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Canon law and the practice of penance: Burchard of Worms's penitential

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This article investigates the characteristics and function of Book 19 of Burchard's Decretum. It demonstrates how the penitential questionnaire, usually considered the most original part of this text, was the result of Burchard's systematic expansion upon his main source, Regino of Prüm. It argues that Book 19 was not a conventional penitential, to be used to support the administration of penance by priests, but rather that it was meant to be both an exemplary penitential and a summary of the preceding eighteen books. Burchard thus sought to ensure there was no contradiction between his collection of canon law and his penitential.

Since the pioneering studies of penitential handbooks by F.W.H. Wasserschleben and Hermann Josef Schmitz in the nineteenth century, it has often been noted that Bishop Burchard of Worms (1000–25)¹ composed the nineteenth book of his influential collection of canon law (the *Decretum*) as a penitential.² Schmitz's editions and studies were unfortunately marred by an anachronistic leading question, but since the publication of the ensuing necessary corrections by Paul Fournier in 1910, researchers have refrained both from trying to reach a deeper understanding of Book 19 of the collection and from establishing its place in the transmission of penitential texts.³ Whilst the particularly

¹ For Burchard see now W. Hartmann (ed.), *Bischof Burchard von Worms 1000–1025* (Mainz, 2000); for the manuscripts and studies of the *Decretum* see L. Kéry, *Canonical Collections of the Early Middle Ages (ca. 400–1140): A Bibliographical Guide to the Manuscripts and Literature* (Washington, 1999), pp. 133–55.

² F.W.H. Wasserschleben, *Die Bußordnungen in der abendländischen Kirche* (1851; repr. Graz, 1958); H.J. Schmitz, *Die Bußbücher und das kanonische Bußverfahren*, vol. 2 (1898; repr. Graz, 1958). See also J.T. McNeill and H.M. Gamer, *Medieval Handbooks of Penance* (1938; repr. New York, 1965), pp. 321–45; C. Vogel, *Les 'Libri paenitentiales'*, *Typologie des sources du moyen âge occidental* 27 (Turnhout, 1978), p. 88 ff., rev. A.J. Frantzen (Turnhout, 1985), p. 40; G. Picasso, G. Piana and G. Motta (eds), *A pane e acqua. Peccati e penitenze nel Medioevo. Il Penitenziale di Burcardo di Worms* (Novara, 1986).

³ P. Fournier, 'Études critiques sur le Décret de Burchard de Worms', in T. Kölzer (ed.), *Mélanges de droit canonique* (Aalen, 1983), pp. 247–391.

rich parts of Book 19 which deal with questions of superstition or sexuality have been brought into more general discussions, a critical assessment of the significance and context of the penitential canons of Burchard's nineteenth book remains a desideratum.⁴ Recent research in the field of penitential studies has concentrated mostly on the Carolingian era and utilized the tenth- and eleventh-century sources merely as witnesses to establish the limits of the influence of Carolingian discussions and decisions.⁵ A monograph devoted specifically to the development of ecclesiastical penitential practice for the period between the Carolingians and the ecclesiastical reforms from the late eleventh and twelfth centuries, has only very recently been published. In this book, Sarah Hamilton for the first time discusses in a fundamental way the significance of Burchard's *Decretum* as a historical source with regard to the contemporary practice of penance.⁶

Hamilton only allows the *Decretum* a minor role in the pastoral practice of hearing confession and assigning penances; according to her, the *Decretum*, divided into twenty books, would have been used, like the other canonical collections of this period, as a reference work for the bishop or the clerical community attached to the cathedral in Worms, but not as a priestly aid for the daily practice of penance.⁷ This view of Burchard's *Decretum*, she holds, is also applicable to those texts which were specifically shaped to be used in pastoral care: the penitentials.⁸ North of the Alps such handbooks seem to have been no longer freshly

⁴ For studies concentrating on Burchard's dealings with superstition and sexuality see e.g. C. Vogel, 'Pratiques superstitieuses au début du XI^e siècle d'après le Corrector sive Medicus de Burchard, évêque de Worms (965–1025)', in *Études de civilisation médiévale. IX^e–XII^e siècle. Mélanges E. R. Labande* (Poitiers, 1974), pp. 751–61. D. Harmening, *Superstitio. Überlieferungs- und theoriegeschichtliche Untersuchungen zur kirchlich-theologischen Aberglaubensliteratur des Mittelalters* (Berlin, 1979), A.J. Gurjewitsch, *Das Weltbild des mittelalterlichen Menschen* (Dresden, 1978), pp. 379–97; *idem*, *Mittelalterliche Volkskultur* (Munich, 1987), pp. 125–66; H. Dienst, 'Zur Rolle von Frauen in magischen Vorstellungen und Praktiken – nach ausgewählten mittelalterlichen Quellen', in W. Affeldt (ed.), *Frauen in Spätantike und Frühmittelalter* (Sigmaringen, 1990), pp. 173–94; J.A. Brundage, *Law, Sex, and Christian Society in Medieval Europe* (Chicago, 1987). Some points I deal with in this paper are also discussed in my article, 'Fortsschreibung frühmittelalterlicher Bußpraxis. Burchards Liber corrector und seine Quellen', in Hartmann (ed.), *Bischof Burchard von Worms*, pp. 199–226, which discusses the penitentials used by Burchard in more detail.

