Legal Consequences of Crusader Status’, *Le concile de Clermont de 1095 et l’appel à la croisade. Actes du Colloque Universitaire International de Clermont-Ferrand* (1997), pp. 141-154, at pp. 147-148; Park, *Papal Protection and the Crusader*, pp. 79-81.

<sup>1314</sup> ... *uxores et filios eorum, bona quoque et possessiones sub sanctae aecclisiae, nostra etiam et archiepiscoporum, episcoporum et aliorum prelatorum aecclisiae Dei protectione manere* ... Eugenius III, ‘Quantum praedecessores’, p. 57.

<sup>1315</sup> See, for example, the following letters: Alexander III, ‘Inter omnia quae’ (29 July 1169) *PL* 200, cols. 599-601; Alexander III, ‘Cor nostrum et’ (16 January 1181) *PL* 200, cols. 1294-1296; Gregory VIII, ‘Audita tremendi’. See also Brundage, ‘Crusaders and Jurists’, p. 148; Miriam Rita Tessera, ‘The Use of the Bible in Twelfth-Century Papal Letters to Outremer’, in *The Uses of the Bible in Crusader Sources*, ed. Elizabeth Lapina and Nicholas Morton (Leiden, 2017), pp. 179-205, at p. 199; Park, *Papal Protection and the Crusader*, pp. 81-88.

<sup>1316</sup> *Illos autem qui ad tam sanctam expeditionem crucem acceperint, et bona eorum sub beati Petri et nostra protectione manere decernimus*. Eugenius III, ‘Divini dispensatione’ (11 or 13 April 1147) *PL* 180, cols. 1203-1204.

However, this was the full extent of protections offered for those going on the Wendish Crusade; the elaborate legal and monetary benefits and protections that were given in 'Quantum praedecessores' for those going to the Holy Land were not present here.<sup>1317</sup> One possible explanation is that since 'Divini dispensatione' was only half as long as 'Quantum praedecessores', the pope focused on the most important aspects of the Wendish Crusade, and did not see it necessary to elaborate beyond offering the most basic protections, especially as crusader protection as a concept was not yet firmly established.

A few decades later, in 1171, when Pope Alexander III exhorted the Scandinavians to fight 'powerfully and bravely against these often mentioned pagans', an offer of one year's remission of sins was given, but no protections were mentioned in the letter.<sup>1318</sup> In 1199, Innocent III issued a letter offering the remission of sins for those going to Livonia, and also taking them 'under St. Peter's and our protection', although this protection covered only persons going to Livonia and not their goods.<sup>1319</sup> As we have noted, the 1204 letter of Innocent III which allowed the commutation of vows to go to Livonia for those who could not go to the Holy Land, did not mention protections at all.<sup>1320</sup> Similarly, the letter 'Alto divina dispositionis' of Innocent III in 1215 did not mention protections, although it was the first time when indulgences were granted to those who financially came to the aid of Livonia.<sup>1321</sup> On the other hand, Pope Honorius III issued a letter in 1222 that proclaimed that those going to Livonia to fight against the heathen are taken under the protection of the Apostolic See 'together with

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<sup>1317</sup> Eugenius III, 'Divini dispensatione' (11 or 13 April 1147) *PL* 180, cols. 1203-1204.

<sup>1318</sup> ... *aduersus saepe dictos paganos potenter et magnanimiter* ... Alexander III, 'Non parum animus', p. 38. See the discussion on the same letter at pp. 257, 355-356.

<sup>1319</sup> ... *sub beati Petri et nostra protectione* ... Innocent III, 'Sicut ecclesiasticae religionis', p. 401. See also Fønnesberg-Schmidt, *The Popes and the Baltic Crusades*, p. 98.

<sup>1320</sup> Innocent III, 'Etsi verba evangelizantium'.

<sup>1321</sup> Innocent III, 'Alto divina dispositionis'.

their families and all their goods'.<sup>1322</sup> Yet, it did not set a precedent. Even in 1245 when Pope Innocent IV promised in a letter addressed to the king of Denmark that those going to Livonia and Estonia to fight against the pagans would receive the same indulgences as those going to the Holy Land, the letter did not mention any protections for the crusaders.<sup>1323</sup>

There are two possible explanations to this lack of explicit protections offered to those going on a crusade to Livonia. First, although important, the crusading movement going to Livonia was not seen as equal to those going to the Holy Land, and consequently the letters issued for the latter tended to be much more elaborate not only in terms of protection but also for indulgences offered. Indeed, papal bulls proclaiming crusades for the defence and aid of the Holy Land all included an offer of protection for those who took the Cross: 'Audita tremendi' that proclaimed the Third Crusade in 1187 stated that the protection offered to the crusaders included that '[t]heir goods too, from their reception of the Cross, with their families, remain under the protection of the Holy Roman Church, as well as of the archbishops and bishops and other prelates (of the Church) of God'.<sup>1324</sup> 'Quia maior', issued by Pope Innocent III in 1213 to call for a new crusade likewise stated that '[w]e also take their persons and goods, since they took up the Cross, under the protection of the blessed Peter and ours... decreeing that, until their death or return is most certainly known, they

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<sup>1322</sup> ... *cum familiis et omnibus bonis suis*. Honorius III, 'Ne terra vaste', p. 133. In another letter, Honorius III took under his special protection these crusaders who went through the port of Lübeck in order to go to Livonia; Honorius III, 'Etsi omnes cruce signati' (28 November 1226) *Horoy* 5, cols. 144-145.

<sup>1323</sup> Innocent IV, 'Insurgentibus contra fidem' (20 February 1245) *LUB* 1, no. 183, cols 239-240.

<sup>1324</sup> *Bona quoque ipsorum ex quo crucem acceperint, cum suis famulis, sub sanctae Romanae ecclesiae, necnon archiepiscoporum, et episcoporum, et aliorum praelatorum [ecclesiae] Dei protectione consistant ...* Gregory VIII, 'Audita tremendi', pp. 18-19; translation from *Crusade and Christendom*, ed. Jessalynn Bird, Edward Peters and James M. Powell, p. 8.



may remain intact and stand in peace'.<sup>1325</sup> Therefore, it seems that protection for crusaders going to the Holy Land was given more consistently compared to those who decided to go to Livonia in the early thirteenth century, at least according to the official letters issued endorsing the crusades.

Yet, this did not mean that no protections were offered to crusaders going to Livonia at all. As a second explanation for omitting explicit protections, the Livonian crusaders were still classified as pilgrims, albeit armed, and thus enjoyed the default protection offered to pilgrims.<sup>1326</sup>

### **PUNISHMENTS**

No penitentials survive from thirteenth-century Livonia.<sup>1327</sup> However, a letter of Innocent III that included a reference to penitential acts in Livonia, was included in the *Compilatio tertia* and the *Liber extra*.<sup>1328</sup> The letter 'Deus qui ecclesiam' from 1201 stated the following:

Furthermore, since penance should be moderated not so much according to the amount of the excess but rather according to the penitent's contrition and through the discretion of the priest, after considering the quality of the person over fornication, adultery, murder, perjury, and other crimes, considering all the circumstances and especially the novelty of

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<sup>1325</sup> *Personas quoque ipsorum et bona, ex quo crucem assumpserint, sub beati Petri et nostra protectione suscipimus ... statuentes, ut, donec de ipsorum obitu vel reditu certissime cognoscatur, integra maneant et quietam consistant.* Innocent III, 'Quia maior', p. 92. Essentially the same protection is given in 'Ad liberandam', Constitution 71 of the Fourth Lateran Council (1215) *Tanner* 1, pp. 270-271.

<sup>1326</sup> James A. Brundage has similarly noted that '[a]bout all that can be concluded from the references to the personal protection of crusaders during the first crusade is that they were considered in the same class and subject to the same general ecclesiastical protection as other types of pilgrims - the distinction between the two in this area was at that time very vague indeed'; Brundage, *Medieval Canon Law and the Crusader*, p. 161.

<sup>1327</sup> Tiina Kala, 'Manuscript Fragments as Testimony of Intellectual Contacts between Tallinn and European Learning Centres in the Thirteenth and Fourteenth Centuries', in *Making Livonia Actors and Networks in the Medieval and Early Modern Baltic Sea Region*, ed. Anu Mänd and Marek Tamm (London, 2020), pp. 170-186, at pp. 170-171.

<sup>1328</sup> Innocent III, 'Deus qui ecclesiam'.

the Church of Livonia, you should impose a suitable penance on the offenders, as you consider it conducive to their salvation. By following in the footsteps of the Apostle, who says, as we said before: 'I gave you milk, not meat' [1 Cor. 3:2], you may gradually instruct them in faith, by carefully teaching them the form of confession, the Lord's Prayer, and the Creed.<sup>1329</sup>

The pope highlighted the fact that the Church of Livonia was still very young, and this should be taken into consideration when imposing penances.<sup>1330</sup> While Pope Innocent IV did not comment on this letter in his *Apparatus*, Hostiensis in his *Summa aurea* listed the qualities that one should take into account when considering penance: 'the crime, quantity, and person, and dignity, condition, sex, employment, poverty, infirmity, custom, temperament, society, contrition, place, religion, and quality of time cause, intention, and will and other circumstances'.<sup>1331</sup> Unfortunately, no more such explicit references to the use of penitentials in Livonia survive from the thirteenth century.

### *Spiritual Punishments: Excommunication*

Excommunication in the Early Middle Ages was preceded by the concept of general social exclusion prescribed in various civil law codes, such as the Theodosian

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<sup>1329</sup> *Ceterum, cum poenitentia non tam secundum quantitatem excessus, quam poenitentis contritionem per discreti sacerdotis arbitrium sit moderanda, pensata qualitate personae super fornicatione, adulterio, homicidio, periurio et aliis criminibus, consideratis circumstantiis omnibus et praesertim novitate Livoniensis ecclesiae, competentem poenitentiam delinquentibus imponatis, prout saluti eorum videritis expedire. Apostoli autem vestigiis inhaerentes, dicentis, ut praediximus: 'Iac vobis potum dedi, non escam,' [1 Cor. 3:2] paulatim eos instruatis in fide, confessionis formam, orationem dominicam et symbolum illos sollicitate edocentes. Interim tamen corporis et sanguinis Domini sacramentum renatis fonte baptismatis consuetis festivitibus et in mortis articulo tribuatis.* Innocent III, 'Deus qui ecclesiam', p. 80. This section of the letter was inserted into 3 *Comp.* 5.20.1 and the *Liber extra* at X 5.38.8.

<sup>1330</sup> Innocent III, 'Deus qui ecclesiam'.

<sup>1331</sup> *Certum est, quod major causa requiritur in publico, quam in occulto: in utroque tamen minor ex causa poenitentia potest imponi, consideratis crimini, quantitate, et personae, et dignitate, conditione, sexu, officio, paupertate, infirmitate, debilitate, co[n]suetudine, complexione, societate, contritione, loci, religionis, et temporis qualitate, causa, animo et voluntate et aliis circumstantiis.* Hostiensis, *Summa aurea* ad X 5.38 §60, cols. 1632-1633.

Code of the fifth century.<sup>1332</sup> The code determined that apostasy warrants segregation and disapproval from the community of all men, excluding the apostate from crucial social connections.<sup>1333</sup> Such social exclusion and contempt was indeed very similar to what excommunication came to signify.<sup>1334</sup> In Gratian's *Decretum*, excommunication was likened to anathema:

However, the designation of the sentence can be understood in different ways. For sometimes it keeps someone away from the threshold of the Church and from the union with the body and blood of Christ ... This judgment is called excommunication because it forbids the person from the communion with the body and blood of Christ ... This judgment does not exclude anyone from the community of believers. There is another judgment, called anathema, by which one is separated from the community of believers.<sup>1335</sup>

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<sup>1332</sup> Oropeza, *Paul and Apostasy*, p. 10.

