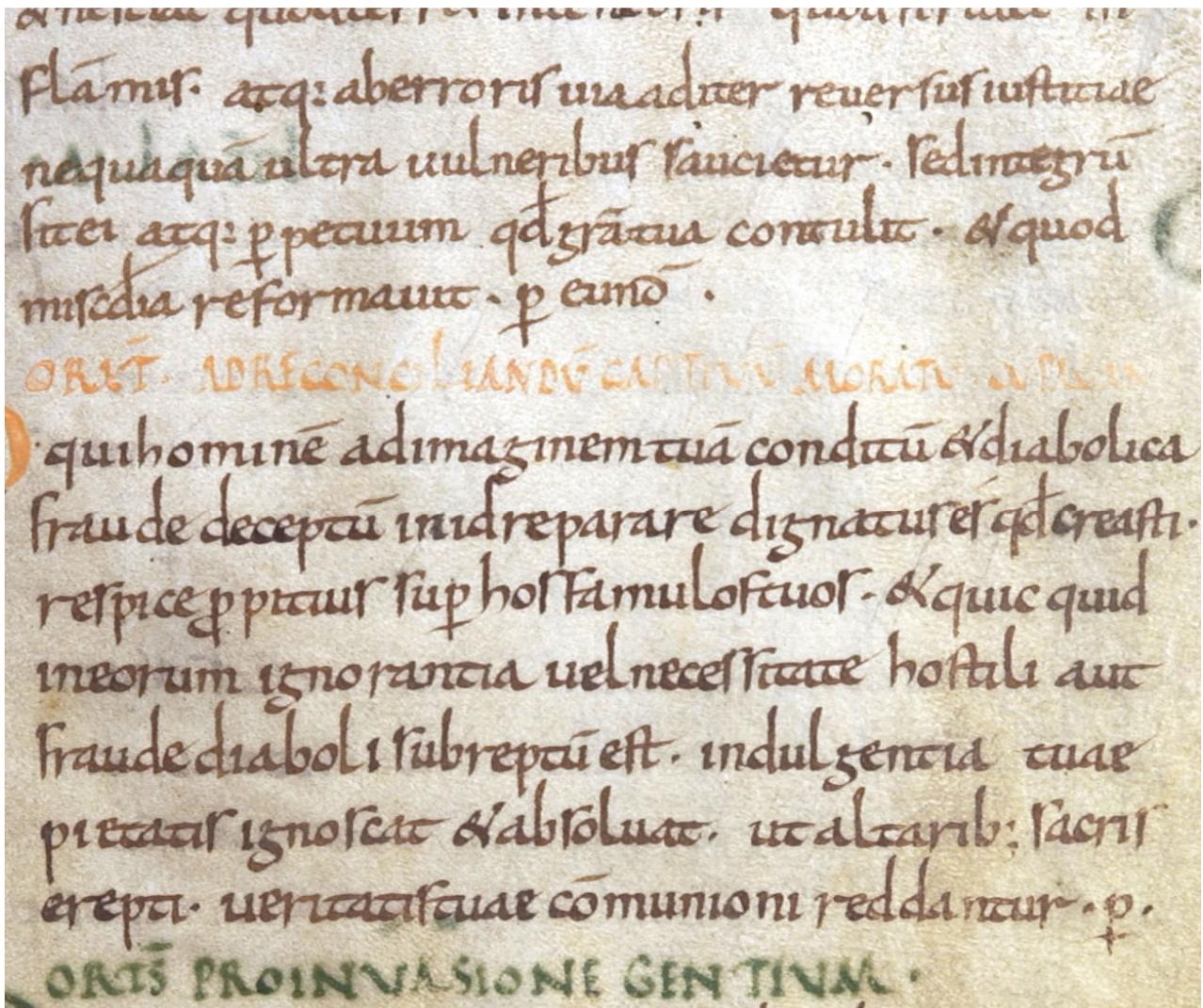


BETWEEN LITURGY AND CANON LAW

A STUDY OF BOOKS OF CONFESSION AND PENANCE



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BETWEEN LITURGY AND CANON LAW

A STUDY OF BOOKS OF CONFESSION AND PENANCE IN ELEVENTH- AND
TWELFTH-CENTURY ITALY

(met een samenvatting in het Nederlands)

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List of abbreviations

<i>Collectio</i>	<i>Coll.</i>
Collection in Nine Books	<i>Coll. 9libr.</i>
Collection in Five Books	<i>Coll. 5libr.</i>
Corpus Christianorum Continuatio Medievalis	CCCM
Corpus Christianorum Series Latina	CCSL
Corpus Consuetudinem Monasticarum	CCM
manuscript	<i>ms.</i>
Monumenta Germaniae Historica	<i>MGH</i>
<i>Paenitentiale</i>	<i>P.</i>
<i>Paenitentiale "Capitula Iudiciorum"</i>	<i>Cap. Iud.</i>
<i>Paenitentiale "Excarpus Cummeani"</i>	<i>Exc. Cum.</i>
<i>Paenitentiale in duobus libris</i>	<i>P. in II libris</i>
Patrologia Latina, J.-P. Migne ed.	PL
<i>Pontificale Romano-Germanicum</i>	<i>PRG</i>
Schmitz I	
Schmitz II	
Finsterwalder	
Wasserschleben	

Papal letters are indicated by their numbers in Ph. Jaffé, *Regesta pontificum Romanorum* (Leipzig 1885-1888). The volume I was prepared by Jaffé in collaboration with P. Ewald (JE), volume II in collaboration with F. Kaltenbrunner (JK).

INTRODUCTION

Pope Nicholas I's letter to the newly converted Bulgarians (866) contains a curious reference to handbooks of confession and penance. In this letter Nicholas promised the Bulgarians, among other things, that the bishops he sent them would bring the 'judgment of penance' (*iudicium poenitentiae*) which the Bulgarians had asked for. He also warned that this *iudicium* was meant for the bishops only, who have the power to judge, and should not fall into the hands of lay people. At first sight, this reference appears to be the earliest reference to penitentials, lists of sins and their corresponding penances to be used by priests at confession, from the region discussed in this book.¹ The request for penitentials, remarkably, seems to have come from the Bulgarians themselves. Possibly they had become acquainted with these texts through Frankish missionaries who had brought such texts with them. Although there is no manuscript evidence for penitentials in Rome or Central and South Italy at this time, the reference can be taken as evidence that penitentials must also have been known to pope Nicholas. Yet, since Nicholas does not refer to a specific text nor give any characteristics of the text, one may wonder what he meant by a *iudicium poenitentiae*. Can it be identified with the handbooks for confession known as penitentials? The pope speaks about a *iudicium* only in connection with bishops and does not mention confession. The letter may, therefore, allude to an ordinary canon law book used for judging ecclesiastical cases. Yet the word *poenitentiae* points to the judgment of sinners, which makes it likely that some kind of penitential was referred to. In short, this papal letter raises several interesting questions about the characteristics and function of the penitential genre, which will also figure prominently in this book.

If this is the first reference to penitentials from this part of Italy, it is a comparatively late one, since the earliest penitentials, lists of sins and their corresponding penances used by priest for hearing confession, had already been written in monasteries in Ireland and Wales in the sixth century.² Penitentials catalogue a wide variety of sins ranging from comparatively

¹ Nicholas I, *epistola* 99 (866), c. 75 (*Epistolae Karolini aevi* 4, MGH Epp. VI (Berlin 1925), p. 593): *Iudicium poenitentiae, quod postulatis, episcopi nostri, quos in patriam vestram misimus, in scriptis secum utique deferent, aut certe episcopus, qui in vobis ordinabitur, hoc, cum oportuerit, exhibebit; nam saeculares tale, quid habere non convenit, nimirum quibus per id quemquam iudicandi ministerium nullum tribuitur.* J.T. McNeill and H.M. Gamer, *Medieval handbooks of penance. A translation of the principal libri poenitentiales and selections from related documents* (New York 1938; repr. 1990) p. 407 suggests that it is a reference to a penitential. Canon 35 (p. 581) mentions among the duties for those who go into battle their confession of sins to a priest.

² For recent literature see R. Kottje, 'Busspraxis und Bussritus' in *Segni e Riti nella Chiesa altomedievale occidentale* I. Settimane di Studio del centro Italiano di studi sull'alto medioevo 33 (Spoleto 1987) pp. 369-395 and M.G. Muzzarelli, *Penitenze nel Medioevo. Uomini e modelli a confronto.* Il mondo medievale. Sezione di storia delle istituzioni della spiritualità e delle idee 22 (Bologna 1994). The most complete survey is still C.

grave sins like homicide and fornication to minor ones such as food taboos (e.g. the eating of carrion) and vomiting up the Host or priests spilling the chalice. They take the form of lists of conditional clauses which introduce the sin (“if someone has committed a certain sin...”) followed by the main clause stipulating a penance usually consisting of a period of fasting, the singing of psalms or almsgiving but also heavier ones such as pilgrimage or exile.¹ Such penances were considered as important as the confessant’s inner conversion, his contrition of mind, which had become the most important ingredient of penance by the twelfth century. Yet remorse and willingness to mend one’s ways were not just novelties introduced by twelfth-century theologians, but were also stressed in the prefaces to the earliest penitentials. The penitentials served a new system of so-called private or secret confession that had also developed in Irish monasteries. The monastic practice of confessing ones sins to fellow-monks together with the use of disciplinary measures imposed upon sinning monks paved the way for lay confession in the Insular church. Whereas ancient Christianity had known public penance, which was reserved for major sins and could be undertaken only once in a lifetime, secret penance was repeatable and also entailed confessing minor sins. Public penance, moreover, involved the public expulsion of sinners from the church on Ash Wednesday and their public reconciliation on Maundy Thursday, while secret penance was not necessarily connected to Lent and did not involve a public ritual.² It is not known whether public penance was a widespread custom or often practiced in the West. The sermons of Caesarius, the early sixth-century bishop of Arles, suggest that people sometimes postponed penance to their deathbed. Recent historiography, in addition, has questioned the usefulness of the distinction between public and secret penance, while paying more attention to the neglected public aspects of (secret) penance.³ Penitents, as we will see in chapter 6, often took part in the rites

Vogel, *Les ‘Libri Paenitentiales’*. Typologie des sources du Moyen Âge Occidental 27 (Turnhout 1978; ‘Mise à jour’ by A. Frantzen (Turnhout 1985)). A critique of his classification of penitentials is given by R. Meens, *Het tripartite boeteboek. Overlevering en betekenis van vroegmiddeleeuwse biechtvoorstellingen*. Middeleeuwse studies en bronnen 41 (Hilversum 1994) pp. 555-564. Useful and stimulating is A.J. Frantzen’s (*The literature of penance in Anglo-Saxon England* (New Brunswick, NJ, 1983), pp. 45-59) section on the earliest penitentials.

¹ The main characteristics of penitentials will be further discussed in chapter 8.

² Vogel, *Les ‘Libri Paenitentiales’*, pp. 34-39 and B. Poschmann, *Buße und letzte Ölung*. Handbuch der Dogmengeschichte IV. Sakramente und Eschatologie, Faszikel 3 (Freiburg 1951) pp. 65-69. On the rites of public penance see J.A. Jungmann, *Die lateinischen Bussriten in ihrer geschichtlichen Entwicklung*. Forschungen zur Geschichte des innerkirchlichen Lebens 3-4 (Innsbruck 1932) pp. 44-109. See for more recent literature the next footnote.

³ See recent literature about penance: M.C. Mansfield, *The humiliation of sinners: public penance in thirteenth-century France* (Ithaca 1995), M. de Jong, ‘What was public about public penance? *Paenitentia publica* and justice in the Carolingian period’ in *La giustizia nell’alto medio evo (secoli IX-XI)* II. Settimane di studio 44 (Spoleto 1997) pp. 863-902, R. Meens, ‘Frequency and nature of Early Medieval Penance’ in P. Biller and A.J. Minnis ed., *Handling sin: Confession in the Middle Ages*. York Studies in Medieval Theology II (Woodbridge 1998) pp. 35-61, and S. Hamilton, *The practice of penance, 900-1050*. Royal Historical Society. Studies in History. New series (Woodbridge 2001).

accompanying confession collectively. Furthermore, some of the penances prescribed by penitentials such as excommunication and exile could hardly have been remained secret and must in effect have carried public consequences.

The earliest penitentials are the *P. Ambrosianum* and the penitential of Vinnian, both written in Irish or Welsh monasteries. Other, more influential texts are the penitentials by the Irish authors Columbanus and Cummean. Probably under the influence of these texts, the collected judgments of the Greek archbishop Theodore of Canterbury (†690) also treat questions connected to sin and penance. Irish and Anglo-Saxon missionaries brought these texts to the Continent, where, on the basis of Columbanus' text and the decrees of local church councils, the first Frankish penitentials or the so-called Simple Frankish penitentials were written in the late seventh and early eighth century. Irish, Anglo-Saxon, and Frankish traditions were blended together in the so-called Tripartite penitentials of the eighth and ninth centuries. At around the same time penitential handbooks began to be accompanied by *ordines ad paenitentiam dandam* that contained the liturgical directions for hearing confession. In 813 and 829 Carolingian church councils condemned some of the existing penitentials as texts of poor authority and full of discrepancies, but this condemnation did not put an end to the circulation of older texts, which continued to be copied until the twelfth century. The labours of the Carolingian bishops resulted in a bipartite theory of penance: secret penance for hidden sins and public penance for public crimes. With the Carolingian reform, new penitentials were produced, often fused with canon law or composed as part of canon law collections. The number of new texts gradually declined from the tenth century onwards and the genre seems to have passed into disuse by the twelfth century. Yet penitentials experienced a late flowering in the tenth and eleventh centuries in two geographically peripheral regions of Latin Christendom, namely Italy and Anglo-Saxon England. It is the texts from Italy which will be discussed in this book. Most of the new texts of the tenth, eleventh, and early centuries seem to have come from the region of Umbria in central Italy, Rome, and Benevento in the South. Although these regions differed in many political and cultural aspects, nonetheless they shared, as we will see, a largely homogeneous penitential and canonical literature.

South and Central Italy

Before turning to the penitentials from Central and South Italy, a brief sketch of the region's political and cultural situation will prove helpful. The Italian penitential texts were compiled

in the area that stretched from the Lombard principality of Benevento to Rome and to the northern duchy of Spoleto or Umbria. Although politically and culturally diverse, this area shows a certain uniformity with regard to both liturgy and canon law.

After the Frankish conquest of Italy in 774, Benevento maintained itself as an independent Lombard duchy. Soon the dukes of Benevento began to style themselves with the title of 'prince' and saw themselves as the heirs of the old Lombard kings. Civil strife in the ninth century resulted in the establishment of several more or less independent principalities and duchies, like Salerno, Capua, and Benevento. Spoleto, roughly comprising the region of Umbria, north of Rome, had fallen to the Franks in the eighth century and was the homeland of the powerful dukes descended from Wido of Spoleto. The Lombard duchies were threatened by several invasions by Saracens in the ninth century. The southern-most regions Calabria and Apulia were under Byzantine rule, which ended only with the coming of Norman knights in the eleventh century.¹ In contrast to the rest of Italy, this region witnessed a time of relative peace and prosperity in the tenth century.² During the reign of prince Pandulf Ironhead Benevento and Capua were united. Pandulf also seized control of the duchy of Spoleto. At the end of the century, however, decentralisation of power and disintegration resulted in a process called *encastellamento*, the erection of castles and fortified villages. Civil strife once more began to dominate political life.³ At the beginning of the eleventh century the first Norman knights were hired as mercenaries by Lombard rulers to fight against their rivals, the Saracens, and the Byzantines. Their number rapidly increased and they seriously threatened both the Lombard and Greek domination in the region. Norman duchies were established in southern Italy and Sicily, while Lombard, Greek, and Saracen rule had virtually disappeared by the end of the eleventh century.⁴

Another factor that defined the future of the Beneventan region and Central Italy was the papacy. After the tumultuous tenth century, the papacy regained much of its prestige in the eleventh century. The stirrings of reform can be seen with the ascendancy of the so-called

¹ Part of the population and clergy were Greek, see O. Capitani, *Storia dell'Italia medievale, 410-1216* (Rome 1994), pp. 214-222.

² G.A. Loud, 'Southern Italy in the tenth century' in T. Reuter ed., *The new Cambridge Medieval history III, c. 900- c. 1024* (Cambridge) pp. 624-645. The image of continuous civil war in the South Italian principalities is questioned by H. Taviani-Carozzi, 'Caractères originaux des Institutions en Italie Lombarde Méridionale' in *Il secolo di ferro: mito e realtà del secolo X*. Settimane di Studio del Centro di Studi sull'Alto Medio Evo 38 (Spoleto 1991) pp. 273-328. She emphasized the stability of political institutions in this period.

³ C. Wickham, *Early Medieval Italy. Central power and local society 400-1000* (Ann Arbor 1989) pp. 146-167. For Lazio see P. Toubert, *Les structures du Latium médiéval. Le Latium méridional et la Sabine du IXe siècle à la fin du XIIe siècle* 2 vols, Bibliothèque des Ecoles Françaises d'Athènes et de Rome 221 (Rome 1973).

⁴ Loud, 'Southern Italy in the eleventh century' in D. Luscombe and J. Riley-Smith ed., *The new Cambridge Medieval history IV c. 1024- c.1198 2* (Cambridge) pp. 94-119. Only Naples and Amalfi maintained their independence until the twelfth century.

‘Tusculan’ popes, Benedict VIII, John XIX and Benedict IX, with the support of the Ottonians. The councils of Ravenna (1014) and Pavia (1022) have been regarded as forerunners of the reform movement to come.¹ The pace of the reform accelerated under the pontificate of Pope Leo IX (1049-54), who was assisted by other like-minded individuals such as Hildebrand (the future pope Gregory VII), Humbert of Silva Candida and Peter Damian both of whom were appointed cardinal bishops. This reform, what was to be called the ‘Gregorian reform’, culminated in the reigns of popes Gregory VII and Urban II.² The main issues of the reform movement were to clear the Church of simony, buying and selling clerical offices, and of clerical marriage, and to strengthen the papal authority and primacy within the Church.

The southern regions are different from other Italian regions in several respects. Instead of Carolingian minuscule, these regions kept their own distinctive scripts, Beneventan script in the South (Benevento and Apulia) and Romanesca script in Umbria and Rome.³ While episcopal authority was weak, perhaps except for important sees like Naples, Benevento, and, naturally, Rome, the region was dominated by monastic centres such as Montecassino, Farfa, and Sant’Eutizio, which were not only culturally but also politically important. Moreover, pastoral care was to a considerable extent controlled by monasteries in Umbria and in the South.⁴ Of great cultural importance was the book production that took place in these monastic centres.⁵ As it was only in 949 that the monks of Montecassino returned to their abbey and could rebuild their library, it is not surprising to find writing activities flourishing only after that date.⁶ Loew mentions several abbots of this abbey who had contributed to the copying of books in this abbey, most notably the eleventh-century

¹ J. Laudage, *Priesterbild und Reformpapsttum im 11. Jahrhundert*. Beihefte zum Archiv für Kulturgeschichte 22 (Cologne, Vienna 1984) pp. 52-83 and K.-J. Hermann, *Das Tuskulaner Papsttum (1012-1046)*. Pápste und Papsttum, Band 4 (Stuttgart 1973).

² J. Laudage, *Gregorianische Reform und Investiturstreit*. Erträge der Forschung 282 (Darmstadt 1993), U.-R. Blumenthal, *The Investiture Controversy. Church and monarchy from the ninth to the twelfth century* (Philadelphia 1995, second paperback edition), Cowdrey, *The age of abbot Desiderius*, and recently, K.G. Cushing, *Reform and the papacy in the eleventh century. Spirituality and social change* (Manchester 2005), and S. Hamilton, ‘Penance in the age of Gregorian Reform’ in K. Cooper and J. Gregory ed., *Retribution, repentance, and reconciliation*. Studies in church history 40 (Woodbridge 2004) pp. 47-73.

³ On which see P. Supino Martini, *Roma e l’area grafica Romanesca (secoli X-XII)*. Biblioteca di scrittura e civiltà 1 (Alessandria 1987) and E.A. Loew, *The Beneventan script. A history of the South Italian Minuscule*. Second enlarged edition, prepared by V. Brown, 2 vols. Sussidi eruditi 33-34 (Rome 1980).

⁴ See V. Ramseyer, *The transformation of a religious landscape. Medieval Southern Italy, 850-1150*. Conjunctions of religion and power in the Medieval past (Ithaca and London 2006).

⁵ F. Newton, *The scriptorium and library at Monte Cassino, 1058-1105*. Cambridge studies in Palaeography and codicology 7 (Cambridge 1999). For book production in Umbrian centres like Farfa and Sant’Eutizio: Supino Martini, *Roma e l’area grafica Romanesca (secoli X-XII)*. See also E.B. Garrison, *Studies in the history of medieval Italian painting I* (Florence 1953) pp. 18-32.

⁶ Loew, *The Beneventan script*, p. 8.

abbots Atenulf, Theobald, and Desiderius.¹ These monastery's political, economic, and social power extended out over their surroundings as they possessed estates, dependent monasteries, and local churches in the area. Furthermore, the large abbeys exchanged books and mutually influenced each others book culture.² Monasteries also furnished churches with priests and bishops. Two eleventh-century abbots, Frederick of Lorraine (1057-58) and Desiderius (1086-87) were even elected as popes. In a recent book on christianity in early medieval southern Italy, Valery Ramseyer argues that monasteries rather than bishops were 'the main source of pastoral care' in this region.³ Yet the region also included some important episcopal centres such as the cities of Benevento, Bari, Naples, and of course Rome. The region also witnessed the creation of new and the re-arrangement of the old episcopal sees in the tenth century as new bishoprics were established, such as Salerno or Valva-Sulmona.⁴ Furthermore, Benevento had its own liturgy, which had come under the influence of the Frankish-Roman rite from the tenth and eleventh centuries onwards.⁵ It has been argued above and will be argued below that the influx of penitentials and *ordines* from the North may be attributed to this 'Romanizing' tendency: penitentials were part of the diffusion of liturgical texts from the Carolingian North.

Penitentials in Central and South Italy

The first penitentials arrived in northern Italy around 800. The oldest fragments of the *P. Oxoniense II*, a text composed in the northern parts of the Frankish kingdom possibly by Willibrord, appear in a North Italian manuscript.⁶ The first penitential probably composed or at least reworked in Italy was the *P. Merseburgense A*, which is made up of canons of earlier

¹ Capitani, *Storia dell'Italia medievale*, pp. 230-231 and G. Cavallo, 'La trasmissione dei testi nell'area beneventano-cassinense' in *La cultura antica nell'Occidente latino, dal VII all'XI secolo* (Spoleto 1975) pp. 357-414. See also Loew, *The Beneventan script*, pp. 9-14 and 79-82. See also the entries in the *Chronica Casinensis* of abbots and the books they had had copied, for example II,53 on abbot Theobald (1022-1035) (*Die Chronik von Montecassino*, H. Hoffmann ed., MGH Scriptores 34 (Hannover 1980) pp. 265-267).

² On the role of these abbeys see H.E.J. Cowdrey, *The age of abbot Desiderius: Montecassino, the Papacy, and the Normans in the eleventh and early twelfth centuries* (Oxford 1983); T. Kölzer, *Collectio canonum regesta Farfensi inserta*. Monumenta Iuris Canonici, series B, 5 (Vatican City 1982); P. Pirri, *L'abbazia di Sant'Eutizio in Val Castoriana presso Norcia e le chiese dipendenti*. Studia Anselmiana 45 (Rome 1960). The lands that Montecassino possessed is called the *Terra Sancti Benedicti*. On Lazio and parts of Umbria see also Toubert, *Les structures du Latium médiéval*, especially his second volume. The role of monasteries in pastoral care is examined in chapter 8 of this study.

³ Ramseyer, *The transformation of a religious landscape*, p. 11.

⁴ Loud, 'Southern Italy in the tenth century' pp. 632-633 and Capitani, *Storia dell'Italia*, pp. 214-222..

⁵ See also T.F. Kelly, *The Beneventan Chant*. Cambridge Studies in Music (Cambridge 1989).

⁶ Ms. Stuttgart, Landesbibliothek Württemberg, Cod. Fragm. 100 A and ms. Darmstadt, Hessische Landes- und Hochschulbibliothek, hs. 895 (s. VIII-XI). See L. Körntgen, *Studien zu den Quellen der frühmittelalterlichen Bußbücher*. Quellen und Forschungen zum Recht im Mittelalter 7 (Sigmaringen 1992) pp. 98-112.

Frankish and insular penitentials. On the basis of this text a new Italian penitential was compiled possibly in Vercelli, the *P. Vallicellianum I*.¹ Other penitentials that were copied in Italian manuscripts were the Frankish *Capitula Iudiciorum* and *P. in II libris*, the G version of the judgments of Theodore of Canterbury (often ascribed to Gregory I, so *Canones Gregorii*), the penitential of Halitgar of Cambrai, and the penitentials attributed to Egbert and Bede. Early texts like the *P. Ambrosianum* or the penitential of Columbanus had a much more limited circulation. Some Frankish penitentials, such as the *Excarpsus Cummeani* and the *P. Hubertense*, survive in Italy only in fragments.² Another popular text was the so-called Reims *ordo*, which contains a small interrogatory penitential – canons in the form of questions.³

In his study on the *P. Vallicellianum I*, Gunther Hägele noted that the majority of the Italian penitentials were written in the tenth and eleventh centuries.⁴ He presented a list of manuscripts and texts among which the high proportion of South Italian ones stands out. The earliest evidence of the existence of penitentials in this region dates from the 866 letter of Nicholas I to the Bulgarians cited above. Other evidence for the presence of penitentials are two canons incorporated into the anonymous *Capitula Casinensia*, a late ninth- or early tenth-century episcopal capitulary from the Beneventan zone.⁵ According to Pokorny, these canons were derived from the *Excarpsus Cummeani*. If these canons were really drawn from the *Excarpsus*, which had a remarkably limited transmission in Italy, it is one of the few testimonies of this penitential in this region.⁶ The manuscript in which this capitulary is copied, the tenth-century ms. Montecassino, Archivio dell'Abbazia, 439, written in Beneventan script, also contains the preface of the *P. Ps.-Egberti*. Thus this codex is the earliest South Italian manuscript evidence for penitential material.⁷ Most of the manuscripts, however, that contain penitentials, both Frankish and Italian ones, are dated to the late tenth, the eleventh, and twelfth centuries. The gap between the earliest references to penitentials and

¹ Both penitentials are examined in G. Hägele, *Das Paenitentiale Vallicellianum I. Ein oberitalienischer Zweig der frühmittelalterliche kontinentalen Bußbücher*. Quellen und Forschungen zum Recht im Mittelalter 3 (Sigmaringen 1984). A new edition of the *P. Merseburgense A* and an analysis of its sources appeared in *Paenitalia minora Franciae et Italiae saeculi VIII-IX*, R. Kottje, L. Körntgen, U. Spengler-Reffgen ed., CCSL 156, *Paenitalia Franciae, Italiae et Hispaniae saeculi VIII-XI part I* (Turnhout 1994) pp. 125-169.

² Excerpts of the *Excarpus* appear in ms. Merseburg, Archiv des Dombibliothek, Ms. 103 (appended to the *P. Merseburgense A*) and ms. Milan, Biblioteca Ambrosiana, G. 58 inf. (Bobbio; s. IX-X). Canons of the *P. Hubertense* were included in the *P. Merseburgense B*.

³ Ms. Rome, Bibl. Nazionale Centrale, 2116 and ms. Navarra, Bibl. Capitolare 18. See also chapter 6 and 8.

⁴ Hägele, *Das Paenitentiale Vallicellianum I*, pp. 93-94. See also Hamilton, *The practice of penance*, pp. 47-50.

⁵ *Capitula Casinensia*, c. 8 (*Capitula episcoporum III*, R. Pokorny ed., MGH (Hannover 1995) p. 326).

⁶ The *Capitula Casinensia* incorporates *Iudicia Theodori U*, I,9,1 (except for Theodore, only found in the *Excarpsus* and the *P. Vindobonense B*; see Meens, *Het tripartite boeteboek*, p. 531) and *P. Burgundense*, c. 12 (Kottje ed., CCSL 156, pp. 21-24). The *P. Casinense* possibly contains some canons of the *Excarpsus*.

⁷ See *Capitula Episcoporum III*, Pokorny ed., MGH, p. 310 and Loew, *The Beneventan script*, pp. 222 and 350: Apulia (Siponto?). The preface of Ps.-Egbert is mentioned in *Spicilegium Casinense complectens analecta sacra et profana e codd. Casinensibus aliarumque bibliothecarum collecta atque edita I* (Montecassino 1888) p. 939n.

the manuscript evidence suggest that, while some Frankish penitentials may have been available in the ninth century, the majority of Frankish and South Italian texts were copied in the period that stretches from ca. 1000 to 1150.

North Italian manuscripts seems to have functioned as intermediaries for the transmission of Frankish penitentials in the South and thus contributed to the revival of these texts. The earliest Italian copies of Frankish penitentials like the *Capitula Iudiciorum* and the *P. in II libris* are to be found in northern Italy in the ninth and tenth centuries, while the first South and Central Italian manuscripts witnesses of these texts date from the eleventh century. The first chapter shows that northern centres like Vercelli or the monastery of Bobbio played an important part in the dissemination of penitentials. Moreover, the penitentials were probably imported as part of a larger corpus of canonical texts which originally stemmed from North of the Alps.¹ To the group of Frankish penitentials available in southern Italy also belonged the *P. Ps.-Gregorii* and the penitential of Halitgar of Cambrai.² Another Frankish text, which combined penitential material with quotations from church fathers and conciliar and papal decrees, is the so-called *Quadripartitus*. The influence of this last text on Italian penitentials was limited.³ Another important, yet not exclusively penitential text was the Irish collection of canons known as the *Coll. Hibernensis*. This collection, written under insular influence, not only contained canon law, but also often apocryphal patristic and scriptural material. The diffusion of this collection in South and Central Italy is remarkable, when compared to other regions.⁴ We can find the excerpts of this text in many of the manuscripts which also contain penitentials. Canonistic and penitential traditions merged in the Collection

¹ One could think of the *Coll. Dacheriana*, the *Concordia Canonum* of Cresconius, and of the *Coll. Hibernensis* which can often be found in the same manuscripts as penitentials. See on these collections R.E. Reynolds, 'The transmission of the *Hibernensis* in Italy: Tenth to Twelfth century', *Peritia* 14 (2000) pp. 20-50 and K. Zechiel-Eckes, *Die Concordia Canonum des Cresconius. Studien und Edition* 2 vols. Freiburger Beiträge zur Mittelalterliche Geschichte 5 (Freiburg 1992).

² On the ninth-century Pseudo-Gregorian penitential see F. Kerff, 'Das Paenitentiale Pseudo-Gregorii III. Ein Zeugnis karolingischer Reformbestrebungen', *ZRG kan. Abt.* 69 (1983) pp. 46-63 and 'Das Paenitentiale Ps.-Gregorii III. Eine kritische Edition' in H. Mordek ed., *Aus Archiven und Bibliotheken. Festschrift für Raymund Kottje zum 65. Geburtstag*. Freiburger Beiträge zur mittelalterliche Geschichte. Studien und Texte 3 (Freiburg 1992) pp. 161-188. Ms. Rome, Biblioteca Nazionale, 2010 (s. XI^{ex}) is probably written in Farfa. South Italian manuscripts of Halitgar's penitential are discussed in R. Kottje, *Die Bußbücher Halitgars von Cambrai und des Hrabanus Maurus. Ihre Überlieferung und ihre Quellen*. Beiträge zur Geschichte und Quellenkunde des Mittelalters 8 (Berlin, New York 1980).

³ F. Kerff, *Der Quadripartitus. Ein Handbuch der karolingischen Kirchenreform. Überlieferung, Quellen, und Rezeption*. Quellen und Forschungen zum Recht im Mittelalter 1 (Sigmaringen 1982) pp. 18-30: ms. Vatican, BAV, Vat. lat. 1347 (Reims (in the eleventh century in Montecassino); s. IX^{med.-3/4}), Vat. lat. 1352 (Italy; s. XI²), and Montecassino, Bibl. dell'Abbazia, 541 (South Italy/Montecassino?; s. XI^m).

⁴ See R.E. Reynolds, 'The transmission of the *Hibernensis* in Italy: Tenth to Twelfth century', *Peritia* 14 (2000) pp. 20-50. While the 'A version' of this collection was published in *Die Irische Kanonensammlung*, H. Wasserschleben ed. (Leipzig 1885; repr. Aalen 1966), the, at least in southern Italy, more influential 'B version' still remains unpublished.

in Nine Books (*Coll.9libr.*) and the Collection in Five Books (*Coll.5libr.*), the most important products of canonistic activity in the southern parts of Italy in the eleventh century.¹

The production of new penitential literature in South and Central Italy deserves closer scrutiny, because penitentials gradually passed into disuse in most other parts of Europe while at the time it experienced something of a renaissance in these regions. This study, accordingly, will take a closer look at the reasons for this late renaissance of penitentials in these regions. Is it, for example, possible to connect this production of penitentials to the emerging study of canon law in Italy in the eleventh and twelfth centuries? Apart from investigating the reasons why Italy produced so many new texts, it is also necessary to address the question whether the contents of the South Italian penitentials have been changed when compared to their Frankish and Insular counterparts. Since it were not only the older Frankish and Insular texts but also new ones that circulated in the southern parts of Italy, clerics evidently felt the need to produce their own texts. This study includes an analysis of those topics on which the penitentials followed the lead of their Frankish examples and on which the authors of penitentials introduced new canons on old and new topics. In other words, an attempt is made to discern a pattern as to the topics these texts dealt with. A third issue is whether these texts really functioned at confession in pastoral care. This question is relevant, since some scholars have contended that penitentials were used within a legal or an educative context rather than in pastoral care. If the former is the case, penitentials reflect the theory of confession and penance rather than its practice. In the last two decades, research depended heavily on codicological and palaeographical evidence to establish which role the penitentials fulfilled in ecclesiastical life. Following the approach suggested by Raymund Kottje and Rob Meens, this study also takes into account such features as the size, the decoration, and the contents of a codex in order to say more about the purpose and function of both the codex and the penitential it contains.²

These and other issues will be discussed through an analysis of the following five texts: the *P. Casinense* (ms. Montecassino, Archivio dell'Abbazia, 372); the *P. Vaticanum* (ms. Vatican, Archivio di San Pietro, H. 58); *P. Vallicellianum E. 62* (Rome, Biblioteca

¹ See Reynolds, 'The South-Italian canon law *Collection in Five Books* and its derivatives: new evidence on its origins, diffusion, and use', *Mediaeval studies* 52 (1990) pp. 278-295 and P. Fournier, 'Un groupe de recueils canoniques italiens des Xe et XIe siècles' in in *Mélanges de droit canonique II. Études sur les diverses collections canoniques*, Th. Kölzer ed. (Aalen 1983) pp. 213-331 Reynolds has published a series of articles on derivatives of this collection over the last two decades. On the *Coll.9libr.* see A.H. Gaastra, 'Penance and the law: the penitential canons of the Collection in Nine Books', *Early Medieval Europe* 14 (2006) pp. 89-100.

² See R. Kottje, 'Erfassung und Untersuchung der frömmittelalterlichen kontinentalen Bussbücher. Probleme, Aufgaben eines Forschungsprojektes an der Universität Bonn', *Studi medievali* 26 (1985) pp. 941-950 and Meens, *Het tripartite boeteboek*, pp. 222-266.

Vallicelliana, E. 62); *P. Vallicellianum C. 6* (ms. Vallicelliana, C. 6); *P. Lucense* (ms. Lucca, Bibl. Statale, 1781). Each of the first five chapters is devoted to one individual text. First these chapters provide a formal and technical description of the exterior (codicological and palaeographical features) and interior (the contents) aspects of the codex in which the penitential is copied, then they turn to the structure and sources of the penitential itself. In the last chapter, the outcome of this codicologically oriented approach of the first chapters will be discussed in the light of recent debates as to whether these texts were actually used within pastoral practice or rather within a legal or educational context. This chapter also considers the role of penitentials in canon law collections on the one hand and penitentials in the liturgy of confession on the other hand. The chapters 6 and 7 go more deeply into the detail of what these texts have in common with regard to their contents. Chapter 6 examines the liturgy of confession and giving penance on the basis of the *ordines* appended to the penitentials that contain liturgical directions for confession. This chapter might seem to fall somewhat outside the general subject of this book, but it is necessary to place the Italian *ordines* within a wider liturgical context in order to highlight the characteristics of Italian penitential liturgy. Moreover, liturgy gives us some important insights into the theories behind penance that needed to be communicated to the laity and the clergy. Through prayers and sermons the need for confession and repentance were addressed to the ordinary confessant. Chapter 7 discusses the contents of the canons. It focuses on those topics that received the most attention in the Italian penitentials. This chapter attempts to demonstrate that the texts of the South and Central regions put much stress on major sins like adultery, fornication and violence and seeks to discover the reasons for the interest in these themes. The last section of this study is comprised of a critical edition of all five penitentials.

Before we can turn to the descriptions of the penitentials, a remark needs to be made about the penitentials selected for this study. Each penitential is preserved in a single manuscript, each of which was written in the region of Umbria-Rome-Benevento. Of the texts discussed in this book, the *P. Casinense* and the *P. Vallicellianum C. 6* were published by Hermann-Josef Schmitz, while the *P. Vallicellianum E. 62* was printed by Friedrich Wassersleben in the nineteenth century.¹ An incipit-explicit edition of the *P. Vaticanum* has been published by Ludger Körntgen, while the *P. Lucense* still remains unpublished. The editions of Schmitz must be used with great care, since they bear the stamp of his attempts to

¹ H.J. Schmitz, *Die Bussbücher und die Bussdisciplin der Kirche. Nach handschriftlichen Quellen dargestellt I* (Mainz 1883; repr. Graz 1958) pp. 167-239. Hereafter cited as Schmitz I.

recover the ‘Ur-text’ of a supposed Roman penitential.¹ Since the canonist Paul Fournier demonstrated that all texts belonging to this ‘Roman group’ were compiled from Insular and Frankish sources and that a ‘Roman’ tradition of penitentials had never actually existed, these texts are commonly regarded as Italian texts.² Moreover, Schmitz’ transcriptions do not always accurately reflect what is written in the manuscripts. The texts that will be discussed are, except for the *P. Vallicellianum C. 6*, accompanied by liturgical *ordines*. Furthermore, I decided to exclude all versions of the *Corrector sive Medicus*, book XIX of Burchard of Worms’ canon law collection, whose circulation independently from this collection deserves a separate study.³ One might object that the *P. Lucense* also borrows from Burchard’s collection. Yet this text cannot be regarded as a mere summary of the *Corrector*, because of its liturgical directions and because the majority of its canons were derived from other sources. I also excluded derivatives of the *Coll.5libr.* that, in my view, cannot be regarded as penitentials, because they are dealing with a limited range of topics or topics that are not markedly penitential. These derivatives include many canons that ultimately stem from penitentials, but many of them are closer to canon law collections than penitentials. Amongst these excluded derivatives is one text which has previously been published as a penitential, namely the *P. Vallicellianum III*, of ms. Rome, Bibl. Vallicelliana, F. 92, printed by Wasserschleben. This text is not accompanied by liturgical directions and entirely omits rulings on penitential topics such as homicide, perjury, or theft.⁴ Although the *P. Vallicellianum C. 6* lacks an *ordo* and the *P. Lucense* touches on an equally limited number of (penitential) topics, nonetheless, the structure and the choice of topics of these texts are characteristic of the genre of penitentials. The *P. Lucense*, moreover, is preceded by a penitential *ordo*. Such criteria may seem arbitrary, since one cannot exclude the possibility that recensions of the *Coll.5libr.*, even if closer to canon law collections, were actually consulted for judging sinners. We must also bear in mind that the *Coll.5libr.* was equally important for the diffusion of penitential material in Benevento and Umbria. Given the scope

¹ Schmitz I, p. 174 about the Roman penitential: ‘Die Entstehung eines Poenitentiale Romanum... wird man sich ebenfalls in Rom unter Oberaufsicht und Controle der Papst und der Römische Kirche zu denken haben.’ F.W.H. Wasserschleben had contended that the term ‘*Poenitentiale Romanum*’ was a general term and could equally denominate penitentials of Theodore, Bede, or Cummean. See his, *Die Bussordnungen der abendländischen Kirche* (Halle 1851) pp. 72-77. The possible existence of a Roman penitential had concerned scholars from the sixteenth century onwards.

² P. Fournier, ‘Études sur les pénitentiels I, II and III’, *Revue d’histoire et de littérature religieuse* 6, 7, and 8 (1901, 1902, and 1903).

³ E.g. the collection of ms. Rome, Bibl. Vallicelliana, F. 8.

⁴ Edited by Wasserschleben, pp. 682-688. It is made up of canons of the *Coll.5libr.* and Burchard’s *Decretum*.

of this study, it is necessary to prune back the number of texts, particularly because the number of derivatives exceeds that of penitentials.

THE PAENITENTIALE CASINENSE

The penitential in the manuscript Montecassino, Archivio dell'Abbazia, 372, known as the *P. Casinense*, was first published by the German suffragan bishop of Cologne, H.J. Schmitz, in 1883.¹ His edition and commentary were part of his attempts to recover the 'Ur-text' of a lost Roman penitential, to which he thought another Italian text, the *P. Vallicellianum I*, came closest. On the basis of similarities with the *P. Vallicellianum I*, Schmitz reckoned that the *P. Casinense* was among a group of penitentials that derived from the lost Roman penitential. Among his series of articles refuting the existence of a Roman penitential, Paul Fournier devoted one study to the sources of the *P. Casinense*, which sought to demonstrate that it was primarily composed of canons from the Frankish *Capitula Iudiciorum*.² Hereafter, scholars have hardly paid any attention to the text of the *P. Casinense* or the contents of the manuscript in which it was copied. Yet the *P. Casinense* deserves more attention than it has recently been given. It is one of the few penitentials in which canons, liturgical directions, and commutations are forged into a single, coherent text. Furthermore, Fournier's examination of the sources of the text is already more than a century old and needs some revision. This chapter, therefore, not only offers a new analysis of this text, its sources, and its liturgical directions, but also a description of the manuscript in order to reveal more about the structure and the intended purpose of the codex. This analysis will show that the codex consists of two separately written parts, of which the first part which contains the penitential is dependent of a North Italian exemplar. The section on the manuscript also investigates what such features as the lay-out, the size, and above all, the contents of the codex can tell us about the purpose of the penitential.

1.1 Codicological description

The only copy of the *P. Casinense* is preserved in ms. Montecassino, Archivio dell'Abbazia, 372. The wooden boards (275 x 178 mm) of the modern cover are coated with brown leather.³ The spine measures ca. 275 x 47 mm. The quires are sewn on three raised bands seen as ridges across the spine.⁴ A piece of parchment, probably cut from the spine of the old cover, is

¹ Schmitz I, pp. 167-239.

² Fournier, 'Études sur les pénitentiels III. Le pénitentiel Casinense', pp. 121-127.

³ A stamp fixed on the bottom of the rear of the pastedown testifies to the restoration of the codex in 1974 ('Restauro del libro; Badia di Cava' dated 5 October 1974).

⁴ The edges of the parchment were dyed blue/purple.

fixed to the front paste-down, on which is written ‘00. 372 *Paenitentiarium Summorum pontificum Et alio*’, ‘MS’, and a coat of arms (of Montecassino?).¹ Three modern paper flyleaves (256 x 164 mm) are followed by two older paper flyleaves numbered I-II (ca. 255 x 159 mm). There are two paper fly-leaves at the end of the codex. On f. Ir is written in an early modern hand ‘*Lit^a*’, an illegible word or number delineated with ‘00’, ‘*Codex seculi x. desinentis*’, and in a modern hand in pencil ‘I 372. 00’ and ‘255/164’ (the measurements of the quires). A table of contents is found on f. Iir.² On the first parchment page are written the *ex libris* of Montecassino (*Iste liber est sacri Monasterii Casinensis 553*) and of San Nicola (*Liber sancti nicolai de ciconia*), and the shelfmark 372.

The codex consists of 18 parchment quires (284 pp; 142 ff), whose organization is as follows: 1-8⁸; 9¹⁰; 10-17⁸; 18⁴ (or 18² + two conjoins 277/8 and pp. 283/4; the tight binding made it difficult to determine the arrangement of this gathering). The hair-flesh organization follows Gregory’s rule. Modern page numbers in Arabic were added in pencil in the lower outside corners, older foliation, in pencil in Arabic numerals, in the upper right corners of the recto folios. The gatherings are, except for the last one, numbered 1-17 in Roman numerals. The leaves measure ca. 254 x 164 mm, the writing space is ca. 210 x 125 mm.³ The text is written in a single column on 27 or 28 lines per page. The ruling is drawn in dry point, with the upper, middle and lower lines extending to the edges of the folios: |_|_|_|. Pricking marks of the horizontal lines are visible in the outer margins. The lines are ca. 7,5 mm apart. Vertical pricking marks are visible in the corners of each folio.

The codex was written by at least three scribes. The first part (pp. 1-148) is written in a round Beneventan minuscule by one hand.⁴ The second part (149-284), in a more angular Beneventan minuscule, is written by two and possibly three different hands. In the first part the letters are ca. 2,5 mm high, the ascenders 4,5 mm, descenders 5 mm. The initials vary in length and measure 15 to 25 mm. Ordinary capitals are ca. 5 mm. In the second part letters are 2 mm, with ascenders 4 and descenders 4,5 mm. The initials are 15 to 23 mm high and ordinary capitals 5 mm. The ink is peeled off on some folios. The script is dated to the early

¹ Hence Schmitz’s title of the penitential: *Poenitentiarium Summorum Pontificum*.

² *Modis unctionis infirmorum. Paenitentiarium summorum Pontificum. Rationale Canonis Mi<Ilos?>um. Epistola Clementis ad Jacobi Fratrem formuli. E uarii epistola contra hebreos. Epistola contra hereticis ex libris maioris. Capitula Concilii Nicaeni, et aliorum*. Under this table is written ‘372 *Paenitentiarium Summorum Pontificum M.S.*’

³ The size of the part that contains the penitential measures approximately 213 x 120 mm.

⁴ The final sentences of the Mass exposition are written in a smaller script in the lower margins of p. 148 of the manuscript, perhaps in order to avoid using a new quire for the remainder of the text.

eleventh century by both Inguanez and Loew.¹ The presence of a sermon attributed to St Firmanus of Fermo (†992) in the second part suggests that at least that part of the codex was written after 992. If the quire on which these texts appear originally belonged to this codex is, however, uncertain, since it is the only unnumbered one of the codex.

Most rubrics are in red and in minuscule or, in the second part, occasionally in *capitalis*. Initials are in red or in brown ink touched up with red, sometimes decorated with zoomorphic designs like snakes or birds. The *incipits* of the psalms and versicles in the liturgical *ordines* are rendered in a smaller script than the rest of the text. Noteworthy abbreviations are *s&* for *set/sed*, *pēn* for *peniteat*, *ḏ* for *dominus*. Orthographical peculiarities are the frequent substitution of ‘e caudata’ for ‘e’ (*neç, tēmpus*), ‘b’ for ‘u/v’ (*bino, adiuba*), and ‘u’ for ‘b’ (*ouitum*). The scribe used four punctuation signs: point (·); point and virgule (./) or point and hook (·̄); the two points and comma sign (.,·). The virgule and point seem to be used interchangeably², although at times the virgule marks off invocations, sometimes without a verb, within a sentence (*Tu uero annuente deo./*). The single point is more frequently used in both enumerations and as the final punctuation.³ The comma-point served almost exclusively as a full stop.⁴ The Beneventan interrogation sign (‘2’), which marks a question, is placed on top of interrogative pronouns (*quis, quomodo*).⁵

1.2 Contents of the manuscript

pp. 1-27 *Ordo* for anointing the sick and deathbed penance

(*In christe nomine incipit ordo qualiter agendum sit ad uisitandum infirmum, uel ad recipiendum penitentem, et reconciliandum siue unguendum infirmum*)⁶

¹ M. Inguanez, *Codicum Casinensium manuscriptorum catalogus* 2 (Montecassino 1934) pp. 224-228, Loew, *The Beneventan script*, pp. 75, 185, 221, and H. Mordek, *Kirchenrecht und Reform im Frankenreich. Die Collectio Vetus Gallica, die älteste systematische Kanonensammlung des fränkischen Gallien. Studien und Edition*. Beiträge zur Geschichte und Quellenkunde des Mittelalters 1 (Berlin, New York 1975) pp. 280-281. On the basis of occurrence of the *-tur* abbreviation, Loew (pp. 218-221, 318) classifies the codex among the ‘transition manuscripts’ written ca. 950-1030 between the formative and the mature period of Beneventan script.

² Conditional clauses are delineated with points but also with point-virgules. Compare *Si quis fornicauerit sicut sodomite. episcopus... peniteat* and *Si quis homicidium fecerit./ episcopus... peniteat*.

³ The alternatives in enumerations of topics are often capitalized as in *Si quis cupidus aut auarus. aut superbus. Aut ebriosus. Aut fratrem suum odio habet...*

⁴ Terminology borrowed from F. Newton, *The scriptorium and library at Monte Cassino, 1058-1105*. Cambridge studies in Palaeography and codicology 7 (Cambridge 1999) pp. 175-179 and M.B. Parkes, *Pause and effect. An introduction to the history of punctuation in the West* (Aldershot 1992) pp. 35-37.

⁵ Newton, *The scriptorium and library at Monte Cassino*, pp. 182-193 assigns a broader function to this sign than Loew. It could also mark affirmations and raised inflections in sentences.

⁶ The *ordo* combines a rite for the anointing of the sick and with that of deathbed penance. It resembles *ordines* 139, 143-145 of the *PRG* and that of the Albi pontifical (N.K. Rasmussen and M. Haverals, *Les Pontificaux du*

pp. 27-56 *P. Casinense (Incipit qualiter suscipi debeat penitentem)*

pp. 56-66 Prologue of the *P. Cummeani (Ex concilio abbati iscottii*; Bieler ed., pp. 108-110), part of the prologue of *P. Oxoniense II (Beati Iohannis os aurei. Quomodo oportet consilium dare... honum meum leue*; Kottje ed., CCSL 156, pp. 181-182)¹, two *admonitiones paenitentiae*, Isidore of Seville on penance (Isidorus Hispalensis, *De ecclesiasticis officiis*, C.M. Lawson ed., CCSL 113 (Turnhout 1989) p. 80), and commutation tables²

pp. 66-82 Gregory I, *Libellus Responsionum* cc. 2, 4, 10, 11 (*Gregorii I Papae registrum epistolarum* 2, L.M. Hartmann ed., MGH Epistolae 2 (Berlin 1899) pp. 331-343)

pp. 82-101 Excerpts of the *Coll. Dionysiana Adaucta*:

pp. 82-85 *Epistola Canonica* cc. 1-11 (PL 56, 890)³

pp. 85-86 *Constitutio Silvestri episcopi orbis Romae* (PL 8, 829-840); *Concilium intra Thermas Domitiani* 4-6 (PL 8, 825-826)

pp. 86-88 Roman Council (743) cc. 1-3, 7, 8, 10 and 13 (MGH Concilia II,1, pp. 11-15; *Decretum Zacharie pape*)

pp. 88-91 Letter of Ps.-Deusdedit to Gordianus of Sevilla (JE †2003; *Concilium diversorum patrum*)⁴; decretal of John VIII (JE 3258; *De eo qui filium suum baptizauerit et suscepit*)⁵; council of Braga a. 563, c. 78 (Vives ed., p. 104)

pp. 91-96 Pseudonymous decretal attributed to Leo I on the election and ordination of bishops.⁶

Haut Moyen Âge. Genèse du livre de l'évêque. Spicilegium Sacrum Lovaniense. Études et documents 49 (Leuven 1998) pp. 62-70).

¹ Inserted into the preface are excerpts of Origenes' Commentary on Matthew and Council of Laodicea, c. 30.

² This text, attributed to Gregory (the Great?), is also found in the *Coll. 9libr.* and the *Coll. 5libr.*

³ Introductory letter of the *Dionysiana Adaucta*, see F. Maassen, *Geschichte der Quellen und der Literatur des canonischen Rechts im Abendlande* 1. *Die Rechtssammlungen bis zur Mitte des 9. Jahrhunderts* (Graz 1870) pp. 454-465 and L. Kéry, *Canonical collections of the early middle ages (ca. 400-1140). A bibliographical guide to the manuscripts and literature. History of medieval canon law* 1 (Washington 1999) pp. 20-21. The *Epistola* was known in southern Italy in the ninth century, for it is cited in Theodosius of Oria's capitulary (*MGH Capitula episcoporum* III, Pokorny ed., pp. 309-316).

⁴ After the rubric comes the title *Sancti patres .iulius. innocentius. et celestinus. cum episcoporum plurimorum. et sacerdotum conuentum confirmauerunt...* This sentence is not recorded in other manuscripts.

⁵ This is probably one of the earliest witnesses of this text. Cf. D. Jasper and H. Fuhrmann, *Papal letters in the Early Middle Ages. History of Medieval Canon Law* 2 (Washington D.C. 2001) p. 130.

⁶ The text, made up of quotations from conciliar and papal decrees, is full of corrections and erasures and may represent the autograph. *Leo episcopus universis ecclesiis... per italiam constitutos. Peruenit ad nos. quod quidam inconsiderato zelo ecclesiam domini uelud priuatas possessiones inuadere... Verumtamen pontificem eligere non ad secularem pertinet secundum canonum instituta. sed clericorum cautela et diligentia talia instituantur.* Then follow quotations from church councils: *Sic enim canonica scriptura asserit. populus non eligat episcopum. sed tantum clericus. Anthiocenum quoque refert concilium. ut nullus ordinetur episcopus. nisi his quem electio clericorum poposcerit (!). Sanctorum patrum statuta asserit. quodsi quis presbiter. uel diaconus. per secularem dignitatem ecclesiam domini obtinuerit... Item canon apostolicum dicit: Si quis episcopus secularibus potestatibus domum domini obtinuerit... The text continues after *Hinc summopere cauenda est* with a letter of Leo I (JK 410) with many changes to the original text.*

pp. 97-101 Excerpts of the letters of Innocent I to Exsuperius of Toledo (JK 293), Leo I to Rusticus of Narbonne (JK 544), and Innocent to Decentius of Gubbio (JK 311)

pp. 101-102 Excerpts of Jerome's commentaries on Joel and Ezekiel, Gregory I, *Libellus Responsionum* c. 8

pp. 102-116 *Epitome Hispana (Incipit excerpta de canonibus sententię tantum ex libro bracarensi episcopi martini galatię de diuersis conciliis)*¹

pp. 116-118 *Iudicia Theodori G (Excerpta Theodori archiepiscopi)*²

pp. 118-120 Excerpts *Dionysiana Adaucta: De canonibus Sancti Siluestri* (ed. Hinschius, p. 449); Roman Council of 595, c. 1

pp. 119-120 Canons concerning maltreatment of clerics ascribed to the councils of Nicea and Chalcedon³; *P. Vallicellianum I*, cc. 8-9, 14, 128, 137-138 (titled *Theodori archiepiscopi*; Schmitz I, pp. 247-339); *Registri Eccl. Carthaginensis Excerpta* 72, Council of Braga II (572), c. 63 (Vives ed., p. 101), Mileve, c. 1, and Carthage III, c. 14⁴; Mass commentary of Ps.-Jerome⁵, *Cap. Iud. X,4, Iud. Theod. U, I,4,5*⁶ and II,5,4-6, Roman Council of 743, cc. 5-6 (MGH Concilia II,1, pp. 13-15), Roman Council of 721, c. 9, *Iud. Theod. U, II,12,26 (Excarpus Cummeani III,24)*, and II,11,7 (*Exc. Cum. I,26*)

pp. 124-148 Mass exposition (*Introitus misse cui conuenit, patriarcharum prophetarum que praeconiis... omnes respondent deo gratias*)⁷

pp. 149-154 *Coll. Hibernensis* 38,7-10, 39,1-4 (Wasserschleben, *Irische Kanonensammlung*, pp. 143-147, 150)⁸

pp. 154-160 *Ps.-Clemens ad Iacobum* (JK †11); anonymous text on baptism (*Qualiter custodienda uel cauenda obseruandaque sit aqua... sibi damnatione acquirit*)

¹ Excerpts of *Epitome Hispana*, nos. 1, 2, 7-8, 11-12, 15-21, 25-26, 28, 30-36, 39 (+ *Ex concilio urbico* (= Conc. Auxerre, ca. 585)); 1-3 (*Epistolae papae*). The manuscript was not known to G. Martínez Diez, *El Epitome Hispanico. Una colección canonica española del siglo VII* (Santander 1961) pp. 98ff.

² *Iud. Theodori G*, cc. 5, 7, 8, 12, 22, 36, 38, 41-43, 61, 71, 73, 87, 114, 131, 133-135, 143, 149-152, 155, 157-159, 163, 164, 185, 186 (Finsterwalder, pp. 253-270).

³ Apocrypha based on *Conc. Romanum* (861), c. 6 (*De his autem qui episcopum percutere. uerberare aut cedere praesumpserint*; *Die Konzilien der Karolingischen Teilreiche 60-874*, W. Hartmann ed., MGH Concilia 4 (Hannover 1998) p. 52), *Iud. Theodori G*, 87 (*Ex niceno concilio. Nulli christianorum licitum est iniuriam episcopo prodere*; Finsterwalder, p. 262), and *Can. Apostolorum* 29 (*Si quis presbiter aut diaconus depositus*).

⁴ *Concilia Africae a. 345 – a. 525*, C. Munier ed., CCSL 149 (Turnhout 1974) pp. 199, 220, 332.

⁵ The version is a short one that departs from versions edited by R.E. Reynolds, 'A South Italian liturgico-canonical mass commentary', *Mediaeval Studies* 50 (1988) pp. 626-670.

⁶ The canon is different from Theodore's version: *Si quis omicidium fecerit. episcopi iudicio erit. si tamen religiosus fuerit. sin alias. eat ad religionem sanctam monachorum cenobitarum iudicandus. quia cecus. ceco non potest ducatum prebere*. See also *Coll. 5libr.* IV,121 (Vat. lat. 1339, f. 191v).

⁷ Without rubric. The text has similarities with the expositions of Amalarius of Metz (*Amalarii episcopi opera liturgica omnia* I, J.M. Hanssens ed., *Studi e Testi* 140 (Vatican 1950) pp. 298-321).

⁸ B version. Part on monks is found as a separate text in ms. Montecassino, Arch. dell'Abbazia, 439 (Siponto? s. X-XI). See R.E. Reynolds, 'A monastic florilegium from the *Collectio Canonum Hibernensis* at Montecassino', *Revue Bénédictine* 114 (2004) pp. 92-111.

- pp. 160-169 Council of Nicea (325) cc. 1-20 (Interpretatio Isidori) (*In christi nomine. Incipiunt capitula nicenii concilii... ad orationem domino uota reddamus*)¹
- pp. 169-224 *Coll. Vetus Gallica* (ed. Mordek, pp. 344-608) (*Incipiunt capitula de reliquiis concilii... ad ecclesiasticus gradus prouetantur statim*)
- pp. 224-234 Leo I, letters to Rusticus of Narbonne (JK 544) and the bishops of Sicily (JK 414; excerpts) (*Incipit epistola papae leonis ad rusticum episcopum/ Alia decretu leoni pape... Explicit epistola papae leonis presbiteri ad rusticum episcopum*)
- pp. 234-249 *Gelasius universis episcopis per Lucaniam et Brutios et Siciliam constitutis* (JK 636)
- pp. 249-268 *Iud. Theod. G* (Finsterwalder ed., pp. 253-270) (*Exemplar sancti gregorii pape*)
- pp. 268-270 Pope Zachary, letter to Theodore of Pavia (JE 2306)
- pp. 270-273 Tract on gemstones (*Primis lapis. Iaspidium multa sunt genera... in humilium animo designatur*)²
- pp. 273-278 *Evantius Troclariensis abbatis epistola* (PL 88, 719) (*Incipit ep[ist]ola a domno euanio archidiacono ex scripturis contra eos qui putant inmundum esse sanguinem... sed cui modica non sufficiunt*)
- pp. 278-281 Anonymous *epistola contra hereticos sive scismaticos, qui sanguinem non comedunt (...)* *collecta ex libris maiorum XLVIII*³
- p. 283 Sermon of Firmanus of Fermo (†992) (*Item prosa eiusdem uersi sancti firmani*)⁴
- p. 284 Hymn in praise of Firmanus⁵

1.3 Function of the manuscript

Before we can draw some conclusions as to the purpose of the codex, it is necessary to summarize the observations made above. This book once belonged to the monastery of San Nicola della Cicogna, a dependency of Montecassino founded in the late tenth century and

¹ *Ecclesiae Occidentalis monumenta iuris antiquissima canonum et conciliorum Graecorum interpretationes Latinae* I, 2, C.H. Turner ed. (Oxford 1899) pp. 155-243

² The tract is found in biblical exegesis. Cf. Hrabanus Maurus, *De universo* 17,8 (PL 111, c. 464).

³ With quotations from church fathers, especially St Augustine.

⁴ See 'La vie de S. Firmanus abbé au diocèse de Fermo par Thierry d'Amorbach', *Analecta Bollandiana* 18 (1899) pp. 22-33 and *Bibliotheca Hagiographica Latina Antiquae et Mediae Aetatis* 1 (Brussels 1898) pp. 449-450. Saint Firmanus of Fermo was venerated in Montecassino and his death on March 11 (992) is recorded in San Nicola's Necrology, see C. Hilken, *The Necrology of San Nicola della Cicogna (Montecassino, Archivio della Badia 179, pp. 1-64)*. Pontifical Institute of Mediaeval Studies, studies and texts 135. *Monumenta Liturgica Beneventana* 2 (Toronto 2000) p. 48 and p. 84.

⁵ The author of the text, which is hardly legible, may have been Theodoricus of Amorbach (ca. 1000). See Hilken, *The Necrology of San Nicola della Cicogna*, p. 48, n. 91.

closed down in the fourteenth century. The only extant codices bearing an *ex libris* of San Nicola are ms. Arch. dell'Abbazia, 179 (s. XIⁱⁿ) and ms. 191 (s. XI^{med}), which contain monastic texts and an *Evangeliarium* respectively.¹ Apart from these books, it is unknown whether any other books survived after San Nicola was closed down. Judging from the two surviving inventories of its library from the twelfth and the fifteenth centuries, San Nicola had possessed mainly liturgical and monastic books.² The fifteenth-century inventory mentions a *liber ad visitandum infirmum et canones multi* which probably refers to ms. Montecassino 372. The codex itself consists of two parts. The first part is written by a single hand and is of a mixed liturgical and canonical contents. This part seems to end with the closing lines of the Mass commentary of page 148. The last lines of this text are written in the margins of the last leave of a quinio, while an excerpt of the *Hibernensis* begins on a new quire (p. 149) in a new hand. Perhaps these two parts functioned independently for some time. This could also explain why the G version of the Theodore of Canterbury's judgments is copied twice, in the first part under the name of Theodore himself and in the second part under the name of Gregory I.³ Being conceived independently, both parts may have been joined at an early stage or at least before the numbering of the quires of the entire codex. It is unlikely that San Nicola could have produced this rich collection of different texts.

The manuscript was most likely produced in Montecassino and then sent to its dependency in order to provide it with a 'textbook' for pastoral care. It is at least possible that the codex was first used in Montecassino before being handed down to San Nicola. Except for the excerpts of the *Hibernensis*, the manuscript contains surprisingly few texts dealing with monastic affairs.⁴ The mixed liturgical-canonical content of the first part suggests that the manuscript was composed to meet the pastoral needs of a monastery. The liturgical part of the manuscript begins with the elaborate *ordo* for the anointing the sick and deathbed penance.

¹ H. Mordek, *Bibliotheca capitularium regum Francorum manuscripta: Überlieferung und Traditionszusammenhang der fränkische Herrschererlasse*. MGH, Hilfsmittel 15 (München 1995), pp. 273-4; Hilken, *The Necrology of San Nicola della Cicogna; Consuetudines saeculi octavi et noni*, K. Hallinger, *Corpus Consuetudinum Monasticarum* I (Siegburg 1963) pp. 185-186, 229-261. The former contains a necrology, a martyrology, the Rule of St Benedict, homilies of Gregory the Great, the *Capitulare Monasticum*, the letter of abbot Theodemar to Charlemagne, and a text on the liturgy of the hours.

² The twelfth-century inventory of ms. Montecassino, Arch. dell'Abbazia, 191 lists antiphoners, psalters, two sacramentaries, several books of the Bible, the rule of Saint Benedict, and Gregory I's Dialogues (Hilken, *The Necrology of San Nicola della Cicogna*, pp. 4-5). The fifteenth-century inventory (ms. Vatican, BAV, Vat. lat. 3961) mentions eight books, among others ms. Montecassino 372.

³ Other Italian manuscripts in which the G version is attributed to Theodore are Rome, BAV, Vat. lat. 5751 (Bobbio, s. Xⁱⁿ), London, British Library, Add. 16413 (South Italy, s. XIⁱⁿ) and Rome, Bibl. Vallicelliana, T. XVIII (South Italy, s. XIⁱⁿ).

⁴ The canons of the *Coll. Hibernensis* deal with the definition of a monk and the different types of monks (cenobites, hermits, etcetera). Significantly, the canons on the monastic life included in the *Coll. Vetus Gallica* are omitted in the version of that collection in this manuscript, see R.E. Reynolds, 'A Beneventan monastic excerptum from the *Collectio Vetus Gallica*', *Revue Bénédictine* 102 (1992) pp. 298-308, see p. 302.

The next text, the *P. Casinense*, comprises a penitential *ordo*, canons, and commutations. It is part of a larger series of texts on penance, which includes the prefaces of several penitentials, commutation tables, and two sermon-like *admonitiones penitentię*, one for male and one for female penitents.¹ The manuscript then moves to canon law: the *Libellus Responsionum*, the *Coll. Dionysiana Adaucta*, and the *Epitome Hispana*. Whereas the liturgical and penitential texts of the first quires seem to be aimed at priests working in pastoral care, some of the canonistic texts deal with subjects that go well beyond the concerns of ordinary priests, as for example the canonical dossier falsely ascribed to Leo I censuring the unlawful election and ordination of bishops. The text – uniquely preserved in this manuscript – is an *ad hoc* compilation of canons of conciliar and papal decrees, full of corrections and adaptations made to fit the canons into the dossier.²

The second part (pp. 149-284) continues along the same lines as the first part and puts much stress on canonical discipline, clerical hierarchy, and the pastoral and sacramental duties of priests.³ Apart from some texts on monastic life and large extracts from canonical texts, it contains an anonymous baptismal instruction which adds to the pastoral character of the codex. The last quires feature some peculiar texts, namely a tract on gemstones perhaps taken from Bede's exegetical works, two letters on food taboos – the first of which was written by Evantius Troclariensis in the diocese of Zaragoza in the seventh century, a sermon assigned to St Firmanus of Fermo and a hymn in praise of this saint. Evantius' text is directed against people who, like the Jews, refrained from eating the blood of animals. Since Theodore of Canterbury's somewhat stricter judgments on food are also included in this codex, these letters may have been intended as compensation for Theodore's views.

The overall impression created by this manuscript is that of a collection of texts for the instruction of priests or possibly a reference work to be consulted by monks serving as priests in local churches.⁴ For our period there is a great deal of evidence for the role of Italian monasteries in pastoral care.⁵ Hilken remarked that the community of San Nicola owned

¹ The last commutation table is also found in the *Coll.9libr.* (Vat. lat. 1349, f. 217r-v) and the *Coll.5libr.* and seems to be of South Italian origin.

² Montecassino, Archivio dell'Abbazia, 372, pp. 91-96.

³ The first concern is reflected by the canons ascribed to councils of Nicea and Chalcedon (pp.119-120) on clerics falsely accusing bishops, the latter by the allegorical Mass exposition of pp. 124-148.

⁴ The function of our codex is somewhat reminiscent of two older, Frankish manuscripts analysed by Y. Hen, 'Knowledge of Canon Law among rural priests: the evidence of two Carolingian manuscripts from around 800', *Journal of theological studies* 50 (1999) pp. 117-134.

⁵ A. Odermatt, *Ein Rituale in Beneventanischer Schrift. Roma, Biblioteca Vallicelliana, cod. C 32, Ende des 11. Jahrhunderts*. *Spicilegium Friburgense* 26 (Freiburg 1980) pp. 102-104 and G. Constable, 'Monastic rural churches and the Cura Animarum in the early Middle Ages' in *Cristianizzazione ed organizzazione ecclesiastica*

estates in the surrounding areas and was involved in both the economic and spiritual life at the region.¹ It is not surprising, therefore, to find a manuscript that was written to meet the monastery's pastoral needs. H.E.J. Cowdrey stresses the pastoral and edificatory purposes of Montecassino's canon law collections of the early eleventh century.² Albeit not entirely canonistic, this particular manuscript seems to fit into this general picture.

1.4 A North-Italian exemplar?

As the manuscript was written in the South, most probably in Montecassino, the content of the first part bears a resemblance to that of North Italian manuscripts. The combination of the long preface of the *P. Oxoniense II* and that of the *P. Cummeani* can mainly be found in North Italian manuscripts.³ Early witnesses of the *Coll. Dionysiana Adaucta*, the *Cap. Iud.*, and the *P. Vallicellianum I* are recorded in manuscripts from Vercelli, Verona, and Bobbio. The codex is particularly closely related to ms. Vatican, BAV, Vat. lat. 5751, written in Bobbio in the late ninth or early tenth century, which once constituted one codex with ms. Milan, Bibl. Ambrosiana, G. 58 sup.⁴ It will be demonstrated below that the compiler of the *P. Casinense* made use of a version of the *Cap. Iud.* identical to that in this manuscript.⁵ Moreover, the *ordo* of the *P. Casinense* contains a rare prayer (*Deus qui propter iustum iudicium*) which is, with one exception, only recorded in ms. Vat. lat. 5751.⁶ Both manuscripts also contain the long preface of the *P. Oxoniense II*, excerpts of the G version of the penitential of Theodore under the title *Excerpta Theodori*, and the *Epitome Hispana*.⁷ Other evidence for an exemplar from Bobbio is the list of questions for penitents included in the *P. Casinense*, which is also

delle campagne nell'alto medioevo: Espansione e resistenze. Settimane di Studio 28 (Spoleto 1982) pp. 349-389. See also chapter 8.

¹ Hilken dates most of the evidence for the monastery's economic activities to the twelfth, thirteenth, and fourteenth centuries (*Necrology*, pp. 8-11), but economic ties between San Nicola and local villages may already have existed in the eleventh century. The necrology also includes the names of lay people. Cf. H. Dormeier, *Montecassino und die Laien im 11. und 12. Jahrhundert*. MGH Schriften 27 (Stuttgart 1979) pp. 127-131.

² Cowdrey, *The age of abbot Desiderius*, pp. 43-44 and Laudage, *Priesterbild und Reformpapsttum*, pp. 78-83.

³ Körntgen, *Studien zu den Quellen*, pp. 121-130.

⁴ See Kaiser, 'Zur Rekonstruktion einer vornehmlich bußrechtlichen Handschrift aus Bobbio', pp. 538-553.

⁵ Ms. Montecassino 372 also shares some texts with the South Italian ms. London, British Library, Add. 16413 (s. XI^m) such as the *Epitome Hispana* and the G version of Theodore, but the version of the *Cap. Iud.* used in the *P. Casinense* agrees with that of the Vatican rather than the London manuscript.

⁶ This exception is the penitential *ordo* in the late eleventh-century ms. Rome, Bibl. Vallicelliana, C. 32. See Odermatt, *Ein Rituale in Beneventanischer Schrift*.

⁷ Körntgen, *Studien zu den Quellen*, p. 131. In the Montecassino manuscript this text is copied under the title *Beati iohanni os aurei*, while in the Bobbio manuscript it is transmitted under the title *Quomodo debent consilium christiani dare*. In the Vat. lat. 5751 manuscript, however, the Ps.-Chrysostome sermon *Prouida mente* is titled *In Christi nomine incipit de poenitentia Iohannis os aurei*. Although this particular sermon is lacking in our manuscript, the rubric is nearly the same.

found in manuscripts from Bobbio. Ms. Montecassino 372, thus, testifies to the importance of North Italian centres of book production for the dissemination of penitentials and canon law in South Italy.¹

1.5 The *P. Casinense*: its structure

The structure of the *P. Casinense* is of a special kind, since, unlike the other penitentials examined in this study, its canons are embedded in a liturgical *ordo*. The first part of this *ordo* contains directions for the liturgy of hearing confession, while the part that follows upon the canons is concerned with the absolution of the penitent. The canons are subdivided into twelve chapters.² The titles of most of the chapters were derived from the Frankish *Capitula Iudiciorum*, although the compiler of the *P. Casinense* did not retain the subdivision in *Iudicia Canonica*, *Iudicia Theodori* and *Iudicia Cummeani*. A comparison of the rubrics of both texts reveals that he altered the structure of his main source at several points.

<i>P. Casinense</i>	<i>Cap. Iud.</i>
I. Capitula de homicidio	I. De homicidio
II. De fornicatione uel adulterio	VII. De fornicationibus uel adulteriis et reliqua ingenia fornicandi
III. De pollutione	X. De vitiis luxuriandi et de ludis puerilibus uel de immundis pollutionibus
IV. De periurio	XV. De periurio et falso testimonio et mendatio
V. De falso testimonio	XXVIII. De ira, tristitia, odio et maledicto
VI. De detractone uel odio	XXX. De detractone, murmuratione, inuidia
VII. Inquisitio de mulieribus	-
VIII. De capita quę dicenda sunt ad uirorum seu ad mulieres	-
IX. De fraude	(XII. De furto et incendio et sepulchrorum violatoribus)
X. De mundis et immundis animalibus quę non licet comedere	XXIII. De discretionem ciborum et de his qui immunda comedunt
XI. De his qui postquam se deo uobunt ad seculum reuertuntur	XI. De eo qui postquam se deo deo uerit ad seculum reuertit
XII. De hereticis et ordinibus malis	XXVI. De heresibus et contentionibus

The canons are distributed, if not always consistently, over the twelve chapters. For example, chapter II on fornication also contains canons on fasting and the liturgical hours. Two chapters are, moreover, classified not according to topic but to gender, the first of which is headed ‘interrogation of women’ and the second ‘on topics that should be said to both men

¹ On the importance of Bobbio for the dissemination of the canon law collection *Concordia Canonum* in the South see K. Zechiel-Eckes, *Die Concordia Canonum des Cresconius. Studien und Edition* 2 vols. Freiburger Beiträge zur Mittelalterliche Geschichte 5 (Freiburg 1992).

² The title of chapter XII (*De hereticis et ordinibus malis*) is not printed in Schmitz’ edition.

and women'. The first addresses issues like abortion, rituals associated with paganism, and fornication, the latter blasphemy, and sexual abstinence. Its only on occasion that penitentials devote separate chapters to women. Separate chapters for women, furthermore, occur in the *P. Ps.-Egberti* and the *P. Vaticanum*, the latter of which presents its canons on sexual offences and homicide committed by women grouped in separate chapters.¹ There is no evidence that the compiler of the *P. Casinense* used one of these texts. It is more likely that the distinction was inspired by a list of questions about the penitent's sins which were copied into mainly Italian and Anglo-Saxon manuscripts. The questions of this list are classified into one general section and two separate sections for women and clerics.² Significantly, this text is also inserted into the *ordo* of the *P. Casinense* in a version, though omitting this threefold distinction.³ Schmitz also points out that phrases like *inquisitio* and *capitula que dicenda sunt* suggest that these canons, or at least their contents, were to be read out aloud to a penitent.⁴ The rubrics do not necessarily mean that canons were actually read at confession, but they could simply indicate for whom these topics were intended.

According to Schmitz, the *P. Casinense* originally ended with XII,16-18 and the remainder of the canons (XII,19-36) should be regarded as an addition to the 'original' version of the *P. Casinense*. The canons XII,16-18 indeed constitute a natural break in the text, for this section consists of directions for confessors with regard to the seal of confession, imposition of penance upon the unfree, and confession of the dying. The remaining canons treat topics which, for the greatest part, had already been dealt with in previous chapters. Some regulations of the previous chapters are repeated almost verbatim. We will also see that, whereas the *Cap. Iud.* was the principal source of the main text, the *P. Vallicellianum I* provided for most canons in the appendix-like section XII,19-36. There is, however, neither a change in the hand nor a rubric in the manuscript that marks off the appendix from the rest of the penitential. It seems that the *ordo* and a part of the canons constituted a core text to which other canons taken from other sources were added later. The inconsistencies and repetitions crept in during this process of multiple redactions.

¹ L. Körntgen, 'Ein Italienisches Bußbuch und seine Fränkischen Quellen. Das anonyme Paenitentiale der Handschrift Vatikan, Arch. S. Pietro, H 58' in H. Mordek ed., *Aus Archiven und Bibliotheken. Festschrift für Raymund Kottje zum 65. Geburtstag* (Freiburg 1992) pp. 189-205. See chapter 2.

² This interrogatory is found in ms. Paris, BNF, lat. 3880, ms. Vatican, BAV, Vat. lat. 5768 (s. X^{ex}; Bobbio), ms. Cambridge, CCC, 320 (*P. Cantabrigiense*; Canterbury; s. X^{med}), Rome, Bibl. Nazionale Centrale, 2081 (Sessor. 95) (Nonantola; s. X/XI), ms. Barcelona, Bibl. Universitaria, cod. 228 (North Italy, s. X/XI), ms. London, British Library, Cotton Vesp. D XX (England; s. X/XI), and in the *ordo* of a now lost Bobbio codex edited by L. Muratori, *Antiquitates Italicae Medii Aevi post Declinationem... AD an. 1500*, V (1741) pp. 732-33.

³ For this list see below.

⁴ Schmitz I, p. 394.

1.6 The *P. Casinense* and the *Capitula Iudiciorum*

Fournier demonstrated that the Frankish *Cap. Iud.* was the principal source of the *P. Casinense*. This text is preserved, alongside others, in four extant Italian manuscripts and its canons were also included in the two important South Italian canon law collections, the *Coll.9libr.* and the *Coll.5libr.*, and in the collection of Anselm of Lucca.¹ Its canons can easily be identified by the penances of its ‘Canonical judgments’, which carefully allotted each separate clerical grade its own penance.² While, for example, most penitentials enjoin an exile of ten years on clerics who have committed homicide, the *P. Casinense* and *Cap. Iud.* demand deposition from office, a fifteen year penance, and a lifelong pilgrimage on bishops who have committed this crime. Priests suffer the same fate as bishops, although their penance is reduced to twelve years. The penances of deacons, monks, clerics of minor orders, and lay people are less heavy, but they were to be excluded from sacerdotal offices.³ It is probably that, apart from the ‘canonical judgments’, the compiler of the *P. Casinense* drew on the *Iudicia Cummeani* and the *Iudicia Theodori* of this penitential as well. The *Cap. Iud.* has come down to us in two distinct versions.⁴ The wording of several canons indicates that the compiler made use of a version of which the only complete text is preserved in ms. Vat. lat. 5751 from Bobbio.⁵ We have seen that ms. Montecassino 372 and this manuscript from

¹ Fournier, ‘Études sur les pénitentiels III’ 121-127. Cf. Meens, *Het tripartite boeteboek*, pp. 138-176 and L. Mahadevan, ‘Überlieferung und Verbreitung des Bußbuchs “Capitula Iudiciorum”’, *ZRG kan. Abt.* 72 (1986) pp. 17-75, see pp. 20-45. For the *Coll.5libr.* see Fournier, ‘Un groupe de recueils canoniques italiens’, pp. 213-331 and Reynolds, ‘The south-Italian canon law *Collection in five books* and its derivatives’, pp. 278-295. Books 1-3 of this collection are edited in *Collectio canonum in V libris (libri I-III)*, M. Fornasari ed. CCCM 6 (Turnhout 1970). See also chapter 8. For Anselm see K.G. Cushing, ‘Anselm of Lucca and Burchard of Worms: Rethinking the sources of Anselm 11, *De Penitentia*’ in K.G. Cushing and R.F. Gyug ed., *Ritual, text and law. Studies in medieval canon law and liturgy presented to Roger E. Reynolds*. Church, faith and culture in the medieval West (Aldershot 2004) pp. 205-224.

² Cf. *P. Casinense* I,1, II,1, II,6, II,9-10, III,4, IV,1 and V,1.

³ *Cap. Iud.* c. I,1a: *Si quis homicidium fecerit, episcopus XV annos peniteat et deponatur. Cunctos dies uitae suae peregrinando finiat. Presbyter XII annos peniteat, IV ex his in pane et aqua et deponatur superiori sententia. Diaconus...* etc. The *P. Casinense* I,1 mentions neither a period in exile nor a pilgrimage.

⁴ F.B. Asbach, *Das Poenitentiale Remense und der sogen. Excarpsus Cummeani: Überlieferung, Quellen, und Entwicklung zweier kontinentaler Bußbücher aus der 1. Hälfte des 8. Jahrhunderts* (Diss. Regensburg 1978) pp. 198-193 and Mahadevan, ‘Überlieferung und Verbreitung des Bußbuchs “Capitula Iudiciorum”’ pp. 17-75. The first version is preserved in mss. Sankt Gallen, Stiftsbibliothek, 150 (Saint Gall; s. IX), London, British Library, Add. 16413, Vienna, Österreichische Nationalbibliothek, ms. 2223 (Mainz? s. IX^m), Vercelli, Biblioteca Capitolare, CCIII (32) (Italy or Northern France; s. IX^{4/4}), and the *Coll.9libr.*, while the only complete copy of the second version is preserved in ms. Vat. lat. 5751. The main difference between the two versions lies in the organisation of the rubrics. The inscriptions of Vat. lat. 5751 are divided into eleven blocks that occur throughout the text. The other version begins with a table of contents, while each separate chapter is announced with a new rubric. Both versions contain canons that are lacking in the other one.

⁵ See for instance *P. Casinense* XII,6: *Si quis autem pro mortuo heretico missas ordinauerint et pro religionem reliquias ibidem tenuerit... Reliquias igne cremare debent et annum .i. peniteat. Si autem scit et negligit,*

Bobbio have several other texts in common, and it is, therefore, likely that the compiler borrowed his canons from a codex akin to the Vatican manuscript.

1.7 Other sources of the *P. Casinense*

The *P. Casinense* also includes canons from other sources, such as the *P. Vallicellianum I*, the *Excarpsus Cummeani*, and possibly the Judgments of Theodore. Particularly section XII,18-36 heavily depends on either the *P. Merseburgense A* or the *P. Vallicellianum I*. Because the *P. Vallicellianum I* was more widely disseminated in South Italy and because fragments of the *P. Vallicellianum I* were copied on page 119 of this codex, the compiler probably had this text at his disposal. The strongest evidence for the use of at least one of these penitentials is canon XII,19 on incest that only appears in these texts.¹ In addition to those of the appendix, several canons of the main text may also derive from these penitentials. For example, the canons on pagan superstitions occur in the *Cap. Iud.*, but their wording suggests that they were taken from the *P. Vallicellianum I*.² More difficult to explain is the possible use of the Frankish *Excarpsus Cummeani*, for which the manuscript evidence in Italy is remarkably slight.³ Canons II,11-13 (fornication) and VII,16-17 (on sins committed by women) appear in the same sequence as in the *Excarpsus*.⁴ The chapter on theft has two canons that go back to

penitentiam motus X annos peniteat. Vat. lat. 5751: *Si quis autem pro mortuo heretico missam ordinaverit et pro religione eius reliquias ibidem tenuerit... reliquias igni concremare debet. Si autem nescit et negligit, penitentiam motus X annos peniteat*. Other manuscripts: *Si quis autem pro mortuo heretico missam ordinaverit et pro religione eius reliquias ibidem tenuerit... reliquias igni concremare debet et I annum peniteat. Si autem scit et negligit X annos peniteat*. See also *P. Casinense* I,6: *Si quis per rixam homicidium fecerit, X annos peniteat*. Vat. lat. 5751: *Qui occiderit hominem per rixam, X annos peniteat*. The others read: *Qui occiderit hominem per rixam, VI (or VII) annos peniteat*.

¹ This text refers to a *barbanus*, a paternal uncle. This term is only mentioned by these penitentials. Fournier, 'Études sur les pénitentiels I. Le pénitentiel Vallicellianum I', p. 301. See also *P. Casinense* XII,31: *Si quis in die dominico per negligentiam ieiunaverit, aut operam fecerit, aut pro decore sui uultus se ualnearuerit, VII dies peniteat...* The underlined parts can only be found in *P. Vallicellianum I*, c. 108 and *P. Merseburgense A*, c. 92 (Kottje ed., CCSL 156, p. 153).

² *P. Casinense* VII,10: *Si quis ad arborem, uel ad fontem, aut ubicumque excepto ad ecclesiam uotum uouerit (nisi ad ecclesiam in the Cap. Iud., excepto/tum in ecclesia in other texts); VII,12: Si quis in kalendas ianuarii cum ceruulo aut cum uecula uadit (ambulauit in the Cap. Iud., missing in Vat. lat. 5751; uadit in other texts). P. Casinense VII,9 (Si qua mulier filium suum aut filiam suam super tectum, aut in fornace, aut super puteum, uel ad parietem...) occurs in *P. Merseburgense A*, c. 88 (Kottje ed., CCSL 156, pp. 131-132; ms. Vat. lat. 5751).*

³ Isolated canons occur in ms. Milan, Bibl. Ambrosiana, G. 58 sup., which once formed one codex with ms. Vat. lat. 5157. It seems that the compiler used a codex that contained such excerpts. See Körntgen, *Studien zu den Quellen*, p. 11 and Kaiser, 'Zur Rekonstruktion einer vornehmlich bußrechtlichen Handschrift', pp. 538-553. Canons of the *Excarpsus* are appended to the *P. Merseburgense A* of Merseburg 103; see Hägele, *Das Paenitentiale Vallicellianum I*, pp. 44-45. A part of the *Excarpsus* is copied in ms. Vienna, Österreichische Nationalbibliothek, 2225, probably based on an Italian exemplar. See R. Meens, "'Aliud Benitientiale': The ninth-century *Paenitentiale Vindobonense C*", *Mediaeval Studies* 66 (2004) pp. 1-26, especially pp. 19-20.

⁴ *P. Casinense* II,11 (*Si quis frater cum frater suum carnalem fornicauerit...*) is based on Theod. U, I,2,19, but is also recorded as *Exc. Cum.* II,3/*P. Merseburgense A*, c. 152; *Cas.* II,12 (*Si quis intrauerit ad ancillam suam...*) is based on Cummean II,26/27, but also occurs in *P. Merseburgense A*, 60/*Vallicellianum I*, 21/*Exc. Cum.* III,32;

sources other than the *Cap. Iud.*¹ The list of periods of sexual abstinence of canon XII,33 seems to have been collected mainly from the Judgments of Theodore. Significantly, the addition of the octave of Pentecost (*pro reuerentia sollempnitatis regenerationisque*) to the periods of sexual abstinence only has a counterpart in the U version of Theodore's judgments, a version which is not recorded in existing Italian manuscripts.² The inclusion of the canon of Elvira concerning Christians who had committed fornication with Jews or gentiles is unusual as it is not found in other penitentials.³

Some versions of canons are significantly different from that offered by their sources, while other canons cannot be found in other texts at all. The new canons and the additions could have been made by the compiler of the *P. Casinense*, but they could also have been taken from an intermediate source. Several examples of new canons occur in the chapter on fornication. The content of II,7-8 on fornication committed by married men does not significantly differ from that of other penitentials except for their penances being changed.⁴ Canon II,8 assigns a penance of five months to men who, having a wife or a *concupina*, have committed fornication 'many times' (*multe*). The canon does not appear in other penitentials but echoes earlier conciliar and papal legislation which tolerates unmarried men having concubines on the condition that the relationship was monogamous.⁵ Canon II,9 deals with fornication with one's mother, sister or niece, but adds the mysterious phrase *Siue cum diāc.* This incomplete ruling probably addressed fornication with either a deacon's wife or widow

Cas. II,13 (*Si quis presbiter aut diaconus uxorem duxerit, in cunctum populum deponatur*) is based on Theod. U, I,9,4/G, 120, but could also be taken from *Exc. Cum.* (III,6). *Cas.* VII,16 (*Si qua mulier cum muliere fornicauerit*) stems from *Exc. Cum.* III,35 or Theod. U, I,2,12; G, 95; *Cas.* VII,17 (*Mulier adultera III annos peniteat*) stems from *Exc. Cum.* III,33 or Theod. U, I,14,14.

¹ *P. Casinense* IX,1 (*Si quis furtum capitale aut casas fregerit aut de ministerio ecclesie furauerit, VII annos peniteat*) perhaps derives from *P. Merseburgense A*, 7/8 et 39/44 (Kottje ed., CCSL 156, pp. 127/136) or *P. Vallicellianum I*, 57/118. Canon IX,6 (*Si quis per potestatem aut quolibet ingenio res alienas malo ordine tulerit uel inuaserit...*) stems from the Simple Frankish Penitentials but is also recorded as *P. Merseburgense A*, c. 21 and *P. Vallicellianum I*, c. 61 (Kottje ed., CCSL 156, pp. 131-132). Canon IX,5 on selling captives (*Si quis hominem uendiderit et eum in captiuitatem duxerit, V annos peniteat*) may be based on *Cap. Iud.* XIII,3.

² XII,33: *Vir abstinere se debet ab uxore sua quadragesima ante pascha et I ebdomada post pascha, unde apostolus ait, ut uacatis orationi, et unam ebdomadam post pentecosten pro reuerentia sollempnitatis regenerationisque, et ante communionem diebus, III et postea similiter, et diebus dominicis, seu in sollempnitatibus sanctorum, et III et VI feria, et sabbato tempore ieiunii, et menstruo tempore, et tribus mensibus antequam pariat, et post partum dies XL...* The phrase *pentecosten... regenerationisque* only occurs in *Iud. Theod.*, U, II,14,12 (not recorded in the *Exc. Carpus*). The possibly South Italian ms. Bamberg, Staatsbibliothek, Misc. patr. 101 (see Loew, *The Beneventan script*, p. 334) contains fragments of the U version.

³ XII,36: *Si quis fidelis cum iudea uel gentilem fuerit mechatus, V annos peniteat a communionem arceatur; si acta legitima penitentia ut alius eum detexerit, post quinquennium poterit dominice sociari.*

⁴ *P. Casinense* II,7: *Si quis laicus habens uxorem suam et cum alterius uxorem fornicauerit, annos II peniteat, clericus III annos peniteat, monachus uel diaconus...* II,8. *Si quis laicus habens uxorem propriam uel concubinam, sed multe fornicatus fuerit, V menses peniteat.* The first canon may be derived from *P. Vallicellianum I*, cc. 14/15.

⁵ See chapter 7. The wording resembles *P. Oxoniense* II, c. 14 (*De his qui cum multis mulieribus fornicatus fuerit*; Kottje ed., CCSL 156, p. 194).

(*diacona*) or a deaconess (*diaconissa*).¹ Canons II,14-15 concerning fornication with one's godmother and fornication between a priest and his goddaughter resemble canons of the South Italian *Coll.9libr.*² Book IX of this collection is a penitential, which includes the entire *Cap. Iud.*, supplemented with rulings from the *P. Ps.-Gregorii*, the *P. Oxoniense II*, and the *P. Vaticanum*.³ This collection also features several canons which cannot be found in earlier sources.⁴ If we look at these canons more closely, they are composed of passages of various other penitentials, such as Theodore's penitential and the *Cap. Iud.*⁵

<i>P. Casinense</i> , cc. II,14/15	<i>Coll.9libr.</i>	Varia
Si quis cum commatre sua de fonte fornicauerit, <i>uitam suam peregrinando finiat et plus de tertia mansione non maneat in ciuitate uel ullo loco et non se mutet, nisi in natiuitate domini siue in pascha, et a communione priuetur.</i>	SYNODUS ROMANA. LIII. Si quis <i>cum matre sua fornicauerit</i> , XV annos peniteat, et <i>numquam mutet cibum nisi die dominicum</i> . Sic in <i>peregrinatione extra patria sua, et numquam faciat in una uillam, aut ciuitatem duas mansiones, nisi per necessitas</i> ; expleta penitentiam tondat caput suum et intret in monasterio et peniteat usque ad mortem. Et <i>numquam communicet</i> , nisi urgentem die mortis periculo...	Si cum matre quis fornicatur, XV annos peniteat et nunquam mutat nisi dominicis diebus. (Theod. U,I,2,16) Si quis homicidium fecerit, episcopus... <i>dies uitae suae peregrinando finiat</i> (...) (Cap. Iud. I,1) (...) in xxx annorum <i>peregrinatione absque carne et muliere et aequo in pane sicco uiuat</i> (...) <i>per duas noctes in una mansione non maneat nisi tantum sollempnitatibus precipuis</i> (Tres Canones Hibernenses c. 3)
Si quis sacerdos cum filia sua spiritali fornicauerit, <i>uendat omnia sua et det pauperibus, et seruiat in monasterio</i> <i>et deponatur</i> . Similiter et illa femina faciat.	IUDICIUM SYNODALE. XL. Si autem <i>sacerdos cum filia sua spiritali fornicauerit</i> , sciat se graue adulterium commississe. Idcirco femina si laica est omnia derelinquat, <i>et tota res sua uendat et donet pauperibus, et conuersa in monasteria, seruiat deo</i> usque ad mortem. Sacerdos autem qui nouum et malum exemplum (!) monstrauit in tempora, ab omni officio <i>deponatur</i> et apprehendat peregrinatione XV annos, et postea uadat in monasterio et cunctis diebus uite suę seruiat deo.	Si quis clericus uel cuiuslibet gradus, qui uxorem habuit..., <i>sciat se adulterium commississe</i> . (Burgundense 12) ... <i>totas res suas uendat et donet pauperibus et conuertatur</i> ... et tundatur ... et usque ad mortem seruiat Deo in monasterio (Colum. B, 20; Cap. Iud. XV,3)

¹ The *P. Vallicellianum C. 6* defines a *diaconissa* as a *uidua deo deuota*, see chapter 7,2.

² See also chapter 8.

³ See Fournier, 'Un groupe de recueils canoniques italiens', Körntgen, *Studien zu den Quellen*, pp. 115-116, and Kerff, 'Das Paenitentiale Pseudo-Gregorii III. Ein Zeugnis', pp. 46-63.

⁴ Gaastra, 'Penance and the law', pp. 85-102. Some of these canons also appear in the *Coll.5libr.* (1014-1023), of which one manuscript is preserved in Montecassino (Arch. dell'Abbazia, 125). See Reynolds, 'The south-Italian canon law *Collection in five books* and its derivatives', pp. 278-295.

⁵ Note that II,15 also corresponds to *Coll.5libr.* II,79 (Fornasari ed., CCCM 6, p. 227).

Although there are considerable differences – the *P. Casinense* discusses fornication with one’s godmother, while the *Coll.9libr.* deals with fornication with one’s mother – the similarities stand out clearly. The precise relationship between both sources is, however, unclear. If the compiler of the *P. Casinense* drew on the *Coll.9libr.*, he must deliberately have ignored canons of the *P. Ps.-Gregorii* and *P. Oxoniense II* in its ninth book. This is highly unlikely. Moreover, both texts drew on different versions of the *Cap. Iud.* The most likely options are that either the compiler of the *Coll.9libr.* included (and revised or expanded) canons of the *P. Casinense*, or that both the *P. Casinense* and *Coll.9libr.* depended on a common source.

The treatment of topics like liturgy and fasting in existing penitentials apparently did not suffice for the compiler. At the end of the chapter on fornication, a canon demands penance for breaking one’s fasts out of voracity before the legitimate hour during the times of fasting.¹ This canon is based on conciliar texts and prohibits eating before the third hour of the day and after the third hour of the night, and drinking after midnight on Christian festivals. The following table shows that the general drift of the canon resembles ancient conciliar legislation.

<i>P. Casinense</i> II,17 ²	Council of Braga II, 65	<i>Cap.Iud.</i> X,23 (<i>Cas.</i> VII,6) + <i>Burg.</i> 18	Synod of Auxerre c.11
Non licet die dominica nec in <i>nativitate domini</i> nec in <i>reliquis precipuis solemnitatibus ante horam tertiam comedere nec post mediam noctem bibere; si praesumpserit, III hebdomadas peniteat</i> in pane et aqua. Ante tertiam nec post tertiam noctis <i>nolite comedere,</i>	Non oportet clericos vel laicos religiosos <i>ante sacram horam tertiam inire convivias</i> ...	Mulieres menstruo tempore non intrent in ecclesiam neque communicent nec sanctaemoniales nec laicae, quod <i>si praesumpserint, III ebdomadas peniteant.</i> Qui <i>manducauerit uoracitatis causa</i> usque	Non licet vigilia paschae <i>ante ora</i> secunda <i>noctis</i> vigiliis perexpedire, quia ipsa nocte <i>non licet post media nocte bibere</i> [aut <i>manducare</i>] <i>nec natale Domini nec reliquas sollemnitates.</i>

¹ *P. Casinense* II,16: *Si quis ante horam legitimam tempore ieiunii non necessitate infirmitatis sed gule obtentu contempserit indicto ieiunio in ecclesia, XL dies peniteat. Si autem in quadragesima hoc fecerit que est ante pascha domini, annum I peniteat, et si per consuetudinem hoc fecerit, ab ecclesia separetur.* It combines *P. Oxoniense I*, c. 45 with Theod. G, 60, both also occur in *Mers. A*, 107/93/*Vallicell. I*, 107/106; *Coll.5libr.* IV,355/359 (Vat. lat.1339, 228v). The order of the *P. Vallicellianum I* is perhaps closest to that of the *P. Casinense*.

² There may also be a connection with a South Italian Mass explanation attributed to Jerome: *...non est licitum post hora tertia die dominico nec sacrificare nec ieiunare. Si quis per neglectum ieiunauerit, vii dies peniteat in pane et aqua...* Cf. Reynolds, *A South Italian liturgico-canonical mass commentary*, pp. 626-670. A short version of this exposition can be found in this manuscript (p. 123).

si per uitiiis uoracitate hoc fecerit, ebdomadam I peniteat.		ad uomitum ... si iterauerit, una ebdomada peniteat.	
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The interdiction against lay people eating in church except in the presence of priests is based on conciliar legislation.¹ The recommendation that Christians take communion every Sunday, or at least every three weeks (XI,6) may go back to the *P. in II libris*, although the content of the ruling is slightly different.² The exhortation that Christians go to church and take communion every Sunday, which stems from Gennadius' *De Ecclesiasticis Dogmatibus*, is combined with a reference to a custom purported to be Greek from the *Iudicia Theodori*. The phrase asserting that the Greeks take communion every day (or every Sunday?) *sine intermissione* ('without interruption') is unique to the *P. Casinense* and perhaps aims at Greek practices in the southern-most parts of Italy.³ A canon only recorded in the *Coll.9libr.* and *Coll.5libr.*, addresses the obligation on the clergy to attend the liturgy of the hours.⁴ The series of canons (XII,15-18) on the administration of penance – the seal of confession, hearing the confession of the dying, and the imposition of penance on the unfree – can be found in approximately the same sequence in book IX of the *Coll.9libr.*⁵ The *P. Casinense* threatens priests who had violated the *secretum penitentię* and who had revealed 'what should remain concealed' with public deposition and lifelong pilgrimage.⁶ This canon, also recorded in the *Coll.9libr.* and the *Coll.5libr.*, does not occur in earlier texts.⁷ The fact that the *P. Casinense*

¹ *P. Casinense* XI,3: *Non licet in ecclesia comedere nisi cum sacerdotibus, et qui presumpserit, III ebdomadas peniteat.* Perhaps based on Council of Laodicea c. 28 (Turner ed. II, p. 366; cf. *P. Vindobonense* C, c. 53, Meens, 'Aliud benitenciale', p. 26) and Theod. U, I,14,17 (*si praesumant, tribus ebdomadibus ieiunet*).

² *P. Casinense* XI,6: *Omni die dominica debent christiani in ecclesiam intrare et communionem suscipere, quia greci sine intermissione omni die communicant; et qui tertia dominica fecerit et non susceperit corpus domini in se, excommunicetur, sicut docet canon. P. in II libris, II,8,24-25 (Theod. U, I,12,1 + Gennadius, *De eccl. dogm.* 53): *Omni die communicare nec laudo nec uitupero, tamen omni dominica communicare exortor, si tamen mens in affectum peccandi non sit. Greci omni dominica communicant, clerici et laici, et qui in tribus dominicis nec communicauerint, excommunicantur, sicut canones habent.* The Frankish *P. in II libris* was known in South Italy. A copy is preserved in Montecassino, Arch. dell'Abbazia, 554 (s. X-XI). See also chapter 2.*

³ The texts of Theodore and Gennadius can also be found as *Coll.9libr.* IX,124-125. Significantly, latin church fathers complained about the supposed 'Greek' or 'Eastern' practice of communicating only once in a year. See A.A.R. Bastiaensen, *Ere wie ere toekomst. Over ontstaan en vroege ontwikkeling van de Latijnse liturgie* (Nijmegen 2006) pp. 57-58.

⁴ *P. Casinense* XI,7: *Si quis officium suum neglexerit, id est, matutinum et I et III et VI et VIII (complines omitted); Coll.9libr.* IX,154 (f. 224v); *Coll.5libr.* III,254 (Fornasari, CCCM 6, p. 439).

⁵ *P. Casinense* XII,15: *Cap. Iud. XXXIV,4 (Versio Vaticana; Theod. U, I,8,5) and Coll.9libr.* IX,128,2 (Vat. lat. 1349, f. 216r); XII,16: cf. *Coll.9libr.* IX,130 (216v); *P. Casinense* XII,17: *Coll.9libr.* IX,128,1 (216r); *P. Casinense* XII,18: *P. Oxoniense II*, 63 and *Coll.9libr.* IX,134 (218v).

⁶ *P. Casinense* XII,17: *Si quis sacerdos palam fecerit et secretum penitentię usurpauerit et quauis homo intellexerit, et declaratum fuerit quem celare debuerit, ab omni honore suo in cunctum populum deponatur et diebus uite suę peregrinando finiat.*

⁷ *Coll.9libr.* IX,128: *Apostolicum CXXVIII. Caueat ante omnia sacerdos, ne de his qui ei confitentur... Si quis sacerdos palam fecerit...* The first part of this canon is found in ms. Zürich, Zentralbibliothek, Car.C. 176 (346)

also assigned deposition *in cunctum populum* to clerics who had married after their ordination (II,13) suggests that both canons were derived from a single source or both created by the author of the *P. Casinense*.

Canon VIII,10 (repeated as XII,25) concerning maltreatment of one's parents also appears in *Coll.9libr.* and *Coll.5libr.*¹ The chapter on detraction and hatred contains two unusual canons. The first one forbids a priest to enter church *cum furore aut scandalum* before having 'harmonized all discord', that is 'settled his conflict'. If he fails to do so, he is to be deposed and suspended from the Eucharist as long as he does not mend his ways and offer composition.² The other canon proclaims that someone who had compelled other people to drink too much, which caused them to commit *scandala* or illicit things by drunkenness, should be judged in a similar manner to a homicide.³ The double occurrence of the word *scandalum* – rarely used in penitentials – suggests that these canons were composed by the same author. In addition to the ruling regarding the supposedly Greek custom of receiving the Eucharist daily, there is another canon that might reflect local elements. A canon in the appendix assigns penances to Christians who had eaten 'polluted' food while held in custody by pagans.⁴ The canon is based on a ruling of the council of Ancyra. While not expressly mentioned, the inclusion of this regulation might have something to do with the presence of Muslims in the South of Italy.

Most conclusions reached by Paul Fournier regarding the *P. Casinense* are confirmed by this analysis. The canons were mainly taken from the *Cap. Iud.* and either the *P. Vallicellianum I* or the *P. Merseburgense A*. As for the *Cap. Iud.*, it was possible to establish that the compiler of the *P. Casinense* used a version resembling that of ms. Vat. lat. 5751

and ms. Montpellier, Bibl. Universitaire, 387 (*P. in II libris*). Cf. Körntgen, *Studien zu den Quellen*, pp. 211-212. Also copied as *Coll.5libr.* IV,69 (Vat. lat. 1339, f. 181r).

¹ *P. Casinense* VIII,10: *Si quis patri aut matri iniuriam fecerit, VII menses (annos in c. XII,25) peniteat*. See also *Coll.9libr.* IX,100 (*Si quis patri aut matri suę iniuriam fecerit aut percuterit*) and *Coll.5libr.* IV,184 (Vat. lat. 1339, f. 201). See chapter 8,2.

² VI,5: *Non potest sacerdotes cum furore aut scandalum ad ecclesiam procedere, nisi prius omnia discordia concordet, ut non dolum in corde remaneat. Sicut scriptum est: prius reconciliari fratri tuo et sic offer munus tuum* (Matth. 5,24). *Quod si aliter fecerit, ipsa die a sacrificio priuetur et deponatur quousque se emendauerit, et satisfaciat fratri suo et dimittat ei omnia de corde*. The *P. Vaticanum* quotes the same biblical passage without specifically referring to priests (I,18: *Tu autem fac secundum quod dominus dixit: corripe eum inter te et ipsum solum, si te non audierit dic aeccliesię* (Matth. 18,15-17), *donec unus alteri de corde dimittatur, et sic satisfaciat ante offeras munus* (Id. 5,24), *aut communicent; et si noluerit conuerti, excommunicetur ab ecclesia et maneat excommunicatus...*).

³ *P. Casinense* VI,8 (*Si quis cogerit hominem plus bibere quam oportet et inebriatus fuerit, et per uinum inimicus iurgia aut scandala aut quod illicitum est agere commiserit, ut homicida iudicetur*). The wording of the previous canon (VI,7: *Si quis sacerdos inebriatus fuerit per ignorantiam... Si quis per negligentiam...*) is probably derived from the *Excarpus* I,6. Not recorded in the *Cap. Iud.*

⁴ XII,30: *Si quis comprehensus est a paganis uel a domesticis traditi, si aliquid polluti in cibum sumpserunt, XL diebus; si proclamauerunt christianos esse et uiolenter sumpserunt, a communionis gratia non separentur. Si uero non luctauerunt, VII annos peniteat, III in pane et aqua.*

from Bobbio. More difficult to explain are the snippets of the *Excarspus Cummeani* and the U version of Theodore's judgments – unnoticed by Fournier – both of which did not widely circulate in Italy.¹ It is quite possible that the compiler had consulted a manuscript that contained excerpts of these texts. Furthermore, the *P. Casinense* offers a number of rulings that correspond to canons included in book IX of the *Coll.9libr.* It is likely that the compiler of the *Coll.9libr.* made use of a manuscript that closely resembled ms. Montecassino 372, since this manuscript also contains other texts that appear in this collection, such as the long preface of the *P. Oxoniense II*, the *Epitome Hispana*, and the *Dionysiana Adaucta*. As for the canons that occur in the *P. Casinense* only, these were possibly derived from another source, but most likely they were the product of the author of the *P. Casinense*.

1.8 *The ordo ad paenitentiam dandam*

The canons are integrated into a detailed *ordo* that gives an almost chronological account of the rite of confession, penance, and absolution. The *ordo* begins with the instruction *Quotiescumque*, which originally belonged to the eighth-century *P. Oxoniense II*, but that also served as preface to many Frankish and Italian penitentials.² The instruction *Quotiescumque* provides the *sacerdos* with preliminary advice such as that he should participate in the penitents' penance and pray for both his own sins and those of all Christians.³ The priest is compared to a physician who 'is not able to cure the wounds of the sick unless he has taken part in their filthiness'.⁴ When the confessant approaches, the priest should take his right hand and make him promise to mend his ways. The priest then brings him to the altar where confession takes place.⁵ This passage stems from the *ordo* of the ninth-century Frankish *P. in II libris*, which was adopted by many tenth- and eleventh-century, mainly North Italian *ordines*.⁶ Apart from this interpolation, the *Quotiescumque* of the *P.*

¹ Mahadevan, 'Überlieferung und Verbreitung des Bußbuchs "Capitula Iudiciorum"' pp. 17-75.

² For an analysis of the instruction see Körntgen, *Studien zu den Quellen*, pp. 121-162.

³ *P. Casinense*, *ordo*: *humiliare se debet episcopus siue presbyter et cum tristitia et gemitu lacrimisque orare non solum pro suo delicto sed etiam pro omnium christianorum.*

⁴ *P. Casinense*, *ordo*: *Neque nullus (lege ullus) medicorum uulnera infirmantium potest curare, nisi fetoribus particeps fuerit.*

⁵ *P. Casinense*, *ordo*: *Postea si uideris eum ex toto corde conuersum apprehende manum eius dextra et promitte emendationem uitiorum suorum et duc eum ante altare, et confiteatur peccata sua.*

⁶ Ms. Montpellier, Bibliothèque Universitaire, 387 (Northern France; s. IX²), Montecassino, Arch. dell'Abbazia, 554 (South Italy; s. X-XI) and Vienna, Österreichische Nationalbibliothek, 2231 (Northern Italy; s. X). See Körntgen, *Studien zu den Quellen*, pp. 207-209. While the *Casinense* requires the priest to reach for the right hand of the penitent, the other texts state that the priest should 'receive' the penitent with his right hand. Cf. *P. in II libris*: *Postea si uideris eum ex toto corde tristari conuersus suscipe eum per manum dexteram et promittat emendationem uitiorum suorum et duc eum ante altare, et ibi confiteatur peccata sua.* This requirement was

Casinense does not resemble that of the *P. in II libris*, whose wording departs from the versions of other penitentials.¹ The instruction continues with the instruction to the priest to praise those who begin fasting with alacrity, as ‘those who complete the fast imposed on them will be purified’. He should also encourage the penitent to fast on Wednesdays and Fridays after the period of penance had been completed.

The rite begins with the priest who withdraws into his *cubiculum* to say a preparatory prayer when a penitent approaches, or if he has no such room, to recite the prayer in secret. Through the prayer *Domine deus propitius esto mihi peccatori* the priest thanks God for receiving his office and his role as intermediary between God and sinner.² Then the priest recites Psalms 69, 6, and 37, the Lord’s Prayer, and the prayers *Exaudi domine preces nostras*, *Deus qui omnium tibi confitentium* followed by Psalm 50, *Deus qui propter iustum iudicium diuinę eminentis* paired with Psalm 102 and the Lord’s Prayer, and *Deus iustorum gloria et misericordia peccatorum*. The first, second and fourth prayer stem from the Old-Gelasian sacramentary and frequently recur in penitential *ordines*.³ The second prayer only occurs in the *ordines* of ms. Vat. lat. 5751 and ms. Rome, Bibl. Vallicelliana, C. 32 (South Italy; s. XI^{ex}).⁴ The early occurrence in Vat. lat. 5751 may point to a North Italian origins of this prayer, perhaps even to Bobbio. A short admonition not to feel ashamed to confess ‘for no one is without sin but God alone’ serves to introduce a list of questions about the penitent’s sins.⁵ This questionnaire is a shortened version of a type that is recorded in several

copied into the *ordines* of Vercelli, Bibl. Capitolare, CLXXVIII (4) (Vercelli; s. X^{med}), Paris, BNF, Mazarineus 252 (Asti; s. X; A. Gastoué, ‘Un Rituel noté de la province de Milan du Xe siècle’, *Rassegna Gregoriana per gli studi liturgici e per il canto sacro* 2 (1903) pp. 137-144, pp. 245-254, pp. 305-310, pp. 493-500, and pp. 533-542), the Verona and Bobbio *ordines* (Muratori, *Antiquitates Italicae* V, p. 720/730). See also chapter 6.

¹ The *Quotiescumque* of the *P. in II libris* reads *Ve uobis legis doctoribus* against *Ve uobis legis peritis* of the other penitentials including the *P. Casinense*.

² *P. Casinense*, *ordo*: *Domine deus propitius esto mihi peccatori, ut condigne possim tibi gratias agere, qui... me exiguum et humilem mediatorem constituisti ad orandum et intercedere ad dominum nostrum ihesum christum pro peccantes, et ad penitentiam reuertentes...* etc. The last petition is not found in other texts (*Tribue eis remissionem peccatorum omnium suorum*). See also chapter 6 and Jungmann, *Die lateinischen Bussriten*, p. 145, n. 69.

³ *Deus qui omnium tibi confitentium* is closer to the version of the Sacramentary of Biasca and the *ordines* of the *P. Sangallense Tripartitum* and PRG 144,8, than to that of the Gelasian Sacramentary (Meens, *Het tripartite boeteboek*, pp. 99-100). For the prayer *Deus iustorum gloria* see *Gelasianum, ordo 107 (Liber Sacramentorum Romanae ecclesiae Ordines anni circuli (Cod. Vat. Reg. Lat. 316/Paris, Bibl. Nat. 7193,14/56)*, L.C. Mohlberg ed. (Rome 1960) p. 248.

⁴ *P. Casinense*, *ordo*: *Deus qui propter iustum iudicium diuinę eminentis potentię titulum promisit preconem, qui non uult mortem peccatoris...* (cf. Ez. 33:11), *propitiare famulo tuo .ille. penitentiam postulantes exoremus, ut si qua luxuriando commisit delicta, per satisfactionem et lacrimarum indulgeas atque uniuersa concedas*. See Odermatt, *Ein Rituale*, p. 290 and chapter 6.

⁵ *P. Casinense*, *ordo*: *Fili noli erubescere confiteri peccata tua, quia non est sine peccato nisi solus deus; ante omnia opus est te ipsum perscruteri et confitere, ne forte habeas iram contra proximum tuum. Aut instigante diabolo et carne operante si es lapsus in fornicatione uel periuro, aut homicidio, seu rapina, aut maledictione patris uel matris, aut alicuius hominis. Aut si per inuidiam loquendo aliquem nocuisti uel delectatus es in perditione proximi tui, aut per iram percutiens sanguinem effudisti...*

Italian and Anglo-Saxon *ordines*.¹ It omits the penances that follow upon the questions in most manuscripts. After being interrogated the penitent should ask forgiveness for his sins three times. The priest is required to treat the confessant like a *bonus medicus*, resuscitating (*confortare*) the patient by giving him the appropriate medicine. Thus when delivering his judgment, a confessor should take into account the age, health, and social status of the confessant.² Then the priest should address a short sermon to the penitent, which explains that, as descendants of Adam, we are all born with sin, but that Christ came into this world in order to ‘wash away our crimes through [the gifts of] baptism and penitence’.³ To obtain forgiveness, the penitent is urged to show remorse wholeheartedly, since God forgives not on account of ‘a space of time’, but rather after a confession with tears, moaning, and remorse. The sermon ends with the exhortation to give alms for the sake of one’s redemption.⁴ Then requirement of the priest delivering his judgment is placed right before the canons.⁵

Immediately after the canons the absolution rite follows. The rubric that announces this part, ‘*post iudicium*’, indicates that a ‘one-stop procedure’ is described, which meant that the penitent was granted absolution from sin immediately after the priest’s judgment.⁶ The rite begins with biblical verses, a psalm, and four prayers to be recited by the priest. The first, second, and fourth prayer belong to the Old Gelasian stock.⁷ The third prayer *Commendamus tibi* (‘We commend to you, Lord, your servant in this present life, that You may release him

¹ Cf. H. Lutterbach, ‘Die Bußordines in den iro-fränkischen Paenitentialien. Schlüssel zur Theologie und Verwendung der mittelalterlichen Bußbücher’, *Frühmittelalterliche Studien* 30 (1996) pp. 150-172, see pp. 163-164 and 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. A journal on the inheritance of Early and Medieval Christianity* 41 (2002) pp. 81sq. Italian copies are listed above.

² *P. Casinense, ordo: Cum autem confessus fuerit, age tu sacerdos sicut bonus medicus cum ingressus fuerit ad infirmum, et uiderit eum grauiter egrotantem. Statim incipiat confortare illum et medicaminibus suis confortare eum. Ita ergo et tu considera peccatorem confitentem cuius sit potestatis, uel etatis, seu fortitudinis, siue sit diues uel pauper, nobilis uel ignobilis, sapiens uel inscius, et secundum personam confitentis adiudica illum...*

³ *Omnes qui ex adam nati sumus cum peccato nati sumus et uiuimus atque delicto, sed ideo dominus noster ihesus christus uenit in hunc mundum, ut per baptismum et penitentiam ablueret omnia delicta nostra. Nam latronem confitentem sub uno momento suscepit ac in paradysum introduxit, et meretricem lacrimantem similiter suscepit et prediatricem sue resurrectionis instituit.* The part on original sin resembles Theodulf of Orléans, Capitulare II, c. III,3. On the ‘crucified thief’, see chapter 6,3,5.

⁴ *P. Casinense, ordo: Et tu ergo si ex toto corde penitueris, clemens deus indulget tibi, quia non eget deus spatiis annorum, sed confessione lacrimarum et suspiriis et penitudine peccatorum. Tu uero annuente deo, cum ingressus fueris ecclesiam dei omnia tua peccata ante oculos tuos constituere et penitere, et promitte numquam ad ea reuersurum, et prout uales indigentibus fac elemosinam... Si autem non habueris quod prebeas, assume humilitatem, et patientiam, et caritatem cordis...*

⁵ *Expletis his statues ei tempus penitentiae cum admonitionem et obseruationem emendationis.*

⁶ The *P. Casinense* is an early witness of this practice. Cf. chapter 6 on penitential liturgy.

⁷ The order of prayers and psalms: *POST IUDICIUM DICENDI SUNT HIS UERBIS: Ego dixi domine miserere mei* (Ps. 40,5; *et an[tiphona]?*) – four biblical verses (Ps. 85,2, Ps. 78,8, Ps. 78,9, and Ps. 78,9/10) – Psalm 29 – Gelasianum XV,81 (*Domine deus noster qui offensione nostra*) – Psalm 50,12 – Gelasianum CVII,1703 (*Deus iustorum gloria*) – Psalm 102 – *Commendamus tibi* – Gelasianum XV,82 (*Precor domine clementiam et misericordiam*; Mohlberg ed., pp. 17-18 and 248).

from all evil') only appears in North and Central Italian sources.¹ All four prayers are recorded in the *Rituale* from Asti and in the *ordo* from Bobbio edited by Muratori. Thereupon the penitent prostrates himself, while the priest says a *Misereatur*.² The priest petitions God to accept the confession of the penitent and to release him from the bonds of sin.³ Through a series of benedictions God, Jesus Christ, the virgin Mary, the angels and saints are beseeched to bless, protect and forgive the penitent. An absolution prayer expresses the wish that the penitent be absolved through the intercession of Mary, the archangel Michael, and St Peter.⁴ Compilers of *ordines* began to make use of such blessings, probably drawing on the *ordines* for anointing the sick.⁵ Most benedictions of the *P. Casinense* appear in the *ordo* for visiting and anointing the sick of the influential Romano-Germanic Pontifical (*Pontificale Romano-Germanicum* or *PRG*), composed in Mainz in ca. 950, and the *P. in II libris*.⁶ Judging from the *ordo* of the *P. Casinense* the role of the penitent is a limited one. His acts are confined to his confession and a petition for forgiveness in the first part and an act of prostration in the absolution rite. An interrogation as to the articles of faith, which occurs in almost every *ordo*, is remarkably absent from this document. The passive role of the penitent contrasts with the prominent part played by the priest. The *ordo* is centred upon the priest rather than the penitent, which fits the educational and instructive functions of the manuscript.

After the absolution rite, a series of commutations is inserted, which offer the priest alternative penances for the periods of fasting demanded by the canons. The series begins with an excerpt of a text that is copied in its entirety on pp. 62-66 of the codex, where it is

¹ *P. Casinense, ordo: Commendamus tibi domine famulum tuum .illum. in uita praesenti, ut ab omni malo eum eripias et intercedente beato [sc. petro] .illum. ad uitam perducas sempiternam.* Cf. ms. Milan, Bibl. Ambrosiana, T. 27 (North Italy, s. XI^{ex}/XII^{im}; *North Italian services of the eleventh century/Recueils d'ordines du XIe siècle provenant de la Haute-Italie* (Milan, Bibl. Ambros. T. 27. Sup.), C. Lambot ed., HBS 67 (London 1931)); *P. Vallicellianum* E. 62; *Bobbio ordo*, ed. Muratori, *Antiquitates Italicae* V, pp. 723-238; *Asti rituale* (Gastoué, 'Un Rituel', p. 98). See also chapter 6.

² *DEINDE PROSTRATUS PENITENS PETA UENIAM ET TUNC INCIPIT HANC ORATIONEM. Misereatur tibi...*

³ *Suscipiat omnipotens deus confessionem tuam, ante cuius conspectum ueniam petisti, et ipse tibi dignetur dare ueram indulgentiam ex omnibus peccatis et delictis tuis, qui te creauit, et sancto suo redemit sanguine, detque tibi semper cogitare, loqui, et agere semper que illi sunt placita, et absoluere te dignetur a cunctis nexibus peccatorum tuorum, tribuatque tibi angelum suum custodem et defensorem in omnibus horis atque momentis, nocte hac die. Et intercedente beatissima dei genitrice maria et beato michahele archangelo cunctisque supernis ciuibus et presentis uite tribuat tibi sospitatem et celestis regni concedat gaudia sempiterna, et non prius dii (!) tui finiantur, quam omnium peccatorum tuorum ueniam inuenire ualeas.* Only recorded here.