⁵ See B. Poschmann, *Die abendländische Kirchenbuße im frühen Mittelalter* (Bresslau, 1930); Vogel, *Libri paenitentiales*, pp. 39–43. For the desiderata regarding the historiography of penance in the early Middle Ages, a field dominated by the works of Poschmann and Vogel, see R. Meens, 'The Frequency and Nature of Early Medieval Penance', in P. Biller and A.J. Minnis (ed.), *Handling Sin: Confession in the Middle Ages* (Woodbridge, 1998), pp. 35–61.

⁶ S. Hamilton, *The Practice of Penance, 900–1050* (Woodbridge, 2001).

⁷ Hamilton, *Practice*, p. 44.

⁸ For the transmission and significance of early medieval penitentials, see Vogel, *Libri paenitentiales*; R. Kottje, 'Bußbücher', in *Lexikon des Mittelalters* 2 (1982), cols 1118–22; L. Körntgen, 'Bußbücher', in *Lexikon für Theologie und Kirche* 2 (1994), cols 822–4; R. Meens, *Het tripartite boeteboek. Overlevering en betekenis van vroegmiddeleeuwse biechtvoorschriften* (Hilversum, 1994), pp. 11–72.

composed in the tenth and eleventh centuries,⁹ yet the existing older compilations from the seventh, eighth and ninth centuries continued to be copied and used. Rob Meens was able to show that the manuscript tradition of penitential texts in the tenth and eleventh centuries differed from the ninth-century one: while in the earlier period we know of relatively many manuscripts which contain one or more penitentials in combination with texts stemming from liturgical or pastoral practice, in the later period the manuscripts seem mostly to reflect an interest in canon law or ecclesiastical administration.¹⁰ Should we therefore conclude that penitentials in the tenth century were no longer used by priests hearing confession but were instead consulted by bishops and their subordinate clerics as a kind of general introduction to the field of canon law?¹¹ Before we can subscribe to such a conclusion it will be necessary to discuss the matter more fully in order to reach a more specific understanding as to the nature of the manuscript tradition of already existing texts, as well as to possible regional differences that can be observed. Moreover, to assess the real significance of such a hypothesis, it would be necessary to evaluate the differences in the chances of survival of library manuscripts and those used in pastoral practice, as well as the survival rates of manuscripts from the ninth and tenth centuries in general.

For such a differentiated analysis the Utrecht research project on the penitentials of the tenth and eleventh centuries will provide ample material. Here the question of the relevance of penitential texts in Burchard's age will be dealt with from a different point of view: through a closer consideration of the characteristics and function of the penitential which Burchard included in his nineteenth book. Without any critical analysis it has always been accepted that the nineteenth book should be regarded as a penitential. Sarah Hamilton, however, did not view the text in relation to other penitentials, but as part of the canon law collection compiled by Burchard.¹² Such a view seems justified by the fact that in Worms (i.e. under the Burchard's personal supervision), the nineteenth book was solely copied as part of his collection.¹³ Yet, in view of the undeniable distinctiveness of the

⁹ In Italy and Spain, on the other hand, we see new texts being composed specifically in the tenth century, see G. Hägele, *Das Paenitentiale Vallicellianum I. Ein oberitalienischer Zweig der frühmittelalterlichen kontinentalen Bußbücher* (Sigmaringen, 1984); F. Bezler, *Les Paenitentiaels Espagnols. Contribution à l'étude de la civilisation de l'Espagne chrétienne du haut Moyen Âge* (Münster, 1994); Hamilton, *Practice*, pp. 48–50.

¹⁰ Meens, 'The Frequency and Nature', pp. 45–6; Hamilton, *Practice*, pp. 45–6.

¹¹ Hamilton, *Practice*, pp. 44–50.

¹² Hamilton, *Practice*, pp. 31–44. Greta Austin has dealt most recently on the purpose behind the compilation of the *Decretum* but without focusing on the nineteenth book: 'Jurisprudence in the Service of Pastoral Care: The *Decretum* of Burchard of Worms', *Speculum* 79 (2004), pp. 929–59.

¹³ See below nn. 49–50.

nineteenth book when viewed in the context of the collection as a whole, one may ask whether such an approach is legitimate. The fact that Burchard devoted a complete book to the subject of penance should not be accepted as self-evident but as requiring explanation, an issue which in turn raises further questions. In fact, not only the nineteenth book but most of the other books deal with problems that have close links with confession and penance. This is illustrated by the short tables of contents at the beginnings of Books 6 to 12, 13, 14, 16 and 17, which deal with topics such as manslaughter, perjury and adultery. The clauses mostly end with words such as 'and about their penance' (*et de poenitentia eorum*) or something similar:¹⁴ in these books Burchard therefore not only dealt with specific forms of sinful behaviour, but also with the appropriate forms of penance. Accordingly, the books in question contain many penitential canons and not only those which correspond to decisions from late Roman or Frankish councils, but also those which can only be found in penitential manuals from both the Carolingian age and the earlier periods. Burchard's collection can be characterized as a mixture of conciliar canons and penitential rules, a feature which it has in common with one of its most important sources and models: the handbook for episcopal visitations (*Sendhandbuch*) composed by Regino of Prüm, c.906.¹⁵

Such a mixture of conciliar legislation and penitential rules corresponds exactly with the goals which Burchard set himself in the general preface to the *Decretum*: to compile a book 'from the sentences of the Fathers, from ecclesiastical canons and from various penitentials' ('quatenus libellum ex variis utilitatibus . . . tam ex sententiis sanctorum Patrum quam ex canonibus seu ex diversis poenentialibus . . . in unum colligerem').¹⁶ Burchard chose these words with great care, as is clearly shown by a comparison with his source here, the preface of the penitential of Halitgar of Cambrai (<830), which together with the so-called *Collectio Anselmo dedicata* (s. IX^{4/4}) formed the most important

¹⁴ For example, Burchard, *Decretum* VI Argumentum: 'Liber hic de Homicidiis sponte et non sponte commissis, de parricidiis, de fratricidiis, de illis qui uxores legitimas et seniores suos interficiunt, et de caede ecclesiasticorum tractat, quaeque singulis hisce homicidii generibus sit poenitentia iniungenda, ostendit'. X Argumentum: 'Libro hoc de Incantatoribus, de auguribus, divinis, sortilegis et variis illusionibus diaboli, de maledicis, contentiosis, conspiratoribus, deque singulorum poenitentia tractatur', *PL* 140, cols 763 D, 831 C.