<sup>1333</sup> *Qui sanctam fidem prodiderint et sanctum baptisma profanaverint, a consortio omnium segregati sint, a testimoniis alieni, testamenti, ut ante iam sanximus, non habeant factionem, nulli in hereditate succedant, a nemine scribantur heredes. Quos etiam praecepissemus procul abici ac longius amandari, nisi poenae visum fuisset esse maioris versari inter homines et hominum carere suffragiis.* – 'If any persons should betray the Holy Faith and should profane holy baptism, they shall be segregated from the community of all men, shall be disqualified from giving testimony, and, as we have previously ordained, they shall not have testamentary capacity, they shall inherit from no person, and by no person shall they be designated as heirs. We should also have ordered them to be expelled and removed to a distance if it had not appeared to be a greater punishment to dwell among men and to lack the approval of men.' 'Theodosiani libri XVI', in *Theodosiani libri XVI cum Constitutionibus Sirmondianis et Leges novellae ad Theodosianum pertinentes*, ed. Theodor Mommsen (Berlin, 1905), pp. 27-906, 16.7.4, p. 885; translation from *The Theodosian Code and Novels, and the Sirmondian Constitutions*, ed. and trans. Clyde Pharr (Princeton, 1952), 16.7.4, p. 466.

<sup>1334</sup> In fact, excommunication in the Early Church was often considered more akin to spiritual rather than social exclusion. Gradually and over time, it also started to signify social exclusion; see Vodola, *Excommunication in the Middle Ages*, pp. 7-8. Interdict, although closely related and also a spiritual sanction, remains out of the scope of this thesis; for a general but comprehensive treatment of interdict, see for example Peter D. Clarke, *The Interdict in the Thirteenth Century: A Question of Collective Guilt* (Oxford, 2007). For a concise overview of interdict in the context of canon law beyond the thirteenth century, see Peter D. Clarke, 'Excommunication and Interdict', in *The Cambridge History of Medieval Canon Law*, ed. Anders Winroth and John C. Wei (Cambridge, 2022), pp. 550-569.

<sup>1335</sup> *Sed et ipsius sententiae notatio multipliciter intelligitur. Aliquando enim arcetur quis a liminibus ecclesiae et a communio corporis et sanguinis Christi ... Hec sententia excommunicatio uocatur, quia a communione corporis et sanguinis Christi notatum prohibet ... Qua sententia non separatur quis a consortio fidelium. Est et alia sententia, que anathema uocatur, qua quisque separatur a consortio fidelium.* Gratian, C.11 q.3 d.p.c.24, col. 651. The 'auctoritas' for the canon itself is John Chrysostom. See also Vodola, *Excommunication in the Middle Ages*, pp. 28-29.

For Gratian, excommunication was meant for sins of conscience and signified a concern for God, which consequently did not mean exclusion from the ‘community of believers’.<sup>1336</sup> The *Decretum* thus considered excommunication mostly as a juridical, temporal penalty.<sup>1337</sup>

Until the twelfth century, excommunication was generally handed out for specific crimes after a sentence was imposed by an individual (*ferendae sententiae*).<sup>1338</sup> By contrast, incurring automatic excommunication (*latae sententiae*) was rarer, although it was used at times, especially in cases of heresy.<sup>1339</sup> It must be noted that the distinction between different types of excommunication sentences was more ambiguous than presented here, and the division into different types of sentences also varied depending on the canon lawyer considering them, especially during the formative twelfth century. For example, a type of excommunication could be considered conditional (*lata sub conditione*), usually imposed by a prelate on a

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<sup>1336</sup> Vodola, *Excommunication in the Middle Ages*, pp. 29-30; Bertil Nilsson, ‘Gratian on Pagans and Infidels. A Short Outline.’, in *Cultural Encounters during the Crusades*, ed. Kurt Villads Jensen, Kirsi Salonen and Helle Vogt (Odense, 2013), pp. 15-163, at p. 156.

<sup>1337</sup> See for example how Gratian considered the sentence of unjust excommunication: *Ex his datur intelligi, quod iniusta sententia nullum alligat apud Deum, nec apud ecclesiam eius aliquis grauat iniqua sententia ...* – ‘From these it is given to be understood that an unjust sentence binds no one before God, nor is anyone burdened by an unjust sentence in his church ...’ Gratian, C.11 q.5 d.p.c.64, col. 661. The *auctoritas* for the canon itself is Gregory I. To be sure, Gratian also thought that even an unjust sentence of excommunication should be respected until it is overturned, lest the excommunicate would be guilty of pride: Gratian C.11 q.3 d.p.c.77, cols. 664-665. See also Chodorow, *Christian Political Theory*, pp. 87-91; Winroth, *The Making of Gratian’s Decretum*, pp. 99-121; Felicity Hill, *Excommunication in Thirteenth-Century England; Communities, Politics, and Publicity* (Oxford, 2022), pp. 92-93.

<sup>1338</sup> See, for example, the letter ‘Quia bellica’ of Pope John VIII from which it can be inferred that the duke of Ravenna had been excommunicated for an incestuous marriage; John VIII, ‘Quia bellica’ (29 September 880) *Epistolae Karolini Aevi*, Vol. 7, ed. Erich L. E. Caspar (Berlin, 1928), no. 261, pp. 231-232. For the case, see also: Betti, ‘Incestuous Marriages in Late Carolingian Ravenna’, pp. 457-477. For yet another example of an incestuous marriage warranting excommunication in the Early Middle Ages, see Ian N. Wood, ‘Incest, Law and the Bible in Sixth-Century Gaul’, *Early Medieval Europe*, Vol. 7 (1998), pp. 291-303, at pp. 297-298. For excommunication *ferendae sententiae* see Alexander Murray, *Conscience and Authority in the Medieval Church* (Oxford, 2015), p. 25; Vodola, *Excommunication in Thirteenth-Century England*, pp. 13-14.

<sup>1339</sup> Peter Huizinga, ‘The Earliest Development of Excommunication *Latae Sententiae* by Gratian and the Early Decretists’, *Studia Gratiana*, Vol. 3 (1955), pp. 277-320, at pp. 281-288.

specific person, but the sentence was suspended until the fulfilment of the condition.<sup>1340</sup>

The twelfth century started to increasingly see an increase in the pronouncement of automatic excommunication.<sup>1341</sup> For example, canons from the Third Lateran Council (1179) pronounced an automatic excommunication for a variety of crimes – alienations of ecclesiastical property by schismatics or by lay persons, taking part in the activities of piracy, and being a Christian servant in the house of Jews and Saracens.<sup>1342</sup> Canon 11 of the same council considered the status of an excommunicate as when somebody is ‘completely separated from the society of the faithful’, more akin to what Gratian’s *Decretum* described as anathema.<sup>1343</sup> The same council also decreed that ‘prelates should not pass sentence of suspension or excommunication without a previous canonical warning, unless the fault is such that by its nature it incurs the penalty of excommunication’.<sup>1344</sup>

Through the conciliar decrees of the twelfth century, what Gratian’s *Decretum* described as anathema came to be treated as the major excommunication. This

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<sup>1340</sup> Huizing, ‘The Earliest Development of Excommunication’, pp. 310-315; Clarke, *The Interdict in the Thirteenth Century*, p. 126. See also its consideration in the *Liber extra*, illustrating that its use had become more commonplace by the 1230s: *Sententia excommunicationis, suspensionis vel interdicti lata sub conditione suspenditur, si ante conditionis eventum fuerit appellatum*. – ‘The conditional sentence of excommunication, suspension or interdict *lata* is suspended if an appeal is made before the condition fulfils.’ X 2.28.39=2 *Comp.* 2.19.14. The ‘*auctoritas*’ is the letter ‘*A nobis fuit*’ of Celestine III (December 1193) *PL* 206, col. 1024.

<sup>1341</sup> Concurrently, the concept of ‘*latae sententiae*’ started to gain the acceptance by canon lawyers as well during the second half of the twelfth century; see Vodola, *Excommunication in the Middle Ages*, pp. 30-32; Huizing, ‘The Earliest Development’, p. 299. In England, for example, the parochial clergy in the thirteenth century had to regularly publish a list of offences incurring automatic excommunication; see Richard H. Helmholz, ‘Excommunication in Twelfth Century England’, *Journal of Law and Religion*, Vol. 11 (1994), pp. 235-253, at p. 251.

<sup>1342</sup> Canons 2, 24 and 26 of the Third Lateran Council (1179) *Tanner* 1, pp. 211-212, 222, 223 and 223-224, respectively.

<sup>1343</sup> ... *a coetu fidelium fiant prorsus alieni*. Canon 11 of the Third Lateran Council (1179) *Tanner* 1, p. 217. This canon was inserted into the *Compilatio prima* at 3.2.12 and the *Liber extra* at X 5.31.4.

<sup>1344</sup> ... *nec praelati, nisi canonica commonitione praemissa, suspensionis vel excommunicationis sententiam proferant in subiectos, nisi forte talis sit culpa, quae ipso genere suo excommunicationis poenam inducat* ... Canon 6 of the Third Lateran Council (1179) *Tanner* 1, p. 214.

distinction was eventually explained by Thomas Aquinas in his *Summa theologiae* more than a century after the compilation of the *Decretum*:

... [H]e who enters the Church through baptism, is admitted to two things: namely, to the assembly of the faithful, and to the participation in the sacraments. And this latter presupposes the former, because the faithful unite together by participating in the sacraments. Therefore, a person may be rendered outside of the Church in two ways. One way, so that he would be deprived only from the participation in the sacraments, and this is the minor excommunication. The other way: so he is excluded from both. And so this will be the major excommunication, which is defined here.<sup>1345</sup>

It is clear that Thomas Aquinas was concerned with the vagueness that had been persistent in discussions on excommunication, although earlier in 1245, Pope Innocent IV had ruled out the use of excommunication on whole communities, significantly narrowing its use.<sup>1346</sup> The supplement of the third part of the *Summa theologiae* where Thomas Aquinas clarified this issue was largely derived from commentaries that he left on Peter Lombard's *Sentences*.<sup>1347</sup> Peter Lombard had

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<sup>1345</sup> ... qui per baptismum in Ecclesia ponitur, ad duo adscribitur: scilicet ad coetum fidelium; et ad participationem sacramentorum. Et hoc secundum praesupponit primum: quia in sacramentis participandis etiam fideles communicant. Et ideo aliquis potest extra Ecclesiam fieri per excommunicationem dupliciter. Uno modo, ita quod separaretur tantum a participatione sacramentorum. Et haec erit excommunicatio minor. Alio modo, ita quod excludatur ab utroque. Et sic erit excommunicatio maior, quae hic definitur. St. Thomas Aquinas, *Summa totius theologiae sancti Thomae Aquinatis. Supplementi Tertiae Partis*, Vol. 1 (Madrid, 1828), Q 21, A 1, co.

<sup>1346</sup> The decretal 'Ceterum' that forbade such excommunication formed a part of the so-called Constitution 'Romana ecclesia', which was promoted by Innocent IV on 17 March 1246 as an outcome of the First Council of Lyon (1245). The entire Constitution has been edited by Peter-Josef Kessler in 'Untersuchungen über die Novellen-Gesetzgebung Papst Innozens' IV. I Teil', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Kanonistische Abteilung*, Vol. 31 (1942), pp. 142-320, at pp. 156-182, and the decretal 'Ceterum' is at pp. 178-179. See also Clarke, *The Interdict in the Thirteenth Century*, pp. 8-9 and pp. 25-26; Theodore Eschmann, 'Studies on the Notion of Society in St Thomas Aquinas: I. St Thomas and the Decretal of Innocent IV *Romana Ecclesia: Ceterum*', *Mediaeval Studies*, Vol. 7 (1946), pp. 1-42.