⁴ *Intercedente pro nobis beata et gloriosa semperque uirgine dei genitrice maria... ipse te absoluat et liberet a cunctis nexibus peccatorum hic et in futuro seculo.* Cf. Jungmann, *Die lateinischen Bussriten*, pp. 201-203. Last prayer: *Misereatur tibi deus hic et in futuro seculo, qui uiuit et regnat deus per omnia secula seculorum.*

⁵ Jungmann, *Lateinischen Bussriten*, p. 207. See overview *P. in II libris* in Körntgen, *Studien zu den Quellen*, pp. 207-208. Cf. F.S. Paxton, *Christianizing death. The creation of a ritual process in Early Medieval Europe* (Ithaca and London 1990) pp. 188-190 and p. 193.

⁶ See *PRG, ordo* 139,28-40 (*Le Pontifical Romano-Germanique du dixième siècle* 2, C. Vogel and R. Elze ed., *Studi e Testi* 227 (Rome 1963) pp. 251-254).

assigned to Gregory the Great.¹ This text proposes an alternative way of fasting, since ‘our weakness’ prevents us from undergoing the penances laid down by the Fathers. Instead of fasting on bread and water for one year, it is allowed to fast on bread and water one day per week during one year.² The rest of the week should be spent in moderate fasting. Specific dietary prescriptions for fasting during the liturgical year follow. For example, from Easter until Pentecost a penitent should abstain from wine and meat on Fridays and should fast until the middle of the day. For the rest of the week no fast needs to be observed.³ This text is, as far as I know, unique to the *P. Casinense*. This text is followed by a short version of the so-called *Inquisitio Hieronymi*, which was originally connected to the *Excarpsus Cummeani* but added to other penitentials as well.⁴ The text proposes some alternatives for those who are not able to fast because of illness, such as the 12 three-day periods (*triduana*) and 24 two-day periods (*biduana*) with three psalters and 300 palm-thumpings which release one from a fast of one year. Then forty psalms which should be sung in place of a one-day fast on bread and water are listed. Another table offers alternatives for those who are not able to sing psalms, for instance almsgiving. The last text enumerates the periods when remission of sins can be obtained, i.e. from Nativity to Epiphany, from Easter to Pentecost, on the Lord’s day, and on several festivals of saints.⁵ What exactly is meant is not clear. In most versions of this text, these days are marked as ‘*non computantur in paenitentia*’. The commutation list, put together from various different tables, constitutes a coherent text beginning with what fasting should involve, then turning to dietary rules for the periods of the liturgical year, and, finally, discussing alternatives to fasting for those who were not capable of it. The commutations are a supplement to the canons and cannot be separated from them. The texts on penance that follow do not bear a direct relationship with the penitential, but taken together all these texts constitute a thematic unit.⁶

¹ Cf. *Coll.9libr.* IX,133 (Vat. lat. 1349, f. 217r) and the *Coll.5libr.* IV,45/46 (Vat. lat. 1339, f. 174).

² *P. Casinense*: *Non enim ea, que a sanctis patri sunt tradita, possumus portare propter fragilitatem nostram. Si uero uolumus super humeros hominum poni, minime portare possunt. Sed enim si unum annum in pane et aqua, unum diem in ebdomada in pane et aqua ducere debet. Ceteros dies in mediocres peniteat.*

³ *P. Casinense*: *A pascha usque ad pentecosten abstineat se sexta feria a uino et pulmentum et ieiunet usque ad medium diem. Aliis uero diebus infra his predictis sine ieiunio debet manere, et uinum et pulmentum sumat...*

Distinct dietary rules should be observed in the periods from Pentecost until Assumption, from Assumption until St Martin, from St Martin until Nativity, from Nativity until *quingagesima*, and, finally, *quadragesima*. Penitents should not fast on specific festivals, like the feasts of St John, St Gregory, and St Benedict.

⁴ See Schmitz II, pp. 643-44 and Asbach, *Das Poenitentiale Remense*, p. 77.

⁵ *Remissio peccatorum in penitentia a natiuitate domini usque in epyphania. Et a pascha...* (no verb).

⁶ Those are the prefaces of the *P. Cummeani* and the *P. Oxoniense II* (the part *Quomodo debent* (titled *Beati Iohannis os aurei*), a short text on penance taken from Isidore’s *De ecclesiasticis officiis*, two sermon-like texts for penitents (*Ammonitio penitentię* and *Item alia admonitio ad mulierem*), a commutation table attributed to Gregory I (see chapter 7), and other commutations deriving from the *P. Oxoniense II* and the *P. Ps-Egberti*

Conclusion

Even though an edition of the *P. Casinense* was published by Schmitz and most of its sources were discovered by Fournier, several features of this penitential, not noticed by these scholars, merit this new examination. First of all, the combination of *ordo*, canons, and commutations in a single coherent entity is unusual if compared to other penitentials from South and Central Italy. The *P. Casinense* gives an almost chronological account of confession, judgment and absolution. The canons are fitted in precisely at the point when the priest has to deliver his judgment over the penitent. The structure of the text betrays a careful planning, but the haphazardly organized chapter XII suggest that several canons were added at a later redaction. Apart from the *Cap. Iud.* and the *P. Vallicellianum I*, it is unclear which other sources were used. There is strong evidence that the compiler used the U version of the *Judicia Theodori* and the *Excarpsus Cummeani*, although no complete Italian copies of these texts survive. The similarities between the canonistic *Coll.9libr.* and the *P. Casinense* can be explained by the possible dependence of that collection of the *P. Casinense*.

The *P. Casinense* is one of the earliest of the South Italian penitentials. The Italian origin of the text can be inferred from the sources used, which were all and, in the case of the *P. Vallicellianum I*, almost exclusively available in Italy. Since the *P. Casinense* is only preserved in a manuscript in the Beneventan script, probably written in Montecassino in the first decades of the eleventh century, it is likely that its transmission was limited to the South Italian region. A southern origin is, furthermore, suggested by several rare canons which only correspond to rulings of two South Italian canon law collections, the *Coll.9libr.* and the *Coll.5libr.* If we are dealing with a South Italian text, the *P. Casinense* and a number of texts copied in the first part of the manuscripts point to an exemplar from northern Italy, and from the monastery of Bobbio in particular. The *P. Casinense* contains a prayer of which the oldest witness is recorded in ms. Vat. lat. 5751 from Bobbio. Moreover, the version of the *Cap. Iud.* that was used corresponds with that of the same manuscript.

Unfortunately, the sources of the penitential do not allow us to date the text precisely. Its main source, the *Cap. Iud.*, was composed in the late eighth or early ninth century. Another important source, the *P. Vallicellianum I*, is dated to the early tenth century. For a possible *terminus ante quem* one might look at the canons that correspond to rulings from the *Coll.9libr.* and *Coll.5libr.* If canons of the *P. Casinense* indeed entered the *Coll.9libr.* and *Coll.5libr.*, its text must have been composed before the years 1014-1023, when the *Coll.5libr.* was compiled. As its only manuscript witness can be dated to the first decades of

the eleventh century, I would favour the composition of the text in southern Italy, possibly Montecassino, in the late tenth or early eleventh century, but a composition date of as early as 900 cannot be excluded beforehand.

The two separately written parts of which the codex consists, could have functioned separately for some time, although it cannot be established with certainty for how long. The penitential itself belongs to series of texts that together constitute a single unit on penance. With regard to the purpose of the penitential, the liturgical *ordo* and chapter headings like *Inquisitio mulierum* suggest that the text was intended for the interrogation of sinners. Yet the contents of the manuscript, especially its canons about the election of bishops, could also suggest an educational context for this penitential. It could perhaps have served a double purpose as both a training device for clerics with their home base in a monastery and as a text used for hearing lay confession. The manuscript contains an impressive number of canonical and liturgical texts, so it must have been composed in a well-stocked library. Although it once belonged to San Nicola della Cicogna, a small dependency of Montecassino, it is more likely to have been copied in a Montecassino, where a larger collection of books was kept. Whether it was specifically compiled for San Nicola is difficult to establish. Perhaps the codex was first used in Montecassino and only sent to San Nicola after it had passed into disuse.

Sources P. Casinense

P. Casinense	Cap. Iud.	Coll.9libr./5libr.	Other sources
I,1.	I,1		
2.	I,15 (Cumm. V,8)		
3.	I,2		
4.	cf. I,6		cf. P.II.lib. II,4,8
5.	I,3		
6.	cf. I,5		Theod.G 111
7.	I,4		
8.	cf. I,8		Theod.G 113
9.	I,6		
10.	I,9/13		
11.	I,10		
12.	II,1		
II,1.	VII,1		
2.	VII,16		
3.	VII,20		
4.	IX,11		
5.	X,I		
6.	VII,7		
7.	-		Vallic.I 14/15;

8.	-		Mers. A 8/11 Vallic.I 14/15; Mers. A 8/11; Oxon.II, 14
9.	VII,5		
10.	VII,2		
11.	-		Theod.U 1,2,19; Exc. II,3
12.	-		Mers. A; Vallic.I 21 Exc. III,32
13.	-		Theod.U I,9,4; Exc. III,6
14.	-	IX,53	cf. Mers.C 4
15.	-	IX40/42	cf. Mers.C 4
16.	-		Vallic.I 106/107; Mers.A 107/93
17.	-		
III,1.	X,13-14		
2.	X,14		
3.	X,16		
4.	X,22		
5.	X,20		
6.	X,19		
7.	-		Exc. III,40; Theod.U I,8,1
8.	VII,23		cf. Exc. II,7
9.	cf. X,3		Exc. II,11; Theod.U I,2,11
10.	X,9		Exc. II,16; Mers.A 75
11.	-		Exc. II,6; Mers.A 155 (<i>crura</i>)
IV,1.	XV,1		
2.	XV,2/6-7		
3.	XV,9		
4.	-	cf. IX,67	
5.	cf. Cap. Iud. XV,3		
V,1.	XV,10; I,1		
2.	XV,11		
3.	-	IX,71	Mers.A 29/Vallic.I 47; Exc. V,10
VI,1.	XXIX,1		
2.	XXIX,1		
3.	XXVII,1		
4.	XXVI,12		
5.	-		Greg. <i>Dial.</i> IV,60

6.	XXII,8		
7.	-		Exc. I,6
8.	cf. XXII,4 + add.		
9.	XIX,5/6		
10.	XXII,9		
11.	XXII,6/9		
12.	XX,1		
VII,1.	XI,4		
2.	IX,6/7		
3.	X,23		
4.	III,1/3		
5.	III,5		
6. (<i>mortuus fuerit</i>)	cf. IV,1 (<i>moritur</i>)		Exc. VI,19; Vallic.I 9/Mers.A 61
7.	III,4		
8.	VIII,3		
9.	-		Mers.A 88 (<i>super puteum</i>)
10.	cf. XVII,1		Vallic.I 113; Mers.A 27/32
11.	I,11		
12. (<i>uadit</i>)	cf. XVIII,1 (<i>ambulauerit</i>)		Burg.34 <i>et al.</i> (<i>uadit</i>)
13.	XXIII,8		
14.	XXIII,8		
15.	X,2		cf. Exc. III,34
16.	-		Exc. III,35; Theod.U I,2,12
17.	-.		Exc. III,33; Theod.U I,14,14
18.	XXIII,9		Exc. I,17; Theod.U I,7,3
VIII,1.	IX,12		Exc. III,18
2.	XI,2/3		Exc. III,36
3.	V,1		
4. (<i>maleficio</i>)	XVI,1		cf. Oxon.I 7
5. (<i>malo ingenio</i>)	XVI,4		cf. Oxon.I 23
6.	XVI,5		
7.	XVI,6		
8.	XIX,1		
9.	XXV,3		
10.	XIII,1 + add.	cf. IX,64/100	
IX,1. (<i>furtum capitalem</i>)	cf. XII,1/5	cf. IX,57,2/58,1	Mers.A 7 + 39; Vallic.I,57/118 (<i>furtum capitale</i>)
2. (<i>sepulchrum uiolauerit</i>)	cf. XII,3 (<i>sepulcri uiolator fuerit</i>)		Ps.Rom 29; Paris. 9 (<i>sepulchrum</i>)

3.	XII,2		<i>uiolauerit)</i>
4.	XII,1		
5.	cf. XIII,3		
6.	-	IX,62	Mers.A 21 Vallic.I 61; Ps.Rom. 48
X,1.	XXII,4		
2.	XXII,2		
3.	XXII,3		
4.	XXII,5/6		
5.	XXII,9		
6.	-	IX,88/89	cf. Paris. 36; Oxon.I 43
XI,1.	XI,1		
2.	XXIII,14		
3.	-		Conc.Laodic. 28; Theod.U I,14,17
4.	XXIII,12		
5.	XXXIII,5		
6.	XXXIV,21 + add.	IX,125	cf. P.II libr. II,8,24/ 25; Gennad. 53
7.	-	IX,154	Coll.5lib. III,254
8.	XXV,3/4		
XII,1.	XXV,1		
2.	XXV,2		
3.	XXXI,1		
4.	XXXI,3		
5.	XXXIV,25		
6.	XXV,13		
7.	XXV,12		
8.	XXV,8		
9.	cf. XXXIV,1/9		
10.	cf. XXXIV,10/11		
11.	XXXIV,2		
12.	XXXIV,18		
13.	XXXIV,8		
14.	XXXIV,9		
15.	XXXIV,4	IX,128,2	
16.	-	IX,130	
17.	-	IX,128,1	Coll.5libr. IV,49
18.	-	IX,134	Oxon.II 63
19.	-		Mers.A 43+8; Vallic.I 19
20. (cf. VII)	cf. IV,1		Exc. VI,19; Vallic.I 9/ Mers.A 61
21.	-	IX,9	Oxon.II 33; Mers.A 115; Vallic.I 40

22. (cf. VII,14)	XXIII,8		Mers.A 103; Valliac.I 90
23. (cf. VIII,4)	XVI,1-2		Mers.A 9/10; Valliac.I 83/84
24.	-		Mers.A 124; Valliac. I 38; cf. Oxon.II 35
25. (cf. VIII,10)	-	cf. IX,100	
26. (cf. VI,10)	-		Mers.A 25; Valliac.I 53
27.	cf. XII,11		Mers.A 55; Valliac.I 58
28.	-		Mers.A 65; Valliac.I 70
29. (cf. XI,8)	-		Mers.A 130; Valliac.I 78 cf. XI,8
30.	-	cf. II,169	Conc.Ancyran. 3/4
31.	-		Mers.A 92; Valliac.I 108
32.	XXIX,5/7		cf. Mers.A 66; Valliac.I 71
33.	-	IX,30	Theod.U II,12,1-3+ II,14,12
34. (cf. VII,3)	X,23		Theod.U I,14,17/18
35.		cf. V,100	Conc.Bracar. 71
36.		IX,15	Conc.Eliber. 78

Burg. = *P. Burgundense* (Kottje ed., CCSL 156, pp. 63-65); *Coll.9libr.* (ms. Vat. lat. 1349); *P. in II libris* (Körntgen, *Studien zu den Quellen*, pp. 272-277); Exc. = *Excarpsus Cummeani* (Schmitz II, pp. 597-644); Theod. = *Iudicia Theodori U* (Finsterwalder, pp. 287-334); Mers.A = *P. Merseburgense A* (Kottje ed., CCSL 156, pp. 125-177); Oxon.I (Kottje, CCSL 156, pp. 89-93); Oxon.II = *P. Oxoniense II* (Kottje ed., CCSL 156, pp. 173-205); Paris. = *P. Parisiense Simplex* (Kottje ed., CCSL 156 pp. 75-79); *P. Ps.-Romanum* (Schmitz II); Conc. Bracar. = Concilium Bracarense (*Concilios Visigóticos*, Vives ed.); Eliber. = Conc. Eliberitanum (*Concilios Visigóticos*, Vives ed.); Ancyran. = Concilium Ancyranum (Turner II,1)

THE PAENITENTIALE VATICANUM

The manuscript Vatican, Archivio di San Pietro, H. 58 is one of the earliest extant liturgical manuscripts written or in any case used in Rome. For this reason the manuscript has been the object of exceptional scholarly scrutiny. Pierre Salmon, Roger Reynolds, Paula Supino Martini, and recently Sarah Hamilton have devoted studies to various aspects of the codex, to its script as well as its texts.¹ Reynolds, who analysed the excerpts of the *Coll. Hibernensis* in the manuscript, was the first to draw attention to the penitential of ff. 109v-117r, and noted similarities with the *P. Vallicellianum I*. Hägele and Kottje observed that the order of the canons diverged considerable from that of this text.² Ludger Körntgen published an incipit-explicit edition of the canons of the penitential and convincingly demonstrated that it was largely made up of canons of the Frankish *P. in II libris* and the *P. Oxoniense II*.³ Yet it is worthwhile providing a new analysis of the text, because no study has yet examined the text as a whole, which comprises an *ordo*, a set of penitential canons, and a canon law appendix. Secondly, it was also possible to refine Körntgen's account of the sources from which the penitential was composed. A third reason to re-examine the text is Supino Martini's discovery that the manuscript consists of two separately written parts, which justifies a new study of the part of the manuscript that contains the penitential. Because this text is preserved solely in this manuscript now kept in the archives of St Peter's in the Vatican – Körntgen pointed out that it is probably the earliest witness of a 'Roman' penitential – the hitherto anonymous penitential is therefore called the *Paenitentiale Vaticanum*.⁴

¹ P. Salmon, 'Un "Libellus Officialis" du XIe siècle', *Revue Bénédictine* 87 (1977) pp. 257-288, Supino Martini, *Roma e l'area grafica Romanesca*, pp. 72-75, S. Hamilton, 'Pastoral care in early eleventh-century Rome', *Dutch review of church history* 3 (2004) pp. 42-61, and eadem, 'The *Rituale*: the evolution of a new liturgical book' in R. N. Swanson ed. *The church and the book*. Studies in Church history 38 (Woodbridge 2004) pp. 74-86.

² R.E. Reynolds, 'Excerpta from the Collectio Hibernensis in three Vatican manuscripts', *Bulletin of Medieval Canon Law* 5 (1975) pp. 1-9, see p. 6, R. Kottje, *Die Bußbücher Halitgars von Cambrai und des Hrabanus Maurus. Ihre Überlieferung und ihre Quellen*. Beiträge zur Geschichte und Quellenkunde des Mittelalters 8 (Berlin, New York 1980) pp. 65-69, and Hägele, *Das Paenitentiale Vallicellianum I*, pp. 32-33.

³ Körntgen, 'Ein Italienisches Bußbuch und seine Fränkischen Quellen', pp. 189-205.

⁴ Was this the apocryphal 'Roman penitential' used by 'unlearned' priests in Rome that was criticized by Cardinal Atto of St Mark? Unfortunately we have, except for the Roman origin of the manuscript, no solid evidence for this tantalizing conclusion. For Atto's Breviary, a collection compiled mainly from Ps.-Isidorian decretals which was intended to substitute for the Roman penitential, see A. Mai, *Scriptorum veterum nova collectio e Vaticanis codicibus edita* 6, 2 (Rome 1832) pp. 60-100, preface on p. 60-61: *paenitentiale romanum apocryphum fingeretur et in rustico stylo ut illi qui authenticos canones nesciunt, et litteras non intelligunt, in his fabulis confidunt...* Preface translated by B.C. Brasington and R. Sommerville, *Prefaces to canon law books in Latin Christianity. Selected translations, 500-1245* (New Haven and London 1998) pp. 118-121.

2.1 Codicological description

The manuscript which contains the *P. Vaticanum* consists of two separately written parts which were probably joined at an early stage. Its cover is made of cardboard coated with white parchment and measures 291 x 201 mm. The spine is ca. 291 x 40 mm. The cover is in a poor condition. Green spots in the upper outer corners of the fly-leaves and parchment betray that the codex has been seriously affected by water or moisture. Five leather bands attach the gatherings to the cover. The title ‘*Martirologium Bede*’, indeed one of the texts of the codex, is written on the spine.¹ Two holes on the edges of both sides of the cover may once have held laces to close the codex. The two front fly-leaves (275 x 190 mm) are made of parchment and foliated I-II. On f. Iv we find the inscription † *Martilogium (!) beati Bede cum alijs opusculis anexis; Sacrosancte Basilice Principis Apostolorum 1562* (probably added by the sixteenth-century restorer) and an almost illegible shelfmark (C 21 ?).² An old shelfmark (CCCXIX) is found on the upper side of f. Iiv.³ A late medieval hand wrote the text *Liber Sancti Petri* on f. 1r. In the upper margin a cross and the letter “Z” were added: an inventory of the books of St Peter’s of 1361 mentions a *Liber antiquus signatus per z*. Accordingly, the codex, or at least the part ff. 1-80/122-150, was already in the possession of St Peter’s before 1361.⁴ Supino Martini even suggested that part ff. 81-122 was kept in the library of St Peter’s from the end of the twelfth century onwards.⁵ The phrase *Pax Picus me instauravit Anno Domini M.D.LXII Mense Maij* on f. 152r bears witness to the restoration of the codex carried out in 1562 and is by the same hand as the inscription of f. Iv.⁶ According to Salmon, the occurrence of the *Passiones* of St Lucia and St Eustratius points to the Church of the Twelve Apostles, since this church possessed the relics of Eustratius.⁷ Raymund Kottje opted for St

¹ Two seals are fixed upon the spine, one with the provenance (‘Arch. Cap. S. Pietri in Vat.’) and one with the signature (‘H. 58’).

² The inscription *Martirologium*, now spelled correctly, is repeated on f. Ir.

³ Salmon pointed out that CCCXIX is, in fact, the first date recorded in the Martyrology of Bede which was mistakenly considered to be the shelfmark of the codex. Supino Martini, *Roma e l’area grafica Romanesca*, pp. 73-74, n. 75. Salmon, ‘Un “Libellus Officialis” du XIe siècle’, p. 258 argues that the shelfmark had been changed into ‘H. 58’ at some time between 1656 and 1727. On f. Ir: *Martirologium beati bede cum alijs opusculis anexis Sacrosancte Basilice*.

⁴ Supino Martini, *Roma e l’area grafica Romanesca*, pp. 73-74, n. 75. According to Salmon, ‘Un “Libellus Officialis”’, p. 258 the shelfmark CCCXIX was changed into H 58 between 1656 and 1727.

⁵ Supino Martini considers the (Scandinavian?) names jotted down by a twelfth-century hand on ff. 118r (Toristen, Ubelob, Gunar, etc.) as evidence for the provenance of the manuscript. Unfortunately, she does not explain the reasons for her contention.

⁶ Supino Martini, *Roma e l’area grafica Romanesca*, pp. 73-74.

⁷ Salmon, ‘Un “Libellus Officialis”’, pp. 257-288. Hamilton, ‘The *Rituale*: the evolution of a new liturgical book’, pp. 79-81 shares his conclusion. The church was dedicated to the apostles James and Philip until at least the tenth century.

Apollinare which also possessed relics of this saint.¹ Supino Martini hesitated to connect the manuscript with one of these churches, because both cults had been widely diffused in Rome in the early Middle Ages.² One may even wonder whether the early connection to St Peter's basilica points to a possible use of the codex in that church. The script and contents, in any case, strongly suggest Rome as the place where the codex was written and used.

The measurements of the parchment folios are ca. 282 x 200 mm. The inserted leaf f. 121 measures 187 x 100 (210 x 140) mm. The organization of the quires is as follows: 10⁸ (ff. 1-80); 11-15⁸ (ff. 80-120); 16¹⁺⁸ (ff. 122-134 + f. 121 which originally belonged to the previous gathering), 17⁸, 18⁶⁺² (ff. 146 and 147 were bound as two separate folios in ff. 143-150). The last, empty bifolium (ff. 151-152) was probably added later. The folios were numbered in arabic in the upper outer corners of the recto sides after the two separate parts joined. After folio number 122 the manuscript jumps to 128 due to a mistake, since the text of f. 122v continues on f. 128r. The ruling of ff. 1-80 and 122-152 is drawn in dry point ||__||__||. Two vertical lines are 5-6 mm apart, the horizontal lines 5-8 mm. The space between the two columns is 7 to 14 mm. The pricking holes of the vertical ruling are sometimes visible in the margins. The pricking holes for the horizontal ruling is visible in the outer margins.³ The space of each separate text columns is ca. 210 x 65 mm. The part ff. 81-121 (31 lines pp.) is written in a single column; the ruling of the folios is drawn in dry point ||__||. The space between the marginal vertical ruling is 6-7 mm., between the horizontal lines 7-8 mm. Two pricking holes for the verticals are visible in all four corners of the folios. Due to large holes in the margins the measurements of the folia are uneven. The text column is ca. 210 x 136 mm with the sentences often crossing the vertical lineation.

Supino Martini concluded that part ff. 81-121, written in the late tenth or early eleventh century, was later inserted into a manuscript that originally consisted of ff. 1-80 and 122-150, which was written in the second half of the eleventh century.⁴ More evidence for the parts being separate manuscripts is the division of the text of ff. 1-80 and 122-150 into two columns, while that of section ff. 81-121 was written in a single column. The last sheet (f. 121) of section ff. 81-121 is somewhat smaller than the rest and was inserted as a conjoint to this part. It is worn and slightly damaged, perhaps because it once was the last sheet of a manuscript. It is, therefore, likely that ms. H 58 consists of two separate manuscripts that

¹ Kottje, *Die Bußbücher Halitgars von Cambrai und des Hrabanus Maurus*, pp. 65-69. See also 'Censimento dei Codici dei Secoli X-XII', *Studi Medievali* 11-2 (1970) pp. 1132-33.

² Supino Martini, *Roma e l'area grafica Romanesca*, pp. 73-74, n. 75.

³ On f. 73-80 a first set of pricking holes was corrected by a new set.

⁴ The Easter table on f. 97r begins with the year 1026. Cf. Salmon, 'Un "Libellus Officialis"', p. 259.

were joined at a later date. The calendar of the first part has entries of Saint Eustratius and Lucy added by another Romanesca hand.¹ Since the passions of these saints are preserved in the second part, the names were probably added when the parts were combined. This suggests that these parts were combined at an early date, at least when the manuscript was still in use. The order of the quires of part ff. 1-80/122-150 is confused possibly due to the restoration in 1562. This might explain why the preface of Halitgar of Cambrai's penitential is copied on f. 45, while excerpts from his penitential are copied on ff. 138r-143r.²

The entire codex was written in a script designated 'Romanesca' by Supino Martini, a version of Carolingian minuscule written in Rome and Umbria from the tenth until the twelfth centuries. She distinguished three different scribes in the section ff. 1-80v/122r-150v³: a first scribe wrote ff. 1-40v, 59r-80v, and 129v-134v; a second one ff. 41r-48v and 57r-59r; the third one ff. 49r-56v, 122r-129r, and 135r-150v. There may also be a change of hand on f. 54r. A single scribe was responsible for the part that contains the *P. Vaticanum* (ff. 81r-121v). The letters of the first part measure ca. 2 mm, with ascenders 4 mm and descenders 5 mm. The last part features slightly smaller letters (2 mm with the ascenders 3 mm and descenders 4 mm). Initials measure ca. 7-22 mm. The codex is largely undecorated, partially because the decoration programme of the manuscript, albeit only a moderate programme, was not executed. Hence in both parts of the manuscript spaces are left open for capitals to be decorated.⁴ The letters of ff. 81-121 are 2,5 mm, with the ascenders 4 mm and the descenders 4,5 mm. Initials (in capitalis) are ca. 15 to 30 mm and the ordinary capitals 4-7 mm. The capital letters that introduce the sentences usually fall outside the text column (but within the two vertical lines of the lineation), the initials of text are written within the text column. The rubrics are in minuscule or in capital. The first words of the texts in the second part are usually in *capitalis*. The rubrics are in red, like most initials that introduce new texts or paragraphs; the capitals are in black ink but often touched up with red. The penances of the penitential are similarly coloured with red. Directions for rubricators are visible in the margins of f. 80v. In the part that contains the penitential, clauses are separated by a point or a point virgule (./). Although these signs are often used interchangeably, the former sign seems to denote stronger pauses, while the ./ is often placed before conjuncts like *et* or *uel*. Reynolds

¹ Noticed by Salmon, 'Un "Libellus Officialis"', p. 262.

² Kottje explains the confusing order of the texts from 'Unachtsamkeit bei der Abschrift'. Kottje, *Die Bussbücher Halitgars von Cambrai und des Hrabanus Maurus*, p. 67.

³ Supino Martini, *Roma e l'area grafica Romanesca*. See also Salmon, 'Un "Libellus Officialis"', p. 258. A different scribe was responsible for section 81r-121v.

⁴ On f. 55r (*Magistri*), on f. 56r: (*Decanus*), and on f. 81r (*Cum per...*). On f. 1v the decoration of *P(er omnia saecula saeculorum)* is unfinished. In the bottom margin of f. 121 is a decorated 'D'.

observed that section ff. 81-122 has certain Beneventan script symptoms, for instance the superscript interrogation sign.¹ This could indicate that the scribe of this part of the codex worked from an exemplar in Beneventan script.

2.2 Contents of the manuscript

The first section²:

ff. 1r-4r: *Ordo Missae*³

ff. 4r-9r: *Missa dominica ad palmas*

ff. 9v-12r: Litanies and blessings (*Incipit letania in sabbato sancto benedictio aque*)⁴

ff. 12r-29r: *Ordo ad agenda mortuorum*⁵

ff. 29r-34r: *Ordo ad uisitandum infirmum uel unguendum*

ff. 34r-40v: *Ordo ad catecuminum faciendum*⁶

ff. 41r-42r: *Incipit ordo ad uistandum infirmum*

ff. 42r-45r: Penitential *ordo* (*Incipit ordo poenitentiae. Cum uenerit poenitens...*)⁷

f. 45r-v: Preface of the *P. Halitgarii* (MGH epp. V, p. 617; Schmitz II, 264sq.)⁸

ff. 45v-48v: *Coll.5libr.* excerpts book III (Fornasari ed., CCCM 6, pp. 315-498)⁹

ff. 49r-56v: *Coll. Hibernensis* II,18-24,26-XI,2 (Wasserschleben ed., pp. 17-19, 30); Isidore of Seville, *De Ecclesiasticis Officiis* II,2-15 (Lawson ed., CCSL 113, pp. 53-73); *Etymologiae* VII (Lindsay ed.)¹

¹ Reynolds, 'Excerpta', pp. 6-9. On this sign see Loew, *The Beneventan script*, pp. 236-258.

² For an account of its contents see also Kottje, *Die Bußbücher Halitgars von Cambrai und des Hrabanus Maurus*, p. 65-66, Reynolds, 'Excerpta', pp. 6-9, and Salmon, 'Un "Libellus Officialis"'.
³ Cf. Salmon, 'Un "Libellus Officialis"', pp. 270-277 (Incipit: *Oratio quando uestitur planetam*).

⁴ Salmon, 'Un "Libellus Officialis"', pp. 281-287.

⁵ A short description in Salmon, 'Un "Libellus Officialis"', pp. 268-269. On f. 15r *lectiones cum responsoriis suis uel antiphones in uigiliis defunctorum. Missa defunctorum (ante sepulchrum, ad sepulchrum, in basilica, postquam sepultus est; f. 19v). Missa sancti sigismundi regis pro febre* (ff. 23v-25v). On this mass see F.S. Paxton, 'Liturgy and healing in an early medieval saint's cult: the Mass in honore Sancti Sigismundi for the cure of fevers', *Traditio. Studies in Ancient and Medieval history, thought, and religion* 49 (1994) pp. 23-43. Also recorded are several masses for the dead (*Missa unius defuncti; Missa pro sacerdote*; etc. ff. 25v-29r)

⁶ For the litanies on f. 38r, see Salmon, 'Un "Libellus Officialis"', pp. 287-288.

⁷ The texts consists of a penitential *ordo*, a mass, and a reconciliation *ordo*. Kottje, *Die Bußbücher Halitgars von Cambrai und des Hrabanus*, p. 65 and p. 110, the *ordo* is similar to that in ms. Berlin, Deutsche Staatsbibl., Hamilton 290 (North Italy; s. X^{ex}; Schmitz II, pp. 270-275), *P. Vallicellianum I* (E. 15; Rome; s. XI-XII), and *PRG ordines CXLIV-CXLVI (Le Pontifical Romano-Germanique II, pp. 270-279)*. See also chapter 6.

⁸ *Epistola ebonis archiepiscopi* and *Responsio alithgarii episcopi, ad ebonem archiepiscopi*. See Kottje, *Die Bußbücher Halitgars von Cambrai und des Hrabanus Maurus*, p. 65.

⁹ Excerpta, primarily concerned with the Mass, do not follow the order of the *Coll.5libr.* The text breaks off in the middle of canon III,254 (Fornasari ed., CCCM 6, p. 439). On f. 45v the *Expositio Missae* of Ps-Jerome, see Reynolds, 'A South Italian liturgico-canonical Mass Commentary', pp. 667-670 and, for resemblances with that of the Catalanian ms. New York, Hispanic Society of America ms. HC 380/819, R.E. Reynolds, 'South Italian *Liturgica* and *Canonistica* in Catalonia (New York, Hispanic Society of America ms. HC 380/819)', *Mediaeval Studies* 49 (1987) pp. 480-495, pp. 485-6.

- ff. 57r-58v: Sedulius, *In carmen alpha*²
 ff. 58v-59r: *Coll. 5 libr.* excerpts books I, II, and III (Fornasari ed., CCCM 6)
 ff. 59r-79r: Martyrology of Pseudo-Bede³
 f. 79r-v: Easter table
 f. 80r: Isidore of Sevilla, *De Eccl. Off.* and *Statuta ecclesiae antiqua* (excerpts)
 f. 80v: Computistica

The second section:

- ff. 81r-84v: Passio of St Lucia (*Incipit passio sancte luciae uirginis. Mense december die XIII*)
 ff. 84v-102v: Passio of St Eustratius (*Die XIII Mensis decembris, festiuitas sanctorum Eustrati et sociorum eius*)
 ff. 102v-108r: *Omelia domni Aymoni episcopi*⁴
 ff. 108r-109v: *Missa sponsaricia* for a newly wedded couple⁵
 ff. 109v-117r: *Paenitentiale Vaticanum*
 ff. 117r-121v: Canons taken from either the Collection of Diessen or the Collection in Four Books⁶, *Libellus Responsionum* 8 (MGH Epp. 2,2, pp. 338-342), Augustine, *In libro psalmodum*, *P. Vallicellianum I*, cc. 128-130 (Schmitz I, pp. 337-8), and Haito of Basle, *Capitulare* c. 16 (*Capitula Episcoporum I*, MGH, p. 215)

The third section:

- f. 122r-v: Ps.-Clemens ad Jacobem (*Incipit epistola decretales, in primis sancti clementi episcopi ad iacobum* (JK †11; Hinschius, pp. 46-52))
 f. 128r: Gennadius of Marseille, *De ecclesiasticis dogmatibus* 53 (PL 58, c. 994).

¹ Version of the *Collectio* is similar to that of ms. Vallicelliana T. XVIII. See also R.E. Reynolds, 'The transmission of the *Hibernensis* in Italy: Tenth to Twelfth century', *Peritia* 14 (2000) pp. 20-50.

² B. Bischoff, 'Eine karolingische "Vita pastoralis": "Sedulius, Carmen alpha"', *Deutsches Archiv* 37 (1981) pp. 559-575.

³ H. Quentin, *Les martyrologes historiques du Moyen Âge. Étude sur la formation du Martyrologe Romain* (Paris 1908; repr. Aalen 1969) p. 74sq.

⁴ The *Omelia in natale sanctorum uirginum* contains a lection of Matth. 25:1sq. with the appropriate *Omelia domni Aymoni episcopi* for this feast. This particular homily belongs to the so-called 'Collection of Liverani' recorded in mainly Central Italian manuscripts. See H. Barré, *Les homéliaires carolingiens de l'école d'Auxerre. Authenticité – inventaire – tableaux comparatifs – initia*. Studi e testi 225 (Vatican 1962) pp. 113-122 and 208. The collection is attributed to Haymo of Auxerre (fl. 840-860) in most manuscripts.

⁵ Prayers found in the Old Gelasian sacramentary and in the sacramentaries of Autun and Gellone.

⁶ *Coll. Diessensis* of Munich, Bayerische Staatsbibliothek, Clm. 5541 and *Coll. IV librorum* of Cologne, Dombibliothek, 124, see R. Pokorny, 'Die drei Versionen der Triburer Synodalakten von 895. Eine Neubewertung', *Deutsches Archiv* 48 (1992) pp. 439-511, see pp. 439-51; the part contains canons of the councils of Tribur, Toledo, Elvira, Braga, and Neocaesaraea.

ff. 128v-129r: *Coll. Hibernensis* X (Wasserschleben ed., pp. 28-29); commentary on the canonical hours (*De oris celebrationem et causis quibus celebrantur*)¹

ff. 129v-134v: Texts on canonical hours of Hrabanus Maurus, *De clericorum institutione* I,31 (Zimpel ed., pp. 328-337), Walafridus Strabo, *De rebus ecclesiasticis* XX and XXVIII (*Walahfrid Strabo's Libellus de exordiis et incrementis ecclesiasticis rerum*. A.L. Harting-Correa ed. (Leiden 1996)); Amalarius, *Liber officialis* I,37/39 (f. 131r: *Item de letanias sequitur*), III, 44 (Hanssens ed., pp. 178-186, 381-6)

ff. 135r-138r: Isidore of Sevilla's *Liber Etymologiarum* VI,16 (*Senodus cuius linguae est...*; Lindsay ed.) and excerpts from *Coll. Hibernensis* I,1-19 (Wasserschleben ed., pp. 3-11; in B version of ms. Vallicelliana T. XVIII); *Liber Etymologiarum* VII

ff. 138r-143r: Halitgar of Cambrai, *Paenitentiale* III,1-V,16 (PL 105, 677-689)²

ff. 143r-146r: Letter of Celestine to the bishops of Apulia and Calabria (JK 371); Ps-Sylvester (*ad nicenum sinodum*; ed. Hinschius, p. 449); chronologically arranged collection of canons of the councils of Ancyra, Neocaesarea, Gangra, Antioch, Laodicea, and Chalcedon; excerpts of decretals: Aurelius ad Coelestinum (PL 67, c. 228); Siricius (JK 255); Innocent I (JK 311); Celestine (JK 369); Leo I (JK 544/536); Gelasius (JK 636); Roman council of 743 (MGH Concilia II,1, pp. 10-23)); Mass Exposition of Ps.-Jerome (Reynolds ed.); excerpts *Coll. Herovalliana*³

ff. 147r-150v: *Coll. Hibernensis* I,20, I,22-II,4,6-18 (Wasserschleben ed., pp. 11-18)⁴

2.3 Purpose and function of the manuscript

The account of the contents show that the manuscript contains a mixture of liturgical and canonistic texts. Pierre Salmon designated it a *Libellus Officialis*, while Sarah Hamilton and Paola Supino Martini considered it one of the earliest species of a *Rituale*, the term for books of *ordines* for priests.⁵ The manuscript contains most of the texts necessary for a priest to perform his liturgical duties, from the celebration of mass to the anointing of the sick. The

¹ The text resembles Hrabanus Maurus' *De Clericorum Institutione* II,1-9 (Hrabanus Maurus, *De institutione clericorum libri tres*, D. Zimpel ed., Freiburger Beiträge zur Mediävistik 7 (Freiburg 2000) pp. 344-351) There is an empty space after the end of the commentary on f. 129r.

² Kottje, *Die Bußbücher Halitgars von Cambrai und des Hrabanus Maurus*, p. 67. This version is also found in the Italian manuscripts Verona, Bibl. Capitolare, cod. LXIII (61), Vercelli, Bibl. Capit., CXLIII, and Berlin, Deutsche Staatsbibliothek, Hamilton 290.

³ See Mordek, *Kirchenrecht und Reform im Frankenreich*, p. 241.

⁴ The text was not finished and the manuscript ends with the phrase *Lex dicit (...)*.

⁵ Hamilton, 'The *Rituale*: the evolution of a new liturgical book', pp. 74-86; Supino Martini, *Roma e l'area grafica Romanesca*, pp. 73-74; Salmon, 'Un "Libellus Officialis"'.

more strictly legal texts, for example the excerpts of the *Coll. 5libr.*, also pertain to liturgical matters or deal with the clerical orders and their corresponding pastoral duties. The fact that the manuscript lacks any decoration gives support to the contention that it served practical purposes. If section ff. 81r-121v functioned as a separate manuscript, then one would have two convenient booklets fit for practical use.

Presuming that the part that contains the *P. Vaticanum* was inserted into the manuscript at a later date, most probably in the twelfth century, it must have functioned independently for at least a short time or could have been part of another manuscript that is no longer extant. The part begins with the passions of St Lucia and St Eustratius and his consociates. The subdivision of the Passion of St Eustratius and his associates into numbered *lectiones* suggests that it was destined to be read out aloud in commemoration services for these saints. After the passions the manuscript continues with a homily attributed to Haymo of Auxerre. Then follows a Mass for a wedded couple, the *P. Vaticanum*, and a short appendix of conciliar decrees, excerpts of the *Libellus Responsionum*, the *P. Vallicellianum I*, and Haito of Basle's capitulary. The appendix was originally not a part of the penitential; the numbering of the canons is different and its canons more or less repeat earlier regulations of the penitential. None of the texts of the appendix are, moreover, recorded in the *P. Vallicellianum E. 62*, which drew on a more complete version of the *P. Vaticanum*.¹ However, the appendix constitutes an appropriate supplement to contents of the penitential, because it touches upon topics dealt with by the penitential, such as incest, adultery, and ritual purity. We have come across this combination of liturgical, penitential, and canonical texts in the manuscript of the *P. Casinense*, in which the penitential also 'mediates' between liturgy and canon law by marking the change from liturgical to canon law texts.

2.4 The penitential ordo

The canons of the *P. Vaticanum* are preceded by an *ordo* with instructions for hearing confession. The *ordo* differs in one important respect from other *ordines*: except for a long *Confiteor* formula, prayers are conspicuously lacking from this text. Most elements, however, are shared with other Frankish and Italian *ordines*. The *ordo* is titled 'How a priest should be a mediator between God and man and how he should give penance'.² The first text of the *ordo*

¹ See chapter 4.

² *P. Vaticanum, ordo: Quomodo debet esse mediator sacerdos infra deum et hominem siue penitentiam dans.* There may be a parallel with the (long version of) the preface of the *P. Oxoniense II* (Kottje ed., CCSL 156, p.

is a slightly abbreviated form of the instruction *Quotiescumque*, which explains to the priest some of the basic principles of penance.¹ Judging from its wording, the instruction was taken from the *P. in II libris*.² The instruction is followed by an *admonitio* to be cited by the priest. The priest tells the penitent not to feel ashamed to confess his sins by explaining that he himself is no less a sinner than the penitent.³ The text underlines the importance of confession by appealing to the examples of St Peter and the crucified thief who had also confessed their sin and were subsequently forgiven. The remainder is similar to a canon incorporated in the *P. Merseburgense A*.⁴ The priest should tell the penitent that the devil will hide and flee as soon as he mends his ways through prayer, fasts, almsgiving, and visits to the places of the saints.⁵ Then the penitent is required to rise up after prostrating before the altar.⁶ The priest asks the penitent to acknowledge guilt for all sins he or she has committed after baptism and demands that the confessant promise to mend his or her ways and renounce all the inventions of the devil. The penitent should answer affirmatively with ‘I will’ and ‘I promise’.⁷ Then follows an exclamation that he or she has sinned before God and his angels and asks forgiveness. This entire interrogation stemmed from the ninth-century Reims *ordo*, which will be analysed in chapter 6. This Frankish *ordo* also survives in a number of Italian manuscripts and exerted a strong influence upon Italian liturgies of penance.⁸ The penitent is subsequently interrogated

186): *nos sacerdotes uel pontifices mediatores sumus christianorum ad deum nostrum Iesum Christum et iterum Iesum Christum pro nobis ad patrem omnipotentem. Et quomodo nos possimus mediatores esse...* See also the *ordo* of ms. Barcelona, Bibl. Universitaria, cod. 228 (Italy; s. X^{cx}-XI): *Deinceps sacerdos stans qui se inter deum et hominem mediatorem discernit.*

¹ Some of the ideas expressed by this text are discussed in chapter 1 on the *P. Casinense*.

² Both penitentials read for example *Vae uobis legis doctoribus* instead of *Vae uobis legisperitis* of most other versions of this instruction.

³ *P. Vaticanum, ordo: Fili, noli despiciere de peccatis, nec erubescas (!) dicere peccata uel quantumcumque malum fecisti, quoniam ego tui similis sum in peccatis.* The wording is particularly close to that of the *P. Vallicellianum III* (ms. B. 58, f. 82r; not edited by Schmitz I): *Karissime fili, noli me despiciere neque erubescas confiteri michi peccata tua. Nam et ego homo peccator sum et in meis peccatis recognosco...* See also chapter 6.

⁴ *P. Merseburgense A*, c. 121 (ms. Vat. lat. 5751; Kottje ed., *CCSL* 156, p. 168). There are also similarities with the preface of the *P. Bituricense* (ms. Leiden, Universiteitsbibliotheek, Scaliger 70 (France; s. XI)).

⁵ *P. Vaticanum, ordo: Porro si conuersus fueris statim diabolus erubescit et fugit. Qui uitia unde poenites modo plus fortiter tecum pugnare habet eo quod expellis ea de domo sua. Sed lacrimabiliter hora, ieiuna et elemosyna fac et illico fugiet a te: Dominus tecum est ne timeas demonem. Sed quantum potueris ad loca sanctorum frequentare ubi sancta scriptura audias et fabula sibi non facias, sed adtentius ausculta que ibi leguntur: Et dominus noster qui uenit in hunc mundum peccatores saluos facere quorum nos sum (I Tim. 1:15: *quorum primus ego sum*). Mox ut te uiderit afflictum et humiliatum, imponet te super humeros suos dicens: Gaudium sit in celo super hunc peccatore...*

⁶ The prostration can be inferred from the rubric *DEINDE SURGAT ANTE ALTARE CUM GEMITU ET SUSPIRIO*. Cf. Hamilton, *The practice of penance*, p. 49.

⁷ *P. Vaticanum, ordo: Sacerdos dicit: Reddis te culpauilem deo de omnibus peccatis tuis quod post baptismum commisisti, uolendo aut nolendo, quod enim recordas aut non recordas, siue in cogitatione, aut in locutione, aut in opere contra mandatum dei? Respondit peccator: Sic facio. Dicit sacerdos iterum: Promittis te de preteritis culpis aemendare, et de futuris cautelam accipere, et ad omnes inuentiones diaboli abrenuntiare? ... Promitto.*

⁸ The Reims *Ordo* can be found in ms. Vatican, BAV, Reg. lat. 191, Navarra, Bibl. Capitolare, 18, and Rome, Bibl. Nazionale 2081 (Sess. 95). See the chapter 6. The interrogation is also recorded in ms. Milan, Bibl. Ambros. T. 27. Sup., the *ordines* of mss. Vallicelliana B. 8, B 63, E. 62 (all in abridged versions), ms. Bologna,

as to his faith in the Trinity and his willingness to forgive others. Then he should make his confession, after which he must declare how much he had sinned in ‘deeds, thoughts, and words’.¹

The *ordo* proceeds with a long, formulaic *Confiteor* prayer through which the penitent confesses all his sins to ‘God Almighty, his angels, and his saints’.² From the tenth century onwards we find such formulae inserted into penitential *ordines*.³ Because the *ordo* lacks any reference to an interrogation of the penitent and apparently places a *Confiteor* prayer instead of spontaneous, individual confession, Sarah Hamilton suggests that the *ordo* of the *P. Vaticanum* may reflect a rite of ‘devotional confession’ rather than private confession. Yet she also noted that the presence of canons could suppose individual confessions of sinners.⁴ The function of the *Confiteor* will be reconsidered in chapter 6. Among the sins mentioned in this prayer one encounters several concerning the neglect of clerical duties. For example, the penitent declares that he had sinned by failing to judge penitents according to the canons.⁵ This impression is strengthened by the occurrence of an almost identical *Confiteor* in an *ordo* for sinning clerics in a North Italian manuscript now in Bologna.⁶ One cannot conclude from this fact that the *ordo* solely aims at clerics, for the penitential itself addresses cleric and lay confessants alike, both men and women. The *ordo* ends with an *admonitio* based on chapter 4 of the Rule of Saint Benedict (‘On the instruments of Good works’). This text is found, with the same introductory sentence, in the *ordo* of the South Italian ms. Rome, Bibl. Vallicelliana, C. 32.⁷ It consists of a list of exhortations based upon biblical precepts and urges Christians to

Bibl. Universitaria, 2679, and Vatican, BAV, Vat.lat. 5768 (Bobbio; s. XI). In the *ordines* of the *P. Vaticanum*, the *P. Lucense* of ms. Lucca, Bibl. Statale, 1781, and the Albi pontifical (Albi, Bibliothèque Rochegude, ms. 20; Rasmussen and Haverals, *Les Pontificaux du Haut Moyen Âge*, p. 40) it begins with *Reddi(s) te culpauilem* instead of *Recognoscis te* of the other manuscripts.

¹ On this triad: P. Sims-Williams, ‘Thought, word and deed: an Irish triad’, *Ériu* 29 (1978) pp. 78-111.

² The prayer begins with *Ego uolo esse confessor deo omnipotente et angelis domini et sanctis eius*.

³ See F. Hautkappe, *Über die altdeutschen Beichten und ihre Beziehungen zu Cäsarius von Arles*. Forschungen und Funde IV,5 (Münster 1917) pp. 53-55. See also chapter 6.

⁴ Hamilton, *The practice of penance*, pp. 48-49.

⁵ *P. Vaticanum, ordo: Ego peccau de illis poenitentibus qui ad me ad confessionem uenerint, et suas culpas mihi confessi sunt, et ego secundum legem non iudicau eis. Et tibi homini dei N. De omnibus peccatis meis quem ego feci postquam natus fui et baptismum accepi usque in ista hora. Quod ego miser peccau in periuriis multis...* etc. Most confessional prayers read ‘*in fabulis/uerbis otiosis*’, for instance PRG 99,50a (*Le Pontifical Romano-Germanique* II, pp. 16-17). Ps.-Alcuin reads: *Peccavi nimis in sermonibus vanis et immundis et turpis, otiosis et nocuis... Peccavi, quod negligens fui... de meo ministerio... Peccavi de illis poenitentibus, qui ad me propter confessionem uenerunt, quos ego non secundum canonicum iudicium iudicavi...* (Hautkappe, *Über die altdeutschen Beichten*, pp. 41-42).

⁶ Bologna, Bibl. Universitaria, 2679 (San Salvatoris 686) (Torcello? s. XI^{ex}) ff. 129v-132r also has the phrase *peccau... in ociosis sermonibus multis*. This *Confiteor* is more elaborate and is at certain points interrupted by blessings to be said by the priest. On this *ordo* see chapter 6.

⁷ Both texts begin with the opening sentence *Fili (Fili) ms. Vallicelliana C. 32, ordo IX,128* (Odermatt, *Ein Rituale in beneventanischer Schrift*, pp. 290-291) *karissime si uis (vultis) saluus (saluos) fieri et uitam eternam*

fast, to visit the sick, to avoid pride or laziness, to fear the Last Judgment, et cetera. The text as it is included in this *ordo* is changed in some important respects, changes that also occur in the first capitulary of Theodulf of Orléans and the Homiliary of Agimond, a priest of the Church of the Twelve Apostles in Rome in the eighth century.¹ The *admonitio* requires penitents to obey the divine precepts even if the *sacerdos* does not observe these very regulations himself. The *praecepta abbatis* of the Rule of Benedict are substituted for the *praecepta diuina* of the *sacerdos*.² The introduction *Fili karissime* and the concluding *Adiuuante domino nostro* suggest that the text was indeed taken from a collection of sermons or homilies, though not necessarily that of Agimond. Since many homilies travelled under St Augustine's name, the enigmatic closing sentence 'Saint Augustine set forth all these things in a synod' also points in this direction.³

Most texts of the *ordo* can be found in other *ordines*, yet this one clearly departs from others in that it is stripped of all its prayers. The emphasis is put on instruction and education of priest and penitent. The instruction *Quotiescumque* requires the priest to partake in the penitent's fasting and to pray *cum tristitia et gemitu atque lacrimas* for the penitent. The confessional prayer, the passage taken from the Rule of Benedict and the other exhortations addressed to the penitent (the renunciation of the devil, the promise to lead a better life) reveal a desire to clarify and justify the reasons for confession and penance and to induce the penitent to mend his ways.

2.5 Structure of the penitential

The canons of the penitential are organized into eight concise chapters.⁴ Like the *P. in II libris*, its principal source, the canons on fornication are subdivided into sections on fornication committed by clerics and that by lay people.⁵ Unlike the *P. in II libris*, the compiler of the *P. Vaticanum* also devoted separate chapters to homicide and fornication

possidere (peruenire), atque a tartareo et diabolico zelo esset liberatum (esse liberati).' The end of the list of ms. Vallicelliana C. 32 is different.

¹ Noted by Salmon. Cf. R. Grégoire, 'L'homélie romain d'Agimond', *Ephemerides Liturgicae* 82 (1968) pp. 257-305, see p. 299, nr. 66. The homiliary is recorded in ms. Vatican, BAV, Vat. lat. 3836.

² *Præceptis diuinis sanctis obedire. Etiam si sacerdos... aliter agat.* Cf. Vallicelliana C. 32, XI,128 Odermatt, *Ein Rituale in beneventanischer Schrift*, p. 158 remarkst that the text is altered 'im Sinne einer Adaptation an nicht-klösterliche Verhältnisse'.

³ *P. Vaticanum, ordo: Haec omnia sanctus augustinus in synodo exposuit.* The phrase is also found in the *P. Vallicellianum E. 62* but appended to another text.

⁴ The *P. Vaticanum* contains the following chapters *De homicidio, De fornicatione clericorum, De fornicatione laicorum, De fornicatione mulierum, De homicidio mulierum, De falsitate, De furto, and De ebrietate.* See Körntgen, 'Ein italienisches Bußbuch und seine fränkischen Quellen', p. 195.

⁵ See Körntgen, 'Ein italienisches Bußbuch und seine fränkischen Quellen', p. 195.

committed by women. For these chapters, he not only borrowed canons from the *P. in II libris* but also from the *P. Oxoniense II* and the *P. Additivum Ps.-Bedaegberti*. Whereas the canons on fornication are, with the exception of a canon on divination and one on making vows, more or less the counterparts of those addressed to men, the canons on homicide deal with topics such as abortion and infanticide. The *P. Casinense* also devotes a separate chapter to sins committed by women, but there is no direct relationship between both penitentials. The remaining three chapters are concerned with ‘falsity’ (perjury and false witnesses), theft, and drunkenness, of which those on falsity and drunkenness do not occur in the *P. in II libris*. Compared to the *P. in II libris*, whose two books cover a much wider range of sins, the *P. Vaticanum* constitutes an abridgment of the somewhat unwieldy *P. in II libris* with its duplications and conflicting rulings. By creating a subdivision and drawing from other sources, the compiler did more than simply abridge his source; he created a new text. With two chapters devoted to homicide and three to fornication, the compiler of the *P. Vaticanum* clearly considered these vices more important than topics such as superstition or food.¹ The only canon that is specifically concerned with superstition is concerned with women performing divinations or ‘diabolical’ incantations.² The last chapter treats sins connected to drunkenness, but also contains canons on infanticide, food taboos, priests neglecting their offices, and people dishonouring their parents. The chapter gives the impression that the compiler grouped those canons together which did not easily fit into the other chapters.

2.6 *The canons and their sources*

Ludger Körntgen showed that almost two thirds of the *P. Vaticanum* is based on the *P. in II libris*. This penitential, probably compiled in northern France, is preserved in one manuscript from Northern France and two from Italy.³ Not only does the structure of the *P. Vaticanum* owe much to the *P. in II libris*, the order of the canons largely concurs with that of the *P. in II libris*. Körntgen noticed that the *P. Vaticanum* as it is found in this manuscript probably represents an abridged version of a more ‘complete’ penitential which is no longer extant. This is attested by the twelfth-century *P. Vallicellianum E. 62*, which is largely based on the

¹ See also chapter 7. Two provisions are concerned with food. Canon VIII,13 forbids consuming animals that had drunk human blood, c. VIII,14 forbids consumption of blood (of animals) and carrion.

² The canon can be traced back to the *Iudicia* of Theodore of Canterbury. *P. Vaticanum*, c. IV,11: *Mulier si diuinationes fecerit uel incantationes diaboli...*

³ Körntgen, *Studien zu den Quellen*, pp. 206-216. The manuscripts are Montecassino, Arch. dell’Abbazia, cod. 554 (Southern Italy; s. X²), Vienna, Österreichische Nationalbibliothek, lat. 2231 (Northern Italy; s. IX/X), and Montpellier, Bibliothèque Universitaire, 387 (Northern France; s. IX^{med}).

P. Vaticanum but also includes canons of the *P. in II libris* not incorporated in the Vatican text.¹ As will be outlined below, an analysis of the sources of the *P. Vallicellianum E. 62* confirms this conclusion. Since Körntgen’s article has already provided a thorough analysis of the similarities between the Vatican penitential and the *P. in II libris*, it is sufficient here to point to the synopsis found at the end of this chapter. Körntgen has also shown that the *P. Vaticanum* contains canons taken from the *P. Oxoniense II*. A comparison between the canons taken from the *P. Oxoniense II* in the *Coll.9libr.* and the *P. Vaticanum* reveals that the compilers of both texts drew on a similar version of this penitential. This may be illustrated by the following comparison of canon III,19 of the *P. Vaticanum* and its corresponding canons in the *Coll.9libr.* and the *P. Oxoniense II*, which deal with men repudiating their legal wives and taking new ones.

<i>P. Vaticanum</i> III,19	<i>Coll.9libr.</i> IX,32	<i>P. Oxoniense II</i> , c.35
Si quis <u>uir habens uxorem</u> , et duxerit aliam, non est illius uxor, sed meretrix; illa tales cum christianos <u>non communicent neque edant, aut bibant</u> , nec in sermone, aut in opere aliquis eum communicent, et <u>non possunt poeniteri donec separentur</u> ; postea unusquisque <u>ieiunet</u> ebdomadas XL; <u>digna est mulier dupplum ieiunare</u> .	Si quis <u>uir habens uxorem</u> , et duxerit aliam, dimissa ea que prius legitima accepit, non est illius uxor, sed meretrix. Illa tale cum christianis <u>non communicet, neque edat, neque bibat</u> , neque in sermone aut in opere ei aliquid commune sit. Sed neque parentibus eorum, qui haec fecerit, et consentiunt. Isti tales <u>non possunt paeniteri, donec separentur; postquam separati fuerint, ieiunet unusquisque</u> , ut iudices sacerdotes; <u>digna est mulier dupplum ieiunare</u> .	Si legitimam uxorem induxerit et dimiserit eam, quam legitimam accepit, et aliam duxerit, illa, quem duxerit, non est illi uxor sed meretrix. Illi talis cum christianis non manducet neque bibat neque illa mulier, quam illi accepit, neque in sermone neque in opere neque in aliquis ei communis sit neque illi neque parentibus eorum, si tamen consenserunt hoc, sed et illi sint excommunicati a christianis.

Other examples support this shared usage.² Since both documents include canons of the *P. Oxoniense II* not present in the other collection, it is likely that they independently drew upon the same, possibly South-Italian recension of the *P. Oxoniense II*.³

Although Körntgen remarked that the compiler of the *P. Vaticanum* made use of the ‘U version’ of the *Iudicia Theodori*, it is more plausible that he had access to the *Canones*

¹ Körntgen, ‘Ein italienisches Bußbuch’, p. 196.

² For instance *P. Vaticanum* III,15 (= *P. Oxoniense II*, 38) and *Coll.9libr.* IX,27, *P. Vaticanum* VI,2 (= *P. Oxoniense II*, 48) and *Coll.9libr.* IX,67 (cf. *Coll.5libr.* IV,254), and *P. Vaticanum* IV,4 (= *P. Oxoniense II*, 2) and *Coll.9libr.* IX,35.

³ It must be recalled that there may have been a more complete version of the *P. Vaticanum* than preserved in ms. Arch. di S. Pietro H. 58. This version might have contained more canons of the *P. Oxoniense II*. Since canons of the *P. Vaticanum* can be found in the *Coll.9libr.*, it is likely that the compiler of the *Coll.9libr.* drew on this lost version of the *Vaticanum*, which also may have included canons of the *P. Oxoniense II* that were copied in the *Coll.9libr.* but missing in the *P. Vaticanum*.

Gregorii (or ‘G version’) of these. The wording of canon VII,8 on eating before receiving Communion, for instance, is closer to G than to U.¹ The use of the G version is all the more likely, because, in contrast to the U version, this version was known in Italy.² The compiler also borrowed canons from the penitentials attributed to Bede and Egbert, perhaps through the so-called *P. Additivum Ps.-Bedaegberti*, four copies of which are preserved in Italian manuscripts.³ The influence of Bede and Egbert can also be seen in canons V,5-7 concerning infanticide and abortion.⁴

It has already been noticed that the compilers of the *P. Vaticanum* and the *Coll.9libr.* made use of the same version of the *P. Oxoniense II*. The *P. Vaticanum*, the *Coll.9libr.*, as well as the *Coll.5libr.* have several other canons in common.⁵ Canon III,11 concerning fornication within churches is recorded in the eighth-century *P. Parisiense simplex*, in the *P. Vindobonense C*, but also in the *Coll.5libr.*⁶ Another canon that also appears in these two collections is a ruling which warns that those who hide their minor sins and fail to do penance have to justify their actions at the Last Judgment.⁷ Canon VIII,15 on dishonouring one’s parents ‘with words’ or by raising one’s hand against them can be found in an enlarged

¹ For example, canon VII,8 (*Si quis commederit et communicauerit, VII dies peniteat, alii dicunt XL*) is closer to Theodore G, c. 193 (*Quis manducauerit et postea communicat, VII dies peniteat*) than to Theodore U, I,12,5 (*Qui acciperit sacrificium post cibum, VII dies peniteat, in iudicio episcopi...*). Another canon that comes closer to the G version than to the U version is V,7 of the *P. Vaticanum*. This canon may, however, have also been taken from the penitential of Ps.-Egbert VIII,2.

² Körntgen, ‘Ein italienisches Bußbuch’, p. 194 and Kottje, ‘Busspraxis und Bussritus’, p. 375.

³ R. Haggemüller, *Die Überlieferung der Beda und Egbert zugeschriebenen Bußbücher*. Europäische Hochschulschriften III, Geschichte und ihre Hilfswissenschaften 461 (Frankfurt, etc. 1991) pp. 195-246: Ms. Milan, Bibl. Ambros. G. 58 and ms. A. 13, ms. Merseburg, Dombibliothek, 103, and ms. Verona, Bibl. Capitolare, LXIII (61). The *P. Additivum Ps.-Bedaegberti* was compiled in two successive stages, both of which are represented in Italian manuscripts.

⁴ *P. Vaticanum* IV,5 (*Parentes cuius filius non baptizatus obiit, I annum peniteat, et numquam sine aliqua poenitentia sit*) and IV,6 (*Si qua mulier hocciderit filium suum sponte in utero ante XL, I annum peniteat, si uero postquam animatum fuerit...*) are not identified by Körntgen. Exact wording in Haggemüller, *Die Überlieferung der Beda und Egbert zugeschriebenen Bußbücher*, p. 306 (*Ps.-Bedaegberti* II,11b) and Schmitz II, p. 656 (*Ps.-Beda* I,37)/p. 667 (*Ps.-Egbert* VIII,2). Canon IV,1 may be based on *Ps.-Beda* I,4 (Schmitz II, p. 255).

⁵ See chapter 8 on these two collections.

⁶ *P. Vaticanum*, c. III,11: *Si quis in haeclesia fornicauerit, po[e]nitentiam abeat omnibus diebus uite suę et prebeat obsequium domum dei*. The wording of the *P. Vaticanum* is closer to *P. Parisiense*, c. 45 (Kottje ed., CCSL 156, p. 78) than to *Coll.5libr.* II,74,3 (Fornasari ed., CCCM 6, p. 227). The *Coll.5libr.* borrowed from the *Vaticanum* rather than vice versa. The canon is not recorded in the *Coll.9libr.* of ms. Vat. lat. 1349, but since this manuscript does probably not contain the original version, it may have been present in an earlier version of the collection. Cf. *P. Vindobonense C*, c. 6 (Meens, ‘Aliud Benitenciale’, p. 22).

⁷ *P. Vaticanum*, c. VII,16: *Qui multa mala fecerit, hoc est, homicidium, adulterium... Nam si aliquis in se uel paruum peccatum celauerit, sciat se exinde rationem redditurum. Quia scriptum est ‘nullum peccatum inultum dimittit deus’, hoc est sine uindicta, quia si non iudicatur hic per penitentiam, iudicat illa deus per seueritatem in die iudicii. Tantum consideret quodcumque facit propter regnum caelorum, cum summo desiderio faciat sicut scriptum est: hilare enim datorem diligit deus*. The first and the last part derive from the *P. in II libris* II,9,19 and I,10,10, the middle part (*quia per confessionem... die iudicii*) is similar to *Coll.9libr.* IX,134 and *Coll.5libr.* IV,4.

version as *Coll.5libr.* IV,184 and *Coll.9libr.* IX,101.¹ Finally, it is worth noting that the *Coll.9libr.* includes canons only recorded in the *P. in II libris* and the *P. Vallicellianum E. 62*.² This suggests that the compilers of the *Coll.9libr.* and, probably via the former collection, the *Coll.5libr.* drew on the more complete, but no longer extant version of the *P. Vaticanum*, which was also used for the *P. Vallicellianum E. 62*. Finally, the chapter on fornication by lay people includes a censure against concubinage which originally derives from a sermon of Caesarius of Arles.³ It is unlikely that the compiler of this penitential took this short quotation from Caesarius' sermon directly. Since it was also transmitted as a separate censure in canonical collections, the quotation entered the *P. Vaticanum* from a canonical source.

Some of the provisions of the *P. Vaticanum* cannot be traced back to any existing penitential. Since many of these provisions also occur in the *P. Vallicellianum E. 62*, it is clear that they must already have been recorded in the early version of the *P. Vaticanum*. The canon on confessing minor sins was based on a ruling of the *P. in II libris* but with unique additions. In some cases, existing canons were merely enlarged with another form of penance.⁴ A penance taken from the *P. Oxoniense II* was added to the seven years required for those who had killed someone in order to steal his goods: a fast of seventy-nine weeks for the killer if he repays the victim's parents for the 'blood price' (*praetium sanguinis*) and compensates for the things he has stolen.⁵ In canons II,2-5 on fornication and adultery committed by clerics, the penances are, as in the *Cap. Iud.*, apportioned to each separate clerical order, but there is no evidence that the compiler based these rulings on those of the

¹ *P. Vaticanum*, VIII,15: *Si quis patrem aut matrem de uerbo exhonoraerit aut manum erexerit in iracundia, III annos peniteat.* Cf. *Coll.5libr.* IV,184 (Vat. lat. 1339, f. 201v) and *Coll.9libr.* IX,101. Cf. *P. Merseburgense B*, c. 28 (Kottje, CCSL 156, p. 176): *Si quis inhonorificauerit patrem aut matrem III annos peniteat in pane et aqua. Quodsi manum leuaerit aut ferita fecerit...* Cf. chapter 8. *Coll.9libr.* IX,53,2 (*Si quis de ministerio sanctae ecclesiae quaecumque opus quislibet fraudauerit... si per cupiditate, aut auaritia, uel sine magna necessitate...*) which reproduces *P. in II libris* I,10,2 (*Si quis de ministerio ecclesiae quacumque opus quodlibet fraudauerit... si per cupiditatem aut auaritiam uel gloria saeculi...*) and *P. Vaticanum* VII,10 (*Si quis de ministerio sanctae ecclesiae qualiuet opus fraudauerit... si per cupiditatem aut auaritiam uel gloria secularia...*).

² *Coll.9libr.* IX,97,2 (*Quaecumque in ecclesia demandauerint episcopum, aut presbiterum, uel diaconum, qui non obseruauerunt...*) reproduces *P. in II libris* II,1,35. *Coll.9libr.* IX,21,2 (*Si quis cum sorore disponsata sua dormierit...*) recalls *P. in II libris* I,4,27 and *P. Vallicellianum E. 62*, c. 33. *Coll.9libr.* IX,4 (*Si quis per scandalum uolens fecerit homicidium .x. annos peniteat*) is similar to *P. Vallicellianum E. 62*, c. 10 (*Si quis per scandalum uolens fecerit homicidium, decem an[n]i peniteat*).

³ *P. Vaticanum* III,11: *Concubinas habere numquam licuit...* Cf. Caesarius, *sermo* 43,4-5, Morin ed., CCSL 103, p. 189. See also chapter 7.

⁴ Other examples are *P. Vaticanum*, cc. I,7; I,13; II,1; II,10; II,13; III,5; III,12; III,15; IV,1; VI,3; VII,1; VIII,8; VIII,13; VIII,16. See II,6 (*Viri qui inter foemora fornicantur, de una uice... si iterum... si autem amplius, addatur duplum poenitentia*), III,18 (*Si quis uiolauerit aut uiolenti habuerit mulierem, aut in oste uel in quacumque locum, et illa noluit consentire, non cogatur eam ieiunare, quia inuitis fornicauit. Homini uero illi dupplum imponat ieiunium; si uxorem habuit, ieiunet ebdomadas XLII, si est sine uxor XXIII(or)*) VII,8 (*Si quis commederit et communicauerit, VII dies peniteat, alii dicunt XL*).

⁵ See *P. Vaticanum* I,5: *Si quis laicus [sc. ex meditatione?] aut auaritiae causa ut res eius inuadat occidit, VII annos peniteat... Et si reddit praetium sanguinis aut res que male abstulit parentibus, ieiunet ebdomadas LXXVIII [sc. tres?] partes in pane et aqua.*

*Cap. Iud.*¹ Sometimes the author of the canons seems either to have misunderstood his sources or to have changed them deliberately. Compare for instance canon VI,3 (*Si quis in ecclesia per sua uoluntate aut per qualibet argumentum hominem damnat, XI annos peniteat et hominem pro se redimat et helemosynas faciat...*) with the corresponding canon of the *P. in II libris* (*Si quis uero coactus pro qualibet necessitatem aut nesciens periurauerit .iii. annos peniteat .i. ex his in pane et aqua, et anima pro se redimat et helemosinas multas faciat*). Whereas the penance, except for the period of fasting, resembles that of the *P. in II libris*, the sin of ‘harming (? *damnat*) a man in Church by perjury either deliberately or by some argument’ is different.² Perhaps the scribe could not read his (possibly Beneventan) exemplar, or the compiler deliberately changed the general vein of the canon.³ Other canons were adorned with quotations from the Bible. A canon concerning those who suspect that they are being led into perjury but nevertheless swear an oath is amplified with an allusion to Matthew 5:34-37: ‘Do not take oaths by my name, nor by heaven or by earth, nor by the hair of your head, but let your yes be a yes and your no be a no.’⁴ Minor additions to the original texts were intended to modify the penances recommended by the *P. in II libris* or to deal with new subject matter. The *P. Vaticanum* is not just a rearrangement of the *P. in II libris*, but is the result of a desire for a more convenient and coherent text.

2.7 The canon law appendix

The penitential is followed by a set of provisions, mainly canons of church councils culled from a canon law collection. Each separate canon is provided with a rubric describing the subject of the canon and with a reference to the council from which the ruling derives. There are also numbers assigned to some of the canons. Körntgen considered these provisions as a separate text which did not belong to the penitential proper. The conciliar decrees are clearly

¹ For instance, a twelve year penance is assigned to a bishop who committed fornication with the someone else’s wife. A priest should do penance for ten years, and so on. Since the penances and the wording of the canons are different from the *Cap. Iud.*, the compiler of the *P. Vaticanum* may have compiled these canons himself. See Körntgen, ‘Ein italienisches Bußbuch’, pp. 194-195.

² What exactly the word *argumentum* means is unknown (a reason? a conflict?). Other canons in which the meaning of the original text becomes muddled are *P. Vaticanum* II,9 (*Qui inpugnat ab spiritu fornicationis, quamdiu inpugnatur, tamdiu in pane et aqua donec ab scelera* [*P. in II libris* I,3,12 reads *abscedat*] *maligna cogitatione*) and VII,2 (*Si quis per necessitate furauerit ciuum aut uestimentum, isti euadatur* [*P. in II libris* I,7,2 reads *isti ueniam datur*]...).

³ A Beneventan exemplar was assumed by Reynolds, ‘Excerpta of the Collectio Hibernensis’.

⁴ *P. Vaticanum* VI,7: *Qui uero suspicatur, ut in periurium ducitur, et non parcit eum ipso nesciente, II annos peniteat, et qui periurat, I annum peniteat. Et dominus in euangelio dicit: ‘Non periurabis in nomine meo, neque per caelum neque per terram. Neque per capillos capitis uestri, nisi tantum, si est, est, et si non, non (Matth. 5:34/37)’.* Cf. *P. Vaticanum*, cc. II,18 and IV,14.

different in form, with their rubrics being numbered and their canons attributed to church councils. Yet they are not formally separated from the penitential canons and immediately follow upon the penitential canons without any special designation.¹ These rulings touch upon subjects that were also treated by the penitential and it, therefore, may have been intended as its supplement. The canons deal with ill-treated and assaulted clerics, fornication and illicit (sexual) relationships. Canon IV,10 of the penitential, which is concerned with fornication between a woman and two brothers is, for example, repeated in a more elaborate form in the canon law section.² Since the choice of canons seems to be inspired by the topics treated in the penitential, it is necessary to discuss the appendix in more detail. The sequence of the first canons, numbered IX-XII, deriving from the councils of Tribur (895) and Toledo I (400), corresponds with that of Regino of Prüm's *Libri II de Synodalibus Causis* II,35-38. Yet the numbers of the remaining canons do not correspond to Regino's collection, but to the Collection in Four Books (III,96-99) of ms. Cologne, Dombibliothek, cod. 124.³ As Pokorny noted that this manuscript may have been written in Central Italy in the eleventh century, this collection might well have been a source of the appendix.⁴ The rest of the canons, which go back to the councils of Elvira (ca. 300), Braga II (561), Neocaesarea (325), and Tribur, appear in the same order and with the same numbers in the Collection in Four Books. Significantly, a second numbering is given to these canons in the Vatican manuscript, corresponding with that of another collection, the Collection of Diessen (ms. München, Clm. 5541).⁵ The text that follows is the eighth canon of the *Libellus Responsionum* or Gregory the Great's letter that deals with Augustine of Canterbury's queries on ecclesiastical matters. This canon discusses the questions of whether pregnant or menstruating women could be allowed to enter church or receive the Eucharist and whether men could receive Communion after sexual intercourse. The text abruptly ends with the first question of the ninth chapter (*Si post illusionem... sit dignus sacra mysteria celebrare*) and proceeds with a short explanation of Psalm 54 taken from Augustine of Hippo's *Enarrationes in psalmos*, three canons of the *P. Vallicellianum I* that bear the title *Canones Cancrensi era* (numbered CXXVII-CXXVIII in this manuscript)⁶,

¹ Körntgen, 'Ein italienisches Bußbuch', p. 190.

² *P. Vaticanum*, c. XVII (=Conc. Neocaesariense (325), c. 2)

³ Cf. Körntgen, 'Ein italienisches Bußbuch', p. 190.

⁴ Pokorny, 'Die drei Versionen der Triburer Synodalakten von 895', pp. 443-445. About the synod see also V. Krause, 'Die Acten der Triburer Synode 895', *Neues Archiv der Gesellschaft für ältere deutsche Geschichtskunde* 17 (1892) pp. 49-82 and E. Seckel, 'Zu den Acten der Triburer Synode 895', *Neues Archiv* 18 (1893) pp. 365-409, and *Neues Archiv* 20 (1895) pp. 289-353.

⁵ The rubric of a canon of the council of Tribur runs *ITEM APUD TRIBURIAS. K. XXVIII, XLVIII* (=Conc. Tribur. c. 28 (Diessen); Coll.4libr. IV,48). Reynolds, 'Excerpta', pp. 1-9 attributed the canons to the Collection of Diessen.

⁶ The canons were taken from *P. Vallicellianum I*, cc. 128-130 (Schmitz I, pp. 337-338). Cf. Hägele, *Das Paenitentiale Vallicellianum I*, p. 33.

and a canon of Hatto of Basle's *Capitula Episcoporum*. The canons are concerned with priests who deny penance to people who ask for it, women putting oblations on the chalice on the altar, and lay people who should not read lessons from the Scriptures or sing Alleluias. Hatto's capitulary decrees that women, even if they were nuns, are not allowed to approach the altar or to perform the *ministerium altaris*.

Conclusion

The *P. Vaticanum* is our oldest manuscript witness of the presence of penitentials in Rome. Yet on the basis of this description of the *P. Vaticanum* and its manuscript, it is difficult to date the text of the penitential more accurately than the very imprecise dating of between the ninth and early eleventh centuries. The penitential is certainly older than the version represented in this tenth-/early eleventh-century manuscript, since other texts, like the *Coll.9libr.* and the *P. Vallicellianum E. 62*, made use of a more complete but no longer extant version of the *P. Vaticanum*. The *ordo* does not give us much clue as to the date of the text. The dialogue *Reddis te culpabilem* of the *ordo* is as old as the ninth century. The part *Porro si conuersus* appears in a late ninth-century manuscript from Bobbio, but the text could be older than that. The same goes for the section from the Rule of St Benedict that is incorporated in the *ordo* and which could have been re-written in this version as early as the eighth century. The sources of the canons, the *P. in II libris*, the *P. Oxoniense II*, and the penitentials attributed to Bede and Egbert, all date from the eighth and ninth centuries. Körntgen observed that the compiler of the *P. Vaticanum* can only have used a version of the *P. in II libris* preserved in two Italian manuscripts.¹ These manuscripts are dated to the tenth century, but this does not rule out the possibility that Italian copies of this penitential already circulated in the ninth century. Canons of the *P. Vaticanum* were incorporated into the *Coll.9libr.* and *Coll.5libr.*, the latter of which was composed between 1014-1023. These dates would then constitute the *terminus ante quem* of the *P. Vaticanum*. Since there is no manuscript evidence for the *P. Vaticanum* prior to this sole, late tenth-/early eleventh-century copy of the *P. Vaticanum*, the first version of the text was presumably composed in the tenth century, possibly at the end of this century.

Whereas its sources are all from northern France and the Rhine region, there is good reason to believe that the text was composed in Italy. Firstly, the South Italian *Coll.9libr.* and

¹ 'Ein italienisches Bußbuch', p. 196-7: 'Nicht in Frage kommt jedenfalls der ältere französische Codex, der z. T. andere Lesarten bietet als die Handschriften aus Wien und Montecassino.'

the *P. Vaticanum* include canons of the same version of the *P. Oxoniense II*, the transmission of which seems to have been confined to South and Central Italy. Secondly, the most important source, the *P. in II libris*, was available in the region. Thirdly, the script of the penitential betrays the influence of the Beneventan script, which could point to an exemplar in this script.¹ Finally, the fact that the text only survives in a Roman manuscript lends support to a South or Central Italian place of origin.

The *P. Vaticanum* was copied into one of the earliest liturgical manuscripts known to have been used in Rome. It originally belonged either to the church of the Twelve Apostles or the church of St Apollinare, but it was kept at St Peter's in Rome from at least the fourteenth century and possibly even earlier. The codex consists of two separate parts. The part that makes up the major part of the codex is dated to the eleventh century. It contains a dossier of liturgical and canonical texts, which enabled a priest to carry out his pastoral duties. The second part that contains the *P. Vaticanum* is the older one (late tenth or early eleventh century). The purpose of this section is more difficult to define, because the collection of texts does not constitute a clear unity. Most texts, like the *missa sponsaricia*, the lections for feasts of saints, and the penitential *ordo*, are liturgical. The liturgical note of most of these texts suggests this part was intended for pastoral use. Whereas both parts were written independently, their focus is on liturgy and penance and they were probably joined at an early stage.

The *P. Vaticanum* is largely made up of canons of older Frankish texts like the *P. in II libris* and *P. Oxoniense II*, but it also has many distinctive features of its own. It is the result of a desire to rearrange, harmonise, and, occasionally, supplement the bulky collection of the *P. in II libris*. The text as it is copied in this manuscript represents a short recension of a more extensive text. Its structure, especially its divisions of canons into chapters for clerics, lay people, and women, shows an attempt to create a practical text suitable for delivering judgment on repentant sinners. Significant too is the virtual absence of references to monks in the canons. All in all, the manuscript context and the text indicate that the *P. Vaticanum* was intended for pastoral care and for use at confession. Besides, the *ordo* of the *P. Vaticanum* omits many directions – when penance was to be assigned, which prayers were to be recited – as if this information was taken for granted by the compiler. The omission of such directions points to the author's familiarity with hearing confession and could suggest that he collaborated closely with the user of the text or he himself may be the user intended. The fact

¹ Reynolds, 'Excerpta', pp. 6-9.

that canons of the *P. Vaticanum* appear in the *P. Vallicellianum E. 62*, the *Coll.5libr.*, and the *Coll.9libr.* indicates that this text, at least in its long recension, was an influential one.

Sources P. Vaticanum

P. Vaticanum	P. in II libris	P. Oxoniense II	Other source/ similar text
I,1.	I,1,1	-	
2.	I,1,2	-	
3.	I,1,3	-	
4.	I,1,4	-	
5.	I,2,1	6	
6.	I,1,2	-	
7.	II,4,8	-	Theod.U 1,4,2
8.	II,4,7	-	Colum. 21
9.	II,4,6	-	Theod.U I,4,5
10.	II,4,4	-	Theod.U I,4,6
11.	I,10,4	-	Burg. 21
12.	I,10,5	-	Burg. 35
13.	Cf. I,10,3	-	Cf. Exc. Cum. VI,23
14.	II,6,3	-	Cumm. (IV),12
15.	II,6,1	-	Cumm. (IV),3
16.	II,6,4	-	Cumm. (IV),8
17.	II,6,2	-	Cumm. (IV),4
18.	II,6,5/6	-	Cumm. (IV),8-10 Matth. 18,15
II,1.	I,3,1; II,3,6	-	Burg. 11; Cumm. II,1
2.	I,3,1	-	Cf. Cap. Iud. VII,2
3.	-	-	Cf. Cap. Iud. VII,3
4.	-	-	Cf. Cap. Iud. VII,5
5.	-	-	Cf. Cap. Iud. VII,9
6.	I,4,15 cf. II,1,1	-	Cumm. (X),14
7.	II,2,2	-	Cumm. II,11
8.	I,3,10	-	Cumm. II,12
9.	I,3,12	-	Cumm. II,14
10.	I,3,13 + add.	-	Cumm. II,15
11.	II,8,11	-	Cumm. (XI),10
12.	II,3,2	-	Vinnian 11
13.	II,3,3/4	-	Cumm. (X),2
III,1.	I,4,2	-	Colum. 14
2.	I,4,5	-	Colum. 16
3.	I,4,5	-	Colum. 16
4.	I,4,6	-	Colum. 16
5.	I,4,7 + II,1,25	57	Colum. 17
6.	I,4,11	-	Theod.U 1,2,16
7.	I,4,9	-	Cumm. II,26-27

8.	I,4,12	-	Burg. 37
9.	I,4,13	-	Theod.U I,14,21
10.	-	-	Parisiense/Vindo.C
11.	-	-	Caesarius 43,4-5
12.	I,4,16 + I,4,22	-	Cumm. II,30; Theod.U I,14,19
13.	-	15; 1	-
14.	-	-	-
15.	-	38-39	Eph. 5,25; I Cor. 7,4
16.	I,4,26	-	Theod. G, 176
17.	I,10,11	3; 12	Theod.U II,12,21
18.	I,10,12	59; 2	-
19.	-	35	Cf. Coll.9libr. IX,32
IV,1.	I,4,17/18	-	Theod.U 1,2,12/13; cf. Ps.Beda I,4a
2.	I,4,20	-	Theod.U I,14,17
3.	-	2	-
4.	-	2	-
5.	II,1,33	-	Theod.U I,14,15; Cumm.(X),18
6.	-	36	-
7. Cf. III,15	-	38	Cf. Theod.G 176
8.	II,2,9	-	Conc. Ancyr. 20(21)
9.	II,2,11	-	Theod.U II,12,29
10.	II,2,12	-	Conc. Neocaes. 2
11.	I,10,6	-	Theod.U I,15,4
12.	II,2,13	-	Theod.U I,14,7
V,1.	-	26	-
2.	-	27	-
3.	-	28	-
4.	-	29/30	-
5.	-	-	Ps.-Beda I,37
6.	-	-	Ps.-Beda II,11b
7.	-	-	Theod. G, 117; Cf. P. Ps.-Egberti VIII,2
VI,1.	-	47	-
2.	-	48	-
3.	Cf. I,5,1/2	-	Cf. Theod.G 188
4.	I,5,3	-	Col.B, 20
5.	I,5,5	-	-
6.	I,5,6	-	Cumm. III,9-10
7.	I,5,7	-	Cumm. III,11 + Lev. 3,6; Matth. 5,33
VII,1.	I,6,1/I,1,7,1	-	Burg. 7; Colum. 19
2.	I,7,2	19	-
3.	I,7,3/4	-	Burg. 23/40

4.	I,6,2	-	Burg. 15
5.	I,7,6	37	-
6.	I,7,5	-	Burg. 27; I Cor. 6,10
7.	II,5,3	-	Cumm. II,14
8.	-	-	Theod.G 193
VIII,1.	Cf. II,1,7	-	Cumm. I,8-9
2.	II,1,7/11	-	Cumm. I,8-11
3.	II,1,4	-	Exc. Cum. I,6
4.	II,8,10	-	Cumm. (XI),7
5.	II,8,4-5	-	Cumm. (XI),23-24
6.	II,8,7-8	-	Cumm. (XI),27; Ambros. IX,12
7.	II,1,8	-	Cumm. I,6
8.	-	27/29	-
9.	II,4,10-11	-	Theod.U I,14,28/29
10.	I,10,2	-	Burg. 41
11.	II,8,23	-	Theod.U II,2,10
12.	II,9,10	-	Theod.U I,8,5
13.	II,23-24	55/57	Cf. Ps.Romanum 103
14.	I,9,11	4	Parisiense 36
15.	-	-	Merseburg.B 28; cf. Coll.9libr. IX,101, Coll.5libr. IV,184
16.	II,9,19 + I,10,10	-	Theod.U I,7,1; cf. Coll.9libr. IX,127, Coll.5libr. IV,4

Ambros. = *P. Ambrosianum* (Körntgen, *Studien zu den Quellen*, pp. 257-270); Ps.-Beda = *P. Ps.-Beda* (Schmitz II; Haggenmüller, pp. 303-308); Burg. = *P. Burgundense* (Kottje ed., CCSL 156, pp. 63-65); Caesarius = *Sancti Caesarii Arelatensis Sermones*, G. Morin ed., CCSL 103 (Turnhout 1953); Colum. = *P. Columbani B* (Bieler ed., pp. 98-107); *Coll.5libr.* (ms. Vat. lat. 1339); *Coll.9libr.* (ms. Vat. lat. 1349); Cumm. = *P. Cummeani* (Bieler ed., pp. 108-135); Ps.-Egbert = *P. Ps.-Egberti* (Schmitz II; Haggenmüller, pp. 308-332); *P. in II libris* (Körntgen, *Studien zu den Quellen*, pp. 272-277); Exc. Cum. = *Excarpus Cummeani* (Schmitz II, pp. 597-644); Theod. = *Iudicia Theodori* G and U (Finsterwalder, pp. 253-270, pp. 287-334); *P. Merseburgense* A and B (Kottje ed., CCSL 156, pp. 125-177); *P. Oxoniense II* (Kottje ed., CCSL 156, pp. 173-205); Parisiense = *P. Parisiense Simplex* (Kottje ed., CCSL 156 pp. 75-79); *P. Ps.-Romanum* (Schmitz II); Vinnian. = *P. Vinniani* (Bieler ed., pp. 74-92)

3. THE *P. VALLICELLIANUM E. 62*

The *P. Vallicellianum E. 62* is written on the last two quires of the liturgical manuscript Rome, Bibliotheca Vallicelliana, E. 62. The text was first published by Wasserschleben in 1850 and called *P. Vallicellianum II* in order to distinguish it from the set of canons he had published from the ms. Vallicelliana C. 6 and designated *P. Vallicellianum I*. Schmitz, however, named the penitential he found in another manuscript kept in the Vallicelliana (E. 15) the *P. Vallicellianum I* and published the penitential of ms. C. 6 under the name of *P. Vallicellianum II*; this label, in short, has been used to designate two different texts. Thus, to avoid any confusion, I have chosen to adopt the system proposed by Cyrille Vogel by including the signatures of the manuscripts into the names of the texts. Furthermore, like Günther Hägele I use the name *Vallicellianum* instead of *Vallicellianum*. Accordingly, Wasserschleben's *P. Vallicellianum II* will be referred to as *P. Vallicellianum E. 62* and Schmitz' *P. Vallicellianum II* as *P. Vallicellianum C. 6*.¹

Since Wasserschleben's edition in 1850, no major study has been devoted to the canons and the liturgical directions of the *P. Vallicellianum E. 62*. Scholars have assigned various dates to the penitential, ranging from the ninth to the thirteenth century.² In his study of the *Coll. 5 libr.* Paul Fournier noticed that this collection was an important source for the penitential, while Ludger Körntgen showed that the *P. Vallicellianum E. 62* was dependent on a more complete version of the *P. Vaticanum*.³ Given the fact that neither an analysis of the *ordo* nor a systematic inquiry into which sources were used has yet been made, the *ordo* and the sources of the penitential need to be treated in more detail. The manuscript itself has received scarcely any more scholarly attention. In her book on Romanesca script Supino Martini briefly described the codex and dated it on palaeographical grounds to the twelfth century, while Bonifacio Baroffio, who devoted an article to its *ordo missae*, dated it to the late eleventh or early twelfth century.⁴ The penitential, as Supino Martini contended, was added later and probably taken from another codex. Because her claim that the penitential was

¹ Vogel writes *P. Vallicellianum E. 62*, see Vogel, *Les "Libri Paenitentiales"*, pp. 84-85. Hägele, *Das Paenitentiale Vallicellianum I*, p. 1-5 notes that the library is now called *Biblioteca Vallicelliana*.

² Vogel, *Les "Libri Paenitentiales"*, p. 85 dated it to the ninth/tenth century, Wasserschleben dated it to the thirteenth century, edition on pp. 555-566.

³ Fournier, 'Un groupe de recueils canoniques italiens', pp. 317-318 and Körntgen, 'Ein italienisches Bußbuch und seine fränkischen Quellen', pp. 189-205.

⁴ Supino Martini, *Roma e l'area grafica romanese*, p. 232, B. Baroffio, 'L'ordo missae de rituale messale Vallicelliano E 62' in G. Farnedi ed., *Traditio et progressio. Studi liturgici in onore del prof. Adrien Nocent, OSB*. *Analecta Liturgica* 12 (Rome 1988) pp. 45-79, p. 47. 'Censimento dei codici dei secoli X-XII', *Studi medievali* XI-2 (1970) p. 1066: early twelfth century.

taken from another manuscript needs to be reconsidered, it is necessary to offer a new description of the codex.

3.1 *The codex*

The manuscript is covered with a modern cover of white parchment. The cover measures ca. 235 x 145 mm, the spine ca. 235 x 65 mm. Three leather strips on the front and three strips on back of the cover, sewn through the hinges, are tied to the three raised bands that keep gatherings together.¹ The folded cover is kept together by leather strips (two on the front and two on the rear side) on the edges of the cover. Front and rear pastedowns are folded into the cover.² The signature E. 62 is written on top of the spine (together with a small cross), on the front cover, and on the front pastedown. A modern hand added the title *Missale* on the inside of the wrapped cover. Three paper front flyleaves and one rear flyleaf are tied as separate sheets to the bands. The front flyleaves are numbered I-III and measure 230 x 143 mm (f. III: 230 x 130 mm). An early modern hand added the signature *Bibliothecę Vallicellanę E. 62* in the bottom of f. Ir and two inscriptions on f. Iir.³ The table of contents, probably by the same hand, follows on f. IIIr.⁴

The codex consists of 289 parchment folios, for the most part organized into quaternions according to Gregory's rule. The quality of the parchment is altogether good, bearing hardly any marks of intensive use. Only the first and last folios are slightly worn. Catchwords are indicated on the verso side of each last folio of a quire. The numbers of the quires were added in arabic in the upper right corners of the recto sides. The organisation of the quires is as follows⁵: 1-21⁸; 22⁶; 23-26⁸; 27⁸ (eight sheets containing chants added between ff. 209 and 217); 28-30⁸; 31⁴; 32⁸; 33⁶; 34¹⁺⁶ (f. 262 extra sheet); 35-36⁸.

¹ Two extra strips, fabricated at a later date, are attached to two probably modern bands. All leather strips are visible on the exterior and interior side of the cover.

² The front paper pastedown measures ca. 220 x 100 mm, the rear pastedown ca. 110 x 70 mm.

³ The inscriptions are *Rituale monasticum cuius index et ordo precipuarum rerum in sequenti pagina continentur* and *Codex XI. seculis*. On f. Iir a red stamp "R(eale). Societa Romana di Storia di Patria 00460" is placed. This stamp, together with blue stamp of the Vallicelliana, occur throughout the codex. Two black stamps with a picture of Mary with child are placed in the bottom margin of f. 2r.

⁴ *E.62 Penitentiale, et Missale Antiquum in quo continetur...* etc., listing twenty-one items (masses, *ordines*), with the last item being the *Canones Penitentialis ex diversis conciliis*. Tables like this one can be found in other codices kept in the Vallicella.

⁵ After the first quire (ff. 1-8) one or two quires are missing. The penitential *ordo* of ff. 248-255 seems to have followed after f. 8v. Errors with the numbering of the folio's occur on ff. 17-23 (18bis), ff. 48-55 (jumps from 55 to 57), ff. 73-78 (74bis, 77bis), ff. 143-149 (146bis), ff. 166-171 (166bis; 168bis; these folios are consolidated).

The folios measure ca. 232 x 141 mm. The penitential is written on two quires that were added later to the codex and which measure ca. 227 x 138 mm.¹ The relationship of these last two quires and the rest of the codex is discussed below. The lineation of all folios is drawn in dry point: _||__||_. Pricking marks for the vertical ruling are visible in the upper (2 x 2) and bottom margins (2 x 2) of the folios, while those for the horizontal ruling are only occasionally visible.² The prickings of the vertical lineation are ca 6 mm apart, those of the horizontal lines ca. 9 mm. The sentences are written on the 17 horizontal lines. The text column of the Missal measures 168 x 80 mm between the inner vertical lines. The prickings of the horizontal lines are not visible on the quires of the penitential, while those for the vertical ruling are visible in the upper (2 x 2) and bottom edges (2 x 2) of each folio. The space between the prickings of the vertical lineation is ca. 6 mm on both sides, between the horizontal lines ca. 7,5 mm.³ The main difference between the lay-out of the last two quaternions and the rest of the codex are its 24 lines (bifolios 271/274 and 277/284 have 23 lines). The scribe often ignored the lineation in the last quires and did not always fill all the lines out.⁴ The text column of the last quires within the outer vertical ruling measures ca. 177 x 107 mm. The text falls within the inner vertical lines (ca. 90-98 mm), although it sometimes crosses both the vertical ruling. Initials fall within the outer marginal vertical lines, but sometimes jump into the text column.

The script of the Ritual-Missal is a round and regular Romanesca minuscule.⁵ Garrison and Baroffio concluded that the manuscript was written in the small episcopal town of Narni in Umbria, because the litanies have entries of the saints Juvenalis, Fausta, Cassius and Eleutherius, who were exclusively venerated in that city.⁶ The main part of the manuscript (1-255, 262-268) was written by a single scribe. It is dated to the mid-twelfth century, while the additions – calendar and penitential – are dated to the second half of the

¹ The measurements of the individual folios are irregular.

² Two series of horizontal prickings are found in the outer margins of f. 157 after a correction.

³ The litany is divided into two columns with two extra horizontal lines in dry point in the middle of the pages. The often irregularly drawn horizontal lines were sometimes corrected.

⁴ The scribe wrote, for instance, 23 sentences divided over the 24 lines on f. 276, 25 on f. 279, to 27 sentences on f. 276v and 22 on f. 277v.

⁵ On 'Romanesca' minuscule see Supino Martini, *Roma e l'area grafica romanesea*.

⁶ Baroffio, 'L'ordo missae de rituale messale Vallicelliano E 62', pp. 47-48 ('zona di Narni', on the basis of the litany of the *ordo missae* which mentions the saints Cassius, Fausta, and Juvenalis of Narni). E.B. Garrison, 'Saints Equizio, Onorato and Libertino in eleventh- and twelfth-century Italian litanies as clues to the attribution of manuscripts', *Revue Bénédictine* 88 (1978) pp. 297-315 arrived at similar conclusions: Narni; s. XII^{med-3/4}. He dated the main part to s. XII^{1/4}. Supino Martini (*Roma e l'area grafica romanesea*, p. 232), admitting that Narni is probably the 'Schriftheimat', hesitates to assign it to Narni on the basis of hagiological evidence only. The codex might have arrived in the Vallicella through Romolo Cesi's ties with the Oratorians. Cesi was elected bishop of Narni but retired to the monastery of Sant' Angelo near Narni in 1588 where he died in 1606. See A. Cistellini, *San Filippo Neri. L'Oratorio e la Congregazione Oratoriana. Storia e spiritualità* (Brescia 1989) pp. 471 and 1197.

twelfth century by Supino Martini.¹ The letters of the main part of the Ritual-Missal are 4 mm, with ascenders measuring 5 mm and descenders 6 mm.² The height of the initials and capitals (in uncial or *capitalis*) varies considerably. They are ca. 7 mm, but decorated initials may be 60 mm high. Initials are in red or brown ink, sometimes touched up with brown, red, and yellow or decorated with zoomorphic designs.³ The liturgical chants were notated between a yellow and a red horizontal staff indicating the pitches. The script of the penitential and the Prefaces is more angular, inclining towards the gothic script. Letters are ca. 3 mm high, with ascenders and descenders 5 mm.⁴ Psalms and versicles were written in a smaller script, with the first two words of each prayer and canon in *capitalis* or uncial, touched up with yellow or brown. The initials, measuring ca. 6-10 mm, are in capital or uncial in red or brown ink. Decorated initials, often in the form of snakes or birds, can be 15 to 25 mm high. The ink is black-brown and a bit worn. The rubrics of both penitential and Missal are in Romanesca in red ink. The musical notation is often not filled out and some initials are missing.⁵ The scribe left room for the rubric *Respondeat* in the penitential *ordo*, but these rubrics were not always added by the rubricator.⁶

The text of the penitential displays some morphological and grammatical peculiarities. Peculiar is its use of *panis* as in *in panis et aqua* instead of *pane*, and *anni* as in *anni peniteat* instead of the usual *annos peniteat*.⁷ The scribe frequently substituted ‘i’ for ‘y’ (*ymagines*, *monachy*) and double ‘t’ for ‘ct’ (*dimictat*). The ‘h’ is sometimes omitted in words like [*h*]uic or *omicidio*. Some words of the penitential are repeated as catchwords in the margins by an early modern scribe. With regard to punctuation, a low point signifies long and short pauses. Accidentally a *punctus elevatus* (./) is used to signify a slight raising of the voice before a medial pause.⁸ The use of capitals often varies within enumerations, such as in *Idest auaritia. Superbia. homicidium. furtum. Sacrilegium*. It is used after the invocation of prayers in the penitential *ordo*: *Te inuocamus domine sancte pater omnipotens eterne deus./ Super hos*

¹ Supino Martini, *Roma e l'area grafica romanesca*, pp. 230-232 and E.B.Garrison, *Studies in the history of Mediaeval Italian manuscript painting IV* (Florence 1962) pp. 236-237.

² Biblical texts (verses, antiphons) are smaller: 2 mm, with the ascenders and descenders 3 mm.

³ Lavishly decorated are the *P(er omnia secula)* on f. 172r, *V(ere dignum)* on f. 172v, and *T(e igitur)* on f. 173v of the *ordo missae*.

⁴ Some canons are written in a smaller script, although presumably by the same scribe who also wrote the liturgical part. The letters measure 2 mm with the ascenders/descenders measuring 3 mm.

⁵ Initials are missing after the litany of the penitential: [*K*]yrie; [*P*]ater noster. But also in the Missal initials are missing, see fol. 205r: [*I*n principio erat uerbum...

⁶ See also the rasura under *Tunc sacerdos dicat* as the scribe forgot to leave room for this rubric.

⁷ In the course of the texts the scribe switched to *pane* instead of *panis*.

⁸ The terminology is borrowed from Parkes, *Pause and effect*, pp. 35-37 and 76-77.

famulos tuos... This could imply that these prayers were written down to be recited by the liturgist during the rite.

3.2 *The penitential's place in the manuscript*

While Supino Martini has suggested that both the calendar and the penitential were taken from another manuscript, there is sufficient evidence that this is not the case. First of all, the scribe who copied the penitential also added prayers for an office for the departed on f. 1r and three mass Prefaces on ff. 246v-247r on the empty space after a *Missa in natale uirginum*.¹ Apparently, the penitential was the work of a second scribe who revised the *Rituale* by adding texts thought to be missing from the codex.² Another, third hand inserted prayers and readings for the dedication of a church on f. 247. The calendar, in my view, is written in a hand identical to the main hand.³ Only the entries of the *Dies Egyptii*, the 'unlucky days' that served as introductions to each month, were written by the scribe of the penitential. The first preface for a Marian feast also offers a clue for dating these additions, for it is similar to a preface recommended by the Council of Clermont in 1095.⁴ Although the penitential is written on separate quires with a different lay-out, it is probable that it was not taken from another manuscript but copied for the very purpose of supplementing the Ritual-Missal.

3.3 *Contents of the manuscript*

ff. 1-284: Missal-Ritual: prayers for the dead (1r); *ordo* for baptism, which breaks off in the middle of a litany (1v-8v); masses for a penitent (*Mox subsequitur missa quam sacerdos pro sibi confessio canere debet* on ff. 9-12, identical to PRG 146; and *Item alia missa pro penitente* on 12v-15r); *ordo* for the reconciliation of penitents (*Item ad reconciliandum penitentes*; 15r-23v); *ordines* and masses for the sick, the dying, and the dead beginning on

¹ See Supino Martini, *Roma e l'area grafica Romanesca*, pp. 230/232. The Prefaces are a *Profatio* (!) *sancte marie*, a *Profatio in quadragesima*, and an untitled Preface, probably for a *Missa de Sancto Cruce*.

² Especially the uncial 'M', the 'f' and 'g', and the 'e caudata' strongly suggest that the same scribe wrote the prayers, Prefaces, and the penitential.

³ Although written in a smaller font, the majuscule 's' and the 'g' suggest that Missal and calendar were written by the same scribe. Cf. Supino Martini, *Roma e l'area grafica romanescas*, p. 232.

⁴ The Preface for a Marian feast and the mass for the (anniversary) of the dedication of a church might point to a connection with the church of Santa Maria Maggiore (now San Domenico). Affinities with the manuscript Vat. lat. 1339 (canons of *Coll.5libr.*, penitential prayers) which was once kept by this church points to the same direction. Other clues, for instance the *Confiteor* and litany of the *ordo* of the *P. Vallicellianum E. 62* which mention Cassian and Saint Benedict, might suggest a connection with the Benedictine abbey of San Cassiano near Narni (est. ca. 1000; cf. R. Pardi, *Architettura religiosa medievale in Umbria*. Centro Italiano di studi sull'alto medioevo 21 (Spoleto 2000) pp. 115-117).

23v and commemorative masses; other masses include a *Missa sponsalicia* and a *Missa pro iter agentibus* (130r-149v).

ff. 150r-152r: Mass exposition: *Sacerdos dum sacrificat secum habeat duos... cecus et alii in cecitate trahit* (ed. Reynolds, 'A South Italian liturgico-canonical mass commentary')

ff. 152r-182v: *Ordo missae* (Baroffio, L'Ordo Missae)

f. 182v: Masses (*missa de trinitate; missa ad pluuiam postulandam; in natale domini*; etc.)

some of them with chants. On f. 246v prefaces by the scribe who also copied the penitential (*Profatio* (!) *sancte marie, in quadragesimo*, and *de sancto cruce*) and, in third hand, a *dedicatio ecclesiae*

ff. 248r-255v: Penitential *ordo* (new quire; first part is missing)

ff. 256r-261v: Calendar¹

ff. 262r-268v: *Ordo ad faciendum aqua sanctificata*

ff. 269r-284v: *P. Vallicellianum E. 62*

3.4 The liturgical character of the codex

The manuscript Vallicelliana E. 62 is a collection of liturgical *ordines* and masses for several occasions and combines two liturgical genres, a Rituale and a Missal. Most *ordines* are placed at the beginning of the manuscript, although some occur at the end of the codex due to a later rebinding of the manuscript, which caused a somewhat disorderly rearrangement of texts.²

The first part of the penitential *ordo* of ff. 248r-255r is missing. An *ordo* may once have preceded the penitential mass of f. 9r.³ Penitential liturgy is altogether well-represented in the manuscript, for there are two masses for penitents, a rite for the reconciliation of penitents, the incomplete *ordo* for confession, and the *ordo* of the *P. Vallicellianum E. 62*. Its *ordo* shares, as will be demonstrated below, some unique prayers with the incomplete *ordo* of ff. 248-255. These texts can also be found in the *ordo* of another famous codex from Narni, ms. Vat. lat. 1339, which contains the *Coll. 5 libr.* Since these prayers cannot be found in any other *ordo*, they were most likely produced in one and the same scriptorium for a church in Narni that had its own, distinctive rite of penance.

¹ The calendar seems to be by the main hand. Names of Iuuenalis and Eleutherius are added.

² Parts of *ordines*, such as those for penance, seem to be lost.

³ An incomplete *ordo* for baptism precedes the mass for a penitent. A lost quire that contained the rest of this *ordo* and the first part of the penitential *ordo* together with quire ff. 248-255 may have preceded the penitential masses of f. 9etc.

3.5 The penitential and its sources

The ordo penitentiae

The lengthy penitential *ordo* which precedes the canons is marked by several peculiarities that need to be discussed here. Firstly, the prayers and dialogues of the *ordo* often switch from singular to plural and back again. This confusion, or better: ambiguity, continues throughout the entire *ordo* and indicates that the rite could be administered to single penitent as well as to a group of penitents. Secondly, the *ordo* omits information essential to the understanding of the rite, such as the judgment of the penitents or the absolution. The rite conventionally begins with the prayer *Domine deus omnipotens propitius esto mihi peccatori* which is to be recited by the priest silently before he interrogates the penitent.¹ After this prayer the *ordo* offers introductory dialogues for the interrogation of the penitent(s). The first dialogue at first addresses a single penitent but then switches to the plural. Apart from this switching from singular to plural, the first dialogue is incomplete, since the last question ‘would you promise to receive true penance’ remains unanswered. It seems that the priest asks the penitent (or penitents) (1) why he has come to (do) penance, and (2) whether he wants to receive true penance. The penitent responds that he is willing to confess and ready to receive his penance (with plural forms on top).² The priest asks the penitents (now addressed in the plural only) whether they bear any malice (*odium* or *debitum*) against someone, to which they must respond in the negative. Then they are required to ‘hand themselves over to God, the almighty Father, the Son, and the Holy Ghost, by (making the sign of?) the Cross’.³ Both questions are directly or indirectly borrowed from the ninth-century Reims *ordo* of Reg. lat. 191, several recensions of which circulated in Italy in the tenth and eleventh centuries.⁴

The questions concerning the articles of faith are again addressed to a single penitent. The questions differ from those of other *ordines*, in that these borrowed from the Creed more directly. For example, the penitent is asked whether he believes that ‘Our Lord Jesus Christ

¹ The final clause of the prayer does not occur in other manuscripts: *qui ad penitentiam uenerunt ut tua gratia saluati pariterque nos ab omni culpa liberare digneris.*

² *P. Vallicellianum E. 62, ordo: TUNC SACERDOS INTERROGET PENITENTEM. QUID TU A NOBIS UENISTI FRATER. RESPONDEAT. Volo ut det michi^{nobis} penitentiam et confessionem; promittitis recipere ueram penitentiam.* The sentence *promittitis...* seems to be a question posed by the priest. It is delineated from the previous sentence by a point placed medially, there is no capital.

³ *P. Vallicellianum E. 62, ordo: INTERROGA EUM: Videte fili, ne cum aliquo homine non habeatis hodium et debitum. Et illi respondeant: Non. Et sacerdos dicit: Tradite uos per istam crucem ad deum patrem omnipotentem, et filium, et spiritum sanctum. Qui uos perducatur ad uitam eternam.*

⁴ Ms. Reg. lat. 191, f. 64v: *Surge frater. et dices ad eum signate. DICES. Tradis te per istam crucem a deo omnipotenti. RESPONDET. Trado.* Italian manuscripts are Novarra, Bibl. Capitolare, 18 and Rome, Bibl. Nazionale, 2116 (Sess. 136). Parts of this *ordo* also occur in the *P. Vaticanum* (see chapter 2) and the *P. Lucense* (see chapter 5). For a detailed description see chapter 6 on penitential liturgy.

suffered, was crucified, had died, was buried, [and] rose again on the third day, ascended into heaven, [and] sits on the right hand of God, the Almighty Father'.¹ A peculiar question pertains to his belief that 'each man will rise again in the shape (*in forma*) of the age of thirty and will receive the good for the good and the evil for evil'.² This notion of a bodily resurrection in what was presumably considered to be the perfect age cannot be encountered in any other source except for the *ordo* of ms. Vat. lat. 1339 from Narni, which adds that this was the age in which Christ suffered.³ The last questions, deriving from the Reims *ordo*, are concerned with the penitent's willingness to forgive others, to renounce the devil, and to mend his ways.⁴ The penitent is expected to answer with a forceful 'I believe' or 'I will'. After the interrogation the priest again addresses the group of penitents, now urging them to join their hands in prayer while he recites 'Into Your Hand(s), Lord, I commend my spirit' (Luke 23,46) three times. Then he sings the antiphon *Suscepimus deus*, psalm 47 (*Magnus dominus*) and again the entire *Suscepimus*.⁵ Since the combination *In manus tuas – Suscepimus Deus – Magnus dominus* is more fully analysed in chapters 5 and 6, it is sufficient to point here to the possibly Italian origin of this commendation ritual.⁶ The *P. Vallicellianum E. 62* departs from the other texts inasmuch as it requires the penitents join their hands in prayer, whereas in the other texts it is the priest who takes the hands of the penitents.⁷ The

¹ *P. Vallicellianum E. 62, ordo: Credis in deum patrem omnipotentem creatore celi et terre. RESPONDEAT. Credo. Credis et in ihesum christum filium eius unicum dominum nostrum... Credis in spiritum sanctum, sanctam ecclesiam catholicam sanctorum... Credis in patrem et filium et spiritum sanctum tres persone sunt et unus deus... Credis quod dominus noster ihesus christus natus fuit de beata uirgo maria, et uirgo fuit ante partum et post partum, et semper permanet uirgo... Credis quod dominus noster ihesus christus fuit passus, crucifixus, mortuus et sepultus tertia die resurrexit a mortuis, ascendit ad celos sedet ad dexteram dei patris omnipotentis...*

² *Credis quod omnis homo debet resurgere in forma de triginta annorum et recipere bonis, bona, malis, mala.*

³ See A. Dold, 'Eine alte Bußliturgie aus Codex Vaticanus latinus 1339', *Jahrbuch für Liturgiewissenschaften* 11 (1931) pp. 94-130: *Et credis quia in die iudicii resurgere debent omnes XXX annorum etate, in qua xps passus est?* The rest of the question is not found in this *ordo*.

⁴ *P. Vallicellianum E. 62, ordo: Credis quod per ueram penitentiam, elemosinam accipiat homo ueram indulgentiam... Vis dimictere illis qui in te peccauerunt, ut deus dimictat tibi omnia peccata tua. RESPONDEAT. Volo. Vis renuntiare diabolo et omnibus operibus eius. RESPONDEAT. Volo. Vis agere penitentiam ex omnibus peccatis uestris, et conuertere de uia mala ad bona. Volo.* This renunciation is found in ms. Rome, Biblioteca Vallicelliana, B. 63 and ms. B. 8 (s. XI^{ex}; both Sant'Eutizio), and the first *ordo* of ms. Vallicelliana E. 62 on ff. 248r-255v, and the *P. Vaticanum* (chapter 2).

⁵ *Iungite manus uestras ad deum patrem omnipotentem. In manus tuas domine commendo spiritum meum* (Luc. 23,46). *III Vicibus. Suscepimus deus misericordiam tuam... est dextera tua* (Ps. 47,10-11). *Ps. Magnus dominus et laudabilis nimis* (Ps. 47). *Gloria patri et filio. Totum Suscepimus.*

⁶ It is recorded in ms. Vallicelliana, C. 32 (Montecassino?; s. XI^{ex}), *ordo IX* (Odermatt, pp. 284-5), *ordo 46* of *Le Pontifical Romain au Moyen-Age II. Le Pontifical de la Curie Romaine au XIIIe siècle*, M. Andrieu ed., Studi e testi 87 (Rome 1940) pp. 480-481, the *P. Lucense* (see chapter 5), ms. Benevento, Bibl. Capitolare, 37 (Benevento; s. XIIⁱⁿ; fragment; J. Mallet and A. Thibaut, *Les manuscrits en écriture bénéventaine de la Bibliothèque Capitulare de Bénévent*, vol. II. Documents, études et répertoires publiés par l'Institut de Recherche et d'Histoire des Textes (Turnhout 1984-1997) p. 234), and the *ordo* for anointing the sick of Vallicelliana, B. 63. Cf. Jungmann, *Die lateinischen Bussriten*, pp. 195-201.

⁷ In the *ordines* of the Arezzo pontifical (ms. Vat. lat. 4772; Northern Italy; s. XIIⁱⁿ) and the *P. Vallicellianum III* (ms. B. 58; northern Italy; s. XI^{ex}) penitents had to offer themselves *iunctis manibus* to a crucifix as part of their absolution. See Schmitz II, p. 406.

priest then recites a prayer – also recorded in the *ordines* of ms. Vat. lat. 1339 and ms. Vallicelliana E. 62, ff. 248-255 – in which the priest invokes God on behalf of the penitents, among other pleas, ‘to convert His servants to His Law’ and to release them from their sins, and to revive them from their second death. The prayer offers some interesting biblical analogies, for instance Christ’s promise to the good thief that he be received in heaven and the penance of the people of Nineveh.¹

The *ordo* includes a series of enumerative lists that ultimately stem from homiletical texts of ancient Insular origin. Although not all enumerations can be traced to earlier sources, it is possible that the entire series derives from a single, possibly Irish text.² The first sequence goes back to Origen and enumerates the seven ways of remitting sin, the second one lists the three sins that cannot be redeemed, and a third the six sins of Adam.³ The latter ultimately stems from St Augustine’s *Enchiridion de fide, spe et caritate*, which perhaps explains the concluding phrase ‘Saint Augustine set out all this in his synod’.⁴ The text continues with the seven plagues of hell, heat, cold, worms, hunger, thirst, smoke, and stench.⁵ This list of plagues shows some affinity with the list of Honorius of Autun’s *Elucidarium*, suggesting that the compiler of the *ordo* and Honorius drew on a similar source.⁶ The last enumeration of the seven *crimina principalia* includes only five items (pride, avarice, theft, homicide, and sacrilege) and is clearly incomplete.⁷ These five are found among the ‘six sins of Adam’

¹ *P. Vallicellianum E. 62, ordo: INCIPIT ORATIO SUPER EOS. Te inuocamus domine sancte pater omnipotens eterne deus, super hos famulos tuos et famulas, tibi genua fidentes et omnia peccata sua confitentes, ut ab omnibus facinoribus eorum absoluti in tua lege conuerti facias. Qui in cinere et cilicio asperses, sicut in nineue ciuitas que plantum (!) populi sui aperuisti portas celorum. Pe[r] ipsum te domine deprecamur, ut erigas elisum, soluas compeditum, cures uulneratum. Tu enim latronem pendentem in crucem bona promictere dignatus es... Viui[fi]ca eum a morte secunda... Cf. Vat. lat. 1339, oratio 20 (Dold, ‘Eine alte Bußliturgie’, p. 104).*

² Some of these lists also appear in the Bobbio Missal (*The Bobbio Missal. A Gallican mass-book (Ms. Paris. lat. 13246)*. Text, E.A. Lowe ed. HBS 58 (London 1920) pp. 178-179). Cf. C.D. Wright, *The Irish tradition in old English literature*. Cambridge studies in Anglo-Saxon England 6 (Cambridge 1993) pp. 49-83 and, on the sins of Adam, M. Glatthaar, *Bonifatius und das Sakrileg. Zur politische Dimension eines Rechtsbegriff*. Freiburger Beiträge zur mittelalterliche Geschichte 17 (Frankfurt, etc. 2004) pp. 363-366.

³ *P. Vallicellianum E. 62, ordo: Septe sunt remissiones peccatorum per quas nobis omnipotens deus peccata dimitti. Prima remissio per baptismum. Secunda per martyrrium. Tertia per penitentiam. Quarta per elemosynam. Quinta... qui conuerti fecerit peccatorem ab errore uie sue. Sexta in caritate non ficta. Septima per indulgentiam. Tria sunt que non remictuntur... Primum qui bla[s]femat deum. Secunda qui desperat se de misericordia dei. Tertia qui non credit esse resurrectionem. Sex peccata habuit adam: Superbiam. Homicidium. Sacrilegium. Furtum. Fornicationem. Auaritiam.*

⁴ The same passage is recorded in the *ordo* of the *P. Vaticanum*, a source of the canon of the *P. Vallicellianum E. 62*, although there it is appended to an excerpt of the Rule of St Benedict.

⁵ *P. Vallicellianum E. 62, ordo: Septem sunt apud inferos plagas... Prima est calor ignis. Secunda frigus. Tertia uermis. Quarta famis. Quinta sitis. Sexta fumus. Septima fetor.*

⁶ Y. Lefèvre, *L’Elucidarium et les Lucidaires. Contribution, par l’histoire d’un texte, à l’histoire des croyances religieuses en France au moyen âge* (Paris 1954) pp. 169-170 and 447-448. Honorius mentions among other punishments *frigus, fames, and sitis* in the ‘upper hell’ and *ignis, frigus, fumus, vermes immortales, fetor, flagra caedentium, tenebrae palpabiles*, etc. in the ‘lower hell’.

⁷ *Crimina namque principalia septe sunt. Idest auaritia, superbia, homicidium, furtum, sacrilegium. Qui unum ex his criminibus in seculo commiserit. Et hic illud per fructuosam penitentiam non corresserit, profecto in*

which are listed earlier in this text and also include fornication. Some versions extend the number to seven sins by adding either gluttony (*gula*) or vainglory (*uana gloria*).¹ Our list could have been an unfinished version of Adam's seven sins from which *fornicatio* and *gula* or *uana gloria* had been dropped. Sinners who had committed one of these crimes but failed to do penance are warned that they will burn in hell, eternally tormented by the seven plagues.

After this warning the priest should sing the seven penitential psalms, a litany and a series of responsories. Through the next prayer (*Inclina domine aurem tuam*) the priest begs God to hear the penitents' prayers and to liberate them from the torments of hell and the power of the devil, so that the penitents, when they rise from death, may be saved at the Last Judgment and ascend to heaven.² The contents of this prayer is dealt with in chapter 6 on penitential liturgy, here it suffices to stress its probable Italian origins.³ The prayers *Deus qui proprium est miserere* and *Praesta quaesumus domine deus* belong to the Gelasian stock, but *Commendamus tibi* and *Suscipere digneris* are relatively rare and probably of Italian origin.⁴ The occurrence of the *Omnipotens sempiterne deus, ne nos permictas perire* and *Omnipotens sempiterne deus... respice propitius* may even be limited to Narni, since they are only to be found in the *ordo* of Vat. lat. 1339 from Narni and the penitential *ordo* of ms. Vallicelliana E. 62 on ff. 248-255.⁵ Through the first one the priest petitions God to grant us a *spatium penitentiae*, a period of penance, so that we can please Him 'with true confession before our death'.⁶ Through the other one God is asked to mercifully look down upon His servants and to grant them indulgence. These supplications are reinforced by a number of biblical examples

inferno his septem plagis torquebitur sine fine mansurus... quia qui semel in pro aliquo crimine in inferno mersus fuerit, semper illic ardebit, et semper illic esse habebit.