¹⁵ F.W.H. Wasserschleben (ed.), *Reginonis abbatis Prumiensis libri duo de synodalibus causis et disciplinis ecclesiasticis* (1840; repr. 1964); see Kéry, *Canonical Collections of the Early Middle Ages*, pp. 128–33. For Burchard's use of Regino, see below nn. 25–6.

¹⁶ Burchard, *Decretum* Praefatio, ed. G. Fransen and T. Kölzer, *Burchard von Worms, Decretorum Libri XX, ergänzter Neudruck der Editio Princeps Köln 1548* (Aalen, 1992), pp. 45–9, at p. 45. The Praefatio will be cited forthwith from this edition. For the value of the preface, see B.C. Brasington, 'Prologues to Canonical Collections as a Source for Jurisprudential Change to the Eve of the Investiture Contest', *Frühmittelalterliche Studien* 28 (1994), pp. 226–42, at pp. 235 and 236, and Austin, 'Jurisprudence', pp. 937–9.

sources for Burchard's preface.¹⁷ Halitgar, bishop of Cambrai, had composed a penitential at the request of his metropolitan Archbishop Ebo of Reims.¹⁸ In Ebo's letter of request as well as in Halitgar's response – both were included in the preface of Halitgar's penitential collection – it was explicitly stated that he should compile a penitential from the sentences of the Fathers and from conciliar legislation. The reason for this was that, as Ebo had observed, in the church province of Reims many penitential rules circulated that were confusing as they lacked uniformity, showed great discrepancies with each other, and were not sanctioned by ecclesiastical authority.¹⁹ Ebo was clearly aiming his critique at the traditional penitentials from the Carolingian age and earlier periods which were circulating in the region over which Ebo had jurisdiction. Interestingly, Burchard extended this negative judgement to the conciliar canons: 'and for this reason especially, because in our diocese the laws of the canons and the judgements of the penitents are confused, diverse and disordered, just as if they were completely neglected, and there are both great discrepancies amongst them, and they are supported by the authority of almost no one' ('ob id maxime, quia canonum iura et iudicia poenitentium in nostra dioecesi sic sunt confusa atque diversa et inculta ac si ex toto neglecta et inter se valde discrepantia et pene nullius auctoritate suffulta').²⁰ It was not just the penitentials which were viewed as problematic, but rather canon law in general. The common stock of ecclesiastical legislation – to which Burchard also added the sentences found in penitential handbooks – had become so complex and complicated, and had been so little taken care of in his own diocese, as Burchard himself added, that priests were overburdened with information when it came to assigning a particular penance. Following on from Halitgar, Burchard diagnosed the causes of this problem: the canons found in the collections often did not contain a detailed assignment of a specific penance for particular sins but instead left that decision to the clergyman responsible. While Halitgar assumed, however, that in general this would be a bishop, particularly in the case of serious offences, it is obvious that Burchard regarded this

¹⁷ For Halitgar's work see R. Kottje, *Die Bußbücher Halitgars von Cambrai und des Hrabanus Maurus* (Berlin and New York, 1980); for the *Collectio Anselmo dedicata*, Kéry, *Canonical Collections*, pp. 124–8; for Burchard's use of these sources, see G. Fransen, 'Les sources de la Préface du Décret de Burchard de Worms', *Bulletin of Medieval Canon Law*, ns 3 (1973), pp. 1–7.

¹⁸ For the historical context in which Halitgar composed his penitential, see Kottje, *Bußbücher*, pp. 3–5.

¹⁹ Halitgar von Cambrai, *Paenitentiale*, Letter of Ebo of Reims: 'Et hoc est quod in hac re me valde sollicitat, quod ita confusa sunt iudicia paenitentium in presbiterorum nostrorum opusculis, atque ita diversa et inter se discrepantia et nullius auctoritate suffulta, ut vix propter dissonantiam possint discerni', ed. Ernst Dümmler, *MGH Epistolae* 5 (Hannover, 1899), pp. 616–17, no. 2, p. 617.

²⁰ Burchard, *Decretum* Praefatio, ed. Fransen and Kölzer, p. 45.

task as belonging, in the first place, to priests. In view of the state of education of priests in his diocese, he thought priests would be over-taxed by such a task.²¹

Are we to conclude that Burchard's main aim when composing his *Decretum* was to provide priests with an aid for the practice of penance? Should we regard the *Decretum* first and foremost as a penitential? Possibly, since Burchard included sentences from existing penitentials not only in Book 19, but in several other books of the *Decretum*. What then is the justification for regarding Book 19 as 'the penitential' of Burchard? This justification lies in one of its particular features: the book contains not only penitential sentences, but also an *ordo* regulating the ceremonies of penitential liturgy. By including this *ordo* Burchard followed a convention which since the eighth century had governed the manuscript tradition of penitential texts. *Ordines* regulating the liturgical procedure for secret penance were not taken from existing liturgical handbooks, but they were compiled, edited and transmitted together with penitential texts, although with the use of singular prayers or benedictions which are also to be found in sacramentaries of the period.²²