<sup>1347</sup> Steven Baldner, *Thomas Aquinas: Basic Philosophical Writing* (Claremont, 2019), p. 11.

treated excommunication in the *Distinction* about the remission of sins, and thus concluded:

There is another manner of binding and loosing, which is done by excommunication. This happens when someone, in accordance with the canonical discipline, has been called three times to the amendment of a manifest crime; if he refuses to make satisfaction, he is cut off by the Church's sentence from the place of prayer, the communion of the sacraments, and the fellowship of the faithful, so that he may blush and, converted by the shame of his crime, he may repent, so that his spirit may be saved.<sup>1348</sup>

Peter Lombard had maintained that someone should be warned three times before they were to be excommunicated, but did not mention automatic excommunications nor any other distinctions between different types of excommunications. Even the terminology used to denote excommunication remained ambiguous in a sense that anathema, while a separate category in Gratian's *Decretum*, came to be used interchangeably with excommunication in general, although it was also used to denote 'major' excommunication more specifically.<sup>1349</sup>

To what extent were such questions about the nature of excommunication present in Livonia? Excommunication in Livonia was only mentioned once in the chronicle of Henry of Livonia, in a passing reference to Otto, the German Emperor (1175-1218).<sup>1350</sup> The chronicle, however, did use the term 'ecclesiastical censure'

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<sup>1348</sup> *Est et alius modus ligandi et solvendi, qui per excommunicationem geritur, dum aliquis, secundum canonicam disciplinam tertio vocatus ad emendationem manifesti delicti, et satisfacere vilipendens, sententia Ecclesiae a loco orationis et Sacramentorum communione et fidelium consortio praeciditur, ut erubescat, et pudore sceleris conversus, poeniteat, ut sic spiritus eius salvus sit.* Peter Lombard, *Libri IV sententiarum*, Sent.4, D.27 c.6 n.6, p. 864; translation from Peter Lombard, *The Sentences. Book 4*, p. 112.

<sup>1349</sup> Clarke, 'Excommunication and Interdict', p. 550; Murray, *Conscience and Authority*, p. 165.

<sup>1350</sup> *HCL XV*, 12, p. 100.

(*censura ecclesiastica*) on two occasions.<sup>1351</sup> Both of these cases appear in very close proximity, describing the activities of William of Modena during his first legatine mission. First the chronicle stated that ‘the legate summoned the same Germans to himself and by ecclesiastical censure he compelled them to transfer that land into the protection of the Supreme Pontiff’.<sup>1352</sup> Soon after, the legate required that the Danes in Estonia return the Livonian hostages, as the region that these hostages had come from was now converted; however, ‘they were not willing to deliver them [the hostages] into his hands, but, being struck by an ecclesiastical censure, they were finally compelled to restore them’.<sup>1353</sup> As William of Modena had received the greatest authority from Pope Honorius III to oversee matters pertaining to Livonia, it is plausible that resisting his orders would have resulted in a major ecclesiastical censure, but it is impossible to establish that this was the case with absolute certainty, as Henry was vague on the exact nature of the potential punishment.

In addition to threats of ecclesiastical censures for specific crimes committed by communities and groups of people, the legatine missions of William of Modena utilised the penalty of automatic excommunication. In April and May 1226, as we have seen, William issued two letters in which the judiciary system of Riga was outlined: disputes should always be decided by three sworn citizens of Riga, jointly chosen by the bishop of Riga, the provost (the head of the cathedral chapter), and the master of

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<sup>1351</sup> *HCL XXIX*, 6, p. 212; *XXIX*, 7, p. 213.

<sup>1352</sup> ... *domnus legatus idem convocavit ad se Theuthonios eosdem et censura ecclesiastica compellebat eos terra ipsam in protectionem summi pontificis resignare ... HCL XXIX*, 6, p. 212; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, p. 234 (amended).

<sup>1353</sup> ... *nolebant eos reddere in manus ipsius, sed censura ecclesiastica percussi tandem eos restutuere cogebantur ... HCL XXIX*, 7, p. 213; translation from Henry of Livonia, *The Chronicle of Henry of Livonia*, pp. 235-236 (amended).



the Order of the Swordbrothers.<sup>1354</sup> Additionally, the legate decreed that sentences given by the judges ought be observed under the penalty of excommunication.<sup>1355</sup>

As the judges were specifically tasked with the authority to oversee secular jurisdiction, such a penalty of excommunication on anyone transgressing their rulings might seem harsh. However, this decision can be seen as an attempt by William of Modena to achieve further equity in the jurisdiction of Riga, the new stronghold of Christianity in Livonia. As we have seen, the bishop of Riga held the highest spiritual authority in most of Livonia, but especially in Riga. Even the Swordbrothers were not exempted.<sup>1356</sup> Through the threat of automatic excommunication, the legate made sure that neither the Swordbrothers nor the bishop of Riga and his household had any immunity to transgress the decisions of the judges. Lastly, the penalty of automatic excommunication implies that William was interested in securing the stability of Riga for the foreseeable future. With this decision, the legate gave the new town the highest ecclesiastical protection that he could offer.

A similar use of automatic excommunication was once again imposed in 1238 by William of Modena during his second legatine mission:

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<sup>1354</sup> The letter of 22 April 1226, *LUB* 1, no. 85, col. 103.

<sup>1355</sup> The letter of 7 May 1226, *LUB* 1, no. 86, col. 103.

<sup>1356</sup> Generally, military orders were exempted from episcopal jurisdiction, see the discussion above at pp. 267-268. See also James A. Brundage, 'Crusades, Clerics and Violence', in *The Experience of Crusading*, Vol. 1, ed. Marcus Bull and Norman Housley, (Cambridge, Cambridge University Press, 2003), pp. 147-66, at pp. 153-54. By contrast, as we have seen, in 1210 Pope Innocent III subjected the Swordbrothers to the bishop of Riga; see the following letters: Innocent III, 'Cum inter te' and Innocent III, 'Cum super sorte'. See also Benninghoven, pp. 113-114; Alan V. Murray, 'The Sword Brothers at War: Observations on the Military Activity of the Knighthood of Christ in the Conquest of Livonia and Estonia (1203-1227)', *Ordines Militares*, Vol. 18 (2013), pp. 27-37, at pp. 28-29; Bombi, 'Innocent III and the Origins of the Order of Sword Brothers', pp. 151-153; Fonnesberg-Schmidt, *The Popes and the Baltic Crusades*, pp. 80-1. The relationship between the two major powers – the bishops of Livonia and the Order of the Swordbrothers – was further refined by William of Modena in 1225, see Toomaspoeg, 'The Military Orders and the Diocesan Bishops', p. 111.

May you all know that excommunication has been made and announced both in sermons and at meetings against the violators of peace everywhere within the boundaries of our legation, so that anyone who has anything against another, may pursue his right by judicial order.<sup>1357</sup>

William, by the authority he had received from Pope Gregory IX, used his delegated powers to threaten with a blanket excommunication in all the regions designated to him at that time – Livonia, Prussia, Gotland, Vironia, Estonia, Semigallia, Curonia, and 'other provinces and islands of neophytes and pagans'.<sup>1358</sup> He also explained that such ecclesiastical censure was needed to keep the peace, and people who had concerns that needed resolving must use courts of law.<sup>1359</sup> This pronouncement also indicates that the judicial system imposed by the Christian missionaries and crusaders was still not universally used or even firmly instituted in the late 1230s when Livonia had been 'officially' Christianised for a decade. Additionally, because the threat of excommunication was issued shortly after the recently completed treaty of Stensby that divided lands between the Danish King and the Teutonic Order, the targets of the threat were also Christians who would have been affected by the changing power-dynamics resulting from the treaty.<sup>1360</sup>

A different example of sentences of excommunication being used as '*latae sententiae*' came from 1237. William of Modena declared that no one should issue new legal statutes or follow the old ones, nor follow customs that are 'contrary to the

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<sup>1357</sup> *Noveritis nos tam in predicationibus quam in conciliis fecisse et denunciassse excommunicationem contra violatores pacis intra terminos nostre legationis ubique ita, ut, quicumque habet aliquid contra alium, prosequatur ordine iudiciario ius suum.* The letter of 1 August 1238, Donner, *Kardinal Wilhelm*, no. 11, pp. 428-429, at p. 429. Note that Vironia was geographically in Estonia; see the discussion about regions in Livonia at pp. 16-20.

<sup>1358</sup> ... *ceterae neophitorum et paganorum prouinciae ac insulae.* Gregory IX, 'Quoniam ut ait', p. 223.

<sup>1359</sup> The letter of 1 August 1238, Donner, *Kardinal Wilhelm*, no. 11, pp. 428-429.

<sup>1360</sup> For Treaty of Stensby of 1238, see pp. 295.

ecclesiastical liberty'.<sup>1361</sup> Whoever transgressed these pronouncements, and did not correct themselves within a two-month period, was to be excommunicated.<sup>1362</sup> This seems to have been a modification of conditional excommunication according to which the transgressor was given a period of time to rectify their wrongdoings before being automatically excommunicated.

Additionally, the legate expressed his concern about a prohibition in Livonia that forbade 'the Germans and neophytes' (*Thetonici et neofiti*) to leave their fields (*agri*) to the Church.<sup>1363</sup> William denounced this prohibition as contrary to ecclesiastical liberty and declared that whoever prohibited leaving land to the Church, was excommunicated 'until they make satisfaction'.<sup>1364</sup> In this case, it was an automatic conditional excommunication which seemed to have been automatically lifted once the violation had been remedied.

In a vastly different set of events, William of Modena had to deal with the question of who had the authority to excommunicate.<sup>1365</sup> In 1226, the Order of the Swordbrothers had lodged a complaint with the legate. It involved John, the provost of the Cathedral Chapter of Riga who had excommunicated one of their knights. The dispute between the parties that led to the excommunication concerned the cutting of trees on land which had been given to the bishop of Riga, who in turn had the right

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<sup>1361</sup> ... *contra ecclesiasticam libertatem* ... The letter of 1237, *LUB* 1, no. 148, col. 190.

<sup>1362</sup> The letter of 1237, *LUB* 1, no. 148, col. 190.

<sup>1363</sup> The letter of 1237, *LUB* 1, no. 148, col. 190. However, there is evidence that donations to the Church of Riga had begun in the 1220s. For example, Henry Borwin I of Mecklenburg had donated the whole village of Tatow in 1224; The letter of 14 July 1282, *LUB* 1, no. 479, cols. 593-594 (the letter confirms the existence of the 1224 donation). For such donations to the Church of Riga during the thirteenth century, see Mäesalu, 'Missed Patronage?', pp. 135-139.

<sup>1364</sup> ... *usque ad satisfactionem* ... The letter of 1237, *LUB* 1, no. 148, col. 190.

<sup>1365</sup> The letter of 28 April 1226, *LUB* 3, no. 85a, cols. 12-13. The case is also briefly discussed in Anti Selart's 'Donating Land to the Church: *Topos* as a Legal Argument in Thirteenth-Century Livonia', in *Making Livonia: Actors and Networks in the Medieval and Early Modern Baltic Sea Region*, ed. Anu Mänd and Marek Tamm (London, 2020), pp. 143-157, at pp. 145-146.

to exercise spiritual and legal rights over this land.<sup>1366</sup> The Order was represented by their Master Volkwin, who essentially declared that the Order only responded to the bishop of Riga, as opposed to the provost of the Rigan Cathedral Chapter.<sup>1367</sup> The legate, after hearing both sides, abruptly stated that the provost did not have the right to impose the sentence of excommunication on any of the Swordbrothers and declared the sentence invalid.<sup>1368</sup> As we have seen, other larger military orders, such as the Templars, had secured a series of privileges, including the exemption from episcopal jurisdiction.<sup>1369</sup> The Order of the Swordbrothers did not have such privileges.<sup>1370</sup> If this had not been the case, the excommunication of the Swordbrother would have still been invalid, but William of Modena might have mentioned the exemption of excommunication in the decision process.

In conclusion, Livonia did not seem to impose the sentence of excommunication consistently until the legatine missions of William of Modena, who was first sent to Livonia from the papal curia in 1225. William used excommunication as a tool of coercion to secure his mandates as a legate.<sup>1371</sup> Additionally, he used blanket excommunication, as opposed to excommunicating specific people. Last but not least, there did not seem to have been any conceptual differences in excommunication sentences, such as dividing them into minor and major ones.

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<sup>1366</sup> The letter of 28 April 1226, *LUB* 3, no. 85a, cols. 12-13.

<sup>1367</sup> The letter of 28 April 1226, *LUB* 3, no. 85a, cols. 12-13.

<sup>1368</sup> ... *non tenere nec posse praepositum magistrum vel fratres eius quam eorum iudex excommunicare ...* – '[T]he provost does not bind nor can he excommunicate the Master [of the Swordbrothers] or his brothers, like their judge ...' The letter of 28 April 1226, *LUB* 3, no. 85a, col. 13.

<sup>1369</sup> See the discussion at pp. 267-269.

<sup>1370</sup> See pp. 268-269.