¹ Several lists are quoted by Glatthaar, *Bonifatius und das Sakrileg*, pp. 363-364.

² *P. Vallicellianum E. 62, ordo: Inclina domine aurem tuam ad preces nostras, et respicere digneris super hos famulos tuos et famulas...* Discussed in chapter 6.

³ The prayer is included in the *P. Lucense*, the Bobbio *ordo* of Muratori (*Antiquitates Italicae V*, p. 734), and ms. Benevento, Bibl. Capitolare, 37. The prayer ends with an entreaty to Christ to accept the penitents' penance and to grant them indulgence (*Suscipiat christus uestram^{tuam} penitentiam et donet uobis^{tibi} ueram indulgentiam, ut possitis consequi illius ueniam usque in futura secula*), which is only recorded in the *ordines* of ms Vallicelliana B. 8 and B. 63, and the *P. Lucense*. See also chapter 6.

⁴ For *Commendamus tibi domine* see chapters 1 and 6. The prayer *Suscipere digneris domine sancte pater omnipotens eterne deus famulos^{uum}... Praesta queso ut sicut per aquam et spiritum sancto dono tue gratie regenerati sunt. Concede propitius, ut per ueram eorum confessionem sancte tue ecclesie aggregari mereantur* can be found in ms. Ravenna, Bibl. Comunale, Scans. 131, ord. 4 (ed. PL 151, 915) and the first *ordo* of ms. Vallicelliana E. 62. The prayer *Exaudisti nos domine qui exaudisti ionam*, in fact an antiphon, is recorded as prayer in the first penitential *ordo* of Vallicelliana E. 62.

⁵ See Vat. lat. 1339, nr. 3 and 22, ed. Dold, 'Eine alte Bußliturgie', pp. 98-106.

⁶ *P. Vallicellianum E. 62, ordo: Omnipotens sempiterne deus, ne nos permictas perire, quia tua creatura sumus, concede nobis spatium penitentiae. Vt ante diem exitus nostri per ueram confessionem tibi domine placere ualeamus.* A different version is found in PL 101, 1402: *Concede nobis spatium vitae vivendi, ut ante diem exitus nostri per ueram poenitentiam tibi placere mereamur.*

mainly taken from the Gospel of Luke, such as the confession of the crucified thief and the parables of the lost sheep and the lost son.¹

The next *oratio* is in fact an admonition to confess one's sins without hesitation. The initial command to the penitent to come forth and confess his sins before God derives from the sermon in the *ordo* for deathbed penance in the *PRG*.² The remainder of the text departs from the text in this pontifical. It consists of three almost similar exhortations to not feel ashamed to confess one's sins (*noli erubescere*) embellished with biblical quotations that for the most part also occur in the *P. Vaticanum*. The *noli erubescere* exhortation will be discussed in chapter 6. The exhortation 'do not feel ashamed to confess your sins since we are all sinners, nobody is without sin but God alone' is recorded in the *P. Casinense* and the *ordo* of ms. Vallicelliana C. 32.³ With the last *nolite erubescere* the *ordo* again switches to the plural. After the priest had indicated that the confessants should now confess their sins, they are urged to 'know (and to say?) the Lord's prayer and the Creed by heart'. This admonition is followed by a *Confiteor* formula, a *Misereatur*, versicles, and a prayer that stems from the Gregorian *Missa de Trinitate*.⁴

The *ordo* proceeds with the absolution of the penitents, without indicating when exactly the priest should assign the penitents their penance. Subsumed under the chapter *incipit de absolutione* we encounter a series of enigmatic formulae, whose Latin is close to the vernacular. The first one is addressed to a single penitent and is intended to confirm the *iudicium penitentiae* just imposed. The text contains the puzzling phrase: 'As the sacred canons recommend for all your sins, for death and for life, so you shall have a number of thirty (!?) years for [the redemption of?] your sins on such a condition [that], if He wants you to do

¹ *P. Vallicellianum E. 62, ordo: Omnipotens sempiterna deus... Respice propitius super hos famulos et famulas tuas... tribue eis indulgentiam clementissime pater. Qui israhelitico populo peccanti per penitentiam peccata condonasti. Qui dauid famulo tuo per confessionem ueniam tribuisti... Clementer ignosce, qui ultionem quod uiro denique in ecclesiam a partem sui corporis perdat. Vt gres tuus detrimentum patiat, set pro clementia tuae pietatis audire mereantur...* (see chapter 6 on the liturgy of penance)

² *P. Vallicellianum E. 62, ordo: Eccede (!) fili ad deum in conspectu angelorum eius et confiteri peccata sua. Quia ipse dixit: Qui me confessus fuerit coram hominibus confitebor... See PRG, ordo 144 (Le Pontifical Romano-Germanique 2, pp. 270-275), P. Vallicellianum I (E. 15; Rome; s. XI), Berlin, Deutsche Staatsbibl., Hamilton 290 (Italy; s. X-XI; ed. Schmitz II, p. 270sq.) and Arch. di S. Pietro, H. 58. See also chapter 6,2.*

³ *P. Vallicellianum E. 62, ordo: Fili noli erubescere confiteri peccata tua, quia dominus dicit in euangelio: Peccator in quacumque ora conuersus fuerit ad penitentiam, et ingemuerit uita uiuet... Noli erubescere fili. Nos omnes peccatores sumus, nemo est sine peccato nisi solus deus... Ideo dico uobis nolite erubescere peccata uestra, quia in multis offendimus. Cf. Vallicelliana C. 32, Odermatt, Ein Rituale, p. 292, ordo IX,129.*

⁴ *P. Vallicellianum E. 62, ordo: Nunc dicite quicquid peccasti, in periurio, in adulterio, in furto, uel in quacumque modis; fili tene memoraliter 'pater noster' et 'credo in deum', quia omnes christiani memo[ri]ter tenere debet. Last prayer: Missa de S. Trinitate, or. 1806. See J. Deshusses, Le sacramentaire Grégorien. Ses principales formes d'après les plus anciens manuscrits II. Spicilegium Friburgense 24 (Freiburg 1979) p. 39.*

more, His may be fulfilled'.¹ What is meant by this passage is unclear. Perhaps the penance referred to is to be understood as a redemption for thirty years of a penitent's life, or perhaps the number of thirty years is only a set example that could be substituted by any other penance. If the penitent dies without performing any other penance [than the current one] then 'he may be represented on the Day of Judgment' with this current penance, 'so that the devil cannot say that you have not [never?] undertaken true penance for all the sins for the days of your life'.² The next three prayers were taken from the *Missa pro pace*.³ The absolution ends with a second formula written in a smaller script than the rest of the prayers. It begins with a question whether the penitent accepts the penitential dress (*Vis^{uultis} in mestimentum (!) penitentię*). The next prayer expresses the wish that his current confession and penance may be a sufficient testimony before God, 'so that the enemy (the devil) cannot harm his soul'. In the event that the penitent will be unable to perform another penance, he may be blessed before God on account of his current penance and all the good works that he has done and any Christian has done.⁴ Close parallels can be drawn with the prayers in two other penitential *ordines*, namely that of a Central Italian manuscript now in Ravenna and that of ms. Vallicelliana, B. 63 from Sant'Eutizio, the latter of which includes a similar prayer in the vernacular. In these *ordines* the prayers serve to introduce benedictions and the absolution rites.⁵ In the *P. Vallicellianum E. 62* it seems to be a part of the absolution itself, since they

¹ *P. Vallicellianum E. 62, ordo: Ex parte dei omnipotentis, et beate marię semper uirginis, et oratione omnium sanctorum tibi sit datum atque confirmatum iudicium penitentię. Sicuti sanctę canones commendant pro omnibus tuis peccatis pro morte et pro uite sic habeas in numero pro tuis peccatis triginta annis tale conditione, si tibi plus uenias faciat suum uelle, et similiter.*

² *si est placitum de domino deo illo ponat istam penitentiam in loco delictis, ut nostra crudelitas non fiat nec tuum detrimentum ut diabolus non possit dicere, ut tu non habeas acceptam ueram penitentiam pro diebus uite tuę. Et si tu morieris sine altera penitentiam, per istam penitentiam semper tristabit uiam tuam ante deum in die iudicii. (...) Si tu morieris sine altera penitentiam et sine altero iudicio per istam penitentiam et per istum iudicium tu sis representatus ante deum in die iudicii, ut diabolus non possit dicere, ut non habeas acceptam penitentiam pro omnibus peccatis tuis pro diebus uite tuę.*

³ *Sacr. Gregorianum Suppl., Missa pro pace, 1343-45 (Deshusses, Le Sacramentaire Gręgorien I, p. 444).* The prayers petition God to grant His servant peace and to protect him from every assault.

⁴ *P. Vallicellianum E. 62, ordo: Vis^{uultis} in mestimentum penitentię uolumus* ['uolumus' suggests that the phrase is to be read as a question], *et ego ex parte dei et omnium sanctorum hoc penitentia et hoc confessio fiant testimonium ante deum ut inimicus non possit nocere anime tuę. Ex parte dei et omnium sanctorum bonum quod fecisti ab infantia tua, et alii pro te facient et sacrificia et officia quę a catholicis per uniuersum mundum aguntur habeas partem ut boni christiani et si ad aliam penitentiam non poteris peruenire hanc penitentiam et confessionem sis saluus ante deum.*

⁵ Vallicelliana, B. 63, f. 232v: *si age tu iudicium penitentie per unumquemque peccatu si cco tu facte l'ai dalu baptismu tou usque in ista hora. Et como li sancti patri constitueru nele sancte canule et lege et derictu est, et tnde uene, tu si nde sie enuestitu, ke lu diabolu non te nde p[o]za accusare ken tu iudecatunde non sie, en questa uita pro raccar quella, et qual bene tu ai factu ui farai enquannanti, ui alt[r]i farai pro te, si sia computatu em pretiu de questa penitentia, se ttuo iudiciu ene ke tu ad altra penitentia non poze accorrere, con questa penitentia et coll altre ke tu ai leuate si sie tu rappresentatu ante conspectu dei, ke lu diabolu no tende poza accusare ke ttunde non sie pentitu.* Transcription of A. Castellani, *I pių antichi testi Italiani. Edizione e commento* (Bologna, 1976) pp. 77-103. Cf. ms. Ravenna, Bibl. Comunale, Scans. 131, ord. 4 (possibly Fonte Avellana; s. XII/XIII; ed. PL 151, c. 917).

are placed under the rubric [*i*]ncipit de absolutione.¹ Chapter 6 includes a more general survey on the themes touched upon by these prayers.

Three features of this *ordo* stand out. Firstly, the *ordo* testifies to the liturgical creativity in Central Italy and, more particularly, in Narni. The *ordo* contains several new prayers and dialogues composed anew or borrowed from other liturgies. Secondly, the rite of this *ordo* could be administered to both a single penitent and a group of penitents collectively. Elements of secret penance and collective penitence seem to have merged in this rite.² While the prayers of the *ordo* of Vat. lat. 1339, to which our text is closely related, are addressed to a single ‘servant’ of God, those of the *P. Vallicellianum E. 62* most often address a group of penitents. This hybrid form of penance can also be encountered in the North Italian *ordines* of the late eleventh and early twelfth century which have recently been analysed by Sarah Hamilton. In contrast to these texts the frequent switching from plural to singular and back renders it difficult to make out which parts were carried out collectively and which parts individually. Since the alternative singular form is most often written in superscript, it seems that the possibility was left open to administer the rite to a single penitent. Thirdly, the *ordo* is incomplete and omits much essential information. The imposition of penance is, for example, nowhere explicitly mentioned, although it is presupposed by the sentence *tibi sit datum atque confirmatum iudicium penitentiae* of the absolution prayer. The compiler seems to have been so familiar with confessional liturgy as to afford himself the luxury of omitting such information. Accordingly, it is not unlikely that the *ordo* was copied by a scribe who was at the same time the intended user of this *ordo*, the priest-confessor.

The penitential canons

With regard to its sources, the canons of the *P. Vallicellianum E. 62* can be divided into two parts. The majority of the canons (cc. 1- 49) were taken from the *P. Vaticanum*, while those of the second section (cc. 49-77) were largely derived from the *Coll.5libr.*³ A version of the *P. Vaticanum* was used that was more complete than that of its only known manuscript.⁴ This explains the fact that, although the *P. Vallicellianum E. 62* follows the *P. Vaticanum* closely, it incorporates several rulings from the main source of the Vatican penitential, the *P. in II*

¹ The often incomprehensible language of the absolution prayers could point to a close connection to the vernacular. Perhaps it was even translated from an old Italian exemplar.

² Hamilton, *The practice of penance*, pp. 166-170 and Jungmann, *Die lateinischen Bussriten*, pp. 198-200.

³ Fournier, ‘Un groupe de recueils’ pp.317-318 gives only five examples of canon from the *Coll.5libr.*

⁴ See Körntgen, ‘Ein Italienisches Bußbuch’, pp. 189-205 and chapter 2.

libris.¹ Only canons 72, 75 and 76 occur neither in the *P. Vaticanum* and *P. in II libris* nor in the *Coll.5libr*.

The rubrics of the first 36 canons deserve special mention, because these canons occur in the *P. Vaticanum* and *P. in II libris* without any attributions. In contrast, they are assigned to authoritative sources in the *P. Vallicellianum E. 62*. For example, canons 3 and 23, both taken from the *P. Vaticanum*, are now rubricated *ex decreto patrum*, while others are assigned to church councils. The compiler appears to have imitated the rubrics of the *Coll.5libr*, in which such inscriptions introduce penitential canons and thereby enhance the authority of otherwise anonymous canons. However, some of the titles of the canons taken from the *Coll.5libr* differ from those of that collection. For example, canon 77 is titled *Magonensi concilio*, whereas it is rubricated *Iudicium commeani* in the *Coll.5libr*.² Perhaps the compiler used a manuscript of the collection (a derivative?) that contained some different titles. Both Paul Fournier and Peter Landau have pointed out that often false attributions of penitential canons are a characteristic of South Italian penitentials and canon law collections of the eleventh century.³ The *P. Vallicellianum E. 62* is clearly a part of this South Italian tradition.

The *P. Vallicellianum E. 62* conventionally begins with canons on violence, such as homicide, bloodshed, mutilation, abortion, and infanticide. The other major topic is fornication. After canon 24 on women making vows without their husband's consent, the order in which the topics are dealt with becomes confused. The *P. Vallicellianum E. 62* first deals with hiding one's major or minor sins, perjury, and theft, before returning to adultery and fornication again.⁴ Canons 37-41 are chiefly concerned with sexual offences committed by women and all begin with the word *mulier* like in its source, the *P. Vaticanum*. The confused order of canons and several repetitions (eg. cc. 25 and 41 on women making vows) indicate that the penitential was not put together with great care.

¹ The wording of the canons resembles both *P. Vaticanum* and *P. in II libris*; see the following comparison: *P. Vaticanum* I,7: *Si quis pro uindicta patri, aut matri, aut fratris occiderit hominem et reddit pretium sanguinis, V annos peniteat, et si componit III. P. in II libris* II,4,7: *Qui uero per uindictam patris aut matris uel fratris hominem occiderit si composuerit anno et dimidio, si non composuerit .iii. annos peniteat. P. Vallicellianum E. 62, c. 9 reads Si quis pro uindicta patris aut fratris occiderit hominem et non redit (!) pretium sanguinis, tres anni peniteat, et componit sic .i. annum aut dimidium peniteat.*

² The canon is dealt with below and stems from *P. Oxoniense II*, cc. 25/28.

³ P. Landau, 'Gefälschtes Recht in den Rechtssammlungen bis Gratian' in *Kanones und Dekretalen. Beiträge zur Geschichte der Quellen des kanonischen Rechts*. Bibliotheca Eruditorum, Internationale Bibliothek der Wissenschaften 2 (Goldbach 1997) pp. 3-49, see 19-21 and Fournier, 'Un groupe de recueils canoniques italiens', pp. 213-331.

⁴ *P. Vallicellianum E. 62*, cc. 26-27 (*Nam si aliquis in se uel paruam peccatum [sc. celauerit] sciat se exinde ratione reituros, secundum illud quod dominus de uerbo otioso, quanto magis nos si plura peccata uel crimina, que commisimus recelauerimus...*).

No less than eleven canons (cc. 55-65), copied ‘en bloc’ from the fourth book of the *Coll.5libr.*, deal with perjury. The topic is introduced with Isidore of Seville’s definition of perjury. The canons deal with perjury committed in church or sworn on altars and Gospel books, with perjury forced by necessity, or committed unconsciously and through cupidity, and oaths sworn on the hands of priests, bishops, or a consecrated cross.¹ The canons also censure people who have seduced others into perjury.² The final canon of this set stipulates that oaths of children, monks, and slaves are invalid without consent of their father, abbot, or lord. Canon 65 marks the beginning of a section on liturgical matters. It forbids clerics or lay people from inviting penitents to drink wine or eat meat. Canon 66 urges people to take communion on Christmas day, Easter, and Pentecost. We have already come across canon 68 as part of the commutations of the *P. Casinense*. The canon, taken here from the *Coll.5libr.*, contrasts the harsh penances of ancient times ‘when the canons were enacted’ with those of later times. The ‘fathers’ are credited with a new way of counting penance. If the canons recommend one year of penance *in pane et aqua*, it is sufficient to fast one day on bread and water per week during that year, while two days on bread and water stand for two years on bread and water, et cetera.³ Canons 69-71 are concerned with periods of fasting within the liturgical year, which include three *quadragesimae legitimae*, the Ember days, and Wednesdays and Fridays.⁴ Like its source, the *Coll.5libr.*, the *P. Vallicellianum E. 62* contains an interpolation attributed to pope Sylvester, recommending to those who are capable of it the Roman custom of fasting on Saturdays.⁵

A set of canons (72-75) subsumed under the rubric *Sequitur* deals with mass and the Eucharist. The first canon states that the Eucharist is not affected by wickedness of the priest who consecrates it, since an invisible angel stands by and will consecrate the sacrifice if the

¹ *P. Vallicellianum E. 62*, c. 60, based on the sentences of Theodore of Canterbury, begins by saying that the Greeks swear on the hands of men, while this practice is considered sinful by the Romans. Then it repeats the prohibition of c. 57 (based on the *P. Ps.-Gregorii*) to swear *in manu epyscopi uel presbiteri... aut in cruce consecrata* but adds the provision *et mentitur*, ‘...and lies’.

² *P. Vallicellianum E. 62*, c. 62: *Si quis per insidiam aut insipientia sciense duxerit in periurium...*; c. 63: *Si quis duxerit aliam in periurium ignorante se et postea recognoscit... Qui uero suspiciatur quod in periurium ducitur...*

³ *P. Vallicellianum E. 62*, c. 69: *Ponunt canones peccantibus de quibusdam peccatis .iii. anni in penitentia et .i. ex his in pane et aqua... Post hoc expositum patres nostri considerauerunt imbecillitate penitentium, et quia post his temporibus non est talis feruor penitentiae, qualis antiquitus erat quando canones efficiebantur, cum tunc omnis uita eorum in solo pane et aqua esse commiscuerunt, hos annos penitendo ut similis et dura penitentia aggerentur. (...) hoc enim uariauerunt, ut qui annum unum erat in pane et aqua inter ipsum penitentialem annum .i. diem ebdomade duceret penitens in pane et aqua. Ceteris uero de mediocriter peniteat...*

⁴ *P. Vallicellianum E. 62*, cc. 70-71 go back to Isidore’s *De eccl. officiis* (Lawson ed., CCSL 113). Canon 69 is recorded as *Coll.5libr. IV,45* (Vat. lat. 1349, f. 174r).

⁵ *P. Vallicellianum E. 62*, c. 71: *Siluester papa dixit atque statuit: Sabato geiunandum... Sabato die domino in sepulchro posito, omnes discipuli ieiuasse dicuntur. Tantum die dominico accipere gaudium meruerunt, quantum acceperunt luctum, et ideo omni quarta et quinta feria et sabato ieiuandum est cui sit possibile...*

priest is unworthy.¹ Although the canon cannot be traced in other penitential or canonical sources, similar ideas were voiced by Peter Damian in his *Liber Gratissimus*, who defended the validity of sacraments administered by simoniacal priests against cardinal Humbert of Silva Candida who contended the opposite.² The virtual absence of canons on heretical priests or the improper treatment of the Eucharist, so often included in penitentials, may be explained by the occurrence of this canon. Canons 73 declares that the wine offered as Christ's blood should be mixed with water but not with any other potion and canon 74 stipulates that the host should be pure and uncontaminated. These regulations are more concerned with the (nature of the) Eucharist itself than with the proper way of treating it during the mass.³ The last canon of this set advises against praying and offering the Eucharist on behalf of the dead on Sundays, since this day should be reserved exclusively for the celebration of the resurrection of Christ. The canon is recorded in the ninth-century *P. Pseudo-Theodori* and the *Consuetudines* of Cluny, which are preserved in a manuscript written in the abbey of Farfa.⁴ Given the influence of the *Consuetudines* in Central Italy, the compiler probably took it from this source. The acquaintance with the *Consuetudines* could mean that the *P. Vallicellianum E. 62* was written in a church or monastery in Narni affiliated to the nearby abbey of Farfa.⁵

¹ *P. Vallicellianum II*, c. 72. *Si per bonos sacerdotes offeratur christi sacrificium, non crescit. Si per malos offeratur, non minuitur. Quia angelus domini stat ibi, quem carnales oculi uidere non possunt. Qui illum uisibiliter sanctificat.* The angel assisting does not figure prominently in Peter Damian's tract. See, however in a different context, Theodulf of Orléans, first capitulary c. 10 (*Capitula episcoporum I*, Brommer ed., MGH, p. 110): *Ubi enim dei nomen invocatur, deo sacrificium offertur, angelorum frequentia inesse non dubitatur.* The antithesis *uidere non possunt – uisibiliter sanctificat* is difficult to explain. Possibly the compiler meant *inuisibiliter sanctificat*.

² Petrus Damiani, *Ep. 40*, *Die Briefe des Petrus Damiani 1*, Reindel ed., MGH, pp. 410-411: *ut neque per bonos sacerdotes meliora illa misteria neque per malos fieri peiora testentur. Nimirum sive per fures sive per adulteros sive etiam per homicidas haec sacramenta fiant, nil prorsus ab his, quae sancti dedicant sacerdotes, misteriis different.* See Laudage, *Priesterbild und Reformpapsttum*, pp. 197-198.

³ *P. Vallicellianum E. 62*, c. 73 (*Quod oportet in calice domini uinum cum aqua offeri*, based on Isidore's *De eccl. officiis I*, 18) and 74 (*Hostiam puram et perfectam licet absque sorde clarissimum uinum cum aqua mixtum*) stem from *Coll. 5libr. III*, 213-214 (Fornasari ed., CCCM 6, pp. 215-216).

⁴ *P. Vallicellianum E. 62*, c. 75: *Sunt nonnulli interrogare, si liceat cotidie orare aut sacrificium deo pro mortuis, quibus respondet: Quia plerique in dominicis diebus sacrificium pro mortuis non offerat propter singularem reuerentiam dominice resurrectionis. Videlicet, quia inter mortuos liber fuit. Ideo ualde condecet ut ei singulis resurrectio uenerabiliter ab omnibus et sine alicuius ambitione defuncti celebratur.* Taken from *Consuetudines Farfenses* 204 copied in ms. Vatican, BAV, Vat. lat. 6808 (*Liber Tramitis aevi Odilonis abbatis*, K. Hallinger ed., CCM 10 (Siegburg 1980) p. 283).

⁵ Other monasteries, however, also possessed copies of the costumary of Cluny. A reference to them is found in a book inventory of the abbey of Sant'Eutizio. See Pirri, *L'abbazia di Sant'Eutizio in Val Castoriana*, p. 348. On churches in Narni dependent of Farfa, see Garrisson, *Studies IV*, p. 238.

Canon 76 treats accusations made against clerics.¹ The text, which may have its origins in Roman law, imposes fines for making charges against clerics or maltreating them. It belongs to a series of canons that does not occur in the *Coll. 5libr.* but can be found in several Italian legal manuscripts.² The last canon deals with particular cases of ‘infanticide’. A mother who had found her child dead lying beside her but did not know whether she was the cause of its death must do penance ‘to purify her soul’. A mother who had placed her child in a cradle, and did not know whether her child had died through her negligence or not must also do penance.³ This penance specified by this canon is much more severe than that of its ultimate source, the *P. Oxoniense II*.⁴

Compared to other Frankish and Italian penitentials, the *P. Vallicellianum E. 62* treats a rather limited number of topics. The emphasis is clearly put upon what might be called *criminalia peccata*, grave sins such as homicide, fornication, and perjury. Canons concerning food taboos, and pagan practices are virtually absent in our text. The same holds true for minor sins or the principal vices, like envy, avarice, or hatred. Since the *ordo* does mention such vices, they must have played some part in confession.⁵ Perhaps the compiler thought that these sins did not require a thorough explanation. He may have tacitly subsumed them under the unspecified *parua peccata* of canon 27, which a confessant should not hide before a priest. It is noteworthy that the compiler omitted canons on food and the Eucharist, for his main sources, the *P. Vaticanum* and the *Coll. 5libr.*, could have offered him canons devoted to these subjects.⁶ The compiler must have deliberately omitted them. If this was the case, this document testifies to a changing attitude towards topics like food taboos or the Eucharist.

¹ *P. Vallicellianum E. 62*, c. 76: *Vt nullus audeat episcopos, presbiteros, diaconos [ac]cusare et qui hoc facere uoluerit, I pondera auri uel argenti inferatur. Vt nullus laicus audeat crimen ingerere, nisi sub idoneis testibus, septem uiros iustos, religiosos, deum timentes et christum predicantes. Non literati, quorum filii habent uxoratus et nepotes et filias iam traditas nuptias. Vt qui percusserit sacerdotem, idest presbiter siue diaconus, decretum est, ut pena auribus X idest solidos II CXX. Qui percusserit diacones et defensores ecclesie... Qui lectores ecclesie percusserit...*

² So-called *Capitula Italica* printed in *Capitularia regum Francorum II*, A. Boretius and V. Krause ed., MGH Legum sectio II (Hannover 1897) p. 427-428, nr. 232. Manuscript witnesses are all tenth-/eleventh-century and Italian, see Mordek, *Bibliotheca capitularium regum Francorum manuscripta*, pp. 758 and 809-810.

³ *P. Vallicellianum E. 62*, c. 77. *MAGONENSI CONCILIO. Si qua mulier inuenerit iuxta se mortuum et non tenet conscientiam eius, quod per eam fuisset [mortuus] ad purificandum tamen animam suam. Si non baptizatus IIII anni peniteat. Si autem baptizatus fuerit, III anni peniteat. Si autem aliqua mulier posuerit infantem suum secundum consuetudinem siue in cuna, siue in aliquo loco, ubi solebat iacere, non tamen iuxta se, et inuenerit eum mortuum, et nescit eum per negligentiam suam esse [neca]tum an non. Si non baptizatus propter inuidiam suam, II anni peniteat. Si baptizatus I.*

⁴ *P. Oxoniense II*, cc. 25 and 28, of which the latter canon (*Si autem posuerit infantem suum secundum consuetudinem siue in cuna siue in alio loco et inuenerit eum mortuum*) declares *non est mulieri culpa* (Kottje ed., CCSL 156, pp. 195-196). The *P. Vallicellianum E. 62* raises the penances of the *Coll. 5libr.* with one year. Cf. Körntgen, *Studien zu den Quellen*, p. 190.

⁵ Such sins are listed in the sermon on the six *peccata* of Adam and in the *Confiteor* prayer.

⁶ *Coll. 5libr.* II,66 (Fornasari ed., CCCM 6, p. 219).

Conclusion

The *P. Vallicellianum E. 62* is perhaps the latest species of the South/Central Italian generation of penitentials. While the script of the quires that contain the *P. Vallicellianum E. 62* is dated to the mid- or second half of the twelfth century, there is reason to believe that the text of the penitential is older. In fact, there seems to be a discrepancy between the dates of the *ordo* and the canons, as the absolution prayers are related to *ordines* from the very end of the eleventh century and beyond, whereas its canons point to the eleventh century, as Fournier argued.¹ The canons were in any case put together after 1014-1023 when one of its most important sources, the *Coll.5libr.*, was compiled.² If the penitential's ruling on the validity of the Eucharist is really inspired by Peter Damian's tract on simony from 1052, the composition of the text can be dated to the second half of the eleventh century or later. Significantly, canons of the influential *Decretum* of Burchard of Worms, present in many Italian canonistic manuscripts of the later eleventh century, are entirely lacking in the *P. Vallicellianum E. 62*. These clues suggest that the *P. Vallicellianum E. 62*, at least its 'tariffed part', was composed some time in the second half of the eleventh century and that this text considerably antedates the version copied in this twelfth-century manuscript. As to the place where the manuscript, including the penitential, was written, the hagiological evidence of the litanies strongly point to the small episcopal city of Narni. In addition, the *ordo* of the *P. Vallicellianum E. 62* contains prayers that can only be found in a penitential *ordo* recorded earlier in this manuscript and in another codex written in Narni, ms. Vat. lat. 1339. These prayers seem to testify to the existence of a distinct rite of penance in Narni. There is also evidence that the rest of the penitential was composed in this city, since the compiler borrowed from the *Coll.5libr.*, a copy of which is also preserved in ms. Vat. lat. 1339. This manuscript once belonged to the church of Santa Maria Maggiore (now San Domenico) in the city. It is not unlikely that this church also possessed ms. Vallicelliana E. 62, for a Preface for a Marian feast was added to the codex and the name of Maria was written in a bolder font in the litany of the penitential *ordo*.

¹ Fournier, 'Un groupe de recueils canoniques italiens', p. 318.

² For Italian manuscripts of this collection see R.E. Reynolds, *The Collectio canonum Casinensis duodecimi seculi. An implicit edition with introductory study*. Pontifical Institute of Mediaeval Studies. Studies and texts 137/Monumenta Liturgica Beneventana 3 (Toronto 2001) pp. 19-24 and C.G. Mor, 'La reazione al "Decretum Burchardi" in Italia avanti la riforma Gregoriana', *Studi Gregoriani* 1 (Rome 1947) pp. 197-206.

While Supino Martini has suggested that the *P. Vallicellianum E. 62* was taken from another manuscript, it is more likely that it was written in order to supplement the Ritual-Missal. The main reason for this contention is that the scribe who copied the penitential also added prayers in other sections of the manuscripts. The analysis of the *ordo* offered a possible hint for the purpose of the text, because it showed that the *ordo* lacks certain directions important for understanding the rite, for example the act of confession. It is quite possible that such acts were considered sufficiently well known that it was not necessary to specify them in detail. In other words, the intended user of the text was well accustomed to hearing confession and, consequently, without any need for detailed instructions. The same is true for the penitential canons, which only discuss a limited set of topics, concentrating upon criminal sins like homicide and adultery. The omission of minor sins, food taboos, and superstition may have been deliberate, either because they did not feature in confession, or because the priest-confessor did not need tariffs to provide guidance on them. Furthermore, the duplicated canons and the disorderly arrangement of the canons suggest that the compiler did not take much trouble to forge the canons collected from his two main sources into a coherent entity. Yet the fact that someone added precisely this penitential implies that it was considered to belong to the equipment necessary for a priest to carry out his duties.

Sources of the P. Vallicellianum E. 62

Vallicell. E. 62	P. Vaticanum	P. in II libris	Coll.5libr.	Varia
1.	I,1	I,1,1	-	OxonII 6
2.	I,2	I,1,2	-	
3.	I,3	I,1,3	-	
4.	I,5	I,2,1	cf. IV,107,2	
5.	-	I,2,2	cf. IV,115	
6.	-	I,2,6	cf. IV,111	
7.	I,6	I,1,5	-	
8.	-	cf. II,4,5	cf. IV,115	
9.	I,7	II,4,7	-	
10.	-	-	-	
11.	cf. I,8	-	-	
12.	I,8/10	II,4,6/5	-	
13.	I,11	I,10,4	-	
14.	-	cf. I,4,19	IV,115	
15.	V,6	I,10,3	-	
16.	I,13		cf. V,264	
17.	II,1		-	
18.	-	cf. I,3,1; II,3,6	V,174/184/190	
19.	II,2		-	

20.	II,3		-	
21.	II,4		-	
22.	II,5		-	
23.	III,2	I,4,5/13	-	
24.	III,9	II,2,13	-	
25.	IV,12	cf. II,9,7	-	
26.	VIII,16		-	
27.	VIII,16		IV,4	
28.		I,5,8	-	
29.	cf. VI,1		-	OxonII 47
30.	III,12	I,4,16/20-22	cf. V,173	
31.	IV,2		-	
32.	-		V,173	
33.	-	I,4,26	-	cf. OxonII 2
34.	-	I,4,28	-	
35.	IV,4	II,1,33	V,167,2	OxonII 35
36.	IV,5	cf. II,2,9	-	
37.	III,19	II,2,11-12	-	
38.	IV,8	II,2,13	-	
39.	IV,9	-	-	
40.	IV,10	I,4,6	-	
41.	IV,12		-	
42.	IV,1		-	
43.	III,4		-	
44.	-	I,4,8	-	
45.	-	I,4,11	-	
46.	III,7	I,4,9	-	
47.	cf. II,5	I,4,10	-	
48.	III,8	I,4,12	-	
49.	cf. II,4	-	cf. V,231	
50.	-	-	IV,210	
51.	-	-	IV,210	
52.	-	-	IV,211	
53.	-	-	IV,221	
54.	-	-	IV,213	
55.	-	-	IV,234	
56.	-	-	IV,243	
57.	-	-	IV,245	
58.	-	-	IV,246,2	
59.	-	-	IV,247	
60.	-	-	IV,247	
61.	-	-	IV,248	
62.	-	-	IV,249	
63.	-	-	IV,249	
64.	-	-	IV,252	
65.	-	-	IV,228	
66.	-	-	IV,79	
67.	-	-	III,267,1	
68.	-	-	IV,45	
69.	-	-	IV,335	

70.	-	-	IV,335	
71.	-	-	IV,335	
72.	-	-	-	Damiani, Ep. 40
73.	-	-	III,213	
74.	-	-	III,214	
75.	-	-	-	ConsFarf 2,61
76.	-	-	-	CapItalica 1-4
77.	-	-	IV,126	OxonII 25/28

Coll.5libr. (Fornasari ed., CCCM 6; ms. Vat. lat. 1339)

Coll.9libr. (ms. Vat. lat. 1339)

ConsFarf. = *Consuetudines Farfenses* or *Liber Tramitis* (K. Hallinger ed., CCM 10, p. 283)

CapItalica = *Capitula Incerta Italica* (MGH Legum sectio II, 2 (232), pp. 127-28)

OxonII = *P. Oxoniense II* (Kottje ed., CCSL 156, pp. 173-205)

Petrus Damiani, *Ep. 40* (MGH, *Briefe der Deutschen Kaiserzeit* IV,1, pp. 410-411)

P. in II libris (ms. Montecassino, Arch. 554; ms. Vienna, Österr. Nationalbibl., 2231)

P. Vaticanum (See chapter 2)

4. THE *P. VALLICELLIANUM C. 6*

In 1850 Wasserschleben published a short series of canons from the manuscript Rome, Bibl. Vallicelliana, C. 6 and designated it the *P. Vallicellianum I*. Schmitz was quick to point out that Wasserschleben had only printed a small section of the original text together with a few isolated canons on f. 183 of the codex. He published the entire penitential which he called *P. Vallicellianum II* in order to distinguish it from the *P. Vallicellianum I* he had edited from the manuscript Vallicelliana E. 15.¹ Schmitz classified the text among the so-called Roman penitentials. In one of his articles written in refutation of Schmitz' theories, Paul Fournier demonstrated that this penitential was largely dependent on the Frankish *Capitula Iucidiorum* and the South Italian *Coll.5libr.*² The title of the penitential of Schmitz' edition, *Alia canones vetustiores*, is not the original title of the work, but is the title given in the table of contents on f. Ir written in the early modern period. We have seen in the preceding chapter that Wasserschleben's *Vallicelliana I* and *II* are not the same as those of Schmitz. It is, therefore, better to follow Cyrille Vogel as we have done with the *P. Vallicellianum E. 62* and to include the signature in the title of the text: *P. Vallicellianum C. 6*.³

The manuscript of the *P. Vallicellianum C. 6* was written at the end of the twelfth century in the abbey of Sant'Eutizio in Val Castoriana situated in the central region of Umbria near the important city of Spoleto. This abbey, founded in the fifth century by the legendary St Spes but named after his successor saint Eutitius, was an important centre of book production in the eleventh and twelfth centuries.⁴ This productivity also resulted in at least two penitential *ordines* (mss. Vallicelliana B. 8 and B. 63) known to have been written in Sant'Eutizio. Furthermore, the scriptorium also produced one of the three extant copies of the complete *Coll.5libr.* The fact that so many books of this library have survived is partially due to its abbot Giacomo Crescenzi (1570-1637), a member of the Oratorian congregation, who

¹ Wasserschleben, pp. 547-550; Schmitz II, pp. 350-388.

² P. Fournier, 'Études sur les pénitentiels II. Le pénitentiel Vallicellianum secundum', *Revue d'histoire et de littérature religieuse* 7 (1902) pp. 59-70.

³ See also the introduction to chapter 3. Vogel, *Les Libri Paenitentiales*, pp. 84-85.

⁴ On the early history of the monastery see Pirri, *L'abbazia di Sant'Eutizio in Val Castoriana presso Norcia*, pp. 1-59. On the scriptorium in the late eleventh and early twelfth centuries, see Supino Martini, *Roma e l'area grafica Romanesca*, pp. 199-223. On the scriptorium in the later twelfth century G. Corso, 'Il "Maestro del breviario di Sant'Eutizio" e la miniatura romanica nel territorio spoletino: Ricerche su un'officina di miniatori professionisti', *Arte medievale. Periodico internazionale di critica dell'arte medievale. Nuova serie I* (2002) pp. 77-95. Before the eleventh century, hardly anything is known of the monastery.

donated most of the abbey's books to Filippo Neri, founder of the Oratorians. These books would eventually enter the library of the congregation, the Biblioteca Vallicelliana.¹

The structure and contents of the codex, particularly of the last part which contains the penitential, is complicated, which requires a deeper analysis of the relationship between this last part and the rest of the codex. The main part of the codex is comprised of a Breviary, the additional quires of exegetical and canonistic material, a calendar, and the penitential. Because of the peculiar contents, the *P. Vallicellianum C. 6* proves to be one of the most difficult to examine as to its purpose and function. The penitential is also the only one discussed in this study which does not include liturgical directions. Almost all the sources of the *P. Vallicellianum C. 6* could be identified by Fournier. Nevertheless, the author clearly left his mark on the text by altering and re-editing the canons of his sources. For this reason, this chapter puts the emphasis on the structure of the penitential, the changes that the compiler had made to his sources, and the place of the text in the codex.

4.1 General description of the manuscript

The manuscript's modern cover, rectangular wooden boards (325 x 195 mm) covered with white leather, was probably added at the restoration of the codex in 1970. A stamp ("R. Salvarezza Restauro" plus address and date) on the rear pastedown bears witness to a restoration. The spine measures ca. 325 x 50 mm, on which is written the signature. Two unnumbered, paper flyleaves (310 x 190 mm) are attached to the front pastedown and two to the rear pastedown. Older paper flyleaves (310 x 180 mm), numbered I-III in the upper corners of the recto-sides, precede the parchment folios. In the bottom of f. Ir is written by an early modern hand *C. 6 Bibliothecę Vallicellianę* and in the upper right corner in pencil "C. 6". On f. Iir the same hand wrote the title *Breviarium Antiquum divinatorum officiorum quo utebatur Monachi S. Euticii Ord. S. Benedicti...*² Placed under this title is a stamp of the "R. Societa Romana di storia patria" (with number 00216) and the inscription *Codex xii. sæculi* by

¹ Cistellini, *San Filippo Neri. L'Oratorio e la Congregazione Oratoriana* II, pp. 810-811 and 1261. Cistellini mentions donations of books 'passò in tempi diversi' with the consent of the pope from the 1590's. See also T. Frank, 'Spuren einer verlorenen Memorialaufzeichnung im Kloster S. Eutizio bei Norcia', *Quellen und Forschungen aus Italienischen Archiven und Bibliotheken herausgegeben von Deutschen Historischen Institut in Rom* 68 (Tübingen 1988) pp. 20-51, see p. 21 (noting that the codex was probably given to the Vallicelliana at some time between 1592 and 1595) and Pirri, *L'abbazia di Sant'Eutizio in Val Castoriana*, pp. 192-207.

² The rest of the title runs ... & alia opuscula quorum indicem sequens pagina exhibet These signatures and inscriptions were probably added by the same hand as in ms. Vallicelliana E. 62.

an early modern hand.¹ The table of contents of f. IIIr is written by the same hand.² On fol. 1r is written *Missale antiquum* (deleted), *Breuiarium antiquum* (in pen), and “C. 6” (in pencil). The clearest evidence that the codex was written in Sant’Eutizio are the entries of Spes, founder of the abbey of Sant’Eutizio, and Eutitius in the calendar of ff. 183-188.

The folios are numbered in arabic numerals in the upper right corners, sometimes redrawn with a pencil. The organization of the quires is as follows: 1⁸, 2¹⁺⁸ (f. 9 added), 3⁴, 5-10⁸, 11⁶ (ff. 66-71)³, 12¹⁺⁸ (one sheet added), 13-17⁸, 18²⁺⁴ (two sheets added to bifolios), 19-24⁸, 25⁴⁺¹ (two bifolios with f. 178 inserted), 26-27⁸. The size of quires 26 and 27 (ff. 180-187 and ff. 188-195), which includes the penitential, is somewhat smaller. In the part of the Breviary the catchwords are written in the lower margins of the verso side of each last folio. The hair-flesh organisation follows Gregory’s Rule. Some folios are repaired with pieces of parchment that were, judging from fragments of chants in Gothic script, taken from other manuscripts. Small leather tabs are attached to the edges of ff. 80, 107, 158, 162, 164, 166, 169, and 183. Although of unknown age, they seem to have functioned as tab index, enabling priests to quickly find a particular text. The short but thick chords sewn through the outside corners of the bottom of f. 21 and f. 33 were possibly the remainders of bookmarks.

4.2 The Breviary

The part containing the breviary (ff. 1-179) measures approximately 300 x 187 mm and has 23 lines per page. The parchment is thick but worn on the edges and the shape of the folios is irregular. The lay-out of the dry-point ruling is $_||____||__$. The writing space is ca. 230 x 118 mm within the vertical lineation, but with the initials and rubrics often falling outside the vertical lineation. There are two vertical prickings in the upper right corner, two in the upper left corner. The space between the vertical prickings is between 8,5 mm. The horizontal pricking are visible in the outer margins of the folios and are ca. 10 mm apart. The main part of the text is written in Romanesca script by a single hand, which is dated to the second quarter or the mid-twelfth century.⁴ Letters are 4 mm high, ascenders and descenders 6 mm.

¹ Stamps of the Vallicelliana (blue) and Reale Societa Romana di Storia patria (red) were placed in the bottom margins the first folio and the last folio (195v).

² *Homilia incerti auctoris in Epistolam S. Jacobi Apostoli. pag. 180. Item alia de Vasis Templi veteris Testamentis. pag. 181 a tergo. Item alia de Arca feđeris. pag. 182. Canones Penitentiales. pag. 183. Kalendarium Vetus. pag. 183 a tergo (pag. 185 inveniuntur annus 1089 additus kalendaris unde actas dignoscitur in another hand in black ink). Item alii Canones Penitentiales vetustiores. pag. 189.*

³ The catchword in the margins of f. 65v does not match the first word of f. 66r. One folio has presumably been cut away, which together with f. 72 once belonged to quire ff. 66-71. Folio 72 is now attached to quire ff. 73-80.

⁴ Supino Martini, *Roma e l’area grafica Romanesca*, p. 219: ‘secondo quarto’/‘metà del XII secolo.’

Psalms, versicles, and antiphons are written in a smaller script.¹ The scribe left room for the initials to be added later, which consequently jump into the text space. Some are decorated with zoomorphic designs or touched up with yellow. Parts of the Breviary were erased in favour of new prayers and offices in Romanesque and Gothic hands, for example on ff. 1-5 and ff. 1r, 2v, 3v, 4, and 174-179.² On f. 174v directly following upon a prayer dedicated to St Nicander, there is a picture of Christ sitting on a throne in red, blue, yellow, green, and black ink.³ The texts of the rubrics are indicated vertically in a small script in the outer margins of the folios. The rubricator faithfully observed these directions and even reproduced the abbreviation signs indicated in the margins.

4.3 *The second part of the manuscript*

The size and lay-out of ff. 180-195 are clearly different from the preceding Breviary. The folios are irregularly cut and smaller (ca. 293 x 179 mm).⁴ The lineation is drawn slopingly and sometimes presses through the parchment. The lay-out of the ruling of this quire is $_||___||__$. The writing space measures ca. 223 x 115 mm. There are two pairs of two vertical prickings (ca. 6,5 mm apart) in all four corners of each folio. The horizontal prickings are 6,5 mm apart. Since the text of the penitential frequently crosses the vertical ruling on the right sides, the actual writing space could extend to 130 mm. The initials usually fall within two verticals. Quire ff. 188-195, which contains the penitential and a part of the calendar, has 33 written lines per page. The lay-out of quire ff. 180-187 (Bede, *Coll. 5 libr.* excerpts, part of the calendar) is different, as ff. 181-186 have 34 lines, while bifolio 180/187 has 47.⁵ The lay-out of ff. 180-187 is $_||___||__$ for the verso sides and $_||___||__$ for the recto sides.⁶ The text space differs for each text.⁷

¹ Some prayers are glossed with nota signs in the margins. Incipits of chants with musical notation are recorded in margins of ff. 35-37.

² Erasures occur on ff. 15-16 and 72-73, where new prayers are written in gothic script. On f. 175 a gothic hand added an *oratio sancti bernardi*

³ Garrison, *Studies in the history of Mediaeval Italian manuscript painting* 4, p. 165.

⁴ The first quire measures ca. 290 mm, the second one inclines to 295 mm. They were cut in a crude fashion

⁵ The scribe ignored the ruling of f. 180 and wrote 30 lines instead.

⁶ There is one pricking hole in the inner corners of each folio, while there are two in the outer corners. The vertical ruling of f. 187 is like ff. 188-195.

⁷ Written space of the calendar is ca. 223 x 134 mm (within the marginal rulings; horizontal sentences ca. 240 mm on f. 187). The horizontal lines of this quire are 7 mm apart, those of bifolium 180/187 4 mm. Vertical ruling 8,5 mm apart. The initials fall within the marginal ruling, yet not on the recto-sides. The writing space of the Bede texts measures 227 x 119 mm (the text often crosses the vertical lineation). The excerpt of the *Coll. 5 libr.* extends to ca. 126 mm.

Three hands can be distinguished on these two quires. One hand wrote the Bede texts on ff. 180r-183r in a small Romanesca minuscule. Another hand added the *Coll.5libr.* excerpts. A third scribe copied the calendar (the rubricated parts and some entries) and the penitential in a slightly larger and more angular Romanesca script. The dates and some of the entries in the calendar are written in red. Later entries, sometimes written in the margins or on top of earlier entries, were added in Romanesca script by at least three different scribes.¹ A later scribe also added the letters ‘a’ to ‘g’ which mark the week days on each line. The ink is stained especially on the hair sides of the folios. The penitential is written by a single scribe, except for the canon titled *Concilio niceno* on fol. 192v, which is probably by another scribe.² The letters of the penitential are 3 mm high, with ascenders 5,5 mm, with descenders 5 mm. Those of the Bede and *Coll.5libr.* excerpts are 2 mm, with ascenders and descender 4 mm. There are no rubrics in this part. The initials are either in capital (d and b) or uncial script (d, m, h, a) without decoration.³ Those of the penitential are 8 to 17 mm high and, like the ordinary capitals, touched up with red.⁴ Rubrics are in red and usually in Romanesca, although with some were written in uncial. The directions for the rubricator do not occur in the margins of the Bede and *Coll.5libr.* excerpts, which do not have rubrics, and the calendar. The rubric *De incestu* of the penitential is the first one to be indicated in the margins again.⁵ Both the penitential and the calendar have been dated to the late eleventh century, or in any case before 1089: an entry added later to the calendar records the dedication of the church of Saint Nicholas in Spoleto on the twelfth of April of that year.⁶

¹ According to E.B. Garrison, *Studies in the history of Mediaeval Italian manuscript painting* 4 (Florence 1960-62) p. 167 the calendar was written by two hands, with the last leaf written by the second scribe. In my view, the main body of the calendar was written by a single scribe who also wrote the penitential. The final leaf of the calendar is not written by another scribe, but has only a different lay-out. Thomas Frank identified at least five different scribes responsible for later entries in the calendar, see his ‘Spuren einer verlorenen Memorialaufzeichnung’, p. 31, nn. 29 and 30.

² The text is written in a slightly smaller script in light brown ink. In addition, the abbreviation of *quis* is with a *qs* with a stroke through the descender of the *q*. The abbreviation of *quis* in the rest of the manuscript is without exception *q* with a stroke on top.

³ On f. 190v a red, capital “T” is written in the margins.

⁴ The first initial ‘s’ of the penitential is in red and is 25 mm high.

⁵ Although this could suggest that both parts of the manuscript were rubricated by the same person, the practice of tagging the texts for the rubrics in the margins could have been standard in the scriptorium during the eleventh and twelfth centuries.

⁶ Entry of *II idus Aprillis* (12 April 1089) on f. 185r: *Dedicatio sancti nycolai. in ciuitate spoletana. Anni domini sunt mlxxxviii*. See on this church Pirri, *L’abbazia di Sant’Eutizio*, p. 247. Frank, ‘Spuren einer verlorenen Memorialaufzeichnung’, p. 31. Garrison, *Studies in the history of Mediaeval Italian manuscript painting* 4, pp. 162-166 dates both Breviary and calendar/penitential to the second quarter of the twelfth century, suggesting that the penitential might have been written a little earlier. His attribution to Sant’Eutizio hinges on hagiological evidence. See also Supino Martini, *Roma e l’area grafica Romanesca*, p. 219. Castellani, *I più antichi testi Italiani*, pp. 77-81 argues from a comparison of the litanies of mss. Vallicelliana C. 6 and B. 63 that the latter manuscript is the older one, since it contains a primitive version of the litany recorded in C. 6.

4.4 Contents of ms. Rome, Bibl. Vallicellianum, C. 6

1r-189v. Breviary, with on f. 41v prayers *pro peccatis*;¹ on f. 93 prayers for the local cult of *S. Mychael in monte gargano*; on f. 175r a prayer in honour of Bernard of Clairvaux (*Perfice quaesumus domine puri*) in a gothic hand; on ff. 176v-179v prayers for Eutitius and Spes²
180r-183r. Beda, *In epistolas septem catholicas* V,13-20 (*Bedae Venerabilis opera* II, *opera exegetica* 4, CCSL 121 (Turnhout 1983) pp. 220-224), *De Tabernaculo* I (*Opera* II, 2a, CCSL 119a (Turnhout 1969) pp. 11-14), and *In epistolas* I,6 and 8-10 (CCSL 121, pp. 186-187)
183r. Commutation table; canons on sexual misconduct from the *Coll.5libr*³
183v-188v. Calendar/necrology; recorded are saints, martyrs, and names of deceased monks of Sant'Eutizio, including that of the eleventh-century abbot Ubertus
188v. Short commentary on a *dictum* of the *Verba Seniorum*
189r-195v. *P. Vallicellianum C. 6*

4.5 General character of the codex

Given that the script of the last two quires is dated to the eleventh century part and that the size these two quires is different from the rest of the codex, it is clear that the last part was later added to the Breviary.⁴ The texts are also of a different nature than the preceding liturgical texts. The Breviary, containing the Proper texts for the offices of the liturgical year, is dated to the second quarter of the twelfth century, the last two quires to some time before 1089.⁵ Before the last quires were joined to the Breviary, this part either functioned as a separate booklet or belonged to another codex.⁶ It could have been added to the Breviary, since a calendar constitutes a useful supplement to a Breviary covering the entire liturgical year. If it was only the calendar that interested the users of the Breviary, the calendar of the last quires could have been transferred from another codex together with the exegetical and

¹ The prayers are found in the *Orationale* printed by G.G. Meersseman, E. Adda, J. Deshusses, *L'orazione dell'arcidiacono Pacifico e il Carpsum del cantore Stefano. Studi e testi sulla liturgia del duomo di Verona dal IX all' XI sec.* Spicilegium Friburgense 21 (Freiburg 1974) pp. 166-168.

² The main hand returns on f. 179v.

³ *Edictio Sancti Bonifatii* (Schmitz II, pp. 699-700; not (!) included in *Coll.5libr.*); *Coll.5libr.* V,197 (Vat. lat. 1339, f. 300r), V,199 (f. 300v), V,189,1-2 (f. 298v), V,190 (ff. 298v-299r), and III,300 (Fornasari, pp. 461-462).

⁴ According to Garrison (p. 165) the manuscript is 'a late binding together of several elements'.

⁵ Although Garrison, *Studies* 4, p. 165 dated the part that contains calendar and penitential to the first quarter of the twelfth century, Frank, 'Spuren einer verlorenen Memorialaufzeichnung', pp. 30-31 rightly points to the end of the eleventh century on the basis of the entry of the dedication of the church of Spoleto in the calendar.

⁶ Given these features I would classify these quires as either a booklet or a fragment taken from another codex. See on the definitions of a booklet P.R. Robinson, 'The "booklet". A self-contained unit in composite manuscripts', *Codicologica* 3 (1980) pp. 46-69.

penitential texts which were ‘coincidentally’ found on these quires.¹ Significantly, one leather tab of the tab index is attached to the folio on which the calendar begins, enabling a priest to find the calendar quickly. This possible explanation for the joining of these two different parts, however, leaves important questions unanswered. First, how should one interpret the somewhat curious combination of exegetical texts, a calendar and a penitential in the last to quires, unrelated to each other as to their contents? While the calendar/ necrology was meant to and, given the numerous entries by various hands, did fulfil a practical function, the lengthy extracts from Bede’s exegetical works on the Tabernacle and the seven Catholic Letters of the New Testament suggest an educational purpose rather than a pastoral one. Secondly, the fact that, unlike most penitentials of this age, the *P. Vallicellianum C. 6* lacks any liturgical direction makes it unlikely that it was ever used for hearing confession. By beginning immediately after the calendar, the scribe did not leave the possibility of adding an *ordo* to the canons.² The penitential itself is a near complete, well-organized text and, unlike the collection of the ms. Vallicelliana F. 92, not just a farrago of canons. Admittedly, there is reason to believe that the text had not reached its definite shape.³ A canon on homicide committed by bishops breaks off in the middle of a sentence and several rubrics were not finished.⁴ Are we perhaps dealing with a draft, a text still in a preliminary phase, which was not intended to fulfil any immediate function? The irregularities, however, may be due to scribal errors made by a scribe. Moreover, a practical function of the *P. Vallicellianum C. 6* cannot be excluded beforehand – after all, most penitentials in ninth-century manuscripts also lack *ordines*. In conclusion, one might say that the contents of the manuscript offers us few hints as to its use either in pastoral care or in the education of priests.

4.6 The *P. Vallicellianum C. 6* and its sources

As far as the contents and the structure of the text are concerned the *P. Vallicellianum C. 6* is a well-planned and coherent text and its structure is that of a traditional penitential, largely following its principal source the *Capitula Iudiciorum*. The penitential is the only one of the

¹ In this respect, it may be interesting to point to a fourteenth-century Breviary of Sant’Eutizio (Vallicelliana B. 78) which also contains an inserted calendar at the end of the codex. See Pirri, *L’abbazia di Sant’Eutizio*, p. 356.

² The scriptorium produced at least two penitential *ordines*, ms. Vallicelliana B. 8 and B. 63 in this period. Possibly the penitential was meant to be used together with one of these texts.

³ The rubric (DE...) before canon 31 on f. 191v is clearly left unfinished.

⁴ *P. Vallicellianum C. 6*, c. 3: *Si quis episcopus homicidium fecerit, XV annos peniteat et deponatur, atque cunctos dies uitae suae peregrinando finiat. Si uero casu hoc ei accidit...* The remaining three lines are empty. Another hand filled the empty space with a gloss stating that offenders (*erratos*) are allowed to give alms, but this does not benefit to the salvation of their souls.

Italian penitentials that is not preceded by an *ordo* for confession. The canons treat a wealth of subjects: homicide, adultery, fornication, incest, theft and sacrilege, perjury, false witnesses, violation of churches, betrayal, superstition and pagan rituals, usury, dietary rules, Sunday observance, rebaptism, and the Eucharist. The attention paid to food taboos and the questions concerning the Eucharist, which often did not receive much attention in other Italian penitentials, reinforce the impression that the *P. Vallicellianum C. 6* is a rather traditional text. However, the emphasis on homicide, fornication, and incest betrays the South and Central Italian preoccupation with major sins. Although the penitential is largely dependent on the *Cap. Iud.*, it borrowed from the *Coll.5libr.* particularly in its sections on homicide, fornication, and incest.

The only systematic inquiry into the sources of the *P. Vallicellianum C. 6* was carried out by Paul Fournier, who demonstrated that most of its canons were derived from the *Cap. Iud.* and the *Coll.5libr.* As to the latter text, the scriptorium of Sant'Eutizio produced a once complete copy (ms. Vallicelliana B. 11) and two derivatives (ms. Vallicelliana T. XXI and ms. F. 92, both saec. XI^{ex}).¹ It is unlikely that the compiler of the *P. Vallicellianum C. 6* consulted one of these derivative collections, since these also contain canons of Burchard of Worms' *Decretum*, which are entirely lacking in *Vallicellianum C. 6*. It is, therefore, tempting to conclude that the compiler drew his canons from a complete copy or a derivative of the *Coll.5libr.* that did not contain canons of the *Decretum*. Although the compiler could have worded from the copy of the *Coll.5libr.* in ms. Vallicelliana B. 11, it is difficult to determine whether the compiler of the penitential really used this codex, which, albeit once complete, now lacks several quires. No copy of the *Cap. Iud.* is known to have been written or kept in Sant'Eutizio.

The author largely followed the structure of the *Cap. Iud.*, but he interspersed his text with canons from the *Coll.5libr.* For example, the canons regarding people surrendering towns, castles, or men into the hands of enemies through betrayal were all derived from the *Coll.5libr.*² Since the *Coll.5libr.* contains almost the entire *Cap. Iud.*, it is not always easy to establish at which points the compiler used the *Cap. Iud.* or the *Coll.5libr.* Furthermore, the editorial work done by the compiler, who freely altered and redrafted the texts of his sources, makes it even more difficult to determine which of the two texts he used. Many of the canons

¹ An incipit-explicit edition of the collection of ms. Vallicelliana T. XXI in R.E. Reynolds, 'The South-Italian Collection in five books and its derivatives: The Collection of Vallicelliana Tome XXI', *Law and liturgy in the latin Church, 5th-12th centuries* (Aldershot 1994) XVI, pp. 77-91. The text of ms. Vallicelliana F. 92 is edited by Wasserschleben as the *P. Vallicellianum III*. Ms. Vallicelliana C. 6 also contains a short excerpt of the *Coll.5libr.* A fragment is preserved in the eleventh-century ms. Vallicelliana B. 63, f. 218r-v also from Sant'Eutizio.

² On these canons see below chapter 7.

on homicide, fornication, and theft were altered, but the procedure of assigning different penances to each separate clerical order is still reminiscent of the *Cap. Iud.* The sequence for the apportioning of penances according to clerical order is as follows: bishop – priest – deacon and monk – (subdeacon –) cleric and layman. Thus lower clerics and lay people often receive the same penance. Sometimes the compiler simply distinguished between sinners of the priestly order and lay people.¹ In several cases the compiler reworked his sources in order to define specific circumstances under which a sin was committed. For example, in the case of someone committing perjury out of necessity the compiler added ‘or in order to defend the life of a man’.² Another canon specifies the crime ‘homicide out of hatred’ by adding the clause ‘while not having a reasonable complaint against him [the victim]’.³ A more substantial explanation of definitions precedes the canons concerning fornication, adultery, and incest. Here definitions of three types of carnal impurity were mainly taken from the Etymologies of Isidore of Sevilla and the Pseudo-Gregorian penitential.⁴ Fornication, the *P. Vallicellianum C. 6* explains, is committed with *puellae* or widows *in seculari habitu* and is named after the arches or *fornices* where this crime was often committed in secret; adultery is committed by a married man or by a man committing fornication with someone else’s wife; finally, incest is committed with blood relatives or virgins vowed to God.⁵ These definitions serve to introduce a number of canons (cc. 19-23) specifying for each clerical order and laymen the penances for all three ‘carnal impurities’.⁶ In other cases the compiler sought to specify the offence as precisely as possible. In his canon on sacrilege, the compiler added to the original text other items that could be stolen from churches, for instance books and liturgical paraments like the pallium, garments, thuribles, or chalices.⁷ Another significant

¹ *P. Vallicellianum C. 6*, c. 61: *Si quis de ordine sacerdotali falsum testimonium dixerit unde homicidium perficiatur... Si quis laicus hoc dixerit...;* c. 86: *Si quis de ordine sacerdotali odium contra proximum suum habuerit... Laicus si odium...*

² *P. Vallicellianum C. 6*, c. 56: *Si quis coactus qualibet necessitate aut uitam hominis defendendo periurauerit, III annos peniteat, I in pane et aqua.*

³ *P. Vallicellianum C. 6*, c. 5: *Si quis laicus sponte homicidium fecerit et per odii meditationem, non habens rationabilem quaerelam contra eum...*

⁴ *Liber Etymologiarum*, Lindsay ed., V,26,13/24, X,10 and *P. Ps.-Gregorii 4* (Kerff ed., ‘Das Paenitentiale Ps.-Gregorii III. Eine kritische Edition’, p. 169)

⁵ *Fornicatio fit cum puellis et uiduis in seculari habitu manentibus. Vnde et fornicatio dicitur, a fornicibus ubi istud scelus clam perficitur. Fornices sunt arci uolubiles fornicatoribus ad peragendum crimen habiles. Adulterium propriae cum uxore alterius peragitur, unde et adulterium alterius tori uiolator dicitur. Incestus cum propinquis et deo sacrate uirginibus committitur...* See also chapter 7.

⁶ *P. Vallicellianum C. 6*, c. 20: *Presbiter si uxorem acceperit, deponatur. Si uero fornicatus fuerit, amplius pelli debet et ad penitentiam redigi. Si uero adulterium uel incestum perpetravit, amisso presbiterii honore XV annos...;* c. 21: *Diaconus post suam ordinationem et continentiae professionem si uxorem acceperit, deponatur et VII annos peniteat in pane et aqua. Si uero adulterii uel incestus crimen admiserit, amplius penitentiae subdatur.*

⁷ *P. Vallicellianum C. 6*, c. 54: *Sacrilegium dicitur sacrarum rerum electio (!), id est direptio, uidelicet librorum, et aeclesie ornamentorum, scilicet palliorum, uestimentorum, turibulorum, calicis, siue omnium ecclesiarum*

alteration occurs in a Theodorian canon on rebaptism. According to the *P. Vallicellianum C. 6*, rebaptism of children who had been baptised by heretics or schismatics in the name of the Trinity is strictly forbidden, ‘so that the invocation of such a name [of the Trinity] does not seem annulled’.¹ This rectification of Theodore’s judgment, who had ordered rebaptism of those who were baptized by heretics, can be found in neither the *Coll.5libr.* nor the *Cap. Iud.* It goes back to a homily of Bede and was incorporated in other early medieval texts.² Perhaps this amendment should be placed against the background of eleventh- and twelfth-century discussions about the validity of orders conferred and sacraments administered by heretical or simoniac priests. A similar message, reflecting Augustinian ideas however pertaining to the Eucharist, can be found in a canon incorporated in the *P. Vallicellianum E. 62*: the worthiness of a priest, even if a heretic, does not affect the Eucharist.³

The compiler enriched several canons with appropriate biblical quotations, as for example he added to a canon on usury: ‘who lends his money without usury, will dwell in God’s sanctuary’ (Ps. 14,5/1). To a canon concerning perjury he added: ‘a false witness will not go unpunished’ (Prov. 19,5). The compiler showed some creativity as to the rephrasing of penances. Deposition from office is, for instance, described in different ways. Bishops and priests who committed adultery or incest are to forfeit their office (*episcopatum amittat; amisso presbiterii honore*); clerics committing homicide should quit their holy office during their penance (*a sancto ministerio debet cessare*); deacons guilty of intentionally committing homicide are not permitted to ‘rise to the priestly order’ (*ad presbiteratus ordinem non adsurgat*); and bishops guilty of fornication like the sodomites ‘are to be cast off from the episcopate’ (*ab episcopatu pellatur*). Less ornamental are the distinctions made by the compiler between various kinds of imprisonment of penitents. If someone has to do penance in another place, some canons distinguish between doing penance in a monastery or in another ‘remote place’, a distinction that is, except for the *Coll.5libr.*, not made in other

substantiarum. Si igitur episcopus sacrilegium fecerit...; c. 19: Si quis episcopus, presbiter... aurum siue argentum, uictum seu uestimentum furati fuerint...

¹ *P. Vallicellianum C. 6*, c. 89 : *Si quis ab heretico baptizatus est, qui trinitatem non credit, iterum baptizetur. Siue igitur ab heretico, siue a scismatico, seu a quolibet facinoroso quis in nomine sanctę trinitatis baptizatus fuerit, rebaptizandus non est, ne inuocatio tanti nominis uideatur annullari.*

² See Bede, *Homelie* II,18 (CCSL 122, p. 312). It is repeated in Peter Damian’s *Liber gratissimus* (Die Briefen des Petrus Damiani 1, Reindel ed., nr. 40, p. 398). A weak parallel can be found in the eleventh-century *P. Parisiense Compositum* (Northern France) c. 61: If in case of illness a child is immersed in water in the name of the Trinity by a lay person, it should not be baptised again (*Si quis infans infirmus sub nomine sanctę trinitatis ab aliquo fidei in aquam fuerit mersus, si hoc cognitum fuerit, non oportet rebaptizari*), but only ‘educated’ (*catecizari*) in the Christian faith and anointed (Meens, *Het tripartite boeteboek*, p. 494).

³ See chapter 3.

penitentials of the period.¹ A bishop guilty of fornication in the manner of the sodomites should be confined in a monastery, instead of the vague ‘in the darkness of prison’ of its source, the *Cap. Iud.*² These and other alterations do not greatly affect the meaning of the canons and are explanatory at best. Most of the depositions or degradations recommended by the *P. Vallicellianum C. 6* also appear in the *Cap. Iud.* and the *Coll. 5libr.* Yet the alterations, albeit minor ones, reveal the compiler’s concern for an accurate understanding of specific cases and bear witness to the attempts to create a new, coherent and intelligible text.

Conclusion

The *P. Vallicellianum C. 6* is perhaps the most mysterious of the penitentials discussed in this study. The text cannot be considered an isolated collection of randomly selected canons, as for instance the collection of ms. Vallicelliana F. 92 but was intended to be penitential, since the topics that were treated and its structure are characteristic of such a text. The rephrasing of the canons and the systematization indicate that the text resulted from a desire to create a new and more comprehensible text for priestly use. The text is also different from the derivatives of the *Coll. 5libr.* such as the collections of ms. Vallicelliana T. XXI or ms. Vallicelliana F. 92, which treat only a limited number of topics and include topics that are not markedly ‘penitential’.

This does not, however, answer the question of how the penitential was used or meant to be used. Because the two last quires that contain the *P. Vallicellianum C. 6* were written a few decades earlier than the Breviary, it did not originally belong to this liturgical book. It could have belonged to another, no longer extant codex, but it could also have functioned as an independent booklet for some time. The part is to be dated to the eleventh century, in any case before 1089. Since the penitential is partially made up of canons of the *Coll. 5libr.*, compiled between 1014 and 1023, this part of the manuscript as well as the penitential must have been written at some time between 1014-1023 and 1089. The entries of St Spes, the founder of the abbey, and St Eutitius in the calendar indicate that the manuscript was written in Sant’Eutizio. The sources of the penitential, in particular the *Coll. 5libr.*, suggest a South or

¹ *P. Vallicellianum C. 6*, c. 2: *Si presbiter odii meditatione homicidium fecerit, deponatur, et in remoto loco uel in monasterio XII annos peniteat...* C. 20: *Si [presbiter] uero adulterium uel incestum perpetravit... Remotiora et secretiora loca ad agendum (!) penitentiam sibi ab episcopo tribuatur, uidelicet in religioso monasterio aut alio apto loco, ubi si fuerit digna penitentia, sit etiam fructuosa.* See also chapter 7.

² *Cap. Iud.* VII,1 (Meens, *Het tripartite boeteboek*, p. 440).

Central Italian origin of the text. The text may have been composed in Sant'Eutizio too, for one of its sources, the *Coll.5libr.*, was kept in several recensions in its library.

Since the texts are so diverse as far as their contents are concerned, it proved difficult to establish what the purpose of this section of the codex and, more particularly, of the penitential could have been. The absence of an *ordo* – seldomly omitted from Italian penitentials – and the occurrence of texts from various genres, such as the calendar and exegetical texts suggest that this penitential was not meant to be used at confession. The contents of the manuscript, however, do not provide us with any alternative explanation for including the *P. Vallicellianum C. 6*. The exegetical texts could point to the instruction of priests, while the calendar/necrology was clearly intended to be used for commemorative and liturgical purposes, as shown by the revisions and additions made to this text. On the basis of the codicological evidence presented in this chapter, it is impossible to draw any solid conclusion about the purpose of this part of the codex and of the penitential.

Sources of the P. Vallicellianum C. 6

P. Vallicellianum C. 6	Cap. Iud.	Coll.5libr.	Original source/ other source
1.	Cf. I,1	IV,109,2/115 (IV,124/134)	Burg. 1
2.	I,3	IV,115,3 (IV,134)	Cumm III,5
3.	I,1	IV,109,1 (IV,124)	Burg. 2
4.	I,1	-	Burg. 2
5.	I,7/13	IV,115 (IV,133) + IV,138?	-
6.	-	IV,110/115 (IV,125/135)	-
7.	-	IV,112 (IV,127)	-
8.	-	IV,112 (IV,127)	-
9.	-	IV,114 (IV,129)	-
10.	-	IV,119 (IV,140)	Conc Bracar. 16
11.	Cf. I,2	Cf. IV,115,3 (IV,134)	Burg. 3
12.	I,4	-	Theod.U I,4,5
13.	I,4	Cf. IV,107 (IV,122)	
14.	I,6 + add.	IV,115,3 (IV,134)	Theod.U I,4,2-3
15.	I,8	Cf. IV,115 (IV,134)	Theod.G, 113
16.	I,11-12	Cf. IV,112/135	Theod.U I,14,15-16
17.	II,1	IV,264,2	
18.	II,3	IV,264,3	
19.	VII,2-6/16 + add.	V,142	Isid. Etym. 26,13/24, X,10; Ps.- Greg. 4

20.	-	-	Conc.Neocaes. 1
21.	VII,3-4; VIII,2	-	Ps.-Greg. 11
22.	VII,3-4; VIII,2	-	Ps.-Greg. 11
23.		Cf. V,149/150	Cf. Vallicell. I, 15
24.	X,1	V,264	Theod.U I,14,21
25.	Cf. X,3	V,188	Theod.U I,2,11
26.	X,13	II,166	Theod.U I,8,2
27.	Cf. X,14	II,166	Theod.U I, I,8,3-4
28.	X,9-10	V,188	Cumm. (X),6-7
29.	X,10	V,188	Cumm. (X),8
30.	X,11	V,188	Cumm. (X),9
31.	VIII,1	V,20 (V,23)	Burg. 37
32.	VIII,2	V,222	Exc. Cum. III,21
33.	VIII,3	V,230	Conc.Neocaes. 2
34.	III,5	IV,133	Theod.U I,14,27
35.	III,6	IV,135	Theod.U I,14,28
36.	Cf. III,1	IV,125	Cf. Burg. 19
37.	III,3	IV,134,2	Burg. 35
38.	Cf. VII,10	V,190	Ps.-Greg. 30
39.	Cf. VII,12	V,190	Theod. U, I,2,3
40.	-	-	Cf. Ps.Rom. 18
41.	Cf. VII,1	V,184	-
42.	VII,2	II,65	-
43.	VII,3	II,65; V,25	-
44.	Cf. VII,4/6	V,135; II,79	-
45.	Cf. VII,2/5; VIII,2	Cf. II,79	-
46.	VII,8	-	-
47.	VII,15	II,75/V,151	Theod.U I,14,4
48.	IX,6-7	-	Theod.U II,12,3
49.	IX,10	V,173	Theod.U I,14,23
50.	IX,11	V,173	Cumm. II,30
51.	-	IV,226/227	
52.	XII,1	IV,211 (IV,237)	-
53.	-	Cf. IV,210 (IV,236)	-
54.	-	IV,207 (IV,233)	Ps.-Greg. 2
55.	XV,1	Cf. IV,246	-
56.	XV,2 + add.	IV,246,2	Burg. 6
57.	Cf. XV,2	Cf. IV,250	Burg. 6
58.	XV,3/4	IV,247	Col. 20; Theod.U I,6,3
59.	Cf. XV,9	-	Cf. Cumm. III,8-10
60.	-	-	-
61.	Cf. XV,10	IV,152	-
62.	Cf. XV,12-13	-	-
63.	-	IV,123	-
64.	-	IV,123	-
65.	-	IV,138	-
66.	-	IV,137 (IV,159)	-
67.	XVI,1	-	Burg. 9
68.	Cf. XVI,3	-	Burg. 10

69.	XVI,4	III,328	Burg. 28
70.	XVI,5	Cf. III,332	Burg. 24
71.	XVI,9	-	Theod.U I,15,5
72.	XVII,1	-	Burg. 29
73.	XVIII,1	-	Burg. 34
74.	XX,1	IV,312	Burg. 22
75.	-	-	-
76.	XXII,2 (versio 2)	IV,323	Theod.U II,11,7-8
77.	XXII,2 (versio 2)	IV,323	Theod.U II,11,7-8
78.	XXII,3 (versio 2)	IV,323	Theod.U II,11,1
79.	XXII,4 (versio 2)	IV,323	Theod.U II,11,9
80.	XXII,5 (versio 2)	IV,323	Theod.U II,11,2
81.	XXII,7 (versio 2)	-	Theod.U II,11,6
82.	Cf. XXII,10	-	Theod.U I,7,6
83.	XXII,12 (versio 2)	-	Theod.U I,14,16
84.	XXII,18 (versio 2)	IV,323	Theod.U I,7,8
85.	XXII,25 (versio 2)	IV,323	Cumm. (XI),14
86.	XXIX,6 + XXIX,1	-	Cumm. (IV),4
87.	XXXII,1	III,44	Theod.U I,10,1
88.	XXXII,1	III,44	Theod.U I,10,2
89.	Cf. XXXII,2	Cf. III,44	Theod.U I,5,6; Beda, Hom. II,18
90.	XXXII,3	-	Theod.U II,8,8
91.	Cf. XXXIII,5	IV,535	Cf. Theod.U I,11,2/3
92.	XXXIII,3	III,57	Theod.U I,11,1
93.	XXXIII,6	IV,355	Theod.U I,11,4
94.	XXXIV,1	IV,325 (IV,359)	Cumm. (XI),1
95.	Cf. XXXIV,2/19	IV,324/326 (IV,358/359)	Cf. Cumm. (XI),1
96.	Cf. XXXIV,3	Cf. IV,325	Cf. Cumm. (XI),3
97.	Cf. XXXIV,5/6/11	Cf. IV,325	Cumm. (XI),4-5/27
98.	XXXIV,9	Cf. IV,325	Cumm. (XI),23-24
99.	XXXIV,10	Cf. IV,325	Cumm. (XI),26
100.	Cf. XXXIV,10	Cf. IV,325	Cumm. (XI),26
101.	XXXIV,11	Cf. IV,325	Cumm. (XI),27
102.	XXXIV,23	-	Theod.U I,12,5
103.	-	IV,327,2 (IV,361)	-
104.	Cf. IX,12	IV,173	Cumm. II,30

Beda = Beda Venerabilis, *Homelia* II,18 (CCSL 122, p. 312); Burg. = *P. Burgundense* (Kottje ed., CCSL 156, pp. 63-65); *Cap. Iud.* = *Capitula Iudiciorum (Paenitentia Franciae, etc. 3*, CCSL, to be published); Col. = *P. Columbani B* (Bieler ed., pp. 98-107); *Coll.5libr.* (Fornasari ed., CCCM 6; ms. Vat. lat. 1339; ms. Vallicelliana B. 11); Cumm. = *P. Cummeani* (Bieler ed., pp. 108-135); Isidorus Hispalensis *Liber Ethymologiarum* V,26,13/24, X,10 (Lindsay); Ps.-Greg. = *P. Ps.-Gregorii* (Kerff, 'Das Paenitentiale Ps.-Gregorii III. Eine kritische Edition' pp. 161-188); Theod. = *Iudicia Theodori U* (Finsterwalder, pp. 287-334)

5. THE *PAENITENTIALE LUCENSE*

The South Italian manuscript Lucca, Biblioteca Statale, 1781 preserves a penitential on ff. 3-8 that has recently been discovered by Roger Reynolds, who briefly examined it for its dependence on the *Coll. 5libr.*¹ The penitential is part of a collection of exclusively liturgical material such as *ordines* for baptism, the anointing of the sick, funeral rites, and mass. The manuscript was, however, not entirely unknown to scholars; the great musicologist Henry M. Bannister left a small note in the manuscript, in which he calls it a *Rituale Romanum* and dates it to the late eleventh or early twelfth century. A more detailed analysis of the manuscript is made by Neil Roy in his unpublished PhD thesis.² Since his study is not widely available, it is worth devoting a chapter to this penitential as well as the manuscript in which it is preserved. Moreover, the *ordo* and the penitential tariffs exhibit several novelties as to sin, confession, and penance which merit a fuller analysis of this text within the context of this study. As the codex that contains this penitential is now preserved in the Biblioteca Statale of Lucca, the text is henceforth referred to as *Paenitentiale Lucense*.

5.1 *Codicological description*

The manuscript that contains the *P. Lucense* is made up of only 36 folios. Its modern cover is made of cardboard, covered with brown leather. The measurements are ca. 290 x 200 mm; the spine measures ca. 290 x 15 mm. A small plate in a metal frame with the title *Rituale Romanum* is attached to the front cover.³ A seal with the signature of the manuscript is attached to the spine. The cover has four raised bands which hold the parchment quires. A small piece of paper is pasted on the front pastedown on which is written ‘Codex 1781’ (in red) and the following note by H.M. Bannister: *Sulmonensis est. in letaniis enim bis referuntur S. Panphilus Patronus Sulmonensis et S. Pelinus, episc. Brundisinensis, cujus reliquiae apud Sulmonam servantur. H.M. Bannister*; and a seal with the signature ‘Pub. Biblioteca di Lucca. No. 1781’. The first, modern flyleaf measures ca. 285 x 192, while a second, older one is numbered I and contains the seal with signature just mentioned. Two rear

¹ The penitential was brought to my attention by Roger Reynolds and Virginia Brown.

² Unfortunately, I have not been able to acquire a copy of his thesis (*The Ritual of Valva-Sulmona*; Pontifical Institute of Mediaeval Studies, Toronto). See also R.E. Reynolds, ‘Penitentials in South and Central Italian canon law manuscripts of the tenth and eleventh centuries’, *Early Medieval Europe* 14 (2006) pp. 65-84, p. 71.

³ The same title occurs in the library catalogue of A. Mancini, ‘Index codicum latinorum Publicae Bybliothecae Lucensis’, *Studi Italiani di filologia classica* 8 (1900) pp. 115-318, see pp. 244-245.

flyleaves, the old one is numbered I¹, the new one is unnumbered. Stamps of the library occur on f. 1r and throughout the codex.

The quality of the parchment leaves is poor. The leaves are of irregular sizes and some were seriously affected by moisture. The quality must already have been poor when the texts were copied, since the lines written in the bottom of f. 7r-v needed to be indented in order to avoid writing in the damaged bottom corner. The numbering of the folios is rendered in arabic numbers in pen in the bottom left corner of the recto side. Older arabic numbers are still visible in the upper right corner of the recto sides. The size of the parchment folios is very uneven, ca. 280 x 190 mm. The written space is ca. 125-140 x 225-230 mm. There are 25 and sometimes 26 written lines per page. The quires are arranged as follows: 1⁴ (ff. 1-5 + f. 5), 2-3⁸, 4⁸⁺¹ (ff. 22-30 + f. 28), and 5²⁺⁴ (ff. 33-36 + ff. 31-32). Unfortunately, the tight binding of the folios prevented me from carrying out a thorough examination of the arrangement of the folios. After the text was finished the folios were cut, since at some points parts of sentences and words added in the margins and top sentences (eg. on f. 32v) have been cut away. Lination is drawn in dry point ||__||. The pricking marks of horizontal lines are visible in the outer margins. Because the ruling is drawn in rather oblique manner, the writing space is somewhat irregular.

The main text was written in Beneventan minuscule in black ink, to which additions were made in another Beneventan hand in brown ink and in various Gothic hands. The last folios of the codex are palimpsests, with prayers and chants in Gothic notation added in the thirteenth or fourteenth century.¹ The initials, a part of the capitals, and the rubrics are in red, some touched up with yellow. The capitals, some of which are lightly decorated, measure 7 mm to 10 mm. The letters measure ca. 2 mm, with ascenders or descenders 5-6 mm. The additions on ff. 3 were made by a second Beneventan scribe, who also may be responsible for the corrections to the main texts. This hand can be recognized by its slightly different 'a'. The words added in the margins of f. 5r. are almost illegible.² Punctuation consists of . and ./, which seem to be used interchangeably. Capitals in the penitential litany are partly in red and partly in black and several names are rubricated, for example, Petrus, Thomas, and Apollinaris. Henry Bannister and Roger Reynolds have dated the script to the late eleventh or early twelfth century.³ Additional evidence is offered by the chants recorded in some of the

¹ Mancini, 'Index codicum latinorum Publicae Bybliothecae Lucensis', pp. 244-245.

² Discernible are *auem* and *namulem*, which may have been *probationes pennaе*.

³ See Bannister's note on the front pastedown. See also Reynolds, 'Penitentials in South and Central Italian canon law manuscripts'. Some of the abbreviations of the manuscript are characteristic of the late eleventh

services, which are notated in a Beneventan type which Thomas Forrest Kelly designates as ‘type three notation’. This type developed in the late eleventh century and was used until the late twelfth century. It can be distinguished from other types of Beneventan notation by its use of horizontal staffs which indicate the pitch. Manuscript Lucca 1781 has one staff drawn in red probably indicating the note C.¹ According to Bannister, the appearance of Saint Panphilus (or Pamphilus † 706) and Saint Pelinus in the litanies of the penitential *ordo* points to Sulmona, a diocese then united with the city of Valva under one bishop, which was situated in the Abruzzi to the east of Montecassino, as the place where the codex was written (and used?). Bishop Panhilus of Valva was the patron saint of Sulmona where he was buried in the cathedral church, which was later dedicated to this saint. The manuscript may also have been written in Valva, since the church of San Pelino is situated near this city.²

As a result of the loss of folios, the first part of the *ordo* for baptism and a significant portion of the penitential *ordo* are missing. The *ordo* for confession breaks off in the middle of the prayer *Deus cuius indulgentia* at the end of f. 4v, and continues with the end of the prayer *Adesto domine supplicationibus nostris* on f. 5r. The first gathering (1⁴⁺¹; ff. 1-5) on which these *ordines* are written may once have been a quaternio. The missing folio(s) must have disappeared before the folio numbers were added.

5.2 Contents of the manuscript

ff. 1-3r: *Ordo* for baptism

ff. 2v-3r: Addition in a Beneventan hand of a penitential *ordo* under the title *ordo ad dandam penitentiam* in the margins of ff. 2v-3r, to be examined below

ff. 3r-8v: *Ordo penitentis* and penitential canons (*P. Lucense*)

ff. 8v-11r: *Ordo ad visitandum infirmum*

ff. 11r-18r: *Ordo ad unguendum infirmum*

ff. 18r-35r: *Ordines* for funeral rites: *viaticum*; *commendatio animae*; funeral service; masses for the deceased (*pro anniuersario*, *pro sacerdote*, etcetera).³ An inserted piece of parchment (f. 28r-v) written in a gothic hand (*textualis*) provides additional prayers.

century, according to Loew, *The Beneventan script. A history of the south Italian minuscule*, p. 210-213, for instance, *ōs* for *omnis*.

¹ T.F. Kelly, *The Exultet in Southern Italy* (Oxford, New York 1996) pp. 90-92.

² On these saints see *Bibliotheca Hagiographia Latina (=BHL) 2* (Brussels 1900-01) pp. 928, 961-2, *BHL. Novum supplementum*, H. Fros ed. (Brussel 1986) p. 679. Cf. *Lexikon für Theologie und Kirche* 10 (Freiburg 1966) p. 611.

³ Neumes are found on ff. 19r, 20r, 21r, 22r-27v, 29r-32v, 33v.

ff. 35r-36v: *Ordo sacerdotis ad missam*, which is erased from f. 36r onwards in favour of prayers and pieces of chant written in a gothic hand similar to that of f. 28r-v.

5.3 Purpose and use of the manuscript

The title of *Rituale Romanum*, inserted into the metal frame on the cover, perfectly suited the contents of this codex, because the manuscript gathers a collection of *ordines* for priestly use. Although the first collections of this kind were developed in the ninth century, it should be clear that the term *rituale* was not used in the Middle Ages and gained currency only in the sixteenth century.¹ Why exactly this booklet was labelled a ‘Roman’ ritual is unknown, but perhaps its *ordines* were thought to represent Roman practice or needed the stamp of Roman authority. Be that as it may, the manuscript offers a priest a near complete handbook for the administration of those liturgical offices not attached to the liturgical year, such as baptism, penance, and death and burial rites. The additions to the penitential *ordo* in the margins, and the additions of prayers and chants by a Beneventan and by gothic hands show that the *ordines* were used and revised in due course, and were even used into the thirteenth or fourteenth centuries, when the texts in gothic script were added. This manuscript exhibits, perhaps to a greater extent than the codices of other penitentials, the signs of heavy and frequent use.

5.4 The penitential *ordo*

The *P. Lucense* consists of an *ordo*, a mass for a penitent and a small number of penitential canons. The *ordo* can be subdivided into two parts. The first set of liturgical instructions are written in the margins of ff. 2v-3r. This set consists of an interrogation of the penitent(s), prayers, and Biblical verses to be addressed to the penitent by a priest. The texts, which constitute an addition to the ‘regular’ *ordo*, prepare the sinner or sinners for confession. First, the sinner is asked if he is willing to do ‘true’ penance and to promise truly to mend his ways. He is asked if he renders himself guilty of sin before God and if he is inclined to forgive those

¹ On the early history of the *rituale* P.-M. Gy, ‘Collectaire, rituel, processional’, *Revue des sciences philosophiques et théologiques* 44 (1960) pp. 441-469, E. Palazzo, *Histoire des livres liturgiques. Le Moyen Age des origines au XIII siècle* (Paris 1993) pp. 197-203, and Hamilton, ‘The *Rituale*: the evolution of a new liturgical book’, pp. 74-86.

who have sinned against him.¹ The sinner is expected to answer affirmatively with *uolo* (or *uolumus*, if there is more than one confessant involved), *reddo*, and *promitto*. This initial interrogation is a succinct version of a lengthy passage that goes back to the ninth-century Frankish ‘Reims *ordo*’, copies of which circulated in Italy.² The acknowledgement of one’s guilt (*Reddite culpauilis deo de omnibus peccatis uestris?*) was also derived from the Reims *ordo*.³ This specific interrogation can also be found in Central and South Italian texts like the eleventh-century *P. Vaticanum* and the early twelfth-century *P. Vallicellianum E. 62* (see chapters 2-3). The interrogation is followed by combination of texts consisting of the verse Ps. 30,6 ‘Into Your hand(s), Lord, I commend my spirit’ (*In manus tua domine commendo spiritum meum*) and the antiphon *Suscepimus deus*, which is dealt with below. The combination is enriched with a blessing: ‘As we have received you in our hands today, may the angel of the Lord receive you into the eternal life with psalms, hymns and canticles’ (*Sic uos recepimus...*). This blessing and the antiphon *Suscepimus deus* are also recorded in the late eleventh-century ms. Benevento, Biblioteca Capitolare, 37, a manuscript once used in the nunnery of St Peter *intra muros* in Benevento, in which it is part of a short series of isolated penitential prayers added by a later hand on a empty leaf.⁴

¹ *P. Lucense*, f. 2v: *Vis agere ueram penitentiam? Respondet: Volo^{lumen}. Des toto corde. Des tota mente. Reddite culpauilis deo de omnibus peccatis uestris? Reddo. Promitti mihi uera emendacione? Promitto. Vis dimittere illi qui in te peccaueret? Dimitto.* The first question as to the willingness to confess is included in the Italian *ordines* from the eleventh century onwards. Similar questions can be found in the *P. Vallicellianum E. 62, ordo*. See also chapter 6.

² See chapter 6. It is found in the manuscripts Vatican, Reg. lat. 191 (Reims; s. IX^{ex}), Navarra, Bibl. Capitolare, 18 (LXXI) (Northern Italy; s. IX), Rome, Biblioteca Nazionale, 2116 (Sess. 136) ff. 19v-ff. (S. Abondio de Como; s. XI²), and Düsseldorf, Universitätsbibliothek, hs. B. 113. See Kottje, *Die Bußbücher Halitgars von Cambrai und des Hrabanus Maurus*, pp. 47 and 70. A partial edition of the text based on a lost manuscript from the monastery Saint-Hubert can be found in J. Morinus, *Commentarius historicus de disciplina in administratione sacramenti poenitentiae tredecim primis seculis in ecclesia occidentali, et hucusque in orientali observata, in decem libros distinctus* (Antwerpen 1682) p. 32.

³ Ms. Albi, Bibliothèque Rochemadeville, ms. 20 (olim 24) (s. X; Rasmussen, *Pontificaux*, p. 42) and the *P. Vaticanum* read *Reddi(s) te culpabilem*. The other sources read *Recognosci te culpabilem*, see ms. Milan, Bibl. Ambrosiana, T. 27 (Northern Italy; s. XI^{ex}; Lambot ed., p. 40); ms. Vatican, BAV, Vat.lat. 5768 (s. X²; Bobbio), f. 36r-v; ms Rome, Bibl. Nazionale Centrale, 2081 (Sess. 95) (Nonantola; s. X^{ex}).

⁴ *P. Lucense*, f. 2v: *In manus tua domine commendo spiritum meum. Sic nos recepimus hodie in manibus nostris, sic uos recipiat angelus domini in uitam <eternam?> cum psalmis et ymnis et canticis, cantantes et psal<lentes in cordibus> nostris domino* (cf. Eph. 5,19). *Suscepimus deus misericordiam tuam* (Ps. 47,10). Cf. R.E. Reynolds, ‘A Beneventan monastic excerptum from the *Collectio Vetus Gallica*’, *Revue Bénédictine* 102 (1992) pp. 298-308, see p. 303, n. 32, and Mallet and Thibaut, *Les manuscrits en écriture bénéventaine de la Bibliothèque Capitulare de Bénévent II*, pp. 231-232. Version of the Benevento ms. reads: *Ant. Suscepimus deus, misericordiam tuam. Gloria patri. Sequitur oratio. Nos uos/te suscepimus in nostris orationibus, in missis et ymnis et canticis spiritualibus, cantantes et psallentes in cordibus nostris dno. Sic uos/te suscipiat omnes ds in uitam aeternam. Amen.* Mallet and Thibaut remark that this part is added by a later hand and possibly constitutes ‘une profession de pénitent’. Cf. Mallet and Thibaut, *Les manuscrits en écriture bénéventaine II*, p. 234 and T.F. Kelly, *The Beneventan Chant*. Cambridge Studies in Music (Cambridge 1989) p. 301: the manuscript was copied in the monastery of Santa Sofia in Benevento in order to be used in the nunnery of St Peter *intra Muros*. The folio on which these prayers are found is dated to the late eleventh century.

Two more prayers were copied in the outer bottom margins of f. 3r. The first prayer is also recorded in ms. Benevento, Bibl. Capitolare 37, in the *P. Vallicellianum E. 62*, and in a slightly different version in the *ordo* from Bobbio printed by Muratori.¹ The prayer is a compilation of passages and phrases taken from prayers for the anointing of the sick and for funeral rites. The first part of the prayer, for example, that begins with the sentence ‘incline your ear to our prayers’ (*Inclina aurem tuam ad preces nostras*), is also the first sentence of a Gelasian prayer of a Mass for the deceased.² The part in which God is beseeched to save the souls of His servants from Hell-fire and the power of the devil just as He ‘saved St Peter from the sea and the three boys from the fiery furnace’, a reference to the book of Daniel, is included in prayers for the anointing of the sick.³ On first sight, these borrowings as well as the general mood of the prayer may seem to suggest that the prayer was aimed at deathbed penance. The supplication to ‘forgive the sins of His servant, so that they are righteous and immaculate on Judgment Day when they rise from the dead and ascend into heaven’ strongly points in this direction. The other prayer, which can be said over both a single penitent and a group, petitions God to receive the penitents into the heavenly kingdom and to write their names in the Book of Life.⁴ God is invoked to give them ‘the spirit of wisdom and understanding, counsel and power, knowledge and awe’ (cf. Isaiah 11,2) and to fill them with the spirit of fear for God and Jesus. Finally, Jesus Christ is asked to give them penance (*donet uobis penitentia*) for their sins. The texts have parallels in South and Central Italian manuscripts. The first part of this prayer (*Ego uos^{te} suscipio... regnum suum celestem*) is found in the *ordo* for visiting the sick of ms. Rome, Bibl. Vallicelliana, B. 63 (Sant’Eutizio, s.

¹ See Reynolds, ‘A Beneventan monastic excerptum from the *Collectio Vetus Gallica*’, p. 303. The Bobbio *ordo* is found in Muratori, *Antiquitates Italicae* V, p. 734. For the *Vallicellianum E. 62* see above.

² *P. Lucense*, f. 3r: *Inclina domine aurem tuam ad preces nostras; respicere dignare super hos famulos et <famulas> tuas, qui hodie in manibus nostris sunt tradituri; sicut liberasti petrum de mare <et tres pu>eros de camino ignis ardentis, ita domine libera animas famulorum famularumque tuorum <de pena> inferni et de diaboli potestate, ut culpas eius parcas et peccata dimittit, <ut> iusti et immaculati sint in diem iudicii per resurgentem a mortuis et ascendentem in celis, qui uiuit. See Paxton, *Christianizing death*, p. 141 and p. 145. The prayer of Benevento, Bibl. Capitolare, 37 reads as follows: *Inclina, dne, aurem tuam ad preces nostras... sicut liberasti petrum de mare, ionam de uentre ceti, et tres pueri de camino ignis ardentis, ita domine libera famulum/os tuum/os de diaboli potestate et de pena inferni... ut iustus sit redemptus ad diem iudicii per resurgentem a mortuis, ascendentem in celis. Per.**

³ See the chapter on penitential liturgy. Cf. D. Sicard, *La liturgie de la mort dans l’église latine des origines à la réforme carolingienne*. Liturgiewissenschaftliche Quellen und Forschungen 63 (Münster 1978) pp. 364-72 and Paxton, *Christianizing death*, p. 118.

⁴ *P. Lucense*, f. 3r: *Ego uos^{te} suscipio in oratione, suscipiad uos deus in regnum suum celestem, ut scribere dignetur nom<en> uestrem^{uum} in libro uite, et det uobis^{te} dominus spiritus sapientię et intellectus, spiritus consilii et fortitudinis, spiritus <scien>cie et pietatis, et repleat uos^{te} spiritus timoris dei et domini nostri ihesu christi, ut ipsius mandata intellig<etis> ut ipsius <manda>ta conseruetis, suscipiat uos christus et donet uobis penitentiam de omnibus peccatis uestris.*

XI^{ex}-XIIⁱⁿ) in combination with the texts *In manus tuas, Suscepimus deus* (see below).¹ The last phrase (*suscipiat uos christus et donet uobis penitentiam*) is recorded in Central Italian *ordines*, among others the *ordo* of the *P. Vallicellianum E. 62*.² Judging from the manuscript evidence, the series of texts written in the margins of ff. 2-3 belongs together and were probably copied from another manuscript. Were these prayers added to provide prayers for deathbed penance or were they part of the preparation of confessants for ordinary confession? It will be argued in chapter 6 that Italian penitential prayers were imbued with such conceptions of Judgment Day and the afterlife. Since the *ordo* nowhere explicitly refers to deathbed penance, we can assume that these texts were intended for ordinary confession.

The ‘official’ *ordo* begins on f. 3r with the rubric *Incipit ordo penitentis*. The first part of the instruction resembles the *ordo poenitentiae* added to the second book of Halitgar of Cambrai’s penitential in some Italian manuscripts, which is based on the *ordo penitentis ad mortem* (nr. 144) of the *PRG*.³ Initially, the priest should silently (*intra se*) recite the preparatory prayer *Domine deus omnipotens... propitius esto mihi peccatoris* (!) in a version that is to be found in the ninth-century *P. Sangallense Tripartitum* and in the *ordines* 136 and 144 of the *PRG*.⁴ The priest should take both hands of the penitent, after the which the penitent should express his willingness to do penance and to commend his soul and spirit into the Lord’s hands.⁵ As required in the instructions in the margins of f. 2v, the priest sings the antiphon *Suscepimus deus* and psalm 47 (*Magnus dominus*; not mentioned in the margins). The *Suscepimus* is repeated, now followed by the *Kyrie*, the Lord’s prayer, and several versicles. Part of this combination is also recorded in the margins of f. 2v. The combination *Suscepimus Deus – Magnus dominus* seems to have belonged to the liturgy of Candlemas,

¹ Fol. 231r-v. See on this manuscript *Censimento dei codici dei secoli X-XII*, pp. 1032-33 and Pirri, *L’abbazia di Sant’Eutizio in Val Castoriana presso Norcia*, pp. 42-53 and pp. 354-355.

² See chapter 3. Cf. ms. Vallicelliana B. 8 (Sant’Eutizio; XI^{ex}) f. 83r: *Tunc dicit ad illum sacerdos: Suscipiat christus tuam paenitentiam et donet tibi ueram indulgentiam, ut possis consequi illius ueniam in sempiterna secula*. Ms. Vallicelliana B. 63: *Suscipiat christe tuam penitentiam. et donet tibi indulgentiam ut possit consequi illius ueniam in sempiterna secula. Amen*.

³ Italian texts are ms. Berlin, Hamilton, 290 (North Italy; s. X) and Vatican, Archivio di S. Pietro, H. 58. See *Le Pontifical Romano-Germanique* II, pp. 270-275; Berlin, Deutsche Staatsbibliothek, Hamilton 290, see Schmitz II, p. 270sq. On these *ordines* see Kottje, *Die Bußbücher Halitgars von Cambrai und des Hrabanus Maurus*, p. 18 and pp. 107-111. The *ordo* of the *P. Vallicellianum I* also belongs to this type, although this *ordo* is different from those of the Italian manuscripts mentioned.

⁴ The version of the *P. Lucense* reads: *Domine deus omnipotens, qui non uis mortem peccatoris, sed ut conuertatur et uiuat, propitius esto mihi peccatoris et suscipe orationem meam, quam pro famulis et famulabus tuis peccata sua confiteri cupientibus ante conspectu clementie tue humiliter fundo, ut pariter eos a peccatis exuas et in futuro ab omni crimine illesos custodias*. The earliest occurrence of this version in the *P. Sangallense Tripartitum* (Meens, *Het tripartite boeteboek*, p. 328). See also Körntgen, *Studien zu den Quellen*, p. 135.

⁵ *P. Lucense*, f. 3r: *OCTU ([H]OC AUTEM?) SI FACERE PROFITETUR MANIBUS EIUS IN SUIS MANIBUS suscipiens, sibi petere penitentiam indicet. Et in manu domini animam et spiritum commendare*.

although there is also evidence that the combination developed from penitential liturgy.¹ Whereas the taking of the hands of the penitents and *Suscepimus deus* (without Psalm 47) occurs in the *ordo* of the North Italian ms. Bologna, Bibl. Universitaria, 2679, the combination far more often appears in texts of Central and South Italy. These texts, moreover, also incorporate the entire Psalm 47. The origin of the verses may be sought in the North of Italy, but the entire ritual seems to have fully developed only in eleventh-century southern Italy. The origins of this ritual will be further dealt with in chapter 6 on penitential liturgy.

After three biblical verses, the *Dominus uobiscum*, and the prayer *Deus cui proprium est misereri*, the penitent prostrates himself whilst the priest recites psalms 37, 50, and 102, the *Kyrie*, and a long litany which resembles that of ms. Vallicelliana C. 32. The litany ends with the Lord's prayer and another set of versicles.² These psalms and verses, the prostration and the prayer *Deus cui proprium est*, all these features are included in *ordo* 144 of the *PRG* and in the *ordo* of Berlin Hamilton 290. The prayer *Deus cui proprium est* is repeated and followed by the prayer *Deus cuius indulgentia*. Due to the loss of one or two folios the text of the latter prayer breaks off on f. 4v with the words *ut qui suis*, as the *ordo* continues on f. 5r in the middle of the prayer *Adesto domine supplicationibus nostris*. The sequence of the next five prayers roughly corresponds to that of the *ordo* for secret penance of the *PRG*.³ Although the rite can no longer be reconstructed in full, we may surmise that the *ordo* at least contained an interrogation – which is found in so many other *ordines* – as to the Trinity, the resurrection of the body, and the confessant's willingness to forgive others.⁴

The rite ends with the Mass that a priest can celebrate on behalf of a penitent. This Mass stems from the *ordo* for deathbed penance of the *PRG* (nrs. 144-146) and is also included in ms. Berlin, Hamilton 290 and in the *P. Vallicellianum I* of ms. Vallicelliana E. 15. The compiler of the *ordo* apparently substituted the second lesson (Luke 17,9-14) of the *PRG* with a lesson from the Gospel of Mark.⁵ The lesson is still assigned to Luke in the rubric, but instead the *ordo* reproduces Mark 2,14-17. In contrast to the rites in ms. Berlin, Hamilton 290 and in *ordo* 144 of the *PRG*, the Mass is not followed by an absolution rite.

¹ The combination is included in the antiphonaries of Rheinau (s. VIII-IX), Mont-Blandin (s. VIII-IX), Compiègne (s. IX), Corbie (s. IX), Senlis (s. IX-X), see *Antiphonale Missarum sextuplex*, R.-J. Hesbert ed. (Brussels 1935) pp. 38-9. In eleventh- and twelfth-century antiphonaries, among others the antiphony of St Lupus of Benevento, the combination is part of the liturgy of the second Nocturn of Christmas, see Hesbert ed., *Corpus Antiphonalium officii* Vol. I, *Manuscripti "Cursus Romanus"*, pp. 34-5, Vol. II, *Manuscripti "Cursus monasticus"*, pp. 64-65, and Vol. III, p. 498, *Rerum Ecclesiasticarum Series maior*, Fontes 7-9 (Rome 1963).

² The verses are the same as those of *PRG* 144,3 and ms. Berlin, Hamilton 290 (Schmitz II, p. 270).

³ *Ordo* 136, prayers 32, 33, 36, 37, and 38; *Le Pontifical Romano-Germanique* II, pp. 244-245.

⁴ For instance in the *ordo* 136 of *PRG*, *Le Pontifical Romano-Germanique* II, pp. 235-7.

⁵ *P. Lucense*, f. 5v: *In illo tempore, uidit ihesus leui alpei sedentem ad teloneum... Non enim ueni uocare iustos, sed peccatores, in penitentiam*. The addition *in penitentiam* is not found in the Scriptures.

5.5 The *P. Lucense* and the development of a Roman liturgy of penance

The analysis of the *ordo* of the *P. Lucense* reveals that its rubrics and prayers, as far as it can be reconstructed, were largely culled from the *ordo* for deathbed penance of the *PRG*. This particular text had already functioned as a separate *ordo* for giving penance from the late tenth century onwards, as attested by its inclusion in the penitential of Halitgar of Cambrai in the Italian manuscripts Berlin, Deutsche Staatsbibliothek, Hamilton 290 and Vatican, Arch. di S. Pietro, H 58. The *P. Vallicellianum I* of the eleventh-century, Roman ms. Vallicelliana E. 15 combines this *ordo* with that of the *P. Ps.-Romanum*.¹ Traces of the rite can also be found in the two penitential *ordines* of ms. Rome, Bibl. Vallicelliana, E. 62 (see chapter 3).² Accordingly, *ordo* 144 of the *PRG* was of considerable importance to the liturgy of penance followed in South and Central Italy, including Rome.

Yet not all texts of the *P. Lucense* can be traced back to this *ordo* in the *PRG*. For example, the occurrence of the combination *In manus tuas – Suscepimus deus – Psalm 47* is almost entirely confined to Italian manuscripts and, more specifically, those from South and Central Italy.³ There is one important text that resembles the *ordo* of the *P. Lucense*, the *ordo* for secret penance of the Pontifical of the Roman Curia of the thirteenth century. This *ordo* had a wide circulation in the thirteenth and fourteenth centuries. Although this *ordo* does not repeat all the texts mentioned here, it shares with the *P. Lucense* the short recension of the initial prayer of *PRG* 144, the ritual of the priest taking the hands of the confessant, and the combination *In manus tuas – Suscepimus deus – Psalm 47*.⁴ In chapter 6 on penitential liturgy it will be shown that the joining of hands was a specific Italian custom, which may have had older origins, possibly in the Frankish *P. in II libris* which states that the priest should take the confessant by the hand and bring him before the altar for confession. This custom passed into

¹ See Kottje, *Die Bußbücher Halitgars von Cambrai und des Hrabanus Maurus*, pp. 16-18, 65, and 107-111. In contrast to Kottje's assertion (p. 18), the *ordo* as transmitted by these manuscripts significantly differs from the older *ordines* of mss. Montecassino, Archivio dell'Abbazia 554 (*P. in II libris*) and 372 (*P. Casinense*).

² The penitential *ordo* of Vatican, BAV, Borgh lat. 211 (Montecassino; s. XII) was also largely dependent on *ordo* 144 of the *PRG*.

³ Texts that belong to the Central and South Italian group are the two *ordines* of ms. Rome, Bibl. Vallicelliana, E. 62, the *ordo* of ms. Rome, Bibl. Vallicelliana, C. 32, the *ordo* of ms. Rome, Vallicelliana, B. 63, all written in the late eleventh or early twelfth century. 'Censimento dei codici dei secoli X-XII', pp. 1040 and 1066.

⁴ See *ordo* 46 in *Le Pontifical Romain au Moyen-Age II. Le Pontifical de la Curie Romaine au XIIIe siècle*, M. Andrieu ed., Studi e testi 87 (Rome 1940) pp. 480-481 and Jungmann, *Die lateinischen Bussriten*, pp. 195-201. Connections also exist with ms. Vallicelliana C. 32, *ordo* IX, 113, Odermatt ed., pp. 284-285.

the Italian *ordines* of the tenth and eleventh centuries.¹ The joining of hands may, therefore, have developed from early liturgical traditions in North Italy and passed to the South in the eleventh century, where the ritual occurs in its most elaborate form, among others in the *ordo* for confession in the Roman Pontifical.

The remainder of the Roman *ordo* departs from the *P. Lucense*, but it should be noted that a part of the liturgical directions in the *P. Lucense* is missing.² Although it is possible that the *ordo* of the *P. Lucense* was based on a copy of a ‘Roman’ rite, it is far more likely that the Roman *ordo* was modelled on a South Italian rite, since most manuscripts transmitting the Roman *ordo* are dated to the thirteenth to fifteenth centuries.³ South Italian *ordines*, therefore, played an important role in the creation of a Roman rite of confession.⁴

5.6 The penitential canons

The penitential canons are subsumed under twenty-six rubrics and follow upon the penitential mass. The canons treat the following subjects: arson, polluted meat, the Eucharist, amputation, homicide and infanticide, treason and theft, incest, sexual abstinence on Christian festivals, sodomy, bestiality and masturbation, unlawful possession of ecclesiastical property, penance for minor sins, disobedience to the priest, the liturgy of the hours, behavior in church, fasting on Christian festivals, and the payment of tithes. The penitential ends with two canons which provide a moral legitimation for confession and penance. Canon 27, which cites a passages from *Coll. Hibernensis* XLVII,1, explains that penance washes away sin through a stream of tears, just as water extinguishes fire.⁵ The last canon, taken from the *Coll. 5libr.*, warns that those who hide even their minor sins will have to render account for them at the

¹ The phrase is recorded in mss. Montpellier, Bibl. Universitaire, 384 (Northern France; s. IX), Montecassino, Archivio dell’Abbazia, 554 (South Italy, s. X^{ex}), Vienna, Österreichische Nationalbibliothek, 2231 (Northern Italy, s. X). Italian *ordines* that contain this passage are ms. Vercelli, Bibl. Capitolare, CLXXVIII (Vercelli; s. X²), ms. Bologna, Bibl. Universitaria, 2679 (see chapter 6), the Verona and the Bobbio *ordines* that are edited by Muratori, *Antiquitates Italicae* V, pp. 720/730, and ms. Paris, BNF, Mazarineus 525 (Asti; s. X), ed. Gastoué, ‘Un Rituel noté de la province de Milan’, p. 98. It is also recorded in the *P. Casinense*.

² The Roman *ordo* continues with an interrogation as to the penitent’s beliefs (*interroget eum diligenter si recte credit*) and the penitent’s social status, a list of days, mainly Christian feasts, that do not count for penance. After confession and the imposition of penance, the penitent is absolved (*absolvimus*). The final prayers of the *P. Lucense*, which are taken from the *PRG*, are not included in the Roman *ordo*.

³ A list of manuscripts is included in Andrieu’s edition.

⁴ Some evidence that Roman liturgists borrowed from South-Italian and Beneventan liturgical sources is discussed by Kelly, *The Beneventan Chant*, pp. 170-171, and p. 217.

⁵ The canon assigned to Augustine proceeds to explain that just like one lives in darkness if one carries a lamp without light, sin cannot be abolished without penance: *Aug[ustinus]: sicut aqua exstringit (!) ignem item penitentia diluit crimina in frontibus lacrimarum, et sicut in tenebris si est absque lumen lucerna, sic non potest peccatum absque penitentia aboleri idest deleri...*

Last Judgment, as ‘God leaves no sin unpunished’.¹ The canons are not so well structured as those of the *P. Vaticanum*. Nevertheless, several ‘blocks’ of canons on the same topic can be discerned, as for example the canons on theft and homosexuality which were grouped together. As far as its topics are concerned the penitential does look somewhat unbalanced, with three canons on sodomy and none on perjury or adultery.

Most canons stem from the *Coll.5libr.* and from the *Corrector sive Medicus*, the penitential incorporated by bishop Burchard of Worms († 1025) in his *Decretum* (see table).² The canons of the *P. Lucense* display some oddities that call for a closer examination. The first observation pertains to the canons’ rubrics. The majority of the canons, including some from the *Corrector*, are attributed to pope Gregory I (*Gregorius papa*, or simply *GG*). This results in double attributions, as for example canon 23, which deals with people who quit their Lenten fasts. The rubric of the canon assigns it to *Gregorius*, whereas the canon itself mentions St Patrick (*Paterius*) as its author.³ It is uncertain who was responsible for the attributions to Gregory. It could have been the compiler himself, but the rubrics could also have been present in one of the penitential’s sources. Since the attributions seem to have been changed to elevate the status of the texts, it is interesting that the rubricator did not change the headings of canons assigned to such ‘lesser’ authorities as Theodore of Canterbury or Cummean, whose authority aroused suspicion in the later eleventh century.⁴ If authority really mattered to the author of the text, it is difficult to explain that a number of canons is not assigned to any source of authority at all.⁵ Some of the rubrics, moreover, have become corrupted in the process of copying and adapting them from their exemplar. For example, immediately after a canon concerning those who break their Lenten fast, the text continues with the puzzling phrase *de utriusque coniugiis compatrem aecclesie relatense (arelatense?)*.⁶ Yet the canon (on incest?) that is announced was not included in the *P. Lucense*. Another case

¹ *P. Lucense*, c. 28: *Nam si aliquis in se uel paruum peccatum celauerit, sciat se exinde rationem redditurum, secundum illud quod dominus dicit de berbo otioso, quanto magis nos si plura uel peccata uel crimina que commisimus recelauerimus, quia scriptum est: Nullum peccatum inultum dimittit deus, hoc est sine uindicta. Quodsi non iudicamus hic per penitentiam, iudicat illic deus per seueritatem in iudicio; nam de satisfactionem dicit quacumque hora conuersus fuerit peccator (Ez. 33,12), et egerit penitentiam, omnia peccata eius in obliuione traduntur.* Ultimately based on *P. Vaticanum* VIII,16.

² Books 1-3 of the *Coll.5libr.* are edited by Fornasari, CCCM 6. For books 4-5 I consulted a microfilm of ms. Vatican, Vat. lat. 1339. Burchard’s *Decretum* is edited in J-P. Migne ed., PL 140.

³ *P. Lucense*, c. 23: *GREGORIUS. Paterius: qui in quadragesima ieiunium soluit, pro I dies (!) VII dies peniteat.*

⁴ A. Gaastra, ‘Penitentials and canonical authority’ in R. Corradini, R. Meens, C. Possel, and P. Shaw ed., *Texts and identities in the Early Middle Ages*. Österreichische Akademie der Wissenschaften, philosophisch-historische Klasse 344. Forschungen zur Geschichte des Mittelalters 12 (Vienna 2006) pp. 191-204.

⁵ Other canons are attributed to Cummean (*Commeanus*), Theodore of Canterbury, Isidore of Sevilla, king Pippin (*Pipinus res*), Basil the Great (*Basilus episcopus*) and St Augustine (*Aug.*), to councils and Chrodegang of Metz’ Rule for Canons (*placuit sancto concilio; regula canonica*).

⁶ *P. Lucense*, c. 23: *...pro I dies VII dies peniteat; de utriusque coniugiis, compatrem aecclesie relatense.*

in point is canon 9 whose rubric mentions two sources, Gregory and the Council of Tarragona (*Con aconense* (!)). The first part of this canon is directed against people injuring relatives and was drawn from the *Coll.5libr.* where it is assigned to a *Concilium Terraconense*.¹ The canon immediately continues with a list of forbidden marriages but without explicitly referring to the subject matter of these rules.² That the canon is concerned with fornication can only be inferred from its source, the *Coll.5libr.*, which moreover attributes this ruling to pope Gregory.³ Such errors probably crept in during the process of copying the canons. One can only guess at whether it was the scribe of the Lucca manuscript himself who was responsible for such errors or whether the errors had crept in during successive stages of redaction. If the latter was the case, the scribe did not bother to revise or to correct the text after it had been copied. One final observation should be made on the form of the canons taken from the *Corrector* of Burchard. Burchard had formulated his canons into questions to be posed to confessants. Most of these canons were, except for canons 4 and 10, reformulated in the *Si quis*-form, perhaps to bring them into line with the regulations taken from the *Coll.5libr.*⁴

With regard to the sins that are dealt with, canons on homicide, adultery, and perjury are virtually lacking in the *P. Lucense*. The only canons that treat cases of homicide are cc. 4 and 5.⁵ In contrast, many canons, most of which derive from the *Coll.5libr.*, are devoted to ecclesiastical ritual, such as the Eucharist, Christian feasts, fasting, and the observance of silence in Church, and the observance of the liturgy of the hours. Noteworthy also are three canons devoted to sodomy and the long canon on incest. Canons on clerical unchastity or adultery are remarkably absent from the *P. Lucense*. A subject that did attract the attention of the compiler was the obligation to pay tithes and the prohibition on lay possession of

¹ *P. Lucense*, c. 9. *Quicumque super genitorem suum aut genitricem, uel compatrem aut patrem in christo, seu seruus super dominum nisi causa nutrimenti iratu animo ictu erexerit, si non percusserit... si uero percusserit...*

² *Sy cum deuota que est ueste mutata. Si cum electa uidua uel cum sponsa alterius. Si cum presbitera uel diacona. Si cum iudea uel pagana VII annos peniteat. Si cum uidua equali uel puplica meretrice, aut ancilla alterius, V annos peniteat. Si cum laica uirgine, que non dum est sponsata alteri, IIII annos peniteat.*

³ BAV, Vat.lat. 1339, fol. 310v: *EX CONCILIO AGATHENSE, SIMILITER PAPA GREGORIUS DECREUIT*. The list ultimately stems from the Roman council of 721 (*PL* 67, cc. 343-344).

⁴ Cf. *P. Lucense*, c. 7: *Furatus es aliquid de ecclesiastico thesauro* rephrased to *Sy (!) quis furauerit de ecclesia aurum uel argentum...* Canons 4 (*Fecisti truncationem manuum...*) and 10 (*Viginti dies ante natalem deum... castitatem debes custodire*) were not changed.

⁵ *P. Lucense*, c. 4 (*GREGORIUS. Fecisti truncationem manuum, aut pedum, aut oculorum, aut uulnerasti aliquam per truncationem nisi pro furto aut latrocinio, unum annum grauius peniteat*), c. 5 (*ALIA. Sy laicus alterum laicum occiderit, VII annos peniteat. Sy qua mulier oppresserit infantem, si baptizatus III annos peniteat, si non baptizatus VII, tres ex his in pane et aqua...*), and c. 9 (*GREGORIUS. CON ACONENSE. Quicumque super genitorem suum aut genitricem, uel compatrem, aut patrem in christo seu seruus super dominum, nisi causa nutrimenti iratu animo ictu erexerit, si non percusserit, I annum peniteat; si uero percusserit, VII annos peniteat*).

ecclesiastical property.¹ It is significant that these subjects, which are hardly dealt with in other penitentials, receive so much emphasis in the *P. Lucense*, while ‘traditional’ topics like perjury and adultery were completely ignored. Apparently, some topics were not deemed necessary by the compiler to be treated in his text, because a priest was expected to deal with them without the aid of canons.

The limited range of topics and the puzzling rubrics create the impression of a text that was not put together with the greatest care. These irregularities could have been present in the exemplar and copied faithfully by the scribe of the Lucca manuscript. However the scribe did nothing to correct or improve the text. Yet it would be mistaken to depict the *P. Lucense* as a solely as a text that lacked any systematic structuring. For one, canons which dealt with the same subject matter were set together. Moreover, almost all canons from Burchard’s *Corrector* were reformulated and there is a tendency to ascribe the ‘anonymous’ canons to Gregory I. Although the *P. Lucense* is largely comprised of rulings from the *Coll.5libr.* and Burchard of Worms’ *Corrector*, it is unlikely that the compiler worked from complete copies of these huge collections. The *P. Lucense* repeats only a small number of canons from these collections, which suggests that he consulted a more modest collection that combined canons from the *Coll.5libr.* and Burchard’s *Decretum*. The use of a *Coll.5libr.* derivative is all the more likely, because Roger Reynolds has discovered over forty of these derivatives in manuscripts from Central and South-Italy.²

None of the regulations of the sequence cc. 15-19 can be found in the canon law collections discussed above. These canons are attributed to Isidore (16-18) and Gregory (15 and 19), and they were either composed by the compiler of the *P. Lucense* himself, or copied ‘en bloc’ from another text. The first canon (c. 15) of this section assigns a penance for ‘a mass of sins’ (*de massa peccatis*) or small sins ‘which are not remembered by men’. The severe penance of a seven-year fast with three years spent on bread and water and two *solidi* for giving alms, incongruously imposed on those who committed minor sins, could have been an error on behalf of the scribe: it is more likely that one had to fast for seven days.³ Yet it

¹ C. 25. GREGORIUS. *Statuta uel decreta patrum regula que constituit: Si quis primitias et decimas non dederit, communionem non potest accipere*; c. 26. DECIMA IN QUATTUOR PARTES DIUIDANTUR. SECUNDUM PIPINUS RES. *Vt decime populi diuidantur in quattuor partes, una pars episcopo, alia ecclesie, III pauperibus, IIIIta ecclesie in fabrica restaurandum computentur sicut in decretalibus gelasii papae continentur*. Canon 18 is cited below.