Through its *ordo* the nineteenth book acquired an immediate affinity with pastoral care, that is, with the practice of penance. Burchard is not responsible for combining penitential canons with this *ordo*, but found this combination in the main source from which he took his penitential rules: the visitation handbook of Regino of Prüm.²³ In Regino's work Burchard found a second formal feature which suggests a close association with penitential practice. The *Sendhandbuch* contains a questionnaire, with the help of which a priest could question a penitent about his sins.²⁴

²¹ Burchard, *Decretum* Praefatio: 'Vnde fit plerumque, ut confugientibus ad remedium poenitentiae tam pro librorum confusione quam etiam presbyterorum ignorantia nullatenus ualeat subueniri. Cur hoc? Inde aestimo euenire maxime, quia mensuram temporis et modum delicti in agenda poenitentia non satis attente et aperte et perfectae praefigunt canones pro unoquoque crimine, sed magis in arbitrio sacerdotis intelligentis relinquendum statuunt. Quapropter quia hoc nisi a sapientibus et legis diuinae eruditus fieri nequit, rogauit me dilectio tua, ut hunc libellum breuiter collectum nunc demum pueris traderem addiscendum . . .', ed. Fransen and Kölzer, p. 45 ff. Compare Hamilton, *Practice*, p. 31.

²² Cf. R. Kortje, 'Bußpraxis und Bußritus', in *Segni e riti nella chiesa altomedievale occidentale*, Settimane di studio del centro italiano di studi sull'alto medioevo 33 (1985), pp. 369–95; L. Körntgen, *Studien zu den Quellen der frühmittelalterlichen Bußbücher* (Sigmaringen, 1993), pp. 234–7, 255. In view of this close connection between penitentials and penitential *ordines*, which had already been established in the eighth century, there is no need to regard the integration of penitential sentences into a penitential *ordo*, as can be observed in some manuscripts from the tenth to twelfth centuries, as fundamentally different from existing forms of transmissions for penitential texts, cf. Hamilton, *Practice*, p. 48.

²³ For the sources of Burchard's penitential canons, see Körntgen, 'Burchards Liber Corrector'; a fundamental tabulation of the sources of the *Decretum* can be found in H. Hoffmann and R. Pokorny, *Das Dekret des Bischofs Burchard von Worms. Textstufen – Frühe Verbreitung – Vorlagen* (Munich, 1991), pp. 165–276; for the sources used in Book 19 see also Picasso, Piana and Motta, *A pane e acqua*, pp. 173–83.

²⁴ Hamilton, *Practice*, pp. 40–1; Fournier, 'Études', p. 320.

Penitential canons were normally a form of casuistry describing singular cases according to the following model: if somebody has done such and such, he should do the following penance. The questionnaire was apparently meant as an adjustment to this tradition: no longer simply reacting to the confession made by the penitent, the priest was instead enabled to take the initiative in questioning him or her directly.

The textual transmission clearly shows that the creation of such a questionnaire is to be considered as a secondary development in the history of penance and penitential texts. Regino adopted this form from the model for many of his penitential sentences: the so-called *Paenitentiale mixtum Pseudo-Bedae-Egberti*, a text composed in the 70s or early 80s of the ninth century in north-eastern France, probably somewhere in Lotharingia.²⁵ The questionnaire which Regino took from this text did not originally belong to the *Paenitentiale mixtum*, as is shown by the fact that it only occurs in the secondary line of transmission for this penitential. The oldest textual witness of this line of transmission dates from the end of the ninth century; an earlier reference to the questionnaire has not been found.²⁶ In the context of the *Paenitentiale mixtum Ps.-Bedae-Egberti* the questionnaire gives the impression of being an only partially integrated addition; in the first place because the enquiries of the *ordo* deal with only a fraction of the sentences which are discussed in the chapters of the penitential, and no clear principle for such a selection can be identified; in the second place, we can observe that some penitential sentences were added to the questionnaire, which are comparable to the sentences found in the penitential proper. The questionnaire, therefore, can be regarded as a rather small but complete penitential of its own. It appears not as a supplement to existing penitential handbooks, but as an alternative. It is therefore only logical to assume that Regino chose to put this questionnaire at the heart of his treatment of secret penance.²⁷ In Regino's work, however, the questionnaire

²⁵ R. Hagenmüller, *Die Überlieferung der Beda und Egbert zugeschriebenen Bußbücher* (Frankfurt a.M., 1991), pp. 246–73; *idem*, 'Zur Rezeption der Beda und Egbert zugeschriebenen Bußbücher', in H. Mordek (ed.), *Aus Archiven und Bibliotheken. Festschrift für Raymond Kottje zum 65. Geburtstag* (Frankfurt a.M., 1992), pp. 149–69, at pp. 155–6; Körntgen, *Studien*, pp. 234–43. Edition: Schmitz, *Die Bußbücher und das kanonische Bußverfahren*, pp. 675–700, the questionnaire is on pp. 681–3.

²⁶ The penitential *ordo* in the Romano-German Pontifical adopted the questionnaire independently from Regino: PRG CXXXVI.13, ed. C. Vogel and R. Elze, *Le Pontifical Romano-Germanique du Dixième Siècle* 2 (Vatican City, 1963), pp. 237, 240; see Kottje, *Halitgar*, p. 124 ff. Another questionnaire, which is independent from the *Paenitentiale mixtum*, is found in many later manuscripts, see K.M. Delen, A.H. Gaastra, M.D. Saan and B. Schaap, 'The *Paenitentiale Cantabrigiense*. A Witness of the Carolingian Contribution to the Tenth-Century Reforms in England', *Sacris erudiri* 41 (2002), pp. 341–73, at pp. 347–8 and the edition on pp. 357–9.