<sup>1371</sup> Unfortunately, it is not known whether he ever absolved any excommunicates, which would have possibly helped to narrow down the status of his legatine office as perceived by contemporary canon lawyers. See the discussion on the categorisation of medieval legatine office at pp. 297-299.

### Material Punishments

Local law codes that were part of treaties between the indigenous Livonians and the Christians reveal the influence of the Church on punishments intended for specific crimes. As we have seen, in 1241 the local representatives of the island of Oesel signed a treaty with the representatives of the bishopric of Oesel and the Livonian Order.<sup>1372</sup> In this document, issues of taxation and judicial arrangements were resolved, and some serious crimes and their appropriate punishments were addressed.<sup>1373</sup> The crimes considered in the treaty were infanticide, sacrificing to pagan gods, not following fasting days, and homicide separated from infanticide, all of which were matters treated in both canon law and penitentials, as we shall see.

For infanticide, the treaty prescribed three oserings to be paid, ‘and the mother herself will receive flogging, naked, at the cemetery for nine Sundays’.<sup>1374</sup> Child exposure and the likely death resulting from it had been common already in Late Antiquity and its use persisted through the Middle Ages, as evidenced by consistent issuing of legislation that forbade such practice.<sup>1375</sup> For example, an early medieval

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<sup>1372</sup> The treaty of 1241, *LUB* 3, no. 169. Technically, the bishop of Oesel was represented by the Livonian Order because Henry, the bishop of Oesel, was at the papal curia. Henry ‘had fully and devotedly commissioned the affairs of his episcopate to the master and the brothers of the Teutonic house in Livonia’ – ... *negocia episcopatus sui magistro et fratribus domus theutonicorum in Liuvonia plene commiserat et devote*. The treaty of 1241, *LUB* 3, no. 169, col. 31.

<sup>1373</sup> The treaty of 1241, *LUB* 3, no. 169, cols. 31-33.

<sup>1374</sup> ... *mater ipsa novem diebus Dominicis nuda in cimiterio recipiet disciplinas*. – ‘The mother herself will receive flogging, naked, at the cemetery for nine Sundays.’ The treaty of 1241, *LUB* 3, no. 169, col. 32.

<sup>1375</sup> See for example John Boswell, *The Kindness of Strangers: The Abandonment of Children in Western Europe from Late Antiquity to the Renaissance* (Chicago, 1998), which demonstrates that child abandonment was common from Late Antiquity through the Middle Ages; H. Bennet, ‘The Exposure of Infants in Ancient Rome’, *The Classical Journal*, Vol. 18 (1923), pp. 341-351, which suggests that child exposure by the Romans in Late Antiquity was due to them adopting this from the Ancient Greeks who commonly used this practice throughout their history; Max Radin, ‘The Exposure of Infants in Roman Law and Practice’, *The Classical Journal*, Vol. 20 (1925), pp. 337-34, which points to the possible use of child exposure by the Romans independently from the Greeks; John Eastburn Boswell, ‘Expositio and Oblatio: The Abandonment of Children and the Ancient and Medieval Family’, *The American Historical Review*, Vol. 89 (1984), pp. 10-33 and Sean B. Lawing, ‘The Place of the Evil: Infant Abandonment in Old Norse Society’, *Scandinavian Studies*, Vol. 85 (2013), pp. 133-150, which both demonstrate that child abandonment, including exposure, certainly persisted throughout the Middle

penitential, the *Paenitentiale Theodori* (*Penitential of Theodore*, c.700) from England, stated that a mother who deliberately kills her child is subject to a penance of fifteen years and is forbidden to change her clothes, except on Sundays.<sup>1376</sup> If the mother was poor (*'mulier paupercola'*), she was prescribed seven years of penance.<sup>1377</sup> In the twelfth century, Otto of Bamberg (1060/1061-1139) preached against the killing of daughters to the Slavic people '[b]ecause up until these times, if a woman had given birth to many more daughters, so that they could more easily provide for the rest, they would strangle some of them, committing parricide for nothing'.<sup>1378</sup> Similar concerns regarding child exposure certainly continued into the High Middle Ages and beyond, as evidenced by the legislature in the treaty of 1241 with the Oeselians.<sup>1379</sup>

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Ages. Evidently, child abandonment was also practised among pre-Christian Finnish people, who were close to the Livonians both culturally and physically, and who might have borrowed this practice from the Germanic peoples; Juha Pentikäinen, 'Child abandonment as an indicator of Christianization in the Nordic countries', *Scripta Instituti Donneriani Aboensis*, Vol. 13 (1990), pp. 72-91, at pp. 82-84.

<sup>1376</sup> *Mater si occiderit filium suum, si homicidium facit, XV. annos peniteat; et nunquam motat, nisi in die Dominico.* – 'If a mother kills her child, if she commits murder, she should repent for fifteen years; and never change [her clothes], except on Sundays.' 'Penitential of Theodore (Paenitentiale Umbrense)', 1.14.25, p. 189. See also Erin Abraham, 'Out of the Mouths of Babes: Speech, Innocence, and Vulnerability in Early Medieval Perceptions of Childhood', *The Journal of the American Society of Irish Medieval Studies*, Vol. 7 (2014), pp. 46-64, at pp. 58-59. Similarly, the *Penitential of Theodore* determined that '[i]f a woman puts her daughter on the roof or in the oven for the cure of a fever, she must atone for 7 years.' – *Mulier si qua ponit filiam suam supra tectum vel in fornacem pro sanitate febris VII. annos peniteat.* 'Penitential of Theodore (Paenitentiale Umbrense)', 1.15.2, p. 190. Because the aim of the mother here was to cure her child, her behaviour was not the same to a mother who exposed her child with the intention of abandoning the child. For child exposure with healing purposes, see Rob Meens, 'Children and Confession in the Early Middle Ages', *Studies in Church History*, Vol. 31 (1994), pp. 53-65, at p. 60 and Sarah Hamilton, *The Practice of Penance, 900-1050* (London, 2001), pp. 203-204, which suggests that such prohibitions were more concerned with 'superstitious' beliefs rather than with the child's welfare. For the creation, transmission, and dissemination of Theodore's canonical and penitential teachings, see Roy Flechner, 'The Making of the Canons of Theodore', *Peritia*, Vol. 17/18 (2003), pp. 121-143; Michael Lapidge, 'The School of Theodore and Hardian', *Anglo-Saxon England*, Vol. 15 (1986), pp. 45-72, at pp. 48-49.

<sup>1377</sup> 'Penitential of Theodore (Paenitentiale Umbrense)', 1.14.26, p. 189.

<sup>1378</sup> *Nam usque ad haec tempora, si plures filias aliqua genuisset, ut ceteris facilius providerent, aliquas ex eis iugulabant, pro nichilo ducentes parricidium.* Herbord, *Dialogus de vita Ottonis episcopi Bambergensis*, ed. Rudolf Köpke in *Monumenta Germaniae Historica. Scriptorum, SS 20*, ed. Georg Henry Pertz (Hannover, 1868), pp. 697-771, at p. 741. See also Boswell, *The Kindness of Strangers*, pp. 278-279.

<sup>1379</sup> For example, the synodal Statutes of Winchester I in 1224 stated that 'women should be restrained from keeping their children close by in bed lest they smother them while in sleep' – ... *inhibeatur ne mulieres infantulos suos in lectis suis iuxta se collocent ne eos opprimant dormiendo.* Statute 65 of Winchester I (1224) *Councils and Synods with Other Documents Relating to the English Church, 1205-1265*, Vol. 1, ed. Frederick M. Powicke and Christopher R. Cheney (Oxford, 1964), p. 136; translation

Three papal letters concerning infanticide were included in the *Quinque compilationes antiquae* and the *Liber extra*.<sup>1380</sup> The undated letter ‘Veniens ad nos M.’ from the early pontificate of Alexander III, instructed the bishop of Tournai that a woman who had killed her son in rage because her husband had claimed that the boy was not his son, should perpetually repent in monastery.<sup>1381</sup> The undated letter ‘Intelleximus ex litteris’ of Lucius III expressed the need for flexibility in difficult circumstances: if a woman had killed her child, but she had other children, she should not be sent away but a different penance should be imposed on her.<sup>1382</sup> Finally, another undated letter of Alexander III, ‘De infantibus’, wrongly attributed to Lucius III, held both parents responsible for accidentally suffocating a child, and prescribed them three years of penance of which one year must be done on bread and water.<sup>1383</sup>

We can find an interesting parallel between ‘De infantibus’ and a local synodal legislation from Sweden, overseen by Anders Sunesen, the remarkably erudite archbishop of Lund who was in Estonia for some time between 1219 and 1221.<sup>1384</sup> Namely, one of the synodal laws decreed that if a child died through negligence of his or her parents, a fast of forty days and a further observance on appointed days for one year should follow, because grief is a bigger punishment than guilt.<sup>1385</sup> Although ‘De

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from Catherine Damme, ‘Infanticide: The Worth of an Infant Under Law’, *Medical History*, Vol. 22 (1978), pp. 1-24, at p. 3. See also Michael Obladen, ‘From Sin to Crime: Laws on Infanticide in the Middle Ages’, *Neonatology*, Vol. 109 (2016), pp. 85-90.

<sup>1380</sup> X 5.10, under the title *De his, qui filios occiderunt* – ‘Of those who killed children’.

<sup>1381</sup> Alexander, ‘Veniens ad nos M.’ (1159-1160) *PL* 200, col. 84; *1 Comp.* 5.9.1=X 5.10.1.

<sup>1382</sup> Lucius, ‘Intelleximus ex litteris’ (1181-1185) *Jaffé*, no. 9672; *1 Comp.* 5.9.2=X 5.10.2.

<sup>1383</sup> Alexander III, ‘De infantibus’ (1159-1181) *Jaffé*, no. 9269; *2. Comp.* 5.5.1=X 5.10.3.

<sup>1384</sup> See p. 147 for the education of Anders Sunesen.

<sup>1385</sup> *Si cuiuscumque puer per negligenciam deperierit, videlicet per incendium vel submersionem, credimus, quod una carena cum unius anni observacione per legitimas ferias sufficere debeat ad talis negligencie abolicionem, cum magis notari possit in matre poena ex doloris vehementia, quam culpa.* – ‘If any one's child dies through negligence, namely by fire or drowning, we believe that a fast of forty days with one year's observance on the appointed days should suffice to undo such negligence, as the punishment may be more noticeable to the mother by the vehement grief rather than by guilt.’ *En Dansk Lov-Historie fra Kong Harald Blaatands Tid til Kong Christian den Femtes*, Vol. 2, ed. Peder Kofod Ancher (Copenhagen, 1776), p. 526.

infantibus' had prescribed penance for both parents and was harsher than the synodal decree of Anders Sunesen, both pieces of legislation showed relative forgiveness compared to intentional infanticide.<sup>1386</sup> These synodal law codes of Anders Sunesen did not directly affect Livonia, but as he was in Estonia from 1219-1221, and exercised the highest spiritual authority there at that time, it is not impossible that he influenced local legislation in a similar manner, especially as he had keen interest in theology and canon law, and their implementation into practice.<sup>1387</sup>

Another statute in the Livonian treaty of 1241 stipulated that whoever sacrificed or allowed another to sacrifice to pagan gods, would have to pay half a mark of silver, and the person carrying out the sacrifice 'will be flogged naked at the cemetery for three Sundays'.<sup>1388</sup> There is no question that such a transgression was seen as a grave violation of and insult towards the Christian faith. This could have also been perceived as apostasy and, as we have seen, even the use of force would have been permitted to compel them back to the Faith.<sup>1389</sup>

Additional monetary fines were prescribed for not following the days of fasting. Although the canonical tradition of the High Middle Ages agreed that there were four seasons of fasting – the so-called '*quattuor tempora*' – authoritative sources, such as councils, popes and Church Fathers had disagreed on how to define them.<sup>1390</sup>

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<sup>1386</sup> Infanticide in the synodal law code was treated as follows: *Si qua mulier infantem suum oppresserit, triennis poenitentia cum tribus carenis ei debet iniungi*. – 'If a mother has suffocated her child, a penance should be enjoined on her for three years with three fasts of forty days.' *En Dansk Lov-Historie*, ed. Ancher, p. 525. However, if an infant died without being baptised, a penance of seven years was enjoined on the *father*, and it was to be treated as homicide. *En Dansk Lov-Historie*, ed. Ancher, p. 526.