² On the derivatives see Reynolds, ‘The South-Italian canon law *Collection in Five Books* and its derivatives’, pp. 278-295 and idem, ‘Canonistica Beneventana’ in P. Landau and J. Mueller ed., *Proceedings of the ninth International Congress of Medieval Canon Law, Munich, 13-18 July 1992*. Monumenta Iuris Canonici, series C: Subsidia vol. 10 (Vatican City 1997) pp. 21-40

³ *P. Lucense*, c. 15. GREGORIUS. *De massa peccatis, idest de minimis peccatis aut de illa que non reminiscuntur hominibus, VII annos peniteat, III in pane et aqua, II solidos in elemosina*.

could also be that the canon alludes to sinners who had confessed a ‘wealth’ of (small) sins, each of which required a short penance, but, when taken together, amounted to a lengthy sentence. Canon 16 forbids Christians to lean on a staff in Church since one should pray to God correctly and simply (*rectus ac simplex*). Those who do not pray ‘with purity’ (*cum puritate*) but instead with verbosity and useless stories are to be anathematized.¹ There is no known precedent for this ruling in any canonical or penitential source. A parallel can be drawn with the decision of a Roman council held in 743 which forbade clerics to enter church with a stick before celebrating Mass, although the *P. Lucense* seems to have in mind lay people rather than clerics.² The next canon seems to be an adaptation of a regulation of the Rule of St Benedict. It requires lay people not to quarrel or argue impudently with their priest but instead to ‘interrogate’ (*interroget*) him in a humble and obedient manner.³ The two subsequent canons are concerned with ecclesiastical property. Lay people are not allowed to own ecclesiastical goods, unless they maintain these on behalf of the Church. If they keep these *per cupiditatem uel saecularia* they are to be anathematized. Priests who celebrate masses in churches owned by lay men are not permitted to sacrifice to God, because a priest should not serve under the command (*militare*) of lay people.⁴ Priests themselves are not allowed to possess any goods, except for goods that belong to the *basilica*, and should either contribute to their sustenance, such as food and their clothing, or be distributed among the poor. After a cleric’s death his possessions remain in his church, while a fourth part falls to the bishop.⁵ The canon echoes the regulations of the Council of Orléans I (511), which urge clerics to give alms, food and clothing (*victum et vestimentum/vestitum*) to the poor.⁶ This

¹ *P. Lucense*, c. 16. YSIDORUS. *Non oporteat cristianus inter ecclesia incumbere in baculo neque in pondio, sed rectus ac simplex ante deum oret pro delictis suis, neque nulla fauulatione aut inusitatione, sed cum puritate oret, namque praesupserit (!) aliut agere anathematizetur.*

² Conc. Romanum, c. 13 (*Ut nullus episcopus, presbiter... praesumat cum baculo introire...*), *MGH Leges Conc.* 1, A. Werminghoff ed. (Hannover 1946) p. 13. Penitents who came to confession were also required to put their sticks on the ground, see *Le Pontifical Romano-Germanique* II, p. 14 and *Sacramentarium Fuldense saeculi X: Cod. theol. 231 der K. Universitätsbibliothek zu Göttingen: Text und Bilderkreis*, G. Richter and A. Schönfelder ed. (Fulda 1912) p. 42: *ordo 55: Cum autem accesserit penitens ad sacerdotum, si laicus est, dimisso baculo...*

³ This canon may be an adaptation of c. 3 of the Rule of St Benedict (*Neque praesumat quisquam cum abbate suo proterve intus et foris monasterium contendere. Quod si praesumpserit, regulari disciplinae subiaceat*). *P. Lucense*, c. 17. YSIDORUS. *Nullis liceat christianus cum sacro sacerdote praesumat proterue contendere, nisi cum humilitate et obedientia eos interroget, et si praesumpserit alia agere, corripatur semel et bis et tertio; si non se emendauerit, excommunicetur (!).*

⁴ *P. Lucense*, c. 18. YSIDORUS. *Nullis liceat laicus rebus ecclesie possidere, nisi ad conseruandum uel regendum sancta dei ecclesia; nam si per cupiditate uel saecularia possedit, anathematus sit, et in ecclesia sacerdos accedere non praesumat ad sacrificandum, quia non debet sacerdos sub iussione laicorum militare.*

⁵ *P. Lucense*, c. 19. GREGORIUS. *Sacer[dos] nil possidere ualet nisi rebus ecclesie quod basilice sancte est uite sue meritum habeat. Inde uictum et uestimentum et egenum substantionem tribuat; defuncto autem eo omnia quod remanet ecclesia remaneat, excepto IIII pars quod episcopi est offerenda uel obseruanda.*

⁶ Conc. of Orléans, c. 16 (C. De Clercq ed., *CCSL* 148a, p. 9) and Conc. of Aachen, c. 121 (A. Werminghoff ed., *MGH legum sectio III, Concilia* II, I, p. 400).

regulation can also be understood against the background of the critique and subsequent revision of the Rule for canons of the Council of Aachen (816) in the Gregorian Reform. Amongst others, Peter Damian and Hildebrand, the future pope Gregory VII, criticized particularly those ‘lenient’ dispositions of the Rule which allowed canons to own private property, although they did not say anything about priests.¹ Rulings relating to unlawful possession of ecclesiastical property cannot be found in other Italian penitentials, but Italian church councils, especially those convened by Urban II (1088-99) and Paschal II (1099-1118), issued sentences against lay possession of ecclesiastical property.² That the adherents of the Gregorian cause protested against unlawful lay possession of churches and ecclesiastical property is also attested by several late eleventh-century canon law collections, which repeat much of the earlier legislation on this topic.³ Although the regulations of the *P. Lucense* cannot be found in any other source, they thus seem to have been inspired by the eleventh-century reform movement. Since these topics did not substantially influence the Italian penitentials, the occurrence of regulations concerning such topics is remarkable.

Conclusion

The *P. Lucense* is, together with the *P. Vallicellianum E. 62*, one of the latest manuscript witnesses of a penitential in southern Italy. The text of the penitential cannot have been compiled before ca. 1020, when both the *Coll. 5libr.* and Burchard’s *Decretum* were composed. Since the manuscript can be dated to the late eleventh or early twelfth century,

¹ The critique was first voiced at the Roman Council of 1059. See A. Werminghoff, ‘Die Beschlüsse des Aachener Concils im Jahre 816’, *Neues Archiv* 27 (1902) pp. 605-675. A ‘reformed’ rule for canons (cc. 39-40, 51, 55-56 on clerical possessions and clothing) is edited by J. Leclercq, ‘Un témoignage sur l’influence de Grégoire VII dans la réforme canoniale’, *Studi Gregoriani* 6 (Rome 1959/61) pp. 173-227. See Laudage, *Gregorianische Reform und Investiturstreit*, pp. 122-130 and Blumenthal, *Gregor VII. Papst zwischen Canossa und Kirchenreform*, p. 102: *ut nullus laicorum uel clericorum sine consensu episcoporum... quicquid habeat uel possideat. Quod qui fecerit aut possessa non reddiderit, anathematizetur* (addition to Roman synod of 1059 in ms. Bergamo, Bibl. Civica Angelo Mai, ms. 3,30)

² See in general Toubert, *Les structures du Latium médiéval* 2, pp. 889-894. Legislation against lay ownership of churches and their possessions, see the decisions of the council of Rome (1083), council of Melfi (1089) cc. 5-7, 11 (ed. R. Somerville, *Pope Urban II, the ‘Collectio Britannica’, and the Council of Melfi (1089)* (Oxford 1996) pp. 254-6, 278-80, and 285-287). On the councils held under Paschal II see also U.-R. Blumenthal, *The early councils of Pope Paschal II, 1100-1110*. Pontifical Institute of Mediaeval Studies, Studies and Texts 43 (Toronto 1978) pp. 32-73 and pp. 106-122. Cf. J.T. Gilchrist, ‘Eleventh- and early twelfth-century canonical collections and the economic policy of Gregory VII’, *Studi Gregoriani* 9 (1972) pp. 377-417, see pp. 383-384. Donations of churches by laymen to monasteries and bishops in South Italy were partly motivated by the Gregorian struggle against lay possession of churches: see Dormeier, *Montecassino und die Laien im 11. und 12. Jahrhundert*, pp. 24-27 and 99-106.

³ The third book of Deusdedit’s collection is devoted to ecclesiastical property, see *Die Kanonensammlung des Kardinals Deusdedit. I. Band: Die Kanonensammlung selbst*. V. Wolf von Glanvell ed. (Paderborn 1905) pp. 271-396. Cf. *Titulus* 61 of the Collection in 74 Titles, *Diuersorum patrum sententie sive Collectio in LXXIV titulos digesta*, J.T. Gilchrist ed., Monumenta Iuris Canonici series B, 1 (Vatican 1973) pp. 160-164.

there are good reasons for dating the text to the late eleventh or early twelfth centuries. Moreover, most collections that combine the canons from the *Corrector* and the *Coll.5libr.* are dated to the second half of the eleventh century and later.¹ Finally, the censures against private property owned by clerics and lay possession of church property seem to be inspired by ideas of the Gregorian reformers in the eleventh and early twelfth centuries. That the text of the *P. Lucense* was composed in South or Central Italy is shown by the *Coll.5libr.* excerpts, which were available in abundance in this region. This conclusion is strengthened by the manuscript being written in Beneventan script in the diocese of Valva-Sulmona.

The main sources of the *P. Lucense* were the *Corrector* of Burchard of Worms and the *Coll.5libr.* The compiler of this penitential did not work from these two texts directly but rather from the abbreviated derivatives of these collections that circulated in the South Italian region. Particularly the errors in the rubrics mark the *P. Lucense* as a text that had undergone several revisions. The text as it is preserved in this manuscript is a somewhat disorderly one dealing with only a limited number of topics. The Lucca penitential does not treat the range of sins usually treated by penitentials, but concentrates on a few specific subjects. Sins like homicide and clerical continence are only briefly touched upon, while perjury and false witness are not even mentioned. Instead, the author included several remarkable canons on the observance of liturgical customs, ecclesiastical property, and the expiation of minor sins. With regard to its choice of topics the *P. Lucense* stands apart from the other South and Central Italian penitentials discussed in this study. Why the compiler chose to focus on only a few topics can only be surmised. Could it solely be explained by hasty and careless planning of the text? Did he regard subjects as clerical continence as common knowledge and thus requiring no further consideration? Chapters 7 and 8 will argue that probably the latter was the case.

A final remark needs to be made about the liturgical *ordo*. The *ordo* of the *P. Lucense* marks an important step in the development of the Roman liturgy of confession, as it was described by the *ordo* included in the Roman pontifical of the thirteenth century. Its rites not only bear resemblance to several Central and South Italian *ordines* of the late eleventh and early twelfth centuries, but also to that of this Roman pontifical. Therefore, the *ordo* of the *P. Lucense* is an important witness to the influence of South and Central Italian rites and shows how these rites shaped the later Roman liturgy of penance.

¹ For derivatives of that combine canons from the *Corrector* and the *Coll.5libr.* see Reynolds, 'The South Italian canon law *Collection in Five Books* and its derivatives'. The youngest derivative that combined canons of both texts is the collection of Montecassino, Archivio dell'Abbazia, 216 (s. XII^{ex}), on which see Reynolds, *The Collectio canonum Casinensis duodecimi seculi*.

The *P. Lucense* is copied into an almost pure example of a *Rituale*, as it contains, except for an *ordo missae*, only *ordines* for priestly rites not specifically connected to the mass or to the liturgical year. The poor quality of the parchment, a restrained use of decoration, the small numbers of folios, and, finally, the fact that new prayers and chants were added until the thirteenth century indicates that the manuscript was used in pastoral care for hundred years or more. The additions to the penitential *ordo* suggests that the penitential was used in penitential practice by a priest. Although depending completely on canon law collections, the *P. Lucense* cannot be considered a canon law collection itself, but instead should be counted amongst the penitentials. It is significant that the compiler chiefly selected canons that ultimately stem from penitentials. The inclusion of an *ordo* suggest that the penitentials was intended to be used in pastoral care. The brevity of the text together with the liturgical contents of the manuscript support this conclusion.

Sources of the P. Lucense

<u>P. Lucense</u>	<i>Coll.5libr.</i>	<i>Corrector/medicus</i>	Original source
1.	IV,222	-	Ps.Greg. 30
2.	IV,322	-	Ps.Greg. 29
3.	IV,324	-	Ps.Greg. 28
4.	-	5,26	
5.	IV,115/125+	5,174	<i>cf.</i> Ps.Greg. 3
6.	IV,123,2	-	
7.	-	5,38	
8.	-	5,39	
9.	IV,183/V,231	-	
10.	-	5,57	
11.	-	5,126	
12.	V,173	-	Coll.9libr. IX,30
13.	V,174	-	Ps.Greg. 30
14.	V,190	-	Cap.Iud.VII,10/X,1
15.	-	-	?
16.	-	-	?
17.	-	-	<i>cf.</i> Reg. Bened. 3
18.	-	-	?
19.	-	-	?
20.	III,254,1/2	-	Conc. Brac.II, 63+ Oxon.II, prolog.
21.	III,267,1	-	Conc. Agath. 18
22.	III,240	-	Chrodegang 61
23.	IV,374	-	?
24.	IV,375	-	Cap. Iud. XXII,1
25.	III,69	-	
26.	III,73	-	Cap. miss. gen. 8

27.	IV,2	-	Coll. Hiber. 47,1
28.	IV,4	-	II.lib.I,10,10/II,9,10

Cap. Iud. = *Capitula Iudiciorum (Paenitentialia Franciae, etc. 3, CCSL, to be published)*

Cap. miss. gen. = (*Capitularia regum Francorum I, A. Boretius ed., MGH Legum sectio II (Hannover 1883)*)

Coll.5libr. (Fornasari ed., CCCM 6; ms. Vat. lat. 1339)

Ps.Greg. = *P. Ps.-Gregorii* (Kerff, 'Das Paenitentiale Ps.-Gregorii III' pp. 161-188)

Coll.Hiber. = *Collectio Hibernensis* (Wasserschleben, *Die Irische Kanonensammlung*)

Oxon.II, prolog = *P. Oxoniense, prologue* (Kottje ed., CCSL 156, p. 184)

6. ITALIAN PENITENTIALS AND THE LITURGY OF PENANCE

Most of the Italian penitentials discussed in this study are accompanied by elaborate *ordines* which contain liturgical instructions for hearing confession and giving penance. The origins of the *ordo ad dandam paenitentiam* go back to the late eighth and early ninth centuries. At first, the *ordines* functioned as appendices to penitentials, but soon the liturgy of confession was detached from the canons; in the eleventh century most *ordines* circulated separately from the tariffs of penance and, eventually, they would outlive the penitential genre. The history of the *ordo* begins with the achievements in the Frankish territories: all *ordines* of the tenth to the twelfth centuries, Italian or non-Italian, are the heirs of the liturgical culture of ninth-century Francia.¹ Indeed, it can be said that the ninth-century Carolingian world witnessed the creation of a liturgy of secret and, to a lesser extent, public penance.² Although penance was not the only ‘sacrament’ to receive a fully developed liturgy (or better, liturgies), the ritual of secret penance had, in contrast to rites for the anointing of the sick or baptism, to be created from scratch.³ No Irish or Anglo-Saxon penitential liturgy survives, so it is impossible to estimate the contributions made by the Irish and Anglo-Saxons to this liturgy of penance. If they did contribute, however, it would be difficult to explain why they left no traces. Instead it was ninth-century liturgists who accorded penance a rite to compare with that for baptism or public penance. To achieve this, they consulted and borrowed from both the prefaces of penitentials as well as rites for public and deathbed penance. New *ordines* were created and styled, albeit not necessarily intentionally, in the manner of the ancient *Ordines Romani*. The overall liturgical activity in the Carolingian age fostered the proliferation of new penitential rites, for liturgists could draw upon a great number of newly available sacramentaries and prayer collections.⁴ The prominent role penance played in the

¹ Jungmann’s scheme of penitential liturgy is still valuable, but he relied on only a limited number of printed texts, which were often inaccurately dated. This chapter does, therefore, not follow his schema for the development of the liturgy. His account of the “Gallican” liturgy of penance, for example, is based on an *ordo* which is in reality a late tenth-century adaptation of the rite of deathbed (!) penance in the *PRG* (Jungmann, *Die lateinischen Bussriten*, pp. 141-168).

² That public penance is not only the product of the ancient church but a rite that developed during the entire medieval period is shown by Jungmann, *Die lateinischen Bussriten*, pp. 44-74, M. de Jong, ‘Transformations of penance’ in *Rituals of power. From late Antiquity to the Early Middle Ages* (Leiden, Boston, Cologne 2000), Mansfield, *The humiliation of sinners*, pp. 159-188, and Hamilton, *The practice of penance*.

³ For other liturgies see S.A. Keefe, *Water and the word. Baptism and the education of the clergy in the Carolingian empire* 2 vols. (Notre Dame 2002), Sicard, *La liturgie de la mort dans l’église latine des origines à la réforme carolingienne*, and Paxton, *Christianizing death*.

⁴ M. Andrieu, *Les Ordines Romani du haut moyen age II. Les textes (Ordines I-XIII)*. Spicilegium Sacrum Lovaniense 23 (Louvain 1948) pp. XXI-XLIX. Cf. Y. Hen, *The royal patronage of liturgy in Frankish Gaul to*

ninth-century political arena could also have furthered the interest in penitential liturgy, for alongside ecclesiastical rites, new forms of rituals of submission and reconciliation in the secular political sphere flourished.¹ Although this chapter concentrates on liturgical sources, the development of ‘secular’ penitential rituals testifies to the growing liturgification of penance as a whole.

The history of the Italian penitential liturgy begins in the ninth century, since the ‘Italian *ordo*’ largely entailed a continuation of Frankish customs.² From the eleventh century onwards, the *ordines* increasingly departed from the models furnished by ninth-century texts. From then on it becomes easier to trace specific characteristics in the Italian *ordines*, which distinguish them from earlier Frankish models. Yet Italian texts also reflect a diversity of customs, which makes general statements about the rite of penance difficult. This chapter, therefore, begins with a survey of the early Frankish rites. Special attention will be given to the *ordines* which contributed to the creation of Italian rites of the eleventh and twelfth centuries. Whereas in the first part each rite is discussed individually, this is, given their great number, impossible for the South and Central Italian *ordines*. The contents of these texts are explored with the aid of one exemplary text, the *ordo* of the North Italian ms. Bologna, Bibl. Universitaria, 2679.³ For reasons of manageability this chapter primarily focuses on *ordines* for so-called private or secret penance. The *ordines* for the public expulsion of sinners from the church on Ash Wednesday and their re-entry on Maundy Thursday have their roots in the ancient church. The administration of these rites was a predominantly episcopal prerogative. Their necessarily public and episcopal character distinguish these rites from their secret counterparts which initially accompanied the penitentials, although the usefulness of a distinction between secret and public penance has recently been questioned. Another reason for the concentration on secret penance is that we have comparatively little manuscript evidence for rites for Ash Wednesday and Maundy Thursday in our region.⁴

the death of Charles the Bald (877). Henry Bradshaw Society, subsidia 3 (London 2001) pp. 148-154. Hen warns that the liturgical developments that took place under the Carolingians cannot automatically be interpreted as either the Romanisation or the unification of the liturgy.

¹ See M. de Jong, ‘Power and humility in Carolingian society: the public penance of Louis the Pious’, *Early Medieval Europe* 1 (1992) pp. 29-52, G. Althoff, ‘Das Privileg der Deditio. Formen gütlicher Konfliktbeendigung in der mittelalterlichen Adelsgesellschaft’ in *Spielregeln der Politik im Mittelalter. Kommunikation in Frieden und Fehde* (Darmstadt 1997) pp. 99-125, and G. Koziol, *Begging pardon and favor. Ritual and political order in early medieval France* (Ithaca and London 1992).

² The *P. Merseburgense A* (Wasserschleben, *Bussordnungen*, pp. 387-391) is perhaps the earliest witness of the *ordo* in Italy.

³ I will not take into account the purpose and function of the manuscripts in which the *ordines* are found. Liturgical manuscripts will be discussed in chapter 8.

⁴ I have found an *Ordo agentibus publicam poenitentiam* in ms. Vallicelliana B. 8 (Sant’Eutizio; s. XI), ff. 394vsq., which seems to be an extended version of the rite of the *Sacr. Gelasianum Vetus*.

6.1. The Frankish background

Early rites of confession

Of all the liturgies which developed in the early Middle Ages, probably no other liturgy displays the same variety as those of penance. Mary Mansfield remarked that at least until the fourteenth century public, private, and deathbed penance ‘refused to settle into any pattern sanctioned by tradition’.¹ The liturgy of secret penance is a comparatively late creation, for it was not until the late eighth century that *ordines* for confession and penance emerged (or were recorded?). The early Irish and ‘Anglo-Saxon’ penitentials are remarkably silent about rituals for confession. Columbanus advised sinners to make their confessions before mass, so that they could approach the altar with a pure heart.² Although some of the *iudicia* of Theodore, the Greek archbishop of Canterbury, deal with penitential rituals, they are chiefly concerned with the public rites he knew from Rome. He reported that the ‘reconciliation of penitents in a public fashion does not exist’ in his church province without going into more detail.³ Early eighth-century Frankish manuscripts of penitentials such as those of the *P. Burgundense* or the *Excarpsus Cummeani* do not contain liturgical directions. Early evidence for the use of prayers at confession is provided by the *P. Bobbiense* copied into the Bobbio Missal, which is followed by two prayers *super penitentem*.⁴ Also of importance for the development of penitential liturgy were the prayers for public and deathbed penance in the Old Gelasian Sacramentary.⁵ Since almost all the prayers in later *ordines* stemmed from the Gelasian Sacramentary, the creation of rites for secret penance may be guided by a desire to grant it a status similar to that of public penance, a status embodied in liturgy.⁶

The earliest generation of Frankish *ordines* is represented by a set of liturgical directives appended to a group of related, Tripartite penitentials. This group consists of the *P.*

¹ Mansfield, *The humiliation of sinners*, p. 161. Sarah Hamilton’s *The practice of penance* also puts much emphasis on liturgical diversity.

² *The Irish penitentials*, Bieler ed., pp. 106-107.

³ *Iudicia Theodori* U, I,13,4 (Finsterwalder ed., p. 306). On the lack of information about the existence of penitential rites in Ireland and Anglo-Saxon England see M.S. Driscoll, *Alcuin et la pénitence à l’époque carolingienne*. Liturgiewissenschaftliche Quellen und Forschungen 81 (Münster 1999) pp. 59-66 and pp. 88-90.

⁴ See R. Meens, ‘Reforming the clergy: a context for the use of the Bobbio penitential’ in Y. Hen and R. Meens ed., *The Bobbio Missal: liturgy and religious culture in Merovingian Gaul*. Cambridge studies in palaeography and codicology 11 (Cambridge 2004) pp. 154-167. The Bobbio Missal may have been written in the late seventh century. The *P. Parisiense Simplex* was once appended to the Gelasian Sacramentary, see Kottje ed., CCSL 156, pp. xxxvi-xxxvii.

⁵ *Liber Sacramentorum Romanae Ecclesiae Ordines anni circuli* (Cod. Vat. Reg. Lat. 316/Paris, Bibl. Nat. 7193,14/56), L.C. Mohlberg ed., *Rerum Ecclesiasticarum Documenta*, Series Maior, fontes 4 (Rome 1960) pp. 17-18, 55-60, and 248.

⁶ Cf. Frantzen, *The literature of penance in Anglo-Saxon England*, p. 105.

Pseudo-Romanum, the *P. Sangallense Tripartitum* and the *P. Merseburgense A*, all of which were compiled in the late eighth and early ninth centuries.¹ The *ordo* combines the instruction *Quotiescumque* – the preface of the eighth-century *P. Oxoniense II* named after its *incipit* – with rubrics, prayers, and Psalms taken from the Gelasian Sacramentary.² The *Quotiescumque* provides the priest with preparatory directions as to how to receive, interrogate, and judge confessants. A confessor is urged, for example, to participate in the penitent’s fasting and to weep and pray for his own sins and for those of all Christians.³ The priest or bishop is compared to a physician who ‘is not able to cure the wounds of the sick unless he has taken part in their filthiness’.⁴ The *ordo* begins with a request to the confessor to retreat into his *cubiculum* to recite a preparatory prayer when a confessant comes to make his confession (*Domine deus omnipotens propitius esto mihi peccatori*). Through this prayer the priest professes his own sinfulness and thanks God for his role as intercessor between God and men.⁵ Other prayers and Psalms, all taken from the Gelasian Sacramentary, are listed under the rubric *Incipit ad dandam penitentiam*. Although the *ordo* dwells at length on the priest’s conduct towards confessants, it does not really provide him with directions for the ritual (gestures, sequence of events). The last prayer of the *ordo* of the *P. Ps.-Romanum* is titled *manus impositio*, indicating that the priest should lay his hands on the penitent’s head. Both *P. Merseburgense A* and *P. Ps.-Romanum* reserve prayers for the absolution of penitents.⁶ The *ordo* of the *P. Sangallense Tripartitum* offers, after the *Quotiescumque*, a short version of the preparatory prayer which is followed by two prayers that are not included in the other two penitentials. This text is of great importance, because its prayers and rubrics

¹ On this group see Körntgen, *Studien zu den Quellen*, pp. 136 and 218-232 and Meens, *Het tripartite boeteboek*, pp. 79-99. Cf. C. Vogel, ‘Les rituels de la pénitence tarifée’ in *Liturgia opera divina e umana. Studi offerti à S.E. Mons. A. Bugnini*. Bibliotheca Ephemerides Liturgicae, subsidia 26 (Rome 1982) pp. 419-427, see pp. 424-425.

² The whole preface is, except for the only copy of the complete *P. Oxoniense II* (ms. Oxford, Bodleian Library, Bodley 311), mainly found in Italian manuscripts. See Körntgen, *Studien zu den Quellen*, pp. 122-130. For the contents of the preface, see idem, pp. 130-154 and H. Lutterbach, ‘Die Bußordines in den iro-fränkischen Paenentialien. Schlüssel zur Theologie und Verwendung der mittelalterlichen Bußbücher’, *Frühmittelalterliche Studien* 30 (1996) pp. 150-172.

³ *Quotiescumque christiani ad penitentiam accedunt, jejunia damus et nos communicare cum eis debemus jejunio unam aut duas septimanas, aut quantum possumus... humiliare se debent Episcopi sive Presbyteri et cum tristitiae gemitu lacrimisque orare, non solum pro suis delictis, sed etiam pro Christianorum omnium*. Cited after the *ordo* of the *P. Ps.-Romanum*, ed. Schmitz II, 290-294.

⁴ Schmitz II, 291-292: *nullus medicorum vulnera infirmantium potest curare, nisi foetoribus particeps fuerit*. The penitent will all the more regret his sins if he sees the priest crying and weeping (*Videns autem ille, qui ad paenitentiam venit, Sacerdotem tristem et lacrymantem pro suis facinoribus, magis ipse in timore Dei percussus, amplius tristatur et exhorrescet peccata sua*).

⁵ If he does not have a *cubiculum*, he should say the prayer ‘in his own heart’ (ed. Schmitz II, p. 291).

⁶ Schmitz II, p. 293 (absolution on Maundy Thursday). For the *P. Merseburgense A* see Wasserschleben, *Bussordnungen*, p. 390. Possibly, the prayer was already part of the preface of the *P. Oxoniense II*. See Körntgen, *Studien*, p. 135. It is not found in the Gelasian Sacramentaries.

would find their way into the *ordines* of the Romano-Germanic Pontifical (*PRG*) and a number of Italian documents.¹

A second type of *ordo* is connected to the Fleury and St Gallen penitentials, both recorded in manuscripts of the early ninth century. This text gives a compressed but detailed and chronological outline of a rite of confession. First the priest should give a short introduction about the coming of Christ into this world, which enables mankind to redeem sin through the gifts of baptism and penance. Then the penitent is interrogated as to whether he believes in the resurrection of Christ and whether mercy can be obtained through confession.² Acts of prostration by both the priest and the penitent are required both before and after confession. After the judgment of the priest, the penitent should promise to observe what the priest had said, to make amends, and to confirm his belief in the efficacy of his confession.³ Although this *ordo* was not as influential as those of the *Quotiescumque* type, it is one of the first to give a chronological account of confession and penance.

A third type is represented by a group of *ordines* copied in ninth- and tenth-century codices of the *P. Additivum Ps.-Bedaegberti*.⁴ The value of this text lies in its set of questions about the articles of faith to be posed by the priest, which were included in many later *ordines*. These questions (to be answered in the affirmative) are concerned with the penitent's belief in the Trinity, the resurrection of the body, and his willingness to forgive others. If the confessant is incestuous, he or she cannot confess.⁵ After the penitent confessed

¹ Rubrics, prayers, and short version of *Domine deus propitius esto mihi* (Meens, *Tripartite boeteboek*, pp. 326-329) are included in *PRG, ordines* 136 and 144 and the *ordines* of ms. Rome, Bibl. Nazionale Centrale, 2081 (Sess. 95; Nonantola; s. X-XI) and 2116 (Sess. 136; S. Abondio de Como; s. XI²).

² Kottje ed., CCSL 156, p. 97: *qualiter diabolus... de angelicam caecidit dignitatem et postea per inuidia hominem expulit de paradyso et proinde Christus ad salutem humanam per uterum uirginis in mundum uenit atque post resurrectionem et diabolum uicit et mundum de peccato reddemit et postea per apostolis baptismi gratiam tradidit, per quo hominem de peccato lauaret...* See Driscoll, *Alcuin et la pénitence à l'époque carolingienne*, pp. 90-91 and Jungmann, *Die lateinischen Bussriten*, p. 156.

³ *Interrogatur ei, si credit resurrectionem uel ista omnia, quod dictum est ei, uel si habeat fidem confessionis per iudicium sacerdotis ueniam consequi apud deum... interrogatur ei, quod egit, unde timet. At ille, cum sua integra dedit confessionem, tunc cum ipso prosternat... Et postea surgant pariter atque de uno, si credit pro ipsa confessione ueniam, si egerit paenitentiam et si uult in uerbis promittere, ut in hoc, quod iudicatum fuerit, interim, quantum potuerit, debeat custodire aut qualiter postea abstinere debeant...*

⁴ Haggemüller, *Die Überlieferung der Beda und Egbert zugeschriebenen Bußbücher*, pp. 228-229: Vesoul, Bibliothèque Municipale, 73 (North France; s. X²); London, British Library, Add. 19725 (Reims; s. IX^{ex}); Verona, Bibl. Capitolare, LXVIII (Verona; s. X²). Also found in the Gellone *ordo* (Jungmann, *Die lateinischen Bussriten*, p. 159) and ms. Basel, Universitätsbibliothek, F III 15e (Fulda; s. IX^{2/4}). A different version in ms. Berlin, Deutsche Staatsbibliothek, Phillip. 1750 (s. IX²; *P. Ps.-Theodori*; Meens, *Het Tripartite Boeteboek*, p. 68). It lacks the part on the penitent's mental abilities. Instead the priest instructs the penitent about the eight principal vices.

⁵ Cited after ms. Basel, Universitätsbibl., F III 15e: *Credis in patrem et filium et spiritum sanctum. Respondeat. Credo... fac eum confiteri omnia peccata sua et ad ultimum dicere: Multa sunt peccata mea in factis et in uerbis et in cogitationibus. Tunc da ei paenitentia, et dic istas orationes super eum* (prayers *Preueniat hunc famulum* and *Exaudi domine preces*). The interrogation predates the double penitential (*Mixtum*, see below) of Bede-Egbert. Cf. Frantzen, *The literature of penance*, pp. 117-118.

that he had sinned in ‘thoughts, words, and deeds’, the priest recites prayers from the Gelasian stock.¹ The text explains that the priest is permitted, if he has enough time, to add more prayers from the sacramentary. If the confessant is astute, the priest should advise him to come back for his reconciliation ‘after a fixed time’, but if the penitent is *minus intellegens* (mentally disabled?) or ill, he should be reconciled immediately.²

The last *ordo* discussed here, first noticed by Raymund Kottje and still unpublished, deserves a more detailed examination, because it exerted a decisive influence on the development of the Italian rites of confession. In some ninth-century manuscripts the *ordo* precedes the sixth book of Halitgar of Cambrai’s penitential written on behalf of archbishop Ebo of Reims. Because the early manuscripts point to a connection with Reims, this text will be referred to as the Reims *ordo*.³ The text itself is subdivided into a series of instant-dialogues between penitent and priest interspersed with prayers and versicles. The first interrogation by the priest is intended to expound the criteria for the admission of sinners to confession. The priest questions the penitent about his knowledge of the Creed and the Lord’s Prayer and his willingness to confess. He asks the penitent whether he has acquired something by theft or by some unlawful reason (which would make it impossible for him to be judged for another sin), whether he harbours a grudge against someone, and whether he is a fugitive, circumstances that would render it impossible to undertake penance. Then he is interrogated as to his sins.⁴ After the penitent and the priest have prostrated themselves, the penitent is required to recognize his guilt and to renounce the tricks of the devil. This abnegation of the

¹ The *ordo* is mentioned by Sims-Williams, ‘Thought, word and deed: an Irish triad’, pp. 78-111.

² *Et ceteras si tempus habueris sicut in sacramentarium continetur. Si tibi non uacet iste sufficiant, et si homo ingeniosus est, da ei consilium ut ueniat tempore statuto ad te uel ad alium sacerdotem, et reconcilietur sicut in sacramentarium continetur, quiquid manens in corpore consecutus non fuerit. Hoc est reconciliatio. Exutus carne consequi non poterit. Si uero minus intellegens fuerit, qui ipse non intellegit. Tu uero statim reconciliare potes eum, ita dicendo. OREMUS. Praesta domine... Si infirmus est homo statim reconciliare eum debes.* In some manuscripts other prayers were added.

³ Manuscripts: Vatican, BAV, Reg. lat. 191 (Reims; s. IX^{3/4}), Reg. lat. 263 (France or North Italy; s. X-XII; incomplete), Navarra, Bibl. Capitolare, 18 (LXXI) (North-Italy, based on ms. from Reims ?; s. IX²), Düsseldorf, Universitätsbibliothek, hs. B. 113 (s. IX; incomplete); descriptions in Kottje, *Die Bußbücher Halitgars von Cambrai*, pp. 20-22, 47, 70-72, 142). See also ms. Rome, Bibl. Nazionale, 2116 (Sessor. 136) (Sant’Abondio de Como; s. XI; combined with Burchard’s *Corrector*).

⁴ The text is transcribed from ms. Vatican, BAV, Reg. lat. 191: *Primum interrogas ei orationem dominicam et symbolum si tenet, et si hoc tenet, dices ei: uis tuam confessionem dare? Respondet: uolo. Interrogas ei si iam ipse confessus fuisset. Propter hoc interrogas ei, si ipse aliquod de malo ingenio habet aut de furto aut de aliqua causa contradicto. Si confessus fuerit quod habeat, instrue eum quod non est licencia iudicio de alia peccata recipere, antequam ipsum malum redderit aut eiciat. Postea si fecerit, interrogas ei si iracundiam contra qualemcumque hominem habeat. Si confessus est habere, amhone eum quod est scriptum: ‘Sic non proficit in uulnerae medicamentum... Interrogas ei si fugitiuus est, quia non licet ei penitentiam agere. Post hec interrogas ei crimina sua quod habet, hoc est de superbia uel sacrilegium...*

devil was evidently borrowed from baptismal liturgy.¹ The dialogue is followed by series of prayers, biblical verses, and a prayer *ad mortem*. The priest urges the penitent to rise (after lying prostrate?) and to ‘hand himself over to the Lord’ by making the sign of the cross. He is then questioned about his belief in the resurrection and in the remission of sin through confession.² Finally, a penitential in the form of an interrogatory is appended to the *ordo* in order to refresh the memory of the confessant. The popularity of this *ordo* was due to its inclusion of such instant dialogues that offered priests set examples of how to interrogate penitents as to their beliefs, their conscience, and their sins. Not surprisingly many of these were included in other *ordines*, notably those for penance in the *PRG*.³

The second phase: combining older traditions

Already in the ninth century new *ordines* were composed that built upon the early tradition. Examples are the *ordines* of the *P. Mixtum Ps.-Bedae-Egberti*, Regino of Prüm’s *Libri duo de synodalibus causis*, and the Fulda Sacramentary. These texts had little influence on Italian rites. More influential were the *ordines* 136 and 144 of the *PRG*, which combined the prescriptions of the Reims *ordo*, the *Quotiescumque ordines*, and the *ordo* of the *Additivum* penitential of Pseudo-Bede/Egbert. Since these texts have been thoroughly examined by Sarah Hamilton, they will not be discussed here.⁴ Liturgical directions for confessors were also included in the second capitulary attributed to Theodulf of Orléans, whose authorship is,

¹ *Postquam de istas confessus fuerit, proicite uos ambo pariter in terra. Dic ei ut ipse dicat: ‘mea culpa, peccavi domine.’ Iterum interroges ei: Recognoscis te culpabilem de omni peccato quod post baptismum sciendo uel nesciendo commemoras, aut recordas quod in uerbo aut in opere aut in cogitatione contra mandata dei egisti culpabilem exinde te recognoscis? (...) Iterum dices ei: promittis te de praeteritis culpis emendare et trinitatem credere et omnes adinuationes diaboli abrenuntiare?* On the interrogation in the baptismal liturgy, see Keefe, *Water and the word* 1, pp. 45-51.

² *RECONCILIATIO PENITENTIS AD MORTEM. Maiestatem tuam domine suppliciter... ITEM DICIS: Surge frater; et dices ad eum signa te. DICES EI: Tradis te per istam crucem a deo omnipotenti. RESPONDET: Trado. INTERROGES: Credis in resurrectionem. RESPONDET: Credo. INTERROGES: Habes fidem de confessione data ad sacerdotem remissionem de tua peccata, hoc? RESPONDET: Credo. INTERROGES: Habes in uoluntate quod egisti contra mandata dei quod emendes. RESPONDET: Sic habeo. INTERROGES: Vnde confessus fuisti uis iudicio recipere? RESPONDET: Volo. Et sic iudica secundum modulum criminum eius... (tables stipulate penances for each clerical order) Et sic debes interrogare, quia multi sunt qui non memorant, dices ei. Fecisti homicidium aut casu... The words *ad mortem*, omitted in ms. Rome, Bibl. Nazionale, 2116, suggest that the rite ended with this prayer if it was administered as a rite for deathbed penance. I doubt whether the last interrogations, which introduce the imposition of the penance, were meant for sick penitents only.*

³ Fragments in ms. Darmstadt, Hessische Landes- und Hochschulbibliothek, 4317 (M. Hellmann, ‘Ein Bußordo der Jahrtausendwende’ in *Fragmenta Darmstadiensia. Heidelberger Handschriften-Studien des Seminars für Lateinische Philologie des Mittelalters (III)* (Darmstadt 1997) pp. 43-52) and in the *ordo* edited by J. Morinus, *Commentarius historicus de disciplina in administratione sacramenti poenitentiae tredecim primis seculis in ecclesia occidentali, et hucusque in orientali observata, in decem libros distinctus* (Antwerpen 1682), appendix p. 32. On ms. Paris, BNF, lat. 2998 (Moissac; s. X/XI), see Haggenmüller, *Die Überlieferung der Beda und Egbert zugeschriebenen Bußbücher*, p. 91. Cf. *Le Pontifical Romano-Germanique* 2, pp. 235-242 and 273-274: *ordo* 136, nrs. 5-8, 13, 15, 21 and *ordo* 144, nrs. 12-13. A combination of the *ordo* of the *P. Sangallense Tripartitum* and the Reims *ordo* occurs in ms. Rome, Bibl. Nazionale Centrale, 2116.

⁴ See Hamilton, *Practice of penance*, pp. 104-150.

however, doubtful. This text does not include prayers, but refers to a sacramentary for the prayers to be said. Theodulf's text is reminiscent of both the Reims *ordo* and that in the Fleury penitential. Despite its limited influence, separate canons from Theodulf on hearing confession were incorporated into Regino of Prüm's synodal handbook and several Italian texts.¹

Another text that enjoyed great popularity among Italian liturgists was the *ordo* of the *P. in II libris*. This *ordo*, cited here after its oldest manuscript Montpellier, Bibliothèque Universitaire, 387 (northern France; s. IX²), provides the priest with a set of detailed instructions.² It begins with the instruction *Quotiescumque* and the preparatory prayer *Domine deus propitius esto mihi* to be said together with the Lord's Prayer in church alone or 'in his heart'.³ Before addressing questions about the articles of faith borrowed from the *ordo* of the *Additivum* of Ps.-Bede and Egbert, the priest asks what the sinner wants, upon which he or she answers 'I wish to make my confession'. After being interrogated he or she kneels before the priest, who determines his penance.⁴ The *ordo* proceeds with a new series of requirements: the priest is to take the penitent by the hand and bring him or her to the altar for confession.⁵ The penitent is urged to fast both during and after his period in penance, because 'if he thereafter fasts on his own accord, he will achieve for himself a crown and the kingdom of heaven'.⁶ After the priest has judged, they both have to prostrate themselves before the altar. Then the priest recites Psalms, biblical verses, the *kyrie eleison*, the Lord's prayer, and a

¹ C. X,34 (P. Brommer ed., *MGH Capitula episcoporum* I, pp. 183-184) is incorporated into *Coll.9libr.* (Vat. lat. 1349, f. 195v), *Coll.5libr.* (Vat. lat. 1339, f. 173r), and the *ordines* of *P. Merseburgense A* (ms. Vat. lat. 5751) and ms. Vercelli, Bibl. Capitolare, CLXXVIII (4) (Vercelli; s. X²). On the Vercelli manuscript see Ebner, *Quellen und Forschungen zur Geschichte und Kunstgeschichte des Missale Romanum*, pp. 284-5. This part is only transmitted in the version of the capitulary as copied by Adhemar of Chabannes. Its authenticity is doubted. Yet the canon occurs in tenth-century manuscripts and must have been older than Adhemar (*Capitula Episcoporum* I, p. 142). It is possible that he took it from another *ordo* and inserted it into his version of the capitulary. On this issue P. Brommer, 'Die bischöfliche Gesetzgebung Theodulfs von Orléans', *ZRG kan. Abt.* 60 (1974) pp. 1-120, see pp. 21-23.

² The text is not edited. The other manuscripts are Montecassino, Arch. dell'Abbazia, 554 and Vienna, Österreichische Nationalbibliothek, 2231. See Körntgen, *Studien zu den Quellen*, pp. 207-208.

³ *Cum ergo uenerit quis confiteri peccata sua, dic ei ut expectet modicum, donec in ecclesia solus aut in corde suo dicat pater noster... ET HANC ORATIONEM. Domine deus omnipotens propitius esto mihi...*

⁴ *Interrogas eum: quid postulas? Ille autem respondebit tibi deo et tibi sacerdoti: Confessionem meam dare uolo. Tunc interrogas eum his uerbis: Credis in patrem et filium et spiritum sanctum. Respondet: Credo. Credis quod iste tres personae quae modo diximus, pater et filius et spiritus sanctus tres personae sint et unus deus? (...)* *Tunc fac eum confiteri omnia peccata sua in quantum recordare potest: Multa sunt peccata mea in uerbis in factis in cogitationibus, et inclinat se ad genua sacerdotis et dat illi poenitentiam.* The Vienna and Montecassino manuscripts omit the question 'quid postulas'.

⁵ *Postea si uideris eum ex toto corde conuersum, suscipe eum per manum dexteram, inpromittat emendationem uitiorum suorum et duc eum ante altare, confiteatur peccata sua.* On confession before the altar see below.

⁶ *Si uero postea ex sua uoluntate ieiunauerit coronam sibi adquiret et regnum caelorum.*

set of Gelasian prayers.¹ The *ordo* ends with the anointing of the penitent with chrism, accompanied by two benedictions.² While this anointing may have been intended for dying penitents, there is no rubric suggesting that this is the case. Without any influence North of the Alps, several novelties of this *ordo*, such as the initial question as to the penitent's willingness to confess, the taking of hands, the altar as the place of confession, and the use of benedictions at the end of the rite would find wide acceptance in Italy.

6.2. Italian ordines: reworking Frankish models

The availability of new Frankish liturgical texts was a necessary precondition for the liturgical creativity of the eleventh and twelfth centuries in Italy. Among the earliest Frankish texts that reached Italy were the 'Quotiescumque' ordines.³ Soon other ordines followed⁴, of which the *ordo* of the *P. in II libris* and the Reims *ordo* in particular were eagerly excerpted by Italian liturgists.⁵ Compilers adapted these texts to their own needs and combined prescriptions of several different ordines in their own texts. At the end of the tenth century, the Romano-Germanic Pontifical (*PRG*) began to circulate in Italy. Sarah Hamilton demonstrated that the *PRG* spread only slowly in Italy and that its penitential liturgy did not

¹ *Postquam confessus fuerit iacent se pariter ante altare. In primis dicit psalmum .xxxvii. Domine ne in furore tuo... (Ps. 37) et ter kyri eleison et orationem dominicam.* Then the following prayers and Psalms should be said: *Precor domine clementiam tuam et misericordiam* (Gelasianum nr. 82); *Benedic anima mea* (Ps. 102); *Domine deus noster qui offensionem* (Gelas. 82); *miserere mei deus* (Ps. 50); *Deus iustorum gloria et misericordia* (Gelas. 1703). The five Psalms belong to the seven penitential Psalms.

² *HIC SIGNAS EUM CUM CHRISMA AUT OLEO SANCTO ET DICIT ORATIONEM. Benedicat tibi dominus...* The other manuscripts read *POSTEA SIGNAS EUM*, indicating that the anointing belonged to the rite.

³ On the transmission of the long preface of the *P. Oxoniense II* in Italy, see Körntgen, *Studien zu den Quellen*, pp. 119-124. See also ms. Montecassino, Arch. dell'Abbazia, 372. Most Italian ordines prior to 1050 include the instruction *Quotiescumque*, such as the ordines of the *P. Casinense*, *P. Vaticanum*, and *P. Vallicellianum I* (ms. Barcelona, Bibl. Universitaria, cod. 228 (Northern Italy; s. X-XI^m) and Rome, Bibl. Vallicelliana, E. 15 (Rome; s. XI), the Bobbio and Verona ordines of Muratori (*Antiquitates Italicae* V, pp. 719-738), Paris, BNF, Mazarineus 525 (Asti; s. X^{ex}; cf. Gastoué, 'Un Rituel', pp. 137-144 and 493-500), the ordines of Rome, Bibl. Nazionale Centrale, 2081 (Sess. 95) (Nonantola; s. X-XI^m), and Vercelli, Bibl. Capitolare, CLXXVIII.

⁴ The Egbert/Bede *ordo* is incorporated into the *P. Vallicellianum I* of Barcelona, Bibl. Univers. 228. Theodulf of Orléans' second capitulary (c. X,34) and the exhortation *Viriliter age* of (Ps.-)Alcuin's *De usu psalmodum* were incorporated into the ordines of ms. Rome, Bibl. Nazionale, 2081, Vercelli, Bibl. Capitolare, CLXXVIII, and *P. Merseburgense A* of ms. Vat. lat. 5751.

⁵ The *P. in II libris* influenced the *P. Casinense*, in the ordines of ms. Paris, BNF, Mazarineus 525, ms. Vercelli, Bibl. Capitolare, CLXXVIII, ms. Milan, Bibl. Ambrosiana, T. 27 sup. (Milan region; s. XI-XII; Lambot ed.), Bologna, Biblioteca Universitaria, 2679 (San Salvatore 686; see below), and the Verona and Bobbio ordines edited by Muratori, *Antiquitates*, pp. 719-738. The two Italian copies of the complete Reims *ordo* are mss. Rome, Bibl. Nazionale, 2116 and Navarra, Bibl. Capitolare, 18 (LXXI). Traces of the Reims *ordo* are found in the ordines of mss. Rome, Bibl. Nazionale Centrale, 2081, Vercelli, Bibl. Capitolare, CLXXVIII, Vatican, Vat. lat. 5768 (Bobbio; s. X^{ex}-XI), Bologna, Bibl. Universitaria, 2679, Rome, Vallicelliana, B. 8 and B. 63 (both Sant'Eutizio; s. XI-XII^m), and E. 62 (Narni; s. XII; two ordines), and those of the *P. Vaticanum* and *P. Lucense*.

replace other rites.¹ It is true that the rites of this pontifical were not accepted without change, but they did leave their marks on later Italian *ordines*.² The *ordo* for deathbed penance was especially influential, which, after being turned into an *ordo* for ordinary penance, circulated as a separate text from the late tenth century onwards.³ Rather than the *ordo* for ‘penance in the usual way’ it was this text which furnished the model for later Italian *ordines*, including that of the Roman Pontifical of the thirteenth century.

The following sections offer a summary of the contents of the Italian *ordines*. Because of the importance of the rites from northern Italy for those of South and Central Italy, a selection of texts, unfortunately incomplete, from all over Italy is included in this survey.⁴ One text, the *ordo* of ms. Bologna, Bibl. Universitaria, 2679 (San Salvatoris 686), has been singled out as a model text in order to discuss the way in which old Frankish traditions and newer local trends merged.⁵ This text, probably written in Torcello near Venice at the end of the eleventh century, is largely made up of older sources, but these are arranged and altered to such a degree that an entirely new and original text was created. The outline of this rite serves as a guideline for an analysis of the rituals and texts described in the *ordines* from North and South Italy. The text depends upon the Reims *ordo*, the *ordo* of the *P. in II libris*, and that of the *P. Sangallense Tripartitum*, but the compiler probably did not use these texts in their complete form and consulted texts in which these different traditions had already been brought together. In several respects the Bologna *ordo* is an entirely unique text. An intriguing feature of this *ordo* is that clerics and lay people had been assigned their own, separate rites. Moreover, all female forms are consistently put above the line (*fornicator^{trix}*)

¹ Against C. Vogel, *Introduction aux sources de l'histoire du culte chrétien au Moyen Âge* (Spoleto 1965) pp. 187-203, it was argued by Hamilton, *Practice of penance*, pp. 211-219 and Rasmussen and Haverals, *Les Pontificaux*, pp. 23-24 that the PRG did not find immediate acceptance in Italy.

² On the process of adapting and rearranging *ordines* of the PRG in Italy, see R.F. Gyug, ‘The pontificals of Monte Cassino’, in F. Avagliano and O. Pecere ed., *L'età dell'abate Desiderio III, I. Storia, arte e cultura. Atti del IV convegno di studi sul medioevo meridionale (Montecassino – Cassino, 4-8 ottobre 1987)*. Miscellanea Cassinese 67 (Montecassino 1992) pp. 413-439.

³ Copied as *ordo* for secret penance in ms. Berlin, Deutsche Staatsbibliothek, Hamilton 290 (North Italy; s. X) and ms. Vatican, Arch. di S. Pietro, H. 58. See Kottje, *Bussbücher*, pp. 107-111.

⁴ The *ordines* of the following manuscripts have not been consulted: Lucca, Bibl. Capitolare, 606, Lucca, Bibl. Statale, 1474, Subiaco, Bibl. dell'Abbazia, cod. 163, and Udine, Bibl. Arcivescovile, Quarto 26, membr. 4. Parts of the *ordines* of ms. Monza, Bibl. Capitolare, cod. b-15/128 and ms. Paris, BNF, Mazarineus 525 have been consulted through F. dell'Oro, ‘Un rituale del secolo X proveniente dall'Italia settentrionale (Monza, Bibl. Capitolare, cod. b15/128)’ in P. de Clerck and E. Palazzo ed., *Rituels. Mélanges offerts à Pierre-Marie Gy, O.P.* (Paris 1990) pp. 215-249 and Gastoué, ‘Un Rituel noté de la province de Milan’, pp. 496-500.

⁵ Saec. XI^{ex}; Ritual-Missal in Carolingian script, with additions in Gothic hands. Size ca. 210 x 143 mm (155 x 85); 242 ff.; usually 20 written lines per page. The entries of St Heliodorus (bishop of Torcello; † 407) and St Liberalis in the litany of the penitential *ordo* point to the town of Torcello near Venice. See Ebner, *Quellen und Forschungen*, pp. 18-20, K. Gamber, *Codices liturgici latini antiquiores* II, Spicilegium Friburgense Subsidia 1,2 (Freiburg 1968) p. 572, nr. 1596, and G. Baroffio, ‘Kalendaria Italica inventario’, *Aevum* 77 (2003) pp. 449-472, p. 453. The codex was kept in the monastery of San Salvatoris in Bologna until the nineteenth century.

and the sermon to be delivered by the priest characteristically begins with ‘brother or sister’. Also exceptional is the separate sermon for the *pauperes* inserted in the *ordo*. No other text so carefully distinguishes as to the gender and status of penitents. Like most North Italian *ordines*, the Bologna *ordo* is free from any influence of the *PRG*. The rites of the *PRG* had a much greater impact in South and Central Italy, where all texts of the later eleventh century were to some extent influenced by this pontifical. Yet the *ordo* has also many features in common with South and Central Italian texts, which makes it an appropriate text to use to connect and compare rites from the North and the South.

Basic structure of the Italian ordines: the diversity of customs

The outline of the Bologna rite is as follows: first the priest asks the penitent to wait so that he can prepare himself by praying and prostrating himself. The dialogues that follow were intended to examine whether the penitent is fit enough to confess and to test his knowledge of the articles of faith. The priest recited prayers, verses, and a sermon exhorting the penitent to confess. After confession the priest should deliver his judgment ‘according to the canons or what seems fair to him’; he blessed the penitent and absolved him or her from sin.¹ The order of the rite for clerics is more or less the same, although less emphasis is put on the role of the priest as a source of authority and on education. Most importantly, the clerics were led into church to confess before the altar, whereas the lay penitent should remain in the *atrium*, a distinction unique to the Bologna *ordo*. The three penitential masses that directly followed upon the rite may have been celebrated *ad libitum*.

This outline is not quite representative for all Italian *ordines*, since it is diversity which characterizes the Italian texts. Some texts, for example the *ordo* of the *P. Casinense*, describe a rite ranging from confession to absolution, while others omit one or more of the items listed above. The *P. Vaticanum*, for example, follows the traditional scheme, but does not indicate when the priest should deliver his judgment nor mention the absolution of the penitent. The detailed Bologna *ordo* stands in contrast with, for example, the *ordo* of ms. Vat. lat. 5751, which reduces its directions to a minimum: it cites a canon of the second capitulary of Theodulf of Orléans and adds two prayers. In general, texts from South and Central Italy

¹ The rubric of ff. 121v-122r *TUNC SACERDOS DET ILLI IUDICIUM SECUNDUM CANONES AUT SECUNDUM QUOD ILLI IUSTUM UISUM FUERIT* is found in the *ordines* of Vat. lat. 5768, f. 37r (Bobbio; s. X-XI) and *P. Vallicellianum III* (ms. B. 58; Milan? s. XI-XII): *indicet eis sacerdos ieiunium secundum quod illi melius uisum fuerit, quia ipsius arbitrio consistit modo penitencie.*

are less abundant in information than their North Italian counterparts.¹ The *ordo* of the *P. Vallicellianum E. 62*, for instance, does not make mention of the assignment of a penance to the penitent. This text also refers in the last absolution prayer to the penitent's acceptance of 'penitential dress', but no rubric actually describes such a ritual.² With regard to the absolution of penitents, which is dealt with below, most Italian *ordines* of the eleventh century require that the absolution take place immediately after penance has been imposed on the penitent before the completion of his or her penance.³ In contrast, the *ordines* of the *P. Lucense* and the *P. Vaticanum* do not refer to any absolution; possibly, such information was omitted, because it was supposed to be known to their users. If this was the case, it means that hearing confession was well established by the eleventh century.

Compilers not only omitted parts, but also introduced new elements into their *ordines*, such as masses said by a priest on behalf of the penitent. The inclusion of mass as a part of the rite was perhaps a novelty introduced by the *PRG*, the earliest source in which this occurred. Masses constituting an integral part of penitential liturgy, often based on mass 146 of the *PRG*, are almost exclusively found in eleventh- and twelfth-century South and Central Italian sources. A notable exception is the North Italian Bologna *ordo* which contains three of them, none of which are based on those of the *PRG*.⁴ Sometimes the mass is placed after the judgment of the priest and before the absolution of the penitent(s), such as in ms. Vat. lat. 1339, Vallicelliana B. 8, and the *P. Lucense*. In other texts the mass is placed after the absolution, as in the Bologna *ordo*. The texts do not indicate whether the sequence of confession – mass – absolution was supposed to take place in one, two, or three 'sessions', nor do they indicate whether the mass was an essential part of the liturgy.⁵ Diversity also characterizes the use of prayers in Italian *ordines*. Many prayers frequently recur in *ordines*, but there certainly was no fixed set of prayers for penitential liturgy. Besides, new prayers were composed until at least the twelfth century. The *ordo* of the *P. Vaticanum*, however,

¹ The first *ordo* is edited by M. Tosi, 'Arianesimo Tricapitolino norditaliano e Penitenza privata Iroscozzese: due piste importanti per riprendere la questione critica delle opere di Colombano II', *Archivum Bobiense* 12-13 (1991-1992) pp. 5-288, on pp. 212-213. The priest should interrogate the penitent, assign a period of penance, and exhort him to refrain from all evil through *labore et gemitu* and *multum jejuniis uigiliis*. A final set of prescriptions, also recorded in the *ordo* of the *P. Vaticanum*, is incorporated as canon 121 at the end of the penitential (Kottje ed., CCSL 156, p. 168).

² The initial question preceding the absolution prayer: *Vis^{uultis} in mestimentum (!) penitentie^{uolumus}*.

³ Examples are the *ordines* of the *P. Casinense*, ms. Vat. lat. 5768, ms. Vat. lat. 4772 (Arezzo; s. XII) and *P. Vallicellianum III* (ms. B. 58), and Milan, Ambrosiana, T. 27 (Lambot ed.).

⁴ North Italian *ordines*, such as Vat. lat. 5768, Vat. lat. 4772 (Arezzo; s. XII) and *P. Vallicellianum III* (ms. B. 58), Milan, Bibl. Ambros., T. 27, Barcelona, Bibl. Univers., 228, the Verona and Bobbio *ordines* edited by Muratori, Paris, BNF, Mazarineus 525, do not contain masses for a penitents. Some South Italian *ordines* (*P. Casinense*, the *P. Vaticanum*, and *P. Vallicellianum E. 62*) do not contain them either.

⁵ See Hamilton's (*Practice of penance*, p. 127) comments on the mass of *ordo* 136 of the *PRG*.

does not include prayers at all, which raises questions about both the extent to which *ordines* reflect the liturgy performed and how the *ordines* were intended to be used. The evidence shows that the priest had a certain freedom in staging the ritual, as, for example, in the *alia* rubrics for the prayers which make clear that confessors were free to choose prayers and to impose penance as in the Bologna *ordo*. It is thus difficult to determine to what extent the ‘*ordo*’ and the ‘rite’ as it was performed coincide, but one must be careful to distinguish between them.¹ Yet textual and manuscript evidence shows that *ordines* were closely related to liturgical practice. Sarah Hamilton and Mary Mansfield have concluded on the basis of the diversity of customs recorded in the liturgical texts that *ordines* were deliberately changed in response to specific local needs.² Moreover, *ordines* provide us with information about the ideas underlying confession and penance and communicate the rationale of penance and confession.

Secret and public penance/the seal of confession

Whereas theologians such as Poschmann and Vogel carefully distinguished private from public penance, nowadays scholars pay more attention to the public aspects of private penance.³ In fact, Mayke de Jong noticed that the term *paenitentia privata* is not used in the eighth and ninth centuries and that Carolingian authors usually refer to *paenitentia secreta* or *occulta* instead of *privata*.⁴ Most *ordines* are simply denoted ‘*ordo* for giving penance’ by their rubrics. As for the Italian liturgies of confession, Hamilton analysed a number of North Italian *ordines* and demonstrated that their liturgies often exceeded the boundary between public and private penance and showed that these texts admitted the possibility of groups of penitents making their confessions.⁵ The admission of groups to confession was not confined to North Italian texts, but was also provided for by South and Central Italian ones. In Central and South Italy more or less hybrid rites came into existence. The fact that early sources do not describe such hybrid forms does not mean, however, that these did not exist prior to ca.

¹ On problems related to the study of liturgical texts see Mansfield, *The humiliation of sinners*, pp. 161-162.

² Mansfield, *The humiliation of sinners*, pp. 161-162. This stance is also defended by Hamilton, *Practice of penance*, pp. 105-106: “[R]ecent research has demonstrated that individual rites can be related to specific circumstances”. She also pointed out that “minor variations and discrepancies within the manuscripts of particular families” point to *ordines* responding to specific needs.

³ See Mansfield, *The humiliation of sinners*, De Jong, ‘What was public about public penance?’ pp. 863-902, Hamilton, *The practice of penance*, and Meens, ‘Frequency and nature of Early Medieval Penance’, pp. 47-52.

⁴ De Jong, ‘What was public about public penance?’ pp. 863-902. The term ‘private’ is used for the first time in the tenth-century Fulda Sacramentary, *ordo* 55, which is rubricated *Ordo priuatae seu annualis poenitentiae* (Richter and Schönfelder ed., *Sacramentarium Fuldense saec. X*, pp. 42).

⁵ Hamilton, *Practice of penance*, pp. 166-172. The public character of these *ordines* was also noted by Jungmann, *Die lateinischen Bussriten*, p. 194.

1000.¹ Italian *ordines* that provided for the possibility of collective confession can roughly be divided into two groups. There is a North Italian group consisting of the *ordines* of the Arezzo pontifical (ms. Vat. lat. 4772), the *P. Vallicellianum III* (ms. B. 58), and ms. Milan, Ambrosiana T. 27. The other group consists of the Central and South Italian *ordines* of, among others, the *P. Lucense*, the *P. Vallicellianum E. 62*, ms. Rome, Bibl. Vallicelliana, C. 32, and ms. Vallicelliana B. 63. In the first category of texts, penitents entered the church collectively, but are then singled out one by one for interrogation, judgment, and absolution. The Bologna *ordo* leaves the possibility open for saying the first preparatory prayer over more than one penitent. The other texts are addressed to a single penitent, suggesting that the rest of the rite was centered around the individual confessant. The *ordo* of ms. Milan, Bibl. Ambrosiana, T. 27 requires the priest to ask the penitents assembled outside the entrance of the church whether they ‘want to come to penance’. After the penitents had answered affirmatively, the priest should take each individual by his right hand and lead him or her into the church for confession.² The remainder of the *ordo* refers to a single penitent, indicating that confessants came as a group to confession to be interrogated individually. The *ordines* of ms. Vallicelliana, B. 58 and ms. Vat. lat. 4772 require that first ‘those who must confess their sins are introduced into the church’. After they have prostrated themselves in front of the priest and the priest had recited litanies and prayers, the priest takes his seat before the altar with a cross on his right side and receives each penitent individually to hear his confession. Confession, judgment, and absolution may have been visible for the group of penitents, but they were not carried out collectively.

The South and Central Italian texts leave room for a greater participation by the group in the rite. The *ordo* in ms. Vallicelliana, C. 32 addresses, save from the part where the priest questions the penitent about his sins, almost all its texts to a group of penitents.³ With regard to the *ordo* of the *P. Vallicellianum E. 62*, it is not clear which parts were administered to a group and which to the individual confessant. Initially its rubrics refer to one penitent, but then the texts switches back and forth from plural to singular. Usually the scribe filled in singular forms above the line on top of the plural, but this is not always the case.⁴ The

¹ See Hamilton, *Practice of penance*, pp. 109-110.

² Ed. Lambot, pp. 35-36: *Egrederere foras ostium aecclesiae et dic eis: Vultis ad paenitentiam uenire? R. Volumus. Tunc suscipiat sacerdos singulatim per dexteram manum... etc.*

³ Ms. Rome, Bibl. Vallicelliana, C. 32, *ordo IX*, 130-134 (Odermatt, *Ein Rituale in beneventanischer Schrift*, pp. 292-293): *Tunc inquirat eum sacerdos de omnibus peccatis, inprimis de octo vitiis principalibus... Post confessa crimina interroget eum sacerdos, quale ministerium faciat... impone illi penitentiam... Penitens faciat confessionem ita dicens: Confiteor deo omnipotenti... The misereatur and absolution prayers address the group.*

⁴ *P. Vallicellianum E. 62: QUID TU A NOBIS UENISTI FRATER. RESPONDEAT. Volo ut det michi^{nobis} penitentiam et confessionem. INTERROGA EUM: Videte fili, ne cum aliquo homine non habeatis hodium et debitum...*

exhortatory sermon first warns the individual penitent not to withhold from confessing his sins (*Fili noli erubescere*) but at the end confusion returns (*Nunc dicite quicquid peccasti...*). The same ambiguity occurs in the supplement to the *ordo* of the *P. Lucense* written in the margins of its manuscript. The questions as to whether the penitent is willing to confess or renders himself guilty of sin are put in the singular, while the prayers are addressed to the group with the singular cases put above the line.¹ The prayers and rubrics of the regular *ordo* are all addressed to a single penitent. The textual confusion makes it clear that the authors of *ordines* were accustomed to multiple penitents and therefore did not bother to distinguish in their texts between a single and a group of penitents.

It is clear that parts of their rites could be carried out collectively. Even though collective and public to a considerable extent, nowhere do the texts indicate that such rituals were staged before a public as if they were shaming rituals.² The penitents were no symbolic scapegoats as in the Ash Wednesday rites for public penance. The fluid boundaries between public and secret aspects of penance do suggest a lack of importance attached to complete secrecy. Yet, the notion that confession should be made in secret was not entirely unknown, since several regulations on the seal of confession circulated in Italy. The preface to the *P. Oxoniense II*, copied into many Italian codices, warned priests that confession and judgment should be kept secret at all times. A Frankish canon also found in several Italian canonical collections threatens those priests who had passed onto their relatives or friends what had been said at confession with penance and deposition from office.³ A ruling recorded in the *P. Casinense*, the *Coll.5libr.* and the *Coll.9libr.* assigns deposition and lifelong pilgrimage to priests who had ‘made known what should have been concealed’.⁴ These regulations show the importance attached to the seal of confession, but at the same time point to the frequent

¹ *P. Lucense*, f. 2v: *Vis agere ueram penitentiam? Respondet: Volo^{lumus}... Reddite culpauilis deo de omnibus peccatis uestris? Reddo. Promitti mihi uera emendacione? Promitto...* F. 3r: *Inclina... respicere dignare super hos famulos et <famulas> tuas, qui hodie in manibus nostris sunt tradituri... Ego uos^{fe} suscipio in oratione, suscipiad uos deus in regnum suum celestem, ut scribere dignetur nom<en> uestrem^{num} in libro uite.*

² The assumption that ritual has an essentially social function is questioned by Mansfield, *Humiliation of sinners*, pp. 10-12. See also P. Buc, *The dangers of ritual. Between early medieval texts and social scientific theory* (Princeton 2001) pp. 1-11 and pp. 237-247.

³ Ms. Montpellier, 387: *Caueat ante omnia sacerdos, ne de is qui ei confessi sunt peccata sua alicui recitet quod ei confessum est. Non propinquis, non extraneis; nec quod absit pro aliquo scandalum. Nam si hoc fecerit deponatur et septem annos peniteat.* It is also found in the *Coll9libr.* IX,128 (Vat. lat. 1349, f. 216r), *Coll.5libr.* IV,69,2 (Vat. lat. 1339, f. 180v) and in Gratian’s *Decretum*. See also Körmtgen, *Studien zu den Quellen*, p. 211.

⁴ *P. Casinense*, c. XII,17: *Si quis sacerdos palam fecerit et secretum penitentię usurpauerit et quauis homo intellexerit, et declaratum fuerit quem celare debuerit, ab omni honore suo in cunctum populum deponatur et diebus uite suę peregrinando finiat.* Cf. *Coll.9libr.* IX,128 and *Coll.5libr.* IV,69.

violation of this seal. Moreover, these regulations require that the penitent's confession and the priest's judgment remain secret, but they say nothing about the rest of the rite.¹

The fact that many texts presuppose a collective rite of penance indicates that confession was made at specific times, such as holy days, before and after the mass, or by announcement and appointment. That confession was perhaps made by appointment is supported by the rites being quite long and needing some time for a priest to prepare. The admittance of groups testifies to the establishment and popularity of confession by the eleventh century. On specific days priest could apparently expect groups of Christians to attend who were willing to make their confessions.

Entry into penance; initial rites; place of confession

The reception of confessants into church according to the Bologna *ordo* illustrates how authors of *ordines* used and rearranged their sources and gave them a new interpretation. When a confessant came to make his confession, the *ordo* prescribes that the priest close the door of the church and tell the confessant to prostrate him or herself outside in the atrium.² The priest should begin terce and afterwards prostrate himself before the altar. Then he said the Lord's prayer and the usual preparatory prayer together with a series of *preces*.³ As in the *ordo* of the Frankish *P. in II libris*, the priest should receive the penitent with his right hand extended, upon which he or she should promise to make amends. Unlike the *P. in II libris* which allowed all penitents to the altar, the Bologna *ordo* reserved this procedure to clerics while lay confessants remain *ante atrium* for further interrogation.⁴

References to the *atrium* of the church are found in North Italian rather than South and Central Italian texts, which, in fact, hardly mention any place for confession at all.⁵ The

¹ Mansfield, *The humiliation of sinners*, p. 79. The confessional was a late medieval invention, popularised by Carlo Borromeo in the sixteenth century.

² Ff. 103v: *CLAUSO HOSTIO, DICAT EI UT PROSTERNAT SE IN ORATIONE FORIS ATRIO, ET SACERDOS INCIPIAT TERCIAM ET FINEAT CUM ORATIONE SUA SECUNDUM ORDINEM. POSTEA LACTET SE SACERDOS ANTE ALTARE IN SECRETO ET DICAT. Pater noster...*

³ The version of *Domine deus omnipotens propitius esto mihi* ends with the phrase *Tribue ei\eis queso remissionem omnium peccatorum*, which also appears in the *P. Casinense*. The *ordo* for clerics uses the abbreviated version of this prayer which occurred for the first time in the *ordo* of the *P. Sangallense Tripartitum*.

⁴ Ff. 104v-105r: *DEINDE SACERDOS ACCIPIAT PENITENTEM EMENDATIONEM UICIORUM SUORUM PROMITTENTEM PER MANUM DEXTRAM, ET DUCAT EUM ANTE ALTARE, SI EST PRESBITER AUT MONACHUS AUT CLERICUS. SI UERO EST LAICUS UEL FEMINA, STET ANTE ATRIUM ET INTERROGET EUM SI IAM CONFESSUS FUIT ET SI ILLAM CONFESSIONEM BENE OBSERUAUIT...*

⁵ Hamilton, *Practice*, pp. 166-170 and Jungmann, *Die lateinischen Bussriten*, pp. 190-196. *Ordo* of ms. Ambrosiana T. 27 (ed. Lambot, pp. 35-36): *Egredere foras ostium aecclesiae... Et ingressi in aecclesiam prosternant (!) se pariter in oratione ante altare... P. Vallicellianum III* (according to ms. B. 58): *Tunc introducantur his qui peccata sua confiteri debent. Quibus in medio ecclesie in faciem prostrati sacer[dos] dicat... His expletis, et hii qui cum eo sunt surgant. Tunc sacerdote ante altare sedente et iuxta eum crux domini in dextera parte. Vnusquisque pro se singulariter ueniens...*

solemn entry of the penitents into the church could have been intended to imitate public penance.¹ Prostration before the altar is already recommended in ninth-century *ordines*.² There is also early evidence that confession itself took place before an altar, for the *P. in II libris* explicitly demands that the priest lead the penitent by the hand to the altar for confession. While the oldest manuscript of this text was written in northern France, the prescription is far more often recorded in Italian sources.³ Two North Italian *ordines* of ca. 1100 are more specific: the priest, sitting before the altar, should interrogate the penitents about their beliefs and their sins.⁴ The fact that the Bologna *ordo* only allowed clerics and monks to proceed to the altar, while lay people could not even enter church, shows that the altar was not universally accepted as the place of confession. One could ask why the altar, the holiest place in church, was chosen for the confession of sinners. The allocation of confession to the altar had a precedent in Jerome's commentary on Joel in which he explains that 'the temple and the altar' are the places most suitable for penance and confession.⁵ A late reference to the altar is found in bishop John of Avranches' *De officiis ecclesiasticis* (1061-69) which stipulates that the people and the clergy confess their sins individually before the altar after the ninth hour of Ash Wednesday.⁶ The bishops who had administered the penance of Louis the Pious are reported to have laid down the written confession of the emperor on the altar.⁷ Before the introduction of the confessional at the end of the Middle Ages, the altar seems to be considered the place where a confession could reach God in the best possible way.

¹ See Mansfield, *The humiliation of sinners*, p. 176 and T.N. Tentler, *Sin and confession on the eve of the Reformation* (Princeton 1977) p. 82. Regino of Prüm, *Libri duo de synodalibus causis: In capite Quadragesimae omnes poenitentes qui publicam suscipiunt aut susceperunt poenitentiam, ante fores ecclesiae se repraesentent episcopo civitatis... Post haec in ecclesiam eos introducat*. Cf. PRG 99,44-73 and 99,223-229 (*Le Pontifical Romano-Germanique* 2, pp. 19-21 and 59-61). Important parts of the Ash Wednesday and Maundy Thursday rites were performed outside the church.

² For instance *P. Sangallense simplex* and *P. Floriacense* (Kottje ed., CCSL 156, pp. 97/119).

³ This passage was incorporated into the *ordines* of ms. Vercelli, Bibl. Capitolare, CLXXVIII, ms. Paris, Mazarineus 525 (cf. Gastoué, 'Un Rituel noté de la province de Milan', pp. 496-500), the Verona and Bobbio *ordines* of Muratori, *Antiquitates Italicae* V, pp. 720/730, and the *P. Casinense*. Cf. Jungmann, *Die lateinischen Bussriten*, pp. 182-83.

⁴ *Ordo* of *P. Vallicellianum III* (ms. B. 58, f. 81v): *Tunc sacerdote ante altare sedente, et iuxta eum crux domini in dextera parte. Vnusquisque pro se singulariter ueniens, humiliter, flexis genibus stet ante eum, que sacerdos intuitus blande ac suaviter interroget eum fili. Credis in patrem omnipotentem...* Rubric is also found in the *ordo* of ms. Vat. lat. 4772 (Schmitz II, pp. 404).

⁵ *In Ioelem* II,15/17, *Commentarii in prophetas minores*, S. Hieronymi presbyteri opera 1,6, CCSL 76 (Turnhout 1969) p. 185: *Locusque aptus paenitentiae et confessioni, templum est et altare*.

⁶ Quotation recorded in Jungmann, *Die lateinischen Bussriten*, p. 278: *In Capite ieiunii Nona dicta clerus et populus ante altare, ab unoquoque confessione singulariter facta et poenitentia accepta, prosternantur, et sic ab episcopo vel a maiore ecclesiae sacerdote absolvantur*.

⁷ De Jong, 'Power and humility in Carolingian society', pp. 29/44. See the *Relatio episcoporum* of the events, *Capitularia regum Francorum* II, A. Boretius and V. Krause ed., MGH Legum sectio II (Hannover 1897) p. 55: *cartulam suorum reatum et confessionis... quam ipsi super altare posuerunt...*

With the exception of the Bologna *ordo*, which places confession after terce, texts rarely specify that confessions should be made at a particular time of the day. The *ordines* for public penance indicate that confessions should be made before or on Ash Wednesday, that is at the beginning of Lent.¹ A sermon included in two *ordines* from Bobbio reports that people should make their confessions on ‘certain holy days’.² Ninth-century sources, like the first capitulary of Theodulf of Orléans, require that confessions be made in the first week before the beginning of Lent.³ The famous canon 21 of the Fourth Lateran Council (1215) demanded confession once a year without mentioning any specific date or time. The admission of groups to confession in several *ordines*, as has been argued above, also suggests that confession happened on festival days or times which had previously been announced. I have not traced references to a particular hour in other *ordines*, except for the *ordo* for the reconciliation of penitents, which places the re-entry of penitents into church at the third hour of Maundy Thursday.⁴ Finally, the above mentioned John of Avranches reported that people and clergy should confess their sins after the ninth hour of *caput ieiunii*.

In the Bologna codex this is the point of departure for the *ordo* for the confession of the clerics and monks. The interrogations of penitents that follow in the ‘lay’ *ordo* were chiefly taken from the Reims *ordo*. The penitent should answer whether he has confessed earlier and corrected his faults, and whether he has ‘paid his debts’ to others, or given up his feelings of anger and hatred against others. If these conditions are met, the sinner may be ‘admitted’ to confession by the priest. First the confessant is asked whether he or she wishes to do ‘true penance’. This initial question is particularly popular in *ordines* of the later eleventh and twelfth centuries and goes back to those found in the Reims *ordo* and the *ordo* of the *P. in II libris*.⁵ Some faithfully reproduced the questions of these ninth-century Frankish texts, while others formulated their own questions.⁶ Hence, like other Italian texts, the

¹ Jungmann, *Die lateinischen Bussriten*, pp. 48-51: Jungmann noticed a shift from the *initium quadragesimae*, falling on Monday or Tuesday, to Ash Wednesday in the early Middle Ages. See also T.J. Talley, *The origins of the liturgical year* (second edition; Collegeville 1989) pp. 222-225.

² *Ordo* of Muratori (*Antiquitates Italicae* V, p. 727) and that of ms. Vat. lat. 5768: *Ecce deo gratias fratres karissimi dies sancti sunt in quibus debemus confiteri deo peccata nostra...*

³ First capitulary c. 36 (*Capitula episcoporum* I, Brommer ed., MGH, p. 133).

⁴ PRG 99,223-224 (*Le Pontifical Romano-Germanique* 2, p. 59): *hora tertia sonetur signum, ut omnes veniant in ecclesiam in qua chrisma debet consecrari. Tunc egreditur penitens de loco ubi penitentiam gessit, ut gremio presentetur ecclesiae*. See also Mansfield, *The humiliation of sinners*, pp. 184-185.

⁵ *P. in II libris* (ms. Montpellier, 387): *Interrogas eum quid postulas? Ille autem respondebit: Tibi deo et tibi sacerdoti confessionem meam dare uolo. Reims Ordo: Dices ei: uis tuam confessionem dare?*

⁶ See the *ordines* of the manuscripts Milan, Ambros. T. 27 and Siena, Bibl. Comunale, F. VI, 8 (Siena? s. XII). Both contain the interrogation of the Reims *ordo*.

Bologna *ordo* requires that the penitent express his willingness to do *uera paenitentia*.¹ In most Italian texts, these questions are posed after the initial prayer *Domine deus omnipotens propitius esto*, but sometimes also as part of the interrogation concerning the articles of faith.² In imitation of the Reims *ordo*, the Bologna *ordo* demands that the penitent renounce the tricks of the devil. This renunciation was incorporated into many Italian *ordines*, but the Bologna *ordo* substituted this part with a query that is much closer to the renunciation in baptismal *ordines*.³ The dialogue ends with questions as to the articles of faith like those of the *ordo* of the *P. in II libris*.

Prostration

According to the Bologna *ordo*, the penitents (lay or cleric) should prostrate themselves when they come to make their confessions. Meanwhile the priest ‘throws himself before the altar’ in secret after having said terce. The lay penitent should prostrate him or herself for a second time after the litany and before his or her confession, whilst the priest says prayers and Psalms.⁴ Prostration, lying stretched out or kneeling on the floor, entered the *ordines* probably via public penance. It embodied a state of total humiliation and sorrow before God, the priest, and, in the case of public penance, the people. Prostration already occurs in Frankish *ordines* from the early ninth century.⁵ Some texts only demand that the penitent prostrate himself, whereas other texts require that both priest and penitent prostrate themselves together or one

¹ Vallicelliana B. 8/B. 63: *Vis agere ueram paenitentiam de omnibus peccatis tuis. et conuertere de uia mala ad bona? RESP. Volo. P. Lucense: Vis agere ueram penitentiam? Respondet: Volo^{lumus}. Milan, Ambr. T. 27 sup.: Egrederi foras ostium aecclisae et dic eis: Vultis ad paenitentiam uenire? R. Volumus. P. Vallicellianum E. 62: TUNC SACERDOS INTERROGET PENITENTEM. QUID TU A NOBIS UENISTI FRATER.. RESPONDEAT. Volo ut det michi^{nobis} penitentiam et confessionem, promittitis recipere ueram penitentiam. Vallicelliana C. 32: POSTEA INTERROGET EUM SACERDOS ET DICAT: Quid queritis, fratres, ut quid confugistis ad ecclesiam dei? R/. PENITENS: Penitere querimus de peccatis nostris. Ordo 46 of *PR saec. XIII* (Andrieu, p. 480): *Frater, pro qua causa uenisti ad ecclesiam istam?**

² Ms. Bologna 2679, f. 105r-v: *Fili uel soror, uis agere ueram penitentiam et conuertere de malo ad bonum? RESPONDEAT. Volo. INTERROGET. Abrenuntias sathane operibus et omnibus pompis eius? RESPONDEAT. Abrenuntio. INTERROGET. Vis dimittere omnibus qui in te peccauerunt, ut deus omnipotens dimittat tibi omnia peccata tua? RESPONDEAT. Volo. INTERROGET. Credis in deum patrem et filium et spiritum sanctum? Etc.*

³ The Bologna *ordo* declares a renunciation of *sathane... pompis* instead of *adinuentiones diaboli*. The *ordines* of mss. Vallicellianum B. 8, B. 63, C. 32, E. 63 (first *ordo*, and *ordo* of *P. Vallicellianum E. 62*), B. 58, *P. Vaticanum*, and *P. Lucense* include a version closer to the Reims *ordo*.

⁴ *TUNC PROSTERNAT SE PENITENS IN TERRA ET DICAT PRESBITER HOS PSALMOS*. When the priest begins his sermon, the penitent may rise again.

⁵ On prostration: G. Koziol, *Begging pardon and favor. Ritual and political order in early medieval France* (Ithaca and London 1992) pp. 62-70. *P. Floriacense* and *P. Sangallense* (R. Kottje ed., CCSL 156, pp. 97-98): *cum ipso prosternat se sacerdos ante altare et confitens... cum fletua ambo pariter prostrati... Et postea surgant pariter atque de uno, si credit pro ipsa confessione ueniam... postea prostrati in terra domino deo caeli commendetur...*

after the other.¹ By the tenth century, the custom described in the *P. in II libris* of prostration before the altar also made inroads into northern Italy.² In general, prostration could occur at any moment of the rite, before and after confession, or as part of the absolution rites.³ The act of prostration before confession seems to have prevailed in most *ordines*, including the Bologna *ordo*.⁴ A custom related to prostration and included in *ordines* written north of the Alps hardly occurs in Italian documents: kneeling *ad genua sacerdotis*. It does not occur in Italian sources before the twelfth century.⁵ Either the *ordines* which prescribed this usage never reached Italy or it was simply ignored by Italian liturgists.

Commendation of penitents

After the preliminary questions an interesting and novel ritual took place. The penitent should commend him or herself to God by saying a triple *In manus tuas domine commendo spiritum meum*, after which the priest takes his hands and addresses the verse *Suscepimus deus* (Psalm 47,10-11: ‘We have received thy mercy, o God, in the midst of thy temple’).⁶ In the *ordo* for clerics, the penitent should, in addition, raise his eyes and hands to heaven while he says the *In manus tuas*, before the priest takes his hands.⁷ The Bologna *ordo* is one of the few North Italian sources that contains this ritual, which is chiefly found in South and Central Italian *ordines*. Texts from these two regions, however, add after the *Suscepimus deus* the entire Psalm 47 (*Magnus dominus*), which is then again followed by *Suscepimus deus*. These texts

¹ Reims *ordo* (ms. Reg. lat. 191): *Postquam de istas confessus fuerit, proicite uos ambo pariter in terra*. Only the penitent prostrates in the *ordines* of PRG 136 (and related texts as the *P. Lucense* and ms. Berlin, Hamilton 290), the *P. Casinense*, the Arezzo *ordo*/*P. Vallicellianum III*, ms. Vercelli, Bibl. Capitolare, CLXXVIII, Bobbio *ordines* of Muratori, and that of ms. Vat. lat. 5768.

² *P. in II libris* (ms. Montpellier, Bibl. Universitaire, 387): *Postquam confessus fuerit iactent se pariter ante altare*. The Bologna *ordo* this place is reserved for the priest confessor.

³ The *P. in II libris* prescribes an act of prostration after the priest’s judgment, likewise the *P. Casinense* and the *ordines* of Monza and Milan, Ambros. T. 27. Prostration both at the beginning of the rite and after confession: ms. Vercelli, Bibl. Capit. CLXXVIII, the Bobbio *ordines* (ms. Vat. lat. 5768 and *ordo* of Muratori), and the Romano-Germanic *ordines* 136 and 144. In the *P. Casinense* the penitent has to prostrate himself in the absolution rites.

⁴ Cf. the *ordines* of the PR saec. XIII, the *P. Lucense*, and ms. Vallicelliana C. 32

⁵ Delen, Gaastra, Saan, and Schaap, ‘The *Paenitentiale Cantabrigiense*’, pp. 341-373: *inclinat se ad genua sacerdotis* after the interrogation as to the Creed. *P. Parisiense Compositum* (Meens, p. 504): *sacerdos (et?) penitens genibus in terra curuatis dicant letanias...* The *P. in II libris* of ms. Montpellier, Bibl. Universitaire, 387 places it after confession: *Tunc fac eum confitere omnia peccata sua in quantum recordare potest. Multa sunt peccata mea in uerbis... et inclinat se ad genua sacerdotis et dat illi poenitentiam*. The same wording is found in PRG 99,44. The only Italian *ordo* that prescribes it is that of ms. Vatican, Borgh. lat. 211 (Montecassino; s. XII), an abbreviation of PRG, *ordo* 136.

⁶ F. 106r: *TUNC FACIAT EUM DICERE TRIBUS UICIBUS. In manus tuas domine commendo spiritum meum* (cf. Luc. 23,46). *POSTEA SUSCIPIAT EUM SACERDOS IN SUAS MANUS ET DICAT HUNC UERSUM. Suscepimus deus misericordiam tuam in medio templi tui. Secundum nomen tuum deus ita et laus tua in fines terre iusticia plena est dextera tua* (Ps. 47,10-11).

⁷ F. 128v: *DEINDE PENITENS ELEUATIS OCULIS AC MANIBUS IN CĒLUM*.

are to be recited either before or after the litany, and in any case before confession.¹ The *P. Vallicellianum E. 62* has a different reading: the penitents are to fold their hands in prayer while the texts are said.² While the combination *Suscepimus – Magnus dominus* was part of the liturgy of Candlemas, the origins of it should be found elsewhere, because *Magnus Dominus* was probably a later addition to ritual. Alban Dold and Ambros Odermatt traced the origins of this combination back to rites of monastic profession, but without mentioning any particular customary.³ A third possibility is that it was meant as a commendation-like ritual that had its origins in the complex of rites for the sick and the dying.⁴ Since the combination cannot be found in such texts before 1100, this cannot be established with certainty. The last and most likely possibility is that the custom was particularly designed for the rite of penance, even though possibly inspired by the rite of commending souls of the deceased to God.⁵ The verse *Suscepimus deus* is already included in the *ordo* of a tenth-century manuscript from Vercelli, although without the taking of hands or the *In manus tuas*. The rubric that precedes the text states that the priest should receive (*suscipiat*) the penitent ‘*ad animam suam*’, which could well have been a misreading of *ad manum suam*.⁶ This primitive usage seems to have evolved from taking the hands of the penitent accompanied by the singing of *Suscepimus deus*.⁷ Gradually, other texts were added, such as Ps. 30,6 (*In manus tuas*) and Psalm 47. Below, we will see that in the South and Central Italian texts prayers were attached to the series. The custom was to have a long afterlife, since it entered *ordo* 46 of the thirteenth-century Roman Pontifical.

Capitula, litanies

After the ‘commendation’ the priest said a series of *capitula*, short prayers based on biblical verses which are sometimes also called *preces* or *versiculi*, a long litany of the saints, and

¹ For example in the *P. Lucense* (...*manibus eius in suis manibus suscipiens, sibi petere penitentiam indicet. Et in manu domini animam et spiritum commendare...*), Rome, Bibl. Vallicelliana C. 32 (ed. Odermatt, p. 285: *Et ego vos suscipio in manibus meis carnaliter...*), and *ordo* 41 of the Roman pontifical of the thirteenth century. The other northern manuscript that contains this ritual is Ravenna, Bibl. Communale, Scans. 131, ord. 4, lett. D, membr. 2o (ed. *PL* 151, 914; *Fonte Avellana?* s. XII).

² *P. Vallicellianum E. 62: Iungite manus uestras ad deum patrem omnipotentem. In manus tuas...*

³ Dold, ‘Eine alte Bußliturgie’, pp. 113-116, Odermatt, p. 156. I have not been able to trace this usage in customs from before 1100.

⁴ It may be interesting to note that the *In manus tuas – Suscepimus* occurs in the *ordo* for deathbed penance of the Bologna manuscript and in the *ordo ad uisitandum infirmum* of ms. Vallicelliana B. 63 (Sant’Eutizio; s. XI^{ex}). No penitential *ordo* prior to the eleventh century includes the combination.

⁵ According to Arnold Angenendt the *Commendatio animae* was inspired by Ps. 30,6 *In manus tuas*. See his ‘Theologie und Liturgie der mittelalterlichen Toten *Memoria*’, pp. 169-170.

⁶ The *ordines* of ms. Vercelli CLXXVIII (Vercelli; s. X^{med}, f. 3v) and ms. Vat. lat. 1339 (Narni; s. XI²; Dold, ‘Eine alte Bußliturgie’, pp. 94-130) include *Suscepimus* as separate verse or antiphon.

⁷ The Bologna and Vercelli *ordines* also mention the old custom of the *P. in II libris* (the priest takes the right hand of the penitent and brings him to the altar). The new ritual, thus, could have been inspired by the older one.

again *capitula*. Such *capitula* also occur at the very beginning of the rite of the Bologna *ordo*, although they seldom appear at this point in other texts. Unlike Psalms which can already be found in early *ordines*, *capitula* and litanies in the liturgy of penance seems to be a feature of the later penitential liturgy. Among the earliest documents that contain *capitula* are the Reims *ordo* and the *ordines* of the Paris and Saint Gall penitentials.¹ These *capitula* are short supplicative prayers usually based on Psalm verses and often consisting of a petition said by the celebrant that was answered by the participant in the rite. Amalarius of Metz had already connected some of them with penance.² By the tenth century they had become a standard feature of penitential *ordines*.³ There is uniformity as to the verses that were used in the *ordines*, both Italian and non-Italian ones. Most *ordines* of the later eleventh century borrowed their series from the *PRG ordines* 136 and 144, but a standard series of verses seems to have existed before the compilation of the *PRG*. Some North Italian *ordines* transmit a distinct series of *capitula* not recorded in texts from other regions.⁴ In general the use of *capitula* keeps pace with the gradual liturgification of confession: the more elaborate the *ordo*, the more *capitula* or *preces* it contains.

The litany of the saints included in the Bologna *ordo* begins with the *Kyrie eleison*, and then invokes God and Trinity, Mary, Apostles, and saints. It also lists specific dangers (sins, sickness, devil) from which the penitents should be liberated. The invocations are to be answered with *ora pro nobis*, *miserere nobis*, and *libera nos*. Michael Lapidge has shown that the litany of the saints originated in the Eastern Church and was probably introduced in Anglo-Saxon England by Theodore of Canterbury.⁵ The litany spread to the Continent from

¹ Reims *ordo* (*capitula*): *Dominus custodiet te ab omni malo* (Ps. 120,7), *Ne tradas domine animam confitentem tibi* (Ps. 73,19), *Respice in testamentum tuum et animas* (Ps. 73,20), *Confirma hoc deus quod* (Ps. 67,29), and *Domine exaudi* (Ps. 101,2). *P. Floriacense* (Kottje ed., CCSL 156, pp. 97-98; *capitula*): *Conuertere domine, Adiutorium nostrum in nomine domini, Ne memineris iniquitates nostras*, and at the end of the rite *Confirma hoc deus* and *Dominus custodi te ab omni malo*. The *P. in II libris* mentions *capitula* and *uersiculi*, which, as they are to be sung *cum gloria (patri)*, seem to denominate psalms. Cf. Meens, *Het tripartite boeteboek*, p. 208.

² See *Liturgisch Woordenboek II* (Roermond 1965-'68) cc. 2244-2249 and *Libellus officialis* 4, 2,23-24 and 4, 4,6/9, *Amalarii episcopi opera liturgica omnia II*, Hanssens ed., pp. 412, 424-425.

³ They are found in tenth-century sources like the *P. Cantabrigiense* (Delen et al., 'The *Paenitentiale Cantabrigiense*', p. 355), *PRG* 136 (Vogel, Elze ed., pp. 242-243), and the *ordines* of the Italian mss. Vercelli, Bibl. Capitolare, CLXXVIII and Barcelona, Bibl. Universitaria, 228.

⁴ Cited after ms. Vat.lat. 5768 (Bobbio; s. XI^m) ff. 37-38: *Exaudiat te dominus in die tri(bulationis). Mittat tibi auxilium de sancto. Memor sit omnis sacrificii tui. Tribuat tibi secundum cor tuum. Impleat dominus omnes petitiones tuas non cognoui. Non det in commotionem pedem tuum. Dominus custodiat te ab omni malo. Custodiat introitum tuum et exitum tuum. Fiat pax in uirtute tua. Benedicat tibi dominus ex sion et uideas bona hierusalem. Et uideas filios filiorum tuorum. Benedicat te dominus ex sion qui fecit celum et terram. Exsurge domine adiuua nos*. Also included in the *ordines* of ms. Vercelli, Bibl. Capitolare, CLXXVIII, f. 3v, *P. Vallicellianum III* (ms. B. 58; ed. Schmitz I, p. 778), and ms. Vat. lat. 4772 (ed. Schmitz II, pp. 404-405).

⁵ M. Lapidge, *Anglo-Saxon litanies of the saints*. HBS 106 (London 1991) pp. 13-41.

the ninth century and turns up in penitential *ordines* for the first time in the tenth century.¹ Apart from the litany of the saints, another type can be found in North Italian texts, which only invokes God in His different roles (*Deus omnium sanctorum, deus unus et incomprehensibilis* followed by *miserere nobis*).² This litany occurs far less frequently in Italian *ordines* than the litany of the saints.³

New prayers in Italian texts

After the litany and two prayers⁴, the penitent has to prostrate himself whilst the priest recites Psalms, *capitula*, and prayers. This sequence is repeated three times with different prayers and Psalms but with the same *capitula*. Most prayers stem from the Old Gelasian sacramentary, yet there are a few exceptions. The prayer *Petimus domine deus noster conditor caeli* can be found in the *ordo* of ms. Vatican, BAV, Vat. lat. 1339 and the first *ordo* of Rome, Bibl. Vallicelliana, E. 62, both from Narni. The prayer is a petition to God to look after the penitent(s) and to loosen the chains of sin, to free them from hell-fire and the snares of the devil and to send an angel to protect him for the rest of his life.⁵ An investigation of Italian documents of the eleventh and twelfth centuries reveals that many new prayers were compiled in this period. Some of them, such as *Petimus domine*, may have originated in the North, where a liturgical culture flourished from the tenth century.⁶ In the central and southern parts of Italy a comparable liturgical activity can only be traced back to the late eleventh century. This activity resulted in new prayers that dealt with the entering of the afterlife.

¹ Cf. *P. Cantabrigiense* (ed. Delen et al., 'The *Paenitentiale Cantabrigiense*', p. 357). Early Italian texts which include full litanies are the *ordines* of the ms. Barcelona, Bibl. Universitaria, 228 and ms. Vat. lat. 5768. The litany of *ordo* 144,2 of the *PRG* (ed. Vogel, Elze, p. 271) is not written out, but the text refers back to the litany of the *ordo* 139 for the anointing of the sick (edited on pp. 247-248).

² This type is found in Vat. lat. 5768, the Bobbio *ordo* of Muratori, the *P. Vallicellianum III* (ed. Schmitz I, p. 776), and the Arezzo pontifical of ms. Vat. lat. 4772.

³ Litanies of this kind are also found in the *ordines* of the *P. Vallicellianum E. 62*, the *P. Lucense*, the *P. Vallicellianum I* (Barcelona, Bibl. Universitaria, cod. 228).

⁴ *Exaudi quęsumus domine supplicum preces* (taken from the Reims *ordo*) and *Deus qui beato petro apostolo tuo collatis clauibus regni cęlestis animas ligandi atque soluendi pontificium tradidisti, concede propicius, ut intercessionis eius auxilio a peccatorum nostrorum nexibus liberemur*.

⁵ Ff. 113v-114v: *Petimus domine deus noster conditor cęli et terre, ut ilari uultu respicere digneris super hu^{nc} famulu^m tuu^m .ill. et omne uinculum peccatorum relaxare ei iubeas, que^m hodie ad medicamentum penitentię peruenire fecisti; da ei domine humilitatem perfectam, mansuetudinem quietam, caritatem fraternitatis, tolerantiam corporis, fac eu^m relinquere omnem concupiscentiam huius seculi, tibi que soli domino pura mente et deuoto corde seruire iubeas, quia tu dixisti nolo mortem peccatoris sed ut conuertatur et uiuat; libera domine animam famuli^e tui^e .ill. a iuditio gehenne ignis et a laqueo diaboli, mitte angelum tuum protectorem qui eu^m custodiat omnibus uite sue. Per.*

⁶ An example is the prayer for a *potentum aliquid ad penitentiam accedit* probably composed by Rather of Verona. See *Die Briefe des Bischofs Rather von Verona*, F. Weigle ed., MGH, Die Briefe der deutschen Kaiserzeit 1 (München 1977) pp. 189-192.

One group of prayers can be pinpointed to a specific region, more particularly to the city of Narni in Umbria. One prayer of this group, which begins with the words *Te inuocamus*, is recorded in the *ordo* of Vat. lat. 1339 and the two *ordines* of ms. Vallicelliana E. 62. This prayer implores God to convert His servants to His Law and to release them from their sins. God is beseeched to lift up the rejected, to free the chained, and to cure the wounded, and ‘to revive the penitents from their second death’. Paraphrasing psalm 50, God is asked to ‘create in them a pure heart and renew a steadfast spirit within them’ so that through their behaviour he will exalt the mother Church (*exaltare; exultare*, ‘rejoice’ in the first *ordo* of Vallicelliana E. 62). The prayer uses a remarkable number of biblical analogies, for example the opening of the gate of heaven for the people of Nineve and Christ’s promise to the good thief that he be received into heaven.¹ Biblical examples are also enumerated in a second prayer from the Narni group. This prayer asks God to look down mercifully upon His servants and to grant them indulgence, a supplication reinforced by a number of biblical examples mainly taken from the Gospel of Luke, like the confession of the crucified thief, the reordination of Peter, the parable of the lost son.² The other prayers are shorter and less evocative. One text is a petition to God to grant the penitents a period of penance (*spatium penitentiae*), so that they may please God ‘with a sincere confession before the day of our departure’.³ The prayer *Suscipere digneris*, which asks God to receive the sinners and to be merciful so that ‘they are worthy to join the holy church with their confession’, is found in the two *ordines* of Vallicelliana E. 62, but also in a manuscript now in Ravenna.⁴ The prayers are

¹ Cited after *P. Vallicellianum E. 62, ordo: Te inuocamus domine sancte pater omnipotens eterne deus, super hos famulos tuos et famulas, tibi genua flentes et omnia peccata sua confitentes, ut ab omnibus facinoribus eorum absoluti, in tua lege conuerti facias. Qui in cinere et cilicio asperses, sicut in nineue ciuitas que plantum populi sui aperuisti portas celorum. Pe[r] ipsum te domine deprecamur, ut erigas elisum, soluas compeditum, cures uulneratum. Tu enim latronem pendentem in crucem bona promictere dignatus es... Viui[fi]ca eum a morte secunda, ut non sit in tormentis... Vt de eorum conuersationem matrem ecclesiam facias exaltare. See also Vat. lat. 1339, oratio 20 (addressed to a single penitent), Dold, ‘Eine alte Bußliturgie aus Codex Vaticanus latinus 1339’, p. 104.*

² *P. Vallicellianum E. 62: Omnipotens sempiternus deus... respice propitius super hos famulos et famulas tuas... tribue eis indulgentiam clementissime pater. Qui israhelitico populo peccanti per penitentiam peccata condonasti. Qui dauid famulo tuo per confessionem ueniam tribuisti; qui umeris tuis ouem perditam reduxisti ad supernum ouilem; qui publicani preces exaudisti et in confessionem lacrimantem peccatricem non despexisti; qui paralitico peccata dimisisti et ab infirmitate sua sanasti. Qui filio adulescenti post dissipata substantiam penitentiam stolam candidam largiri dignatus es. Qui latroni in cruce suspeso, peccata remisisti et eum ad paradisi delicias perduxisti. Qui petrum lacrimantem suscepisti ad pristinum gradum illum restituisti. Quaesumus domine huic famulo tuo penitenti. Clementer ignosce, qui ultionem quod uiro denique in ecclesiam a partem sui corporis perdat. Vt gres tuus detrimentum patiat, set pro clementia tuae pietatis audire mereantur. Venite benedicti patris mei, possidete uitam perpetuam. Cf. Dold, ‘Eine alte Bußliturgie’, pp. 105-106, or. 22.*

³ *P. Vallicellianum E. 62: Omnipotens sempiternus deus, ne nos permictas perire, quia tua creatura sumus, concede nobis spatium penitentiae. Vt ante diem exitus nostri per ueram confessionem tibi domine placere ualeamus. Recorded in a different version as oratio quotidiana in a Libellus precum from Fleury (PL 101, 1402).*

⁴ *P. Vallicellianum E. 62: Suscipere digneris domine sancte pater omnipotens eterne deus famulos^{um} et famulas^{um} tuas^{um}... Praesta queso ut sicut per aquam et spiritum sancto dono tuae gratiae regenerati sunt.*

lively and elaborate, often appealing to biblical examples to strengthen their message, and testify to a flourishing liturgical culture in Central Italy, and more particularly to Narni as a centre of liturgical renewal in the later eleventh and early twelfth centuries.¹

Sermons

After the penitent had risen from the ground, the priest should preach (*predicet*) a couple of admonitions to the penitent. The first one is a general admonition, the second is addressed to the poor, and the third one is an exhortation to confess.² Many Italian *ordines* incorporate these sermon-like admonitions, which served the double purpose of teaching the meaning and necessity of penance as well as exhorting penitents to confess their sins. Already in the preface of the *P. Oxoniense II* and the *ordo* of the *P. Floriacense* the priest is told to instruct the penitents about the need of confession and penance for salvation. The earliest sermons can be found in the second capitulary of Theodulf of Orléans and the *Libri duo de synodalibus causis* of Regino of Prüm.³ The influential exhortation in the *PRG ordo* for deathbed penance summons the penitent to come forth before God in the sight of His angels and His saints to account for his iniquities, a message that is strengthened by such examples as the confession of the people of Nineve or the crucified thief.⁴ Italian *ordines*, whether or not inspired by this text, often cite these biblical quotations or give biblical examples of fruitful confession such as that of the crucified thief.⁵

The variety of admonitions in Italy indicates that the authors of *ordines* often prepared their own texts, while building upon existing models and borrowing older ideas about penance. Although the contents of all texts are more or less similar, it is impossible to ascertain which text influenced which. Three examples may be singled out to give an impression of what these texts sought to communicate: the Bologna *ordo*, the *ordo* of ms. Barcelona, 228, and the *P. Casinense*. The sermon of the Bologna *ordo* begins with Biblical

Concede propitius. Vt per ueram eorum confessionem sanctę tuę ecclesie aggregari mereantur. Per. Cf. Ravenna, Bibl. Communale, Scans. 131, ord. 4, lett. D (PL 151, 915; Ebner, Quellen und Forschungen, p. 133) and the first ordo of ms. Vallicelliana E. 62.

¹ This liturgical development coincided with an increasing book production and the creation of a distinctive local script in this region. See Supino Martini, *Roma e l'area grafica Romanesca*.

² No sermon is written out in the *ordo* for clerics, except for a reference on f. 129r-v: *INDE PREDICET PENITENTEM ET ADMONEAT UT A CULPIS PRETERITIS SE CUSTODIAT, A PRESENTIBUS UEL FUTURIS CAUEAT.*

³ There are no manuscripts of Regino's collection known to have been written in Italy. Perhaps Italian authors knew the text via Burchard of Worms. However, the *ordines* of for example the *P. Vaticanum* and *P. Casinense* are older than Burchard's collection.

⁴ *Ordo* 144 (*Le Pontifical Romano-Germanique II*, p. 273): *Accede, fili, ante Deum, in conspectu angelorum et sanctorum eius, et confiteri peccata tua...*

⁵ See the *P. Casinense*, *P. Vaticanum*, *P. Vallicellianum I* (ms. Barcelona 228), and *PRG* 144.

quotations demonstrating that God urges every Christian to confess his sins.¹ The penitent should mend his ways and divert his attention to the afterlife, since ‘one does not know how long one has to remain in this miserable, short, fragile, and temporary life, which is full of scandal, ruin, and iniquity of every kind’. A number of sins, with the exception of homicide, are listed together with appropriate penances. The list draws partially on a sermon of Caesarius of Arles and partially on a penitential, though the tariffs of penance have disappeared. The old penitential principle of ‘contraries that are cured by their contraries’ is upheld: the proud should live humbly, fornicators in chastity, thieves should give alms, et cetera.² The penitent is asked to mend his ways, now that he or she is still healthy, and not to relapse into sin again. An *admonitio* addressed to the poor, or ‘those who have to work with their own hands’ tells them to guard against jealousy or seeking justification for committing sins because one is poor. One should not seek temporal but spiritual riches, which are, in fact, more readily to be found with the *pauperes humiles* than the *superbi diuites*.³ If we may believe the Bologna *ordo*, confession and penance reached all sections of society, male and female, lay and clerical, rich and poor.

The last sermon explains that confession is made to the omnipotent God rather than to the priest. He exhorts the penitent to set aside his shame and confess, for if he will not confess his sins in secret now, ‘they will be revealed at the Last Judgment before the tribunal of the Highest Judge for all angels, saints, and every people that had been from the beginning and will be until that day’.⁴ Moreover, after death there will be no possibility to confess. This call

¹ Ff. 115v: *Pius dominus et misericors per prophetam nos exortatur ad penitentiam dicens: Conuertimini ad me... quia nolo mortem peccatoris, sed ut conuertatur et uiuat... Peccator in quacumque hora conuersus fuerit et ingemuerit, omnia peccata eius in obliuione erunt coram me...*

² Ff. 116v-117r: *ut declines ab omni opere malo et festines in omni opere bono perseuerare, quia nescis quamdiu in hac uita misera, breuis et caduca, fragilis et temporalis, que est plena scandalo, ruina, et omni iniquitate manere debeas. Quid prodest hic uti temporalibus bonis et in futuro sempiternis gaudiis carere et aeternis flammis in inferno cruciari? Ideo precor et moneo te si usque modo fuisti cupidus aut auarus, et aliena mala ordine tollebas, et tua iniuste retinebas, deinceps sis in elemosinis largus^a, pauperibus, uiduis, et orphanis bene faciendo pro peccatis tuis et omnium christianorum missas deo offerendo, ut quicquid per cupiditatem aut per auariciam peccasti, a deo tibi dimittatur. Si ebriosus^a uel gulosus fuisti, modo sobrius^a sis et abstinens et parcus^a in cibo et potu... Si fornicator^{trix} uel luxuriosus^a aut adulter^{ra} fuisti, sis purus^a et castus^a et continens. The phrase *aliena... tollebas* occurs in various penitentials; cf. *P. Burgundense* c. 23 (Kottje ed. CCSL 156, p. 64). Cf. sermo 13, *S. Caesarii Arelatensis Sermones*, G. Morin ed. CCSL 103,1 (Turnhout 1953) p. 64.*

³ Ff. 119v-120v: *Tu itaque frater, qui pauper es et labore manuum tuarum uiuis, in cunctis tuis aduersitatibus deum collauda et gratias age, quoniam per multas tribulationes, ut paulus ait, oportet nos intrare in regnum dei. Non dicas felices esse diuites propter diuitiarum copiam et te miserum propter inopiam, quia non inopia sed peccata faciunt infeliciter animam miseram. Noli dicere quid faciam? furtum faciam, quia unde uiuam non habeo... Sunt enim diuicie spirituales, quas non possunt habere superbi diuites, quibus habundant pauperes humiles. (...) Melius est de temporali fame ad eternam sacietatem transire, quam de transitoria sacietate ad inopiam perpetue famis migrare...*

⁴ Ff. 120v-121r: *Fili uel filia modo manifesta mihi, hic coram deo et sanctis suis peccata tua que fecisti aut cogitasti. Non enim mihi confessus^a eris, sed deo omnipotenti qui ubique est. Ideo noli erubescere mihi confiteri peccata tua, quasi modo absconse non uis confiteri, in die iudicii ante tribunal summi iudicis erunt manifesta*

to overcome one's *erubescencia*, which signifies shame and embarrassment, occurs in several texts from the ninth century onwards. The warning can be found in Alcuin's letter to the Irish and in the early ninth-century *Capitula Bavarica*, which requires priests to warn penitents that 'it is better to feel ashamed here and now in the sight of one man [the priest], than before all nations at the coming [day of] judgment'.¹ Theodulf of Orléans' second capitulary warns in similar language that the devil regrets every confession, since he wants us to conceal every sin in order to accuse us at Judgment Day.² The sermon in the *ordo* of Regino of Prüm's *Libri duo de synodalibus causis* explains that sinners should not feel ashamed to confess because everyone, including the priest himself, is a sinner.³ Many Italian texts begin with the *noli erubescere* passage and a reminder that all men are sinful or that 'no one is without sin but God alone', although the wording differs for each separate text.⁴ An interesting inversion of the theme is recorded in the *P. Vaticanum* and *P. Merseburgense A*: it is the devil who, as soon as the sinner mends his ways (*conuersus*), feels ashamed (*erubescit*) and flees.⁵ The message to overcome one's shame is remarkably different from that of the twelfth-century

ante omnes angelos et sanctos dei et ante omne genus humanum, quod ab inicio fuit et erit usque ad diem illum. Si uero modo erubescis dum tempus habes peccatum manifestare, post mortem nec tu nec ullus peccatum suum poterit confiteri...

¹ *Capitula Bavarica*, c. 2 (*Capitula episcoporum* III, MGH, p. 195): *ut paenitentiam veram doceantur facere de omnibus peccatis et non erubescant confiteri deo peccata sua in ecclesia sancta coram sacerdotibus... Melius est enim hic in praesenti erubescere in conspectu unius hominis quam in futuro iudicio coram cunctis gentibus.* Alcuin's letter in *Epistolae Karolini aevi* II, MGH 4, p. 438.

² Theodulf, Second capitulary X,2 (*Capitula episcoporum* I, MGH, p. 172): *Si quem autem verecundum viderit sacerdos et erubescentem confiteri et discooperire peccata sua... ammoneat illum dicens: Frater mi, saepius nos dominus hortatur... See also part II of the *De psalmorum usu* of (Ps.-)Alcuin (PL 101, c. 498.): *Viriliter age, et confortare in domino, et noli erubescere quia inde venit indulgentia cum in spe et misericordia dei humiliter confessus fueris peccata tua et reliqueris ea quia sine confessione non est indulgentia.* This text was meant for devotional use, but was also incorporated in *ordines*. Cf. Frantzen, *The literature of penance*, pp. 154-157.*

³ Regino of Prüm, *Libri duo de synodalibus causis*: *Frater, noli erubescere peccata tua confiteri. Nam et ego peccator sum, et fortassis pejora quam tu feceris habeo facta.* Cf. *ordo* 136 of PRG (*Le Pontifical Romano-Germanique* II, p. 243) and *ordo* IX,129 of ms. Vallicelliana C. 32 (ed. Odermatt, p. 292). Regino also brings up the double role of the devil who first deludes us into sin and wishes us to hide it, but then, acting as accuser at the Last Judgment, wants to accuse us for concealing our sins.

⁴ *P. Vaticanum*: *Fili noli despiciere de peccatis, nec erubescas dicere peccata tua, uel quantumcumque malum fecisti, quoniam ego tui similis sum in peccatis*; cf. *P. Merseburgense A* (Vat. lat. 5751) c. 121 (Kottje ed., CCSL 156, p. 168). *P. Vallicellianum E. 62*: *Noli erubescere fili. Nos omnes peccatores sumus, nemo est sine peccato nisi solus deus.* *P. Casinense*: *Fili noli erubescere confiteri peccata tua, quia non est sine peccato nisi solus deus... Ordo IX,129 of Vallicelliana, C. 32 (ed. Odermatt, p. 292): ...nichil erubescetes quicquid inique egistis... proprio ore manifestare festinate, quia nemo est sine peccato nisi solus deus. Nam et ego similis vobis peccator sum.* Two *ordines* from Bobbio (ms. Vat. lat. 5768 and that edited by Muratori, *Antiquitates* V, p. 727) state that we should not be ashamed to confess our sins, because we were not ashamed to commit them: *propterea quod non erubuimus committere, nullo modo debemus erubesci deo confiteri...* This thought is also found in *Coll. Hibernensis* XLVII,2 assigned to Augustine (Wasserschleben, p. 196): *Quid enim celat peccator, quod Deo teste commisit, quid erubescit confiteri, qui peccatis non erubuit coinquinari...*

⁵ *P. Vaticanum, ordo*: *Porro si conuersus fueris statim diabolus erubescit et fugit. Qui uitia unde poenites modo plus fortiter tecum pugnare habet eo quod expellis ea de domo sua. Sed lacrimabiliter hora, ieiuna et elemosyna fac et illico fugiet a te. Dominus tecum est ne timeas demonem.* See also *P. Merseburgense A*, c. 121 (Kottje ed., CCSL 156, p. 168).

Pseudo-Augustinian tract *De vera et falsa poenitentia* which considers *erubescencia* a necessary ingredient for the redemption of sins.¹

Likewise, the *ordo* of the *P. Casinense* contains the exhortation to overcome one's shame (*Fili noli erubescere*), just before a list of questions for the penitent's interrogation begins. The sinner must carefully examine himself as to whether he has fallen into sin instigated by either the devil or the work of the flesh. The second text, recited before the priest assigns a penance to the penitent, treats the origins of sin and the meaning of penance. Being the descendants of Adam 'we are born with sin and live in sin', but Jesus Christ came into this world in order to 'wash away our crimes through [the gifts of] baptism and penitence'.² The connection of penance and baptism goes back to ancient Christianity, but this is nowhere formulated as succinctly as in this text.³ It then explains that, in order to obtain God's forgiveness, the penitent should wholeheartedly show remorse, since He forgives not on account of 'a space of time' (a theme stressed by Isidore and Halitgar), but rather wants a confession of tears, sighs, and regret for one's sins. Finally, the admonition emphasizes the need to give alms, for 'almsgiving extinguishes sin, like water extinguishes fire'.⁴

The *predicatio* of the *ordo* of the *P. Vallicellianum I* of ms. Barcelona, Bibl. Universitaria, 228 was also incorporated into an *ordo* from Bobbio published by Muratori. Taking the biblical quotation 'If someone wants to follow Me, let him renounce himself and assume his cross' as its point of departure, the *ordo* recommends that the sinner renounce his worldly desires and idle wishes through almsgiving, true confession, and tears.⁵ Like the Bologna *ordo*, the texts reminds the penitent that it is better to confess one's sins before 'the God of the living' and the priest, than on Judgment Day before angels and men, where all sins

¹ *De vera et falsa poenitentia* X,25 (PL 40, c. 1122).

² *P. Casinense, ordo: Omnes qui ex adam nati sumus cum peccato nati sumus et uiuimus atque delicto, sed ideo dominus noster ihesus christus uenit in hunc mundum, ut per baptismum et penitentiam ablueret omnia delicta nostra.*

³ Stressed by Isidore of Sevilla, *De eccl. officiis* XVII,5-6, Lawson ed., CCSL 113, pp. 81-82 and, in the twelfth century by Ps.-Augustine, *De vera et falsa poenitentia* (PL 40, cc. 1114-1119). Cf. *Ordo IX* of ms. Vallicelliana C. 32 (ed. Odermatt, p. 291): *quia post baptismi regenerationem multa mala commisimus... misericors et clemens deus ostendit nobis humilitatis iter et penitentie modum per quem iterum ad gratiam dei reuertere.*

⁴ *P. Casinense, ordo: Et tu ergo si ex toto corde penitueris, clemens deus indulget tibi, quia non eget deus spatiis annorum, sed confessione lacrimarum et suspiriis et penitudine peccatorum. Tu uero annuente deo, cum ingressus fueris ecclesiam dei omnia tua peccata ante oculos tuos constituere et penitere, et promitte numquam ad ea reuersurum, et prout uales indigentibus fac elemosinam, quia elemosina a morte liberat (Tob. 12,9)... Si autem non habueris quod prebeas, assume humilitatem, et patientiam, et caritatem cordis in quibus deus et angeli eius congaudent.*

⁵ Barcelona, cod. 228, f. 50v: *Sine dubio frustra uenit qui semetipsum negare non uult, dicente domino: Si quis uult post me uenire, abneget semetipsum et tollat crucem suam et sequatur me (Luc. 9,23)... Quisquis terrenis desiderijs uanisque cupiditatibus implicat, atque nefandis operibus deditus abrenunciauerit, mens de terrenis ad celestia exerit et de uanis cupiditatibus, elemosinarum largitate indigentibus copiam tribuere et de nequissimis operibus fructum bone operationis prout uires suppetunt per ueram confessionem lacrimarumque irrigationem de praeteritis delictis sedula lamentatione creatori suo effuderit.*

will be revealed, which one was too ashamed to confess.¹ The priest promises that the sins will be forgotten, if one confesses and makes amends, and demonstrates by means of biblical examples (the crucified thief, the publican asking God's mercy) God's willingness to forgive. The biblical passage 'first go and reconcile yourself with your brother, and then go and offer your gift' serves to remind the penitent to put aside any discord, since one cannot do penance nor acquire the eternal life unless one restores peace in one's heart and soul and lives in concord with those with whom one had quarreled.²

Sermons addressed to confessants hardly occur in early *ordines*. Their inclusion seems to be connected to the liturgical development of confession and penance of the tenth and eleventh centuries. The principal purpose of these texts was to exhort sinners to confess their sins, even if they were too ashamed to reveal them. Because the *noli erubescere* clause has biblical origins and is transmitted again and again in *ordines*, it may have been a topos rather than a reflection of reality. Yet the popularity of this topos and the many versions in which it occurs indicate that it was necessary to reassure confessants to set their shame aside. Admonitions also enabled priests to instruct confessants about the origin and necessity of confession and penance.³ Thus education and exhortation are closely intertwined. Whether such sermons were recited in Latin to the penitents is doubtful, but they offered priest a model text, upon which he could improvise in his own words, possibly in the vernacular.

Confession or Confiteor?

In the *ordo* for lay people as well as the one for clerics the penitent should recite a *Confiteor* prayer. The *Confiteor* is prayer-like confession formula that often lists a preponderance of sins. Originally the *Confiteor* was pronounced as private prayer but it was later said at the beginning of mass. Its origins are probably Insular and it was Alcuin who introduced and

¹ *Hoc scitote fratres quia ualde melius est tibi in conspectu dei uiuentis et mihi indigno sacerdoti tua confiteri delicta quam in die uenturi iudicis omniumque angelorum uel filiorum hominum ubi omnia peccata manifesta erunt qui in presenti saeculo ea erubuerit confiteri.*

² *Ista confessio si fructuosa fuerit ab omni crimine lauat, et ab gehennarum ignibus liberat. Vsque in die illa semper fructuosa est uera penitencia, ultra nullum iam spatium penitentie datur. Nunc autem frater si pleniter et fideliter confessus fueris et deinceps emendaueris, promitto tibi in dei omnipotentis misericordia nunc in eius praesentia sanctorumque eius, quia omnia peccata obliuioni datur... Et ad penitenciam nullo modo potes accedere, nec uitam aeternam in perpetuo possidebis nisi ad ueram cordis animique pacem atque concordiam cum omnibus habueris cum quibus te esse cernis discordes. After this text the sinner may confess: *Tunc fac eum confiteri peccata sua, tamen omnino praeuide prius si habet aliquid aduersus aliquem et si non uult ipsa incesta dimittere ei non solum cui ille sed qui sibi deliquit, nullatenus ei penitenciam dare praesumas. (...) Et si uult sicut praedictum est satisfacere, et quorum deo promittere, hoc nefandum uicium a se radicitis negare, tunc reuelatum est, fac eum confiteri uniuersa sua delicta...**

³ The educational function of *ordines* is stressed by Frantzen, *The literature of penance*, pp. 117-120.

popularized this type of ‘penitential’ prayer.¹ It became part of penitential liturgy only in the later tenth century.² In penitential *ordines* these texts are usually followed by a blessing of the priest, begging for forgiveness (*Misereatur tibi*) on behalf of the sinner. The Reims *ordo* incorporates an exclamation of guilt, albeit a short one: *mea culpa peccavi domine*. Later texts drawing upon the Reims *ordo* often substituted this exclamation for a *Confiteor* formula. Such confessional prayers enjoyed a wide popularity especially in the later eleventh century, although not every *ordo* contained them.³ It is not always clear how these prayers ought to function in the liturgy.⁴ Were they read in Latin or were they first said by a priest and repeated by the confessant? An *ordo* from the monastery of Sant’Eutizio contains a *Confiteor* in old Italian. The fact that they also exist in old High German and old English translations suggests that confessants often had their own versions in the vernacular.⁵ According to an *ordo* from Anglo-Saxon England, the penitent, if literate, could read the confession aloud, but no such reference occurs in any Italian text.⁶ Another particularity is that a *Confiteor* lists such a number of sins, homicides, adulteries, et cetera, of a kind that no sinner could possibly have committed during a lifetime. On the basis of similar prayers in English *ordines* Allen Frantzen has suggested that these were meant for ‘devotional’ confession. Consequently, *ordines*, that contain such formulae, describe a devotional, public rite of confession which did not involve individual confessions of sins.⁷ In the Bologna *ordo*, however, the *Confiteor* does not take the place of confession. First the penitent made his or her confession and then the priest asked whether the penitent ‘renders him or herself guilty’, a question that stemmed from the Reims *ordo*. Only then did the penitent say a *Confiteor* as a formal acknowledgment

¹ J. Black, ‘Psalm uses in Carolingian prayerbooks: Alcuin’s *Confessio peccatorum pura* and the seven penitential psalms (use 1)’, *Mediaeval studies* 65 (2003) pp. 11-56, see pp. 2-24 on his ‘*Confiteor* prayer’ *Deus inaestimabilis misericordiae*, which Alcuin may have offered to Charlemagne.