²⁷ Regino, *De synodalibus causis* I.302–4, pp. 140–148; cf. Kottje, *Bußbücher Halitgars*, pp. 124 ff., 128 ff.

and penitential sentences are not yet fully integrated. The sentences, moreover, do not appear in the form of a complete penitential handbook, but are to be found spread all over the text. It was only Burchard who then tried to employ the questionnaire as a detailed model for the process of interrogating a penitent and assigning a specific penance. This is clearly exemplified by the sheer number of the questions which are to be found in the nineteenth book of the *Decretum*: in Regino's work we can count approximately forty questions, a number which in Burchard's work grew to more than one hundred and ninety.²⁸

Burchard, therefore, considerably expanded the scheme he had found within Regino. Where did he find this additional material? To this question there are two answers. Firstly, it is mainly in Burchard's questionnaire that we find the rich material for which no sources could be identified, including the well-known detailed descriptions of magical rites and sexual practices.²⁹ It is possible, therefore, that these questions have their origins in actual experiences and problems, which need not, however, have been limited to the neighbourhood of Worms. The *lex* Burchard issued for his *familia* in Worms shows that the bishop and his associates were in much closer contact with the daily life of the laity, and particularly the lower strata of the laity, than the authors of older penitentials had been, hemmed in as they were by their monastic routine and principles.³⁰

Yet, this material which was possibly developed in Burchard's immediate surroundings forms only a part of the broad range of subject matter which the bishop of Worms added to the questionnaire he had found in Regino's work. The most important source for these penitential enquiries was identified by Paul Fournier. He did not have to look very far afield: it was Burchard's own *Decretum*, or rather, the material he had gathered together in its earlier thematically organized books.³¹ This can, for example, be shown from the questions dealing with homicide and forms of violence. The forms of homicide with which the questionnaire begins in Burchard's *Decretum*, appear in a much more detailed and extensive form than in Regino's work or in the *Paenitentiale mixtum*, the sources upon which the questionnaire was built. Regino formulated the question: 'Did you perpetrate homicide, either by accident, or on purpose, or without willing to do so, or as revenge

²⁸ Schmitz, *Die Bußbücher und das kanonische Bußverfahren* contains one hundred and ninety-four questions. The whole section is normally counted as one chapter of Book 19 and in this way equated with the other chapters, which often are less than ten per cent of this length; because of this the central significance of the questionnaire has not been noticed.

²⁹ See above n. 4.

³⁰ Cf. K. Schulz, 'Das Wormser Hofrecht Bischof Burchards', in Hartmann (ed.), *Bischof Burchard von Worms*, pp. 251–78.

³¹ Cf. Fournier, 'Études', pp. 323–7; G. Motta, 'Fonti del penitenziale di Burcardo', in *A pane e aqua*, pp. 173–83, at pp. 173–4.

for your parents, or on the orders of your lord, or during a military expedition?³² For almost every case Regino mentions in this sentence, Burchard devoted a specific and detailed question. In doing so, the bishop of Worms used a lot of the material which he had compiled in his sixth book devoted to the subject of homicide. The following table will provide evidence for such a rereading regarding the twenty-seven questions dealing with violent crimes.³³

| Burchard, <i>Decretum</i> , Book XIX.5: Penitential questionnaire | Burchard, <i>Decretum</i> | Regino, <i>Libri duo</i> |
|--|---------------------------|--------------------------|
| 1 | VI.1 | II.6/Questionnaire |
| 2 | VI.2 | II.7/8 |
| 3 | VI.3 | II.8 |
| 4 | VI.4 | II.9 |
| 5 | VI.4 | II.9 |
| 6 | – | – |
| 7 | VI.32 | II.23/Questionnaire |
| 8 | Cf. | Cf. |
| | VI.15/16 | II.15/22/Questionnaire |
| 9 | VI.23 | Questionnaire |
| 10 | VI.17 | II.25/Questionnaire |
| 11 | – | – |
| 12 | VI.31 | II.49 |
| 13 | – | – |
| 14 | VI.42 | II.96 |
| 15 | VI.34 | II.27 |
| 16 | – | Cf. Questionnaire |
| 17 | – | – |
| 18 | – | – |
| 19 | – | – |
| 20 | Cf. VI.21/23 | – |
| 21 | VI.22 | II.18 |
| 22 | VI.21 | II.17 |
| 23 | VI.40/37 | – |
| 24 | VI.20 | cf. II.30 |
| 25.1 | – | Questionnaire– |
| 25.2 | XIX.101 | – |
| 26 | XI.60 | Appendix I.28 |
| 27 | Cf. VI.27 | – |

³² Regino I.304, p. 142: 'Fecisti homicidium, aut casu, aut volens aut nolens, aut pro vindicta parentum, aut iubente domino tuo, aut in publico bello?'

³³ Cf. Fournier, 'Études', pp. 323–4. Most references can be found in Wasserschleben's earlier work: *Bußordnungen*, pp. 631–65, where, however, the published text is taken from a later separate transmission of Book 19 (see below, n. 45) in Cod. Rome, Biblioteca Vallicelliana, Cod. F. 8. A detailed presentation of the evidence for all one hundred and ninety-four questions, would show a similar view. Hoffmann and Pokorny, *Das Dekret*, p. 233, refer to Regino I.304 as the source for the whole of Chapter 5 from Book 19; this identification should be refined accordingly.