<sup>1387</sup> Sunesen had stayed in Estonia and in Riga earlier, too, but these visits were briefer, and Sunesen did not have jurisdictional authority like he had during his later stay in Estonia; see p. 147 and footnote no. 978 at p. 299. For Sunesen's stay in Estonia during the so-called Danish conquest, see Nielsen, 'Missionary Man', pp. 113-115. For Sunesen's impressive education and knowledge, see p. 147.

<sup>1388</sup> ... *tribus diebus Dominicis nudus in cimiterio vapulabit*. The treaty of 1241, *LUB* 3, no. 169, col. 32.

<sup>1389</sup> See the discussion at pp. 192-197.

<sup>1390</sup> Wei, *Gratian the Theologian*, pp. 267-270; Caroline Walker Bynum, *Holy Feast and Holy Fast: The Religious Significance of Food in Medieval Times* (London, 1988), p. 37. See also the meticulously detailed analysis of fasting traditions in early Christianity, suggesting that such fasting periods at last



Gratian's *Decretum* had included many such disagreeing pronouncements.<sup>1391</sup> Gratian explained such discrepancies with differences in the ways the fasting months are calculated: 'But we ought to take the first month, the fourth, the seventh, and the tenth, not by reason of the Hebrews, but by ours. For the first month among them is April, the fourth July, the seventh October, and the tenth January.'<sup>1392</sup>

During fasting days, one was expected to adhere to rules that regulated eating, such time-periods had even larger implications on everyday life in canon law.<sup>1393</sup> For example, Gratian's *Decretum* included a prescription that 'from the Septuagesima to the octave of Easter, and from the Advent of the Lord until the octave of the Epiphany, and during the four periods of fasting, and during major feast days, and Sundays, and the Days of Rogation, let no one presume to swear upon the sacred Gospels (except for concord and pacification)'.<sup>1394</sup> Taking an oath was a crucial tool in keeping the cohesion of medieval societies, and restricting their use according to the instructions

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partly replaced pagan festivals commonly celebrated at the same time: Rudolph Arbesmann, 'Fasting and Prophecy in Pagan and Christian Antiquity', *Traditio*, Vol. 7 (1949-1951), pp. 1-71, esp. pp. 45-49.

<sup>1391</sup> The majority are in Gratian, D.76 cc.1-11, cols. 267-271. For example, the Council of Mainz (813) had stated that '[w]e have determined that the four seasons of the year are to be observed by all men with fasting, that is, first in March; second in June; third in September; fourth in December' – *Constituimus, ut quatuor tempora anni ab omnibus hominibus cum ieiunio obseruentur, id est in Martio, hebdomada prima; in Iunio, secunda; in septembri, tertia; in decembri, quarta*. Gratian, D.76 c.2, cols. 267-277. The 'auctoritas' is the Council of Mainz (813). On the other hand, Pope Leo I explained that '[a]ccordingly, let us celebrate the spring fast in Lent, the summer one at Pentecost, the autumn one in the seventh month, and the winter one in which is the tenth.' – *Primum uero mensem, quartum, septimum, et decimum, non Ebreorum ratione debemus accipere, sed nostra. Primum enim mensis apud illos est Aprilis, quartus Iulius, septimus October, decimus Ianuarius*. Gratian, D.76, d. post c.6, col. 269.

<sup>1392</sup> *Primum uero mensem, quartum, septimum, et decimum, non Ebreorum ratione debemus accipere, sed nostra. Primum enim mensis apud illos est Aprilis, quartus Iulius, septimus October, decimus Ianuarius*. Gratian, D.76, d. post c.6, col. 269.

<sup>1393</sup> For an overview of the rules regulating eating during fasting days, see Bridget Ann Henisch, *Fast and Feast: Food in Medieval Society*, (Penn. State, 1976), pp. 28-58. For an in-depth examination of the role of different foods and drinks in fasting, and of regional disparities in fasting practices, see Melitta Weiss Adamson, *Food in Medieval Times* (London, 2004). For lay devotion and for fasting from a gendered perspective, see Bynum, *Holy Feast and Holy Fast*.

<sup>1394</sup> ... *a septuagesima usque in octauam pascae, et ab aduentu Domini usque in octauam epiphaniae, nec non et in ieiuniis quatuor temporum, et in letaniis maioribus, et in diebus Dominicis, et in diebus rogationum (nisi de concordia et pacificatione) nullus super sacra euangelia iurare presumat*. Gratian, C.22 q.5 c.7, col. 887. The 'auctoritas' is the 'Concilio apud S. Medardum' (852) but Friedberg has pointed out that a similar declaration can be found at the Council of Soissons (853). The *Liber extra* included a similar prohibition by Pope Gregory IX at X 2.9.5, *Pothast* no. 9592.

found in Gratian's *Decretum* could have potentially impeded anything involving taking such oaths, such as transferring an office.<sup>1395</sup> As oath-taking was not an exclusively Christian custom, limiting its use would have affected societies that had only recently converted to Christianity, provided that they had practised oath-taking before the conversion.<sup>1396</sup>

According to the *Decretum*, the celebration of marriage was also forbidden during the days of fasting.<sup>1397</sup> Therefore, with the conversion of pagan Livonians, the changes that the requirement to observe fasting days brought, did not just include regulating meals but they also affected the everyday life of now converted peoples. It is perhaps not so surprising then to find that the treaty with the Oeselians included sacrificing to pagan gods and not observing fasting days side by side – they were both serious transgressions of someone expected to adhere to Christian values, and they both likewise required considerable changes from previous ways of life.

Finally, a monetary fine was prescribed for murder: 'If a homicide occurs between them and the people of another country, it shall be redeemed with ten marks of silver'.<sup>1398</sup> The prohibition of murder in canon law had, of course, Scriptural basis. For example, commandments such as 'you shall not murder' and 'do not kill the

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<sup>1395</sup> Eberhard Isenmann, 'Ratsliteratur und städtische Ratsordnungen des späten Mittelalters und der frühen Neuzeit. Soziologie des Rats-Amt und Willensbildung politische Kultur', in *Stadt und Recht im Mittelalter: La ville et le droit au Moyen Âge*, ed. Pierre Monnet and Otto G. Oexle (Göttingen, 2003), pp. 215-479, at pp. 338-339. For example, enfeoffments were often accompanied by oath-taking to demonstrate fidelity; see Attilio Stella, 'Bringing the Feudal Law back Home: Social Practice and the Law of Fiefs in Italy and Provence (1100-1250)', *Journal of Medieval History*, Vol. 46 (2020), pp. 396-418, at pp. 403-404.

<sup>1396</sup> For example, analysis of peace treaties has suggested that the Rus' practised oath-taking already before they had accepted Christianity; see Martina Stein-Wilkeshuis, 'Scandinavians Swearing Oaths in Tenth-Century Russia: Pagans and Christians', *Journal of Medieval History*, Vol. 28 (2002), pp. 155-168, at pp. 162-163.

<sup>1397</sup> Gratian, C.33 q.4 d.p.c.7, col. 1249. The 'auctoritas' for the canon itself is Pope Gregory I. Similar prohibition can be found in 2 *Comp.* 2.5.4=X 2.9.4. The 'auctoritas' for the latter is the letter 'Capellanus tuus frater' of Celestine III (1187-1191) *Jaffé*, no. 10242.

<sup>1398</sup> *Si homicidium inter ipsos et homines alterius terrae contigerit, decem marcis argenti redimetur.* The treaty of 1241, LUB 3, no. 169, col. 32.

innocent and those in the right, for I will not acquit the guilty' could be found in the Bible.<sup>1399</sup> This was also reiterated in Gratian's *Decretum*:

Now that it is lawful for no one to kill anyone is proved by that precept by which the Lord forbade murder in the Law, saying: 'You shall not kill!' [Exodus 20:13] Also in the Gospel: 'Everyone who takes the sword will perish by the sword'. [Matt. 26:52]<sup>1400</sup>

While Gratian did concede that '[e]normous crimes must be rebuked by the judges of the world [*i.e.* secular judges]', he went on to clarify that this is the case 'when someone kills an Apostolic Pontiff, a bishop, a presbyter, or a deacon'.<sup>1401</sup> Thus Gratian clearly recognised that certain crimes could and sometimes should be punished by secular authorities.<sup>1402</sup> Indeed, Gratian in a '*dictus*' also recognised that sometimes capital punishment is permissible: '[I]t is evident that the wicked may not only be scourged, but also killed'.<sup>1403</sup> As we have seen, it was forbidden to shed blood for clerics, and thus capital punishment within an ecclesiastical setting was not allowed.<sup>1404</sup> What emerges here is the notion that actions considered crimes within

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<sup>1399</sup> *non occides*, Exodus 20:13 and Deut. 5:17; *iustum non occides quia aversor impium*, Exodus 23:7. See also for the endorsement of this commandment in the New Testament: for example, Matthew 5:21; Matthew 19:18; Mark 10:19; Luke 18:20; Romans 13:9; James 3:10. As we have seen, not every killing was considered murder; see the discussion on this at pp. 215-217.

<sup>1400</sup> *Quod autem nulli liceat aliquem occidere, illo precepto probatur, quo Dominus in lege homicidium prohibuit, dicens: 'Non occides.'* [Exodus 20:13] *Item in euangelio: 'Omnis, qui gladium acceperit, gladio peribit.'* [Matt. 26:52] Gratian, C.23 q.5 d.a.c.1, col. 928. The '*auctoritas*' is St. Augustine.

<sup>1401</sup> *Enormia flagicia per seculi iudices corripiantur. ... sicut est cum quis interficit Pontificem apostolicum, episcopum, presbiterum, siue diaconum.* Gratian, D.23 q.5 c.39, col. 942. The '*auctoritas*' is Haymo of Halberstadt (d.853).

<sup>1402</sup> In a similar manner, see C.23 q.5 c.40, col. 941, which Gratian entitled: 'Theft and other crimes are to be restrained by the king' – *Furta et cetera crimina a rege sunt cohibenda*. Relying on Cyprian, Gratian then stated that '[t]he king must impede thefts, punish adulteries, destroy the wicked from the earth, not allow the patricides and perjurers to live, not allow his children to act impiously' – *Rex debet furta cohibere, adulteria punire, inpios de terra perdere, patricidas et periuros non sinere uiuere, filios suos non sinere inpie agere*. Gratian, C.23 q.5 c.40, col. 941.

<sup>1403</sup> ... *patet, quod malos non solum flagellari, sed etiam interfici licet*. Gratian, C.23 q.5 d.p.c.48, col. 945. The '*auctoritas*' for the canon itself is St. Augustine.

<sup>1404</sup> See the discussion on the prohibition to shed blood at p. 233.

canon law – including murder – all needed to be corrected, but at times the penalty had to be carried out by secular authorities because of the nature of the punishment.

As we have seen, the treaty of 1241 prescribed flogging in some form for infanticide and for sacrificing to old gods.<sup>1405</sup> Public physical punishment did not seem to be frequently considered in canon law sources. Gratian's *Decretum*, however, did include the prohibition proclaimed already at the Fourth Council of Toledo (633) for Jews and those of Jewish descent to hold public offices, ending with a statement that 'he who stole [the office] shall be publicly beaten'.<sup>1406</sup> The canon from the Fourth Council of Toledo (633), and its inclusion in the *Decretum* played a significant role in the prevalence of anti-Jewish legislation in the Middle Ages and beyond.<sup>1407</sup> Johannes Teutonicus, for example, noted on this canon that 'sometimes the Church judges those who are outside'.<sup>1408</sup>

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<sup>1405</sup> In the treaty, the words used to denote flogging were *vapulare* and *disciplinas recipere*.