² Frantzen, *The literature of penance*, pp. 84-90. Some of these prayers are published by Wilmart, *Precum libelli quattuor aevi Karolini*. Cf. *Liturgisch woordenboek* 1, cc. 457-458 and Jungmann, *Die lateinischen Bussriten*, pp. 280-285.

³ For instance the *ordines* of the *P. Casinense* and the *P. Vallicellianum I* (Barcelona, Bibl. Universitaria, 228 and Rome, Bibl. Vallicelliana, E. 15).

⁴ Some problems concerning the inclusion of *Confiteor* prayers in *ordines* are treated by Jungmann, *Lateinischen Bussriten*, pp. 177-178, n. 36 and Mansfield, *The humiliation of sinners*, p. 67.

⁵ Rome, Bibl. Vallicelliana, B. 63. See Pirri, *L’abbazia di Sant’Eutizio*, pp. 45-52. High German texts are published by Hautkappe, *Über die altdeutschen Beichten*.

⁶ *Ordo* of ms. London, British Library, Cotton Vesp. D. XX, f. 23r: *et si penitens litteras scit faciat ei sacerdos legere istam confessionem. Confiteor tibi...*

⁷ See Frantzen, *The literature of penance*, pp. 112-113 and 169-171. Although they had their origin in private prayer, with regard to *Confiteor* prayers in later *ordines* Frantzen places these texts too much in the context of public, devotional confessional rituals. For examples of such *Confiteor* prayers for private prayer at Montecassino, see M. dell’Omo, ‘Cultura liturgica e preghiera a Montecassino negli anni dell’abate Desiderio (1058-1087)’ in *L’eta dell’abate Desiderio III,1*, pp. 279-361, see pp. 311-312.

and expression of his or her sinfulness.¹ In the *ordo* for clerics the *Confiteor* is placed before the confession and is several times interrupted by blessings said by the priest (*indulgeat tibi, misertus sit tibi*). After the confessional prayer a rubric states that, before the priest would deliver his judgment, the confessing cleric should make known whether he wants to confess something in particular.² In fact, the only Italian *ordo* in which the *Confiteor* seems to have replaced confession is that of the *P. Vallicellianum E. 62*. The prayer is placed immediately after the priest had urged the penitents to confess, without a confession or interrogation being indicated. This *ordo*, however, does not provide lots of directions for the ritual in its rubrics. The inclusion of penitential tariffs in this text, moreover, seems to imply a more specific interrogation of penitents.³ The *Confiteor* mainly served as a formal expression of one's guilt or, given the closing sentences of the formulae, as a petition for intercession and forgiveness.⁴ Yet, just as the *ordines* of secret penance borrowed from the liturgies of public and deathbed penance, it is not surprising to find the *ordines* borrow from devotional forms of penance as well. Since, as Jungmann showed, the *Confiteor* was increasingly used for general confessions in the Maundy Thursday liturgy, the inclusion of confessional prayers in the *ordines* again testifies to the fusion of different forms of penance.

Benedictions and absolution

The absolution occurs right after the imposition of the penance, before the completion of one's penance. This way of absolving penitents, described as a one-stop procedure by Hamilton, is followed by most but not all Italian *ordines*. Its origins can be traced back to a canon incorporated into the ninth-century *Statuta Ps.-Bonifatii* and the *P. Ps.-Theodori*, yet the first *ordines* that testify to this procedure date from the ca. 1000.⁵ The *ordo* of the tenth-

¹ Ff. 121r-v: *POSTQUAM PENITENS CONFESSUS PECCATUM SUUM FUERIT, ITERUM SACERDOS DICAT ILLI. Reddis te frater uel soror culpabilem de omnibus istis peccatis... POSTQUAM PENITENS SE REDDIDERIT HIS CULPIS CULPABLEM, FACIAT EUM DICERE ISTAM CONFESIONEM. Confiteor deo et omnibus sanctis eius et tibi pater quia multum peccaui in uisu...* Other texts: Ms. Vercelli, Bibl. Capitolare, CLXXVIII, f. 4r-v: *si uult dimittere, tunc debes eum interrogare criminalia et minuta peccata*. After confession the penitent prostrates and recites a short confessional prayer. The *ordo* of Vallicelliana C. 32 lets the penitent recite a *Confiteor* after being interrogated and being judged (Odermatt, pp. 292-293).

² Ff. 129v-133r: *DEINDE PENITENS DICAT HANC CONFESIONEM. Ego peccator uolo confessus esse deo omnipotenti... POST HAEC MANIFESTET SI QUID SPECIALITER UULT CONFITERI. DEINDE SACERDOS IUDICIUM ILLI DET SECUNDUM QUOD ILLI RECTUM UISUM FUERIT.*

³ The *P. Vaticanum* also does not mention an interrogation and only gives a *Confiteor*, but the canons suggest a more specific confession of the penitent's sins.

⁴ In the Bologna *ordo*: *ideo precor te pater ora pro me misero^a peccatore^{trice}*. See also Hamilton, *Practice of penance*, p. 111. She adds (p. 148) that they may also have been added for educational reasons, to enumerate all things from which one had to refrain.

⁵ The *Statuta Bonifatii*, c. 31 (*Capitula episcoporum* 3, MGH, p. 365; canon also cited by Benedictus Levita): *Et quia varia necessitate prepedimur canonum statuta de reconciliandis paenitentibus pleniter observare, ne tamen omnino dimittatur, curet unusquisque presbiter statim post acceptam confessionem penitentium singulos data*

century ms. Vercelli, Bibl. Capitolare, CLXXVIII initially did not contain an absolution rite, except for prayers for Maundy Thursday. In order to bring the rite into keeping with new customs, a leaf was inserted into the *ordo* with an absolution prayer by a twelfth-century hand.¹ Arnold Angenendt has pointed out that the practice of celebrating masses for the salvation of one's soul necessitated the quick admission of penitents to mass before the completion of one's penance.² There may also have been practical considerations, for example, fear that a penitent might die before being granted absolution. A third factor is that deathbed penitential practice exerted a strong influence upon rites of secret penance. Before the one-stop procedure turns up in *ordines*, it is difficult to reconstruct at which particular time the absolution was granted. Perhaps the completion of one's penance automatically entailed the absolution, without need for an absolution prayer. Theodore of Canterbury allowed penitents to receive Communion after six months but does not mention a formal absolution. Some early *ordines* require that sick people be absolved immediately after they have been judged, while the others were to be absolved on Maundy Thursday.³ The *P. in II libris* contains blessings for the well-being and protection of penitents, albeit without their being absolved from sin.⁴ There is no Italian evidence prior to the eleventh century of the one-stop procedure.

Only in the Bologna *ordo* for clerics is the absolution preceded by the priest laying his hands on the head of the penitent.⁵ The ninth-century *P. Ps.-Romanum* required this at the end of its rite. The imposition of hands, furthermore, appears in the *ordo ad reconciliandum* of ms. Vallicelliana, E. 62 and in the *ordo* of ms. Barcelona 228.⁶ The imposition of hands by the bishop has been part of the public reconciliation of penitents on Ash Wednesday. It is only

oratione reconciliari. The *varia necessitate* are not specified. See also Jungmann, *Die lateinischen Bussriten*, pp. 249-275. De Jong, 'De boetedoening van Iso's ouders. Kanttekeningen bij een verhaal uit Ekkehards *Casus Sancti Galli*', pp. 111-139. For a different opinion see Hamilton, *Practice of penance*, p. 41.

¹ Vercelli, Bibl. Capitolare, CLXXVIII, fol. 7r-v: *Si infra istam penitentiam mors te occupauerit aut in die aut in nocte, absolutus sis de deo patre omnipotente et de maria matre domini nostri ihesu christi... De quorum numero ego indignus peccator esse uolui, ipse te absoluat per ministerium meum ab omnibus nexibus peccatorum, et perducatur te dominus omnipotens ad regna caelorum.*

² A. Angenendt, 'Missa specialis. Zugleich ein Beitrag zur Entstehung der Privatmessen', *Frühmittelalterliche Studien* 17 (1983) pp. 153-221, see pp. 158-163.

³ The *ordo* of the *P. Additivum Ps.-Bedae-Egberti* mentioned above.

⁴ *P. Oxoniense II*, c. 8 (Kottje ed., CCSL 156, p. 193): *Si autem... egritudo euenerit et non potuit adimplere omnia, quae illi mandatum fuit a sacerdote, suscipiatur ad sanctam communionem.* *Ordo* 99 of the PRG also allows that people who travel are absolved in advance.

⁵ Bologna *ordo*, f. 133v: *TUNC IMPONAT MANUM SUPER ILLIUS CAPUD ET DICAT: Benedicat...* The words of the *ordo ad reconciliandum* of ms. Vallicelliana, E. 62 are strikingly similar: *TUNC PRESBITER PONAT MANUM SUPER CAPUD PENITENTI ET BENEDICAT...*

⁶ Barcelona 228, f. 54v: the *manus inpositionis* accompanies a supplicative prayer, though not necessarily an absolution formula.

rarely recommended by *ordines* for secret penance. Even in public penance, the imposition of hands became less important in later rites.

In the Bologna *ordo* the absolution formulae are embedded in a series of benedictions.¹ Through such benedictions the priest asks God to bless the penitent, Jesus Christ may save him, and the Holy Ghost may ‘illuminate’ him.² Jungmann calls these blessings ‘Beichtannahmesprüche’, because they are petitions to God to accept the penitent’s confession and willingness to make amends. Early examples of benedictions can be encountered in the *P. in II libris* and the Reims *ordo*, but they are found in larger numbers in Italian texts.³ In fact, since the absolution prayers are styled in the same supplicative form as the benedictions (*ipse te absoluat*), it is difficult to separate the two.⁴ The emphasis on the penitent’s absolution seems to be a feature of later penitential liturgy and, since it is often also a petition to God to receive the penitent in the heaven, corresponds to the importance assigned to penance for entry into the afterlife.

Penance, death, and the afterlife

Italian *ordines* of the late eleventh and early twelfth centuries, in particular those from Central and South Italy, betray the strong influence of rituals for the sick, the dying and the dead. Prayers and biblical verses were inspired by those for deathbed penance and funeral rites. The transformation of the *PRG*’s *ordo* for deathbed penance into one for regular confession testifies to the influence of rites for the sick and the dying.⁵ The *ordines* conceive of confession and penance as a purification of the soul that safeguards the entering of the afterlife. In absolution prayers, confession and penance are considered as a precondition for entering the heavenly kingdom and a means to ward off the accusations of the devil at the Last Judgment. Prayers envisage confession as a commendation to God analogous to the

¹ Like in many *ordines*, such as that of ms. Vat. lat. 5768, ms. Paris, Mazarineus, 525, the *P. Casinense*, and *P. Vallicellianum III* (ms. B. 58).

² F. 124r: *Benedicat te deus, saluet te deus filius, illuminet te deus spiritus sanctus, corpus tuum dirigat, sensum tuum custodiat, cor tuum illuminet, animam tuam saluet, et ad perpetuam uitam te perducatur dominus noster ihesus christus. Sit ante te, ut te defendat. Sit circa te, ut te ipse custodiat. Sic protegat te, ut te ab omni malo eripiat et saluet.*

³ See above for the *Benedicat* prayers at the end of the rite of the *P. in II libris*. The Reims *ordo* (Reg. lat. 191, f. 64r): *Dominus sit tibi adiutor et protector et prestet tibi indulgentiam de tua peccata.* Jungmann regards the *Misereatur* that follows upon the *Confiteor* as similar type of blessing.

⁴ Jungmann, *Die lateinischen Bussriten*, pp. 250-254 and pp. 201-223. Jungmann distinguishes optative (*absoluat*) and indicative (*absoluimus, absoluo*) absolution formulae. The indicative formula are rarely found in Italian texts, except for the *P. Vallicellianum III* (B. 58) which includes the phrase *ego christi sacerdos... absoluo te ab omnibus iudiciis.*

⁵ *Le Pontifical Romano-Germanique* 2, pp. 270-275, *ordo* 144. This *ordo* was one of the sources for the *ordo* inserted into the Roman Pontifical of the thirteenth century, *Le Pontifical de la Curie Romaine au XIIIe siècle*, Andrieu ed., pp. 279-285, *ordo* 46. Hamilton, *The practice of penance*, pp. 126-127 points to the fluidity of the rites of penance *more solito* and deathbed penance.

Commendatio animae, the commendation of the soul to God in the Last Rites. An absolution prayer in the Bologna *ordo* declares that the penitent may be absolved from all sins committed from the time of his birth on account of his current penance, even if he is not capable of undergoing (another) penance because he might have died suddenly or lost his speech.¹ Such ideas are articulated in South and Central Italian prayers with even greater vigour.

The notion that confession and penance contributed to the salvation of the penitent's soul is not new. Sermons of Caesarius of Arles already contained warnings that without confession and penance one should fear the Last Judgment.² An intimate link between confession and salvation is established by Alcuin: people should not feel ashamed to confess, because it is better to be ashamed in the presence of one priest, than before all nations at Judgment Day.³ We have seen that this idea was taken up by the Italian *ordines*. A most terrifying warning can be found in the *ordo* of the *P. Vallicellianum E. 62*. Those who fail to atone for their sins in this world, will be condemned to Hell, tormented eternally by the seven plagues of Hell, the heat of fire, the cold, the worms, the hunger, the thirst, the smoke, and the stench.⁴ Alcuin's letters also stress the role of the devil who will accuse us at the Last Judgment: those who accuse themselves in front of a priest cannot be accused by the devil at the Last Judgment.⁵ The second capitulary attributed to Theodulf of Orléans adds that the devil wants us to conceal our sins in order to accuse us at the Last Judgment of hiding our

¹ Ff. 125r-v: *ipse te absoluat ab omnibus peccatis et de istis peccatis que modo mihi coram deo confessus es, seu et de omnibus que a natiuitate tua cogitando, loquendo, aut operando commisisti, non reddas de eis rationem per misericordiam dei in die iudicii, et quando transieris de hoc seculo, subitanea mors tibi aduenerit, aut impeditus lingua nullatenus penitentiam accipere poteris, cum ista penitentia que modo accepisti sis absolutus*^a *a deo patre et filio et spiritu sancto, et ab omnibus sanctis eius, et a me misero peccatore...*

² The idea that souls must be purified through penance before the Last Judgment is most vividly expressed in sermons of Caesarius of Arles. See sermo 64 (Morin ed. CCSL 103,1 p. 277): *tempus iudicii et diem reddendae rationis sapienter et utiliter cogitemus, et crimina vel peccata maiora cum gemitibus et suspiriis, quamdiu vivimus... quomodo non desunt cotidiana peccatorum vulnera, sic numquam desint elymosinarum vel orationum remedia. Si enim in nobis ipsis propria severitate dstringimus, sententiam futuri iudicis praeuenimus.*

³ Alcuin's letter to the Irish. Cf. *Capitula Bauarica*, c. 2. The passages are cited above. The *ordo* of the ninth-century Fleury penitential warns that sinners will burn in hell, if they fail to perform penance.

⁴ *P. Vallicellianum E. 62: Septem sunt apud inferos plagas que animas reproborum cruciant legimus imminentes. Prima est calor ignis. Secunda frigus. Tertia uermis. Quarta famis. Quinta sitis. Sexta fumus. Septima fetor. (...) Qui unum ex his criminibus in seculo commiserit, et hic illud per fructum penitentiam non corresserit, profecto in inferno his septem plagis torquebitur sine fine mansurus.*

⁵ Alcuin *ad pueros Sancti Martini* edited by Driscoll, *Alcuin et la pénitence*, p. 188: *Datur nobis a benignissimo iudice locus accusandi nosmetipsos in peccatis nostris coram sacerdote dei, ne iterum accuset nos in eis diabolus coram iudice Christo.*

sins.¹ The idea that the souls of the deceased dwelled in purgatory before the Last Judgment apparently did not appeal to liturgists.²

Examples of commendation-like rituals reminiscent of the *commendatio animae* show the influence on Italian *ordines* of rites for the sick and the dying. The language of commendation can be found as early as the *ordo* of the Fleury and Sankt-Gallen penitentials, according to which the penitent, while prostrating, should ‘commend’ himself to God.³ According to the Reims *ordo* the penitent should hand himself over to God by making the sign of the cross.⁴ This commendation to the cross was incorporated into Italian sources.⁵ A couple of North and South Italian *ordines* include a curious commendation prayer beginning with the words *Commendamus tibi*.⁶ Through this prayer, evidently inspired by the funeral prayer *Commendamus tibi domine animam famuli tui*, the penitent is entrusted to God so that He ‘may deliver him from all malice and may carry him through the intercession of the Blessed Peter to the eternal life’.⁷ More evidence for the connection between confession and commendation is the sequence of the verses *In manus tuas domine commendo spiritum meum* and *Suscepimus deus*, discussed above. This rite may not have been derived from rites

¹ Theodulf, capitulary II, X,2 (*Cap. episc.* I, MGH, p. 172): *Dolet diabolus, quando aliquis confitetur peccata sua, et desiderat nos caelare, quod fecimus, quia qui seipsum accusat in peccatis suis, hunc diabolus non habet iterum accusare in die iudicii.*

² On the importance of this theme in deathbed rites see Paxton, *Christianizing death*, pp. 66-67 and A. Angenendt, ‘Theologie und Liturgie der mittelalterlichen Toten Memoria’ in K. Schmid and J. Wollasch ed., *Memoria. Der geschichtliche Zeugniswert des liturgischen Gedenkens im Mittelalter*. Münstersche Mittelalter-Schriften 48 (München 1984) pp. 79-199, pp. 158-162. There is a reference in Theodulf of Orléans capitulare II, c. X,18 (MGH Cap. Episc. I, p. 177).

³ *P. Floriacense* (Kottje ed., CCSL 156, p. 98): *prostrati in terra domino deo caeli commendetur.*

⁴ Cf. the Reims *Ordo* (Vatican, BAV, Reg. lat. 191), discussed above.

⁵ Passage of the *P. Vallicellianum E. 62* recalls that of the Reims *ordo*. Cf. *P. Vallicellianum III* (Schmitz I, p. 776): *Fili dei commenda te deo et huic sancte crucis domini nostri ihesu christi iunctisque manibus offerat se crucifixo. Interim sacerdos dicat super eum: Per hoc signum salutifere crucis domini nostri ihesu christi et per intercessionem istorum et omnium sanctorum... Modo signa te signo crucis christi contra diabolium et contra omnia temptamenta eius...*

⁶ *P. Casinense, ordo: Commendamus tibi domine famulum tuum .illum. in uita praesenti, ut ab omni malo eum eripias et intercedente beato [sc. petro apostolo] .ill. ad uitam perducas sempiternam.* Found in the Bobbio *ordo* of Muratori, *Antiquitates Italicae*, the *ordines* of ms. Milan, Bibl. Ambrosiana, T. 27, Paris, Mazarineus 525, the *ordo ad reconciliandum* of ms. Vallicelliana E. 62 and that of the *P. Vallicellianum E. 62* itself. Whereas *Commendamus tibi* is usually recited just before or as part of the prayers of the absolution, the *P. Vallicellianum E. 62* places the prayer before confession. Bologna *ordo* contains a different version: *Commendamus tibi domino deo nostro ihesu christo famulu^m tuu^m .ill., ut ad te toto corde cito conuertat et tibi deuota mente deseruiat, ut cotidie in omnibus bonis operibus propter tui nominis amorem perseueret, ut pro delictis atque facinoribus suis ueniam et indulgentiam ei concedas, ut sub ope sancte trinitatis tibi deo deseruiat, cui omne genu flectitur, celestium, terrestrium, et infernorum, ut eu^m custodias hic et in presenti seculo et in futuro iudicio eu^m ad uitam aeternam perducas.* The prayer occurs in the *ordo ad uisitandum infirmum* of ms. Vallicelliana B. 63 (Sant’Eutizio; s. XI-XII^m).

⁷ On which see Paxton, *Christianizing death* and Sicard, *La liturgie de la mort*, pp. 274-276.

accompanying sickness and death directly, but the language of commendation and surrender to God is reminiscent of them.¹

In several South and Central Italian *ordines* the *In manus tuas* combination can be linked to the commendation of souls more intimately. For example, the combination is interwoven into a series of new prayers in the *P. Lucense*. It is recorded twice, in the “classic” form and in an elaborate form in the margins of the codex. This second form begins, after a preparatory interrogation, with the *In manus tua[s]*, followed by a benediction expressing the wish that the penitents be admitted to the eternal life by the angel of the Lord (*Sic nos recepimus*), and by the verse *Suscepimus deus*.² The next prayer (*Inclina domine aurem tuam*) is a compilation of passages from many different prayers for the anointing of the sick and for funeral rites. For example, the part ‘Incline your ear to our prayers’ is the first sentence of a Gelasian prayer for the deceased.³ The supplication to liberate the souls of His servants from Hell-fire and the power of the devil, just ‘like He freed St Peter from the sea and the three boys (Sadrach, Meshach, and Abednego (Daniel 3)) from the fiery furnace’ stems from a prayer for the anointing of the sick.⁴ The final petition to ‘forgive the sins of His servants so that they are righteous and immaculate on the Day of Judgment when they rise from death and ascend into heaven’ can be taken to suggest that the prayer was meant for deathbed penance. The last prayer *Ego uos/te suscipio* entreats the reception of the penitents into the heavenly kingdom and implores God to write their names into the “Book of Life”, an allusion to that of Revelations 20,12-15 which lists the names of those who will ascend into heaven.⁵ Such references to the heavenly kingdom and the book of life reveal a preoccupation with death and

¹ No penitential *ordo* prior to the late eleventh century incorporates the combination. The *ordines* of ms. Vercelli CLXXVIII (f. 3v) and ms. Vat. lat. 1339 (Narni, s. XI²; Dold, ‘Eine alte Bußliturgie’, pp. 94-130) include *Suscepimus deus* as a separate verse and antiphon respectively. According to Arnold Angenendt the verse *In manus tuas* (Ps. 30) inspired the prayers of the *commendatio animae*, see Angenendt, ‘Theologie und Liturgie der mittelalterlichen Toten *Memoria*’, pp. 169-170.

² *P. Lucense*, f. 2v: *In manus tua domine commendo spiritum meum. Sic nos recepimus hodie in manibus nostris, sic uos recipiat angelus domini in uitam eternam cum psalmis et ymnis et canticis, cantantes et psal<lentes in cordibus> nostris domino* (Eph. 5,19). *Suscepimus deus misericordiam tuam*. See Reynolds, ‘A Beneventan monastic excerptum’, p. 303, n. 32.

³ *P. Lucense*, f. 3r: *Inclina domine aurem tuam ad preces nostras; respicere dignare super hos famulos et <famulas> tuas, qui hodie in manibus nostris sunt tradituri; sicut liberasti petrum de mare <et tres pu>eros de camino ignis ardentis, ita domine libera animas famulorum famularumque tuorum <de pena> inferni et de diaboli potestate, ut culpas eius parcas et peccata dimittit, <ut> iusti et immaculati sint in diem iudicii per resurgentem a mortuis et ascend<entem in celis>, qui uiuit*. On the prayers that may have inspired this prayer see Paxton, *Christianizing death*, p. 141 and p. 145.

⁴ Sicard, *La liturgie de la mort*, pp. 364-72 and Paxton, *Christianizing death*, p. 118.

⁵ *P. Lucense*, f. 3r: *Ego uos^{le} suscipio in oratione, suscipiad uos deus in regnum suum celestem, ut scribere dignetur nom<en> uestrem^{lunum} in libro uite, et det uobis^{le} dominus spiritus sapientie et intellectus, spiritus consilii et fortitudinis, spiritus <scien>cie et pietatis, et repleat uos^{le} spiritus timoris dei (Isaia 11,2) et domini nostri ihesu christi, ut ipsius mandata intellig<etis> ut ipsius <manda>ta conseruetis, suscipiat uos christus et donet uobis penitentiam de omnibus peccatis uestris*.

the afterlife. These prayers were meant for regular confession and not for deathbed penance, since the *ordo* is called *ordo ad penitentiam dandam*. The fact that the prayers could be addressed to a group of penitents seems to confirm this conclusion. Moreover, we find many of these texts copied in other *ordines* from South and Central Italy. The part ranging from *Sic nos recepimus* until *Inclina domine aurem tuam* is recorded almost verbatim in ms.

Benevento, Bibl. Capitolare, 37, once used in the nunnery of St Peter's *intra muros* in Benevento.¹ The prayer *Inclina domine aurem tuam* is in a different version included in the Bobbio *ordo* edited by Muratori, its only North Italian witness. The *P. Vallicellianum E. 62* incorporated the prayer *Inclina* together with the part *suscipiat uos christus*.²

The Last Judgment and afterlife not only played a role in the preparation for confession, but also in the absolution rites. An absolution prayer in the Bologna *ordo* asks Christ, if death is near *in ista traditione uel absolutione*, to bring the penitent to the eternal life.³ A series of absolution prayers from Central Italy take up this theme of penance in connection with the salvation of souls. We have seen in chapter 3 that an intriguing and at the same time puzzling example is recorded in the *P. Vallicellianum E. 62* from Narni.⁴ After penance is 'given and confirmed' the text proceeds: 'as the sacred canons recommend for all your sins for death and for [the days of your?] life, you shall have a number of thirty (!) years [of penance?] for all your sins'.⁵ The obscure Latin of the prayer renders it difficult to recover the meaning of this passage exactly; either the thirty-year penance is given as a redemption for all sins the penitent had committed, or the thirty years should be understood as a set phrase

¹ Mallet and Thibaut, *Les manuscrits en écriture bénéventaine* II, p. 234 and Kelly, *The Beneventan Chant*, p. 301: The codex was copied in the monastery of Santa Sofia in Benevento to be destined for the nunnery of St Peter *intra Muros*. The fragment is dated to saec. XI^{ex}-XIIⁱⁿ.

² *P. Vallicellianum E. 62*; not immediately connected to *In manus tuas: Suscipiat christus uestram^{tuam} penitentiam et donet uobis^{tibi} ueram indulgentiam, ut possitis consequi illius ueniam usque in futura secula* (wording of the *P. Vallicellianum E. 62*). The *ordines* of the manuscripts Vallicelliana, B. 8 and B. 63 from Sant'Eutizio (after the questions concerning the penitent's beliefs) have an extended version of the part *Suscipiat uos*. The *P. Casinense*, in which it introduces an absolution formula, is perhaps the oldest witness: *Suscipiat omnipotens deus confessionem tuam, ante cuius conspectum ueniam petisti, et ipse tibi dignetur dare ueram indulgentiam ex omnibus peccatis et delictis tuis... et absoluere te dignetur a cunctis nexibus peccatorum tuorum...* The first part of *Ego uos\te suscipio... regnum suum celestem* is found, together with the *In manus tuas* combination, in the *ordo* for visiting the sick of Rome, Bibl. Vallicelliana, B. 63, f. 231 and the penitential *ordo* of Vallicelliana, C. 32, XI,114 (ed. Odermatt, p. 285). In both *ordines* the text is placed between the taking of the hands and the *Suscipimus deus – Magnus dominus* combination.

³ F. 125v: *Nos te suscepimus in missis et in psalmis et in canticis spiritualibus* (cf. Eph. 5,19) *et cuncto officio sacerdotali, suscipiat dominus animam tuam quando exitura est de hoc seculo in uitam aeternam, et si in ista traditione uel absolutione tibi mors aduenerit, perducatur christus filius dei uiui ad uitam aeternam, et absoluat te sanctus petrus et beatus michael archangelus.*

⁴ The formula is discussed in Jungmann, *Die lateinischen Bussriten*, pp. 199-200.

⁵ *P. Vallicellianum E. 62: Ex parte dei omnipotentis, et beate marie semper uirginis, et oratione omnium sanctorum tibi sit datum atque confirmatum iudicium penitentiae. Sicuti sancte canones commendant pro omnibus tuis peccatis pro morte et pro uite sic habeas in numero pro tuis peccatis triginta annis tale conditione, si tibi plus uenias faciat suum uelle, et similiter.*

for which any number of years could be substituted. If the former is the case, we come close to the ideas of perpetual penance current in the religious communities of (lay) penitents which were established in the twelfth century.¹ If the penitent died prematurely without being able to perform another penance for another sin, the prayer implores God to let him ‘be represented’ with this current penance at the Last Judgment, so that the devil cannot say that he has never undertaken a penance for all his sins of his entire life. Penance is envisaged as a safeguard against the accusations of the devil at the Last Judgment.² After being asked to accept the penitential dress, the priest again was to express the wish that this penance and confession was a sufficient ‘testimony’ to God, ‘so that the enemy cannot harm his soul’. Finally, the priest recalled the good works done both by the penitent and by others for the benefit of the penitent together with the current penance.³ The prayers suggest that the penance currently undertaken together with other good works (baptism, masses, etc.) are sufficient to lead the penitent through the Last Judgment, in the event that he dies prematurely. Less elaborate examples are found in other Italian *ordines*.⁴ Similar formulae are recorded in the *ordo* of a twelfth-century Ravenna manuscript, which recommends what appears to be a perpetual penance for the redemption of all sins committed either consciously or unconsciously.⁵ Another parallel can be drawn with the *ordo* of ms. Vallicelliana B. 63 from Sant’Eutizio,

¹ G. Meersseman and E. Adda, ‘Pénitents ruraux communautaires en Italie au XIII^e siècle’, *Revue d’histoire ecclésiastique* 49 (1954) pp. 345-390: most of these (lay) movements sprang up only in the later twelfth century.

² *Et si tu morieris sine altera penitentiam, per istam penitentiam semper tristabit uiam tuam ante deum in diē iudicii. Et ego dico tibi per misericordiam dei omnipotentis et beate marię semper uirginis et omnibus sanctis, et per fidem tuam et per baptismum tuum quod alter pro te promisit si aliquam bonam operationem fecisti, aut in antea facere debemus per istam penitentiam et ceteras penitentias quas acceptas habeas a spiritali hominibus. Si tu morieris sine altera penitentiam et sine altero iudicio, per istam penitentiam et per istum iudicium tu sis representatus ante deum in diē iudicii, ut diabolus non possit dicere, ut non habeas acceptam penitentiam pro omnibus peccatis tuis pro diebus uite tuę.*

³ *Vis^{uultis} in mestimentum (!) penitentię^{uolumus} et ego ex parte dei et omnium sanctorum hoc penitentia et hoc confessio fiant testimonium ante deum ut inimicus non possit nocere animę tuę. Ex parte dei et omnium sanctorum bonum quod fecisti ab infantia tua, et alii pro te facient et sacrificia et officia quę a catholicis per uniuersum mundum aguntur habeas partem ut boni christiani et si ad aliam penitentiam non poteris peruenire, hanc penitentiam et confessionem sis saluus ante deum.*

⁴ Cf. the absolution of ms. Vercelli, Bibl. Capit., CLXXVIII, f. 7: *Si infra istam penitentiam mors te occupauerit aut in die aut in nocte, absolutus sis de deo patre... ut diabolus non possit nocere animam tuam neque hic neque in futura secula...* Cf. *ordines* of P. Vallicellianum III (B. 58) and ms. Vat. lat. 4772: *si in ista confessione et poenitentia mortuus fueris, antequam ad aliam confessionem ueniam Xtus filius diuinus misereatur tui et absolutus permanes in saecula saeculi* (Schmitz II, p. 406).

⁵ Ed. PL 151, 917: *ex officio nostro damus, et confirmamus vobis verum iudicium, et veram poenitentiam de omnibus peccatis vestris, sicut sancti Patres praecipiant, et justa iustitia est, et ab hac hora in antea state sub iugo poenitentiae, et sub fructu poenitentiae, et si morte praeoccupati fueritis, et non potestis accedere ad sacerdotem, et ad aliam poenitentiam, per istam poenitentiam faciat Dominus peruenire animas vestras ad vitam aeternam. Amen. QUANDO SACERDOS IMPONIT POENITENTIAM. Nos vobis imponimus poenitentiam de omnibus peccatis vestris, quae volentes aut nolentes commisistis, unde confessi estis, vel quae in vos nescienter sunt abscondita, ut redimatis ea per orationem, et sacrificium, et jejunium atque eleemosynam, et usque ad terminum vitae vestrae in ipsa poenitentia permanetis, et si morte praeoccupati fueritis, per istam poenitentiam faciat Dominus peruenire animas vestras ad vitam aeternam. Amen.*

which contains a similar prayer in the vernacular. It is placed after a *Confiteor* formula in old Italian and was to be said before the absolution prayers.¹ The role of the devil as accuser of sinners also occurs in earlier sources, but is not as directly connected with a sinner's possible death as in these texts.

Although these themes are not entirely new, the Last Judgment, the devil, and the afterlife played a much more prominent role in these Italian *ordines* than they have done before. The language of the *ordines* comes to resemble that of rites for the sick and the dying, from which many new ideas were borrowed. New developments in the penitential liturgy in the course of the tenth century, particularly the absolution of sinners in advance, contributed to a closer connection between penance and eternal salvation. Whether the rites respond to genuine fears, held by both clergy and penitents, that a penitent might pass away before having confessed or being granted absolution, cannot be determined solely on the basis of the liturgical evidence. Frederick Paxton observed that the early medieval death rites were deeply indebted to penitential themes, but, from the eleventh century onwards, the influence worked in precisely the opposite direction.²

Conclusion

The late eleventh century witnessed the penitential *ordo* coming to maturity, which culminated in texts like the Italian Bologna *ordo*. The texts are more detailed than ever before, new prayers were added, and a more prominent role is granted to the priest in the remission of sins. These *ordines* had developed from the prayers and prescriptions which initially accompanied the penitentials but had become increasingly exposed to influences from other rites such as public and deathbed penance and forms of devotional and collective expiation of sins. The large number of *ordines* suggests that confession was often practiced by the eleventh century. This 'popularity' of penance is also evidenced by the fact that most *ordines* provide for the collective participation of groups in the liturgy of confession. The *ordines* thus combined two functions: they offered priests an opportunity to educate Christians about sin and its roots, and to exhort them to mend their ways and to behave as

¹ Vallicelliana, B. 63, f. 232v: *ke lu diabolū non te nde p[o]za accusare ken tu iudecatunde non sie, en questa uita pro raccar quella, et qual bene tu ai factu ui farai enquannanti, ui alt[r]i farai pro te, si sia computatu em pretiu de questa penitentia, se ttuo iudiciu ene ke tu ad altra penitentia non poze accorrere, con questa penitentia et coll altre ke tu ai leuate si sie tu rappresentatu ante conspectu dei, ke lu diabolū no tende poza accusare ke ttunde non sie pentitu.* See Castellani, *I più antichi testi Italiani*, pp. 77-103.

² Paxton, *Christianizing death*, p. 91.

good Christians ought to do. This last purpose is suggested by the sermons included in the *ordines*.

The rites were not only an instrument used by clerics to discipline their flock, but were also used to ‘recommend’ Christians to God. By taking part the penitents gained evidence of their good conduct and intentions that would help them at the Last Judgment, even in the event that they died before going to confession another time. The popularity of this idea was the outcome of a development that had started in the ninth century and had become more important over the course of time. In addition to this elaboration of a current liturgico-theological theme developed by clerics, it could also have been a response to fears among confessors and confessants: confession and penance were considered a necessary precondition for passing the Last Judgment.

The *ordines* are a fascinating source for the history of confession, especially because there are so many of them, and because they offer a clear record of the rituals that accompanied confession. At the same time, the liturgy poses problems to the historian of penance. If we assume that such texts were indeed used for receiving penitents, it is difficult to determine to what extent their directions were followed closely. How should we interpret, for example, the fixed dialogues incorporated in these texts? They could have been read out aloud, but they also could have been a model upon which a priest could improvise and base his own liturgy. Some penances prescribed by canons could even preclude a liturgy as outlined above. The *P. Casinense*, for instance, orders priests who had committed fornication to be deposed ‘before all the people’, a provision which cannot be reconciled with its *ordo* that does not provide for such a public deposition. (The Bologna manuscript offers a different *ordo* for clerics, but this is, as far as I know, the only example of a separate *ordo*.) The same can be said about penances in which periods in prison are prescribed.¹ The *ordines* give us important information about confession and its establishment in Italy. Yet their scope is, like any other historical source, limited. A survey of the *ordines* gives us one insight, although an important one, into penitential practice, which needs to be completed by an analysis of the canons.

¹ See chapter 7 on such penances.

7. NEW ORIENTATIONS IN SOUTH AND CENTRAL ITALIAN PENITENTIALS

Previous chapters have revealed the interdependence of the Italian penitentials as to the sources on which their compilers drew. This chapter investigates the extent to which the texts also shared a common interest in particular topics. The importance which the compilers of these texts attached to specific topics can be judged from two main indicators. First there is the proportion of canons devoted to a specific topic. For example, the *P. Vaticanum* devotes no less than three of its eight chapters to fornication and adultery, and two are concerned with homicide. The remaining three chapters are, moreover, considerably shorter than the ones devoted to sexual acts and violence. The other way to determine the importance of a topic is through comparison with penitentials from other regions or times. The fact that compilers sometimes chose to compose new canons on a particular topic indicates that a subject was important to them.

There are, however, difficulties with such an approach. The first problem is the small number of Italian texts available to the modern historian. To increase this number, the two most important South Italian canon law collections of the early eleventh century, the *Coll.9libr.* and the *Coll.5libr.* will also be discussed in this chapter. Their inclusion is warranted by the fact that the penitentials and these collections share so many characteristics: they are made up of canons taken from the same Frankish penitentials and cover the same subject matter as the Italian penitentials. A second problem pertains to the question as to whether it is possible to establish which sins were deemed important at confession solely on a textual basis. Is it safe to focus only upon normative texts, when it is not even certain whether they were actually used in practice? This problem can be overcome by pointing to the large number of different canons devoted to the particular subjects. It is unlikely that so much effort was spent in copying the old and in fabricating new canons, if these texts did not play any role in the instruction of priests or in confession itself. This chapter, moreover, will argue that the changing contents of the penitentials is closely related to wider developments in the field of confession itself.

This chapter falls into two sections. The first section is concerned with the sins that the penitentials sought to counter. I have chosen to select for this chapter a limited set of topics and to focus on those which received the most attention from the compilers of these texts: fornication, adultery, incest, and violence. This emphasis on *criminalia peccata* needs to be

analysed and explained in further detail. Likewise, the first part of the initial section is devoted to sins that gradually disappeared from the documents. This approach inevitably means that some sins are not discussed in this chapter. The discussion of marriage, for example, is concerned with fornication, adultery, and forbidden marriages but less with such sins as bestiality or sodomy, since no new canons were devoted to these topics. The same holds true for perjury, which continued to be important but did not attract the special attention of compilers. The last part treats the other important aspect of the penitentials, the penances imposed upon sinners. This theme deserves a separate treatment, because it is in this respect particularly that the texts of South and Central Italy exhibit their greatest originality.

7.1 Disappearance of minor sins?

Whilst Italian penitentials devote a lot of space to major sins like homicide and fornication, other sins receive comparatively scant attention. This new orientation is remarkable, because penitentials are generally noted for their detailed coverage of almost every possible way of sinning. Thus the Frankish tripartite penitentials, which incorporated Frankish and Insular penitential traditions, catalogue major sins such as homicide or adultery, vices like greed or avarice, but also topics like dietary rules and transgressions related to ritual purity. A quick glance at the Italian texts points to an increased indifference towards food taboos, superstitions, the Eucharist, and also to the principal vices like greed or avarice. Regulations on the Eucharist were still being copied, but without receiving the same attention as in earlier times. In some respects Italian texts come closer to the much shorter Simple Frankish penitentials of the eighth century, which were based upon the penitential of Columbanus. Yet even this type of penitentials contains many canons on pagan superstitions and are supplemented with Insular rulings on, for example, ritual purity.¹ As for the Italian texts, the range of topics covered by *P. Casinense* still recalls penitentials of the ninth century like the *Cap. Iud.* or the *P. in II libris*. The *P. Casinense* treats superstitions in its chapter on sins of women. Vices like wrath, slander, inobedience, and avarice are treated in the chapter ‘on slander and hatred’, whereas food taboos are discussed in the chapter ‘on animals that may or may not be eaten’. Book IX of the *Coll. 9libr.* repeats all canons of the *Cap. Iud.* and the *P.*

¹ See the editions in Kottje ed., CCSL 156, pp. 63-121. The *P. Bobbiense* is an example of a Simple Frankish penitential supplemented with canons on ritual purity taken from the possibly Irish *P. Ambrosianum*. See R. Meens, ‘Reforming the clergy: a context for the use of the Bobbio penitential’ in Y. Hen and R. Meens ed., *The Bobbio Missal: liturgy and religious culture in Merovingian Gaul*. Cambridge studies in palaeography and codicology 11 (Cambridge 2004) pp. 154-167, pp. 158-159.

Ps.-Gregorii on food and the Eucharist, and includes a new canon forbidding the consumption of meat during Lent.¹ Yet even these documents contain a disproportional number of canons devoted to fornication and a correspondingly slight number devoted to other sins. The *P. Vaticanum* contains only one canon on pagan rituals and two on unclean food, while a somewhat larger number of canons is concerned with ecclesiastical ritual.² The last in the line of Italian penitentials, the *P. Vallicellianum E. 62*, completely ignores issues like food taboos, the Eucharist, or superstitions. This text also neglects minor sins and, instead, concentrates on *criminalia peccata* like homicide, adultery, theft, and perjury.

The indifference towards pagan superstitions or food taboos indicates that these topics were no longer considered relevant in the eleventh and twelfth centuries. A similar lack of interest in the eight principal vices and minor sins may, however, be attributed to another cause. A letter of Peter Damian is illuminating in this respect. Drawing on Gregory I and John Cassian, Damian distinguished the seven principal vices (pride, avarice, vainglory, wrath, envy, lust, and sadness) – the causes of all evil – from the seven ‘criminal sins’ (adultery, homicide, theft, perjury, false witnesses, rape, and blasphemy). Damian introduced a third category of minor sins (*laevia minimaque peccata*) into which even righteous men lapse daily. Those sins arising from thought, ignorance, unsteadiness, necessity, illness, absent-mindedness, and surprise can, since all Christians relapse into these every day, be expiated by observing the canonical hours.³ The idea that devotional exercises could help expiate minor sins had already been held by Augustine, Caesarius of Arles, and Alcuin, but Damian connected it to a specific category of sin.⁴ His letter turns the struggle against minor sins into part of a Christian’s daily life rather than just being reserved for ‘sacramental’ confession. The fact that twelfth-century *ordines* contain absolution formulae, discussed in the previous chapter, which seem to propagate a kind of perpetual penance for sins points in the same

¹ *Coll. 9libr. IX,90* (Vat. lat. 1349, f. 210r): *APOSTOLICUM. Si quis in quadragesima carne comederit, .ii. annos peniteat...* The *P. Merseburgense A* (ms. Vienna, Österreichische Nationalbibliothek, 2225) contains a similar ruling but requires a much reduced penance (c. 111; Kottje ed., CCSL 156, p. 169).

² *P. Vaticanum* V,7 (putting sick children upon the roof or in the oven), VIII,13-14 (prohibitions to eat blood or carrion, and animals that had consumed human blood). *P. Vaticanum* VIII,2-6 (loosing the Host, spilling from the chalice) and 9-12 (clerics stealing from churches, priests failing to read lections or prayers according to the rite, priests failing to baptize dying children, or denying penance).

³ Peter Damian, *Ep. 17* (*Die Briefe des Petrus Damiani* I, K. Reindel ed., MGH, Die Briefe des deutschen Keiserzeit 4 (Hannover 1983) pp. 156-158). The first category consists of *superbia, avaritia, vana gloria, ira, invidia, luxuria*, and *tristitia*, the second of *adulterium, homicidium, furtum, periurium, falsum testimonium, rapina*, and *blasphemia*, the third of *cogitatio, ignorantia, inconstantia, necessitas, infirmitas, oblivio*, and *obreptio*.

⁴ Frantzen, *The literature of penance*, pp. 114-115. See also Gratian, D. 3, De penitentia c. 18-20 (Friedberg, p. 1214) quoting Augustine and John Chrysostom.

direction.¹ Yet minor offences were not entirely neglected by penitentials. The *P. Vaticanum* urges confessants not to hide even a *paruum peccatum*, for ‘what is not judged with penance now, must be judged with severity at Judgment Day’.² This warning was included in a slightly changed version in the *Coll.9libr.*, the *Coll.5libr.*, and several penitentials.³ The *P. Lucense*, moreover, prescribes a penance of seven years for the ‘mass of sin[s?], that is, small sins or sins ‘which are not remembered by men’. The harsh penance of seven years of fasting, three of which should be spent on bread and water, and a payment of two *solidi* at first sight seems disproportional. Although it may have been a copy error, the canon possibly hints at a large accumulation of (minor) sins, which needed a long period of redemption.⁴ In none of these cases are the sins specified, almost as if they did not need to be explained or taxed with penances. Compared to Peter Damian’s tripartite scheme, it seems that the penitentials increasingly concentrated on his category of criminal sins, but this does not mean that his other categories ceased to play any role in confession. Canons do not give us all the information as to the sins about which confessants were questioned at confession. Minor sins clearly continued to play a role in confession, since they are referred to in the prayers and sermons of *ordines*, but apparently it was no longer necessary to specify their penance in detail. As a result penitential handbooks no longer tried to cover each type of sin in full detail, but instead they concentrated on criminal sins. In a way, the emphasis on major sins in the penitentials was due to the change in function of these texts: they were used for judging criminal, scandalous, and, to some extent, public sins.

7.2 Liturgy and fasting

A theme that continued to be important was ecclesiastical ritual.⁵ Since the interest in ritual and the preservation of the purity of the Eucharist did not diminish during the eleventh-century reforms, the omission of canons from the penitentials of Cummean and Theodore

¹ See *P. Vallicellianum E. 62*, *ordo* of ms. Vallicelliana, B. 63, and the *ordo* of the Ravenna manuscript printed in PL 150. See chapter 6 on these formulae.

² *P. Vaticanum* VII,16: *Nam si aliquis in se uel paruum peccatum celauerit, sciat se exinde rationem redditurum, quia scriptum est, ‘nullum peccatum inultum dimittit deus, hoc est sine uindicta’, quia si non iudicamur hic per penitentiam, iudicat illa deus per seueritatem in die iudicii.* (...)

³ These collection add that if even minor sins must be confessed, this also goes for major sins. *Coll.9libr.* IX,127 (Vat. lat. 1349, f. 216r): *Nam si aliquis in se uel paruum peccatum celauerit... secundum illud quod dominus dicit de uerbo otioso, quanto magis nos si plura peccata uel crimina, quem commisimus, recelauerimus...* Cf. *Coll.5libr.* IV,4 (Vat. lat. 1339, f. 172r), *P. Vallicellianum E. 62* and *P. Lucense*.

⁴ *P. Lucense*, c. 15: *De massa peccatis, id est, de minimis peccatis aut de illa que non reminiscuntur hominibus, VII annos peniteat, III in pane et aqua, II solidos in elemosina.*

⁵ On the importance of liturgical canons in the *Coll.5libr.* and its derivatives, see Reynolds, ‘The South-Italian canon law *Collection in Five Books* and its derivatives’, p. 293.

concerning ritual purity is remarkable.¹ It seems that the Gregorian reformers were more concerned with the purity of the ministers who administered the sacraments than with the sacraments themselves. Yet the old rulings on this topic did not entirely disappear in the eleventh century. New regulations on liturgy, moreover, appear in the penitentials, albeit narrower in scope and mainly concerned with the liturgy of the hours, baptism, and the periods of fasting. The *P. Casinense* offers some interesting examples of such canons. Perhaps responding to confusion concerning fasting on Sundays and feast days, the compiler incorporated a set of rulings on this topic.² After a canon dealing with transgressions of appointed fasts such as Lent, another ruling forbids Christians to eat before the third hour (of the day?) and to drink after midnight on Sundays and Christian feast days.³ The third regulation stipulates that anyone who out of voracity eats between the third hour of the night and the third hour of the day (on any day of the week?) should do penance for three weeks. The last canon was most likely intended for clerics and monks who were able to keep such vigils as a preparation for feast days, but it could also have been a clarification of the previous canon and, thus, pertain to both clergy and laity abstaining from food on the nights before Christian feasts. Similar concerns are expressed in an explanation of the Mass recently edited by Reynolds, which appears in the *Coll.9libr.*, the *Coll.5libr.*, and in manuscripts that also contain penitentials.⁴ It begins with the hours of which the Mass is supposed to begin. In several versions a penance of one week's fasting is assigned to those who dare to fast on Sunday after the third hour when the Mass begins. A ruling on the liturgy of the hours is included in several penitentials and collections, which assigns penances to clerics who had neglected the canonical hours. Lay people 'who know them' are required to observe them, but do not have to do penance.⁵ The interest in fasting and the liturgical hours would continue

¹ Cushing, *Reform and the papacy in the eleventh century*, pp. 111-128.

² That fasting on feastsdays could give rise to conflict is testified by a story about Ariald, a leader of the Milanese Pataria movement, who preached a sermon on the unlawfulness of fasting on Whitsun. This caused a riot among the people of Milan, for it such a fast was supposed to be a precept of Ambrose. Bonizo of Sutri, *Liber ad amicum* VI, E. Dümmler ed., MGH LdL 1 (Hannover 1891) pp. 596-597.

³ *P. Casinense* II,16: *Si quis ante horam legitimam tempore ieiunii non necessitate infirmitatis sed gula obtentu contempserit indicto ieiunio in ecclesia...* II,17: *Non licet die dominico, nec in natale domini, nec in reliquiis precipuis sollempnitatibus ante horam tertiam comedere nec post mediam noctem bibere. Si presumpserit, III ebdomas peniteat in pane et aqua. Ante tertiam ora diei nec post tertiam horam noctis non licet comedere, si per uitium uoracitatis hoc fecerit, ebdomadam I peniteat.* Canons II,17-18 may go back to Council of Auxerre, c. 11 (De Clercq ed., CCSL 148a, p. 266) and Council of Braga II, c. 65 (*Concilios Visigoticos*, Vives ed., p. 102). See chapter 1 on the *P. Casinense*.

⁴ Copied into mss. Montecassino, Arch. dell'Abbazia, 372, Vatican, Arch. di S. Pietro, H. 58, and Rome, Bibl. Vallicelliana, E. 62. See Reynolds, 'A South Italian liturgico-canonical mass commentary', pp. 626-670.

⁵ *P. Casinense* XI,7: *Si quis officium suum neglexerit, id est, matutinum et I et III et VI et VIII et uespera non expleuerit, episcopus XL dies peniteat, presbiter XXX, monachus uel diaconus XX, clericus XV, et laicus qui scit non perdat horam suam, quia dominus noster cum usuris exigere debet talenta quod accepimus.* Also

into the Gregorian era. Whether this interest during the Gregorian reform was foreshadowed by the penitentials is difficult to assess, but a link is suggested by ms. Vat. lat. 629 in which ‘Gregorian’ sentences on fasting and the canonical hours can be found in connection with a South Italian text on penitential fasting discussed below.¹

The validity of sacraments administered by simoniacal or schismatic priests received the warm attention of eleventh-century reformers.² Under the influence of Theodore of Canterbury, who had called into question the efficacy of sacraments administered by heretical priests, many penitentials had required the reordination of priests ordained by heretics or the rebaptism of people baptised by heretics. In two Italian penitentials of the late eleventh and twelfth centuries these notions are challenged. The *P. Vallicellianum E. 62* defends the validity of a Mass administered by ‘wicked priests’ probably by drawing on Peter Damian’s defence of the validity of sacraments performed by simoniacal priests.³ This penitential argues that the goodness or wickedness of the priests who consecrate the Eucharist does not positively or negatively affect the *sacrificium christi*. If a wicked priest consecrates the Host, an invisible angel will take his place and visibly (*uisibiliter!*) consecrate it.⁴ The reference to the angel is curious for it is not mentioned by Damian, who ascribes the efficacy of the Eucharist to the presence of the Holy Ghost.⁵ The *P. Vallicellianum E. 62* ignores all Theodorian rulings on the Eucharist and heretics. Those rulings included are not really concerned with the proper way of treating it, but rather with the Eucharist itself: the wine offered as Christ’s blood should be mixed with water, and the Host should be offered in a

incorporated as *P. Lucense* c. 20,1, *Coll. 9libr.* IX,154 (Vat. lat. 1349, ff. 224v-225r), *Coll. 5libr.* III, 254,1 (Fornasari ed., CCCM 6, p. 439) which also include the complines.

¹ Vatican, BAV, Vat. lat. 629 (Florence; s. XI^{ex}) f. 268v: *Ordo de discretione penitentiae, quem gregorius papa constituit, ponunt canones peccantibus...* See below. Cf. Duchesne, *Le Liber Pontificalis* I, p. CLXIX and Morin, ‘Règlements inédits du pape Saint Grégoire VII’, pp. 177-183. On liturgical texts attributed to Gregory VII: D.G. Morin, ‘Règlements inédits du Pape Saint Grégoire VII pour les chanoines réguliers’, *Revue Bénédictine* 18 (1901) pp. 176-183, C. Dereine, ‘La prétendue règle de Grégoire VII pour chanoines réguliers’, *Revue Bénédictine* 71 (1961) pp. 108-118, R. Elze, ‘Gregor VII. und die römische Liturgie’, *Studi Gregoriani* 13 (Rome 1989) pp. 179-188.

² On this problem, which had also occupied church fathers like Cyprian and Augustine, see N.M. Haring, ‘The Augustinian axiom “Nulli sacramento injuria facienda est”’, *Mediaeval Studies* 16 (1954) pp. 87-117, J.T. Gilchrist, ‘*Simoniaca haeresis* and the problem of orders from Leo IX to Gratian’ in *Proceedings of the Second International Congress of Medieval Canon Law* (Vatican 1965) pp. 209-235, and Laudage, *Gregorianische Reform und Investiturstreit*, pp. 64-75.

³ *Ep.* 40, *Die Briefe des Petrus Damiani* 1, Reindel ed., pp. 410-411: *ut neque per bonos sacerdotes meliora illa mysteria neque per malos fieri peiora testentur.*

⁴ *P. Vallicellianum E. 62*, c. 72: *Si per bonos sacerdotes offeratur christi sacrificium, non crescit. Si per malos offeratur, non minuitur. Quia angelus domini stat ibi, quem carnales oculi uidere non possunt. Qui illum uisibiliter (!) sanctificat.*

⁵ See Brommer, ‘Die bischöfliche Gesetzgebung Theodulfs von Orléans’, p. 81: presence of angels at mass was a regular feature of Carolingian theology according to Brommer. See also the mass commentary edited by Reynolds: *si istas horas praesumpserit sacrificare, angeli non recipiunt sacrificium ad offerendum maiestati* (*Coll. 5libr.* III,212 Fornasari ed., CCCM 6, p. 414). This version is also incorporated in ms. Vallicelliana E. 62.

pure and uncontaminated state.¹ Hence, this text can be considered the first penitential to break with the older penitential notions about reordination and ritual purity. The *P. Vallicellianum C. 6* includes many of the old canons on liturgy, but departs from penitential tradition in one respect. Into a series of canons from Theodore of Canterbury the compiler inserted a sentence taken from the homilies of Bede, which rules that baptism in the name of the Trinity performed by heretical or schismatic priests should not be repeated, since this would suggest that ‘the invocation of such a name [the Trinity] is annulled’.² This idea is not articulated in any other penitential.³ These canons are the only ones that touch upon specific ideas current in the Gregorian reform but they seem to reflect a change in attitude towards both priests and the Eucharist, when compared to older penitentials.

7.3 Marriage and sex

Of all the topics treated by the penitentials from South and Central Italy, most attention is devoted to the sins relating to marriage and sex: fornication, adultery, remarriage, and incest. Texts include not only existing rulings on these matters, but also new ones. The importance attached to these topics emerges first of all from the sheer number of canons treating fornication and adultery. The *P. Vaticanum*, for example, devotes three chapters to fornication, one addressed to clerics, one to lay people, and one to women. Almost one third of the canons of the *P. Vallicelliana C. 6* and *E. 62* are concerned with these subjects, while the *Coll.5libr.* discusses clerical continence in its second book and devotes its entire fifth book to marriage and adultery.

The terms fornication, adultery, and incest are often used interchangeably in our texts. Only the author of the *P. Vallicellianum C. 6* made an effort to clarify them by introducing the canons on adultery and fornication with definitions borrowed from Isidore of Seville. Fornication, adultery and incest are defined as branches of ‘carnal impurity’ (*carnalis*

¹ *P. Vallicellianum E. 62*, c. 73 (*Quod oportet in calice domini uinum cum aqua offeri...* based on Isidore’s *De eccl. officiis* I,18) and 74 (*Hostiam puram et perfectam licet absque sorde clarissimum uinum cum aqua mixtum...*) stem from *Coll.5libr.* III,213-214 (Fornasari ed., CCCM 6, pp. 215-216).

² Canon 89: *Si quis ab heretico baptizatus est, qui trinitatem non credit, iterum baptizetur. Siue igitur ab heretico, siue a scismatico, seu a quolibet facinoroso quis in nomine sanctę trinitatis baptizatus fuerit, rebaptizandus non est, ne inuocatio tanti nominis uideatur annullari* (= Bede, *Homelia* II,18; CCSL 122, p. 312).

³ See, however, *P. Parisiense Compositum* (North France; s. XI): children suffering from sickness who are immersed in water in the name of the Trinity by ordinary Christians do not need to be rebaptized (ed. Meens, p. 494: *Si autem infans infirmus sub nomine trinitatis ab aliquo fidei in aquam fuerit mersus, si hoc cognitum fuerit, non oportet rebaptizari sed tantum catechizari et sancto chrismate perungi...*

inmunditiae).¹ As noted above, fornication is committed with women or widows ‘who remain in secular dress’. It is named after the ‘arches’ (*fornices*) or brothels where this crime is committed in secret. Adultery is committed with someone else’s wife and the word is derived from ‘violator of someone else’s bed’.² Incest is committed with relatives or with virgins vowed to God.³ The canons that follow fix the penances for these three sins, with each clerical order apportioned its own penance. Judging from the penances, incest was considered the gravest crime, followed by adultery, which was sometimes put on a par with incest, while fornication is the least of all.⁴ The language of other penitentials, however, is less precise and even ambiguous.⁵ Penitentials refer to the ‘fornication’ of married men in cases in which the term ‘adultery’ seems preferable.⁶ The *P. Vaticanum* forbids ‘adultery’ with one’s cousin, aunt, sister, and godmother, but it is unlikely that it refers just to the incestuous affairs of married men; rather it is aimed at incest in general.⁷ Moreover, it is not always clear whether canons denounce incest as a sexual or marital offence. The language suggests that the emphasis was on sexual sins. Since the terms adultery and fornication are often used interchangeably, they are discussed together in one section. Marital issues such as divorce, remarriage, and incest are treated separately.

Fornication and adultery

As regards fornication and adultery, it is not so much the new rulings that catch the eye but rather the large number of rulings in general. The chapter of the *P. Vaticanum* concerning the

¹ *Tria sunt genera carnalis inmunditiae. Primum fornicatio. Secundum adulterium. Tertium incestus. Fornicatio fit cum puellis et uiduis in seculari habitu manentibus. Vnde et fornicatio dicitur, a fornicibus ubi istud scelus clam perficitur. Fornices sunt arci uolubiles fornicatoribus ad peragendum crimen habiles. Adulterium propriae cum uxore alterius peragitur, unde et adulterium alterius tori uiolator dicitur. Incestus cum propinquis et deo sacrate uirginibus committitur, unde et incestus uocatur.* See also H. Lutterbach, *Sexualität im Mittelalter. Eine Kulturstudie anhand von Büssbüchern des 6. bis 12. Jahrhunderts*. Beihefte zum Archiv für Kulturgeschichte 43 (Cologne 1999) pp 72-73.

² This definition goes back to Isidore of Sevilla (*Isidori Hispalensis episcopi Etymologiarum sive Originum libri XX*, vol. 1, W.M. Lindsay ed. (Oxford 1911; repr. 1985) V,26,13 and X,10) and is also found as *P. Ps.-Gregorii*, c. 4 (Kerff ed., pp. 169-170).

³ The definition is taken from Isidore of Sevilla, *Liber etymologiarum* V,26,24 (Lindsay ed.).

⁴ Yet the penance assigned to lay people and monks for incest is higher than that for adultery.

⁵ See also Payer, *Sex and the penitentials*, pp. 20-21 on the meaning of the word ‘adultery’.

⁶ *P. Casinense* II,7: *Si quis laicus habens uxorem suam et cum alterius uxorem fornicauerit... P. Vaticanum* III,13: *Si quis habens uxorem et fornicat...*

⁷ Even the *P. Vallicellianum* C.6 departs from its own three-fold distinction. In some canons an additional category is introduced: clerics taking a wife, which is sometimes taxed with the same penance as fornication, sometimes with a lesser penance. *P. Vallicellianum* C. 6, c. 20: *Presbiter si uxorem acceperit, deponatur. Si uero fornicatus fuerit, amplius pelli debet et ad penitentiam redigi. Si uero adulterium uel incestum perpetravit, amisso presbiterii honore XV annos peniteat...; c. 21: Diaconus post suam ordinationem et continentiae professionem si uxorem acceperit, deponatur et VII annos peniteat in pane et aqua. Si uero adulterii uel incestus crimen admiserit, amplius penitentiae subdatur.* C. 43, based on *Cap. Iud. VII,3 cum uxore alterius corruperit: episcopus XII annos, presbiter X, diaconus et monachus VIII* (all deposed), *clerici et laici VII* (excommunicated).

fornication by clerics starts with fornication in general and then treats more specific cases, like fornication with someone else's wife or a 'maidservant consecrated to God'.¹ The chapter on fornication by lay people contains a canon on adultery, taken from the *P. in II libris*, that assigns a penance of three years, during which the penitent should also abstain from his own wife. The second, taken from the Frankish *P. Oxoniense II*, assigns a comparatively mild penance of eleven weeks to married men who had committed fornication.² The high penance of the first canon is probably due to the fact that the woman is married, while the second does not mention marriage. Other canons forbid fornication with a slave girl, a widow, a virgin, and a young girl.³ In its chapter on fornication by women a penance of eleven months – the same penance is imposed on men – is assigned to women who had committed adultery when their husbands were present. Women who seduce men into adultery are to be excommunicated.⁴ The *P. Casinense* assigns a penance of two years (raised to ten years for bishops) to married men who had committed fornication with someone else's wife, whereas adulterous women are given three years.⁵ Other canons are concerned with fornication committed with the wife of a relative, a slave girl, a *sanctimoniale*, a *diaconissa* or wife of a deacon, and a virgin.⁶ The most peculiar canon of the *P. Casinense* deals with a layman *habens uxorem propriam uel concubinam* who had frequently (*multe*) committed fornication.⁷ Apparently, no distinction is made between a fornicator having either a legal wife or a concubine. This equation of concubinage and marriage under specific circumstances was first made by the council of Toledo (400), which declared that unmarried men having concubines instead of legal wives should not be barred from the Eucharist. This implies that monogamous and lasting cohabitation with a single partner was put on a par with marriage.⁸ The Toledan

¹ *P. Vaticanum* II,1 (*episcopus-monachus fornicauerit*; penance dealt with below); 2 (*episcopus-laicus sacrata dei ancilla fornicauerit*); 3 (*episcopus-laicus uxore alterius fornicauerit*). The wording of the last two canons, also addressed to lay offenders, seems to be unique to this penitential.

² *P. Vaticanum* III,1: *Si quis laicus cum alterius uxore fornicauerit, III annos peniteat et a propria uxore se absteineat diebus penitentiae*; 13: *Si quis habens uxorem et fornicat XI menses peniteat*.

³ *P. Vaticanum* III,2 (*cum uidua fornicatus*); 3 (*cum puella*); 7 (*ad ancillam suam intrauerit*)

⁴ *P. Vaticanum* IV,3: *Mulier si mechauerit presente uiro suo*; IV,6: *Mulier qui alterium uirum suadet*. See *P. Oxoniense II*, cc. 2/36 (Kottje ed., CCSL 156, pp. 191/195).

⁵ Reiterating a canon of the *P. Vallicellianum I*.

⁶ *P. Casinense* II,7: *Si quis laicus habens uxorem suam et cum alterius uxorem fornicauerit, annos II peniteat, clericus III annos peniteat...* Cf. II,3 (*maculauerit uxorem proximi sui uel uirginem corruperit*), 9 (*diacona*), 10 (*cum sanctimoniale fornicauerit*), VII,17 (*Mulier adultera III annos...*).

⁷ *P. Casinense* II,8: *Si quis laicus habens uxorem propriam uel concubinam, sed multe fornicatus fuerit, V menses peniteat*. Perhaps based on *P. Oxoniense II*, c. 14 (Kottje ed., CCSL 156, p. 194): *cum multis mulieribus fornicatus est* (no reference to adultery). Alternatively, if one reads *et for uel*, the canon addresses married men who had frequently committed adultery with their concubines.

⁸ A. Weckwerth, *Das erste Konzil von Toledo. Ein philologischer und historischer Kommentar zur Constitutio Concilii*. Jahrbuch für Antike und Christentum, kleine Reihe 1 (Münster 2004) pp. 216-218: 'einer Ehe stark angenäherte Konkubinat', '[d]er monogame, auf Dauerhaftigkeit angelegte Character einer solchen Verbindung wird stark betont'. Cf. *Concilium Romanum* (826) c. 2 (MGH Concilia 2, p. 582): *Ut non liceat uno tempore*

canon was also incorporated into the *Coll.5libr.*, where it is followed by a ruling which unequivocally states that concubines must be repudiated in case of marriage.¹ Quoting a sermon of Caesarius of Arles, the *P. Vaticanum* rejects concubinage and brands it adulterous, yet without any further specification.² No other text equates concubinage and marriage, so it seems that the *P. Casinense* is exceptional in this respect.

After treating fornication, adultery, and incest, the *P. Vallicellianum C. 6* discusses some specific cases, like fornication with a virgin dedicated to God (*uirgine deo sacrata*; c. 42), a widow vowed to God or deaconess (*uidua deo deuota, quae diaconissa dicitur*; c. 44), and a woman vowed to God (*deo sacrata*, branded as incest; c. 45). The *P. Vallicellianum E. 62* censures fornication with married women, ‘maidservants vowed to God’, widows, and virgins (cc. 19, 20, 23, 43, 46). This text also assigns a penance of ten years to someone who sleeps with his betrothed (*uxore sua disponsata*). This lengthy penance may be explained by the wording of the canon’s source, the *P. in II libris*, which reads ‘one’s betrothed sister’ (*sorore sponsata sua*). It is unknown whether the substitution of *soror* for *uxor* is made deliberately or is due to a scribal error. Betrothal did, except in the *Coll.9libr.* and the *Coll.5libr.*, not receive much attention in Italian penitentials.³ The *P. Lucense* repeats the *Coll.5libr.* by forbidding fornication with a woman vowed to God (*deuota que est ueste mutata*), an ‘elected widow’ (*uidua electa*; the *diaconissa* of *P. Vallicellianum C. 6*, c. 44?), the spouse of another man, the wife of a priest or deacon, a Jewish or pagan woman, a ‘*uidua equalis*’, a prostitute, a slave of someone else, and a ‘virgin not betrothed to another man’.⁴ The elected widow seems to designate a widow who has received a pension from the church, while the meaning of *uidua equalis* is not explained.⁵ The Italian penitentials largely follow the track of the older penitentials by including regulations of older texts, but they avail themselves of a more elaborate terminology to define forbidden sexual relationships more precisely.

duas habere uxores sive concubinas. See J.A. Brundage, *Law, sex, and Christian society in Medieval Europe* (Chicago and London 1987) pp. 101-102, 145.

¹ *Coll.5libr.* V,34-35 (Vat. lat. 1339, f. 259v): *IUDICIUM CANONICUM. Si quis laicus concubinam habens antequam uxorem accipiat, dimittat eam. Non est duplicata coniunctio...*

² *P. Vaticanum* III,11: *Concubinas habere numquam licuit... quam qui adulterium committit, a conloquio christiani populi separatur*. Cf. Caesarius 43,4-5, Morin ed., CCSL 103, p. 189.

³ *P. Vallicellianum E. 62*, c. 33: *Si quis cum uxore sua disponsata dormierit, X an[n]i peniteat secundum priores canones*. The *P. in II libris* I,4,26 and the *Coll.9libr.* IX,21,2 (Vat. lat. 1349, f. 200r) read *sorore disponsata*. *Coll.5libr.* book V begins with betrothal. The status of betrothal in canon law is treated by A. Esmein, *Le mariage en droit canonique* I (Paris 1929), pp. 101-125.

⁴ *P. Lucense*, c. 9,2: *Sy cum deuota que est ueste mutata. Si cum electa uidua uel cum sponsa alterius. Si cum presbitera uel diacona. Si cum iudea uel pagana VII annos peniteat. Si cum uidua equali uel puplica meretrice, aut ancilla alterius, V annos peniteat. Si cum laica uirgine, que non dum est sponsata alteri, III annos peniteat.*

⁵ The *uidua electa* was registered by the church and was chosen according to the ‘good works’ she had performed, which can be inferred from *Coll.5libr.* II,156 (Fornasari ed., CCCM 6, pp. 274-275).

Divorce; remarriage

Divorce and remarriage are discussed most systematically in the *Coll.9libr.* and *Coll.5libr.*, both of which built upon a vast but contradictory canonistic and patristic tradition. Canon law tended to allow divorce only in cases of adultery, entry into a monastery, and impotence. Even in the case of adultery, the innocent party was usually only allowed to remarry after the partner had died. The attitude towards second marriages in general was reserved.¹ While Irish penitentials follow the strict line of early canon law, a less strict policy is pursued by the *Iudicia* of Theodore and the *P. Oxoniense II*, both of which were influential in Italy.² Theodore allowed men to repudiate their adulterous wives. If it is his first marriage, the deceived husband is permitted to remarry, while a repudiated woman is permitted to remarry after five years of penance. For second and third marriages one has to do two or seven years of penance. Men who had abandoned their wives without reason and had remarried are awarded a penance of seven to fifteen years. Theodore also declared that a wife was not allowed to divorce her adulterous husband and that a couple was only permitted to divorce if both parties had given their consent.³ The position of the *P. Oxoniense II* on repudiation and remarriage was adopted by almost all the Italian penitentials, except for the *P. Vallicellianum C. 6*. The *P. Vaticanum* repeats the ruling that women who had repudiated their men could never be taken as wives, but omits another ruling that allows men to divorce from their wives if they had committed adultery.⁴ The *P. Vaticanum* and *Coll.9libr.*, repeating the *P. Oxoniense II*, forbid men to repudiate their wives and to take new ones (who should be considered prostitutes). The newlyweds and, if they had consented, their parents are condemned to total exclusion from the Christian community. Both texts add that the couple should divorce before they did a penance of forty weeks.⁵ The *Coll.9libr.* censures men or women who had repudiated their wives or husbands (*P. Oxoniense II*), men and women

¹ K. Heidecker, *Kerk, huwelijk en politieke macht. De zaak Lotharius II, 855-869* (Amsterdam 1997) p. 25. Brundage, *Law, sex, and Christian society*, pp. 143-145. Lutterbach, *Sexualität im Mittelalter*, pp. 98-101. In case of incest divorce is almost always mandatory.

² *P. Vinniani* c. 42-45 (Bieler, p. 90): both husband and wife are not allowed to remarry if their partners had committed fornication, at least while their adulterous wife or husband is still alive. The adulterous partner is allowed to return. See Lutterbach, *Sexualität im Mittelalter*, p. 126.

³ Meens, *Tripartite boeteboek*, pp. 282-283. See *Iud. Theod.* U, I,14,4-8; II,12,5-7 (Finsterwalder, pp. 307, 326-327). Men are permitted to keep their adulterous wives but they have to do penance or abstain from matrimonial relations for a period of time. Divorce is also permitted if a woman had made vows without her man's consent and if someone wishes to enter a monastery.

⁴ *P. Vaticanum* IV,4, *P. Oxoniense II*, c. 2 (Kottje ed., CCSL 156, p. 191; Körntgen, *Studien*, pp. 177-180).

⁵ *P. Vaticanum* III,19: *illa tales cum christianos non communicent neque edant, aut bibant, nec in sermone aut in opere aliquis eum communicent, et non possunt poeniteri donec separentur, postea unusquisque ieiunet ebdomadas XL; digna est mulier dupplum ieiunare. Coll.9libr.* IX,32 (Vat. lat. 1349, f. 201v): the priest should decide the length of the penance. *P. Oxoniense II*, c. 35 (Kottje ed., CCSL 156, pp. 196-197). Cf. chapter 2.

approving of the fornication of their partners (Council of Elvira), and men who had remarried after renouncing or killing their wives (Benedictus Levita).¹ The *P. Vallicellianum C. 6* follows Theodore by demanding that a man repudiate his adulterous wife or, if he wants to keep her, that both husband and wife do penance for three years during which they should abstain from intercourse.² The *P. Casinense* and the *Coll.5libr.* include the ruling of the *P. Oxoniense II*, yet in a shortened version, where a man who had deserted his wife and had taken another should be excommunicated.³ Most Italian penitentials are silent about permitting for men or women to divorce and remarry in cases of adultery. The *P. Lucense* ignores the subject. It is, therefore, difficult to ascertain a common policy or stance, either a strict or a more lenient, on this matter in the Italian penitentials.

A desire for precise and detailed regulations concerning divorce and remarriage prompted the compiler of the *Coll.5libr.* to create an impressive series of forgeries under the name of *Iohannes Constantinopolitanus*, which addressed this matter in considerable detail.⁴ The canons imitate the structure of the rulings of the *P. Ps.-Gregorii* by systematically distinguishing between old penances and more humane ones.⁵ This approach seems to be a rhetorical device to enhance the credibility of the forgery, since none of these ‘old judgments’ exists. The dossier of the *Coll.5libr.* begins with a ruling on married men (*habens uxorem*) who had committed fornication with unmarried (*uacans*) or married (*impedita*) wives. Then a multitude of cases are discussed, where second marriages are forbidden, for example, men who, after divorcing from their wives because of fornication, married wives who had also been repudiated after having committed fornication. The *Coll.5libr.* adds a number of different combinations (women repudiated but not because of fornication who marry men

¹ *Coll.9libr.* IX,35 (Vat. lat. 1349, f. 202r): *Mulier qui uirum suum uoluntarie dimittit, nemo accipiet eam... Mulier si suum uirum consentit cum alia fornicare, et si uirum consentientem se mulier mechare... si uir propriam suam uxorem derelictam uel sine culpa fornicationis aut interfectam aut aliam duxerit, deposita arma tantum publ[ic]a agat penitentiam, et si hec contumax fuerit, comprehendatur a comitem aut ab aliis nobiliores, et ferro uinciatur et in custodia et in carcere mittatur, donec ad penitentiam reuertatur...*

² *P. Vallicellianum C. 6*, c. 47. Theodore and the *Cap. Iud.* give a husband the choice either to do a two year penance or to abstain from intercourse during the penance of the adulterous wife.

³ Derived from the *P. Vallicellianum I* or *P. Merseburgense* (c. 124; Kottje ed., CCSL 156, p. 160).

⁴ Introduced by the rubric (Vat. lat. 1339, f. 289v): *Iohannes constantinopolitanus episcopus atque alii eruditissimi uiri, prouidentes conciliorum canones decretaliumque pontificum. De coniugibus adulterinis iudicium ediderunt.* According to R.F. Gyug, ‘The list of authorities in the illustrations of the Collection in Five Books (MS Vat. lat. 1339)’ in *Ritual, text and law. Studies in medieval canon law and liturgy presented to Roger E. Reynolds*, pp. 241-254, p. 251, John of Constantinople is not to be identified with John Chrysostome. However, it is difficult to determine to which other ‘John of Constantinople’ the rubric could refer. The series deserve a closer analysis than can be given here.

⁵ See for instance *Coll.5libr.* V,160 (Vat. lat. 1339, ff. 291v-292r): *Si quis, quod est mercatum incestuosissimum, preter fornicationem uxorem suam dimiserit, et dimissam a uiro preter fornicationem uiuente uiro suo duxerit... Secundum antiquam diffinitionem .xx. annos peniteat. Humanius diffinierunt .xv. annos penitere et sacrum corpus domini post actam penitentiam percipere, nisi ante tempus urgeatur obitu mortis...*

abandoned by their wives because of fornication, etc.). In those rare events when remarriage was allowed, usually if one's partner had committed 'fornication', one had to wait until one's repudiated husband or wife had died before one could remarry.¹ Compared to the penitentials, the *Coll.5libr.* adopts a strict policy based on early conciliar and papal legislation rather than the approach of penitentials.² Curiously, no penitential incorporated any of these pseudonymous canons, either because the cases were considered too hypothetical or too rigorous.

The question of remarriage by widows and widowers is only discussed in the *P. Vaticanum* and *Coll.9libr.* Both texts allow remarriage but demand a period of penance before contracting a second marriage. The *P. Vaticanum* adds that such remarriage is permitted only after seven months following the death of the spouse, a stricture not found in any other text.³ The *P. Vaticanum*, like the *P. Oxoniense II*, allows a widower to remarry after seven months, but demands that he do penance for one year or more if it is his third or fourth wife. Women who had remarried within a year should fast for four months.⁴ The period of seven months for men is not mentioned in its source, the *P. Oxoniense II*, which only prescribes a fast of one or two weeks for men and women who had remarried. The seven months are also recommended by the *Coll.9libr.*, following the *P. Vaticanum* while suggesting that it is quoting ancient and venerable authorities. This collection contrasts this requirement with a supposed 'old' permission allowing remarriage after one year.⁵ Other Italian penitentials do not deal with the topic, which suggest that remarriage of widows was allowed unconditionally.⁶ Remarriage without any period of 'celibacy' may, therefore, have been the norm in Italy.

¹ The series end with a canon rubricated *Synodus Romana* allowing men and women who caught their wives and husbands in adultery to remarry after their partners had died. The adulteress cannot remarry but should do penance for the rest of her life: *Coll.5libr.* V,164 (Vat. lat. 1339, f. 292v): *Hi uero qui uxores suas scortos in adulterio deprehenderit, non licebit nec eum nec illam aliam uxorem accipere uel alium uirum, quamdiu ambo uiuunt. Si autem adultera mortua fuerit, uir eius si uult nubat tantum in domino. Adultera uero numquam, etiam si mortuus fuerit uir eius, omnibus tamen diebus uite suę acerrimam penitentiam per lamenta soluat.*

² See the legislation cited by Heidecker, *Kerk, huwelijk en politieke macht*, pp. 15-40.

³ Theodore cannot have been the source here, for he approved of remarriage after one month. The dependence of the *Coll.9libr.* on the *P. Vaticanum* could explain the occurrence of the period of seven months, but it is not clear why the *Coll.9libr.* designates as the old regulation the period of one year, which the *P. Oxoniense II* and Theodore demanded for widows only.

⁴ *P. Vaticanum* III,15: *Vir cuius mortua fuerit uxor licet ei post septem menses aliam accipere, et I annum peniteat, et si tres duxerit, II annos...etc.* IV,7: *Mulier cuius mortuum fuerit uir eius et alium duxerit ante annum...* See *P. Oxoniense II*, c. 38 (Kottje ed., CCSL 156, p. 197).

⁵ *Coll.9libr.* IX,27 (f. 200v): *Vir cuius mortua fuerit uxor, secundum antiquam diffinitionem licet ei post annum accipere aliam, secundum humaniorem diffinitionem post .vii. menses, et ipsa si prima fuit, et unum annum peniteat. Et si tertiam duxerit, .vii. annos peniteat et separetur, quia non sunt coniugia, sed adulteria aut stupra aut contubernia... Similiter et mulier si tertium uirum duxerit.*

⁶ See Körntgen, *Studien*, pp. 180-182.

Incest I

Anti-incest legislation takes a prominent place in South Italian penitentials and canon law collections. The canons of the *Coll.5libr.* and Italian penitentials on this topic have been characterized as “the apogee of the anti-incest legislation of the early Middle Ages”.¹ Whereas Frankish penitentials do not discuss the subject in great detail, Italian texts were deeply concerned with incest and consanguinity. South Italian sources showed an unusual interest in incest, relying on a battery of forgeries to defend their case. Against the ‘laxity’ of early canon law and the competing Roman system for calculating kinship, the *Coll.9libr.* and *Coll.5libr.* defended the Germanic or canonical system and vigorously upheld a strict position by forbidding marriages within seven generations of kinship.² The extension of the ban to the seventh generation of kinship was introduced into canon law in the eighth century for motives that are still debated by historians.³ Some scholars have contended that it was a reaction against the ‘kin-based society’ of early medieval Europe; some view it as an attempt by the church to acquire possessions, while others explain it as due to fear of pollution.⁴ I will not discuss these theories in full, but rather focus upon the impact this accumulating body of contradictory laws had over the course of time.⁵ Disharmony and confusion as to which marriages were to be permitted not only led to recent discussions among modern historians but also to strife between eleventh-century canonists. The debate hinged upon the problem as to whether marriages that fell between the fourth and the seventh generations of kinship were incestuous and therefore illegal. According to the canonical or Germanic system of kinship the number of generations is calculated as the larger of the number of links that two relatives can trace back in the ascending line to their most recent common ancestor. The Roman system

¹ M.H. Gelting, ‘Marriage, peace and the canonical incest prohibitions: making sense of an absurdity?’ in M. Korpola ed., *Nordic perspectives on medieval canon law*. Publications of Matthias Calonius Society 2 (Helsinki 1999) pp. 93-124.

² Esmein, *Le mariage en droit canonique* I, pp. 379-393. Gelting, ‘Marriage, peace and the canonical incest prohibitions’, pp. 97-105. For the critique on the Roman mode of counting by canonists see P. Legendre (with A. Schütz, M. Smith, and Y. Thomas), *Leçons VI, suite: Le dossier occidental de la parenté. Textes juridiques indésirables sur la généalogie* (Paris 1988) pp. 211-214.

³ P. Mikat, *Die Inzestgesetzgebung der merowingisch-fränkischen Konzilien (511-626/27)*. Rechts- und Staatswissenschaftliche Veröffentlichungen der Görres-gesellschaft 74 (Paderborn 1994) and M. de Jong, ‘An unsolved riddle: Early Medieval incest legislation’ in I.N. Wood ed., *Franks and Alamanni in the Merovingian period. An ethnographic perspective*. Studies in historical archaeology 3 (San Marino 1998) pp. 107-121.

⁴ Survey of the discussion in Gelting, ‘Marriage, peace and the canonical incest prohibitions’, pp. 93-106. I have consulted only a part of the vast literature on incest in the early Middle Ages: De Jong, ‘An unsolved riddle: Early Medieval incest legislation’, pp. 107-121; J. Goody, *The development of the family and marriage in Europe* (Cambridge 1983) pp. 134-146; C.B. Bouchard, ‘Consanguinity and noble marriages in the tenth and eleventh centuries’, *Speculum* 56 (1981) pp. 268-287 for the opinion that incest resulted from a ruling elite wishing to strengthen the power of the family by marrying members of distant kin

⁵ De Jong, ‘An unsolved riddle’, p. 116: ‘Falsifications... also attempted to harmonize an authoritative, but contradictory and confusing textual tradition.’

of grades counts the number of degrees to the common ancestor in both the ascending and descending line. For example, nephews are relatives in the second generation of kinship according to the canonical system, while they are relatives in the fourth degree according to the Roman system. Early canonistic sources used the Roman mode of counting kinship, while canonistic texts from the eighth century onwards employed the Germanic system.¹ The existence side by side of two different systems caused confusion, as shown by a letter by pope Alexander II (1061-73).² Even those who employed the canonical system held different views as to how to count the generations.³

The *Coll.9libr.* and *Coll.5libr.* both deploy an impressive amount of canons in order to emphasize the seventh *generatio* as the canonical criterion to be obeyed by all.⁴ It was probably the absence of references to the seven generation ban in earlier texts that prompted their compilers to create a number of forgeries. In ms. Vat. lat. 1339 of the *Coll.5libr.* consanguinity tables were reproduced, based on those of Isidore's *Etymologiae*. Since Gregory the Great's influential *Libellus Responsionum* had allowed the English to marry in the third and fourth generations, both collections sought to downplay the implications of this ruling by rendering interpolated versions of his answer in order to show that Gregory had actually remained faithful to the principle of the seventh *generatio*, which in reality he had not mentioned.⁵ These versions make it seem as if Gregory had granted dispensation to marry within the fourth generation to the English only.⁶ Another forgery, attributed to the council of

¹ Eg. Isidore and Theodore of Canterbury. See Lutterbach, *Sexualität im Mittelalter*, pp. 174-175.

² Decretal of pope Alexander II (Gratianus C. 35, q. 5, c. 2, Friedberg ed., pp. 1271-1274). See also Legendre, *Le dossier occidental de la parenté*, pp. 210-215.

³ Burchard of Worms counts nephews and nieces as the first generation, since son and daughter, or brother and sister are his point of departure, his *truncus*. The *Coll.5libr.* counts them as the second generation and considers parents the *truncus*. On this confusion see Legendre, *Le dossier occidental de la parenté*, pp. 205-209 and G. Picasso, 'I fondamenti del matrimonio nelle collezioni canoniche', *Il matrimonio nella società altomedievale I*. Settimane di studio XXIV (Spoleto 1976) pp. 191-231, p. 216. Bonizo of Sutri declared Burchard's counting apocryphal. There is a second disagreement. Drawing on biblical models, Peter Damian and Bonizo of Sutri counted the common ancestor as the first generation and his children as the second. They departed from the canonical system, which counted parents and their children as one generation. See W. Berschin, *Bonizo von Sutri: Leben und Werk*. Beiträge zur Geschichte und Quellenkunde des Mittelalters 2 (Berlin, New York 1972) pp. 88, 90-91. Discussion by Gratian in C. 35, q. 3, c. 21 (Friedberg ed., pp. 1269-1270).

⁴ Apocryphals ascribed to Gregory I are treated by L. Machielsen, 'Les spurii de S. Grégoire le Grand en matière matrimoniale, dans les collections canoniques jusqu'au Décret de Gratien', *Sacris Erudiri. Jaarboek voor godsdienstwetenschappen* 14 (1963) pp. 251-270. He does not mention the *Coll.9libr.* or *Coll.5libr.*, although these collections are the oldest manuscript witnesses for some of these 'spurii'.

⁵ Gregorius I, Reg. XI,56a (*Gregorii I Papae Registrum epistolarum* 2, L.M. Hartmann ed., MGH, Epistolae 2 (Berlin 1890), pp. 335-336) explains that his censures are stricter than those of Roman law.

⁶ *Coll.5libr.* V,215 (Vat. lat. 1339, ff. 306v-307r): *Vnde necesse est, ut iam tertia, quarta, quinta, sexta, septima generatio fidelium licenter sibi iungi nequaquam debeat. Graue enim facinus, qui hæc fecerit. The Coll.5libr. adds: Præterea cum cognata quoque, uel propinqua uxoris sue, uel propinquo uiri sui misceri prohibitum est funditus, quia per coniunctionem priorum caro fratris fuerant facti. According to this collection the offspring of such marriages should be considered bastards (Et quia si quis hæc incesta uel nefaria que superius scripta sunt fecerit, nec nuptias nec filios habere uidetur, sed spurios. Spurii ideo appellantur, quia uidentur habere patrem,*

Nicea in the *Coll.9libr.* and to Gregory in the *Coll.5libr.*, forbids people to marry unless they are certain that they are not marrying within seventh degrees of relationship. Those who marry within seven generations without knowing should be separated from their wives or husbands and do penance, but those who knowingly marry within the seventh generation of kinship shall be cast out of the church without receiving Communion on their deathbeds.¹ A letter of pope Zachary, included in both collections, takes notice of the ‘dispensation’ of Gregory I, whose leniency is explained by the fact that the Anglo-Saxons had to be ‘invited to the Christian faith’, and it subsequently sets out the seventh degree as Zachary’s predecessor Gregory II had done.² Finally, the collections include a series of penitential canons, mainly rearrangements of older material that prescribe penances for specific incestuous bonds.³ With this legislation the strictest interpretation of incest reached its peak and also its end. Under the moderating influence of authors like Peter Damian and the canonist Bonizo of Sutri (ca. 1045-1089?) the rigor of this interpretation was toned down.⁴

Penitentials treat incest in a less systematic fashion than canon law collections and consider incestuous bonds as just one of many forbidden relationships. They concentrate on fornication with relatives outside blood affinity, such as the widow of one’s father or uncle.⁵

sed non consanguineos); *Coll.9libr.* VII,65 (Vat. lat. 1349, f. 153v) has the same interpolations, but unlike the *Coll.5libr.* quotes Gregory’s answer in full. Both collections incorporate another version which underlines the exceptional character of his concession: *Coll.5libr.* V,213 (Vat. lat. 1339, f. 306r): *ut tertia uel quarta generatio fidelium licenter sibi specialiterque coniungi debeant, id est solummodo in anglorum gente et hec omnino non generaliter.* *Coll.9libr.* VII,67 (Vat. lat. 1349, f. 154) adds: *corpore et sanguine dominico priuentur, usque dum se penitentie subdant et ab inuicem separentur.* A letter of (Ps.-)Gregory I to Felix of Messina, fabricated by Ps.-Isidore, underline the exclusiveness of the dispensation: *Coll.5libr.* V,214 (Vat. lat. 1339, f. 306r-v; ed. *Decretales Pseudo-Isidorianae*, Hinschius ed., pp. 747-753).

¹ *Coll.5libr.* V,212 (Vat. lat. 1339, f. 305v): (...) *Legimus in decretis sanctorum patrum uel in concilio niceño, ut nullus christicola de cognatione sua uxorem accipiat, nisi perfecte sciat transactam .vii. generationem... si per ignorantiam factum fuerit, tamen sic separentur et a sacerdotibus locorum addatur illis congrua penitentia. Si tamen sciens homo et cognitum habuerit, hoc secundum et magnum niceñum concilium ceteraque sanctorum patrum decreta, qui hoc malum attractauerit, abominabitur cum sancta ecclesia catholica, et nec in finem ei danda est communitio.*

² De Jong, ‘An unsolved riddle: Early Medieval incest legislation’, pp. 110-111 and R. Weigand, ‘Die Ausdehnung der Ehehindernisse der Verwandtschaft’, *ZRG, kan. Abt.* 80 (1994) pp. 1-17, pp. 5-6.

³ The *Coll.9libr.* takes a ruling on incest of the *P. Ps.-Gregorii* as its model, to which it adds new, forbidden relations. See IX,49 (Vat.lat. 1349, ff. 205v-206r): *Qui cum suam commatre tam funestu atque nefarium uitium intulerit, ut ea fornicat... cum filia in christo, id est, de sacro fonte suscepta, secundum priorum constitutionum inermis .xv. annos cum fletu et penitentia. Secundum paterna diffinitione .xii. annos...; IX,50: Si quis nouercam, aut cognata, aut consobrina, aut sororis filiam, aut relicte abunculi, uel patru, aut priuigne, uel qui duas sorores, aut ille qui duos fratres, aut cum nepta, aut cum commatre, aut cum matre in christo, aut cum filia de baptismo, aut cum socrum, uel cum nuru sua concubitu pollutantur, secundum antiqua diffinitionem .xv. annos districtis peniteat. Secundum paterna diffinitionem .xii. annos...; IX,51: Si quis cum filia sua uel sorore tam funestu atque nefarium uitium perpetraverit, secundum antiquam et humaniorem diffinitionem .xv. annos inermis cum fletu et luctu peniteat...; IX,52: Si filius cum matre tam sceleratissimus atque nefandissimus uitium presumserit, secundum canonicam apostolicamque auctoritatem .xv. annos...*

⁴ Gelting, ‘Marriage, peace and the canonical incest prohibitions’. For Bonizo and Damian see note 41.

⁵ See Payer, *Sex and the penitentials*, p. 32. The Frankish *P. Oxoniense II*, an important source for Italian penitentials, explicitly forbids these marriages. See Körntgen, *Studien*, p. 179.

Incest was a flexible concept, which could include a wide range of forbidden marriages that one would not always associate with incest. Some penitentials denounce fornication with nuns, virgins and widows devoted to God as incest. While some canons explicitly refer to marriage (*uxorem ducere*; ‘taking as a wife’), the majority seem to allude to sexual incest.¹ The *P. Casinense* forbids ‘fornication’ with one’s mother, sister, and sister-in-law.² It also forbids fornication with one’s niece (*consobrina*), sister-in-law, stepdaughter (*filiastra*), the widows of one’s father or (paternal) uncle (*uidua barbani*), and the wife of ‘a relative’.³ The *P. Vaticanum* censures ‘adultery’ with one’s sister, sister-in-law, niece, godmother, aunt (*ziana*) in its chapter on fornication committed by clerics. The chapter on fornication by lay people treats fornication with one’s mother and marriages with the widow of one’s father, brother, or maternal uncle, stepdaughters (*filia uxoris sui*), and stepmothers (*nouerca*).⁴ The *P. Vallicellianum E. 62* repeats the censures of the *P. Vaticanum*.⁵ The *P. Vallicellianum C. 6* is the only penitential that explicitly censures incest up to the seventh generation by quoting the *Coll.5libr.* Those who are involved in incestuous marriages cannot be judged until they are divorced.⁶ Another canon deals with *incestum* committed with relatives, godmothers, and women ‘dedicated to God’, heaping together three different kinds of forbidden relations under one rubric.⁷

¹ They use the term *fornicatio*. The distinction between marital and sexual incest is made by Payer, *Sex and the penitentials*, p. 30. However, incestuous marriages were often not recognized as marriages at all, see Mikat, *Die Inzestgesetzgebung der merowingisch-fränkischen Konzilien*, pp. 96-98.

² *P. Casinense* II,9: *Si quis cum matre uel sorore sua fornicauerit, XV annos. Si quis cum cognata sua, VII annos peniteat.* Fornication with a *commater de fonte* and a *filia spirituale* is dealt with below.

³ *P. Casinense* XII,19: *Si quis fornicauerit cum uidua patris sui uel barbani sui, aut germana, cognata, uel filiastra sua... Et si cum uxore proximi sui...* The canon is taken from the North Italian *P. Vallicellianum I. Cf.* Hägele, *Das Paenitentiale Vallicellianum I*, p. 54 on the term *barbanus*.

⁴ *P. Vaticanum* II,4: *Si quis cognata aut consobrina, seu ziana, uel sorore, aut commatre adulterium commiserit...* *P. Vaticanum* III,6: *Si quis cum propria matre fornicauerit...* (based on Theodore); III,17: *Si quis duxerit uiduam patris, aut fratri sui uxorem, aut filiam uxoris sue, aut nouercam, aut auunculis sui uiduam, aut alium illicitum coniugium, hi tales non possunt iudicare donec separentur...* (based on *P. Oxoniense II*, cc. 3/11/12 (Kottje ed., CCSL 156, pp. 191/194)).

⁵ *P. Vallicellianum E. 62*, c. 21: *Si quis cum cognata, aut cum consobrina, aut sororem, uel cum commatre, seu tiana adulterium comiserit...* C. 34: *Si quis acceperit cognatam aut nouercam auunculis suis, isti separentur et post hoc canonice iudicentur* (cf. *P. in II libris I,4,28*). Canons 44-47 repeat the censures of the *P. Vaticanum* on illicit marriages with a *consobrina*, one’s mother, and a godmother.

⁶ *P. Vallicellianum C. 6*, c. 51: *Si quis duxerit de propria cognatione in coniugio, hi tales non possunt iudicari, nisi prius separentur. Ratio autem iudicii haec est: Prout propinquitatem manifestat, id est: Si tertia XV annos peniteat. Si quarta XIII annos. Si quinta XII. Si VI^a X annos. Si septima VII. Districtius tamen tot annorum post diuisionem subdatur penitentiae, siue minus, siue amplius iuxta prolixiores perpetraciones peccati. Si quis igitur propinquam suam ante completionem septime generationes uxorem duxerit, X annos peniteat, V in pane et aqua, et illam a se abiciat; quod si facere noluerit, anathema sit et excommunicatus.* It departs from *Coll.5libr.* V,226 (Vat. lat. 1339, ff. 309-310; cf. *P. Oxoniense II*, c. 3 (Kottje ed., CCSL 156, p. 191)). Gratian, C. 35, q. 6, dict. p. c. 9 (Friedberg, p. 1280): people cannot be divorced under the pretext of incest until their case has been tried and the marriage proven to be incestuous. He refers to an ecclesiastical court rather than confession.

⁷ *P. Vallicellianum C. 6*, c. 45: *Si quis episcopus incestum commiserit cum propinqua sua, uel commatre, aut deo sacrata, XV annos peniteat. Presbiter XII...*

We may conclude that penitentials confine themselves to specific cases and rarely refer to any system of calculating kinship.¹ The prohibition against incest up to the seventh *generatio* presupposes a theoretical treatment of the subject, which belongs to the world of canonists rather than that of the priests consulting penitentials. It is unlikely that a priest-confessor could investigate these cases as thoroughly as the canonistic sources envisioned. The collections adopt a strong stance, whereas the penitentials advocate a more pragmatic approach, which is sometimes more tolerant than that allowed by the theoretical rules of the collections.

Incest II: spiritual kinship

Although some Frankish and North Italian texts incorporate prohibitions against sexual relations between people related through spiritual kinship, spiritual kinship was not a major issue in early penitentials.² Italian penitentials and canon law collections are almost unanimous in their rejection of marital and sexual bonds between godparents and godchildren. Such a ban probably originated in Byzantium and, through the Roman synods of 721 and 743, entered Lombard law and canon law in the eighth century.³ The authors of the South Italian penitentials could build upon a vast, partly indigenous legal tradition.⁴ The penances for fornication between priests and their spiritual daughters are particularly harsh. The *Coll.9libr.* and the *Coll.5libr.* require that the goddaughter give up her worldly possessions and enter a monastery, while a priest is deposed and condemned to a fifteen-year pilgrimage, after which he is confined to a monastery for the rest his days.⁵ The *P. Casinense* demands that priest and spiritual daughter sell their possessions and enter a monastery.⁶ The *Coll.9libr.* and *Coll.5libr.*

¹ For instance, the *nepta* (granddaughter) and *amita* (aunt) are only mentioned in the North-Italian *P. Merseburgense B*, c. 3 (cf. *P. Hubertense*, c. 45; Kottje ed., CCSL 156, pp. 173/113).

² *P. Merseburgense A*, c. 144 (*commater*) and *B*, c. 8 (*filia uel soror ex sacro fonte* = *P. Hubertense*, c. 51) 9 (*commater*) (Kottje ed., CCSL 156, pp. 165/173/175), *Merseburgense C*, c. 4 (*commater sua fontanea; commater de sancto ioh[anno]*); Wassersleben, p. 436)

³ J.H. Lynch, *Godparents and kinship in early medieval Europe* (Princeton 1986) pp. 202-203, 219-224, and 234-242. Lynch explains the absence of this ban in Frankish sources prior to the eighth century from the fact that most spiritual parents were of the same sex as the children they sponsored, a custom that changed in the eighth century. See Payer, *Sex and the penitentials*, p. 32.

⁴ The *Coll.9libr.* and *Coll.5libr.* cite Longobard and Roman law. Since Frankish canons of the ninth century also prohibited marriages between spiritual kin, the possibility of Frankish influence cannot be ruled out. Apart from the rulings of the Roman synod of 721, canonistic sources include an alleged letter of pope Deusdedit that declared that all coparenthood arising from the seven *dona baptismi* ('from the giving of salt to the catechumen to confirmation') invalidated marriage.

⁵ *Coll.9libr.* IX,40: *Si quis autem sacerdos cum filia sua spirituali fornicauerit, sciatur se graue adulterium commississe...* The penance is discussed below. The ruling is repeated as IX,43. Cf. *Coll.5libr.* II,791/2 (Fornasari ed., CCCM 6, pp. 227-228). The second ruling of the *Coll.5libr.* raises the penance of the bishop to twenty years and also covers other sins committed with a *filia spiritualis*.

⁶ *P. Casinense* II,15. *Si quis sacerdos cum filia spirituale fornicauerit.* The penance is treated above.

also censure fornication between a lay man and his *filia in christo*.¹ Most penitentials, however, only mention the godmother, but not the *filia spiritualis*. The penances of the *P. Vaticanum* and the *P. Vallicellianum E. 62* for ‘adultery’ with one’s godmother range from twelve years with deposition for bishops to five for lay people.² The *P. Vallicellianum C. 6* requires similar penances for ‘incest’ with one’s godmother.³ The harshest penance is found in the *P. Casinense* which condemns those who had committed fornication with their *commater de fonte* to a lifelong pilgrimage and exclusion from communion.⁴ The *Coll.9libr.* assigns twelve years of penance in exile for this sin.⁵ Most canons refer to fornication or adultery and not to marriage, which makes it likely that they are aimed at sexual rather than marital incest.

Sexual abstinence

The requirement to abstain from sexual contact during specific times of liturgical significance such as Sundays and Lent, or during pregnancy or menstruation can be encountered in the earliest penitentials. With regard to sexual abstinence Italian penitentials seem to have adopted a stricter stance than other texts.⁶ This partially resulted from the fact that Italian compilers collected and grouped together the regulations they found in earlier texts. Like Frankish and Insular texts, Italian penitentials disagreed about which feast days and periods were to be included in the list. For example, while most texts (*P. Casinense*, *P. Vallicellianum C. 6*, *P. Lucense*, *Coll.5libr.*) demanded that a couple refrain from intercourse from the time of conception, other texts (*P. Vaticanum* and *P. Vallicellianum E. 62*) required abstinence only during the three months before giving birth. The period after giving birth was equally liable to different interpretation. Some texts require that couples observe forty days of

¹ *Coll.9libr.* IX,49 (Vat. lat. 1349, f. 205v): *Qui cum suam (!) commatre... aut quod turpis est dicere, cum filia in christo, id est de sacro fonte suscepta*. Based on *P. Ps. Gregorii* 11 (Kerff ed., p. 174).

² *P. Vaticanum* II,4: *Si quis cum cognata aut consobrina, seu ziana, uel sorore, aut commatre adulterium commiserit, honore priuatus, episcopus XV annos peniteat, presbyter...* The *P. Vallicellianum E. 62* mentions fornication with one’s *commater* in two of its canons. *P. Vallicellianum E. 62*, c. 21: *Si quis cum cognata aut cum consobrina aut sororem uel cum commatre seu tiana adulterium comiserit...* Canon 49: *Si quis cum comatre sua adulterium fecerit, VII anni peniteat...* The first reduces the penance of the *P. Vaticanum* for minor clerics and lay people to three years, while the second, taken from the *Coll.5libr.*, requires seven years of penance.

³ *P. Vallicellianum C. 6*, c. 45: *Si quis episcopus incestum commiserit cum propinqua sua, uel commatre, aut deo sacrata, XV annos peniteat. Presbyter XII... et communione priuentur et sacro ordine*. See also c. 6 on parricide: *Qui patrem et matrem, sororem, aut fratrem, siue filium, seu compatrem, aut filium de sacro lauacro, seu proprium seniore, et alios similes, uidelicet presbyterum, aut suam uxorem uoluntariae occiderit...*

⁴ *P. Casinense* II,14: *Si quis cum commatre sua de fonte fornicauerit...* On this canon see chapter 1.

⁵ *Coll.9libr.* IX,50 (Vat. lat. 1349, ff. 205v-206r): *Si quis nouercam... aut cum commatre, aut cum matre in christo, aut cum filia de baptismo...* Cf. IX,49,2 and *P. Ps. Gregorii* (Kerff ed., p. 174).

⁶ An overview of the periods of sexual abstinence prescribed by penitentials in Payer, *Sex and the penitentials*, pp. 23-28 and pp. 126-127 and J.-L. Flandrin, *Un temps pour embrasser. Aux origines de la morale sexuelle occidentale (VI^e-XI^e siècle)* (Paris 1983) pp. 10-40.

abstinence, others demands two or three months.¹ As for liturgical days, most texts include Saturdays and Sundays among the days of continence, but the *P. Vaticanum* confines the period of abstinence to Saturday night and all of Sunday until vespers.² In addition, some texts omit Wednesdays and Fridays as days of continence.³ Apart from Wednesdays, Fridays, Sundays and Saints' festivals, the *P. Casinense* also requires that Christians abstain from sexual relations on Saturdays of Lent and, quoting Theodore, during the Easter and Pentecost octaves.⁴ The *P. Vaticanum* reproduces censures of the *P. in II libris*, but adds three-day periods before and after communion, three days before and after one went to church, and abstinence from intercourse during one's penance.⁵ Continence during one's penance is also proposed by the *Coll.9libr.* and the *Coll.5libr.* Although this is sometimes mentioned as part of one's penance, it is hardly found as a general requirement. The collections stipulate a large number of restrictions, derived from an equally large number of different sources.⁶ The *Coll.9libr.* lists all *quadragesimae*, the *publica quadragesima* (Lent), the Easter octave, and 'all periods when one has to carry out a fast or celebrate a [religious] feast'.⁷ The *Coll.5libr.* adds the entire period ranging from 'the Sunday of *Quinquagesima* until the closing of Easter' and all Christian feasts.⁸ The connection between sexual abstinence and fasting is made

¹ The *P. Vaticanum*, the *P. Casinense*, and the *P. Vallicellianum E. 62* require forty days of abstinence, the *P. Vallicellianum C. 6* two months, and the *Coll.9libr.* and the *P. Lucense* three months.

² *P. Vaticanum* III,12. *Omnis christianus abstinere se debet a propria uxore sua tempore poenitentiae et quadragesimis diebus, et sabato nocti seu die dominico ante uesperum, uel diebus festis, et tres ante communionem et tres post communionem, et quando ad aecclesiam uadit. Similiter et menstruo tempore, et XL dies ante partum, et XL post partum, et qui intrauerit ad mulierem his diebus, XX dies poeniteat.* According to *P. Vallicellianum E. 62*, c. 30: *sabato seu dominica diebus usque ad noctem.*

³ *P. Vallicellianum C. 6*, c. 50: it is not certain whether it refers to Fridays of Lent, or the days of Lent and the nights of all Fridays, Saturdays, and Sundays of the entire year: *Qui in matrimonio sunt, quadragesimę diebus et noctibus dierum ueneris* [punctuation of the manuscript retained], *et sabbatis et dominici, et menstruo tempore abstinere se debent a copulatione carnali...* The *P. Vallicellianum E. 62* does not include both days.

⁴ *P. Casinense* XII,33: *Vir abstinere se debet ab uxore sua quadragesima ante pascha et I ebdomada post pascha... Et unam ebdomadam post pentecosten pro reuerentia sollempnitatis regenerationisque. Et ante communionem diebus III et postea similiter, et diebus dominicis, seu in sollempnitatibus sanctorum, et III et VI feria, et sabato tempore ieiunii, et menstruo tempore, et tribus mensibus antequam pariat, et post partum dies XL. Quod si pręsumpserit, XL dies peniteat.* Based on Theodore U, II,12,1-3/II,14,12

⁵ *P. Vaticanum* III,12: *tres ante communionem et tres post communionem, et quando ad aecclesiam uadit.*

⁶ Titles of the canons of both collections (*Ex decreto patrum, in conflictu canonum, Iudicium canonicum, Gregorius, or Commeanus*) show that their compilers had consulted various sources.

⁷ *Coll.9libr.* IX,30/34 (Vat. lat. 1349, f. 201): *Omnis itaque christianos abstinere debet a propria uxore tempus penitentię, et in quadragesime anni, et in sabbatis et dominici diei noctibus et in certis ac pręcipuis festiuitatibus, et .iiii. et .vi. feria, et ab inconceptos semine usque .xl. dies post partum, et menstruo tempore, et .iii. dies antequam communicet... Vir contineat se ab uxore sua .iii. menses antequam parturiant... Si quis menstruo tempore... In quadragesima uero publica si peccauerit homo cum sua coniuge ante octaba pasche... Si quis uir cum sua uxore in quadragesima publica nupserit, ante octaua pasche... In aliis diebus quando ieiunium debuit portare aut festiuitatem celebrare...*

⁸ *Coll.5libr.* V,173 (Vat. lat. 1339, f. 295v): *Omnis christianus qui in matrimonio est abstinere se debet a propria uxore* (repeating *Coll.9libr.* IX,30/34)... *Qui nupserit, ut in conflictu canonum et in iudicio canonicum repperitur, a dominica quinquagesima usque ad clausum pasche, quando paschalis sollempnitas eo die festiuitate concluditur...* (Then follow the penances for each violation).

explicit in these collections. On the other hand, Flandrin notes that, whilst times of fasting were often periods of sexual abstinence, abstinence was also mandatory on days of joy such as Easter or Sundays, on which fasting was not permitted.¹ The emphasis on sexual abstinence during days and periods which carried a special liturgical connotation could indicate a concern for a pure and uncontaminated liturgy, a topic that was touched upon above.

Their dealings with adultery and abstinence make clear that penitentials made an effort to regulate marriage itself. In this respect penitentials did not differ from those of earlier times. Yet the attention paid to these topics when compared to other sins is remarkable. In addition, new regulations were formulated in penitentials and, to an even greater extent, in the *Coll.9libr.* and *Coll.5libr.* These collections, moreover, tend to treat these subjects in a more scholarly way than the penitential books, partially by adding rules from ‘non-penitential’ sources. Their compilers drafted new canons to bring uniformity and to remove uncertainties due to the variety of (penitential) regulations. In general, the *Coll.5libr.* and *Coll.9libr.* were not only engaged in combatting sin, but also in formulating a theory of marriage.² Except for the *P. Vallicellianum C. 6*, penitentials were not involved in systematic enquiries into concepts of fornication or marriage. Instead, divisions of canons into chapters for clerics or lay people, or men and women show that penitentials were more concerned with sinners than with sins. This pastoral concern may have led to a more practical attitude towards remarriage and incest. However, the sheer number of regulations about fornication, adultery and incest in Italian penitentials and their similarities with the canonistic collections of the region still testifies to a deep concern for marital life. It is particularly revealing that rulings on such topics from the *Coll.9libr.* and *Coll.5libr.* would influence later canonists like Bonizo of Sutri, Anselm of Lucca (chiefly later recensions of his collection), and Gratian.³ Significantly, clerical continence, one of the main issues of the eleventh-century reform movement, is but a part of a general struggle against adultery and fornication. Although the *P. Vaticanum* and

¹ Flandrin, *Un temps pour embrasser*, pp. 106-110, therefore, distinguishes periods of mourning and penitence as preparation for Christian festivals (like Lent) from days of joy such as Easter.

² For example, a major part of book V of the *Coll.5libr.* is comprised of sections taken from Augustine’s *De bono conjugali*. According to Heidecker, *Kerk, huwelijk en politieke macht*, pp. 39-40 a theory of marriage, partly with the aid of forged texts, had been achieved by ca. 850. Yet the *Coll.5libr.* demonstrates that in the eleventh century there still was no uniform or comprehensive theory of marriage. See also Brundage, *Law, sex, and Christian society*, pp. 225-228.

³ L. Fowler-Magerl, *Clavis canonum. Selected canon law collections before 1140. Access with data processing*. MGH Hilfsmittel 21 (Hannover 2005) p. 81. However, Bonizo (and other canonists) borrowed from the *Coll.5libr.* rather than the *Coll.9libr.*

Coll.5libr. devote separate chapters to clerical fornication, there is no sign that it was considered of greater importance than in earlier texts.¹

7.4 Violence

A keen attention given to scandalous sins can most clearly be perceived in the large number of canons on sins involving violence, such as homicide, treason, and sacrilege. With regard to homicide, it is significant that, with the exception of the *P. Lucense*, all penitentials begin with a series of canons dealing with this very topic. The *P. Vaticanum* devoted two chapters to homicide, one general chapter and one that specifically addresses women. A large number of new, pseudonymous, canons on homicide can be encountered in the *Coll.5libr.* Although the number of canons on this topic partially arose from canonistic interests, as indicated by the compiler's efforts to compare different canons and his inclination for subtle casuistry, canons on crimes of violence were often accompanied by harsh penances suggesting that this issue greatly troubled South Italian canonists.²

That this concern was not restricted to homicide is shown by a number of canons devoted to dishonouring one's parents. Recently, Hans Gelting linked up the canons concerning parricide and fratricide up with the anti-incest legislation proliferating in the Italian penitentials and canon law collections. Although the connection between parricide and incest may in part have accounted for the large number on canons on this subject, the attempt to restrict violence within families has older roots. The earliest regulations concerning the maltreatment of parents are to be found in Frankish and early Italian canonical and penitential texts, such as the eighth-century penitential of Ps.-Egbert, the *Cap. Iud.*, and several Carolingian church councils.³ The *Cap. Iud.*, for example, declares that people who had expelled their parents should be judged as impious and desecrators.⁴ The *P. Casinense* censures people who wrong their parents (*iniuram fecerit*) and the *P. Vaticanum* bans those

¹ The South Italian penitentials and collections followed the *Cap. Iud.* in systematically fixing the penances for each clerical order: bishops received harsher penances than members of the lower clergy.

² See for instance *Coll.5libr.* IV,114 (Vat. lat. 1339, ff. 189v-190r) which deals with several instances of killing someone unintentionally. The canon is dealt with in the next chapter.

³ Gelting, 'Making sense of an absurdity', pp. 103-107. See the canons of *P. Ps.-Egberti* III (Schmitz II, p. 664); Regino of Prüm, *Libri duo de synodalibus causis et disciplinis ecclesiasticis* II,38 (*Das Sendhandbuch des Regino von Prüm*, W. Hartmann ed. (Stuttgart 2004) p. 262).

⁴ Cf. *P. Merseburgense B* and the *P. Vaticanum* and *P. Casinense*. The *Cap. Iud.*, repeating a ruling of the eighth-century *P. Parisiense Simplex*: *Cap. Iud.* XIII,1: *Si quis patrem aut matrem expulerit, impius uel sacrilegus iudicandus est, peniteat autem equali tempore, quamdiu in impietate extiterit.*

who defile their parents ‘with words’ or raise their hand against them.¹ The regulations on this subject also influenced the *Coll.9libr.* and the *Coll.5libr.*, which devote large sections to this problem, extending the ban to maltreatment of one’s spiritual parents. Their compilers also composed forgeries that dealt with maltreatment of godparents.² The question arises whether such canons testify to a canonistic interest, perhaps a tendency to compare and harmonise regulations from different sources, rather than to a real concern for these crimes.³ That said, the fact that canonists and compilers of penitentials both showed a special interest in this particular theme reveals their sensitivity to this subject.

In the *Coll.5libr.* the concern for restricting violence is also manifest in its canons on the protection of churches. This collection includes a series of new canons concerning the harassment of clerics and violation of ecclesiastical possessions that condemn these crimes in an unusually harsh tone. The aim and language of these canons is strikingly similar to that of the councils that propagated the Peace of God in France in this period. The main objectives of the loosely organised Peace of God movement were to counter violence against peasants and the pillaging of churches by local knights and aristocrats.⁴ These canons were, significantly, included in the section on homicide and not, as one might expect, in that on theft. The same section also includes a series of rulings, quite similar in spirit and tone, which deal with treason and ‘collaboration’ with enemies, that is people surrendering towns, castles or men into the hands of enemies. These canons need to be considered in further detail, not only because they have hardly any precedents in the older collections and because these crimes were awarded severe penances, but also because some of them found their way into the Italian penitentials.⁵ The series begin with two canons attributed to a Roman synod concerning traitors who ‘in the spirit of Judas’ had delivered men, castles, or towns into the hands of the

¹ *P. Casinense VIII,10: Si quis patri aut matri iniuriam fecerit, VII menses peniteat. Si quis patrem aut matrem expulerit, ut impius sacrilegus iudicetur. P. Vaticanum VIII,15: Si quis patrem aut matrem de uerbo exhonorerit aut manum erexerit in iracundia, III annos peniteat.*

² *Coll.9libr. IX,100 (Vat. lat. 1349, f. 212r): Si quis patri aut matri suę iniuriam fecerit aut percuterit, ut impium et sacrilegum iudicandum est, et peniteat equali tempore, quandiu in impietate extiterit; IX,101: Si quis patri suo uel matri in iracundia manu erexerit, sicut impius uel sacrilegus iudicandum est...; IX,102: Si quis non conserua[t] compatre aut commatre, aut patre uel matre, aut patre in christo, uel filio... Coll.5libr. IV,183-186 (Vat. lat. 1339, f. 201): Quicumque super genitorem suum seu genitricem irato animo ictum erexerit... Tunc demum peruenit ad aures sardicense concilium hoc confirmauit aliosque addidit. Similiter et nos sancimus de sacro fonte compatrem, filiumque patrem de sancto lauacro atque seruum, nisi causa nutrimenti iusta suum dominum... See also chapter 8.*

³ Perhaps indefinite and generalizing phrases like *iniuriam fecerit* or *expulerit* needed clarification. The canons needed to be reworked and rephrased to show what such terms actually meant.

⁴ On the early Peace of God see H. Hoffmann, *Gottesfriede und Treuga Dei*. MGH Schriften 20 (Stuttgart 1964) pp. 1-20. For a recent discussion of the nature, objectives, and significance of this movement see Cushing, *Reform and the papacy*, pp. 39-52.

⁵ The canons may also serve as examples of the *Coll.5libr.* of falsely ascribing canons to imaginary councils (*synodus romana*), or ecumenical councils (*Synodus ephesina*). See chapter 8.

enemy. Someone guilty of such a crime should divide his goods among the poor and do penance in prison. The canon lays a curse upon him ('cursed are traitors above all homicides and adulterers') and, paraphrasing Matth. 5,13, declares that traitors are 'good for nothing'.¹ The next canon, attributed to the council of Ephesus, declares 'violators of God's Church' to be abominated like pagans and jews.² A ruling attributed to the council of Nicea anathematizes those who out of hatred or 'any bad intention' violate or destroy churches but refuse to do penance.³ The strictures that follow are concerned with the unlawful prosecution and harassment of clerics and can be traced back to a series of pseudonymous canons recorded in mainly French manuscripts of the ninth and tenth centuries, which Abigail Firey called the '*nulli laico* canons' after the incipit of the first canon.⁴ The canon recorded by the *Coll.5libr.* prescribes an unusually severe, life-long penance of fasting and pilgrimage.⁵ The malediction and the equation of traitors with Judas Iscariot also occur in this sequence of canons. The curse and the reference to Judas are reminiscent of the liturgical maledictions studied by Lester K. Little. These maledictions begin to occur in the second half of the ninth-century and were also popular with the Peace of God movement.⁶

The focus on restricting violence and protecting churches reveals similarities with a number of sources. Attacks on ecclesiastical possessions were one of the main concerns of

¹ *Coll.5libr.* IV,123 (Vat. lat. 1339, f. 192): *SYNODUS ROMANA. Si alium quis homo in manus inimici tradiderit, non aliter ipse prouidendus est – quis ambigat? – nisi ut iudas qui christum dei filium tradidit. Oportet eum congrue omnia sua obsequia disponere in pauperibus, atque usque ad mortem inhermis... Si quis castellum aut alicuius municipium in manus inimicorum in spiritu iude tradiderit... Maledicti sunt traditores super omnes homicidas uel adulteros... Et ipse ut iudas scarioth domini ac magistri sui traditor damnationem sustineat cum suis omnibus sequacibus.* The penances are dealt with below. See also *P. Vallicellianum C. 6, c. 64* and *P. Lucense, c. 6.*

² *Coll.5libr.* IV,136: *Si quis ecclesie dei per iniquam intentionem uiolator extiterit, abominatus sit ab omni ecclesia dei sicut sacrilegus uel paganus.* The canon is repeated, albeit shortened, as IV,138, purporting to be a decision of a Roman synod.