A great part of the material that Burchard expanded upon and specified in the questionnaire which he had found in Regino, stems also from Regino's *Sendhandbuch*. But whereas Regino adopted the questionnaire from his source (the *Paenitentiale mixtum Pseudo-Bedaegberti*) almost without alteration and presented the greater part of the sentences as being relevant to the assignment of penances in the various chapters of his collection irrespective of the questionnaire itself, Burchard utilized the material from the various books a second time in order to transform his inquiry. In contrast to Regino, Burchard did not, therefore, eschew using the same sentence twice, but did his best to include such parallels.³⁴ This conforms with his intentions, as set out in the general preface: to create a work that not only provides easy access to its subject matter, but is also free from internal contradictions.³⁵ By utilizing his own work, Burchard more or less succeeded in avoiding contradictions between the penitential questionnaire and the sentences found in the various other books of his collection. This begs the question, however, as to why he chose to compose a penitential in the form of a questionnaire, when this did not – and was not meant to – introduce new material to the collection as a whole.

We should not dismiss the simple answer that Burchard formulated these questions because he found this format in his source, Regino. But Burchard transformed Regino's own text by presenting *all* the material relevant for penitential purposes in the form of questions. In this way he adapted the traditional canons for the practice of penance so that they could be used in the liturgical dialogue between priest and penitent. Such an adaptation to a confessional context constituted more than a superficial reformulation of the specific canons: Burchard not only replaced the traditional third person with the second person, but in his questionnaire he often also elucidated the text of singular canons. *Capitulum* VI.32, for example, dealing with the question of homicide in the context of a blood feud, refers to the penance, as it had been assigned in *capitulum* VI.1 for a qualified case of killing; the equivalent question in the questionnaire resolves this allusion to an earlier canon by indicating a second time the amount of penance the killer had to fulfil.³⁶ The

³⁴ Regino refers several times to correspondences within his work, but without copying the relevant sentences, see Wasserschleben, *Reginonis libri duo*, pp. xiv–xx.

³⁵ See above nn. 21–2.

³⁶ Burchard, *Decretum* VI.32 (PL 140, 772 C): 'Qui pro vindicta fratris, aut aliorum parentum occidit hominem, ita poeniteat, ut homicidia sponte commissa, cum ipsa Veritas dicat: "Mihi vindictam, et ego retribuam."' Cf. XIX.5 [7] (952 B): 'Fecisti homicidium pro vindicta parentum? XL dies, quod carinam vocant, poeniteas, cum septem sequentibus annis, quia Dominus dicit: "Mihi vindicta[m], et ego retribuam."' (I follow the numbering of the sentences as established by Wasserschleben, Schmitz and Fournier, who made further divisions within the first questions as well as several others. In fact, this note concerns the second question.)

detailed description of the way in which the seven years of penance should be fulfilled, as offered in relation to the first question, is apparently taken for granted.³⁷ This detailed regulation of penance was first issued in 895 at the eastern Frankish council of Tribur, the canons of which Burchard used in the final stages of editing his *Decretum*.³⁸ Yet, Burchard adopted the rules of Tribur only indirectly, from Regino, as there are no traces of the so-called Vulgate-version of the canons of Tribur to be found in either the questionnaire or in Book 6.³⁹

In the context of the questionnaire in Book 19 Burchard, therefore, not only repeated the sentences which he had compiled in a systematic way in the other books of the *Decretum*, but at times he also made them more specific or clarified their contents.⁴⁰ For this reason the compiler intervened more in the texts of his sources for the questionnaire of Book 19 compared to the way in which he treated them in the other books of the *Decretum*. He reduced, for example, the elaborate text of his source to the essential part that was necessary for assigning the proper penance; or he changed the formulation of his source aiming at a very specific case in such a way as to make it more generally applicable.⁴¹ Burchard thus edited his sources even more effectively in the questionnaire of Book 19 than in the rest of the *Decretum*, apparently out of a concern for the practical applicability of his work. These formal changes, abridgements, clarifications and generalizations were meant to facilitate the use of the subject matter for the specific circumstances of determining an appropriate form of penance for a specific kind of sin. Should we conclude from this that Burchard compiled the nineteenth book of the *Decretum* with the specific aim of its being used as a practical tool by local priests in his diocese, as a traditional penitential handbook? The sheer abundance of the questions makes it rather improbable that they could all be put to a penitent by his confessor.⁴² Yet, this is what the introductory remarks of the questionnaire, which

³⁷ Burchard, *Decretum* XIX.5, *PL* 140, cols 951 C–952 B.

³⁸ Concilium Triburiense a. 895 c. 52a–58a, ed. V. Krause, *MGH Capitularia regum Francorum* 2 (Hannover, 1890–7; repr. 1980), pp. 241–6; for this point see Wilfried Hartmann, *Die Synoden der Karolingerzeit im Frankenreich und in Italien* (Paderborn, 1989), pp. 370–1, 438. For the historical context of the council and the transmission of its canons, see *idem*, 'Kaiser Arnolf und die Kirche', in F. Fuchs and P. Schmid (eds), *Kaiser Arnolf. Das ostfränkische Reich am Ende des 9. Jahrhunderts* (Munich, 2002), pp. 221–52, at pp. 245–51, and R. Pokorný, 'Die drei Versionen der Triburer Synodalakten von 895. Eine Neubewertung', *Deutsches Archiv* 48 (1992), pp. 429–511.

³⁹ Regino II.6–9, pp. 216–18; cf. Hoffmann and Pokorný, *Das Dekret*, pp. 69–81.