<sup>1406</sup> ... *qui subreperit, publicis cedibus deputetur*. Gratian, C.17 q.4 c.31, col. 823. Note that the phrase '*caedes publica*' could mean anything from public execution/murder to public physical punishment, e.g. beating. For example, in the context of the prohibition at the Fourth Council of Toledo, it has been translated as 'public execution', in Robert A. Markys, *Jesuits of Jewish Ancestry and Purity-of-Blood Laws in the Early Society of Jesus* (Leiden, 2010), pp. 23-24. By contrast, it has been rendered as 'public flogging', albeit in the context of a different canon at the same council, in Rachel Stocking, 'Forced Converts, "Crypto-Judaism", and Children: Religious Identification in Visigothic Spain', in *Jews in Early Christian Law: Byzantium and the Latin West, 6<sup>th</sup>-11<sup>th</sup> Centuries*, ed. John Tolan, et al (Turnhout, 2014), pp. 243-265, at p. 260. I am inclined to agree with the latter rendition, at least when it comes to how Gratian understood the term, as otherwise he would have probably commented on the unusually harsh capital punishment that he chose to include in his canon law compilation. Gratian's *Decretum* had other similar prohibitions against Jews holding public offices and positions, for example Gratian, D.54 c.14, col. 211 (the '*auctoritas*' is the Third Council of Toledo of 589) stated that '[n]o public office shall be enjoined on the Jews, by which they may be given an opportunity of inflicting punishment on the Christians'. – *Nulla officia publica Iudeis iniungantur, per que eis occasio tribuatur penam Christianis inferre*. However, the canon prescribed no punishment for Jews who infringed the prohibition. See also Ferdinando Treggiari, "Iudei hic studentes non possunt conventuari": The Exclusion of Jews from Obtaining the Doctoral Degree (14th century)', *Annali di Storia delle universit' a italiane*, Vol. 24 (2020), pp. 13-20, at p. 15. For the treatment of Jews in Gratian's *Decretum* more generally, see Pennington, 'Gratian and the Jews', pp. 113-117.

<sup>1407</sup> Albert Bat-Sheva, 'Isidore of Seville: His Attitude Towards Judaism and His Impact on Early Medieval Canon Law', *The Jewish Quarterly Review*, Vol. 80 (1990), pp. 207-220, esp. at 215-218. For the Councils of Toledo and their harsh treatment of Jews, see Rist, *Popes and Jews*, pp. 76-77.

<sup>1408</sup> *Ecclesia de his qui foris sunt quando que iudicat*. Johannes Teutonicus, 'Glossa ordinaria ad *Decretum Gratiani*', in *Corpus iuris canonici emendatum et notis illustratum*, Vol. 1 (Rome, 1582), ad C.17 q.4 c.31, col. 1577.

The Fourth Lateran Council of 1215, building on a similar canon from the Third Council of Toledo (589), decreed the following:

We therefore renew in this canon, on account of the boldness of the offenders, what the council of Toledo providently decreed in this matter: we forbid Jews to be appointed to public offices, since under cover of them they are very hostile to Christians.<sup>1409</sup>

This canon, unlike the canon from the Fourth Council of Toledo, did not prescribe a public punishment for Jews holding public offices. Perhaps it was this reason that a milder canon from an earlier council was chosen to be included in the constitutions of the Fourth Lateran Council. Significantly, the Fourth Lateran Council also expanded the scope of the prohibition, adding that '[w]e extend the same thing to pagans'.<sup>1410</sup>

What was clear from canon law was that shedding of blood was forbidden for clerics and by proxy to ecclesiastical courts, including assigning punishments involving it. Concerned with this very matter was the undated letter 'In archiepiscopatu' of Pope Alexander III, addressed to the archbishop of Palermo, who had enquired about what should he do with Muslims who have been abducting Christian women and children and whose punishment had fallen on him.<sup>1411</sup> The pope replied that the archbishop can either fine them or 'inflict whippings on them, used with moderation, so that flogging is not seen turning into blood vengeance'.<sup>1412</sup> The

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<sup>1409</sup> ... *super hoc Toletanum concilium provide statuit, nos propter transgressorum audaciam in hoc capitulo innovamus, prohibentes ne Iudaei officiis publicis praeferantur, quoniam sub tali praetextu christianis plurimum sunt infesti.* Constitution 69 of the Fourth Lateran Council (1215) *Tanner* 1, pp. 266-267, at p. 266.

<sup>1410</sup> *Hoc idem extendimus ad paganos.* Constitution 69 of the Fourth Lateran Council (1215) *Tanner* 1, p. 267.

<sup>1411</sup> Alexander III, 'In archiepiscopatu' (1159-1181) *Mansi* 22, cols. 445-446.

<sup>1412</sup> ... *flagellis afficere ea, moderatione adhibita, quod flagella in vindictam sanguinis transire minime videantur.* Alexander III, 'In archiepiscopatu', col. 446.

letter was subsequently inserted into the *Compilatio prima* and the *Liber extra*, in which it acquired the heading: ‘When delegated by a prince, the prelates can judge [cases] about kidnapping and other crimes; yet they cannot inflict the penalty of blood’.<sup>1413</sup>

Later decretalists endorsed this understanding of permitting ecclesiastical judges to oversee criminal cases and impose such penalties which would not result in shedding of blood. Bernard of Parma, for example, simply noted on the letter ‘In archiepiscopatu’ of Alexander III that ‘the prince can delegate criminal cases to the prelate of the Church where the blood penalty does not follow; and so it is known that clerics should not impose the penalty of blood’.<sup>1414</sup> Hostiensis also used the letter to permit corporal punishment in a case where a Jew had struck a cleric: ‘The bishop must punish him with monetary fines at his discretion, or with other things which will be seen to be more expedient, such as flogging without the shedding of blood’.<sup>1415</sup> Thus, flogging and other corporal punishments were seen suitable as long as they stopped short of drawing blood.<sup>1416</sup>

At the Synod of Esztergom (1105-1116) in Hungary, Constitution 6 stated that celebrating anything from pagan rituals is forbidden: guilty people from lower classes (*minores*) had to do penance for seven days and also received a flogging, while higher ranking people (*maiores*) had to do penance for forty days without getting flogged.<sup>1417</sup>

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<sup>1413</sup> *Ex principis delegatione possunt praelati de raptu et aliis criminibus iudicare; poenam tamen sanguinis infligere non possunt. X 5.17.4=1 Comp. 5.14.3.*

<sup>1414</sup> *... princeps Praelatis ecclesiarum causas criminales delegare potest, ubi poena sanguinis non sequitur. Et sic nota quod clerici poenam sanguinis inferre non debeant.* Bernard of Parma, ‘Glossa ordinaria’ ad X 5.17.4, cols. 1727-1728.

<sup>1415</sup> *Debet eum episcopus mulcta pecuniaria punire ad arbitrium, vel alia, quae magis videbuntur expedire, puta fustigationem citra sanguinis effusionem.* Hostiensis, *Summa aurea* ad X 5.6 §6, col. 1349.

<sup>1416</sup> For shedding of blood and punishments by ecclesiastical courts, see also: Brundage, *Law, Sex, and Christian Society*, p. 471.

<sup>1417</sup> *Ut nullus aliquid de ritu gentilitatis observet; qui vero fecerit, si de maioribus est, XL dies districte peniteat, si autem de minoribus, VII dies cum plagis.* – ‘That no one celebrate anything from pagan rituals; but he who has done it, if he is from the high ranking people, he must strictly do penance for

There did not seem to be such a distinction in Livonia, although it is possible that separate penitentials were used, as penance clearly formed an integral part of the conversion from its early stages.<sup>1418</sup> Crimes described in Livonia generally incurred a fine in addition to some being prescribed flogging, which suggests that the people must have had the means to pay such fines, and that these crimes were not confined to just one section of the society.<sup>1419</sup> At the same time, there was no option to substitute flogging for a monetary payment, which became a possibility in some parts of Western Europe, for example in France.<sup>1420</sup> On the other hand, the inclusion of public flogging for pagan practices was likely to have been an effective punishment that made the consequences of a crime visible and tangible for the whole community. It served as a tool of discipline and public shame for those who were on the verge of

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forty days, but if he is from the lower ranking people, he must do [penance] for seven days with flogging.' *The Laws of the Medieval Kingdom of Hungary*, ed. and trans. János M. Bak, György Bónis and James Ross Sweeney (Bakersfield, CA, 1989) p. 58. Nora Berend, József Laszlovszky and Béla Zsolt Szakács, 'The kingdom of Hungary', in *Christianisation and the Rise of Christian Monarchy: Scandinavia, Central Europe and Rus' c.900-1200*, ed. Nora Berend (Cambridge, 2007), pp. 319-368, at pp. 333-334.

<sup>1418</sup> See pp. 386-386.

<sup>1419</sup> For example: *Iterum si quis ritu gentili immolaverit et qui immolari fecerit, uterque dimidiam marcam argenti dabit; ipse autem, qui sic immolat, tribus diebus Dominicis nudus in cimiterio vapulabit.* – 'Once again: if anyone sacrifices according to a pagan rite, as well as the person who commissioned the sacrifice, each shall give half a mark of silver; but whoever conducts sacrifices in this way will be flogged naked at the cemetery for three Sundays.' The treaty of 1241, *LUB* 3, no. 169, col. 32. Similarly: *Si homicidium inter ipsos et homines alterius terrae contigerit, decem marcis argenti redimetur.* – 'If a homicide occurs between them and the people of another country, it shall be redeemed with ten marks of silver.' The treaty of 1241, *LUB* 3, no. 169, col. 32.

<sup>1420</sup> Evidence for such commutations tend to come from the later Middle Ages because legal material has not survived as abundantly from the earlier periods. Thus, for example, the Privileges of Montfaucon (1395) stated the following: *Quod si aliquis vir uxoratus repriatur in dicto loco aut ejus pertinentiis, cum muliere conjugata, baugis abstractis, aut nudus cum nuda, in loco tamen suspecto; quod dicti vir et mulier sic reperti, spoliati penitus et nudati currant per villam, aut currere teneantur, aut solvant sexaginta solidos Tholosanos dominis dicti loci ...* – 'But if a married man is caught in the said place or in its appurtenances with a married woman, without his trousers, or naked with the naked [i.e. both are undressed] yet in a suspicious place; that the said man and woman, having been thus found, shall run through the village, completely stripped and naked: either they shall be obliged to run, or they shall pay sixty solidi of Toulouse to the lords of the said place ...' Article 17 of the Privileges of Montfaucon (1395) *Code matrimonial, ou recueil complet de toutes les lois canoniques et civiles de France*, Vol. 1, ed. Pierre Le Ridant (Paris, 1770), p. 201. See also Dean, *Crime in Medieval Europe*, pp. 129-130; G. Geltner, *Flogging Others: Corporal Punishment and Cultural Identity from Antiquity to the Present* (Amsterdam, 2014), p. 63.

steering outside of the Church and thus likely served as a deterrent for the rest of the members of their communities.

Another local treaty dated from 1255, including additions to the 1241 treaty.<sup>1421</sup> After an introduction, it began with a proclamation that ‘they [the Livonians] will pay nothing for the damages caused during the time of apostasy and before, except only for murder’.<sup>1422</sup> There were no longer prescriptions of corporal punishments, and the majority of questions dealt with inheritance.<sup>1423</sup> However, the treaty also stated that ‘if anyone, according to their custom, is sent out from the island of Oesel for a sin committed against nature’, the heir of that person could still inherit with the consent of their lord.<sup>1424</sup> It is not known which crime is exactly meant here but it must have been of sexual nature due to the way it was classified as going ‘against nature’.

The ‘sin against nature’ was a topic of discussion for various theologians and canon lawyers throughout the Middle Ages but their understanding of what exactly constituted such a crime – apart from agreeing that it was of sexual nature – could differ.<sup>1425</sup> The concept of ‘sin against nature’ was repeatedly mentioned in Gratian’s

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<sup>1421</sup> The treaty of 27 August 1255, *LUB* 1, no. 285, cols. 369-371.

<sup>1422</sup> ... *nullam facient emendam de damnis, datis tempore apostasiae et antea, homicidio duntaxat excepto*. The treaty of 27 August 1255, *LUB* 1, no. 285, col. 369.

<sup>1423</sup> The treaty of 27 August 1255, *LUB* 1, no. 285, cols. 369-371.

<sup>1424</sup> ... *si aliquem a terra Osiliensi secundum eorum consuetudinem eliminari contigit pro peccato contra naturam commisso* ... The treaty of 27 August 1255, *LUB* 1, no. 285, col. 369.