³ *Coll.5libr.* IV,136: *Placuit sanctae uel magne synodo nicene... ut si quis ecclesiam dei per odium. uel aliquam intentionem malam dissipauerit uel uiolauerit, siue per ignem, siue per dirruptionem aliquam, uel pro qualicumque causa uiolentie hoc fecerit uel etiam consenserit, anathematis uinculo religetur in perpetuum et ab aliis ecclesiis omnino non recipiatur, nisi cum satisfactione digne emendauerit.* Repeated as IV,138,2 and ascribed to a *Synodus Hibernensis.*

⁴ A. Firey, 'The canon law book of Jerome, bishop of Belley, A.D. 933 (Ms. Troyes, Bibliothèque Municipale, 1064)', *Revue Bénédictine* 107 (1997) pp. 88-129, pp. 93-94/123-125. Cf. Fournier, 'Un groupe de recueils canoniques inédits du Xe siècle (Troyes, 1406; Bibliothèque Nationale, Latin 2994; Ambrosienne, A, 46, inf.)', *Annales de l'Université de Grenoble* 11 (1899) pp. 345-402, pp. 358-362.

⁵ *Coll.5libr.* IV,139,3 (Vat. lat. 1339, f. 195r): The penitent is not to carry weapons, he should wear a sackcloth, he should not eat meat nor drink wine, he cannot marry, he should perform a life-long pilgrimage never spending two days in the same place. Unless he shows himself a worthy penitent, he is not to be given the *viaticum* and his unburied corpse is left to the dogs, birds, and the beasts of prey.

⁶ See below, the chapter on penance. L.K. Little, *Benedictine Maledictions. Liturgical cursing in Romanesque France* (Ithaca and London 1993), E. Magnou-Nortier, 'The enemies of the Peace: reflections on a vocabulary, 500-1100' in T. Head and R. Landes ed., *The Peace of God. Social violence and religious response in France around the year 1000* (Ithaca and London 1987) pp. 85-87. Penitentials that may have been influenced by the Peace of God are the *P. Parisiense Compositum* and the *P. (Ps-?)Fulberti*, on which see Meens, *Tripartite boeteboek*, p. 218.

Saint Boniface and, a century later, of Pseudo-Isidore and his collection of mainly false decretals.¹ The fierce language of the canons of the *Coll.5libr.* is, above all, reminiscent of tenth-century regulations, such as the *Nulli laico* canons, the canons of Hohenaltheim (916), and those of the Peace councils of the late tenth and early eleventh centuries.² Since, however, the Peace of God movement reached South Italy only in the mid-eleventh century, it is unlikely that the canons were inspired by this movement.³ In the late 1050s, one of the principal reformers of the eleventh century, Humbert, cardinal of Silva Candida and later a monk of Montecassino, quotes in his *Libri tres adversus simoniacos* several Pseudo-Isidorian decretals against robbery of clerical possessions. His use of these Pseudo-Isidorian condemnations should be placed in the context of his fight against simony and lay possession of churches.⁴ The canons of the *Coll.libr.* are more immediately concerned with robbery and looting, crimes that involved some form of violence. A direct connection with the Peace of God cannot be established; nevertheless the canons of the *Coll.5libr.* seem to be inspired by similar concerns to restrict violence. Perhaps the continuous civil strife in the late tenth and eleventh century between Beneventan princes resulted in a similar ‘movement’ in circles of canonists.⁵

7.5 Penance and the canons

The novelty of Italian penitentials lay not so much in the kind of sins they sought to combat, but rather in the penances they prescribed. While the topics do not differ substantially from those treated in Frankish sources, the formulation of the penance to be imposed on the sinner is often original. Italian penitentials, in general, provide the priest with more detailed instructions as to which penance should be imposed. The penances are often harsh, perhaps too harsh for confessants, but the rigor of the canons is softened by a battery of commutation tables included in most texts. Moreover, the harshest penances were usually reserved for

¹ Saint Boniface’s *Capitula de invasoribus ecclesiarum* influenced Pseudo-Isidorian and Gregorian legislation. See Glatthaar, *Bonifatius und das Sakrileg*, pp. 43-271, especially pp. 107-109. Some of these canons are very similar in language to those of the *Coll.5libr.*

² See A.G. Remensnyder, ‘Pollution, purity, and peace: An aspect of social reform between the late tenth century and 1076’ in *The Peace of God. Social violence and religious response*, pp. 280-307. See on Hohenaltheim c. 24 (*Die Konzilien Deutschlands und Reichsitaliens 916-1001* 1, E.D. Hehl ed., MGH Concilia VI,1 (Hannover 1987) p. 31): *Quisquis per dolum mittit manum suam in christum domini, episcopum videlicet, patrem et pastorem tuum, quia sacrilegium committit, et qui ecclesiam dei devastat et incendat... ut in uno loco, id est in monasterio, peniteat omnibus diebus vite, vel XII annos...*

³ On early evidence of the Truce of God or *Treuga Dei* in southern Italy see R.E. Reynolds, ‘Odilo and the *Treuga Dei* in southern Italy: A Beneventan manuscript fragment’, *Mediaeval Studies* 46 (1984) pp. 450-462.

⁴ Humbert of Silva Candida, *Libri III. Adversus simoniacos*, III,4, F. Thaner ed., *Libelli de lite* I. MGH (Hannover 1891) pp. 202-203.

⁵ Wickham, *Early Medieval Italy*, pp. 153-164. Taviani-Carozzi, ‘Caractères originaux des institutions politiques et administratives’, pp. 273-326 nuances the presumed chaos in the principalities.

major crimes like homicide and theft.¹ The *Coll.9libr.* and the *Coll.5libr.* often explicitly add that penances can be raised or diminished after taking into account the circumstances in which the sin was committed, the status of the sinner, and his willingness to make amends.² This section examines the penances demanded by canons, starting with the penance most commonly prescribed, fasting.

Fasting is recommended by penitentials for almost every sin. Yet the periods of fasting should not be taken at face value, as they could be subdivided into periods of different intensity. An anonymous *Tractatus paenitentiae* copied into a tenth-century manuscript from northern Italy offers some important guidelines for imposing penance. Firstly, it explains that no single mode of penance exists and that penance should be *uarius et multiplex*, tailored to fit each sinner's age, gender, and conduct.³ For example, if for a 'mortal sin' a penance of seven years is fixed, penitents should abstain from meat and wine during the first year. During the next three years they should abstain from meat and wine on every day of the week except for Thursdays, Saturdays, and Sundays, while the remaining three years they should fast on Mondays, Wednesdays, and Fridays.⁴ For those who could not perform the fasts imposed, the period is arranged in a different way. After these examples the tract ends by stating that the remission of sins for the greatest part depends on the penitent's contrition.⁵ Conditions of fasting as stipulated by this tract are not unique, for authors of penitentials like Cummean or Burchard of Worms carefully laid down conditions for penance for particular sins.⁶ Letters by

¹ Similar remarks made by Frantzen, *The literature of penance*, p. 15.

² The *Coll.5libr.* explains in a canon on theft that a priest should, before delivering his judgment, consider the nature and gravity of the sin, the circumstances under which the sin was committed, and the penitent's willingness to mend his ways. *Coll.5libr.* IV,217 (Vat. lat. 1339, f. 205r-v): *Quamuis in multorum tractatorum canones comperimus scriptum: Si quis furtum capitale commiserit... ac talium similia .v. annos peniteat. Tamen maxime pensandum est persona peccantis uel quantitas uel qualitas damni. Præcipue tamen intentio et affectus peccandi. Si per ignorantiam. Si per necessitatem... ita prouidentia sacerdotis iudicandum est.* See P.J. Payer, 'Humanism of the penitentials and the continuity of the penitential tradition', *Mediaeval studies* 46 (1984) pp. 340-354 and Meens, *Het tripartite boeteboek*, p. 261.

³ The *tractatus penitentiae* in Paris, Bibl. Nationale, nouv. acq. 281, f. 119: *Penitentię modus non unus esse debet, sed uarius et multiplex, ut diuersis etatibus, sensibus, conditionibus, negotiis ac moribus, et utriusque sexui possit esse congruus.* The manuscript also contains fragments of the *Cap. Iud.*, see Mahadevan, 'Überlieferung und Verbreitung des Bussbuchs "Capitula Iudiciorum"', p. 32.

⁴ *De illis ergo qui post baptismum mortalia peccata simpliciter hoc est absque incestu committunt congruum uidetur esse iudicium, ut septem annis peniteant. Primo quoque anno a uino et carne abstineant, tribus uero sequentibus similiter exseptis quinta feria, sabbato et dominica. Tribus uero alii annis secunda, quarta et sexta feria similiter abstineant.*

⁵ *Verumtamen sciendum quia remissio peccatorum maxime consi<stit?> in mentis contrition<e?>.*

⁶ *P. Cummeani* II,2 (ed. Bieler, pp. 112-114): prescriptions for fasting for clerics who had committed fornication. The *Corrector sive Medicus* of Burchard of Worms assigns a seven-year fast for homicide committed voluntarily (PL 140, cols. 951-952). Apart from an annual forty-day fast on bread and water, he fixes the diet, the days of fasting, and other penitential acts (almsgiving) for each year.

popes Stephen V (885-91) and Victor II (1055-57) concerning penances of individual penitents contain similar prescriptions for fasting, possibly inspired by penitential rulings.¹

The word '*paenitere*' cannot simply be equated with fasting, since the diversity of penances also meant that there was more than one way to remit sin.² The *Coll. Hibernensis* explains that fasting alone is not sufficient and should always be accompanied by almsgiving.³ Penitential *ordines* encourage the penitents to pray, fast, give alms, and to attend church for the remission of sins.⁴ Likewise, penitential canons combine fasting with other penances. Commutation tables appended to penitentials allowed priests to commute years of fasting into shorter but heavy two- or three-day periods of fasting per week or to substitute fasting by psalmody, almsgiving, or the celebration of Masses. They also taught priests how to 'interpret' the penances of the canons by indicating the days on which one should not fast.⁵ The *Coll. 9libr.* and the *Coll. 5libr.*, in particular, include many commutation tables under the name *de discretione paenitentiae*. Although not all penitentials of the eleventh century contain commutations, Peter Damian's criticisms of them suggest their widespread use.⁶

The concern for regulating fasts is shown by a text attributed to Gregory the Great, which is solely found in South and Central Italian manuscripts. The text begins with the modes of fasting attributed to the canons.⁷ After noting that the *feruor penitendi* of the times when the canons were enacted had diminished, anonymous 'Fathers' are credited with a new

¹ Stephen V assigns a lifelong abstinence from meat and wine to a certain Inbaldo who had killed his mother. He fixes the days of the week on which the penitent has to fast on bread and water, or is allowed to drink (*tres fialas de vino* on feastdays) or to eat cheese and vegetables. The letter is preserved in ms. Montecassino, Arch. dell'Abbazia, 439 (ed. *Spicilegium Casinense complectens analecta sacra et profana e codd. Casinensibus I* (Montecassino 1888), pp. 381-382). The letter of Victor II is preserved in ms. New York, Hispanic Society of America ms. HC 380/819, see Reynolds, 'South Italian *Liturgica* and *Canonistica* in Catalonia', pp. 494-495.

² Poschmann, *Buße und Letzte Ölung*, p. 67 remarks that 'paenitere in den Bußbüchern ohne weiteres fasten bedeutet.' See also C. Vogel, 'Composition légale et commutations dans le système de la pénitence tarifée', *Revue de droit canonique* 8 (1958) pp. 89-318, p. 295.

³ *Coll. Hibernensis* XIII,8 (Wasserschleben, *Irische Kanonensammlung*, p. 40): *jejunium sine elemosina omnino non prodest, jejunium cum elemosina duplex bonum, jejunium vero sine elemosina nullum bonum est.*

⁴ *P. Vaticanum, ordo: Sed lacrimabiliter hora, ieiuna et elemosyna fac... quantum potueris ad loca sanctorum frequentare ubi sancta scriptura audias et fabula sibi non facias, sed adtentius auscultaque ibi leguntur. P. Vallicellianum I* of ms. Barcelona, cod. 228, f. 53r: *Post hec uero proba si potes, qualiter emendauerit, si permanet in humilitate, aut in elemosina, uel orationes, seu ieiunium cum afflictione, si sanctorum basilicis frequentat, si ad sacrum officium cum omni diligencia festinat, et si hoc quod in confessione pollicitus est, sua errata desideranti animo emendat.*

⁵ Vogel, 'Composition légale', *Revue de droit canonique* 9 (1959) pp. 1-38 argues that the system of commutations belonged to the penitentials from the start as an instrument to adapt penances to the conditions of sinners. Cf. Hamilton, *Practice of penance*, pp. 40-41.

⁶ Peter Damian, *ep.* 45 (Reindel ed., pp. 38-39); cf. J.J. Ryan, *Saint Peter Damiani and his canonical sources*. Pontifical Institute of Mediaeval Studies, studies and texts 2 (Toronto 1957) pp. 75-76 and 94.

⁷ Recorded in ms. Montecassino, Arch. dell'Abbazia, 372, pp. 62-64, the *Coll. 9libr.* IX,133 (Vat. lat. 1349, ff. 217r-218r), *Coll. 5libr.* IV,45-46 (Vat. lat. 1339, f. 174) and *P. Vallicellianum E.* 62, c. 68. The attribution to Gregory may be due to the excerpts of Gregory I's Homilies interwoven into the text.

way of ‘mixing’ penance.¹ For a penance of one year on bread and water it is sufficient to fast one day per week on bread and water during that year, for two years two days per week, et cetera. The rest of the week should be spent in moderate fasting.² The tract perhaps hints at the Fathers mentioned in the commutations in the *Excursus Cummeani*, since his system of one-, two-, and three-day fasts attributed to the *patres* is reminiscent of the *biduanae* and *triduanae* that, according to the *Exc. Cum.*, were proposed by ‘certain wise men’ as alternatives to the years on bread and water.³ He also complained about the ‘ignorant and unlearned’ priests who only required that penitents abstain from cooked food and wine for one, two, or three days per week and, even worse, permitted them to eat and drink the rest of the week whatever and as much as they wanted *in omni crapula et ebrietate*. They allowed the consumption of fruits, nuts, herbs, oils, juices, and alcoholic drinks, which this tract, referring to Jerome, dismisses as delicacies unfit for penitential fasting.⁴ It offers a (quasi) historical explanation of penitential fasting by referring to the Fathers who had toned down the severe penances of the ancient canons. A similar perspective can be encountered in the Pseudo-Gregorian penitential, which contrast the ancient way of imposing penance with a new and more humane approach. Yet this tract departs from this ancient-modern scheme in that it seizes the opportunity to condemn the ‘laxity’ of ‘unlearned’ priests in modern times. It is unknown whether this alleged laxity was current among a great part of the clergy, but the

¹ Cited after ms. Montecassino, Arch. dell’Abbazia, 372, pp. 62-64: *Ponunt canones peccantibus de quibusdam peccatis III annos in penitentia unum ex his in pane et aqua. De quibusdam quinque II ex his in pane et aqua... sed quosdam ex eis plus durius, hoc est in solo pane et aqua, quosdam minus durius, hoc est in paruo uino et paruo pulmento et pane... Post hoc positum patres nostri considerauerunt imbecillitatem penitentium; et quia his temporibus non est talis feruor penitendi qualis antiquis erat quando canones efficiebantur, cum tunc omnis uita quorum in solo pane et aqua esset, miscuerunt hos annos in penitendo, ut in simul et dura penitentia ageretur a quoquam, ita ut compleretur ipsa penitentia in purgatione peccatorum et preuaricationem sui leuior uideretur.*

² *Hoc enim modo eam uariauerunt, ut qui unus annus erat in pane et aqua inter ipsos penitentiales annos unum diem in ebdomada duceret penitens in pane et aqua, ceteros uero dies in mediocri penitentia ut predictum est. (...) Simili modo de duobus annis in pane et aqua duos dies in ebdomada...*

³ *Exc. Cum.* (Schmitz II, p. 601): *Legimus in poenitentiale uel canonis pro criminalibus culpis alii VII annos, alii X... ex ipsis I aut II vel III in pane et aqua... alii statuunt: XII triduanas pro uno anno, quod in pane et aqua debet poenitere... dicunt aliqui sapientes: quia I anno in pane et aqua XII biduanas...*

⁴ *Predictas discretionem penitentium ignorantem, indocti sacerdotes nesciunt quid dicant, ponunt annos in penitentia cum qua non aliter, nisi aut unum aut duobus in ebdomada non manducant coctum nec bibant uinum. Ceteris diebus quod uolunt et quantum uolunt comedant et bibant in omni crapula et ebrietate ...dant licentia comedere omne quod crudum potest comedi. Vt est caseum et diuersa mixtura liquamina, et pigmentorum, et poma omnia, et nuclei diuersi, et carice, et pistacii, et olera cuncta. Et bibere mulsa et omne sicera et sucus herbarum, que omnia beatus hieronimus et ceteri sancti patres maximas delicias affirmauerunt, etiam et panem et aqua si superflue sumantur inter delicias posuerunt.* The reference is to Jerome’s letter to Nepotianus which lists several *delicias* that do not belong in a fast, like *caricae*, *nuces*, *fructus*, *simila*, *mel*, *pistatia*, *contritata holera betarumque succum* (*S. Eusebii Hieronymi epistolae* I, 1, Hilberg ed., CSEL 54 (Vienna and Leipzig 1910) pp. 435-436).

text shows that confessors were probably not unaffected by the tension caused by what canons taught and what was feasible in practice.¹

The penances imposed by penitentials can be interpreted as both disciplinary punishment and penitential satisfaction. Kottje proposed a distinction between penance and punishment. He loosely defined penance as a satisfaction to God contributing to the salvation of the sinner and aimed at forgiveness. Punishment was an involuntary measure involving feelings of revenge meant as a reaction to the disturbers of the social peace. He saw penance as being aimed at the individual sinner, whereas punishment was aimed at society.² Excommunication is such a measure, as it could mean either a simple prohibition from the receipt of communion or total separation from the body of Christians. Excommunication in the narrow sense, that is the exclusion from the Communion or from the Eucharistic service, seems to have been a side-effect or an ingredient of other penances such as fasting and exile. It is less often a penance *per se*. Until at least the eighth century penitents were, in theory, automatically excluded from the Eucharist. Ludger Körntgen remarked, therefore, that in this respect the new private or secret penance introduced by the Irish was not much different from the public penance of the early church. The *P. Oxoniense II* explicitly states that penitents were allowed to pray with their fellow-Christians, but had to leave the church when the Host and the chalice were introduced and put on the altar.³ A relaxation of this rule can be found in the collected judgments of archbishop Theodore of Canterbury, who declared that penitents may be allowed at Communion after one year or six months.⁴ Exclusion from the Eucharist is often tacitly included in the penance required by the canons, even if it is not required explicitly. A canon on homicide of the *Cap. Iud.* included in many Italian penitentials states only at the end that ‘if he, however, has properly performed his penance, let him be received at Communion’.⁵ At the end of the eighth century this practice seems to have been breaking down. In the previous chapter we have seen that in liturgical *ordines* of the eleventh and twelfth centuries, the rite for the absolution (and reconciliation) increasingly took place right

¹ On discretion see Frantzen, *The literature of penance*, pp. 16-17 and P.J. Payer, ‘Humanism of the penitentials and the continuity of the penitential tradition’, *Mediaeval studies* 46 (1984) pp. 340-354.

² The opposite positions of F. Kerff (‘Libri Paenitentiales und kirchliche Strafgerichtsbarkeit bis zum Decretum Gratiani. Ein Diskussionsvorschlag’, *ZRG kan. Abt. 75* (1989) pp. 23-57) and R. Kottje, “Buße oder Strafe?” Zur “Iustitia” in den “Libri Paenitentiales” in *La giustizia nell’alto medioevo (secoli V-VIII)* I. Settimane di studio 42 (Spoleto 1996) pp. 443-468.

³ Körntgen, pp. 154-57: *P. Oxoniense II*, c. 49: *ieiunet... et sic postea suscipiatur a sanctam communionem. C. 7: licentiam habeat orare cum christianis cottidie. Cumque cum oblatione offeritur, oret cum christianis, donec introducantur panis et calix christi super sanctum altare, postea uero procedat ad paenitentiam.*

⁴ *Iud. Theod.* U, I,12,4 (Finsterwalder, p. 305): *Secundum canones non debent communicare ante consummatione penitentiae nos autem pro misericordia post annum uel menses sex licentia damus.*

⁵ *Cap. Iud.* I,1: *Si uero bene egerit penitentiam reconcilietur ad communionem.*

after confession and the imposition of the penance upon the penitent, before the completion of one's penance. The origins of this practice can be traced to a canon incorporated into the ninth-century *Statuta Ps.-Bonifatii*, which advises that, though contrary to the old custom, out of necessity penitents should be reconciled by their priests immediately after confessing.¹ Minor excommunication continued to be mentioned in the canons, particularly in case of major sins.

Excommunication as a ban on any contact with the Christian community is only occasionally found in penitentials, while it is frequently mentioned in conciliar and papal legislation. Total exclusion is prescribed by the *P. Oxoniense II* for men who had remarried after relinquishing their wives. The canon, copied into various Italian texts, forbids such newlyweds from drinking and eating with other Christians, or from joining others in work and prayer.² Excommunication is less frequently mentioned in penitentials than in canon law, because it was a disciplinary measure resorted to only if sinners did not mend their ways or were unwilling to do penance.³ For serious offences penitentials pronounced a curse or anathema upon sinners. What kind of measures such a curse involved is not made explicit, but it probably entailed exclusion from the community.⁴ Yet the language suggests a harsher measure than simple excommunication. According to Theodore of Canterbury those who fasted on Sundays like the Jews do should be 'cursed by all catholic churches'.⁵ The *Coll.9libr.* and *Coll.5libr.* curse violators of church property, people dishonouring their parents, and people guilty of incest.⁶ Drawing on the *Coll.5libr.*, the *P. Vallicellianum C. 6* declares excommunicate and anathema those who had not dissolved their incestuous

¹ The *Statuta Bonifatii*, c. 31 (*Capitula episcoporum* 3, MGH, p. 365). See also Jungmann, *Die lateinischen Bussriten*, pp. 249-275.

² *P. Oxoniense II*, c. 35 (Kottje ed., CCSL 156, p. 197): *Illi talis cum christianis non manducet neque bibat neque illa mulier, quam illi accepit, neque in sermone neque in opere neque in aliquis ei communis sit neque illi neque parentibus eorum, si tamen consenserunt hoc, sed et illi sint excommunicati a christianis*. Excommunication agrees with canon law, see Körntgen, *Studien*, p. 179. Included in the *P. Vaticanum*, the *P. Vallicellianum E. 62*, the *Coll.9libr.* The *P. Vaticanum* and *Coll.9libr.* add that both are not allowed to do penance unless they divorce.

³ *P. Lucense*, c. 17: *Nullis liceat christianus cum sacro sacerdote presumat proterue contendere... si non se emendauerit, excommunicetur (!)*. *P. Vaticanum I*, 18: *...si te non audierit dic aecclesie (Matth. 18,15-17) donec unus alteri de corde dimittatur, et sic satisfaciatur ante offeras munus (Matth. 5,24), aut communicent; et si noluerit conuerti, excommunicetur ab ecclesia et maneat excommunicatus*. See E. Vodola, *Excommunication in the Middle Ages* (Berkeley 1986) pp. 12-13.

⁴ The curses bear some relationship to the liturgical cursing in France and Germany in the late ninth century studied by Little, *Benedictine Maledictions*, pp. 29-33 and Vodola, *Excommunication in the Middle Ages*, p. 14.

⁵ *Iud. Theod. U*, I,9,3 (Finsterwalder ed., p. 304): *Si pro damnatione diei ieiunauerit sicut iudeus (lege: iudeus) abominatur ab omnibus ecclesiis catholicis*.

⁶ *Coll.9libr. IX*,100/101 (Vat. lat. 1349, f. 212r): *Si quis patri aut matri suę iniuriam fecerit aut percuterit, ut impium et sacrilegum iudicandum est, et peniteat... Si quis patri suo uel matri in iracundia manu erexerit, sicut impius uel sacrilegus iudicandum est, .x. annos peniteat... si non emendauerit, extermitur (!) ab ecclesia sicut iudeus*. Cf. *Coll.5libr. IV*,184/5 (Vat. lat. 1339, f. 201).

marriages.¹ Another canon of the *Coll.5libr.* ‘binds’ destroyers of churches to ‘the chain of anathema’, if they refuse to do a penance of fifteen years of fasting, praying, and almsgiving.² Abomination is pronounced upon violators or destroyers of churches.³ Those who deliver castles or towns into the hands of the enemies ‘in the spirit of Judas’ should do penance in prison, a sentence reinforced by the quotation ‘cursed are traitors above all homicides and adulterers’. The malediction of violators of church property had its roots in the Pseudo-Isidorian decretals, while the early assemblies of the Peace of God movement also used anathemas against this offence.⁴ A curse for a relatively minor sin occurs in the *P. Lucense*, which declares anathema those who do not pray *cum puritate* and who intersperse their prayers with useless tattle. It is perhaps in this light that we must see Peter Damian’s letter to pope Alexander II in which he regretted the excessive use of anathemas in papal letters and, hence, the devaluation of its severity.⁵

The deposition of clerics occupies a less prominent place in penitentials than in conciliar and papal legislation. Like excommunication, deposition often resulted from another penance. For example, penitential pilgrimage was often imposed upon sinning clerics; exclusion from the Eucharist could also, in effect, have entailed a suspension from office. We should keep in mind that degradation or deposition order on the one hand, and not being allowed to celebrate the mass on the other are not necessarily the same, since a priest could keep his office and at the same time be suspended from celebrating the mass. Besides, it is not always clear whether a sinning priest is stripped of all clerical honours or only his priestly honour. Such intricate distinctions did not affect penitentials in the same way as they did canon law.⁶ Deposition is explicitly recommended by the *Iudicia* of Theodore of Canterbury in cases of drunkenness and fornication.⁷ The *Cap. Iud.* expects that sinners guilty of

¹ *P. Vallicellianum* C.6, c. 51: *...illam a se abiciat; quodsi facere noluerit, anathema sit et excommunicatus.*

² *P. Vallicellianum* C.6, c. 66: *...anathematis uinculo religetur in perpetuum et ab aliis omnino aecclesiis non recipiatur, nisi cum satisfactione et digna emendatione, id est per XV annos crebris ieiuniis et helymosinis et orationibus se redimat.*

³ *P. Vallicellianum* C. 6, c. 65 (*Coll.5libr.* IV,136): *Si quis ecclesiae dei per iniquam intentionem uiolator extiterit, abhominatus sit ab omni ecclesia dei sicut sacrilegus et paganus.*

⁴ See Little, *Benedictine maledictions*, pp. 30-44, 85-87, and 218-229 and Hoffmann, *Gottesfriede und Treuga Dei*, pp. 11-23, 78. Cursing violators of ecclesiastical goods occurs in the Concil of Quierzy (857), *Collectio de raptoribus* (*Concilia aevi Karolini 843-859*, W. Hartmann ed., MGH, Concilia 3 (Hannover 1984) pp. 392-398).

⁵ *Ep.* 164, *Die Briefe des Petrus Damiani* 4, pp. 165-168.

⁶ Discussions about the permission of clerics resuming their offices after having performed penances for grave sins, addressed up by the influential letters of (Pseudo-)Gregory (*Epistola ad Secundinum*) and (Pseudo-)Isidore (*Epistola ad Massonam*), did not influence the Italian penitentials, although the letters were incorporated into the *Coll.9libr.* and the *Coll.5libr.* (Fornasari ed., CCCM 6, pp. 237-241).

⁷ See *Iud. Theodori* U, I,1,1 (Finsterwalder, p. 288; on drunkenness) and I,9,1-13 (Idem, pp. 302-303; fornication committed by priests or deacons). Cf. U, 1,14,29, and I,15,15 (Idem, pp. 310-311).

homicide, fornication, adultery, perjury, and theft give up their priestly offices.¹ Bishops, priests, and deacons suffer deposition (deprivation from all clerical offices for bishops) in the case of fornication ‘like the sodomites do’, while all sinners are to be excluded from future sacerdotal offices.² In all these cases deposition is combined with other penances such as fasting and pilgrimage. The *P. Casinense* prescribes, in addition to rulings of the *Cap. Iud.*, deposition for priests who live in discord with someone and go to church ‘with anger and scandal’ before they have settled their conflicts. They should be deprived of the Eucharist and their office, as long as they do not reconcile themselves with their adversaries. Here deposition implied only a temporal suspension from sacramental duties.³ Other depositions concern priests who had violated the seal of confession and priests and deacons who had married.⁴ In both cases clerics were to be deposed in the presence of all people (*in cunctum populum*), a solemn public deposition never mentioned in other penitentials.⁵ The *P. Vaticanum* and *P. Vallicellianum E. 62* require deprivation of office in combination with other penances for clerics who had committed fornication. In contrast to their Frankish source, they allow clerics to resume their offices after the completion of their fast if their sin had remained a secret.⁶ Furthermore, these texts demand deprivation of clerical honours in cases of incest and sodomy.⁷ The *P. Lucense* demands that priests of churches owned by lay people refrain from offering the Eucharist – its only canon prohibiting clerics to celebrate

¹ See *Cap. Iud.* VII,1-7 (Meens, pp. 440-442): deposition in case of fornication (bishops – deacons), perjury (bishops – deacons; only during the period in penance) and theft (bishops and priests). The *Cap. Iud.* repeats most of the *P. Sangallense Trip.* See also Kottje, *Die Bussbücher*, pp. 216-217.

² *Cap. Iud.* VII,1 (Meens, p. 440) on fornication *sicut sodomite fecerunt: episcopus .xxv. annos paeniteat, .v. ex his in pane et aqua, et ab omni officio deponatur, peregrinando finiat dies uitae suae. Si autem senex aut eger fuerit, carceralibus tenebris reclusus paeniteat omnibus diebus uitae suae... Ad quoslibet sacerdoti gradus accedere nunquam praesumat. (...)*

³ *P. Casinense* VI,5: *Non potest sacerdotes (!) cum furore aut scandalum ad ecclesiam procedere, nisi prius omnia discordia concordet, ut non dolum in corde remaneat. Sicut scriptum est, prius reconciliari fratri tuo et sic offer munus tuum (Matth. 5,24). Quodsi aliter fecerit, ipsa die a sacrificio priuetur et deponatur, quousque se emendauerit, et satisfaciat fratri suo et dimittat ei omnia de corde.*

⁴ *P. Casinense* II,13: *Si quis presbiter aut diaconus uxorem duxerit, in cunctum populum deponatur.* XII,17: *Si quis sacerdos palam fecerit... ab omni honore suo in cunctum populum deponatur et diebus uite suae peregrinando finiat.*

⁵ The canon on the seal of confession is recorded as *Coll.9libr.* IX,128 and *Coll.5libr.* IV,69,3.

⁶ *P. Vaticanum* II,1: *Si quis episcopus fornicauerit, honore priuetur et duodecim annos peniteat..., presbyter... etc., si ab omnibus celatum fuerit expletis profecto ieiuniis, in gradu suo recipiatur pristinos.* Cf. *P. Vallicellianum E. 62*, c. 17. Similar opinions expressed by Hrabanus Maurus (*Ad Otgarium*, PL 122, 1399-1405) and Finnian (penitential, c. 10; Bieler ed., p. 76). *P. Merseburgense B*, c. 17 (Kottje ed., CCSL 156, p. 174) forbids deacons and priests to resume their offices even if their *crimen mortale* was committed in secret. Cf. Kottje, *Die Bussbücher*, pp. 216-240.

⁷ *P. Vaticanum* II,4 (*P. Vallicellianum E. 62*, c. 21) in the case of incest: *honore pribatus, episcopus XV annos peniteat...; P. Vallicellianum E. 62*, c. 18: *Si quis de his gradibus fornicauerit aut [lege ut] sodomite, idest cum masculo aut cum femina de retro, aut cum quadrupedia, episcopus XXV anni peniteat... numquam in gradu suo recipiatur, set peregrinando penitentiam finiat; si presbiter est... similiter peregrinando et ad honorem non recedat. Clericus... ad officium sacerdotale non accedat...*

mass.¹ The *P. Vallicellianum C. 6* prescribes deposition for bishops, priests, and, occasionally, for clerics in minor orders in cases of homicide, fornication, incest, adultery, and perjury. In general, deposition is explicitly mentioned if the canons distinguish between lay people and clerics, or between the clerical orders themselves. It is resorted to if clerics are involved in scandalous sins that could upset public order. Public depositions as decreed by the *P. Casinense* may be imposed to prevent popular outrage. The fact that the *P. Vaticanum* only allows priests who had committed fornication to return to office if the sin was kept secret suggests that the scandalous nature of the sin and popular pressure played a role in the deposition of clerics.

Instead of excommunication from the Christian community, we find such penance as exile, pilgrimage, and imprisonment much more frequently mentioned in the tariffs. Yet the consequences of these penance were not much different from it. It is not unusual to find exiles or pilgrimages of fifteen years or for the rest of one's life. The requirement to spend penance in exile goes back to the penitentials of Columbanus and Cummean. What exactly the difference was between exile and pilgrimage is difficult to tell. Pilgrimage possibly implied the adoption of an itinerant life, while exile denoted a penance performed outside a specific territory.² Since the word *exul* is glossed with the sentence 'exile, that is a pilgrim leaving the *patria*' in the *P. Vallicellianum I* of ms. Vallicelliana E. 15, both concepts were closely related.³ Penitentials never require pilgrimages to specific destinations. Other sources indicate that penitential pilgrimages to Rome or other holy places were not unusual. Peter Damian, for example, sent simoniacs of Milan on pilgrimages to holy places.⁴ A letter of pope Victor II (1055-57) is concerned with a penitent from Catalonia who had spent one year in exile in Rome.⁵ The *Cap. Iud.* demands that bishops and priests guilty of homicide or clerics and monks guilty of fornication *ut sodomite* spend the rest of their days as pilgrims after a long period of fasting or imprisonment.⁶ These canons were included in many South Italian texts. The ninth-century Frankish *P. Ps.-Gregorii* prescribes exile 'outside the borders of the country' for homicide and incest. The *Coll.9libr.* and *Coll.5libr.* reproduce these canons and

¹ *P. Lucense*, c. 8: *in ecclesia sacerdos accedere non presumat ad sacrificandum.*

² The distinction is made by C. Vogel, 'Le pèlerinage pénitentiel', *Revue des sciences religieuses* 38 (1964) pp. 113-153, see p. 123-126. See however Kottje, *Die Bussbücher*, p. 245.

³ *P. Vallicellianum I* (ms. E. 15; Schmitz I, p. 247), c. 1: *exul id est peregrinus extra patriam vadens.*

⁴ *Ep. 65, Die Briefe des Petrus Damiani 2*, pp. 240-244. On apocryphal canons demanding pilgrimages to Rome, see Firey, 'The canon law book of Jerome, bishop of Belley', pp. 88-129.

⁵ Reynolds, 'South Italian *liturgica* and *canonistica*', pp. 494-495. The letter fixes a severe penance of several year of fasting, highly similar to the prescriptions of South Italian commutation tables.

⁶ See Vogel, 'Le pèlerinage pénitentiel', pp. 124-126. Cf. *Cap. Iud.* VII,1.

apply the same penance to other sins as well.¹ Although the *P. Casinense* drew directly on the *Cap. Iud.*, it omits any reference to pilgrimage in its canons on homicide and sodomy. This penitential requires a pilgrimage for incest, the violation of the seal of confession, and fornication with one's godmother.² This last offence should be redeemed with a lifelong pilgrimage, during which the pilgrim is not allowed to stay more than three nights in one city or village. A similar requirement can be found in the *Coll.9libr.* which enjoins upon a sinner who had committed fornication with his mother a fifteen-year pilgrimage before entering a monastery – reducing the number of nights (*mansiones*) by two.³ Similar conditions for the pilgrim, albeit for other sins, are found in earlier Frankish and Irish texts.⁴ The *P. Vaticanum* requires penance in exile only for clerics guilty of homicide. The *P. Vallicellianum E. 62* also recommends pilgrimage for bishops and priests who had committed sodomy.⁵ This text reiterates a ruling of the *P. in II libris* which leaves sinners who had committed fornication with their mother the choice of whether to fast on bread and water on pilgrimage for two years, or to fast on bread and water in the *patria* for seven years.⁶ Pilgrimage was thus considered a severe penance that could compensate for long periods of fasting.⁷ Exile or pilgrimage combine elements of punishment and penance, since it kept sinners who had caused scandal away from society and it was at the same time a devotional exercise. There were probably only minor differences, if any at all, between these concepts.⁸ What exactly the

¹ Cf. *P. Ps.-Gregorii* cc. 3, 11 (Kerff ed., pp. 168-175), often combined with the prescription of laying down arms. See also the *Coll.5libr.* cc. IV,108-110. 115,1-5 (Vat.lat. 1339, ff. 188r-191r; repeating similar cases of homicide) taken from the *P. Ps.-Gregorii*: .vii. *ex his extra metas exsul fiat; extra patria .vii. exsul fiat; extra metas ipius terre exsul fiat.*

² *P. Casinense* II,14: *Si quis cum commatre sua de fonte fornicauerit, uitam suam peregrinando finiat et plus de tertia mansione non maneat in ciuitate uel ullo loco, et non se mutet nisi in natale domini siue in pascha, et a communione priuetur.* Canon XII,19 (*Si quis fornicauerit cum uidua patris sui uel barbari sui... X annos peniteat peregrinando*) is based on *P. Vallicellianum I*, c. 19 (Schmitz I, p. 274).

³ *Coll.9libr.* IX,53: *Si quis cum matre sua fornicauerit, .xv. annos peniteat et numquam mutet cibum nisi die dominicum. Sic in peregrinatione extra patria sua et numquam faciat in una uillam aut ciuitatem duas mansiones nisi per necessitas, expleta penitentiam tondat caput suum et intret in monasterio et peniteat usque ad mortem. Et numquam communicet nisi urgentem die mortis periculo. Nonnulli dicunt, si bene egerit penitentiam, post .xv. annos communicetur.*

⁴ *Coll.5libr.* IV,139,3 (Vat. lat. 1339, f. 195r; harrassment of clerics): *numquam in uno loco siue in una uilla hospitetur, sed peregrinando semper deambulet, nisi grauissima infirmitate detineatur.* Deriving from the *Nulli laico* canons, fabricated in France; see Firey, 'The canon law book of Jerome, bishop of Belley', pp. 88-129. Cf. *Tres canones hibernici*, c. 3 (Bieler, p. 182): *per duas noctes in una mansione non maneat nisi tantum sollempnitatibus precipuis aut si infirmitas eum praeoccupauerit.*

⁵ See above *P. Vallicellianum E. 62*, c. 18, which also requires them to fast and to resign.

⁶ *Idem*, c. 45: *Si quis cum matre sua fornicauerit, .x. anni peniteat et numquam mutet nisi in die dominico. Si in peregrinatione, .ii. anni peniteat in panis et aqua, et in patria sua uoluerit, .vii. anni peniteat aut certe toto illos decem neq[ue] uinum, neque carnem, nec coctum manducet excepto panem.* Whether the third alternative of ten years without wine, meat, and cooked food is to be carried out in the *patria* is uncertain.

⁷ Vogel, 'Le pèlerinage pénitentiel', p. 115.

⁸ *Iud. Theod.* (U, I,4,2 (Finsterwalder, p. 294)): penitents should do penance *in alio loco*.

terms ‘borders’ (*meta*) or ‘fatherland’ (*patria*) meant in an early medieval context is not clear, but it seems to have been the town or region where one lived.

The requirement to do penance in a monastery or whilst imprisoned is not restricted to penitentials, since it can also be found in early conciliar legislation.¹ In the Frankish period the compulsory or voluntary entry into a monastery was a frequently used penance imposed on aristocrats and even kings.² Early examples of confinement to a monastery can be encountered in the penitentials of Cummean and Columbanus, who required that sinners guilty of homicide and perjury be confined. Columbanus demanded that a perjurer sell his goods and give it (the goods, the benefit?) to the poor, before receiving the tonsure and entering a monastery for the rest of his life.³ This decision entered later penitentials, while Italian authors of penitentials used the particular form of penance devised by Columbanus for other sins as well.⁴ Theodore’s penitential requires that laymen who had killed clerics should lay down their weapons and enter a monastery. This ruling also entered South Italian sources via the Tripartite penitentials.⁵ Many texts regarded the entry into a monastery either as a sequel to or as an alternative for periods of fasting or pilgrimage. For instance, the *Coll.5libr.* and *P. Vallicellianum C. 6* allow penitents to do penance either in exile or in a monastery.⁶ The *Coll.9libr.* expects that a priest guilty of fornication with his goddaughter enter a monastery after completing fifteen years of penance on pilgrimage. Some sources distinguish between penance in a monastery and penance in a ‘remote’ or ‘more secret’ place’. Another canon of the *Coll.9libr.* on fornication between a priest and his goddaughter requires that the

¹ *Conc. Epaonense*, c. 22: *Si episcopus, presbyter, aut diaconus capitale crimen commiserit... ab officii honore depositus, in monasterio retrudatur, et ibi quandiu vixerit.*

² M. de Jong, ‘Monastic prisoners or opting out? Political coercion and honour in the Frankish kingdoms’ in M. de Jong, F. Theuws, and C. van Rhijn ed., *Topographies of power in the early Middle Ages* (Leiden, etc. 2001) pp. 291-328 prefers the term ‘monastic exile’ to ‘monastic imprisonment’, because it is not always clear whether the entry into a monastery was enforced or not, and whether such tonsure was considered permanent or not.

³ *P. Columbani B*, c. 20 (Bieler, p. 104): *...totas res suas uendat et donet pauperibus et conuertatur ex integro ad Dominum et tundatur omni dimisso saeculo et usque ad mortem seruiat Deo in monasterio.*

⁴ *Coll.9libr.* IX,40 (Vat. lat. 1349, f. 203r-v): *Si quis autem sacerdos cum filia sua spiritali fornicauerit, sciat se graue adulterium commississe. Idcirco femina si laica est, omnia derelinquat, et tota res sua uendat et donet pauperibus, et conuersa in monasterio seruiat deo usque ad mortem. Sacerdos... ab omni officio deponatur et apprehendat peregrinatione, .xv. annos, et postea uadat in monasterio et cunctis diebus uite suę seruiat deo. Cf. *Coll.9libr.* IX,42,4 (f. 203v) and *Coll.5libr.* II,79 (Fornasari ed., CCCM 6, p. 227). The *P. Casinense* omits the pilgrimage and gives both the same penance (II,15: *sacerdos... seruiat deo in monasterio et deponatur. Similiter et illa femina faciat.*)*

⁵ *Iud. Theodori U*, 1,4,5 (Finsterwalder, p. 294): *Si quis occiderit monachum vel clericum arma relinquere et deo seruiat vel VII annos peniteat in iudicio episcopi est.* The canon appears in various different versions as *Coll.5libr.* IV,107, 111, and 115.

⁶ *Coll.5libr.* IV,110 (Vat. lat. 1339, f. 189r): *Qui patrem uel matrem, sororem aut fratrem... uoluntarię occiderit, secundum humaniorem diffinitionem .xv. annos peniteat, .vii. ex his exsul fiat aut in monasterio cum luctu peniteat.* The *P. Vallicellianum C. 6*, c. 6 reads *peregrinando* instead of *exul*. See also *Coll.5libr.* IV,107,1-2 (Vat. lat. 1339, f. 188r): *Qui uero monachum uel clericum occiderit, episcopi est iudicandum, ut relinquat arma et seruiat deo in monasterio, uel .x. seu .xii. annos peniteat.*

goddaughter do penance either in a *monasterium puellarum* or in a secret and remote place.¹ The *P. Vallicellianum C. 6* expects that priests who had committed homicide do penance for twelve years ‘in a remote place’. A priest guilty of incest or adultery should do penance in ‘a more secret and remote place’ allocated by the bishop, that is, either a monastery or another ‘fitting place’.² Accordingly, a ‘remote place’ and a monastery were not necessarily the same. A remote place seems to denote a place far away from the community, sometimes a monastery, where one would lead a solitary life in exile. With regard to these penances, it is not clear whether tonsure was an enforced measure or choice of two or more alternative penances.

Imprisonment *in carcere* is rarely mentioned in canon law and penitentials.³ The *Cap. Iud.* wants bishops who had committed sodomy to be confined to the ‘darkness of prison’ (*carceralibus tenebris*), if they are not able to perform a pilgrimage because of sickness or old age. How *carceralibus* should be understood is unclear. It was sometimes conceived of as a monastery, for example by the *P. Vallicellianum C. 6* in which the ‘darkness of prison’ is substituted with *in monasterio inclusus* (c. 41). The *Coll.9libr.* and the *Coll.5libr.* require that women who had repeatedly been caught in adultery with a priest or a deacon be imprisoned *in carcere* in order to eject them ‘from the place where the offence can easily happen again’.⁴ The phrase *ut conuertat et in carcere retrudatur* can be understood as making amends by entering a monastery. In any case, the wish to prevent both cleric and woman from lapsing into the same crime again played a role in sending her away. A canon of the *Coll.5libr.*, also included in penitentials, demands traitors who had surrendered cities or castles into the hands of enemies to divide their goods among the poor and, excommunicated for the rest of their lives, to perform a lifelong penance in prison.⁵ Finally, in order to mark the similarities and

¹ *Coll.9libr.* IX,42,4 (Vat. lat. 1349, f. 203v): *Si qui sacerdos cum filia sua spiritualis fornicauerit... femina si laica est, omnia delinquat in pauperibus diuidat res suas, et conuertat se aut in monasterio puellarum aut in secreto et remotus locus ubi peniteat usque ad mortem...* The canon is roughly the same as IX,40, cited above.

² *P. Vallicellianum C. 6*, c. 2 *Si presbiter odii meditatione homicidium fecerit, deponatur, et in remoto loco uel in monasterio XII annos peniteat*; c. 20: *Presbiter... Si uero adulterium uel incestum perpetravit, amisso presbiterii honore XV annos peniteat... Remotiora et secretiora loca ad agendum (!) penitentiam sibi ab episcopo tribuatur, uidelicet in religioso monasterio aut alio apto loco.*

³ A rare example is found in the *Concilium Germanicum* of 742 held under the auspices of Boniface and the Frankish king Carloman; see canon 6 (*Concilia aevi Karolini* I,1, A. Werminghoff ed., MGH Legum sectio III, Concilia II,1 (Hannover 1896) p. 4): *in carcere poenitentiam faciat in pane et aqua.*

⁴ *Coll.9libr.* IX,43 (Vat. lat. 1349, f. 204r): *de illo loco abice eam oportet, ubi commissum facile recommittere possit et ignominiosam ab huius seculi semper consistat. (...) talem mulierem... sancimus, ut celeriter conuertat et in carcere retrudatur, ubi usque ad mortem peniteat et ibi tantummodo communicet.* Cf. *Coll.5libr.* II,75 (Fornasari ed., CCCM 6, pp. 223-225).

⁵ *Coll.5libr.* IV,123,2 (Vat. lat. 1339, f. 192r-v): (crime deal with above)... *ut omnes substantias suas dispertiat pauperibus. Tunc demum cunctis uite sue diebus a christi sacramentis excommunicatus in carcere retrusus, ibidem cum fletu et luctu iuxta uires suas iugiter peniteat. Quia contra eum scriptum est: Maledicti sunt traditores super omnes homicidas uel adulteros. Et illud: Traditor ad nichilum ualet ultra (cf. Matth. 3,13). Et*

differences between pilgrimage, entry into a monastery, and imprisonment, it is worth quoting the *Coll.5libr*. It leaves sinners who had committed perjury the choice of entering a monastery, going on a pilgrimage, or performing a penance in prison for the rest of their lives.¹ This canon envisages all three forms of penance as equal in quality and mutually exchangeable. It is impossible to recover the exact meaning of *carcer* solely on the basis of these normative texts. Although the canons still use ‘penitential language’ (*in carceribus cum luctu peniteat*), with the imprisonment of penitents in what is probably a guarded place we leave the field of the voluntary acts of penance.

In conclusion, one can say that penance is a more flexible concept than the canons suggest. This flexibility depended on many things, for example the ability of the penitent to fast, his willingness to repent, his status, et cetera. Moreover, it is not only the commutation tables and the prologues to the penitentials that stress the flexible nature of penance, but also the canons themselves. According to Hubertus Lutterbach the penances of especially the Irish penitentials were imposed as compensations (‘Ausgleich’) for offences, imposed without regard for the intention or inner conviction of sinners. Yet even if the penitentials neglect the intention or conversion of sinners (which is not always the case), I do not think that the canons should be or were meant to be taken as literally as Lutterbach does, without taking into consideration their prologues and *ordines*.² By combining different penances ranging from fasting, to pilgrimage, excommunication, and imprisonment, Italian sources could connect elements of both penance and punishment. Disciplinary measures such as deposition or excommunication are consequences of penance, employed to force obstinate sinners to mend their ways or to remove sinners from offices or places where they had caused or could engender scandal. Priests could resort to excommunication to force the most obstinate sinners to penance. Contrary to excommunication, pilgrimage and monastic exile, in combination with fasting, were usually a part of one’s penance. Elements of penance on the one hand and coercion and prevention on the other could more easily be combined in exile and the entry into a monastery. They could be conceived of as disciplinary measures and at the same time as penances, mortifications of the body and soul. Moreover, they were religious topoi that had

ipse ut iudas scarioth domini ac magistri sui traditor damnationem sustineat cum suis omnibus sequacibus.
Repeated as *P. Vallicellianum* C. 6, c. 64 and *P. Lucense*, c. 6.

¹ *Coll.5libr*. IV,250 (Vat. lat. 1339, f. 210r): *Si quis per industriam quod est grauius, id est ante iuramentum deliberauit, quod ipse aliqua machinatione auaritię suę artis in reuerenti animo ultro se temeritate periurauerit, omnes res suas pauperibus dimittatur et in monasterio deo seruiat, aut in peregrinatione exsul fiat, aut in carceribus retrusus diebus omnibus uite suę cum luctu peniteat.*

² See H. Lutterbach, ‘Intentions- oder Tathaftung? Zum Bußverständnis in den frühmittelalterliche Bußbüchern’, *Frühmittelalterliche Studien* 29 (1995) pp. 120-143, pp. 140-143.

a long history in religious and penitential literature.¹ Besides, the fact that Hrabanus Maurus complained about parricides wandering about the country and committing many crimes and, instead, proposed that parricides stay in one place, demonstrates that such a penance did not always serve its purpose.²

Conclusion

Both the penitentials and the canon law collections of South and Central Italy were engaged in combatting grave sins like adultery, fornication, and violence, which could cause scandal in communities. If penitentials were intended to govern the behaviour of Christians, they increasingly governed their social relations, which is particularly clear in their canons on marriage. They also sought to counter crimes like violence, treason, or violation of ecclesiastical possessions, crimes that could disrupt society, the Church at large. Correspondingly, for many of these ‘criminal’ sins, the repertory of penances is considerably extended in penitentials and canon law collections. The modest role of minor sins in penitentials, however, should not be taken to suggest that these did not play a role at confession. They still appear in such late texts as the *P. Vallicellianum C. 6*. Other texts urge confessants to search their soul for minor sins, but without specifying them. The emphasis on grave sins can partly be explained by the changing function of the penitential canons. Of course, Peter Damian’s exhortation to expiate minor sins by daily participation in the liturgy of the hours hints at a new understanding of confession. The struggle against (minor) sins was considered a part of a Christian’s daily life and not necessarily reserved for confession alone. Yet Peter Damian’s letter is a call to observe the liturgy of the hours and, accordingly, tells us nothing about confession. In chapter 6 a multitude of penitential *ordines* has been taken as evidence for the establishment and popularity of confession and penance in South and Central Italy in the eleventh and twelfth centuries. By the twelfth century, as Allen Frantzen suggested, confession and penance had become a practice for the many, not only for a few devout as was the case in early medieval Ireland. The increasing popularity of penance caused a shift ‘towards a discipline less exacting and more likely to be widely observed’.³ Applying Frantzen’s theory to Central and South Italy, the periods of fasting prescribed for minor sins

¹ Hrabanus Maurus complained about parricides wandering about the country and committing many crimes and, instead, proposed that parricides stay in one place, demonstrates that such a penance did not always serve its purpose (*Ad Otgarium*; PL 112, 1410). See Vogel, ‘Le pèlerinage pénitentiel’, pp. 136-138.

² Hrabanus Maurus *ad Otgarium* (PL 112, 1410). See Vogel, ‘Le pèlerinage pénitentiel’, pp. 136-138.

³ Frantzen, *The literature of penance*, p. 201.

by penitentials were losing their meaning when confession became opened to the many. This could explain why penitentials focused on criminal sins, whereas texts such as *ordines* continued to mention minor sins. The function of penitentials changed as confession became an established ‘sacrament’, with an increasingly focus upon major sins or *criminalia peccata* to the neglect of other topics. Minor sins did not need special treatment in the canons, as priests could impose ‘less exacting’ penances at their own discretion without the aid of a penitential. In the case of criminal sins, the priest’s discretion may have been tested to such an extent that he needed the canons to help him impose a suitable penance or he needed an authoritative statement in order to be able to impose effectively a penance in such a case.

The emphasis on sins like incest, adultery, and homicide may also have accounted for the expanded repertory of penances, including pilgrimage, monastic exile, and incarceration. Yet the penances, even in their extreme manifestations, cannot be explained solely by contrasting disciplinary measures with purifications of the soul. If we consider the language of the canons, ideas of repentance and penalty have been merged. Another point that has been stressed is the variety of penance. The penances prescribed were by no means regarded as fixed. With the help of new commutation lists, bearable and moderate periods of fasting could be imposed upon sinners of all kinds.

The importance of criminal sins in penitentials was not solely brought about by a change in the function of these texts. We may conclude that the penitential texts reflect genuine concerns with individual salvation as well as public order from the fact that canonists and composers of penitentials produced so many new canons dealing with marriage, homicide, and (ecclesiastical) property.¹ In some respects, the canons can be considered a continuation of Carolingian and even earlier ideas. Although it is difficult to trace in the texts analysed here any direct links with the reform movement of the eleventh and twelfth centuries, some themes like the protection of church possessions and ecclesiastical ritual would later play an important role during the Gregorian reform. More importantly, several canons were apparently guided by concerns and ideals that we also encounter in the Peace of God movement.

¹ Some scholars considered the *Coll.5libr.* an important witness to the reforming efforts of pope Benedict VIII and emperor Henry II. Benedict VIII, moreover, is known to have supported the Peace of God movement. The decrees of the council of Ravenna (1014) convened by Henry and Benedict are preserved solely in the *Coll.5libr.* Yet none of these minutes treat topics like incest or protection of churches. See Laudage, *Priesterbild*, pp. 52-83. M. Fornasari, ‘Enrico II e Benedetto VIII e i canoni del presunto concilio di Ravenna del 1014’, *Rivista di storia della chiesa in Italia* 18 (1964) pp. 46-56, and Hermann, *Das Tuskulaner Papsttum*, pp. 124-125.

8. PENANCE IN BETWEEN LITURGY AND CANON LAW

QUESTIONS ABOUT GENRE, PURPOSE AND USE OF THE PENITENTIALS

In the last two decades the question as to how the penitentials were actually used has become the subject of debate. Particularly important in this debate was Franz Kerff's contention that penitentials were primarily used as law codes in episcopal courts rather than in pastoral care.¹ Although his ideas have not entirely convinced historians of penance, scholars like Raymund Kottje, Rob Meens and Sarah Hamilton agree that, while penitentials were largely used in pastoral care in the seventh to ninth centuries, they increasingly functioned in a legal or educational context from the tenth century onwards.² Hamilton argued, moreover, that from the late ninth century onwards the number of newly produced penitentials declined and that penitentials came to be used in episcopal courts or as texts for educational reasons rather than as pastoral texts.³ The observations made by Kerff, Meens, and Hamilton as to the context in which penitentials were used were primarily based upon codicological evidence such as size, decoration, or contents of particular manuscripts. Accordingly, small manuscripts with largely liturgical contents are more readily considered to have been used in pastoral care than large manuscripts with a predominantly legal or theological content. Kottje approached this issue from a different angle. He dealt with the question whether the penances prescribed by penitentials were penances for the cure of sinful souls or punishments inflicted upon criminal offenders, an issue that has been discussed in the previous chapter. His conclusion that the penances were a cure rather than a punishment confirmed his views that penitentials served a pastoral purpose.

Because the penitentials of South and Central Italy were composed in precisely that period in which these texts are considered to have assumed a different function, that is, in a legal rather than a pastoral context, it is important to examine how and by whom these texts were used. My analysis of the function and use of penitentials entails an investigation of both codicological and textual evidence and begins with a short survey of the different types of manuscript in which these texts can be found. Subsequently I will focus on the use of

¹ Kerff, 'Libri Paenitentiales und kirchliche Strafgerichtsbarkeit bis zum Decretum Gratiani', pp. 23-57.

² R. Meens, 'Frequency and nature of Early Medieval Penance' in P. Biller and A.J. Minnis ed., *Handling sin: Confession in the Middle Ages*. York Studies in Medieval Theology II (York, 1998) pp. 35-61, and especially Meens, *Het tripartite boeteboek*, pp. 220-266, for an extensive analysis of the manuscripts of tripartite penitentials. See also Kottje, "'Buße oder Strafe?' Zur 'Iustitia' in den 'Libri Paenitentiales'" and Körntgen, *Studien zu den Quellen*, pp. 164-168.

³ Hamilton, *The practice of penance*, pp. 38-50, especially p. 50: '[I]n both cases the evidence points the same way: penitentials were ceasing to be seen as pastoral texts and were coming to be considered rather as texts to be used in a more formal context, either that of the cathedral school or the episcopal court and synod.'

penitentials in a ‘legal’ context through studying the reception of their canons in the two most important canonical collections of southern Italy, the *Coll.9libr.* and the *Coll.5libr.* The last sections are concerned with the penitentials from South and Central Italy. The texts will be considered from a codicological perspective as well as from a more textually oriented approach looking at the texts and the information they provide us as to their purpose.

8.1 Penitentials as canonical texts, penitentials as liturgical texts

Cyrille Vogel has given a useful characterisation of the penitential genre. I have singled out two of his characteristics, the first pertaining to the form of the texts and the second to their contents. Firstly, the scope of penitentials is limited to the countering of sins as opposed to the wider range of topics treated by canon law collections, which also dealt with topics like clerical hierarchy, papal primacy, or episcopal jurisdiction. Secondly, the rulings of handbooks for confessors display an almost fixed “sin-penance structure”: if someone has committed <a particular crime> then he has to do penance for <a particular period of time>. The penance is defined very precisely, usually consisting of a number of years or days in penance.¹ While such features enable us to define penitentials as a genre, it is sometimes difficult to distinguish the penitential genre from other genres. Early penitentials like the *P. Ambrosianum*, the *P. Cummeani*, and, to a lesser degree, the *P. Columbani* combine the elements found in a penitential with those of a monastic rule.² The collected judgments of Theodore of Canterbury, which cover topics ranging from the privileges of bishops to food taboos, show that this collection has the characteristics of a penitential as well as a canon law collection.³

Carolingian manuscript evidence demonstrates that penitentials functioned within several contexts. From the late eighth/early ninth century onwards, compilers of canon law collections and penitentials showed a growing interest in each other’s texts, which brought about a fusion of penitential and canonistic genres. The Frankish *Excarpsus Cummeani* was probably the first texts to be produced in conjunction with a canon law collection, notably the *Coll. Vetus Gallica*.⁴ Accordingly, one may conclude that the *Excarpsus* was not exclusively

¹ Vogel, *Les ‘Libri Paenitentiales’*, pp. 39-42.

² See Körntgen, *Studien zu den Quellen*, pp. 35-37 and 50-72 and, subsuming recent discussions about the *P. Ambrosianum* and the *P. Columbani*, M.G. Muzzarelli, ‘Il Penitenziale di Columbano nella storiografia recente’ in M.C. De Matteis ed., *Ovidio Capitani: Quaranta anni per la storia medioevale* (Bologna 2003) pp. 141-155.

³ See Frantzen, *The literature of penance*, pp. 64-67.

⁴ L. Körntgen, ‘Der *Excarpsus Cummeani*, ein Bußbuch aus Corbie?’ in O. Münsch and T. Zotz ed., *Scientia Veritatis. Festschrift zur Hubert Mordek zum 65. Geburtstag* (Ostfildern 2004) pp. 59-76.

consulted in a pastoral setting. This process was furthered by the condemnation of anonymous penitentials by Carolingian bishops at the Reform Councils of 813 and 829. These church councils condemned (all?) the existing penitentials as of poor authority and full of errors and discrepancies. This condemnation was partially an expression of the Carolingian quest for authoritative texts, but it also may have increased the pace of the integration of penitentials into canon law. Not much later an eminent Carolingian bishop, Halitgar of Cambrai, compiled a penitential in six books from the decrees of church councils and papal letters which he dedicated to Ebo, archbishop of Reims. He also added as the sixth book an old-style tariffed penitential, based upon the old Frankish-insular legacy, but he legitimised this addition by pointing to its alleged Roman origin.¹ In the tenth and eleventh centuries, Halitgar's example was widely followed by canonists. Regino of Prüm included in his episcopal handbook, or *Libri duo de synodalibus causis*, a penitential while Burchard of Worms († 1025) composed and included as the nineteenth book of his *Decretum* the so-called *Corrector sive medicus*.² An Italian example is the *P. Vallicellianum I* included in the canon law collection of ms. Milan, Bibl. Ambrosiana, I 145 inf.³

In the ninth century the connection between penitentials and liturgy drew closer as well, as liturgical instructions began to accompany penitentials. As we have seen in chapter 6, the *ordines* that contained liturgical instructions became more elaborate in the course of the ninth century. Most of the Italian penitentials of our period were joined with or even fully integrated into *ordines* of confession. A growing number of penitentials were copied into liturgical books like pontificals or books of *ordines* for priests, later known under the name *Rituale*.⁴ Early examples are the *P. Bobbiense* included into the seventh- or eighth-century

¹ According to Körntgen, *Studien*, p. 245, Halitgar was not the compiler of this sixth book and used an existing text as a supplement to his penitential.

² On the *Corrector* of Burchard see L. Körntgen, 'Burchards "Liber Corrector" und seine Quellen' in W. Hartmann ed., W. Hartmann ed., *Bischof Burchard von Worms, 1000-1025. Quellen und Abhandlungen zur mittelrheinischen Kirchengeschichte 100* (Mainz 2000) pp. 199-226 and H. Hofmann and R. Pokorny, *Das Dekret des Bischofs Burchard von Worms. Textstufen – Frühe Verbreitung – Vorlagen*. MGH Hilfsmittel 12 (München 1991). On the function of the *Decretum* see G. Austin, 'Jurisprudence in the service of pastoral care: the *Decretum* of Burchard of Worms', *Speculum* 79 (2004) pp. 929-959 and L. Körntgen, 'Canon law and the practice of penance: Burchard of Worms' penitential', *Early Medieval Europe* 14 (2006) pp. 103-117.

³ About this collection (Milan?; s. XII^m) see G. Picasso, *Collezioni canoniche milanesi del secolo XII*. Pubblicazioni dell'Università Cattolica del S. Cuore. Saggi e ricerche, serie terza. Scienze storiche 2 (Milan, 1961) pp. 81-157 and Hägele, *Das Paenitentiale Vallicellianum I*, pp. 27-29.

⁴ N.K. Rasmussen, 'Célébration épiscopale et célébration presbytérale: un essai de typologie', *Segni e riti nella chiesa altomedievale occidentale 2*. Settimane di Studio 33 (Spoleto 1987) pp. 581-603, see p. 593: 'les rites presbyteraux non-eucharistiques'; he mentions in particular baptism, confession, marriage, and funeral rites. The name *Rituale* was coined in the sixteenth century. Rasmussen admits that classifications like Sacramentary, Missal, or *Rituale* do not always correspond to the contents of liturgical manuscripts. Many manuscripts combine features of two or more genres of liturgical books. See also Hamilton, 'The *Rituale*: the evolution of a new liturgical book', pp. 74-86.

Bobbio Missal and the *P. Parisiense Simplex* appended to the Old Gelasian Sacramentary.¹ The *P. Vallicellianum I*, which, as we have seen, was sometimes part of canonical collections, is also found in liturgical manuscripts, combined with elaborate penitential *ordines*.² Occasionally, the liturgical context seems to have affected the outlook of penitentials, when the canons were reformulated into questions. This particular form, lists of questions, would have made penitentials a more convenient tool for the interrogation of penitents. An example of an interrogatory penitential is the Reims *ordo*, discussed in chapter 6, whose list would be incorporated into the *P. Mixtum Ps.-Bedae-Egberti* and the Romano-Germanic Pontifical. Another list of questions can be found in Anglo-Saxon and Italian *ordines*, among others in that of the *P. Casinense*. This version of the ‘Interrogationstypus’ enjoyed a wide popularity in Italy.³ The *Corrector sive medicus*, the questionnaire penitential with *ordo* incorporated in Burchard of Worms’ *Decretum* bears witness to the close connection between liturgy, penance, and canon law.⁴

8.2 Penitential canons in South-Italian canon law collections

Considering the prominent place of penitential material in canonical collections of South and Central Italy, one should examine how this ‘fusion’ of genres was brought about. In the light of the nascent study of canon law in the eleventh century, the interest in canon law could have entailed an interest in normative texts in general, including the penitentials. Hägele confidently linked the popularity of penitentials in Italy to increased canonistic activity in northern Italy’s cathedral schools. He mentions, amongst others, the episcopal cities of Vercelli, Verona, Milan, and Pavia as centres of learning. Yet most of the manuscripts containing canonical collections and penitentials cited by him cannot be pinpointed to one of these cities, except for those codices written in Vercelli. The others were copied in monastic centres like Bobbio or Nonantola.⁵ We will see that, at least in Umbria and the South, the copying of canon law books was not only an affair of episcopal centres but also of monasteries. The trend towards the fusion of penitentials and canon law, which had begun in

¹ See on these texts Kottje ed., CCSL 156, pp. XXXV-XXXVII and Meens, ‘Reforming the clergy: a context for the use of the Bobbio penitential’, pp. 154-167.

² In the eleventh-century ms. Rome, Bibl. Vallicelliana, E. 15, a collection of *ordines*.

³ See chapter 1. It is found in the Italian *ordines* of the *P. Casinense*, ms. Rome, Bibl. Nazionale, 2081, ms. Vat. lat. 5768, ms. Barcelona, Bibl. Universitaria, 228, and the Bobbio *ordo* of Muratori.

⁴ This bulky list of questions seems too elaborate for use in pastoral care. See Hamilton, *Practice of penance*, pp. 40-44. However, the *Corrector* was also transmitted separately from the *Decretum*, often in liturgical books. In such a context it may have functioned in pastoral care.

⁵ Hägele, *Das Paenitentiale Vallicellianum I*, pp. 93-94.

the Carolingian age, is indeed discernible in South and Central Italy in the eleventh century. Two South Italian canon law collections that were heavily infused with penitential canons are the *Coll.5libr.* and the *Coll.9libr.* As the influence of these collections on later texts has already been discussed in previous chapters, this section is concerned with the way in which penitential material is dealt with in these collections. A second objective is to reconstruct the aim and function of these collections and, more particularly, of the penitential canons these documents include. What do the texts and the manuscripts in which they are recorded tell us about their use? Thirdly, Charles Radding devoted a study to the ninth- to eleventh-century antecedents of legal scholarship in twelfth-century northern Italy, but he only discusses secular law.¹ This section considers the issue of whether it is possible to discern in Italian canon law collections, in particular in their treatment of penitential canons, a glimpse of an emerging study of canon law, the other pillar of academic legal scholarship.²

Both the *Coll.9libr.* and the *Coll.5libr.* are classified among the tenth- and eleventh-century ‘Pre-Reform collections’, a group which includes Burchard’s *Decretum* and Abbo of Fleury’s canon law collection, since they are considered precursors of the Reform collections with regard to their contents. Johannes Laudage, for example, saw many of the themes of the eleventh-century reform foreshadowed in Burchard’s *Decretum* and *Coll.5libr.*³ The sole copy of the *Coll.9libr.* is preserved in ms. Vatican, BAV, Vat. lat. 1349.⁴ The collection was written in Beneventan script somewhere in southern Italy. The manuscript is dated to ca. 1050, although the collection is presumed to date back to the tenth century.⁵ Given the

¹ C.M. Radding, *The origins of medieval jurisprudence. Pavia and Bologna 850-1150* (New Haven 1988). He defines jurisprudence as ‘thinking about’ or ‘interpreting’ the law, which involved comparing different laws and creating a distinct legal terminology. His conclusions were criticized, because the evidence on which his theories rested was dated incorrectly. Reservations about his definition of jurisprudence were aired by A. Winroth, *The making of Gratian’s Decretum* (Cambridge 1999) pp. 171-172.

² See R.E. Reynolds’ review of R. Sommerville and B.C. Brasington, *Prefaces to canon law books in Latin Christianity: Selected translations, 500-1245* (New Haven 1998) in *The American journal of legal history* 42 (1998) pp. 299-301: ‘[The] prefaces [of penitentials] often reflect a keen consciousness of the divergent penances within them and a system of use that very much looks forward to the interpretive principles enumerated in the late eleventh century and beyond in the harmonization of discordant canons.’

³ P. Fournier and G. le Bras, *Histoire des collections canoniques en Occident depuis les Fauses Décrétales jusqu’au Décret de Gratien I* (Paris 1931), Laudage, *Priesterbild und Reformpapsttum*, pp. 78-83. On the influence of the *Decretum* in Italy see J.J. Ryan, *Saint Peter Damiani and his canonical sources*. Pontifical Institute of Mediaeval Studies, studies and texts 2 (Toronto 1957), Mor, ‘La reazione al “Decretum Burchardi” in Italia avanti la riforma Gregoriana’, pp. 197-206, and D. Jasper, ‘Burchards Dekret in der Sicht der Gregorianer’ in *Bischof Burchard von Worms*, pp. 167-198.

⁴ The manuscript (225 ff; 363x263 mm) is written in Beneventan script by various hands. See S. Kuttner (and R. Elze), *A catalogue of canon and roman law manuscripts in the Vatican Library I, codices 541-2299*. Studi e testi 322 (Rome, 1986) p. 109 and Fournier, ‘Un groupe de recueils canoniques italiens’, pp. 242-276. Rubrics printed by A. Maï, *Spicilegium Romanum* 6 (Rome 1839-54) pp. 396-472.

⁵ See Loew, *The Beneventan script*, pp. 213-215, Kuttner, *A catalogue of canon and roman law manuscripts I*, p. 109, and Reynolds, ‘The transmission of the *Hibernensis* in Italy: Tenth to Twelfth century’, p. 27. Fournier, ‘Un groupe de recueils canoniques italiens’, pp. 269-273 dates the collection to ca. 920 on the basis of the excerpts of

number of canons pertaining to the privileges and duties of bishops in the first and second books, the collection was probably intended for an episcopal church.¹ It includes a wide variety of different texts such as conciliar decisions, papal decretals, Roman law, capitularies, quotations from the Greek and Latin fathers and the Scriptures, taken from an equally wide range of sources.² The *Coll. 9libr.* contains two books on penance. The eighth book is comprised of quotations from church fathers, popes, and councils that serves as a more theoretical and theological introduction to the subject. The ninth book (*De iudicium (!) paenitentiae*) is a penitential, which is introduced by a sequence of prefaces of penitentials (*P. Ps.-Gregorii*, the penitentials of Cummean, Columbanus, Ps.-Egbert, and the *P. Oxoniense II*), Pseudo-John Chrysostome's sermon *Provida mente*, and an excerpt from the second capitulary of Theodulf of Orléans.³ Its most important sources are the *Cap. Iud.*, which also provided the backbone for the structure of the ninth book, the *P. Ps.-Gregorii*, the *P. Oxoniense II*, the *Iudicia Theodori*, the *P. Vaticanum*, and the *P. Casinense*.⁴

It is impossible here to unravel all the secrets of the ninth book. No detailed study of the book on penance and its structure exists, so this section offers some observations – though still provisional – on the oddities of its structure.⁵ At times, the ninth book gives the impression of a text that had not yet reached its final form. The repetitions and the sometimes awkward organisation point to an uncorrected ‘work-in-progress’, a fabrication that was still in an embryonic state. For example, some canons are copied twice, but with the repeated canon in a somewhat different version.⁶ On other occasions, texts seem to have been added to

Auxilius Francus' defence of the ordinations of clerics by pope Formosus, which had been declared null and void by popes Stephen VI (896-7) and Sergius III (904-11).

¹ See Fournier, ‘Un groupe de recueils canoniques italiens’, p. 270 opts for the city of Naples, where the support for pope Formosus was particularly strong, or the region of Benevento.

² The compiler used a manuscript similar to ms. Rome, Bibl. Vallicelliana, T. XVIII (South Italy; s. XI^m) which contains the B version of the *Coll. Hibernensis*, the Collection in 72 Titles, the *Concordia Canonum* of Cresconius, and *De transmigratione episcoporum*. Cf. Fournier, ‘Un groupe de recueils canoniques italiens’, pp. 247-257, Zechiel-Eckes, *Die Concordia Canonum des Cresconius. Studien und Edition* 1, pp. 248-249, and S. Lindemans, ‘Auxilius et le manuscrit Vallicellan Tome XVIII’, *Revue d'histoire ecclésiastique* 57 (1962) pp. 470-484. Other sources: *Epitome Hispana* and *Coll. Dionysiana Adaucta*.

³ The combination of Ps.-Chrysostome's *Provida mente* and the prologue of the *P. Oxoniense II* is found in North Italian manuscripts, notably ms. Vat. lat. 5751 (Bobbio; s. IX-X). See Körntgen, *Studien*, pp. 122-130. Canon X,34 of capitulary II of Theodulf of Orléans, placed at the end of the sequence, is found in ms. Vat. lat. 5751 (as *ordo* of the *P. Merseburgense A*, see chapter 6) and ms. Paris, BNF, Nouv. acq. 281 (North Italy; s. X).

⁴ See Gaastra, ‘Penance and the law’, pp. 85-102.

⁵ An attempt is made in Gaastra, ‘Penance and the law’, pp. 85-102. Fournier, ‘Un groupe de recueils canoniques italiens’ pp. 260-269 only discusses the sources of book IX. He had no knowledge of the existence of the *P. in II libris* and the *P. Oxoniense II*, discovered by Körntgen several years ago.

⁶ Compare *Coll. 9libr.* IX,40 (*Si quis autem sacerdos cum filia sua spirituali fornicauerit, sciat se graue adulterium commississe... conuersa in monasterio, seruiat deo usque ad mortem. Sacerdos autem qui nouum et malum exemplum (!) monstrauit in terra, ab omni officio deponatur...*) and IX,43 (*Si qui sacerdos cum filia sua spiritualis fornicauerit, sciat se graue adulterium commiserit... conuertat se aut in monasterio puellarum, aut in secreto et remotus locus ubi peniteat usque ad mortem. Sacerdos autem qui tam malum exemplum in tempore*

an earlier version. The fact that several canons were placed where they did not belong points in this direction. For example, the conciliar canons – unnumbered in contrast to the other canons - on simony and clerical continence (IX,38-39 and 43-47; my numbering) occur in the midst of the section on fornication. At the same time, book IX bears the stamp of a single compiler or a group of collaborating compilers. An analysis of new canons, which were probably created by the compiler of the collection himself, demonstrates that these are based upon texts, such as the *Cap. Iud.*, the *P. Ps.-Gregorii*, and the *P. Oxoniense II*, that were also the main sources of the ninth book.¹ Secondly, the way both new and existing canons were rubricated and ascribed to sources of authority exhibits a consistent policy. For instance, six newly composed canons and five taken from existing penitentials are called *Iudicium synodale* or *Synodale*. The rubric *Apostolicum* or *Apostolica* has been used three times for new canons and two times for rulings of existing penitentials.² The rubric *Synodus romana* designates both new canons and existing ones on six occasions.³ The collection, in particular its ninth book, as preserved in ms. Vat lat. 1349 represents a living text which bears witness to various stages of revision and elaboration over the course of time, but it could also be and, to some extent, is a work-in-progress by a single compiler.⁴

Complete versions of the other major collection, the *Coll.5libr.*, survive in three manuscripts, written at Montecassino (ms. Montecassino, Arch. dell'Abbazia, 125), Narni (ms. Vat. lat. 1339), and the abbey of Sant'Eutizio (ms. Rome, Bibl. Vallicelliana, B. 11), all dated to the mid and second part of the eleventh century.⁵ In addition, Roger Reynolds has

christianitatis et oues christi monstravit, lupus rapit et dispergit oues (Ioh. 10,12), propterea ab omni officio...). Cf. IX,43,1 and IX,43,2 (*Si qua femina in fornicatione reprehensa fuerit cum episcopus...*). The first is rubricated *Iudicium de femina... epistola ormisde pape per uniuersas prouincias. Similiter eugenii pape, theodorus archiepiscopus et commeanus abbas sic constituerunt*. The second *in concilio niceno*. These canons cannot be found in earlier sources and were probably composed by the compiler of the collection himself.

¹ Gaastra, 'Penance and the law', pp. 85-102.

² The rubric *Iudicium canonicum* was used, apart from the canons derived from the *Cap. Iud.*, to denominate new canons, but most often to designate older penitential or conciliar material. *Synodus* (six times) is reserved for existing canons taken from the *Cap. Iud.* and the *P. in II libris*. Also used are *Prouidentia canonica et apostolicam catholicamque censura* (1 time), *canonicam apostolicamque doctrinam* (1 time); *iudicium canonicum apostolicumque* (1 time), *Statuta apostolica*, all for existing penitential and canonical canons. One new canon and one canon of the *P. in II libris* were labelled *Ex decreto pontificum*. A canon based on *P. in II libr. I,10,2* is designated *Ex decreta papae leonis*.

³ Variants like *Synodus penitentiae* (f. 203v; repeting IX,40 on fornication between a priest and his goddaughter) or *Iudicium penitentiae* (f. 197v; on homicide; taken from *Cap. Iud. I,1*) can also be found in the rubrics.

⁴ Inconsistencies can also be found in other 'books' of the collections. For example, the order and numbering of the canons on incest is muddled in the seventh chapter. In addition, two texts now copied on the second folio at the beginning of the collection may have been intended to be inserted in the collection.

⁵ See Reynolds, 'The South-Italian canon law Collection in Five Books', pp. 279-286. The sizes of the manuscripts of the *Coll.5libr.* are bulky. Ms. Vat. lat. 1339: 400 x 285 mm (310 ff.; the fifth book is incomplete); Montecassino, Arch. dell'Abbazia, 125: 325 x 464 mm (368 pages; see G. Orofino, *I codici decorati dell'Archivio di Montecassino II,2: I codici preteobaldiani e teobaldiani* (Rome 2000) p. 103); Vallicelliana, B.

discovered one fragment of what had probably been a copy of the complete text and more than twenty derivatives of the collection, some of which are abbreviated recensions, while in others material is combined with other canonical collections such as the *Decretum* of Burchard of Worms.¹ Its derivatives ensured the collection's continuous influence in South and Central Italy well into the twelfth century. The *Coll.5libr.* is dated to the years 1014-1023. While the collection was considered to have been composed in the monastery of Farfa by Mario Fornasari, most scholars now agree on a place of origin in southern Italy, possibly Montecassino or one of its dependencies.² Fournier demonstrated that the compiler of the *Coll.5libr.* used the same sources as the *Coll.9libr.* and possibly the *Coll.9libr.* itself.³ However, some of the (penitential) canons of the *Coll.5libr.* cannot be found in the *Coll.9libr.*⁴ In addition, the *Coll.5libr.* contains capitularies and Lombard law not incorporated in the *Coll.9libr.* Reynolds, therefore, argued that if the *Coll.5libr.* was dependent on the *Coll.9libr.*, it was on a version different from that of ms. Vat. lat. 1349.⁵

Reynolds regarded the collection as a work with a markedly pastoral purpose, both because of the contents and because many derivatives circulated widely in South and Central Italy.⁶ The structure of the *Coll.5libr.* differs from that of the *Coll.9libr.* in that the penitential canons are scattered throughout the collection and were not, like in the *Coll.9libr.*, grouped together in a separate 'book'. As a result, the distinction between canon law collection and penitential disappears in the *Coll.5libr.*, especially in its fourth and fifth books. Each topic is

11: 340 x 220 mm (Supino Martini, *Roma e l'area grafica Romanesca*, p. 223; fifth book incomplete). See also Gyug, 'The list of authorities in the illustrations of the Collection in Five Books', pp. 241-254.

¹ Reynolds, 'The South-Italian canon law Collection in Five Books', p. 285: fragment in ms. Rome, Bibl. Vallicelliana, R. 32 (Central Italy; s. XI).

² Reynolds, 'The South-Italian canon law Collection in Five Books', pp. 279-280, Kölzer, *Collectio canonum regesta Farfensi inserta*, p. 52, and Laudage, *Priesterbild und Reformpapsttum*, pp. 78-83. The latest dateable sources are canons of the Council of Ravenna of 1014, which provides the *terminus post quem*. The collection is probably compiled before 1023, since it is mentioned by the *Chronicon Casinensis* as a *Liber Canonum* which abbot Theobald had had made for the library of Montecassino in 1023. The *Liber canonum* mentioned in the *Memoriale* of 1019 that was copied at the behest of Theobald, provost of San Liberatore and future abbot of Montecassino was identified by Mordek with the *Coll.5libr.* Theobald may have acquired it for the poorly stocked library of Montecassino. The Montecassino codex is closest to the original according to Kölzer, who also argues that there may have been a now lost Farfese copy of the collection. Lupo, the *peregrinus frater* and *sacerdos ualde amabilis* who, according to the prologue, compiled the collection, may have been a monk of Montecassino (see Fransen, 'Principes d'édition des collections canoniques', p. 131).

³ Fournier, 'Un groupe de recueils canoniques italiens', pp. 288-292. Cf. Kölzer, *Collectio canonum regesta Farfensi inserta*, p. 49. Fournier's comparison of both collections was not based on book IX of the *Coll.9libr.* Yet the order of the canons of *Cap. Iud.* as it appears in book IX is closer to the original order of this penitential than that of the *Coll.5libr.* Furthermore, the *Coll.9libr.* more substantially quotes from the *P. Oxoniense II*. If we compare *Coll.9libr.* IX,9 with *Coll.5libr.* IV on infanticide and abortion, it becomes clear that the *Coll.9libr.* quotes the entire section on this topic from the *P. Oxoniense II*, while the *Coll.5libr.* only quotes a part of it.

⁴ For instance *Coll.5libr.* II,78,3 (Fornasari, CCCM 6, p. 227) on fornication in churches which is found in the *P. Vaticanum* (for its origin see Meens, 'Aliud Benitenciale', *Mediaeval Studies* 2004), III,328 (Fornasari), which is in this particular version only to be found as *P. Merseburgense A*, c. 26.

⁵ Reynolds, 'The South-Italian canon law Collection in Five Books', p. 280.

⁶ Reynolds, *The Collectio canonum Casinensis duodecimi seculi*, p. 8.

usually introduced by a definition from Isidore of Seville, followed by quotations from the Scriptures and Church Fathers, papal and conciliar decrees, and, finally, penitential canons. The occurrence of chapters devoted to markedly ‘penitential’ topics like perjury, false witnesses, food taboos, or the Eucharist demonstrates that the choice of topics was, at least partially, inspired by penitentials. Not surprisingly, Reynolds remarked that the collection is ‘heavily penitential in nature’. In two of its four prefaces the collection is defined as a text for the *remedia animarum* and the *recuperatio lapsorum*, obvious hints for users of the collection.¹ Yet, the *Coll.5libr.* and, to a lesser extent, the ninth book of the *Coll.9libr.* are essentially canonistic texts and, as a consequence, not solely concerned with countering sin. In the previous chapter it was argued that their sections on marriage were not only used to define what is sinful, but to arrive at a theory by establishing rules for marriages.

Besides collecting and copying canons from their sources, the compilers were engaged in reworking and revising existing canons, partly in order to address new subject matter and partly to harmonise conflicting regulations.² Some of these new canons can be found in both collections, others only occur in only one of them. Because it is impossible to investigate fully all the new rulings within the scope of this chapter, the following example suffices to show how the compilers of the *Coll.9libr.* and *Coll.5libr.* made use of penitential traditions in order to create new canons on specific topic, in this case dishonouring one’s parents. The *Cap. Iud.* demands that people repudiating their parents be judged as impious and desecrators. The *P. Merseburgense B* assigns penances to people dishonouring or lifting their hands against their parents. The *P. Casinense* censures people who ‘harm’ their parents (*?iniuriam fecerit*) and *P. Vaticanum* those who defile their parents ‘with words’ or lift their hand against them. These texts constituted the dossier upon which the compilers of the *Coll.9libr.* and *Coll.5libr.* built their own regulations. The resulting canons are still somewhat rudimentary versions of the older models, but it is clear that the penances are raised, the censures are extended to the godparents, and the authority of the texts is improved.

Sources	<i>Coll.9libr.</i> IX,64/100-102 (Vat. lat. 1349, f. 212r)	<i>Coll.5libr.</i> IV,133-136 (Vat. lat. 1339, f. 201r-v)
Si quis patrem aut matrem expulerit, impius uel sacrilegus iudicandus est, peniteat autem	Si quis patrem uel matrem expulit, impius uel sacrilegum iudicandus est, peniteat	CONCILIO TERRACONENSE. Orthodoxis sen[ior]ibus in concilio terraconense: Quicumque super genitorem

¹ See Fornasari, CCCM 6, p. XIX, Reynolds, ‘The South-Italian canon law Collection in Five Books’, pp. 279-280 and Fournier, ‘Un groupe de recueils canoniques italiens’, p. 284.

² On these forgeries see Fournier, ‘Un groupe de recueils canoniques italiens’, pp. 267-269, Landau, ‘Gefälschtes Recht in den Rechtssammlungen’, pp. 27-29, and Gaastra, ‘Penance and the law’, pp. 95-97.

<p>equali tempore, quamdiu in impietate extiterit. (<i>Capitula Iudiciorum XIII,1; P. Parisiense simplex</i>, c. 44)</p> <p>Si quis patri aut matri iniuriam fecerit, VII menses peniteat. Si quis patrem aut matrem expulerit, ut impius sacrilegus iudicetur. (<i>P. Casinense VIII,10</i>)</p> <p>Si quis patrem aut matrem de uerbo exhonoraerit aut manum erexerit in iracundia, III annos peniteat. (<i>P. Vaticanum VI,15</i>)</p> <p>Si quis inhonorificauerit patrem aut matrem, III annos peniteat in pane et aqua. Quodsi manum leuauerit aut ferita fecerit, VII annos exul in pane et aqua peniteat. Quodsi per uoluntate parentum redierit, suscipiatur a<d> communionem. (<i>P. Merseburgense B</i>, c. 28)</p>	<p>autem equali tempore, quamdiu in impietate extiterit.</p> <p>APOSTOLICUM. Si quis patri aut matri suę iniuriam fecerit aut percuterit, ut impium et sacrilegum iudicandum est, et peniteat equali tempore, quamdiu in impietate extiterit.</p> <p>SYNOdale. Si quis patri suo uel matri in iracundia manu erexerit, sicut impius uel sacrilegus iudicandum est, .x. annos peniteat, .iii. ex his in pane et aqua peniteat, et si non emendauerit, exterminetur ab ecclesia sicut iudeus.</p>	<p>suum. seu genitricem irato animo <u>ictum erexerit</u>, gladio diuino ultio eum in futuro percutiet, si non celeriter huic seculo apte placabitur, de cetero <u>ut impius iudicetur</u>. Tunc demum peruenit ad aures sardicense concilium hoc confirmauit aliosque addidit: Similiter et nos sancimus de sacro fonte compatrem filiumque patrem de sancto lauacro atque seruum... si non percutitur, .i. annum peniteat. Si uero percutitur...</p> <p>Si quis patri aut matri suę <u>iniuriam fecerit aut expulerit</u>, si non celerius cum satisfactione eis digne emendauerit, <u>quasi impius iudicetur, et peniteat equali tempore extiterit</u>.</p> <p>Si quis super patrem suum uel matrem <u>in iracundiam manum erexerit</u>, si tamen non percusserit. De hoc .v. annos quasi paricida peniteat. Si autem <u>percusserit</u>, .vii. annos <u>sicut impius uel sacrilegus iudicandus est</u>. Et <u>si non citius emendauerit, exterminetur ab ecclesia sicut iudeus</u>. (...)</p> <p>Si quis patrem aut matrem <u>in uerbo exhonoraerit</u> .iii. annos peniteat. Si quis patri uel matri <u>per iracundiam manum erexerit, sicut impius et sacrilegus iudicandus erit</u> et .x. annos...</p>
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On some occasions the compilers of both collections applied an approach borrowed from the Frankish *P. Ps.-Gregorii*, which substituted old, stricter penances with more humane ones (*secundum antiquam diffinitionem – humanius diffinierunt*).¹ In general, the author of the *Coll.5libr.* reformulated old canons more thoroughly and assigned them more specifically to sources of authority than the compiler of the *Coll.9libr.* While the canons of the *Coll.9libr.* are labelled *Iudicium Synodale* or *Synodus Romana*, those of the *Coll.5libr.* are enriched with titles like ‘a holy synod of Constantinople where hundred and fifty bishops gathered under

¹ Canons IX,49-53 of the *Coll.9libr.*, placed at the end of the section on incest, are new arrangements of c. 11 on incest in the ninth-century *P. Ps.-Gregorii* and also use this method. See chapter 7, paragraph on incest.

Theodosius the Elder'.¹ The appearance of standard phrases and attributions reveal that such canons were the inventions of the compilers of these collections.²

The compiler of the *Coll. 5libr.* also used another type of rubric to introduce the penitential canons, namely the rubrics *In conflictu canonum*.³ In such occasions the compiler attempted to summarize the contents of the often conflicting judgments found in penitentials. After describing the transgression, occasionally, the penance, the priest is told to rely for his judgment on his own discretion after having examined the status of the sinner, his motives, and willingness to mend his ways.⁴ In the case of a layman who had killed another the compiler noted that the way in which the crime was committed – through ignorance, through weakness, or on purpose – ‘should always be taken into consideration by the wisest of priests’.⁵ The compiler’s concern for the conflicting rulings of the penitentials was not new. Criticism about penitentials and their contradictions had already been voiced by church councils held under the Carolingians and in the eleventh century by authors of the Gregorian era, Peter Damian and cardinal Atto of St Mark. Yet this awareness did not prevent the compiler of the *Coll. 5libr.* from using anonymous penitentials. Instead, this canonist noted the contradictions – mostly in the measure of penance prescribed – and subsequently redrafted the canons and their penances.

In order to present a coherent text, the compilers of both collections compared penitential canons, resolved their contradictions, changed existing canons, and composed entirely new ones to address new subject matter.⁶ To legitimize the revision of canons

¹ Two examples: *Coll. 5libr.* IV,115,4 (Vat. lat. 1339, f. 190v): *Sancta synodus .cl. patribus sub theodosio seniore constantinopolis congregata. Epylogus breuiter digestus... Qui uoluntarie genitorem suum aut genetricem occiderit, extra patriam .vii. annos exsul fiat...* IV,136 (Vat. lat. 1339, f. 194r): *Synodus ephesina. Primum a .cc. tis .xiii. episcopis sub iunior theodosio augusto edita. Si quis ecclesie dei per iniquam intentionem uiolator extiterit...*

² The use of formulas like *tunc demum*, the attributions mentioned in the previous note, rubrics like *Epylogus breuiter digestus*, the *antiquam diffinitionem... humaniorem diffinitionem* antithesis borrowed from the *P. Ps.-Gregorii* hint at a single author of these texts.

³ In some occasions he used the alternative *in multorum tractatorum canones comperimus*.

⁴ See *Coll. 5libr.* IV,212 (Vat. lat. 1339, f. 205r): *In conflictu canonum ita habetur: Quicumque furtum fecerit, siue capitale, siue minus, ualde considerandum est persona: Quis, cui, quale, quantum, quare. Si per necessitatem. Si per auaritiam. Si per odium. Si per inuidiam. uel inscitiam. Si per industriam; sic iudicandus est ut illud: Secundum morbum adhibenda est medicina.* See also c. V,160 (ff. 291v-292r): *Si autem propter fornicationem dimiserit uxorem, et dimissam preter fornicationem duxerit, aut suam uxorem preter fornicationem dimiserit, et duxerit propter fornicationem dimissam, omnis suprascripta succedat sententia, nisi tantum ut .xiii. annos peniteat. Tamen uel amplius uel minus iuxta qualitatem uel quantitatem criminis, et conuersationem simul et emendationem.*

⁵ *Coll. 5libr.* IV,115,5 (Vat. lat. 1339, f. 191r): *Si quis laicus occiderit alterum laicum... Valde pensandum est supra scriptis omnibus personis, equibus aliquid ex his sequissimis malis aliquibus irrepserit. Si per ignorantiam. Si per infirmitatem. Si per industriam. Grauius est infirmitate, quam per ignorantiam. Grauius industria, quam per infirmitatem peccare. Sic semper prouidendum est peritissimis sacerdotibus.*

⁶ In contrast to the heading *In conflictu canonum*, which alludes to conflicting penances, the forgeries were intended to (re)formulate the subject, the sin or crime.

compilers assigned their new versions to councils, popes, and church fathers.¹ In this respect, the working methods of the South Italian compilers are reminiscent of Burchard or Regino.² In contrast to the Carolingian Pseudo-Isidore whose forgeries of papal decretals were chiefly (though not exclusively) aimed at legitimizing ideas about politics and ecclesiology, the objectives of the compilers of the *Coll.9libr.* and the *Coll.5libr.* were more modest. False attributions were deployed to justify the authors' revisions of existing (penitential and canonical) tradition. There is no evidence that these authors were aware of the criticism of the authority of penitentials voiced by the Carolingian reform councils of the ninth century. Nor is the reference to the conflicting canons a precursor of the critique of the authority of penitentials voiced by Gregorians in the eleventh century.³ The authors of the South Italian collections only felt obliged to corroborate the authority of anonymous canons as well as their own created ones.⁴ They also considered the judgments of Cummean, of whom virtually nothing was known, sufficiently high to include his name in the rubrics.⁵ In the parade of portraits of authorities that precedes the *Coll.5libr.* of ms. Vat. lat. 1339 Cummean and Theodore rank alongside such figures as Augustine and Gregory I.⁶

It is doubtful that the canon law collections were used at confession. Rather, they were aids for the education of clerics. Firstly, the occurrence of explanatory glosses in all three manuscripts of the *Coll.5libr.* may be interpreted as evidence for the scholarly function of these texts.⁷ Secondly, the comparison and juxtaposition of canons and the reliance upon the priest's power of discernment testify to a scholarly approach to law usually attributed to the later eleventh century.⁸ Because the penitential canons emphatically address the priests and

¹ Completely new canons are those of *Coll.5libr.* V attributed to *Iohannes Constantinopolitanus*, which were created to treat the problem of the (il)legitimacy of divorce and the contraction of second marriages. These canons are further dealt with in chapter 7.

² Austin, 'Jurisprudence in the service of pastoral care: the *Decretum* of Burchard of Worms', pp. 950-954.

³ See Gastra, 'Penitentials and canonical authority', pp. 191-204.

⁴ See M. Mostert, *The political theology of Abbo of Fleury. A study of the ideas about society and law of the tenth-century monastic reform movement* (Hilversum 1987) pp. 115-119. On falsification in canon law: Landau, 'Gefälschtes Recht in den Rechtssammlungen bis Gratian'.

⁵ Cummean's rulings were ignored by Anselm of Lucca, in his penitential addition to his *Collectio* depending of the *Cap. Iud.* Yet this may be due to the version of the *Cap. Iud.* to which he had access, which completely omitted Cummean's judgments. See K.G. Cushing, 'Anselm of Lucca and Burchard of Worms: Rethinking the sources of Anselm 11, *De Penitentia*' in *Ritual, text and law*, in K.G. Cushing and R.F. Gyug ed., *Ritual, text and law. Studies in medieval canon law and liturgy presented to Roger E. Reynolds*. Church, faith and culture in the medieval West (Aldershot 2004) p. 205-224, see p. 232.

⁶ On which see R.F. Gyug, 'The list of authorities in the illustrations of the Collection in Five Books (MS Vat. lat. 1339)' in *Ritual, text and law*, pp. 241-254.

⁷ Reynolds remarked that the scribes who produced the complete versions of the *Coll.5libr.* deliberately left room for the incorporation of glosses.

⁸ See B.C. Brasington, *Ways of Mercy: the prologue of Ivo of Chartres, edition and analysis*. Vita regularis, Ordnungen und Deutungen religiösen Lebens im Mittelalter, Editionen 2 (Münster 2004), Winroth, *The making of Gratian's Decretum*, pp. 157-174, Radding, *The origins of medieval jurisprudence* (only discussing secular

appeal to their power of discernment (*discretio* or *providentia*), the function of the *Coll.9libr.*, at least its ninth book, and the *Coll.5libr.* was to make priests familiar with the application of the often conflicting ecclesiastical rules and to learn them in order to deliver the appropriate judgment under all circumstances. This emphasis on discretion was to a considerable extent still guided by pastoral concerns. The approach to law in the South Italian collections thus does not greatly differ from that of Burchard of Worms or of Ivo as expounded in the famous prologue to his *Panormia*.¹ Their compilers used their penitential material to address the idea of discretion, either because it was the genre with which priests were most familiar or because future priests had to be made familiar with the genre with which they had to work, penitentials. Canon law collections, therefore, offer us specific information about the way in which penance ought to be administered by priests. Unlike Ivo of Chartres, however, who attached great importance to the interpretation of laws and the discretion of the judge but left the canons unaltered, Italian canonists did not hesitate to change the laws themselves. In this manner, law could be summarized, compared, and clarified to the users of the collections.

Sarah Hamilton rightly argued that canon law collections had become of crucial importance to the transmission of penitential canons by the end of the ninth century. Her assertion that the collection of Burchard of Worms was intended for the training of clerics in an episcopal centre rather than for use at confession also holds true for the *Coll.9libr.* and *Coll.5libr.* Given that copies of the latter collection were copied in a monastic context, monasteries arguably also functioned as centres of education for clergy. Moreover, the often smaller and more practical derivatives of the *Coll.5libr.* were passed on from monastic and episcopal centres to smaller monasteries and local churches, which secured the influence of this collection beyond circles of canonists.² Hence one finds these excerpts used in settings closer to pastoral care, in liturgical manuscripts such as Missals and *Rituales* for priestly use. Most importantly, these collections testify to a living penitential tradition as evinced by the many new canons which they include.

The fact that the *Coll.9libr.* and *Coll.5libr.* drew upon the same texts, focused on penance, and contain skilfully fabricated new (penitential) rulings point to a single canonistic

law), H. Zimmermann, 'Römische und kanonische Rechtskenntnis und Rechtsschulung im früheren Mittelalter' in *La scuola nell'Occidente latino dell'alto Medio Evo*. Settimane di studio 19 (Spoleto 1972) pp. 767-794, and U. Lewald, *An der Schwelle der Scholastik. Bonizo von Sutri und das Kirchenrecht seiner Tage* (Berlin 1938).

¹ See Austin, 'Jurisprudence in the service of pastoral care: the *Decretum* of Burchard of Worms', pp. 954-959 and Brasington, *Ways of Mercy: the prologue of Ivo of Chartres*. Already in the tenth century Abbo of Fleury remarked that laws could change under the force of 'the site of countries, the quality of the times, the weakness of man, and other necessities of matter'. See Mostert, *The political theology of Abbo of Fleury*, pp. 117-119.

² For the existence of such handbooks in earlier times see Hen, 'Knowledge of Canon Law among rural priests', pp. 117-134.

‘atelier’, perhaps even to a circle of collaborating compilers. The production of these two, highly original collections and the dissemination of especially the *Coll.5libr.* show that canon law flourished in the South and Central regions of Italy. Hägele has suggested that the study of canon law in cathedral schools in the North generated a renewed interest in penitentials, but in South and Central Italy monasteries played an equally important role in the compilation and copying of both penitentials and canonistic texts. At least two of the complete versions of the *Coll.5libr.* and many of its derivatives were copied in and owned by monasteries.

Penitential material occupies a somewhat less prominent role in the canon law collections of the later eleventh century, although penance was an important theme during the Gregorian reform. This may have been caused by greater ambivalence towards penitentials in the Gregorian era, when authors like Peter Damian and cardinal Atto of St Mark rejected such books as lax and uncanonical – not promulgated by nor in accordance with the decrees of popes or ecumenical church councils.¹ Some canonists ignored penitentials in their collections, as for instance Deusdedit. On the other hand, penitentials were important sources of inspiration for Anselm of Lucca and Bonizo of Sutri, who both incorporated penitential canons, the latter of whom used both (a derivative of) the *Coll.5libr.* and the *Decretum* of Burchard.² The ambivalence can be explained by the objectives of most reform collections, which were in the first place ecclesiological rather than pastoral. They focused on correcting abuses such as simony or nicolaitism, for which one could find sufficient canonical precedent in conciliar and papal decrees. The emphasis on authoritative law may have also partially accounted for the declining interest in penitentials.³ Few penitential canons eventually entered Gratian’s *Decretum*, with whom the age of classical canon law begins. These penitential rulings, however, entered the *Decretum* only indirectly via the collections of Anselm and Bonizo.⁴

¹ See Gaastra, ‘Penitentials and canonical authority’, pp. 200-202.

² On the influence of penitentials in the Gregorian reformer Anselm of Lucca see Cushing, ‘Anselm of Lucca and Burchard of Worms’, pp. 205-224 and Landau, ‘Die Rezension C der Sammlung des Anselm von Lucca’ in *Kanones und Dekretalen. Beiträge zur Geschichte der Quellen des kanonischen Rechts*, pp. 17-54.

³ With the exception of Atto of St Mark, whose *Breviarium* was intended to supplant the penitentials. See the preface of his *Breviarium* (Maï, *Scriptorum veterum nova collectio*, pp. 60-62). Anselm of Lucca also showed a particular interest in penitentials. He inserted a penitential, largely based upon the *Cap. Iud.* into his collection. See Cushing, ‘Anselm of Lucca and Burchard of Worms’, pp. 205-224

⁴ For instance C. 30, q. 1, cc. 9 and 10 on fornication of priests with their goddaughters (*Corpus Iuris Canonici* 1, *Decretum magistri Gratiani*, E. Friedberg ed. (Leipzig, 1879) p. 1099. Some penitential rulings were not present in its first recension. An overview of the contents of the first recension is presented by Winroth, *The making of Gratian’s Decretum*, pp. 197-227.

8.3 The South-Italian penitentials and their purpose and function

Paleographical and codicological evidence for the use of penitentials

In the previous paragraphs a distinction has been made between liturgical and canonical books, with a focus on the latter type of books. If we apply this distinction to the penitentials compiled in South and Central Italy, one meets difficulties. Inasmuch as the small number of penitentials allows us to draw solid conclusions, these texts not only occur in both liturgical and legal types of manuscripts, but also in codices of a mixed liturgico-canonical type. In the last two decades attention has been drawn to the function of liturgical books in the liturgy, which also merits an investigation of the use of penitentials copied into liturgical manuscripts.¹ But before we can turn to this analysis of the manuscript, it is necessary to briefly summarize some of the conclusions drawn in previous chapters. This section again examines the contents of the manuscripts that contain penitentials. Then the outward codicological features are discussed, such as size, organisation of quires, and glosses in order to say more about the purpose and use of these texts.

If we consider the contents of South and Central Italian penitential manuscripts, it becomes clear that penitentials could function within different contexts. The South Italian manuscript of the Frankish *Cap. Iud.*, ms. London, British Library, Add. 16413, is neither a liturgical nor a purely canonical manuscript. It contains theological texts, a mass exposition, sermons, and a canon law collection.² The *P. Vallicellianum I* is copied into the South Italian manuscripts Vallicelliana, E. 15 and Vallicelliana, F. 54; the first manuscript is a liturgical codex and the second a legal manuscript.³ The *Quadripartitus*, a collection of rulings on penitential topics that were mainly drawn from canonistic sources, and the penitential of Halitgar are preserved in canonical manuscripts. This is not surprising since these texts consider penance from a canonistic point of view.⁴ The unwieldy *Quadripartitus* pretends to give a full view of all facets of penance and is quite unlike such short and convenient texts as the *P. Vaticanum*. The content of the manuscript that contains the *P. Gregorii* also supposes a

¹ See Gy, 'Collectaire, rituel, processional', pp. 441-469, Palazzo, *Histoire des livres liturgiques*, Rasmussen, 'Célébration épiscopale et célébration presbytérale', pp. 581-603, and Hamilton, 'The *Rituale*: the evolution of a new liturgical book', pp. 74-86. See also various articles in Hen and Meens ed., *The Bobbio Missal*.

² Mahadevan, 'Überlieferung und Verbreitung des Bußbuchs "Capitula Iudiciorum"', pp. 24-28.

³ Hägele, *Das Paenitentiale Vallicellianum I*, pp. 24-27. See also U-R. Blumenthal, 'An episcopal handbook from twelfth-century Southern Italy: Codex Rome, Bibl. Vallicelliana F. 54/III' in R.I. Card. Castillo Lara ed., *Studia in honorem Eminentissimi Cardinalis Alphonsi M. Stickler*. Pontificia studiorum universitas Salesiana-Facultas Iuris Canonici 7 (Rome 1992) pp. 13-24.

⁴ See Kerff, *Der Quadripartitus*, pp. 18-30 on the manuscripts and pp. 54-61 on the contents of the collection.

legal context.¹ Of the penitentials produced in South Italy the *P. Casinense* and the *P. Vaticanum* were copied into mixed liturgico-canonical manuscripts. The *Casinense* follows upon an *ordo* for anointing the sick and deathbed penance, while its canons are fully integrated into an *ordo* for confession. After the absolution rite and a series of texts about penance (commutations, prefaces of penitentials) comes a canonistic part that comprises excerpts from the *Coll. Dionysiana Aduacta* and the *Epitome Hispana*. The texts on simony and the proper election of bishops and the Mass exposition suggest that the manuscript was used for the training of priests. The *P. Vaticanum* follows upon a rite for a newlywed couple and two passions of martyrs whose division into *lectiones* points to liturgical use. The canonistic part that follows is related to the penitential, for it deals with topics like incest, ritual purity, and fornication. The contents of the manuscript of the *P. Vaticanum* point to a practical function, perhaps to its use at confession. The *P. Vallicellianum E. 62* and the *P. Lucense* are preserved in purely liturgical manuscripts that combine the features of a *Rituale* (containing the *ordines* for non-eucharistic services) and a Missal. The *P. Vallicellianum C. 6* was added to a Breviary. This part contains a calendar and extracts from exegetical works of Bede, which are difficult to relate to confession and penance. The content of this part renders it difficult to draw conclusions about the use of this penitential.

All the manuscripts of the five penitentials discussed in this study are of moderate size. In general they are much smaller than canon law collections, but bigger than, for example, the pocket-sized ritual books of Vatican, Vat. lat. 5768 and Rome, Bibl. Nazionale Centrale, 2116, which contain interrogatory penitentials.² This analysis of penitential manuscripts started from the assumption that the size of some of these liturgical books would make them likelier candidates for use in penitential liturgy than the bulky juridical manuscripts of the *Coll. 5libr.* However, legal collections also survive in pocket-sized manuscripts, which is the case for ms. Montecassino, Arch. dell'Abbazia, 554 (South Italy; s. X/XI). This manuscript, which contains the *P. in II libris* and almost the entire *Coll. Dacheriana*, is of an unusually small size (160 x 107 mm) if compared to other legal collections. A canonistic codex can thus be as small as a liturgical codex. With regard to decoration and text presentation, the manuscripts of the *Coll. 5libr.* and *Coll. 9libr.* are more lavishly decorated than the manuscripts of extant Italian penitentials. Penitentials are usually

¹ Ms. Rome, Bibl. Nazionale, 2010 (Farfa; s. XI^{ex}). See Kerff, 'Das Paenitentiale Pseudo-Gregorii III. Ein Zeugnis', pp. 55-56.

² *P. Vaticanum*: 282 x 200 mm (210 x 135 mm); *P. Casinense*: 254 x 164 mm (210 x 125 mm); *P. Vallicellianum C. 6*: 293 x 179 mm (223 x 115 mm); *P. Vallicellianum E. 62*: 227 x 138 mm (177 x 107 mm); *P. Lucense*: 280 x 195 mm.

adorned with less decoration.¹ Furthermore, none of the penitentials contain glosses.² The few South Italian penitential manuscripts that do contain glosses are the Montecassino manuscript of the *P. in II libris* and the liturgical ms. Vallicelliana E. 15 that contains the *P. Vallicellianum I*.³ Those of the first manuscript, possibly jotted down by the same glossator who also glossed the *Coll. 5 libr.* of ms. Montecassino 125, only appear in the canonical part (*Coll. Dacheriana*) of the manuscript. The fact that penitential manuscripts were not glossed does not mean that they were not used in a practical setting, but rather that the glosses belong to the scholarly environment of canonists rather than to that of a pastor.

Eric Palazzo has recently drawn attention to the use of small and handsome booklets (*libelli*) in the liturgy.⁴ Since most penitentials are recorded in composite codices, let us examine whether the separate parts were once *libelli* to be used at confession. In this light it may also be interesting to point to the use of scrolls in the liturgy in southern Italy. The so-called *Exultet* rolls for the blessing of the Paschal candle are the most famous examples of this type, but T.F. Kelly has demonstrated that scrolls functioned in other rites as well. Evidence for the use of scrolls in the penitential liturgy comes from an entry in a list of donations to a monastery in Amalfi of 1007, which mentions a no longer extant roll that contained prayers for a rite of penance.⁵ No such scrolls, however, survive and it is impossible to determine how widespread this custom was in South Italy. With regards to the use of small booklets, there is no evidence that either one of the Italian penitentials that have survived functioned as a separate *libellus*. The *P. Vaticanum*, the *P. Casinense*, and the *P. Vallicellianum C. 6* were copied in small and manageable ‘codicological units’ within larger codices, but these booklets also contain other texts.⁶ Only the *P. Vallicellianum E. 62* is written on the two final quires with a ruling and font slightly distinct from that of the previous quires. As has been argued in chapter 3, this text was specifically written in order to supplement the codex and probably

¹ It should be noted that decoration programmes of some *codices*, for example ms. Arch. di S. Pietro H. 58, are unfinished. In addition, some penitentials, like the *P. Vallicellianum C. 6*, end abruptly, which could indicate that the texts as we have them were never finished.

² For that matter, the *Coll. 9 libr.* hardly contains any glosses. The glosses of the *P. Vallicellianum E. 62* are by an early modern hand.

³ On the Montecassino manuscript see Körntgen, *Studien*, p. 207 and Loew, *The Beneventan script*, p. 352. The *P. Vallicellianum I* of ms. E. 15, with glosses, is edited by Schmitz I, pp. 293-342.

⁴ E. Palazzo, ‘Le rôle des *libelli* dans la pratique liturgique du haut moyen âge. Histoire et typologie’, *Revue Mabillon* 62 (1990) pp. 9-36. Directions for identifying booklets within manuscripts are given in Robinson, ‘The “booklet”’. A self-contained unit in composite manuscripts’, pp. 46-69, and J.P. Gumbert, ‘Codicological units: Towards a terminology for the stratigraphy of the non-homogeneous codex’, *Segno e testo* 2 (2004).

⁵ T.F. Kelly, *The Exultet in Southern Italy* (Oxford, New York 1996) p. 25 mentions an entry in a list of donations of 1007 of a *rotulus unum de penitentia cum benedictione da (!) fonti*. Tariffs are not mentioned. See also p. 26, n. 80 for a reference to the use of scrolls in reconciliation rites in France.

⁶ Both booklets that contain the *P. Vallicellianum C. 6* and the *P. Vaticanum* even predate the codices in which they are inserted. See chapters 2 and 4.

never constituted a booklet, since the scribe responsible for the penitential also added prayers in the *Rituale*-Missal to which it was appended.

Codicological evidence certainly does not answer all questions about the use of penitentials. Even though in individual cases the difference between the liturgical and canonical manuscripts is not always easy to trace, features such as contents and size enable us to make a distinction between the more strictly canonical manuscripts and the hybrid canonical-liturgical or fully liturgical manuscripts in which most penitentials were copied. The penitentials examined in this study are copied into manageable codices which contain liturgical texts for priestly use or canonical texts concerned with the daily routine.

Text-internal evidence for the use of penitentials

What do the penitentials themselves tell us about the way they were intended to be used? Their liturgical directions and the structure of their canons suggest that these texts were intended to fulfil a role in pastoral care, either as tools for preparing priests for their task as pastors or as mnemonic devices meant to remind priests what to ask and how to assess particular sins. The interrogative penitentials are perhaps the best examples of texts used as devices for the interrogation of sinners. The second capitulary attributed to Theodulf of Orléans even warns that priests should not read the whole penitential to the confessants, because that could give them new ideas about how to sin.¹ The Bobbio interrogatory of ms. Vat. lat. 5768 is introduced by the sentence ‘Now tell me, my brother, the things you have done, or have thought, or [whether you have sinned] in word and deed’. The influential Reims *ordo*, copied into many North Italian manuscripts, introduces its canons under the heading ‘[a]nd thus you must interrogate [them], because there are many things that they do not remember’.² Penitential canons were incorporated in a sermon addressed to penitents in the *ordo* of ms. Bologna 2679. This sermon exhorts penitents to confess and recommends penances for sins (the pride should live humbly, thieves should give alms).³ The *ordo* of the

¹ Canon X,14 (Brommer ed., *MGH Capitula Episcoporum I*, p. 176): *Sed tamen non omnia crimina debet ei innotescere, quia multa vitia recitantur in poenitentiale, quae non decent hominem scire*. Similar language can be found in the letter of Nicolas I to the Bulgarians (c. 75, *MGH, Epp.* VI,4 p. 593) and the instruction *Quotiescumque*: only priests and bishops were allowed to read penitentials.

² *Ordo* of ms. Vat. lat. 5768: *Dic mihi frater opera tua quae fecisti, aut cogitasti, [peccasti] aut in uerbo uel in opere? Iurasti super euuangelium...* Reims *ordo* according to ms. Reg. lat. 191: *Et sic debes interrogare, quia multi sunt qui non memorant; dices ei: Fecisti homicidium...* In PRG, *ordo* 136,13 (*Le Pontifical Romano-Germanique II*, p. 237) the list is introduced with the words ‘make him confess all his sins saying...’

³ Ms. Bologna, Bibl. Univ. 2679, ff. 116v-117r: *Ideo precor et moneo te si usque modo fuisti cupidus aut auarus, et aliena mala ordine tollebas, et tua iniuste retinebas, deinceps sis in elemosinis largus^a, pauperibus, uiduis, et orphanis bene faciendo pro peccatis tuis et omnium christianorum missas deo offerendo, ut quicquid per cupiditatem aut per auariciam peccasti, a deo tibi dimittatur. Si ebriosus^a uel gulosus fuisti, modo sobrius^a sis*

P. Vallicellianum I of ms. Barcelona, Bibl. Universitaria, 228 suggests that penitentials were also used when the priest had to assign an appropriate penance to confessants. Before the priest delivers his judgment, he should address the following words to a penitent: ‘Look, my brother, what the holy canons declare about such sins. I, although an unworthy priest, am not allowed to judge otherwise than according to what is written here’.¹ It is doubtful whether canons in Latin were read out aloud at confession, but they could have functioned as points of reference for priests either when questioning penitents or preparing their judgments.² The references cited here are normative and do not necessarily reflect reality, but they seem to take for granted the idea that penitential texts were necessary for the priest’s judgment.

The place of penitentials in liturgical *ordines* can tell us something about the role assigned to penitentials in the liturgy. For example, the canons of the *P. Casinense* were intended for determining penance, since they begin precisely when the priest is required to ‘stipulate a period of penance’, whereas a questionnaire is included in the *ordo* when he has to interrogate the penitent as to his sins.³ Both the *P. Vaticanum* and the *P. Vallicellianum E. 62* urge penitents to confess their sins, but without mentioning any interrogation by the priest.⁴ The canons of these documents, placed after the *ordo*, probably served to fix the penances rather than to question penitents and also played a role in the priest’s judgment of the sins of confessants. The penances were not imposed mechanically, since the confessor’s discretion, in the end, was the deciding factor, as is argued in the previous chapter. Yet by examining the penances a confessor could establish the relative gravity of each sin.⁵

et abstinens et parcus^a *in cibo et potu...* The wording *aliena mala tollebas* comes from a canon that goes back to the Simple Frankish penitentials (cf. chapter 6). Furthermore, a rubric indicates that the priest should deliver his judgment according either to the canons or to what seems best to him. Ff. 121v-122r: *TUNC SACERDOS DET ILLI IUDICIUM SECUNDUM CANONES AUT SECUNDUM QUOD ILLI IUSTUM UISUM FUERIT.*

¹ Ms. Barcelona, Bibl. Univ. 228, f. 53r: ...*TUNC IUXTA MODUM PROFESSIONIS LEGE EO AUDIENTE IUDICIUM PENITENTIE SICUT IN CANONIBUS CONTINETUR, ET DICIT EI. Vide frater quid de talibus peccatis sanctę iudicant canones. Ego licet indignus sacerdos non sum ausus aliter iudicare, nisi quemadmodum hic continetur. Tunc da ei penitentiam iuxta modum culpę iustum iudicium...*

² As for the Irish penitentials Allen Frantzen suggested that these texts were learned by heart and their contents were easily recalled from memory at confession (*The literature of penance*, p. 51).

³ After the indication *Expletis his statues ei tempus penitentię cum admonitionem et obseruationem emendationis* the canons are listed.

⁴ *P. Vaticanum, ordo: noli despicere de peccatis, nec erubescas (!) dicere peccata tua uel quantumcumque malum fecisti;* and later: *Tunc fac eum omnia peccata sua confiteri et ad ultimum fac eum dicere: Multa sunt peccata mea in factis, in cogitatione, in locutione et omnibus uitiiis malis. P. Vallicellianum E. 62, ordo: Nunc dicite quicquid peccasti in periurio, in adulterio...* etc. At the point where the sinner has to confess a *Confiteor* prayer is placed. See also chapter 6.

⁵ This approach was adopted by Meens, *Het tripartite boeteboek*, pp. 267-306. Payer, *Sex and the penitentials*, warns that penances can be used to establish which sins were considered more regrettable than others by different penitentials but only with the greatest care. In my view, within the limits of a single text one can compare the periods of penances for particular sins to establish their gravity.

One of the most striking features of the South and Central Italian texts is the many newly composed canons included in penitentials. The canons seem to have needed revision in order to bring existing penitential canons into line with current ideas about sin and penance.¹ Texts like the *P. Vaticanum*, the *P. Casinense*, and the *P. Vallicellianum C. 6* show the marks of such a rephrasing of existing canons. In addition to these new canons, the penitentials which were singled out for this study were also structured to new guiding principles. The authors of penitentials did not follow strictly the order of the chapters of the Frankish penitentials, but applied their own criteria for classifying their canons. While still relying on their Frankish sources, authors reorganized the material of their sources into new chapters. One of the chapters of the *P. Casinense* is called ‘the interrogation of women’ and another ‘*capitula* that should be said to both women and men’. The compiler of the *P. Vaticanum* reorganized the canons taken from the *P. in II libris* into new chapters under new headings ‘concerning fornication by women’ and ‘concerning homicide by women’.² This new subdivision suggests that the canons needed to be brought into line with their intended (practical) usage. The structure applied by the compiler of the *P. Vallicellianum C. 6* to the canons on homicide and adultery allowed for a more careful distinction between the various types of adultery and the status (cleric or lay) of the sinners. The originality of their canons and the organisation of the texts shows that we are not dealing with material stripped of all its relevance. Whereas the *Coll.5libr.* and *Coll.9libr.* also contain reformulated and newly composed canons, subdivision into categories as lay and clerical, or male and female plays a minor role in these collections. This is another indication that penitentials are more ‘praxisbezogen’ than canon law collections. Their focus was on confessants rather than confessors.

The *P. Vallicellianum E. 62* and the *P. Lucense* are different from the other penitentials in several respects. These texts are less systematically structured, as if their canons were sorted out hastily and selected at random from their sources. The *P. Vallicellianum E. 62* dwells upon ‘criminal sins’ like homicide, fornication, and perjury to the neglect of minor sins, which are, deliberately or not, almost entirely omitted. The *P. Lucense* does not discuss ‘criminal’ sins like perjury or adultery, but instead concentrates on specific offences like laymen seizing ecclesiastical possessions or attendants at mass failing to observe

¹ For the new canons of the *Coll.9libr.* see above.