⁴⁰ See, for example, Burchard, *Decretum* VI.31/XIX.5 [12] (*PL* 140, 772 B–C/952 D–953 A); VI.22/XIX.5 [21] (770 A/954 B).

⁴¹ See, for example, Burchard, *Decretum* VI.23/XIX.5 [9] (770 B–771 A/952 C) and *Decretum* VI.37/VI.40/XIX.5 [23] (773 C. 774 A–775 B/954 C–D).

⁴² Moreover, the structure of the questionnaire, which is closely related to the structure of its source, is inconsistent, see Hamilton, *Practice*, pp. 40–1, particularly n. 77.

Burchard adopted from Regino, suggest: 'Perhaps, most beloved', the priest should tell the penitent, 'you are unable to remember everything you have done. Therefore, I will interrogate you. Be careful not to hide anything by diabolical deception.'⁴³ After this admonition, the priest should, according to the following rubric, interrogate the penitent thereby following the sequence of the questionnaire – that is, according to the plentiful questions composed by Burchard.

In the case of Regino's visitation handbook, such an interrogation seems perfectly possible, since no more than forty questions were incorporated into the *ordo*. This total contrasts sharply with Burchard's one hundred and ninety questions; questions which are generally much more elaborate than those in Regino's *ordo*. Therefore, it is hardly conceivable that a priest would have read the complete catalogue to the penitent believer. Should we therefore assume that Burchard's penitential is a literary fiction, which was never intended to be used in the practice of penance? The practical significance of the work might be found in a different context. Burchard stresses in his preface that at least one of his aims for the whole collection was to educate the young clerics connected to the cathedral school in Worms. For such educational purposes the consequent amplification of the questionnaire would have provided the perfect assistance. Pupils in Worms and elsewhere could learn which kind of crimes they could encounter in the process of hearing confession and the kind of penances they should dispense for these.⁴⁴ The question format, moreover, together with the fact that it was embedded in the *ordo*, provided a direct connection to the process of hearing confession. Pupils in this way not only learnt about the material side of penance, that is the possible kinds of sin and appropriate forms of penance; but also its ritual side, that is the liturgy of penance and the specific order in which confession should be heard and a penance determined.

The manuscript tradition supports the view that the nineteenth book of the *Decretum* was first and foremost a didactic work, which was not meant to function in the same way as the older penitentials, that is in direct support of pastoral care. Book 19 is found in manuscripts as a separate, independent work, but this transmission begins only at the end of the eleventh century.⁴⁵ We know of no independent transmission

⁴³ Burchard, *Decretum* XIX.5 (*PL* 140, col. 951 B/C): 'Videns autem eum sacerdos verecundantem, rursus prosequatur: Fortassis, charissime, non omnia quae gessisti ad memoriam modo veniunt. Ego te interrogabo; tu cave ne, diabolo suadente, aliquid celare praesumas. Et tunc eum ita per ordinem interroget.'

⁴⁴ Hamilton, *Practice*, p. 43.

⁴⁵ For the separate transmission of Book 19, see Schmitz, *Die Bußbücher und das kanonische Bußverfahren*, pp. 393–402; M.W. Bloomfield et al., *Incipits of Latin Works on the Virtues and Vices, 1100–1500 A.D.* (Cambridge, MA, 1979), p. 203, #2287; P.J. Payer, 'The Origins and Development of the Later Canones Penitentiales', *Medieval Studies* 61 (1999), pp. 81–105, at pp. 81–2.

of Book 19 from the first decades after the compilation of the *Decretum* (<1023), nor from the productive scriptorium in Worms, to which we owe several copies of the *Decretum* in different editorial redactions.⁴⁶ The audience for which the work was written, as it can be inferred from Burchard's own words, implies, however, a more direct link with penitential practice. In the *Argumentum* at the beginning of Book 19, Burchard wrote that every priest should be instructed, even the 'simple' ones.⁴⁷ He thereby revealed that the didactic purpose of the book was aimed at a more general audience than just that of the cathedral school, and that the work was meant to reach the local priest who had to hear confession and determine specific penances. In the preface to the whole work, Burchard, following on from Halitgar's work, identifies the 'lack of knowledge' amongst priests as the central problem in penitential practice.⁴⁸ The question is, therefore: was he trying to remedy this lack of knowledge only by educating the young clerics, or was the nineteenth book meant to provide specific assistance for penitential practice?

In order to arrive at least at a hypothetical answer to this question, it is necessary to return to the relationship between Burchard's nineteenth book and the sixth book of the penitential of Halitgar. The reference to the *sacerdos simplex*, the simple priest, in the *Argumentum* of Book 19 is inspired by Halitgar, who added to the five books of his penitential a complete penitential with its own *ordo*, which should be of use to 'the more simple priests, who are unable to understand more complex matters'.⁴⁹ Halitgar's example was probably the decisive factor behind Burchard's decision to add the nineteenth book as the 'Corrector' to his canon law collection. Book 19, and particularly its *ordo* with the questionnaire and redemptions, was intended to perform the same function that Halitgar had expected of his sixth book: to act as an aid for those priests who became overburdened with knowledge when asked to use his formidable collection of canons. This presupposes that Burchard held the traditional penitentials to be useful texts. That he did so, is not only clear from the fact that he used early medieval penitentials as sources for the sentences in his collection, but he also,

⁴⁶ Hoffmann and Pokorny, *Das Dekret*.