<sup>1425</sup> Sometimes, the terminology could vary even between the writings of the same person. For example, in the *Summa theologiae* of Thomas Aquinas, the ‘sin against nature’ was divided between four categories, whereas in his other writings he considered the ‘sin against nature’ only one of these categories; see Mark D. Jordan, ‘Homosexuality, *Luxuria*, and Textual Abuse’, in *Constructing Medieval Sexuality*, ed. Karma Lochrie, Peggy McCracken and James A. Schultz (London, 1997), pp. 24-39, at p. 28. See also Vern L. Bullough, ‘The Sin Against Nature and Homosexuality’, in *Sexual Practices and the Medieval Church*, ed. Vern L. Bullough and James A. Brundage (Buffalo, 1982), pp. 55-72, which offers a comprehensive overview of the ambiguity inherent to the concept of the ‘sin against nature’. See also Brundage, *Law, Sex and Christian Society*, pp. 212-214, which gives a brief overview of the treatment of the ‘sin against nature’ among the reformists and canonists in the eleventh and early twelfth centuries; John T. Noonan, Jr. *Contraception: A History of Its Treatment by the Catholic Theologians and Canonists* (London, 1986), pp. 223-227, which gives a variety of examples of what was considered as the ‘sin against nature’ by different canonists and theologians, and also suggests that the use of this term, as opposed to spelling out the precise description of the act(s), was ‘to reflect acceptance of a general phrase conventionally covering all the several forms’; Ruth Mazo Karras, *Sexuality in Medieval Europe:*



*Decretum*: it was considered worse than incest, fornication or adultery; it meant having an intercourse in an unnatural way; the Sodomites committed such a crime; the ‘sin against nature’ was always illicit, repulsive and disgraceful.<sup>1426</sup> Later commentators on the *Decretum* affirmed the notion that having an intercourse in an unnatural way constitutes the ‘sin against nature’. Thus, Rolandus, commenting on the *Decretum*, explained that Lot allowed his daughters rather than men to be sexually corrupted, because at least the intercourse would have been natural.<sup>1427</sup>

Canon 11 of the Third Lateran Council in 1179 also mentioned ‘incontinence against nature’, and it is generally understood to be referring to homosexuality.<sup>1428</sup> It

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*Doing Unto Others* (London, 2017), pp. 185-191, which notes that the ‘sin against nature’ was commonly used to denote sodomy, although technically they were not synonymous.

<sup>1426</sup> *Sed hos omnes incestuosi transcendunt, quos uincunt contra naturam delinquentes.* – ‘But the incestuous surpass all those who transgress against nature [i.e. fornicators and adulterers].’ Gratian, C.32 q.7 d.c.p.10, cols. 1142-1143, at col. 1143. The ‘auctoritas’ for the canon itself is St. Augustine. Note that although the passage quoted is from Gratian’s ‘dictus’, essentially the same statement can be found in the *Sentences* of Peter Lombard: *Gravissime igitur peccant adulteri, graviter fornicarii, sed cunctis his gravius incestuosi; quos omnes transcendunt contra naturam delinquentes.* Peter Lombard, *Libri IV sententiarum*, Sent.4, D.38 c.2 n.10, p. 970. *Sed omnium horum pessimum est quod contra naturam fit, ut si uir membro mulieris non ad hoc concessio uoluerit uti.* – ‘But the worst of all these things is what is contrary to nature, like when a man chooses to use a body part of a woman not meant for it.’ Gratian, C.32 q.7 c.11, col. 1143. The ‘auctoritas’ is St. Augustine. *Minus est secundum naturam coire, quam contra naturam delinquere.* – ‘It is less serious to have intercourse according to nature than to transgress against nature.’ Gratian, C.32 q.7 c.12, col. 1143. The ‘auctoritas’ is St. Ambrose. *Flagicia, que sunt contra naturam, ubique ac semper repudianda atque punienda sunt; qualia Sodomitarum fuerunt.* – ‘Crimes which are against nature are everywhere and always to be rejected and punished; such as were those of the Sodomites.’ Gratian, C.32 q.7 c.13, col. 1143. The ‘auctoritas’ is St. Augustine. *Contra naturam uero semper illicitus, et proculdubio flagiciosior atque turpior.* – ‘[An act] contrary to nature is indeed always unlawful, and undoubtedly more disgraceful and repulsive [than fornication or adultery].’ Gratian, C.32 q.7 c.14, col. 1143. The ‘auctoritas’ is St. Augustine. While Gratian thought the ‘sin against nature’ to be worse than incest, some theologians, such as St. Bonaventure (1221-1274), considered incest to belong to the category of ‘sins against nature’: *Si autem fit contra fundamentum omnium istorum, sic dicitur peccatum contra naturam; et hoc fit dupliciter. aut fit contra instinctum naturae, et hoc modo est incestus, scilicet quando quis peccat cum persona sibi coniuncta.* – ‘Now if it is done against the basis of all of those, then it is called a sin against nature, and this can be done in one of two ways. ... Either it goes against natural instinct, and this is what incest is, that is, when someone sins with a relative.’ St. Bonaventure, ‘Collationes De Decem Praeceptis’, in *Opera Omnia*, Vol. 5, ed. the College of St. Bonaventure at Quaracchi (Firenze, 1891), pp. 505-532, Coll.6 c.13, pp. 527-528; translation from St. Bonaventure, *Collations on the Ten Commandments*, trans. Paul J. Spaeth (New York, 1995), p. 89 (amended).

<sup>1427</sup> ... *magis offerebat filiarum pudorem quam viros corrumpi permetteret, quia gravius est contra naturam delinquere quam secundum naturam coire.* – ‘[H]e offered the shame of his daughters rather than allowing men to be corrupted, because it is more serious to transgress against nature than to have intercourse according to nature.’ Rolandus, *Summa ad C.32 q.7 c.12*, p. 185.

<sup>1428</sup> *Quicumque incontinentia ilia, quae contra naturam est, propter quam venit ira Dei in filios diffidentiae et quinque civitates igne consumpsit, deprehensi fuerint laborare, si clerici fuerint eiciantur*

was subsequently inserted into the *Compilatio prima* and the *Liber extra* where it acquired the summarising title: ‘The incontinent against nature, if they are clerics, they are deposed and expelled into the monastery; if they are laymen, they are excommunicated’.<sup>1429</sup> Innocent IV did not comment on this canon at all.<sup>1430</sup> Hostiensis did comment on the canon but only to reiterate its content; he did not expand on it nor offer a clearer definition of what was meant exactly with ‘incontinence against nature’.<sup>1431</sup>

However, Hostiensis elaborated on the ‘sin against nature’ elsewhere in his *Summa aurea*: ‘But the worst of all these things is what is contrary to nature, as if a man chooses to use a member of a woman not meant for it’.<sup>1432</sup> In a similar manner, Hostiensis explained:

You have sinned against nature: that is, when a woman is known differently than nature requires ... [E]very other [way], whichever it may be, is contrary to nature, [and] I do not wish to write, nor do I advise you to uncover these ways.<sup>1433</sup>

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*a clero vel ad poenitentiam agendam in monasteriis detrudantur, si laici excommunicationi subdantur et a coetu fidelium fiant prorsus alieni.* – ‘Let all who are found guilty of that incontinence, which is against nature, [and] for which the wrath of God came down upon the sons of disobedience and destroyed the five cities with fire, if they are clerics be expelled from the or confined clergy in monasteries to do penance; if they are laymen they are to incur excommunication and be completely separated from the society of the faithful.’ Canon 11 of the Third Lateran Council (1179) *Tanner 1*, p. 217 (amended). For the canon, see also: Brundage, *Law, Sex and Christian Society*, p. 399; Summerlin, *The Canons of the Third Lateran Council*, footnote no. 51 at p. 102; Bullough, ‘The Sin against Nature and Homosexuality’, pp. 63-64 and Karras, *Sexuality in Medieval Europe*, pp. 187-188, which both suggest that the conciliar legislation encouraged local church councils and canon lawyers to incorporate similar provisions into their considerations.

<sup>1429</sup> *Contra naturam incontinentes, si sunt clerici, deponuntur, et in monasterio detruduntur; si laici, excommunicantur.* X 5.31.4=1 *Comp.* 3.2.12.

<sup>1430</sup> Innocent IV, *Apparatus ad X* 5.31.4, p. 524.

<sup>1431</sup> Hostiensis, *Summa aurea ad X* 5.31 §2, cols. 1495-1496.

<sup>1432</sup> *Sed omnium horum pessimum est, quod contra naturam sit, ut si vir membro mulieris non ad hoc concessio voluerit uti.* Hostiensis, *Summa aurea ad X* 5.38 §9, col. 1561. Hostiensis cited St. Augustine as his ‘auctoritas’, and as we have seen, the same passage was also used in Gratian’s *Decretum* at C.32 q.7 c.11, col. 1143.

<sup>1433</sup> *Peccasti contra naturam: quod est, quando aliter cognoscitur mulier, quam natura requirat ... omnis alius, quicumque sit ille, est contra naturam, quos modos nec volo scribere, nec consulo quod reveles.* Hostiensis, *Summa aurea ad X* 5.38 §49, col. 1607.

Such ambiguity was also present in the aforementioned legal prescription in Livonia which stated that those who had committed the 'sin against nature' were exiled.<sup>1434</sup> It was not explained what was meant under this 'sin against nature', only that exiling people for committing such a crime had already been the local custom. Yet, canon law influence here is evident in the wording of the transgression, as now the crime was called the 'sin against nature'. Conclusively, this is an example of a case where canon law regulations did not bring a complete paradigm shift but rather absorbed and adjusted the already existing judicial system to conform to Christian concepts and language.

In conclusion, the crimes that were included in the Livonian treaties of 1241 and 1255 were all transgressions that could be found in canon law as well. Additionally, all the punishments that were prescribed for such transgressions were permissible in canon law – even flogging, provided it stopped short of drawing blood. It is not possible to tell with certainty whether the crimes presented in the treaties were seen as canonical or secular matters, but it is undeniable that canon law had a strong influence on both the selection of the content and also on the conceptual aspects of the treaties.

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<sup>1434</sup> The treaty of 27 August 1255, *LUB* 1, no. 285, col. 369.

## CONCLUSION

The aim of this thesis has been to offer a systematic analysis of how canon law was implemented in medieval Livonia. This has been done not only by examining how much the prescriptions of canon law were followed in Livonia, but also by investigating how the Christianisation of Livonia might have affected the development of canon law. Additionally, further attention has been paid to *how* the implementation of canon law took place, including how knowledge of canon law might have been disseminated and potential legal transgressions investigated.

The first chapter reviewed the extent to which baptismal practices in Livonia adhered to canon law. The highly influential *Decretum* of Gratian had devoted more than one hundred and fifty sections to describing the details of baptismal rituals, although it was already evident in that collection that for any baptism to be valid, only water and words were necessary. Such a position was later affirmed by popes and canon lawyers alike. In the case of Livonia, baptism during the first decades of conversion seemed to have assumed a simplified form, as priests often had to baptise in a hurry. What stands out, however, is that occasionally even the locals themselves were permitted to perform baptism on their families. Canonically still valid, such cases of baptism were reserved to extreme cases of necessity. Additionally, as a consequence to being baptised, the Livonians entered a new legal category – they became members of the '*societas Christiana*'. Thus, when they apostatised, they were permitted to be compelled back to the Faith even by force. Conclusively, with the very relaxed requirements for baptism to be valid, the Livonians were easily able to become Christians. At the same time, they did not seem to understand or care that there was

no possibility to reverse the act of baptism, attesting to at least some lack of knowledge of or concern about Christian doctrine.

The Christianisation of marriage in Livonia left a few significant traces in contemporary sources. It appears that at least some members of Livonian society were practicing levirate marriages – marrying the widow of their dead brother. Such marriages were prohibited not just in canon law but also strongly condemned in Scripture. When Bishop Albert inquired about this issue from Pope Innocent III in 1201, he could have not known that the papal letter ‘Deus qui ecclesiam’ issued in response to his letter and giving levirate marriages a dispensation, would leave a lasting legacy by being included in the influential *Liber extra*. This is but one example of how the Christianisation of Livonia affected the development of canon law. While levirate marriages did not seem to cause any more problems after the 1201 letter, other aspects related to local marriage practices incompatible with Western canon law, such as divorce and polygamy, started to pose problems. In this sense, then, the reason why we know anything about pre-Christian marriage practices in Livonia is precisely because of the attempts to implement canon law in relation to this particular aspect of life.