² Remnants of this distinction can be observed in the *P. Vallicellianum E. 62*, which has a series of canons all introduced with the word *Mulier* and taken from the *P. Vaticanum* grouped together

silence. Both texts briefly touch upon minor sins but do not treat them in detail.¹ It is not clear whether any meaning can be attached to the lack of structure of these texts. The context of both, copied into liturgical manuscripts and accompanied by *ordines*, suggests that these penitentials were used in the liturgy of confession. A reason for the peculiar choice of canons may have been that minor sins needed no lengthy treatment or a fixed penance. The compilers of these penitentials did not systematically rework their sources and picked out a short series of canons on more ‘complicated cases’. Judging from the organisation of the *P. Casinense* and the *P. Vaticanum* and the inclusion of canons drawn from a variety of penitential and canonistic sources, the authors of these texts were perhaps more experienced with penitentials and canon law. Being less systematic than the other texts, the *P. Vallicellianum E. 62* and *P. Lucense* can be linked up with pastoral practice with greater certainty than the *P. Casinense* and *P. Vaticanum*. Furthermore, most canons of the *P. Vallicellianum E. 62* and *P. Lucense* were derived from the canonistic sources, notably the *Coll. 5libr.* We are, therefore, not dealing with two completely separate worlds: the mutual influence between canon law, penitentials, and liturgy prevents us from separating too strictly between the theory and practice of penance.²

8.4 Penitentials and their users

Based admittedly upon a small number of texts, the picture that emerges from this survey of penitentials is heterogeneous.³ This chapter tried to show that penitentials could function in different contexts. Recent research on liturgical texts copied into manuscripts with a mixed content stress their place in the education of clerics.⁴ Such a function could apply to some of the penitentials as well, in particular the *P. Casinense*. It seems that most texts, including those copied in manuscripts of mixed liturgical-canonical contents, were used by parish priests, although not necessarily or exclusively in the delivery of the liturgy of confession.⁵

¹ See chapter 7.

² See also Gaastra, ‘Penance and the law’, pp. 100-101.

³ The number of surviving texts could represent only the tip of the iceberg, since, as Meens, ‘Frequency and nature’, p. 46 remarks, ‘[P]enitential texts which were connected to canon law collections... had a better chance of survival than texts merely intended for pastoral care’. See also Frantzen, *Literature of penance*, p. 58

⁴ See Keefe, *Water and the word. Baptism and the education of the clergy in the Carolingian empire I*, pp. 21-38 and F.S. Paxton, ‘*Bonus liber*: A late Carolingian clerical manual from Lorsch (Bibliotheca Vaticana Ms Pal. lat. 485)’ in L. Mayali and A.J. Tibbetts ed., *The Two Laws. Studies in Medieval legal History dedicated to Stephan Kuttner*. Studies in Medieval and Early Modern Canon Law 1 (Washington 1990) pp. 1-30.

⁵ With regard to baptismal expositions, Susan Keefe argued that manuscripts of canonical-liturgical contents were used for didactic rather than pastoral purposes. She remarked that such manuscripts often ‘do not give enough of the text to be serviceable’ (Keefe, *Water and the word I*, p. 21). Since we do not know how penitential

The focus upon *criminalia peccata* and the contents of the manuscripts themselves point to a broad purpose of penitentials; these texts were not only intended for confession. They were at the same time reference works for priests when they were asked for counsel or noticed socially disruptive behaviour, in short, for regulating life in the parish.

By whom were the Italian penitentials used? The manuscript of the *P. Casinense* was probably written in Montecassino in the early eleventh century but later belonged to its dependency San Nicola della Cicogna. The largely non-monastic texts of this codex seem to be intended for priests, possibly monks of San Nicola with clerical duties in churches nearby, as has been argued in the first chapter. Its manuscript could have functioned in the education of local priests if we take into account the educational character of some of the liturgical texts, particularly the mass exposition, and the canons on clerical duties. The part of ms. Archivio di S. Pietro H. 58 that contains the *P. Vaticanum* is thought to have been written for a church in Rome, possibly the church of the Twelve Apostles or the church of San Apollinare.¹ If one considers this part, the mass for a wedded couple and the penitential *ordo* point to a pastoral setting and, possibly, to its use in penitential liturgy.² While the canon law appendix presupposes a legal context, the fact that the appendix deals with topics that also occur in the penitential suggest that it was intended for a priest hearing confession. Both manuscripts could have functioned at confession, but could also have been consulted by priests engaged in their pastoral duties, either as reference works or educational texts. Such a conclusion cannot readily be drawn from the manuscript that contains the *P. Vallicellianum C. 6*, which was written in the monastery of Sant'Eutizio. This penitential together with extracts from Bede's exegetical works, canonical fragments, and a calendar/necrology constitutes a separate codicological unit, which was joined to a Breviary at a later date. It is not clear what the purpose and the actual use of this penitential has been. Apart from the contents of that part of the manuscript, the fact that the penitential lacks an *ordo* does not immediately suggest a role for the *P. Vallicellianum C. 6* in pastoral care. Yet the calendar/necrology, used intensively and revised several times, does not point to a solely educational purpose either. The *P. Vallicellianum E. 62* and the *P. Lucense* were copied in liturgical manuscripts; the Lucca in particular bears witness to intensive use.³ The manuscript that contains the *P. Vallicellianum E. 62* was probably written in the small episcopal town of Narni, although the liturgical texts

ordines were read (did a priest need the entire text?), the possibility that a text was used in pastoral care can never be excluded.

¹ See Hamilton, 'Pastoral care in early eleventh-century Rome', pp. 42-61 and P. Salmon, 'Un "Libellus Officialis" du XIe siècle', pp. 257-288.

² The rest of the manuscript is a similar mixture of liturgical and canonistic texts. See chapter 2.

³ A new penitential *ordo* was added in the margins of ms. Lucca, Bibl. Statale, 1781. Cf. chapter 5.

of the manuscript do not point to its use by a bishop.¹ The fact that a later scribe added the *P. Vallicellianum E. 62* to the (his?) liturgical manuscript suggests that the penitential was considered a necessary tool for the user of the codex in order to fulfil his role as priest-confessor. The *P. Lucense* was copied into a *Rituale* probably written in the diocese of Valva-Sulmona. The *P. Lucense* and the *P. Vallicellianum E. 62* were not only copied into the same kind of manuscript, the texts themselves also have certain things in common. Both texts deal with only a limited set of topics. Their compilers picked up the few canons that they needed, without thoroughly editing or structuring their compilations. Even if the versions copied into these manuscripts do not represent the original ones, their scribes did not make any attempt to improve the organisation of their exemplars. The lack of organisation and the apparent incompleteness of these penitentials could be explained by their compilers being liturgists and, consequently, less familiar with normative texts. The other possible explanation is that the priest-confessors for whom these texts were meant did not need elaborate and well-organised texts to judge sinners. As has been argued in the previous chapter, they only needed canons on predominantly major sins, such as homicide or adultery, which involved a keen and balanced judgment by a priest.

Most of the manuscripts in which these penitentials were copied were intended for priestly use, although in some manuscripts the emphasis is on instruction while in others the focus is put on liturgical use.² The canon law collections of the *Coll.9libr.* and the *Coll.5libr.* were furthest removed from pastoral care and were produced in and for important monastic or episcopal centres. Their manuscripts and the outlook of their canons indicate that they were compiled and copied for educational purposes. The *Coll.5libr.* and the diffusion of its derivatives reveals the high level of sophistication of a network of pastoral care. More than any other collection, this text emphasizes pastoral concerns and extensively deals with mass, baptism, and penance. Derivative collections were diffused from the episcopal and monastic centres to local churches and dependent monasteries. We find derivatives of this collection still being copied in manuscripts of the later twelfth century.³ Penitentials dependent on the *Coll.5libr.*, like the *P. Lucense*, the *P. Vallicellianum E. 62*, and the *P. Vallicellianum C. 6*, show that the canon law collections were consulted in a context that was less remote from pastoral care than one might expect. Since penitentials and canon law collections are mutually

¹ There are no specifically episcopal rites included in the *Rituale*, such as *ordines* for the ordination of clerics. The penitential could have been composed in Narni too, since it has liturgical (prayers of the *ordo*) and canonical texts (deriving from the *Coll.5libr.*) in common with ms. Vat. lat. 1339 from Narni.

² Hamilton, *Practice of penance*, p. 50 appears to equate an educative with an episcopal context, but such an equation does not readily apply to the situation in South and Central Italy.

³ See the collection studied by Reynolds, *The Collectio canonum Casinensis duodecimi seculi*.

dependent, the texts may be regarded as constituting a single corpus of texts; they are related with regard to the sources they use and the topics they discuss. The derivatives of the *Coll.5libr.* copied into liturgical manuscripts testify to the close connection between different genres of texts. The dissemination of the abbreviated recensions of this canon law collection, usually smaller, less elaborate and hence more convenient for use than the complete version of the collection, may have rendered the compilers of penitentials a good service. Being normative texts, penitentials and canon law collections by definition reflect the ideals of clerics. The normative character of the South and Central Italian penitentials and collections should not prevent us from using the invaluable information on penance these texts contain. Although the penitential tariffs were probably not implemented in all their rigor, the teachings about penance transmitted by a great number of penitentials and canon law collections must have shaped the minds of priests in southern Italy.

If we chart the places of origin and the provenances of the manuscripts, the role of monasteries in the copying and dissemination of penitentials and canon law collections in South and Central Italy is remarkable. The manuscript evidence of penitentials and derivatives of the *Coll.5libr.* demonstrates that a strong connection existed between monks and pastoral care. Monasteries owned local churches requiring pastoral services and extended their number through private donations in the course of the eleventh century. Toubert has already noted the number of churches that were owned by monasteries. These monasteries may also have provided these churches with those texts, among other penitentials, necessary for carrying out their pastoral duties.¹ Giles Constable and, recently, Valerie Ramseyer remarked that monasteries were responsible for the education and appointment of clergy for their local churches, although probably few monks themselves served in such churches.² The circulation of pseudonymous canons in Italy that either deny monks any role in pastoral care or attempt to legitimise this testifies to their involvement in pastoral care.³ An apocryphal

¹ Toubert, *Les structures du Latium médiéval II*, p. 868 estimated that an 'église rurale' in Lazio possessed at least five liturgical books, but does not mention any penitentials. He cites from inventories without citing any specific manuscript, but is aware that these yield only a partial picture. Yet we have seen that penitentials were often included in liturgical books. Ramseyer, *The transformation of a religious landscape*, p. 77 refers to two South Italian churches that possessed penitential books. On liturgical books written in monasteries see Odermatt, *Ein Rituale in Beneventanischer Schrift*, pp. 102-104 and Gy, 'Collectaire, rituel, processional', p. 459.

² See Constable, 'Monastic rural churches and the Cura Animarum in the early Middle Ages', pp. 349-389, see pp. 369-271 and Ramseyer, *The transformation of a religious landscape*, pp. 11 and 191-192. With reference to Toubert, Constable concludes that in Latium the movement against lay possession of churches was at the benefit of monasteries. Dormeier, *Montecassino und die Laien im 11. und 12. Jahrhundert*, pp. 9-11 on the number of monks with clerical ordinations, pp. 99-106 on churches donated by noblemen to Montecassino.

³ P. Landau, 'Seelsorge in den Kanonensammlungen von der Zeit der gregorianischen Reform bis zu Gratian', in *La pastorale della Chiesa in Occidente*, pp. 93-123. On canon law and monks see Kölzer, 'Mönchtum und Kirchenrecht. Bemerkungen zu monastischen Kanonensammlungen der vorgratianischen Zeit', pp. 121-142.

decree attributed to a pope Clement, which was copied in an Italian manuscript of the late eleventh century, prohibits monks from administering the commendation of souls, penance, or anointings, and from receiving tithes.¹ Canons defending the rights of monks in pastoral affairs were added to ms. Vat. lat. 1339 and ms. Vallicelliana B. 11 of the *Coll.5libr.* Monasteries could also have functioned as training centres of priests. The fact that Sant'Eutizio and Montecassino possessed copies of the *Coll.5libr.*, a text which, as has been suggested, played a role in the education of priests, supports this conclusion. Dependencies of such monasteries were probably also involved in the parishes.² The manuscripts that monastic *scriptoria* produced exhibit a thorough understanding of which texts priests needed to carry out their offices. Other evidence for the importance of monasteries for South Italian ecclesiastical life is the number of bishops known to have been recruited from abbeys like Montecassino, Cava dei Tirreni, Farfa, and Sant'Eutizio.³ Through the dissemination of penitentials in Central and Southern Italy – all related as to their contents and the sources that they use – we catch a glimpse of the existence of a network of monasteries and churches involved in pastoral care.⁴

¹ Somerville, 'Pope Clement in a Roman synod and pastoral work by monks', pp. 151-156. Constable, 'Monasteries, rural churches', pp. 273-275. Toubert, *Les structures du Latium médiéval* II, pp. 911-912, n. 1 quotes a letter of Paschal II to Berard of Marsi: *ut nec ulterius baptismata in monasteriis faciant nec ad infirmorum unctiones claustris suis progredi audeant nec ad poenitentiam injungendam populares personas admittant...* According to Landau, 'Seelsorge in den Kanonensammlungen', p. 116, the anti-monastic forgeries originated in Italy, while the pro-monastic forgeries had been composed in North- or West-France and travelled to Italy shortly before 1050.

² An overview of the churches dependent on Sant'Eutizio is found in Pirri's *L'abbazia di Sant'Eutizio in Val Castoriana presso Norcia*, pp. 223-255.

³ See Toubert, *Les structures du Latium médiéval* II, pp. 829-830 concerning bishops. Most of the material on which his conclusions rest dates from the eleventh and the twelfth centuries. See also pp. 900-912. Monks served as priests in churches of the many *castra*, fortifications or fortified villages built in the ninth- to eleventh-centuries.

⁴ According to Ramseyer, *Transformation*, pp. 157-158, the role of monasteries in the organisation of pastoral care in southern Italy continued to be strong well into the Norman era.

CONCLUSION

The production of new penitentials in central and southern Italy regions can be regarded as the last flowering of this genre in the medieval period. The penitentials of the traditional type would eventually disappear in the twelfth century and, as far as the Italian texts are concerned, without directly influencing the new *summae confessorum* of the twelfth and thirteenth centuries.¹ Yet the immediate impact of the southern texts can be recognized in the development of canon law in the later eleventh century. The collections of Bonizo of Sutri, Anselm of Lucca – chiefly in its later recensions – and, eventually, Gratian include some South Italian penitential material. Penitentials contributed to the spread of auricular confession in Italy and popularized the idea that confession and penance were necessary to the salvation of each Christian. They also propagated the important role for the priest-confessor in handling sin by providing him with clear guiding principles for hearing confession and dispensing penance and absolution. In this respect South Italian texts emphasized two other important factors, namely priestly discretion and ‘contrition of mind’. Especially in the South Italian canon law collections discretion was considered of primary importance for priests judging sinners. Only by using their power of reason and by taking notice of the penitent’s repentance and willingness to mend his way, confessors could choose a suitable penance from the plethora of penances at their disposal. The influence of penitentials on ideas about penance current in the Gregorian reform is visible in Gregory VII’s call to eradicate ‘false penances’ by underlining total conversion and renunciation of all hatred, foreshadowed in penitentials and *ordines*.² The themes of contrition and inner conversion, which are often regarded as typical for confession in the twelfth and thirteenth centuries, were already articulated in early medieval penitentials and liturgical *ordines* for confession.

The anonymous *Tractatus paenitentiae* discussed in chapter 7 started with the observation that penance should be *uarius et multiplex*. In this tract variety is understood as applying to the penances imposed upon sinners, which should be adjusted to each sinner’s status, condition, and sex. This study of penance and penitentials in eleventh-century Italy has attempted to capture some of the variety within penance and the variety of the texts dealing with confession and penance, thereby focusing foremost on what would later become the sacramental confession. The variety of documents which was analysed comprised of mainly

¹ P.J. Payer, ‘The origins and development of the later *canones penitentiales*’, *Mediaeval studies* 61 (1999) pp. 81-105. Although Thomas of Chobham and Robert of Flamborough incorporated tariffs, these were primarily borrowed from Burchard’s *Decretum* and Gratian.

² Autumn synod of 1078, c. 6 and Synod of 1080, c. 5; *Das Register Gregors VII*. E. Caspar ed., MGH *Epistolae selectae* II,2 (Berlin 1923) pp. 404, 481-482. Hamilton, ‘Penance in the age of Gregorian Reform’, pp. 47-73.

normative texts, such as penitentials, canon law, and liturgical *ordines*, which arguably offer a somewhat narrow view of penance. Since this evidence is available to us in large number of manuscripts, unearthing and analysing this evidence is necessary in order to say more about confession and penance in the early Middle Ages. Variety also means that there were many ways of performing penance, voluntary or involuntary, as a part of ‘sacramental’ confession to a priest or as a part of a voluntary devotional exercise. Peter Damian, for example, regarded the redemption of sins as a part of the daily routine and encouraged participation in the liturgy of the hours as the appropriate medicine for minor sins. The increasing amplification of the liturgy of confession from the ninth century onwards shows that confession was rapidly becoming an ecclesiastical institution. Nevertheless, we should keep in mind that penance as a feeling of guilt for one’s sins accompanied by inner conversion and good works, is a broader notion that cannot be equated with confession a priest alone.¹ The notion of penance that emerges from the penitentials and the liturgical *ordines* is only one aspect of a rich and manifold notion, that pervaded early medieval theology, religious life and society at large.

The introduction of penitentials in the South and Central parts of Italy and the creation of a penitential literature in that region were taking shape at a late age when compared to the northern parts of Europe. Most of the Frankish penitentials reached the South in the late tenth century. The South and Central Italian texts were modelled upon Frankish texts, which their compilers had become acquainted with through North Italian intermediaries. While the main (Frankish) sources of these penitentials have already been identified by scholars like Paul Fournier and, more recently, Ludger Körntgen, it was possible to refine their analysis on specific points. Moreover, the first chapters sought to demonstrate how the compilers did not refrain from composing new canons, in those cases where existing ones did not suffice. Far from being pale copies of Frankish or Insular texts, the Italian penitentials are the products of a dynamic process of revising and editing texts. Moreover, the authors developed new systems of classifying topics. Apparently, the newly revised handbooks were meant to satisfy a need for texts designed to fit the South Italian preferences.

The earliest new penitentials were composed in the Beneventan region. The *P. Casinense* was probably composed in Montecassino in the late tenth or early eleventh century on the basis of the Frankish *Cap. Iud.* and the *P. Vallicellianum I*. The penitential part of the *Coll9.libr.*, the sole copy of which is preserved in a manuscript in Beneventan script, was probably compiled in southern Italy. The earliest penitential written in Romanesca script, the

¹ The influence and function of penitential language in early Medieval society is discussed by Koziol, *Begging pardon and favor*, pp. 177-288.

P. Vaticanum, is preserved in a Roman codex of ca. 1000, which was copied from an exemplar in Beneventan script. The text is based mainly on canons from the Frankish *P. in II libris* and the *P. Oxoniense II*. Later in the eleventh century, we find several new texts in manuscripts written in Umbria. The *P. Vallicellianum E. 62*, composed from canons from the *P. Vaticanum* and the *Coll.5libr.*, is recorded in a twelfth century codex from Narni. The text may have been compiled in the second half of the eleventh century, probably in central or southern Italy where many copies of the *Coll.5libr.* were available. The *P. Vallicellianum C. 6* is written in the same region in the second half of the eleventh century and is preserved in a manuscript written in the abbey of Sant'Eutizio in Valcastoriana. The text is based on the *Cap. Iud.* and the *Coll.5libr.* The *P. Lucense* is recorded in a manuscript written in Beneventan script from the diocese of Valva-Sulmona dated to the late eleventh or early twelfth century. It consists of canons from the *Coll.5libr.*, the *Corrector sive medicus* of Burchard of Worms, and a set of canons deriving from an unknown source. Since the text is made up of canons of the *Coll.5libr.* and is only preserved in a South Italian manuscript, it is most probably composed in this region at around 1100.

Even though there are important differences between these texts, the similarities between them stand out. In fact, these texts can be regarded as constituting a single corpus of texts. Their compilers made use of the same Frankish sources, notably the *Cap. Iud.* and the *P. in II libris*. Moreover, each text, except for the *P. Vallicellianum C. 6*, is accompanied by a liturgical *ordo* for hearing confession. With regard to their contents, all texts, including the *Coll.9libr.* and the *Coll.5libr.*, the two most important canon law collections of the South, show a remarkable preference for canons concerning the major sins of fornication, adultery and violence. Since the Italian penitentials are characterized by diversity but at the same time constitute a unified group, this study approached the penitentials from southern and central Italy by examining each text both individually and in comparison with the other texts.

The analysis of the codicological evidence presented in chapters 1-5 and 8 reveals the chameleon-like nature of the penitentials. The different types of manuscripts in which these texts are to be found show that these texts could be used within different contexts. The two main fields in which we find them are the fields of liturgy and law. Hence we find tariffs inserted into *ordines* copied in liturgical manuscripts but we also find them appended to legal collections. Penitential handbooks are neither fully legal nor purely liturgical texts. Consequently, it is particularly difficult to distinguish between penitentials and canon law collections. The structure and the contents of the canonistic *Coll.5libr.* were so dependent on the penitentials, that the boundaries between the canonistic and the penitential genre almost

disappear in this text. Perhaps with the exception of the *Coll.9libr.* and the *Coll.5libr.* none of the texts analysed here seem to have been consulted in the episcopal court, which Franz Kerff conceived of as the main function of penitentials. Even the *sacerdos* as perceived by the *Coll.9libr.* and *Coll.5libr.* seems to be one with predominantly pastoral concerns. These collections were probably written not for the court but for the training of priests, preparing them for the task as a pastor. Of the penitentials discussed in this study, the *P. Casinense* and the *P. Vaticanum* were copied into manuscripts with a mixed liturgical and canonical content, while the *P. Vallicellianum E. 62* and the *P. Lucense* were written in books of liturgical *ordines*, now known as *Ritualia*. The divergences between the manuscripts of these texts suggest that each text was used in a different manner. Judging from the contents of their manuscripts, the purpose of the *P. Casinense* seems to have been educational, while the *P. Vallicellianum E. 62* was intended for a liturgical setting. Yet, a text like the *P. Casinense* was owned by a small monastic dependency of Montecassino, San Nicola, and was probably consulted by priests having their home base in this monastery. Even the *Coll.5libr.* and *Coll.9libr.*, which include a wealth of penitential canons, played some part, albeit indirectly, in pastoral care, since their canons, stressing the discretion of priests and teaching which penance should be imposed in each situation, were designed for the instruction of priests.

This study has examined penance from three different angles, by looking at penitentials, liturgical *ordines* and canon law collections. The fact that authors of canonical, liturgical and penitential texts used each other's texts testifies to the close interrelatedness of law, liturgy and penance. The development of a liturgy of confession in Italy coincided with the production of penitentials and canonistic texts like the *Coll.5libr.* The rapid diffusion of new *ordines* for confession and the production of new rites for collective penance bear witness to the wide acceptance and the popularity of confession among the laity and the clergy in the South and Central parts of Italy. As has been argued in chapter 6, rites of confession and penance stressed the need for confession and repentance before one could enter the afterlife, thereby expressing the feelings and expectations of those willing to make their confession. While the *ordines* for confession were increasingly transmitted independently from the penitentials, the connection between penitentials and canon law became even closer in eleventh-century Italy. A survey of the contents of South and Central Italian penitentials and canon law collections reveals that these texts gradually formed a single corpus. The texts are marked by an emphasis on social sins causing 'scandal', such as infractions of marriage or acts of violence. Minor sins are less important, and sometimes not even mentioned in the texts. This focus on major sins such as homicide, adultery, and incest

partially testifies to the changing function of these texts. They were increasingly consulted in order to deal with scandalous sins, complex cases which demanded harsh and long penances. The canons increasingly regulated the social life of penitents, leaving the penances for small sins to the priest to decide. That minor sins continued to matter at confession is shown by the *ordines* which urge penitents to confess every possible sin. On the other hand, the many new canons concerning marriage and, above all, criminal sins such as homicide, assault, pillory, and violation of clerics and ecclesiastical possessions suggest a widespread concern for public order, a concern shared by the near contemporary Peace of God movement in France. The penitentials reflect deeply felt discomfort amongst clerics about individual well-being and social order, a concern similar to that of the Peace of God movement in France. The production and diffusion of penitentials may have been regarded as a remedy for the sins which the clergy thought had caused this disorder.

The late flowering of the penitential genre in Central and South Italy can be regarded as a continuation of Carolingian traditions: most of the penitentials, which furnished the models for the South Italian texts, for example the *Cap. Iud.* and the *P. in II libris*, were produced in Francia and in the Rhine-Main region in the early eighth and ninth centuries. These penitentials were part of a larger corpus of Carolingian texts, liturgical as well as canonistic, which arrived in the South of Italy in the tenth and eleventh century. It is surely no coincidence that in this same period the local Beneventan liturgy was gradually replaced by a Franco-Roman rite, a development that was accompanied or facilitated by the influx of Frankish books in this region.¹ Moreover, in the eleventh century we encounter the products of the Ottonian ecclesiastical world in the South, the *Pontificale Romano-Germanicum* and Burchard of Worms' *Decretum*. The influence of these documents was particularly strong in the later eleventh century. Other developments may also have contributed to the proliferating penitential literature in the southern parts of Italy. After the civil wars of the ninth and early tenth centuries institutions like Montecassino were restocking their libraries through a lively exchange of manuscripts.² This trend is nicely illustrated by the collection of books that survives from the library of the abbey of Sant'Eutizio. The collection from this institution of which not much is known in the ninth and tenth centuries, almost entirely consists of codices of the eleventh and twelfth centuries.³ Moreover, the copying and distribution of penitentials as well as collections like the *Coll. 5libr.* in southern and central Italy can be related to the

¹ This process is described by Kelly, *The Beneventan chant*, pp. 1-30.

² Garrison, *Studies in the history of medieval Italian painting* 1 (Florence 1953).

³ See Pirri, *L'abbazia di Sant'Eutizio in Val Castoriana*, pp. 1-59 and Supino Martini, pp. 199-223.

involvement of monastic institutions in pastoral care. The copying of penitentials coincided with the development of a pastoral network that was largely guided by the activities of monasteries. This involvement can be traced by studying the history of the *Coll.5libr.* The major ecclesiastical institutions like Montecassino and Sant'Eutizio possessed the complete copies of this collection, the more convenient derivatives distributed the collection to smaller centres. The diffusion of penitential texts and the derivatives of the *Coll.5libr.* across southern and Central Italy illustrates the ways in which monastic institutions influenced pastoral activities in this region. The texts investigated here strongly suggest that penance was an important aspect of ecclesiastical life in southern and central Italy in the period from the late tenth to the twelfth centuries.

EDITION: EDITORIAL PRINCIPLES

Preparing an edition of medieval texts which is intellegible for a modern reader but that the same time retains some of the principles guiding the texts of the manuscripts is no easy task. The Latin of penitentials often does not follow the rules of classical Latin. The influence of romance languages led to a different pronunciation of the Latin, which is reflected in the peculiar spelling of many words. It also contributed to the hyper-correct spelling of Latin words. At times the Latin is so obscure as to prevent us from precisely grasping the meaning of the tariffs and prayers. Yet this edition largely follows the orthography, the grammar, and, albeit to a lesser extent, the punctuation of the original manuscripts in order to stay as closely as possible to the texts as they were read by an eleventh-century audience. This approach, adopted from modern editors of penitentials like Bieler and Kottje, considers each text of each individual manuscript a unique text, produced and used in a particular context.¹ This also means that orthographical and grammatical peculiarities (confusion as to case endings; substitution of singular and plural) are retained in so far as they do not confuse the readers. For example, words like *adiuba* (*adiuua*) or *bino* (*uino*) are not corrected. If words or parts of words essential to the understanding of a sentence are missing, the reconstructed words are put between square brackets [], as in *Pe[r] ipsum te domine deprecamur* in a prayer of the *P. Vallicellianum E. 62*. If words or phrases have become illegible due to later corrections or the poor quality of the parchment, the reconstructed words or phrases are rendered between <> brackets in this edition. Furthermore, repetition of words (e.g. *et et*) and obvious copy errors, such as *Bominus* instead of *Dominus* as in a prayer in the *P. Casinense*, are corrected. The reading of the manuscript is in these cases included to the apparatus.

A major challenge to the modern editor is the transcription of medieval punctuation signs. In general, the scribes who copied the Italian penitentials tended to make more generous use of punctuation signs than a modern reader is used to.² Medieval punctuation is in certain respects more varied and nuanced than ours, because it more clearly marks shorter, middle, or longer pauses within the text.³ However this may be, concessions are made to the

¹ See Bieler's prologue of *The Irish penitentials*, pp. 27-51. See also Meens, *Het tripartite boeteboek*, p. 323.

² I discuss these punctuation signs in the chapters 1-5.

³ On the history of punctuation in medieval manuscripts and its value for the history of reading see Parkes, *Pause and effect*. Punctuation in Beneventan script in its various successive stages is treated by Loew, *The Beneventan script*, pp. 229-279. Some of Loew's views, especially those about the Beneventan interrogation sign, are corrected in Newton, *The scriptorium and library at Monte Cassino*, pp. 175-193. No such detailed analysis of punctuation signs for Romanesca script exists.

principle of preserving medieval texts intact in order to present an intelligible text to modern readers. In effect, this means that capitals are suppressed within enumerations and in the case of conjunctions in order to prevent the interruption of the flow of sentences. Thus the sentence of the *P. Vallicellianum E. 62* ‘*peccauī... In periurio. In adulterio. In furto. Vel in quacumque modis...*’ has become ‘*peccauī... in periurio, in adulterio, in furto, uel in...*’. In the *P. Vaticanum*, the sentence ‘*Et compriuetur testimonium episcopi uel presbiteri. Si bene eierunt poenitentiam...*’ is transcribed in ‘*presbiteri, si bene eierunt...*’. In the *P. Casinense*, the sentence ‘*Domine deus noster qui offensione nostra non uinceris. sed satisfactione placaris. Respice quaesumus...*’ is transcribed in the following manner: ‘*Domine deus noster qui offensione nostra non uinceris, sed satisfactione placaris, respice quaesumus...*’

Admittedly, changing the punctuation of penitentials is in danger of misrepresenting the texts as they were meant to be read by a medieval audience. The value of punctuation for understanding how a text ought to be read can be shown by analysing a prayer of the *P. Vallicellianum E. 62*. In this prayer the sign ./ after the invocation ‘*Te inuocamus domine sancte pater omnipotens eterne deus./ Super hos famulos tuos et famulas*’ could indicate a raised inflection of the voice. The main clause continues, however, after the ‘capital S’ of ‘*Super hos famulos*’, which seems to imply that the prayer was to be recited with a strong and dramatic pause after the invocation of God.¹ In short the use of punctuation and capitalisation can reveal something about the way the prayers were read and, as a consequence, that the texts of the *ordines* were meant to be read by the liturgist. This information is to some extent lost in my rendition of the sentence: ‘*Te inuocamus... deus, super hos famulos et famulas*’. Yet the scribes did not consistently apply their own rules of punctuation and capitals. The following canon of the *P. Vaticanum* shows that it is difficult to follow the use of capitals of manuscripts: ‘*Si quis sacrata dei ancilla fornicauerit. Episcopus XV annos peniteat. presbiter XII. Diaconus aut monachus VII. Clericus V. Laicus III annos peniteat. tres partes in panem et aqua*’.²

Abbreviations are resolved silently in this edition. The *P. Casinense*, the *P. Vaticanum*, and the *P. Vallicellianum E. 62* use the *qui* abbreviation (q_) before female words like *mulier*. in these cases the abbreviation is transcribed as *qua*.³ The rubricated parts in the manuscripts,

¹ *Te inuocamus domine sancte pater omnipotens eterne deus./ Super hos famulos tuos et famulas. tibi genua flentes et omnia peccata sua confitentes. ut ab omnibus facinoribus eorum absoluti in tua lege conuerti facias...*

² The text is transcribed in the following manner: *Si quis... fornicauerit, episcopus XV annos peniteat, presbiter XII, diaconus...* Likewise capitals are sometimes added to sentences, if they are not found in the penitentials themselves. Thus a dialogue like *Respondit peccator. promitto* is rendered as *Respondit peccator: Promitto*.

³ In those few cases in which abbreviations could not be resolved, the abbreviation plus its sign is integrally copied into the text.

usually titles and chapter headings to canons or prayers, are rendered in SMALL CAPITALS. The *e caudata* (i.e. the contraction of *ae*) is transcribed as ‘*ę*’. In none of the manuscript is a numbering applied to the canons of the penitentials. In this edition it is added to the canons in order to facilitate reference. The canons are numbered with Arabic numerals. The *P. Casinense* and the *P. Vaticanum* tend to group their canons together according to topic in chapters, with rubrics announcing the subject matter of a particular chapter. These chapters are designated by Roman numerals, while the canons are numbered in Arabic numerals. I have chosen not to follow the numbering of previous editors of some of these texts, mainly because Schmitz’ as well as Wasserschleben’s edition does not always include all the canons of the penitentials. Page endings in manuscripts are indicated through the sign //. For the biblical quotations, the Vulgate (*Biblia sacra iuxta Vulgatam versionem*, R Gryson *et al.* ed. (Nördlingen 1994; fourth edition)) has been used.

Abbreviations critical apparatus

<i>abbrev.</i>	abbreviavit
<i>a.corr.</i>	ante correctionem
<i>add.</i>	addidit
<i>delin.</i>	delineat
<i>e corr.</i>	e correctione
<i>marg.</i>	in margine
<i>ms.</i>	manuscriptus
<i>praem.</i>	praemisit
<i>p.corr.</i>	post correctionem
<i>ras.</i>	in rasura
<i>sc.</i>	scilicet
<i>sequ.</i>	sequitur
<i>sub l.</i>	sub lineam
<i>sup.l.</i>	supra lineam
<i>vac.</i>	vacuum

INCIPIIT QUALITER // SUSCIPI DEBEAT PENITENTEM.

Quotiescumque christiani qui ad penitentiam accedunt ieiunia damus, et nos communicare cum eis debemus ieiunium unam aut duas ebdomadas, aut quantum possumus, ut non dicatur nobis quod sacerdotibus iudeorum dictum est a domino saluatore: *ue uobis legisperitis qui aggrauatis homines et imponitis supra humeros eorum onera grauia, ipsi autem digito uestro non tangitis sarcinas ipsas* (Luc. 11,46; Matth. 23,4). Nemo enim potest subleuare cadentes subpondus, nisi inclinauerit se ut porrigat ei manum. Neque nullus (!) medicorum uulnera infirmantium potest curare, nisi fetoribus particeps fuerit. Ita quoque nullus sacerdotum uel pontificum peccatorum uulnera curare potest aut ab animas peccata auferre, nisi per instantem sollicitudinem et orationem et lacrimas. Necesse est ergo nobis fratres karissimi, solliciti esse pro peccantibus, quia sumus alterutrum membra. *Et si quid patitur unum membrum, compatiuntur omnia membra* (I Cor. 12,26).

Ideoque et nos si uiderimus aliquis in peccatis iacentem, festinemus eum ad penitentiam ad nostram doctrinam uocare. Et quotiescumque dederis consilium peccantis, simul da illis penitentiam. Et dic ei statim quantum debeat ieiunare et redimere peccata sua, ne forte illi oblibiscari // quantum eum oporteat pro suis peccatis ieiunare. Et necesse tibi erit, ut iterum exquiras ab eo peccata sua, ille forsitan erubescit peccata sua confiteri et inuenietur iam amplius iudicari a te. Non enim omnes clerici hanc scripturam usurpare aut legere debent qui inueniunt eam, nisi soli illi quibus necesse est, hoc est presbiteris. Sicut enim sacrificium offerre non debent, nisi episcopi et presbiteri quibus *claves regni celestis tradite* sunt (cfr. Matth. 16,19), sic nec iudicia ista alia usurpare debent. Si autem necessitas euenerit et presbiter non fuerit presens, diaconus suscipiat penitentiam ad sanctam communionem. Sicut ergo superius diximus, humiliari se debet episcopus siue presbiter et cum tristitia et gemitu lacrimisque orare, non solum pro suo delicto, uerum etiam pro omnium christianorum. Vt possit cum beato paulo dicere: *quis infirmatur et ego non infirmor, quis scandalizatur¹ et ego non uror* (II Cor. 11,29)?

Videns autem ille qui ad penitentiam uenit, sacerdotem tristem et lacrimantem pro sua facinora, magis ipse timorem domini perfusus amplius tristatur et timet. Postea si uideris eum ex toto corde conuersum, apprehende manum eius dextra et promittat emendatione uitiorum suorum, et duc eum ante altare, et confiteatur peccata sua. Eum uero qui potest festinanter ieiunet quod impositum est, noli prohibere; magis enim sunt laudandi hi qui // celeriter debitum pondus² persoluere festinant et sic da ei mandatum, ut cetero non peccet. Quia si ieiunauerit et compleberit quod ei dictum est, purificabitur. Quodsi iterum ad pristinam consuetudinem uel peccatam conuersus fuerit, sic uero est quomodo *canis ad uomitum suum reuertitur* (Prou. 26,11). Verumtamen currat, numquam desperet. Omnis tamen penite[n]s non solum hoc debet ieiunare quod illi mandatum est, sed et postquam iussa compleuerit; debet exeipsum quantum ei actum fuerit ieiunare quarta siue sexta feria.

CUM ERGO UENERIT ALIQUIS AD SACERDOTE M CONFITERI PECCATA SUA, MANDA EI TU SACERDOS, UT EXPECTET MODICUM, DONEC INTRES IN CUBICULUM TUUM AD ORATIONEM. SI AUTEM NON HABUERIS CUBICULUM, TAMEN TU SACERDOS IN CORDE TUO DIC HANC ORATIONEM. Domine deus omnipotens propitius esto michi peccatori, ut condigne possim tibi gratias agere, qui me indignum propter misericordiam dignum fecisti officium sacerdotale et me exiguum et humilem mediatorem constituisti ad orandum et intercedere ad dominum nostrum ihesum christum pro peccantes et ad penitentiam reuertentes. Ideoque domine dominator *qui omnes homines uis saluos fieri et ad agnitionem ueritatis uenire* (I Tim. 2,4), *qui non uis mortem*

¹ scandalizatur] e corr.

² pondis a.corr.

peccatorum, *sed ut conuertatur et uiuat* (cfr. Ezech. 18,23; 33,11), suscipe orationem meam quam fundo ante conspectu clementię tuae pro famulos et famulas^m tuas^m qui ad penitentiam uenerunt. // Tribue eis remissionem peccatorum omnium suorum. per.

POST HEC DICIT DEUS IN ADIUTORIUM MEUM INTENDE CUM GLORIA (Ps. 69).

SEQUITUR PSALMUS: *Domine ne in ira tua arguas me, miserere mihi deus* (Ps. 6).

SEQUITUR PSALMUS: *Domine ne in ira tua quoniam sagitte* (Ps. 37).

HOC PSALMO EXPLETO TOTUM CUM GLORIA ET PATER NOSTER HAS ORATIONES:

Exaudi domine preces nostras et confitenti tibi famulo tuo .illo., parce peccantis et quod conscientię reatus accusat, indulgentia tuę pietatis absoluas. per.

ALIA ORATIO.

Deus qui omnium tibi confitentium corda purificas et accusantium suam conscientiam ab omni uinculo iniquitatis absoluis, da indulgentiam huic famulo tuo .illo. et medicinam tribue uulnerato; da ut exclusa dominatione peccati libera tibi mente deseruiat. per.

PSALMUS: *Miserere mei deus, usque iniquitates meas dele* (Ps. 50).

ALIA ORATIO.

Deus qui propter iustum iudicium diuinę eminentis potentię titulum promisit preconem, qui *non uult mortem peccatoris sed ut conuertatur et uiuat* (cfr. Ezech. 18,23; 33,11), propitiare famulo tuo .illo., penitentiam postulantem exoremus, ut si qua luxuriando commisit delicta, per satisfactionem et lacrimarum indulgeas atque uniuersa concedas. per.

PSALMUS: *Benedic animam meam domine, et omnia interiora mea, usque renouabitur* (Ps. 102), et pater noster.

ALIA ORATIO.

Deus iustorum gloria et misericordia peccatorum, da huic famulo tuo .illo. plenam indulgentem ueniam et penitentię¹ locum exoratus indulge, ut qui // preterita peccata deplorat futura mala non sentiat, neque iam ulterius lugenda committat. Dimitte ei domine omnia crimina et peccata et in semicis eum iustitię placatus instaure, ut securus mereatur deinceps inter iustis et bene meritis currere, et ad pacis eterna premia peruenire. per.

HIS UERO EXPLETIS, TUNC INCIPE INTERROGARI PENITENTEM, UT QUE COMMISIT DELICTA CONFITEANTUR, ET DICITO EI.

Fili noli erubescere confiteri peccata tua, quia non est sine peccato nisi solus deus; ante omnia opus est te ipsum perscruteri et confiteri, ne forte habeas iram contra proximum tuum, aut instigante diabolo et carne operante si es lapsus in fornicatione, uel periuro, aut homicidio, seu rapina, aut maledictione patris uel matris, aut alicuius hominis. Aut si per inuidiam loquendo aliquem nocuisti, uel delectatus es in perditione proximi tui, aut per iram percutiens sanguinem effudisti. Si habes aliquam causam de malo ingenio uel fraude. Si habes concupiscentiam gule, aut si fecisti uomitum per ebrietatem post communionem. Quomodo conseruasti diem dominicum uel alia festa sanctorum siue quadragesimales dies? Si manducasti ieiunii diebus ante horam. Fornicasti cum muliere aut menstruis temporibus? Abuisti inuidiam, aut fuisti // detractiosus? Fecisti furtum? Fuisti cupidus, aut avarus, siue superbus? Fecisti incatantiones, aut diuinationes, uel maleficiis? Quomodo conseruasti communionem sanctam?

STATIM UT INTERROGATUS FUERIT ET PRECIPE ILLIS UT PETAT UENIAM TERTIO CONFITENDO PECCATA QUE COMMISIT.

Cum autem confessus fuerit, age tu sacerdos sicut bonus medicus cum ingressus fuerit ad infirmum, et uiderit eum grauiter egrotantem. Statim incipiat² confortare illum et medicaminibus suis confortare eum. Ita ergo et tu considera peccatorem confitentem cuius sit

¹ penitentię] penitene *a.corr.*

² incipia *a.corr.*

potestatis, uel etatis, seu fortitudinis, siue sit diues uel pauper, nobilis uel ignobilis, sapiens uel inscius, et secundum personam confitentis adiudica illum, et sic alloquere:

Omnes qui ex adam nati sumus cum peccato nati sumus et uiuimus atque delicto; sed ideo dominus noster ihesus christus uenit in hunc mundum, ut per baptismum et penitentiam ablueret omnia delicta nostra. Nam latronem confitentem sub uno momento suscepit ac in paradisum introduxit, et meretricem lacrimantem similiter suscepit et predicatricem sue resurrectionis instituit. Et tu ergo si ex toto corde penitueris, clemens deus indulget tibi, quia non eget deus spatiis annorum, sed confessione lacrimarum et suspiriis et penitudine peccatorum. Tu uero annuente deo, cum ingressus fueris ecclesiam dei omnia tua peccata ante oculos tuos // constituere et penitere, et promitte numquam ad ea reuersurum; et prout¹ uales indigentibus *fac elemosinam*, quia *helemosina a morte liberat* (Tob. 4,7/11), sicut prophetam dixit: *Absconde helemosinam in sinu pauperis et ipsa orauit ad dominum* (Sir. 29,15), quia *sicut aqua extinguet ignem, ita helemosina extinguet peccatum* (Sir. 3,33). Si autem non habueris quod prebeas, assume humilitatem et patientiam et caritatem cordis in quibus deus et angeli eius congaudent.

Expletis his statues ei tempus penitentiae cum admonitionem et obseruatione emendationis.

<I.> CAPITULA DEOMICIDIUM (!).

1. Si quis homicidium fecerit, episcopus quindecim annos peniteat, V in pane et aqua, et deponatur. Presbiter XII annos et deponatur, III in pane et aqua. Diaconus X annos et deponatur, III in pane et aqua. Clericus uel laicus VII annos, III in pane et aqua et ad superiorem gradum non presumat accedere; et si bene egerit penitentiam, reconcilietur.
2. Si quis nolens occidit proximum suum, annum I peniteat.
3. Si quis ad omicidium faciendum consenserit et factum fuerit, annos VII peniteat, III in pane et aqua. Si uoluerit et non potuerit, III annos peniteat, I in pane et aqua.
4. Si quis propter uindictam parentis homicidium fecerit, III annos peniteat.
5. Si quis nolens homicidium fecerit, V annos peniteat, II in pane et aqua.
6. Si quis per rixam² homicidium fecerit, X annos peniteat.
7. Si quis occiderit episcopum, uel presbiterum, uel diaconum, uel clericum, uel monachum, omnia derelinquat et seruiat deo.
8. Si quis occiderit hominem in prelio, XL diebus peniteat, et si potuit euadere locum ut non percuteretur, et perpetravit, ut homicida // iudicetur.
9. Si quis propter uindictam patris uel matris uel fratris hominem occiderit³, III annos peniteat; si composuerit parentibus, dimidio sit portio.
10. Si quis odii meditatione homicidium fecerit, XV annos peniteat, et si per poculum aut artem aliquam malam, VII annos peniteat.
11. Qui per iussionem domini sui hominem occiderit, XL diebus peniteat.
12. Si quis aliquem per iram percusserit et sanguinem fuderit, laicus XL diebus peniteat. Clericus II quadragesimas peniteat. Diaconus menses VII. Presbiter annum I. Episcopus annos II.

<II.> DE FORNICATIONE UEL ADULTERIO.

1. Si quis fornicauerit sicut sodomite, episcopus XXV⁴ annos peniteat, V in pane et aqua, et deponatur. Presbiter XII annos peniteat, III in pane et aqua. Monachus uel diaconus X annos peniteat, III in pane et aqua. Clericus uel laicus, VII annos peniteat, II in pane et aqua; et cum alio non dormiant.

¹ prout] ut *add. p.corr.*

² rixam] iram *secundum Schmitz I*

³ occideris *a.corr.*

⁴ XV *a.corr.*

2. Si quis episcopus faciens fornicationem, deponatur et XII annos peniteat, presbiter aut diaconus X annos peniteat.
3. Si quis laicus maculauerit uxorem proximi sui uel uirginem corruperit, I annum peniteat et sine uxore propria dormiat.
4. Si quis menstruo tempore commiserit cum mulierem suam, XL dies peniteat.
5. Si quis nupserit cum mulierem suam retro, XL dies peniteat.
6. Si quis cum [qua]drupedia fornicauerit, episcopus XII annos peniteat, presbiter, et monachus uel diaconus X. Clericus uel laicus III.
7. Si quis laicus habens uxorem suam et cum alterius uxorem fornicauerit¹, annos II peniteat, clericus III annos peniteat, monachus uel diaconus V annos peniteat, subdiaconus III annos, sacerdos VII annos, episcopus annos X.
8. Si quis laicus habens uxorem propriam uel concubinam, sed multe fornicatus fuerit, V menses peniteat. //
9. Si quis cum matre uel sorore sua fornicauerit, XV annos. Si quis cum cognata sua, VII annos peniteat. Siue cum diacona².
10. Si quis cum sanctimoniale fornicauerit, episcopus XV annos peniteat, presbiter XII annos, diaconus uel monachus VII annos, clericus uel laycus V annos peniteat.
11. Si quis frater cum fratre³ suum carnalem fornicauerit, XV annos peniteat, abstineat se a bino (!) uel carne.
12. Si quis intrauerit ad ancillam suam et nupserit cum ea, annum I peniteat, et si genuerit filium ex ea, liberum illum constituat.
13. Si quis presbiter aut diaconus uxorem duxerit, in cunctum populum deponatur.
14. Si quis cum commatre sua de fonte fornicauerit, uitam suam peregrinando finiat et plus de tertia mansione non maneat in ciuitate uel ullo loco, et non se mutet nisi in natale domini siue in pascha, et a communionem priuetur.
15. Si quis sacerdos cum filia spirituale fornicauerit, uendat omnia sua et det pauperibus, et seruiat deo in monasterio et deponatur. Similiter et illa femina faciat.
16. Si quis ante horam legitimam tempore ieiunii non necessitate infirmitatis sed gula obtentu contempserit indicto ieiunio in ecclesia, XL dies peniteat. Si autem in quadragesima hoc fecerit que est ante pascha domini, annum I peniteat, et si per consuetudinem hoc fecerit, ab ecclesia separetur.
17. Non licet die dominico, nec in natale domini, nec in reliquiis⁴ precipuis sollempnitatibus⁵ ante horam tertiam comedere nec post mediam noctem bibere. Si presumpserit, III ebdomas peniteat in pane et aqua⁶. Ante tertiam ora diei⁷ nec post tertiam horam noctis non licet comedere, si per uitium uoracitatis hoc fecerit, ebdomadam I peniteat.

<III.> DE POLLUTIONE. //

1. Si quis episcopus uel presbiter osculatus fuerit per desiderium feminam, XX dies peniteat, et si semen per osculum mittit, XL dies peniteat.
2. Si per cogitationem episcopus aut presbiter semen fuderit, ebdomadam I; si manu tetigerit, ebdomadam III peniteat.

¹ fornicauerit] *sequ. ras.*

² diacona] *diac. abbrev.*

³ fratre] *fr abbrev.*

⁴ reliquis *a.corr.*

⁵ sols. *a.corr.*

⁶ qua *a.corr.*

⁷ ora diei] *sup.l.*

3. Si per turpiloquium uel aspectu coinquinatus fuerit, non tamen uoluit fornicari corporaliter, XX uel XL dies peniteat. Si autem inpugnatione cogitationis uiolenter coinquinatus est, ebdomadam I peniteat.
4. Si quis in nocte cogitauerit fantasię luxurie et si in somno pollutus est, episcopus canat XL psalmi totidem cum metanie leuentur, presbiter XXX, monachus uel diaconus XXIII, et a communione¹ priuetur. Si autem sine cogitatione pollutus fuerit, sacerdos XX psalmos canat cum metanie et ad sacrum officium si necesse fuerit accedat.
5. Si quis dormiens in ecclesia et semen fuderit, IIII dies peniteat.
6. Si in somno peccans non polluerit, XX psalmos canat.
7. Si quis tangendo aut osculando pollutus fuerit, XX dies peniteat.
8. Si uir semetipsum inquinans, primo C dies peniteat. Si iterauerit, unum annum peniteat.
9. Pueri qui fornicationem facit inter se, uapulentur.
10. Si pueri ante XX annos se inuicem manibus coinquinauerint, et confessi fuerint ante quam comun[ic]auerint, XX dies peniteat. Si iterauerint post penitentiam, C dies peniteat. Si uero frequentius, separentur et I annum peniteat.
11. Si quis inter crura aut in manibus fornicauerit, C dies peniteat.

<IV.> DE PERIURIO.

1. Si quis periurium fecerit, episcopus² XII annos peniteat, III ex his in pane et aqua³, presbiter X, diaconus et monachus // VIII, subdiaconus VII, et deponatur usque dum finiat penitentiam, et numquam iuret postea. Clericus peniteat V, laicus III.
2. Si quis coactus qualibet necessitate periurauerit in ecclesia, X annos peniteat; si per necessitate periurauerit, III quadragesimas peniteat.
3. Si quis alium adduxerit in periurium ignoranter, annum I peniteat. Si quis autem ductus est in periurio ignorans et postea cognouerint, annum I peniteat.
4. Si quis scit aliquem sibi male iurare et ei sacramentum tulerit, VII annos peniteat.
5. Si quis per cupiditatem periuraberit, X annos peniteat.

<V.> DE FALSO TESTIMONIO.

1. Si quis falsum testimonium dixerit, episcopus VII annos peniteat, presbiter V, diaconus uel monachus III, et deponatur usque dum finiat penitentiam; si uero bene egerint (!) penitentiam, reconcilietur. Clericus uel laicus annum I.
2. Si quis consenserint ad falsum testimonium, annum I peniteant.
3. Si quis falsitatem commiserit, VII annos peniteat.

<VI.> DE DETRACTIONE UEL ODIO.

1. Si quis episcopus aliquem detrahit, VII ebdomadas peniteat. Presbiter V. Diaconus uel monachus IIII. Subdiaconus III. Clericus II. Laicus I.
2. Si quis contra aliquem iram tenet in corde, ut omicida iudicetur. Si non uult *reconciliari fratri suo* (Matth. 5,24), tamdiu in pane et aqua uiuat, quousque reconcilietur.
3. Si quis inobediens est, maneat sine cibo et potu et pulset humiliter donec recipiatur, et quanto tempore inobediens fuerit⁴, tanto in pane et aqua uiuat⁵.
4. Si quis contentiosus fuerit, etiam alterius sententiis se subdat. Si autem noluerit, anathematizentur et de regno dei est alienus.

¹ commonione *a.corr.*

² episcopus episcopus *ms.*

³ qua *a.corr.*

⁴ fuerit] *sup.l.*

⁵ uiua *a.corr.*

5. Non potest sacerdotes (!) cum furore¹ aut scandalum ad ecclesiam procedere, nisi prius omnia discordia concordet, ut non dolum in corde remaneat. // Sicut scriptum est: *prius reconciliari fratri tuo et sic offer munus tuum* (Matth. 5,24). Quodsi aliter fecerit, ipsa die a sacrificio priuetur et deponatur, quousque se emendauerit, et satisfaciat fratri suo et dimittat ei omnia de corde.
6. Si quis episcopus aut presbiter aut de aliquis de ordinatis consuetudini habuerit uitium ebrietatis, aut desinat aut deponatur.
7. Si quis sacerdos inebriatus fuerit per ignorantiam, VII dies peniteat in pane et aqua. Si quis per negligentiam, V dies peniteat.
8. Si quis cogerit hominem plus bibere quam oportet et inebriatus fuerit, et per uinum inimicus iurgia aut scandala aut quod illicitum est agere commiserit, ut homicida iudicetur.
9. Si quis cupidus, aut auarus, aut superbus, aut ebriosus, aut fratrem suum odio habet uel alia similia inuentus fuerit, III annos peniteat et iuxta uires suas helemosinas faciat. Si permanserit annos duos in abaritia, VII annos peniteat, III ex his in pane et aqua.
10. Si quis presbiter aut diaconus per ebrietatem uomitum fecerit, XL dies peniteat. Monachus XXX. Laicus XV.
11. Si quis per ebrietatem sacrificium uomuerit, XL dies peniteat. Si per infirmitatem, VII dies peniteat.
12. Si quis usuras undecumque exigerit, III annos peniteat, I in pane et aqua.

<VII.> INQUISITIO DE MULIERIBUS.

1. Mulieribus non licet uotum uouere sine licentia uiri sui. Sed si uoluerit, dimitti potest. Et penitentiam iudicet sacerdos.
2. Mulier III menses abstinere debet a uiro suo, quando concipiet et antequam pariat et post partum XL dies. Qui nupserit cum ea, XX dies peniteat.
3. Mulieres menstruo tempore non intrent // in ecclesiam neque communicet, neque sanctimoniale; quodsi presumpserit, III ebdomadas peniteat.
4. Si quis infantem suum oppresserit, III annos peniteat, et si nolens III quadragesimas peniteat.
5. Si qua mulier postquam concipiet occidit filium suum in utero ante XL dies, annum I peniteat. Si post quadraginta, ut homicida iudicetur.
6. Cuius paruulus per negl[eg]entiam sine baptismo mortuus fuerit, III annos peniteat.
7. Mulieres qui partu suo necant, et ille que agunt ut utero conceptos discutiant, antiqui patres constituerunt usque ad exitum uite; nunc uero humanius definitum est, X annos peniteat, III ex his in pane et aqua.
8. Si qua mulier duobus fratribus nupserit, abicienda est usque ad uitum mortis, sed propter humanitatem in extremis suis communio eam reconciliari². Ita tamen ut si forte sanitatem receperit, matrimonio soluto ad penitentiam ammittatur. Quodsi defuncta fuerit mulier huiusmodi consortio alligata, difficilis erit penitentia remansit.
9. Si qua mulier filium suum aut filiam suam³ super tectum, aut in fornace, aut super puteum, uel ad parietem, aut ubicumque pro sanitatem transposuerit, V annos peniteat.
10. Si quis ad arborem, uel ad fontem, aut ubicumque excepto ad ecclesiam uotum uouerit, annum I peniteat, quia sacrilegium est.
11. Si qua mater filium suum occiderit, XV annos peniteat.
12. Si quis in kalendas ianuarii cum ceruulo aut cum uecula uadit, III annos peniteat, quia hoc demonum est.
13. Si qua mulier sanguinem uiri sui pro remedium gustauerit, III annos peniteat.

¹ furore] *e corr.*

² reconciliari] reconcilia *abbrev.*

³ suam suam *ms.*

14. Si quis semen uiri sui in cibum miscet ut inde plus ametur, III annos peniteat.
15. Si qua mulier cum se ipsa coitum habuerit, annum I peniteat.
16. Si qua mulier cum muliere fornicauerit, III annos peniteat.
17. Mulier adultera III annos peniteat.
18. Si quis sanguinem aut semen bibit, III annos peniteat.

<VIII.> ITEM CAPITULA QUÆ DICENDA SUNT AD UIRORUM SEU AD MULIERES.

1. Si quis in matrimonio est, quadragesimis temporibus et dominicis et festiuitatibus continens debet esse, III dies ante communione et III dies post communione, et qui praesumpserit et hoc egerit, XL dies peniteat.
2. Si quis uir aut mulier habens uotum uirginitatis et postea adiungitur uxori, III annos peniteat et non separetur, quia sic stulta uerba uota frangenda sunt et importabilia.
3. Si quis quolibet¹ membrum uoluntarie sibi absciderit, III annos peniteat.
4. Si quis per maleficio suo aliquem perdidit, VII annos peniteat, III in pane et aqua.
5. Si quis sortes contra rationes sanctorum uocant uel alia sorte per qualicumque ingenio sortitus fuerit, III annos peniteat, I in pane et aqua.
6. Si quis ariolos aut aruspices qui anguriani (!) solent, aut per aues aut quacumque ingenio anguriant, III annos peniteat.
7. Si quis ariolando aliquas diuinationes fecerint, quia hoc demonium est, V annos peniteat.
8. Si quis mathematicus fuerit aut per inuocationem demonum mentes tulerit, V annos peniteat.
9. Si quis blasphematur, quanto tempore pro hoc inpenitens manserit, tanto peniteat in pane et aqua.
10. Si quis patri aut matri iniuriam fecerit, VII menses peniteat. Si quis patrem aut matrem expulerit, ut impius sacrilegus iudicetur.

<IX.> DE FRAUDE. //

1. Si quis furtum capitale aut casas fregerit aut de ministerio ecclesie furauerit, VII annos peniteat.
2. Si quis sepulchrum uiolauerit, V annos peniteat.
3. Si quis domum aut aream igne cremauerit, III annos peniteat.
4. Si quis furauerit caballum uel alia peculia, II annos peniteat.
5. Si quis hominem uendiderit et eum in captiuitatem duxerit, V annos peniteat.
6. Si quis per potestatem aut quolibet ingenio res alienas malo ordine tulerit uel inuaserit, VII annos peniteat, III ex his in pane et aqua.

<X.> DE MUNDIS² ET INMUNDIS ANIMALIBUS QUE LICET³ COMEDERE.

1. Animalia coitum hominis occidenda sunt et canibus proicenda quod genuerit, et corus eius in usu assumatur; sed ubi dubi est, non occidatur si non est probatum.
2. Si uero porci cadauera mortuorum comederunt, comedi porci prohibentur usque dum macerentur, et post circulum anni manducentur.
3. Animalia, quæ a feris et canibus consumuntur, non sunt comedenda, nisi forte adhuc uiua auferantur; si quis manducauerit, XL dies peniteat.
4. Aues et animalia cetera si in retibus⁴ stranguillauerint, non sunt comedenda.
5. Pisces licet comedere, quia alterius nature sunt. Lepores licet comedere et bonum est pro dysinteria.

¹ quodlibet *Schmitz I*

² in ras. p.corr.

³ licet] *Schmitz I*: non licet

⁴ Aues et animalia cetera si in retibus 2x ms.

6. Si quis sanguine quaecumque comederit, XL dies peniteat.

<XI.> DE HIS QUI POSTQUAM SE DEO UOBUNT AD SECULUM REUERTUNTUR.

1. Si quis presbiter aut monachus, postquam se deo uouerit, ad secularem habitum reuersus fuerit et uxorem duxerit, X annos peniteat, III ex his in pane et aqua, et numquam postea in coniugio copulentur; quodsi noluerit, sancta synodus // uel sedis apostolica separet eos a communionem et a conuiuio catholicorum. Similiter postquam se deo uouerit et mulier si talem scelum commiserit, pari sententia subiacebis (!).
2. Cathecuminis non est licitum cum christiani comedere.
3. Non licet in ecclesia comedere nisi cum sacerdotibus, et qui presumpserit, III ebdomadas peniteat.
4. Qui manducat et postea communicat, VII dies peniteat.
5. Si quis in dominico die ieiunauerit, ebdomadam I peniteat. Si iterauerit, XX dies peniteat.
6. Omni die dominico debent christiani in ecclesiam intrare et communionem suscipere, quia greci sine intermissione omni die communicant. Et qui tertia dominica fecerit et non susceperit corpus domini in se, excommunicetur sicut docet¹ canon.
7. Si quis officium suum neglexerit, id est, matutinum et I et III et VI et VIII et uespera non expleuerit, episcopus XL dies peniteat, presbiter XXX, monachus uel diaconus XX, clericus XV, et laicus qui scit non perdat horam suam, quia dominus noster cum usuris exigere debet talenta quod accepimus.
8. Si quis de fide uera discesserit et postea reuersus fuerit ex toto corde, III annos peniteat extra ecclesiam et II extra communionem.

<XII.> DE HERETICIS ET ORDINIBUS MALIS.

1. Si quis ab hereticis ordinatus fuerit, iterum debet ordinari.
2. Si quis ab heretico baptizatus fuerit, qui recte trinitate non credit, iterum debet baptizari.
3. Quis baptizatus fuerit ignorans, non indiget pro penitentiam.
4. Si quis baptizatus fuerit a presbitero non recte baptizantes (!), iterum debet baptizari.
5. Sacrificium non est acc[i]piendum de manu sacerdotis qui orationes uel secundum ritum implere non potest.
6. Si quis autem pro mortuo heretico missas ordinauerint (!) et pro religionem reliquias ibidem tenuerit quia multum ieiunat, et nescit differentia catholice fidei et postea intellexerit, reliquias igne cremare debent et annum I peniteat. Si autem scit et negligit, penitentiam motus X annos peniteat.
7. Si quis presbiter missas celebrauerit et nomina mortuorum nominauerit, hereticos cum catholicos, et postea intellexerit et non eos separauerit, non est acceptabile sacrificium deo. Quodsi ei alia uice contigerit, I annum peniteat.
8. Si quis dederit aut acceperit communionem de manu heretico, et nescit quod catholica ecclesia contradicit, et postea intellexerit, annum I peniteat; si scit et negligit, X annos peniteat.
9. Si quis neglexerit presbiter et de sacrificio suo perdiderit et inuentus non fuerit, locus in quo ceciderit scopetur et comburetur² igni et cinis sub altare abscondatur, et I annum peniteat; et si inuentus fuerit, XL dies peniteat et locus lauetur.
10. Si uero de calicem stillauerit in terram, labetur (!) lingua; et si non potest desuper igne accendatur, VII dies peniteat. Si super altare stillauerit linteamina que tetigerit, abluatur per III uices calicem subterpositum et aquam ablutionis sumat.
11. Qui non bene custodierit sacrificium et musca comederit ex eo, XL dies peniteat.

¹ decet *a.corr.*

² combulretur *a.corr.*

12. Qui negligentiam erga sacrificium fecerit et casu uermibus consumatur et ad nichilum deuenerit, III quadragesimas peniteat.
13. Ad presbiterum missas celebrare II conceditur.
14. Omne // sacrificium sordida uetustate consumptum ignis est comburendum.
15. Si quis presbiter penitentiam morientibus abnegauerit, reus erit animarum, quia dominus dixit in euangelio: *quacumque die conuersus peccator fuerit, uita uiuet et non morietur* (Ez. 33,12; 18,28). Vera enim confessio in ultimo tempore potest esse, quia dominus non solum temporis, sed *cordis inspector est* (Prou. 24,12), sicut latro in hora confessionis unius momentis meruit esse in paradiso (cfr. Luc. 23,43).
16. Si quis penitens petierit penitencia¹ et <ante dum?> sacerdos uenerit², fuerit ab officium lingue priuatus, constitutum est ut, si idonea testimonia hoc dixerint et ipse per motos aliquos satisfacit, sacerdos impleat omnia circa penitentem, ut mos est, et oret pro eum.
17. Si quis sacerdos palam fecerit et secretum penitentię usurpauerit, et quauis homo intellexerit, et declaratum fuerit quem celare debuerit, ab omni honore suo in cunctum populum deponatur et diebus uite sue peregrinando finiat.
18. Si autem uenerint ad uos serui uel ancille, non eos grauetis quomodo dominos suos, quia serui non sunt in sua potestate quomodo dominos eius, tamen medietatem penitentię eis inponite.
19. Si quis fornicauerit cum uidua patris sui uel barbani sui, aut germana, cognata, uel filiastra sua, X annos peniteat peregrinando, II ex his in pane et aqua. Et si cum uxore proximi sui, V annos peniteat.
20. Cuius paruulus per negligentiam mortuus fuerit sine baptismo, III annos peniteat.
21. Si qua mulier ab hoste rapta infantem inuito proicit, III ebdomadas peniteat.
22. Si qua mulier malefi//cio aliquem in cibum miscet uiri sui ut inde plus ametur, annos III peniteat.
23. Si quis maleficio aliquem perdiderit, annos VII peniteat in pane et aqua; et si neminem perdiderit et pro amorem fuerit beneficus: Si quis presbiter est, VII annos peniteat in pane et aqua. Si diaconus VI. Subdiaconus V. Si clericus est IIII. Si laicus est III.
24. Si quis uxorem dimiserit et acceperit aliam, cum christianis non manducet et VII annos peniteat.
25. Si quis patri aut matri iniuriam fecerit, VII annos peniteat.
26. Si quis cupidus aut auarus, superbus aut inuidens fuerit, annum I peniteat.
27. Si quis furtum fecerit de cibo, XL dies peniteat.
28. Si quis per rixam ictu deformat hominem, reddat *impensus medicis* et macule pretium et *opus eius*, donec sanetur *restituatur* et medium annis peniteat (cfr. Ex. 21,19); et si non habet unde restituatur, annum integrum peniteat.
29. Si quis a fidem domini discesserit sine ulla necessitate et postea conuersus fuerit, X annos peniteat, III ex his in pane et aqua et extra ecclesiam.
30. Si quis comprehensus est a paganis uel a domesticis traditi, si aliquid polluti in cibum sumpserunt, XL diebus; si proclamauerunt christianos esse et uiolenter sumpserunt, a communionis gratia non separentur. Si uero non luctauerunt, VII annos peniteant, III in pane et aqua.
31. Si quis in die dominico per negligentiam ieiunauerit, aut operam fecerit, aut pro decore sui uultus se ualneauerit, VII dies peniteat. Si iterauerit, XL dies peniteat. Si damnatione hoc fecerit, diei dominici abominet ab ecclesia ut iudeus.
32. Maledicus per iram VII dies peniteat et satisfaciat fratri suo de corde.
33. Vir abstinere se debet ab uxore sua quadragesima ante pascha et I ebdomada // post pascha, unde apostolus ait, *ut uacetis orationi*¹ (I Cor. 7,5), et unam ebdomadam post

¹ penitencia] dum *delin.*; pe, *sup.l.*: nitencia. et ante dum? *p.corr.*

² uenerit] *sequ.* et *ras.*

pentecosten pro reuerentia sollempnitatis regenerationisque, et ante communionem diebus III et postea similiter, et diebus dominicis, seu in sollempnitatibus sanctorum, et IIII et VI feria, et sabbato tempore ieiunii, et menstruo tempore, et tribus mensibus antequam pariat, et post partum dies XL. Quodsi pręsumperit, XL dies peniteat.

34. Si quis immundus in ecclesiam introierit, ebdomadas III peniteat.

35. Si quis diuinos et sortilegos in domo sua introduxerit, quasi ut malum foras mittant (!) uel maleficia inueniat, V annos peniteat.

36. Si quis fidelis cum iudea uel gentilem fuerit mechatus, V annos peniteat a communionem arceatur; si acta legitima penitentia ut alius eum detexerit, post quinquennium poterit dominicę sociari.

POST IUDICIUM DICENDI SUNT HIS UERBIS.²

Ego dixi domine miserere mei (Ps. 40,5). ET AN[TIPHONA?].

VERSUS. *Saluum fac seruum* (Ps. 85,2).

VERSUS. *Ne memineris iniquitates nostras antiquas. Cito nos anticipet misericordia tua* (cfr. Ps. 78,8).

VERSUS. *Adiuba nos deus salutaris noster, et propter honorem nominis tui domine libera nos* (cfr. Ps. 78,9).

VERSUS. *Propitius esto peccatis nostris domine, ne quando dicant gentes ubi est deus eorum* (cfr. Ps. 78,9/10).

SEQUITUR PSALMUS. *Exaltabo te domine quoniam suscepisti me* (Ps. 29).

ORATIONES.

Domine deus noster qui offensione nostra non uinceris, sed satisfactione placaris, respice quaesumus super hunc famulum tuum .illum. qui se tibi peccasse grauiter confitetur; tuum est enim absolutionem criminum dare et ueniam relaxare peccantibus qui dixisti penitentiam te magis uolere quam mortem. Concede ergo³ huic famulo tuo domine, ut tibi penitentię excubias celebret et correctis actibus suis, conferri sibi, // ad diem iudicii sempiterna gaudia gratuletur. per.

PSALMUS. *Cor mundum crea in me deus, spiritum* (Ps. 50,12).

ORATIONES.

Deus iustorum gloria misericordia peccatorum, da huic famulo tuo .illo. plenam indulgentię ueniam et penitentię locum exoratus indulge, ut qui preterita peccata deplorat, futura mala non sentiat, neque iam ulterius lugenda committat, dimitte ei domine crimina et in semitis eum iustitię placatus instaure, ut securus mereatur deinceps inter iustos et bene meritos currere, et ad pacis heterna premia peruenire. per.

PSALMUS. *Faciens misericordias dominus et iudicium, usque ita deflorię* (Ps. 102,6-15).

ORATIO⁴.

Commendamus tibi domine famulum tuum .illum. in uita praesenti, ut ab omni malo eum eripias et intercedente beato [petro?] .illum. ad uitam perducas sempiternam. per.

ORATIO⁵.

Precor domine clementiam et misericordiam maiestatis tuę, ut huic famulo tuo .illo. peccata et facinora confitenti ueniam donare digneris, qui humeris tuis ouem perditam reduxisti ad caulas, qui publicani precibus et confessione placatus es; tu etiam huic famulo tuo placare, tu huius preces suscipe. Remitte ei omnia peccata et da ei pro suppliciis ueniam pro merore

¹ oratione a.corr.

² Post... uerbis marg.

³ ergo] sequ. ut ras.

⁴ Oratio] marg.

⁵ Oratio] marg.

letitiam, ut qui ad tantam spem cęlestis apicis deuolutus est de tua confidens ad heterna gaudia te protegente perueniat. per.

DEINDE PROSTRATUS PENITENS PETA UENIAM ET TUNC INCIPIT HANC ORATIONEM.

Misereatur tibi omnipotens deus et dimittat tibi omnia tua peccata, // liberet te ab omni malo, conseruet et confirmet te in omni opere bono, et perducatur te dominus pariter ad uitam heternam. per.

ALIA ORATIONES.

Suscipiat omnipotens deus confessionem tuam, ante cuius conspectum ueniam petisti, et ipse tibi dignetur dare ueram indulgentiam ex omnibus peccatis et delictis tuis, qui te creauit, et sancto suo redemit sanguine, detque tibi semper cogitare, loqui, et agere semper quę illi sunt placita, et absoluere te dignetur a cunctis nexibus peccatorum tuorum, tribuatque tibi angelum suum custodem et defensorem in omnibus horis atque momentis, nocte hac die. Et intercedente beatissima dei genitrice maria et beato michahele archangelo cunctisque supernis ciuibus et presentis uite tribuat tibi sospitatem et cęlestis regni concedat gaudia sempiterna, et non prius dii (!) tui finiantur, quam omnium peccatorum tuorum ueniam inuenire ualeas.

Amen.

ALIA ORATIONES.

Benedicant te angeli et archangeli, uirtutes et dominationes, principatus et potestates, throni, cherubim et seraphim, liberent, protegant, ac defendant te ab omni malo, et custodiant te patriarchię, prophete, apostoli, martires, uirgines, et omnes sancti. Amen.

Benedicat te deus pater qui te creauit. Benedicat te filius, qui pro te passus est. Benedicat te // spiritus sanctus, qui in te effusus est. Sanet te fides tua et liberet te deus ab omni malo et ab omni iniquitate. Benedictio abraham, isaac et iacob sit super corpus tuum a planta pedis usque ad uerticem capitis tui in remissionem peccatorum in die iudicii. Amen.

ALIA ORATIO.

Benedicat te dominus deus noster caput tuum, et cor tuum, et animam tuam. Angeli ad dexteram tuam, apostoli ad sinistram tuam. Christus te benedicat et animam tuam uiuificet et cor tuum illuminet. Et sensum tuum in sua uoluntate semper declaret et pedes tuos dirigat¹ ad uitam rectam; te ad uitam ęternam deducat pater et filius et spiritus sanctus, per eum qui uiuit et regnat per omnia sęcula sęculorum. Amen.

ALIA ORATIO.

Vade et dominus sit tecum; et donet tibi ueram penitentiam agere, et concedat tibi indulgentiam omnium delictorum tuorum, et perducatur te ad uitam ęternam. Amen.

ALIA ORATIO.

Intercedente pro nobis beata et gloriosa semperque uirgine dei genitrice maria, et beata michahele archangelo, et beato petri apostolorum principe, qui habet potestatem in cęlo et in terra ligandi et soluendi, ipse te absoluat et liberet a cunctis nexibus peccatorum hic et in futuro sęculo. Amen.

ALIA ORATIO.

Maiestatem tuam domine supplices deprecamur, ut huic famulo tuo longo squalore penitentię macerato, miserationis tuę ueniam largiri digneris, ut nuptiali ueste recepta ad regalem mensam, // unde eiectus fuerat mereatur intrare. per.

ALIA ORATIO.

Dominus² ihesus christus apud te sit, ut te defendat. Intra te sit, ut te reficiat. Circa te sit, ut te conseruet. Ante te sit, ut te deducat. Post te sit, ut te iustificet. Super te sit, ut te benedicat. Qui cum patre.

ALIA ORATIO.

¹ dirigat] at *add. p.corr.*

² Bominus *ms.*

Ille te benedicat de cęlis, qui per crucem et passionem totum mundum illuminauit. Ille te benedicat de celis, qui tres pueros de camino ignis ardentis liberauit. Ille te benedicat de cęlis, qui petrum et paulum benedixit. Ille te benedicat de cęlis, qui susanna de falso crimine liberauit. Ipse¹ te benedicat, cui angelus dixit: *habe gratia plena dominus tecum* (Luc. 1,28). Ipse angelus domini super te descendat, qui et te benedicat diem ac nocte. Illuminet deus corda tua et sensum tuum et perducatur te ad sempiternam uitam, qui cum patre et spiritu sancto uiuit et regnat in secula seculorum. Amen.

ORATIO.²

Benedicat te deus pater qui in principio cuncta creauit. Benedicat te deus filius qui de supernis sedibus pro nobis saluator descendit. Benedicat te spiritus sanctus qui in similitudine columbe in flumine iordanis requieuit in christo. Ipse que in trinitate sanctificet, que omnes gentes uenturum expectant ad iudicium. Qui cum patre.

ALIA ORATIO.

Benedicat te deus pater. Sanet te deus filius. Illuminet te spiritus sanctus. Corpus tuum custodiat. Animam tuam saluet. Cor tuum irradiet. Sensum // dirigant et ad supernam uitam perducatur. Qui in tri[nitate].

ORATIO.³

Benedicat deus cęli. Adiuuet te christus filius dei. Corpus tuum in suo sancto seruitio custodiri et conseruari faciat, mentem tuam illuminet. Sensum tuum custodiat. Gratiam suam ad profectum anime tuę in te augeat. Ab omni malo te liberet. Dextera sua te [de]fendat, qui sanctos suos semper adiuuat. Ipse te adiuuare et confortare dignetur, qui cum patre.

ALIA ORATIO.

Benedicat te deus pater, custodiat te ihesus. Illuminet te spiritus sanctus et gubernet omnibus diebus uite tuę. Confirmet te uirtus christi ihesu filii dei uiui. Indulgeat tibi domini uniuersa delicta. Qui in trinitate perfecta.

ALIA ORATIO.

Benedictio dei patris cum angelis suis sit super te. Amen.

Benedictio domini nostri ihesu cum apostolis suis super te. Amen.

Benedictio beate marie matris domini cum omnibus uirginibus ueniat super te. Amen.

Fiant merita et orationes sanctorum omnium tecum in diebus et noctibus et in omni tempore. Amen.

Commendo te in cogitatione, in uerbo, in facto, in potestate sanctę trinitatis. Amen.

Misereatur tibi deus hic et in futuro seculo, qui uiuit et regnat deus per omnia secula seculorum. Amen.

Non enim ea, que a sanctis patri sunt tradita, possumus portare propter fragilitatem nostram. Si uero uolumus super humeros hominum // poni, minime portare possunt. Sed enim si unum annum in pane et aqua, unum diem in ebdomada in pane et aqua ducere debet. Ceteros dies in mediocres peniteat⁴. Hoc est in paruo uino, et paruo pulmento, et paruo pane in uilitate et parcite penitentie sit. Sed penitentiam agere digne non possumus, nisi modum quoque eiusdem penitentie cognoscamus. Qualis est enim penitentia ad peccatorum purgationem, ubi delicie preeparantur abundanter. Cum etiam ueraciter de cibo que sibi subtraxerit in helemosina dandum sit. Canones dicunt, ut penitentes⁵ omni tempore penitentie sue non sint in gaudium, set in merore. Vt caro que leta traxit ad culpam nunc afflicta reducat ad ueniam.

¹ Ipse] *e corr.*

² Oratio] *marg.*

³ Oratio] *marg.*

⁴ peniteat] *pen. abbrev.*

⁵ penitens *a. corr.*

Verumtamen qui tantis irretitus est culpis illicitis, a liciti se in quantum plus ualet absteineat. Et iam omnino de his nichil ulterius committat quę gessit.

ET ITA DEBET ABSTINERE.

A pascha usque ad pentecosten absteineat¹ se sexta feria a uino et pulmentum et ieiunet usque ad medium diem. Aliis uero diebus infra his predictis sine ieiunio debet manere, et uinum et pulmentum sumat. Verumtamen nec carnem nec pingua sumat exceptis festiuitatibus beati iohannis, et beatorum apostolorum petri et pauli, et transfiguratione domini, et beati laurentii. Ab assumptione sanctę marię usque in festiuitatem sancti martini // tantummodo sexta feria absteineat se a uino et pulmento uel epularibus cibus et ieiunet usque ad nonam. Et a festiuitate beati martini usque in natiuitatem domini ita agendum est, tribus diebus in ebdomada a uino et pulmento absteineat. Sed enim ieiunet omnibus diebus usque ad nonam. Carnem nec pingua non sumat excepta sollempnitate beati andree. Et a natiuitate domini usque in quinquagesimam tantummodo sexta feria absteineat se a uino et pulmento. In diebus quadragesimalibus absteineat tribus diebus in ebdomada a uino et pulmento uel epularibus cibus et ieiunet omnibus diebus usque ad uesperum. Insuper et piscem non edat, exceptis dominicis diebus et beati gregorii et beati benedicti, et ann[un]tiatione domini. Nam penitentiam quisquis uult semper eam ad regnum perducitur sempiternum. Nemo se desperet propter peccata sua quę gessit, si et intimo cordis flet, nam deus celeriter suscipit hominem peccatorem si recte flet.

INQUISITIO SANCTI HIERONIMI DE SALUTATE ANIME.

Qualiter hii qui infirmi sunt et per penitentiam non ualent proficere ad salutem, ut per istam inquisitionem ueniant ad medelam animę. Duodecim triduanas uel XXIII uiduanas cum tribus psalteriis completis et CCC palmate excusant annualem penitentiam. Et centum psalmi cum uenia et CCC palmate excusant triduanam, et LXXV psalmi similiter excusant biduanam.

PSALMI AUTEM HII SUNT:

Mise[re]re mei deus secundum (Ps. 50). PSALMUS *Deus in nomine tuo* (Ps. 53). // PSALMUS *Miserere mei deus mise[re]re mei* (Ps. 56). PSALMUS *Deus misereatur nobis* (Ps. 66). PSALMUS *Domine deus in adiutorium* (Ps. 69).

DE ISTIS PSALMI QUI IMPLENT PSALTERIUM CUM GLORIA SUA, CONFIDA DOMINI DEI OMNIPOTENTIS MISERICORDIA, QUICQUID IUSTE PETIERIT² A DOMINO IMPETRABIS. SI QUIS IEIUNARE NON POTEST, PER UNAM DIEM QUANDO IN PANE ET AQUA DEBET PENITERE PSALMOS L CUM GENUA FLECTENDO, AUT SINE GENUA FLECTENDO LXVIII PSALMI AUTEM HI SUNT: PSALMUS *Domine quid multiplicati* (Ps. 3). PSALMUS *Domine ne in ira tua, usque quo domine* (Ps. 37 (Ps. 6,1-4?)). PSALMUS *Exaudi domine* (Ps. 16). PSALMUS *Deus deus meus respice* (Ps. 21). PSALMUS *Dominus regit me* (Ps. 22). PSALMUS *Ad te domine leuaui* (Ps. 24). PSALMUS *Iudica me domine* (Ps. 25). PSALMUS *Dominus illuminatio* (Ps. 26). PSALMUS *Exaltabo te domine* (Ps. 29). PSALMUS *In te domine speraui* (Ps. 30). PSALMUS *Beati quorum* (Ps. 31). PSALMUS *Benedicam dominum* (Ps. 33). PSALMUS *Iudica domine nocentes me* (Ps. 34). PSALMUS *Domine ne in ira tua quoniam sagittae* (Ps. 37). PSALMUS *Dixi custodiam* (Ps. 38). PSALMUS *Sicut ceruum* (Ps. 41). PSALMUS *Deus auribus* (Ps. 43). PSALMUS *Mise[re]re mei deus secundum* (Ps. 50). PSALMUS *Deus in nomine tuo* (Ps. 53). PSALMUS *Exaudi deus orationem et ne despexeris* (Ps. 54). PSALMUS *Miserere michi domine* (Ps. 55). PSALMUS *Miserere mei deus miserere* (Ps. 56). PSALMUS *Exaudi deus deprecationem* (Ps. 60). PSALMUS *Deus deus meus ad te* (Ps. 62). PSALMUS *Exaudi deus orationem cum tri[bulor]* (Ps. 63; Vetus latina). PSALMUS *Deus misereatur* (Ps. 66). PSALMUS *Saluum me fac deus* (Ps. 68). PSALMUS *Domine deus in adiutorium* (Ps. 69). PSALMUS *Quam amabilia* (cfr. Ps. 83). PSALMUS *Inclina domine* (Ps. 85). PSALMUS *Domine exaudi orationem* (Ps. 101). PSALMUS *Benedic anima mea dominum et omnia* (Ps. 102). PSALMUS *Confitemini dicat nunc* (Ps. 117,1-2). PSALMUS *Beati*

¹ astineat a.corr.

² petieris a.corr.

immaculati, usque ad dominum dum tri (Ps. 118-119:1). PSALMUS *Ad te leuavi oculos* (Ps. 122). PSALMUS *Eripe me domine* (Ps. 139). PSALMUS *Domine clamaui* (Ps. 140). PSALMUS *Domine exaudi orationem auribus* (Ps. 142). PSALMUS *Benedictus dominus deus meus* (Ps. 143). PSALMUS *Exaltabo te* (Ps. 144). PSALMUS *Benedicite omnia* (cfr. Ps. 133; Dan. 3,57?). PSALMUS *Benedictus dominus deus israhel* (cfr. Ps. 105,48).

ET SI PSALLERE NESCIT, PER DIEM DET DENARIUM I, ET SI PRETIUM NON HABET, DET CIBUM TANTUM QUANTUM IPSE SUMIT, ET IN TRIBUS QUADRAGESIMIS PENSET QUANTUM IPSE SUMIT ET TRIBUAT MEDIETATEM IN HELE MOSINA.

Vt illud non est omittendum quod apostolus ait: ‘qui per corpus peccat, per corpus emendet’, hoc est // ieiunium, uigilias, et orationes, obsecrationibus ad deum. Legimus quia christus ieiunauit, qui nullum peccatum commisit. Similiter et apostoli ieiunauerunt propter donum spiritus sancti. Igitur eorum nos debemus imitatores esse, quorum uolumus participes esse regni cęlestis. Propterea oportet nos per unamquamque ebdomadam quarta et sexta feria a uino et carne uel epularibus cibis et a coniugali abstinere coniugio. Et qui non potest sic agere penitentiam sicut sancti patres constituerunt, in primo anno eroget in helemosina solidos XXVI, in secundo solidos XX, in tertio solidos XVIII. Sed unusquisque intendat cui dare debet, siue pro redemptione captiuorum, siue super sanctum altare, siue pauperibus christianis erogandum.

Remissio peccatorum in penitentia a natiuitate domini usque in epyphania. Et a pascha usque in pentecosten, et dominicis diebus, sancti iohannis, sanctę marię, et sanctorum duodecim¹ apostolorum uel sancti martini, sed et ueneranda festiuitas illius sancti qui in prouincia ipsa in corpore requiescere uidentur.

¹ duodecim] xii^m ms.

INCIPIT, QUOMODO DEBET ESSE MEDIATOR SACERDOS INFRA DEUM ET HOMINEM SIUE PENITENTIAM DANS.

Quotiescumque christiani ad poenitentiam accedunt, et ieiunia eis damus et nos participare cum eis debemus. Vna aut duas ebdomada aut quantum possumus ieiunare uel missas pro eis celebrare, ut non dicatur nobis quod sacerdotibus iudeorum dictum est a domino: *Ve uobis legis doctores qui grauatis homines, et inponitis supra humera hominum honera grauia et importabilia. Ipsi autem digito uestro non tangitis sarcinas ipsas. Nemo enim subleuare potest cadentes sub pondus nisi inclinauerit se ut porrigat ei manus* (Luc. 11,46). Neque ulli medicorum uulnera infirmantium cura/re potest, nisi de fetoribus eius fuerit participes. Ita quoque nullus sacerdos uel pontifex peccatorum uulnera curare potest, aut ab animas (!) peccata auferre, nisi per instantem sollicitudinem et orationem et lacrimas. Necesse est ergo nobis, fratres karissimi, sollicitos esse peccantes, quia sumus alterius membra in christo. Et *si compatimur unum membrum¹, patiuntur omnia membra* (I Cor. 12,26). Ideoque et nos si uiderimus aliquis in peccatis iacentem festinemus eum ad poenitentiam et per nostram doctrinam reuocare, et quotiescumque dederis consilium peccanti simul da illi et penitentia. Et dic ei quantum debeat ieiunare uel pro redemptione anime suę dare ne forte obliuiscatur, quantum eum oporteat pro suis peccatis ieiunare. Et necesse est tibi, ut uerum inquiras ab eo, ne forte erubescat et timeat a te amplius ieiunare. Non enim omnes clerici debent hanc scriptura usurpare uel legere qui inueniunt eam, nisi episcopus aut presbiter quibus *clauces regni celesti* tradite sunt. Si autem necessitas euenerit et presbiter non fuerit presens, diaconus suscipiat poenitentem². Et sicut superius diximus: Humiliari se debet episcopus siue presbiter aut cum tristitia et gemitu atque lacrimas orare non solum pro suo delicto, sed et pro omnibus christianorum. Vt possit cum beato paulo apostolo dicere: *Quis infirmatur, et ego non infirmor? quis scandalizatur et ego non uror* (II Cor. 11,29)?

AMMONITIO SACERDOTIS CONTRA PENITENTEM QUOMODO DEBEAT TIMERE³ DEUM ET CREDERE. Oporteat autem huiusmodi poenitentem sacerdos ad confessionem exorare: Fili noli despiciere de peccatis, nec erubescas (!) dicere peccata tua uel quantumcumque malum fecisti, quoniam ego tui similis sum in peccatis. Dicente domino: *Conuertimini ad me in toto corde uestro, et scindite corda uestra et non uestimenta* (Ioel 2,12-13). // *Quia iustus est dominus* (Bar. 2,9) ut dimittat nobis confitendo peccata et *mundet nos ab omni peccato* (Ioh. 1,7). Sicut habemus in exemplum publicanus et latronem in crucem cananea et petrum apostolum et reliqui toto corde confitentes. Et iterum: *Qui me confessus fuerit coram hominibus confitebor et ego eum coram patre meo qui est in celis* (Matth. 10,32/33). Et iacobus apostolus dicit: *Confitemini alterutrum peccata uestra et orate pro inuicem ut saluemini* (Iac. 5,16). Porro si conuersus fueris, statim diabolus erubescit et fugit. Qui uitia unde poenites modo plus fortiter tecum pugnare habet eo quod expellis ea de domo sua. Sed lacrimabiliter hora, ieiuna et elemosyna fac, et illico fugiet a te. Dominus tecum est ne timeas demonem. Sed quantum potueris ad loca sanctorum frequentare, ubi sancta scriptura audias et fabula sibi non facias, sed adtentius ausculta que ibi⁴ leguntur. *Et dominus noster qui uenit in hunc mundum peccatores saluos facere quorum nos sum* (I Tim. 1,15: *quorum primus ego sum*). Mox ut te uiderit afflictum et humiliatum, imponet te super humeros suos dicens: *Gaudium sit in celo super hunc peccatorem poenitentiam agentem quam supra nonaginta nouem iustos qui non indigent poenitentiam* (Luc. 15,7).

¹ membrum] brum sup.l.

² poenitentea a.corr.

³ timere] marg.

⁴ ibi] bi a.corr.; i sup.l.

DEINDE SURGAT ANTE ALTARE CUM GEMITU ET SUSPIRIO, DICIT SACERDOS.¹

Reddis te culpauilem deo de omnibus peccatis tuis quod post baptismum commisisti, uolendo aut nolendo, quod enim recordas aut non recordas, siue in cogitatione, aut in locutione, aut in opere contra mandatum dei. Respondit peccator: Sic facio. Dicit sacerdos iterum: Promittis te de preteritis culpis aemendare, et de futuris cautelam accipere, et ad omnes inuentiones diaboli abrenuntiare. Respondit peccator: Promitto. Et dicit peccator: Mea culpa, pecca//ui domine coram te et coram ang[e]lis tuis in uisu, auditu, gustu, odoratu et tactu, ueniam peto ad te domine deus meus.

Et dicit sacerdos ad eum: Credis in deum patrem et filium et spiritum sanctum. Respondit: Credo. Credis quod in ista carore in qua sumus in ipsa habemus resurgere in die iudicii et recipere siue bonum siue malum quod egisti. Respondit: Credo. Vis dimittere peccata quecumque in te peccauerint, domino dicente: *si non remiseritis hominibus peccata eorum, nec pater uester caelestis dimittet uobis peccata uestra* (Matth. 6,14). Respondit: Volo. Dic mihi 'pater noster'. Nam si est et non uult ipsa necessitate dimittere, aut ista sapere, non potest ei dare poenitentiam. Et si non uult² ipsa necessitate dimittere, aut ista sapere, in caelum est.

Tunc fac eum omnia peccata sua confiteri et ad ultimum fac eum dicere: Multa sunt peccata mea in factis, in cogitatione, in locutione et omnibus uitiiis malis.

CONFESSIO PENITENTI.

Ego uolo esse confessor deo omnipotente, et angelis domini et sanctis eius, et tibi homini dei .N. De omnibus peccatis meis quem ego feci postquam natus fui et baptismum accepi usque in ista hora. Quod ego miser peccaui in periuriis multis, in commensationibus multis, et in uomitu. Ego peccaui in detractionibus multis, in murmurationibus multis, in inuidia, in maledictione, in auaritia, inobedientia, in otiosis sermonibus multis. Ego peccaui quod ego neglegens fui de meo ministerio, quod non custodiui secundum ordinem. Ego peccaui de illis poenitentibus qui ad me ad confessionem uenerint, et suas culpas mihi confessi sunt, et ego secundum legem non iudicaui eis. Et ego peccaui in cupiditate, quia multum accepi // aliorum pretium et id non conquisiui, et de hoc quod ad dispensandum recepi in helemosyna, inde ad opus meum retinui. Et ego peccaui quod ego non custodiui sacrificium secundum legem. Et ego peccaui quando confessus fui, quod ego post confessionem cecidit in ipsas culpas quam antea confessus fui. Et ego peccaui in desideriorum alienorum rebus. Et ego peccaui quod non indulgebam in me peccantibus. Et modo dimitto ex toto corde meo omnibus hominibus qui in me peccauerunt. Ego peccaui cum oculis meis, quod ego spiculatus sum quod non debui, inde confiteor meas culpas. Ego peccaui ore meo et lingua mea quod locutus fui quod non debui, oscula inlicita feci, inde confiteor meas culpas. Ego peccaui manibus meis palpando, quod ego palpauit quod non debui³, dimisi opera bona facere quod non⁴ debui. Ego peccaui cum mea uirilitate, quod ego non custodiui castitatem sicut scriptura⁵ me docuit, et cum manu mea suscitauit semen meum, perpetravi pollutiones multas, uigilando et dormiendo. Ego peccaui pedibus ambulando, quod ego ambulauit ubi non debui, dimisi ambulare ubi debui, inde confiteor meas culpas. Ego peccaui totis membris meis cum aliis membris et consentiui quod alia menbra peccauerunt cum membris meis, inde confiteor. Ego peccaui toto corpore meo cum aliis corporibus, inde confiteor deo omnibus peccatis meis, quem ego feci post qua natus fui et baptismum accepi usque in istam hora. Aut ego sum recordatus, aut non sum recordatus,

¹ piro... sacerdos] *sub l.*

² si non uult] *lege si non uult ?*

³ debui] *e corr.*

⁴ non] *sequ.ras.*

⁵ scriptura] *praem. p a.corr.*

aut sciendo peccauit, aut nesciendo, aut uolendo, aut nolendo, aut uigilando, aut dormiendo peccauit. De omnibus peccatis meis que ego feci, ego me recognosco peccatorem, inde confiteor meas culpas deo omnipotente, et angelis domini, et sancti eius, et tibi homini dei .illo.

POSTQUAM ERGO CONFESSUS FUERIT TUNC DEBET AMMONERE EUM. //

Fili karissime, si uis saluus fieri et uitam eternam possidere, atque a tartareo et diabolico zelo esset liberatum. Oportet te precepta atque mandata domini custodire et adimplere. Id est, in primis *dominum deum diligere ex toto corde tuo, et ex tota anima tua, et ex tota uirtute tua*. Deinde *proximum tuum sicut te ipsum* (Luc. 10,27). Deinde non occidere. Non adulterare. Non facere furtum. Non concupisces rem proximi tui (Ex. 20). Non facsum (!) testimonium dicere. *Honora patrem tuum et matrem* et omnes homines (Ex. 20). Et *quod tibi non uis fieri alios ne facias* (Tob. 4,16). *Abnegate [se]metipsum et sequere christum* (cfr. Matth. 16,24). Corpus castigare. Delicias non amplectere. Ieiunium amare, pauperes recreare, nudos uestire. Infirmum uisitare. Mortuum sepelire. In tribulatione subuenire. Dolentes consolare. A saeculi actibus facte alienum. Nihil amore christi preponere. Dolum in corde non retinere, pacem falsam non dare. Caritatem non derelinquere. Non iurare, ne forte periures. Veritatem ex corde et ore proferre. Malum pro malo non reddere. Iniuriam non facere, sed et facta, patienter sufferre. Inimicos diligere, maledicentes non remaledicere, sed¹ magis benedicere. Persecutiones pro iustitia sustinere. Non esse superuum, non uinolentum, non multum edacem, non somnolentum, non pigrum². Non murmuriosum, non detractor. Spem tuam in deum pone. In domino iacta cogita[tum] tuum. Bonum aliquid in saeculum uiderit deo amplificet non sibi. Malum uero semper a se factum sciad. Diem iudicii timere. Gehenna expauescere. Vitam aeternam omni concupiscentia spiritali desiderare. Mortem cotidie ante oculos suspectus habere. Actus uite tue omni hora custodire. In omni loco deum se respicere pro certo scire. Cogitationes malas in corde tuo non habere. Mox ad christum allidere // et senioris spiritali patefac, hos tuum a malo uel prauo aeloquio custodire. Multum loqui non amare. Verba uana aut risui apta non loqui. Risum multum aut excussum non amare. Lectiones sanctas libenter audire. Orationis frequenter incumbere. Mala tua preterita cum lacrimis uel gemitu cotidie in oratione deo confiteri, et de ipsis malis uel de cetero aemendare. Desideria carnis non perficere. Voluntatem propriam odire. Preceptis diuinis sanctis in omnibus obedire. Etiam si ipse sacerdos quod absit aliter agat, memoret illud dominicum preceptum, que *dicunt facere facite*, que autem *faciunt, facere nolite* (Matth. 23,3). Non uelle dicit sanctum antequam sis, sed prius esse quod uerius dicatur. Precepta dei factis cotidie adimplere. Castitatem amare. Nullum odire zelum et inuidiam non habere. Contentionem non amare. Elationem fugere. Seniores uenerare. Iuniores diligere in christi amore. Pro inimicis orare. Cum discordantibus ante solis occasus in pace redire. Et de dei misericordia numquam desperare.

Ecce haec sunt instrumenta artis spiritalis, que cum fuerint a nobis diae noctumque incessabiliter adimpleat, et in die iudicii reassignata illa mercis nobis a domino recompensabitur quod ipse promisit. *Quod oculus non uidit nec auris audiuit, nec in cor hominis ascendit, quem preparauit deus his qui diligunt eum* (I Cor. 2,9). Adiuuante domino nostro et ihesu christo. Haec omnia sanctus augustinus in synodo exposuit.

<I.> INCIPIT CANONE SANCTORUM PATRUM³. IN PRIMIS DE HOMICIDIO.

<1.> Si quis clericus homicidium fecerit, X annos exul pentur (!), post haec recipiatur in patria sua. Et compriuetur testimonium episcopi uel presbiteri, si bene egerunt poenitentiam in

¹ sed] se a.corr.

² pigrum] um sup.l.

³ patrum] sup.l.

pane et a//qua, et satisfacit parentibus cui occisit; si autem satis non facerit, non recipiatur in patria.

<2.> Si quis homicidium consiliauerit et factum fuerit, VII annos peniteat, III ex his in pane et aqua.

<3.> Si quis homicidium nolens fecerit, V annos peniteat.

<4.> Si quis uoluit homicidium facere et non potuit, III annos peniteat.

<5.> Si quis laicus aut auaritia¹ causa ut res eius inuadat occidit, VII annos peniteat, III ex his in panem et aqua. Et quadraginta dies non comedat cum alio homine nec communicet. Et si reddit praetium sanguinis aut res que male abstulit parentibus, ieiunet ebdomadas LXXVIII partes² in pane et aqua.

<6.> Si quis qualibet hominem occiderit episcopum aut presbiterum, regis iudicium sit de eo.

<7.> Si quis pro uindicta patri, aut matri, aut fratris occiderit hominem et reddit pretium sanguinis, V annos peniteat, et si componit III.

<8.> Si quis sanguinem fuderit per scandalum, quadraginta dies peniteat.

<9.> Si quis per iussionem domini sui hominem hocciderit, XL ebdomadas peniteat.

<10.> Similiter peniteat qui in bello publico occiderit hominem.

<11.> Si quis qualibet membrum uoluntarie truncauerit per iram, III annos peniteat.

<12.> Si qua mulier uoluntarie aborsum fecerit, VI annos peniteat.

<13.> Si quis alium percusserit et sanguinem fuderit uel debilitauerit, laicus XL dies, clericus duo quadragesime, diaconus aut monachus VII menses, presbiter I annum peniteat; et soluat omnia que expendit per medicos, aut quamdiu non laborat.

<14.> Si quis fratrem suum cum furore aut ira maledixerit, petat ab eo ueniam et VII dies seu amplius iuxta culpa eum satisfactione poeniteat.

<15.> Si quis rixauerit cum proximo suo, reconcilietur ad pacem, et si postea odium non ad alterutrumque de is nollet ad pacem redire, quamdiu ira tenet tamdiu in pane et aqua peniteat.

<16.> Qui per inuidiam detrahit proximum uel libenter detrahenti consentit, III dies peniteat in pane et aqua.

<17.> *Qui odit fratrem suum* uel proximum // sicut scriptum est, ut *homicida* (I Ioh. 3,15) iudicetur.

<18.> Tu autem fac secundum quod dominus dixit: *corripe eum inter te et ipsum solum, si te non audierit dic aecclesie* (Matth. 18,15-17), donec unus alteri de corde dimittatur, et sic satisfaciat ante *offeras munus* (Matth. 5,24), aut communicent³; et si noluerit conuerti, excommunicetur ab ecclesia et maneat excommunicatus, quia scriptum est: *ira enim uiri iustitia dei non operatur* (Iac. 1,20).

<II.> DE⁴ FORNICATIONE CLERICORUM.

<1.> Si quis episcopus fornicauerit, honore priuetur et duodecim annos peniteat, V ex his in pane et aqua, cum redemptione captiuorum et helemosynis plurimis, presbiter VII annos peniteat, diaconus aut monachus V. Et si ab omnibus celatum fuerit expletis profecto ieiuniis, in gradu suo recipiatur pristinos.

<2.> Si quis sacrata dei ancilla fornicauerit, episcopus XV annos peniteat, presbiter XII, diaconus aut monachus VII, clericus V, laicus III annos peniteat, tres partes in panem et aqua.

<3.> Si quis cum uxore alterius fornicauerit, episcopus XII annos, presbiter X, diaconus aut monachus VII, clericus V, laicus III annos peniteat.

¹ aut auaritia] *lege* ex meditatione aut auaritia causa

² LXXVIII partes] *lege* LXXVIII, tres partes ?

³ communicet *a.corr.*

⁴ De] *praem. ras.*

- <4.> Si quis cum cognata, aut consobrina, seu ziana, uel sorore, aut commatre adulterium commiserit, honore priuatus, episcopus XV annos peniteat, presbiter XII, diaconus aut monachus X, clericus VII, laicus V, tres partes in pane et aqua.
- <5.> Si quis per semetipsum per qualibet ingenio fornicauerit, episcopus III annos peniteat, presbiter II, diaconus aut monachus I, clericus medium annum, laicus XL dies; et si iterum aut iterum hoc fecerit, excommunicetur et cetum fratrum separetur.
- <6.> Viri qui inter foemora fornicantur, de una uice unum annum, et si iterum duo annos; si autem amplius, addatur duplum poenitentia.
- <7.> Qui concupisscit (!) mente fornicari et non est receptus a muliere, I annum peniteat.
- <8.> Qui pro turpiloquium uel aspectum mulierum coinquinatus tamen non uoluit fornicare, XX dies aut quadraginta iuxta modum culpe uel gradu suo peniteat. //
- <9.> Qui inpugnat ab spiritu fornicationis, quamdiu inpugnatur, tamdiu in pane et aqua donec ab scelera¹ maligna cogitatione.
- <10.> Qui in somnis pollutus fuerit, surgat et cantet genuflexu VII psalmi et lauet se et sic ingrediatur in aecclesia, et ipsa die in pane et aqua peniteat, et si qualiuet festa uenerit, cantet missa. Si autem non cantet missa et si ieiunare non potest, cantet L psalmos cum genuflexo aut LXXX sine genuflexu.
- <11.> Qui pollutus in somnis communicauerit, II dies poeniteat.
- <12.> Si quis de is gradibus feminarum habuerit familiaritatem et commissiones, aut oculis inlecebris, tamen in ruina non deueni, recedat ab huiuscemodi opere et I annum peniteat.
- <13.> Si quis de his gradibus osculatis feminam tantum simpliciter, VII dies peniteat. Osculum cum amplexu et inquinamentum, XX dies peniteat.

<III.> DE FORNICATIONE LAICORUM².

- <1.> Si quis laicus cum alterius uxore fornicauerit, III annos peniteat et a propria uxore se absteineat diebus poenitentiae³.
- <2.> Si quis cum uidua fornicatus fuerit, I annum peniteat.
- <3.> Si quis cum puella II annos peniteat, I ex his in pane et aqua.
- <4.> Si uirgo uirginis copulatus fuerit, sit ei uxor, si parentes eius uoluerit, et II annos peniteat.
- <5.> Si quis cum iumento aut pecoribus fornicauerit, habens uxorem II annos peniteat; si sine uxore est I annum; et de ipse pecoribus nemo manducet, sed hoccidatur et canibus proiciatur.
- <6.> Si quis cum propria matre fornicauerit, X annos peniteat, et numquam mutet ciuum nisi in diem dominico.
- <7.> Si quis ad ancillam suam intrauerit, I annum peniteat, et si filium genuerit, libera eam faciat.
- <8.> Si quis uirginem uel uiduam rapuerit aut uiolenter habuerit, III annos peniteat, in pane et aqua.
- <9.> Si quis cum uxore sua retro nupserit, XL dies peniteat, et si secundo sic peniteat quomodo de animalibus.
- <10.> Si quis in haecclesia fornicauerit, po[e]nitentiam abeat omnibus diebus uite suę et prebeat obsequium domum dei. //
- <11.> Concubinas habere numquam licuit, numquam peccatum facit, quam qui adulterium committit, non solum a communionem suspendi, sed etiam a conloquio christiani populi separatur.
- <12.> Omnis christianus abstinere se debet a propria uxore¹ sua tempore poenitentiae et quadragesimis diebus, et sabato nocti seu die dominico ante uesperum, uel diebus festis, et

¹ ab scelera] abscedat *P. in II libris I,3,12*

² laicorum] *marg.*; lacorum *a.corr.*

³ poenitentiae] *penit abbrev.*

tres ante communionem et tres post communionem, et quando ad ecclesiam uadit. Similiter et menstruo tempore, et XL dies ante partum, et XL post partum, et qui intrauerit ad mulierem his diebus, XX dies poeniteat.

<13.> Si quis habens uxorem et fornicat XI menses poeniteat, quia apostolus dicit: *unusquisque uxorem suam habeat* (I Cor. 7,2).

<14.> *Viri diligite uxores uestras, sicut christus dilexit ecclesiam* (Ephes. 5,25), quia *mulier corpus suum in potestatem non habet, sed uir* (I Cor. 7,4).

<15.> Vir cuius mortua fuerit uxor licet ei post septem menses aliam² accipere, et I annum poeniteat, et si tres duxerit, II annos poeniteat, et si quattuor aut amplius addatur ei poeniteat, sicut qui fornicat.

<16.> Cuius uxor uel maritus in captiuitate est, licet aliud maritum aut uxorem post annum accipere, melius enim est quam fornicari; et si postea redit potestatem abens, ut non requirat se mutuo.

<17.> Si quis duxerit uiduam patris, aut fratri sui uxorem, aut filiam uxoris suae, aut nouercam, aut auunculis sui uiduam, aut alium illicitum coniugium, hi tales non possunt iudicare donec separentur; postquam separati fuerint, ieiunet unusquisque ebdomadas XIII, sic tamen ut de cetero se non recognoscant.

<18.> Si quis uiolauerit aut uiolenti habuerit mulierem, aut in oste uel in quacumque locum, et illa noluit consentire, non cogatur eam ieiunare, quia inuitis fornicauit. Homini uero illi dupplum imponat ieiunium; si uxorem // habuit, ieiunet ebdomadas XLII, si est sine uxor XXIIIor.

<19.> Si quis uir habens uxorem et duxerit aliam, non est illius uxor, sed meretrix; illa tales cum christianos non communicent neque edant, aut bibant, nec in sermone aut in opere aliquis eum communicent, et non possunt poeniteri donec separentur, postea unusquisque ieiunet ebdomadas XL; digna est mulier dupplum ieiunare.

<IV.> DE FORNICATIONE MULIERUM.

<1.> Mulier nitens fornicare cum alia muliere aut per semetipsa, quod nefas est faciendi, III annos poeniteat; et si polluta fuerit, centum dies poeniteat.

<2.> Mulier menstruo tempore, non intret in ecclesia neque com[mu]nicet; si autem intrauerit uel communicauerit, XX dies poeniteat.

<3.> Mulier si mechauerit presente uiro suo, illa ieiunet menses XI, quia apostolus dicit: *unaquoque uirum suum habeat* (I Cor. 7,2).

<4.> Mulier qui uirum suum uoluntarie dimittit, nemo accipiet eam, quia dominus in euangelio dicit: *si quis dimissam duxerit mechatur* (Matth. 19,9).

<5.> Mulier qui semen uiri sui aut urinam aut stercus miscens in cibo, uel sumens ipse uel illa, ut exinde plus ametur, III annos poeniteat.

<6.> Mulier qui alterium uirum suadet, illa excommunicetur a christianis.

<7.> Mulier cuius mortuum³ fuerit uir eius et alium duxerit ante annum, illa ieiunet menses IIIor.

<8.> Mulier qui fornicat et partu suo negat, iungentes homicidium et adulterium, X annos poeniteat.

<9.> Duos fratres, duos sorores possunt in coniugio sociari. Similiter pater filius, mater et filiam.

<10.> Mulier si duobus nupserit abicienda est, separent se, et poeniteat usque ad mortem.

<11.> Mulier si diuinationes fecerit uel incantationes diaboli, I annum poeniteat aut plus secundum culpa poeniteat.

¹ uxore] u sup.l.

² aliam] ali vac. sequ. am

³ murtuum a.corr.

<12.> Mulier non licet uotum uouere sine licentia uiri sui; si noluerit uir eius ut soluat, frangatur, postea mulier VII dies peniteat.

<V.> DE HOMICIDIO MULIERUM.

<1.> Si quis nolendo suffocauerit infantem fidelem, illa ieiunet ebdomadas XIII

<2.> Si autem quis gentiles suffocauit, ieiunet ebdomadas XXVIII cum lacrimis et gemitu; quia fraudat (!) eum de presenti luce et de futura, et non sustulit eum sacerdoti, ut baptizaret (!) eum specialiter, III annos peniteat.

<3.> Si qua mulier posuerit infantem suum super cumulis, secundum consuetudinem habere solet infans iacere, non est mulieri culpa.

<4.> Si qua mulier hebria et per sua negligentia suffocauerit infantem, ieiunet ebdomadas LXXIII; si autem gentiles suffocauerit, III annos peniteat, ut enim diximus cum lacrimis et fletu.

<5.> Parentes cuius filius non baptizatus obiit, I annum peniteat, et numquam sine [a]liqua poenitentia sit.

<6.> Si qua mulier hocciderit filium suum sponte in utero ante XL, I annum peniteat, si uero postquam animatum fuerit, quasi homicida; si uero post quadraginta dies, III annos peniteat in pane et aqua.

<7.> Si qua mulier infantem suum super tectum aut in fornace pro sanitatem ponit, V annos peniteat.

<VI.> DE FALSITATE.

<1.> Si quis per falsitatem hominem hocciderit absque culpa, ut homicida iudicetur.

<2.> Si quis uoluntarie iurauerit et non custodierit sacramentum suum, ille sic iudicetur, quomodo hi qui deum contempnunt aut negant, et tarde a communione suscipiatur, nisi aliqua infirmitate aeuenerit, aut circa finem uite suae nullus potest eum absoluere. Ipse enim se obligauit et deum contempsit, sed tamen ad penitentiam annos II aut quales fuerit causa secundum gradum peniteat.

<3.> Si quis in ecclesia per sua uoluntate aut per qualibet argumentum hominem damnat¹, XI annos peniteat et hominem pro se redimat et helemosynas faciat, et amplius nullo modo iuret.

<4.> Si quis laicus per cupiditatem aut auaritia periurauerit, donec res suas // uendat et det pro anima sua, et uada[t] in monasterio aut ubi uoluerit, et peniteat usque ad mortem.

<5.> Si quis autem inuitus pro aliqua necessitate oppressus aut nesciens periurauerit, I annum peniteat.

<6.> Qui ducit alium ad periurandum et ille nescit quod periuras, sed et postea cognoscit, I annum peniteat, et si scit V. Qui autem ducit eum, si scit quia periurat et non reprehendit eum, VII annum peniteat.

<7.> Qui uero suspicatur, ut in periurium ducitur, et non parcat eum ipso nesciente, II annos peniteat, et qui periurat, I annum peniteat. Et dominus in euangelio dicit: *Non periurabis in nomine meo, neque per caelum, neque per terram, neque per capillos capitis uestri, nisi tantum si est, est, et si non, non* (cfr. Matth. 5,34-37).

<VII.> DE FURTU.

<1.> Si quis furtum capitale fecerit, et quadrupedia aut casas fregerit, uel qualiuet maiora causa, reddat cui furauit, et tres quadragesime, et haelemosynas faciat.

<2.> Si quis per necessitate furauerit ciuum aut uestimentum, isti euadatur², et XL dies aut plus aut minus secundum culpe peniteat.

¹ damnat] e corr.

² isti euadatur] isti ueniam datur P. in II libris I,7,2

<3.> Si quis per potestatem aut per qualibet ingenio quod contra legis est res aliena malo ordine inuaserit uel tulerit, III annos peniteat in pane et aqua. Et si domum uel area incenderit, similiter peniteat.

<4.> Si quis sepulchrum uiolauerit, V annos peniteat.

<5.> Qui hominem iterantem aut errantem uendiderit, ille inter christianos non debet requiem habere, donec inueniat quod uendidit, et si inuenerit non potuerit, redimat alio pro illo in eo pretio et X menses peniteat; si autem nec ipsum hominem nec pretium habuerit, III annos peniteat.

<6.> Si quis usura undecumque exhigerit, V annos peniteat; apostolus dicit: *neque auari regnum dei possidebunt* (I Cor. 6,10).

<7.> Si quis clericus habet superflua¹, det pauperibus, et si non, excommunicetur.

<8.> Si quis commederit et communicauerit, VII dies peniteat, alii dicunt XL.

<VIII.> DE HEBRIETATE.

<1.> Si quis per ebrietatem uomerit, si per infirmitate septem dies peniteat; si autem non est infirmus XL //

<2.> Si quis sacrificium uomerit, XL dies peniteat; si in igne progecit, C psalmos cantet; si cane lambuerit, C dies peniteat.

<3.> Si quis propria uoluntate se inhębriaberit, XL dies peniteat, si per contentu C

<4.> Si quis sacrificium uomerit, si autem media nocte, III dies peniteat, si ad matutinum I

<5.> Si quis sacrificium neglegenter in terra ceciderit, L psalmos cantet cum uenia; si autem inuentus non fuerit locus a scopis mundetur, et ab igne comburatur et cinis sub altare abscondatur, sacerdos tre (!) dies peniteat.

<6.> Si tantum de calice distillauerit super altare, sorbeat gutta minister, et IIIor dies peniteat; si per linteo ab alia linteamina intrauerit, V dies peniteat, si at tres VII dies, si ad quattuor XV; et linteamina ter uicibus lauentur calicem subtus positus, et aqua lauationis bibat.

<7.> Si quis superflua uentris saturitatem dolorem senserit, I dies (!) peniteat, si usque ad uomitum VII dies peniteat.

<8.> Si quis mulier nolendo aut per ebrietatem infantem suum suffocauerit baptizatum, ieiunet menses XV; si autem paganum, ieiunet menses XXVI cum lacrimis et gemitu, quia fraudauit eum de presenti luce, eo quod non fuit baptizatus.

<9.> Infans infirmus commendatus presbitero, si per neglegentiam eius mortuus fuerit sine baptismo, presbiter deponatur, et si per parentum neglegentia, III annos peniteat in pane et aqua.

<10.> Si quis de ministerio sanctę ecclesię qualiuet opus fraudauerit aut neglexerit, si per cupiditatem aut auaritiam uel gloria secularia, VII annos peniteat.

<11.> Sacrificium non est accipiendum de manu sacerdo[tis], qui orationem et lectionem secundum ritum non possunt implere.

<12.> Quicumque sacerdos penitentiam negauerit conuertenti, reus erit animarum et pro eis reddet rationem in die iudicii.

<13.> Si porcus aut pullus commederit humanum² sanguinem, nemo manducet neque seruetur ad semen, sed hoccidatur et a³ canibus tradatur. // Si quis commederit, III annos peniteat.

<14.> Si quis manducauerit sanguinem aut morticinum et non fuerit inuitus, XXX dies peniteat.

<15.> Si quis patrem aut matrem de uerbo exhonoraauerit aut manum erexerit in iracundia, III annos peniteat.

¹ superflua] a *sup.l.*

² humanum] hunum *a.corr.*

³ a] *sup.l.*

<16.> Qui multa mala fecerit, hoc est, homicidium, adulterium, furtum, falsum testimonium, periurium et alia plura, eat in monasterio et satisfaciat omnia que mala gessit, et peniteat usque ad mortem, quia per confessionem, et lacrimas, et iemitu, et satisfactionem et emendationem uitiorum *remittuntur ei peccata* (cfr. Luc. 7,;47). Nam si aliquis in se uel paruum peccatum celauerit, sciat se exinde *rationem redditurum*, quia scriptum est, ‘nullum peccatum inultum dimittit deus’, hoc est sine uindicta, quia si non iudicamur hic per penitentiam, iudicat illa deus per seueritatem in die iudicii. Tantum consideret quodcumque facit propter regnum caelorum, cum summo desiderio faciat, sicut scriptum est: *hilare enim datorem diligit deus* (II Cor. 9,7).

† INCIPIT ORDO PENITENTIE. CUM UENERIT PENITENS AD CONFITENDUM DICAT PRIUS SACERDOS INTRA SE HANC ORATIONEM.

Domine deus omnipotens propitius esto michi peccatori, ut cum digne possim tibi gratias agere, qui me indignum propter misericordiam tuam ministrum me fecisti officio sacerdotali, et me exiguum humilemque mediatorem constituisti orare et intercedere ad dominum nostrum ihesum christum pro peccantibus et ad penitentiam reuertentibus. Ideoque domine dominator qui *omnes homines uis saluos fieri, et ad agnitionem ueritatis uenire* (I Tim. 2,4), qui *non uis mortem peccatori set ut conuertatur et uiuat* (cfr. Ezech. 18,23; 33,11), suscipe orationem meam quam fundo ante conspectu clementię tuę pro peccatis meis et pro eorum qui ad penitentiam uenerunt, ut tua gratia saluati pariterque nos ab omni culpa liberare digneris. per.

TUNC SACERDOS INTERROGET PENITENTEM. QUID TU A NOBIS UENISTI FRATER. RESPONDEAT. Volo ut det michi^{nobis} penitentiam et confessionem. Promictitis recipere ueram penitentiam.¹ INTERROGA EUM.

Videte fili, ne cum aliquo homine non habeatis hodium et debitum. Et illi respondeant: Non. Et sacerdos dicit: // Tradite uos per istam crucem ad deum patrem omnipotentem et filium et spiritum sanctum. Qui uos perducatur ad uitam ęternam.

TUNC SACERDOS INTERROGET EUM DE CREDULITATE.

Credis in deum patrem omnipotentem creatore cęli et terre. RESPONDEAT. Credo. Credis et in ihesum christum filium eius unicum dominum nostrum. RESPONDEAT. Credo. Credis in spiritum sanctum, sanctam ecclesiam catholicam sanctorum. Credo. Credis in patrem et filium et spiritum sanctum tres persone sunt et unus deus. RESPONDEAT. Credo. Credis quod dominus noster ihesus christus natus fuit de beata uirgo maria, et uirgo fuit ante partum et post partum et semper permanet uirgo. RESPONDEAT. Credo. RESPONDEAT (!). Credis quod dominus noster ihesus christus fuit passus crucifissus mortuus et sepultus, tertia die resurrexit a mortuis, ascendit ad celos, sedet ad dexteram dei patris omnipotentis. RESPONDEAT. Credo. Credis quod omnis homo debet resurgere in forma de triginta annorum et recipere bonis bona, malis mala. [RESPONDEAT.] Credo. Credis quod per ueram penitentiam [et] elemosinam accipiat homo ueram indulgentiam. RESPONDEAT. Credo. Vis dimictere illis qui in te peccauerunt, ut deus dimictat tibi omnia peccata tua. RESPONDEAT. Volo. Vis renuntiare // diabolo et omnibus operibus eius. RESPONDEAT. Volo. Vis agere penitentiam ex omnibus peccatis uestris et conuertere de uia mala ad bona. Volo.

TUNC SACERDOS DICAT.²

Iungite manus uestras ad deum patrem omnipotentem.