⁴⁷ Burchard, *Decretum* XIX *Argumentum*, PL 140, col. 949 A: 'Liber hic corrector vocatur et medicus, quia correctiones corporum et animarum medicinas plene continet, et docet unumquemque sacerdotem, etiam simplicem, quomodo unicuique succurrere valeat, ordinato vel sine ordine, pauperi, diviti, puero, juveni, seni, decrepito, sano, infirmo, in omni aetate et in utroque sexu.'

⁴⁸ Above, n. 21.

⁴⁹ Halitgar von Cambrai, *Paenitentiale* Praefatio, p. 266: 'Sextus quoque ponitur libellus de paenitentia, qui non est ex labore nostre excerptiois sed adsumptus de scrinio romane ecclesiae, in quo multa ac diversa continentur, que in canonibus non habentur. Tamen simplicioribus qui majora non valent capere poterit prodesse.'

following on from a requirement in the *Paenitentiale Pseudo-Egberti*, reckoned penitentials among the indispensable tools that every priest should have at his disposal.⁵⁰ The penitentials Burchard names, however, were not mentioned in his source, but in fact he adopted this triad 'Paenitentiale Theodori, Paenitentiale Romanum and Paenitentiale Bedae' from Regino's visitation handbook.⁵¹ Yet, Burchard modified his source on one crucial point. Whereas Regino had prescribed that every priest should be questioned as to which of these three penitentials he used, Burchard demanded that he use a penitential composed according to 'the canons and sentences' of these three texts.⁵² In his time, however, as far as we can judge from the extant texts, such a penitential did not exist. The only work which conforms to these demands is Burchard's own; penitentials and canons are precisely the authorities (apart from the Fathers) that Burchard had identified as the sources of his own collection.⁵³ Burchard, therefore, did not recommend one of the existing penitentials. He even explicitly cautions his readers against using Bede's penitential, a text he had himself used as a source, warning it contained not only a lot of useful things, but also a lot of material which contradicted the canons and other penitentials.⁵⁴

No penitential, therefore, existed at the time which could live up to Burchard's expectations. Such a conclusion does not, however, allow us to presume that Burchard compiled his nineteenth book as a replacement for existing penitential handbooks. We can however, it seems to me, formulate a less far-reaching conclusion: Burchard compiled his nineteenth book as a kind of exemplary penitential, by using a compositional scheme which included an *ordo*, questionnaire and redemptions.⁵⁵ This model met the criteria regarding form and contents as Burchard had formulated them from his knowledge of both canonical traditions and the legacy of early medieval penitentials. From such a perspective it no longer seems particularly important whether Burchard

⁵⁰ Burchard, *Decretum* XIX.8: 'Ad haec autem suum Poenitentialem, qui et secundum canonem auctoritatem, et iusta sententias trium Poenitentialium, Theodori episcopi, et Romanorum pontificum, et Bedae ordinetur.' (*PL* 140, col. 979 D). Cf. *Paenitentiale Ps.-Egberti* Praefatio: 'post autem suum penitentialem, qui hoc ordine secundum auctoritatem canonum ordinatur, ut discretiones omnium causarum investiges primitus, sine quibus rectum iudicium non potest stare', ed. Schmitz, *Die Bußbücher und das kanonische Bußverfahren*, pp. 660–74, at p. 662.

⁵¹ A fact which Fournier, 'Études', p. 322, n. 4, did not take into account.

⁵² Regino, *De synodalibus causis* I. Interr. 96: 'Si habent poenitentialem Romanum vel a Theodoro episcopo aut a venerabili Beda editum, ut secundum quod ibi scriptum est, aut interroget confitentem, aut confesso modum poenitentiae imponat', p. 26.

⁵³ Above n. 16.

⁵⁴ Burchard, *Decretum* XIX.8: 'Sed in Poenitentiali Bedae plura inveniuntur utilia: plura autem inveniuntur ab aliis inserta, quae nec canonibus, nec aliis Poenitentialibus conveniunt' (*PL* 140 col. 979 D). This sentence follows immediately upon the one cited above in n. 50.

⁵⁵ For the particular importance that Burchard attached to the redemptions, see Hamilton, *Practice*, pp. 41–2.

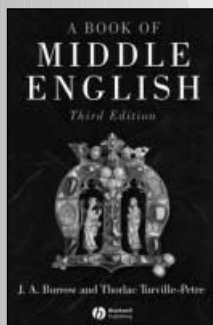
did indeed foresee that Book 19 of the *Decretum* could reach a wider priestly audience than the clerical community attached to Worms cathedral. His efforts at presenting a penitential in the way he did already shows that the bishop of Worms was familiar with the practical significance of the penitential genre. It seems to me that it was precisely for this reason that he undertook the formidable task of bringing together canons and penitential sentences in some formal unity and so reconciling, to a degree at least, the genre of early medieval penitentials with the traditions of canon law. Just like the Carolingian bishop, Halitgar of Cambrai, two hundred years earlier, the Ottonian bishop of Worms thought it inadequate just to collect the material relating to the penitential practice from the authoritative canon law collections of his day. For Burchard the early medieval penitentials were not only authoritative texts he could use next to the ancient authorities he found in the canon law collections, he clearly saw them as useful tools for the process of administering penance, more so than these same collections of canon law.⁵⁶ From such a perspective he took the logical step and composed an all-embracing penitential which did not allow any contradiction with his canon law collection, compiled as it was from the same sources.

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⁵⁶ Cf. Hamilton, *Practice*, pp. 45–6.

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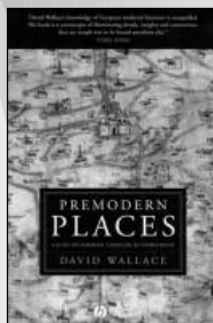
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