The conversion of Livonia was first and foremost a missionary activity, accompanied by preaching and teaching. The need for both authority to preach and limits to such authority, were certainly recognised among the missionaries going to Livonia, as repeatedly attested by the chronicler Henry of Livonia. It is also apparent that missionaries sought permission to preach from local pagan leaders, although not required by canon law. Very little is known of the preachers who went to Livonia, although it is clear that the Dominicans played a significant role in Livonia from the 1230s onwards. Similarly, not much is known of the content of sermons, but from the

scant evidence it emerges that the main principles of the Faith and the very foundations of canon law were probably preached to the locals. Audiences were multi-ethnic and -lingual, warranting the use of interpreters. Preaching in Livonia was another aspect of the conversion that left a mark in medieval canon law. Namely, the letter 'Quam sit laudabile' of Pope Clement III of c.1190 allowed the preachers to eat whatever food they could find, and the letter 'Deus qui ecclesiam' of Pope Innocent III of 1201 strongly suggested that preachers of various orders should assume similar clothing. Both letters were inserted into the *Quinque compilationes antiquae* and the *Liber extra*.

The majority of clergy in Livonia probably did not receive extensive training in canon law; rather, their education was reliant on a few local teachers, and the brightest of young boys would have been sent to local schools created after the conversion of Livonia, or to cathedral schools later on. While ecclesiastical instructions could have been received directly from the curia in the form of papal letters, it is also likely that visitations by highly educated officials, such as Archbishop Anders Sunesen and the papal legate William of Modena, provided insight into concepts and developments in theological and legal issues.

Missionary activities in Livonia were accompanied and intermingled with more or less constant warfare. At the same time, the concept of just war was a highly discussed topic among canon lawyers. First, a just war needed to have a just cause. In this thesis, just causes were divided into five categories: restitution, vengeance, apostasy, defence, and prevention. All these types fitted into the medieval understanding of just war. Therefore, the narratives depicting the conversion of Livonia tended to justify any military actions undertaken by Christians within the framework of just war, also testifying to the fact that just causes in the context of

canon law were often flexibly interpreted. Discerning the intentions of those who waged war in Livonia proved to be a much harder exercise. Nevertheless, they too seemed to have aligned with the medieval understanding of just intentions, with ultimate peace being of utmost importance. Finally, it was clear that the need for authority to wage a just war was fully acknowledged in medieval Livonia.

The range of people who participated in warfare in Livonia varied greatly, and included crusaders, the members of the Order of the Swordbrothers, the Livonian Order, merchants, bishops' own men, but also converts. Furthermore, as many of the people going to Livonia were clerics, questions around their participation in warfare have arisen. Clerics involved in Livonian warfare in any capacity were divided into three groups. By far the most numerous group was the first one – clerics who did not accompany armies. The second group consisted of clerics who went with armies but did not take part in fighting. These were often bishops, testifying to their importance in providing spiritual support to the armies. Indeed, such passive participation in warfare, often in the form of exhortation, was not contradictory to canon law. The third group comprised a very small number of clerics who might have taken part in military activity, although such action took place only in cases of extreme necessity. It is probable that when faced with a choice between death or active defence, clerics did indeed take up arms contrary to the stance most commonly held by canon lawyers. Lastly, our investigation has shown that while the conditions of Livonia very much shaped the way Christians were taking part in warfare in terms of timing and strategies, their conduct of war generally adhered to canon law, which allowed relatively loose interpretation in the first place.

Once Livonian society was converted through mission and warfare, the shaping of the society itself could commence. There is no evidence to suggest that the

elections of bishops until the death of Albert of Riga in 1229 did not conform to canonical prescriptions. However, the one question that remains from the early period of the Christianisation of Livonia pertains to the bishopric of Estonia. If a certain Fulco was indeed appointed a bishop of Estonia some time in the 1160s, and he died perhaps in the 1180s, it would suggest that, contrary to canon law, the bishopric of Estonia remained vacant for several decades. It seems more likely, however, that the bishopric simply ceased to exist, as at no point was the vacancy referred to in contemporary sources. The election of a successor to Bishop Albert of Riga proved to be another problematic case, with Pope Gregory IX forced to intervene. The decision of the pope that confirmed the candidate elected by the cathedral chapter very clearly adhered to canon law. The election of archbishops of Riga from the second half of the thirteenth century seemed to have occasionally attracted the attention of the papacy, suggesting that canonical irregularities were recognised and reported to the pope. Compared to the bishopric of Riga, the king of Denmark and the bishopric of Estonia were violating canon law for most of the thirteenth century, as the king retained the right to appoint bishops there.

Another crucial aspect pertaining to the question of jurisdiction were legatine missions. Livonia received its first papal legate, William of Modena, in 1225. William was subsequently appointed as a legate to these regions in 1234 and 1244, testifying to his success in resolving both spiritual and secular matters he was tasked with. As a curiosity, Pope Innocent IV subscribed to the view in his *Apparatus* that any papal legate with the ultimate authority should be a cardinal. Before he appointed William as a legate to Livonia in 1244, he also made him a cardinal. Perhaps this is but one example of how a pope could put his interpretation of canon law into practice.



The implementation of canon law in Livonian legislation took various forms. By investigating treaties and municipal laws from medieval Livonia, it is evident that prescriptions of canon law often accompanied those of civil law. The relationship between these two bodies of legislature was not characterised by competition for primacy but rather by complementarity. Very little is known of how the court system in thirteenth-century Livonia functioned. Occasionally, it seems that clerics were expected to administer both civil and ecclesiastical law, with one example being the papal legate William of Modena who arbitrated several civil cases.

Although clerical participation in the ordeal was explicitly forbidden by Constitution 18 of the Fourth Lateran Council in 1215, it seems that it might have prevailed to some extent in Livonia. There is no reason to believe that the ordeal was widespread, but the occasional prohibitions mentioning it could attest to the fact that some people might have still used it. Yet the fact that it was not completely obsolete shows how not all canonical prohibitions were immediately received unequivocally by and implemented in peripheral areas, such as Livonia. When Pope Honorius III issued the letter 'Dilecti filii noviter' in 1222, condemning the use of the ordeal in Livonia, it was found significant enough to be inserted into the *Liber extra*, manifesting the role of Livonia in the formation of canon law.

Furthermore, by examining three cases involving court procedure in Livonia, a clear pattern emerged of how the investigation of issues pertaining to legal matters developed over the course of the thirteenth century. The aim of the first mission of William of Modena in 1224-1226 remained ambiguous and he seemed to have settled matters as they came up without adhering to strict legal regulations. By the time of Baldwin of Alna in 1234, a more distinctive litigation process had developed – after having received the complaints, the pope summoned the concerned parties and

witnesses to Rome, and appointed a papal legate to implement the results of the court case. Finally, the case of 1298-1300 represented a full-scale litigation process. Extensive complaints were compiled by professional procurators representing different parties, who then in turn presented them to the pope. However, this case was also the one that took the longest to gain papal attention. Unlike in any previous cases, an inquisitor was finally sent to Livonia, highlighting a new era in legal proceedings of Livonia.

The Christianisation of Livonia involved both benefits and drawbacks for everyone involved. During the twelfth century, terminology pertaining to the types of indulgences granted to those going to Livonia remained ambiguous by not explaining what was meant by 'remission of sin'. With the development of the idea of indulgences more generally, crusaders to Livonia started to obtain plenary indulgences during the thirteenth century. If anyone died on the journey, they could hope for eternal salvation. While the canonisation process for saints had not yet crystallised in canon law by the time of the conversion of Livonia, narrative sources often implied the sanctity of those who had perished there. Yet, official letters concerning Livonia did not mention martyrdom, nor did they refer to the sanctity of those who were probably locally venerated. Lastly, an investigation into the material privileges granted to crusaders going to Livonia concluded that such rights granted to them were less consistent and explicit than those granted to crusaders going to the Holy Land, but in most cases protections afforded to crusaders were probably assumed.

The final part of the thesis looked at spiritual and material punishments implemented in Livonia. In the letter 'Deus qui ecclesiam' of Innocent III of 1201 addressed to Bishop Albert, the pope suggested leniency when dealing with new

converts and their punishments. This was the only reference to penance in the early conversion of Livonia. Yet, as the letter was included in the *Liber extra*, it became a part of the wider canon law tradition. When it comes to the harshest spiritual punishment, the sentence of excommunication did not seem to be widely used until the legatine missions of William of Modena, who was first sent to Livonia in 1225. William used excommunication as a tool of coercion to secure his mandates as a legate and he introduced the use of automatic and conditional excommunication, as opposed to excommunicating specific people. Finally, the use of material punishments was evident in addressing major transgressions that were seen as crimes in canon law as well. Whipping, seen as a canonical punishment as long as it stopped short of drawing blood, was utilised in most serious cases, such as apostasy and infanticide. Lastly, the influence of canon law in local legislation could be seen through the way in which the 'sin against nature' was reframed from a transgression already existing in pre-Christian Livonia into a crime that fitted within the canonical framework.

While not pretending to offer a full overview of canon law in thirteenth-century Livonia, this study has provided a varied selection of aspects influenced by ecclesiastical regulations that played a crucial role in the conversion of Livonia. Further research could not only expand such a thematic approach to include matters not in the scope of this thesis, but also examine this topic beyond the thirteenth century, potentially offering a more comprehensive insight into the organisation of a Christian society at the borders of Latin Christendom.

In conclusion, it can be said that canon law prescriptions in Livonia were generally enforced in all aspects of society discussed in this thesis. There were, of course, exceptions, such as the possible continued use of the ordeal and irregularities

in electing bishops, but such infringements of canon law also occurred elsewhere in Christendom. This thesis has revealed that canon law was both influential and, in many ways, crucial in converting Livonian society, despite the fact that the region was on the fringes of Latin Christendom and therefore far away from the central institutions and individuals who were responsible for the formulation and compilation of canon law collections. It is difficult to tell if the implementation of canon law regulations was a conscious decision by individuals, or if it formed part of a religious worldview in which the law was not perceived as a separate category. Nevertheless, and as expected, some groups of individuals – e.g. the bishops of Riga and papal legates – played a significant role in bringing the principles of canon law to Livonia. Last but not least, this thesis has shown that while the Christianisation of Livonia was underpinned by widespread use of canon law principles and prescriptions, the incorporation of this far-away region into Latin Christendom itself was a process which, on occasion, influenced the formulation and development of medieval canon law in turn.

**APPENDIX A: FIGURE NO. 1**

**Map of Often-Mentioned Locations in the Thesis**



**APPENDIX B: TABLE NO. 1****Placenames with Modern Equivalents**

<b>Name used in the thesis</b>	<b>Modern equivalent</b>
Dorpat	Tartu
Holm	Salaspils
Kokenhusen	Koknese
Leal	Lihula
Oesel	Saaremaa
Reval	Tallinn
Treiden	Turaida
Üxküll	Ikšķile

## APPENDIX C

### Citation System

The citation system for canon law follows the suggestions by James A. Brundage.<sup>1435</sup>

- Gratian's *Decretum*:
  - Pars I:
    - D.1 c.7, for *Distinctio 1, capitulum 7*
    - D.63 d. post c.34, for *Distinctio 63, dictum post capitulum*
  - Pars II:
    - C.24 q.1 c.18, for *Causa 24, quaestio 1, capitulum 18*
    - C.23 q.3 d.a.c.1, for *Causa 23, quaestio 3, dictum ante capitulum 1*
    - C.32 q.2 d.p.c.12, for *Causa 32, quaestio 2, dictum post capitulum*  
12
  - Pars III
    - D.4 de cons. c.9, for *Distinctio 4, de consecratione, capitulum 9*
- *Quinque compilationes antiquae*:
  - 3. *Comp.* 5.1.4, for *Compilatio tertia, liber 5, titulus 1, capitulum 4*
- *Liber extra*:
  - *X* 5.1.17, for *liber 5, titulus 1, capitulum 17*

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<sup>1435</sup> Brunadage, *Medieval Canon Law*, pp. 190-194 for Gratian's *Decretum*; pp. 194-195 for the *Quinque compilationes antiquae*; pp. 196-197 for the *Liber extra*.

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