In manus tuas domine commendo spiritum meum (Ps. 30,6; Luc. 23,46). III Vicibus.

Suscepimus deus misericordiam tuam in medio templi tui. Secundum nomen tuum ita, et laus tua in fines terre iustitia plena est dextera tua (Ps. 47,10-11).

PSALMUS. *Magnus dominus et laudabilis nimis* (Ps. 47). Gloria patri et filio. Totum *Suscepimus*.

INCIPIT ORATIO SUPER EOS.

Te inuocamus domine sancte pater omnipotens ęterne deus, super hos famulos tuos et famulas, tibi genua flentes et omnia peccata sua confitentes, ut ab omnibus facinoribus eorum absoluti, in tua lege conuerti facias. Qui in cinere et cilicio aspersos, sicut in nineue ciuitas

¹ Promictitis... penitentiam] *lege*: Promictitis...? Promittimus

² Tunc... dicat] *in ras. add. p.corr.*

que plantum populi sui aperuisti portas celorum (cfr. Ion. 3-4). Pe[r] ipsum te domine deprecamur, ut erigas elisum, soluas compeditum, cures uulneratum. Tu enim latronem pendentem in crucem bona promictere dignatus es dicens: *Hodie mecum eris in paradiso* (Luc. 23,43). Ita uic penitenti omnia peccata dimicte. Confiteri enim non dubitet, qui peccare non dubitauit. Ipso domino dicente: *nolo morte peccatoris, set // ut conuertatur et uiuat* (cfr. Ezech. 18,23; 33,11). Viui[fi]ca eum a morte secunda, ut non sit in tormentis. *Cor mundum crea in eis*¹*eum domine, et spiritum rectum innoua in uisceribus eorum*^{eis}⁽¹⁾ (Ps. 50,12), ut de eorum conuersationem matrem ecclesiam facias exaltare. Per.

ORATIO.

Septe sunt remissiones peccatorum per quas nobis omnipotens deus peccata dimitti: Prima remissio per baptismum. Secunda per martyrium. Tertia per penitentiam. Quarta per elemosynam. Quinta iusta illud quod dicit apostolus: *Quod conuerti fecerit peccatorem ab errore uie sue*. Sexta *in caritate non ficta* (II Cor. 6,6). Septima per indulgentiam.

Tria sunt que non remicuntur neque in hoc seculo neque in futuro: Primum qui bla[s]femat² deum. Secunda qui desperat se de misericordia dei. Tertia qui non credit esse resurrectionem.

Sex peccata habuit adam, superbiam, homicidium, sacrilegium, furtum, fornicationem, auaritiam. Superbiam abuit quia plus uoluit esse in sua potestate quam dei. Sacrilegium habuit quia plus credidit diabolo quam deo. Homicidium fecit quia se ipsum prostrauit in morte nam antea mortalis³ fuit. Furtum habuit quia uetitum a domino comedit. Fornicationem habuit quia serpentinam suasionem a diabolo corruptus est. Auaritiam habuit quia plus quam ei necessarium fuit appetiuit. Hec omnia sanctus augustinus in sinodo suo exposuit. //

Septem sunt apud⁴ inferos plagas que animas reproborum cruciant legimus imminentes. Prima est calor ignis. Secunda frigus. Tertia uermis. Quarta famis. Quinta sitis. Sexta fumus. Septima fetor. Has plagas patitur qui de aliquo grauiori crimine in hoc seculo non uult habere penitentiam fructuosam agere. Vt ait beatus gregorius: ‘Omne crimen peccata est. Non omne peccatum crimen est.’ Crimina namque principalia⁵ septe sunt. Idest auaritia, superbia, homicidium, furtum, sacrilegium⁶. Qui unum ex his criminibus in seculo commiserit, et hic illud per fructum penitentiam non corresserit, profecto in inferno his septe plagis torquebitur sine fine mansurus. Nam diues ille, de quo ueritas mentionem fecit, de suo non dedit alienum non abstulit, set pro solo auaritie crimine in inferno semper positus ardebit (cfr. Luc. 16,19-31?). Si dicat michi aliquis de illo, iam fuit et modo est in inferno. Ego autem dicam: fuit et modo est et semper erit, quia qui semel pro aliquo crimine in inferno mersus fuerit, semper illic ardebit et semper illic esse habebit. //

In primis PSALMUS. *Domine ne in ira tua I* (Ps. 6). *Beati quorum remisit* (Ps. 31). *Domine ne in ira tua II* (Ps. 37). *Miserere mei deus* (Ps. 50). *Domine exaudi I* (Ps. 101). *De profundis* (Ps. 129). *Domine exaudi II* (Ps. 142).

INCIPIT LITANIA.

Exurge domine adiuua⁷ nos. Et libera nos propter nomen tuum.

Kyrie leyson III uicibus. Christe eleyson III uicibus. Christe audi nos.

¹ eis] es *a.corr.*

² bla[s]femat] *e.corr.*

³ mortalis] *lege immortalis?*

⁴ apud] *e.corr.*

⁵ principali *a.corr.*

⁶ sacrilegium] *sc. fornicatio, gula sicut in Collectanea Ps.-Beda, ‘de septe peccatis adae’*

⁷ adiuua *a.corr.*

Pater de celis deus, miserere nobis.
Filius redemptor mundi deus, miserere.
Spiritus sancte deus, miserere nobis.
Pater misericordiarum, miserere nobis.
Sancta trinitas et unus deus, miserere
nobis.
Sancte sanctorum deus, miserere nobis.
Sancta MARIA, ora [pro nobis].
Sancta mater domini, ora
Sancta mater luminum, ora.
Sancta mater castitas, ora.
Sancta regina celorum, ora.
Sancta uirgo uirginum, ora.
Sancta dei genetrix, ora.
Sancte Michael, ora.
Sancte Gabriel, ora.
Sancte Raphael, ora.
Omnes sancti angeli et archangeli, orate
pro nobis.
Omnes sancti troni et dominationes,
orate.
Omnes sancti cherubyn et seraphyn,
orate.
Sancte abraam, ora.
Sancte ysaac, ora.
Sancte iacob, ora.
Sancte moysen, ora.
Sancte aaron, ora.
Sancte esayas, ora.
Sancte hieremias, ora.
Sancte helyas, ora.
Sancte iohannes baptista, ora
Omnes sancti patriarche et prophete,
orate.
Sancte petre, ora.
Sancte paule, ora.
Sancte andreas, ora.
Sancte iacobe, ora.
Sancte IOHANNES, ora
Sancte thomas, ora. //
Sancte iacobe, ora.
Sancte phylippe, ora.
Sancte Bartholomee, ora.
Sancte matheę, ora.
Sancte symon, ora.
Sancte tatdeę, ora.
Sancte mathya, ora.
Sancte barnabas, ora.
Sancte lucas, ora.
Sancte marce, ora.

Sancte hieronime, ora.
Sancte NICOLAE, ora. //
Sancte iuuenale, ora.
Sancte cassię, ora.
Sancte maxime, ora.
Sancte Alesię, ora.
Sancte donate, ora.
Sancte fortunate, ora.
Omnes sancti pontifices et confessores,
orate.
Omnes sancti doctores, orate.
Sancte Benedicte, ora.
Sancte maure, ora.
Sancte placide, ora.
Sancte basile, ora.
Omnes sancti monachi et heremite, orate.
Sancta helisabeth, ora.
Sancta felicitas, ora.
Sancta perpetua, ora.
Sancta agatha, ora.
Sancta agnes, ora.
Sancta lucia, ora.
Sancta cecilia, ora.
Sancta anastasia, ora.
Sancta praxedis, ora.
Sancta barbara, ora.
Sancta scolastica, ora.
Sancta fausta, ora.
Sancta christina, ora.
Sancta firmina, ora.
Sancta elena, ora.
Sancta Sauina, ora.
Omnes sancte uirgines, orate.
Omnes sancte uidue, orate.
Omnes sancti et sancte dei, intercedite.
Propitius esto, parce nobis domine.
Propitius esto, fac nobis misericordia.
Ab omni malo, libera [nos].
Ab omni peccato, libera.
Ab ira tua, libera.
A furore tuo, libera.
A culpis multis, libera.
A gladio et fame, libera.
A clade et tempesta, libera.
A persecutione inimici, libera.
A morte perpetua, libera.
A morte repentina, libera. //
Ab insidiis diaboli, libera.
Ab omnis operibus eius, libera.
A penis inferni, libera.

Omnes sancti apostoli et euangeliste,
orate.
Omnes sancti discipuli domine, orate.
Sancte stephanę, ora.
Sancte line, ora.
Sancte Clete, ora.
Sancte clemens, ora.
Sancte xiste, ora.
Sancte corneli, ora.
Sancte urbani, ora.
Sancte appolenari, ora.
Sancte laurenti, ora.
Sancte uincenti, ora.
Sancte anestasi, ora.
Sancte pangrati, ora.
Sancte antime, ora.
Sancte ualentine, ora.
Sancte Gregori, ora.
Sancte sauine, ora.
Sancte Sebastiane, ora.
Sancte crisochone, ora.
Sancte iohannes et paule, ora.
Sancti cosma et damiane, orate.
Sancti prime et feliciane, orate.
Sancti ypoliti et CASSIANE, orate.
Sancti IIIor coronati, orate.
Sancti VIItem fratrum, orate.
Sancti VIItem dormientem, orate.
Sancti XL martyres, orate.
Omnes sancti martyres, orate.
Sancte siluester, ora.
Sancte leo, ora.
Sancte Gregorii, ora.
Sancte Ambrosi, ora.
Sancte Augustine, ora.
Sancte martine, ora.

A geemna (!) ignis, libera.
Per aduentum tuum, libera.
Per incarnationem tuam, libera.
Per genitri[ti]onem tuam, libera.
Per natiuitatem tuam, libera.
Per apparitionem tuam, libera.
Per baptismum tuum, libera.
Per ieiunium tuum, libera.
Per passionem tuam, libera.
Per mortem tuam, libera.
Per sanctum sepulchrum tuum, libera.
Per sanctam resurrectionem tuam, libera.
Per gloriosam ascensionem tuam, libera.
Per aduentum spiritu sanctum paraclitu,
libera.
Per aduentum tuum secundum, libera.
In die iudicii, libera.
In die iudicii. Salua nos.
Nos peccatores, te rogamus.
Vt nobis subueniat, te rogamus.
Vt pacem nobis dones, te rogamus.
Vt remissionem peccatorum nobis¹
dones, te rogamus.
Vt indulgentiam (!) nobis dones, te
rogamus.
Vt locum penitentię nobis donare
digneris, te rogamus.
Oues tue sumus, te rogamus.
Saluator mundi, te rogamus.
Filii dei, te rogamus.
Agne dei, te rogamus.
Agnus dei qui tollis peccata mundis,
exaudi nos domine.
Agnus dei qui tollis peccata mundis,
parce peccatis nostris, domine.
Agnus dei qui tollis peccata mundis,
miserere nobis.

Christe audi nos. [K]yrie. [Chris]te. Kyrie.
[P]ater noster. Et ne nos [inducas].

Saluos fac seruos tuos. RESPONDEAT. Deus meus sper[antes] (cfr. Ps. 85,2).
Micte eis domine aucilium de sancto. RESPONDEAT. Et de syon (cfr. Ps. 19,3).
Conuertere domine aliquantulum. RESPONDEAT. Et depreca[bilis] (cfr. Ps. 88,13). //
Fiat domine misericordiam tuam super nos. RESPONDEAT. Sicut sperauimus (cfr. Ps. 32,22).
Domine exaudi orationem meam. RESPONDEAT. Et clamor meus (cfr. Ps. 101,2).
Dominus uobiscum. RESPONDEAT. Et cum spiritu tuo.

¹ nobis] *praem.* V[t]

Inclina domine aurem tuam ad preces nostras, et respicere digneris super hos famulos tuos et famulas, qui hodie in manibus meis sunt tradituri. E[st] sicut petrum de mare et tres pueros de camino ignis, ita liberare digneris hos^{unc} famulos^{um} tuos^{uum} et famulas de pena inferni et de potestate diaboli, ut culpas uobis parkas et peccata dimictas, ut iusti^{um} et immaculati^{um} sint redempti^{um} in die iudicii per resurgentem a mortuis ascendentem in celis, ipso adiuuante.

Suscipiat christus uestram^{tuam} penitentiam et donet¹ uobis^{tibi} ueram indulgentiam, ut possitis consequi illius ueniam usque in futura secula. Per.

ORATIO.

Commendamus tibi domine famulos^{um} et famulas^{am} tuas^{am}, ut uitam presenti ab omni malo eos^{um} eripias, et intercedente beata dei genetricem maria cum omnibus sanctis tuis ad uitam eos perducatur eternam.

ORATIO.

Deus qui proprium est miserere semper et parcere, suscipe deprecationem nostram famuli et famule tue ad confessionem et penitentiam ueramque emendationem, et ueniam tue pietatis inspiratione conpunctis quos delictorum catena constringit mise//ratio tua pietatis absoluat. Per.

Praesta quaesumus domine deus omnipotens hos famulos et famulas tuas digne penitentiae fructum, ut ecclesiam tuam sancte ab eius integritate deuiarunt peccando, missorum ueniam consequendo reddantur innoxios. Per.

Omnipotens sempiternus deus, ne nos permictas perire, quia tua creatura sumus, concede nobis spatium penitentiae, ut ante diem exitus nostri per ueram confessionem tibi domine placere ualeamus. Per.

ORATIO.

Exaudi nos domine qui exaudisti ionam de uentre ceti, exaudi nos clamantes, qui exaudisti dauid prostratum et iacentem in cilicio, clamantes et dicentes: Parce parce et defende plasma tua dominus deus noster. Per.

Suscipere digneris domine sancte pater omnipotens eterne deus famulos^{um} et famulas^{am} tuas^{am}, qui uiam erroris dimictere cupiunt et uiam ueritatis ad te currere desiderant, praesta queso, ut sicut per aquam et spiritum sancto dono tue gratiae regenerati sunt. Concede propitius, ut per ueram eorum confessionem sanctae tue ecclesiae aggregari mereantur. Per.

ORATIO.

Omnipotens sempiternus deus qui plus uitam quam mortem expectans, et dixisti *nolo mortem peccatoris set ut conuertatur et uiuat* (cfr. Ezech. 18,23; 33,11), respice propitius super // hos famulos et famulas tuas, qui se tibi peccasse grauiter confessus est; tribue eis indulgentiam clementissime pater. Qui israhelitico populo peccanti per penitentiam peccata condonasti. Qui dauid famulo tuo per confessionem ueniam tribuisti (cfr. II Sam. 12). Qui umeris tuis ouem perditam reduxisti ad supernum ouilem (Luc. 15,4-5). Qui publicani preces exaudisti et in confessionem lacrimantem peccatricem non despexisti (Luc. 7,37-50). Qui paralitico peccata dimisisti et ab infirmitate sua sanasti (Luc. 5,18-26). Qui filio adulescenti post dissipata substantiam penitentiam stolam candidam largiri dignatus es (Luc. 15). Qui latroni in cruce

¹ donet] e corr.

suspensio peccata remisisti et eum ad paradisi delicias perduxisti (Luc. 23,40-43). Qui petrum lacrimantem suscepisti ad pristinum gradum illum restituisti (cfr. Luc. 22,61). Quaesumus domine huic famulo tuo penitenti¹, clementer ignosce, qui ultionem quod uiro denique in ecclesia tua partem sui corporis perdat, ut gres (!) tuus detrimentum patiat, set pro clementia tuae pietatis audire mereantur. *Venite benedicti patris mei, possidete uitam perpetuam* (cfr. Matth. 25,34). Qui cum patre uiuit et regnat cum spiritu sancto in trinitate inseparabilem in secula seculorum. Amen. //

ORATIO.

Eccede (!) fili ad deum in conspectu angelorum eius et confiteri peccata sua, quia ipse dixit: *Qui me confessus fuerit coram hominibus confitebor et ego eum coram patrem (!) meo* (Matth. 10,32). Et in psalmo: *Reuela domino uiam tuam. et ipse te enutriet* (Ps. 36,5). E[t] iacob apostolus: *Confitemini alterutrum peccata uestra* (Iac. 5,16). Fili noli erubescere confiteri peccata tua, quia dominus dicit in euangelio: *Peccator in quacumque ora conuersus fuerit ad penitentiam, et ingemuerit uita uiuet* (Ezech. 18,33). Et in alio loco: *Gaudium super uno peccatore penitentiam agentem quam supra nonaginta nouem iustos qui non indiget penitentiam* (Luc. 15,7). Et dominus dixit: *Qui me confessus fuerit coram hominibus* (Matth. 10,32). Noli erubescere fili. Nos omnes peccatores sumus, nemo est sine peccato nisi solus deus. Sicut dicit beatus iohannes apostolus: *Si dixerimus quia peccatum non habemus, nos ipsos seducimus et ueritas in nobis non est* (I Ioh. 1,8). Et dominus: *Penitentiam agite approuinquauit enim regnum celorum* (Matth. 4,17). Et beatus petrus: *Penitentiam igitur ut deleantur peccata uestra* (Act. 3,19). Et beatus gregorius dixit: 'Caro enim leta traxit ad culpam, afflictata reducat ad ueniam.' Ideo dico uobis, nolite² erubescere peccata uestra, quia in multis offendimus. Nunc dicite quicquid peccasti in periurio, in adulterio, // in furto, uel in quacumque modis; fili tene memorialiter 'pater noster' et 'credo in deum', quia omnes christiani memo[ri]ter tenere debet.

Confiteor deo, et beate marie semper uirgini, et beato michaeli archangelo, et beato iohanni bapteste, et sanctis apostolis petro et paulo, e[t] beato leutherio et cassiano, et beato iuuenale, cum omnibus sanctis et tibi patri. Mea culpa III uicibus³, peccaui per superbiam in multa mea mala iniqua et pessima cogitatione, locutione, pollutione, suggestione, delectatione, consensu, uerbo et opere, in periurio, in adulterio, in sacrilegio, omicidio, furto, falso testimonio, peccaui uisu, auditu, gustu, odoratu et tactu, et in omnibus uitiis meis malis. Precor beatam mariam semper uirginem, et omnibus sanctis, et isti^{os} sancti^{os}, et te pater orare et intercedere pro me peccatore, dominum nostrum ihesum christum.

Misereatur uestri omnipotens deus, ut deus dimictat omnia uestra culpa et omnia uestra peccata, preterita, presentia, et de uentura uos custodiat. Liberet uos deus ab omni malo salute, et confirmet et confortet uos deus in omni opere bono⁴, et perducatur uos dominus cum suis sanctis angelis in uitam heternam.

Saluos fac seruos et ancillas tuas. R\ Deus meus sperantes (cfr. Ps. 85,2).

Micte eis domine auxilium. R\ Et de syon tuere (cfr. Ps. 19,3).

Domine exaudi orationem meam. R\ Et clamor meus (cfr. Ps. 101,2). //

¹ peni ras. tenti

² nolite a.corr.

³ uicibus] sup.l.

⁴ bona] a.corr.

Omnipotens sempiternae deus qui dedisti famuli et famule tuę in confessione uere fidei eterne trinitatis gloriam agnoscere et in potentia magestatis tuę adorare unitatem; quaesumus ut eiusdem fidei firmitatem ab omnibus semper muniamur aduersis. Per.

INCIPIIT DE ABSOLUTIONE.

Ex parte dei omnipotentis et beate marie semper uirginis et oratione omnium sanctorum tibi sit datum atque confirmatum iudicium penitentie. Sicuti sanctę canones commendant¹ pro omnibus tuis peccatis pro morte et pro uite, sic habeas in numero pro tuis peccatis triginta annis tale conditione, si tibi plus uenias² faciat suum uelle, et similiter. Et si est placitum de domino deo illo ponat istam penitentiam in loco delictis, ut nostra crudelitas non fiat nec tuum detrimentum ut diabolus non possit dicere, ut tu³ non habeas acceptam ueram penitentiam pro diebus uite tuę. Et si tu morieris, sine altera penitentiam per istam penitentiam semper tristabit uiam tuam ante deum in die iudicii. Et ego dico tibi per misericordiam dei omnipotentis et beate marie semper uirginis et omnibus sanctis, et per fidem tuam et per baptismum tuum quod alter pro te promisit si aliquam bonam operationem fecisti, aut in antea⁴ facere debemus per istam penitentiam et ceteras penitentias⁵ quas acceptas habeas a spiritali hominibus. Si tu morieris sine altera penitentiam et sine altero iudicio, per istam penitentiam et per istum iudicium tu sis representatus ante deum in die iudicii, ut diabolus non possit dicere, ut non habeas acceptam penitentiam pro omnibus peccatis tuis pro diebus uite tuę.

ORATIO PRO PACE.

Deus a quo sancta desideria recta consilia et iusta sunt opera, da seruis tuis illam quam mundus dare non potest pacem, ut et corda nostra mandatis tuis dedita et ostium sublata formidine, tempore sint tua protectione tranquilla. Per.

SECRETA.

Deus qui credentes in te populos nullis sinis concuti terroribus, dignare preces et ostias dicite tibi plebis suscipere, ut pace a tua pietate concessa christianorum fines ab omni oste facias esse securos. Per.

ORATIO AD COMPLENDUM.

Deus auctor pacis et amator, quem nosse uiuere cui seruire regnare est, protege ab omnibus inpugnationibus supplices tuos, ut qui in defensione tua confidimus, nullius hostilitatis arma timeamus. Per.

Vis⁶ uultis in mestimentum (!) penitentie, uolumus⁷, et ego ex parte dei et omnium sanctorum hoc penitentia et hoc confessio fiant testimonium ante deum, ut inimicus non possit nocere anime tuę.

Ex parte dei et omnium sanctorum bonum quod fecisti ab infantia tua, et alii pro te facient et sacrificia et officia que a catholicis per uniuersum mundum aguntur habeas partem ut boni christiani, et si ad aliam penitentiam non poteris peruenire, hanc penitentiam et confessionem sis saluus ante deum. //

¹ commendaat *ms.*

² ueniat *a.corr.*

³ tu] *in ras.*

⁴ antea] an *sup.l.*

⁵ penitentia *ms.*

⁶ Vis... ante deum] *add. al.manu? marg.*

⁷ uolumus] *sup.l.*

SEQUITUR.

<1.> Si quis clericus homicidium fecerit, X anni peniteat, post hec recipiatur in patria sua, et prohibetur testimonium episcopi uel presbiteri; si bene egerit penitentiam suam in panis et aqua, et satisfaciat parentibus cui occisit. Si autem non satisfecerit non recipiatur in patria sua.

EX CONCILIO YBERITANO. DE OMICIDIO.

<2.> Si quis enim homicidium consiliauerit, VII anni peniteat, tres ex his in panis et aqua.

EX DECRETO PATRUM.

<3.> Si quis homicidium nollens fecerit, V anni peniteat.

IUDICIUM COMEANI.

<4.> Si quis laicus ex meditatione rixe aut auaritię causa aut res¹ eius inuadat occiderit hominem, VII anni peniteat, III ex his in panis et aqua, et si redit pretium sanguinis aures, que male abstulit parentibus, ieiunet ebdomadas XXVIII, tres in panis et aqua.

SEQUITUR.

<5.> Si quis sine meditatione fecerit per rixa aut per uino et occiderit hominem, III anni peniteat, I ex his in panis et aqua.

SEQUITUR.

<6.> Si quis pro proprio quod absit patrem aut matrem occiderit, relinquat arma in monasterio, peniteat usque ad mortem ubi potuerit.

SEQUITUR.

<7.> Si quis episcopus aut presbiter uel diaconus aliquid occiderit, regis iudicium sit de eo.

SEQUITUR. //

<8.> Si quis monachus aut clericus occiderit, episcopus erit iudicium, relinquat arma et eat in monasterio et septem anni peniteat.

CONCILIO NICENO DE OMICIDIIS.

<9.> Si quis pro uindicta patris aut fratris occiderit hominem et non redit pretium sanguinis, tres anni peniteat, et componit sic, I annum aut dimidium peniteat.

SEQUITUR.

<10.> Si quis per scandalum uolens fecerit homicidium, decem an[n]i peniteat.

EX CONCILIO YRARDENSE.

<11.> Si quis sanguinem fuderit per scandalum uolens fecerit homicidium, X anni peniteat.

SEQUITUR.

<12.> Si quis sanguinem fuderit per scandalum, XL dies peniteat. Similiter et qui in bello publico occiderit hominem.

SEQUITUR.

<13.> Si quis qualibet membrum uoluntarię truncauerit hominem, III anni peniteat.

¹ res] rex *a.corr.*

DE MULIERE QUAE¹ INFANTEM SUUM NECAT².

<14.> Si mulier paruulum necat sine baptismo, VII anni peniteat, III ex his in panis et aqua.

<15.> Si quis occiderit paruulum in utero post XL dies, ut homicida peniteat III anni aut octo XLgesime in penitentia³.

IUDICIUM COMMEANI.

<16.> Si quis laicus percusserit, aut sanguinem fuderit, uel debilitauerit, la[i]cus XL dies peniteat, clerici duę quadragesime, diaco//nus et monachus IIII menses, presbiter I annum, et soluet omnia, quę expendit in medico⁴, aut quandiu non laborauerit.

GREGORIUS.

<17.> Si quis epyscopus fornicauerit, honorem priuetur et XII anni peniteat, V ex his in panis et aqua, cum rede[m]ptione captiuorum, et elemosynas plurimas faciat; presbiter VII et si celatum fuerit ab hominibus, expleto ieiunium, in gradu suo recipiatur pristino.

SEQUITUR.

<18.> Si quis de his gradibus fornicauerit aut sodomite, idest cum masculo aut cum femina de retro, aut cum quadrupedia, episcopus XXV anni peniteat, V ex his in panis et aqua et numquam in gradu suo recipiatur, set peregrinando penitentiam finiatur; si presbiter est, XX anni peniteat, V ex his in panis et aqua, similiter peregrinando et ad honorem non recedat. Clericus XV anni peniteat, III e (!) his in panis et aqua et ad officium sacerdotale non accedat; laici X anni peniteat, I ex his in panis et aqua et numquam cum alia dormat.

EX MAGONENSI CONCILIO.

<19.> Si quis cum sacrata dei ancilla fornicauerit, epyscopus XV anni peniteat, presbiter X, diaconus et monachus VI, clericus et laicus IIII, unum ex his in panis et aqua.

<20.> Si quis cum alterius uxorem fornicauerit, epyscopus XII, // presbiter X, diaconus et monachus V, clericus et laicus III.

EX CONCILIO NICENO.

<21.> Si quis cum cognata, aut cum consobrina, aut sororem, uel cum commatre⁵, seu tiana adulterium comiserit, honore priuetur. Epyscopus XII anni peniteat, prebiter X, diaconus et monachus VII, clericus et laicus III, tertia pars in panis et aqua.

DE FORNICATIONE. CONCILIO GREGORII.

<22.> Si quis per semetipsum per qualibet ingenium fornicauerit, epyscopus III anni peniteat, presbiter II, diaconus et monachus I, clericus dimidium, laicus XL dies, tertia pars in panis et aqua.

EX DECRETO PATRUM.

<23.> Si quis cum uidua fornicauerit, unum annum peniteat.

<24.> Si quis cum uxore sua retro nupserit, quomodo de animalia, sic penitentiam XL ebdomade.

SEQUITUR.

¹ q. *abbreviatio*

² quae... necat] *marg.*

³ penitentię *a. corr.*

⁴ medico] *e corr.*

⁵ commatre] *com sup. l.*

<25.> Mulier non licet uotum uouere sine licentia uiri sui, si uoluerit uir eius, ut soluat, frangendum est, postea VII dies [peniteat].

<26.> Qui multa mala fecerunt, hoc est homicidium, adulterium, furtum, falsum testimonium, periurium, et alia plura, eat in monasterio et satisfaciat de omnia, que male gessit, et peniteat usque ad mortem, quia per confexionem (!) et gemitum et satisfactionem et emendationem uitiorum remictuntur ea peccata.

SEQUITUR.

<27.> Nam si aliquis in se uel paruum peccatum¹ sciat se exinde *ratione redituros*, secundum illud quod dominus de uerbo otioso (cfr. Matth. 12,36), quanto magis nos si // plura peccata uel² crimina, que commisimus recelauerimus, quia scriptum est: Nullum peccatum inultum dimittit deus, hoc est sine uindictam; quodsi non iudicemur hic per penitentiam, iudicat illam deus per ueritatem in iudicio. Nam et de satisfactione dicit: *Quacumque hora conuersus fuerit peccator ad penitentiam, omnia peccata eius in obliuione traduntur* (Ez. 33,12-13).

<28.> Qui falsum testimonium dixerit contra colibet christianus, prius penset dampnum quod passus est homo ille pro ipso testimonio, et reddat aut ipsum hominem aut in pauperibus. Post hec secundum honorem suum penitentiam habeat: Episcopus VII annis. Presbiter V. Diaconus et monachus III. Clericus II. Laicus I; tertia pars in panis et aqua.

DE FALSO TESTIMONIO.

<29.> Qui falsum testimonium dixerit et mortuus fuerit, ex his de hō³ absque culpa illum talem homicidia iudicandum est, et XXVIII ebdomade peniteat.

SEQUITUR.

<30.> Omnis itaque christianus abstineret se debet a propria uxore tempus penitentię, et quadragesime, et sabato seu dominica diebus usque ad noctem, et menstruo tempus, et quadraginta dies post partum seu ante partum, et in his diebus absteat se⁴ mulieres ab ecclesia et communione.

<31.> Mulier menstruo tempore non intret in ecclesia nec communicet, nec sanctimoniales nec laica. // Si quis intr[auerit], XX dies peniteat.

DE MENSTRUO TEMPORE.

<32.> Vir qui intrauerit ad⁵ mulierem menstruo tempore uel post partum seu ante⁶ partum post quadragesimo, XX dies peniteat. Si quis nupserit sabato nocte, aut dominico die ante⁷ uesperum, III dies peniteat.

SEQUITUR.

<33.> Si quis cum uxore sua dispensata dormierit, X ani (!) peniteat secundum priores canones.

DE FORNICATIONE. GREGORIUS.

<34.> Si quis acceperit cognatam aut nouercam auunculis suis, isti separentur et post hoc canonicè iudicentur.

¹ peccatum] *lege* peccatum celauerit

² uel *ms.*

³ ho] *abbrev. lege* hominis ?

⁴ se] *add. a a.corr.*

⁵ ad] *a a.corr.*

⁶ ante] *post a.corr*

⁷ ante ante *ms.*

SEQUITUR.

<35.> Mulier qua uirum suum uoluntarię dimiserit, ne debet eam accipere, quia dominus in euangelio: *Si quis [dimis]sam duxerit, mechabitur* (Matth. 19,9).

<36.> Mulier qua semen uiri sui, aut urinam, aut stercus miscens aut summens in cibo ipse uel ipsa ut exinde plus ametur, tres anni peniteat.

REGULA CANONICA.

<37.> Si quis abens uxorem uir duxerit aliam dimissa est que prius legitimam accepit non est illius uxor set meretrix. Illos tamen christianos non communicet neque edant aut bibant, nec in sermone aut in opere aliquis ei communicet set parentibus eorum. Qui hec fecerunt ista talia, non possit penitere donec separentur, postquam separati fuerint ieiunet unusquisque ebdomas quadraginta; digna est mulier dumplum (!) ieiunare. Set considerandum est, quis de his uoluit tales scelum facere; alia mulier qui alterius uirum suadet illam, excommunicentur.

<38.> Mulier qua fornicatur et partu suo necat iungentes omicidium cum adulterium, X anni peniteat.

THEODORUS. //

<39.> Duos fratres uel duas sorores in coniugio sociare. Similiter patrem et filium, matrem et filiam.

<40.> Mulier si duobus fratribus nupserit abicienda est, si separauerint se a coniuntione (!) usque ad mortem agat penitentiam.

<41.> Mulier non licet uotum uouere sine licentia uiri sui. Si uoluerit uir eius ut soluat, frangendum est postea septem dies peniteat.

<42.> Mulier nitens fornicari cum alia muliere aut presente ipsa quod nefax est faciendi, I annum peniteat.

SEQUITUR.

<43.> Si quis uirgo uirginem copulatus fuerit, sit ei uxor, si parentes eius uoluerit, et duo anni penitentia.

SEQUITUR.

<44.> Si quis cum uxore¹ aut consobrina adulterium commiserit, VII anni peniteat, III ex his in panis et aqua.

SEQUITUR.

<45.> Si quis cum matre sua fornicauerit, X anni peniteat et numquam mutet nisi² in die dominico. Si in peregrinatione, II anni peniteat in panis et aqua et in patria sua uoluerit, VII anni peniteat aut certe toto illos decem, neq[ue] uinum, neque carnem, nec coctum manducet excepto panem.

EX CONCILIO YLARDENSE.

<46.> Si quis ad ancillam suam intrauerit, I annum peniteat. Si ex ea genuit filium, liberet et eum.

THEODORUS.

<47.> Si quis per semetipsum propriis menbris uiolauerit, I annum peniteat.

¹ uxore] lege uxore alterius?

² nisi] sup.l.

<48.> [S]i quis uirginem aut uiduam rapuerit uel uiolentio¹, III anni peniteat in pane et aqua.

SEQUITUR.

<49.> Si quis cum comatre sua adulterium fecerit, VII // anni peniteat, III ex his in panis et aqua.

DE FURTO. GREGORIUS.

<50.> Si quis furtum capitale commiserit, idest aurum uel argentum, quadrupedum, uel domos fregit, si potest quod iniuste abstulit redere, multum breuiatur penitentiam eius. Sin autem V anni peniteat. Quodsi sepe illud fecerit, VII anni peniteat.

<51.> Si puer amplius X annorum fecerit furtum, XL uel XXX dies peniteat; tamen prout etas eius est, et qualitas eruditionis, pro modico furto XX dies peniteat, puer X annorum aliquid furti faciens, VII dies peniteat.

<52.> Si quis furatus fuerit equos aut boues uel cetera capitalia, pecunia, aurum, argentum, seu casas fregerit, episcopus XII anni peniteat, presbiter X, diaconus et monachus VII, subdiaconus VI, clerici et laici V. Omnes hi III in panis et aqua et presbiter deponatur. Si minoris peculialis de qualicumque re, decreuerit sancta synodus atque sedis apostolica, ut gradus est iuxta qualitatem culpe uel dampnum. Sic iudicentur.

GREGORIUS IN CONFLICTU CANONUM.

<53.> Si quis domum uel aream cuiuscumque igne in sponte ultro cremauerit, III anni peniteat in pane et aqua. Seu amplius aut minus, ut dampnum est, eo quod in conflictu canonum et in questionum persona et intentio tenoris adque dampnum semper prouidendum est, ut maioris maiorem, minoris minorem, // ita sub canonum iudicii subiaceat.

GREGORIUS.

<54.> Quicumque furtiuum commederit et scit, si pauperem uel hebes VII dies peniteat. Si sani qui sciunt XL, dies peniteat. Qui sepe hoc faciunt III XL^{me}. Hoc de minoribus dictum est, si uero magis adatur.

<55.> Multi ut fallunt periurant, ut fidem sacramenti fidem faciant uerbi, sicque periurant fallendo mentiuntur, hominem incautum decipiunt, qu[a]cunque arte uerborum quis iuret. Deus tamen qui conscientie testis ita hoc inspicit. Sicut ille cui iuratur intellegit. Duppliciter autem reus sit, qui est dei nomen in uanum assummit et proximum dolo capiat.

<56.> Si quis in altare ubi reliquie habentur uel in euangelio periurium incurrerit, secundum antiquam diffinitionem, episcopus XIII anni peniteat et deponatur; presbiter XII anni et deponatur. Diaconus et monachus X et deponatur diaconus. Clericus et laicus VII; et omnes hi III ex his in pane² et aqua, et numquam iuret postea; post actam penitentiam reconcilietur ad communionem.

<57.> Si quis in manu episcopi uel presbiteri aut in cruce consecrata, secundum antiquam diffinitionem V anni peniteat.

<58.> Si quis qualibet coactus necessitate aut nesciens periurium incurrerit, III anni peniteat.//

<59.> Si quis laicus per cupiditatem se periurauerit, totas res suas uendat et det pauperibus et conuersus in monasterium, seruiens deo usque ad mortem cunctis (!) diebus uite sue. Si autem non per cupiditatem, set mortis periculo hoc incurrerit, III anni inhermo exul peniteat, a carne et uino se absteineat, et si habet seruum, dimictat illum, et si non habet, det de alia sua re et pro aliis II anni peniteat et elemosynam faciat, et sic post VII anni iudicio sacerdotis communitio.

¹ uiolentio] lege uiolentio habuerit

² panis a.corr.

<60.> Si quis iurauerit in manu hominis apud grecos nihil est, apud latinos peccatus est. Si uero iurauerit in manu epyscopi uel presbiteri, et mentitur, aut in cruce consecrata, V anni peniteat.

<61.> Qui periurium fecerit in ecclesia, X anni peniteat aut iuxta gradus ut habet ita iudicetur.

<62.> Si quis per insidiam aut insipientia sciense duxerit in periurium aliquem, ut in conflictu canonum scriptum est, cum illo qui scienter se periurauerit, similiter iudicetur. Eo quod ille perseuerans crudeliter, et ille miser dilapsa fuga negans utrique in reatu laqueo diaboli sunt iugulati, quatenus VII anni utrique iudicetur.

CONCILIO. GREGORIUS.

<63. Si quis duxerit aliam in periurium ignorante se et postea se recognoscit, et ipse similiter III anni peniteat. Qui uero suspicatur, quod in periurium ducitur, tamen // iurat pro consensu, III anni peniteat eo quod dubium erat.

ILARDENSE.

<64.> Qui sacramento se obligauerit, ut ligans cum quolibet ad pacem nullo modo redeat pro periurio I annum a communione et corporis domini segregatus reatus suum elemosynis ac fletibus et quantum potuerit ieiuniis persoluat, at caritatem uero que operit multitudinem peccatorum celeriter uenire festinet.

IBERNENSIS.

<65.> Iuramentum filii et filię nesciente patre, iuramentum monachy nesciente abbate, iuramentum serui nesciente domino, irrita erunt.

KAROLUS REX

<66.> Vt nullus presbiter aut laicus penitentes inuitet uinum bibere aut carne manducare, nisi ad pro ipso I uel duos denarios iuxta qualitatem penitentię dederit.

CARTAGINENENSE (!).

<67.> Seculares uero qui in natale domini, pasca, pentecostes non communicauerit, catholici non credantur, nec inter catholicos habeantur.

GREGORIUS.

<68.> Ponunt canones peccantibus de quibusdam peccatis III anni in penitentia et I ex his in pane et aqua. De quibusdam V, II ex his in pane et aqua. De quibusdam VII, III ex his in pane et aqua, et ceteris in hunc modum, totum numerum annorum dicunt penitere. Sic quosdam ex his plus durius, hoc est in solo pane et aqua. Quosdam minus // durius, hoc est in paruo uino et in paruo pulmento et pane. In paruitate et parcitate pene sit. Post hoc expositum patres nostri considerauerunt imbecillitate penitentium, et quia post his temporibus non est talis feruor penitentię, qualis antiquitus erat quando canones efficiebantur, cum tunc omnis uita eorum in solo pane et aqua esse commiscuerunt, hos annos penitendo ut similis et dura penitentia aggerentur. Ita ut compleretur ipsa penitentia in purgatione peccatorum, et preuaricationes suis leuius uiderentur; hoc enim uariauerunt, ut qui annum unum erat in pane et aqua inter ipsum penitentialem annum I diem ebdomade duceret penitens in pane et aqua. Ceteris uero de mediocriter peniteat, ut predictum est atque eo modo simul mixtos comple[ret] penitens suos annos. Simili modo de duobus annis in pane et aqua I dies in ebdomada, et de tribus annis in pane et aqua II dies in ebdomada, ut simul mixtos complerentur penitentia annum leuius.

DE QUADRAGESIMA.

<69.> Legitime quadragesime tria sunt populis constituta in anno, XL dies ante pascha ubi decimas anni soluimus. Secunda post pentecostes XL dies, tertia ante natale domini XL. Set prima his // duabus proferuntur. Additur alia quarta. Sunt nonnulli imitatores bonorum religiones causas qui post assumptionem sanctę marię pro penitentibus quadragesimam indiderunt. Set omni modis quibusdam prohibendi, hec uero religio nulla ratione obfuscantur. Dicente domino: *In qua die peccator conuersus fuerit ad penitentiam uita uiuet.*

DE IIII TEMPORA.

<70.> Mense primo ebdomada prima feria IIII et VI et sabato geiunium celebremus. Mense IIII, ebdomada II. Mense sexto ebdomada III. Mense decimo nouissima ebdomada ante natale domini. Similiter et si uigilia natale domini in sabato antecedente ebdomada superscriptum geiunium celebretur, sunt enim et alia sacratissima geiunia que per omnia sunt celebranda. Sanctorum uigilię qualiter pertinent per celeberrimas festiuitates, que a sanctis patribus per singulos annos constitute sunt.

SEQUITUR.

<71.> Post hec autem legitima tempora geiuniorum sunt quarta feria, quia iudas traditiones domini cogitauit. Sexta feria propter passionem domini a quibusdam geiunantur. Set sabato dię a plerique propter quod in eo christus iacuit in sepulchro, geiunium consecratum habemus. Scilicet ne iudeis insultando, preter quod christus substulit moriendo, presertim cum apostolica sedes // hanc regulam seruet. Silvester papa dixit atque statuit: Sabato geiunandum. Quinta feria sicut domenica obseruanda euidētissima ratione demonstrat. Nam si resurrectionem domini per singulas ebdomadas ipsius diei ymages frequentamus, et feria IIII propter traditionem domini et VI feria propter passionem eius ieunamus. Sabato pretermictere non debemus, quia in tristitia et letitia temporis illius uidetur inclusum. Sabato die domino in sepulchro posito, omnes discipuli ieunasse dicuntur. Tantum die dominico accipere gaudium meruerunt, quantum acceperunt luctum, et ideo omni quarta et quinta feria et sabato ieunandum est cui sit possibile. A nemine autem cui impossibile dicimus quod non potest, non queritur. Pascha autem usque ad pentecosten, licet traditio ecclesiarum abstinentię rigorem prandium constituerunt. Tamen si clerici uel monachi constituerunt, seu penitentes ieunare cupiunt non sunt prohibendi, quia antonius et paulus et ceteri patres antiqui etiam in his diebus in heremo leguntur abstinuisse neque absoluisse abstinentia, nisi tantum die dominico.

SEQUITUR.

<72.> Si per bonos sacerdotes offeratur // christi sacrificium, non crescit. Si per malos offeratur, non minuitur. Quia angelus domini stat ibi, quem carnales oculi uidere non possunt. Qui illum uisibiliter sanctificat.

<73.> Quod oportet in calice domini uinum cum aqua offeri. In calice domini no[n] debet offeri uinum solum, quia si solum uinum offert, sanguis christi incipit esse sine nobis. Si sola aqua offert, sola pleps incipit esse sine christo. Quando in uino miscitur et adunati inuicem copulantur, sacramentum spirituale proficit.

<74.> Hostiam puram et perfectam licet absque sorde clarissimum uinum cum aqua mixtum, prout debeat sine turbido uel acetum, uel quassatum, at fex plenus. Set quomodo legitur hostiam puram, et immaculatam, et illibatam et incontaminam.

<75.> Sunt nonnulli interrogare, si liceat cotidie orare aut sacrificium deo¹ pro mortuis. Quibus respondet: Quia plerique in dominicis diebus sacrificium pro mortuis non offerat, propter singularem reuerentiam dominice resurrectionis. Videlicet, quia inter mortuos liber

¹ sacrificium deo] sc. offerre

fuit. Ideo ualde condecet ut ei singulis resurrectio uenerabiliter ab omnibus et sine alicuius ambitione defuncti cęlebratur.

DE ACCUSATIONE.

<76.> Vt nullus audeat episcopos¹, presbiteros, diaconos [ac]//cusare et qui hoc facere uoluerit, I pondera auri uel argenti inferatur. Vt nullus laicus audeat crimen ingerere, nisi sub idoneis testibus, septem uiros iustos, religiosos, deum timentes et christum predicantes. Non literati, quorum filii habent uxoratus et nepotes et filias iam traditas nuptias. Vt qui percusserit sacerdotem, idest presbiter siue diaconus, decretum est, ut pęna auribus X idest solidos II, CXX. Qui percusserit diacones et defensores ecclesię, det penam auri libras V, hoc est solidos CCCL. Qui lectores ecclesię percusserit, det penam auri libras III, hoc est solidos III, CXVIII.

MAGONENSI CONCILIO.

<77.> Si qua mulier inuenerit iuxta se mortuum et non tenet conscientiam eius, quod per eam fuisset [mortuus] ad purificandum tamen animam suam. Si non baptizatus IIII anni peniteat. Si autem baptizatus fuerit, III anni peniteat. Si autem aliqua mulier posuerit infantem suum secundum consuetudinem siue in cuna, siue in aliquo² loco, ubi solebat iacere, non tamen iuxta se, et inuenerit eum mortuum, et nescit, eum per negligentiam suam esse [neca]tum an non. Si non baptizatus propter inuidiam suam, II anni peniteat. Si baptizatus I.

¹ epycopos *a.corr.*

² aliquo] aquo *a.corr.*

P. VALLICELLIANUM C. 6 (ff. 189r-195v)

<1.> Si quis clericus homicidium fecerit, X annos peniteat, IIII ex his in pane et aqua. Verumtamen prius satisfaciat parentibus illius.

<2.> Si presbiter odii meditatione homicidium fecerit, deponatur, et in remoto loco uel in monasterio XII annos peniteat, VI ex his in pane et aqua. Si autem casu hoc perpetrauerit, VII annos peniteat, IIII ex his¹ in pane et aqua et illis temporibus a sancto ministerio debet cessare.

<3.> Si quis episcopus homicidium fecerit, XV annos peniteat et deponatur, atque cunctos dies uitae suae peregrinando finiat. Si uero casu hoc ei accidit (...).

Licet² erratos elemosinam facere, tamen ad salutem anime nil ualet.

<4.> Diaconus sponte homicidium faciens, X annos peniteat, V in pane et aqua, et ad presbiteratus ordinem non adsurgat. Si autem hoc casu id perfecerit, VII annos peniteat, IIII in pane et aqua. Peracta digna penitentia, reconcilietur communioni et suo ordini.

<5.> Si quis laicus sponte homicidium fecerit et per odii meditationem, non habens rationabilem quaerelam contra eum, reiectis armis in monasterium uadat, ibi usque ad mortem mortuus mundo uiuat deo. Si quis homicidium fecerit per iram et non per odium, V annos peniteat, III in pane et aqua.

DE PARRICIDIS.

<6.> Qui patrem et matrem, sororem, aut fratrem, siue filium, seu compatrem, aut filium de sacro lauacro, seu proprium seniore, et alios similes, uidelicet presbiterum, aut suam uxorem uoluntariae occiderit, XV annos peniteat, V ex ipsis peregrinando eat aut in monasterio cum luctu peniteat.

SYNODUS CALCEDONENSI. //

<7.> Placuit sancto et magno concilio calcedonensi, ubi fuerunt sexcenti triginta episcopi sub marciano principe, ut si quis uir suam uxorem sine causa occiderit, V annos exul fiat extra terminos suę patriae. Deinde XV annos inermis peniteat et eucharistiam domini nisi ad exitum mortis non percipiat. Si autem non sine causa, quamuis iuxta mundanam legem hoc fecerit, tamen iuxta dei prouidentia VII annos peniteat et aliam uxorem penitus non accipiat. Si uero nolens hoc perpetrauerit, V annos peniteat.

<8.> Et si qua mulier uirum suum quacumque diabolica arte uel fraude occiderit uel hoc consenserit, omnibus diebus uitae suę separata ab omnibus coniugatis mulieribus, cum fletu et luctu peniteat, et non mutet cibum nisi die dominico et sacramentum christi nisi ad mortem non percipiat.

DE SEPTEM GENERA NOLENTIA HOMICIDIORUM.

<9.> Septem sunt genera nolentia homicidiorum. Primum, cum quis aut in preda, uel in assaltu alicui, siue alicuique molitur malitia, uel in comitatu suo uel extra aliquem perduxerit in quo mortuus fuerit, ductor eius VII annos peniteat, medietatem in pane et aqua, eo quod maliuolo hoc egit opere. Secundum, cum quis irato animo per rixam aliquem debilitare uoluerit, tunc si exinde aliquis mortem incurrerit, quamuis nolens homicidium tamen VI annos peniteat, eo quod iram et rixam id accidit. Tertium, cum quis causa medicandi iniquo amore pretium exigerit, quodsi exinde mortem incurrerit, medicus uel VII, uel VI, aut V annos peniteat, eo quod quamuis nolens propter auiditatem uel // cupiditatem ei mederi cepit³. Si uero non propter cupiditatem, uel auiditatem, aut auaritiam, sed tantummodo karitatis

¹ his] hoc *a. corr.*

² Licet... ualet] *add. al. manu*

³ cepit] *praem. ras. p. a. corr.*

amore hoc egit, tres¹, uel II, uel I annos peniteat circa presumptionem suam. Quartum, cum quis in suo aedificio aliquem operandi causa solummodo inuitauerit et ille forte² hoc tunc morte periclitauerit, inuitator eius III annos peniteat, eo quod pro suo eum conduxerit opere. Quintum, cum quis in quocumque suo officio uel ministerio siue per arborem, siue per ignem, siue per aquam, siue per quaecumque opus suum aliquis quouis periclitauerit casu, V annos peniteat, eo quod casu hoc accidit. Si autem non casu hoc accidit, III annos, siue amplius siue minus iuxta modum culpe. Sextum, cum quis forte³ ad bestiam, aut ad auem, uel aliquid similem lapidauerit siue sagittauerit, et exinde omnino inproviso homo periclitauerit, factor eius I annum in pane et aqua peniteat, eo quod casu hoc accidit periculum. Septimum addatur genus nolentis homicidium uel de oppressis infantibus, si nondum baptizatis hoc contigerit, VII annos peniteat. Si uero baptizatis III annos, eo quod quamuis nutrice eius nolente, tamen difficile sine neglegentia hoc inuenitur.

DE HIS QUI SE IPSIS OCCIDERUNT.

<10.> Placuit, ut qui sibi ipsis aut per ferrum, aut per uenenum, aut per precipitium, aut suspendio, uel per quemlibet modum uolentiae inferitur mortem, nullam pro illis in oblatione commemoratio fiat, neque cum psalmis ad // sepulturam eorum cadauera deducantur. Multi enim sibi hoc per ignorantiam usurpantur. Similiter et de his placuit fieri, qui pro suis sceleribus puniuntur, exceptis his qui per infirmitatem a demonibus arripiuntur.

<11.> Si quis homicidium consenserit et factum fuerit, V annos peniteat, II in pane et aqua. Si autem uoluerit et non potuerit, III annos peniteat.

<12.> Si quis occiderit episcopum uel presbiterum, iudicio regis dimittatur.

<13.> Qui occiderit clericum uel monachum, iudicio episcopi teneatur, et arma relinquat deoque seruiat, et X annos peniteat, V in pane et aqua.

<14.> Qui propter uindictam patris uel fratris aut propinqui homicidium commiserit, licet alii diffinierint III annos penitere⁴, tamen placuit sancto niceno concilio VII annos penitere. Liqueat enim dominum dixisse: *Nolite reddere malum pro malo* (Rom. 12,17).

<15.> Si quis cum rege in prelio hominem occiderit, XL dies peniteat in pane et aqua. Qui iussu domini sui occiderit, similiter XL dies peniteat.

<16.> Mulier filium suum uoluntarię occidens, XV annos, VII in pane et aqua, et numquam mutet cibum nisi dominico die. Si uero pauperula fuerit, VII annos peniteat.

DE SANGUINIS EFFUSIONE.

<17.> Si quis aliquem per iram percusserit et sanguinem eius fuderit aut debilitauerit, soluat ei prius expensas et opera in medicum, et si laicus est, XXX dies peniteat. Si presbiter, VI menses peniteat, I in pane et aqua. Si diaconus, menses III. Subdiaconus menses II. Monachus menses III.

<18.> Paruuli se inuicem percutientes, VII dies peniteant. Adolescentes XL⁵ dies peniteant.

DE FORNICATORIBUS.

<19.> Tria sunt genera carnalis inmunditiae. // Primum fornicatio. Secundum adulterium. Tertium incestus. Fornicatio fit cum puellis et uiduis in seculari habitu manentibus. Vnde et fornicatio dicitur, a fornicibus ubi istud scelus clam perficitur. Fornices sunt arci uolubiles fornicatoribus ad peragendum crimen habiles. Adulterium propriae cum uxore alterius peragitur, unde et adulterium alterius tori uiolator dicitur. Incestus cum propinquis et deo

¹ tres] sequ. Terties a.corr.?

² forte] sequ. ras. ille a.corr.

³ forte] e corr.

⁴ penitere] pen. abbrev.

⁵ xl] sup. ras.

sacratę uirginibus committitur, unde et incestus uocatur. Episcopus faciens fornicationem degradetur et XII annos peniteat, VII in pane et aqua. Si uero in adulterio aut, quod est deterius, in incestu ceciderit, episcopatum amittat et in monasterio cum fletu usque ad mortem peniteat.

<20.> Presbiter si uxorem acceperit, deponatur. Si uero fornicatus fuerit, amplius pelli debet et ad penitentiam redigi. Si uero adulterium uel incestum perpetravit, amisso presbiterii honore XV annos peniteat, VIII in pane et aqua, ceteris a carne et adipe sequestratus modico uino utatur. Remotiora et secretiora loca ad agendum (!) penitentiam sibi ab episcopo tribuatur, uidelicet in religioso monasterio aut alio apto loco, ubi si fuerit digna penitentia, sit etiam fructuosa.

<21.> Diaconus post suam ordinationem et continentiae professionem si uxorem acceperit, deponatur et VII annos peniteat in pane et aqua. Si uero adulterii uel incestus crimen admiserit, amplius penitentiae subdatur.

<22.> Subdiaconus talia facinora perpetrans, VII annos peniteat in pane et aqua. Clerici similiter. Monachus adulterio pollutus, X annos peniteat, V in pane et aqua. Si fornicatione VII annos. Si incestu XII annos, VI in pane et aqua.

<23.> Laicus uxorem habens, si adulterium fecerit, VIII annos peniteat, IIII in pane et aqua. Si absque uxore est, VII annos peniteat, III in pane et aqua. Si autem incestus peccatum perfecit, // X annos peniteat, V in pane et aqua.

<24.> Si quis cum uxore sua retro nupserit, XL dies peniteat. Si autem more sodomitico, X annos peniteat.

<25.> Pueros inter se fornicantes, preceperunt sancti canones acriter flagellari.

<26.> Si quis presbiter per amorem libidinis feminam osculauerit, XX dies peniteat.

<27.> Si per cogitationem semen fuderit, XXX dies peniteat. Si manu semen excusserit, XL dies peniteat. Si in consuetudinem habuit, ita peniteat ut de fornicatione.

<28.> Si quis ante XV annos se inuicem manibus polluerint, XXX dies peniteant. Si iterauerint, C dies peniteant in pane et aqua. Si autem in consuetudinem uerterint, I annum peniteant.

<29.> Supradicti inter femora fornicantes, C dies peniteant. Si iterauerint, I annum peniteant.

<30.> Puer paruus oppressus a maiore per uiolentiam iuxta aetatem suam peniteat. Si consensit, XL dies peniteat.

DE (...)

<31.> Si quis uirginem uel uiduam rapuerit, III annos peniteat in pane et aqua.

<32.> Si quis more bestiali cum propinqua sanguinis sui concubuerit ante XX annum suę etatis, X annis in penitentia districta exactis, oratione tantum incipiat communicari. Post XV annos ad communionem cum oblatione suscipiatur. Discutiatur uita ipsorum, qualis fuerit tempore penitentiae et ita hanc humanitatem consequantur. Quodsi abusi sunt hoc crimine prolixiori tempore post XX annos etatis et uxores habentes hoc fecerint, XX annos penitentia peracta ad communionem orationis admittantur, et ita post quinquennium ad plenam communionem cum oblatione suscipiantur. Quodsi aliqui uxores habentes, et post XL uel Lta annos etatis hoc facinore lapsi sunt, ad exitum uitae tantum communicentur.

<33.> Mulier si duobus fratribus nupserit, abiciatur usque ad mortem. Sed propter humanitatem in extremis ad communionem reconcilietur, ita tamen ut si forte sanitatem receperit, matrimonio soluto penitentiae subdatur. Quodsi defuncta fuerit huiusmodi consortio alligata, difficilis erit penitentia // remanenti. Hanc sententiam uiri et mulieres timere debent.

<34.> Mulier quae conceptum filium suum in utero ante XL dies occiderit, annum I peniteat. Si uero post XL dies, ut homicida peniteat.

<35.> Pater aut mater uoluntariae occidentes filium suum ante baptismum, X annos peniteat, V in pane et aqua.

<36.> Si quis filium suum oppresserit ante baptismum, V annos peniteat. Si autem baptizatus est, III annos peniteat in pane et aqua.

<37.> Si qua mulier abortiuum fecerit uoluntarie, III annos peniteat in pane et aqua. Si autem inuite, tres quadragesimas peniteat.

DE FORNICATORIBUS.

<38.> Si masculus cum masculo fornicauerit, X annos peniteat. Si mulier cum muliere similiter.

<39.> Qui cum animalibus coierit, X annos peniteat, V in pane et aqua.

<40.> *Mulier si succubuerit iumento* (Lev. 18,22), X annos peniteat. Presbiter aut diaconus hoc uitio deprauiatus, excommunicetur ab omni diuino officio.

DE PESSIMO UITIO SODOMITE¹.

<41.> Si quis episcopus fornicatus fuerit ut sodomite fecerunt, XV annos peniteat, VII in pane et aqua, et ab episcopatu pellatur et peregrinando uitam finiat. Si autem senex aut eger fuerit, in monasterio inclusus omnibus diebus uite suae peniteat. Presbiter XII annos peniteat, V in pane et aqua, et similiter deponatur. Diaconus et monachus X annos peniteat, III in pane et aqua, et deponatur. Clerici et laici X annos peniteant, tres in pane et aqua, et numquam ad sacrum ordinem accedant, et a uino et carne annis penitentiae abstineant se excepto infirmitate. Communionem in finem uite mereantur. Si autem bene penituerint, reconcilientur.

<42.> Si quis episcopus cum uirgine deo sacrata concubuerit, XV annos peniteat, VI in pane et aqua, et deponatur. Presbiter XII annos peniteat, V in pane et aqua, et deponatur. Diaconus et monachus X annos peniteat, III in pane et aqua, et deponatur. Clericus et laicus VIII annos peniteat, tres in pane et aqua, ad sacrum ordinem non accedant. Acta penitentia, reconcilientur.

<43.> Si quis episcopus uxorem alterius corruperit, XII annos peniteat, V in pane et aqua, et deponatur. Presbiter X, III in pane et aqua. Diaconus et monachus VIII, III ex his in pane et aqua, et deponatur. Clerici et laici VII, III in pane et aqua, et communionem priuentur². //

<44.> Si quis cum uidua deo deuota, quae diaconissa dicitur, fornicatus fuerit, episcopus XII annos peniteat, V in pane et aqua. Presbiter X, III in pane et aqua. Diaconus et monachus VII, III in pane et aqua. Clerici et laici VII, III in pane et aqua.

DE INCESTU.

<45.> Si quis episcopus incestum commiserit cum propinqua sua uel commatre aut deo sacrata, XV annos peniteat. Presbiter XII. Diaconus et monachus X. Laici et clerici VIII, et communionem priuentur et sacro ordine.

DE ADULTERIO.

<46.> Qui concupiscit fornicari et non potest, aut mulier non suscepit eum, episcopus V annos peniteat. Presbiter III. Diaconus et monachus III. Clerici et laici II.

<47.> Si quis uxorem suam deprehenderit in adulterio, abiciat eam. Quodsi noluerit, III annos simul peniteat, et ipsis penitentiae annis a concubitu se abstineant.

<48.> Mulier tribus mensibus abstineat se a uiro suo quando conceptura est. Et post partum duo mensibus.

<49.> Si quis cum muliere menstruata concubuerit, XL dies peniteat.

<50.> Qui in matrimonio sunt, quadragesime diebus et noctibus dierum ueneris, et sabbatis et dominici, et menstruo tempore abstinere se debent a copulatione carnali. Qui contempserint, XL dies peniteant.

¹ sodomite] mite sub l.

² priuentur] sub l.

CONCILIO¹ NICENO.

<51.> Si quis duxerit de propria cognatione in coniugio, hi tales non possunt iudicari, nisi prius separentur. Ratio autem iudicii haec est: Prout propinquitate manifestat, id est: Si tertia XV annos peniteat. Si quarta XIII annos. Si quinta XII. Si VI^{ta} X annos. Si septima VII Districtius tamen tot annorum post diuisionem subdatur penitentiae. Siue minus, siue amplius iuxta prolixiores perpetrations peccati. Si quis igitur propinquam suam ante completionem septime generationes uxorem duxerit, X annos peniteat, V in pane et aqua, et illam a se abiciat; quodsi facere noluerit, anathema sit et excommunicatus. //

DE FURTO.

<52.> Si quis episcopus furatus fuerit equum, bouem, uel asinum, aut aliqua quadrupedia, aut casas fregerit, si restituerit, III annos peniteat. Sin autem VII annos peniteat, IIII in pane et aqua. Presbiter V, III in pane et aqua. Diaconus et monachus IIII, II in pane et aqua. Clerici et laici II, I in pane et aqua.

<53.> Si quis episcopus, presbiter, diaconus, clericus uel laicus, aut mulier aurum siue argentum, uictum seu uestimentum furati fuerint, secundum quantitatem uel qualitatem illarum rerum penitentiae subdantur, et ut suis possessoribus direpta restituant, eis omnino precipiatur, quia leuius postea iudicabuntur.

DE SACRILEGIO.

<54.> Sacrilegium dicitur sacrarum rerum electio², id est direptio, uidelicet librorum, et aecclesie ornamentorum, scilicet palliorum, uestimentorum, turibulorum, calicis, siue omnium ecclesiarum substantiarum³. Si igitur episcopus sacrilegium fecerit, XII annos peniteat, V in pane et aqua, et presbiter X. Diaconus et monachus VII. Subdiaconus V. Clerici et laici IIII. Verumtamen secundum pondus sacrilegii penitentia illis tribuatur. Si restituerint quod abstulerunt, mediocriter iudicentur. Valde autem pensandum est, ut ait beatus gregorius papa iustum in hoc facto examen. Ex persona enim furis pensari potest, qualiter corrigi ualeat. Sunt enim quidam habentes subsidia et furtum perpetrant et sunt qui per inopiam peccant; unde necesse est ut quidam damnis, quidam uero uerberibus, et quidam districtius, quidam lenius arguantur. Quae correctio ex caritate agenda est, non ex furore, quia⁴ ipsis hoc prestatur qui corrigitur, ne gehennae ignibus tradatur. Quomodo autem quae furto de ecclesia sublata sunt, restituantur edicimus. Absit ut ecclesia cum augmento recipiat quod terrenis rebus uidetur amittere.

DE PERIURIO. //

<55.> Si quis episcopus periurium fecerit, XII annos peniteat, V in pane et aqua. Presbiter X, IIII in pane et aqua. Diaconus et monachus VIII, III in pane et aqua. Clericis et laicis VII, III in pane et aqua.

<56.> Si quis coactus qualibet necessitate aut uitam hominis defendendo periurauerit, III annos peniteat, I in pane et aqua.

<57.> Si quis nescienter periurauerit, II annos peniteat, I in pane et aqua.

<58.> Si quis per cupiditatem periurauerit, totas res suas uendat pauperibusque tribuat, et conuersus in monasterio usque ad mortem deo seruiat. Si autem non per cupiditatem, sed pro mortis periculo, III annos inermis peniteat.

¹ Concilio... excommunicatus] *al. manu*

² electio] *lege ablatio aut laesio?*

³ substantiarum] *e corr. in ras.*

⁴ quia] *add. in a.corr.*

<59.> Qui scit hominem periurare et compellit eum iurare, VII annos peniteat, IIII in pane et aqua; et ille per inuite periurauit, IIII annos peniteat.

<60.> Qui per pecuniam suam acquirendam hominem ad periurium prouocat, VII annos peniteat, IIII in pane et aqua.

DE FALSO TESTIMONIO.

<61.> Si quis de ordine sacerdotali falsum testimonium dixerit unde homicidium perficiatur, deponatur et ut homicida iudicetur. Si quis laicus hoc dixerit unde supradictum scelus operetur, duobus criminibus reus habeatur, et X annos peniteat, V in pane et aqua.

<62.> Quicumque falsum testimonium dixerit et nemini nocuerit ex sua mala intentione, III annos iudicandus est, II in pane et aqua. *Falsus testis*, ut ait salomon, *non erit impunitus* (Prou. 19,5).

DE TRADITORIBUS HOMINUM.

<63.> Si quis alium hominem in manus inimici tradiderit, non aliter iudicandus esse credatur, nisi ut iudas qui christum dei filium tradidit. Oportet autem eum congrue omnes res suas dare pauperibus atque usque ad mortem inermis manere et, a christi corpore separatus, districte penitere, etiam si traditus nutu dei ab inimicis euaserit.

DE TRADITORIBUS CASTELLI.

<64.> Si quis castellum uel ciuitatem aut alicuius munitioem // in manus inimicorum spiritu iudae tradiderit, nullus dubitet ex illis omnibus in utraque parte reum factum esse homicidam. Vnde non aliud iudicandum est, nisi ut omnes substantias suas tribuat pauperibus. Tunc demum cunctis uite sue diebus a christi sacramentis excommunicatus in carcerem retrusus, ibidem cum fletu et luctu iuxta uires suas iugiter peniteat. Quia contra eum scriptum est: 'Maledicti sunt omnes traditores, super omnes homicidas et adulteros'; et illud: 'Traditor *ad nihilum ualet ultra*' (cfr. Matth. 5,13).

DE ECCLESIE UIOLATORES.

<65.> Si quis ecclesiae dei per iniquam intentionem uiolator extiterit, abhominatus sit ab omni ecclesia dei sicut sacrilegus et paganus. Scriptum est enim: *Qui templum dei uiolauerit, disperdet illum deus* (I Cor. 3,17).

ITEM.

<66.> Placuit sancte et magne synodo nicene, quae a CCC^{ti} XVIII episcopis sub constantino augusto est peracta, ut si quis ecclesiam dei per odium uel aliquam intentionem malam dissipauerit uel uiolauerit siue per ignem siue per direptionem aliquam, uel pro qualicumque causa uiolentiae hoc fecerit, uel etiam consenserit, anathematis uinculo religetur in perpetuum et ab aliis omnino aecclesiis non recipiatur, nisi cum satisfactione et digna emendatione, id est per XV annos crebris ieiuniis et helymosinis et orationibus se redimat, et quantum potest succensae aecclesie ablata restituat.

DE MALEFICIS.

<67.> Si quis maleficio suo aliquem perdidit, VII annos peniteat, III in pane et aqua.

<68.> Si qua mulier herbas ne concipiat biberit, quantoscumque concipere uel parere debuerat, tantorum homicidiorum rea erit et ita iudicetur.

<69.> Si quis sortes quas contra rationem sanctorum uocant, uel alias sortes habuerit, uel qualicumque ingenio sortitur, III annos peniteat, I in pane et aqua.

<70.> Si quis ariolos, uel diuinos, aut aruspices, aut augures // qui in auibus auguriantur, introduxerit in domum suam ad diuinationem inquirendam, III annos peniteat, I in pane et aqua.

<71.> Qui cibum immolatum comedit, et postea confessus fuerit, considerare debet sacerdos personam et qualiter fecerit, et ita auctoritas sacerdotalis circa infirmum moderetur. Et hoc in omni penitentia et confessione obseruetur.

<72.> Si quis ad arbores uel ad fontes uotum uouerit, III annos peniteat, I in pane et aqua.

<73.> Si quis in kalendis ianuarii consuetudine paganorum cum ceruolo aut quodlibet uehiculo ambulauerit, III annos peniteat.

DE USURIS.

<74.> Si quis usuras undecumque exigerit, III annos peniteat, I in pane et aqua.

<75.> Clericus aut presbiter usuras accipientes, III annos peniteant, II in pane et aqua. Daudid propheta dicit: *Qui pecuniam suam non dedit ad usuram, habitabit in tabernaculo dei* (Ps. 14,5/1). Ergo non habitabit cum deo usuras accipiens et auaritiae studens.

DE CARNIBUS INMUNDIS.

<76.> Si casu comederint porci carnes morticinas aut sanguinem hominis biberint, non abiiciantur. Similiter ne gallina.

<77.> Si porci cadauera hominis lacerantes manducant, usque ad circulum anni non manducentur. Postea uero comedantur.

<78.> Animalia quae a feris et canibus consumuntur, non sunt comedenda ab hominibus nisi forte uiua occidantur. Sed porcis et canibus dentur.

<79.> Animalia coitu hominis polluta, occidantur. Carnesque canibus proiciantur, filios autem illorum assumantur, et coria.

<80.> Aues et animalia si in retibus strangulantur, non comedantur. Si accipiter occiderit auem, non comedatur, quia scriptum est in apostolorum actibus: *Abstinetes uos a fornicatione et sanguine et suffocato, idolothito* (cfr. Act. 21,25).

<81.> Si apes occiderint hominem, occidantur continuo et mel manducetur.

<82.> Qui comederit ex supradictis carnibus, XL dies peniteat. Si necessitas cogit, nihil est. //

<83.> Mulier quae sanguinem uiri sui pro remedio biberit, XL dies peniteat. Et qui semen uiri sui in cibum sumit, ut maiorem amorem inde accipiat, III annos peniteat, I in pane et aqua.

<84.> Sorex si ceciderit in aliquo liquore, tollatur inde et aqua sancta ibi aspergatur. Si uero mortuus ibi fuerit, proiciatur omnis liquor foras et mundetur uas.

<85.> Si in farina aut in pane aut in aliquo siccato cibo sorex uel mustela inueniuntur, quod est circa eorum corpora proiciatur et reliquum sana fide sumatur.

DE ODIO.

<86.> *Qui odit fratrem suum homicida est*, ait iohannes apostolus (I Ioh. 3,15). Si quis de ordine sacerdotali odium contra proximum suum habuerit, tot menses peniteat in pane et aqua, quot dies odium retinuerit. Laicus si odium aduersus aliquem habuerit, excommunicetur, et per omnes dies odii retenti XL dies peniteat in pane et aqua.

DE REBAPTIZATIS.

<87.> Qui bis baptizatus fuerit nescienter, non indiget penitentia. Sed iuxta canones non potest ordinari nisi magna necessitate.

<88.> Qui autem scienter baptizatus est, hereticus est, et peniteat VII annos, III in pane et aqua. Si autem pro munditia licitum putauit, III annos peniteat.

<89.> Si quis ab heretico baptizatus est, qui trinitatem non credit, iterum baptizetur. Siue igitur ab heretico, siue a scismatico, seu a quolibet facinoroso quis in nomine sanctę trinitatis baptizatus fuerit, rebaptizandus non est, ne inuocatio tanti nominis uideatur annullari.

<90.> Baptizati a presbitero non recte baptizante, denuo baptizentur.

DE IEIUNIO DOMINICIS DIEBUS.

<91.> Qui ieiunat in die dominico sponte, anathema sit.

<92.> Qui operatur in die dominico, VII dies peniteat.

<93.> Qui contempnit indictum ab ecclesia ieiunium, XL dies peniteat.

DE DIUERSIS CULPIS SACRIFICII.

<94.> Si quis neglexerit sacrificium¹ et fuerit perditum et minime inuentum, I annum peniteat, // medium in pane et aqua.

<95.> Cuius negligentia mus aut uermes comederint² sacrificium, XL dies peniteat in pane et aqua.

<96.> Si quis casu sacrificium perdiderit et aues illud acceperint³, XL dies peniteat in pane et aqua, aut I annum.

<97.> Si casu de manu presbiteri uel diaconi sacrificium ceciderit super linteamina altaris uel in alio panno, lauentur linteamina et illa aqua in sanctuario mergatur. Et cui cecidit, XL dies peniteat.

<98.> Si ceciderit sacrificium de manu offerentis in terram, et non inuenitur, terra ubi sperat cecidisse tollatur et comburatur, cinisque in altari abscondatur. Si uero inuentum fuerit sacrificium, locus ille scopis mundetur, et incendatur et abscondatur, presbiter V menses peniteat aut canat DC psalterii.

<99.> Si de calice sanguis domini stillauerit per negligentiam in terra, lambatur et terra comburatur et abscondatur.

<99.> Si uero in ligno ceciderit, radatur et cum uino bibatur, aut incendatur et abscondatur, et presbiter XX dies peniteat.

<101.> Si super altare ceciderit sanguis dominicus, sorbeat minister stillam, et III dies peniteat, et linteamina super que distillauit lauentur et ipsa aqua in sanctuario mittatur. Si usque ad secundum linteum transierit, VII dies peniteat. Si ad tertium X.

<102.> Qui acceperit sacrificium post cibum, VII dies peniteat, nisi infirmus fuerit.

DE PRESBYTERO NON COMMUNICANTE.

<103.> Si sacerdos missam cantans et non communicans, aut causam dicat cur dimittat, aut I annum in pane et aqua peniteat.

<104.> Qui in matrimonio sunt, custodiant se VII dies antequam communicent et postea VII.

¹ sacrificium] *e corr.* cium in red

² comederit *a.corr.*

³ acceperit *a.corr.*

P. LUCENSE (Lucca, Biblioteca Statale, ms. 1781)

Marg. f. 2v:

Ordo ad dandam penitentiam.

Vis agere ueram penitentiam? Respondet: Volo^{lumus}. Des toto corde. Des tota mente. Reddite culpauilis deo de omnibus peccatis uestris? Reddo. Promitti mihi uera emendacione? Promitto. Vis dimittere illi qui in te peccaueret? Dimitto. *In manus tua domine commendo spiritum meum* (Ps. 30,6; Luc. 23,46). Sic nos recepimus hodie in manibus nostris, sic uos recipiat angelus domini in uitam eternam *cum psalmis et ymnis et canticis, cantantes et psal<lentes in cor>dibus nostris domino* (Eph. 5,19). *Suscepimus deus misericordiam tuam* (Ps. 47,10).

Marg. f. 3r:

Inclina domine aurem tuam ad preces nostras; respicere dignare super hos famulos et fam<ulas> tuas, qui hodie in manibus nostris sunt tradituri; sicut liberasti petrum de mare et <tres pu>eros de camino ignis ardentis, ita domine libera animas famulorum famularumque tuorum <de pena> inferni et de diaboli potestate, ut culpas eius parcas et peccata dimittit, <ut> iusti et immaculati sint in diem iudicii per resurgentem a mortuis et asscendentem in celis, qui uiuit.¹

Ego uos^{te} suscipio in oratione, suscipiad uos deus in regnum suum celestem, ut scribere dignetur no<men> uestrem^{tuum} in libro uite, et det uobis^{te} dominus *spiritus sapientie et intellectus, spiritus consilii et fortitudinis, spiritus <scien>cie et pietatis, et repleat uos^{te} spiritus timoris dei* et domini nostri ihesu christi (cfr. Is. 11,2-3), ut ipsius mandata intellig<etis,> ut ipsius <...>ta conseruetis, suscipiat uos christus et donet uobis penitentiam de omnibus peccatis uestris.

ff. 3r-8v:

INCIPIIT ORDO PENITENTIS DICAT SACERDOS INTRA SE ORATIONEM.

Domine deus omnipotens, qui *non uis mortem* peccatoris, *sed ut conuertatur et uiuat* (cfr. Ezech. 18,23; 33,11), propitius esto mihi peccatoris, et suscipe orationem meam, quam pro famulis et famulabus tuis peccata sua confiteri cupientibus ante conspectu clementie tue humiliter fundo, ut pariter eos a peccatis exuas et in futuro ab omni crimine illesos custodias. Per.

OC AUTEM (?) SI FACERE PROFITETUR MANIBUS EIUS IN SUIS MANIBUS suscipiens, sibi petere penitentiam indicet. Et in manu domini animam et spiritum commendare.

DEINDE SACERDOS DICAT ANTIPHONA² ISTA: *Suscepimus deus*; psalmus: *Magnus dominus* (Ps. 47). Gloria patri et filio. Sicut erat.

ET REPETAT ANTIPHONAM³: *Suscepimus deus*. KYRIE. CHRISTE. KYRIE. PATER NOSTER.

CAPITULA.

Ego dixi, domine, miserere mei. Respondeat: *Sana animam meam* (Ps. 40,5).

Ab occultis meis⁴ munda me domine. Et *ab alieni parce seruo tuo* (Ps. 18,13/14).

Domine adiuua nos. Et *libera nos propter nomen tuum* (cfr. Ps. 43,26).

Dominus uobiscum.

¹ tem in celo *add. marg. sub.l.*

² antiphona] an *abbrev.*

³ antiphonam] a *abbrev.*

⁴ meis meis *ms.*

Deus cui proprium est, misereri semper et parcere, intercedente beato petro apostolo tuo suscipe deprecationem nostram, et hunc famulum tuum .N. ad confessionem et penitentiam ueramque emendationem et ueniam tue pietatis inspiratione conpunctum quem delictorum catena constringit miseratio tue pietatis absoluat. Per dominum.

PROSTERNAT SE PENITENS IN TERRA. POST.¹

Domine ne in ira II usque *amici mei* (Ps. 37,1-11). *Miserere mei deus usque cor mundum* (Ps. 50,1-11). *Benedic anima mea dominus usque faciens misericordiam et iudicium* (cfr. Ps. 102,1-5). KYRIE. CHRISTE. KYRIE. //

TUNC SACERDOS FACIAT LETANIAM.

Christe audi nos III uicibus².

INCIPIIT LITANIA.

Exurge domine adiuua³ nos. Et libera nos propter nomen tuum.

Kyrie leyson III uicibus. Christe eleyson III uicibus.

Pater de celis deus, miserere nobis.	Sancte panphile, ora.
Fili redemptor mundi, deus miserere nobis.	Omnes sancti ⁷ pontifices et confessores, orate.
Spiritus sancte deus, miserere nobis.	Sancte benedicta, ora.
Sancta trinitas unus deus, miserere nobis.	Sancte paule, ora.
Sancta maria, ora [pro nobis].	Sancte Antoni, ora.
Sancta dei genitrix, ora.	Sancte ylarion, ora.
Sancta mater et uirgo, ora.	Sancte machari, ora.
Sancta regina celorum, ora.	Sancte maure, ora.
Sancte michahel, ora.	Sancte placide, ora.
Sancte gabrihel, ora.	Sancte romane, ora.
Sancte raphahel, ora.	Sancte libertine, ora.
Omnes sancti angeli et archangeli.	Sancte fortunate, ora.
Omnes sancti throni et dominationes, orate.	Sancte egidy, ora.
Omnes sancti principates et potestates.	Omnes sancti monachi et eremite, orate.
Omnes sancte uirtutes celorum, orate.	Sancta felicitas, ora.
Sancta ⁵ cherubin et seraphim, orate.	Sancta perpetua, ora.
Omnes sancti beatorum ⁴ spirituum ordines, orate.	Sancta Agatha, ora.
Sancte iohannes precursor deum, ora pro nobis.	Sancta lucia, ora.
Sancte petre, ora.	Sancta Agnes, ora.
Sancte paule, ora.	Sancta cecilia, ora.
Sancte andrea, ora.	Sancta Anastasia, ora.
Sancte iacobe, ora.	Sancta marina, ora.
Sancte iohannes, ora.	Sancta scolastica, ora.
Sancte paule, ora.	Omnes sancte uirgines et uidue, orate.
Sancte thoma, ora.	Propitius esto, parce nobis domine.
Sancte iacobe, ora.	Propitius esto, libera nos domine.
	Ab insidiis demonum, libera nos domine.
	A persecutione omnium inimicorum, libera.

¹ Post] *lege psalmos hos?*

² uicibus] *sup.l. marg.*

³ adiuua *a.corr.*

⁴ beatorum] *add. e sup.l.*

⁵ appollinaris *a.corr.*

⁶ ora] *sequ. ras.*

⁷ sancti] *s abbrev. sancti sup.l.*

Sancte philippe, ora.	A periculo mortis, libera.
Sancte paule, ora.	A subitanea et eterna morte, libera.
Sancte bartholomee, ora.	A penis inferni, libera.
Sancte mathee, ora.	A delectationibus carnis, libera.
Sancte simon, ora.	Ab inmundis cogitationibus, libera.
Sancte taddeu, ora.	A dominatu omnium uitiorum, libera.
Sancte mathia, ora.	A diebus malis, libera. //
Sancte barnaba, ora.	A malis operibus, libera.
Sancte lucan, ora.	A cecitate cordis, libera.
Sancte marce, ora.	A spiritu superbie, libera.
Omnes sancti apostoli et euangelisti, orate.	A spiritu inanis glorie, libera.
Omnes sancti discipuli domini, orate.	Per misterium sancte incarnationis tue, libera.
Omnes sancti innocentes, orate.	Per aduentum tuum, libera.
Sancte stephane, ora.	Per natiuitatem tuam, libera.
Sancte line, ora.	Per crucem et passionem tuam, libera.
Sancte clete, ora.	Per sancta resurrectionem tuam, libera.
Sancte clemens, ora.	Per gloriosam ascensionem tuam, libera.
Sancte alexander, ora.	Per aduentum spiritu sancti, libera.
Sancte xiste, ora.	In die iudicii, libera.
Sancte corneli, ora.	Peccatores, te rogamus.
Sancte cypriane, ora.	Vt parcas nobis, te rogamus.
Sancte chrysogone, ora.	Vt indulgentiam et remissionem peccatorum nobis dones.
Sancte laurenti, ora.	Vt ecclesiam tuam regere et defendere digneris, te rogamus.
Sancte uincenti, ora. //	Vt hodie sine peccato nos custodiat, te rogamus.
Sancte apollenaris ⁵ , ora.	Vt nos audire digneris.
Sancte peline, ora.	Vt nobis miserere digneris, te rogamus.
Omnes sancti martyres, orate.	Fyli dei, te rogamus.
Sancte ylari, ora.	Pastor ¹ bone, te rogamus.
Sancte martine, ora.	Mediator dei et hominum, te rogamus.
Sancte hieronime, ora.	Agnus dei qui tollis peccata mundi, exaudi nos domine.
Sancte ambrosi, ora.	Agnus dei qui tollis peccata mundi, parce nobis domine.
Sancte agustine, ora.	Agnus dei qui tollis peccata mundi, miserere nobis.
Sancte gregori, ora. ⁶	
Sancte basili, ora.	
Sancte nicolae, ora.	
Sancte pauline, ora.	
Sancti germane, ora.	

CHRISTE AUDI NOS III UICIBUS. PATER NOSTER. CAPITULA:

Ego dixi domine miserere mei. Sana animam meam (Ps. 40,5). *Saluum fac seruum tuum. Deus meus sperantem* (Ps. 85,2).

Propitius esto domine peccatis nostris. Propter gloriam nominis tui (Ps. 78,9).

Conuertere domine aliquan[tulum]. Et deprecare ser[uos] (cfr. Ps. 89,13).

Domine exaudi² orationem. Et clamor meus (Ps. 101,2).

Exurge domine adiu[a nos]. Et libera nos propter nomen tuum (cfr. Ps. 43,26).

ORATIO.

¹ patstor ms.

² exaudi] e corr.

Deus cui proprium est, misereri semper et parcere, suscipe deprecationem nostram et famulum^{li} tuum^{et famule tue} ad confessionem et penitentiam, ueramque emendationem et ueniam tue pietatis inspiratione conpunctum quem delictorum catena constringit, miseratio tue pietatis absoluat. per.

ORATIO.

Deus cuius indulgentia cuncti indigent memento famuli tui^{et famule}, qui lubrica terreni corporis est fragilitate nudatus, quesumus, da ueniam confitenti, parce supplici, ut qui suis (...) // (...) .N. clementie tuę longinqua miseratio sana uulnera eius, remitte peccata, ut nullis a te separatus iniquitatibus tibi domino semper ualeat adherere. per.

ALIA ORATIO.

Domine deus noster, qui offentionem nostra non uinceris, set factione (!) placaris, respice quesumus ad hunc famulum tuum .N. qui se tibi peccasse grauiter confitetur; tuum est¹ enim domine² absolute criminum dare et ueniam prestare peccantibus, qui dixisti penitentiam te peccatorum malle quam mortem; concede hoc ergo, ut tibi penitentie excubias³ celebret et correctis actibus suis confiteri sibi a te sempiterna gaudia gratuletur. per.

Assit quesumus domine huic famulo tuo .N. inspiratio salutaris gratie, que cor eius fletuum⁴ ubertate resoluat, sicque se macerando, conficiat ut iracundie tuę motus idonea satisfactione conpescat. per.

Omnipotens sempiternus deus, qui es uere sanctus et sanctorum omnium protector, te pium dominum deuotis mentibus deprecamur pro famulo tuo .N., ut ei indulgentiam tribuas omnium peccatorum suorum, et ne iterum ad uoluntatem peccandi redeat, propitius⁵ eum custodire digneris. per.

Precamur domine, ut intercedentibus omnibus sanctis tuis, famulo^{li} tuo^{tui}, .N. indulgentias concedas, fide, spe, et caritate eum repleas, mentem eius ad celestia desideria erigas et ab omni aduersitate eum defendas et ad bonam perseuerantiam⁶ perducas. per.

MISSA PRO PENITENTE.

IUSTUS ES DOMINE ET RECTUM IUDICIUM TUUM FAC CUM SERUO TUO SECUNDUM MISERICORDIAM TUAM. PSALMUS. *Beati immaculati* (Ps. 118).

Da nobis domine, ut sicut puplicani precibus et confessione placatus es, ita et huic famulo^a tuo^a.N. placari digneris; tu precibus eius benignus aspira, ut in confessione flebili permanens petitione perpetua celeriter exoret, sanctisque altaribus et sacramentis restitutus⁷, // rursus celesti gratia mancipetur. per.

LECTIO EPISTOLE BEATI PAULI APOSTOLI AD GALATHAS.

Fratres, si spiritus uiuimus, spiritus et ambulemus. Non efficiamur inanis glorie cupidi, inuicem prouocantes, inuicem inuidentes. Et si prehoccupatus fuerit homo in aliquo delicto, uos qui spirituales estis, instruite huiusmodi in spiritu lenitatis, consyderans te ipsum ne et tu tenteris⁸. Alter alterius honora portate et sic adimplebitis legem christi (cfr. Galat. 5,25-6,5).

GRADUALE. *Saluum fac seruum tuum deus meus sperantem in te.*

V/ [=Versus?] *Auribus percipe domine orationem meam* (Ps. 53,4).

SEQUITUR SANCTI EUANGELII SECUNDUM LUCAM.

In illo tempore, uidit ihesus leui alphei sedentem ad teloneum, et ait illi: Sequere me. Et surgens secutus est eum. Et factum est cum recumberet in [do]mo illius multi puplicani et

¹ est] domine *sup.l. a.corr.*

² domine *sup.l.*

³ exubias *a.corr.*

⁴ fletuum] *sequ. ras.*

⁵ propitius] *add. us sup.l.*

⁶ perseuerantium *a.corr.*

⁷ auem *margin.*

⁸ tenteris] *tente sequ. ras. ris*

peccatores, simul discumbebant cum ihesu et discipulis eius. Erant enim multi qui et sequebantur eum, et scribe et pharisei uidentes quia manducaret cum puplicanis et peccatoribus dicebant discipulis eius: Quare cum puplicanis et peccatoribus manducat et bibit magister uester? Hoc audito ihesus ait illis: Non necesse habent sani medicum, sed qui male habent. Non enim ueni uocare iustos, sed peccatores, in penitentiam (cfr. Marc. 2,14-17).

OFFERTORIUM. *Bonum est [con]fiteri domino et psallere nomini tuo altissime* (Ps. 91,2).

SECRETA. Suscipe clementissime pater, hostias placationis et laudis, quas ego peccator et indignus famulus tuus tibi presumo offerre ad honorem et gloriam nominis tui et periculo mitate famuli tui .N., ut omnium delictorum ueniam consequi mereatur. per.

COMMUNIO.

Gustate et uidete quam suabis est dominus beatus uir qui sperat in eo.

POST COMMUNIONEM.

Purificent nos quesumus domine, sacramenta que sumpsimus et famulum tuum .N.¹ // ab omni culpa liberum esse concedet, ut qui reatu constringitur celestis remedii plenitudine glorietur. per.

GREGORIUS PAPA. DE INCENDIO.

<1.> Sy quis aream aut domum cuiuscumque uoluntarie igne cremauerit, circa humanam diffinitionem III annos peniteat.

DE SUBFOCATO ET SANGUINE. GREGORIUS.

<2.> Sy quis a lupo, uel a cane, aut a se ipse/a aliquam bestiam suffocatam inuenerit², nullatenus manducare³, nec sanguinem alicuius bestie manducare aut bibere presumat; si quis fecerit, XL dies peniteat.

GREGORIUS.

<3.> Si quis eucharistiam perdiderit, I annum peniteat. Si sacrificium in terram ceciderit et inuentum non fuerit, IIII quadragesime peniteat; si inuentum fuerit, L psalmos cantet. Qui negligit sacrificium ita ut uermes in eo inueniantur, aut colorem saporemque mutet, XL dies peniteat, et incendatur. Qui fuderit calicem in finem misse, XL dies peniteat. Si stillauerit calix super altare, sorbeatur stilla, et III dies peniteat, et linteamina que tetigerit abluat per tres uices, calice subter posito, et aqua ablutionis in ignem proiciatur.

GREGORIUS.

<4.> Fecisti truncationem manuum, aut pedum, aut oculorum, aut uulnerasti aliquam per truncationem nisi pro furto aut latrocinio, unum annum grauiter peniteat.

ALIA.

<5.> Sy laicus alterum laicum occiderit, VII annos peniteat. Sy qua mulier oppresserit infantem, si baptizatus III annos peniteat, si non baptizatus VII, tres ex his in pane et aqua. Si infans positus fuerit iusta ignem et caldaria, uel quolibet uas cum bullita aqua perfuderit in//fantem et moritur, custos III annos peniteat.

DE TRADITORIBUS

<6.> Si quis hominem in manus inimici uel castellum in spiritu iudea tradiderit⁴, non aliter de eo iudicandum est, nisi ut omnes substantias suas distribuat pauperibus tunc demum, usque

¹ N] N. ab omni culpa *sub l. marg.*

² inueuerit *ms.*

³ manducare] *e corr.*

⁴ tradiderit] *dederit a.corr.*

ad¹ mortem excommunicatus in carcere trusus ibi cum fletu et luctu peniteat, quia scriptum est: 'Maledicti sunt traditores super omnes homicidas'.

GREGORIUS.

<7.> Sy quis furauerit de ecclesia aurum, uel argentum, seu libros, siue sacerdotalia, uestimenta, seu uela, siue aliquid quod ausum ecclesie datum est, reddat quod furtum, et tres carrinas cum septem sequentibus annis peniteat. Si reliquias furatus est, VII carrinas et annos suprascriptos peniteat, et reliquias prius reportentur.

GREGORIUS.

<8.> Sy quis fregerit domum alicuius et quadrupedia, equum, aut bobem, uel alia animalia, aut solidos rapuerit, reddatur quod furatum est et annum I peniteat. Si paruum furtum fuerit reddatur, et X dies peniteat in pane et aqua, pueri VII dies in pane et aqua peniteant.

GREGORIUS. CON ACONENSE².

<9,1.> Quicumque super genitorem suum aut genitricem, uel compatrem, aut patrem in christo seu seruus super dominum, nisi causa nutrimenti iratu animo ictu erexerit, si non percusserit, I annum peniteat; si uero percusserit, VII annos peniteat.

<9,2.> Sy cum deuota que est ueste mutata. Si cum electa uidua uel cum sponsa alterius. Si cum presbitera uel diacona. Si cum iudea uel pagana VII annos peniteat. Si cum uidua equali uel puplica meretrice, aut ancilla alterius, V annos peniteat. Si cum laica uirgine, que non dum est sponsata alteri, IIII annos peniteat.

GREGORIUS.

<10.> Viginti dies ante natalem // domini, et omnes dies dominices, et omnibus³ legitimis ieiuniis, et in nataliciis apostolorum, et in precipuis festis, et in puplicis castitatem debes custodire. Si autem non custodisti, XX dies in pane et aqua peniteat.

<11.> Sy quis fecerit fornicationem contra naturam, idest masculis, cum animailibus (!) idest cum uacca, cum equa, cum asina, uel cum alio animali, XV annos dixtrictē peniteat.

ALIO.

<12.> Omnis christianus qui in matrimonio est, abstinere se debet a propriam etiam uxorem in certis quod subnotamus. Videlicet qui nupserit a dominica quinquagesime usque ad clausam pasce, antiqui patres I annum, humanius diffinierunt XL dies cum plurimis helemosinis et horationibus et bonis operibus. Qui autem in aliis quadragesimis et IIII^a et sexta feria, petat indulgentiam a deo, in iudicio spiritali patris. Qui uero sabbato adque dominico die uel nocte, IIII dies peniteat. Qui in precipuis festiuitatibus cum intentis orationibus et helemosinis adque offertoriis ad ecclesiam, ut in iudicium sacerdotis est peniteat. Qui menstruo tempore cum uxore coierit, XL dies peniteat. Qui concepto semine ad uxorem usque ad tertium mensem ante partum intrauerit de res sua, iudicio sacerdotis se redimat. Qui nupserit III menses ante partum, XX dies peniteat iusta quod prope ante partum.

GREGORIUS.

<13.> Sy qui uir cum uxore sua retro nupserit, corripiendus est ne faciat, set si fecerit, pro huna uice in semetipso XL dies peniteat. Si autem in terga peniteat, sicut de animalia.

¹ ad] adque *a.corr.*

² lege Concilium terraconense

³ omnibus] sequ. du *a.corr.*

IUDICIUM THEODORI. //

<14.> Sy masculino cum masculino fornicatus fuerit non ut sodomite, V uel VII annos peniteat seu amplius uel minus circa qualitate siue quantitate fornicationis culpe. Si mulier cum se ipsa sola coitu habuerit, I annum peniteat. Si cum alia II.

GREGORIUS.

<15.> De massa peccatis, idest de minimis peccatis aut de illa que non reminiscuntur hominibus, VII annos (!) peniteat, III in pane et aqua, II solidos in elemosina.

YSIDORUS.

<16.> Non oporteat cristianus inter ecclesia incumbere in baculo neque in pondio, sed rectus ac simplex ante¹ deum oret pro delictis suis, neque nulla faulatione aut inusitatione, sed cum puritate oret, namque presu[m]pserit aliut agere, anathematizetur.

YSIDORUS.

<17.> Nullis liceat christianus cum sacro sacerdote presumat² proterue contendere, nisi cum humilitate et obedientia eos interroget, et si presumpserit alia agere, corripiatur semel et bis et tertio; si non se emendauerit, excommunicetur (!).

YSIDORUS.

<18.> Nullis liceat laicus rebus ecclesie possidere, nisi ad conseruandum uel regendum sancta dei ecclesia; nam si per cupiditate uel secularia possedit, anathematus³ sit, et in ecclesia sacerdos accedere non presumat ad sacrificandum, quia non debet sacerdos sub iussione laicorum militare.

GREGORIUS.

<19.> Sacer[dos] nil possidere ualet, nisi rebus ecclesie, quod // basilice sanctę est uite sue meritum habeat, inde (?) uictum et uestimentum, et egenum substantionem tribuat; defuncto autem eo omnia quod remanet ecclesia⁴ remaneat, excepto IIII pars quod episcopi est offerenda uel obseruanda.

DE CLERICIS QUI OFFICIUM SUUM NEGLEGUNT.

<20,1.> Placuit sancto concilium: Si qui officium suum negleserint, idest, nocturnum, matutinum primam, tertiam, sextam, nonam, uesperum, completorium, episcopus XL, presbiter XXXta, diaconus et monachus XX, subdiaconus XV, clericus X, et qui sunt laici, non perdant oras suas, quia dominus noster cum usuris exigere debet talentum quod accepimus.

<20,2.> Basilius episcopus: scire debemus quia reddituri sumus de ecclesiasticis officiis, qui a deo credita sunt nobis; nullus ergo⁵ negligens inueniatur de officio quod a deo creditum est. Scriptum est enim, *maledictus⁶ qui faciunt opus dei neglegentes* (Ier. 48,10).

GREGORIUS.

<21.> Seculares uero qui in natale domini, pasca, pentecoste non communicauerit, catholici non credantur nec inter catholicos habeantur.

¹ ante] an *abbrev.*

² presumat] *e corr.*

³ anathematus] *tus sup.l.*

⁴ ecclesie *a.corr.*

⁵ ergo *ergo ms.*

⁶ maledictustus *ms.*

DE TACITURNITATE IN ECCLESIA. REGULA CANONICA.

<22.> Omni tempore in ecclesia a populo¹, quam a clero summum silentium fiat, exceptis que ad laudem dei pertinet; qui hanc taciturnitatem in ecclesia minime custodierit, pro una uice I dies (!) peniteat in pane et aqua et si iterum, III dies, et tertia uice iterauerit, VII dies peniteat ut supra peniteat, et amplius hoc facere presumpserit, corporali discipline subiciatur, ut ceteri timeant.

GREGORIUS.

<23.> Paterius: qui in quadragesima ieiunium soluit, pro I dies (!) VII dies peniteat; de utriusque coniugiis, compatrem ecclesie relatense (*sic!*).

YUDICIUM COMMEANI.

<24.> Qui anticipat ora canonica // uel suabiora cetera sumit gule, tantum cena careat, III diebus in pane et aqua peniteat; qui autem superfluum uentris distentionem qui sentit, I dies peniteat.

GREGORIUS.

<25.> Statuta uel decreta patrum regula que constituit: Si quis primitias et decimas non dederit, communionem non potest accipere.

DECIMA IN QUATTUOR PARTES DIUIDANTUR. SECUNDUM PIPINUS RES.

<26.> Vt decime populi diuidantur in quattuor partes, una pars episcopo, alia ecclesie, III pauperibus, IIIIta ecclesie in fabrica restaurandum computentur, sicut in decretalibus gelasii papę continentur.

<27.> Augustinus: sicut aqua exstringit (!) ignem item penitentia diluit crimina in frontibus (!) lacrimarum, et sicut in tenebris si est absque lumen lucerna, sic non potest peccatum absque penitentia aboleri idest deleri. Nam quod peccatum claudit, penitentia reserat qui timet deum per penitentia illustrantur. Penitentia respuit auaritiam, horrit luxuriam, fugit furorem, firmat amorem, calcat superbiam, linguam continet, componit mores, odit malitiam, excludit inuidiam.

GREGORIUS.

<28.> Nam si aliquis in se uel paruum peccatum celauerit, sciat se exinde rationem redditurum, secundum illud quod dominus dicit de berbo otioso (cfr. Matth. 12,36), quanto magis nos si plura uel peccata uel crimina que commisimus recelauerimus, quia scriptum est: 'Nullum peccatum inultum dimittit deus, hoc est sine uindicta'. Quodsi non iudicamus hic per penitentiam, iudicat illic deus per seueritatem in iudicio; nam de satisfactionem dicit, *quacumque hora conuersus fuerit peccator, et egerit penitentiam, omnia peccata eius in obliuione traduntur* (Ez. 33,12-13).

¹ populo populo *ms.*

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SAMENVATTING

In de ontwikkeling en verbreiding van de kerkelijke biecht hebben de vroegmiddeleeuwse boeteboeken een zeer belangrijke rol gespeeld. Boeteboeken zijn verzamelingen van bepalingen of tarieven, waarin voor elke denkbare zonde een passende boete is voorgeschreven. De aard van de boete, meestal een periode van vasten, het geven van aalmoezen of het zingen van Psalmen, en de duur kon variëren al naargelang de zwaarte van de zonde, de intentie van de zondaar en de omstandigheden waaronder de zonde was begaan. De zonden liepen uiteen van kleine vergrijpen, zoals het laten vallen van de hostie of het koesteren van afgunst tegen iemand, tot grote, zoals moord, diefstal en overspel. Vanaf de Karolingische tijd worden boeteboeken vaak voorafgegaan door *ordines ad paenitentiam dandam*, liturgische draaiboeken voor de biechthorende priesters. Hoewel de eerste boeteboeken werden geschreven in Ierse kloosters, zijn de meeste en de meest populaire teksten producten van de Karolingische renaissance. In de tiende eeuw neemt het aantal nieuwe teksten gestaag af, om na ca. 1150 in deze vorm zelfs helemaal uit het kerkelijke leven te verdwijnen.

Deze studie behandelt vijf boeteboeken die in de nadagen van het genre samengesteld zijn. Het gaat om een groep teksten die alle geschreven zijn in het midden en zuiden van Italië in de periode 1000-1100, meer specifiek in Benevento, de streek ten zuiden van Rome, en in Umbrië, ten noorden van Rome. Aangezien het boeteboek al in de zesde eeuw in Ierland is ontstaan en de grootste productie van boeteboeken in het Frankische Rijk plaatsvond, kunnen we spreken van een opvallend late opleving van het genre in Zuid- en Midden-Italië. Deze indruk wordt versterkt doordat in de rest van Europa in deze tijd slechts een gering aantal nieuwe teksten geschreven werd. De Italiaanse boeteboeken vertonen, wat hun inhoud en de gebruikte bronnen betreft, een sterke onderlinge verwantschap. Enerzijds bouwen ze voort op oudere Insulaire en Frankische tradities, maar anderzijds hebben de teksten een geheel eigen karakter. Behalve op grond van het gebied van herkomst is er ook op inhoudelijke grond genoeg aanleiding om de teksten als één corpus te beschouwen.

Voor het huidige onderzoek naar de biecht en boetedoening is de late bloeiperiode van het boeteboek in Italië bijzonder interessant. In de eerste plaats is het relatief late tijdstip van de compilatie van de boeteboeken opvallend. Men kan zich afvragen waarom het genre juist in deze periode een opleving beleefde, terwijl het in andere regio's langzamerhand in onbruik geraakt was. Verschillen deze late teksten uiterlijk en inhoudelijk van eerdere boeteboeken? Is het mogelijk om in deze boeteboeken een verandering in de boetpraktijk te traceren ten

opzichte van vroegere periodes? Verder is het interessant om de compilatie van nieuwe boeteboeken af te zetten tegen de achtergrond van de opkomende studie van het (kerkelijk) recht in juridische scholen in Italië. Wellicht is het mogelijk om de compilatie van veelal nieuwe Italiaanse boeteboeken in verband te brengen met een groeiende interesse in juridische teksten. Tot slot is het in licht van recente discussies over het gebruik van boeteboeken, goed om na te gaan in hoeverre de Italiaanse teksten ook daadwerkelijk in de pastorale praktijk door biechthorende priesters gebruikt zijn. Dat boeteboeken in de zielzorg geraadpleegd zijn is niet langer vanzelfsprekend. Franz Kerff en Sarah Hamilton kwamen beiden tot de conclusie dat vooral de latere werken niet in de zielzorg gebruikt werden, maar veler in een bisschoppelijke context, hetzij in de bisschoppelijke rechtspraak (Kerff) hetzij in het onderwijs van priesters (Hamilton). De toevoeging van boeteboeken aan kerkrechtelijke verzamelingen deed Hamilton concluderen dat het merendeel van de teksten een educatieve functie vervulden in de kathedraalscholen. Zij hadden geen directe relevantie meer met de boetepraktijk. De visies van Kerff en Hamilton worden ten dele door andere historici gedeeld. Rob Meens, bijvoorbeeld, geeft hun gelijk wat betreft de toenemende ‘juridisering’ van boeteboeken in de tiende en elfde eeuw, maar hij benadrukt tegelijkertijd ook de pastorale functie van de teksten in de achtste en negende eeuw. Onderzoek naar de handschriften waarin boeteboeken afgeschreven zijn speelt in deze discussie een belangrijke rol. Zo kan men er bijvoorbeeld van uitgaan dat een korte tekst in een kleine liturgische codex een wezenlijk andere functie had dan een zeer uitgebreide verzameling boettarieven in een rijk verlicht, kerkrechtelijk handschrift. Om de vraag over het gebruik van de teksten te kunnen beantwoorden is in deze studie daarom veel plaats ingeruimd voor de analyse van de handschriften van de teksten (bibliotheekgeschiedenis, inhoud van het de manuscripten, schrift, formaat, decoratie, enz.) speelt daarom een grote rol in deze studie.

In dit boek is getracht om een antwoord op deze vragen te krijgen door een nadere analyse te maken van een vijftal biechthandboeken. Dit hield in de eerste plaats een analyse in van de bronnen van de boetbepalingen en van de handschriften waarin ze afgeschreven zijn. Het ging hierbij om de volgende teksten. Het *P. Casinense*, een laat tiende of vroeg elfde-eeuwse tekst die waarschijnlijk in Zuid-Italië is gecompileerd. De tekst is gebaseerd op het Frankische *P. Capitula Iudiciorum* en het Italiaanse *P. Vallicellianum I*, aangevuld met teksten van andere boeteboeken en canones van eigen makelij. De tekst heeft enkele bepalingen die niet in een andere bron voorkomen gemeen met de Verzameling in Negen Boeken, een kerkrechtelijke verzameling die van invloed is geweest op de belangrijke Verzameling in Vijf Boeken. Waarschijnlijk is het *P. Casinense* voor deze kerkrechtelijke

verzameling gebruikt. Dit boeteboek is overgeleverd in een vroeg elfde-eeuws handschrift in Beneventaans schrift dat waarschijnlijk in Montecassino is geschreven, maar lange tijd in het klooster van San Nicola della Cicogna heeft gelegen. De *canones* zijn ingeklemd in een lange liturgische *ordo*. Het uit twee delen bestaande handschrift bevat zowel kerkrechtelijke als liturgische teksten.

Het *P. Vaticanum* dateert uit dezelfde periode. Vanwege de aanwezigheid van teksten over de levens van de martelaren Lucia en Eustratius hebben historici verondersteld dat de codex mogelijk toebehoord heeft aan een kerk in Rome, hetzij aan de SS XII Apostolorum hetzij aan de San Appollinare. In ieder geval is het handschrift geschreven in Rome. Het boeteboek bestaat uit een *ordo* en een reeks *canones*, verdeeld over zeven hoofdstukken. De voornaamste bronnen zijn het *P. in II libris* en de *P. Oxoniense II*, hoewel we ook hebben kunnen vaststellen dat sommige bepalingen teruggaan op de *Iudicia* van Theodorus van Canterbury en de boeteboeken van (Pseudo-)Beda en (Pseudo-)Egbert. Net als het *P. Casinense* is deze tekst waarschijnlijk van invloed geweest op de Verzameling in Negen Boeken. Een andere overeenkomst met het *P. Casinense* is het handschrift, dat ook uit twee apart geschreven delen bestaat en zowel liturgische als kerkrechtelijke teksten bevat.

Het *P. Vallicellianum E. 62* is weer gebaseerd op het *P. Vaticanum*, zij het in een vroegere en niet overgeleverde versie van deze tekst, en de Verzameling in Vijf Boeken. De tekst bestaat uit een biecht*ordo* en een korte verzameling bepalingen. Het enig overgeleverde manuscript dat deze tekst bevat, is geschreven in Narni in de eerste helft van de twaalfde eeuw. Het bestaat volledig uit liturgische teksten, zoals *ordines* en misformulieren. Het boeteboek is samen met enkele andere teksten later aan het handschrift toegevoegd, waarschijnlijk door een latere gebruiker van de codex. De tekst is mogelijk iets ouder dan de twaalfde eeuw, omdat de bronnen teruggaan op elfde-eeuwse teksten.

Het *P. Vallicellianum C. 6* bestaat uit *canones* van het *Capitula Iudiciorum* en de Vijf Boeken Verzameling. Het is de enige in deze studie behandelde tekst zonder liturgisch draaiboek. De samensteller van dit boeteboek legde een opvallende ijver aan de dag wat betreft het bewerken en homogeniseren van de bepalingen uit de verschillende bronnen. Van alle boeteboeken is de originaliteit van dit boeteboek waarschijnlijk het grootst. De tekst is geschreven iets vóór het jaar 1089 op twee folia, die gehecht zijn aan een twaalfde-eeuws Breviarium. Zowel de twee folia als het Breviarium is geschreven in de abdij van Sant'Eutizio in Val Castoriana bij Norcia. Naast het boeteboek bevatten de twee folia ook nog fragmenten uit de exegetische werken van Beda Venerabilis, *canones* uit de Verzameling in Vijf Boeken

en een kalender. Omdat de inhoud van het laatste gedeelte van de codex zo divers is, is het niet mogelijk om nader te bepalen hoe de codex gebruikt is.

Het *P. Lucense* is al met al het kortste boeteboek. Het bestaat uit een onvolledige *ordo* en een korte reeks bepalingen, afkomstig van de Verzameling in Vijf Boeken en het *Decretum* van Burchard van Worms. Enkele canones zijn niet te herleiden tot een bestaande bron. Zij handelen over kerkelijk bezit dat in handen is van leken en het verbod op het hebben van bezitting voor geestelijken, thema's die een grote rol speelden tijdens de Gregoriaanse hervorming van de elfde en twaalfde eeuw. In de marge zijn gedeeltes van een tweede *ordo* toegevoegd. Kennelijk voldeed de oorspronkelijke *ordo* niet helemaal aan de wensen van de gebruiker, wat erop wijst dat de *ordo* ook daadwerkelijk is gebruikt. Het handschrift, een *Rituale* met de *ordines* van de mis, de doop, en de ziekenzalving, is geschreven in Beneventaans schrift, mogelijk in het bisdom Valva-Sulmona.

Hoewel in deze studie een relatief beperkt aantal teksten aan bod is gekomen, kan men toch wijzen op de grote overeenkomsten tussen de teksten. Niet alleen maken de teksten gebruik van dezelfde bronnen, maar ook zijn er inhoudelijke overeenkomsten tussen de teksten aan te wijzen. Wat dit laatste betreft getuigen de Italiaanse boeteboeken van een opvallende ontwikkeling die het genre heeft doorgemaakt. Ofschoon 'kleine' zonden niet uit de boeken verdwijnen, lijkt het erop dat de nadruk is komen te liggen op kapitale zonden, zoals moord, ontucht, overspel en incest. Boeteboeken behandelen vooral de zonden die de onderlinge relaties tussen mensen beïnvloeden of schade toebrengen, zoals overspel of geweldsdelicten. Deze grotere aandacht voor 'sociale' en schandaalverwekkende zonden hangt ten dele samen met het gebruik van de boetedoening in de samenleving. De biecht kan deels gefunctioneerd hebben als middel om de sociale rust te bewaren in een gemeenschap. Het heeft echter in even grote mate te maken met een veranderende functie van het genre. Het is in dit verband interessant dat Allen Frantzen de popularisering van de biecht in verband brengt met het opkomen van een minder strikte boetpraktijk in de twaalfde eeuw. Dit hoeft echter niet te betekenen dat kleine zonden geen rol speelden in biecht. Waarschijnlijk volstond voor dergelijke zonden het deelnemen aan het biechtritueel of het doen van een korte boete. Terwijl deze zonden geleidelijk uit de tarieven verdwenen, hadden de boeteboeken nog wel relevantie voor de zwaardere zonden die met langere of uitzonderlijke boetes bestraft dienden te worden.

Over de opvallende aanwezigheid van bepaalde geweldsdelicten kan nog het volgende opgemerkt worden. De groeiende zorg van geestelijken kan vooral afgelezen worden aan het

aantal nieuwe bepalingen over moord, geweld tegen verwanten en roof van kerkelijke goederen. Nu is het niet mogelijk om deze bezorgdheid direct met de hervormingsbeweging(en) van de elfde eeuw in verband te brengen. Een deel van de boeteboeken en kerkrechtelijke verzamelingen waarop het onderzoek gebaseerd is, is al voor de zogenaamde Gregoriaanse hervorming te dateren. Het is echter opvallend dat dezelfde onderwerpen een grote rol speelden in de Godsvredebeweging, en in de conciliaire wetgeving die hieruit voortvloeide. De Godsvrede ontstond aan het eind van de tiende eeuw in Frankrijk om het geweld tussen adellijke heren in te dammen. Het is aannemelijk dat de interesse in boete en boeteboeken mede het gevolg was van een vergelijkbare, door monniken en geestelijken gecoördineerde aanzet om geweldsdelicten te beteugelen.

De populariteit van biecht en boetedoening in Midden- en Zuid-Italië is goed te meten aan een groot aantal overgeleverde *ordines*, liturgische draaiboeken waarin nauwkeurig de rituele handelingen en de gebeden voor de biecht zijn opgetekend. Oorspronkelijk behoorde de *ordo* bij het boeteboek. Bijna alle besproken Italiaans boeteboeken worden voorafgegaan door een dergelijk liturgisch draaiboek. Al in de negende eeuw zien we dat de eerste *ordines* onafhankelijk van boeteboeken worden overgeleverd, een ontwikkeling die zich in de daaropvolgende eeuwen doorzet. De ontwikkeling van de liturgie van de biecht ondergaat in het Italië van de elfde eeuw een ware bloei. Nadat de liturgie van de biecht en de boetoplegging pas in de Karolingische periode vorm begint te krijgen, vindt de ritualisering van biecht en boete een onbetwist hoogtepunt in elfde-eeuws Italië. Hierbij speelden drie oudere teksten een belangrijke rol, namelijk de zogenaamde Reims *ordo* en de *ordo* van het *P. in II libris*, beide gecompileerd in Noord-Frankrijk in de negende eeuw, en het *Pontificale Romano-Germanicum*, geschreven in Mainz rond 950. De rites uit Italië gedeeltelijk publiek zijn, dat wil zeggen, op een publiek van meerdere boetelingen berekend zijn, maar de Zuid en Midden-Italiaanse teksten lijken hier nog iets verder in te gaan. Het is derhalve niet mogelijk om een strikt onderscheid te maken tussen publieke en private boete. De basis van de liturgie van bijna alle *ordines* is hetzelfde. De rite begint met voorbereidende gebeden en geloofsvragen. Dan wordt de boeteling ondervraagd of gevraagd te biechten, waarna de priester een penitentie oplegt. In de meeste teksten geeft de priester meteen na het opleggen van de penitentie, dus voordat de boeteling zijn zonde heeft uitgeboet, de zondaar de absolutie. Opvallend aan de Zuid- en Midden-Italiaanse teksten is de grote invloed op de biechtliturgie van rituelen die zich om het ziekte- en sterfbed afspelen. Hierbij kan de *Commendatio animae*, de aanbeveling van de ziel (van de overledene) aan God, in het

bijzonder genoemd worden. De liturgische diversiteit waarvan de *ordines* getuigen maakt duidelijk dat iedere regio, en binnen die regio, ieder kerk of klooster zijn eigen liturgische gebruiken had. Niet alleen het grote aantal teksten maar ook het feit dat de teksten vaak voor meerdere boetelingen tegelijk bestemd waren maakt duidelijk dat de biecht tot één van de reguliere en vaak voorkomende kerkelijke gebruiken behoorde in Zuid- en Midden-Italië.

Vanuit het oogpunt van de handschriftelijke overlevering zou men het boeteboek soms als liturgische en soms als kerkrechtelijke tekst kunnen classificeren. Een deel van de boeteboeken is gekopieerd in liturgische boeken, terwijl andere teksten zijn afgeschreven in kerkrechtelijke handschriften, soms als onderdeel van een canonieke verzameling. In de afgelopen decennia is in het onderzoek naar de boetedoening de neiging opgekomen om het liturgische karakter van een tekst of een codex gelijk te stellen met het gebruik in de zielzorg. Van kerkrechtelijke handschriften, daarentegen, werd vooral het theoretische of het educatieve karakter benadrukt. Deze bewering gaat inderdaad in veel gevallen op, maar ze is tegelijkertijd ook een versimpeling van wat de handschriften ons vertellen. Zo zijn een aantal Italiaanse teksten in handschriften van gemengd liturgisch-kanonieke aard gekopieerd zijn.

Van de grote invloed van boeteboeken op het kerkelijk recht getuigt de receptie van boetcanones in de twee belangrijkste Zuid-Italiaanse kerkrechtelijke verzameling uit de late tiende en vroege elfde eeuw, de Verzameling in Vijf Boeken en de Verzameling in Negen Boeken. Boete speelde een zeer belangrijke rol in beide collecties. Terwijl de compiler van de laatste verzameling al haar boetcanones reserveerde voor het negende boek, waardoor een apart boeteboek ontstaat, vinden we in de Verzameling in Vijf Boeken de bepalingen uit boeteboeken door de gehele tekst. Haar vierde en vijfde boek nemen ook de indeling van de *Capitula Iudiciorum* over en hebben als zodanig de vorm van een boeteboek. We hebben hier te maken met typisch kerkrechtelijke documenten. De samenstellers vergeleken de (boet)bepalingen, gaven aanwijzingen voor het toepassen van de vaak tegenstrijdige *canones*, en probeerden deze als het nodig was met elkaar te verzoenen. Ook kennen beide verzamelingen een grote inbreng van kerkrechtelijk materiaal zoals decretalen en kerkvadercitaten. Tevens duiden de (grote) formaten van de handschriften zelf niet op het gebruik van deze teksten in de zielzorg. Dit wil echter niet zeggen dat beide documenten niet de zielzorg op het oog hadden. Juist de grote invloed van boeteboeken wijst op een mogelijke functie in het onderricht van priesters dat zij als voorbereiding ontvangen op hun taak in de zielzorg. Bovendien is de Verzameling in Vijf Boeken in ongeveer veertig, vaak verkorte recensies overgeleverd. Via deze korte recensies zijn hun bepalingen uiteindelijk weer

gebruikt voor het samenstellen van boeteboeken, waarvan enkele in liturgische handschriftjes te vinden zijn. Het is dus vooral in deze korte versies, of ‘derivatives’ zoals Roger Reynolds ze noemt, dat deze verzameling een grote invloed heeft uitgeoefend op het kerkelijk leven in Zuid- en Midden-Italië.

De handschriften die afgeschreven zijn in liturgische boeken lijken dichter bij de boetepraktijk te staan. Het uiterlijk van de manuscripten waarin de vijf behandelde boeteboeken afgeschreven zijn, is eenvoudig. Het formaat van de manuscripten is niet bijzonder groot. Verder gaat het om korte boeteboeken die voorafgegaan werden door liturgische *ordines*. Ook hier mogen we echter niet een te strikte scheiding aanbrengen tussen de genres. Voor de twee in deze studie besproken representanten, het *P. Vallicellianum E. 62* en het *P. Lucense*, is de canonieke Verzameling in Vijf Boeken een zeer belangrijke bron geweest. De functie van de gemengd canoniek-liturgische handschriften, waarin het *P. Casinense* en het *P. Vaticanum* te vinden zijn, is moeilijker in te schatten. De teksten kunnen gebruik zijn voor zowel educatieve als pastorale doeleinden. Mogelijk vervulden zij beide functies tegelijkertijd. Het verschil tussen ‘juridische’ boeteboeken en ‘liturgische’ boeteboeken is derhalve gradueel. De in deze studie beschreven boeteboeken zijn mede het resultaat van een vruchtbare kruisbestuiving van liturgische en kerkrechtelijke teksten.

De populariteit van boeteboeken en biecht*ordines* is grotendeels te danken aan de ontwikkeling van een pastoraal netwerk dat onder de vleugels van de bisschoppen en, in sterkere mate, van kloosters tot volle wasdom kon komen. Vooral kloosters speelden een belangrijke rol in de coördinatie van de zielzorg en in het onderwijs van de priesters, de zielzorgers. Hierop duidt een groot aantal pseudonieme bepalingen die de zielzorg verzorgd door monniken trachten te verbieden dan wel deze proberen te legitimeren. Zowel het onderricht in het horen van de biecht als het aanleveren van de benodigde teksten vond voor een belangrijk deel plaats in kloosters. Niet voor niets is zijn enkele van de beschreven boeteboeken, boet*ordines* en kerkrechtelijke verzamelingen (af)geschreven in abdijen als Montecassino in het Benevento en Sant’Eutizio in Umbrië.

CURRICULUM VITAE

Adriaan Gaastra, geboren te Lisse op 25 november 1975, behaalde zijn examen VWO aan het Agnes College te Leiden. Hij studeerde Geschiedenis aan de Universiteit Utrecht en studeerde in 2000 af op de specialisatie Middeleeuwse Studies. Tussen 2001 en 2005 was hij verbonden aan deze universiteit als wetenschappelijk medewerker en Assistent in Opleiding bij het project “Building a Christian Society: Penitentials of the Tenth and Eleventh Centuries” geleid door dr. Rob Meens. Tevens was hij tussen 2005 en 2006 als junior docent verbonden aan de Opleiding Geschiedenis. In 2006 verbleef hij met een onderzoeksbeurs van het Collegio dei Fiamminghi aan de Universiteit van Bologna.